
MEASURING THE AGREEMENT LEGALITY BETWEEN THE COMPANY OF ONLINE TRANSPORTATION SERVICE PROVIDER AND THEIR DRIVER PARTNERS IN EFFECTUATION OF NON-ROUTE PUBLIC TRANSPORTATION**Syamsuddin Baco¹, Nurhayati Sutan Noko'e², Adiesty Septhiany P. S.³**

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Abstract

The increase of the online transportation practice raises problems from its legal aspects. Even so, the community actually welcomes it as an alternative means of public transportation, which is faster, cheaper and more convenient for the community.

This study aims to: (1). Analyze the legal relationship of the online transportation service provider and their driver partners according to Indonesia Transportation Law; and (2) Analyze the validity and legality of the agreement between the company of online transportation service provider and their driver partners and also between the driver partners and their passenger and it relations under Indonesia Traffic Law.

This research was conducted using normative legal approach with studies from theoretical, historical, structural and philosophical aspects of laws and regulations. Empirical approach was used to support the normative approach arguments.

*The results reveals that: (1) Construction of the legal relationship between the online transportation service provider and the drivers is an **agency agreement**, where the online transportation service provider act as a commercial agent (**Agentuur**) and the drivers act as the **Principal**. Therefore, the agreement substance that contained in the terms and conditions in the electronic contract categorized as an agency agreement (**Agentuur** contract). (2) The legal relation between the company of online transportation service provider and their driver partners and also between the driver partners and the passenger is a violation of Indonesia Traffic Law. Therefore, the legal status is null and void by law and the parties cannot file a lawsuit before the court based on that agreement.*

Keywords: *Contract Law; Online Transportation; Transportation Law*

INTRODUCTION

The advanced development of information technology has penetrated all

aspects of human life and has become a major stream in economic globalization which has an impact on the development of business law. The emergence of new legal relations and provide full support for creativity and innovation, but lead to excess legal means. The rule of law principle, in fact, can mean the readiness of the state to prepare regulations that can anticipate future changes, due to the emergence of new legal relations because of the effects of information technology. Since 2014, the phenomenon of a large flow of information technology impacted the area of transportation industry in Indonesia. Even though the same current phenomenon has already penetrated the air transportation mode beforehand, but its presence in air transportation mode is not as difficult as its presence in the land transportation mode.

The government's response to the commotion and controversy is to prepare regulations that provide legality certainty for the implementation of land transportation mode for people based on online application. The regulation is contained in the Minister of Transportation Regulation of the Republic of Indonesia (hereinafter called PM) Number 32 of 2016 concerning the Implementation of Non-Route Public Transportation with Motorized Ve-

hicles (State Gazette of the Republic of Indonesia Number 469 Year 2016). The online drivers community rejected this rule, the government revoked it and replaced it with the Minister of Transportation Regulation Number 26 of 2017 (State Gazette of the Republic of Indonesia Number 516 Year 2017) concerning the Implementation of Non-Route Public Transport with Motorized Vehicles , which was supposed to take effect on 31 March 2017.

Indeed, PM Number 26 of 2017 has never been implemented successfully, because its reaping rejection from the online driver community through marches and rallies, also through submitting a judicial review proposal to the Indonesia Supreme Court. Through the verdict of the Indonesia Supreme Court Number 34P / HUM / 2017, several Articles in PM Number 26 of 2017 ruled as illegitimate and non-binding, as its opposed to Law Number 22 Year 2009 concerning Road Traffic and Transportation. The articles that declared invalid and non-binding are provisions that legalize the existence of online application-based people's transportation. As a result of the material test verdict, the legal basis for the transportation of people based on online applications has ceased to exist.

