

Disruptive Innovation on Competition Law: Regulation Issues of Online Transportation in Indonesia

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Abstract

Disruptive innovation such as online transportation business is a leap of innovations of in services that triggered chaos in field of competition law. The emergence of new cumbent with its disruptive innovation has disturbed the market that dominated by the incumbent. This chaos cannot be overcome by the same legal approach because it has a different business model, in fact, it also happened in Indonesia. This study aims to: (a) reviewing whether disruptive innovation infringes the principles and provisions of competition law and; (b) identifying and evaluating various regulations regarding online transportation in Indonesia. The method of this research is normative legal research, which examines various legal principles, legal theories, and legislation. Findings of this study are; First, disruptive innovation is not an unlawful act because it does not infringe any provisions in the competition law. And also, this innovation is not contravene with the public order; its using new business platforms that are different from old business models. Second, Indonesian government has regulated this disruptive innovation by issuing regulation which has been sued for judicial review and amendment. Finally, Indonesian government has formulated an accommodative regulation format, i.e., online transportation is equalized to the specialized rental transportation.

Keyword: disruptive innovation, competition law, online transportation, regulation

Introduction

Technology has changed people's ways of life. It forced industries to constantly innovate, economic development through technology sharing has "forced" the emergence of dynamics in the business world (Geradin: 2015, p. 2). The growth of the sharing economy has attracted increased attention as the disruption of longstanding. The sharing economy represents a profound change in the way goods and services are exchanged. New technological platforms help connect consumers with goods and services providers and promote better utilization of assets and fuller realization of economic rights over resources (Kaplinsky: 2018).

As the sharing economy continues to grow, and they are not without their negative impacts, however, leading to controversy and calls for regulation. Those regulation include the fundamental question of how best to characterize sharing economy businesses and newly crafted regulations, specifically targeting services.

This change affects free competition. There are many cases where large industrial business group are shifted because they were slow in innovating. For example, Nokia and Blackberry were hit by Apple and Samsung products, Yahoo, which lost to Google and Facebook, and the growth of online transportation modes in various countries.

Various innovations brought by newcumbent caused disputes between the new cumbent and the incumbent. This dispute arises because the consumers move to new cumbent and considered as a "disruptive innovation". In Europe and Asia, the issues of unfair competition led to massive demonstrations by taxi drivers and court judgments against Uber services. In 2016, France and Germany went against Uber due to unlicensed drivers, which is a violation of the local transport laws. Uber shut down its operation in Denmark following the introduction of new tax laws. In Korea and India, Uber failed to meet

safety standards. Thailand’s transport authorities have begun a crackdown on drivers for the ride-hailing services Uber and Grab due to registration and payment systems that did not meet regulations. On another case, Uber was registered as a software company in Taiwan not a transportation services provider. Meanwhile, Uber was also facing tougher competition in Japan if it fails to partner with Sony, which partners with six local companies to build a new taxi-hailing system that was more sophisticated than that of Uber (Mutiarin: 2019, p. 1).

In the other hand, the growth of Uber and Airbnb impact on changing of regulation, most regulation occurs at the municipal level, and their popularity and significant revenues made these two companies have been the prime targets of regulation (Brescia: 2016, p. 87).

As well as in Indonesia, the emergence of Go Jek online transportation has disrupted the conventional transportation business. Graph 1 below shows that there has been a drastic decline in conventional transportation industry.

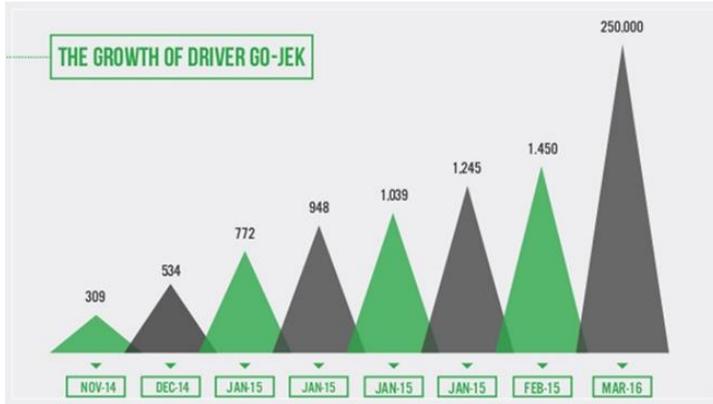
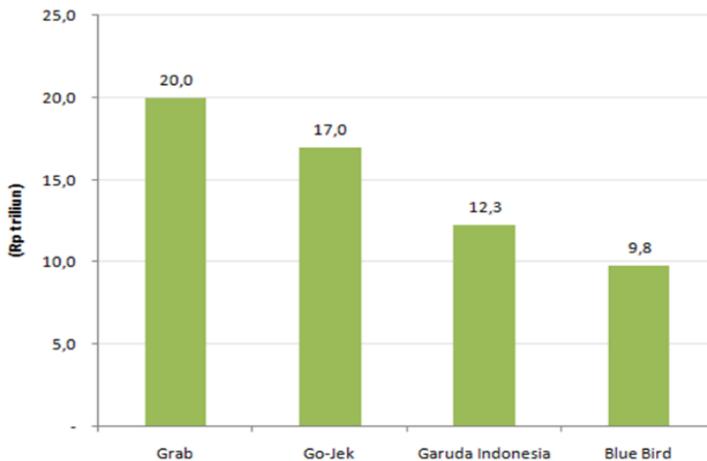


Figure 1. Data of an increase in Go-Jek drivers



Source: TechCrunch, Wall Street Journal, Bareksa

Figure 2. The Graph on the Comparison of Valuation between Online & Conventional Transportation Companies

The two graphs above show the number of GoJek partners increases year by year significantly, and asset valuation of GoJek exceeded and larger than conventional transportation companies. In March 2016, the losses of Express taxis reached 9.8 billion rupiah or dropped 148 percent compared to the same quarter in 2015, amounting to 20.3 billion rupiah.

