

Legal Protection of Online Taxi-bike Driver from Work Accident in Indonesia

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Abstract

Rapid technological developments have implications for the development of online transportation modes, one of which is Taxi-bike online. Many online Taxi-bike transportation drivers generally carry out professions with the status of a partnership relationship pattern with the company as the partnership is regulated in a civil law agreement. The pattern of relationships that occur between online Taxi-bike drivers and companies that are not based on a working relationship has an impact on the invalidity of Law Number 13 of 2003 concerning Employment, one of which is related to the absence of legal certainty over guaranteed work safety protection for online Taxi-bike drivers. This research provides an understanding of how online Taxi-bike drivers stand with companies and how to guarantee legal protection for work safety for online Taxi-bike drivers according to regulations in Indonesia. The research method in this research is normative juridical with the approach of library materials or secondary data. The results of this study indicate that *first*, the Taxi-bike company as a partnership-based transportation company has not provided guaranteed protection for the recognition of legal status for its working partners, in this case, the online Taxi-bike driver. *Second*, there is no regulation on work safety guarantees for online Taxi-bike drivers that are based on partnerships or have not been regulated in laws and rules, so this reason is used as the basis for online transportation companies not to provide compensation or compensation when an accident occurs to online Taxi-bike drivers.

Keywords: *Legal Protection, Work Accident, Online Taxi-bike.*

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INTRODUCTION

Transportation is one of the most important areas of activity in the life of the Indonesian people (Putri & Diamantina, 2019). Technological developments can change people's habits (*lifestyle*) from conventional methods to methods that rely on *smartphones*. The increasing sophistication of activities through *smartphones* among the Indonesian people invites the presence of several online transportations in Indonesia (Safira, 2020). Realizing the importance of the role of transportation, activities can run smoothly, so it is necessary to have transportation facilities that can provide convenience in the implementation of community activities (Saputra *et al.*, 2020).

The presence of Taxi-bike, both two-wheeled and four-wheeled, based on online applications, is welcomed by the community because apart from being easy to order and practical, it is in their hands.

However, the safety of the driver is still far from guaranteed legal protection and position. The safety side of online transportation drivers, both motorbikes and four-wheelers, has proven over the years as the means of transportation that are most involved in accidents. As long as a clear legal umbrella has not been established to protect the safety of online Taxi-bike drivers, the guarantee of protection against accidents is far from roasted (Putri & Diamantina, 2019)

Likewise, protection guarantees have been provided by the government through policy responses, so that companies provide agreed and applicable rules of the game for companies and workers (Salsabila & Kristina, 2020)

Taxi-bike companies in collaborating with drivers (online motorcycle taxi drivers or drivers based

on partnership commitment). The agreement refers to Article 1313 of the Civil Code, which is an act in which one or more people bind themselves to one or more other people. In the opinion of Sudikno Mertokusurno, an agreement is a legal relationship between two parties that gives rise to rights and obligations for an achievement. The meaning is, that the same party has the right to an achievement (Adonara, 2014).

One of the developments in employment is in the transportation sector. Indonesia has a legal umbrella that specifically regulates the labour system in Indonesia, namely Law no. 13 of 2003 concerning Manpower (Putra, 2017). There is a separate problem in the legal order regarding the position and protection of online Taxi-bike drivers in Indonesia, because of what, in the constitution of our country that every citizen is legally guaranteed in article 27 paragraph (2) of the 1945 Constitution of the Republic of Indonesia. Where this article guarantees the right of every Indonesian citizen to get a decent job for his life. Not only that, but every citizen also has the same right to legal protection as regulated in Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia. This explanation is also seen in Article 28D paragraph (2) of the State Constitution. The Republic of Indonesia in 1945 (Michael, 2016). Based on this description, the author's research focuses on discussing; how is the existence of the online Taxi-bike driver position and what is the legal protection for work safety for online Taxi-bike drivers in the eyes of law in Indonesia.

