

## PRINCIPLES INTEGRATION OF LEGAL CERTAINTY AND JUSTICE IN PUBLIC TRANSPORTATION RATES POLICY

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### ABSTRACT

Online and conventional-based public transportation rates can be adjusted to possible fairest calculation by considering mileage, gasoline, and spare parts maintenance, this is as well as by primarily paying attention to and considering the driver partners who are members of it. Those circumstances will create effectivity and efficiency in order to have stable economy for Indonesia and the people. This study uses a normative juridical approach with the specification of the research is descriptive analytic. The results of the study show that the conformity policy concept of economic income in transportation businesses of both online-based public transportation and conventional public that integrates the principles of legal certainty and justice must carry out a reconstruction of the provisions of Article 183 paragraph 1 of Law no. 22 of 2009 concerning Road Traffic and Transportation.

### Keywords

*integration; Principles of Legal Certainty and Justice; Public Transportation Rates Policy*

### INTRODUCTION

Calculation of both online public transportation rates and conventional public transportation is obtained from mileage taking into account fuel, vehicle facilities, and maintenance of vehicle spare parts which are accumulated at the upper and lower limit rates that have been enacted in Law no. 22 of 2009 concerning Road Traffic and Transportation.

If there is a reconstruction of Article 183 paragraph 1 of Law no. 22 of 2009 concerning Traffic and Road Transportation, which contents are to take over completely toward calculation, determination, and enactment of rates in the public transportation sector both online and conventional, then there will be effect on online public transportation business such as Grab Car, Go Jek, Maxim, and InDriver. Based on the reconstruction, their riders and drivers which are called as partners are no longer in their confinement because they do not have a legal protection to collect 20% (twenty) percent commission from those partners, because the partners invest themselves in those online public transportation business; fuel, spare parts, quota, insurance, and others are genuinely from the partners. This situation is categorized as individual business that is subjected to personal income tax.

The substance of determining online and conventional-based public transportation rates which in line to the principles of legal certainty and justice should be able to provide equal welfare opportunities to all Indonesian.

The need for legal provisions and legislation in the field of online-based public transportation that are more specific with online and conventional-based public transportation rates adjustments is an urgent legal realm for the prosperity of all Indonesian. At present the people are very enthusiastic about having and running businesses independently via managing and using the business opportunities as partners of online-based public transportation.

This needs to be supported by a strong legal protection in reforming all legal provisions and statutory regulations in which the legal reflexivity must contain the interests of all Indonesian; for those whose belong

to public transportation business both in online and conventional by paying attention to the law accordance hierarchy.

The scale of justice varies greatly from place to place. Each scale is defined and fully determined by society in accordance with the existing public order (Santoso, 2012; Tapia-Hoffmann, 2021a), as the law aims to facilitate humans to a fair, prosperous, and happy life (Nasir et al., 2022; Rahardjo, 2009). Likewise, with the determination of both online and conventional-based public transportation rates, the balance in determining the rates is essentially to achieve social justice for the benefit of all Indonesian.

Rates are defined as the price of transportation services paid by users (Adisasmita, 2015; RUSCHE et al., 2021). The difference in rates between online and conventional public transportation can result to social inequality. This makes it difficult to achieve social justice in the national economy for the welfare development of all Indonesian. Therefore, it is necessary to have legal certainty that will lead society to regularity (Gunarsa & Sidharta, 2013; Tapia-Hoffmann, 2021b).

Legal certainty refers to the implementation of the order of life which in practice is transparent, orderly, consistent, consequential, and cannot be influenced by subjective circumstances in people's lives (Eliantonio & Dragos, 2022; Susanto, 2014) so that rates conformity will provide a clear balance if it is based on legal certainty of laws and regulations no. 22 of 2009 concerning Road Traffic and Transportation.

The policy theory formulated by Federick defines policy as a series of actions or activities proposed by a person, group, or government in a certain environment where there are obstacles or difficulties and opportunities for implementing the proposed policy in order to achieve certain goals (Agustino, 2008; Wiryawan, 2020). One of the main keys to quality policy management is the high intensity of public participation. Dialogue with the public is the truth of a policy and it is the main means for policies that are ready to be used (Chevalier, 2021; Sinambela, 2008).

The policy contained in the Law Number 22 of 2009 is only *lex specialist* in the rates suitability sector, but comprehensively can reach all layers of the legislation provisions in *lex generalist* manner to be beneficial to create a legal certainty that aims to realize social justice for all.

