

MEASURING THE LEGAL CONSISTENCY OF SPECIAL RENTAL TRANSPORT LICENSING

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Abstract: Special Rental Transport Arrangements, as one type of transportation of people with public motor vehicles on the road, are a response to the use of information technology as a medium of liaison between transporters and prospective passengers of public motor vehicles. But the arrangement does not place ASK complementary to other types of public transport services. The results showed that there was a different permit treatment between special rental transportation and transportation of people with public motorized vehicles not on other routes. The difference makes it easier for special rental transportation, compared to other types of transportation services. The difference is, first, the requirements for obtaining a license for a special rental transportation operator company, second, the condition that the vehicle must have proof of passing periodic tests, and third, the driver must have a General Driver's License. The norm of PM 118 of 2018 which provides the convenience (privilege) of licensing, is contrary to the norms of UULLAJ, PP Number 74 of 2014, and PM Number 117 of 2018. So that in fact, the norms of PM 118 of 2018 are void and non-binding because they conflict with legal norms that have a higher position, namely the norms of UULLAJ and PP Number 74 of 2014.

Keywords: Transport Law; Special Freight Rental; consistency of permit arrangements.

INTRODUCTION

That the urgency of regulating Special Rental Transportation (hereinafter referred to as ASK), explained in consideration considering the Regulation of the Minister of Transportation Number 118 of 2018 concerning the Implementation of Special Rental Transportation (hereinafter referred to as PM 118 of 2018), is, "The implementation of special rental transportation has a strategic role in supporting development to realize general welfare as mandated in the Constitution of the Republic of Indonesia Year 1945 and the community in need Hukum certainty on aspects of safety, security, comfort, equality, affordability and regularity for the implementation of special rental transportation".

Definition of ASK according to Article 1 number 7 PM 118 of 2018:

"Special Rental Transport is a door-to-door transportation service with drivers, having an operating area in urban areas, from and to airports, ports, or other transportation nodes and booking using information technology-based applications, with the number of rates listed in the application".

That the presence of ASK, as a response to the involvement of information technology (application), in providing services to the community that is faster, easier, cheaper, and more convenient. The presence of the application as a medium of liaison between people transportation service providers (carriers) and service users (passengers), has provided ease of accessibility, comfort, and real effectiveness. Although the presence of applications in the implementation of transportation of people by Public Motor Vehicles, has contributed tangibly, but its presence, needs to be regulated and controlled through laws and regulations so that the principles and objectives of its

implementation do not deviate from laws and regulations.

The presence of ASK, as an organizer of public transportation of people in urban areas, should not be a predator for other types of people transportation services, both transportation on the route and transportation of people not on the route. This is affirmed in Article 197 paragraph (1) point b of Law Number 22 of 2009 concerning Road Traffic and Transportation (hereinafter referred to as UULLAJ) as amended by Law Number 11 of 2020 concerning Job Creation (hereinafter referred to as Job Creation Law), which stipulates: "The Government and Regional Governments as transportation operators, are obliged to protect Public Transportation companies by maintaining a balance between the supply and demand of public transportation".

To prevent ASK from becoming a predator against other types of transportation services, PM 118 of 2018 stipulates several legal requirements that must be met, for example, the company has an ASK implementation permit, the vehicle operated has proof of passing the Periodic Test and the driver has a General Driver's License (SIM). These requirements are made with the intention that asks is complementary to other types of people transport and ensures the security and safety of passengers, other road users, and other third parties.

Laws are made not for hukum but hukum for man. The presence of PM 118 of 2018 is not for display or just a shield for parties who intend to practice culpably in carrying out ASK activities. Ideally, if PM 118 of 2018, has run well and effectively, then it certainly will not turn off other types of transportation that serve urban areas, such as taxis and others. But the fact is, since ASK appeared and operated massively, taxi transport companies "staggered" until most "fell unconscious"

and finally closed (Satjipto Rahardjo, 2009).

"Chairman of Organda DKI Jakarta, Syafruan Sinungan, claims that only 8 (eight) taxi companies in Jakarta survived the online taxi invasion. Even though in 2016 the number of taxi companies still reached 34 companies. But in two years, 26 companies have collapsed." Furthermore, he said that online taxis had an impact on the number of taxi fleets operating in Jakarta, which reduced from 25,550 units to less than 9,700 units today. "This is because information technology companies (online taxis) operate like transportation companies and determine their fares."

The design of the implementation of transportation of people by public motor vehicles regulated in the UULLAJ, along with its implementing rules, does not provide room for free competition between business actors, because there is an obligation of the government to maintain a balance between the number of vehicles and the demands of service user demand. These government obligations are implemented through licensing and tariff instruments. Therefore, the issue of the substance of PM 118 of 2018, becomes very important to be studied through scientific research, because it is closely related to economic development and national resilience as well as the security and safety of public transportation service users and drivers as a whole. Therefore, the study and research of the fulfillment of the company's permit requirements, ASK vehicles, and drivers are very important and urgent.

