

THE PHENOMENA OF MOTORCYCLE-TAXI OR *OJEK* AS PUBLIC TRANSPORTATION IN JAKARTA AND ITS LEGITIMACY ACCORDING TO TRAFFIC AND TRANSPORTATION LAW

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ABSTRACT

Jakarta mostly known for its problem with traffic jam and also their public transportation. Amongst this issue, *ojek* emerge and established themselves as an alternative public transportation that much faster and accessible compared to other public transportation, especially after the emergence of application-based *ojek*. Traffic and road transportation have important role in supporting development and as a part to advancing national welfare of the people. The law that provides regulation of transportation itself already exist in Law No. 22 of 2009 of Traffic and Transportation and further regulation in Government Regulation Number 74 of 2014 of Road Transportation, Regional Regulation of Province of Jakarta Number 5 of 2014 of Transportation and Minister of Transportation's Decision Number KM. 35 of 2003 of Implementation of People's Transportation in the Road with Public Transportation. A good proper public transportation provides six point that safety, security, comfortness, affordability, equality, and regularity. While, during these days public transportation mostly are unable to fulfill those six point. These situation makes *ojek* came up with solution as an option for people to through the traffic in Jakarta. But, yet *ojek* in Jakarta and in Indonesia itself still not regulated and actually becomes illegal public transportation. And the absence of law itself leads to some problem such as price, safety issues, and no customer service provided. In doing this research Author was using socio-legal study and also sociological approach. Author conducted two researches, one for customer of *ojek* and one for *ojek* driver. Author used questionnaire for the customer and interview for the *ojek* driver. Based on research conducted by Author, the absence of law leads into legal uncertainty in the society for the related parties; no regulation that regulates standard or measurement about *ojek*'s fare and safety. And according to both customer and *ojek* driver asked by Author also prefer a regulation to be created than to prohibit *ojek* itself. In this chaotic Jakarta's traffic and its public transportation that still under development, *ojek* provides people with option for people. But a regulation still needs to be created to gives legal certainty for parties; whether to protect customer and *ojek* drivers.

Keywords : *Ojek, Public Transportation, Legitimacy.*

1. Introduction

Jakarta as the capital city of Indonesia, is mostly known for its bad traffic, even Jakarta ranked top amongst 78 cities for the most traffic jams on earth.¹ It gets worse with some

project currently ongoing throughout Jakarta's main road (Sudirman, Thamrin, Sisingamangaraja, etc.), namely Mass Rapid Transit (MRT) and Light Rail Transit (LRT). Most of people commuting to and from Jakarta are using their private vehicle. Many reasons backed their decision to use their own vehicle, but it is presumably because of Jakarta's public transport that still have poor quality. Most of Jakarta's public transport (train, bus, mini-bus) seems to be uncomfortable for the passenger (broken seat, broken AC, many

¹Thrillist, 2015. *City With Worst Traffic; Jakarta, Indonesia Tops Castrol's Ranking of Cities With Most Stop Starts*. [online] Available at: <<https://www.thrillist.com/travel/nation/city-with-worst-traffic-jakarta-indonesia-tops-castrol-s-ranking-of-cities-with-most-stop-starts>> [Accessed on September 12th, 2015]

beggars/street singers/sellers) and unsafe (theft, sexual harassment).

From various kind of public transportation exist in Jakarta, motorcycle-taxi, or known as *ojek*, is one of people's favourite among others. It is mostly known for their quickness in going through Jakarta's traffic, *ojek* can go through smaller roads, shortcut and move swiftly in the traffic, which makes the passenger arrive faster compared to when they use bus or cars.

Ojek can easily be found in Jakarta, from main road to suburb area. Most of the *ojek* are usually using area system. Certain number *ojek* drivers are usually dividing themselves based on area where they came from and will pick their customer. The pricing system for *ojek* is based on bargaining within the driver and the customer. So, there is no system to measure the price for each trip, since the price is set individually, one driver could be different compared with other driver.