Online-based transportation is substantially an engagement. Parties related to this type transportation are application service providers, drivers, riders, merchants, and consumers (Giaoui, 2019), in this circumstances, as a result, the government must play a role in protecting its citizens and providing legal certainty for all parties join in the transactions (Pérez González, 2019; Wicaksono, 2017) considering the legal concept is oriented to the idea of law namely formal justice, legal certainty, and expediency (Giaoui, 2019; Spaak, 2009).

## METHODS

This research used normative legal research or dogmatic law research. The approaches used were statute approach, case approach, historical approach, comparative approach, and conceptual approach. The data were from secondary data in the form of literature and legal materials such as laws and regulations, research results, web sites, scientific journals, as well as literature related to policies regarding online and conventional based public transportation rate determination. In addition, researchers also conducted interviews not only with passengers and companies of both online and conventional public transportation, but also the Indonesian Consumers Foundation.

Qualitative normative analysis was the technique used, namely research by describing the conditions and facts about object of the research. The data obtained were described in accordance with the main issues that were studied qualitatively juridical. The legal facts obtained were analyzed with various relevant laws and regulations, in addition some theories and doctrines, or expert opinions also used to find answers of the issues discussed.

## RESULTS

Indonesia's trade liberalization policy is about a balance between internal and external factors. This accommodate some economic interests such as the process of production, consumption, and distribution of mass people in the country, it also deals with foreign parties such as international trade along with its institutional aspects and international agreements (Pratiknya, 1999; Yetniwati, 2016), Basic rules of international economic law refers to 2 (two) main principles of freedom, namely freedom of communication and freedom of trade (Gunarsa & Sidharta, 2013).

The development of Indonesia national law is implicitly reflects a growing process of social change towards modernization which is packaged in an orderly and continuous legislation process by incorporating socio-cultural aspects that support the intended direction of change (Atmasasmita, 2003).

Online-based public transportation business, which at some point, face ultimately legal dispute because an existing issue of unfair competition and monopolizes market share in public transportation businesses. This issue appear because a believe that consumers feel more comfortable, safe, efficient, and effective in terms of time, costs, and effort when using online-based instead of conventional public transportation.

The legal policy regarding determining appropriate rates between online-based and conventional public transportation is needed. This is in view of the services provision in public transportation modes when dropping off and picking up passengers of these public transportations, so that legal policies regarding rate provisions that are equal with the distance traveled on the travel route. Public transportation accommodations with existing vehicle facilities can impact revenue gains for online-based public transportation entrepreneurs with conventional public transportation companies which are principally oriented towards State-Owned Enterprises (BUMN). In this way, economic stability will automatically occur in state revenues both in the taxation sector and/or in all other sectors to advance national development based on Pancasila and the 1945 Constitution in realizing legal certainty.

The ongoing gap that has occurred so far between companies of online and conventional -based transportation will find appropriate settlement if there is a suitable policy to accommodate the above issue; a legal policy to determine proper rates of the two public transportation routes with the creation of a statutory provision legislation adapted to the situation and travel conditions to realize legal certainty.

Therefore, it is important to create certainty of laws and regulations that can be enforced by applying flexibility of adjustments in the application of existing conventional public transportation laws based on Law No. 22 of 2009 concerning Road Traffic and Transportation. The law is the basis for legal renewal to gain economic progress in the field of nowadays public transportation: online and conventional. In addition, the law is also as a form of law enforcement and a means to avoid unfair business competition in both transportation modes.

In implementing a policy of determining rates for online and conventional-based public transportation, it must be matched with the current situation of social justice that has been created and enforced in advance in the provisions of Law no. 22 of 2009 concerning Road Traffic and Transportation. The law is clearly stipulates that public transportation rates are well accommodated and in line with law and justice, this will provide the widest possible benefit in the correctness of rearranging the existing laws regarding public transportation in Indonesia which is based on social justice.

In adjusting rates for online and conventional-based public transportation, especially regarding rates that not on routes or in the form of online or conventional taxis, which are not only concerned with improving the internal requirements of each of these online-based public transportation application companies such as GrabCar, Go Jek, Maxim, and In Driver regarding the Due Diligence Test in the form of KIR and Business Permit Cards in the field of online-based public transportation such as KSEP, but it is necessary to prioritize the school of business sociology in determining rates that are specifically determined by a public transportation company which business license is in accordance with Law No. 22 of 2009.

