

LEGAL PROTECTION OF THE RIGHTS AND OBLIGATIONS OF ONLINE OJEK DRIVERS BASED ON PARTNERSHIP AGREEMENTS IN TERMS OF INDONESIAN POSITIVE LAW

¹Muljanto, ²Gindo L. Tobing, ³Wiwik Sri Widiarty

^{1,2,3} Law Study Program, Master Program Postgraduate Program, Universitas Kristen Indonesia
Jakarta, Indonesia

Email : antothea22@yahoo.com

ABSTRACT

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The online motorcycle taxi phenomenon is one of many changes or evolutions that take advantage of technology. So the legal protection of the rights and obligations of online motorcycle taxi drivers is very important to study, both regarding the governing legal rules and legal protection. In this study, 2 (two) problems were determined that had to be answered, namely how are the legal rules governing the rights and obligations of an online motorcycle taxi driver in Indonesia, and how is the legal protection of the rights and obligations of online motorcycle taxi drivers based on a Partnership Agreement in terms of Indonesian Positive Law. Based on the study results, the legal rules governing the rights and obligations of online motorcycle taxi drivers in Indonesia need to be revised, starting from the transportation ministry regulations and the rules in the partnership agreement. So that the legal protection of the rights and obligations of online motorcycle taxi drivers could be better. So that the effort that will be made is for the Government, as the party that must protect online motorcycle taxi drivers, to take concrete steps, namely issuing policies so that online motorcycle taxi drivers are not based on a Partnership Agreement but are included in the realm of Law Number 13 of 2003 concerning Manpower., renegotiating the contents of the Partnership Agreement which were very arrogant and detrimental to online motorcycle taxi drivers who are also part of Indonesian citizens, and taking steps to have online motorcycle taxi drivers appointed as employees.

Keywords: Legal Protection, Rights and Obligations of Online Ojek Drivers, Partnership Agreements

1. INTRODUCTION

The development of the transportation industry today is developing very rapidly. Every year there is an increase in the number of vehicles, both passenger cars, buses, freight cars, and motorcycles. Of the four modes of transportation, the increase in the number of motorcycles from year to year is the highest. Data from the Central Statistics Agency explains that the increase in motorcycles from 2015 to 2016 was 6,268,815 units or an increase of 6.34% (Central Statistics Agency, 2018). According to several media and articles that the author of *research*, traffic congestion will always have a *negative* impact, both on the drivers themselves and in terms of economy and environment. For vehicle drivers, traffic jams will cause tension. In addition, it will also negatively impact economics in the form of lost time due to long travel times and increased vehicle operational costs ranging from gasoline, engine maintenance, and frequent vehicle stops.

Another problem that is no less important is public transportation facilities. Currently dominated by bus and microlet transportation, urban public transportation still feels less comfortable, unsafe, and inefficient. Mass transit such as trains still needs to work for urban public transport. Overcrowding inside public transport is already a daily sight in big cities. Users of public transportation services are still limited to the lower class and some of the middle class. People with ties are still reluctant to use



public transportation, because the *comfortability of* public transportation they still consider too low, compared to private vehicles that are so comfortable with door-to-door service.

Meanwhile, a modern mass public transportation system as an *integral* part of the resilience of the city's carrying capacity (city *survival*) is still in the design and planning stage. It must still be in the mainstream flow of government policies and decisions to create a *balanced*, efficient city transportation system and quality. The lack of a modern public transport system (from now on abbreviated as SAUM) as an attribute to a "*metropolitan*" city and therefore not yet a viable *alternative* for travelers is a justification for the inefficient use of low-occupancy *private vehicles*.

Since there have been no significant breakthroughs over the past few decades, prolonged queues and traffic jams in every *corridor* and city center, and as a result massive waste of fuel energy and air pollution, will continue to be on the daily menu of urban travelers. Several online transportation application provider companies have been born to answer the community's needs.

In the 21st century, Adawia said that *technology* has encouraged the development of a digital society. People can now be connected to the internet all the time and digital devices are connected to the internet in almost all locations. Smartphones and tablet computers can be easily carried around all the time. Using internet access as the backbone, the android *application-based ojek* transportation mode also uses *GPS features* as service support. GPS provides benefits in terms of *navigation* and placement. Using *GPS features* as a form of technology provides an opportunity to obtain certainty about distance, time and direction. The *GPS feature* used in the *ojek transportation* mode can track the fleet's whereabouts, so users can get the opportunity to get certainty regarding distance and time.

Starting with the company PT *Go-Jek* Indonesia in 2011 founded by Nadiem Makarim. Nadiem Makarim created *Go-Jek*, a modern order-based ojek shuttle service. Ojek, which is a two-wheeled motorcycle, is a very *effective* transportation. This *application* allows users to be able to order motorcycle taxis online. PT *Gojek* Indonesia is known as a *modern* and *professional* motorcycle taxi. The drivers have been equipped with Android-based mobile phones to make it easier for drivers to connect with users and easily get the best *route* to deliver passengers. Along with the current time the company PT. *Gojek* Indonesia has grown rapidly, so researchers are interested in analyzing the development of the online transportation industry in the *current* disruptive era.