In 2015, when the traffic in Jakarta was worse than before with constructions that currently happening in many area, *ojek* became more popular for the customer. Even more, as the new technology developed rapidly, it also affects the system of *ojek* itself as public transportation. The conventional system of *ojek* is based on more traditional method, we see the *ojek*, we call them, bargaining, and after the bargaining process is done, we are good to go. But now, *ojek* can be ordered throughout application straight from our gadget. All we have to do is just open the application and choose the service, where to pickup, where the customer want to go, and then all we have to do is just wait for the driver to pick ourself up and take us where we want to go as booked in the application. The most popular application-based *ojek* in Jakarta are *Go-Jek* and *Grabbike*.

A lot of motorcycles with *Go-Jek* and *Grabbike* logo can be seen spread throughout Jakarta and taking passengers. Both of *Go-Jek* and *Grabbike* are the company that combines *ojek* services with latest technology. *Go-Jek* and *Grabbike* provides a revolution in the *ojek* services. Both of them creates an application that can be used anywhere as long as they are connected with the internet and able to use GPS system. These application-based *ojek* is growing rapidly in recent months, it can be

seen throughout massive recruitment that held by *Go-Jek*, one of application-based *ojek* service provider, around August 2015.² According to the founder of *Go-Jek*, Nadiem Makarim, since launched in January 2015, *Go-Jek*'s application already downloaded for more than 500.000 times. He claimed that there is no application in Indonesia that downloaded as much as that in a span of six months.³ It makes the customer can order *ojek* everywhere. They also set price for their service on kilometer basis (Rp 4.000 per kilometer), so there is no need to bargaining with the driver. *Go-Jek* driver that recruited by *Go-Jek* also trained for safety riding, and also given helmet, jacket, and smartphone that contains *Go-Jek* application to get their order. Even more, *Go-Jek* also provides services for buying us food or item and become a courier.

Many customer satisfied with their services, especially after both of them constanly gives promo prices that remarkably cheap compared to other public transportation. These application-based *ojek* has become a trend in some big cities in Indonesia, mainly Jakarta. These application-based *ojek*, provides solution towards people who in needs of fast and cheap way to commuting in big cities where most of the time on a day are spent on the road.

When customers are delighted with the existence of *Go-Jek* and *Grabbike*, conventional *ojek* are not. They feel that both *Go-Jek* and *Grabbike* have stolen their regular customer. In some conventional *ojek* stands in Jakarta, banner like "Go-Jek and Grabbike are forbidden here" can be seen. Some clashes already happened between *Go-Jek* drivers with conventional *ojek* drivers. Some *Go-Jek* drivers were beaten up or threatened by *ojek*

² Metro TV News, 2015. *Go-Jek Diprotes Karena Merekrut Drive Besar-besaran*. [online] Available at: <<http://news.metrotvnews.com/read/2015/08/18/422176/go-jek-diprotes-karena-merekrut-driver-besar-besaran>> [Accessed on September 12th, 2015]

³ BBC Indonesia, 2015. *Masalah Gojek Nadiem*. [online] Available at: <http://www.bbc.com/indonesia/majalah/2015/08/150825_majalah_gojek_nadiem> [Accessed on September 12th, 2015]

drivers. Not only *ojek* drivers that felt the impact of *Go-Jek* and *Grabbike*, taxi drivers also felt that some of their customers decide to use *Go-Jek* and *Grabbike*. Their main complaint about the existence of *Go-Jek* and *Grabbike* is about the price they offered. As mentioned earlier, both of them actually set the price based on the distance of where their customer want to go, same as regular taxi, but both *Go-Jek* and *Grabbike* are continuously using promo prices that a lot cheaper compared with taxi or conventional *ojek*. By continuously using promo prices, they felt that *Go-Jek* and *Grabbike* are destroying market prices.

