

## The Legal Protection Policy for Partnerships in Socially Just, Digital-Based Land Transportation Businesses

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### Abstract

*The development of legal relations between drivers and online land transportation service application providers is becoming increasingly massive, especially when technological developments and digitalization make it easier to utilize digital-based land transportation services. This research aims to analyze and determine legal prescriptions or solutions to the problem of legal gaps in special regulations that discuss and serve as guidelines in implementing partnership legal relations between online transportation drivers and online land transportation service application providers in terms of the aspect of social justice. This research is normative legal research by prioritizing conceptual and statutory approaches. The research results confirm that the social justice aspect of the partnership legal relationship between drivers and online land transportation service application providers has not actually been fulfilled, which is due to the absence of special regulations regarding partnership relationships that can guarantee legal certainty and protection for online transportation service drivers. Legal protection policies for partnership legal relationships between drivers and online land transportation service application providers can be implemented by establishing regulations regarding special partnership relationships between drivers and online land transportation service application providers to fill the existing legal gaps.*

## 1. Introduction

The development of land transportation in the era of digitalization is increasingly massive with the existence of various platforms that facilitate land transportation services as part of technological developments. Before

technological developments became as massive as they are today, land transportation services used to be carried out conventionally by placing orders directly on the chosen land transportation mode.(Desak Nyoman Oxsi Selina and Darma 2021) However, technological developments, especially in the era of digitalization, have made land transportation services more inclusive and instant, especially land transportation services which can be ordered online or online.(Knorr and Eisenkopf 2022) Ordering land transportation online is increasingly effective in the era of digitalization because, with only an application on a device, people can order land transportation services efficiently, effectively, precisely, and at an affordable price. One example of land transportation that can be ordered online is based on applications such as the Go-Jek application, Grab, and other similar applications that provide online land transportation services.(Ernawati and Lutfi 2022) The development of application-based online land transportation services in legal developments has given rise to new legal relationships which are commonly referred to as partnership legal relationships.

Partnership legal relations are briefly understood as legal relations in the business sector which are principally based on aspects of mutual need and mutual trust between business actors. (I Made Tegar Dewanta, Moch Choirul Rizal 2023a) At an ideal level, a partnership legal relationship emphasizes equality of position between the parties, thus requiring a partnership agreement to guarantee legal certainty. Conceptually, the legal relationship between online land transportation service application providers and land transportation drivers can be categorized as a partnership legal relationship.(Radic and Kuswandi 2021) However, in practice, this partnership legal relationship gives rise to problems, including "one-sided" legal relationships, so that every decision and substance of the partnership agreement generally benefits the provider of the online land transportation service application more than the driver. This can be proven by the protests filed by online transportation drivers such as Go-Jek and Grab who stated that the partnership legal relationship that occurs is disproportionate and tends to weaken the position of online transportation drivers..(Savita, Putra, and Rusjyanthi 2021)

Viewed from a legal aspect, the main problem that occurs between online transportation drivers and online land transportation service application providers in partnership legal relationships is due to the absence of specific legal regulations that discuss and serve as guidelines in implementing partnership legal relationships between online transportation drivers and transportation service application providers. land online. This creates a legal vacuum, further weakening the position of online transportation drivers. This research aims to analyze and determine legal prescriptions or solutions to the problem of legal

gaps in special regulations that discuss and serve as guidelines for implementing partnership legal relations between online transportation drivers and online land transportation service application providers in terms of the aspect of social justice. The social justice aspect is the main aspect used to analyze this research because the social justice aspect is the main idea of the legal relations of the Indonesian economy as initiated by the founding leaders and the drafters of the Indonesian constitution. (Sagala 2022) Apart from that, the aspect of social justice about the problematic legal relationship between online transportation drivers and online land transportation service application providers is also relevant to discuss regarding how to contextualize the value of social justice in technological developments that have an impact on the digitalization of land transportation services.