MATERIALS AND METHODS

This research uses normative legal research methods because it focuses on the consistency of statutory norms, using a statutory approach (statute approach), conceptual approach, and analytical approach. The technique of collecting legal materials uses document study techniques,

as well as study analysis using qualitative analysis.

RESULTS AND DISCUSSION

Consistency of Business Entity Requirements for ASK organizers.

Article 11 paragraph (1) stipulates that Special Rental Transport companies must have a permit to operate Special Rental Transportation. This provision is a follow-up to Article 173 of the UULLAJ, which was later amended in Article 55 number 18 of Law Number 11 of 2020 concerning Job Creation, which states: "The provisions of Article 173 are amended so that the contents of the article are as follows:

- (1) Public Transport Companies that carry out the transportation of people and/or goods must fulfill Business Permits from the Central Government or Local Government by norms, standards, procedures, and criteria set by the Central Government.
- (2) The obligation to fulfill the Business License as referred to in paragraph (1) does not apply to:
 - a. Transport of the sick by ambulance; or
 - b. Transportation of bodies.
- (3) Further provisions regarding Business Licensing as referred to in paragraph (1) are regulated in Government Regulations."

Further arrangements based on the provisions of paragraph (3) are regulated in Government Regulation Number 5 of 2021 concerning the Implementation of Risk-Based Business Licensing (hereinafter referred to as Business Licensing PP).

In Annex I.9.A.15, number 22, Business Licensing PP, ASK with KBLI Code 49426, has a Medium High risk, Business Licensing includes NIB and Standard Certificates, which have a validity period as long as business actors run their business and licenses are issued by the Minister and

Governor as a deconcentration task.

Technically, the ASK permit application follows the mechanism stipulated in the laws and regulations regarding electronically integrated business licensing services or Online Single Submission (OSS). Special Rental Transport License consists of:

- a. A special Rental Transport license decree is a permit given to the head of the company and attached to the company; and
- b. Electronic Card Service Standard (KESP), is a permit attached to the vehicle.

The requirements for the ASK permit should be the same as the conditions for the permit to transport people not on other routes because ASK is part of the transportation of people not on the route, as stipulated in Article 13 of the Regulation of the Minister of Transportation of the Republic of Indonesia Number 117 of 2018 concerning the Implementation of Transportation of People Not in Treayek (hereinafter referred to as PM 117 of 2018), which states: "Transportation of People with Certain Destinations as referred to in Article 4 letter b is Transportation that serves:

- a. Shuttle transportation;
- b. Settlement transport;
- c. Employee transport;
- d. School transport;
- e. Chartered transport;
- f. Public rental transport; and
- g. Special rental shuttles.

In the Article... paragraph (3) UULLAJ, jo Article..... Government Regulation Number 74 of 2014, jo PM 117 of 2017, stipulates that companies that carry out the transportation of people by Public Motor Vehicles, must be Indonesian legal entities, in the form of State-Owned Enterprises, Regional-Owned Enterprises, Limited Liability Companies, or Cooperatives. This

provision is strengthened in line with the decision of the Constitutional Court Number..... which in its legal judgment states:

"In legal consideration of the decision of the Constitutional Court Number 78/PUU-XIV/2016, paragraph [3.13] states: "Considering that after carefully examining the arguments of the Petitioners in their application, the Court thinks that the losses suffered by the Petitioners are not caused by the unconstitutionality of the legal norms requested for testing so that they do not constitute a loss of constitutional rights as referred to in Article 51 paragraph (1) of the Constitutional Court Law. This can be seen from the reasoning where there will be legal uncertainty if the legal norms requested by the test do not exist or are interpreted differently. Conversely, the formulation of article a quo which emphasizes the necessity of a legal entity for online transportation service providers has not only provided legal certainty, but also protected various aspects, both to service providers, drivers, and users of online transportation services. In addition, the norm of law a quo also has no conflict with the idea of the rule of law. Moreover, with the regulation of provisions on online transportation service providers who must be legal entities, it further guarantees the constitutional rights of the Petitioners to decent work and the right to work and get proper remuneration in employment relations as stipulated in Article 27 paragraph (2) and Article 28D paragraph (2) of the 1945 Constitution. Because, with the necessity of such a legal entity in the event of a dispute, the resolution mechanism becomes clearer. Similarly, for users of online transportation services, it will be more certain if some complaints or demands must be filed when they feel aggrieved. Thus, it is clear to the Court that the harm postulated to have been suffered by the Petitioners was not caused by the

unconstitutionality of the statutory norm for which the test was invoked, but rather by the application or implementation of the norm in practice. Thus, through Decision Number 78/PUU-XIV/2016, the Court has affirmed that Article 139 paragraph (4) of the LLAJ Law which requires online transportation to be a legal entity is constitutional. While about the implementation by lower regulations of the law, it is not the authority of the Court to judge it and compliance with it is in no way related to Article 55 of the Constitutional Court Law."

