

## CHAPTER TWO

### LITERATURE REVIEW

#### A. The Transportation Issue

Based on Black Law Dictionary, transportation is “*the removal of goods or persons from one place to another, by a carrier*”.<sup>8</sup>The definition of transportation in Black Law Dictionary has similarities with definition of “transportation” in Indonesian dictionary, namely the transport of goods and people by different types of transportation in accordance with technological development.<sup>9</sup>

Transportation growth has provided great benefits to society which affect many aspects of human life. Transportation has also created problems for public interest. Therefore, the government must manage it in a directed and thorough manner. Active government involvement in the implementation of transportation activities is needed especially in the initial stages of development<sup>10</sup>. Transportation means to move people or

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<sup>8</sup>Anonymous, “What is Transportation”, accessed from <https://www.go-jek.com/about/> Accessed on October 23th, 2017, 3:17 p.m

<sup>9</sup>Badan Pengembangan dan Pembinaan Bahasa, 2012, <https://kbbi.web.id/transportasi> Accessed on October 25th, 1:41 p.m

<sup>10</sup>Rahardjo Adisasmita, 2014, *Manajemen Pembangunan Transportasi*, Jakarta, Graha Ilmu, p.6

goods from one place to another by using a transport in a road traffic space.<sup>11</sup>

Transportation is one of the largest consumers of energy, particularly hydrocarbons, and has a considerable share of the economics of governments, industry and households. All major transportation links, including railway stations, airports, ports and freight terminals, can be powerful driving forces behind the development of a region and conversely they can result in major problems if they are wrongly sited and not properly integrated in the general transportation system of the area.

As the world continues to develop into a global economy, the importance of transportation grows and consequently the need to find new solutions. Intermodal transportation can be defined as the serial use of different means of transportation to move passengers and freight from a place to another. Up to now greater interest has been devoted to intermodal freight transportation, even though intermodal passenger transportation well applies to urban and suburban frameworks. Urban public transportation services usually consist of buses, underground, and railway

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<sup>11</sup>Article 1 point 1 the Regulation of the Minister of Transportation No. 26 of 2017 Concerning the Administration of Public Transport of Motor Vehicle Not in the Route In Yogyakarta

and the integration among them and between public and private urban transportation can shape a transportation network.<sup>12</sup>

To conclude, transport is a condition in which there is a process of moving people or goods from a place with a specific purpose to obtain value-added goods/commercial or for non-commercial purposes.<sup>13</sup>In other words, transportation can be defined as "the transfer of goods and people from the place of origin to the destination".<sup>14</sup>

The goal of transportation is to help people or groups to reach the desired places or send items from their original place to their destination. The process can be done using transportation in the form of transport. Public transportation include bus, minibus, trains, ship, and airplane.<sup>15</sup> Types of public transportation are:

- a. Public transportation, which include taxi is a public passenger car transported with special meter and price based on the operational parameters in an operating area in city areas.<sup>16</sup>
- b. Public transportation with a special function is the public transportation which is not in the route of public transport or Public

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<sup>12</sup>A. Di Febraro, V. Recagno, "Intermodal Transportation in Urban Framework: a Discrete-Events Simulative Approach" *International Journal of Transport Development and Integration*, Vol. 2, (2018)

<sup>13</sup>HMN Purwosutjipto, *Pengertian Pokok Hukum Dagang Indonesia* (Djambatan: Jakarta, 1981), p. 4

<sup>14</sup>E. Suherman, *Aneka Masalah Hukum Kedirgantaraan* (Bandung, 2002), p. 293

<sup>15</sup>Warpani, 1990, *Merencanakan Sistem Perangkutan*, Institute Teknologi Bandung, Bandung, p.170.