In this study, a critical review of the study of the protection of work safety in online transportation in Indonesia will be critical. Therefore, the author has the idea to make this research with the title Legal Protection and Position on Work Safety for Taxi-bike Online Drivers in Indonesia.

Based on this background, this research consists of 3 (three) problem formulations, namely:

1. What is the legal position of the Taxi-bike Online Driver within the Taxi-bike Company according to Indonesian law?
2. How is the guarantee of legal protection for work safety for Taxi-bike Online Drivers in Indonesia?

METHOD OF RESEARCH

This study uses a constructivist legal research paradigm approach. The constructivism paradigm in the social sciences is a critique of the positivist paradigm. According to the constructivist paradigm of social reality that is observed by one person cannot be generalized to everyone, as positivists usually do.

This research uses descriptive-analytical research. Analytical descriptive research is a type of descriptive research that seeks to describe and find answers on a fundamental basis regarding cause and

effect by analyzing the factors that cause the occurrence or emergence of a certain phenomenon or event.

The approach method in research uses a method (*socio-legal approach*). The sociological juridical approach (*socio-legal approach*) is intended to study and examine the interrelationships associated in real with other social variables (Toebagus, 2020).

Sources of data used include Primary Data and Secondary Data. Primary data is data obtained from field observations and interviews with informants. While Secondary Data is data consisting of (Faisal, 2010):

1. Primary legal materials are binding legal materials in the form of applicable laws and regulations and have something to do with the issues discussed, among others in the form of Laws and regulations relating to the freedom to express opinions in public.
2. Secondary legal materials are legal materials that explain primary legal materials.
3. Tertiary legal materials are legal materials that provide further information on primary legal materials and secondary legal materials.

Research related to the socio-legal approach, namely research that analyzes problems is carried out by combining legal materials (which are secondary data) with primary data obtained in the field. Supported by secondary legal materials, in the form of writings by experts and legal policies.

RESEARCH RESULT AND DISCUSSION

1. Legal Position of the Taxi-bike Online Driver within the Taxi-bike Company According to Indonesian Law

Concerning the increasing number of supporting applications for online transportation such as Taxis, Grab, Go-jek, and Uber which are popping up all over the world, various regulations that regulate network-based transportation naturally appear, this is due to the theory of societal change and law, Changes in society can bring about changes in society and changes in the law itself either because of the discovery of new technology or the existence of discoveries. However, many countries have not legalized online transportation activities due to regulatory constraints related to online transportation itself (Romlah, 2019).

For example, in London, Uber's online transportation was banned and it lost its license to operate by TfL (*Transportation for London*). Quoted from The Guardian, *Transportation for London* is a government agency responsible for all types of public transportation and private vehicle rental because the revocation of Uber's license due to Uber's approach and behavior shows a lack of responsibility by the company, one of which is related to public safety and security cases. The matter went to court and the court granted it after conducting an in-depth audit and investigation of

Uber. In contrast to London, Malaysia changed the law related to land transportation and included the use of online transportation to suit the needs of the community so that people in Malaysia feel protected.

In Indonesia itself, regulatory issues related to online transportation have become an unsolved problem. There are still many pros and cons regarding online transportation regulations in the community, such as the status of online motorcycle taxis as a type of transportation for motorized vehicles or whether online cars are in the category of public transportation or not. Besides that, no regulation guarantees safety protection for Taxi-bike drivers, it is the obligation and responsibility of the state to immediately issue legal products in the field of online transportation.

As explained in Article 47 Paragraph (3) of Law Number 22 of 2009 concerning Traffic and Transportation, it is stated that motorized vehicles or cars are only divided into individual motorized vehicles and general motorized vehicles, because online transportation is in a grey zone so a lot of things happen. The pros and cons of its status as a motor vehicle. Many regulations have tried to collect online transportation, both related to status and legal protection, but all of them have been cancelled by the decision of the Supreme Court such as Ministerial Regulation Number 26 of 2017 which was cancelled with the decision of the Supreme Court Number 37 P/HUM/2017 and Supreme Court Regulation Number 108 of 2017 which was cancelled with the decision of the Supreme Court Number 15 P/HUM/2018 until at its peak the online transportation driver union submitted a *judicial review* to the Constitutional Court regarding the entry of online Taxi-bikes to public motorized vehicles as stated in Article 47 Paragraph (3) of Law Number 22 the Year 2009 concerning Traffic and Transportation, but the application was rejected by the panel of judges (Siti Romlah, 2019).