In Indonesia itself, there are no regulation that regulates about *ojek* itself. Indonesia have the regulation concerning traffic and transportation, it is Law No. 22 of 2009. In that law already being regulated aspects on public transports, which is written in Article 140 until Article 159. But, none of those Articles mention about motorcycle as public transport. Thus, makes the whole operational of *ojek* itself is completely informal. The motorcycle that used as an *ojek* basically is not for public transportation purpose, since all motorcycle in Indonesia are using black license plate, while all public transportation in Indonesia are using yellow license plate.

Many things can go wrong when there is no regulation about it. For instance, since *ojek* are not listed as an public transportation, they can't be monitorized by the authority. The safetiness of the motorcycle can't be guaranteed since it didn't checked by the authorized, even most of conventional *ojek* driver did not provide their passenger with a helmet. Also since there are no standardization about the price, both conventional *ojek* and *Go-Jek* or *Grabbike* can decide the price of their services on their own, making the customer helpless in this case. Beside that, it will also creates price wars amongst conventional *ojek* and *Go-Jek* or *Grabbike* which can led into unhealthy business competition amongst them.

The absence of law regarding motorcycle as public transportation needs to be discussed, concerning the growing phenomena of conventional *ojek* and application-based *ojek*. A regulation is needed to give legal protection for every parties involving in this business.

According to Law No. 22 of 2009 of Traffic and Transportation Article 141 paragraph 1, the customer needs guarantee that they will get safety, security, comfortness, affordability, equality, and regularity.⁴ Conventional *ojek* driver also needs protection regarding the price of the service. Many people decides to use *Go-Jek* or *Grabbike* due to promotional price that they set are very cheap.

Without laws that regulated *ojek*, basically the government are helpless when there is a violation, since the law itself is still not exist. Transport and Transportation service of DKI Jakarta, Andri Yansyah said that. He also states that they unable to ask *Go-Jek* to stop operating, since people needs their service.⁵ Governor of DKI Jakarta, Basuki Tjahaja Purnama, also encourages the revision of Law No. 22 of 2009 of Traffic and Transportation. The revision will change motorcycle as public transportation.⁶

2. *Ojek* And Jakarta's Public Transportation System In National And Regional Traffic And Transportation Legislation

The word transportation came from Latin, *transportare*, *trans* means across or another side; and *portare* means lift or carry. Thus, transportation means to lift or carry something to the other side or from one place to the other place.⁷ According to Abdulkadir Muhammad, transport is a process of the transfer of passenger and/or goods from one place to another place by using various mechanic transportation that acknowledged and

⁴ Law No. 22 of 2009 of Traffic and Transportation, Art. 141 paragraph 1

⁵ Metro TV News, 2015. *Revisi UU Lalu Lintas, CEO Go-Jek: "Enggak Perlu."*. [online] Available at: <<http://news.metrotvnews.com/read/2015/08/19/422430/revisi-uu-lalu-lintas-ceo-go-jek-enggak-perlu>> [Accessed on September 12th, 2015]

⁶ Tempo, 2015. *Bela Go-Jek, Ahok Dukung Revisi UU Lalu Lintas*. [online] Available at: <<http://metro.tempo.co/read/news/2015/08/19/231693129/bela-go-jek-ahok-dukung-revisi-uu-lalu-lintas>> [Accessed on September 12th, 2015]

⁷ Rustian Kamaluddin, 2003, *Ekonomi Transportasi: Karakteristik, Teori Dan Kebijakan*, Ghalia Indonesia, page 75.

regulated in law as in accordance with the field of transportation and progress of technology.⁸

Public transportation holds important role in economic development. Transportation is much related with distribution of goods, services, and labors. Many worker use public transportation to commute between their home to their workplace, public transportation also usually used by tourists as they travel throughout the city, and as a transportation in broader sense along with its indirect impact, it can helps distribution of goods throughout nation, helps development in many sectors, also closing the distance between village and town. Various kind of public transportation emerged to match with characteristic, financial capability, and services to provide better services and reduce the usage of private vehicle. Former Mayor of Bogota from 1998 to 2001, Colombia, Enrique Peñalosa, once said a famous quote: “A developed country is not a place where the poor have cars. It’s where the rich use public transport.”