<sup>16</sup>Article 1 point 16 the Regulation of the Minister of Transportation No. 26 of 2017 Concerning the Administration of Public Transport of Motor Vehicle Not in the Route

Bus transportation for purposes other than taxi services, tourism, and certain areas such as shuttle transport, employee transportation, special rental transport, charter transport.<sup>17</sup>

- c. Tourism transportation is a public transportation which is equipped with special marks for traveling purposes.<sup>18</sup>
- d. Public transportation in certain areas, public transportation operated in local road.<sup>19</sup>

To transport means to transfer people or goods from one place to another using means of transportation. Public transportation can be defined as any motor vehicle that is provided for the public with a charge.<sup>20</sup> From the definition of transportation mentioned above, can be seen the existence of several aspects as follows:

- a. The subject is the person who operates the transportation, it can be a company or personal.
- b. Means of transportation is a means to carry out the transportation services. The means can be operated by mechanics and fulfill the requirements as mentioned in the legislation such as ships, aircraft, and transport vehicles.
- c. Goods or passengers are the load in transport

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<sup>17</sup>Article 1 point 17 the Regulation of the Minister of Transportation No. 26 of 2017 Concerning the Administration of Public Transport of Motor Vehicle Not in the Route

<sup>18</sup>Article 1 point 18 the Regulation of the Minister of Transportation No. 26 of 2017 Concerning the Administration of Public Transport of Motor Vehicle Not in the Route

<sup>19</sup>Article 1 point 19 the Regulation of the Minister of Transportation No. 26 of 2017 Concerning the Administration of Public Transport of Motor Vehicle Not in the Route

<sup>20</sup>Government Regulation No. 41 of 1993 on Roads Traffic

- d. Transportation activity is the activities of transporting goods or people from loading up to the decline in the destination in accordance with already decided or agreed.
- e. The function of transportation is increasing the usefulness and value of goods or passengers in place.
- f. The purpose of transportation is the arrival of goods or passengers in place according to the agreement with the agreed costs.<sup>21</sup>

Transportation within the legal approach certainly has definitions, principles, forms, and other legal regulations that cover up to become a mode of transportation. In this section, the researcher will apply the legal principle rather than transport because if these principles are ruled out, then the building of the law and all implementing regulations in it will collapse.<sup>22</sup>The principle of law here means a basic, general but abstract mind that has a motive for the rules that have been set.<sup>23</sup> So that transportation, therefore, is divided into two types, namely public and civil.

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<sup>21</sup>Wahyudi Prawesthi, "Penyelenggaraan Angkutan Orang dengan Kendaraan Umum di Surabaya", *Jurnal Manajemen dan Logistik*, II, (Juli, 2015) Accessed on November, 9th, 2017, 9:26 p.m

<sup>22</sup>YusufShofie, *Pelaku Usaha, Konsumen, dan Tindak Pidana Korporasi* (Ghalia Indonesia: Jakarta, 2002), p. 25

<sup>23</sup>Sudikno Mertokusumo, *Penemuan Hukum Suatu Pengantar* (Liberty: Jakarta, 1996), p. 6

a. The Public Principle

This principle is the foundation of the transport law that is useful for any person, whether a third party or government. Public principles are contained in the explanation of the law governing transportation. There are several public principles here based on Article 2 of Law No. 22 of 2009 on Road Traffic:

- 1) Transparency principle, which means openness in the operation of road traffic and transportation to the wider community in the form of true, clear and honest information so that the community has the opportunity to participate in the development of traffic and road transportation.
- 2) The accountability principle, that in the operation of road traffic and transportation must be accountable.
- 3) The continuous principle, the guarantor of the quality of environmental functions through the regulation of technical requirements, such as vehicles and general plans for the development of traffic and road transport networks.
- 4) Participatory principles, namely the regulation of the participation of the community in the policy formulation process, supervision of the implementation of policies, handling accidents, and reporting on events related to road traffic and transportation.

- 5) The principle of usefulness, namely all traffic and road transport activities, must be able to provide as much added value as possible in order to realize community welfare.
- 6) Efficient and effective principles, namely service in its implementation, are carried out at least by each coach at the government level in an efficient and successful manner.
- 7) The seventh principle is balance, which means that the implementation in question has a basic balance between facilities and infrastructure and the fulfillment of the rights and obligations of service users and providers.
- 8) Integrated principles, with this principle, the aim is to prioritize harmony and interdependence between authorities and responsibilities between the Trustees.
- 9) Self-reliance, which means that transportation is used to support the community and state in order to land, sea and air transportation into an integrated and holistic.

b. Civil principles

This principle has a legal basis in Article 186 of the Law No. 22 of 2009 on Road Traffic and Transportation: "public transport companies are obliged to transport people and/or goods after an agreement has been agreed to and/or payment of transportation costs by passengers and/or goods senders." this principle is in the form of:

- 1) The consistent principle, that the transport agreement is not required in written form, it is sufficient with the agreement of both parties. However, to state that the agreement has taken place or has already existed it must be proven with or supported by transportation documents.
- 2) The coordinative principle, that the parties in the transportation have an equal or equal position, no party can handle or supervise others. Even though the carrier provides services and carries out the orders of the passenger or goods sender, the carrier is not a subordinate of the passenger or the consignor of the goods.
- 3) The mixed principle, that the transportation in question consists of three types of agreement: authorizer, storage of goods and carrying out work from the sender to the carrier. The provisions of these three types of agreements apply to transportation unless determined differently in a transport agreement.
- 4) The principle of proof, namely with documents, and if there is no document, then there is no transport agreement. This is different when the document is not needed because there is an unwritten consensus from the community - and this applies generally - that transport for short distances does not require passenger documents or tickets, such as city transport.<sup>24</sup>

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<sup>24</sup>Soegijatna Tjakranegara, *Hukum Pengangkutan Barang dan Penumpang* (Rineka Cipta: Jakarta), p. 24



A motorized vehicle is each vehicle activated by the mechanic equipment in terms of engine besides the vehicle on the railway track.<sup>25</sup> The public vehicle is any transport that is used to transport goods or people with payment.<sup>26</sup> Land transportation by motor vehicle starts to be used for public services besides personal use. Public transportation for four-wheeled transport on land such as city bus, taxi, public transportation, village transportation, nowadays can be found in many places.<sup>27</sup> There are several types of public vehicles, namely:

a. Online Transportation

Online transportation is the door to door services by the driver, the area of operation is in the city, and ordering by using application. Public transportation has to fulfill the operational area located within the city, unscheduled, transport rates are stipulated in the applications, tariff determination is based on the upper and lower limit rates on the basis of proposal from the governor, the use of transport must be through reservations or agreements are not allowed to serve the passenger directly on the road, ordering services only through the

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<sup>25</sup> Article 1 point 8 Law No. 22 of 2009 on Road Traffic

<sup>26</sup> Article 1 point 1 Law No. 22 of 2009 on Road Traffic

<sup>27</sup> Bambang Susanto, 2010, *1001 Wajah Transportasi Kita*, Jakarta, Gramedia Pustaka Utama, p.105

applications, and have to fulfill the Minimum Service Standards that has been decided.<sup>28</sup>

b. Conventional Transportation

Conventional transportation is the public transportation that we usually use, which has been available on conventional roads. In Indonesia, there are several types of conventional transportation such as buses, taxis, public transport, bajaj, and motorcycle. Taxi is one type of transport service that has special characteristics, which is a mix of private transport and public transport. Taxis can be operated in all places in the city and can be called by telephone and provide personal travel services, so taxis tend to be private transport rather than public transport<sup>29</sup>. Taxi service is a door-to-door transport service within the operating area of the city.<sup>30</sup> Taxi service must fulfill the following services:

- 1) Unscheduled
- 2) Served by public transportation type of station wagon and van (minibus) that possesses construction according to technical standards set by the Director-General

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<sup>28</sup>Article 19 point 1 and 2 the Regulation of the Minister of Transportation No. 26 of 2017 Concerning the Administrative of Public Transport of Public Vehicle Not in the Route

<sup>29</sup>Guntur C Purba, "Analisa Supply dan Demand Angkutan Taksi di Kota Medan Berdasarkan Tingkat Okupansi dan Biaya Operasional Kendaraan" *Jurnal Teknik Sipil USU*, III, (2014) Accessed on November, 9th, 2017, 8:30 p.m

<sup>30</sup>Article 7 the Regulation of the Minister of Transportation No. 26 of 2017 Concerning the Administrative of Public Transport of Public Vehicle Not in the Route

- 3) Freight rate based on the ergometer
- 4) Door-to-door service

Every public transportation in the city must have a route and a route network. The route is a public vehicle trajectory for transportation services of persons with public transportation or bus that have fixed destination, route, and type of car both during scheduled and unscheduled time.<sup>31</sup> Route network is a collection of trajectory that becomes a unity of people transport service network. Whereas the route permit is a permit to carry out the activities of the public passenger service on one or more specific routes within the territory of the region, including the notion of operating permit not in the route.<sup>32</sup>

Public transportation service in route as mentioned above is implemented in the route network. Route networks in fixed and regular routes consist of:<sup>33</sup>

- 1) City and provincial routes are the route through more than one Province of the First Level Region.
- 2) City routes in province, are the route through the inter-regional level II in one Regional Province Level I Region.