Both according to the traffic and transportation laws as well as in the decision of the Supreme Court above, the Indonesian state should make a regulation that can guarantee social changes in the lives of its people. The importance of regulation to guarantee the protection and status of the status or existence of online transportation in Indonesia is highly expected by all online transportation drivers. These changes of course occur due to the urgency of needs that occur because of a development of science, a revolution, or because of the development of science and technology. The occurrence of social changes in a society can also cause legal changes in that society.

Henry S. Maine said that law is a derivative product of the structural conditions of society; therefore law exists because of the dynamics in society itself. But somewhat different opinion, in the opinion of Lawrence Friedman and Jack Landsky quoted by Roger Cotterrell

stating that social change is considered to have occurred if there has been a change in social structure, patterns of social relations, norms, and patterns of social relations. Law as a norm sometimes affects or is influenced by other norms. In terms of social change, sometimes the law is also affected, or vice versa, giving rise to two paradigms, namely legal changes that cause social changes or social changes that cause legal changes (Romlah, 2019).

The relationship between social change and legal change cannot always go hand in hand. Sometimes legal changes cannot keep pace with social changes that occur very quickly. Especially in a legal country like Indonesia where legal changes require a very long process to be carried out by a competent government. The state of imbalance referred to by WF Ogburn is called a state of *social lag*. However, *social lag* can occur if the law is not able to meet the needs of society. Another situation that shows that the law has been left behind by social change is that the law becomes an obstacle to that change. In addition to causing social backwardness, backwardness in law can also cause disorganization and even a legal vacuum. When these conditions occur, what will happen is a state of chaos because there are no rules that become a benchmark for human behaviour (Carpenter, 1958)

As contained in the theory of legal certainty, that legal certainty is one of the goals of the creation of the law itself. Manullang in his book says that legal certainty is one of the elements in the law proposed by Montesquieu, Rousseau, and Beccaria. Legal certainty itself is an applied element that must be met if you want to apply the law to a case or another case (Manullang, 2016). Meanwhile, talking about legal certainty itself, according to Soedikno Mertokusumo, is something in which there is legal protection that protects the community from arbitrary actions carried out by the government or certain parties so that someone can get what they should (Erwin, 2011).

The application of legal certainty varies in each country depending on which system and school of thought are adopted by the country itself. As in Indonesia, which adheres to *civil law* and understands positivism, legal certainty lies in the application of a case to existing rules. Peter Mahmud Marzuki added that;

Legal certainty is not only in the form of articles in the law but also in the consistency of the judge's decision between a judge's decision and the decisions of other judges for similar cases that have been decided (Marzuki, 2008).

This is because in civil law countries it is possible to use jurisprudence as a legal basis, especially in Indonesia, but this is not the main obligation that must be carried out.

The discussion about the protection and legal status of online transportation drivers, in this case, Taxi-bike drivers, has not been fully touched. Normatively, the practice of legal relations between online Taxi-bike drivers and companies is a partnership relationship, but there are still different views in assessing the current legal relationship. The government's role in protecting the status of its recognition as an online transportation driver can be seen from several regulatory aspects, namely both legally in civil agreements and from aspects of labour laws, the pattern of partnership relationships between drivers and companies and regulations are the basis for good online transportation arrangements if something happens legal certainty. The partnership agreement here is a business strategy carried out by two or more parties within a certain period to achieve mutual benefits with the principle of mutual need and mutual enlargement. Because it is a business strategy, the success of a partnership is largely determined by the compliance between partners in carrying out business ethics.

