

# Legal Practices Beyond the Law That Eliminate the Rights of Traffic Accident Victims in the Implementation of Special Lease Transportation

Syamsuddin Baco Nurhayati Sutan Nokoe Darwati Suarlan Datupalinge Sulwan Pusadan  
Lecturer at the Faculty of Law, Tadulako University, Palu

## Abstract

The present study identifies legal practices that violate legal entity requirements for operating Special Lease Transportation (SRT), extending beyond the boundaries of established laws. This transgression takes the form of vertical inconsistencies in the hierarchy of laws and regulations, where higher regulatory norms mandate SRT administrators to be legal entities, while lower regulatory norms allow them to operate without such status. Such inconsistencies have profound implications for the loss of corporate criminal charges and the right to compensation for victims of traffic accidents caused by SRT organizers who lack a legal entity. The absence of adequate legal norms to protect and guarantee corporate criminal charges and the right to compensation for victims of traffic accidents arising from SRT operators without legal entity status constitutes a legal practice that goes beyond established law. Such practices disregard the protection of guarantees for legal certainty and community justice, as stipulated in legislation.

**Keywords:** Road Transportation Law, Regulatory Inconsistency, Right to Compensate Traffic Accident Victims.

**DOI:** 10.7176/JLPG/131-08

**Publication date:** April 30<sup>th</sup> 2023

## 1. Introduction

The term "legal practice that goes beyond the law" refers to the practice of forming and implementing legal norms or rules that deviate from the higher legal norms or rules in the hierarchy of legislation as regulated in Law Number 12 of 2011 concerning the Formation of Legislation, as last amended by Law Number 13 of 2022.

This practice is not only a deviation from higher legal norms or rules but is also a discriminatory legal practice because it treats legal norms or rules differently for citizens who should be subject to the same law. The Constitutional Court of the Republic of Indonesia, in Decision Number 41/PUU-XVI/2018, stated that different treatment is when treating different things the same and treating the same thing differently. Therefore, in this context, Minister of Transportation Regulation Number 118 of 2018 concerning Special Rental Transportation (hereinafter referred to as PM 118 of 2018) treats the legal entities providing Special Rental Transportation (SRT) and those who are not legal entities equally, which should be treated differently because they are different.

The principle of equity before the law is one of the fundamental legal principles in the rule of law. One of the characteristics of implementing this principle is that the law that applies and is binding must apply to all citizens without discrimination based on social status and other factors. This is declared in Article 27 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which states that "*all citizens are equal before the law and government and are obliged to uphold the law and government without exception.*" This provision is further regulated in Law Number 39 of 1999 concerning Human Rights, Article 3 paragraph (2) which states that "*everyone has the right to recognition, guarantees, protection, and fair legal treatment and to obtain legal certainty and equal treatment before the law.*" The practice of legal practice that goes beyond the law commonly occurs at the level of law enforcement in the narrow sense,<sup>1</sup> but the practice of legal practice that goes beyond the law in the formulation of legal norms or rules is something that should not occur in a country that upholds the principle of the rule of law like Indonesia.

Interestingly, the practice of legal practice that goes beyond the law occurs in open economic activities,<sup>2</sup> as it can be perceived by the five senses, namely transportation services using public motor vehicles called SRT. The definition of SRT is regulated in Article 1 number 7 of PM 118 of 2018, which states that:

"Special Rental Transportation is a door-to-door transportation service with a driver, operates within the urban area, from and to airports, ports, or other transportation hubs, and orders using technology-based applications, with the tariff amount listed in the application."

The issue of preferential treatment and privileges given to transportation services that use public motorized vehicles, also known as online taxis or SRT, has been a matter of concern. This special treatment is seen to go

<sup>1</sup> The process of realizing legal desires into reality is carried out through law enforcement agencies, or as stated by Sunarto in "The Principle of Legality in Law Enforcement towards the Realization of Substantive Justice," *Legal Issues*, Volume 45, No. 4, October 2016, pages 252-258. Law enforcement is a series of efforts that need to be implemented so that general and abstract legal norms can be applied to resolve specific and concrete legal cases.

<sup>2</sup> This activity is referred to as an open activity because it is carried out on public roads and is intended for the public.

beyond the law and undermines principles of legal certainty and justice. Therefore, it is essential to ensure that these services are subject to the principle of equity before the law. The foundation for the implementation of all transportation services using motorized vehicles is governed by Law Number 22 of 2009 Concerning Road Traffic and Transportation (UULLAJ), as amended by Law Number 11 of 2020 Concerning Job Creation. The implementing regulations for UULLAJ are specified in Government Regulation Number 74 of 2014 Concerning Road Transportation (PP Number 74 of 2014) and Regulation of the Minister of Transportation of the Republic of Indonesia Number 117 of 2018 Concerning Organizing the Transport of People with Public Motorized Vehicles Not on Routes (PM 117 of 2018) and PM 118 of 2018. The regulations need to remain consistent with UULLAJ and PP Number 74 of 2014 as their position in the hierarchy of laws and regulations is subordinate to Laws and Government Regulations.

Laws are made to be carried out or implemented, not just to be a row of legal texts that will be displayed in the library.

The law is binding and must be obeyed, explained in three theories or teachings, namely:<sup>1</sup>

1. *Juridische Geltungslehre*

According to this teaching, law is a set of rules or regulations in the form of laws or agreements made by institutions or people who have authority.

2. *Philosophische Geltungslehre*.

The law that applies in society must contain a philosophy of life that has high value for humanity. Thus the law upholds human values.

3. *Sosiologische Geltungslehre*.

Legislation can only be said to be positive law if it is well received and followed in real terms by the community, the people who are subject to the rule of law.

