

## Contradictions of Online Motorcycle Taxi (Ojek) Arrangements as Public Motor Vehicles in Indonesia

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### Abstract

*There are various types of transportation services as facilities for community mobilization in Indonesia, one of them is an Ojek. Ojek as a two-wheeled transportation service considered as alternative public transportation which can transport a person from one place to another in a fast way and at affordable costs. With the development of technology and transportation in this digital era, conventional motorcycle taxi (in Indonesia: ojek konvensional) transformed into online motorcycle taxi (known as ojek online), a transportation service using an online application as the ordering media. However, currently, there is no regulation that regulates or legalizes the existence of the motorcycle taxi itself, until the emergence of online motorcycle taxi. With the issuance of Minister of Transportation Law Number 12 of 2019, which gave a perspective that motorbikes were legalized into public transportation, while the regulation in Indonesia Transportation Law stated that motorbikes were not public transportation and Constitutional Court Decision Number 41/PUU-XVI/2018 refuse the legality of motorbikes as the public transportation. The contradiction of the regulation of online motorcycle taxi has resulted an unclear legality of motorbikes used as an online transportation in Indonesia. Transportation Law as a higher regulation than Minister of Transportation Law does not regulate the classification of motorbikes as a public transportation which resulted a contradiction on the basis of the hierarchy of laws in Law Number 12 of 2011.*

### Keywords

ojek online; motorcycle taxi; transportation law; public transportation; indonesia motorcycle taxi regulation.



## I. Introduction

Transportation is an activity that facilitates the flow of movement of people and/or goods so as to increase the usability value of the object being transported to the destination. According to Abdulkadir (1991), believes that transportation is a series of activities to load goods or passengers into the means of transportation, carry goods or passengers from the place of loading to the place of destination, and unload goods or passengers from the means of transportation to a predetermined place. Meanwhile, according to Soekardono (1981), in essence, transportation consists of the movement of places both regarding objects and about people, because the movement is essential in order to achieve and increase benefits and efficiency. The density of the volume of vehicles in urban areas makes motorcycles a solution to avoid congestion. This resulted in a range of transportation services being supplied to the community by motorcycles, such as online motorcycle taxis (ojek online), which are still in use today.

Transportation at this time has become a basic need for community activities, especially the activities of the people of North Sumatra. These activities make transportation an important choice with an increasing number of populations using transportation modes, especially public transportation. (Agussani, 2020)

Based on article 1 number 20 UULAJ, a motorcycle is a two-wheeled motorized vehicle with or without houses and with or without a side carriage or a three-wheeled motorized vehicle without houses. Likewise, as regulated in Article 3 paragraph (2) of Government Regulation Number 74 of 2014 concerning Road Transportation (hereinafter referred to as PP No. 74 of 2014), motorbikes are a form of motorized vehicle other than passenger cars and buses. According to its classification, motorcycles are not included in public motorized vehicles based on article 47 paragraph (3) of the UULAJ. However, with the phenomenon of motorcycle taxis (ojek) and online motorcycle taxis (ojek online). It is as if the type of motorcycle is included in the public motor vehicle class. Transportation services provided by ojek and ojek online fulfill the elements of the operation of public motorized vehicles, where ojek and ojek online transports people and/or goods at a fee based on the distance from the pick-up point to the transportation destination.

Based on this phenomenon, the Constitutional Court took a stance with the issuance of Constitutional Court Decision No. 41/PUU-XVI/2018 concerning the Judicial Review of the UULAJ Law against the 1945 Constitution of the Republic of Indonesia on a lawsuit filed by 54 drivers of online motorcycle taxi, which demands the determination of the legal status of motorcycles as public motorized vehicles. In the decision, the Constitutional Court stated that motorcycles cannot be categorized as a type of public motorized vehicle with a philosophical basic construction that the public type of motorized vehicle must realize security and safety, especially those that are transported are people. The regulation regarding public motorized vehicles is to realize security and safety for road transportation in accordance with the philosophical basis of UULAJ as contained in the Preamble to letters a and b as follows:

- a. That Road Traffic and Transportation has a strategic role in supporting development and national integration as part of efforts to promote public welfare as mandated by the 1945 Constitution of the Republic of Indonesia;
- b. That Road Traffic and Transportation as part of the national transportation system must develop its potential and role to realize security, safety, order and smoothness of traffic and Road Transportation in the context of supporting economic development and regional development.

