



**JURIDICAL ANALYSIS OF CONSUMER PROTECTION FOR PASSENGERS AS SEXUAL HARASSMENT VICTIMS BY DRIVERS OF ONLINE TRANSPORTATION SERVICE COMPANIES (COMPARATIVE STUDY BETWEEN INDONESIAN LAW WITH CALIFORNIA LAW)**

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*Abstract*

*The rapid growth of online transportation service companies has revolutionized the way people commute, providing convenience and accessibility. However, alongside this progress, there has been an alarming rise in reported cases of sexual harassment experienced by passengers at the hands of drivers. This research investigates the pressing issue of sexual harassment within the context of online transportation services, focusing on the jurisdictions of Indonesia and California. As the issue of sexual harassment in the online transportation industry continues to be a significant concern, this research aims to contribute to the ongoing discourse surrounding consumer protection and passenger safety. By identifying the strengths and weaknesses of the legal frameworks, the study proposes recommendations for enhancing protections against sexual harassment and promoting a safer and more inclusive environment for passengers. The research goes beyond the legal aspects and examines the impact of sexual harassment on passengers' well-being and confidence in utilizing online transportation services. By applying on the legal enforcement of both jurisdiction and each company's policies, the study sheds light on the prevalent patterns of sexual harassment and the responses of online transportation service companies in addressing these issues.*

**Keywords:** *Consumer Protection; Sexual Harassment; Comparative.*

## **I. INTRODUCTION**

### **A. Background**

Nowadays, advances in transportation and information technology have led countries to empower people's lives to improve. Of course, each country has its own regulations to advance the general welfare in the fields of economy, technology, transportation, and other fields. This can be seen with the development of modern technology which is currently supported by social media, which also makes information disseminatable and encourages business activities in various fields. This situation leads to numerous business actors expanding their business range in order to realize their objective to enlarge the captive market. Business actors flock to get and use social media as a place to promote their business plus the nature of modern humans who are sometimes infected by hedonism disease, meaning a nature that is never satisfied with material needs.<sup>1</sup>

People's lives are now increasingly diverse according to changes to the development of the times that are now taking place quickly. This modern era presents many alternatives to facilitate the mobility of human life, one of which is information technology which is better known as the internet. The presence of the

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<sup>1</sup> Absori, *Deklarasi Pembangunan dan Implikasi di Indonesia*, Jurnal Ilmu Hukum, Vol.9, No.1, 2006, p. 39-52.



Internet presents alternative business offerings that have a fairly large process. It is known that since the presence and development of the internet, there are also much more diverse activities that can be done in an easy way and a fast system. Nowadays, modern society is also familiar with very advanced and sophisticated communication tools that are already known, such as smartphones, that are very supportive of all aspects of life.

Indonesia's growing transportation industry is marked by the increasingly modern transportation services that are already based online in major cities in Indonesia. Initially, the ridesharing application began to be heard in 2014 which was marked by the emergence of the Uber application with the Uber Taxi service that used the online system for the first time. The Uber company, founded by Garret Camp and Travis Kalanick in the City of San Francisco in the United States, has become a major pioneer in the use of online transportation. However, in its operation, not only is Uber the only ride-hailing company, Lyft and CideCar, as competitors are scattered. In other parts of the country, such as Asia and India, there are also online transportation such as Easy Taxi and Ola.

Every company must have a social responsibility which means concern and commitment, the company's moral values to the interests and safety of the community, which depends on the loss and profit of the company. This responsibility that brings prosperity to society is an important element. In terms of environmental protection and labor protection, the company is obliged to protect its consumers. The legal relationship between producers and consumers has a fairly high degree of dependence. the ongoing legal relationship between producers and consumers has occurred since the processes of production, distribution, marketing, and bidding.

The comparative research between Indonesian law and California law on this topic is crucial because it allows for an examination of different approaches and the identification of potential gaps or areas for improvement for both Jurisdiction. By studying the legal frameworks in California, it can gain valuable insights into the effectiveness of specific measures and policies that could be potentially adopted or adapted to enhance consumer protection in Indonesia, and vice versa. By studying California law, it can draw upon its experiences, best practices, and legal mechanisms to make informed recommendations for enhancing consumer protection and preventing sexual harassment in Indonesia.

