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## **Do Consumers of Online Transportation Services Get Legal Protection?**

**Elfrida Ratnawati<sup>1</sup>**  
**Meta Indah Budhianti<sup>2</sup>**

<sup>1</sup> Faculty of Law, Universitas Trisakti, Indonesia. E-mail: [elfrida.r@trisakti.ac.id](mailto:elfrida.r@trisakti.ac.id)  
<sup>2</sup> Faculty of Law, Universitas Trisakti, Indonesia. E-mail: [metaindah75@yahoo.com](mailto:metaindah75@yahoo.com)

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### **Abstract**

*Currently all the desired needs can be easily obtained, including the transportation of people or goods from one place to the destination. Only by downloading an online-based transportation application and pressing a button on a smartphone, the two- and four-wheeled transportation process can be carried out. Who is responsible in the event of an accident to passengers and damage to goods in the online-based transportation process? Do passengers and property owners get legal protection? is the subject matter that will be discussed in this article. The normative research method is used in this article, using secondary data and then processing it qualitatively by describing it descriptively. The conclusion obtained is the legal relationship between online vehicle drivers and the company as a liaison operator between the driver and passengers or the owner of the goods bound in a partnership agreement is responsible for consumer losses, this is written in the terms and conditions. Passengers and goods owners receive legal protection and compensation from online-based companies as operators due to accidents and damage to goods caused by online drivers.*

## 1. Introduction

Recently, people in the world, including in Indonesia, find it easier to fulfill their various needs, from buying food, daily necessities, to getting transportation, either four-wheeled or two-wheeled vehicles. Everything becomes easier with the availability of online applications that simplify all daily transactions. All can be done using technological advances, which can be obtained by downloading one or more applications that provide the services needed. Thus, by using these applications, all needs can be met without leaving the house.<sup>1</sup>

Just pressing the cellphone button can really facilitate people's needs. This is an undeniable fact. People are greatly helped because, for example, at the same time, while waiting at home and doing other important activities, other people deliver the needs that have been ordered and deliver them directly to the house.

At the beginning of its development, there were several types of online applications that could be downloaded and used to perform several transactions, including Grab, Go-Jek, and Uber. Some others have tried to follow the success of the three previous applications, which are Blue-Jek, Top-Jek and Lady-Jek, but they did not last long.

Initially, this online-based ordering application only provided two-wheeled vehicle transportation. Soon, the service increased to four-wheeled vehicles. Over time and increasing capital, innovation continues to this day. Gojek and Uber, for example, are increasingly providing various online services for the delivery of food, goods, and documents; delivery service for shopping (Go-Shop), goods transfer service, and health massage service. Not only Go-Jek, currently there is another online company, which is Grab. The more consumers use transportation services and online applications, the more the online company's efforts and innovations in serving consumers will increase. The price is even more competitive.

The purpose of this online transportation application is to create convenience through technology. The first online application introduced is a shuttle service that can help consumers who need transportation services, either by motorbike or car.

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<sup>1</sup> Dhevi Nayasari Sastradinata, "Aspek Pertanggungjawaban Pengemudi Ojek Online Dalam Kasus Kecelakaan Yang Melibatkan Penumpang Dilihat Dari Hukum Perlindungan Konsumen," *Jurnal Independent* 6, no. 2 (2019): 113-119.

With this online transportation application, consumers will find it easier to travel using both types of vehicles. People who want to go with their families or in large numbers are greatly facilitated by this online taxi service. This application also creates jobs and income for drivers. Taxi drivers don't just spend their time waiting at taxi pools because not everyone knows where to find them. The transportation of passengers or goods through this online-based application will be discussed in this article.

If it is related to the function and purpose of transportation to move objects of people and goods transported from one place to their destination safely, the transportation of passengers or goods with online applications also fulfills these things. However, are the reciprocal agreements in transportation activities between online-based vehicle drivers as carriers and passengers or goods complied with? Those directly involved are the carriers and passengers or the owners or recipients of the goods directly. However, in online transportation, there is an agreement that is not with the carrier (which in this case is the driver of both two and four-wheeled vehicles) but with an online taxi company. It is the company that regulates the agreement about what consumers want and need with the driver who will carry out their duties.<sup>2</sup>

## **2. Problem Statement**

The problem that arises here is, who is responsible if the consumer suffers a loss, or an accident occurs? From the legal aspect of the agreement implementation procedure, online companies are only business actors who provide applications or as operators. In carrying out the transportation function for passengers or goods, can operators provide security, comfort, and safety in the transportation process if something happens that harms consumers using online applications, even though the transportation process is carried out by drivers who receive orders from the operator? What is the legal protection for users of this online application-based service? These are the problems that the researcher will discuss in this article.

