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REGULATORY FORBEARANCE AND LEGAL RISKS OF APPLICATION-BASED MOTORCYCLE TRANSPORTATION IN INDONESIA: A LEGAL RISK THEORY PERSPECTIVE

TOLERÂNCIA REGULATÓRIA E RISCOS JURÍDICOS DO TRANSPORTE POR MOTOCICLETA VIA APLICATIVO NA INDONÉSIA: UMA PERSPECTIVA DA TEORIA DO RISCO JURÍDICO

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Abstract
The rapid development of app-based transportation services has significantly transformed urban mobility systems in many countries, including Indonesia. One of the most prominent innovations is the use of motorcycles as passenger transport vehicles through digital ride-hailing platforms. Despite their widespread use and growing importance in urban mobility, the Indonesian transportation legal framework does not explicitly recognize motorcycles as public passenger transport vehicles for commercial services. This situation has created a regulatory gap that gives rise to a phenomenon of regulatory forbearance, in which the state implicitly allows the practice to continue without a clear and comprehensive legal framework. This study aims to analyze the regulatory forbearance in the governance of app-based motorcycle passenger transport and to identify the legal risks arising from such regulatory conditions. The research employs a normative legal research method using statutory and conceptual approaches. Legal materials are analyzed qualitatively using the perspective of legal risk theory. The findings indicate that regulatory forbearance in app-based motorcycle transport generates various legal risks for drivers,

Resumo
O rápido desenvolvimento dos serviços de transporte baseados em aplicativos transformou significativamente os sistemas de mobilidade urbana em muitos países, incluindo a Indonésia. Uma das inovações mais notáveis é o uso de motocicletas como veículos de transporte de passageiros por meio de plataformas digitais de transporte sob demanda. Apesar de seu uso generalizado e da crescente importância na mobilidade urbana, o marco jurídico indonésio em matéria de transportes não reconhece explicitamente as motocicletas como veículos de transporte público de passageiros para serviços comerciais. Essa situação criou uma lacuna regulatória que dá origem a um fenômeno de tolerância regulatória, no qual o Estado permite implicitamente que a prática continue sem um quadro jurídico claro e abrangente. Este estudo tem como objetivo analisar a tolerância regulatória na governança do transporte de passageiros por motocicleta baseado em aplicativos e identificar os riscos jurídicos decorrentes de tais condições regulatórias. A pesquisa emprega um método de pesquisa jurídica normativa, utilizando abordagens estatutárias e conceituais. Os materiais jurídicos são analisados qualitativamente

passengers, platform providers, and the state as regulator. These risks primarily relate to legal uncertainty, liability issues, and the lack of adequate legal protection for service users. Therefore, a more adaptive and risk-based regulatory framework is necessary to ensure legal certainty and public protection in the evolving digital transportation ecosystem.

Keywords: Regulatory Forbearance. Legal Risk. Risk-Based Regulation. Digital Transportation. Motorcycle Ride-Hailing.

utilizando a perspectiva da teoria do risco jurídico. Os resultados indicam que a tolerância regulatória no transporte de passageiros por motocicleta via aplicativo gera diversos riscos jurídicos para motoristas, passageiros, provedores de plataforma e o Estado como regulador. Esses riscos estão relacionados principalmente à incerteza jurídica, questões de responsabilidade civil e à falta de proteção jurídica adequada para os usuários do serviço. Portanto, é necessária uma estrutura regulatória mais adaptativa e baseada no risco para garantir a segurança jurídica e a proteção pública no ecossistema de transporte digital em evolução.

