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THE REGULATION OF ONLINE TAXI FARES IN THE BUSINESS COMPETITION LAW PERSPECTIVE

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ABSTRACT

The presence of online-based taxi in Indonesia has caused the conventional taxi business actor to have strong competitor. This competition will further encourage the regulation of public transportation management to be immediately updated. Previously, the regulation of public transportation for conventional taxi had been regulated in the Law Number 22 of 2009, but the regulation was not compatible to apply to online taxi. Therefore, the government through the Ministry of Transportation made the regulation for online taxi, namely *Permenhub* (The Regulation of Transportation Ministry) Number PM 108 of 2017 concerning the Implementation of People's Transportation with Public Motorized Vehicles which is not on the Route. The purpose of this research is to analyze the regulation regarding the establishment of online taxi fares. In addition, this research also reviews the indication of unfair business competition related to online taxi fares. Based on the result of the analysis conducted, there was no evidence of anticompetitive behavior in the taxi transportation market which was conducted by online taxi business actor with the conventional taxi business actor. Online taxi fare regulation was focused on the quality and service. Both conventional taxi and online taxi did not depend on and influence each other. However, in the latest ministerial transportation regulation was considered to be in conflict with the higher regulation, then the legal remedy that could be carried out was judicial review.

INTRODUCTION

As time goes by, technology-based transportation facility is increasingly widespread. One of the transportation facilities which affected by technological development is online taxi. The presence of online taxi has caused the competition among taxi service providers increasingly fierce. Recently, conventional taxi user switched to using online taxi. The superiority of online

taxi includes the cheap fare, being able to reach the place to live, easily because it can be ordered by mobile phone, and being able to know the fare before deciding to order. On the other hand, the government has not responded to the movement in the public transportation business model, but it only asked online taxi company to form Indonesian legal entity. But this has not solved the problem, because what become the point of the problem is a very significant fare difference (Safitri, 2015).

Indonesian law does not provide a legal basis for regulating or guaranteeing the prices for any product (Prihandono and Relig, 2019). However, various regulations which regulate the economic activities and the work of developing and enforcing these regulations are in the hands of the government. At the global level, economic law carries the greater quality considering its scope and the economic actors who involved (Niyobuhungiro, 2019). Considering the importance of legal regulation in economic activity, on April 1, 2017 the government through the Ministry of Transportation has established the Regulation of the Transportation Ministry Number 26 of 2017 concerning the Implementation of People's Transportation with the Public Motorized Vehicles which is not on the Route (hereinafter referred to as *Permenhub* Number 26 of 2017) in order to regulate the taxi-based online transportation (Idris, 2017). However, the enactment of the Regulation of the Transportation Ministry regarding online taxi does not last long, because the Supreme Court has revoked it. The Supreme Court stated that the regulation contradicted the Micro, Small and Medium Enterprises Law and the Traffic and Transportation Law. It was also stated that in the panel of judges consideration, the preparation of regulation in the field of transportation which in the basis of technology and information should be based on the deliberation principle that involves all the stakeholders in the field of transportation services, thus it can grow micro, small and medium economic businesses, without leaving the kinship principle (Saputra, 2017). Still in the 2017, the Ministry of Transportation issued the regulation again, namely *Permenhub* Number PM 108 of 2017 concerning the Implementation of People's Transportation with Public Motorized Vehicles which is not on the Route.

This research uses the data from the law and regulation and the regulation related to online basic fare regulation. This type of research is normative legal research, thus subsequently the data collected has been linked to the related literature. The purpose of this study is to analyze the regulation and then review the indication of unfair business competition related to online taxi fare. After conducted analysis, the clarity obtained can be used as a legal or educational proposal for those who need it.

RESEARCH METHOD

This research used normative research type, which analyzed the problem based on the existing law and regulation and the literature related to the problem (Hanitijo Soemitro, 1988; Wiratraman, 2019). The method which chosen in this research was related to the principles and norms in the law and regulation as

well as other regulations relating to the legal business competition, especially regarding online taxi.

The approach in legal research aimed to facilitate the researchers in obtaining information which related to the problem being faced. The approaches which were used including the statute approach, the conceptual approach, and the case study approach (Marzuki, 2017). In this legal research, the first approach used was the statutory approach. The statute approach was carried out by reviewing all the Laws of the regulation relating to the legal case being studied.