Based on these three theories, the law is binding and must be obeyed because it is made by an institution that has the authority for that and its substance upholds human values and is accepted and obeyed by those who are subject to these legal rules. The legal entity requirement is the main requirement for obtaining a permit to operate public motorized vehicle transportation, as stipulated in Article 1 point 21 and Article 139 paragraph (4) UULLAJ, each of which states, Article 1 point 21 stipulates "Public Transport Company is an entity law that provides services for the transportation of people and/or goods with Public Motorized Vehicles. Whereas Article 139 paragraph (4) stipulates "Providers of public transportation services are carried out by state-owned enterprises, regionally-owned enterprises, and/or other legal entities in accordance with the provisions of laws and regulations".

Referring to these provisions, it can be explained that a public transportation company that provides people's transportation services must be a legal entity. Then every Public Transport Company is required to fulfill a Business Permit, as emphasized in Article 173 UULLAJ, as amended by Article 55 of the Job Creation Law, which states:

“(1). Public Transport Companies that organize the transportation of people and/ or goods are required to fulfill Business Permits from the Central Government or Regional Government according to the norms, standards, procedures and criteria stipulated by the Central Government.

(2). The obligation to fulfill the Business Permit as referred to in paragraph (1) does not apply to:

- a. Transporting sick people by ambulance; or
- b. Transport of corpses.

(3). Further provisions regarding Business Licensing as referred to in paragraph (1) are regulated in government regulations.

So the requirements for a legal entity apply and bind all business entities that provide people's transportation services, both for people on routes and for people not on routes, for example, people's transportation by taxi, people's transportation for tourism purposes, urban transportation and so on.

Ideally, the requirements for these legal entities should also apply in the implementation of SRT, as one of the types of non-route passenger transportation services, because these conditions contain the value of preventive legal protection, in the form of guarantees for the security and safety of passengers, other road users and other parties. the other three.

Different things are regulated in Article 12 paragraph (3) PM 118 of 2018, which allows SRT permit holders not to have legal entities, for small and micro business actors. This shift in legal practice not only has implications for aspects of legal certainty and justice, but also has juridical implications for the rights of corporate criminal prosecution and the right to compensation for victims of traffic accidents caused by SRT license holders not being incorporated. This shift has led to a way of punishing in a "pitchless" direction, due to the absence of legal norms governing the UULLAJ, so that the right to obtain compensation for victims of traffic accidents caused by SRT operators without legal entities can be ignored by law.

<sup>1</sup><https://www.berpendidikan.com/2016/11/3-teori-kepatuhan-pada-Hukum-dan-norms.html>. Thursday 20 February 2020, 08.05.

## 2. Formulation of the problem

How is the system of responsibility for the right to compensation for victims of traffic accidents caused by SRT organizers not having a legal entity?

## 3. Research methods

The research method used is a normative legal research method with a statutory *research approach*, by examining the application of legal norms or norms in positive law. The legal materials used consist of primary legal materials in the form of laws and regulations and secondary legal materials in the form of research results, scientific articles, documents and books. The legal material is analyzed qualitatively.

## 4. Discussion

### 4.1. SRT Settings History

Whereas in fact, the type of public transportation service called SRT is not known and is not explicitly regulated in Article 151 UULLAJ in conjunction with Article 41 PP Number 74 of 2014. The history<sup>1</sup> or origins of the emergence of the SRT nomenclature as a type of public transport service are not on routes, began when the government replaced the Regulation of the Minister of Transportation of the Republic of Indonesia Number 32 of 2016 Concerning the Transportation of People Not on Routes (hereinafter referred to as PM 32 of 2016) with the Regulation of the Minister of Transportation of the Republic of Indonesia Number 26 of 2017 concerning the Implementation of the Transportation of People Not on Routes (hereinafter referred to as PM 26 year 2017).

This replacement effort was motivated by the desire to accommodate the practice of transporting people using an application (online), which at that time had started to operate a lot without permits. This wish is carried out by including the application-based transportation as a type of transportation service for people not on routes as stipulated in Article 11, PM 26 of 2017, which states:

- a. Shuttle transportation;
- b. Residential transportation;
- c. Employee transportation;
- d. Charter transportation; and
- e. Rental transport.

Furthermore, Article 11 letter e is elaborated in Article 17 paragraph (2) by dividing Leased Transportation into two types, namely *first*, General Leased Transportation and *second*, Special Leased Transportation. The provision of Article 11 letter (e) which divides the two types of rental transportation as regulated in Article 17 paragraph (2) is an erroneous interpretation because it uses an extensive interpretation,<sup>2</sup> by removing the original meaning of the interpreted norm.

In Article 17 (2) PM 26 of 2017, for the first time the SRT nomenclature is used in statutory regulations. So that the SRT nomenclature regulated in Article 17 paragraph (2) PM 26 of 2017, originates from the genus of Transportation of Persons with Specific Purposes, then the genus is further divided into five types (sub-genres), one of which is called Rental Transport. The rental transportation sub-genus is divided into two more (sub-sub-genres), namely special leased transportation (SRT) or general leased transportation. This division is the result of an interpretation of Article 151 letter b UULLAJ in conjunction with Article 41 letter b PP No 74 of 2014.

Whereas based on the Ruling on the Judicial Review of the Supreme Court of the Republic of Indonesia Number 37/P/HUM/2017 dated 20 June 2017, which stated several provisions in PM 26 of 2017, particularly those relating to SRT, were declared null and void because they contradicted higher laws and regulations namely Law Number 20 of 2008 concerning Micro, Small and Medium Enterprises and UULLAJ.

The articles that were canceled were:

1. Article 5 paragraph (1) letter e;
2. Article 19 paragraph (2) letter f;
3. Article 19 paragraph (3) letter e;
4. Article 20;
5. Article 21;
6. Article 27 letter (a);
7. Article 30 letter b;

<sup>1</sup>. Article 151 UULLAJ and Article 41 PP 74 of 2014 Regulates the types of services for the Transport of People with Public Motorized Vehicles not on routes, namely; transportation of people using taxis, transportation of people for certain purposes, transportation of people for tourism purposes, and transportation of people in certain areas.