Research discussing legal partnership relations has been carried out by several previous researchers such as a) research by Supriatna, et al. (2021) which specifically examines the legal relationship of partnerships in online transportation in Indonesia. (Dewantoro, Sharon, and Supriatna 2021) This research focuses on a comparative analysis of partnership legal arrangements between Indonesia, Malaysia, and the United States. Further research, conducted by Kartini and Miliasari (2022), discussed the legal partnership relationship between the government and residents in the relocation process. (Miliasari and Kartini 2022) The focus of this research is on various obstacles regarding the partnership legal relationship between the government and residents in the relocation process. Further research was also carried out by Amelia, et al. (2023) which refers to the legal partnership relationship between Go-Jek and drivers in the context of employment law. (Hasibuan, Charos, and Tambunan 2023a) this research focuses on a comprehensive analysis of the legal partnership between Go-Jek and drivers in terms of various laws and regulations in the employment sector.

From the three previous studies above, it can be concluded that research that specifically discusses the legal partnership relationship between online transportation drivers and online land transportation service application providers, especially with a review of social justice aspects, has never been carried out. This emphasizes the originality of this research which tries to discuss aspects of social justice that have not been analyzed in the legal partnership relationship between online transportation drivers and online land transportation service application providers by the three previous studies above.

## **2. Research Method**

Research with an analytical focus on efforts to answer legal issues, namely the absence of specific legal regulations that discuss and serve as guidelines for implementing partnership legal relations between online transportation drivers and online land transportation service application providers viewed from the aspect of social justice, is normative legal research. (Peter Mahmud Marzuki 2017) Normative legal research focuses on aspects of studying legal values, principles, and norms by referring to certain legal events or relationships. The primary legal material used in this research is Law no. 13 of 2003 concerning Employment (UU Ketenaker), UU no. 20 of 2008 concerning Micro, Small, and Medium Enterprises (UMKM Law), as well as Law no. 6 of 2023 concerning Job Creation (Creation Law). Secondary legal materials are journal articles, books, as well as various news and websites that discuss the legal partnership relationship between online transportation drivers and online land transportation service application providers. The approach used is a conceptual and statutory approach.

### **3. Results and Discussion**

#### **The Aspects of Social Justice in the Legal Partnership Relationship Between Drivers and Online Land Transportation Service Application Providers**

Technological developments and societal developments in general have implications for the development of law in society. These legal developments can take the form of the birth of new legal relationships, legal activities that specifically change and are different from before, up to the existence of certain legal acts that are formed to facilitate existing developments in society. (Garnett and James 2020) The existence of the online transportation phenomenon is part of societal developments that occur due to technological changes. (Haerani 2021) The relevance between societal developments that occur as a result of technological change and law is described comprehensively by Richard Susskind who states that societal developments that occur as a result of technological change are oriented towards the development of society's culture and legal behavior. (Susskind 2015) One of them is that changes in technology and information make society a subject that determines the development of law and not just an object where people live to be subject to and implement the laws that have been formulated. Societal developments that occur as a result of technological changes have implications for legal aspects, one of which occurs due to the digitalization phenomenon which makes various aspects of human life digital and rely on networks and are online-based. This development is part of the long history of the Industrial Revolution, where digitalization then became the main characteristic of the development of the

Industrial Revolution 4.0.(Riyadi Putra, Nur Styaningsih, and Herviana 2022) From another perspective, the phenomenon of digitalization is also an inevitable part of the concept of society 5.0, where digitalization has changed human behavior from "all business" to "all practical" and "all efficient".(Budi, Wira, and Infantono 2021)

This digitalization phenomenon also has an impact on online-based land transportation service providers. The existence of several application platforms that provide online land transportation services such as Go-Jek, Uber, and Grab is a legal phenomenon that cannot be avoided. (Gusti et al. 2021) On the one hand, the phenomenon of digitalization of online-based land transportation has had a positive impact on consumers regarding the ease of mobilization and efficiency in activities, which makes it easier to order land transportation services because simply by using a device and doing a "click" then everyone can enjoy land-based transportation services. on line. On the other hand, for the general public, especially land transportation drivers, the phenomenon of digitalization of online-based land transportation can also open up new job opportunities and minimize unemployment in Indonesia. In 2019-2020, online-based land transportation services were proven to reduce the number of unemployed in Indonesia by 5.34%.(Damayanti 2019) Even so, in its development, work as an online transportation driver complains of various problems which by 2023 can be summarized into three problems, namely: income that tends to fall, bonuses and application provider policies that are not as intensive as before (2020 and below), and legal relations. partnerships that do not guarantee optimal legal protection for online transportation drivers.