The agreement which is then often referred to in Dutch is known as *overeenkomstenrecht* (Kansil, 1995). In civil law, judging from the form of the agreement, the relationship between the Taxi-bike online driver and the company is clear, namely a partnership agreement. The agreement is said to be one of the sources that will give birth to an engagement for the parties to the agreement. Thus it can be concluded that the engagement is an agreement that arises from an agreement made by the parties either jointly or unilaterally. Is reaffirmed in Article 1313 of the Civil Code which states that an agreement or agreement is an act by which one or more people bind themselves to one or more people (Saputra *et al.*, 2020). So it is clear from the intent contained in Article 1313 of the Civil Code (KUHPperdata) that the engagement is due to obtaining permission or will (*toestemming*) from those who are bound by an agreement, namely those who agree to the agreement in a statement (Dewi, 2019).

The Civil Code (KUHPer) recognizes several principles in an agreement, including the Personnel Agreement Principle, Freedom of Contract Principle, Good Faith Principle, Consensualism Principle, and *Pacta Sun Servanda*. This is what is then described in Article 1320 and Article 1338 of the Civil Code, the binding of the two parties who agree is said to have agreed and is legally valid in civil law. As stated in Article 1320 of the Civil Code (KUHPperdata) regulates the legal terms of the agreement, and divides it into two conditions, namely subjective conditions, and objective conditions. As for the legal requirements of the agreement according to Article 1320 of the Civil Code, there are 4, namely: (1) the parties agree (consensus); (2) the ability to act according to the law (capability); (3) the object must be clear; and (4) permissible causes (halal). Partnership as a form of agreement is also bound by these four conditions. In particular,

partnerships are regulated in Article 1618 - Article 1652 of the Civil Code regarding civil partnerships (*maatschap* or *vennootschap* in Dutch or partnership in English) (Saputra *et al.*, 2020).

Even the theory of the agreement itself is explained by R. Subekti, where he explains that the agreement is "an agreement where one person promises to another person or the two people promise each other to carry out something, from this event arises because of a relationship between the two people who are called the "*Engagement*". Therefore, the agreement issues an agreement between the two people who make it (Subekti, 1995).

This is if considered in a legal relationship or work relationship, where doing work that was born based on partnership is based on the principles in the work agreement, one of which is the principle of freedom of contract, the principle of consensus, and following the provisions of Article 1320 of the Civil Code. The legal relationship arises because of an agreement that involves two parties, namely the employer and the party who will do the work following the agreement (Dewi, 2019). If we look at the elements of the engagement that arise from an agreement, it can be said that the online driver has entered into a joint engagement with the online transportation company, as stated in Article 1313 of the Civil Code which states that the engagement was born or occurred due to obtaining a permit. or the will of the parties bound by the agreement. With the consent or will of the parties, there has been a legal relationship between the two. This is based on online drivers registering with online transportation companies so that a legal binding has automatically occurred which will certainly bring up obligations and rights that must be obeyed by both parties (Saputra *et al.*, 2020).

Viewed from the aspect of the agreement, there is a difference between a partnership agreement and a work agreement. Partnership agreements based on the Civil Code are easier to enter into, but there are no clear rules regarding the protection aspect. When viewed in terms of partnership agreements, as there are still violations in the partnership agreements that exist between companies and online transportation drivers. The violation was dominated by unilateral determination by the company regarding several new policies. In the agreement, new things outside the initial agreement must of course be agreed/agreed upon again by the parties involved in the agreement. The new things that are done outside the agreement are certainly not binding on the parties. However, for the driver, this condition is not simple. Some drivers depend on this profession for their livelihood because they do not have other jobs. This condition makes the driver's position very weak compared to the company, and they are very vulnerable to being pressured to fulfil the wishes of the stronger party (Nola, 2018).

