



GRAND DESIGN: LEGAL PROTECTION OF ONLINE TRANSPORTATION IN THE MIDDLE COVID-19

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ABSTRACT

This research aims to determine the grand design of legal protection for online transportation drivers as well the momentum of government to provide legal empowerment both in terms accelerated decentralization and decentralized orientation for online transportation drivers amid the current COVID-19 pandemic situation. In this study, researchers used the narrative review method to build narratives and main ideas based on literature review extractions. The results of this study indicate that the government is obliged to attend through bestuurshandeling in the form at Peraturan Pemerintah Pengganti Undang-Undang (PERPU) this strategic step an effort to protect online transportation drivers as well as a form disruptive innovation solutions in accordance with principles and practices.

KEYWORDS: Bestuurshandeling, Protection, Online Transportation

INTRODUCTION

The development of the online transportation mode industry is growing very fast. The periodic table shows an increase in the number of vehicles, both motorbikes, cars, auto buses and vehicles that load logistics, experiencing a significant growth rate transformation. However, of the four modes of transportation described earlier, motorbikes have the greatest interest in the general public, this can be seen from the survey results Badan Pusat Statistik, Kota Madiun 2020 in the table below:

Table. 1 Types of Vehicles by Subdistrict Level Category

Transportation Type	Types of Vehicles by Subdistrict Level Category in Madiun City		
	SDL-1	SDL-2	SDL-3
Motorcycle	28.398	46.058	30.155
Car	449	1.024	671
Oto Bus	11	29	17
Other	262	519	292

Source: *Badan Pusat Statistik, Kota Madiun 2020.*

Where,

1 UN Secretary-General. <https://www.un.org/en/un-coronavirus-communications-team/protecting-human-rights-amid-covid-19-crisis>.

- SDL: *Sub District Level*
- 1: *Sub District Level Manguharjo*
- 2: *Sub District Level Taman*
- 3: *Sub District Level Kartoharjo*

In 2020, the results of a survey from the Demographic Institute of Madiun City, show that online motorcycle taxi services can provide a contribution value of IDR 8.2 trillion per year to the Indonesian economy through the income of driver partners (Badan Pusat Statistik, Kota Madiun 2020). This scheme has changed the pattern while reducing the unemployment rate in Madiun City, as in the data released by the National Labor Force Survey in 2020, that around 8.32 percent of the total > 5,000 online transportation partners who joined are unemployed (Fakhriyah, 2020).

Based on a review of research results, the current phenomenon that online motorcycle taxi drivers in Madiun City revealed that some of the drivers feel disadvantaged by the partnership system that is applied. According to the recognition of one of the drivers who was the object of research by the researcher, companies in making new regulations often act arbitrarily, especially regulations related to tariffs and distance per kilometer. (Yuniastuti, et al., 2019).

Apart from the problem of the relationship between partnerships, another problem lies in the legality of ojeg as online transportation. Undang-Undang Nomor 22 Tahun 2009 regarding Traffic and Road Transportation, it states that motorbikes are not used as public transportation. This means that if an accident occurs, the driver will not get an insurance policy from the company, because motorbikes are not part of public transportation in the zoning route area (Yuniastuti, et al., 2019).

Subsequent problems emerged from Peraturan Menteri Perhubungan Nomor 18 Tahun 2020 concerning Control of Transportation in the Context of Preventing the Spread of COVID-19 and regulations Peraturan Menteri Perhubungan Nomor 18 Tahun 2020 it has also been adapted by Walikota Madiun to follow Enforcement of Restrictions on Community Activities. Please note, that the legal offense contained in pasal 11 ayat 1d it is stated that motorbikes are allowed to carry passengers on terms and conditions that must meet the elements of the health protocol.

Although, it sparked polemics from most of the online drivers. However, the regulations must still be implemented, considering that Madiun City is in the red zone with 1,275 confirmed active cases as of February 16, 2021 (Madiun City Government Dashboard, 2021). So, online transportation modes are very limited,

in order to reduce the spread of severe acute respiratory syndrome coronavirus disease or known as COVID-19. Based on the above study, this study focuses on the formulation of related research discussions, the existence of a legal grand design in the midst of the current COVID-19 pandemic.

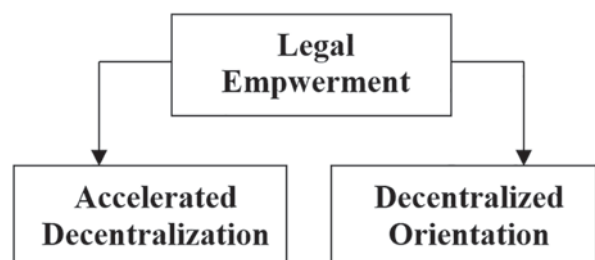
RESEARCH METHODS

This research was conducted, based on the literature study approach technique, where 8 were obtained from the basic rules of online transportation that discussed the visualization of data images and digital online sampling of field data which were then made review papers, in order to provide general knowledge with the aim and hope of increasing horizons. law and legal insight, resulting in a scientific study in the form of a narrative review.

RESULTS AND DISCUSSION

The grand design of legal protection for online transportation drivers can be viewed from various elements, one of which is that it can be assessed through the extraction of scientific libraries. Based on this explanation, there is a permanent legal concept based on the appropriate work relationship pattern Undang-Undang Ketenagakerjaan. Then, when examined from a proxy Undang-Undang Ketenagakerjaan said, therefore, the government's role is needed to guarantee the rights and position of online drivers in the midst of the COVID-19 outbreak through bestuurshandeling instruments.