In terms of decreasing income, in August 2023 alone there will be a 66% decrease in income experienced by online transportation drivers. (Mustajab 2023) This decrease in income could occur due to the large number of people working in the online transportation driver sector as well as the many similar platforms that offer various other convenience features. This makes competition in the field of online transportation service providers too much and has implications for decreasing income. In terms of bonuses and application provider policies, they are not as intensive as before (2020 and below) this can be seen from the application policies of online transportation providers which tend to reduce daily bonuses from previous years. One of the reasons for the policy to reduce daily bonuses from previous years is the minimum standard for online transportation service fees which has been regulated by the Ministry of Transportation since 2022. (Izzati 2022a) The regulations regarding online transportation service fee standards that have been regulated by the Ministry of Transportation also have an impact on various

guarantees that must be provided by online transportation service providers for both passengers and online transportation drivers. The next aspect is related to the pattern of partnership relationships that occur between online transportation service provider applications and online transportation service drivers.

The partnership relationship between online transportation service provider applications and online transportation service drivers is a legal relationship that tends to be new and has not received specific and comprehensive regulation in various laws and regulations in Indonesia.(Izzati 2022b) It is noted that expressive verbs, and partnership legal relations are only regulated in Article 1 number 13 of the MSME Law which was later amended in the Ciptaker Law which emphasizes that partnership legal relations are based on three aspects, namely: cooperative relations, both direct and indirect, legal relations involving each other. each business actor, and is based on several principles such as mutual benefit, strengthening, and trust. At a glance, Article 1 point 13 of the MSME Law which was later amended in the Ciptaker Law has generally regulated partnership legal relationships, however about partnership legal relationships between online transportation service provider applications and online transportation service drivers, this requires more specific special arrangements. compared to the provisions in Article 1 number 13 of the MSME Law which was later amended in the Ciptaker Law. Referring to the legal ratio of Article 1 number 13 of the MSME Law which was later amended in the Ciptaker Law, the partnership legal relationship is intended as an effort to emphasize cooperation that can strengthen the existence of MSMEs as small community businesses that can be empowered and can generate profits that can improve the welfare of MSME organizers..(Jatimulya and Wibowo 2023)

This confirms that, in principle, the legal ratio of partnership relationships is a cooperation between business actors to empower small, micro, and medium businesses. This creates problems because the legal partnership relationship between online transportation service provider applications and online transportation service drivers is not based on cooperation between business actors to empower small, micro, and medium businesses, but is mutually necessary in which the online transportation service provider application requires a role. from online transportation service drivers, while online transportation service drivers also need policies from the online transportation service provider application. If the legal relationship that occurs between the online transportation service provider application and the online transportation service driver is categorized as a partnership legal relationship later link as regulated in Article 1 number 13 of the

MSME Law which was later amended in the Ciptaker Law, then this has the potential to cause injustice for online transportation service drivers. The potential injustice experienced by online transportation service drivers regarding partnership relationships with online transportation service providers is based on three aspects, first, online transportation service drivers are fully subject to various policies set by online transportation service providers which place online transportation service drivers in a legal relationship. depending on the online transportation service provider.

This makes the principle of mutual benefit one of the basic principles in partnership relationships potentially "one-sided" because various policies made by online transportation service provider applications can be detrimental to online transportation service drivers. Second, viewed from the aspect of legal relations based on the Employment Law, later amended in the Ciptaker Law, the legal relationship between the online transportation service provider application and the online transportation service driver is not relevant to be categorized as an employment legal relationship. This is because the elements of wages and certain working hours which are basic requirements in an employment relationship are not contained in the legal relationship that exists between the online transportation service provider application and the online transportation service driver. (Adriaman and Irianto 2021) This means that drivers of online transportation services do not get the legal protection that workers get as regulated in the Employment Law which was later amended in the Job Creation Law. Third, if you look at the pattern of legal relations between online transportation service provider applications and online transportation service drivers, there should be special partnership legal arrangements so that they can provide legal protection for online transportation service drivers. This is because if we only refer to the regulation of partnership relationships as in Article 1 number 13 of the MSME Law which was later amended in the Ciptaker Law, this is irrelevant. After all, the regulation in Article 1 number 13 of the MSME Law which was later amended in the Ciptaker Law is focused on the regulation of partnership relationships. between business actors.