Based on the explanation above, the Constitutional Court is of the opinion that:

That motorcycles are not road transportation intended to transport people and/or goods in connection with the classification of public motorized vehicles, because they cannot provide security and safety for drivers, passengers and road users. Moreover, public transportation is related to the collection of transportation costs, so the type of motorized vehicle used must be truly appropriate and in accordance with its designation. With the issuance of the Constitutional Court's decision, the pros and cons emerged from various circles. According to Djoko Setijowarno as a transportation observer, the Constitutional Court's decision is considered appropriate because the number of accidents on roads which are dominated by motorcycles is the reason for online motorcycle taxis not proper as a public motor vehicle, motorcycles themselves are known to be the numerous death cause on the highway (Putra, 2018).

Other responses also emerged among online motorcycle taxis drivers who are against the decision because they feel the existence of online motorcycle taxis has no legal basis in Indonesia and there is no clear legal status for the motorcycles used as a source of income. The Ministry of Transportation then responded to this by giving the authority to regulate

online motorcycle taxis as well as conventional motorcycle taxis to the local government to see that the existence of motorcycle taxis is beneficial for the local community (Saputro, 2018). However, this actually triggers turmoil because there are regulations that are not uniform from one region to another because the Central Government does not provide guidance in making regional regulations related to online motorcycle taxis

For this matter, the Ministry of Transportation then issued the Minister of Transportation Regulation Number PM 12 of 2019 concerning the Protection of the Safety of Motorcycle Users Used for the Interest of the Community (hereinafter referred to as Permenhub No. 12 of 2019). The Permenhub was issued with the aim of providing legal protection for motorcycle users, especially motorcycle drivers and passengers used for transportation services such as conventional motorcycle taxis and online motorcycle taxis. In the regulation, there are regulations regarding safety aspects that must be complied with by both drivers and motorcycle passengers, to regulations regarding tariffs set by application provider companies and online motorcycle taxis drivers.

Permenhub No. 12 of 2019 then triggered various opinions, especially because it contradicted the UULLAJ and the Constitutional Court Decision. The Chairperson of the Advocacy Division of the Indonesian Transportation Society (MTI) who was involved in making the Minister of Transportation stated that there was a rejection of the legality of online motorcycle taxis as a public motor vehicle, therefore the name of the regulation was changed to use the term Motorcycle Used for the Interest of the Community (Ravel, 2019). In addition to the Permenhub, it also does not clearly state the meaning of the interests of the community itself, UULAJ which is used as a consideration in making the Permenhub also raises the perspective that Permenhub No. 12 of 2019 is the legal basis for the ratification of motorcycles as a new type of public motorized vehicle.

Regulation of motorcycles in Permenhub No. 12 of 2019 which reflects the criteria for public motorized vehicles, such as the services provided and the element of collecting fees for motorcycle transportation services. In fact, UULAJ does not regulate the classification of motorcycles as public motorized vehicles, so the enactment of Minister of Transportation Regulation No. 12 of 2019 should be questioned which article in UULAJ refers to. Apart from the contradiction between Permenhub No. 12 of 2019 with UULAJ and Constitutional Court Decision No. 41/PUU-XVI/2018, regulations for online motorcycle taxis very necessary to accommodate the implementation of transportation on line. Furthermore, online motorcycle taxis is currently in great demand and brings many benefits to the people in Indonesia. Based on this description, the author considers it necessary to examine the legality of motorcycles as public motor vehicles in terms of transportation law.

## **II. Review of Literature**

### **2.1 Motorcycle Regulation in Online Motorcycle Taxis (Ojek Online) in Indonesia**

Online motorcycle taxis or also known as ojek online has now become a characteristic of transportation services in Indonesia. With all the conveniences of service provided by application companies, online motorcycle taxis are able to attract public interest and are able to compete with other public transportation on the streets. Motorcycles as a mode of transportation in the operation of online motorcycle taxis are also considered to be a solution in the midst of traffic jams in big cities, so it's no wonder that online motorcycle taxis can develop rapidly and become a preference for people in fulfilling their daily transportation needs.

