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Conflict of Norms between Law No. 22 of 2009 on Traffic and Road Transportation and the Minister of Transportation Regulation on App-Based Transportation: An Analysis of Hierarchy and Regulatory-Making Authority

Article

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Abstract

Objective: This study aims to analyze the conflict of norms between Law No. 22 of 2009 on Traffic and Road Transportation (UU LLAJ) and Minister of Transportation Regulations No. 118 of 2018 and No. 12 of 2019 regarding "special rental transportation." The focus of this study is directed towards evaluating whether the provisions in these ministerial regulations align with or contradict the legal framework and the principles of the hierarchy of applicable legislation.

Theoretical Framework: This analysis is based on the theory of the hierarchy of norms (stufenbau des recht) developed by Hans Kelsen, the principle of lex superior derogat legi inferiori, and the concept of delegated legislation. These three theoretical foundations are used to assess the validity and the limits of the authority of the Minister of Transportation in establishing implementing regulations.

Method: The research uses a normative legal method with a statutory approach, conceptual approach, and analytical approach. Primary legal materials include UU LLAJ, Law No. 12 of 2011 on the Formation of Legislation, as well as Minister of Transportation Regulations No. 118 of 2018 and No. 12 of 2019. Secondary legal materials are obtained from scholarly literature and opinions of legal experts related to the hierarchy of norms and the authority to form regulations.

Results and Discussion: The research findings show a substantial inconsistency between UU LLAJ and the ministerial regulations governing app-based transportation. The creation of the new category "special rental transportation" lacks a clear delegative basis in the law, thus legally exceeding the authority (ultra vires). This expansion of the norm blurs the distinction between public and private vehicles, and creates uncertainty regarding legal responsibility, oversight mechanisms, and the division of authority between the central and regional governments.

Research Implications: These findings emphasize the importance of legislative reform so that national law can adapt to technological innovations without compromising the principle of legal certainty. A revision of UU LLAJ is necessary to explicitly accommodate digital transportation models,

ensuring hierarchical consistency within the legal system and preventing the abuse of authority by executive agencies.

Originality/Value: This research provides both theoretical and normative contributions to the discourse on regulatory adaptation in the digital era by illustrating how hierarchical discrepancies arise when executive policymakers attempt to fill legal gaps through implementing regulations. This study offers an analytical framework for legal reform to ensure alignment with the principles of legality and the rule of law within the Indonesian legal system.

Kata kunci: legal hierarchy; delegative authority; transportation regulations; digital platforms; legal certainty

INTRODUCTION

The development of information technology in the last decade has brought significant changes to mobility patterns in Indonesia. One of the most visible manifestations of this transformation is the emergence of app-based transportation or ride-hailing services such as Gojek, Grab, and Maxim. These services introduced a new business model that combines digital technology with conventional transportation sectors, offering efficiency, accessibility, and flexibility for users. Through smartphone applications, the public can book vehicles in real-time, know the estimated cost of the trip, and assess the quality of driver services. This phenomenon illustrates how digital innovation can change the way society interacts with both public and private transportation systems.

However, the presence of app-based transportation also presents serious challenges in the fields of law and public policy. When Law No. 22 of 2009 on Traffic and Road Transportation (UU LLAJ) was formulated, the social-technical context was far from the current situation. The law was created to regulate conventional transportation modes such as public transport, taxis, buses, and private vehicles, assuming that every transportation service involved a legal entity with its own permit and fleet. This means the legal framework designed at that time did not anticipate the emergence of collaborative models like ride-hailing, where technology companies only act as digital platform providers that connect drivers (partners) and passengers, rather than as traditional transport operators.

The mismatch between social reality and legal norms led the government to issue various implementing regulations to align transportation regulations with technological advancements. The Ministry of Transportation issued a series of Ministerial Regulations, such as Permenhub No. 108 of 2017, Permenhub No. 118 of 2018, and Permenhub No. 12 of 2019, which aimed to accommodate the existence of online transportation. These regulations govern aspects such as operational permits, minimum and maximum tariffs, vehicle testing obligations (KIR), and the responsibilities of digital platforms. Although intended to provide legal certainty, the implementation of these rules often sparks debates: whether, in terms of hierarchy and substance, the Permenhub can add or even alter provisions not regulated in the UU LLAJ? Does its existence create a normative conflict between the law and the implementing regulations?