The requirements for legal entities are classified as imperative requirements, but in PM 118 of 2018, Article 1 number 8 and Article 12 paragraph (3) are changed to facultative requirements (optional), each of which reads:

Article 1 number 8 and Article 12 paragraph (3) respectively read:

The definition of a Special Rental Transport Company has regulated in Article 1 point 8: "Special Rental Transport Company is a legal entity or micro business actor or small business actor that organizes Special Rental Transportation services."

Then the meaning of Article 1 number 8 is described in Article 12 which reads:

- "(1). The Special Rental Transport Company must be an Indonesian legal entity by the provisions of laws and regulations;
- (2). Indonesian legal entities as referred to in paragraph (1) in the form of:
 - a) State-Owned Enterprises;
 - b) Regionally Owned Enterprises;
 - c) Limited Liability Company; or
 - d) Cooperation.
- (3). In addition to legal entities as referred to in paragraph (2), the implementation of ASK can be carried out by micro business actors or small business actors by the provisions of laws and regulations".

Changes in the requirements of legal entities are carried out by providing

legal entity options or not legal entities, for micro business actors or small business actors as referred to in Law Number 20 of 2008 concerning Micro, Small, and Medium Enterprises (MSMEs).

The change in the requirements of the legal entity, carried out through the separation of the arrangement of transportation of people, not on the route with ASK (even though ASK is part of the transportation of people not on the route), is a discriminatory legal policy and has no juridical, sociological and philosophical basis. The conditions that must be met to obtain a permit for transportation of people not on the route (taxi transportation, residential transportation, employee transportation, school transportation, charter transportation, and public rental transportation) are strictly regulated and limited in Article 36 and Article 37, PM 117 of 2018, while the conditions for obtaining an ASK permit, are not regulated in PM 118 of 2018, as or similar to the conditions stipulated in Article 37 PM 117 of 2018. When using the principle of law *lex specialis derogate lex generalis*, the special law takes precedence over the general law, or if there is nothing provided for in the special law, the general law applies. Based on this principle, if PM 118 of 2018 as a special law, does not regulate the conditions for ASK permits, then the conditions for people transportation permits are not on the route as a general law that applies.

In practice, this legal principle does not apply, because what is treated is, because there are no ASK permit requirements regulated in a special law, namely PM 118 of 2018, it is considered that ASK does not apply the permit conditions regulated in the general law, namely Article 37 PM 117 of 2018. The practical consequence is that the business entity that organizes ASK for a permit, does not need to meet the

requirements to own at least five units of motor vehicles, as stipulated in Article 37 letter a and Article 38 PM 117 of 2018. The

same applies to individuals who have an ASK permit.

Table 1. about the differences in the conditions for transportation permits for people not on other routes with the conditions for ASK permits.

Requirements for Transportation Permits for People Not on the Route in PM 117 of 2018.	ASK Permit Requirements in PM 118 of 2018.
<p>Article 35</p> <p>(1) Public Transport Companies are required to have a permit for the operation of Transportation of People with Public Motor Vehicles Not on the Route.</p>	<p>Article 11</p> <p>(1) Special Rental Transport Companies are required to have a Special Rental Transport operating permit.</p>
<p>Article 36</p> <p>(1) Public Transport Companies as referred to in Article 35 paragraph (1) must be Indonesian legal entities in accordance with the provisions of laws and regulations;</p> <p>(2) Indonesian legal entities as referred to in paragraph (1), in the form of:</p> <ul style="list-style-type: none"> a. State-Owned Enterprises; b. Regionally Owned Enterprises; c. Limited Liability Company; or d. Cooperation. <p>Note: There are no exceptions to the legal entity requirement for transportation companies of people not on the route, as stipulated in paragraph (3) PM 118 of 2018.</p>	<p>Article 12</p> <p>(1) Special Rental Transport Company as referred to in Article 11 paragraph (1) must be an Indonesian legal entity in accordance with the provisions of laws and regulations;</p> <p>(2) Indonesian legal entities as referred to in paragraph (1) in the form of:</p> <ul style="list-style-type: none"> a. State-Owned Enterprises; b. Regionally Owned Enterprises; c. Limited Liability Company; or d. Cooperation. <p>(3) In addition to legal entities as referred to in paragraph (2), the operator of Special Rental Transport can be carried out by micro business actors or small business actors in accordance with the provisions of laws and regulations.</p>

<p>Article 37 To obtain a permit as referred to in Article 35 paragraph (1), the Public Transport Company must meet the following requirements:</p> <ul style="list-style-type: none"> a. Own at least 5 (five) vehicles; b. Own/master a vehicle storage area that can accommodate the number of vehicles owned; c. Provide vehicle maintenance facilities (workshops) as evidenced by ownership documents or cooperation agreements with other parties. 	<p>Nothing is regulated in PM 118 of 2018.</p>
<p>Article 38 The vehicle as referred to in Article 37 letter a is evidenced by a Motor Vehicle Owner's Book (BPKB) or Vehicle Number Certificate (STNK) on behalf of a legal entity.</p>	<p>Nothing is regulated in PM 118 of 2018</p>

The difference in legal treatment is increasingly evident in its implications, because generally the ASK vehicles that operate, are not part of the assets of legal entities, but remain private property.