Palavras-chave: *Tolerância Regulatória. Risco Jurídico. Regulamentação Baseada no Risco. Transporte Digital. Serviços de Transporte por Motocicleta.*

1 INTRODUCTION

The development of digital technology has driven significant transformation in urban transportation systems in various countries. One manifestation of this transformation is the emergence of digital application-based transportation services or *ride-hailing services*, which are mobility services that connect drivers with passengers through smartphone-based digital platforms. This transportation model has grown rapidly in line with increasing internet penetration, smartphone usage, and public demand for more flexible, efficient, and accessible transportation services. In many cities around the world, *ride-hailing* services have become an important part of the urban mobility ecosystem and are often seen as a form of innovation in modern transportation systems. (Shaheen et al., 2019)

Globally, the growth of the *ride-hailing* industry has shown a very significant trend in recent years. Market data shows that the global *ride-hailing* market value is estimated to reach around US$179.7 billion in 2025, with a projected growth that continues to increase to US$229.9 billion in 2030. In addition, the number of *ride-hailing* service users worldwide has also increased rapidly. It is estimated that the number of users of this service could reach more than 2.34 billion users globally by 2030, with a market

penetration rate estimated to reach around 23.5% of the population of digital mobility service users by 2025.

This growth is also reflected in the increasing number of trips made through *ride-hailing* platforms. In 2024, it is estimated that there will be more than 11 billion ride-hailing trips made globally, with more than 200 million active users each month using this service in various regions of the world. In addition, industry reports show that the number of *ride-hailing* service users globally has reached around 2.8 billion users in 2023 and is projected to increase to more than 4.1 billion users by 2028 in line with increasing urbanization and digital technology adoption in various countries. (Marcus Afolabi, 2024)

In Asia, particularly in developing countries, the growth of *ride-hailing* services is even more dynamic than in other regions. The Asia-Pacific region accounted for nearly 47% of the global ride-hailing market share in 2023, driven by high urbanization rates and increased use of smartphones and mobile internet services. This development shows that app-based transportation services are no longer just a technological phenomenon but have become an integral part of the global urban mobility system.

In the Indonesian context, the development of application-based transportation has shown rapid growth since the mid-2010s. Digital platforms not only provide transportation services using cars but also expand their services by utilizing motorcycles as a mode of paid passenger transportation. Application-based motorcycle transportation services have become very popular because they are able to address various urban mobility issues, such as traffic congestion, limited public transportation, and the public's need for fast and affordable transportation services.

However, the development of application-based transportation practices has not always been accompanied by the development of an adequate regulatory framework. In Indonesia's transportation legal system, regulations concerning public motor vehicles for passenger transportation do not include motorcycles as a mode of public transportation that is permitted to transport passengers commercially. The applicable legal provisions place motorcycles as private vehicles, not as public motor vehicles that can be used for paid passenger transportation services. This condition creates a discrepancy between the transportation practices that have developed in society and the legal norms that apply in the national transportation regulatory system.

The lack of synchronization between the development of application-based transportation practices and the existing regulatory framework has ultimately given rise to a situation that some circles understand as a form of *regulatory forbearance*, namely a condition in which the state does not explicitly prohibit or regulate an economic activity that is developing in society. In the context of app-based transportation, this regulatory forbearance has the potential to give rise to various complex legal consequences, particularly in relation to the unclear legal status of the parties involved, legal liability in the event of an accident, and legal protection for transportation service users.

From the perspective of modern regulatory theory, t this kind of regulatory gap can give rise to *legal risk* in a rapidly growing economic sector that does not yet have a clear regulatory framework. Therefore, analysis of the phenomenon of using motorcycles as application-based passenger transportation is not only important from a transportation policy perspective, but also from the perspective of regulatory governance and legal risk management in the national transportation legal system.

In recent years, academic studies on app-based transportation or *ride-hailing* have grown rapidly in various disciplines, including transportation studies, digital economics, public policy, and digital platform governance. Various studies have analyzed the impact of *ride-hailing* services on urban mobility, changes in people's travel patterns, and their implications for urban transportation systems. For example, research shows that *ride-hailing* services have contributed to increased transportation accessibility, especially in urban areas with limited public transportation services (Tirachini, 2020a). In addition, a number of studies have also discussed the relationship between the growth of *ride-hailing* services and the dynamics of the platform economy and the emergence of new forms of employment in the digital economy (Graham & Anwar, 2023).