2.1. Obligation for the Government to Provide Public Transportation

Public transportation is held to:

*“Angkutan umum diselenggarakan dalam upaya memenuhi kebutuhan angkutan yangselamat, aman, nyaman, dan terjangkau.”*⁹

And public transportation holds important role in many sector. Lots of people who can’t afford themselves private vehicle relies on public transportation. Public transportation also helps to reduce unemployment by employing them to become driver or administration officer.

Traffic and road transportation have strategic role in supporting the development and national integration as a part of effort to advance public welfare as mandated in the Constitution of Republic of Indonesia 1945.¹⁰

Also traffic and road transportation as a part from national transportation system must be developed its potential and role to fulfill safety, security, discipline, and smoothness in traffic and road transportation in order to support economical development and regional development.¹¹

And the one who is responsible for the implementation of public transportation is the government.¹²

“Pasal 139

- (1) *Pemerintah wajib menjamin tersedianya angkutan umum untuk jasa angkutan orang dan/atau barang antarkota antarprovinsi serta lintas batas negara.*
- (2) *Pemerintah Daerah provinsi wajib menjamin tersedianya angkutan umum untuk jasa angkutan orang dan/atau barang antarkota dalam provinsi.*
- (3) *Pemerintah Daerah kabupaten/kota wajib menjamin tersedianya angkutan umum untuk jasa angkutan orang dan/atau barang dalam wilayah kabupaten/kota.”*

These concepts also stated in Government Regulation Number 74 of 2014 of Road Transportation with the same meaning and elaboration.

2.2. People’s Transportation by using Public Motor Vehicle

The service for people’s transportation consists of two types, people’s transportation by using public vehicle in route and people’s transportation by using public vehicle not in route.¹³ Buses, *metromini*, *kopaja*, and *angkot* are the examples for people’s transportation by using public vehicle in route; and *ojek*, taxi, travel bus, rented car are the examples of people’s transportation by using public vehicle not in route.

Public motor vehicle mentioned in Law No. 22 of 2009 of Traffic and Transportation, Government Regulation Number 74 of 2014 of Road Transportation,

⁸ Abdulkadir Muhammad, 2007, *Arti Penting dan strategis multimoda pengangkutan niaga di Indonesia, dalam perspektif hukum bisnis di era globalisasi ekonomi*, Penerbit Genta Press, page 1.

⁹ Law No. 22 of 2009 of Traffic and Transportation *op. cit.*, Art. 138 paragraph 1.

¹⁰ *ibid*, Consideration point a

¹¹ *ibid*, Consideration point b

¹² *ibid*, Art. 138 paragraph 2

¹³ *ibid*, Art. 140

and Regional Regulation of Province of Jakarta Number 5 of 2014 of Transportation never included motorcycle as a public motor vehicle. Motor vehicle in Law No. 22 of 2009 of Traffic and Transportation are grouped based on its type, namely: motorcycle, passenger car, bus car, goods car, and special vehicle.¹⁴

And passenger car, bus car, and goods car are later be grouped based on its function; whether individual motor vehicle or public motor vehicle.¹⁵

2.3. Ojek as a Public Transportation

Historically, *ojek* emerged around 1969-1970 in Central Java and also Jakarta. Around that year, bicycle was used for *ojek*, instead of motorcycle. *Ojek* that using bicycle still can be seen nowadays in some area in Jakarta.

Ojek itself basically is the motorcycle form of taxi. They operating not in a route established for them. *Ojek* is very helpful for people in Jakarta who must face traffic jams; they can go through impassable road that can't be passed by other vehicle. *Ojek* also helpful, since not all area in Jakarta are covered by public transportation services. On the streets in Jakarta, *ojek* can be easily found. Especially, after the latest trend of application based *ojek* emerged. The number of *ojek* driver itself keeps on growing, especially application-based *ojek* driver.

