

Table Of Content

Journal Cover 2
Author[s] Statement 3
Editorial Team 4
Article information 5
 Check this article update (crossmark) 5
 Check this article impact 5
 Cite this article 5
Title page 6
 Article Title 6
 Author information 6
 Abstract 6
Article content 7

Rechtsidee

Vol 4 No 2 (2018): June

DOI: <https://doi.org/10.21070/jhr.2018.4.44>

Article type: (Business Law)



RECHTSIDEE

PUBLISHED BY
UNIVERSITAS
MUHAMMADIYAH
SIDOARJO

ISSN 2443-3497
(online)



SCAN ME

Rechtsidee

Vol 4 No 2 (2018): June

DOI: <https://doi.org/10.21070/jhr.2018.4.44>

Article type: (Business Law)

Originality Statement

The author[s] declare that this article is their own work and to the best of their knowledge it contains no materials previously published or written by another person, or substantial proportions of material which have been accepted for the published of any other published materials, except where due acknowledgement is made in the article. Any contribution made to the research by others, with whom author[s] have work, is explicitly acknowledged in the article.

Conflict of Interest Statement

The author[s] declare that this article was conducted in the absence of any commercial or financial relationships that could be construed as a potential conflict of interest.

Copyright Statement

Copyright © Author(s). This article is published under the Creative Commons Attribution (CC BY 4.0) licence. Anyone may reproduce, distribute, translate and create derivative works of this article (for both commercial and non-commercial purposes), subject to full attribution to the original publication and authors. The full terms of this licence may be seen at <http://creativecommons.org/licenses/by/4.0/legalcode>

Rechtsidee

Vol 4 No 2 (2018): June

DOI: <https://doi.org/10.21070/jhr.2018.4.44>

Article type: (Business Law)

EDITORIAL TEAM

Editor in Chief

Rifqi Ridlo Phahlevy , Universitas Muhammadiyah Sidoarjo, Indonesia ([Scopus](#)) ([ORCID](#))

Managing Editor

Noor Fatimah Mediawati, Universitas Muhammadiyah Sidoarjo, Indonesia ([Sinta](#))

Editors

Faizal Kurniawan, Universitas Airlangga, Indonesia ([Scopus](#))

M. Zulfa Aulia, Universitas Jambi, Indonesia ([Sinta](#))

Emy Rosnawati, Universitas Muhammadiyah Sidoarjo, Indonesia ([Sinta](#))

Totok Wahyu Abadi, Universitas Muhammadiyah Sidoarjo, Indonesia ([Scopus](#))

Complete list of editorial team ([link](#))

Complete list of indexing services for this journal ([link](#))

How to submit to this journal ([link](#))

Rechtsidee

Vol 4 No 2 (2018): June

DOI: <https://doi.org/10.21070/jihr.2018.4.44>

Article type: (Business Law)

Article information

Check this article update (crossmark)



Check this article impact (*)



Save this article to Mendeley



(*) Time for indexing process is various, depends on indexing database platform

Online-Based Transportation: Is It Legal?

Transportasi Berbasis Online: Apakah Itu Legal?

Yoga Sugama Ali Fhatnur, yogasugama21@gmail.com, (1)

Universitas Bhayangkara Surabaya, Indonesia

⁽¹⁾ Corresponding author

Abstract

This study aims to observe the legality of online-based transportation in Indonesia. As a law-abiding State, all the activities of the nation and the state shall be based on the regulation of law. However, on the other hand, the type of online-based transportation has potential to develop problems and also to trigger the pros and cons that exist in the community. This cons consider that the type of online-based transportation is illegal because it is not in accordance with the provisions of the applicable Law on Road, Traffic and Transportation, which states that business licenses are required for companies to have legal status. This is because the process of conducting conveyance consists series of actions to carry passengers, such as collecting fees which must be supported by a business license and a definite operating license. To be able to carry out transportation activities, the legal entity concerned must have an appropriate business license.

Published date: 2018-06-05 00:00:00

Introduction

Viewed from the aspect of Law of Land Transportation, it can be said that online-based transportation operates illegally because the online-based transportation does not have means of transportations in carrying the transportation business. This is because the online-based transportation still uses the drivers' vehicles as its fleet -means of carrying passengers, so it can not be ascertained the feasibility of the vehicles from the driver, moreover online-based transportation still has not pocketed the operating license from the Transportation Department.

The exposure of this type of online transportation has been deemed as a violation of the Act. Number 22 of 2009 on Road Traffic and Transportation, and Government Regulation Number 74 of 2014 concerning Road Transport and Regulation of the Minister of Home Affairs Number 101 Year 2014 About Road Transport, because as business entities it is not equipped with the operational permit required as set forth in the prevailing laws and regulations. Thus, for the conventional transportation competitor, the type of online-based transportation can be seen as potentially taking revenues. Thus naturally, in recent times, emerged demonstrations by conventional transportation drivers protesting the existence of online-based transportation types.

