



PROCEEDINGS

3rd INTERNASIONAL CONFERENCE ON ISLAMIC LAW IN INDONESIA
“Reviving and Strengthening Islamic Law as a Living Law Within World’s Legal System”

September 4th-6th 2018
Faculty of Law, Mulawarman University
Samarinda

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**FOREWORD DEAN
FACULTY OF LAW, MULAWARMAN UNIVERSITY**

Assalamu'laykum Warahmatullahi Wa barakaatuh

First, let us thank to Allah SWT for blessing and guiding us into the right path.

On behalf of the Faculty of Law Mulawarman University, we are greatly honored and pleased that the 3rd International Conference on Islamic Law in Indonesia (ICILI) on “Reviving and Strengthening Islamic Law as a Living Law Within World’s Legal System” has been done and the proceeding will be published online soon.

This international conference is organized by Faculty of Law Mulawarman University in collaboration with the Association of Islamic Law’s Lecturers in Indonesia (ADHII), Lembaga Kajian Islam dan Hukum Islam (LKIHI) Law Faculty of Universitas Indonesia and has become the 3rd ICILI after the first one in Law Faculty of Universitas Mulawarman and the second one in Law Faculty of Universitas Andalas.

The theme of this 3rd ICILI is to reviving and strengthening the Islamic Law as a Living Law Within the World’s Legal System, we hope that the Islamic law will not be limited anymore just in private law but in all the legal system as well as the Islamic Law has every rules for everything to do for humankind.

We would also like to extend our gratitude to our invited speakers Prof. Dr. Noor Aziah Mhd. Awal (University Kebangsaan Malaysia), Prof. Mehmet Asutay, BA, M.Sc. PgDip, MA, Ph.D. (Durham University, UK), Dr. Tawat Noipom (Halal Institute Prince of Songkla University), and Prof.Dr.H. Jaih Mubarak,SE,MH.M.Ag (Sunan Gunung Djati Islamic State University) and also all participants, sponsorship partners, and committees.

Finally, allow me to wish you a beneficiary and pleasant international conference of Islamic law in Indonesia and wish that this conference will always continuous every year.

Wassalamu'alaykum wa rahmatullahi wa barakaatuh

Samarinda, September 2018
Dean

Dr.Mahendra Putra Kurnia, S.H., M.H.

FOREWORD
DR. WIRDYANINGSIH, S.H., M.H.
CHAIRMAN OF ISLAMIC LEGAL ASSOCIATION OF INDONESIA

Assalamu'laykum Warahmatullahi Wa barakaatuh,

Thank God, we pray to God Almighty and prayers and greetings to our lord, the Prophet Muhammad, may we always be in line to uphold Islamic law on this earth.

Alhamdulillah, since the establishment of the Association of Islamic Law Lecturers in Indonesia (ADHII) in 2015, then the following year, the 2016 ICILI (International Conference on Islamic Law in Indonesia) was first held at the Faculty of Law, University of Indonesia, Depok. Then the second ICILI was held at the Faculty of Law, Andalas University, Padang and the third at the Faculty of Law, Mulawarman University, Samarinda. In every conference i ICILI always chooses topics that develop at that time. This time the topic of the 3rd conference was about "Islamic Law Reviving and Strengthening as a living law within the world's legal system".

This conference is a forum for meeting Islamic law lecturers throughout Indonesia to discuss and present their findings, studies and research results related to Islamic law and its development in Indonesia, which is now recorded in the form of proceedings. My hope is that this conference will continue to run in a better direction in order to strengthen Islamic law in Indonesia.

This proceeding is a collection of writings from papers presented at ICILI 3rd at Mulawarman University, Samarinda on 4-6 September 2018. The writing in this proceeding is more and better than the previous proceedings. Many results of research and studies can be a reference for teachers, researchers and Islamic law enthusiasts to further develop the next study.

Finally, hopefully this conference and proceedings will continue with better results. Jadzakallahu khairon katsiro for the help of the parties, especially the Institute of Islamic Studies and Islamic Law FHUI which has supported the implementation of this conference and the realization of this proceeding.