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<sup>2</sup> Andika Wijaya, *Aspek Hukum Bisnis Transportasi Jalan Online* (Jakarta: Sinar Grafika, 2016).

### 3. Methods

This article is a normative juridical law research that is based on norms, propriety, and applicable legal rules in analyzing consumer protection in using online-based applications.<sup>3</sup> The data used is secondary data<sup>4</sup> consisting of primary legal materials in the form of laws and regulations relating to the issues to be discussed, which are the Civil Code; Law Number 22 of 2009 concerning Road Traffic and Transportation; Law Number 36 of 1999 concerning Telecommunications; Law Number 11 of 2008 concerning Information and Electronic Transactions; Law Number 8 of 1999 concerning Consumer Protection; Government Regulation Number 52 of 2000 concerning the Implementation of Telecommunications Circular Letter Number 3 of 2016 concerning the Provision of Application Services and/or Content via the Internet (Over the Top) as the main material supported by primary data, and analyzed qualitatively by drawing conclusions from general to specific, then the discussion will be described descriptively.<sup>5</sup>

### 4. Discussion

The existence of land transportation based on online applications becomes a consideration for consumers to choose types of transportation other than conventional taxis and other public transportation. Many consumers choose the type of online transportation, because it is considered fast, efficient, picked up, and more affordable because sometimes the operator provides discounted prices and other interesting things.

The problem here is who is responsible if the consumer gets an accident? Are there any arrangements regarding responsibility for the transportation of passengers or goods through this online transportation system? Is there any legal protection for consumers from online companies when they have an accident or damage to goods? How is the performance and relationship between the carrier and the consumer, and between the carrier and the online operator company? Is there a legal relationship in

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<sup>3</sup> Ibrahim Johnny, *Teori Dan Metodologi Penelitian Hukum Normatif* (Malang: Bayumedia Publishing, 2006). p. 294

<sup>4</sup> Bambang Waluyo, *Penelitian Hukum Dalam Praktek* (Jakarta: Sinar Grafika, 2008). p. 17

<sup>5</sup> Sri Mamudji and Soerjono Soekanto, *Penelitian Hukum Normatif Suatu Tinjauan Singkat* (Jakarta: Raja Grafindo Persada, 2004). p.14

the partnership that exists between the driver as the carrier and the company as the liaison operator, which is analyzed from the point of view of consumer protection regarding liability for accidents, which can cause death or injury, as well as for goods, if they are damaged? Does the consumer get compensated and is there any liability as stipulated in public transport? Do consumers get legal protection?

#### **4.1. Main Differences between Public and Online Transportation**

Road Traffic and Transportation or LLAJ in Law Number 22 of 2009 considers part A "Road Traffic and Transportation has a strategic role in supporting national development and integration as part of efforts to promote public welfare, as mandated by the 1945 Constitution of the Republic of Indonesia." Technological advances can be seen from the online road transportation which is very popular with the public. This is because in Indonesia, it is a form of rapid technological improvement that serves to meet people's daily needs.

At the beginning of the formation of an online transportation service provider, there was no legal basis as a regulation that became the legal umbrella for its implementation. Article 139 paragraph 4 of the Road Traffic and Transportation Law states, "The provision of public transportation services is carried out by state-owned enterprises, regionally-owned enterprises, and/or other legal entities in accordance with statutory regulations". The rule does not that mention online transportation.

In addition, in carrying out public transportation, it is required to meet minimum service standards for consumer needs, which consist of 6 things which are safety, comfort, affordability, equality, and regularity.<sup>6</sup> This standard service provided to consumers is regulated in a Ministerial Regulation, which states that the provision of good road transportation facilities and infrastructure is the duty and responsibility of the organizer.