The partnership agreement between the driver and the company is normatively based on the freedom of contract using a standard agreement model. However, the standard agreement model used still has the potential to contain defects of will, for example in the Taxi-bike partnership agreement which states that partners are responsible for all risks, even though the risk should be a shared responsibility. The defect of will, in this case, is because the agreement is one-sided, unbalanced, and unfair. In this partnership agreement, the company is the party with strong bargaining power, while the partner is the party with weak bargaining power. The driver can only accept all the contents of the agreement by force (*taken for granted*) because if he tries to bargain with other alternatives, he will most likely accept the consequences of losing what is needed. Therefore, to minimize the existing problems, the government's role is needed through *bestuurshandeling* in the form of coercive regulations (Utami *et al.*, 2020).

Has added value to the partnership agreement. For the company, this is also beneficial because it does not need to be tied to labour regulations such as wages and severance pay. It's just that the violations committed by entrepreneurs have made some parties, including drivers, want the partnership pattern to be reviewed. The driver's desire to include a partnership pattern in the Manpower Bill has no legal basis because the employment agreement is different from the partnership agreement. The employment agreement is regulated in Law Number 13 of 2003 concerning Manpower. In this law, what is meant by a work agreement is an agreement between a worker/labourer and an entrepreneur or entrepreneur that contains the working conditions, rights, and obligations of the parties. While the employment relationship is the relationship between the employer and the worker based on an employment agreement, which contains elements of work, wages and orders (Nola, 2018).

The explanation in Article 1 number 15 of Law Number 13 of 2003 concerning Manpower states that the employment relationship is a relationship between employers with workers/labourers based on work agreements, which have elements of work, wages, and orders, and explanations of the above article for workers who legally have clear legality, namely a work agreement (Darmajaya, 2015). So, an employment relationship arises from an employment agreement, not a partnership agreement. The definition of the work agreement itself is also explained in Article 1 number 14 of Law Number 13 of 2003 concerning Manpower as an agreement between a worker/labourer and an entrepreneur or employer that contains working conditions, rights, and obligations. While the agreement between the online Taxi-bike driver and the Taxi-bike company is a partnership agreement, meaning that Law Number 13 of 2003 concerning Manpower cannot be used as a legal basis. Both parties are bound by an ordinary agreement, in this case, they return and are

subject to the rules of the Civil Code (KUHPer) section of the Agreement. *The principle of lex specialis derogat lex generalis* does not apply in this case (Rachman, 2019)

Law Number 13 of 2003 concerning Manpower has provided signs to map whether there is an employment relationship. If there is no working relationship, it means that there are no terms between workers and employers, only partners. The manpower law defines an employment relationship as a relationship between an entrepreneur and a worker/labourer based on a work agreement that contains elements of work, wages, and orders. From this explanation, it can be seen that there are three elements of an employment relationship, namely work, wages, and orders. Even the explanation of the labour law does not explain further and in detail the elements of the employment relationship, especially regarding the relationship between online Taxi-bike drivers and Taxi-bike companies. The absence of further explanation regarding the elements of the employment relationship makes each party have its interpretation.

Since the regulations in the field of manpower do not explain further the elements of the employment relationship, it is very important to see how the court views these three elements. One of the decisions of the Supreme Court Number 841 K/Pdt.Sus/2009 relates to an example of a case between a taxi driver and a taxi company. In the explanation contained in the case, the Supreme Court clearly stated that there was no element of wages because taxi drivers only received a commission/percentage. Not only that, even in the case that was decided by the Supreme Court, it also explained that there was no element of order because taxi drivers were given the freedom to find their passengers. On the other hand, in a decision issued by the Supreme Court Number 276 K/Pdt.Sus /2013 in a case between a company in the logistics sector and a driver. In the decision of the case, the Supreme Court approved the decision of the previous level which stated that there was a working relationship between the company and the driver. The driver only transports the cargo provided by the company. It was not provided/looked for by the driver himself (Rachman, 2019). From the two Supreme Court decisions above, conclusions can be drawn regarding the elements of the employment relationship as follows:

- a. Employment: this element is fulfilled if the worker only carries out the work that has been given by the company.
- b. Wages: this element is met if the employee receives a fixed amount of money for a certain period. Not based on commission/percentage.
- c. Order: this element is met if the giver of the work order is a company. Not on the initiative of workers.