From this point, an interesting legal issue arises for analysis, namely the potential conflict between the norms in UU LLAJ and various subsequent implementing regulations. As a higher legal product, the law should be the primary reference for all policies below it. However, in practice, there is a perception that Permenhub is "filling legal gaps" by adding new provisions that are not regulated— or even contradict— UU LLAJ. For instance, the classification of special rental transportation (ASK), which is not recognized in UU LLAJ, but becomes the legal basis for online transportation services.

This raises fundamental questions about the validity and consistency of the normative hierarchy in Indonesia's legal system.

Based on this background, the research questions in this analysis include: (1) How is the relationship between the regulation in UU LLAJ and the implementing regulations governing app-based transportation? (2) To what extent are these implementing regulations consistent with or in conflict with the principles and norms regulated in the law? and (3) What are the legal implications of the existence of this normative conflict on legal certainty, consumer protection, and fairness for transportation business actors? The aim of this analysis is to critically examine the alignment between technological developments and Indonesia's positive legal system, while also assessing whether the regulatory adaptation mechanisms carried out by the government comply with the principles of good legislative rule-making.

Thus, this discussion not only seeks to identify the normative conflicts between the law and its implementing regulations but also raises a broader issue: how should the state respond to technological disruption without compromising legal certainty and social justice? The analysis of app-based transportation ultimately becomes a reflection of greater challenges in the Indonesian legal system—how to maintain legal relevance in the face of rapid social change without losing its legitimacy and normative coherence.

Research Questions:

1. Has the regulation regarding "special rental transportation" in the Minister of Transportation Regulations—particularly Permenhub No. 118 of 2018 and Permenhub No. 12 of 2019—been in line with the provisions of Articles 138 and 139 of Law No. 22 of 2009 on Traffic and Road Transportation, or does it actually contradict them?
2. Does the authority of the Minister of Transportation encompass the establishment of a new category in public transportation that is not explicitly regulated in Law No. 22 of 2009 on Traffic and Road Transportation?
3. What are the legal implications of the potential conflict of norms between the ministerial regulations and the law on the principles of legal certainty and the hierarchy of laws and regulations in Indonesia?

RESEARCH METHODS

This research uses a normative legal approach, focusing on the analysis of the positive legal norms governing traffic and road transportation in Indonesia. This approach is chosen to deeply explore the potential conflict of norms between Articles 138 and 139 of Law No. 22 of 2009 on Traffic and Road Transportation and the Minister of Transportation Regulations No. 118 of 2018 and No. 12 of 2019, which regulate app-based special rental transportation. In other words, this study does not focus on social behavior or field implementation, but instead assesses the validity, hierarchy, and alignment of legal norms within the regulatory system.

To obtain a comprehensive understanding, this study utilizes several types of approaches. First, the statute approach is used to examine and compare the contents of the regulations under study, as well as to evaluate the hierarchical relationship between laws and ministerial regulations. Second, the conceptual approach is used to analyze relevant legal theories and principles, such as the theory of the hierarchy of norms (stufenbau des recht), the lex superior derogat legi inferiori principle, and the concept of delegated legislation, which explains the limits of the executive's regulatory authority. Third, the analytical approach is used to test the extent to which ministerial regulations have exceeded the authority granted by the parent law and to assess the legal implications of these normative conflicts.

The data sources used in this study include primary, secondary, and tertiary legal materials. Primary legal materials include the legislation that forms the main subject of this study: Law No. 22 of 2009, Law No. 12 of 2011 on the Formation of Legislation, and Minister of Transportation Regulations No. 118 of 2018 and No. 12 of 2019. Secondary legal materials are obtained from scholarly literature, such as books, legal journals, research results, and expert opinions discussing the hierarchy of norms, ministerial authority, and digital transportation policies. Tertiary legal materials include legal dictionaries, encyclopedias, and other references that help clarify the legal terms and concepts used.

The collection of legal materials is conducted through library research by exploring various legal sources and official documents available in online databases such as peraturan.go.id, jdih.dephub.go.id, and putusan.mkri.id. This technique allows the researcher to obtain authoritative and relevant legal materials to support normative arguments.

Next, the collected legal materials are analyzed qualitatively and argumentatively. The analysis involves describing the contents of the norms of each regulation and assessing their alignment based on the principles of hierarchy and the authority to make laws. The analysis follows a deductive pattern, starting with general legal principles on the hierarchy of norms and the principle of legality, and then applying them to the concrete case of the conflict between the law and ministerial regulations. The analysis results are expected to clearly show whether the ministerial regulations are still within the bounds of their delegative authority or have exceeded the provisions set by the law.