When motorcycle taxis were in their infancy in the 1960s, there was widespread resistance to their operation from numerous political parties (Hanggoro, 2015). The control of motorcycle taxis will be carried out because the use of motorbikes as a means of transportation is considered contrary to traffic regulations where motorcycle taxis are not included in the type of mass transportation in Jakarta. However, until now there is no regulation that regulates or legalizes the existence of motorcycle taxis themselves, until the emergence of online motorcycle taxis as a transformation of two-wheeled transportation services.

In operating online motorcycle taxis in Indonesia, GoRide and Grab Bike use a two-wheeled mode of transportation in the form of a motorcycle. In Chapter VII UULAJ it has been regulated regarding the classification of vehicles as follows:

- (1) The vehicle consists of:
  - a. Motor vehicle; and
  - b. Non-Motorized Vehicles.
- (2) Motorized Vehicles as referred to in paragraph (1) letter a are grouped by type:
  - a. Motorcycle;
  - b. Passenger car;
  - c. Bus cars;
  - d. Freight cars; and
  - e. Special vehicles.
- (3) Motorized Vehicles as referred to in paragraph (2) letter b, letter c and letter d are grouped by function:
  - a. Individual Motorized Vehicles; and
  - b. Public Motorized Vehicles.
- (4) Non-motorized vehicles as referred to in paragraph (1) letter b are grouped into:
  - a. Vehicles driven by human; and
  - b. Vehicles driven by animal.

The classification of vehicles as regulated in the UULAJ above is further elaborated in PP No.74 of 2014 as the implementing regulation of UULAJ. In Article 3 paragraph (2) of PP No. 74 of 2014, which are categorized as motorized vehicles include Motorcycles, Passenger Cars, Bus Cars, and Goods Cars. Motor Vehicles that can be used as People's Transportation are further regulated in Article 4 paragraph (1), namely, that the Transportation of People using motorized vehicles can be in the form of Motorcycles, Passenger Cars, or Bus Cars.

According to Article 47 UULLAJ, motorcycles are motorized vehicles that are not included in the classification based on function, namely individual motorized vehicles or public motorized vehicles. Article 1 point 10 UULAJ provides the understanding that Public Motorized Vehicles are any vehicle used to transport goods and/or people for a fee. Based on this understanding, the elements of public motorized vehicles can be drawn, namely the existence of transportation service activities and service fees. For these elements, the essence of the implementation of online motorcycle taxis has fulfilled the element of transportation by public motorized vehicles, where motorcycles are used to transport people in online motorcycle taxi operations with a service fee in the form of online motorcycle taxi rates. However, motorcycles themselves are not classified as public motorized vehicles in UULLAJ even though they have functions similar to the elements of public motorized vehicles. The legality of the classification of motorcycles is a major problem in the implementation of online motorcycle taxis where the phenomenon of online motorcycle taxis has mushroomed without a clear legal basis.

Hence, in 2015 was the first year for the implementation of online motorcycle taxis in Indonesia, where applications for transportation service providers began to appear, both formed by domestic companies and foreign companies that were expanding to Indonesia. Responding to this phenomenon, the Ministry of Transportation then issued Notification Letter Number UM.3012/1/21/Phb/2015 on November 9, 2015 which was signed by Ignasius Jonan as Minister of Transportation. The letter addressed to the Head of the State Police of the Republic of Indonesia contains the following notification;

1. In connection with the increasingly widespread use of non-public transport motorized vehicles (motorcycles, passenger cars and freight cars) using internet applications to transport people and/or goods for a fee (Uber Taxi, Go-Jek, Go-Box, Grab Bike, Grab Car , Blu-Jek, Lady-Jek) thus causing pros and cons in the community, especially public transport operators.
2. The regulation of motorized non-public transportation vehicles mentioned above in accordance with the provisions of Law Number 22 of 2009 concerning Road Traffic and Transportation and Government Regulation Number 74 of 2014 concerning Road Transportation does not meet the provisions as public transportation.
3. Based on the foregoing, it is requested that you take steps in accordance with the laws and regulations.
4. That's all, thank you for your attention and cooperation.