2. The Guarantee of Legal Protection for Work Safety for Taxi-bike Online Drivers in Indonesia

Legal protection has a close relationship with the acquisition of rights and obligations from legal subjects themselves. Where the legal subject in question is none other than human beings who have rights and obligations related to the implementation of legal activities or actions they take. A legal protection intended for drivers who are partners of online transportation service companies is still considered to need to be maximized; this is because drivers are partners who should be given a sense of security and safety in the form of protection when carrying out their activities (Saputra *et al.*, 2020)

In formulating the principles of legal protection that exist in the Indonesian state, the basic core is Pancasila as the ideology and philosophy of the state. While the conception of legal protection for the people in the west is based on the concepts of *Rechtstaat* and the "Rule of the Law" by using the conception of western law as a framework of thinking while keeping its main foundation on Pancasila, the principle of legal protection in Indonesia is the principle of recognition and protection of dignity and worth. Human originating from Pancasila.

Hadjon (1983) in relation to this stated that legal protection for the people is in the form of *preventive* and *repressive*. Preventive nature means that the government is more careful in making and making decisions because it is still in the form of preventive measures. While it is repressive, meaning that the government must be more assertive in making and making decisions on violations that have occurred.

The Legal protection for every Indonesian citizen without exception can be found in the 1945 Constitution of the Republic of Indonesia (UUDNRI 1945). Therefore, every product produced by the legislature must always be able to provide guarantees of legal protection for everyone and even must be able to capture the aspirations of law and justice that develop in society. This can be seen from the provisions governing the existence of equal legal status for every citizen.

Legal issues occur between drivers who are partners of transportation service companies, one of which is the problem of their position only as partners who are legally registered as partners from a partnership agreement. The agreement written in the agreement between the online transportation service company focuses more on the rights granted by the company but does not provide accommodation regarding the various obligations carried out by the transportation service company in protecting its partners, one of which is the protection of the safety of online Taxi bike drivers.

The term partnership should have been explained in Article 1 point 1 of Government

Regulation Number 44 of 1997 concerning Partnerships, namely "business cooperation between small and medium businesses and or large businesses accompanied by the guidance and development of medium and or large businesses by taking into account the principle of mutual need, mutually reinforcing and mutually beneficial" (HS & MS, 2007). Partnerships are also regulated in Articles 1618-1652 of the Civil Code regarding civil partnerships (*Maatschap or partnership*). Meanwhile, the definition of a work agreement in Article 1 number 14 of 2003 concerning Manpower is an agreement between a worker/labour and an entrepreneur or employer that contains the working conditions, rights, and obligations of the parties.

One of the protections for online Taxi-bike drivers is the guarantee of work safety in terms of carrying out their very vulnerable duties such as having accidents and even being prone to crime. One example of a case is that experienced by the Daihatsu Sigra Taxi-bike car driver in Cirebon City who had an accident on March 18, 2020, due to his car being hit by a Mitsubishi Pajero, which left the victim with severe injuries to the head and neck and was treated at the hospital for treatment. Sometime later the victim died (Source of Grage Surya Online News, 19/03/2020).

Accidents experienced by online Taxi-bike car drivers can be categorized as accidents, but it is not the responsibility of the online application-based transportation company, why? because following Law Number 13 of 2003 Article 1 concerning Employment, especially regarding employment relations, the relationship between Taxi-bike online companies and their drivers is a working relationship between *vendors* (companies) like partnerships. Except for work relations according to Law Number 13 of 2003, namely between employers and workers based on work agreements that have elements of work, wages, and orders, this partnership relationship has not been regulated in the Manpower Act.

This makes it very necessary for the protection in the form of safety and health for online Taxi-bike drivers, as has been regulated in the Regulation of the Minister of Transportation of the Republic of Indonesia Number PM 12 of 2019 concerning Protection of the Safety of Online Transportation Drivers Used for the Interest of the Community Article 16 Paragraph (3) letter i which states that "drivers get certainty of protection of safety and health insurance by employment and health social security by the provisions of laws and regulations". If the status of the online Taxi-bike driver is not based on a partnership, the guarantee of protection of occupational safety and health legally or statutory regulations is very clearly contained in the Manpower Act Number 13 of 2003 Chapter X Paragraph 5 Article 86 Paragraph (1), namely " Every worker/labour has the right to obtain

protection for: a. occupational safety and health, b. morals and decency, c. treatment by the nature and dignity of human beings as well as religious values”.