Online-based transport has violated regulations because it bypasses the Act. The clarification of the legality of online-based transportation in the perspective of laws should not be left alone. If analyzed further, there are also shortcomings and advantages of online-based transportation that result in poor assessments of the online-based transportation. These assessments will be used as considerations by various parties, especially the government to publish regulations on two-wheeled vehicles to become public transportations. This is because a new norm will emerge if there are one or more people who need it, therefore norms initially are regulating on how the behavior of a person towards others, or to the surrounding environment. In other words, a new norm will be found in a social life of human beings. This forced the government to immediately take actions, as not to harm the owners of conventional public transportation that has been officially in accordance with the laws and regulations, shown in the form of: yellow license plate number, vehicle feasibility test, pay retribution to the government and so on. The existence of public transportation using black license plate is not in accordance with Law Number 22 Year 2009 on Traffic and Road Transportation. Under the Law, all vehicles which will be used as public transportation, including travel, shall have a business license as required by law.

The main issue is still no clear rules related to the mechanism of online-based transportation. The existence of a black-plated common passenger vehicles must follow a series of feasibility tests on a regular basis. Therefore, the operation of online-based transportation is not based on the terms and conditions of the Act. This could potentially destroy the *rechtsidee* of Road Traffic and Transportation Law Number 22 Year 2009, one of its examples is to create a conducive atmosphere for the owners of public transport cars and passengers who become consumers.

It should be noted that online transportation services in other countries are required to comply with the applicable laws of each state. Because of this, the government should immediately issue regulation relating to transportation media clearly. If not, events like this will continue to recur and bring gradual social problems between conventional transportation drivers and online-based transportation drivers.

Based on the background of the above problem, it can be drawn the formulation of the problem as follows:

1. What is the arrangement of Online Based Transportation according to Law No. 22 of 2009 on Traffic and Road Transport?
2. What is the Legality of Online Based Transportation by Positivistic Legal View?

Research Method

This study is a normative legal research that uses a conceptual approach that seeks the source of legal principles, and doctrines in a juridical philosophical term. The reason researcher uses the type of normative legal research that it produces theories, arguments or new concepts needed by practitioners in solving problems that need to be faced. In addition, according to Prasetijo Rijadi and Sri Priyati, the object of normative legal research is always taken from legal issues as the norm system used to provide a "justification" of a perspective in a legal act. Thus, normative legal research makes the norm system as the center of the study.

The methodology basically provides guidance on how a researcher understands, studies, and analyzes the environment he or she will be facing. The method in a research is essentially the stages of seeking the truth. So it can be used to answer questions related to the object of research.

The method used by researchers in this case is: Normative juridical approach that is used to analyze the norms of legislation and judgment, with reference to the values of justice and welfare to the community. The analysis is conducted qualitatively that does not emphasize the quantity of data, but on the quality. This study was conducted using bibliographic data, by tracing legislative documents, books, legal journals, research results and relevant court decisions to explain the problems in this study.

Rechtsidee

Vol 4 No 2 (2018): June

DOI: <https://doi.org/10.21070/jihr.2018.4.44>

Article type: (Business Law)

Normative legal research, is a research that refers to the norms and legal principles that exist in legislation and court decisions. Normative approach is used to analyze various laws and regulations.

According Soerjono Soekanto, legal research conducted by examining the material bibliography (secondary data) which includes:

1. Research of legal principle, that is research on legal elements both ideal elements that produce legal regulation through legal philosophy, and real elements that produce the written law;
2. Research on the systematic law, namely to identify the basic terms of law such as legal subjects, rights and obligations, cases in the written law
3. Research on the level of vertical and horizontal synchronization, which examines the harmony of positive law so as not to contradict based on the hierarchy of the written law.

Comparative law, namely to build general knowledge about positive law by comparing legal system in one country with legal system in other countries.

In this study the authors use the problem approach. It is known that in the literature of law, the problem approach is determined and limited by the scientific tradition developed. Normative legal research is done by examining the various materials of legal literature, commonly called as secondary data. Approaches in normative (dogmatic) legal research are: statute approach or legislation-regulation approach, conceptual approach, historical approach, and comparative approach. Through the approach of legislation and the conceptual approach, an assessment of the overall legal provisions applied to reflect and to be argued theoretically based on basic legal concepts. Comparative approach of law, on the other hand, intended to obtain a source of comparison that will support the discussion material.

Complementing approaches above can also be utilized in non-legal studies. It is not as scientific activity that seeks to explain the reality of law (legal realities). Relevant discipline of non-judicial objectives helps to provide explanation of the legal issues studied. This means that the use of the perspective of non-legal science disciplines is not only as a means of supporting the development of analysis but also useful for analyzing the norms of legislation and judgment. The normative approach is used to analyze the various laws and regulations related to the legality of online-based transportation.

Sources of legal material in this study include. In this normative legal research the materials used are legal materials, which categorized as primary legal materials and secondary legal materials. According to R.G. Logan, in its writings on *Legal Literature and Law Libraries*, primary materials include: Acts of Parliament, subordinate legislation, and reported decision of the courts and tribunals. On the other hand, secondary materials include: All types of legal literatures which are not formal records of law, such as encyclopedias, digest of cases, textbooks, journals, dictionaries, indexes and bibliographies.