Legal Framework

A. Provisions in Law No. 22 of 2009 on Traffic and Road Transportation

Law No. 22 of 2009 (UU LLAJ) is the primary legal framework regulating all aspects of traffic and road transportation in Indonesia. Within this legal framework, road transportation is considered a public activity and is therefore subject to licensing and oversight by the government. One of the key provisions is found in Article 138 paragraph (3), which states that "Every person who conducts transportation of people and/or goods with motor vehicles must have a transportation operation permit." This norm emphasizes that transportation services cannot be conducted freely or informally, but must be carried out by legal entities that meet administrative, technical, and legal requirements.

Further, Article 139 paragraph (1) states, "The government is responsible for organizing public transportation to ensure the availability of safe, secure, comfortable, and affordable transportation." This provision reflects the division of responsibilities between the state and transport operators within the framework of public service. The state acts as the regulator and supervisor, while businesses as operators must comply with the licenses and standards set. In this context, the legal entities organizing public transport are defined as legal bodies such as cooperatives, private enterprises, or state/local-owned enterprises—not individual operators.

UU LLAJ also clearly distinguishes between private vehicles and public vehicles. According to Article 1 number 10, public vehicles are motor vehicles used to transport people and/or goods for a fee. In contrast, private vehicles (Article 1 number 11) are for personal use and cannot charge fees. From this distinction, the legal principle emerges that every vehicle used for paid transportation must have an operation permit and meet certain technical requirements. This principle, known as the route permit principle, aims to ensure safety, healthy competition, and orderliness in the transportation system. Therefore, under the framework of UU LLAJ, conducting paid transportation using private vehicles without formal permission is a legal violation.

However, when app-based transportation technology emerged, the normative structure of UU LLAJ faced new challenges. The ride-hailing business model does not fit into the existing legal categories—on one hand, the vehicles used are private vehicles, but on the other hand, they are used for

commercial purposes. This normative gap became the entry point for the government to issue various implementing regulations that attempt to bridge the existing law with new practices in the field.

B. Provisions in the Minister of Transportation Regulations

In response to the development of app-based transportation technology, the government, through the Ministry of Transportation, issued several ministerial regulations focusing on regulating special rental transportation (ASK). Two of the most significant regulations are Minister of Transportation Regulation No. 118 of 2018 and Minister of Transportation Regulation No. 12 of 2019. These regulations serve as instruments for adapting to the emergence of the app-based transportation business model, which is not explicitly regulated in UU LLAJ.

Permenhub No. 118 of 2018 defines special rental transportation as transportation of people using motor vehicles that are not on a route, conducted through a rental system via an information technology-based application. With this definition, the government created a new legal category that is not found in UU LLAJ. This regulation also sets several obligations, including periodic vehicle testing (KIR), special markings, compliance with minimum and maximum tariffs, and operation by legal entities or cooperatives. Drivers are regulated as parties cooperating with the organizing legal entity, not permanent employees, thus creating the "partner" status typical of the digital economy.

Meanwhile, Permenhub No. 12 of 2019 updates and refines the previous provisions, particularly in terms of licensing mechanisms and the responsibilities of app providers (applicators). This regulation clarifies that applicators are not considered public transportation operators but are obligated to ensure their driver partners meet all licensing and safety requirements. Therefore, the position of applicators is described as an electronic system operator supporting transportation operations, rather than a transport operator itself.

The main purpose of these two Permenhub regulations is to adapt regulations to technological advancements and market dynamics. The government strives to balance the need for digital economic innovation with user safety and legal certainty. However, the creation of the "special rental transportation" category raises a normative problem: because this type of transportation is not recognized in UU LLAJ, the question arises as to whether the Minister of Transportation has the authority to add a new category outside those regulated by the law. This creates the potential for a conflict of norms between the law and the ministerial regulations.

C. Principles of the Hierarchy of Norms and Delegation of Authority

In Indonesia's legal system, all regulations are subject to the hierarchy principle set out in Law No. 12 of 2011 on the Formation of Legislation, as amended by Law No. 13 of 2022. The basic principle that applies is lex superior derogat legi inferiori—that a lower regulation cannot contradict a higher one. This means ministerial regulations are only valid if they do not violate, add to, or alter the substance already regulated by the law. Ministerial regulations are delegative, meaning they can only be issued based on a delegation of authority explicitly granted by the law or government regulations.

