

# Application of Good Intention on Partnership Agreement of Special Rental Transportation

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**ABSTRACT**--Globalization era, the use of communication technology, media and information technology has entered into all human activities including business activities, one of which is the utilization in the field of transportation. Special rental transportation services/online taxis are one of the transportation services in urban areas, from and to airports, ports and other transportation nodes that are ordered using information technology-based applications and the amount of the tariff is already listed in the application. In providing transportation services, a company operating special rental transportation is in collaboration with the application company. An application company is an electronic system provider company that provides technology-based applications in the field of land transportation. Legal relationship between the operators of special rental companies and application companies are based on partnership agreements. Despite the name of the partnership agreement, the position of the special rental transport operator (driver) is not parallel with the application company. It makes the legal protection of the driver still weak. As an agreement, the partnership agreement is generally made electronically. Electronic agreement between the parties that is made through an electronic system. Partnership agreements made electronically besides having to fulfill the legality requirements of the agreements stipulated in Article 1320 of the Civil Code are also based on the good faith principles contained in Article 1318 of the Civil Code. The principle of good faith is the principle used by the parties in entering into an agreement that is not intended to intentionally and without rights or against the law which results in harm to other parties without the knowledge of the other party. The application of the principle of good faith in a partnership agreement on special rental transport aims to protect the parties in the agreement to avoid the possibility of hidden intentions that could harm one of the parties to the agreement.

**Keywords:** good intention, partnership agreement, special rental transportation

## I. INTRODUCTION

In the current digital era, the use of information technology has entered all of human life which changes social, cultural and economic life quickly and significantly. Changes in the economic field with many

businesses in the field of trade in goods and services that use information technology. One of the businesses in the service sector is the emergence of businesses in the field of transportation namely online taxis/special rental transportation.

In the field of transportation, a big change has occurred since the advent of online transportation, which is the type of transportation that makes it easy for consumers to access and utilize this type of transportation. Thus this causes the development of online transportation presence is a necessity that can not be prevented and prohibited. An understanding of online transportation cannot be separated from the understanding of road transportation. Understanding online transportation comes from the word transportation and from the word online.

The word "transportation" comes from the English language". "Transportation". The word transportation is defined as *the removal of goods or person from one place to another, by carrier*, [11] which translates freely as the movement of goods or people from one place to another using a vehicle. The definition of transportation in the Black Dictionary dictionary is the same as the definition of transportation in Article 1 number (1) of Law Number 22 Year 2009.

Then the word online in Indonesian is translated as "in the network" (online), which means a state of the computer connected to the internet network. In Law Number 22 Year 2009 and in the Minister of Transportation Regulation. Number 118 Year 2018 does not recognize the word online. Article 1 number (3) of the Information and Electronic Transaction Law states that what is meant by information technology is a technique for collecting, preparing, storing, processing, announcing, analyzing, and/or disseminating information.

Based on the understanding of transportation and online above, it can be concluded that the definition of online transportation is the movement of goods and/people from one place to another by using motorized vehicles that are ordered through information technology applications.

In organizing online taxis, online taxi organizers can work with application companies. The collaboration between the driver/organizer of the online taxi and the application company is outlined in the form of a partnership agreement. As an agreement, the partnership agreement must fulfill the principles of the agreement, one of which is the principle of good faith.

Based on the description above, the problem can be formulated, namely how is the application of the good faith principle in a special rental transport partnership agreement.

## II. RESEARCH METHOD

The research method used in this study is juridical normative with descriptive analytical research specifications, the research results are described in the form of sentences.

Data sources: primary data and secondary data. Primary data obtained through interviews with resource persons. Secondary data was obtained through literature study with books, agreement literature and studying legislation including the Civil Code, Information and Electronic Transactions Act, namely Law Number 19 Year 2016 concerning Information and Electronic Transactions, Minister of Transportation Regulation Number 118 Year 2018 concerning Implementation of Special Lease Transportation.

## III. FINDINGS AND DISCUSSION

### A. Special Rental Transportation

The term transportation is also commonly referred to as transportation in the English translation of transportation. Transportation emphasizes more on the juridical aspect while transportation places more emphasis on aspects of economic activity, but both have the same meaning, namely as a transfer activity using a conveyance.[5]

The function of transportation is to move goods or people from one place to another with a view to increasing their usefulness and value.[2] According to Abdul Kadir Muhammad,[2] the concept of transportation includes 3 (three) aspects, namely:

- a. Transportation as a business;
- b. Transportation as an agreement; and
- c. Transportation as a process (applying process).

Transportation as a business has characteristics that are based on agreements, economic activities in the service sector, in the form of companies, and using mechanical conveyances. Transportation as an agreement is generally verbal (not written) but is always supported by an agreement document. A transportation agreement can also be written which is called a charter agreement. The agreement as a process that is a series of actions starting from loading into the carrier, then taken to the designated place, and demolition or decline at the destination.[1]

Online taxis/special rental transport are regulated by Minister of Transportation Regulations. Number 118 of 2018 concerning the Implementation of Special Lease Transportation. the definition of special rental transportation is a door-to-door transportation service with drivers, having operating areas in urban areas, from

and to airports, ports or other transportation nodes and ordering using information technology-based applications, with the tariff rates listed in the application.