Responding to these conditions, the Indonesia Minister of Transportation issued a new regulation, Minister of Transportation Regulation Number 108 of 2017 concerning the Implementation of Non-Route Public Transportation with Motorized Vehicles (State Gazette of the Republic of Indonesia Number 1474 Year 2017) as a substitute for PM Number 26 of 2017. PM 108 of 2017 regulates several conditions for organizing online application-based person transport. Because the material provides the conditions and limitations, such as determining the quota of each province, limiting the area of operation, the obligation of the periodic examination for vehicles (KIR) test and general SIM-A requirements for the driver. On 29 January 2018, the online drivers community rejected the material of PM 108 of 2017 by conducting demonstrations in front of the Presidential Palace. As the results, the government issued a Form Letter of the Director General of Indonesia Land Transportation Number HK.202 / I / 9/2017, which stated the postponement of the implementation of PM 108 of 2017, to an indefinite deadline.

Measuring from the validity of the agreement to grant application access from the application company to the drivers is very urgent because it is related to

drivers legal protection in dealing with application companies and passenger or other third party lawsuits. The norms of the Transportation Law material and/or agreement instruments made between application companies and the drivers should guarantee equal and fair legal protection for all parties involved. But in fact, this matter has the potential to be problematic from two perspectives. First, the legal position of the Application Company and the drivers and second, the validity and inequality of position in the agreement between the Application Company and the drivers.

The main issues here are the substance of the Transportation Law norms and the Agreement Law stipulated in 3rd Book of Indonesia Civil Code on the contrary to the demands of drivers interests in particular and the general development needs of society. Therefore, it is necessary to have a roadmap for harmonization between the substance of the legal norms of land transportation and Agreement law, with the demands of the needs and interests of the community.

According to aforementioned introduction, the topic that will be discussed in this paper is:

1. What is the legal relationship of the online transportation service provid-

- er and their driver partners according to Indonesia transportation law?
2. How is the position of validity and legality of the agreement between the company of online transportation service provider and their driver partners and also between the driver partners and their passenger and it relations under Indonesia Traffic Law?

Thus, the purpose of this paper is:

1. To analyze the legal relationship of the online transportation service provider and their driver partners according to Indonesia transportation law.
2. To analyze the validity and legality of the agreement between the company of online transportation service provider and their driver partners and also between the driver partners and their passenger and it relations under Indonesia Traffic Law.

METHOD

This research was conducted with a normative legal approach by conducting a study and analysis of the theoretical, historical, structural, substance and philosophical aspects of the laws and regulations relating to the public transportation and the Agreement Law. The legislation in question includes Act Number 22 of 2009 concerning Road Traffic and Trans-

portation, along with all the implementing regulations and the provisions of Book III Indonesia Civil Code concerning Agreement, as well as treaty law that applies in international trade.

Besides the normative approach, an empirical approach will also be used, to understand the essence of the implementation of legislation, but this approach is only used to support the foundation of the normative approach argument. The empirical approach was conducted in the DKI Jakarta and the city of Palu.

The data and legal material collection are done by inventorying documents or digital data, through literature and field studies. Literature studies are carried out by finding and collecting the data and the secondary legal material. Then a field study was conducted to find and collect digital data agreements between the Application Service Provider with the drivers and prospective passengers. Conducting face-to-face interviews for respondents from drivers and passengers using interview guidelines, which were determined based on purposive sampling.

ANALYSIS AND DISCUSSION

According to Information Technology Association of America, the Application Service Provider (hereinafter called ASP) is a company that provides a collec-

tion of IT resources to clients or subscribers who access those resources via the Internet or other networking arrangements¹. In other words, it is an information technology company that provides information technology-based applications as a medium of connecting/ordering motorized vehicles by prospective service users (passengers) with drivers.

In the general terms and conditions of the agreement between the ASP and drivers in the Grab app, there are several terms that are used differently:

- a. “Client”, interpreted as an entity identified in the Client details as listed in the Order Form.
- b. “Client employee”, defined as a list of client employees who (together with the conditions that may be required by Grab app) have or will be provided by the Client to Grab app, and where the list must be updated from time to time by the Client.
- c. “Affiliate” means, in connection with an entity, another entity that controls, is controlled by or is under the same control of that entity. For the purpose of the definition in this Agreement, “control” (including the term “controlling”,

“controlled by” and “under control”) means mastery, both directly and indirectly, of a power to direct or determine the direction of management and policy of an entity, either through guarantees of ownership of voting rights, based on contracts, or otherwise.