In the context of UU LLAJ, the Minister of Transportation is indeed given the authority to regulate the technical aspects of transportation operations. However, this delegation is administrative and technical, not normative and substantive. This means the Minister is only authorized to elaborate on matters already regulated by the law, not to create new norms that alter the legal relationships between transportation actors. If ministerial regulations introduce new categories, such as "special rental transportation," that are not recognized in UU LLAJ, this could theoretically exceed the limits of authority (ultra vires) and be considered inconsistent with the hierarchy of norms.

Furthermore, the existence of Permenhub regulations governing tariffs, KIR testing obligations, and the qualification of the app provider legal entity raises questions about the strength of their legal basis. Without clear delegation from the law, these regulations risk losing their normative legitimacy. While these regulations may be practically necessary for organizing the app-based transportation sector, from a legal theory perspective, they can be criticized for undermining the principle of the supremacy of the law.

Therefore, the discussion of the legal framework for app-based transportation should not only focus on the analysis of regulatory texts but also examine the relationships between different levels of norms. The issue that arises is not merely the substantive difference between the law and the ministerial regulations, but also a methodological question in regulation-making: can adaptation to technology be justified through ministerial regulations, or should it be done through a revision of the law as a higher legal basis? This issue forms the core of the normative conflict between UU LLAJ and its implementing regulations and presents a challenge for the consistency of the legal system in the era of technological disruption.

ANALYSIS AND DISCUSSION

1. Analysis of Normative Conflicts

A. Forms of Conflict

The normative conflict between Law No. 22 of 2009 on Traffic and Road Transportation (UU LLAJ) and Minister of Transportation Regulations (Permenhub) No. 118 of 2018 and No. 12 of 2019 arises from fundamental differences in how the two legal instruments define and position legal subjects, the objects of regulation, and the mechanisms of transportation permits.

First, Permenhub broadens the scope of the legal subjects involved in public transportation. In UU LLAJ, the legal subject responsible for operating public transport is explicitly a legal entity that obtains permission from the government. This means that the legal relationship in the conventional transportation system is vertical and formal: transport companies apply for permits, own their fleets, employ drivers, and comply with safety and public service standards.

However, Permenhub shifts this paradigm by incorporating digital platforms (applicators) and driver partners into the transportation ecosystem. Platforms like Gojek and Grab do not operate as transportation companies but have certain obligations typically associated with transportation providers, such as ensuring safety, setting fares, and overseeing operations. On the other hand, driver partners, who are legally individual entities, are directly involved in paid transportation services. Therefore, Permenhub creates a "legal hybrid" that extends the legal subject beyond the framework established by the law.

Second, there is a conflict regarding the use of private vehicles (with black license plates) for commercial activities. UU LLAJ explicitly defines public vehicles as vehicles used to transport people and/or goods for a fee, which means they must have yellow plates and operational permits. In contrast, private vehicles are for personal use and cannot be used for profit-making. Through the "special rental transportation" category, Permenhub allows the use of private vehicles (black plates) for paid services, provided they meet certain technical requirements and are registered through a legal entity. This provision substantially shifts the boundary between private and public vehicles, creating a vertical conflict between the imperative norms in UU LLAJ and the permissive norms in Permenhub.

Third, differences also exist in the mechanisms of licensing, fare regulation, and safety oversight. UU LLAJ positions the transportation permit process as a formal procedure applied by legal entities to either local or central governments according to their authority. On the other hand, Permenhub introduces a registration mechanism through applicators and legal vehicle providers, which, in practice, does not always require route permits as mandated in the UU. Additionally, the regulation of minimum and maximum fares in Permenhub is not explicitly delegated by UU LLAJ, raising the question of whether this tariff authority originates from the law or is a new norm created by administrative policy. This regulatory difference has the potential to blur the safety oversight principle, as oversight has shifted from public authorities to the internal mechanisms of the platform providers.

Thus, the conflict emerging is not just a matter of different wording, but involves substantive normative differences and the legal structure of national transportation. UU LLAJ builds a regulatory model based on permits and state control, while Permenhub forms a model based on collaboration and digital technology. The tension between these two paradigms marks a shift from state-centered regulation to platform-mediated governance, which lacks an explicit legal foundation at the law level.