The implementation of public transportation through online applications does not have any legal rules. However, if it is considered from the concept of transportation law learning that public transportation is a vehicle whose function and use is to

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<sup>6</sup> Nanin Koeswidi Astuti, "Perlindungan Hukum Terhadap Pelaku Usaha Dan Pengguna Jasa Transportasi Ojek Online Dalam Perkembangan Dinamika Hukum Dan Masyarakat," *to-ra* 5, no. 3 (2019): 133–160.

transport passengers or goods, and collect fees in the transportation process, these things also occur in online-based transportation.

Regulations to analyze the existence of online transportation in Indonesia are still based on Law Number 22 of 2009 concerning Road Traffic and Transportation, Government Regulation Number 74 of 2014 concerning Road Transportation, Regulation of the Minister of Transportation of the Republic of Indonesia Number 12 of 2019 concerning Protection of the Safety of Motorcycle Users used for Community Interests.

Based on the Traffic Law, can online transportation of two- and four-wheeled vehicles be considered public transportation? There is no article in the law that regulates the two means of online transportation as a means of public transportation. Article 47 paragraph (3) of the Traffic Law states that motorcycles are not a legal means of transportation for both people and goods. Article 137 paragraph (3) confirms that in terms of carrying out goods transportation, a freight truck is required. The two articles above both affirm the illegitimacy of two-wheeled motorized vehicles to carry out transportation activities of both people and goods. If it is used for things that should not then it will have a negative impact. However, the statements in these two articles contradict Article 10 paragraph (2) of Government Regulation Number 74 of 2014 concerning Road Transportation, which states that “in terms of meeting the technical requirements, the goods transportation with motorized vehicles as referred to in paragraph (1) may use passenger cars, bus car, or motorcycle. The explanation of the technical requirements here is stated in Article 10 paragraph (3) of Government Regulation Number 74 of 2014, that road transportation is a cargo that has a width not exceeding the steering handlebar, the height of the load does not exceed 900 (Nine hundred) millimeters from the top of the driver's seat, and cargo is placed behind the driver. Online motorcycle taxis are not allowed to carry goods because it can endanger the driver, as well as other drivers on the road. So, there is a conflicting rule here, regarding the function of online motorcycle taxis as public transportation that transports passengers and goods. This

is also supported by the Regulation of the Minister of Transportation Number UM.3012/1/21/PBH/2015.<sup>7</sup>

How about transporting people using private cars? Article 1 number 22 of the Traffic Law states: “Public Transportation Company is a legal entity that provides services for the transportation of people and/or goods using public motorized vehicles.” Based on this statement, it is a company or legal entity that can provide transportation services for people and/or goods. This means that the transportation of people and/or goods may not be carried out using privately owned four-wheeled vehicles or cars. Likewise, if the vehicle is not privately owned but belongs to an online company that is rented out to the driver, by paying a deposit every day (sometimes getting a deposit discount after a trial of taking the company's car online for a specified time, or paying on a car loan provided by the company and with a certain time the vehicle becomes the property of the driver).

Article 138 paragraph (1) of the Traffic and Road Transportation Law states that “Public transportation is organized in an effort to meet the needs of safe, secure, comfortable, and affordable transportation,” while paragraph (2) states “The government is responsible for the operation of public transportation. public transportation, as referred to in paragraph (1),” and paragraph (3) states “Public transportation of people and/or goods is only operated by public motorized vehicles.” Article 138 paragraph (1) states “The government is obliged to guarantee the availability of public transportation for people and/or goods between cities, between provinces, as well as across national borders.”

The articles above represent an explanation of the requirements for the operation of public transportation, which if analyzed, the transportation of people or goods carried out by four-wheeled motorized vehicles does not meet the requirements in the Traffic Law. However, the Ministry of Transportation Regulation Number 118 of 2018 concerning the Implementation of Special Rental Transportation states that the government allows private vehicles and rental vehicles to be used as online taxis.

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<sup>7</sup> Ni Putu Puspa Chandra Sari and I Nyoman Suyatna, “Perlindungan Konsumen Pengguna Angkutan Barang Melalui Layanan Ojek Online,” *Kertha Semaya: Journal Ilmu Hukum* 6 (2018): 1–5.