Therefore, further studies are needed on legal protection for consumers of online transportation service users to overcome sexual harassment by drivers in reference to Law No. 8 of 1999 concerning Consumer Protection and other laws governing sexual harassment as well as further comparative studies on the prevention of sexual harassment through California Sexual Harassment Policy In light of the situation as described above, the author is interested in additional research and has written a thesis with the title **“Juridical Analysis of Consumer Protection for Passenger as Sexual Harassment Victim by Driver of Online Transportation Service Companies (Comparative Study Between Indonesian Law with California Law).**



## B. Legal Issues

1. How is consumer legal protection against passengers as a victim of sexual harassment by Drivers of online transportation service companies in Indonesian Law?
2. How is consumer legal protection against passengers as a victim of sexual harassment by Drivers of online transportation service companies in California Law?
3. What are the comparative results between Indonesian consumer protection law and California consumer protection law?

## II. RESEARCH METHOD

Terminologically speaking, the word 'method' itself derives from the Greek words 'methodos', which has a meaning of 'way of proceeding'.<sup>2</sup> In regard to this research, the method section is a crucial part as it provide a full account of procedures and method used in the study. In addition, method is a scientific activity associated with a methodical approach to understanding a subject or object of research in order to arrive at conclusions that can both be validated scientifically. On the other hand, Research is a methodical, systematic, and persistent attempt to study and develop. Research is a method of enhancing, fostering, and expanding knowledge<sup>3</sup>

## III. RESULT AND DISCUSSION

### A. Regulation for Consumer Protection Law for Passenger as Victims of Sexual Harassment by Driver of Online Transportation Services in Indonesia

#### 1. Overview of Consumer Protection Law in Indonesia

Consumer protection law is a branch of law that grew and developed in the 1900s. Consumer protection law is a response to industrialization activities in the United States and Europe, as well as an answer to the demands of globalization Protection Law. In consumer protection, there are two legal terms, namely consumer law and consumer protection law

According to AZ. Nasution, the definition of a consumer is "Every person who legally obtains and uses goods or services for a certain use. According to Article 1 number (2) of the Law No 8 Year 1999 which will be refer as 'UUPK' states that "Consumer is every person who uses goods and / or services available in society, both for the benefit of themselves, family, others, and other living things and is not traded".

Business actors in general are people or legal entities that produce goods and/or services by producing these goods and/or services to meet the needs of the community or consumers by seeking profits from these goods and/or services. The Consumer Protection Law (UUPK) seems to try to avoid using the

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<sup>2</sup> Suteki dan Galang Taufani, *Metodologi Penelitian Hukum: Filsafat, Teori, dan Praktik Cet.3*, (Depok: RajaGrafindo Persada, 2020), p. 148

<sup>3</sup> Soerjono Soekanto, *Pengantar Penelitian Hukum Cet. 3*, (Jakarta: UI Press, 2007), p. 3.



word "producer" as opposed to the word "consumer". So that the word "business actor" is used which has a broader meaning, where the term business actor can also mean creditors (providers of funds), producers, distributors, sellers and other terminology commonly given

## **2. Regulation About Sexual Harassment in Indonesia**

The criminal act of sexual harassment is a criminal offense contained in Law No. 12 Year 2022 concerning Violent Crimes which was passed on May 9, 2022. One of the reasons behind the presence of this law is because laws and regulations related to sexual violence have not been optimal in providing prevention, protection, access to justice, and recovery.

In Article 1 Number 1 of Law Number 12 of 2022, Sexual Violence is defined as all acts that meet the elements of a criminal act as stipulated in this law and other acts of sexual violence as stipulated in this law to the extent specified in this law. Based on this definition, we can know that what is meant by sexual violence is all forms of criminal acts both regulated in Law Number 12 of 2022 and other crimes that are said to be sexual violence crimes regulated in other statutory provisions.