B. **Analysis of Ministerial Authority**

The next question is whether the actions of the Minister of Transportation in issuing Permenhub No. 118/2018 and No. 12/2019 can still be considered as the implementation of authority delegated by UU LLAJ or whether they exceed the limits by creating new norms not mandated by the law.

In the theory of delegated legislation, the executive can be granted authority to further regulate technical matters under a law. This delegation is valid as long as: (1) there is clear and explicit delegation from the law; (2) the regulations do not alter or add to the substance of the law; and (3) the regulations are implementational, not creative. In other words, the minister may regulate the "how" of the norms already in place, but cannot create new norms that change the legal position of the subjects or objects being regulated.

UU LLAJ grants the Minister of Transportation authority to set regulations for technical matters such as safety, vehicle standards, and transportation operations. However, the law does not explicitly mandate the Minister to create new categories of transportation, such as "special rental transportation," or to expand the legal subjects involved to include digital applicators. Therefore, in legal theory, the issuance of Permenhub that adds new categories without a clear delegation basis can be said to exceed the authority (ultra vires).

Additionally, from the perspective of the separation of powers, the minister is an administrative official within the executive branch. The executive's role is to enforce the law, not to create substantive law. When the minister creates regulations that substantially add to or change the legal norms, this shifts the minister's function from administrative to legislative. This poses a risk of violating the principle of separation of powers and the hierarchy of legal norms regulated in Article 7 paragraph (1) of Law No. 12 of 2011.

Therefore, from the perspective of delegated legislation theory, Permenhub concerning special rental transportation tends to be normatively creative, rather than simply implementational. While this step may be driven by pragmatic needs to organize the app-based transportation sector, from a legal standpoint, it exists in a gray area between "regulating implementation" and "creating new norms." This is the primary root of the normative conflict causing the tension between formal legal interests and technological adaptation demands.

C. **Implications for Legal Certainty**

The conflict between UU LLAJ and Permenhub has serious implications for legal certainty and the principle of the rule of law. In a sound legal system, every citizen should clearly know what is allowed and prohibited, who is responsible, and the legal basis for carrying out any activity. When a lower norm (Permenhub) provides provisions that differ from a higher norm (UU), legal certainty becomes blurred, leading to potential injustice.

First, the legal status of drivers and applicators becomes unclear. In UU LLAJ, the transportation provider is a legal entity responsible for the fleet and safety. However, in the ride-hailing system, the driver is an individual using a private vehicle, while the applicator claims only to be a digital intermediary. When legal violations or accidents occur, it is difficult to determine who is legally responsible—whether the driver as the direct actor, the applicator as the platform provider, or the legal entity overseeing the partner. This ambiguity creates uncertainty regarding legal liability and may violate the principle of accountability in public service.

Second, the inconsistency of norms also threatens the rule of law, as a ministerial regulation that should be implementational instead changes the substance of the law. In the long run, this may create a bad precedent where implementing regulations are used to cover gaps in the law without legislative oversight. This could undermine the legal legitimacy and reduce public trust in the national regulatory system.

Third, there are implications for the division of authority between the central and regional governments. UU LLAJ grants some licensing authority to local governments, especially regarding routes and operational permits. However, Permenhub introduces a centralized registration and oversight mechanism through digital platforms, often bypassing local authority. This creates overlapping authority and could undermine the principle of regional autonomy as guaranteed in Law No. 23 of 2014 on Regional Government.

Thus, the implications of this normative conflict extend beyond technical transportation matters and into the structure of legal and governmental governance. The uncertainty regarding the status of drivers, applicators, and the division of authority threatens the fundamental principles of a state of law: clarity of norms, equality before the law, and certainty of responsibility.

In short, the conflict between UU LLAJ and Permenhub is not merely a formal issue but reflects a deeper dilemma: how law must adapt to innovation without losing its supremacy. If law is too rigid, it lags behind social change; but if the law is too flexible and altered by implementing regulations without clear delegative basis, legal certainty and legitimacy are eroded. This dilemma is the main challenge for the Indonesian legal system in the era of technological disruption.