Wassalamu'alaykum wa rahmatullahi wa barakaatuh

October 2018

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**LEGAL PROTECTION FOR ONLINE TAXI BIKE DRIVERS IN THE
TRANSACTION OF GO-SEND APPLICATION
(PERSPECTIVE MAQASHID AL-SHARIAH)**

Dyah Ochtorina Susanti

Faculty of Law, Universitas Jember

Jl. Kalimantan 37 Jember Kampus Tegal Boto Jember

Email : dyahochtorina.fh@unej.ac.id / dyahochtorina@gmail.com

ABSTRACT

One of the advantages in the current disruptive era is at providing a convenient transaction of delivering a package through an online application. With regard to this, it emerges a delivery transaction of a package from one party to another in different locations through a Go-Send application. This kind of transaction, however, resulted in a consequential problem when the name of a package received by buyers does not same with what it was previously ordered in the application. Indeed, it can be driven to a criminal offense when the package is prohibited by laws in Indonesia (for instance: narcotics or bomb). The results of the study find that laws in Indonesia have not provided a protection to Go-Send drivers yet. Law Number 11 Year 2008 on Electronic Transactions as it was amended in Law Number 19 Year 2016 on the amendment of the Electronic Transactions Act 2008 is not able to provide a legal protection to online taxi bike drivers (Go-Send drivers). Accordingly, this article suggests the legislature and PT Go-Jek Indonesia to establish new regulations in order to ensure the protection of parties in the online transaction of a package delivery.

Keywords: Legal Protection, Online Taxi bike Drivers, Go-Send

ABSTRAK

Salah satu keunggulan era disrupsi adalah kemudahan bertransaksi secara on-line untuk mengirim barang. Terkait hal tersebut, memunculkan transaksi kirim barang dari satu pihak ke pihak lain, dari satu tempat ke tempat lain melalui aplikasi Go-Send. Menjadi masalah bagi Pengemudi ojek online, ketika suatu saat menerima transaksi Pengiriman barang melalui aplikasi Go-send yang ternyata barang kiriman tidak sesuai dengan nama yang tertera di aplikasi, bahkan diketahui disaat kemudian bahwa barang yang dibawa adalah barang yang dilarang oleh hukum di Indonesia (misal : paket narkoba atau bom). Hasil penelitian menunjukkan bahwa sampai saat ini hukum di Indonesia belum memberikan perlindungan kepada pengemudi go-send. UU No. 11 Tahun 2008 Tentang Transaksi Elektronik sebagaimana telah diubah dengan Undang-Undang No. 19 Tahun 2016 Tentang Perubahan atas UU No. 11 Tahun 2008 Tentang Transaksi Elektronik belum mampu memberikan perlindungan hukum secara detail kepada para pengemudi ojek online (pengemudi go-send). Terkait demikian, penulis memberi saran kepada DPR RI dan PT Gojek Indonesia untuk membuat aturan-aturan yang lebih melindungi para pihak dalam transaksi elektronik pengiriman barang.

Kata kunci: Perlindungan Hukum, Pengemudi Ojek Online, Go-send

Background

The development of technology and law are currently intertwined each other. This is evidenced by the current disruptive era which influences society. This era is relatively a new phenomenon when society shifts activities in which they previously tended to communicate in the real world but those are currently made in the internet world. In other words, it asserts a shift of consumers' segments from X generation to millennial generation, so that it needs the development of various aspects, including its service. Such service should include at least four indicators, i.e. *simpler, cheaper, accesible, and faster*.¹ Such indicators are subsequently used by a service company having a high demand in Indonesia, like *Go-Jek*. *Go-Jek* can be defined as follows:²

Established in 2010 as a motorcycle ride-hailing phone service, GO-JEK has evolved into an on-demand mobile platform and a cutting-edge app, providing a wide range of services that includes transportation, logistics, mobile payments, food delivery, and many other on-demand services.