In the field of transportation policy, other studies also highlight various regulatory challenges arising from the development of digital platform-based transportation. A number of studies show that many countries face difficulties in formulating a regulatory framework that can accommodate technological innovation without neglecting the principles of safety, consumer protection, and fair business competition (Shaheen & Cohen, 2018). In this context, studies on *regulatory governance* often emphasize the importance of adaptive policy responses to the rapid development of digital technology (Mišić, 2021).

However, most existing research still focuses on economic aspects, mobility, or transportation policy in general. Relatively few studies specifically analyze the phenomenon of *ride-hailing* from the perspective of legal risks arising from regulatory uncertainty or gaps. In fact, in situations where transportation practices develop faster than the legal system's ability to respond, the potential for legal uncertainty and conflicts of responsibility becomes even greater. In this context, *regulatory forbearance* can create conditions in which various actors in the digital transportation ecosystem, such as drivers, passengers, platform operators, and the state, face various forms of legal risks that have not been fully identified and properly managed. (Black, 2010)

Therefore, there is still *a research* gap in studies on application-based transportation, particularly in relation to the analysis of legal risks arising from the phenomenon of regulatory forbearance. This study attempts to fill this gap by analyzing how regulatory forbearance in the regulation of application-based motorcycle transportation can give rise to various forms of legal risk for the parties involved from the perspective of legal risk theory.

Based on the background and research gap described above, the research question in this study is:

How does regulatory forbearance of the use of motorcycles as app-based passenger transportation in Indonesia pose legal risks for drivers, passengers, app operators, and the state from the perspective of legal risk theory?

This study aims to analyze the phenomenon of regulatory forbearance in the regulation of app-based motorcycle transportation and its implications for the emergence of legal risks in the transportation system. More specifically, this study has several main objectives.

First, this study aims to analyze the form of regulatory forbearance in the regulation of motorcycle use as application-based passenger transportation within the framework of transportation law in Indonesia. This analysis is important to understand how the inconsistency between developing transportation practices and applicable legal norms can create regulatory uncertainty. (Rayle et al., 2014)

Second, this study aims to identify various forms of legal risks arising from such regulatory forbearance. Legal risks can arise in various forms, such as the unclear legal

status of drivers, the legal responsibility of digital platform operators, and legal protection for transportation service users. (Baldwin et al., 2011)

Third, this study aims to explain the legal implications for the parties involved, including drivers, passengers, app operators, and the state as the authority responsible for regulating the public transportation system. Using the perspective of legal risk theory, this study seeks to explain how these legal risks arise and how they should be managed within the framework of modern transportation regulations.

This study is expected to make an important contribution, both theoretically and normatively, to the development of transportation law studies and the governance of digital transportation regulations.

Theoretically, this study contributes to the development of research on legal risk theory in the context of digital platform-based transportation regulation. The legal risk theory approach emphasizes that regulatory systems should not only serve to regulate social and economic behavior, but also to identify and manage the risks arising from such activities (Mythen, 2020). Thus, this study seeks to expand the application of legal risk theory in the analysis of digital economic phenomena, particularly in the application-based transportation sector.

Normatively, this study is also expected to contribute to the form of recommendations for the formulation of transportation policies and regulations that are more adaptive to developments in digital technology. In the context of application-based transportation, regulations that are not responsive to technological innovation have the potential to create legal uncertainty and increase legal risks for the parties involved (Braithwaite, 2011). Therefore, this study is expected to provide an academic basis for the formulation of transportation policies that are more responsive, adaptive, and based on legal risk management.

1.1 Literature review and theoretical framework

The **Literature Review and Theoretical Framework** section of this study aims to examine relevant literature and develop a conceptual framework used in analyzing the research problem. A literature review was conducted on previous studies concerning the development of application-based transportation, digital mobility governance, and

regulatory dynamics in response to technological innovation. Through this review, this study identified key concepts such as *regulatory forbearance*, *legal risk*, and *risk-based regulation.* This theoretical framework is used as an analytical basis for understanding how regulatory uncertainty or gaps regarding the use of motorcycles as an application-based passenger transportation mode can pose various legal risks for the parties involved, as well as a basis for formulating a more adaptive regulatory model in the digital transportation system.