<sup>2</sup> <https://journal.trunojoyo.ac.id>; Hwian Christianto; Limitations and developments in Extensive Interpretation in Criminal Law. Explain that the interpretation of law extensively carried out by exceeding the limits of grammatical interpretation does not mean that extensive interpretation is detached from the original meaning as stipulated in the law. The purpose of this extensive interpretation is to open a new understanding of a term in legal provisions while maintaining its position within the scope of legal rules. This is based on the understanding that every rule of law ( *rechtsregel* ) contains a "rule of law" ( *rechtsnorm* ) in which there are propositions about what is prohibited or not allowed. (accessed December 15 2020, 12.20 Wit).

8. Article 35 paragraph (9) letter a number 2;
9. Article 35 paragraph (9) letter a number 3;
10. Article 36 paragraph (4) letter c;
11. Article 37 paragraph (4) letter c;
12. Article 38 paragraph (9) letter a number 2;
13. Article 38 paragraph (10) letter a number 3;
14. Article 43 paragraph (3) letter b number 1 sub letter b;
15. Article 44 paragraph (10) letter a number 2;
16. Article 44 paragraph (11) letter a number 2;
17. Article 51 paragraph (3);
18. Article 66 paragraph (4).

That the judicial review decision does not invalidate Article 26 paragraph (1) and paragraph (2), which stipulates that the legal entity requirements for a company that transports persons not on routes. After the decision of the Judicial Review Number 37 P/HUM/2017, the Ministry of Transportation of the Republic of Indonesia, compiled and stipulated the Regulation of the Minister of Transportation of the Republic of Indonesia Number PM 108 of 2017 Concerning the Implementation of Transportation of People with Public Motorized Vehicles Not on Routes (hereinafter referred to as PM 108 of 2017), stipulated on 24 October 2017, and promulgated on the same day, namely 24 October 2017, State Gazette of the Republic of Indonesia of 2017 Number 1474.

Because PM 108 of 2018, suffered the same fate as PM 26 of 2017, namely the cancellation of several articles by the Supreme Court of the Republic of Indonesia through the decision of Judicial Review Number 15 P/HUM/2018, May 31 2018 and among the articles that were cancelled, does not include Article 37 paragraph (1) and paragraph (2), which stipulates the requirements for a legal entity for a company that transports people not on routes. Because the Supreme Court did not rescind the provisions regarding the legal entity requirements for a company that transports persons not on routes, the requirements for the legal entity should not have changed.

Within six months and eighteen days, on December 18 2018 to be exact, after the judicial review decision, the Ministry of Transportation of the Republic of Indonesia, issued two regulations at once, namely the Regulation of the Minister of Transportation of the Republic of Indonesia Number PM 117 of 2018 Concerning the Implementation of Transportation of People Not on Routes (hereinafter referred to as PM 117 of 2018) and Regulation of the Minister of Transportation of the Republic of Indonesia Number PM 118 of 2018 concerning Special Rental Transportation.

This legal policy separates the SRT arrangement separately and excludes it from the arrangement for the transportation of people not on other routes. In Article 12 paragraph (3) PM 118 of 2018, creates a new legal norm or rule, which negates the requirement for an SRT company legal entity, because it allows SRT companies to not have a legal entity as long as they are carried out by micro or small business actors.

## **4.2. Arrangements for Legal Entity Requirements for Companies Organizing the Transport of People with Public Motorized Vehicles.**

### **4.2.1. UULLAJ.**

The definition of a public transportation company according to Article 1 point 21 UULLAJ is: "A legal entity that provides services for the transportation of people and/or goods by public motorized vehicles. The term legal entity is reaffirmed in Article 139 paragraph (4) UULLAJ, which states: "(4). The provision of public transportation services is carried out by state-owned enterprises, regionally-owned enterprises, and/or other legal entities in accordance with statutory provisions.

The phrase "other legal entities in accordance with the provisions of the legislation" referred to in Article 139 paragraph (4) of the UULLAJ, is spelled out in PP Number 74 of 2014, Article 79 paragraph (2) letters c and d, namely Limited Liability Companies and Cooperatives. Referring to these provisions, the requirements for companies operating the transportation of people with public motorized vehicles according to UULLAJ are:

1. Incorporated;
2. Providing services for the transportation of people and/or goods; And
3. Using Public Motorized Vehicles.

These requirements are cumulative, meaning that one or more of these requirements are not met, then they are not classified as public transportation companies.

### **4.2.2. PP Number 74 of 2014.**

The provisions of Article 79 PP Number 74 of 2014, state:

- “(1). Public Transport Companies must be in the form of Indonesian law in accordance with the provisions of laws and regulations.
- (2). The Indonesian legal entity referred to in paragraph (1) takes the form of: a. state-owned enterprises; b. regional owned enterprises; c. limited liability company; or d. cooperative.”

There are two types of public transport companies, namely *first*, public transport companies for people; *secondly*, the public freight company. Public transportation companies are divided into two, namely *first*, public transportation companies for people on routes, *second*, public transportation companies for people not on routes. Public transport companies for people not on routes according to Article 151 UULLAJ in conjunction with Article 41 Government Regulation Number 74 of 2014 concerning Road Transportation, consist of:

1. Transportation of people using taxis;
2. Transportation of people for a specific purpose;
3. Transportation of people for tourism purposes; And
4. Transportation of people in a certain area.

#### **4.2.3. Regulation of the Minister of Transportation Number 15 of 2019 concerning Organizing the Transportation of People with Public Motorized Vehicles on Routes.**

Whereas the requirements for a public transport company legal entity on routes are regulated in Article 66, which states:

“(1). Public Transport Companies must be in the form of Indonesian legal entities in accordance with the provisions of laws and regulations.

(2). Indonesian legal entity as referred to in paragraph (1) shall take the form, a. state-owned enterprises; b. regional owned enterprises; c. limited liability company; d. cooperative.”

#### **4.2.4. PM 117 of 2018.**

The requirements for a public transport company legal entity are regulated in Article 36 which states:

“(1). Public Transport Companies must be in the form of Indonesian legal entities in accordance with the provisions of laws and regulations.

