

## CHAPTER FOUR

### FINDING AND ANALYSIS

#### **A. The Administration of Online Transportation in the Special Region of Yogyakarta**

##### **1. The Role of Government in Administration of Online Transportation in the Special Region of Yogyakarta**

###### **a. As regulator**

The Government, in this case the Department of Transportation which is the most responsible government institution in the process of implementing transportation management policies in DIY, acts as a regulator. To carry out its duties as a regulator, the government issued the Regulation of Minister of Transportation No. 108 of 2017 concerning the administration of public transport of motor vehicle not in the route. In this regulation the government provides safety guarantees for the passengers and the drivers. This is indispensable for a very efficient level of effectiveness in order to achieve success that has been set by the government.<sup>40</sup>

The enacted law, in this case the Regulation of Minister of Transportation aims to resolve the online and conventional

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<sup>40</sup>William Dunn N, *Analisis Kebijakan Publik*, Yogyakarta: Gadjah Mada University Press, p. 610

conflicts.<sup>41</sup> According to Mochtar Kusumaatmadja the purpose of law is to achieve justice that varies in content and size according to society and its time.<sup>42</sup> Legal relationships that exist in online transportation practices consist of horizontal legal relations between online transportation companies and their partners, such as Go-Jek or Grab. Horizontal legal relation is between online transportation providers and users. Meanwhile, vertical legal relations is between the companies and the Government. Every controversy which are stemmed from every legal relationship must be resolved through a special institution based on applicable law.

Understanding legal state as stated in the provisions of article 1 paragraph (3) of 1945 Constitution of the Republic of Indonesia is closely related to the understanding of the welfare state or understanding the State of material law in accordance with the fourth paragraph of the Preamble and the provision of article 34 of 1945 Constitution of the Republic of Indonesia.<sup>43</sup>

In its role, the government of the Special Region of Yogyakarta also provides a guarantee of protection by applying the quota that limit the number of online transportation operating

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<sup>41</sup>LJ. Van Apeldoorn, 1996, *Pengantar Ilmu Hukum*. Terj. Oetarid Sadino, Jakarta: Pradnya Paramita, cet. Ke-26, , p. 10

<sup>42</sup>Mochtar Kusumaatmadja, 1999, *Mengenal Hukum, Suatu Pengantar*, Yogyakarta: Liberty, p. 74-75

<sup>43</sup>Tim Penyusun Revisi, *Naskah Komprehensif Perubahan UUD Negara Republik Indonesia Tahun 1945; Latar Belakang, Proses dan Hasil Pembahasan 1999-2002, Buku Sendi-Sendi/Fundamen Negara*, Edisi Revisi, Jakarta

in DIY. Additionally, the government also need to guarantee drivers prosperity and maintenance of costumer service.

b. As supervisor

The government, based on the Regulation of Minister of Transportation No. 108 of 2017 in article 68 paragraph (1) and (2), acts as a supervisor. Their duties includes:

- 1) Supervision of public transport of motor vehicles not in the route is carried out by supervisors manually or electronically in accordance with the provisions of the legislation.
- 2) The supervisors of motor vehicles referred to in paragraph above, include: investigating civil servants officers in the field of traffic and road transport and police officers of the Republic of Indonesia.

In carrying out supervisory duties, the government is should based their actions on article 69 paragraph (1) and (2), namely:

- 1) Supervision of public transport of motor vehiclee not in the route as referred to in article 68 done at:
  - a) Tourist attraction
  - b) Roads
  - c) Place of departure
  - d) Vehicle storage area; and
  - e) stops and other transportation nodes

2) In the event that a public transport company does not fulfill the minimum service standard provisions, the Director General, the Head of the Agency, the Governor, the Regent/Mayor in accordance with their authority can conduct an evaluation and punishing again concerning the administration of public transport of motor vehicle not in the route the people's wrecking operating license with a public motor vehicle not in the route that has been given to the company.

In conclusion, observing government acts in managing online transportation, the national public transportation system can be said to be advanced. This is a reflection of the discipline applied through the supervision and supremacy of the law which is well affirmed. One example of government supervision and upholding of law supremacy can be observed in an immoral in Yogyakarta Adisutjipto Airport. There was an incident of nudging an online taxi driver at the airport. The incident was started when an online taxi driver dropping off passenger into Adisutjipto Airport. At the moment, several new in an instant, got into his car in a prohibited zone for online transportation. Finding out about

this, an airport officers chased the driver.<sup>44</sup>The above case is one example of a lack of supervision from the local government.