2. **Resolution Efforts**

A. **Judicial Path**

One mechanism available in the Indonesian legal system to address the normative conflict between laws and subordinate regulations is through judicial review in the Supreme Court (MA). This is regulated in Article 31A of Law No. 3 of 2009 on the Supreme Court, which grants the MA the authority to review subordinate regulations against laws. Therefore, if Permenhub is considered to extend or violate norms set in UU LLAJ, a petition for judicial review can be submitted to the Supreme Court.

Conceptually, this mechanism is a form of juridical control over executive products. When the minister issues a regulation that is implementational, it must adhere to the limits set by the law. However, if the substance of Permenhub creates new norms that alter the legal structure of subjects, add to the objects of regulation, or change the classification of vehicles from "public" to "private for hire," then this action could be classified as ultra vires—acting beyond legal authority. Therefore, the role of the MA is crucial to ensure that the principle of lex superior derogat legi inferiori is upheld.

However, there are limitations to this judicial path. First, the Supreme Court can only review regulations below the law against the law, not against the 1945 Constitution. Therefore, if the root of the problem stems from outdated or incomplete norms in UU LLAJ that are no longer relevant to the developments in digital transportation technology, the judicial path can only resolve formal normative conflicts, not substantive ones. Second, MA's rulings are often case-specific and may not lead to systemic reform of transportation policies. Third, the implementation of MA rulings may face administrative and political challenges, particularly if large economic interests are at stake between the government, applicators, and the public.

Nevertheless, the judicial path remains important as a corrective mechanism against the abuse of administrative power. The review of Permenhub by the Supreme Court not only serves to maintain the hierarchy of regulations but also strengthens the rule of law in public administration. In this context, the judiciary plays a balancing role against executive power, ensuring that policy adaptation is not carried out at the expense of formal legality and legal certainty for all involved parties.

B. **Legislative Path and Policy Reform**

In addition to the judicial path, a more fundamental long-term resolution must be pursued through the legislative path, namely by revising Law No. 22 of 2009 on Traffic and Road Transportation. This revision is necessary because the law was drafted in the pre-digital era, when platform-based business models (ride-hailing) were not yet known. As a result, many concepts in UU LLAJ have become irrelevant—for example, the definition of "public transportation" limited to corporate entities with specific route permits, or the classification of public vehicles not covering private vehicles operated through applications.

Through a revision of the law, the state can introduce new legal categories, such as app-based transportation or digital rental transportation, each with its own regulatory standards. This classification will allow the government to treat new actors like applicator companies and driver partners more proportionally without forcing the old legal framework designed for conventional transportation modes. Thus, a revision of the law will be a form of regulatory adaptation to technological advancements and the dynamics of the digital economy.

Policy reform must also consider principles of distributive justice and social protection. The ride-hailing business model creates a unique labor relationship: drivers are not employees but also not full entrepreneurs. This lack of legal clarity creates uncertainty about protection regarding wages, insurance, and social guarantees. Therefore, new norms must be formulated to clarify the legal position of driver partners and the responsibilities of applicators as platform providers. In the framework of positive law, this can be realized through a combination of revised UU LLAJ and cross-sectoral implementing regulations (e.g., coordination between the Ministry of Transportation, Ministry of Manpower, and Ministry of Communication and Information).

Furthermore, lawmakers must clarify the division of authority between the central government and local governments. In practice, operational permits often overlap between local

transportation agencies and the Ministry of Transportation, particularly concerning vehicle quotas and fare determination. A revision of UU can clarify the division of functions: the center as the national policy maker and regions as technical implementers with adaptive autonomy to local conditions. This approach aligns with the principle of asymmetric decentralization, where each region has space for policy innovation, yet remains within the framework of a consistent national legal system.

Policy reform must also take a participatory approach. In drafting the revised law, the involvement of stakeholders—including driver associations, applicator companies, consumers, and transportation experts—must be part of the deliberative process. This is crucial to avoid elitist regulation or bias towards one party. The principle of good regulatory governance requires that every new policy be based on data, transparent, and accountable. In this way, legal updates will not only address normative conflicts but also build a fair and sustainable digital transportation system.

Finally, resolving the legal conflict between UU LLAJ and Permenhub should be seen as a moment for systemic reform, not just a legalistic issue. The emergence of app-based transportation has changed the face of urban mobility, creating new efficiencies as well as social challenges. Therefore, the legal response should not be defensive preserving the old regime but transformative, reshaping the relationship between law, technology, and social justice. In this sense, both judicial and legislative paths complement each other: one upholding legal certainty, and the other paving the way for the evolution of Indonesian public law in the digital age.