Referring to the description above, there is an unfair orientation that occurs between the legal relationship between the online transportation service provider application and the online transportation service driver because there is no special partnership relationship arrangement between the online transportation service provider and the online transportation service driver which does not have to refer to the provisions Article 1 number 13 of the MSME Law which was later amended in the Ciptaker Law. Conceptually, the legal relationship between online

transportation service provider applications and online transportation service drivers because there is no special partnership relationship between online transportation service providers and online transportation service drivers has given rise to a form of social injustice. Social injustice is understood as a form of failure or non-implementation of the idea of social justice as the main principle in economic legal relations to realize shared prosperity. (Nur Afiah , Sirajuddin 2023) The principle of social justice itself is one of the basic values in Pancasila, especially the fifth principle, and is a fundamental value in the Indonesian constitution which was the main discussion of the founding fathers of the country. (Chairul Huda 2018) Sukarno, as the initiator of Pancasila, for example, firmly stated that the orientation of independent Indonesia apart from political democracy was the realization of economic democracy based on social justice in which every citizen apart from getting the same opportunities was also empowered to be able to realize economic prosperity. (Widhyartono, Arqom Kuswanjono 2019)

Sukarno's view is also relevant to Moh's ideas. Hatta emphasized that the idea of economic democracy is a fundamental idea and joint in realizing the country's goals. Moh. Hatta emphasized that what is meant by economic democracy is the provision of shared prosperity based on cooperative principles in which prosperity is shared and felt together. (Hidayat 2017) The ideas of the two founding leaders above can provide direction regarding the orientation and nature of social justice which, apart from building equal and mutually beneficial relationships, also contains an orientation to empower "weaker" parties economically. Sukarno and Moh's ideas of social justice. Hatta above has relevance to the idea of justice as put forward by John Rawls regarding fairness as the "heart" of justice itself. In John Rawls' view of fairness itself, justice has two dimensions, namely the similarity dimension and the differentiation dimension. (Said and Nurhayati 2021) In the aspect of similarity, justice or fairness in John Rawls' terms can be achieved as long as equal parties are treated the same. However, if the parties are not equal then a differentiation aspect is needed, namely, various different efforts to ensure a fair and proper legal relationship. Referring to the legal relationship between online transportation service provider applications and online transportation service drivers, refers to the idea of social justice from Sukarno and Moh. Hatta above, the "empowering" aspect is still not fulfilled. In practice, online transportation service provider applications can impose various policies unilaterally on online transportation service drivers.

Judging from the idea of justice as fairness in John Rawls' terms, the legal relationship between the online transportation service provider application and the

online transportation service driver is a legal relationship that requires a differentiation aspect, namely the differentiation of special arrangements related to partnership relationships so that it can guarantee certainty and legal protection for online transportation service driver. Based on the results of the analysis above, the social justice aspect of the partnership legal relationship between the driver and the online land transportation service application provider has not been fulfilled apart from the reality that the online transportation service provider application can impose various policies unilaterally on online transportation service drivers, this is also due to the absence of special regulations regarding special partnership relationships that can guarantee legal certainty and protection for online transportation service drivers.