The notification letter is understood by the public as a form of regulation that is imperative or contains a prohibition for online road transportation companies to no longer run their business (Wijaya, 2016). Various kinds of responses emerged, ranging from support, criticism, and rejection from the public through social media, including the President of the Republic of Indonesia, Joko Widodo, who gave his response through Twitter and Facebook accounts. He is of the opinion that motorcycle taxis as an alternative and innovative mode of transportation are needed by the people, so that the operation of motorcycle taxis should be given transitional regulations so that security and safety are guaranteed.

Within 12 hours, the Minister of Transportation then lifted the ban and reinstated online transportation services. The revocation was welcomed by many parties, but still the operation of online motorcycle taxis does not get legal certainty in Indonesia and since then, online motorcycle taxis have operated without any laws and regulations governing its implementation. Until 2018, 54 online motorcycle taxi drivers submitted an application to the Constitutional Court regarding the review of UULAJ against the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution). In their petition, the petitioners submitted a material review of Article 47 paragraph (3) of the UULAJ which was deemed to be contrary to Article 27 paragraph (1) and paragraph (2) and Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia which reads as follows; Article 27

- 1) All citizens have the same position in law and government and are obliged to uphold the law and government with no exceptions
- 2) Every citizen has the right to work and a decent living for humanity Article 28D
- 3) Everyone has the right to recognition, guarantee, protection and fair legal certainty and equal treatment before the law

The essence of the petition of the petitioners is that because Article 47 paragraph (3) of the UULAJ does not regulate and function motorcycles as individual motor vehicles and public motorized vehicles, it is considered contrary to Article 27 paragraph (1), Article 27 paragraph (2) and Article 28D paragraph (1) of 1945 Constitution. This is based on the fact that the operation of online motorcycle taxis is to fulfill the public's demand as consumers for the needs of people's public transportation so that there should be a guarantee of

constitutional rights for applicants as online motorcycle taxi drivers in the form of equality in law, recognition, guarantees, protection and even certainty fair law. The constitutional judges then gave legal considerations which were summarized as follows:

- Article 47 paragraph (3) UULAJ is a legal norm designed to carry out social engineering so that people use road transportation that can realize security and safety both in terms of the use of individual and public motorized vehicles. Meanwhile, Article 27 paragraph (1) of the 1945 Constitution relates to the equality of the position of citizens in the event that there is a violation of the law and if they will sit in the government, so that it has nothing to do with motorized vehicles.
- In relation to Article 27 paragraph (2) of the 1945 Constitution, that Article 47 paragraph (3) of the UULAJ does not prevent the Petitioners from working and earning a decent living, because based on the facts, motorcycle taxis can still run even though Article 47 paragraph (3) does not regulate the classification motorcycle as a public motor vehicle. The arrangement for the classification is intended to realize safe and secure road transportation for drivers, passengers and other road users. Thus, motorcycles are not road transportation intended as a means of transporting goods and/or people.
- There is no correlation between Article 28D paragraph (1) of the 1945 Constitution and Article 47 paragraph (3) of the UULAJ relating to the rights of the Petitioners to recognition, guarantee, protection and fair legal certainty and equal treatment before the law. This is because Article 28D paragraph (1) of the 1945 Constitution regulates the rights of citizens when dealing with the law.
- The Constitutional Court did not turn a blind eye to the phenomenon of motorcycle taxis. However, this phenomenon has nothing to do with the constitutionality of Article 47 paragraph (3) of the UULAJ, because if you look before the existence of online motorcycle taxis, conventional motorcycle taxis still run without being disturbed by the existence of Article 47 paragraph (3) of the UULAJ.