- d. “Driver” is an independent third party service provider who has installed the Grab Application on his mobile device and has carried out the registration process to create a Grab account and is authorized and approved by Grab and/or its Affiliates to provide Grab for Business (hereinafter called GfB) Services.

Seen from the terms and conditions apply in Grab app, it appears that Grab did not explicitly state the type of legal relationship between Grab as an ASP and drivers. Grab separates the term “Client” from “Driver”, where the Client is not identical to the Driver. If so, what does the Client categorize according to Grab app? According to the drivers, the “driver” is the party that owns the motorized vehicle and registered in the Grab app by obtaining an account that is used as a tool for booking prospective passengers.

The Indonesia Language Dictionary (KBBI)² elaborate the meaning of “client” as follows: (1) a person who obtains legal

¹ Application Providers: Law and Legal Definition. 2018. Available from <https://definitions.uslegal.com/a/application-service-providers/>. [Accessed on December 5 2018].

² Available from <https://kbbi.web.id/klien>. [Accessed on October 21 2018].

assistance from a lawyer in a case defense in court; (2) people who buy or obtain services (such as health, mental counseling) permanently; (3) customers. Based on this definition, the term “client” in the agreement between Grab ASP and the drivers is a permanent legal relationship in the provision of online application services that will be used by prospective passengers. So that the “client” is terms are assumed to be the party that receives application access, while the term “driver” is the driver itself. So for Grab app, there are subject differences between the client and the driver, but in fact, both terms lead to one subject, driver, because the client is also the driver itself.

Meanwhile, Go-Jek app uses the term “partnership cooperation”. Where it expressly states that this cooperation agreement does not create employment relations, outsourcing or agency between PT. Paket Global Semesta (PGS), PT. Aplikasi Karya Anak Bangsa (AKAB) and PT. Dompot Anak Bangsa (DAB) and their Partners. So Go-Jek clearly stipulates that the relations that occur are legal relationships of partnership cooperation, not labor relations, outsourcing or agency relations. According to the Indonesia Dic-

tionary (KBBI)³ the meaning of the word “partner” is (1) people (business entities and so on) from two different parties who work together because they need or complement each other (in an activity, trading business, etc.); (2) partners; counterpart; fellow; (3) two people as a pair playing (in sports, dancing, etc.).

Textually, the agreement between the ASP and the drivers uses the terms of “partnership agreement” or “client”. In the legal terminology the term “Partnership” is a general terminology because it can be broadly interpreted, include all legal relationships that are allies/partners, trade intermediaries, and others. So for the purpose to identify the type of agreement between the ASP and the drivers, it is necessary to explain the rights and obligations of each party, which are:

Rights and obligations of the ASP

a. ASP Rights:

- 1). Recruit and discharge the drivers;
- 2). Get 20% payment for every transaction between drivers and passengers;
- 3). Make changes to the terms and conditions in the agreement;
- 4). Set service rates.

b. ASP Obligations

- 1). Provide application services to drivers;

³ Available from <https://kbbi.web.id/partner>. [Accessed on October 21 2018].

- 2). Provide technical support and customer service regarding any issues related to the application;
- 3). Maintain the confidentiality of drivers personal data.

The drivers rights and obligations

a. Drivers rights

- 1). Obtain payment of 80% of each transaction with passengers;
- 2). Obtain incentives based on the terms and conditions set by the ASP;
- 3). Obtain application services.

b. Drivers obligations

- 1). Provide motorized vehicles in accordance with the agreement;
- 2). Pick up prospective passengers in the place of origin and bring them to the destination according to the order in the application;
- 3). Provide good services including maintaining passenger safety and security;
- 4). Prepare a minimum deposit of IDR 300,000.- (three hundred thousand Rupiahs);
- 5). Maintain the application and not provide application access to other parties without the ASP approval.