### **The Legal Protection Policy for Partnership Legal Relations Between Drivers and Online Land Transportation Service Application Providers**

The phenomenon of partnership legal relations between drivers and online land transportation service application providers as part of technological developments certainly creates problems, especially from the aspect and dimension of social justice. Referring to the idea of social justice as put forward by Sukarno and Moh. Hatta above, the "empowering" aspect is still not fulfilled. This can also be seen in the provisions in Article 1 point 13 of the MSME Law which was later amended in the Ciptaker Law which does not explain one of the principles of a partnership legal relationship, namely the empowerment principle. The absence of the empowerment principle in the provisions of Article 1 point 13 of the MSME Law which was later amended in the Ciptaker Law can be understood because the legal partnership relationship as regulated in Article 1 number 13 of the MSME Law which was later amended in the Ciptaker Law is a partnership legal relationship for MSMEs. This will cause problems when it is related to the legal partnership relationship between the driver and the online land transportation service application provider. Essentially, there are three main differences between the partnership legal relationship as regulated in Article 1 point 13 of the MSME Law which was later amended in the Ciptaker Law and the partnership legal relationship between drivers and online land transportation service application providers, namely: first, the partnership legal relationship in Article 1 point 13 of the MSME Law which was later amended in the Ciptaker Law is oriented towards cooperation between business actors, especially for MSME business actors in increasing their productivity.

This is of course different from the partnership legal relationship between the

driver and the online land transportation service application provider because this legal relationship is only based on an orientation of mutual need, namely the online land transportation service application provider needs the online land transportation service driver and vice versa.(Hasibuan, Charos, and Tambunan 2023b) Second, the partnership legal relationship as regulated in Article 1 point 13 of the MSME Law which was later amended in the Ciptaker Law only emphasizes the importance of the principles of cooperation, mutual need, and mutual benefit in the partnership legal relationship. In the context of partnership legal relations carried out by MSME business actors, this can be said to be relevant, however, in the context of partnership legal relations between drivers and online land transportation service application providers, this principle is still inadequate because, in the partnership legal relationship between drivers and providers, Online land transportation service applications require the principle of empowerment from one party to another. In this context, the partnership legal relationship between drivers and online land transportation service application providers emphasizes online land transportation service application providers to be able to empower online land transportation service drivers.

Third, viewed from the aspect of social justice, the partnership legal relationship between the driver and the online land transportation service application provider is actually in the "middle" between the orientation of the labor law relationship regulated in the Employment Law which was later amended in the Job Creation Law and the partnership legal relationship as regulated in Article 1 number 13 of the MSME Law which was later amended in the Ciptaker Law. This orientation of being "in the middle" shows that in the legal relationship between the driver and the online land transportation service application provider, there are characteristics of employment law relations and partial or incomplete partnership relations. This can be seen in the regulation of the Employment Law which was later amended in the Job Creation Law, where the main orientation of employment law relations is the existence of aspects of agreements (agreements) between business actors and workers, wages, type, and time of work. In the aspect of the agreement (agreement) between business actors and workers and the type of work, the legal relationship between the driver and the online land transportation service application provider fulfills these two elements, but cannot be categorized as a legal employment relationship, because of two other aspects, namely wages and work time is not fulfilled and is not specifically formulated in the legal relationship between the driver and the online land transportation service application provider.

In another aspect, even though the legal relationship between the driver and

the online land transportation service application provider is closer to the type of partnership legal relationship, this is also not entirely appropriate considering the regulations in the partnership legal relationship as regulated in Article 1 number 13 of the MSME Law which was later amended The Job Creation Law emphasizes legal relations between business actors in business relations so that it is not fully applicable to legal relations between drivers and online land transportation service application providers. With a position "in the middle" between the aspects of partnership legal relations and employment law relations above, the legal relationship between drivers and online land transportation service application providers should be regulated in separate legal regulations to realize social justice. A separate legal relationship arrangement is needed because, in the legal relationship between the driver and the online land transportation service application provider, there are no special regulations governing the legal relationship between the driver and the online land transportation service application provider, apart from technically it also aims to realize social justice. The absence of special regulations, apart from having the potential to cause social injustice, also creates a legal vacuum regarding the ideal regulation of legal relations between drivers and online land transportation service application providers.