There is a statement in the Terms and Conditions of the online-based transportation companies and in the form of an affirmation, that in this case, online-based public transportation companies such as Grab and Gojek are not types of public transportation companies, but technology companies. Therefore, the rules regarding it are not the same as public transportation companies but must comply with the rules regarding public transportation on land. Why can't traffic laws be enforced for online-based vehicle transportation? This is because the law does not regulate two-wheeled vehicles or motorcycles as a means of transportation or public transportation. Online-based transportation companies are also not required by the government to have a business license like public transportation companies.<sup>8</sup>

The rules for a company in operating an online-based transportation business are based on notification letter number: UM.3012/1/21/Phb/2015 on November 9, 2015 by the Minister of Transportation of the Republic of Indonesia. Upon the issuance of the notification letter, there were pros and cons between the two opposing parties. Therefore, the government, in this case through the Minister of Transportation and Commission Five of the House of Representatives of the Republic of Indonesia, issued a new regulation on public transportation, which is the Regulation of the Minister of Transportation Number 32 of 2016 concerning the Implementation of Transportation of People with Non-Route Public Motorized Vehicles, such as taxis, rental transportation, chartered vehicles, tourism, and online taxi services.<sup>9</sup>

#### **4.2. Differences between Public Transport Agreements and Online-based Transport Agreements**

In transportation, there is a reciprocal agreement in which each party, be it the carrier, the passenger, and the owner of the goods, have their respective rights and obligations. The carrier is obliged to transport passengers and/or goods, then receive their rights in the form of payment. On the other hand, passengers or goods owners have an obligation to pay for transportation services and get their rights to be

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<sup>8</sup> Dian Mandayani Ananda Nasution, "Tinjauan Hukum Terhadap Layanan Transaksi Dan Transportasi Berbasis Aplikasi Online," *RESAM Jurnal Hukum* 4, no. 1 (2018): 17–30.

<sup>9</sup> David Reynalda Silitonga, "Perlindungan Hukum Bagi Pengguna Transportasi Online Terkait Dengan Peraturan Menteri Perhubungan Nomor PM 32 Tahun 2016 Tentang Penyelenggaraan Angkutan Orang Dengan Kendaraan Bermotor Tidak Dalam Trayek" (Universitas Sumatera Utara, 2018).



delivered to their destination safely and securely.

This agreement is subject to Article 1320 of the Civil Code, where the conditions for a valid agreement must meet these conditions: the parties making the agreement are proficient; certain things are agreed upon, and are lawful. Then this agreement becomes law for the parties who make it and is carried out in good faith, which is Article 1338 of the Civil Code.

In the case of public transportation organized by a transportation company, Article 1367 of the Civil Code which states that if an accident occurs as a result of the facilities and infrastructure provided by the transportation company that are not roadworthy, the public transportation company is responsible, not the person employed by the transport company, or in this case as a driver. However, if the accident is caused by the negligence or fault of the driver himself, in addition to being liable under criminal law, he is also liable under civil law.<sup>10</sup>

Regarding the accident, the Traffic and Road Transportation Law Number 22 of 2009 regulates it in Article 188 which states: "Public transportation companies are obliged to compensate for losses suffered by passengers or shippers due to negligence in carrying out transportation services", and affirmed in Article 192 paragraph (3) which states about "the period of responsibility of the carrier starts from the time the passenger is transported, and ends or arrives at the agreed place". Thus, this article explains the period of responsibility of the carrier.

In online-based transportation, there is an agreement that is subject to Article 1320 of the Civil Code and applies the principle of consensualism, in which the agreement is born simply by agreement or it can be said that the agreement is valid if there is the word "agree". In addition to the principle of consensualism, there is also a principle regulated in Article 1338 paragraph (1) of the Civil Code concerning freedom of contract: "All agreements made legally apply as law for those who make them". In the statement, there is the word "all", and the meaning of this word gives the understanding that the agreement is allowed in any form or about anything, and

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<sup>10</sup> Farda Fardan, "Tanggung Jawab Pengangkut Terhadap Penumpang Pada Angkutan Jalan Menurut Undang-Undang Nomor 22 Tahun 2009," *Legal Opinion* 1, no. 1 (2013).

binds the parties directly.