The scheme of government action through bestuurshandeling instruments can be divided into several dimensions such as accelerated decentralization and orientation decentralization. Thus, the role model images that can be explained are as follows:



Picture 1. Mechanism governmental action through bestuurshandeling instruments

When examined from the two instruments, which

services are more precise, fast and close, it shows that the government is acting in real or functional ways in managing the private sector. On the other hand, the government is obliged to improve the fulfillment of citizens' rights or rechtshandelingen to guarantee people and society. Thus, the function of legal reform can run according to the concept of legal empowerment in Indonesia.

Historically, the government has issued Peraturan Perundang-Undangan Nomor 22 Tahun 2009 regarding Traffic and Road Transportation. Thus, the problem of online transportation drivers can be resolved by the government through Peraturan Perundang-Undangan. Thus, the legal elaboration of Peraturan Perundang-Undangan Transportation of People by Public Motorized Vehicles Paragraf 1 Pasal 140 huruf a will run according to the schematic feitelijke handelingen and rechts handelingen.

Meanwhile, when viewed from the current situation, namely the COVID-19 pandemic outbreak. The government should be able to issue bestuurshandeling instruments in the form of Peraturan Pemerintah Pengganti Undang-Undang (PERPU). Peraturan Perundang-Undangan issued in order to redesign with the aim of an urgent need to quickly resolve legal problems that cannot be resolved by means of making Undang-Undang procedurally, so that legal certainty is needed, so the problem is quickly resolved (Konstitusi, 2009).

The availability of bestuurshandeling in the form of coercive regulations has been issued by the government. Based on the search results accessed through Jaringan Dokumentasi Dan Informasi Hukum Badan Pembinaan Hukum Nasional produce 8 (eight) regulations that form the basis of online transportation arrangements, namely:

LITERATURE REVIEW RESULTS

Permenhub Nomor 12 Tahun 2019 Regarding Safety Protection for Motorcycle Users Used for the Benefit of the Community (Republik Indonesia, 2019). This regulation is a form of legal reform and provisions that recognize the legal existence of online motorcycle taxis. The regulations also focus on 5 main points, namely driving safety and security, operational standardization, calculation of tariffs, provisions for suspend from companies and supervision by the government.

Putusan Mahkamah Konstitusi Nomor 41/PUU-XVII/2018 (Konstitusi, 2018). Rules of Putusan Mahkamah Konstitusi has strengthened the provisions Pasal

47 ayat (3) Undang-Undang LLAJ which does not include motorbikes as public transportation, but this article does not prevent motorbike taxis from operating even though it is not regulated inside Undang-Undang LLAJ.

Permenhub Nomor 108 Tahun 2017 concerning the Operation of People Transport with Public Motorized Vehicles Not on Routes (Republik Indonesia, 2017). This regulation has regulated various types of public transportation ranging from conventional taxis, online taxis on taximeters, tariff setting, operating areas, vehicle demand quotas and the role of applicators.

Putusan Mahkamah Agung Nomor: 37P/HUM/2017 (Agung, 2017). Peraturan Mahkamah Agung has canceled 14 Pasal in Permenhub Nomor 26 Tahun 2017 because it contradicts peraturan perundang-undangan on it, like : (1) Pasal 3, 4, 5, and 7 Undang-Undang UMKM, and (2) Pasal 183 ayat (2) Undang-Undang LLAJ.

Peraturan Presiden Nomor 17 Tahun 2003 about Implementation Undang-Undang UMKM (Republik Indonesia, 2013) Peraturan Presiden Nomor 17 Tahun 2003 emphasized that in partnership there is a principle of win win solution partnership and the parties have an equal bargaining position.

Undang-Undang Nomor 22 Tahun 2009 about LLAJ (Republik Indonesia, 2009) The rules are contained in Pasal 47 ayat (3) Undang-Undang LLAJ do not include motorbikes as public transport. So that motorbikes cannot be used to transport people or goods.

Undang-Undang Nomor 20 Tahun 2008 about UMKM (Indonesia, 2008). Regulations The pattern of partnership relationships between online motorcycle taxi drivers and companies includes a profit sharing pattern as follows Pasal 26 huruf f Undang-Undang UMKM.

Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 (Indonesia, 2002) Rules contained in Pasal 27 ayat (2) Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 regulate the position of the state in protecting everyone to get a decent life and work.

Based on the table explanation. 2 above, it can be concluded that the government is actually present in providing legal rights and protection to online drivers, even though it has not reached the maximum limit. In addition, there is a lack of the government's role from a technical point of view which can be seen from the enactment of regulations Permenhub Currently, which only provides recognition to online drivers but specifically and concretely does not guarantee all components needed by online drivers.

Thus, the only issues that can be fixed are in the scope of which each one covers Kementerian if referring to regulations at the ministerial level. Therefore, it is necessary to design cross-sectoral coordination. This means that a deeper role for the government is needed to break down the urgent need to issue *bestuurshandeling* instruments related to driver protection through regulations at a higher level.

The next step, namely disruptive innovation to protect online drivers in the midst of the COVID-19 pandemic. This should be a momentum for the government, service providers (merchants) and for workers to keep growing and competing. This disruptive innovation can be created, among others, through exploiting opportunities, targeting market share and ensuring tariffs. To realize this, a just legal status is needed for all parties.

CONCLUSION

Based on the study of research results, it can be concluded that strengthening the position of online drivers is a form of government obligation as a means of working partners through *bestuurshandeling* in the form of Peraturan Pemerintah Pengganti Undang-Undang (PERPU) as a strategic step in an effort to protect online transportation drivers and disruptive innovation solutions are a must-have proxy for all elements, both government, service providers (merchants) and the workforce here online drivers.

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