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### The Dilemma of Criminal Liability for the Operation of Motorized Pedicabs in Yogyakarta Due to the Absence of Explicit Regulations Accommodating Them as a Mode of Public Transportation

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**Abstract:** The phenomenon of motorized pedicab (bentor) operations in Yogyakarta reflects a shift in public demand toward faster and more efficient modes of transportation. However, the presence of a bentor faces a legal dilemma due to the absence of explicit regulations accommodating it within both national and regional legal systems. Law No. 22 of 2009 on Road Traffic and Transportation and Regional Regulation (Perda) of Yogyakarta Special Region (DIY) No. 5 of 2016 only regulate official and traditional transportation modes, without specifically addressing modified forms such as bentor. This legal ambiguity raises questions regarding the legal status of bentor and the extent to which its drivers can be held criminally liable. This study employs a normative juridical method with statutory and conceptual approaches, aiming to analyze the existing legal vacuum and its impact on law enforcement and social justice. The study finds that although the operation of bentor may be considered administratively unauthorized, the application of criminal law to its drivers encounters obstacles related to the principle of legality, as no criminal norm explicitly prohibits such activity. Moreover, enforcement actions carried out without an adequate legal basis have the potential to create injustice and discrimination. This research recommends revising regional regulations to be more accommodating of alternative modes of transportation, adopting a conditional legalization approach, and encouraging intergovernmental collaboration. Responsive regulation is key to ensuring legal order while upholding social and humanitarian values.

**Keywords:** motorized pedicab, legal vacuum, criminal liability, alternative transportation

**Abstrak:** Fenomena operasional becak motor (bentor) di Yogyakarta mencerminkan pergeseran permintaan masyarakat menuju moda transportasi yang lebih cepat dan efisien. Namun, keberadaan bentor menghadapi dilema hukum akibat ketidakhadiran regulasi eksplisit yang mengakomodasi operasionalnya dalam sistem hukum nasional maupun regional. Undang-Undang Nomor 22 Tahun 2009 tentang Lalu Lintas dan Angkutan Jalan serta Peraturan Daerah

(Perda) Daerah Istimewa Yogyakarta (DIY) Nomor 5 Tahun 2016 hanya mengatur moda transportasi resmi dan tradisional, tanpa secara khusus menyinggung bentuk-bentuk modifikasi seperti bentor. Ketidakjelasan hukum ini menimbulkan pertanyaan mengenai status hukum bentor dan sejauh mana pengemudinya dapat dituntut secara pidana. Studi ini menggunakan metode yuridis normatif dengan pendekatan statuta dan konseptual, bertujuan untuk menganalisis kekosongan hukum yang ada dan dampaknya terhadap penegakan hukum dan keadilan sosial. Studi ini menemukan bahwa meskipun operasi bentor dapat dianggap secara administratif tidak sah, penerapan hukum pidana terhadap pengemudinya menghadapi hambatan terkait prinsip legalitas, karena tidak ada norma pidana yang secara eksplisit melarang aktivitas tersebut. Selain itu, tindakan penegakan hukum yang dilakukan tanpa dasar hukum yang memadai berpotensi menimbulkan ketidakadilan dan diskriminasi. Penelitian ini merekomendasikan revisi peraturan daerah agar lebih akomodatif terhadap moda transportasi alternatif, mengadopsi pendekatan legalisasi bersyarat, dan mendorong kolaborasi antar pemerintah. Regulasi responsif merupakan kunci untuk memastikan ketertiban hukum sambil menjaga nilai-nilai sosial dan kemanusiaan.

Kata Kunci: becak motor, kekosongan hukum, tanggung jawab pidana, transportasi alternatif

#### **INTRODUCTION**

The phenomenon of motorized pedicab (bentor) operations in Yogyakarta reflects the social dynamics of a society attempting to adapt to the changing times (Julaikah, 2020). Amid modernization and increasing urban mobility, bentor emerges as an affordable and practical transportation alternative (Yunus, 2024). The fusion of a traditional pedicab with a motorized engine illustrates local creativity in responding to the limitations of public transportation (Nugroho, 2024). However, despite its deep-rooted existence in community life, the legal status of bentor remains a lingering problem (TUBAN, 2022). This reality highlights the disparity between social practice and the legal norms governing it.