As mentioned earlier, *ojek* has no regulation that regulates about the existence of *ojek* and its practical regulation. In Law No. 22 of 2009 of Traffic and Transportation and Government Regulation Number 74 of 2014 of Road Transportation, motorcycle is not classified as a public transportation. But practically, *ojek* still roam freely in Jakarta and anywhere. Because if *ojek* is prohibited to operate, it could make lots of people lose their job as an *ojek* driver and people are losing one option of public transportation.

From 2015, a breakthrough emerged in *ojek* with the growing of application-based *ojek*. Application-based *ojek* basically is same with conventional *ojek* in terms of vehicle used; the differences between them are the usage of technology during the process, the services provided, and application-based *ojek*

are run by companies, while conventional *ojek* are individually run by the driver. With application-based *ojek* are run by companies, there are some advantages compared with conventional *ojek*; such as, they are using application that can be accessed through smartphone; no need to go outside and find conventional *ojek* base, since it is run by company, they can give out promotion that can't be matched with conventional *ojek* driver, some of application-based *ojek* company also innovate by not only act as *ojek* driver, these application-based *ojek* also provide their customer with courier service, food delivery service from various restaurant and also shopping through smartphone. In Jakarta there are several application-based *ojek* that can be found; *Go-Jek*, *GrabBike*, *BlueJek*, *LadyJek*, *Smart Jek*, and *Bang Jek*.

On December 17th, 2015, Minister of Transportation, Ignasius Jonan, issued Notification Letter Number UM.3012/1/21/Phb/2015, dated back to November 9th, 2015. The letter itself addressed to the Head of Police of Indonesia and contains prohibition for vehicle non-public transportation that is using internet-based application to operate and ask the police to do what are necessary.¹⁶ The reason stated by the Minister, was because motorcycle is not included as public transportation.¹⁷ Many people protested the decision made by the Minister, even the President himself declaring that he will coordinate with the Minister to revoke his decision.¹⁸ In the next day, the

¹⁶ CNN Indonesia, 2015. *Pemerintah Resmi Larang Layanan Ojek Daring Beroperasi*. [online] Available at: <<http://www.cnnindonesia.com/nasional/20151217223917-20-98990/pemerintah-resmi-larang-layanan-ojek-daring-beroperasi/>> [Accessed on December 17th, 2015]

¹⁷ Detik News, 2015. *Ini Penjelasan Menhub Jonan Soal Aturan Transportasi Umum Berbasis Aplikasi*. [online] Available at: <<http://news.detik.com/berita/3100667/ini-penjelasan-menhub-jonan-soal-aturan-transportasi-umum-berbasis-aplikasi>> [Accessed on December 20th, 2015]

¹⁸ CNN Indonesia, 2015. *Jokowi: Gojek Harus Diapresiasi, Bukan Dihalangi*. [online] Available at: <<http://www.cnnindonesia.com/nasional/20151218152348-20-99157/jokowi-gojek-harus->

¹⁴ *ibid*, Art. 47 paragraph 2

¹⁵ *ibid*, Art. 47 paragraph 3

prohibition revoked by the Minister himself.¹⁹ The reason of revocation itself is caused by there is a big gap between demand of public transportation and the ability to provide proper public transportation and that gap was filled by conventional *ojek* and application-based *ojek* recently. Thus, makes application-based public transport are allowed to operate as a solution until the need of proper public transportation could be fulfilled.²⁰

Although through Ministry of Transportation stated that *ojek* is not included as a public transportation, according to one of the member of the National Consumer Protection Agency (*Badan Perlindungan Konsumen Nasional/BPKN*), Dr. David Tobing, basically *ojek* already classified and acknowledged as a business field based on Head of Central Statistic Agency Regulation Number 57 of 2009 of Basic Classification of Business Field of Indonesia (*Klasifikasi Baku Lapangan Usaha Indonesia/KLBI*) in attachment Number 49424.²¹ It means that basically there is difference between the governments concerning the legality of the *ojek* itself. From the perspective of Ministry of Transportation, *ojek* is an illegal public transportation; since there is no regulation that mentions the legality of motorcycle as a public transportation. While from the perspective of National Consumer Protection Agency (*Badan*

Perlindungan Konsumen Nasional/BPKN), *ojek* is a legal profession; since it has been included as one of business field mentioned in Basic Classification of Business Field of Indonesia (*Klasifikasi Baku Lapangan Usaha Indonesia/KLBI*) edition 2009.

