

The Contractual Relationship of Online Motorcycle Taxis in Contract Law: Imbalance, Liability, and the Crisis of Legal Certainty

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Abstrak: Penelitian ini bertujuan untuk menganalisis relasi kontraktual ojek online dalam perspektif hukum perjanjian serta mengkaji perlindungan hukum konsumen. Penelitian ini merupakan penelitian hukum normatif dengan menggunakan pendekatan perundang-undangan dan pendekatan konseptual. Bahan hukum yang digunakan meliputi bahan hukum primer berupa peraturan perundang-undangan, bahan hukum sekunder berupa literatur dan jurnal ilmiah, serta bahan hukum tersier. Analisis dilakukan secara deskriptif-kualitatif untuk menguraikan dan menafsirkan ketentuan hukum yang berlaku. Kebaruan penelitian ini terletak pada analisis hubungan hukum tripartit yang melahirkan dua bentuk perjanjian elektronik, yaitu perjanjian kemitraan dan perjanjian pengangkutan. Hasil penelitian menunjukkan bahwa kedudukan hukum ojek online terbentuk melalui hubungan hukum tripartit yang melahirkan dua bentuk perjanjian, yaitu perjanjian kemitraan antara pengemudi dan perusahaan aplikasi serta perjanjian pengangkutan antara pengemudi dan konsumen. Kedua perjanjian tersebut sah secara hukum karena memenuhi syarat Pasal 1320 KUH Perdata dan diakui sebagai kontrak elektronik. Perlindungan hukum bagi konsumen telah diatur dalam Undang-Undang Nomor 8 Tahun 1999 tentang Perlindungan Konsumen dan Undang-Undang Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik, namun masih terdapat hambatan berupa ketidakjelasan tanggung jawab, kontrak baku yang merugikan, kesulitan pembuktian, dan tidak adanya jaminan kualitas layanan yang konsisten. Penelitian ini menyimpulkan perlunya regulasi khusus dan penguatan mekanisme perlindungan hukum guna menciptakan kepastian dan keadilan bagi seluruh pihak.

Kata Kunci: Ojek *Online*; Hukum Perjanjian; Perlindungan Konsumen; Kontrak Baku; Hubungan Hukum Tripartit

Abstract: *This study aims to analyze the contractual relationships of online motorcycle taxi (ojek online) services from the perspective of contract law and to examine consumer legal protection. This research is a normative legal study using a statutory approach and a conceptual approach. The legal materials employed consist of primary legal materials in the form of laws and regulations, secondary legal materials in the form of literature and scientific journals, and tertiary legal materials. The analysis is conducted descriptively and qualitatively to describe and interpret the applicable legal provisions. The novelty of this research lies in the analysis of a tripartite legal relationship that gives rise to two forms of electronic agreements, namely a partnership agreement and a transportation agreement. The results show that the legal status of online motorcycle taxi services is formed through a tripartite legal relationship that produces two types of agreements: a partnership agreement between the driver and the application company, and a transportation agreement between the driver and the consumer. Both agreements*



are legally valid because they fulfill the requirements of Article 1320 of the Indonesian Civil Code and are recognized as electronic contracts. Consumer legal protection has been regulated in Law Number 8 of 1999 concerning Consumer Protection and Law Number 11 of 2008 concerning Electronic Information and Transactions; however, there are still obstacles such as unclear liability, disadvantageous standard-form contracts, difficulties in evidence, and the absence of consistent service quality guarantees. This study concludes that there is a need for specific regulations and the strengthening of legal protection mechanisms in order to create legal certainty and justice for all parties.

Keywords: *Online motorcycle taxi; Contract Law; Consumer Protection; Standar Contracts; Tripartite Legal Relationship*

INTRODUCTION

The development of digital technology through platforms such as Gojek and Grab has revolutionized the landscape of public transportation in Indonesia by transforming motorcycle taxis (ojek) from an informal mode of transport into a large-scale, organized service. This transformation has provided easier access for millions of people, especially in major cities, as online motorcycle taxi services offer mobility solutions that are efficient, flexible, and affordable.[1]. However, the rapid development of online motorcycle taxi services has begun to create various legal issues, as they operate within a legal framework that is not yet fully clear and well-regulated.