Morris I. Cohen and Kent C. Olson, legal materials (primary legal material) in the study of normative law include legislation and court decisions. Secondary legal material, according to Jay A. Sigler and Benjamin R. Beede or Peter Halpin, are scientific papers of scientists, research reports, dictionaries, encyclopedias, legal and non-legal research journals, magazines and so on.

Primary legal material consists of laws and regulations sorted by hierarchy, such as the Constitution of the Republic of Indonesia Year 1945, and other relevant legislation that is:

1. The 1945 Constitution of the State of the Republic of Indonesia
2. Book of Civil Code;
3. Law Number 22 Year 2009 regarding traffic and road transportation;
4. Government Regulation no.74 of 2014 on Road Transportation
5. Regulation of the Minister of Transportation Number 26 Year 2017 on the Implementation of Transport of People with Public Motor Vehicles Not In Route
6. Regulation of the Minister (PM) Number 108 of 2017 on the Transport of Non-Trafficers in force starting from 1 November 2017
7. Supreme Court Decision Number: 37 P / HUM / 2017 regarding Material Test against Regulation of the Minister of Transportation Number PM Year 2017

The procedure of collecting legal material of this research using. Whereas the collection of primary legal materials and secondary legal materials is carried out through inventory procedures, identification by using a card system divided into: summary cards, quotation cards and analysis cards. In summary cards, the materials are summarized into substantial outlines of thought. The legal substances used as set forth in the thoughts that represent the opinions of the authors will be referred authentically.

The legal material that has been collected is then processed through the selection and classification according to the problems and objectives of the research to do the sorting of legal materials related to the subject matter.

Processing and analysis of law material in this research include. Data that has been collected is then being

processed; the activity of tidying data from the field data classification until ready to use and analyzed. In this research, after the data has been collected, then firstly, the researcher performs data processing by editing the obtained data. The researcher will check the data to ensure whether the data obtained is in accordance with the subject matter that will be examined by making changes and editing the collected data.

The data that has been processed is then analyzed. The data analysis that will be used in this research is the qualitative data analysis model, that is the analysis done by working using the data; collecting the data, sorting it into a collection that can be processed, to synthesize it, and to the pattern, to find urgency in the data and to find something that has been learned before, and to decide data that will be described for the reader. In addition to qualitative analysis, this case also implements method of interpretation. Based on the method of interpretation, the expectation can answer all legal problems that exist in this researcher's writings.

After obtaining secondary data in the form of primary law material and secondary material, the data is then being processed and analyzed by using qualitative method, namely re-explanation by using systematic sentences that are inductive and deductive to be able to give a clear picture of the answer of the issues raised, which in the end poured in the form of descriptive.

Result and Discussion

3.1 Online transport-based operational requirements

So far the rapid changes in technology and science can not be avoided and affect the economic, social, political and other conditions in the community, not least in the field of transportation. The growing technology nowadays is giving the opportunity to facilitate the society to do their daily activities. One example is a smart telephone: the advanced technological development progress as if the world is within human hands and is now manifested in its easiness for daily use, including in the case of transporting both people and/or goods. The growing technology also resulted in the growing way of connecting passengers with existing transportation service owners. With the rapid advanced in technology and also in science, it is now much easier in obtaining transportation. And this is what happened lately and is being rampant over the last year; the breakthrough arrival of online-based transportation. *Ojek* online is also one of technology-based transportation that allows passengers (Customer) or service users to use the services of transportation in the form of motor vehicles. This can be done anywhere and anytime, by utilizing the technology on their smart phone. Basically *ojek* online is operated by a private company in the form of a limited liability company (PT) that uses an application on the smart phone to request services of transportation. This application is lately has been well-known and been downloaded by crowds in both upper and lower middle-class societies. This online-based transportation company already has a Trading Business License (SIUP). By using the application alone, service users (Customer) based online transportation can make online transportation reservations at any time. An online-based transport company only plays a role in connecting an online motorcycle taxi driver (*ojek*) with a customer user online *ojek* service via a smart phone application. This application allows customers communicate directly with in the online motorcycle driver within the customers' areas, therefore, the app owner is just a liaison. To be officially registered driver onn online transportation driver, they must register to an online *ojek* company in their respective area. Until now, more than one online-based transport transactions companies are running and most of them also have branches in all big cities and remote areas in Indonesia. In each of the online transportation companies has their own respective provisions for the driver of online transportation, but in general, the terms of the proposed majority are the same.

Based on the data that has been collected, it can be discussed for the first problem formulation that the needs of society in the implementation of decent and comfortable public transportation. the current public transportation based information technology applications such as Gojek, Uber and Grab very enthused by the public as they meet the requirement of public transportation if reviewed with the provisions contained in Law Number. 22 of 2009 on Traffic and Road Transport as well as Candy Hub Number. 108 Year 2017 on the Implementation of Transport of People with Public Motor Vehicles Not In Route.