3. The Phenomena Of Motorcycle-Taxi Or *Ojek* As Public Transportation In Jakarta And Its Legitimacy According To Traffic And Transportation Law

Public transportation holds important role in the development of nation. Thus, makes the existence of public transportation needs to be guaranteed by the law. As the world develops quickly and innovation keeps on emerged, sometimes regulation that already existed can't keep up with the latest development, and the existence of *ojek* itself is the example of when a regulation can't keep up to the innovation and leads to absence of law.

3.1. Why are the law needed to regulates conventional *ojek* and application-based *ojek*?

Basically, there is no regulations that regulates the existence of motorcycle as a public transportation itself. According to Law No. 22 of 2009 of Traffic and Transportation shows that vehicle that are included as a public transportation are passenger car, bus, and goods car; motorcycle doesn't included as public transportation. Since the law itself doesn't regulate the existence of *ojek*, lower regulation can't regulate *ojek* either.

The absence of law itself basically makes *ojek* an illegal public transportation. Since here is no mechanism to regulate them compared to other types of public transportation. And it creates legal uncertainty, something that want to be avoided, as said in Article 3 point c of Law No. 22 of 2009 of Traffic and Transportation.

The absence of law also affects on the implementation of *ojek* itself; it affects the price, safetiness, and customer protection. There is no standard price measurement for *ojek* and the driver could decide the price as much as they wish. And when application-based *ojek* emerged, the company also measure the price by their own. From Authors' research, the existence of application-based *ojek* affects conventional *ojek* driver, in terms of amount of income they get everyday. And it

diapresiasi-bukan-dihalangi/> [Accessed on December 18th, 2015]

¹⁹CNN Indonesia, 2015. *Menteri Jonan Melunak, Ojek Online Boleh Beroperasi Lagi*. [online] Available at: <<http://www.cnnindonesia.com/ekonomi/20151218113104-92-99078/menteri-jonan-melunak-ojek-online-boleh-beroperasi-lagi/>> [Accessed on December 18th, 2015]

²⁰ Detik News, 2015. *Ini Penjelasan Menhub Jonan Soal Aturan Transportasi Umum Berbasis Aplikasi*. [online] Available at: <<http://news.detik.com/berita/3100667/ini-penjelasan-menhub-jonan-soal-aturan-transportasi-umum-berbasis-aplikasi>> [Accessed on December 20th, 2015]

²¹ Detik News, 2015. *Menhub Larang Go-Jek, Badan Perlindungan Konsumen Protes*. [online] Available at: <http://news.detik.com/berita/3099103/menhub-larang-go-jek-kemendag-protos?utm_source=news&utm_medium=Twitter_Detikcom&utm_campaign=CMS+Socmed> [Accessed on December 18th, 2015]

creates friction between driver from conventional driver and application-based driver. Conventional *ojek* driver felt that price set by application-based *ojek* is way too low and makes them can't compete with the price from application-based *ojek*. Some friction already happened, including threatening application-based *ojek* driver to not pick up passenger from their area; these area includes Kalibata area, Gading Pluit area, Kebon Jeruk area, and Pasar Minggu area.

Besides price, there is safety issues that also needs to be regulated. Safetiness tops the survey from customer as the weakness of *ojek* itself. If we see Minister of Transportation Regulation Number 46 of 2014 of Minimum Standard Services of People Transportation by Using Public Vehicle Not In Route and its Amendment, Minister of Transportation Regulation Number 28 of 2015, there are many aspects considered for safety and security aspect. For example, minimum safety and security for taxi includes few things such as: driver's identification, customer service, communication device, vehicle's identification, customer service phone number for safety aspects and driver's physical condition, driver's competency, first aid kit, insurance for traffic accident, inspection for vehicle before operate, age of vehicle, maintenance facility for security aspects. And those aspects can't be implemented since the regulation for *ojek* itself didn't exist.