Thus, in order to achieve a balance in determining the application of online and conventional-based public transportation rates which travel routes are not in the form of taxis, or those in routes with phenomena and conditions and situations in the field of public transportation work, it is necessary to be controlled by the Government to provide a legal certainty that synchronizes with a Limited Liability Company provision. This can attract every online-based public transportation application company to be a market place that no longer untouched by the provisions of Law No. 22 of 2009. Legal truth can be created as fairly as possible in this booming land transportation sector. This is in line with the high level of public demand for public domain that is safe, effective, efficient, comfortable, and low-cost online-based public transportation. So for the current discourse to avoid predatory pricing or business characteristics that will shut down the same type of business in their field, conventional public transportation really needs legal provisions that are as fair as possible.

As a new discourse in adjusting rates for online and conventional-based public transportation, the control over the determination of rates is no longer referred to in the provisions of Article 183 paragraph 1 of Law No. 22 of

2009 concerning Road Traffic and Transportation, namely the determination of public transportation rates is determined by public transportation companies with the approval of the Government of the Republic of Indonesia, this matter must be taken over as a whole and in full by the Government. The goal is to realize a balanced and socially fair rate setting, which is implemented and enforced for those both types of public transportation.

Phenomenal matters in the provisions of Law No. 22 of 2009 which specifically regulates the determination of public transportation rates must be adjusted in a fair and balanced manner, so that they are equal to the rates applied to both online-based and conventional public transportation businesses. This is to achieve a legal truth that is beneficial to all parties involved in these two types of public transportation business. Thus, the control and determination of the application of rates from the government for the business climate in these two types of public transportation is currently in need of renewal.

Determination of policies for adjusting conventional and online-based public transportation rates in a socially fair manner based on legal certainty in the provisions of law and regulations No. 22 of 2009 needs to pay attention to the relevant calculations between the pick-up and drop-off distances of passengers. In order to create conformity and balance related to a number of expenses in the form of fuel, spare parts, and maintenance of the two types of transportation business, in which there should be no differences from the aspect of providing safe, comfortable, and orderly services. In addition, ensuring effectiveness and efficiency also needs directly or indirectly attention that is in terms of time, cost, and effort, in order to support the safety of passengers as users and/or consumers. These matters need to be emphasized in the renewal of the law concerning the adjustment of the two types of public transportation rates that are socially fair for all Indonesian, and aim to increase the local economy on a par with improvements in the global and international economy. In legal reality, at least some norms, dealing with the minimum share of every citizen, must be fair and must be implemented fairly. This ideal should be achievable. Even in the society that is full of injustice, for example Indonesian society has been able to narrow down the tension between minimum ideals and the way these ideals are implemented (Ali, 2009).

Social inequality avoidance in achieving definite prosperity based on legal provisions in a policy for determining adjustments to the application of Conventional and Online-based public transportation rates will provide significant guidance to methods of creating and or inventing new laws that can be applied to all levels of Indonesian society, so that the principle of obtaining the benefits of social justice in legal certainty in the policy of the Government of the Republic of Indonesia in reforming the provisions governing public transportation rates in Law Number 22 of 2009 will bridge to income equality in running a Conventional and Online public transportation business in various types of transportation modes both land, sea, and air in accordance with existing policies.

## CONCLUSION

Based on the research results, it can be concluded that the policy of determining rates for online and conventional public transportation must be adjusted to the provisions in Law no. 22 of 2009 concerning Traffic and Road Transportation which controls to determine the amount of rates that are balanced and socially just lies in the authority of the Government of the Republic of Indonesia as a whole from all types of businesses in the transportation sector both privately and corporately, the application of these rates can be implemented in a balanced manner according to the situation and condition of the national economy, so that the achievement of a prosperous economic income for all Indonesian in the public transportation business obtains legal certainty.

The policy concept of conformity of economic income in online and conventional public transportation that integrates the principles of legal certainty and justice must carry out a reconstruction of the provisions of Article 183 paragraph 1 of Law no. 22 of 2009 concerning Road Traffic and Transportation which so far reads as follows: "Passenger rates for the transportation of people not on routes using taxis as referred to in Article 151 letter a are determined by Public Transport Companies with the approval of the Government in accordance with their respective authorities based on the stipulated minimum service standard", is reconstructed as follows: "Passenger fares for the transportation of people not on routes using taxis as referred to in Article 151 letter a are determined absolutely by the Government in accordance with the calculation of the national economy in adjusting the upper and lower limits of rates implemented in the online as well as conventional public transportation business", so that social justice for all Indonesian people can be achieved.

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