In response to the above case, Budi Karya Sumadi the Minister of Transportation explained that if the cases happened due to driver recruitment process was not done in accordance with the appropriate procedure. According to Sumadi, although it was often demonstrated in relation to the Regulation of the Minister of Transportation No.108 Of 2017, was considered to be too strict by some online transportation companies. However, he still insisted on continuing to implementation of the Regulation of the Minister of Transportation No.108 Of 2017 with the pretext that the rules stipulated in it would greatly protect both consumers and drivers of online transportation.

Despite many conflicts that have occurred in Yogyakarta and some problems have not been resolved, the contribution of the DIY Regional Government cannot simply be ruled out. At this point, stands as mere observer of the phenomenon despite the fact that, online transportation in Yogyakarta has been integral part of researchers social reality over the years. As neutral party, the researcher attempt to objectively analyze the theme of the study based on the results of interviews with the Department of

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<sup>44</sup>Purnomo Edi, 2017, "Supir Taksi Online di Persekusi di Adisutjipto dan di Paksa Telanjang", accessed from <https://www.merdeka.com/peristiwa/sopir-taksi-online-dipersekusi-di-adisutjipto-dan-dipaksa-telanjang.html> on November 1th, 2:54 p.m.

Transportation and the Center for Transportation and Logistics Studies (PUSTRAL) UGM.

In general, there are four basic rights of consumers, such as a) the right to security, b) the right to information, c) the right to vote, and d) the right to be heard.<sup>45</sup> Eventhough online transportation services, have a relationship with passenger services which ultimately determines the rights of passengers (as consumers) to be respected by providers of transportation services. Related to this, a guarantee of legal protection, which is also benefit of transportation safety as well as the responsibility of transporters, is needed for users of transportation services and other types of transportation.<sup>46</sup>

On the other hand the problem is, the lack of agreement betweenonline and conventional transportation actors regarding:

a. Tariff agreement. The Regulation of the Minister of Transportation No. 108 of 2017 article 65 application companies in the field of land transportation are prohibited to set tariffs that are not in accordance with the above regulations or as public transportation which includes:

1) The provision of application access services to public transport companies that do not have a license concerning

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<sup>45</sup>Mahmud Yunus, "Gojek Sebagai Simbol Perubahan Sosial dan Ekonomi di Kota Tegal" *Jurnal Ilmiah Pendidikan Ekonomi*, Vol. 2, No. 2 (2017), p. 62 Accessed on July 17th, 7:30 p.m.

<sup>46</sup>Shidarta, 2000, *Hukum Perlindungan Konsumen Indonesia*, Jakarta, PT. Grasindo, p. 14

the administration of public transport of motor vehicle not in the route.

- 2) Application access services availability for individuals
- 3) Driver requirement
- 4) Tariff agreement
- 5) The promotion of the lower fare set

Based on field data, it was found that application-based transportation violated the regulations set by the Government during traffic jams, nights, and bad weather (heavy rain) by setting tariffs which are not in accordance with government policy.

- b. The prohibition zone for drivers of online transportation to pick up costumers in several areas, such as Yogyakarta Railway Station (pick-up location in front of Neo hotels and around Gedong Tengen Police Station, Lempuyangan Yogyakarta Station (pick-up location under the flyover (east station) and T-junction (west of the station), Airport Adisutjipto Yogyakarta (pick-up location in front of the Immigration Office), Giwangan Yogyakarta Terminal (pick-up location in front of SLB (north terminal) and around red lights (south terminal), fly over of Janti Yogyakarta (pick-up location in front of Honda Anugerah and front of Ayam Goreng Suharti), Jombor terminal (pick-up location in front of McD),

and in front of Hotel Borobudur Gamping (pick-up location in the west of Gamping Market), traffic light (east Gamping market), Dr. Sardjito General Hospital (pick-up location in front of Toko Bali).<sup>47</sup>In general, there are four basic rights of consumers, namely: a) the right to security, b) the right to information, c) the right to vote, and d) the right to be heard.<sup>48</sup> While online transportation services, related to this matter, have a relationship with passenger services which ultimately determine the rights of passengers (as consumers) to be respected by providers of transportation services. Related to this, a guarantee of legal protection, which is also benefit of transportation safety as well as the responsibility of transporters, is needed for users of transportation services and other types of transportation.<sup>49</sup>

c. As the issuer of license

Government as issuer of license based on the Regulation of the Minister of Transportation No. 108 of 2017 in article 45, namely:

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<sup>47</sup>Wijaya Kusuma, 2017, "Ini Zona Merah Taksi "Online" di Yogyakarta" Accessed from <https://regional.kompas.com/read/2017/06/21/10541821/ini.zona.merah.taksi.online.di.yogyakarta> on July 15th, 8:50 p.m.

<sup>48</sup>Mahmud Yunus, "Gojek Sebagai Simbol Perubahan Sosial dan Ekonomi di Kota Tegal" *Jurnal Ilmiah Pendidikan Ekonomi*, Vol. 2, No. 2 (2017), p. 62 Accessed on July 17th, 7:30 p.m.

<sup>49</sup>Shidarta, 2000, *Hukum Perlindungan Konsumen Indonesia*, Jakarta, PT. Grasindo, p. 14



Permit for carrying out transportation of people with public motorized vehicles not on routes as referred to in article 36 paragraph (1), is given by:

- 1) Director General, for:
  - a) Transportation of people for tourism, charter transportation, public leasing services; and
  - b) Transportation of people using taxis, shuttle transportation, residential transportation, employee transportation, special rental transportation whose operational areas exceed more than 1 provincial area in the Jakarta, Bogor, Depok, Tangerang, Bekasi (Jabodetabek) areas.
- 2) Head of Agency, for transportation of people using taxis, shuttle transportation, residential transportation, employee transportation, and special rental transportation whose operational areas exceed more than 1 provincial area in the Jakarta, Bogor, Depok, Tangerang, Bekasi (Jabodetabek) areas.
- 3) Governor, for transportation of people using taxis, shuttle transportation, residential transportation, transportation of employees whose operational areas exceed 1 regency/municipality in one provincial area and special rental transportation whose operational area is in one provincial area; and

4) Regents/mayors, for transportation of people using taxis, transportation of people in certain areas, residential transportation, and transportation of employees whose operational areas are in the districts cities.

As public transportation providers, online transportation companies must be legal entities which guarantee protection for entrepreneurs, drivers, and passengers. Based on the Regulation of Ministry of Transportation Number 108 of 2017, the government plays a role in providing licensing public transportation.

## **2. Licensing of Online Transportation in the Special Region of Yogyakarta**

Online transportation has been regulated in the Regulation of Minister of Transportation Number 108 of 2017 on the administration of public transport of public vehicle not on the route. Based on article 37 paragraph (1) and (2), namely:

- 1) Public transport companies must be Indonesian legal entities in accordance with statutory provisions.
- 2) Indonesian legal entities as referred to in paragraph 1, are in the form of:
  - a. State-owned enterprises
  - b. Regional owned enterprises

- c. Limited liability company
- d. Cooperative

In the licensing, online transportation must fulfill several requirements as stated in the Regulation of Ministry of Transportation Number 108 of 2017 article 38 that:

To obtain a permit as referred to in Article 36 paragraph (1), Public Transportation companies must fulfill the following requirements:

- a. Having at least 5 (five) vehicles
- b. Owning/controlling a vehicle storage area that can accommodate in accordance with the number of vehicles owned
- c. Providing vehicle maintenance facilities (workshops) as evidenced by ownership domiciles or cooperation agreements with other parties.

There are requirements for new applicants listed on the Regulation of Ministry of Transportation No. 108 of 2017 article 48 paragraph (1), namely:

Requests for permit for new applicants must be submitted to the Director General, Head of Agency, Governor, Regent/ Mayor in accordance with their authority by submitting the following administrative requirements namely:

- a. Deed of establishment or final amendment

- b. Proof of validation as a legal entity from the Ministry of Law and Human Rights
- c. Trading Business License (SIUP)
- d. Company Registration Certificate (TDP)
- e. Taxpayer Identification Number (NPWP)
- f. Certificate of domicile issued by the authorized official
- g. Statement of ability to fulfill all obligations as a holder of a license to operate a People's Transport with a Public Motorized Vehicle Not in Route, operate and sign the company leader
- h. Statement of ability to possess or cooperate with other parties capable of providing motor vehicle maintenance facilities, stamped and signed by the company leader
- i. Letter of agreement between the vehicle owner or member of the cooperative with the Public Transport company in the form of a cooperative legal entity
- j. Owning or controlling a vehicle storage area that meets technical requirements and is able to accommodate the number of vehicles owned and proven by a letter from the local government stating that the area is capable of storing vehicles in accordance with the number of vehicles owned
- k. Public transport company business plan which is outlined in document form

In DIY, there have been ready 15 legal entities in the form of PT (Limited Liability Companies) or cooperatives of operating online transportation.<sup>50</sup> All online transportations want to move to public transportation businesses. However, they do not know what the terms of use or operation are. They consider the online transportation application use is enough. In fact, the law concerning it has been regulated. Eventhough not being specifiially regulated in the Ministerial Regulation, the regulation actually concerns the entire transportation that take payments from passengers, online transportation.<sup>51</sup>This is admitted by the Department of Transportation, who mentioned that the lack of the role of the Department of Transportation contributes to online transporation problem. On the other hand, the problems in the field related to transportation including online are too large. Therefore the cooperation with relevant parties such as officers of the Indonesian National Police is needed.

According to the UGM Center for Transportation and Logistics (PUSTRAL), until now licensing related to technical online transportation in the field has not yet existed. However, the permit in question is being processed in formal regulations.<sup>52</sup> Due to the big number existing of online transportation in Yogyakarta that is very

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<sup>50</sup>Interview's result with representative from Departement of Transportation. Mr. Sigit (Head of Land Transportation), on May 28, 2018.

<sup>51</sup> *Ibid*

<sup>52</sup>Interview result with representative from PUSTRAL UGM (Pusat Studi Transportasi dan Logistik, Mr. Lili (Head of Public Relations), on May 31th, 2018

large and potential costumers, many problems to arise in the field. In addition to the ongoing legalization process, another problem that arises istechanical problem.<sup>53</sup>

The PUSTRAL metioned that social spaces will be disrupted by the presence of online transportation. The service users or consumers here are very threatened, whether they are aware or not. Users of online transportation, are not aware when that they become the consumer of the service a very low level of security. For example, the use of an online motorcycle taxi guarantees a minimum safety because motorcycles is not categorize as a public transportations. However, for people who do not interact and even use this online transportation directly, the disruption lies in such as:

- a. More vehicles causing traffic jams. However, this is inversely proportional to the research initiated by Aspari Wahyu Kurnianti<sup>54</sup> who said that online transportation has become an alternative solution for consumers in big cities to avoid the complexities of congestion,
- b. Many people are disadvantaged when they become drivers because they are not aware of many things such as minimal security and as explained by PUSTRAL UGM there is no advantage of being an

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<sup>53</sup>*Ibid*

<sup>54</sup>Aspari Wahyu Kurnianti, "Komunikasi Pemasaran Transportasi Online NguberJek", *Jurnal Komuniiasi dan Kajian Media*, Vol. 1, No. 1, Oktober 2017, p. 72 Accesed on July 18th, 2018, 9:46 p.m.

online driver because their financing and health. Security is not guaranteed by online transportation companies.

This concern arises because of a large number of online drivers, and all of them use their own vehicles without being provided by Go-Jek. Thus, if withdrawn in the jurisdiction, Go-Jek is not considered as a transportation service provider. Article 201 paragraph (2) of Law No. 22 of 2009 states, "Public Motorized Vehicles must be equipped with information giving tools to facilitate the detection of events in Motor Vehicles." Referring to the law mentioned earlier, many internal problems within Go-Jek may need to be addressed.

When referring to the principle of freedom of mobility, online transportation is initiated to answer the need of an effective transportation system in helping high levels of community mobility in using public transportation, especially in some metropolis cities in Indonesia such as Jakarta, Bogor, Depok, Tangerang, Bekasi, Bandung, and even Yogyakarta. Therefore, it can be understood and undeniable that online transportation is very beneficial for the community in terms of cost and convenience. Unlike any other mode of transportation, the tariff offered is relatively cheaper and no use price negotiation systems such as that with conventional public transportation is needed. Additionally, it also offer a convenient transportation service. Passengers or consumers no longer need to find out which vehicle is the readiest to deliver goods. Here, passengers are

very privileged because the driver is the ones who finally picks them up to a specific location that has been ordered.