According to the definition as mentioned above, *Gojek* established in 2010 is a service company which provides an online platform by using motorbike. The services provided by the company include transportation, package delivery, top-up payment, food delivery, and so forth. One of the features which is commonly used by consumers is *go-send*. It is defined as an instant courier service to send items and documents quickly, with no limits on distance.³

In pertaining to the utilization of *go-send* services, according to author's experience is that *go-send* transaction requires a sender to open a *Go-Jek* application in order to find a *go-send* service. After a sender fill a location in which a package will be received, the application will show the fare a sender should pay. Then, a sender is required to fill package details, name, phone number, and a recipient. Regarding this, if a sender has agreed to use this service, he or she should click order, so that a *go-send* driver will directly pick up the package to which a package is located as it is provided in the application.⁴

According to the cycle of transaction as mentioned above, it will arise a problem if a package which will be sent by a *go-send* driver as it is shown in the application does not conform with the description in the application. For instance, when a package from a sender is prohibited by laws in Indonesia (i.e.: narcotics or bomb) or any other kinds of package which endanger the safety of a recipient or a driver. It is evidently exemplified in Surabaya on 15th December 2017 where a driver was arrested by police in Tanjung Perak Seaport, Surabaya as he delivered a package containing a low explosive bomb to Anton as a recipient who works as a firm security in Surabaya. The package exploded when he received it, so that broken glass injured his hands.⁵

¹<http://jogja.tribunnews.com/2018/02/24/rektor-uny-ingatkan-lulusan-untuk-siap-di-era-disrupsi>. Nto. The article titled: *Rektor UNY Ingatkan Lulusan untuk Siap di Era Disrupsi*, accessed on 14 July 2018.

² <https://www.go-jek.com/about/>, accessed on 14 July 2018.

³ <https://www.go-jek.com/go-send/>, accessed on 14 July 2018.

⁴ It is author's experience as a sure of *go-jek* application in various necessities.

⁵ <https://www.kaskus.co.id/thread/5a33ca1fc2cb17fa5d8b4567/paket-bom-rakitan-quotlow-explosivequot-itu-dikirim-via-Gojek/>, accessed on 14 July 2018 .

See also the case on a *go-send* drivers with an initial IP which successfully cancelled a package delivery containing heroin in Cilandak, South Jakarta. It was motivated by *the suspicion of drivers on a*

The problem arises as drivers do not know the real content of a package they will deliver is a dangerous goods and prohibited by laws in Indonesia. In fact, drivers only rely upon the description outlined by senders in the application. In other words, drivers will never know the real content of a package. It affirms the weakness of the application which will take drivers as potential victims.

Hitherto, there have not been a specific regulation in Indonesia which protects online courier drivers as they face the aforementioned problem. It is essential to be noted that a good law is a law which enables to protect all the parties aimed at preserve religion, life, minds, generation and property as it is in Islamic law called *Maqashid Al-Syari'ah*.

According to the background, the point of the discussion of the article is: "*What is the form of legal protection for online taxi bike drivers in a transaction through go-send application in the lens of Maqashid Al-Syariah?*"

Discussion

PT. Gojek Indonesia is a corporation that specializes in a service of transportation powered by taxi bike drivers. It recruits conventional taxi bike drivers and other than taxi bike drivers who seek additional incomes through a series of selections as it requires they belong to motorbike and motorbike driving license (SIM C). In addition, they are also required to provide a guarantee, such as a family certificate, a motorbike's ownership book or a certificate of birth. *Go-Jek* has emerged an alternative to integrate the unmanaged taxi bike drivers in a certain spot, so that they can improve the quality of service by using a Go-jek application from mobile phone that provides an online order.⁶ It offers various features as its services, such as go-food, go-ride, go-car and so forth, in which one of the most used service is go-send. *Go-send* is an instant courier service which provide a package and document fast delivery, with an unlimited distance.⁷