The online motorcycle taxi phenomenon is one of many changes or *evolutions* that utilize technology. The *evolution* of this utilization can also occur in *other segments*. For the first time the pros and cons remain, but slowly but surely the society that judges, the society that determines useful is not a *technological transformation*. Ojek is one of the mainstay modes of *transportation* for the people of Indonesia. The ability of this mode of *transportation is very dynamic making it much favored by the public to reach areas far from bus stops, terminals, or other public transportation. Ojek ratings* have increased since the advent of its *mobile application*. From there, motorcycle taxis began to get many new jobs besides delivering passengers. Slowly but surely people have begun to be familiar with *online motorcycle taxis. Go-Jek's expansion* to several cities occurred in a short period. The entry of Grab and Uber as services from abroad also expanded the prestige of online motorcycle taxis throughout Indonesia.

Law Number 22 of 2009 concerning Road Traffic and Transportation Article 1 number 10 states that a Public Motor Vehicle is any vehicle used to transport goods and people for a fee. Meanwhile, based on Article 1 number 20 of the Road Transport Traffic Law states that:

"A motorcycle is a two-wheeled motor vehicle with or without houses and with or without a side carriage or a three-wheeled motor vehicle without houses".

Technological advances in the field of *transportation*, become a socio-cultural reality that occurs in society, that currently the *internet* is very influential to citizens in living people's lives. The rise of *smartphone users*, both *Android and iOS systems make people dependent on smartphones and the internet*. Regarding the community's relatively cheap and easy transportation needs, breakthroughs have been raised by young entrepreneurs who develop innovations in providing online Ojek transportation services or motorcycle taxis.

The definition of motorcycle taxi according to J.S. Badudu and Sutan Mohammad Zain in the General Dictionary Indonesian, is a motorcycle made into a public vehicle to carry passengers to their destination. Meanwhile, in the opinion of scholars, motorcycle taxis are bicycles or motorcycles rented by piggybacking on their tenants. Through the Ministry of Transportation, the government officially issued rules for online application-based transportation services in the Regulation of the Minister of Transportation Number 26 of 2017 concerning implementing Transportation of People with Public Motor Vehicles Not on Routes such as taxis, rental transportation, *charter*, tourism and others.

Based on the background described by the author above, the author is interested in further analyzing the protection of the rights and obligations of *online motorcycle taxi drivers* based on a partnership agreement that the author reviews from the Minister of Transportation Regulation and other legal rules in this writing form, which is entitled: "Legal Protection of Rights and Obligations of *Online Ojek Drivers* based on the partnership agreement in terms of Indonesia's positive law".

Based on the background description that contains *phenomena*, data and facts, as well as points of thought, the problem that must be answered in this writing is, how the legal rules that regulate the rights and obligations of an online motorcycle taxi driver and *legal protection, rights and obligations* of online motorcycle taxi drivers *based on the Partnership Agreement reviewed from Positive Law in Indonesia*.

2. METHODS

Method is the process, principles and procedures of solving a problem, while research is a careful, diligent and thorough examination of a symptom to increase human knowledge. Therefore, when conducting research, one must pay attention to the science that is the parent.

According to Soerjono Soekanto, what is meant by legal research is a scientific activity based on certain *methods, systematics*, and thinking that aims to study one or all certain laws by analyzing them.

This type of research is normative legal research or doctrinal legal research with a statutory approach. The sources and types of legal materials are primary legal materials in the form of regulations and legislation, especially Law Number 22 of 2009 concerning Road Traffic and Transportation, Law Number 13 of 2003 concerning Manpower, Law Number 23 of 2014 concerning Regional Government, Regulation of the Minister of Transportation Number 108 of 2017 concerning Transportation of People with Motor Vehicles Not on the Route, Constitutional Court Decision Number 41/PUU-XVI/2018, Minister of Transportation Regulation Number 118 of 2018 concerning the Implementation of Special Rental Transportation, Minister of Transportation Regulation Number 12 of 2019 concerning Protection of Safety of Motorcycle Users Used for the Benefit of the Community, and Decree of the Minister of Transportation Number 348 of 2019 concerning Guidelines for Calculating Service Fees for the Use of Motorcycles Used for the Benefit of the Community carried out with applications. Secondary legal materials from previous research results are theses, theses, papers, journals, internet, books, literature and expert opinions related to the research object.

Concluding is carried out in a deductive way, that is, concluding general things, namely the data studied, to special legal provisions. The meaning is general legal provisions such as legal provisions on legal rules governing the rights and obligations of an online ojek driver in *Indonesia; and legal protection, rights and obligations* of online ojek *drivers* based on the Partnership Agreement in terms of positive Indonesian law. While the specific legal provisions are how the rights and obligations of an *online motorcycle taxi driver* occur and how the process occurs until the signing of the Partnership Agreement.

3. RESULTS AND DISCUSSION

According to Mertokusumo, the law governs legal relations. The legal relationship consists of the bonds between the individual and society and between the individual himself. These bonds are reflected in rights and obligations. In regulating legal relations, the ways are diverse. Sometimes the law formulates certain events that are conditions for the emergence of legal relations. The law must be distinguished from the rights and obligations that arise when applied to concrete events. But the two are

inseparable from each other. The order created by law only becomes a reality when the subjects of the law are given rights and burdened with obligations. There is no right without obligation and vice versa, there is no obligation without rights.