## **B. The Obstacles in the Administration of Online Transportation in the Special Region of Yogyakarta**

Some obstacles in managing online transportation, namely:

1. Government delays in providing adequate transportation in terms of quality and quantity.

The government delays in providing adequate transportation resulted in many conflicts between online and conventional transportation, due to business competition between the two parties. The high level of mobility of a region must be addressed with the availability of adequate public transportation in terms of quality and quantity. The existence of the mass transport is one of the important factors for the success of the country development process.<sup>55</sup> Considering the conditions that exist in Indonesia, one among them, the Special Region of Yogyakarta, that the field of public transportation has not become the main choice of the community, online transportation can be an option. This is because the quantity and quality of public transport is inadequate. The government had been less assertive both in regulating and taking action in the field directly.

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<sup>55</sup>Indonesia Report 2015, “Respon Kebijakan Terhadap Transportasi Berbasis Aplikasi Di Jakarta: Kajian Singkat dan Rekomendasi”, *The Indonesian Institute Center for Public Policy Research*, accessed on november 2th, 2018, 9:36 p.m.



2. Lack of legal framework governing the relationship and alignment of online and conventional transport rule.

So far, the government has not made any clear regulations related to online and conventional transportation relations. As a consequence, many problems occur in various regions. The conflict occurred between online and conventional drivers became a public conversation. On some social media such as Facebook, Twitter, and Instagram, many concerns from netizens were received by online drivers.<sup>56</sup> As the case of online driver tracking at Adisutjipto cause is drivers do not obey the prohibition zone already agreed to pick up passengers at the airport.<sup>57</sup> With the government making legal basis governing the relationship and alignment between online and conventional transportation problems can be solved.

3. The Government does not provide legal protection for two-wheeled vehicles as public transportation

The parties of the online motorcycle want two-wheeled vehicles as public transportation as stated in Law No. 22 of 2009 concerning Traffic and Transportation.<sup>58</sup> So that drivers and consumers are protected that welfare. This makes a lot of conflict between online

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<sup>56</sup>*Ibid*

<sup>57</sup>Rid, 2018, "Terkait Insiden Pemukulan Driver Online di Bandara Adisutjipto, Beberapa Pihak Lakukan Pertemuan", accessed from <http://jogja.tribunnews.com/2018/06/01/terkait-insiden-pemukulan-driver-online-di-bandara-adisutjipto-beberapa-pihak-lakukan-pertemuan> on November 2th, 9:15 p.m.

<sup>58</sup>Ika Fitriana, 2017, "Masalah Transportasi Online Darurat Payung Hukum", accessed from <https://ekonomi.kompas.com/read/2017/10/16/075916326/masalah-transportasi-online-darurat-payung-hukum> on November 2th 2018, 10:58 p.m.

and conventional drivers. Online motorcycle drivers are at risk of accidents on the streets. The highest number of traffic accidents in Indonesia comes from two-wheeled vehicles. Additionally, online motorcycle experience employment gap because they are not considered employees. Drivers have no power to determine policies and drivers feel policies are not transparent.<sup>59</sup> There are several types of online transportation, namely online taxi and motorcycle online. In Yogyakarta, the availability of online taxi already obtained permits from the relevant government as regulated in the Regulation of Ministry of Transportation No. 108 of 2017, while online motorcycle has not yet been licensed and cannot be granted permission from the Department of Transportation the Special Region of Yogyakarta. The status online motorcycle is not recognized as public transportation so that it cannot obtain a transportation permit. The cancellation of the Minister of Transportation's Notification No.Um.3012/1/21/Phb/2015 by the president has given an exception for motorcycle online drivers to be able to operate temporarily until the government is able to provide adequate transportation modes for people.