Regarding the use of go-send service, the first step should be done by senders is to download the application. After it has been downloaded, senders should open it to display various services provided by Gojek. Senders should click the menu icon go-send and it will ask senders to fill the location of recipients. Immediately, the application will show the fare senders should pay, once the location was submitted to the application. The next step is that senders are required to fill the package details, senders' name and phone number, including recipients of the package. After those are completed, senders subsequently can click the order button as it is displayed in the application. Then, drivers will respond the order by picking up the order as it is mentioned in the application. Then drivers deliver the package to the address of recipients as it is outlined in *go-send* application.⁸

package he would deliver, so that IP brought a package to police in Fatmawati Road. As a package was opened, they found two boxes of heroin inside a package which would be delivered by IP. See <https://news.detik.com/berita/d-3381643/polisi-apresiasi-driver-Gojek-yang-gagalkan-Pengiriman-sabu-dicilandak>, accessed on 14 July 2018.

⁶ <http://www.go-jek.com/profil/faq.php>, accessed on 14 July 2018.

⁷ <https://www.go-jek.com/go-send/>, accessed on 14 July 2018.

⁸ It is author's experience when using the menu of go-send in the Gojek application.

Regarding the use of go-send service as outlined before by the author, there are two legal relationships. First, it is a legal relationship between service users (senders) and go-send drivers. Second, it is a legal relationship between go-send drivers and recipients. Accordingly, the parties in the go-send transaction consist of senders, go-send drivers and recipients.

With regard to the definition of shippers, Abdulkadir Muhammad define senders as owners of a package or goods. In other words, they are called as sellers (exporters) or employers in the carrier agreement of carriage which comprise a number of passengers (employees, sports) or parties binding themselves into an agreement in order to pay a fare of carriage.⁹ In the side of senders, persons who use a go-send application are called as senders. In the side of drivers, persons whose work is to drive certain vehicles, such as motorbikes, cars, planes, airplanes and so forth called as drivers.¹⁰ In dealing with this, if such is associated with go-send, drivers do not only drive vehicles, but also carry goods which will be delivered according to the address in the application. Relating to go-send drivers as drivers and good carriers, Purwosutjipto provides a definition in which carriers are persons who bind themselves to carry goods and/or passengers from one place to another with a certain destination,¹¹ whereas the definition of carriage (in this regard, it is the go-send menu in the go-jek application) is a process to carry and pay the fare of carriage.¹² Normatively the Legal Code of Trade (hereafter called as *KUHD*) does not provide a clear definition of carriage, but it only regulates sea carriage. Article 521 of such Code provides a definition of carriage as follows:

“Carriage in the definition of business chapter is a party binding himself/herself, whether it uses an agreement of goods chater according to time and place or other agreements to conduct a carriage of people (travellers, passengers) all or partially by sea.”

According to the aforementioned definition, it can be concluded that goods carriers are parties who carry goods from the loading place to the destination places which relatively belong to same address where was previously based upon an agreement between carriers and senders.¹³ Other parties who are involved the go-send transaction are recipients. In dealing with recipients, Purwosutjipto argues that recipients are third parties concerned with the receipt of goods or package.¹⁴ Since recipients have made a statement of willingness to agree receiving a goods or a package as it had been delivered, recipients have started to entitle their rights in accordance with carriage made between senders and carriers, where recipients do not have any power to change the destination of the goods or the package. However, the statement of willingness made by recipients to receive packages does mean that recipients can ask couriers to deliver such package

⁹ Abdulkadir Muhammad. *Hukum Pengangkutan Niaga*. (Bandung: PT. Citra Aditya Bakti, 2013), p. 35. (heinafter called *Abdulkadir Muhammad I*)

¹⁰ <https://kbbi.kemdikbud.go.id/entri/pengemudi>. accessed on 14 July 2018.

¹¹ H.M.N Purwositjipto. *Pengertian Pokok Hukum Dagang Indonesia III: Hukum Pengangkutan*. (Jakarta: Djambatan, 2003), p. 4.