Problems arise when various forms of disputes occur between online motorcycle taxi drivers and application companies, such as unilateral termination of partnerships without a clear dispute resolution mechanism, the lack of clarity regarding the allocation of responsibility or liability for road accidents, and the absence of social security, health protection, and occupational safety guarantees for drivers [2]. In many cases, online motorcycle taxi drivers are in a weak legal and economic position, as the contents of the partnership agreements are generally drafted unilaterally by the application companies without providing balanced room for negotiation.

Normatively, transportation regulations in Indonesia have not yet fully accommodated the existence of online motorcycle taxis. Law Number 22 of 2009 concerning Road Traffic and Transportation only regulates public transportation in general terms, without explicitly mentioning application-based transportation modes. Law Number 8 of 1999 concerning Consumer Protection provides general protection for consumers; however, it was not designed to address the complexity of tripartite relationships within digital platforms. Meanwhile, Law Number 11 of 2008 concerning Electronic Information and Transactions recognizes the validity of electronic contracts but does not regulate specific protection mechanisms for parties within the application-based transportation ecosystem. This regulatory gap creates a legal grey area that can be exploited by application companies to minimize their responsibilities.

Academic studies on online motorcycle taxis have developed quite significantly over the past decade; however, substantial gaps still remain. Several previous studies have examined aspects of consumer protection in application-based transportation services in general, the employment relationship and labor status of drivers from a labor law perspective, as well as the validity of electronic contracts within the framework of the Electronic Information and Transactions (ITE) Law. Several studies have discussed the civil liability of application companies from the perspective of business law, as well as comparisons of online motorcycle taxi regulations in various Southeast Asian countries [3]. Previous studies have mostly focused on aspects of consumer protection and employment relationships; however, they have not examined in depth the construction of agreements from the perspective of modern contract law. This gap forms the basis for the novelty of this research.

Based on this background, this study aims to examine the specific regulations concerning online motorcycle taxis within contract law and the mechanisms of legal protection in order to create certainty and fairness for all parties.

RESEARCH METHOD

This study employs a normative legal research method with statutory and conceptual approaches by examining various relevant laws and regulations, such as the Civil Code, Law Number 8 of 1999 concerning Consumer Protection, Law Number 22 of 2009 concerning Road Traffic and Transportation, and the Law on Electronic Information and Transactions. The data were obtained through a literature study of regulations, academic literature, and reputable scientific journals. The legal materials used include primary legal materials in the form of laws and regulations, secondary legal materials in the form of literature and scientific journals, and tertiary legal materials. The technique for collecting legal materials was conducted through a literature review, while the analysis used was descriptive-qualitative analysis to describe and interpret the applicable legal provisions.

RESULT AND DISCUSSION

1. The Legal Position of Online Motorcycle Taxis from the Perspective of Contract Law in Indonesia

The legal position of online motorcycle taxis from the perspective of contract law in Indonesia demonstrates the complexity of legal relationships involving three main parties, namely online motorcycle taxi drivers, application provider companies, and consumer service users. This tripartite relationship creates two types of agreements that are interconnected but have different characteristics.

The first agreement is formed between the online motorcycle taxi driver and the application company, which is categorized as a partnership agreement. In this agreement, the driver registers through the application and agrees to the terms and conditions that have been unilaterally determined by the company. The second agreement is formed when the driver accepts the order.

Both agreements fulfill the legal requirements for a valid contract as stipulated in Article 1320 of the Indonesian Civil Code. The element of consent is satisfied through the mechanism of clicking “agree” on the application, both by drivers when registering and by consumers when ordering the service. The element of legal capacity is fulfilled because only parties who are legally competent and of legal age are allowed to register. The element of a specific object is clearly met, namely the service of transporting people or goods from one place to another. Meanwhile, the element of a lawful cause is also satisfied because the purpose of the agreement is the provision of transportation services that are legal and not contrary to public order.