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<sup>31</sup>Article 1 point 1 the Regulation of the Minister of Transportation No. 26 of 2017 Concerning the Administration of Public Transport of Motor Vehicle Not in the Route

<sup>32</sup>Damar Ismoyo, "Pemetaan Trayek Angkutan Umum dan Fasilitas Sosial Berbasis Webgis", Jurnal Geodesi Undip, IV, (Januari, 2015) Accessed on November, 10th, 2017, 12:38 pm

<sup>33</sup>Article 7 Government Regulation No. 41 of 1993 on Transportation

- 3) City route is a route that is entirely within one area of the municipality of the Level II Region or trajectory within the Special Capital Region
- 4) Local route is a route that is entirely within a region of the District Level II Region.
- 5) Transboundary cross-border routes through cross-border boundaries

Public transportation not in the trajectory consists of:<sup>34</sup>

- a) Transport by taxi
- b) Transport by rental
- c) Transport for tourism purposes

City transportation is one of the needs of the existence of transportation in the city that if not handled properly and correctly will be a problem for city life. Transportation operation is divided into several routes or lines provided by several companies, each company has its characteristic, in term of length of the route, the amount of passenger and bus distribution on each route.<sup>35</sup>

## **B. The Regulation of Public Transportation**

The discussion on the development of the legal aspects of transportation cannot be separated from the effectiveness of the transport law itself. In Indonesia the provision related to the enumeration has been

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<sup>34</sup>Article 9 Government Regulation No. 41 of 1993 on Transportation

<sup>35</sup>Bambang Pribadi, 2003, *Dukungan Transportasi pada Bisnis dan Pariwisata*, Bandung, Gramedia, p. 15.

regulated in the field of land transportation with the issuance of the Law No. 22 of 2009 on Traffic and Road Transport in conjunction with the Law Number 14 of 1992, and the Government Regulation No. 41 of 1993 on Road Transport which is still applicable, as mentioned in article 324 of the Law No. 22 of 2009 that:

At the time this Law Number 22 of 2009 comes into force, all implementing regulations of the Law Number 14 of 1992 concerning the Traffic and Road Transportation of State Gazette of the Republic of Indonesia Number 49 of 1992, Supplement to the State Gazette of the Republic of Indonesia Number 3480) are declared valid insofar as they are contradictory or have not been replaced by the new law under this Act.

In the Law of Traffic and Road Transport, there are many articles that deal with the effort to provide convenient, secured, and safe transportation services for users. The related articles, some of which are contained in article 4 that the Act is applicable to foster and hold road traffic and transportation which is safe, orderly and smooth through the activities of moving vehicles, people or goods on the road; activities that use facilities, infrastructure and facilities supporting traffic and road transport; as well as activities related to the registration and identification of motor vehicles and drivers, cross-shore education, traffic management and engineering, and traffic law enforcement and road transport.

Regarding the regulations relating to public transport, the Minister of Transportation issued the latest regulation for online transportation that is the Minister of Transportation Regulation No. 108 of 2017 on

concerning the administration of public transport of Motor Vehicles Not In the Route in conjunction to of the Regulation of the Minister of Transportation No. 26 of 2017. In article 2 of these regulations the intent and purpose of the regulation of Public Transport of People Not in the Trajectory that the use of information technology-based applications to accommodate the accessibility for the community and the realization of the service public transportation which is safe, convenient, orderly and smooth. The articles relating to the above statement which is the type of service public transport of motor vehicle not in the route, transportation exploitation, the administration of public transport of motor vehicles not in the route with applications based on information technology, supervision of public Transport of motor vehicle not in route, community participation and administrative sanctions. Based on the Regulation of Ministry of Transportation Number: KM. 49 of 2005 on National Transportation System transport is from one place to another in one district that is not included in the route of the capital city by using public transport bound in the route.