¹² Abdulkadir Muhammad. *Hukum Pengangkutan Darat, Laut, Dan Udara, Cet.II*. (Bandung: PT. Citra Aditya Bakti, 1994) . p. 93. (hereinafter called *Abdulkadir Muhammad II*)

¹³ In the go-send transaction, the form of agreement is by online in the go-jek application. While parties orders and accepts, it resulted in an agreement of carriage between a sender and a go-send driver.

¹⁴ H.M.N Purwositjipto. *Op. Cit.* p. 5.

in other than the destination in the application, except it has been agreed by senders and carriers as Article 1338 of the Civil Code.¹⁵

In fact, it shows that go-send drivers never check packages from senders. Rather, go-send drivers directly take packages from sender in which drivers refer to the description details of packages outlined in by senders in a menu of go-send application. In the context, it harms drivers as the case described in the introduction, in which go-send drivers unfortunately received an order whose content is a bomb delivered to Anton as a recipient.¹⁶ Therefore, it asserts that go-send drivers needs a legal protection over their works.

Legal protection has become one of the topics of discussion in order to safeguard rights of the people. According to Setiono, legal protection is a measure in order to protect the people from arbitrary behaviours or those which are not in accordance with laws by administration, in order to provide order and peace in which it empowers human being to enjoy dignity as a human.¹⁷ According to Fitzgerald as cited by Satjipto Raharjo, he explains Salmond's thought that the objective of law is to integrate and coordinate various interests in a society, by limiting such interests, because in the traffic of interests, the protection against certain interests can only be conducted by limiting the interest of other parties.¹⁸ Fitzgerald, then, elaborates in which law is to protect the interest of man by allocating measurable powers granted to him. In other words, it includes the scope of powers on behalf of his interest which is so-called as a right.

By referring the elucidation above, it affirms that every power in a society cannot be defined as a right, but a certain power granted by laws to a man.¹⁹ The interest of society, according to Salmond as explained by Fitzgerald in Satjipto Rahardjo, is the objective of rights; it is not only because it is protected by laws, but also *vinculum juris* prevails as a recognition of rights of parties subjected to obligation.²⁰ In the go-send transaction, each party has *vinculum juris*. Senders have had *vinculum juris* in the form of which a package had been carried to the destination by go-send drivers. The entitlement has ended up when go-send drivers had received an order from senders. Go-send drivers have had *vinculum juris* since they had received an order until a package had been delivered. Their entitlement has prevailed since go-send drivers were authorized to re-enquire details or description of a package they would have delivered and have precisely known the content of a package they would have delivered. In practice, go-send drivers do not verify the content so that they know a package they will deliver. In contrast, senders are relatively reluctant if the content of a package is verified by go-jek drivers. As a result, when a package has been delivered, it deals with recipients whose right is to receive a package as the destination is addressed to recipients. In the

¹⁵ See Article 1338 of Code of Civil Code:

“all agreements have made according to law have subsequently become law to parties These agreements cannot be withdrawn, except by agreement of both parties under the ground of what is outlined in law. Agreement should be made with a good will.”

¹⁶ See what it has been described in the background.

¹⁷ Setiono. *Rule of Law (Supremasi Hukum)*. (Surakarta: Magister Ilmu Hukum Program Pascasarjana Universitas Sebelas Maret, 2004). p. 3.

¹⁸ Satjipto Rahardjo. *Ilmu Hukum*. (Bandung: Citra Aditya Bakti, 2000), p. 53.

¹⁹ *Ibid.*

²⁰ *Ibid.*, p. 54

context, recipients have a right to re-enquire to go-send drivers regarding the description of a package they would have been received.

