



The Legal Status of Information Technology Application-Based Transport in Indonesia: Legal or Not?

Siti Nurbaiti

Faculty of Law, Universitas Trisakti, Jakarta, Indonesia
nurbaiti_05092000@yahoo.com

Abstract. The existence of public transportation using digital information applications causing beneficial for users of transportation services and is important to facilitate the mobility of passengers or goods, but still raises problems regarding the legal status of its existence, whether it is legally valid or not as public transportation in the perspective of Indonesia regulations. The purpose of this study is to describe the legal status of the existence of transportation based on information technology applications in Indonesia. The method used in this study is descriptive normative research based on secondary data which is analyzed qualitatively by deductive conclusions. The results of the study illustrate that the legal status of the existence of information technology application-based transportation as stipulated in Law No. 22 of 2009 on Traffic and Road Transportation does not qualify such transportation as public transportation. This has been specified in Article 1 point (10) in conjunction with Article 1 point (21) in conjunction with Article 138 paragraph (3) in conjunction with Article 139 paragraph (4) of the Law no. 22 of 2009, juncto Article 36, Article 37, Article 38 of the Ministry of Transportation Regulation No. 108 of 2017. It can be concluded that the information technology application-based transportation does not fulfill the requirements for the validity of the agreement as stipulated in Article 1320 of the Indonesia Civil Code, and contrary to Article 1339 of the Indonesia Civil Code and also the Law No. 22 of 2009 on the Traffic and Road Transportation.

Keywords: Information Technology, Legal Status, Transport

1 Introduction

Since 2015, there has been an application that allows passengers or shippers to order public transportation online pioneered by Go-Jek Indonesia followed by others such as Grab bikes, and Grab Cars which can pick up passengers or goods wherever they are. The new mechanism is quite different from the conventional public transportation that does not use online applications, such as taxis, Bajaj, microbuses, and public bus transportation [5], [13]. As time goes by, there is no longer any resistance from such conventional transportation, because until now consumers who use transportation services are still in demand. Service users are getting easier and faster for users of transportation services, both passengers and goods senders, to carry out their mobility. Previous studies mainly analyzed the legal aspect of online transportation based on certain perspectives such as the lack of legal similarities [6], the business of online

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transportation [12], the aspect of responsibility of the online transportation driver [10], or the user satisfaction [1]. However, there is still a problem with performing such kind of transportation on its legal status of the existence of online transportation based on information technology applications under Law No. 22 of 2009 concerning Road Traffic and Transportation. For this reason, the main focus of this research underlines the discussion on the legal status of the existence of information technology application-based transportation in Indonesia, whether it is legal or illegal.

2 Methodology

The research methodology employed in this study is normative research [11]. Type of data is secondary data based on laws and regulations, including primary legal materials, namely the Civil Code Law No. 22 of 2009 concerning Traffic and Road Transportation and Regulations of the Ministry of Transportation No. 108 of 2017 concerning Organizing the Transport of People with Public Motorized Vehicles Not on Routes, also uses secondary legal materials and tertiary legal materials.

The nature of this research is primarily descriptive in its approach [2], namely providing an overview of the legal status of the existence of information technology-based transportation in Indonesia.

Data analysis was carried out qualitatively, namely analyzing the provisions of laws and regulations relating to the legal status of the existence of information technology application-based public transport in Indonesia.

Concluding is conducted deductively, namely drawing specific conclusions from statements that are general in nature. This method is carried out by examining the general provisions regarding the terms of the transportation agreement and the conditions for the operation of public transportation. The conclusions provide specific matters, namely regarding the legal status of the existence of information technology application-based public transportation in Indonesia.

3 Result and Discussion

3.1 Public Transport on the Road

As stated by Purwosutjipto (8), transportation can be defined as a contractual arrangement between a carrier and a sender, wherein the carrier assumes the responsibility of ensuring the secure conveyance of products and/or individuals from a specific origin to a designated destination, while the sender is obligated to remunerate the transportation charges. Based on this definition, the transportation agreement has the following elements:

1. Payback

The transportation company should transport passengers and/or goods to the agreed destination and is entitled to transportation costs, while the obligation of passengers

and/or goods senders to pay transportation costs and is entitled to be transported to the agreed destination.

2. Fulfillment of the requirements for the validity of the agreement as specified in Article 1320 of the Indonesia Civil Code [4].

The validity of an agreement must meet four conditions, namely an agreement between the transportation company and the passenger and/or goods sender; the ability to make an engagement; the means of transportation used and whether the transportation used is halal or not.

If the parties have agreed, then the transportation agreement that they made applies as a law, as stipulated in Article 1338 paragraph (1) of the Indonesia Civil Code that all agreements made legally apply as laws for the parties agreeing, but the agreement, even though it is binding on the parties, may not conflict with decency, custom, and law according to Article 1339 of the Indonesia Civil Code.