The agreement made by the parties will result in rights and obligations, for example on passengers and drivers. Passengers have the right to be taken to an agreed place and have an obligation to pay the agreed fare. If using Grab or Gojek, before ordering, passengers must enter the pick-up point and the destination in the application, and then the price charged to get to that destination will immediately be listed.

The legal subject in online transportation is not only consumers as users. The consumer and the driver also enter into an agreement, from a legal point of view of transportation where the work is carried out by the company. Online transportation operators are included in business activities because they charge fees or tariffs to consumers who use online transportation services, who realize that one of the important parts in trade is profit.<sup>11</sup>

In online-based transportation, there is no working relationship between the employer and the worker. What exists is a partnership relationship and is bound by an agreement, in which there is a form of legal protection between the companies that provide online transportation services and drivers as carriers, with the principle of freedom of contract. The partnership between the carrier and the online company is in terms of joint business which in its implementation is bound by partnership agreements and transaction services.

The purpose of the partnership here is to work together in business between online transportation service operator companies and drivers, or it can also be done by two or more parties, and within a certain period of time with the aim of achieving mutual benefits in accordance with the principle of mutual need. For example, when a consumer need two or four-wheeled transportation services, the consumer will open an operator company application, then will contact the carrier which is the driver of the two or four-wheeled vehicle needed by the consumer.

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<sup>11</sup> Margaretha Evelin Asmara Putri and Moch Najib Imanullah, "Tanggung Gugat Perdata Angkutan Umum Berbasis Online Terhadap Penumpang Apabila Terjadi Suatu Kecelakaan Lalu Lintas," *Jurnal Privat Law* 7, no. 2 (2019): 223-227.

### 4.3. Relationships between Consumers, Drivers, and Online-Based Transportation Companies

In its implementation, online transportation parties have obligations and rights, both verbally and in writing and binding on the parties, the contents of the agreement must be fulfilled. These parties have the following rights and obligations:<sup>12</sup>

#### a. Online Transportation Driver

There is a legal relationship between drivers and consumers as users of online transportation services, as follows.

- 1) Online transportation drivers can reject or accept online orders through the application. When receiving an order, the driver has the right to receive payment for the transportation services performed by him;
- 2) Passengers can safely reach the agreed destination from the pick-up point according to the application, and provide services according to standard operating procedures.

#### b. Legal Relationship between Online Transportation Driver with the Application Company:

- 1) The driver has the right to share profits based on a profit sharing and reward system, based on the points earned by the driver, and receive protection when working as part of an application company partner.
- 2) Drivers have an obligation to provide part of the income from consumer orders to application provider companies, provide good service to customers or consumers, and maintain the good name of the company.

#### c. Relationship between Passenger and Online Transportation Driver:

- 1) The right of the passenger as a consumer is to arrive at the agreed destination safely from the pick-up point according to the provisions in the application and receive transportation facilities that must be provided by the driver as a carrier, such as helmets and masks.

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<sup>12</sup> Ananda Amalia Tasya and Hilda Yunita Sabrie, "Implementasi Sifat Hukum Pengangkutan Dalam Pelaksanaan Ojek Online," *Perspektif* 24, no. 3 (2019): 156–167.

- 2) The obligation of the passenger is to pay when it has arrived at the agreed destination according to the application point, based on the price stated in the application.
- d. Relationship between Passenger and Application Company:
- 1) The right of passengers is to get facilities and transportation insurance services provided by the application company;
  - 2) The obligation of the passenger is to comply with all terms and conditions imposed by online-based vehicle companies as outlined in the application, and when using online transportation services.
- e. Online Transportation Application Company
- 1) There is a legal relationship between application companies and online transportation drivers, including:
    - a) The application company has the right to benefit from the driver's income according to the partnership agreement
    - b) Application companies have an obligation to provide bonuses for drivers and are given work protection as long as the driver is a partner of the company.
  - 2) Between the application company and the passenger there is also a legal relationship as follows.
    - a) The application company has the right to provide feedback or allegations if the passenger violates the rules.
    - b) The application company has an obligation to protect the personal data of passengers.

#### **4.4. Do Consumers as Users of Online Application-Based Transportation Services Get Legal Protection If an Accident Happens?**

The regulation that confirms that consumers of online-based transportation get legal protection is Article 10 of the Traffic Law. The article states that as referred to in Article 7 paragraph (2) regarding all traffic and road transportation operations mentioned in this article, it is obligatory to ensure security, safety and comfort in traffic. In addition, this law is supported by the regulation of the Ministry of Transportation No. 26 of 2017 concerning the Implementation of Transportation.