With regard to rights, according to laws as it is outlined by Fitzgerald, rights are characterized as follows:²¹

1. Rights are granted to a person called as an owner or a subject of such rights. Such a subject is also called as a person who has a title of goods subjected to rights. In this context, the owner of rights in the transaction of a package delivery through a go-send application is a sender belongs to a package which will be delivered by a go-send driver who will deliver a package to the destination. The next party is a recipient as a receiver of a package which will receive a package as it is displayed in the application.
2. Rights are subjected to other persons who are holders of liability, in which there is a correlative relationship between rights and duties; In this context, there is a shifting right in which a right belongs to a sender has gradually altered to a go-send driver until a package had been received by a recipient. In addition, a go-send driver has become the holder of liability to ensure a package delivery to the destination.
3. Rights which are granted to a person oblige other parties not to do (*omission*) certain deeds. It can be defined as the essence of rights; In this context, *commission* or *omission* belongs to a go-send driver in which a driver can receive or reject an order.
4. *Commission* or *omission* deals with what is so-called as the object of rights. In this context, a package which will be delivered by a go-send driver to a recipient through a transaction of a goods delivery in the application is the object of object of rights.
5. Each right according to laws has a title. It means that it has a certain circumstance as the underlying reason to adhere rights to the owner. In this context, such circumstance is a good delivery from a sender to a recipients through a go-send driver. In the Legal Code of Trade, it does not account details on on the rights of go-send drivers (couriers). With regard to this, Hudi Asrori argues that rights belonging to couriers is those rights on the fare of courriers which should be paid by senders, including rights of courriers to claim the fulfilment or reject the carriage, if senders do not fulfill the obligation to pay the fare of delivery. Regarding this, the rights of courriers to claim the fulfilment or reject the carriage have never been applied. This is caused by practices that the agreement of carriage on the fare of carriage is always claimed by courriers before they have delivered goods or a package in which it was on the agreement of carriage.²² In dealing with *go-send*, drivers have a right to receive the fare of carriage as it is displayed in the application. Indeed, the obligation of courriers is to dispatch a package from the origin of senders to the destination and protect the condition of a package until they arrived to the

²¹*Ibid*, p. 55.

²² H. M. Hudi Asrori S. *Mengenal Hukum Pengangkutan Udara* (Yogyakarta: Kreasi Wacana, 2010), p. 30.

destination. Regarding this, the obligation of *go-send* drivers is to deliver a package to the destination as it is shown in the application.

With regard to the right of senders, as it is common in practice is that a package which will be dispatched by courriers to the destination and it is delivered to recipients should be in a good condition as it was received by courriers from senders. If there is a damage in a package or it has lost during the dispatch, senders have a right to claim a compensation. In dealing with those rights, those are actually owned by recipients because in the dispatch of goods, recipients are parties who have a legal relationship to senders.²³ Therefore, regarding parties who use a service of courriers, senders have an obligation to pay the fare of courriers as a *contra obligation* on the dispatch by courriers (*go-send* drivers).

Regarding the rights belong to each party subjected to the transaction of a package delivery through a *go-send* application, the law has a pivotal role to deal with rights and interests of parties as outlined by Fitzgerald, so that the law has the highest authority in order to consider the interest of people which should be protected and regulated.²⁴ The law according to Paton is not only created to protect rights and interests, but also the will of people. Thus, it is not only the interests of people which is protected by laws, but also their will.²⁵

Hitherto, the author has not found the regulation on the protection against online taxi bike drivers, particularly those in a *go-send* service. The law on electronic transaction as the transaction of a package delivery in the *go-send* application has commonly been covered in the Law No. 11 Year 2008 on Electronic Transaction as it was revised in the Law No. 19 Year 2016 on the amendment of Law No. 11 Year 2008 on Electronic Transaction. These laws, however, only accommodate the general protection to parties in electronic transactions. Indeed, the transaction in PT. Gojek Indonesia has not provided clear clauses in practices through an application if it had been found that a package delivered by senders has not represented the description details as it is displayed in the *go-send* application, so that it can bring a disadvantage to *go-send* drivers.²⁶

In this context, it urgently needs a set of regulation which enables to respond the need of online taxi bike drivers, specifically *go-send* drivers, in order to protect their rights. It is important to note that as a result of the absence of a specific regulation to accommodate the protection of online taxi bike drivers, especially *go-send* drivers, it will bring disadvantages to practices as exemplified in the background that a *go-send* driver was assumed to responsible to a package. In fact, it was known that such package brought about hazards to the safety of recipient. Therefore, it needs laws which enables to avoid disadvantages, but it brings about advantages through *ijtihad* from legal experts or by jurists. *Maslahah Mursalah* (also called as *istislah*) is part of *ijtihad* in

²³ *Ibid*, p. 32.