(2) The Indonesian legal entity as referred to in paragraph (1) takes the form of: a. state-owned enterprises; b. regional owned enterprises; c. limited liability company, d. cooperative.”

### **4.3. SRT's Beyond the Law Legal Entity Norms.**

In fact, the requirements for SRT organizing legal entities are imperative and without exception, as explicitly stipulated in the UULLAJ, Government Regulation Number 74 of 2014, PM 15 of 2019, and PM 117 of 2018, but these imperative requirements have been amended in PM 118 of 2018, Article 1 number 8 and Article 12 paragraph (3), each of which reads as follows:

Article 1 point 8: "Special Lease Transportation Company is a legal entity or micro business actor or small business operator that provides Special Lease Transportation services".

The definition of Article 1 point 8 is reaffirmed in Article 12:

“(1). The Special Chartered Transportation Company must be in the form of an Indonesian legal entity in accordance with the provisions of the laws and regulations;

(2). Indonesian legal entity as referred to in paragraph (1) shall take the form of: a. State-owned enterprises; b. Regional owned enterprises; c. Limited liability company; or; d. Cooperative;

(3). In addition to the legal entities referred to in paragraph (2), SRT can be implemented by micro business actors or small business actors in accordance with the provisions of laws and regulations.

The meaning of SRT Company Article 1 point 8 and the requirements for legal entity Article 12 paragraph (1) and paragraph (2) are amended by expanding the meaning of SRT, by adding one new option, namely not being a legal entity for micro or small business actors. According to Law Number 20 of 2008 Concerning Micro, Small and Medium Enterprises (hereinafter referred to as the MSME Law) Article 1 point 1, the definition of Micro Enterprises is: "Productive businesses owned by individuals and/or individual business entities that meet the criteria for Micro Enterprises as regulated in this law". become a part, either directly or indirectly, of a Medium or large business that meets the criteria for a Small Business as referred to in this law ”.

Referring to the definition of Micro Enterprises and Small Enterprises, the legal construction of Micro Enterprises or Small Enterprises, in the MSME Law, is a productive individual business, not a productive business which allows the form of a legal entity. So when Micro and Small Enterprises are allowed to become SRT organizers, it is a deviation from the norm for legal entity requirements stipulated in Article 139 paragraph (4) UULLAJ as an imperative requirement, because it has been reduced in such a way to become an optional requirement. Changes in the nature of imperative legal norms or rules to become facultative legal norms or rules are not in line with the Supreme Court decision Number: 37/P/HUM/2017 and Number 15/P/HUM/2018, because in the Supreme Court decision, there is no explicitly change or expand the terms of the legal entity.

If using the method of systematic interpretation<sup>1</sup> by linking the provisions of the articles relating to legal entity requirements, rights, obligations and responsibilities of public transport companies regulated in the LLAJ Law, PP Number 74 of 2014, PM 117 of 2018 and PM 118 of 2018, then Public transportation companies must

<sup>1</sup>. Systematic interpretation, namely legal interpretation based on the systematics of legal arrangements in relation between articles or paragraphs of the legal regulations themselves in regulating their respective problems. (<http://www.ensikloblogia.com/2016/08/pengertian-penafsiran-Hukum-dan-kinds.html>).

be in the form of Indonesian legal entities, without any exceptions, because the construction of public transportation companies in UULLAJ, is a business entity that can be prosecuted based on corporate crime and corporate compensation claims .

The term "legal entity" refers to the legal status of a business entity in legal traffic. According to Abdul Kadir Muhammad<sup>1</sup>, legal entities are supporters of rights and obligations, just like humans. As a supporter of rights and obligations, he can enter into legal relations with other parties. For this reason, he has his own wealth, which is separate from the wealth of the management or founder. All legal obligations are fulfilled from the assets owned by the legal entity.

So the term "legal entity" is different from the term "Micro, Small Business, and Medium Enterprises" as referred to in the MSME Law, and Government Regulation Number 7 of 2021 Concerning Ease, Protection, and Empowerment of Cooperatives and Micro, Small and Medium Enterprises, because the term "legal entity" relates to status in legal traffic while the terminology for micro and small businesses relates to business capital criteria or annual sales results.<sup>2</sup>

The importance of legal entity requirements to be attached to SRT operators, because these conditions have the dimension of legal protection for service providers, drivers, passengers and other road users. This was confirmed in the consideration of the decision of the Constitutional Court Number 78/PUU-XIV/2016, in paragraph [3.13] stating:

"Considering that after carefully examining the arguments of the Petitioners in their petition, the Court is of the opinion that the losses suffered by the Petitioners were not caused by unconstitutional norms. the law being petitioned for review so that it does not constitute a loss of constitutional rights as referred to in Article 51 paragraph (1) of the Constitutional Court Law. This is evident from the reasoning that legal uncertainty will arise if the legal norms being petitioned for review do not exist or are interpreted differently. In contrast, the formulation of *the a quo* article which emphasizes the necessity of having a legal entity for online transportation service providers has not only provided legal certainty, but has also provided protection from various aspects, both to service providers, drivers, and users of *online transportation services* . Apart from that, the norms of *the a quo* law also do not conflict with the idea of a rule of law state. Moreover, by stipulating provisions regarding online transportation service providers who must be legal entities, this actually guarantees the constitutional rights of the Petitioners to a decent job and the right to work and receive proper compensation in the employment relationship as stipulated in Article 27 paragraph (2) and Article 28D paragraph (2) of the 1945 Constitution. Because, with the existence of such a legal entity obligation in the event of a dispute, the resolution mechanism becomes clearer. Likewise, users of *online transportation services* will become more certain if there are complaints or demands that must be filed when they feel aggrieved. Thus, it is clear to the Court that the loss alleged to have been experienced by the Petitioners was not caused by the unconstitutional norms of the law being petitioned for review, but by the application or implementation of the norms in practice. Thus, through Decision Number 78/PUU-XIV/2016, the Court has emphasized that Article 139 paragraph (4) of the LLAJ Law which requires *online transportation* to have legal entities is constitutional. Meanwhile, with regard to the implementation by regulations that are lower than the law, it is not the authority of the Court to assess them and compliance with them is not at all related to Article 55 of the Constitutional Court Law.<sup>3</sup>

The practice of law going beyond the law occurs because the norms or rules of law that have a lower position are inconsistent with the norms or rules of law that have a higher position according to the hierarchy of laws and regulations stipulated in Law Number 12 of 2011 concerning Formation of Legislation, as has been lastly amended by Law Number 13 of 2022.