In the provisions of the old Criminal Code which were still valid at the time this article was published and Law 1/2023 which came into force 3 years from the date of promulgation, namely in 2026, the term sexual harassment is not known but the term used is obscene acts which are outlawed from article 414-423

## **3. Protection and Responsibility of Indonesia online transportation service (Go-Jek) companies in cases of sexual harassment**

Gojek is an Indonesian multinational technology company that provides a platform for transportation, food delivery, and other services. Gojek is one of the most popular ride-hailing apps in Indonesia, and it has over 170 million users. This company has taken a number of steps to address the issue of sexual harassment among drivers and passengers. In online transportation services, It is necessary to understand in advance about the relationship between drivers and online transportation application provider companies. Article 1 Number 15 of the Manpower Law states that the employment relationship is a relationship between employers and workers / laborers based on a work agreement, which has elements of work, wages and orders. An employment relationship arises from an employment agreement, not a partnership agreement. So the agreement between the driver and the application provider is a partnership agreement, so the Labor Law cannot be used as a legal basis. Both parties are bound by an ordinary agreement, in this case again and subject to the rules of the Civil Code part of the agreement, namely Article 1338 jo. Article 1320 of the Civil Code

Meanwhile, in particular, partnership agreements can also refer to the provisions of civil partnerships in articles 1618 of the Civil Code to Article 1652 of the Civil Code concerning civil partnerships. Thus, the relationship between drivers and application providers based on a partnership agreement, then what happens is not the employment relationship of subordinate superiors who have



elements of work, wages, and orders, but equality between the parties in the partnership relationship. This is because in a partnership relationship there is no element of wages and orders

Gojek, an Indonesian-based ride-hailing and on-demand services platform, has taken significant steps to tackle sexual harassment issues and create a safer environment for its users, particularly passengers. If the sexual harassment occurs while on the go, press the Emergency Button (click the shield icon) to activate assistance. If it occurs after the trip is over, open the Order Page (My Order), then select the order in which passenger experience problems, open the Help / Need Help Page, select the Driver Issue section, select the Sexual Violence section and then report it directly to the Gojek Emergency Unit. Therefore, passenger will be directly connected to the Gojek Emergency Unit who will follow up on the report. Gojek provides the assistance for the victim of Sexual Harassment by giving them a physical or mental recovery or assistance if the victim wants to report the case to authorities.

## **B. Regulation for Consumer Protection Law for Passenger as Victims of Sexual Harassment by Driver of Online Transportation Services in California**

### **1. Overview of Consumer Protection Law in California**

Consumer protection law in California refers to a set of laws and regulations that aim to safeguard the rights and interests of consumers in various commercial transactions. The overarching goal is to ensure fair and transparent practices in the marketplace, protect consumers from deceptive or fraudulent activities, and provide remedies for those who have been harmed by unfair business practices. In California, consumer protection is governed by several key laws and statutes, including: California Consumer Privacy Act (CCPA), California Unfair Competition Law (CLRA), and California Legal Remedies Act

### **2. Sexual Harassment Law in California**

Under California sexual harassment law, Civil Code 51.9, the victim have the right to sue if the victim are the are subject sexual harassment in the context of a business, service or professional relationship. Damages shall be awarded by subdivision (b) of Sections 52 that, if anyone denies the rights provided by these sections (Section 51.7 and Section 51.9) or aids, incites, or conspires in such denial, they can be held liable for their actions. The wrongdoer is responsible for compensating the victim for any actual damages suffered as a result of the denial. In addition to the actual damages, the court may award exemplary damages, which serve as a form of punishment for the wrongdoer. The law also imposes a civil penalty of \$25,000 to be awarded to the person whose rights were denied, and this penalty can be sought through legal action brought by the affected person or by relevant authorities such as the Attorney General, district attorney, or city attorney. To pursue the civil penalty, the action must be initiated within three years of the alleged wrongful practice. Furthermore, the court has the authority to determine the attorney's fees to be paid in connection with the case.



The definition of professional-relationship sexual harassment under California Civil Code 51.9 is closely related to the definition of sexual harassment in the workplace under California's Fair Employment and Housing Act. It is also mentioned in Civil Code section 51.9, Sexual harassment in the context of a business, professional or service relationship is defined as sexual advances, solicitations, sexual requests, demands for sexual compliance, or verbal, visual, or physical conduct of a sexual nature or of a hostile nature based on gender.