There is also no mechanism to customer protection for conventional *ojek*. Since they are act individually, not under a company or association. While on the other side, application-based *ojek* already establish themselves with customer protection with the existence of customer service in their company. The establishment of customer service become important, especially for service-based business. With the existence of customer service, the customer could give feedback from the service and helps the service to become better. When the service become better, the customer will satisfy and people as a social creature are tend to spread their good experience towards people around them, it is a free marketing for the driver. If it used well, it can be advantageous for both driver, and customer. Customer protection itself is big issue in global competition

nowadays, since customer protection is needed in global protection.²² Since customer holds important role in the business itself and the customer also needs the goods or service business, so its a mutual relationship and both of them needs legal protection. The terms of customer protection itself is related with legal protection, the protection in here not only for physical protection, but also the rights which is more abstract. In other words, customer protection is protection given by the law towards customers' rights.²³ The customer protection law itself groups norms of customer protection into two groups²⁴:

1. Actions Prohibited By Business Doers; And
2. Regulation About Inclusion Of Standard Clause.

Related with customer protection itself, it could be seen areas of customer protection:²⁵

1. Physical security;
2. Improvement also protection of economical interest of customer;
3. Standard for security and quality of goods and service;
4. Even distribution of facility of basic needs;
5. Efforts to allows customer to perform compensation demands;
6. Education program and information dissemination;
7. Regulation for certain problems such as foods, beverages, drugs, and cosmetics.

And according to Janus Sidabalok, there are four main reasons of why customer needs to be protected:²⁶

1. Protecting customer is same with protecting whole nation as mandated by purpose of national

²² Dr. Abdul Halim Barkatullah, S.Ag., S.H., M.Hum, 2010, *Hak-hak Konsumen*, Bandung, Nusa Media, page 23

²³ Shidarta, 2000, *Hukum Perlindungan Konsumen Indonesia*, (Jakarta: PT Grasindo) page 1

²⁴ Yusuf Shofie, 2003, *Perlindungan Konsumen dan Instrumen-Instrumen Hukumnya*, (Bandung: PT Citra Aditya) page 26

²⁵ Taufik Simatupang, 2004, *Aspek Hukum Periklanan*, (Bandung: PT. Aditya Bakti) page 11-13

²⁶ Janus Sidabalok, 2006, *Hukum Perlindungan Konsumen di Indonesia*, (Bandung: PT. Citra Aditya Bakti) page 6

- development according to constitution 1945;
2. Protecting customer needed to prevent customer from negative impact of the use of technology;
 3. Protecting customer needed to create humans that physically and spiritually healthy as development actors, which also means to maintain continuity of national development;
 4. Protecting customer needed to ensure finance resource of development that comes from customer people.

And according to Adijaya Yusuf and John W. Head, customer protection is terms that used to describe legal protection that given towards the customer in effort to fulfill their needs from things that could harm the customer. Customer protection law has one main goal, to embody nationhood and statehood life that fair and prosperous as mandated in Preamble of Constitution 1945.²⁷ According to Ali Mansyur, customer interest can be divided into four types of interest, namely:²⁸

1. Physical interest;
Physical interest is about body or physic that related with safety and security of body and mind in using goods and/or services. Physical interest also related with healthy and soul security.
2. Social and environment interest;
Social and environment interest of customer is realization of customers' desire to get optimal result from the use of their economic resource in order to get goods and service that are life needs, thus customer needs correct information about the product they about to usel it will create social issue if the product used is unsafe.
3. Economic interest;

Economic interest of the business actors to get profit as much as they can is something reasonable, but customers' buying power also must be considered in means that business actors must give details of real production cost of a product or service.