According to Article 7 of Law Number 12 of 2011, the types and hierarchies of Legislation consist of:

- a. The 1945 Constitution of the Republic of Indonesia;
- b. Decree of the People's Consultative Assembly;
- c. Acts/government regulations in lieu of laws;
- d. Government regulations;
- e. Presidential decree;
- f. Provincial Regulations; and
- g. District/City Regional Regulations.

<sup>1</sup>. Abdul Kadir Muhammad; 2010; Indonesian Corporate Law; PT Citra Aditya Bhakti Bandung; page 101.

<sup>2</sup>. Article 35 PP Number 7 of 2021 reads:

(1). Micro, Small and Medium Enterprises are grouped based on business capital criteria or annual sales results.

(2). The criteria for business capital referred to in paragraph (1) are used for the establishment or registration of business activities.

(3). The criteria for working capital as referred to in paragraph (2) consist of;

- a. Micro Enterprises have working capital of up to a maximum of IDR 1 billion excluding land and buildings for business premises;
- b. Small Businesses have business capital of more than IDR 1 billion, not including land and buildings for business premises; And
- c. Medium Enterprises have business capital of more than IDR 5 billion up to a maximum of IDR 10 billion excluding land and buildings for business premises.

<sup>3</sup>Constitutional Court Decision Number 79/PUU-XV/2017, page 29

The legal force of Legislation is in accordance with the hierarchy mentioned above.

Furthermore, in Article 8, it regulates the types of laws and regulations other than those stipulated in Article 7, namely regulations stipulated by the People's Consultative Assembly, the People's Representative Council, the Regional Representatives Council, the Supreme Court, the Constitutional Court, the Supreme Audit Agency, the Judicial Commission, Bank Indonesia, Ministers, Agencies, institutions or commissions of the same level established by law or the Government by order of law, Provincial People's Legislative Council, Regency/City People's Legislative Council, Regent/Mayor, Village Head or equivalent.

These laws and regulations are recognized as existing and have binding legal force as long as they are ordered by higher laws or regulations or are formed based on authority. In the *Stufentheorie theory* put forward by Hans Kelsen, <sup>1</sup>legal norms are tiered and layered in a hierarchy.

Referring to the hierarchy of the Legislation, the norms or legal rules of PM 118 of 2018, are products of Legislation that have a position under UULLAJ, and PP Number 74 of 2014, but whose position is equal to PM 117 of 2018 and PM 15 2019 year.

Based on *the principle of lex superior derogat lex inferior*, laws and regulations at a lower level may not conflict with laws and regulations at a higher level. Supposedly Article 12 paragraph (3) PM 118 of 2018, as a norm with a lower position, may not conflict with norms with a higher position, namely Article 139 paragraph (3) UULLAJ, and Article 79 paragraph (1) and paragraph (2), PP 74 of 2014.

Legal practice goes beyond the law, at least violating seven substantive principles of laws and regulations, namely <sup>2</sup>;

- a. protection; provide protection in order to create public peace;
- b. Justice; load the mission of justice;
- c. Equality before the law and government; provide equal access and standing before the law;
- d. Order and legal certainty; creating order through legal guarantees;
- e. Balance, harmony and harmony; balance between the interests of individuals and society, as well as the interests of the nation and the state;
- f. Anti-discrimination, does not contain differences (either directly or indirectly), based on gender, skin color, ethnicity, religion and other social identities;
- g. Executable; contains rules that are philosophically, juridically, and sociologically effective, so that they can be implemented.

#### **4.4. Loss of Right to Claim Corporate Criminal Responsibility and Right to Compensate Victims of Traffic Accidents Caused by SRT Not Legal Entity**

The urgency of the requirements for a legal entity for a Public Transport Company operating SRT is to ensure the ability to be responsible under criminal law and civil law, as stipulated in the UULLAJ. Responsibility according to criminal law is carried out through law enforcement of criminal sanctions regulated in Article 315 of the LLAJ Law, which states:

- “(1). In the event that a crime is committed by a public transportation company, criminal liability is imposed on the public transportation company and/or its management;
- (2). In the event that a traffic crime is committed by a public transportation company, in addition to the punishment imposed on the management as referred to in paragraph (1), a fine is also imposed at most multiplied by 3 (three) of the fines specified in each article in this chapter;
- (3). In addition to fines, public transportation companies can be subject to additional penalties in the form of temporary suspension or revocation of transportation operating permits for the vehicles used.”

These provisions adhere to corporate criminal responsibility, <sup>3</sup>namely public transportation companies, with a maximum penalty of three times the specified fine and additional penalties in the form of temporary suspension or license revocation. Meanwhile, the responsibility in civil law, through demands for compensation for the victim's right to SRT organizers.

Civil compensation rights are regulated in UULLAJ articles as follows:

1. Article 188 states:

"Public Transport Companies are obliged to compensate for losses suffered by passengers or goods senders due to negligence in carrying out transportation services".

2. Article 189 states:

<sup>1</sup>Maria Farida; 2007; The Science of Legislation (Fundamentals and Its Formation), Kanisius, Jogjakarta, page 20.

<sup>2</sup>Idr uin-antasari.ac.id; Principles of Legislation; (accessed February 7, 2023).