According to Sudikno Mertokusumo, a legal vacuum is a form of absence of legal regulations that regulate a particular legal act or event. (Sudikno 2014) The absence of legal regulations that regulate certain legal actions or events can have an impact on not guaranteeing the rights and obligations of each party proportionally. An important implication of the legal vacuum is that rights cannot be implemented optimally and maximally and this has an impact on the realization of the values of justice in society. In Soeroso's view, a legal vacuum also has an impact on the lack of legal certainty in society regarding certain legal acts or events. (Soeroso 2015) In the context of the legal relationship between the driver and the online land transportation service application provider, the absence of special arrangements means that the legal relationship between the driver and the online land transportation service application provider is partially considered a partnership legal relationship. Even though it has fulfilled the legal partnership aspect, referring to the legal ratio of partnership legal relations as in Article 1 number 13 of the MSME Law which was later amended in the Ciptaker Law is not relevant to formulating a legal relationship between drivers and online land transportation service application providers because of the nature of from Article 1 number 13 of the UMKM Law which was later amended in the Ciptaker Law is a legal partnership relationship for UMKM business actors.

This legal vacuum weakens the legal position of drivers of online land transportation services. (I Made Tegar Dewanta, Moch Choirul Rizal 2023b) The weak legal position of online land transportation service drivers is based on two aspects, namely on the type and scope of work where online land transportation service drivers do not have the bargaining power to refuse or consider certain job offers in agreements that have been made with transportation service application providers. land online. Online land transportation service drivers often always "agree" to every provision agreed to by the online land transportation service application provider. In the next aspect, namely related to wages and bonuses, online land transportation service drivers also in practice often agree to various clauses in the wage and bonus agreements and policies set by online land transportation service application providers. From the two aspects above, it can be said that the position of online land transportation service drivers has weaker bargaining power compared to online land transportation service application providers. Referring to the legal vacuum phenomenon above, the idea that the author offers is the need to regulate a special partnership relationship between drivers and online land transportation service application providers. A special partnership relationship between the driver and the online land transportation service application provider can be implemented by referring to the substantive aspects of the partnership legal relationship and employment law relationship.(Mohammad Rizky Axell Putranto 2023)

Quoting M. Isnaeni's view that legal protection oriented towards providing special partnership relationship arrangements between drivers and online land transportation service application providers must be addressed through internal and external legal protection. (Isnaeni 2016) On the internal aspect, legal relations are carried out by formulating a special partnership agreement between the driver and the online land transportation service application provider. Special partnership agreements between drivers and online land transportation service application providers should be specifically regulated in statutory regulations so that they can provide certainty and fairness for drivers and online land transportation service application providers. Regarding external legal protection, the special partnership legal relationship between the driver and the online land transportation service application provider can be regulated through statutory regulations by emphasizing the principle of empowerment as the main principle in the special partnership legal relationship between the driver and the online land transportation service application provider. Apart from that, it is also necessary to regulate social security and health insurance for drivers of online land transportation service

applications as well as provide fair and appropriate bonuses for drivers of online land transportation service applications.

Based on the analysis above, it can be concluded that the legal protection policy for legal partnership relationships between drivers and online land transportation service application providers can be implemented by establishing regulations regarding special partnership relationships between drivers and online land transportation service application providers to fill the existing legal gaps. This is based on the aspect of internal legal protection which is implemented through the formulation of a special partnership agreement that is proportional and balanced between the driver and the online land transportation service application provider. Apart from that, for external legal protection, it is also necessary to formulate certain legal regulations that specifically regulate the special partnership relationship between drivers and online land transportation service application providers.

#### 4. Conclusion

The social justice aspect of the partnership legal relationship between the driver and the online land transportation service application provider has not been fulfilled apart from the reality that the online transportation service provider application can impose various policies unilaterally on online transportation service drivers, this is also due to the absence of specific regulations regarding special partnership relationships that can guarantee legal certainty and protection for online transportation service drivers. Legal protection policies for partnership legal relationships between drivers and online land transportation service application providers can be implemented by establishing regulations regarding special partnership relationships between drivers and online land transportation service application providers to fill the existing legal gaps. This is based on the aspect of internal legal protection which is implemented through the formulation of a special partnership agreement that is proportional and balanced between the driver and the online land transportation service application provider. Apart from that, for external legal protection, it is also necessary to formulate certain legal regulations that specifically regulate the special partnership relationship between drivers and online land transportation service application providers.

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