In the agreement between the ASP and the drivers, it is referred to as a partnership legal relationship, but if you see the intentions of the parties in the agree-

ment, it seems that there are characteristics of separate legal relationships that exist between the two. To find out the type of agreement between the ASP and the drivers, we referring to the interpretation method stipulated in Article 1343 Indonesia Civil Code. Further discussion includes the aims and objectives of the parties to make the agreement. In the contract, the agreement between the ASP and the drivers expressly stated as a partnership agreement, but the phrase “partnership” can provide various interpretations. According to Umar Kasim⁴,

“The form of partnership agreement may vary, for example, the agreement to carry out work on a partnership basis, it can be in the form of profit sharing agreements, agency (both private and public corporation), nucleus-plasma, subcontractors, agreements to pay off a number of certain values and others”.

Another opinion expressed by Muhammad Jafar Hafsah⁵ which states that,

“Partnership is a business strategy that is carried out by two or more parties within a certain period of time to gain profits together with the principle of mutual need and mutual nurturing. Because

⁴ Umar Kasim. (2017). *Hubungan Antara Penyedia Aplikasi dan Penumpang*. Available from <https://www.hukumonline.com/klinik/detail/lt56a9c0362ef3d/hubungan-antara-penyedia-aplikasi--idriver-i--dan-penumpang>. [Accessed on December 8 2018].

⁵ Muhammad Jafar Hafsah. *Kemitraan Usaha* (Jakarta: Pustaka Sinar Harapan, 1999), p. 43.

it is a business strategy, the success of partnerships is largely determined by the presence of compliance among partners in carrying out business ethics”.

The kind of partnership that needs to be held and sought are⁶:

- a. Having the same (common) goals;
- b. Mutual benefit;
- c. Trust each other (mutual trust);
- d. Transparent);
- e. Having a long-term relation;
- f. Continuous improvement in quality and coast).

Based on the interpretation method referred to in Article 1343 Indonesia Civil Code, then linked to the clause of the agreement between the ASP, the drivers, and the prospective passenger, then the ASP and the drivers make an agreement to carry out transportation of people with motorized vehicles by using the application as a medium. Go-Jek app entered a partnership agreement with their drivers as the business liaison actor between the drivers and prospective passengers. These relations arise from the agreement make Go-Jek app an application provider company that function as a liaison or channel⁷.

⁶ Richardus Eko Indrajit, *Proses Bisnis Outsourcing* (Jakarta: Grasindo. 2003), p. 51.

⁷ Yulia Budiarti Ningsih, (2017), *Kedudukan Hukum PT. Go-Jek Indonesia Terhadap Pelaksanaan Jasa Pengangkutan Barang Berbasis Layanan Aplikasi Online Go-Send dan Go-Box*. Skripsi. (Yogyakarta: Fakultas Hukum Universitas Muhammadiyah Yogyakarta), p. 78.

This view shows that the ASP only acts as a liaison between the drivers and prospective passengers, not as transporters. The terminology of “connecting” can mean the same as the term “intermediary” in law. The term “intermediary” in trade law explained by C. S. T. Kansil⁸, that in trade practices there have emerged trade intermediaries that are not regulated in Indonesia Commercial Law (as stipulated in Indonesia Commercial Code), such as commercial traders and commercial agents. Because the type of trade intermediary is not regulated in the Indonesia Commercial Code, this kind of arrangement is subject to the provisions of Article 1601 Indonesia Civil Code.

There is no further explanation on the arrangements in the Indonesian Civil Code regarding trade agents because Article 1601 Indonesian Civil Code does not mention the nomenclature of “trade agents” textually. It implies that there is an agreement to carry out a certain kind of work, but it is not classified as a labor agreement or contract agreement. Therefore, the characteristics of trade agent agreements differ from the characteristics of labor agreements and job chartering. The main characteristic of a labor agree-

⁸ C. S. T. Kansil & Christine S. T. Kansil. *Pokok-Pokok Pengetahuan Hukum Dagang Indonesia (Edisi Kedua)*. Jakarta: Sinar Grafika 2013), p. 42.

ment is an agreement between the employer and the worker, where the employer's position is higher than the position of the worker⁹

The trading agent is an independent worker and does not have a position as a worker to his principal, so the relationship between the trade agent and the principal is not required as the relationship between the worker and the employer. A commercial agent acts on behalf of the principal as a representation and not on his own behalf. The commercial agent accepts the provision for mediation held for its principal, which consists of a certain percentage of the transactions made by the commercial agent¹⁰.