²⁴ *Ibid*, p. 69.

²⁵ *Ibid*, p. 54-55. See and read also GW Paton. *A Text Book of Jurisprudence*. (Oxford : Oxford University Press, 1969).

²⁶ According to author's experience, there is no clause which impose a sanction or a fine when a package delivered is not match to what has been described in the application.

which *ijtihad* is a means to resolve new problems which have never existed before. This concept has been acknowledged by Islamic jurists, so that they formulated a popular convention as follows:²⁷

"Di mana ada masalah, di sana terdapat hukum Allah."

In the Arabic language, *Maslahah* (plural: *mashalih*) is a substitute word of advantage. According to Al-Khawaizmi in Al-Syaukani, the definition of *maslahah* is to maintain the objective of Islamic law by rejecting disasters which damage to mankind.²⁸ In dealing with this, every regulation is directed to maintain the five objectives of *syara'*, *inter alia hifzh al-din* (the protection of religion); *hifzh an nafs* (the protection of life); *hifzh al-nash atau hifzh al-'ardh* (the protection of generation/dignity); *hifzh al-'aql* (protection of mind); *hifzh al-mal* (the protection of wealth) by avoiding what can damage to them are defined as *maslahah*.²⁹

The five objectives of Islamic law are subsequently known as *Maqashid Al-Syari'ah*. The essence of *Maqashid Al-Syari'ah* is to embody and protect the advantage of mankind. In other words, the objective of Islamic law is the happiness of mankind in the world and in the life after death. By considering all advantages and avoiding all disadvantages.³⁰ According to the definition, it asserts that what is called as *maslahah* whose a parameter in Islamic law is not intelligence. Al-Ghozali explains the genesis of *maslahah* in which it means something bringing advantages or benefits and dismiss *mudharat* (damages) based on its nature in order to maintain the objective of *syara'* as it has become laws.³¹

In dealing with legal protection for go-send drivers, it requires a minimum standard of regulation for go-send drivers which enables to maintain some indicators as follows:

1. Protecting religion

It is important to note that Islam is *rahmatan lil alamin* which means that Islam is a religion that brings mercy and welfare to the universe, including animals, plants, humans, and demon. It is as outlined in QS. Al-Anbiya 107 whose translation is: "And you (Muhammad) have not been sent into the world except as mercy to the universe."

Relating to rights all the parties subjected to an agreement of a package delivery through a go-send application, it orders senders that a package dispatched cannot contradict religious and Indonesian laws. It is granted rights to go-send drivers who will dispatch a package to verify a package along with senders of a package so that it will be mutually known on what package drivers will deliver. For recipients, they are granted rights to open a package they have received from go-

²⁷ Muhammad Sa'id Ramdan al-Buti. *Dawabit al-Maslahah fi as-Syariah al-Islamiyah*. (Beirut: Mu'assasah ar-Risalah, 1977), p. 12.

²⁸ Al-Syaukani. *Irsyad a Fuhul Ila Tahqiq al Eal min 'ilm al-Ushul*. (Beirut, Libanon : Dar al-Fikr. Tanpa Tahun), p. 242. The objective of Islamic law as it is commonly known is to protect religion, moral, wealth, mind and heredity.

²⁹ Jurnalis Udin et.al. *Reinterpretasi Hukum Islam tentang Aborsi* (Jakarta: Univ. YARSI, 2007), p. 144.

³⁰ Mohammad Daud Ali. *Hukum Islam: Pengantar Ilmu Hukum dan Tata Hukum Islam di Indonesia*. (Jakarta: Rajawali Pers, 2011), p. 61.

