

Legal Certainty of Online Motorcycle Taxis as Public Transportation in Indonesia

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ABSTRACT

Background: Indonesia, as an archipelagic nation, heavily depends on transportation that aligns with its unique geographical conditions. The rapid development of science and technology has transformed the transportation sector, leading to the emergence of alternative modes such as online motorcycle taxis (Ojek online). These services have become a crucial component of road transportation, offering intra-city and inter-city journeys via application-based systems.

Objective: This study aims to assess the legal standing of online motorcycle taxis and their alignment with current legislative provisions to determine their status as legitimate public transportation.

Methodology: The research adopts a qualitative approach, utilizing legislative reviews, comparative studies, and stakeholder interviews to analyze the regulatory framework governing online motorcycle taxis.

Findings: The study reveals that while online motorcycle taxis contribute significantly to the transportation sector, current legislation does not fully recognize them as legitimate public transport providers. This gap affects passenger protection and the certainty of service standards.

Conclusion: To ensure safety, reliability, and legal clarity, it is imperative to establish a comprehensive legal framework that formally categorizes online motorcycle taxis as recognized public transportation.

KEYWORDS

Indonesia, Legal Certainty, Online Motorcycle Taxis, Public Transportation, Transportation Policy.

INTRODUCTION

As an archipelagic nation, Indonesia is increasingly convinced that transportation is imperative, necessitating our adaptation to the various modes of transport available to their demands (Rohe & Chlebna, 2021). Generally, Soegijatna Tjakranegara articulates that transportation involves the movement of goods and passengers from one location to another (Córdova & Kras, 2020), thereby enabling carriers to provide transportation services or produce services for communities that require the transfer or delivery of their goods. Transportation, as defined in Article 1, Number 3 of Law No. 22 of 2009 regarding Traffic and Road Transportation, states (Starke & Lünich, 2020),

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“Transportation is the movement of persons and/or goods from one location to another using vehicles within the road traffic space.” In general, the primary function of transportation is to facilitate the effective and efficient transfer of goods or individuals from one location to another. The advancements in science and technology have had a remarkable impact on the availability of transportation that ensures and protects every user and passenger from disturbances and obstacles during their journeys. Currently, transportation in Jakarta and its surrounding areas has developed at an extraordinary pace, demonstrating remarkable dynamism (Lin dkk., 2021). Cars, trains, and other vehicles have become the public transportation options that we have recognized for several decades. Reliable transportation undoubtedly warrants significant attention.

According to the Great Dictionary of the Indonesian Language (KBBI), reliable transportation is defined as transportation that can be trusted (Payne dkk., 2021). The essence articulated in this vision underscores the availability of dependable road transportation services that facilitate transportation activities, ensuring that passengers experience no reservations due to guarantees of safety until they reach their destinations. In road transportation, the vehicles utilized are public motor vehicles, which, according to Article 1, Number 5 of Government Regulation No. 74 of 2014, are defined as any motor vehicle employed for the transport of goods and/or individuals for a fee. The public motor vehicles referred to herein include passenger cars, buses, and cargo vehicles (Giacomini dkk., 2021). This aligns with the provisions of Article 47, paragraph (3) of Law No. 2 of 2009 concerning Traffic and Road Transportation.

Public motor vehicles used as a mechanism of road transport must meet minimal service standards encompassing safety, security, comfort, accessibility, and regularity (Campbell dkk., 2020). Consequently, the vehicles employed for public transportation must satisfy roadworthy requirements as stipulated in the provisions of Article 48, paragraph (3) of Law No. 22 of 2009 (Dellmuth & Tallberg, 2021).

Online motorcycles utilize two-wheeled motor vehicles as a means of transportation (Luo dkk., 2022). However, based on the aforementioned legislative provisions, it can be established that online motorcycles cannot yet be classified as legitimate road transportation services capable of providing reliable service. The ensuing question then becomes: how can online motorcycles be transformed into reliable road transportation with legal standing? In light of this, the author is compelled to provide a review through analysis and solutions to address the issue (Nivette dkk., 2020), ensuring that online motorcycles meet the criteria necessary to qualify as reliable transportation.

RESEARCH METHODOLOGY

This kind of research is categorized as normative legal research, which entails an examination of legal products in the form of regulations and an analysis of the realities present in society, particularly those relevant to the focal point of this study (Taeuscher dkk., 2021). The methodology employed in this research is descriptive, utilizing a qualitative approach. The data utilized comprises both primary and secondary data (Jahn dkk., 2020). Primary data may consist of manuscripts, meeting minutes, personal notes, as well as in-depth interviews with various respondents, including traditional leaders, religious figures, political leaders, educational experts (academics), and members of the general public (Rasmussen & Reher, 2023). Meanwhile, secondary data is gathered through literature study, encompassing books, magazines, scholarly journals, monographs, and newspapers that contain discussions pertinent to this research.