The second approach used was a conceptual approach. Conceptual approach was an approach that moved from the views and doctrines that developed in the legal studies. By studying the views and doctrines in the legal studies, researchers would find the ideas that created the legal understandings, legal concepts, and legal principles that were relevant to the issues encountered (Marzuki, 2017).

RESULTS AND DISCUSSION

The existence of this online taxi was regulated by the Regulation of the Minister of Transportation Number PM 108 of 2017 concerning the Implementation of People's Transportation with Public Motorized Vehicles which is not on the Route (hereinafter referred to as *Permenhub* Number 108 of 2017). In the Regulation of the Transportation Ministry Number 108 of 2017, the existence of online taxi was categorized into special rental transportation, which was regulated in article 26 paragraph (1) containing:

"Special rental transportation as referred to in Article 23 paragraph (2) letter b, is a door-to-door transportation service with driver, has operating and booking areas using information technology-based application".

Online taxi in the Regulation of the Transportation Ministry Number 108 of 2017 was categorized into rental transportation because online taxi services used passenger car in which the transportation services using passenger car was regulated in Article 23 paragraph (1) the Regulation of the Transportation Ministry Number 108 of 2017 containing:

"Rental transportation as referred to in Article 13 letter e, is a door-to-door transportation services using Passenger Car".

Rental transportation as referred to above consisted of:

- a. Public rental transportation; and
- b. Special rental transportation.

Based on the explanation above, the equation between conventional taxi and online taxi was that both transportation services were the transportation of people with public motorized vehicle which was not on the route, namely conventional taxi and online taxi which did not have a fixed origin and

destination, as well as non-fixed routes. While the difference between conventional taxi and online taxi was on the type of vehicle used. Conventional taxi used taxi type transportation, it was different from online taxi that used passenger's car type transportation as regulated in the Regulation of the Transportation Ministry Number 108 of 2017.

The Regulation Regarding the Establishment of Online Taxi Fare

The regulation of basic fare for conventional taxi was regulated in article 183 paragraph (1) of Law Number 22 Year 2009 which stated that the fare charged to the passengers when using taxi was determined by the public transportation companies with the approval of the government in accordance with their respective authorities based on the specified minimum service standards. In its implementation, the imposition of fare by business actors and taxi drivers was usually divided into 3 (three) categories, namely the door opening fare, the fare per kilometer, and the waiting fare. The waiting fare could be charged if the passenger was stuck in a traffic jam or while waiting for the passenger to get into the taxi, so the taximeter continued to run even if the taxi was not moving (Siregar, 2011).

Online taxi fare was further regulated in the Regulation of the Transportation Ministry Number 108 of 2017 which was regulated in the following article.

Article 28 paragraph (1)

"The establishment of the special rental fare is carried out based on an agreement between the service user and the transportation service provider through the information and technology application which guided by the upper limit and lower limit fare".

Article 28 paragraph (5)

"The proposal of upper and lower limit fare for special rental transportation as referred to in paragraph (3) and paragraph (4), was discussed with all stakeholders, concerning the upper limit fare and lower limit fare which was used by special rental transportation, it was guided by the upper limit fare and lower limit fare which was regulated by the Director General".

The imposition of upper limit fare and lower limit fare was divided into two regions. Region I covering Sumatra, Java and Bali, then Region II covering Kalimantan, Sulawesi, Nusa Tenggara, Maluku and Papua.

Conventional taxi and online taxi had the same market share. This similarity could be seen from the operational vehicle requirements used. Based on the explanation above, online taxi was the substitutes of conventional taxi. The regulation regarding the fare establishment has been regulated by each regulation with the component that could be regulated by related company.

Indication of Unfair Business Competition related to Online Taxi Fare

The contrast price fixing between conventional taxi and online taxi was a problem point that could be related to the indication of unfair business competition between conventional taxi and online taxi. In the Law Number 5 of 1999 the price fixing was regulated in Articles 5, 6, 7, and 8, which in the Article 5 was regulated regarding the price fixing agreement, Article 6 regulated the price discrimination agreement, and Article 7 regulated the agreements of price fixing under the market prices or predatory pricing.

Furthermore, it was price fixing. This activity could indeed be a common partnership contract in economic activity (Leslie, 2017), but legally price fixing must be monitored as an effort to enforce justice. Price fixing agreement according to Article 5 paragraph (1) of Law Number 5 of 1999 stated that:

"Business actor is prohibited to make an agreement with business competitor to determine the price of goods and/ or services that must be paid by consumer or customer in the same relevant market".