<sup>3</sup>Muladi & Dwidja Priyatno; 2013; Corporate Criminal Liability; Kencana Prenadamedia; pp 53-55, it is explained that the Corporation as a subject of criminal law has developed gradually; *First*, criminal acts in a corporate environment are considered acts of corporate management, not corporations. The *second* stage, criminal acts can be committed by corporations but those who are responsible for the burden of the management of the legal entity. The *third* stage allows criminal acts to be committed by corporations and the burden of responsibility on the corporation. This last view is adhered to Article 315 of the UULLAJ.

"Public Transport Companies are obliged to insure their responsibilities as referred to in Article 188".

5. Article 191 states:

Public Transport Companies are responsible for losses caused by all the actions of people employed in transportation operations.

4. Article 192 states:

- (1) Public Transport Companies are responsible for losses suffered by Passengers who die or are injured as a result of the operation of transportation, unless caused by an incident that cannot be prevented or avoided or due to the Passenger's fault;
- (2) The loss as referred to in paragraph (1) is calculated based on the actual loss experienced or part of the service fee;
- (3) The responsibility as referred to in paragraph (1) starts from the time the Passenger is transported and ends at the agreed destination;
- (4) The carrier is not responsible for any loss of luggage carried by the Passenger, unless the Passenger can prove that the loss was caused by the fault or negligence of the carrier;
- (5) Further provisions regarding the amount of compensation are regulated by government regulations.

5. Article 193 states:

- (2) The public transportation company is responsible for losses suffered by the sender of goods because the goods are destroyed, lost or damaged as a result of the operation of transportation, unless it is proven that the damaged, lost or damaged goods are caused by an event that could not be prevented or avoided or by the sender's fault.
- (2) Losses as referred to in paragraph (1) are calculated based on actual losses experienced.
- (3) The responsibility as referred to in paragraph (1) starts from the time the goods are transported until the goods are delivered at the agreed destination.
- (4) The public transportation company is not responsible if the loss is caused by the inclusion of information that is not in accordance with the bill of lading.
- (5) Further provisions regarding the amount of compensation are regulated by government regulations.

6. Article 194 states:

- (1) The Public Transport Company is not responsible for losses suffered by third parties, unless the third party can prove that the loss was caused by the fault of the Public Transport Company.
- (2) The right to submit objections and requests for compensation for losses from third parties to the Public Transportation Company as referred to in paragraph (1) is submitted no later than 30 (thirty) days from the date the loss occurs.

The public transportation company referred to in these articles is a legal entity as emphasized in Article 1 number 21 UULLAJ which reads: "Public Transport Company is a legal entity that provides services for the transportation of people and/or goods with Public Motorized Vehicles." Arrangements for the legal liability system of public transport companies, also known and applicable in the European Union,<sup>1</sup> "Among these is Regulation (EC) No 561/2006 (European Union, 2006) which entered into force in 2007. With the introduction of this regulation, transport companies can be made liable for infringements committed by the drivers and, thus, they are legally responsible if plans and schedules are generated in such a way that drivers do not have enough time for compulsory break and rest periods".

Claims for corporate responsibility according to criminal law as referred to in Article 315 UULLAJ or claims for corporate compensation rights for victims of traffic accidents as referred to in Article 189, Article 189, Article 191, Article 192, Article 193 and Article 194, only apply to SRT administrators of legal entities. Based on the legal interpretation a contrario,<sup>2</sup> this provision does not apply if corporate criminal charges and the right to compensation for victims of traffic accidents caused by SRT operators are not incorporated. This is in line with the opinion of Subekti and Tjitrosudibio<sup>3</sup> who said that what is meant by a *corporatie* or corporation is a company which is a legal entity. The same view was expressed by Yan Pramadya Puspa,<sup>4</sup> who stated that "A company which is a legal entity, corporation or company here what is meant is an association or organization which is treated like a human (personal) by law, namely as a bearer (or owner) of rights and obligations. , has the right to sue or be sued before the court."

When the provisions regarding corporate criminal charges and demands for compensation for traffic accident victims do not apply to SRT operators who are not legally incorporated, then this is a form of losing the rights to claim corporate criminal responsibility and compensation rights for traffic accident victims. The loss of

<sup>1</sup> Asvin Goel; Legal aspects in road transport optimization in Europe; Transportation Research Part E 114 (2018);144; Elsevier.

<sup>2</sup> A contrario interpretation is a legal interpretation based on an understanding or conclusion which is the opposite of the contents of the meaning of the stated legal provisions. <http://www.ensikloblogia.com/2016/08/pengertian-oeninterpretation-of-laws-and-kinds>. (accessed Sunday 3 March 2019).

<sup>3</sup> *Ibid*, page 25.

<sup>4</sup> *Ibid*.



claims for corporate criminal responsibility and compensation rights for traffic accident victims is due to the substance of the provisions of Article 12 paragraph (3) PM 118 of 2018, which allows SRT to be administered to micro and small business actors, which postscript are business actors who are not incorporated law.

Therefore, granting permission to administer SRT to micro and small business actors is not only a form of conflicting norms of a lower position with norms of a higher position, but also eliminates the rights of traffic accident victims to sue for corporate criminal responsibility. or civil claims for damages. Victims of traffic accidents, it is not possible to sue corporations for criminal law according to Article 135 or civil lawsuits according to Articles Article 189, Article 189, Article 191, Article 192, Article 193 and Article 194 UULLAJ, because they are not legal entities.

The loss of claims for corporate criminal responsibility and the right to compensation for traffic accident victims has had a broad impact on traffic accident victims as a whole.

According to data from the Ministry of Transportation of the Republic of Indonesia, <sup>1</sup>the number of land traffic accidents in Indonesia in 2021 reached 103,645, this number increased by 3.62% compared to the previous year of 100,028 cases. There were 25,266 victims who died, this number increased by 7.38% compared to the previous year when 23,529 people died. The number of vehicles involved in accidents was 21,463 units, of which 73% consisted of motorbikes. The material losses experienced by the victims reached Rp. 246 billion, this value increased by 24.24% from 2020 which amounted to Rp. 198 billion. Furthermore, the number of traffic accidents from January to September 13 2022 <sup>2</sup>reached 94,617 cases, with 19,054 deaths. The death toll has increased by 683 people, when compared to the same period in 2021.