Basically, in the protection of online Taxi-bike drivers, there are no laws or regulations that specifically discuss the problem of online Taxi-bike drivers in terms of safety for online Taxi-bike drivers themselves or the health of online Taxi-bike drivers or others related to online Taxi-bike drivers. Although later in his opinion, Imam Soepomo explained that labour protection was divided into 3 types, namely:

- a. Economic protection, namely protection related to efforts to provide workers with an income sufficient to meet daily needs for themselves and their families, including if the worker is unable to work because of something against his will (social security);
- b. Social protection, namely protection related to community business, the purpose of which is to enable the worker to enjoy and develop his life as a human being in general, and a member of the community and family members (occupational health);
- c. Technical protection, namely protection related to efforts to protect workers from the dangers of accidents that can be caused by planes or other work tools or by materials processed or manufactured by the company (work safety).

Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) states that the state of Indonesia is a state of law (*rechtstaat*). The framework of the Indonesian state as a state of the law is interpreted of them by realizing the fifth principle of Pancasila which emphasizes social justice, including in the field of justice in labour relations. It is definitively explained that the employment relationship is the relationship that exists between employers and workers based on a work agreement either for a certain time or not for a certain time which contains elements of wages, orders, and work (Irsan, 2005).

Legal instruments as the main basis, the Constitution of the Republic of Indonesia 1945 article 27 paragraph (2) reads: "*Every citizen has the right to work and a decent living for humanity*". The existing legal instruments are realized to guarantee the right to work and a decent life for humanity as mandated by the constitution itself. In general, the rights that the law itself tries to protect against include: (i) the right to guarantee work safety and health; (ii) the right to a decent wage; and (iii) social security for workers. The companies engaged in technology that has been mentioned can establish hundreds of thousands of partnership relationships with drivers (Nugroho, 2018).

Some of the problems above are serious problems that need to be studied, starting with the

definition of legal relation that occurs between online motorcycle taxi service providers in this case. Taxi-bike companies and online Taxi-bike drivers and how legal protections are related to safety and health guarantees for online Taxi-bike drivers? So that occupational safety and health (K3) are one of the programs and a solution that should be made for online Taxi-bike drivers and Taxi-bike entrepreneurs themselves as an effort to prevent work accidents and diseases due to work relationships in the work environment by recognizing things that have the potential cause work accidents and diseases due to work relations, as well as an anticipatory action if it occurs to every online Taxi-bike driver, this has been regulated for a long time through Law Number 1 of 1970 concerning Occupational Safety.

CONCLUSION

Based on the discussion described above, several things can be concluded as follows:

1. The working relationship between the online Taxi-bike driver and the online transportation service company is not a work agreement but the application of the agreement that occurs in the working relationship between the online transportation company and the driver, so that the agreement is legally civil, its position is only as a partnership. A partnership agreement is an agreement with a working relationship with the same or equal position as a partner or co-worker. The position in the employment relationship has the most basic priority, which must be mutually beneficial to both. In implementing the working relationship between online Taxi-bike drivers and transportation companies, they cannot comply with Law Number 13 of 2003 concerning Employment due to the non-fulfilment of the elements contained in the work agreement, namely the elements of wages and orders.
2. Guarantees of work safety protection for online Taxi-bike drivers legally must be obtained by every online Taxi-bike driver as a citizen without any constitutional exceptions. This is the difference in understanding between online Taxi-bike drivers based on partnerships and workers based on work agreements. The government should have provided a solution to guarantee the work safety of online Taxi-bike drivers by making a *bestuurshandeling* in the form of coercive regulations for Taxi-bike companies.

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