The same thing was stated by Agus Pribadiono¹¹ that:

“The legal subject, in this case, is that the drivers are only limited to utilizing online applications that are provided

by the application provider owner so that they can connect with users of land transportation services. While transportation is not the fundamental business for online applications owners. Their core business is the provision of applications which include profiling data.”

So that the construction of the legal relationship between the ASP and the drivers is the legal relationship of the commercial agent, where the application company is domiciled as a commercial agent (*Agentuur*) and the drivers are the *Principal* carrying out the public transportation business activities. This view is different from Yulia Budiarti Ningsih¹² opinion that the general provisions of the partnership agreement are Article 1338 in conjunction with Article 1320 of the Indonesia Civil Code, while special provisions can refer to the provisions of civil partnership in Article 1618 up to Article 1641 of the Indonesian Civil Code, which is a legal relationship between parties by entering a “capital in exchange”.

This was also conveyed by Luthvi Febryka Nola¹³, that the partnership agreement was legally regulated in the

⁹ According to Subekti, a worker agreement is an agreement between a worker and an employer, which agreement is characterized as follows: 1). There are certain wages agreed upon; and 2). There is a limited relationship based on which one party (employer) has the right to give orders that must be obeyed by others (worker). R. Subekti, *Aneka Perjanjian*, (Bandung: Alumni Bandung, 1977), p. 63.

¹⁰ *Ibid.*, p. 43.

¹¹ Agus Pribadiono, *Transportasi Online Vs Transportasi Tradisional Non-Online Persaingan Tidak Sehat Aspek Pemanfaatan Aplikasi Oleh Penyelenggara Online*. Jurnal Lex Jurnalica, Volume 13 Nomor 2, Agustus 2016. (Jakarta: Pusat Pengelola Jurnal Ilmiah Universitas Esa Unggul), p. 130.

¹² Yulia Budiarti Ningsih, *loc.cit.*

¹³ Lutfvi Febryka Nola, *Perjanjian Kemitraan vs Perjanjian kerja Bagi Pengemudi Ojek Online*, Info Singkat, Kajian Singkat Terhadap Isu Aktual Dan Strategis, Volume X. No. 07/1/Puslit/April/2018. Year 2018. (Jakarta: Pusat Penelitian Badan Keahlian DPR RI), p. 5.

Indonesian Civil Code regarding the rules regarding the civil partnership. So this view tends to interpret the partnership agreement with a civil partnership. Whereas Vivian Lora¹⁴ viewed it as a legal employment relationship, by saying that the legal relationship of the parties in accordance with the contents of the Go-Jek app partnership agreement was a working relationship on the basis of a partnership that put forward on a mutually beneficial relationship.

The presence of ASPs as trade agents in public transport area has changed the workings of commercial agents in a conventional manner. It significantly contributed to the improvement of passenger services. Typically, passengers order motorized vehicles by calling directly to companies that provide transportation services (taxi pool) or by the traditional way (waving on the side of the road). With this application, services can be provided by opening the applications via smartphones, so that conventional methods are considered more complicated and inefficient. So what changes are the way this online application connects the carrier (driver) with the prospective pas-

senger, not how to transport passengers from the place of origin to the destination. Because in fact, the one who transports passengers is the driver, not the application itself. So that the role of the application is similar and congruent with the trade intermediaries that are known so far in practice.

Although the position of the ASP as an agent in the operation of special rental transportation (Angkutan Sewa Khusus/ASK) is not explicitly stated in the contract clause between the Grab app and the drivers, but Article 5 Paragraph (1) stated “Client acknowledges and accepts that Grab is only an Application Service Provider and therefore is not responsible for claims, losses or damage caused by the driver.” Therefore, the agreement can be interpreted that the ASP acts as a commercial agent.