The presence of bentor has not been accompanied by adequate regulation. Under national law, Law No. 22 of 2009 concerning Road Traffic and Transportation does not explicitly recognize bentor as a legitimate mode of transport (Himawan, 2025). This lack of legal recognition makes bentor vulnerable to enforcement actions based on administrative or technical traffic violations. On the other hand, the Special Region of Yogyakarta through Regional Regulation No. 5 of 2016 only regulates traditional transportation modes like pedal-powered pedicabs and horse-drawn carriages, without addressing modified forms like bentor (Noviyati, 2023). This regulatory mismatch further widens the gap between societal needs and the legal protection that should be afforded to them.

This situation raises a criminal law dilemma because the operation of bentor can practically be considered a violation of applicable traffic regulations (Suryani, 2016). Referring to Government Regulation No. 30 of 2021, which derives from the Road Traffic and Transportation Law, there are technical requirements regarding specifications for motor vehicles fit to operate on public roads (Putra, 2022). Being a modified vehicle, bentor generally does not meet type approval or safety standards as regulated in the decree (Parlindungan, 2020). From a criminal law perspective, any unlawful act threatened with criminal sanctions—including traffic violations endangering public safety—can be subject to liability (Fadlian, 2020). However, on the other hand, imposing criminal sanctions on bentor drivers can result in substantive injustice given the unclear regulations governing them from the outset.

The problem becomes complex as it is closely tied to the principle of legality in criminal law. The *nullum crimen sine lege* principle emphasizes that no one can be criminally punished for an act not clearly regulated in existing law (Fitri, 2024). In the context of bentor, the absence

of explicit regulation regarding its legitimacy as a mode of transportation creates issues in applying criminal liability lawfully (Rachman, 2019). Criminal law, being an *ultimum remedium*, should be used as a last resort and not hastily applied in such legal grey areas (Fitri S. M., 2020). When the state has not provided clear regulation, it should not proceed to punish its citizens for violations of ambiguous rules.

The theory of criminal liability in this context can be further examined to assess the extent to which an individual can be held responsible for actions not entirely under their control (Fridawati, 2024). Bentor drivers are not criminals by nature, but economic actors trying to survive amid limited job choices and inadequate public transport facilities (Joan, 2023). This theory highlights the importance of considering *schuld* (fault), which is a prerequisite for criminal punishment (Utoyo, 2020). If someone has no other option but to operate a bentor as a means of livelihood, and the law offers no clear alternative, the element of fault in that person can be disputable. This illustrates the necessity for the law to not only base itself on written norms but also to understand the sociological context behind them.

Such conditions should prompt the government to urgently review the relevance and applicability of existing legislation, especially to address current societal needs. Many previous studies have shown how the misalignment between regional regulations and real-world practice creates tension between citizens and law enforcement (Saleh, 2025). One study on the implementation of Regional Regulation No. 5 of 2016 in Yogyakarta found that the rule tends to marginalize bentor because it focuses too heavily on preserving traditional modes (Iqbal, 2023). Rather than protect, such regulation actually narrows the space for bentor drivers—who mostly come from lower-middle economic backgrounds—to earn a living. This research is vital as a policy evaluation for outdated regulations.

Studies on unofficial transportation modes also show that phenomena like bentor are not unique to Yogyakarta, but occur in various other Indonesian cities. Unofficial modes such as local motorcycle taxis and early online ride-hailing services experienced similar fates: not legally recognized yet socially necessary. This pattern shows that law often lags behind dynamic social developments (Makruf, 2025). Delays in regulatory updates create legal vacuums that lead to ambiguity in enforcement. In such situations, law enforcement tends to be discriminatory and unjust because it relies on subjective interpretations by officials.

The absence of clear regulation also makes it difficult for police and transportation authorities to identify a legal basis for enforcement. Officials find themselves in a dilemma between enforcing the letter of the law and understanding the social needs of the community they serve. In many cases, repressive actions against bentor drivers cause horizontal conflicts disrupting public order. Yet, law should function as a problem-solver, not as a source of new social tension. This highlights the importance of legal approaches that are progressive and contextual.

Such legal conflicts reinforce the argument that transport policy must consider dimensions of social justice and inclusivity. Bentor drivers are not lawbreakers deserving punishment, but rather victims of policies unable to adapt to societal realities. A fair legal system should not rigidly enforce rules but also address humanity and basic citizen needs. In many modern legal theories, a responsive law is considered a solution to contemporary problems that cannot be solved through normative approaches alone. In this context, bentor requires legitimacy, not criminalization.