From the Article 5 paragraph (1) above, it could be concluded that the price fixing agreement was the fixing of a certain price on goods and/ or services that must be paid by consumer in the same relevant market. If it was related to the case between conventional taxi and online taxi, there was not any agreement between the two parties to fix prices that could lead to the lack of competition and negate other options both offered by service provider and those that would be chosen by consumer according to their needs. There was not the indication of price fixing agreement among business actors. In this case, each business actor run the business by adjusting the service fare. There was not price fixing agreement among business actors that aimed to creating the barrier to entry which was quite large. It could prevent the new business actor to enter the relevant market.

Price discrimination agreement according to Article 6 of Law Number 5 of 1999 stated that:

"Business actor was prohibited to make an agreement that cause one buyer having to pay the different price from the price that must be paid by other buyers for the same goods and/ or services".

From the Article 6 above, it could be concluded that the price discrimination agreement was there a buyer who must pay the different price from the price that must be paid by other buyers for the same goods and/ or services. In the case of conventional taxi with online taxi, the price discrimination among business actors did not occur. In this case, each party sold the services only focused on the quality of service by adjusting their respective fare. Thus, both conventional taxi and online taxi did not depend on and influence each other.

Furthermore, the price fixing agreement under the market price or predatory pricing according to the Article 7 of Law Number 5 of 1999 stated that:

"Business actor is prohibited to make an agreement with business competitor to fix the prices under the market prices, which can cause an unfair business competition".

From the Article 7 above, it could be concluded that the agreement of price fixing under the market prices or predatory pricing was price fixing under the market prices. It was seen that online taxi indeed had very low fare and in a short time could take over the conventional taxi market. When it viewed from the Predatory Pricing formula, online taxi fare was much cheaper compared to conventional taxi fare. It was not to raise the price in the future, but because the price of services traded by online taxi could be reduced because the process of managing an online taxi business was not as much as conventional taxi management which must use yellow template. Due to this matter, online taxi was able to offer the cheaper fare. It made the entry of online taxi in a short time could penetrate the conventional taxi market, so in this case the indication of Predatory Pricing did not occur.

In the Regulation of Transportation Ministry Number 108 of 2017, the upper and lower limit fare was regulated in the regulation regarding the determination of transportation fare by using taxi and online taxi which was categorized in special rental transportation. The implementation of the upper limit fare by the government was in line with the principle of fair business competition. The policy could prevent the consumer from exploitation that may be carried out by producer who had a dominant position in the form of price that was too high. If the implementation of the upper limit fare by the government was tolerated by the principle of business competition, however, the implementation of the lower limit fare was not, because the implementation of the lower limit fare would protect inefficient operator to remain within the industry. The implementation of the lower limit fare could also be detrimental to consumer because consumer was forced to pay the minimum price of the lower limit fare, even when using transportation services the price was less than the lower limit tariff (Komisi Pengawas Persaingan Usaha, 2017). Furthermore, if the lower limit fare was regulated, it would reduce the level of competition among business actors and business actor did not carry out innovation towards the services they provide (interview with the Head of KPD KPPU Surabaya 2017). This caused business actor who could operate efficiently by providing fare that was under the lower limit fare would be hampered to implement these competitive advantages, and the people would also lose the cheap fare option, in the long-term this would lead to the huge inefficiency (Komisi Pengawas Persaingan Usaha, 2017).

CONCLUSION

The concept of fair business competition was to protect new business actor of the same type or those that related to other types of business that was their competitor, thus the new business actor could still compete, and the old business actor could not carry out the action which intended to deter or stem the new

business actor to enter a certain market. There was no evidence of anti-competitive behavior in the taxi transportation market which conducted by online taxi business actor with conventional taxi business actor. Each party sold the services focusing on the quality of service by adjusting their respective fare, so that both conventional and online taxi did not depend on and influence each other. However, if the latest ministerial transportation regulation was considered to be in conflict with the higher regulation, then the legal remedy that could be carried out was judicial review.

Ethical clearance

This research does not involve any participants, rather it is descriptive study. This research was carried out in accordance with the research principles. This study implemented the basic principle ethics of respect, beneficence, nonmaleficence, and justice.

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