Governments are required to encourage the use of technology, information and communications to support public transport services, to be carried out in accordance with applicable law. In carrying out business of application (online-based transportation) it is also required to comply with the laws and regulations in Information & Electronic Transactions, and also on the implementation regulation. However, when carrying the transportation business, it is obliged to comply with the law number 22 Year 2009, and also on its implementation regulation, "

Law Number 22 of 2009 in Article 1, it is explained that a general motor vehicle is a vehicle used for the transport of goods and/or persons with a fee.

Furthermore, Article 47 of Law No. 22 Year 2009, paragraph:

Vehicle consists of:

1. Motor vehicle
2. Non-Motorized Vehicles

Rechtsidee

Vol 4 No 2 (2018): June

DOI: <https://doi.org/10.21070/jihr.2018.4.44>

Article type: (Business Law)

Motor Vehicles as referred to in paragraph (1) letter a are grouped by type:

1. Motorcycle
2. Passenger car
3. Bus Car
4. Freight cars
5. Special Vehicles

Motor Vehicles as referred to in paragraph (2) letter b, c and d are grouped by function:

1. Individual Motor Vehicles
2. General Motors

Furthermore, Article 138 of Law No. 22 of 2009

1. Public transport carried out in an effort to meet the needs of safe, secure, convenient and affordable transport;
2. Public transport and / or merchandise is only done by General Motor Vehicles In Article 139 of Law No. 22 of 2009
3. The government is obliged to guarantee the availability of public transportation for the transportation of people and / or intercity goods, between provinces and borders;
4. Providers of public transport services are carried out by state-owned enterprises, regional-owned enterprises, and / or other legal entities in accordance with laws and regulations.

In Article 173 of Law No. 22 of 2009

1. Public transport companies that organize freight and / or goods shall have a license to operate the transport.
 - a. permit to organize the transportation of people in the route.
 - b. permit to organize the transport of persons not in the trajectory;
 - c. License for the delivery of special goods or heavy equipment.

Public transport companies are required to meet minimum service standards covering security, safety, convenience, affordability, equity and regularity, which have been established based on the types of services provided by Article 141 of Law 22/2009:

1. Regulation of the Minister of Transportation Number 28 of 2015 on Amendment to Ministerial Regulation Number. 46 of 2014 Uniform Minimum Service Standards on the Transport of Persons with Public Vehicles Not in the Route;
2. Regulation of the Minister of Transportation No. 29 of 2015 on Amendment to Regulation of Minister Number. 98 of 2013 on the Minimum Service Standards of Transport of People with Public Vehicles in Route.

General Motor Vehicle Arrangement:

1. In Article 1 number 10 of Law Number 22 Year 2009: General Motor Vehicles shall be any Vehicle used for the transport of goods and / or persons with a fee
2. In article 53 paragraph 1 of Law Number 22 Year 2009: General motor vehicles must be tested periodically in order to meet the technical requirements and road worthy
3. In Article 23 paragraph 3 Article 43 2 Government Regulation Number 74 Year 2014 on Road Transport: Transports of people with public motor vehicles using General Passenger Car & Public Bus Car

In article 39, paragraph 3 of the Regulation of the Chief of Police of the Republic of Indonesia Number 5 of 2012: The sign of the number of public motor vehicles is the basis of yellow plate and in black writing.

The provider of online-based transport applications, the vehicles they use are privately owned vehicles, so they do not have the position as public transportation. This is because based on Article 1 point 10 eventhough the provider of online-based transport applications is paid, and the information technology-based application company has qualified as a incorporated company as provided in Article 139 paragraph 4 of Law Number.22 of 2009, but the Operator of such information-based transportation is not a public transportation because it does not fulfill the requirements as a public transport as stipulated in Article 36 paragraph (1), and because it does not have a route permit as a transport general and pursuant to Article 36, Article 37, Article 38 and Article 65 of the Ministerial Regulation No.108 of 2017 and Article 65 of the Ministry of Transportation Regulation No.108 Year 2017.

By not fulfilling the requirement the position as public transportation, hence the problem of responsibility of

transportation operator based on application of information technology also can not be used the provisions contained in Article 186, Article 188, Article 192 and Article 193 of Law No.22 Year 2009, objective on a *halal causa* as one of the validity of the treaties contained in Article 1320 of the KUP and of the principle of contracting freedom contained in Article 1339 as being contrary to the existing Law.

3.2 Legal Positivism

The legal order in Indonesia since the Dutch colonialism reflects a positivistic legal order. It is marked by the existence of written law and is used as the basis in running the life of the Dutch colonial government. Written law is the mainstream of the civil law system adopted by the Dutch state. Yet, legal system refers to the law is a written legislation; examples of which are the Criminal Code (Criminal Code), Civil Code (KUHPer), Book of Commercial Law (KUHD), etc. From practice that was done during the Dutch colonial time when it made a typology of understanding the science of law is positivistic. This can be seen from the nature of civil law system that is systematic, procedural and formal. Post-independence of the legal order in Indonesia began to be re-colored on the character of the customary law which is part of strengthening national identity, trying to show the existence of the sovereignty of the newly independent Indonesian state, then the whole idea of state administration was derived from thoughts of Indonesian character. At this time the law explored more the ideals of law in the community. This means that the practice of law was implemented in order to strengthen the sense of nationalism. Although still in the administration of the country still used the Dutch colonial legacy law. So at this time, it describes the typology of understanding of law in the process of learning dialectic-positivistic and post-positivistic.