There is discretion by the president who previously made rejection of the existence motorcycle online then legalized for a while. The president's discretion is oriented towards the

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<sup>59</sup>Kustin Ayuwuragil, 2018, “ 5 Masalah Kesejahteraan Yang di Keluhkan Supir Ojek Online”, accessed from <https://www.cnnindonesia.com/teknologi/20180410195433-185-289823/5-masalah-kesejahteraan-yang-dikeluhkan-sopir-ojek-online> on November 2th 2018, 11:16 p.m.

implementation of the public interest, not necessarily at the enforcement of the legal aspect or legality because the government realizes may not provide a safe, comfortable, cheap, fast and affordable mode of public transportation. This contrasts with a survey from the Yayasan Lembaga Konsumen Indonesia (YLKI), April 2017 that the reasons for choosing online transportation are due to cheaps (84.1%), fast (81%), comfortable (78.8%), and safe (61.4%).<sup>60</sup>Licensing regarding online transportation in Yogyakarta has not yet been carried out optimally and comprehensively.

4. The absence of the Regulation of the Special Region of Yogyakarta governing online transportation

Since its emergence early 2015 specially in Indonesia, one of the provides of online transportation system was Go-Jek. In Indonesia, Go-Jek attracted many interested people as the technology of smartphones offered and iOS developer both can access Go-Jek in the form of applications.<sup>61</sup> Online transportation which in this case Go-Jek is engaged in services that use online application media to serve anyone. The services in the form of go-ride, go-food, go-mart, go-glam (beauty services), go-clean home service, go-box (cargo), go-sed (courier goods), go-message (massage). Go-Jek is referred to as

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<sup>60</sup>Ahsani Amalia Anwar, "Online vs Konvensional: Keunggulan dan Konflik Antar Moda Transportasi di Kota Masyarakat" *Jurnal Etnografi Indonesia*, Vol 2, (2 Desember 2017) Accessed on July, 15th, 2018, 8:30 p.m.

<sup>61</sup>Fania Darma Amajida, "Kreativitas Digital Dalam Masyarakat Risiko Perkotaan: Studi Tentang Ojek Online Go-Jek di Jakarta, *Jurnal Departemen Sosiologi Universitas Indonesia*, p. 108 Accessed on July 20th, 2018, 8:30 p.m.

flexible transportation because it uses motorbikes that are easy, fast, and efficient to avoid the traffic jump.<sup>62</sup>

This case has reaped many positive and negative responses. The response provoked various parties to participate in it so that it formed an archetype that could be called the pros and cons of its existence. In Yogyakarta, which is a metropolis city with visitors to travel and residents who live in it also resulted in considerable conflict such as fight related to online transportation. Positive responses such as consumer services from one of them Go-Jek is satisfied. This satisfaction ultimately has its own significance in panning positive attitudes rather than consumers or intended service customers.<sup>63</sup> While the negative response from consumers such as server disruptions such as loading-errors, long respond orders, out of estimate document delivery and so forth.<sup>64</sup>

The data from media information throughout 2017 until 2018, indicated a series of conflicts both in the online transportation itself and with the users community even with the Yogyakarta government often occur. As at the end of 2017 on December 19th, hundreds of Yogyakarta motorcycle online drivers who were members of the

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<sup>62</sup>Putu Citrayani Giri, Made Heny Urmila Dewi, “Analisis Faktor-Faktor Yang Mempengaruhi Pendapatan Driver Go-Jek di Kota Denpasar, Bali, *E-Jurnal Ekonomi Pembangunan Universitas Udayana*, Vo. 6, No. 6 Juni 2017, p. 951 Accessed on July 20th, 2018, 9:00 p.m.

<sup>63</sup>Rika Kharline Ekawati, “Pengaruh Kepuasan Terhadap Sikap yang Berdampak pada Niat Menggunakan Aplikasi Gojek”, *Jurnal Sistem Informasi Indonesia*, Vol 2, No.1, 2017, p. 10 Accessed on July 20th, 2018, 10:31 p.m.

<sup>64</sup>Muhammad Fahrurrozy dan Indira Rahmawati, “Analisis Kualitas Pelayanan Pada Gojek Bandung”, *Jurnal e-Proeeding of Management*, Vol. 4, No. 3 Desember 2017, p. 4 Accessed on July 21th, 2018, 9:00 a.m.

Assosiation of Online Motorcycle Drivers Jogja (PPOJ) staged a protest in the form of a long march from the courtyard of the Syuhada Mosque.<sup>65</sup> They firmly protested the Regulation of Minister of Transportation No. 108 of 2017 concerning the administration of public transport of motor vehicle not in route. The local government in charge of the development of public transport have not been able to provide that in all regions, urban and suburban.