ASK vehicles that use Cooperative permits, but the vehicles remain in the personal name of the partner, not in the name of the cooperative. Then the driver-partner in question, pays a monthly fee to the Cooperative, in exchange for utilizing the cooperative's ASK permit. Most of the Cooperative partners do not have a KESP, as one of the permit requirements that every ASK vehicle must have.

The use of the Cooperative as a business entity organizing ASK, is only as a camouflage, because in practice what happens is that ASK drivers who use the Cooperative ASK Permit, only like "permit rental", because all the risks that befall ASK

drivers as Cooperative Partners are fully borne by ASK drivers who are concerned and not related to the Cooperative. This practice deviates from the purpose and purpose of the legal entity requirements of the ASK company itself.

Both at the normative level and the practical level, ASK companies obtain privileges, and privileges are legitimized through PM 118 of 2018 and it is a form of conflict between the norms in UULLAJ, PP Number 74 of 2014, PM 117 of 2018 with the norms in PM 118 of 2018. The conflict of norms gives birth to legal injustice framed with a narrative that seems to protect the interests of the community while accommodating the use of information technology developments in the transportation of people on the road. What has happened is that traffic laws have been manipulated in such a way that they

have lost their distinctive identity as instruments that ensure security, safety, and healthy business competition in the road transport industry. Such a phenomenon is described by Kuntoro Mangkusubroto, we are also increasingly made aware that criminal prosecution or mere conviction has proven to fail to eradicate crime. The source is not only bad (Surowidjojo, 2021) laws, says Chinese reformer An Shih (1021-1086), but also bad men. In fact, according to him, this bad man factor is greater in his work and influence than bad laws.

Similarly, the desire for a more responsive system can depend on the extent to which a society or institution needs to sacrifice other values, such as achieving a high culture to achieve justice. For those who may find the picture of "development" misleading, the model can be reshaped by showing two ways in which the law can die, namely when the law loses its distinctive identity. Historically, the idea of law is closely related to specific ideals and schools of thought, as well as institutional details in the (Nonet & Selznick, 2003)rule of law model. In both its repressive and responsive complexion, the legal order loses the protection of its firm institutional boundaries and becomes an integral part of government and politics. Then there was a weakening of ideas and ways of thinking that were peculiar to the law. Legal death, in such a sense, is a sign that exists at both stages of development. In both repressive and responsive law, the regulatory authority is weakened, discretion is expanded, instrumental perspectives undermine the formalism of artificial reasoning, legal arguments become less distinguishable for policy analysis, and legal institutions become more accessible and more fragile.

Consistency of Vehicle Permit Requirements

The definition of General Motor Vehicles according to UULLAJ, Article 1 number 10 is "Every vehicle used for the transportation of goods and/or people for a fee". The characteristics of motorized vehicles in the ASK service are regulated in Article 4 PM 118 of 2018 which stipulates that Special Rental Transport services use General Motor Vehicles with a cylinder capacity limit of at least 1,000 cubic centimeters.

When viewed from a cylinder capacity of at least 1,000 cubic centimeters, then all types of vehicles that have been known such as Agya, Alya, Calya, Avansa, and others, are eligible to become ASK vehicles. Furthermore, Article 5 stipulates the requirements for General Motor Vehicles used in ASK services, namely:

1. Common Motor Vehicles used include:
 - a. Sedan passenger cars; and/or
 - b. Passenger Cars Are Not Sedans
2. Use motor vehicle number signs with a basic color of black and white writing by application data or by the provisions of laws and regulations;
3. Meet the requirements of the Minimum Service Standard;
4. Equipped with an application that shows the amount of fare charged to passengers and the identity of the driver and vehicle listed in the application;
5. Equipped with a driver performance monitoring device that can record vehicle speed and driver behavior in operating the vehicle;
6. Equipped with Motor Vehicle Number Certificate and ASK operating permit; and
7. Include the electronic mail address and telephone number of the public complaint service placed in the vehicle and easily readable by Service Users.

The first and second terms are not elaborated at length, because they have been described on other pages, so they will only be described in the third condition, namely General Motor Vehicles. In UULLAJ Article 47 paragraph (3) classifies Motor Vehicles based on functions, namely:

- a. Individual Motor Vehicles; and
- b. General Motor Vehicles.