The characteristics of a standard contract in this partnership agreement indicate an imbalance in the application of the principle of freedom of contract. Drivers do not have the freedom to negotiate the contents of the agreement, but are only given the option to accept or reject the agreement as a whole [4]. This condition raises the question of whether the relationship truly constitutes a partnership or rather resembles a disguised employment relationship, as indicated by unilateral control through the application system, the determination of fares, the imposition of sanctions, and the termination of partnerships without balanced protection mechanisms [5].

Application companies occupy a unique position within this contractual structure. Although formally they claim to act merely as providers of technology platforms, the level of control they exercise over all operational aspects of the service indicates that they are not simply passive intermediaries. Application companies determine fares, set service standards, impose sanctions on drivers who violate the rules, and even have the authority to unilaterally deactivate drivers’ accounts. Juridically, a party that has control over an activity and derives economic benefit from it should also bear the risks arising from that activity.

From the perspective of contract typology in civil law, online motorcycle taxi services can be categorized as a form of innominate contract. An innominate contract is a contract that arises from the principle of freedom of contract and is not specifically regulated in the Civil Code or other statutory regulations. Nevertheless, such contracts remain valid and binding as long as they fulfill the legal requirements for a valid agreement and do not conflict with the law, morality, or public order.

a. Perjanjian Kemitraan antara Pengemudi dan Perusahaan Aplikasi

The legal relationship between drivers and application companies has particular characteristics that require in-depth examination. Formally, application companies such as Gojek, Grab, and Maxim refer to drivers as partners and describe their relationship as a partnership. This term indicates that drivers are not considered employees as defined in the Manpower Law, but rather independent business actors who collaborate with the company [6].

However, the substance of this relationship indicates a significant imbalance. The partnership agreement offered takes the form of a standard contract in which all clauses are drafted unilaterally by the application company. Drivers only have two choices: to accept the entire contents of the agreement or to refuse the partnership. There is no room for negotiation to modify or add certain clauses that would be more beneficial to the drivers [7].

The characteristics of this standard contract contradict the true principle of freedom of contract, in which the parties should have an equal bargaining position in determining the contents of the agreement. According to the author, this condition indicates that the principle of freedom of contract as stipulated in Article 1338 paragraph (1) of the Indonesian Civil Code is not substantively fulfilled. Drivers do not have the opportunity to negotiate the contents of the agreement, but are merely given the option to accept or reject the agreement as a whole [8].

This condition raises the question of whether this relationship truly constitutes a partnership or rather resembles a disguised employment relationship (*quasi-employment*). This is indicated by the existence of unilateral control through the application system, fare determination, the imposition of sanctions, and the termination of partnerships without balanced protection mechanisms [9]. From the perspective of contract law, a partnership should be based on the principles of equality and mutual benefit. However, in reality, drivers are in a subordinate position and are highly dependent on the decisions of the application companies.

Nevertheless, as long as the agreement fulfills the legal requirements for a valid contract and does not violate the provisions of statutory regulations, the partnership agreement remains valid and binding upon the parties. This is in line with the principle of *pacta sunt servanda*, which affirms that agreements lawfully made shall apply as law for the parties who enter into them.

b. Agreement Between the Driver and the Consumer

Hubungan hukum kedua yang terbentuk dalam ekosistem ojek online adalah perjanjian pengangkutan antara pengemudi dengan konsumen. Perjanjian ini dapat dikategorikan sebagai perjanjian pengangkutan sebagaimana diatur dalam pasal 1601 KUH Perdata, meskipun prosesnya dilakukan secara elektronik melalui aplikasi[10].