Based on these legal considerations, the Constitutional Court then handed down a decision stating that he had rejected the petitioners' petition in its entirety as outlined in the Constitutional Court Decision Number 41/PUU-XVI/2018. The thing that needs to be underlined is the ratio decidendi of the Constitutional Court, which states that in the case of road transportation that transports goods and/or people for a fee, the safety and security aspects must be met, while motorcycles are not road transportation criteria that meet the safety and security aspects in terms of transportation. people, so that motorcycles cannot be classified as public motorized vehicles in Article 47 paragraph (3) of the UULLAJ.

After the issuance of the Constitutional Court's decision, there were pros and cons opinions in the community, especially among online motorcycle taxi drivers who felt that the law in Indonesia did not accommodate their work. Seeing this turmoil, the Minister of Transportation finally threw the regulation of online motorcycle taxis to local governments as a solution to the legal vacuum of online motorcycle taxi operations (Qur'ani, 2018). Local governments are encouraged to make Regional Regulations that regulate the implementation of online motorcycle taxis in each region because motorcycle taxis are considered as local wisdom. Bogor and Balikpapan are regions that have regulated online motorcycle taxis in their regional regulations, namely Bogor Mayor Regulation Number 21 of 2017 and Balikpapan Mayor Regulation Number 25 of 2017. regional regulations which are regional policies. Not all regions then make regional regulations regarding the implementation of online motorcycle taxis, such as East Java Province which refuses to make these regulations because they are not under their authority. Furthermore, the scope of online motorcycle taxis is not only in one area but also not limited from one area to another.

Alternative solutions for technical regulation of online motorcycle taxis through local regulations do not work well and do not solve the problem of legality in operating online motorcycle taxis that use motorcycles as a mode of public transportation. Thus, the Ministry of Transportation has begun to take a stand against the phenomenon that has involved many people who work as online motorcycle taxi drivers. On March 11, 2019, the Ministry of Transportation ratified the Regulation of the Minister of Transportation Number PM 12 of 2019 concerning the Protection of the Safety of Motorcycle Users Used for the Interest of the Community (hereinafter referred to as Minister of Transportation Regulation No. 12 of 2019). The Permenhub was issued with the aim of providing legal protection for motorcycle users, especially motorcycle drivers and passengers used for transportation services.

Article 2 Permenhub No. 12 of 2019 regulates the scope of regulations, where the Minister of Transportation Regulation applies to conventional motorcycle taxis and online motorcycle taxis. Interestingly, conventional motorcycle taxis are also regulated in the Minister of Transportation so that their existence is recognized and also provides a legal umbrella for the implementation of conventional motorcycle taxis. In the regulation, there are provisions regarding aspects that must be obeyed by both drivers and motorbike passengers, namely safety aspects, security aspects, comfort aspects, affordability aspects and regularity aspects. The Minister of Transportation also regulates the formula for calculating service fees, the mechanism for stopping the operation of motorcycle use, community protection, supervision and community participation.

The ratification of the Minister of Transportation then raises several questions, especially regarding the term motorcycle used in the regulation, namely "Motorcycles Used for the Interest of the Community". The Chairperson of the Advocacy Division for the Indonesian Transportation Society (MTI) who was involved in making the Minister of Transportation stated that there was a rejection of the legality of online motorcycle taxis as a public motorized vehicle, therefore the name of the regulation was changed to use the term Motorcycle Used for the Interest of the Community. (Ravel, 2019). However, the Minister of Transportation also does not clearly regulate the meaning of the interests of the community itself. In addition, in the preamble to Permenhub No. 12 of 2019 there is a UULAJ as one of the laws and regulations that are taken into consideration in making the Minister of Transportation Regulation. The problem is with the regulation of motorcycles used for the benefit of the community in Permenhub No. 12 of 2019, so what article does this regulation refer to in UULAJ? Given that in UULAJ, motorcycles are only classified as motorized vehicles and are not included in the classification of motorized vehicles based on their function, namely as individual motorized vehicles and public motorized vehicles. The Permenhub seems to create a new classification for motorcycles by avoiding the use of the term "public motorized vehicles", even though the provisions stipulated in the Permenhub are in accordance with the regulation of public motorized vehicles. The community itself has considered that with the enactment of the provisions in Permenhub No. 12 of 2019, then the motorcycle can be said to be one type of public motorized vehicle in Indonesia.