Furthermore, according to Mertokusumo, Rights are essentially the relationship between legal subjects and objects or subjects with other legal subjects protected by law and give rise to obligations, while obligations are contractual burdens. Rights and obligations arise in the event of a legal relationship between two parties based on a contract or agreement. So as long as the legal relationship born of the agreement has not ended, then on one of the parties, there is a contractual burden and a necessity or obligation to fulfill it. Similarly, Muhammad Amin stated that: Rights are interests protected by law and give freedom to someone to exercise them. While interests are the demands of a person or group that are expected to be met, guaranteed and protected by law. And obligations are restrictions or burdens arising from relations with others or the state. Discussing workers' rights associated with workers' rights, Sutedi stated that the Indonesian state is seen from national development goals, adhering to the type of welfare state.

One of the things related to labor in the labor market is the unprotected rights of workers/workers, human rights, and non-human rights. Human rights are inherent rights of workers/workers who are brought from birth, and if these rights are released, they will decrease their dignity and status as human beings.

While non-human rights are in the form of workers'/laborers' rights regulated in non-basic legislation. Human rights as a moral concept in society and state are not a concept that is born instantly and is comprehensive. Human rights are born step by step through certain periods in the history of the development of society as a moral concept developed based on the experience of human society itself. The experiences of these social groups color the concept of human rights. In Indonesia, the human rights of workers are regulated in the 1945 Constitution, namely the right to obtain decent work for humanity. Likewise, non-human rights undergo processes in accordance with the interests and development of society regulated in legislation. In connection with the State's obligation to exercise constitutional rights, the State must provide the best and widest possible service to the community. Therefore, government interference in workers' welfare can be seen from the existence of legal instruments. The purpose of government intervention is to protect workers/workers as weak positions rather than rulers, to improve the standard of living of workers/workers and their families, to prevent the decline in income and purchasing power of the community, especially workers/workers and protect workers/workers and their families from losing their jobs.

Based on the explanation of the understanding of rights and obligations according to legal experts and the constitution of our country above, the author will examine how the rules governing the rights and obligations of online motorcycle taxi drivers in Indonesia. To explain the rules governing the rights and obligations of online motorcycle taxi drivers, the author uses a statutory approach, namely:

1. Review of the Rights and Obligations of Online *Ojek Drivers* according to the Regulation of the Minister of Transportation Number 108 of 2017 concerning the Implementation of Transportation of People with Public Motor Vehicles Not on the Route;
2. Review of Rights and Obligations of Online *Ojek Drivers* according to the Partnership Cooperation Agreement Between PT. Go-Jek Indonesia with *drivers*; and
3. Review of Rights and Obligations of Online *Ojek Drivers* according to Law Number 13 of 2003 concerning Manpower

Regulation of the Minister of Transportation Number 108 of 2017 concerning the Implementation of Transportation of People with Public Motor Vehicles Not on the Route, which is the legal basis for *online motorcycle taxi drivers*, apparently does not regulate the rights of these drivers at all. However, the author found that the Minister of Transportation Regulation Number 108 of 2017 only regulates the validity of vehicles and the minimum and maximum tariff limits. The results of the author's research from a study of the Partnership Agreement agreed by *drivers* with PT Go-Jek Indonesia also do not adequately regulate drivers' rights. But this agreement is more about the conditions of registration and use of the application and restrictions that drivers cannot do as partners.

The relationship between application providers *and drivers* is based on a partnership agreement, a general form of legal relationship between one party and another based on a partnership agreement. The general provisions of the partnership agreement are Article 1338 jo Article 1320 of the Civil Code ("Civil Code"). Meanwhile, special provisions can refer to the provisions of civil partnership in Article 1618 of the Civil Code to Article 1641 of the Civil Code, namely the legal relationship of the parties between one partner and another partner by including a "capital" as "offering" (*inbreng*).

In the article " Legal Status of Non-Permanent Workers in Government Agencies, " Umar Kasim said there is a so-called agreement to do work based on a partnership (*partnership agreement*). The form can be a profit-sharing agreement, an agency agreement (either personal or corporate), core-plasma, sub-contracting, a payment agreement ("deposit") of a certain amount of money, and others.

Driver PT. Go-Jek Indonesia merupakan bagian dari tenaga kerja. Dalam Undang-undang Nomor 13 tahun 2003 pasal 1 angka 2 dinyatakan bahwa :Tenaga Kerja adalah setiap orang yang mampu melakukan pekerjaan guna menghasilkan barang dan jasa untuk memenuhi kebutuhan sendiri maupun masyarakat. J. Simanjuntak mengartikan tenaga kerja adalah, mencakup penduduk yang sudah atau sedang bekerja, yang sedang mencari kerja dan yang melakukan pekerjaan lain. Hubungan antara penyedia aplikasi dengan *driver* berdasarkan perjanjian kemitraan, yaitu bentuk umum suatu hubungan hukum antara satu pihak dengan pihak lainnya atas dasar hubungan kemitraan (*partnership agreement*). Ketentuan umum perjanjian kemitraan adalah Pasal 1338 jo Pasal 1320 Kitab Undang-Undang Hukum Perdata ("KUH Perdata"). Sedangkan, ketentuan khusus, bisa merujuk pada ketentuan persekutuan perdata dalam Pasal 1618 KUH Perdata s.d. Pasal 1641 KUH Perdata, yakni hubungan hukum para pihak antara mitra satu dengan mitra lainnya dengan memasukkan suatu "capital" as "litter" (*inbreng*).