According to UULLAJ Article 49 paragraph (1), every Motor Vehicle operated on the road must be tested, and Article 49 paragraph (2) stipulates that testing includes;

- a. Type test; and
- b. Periodic test.

Furthermore, Article 53 paragraph (1) stipulates that periodic tests referred to in Article 49 paragraph (2), are required for public passenger cars, bus cars, freight cars, trailer trains, and outboard trains operated on the Road. This obligation is to meet the requirements of Article 106 paragraph (3) which states: "Every person who drives a Motor Vehicle on the Road must comply with the provisions on technical and roadworthy requirements."

Periodic Tests include physical inspection and testing of Motor Vehicles, and attestation of test results. Motor Vehicle Inspection and physical testing activities according to Article 54 paragraph (1) include testing against technical and roadworthy requirements.

This provision, previously further regulated in Government Regulation Number 55 of 2012 concerning Vehicles, Article 143 paragraph (1) states: "Mandatory Periodic Test for Public Passenger Cars, Bus Cars, Freight Cars, Trailer Trains, and Outboard Trains operated on the road". However, based on PP Number 30 of 2021 concerning the Implementation of Road Traffic and Transportation, (hereinafter referred to as PP 30 of 2021) Article 1 paragraph (1) letter b, Article 143 is revoked. Article 24 of PP 30

of 2021 states:

(1) "Periodic tests as referred to in Article 121 paragraph (3) point b of Government Regulation Number 55 of 2012 concerning Vehicles are mandatory for public passenger cars, bus cars, freight cars, trailer trains, and outboard trains operated on the road.

(2) Periodic testing as referred to in paragraph (1) includes the activities of:

- a. Motor Vehicle Registration must be periodically tested;
- b. First periodic test; and
- c. Periodic test of validity period renewal.

(3) Periodic tests as referred to in paragraph (1) are carried out by:

- a. The testing implementation unit of the District/City Government by the norms, standards, procedures, and criteria set by the Minister;
- b. The implementing unit of the sole agent of the trademark holder who received a Business License from the Minister; or
- c. Private testing implementation unit that obtains Business Licensing from the Minister.

(4) The first periodic test and periodic test of extending the validity period as referred to in paragraph (2) letter b and letter c include:

- a. Pemeriksaan persyaratan teknis;
- b. Roadworthiness requirements testing; and
- c. The provision of evidence passed the test."

In Article 175 PP 55 of 2012, administrative sanctions are threatened, for anyone who violates the provisions of Article 143 paragraph (1) in the form of written warnings and administrative fines. When the provisions of Article 143 are repealed, then the provisions of Article 175, lose the object of regulation.

In Article 176 paragraph (1) and paragraph (2) it is stipulated that written

warnings are given three times with a period of 30 days each. If the owner of the Motor Vehicle does not carry out the periodic test obligation after the expiration of the third written warning period, administrative sanctions shall be imposed in the form of a maximum fine of IDR 24,000,000 (twenty-four million rupiahs). In addition to the threat of administrative sanctions as such, Article 288 paragraph (3) of the UULLAJ, also threatens criminal sanctions, which states: "(3). Every person who drives a public passenger car, bus car, freight car, trailer train, and outboard train that is not equipped with a periodic test certificate and a mark of passing the periodic test, as referred to in Article 106 paragraph (5) point c, punishable with a maximum imprisonment of 2 (two) months or a maximum fine of IDR 500,000 (five hundred thousand rupiahs)".

If we look at the provisions in PM 118 of 2018, there is no explicit regulation about mandatory periodic tests for ASK Motor Vehicles, but Article 5 explicitly mentions General Motor Vehicles. Article 5 PM 118 of 2018 states:

"General Motor Vehicles used for ASK services must meet the following requirements:

a. Common Motor Vehicles used include:

1. Sedan Passenger Car; and/or
2. passenger cars are not sedans;

b. Using motor vehicle number signs with a basic color of black and white writing by the data in the application or by the provisions of laws and regulations;

c. Meet the requirements of Minimum Service Standards:

d. Equipped with an application that shows the amount of fare charged to Passengers and the identity of the driver and vehicle listed in the application;

e. Equipped with a driver performance monitoring device that can record vehicle

speed and driver behavior in operating the vehicle;

f. Equipped with STNK and ASK implementation permit; and

g. Include the electronic mail address and telephone number of the public complaint service placed in the Vehicle and easily readable by Service Users".

The provision confirms that the Motor Vehicle used by ASK is a General Motor Vehicle in the form of a General Passenger Car that is a sedan and/or not a sedan. According to Article 1 number 5 of PP Number 55 of 2012, a Passenger Car is a motor vehicle transporting people who have a maximum seat of 8 people, including the driver, or whose weight is not more than 3,500 kg. Then Article 5 paragraph (2) stipulates that passenger cars consist of;

a. Sedan, which has space consisting of, an engine room, driver and passenger room, and luggage room.

b. Not a sedan, which has an engine room and driver's room, passenger and/or luggage compartment.