Based on data from the Directorate General of Land Transportation, Ministry of Transportation of the Republic of Indonesia, profiles of traffic accident victims in Indonesia in 2020 based on education level, the most victims were students with a high school education level of 80,641 people, 17,699 junior high school students and 12,557 elementary school students, 770 D3 students. , 3,751 bachelor's degrees and 136 master's degrees. In terms of age, namely; 10-19 years as many as 266,906 people, aged 20-29 years, 29,281 people, aged 30-39 years, 18,553 people, aged 40-49 years, 17,980 people and ages 50 and over, 31,740 people.<sup>3</sup>

Furthermore, according to Sutanto Soehodho, <sup>4</sup>the causes of traffic accidents in Indonesia are often caused by three different factors, namely the human factor, the vehicle factor and external factors (including road conditions). The human factor has the strongest influence, as figures from around the world show. The effects caused by traffic accidents are not only in the form of fatalities or injuries, but also victims who experience material or other immaterial losses.

Generally traffic accidents occur due to driver negligence, as stated by Herawati, that as many as 43% of accidents are caused by drivers who are not disciplined about traffic violations and 34% are caused by drivers being careless. These two factors are a combination of physiological and psychological factors. <sup>5</sup>The same thing was stated by the former Director General of Land Transportation, Pudji Hartanto, <sup>6</sup>who said that the factors of ability and character of the driver are influential in road traffic safety.

This view is in line with Rothegatter's opinion in LM Martinussena et al, which says that "*Human behavior is a key factor in 80-90% of road traffic accidents.* (human behavior is a key factor in 80-90% of road traffic accidents). <sup>7</sup>The same thing happened in India, <sup>8</sup>“There are several factors responsible for accidents but driver's fault is found to be the most important one; driver's fault accounted for 78% of total accidents in 2013.”

The high number of traffic accident victims, as presented above, shows that it is very urgent to regulate corporate criminal prosecution rights and the right to claim compensation for traffic accident victims, because everyone who is on the road has the potential to become an accident victim. Victims of traffic accidents do not know social strata, age and gender, all of them can become victims of traffic accidents.

When a claim for compensation is submitted to an individual (not a legal entity), it cannot provide legal certainty <sup>9</sup>regarding the ability of the person concerned to fulfill this responsibility. Furthermore, the problem is

<sup>1</sup>. dataindonesia.id/sektor-riil/jumlah-kecelakaan-lalu-lintas-meningkat-jadi-103645-in-2021 (accessed February 11, 2023).

<sup>2</sup>. Kompas.com; 20/11/2022; Korlantas Polri Records 94,617 Accidents in January-September 2022, (accessed February 11, 2023).

<sup>3</sup> <https://dephub.go.id>; Minister of Transportation of the Republic of Indonesia, Budi Karya Sumadi; Victims of traffic accidents are dominated by productive age, encourage students to always be disciplined in traffic and prioritize safety aspects. (accessed 5 February 2023).

<sup>4</sup>. Sutanto Soehodho; Development of public transportation and prevention of traffic accidents in Indonesia; IATSS Research, 40 (2017) 76-80, pages 76-77.

<sup>5</sup>Herawati; 2012; Characteristics and Causes of Traffic Accidents in Indonesia 2012 (Traffic Accident Characteristics and Caused in Indonesia 2012); Warta Research Journal of Transportation Vol 26, No 3 (2014).

<sup>6</sup> <https://superyou.co.id>; Pudji Hartanto; The ability and character of drivers is the most common cause of accidents in Indonesia (accessed 27 January 2023).

<sup>7</sup>LM Martibussena, M. Moller, Prato, S. Hausteina; How indicative is a self-reported driving behavior profile of police registered traffic law offenses?; ELSEVIER; Accident Analysis and Prevention 99 (2017) 1-5, page 1. (journal homepage: [www.elsevier.com/locate/aap](http://www.elsevier.com/locate/aap) ).

<sup>8</sup>.Sanjay Kumar Singh; Problems And Challenges Of Traffic Accidents IN India; Proceedings of Transportation Research 25 (2017); Procedia Elsevier; page 4709

<sup>9</sup>. According to Sudikno Mertokusumo, legal certainty is a guarantee that the law must be implemented in a good way. Legal certainty requires efforts to regulate law in legislation made by authorized and authoritative parties, so that these rules have a juridical aspect that can

who is the individual who bears the responsibility to compensate for the loss? Is it the driver, the app company or the vehicle owner?

In UULLAJ, PP 74 of 2014 and PM 118 of 2018, there is no regulation for this (a legal vacuum occurred), so neither party feels and wants to be responsible. As a result of this legal vacuum, there is no guarantee of the right to claim compensation for victims of traffic accidents caused by SRT organizers who are not incorporated. In fact, according to Rafael La Porta, <sup>1</sup> "the form of legal protection provided by a state has two characteristics, namely prevention (*prohibition*) and punishment (*sanction*)". The most tangible form of legal protection is the existence of law enforcement institutions such as courts, prosecutors, police, and other non-litigation dispute resolution institutions. Protection is meant by prevention (*prohibitive*), namely making regulations. While the intended protection is punitive (*sanction*), namely enforcing regulations. The objectives and ways of implementing them are as follows:

1. Make regulations, which aim to:
  - a. Provide rights and obligations;
  - b. Guarantee the rights of legal subjects.
2. Enforce regulations through:
  - a. State administrative law that functions to prevent violations of rights by licensing and supervision.
  - b. Criminal law that functions to overcome any violation of laws and regulations, by imposing legal sanctions in the form of criminal sanctions and fines.
  - c. Civil law that functions to restore rights by paying compensation or compensation.

Thus, referring to Rafael La Porte's opinion, the state should provide legal protection to victims of traffic accidents caused by SRT permit holders who are not incorporated by law by providing guarantee protection for corporate criminal prosecution rights and compensation rights through statutory regulations.