In the article " Legal Status of Non-Permanent Workers in Government Agencies, " Umar Kasim said there is a so-called agreement to do work based on a partnership (*partnership agreement*). The form can be a profit-sharing agreement, an agency agreement (either personal or corporate), core-plasma, sub-contracting, a payment agreement ("deposit") of a certain amount of money, and others.

Employment relationship arises between workers and employers after a previous agreement is made by the party concerned. Employment relations are relationships between employers and workers/laborers based on work presentation, which includes work, wages, and orders. One type of agreement is an employment agreement that will give rise to an employment relationship.

According to the Manpower Law, an employment agreement is an agreement between workers/laborers and employers or employers according to the terms of work, rights, and obligations of the parties. Work agreements generally only apply between workers/laborers with employers who organize and other people or parties who are not bound. The conditions for the validity of an employment agreement between employers and workers are regulated in Article 1320 of the Civil Code. The worker expresses his willingness to work for the employer by receiving wages and conversely the employer also expresses his ability to hire workers by paying wages. Thus, the employment relationship between workers and employers is a work agreement containing each party's rights and obligations. The Manpower Law defines employment relations as relationships between employers and workers/laborers based on work agreements, which have elements of work, wages, and orders.

From that understanding, it can be seen that three elements of labor relations are workers, wages, and orders. Unfortunately, the Explanation section of the Manpower Law does not explain further and in detail the elements of the employment relationship. The absence of further explanation of the elements of the employment relationship makes each party have their interpretation. For example, this was seen in the case between dozens of drivers and a company in freight transportation Tanjung Perak Port Surabaya. Since labor regulations do not further explain the elements of labor relations, it is important to see how the court views these three elements.

In Supreme Court Decision Number 841 K/Pdt.Sus/2009 in cases between taxi drivers and taxi companies for example. In that case, the Supreme Court stated there was no wage element because taxi drivers only received a commission/percentage. In addition, there is no command element because taxi drivers can find their passengers.

From the above Supreme Court Decision, conclusions can be drawn regarding the elements of employment relations as follows:

1. Occupation: This element is fulfilled if the worker only carries out the work given by the company.
2. Wage: This element is fulfilled if the worker receives compensation in the form of certain money that is a fixed amount in a certain period. Not based on commission/percentage.
3. Command: This element is satisfied if the employer of the work order is a company. Not on the initiative of workers.

What is meant by worker is everyone who works by receiving wages or other forms of remuneration. A worker must have an employment relationship with every company in which the employment relationship is required to provide legal protection for its workforce.

Based on media reports, these ojek drivers do not get salaries from the application company. How much a taxi driver earns depends on how many passengers he can deliver. The order to take passengers also does not come from the company, but from passengers and of course on the rider's willingness. In that condition, there is no employment relationship between the driver and the application provider company and the driver cannot be called a worker in PT. Go-Jek Indonesia. Thus, it is concluded that there needs to be a working relationship between Driver and PT. Go-Jek Indonesia as an application company. Because there is no employment relationship, the *Driver* PT. Go-Jek Indonesia has no right to demand the usual rights workers receive, such as overtime pay, social security or severance pay if their cooperation relationship ends. Determining the presence or absence of this employment relationship is important to see if a 'worker and employer' relationship exists. If there is no employment relationship, there is no term worker and employer. There are only partners.

If the relationship between the application provider employer *and the driver* is a partnership relationship, then Law Number 13 of 2003 concerning Manpower and other laws and regulations in the field of employment do not apply. This is because laws and regulations in the field of labor regulate matters related to workers and employers.

Agus Mulya Karsona, lecturer in Labor Law at Padjadjaran University, Bandung explained that there is a fundamental difference between partnership and employment relations. Partnership relationships are more mutualism between the parties. In principle, partnerships place more emphasis on mutually beneficial relationships. The position of the parties is equal. In contrast to the employer-labor position in labor law which is superior-subordinate. Furthermore, you can also listen to the article *When a Partnership Relationship Becomes an Employment Relationship*.

Based on this explanation, the legal relationship between the application provider company and the *driver* is based on a partnership agreement. Therefore, legal protection for *drivers* is not protection for workers under an employment agreement, but protection as a party to a partnership agreement.

Based on this explanation, it can be concluded that if the *driver* takes the action of *clicking on* the electronic *approval* of the partnership agreement of PT. Go-Jek Indonesia, access and use the application of PT. Go-Jek Indonesia means that the driver has agreed to the partnership agreement in the *application*. In addition, by agreeing to this partnership agreement, *the driver* has also agreed if changes to the terms and conditions are applied. And based on the understanding in article 15 of Law Number 13 of 2003 concerning Manpower, there are 3 elements in Employment Relations: Work, Wages, and Orders. In this case, *Driver* PT. Go-Jek Indonesia still needs to get a salary from the *application* company. How much does *Driver* PT. Go-Jek Indonesia depends on how many passengers it can deliver.

The order to take passengers also did not come from the company, but from passengers and of course the willingness of PT. Go-Jek Indonesia. So that there is no working relationship between *the Driver* and PT. Go-Jek Indonesia but there is a partnership relationship between the two parties, so *drivers* are not entitled to demand rights usually received by workers in general such as overtime pay, social security or severance pay if their cooperation relationship ends.