The formulation of this clause is different than the Go-Jek app. In Number 2 Paragraph 4 concerning Cooperation Agreements it is confirmed that “..., and Partners are collaborative partners where each is a stand-alone and independent legal subject. This cooperation agreement does not create labor relations, outsourcing or agency between each...”. In the other hand, in Number 1 clause from the same section stipulates that “Partners are

¹⁴ Vivian Lora, *Tinjauan Hukum Terhadap Perjanjian Kemitraan Antara PT Go-Jek Indonesia Cabang Medan Dengan Driver Go-Jek*, Skripsi, (Medan: Fakultas Hukum Universitas Sumatera Utara, 2018), p. 58-59.

parties that carry out the shuttle of goods and/or people that have previously been ordered by consumers or other services through the online application ...”.

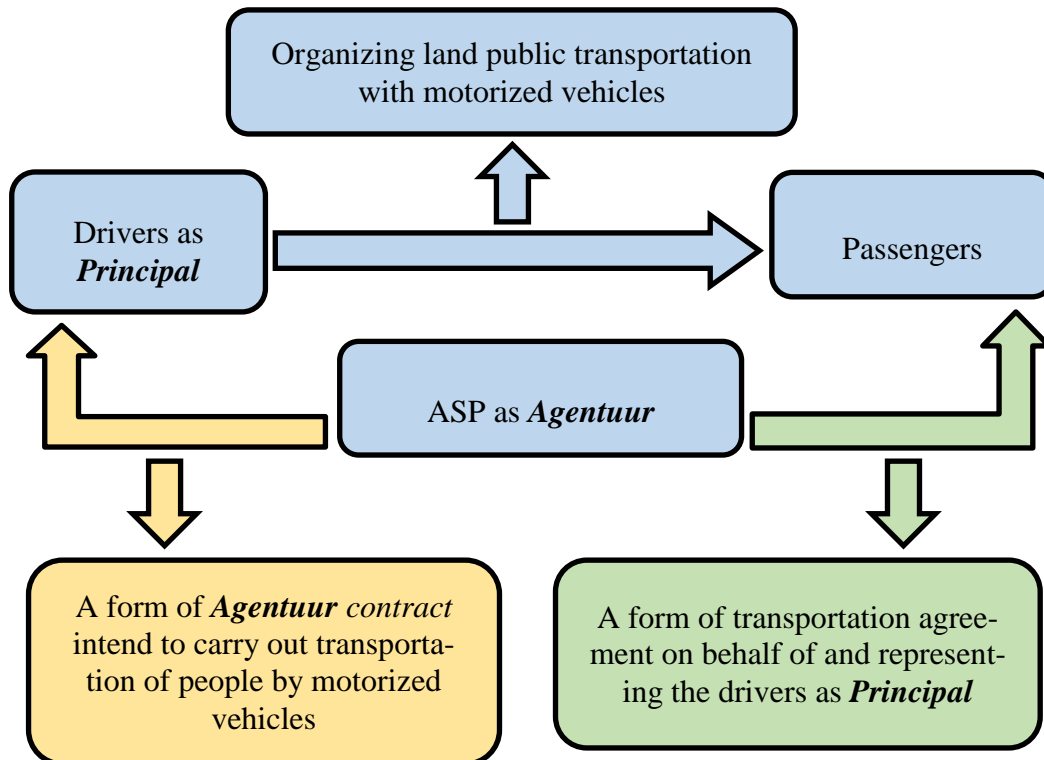
Furthermore, it is explained in Number 2 Paragraph 6 of the same section that “Applications and all rights related to the Application constitute and will remain the property of AKAB” (abbreviation for PT. Aplikasi Karya Anak Bangsa, the trademark owner of Go-Jek)”. Although formally, Go-Jek does not recognize the configuration of its legal relationship with the drivers as a trade agent legal relationship. But substantively, there is a clear legal relationship between trade agents, where Go-Jek works as the *Agentuur* and drivers work as *Principal*. Because the ASP serves as a link between drivers and prospective passengers.

Configuring the business agent relationship between the ASP and the drivers is reflected in the service model that is given by the application to the drivers and the prospective passengers. When prospective passengers make reservations for

motorized vehicles through the application, the application immediately responds by presenting vehicle data, driver’s name, and the tariff. It must be interpreted as a service offer from drivers to prospective passengers. As an offer, of course, the prospective passenger has the right to reject the offer by simply pressing the “cancel” button.