Protection for consumers if an accident occurs is also written on the online transportation application website. For example, the Indonesian Gojek company in the Terms and Conditions states that it will guarantee compensation. This online transportation company will provide a guarantee in the event of an accident of IDR 10,000,000 to consumers, then if treated in a hospital, IDR 5,000,000 will be given, and if the consumer loses goods, then Gojek will provide compensation of IDR 10,000,000 which is valid for instant courier service. Online transportation business actors such as Gojek and Grab, also wrote guarantees not only for passengers but also drivers. If the driver suffers a maximum loss of Rp. 25,000,000.00 (twenty-five million rupiah), then the amount of the loss can be filed. However, if the amount of the loss is below Rp. 25,000,000, then he cannot apply for compensation.

All accidents must be reported to the company where the company has collaborated with the insurance company, and is given 30 (thirty) days to make a report.

According to Article 1 number 2 of the Law on Consumer Protection no. 8 of 1999 (hereinafter UUPK), users of online transportation services, related to this are online transportation passengers, categorized as consumers. The article describes, "Consumers are every person who uses goods and/or services available in the community, both for the benefit of themselves, their families, other people and other living creatures and not for trading". Meanwhile, online transportation drivers and application companies can be categorized as business actors, which is described in Article 1 number 3 of the UUPK: "Business actors are every individual or business entity in the form of legal entities or non-legal entities that are established and domiciled or carry out activities within the jurisdiction of the Republic of Indonesia, either individually or jointly, through an agreement to carry out business activities in various economic fields."

If there is a dispute or problem between the parties to the carriage agreement, which are online drivers and consumers, then the only parties involved in the dispute are passengers and online vehicle drivers. The online transportation company is not included as a party involved in the dispute because it is only a provider of application services as a liaison, not a party that provides online transportation services.

Regarding passengers, the Shelter also functions as a place for complaints and resolving problems or disputes between passengers and drivers, for example in Gojek online transportation. However, not all passengers know about the existence of the Shelter. Basically, if there is a dispute or dispute between the passenger and the online vehicle driver during transportation, the passenger can immediately report the problem to the online transportation company, either by giving a comment or rating through the application or sending an email to the online transportation company so that the driver the person concerned will receive sanctions from the company in the form of suspension (the condition of the driver's account being unable to accept orders) even up to termination of employment.

Consumer protection law has regulated and guaranteed the rights of every consumer using online transportation services. Consumers also receive legal protection from the Consumer Protection Agency as well as from business actors which are Online-Based Transportation Companies and receive compensation for any losses they experience.

## **5. Conclusion**

There is a difference between public transportation and online-based transportation, not only in the rules, but also the responsibility of the carrier if an accident occurs to a passenger or there is damage to goods. Public transportation organized by the government or the public is subject to the law, and if there is an accident, the transportation company, based on a reciprocal agreement, is subject to Articles 1320 and 1338 of the Civil Code, is responsible for the loss suffered by passengers as well as damage to goods.

However, this online-based transportation of passengers or goods is different, where between the driver and the company as the operator, and between the driver and the passenger or the owner of the goods, they are bound in a partnership agreement which still has responsibility for consumer losses as written in the terms and conditions.

So, Law Number 29 of 2009 concerning Road Traffic and Transportation and Regulation of the Minister of Transportation of the Republic of Indonesia Number 108

of 2017 concerning the implementation of transportation of people with non-route public motorized vehicles do not regulate the obligations and responsibilities of online transportation companies in enforcing compensation rules. This is because according to Article 173 UULLAJ, online transportation companies are not public transportation companies because they do not have a transportation operation permit. This company only has the identity of a limited liability company that is engaged in providing information technology-based application services (online). If there is a dispute between the driver, the settlement can be resolved at the shelter by conducting deliberation. If an agreement is not reached, the dispute resolution can be resolved through the agreement of the two parties to the dispute.

So, the rights of passengers and goods owners as consumers who use online transportation services get legal protection from the law and these online-based transportation companies.

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