Laws that develop in Indonesia are further inclined toward written law with priority on systematic aspects and formal procedures contained in the form of legislation. So that in the implementation of the main obstacles in the field of law in Indonesia lies in legal thoughts that are very legal-positivistic, where the science of law is learned and made a solution to the crisis, as positive law which considers that the law of the State is the only law, beyond that there is no law. Positivism elevates jurisprudence into the study of law as a logical-rational building, supported by a systematic, procedural, formal and standardized model applied in legislation. Hence, the positive law tends to be funnel of the wishes and expectations aspired by its founders. In the reality of law there are various contradictory factors inherent to the positivistic doctrine of positive law. First, the understanding of positive law requires the mastery of the technics and technical skills, the ability which is rarely owned by commoner. Second, the problem of commoners' law in everyday life is identical with the basic needs (primary needs) means that positive law will be accepted by the commoners if positive law is able to support the achievement of their primary needs well. Third, positive justice law in the eyes of the commoners can only be digested on the basis of taste sensitivity and not on the basis of rational logic. The same idea by Newtonian, positive law is modern law which is a deliberate, logical-rational and systematic work so that everything that is metaphysical and theological, and is viewed as an aberrational data so it is always rejected. Positivism combines with knowledge through the ways/processes collected from small things (atomization), namely by classifying - classify, break down, and sort out objects to be studied rationally. Therefore, in the orderly atmosphere of thinking the mechanistic linear atomistic, through the development of legal science that would have found the pattern is the law needed by advanced societies. Something to be achieved through law is not just justice and happiness but by simply making, executing and applying the law rationally. With this, if society has held on to that rationality, the law is then already believed and viewed by society to be a mirror of the truth. If the law is not for a greater purpose than just rationality, consequently the law becomes dry. The development of modern legal science as a consequence of the change of form toward the modern state becomes the inevitable flow of globalization. Modern science has influenced the formation of a modern state, and a modern state demands modern stream of legal science to organize the life of the country. The science of modern law is based on objectivity, empiricity and rationality into a systematic, procedural and formal order. The science of modern law that developed so far can be understood as a positivistic form. Departing from the development of modern legal science positivistic that occurred in Indonesia, currently forms typology of understanding of the science of positivistic law. From the process of the history of the Indonesian, until to the present, there are contradictory nuances in the typology of legal understanding.

Legal Positivism on Legal Theory (Legal Theory) implies a method of observing how people make laws. The other meaning of Positivism is the study of the real law (*das sein*) that is distinguished from the law as it should exist (*das sollen*). Legal Theory positivism never rejects *sollen* (what it really should be) on the moral set as a subject, as it is unworthy of being attentive or unrelated to the law. But a positivist disciple plainly rejects *sollen* (what ought to be) in a metaphysical sense as a direct result of "metaphysical non-positive." Now, whatever is in the positivist follower is fulfilled by the emergence of the laws governing man and the type of study is explicit should not deviate from the existing scope. We should also have found *sollen* (what ought to be) in this scope but it is not moral, *das sollen* (what should exist normatively), what should exist according to law is different from moral obligation.

3.2.1 Flows of Thought in Legal Positivism

Legal positivism or legal positivism is one of the school of thoughts in law. The core view of legal positivism is that the law is the norms or rules that are set forth in the legislation, so it is concrete and formulated in formulations that are clear and assertive. Legal positivism is also a school of thought in the field of jurisprudence in the early nineteenth century that separates expressly between law and morality. In view of legal positivism, there is no law except the command of the ruler. Positivism understands that the science of law is a science that covers the life and behavior of every society, therefore the followers of this positivist teachings try to pour their thoughts and

Rechtsidee

Vol 4 No 2 (2018): June

DOI: <https://doi.org/10.21070/jihr.2018.4.44>

Article type: (Business Law)

positivise principle of cause in effect, as a rule of law supported by structural strength formulated in the form of threats or sanctions.

The flow of legal positivism is much more playing a role to examine the classical problems in a law creation, the issue of which is more important legal certainty or justice. The flow of legal positivism emphasizes the importance of legal certainty. Personally, I agree with this flow of thought, because if we talk about justice in the context of legislation, then a positive law provision will surely have a double effect. On one hand it feels that the decision or provision is a fair decision or condition, and comparatively, on the other hand, it will feel that such a decision or condition creates injustice to them. This is, in my opinion, due to the fact that if we speak of justice then we are talking about a value that is so subjective that it is impossible to create a rule that can generate justice for everyone because everybody has their own idea and sense of justice.

However, the thoughts and opinions of this school can not be entirely applied in Indonesia, as it grew and developed in Europe, in particular Continental Europe, and hence the ideas were also influenced by values in European society at that time. A thought is the result of the mind-set, formed of discipline, custom, and culture, and because of the way or method of thinking of a person to a problem will vary, according to the level of discipline, habit, and culture that live and become a value in the society where they are. For example, in Javanese society there is a saying that *alon-alon asal klakon* (getting something done, if it is done slowly, one at a time), but Batak people will say "if you can do fast, why do it slowly".