This agreement is formed when the consumer clicks the order button on the application and the driver accepts the request. At that moment, reciprocal rights and obligations arise. The driver is obliged to transport the consumer to the destination safely, on time, and in accordance with the determined route. Conversely, the consumer is obliged to pay the established fare and behave cooperatively during the trip.

The characteristics of this agreement are unique because it is electronic and instantaneous. There is no conventional written contract document; instead, the entire agreement is recorded digitally within the application system. This is in accordance with the provisions of Article 18 paragraph (1) of Law Number 11 of 2008 concerning Electronic Information and Transactions, which recognizes the validity of electronic contracts as long as they fulfill the legal requirements for a valid agreement.

Based on Article 1320 of the Indonesian Civil Code and Article 18 paragraph (1) of the Law on Electronic Information and Transactions, electronic agreements have the same legal force as conventional agreements as long as they fulfill the legal requirements for a valid contract. The nature of this agreement is consensual, meaning that the agreement arises once mutual consent is reached without requiring any particular formalities. Such consent is considered to have occurred when the consumer and the driver mutually agree to the transaction through the application.

c. The Position of Application Companies in the Contractual Structure

Application companies generally state that they only act as providers of technology platforms that facilitate the meeting between drivers and consumers. In other words, they claim to be third parties who are not directly involved in the agreement.

However, based on normative analysis, application companies possess very significant control over all operational aspects of the service. They determine the fares that must be paid by consumers and the commissions received by drivers, set the service standards that must be fulfilled, impose sanctions on drivers who violate the rules, and even have the authority to unilaterally deactivate drivers' accounts.

According to the author, such a high level of control indicates that application companies are not merely passive intermediaries, but rather parties that actively regulate and control

the legal relationship between drivers and consumers. Juridically, a party that exercises control over an activity and derives economic benefit from it should also bear the risks arising from that activity.

The existence of application companies can be categorized as parties that have a direct economic interest in the agreement, even though formally they are not parties to the contract. This position creates important legal implications, particularly regarding liability in the event of losses or breach of contract.

The absence of specific regulations that comprehensively govern online motorcycle taxis creates legal uncertainty, particularly regarding the liability of the parties in the event of losses, dispute resolution mechanisms, and the protection of drivers' rights. Because the agreements are conducted electronically without conventional written documents, proof in the event of a dispute becomes more complex. Although the Electronic Information and Transactions Law recognizes the validity of electronic documents as evidence [11].

The status of drivers as partners rather than employees results in them not receiving legal protection as provided under the Manpower Law, such as social security, occupational health and safety protection, and other normative rights [12]. The tripartite structure, with the ambiguous position of application companies, creates uncertainty regarding who is responsible when losses occur. In this context, online motorcycle taxi drivers act as third parties in carrying out the sale and purchase agreement between the restaurant or seller and the consumer. This raises the question of whether the responsibility lies entirely with the driver, or whether the application company should also bear responsibility considering its significant control over the operational aspects of the service.

2. Legal Protection for Consumers of Online Motorcycle Taxi Services in the Event of Losses

Legal protection for consumers of online motorcycle taxi services is an important aspect that must be guaranteed within the Indonesian legal system. Consumers, as users of application-based transportation services, possess rights that are guaranteed under Law Number 8 of 1999 concerning Consumer Protection (UUPK) and Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 on Electronic Information and Transactions. These two laws provide a strong legal foundation for protecting consumer interests from various forms of losses that may arise in transactions involving goods or services.

Article 4 of the Consumer Protection Law (UUPK) affirms the rights of consumers, which include the right to comfort, security, and safety in consuming goods and/or services; the right to choose goods and/or services and to obtain such goods and/or services in accordance with the exchange value and the conditions and guarantees promised; the right

to accurate, clear, and honest information regarding the condition and guarantees of goods and/or services; the right to have their opinions and complaints heard regarding the goods and/or services used; and the right to obtain compensation, indemnification, and/or replacement if the goods and/or services received are not in accordance with the agreement or are not as they should be.