2 CONCEPT OF REGULATORY FORBEARANCE

In public policy and regulatory studies, the term *regulatory forbearance* refers to a situation in which regulatory authorities deliberately or inadvertently delay the application, enforcement, or formulation of legal rules against certain economic or social activities. This phenomenon often arises when technological developments or market innovations occur faster than the ability of regulatory institutions to respond to them. In the context of the digital economy, various forms of platform-based innovation often develop in conditions of regulatory uncertainty before eventually being formally regulated by the state.

The concept *of regulatory forbearance* is often associated with the dynamics of modern regulatory *governance*, in which countries face the challenge of balancing the promotion of innovation with the protection of public interests. David Levi-Faur explains that the development of digital technology has created new challenges for traditional regulatory systems because innovation often exceeds the regulatory capacity of countries. He states that:

"Digital technologies have fundamentally transformed regulatory governance by creating new actors, new risks, and new regulatory challenges that traditional regulatory frameworks were not designed to address." (Mišić, 2021)

This statement shows that digital transformation not only changes economic activity patterns but also creates new challenges in the legal regulatory system. In many cases, countries choose not to immediately intervene in newly developing economic activities so as not to hinder innovation. However, this approach can lead to regulatory forbearance, which has the potential to give rise to various legal issues in the future.

In the context of app-based transportation, the phenomenon of *regulatory forbearance* often arises because digital transportation services develop through new business models that do not fully fit into conventional transportation regulatory categories. A number of studies show that governments in various countries initially tended to be ambiguous towards *ride-hailing* services, neither explicitly prohibiting nor fully regulating them. This situation created space for the development of digital transportation practices in a context of regulatory uncertainty. (Shaheen & Cohen, 2018)

Thus, *regulatory forbearance* can be understood as a form of temporary regulatory response to technological innovation. Although this approach can provide space for innovation to develop, in the long term it can also give rise to various legal implications, particularly in relation to the legal uncertainty of business actors, legal liability, and legal protection for service users.

3 LEGAL RISK THEORY

In modern legal and regulatory studies, the concept of risk has become an increasingly important consideration in the formulation of public policy. The development of modern society is often described as *a risk society*, a social condition in which various economic and technological activities create new forms of risk that require management through effective regulatory systems. Ulrich Beck explains that in modern society, risk is no longer only natural in nature, but also a result of the modernization process itself. He states that:

"In advanced modernity, the social production of wealth is systematically accompanied by the social production of risks." (Black, 2010)

This concept shows that modern technological and economic development inherently generates new risks that must be managed through institutional mechanisms, including through the legal system. In the context of regulation, *legal risk* refers to potential losses or uncertainties arising from ambiguity, inconsistency, or gaps in the legal norms governing a social or economic activity.

Modern regulatory approaches increasingly emphasize the importance of *risk-based regulation*, which is a regulatory approach that places risk identification and management at the heart of policy formulation. Julia Black explains that this approach

requires regulators to identify the risks arising from an activity and prioritize regulatory intervention based on the level of risk. She states that:

"Risk-based regulation involves the prioritization of regulatory actions based on the identification and assessment of risks posed by regulated activities." (Black, 2010)

In the context of app-based transportation, legal risks can arise when transportation practices develop without a clear regulatory framework. Legal uncertainty regarding the status of vehicles, the legal responsibilities of digital platforms, and legal protection for passengers can create various forms of legal uncertainty for the parties involved. Therefore, analysis of the phenomenon of app-based transportation needs to consider how the regulatory system identifies and manages the legal risks arising from these technological developments.

4 REGULATION OF MOTORCYCLE RIDE-HAILING

The development of app-based transportation has significantly changed the landscape of transportation systems in various countries. *Ride-hailing* services allow users to order vehicles directly through digital applications, creating a more flexible transportation model compared to conventional transportation systems. Research shows that *ride-hailing* services have become an important part of modern urban mobility systems, especially in cities with high levels of urbanization. (Tirachini, 2020b)

In a number of developing countries, *ride-hailing* services not only use four-wheeled vehicles but also utilize motorcycles as a mode of passenger transportation. The use of motorcycles in application-based transportation services is considered more efficient in dealing with traffic congestion in big cities. However, the use of motorcycles as paid passenger transportation is often not fully compliant with the applicable transportation regulatory framework.