CONCLUSION

First, it can be concluded that the Minister of Transportation Regulations (Permenhub) regulating app-based transportation has exceeded the limits of the delegative authority (ultra vires) granted by Law No. 22 of 2009 on Traffic and Road Transportation (UU LLAJ). Normatively, the minister's authority to create implementing regulations is limited to clarifying or operationalizing the provisions of the law, not creating new norms that substantively change the structure or meaning of established legal norms. In this case, Permenhub 108/2017, 118/2018, and 12/2019 do not merely implement the law, but also create new legal categories—such as "special rental transportation" with legal subjects like "digital platforms and driver partners"—that were not previously recognized in UU LLAJ. This action constitutes the creation of new substantive norms outside the scope of delegative authority, thus legally conflicting with the principle of lex superior derogat legi inferiori, where lower regulations cannot violate or add to the substance of higher laws.

Second, this phenomenon reflects a temporal and conceptual gap between the law and technological development. UU LLAJ was drafted in the social context of 2009, when the transportation paradigm was still based on conventional models, with clear route permits and public vehicles. In contrast, the emergence of app-based transportation such as Gojek and Grab has disrupted the legal system, which is still rigid and oriented toward a corporate structure. The government, through the Ministry of Transportation, has attempted to close this legal gap by issuing Permenhub as an adaptive response. However, this adaptive step, rather than resolving the issue, has led to a vertical normative conflict because the ministerial regulation lacks explicit delegative basis in the parent law. In other words, the good intentions of adaptive policy cannot justify violating the principle of legality, as legality is the fundamental foundation of legal order and citizens' rights certainty.

Third, this situation underscores the importance of legislative reform to ensure the national legal system can keep up with technological innovation without losing its normative integrity. UU LLAJ needs to be revised to explicitly include regulations recognizing the existence of "app-based transportation" or "digital rental transportation" as a new category in the national transportation regime. This revision should include definitions, legal status, licensing mechanisms, applicator responsibilities,

and protections for both driver partners and consumers. Thus, lawmakers would not only recognize the existence of new technologies but also enforce regulatory fairness between conventional and digital transport operators. This step will create normative consistency and regulatory harmony across different levels of regulation, from laws to implementing regulations.

Fourth, within the framework of the hierarchy of norms theory, clarity, consistency, and vertical alignment are essential requirements for a functioning legal system. When a regulation below the law adds to or changes the substance not regulated in the parent norm, regulatory conflict and legal uncertainty occur. This situation not only harms business operators and drivers but also undermines public trust in the government as the policymaker that should ensure legal certainty. Therefore, the principle of the hierarchy of legal norms (stufenbau theory), as developed by Hans Kelsen, must be upheld, where each norm derives its validity from higher norms. Without respect for this hierarchical structure, the legal system loses its coherence and opens the door for arbitrariness of power in state administrative practices.

Fifth, efforts to maintain legal certainty should not be equated with rejecting innovation. The law must indeed be adaptive to social change, but legal adaptability should not come at the expense of formal legality. In this context, the ideal solution is not to loosen the boundaries of executive authority but to adjust the normative foundations through the legislative path. In this way, digital transportation policies can have strong legal legitimacy while maintaining flexibility to evolve with market dynamics. Legislation that responds to innovation will prevent practices of rule by regulation, where the executive creates substantive norms without parliamentary legitimacy, which ultimately weakens the principles of democracy and the rule of law.

Sixth, resolving this issue should also be seen from the perspective of the division of powers between the central and regional governments. The ambiguity in the classification of app-based transportation has created confusion in issuing operational permits and field supervision. Once the national legal framework is clearly updated, the relationship between central and regional authorities in managing transportation can be better synchronized. This not only strengthens administrative effectiveness but also ensures that digital innovation develops within a uniform legal framework and does not create policy disparities across regions.

Finally, the core of this issue is the tension between the need for policy adaptation and adherence to the principle of legality. In the short term, the government can use an interpretative and coordinative approach to reduce normative tension. However, in the long term, only through the revision of the law and the creation of new legal norms can a true balance between innovation and legal certainty be achieved. By maintaining the principle of the hierarchy of regulations, strengthening normative legitimacy, and adopting an inclusive legal framework for technological development, Indonesia can build an efficient, just, and constitutional digital transportation system, while also strengthening public trust in the rule of law in the digital transformation era.

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