Consumers have the right to receive transportation services that are safe, comfortable, and in accordance with the standards that have been promised. When consumers order services through an application, a legitimate expectation is formed that the trip will be carried out safely and professionally. If a loss occurs, whether in the form of an accident, loss of goods, or other types of damage, consumers have the right to demand accountability from the party responsible [13].

Persoalan utama dalam perlindungan konsumen ojek online adalah menentukan siapa yang bertanggung jawab ketika terjadi kerugian. Mengingat struktur hubungan hukum yang tripartit, maka tanggung jawab dapat dibebankan kepada beberapa pihak:

a. Driver's Responsibility

Directly, online motorcycle taxi drivers are responsible for the performance of the service. Based on Article 1365 of the Indonesian Civil Code concerning unlawful acts, any person who, due to their fault, causes loss to another person is obliged to compensate for such loss. Drivers whose negligence or intentional actions result in losses to consumers must bear personal responsibility.

The driver's liability is also based on Article 1366 of the Indonesian Civil Code, which states that every person is responsible not only for losses caused by their own actions but also for losses caused by their negligence or lack of caution. In this context, drivers have a high duty of care to ensure the safety of passengers [14].

Furthermore, based on the principle of liability in transportation law, the carrier is responsible for the safety of passengers from the moment the passenger boards the vehicle until they arrive at their destination and disembark. This responsibility is of a nature *presumption of liability*, which means that the carrier is presumed to be responsible unless they can prove that the loss occurred because of *force majeure* or due to the fault of the passenger themselves.

b. Application Company Responsibility

The position and liability of application companies in law constitute a complex issue that remains subject to debate. Application companies generally claim that they merely act as providers of technology platforms that facilitate the meeting between drivers and

consumers, and therefore are not responsible for losses that arise in the execution of the service.

However, this issue should be examined normatively based on legal considerations. First, based on Article 19 of the Consumer Protection Law (UUPK), business actors are responsible for providing compensation for damage, pollution, and/or consumer losses resulting from the consumption of goods and/or services produced or traded. Application companies, as business actors that provide digital transportation services, can be categorized as parties that trade services, and therefore bear responsibility toward consumers.

Second, application companies have very significant control over the operational aspects of the service, including the determination of fares, service standards, rating systems, and sanction mechanisms. Such a high level of control indicates that application companies are not merely passive intermediaries, but rather parties that actively regulate and control the relationship between drivers and consumers.

Third, application companies obtain direct economic benefits from every transaction that occurs through their platform in the form of commissions or service fees. Based on the principle that profit and risk go hand in hand, parties that obtain economic benefits must also bear the risks that arise.

Fourth, based on Article 15 of Law Number 11 of 2008 concerning Electronic Information and Transactions, electronic system providers are obligated to operate electronic transaction systems in a reliable and secure manner and are responsible for the proper functioning of the electronic system. Application companies, as electronic system providers, have the responsibility to ensure that their systems operate properly and do not cause losses to users [15].

According to the author, although application companies do not directly carry out the transportation service, they bear indirect liability (*vicarious liability*) or liability based on system negligence if losses occur due to an inadequate system, insufficiently strict driver verification, or operational policies that harm consumers.

CONCLUSION

The contractual relationship of online motorcycle taxis in Indonesia is established through a tripartite legal relationship that gives rise to two agreements: the partnership agreement between drivers and application companies, and the transportation agreement between drivers and consumers. Both are legally valid as electronic contracts under Article 1320 of the Indonesian

Civil Code, yet they contain structural imbalances due to the dominance of standard contracts. Existing consumer protection has not been able to provide adequate legal certainty due to the ambiguous liability of application companies and the absence of specific regulations governing application-based transportation. Therefore, regulations are needed that explicitly define the legal position of application companies within the tripartite legal relationship, clarify the allocation of responsibilities, establish minimum standards for balanced partnership agreements, and create effective dispute resolution mechanisms.

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