In many transportation legal systems, motorcycles are basically categorized as private vehicles, not as public vehicles that are allowed to transport passengers commercially. This condition creates a discrepancy between transportation practices that are developing in society and the applicable legal norms. As stated in a study on digital transportation regulation, the development *of ride-hailing* often poses regulatory

challenges because the platform's business model does not fully comply with traditional transportation legal categories. (Rayle et al., 2014)

As a result, many countries face policy dilemmas in regulating app-based transportation services. On the one hand, these services provide significant economic and social benefits to society. On the other hand, the absence of a clear regulatory framework can give rise to various legal issues, including those related to transportation safety, consumer protection, and the legal liability of digital platform operators.

The development of digital platform-based transportation services, particularly ride-hailing, has posed new challenges for transportation regulatory systems in various countries. A number of studies show that technological innovations in the digital mobility sector often develop faster than regulators' ability to adapt existing transportation legal frameworks, making it difficult to formulate effective and adaptive policies in response to technological changes (Oviedo et al., 2021). Studies on ride-hailing governance in various developing countries also show that regulators often face challenges in integrating digital platform business models into conventional transportation regulatory frameworks that were previously designed for traditional transportation services (Rayle et al., 2014).

From a public policy perspective, several studies confirm that regulation plays an important role in shaping the structure and dynamics of the ride-hailing industry. The policy design implemented by the government can influence market structure, platform companies' operational strategies, and the level of driver participation in the digital transportation service ecosystem (Verma et al., 2024). Therefore, various countries have developed different regulatory approaches, ranging from strict oversight models to collaborative governance approaches that involve the government, platform companies, drivers, and service users in the process of regulating the digital transportation sector. Furthermore, research on the evolution of ride-hailing regulations shows that regulatory frameworks in many developing countries tend to evolve gradually in response to technological dynamics, social pressures, and demands from various stakeholders in the digital transportation ecosystem (Verma et al., 2024).

On the other hand, literature also shows that ride-hailing regulation is not only related to transportation policy, but also covers aspects of market governance, consumer protection, and fair access to digital mobility services (Liu et al., 2020). Several studies also show that regulatory policies implemented by the government can influence driver

behavior and their perceptions of various risks associated with the use of digital platforms in transportation economic activities (Li et al., 2018). In addition, the development of platform-based transportation technology also poses new challenges in integrating digital mobility services with broader transportation systems, including in the context of developing multimodal transportation systems and autonomous vehicle innovations in the future (Wu et al., 2025). Other studies highlight that the use of algorithms and operational mechanisms in ride-hailing platforms can also affect the distribution of transportation services and user accessibility, raising questions about fairness, transparency, and accountability in digital mobility systems (Guo et al., 2023).

Although these studies have made important contributions to understanding the dynamics of ride-hailing regulation, most studies still focus on aspects of transportation policy, market governance, and the economic impact of these services. Relatively few studies have specifically examined the legal implications of the ride-hailing phenomenon, particularly in the context of the emergence of legal risks due to regulatory uncertainty or gaps (Oviedo et al., 2021). In a situation where technological innovation is developing faster than regulatory responses, the potential for legal uncertainty and conflicts of responsibility is increasing for various actors in the digital transportation ecosystem. Therefore, an analytical approach is needed that not only highlights transportation policy aspects but also considers how regulatory forbearance can give rise to various forms of legal risk in application-based transportation systems.

5 ANALYTICAL FRAMEWORK

Based on the theoretical framework described above, this study uses a legal risk theory approach to analyze the phenomenon of regulatory forbearance in the regulation of application-based motorcycle transportation. This analytical framework is based on the assumption that the development of digital transportation that is not accompanied by an adequate regulatory response can create conditions of legal uncertainty that have the potential to give rise to various forms of legal risk for the parties involved.