RESULT AND DISCUSSION

The advancement of knowledge and technology has given rise to an alternative form of road transportation commonly referred to as online motorcycles. The existence of this mode of transportation has significantly contributed to service in the realm of road transport through online services facilitated by applications. Passengers can appreciate the notable impact, as this road transport operates almost in every city, providing services twenty-four hours a day and is easily accessible. Service is not limited to intracity travel but also encompasses intercity transport within a province and even beyond provincial borders (2020). However, on the flip side, this mode of transport requires legal recognition to establish it as a trustworthy or dependable option for passengers, thereby ensuring certainty and protection for all involved. The steps to be undertaken are as follows:

First; Synergy to establish legal recognition. As previously stated, online motorcycles currently lack legal status as road transportation, making it essential to provide this recognition through amendments to Law No. 22 of 2009. A crucial change that must be addressed is the designation of two-wheeled vehicles as road transport classified under public transportation.

The Minister of Transportation once issued Notification Letter No: UM.3012/1/21/PBH/2015, which fundamentally disavows online motorcycles as road transport. The issuance of this letter was prompted by strong advocacy against the classification of two-wheeled online transportation as road transport under legal definitions, leading to government prohibition via this official notification (Rios dkk., 2020). The important content of the notification defines these vehicles (motorcycles, passenger cars, and freight vehicles) as private vehicles used for transporting individuals and/or goods for a fee, which does not comply with the stipulations under Law No. 22 of 2009 and Government Regulation No. 74 of 2014.

Legally, the Minister of Transportation has adhered to regulations governing transportation, even amidst the prevailing conflicting phenomena within society. The public genuinely requires innovation in road transport considering the challenges faced in Indonesia. Society's needs continue to evolve, demanding more dynamic and efficient solutions; thus, the presence of online motorcycle transportation is eagerly anticipated, despite the eventual revocation of the aforementioned notification by the Ministry of Transportation of the Republic of Indonesia. Subsequently, the Ministry of Transportation has permitted online motorcycles and application-based public transport to continue operating, thereby ensuring that public transportation needs are met satisfactorily. Based on the aforementioned narrative, online motorcycle transportation can continue its operations, albeit without being classified as a recognized form of road transport.

From a legal standpoint, the establishment of online motorcycles needs to be codified into a norm that provides certainty and protection for all stakeholders. The principle of legality states that it constitutes "a foundational guarantee for individual freedom by clearly delineating which activities are prohibited." This principle also protects against the abuse of power, ensuring individual safety by outlining what is permissible and forbidden (McLennan dkk., 2021). Furthermore, every individual should receive prior warnings regarding illegal acts and their corresponding penalties.

Recognizing the essence and the urgency of legalizing online motorcycles, the executive, legislative bodies, and all stakeholders must collaborate on amending Law No. 22 of 2009 to include two-wheeled vehicles or online motorcycles as forms of road transport. In 2023, both the executive and legislative branches agreed to include Law No. 22 of 2009 in the legislative program for revision. However, provisions concerning the types of transportation eligible for amending those categorized remain unaddressed.

The modification of this article is crucial for the comfort and safety of the public and for all parties involved in public transportation to have legal standing. The existence of clear norms concerning online motorcycle transportation is also expected to establish certainty regarding fare structures and the technical or procedural mechanisms governing two-wheeled vehicles as road transport, as well as to ascertain safety standards for public conveyance.

Second; Integration of online motorcycles with payment systems for other modes of transportation. Several local governments have undertaken significant reforms in transportation by integrating public transport with other transport modes (Schoon, 2022). For example, the DKI Jakarta government's initiative to integrate public transport systems, though currently limited to certain specific transport types, has set a precedent. The DKI Jakarta Provincial Transportation Department and PT. JakLingko Indonesia is intensively collaborating with three regional transportation state-owned enterprises (BUMD) that operate under integrated fare systems, namely PT. Transjakarta, PT. Moda Raya Terpadu (MRT) Jakarta (Perseroda), and PT. Light Rail Transit (LRT) Jakarta.

Government programs employing integrated payment systems are undoubtedly effective and efficient. This initiative aims to eliminate barriers that may deter individuals from utilizing public transport options. It is designed to ensure that all activities conducted—whether users are visiting stations, traveling via public transport, or arriving at their intended destinations—are increasingly safe and comfortable.

The success of Jakarta in developing a transportation system with integrated payment methods can serve as a role model for public transportation management throughout Indonesia. The application of this integrated transportation model utilizes two concepts: intermodality and multimodality. Intermodality refers to the transfer from one transportation mode to another, while multimodality describes the association of several transport modes (rail, road, air, and sea). This delineates between mono-modal platforms—whether they be road or rail—and multimodal platforms, where several transport modes converge.