4. Legal protection interest;
Legal protection interest is customers' access to justice, and customer deserve the rights to be protected from business actors' action that is harm to them.

The occurence of conventional *ojek* and application-based *ojek* itself are still running although there is no regulation for them. Minister of Transportation, Ignasius Jonan, on December 2015 issued a Decision that prohibits the existence of application-based *ojek* due to the types of vehicle they use. This decision quickly became topic on the internet and sparks controversy. Lot of people asks why the decision issued after the application-based *ojek* already established themselves in the society and why only application-based *ojek* that prohibited while conventional *ojek* can still operate.

From elaboration above, it can be seen that the absence of the law itself still did not provide legal certainty for the *ojek* driver and for customer as well, as stated as the goal of the law itself. And it also proves that the Law No. 22 of 2009 of Traffic and Transportation is outdated and needs to be revised, especially regarding the existence of motorcycle as a public transportation.

3.2. How does the law regulates the high need of application based ojek and conventional ojek, along with other transportation?

The big amount of usage of private vehicle in Jakarta is affected by the quality of public transportation itself. Factors such as, uncomfortable for the passenger (broken seat, broken AC, many beggars/street singers/sellers) and unsafe (theft, sexual harassment) mostly became their main reason to choose using private vehicle.

And it government's responsibility to provide people with proper public transportation in order to support the

²⁷ Setiawan, 2001, *Makalah Produsen atau Konsumen;Siapa Dilindungi Hukum*, (Jakarta) page 152

²⁸ M Ali Mansyur, 2007, *Penegakan Hukum Tentang Tanggung Gugat Produsen Dalam Perwujudan Perlindungan Konsumen*, (Yogyakarta: Penerbit GentaPress) page 81

development and national integration as a part of effort to advance public welfare as mandated in the Constitution of Republic of Indonesia 1945. But so far, the government is yet to able in creating proper public transportation that safety, comfortable, and integrated. Currently the government is in the middle of process to build more public transportation to provide more option for passenger; such as monorail, Light Rapid Transit (LRT), and Mass Rapid Transt (MRT).

Ojek continuously developed in society since *ojek* offers some strong point that can't be offered or matched by other public transportation. Main reason of people using *ojek* is because of their swiftness; they can go through impassable road compared to bus or *angkot*. Also, *ojek* is easy to find. At corner of the street, in front of housing complex, even in the main road; *ojek* became their only option since sometimes there are certain places that still out of other public transportation's reach.

Basically there are two options for the government that can be done to overcome the issue of *ojek*. First, to revised the existed regulation. Or second, to prohibit them for operating. But if the government decide to choose option number two, the government must remember that the user of *ojek* service are plenty and public transportation in Jakarta seems still haven't finished to be revitalised. And to gives legal certainty for every parties, it needs to be created legal basis for *ojek*.

And with more and more people with the awareness for using public transportation, the government needs to revised the law to provide legal certainty for every parties involved in *ojek*; either the company or association, the customer, and the *ojek* driver. The high needs of application-based *ojek* and conventional *ojek*, along with other transportation needs to be regulated.

4. Conclusion

Indonesia, who has one of the worst traffic in the world, have a lot of problems regarding traffic. The growth of private vehicle that outnumbered the growth of the road, indisiplinary of the people towards the traffic, the construction that currently happening which affects the number of lane that opened in some area, public transportation that still unable to give good quality and service.

The government are supposed to provide people with a proper public transportation. Public transportation holds important role in many sector. Lots of people who can't afford themselves private vehicle relies on public transportation, public transportation also helps to reduce unemployment by employing them to become driver or administration officer, and Tourists are using them as they commute throughout the city.

While the quality of public transportation still not well enough and the traffic keeps on worsening, *ojek* become more popular option for commuter. By using smaller vehicle compared to bus, *angkot*, and *metromini*, *ojek* provides more swiftness and agility in going through Jakarta's traffic. They can go through impassable road and makes you arrive faster compared when using bus or *angkot* or *metromini*.

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