Based on this, ASK General Motor Vehicles, classified as vehicles are required to be periodically tested so that the provisions on criminal sanctions regulated in Article 288 ULLAJ and administrative sanctions regulated in Article 175 paragraph (1) and paragraph (2), Article 176 paragraph (1) and paragraph (2) also apply to it. But in its implementation, all motor vehicles operated do not have a periodic test certificate and proof of passing periodic tests, as one of the requirements that must be met as a General Motor Vehicle. Proof of passing the test is a legal document that can be proof that the motor vehicle meets the technical and roadworthy requirements, so it is considered to meet the safety requirements to operate on the road. When using an analogy, public motor vehicles that do not have a periodic test certificate and proof of

passing periodic tests, are considered not to meet the requirements for technical completeness and roadworthiness, so they have the potential to cause road accidents. This argument is the philosophical basis, the need for government control or supervision to ensure that every public motor vehicle operated must be able to guarantee safety. The legal instrument used to ensure this is a legal instrument of testing known as the Periodic Test. That is why, the violation of such obligations is punishable by administrative sanctions and criminal sanctions, as outlined above. So that opinion, which says the requirements for non-online transportation such as kir institutions, yellow plate institutions, providing vehicle pools for the implementation of non-online taxi businesses become an obstacle when having to compete with online transportation services. Even though on a practical level, the necessity does not make public transportation safer and more comfortable. While online vehicle check is better, considering the personal ownership of vehicles used as a means of online transportation are privately owned. Because it is privately owned, the maintenance of his vehicle will feel different from the property of a legal entity (Pribadiono, 2016).

Agus Prabadiono's view, which wants to eliminate the government's supervisory function on the roadworthy fulfillment of public motor vehicles and leave it entirely to each vehicle owner, is a view that is not pro-public safety, but the interests of online transportation. If someday, all online transportation business actors have integrity and are aware of their responsibilities to the security and safety of service users, and other road users, the idea may be applied in the future.

In practice, the threat of criminal and administrative sanctions, like a "toothless tiger" seems frightening but the biting

power is non-existent. The non-enforcement of the Periodic Test obligation for ASK General Motor Vehicles is because there has never been an effort (earnestly or insincerely), to enforce the mandatory test rules. Although the legal substance of the compulsory test is good, in the sense that there is legal certainty, expediency, and justice. It is called the legal substance of the mandatory provisions of the Periodic Test and is considered good, if the norms and implementation are consistent and apply to all, and do not choose the targeted subject. Certainty means "provision; statute" whereas if the word certainty is combined with the word "law" into legal certainty, it means "the legal instrument of a state that can guarantee the rights and obligations of every citizen." According to Sudikno Mertokusumo, "Legal certainty is one of the conditions that must be met in law enforcement". So legal certainty is an (E.Fernando M.Manullang, 2007) justifiable protection against arbitrary actions which means that a person will obtain something expected under certain circumstances. This is in line with the view of (E.Fernando M.Manullang, 2007), "the existence of the state and law (constitution) which is a manifestation of the common will of the sovereign people, therefore the value of certainty which in this case is related to the law, is a value that in principle provides legal protection for every citizen from arbitrary power so that the law gives responsibility to the state to carry it out. Here lies the relationship between the issue of certainty (law) and the role of the state is seen. Therefore, in understanding the value of certainty (law), what must be considered is that the value has a close relationship with positive legal instruments and the role of the state in actualizing them in positive law. Even though the role of the state is not only limited to that level, the state also has the responsibility to carry it out and enforce it.

Referring to this view, the mandatory norm of Periodic Test for Public Motor Vehicles, the state is responsible for carrying out and enforcing it consistently, because when the norm, is only imposed on Public Transport Companies other than ASK, it is a form of state arbitrariness to its people.

Consistency of Driver's License Requirements

The ASK driver, a partner of the application company, factually acts as a carrier. Although it factually acts as a carrier, behind that there is a party who gives orders to transport, namely an information technology product called an online application. This online application, owned by an information technology company, is juridically the party that gives orders to drivers to transport prospective passengers. Such transport orders are carried out through information technology called online applications. The construction of a legal relationship between the applicable company and the driver, should not only be seen as an ordinary partner but is a legal relationship between the governing and the governed or the relationship between the worker and the employment. This type of construction of legal relations is thus called the legal relationship between employers and workers.

The same thing was stated by Rohani Budi Prihatin, who said that "when viewed from the side of the relationship between the application owner company and online-based Transportation Drivers, mka often their relationship is referred to as a partnership relationship. But if you look carefully, actually the relationship between the two is midriff the relationship between employer and labor, the application owner acts as an employer in providing customer information in need, while the driver only executes application commands".

In PM 118 of 2018, there is no explicit regulation regarding the construction of the legal relationship, but only the prohibitions and obligations of application companies are regulated in Article 27 and Article 28, while the position and conditions of the driver are not regulated at all.