Streams of thought in legal positivism can be seen in the thoughts of jurists belonging to legal groups positivism, among them are:

3.2.2 Jeremy Bentham

Some of Bentham's thoughts on law include:

1. Changes in the substance of the law will not be effective if it is not followed by changes in the form and structure of the law itself.
2. The ruling order is law, even if the order is supported only by moral or religious sanctions. In other words, Bentham says that the ruling order is law and must be obeyed, even though the order is not included in the legislation.
3. The government or the ruler must execute the government in order to achieve the greatest happiness for the largest number of individuals. This is known as the principle of utilitarianism.

3.2.3 Herbert Lionel Adolphus Hart

Hart distinguishes 5 meanings in positivism, namely:

1. The presumption that a law is a human command.
2. There is no need for a legal relationship with morals.
3. Analysis of legal conceptions must be distinguished from historical studies of the causes or origins of the law and from sociological studies of other social relationships.
4. A legal system is a closed logical system in which an appropriate judicial decision can be produced in a logical manner from predetermined rules of law without regard to social demands, wisdom, and moral norms.
5. Moral values can not be given on a rational basis.

3.2.4 John Austin

The most important thought of John Austin is about analytical jurisprudence (the teaching of analytical law). Austin views the law as command of the ruler (command / order). Austin divides the law into two types, the Laws of God, and the Human Laws (laws made by men). Also on the law made by Austin man classify again in:

1. actual laws (laws), and
2. an incorrect law (positive morality), that is, a law made by man, not in his position as ruler, but in relation to man.

Hans Kelsen

Hans Kelsen poured his thoughts on the legal positivism in his writings Pure Theory of Law, a study of laws that examine the law purely in the sense of freeing the study from non-legal elements such as sociological, psychological, and moral.

In accordance with the mandate of Law 22/2009, in article 5 it is explained that the State is responsible for the traffic and road transportation and its guidance is implemented by the government which includes planning, arranging, controlling and supervising. In the case of the provision and conveyance of people transportation services in the route, the government controls them by issuing permits. The Government issues such licenses in

Rechtsidee

Vol 4 No 2 (2018): June

DOI: <https://doi.org/10.21070/jihr.2018.4.44>

Article type: (Business Law)

order to:

1. Guarantee of safety for the consumer of transportation service / transportation to obtain transportation services in accordance with the wishes and needs. As well as to realize the certainty of public transport services then each operator must perform the obligations that have been determined.
2. Provide good protection to service providers / operators by maintaining a balance between the provider of transportation (supply) and demand for transportation (demand), so the company can maintain and develop its business.

This is related to public service sector, especially in the land transportation sector, specifically in public transportation, there are permit for the implementation of the transportation of people in the route, the license for the implementation of the transport of persons not in the route, the license for the implementation of special and/or heavy equipment transportation, test certificate for type of motor vehicles and endorsements of design and engineering of motor vehicles.

This is in conformity with the regulation set forth in Article 173 paragraph 1 letter a, b and c of Law 22 of 2009 as follows.

"Public transport companies that organize the transport of persons and / or goods shall have:

1. Permit to organize the transportation of people in the route;
2. Permit to transport person's not in the route;
3. License to operate special freight or heavy equipment. "

In article 49, paragraph 1 and 2 of Law Number 22/2009, states that: "Motor vehicles, trailers, and imported, created and / or assembled domestic trains operated on the road shall be subject to testing (Test Type and Periodic Test)".

In both the Commercial Code and the Civil Code have not been regulated in relation to the transportation of persons by land, thus that regulations relating to agreements on land transport may be included in the general provisions on general agreements in articles 1338 and 1339 of the Civil Code. In essence, the transport is a series of moving to places, whether the object is in the form of goods or persons, because the transfer is absolutely necessary for the benefit and efficiency. According to Law 22/2009 of Article 1 described transportation is the movement of people and/or goods from one place to another using transportation in traffic and road. At the time of conveying the object on land can create means of transportation in the form of motor vehicles to transport people and goods. In the Law 22/2009 and PP 74/2014 mentioned that the motor vehicle that is a vehicle that uses mechanical displays in the form of machines. In article 47 paragraph 2 of Law 22/2009 Junto Article 3 paragraph 2 PP 74/2014, motor vehicles can be classified into four kinds, namely passenger cars, motorcycles, bus cars and freight cars. If the implementation of transportation becomes an activity of providing transportation services, in which there is a transport process and there is reciprocity in the form of wages as a reward, then the means of transportation used shall be public motor vehicles in accordance with Article 1 number 10 of Law 22/2009 junto. Article 1 number 5 PP 74/2014.