The presence of bentor, along with all its legal issues, should be seen as a mirror reflecting the imbalance between public demand and state policy. The state cannot demand legal compliance from citizens when it has failed to provide fair and inclusive legal instruments. Rather than continually challenging bentor legality, policymakers would be better served by initiating open dialogue with drivers and their communities. Regulation should not

only come from the top but must also listen to grassroots voices. Only then can law return to being an instrument that ensures justice and order in balance.

#### **METHOD**

This study employs a normative juridical method, which is a legal research approach based on literature study by examining primary and secondary legal materials to analyze the prevailing legal norms. The main focus of this method is to analyze statutory regulations related to the operation of transportation modes, particularly bentor (motorized pedicabs), within the context of the national and regional legal system. The primary legal materials in this research include Law Number 22 of 2009 on Road Traffic and Transportation, Government Regulation Number 30 of 2021 on the Administration of Road Traffic and Transportation, and Regional Regulation of the Special Region of Yogyakarta Number 5 of 2016 on Traditional Transport Modes of Pedicabs and Horse-Drawn Carriages. In addition, the secondary legal materials used consist of legal literature, scientific journals, previous research findings, and the opinions of criminal law and administrative law experts. The normative juridical method was chosen because it is considered the most relevant for examining the issue of legal vacuum and the dilemma of criminal liability toward a social phenomenon that has not been explicitly regulated in positive legal norms. A conceptual approach is also applied to study the legal principles underlying the application of criminal law, such as the principle of legality (nullum crimen sine lege), the principle of justice, and the ultimum remedium principle in criminal law. Through this method, the analysis is conducted systematically to assess how the law should respond to social realities such as the existence of bentor, by taking into account the limitations of existing regulations and the legal values that should be upheld. This approach does not aim to empirically test policies, but rather emphasizes normative and argumentative construction in order to provide rational, fair, and contextual legal solutions.

#### RESULT AND DISCUSSION

## Legal Status of Motorized Pedicabs in Yogyakarta from the Perspective of Criminal and Administrative Law

The legal status of motorized pedicabs (bentor) in Yogyakarta remains a polemic within the realm of Indonesian transportation law (Kusuma, 2023). Bentor has not been explicitly legitimized either under Law Number 22 of 2009 on Road Traffic and Transportation or Regional Regulation of the Special Region of Yogyakarta Number 5 of 2016 on Traditional Transport Modes of Pedicabs and Andong. This lack of legal recognition creates a legal ambiguity in which bentor continues to exist and operate de facto, but does not have a strong legal basis de jure. This condition results in the potential for repressive actions against bentor drivers, even though their activities are intended to meet economic needs and public mobility. The imbalance between social reality and legal foundations is at the core of the dilemma concerning criminal liability over the operation of bentor.

Administrative requirements, as regulated in transportation legislation, require motor vehicles to fulfill a number of legal procedures. Vehicles must undergo type testing, obtain route permits, and be registered as part of the official public transportation system. Bentor, as a modified mode of transport combining a bicycle and motor engine, generally does not undergo legitimate type testing and does not meet the safety standards as stipulated in technical regulations. The legality of the vehicle is questionable because it does not fit the category of either a private or officially recognized public transport vehicle. Its presence in this legal uncertainty makes every activity by bentor drivers vulnerable to being classified as an administrative violation, which can escalate into criminal prosecution if more serious damage or violations occur.

The illegal status of bentor directly affects the potential for criminal sanctions against drivers. When a transport mode is deemed unauthorized, all its operations may be construed as unlawful, whether from an administrative or criminal perspective. Nonetheless, the application of criminal penalties to bentor drivers must be scrutinized carefully. Bentor drivers typically do not possess criminal intent, but are merely attempting to earn a livelihood. Criminalizing acts born from social circumstances and economic necessity presents an ethical dilemma in criminal legal practice.