From the description that the author has thoroughly explained about the legal rules governing the rights and obligations of online motorcycle taxi drivers in Indonesia, the author can conclude that there

are no adequate rules governing the rights of divers, ranging from regulations of the ministry of transportation, partnership agreements. Indeed, in labor rules, there are regulated but do not include online motorcycle taxi drivers in it. Furthermore, in discussing the results of the next research, the author will explain the legal protection of the rights and obligations of *online motorcycle taxi* drivers.

Legal protection of the rights and obligations of online motorcycle taxi drivers based on the Partnership Agreement is not protection for workers as well as an employment agreement, but protection as a party to a partnership agreement. The author conveys this, where the rules governing the rights and obligations of drivers *are inadequate, so that the results of the author's research explain legal protection of the rights and obligations of online motorcycle taxi drivers based on a Partnership Agreement with a positive legal approach in Indonesia.*

An agreement must be agreed by the parties, including if there is a change it must also be agreed. If one party (application provider company) changes the content of the partnership agreement, then there must be approval from the other party. The agreement mentioned in the *electronic agreement* between the company and *the driver* is the Partnership Cooperation Agreement. A partnership agreement is known in Law Number 20 of 2008 concerning Micro, Small and Medium Enterprises and Government Regulation Number 44 of 1997 concerning Partnerships. The term partnership comes from English, i.e. "*partner contract*." It is not justified in a partnership relationship that there is coercion in any form including economic helplessness of one of the parties. It is also not justified to economically oppress one party against the other.

Contract between PT. Gojek Indonesia with *drivers* is made electronically. Electronic contracts by business managers contain several articles of partnership cooperation made by default and applied equally to all partners. The interesting thing in electronic contracts is that there are some articles in the terms of the agreement that could be more beneficial to the partner and there is no room for the partner to review, refute and offer as part of the agreement element in the agreement. If *the driver* partner PT. Gojek Indonesia agrees with the contents of the electronic contract, *then the driver presses* the click *button provided in* the electronic contract. Regarding *autosuspend*, usually the operational office of PT. Gojek Indonesia does not give a reason to the *driver* why he can be sanctioned in the form of *autosuspend*, resulting in the deposit balance not being withdrawn and considered forfeited. With the existence of a partnership relationship, the *default* should not result in losses for either party in its implementation.

An agreement is an agreement that occurs when the parties promise each other to carry out certain deeds. According to Subekti, a covenant is when one or more people promise to do something. According to Article 1313 of the Civil Code, an agreement is an act by which one or more parties bind themselves to one or more persons. In Article 1313 of the Civil Code regarding the definition of agreements, two points can be taken that show that contracts and agreements are the same, namely the existence of an act and the existence of one or more parties who bind themselves. Partnership agreement between PT. Gojek Indonesia with *drivers* is done electronically (*e-contract*). This is because the agreement is only in the PT. Gojek Indonesia *driver* has also been explained in Article 1 regarding General Provisions and Article 5 Number (5.2) regarding *electronic contracts* in the Partnership Cooperation Agreement between PT. Gojek Indonesia with *driver*.

The author sees that the Partnership Agreement agreed by the drivers with PT Go-Jek Indonesia does not adequately regulate drivers' rights. But this agreement is more about the conditions of registration and use of the application and restrictions that drivers cannot do as partners. And the contents of this partnership agreement explain the definition of Partner, application registration, application usage, and all procedures drivers must obey, as well as the existence of 15 (fifteen) prohibitions issued by PT. Go-Jek Indonesia and must be complied with by the Partner. The author found no legal rules governing the rights and obligations of online motorcycle taxi drivers in Indonesia, starting from the regulations of the transportation ministry and in the partnership agreement itself. Indeed, in labor rules, there are regulated but do not include online motorcycle taxi drivers in it. The following author first explains the problems between online motorcycle taxi drivers as partners and PT. Go-Jek Indonesia, the new author will explain the conceptual ideal legal protection.

According to Law of the Republic of Indonesia No. 20 of 2008 concerning Micro, Small and Medium Enterprises, where the definition of Partnership is business cooperation between small and medium enterprises or large businesses accompanied by coaching and development by medium enterprises or large businesses by taking into account the principles of mutual need, mutual need, mutual strengthening and mutual benefit.

According to Muhammad Jafar Hafsa in the book business partnership, partnership is a business strategy carried out by two or more parties within a certain period to achieve mutual benefits with the principle of mutual need and mutual improvement. According to *Louis E. Boone and David L. Kurtz* :

"Partnership also includes partnerships, which are affiliates of two or more companies with a common goal, which is to help each other achieve common goals"

According to Salim in his book the theory and preparation of contract law, namely:

"Contract law is the rules of law governing the legal relationship between two or more parties based on the word agreement to cause legal effects"

The legal regulatory system of agreements is an *open system*, meaning that any person or party who wants to agree is free to enter into agreements regulated and not regulated in law. According to Article 1233 of the Civil Code: An engagement is born through an agreement or a law. So it can be concluded that the covenant gives birth to an engagement. Because the parties have the freedom to make all engagements as long as they do not contradict the Law, decency and public order. A partnership agreement is a special agreement not regulated in Book III of the Civil Code, so the understanding of a partnership agreement is not found in the law or the implementing regulations. It's just that in Law Number 9 of 15 of 1995 concerning Small Business in the provisions of Article 29 it is explained, namely:

"The partnership relationship is outlined in the form of a written agreement that at least regulates the form and scope of partnership business activities, the rights and obligations of each party, the form of coaching and development as well as the period and settlement of disputes"

Partnership agreements are sourced or controlled by Book II and Book III of the Civil Code, Law Number 9 of 1995 concerning Small Businesses, Government Regulation of the Republic of Indonesia Number 17 of 2013 concerning Micro, Small and Medium Enterprises and their implementing regulations so that in addition to being based on general principles in the law of agreements regulated in the Civil Code are also based on special legal principles. In this writing, partnership law theory is used to find out how the process of partnership between PT. Go-jek Indonesia with *drivers*.

According to Article 1 number 13 of Law Number 20 of 2008 concerning Micro, Small and Medium Enterprises, Partnership is cooperation in business linkages, both direct and indirect, based on the principle of mutual need, trust, strengthening, and benefit involving Micro, Small, Medium and Large Enterprises. Furthermore, according to Article 1 point 1 of Government Regulation Number 44 of 1997 concerning Partnership, defining partnership is business cooperation between Small Businesses and Medium Enterprises and or with Large Businesses accompanied by coaching and development by Medium Enterprises and Large Enterprises by taking into account the principles of mutual need, mutual strengthening and mutual benefit.

Before the birth of Law Number 20 of 2008 the role of the government in regulating the partnership pattern of large, medium and small entrepreneurs was contained in the general provisions of Article 1 paragraph (8) of Law Number 9 of 1995 which mentions about: Business cooperation between small businesses and medium businesses or with large businesses accompanied by sustainable coaching and development by medium or large businesses by taking into account the principle of mutual need, mutual reinforcement and mutual benefit.

Partnership according to *Kian Wie* is a business cooperation between large or medium companies engaged in the production sector of goods and the service sector with small industries based on the principle of mutual need, mutual strengthening, and mutual benefit.

Based on the provisions in Article 1 number 14 of Law Number 13 of 2003 concerning Manpower, an employment agreement is an agreement between workers/laborers and employers or employers containing the parties' work conditions, rights, and obligations. Juridically, Article 1 number

15 of Law Number 13 of 2003 concerning Manpower also regulates employment relations, which means that it is a relationship between employers and workers/laborers based on work agreements, which have elements of work, wages, and orders.

Employment agreements in Dutch are often referred to as *arbeidsovereenkoms* which can be interpreted in several senses. According to Imam Soepomo, a work agreement is an agreement where the first party, the worker binds himself to work by receiving wages from the other party. This employer binds himself to work on the worker by paying wages. Article 1601a of the Civil Code (KUHPer) explains that an employment agreement is an agreement in which one worker, binds himself to under his orders the other party, the employer for a certain time, perform work by receiving wages.

Subekti argues that an employment agreement is an agreement between a worker and an employer, this agreement is characterized by the characteristics of a certain wage or salary agreed and the existence of a relationship at the top (in Dutch: *dierstverhandin*) which is a relationship based on which the first party (employer) has the right to give orders that must be obeyed by the other party (labor).

Agus Mulya Karsona, distinguishes partnership relationships from labor relations that the fundamental difference is that partnership relationships emphasize more on mutually beneficial relationships or mutualism between parties where the positions of the parties are equal or equal. Meanwhile, in an employment relationship, the position of the employer and the worker is superior to subordinates and contains elements of work, wages, and orders. According to him, partnership relationships are also not subject to the Manpower Law because of the clear difference between partnership and employment relationships.

Umar Kasim, an expert in labor law, explained that in accordance with Law Number 13 of 2003 concerning Manpower does not include legal relations to do work based on partnerships. According to him, the legal relationship regulated in Law Number 13 of 2003 concerning Manpower is only a legal relationship to do work based on an employment agreement.

In the employment agreement relationship, workers have general rights that partners do not have in partnership relationships such as overtime pay, which is additional wages given if there is an increase in working hours than predetermined, health insurance, and old age benefits if the employment relationship ends. Therefore, it can be concluded that the difference between an employment agreement and a partnership agreement is: The partnership agreement puts forward a mutually beneficial relationship between the parties so that the parties' positions are the same. Meanwhile, in the employment agreement, it contains elements of work, wages, and orders where the position of the employer as a superior and workers as subordinates.

In discussing the research above, explaining a little about PT is necessary. Go-Jek Indonesia to find out how the partnership agreement between PT. Go-Jek Indonesia with PT. Go-Jek Indonesia. PT. Go-Jek Indonesia is a social-minded company leading the revolution in the *ojek transportation industry*. PT. Go-Jek Indonesia partners with experienced ojek drivers and becomes the main *solution* in delivering goods, ordering food, shopping and traveling amid traffic jams.