³¹ Al-Ghazali. *Al-Mustafa min 'ilm Al-Ushul (Juz 1)*. (Beirut : Dar Al-Fikr, Tanpa Tahun), p. 286.

send drivers. It affirms that in a law protecting rights of parties brings up akhlaq (moral) and good will in order to maintain a trust or a commitment to business, especially to the Islamic business.

2. Protecting life

In Islamic law, there is an obligation to protect the rights of humans, i.e. the right to life and maintain the quality of life. It can be exemplified from which we respect for the rights of other parties subjected to an agreement of a package delivery through a go-send application. According to the case described in the background, it will potentially annoy the soul and mind, if go-send drivers are assumed guilty before the law as they have received an order and dispatched a dangerous package or which it is prohibited by religious and Indonesia's national laws.

3. Protecting the mind

One of the aims of having clear regulations on legal protection to go-send drivers is to protect the mind in which it is an important component of human life in order to be able to think about Allah SWT, the universe, and human, so that it will promote the development of science and technology. Therefore, the mind should promote meaningful behaviours, for instance, establishing a laws which mutually protect rights of all the parties in the transaction fo a package delivery through a go-send application.

4. Protecting wealth

According to Islamic teachings, wealth is granted by Allah to mankind in order to maintain the life of mankind and obtain it legally and lawfully, and protect such wealth.³² It includes in the transaction of a package delivert through a go-send application. All the parties should note that a package that has been delivered is part of recipients' belonging and a package from drivers is part of how they seek income for their families.

In this cntext, law is utilized to bring about the protection which is not only adaptive and flexible, but also predictive and anticipative.³³ It is essentia to note that law is created with a certain vision. Law is commonly created with aims to meet justice, certainty, and order. Legal certainty for the subjects of law can be materialized in the form that has been established against certain legal actons or cicumstances. In dealing with this, by taking into account of the need of a go-send service, it urgently needs a legal protecion which is not only applied in the conventional transaction but also in the online application of taxi bike drivers, such as go-jek, so that online taxi bike drivers (especially go-send drivers) is are protected by laws. It is to anticipate when go-send drivers assuming themselves are practically drivers can file a suit and a claim.

Conclusion

The development of technology in the disruptive era brings many advantages to human life, especially in the field of transportation on good delivery resulted in a go-

³² Mohammad Daud Ali. *Op. Cit.* p. 64.

³³Lili Rasjidi dan I.B Wyasa Putra. *Hukum Sebagai Suatu Sistem.* (Bandung: Remaja Rosdakarya, 1993), p. 118.

send application as an example. This rapid technology advancement, however, is not equilibrated by laws which provide the protection to online taxi bike drivers who have accepted an order of a package delivery through a go-send application. Law No. 11 Year 2008 on Electronic Transactions as it was revised in Law No. 19 Year 2016 on the Amendment of Law No. 11 Year 2008 on Electronic Transactions is the core of legal protection which commonly regulates electronic transaction, but it cannot provide a protection to go-send drivers yet.

Recommendation

According to the discussion and conclusion, it is recommend as follows:

1. To House of Representative of the Republic of Indonesia (DPR RI):
 - a. The House, at least, amends of Law No. 19 Year 2016 on the amendment of Law No. 11 Year 2008 on Electronic Transaction by adding articles which specifically protect online taxi bike drivers, especially go-send drivers.
 - b. The House needs to enact a law whose content specifically regulates electronic transactions on goods delivery so that it is able to guarantee the protection to the parties in the electronic transaction on goods delivery
2. To PT. Gojek Indonesia which employs go-send drivers:
 - a. PT. Gojek Indonesia should update the go-send application by adding clauses that impose a fine or a sanction if senders provide an incorrect description in a package.
 - b. PT. Gojek Indonesia should add clauses in the go-send application in which go-send drivers are authorized to check a package they will dispatch before senders. It is aimed that both parties have known the content of a package that will be the object of agreement of carriage.

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