The principle of legality is a fundamental element in Indonesia's criminal law system, as enshrined in Article 1(1) of the Indonesian Penal Code (KUHP) and reiterated in various legal rulings, including Constitutional Court decisions. This principle encompasses the notion of "nullum crimen sine lege," meaning that no act can be punished unless it has been clearly stipulated in legislation. The operational phenomenon of bentor is not explicitly categorized as a criminal act under the current legal framework. In the absence of clear legal provisions prohibiting or regulating bentor use, the imposition of criminal sanctions becomes problematic and conflicts with the principle of legality. Criminal law enforcement in the bentor context without a clear normative basis has the potential to undermine justice and legal certainty.

The debate arises when law enforcement officers apply criminal instruments to bentor drivers based on violations of administrative norms, such as using unfit vehicles or lacking route permits. Using criminal law as a repressive tool in a regulatory vacuum regarding bentor has drawn sharp criticism. Criminalization in this context is seen as disproportionate because it fails to consider the real conditions of society. In fact, criminal law should be applied restrictively, only for acts that seriously endanger legal interests. This approach is known as the principle of criminal law as an *ultimum remedium*—a last resort when administrative and preventive approaches are no longer sufficient.

Applying criminal law to bentor drivers without considering the *ultimum remedium* principle risks creating structural injustice. In an ideal justice system, punishment should be aimed at protecting society from actual crimes, not punishing impoverished citizens acting out of economic necessity. The state should instead prioritize non-penal measures such as coaching, vocational training, or limited legalization under strict supervision, rather than simply imposing sanctions. Applying punitive approaches in such contexts only exacerbates social conditions and fails to address the root issues of informal transportation in the region.

Criminal liability does not depend solely on the act itself but also on the element of fault (*schuld*) in criminal law. To consider someone guilty, the presence of intent or mens rea must be proven. In the case of bentor drivers, it is difficult to establish criminal intent because their primary motive is economic, not legal violation. Many are unaware that their vehicles do not meet the required standards or do not even realize they are breaking the law due to a lack of socialization by authorities.

Defense for bentor drivers' actions can also be analyzed through the concept of *overmacht* or force majeure. *Overmacht* reflects situations in which a person commits an unlawful act because there are no other rational and humane alternatives. When one's only option for livelihood is driving a bentor, criminal liability becomes difficult to justify both morally and legally. Criminal law should not be used to punish those who act out of urgent and unwanted necessity.

A more just response to the bentor issue is to implement non-penal policy solutions. The state has a responsibility to provide inclusive and accommodative regulations in response to evolving social dynamics. The legality of bentor should be addressed through administrative channels or regional policy that reflects community needs. Humanistic policymaking is better suited to resolving informal transportation challenges than repressive criminal approaches. A legal approach responsive to social conditions is a tangible form of substantive justice in modern criminal law systems.

# Implications of Legal Vacuums on the Law Enforcement of Motorized Pedicabs in Yogyakarta

The phenomenon of motorized pedicabs (bentor) as a modified mode of transport reflects the community's demand for affordable, flexible transportation that can access areas beyond the reach of conventional public vehicles. However, the absence of official policies that specifically regulate this mode of transportation has created a legal vacuum that disadvantages various parties. There is no formal classification of vehicles like bentor in either national or regional regulations, leaving their legal status ambiguous. While society continues to widely use this form of transport, the state has yet to respond with regulatory certainty and policy direction. This allows bentor to grow and operate within a social space that lacks adequate legal legitimacy.

The situation is reminiscent of the early emergence of ride-hailing motorcycle taxis in Indonesia, which also faced a regulatory vacuum and rejection from transportation authorities. At the time, online ojek were deemed illegal as public transportation because they did not fit within the legal classification of passenger or freight vehicles under the Road Traffic Law. However, public pressure and rapid social change forced the government to adapt and create regulations that accommodated ride-hailing services. This case demonstrates that policy must evolve to meet the developing needs of society. The successful integration of online motorcycle taxis into the formal transport system should serve as a key lesson in resolving similar legal issues surrounding bentor.

The absence of official policy makes bentor operations not only vulnerable to enforcement actions but also legally unprotected. In fact, this transportation mode operates in response to real public needs. The urgency for new regulations increases as bentor is no longer a temporary phenomenon but has become part of an informal transport system relied on by urban communities, especially in regions like Yogyakarta. Ignoring the bentor's existence only prolongs the gap between prevailing laws and social realities on the ground. Responsive regulation would better support the creation of an inclusive, safe, and fair transport system.