Disharmony Permenhub No. 12 of 2019 not only against UULAJ, but also against the Constitutional Court Decision No. 41/PUU-XVI/2018 which expressly rejects the classification of motorcycles as public motorized vehicles because they cannot meet safety and security aspects in their implementation. Thus, neither the UULAJ nor the Constitutional Court's decision classifies motorcycles as public motorized vehicles, but Permenhub No. 12 of 2019 regulates provisions for motorcycles to be able to carry out public transportation service activities.



### III. Result and Discussion

#### 3.1 The Contradiction of the Classification of Motorcycles between UULAJ and the Constitutional Court's Decision with the Minister of Transportation Regulation No. 12 Years 2019

Contradictions in the application of Minister of Transportation Regulation No. 12 of 2019 with UULAJ and the Constitutional Court's Decision can be analyzed based on the position of the Minister of Transportation, the Law and the Constitutional Court's Decision in Indonesian law. According to Article 7 paragraph (1) of Law Number 12 of 2011 concerning the Establishment of Legislations (hereinafter referred to as Law No. 12 of 2011), the position of UULAJ is in the hierarchy of laws and regulations in Indonesia under the Decree of the People's Consultative Assembly. Meanwhile, according to Article 8 of Law no. 12 of 2011, the Ministerial Regulation is domiciled as a statutory regulation outside the hierarchy in Article 7 paragraph (1) but its existence is recognized and has binding legal force as long as it is formed based on authority, where Permenhub No. 12 of 2019 was made on the basis of the authority possessed by the Ministry of Transportation. In Article 9 paragraph (1), if there is a law that is suspected to be contrary to the 1945 Constitution, then the review is carried out by the Constitutional Court. In this case, the Constitutional Court's Decision No. 41/PUU-XVI/2018 which examines UULAJ against the 1945 Constitution is a final and binding decision that applies to all Indonesian people. With this disharmony, the enactment of Permenhub No. 12 of 2019 is currently questionable and has the potential to submit a judicial review of Permenhub No. 12 of 2019 against UULAJ. With this disharmony, the enactment of Permenhub No. 12 of 2019 is currently questionable and has the potential to submit a judicial review of Permenhub No. 12 of 2019 against UULAJ. With this disharmony, the enactment of Permenhub No. 12 of 2019 is currently questionable and has the potential to submit a judicial review of Permenhub No. 12 of 2019 against UULAJ.

The contradiction of the regulation in Permenhub No. 12 of 2019 with UULAJ can actually be related to the principle of legal preference. There are 3 (three) principles of legal preference commonly used by Indonesian law, namely, *Lex Specialis Derogat Legi Generalis*, *Lex Superior Derogat Legi Inferiori*, and *Lex Posterior Derogat Legi Priori*. Of the three principles that are most in line with the contradictions of this discussion, the principle of *Lex Superior Derogat Legi Inferiori*, because the contradiction faced is that there are differences in legal position as regulated in Law no. 12 of 2011. Based on the principle of *Lex Superior Derogat Legi Inferiori*, which means legislation which has a higher hierarchy based on Law no. 12 of 2011, it will override laws and regulations with lower hierarchies (Mahendra, 2010). However, when using the principle of legal preference to answer the contradiction between Permenhub No. 12 of 2019 and UULAJ, then what should be ruled out is Permenhub No. 12 of 2019 because the UULAJ hierarchy is higher. However, if Permenhub No. 12 of 2019 is ruled out, thus eliminating legal protection for online motorcycle taxi users, even though on the other hand the UULAJ is actually unable to accommodate the increasingly varied needs of the community.

The issue of the validity of the enactment of Permenhub No. 12 of 2019 returns to the legality of classifying motorcycles in Indonesia. Some people who are pro of the development of transportation in the form of online motorcycle taxis support the classification of motorcycles as public motorized vehicles and welcome the Minister of Transportation Regulation No. 12 of 2019 as a regulation that regulates the operation of online motorcycle taxis. While some people are also against the classification of motorcycles as public motorized vehicles because they are considered inappropriate when used as public



transportation, considering that the use of motorcycles on the streets itself is prone to being the cause of traffic accidents.