The phenomenon of this legal vacuum has implications for the unavailability of adequate norms to protect corporate criminal charges and the right to claim compensation for traffic accident victims. Victims of traffic accidents can be experienced by anyone who uses SRT services without being a legal entity. Therefore, the SRT company legal entity requirements in PM 118 of 2018, Article 12 paragraph (3), should be regulated consistently with UULLAJ, Article 139 paragraph (3) and PP 74 of 2014, Article 79 paragraph (1) and paragraph (2), or a special arrangement is made in the UULLAJ, regarding the system of responsibility for compensation rights to SRT permit holders who are not legal entities, as applies to SRT permit holders who are legal entities.

## 5. Conclusion

Whereas the provisions of Article 12 paragraph (3) PM 118 of 2018, are norms that conflict with legal norms that have a higher position, namely Article 139 paragraph (4) UULLAJ and Article 79 paragraph (1) and paragraph (2), PM 74 of 2014, as well as contrary to the legal norms of the equivalent, namely Article 37 paragraph (1) and paragraph (2) PM 117 of 2018, so that normatively, Article 12 paragraph (3) PM 118 of 2018, is a null and non-binding norm, but in practice, these norms remain valid and used as legal and binding norms. The enactment of null and non-binding legal norms is a legal method that goes beyond the law, which has implications for the loss of the right to corporate criminal prosecution and the right to compensation for traffic accident victims caused by SRT operators who are not incorporated.

## References

- Abdul Kadir Muhammad; 2010; *Indonesian Company Law*; PT Citra Aditya Bhakti Bandung;
- Asvin Goel; Legal aspects in road transport optimization in Europe; *Transportation Research Part E* 114 (2018); Elsevier.
- Bakhtiar, H.S., Abbas, . and Nur, R. 2021. Limitation of Harbormaster Responsibility in Ship Accidents. *Academic Journal of Interdisciplinary Studies*. 10, 3 (May 2021), 375.
- Herawati; *Characteristics and Causes of Traffic Accidents in Indonesia 2012* (Traffic Accident Characteristics and Caused in Indonesia 2012); *Warta Research Journal of Transportation* Vol 26, No 3 (2014).
- LM Martibussena, M. Moller, Prato, S. Hausteina; How indicative is a self-reported driving behavior profile of police registered traffic law offenses?; *ELSEVIER; Accident Analysis and Prevention* 99 (2017) 1-5, page 1. (journal homepage: [www.elsevier.com/locate/aap](http://www.elsevier.com/locate/aap)).
- Maria Farida; 2007; *The Science of Legislation (Fundamentals and Its Formation)*, Kanisius, Yogyakarta.
- Muladi and Dwidja Priyatno; 2013; *Corporate Criminal Liability*; Kencana Prenadamedia.
- Sanjay Kumar Singh; *Problems And Challenges Of Traffic Accidents IN India; Proceedings of Transportation Research* 25 (2017); *Procedia Elsevier*.
- Sunarto; *The Principle of Legality in Law Enforcement Towards the Realization of Substantive Justice*; *Journal*

---

guarantee certainty that the law functions as a rule that must be obeyed.  
[http://repository.uma.ac.id/bitstream/123456789/1105/5/138400010\\_file%205.pdf](http://repository.uma.ac.id/bitstream/123456789/1105/5/138400010_file%205.pdf); Theory of Legal Certainty. (accessed 25 April 2022 )  
<sup>1</sup>. <https://www.scribd.com/doc/313857381/Theory-of-Legal-Protection-dissertation-doc>; page 6. (accessed April 25, 2022.)

- of Legal Issues, Volume 45 No 4, October 2016.
- Sutanto Soehodho; *Development of Public Transportation and Prevention of Traffic Accidents in Indonesia*; IATSS Research, 40 (2017) 76-80
- [http://www.ensikloblogia.com/2016/08/pengertian legal interpretation and types](http://www.ensikloblogia.com/2016/08/pengertian-legal-interpretation-and-types). (accessed Sunday 3 March 2019).
- <http://www.ensikloblogia.com/2016/08>; Definition of Legal Interpretation and Types of Legal Interpretation (accessed January 25, 2023).
- <https://journal.trunojoyo.ac.id> ; Hwian Christianto; Limitations and developments in Extensive Interpretation in Criminal Law. (accessed December 15 2020, 12.20 Wit).
- <https://www.educational.com/2016/11/31>; The theory of compliance with law and legal norms. (accessed Thursday 20 February 2020, 08.05Wita).
- <https://dephub.go.id>; Minister of Transportation of the Republic of Indonesia, Budi Karya Sumadi; Victims of traffic accidents are dominated by productive age, encourage students to always be disciplined in traffic and prioritize safety aspects. (accessed February 5, 2023).
- <https://superyou.co.id>; Pudji Hartanto; The ability and character of drivers is the most common cause of accidents in Indonesia (accessed January 27, 2023).
- [Idr uin-antasari.ac.id](http://idr.uin-antasari.ac.id); Principles of Legislation; (accessed 7 February 2023).
- [dataindonesia.id/sector-real/](http://dataindonesia.id/sector-real/); The number of traffic accidents will increase to 103,645 in 2021 (accessed 11 February 2023).
- [Kompas.com](http://Kompas.com); 20/11/2022; Korlantas Polri Records 94,617 Accidents in January-September 2022, (accessed 11 February 2023).
- Court Decision Number 78/PUU-XIV/2016.
- Court Decision Number 79/PUU-XV/2017
- Decision of the Supreme Court of the Republic of Indonesia Number: 37/P/HUM/2017 concerning the judicial review of PM 26 of 2017 concerning the Organizing of Transportation of People Not on Routes.
- Decision of the Supreme Court of the Republic of Indonesia Number 15/P/HUM/2018, Concerning the Judicial Review of PM 108 of 2017 Concerning the Implementation of Transportation of People Not on Routes.