If you see Special Rental Transport as a service for transporting people with public motor vehicles, then the provisions regarding the requirements for drivers of public motor vehicles are regulated in Article 1 number 23 of the UULLAJ, which stipulates that a driver is a person who drives a Motor Vehicle on the Road who already has a Driver's License. The requirements for General Motor Vehicle Drivers are affirmed in Article 77 of the Lalin Law which states:

(1) Every person who drives a Motor Vehicle on the road must have a Driving License by the type of Motor Vehicle being driven.

(2) Driver's License as referred to in paragraph (1) consists of 2 (two) types:

a. Individual Motor Vehicle Driver's License; and

b. General Motor Vehicle Driver's License.

(2) To obtain a Driver's License, prospective Drivers must have driving competencies that can be acquired through education and training or self-study.

(3) To obtain a Public Motor Vehicle Driver's License, prospective drivers are required to attend education and training for public transport drivers.

(4) Education and training as referred to in paragraph (4) are only attended by people who already have a Driver's License for individual Motor Vehicles.

The provisions of Article 77 stipulate that every driver of a public motor vehicle must have a Driver's License by attending education and training for public transport drivers, and previously had a Driver's

License for individual Motor Vehicles. So to obtain a General Motor Vehicle Driving License, it is mandatory to have an individual Motor Vehicle Driving License.

Article 82 states:

"Driving License for General Motor Vehicles as referred to in Article 77 paragraph (2) point b is classified into:

a. General Driver's License A is valid for driving public motor vehicles and goods with an amount of permissible weight not exceeding 3,500 (three thousand five hundred) kilograms;

b. General B I Driver's License is valid for driving passenger cars and general goods with an allowed amount of weight of more than 3,500 (three thousand five hundred) kilograms; and

c. General B II, Driver's License is valid for driving a towing Vehicle or Motor Vehicle by pulling an outboard cart or trailer with a permissible weight for an outboard cart or trailer of more than 1,000 (one thousand) kilograms."

Article 83 states:

"(1) Every person applying to be able to obtain a Driver's License for General Motor Vehicles must meet the age requirements and special requirements.

(2). The age requirement to obtain a General Motor Vehicle Driver's License as referred to in paragraph (1) shall be determined at least as follows:

a. 20 (twenty) years old for General Driver's License A;

b. Age of 22 (twenty-two) years for General B I Driver's License; and

c. 23 (twenty-three) years old for General B II Driver's License.

(3) . Specific requirements as referred to in paragraph (1) are as follows:

a. Pass a theoretical exam that includes knowledge regarding:

1. Public transport services;
2. Public facilities and social facilities;
3. Motor Vehicle Testing;

4. Procedures for transporting people and/or goods;

5. An important place in the area of domicile;

6. Types of dangerous goods; and

7. Operation of security equipment.

b. Pass a practical exam, which includes:

1. Pick up and drop off passengers and/or goods at the Terminal and certain other places;

2. Procedures for transporting people and/or goods;

3. Filling out the cargo letter;

4. General Motor Vehicle Driver Ethics; and

5. Operation of security equipment.

(4). Taking into account the age requirement, each Motor Vehicle Driver who will apply:

a. General Driver's License A must have a Driver's License A for at least 12 (twelve) months;

b. For General Driver's License B I must have a Driver's License B or General Driver's License A for at least 12 (twelve) months; and

c. For General B II Driving License, you must have a B II Driving License or General B I Driving License for at least 12 (twelve) months.

(5). In addition to meeting the age requirements and special requirements as referred to in paragraph (2) and paragraph (3), every person who applies to obtain a General Motor Vehicle Driving License must meet the conditions as referred to in Article 81 paragraph (3) and paragraph (4)."

Article 84 states:

"A Driver's License for a Motor Vehicle may be used as a Motor Vehicle Driver's License whose weight is equal to or lower, as follows:

a. A General Driver's License may apply to driving a Motor Vehicle that is supposed to use a Driver's License;

- b. Driver's License B I can apply to drive a Motor Vehicle that is supposed to use Driver's License A;
- c. General B I Driver's License can be valid for driving Motor Vehicles;
- b. who should use Driver's License A, General Driver's License A, and Driver's License B I;
- a. A B II Driver's License can be valid for driving a Motor Vehicle that is supposed to use both Driver's License A and Driver's License B I; or
- b. A General B II Driver's License can apply to driving a Motor Vehicle that is supposed to use a Driver's License A, a General Driver's License, a B I Driver's License, a General B I Driver's License, and a B II Driver's License."

Article 85 states:

- (1) Driver's License in the form of an electronic card or another form;
- (2) Driver's License is valid for 5 (five) years and can be extended;
- (3) The Driver's License as referred to in paragraph (1) is valid throughout the territory of the Unitary State of the Republic of Indonesia;
- (4) If there is a bilateral or multilateral agreement between the Unitary State of the Republic of Indonesia and another country, a Driver's License issued in Indonesia may also be valid in another country and a Driver's License issued by another country is valid in Indonesia.
- (5) Holders of a driver's license as referred to in paragraph (4) can obtain an international driver's license issued by the National Police of the Republic of Indonesia."