Such developments have intensified spatial-temporal connections: significant distances can now be traversed in a remarkably short time, whereas shorter distances may require considerably longer. The proportionality of space and time has been disrupted, resulting in an increasingly heterogeneous spatial fabric (Hoole & Hincks, 2020). The evolution of transport modalities necessitates a hierarchy of modes, where slower modes facilitate local areas while faster modes dominate main thoroughfares. The most complex interactions among transport modes occur at convergence points.

An integrated payment transport system possesses the capacity to alter habitual behaviors concerning the impacts of transport within congested zones, pollution, resource consumption, road safety, and public expenditure. The societal implications stemming from well-executed integrated transport systems can also yield substantial individual benefits. Such systems facilitate users' choices from a variety of transport options while easing their overall travel expenses (Mittiga, 2022). The interrelation between transport payment integration and robust mobility management aims to create optimal outcomes for service users, benefiting vulnerable groups such as the elderly, disabled, economically disadvantaged, and the community at large. Keeping these goals in focus, broader systems can concentrate on meeting individual user needs. By coordinating payment systems, schedules, modal connections, information dissemination, and service provision, transportation systems can effectively cater to societal needs above all else.

Modal integration is defined as a form of public transportation system that combines two or more transport modes to achieve optimal public transport service delivery. In the National

Transportation System (Sistranas), it is stated that the integration of public transport is a primary goal of national transportation system development, aimed at providing guarantees of safety and security in transportation, orderliness, fluency, speed, attainability, punctuality, comfort, regularity, fare affordability, and minimal pollution levels within a cohesive public transport network, without overburdening society while still delivering maximized and optimal services.

If online motorcycles acquire legal status as road transport, they should also integrate with other transport modalities, yielding mutual benefits for transportation entrepreneurs, drivers, passengers, and even the government (Chowdhury dkk., 2021). The effectiveness and efficiency will undoubtedly form the crux of all activities within road transport service if realized through integrated systems. Furthermore, intermodal integration is vital to construction as high accessibility is anticipated to facilitate users' access to public transportation.

Third; Competency certification for online motorcycle drivers. Online motorcycle drivers are undeniably an integral component of the framework to establish reliable road transport. Motorcycle riders are required to possess a Driver's License (SIM). It is an obligation for drivers to hold such documentation as proof of their proficiency and legal capability to operate vehicles on public roads. This matter leaves no room for debate; however, a point of contention arises as to whether online motorcycle drivers should also obtain certification as professional drivers within the road transportation sector. Competency certification serves as a recognition of the workforce's skills, knowledge, and work ethic that align with required competency standards. Consequently, this certification assures that the individual or certificate holder is deemed credible in their work responsibilities. Beyond affirming their competence, possessing such certification aids companies in selecting qualified workers for the positions they require.

Data suggests an alarming increase in traffic accidents on road transport, as recorded by the National Police of the Republic of Indonesia, indicating that the number of traffic accidents rose in 2019 compared to 2018. According to Police statistics, there were 107,500 traffic incidents in 2019, an increase from 103,672 incidents in 2018. Meanwhile, the number of fatalities resulting from traffic accidents in 2019 totaled 23,530, a decrease from 27,910 casualties in 2018.

Given the substantial potential and occurrence rates of accidents caused by two-wheeled vehicles, preventative measures such as implementing safety riding awareness for motorcycle drivers, particularly online motorcycle drivers, are crucial. Safety riding refers to the practice of safe driving behaviors designed to prevent traffic accidents (Ryan & Bergin, 2022). The role of an online motorcycle driver necessitates expertise, balance, strength, and concentration during operation. Additionally, safety equipment such as helmets and motorcycle gear are essential components for safe riding to avert accidents.

Traffic accidents remain a widespread issue, with two-wheelers accounting for a significant proportion of accidents. The relative frequency of traffic incidents involving motorcycle drivers often results from a lack of safe riding awareness. As online motorcycles rapidly proliferate in Jakarta, the likelihood of accidents involving motorcycle drivers is also on the rise. An understanding of and commitment to safe driving practices is urgently required by online motorcycle drivers, who navigate the roads daily to escort passengers; failure to maintain focus while driving may lead to accidents.

This pressing issue prompts all stakeholders to advocate for competency certification for online motorcycle drivers to ensure the suitability or unsuitability of two-wheeled vehicle operators for their passengers. Possessing merely a Driver's License falls short of qualifying as a standard for establishing reliable transport in Jakarta; driving requires consideration not only for one's interests but also for the wellbeing of others (Werner & Marien, 2022). While realizing this goal may not be

straightforward, a collective determination from various parties will be paramount in bringing this vision to fruition.