3. Arrive at the destination with what has been agreed upon safely.
4. *The special elements stipulated in Law No. 22 of 2009 concerning Road Traffic and Transportation, namely [9]:*

- a. Article 1 point (10).

Public motorized vehicles are any vehicles used to transport goods and/or people for a fee.

- b. Article 1 point (21).

“A Public Transport Company is a legal entity that provides services for the transportation of people and/or goods by public motorized vehicles”.

- c. Article 139 paragraph (4).

“Public transportation service providers are implemented by State-Owned Enterprises, Regional-Owned Enterprises, and/or other legal entities following statutory regulations”.

- d. Article 173 paragraph (1).

“Public transportation companies that organize the transportation of people and/or goods are required to have permits for the operation of people on routes and not on routes as well as permits for the transportation of special goods or heavy equipment”.

- e. Article 179 paragraph (1).

Permits for the transportation of people not on routes as referred to in Article 173 paragraph (1) letter b are granted by:

1. “The Minister who is responsible for the field of traffic and road transportation facilities and infrastructure serving:

- a. Taxi transportation whose operational area extends beyond 1 (one) provincial area;
 - b. Transportation with a specific purpose;
 - c. Tourism transportation.
2. Governor for taxi transportation whose operational area extends beyond more than 1 (one) regency/city area within 1 (one) province;
 3. Governor of the Special Capital Region of Jakarta for taxi transportation and transportation of certain areas whose operational areas are within the territory of the province of the Special Capital Region of Jakarta;
 4. Regent/Mayor for taxis and transportation in certain areas whose operational areas are within the district/city territory”.

Article 183 paragraph (1).

“Passenger fares for non-route transportation using taxis as referred to in Article 151 letter a2 are determined by public transportation companies with the approval of the government under their respective authorities based on the stipulated minimum service standards”.

Article 183 paragraph (2).

“Passenger fares for the transportation of people not on routes with certain destinations, tourism, and in certain areas are determined based on an agreement between service users and public transport companies”.

Article 186.

“The public transportation company is obligated to transport people and/or goods after the transportation agreement has been agreed upon and/or the transportation fee is paid by the passenger and/or the sender of the goods”.

Article 192.

- (1) “Public transportation companies are responsible for losses suffered by passengers who die or are injured as a result of the operation of transportation unless caused by an incident that could not be prevented or avoided or due to the passenger's mistake;
- (2) The loss referred to in paragraph (1) is calculated based on the actual loss experienced or part of the maintenance costs;
- (3) The responsibility as referred to in paragraph (1) begins when the passenger is transported and ends at the agreed destination;
- (4) The carrier does not responsible for any loss of passenger luggage unless the passenger can prove that the loss was caused by the carrier's fault or negligence;
- (5) Further provisions regarding the amount of compensation are regulated by government regulations”.

Article 193

- (1) “The public transportation company is responsible for losses suffered by the sender of the goods because the goods are destroyed, lost, or damaged as a result of the operation of the transportation unless it is proven that the damaged, lost, or damaged goods are caused by an incident which could not be prevented or avoided or the sender's fault;
- (2) Losses as referred to in paragraph (1) are calculated based on actual losses experienced;
- (3) The responsibility of the transportation company starts from the time the goods are transported until the goods are delivered at the agreed destination;
- (4) The public transportation company is not responsible if the loss is caused by the inclusion of information that is not following the bill of lading for the transportation of goods;
- (5) Further provisions regarding the amount of compensation are regulated by government regulations”.

Public Transport Entrepreneurs must also meet the requirements specified in the Ministry of Transportation Regulation No. 108 of 2017 concerning Organizing the Transportation of People with Public Motorized Vehicles Not on Routes, namely [7]:

1. Article 1 paragraph (4).

A Public Transport Company is a legal entity that provides services for the transportation of people and/or goods by public motorized vehicles.

2. Article 36 paragraph (1).

To organize the transportation of people by public motorized vehicles not on routes, the public transport company is required to have a permit to operate the transportation of people by public motorized vehicles not on routes.

3. Article 37 paragraph (1) and paragraph (2).

The public transportation company as referred to in Article 36 paragraph (1) must be in the form of an Indonesian legal entity in the form of a State-Owned Enterprise; Regional owned enterprise; Limited Liability Company or cooperative under the provisions of the laws and regulations

4. Article 38 letter (a).

To obtain the permit referred to in Article 36 paragraph (1), public transportation companies must meet the requirements of owning at least 5 (five) vehicles.

5. Article 63 paragraph (1).

“To increase the convenience of ordering public transportation services with public motorized vehicles, not on routes, public transport companies can use information technology-based applications”.