Special rental transportation services must meet the following service criteria:

- a. The operational area is in an urban area, and from and to the airport, harbor or other transportation node;
- b. Not scheduled;
- c. Door to door service;
- d. The destination of the trip is determined by the service user;
- e. The amount of the transportation tariff is stated on the application based on information technology;
- f. Meet minimum service standards; and
- g. Orders are made through information technology based applications.

The special rental transportation services using public motor vehicles with a cylinder capacity of at least 1,000 (one thousand) cubic centimeters, must meet the following requirements:

- a. Common motor vehicles used include:
  1. a sedan passenger car; and/or
  2. non-sedan passenger cars;
- b. Using motor vehicle number marks with the basic black and white color in accordance with the data in the application or in accordance with statutory provisions;
- c. Meet the minimum service standard requirements;
- d. Equipped with an application that shows the amount of tariffs imposed on passengers and the identity of the driver and the vehicle listed on the application;
- e. Equipped with a driver performance monitoring tool that can record vehicle speed and driver behavior in operating a vehicle;
- f. Equipped with a Motorized Vehicle Registration Number and a permit to operate a special rental vehicle; and
- g. Include the electronic mail address and telephone number of the public complaint service that is placed in the vehicle and is easily legible by service users.
- a. As a special rental transportation company is required to have a permit to operate special rental transportation. The form of a special rental transportation company is a legal entity or micro business actor or small business actor that provides special rental transportation services.

### B. Partnership Agreement

The definition of agreement according to Article 1313 of the Civil Code is an act by which one or more persons are bound to one or more other people. In Article 1320 of the Civil Code the provisions of the provisions for the validity of an agreement are:

1. An agreement between the two parties.
2. The ability to carry out legal actions.
3. The existence of certain objects
4. There are halal causes.[6]

The first and second terms of the agreement are subjective conditions, if violated the agreement can be canceled. The third and fourth terms of the agreement are objective conditions if the conditions are violated, the agreement is null and void.

A partnership agreement differs from a work agreement. The work agreement is the basis for the employment relationship, where the relationship between the employer and the worker or laborer is based on an employment agreement.

The partnership agreement is to embrace the principle of mutual need, trust, strengthen and benefit. The partnership agreement contains elements of partners, where the parties are equal as partners with the profit sharing system, not as a superior/employer and subordinate/laborer. In online taxis/special rental transportation, partnership agreements between the driver and the application company are made electronically. The electronic agreement must fulfill the good faith principle as stated in Article 17 paragraph (2) of the ITE Law.

### C. Principles Of The Agreement

In the law of agreement known principles of agreement are: the principle of freedom of contract, the principle of consensualism, the principle of *pacta sunt servanda* (the principle of legal certainty), the principle of good faith, and the principle of personality.[6]

#### 1. The principle of freedom of contract.

The principle of freedom of contract allows anyone to make agreements that contain anything as long as it does not conflict with public order, decency, and the law. Agreement law gives the widest possible freedom to the people to enter into an agreement containing everything and with their own agreed terms.

#### 2. The principle of consensualism.

The principle of consensualism is a principle which states that agreements are not generally held formally, but sufficient with the agreement of both parties. An agreement is a match between the will and the statement made by both parties. An agreement is valid if it has agreed on key issues and it does not require a certain formality.

#### 3. Principle of *Pacta Sunt Servanda*.

#### 4. The principle of good faith.

The definition of good faith has two meanings, namely:

- Agreements made must pay attention to norms, appropriateness, and decency.
- The agreement made must reflect a mood that does not indicate intentional harm to the other party.

#### 5. Principle of Personality.

The principle of personality is deduced from Article 1315 of the Civil Code which reads "In general no one can bind themselves in their own name or ask for a promise to be made, but for themselves". A legal engagement that is born by a treaty only binds the people who made the agreement and does not bind others.

### D. Application Of The Principle Of Faith In Partnership Agreements Between The Driver And The Company Of An Application

The implementation of special rental transportation has a strategic role in supporting development to realize public welfare as mandated in the 1945 Constitution of the Republic of Indonesia.

Judging from the purpose of legal formation, the theory of legal goals from Gustav Radbruch,[4] which states there are three legal objectives namely, certainty, fairness, and expediency. The three elements of the purpose of the law in reality cause a problem. Because it is not uncommon between legal certainty to clash with justice, the clash between legal certainty and expediency, and the clash between justice and legal certainty. Gustav Radbruch in his theory teaches that there is a scale of priorities that must be carried out, where the first priority is always justice, then the usefulness and finally legal certainty.

The partnership agreement between the driver and the application company based on the principle of good faith aims to provide legal certainty for the parties to carry out the agreement. The existence of legal certainty is expected to provide a sense of justice for the parties.

## IV. CONCLUSION

The partnership agreement between the driver and the application company is made electronically. The application of the principle of good faith in a partnership agreement on special rental transport aims to protect the parties in the agreement so as to avoid the possibility of hidden intentions that could harm one of the parties to the agreement.

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