Fourth; Online motorcycle drivers receive monthly salaries. Online motorcycle drivers should be equated with office jobs conducted on the streets or in the field. Before an online motorcycle driver can become a partner or work with a given application operator, a binding employment agreement is typically established, delineating each party's rights and obligations.

The contractual relationship between the online motorcycle operator and the drivers provides the legal groundwork positioning the drivers as employees within that operational framework. As workers, characterized by their partnership status or under whatever designation, these drivers contribute intrinsically to the continuity of the operator company. Presently, online motorcycle drivers are regarded as associates, which consequently permits them to receive remuneration solely based on their daily performance (Bellucci dkk., 2021). Specific regulations regarding the use of two-wheeled vehicles for transporting persons are delineated in the Minister of Transportation Regulation No. 12 of 2019 concerning the Safety Protection of Motorcycle Users for Public Purposes. Article 15 of Ministerial Regulation No. 12 of 2019 states: 1) The relationship between the Application Company and the Driver is a partnership relationship. 2) Regulations regarding this partnership are established by relevant laws and regulations.

According to this regulation, the relationship between online motorcycle drivers and the application companies is categorized as a partnership. Article 1, Number 13 of Law No. 20 of 2008 concerning Micro, Small, and Medium Enterprises defines "partnership" as cooperation connected to business interests, either directly or indirectly, based on mutual necessity, reinforcement, and benefit involving Micro, Small, and Medium Enterprises with larger enterprises.

Sonhaji asserts that there exists no employment relationship between the driver partners and online motorcycle companies, for drivers are mandated to share the fares they receive from consumers with the respective motorcycle service. Thus, the relationship formed is one of profit-sharing collaboration. Online motorcycle services qualify as application companies rather than transportation enterprises under Law No. 22 of 2009 concerning Traffic and Road Transport (UU LLAJ). The partnership agreement between Gojek and its partners falls under a partnership cooperation contract, not an employment contract, thereby excluding the applicability of Law No. 13 of 2003 concerning Employment in this cooperative agreement, which is governed instead by Government Regulation No. 17 of 2013. In various countries, online drivers are often recognized as employees (Renner & Giampietro, 2020). Some countries actively encourage delivery service providers to employ online motorcycle drivers, ensuring that their rights are duly protected. This initiative reflects a societal responsibility to guarantee citizens a decent livelihood and job security.

In the United Kingdom, online drivers are treated similarly to other employees, entitled to paid leave and minimum wages. Moreover, the Supreme Court has ruled that any agreements drafted by application companies that circumvent fundamental obligations to employees are legally invalid and unenforceable. Online motorcycle drivers are entitled to the same rights as any employees. Furthermore, companies exert control over them, including the authority to set fares without providing drivers with information about passengers' destinations.

In Malaysia, Air Asia drivers made headlines by opting to extend employee rights to their riders similar to regular employees. These drivers receive a fixed monthly salary starting from RM 3,000 or approximately Rp 10 million. Additionally, they benefit from various perks, such as contributions to the Employee Provident Fund (EPF) for retirement and Social Security Organizations (Sosco) for job-related injuries (Crossley dkk., 2021). They also receive health insurance, annual leave, and travel allowances. Examining the frameworks of these two countries

reinforces our collective responsibility to advocate for online motorcycle drivers as formal employees entitled to monthly wages and other benefits. This step would contribute to ensuring their livelihoods and future security for themselves, their families, and their children, ultimately achieving the goal of establishing a reliable road transportation system.

CONCLUSION

Online motorcycle taxi service providers, government, executives, road transportation observers, and online motorcycle taxi drivers have not synergized to realize online motorcycle taxis as road transportation to realize reliable road transportation so that the existence of online motorcycle taxis does not have legal certainty. This happens because Law Number 22 of 2009 does not stipulate or accommodate online motorcycle taxis (two wheels) as a type of road transportation (public) so the same understanding and steps are needed to make online motorcycle taxis present amid society as road transportation that has legal certainty for its existence.

Law Number 22 of 2009 has been included in the Prolegnas in 2023 to be amended, so through this opportunity, changes to the legal status of online motorcycle taxis as road transportation are certainly a priority to be accommodated in these changes so that online motorcycle taxis can be integrated with other modes, their drivers as competent drivers because they are appointed based on passing competency certification and can be appointed as employees at online service providers and not as partners who only get daily income as before.

AUTHORS' CONTRIBUTION

Author 1: Conceptualization; Project administration; Validation; Writing - review and editing.

Author 2: Conceptualization; Data curation; In-vestigation.

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