Partners here are also known as PT. Go-Jek Indonesia where a partner is a party who carries out the transfer of goods and people, delivery of goods previously ordered by consumers, or other services through the application of PT. Go-Jek Indonesia by using two-wheeled motorized vehicles owned by its partners. To be approved as a partner, partners are required to meet the requirements determined by PT. Go-Jek Indonesia as follows:

1. Able to drive a two-wheeled motorized vehicle and have a valid and appropriate driver's license (SIM) and other valid permits for driving and transportation/delivery services by two-wheeled vehicles and other related services through the PT. Go-Jek Indonesia;
2. Own or control a two-wheeled motor vehicle that meets the requirements determined under applicable law and is safe and comfortable to drive on the road;
3. Have an account with a bank recommended by AKAB;
4. Have a good record of achievement and have never been included in the blocklist of the Indonesian National Police;

5. Undertake to, at all times, fulfill all terms and conditions as stated in the Code of Ethics and Obligations section of this agreement and the minimum qualifications of PT. Go-Jek Indonesia which will be described separately but remains an integral part of this agreement;

The consumer referred to in the content of this partnership agreement is any person or customer who utilizes the *PT. Go-Jek Indonesia* to obtain services available in the *application features of PT. Go-Jek Indonesia*. Each party mentioned above is considered an *individual* or *subject* who is legally capable and capable of performing legal acts such as entering into agreements.

In the process of implementing the *application* of *PT. Go-Jek Indonesia*, please note that the legal relationship between *PT. Go-Jek Indonesia* as an application provider company with *drivers* is a partnership relationship based on a partnership agreement. As explained earlier, that based on the partnership agreement *PT. Go-Jek Indonesia* with *drivers* must fulfill the employment agreement's characteristics and elements such as wages, orders, and elements of work. Based on the annex to the contents of the partnership agreement, it has also been mentioned *that the driver* of *PT. Go-Jek Indonesia* acts as a partner. Also, the *drivers* still need a salary from the application company *PT. Go-Jek Indonesia* but the *drivers* must share their income with the company.

Driver revenue *PT. Go-Jek Indonesia* depends on how many passengers make bookings through the *application* and the willingness of *drivers to distribute services according to passenger demand*, with a revenue-sharing system of 80% for *drivers* and 20% for *PT. Go-Jek Indonesia*. If the payment made by the *consumer* uses cash, then 20% is entitled to *PT. Go-Jek Indonesia* will be obtained from the deduction of the *PT. Go-Jek Indonesia*. Because of every driver of *PT. Go-Jek Indonesia* must have a *PT. Go-Jek Indonesia* for balance payments or bonus points that *PT* will give. *Go-Jek Indonesia* can be exchanged for cash if collected with the minimum limit determined by *PT. Go-Jek Indonesia*. However, if the consumer makes the payment in balance, then the *PT driver. Go-Jek Indonesia*. Not getting money in cash, but increasing the balance of *PT. His Go-Jek Indonesia* has been automatically cut by 20% for *PT. Go-Jek Indonesia*. The legal relationship between *Go-Jek, AKAB, PAB, DAB, and Driver* is a cooperation partner which acts as a *stand-alone and independent legal subject*. In the *electronic* contract of *PT. Go-Jek Indonesia* clearly stated that the partnership agreement did not create employment, outsourcing, or agency relationships between each party, namely *Go-Jek, AKAB, PAB, DAB, and Partners*.

Law Number 13 of 2003 concerning Manpower and other regulations in the field of labor does not apply in the partnership cooperation agreement of *PT. Go-Jek Indonesia* with driver *PT. Go-Jek Indonesia*. Because labor legislation only regulates the relationship of employers with workers, superiors and subordinates. While the partnership agreement is the main element is equality between the parties.

In the electronic partnership agreement of *PT. Go-Jek Indonesia* is advised that every partner who registers must agree to the terms and conditions stated in the agreement by clicking consent *electronically*. Therefore, each partner is declared to have agreed to be bound by a *contractual* relationship between the Partner, *Go-Jek*, and *AKAB*. Click the consent mark as a partner and access and use the *PT. Go-Jek Indonesia* partners must comply with every policy in its terms. That way, it is said that the partner also approves for:

1. The cooperative relationship between partners and *PAB* in connection with each postal service carried out by partners.
2. The cooperative relationship between partners and *DAB* in using electronic money systems to provide services carried out through the *application*.
3. Comply with any terms and conditions imposed by *PAB, DAB, or AKAB*, as may be amended or added by *AKAB, PAB, and DAB* from time to time, in connection with matters agreed and will be notified and announced and informed through *electronic* media or other communication media.

Based on the legal relationship, the partner will obtain an account in his name after the partner registers and agrees to the agreement. Through this account, partners can access content, information, and materials regarding services consumers need. The information can be in the form of name, address

or location of consumers, destination addresses of consumers, services or services needed by consumers as provided in the application, and service rates.

If there is a change in the content of the agreement unilaterally in the future, the agreement must also be based on the word agreement, if one party agrees then the agreement is binding on both parties. While the agreement that is in the application of PT. Go-Jek Indonesia, the drivers of PT. Go-Jek Indonesia often needs to pay more attention to its content and they agree without knowing the agreement'. Partner agrees that PGS may, as applicable, determine the price to be paid by *Consumers* in accordance with applicable laws and regulations, which changes will be notified to Partner in writing either through *the application* or through other communication media selected by PGS; and to withdraw the payment amount from the Partner's bank *account* at a bank designated by PGS or affiliates from PGS to withdraw the amount determined by PGS for installment payments, payment of penalty money for violations committed by the Partner, as well as other payments as applicable.