In this context, regulatory forbearance is understood as a condition in which the state has not yet fully established clear legal rules for an economic activity that is developing in society. This condition can have various legal implications, such as

uncertainty regarding the legal status of business actors, uncertainty regarding legal liability in the event of an accident, and weak legal protection for transportation service users.

Through the perspective of legal risk theory, this study seeks to identify and analyze various forms of legal risk arising from such regulatory forbearance. This analysis focuses on four key actors in the app-based transportation ecosystem, namely drivers, passengers, digital platform operators, and the state as the regulatory authority. Using this approach, the study aims to provide a more comprehensive understanding of how legal risks arise in the context of app-based transportation and how these risks should be managed within the framework of modern transportation regulations.

6 RESEARCH METHOD

6.1 Type of research

This study is normative legal research that focuses on the analysis of legal norms, legal principles, and conceptual frameworks related to application-based transportation regulations and the legal implications they entail. Normative legal research essentially places law as a system of norms that is analyzed through a conceptual approach and applicable laws and regulations. According to Peter Mahmud Marzuki, normative legal research is research that aims to find legal rules, legal principles, and legal doctrines to answer legal issues that are faced. (Marzuki & Sh, 2021)

This approach is relevant to this study because the issue of using motorcycles as a mode of passenger transportation based on applications is not only related to social practices but also concerns the ambiguity of legal norms and regulatory gaps in the transportation legal system. Thus, this study attempts to analyze how this phenomenon of regulatory forbearance can give rise to various forms of legal risks for parties involved in the digital transportation system.

6.2 Approach

In normative legal research, analysis is conducted through several complementary legal approaches. This study uses two main approaches, namely the statutory approach and the conceptual approach

First, the statutory approach is used to examine various laws and regulations related to transportation and road traffic, particularly regulations governing the classification of motor vehicles and the operation of public transportation. Through this approach, the study examines the consistency and suitability of applicable legal norms with the practice of application-based transportation that is developing in society.

Second, a conceptual approach was used to understand the legal concepts relevant to this study, particularly the concepts of regulatory forbearance and legal risk. The conceptual approach enabled researchers to analyze legal phenomena using a theoretical framework developed in academic literature. In this context, the concept of risk-based regulation is important because, according to Julia Black, modern regulation increasingly emphasizes the importance of identifying and managing risk in the public policy-making process. She states that:

"Risk-based regulation involves the identification, assessment and prioritization of risks as the basis for regulatory action." (Black, 2010)

6.3 Legal materials

In normative legal research, the data sources used are legal materials consisting of primary, secondary, and tertiary legal materials.

First, primary legal materials, which are authoritative and directly binding sources of law. In this study, primary legal materials include various laws and regulations related to the national transportation system, particularly regulations concerning traffic and road transportation, as well as government policies governing application-based transportation.

Second, secondary legal materials, which provide explanations of primary legal materials. Secondary legal materials in this study include law textbooks, scientific journal articles, and academic publications discussing transportation regulations, platform

economics, and legal risk theory. According to Terry Hutchinson, secondary legal materials play an important role in legal research because they help explain and interpret the legal norms being analyzed.

Third, tertiary legal materials, which are materials that provide additional guidance or explanations to primary and secondary legal materials, such as legal dictionaries, legal encyclopedias, and other reference sources that support the understanding of legal concepts used in research.

6.4 Method of legal analysis

The analysis in this study was conducted using qualitative legal analysis methods. This method emphasizes the interpretation of legal norms, analysis of legal doctrine, and examination of theoretical concepts related to the research problem. Through this approach, various legal materials that have been collected are analyzed systematically to identify the relationship between the phenomenon of regulatory forbearance and the emergence of legal risks in application-based transportation systems.

The analytical framework in this study uses the perspective of legal risk theory, which emphasizes that the ambiguity of legal norms can give rise to various forms of uncertainty and potential legal liability for the parties involved. In the literature on modern regulation, the risk-based approach is seen as an important framework for understanding the relationship between regulation and the potential risks that arise in society. As Ulrich Beck argues in his theory of *the risk society*, modern society is increasingly characterized by the emergence of various forms of risk generated by the process of modernization itself.