6. Article 63 paragraph (2).

“The use of information technology-based applications as referred to in paragraph (1) can be carried out independently or in collaboration with application companies in the field of land transportation”.

7. Article 64 paragraph (1).

“Public transportation companies that use information technology-based applications as referred to in Article 63 paragraph (1) are required to follow the provisions in the field of transportation concessions as referred to in Article 36, Article 37, and Article 38”.

8. Article 64 paragraph (2).

“Public transportation companies that use information technology-based applications as referred to in paragraph (1) are required to stop operating motorized vehicles and using applications”.

9. Article 65.

Application companies in the field of land transportation as referred to in Article 63 paragraph (2) are prohibited from acting as public transportation operators which include:

- a. “Provision of application access services to public transportation companies that do not yet have a permit to operate the transportation of persons with motorized vehicles not on routes;
- b. Provision of application access services to individuals;
- c. Driver recruitment;
- d. Tariff determination;
- e. Provision of promotional rates below the predetermined lower limit rates”.

10. Article 72.

“Public Transport Companies that violate the provisions referred to in Article 36, Article 37, and Article 38 (paragraph (1)) are subject to administrative sanctions in the form of minor violations, moderate violations, and serious violations (paragraph (2))”.

Based on secondary data and primary data that has been collected, it can be discussed that the needs of the community in organizing public transportation, currently transportation based on information technology applications such as Gojek, Grab and Maxim are in great demand by the community as a necessity in the field of public transportation, but if the provisions are reviewed contained in Law No. 22 of 2009 concerning Road Traffic and Transportation as well as Ministry of Transportation Regulation No. 108 of 2017 concerning Organizing the Transportation of People with Public Motorized Vehicles Not on Routes and based on the results of interviews conducted by researchers with a number of Gojek, Uber and Maxim drivers, the vehicles they use are privately owned vehicles, so they do not have a status as public transportation because based on Article 1 point (10), even though Grab or Gojek are charged a fee and information technology-based application companies have met the requirements as a company with a legal entity as stipulated in Article 139 paragraph (4) of Law No. 22 of 2009. However, the Information Application-based Transportation Operators are not public transportation because they do not meet the requirements of public transportation as stipulated in Article 36 paragraph (1) because they do not have a route permit as public transportation and based on Article 36, Article 37, Article 38 and Article 65 of Ministry of Transportation Regulation No.108 of 2017 and Article 65 Ministry of Transportation Regulation No. 108 of 2017. As a result, sanctions can be imposed under the provisions of Article 72, namely in the form of admin-

istrative sanctions, performing minor violations, moderate violations, and serious violations.

By not fulfilling the requirements of public transportation, then the problem of responsibility for transport operators based on information technology applications cannot be used even with the provisions contained in Article 186, Article 188, Article 192, and Article 193 of Law No. 22 of 2009. After all, they do not meet the objective of the requirement regarding lawful causes as one of the validity of the agreement contained in Article 1320 of the Indonesia Civil Code and the principle of freedom of contract contained in Article 1339 because it is contrary to existing laws. Thus, transportation operators based on technology applications do not meet the technical and substance requirements contained in Law No. 22 of 2009, Ministry Regulation No. 108 of 2017 concerning Organizing the Transportation of People with Public Motorized Vehicles Not on Routes and Articles 1320, 1339 of the Indonesia Civil Code. If something happens to a service user, then the service user cannot sue the driver or Transportation Operator based on information technology applications based on default due to breach of an agreement, but can only sue based on an unlawful act as regulated in Article 1365 of the Indonesia Civil Code, stated that any act against the law that harms other people, the person who caused the loss must pay compensation with the burden of proof being on the injured party as a result of the absence of an agreement as stipulated in Article 1866 of the Indonesia Civil Code. Based on the discussion above, it is urgent to uphold the legal policy from the Indonesia Government to regulate online transportation in Indonesia [3].

4 Conclusion

Based on the problems raised, it can be concluded that the legal status of information technology application-based public transportation is not legal as public transportation, because it does not meet the requirements of public transportation, as required in Article 1 point (10) in conjunction with Article 1 point (21) in conjunction with Article 138 paragraph (3) in conjunction with Article 139 paragraph (4) of Law no. 22 of 2009 jo Article 36, Article 37, Article 38 and Article 65 Ministry of Transportation Regulation No.108 of 2017 and Article 65 Ministry of Transportation Regulation No. 108 of 2017, so that service users, both passengers, and shippers, cannot use Law No. 22 of 200 concerning Road Traffic and Transportation to hold public transport companies accountable. The transportation agreement also does not fulfill the elements of Article 1320 of the Indonesian Civil Code in conjunction with Article 1339 of the Indonesian Civil Code. For online application transportation to have legal status, online application transportation must meet the requirements contained in Law No. 22 of 1992 concerning Road Traffic and Transportation.

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