It is clear in the electronic agreement that the driver of PT. Go-Jek Indonesia agrees that PT. Go-Jek Indonesia may change *fares* unilaterally without the consent of PT. Go-Jek Indonesia so it cannot be used as an excuse that PT. Go-Jek Indonesia changed the *fare* without the approval of the PT. Go-Jek Indonesia because they have agreed to the partnership agreement, either understand or are considered to understand. PT. Go-Jek Indonesia itself has provided *insurance* to PT. Go-Jek Indonesia up to Rp.10,000,000 (ten million rupiah) if an accident occurs while carrying out its work. However, the insurance needs to be paid by the driver of PT. Go-Jek Indonesia which *is automatically* deducted from the *balance* of PT. Go-Jek Indonesia is Rp. 15,000 (fifteen thousand rupiah) per month.

According to the results of the interview of PT. Go-Jek Indonesia, named Heru Haerudin, the insurance harms them because they have to pay insurance costs that only sometimes occur every month. Even though for vehicle fuel, as well as minor illness of the driver, and vehicle repairs that PT often carries out. Go-Jek Indonesia is still carried out independently, where the *vehicle's risk remains with the PT's driver*. Go-Jek Indonesia itself. Not to mention the 20% revenue sharing which they feel is quite large only for *application* services, because PT drivers still bear the responsibility by consumers. Go-Jek Indonesia itself and the *risk of damage* to vehicles used for work. In the end, if the driver of PT. Go-Jek Indonesia objected to the content of the partnership agreement, they could still sue civilly, but not employment. However, PT. Go-Jek Indonesia prefers to terminate the partner relationship in the event of a civil lawsuit.

So that the element of equality in the partnership agreement here is tainted because the company that remains the boss and driver of PT. Go-Jek Indonesia became because it is in full control and driver of PT. Go-Jek Indonesia can only accept without negotiation of both parties. This is certainly a natural thing if between PT. Go-Jek Indonesia and driver PT. Go-Jek Indonesia has a working relationship, but it needs to be emphasized again here only as a partner. The agreement is like a mixture of partnership and employment relationship. However, it remains in accordance with article 1338 of the Civil Code that all agreements validly apply as law to those who make them. So as long as both parties benefit from each other and feel less disadvantaged which agrees terminated, then the agreement continues to run and binds both parties. Especially for work partners do not have the right to demand rights from a worker such as health insurance. This partnership relationship also gives rise to rights and obligations for the parties in accordance with their respective parts.

The relationship between application providers PT. Go-Jek Indonesia with *drivers* based on the general provisions of the partnership agreement is regulated in Article 1338 jo. Article 1320 of the Civil Code. Meanwhile, regarding special provisions, it can refer to the provisions of civil partnerships in Article 1618 of the Civil Code, namely the legal relationship of the parties between partners with one another partner by including a capital as an *inberg*.

According to the author based on the Civil Code, some things that need to be considered are the discovery of the nature of the agreement according to Article 1313 which is contrary to the partnership agreement between PT. Go-Jek Indonesia and *drivers*. Because of the content of the partnership agreement of PT. Go-Jek Indonesia was made by PT. Go-Jek Indonesia itself does not involve partners

or *drivers*. Meanwhile, the nature of the agreement stipulates that the parties jointly agree to bind themselves.

Based on the author's explanation above, the result of inadequate legal rules governing the rights and obligations of PT *drivers*. Go-Jek Indonesia, then automatically legal protection of the rights and obligations of PT. Go-Jek Indonesia is not protected. Because *the driver* PT. Go-Jek Indonesia cannot be protected by Law Number 13 of 2003 concerning Manpower, because the legal position of *online* motorcycle taxi *drivers* is based on a partnership agreement. However, Pancasila and the 1945 Constitution still guarantee this. So gradually all *stakeholders* will have to pay serious attention to this, and in the partnership agreement with PT. Go-Jek Indonesia, it would be better if *the driver* of PT. Go-Jek Indonesia was appointed as an employee.

4. CONCLUSION

Based on the description of the problems raised by the author, namely about how the legal rules governing the rights and obligations and legal protection of the rights and obligations of an online motorcycle taxi driver in Indonesia based on *the Partnership Agreement are reviewed from the Indonesian Positive Law*, the author can conclude that the legal rules governing the rights and obligations of *drivers* PT Go-Jek Indonesia has not adequately regulated. Both in the regulations issued by the Ministry of Transportation and the Partnership Agreement. Because the Partnership Agreement further explains the definition of Partner, and *so on*, regulates the terms of registration and use of the application and prohibitions that cannot be violated by drivers as *partners*, as well as the existence of 15 (fifteen) prohibitions issued by PT. Go-Jek Indonesia and must be complied with by the Partner.

As a result of inadequate legal regulations governing the rights and obligations of PT. Go-Jek Indonesia, then automatically legal protection of the rights and obligations of PT. Go-Jek Indonesia is not protected. Because *the driver* PT. Go-Jek Indonesia cannot be protected by Law Number 13 of 2003 concerning Manpower, because the legal position of *online* motorcycle taxi *drivers* is based on a partnership agreement. However, Pancasila and the 1945 Constitution still guarantee this. So that gradually all *stakeholders* will have to pay serious attention to this.

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