As for the drivers, it is not permissible to cancel any offers that have been responded unilaterally by the prospective passenger, by pressing the “OK” button, because any cancellation/rejection of the drivers for the prospective passenger booking is considered a violation to the agreement. The ASP as a commercial agent that connects the drivers as *principal* and prospective passenger, has the right to ensure that the drivers and the prospective passenger comply with the agreement. If the drivers break the agreement, the ASP may impose penalties and/or termination to the drivers account in the online application.

Picture 1. The Chart of Legal Relation between ASP, Drivers and Passenger in Online-Based Transportation



There is an impression that the ASPs is more dominant and superior compared to the drivers, especially in the right of the ASP to impose sanctions on the drivers. This impression cannot be interpreted immediately as the existence of a relationship between the employer and the worker, but rather as an implementation of the agreed agreement clause.

Therefore, the main characteristic of the legal relationship between *Agentuur* and its *Principal* is the existence of equal legal relations. The presence of an *Agentuur* is important indeed, but the presence of a commercial agent without any transporters is meaningless. Con-

versely, the carrier is important but if there is no online application, the transporter also cannot do his job. So there is a mutualism symbiotic relationship between the two. Meanwhile, according to Muhammad As Ari¹⁵, that online transportation agreements such as Go-Jek, Grab-Car, Uber and so on are new types agreements because it is not regulated in the Indonesia Civil Code yet and was created

¹⁵ Muhammad As Ari. AM. (2017). *Perlindungan Hukum Terhadap Perjanjian Jasa Transportasi* Online. *Jurnal Islamic Business Law Review* Vol. 1, No. 1 (2017). ISSN: 2337-4241. (Medan: Jurusan Hukum Ekonomi Syariah Fakultas Syariah dan Hukum UIN Sumatera Utara, 2017), p. 5. Available from <http://jurnal.uinsu.ac.id/index.php/iblr/article/download/1362/1107>. [Accessed on November 21 2018].

by the modern world through the advancement of information and communication technology.

The opinion of Muhammad As Ari is unreasonable because the agreement between the ASP and the drivers or between the drivers and the passenger is not a new and modern agreement, in the sense that it is a new type of agreement which contains a new substance altogether. The only new thing here is the method of connecting the ASPs, drivers, and passengers. The method does not affect the substances of the agreement. The presence of online applications in the transportation agreement does not change the type of motorized vehicle, the road and the use of the driver. Although it is called *online transportation*, it still using motorized vehicles, it is driven by humans and moves on the highway. If the case of online transportation happens to be not using motorized vehicles, not driven by humans and not moves on the highway, then it is appropriate to claim it as an activity that is not subjected to the general Traffic Law. In other words, it is a violation of Indonesia Traffic Law. Consequently, agreements that violate the Traffic Law are null and void so that the parties cannot file a lawsuit before the court based on the basis of this kind of agreement.

The activity of organizing people transport on the highway is the legal relationship of the agreement between the carrier and the passenger. As a connection to the contract law, the provisions of Article 1320 Indonesia Civil Code, regarding the legal conditions of the agreement along with all legal consequences, apply in the agreement to transport people with motorized vehicles on the highway, as stipulated in the Traffic Law, along with the implementation rules. Construction of the legal relationship of the agreement between the Applicator and the drivers is an agency agreement, where the ASP act as a trading agent (*Agentuur*) and drivers as *Principal* while the agreement between them is called an agency agreement (*Agentuur* contract).

The intention of the parties upon the agency agreement is to carry out the land public transportation outside the routes. The APS act as an *Agentuur*, aware and knows that the drivers as its *Principal*, does not have:

- a. Permit as a public transportation company;
- b. Public vehicles (as the motorized vehicles used is a private property of the drivers); and
- c. General drivers license (SIM A).

Based on this, the agency agreement (*agentuur* contract) made between the ASP and the drivers plus the agreement (transportation) between the drivers and passengers, is a type of agreement that has ill *causa* (*oorzaak*). The *causa* is not legal because the parties intentions violate the provisions which are subjected to criminal imprisonment and/or fines in the Indonesia Traffic Law (Act Number 22 of 2009), namely:

- a. Article 173 Paragraph (1) Letter b, which affirms that the public transport company that organizes people's transportation are obliged to have permission to carry out the transportation of people not on routes.