Law enforcement that lacks a clear regulatory framework leads to disharmony between law enforcers and regional policymakers. Officers are often in a dilemma—having to enforce rules that are irrelevant to on-the-ground conditions or having no strong legal basis for action. On the other hand, local governments, although closer to the community, do not have full authority to legalize bentor without support from national law or amendments to existing regional regulations. As a result, bentor management is sporadic and inconsistent, creating wide interpretive room in law enforcement. This legal inconsistency undermines legal certainty and affects all parties, especially drivers.

This legal void also results in discriminatory enforcement practices. In reality, enforcement actions against bentor can be highly selective, depending on region, political interests, or pressure from specific groups. A driver operating without disturbance in one area may face harsh actions in another, purely due to different legal interpretations. This unfairness is exacerbated by the lack of clear legal defense mechanisms for bentor drivers, rendering them vulnerable to arbitrary treatment. When the law lacks clear and fair standards, public trust in legal institutions is further eroded.

The lack of fair treatment toward alternative transportation modes highlights the weakness of social justice principles in current transportation policy. While ride-hailing motorcycle taxis have been granted legal recognition and formal operation space, bentor continue to be marginalized. Yet both were born out of social need and economic conditions. This imbalance raises questions about the consistency and alignment of public policy with the needs of lower-income groups. Bentor should not be seen as a disturbance, but rather as a potential solution to be inclusively managed through fair and participatory regulatory approaches.

A concrete step would be to revise Regional Regulation (Perda) No. 5 of 2016 to include modified transportation modes such as bentor. The current regulation only acknowledges traditional pedicabs and horse-drawn carriages, rendering it ineffective in addressing transportation developments on the ground. Drafting a new regulation that accommodates bentor would open the door to conditional legalization that considers safety standards, comfort, and consumer protection. This revision could help resolve the legal vacuum that has been the root of social and legal issues. Through regulatory reform, local governments can demonstrate a commitment to their communities without violating national legal principles.

Harmonizing regulations between the central and local governments is crucial to avoid overlapping policies in transportation governance. The central government, through the Ministry of Transportation, can formulate general guidelines for managing informal transport, which can then be adopted into local regulations. Such collaboration enables the realization of a more inclusive national transport system that adapts to local developments. With clear authority and legal frameworks, local governments can regulate bentor humanely and orderly. This synergy also strengthens the legitimacy of the resulting regulations.

One proposed approach is conditional legalization of bentor, requiring technical feasibility tests, safety training, and operational supervision by the transportation agency. This approach accommodates drivers' economic needs while ensuring public safety and transport order. The government can provide simple certification mechanisms, vehicle repair incentives, and designated operational routes as facilitation measures. This way, bentor is no longer a legal problem but part of the solution to urban transport challenges. Justice, order, and social welfare are more easily achieved when the state sees and responds to reality with an inclusive legal approach.

#### **CONCLUSION**

The phenomenon of motorized pedicab (bentor) operations in Yogyakarta highlights the tension between the public's need for practical and affordable transportation and the rigidity of a legal system that has yet to respond adaptively to social realities. The discussion reveals that the legal status of bentor falls into a normative void, creating the potential for conflict between drivers, users, and law enforcement. This irregularity is not solely the result of individual negligence, but rather the absence of clear and inclusive regulations. In the context of criminal law, the imposition of sanctions on bentor drivers presents a dilemma, as there are no explicit norms that clearly define such actions as criminal offenses. This raises serious questions regarding the principles of legality and justice in the application of criminal law in society. A non-penal approach and recognition of the socio-economic factors affecting drivers must be prioritized to avoid disproportionate criminalization of vulnerable groups.

To address this issue, concrete steps are needed in the form of legal policy reform both at the national and regional levels—that can wisely accommodate the existence of bentor. Regional governments such as the Special Region of Yogyakarta (DIY) could take the initiative to revise existing regional regulations by expanding the scope of traditional transport modes to include organically developed modifications within communities. Conditional legalization and the implementation of minimum safety standards can serve as a fair compromise between regulatory needs and on-the-ground realities. The central government must also play a role by issuing general guidelines that encourage regions to adopt a more inclusive stance toward alternative transportation modes. In doing so, regulation can become an instrument that not only maintains order but also upholds humanity, social equity, and substantive justice in public transport governance.

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