Article 86 states:

- (1) A driver's license serves as proof of driving competence.
- (2) The Driver's License serves as a Motor Vehicle Driver registration containing the Driver's complete identity information.

- (3) Data on Driver registration can be used to support police forensic investigation, investigation, and identification activities."

Article 87 states:

- (1) A Driver's License is issued to every prospective Driver who passes the driving exam;
- (2) Driver's License as referred to in paragraph (1) issued by the National Police of the Republic of Indonesia;
- (3) The National Police of the Republic of Indonesia must organize an information system for the issuance of driver's licenses;
- (4) Every officer of the National Police of the Republic of Indonesia in the field of issuance of a Driver's License as referred to in paragraph (2) must comply with the procedure for issuing a Driver's License.

Article 88 states:

"Further provisions regarding the procedures, requirements, testing, and issuance of driver's licenses are regulated by the regulations of the Chief of Police of the Republic of Indonesia."

The provisions presented above indicate that a driver's license is proof of a person's competence to become a motor vehicle driver. Only measurable competence according to the type of driver's license obtained is normatively seen as a condition to ensure road safety guarantees. Even though you already have a driver's license but driving a motor vehicle is not by the type of driver's license, it is considered an act that drives a motor vehicle with no competency requirements, so it does not guarantee safety when driving. From the driver's side, a driver's license should be viewed as a legal instrument to ensure road safety, so allowing the driving of a motor

vehicle without having a license or having a license but not being used by the vehicle being operated, is the same as allowing a road safety threat to occur. Allowing violations of the law to occur without any consistent effort to enforce the law, is a form of violation of the law because it neglects the legal obligations attached to its position.

In PM 118 of 2018 there is no regulation on the type of driver's license for ASK drivers, but because ASK is public transportation for people with public motor vehicles, the provisions regarding the terms and types of ASK driver's licenses are subject to the provisions of Article 77 paragraph (1) and paragraph (2) letter b and Article 82 letter b of UULLAJ, each of which reads as follows:

Article 77 paragraph (1) and paragraph (2) point b states:

- "(1). Every person driving a Motor Vehicle on the road shall have a Driving License by the type of Motor Vehicle being driven;
- (2). Driver's License as referred to in paragraph (1) consists of 2 (two) types:
- a. Individual Motor Vehicle Driver's License; and
 - b. General Motor Vehicle Driver's License."

Article 82 letter b states:

"Driver's License for General Motor Vehicles is classified into:

- a. A General Driver's License is valid for driving passenger cars and general

- goods with an amount of permissible weight not exceeding 3,500 kilograms.
- b. General B I Driver's License is valid for driving public motor vehicles and goods with an amount of permissible weight of more than 3,500 kilograms.
- c. General B II, Driver's License is valid for driving a towing vehicle or by motor vehicle by pulling an outboard cart or trailer with a permissible weight for an outboard cart or trailer of more than 1,000 kilograms."

Based on these provisions, ASK drivers should have a General A Driver's License, or General B I, depending on the type of vehicle operated, but in reality, ASK drivers only have a regular A driver's license, not a General A driver's license. ASK drivers who do not have a General A or General B I Driver's License are threatened with criminal sanctions as stipulated in Article 281 of the LLAJ Law which states:

"Every person who drives a motor vehicle on the road who does not have a Driver's License as referred to in Article 77 paragraph (1) shall be punished with a maximum imprisonment of 4 (four) months or a maximum fine of Rp.1,000,000,-".

The observance of these sanctions is not accompanied by consistent and fair law enforcement efforts.

CONCLUSIONS

That the regulation of the requirements for business entity licenses, vehicle periodic test requirements, and ASK Driver requirements in PM 118 of 2018, is different from the requirements applicable to the transportation of people not on other routes as stipulated in PM 117 of 2018.

The difference is a form of discriminatory legal treatment legitimized by the law itself, resulting in inconsistencies that result in the injury to legal certainty and justice in the implementation of transportation of people, not on the route in general.

In addition, the license of the business entity that organizes ASK, Permit or proof of passing the Periodic Test and Driver's License is a legal instrument that can ensure the fulfillment of security and safety aspects of the implementation of transportation of people by public motor vehicles on the road. So when this aspect of licensing is neglected, ASK becomes a threat to the security and safety of

passengers, drivers, other road users, and other third parties.

Waiver of ASK licensing requirements as public transportation of people with public motor vehicles, as regulated in UULLAJ and PP Number 74 of 2014, as a form of the inconsistency of PM 118 of 2018 norms against UULLAJ norms and PP Number 74 of 2014.

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