When viewed from the economic aspect, the presence of online motorcycle taxis provides real benefits for the community and the country. The presence of online motorcycle taxis can open up job opportunities for the people of Indonesia to reduce unemployment (Saputra, 2019). In addition, the implementation of online motorcycle taxis also contributes revenue to the state treasury through tax payments. Based on research conducted by the Demographic Institute of the Faculty of Economics and Business, University of Indonesia (LD FEB UI), Gojek's contribution to the Indonesian economy ranges from IDR 44.2 trillion to IDR 55 trillion if using the assumption of 100% active partners (FEB UI, 2019). These things are factors that support the legality of motorcycle classification in Indonesia. The classification of motorcycles as public motorized vehicles in the UULAJ is the first step to accommodate the legality of the existence of online motorcycle taxis in Indonesia. The regulation of online motorcycle taxis is also intended to overcome the *rech vacuum* in the development of transportation. The UULAJ is considered no longer relevant to transportation conditions in Indonesia, so it is appropriate to make changes to follow transportation developments.

The factor for refusing to classify motorcycles as public motorized vehicles is because motorcycles do not meet the security and safety aspects when used as public motor vehicles. The existence of public motorized vehicles must be able to reflect the existence of safety beyond the economic reason principle, where in a modern legal state, safety is the main factor in economic activities because business people often put safety aside for reasons of efficiency and profit (Hilgert, 2012). In addition, the online motorcycle taxi profession is considered not a promising profession. With the bonus system, it seems as if the driver is required to continue to work in pursuit of the bonus he will get. Meanwhile, being an online motorcycle taxi driver means working flexible and irregular hours. Prof. Aloysius Uwiyono (2014) argues that working hours are a preventive mechanism for workers to avoid being overworked, so that the absence of working hour's limits can also endanger the driver and the passengers they carry.

#### IV. Conclusion

The conflicting regulation of online motorcycle taxis in Indonesia between the Minister of Transportation Regulation No. 12 of 2019 against UULLAJ and the Constitutional Court's Decision No. 41/PUU-XVI/2018 resulted in unclear legality of motorcycles used as means of transportation in online motorcycle taxis. UULAJ as a regulation that is higher than the Permenhub does not regulate the classification of motorcycles as public motorized vehicles which results in conflicts on the basis of the hierarchy of legislation in Law no. 12 of 2011. In addition, the urgency of classifying motorcycles as public motorized vehicles in Indonesia in Article 47 paragraph (3) of UULLAJ is to provide a legal basis for the implementation and implementation of Permenhub No.12 of 2019 relating to the regulation of the implementation of online motorcycle taxis, as well as overcoming the occurrence of *vacuum recht* in the development of transportation as the first step to accommodate the legality of the existence of online motorcycle taxis in Indonesia.

With the proliferation of the phenomenon of online motorcycle taxis, the government should make changes to the UULAJ which is no longer relevant to current transportation developments. to harmonize online motorcycle taxi arrangements, namely UULLAJ and Permenhub No. 12 of 2019. Such changes can be made by replacing the sound of Article 47 paragraph (3) UULAJ, "Motorized vehicles as referred to in paragraph (2) letter a, letter b,

letter c, and letter d are grouped by function: a) Individual Motorized Vehicles ; and b) Public Motorized Vehicles.” The classification of motorcycles as public motorized vehicles can also be strengthened by including the regulation of online motorcycle taxis in Article 151 of the UULAJ concerning the transportation of people with public motorized vehicles not on the route, by adding the phrase “e. transportation of people using motorbikes. In subsequent articles that regulate the transportation of people with public motor vehicles not in the tray should be regulated regarding the implementation of online motorcycle taxis and the fulfillment of safety and security aspects of online motorcycle taxi drivers and passengers, considering that online motorcycle taxis can be classified as transportation of people with public motor vehicles not in the tray. Those regulation will be the basis of guidelines and references for application companies to determine policies related to the implementation of online motorcycle taxis.

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