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Sexual battery, also known as sexual assault, is defined by California Penal Code § 243.4 PC as the act of touching another person's intimate parts without their consent, for the purpose of sexual gratification, arousal, or abuse. Penal Code 243.4

### **3. Protection and Responsibility of California Online Transportation Service (Uber) Companies in Cases of Sexual Harassment**

Uber is dedicated to establishing and maintaining a community that fosters a secure and respectful environment for all users of our platform. As drivers and delivery individuals, passenger experiences should be free from sexual harassment, sexual misconduct, and sexual assault while using the Uber apps for driving or delivering. This protection extends to interactions with passengers/customers, restaurant partners, Uber employees, and others.

For the purpose of this policy and associated training materials, "sexual harassment" encompasses sexual assault or sexual misconduct in accordance with Cal. Bus. & Prof. § 7457(a)(1). Cal. Bus. & Prof. § 7457(a)(1) refers to a specific section of the California Business and Professions Code, Division 3,





Chapter 10.5, which addresses sexual harassment prevention in the context of app-based drivers and services. This particular subsection outlines one of the key requirements that companies operating app-based transportation services must fulfill.

However, on such case are inevitable where the passenger experience a sexual harassment by driver of online transportation services. A victim can seek protection under The California Consumer Legal Remedies Act (CLRA) and the California Consumer Privacy Act (CCPA) are both consumer protection laws that could be used to hold companies accountable for sexual harassment. The California Penal Code Section 243.4 and the California Civil Code Section 51.9 are both criminal and civil laws that specifically address sexual harassment. A victim of sexual harassment could file a lawsuit under the CLRA or the CCPA, alleging that the company engaged in unfair or deceptive business practices or violated the victim's right to privacy.

The victim could also file a criminal complaint under California Penal Code Section 243.4, alleging that the driver committed sexual harassment. In addition, the company could be held liable for the driver's actions under California Civil Code Section 51.9, if the company knew or should have known that the driver was a danger to passengers.

#### IV. SIMPULAN DAN SARAN

The sexual harassment case committed by its drivers in Indonesia, the perpetrators will be held liable under Article 4 Paragraph 1 point (a) and (b) of Law No 12 Year 2022 concerning Criminal Acts of Sexual Violence, Article 414-423 of Law No 1 Year 2023 concerning the Criminal Code. For the business owner (GoJek), the plaintiff can file a lawsuit to hold the company responsible according to Article 19 of UUPK. If the online transportation company (Gojek) argues by including a clause not responsible for mistakes made by drivers in the partnership agreement, then, it is contrary to Article 18 paragraph (1) letter a of the Consumer Protection Law and the sanction will be imposed on Criminal Sanction and Administrative Sanction. Gojek will offer psychological and physical recovery assistance to help victims recover trauma and mental condition. Consumers can file a lawsuit based on Article 4 Paragraph 1 point (a) and (b) of Law No 12 Year 2022 concerning Criminal Acts of Sexual Violence, Article 414-423 of Law No 1 Year 2023 concerning the Criminal Article 18 paragraph (1) point a and article 46 paragraph (1) of Law No. 8 of 1999 concerning Consumer Protection.

Sexual harassment case committed by its drivers in California, the consumers who suffered losses due to sexual harassment events by driver has the option to bring a legal case using the CLRA or the CCPA as The California Consumer Legal Remedies Act (CLRA), the California Consumer Privacy Act (CCPA) are all consumer protection laws applied that could be used to hold companies accountable for sexual harassment. The CLRA prohibits businesses from engaging in unfair or deceptive business practices. This could include sexual harassment, as it can be considered a form of "unfair and deceptive" conduct. The CCPA gives consumers the right to control their personal information and how it is collected, used, and shared by businesses. This could include sexual harassment, as it can involve the



collection or sharing of personal information without the victim's consent. The California Penal Code Section 243.4 and the California Civil Code Section 51.9 are both criminal and civil laws that specifically address sexual harassment. Uber employs a behavior-based classification system that has been developed in collaboration with respected organizations. By adopting this comprehensive approach, Uber can effectively tackle a wide range of inappropriate behaviors, even those that might not be classified as criminal offenses but are still prohibited within the Uber community. This proactive approach fosters a safer and more secure environment for all users of the platform.

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California Consumer Privacy Act (CCPA)

California Unfair Competition Law (UCL)

California Penal Code

California Civil Code