Using a legal risk theory approach, this study attempts to analyze how regulatory forbearance of the use of motorcycles as a mode of passenger transportation based on applications can result in various forms of legal risk, both for drivers, passengers, application providers, and the state as a regulator.

6.5 Results and discussion

1. Regulatory Gap in Motorcycle Passenger Transport in Indonesia

The development of application-based transportation services has changed the mobility patterns of people in various countries, including Indonesia. One form of rapidly developing transportation innovation is the use of motorcycles as an app-based passenger transportation mode (*motorcycle ride-hailing*). This service offers various advantages such as flexibility, time efficiency, and the ability to reach urban areas with high levels of congestion. However, the development of this practice has not always been accompanied by adequate adjustments to the transportation legal framework.

In Indonesia's transportation legal system, the classification of motor vehicles and the operation of public transportation are regulated by **Law No. 22 of 2009 concerning Road Traffic and Transportation**. This regulation basically categorizes public motor vehicles as vehicles used to transport people or goods for a fee but normatively does not recognize motorcycles as public motor vehicles for passenger transportation (Yudianto et al., 2010). As a result, the legal use of motorcycles to transport passengers in exchange for services is in an ambiguous position in the national transportation legal system.

This phenomenon indicates **a regulatory gap** between the development of digital transportation practices and the applicable legal framework. In public policy literature, regulatory gaps often arise when technological innovation develops faster than the legal system's ability to adapt. According to Julia Black, in the context of modern regulation, "the pace of innovation frequently outstrips the ability of regulatory frameworks to respond effectively" (Black, 2010). This condition can lead to legal uncertainty and potential conflicts of responsibility among parties involved in technology-based economic activities.

2. Regulatory Forbearance in the Governance of App-Based Motorcycle Transport

Although motorcycles are not normatively classified as public transportation vehicles, app-based motorcycle transportation services continue to grow rapidly and are used by millions of people in Indonesia. This situation demonstrates the phenomenon **of** *regulatory forbearance*, which is when state authorities implicitly allow a practice to continue even though the existing legal framework does not yet clearly regulate it.

In modern regulatory studies, regulatory forbearance is often understood as a policy strategy that arises when regulators face a dilemma between the need to maintain legal certainty and the demand to accommodate economic innovation. In some cases, regulators choose not to strictly enforce the law against a new practice until a more comprehensive regulatory framework is available. This phenomenon also frequently occurs in the digital economy sector, where technological developments and new business models often outpace the regulatory response of the state.

Research on *ride-hailing* service governance shows that many countries face similar situations when digital transportation services first emerge. Governments often take a gradual approach by allowing these services to develop while studying their impact on the transportation system and economy (Oviedo et al., 2021). This approach reflects the adaptation of regulations to the dynamics of technological innovation, but at the same time, it can also have various legal implications for the parties involved.

3. Legal Risks Arising from Regulatory Forbearance

Regulatory forbearance towards app-based motorcycle transportation practices not only creates flexibility for transportation innovation but also poses various **legal risks** for actors in the service ecosystem. Legal risks essentially refer to potential losses arising from legal uncertainty, regulatory changes, or unclear potential legal liability. (Stulz, 2022)

First, for **drivers**, the unclear legal status of motorcycles as passenger vehicles can pose legal risks related to liability in the event of a traffic accident or dispute with passengers. In a situation where the status of such transportation activities is not fully recognized by the transportation legal system, drivers may face uncertainty regarding the legal protection they should receive.

Second, for **passengers**, legal risks may arise in the form of uncertainty regarding safety standards, consumer protection, and liability mechanisms in the event of an accident or loss during the trip. When a transportation service develops outside of a clear regulatory framework, legal protection for service users also has the potential to be suboptimal.