For drivers who violate these provisions, they are threatened with a maximum of 2 (two) months imprisonment or a maximum fine of IDR 500.000.- (five hundred thousand rupiahs) (Article 308 letter b). Ironically, the threat of punishment cannot be applied to the Applicator as a commercial agent.

- b. Article 138 Paragraph (3) stipulates that public transportation can only be carried out by public motorized vehicles. For drivers who violate these provisions, they are threatened with a maximum of 2 (two) months imprisonment or a maximum fine of IDR

500.000.- (five hundred thousand rupiahs) (Article 288 paragraph 3 of the Traffic Law).

- c. Article 82 Letter a, which requires that drivers of public motorized vehicles must have a General Driving License (SIM A).
- d. Drivers who violate the Articles are threatened with a maximum of 1 (one) month imprisonment or a maximum fine of IDR 250.000.- (two hundred fifty thousand rupiah).
- d. Article 65 PM 108 of 2017, which stipulates the prohibition of ASP to provide application access to business entities that do not have permission to carry out transportation of persons not on routes.

The terms "*causa*" in the agreement are called the legal objective conditions of the agreement. The legal consequences of the agreement that do not meet the objective requirements are explained by Riduan Syahrani as follows:

"If the subjective conditions are not fulfilled, the agreement can be canceled by the Judge at the request of an incompetent party or who gives an agreement freely. The right to terminate this agreement is limited to 5 years (Article 1454 of Indonesia Civil Code). If the objective conditions are not met, the agreement is null and void. That is, from the beginning the agreement never existed. So there is no basis for suing each other in court".

So the cancellation of an agreement that does not meet subjective requirements must go through a litigation process. Court decisions provide a cancellation of an agreement because it does not meet the subjective requirements. As long as there are no court decisions, the agreement is still considered valid and binding. In contrast to agreements that do not meet objective requirements, where from the beginning, it was seen that there was never an agreement so that there was no basis for parties to sue each other with a legal basis agreement.

Agency agreement made between the ASP, the drivers and passengers is an agreement that does not meet the objective requirements, so the agreement is null and void. The legal consequence of the agreement which is null and void is that from the beginning, the law never acknowledged the existence of the agreement, so that if one party feels aggrieved by another party due to the agreement, then the concerned party could not file a legal claim with the basis of the agreement.

But it does not mean it blocking the rights for any parties who wish to file a lawsuit against the other party for reasons of violating the law (*onrechtmatige daad*) as stipulated in Article 1365 to Ar-

icle 1380 of the Indonesia Civil Code. In this regard, the agency agreement between the ASP with drivers and drivers with passengers does not apply to the provisions of Article 1338 of the Indonesia Civil Code which stipulates that all agreements made legally apply as laws for those who makes them. So the agreement does not apply and does not binding as a law for the parties who makes it. Because it is only an agreement that fulfills the requirements of Article 1320 of the Indonesia Civil Code which provides binding power such as the binding power of the law to the parties who makes it.

CONCLUSION

Construction of the legal relationship between the ASP and the drivers is an **agency agreement**, where the ASP act as a commercial agent (*Agentuur*) and the drivers act as the *Principal*. Therefore, the agreement substance that contained in the terms and conditions in the electronic contract categorized as an agency agreement (*Agentuur* contract).

The legal consequences of the agreement that violates the Traffic Law are null and void so that the parties cannot file a lawsuit before the court based on the basis of the agreement.

To prevent the occurrence of legal chaos in the implementation of public transpor-

tation in online-based application routes and as a response to the demands of efficiency, safety, amenities and comfortability of public transportation, it is necessary to immediately revise Traffic Law (Act Number 22 of 2009, Government Regulation Number 74 of 2014 and Minister of Transportation Regulation Number 108 of 2017, which concerns:

- a. Responsiveness to the involvement of online-based applications the public transportation, while maintaining the sustainability of the existing transportation industry.
- b. Harmonization and complementarity between online and offline transportation.

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