As one of the activities of service providers in the field of transporting people and goods from one place to another, transportation has a very active role in realizing with the service that is convenient, safe, fast, regular, and low cost to the public. So far, Indonesia has been presented the type of public land transportation with new innovations in the field of technology that greatly facilitates the consumer that is, online-based transportation. This type of online-based transportation is an application in which there are various services of transporting goods or people from one place to another. This finding does not take long to steal the attention of the people, because all the facilities and benefits included are simplified the activities of the community. However, we must keep in our minds that every carry out land transportation activities, especially on the transportation of people has been regulated in Law 22/2009. In Law 22/2009 in Article 1, it is explained that a public motor vehicle is any vehicle used for the transport of goods and / or persons with a fee. And also in article 47 explained that the vehicle consists of motor vehicles and non-motorized vehicles. In this article is also explained related to the classification of motor vehicles based on the their function, which are motorcycles are individual motor vehicles while passenger cars, bus cars, freight cars and special vehicles are classified into public motor vehicles. In this regulation, it has been described that the implementation of public transport must use public motor vehicles. To be able to become public transportation, also in this regulation is explained the permits that must be attained by the transportation company; either permit for the transport of people in the route, the transport permits of people not in the trajectory or the permit of transport of special goods or heavy equipment.

Article 21 states that in carrying out the transportation of persons not in a route with public motor vehicles, public transportation companies must hold a license for the implementation of the transport of persons not in the trajectory. And in Article 22, it is explained that public transport companies must be incorporated in accordance with the provisions of the laws and regulations that can be: State-Owned Enterprises, Regional-Owned Enterprises, Limited Liability Companies or Cooperatives. Article 23 states that in order to obtain a permit, a public transportation company shall be required to complete such requirements as having at least 5 (five) vehicles as evidenced by the Vehicle Registration Certificate (Vehicle Identity Number) on behalf of the company and a letter

of evidence passing periodic test of motor vehicles, providing vehicle maintenance facilities (workshops) as evidenced by documents of ownership or cooperation agreements with other parties, employing drivers who have a General Driving License (SIM) General in accordance with the class of vehicles. Article 40 and Article 41 are explained in relation to the application of public transportation and explain the steps of application company, in order to operate in accordance with applicable regulations.

Conclusions

Based on the analysis conducted by researchers who poured in the theories of law on Objects of online-based transportation, it is known on some essence that researchers can describe that it is still not meet the rules that apply on public-based public transportation, to meet the demands of community related to transportation-based online applications for creating public transportation that easy-to-use, by using technology. So far the conclusions obtained by researchers as a result are as follows:

4.1 The vehicles they use (online-based transport) are privately owned vehicles, so they do not have the position as public transportation because under Article 1 point (10) although the provider of online transport based applications is paid and the information technology based company has qualified as a company legal entities as stipulated in Article 139 paragraph (4) of Law No.22 of 2009, but the transport information-based Operator is not a public transportation. It is because it does not meet the requirements as a public transport as stipulated in Article 36 paragraph (1); it does not have a route permit as a public transport. By failing to fulfill the requirement of position as a public transportation, the problem of responsibility of the transportation operator based on the application of information technology can not be used in the provisions contained in Article 186, Article 188, Article 192 and Article 193 of Law No.22 of 2009, based on technological applications do not meet the technical requirements and substances contained in Law No.22 of 2009, Ministerial Regulation No PM 108 of 2017 on the Implementation of Transport of People with Public Vehicles Not in Route and Article 1320, 1339 KUHperdata. If something happens to the service user, the service user can not sue the driver or the Transportation Operator-based application of information technology based on the basis of default due to violation of an agreement, but can only apply on the basis of unlawful acts regulated in Article 1365 KUHperdata ie every act against the law, harmful to other people then the person causing the loss shall pay compensation with the burden of proof is on the disadvantaged party as a result of the absence of the agreement as provided in Article 1866 of the Civil Code. Thus the conclusion of the analysis in this second chapter is that the operation of vehicles for public passenger transportation is not in accordance with Law 22 of 2009 on LLAJ and its derivative legislation is against the law so that the operation is "prohibited,"