Third, for application providers, regulatory forbearance can pose legal risks related to corporate liability and uncertainty regarding the sustainability of their business models. The literature on platform economics shows that regulatory uncertainty is one of

the main challenges faced by technology companies in the digital mobility sector, especially when service innovation develops faster than government policy responses. (Shaheen & Cohen, 2018)

Fourth, for **the state**, regulatory forbearance can also pose risks in the form of weak oversight capacity over the transportation system and potential policy conflicts between economic innovation and public protection interests. In the long term, regulatory uncertainty can reduce the effectiveness of the legal system in ensuring legal certainty and justice for the public.

4. Risk Analysis from the Perspective of Legal Risk Theory

The phenomenon of regulatory forbearance in app-based motorcycle transportation can be further analyzed using the perspective **of legal risk theory**. This theory emphasizes that modern legal systems not only serve to regulate people's behavior, but also to manage various forms of risk that arise in social and economic life.

Within the framework of the *risk society* theory developed by Ulrich Beck, modern society is characterized by an increase in the production of risk as a consequence of modernization and technological development. Beck explains that in modern society, the systematic production of wealth is accompanied by the production of risk arising from industrial development, technology, and modern social systems. Beck (1992) states that:

"Modern society has increasingly become a society concerned with the future and safety, which generates the notion of risk."

In the context of digital transportation, the development of platform technology has created new forms of mobility that bring various economic and social benefits but also generate various new forms of risk that must be managed by regulatory systems.

The *risk-based regulation* approach in public policy literature emphasizes that regulators need to identify and prioritize the various risks arising from an economic activity before formulating regulatory policies. This approach requires regulators to focus regulatory intervention on activities with the highest level of risk so that the use of supervisory resources becomes more effective. As stated by Julia Black, risk-based regulation requires regulators to "prioritize regulatory intervention according to the level of risk posed by particular activities." (Black, 2010)

Using the perspective of legal risk theory, regulatory forbearance of app-based motorcycle transportation can be understood as a condition in which the state has not fully

identified and managed the various legal risks arising from this digital transportation practice. As a result, various legal risks that could have been minimized through clear regulations are instead distributed among the parties involved in the app-based transportation system.

7 CONCLUSION

This study shows that the development of application-based motorcycle transportation in Indonesia has created new dynamics in the national transportation system that have not been fully accommodated by the applicable legal framework. Normatively, traffic and road transportation laws and regulations do not classify motorcycles as public motor vehicles for paid passenger transportation. However, in practice, app-based motorcycle transportation services have developed extensively and become an important part of the urban mobility system. This condition indicates **a regulatory gap** between digital transportation practices and the existing transportation legal framework.

This study also found that the sustainability of these transportation practices is inseparable from **regulatory forbearance** on the part of the state. In this situation, the government does not explicitly prohibit these practices but has also not yet provided a comprehensive regulatory framework to govern them. On the one hand, this kind of policy approach allows transportation innovation to flourish and meet the mobility needs of the community, but on the other hand, it creates legal uncertainty that has the potential to give rise to various legal implications for the parties involved.

From **a legal risk theory** perspective, r regulatory forbearance regarding app-based motorcycle transportation results in various forms of **legal risk** distributed among drivers, passengers, app operators, and the state as regulator. For drivers and passengers, the unclear legal status of these services can lead to uncertainty regarding legal protection and accountability mechanisms in the event of an accident or dispute. For app operators, regulatory uncertainty can create legal risks related to future policy changes that could potentially affect the sustainability of the platform's business model. Meanwhile, for the state, regulatory forbearance can reduce the effectiveness of the legal system in ensuring legal certainty, transportation safety, and the protection of public interests.

Thus, the findings of this study indicate that the phenomenon of app-based motorcycle transportation is not only a transportation policy issue but also reflects broader challenges in regulatory governance in the digital economy era. Therefore, it is necessary to develop a more adaptive and risk-based regulatory framework so that the legal system is able to manage the various legal implications arising from digital transportation innovations, while providing legal certainty and adequate protection for all parties involved.

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Authors' Contribution

All authors contributed equally to the development of this article.

Data availability

All datasets relevant to this study's findings are fully available within the article.

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