4.2 It is mentioned in Article 21 of the requirement to carry out the Transport of Persons not in the Route by Public Motor vehicle, Public Transport Company shall have a license to operate the transport of persons not in the route. Article 22 explains that the Public Transport Company of Indonesian legal entities in accordance with the provisions of legislation that is BUMD, BUMD, PT or Cooperative. Article 23 explains that to obtain a license for a Public Transportation, company shall comply with requirements such as having at least 5 (five) vehicles as evidenced by a Certificate of Vehicle Number (STNK) on behalf of the company and a letter of evidence passing periodic test of a motor vehicle, pool), providing vehicle maintenance facilities (workshops) as evidenced by documents of ownership or cooperation agreements with other parties, employing drivers who have a General Driving License (SIM) General in accordance with the class of vehicles. Article 40 and Article 41 therein describe the use of the application in public transport and explain the steps needed to be taken by the application company to provide services in accordance with the regulations. In this case should also be regulated on the arrangement of an application service company, if it will conduct cooperation in the field of transportation must be with a freight company rather than an individual company. The application service company is also not justified to determine the freight rates and do the recruitment. Arrangement of Public Transport Operations under Public Motor Vehicles is regulated in Law Number 22 Year 2009 on Road Traffic and Transportation and Government Regulation Number 74 Year 2014 on Road Transportation. Arrangement of Public Transport Operation with Information Technology Based Application is regulated in Regulation of the Minister of Transportation Number 32 Year 2016 concerning Transportation of People with Public Motor Vehicle Not In Route that is contained in Article 21 to Article 23 concerning licensing of transportation of persons, Article 40 to Article 42 concerning public transport with information technology-based applications. To carry out the Transport of Non-Road People with Public Vehicles, Public Transport Companies shall have a license to operate the transportation of persons not in the trajectory who must meet the requirements. The service provider company in the field of transportation is not a public transportation company. if you see the Understanding of Route according to RI Law No.14 of 1992 Article 37 paragraph (1) fixed and regular is the transportation service carried out in the network route regularly, with a fixed schedule or not scheduled. While the definition is not in the trajectory is the transport service that is done by not tied in a certain route network with a unified transport schedule. It can be concluded that online-based transport violates Government Regulation No. 74 of 2014. This government regulation of online transport (go-jek and grab car) is in violation of Article 23 paragraph 1 and 3 which contains about public transportation people must have a fixed and regular route whereas online transport does not have fixed and regular routes. With the enactment of Law No. 22 of 2009 is expected to help to realize the legal certainty of the parties associated with the provision of transport services, be it the employer of transport, workers / drivers, and passengers.

References

1. Majalah Info Singkat Kesejahteraan Sosial. Vol.VIII, No 07/I/P3DI/April/2016
2. D.H.M. Meuwissen, Ilmu Hukum, Pro Justitia, Tahun XII No. 4, Oktober 1994,
3. Sigit Sapto Nugroho, 2012, Diktat Pengantar Hukum Adat, Fakultas Hukum Universitas Merdeka Madiun, Tidak dipublikasikan, dalam Volume 1 Nomor 2 September 2015 YUSTISIA MERDEKA
4. Jan Gijssels & Mark van Hoecke, Dalam Suparto Wijoyo, Matarantai Pengaturan Pengendalian Pencemaran Udara Dalam Rangka Pengelolaan Lingkungan Secara Terpadu Di Indonesia, Disertasi, Program Pascasarjana Universitas Airlangga Surabaya, 2003.
5. Bambang Waluyo, Penelitian Hukum dalam Praktek, Jakarta, Sinar Grafika, 1999.
6. J.J. Bruggink, Refleksi Ilmu Hukum, dialihbahasakan, Arief Sidharta, Bandung, Citra Aditya Bakti, 1996.
7. John Fich, Introduction to Legal Theory, London : Sweet & Maxwell, 1974.
8. Prasetijo Rijadi dan Sri Priyati, Memahami Metode Penelitian Hukum dalam konteks penulisan Skripsi/tesis, Surabaya, Al Magtabah, 2017.
9. R.G. Logan, Legal Literature and law Libraries, dalam R.G. Logan, Information Sources un Law, Butterworth Guide to International Sources, Butterworth & Co. Publisher Ltd, 1986,
10. Soekardono, Hukum Dagang Indonesia, Jakarta, Rajawali Pers, 1986,
11. Winarno Surakhmad, pengantar ilmiah dasar, metode, teknik, tarsito, bandung, 1994,
12. Legal Documents:
13. Undang - Undang Dasar Negara Republik Indonesia Tahun 1945
14. Kitab Undang-undang Hukum Perdata;
15. Undang-Undang Nomor 22 Tahun 2009 tentang lalu lintas dan angkutan jalan LN No. 196, TLN5025.;
16. Peraturan Pemerintah no.74 tahun 2014 tentang Angkutan Jalan
17. Peraturan Menteri Perhubungan Nomor 26 Tahun 2017 tentang Penyelenggaraan Angkutan Orang dengan Kendaraan Bermotor Umum Tidak Dalam Trayek, yang dicabut oleh Mahkamah Agung melalui Putusan MA dengan nomor: 37 P/HUM/2017 tentang Uji Materi terhadap Peraturan Menteri Perhubungan Nomor PM 26 Tahun 2017
18. Peraturan Menteri (PM) Nomor 108 Tahun 2017 tentang Angkutan Orang Tidak dalam Trayek yang berlaku mulai 1 November 2017
19. Putusan MA dengan nomor: 37 P/HUM/2017 tentang Uji Materi terhadap Peraturan Menteri Perhubungan Nomor PM 26 Tahun 2017
20. Direktorat Jenderal Perhubungan Darat, Kementerian Perhubungan Republik Indonesia, Peraturan Pemerintah Republik Indonesia Nomor 65 Tahun 2005 Tentang Pedoman Penyusunan Dan Penerapan Standar Pelayanan Minimal.
21. Putusan Mahkamah Agung No 37 P/HUM /2017
22. Internet Reference
23. Direktorat Jenderal Perhubungan <http://www.dephub.go.id/post/read/permenhub-32-tahun-2016-payung-hukum-taxi-aplikasi-yang-transparan>