In 2015, the Express taxi profit fell 72.7 percent compared to the previous year. Meanwhile, Blue Bird 2016 earnings also fell 61 percent.

Based on Law No 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Competition (Antitrust Law), there is no prohibition for businesses communities to develop product innovations. In fact, in free-market theory, Adam Smith said that "economic practice must have an element of business freedom, and the market has the role in regulating and creating its mechanisms, not the government policies" (Mulia: 2012, p. 5).

This study aims to: First, identify the legal position of disruptive innovation on competition law perspective. Second, Evaluate and identify government's policies for the online transportation industry in Indonesia.

The method of this research is normative legal research, which examines various legal principles, legal theories, legislation and using secondary data in the form of legal documents obtained from the library research and primary data obtained from field research through interviews and observations. The data obtained will be analyzed in a prescriptive and descriptive method with a qualitative approach.

Discussion

The legal position of disruptive innovation on competition law perspective

The main focus of innovation is the creation of new ideas that will be implemented into new products and new processes. The main purpose of the innovation process is to provide and bring better customer value (Hartini:2012, p. 83). Lukas & Farel (2000) distinguish product innovation from three basic categories, namely "product line extensions", "me to products" and "new to the world product". Product line extensions are products that are relatively new to the market but not for the company. "Me too product" is a product that is relatively new to the company but is relatively well known in the market. "New to the world product" is a new product for both the company and the market. Many dominant companies have been replaced by new cumbent in both slow-moving and fast-moving industries. Disruption is the cause of that phenomenon, which an economist Joseph Schumpeter called "creative destruction" (Hartini:2012, p. 83).

The concept of disruptive innovation explains the reason for the leading companies often fail to stay on top of the industry when technology or markets change (Christensen: 1995). Identifying the effects of disruptive innovation on the market is relatively easy, but constructing the definition is quite difficult. One definition of disruptive innovation focuses on the quality of the functions and costs of innovation. This definition describes disruptive innovation as a "good enough" and "low-cost innovation" (Nagy: 2016, p.120).

Bower and Christensen make a difference between two types of innovation technology, namely Sustaining Innovation, i.e., an innovation that presents an increase in existing products but does not affect the market. Meanwhile, disruptive innovation has features that are completely new and different from the previous product. Glen M. Schmidt and Cheryl T. Druehl also classifying innovations into two; the differences are provided in the following table (Schmidt: 2008):

Type of innovation	Type of target / target	Description
Sustaining Innovation	high-end market	The product first targeted the high-end market and then spread to the low-end market
Disruptive Innovation	low-end market	The product first targeted the low-end market and then spread to the high-end market

Table 1. Differences between Disruptive Innovation and Sustaining Innovation

Sustaining Innovation, usually carried out by large companies, while Disruptive Innovation is usually carried out by a start-up company. Start-up company is a company that is looking for a new business model that is measurable, repeatable and profitable (Morris).

Start-up companies are companies that have newly operated. Usually, it is in the form of a Limited Liability Company which has the legality of a trading license and tax ID number (Wijayanto: 2018, p. 73-157). This company is established and in the phase of development and research to find the right market (Wikipedia). The term "startup" became popular internationally when many dot-com companies were founded. This startup business is more synonymous with businesses that have elements of technology, web, internet, etc. From this understanding, it can be seen that business competition is not always competition between large companies and small companies. In fact, it is the competition between incumbents who use Sustaining Innovation with new incumbent that use disruption innovation.

Disruptive innovation takes place outside the value network of the established firms and introduces a different package of attributes from the one mainstream customers historically value (De Steel: 2015). This innovation radically changes the existing business model, competing with incumbent competitors in the same market (Fang Wei: 2015). Disruptive Innovation: "a new competitor creates radical change in an existing industry, launching a new product or service, often with some distinctly novel features or an entirely different business model" (Li Toh: 2016). Disruptive Innovation is like an invisible enemy for incumbent competitors. It came not through formal competition, like advertising on the billboard, or sales that sell goods from door to door. This new competitor suddenly enters directly into consumer rooms through the help of Information Technology (IT), offering the same product in different ways (Kasali: 2017). The consumers are served by inimitable business diversification. Rhenald Kasali calls a business model that changes with the term Great Shifting (Kasali: 2018). Disruptive Innovation has a disruptive effect not only on the products or services they contribute to the market but also challenges for the law enforcer in responding to this new scenario globally (Fang Wei: 2015).

To review disruptive innovation violates competition law or not, it can be seen from the following things:

First: if its seen from the side of morality as the basis for norms to measure legal standards then, morality can be classified into two groups, namely: (1) Objective morality is a norm relating to all actions that are good or evil, right or wrong, which are put in the effort to defend life (the right to live is a human right). (2) Subjective morality is a morality which sees actions influenced by the knowledge and the background of the perpetrators that are related to good or bad intentions. From this explanation, disruptive innovation cannot necessarily be classified as a violation of moral values because, in fact, it gives a lot of benefits to the community as consumers by providing more varied choices for consumers and convenience for businesses to enter the market (no entry barrier principle) (Claassen: 2016). Therefore, philosophically, disruptive innovation does not violate the Competition Law. Second, juridically normative, it has been regulated in the standard legislation, in Indonesia, Law number 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Competition.

A product innovation both goods and services become wrong, if it infringes provisions regarding: (1) prohibited activities; (2) agreements that are not permitted; and, (3) abuse of dominant position. For example, predatory pricing, operation area, conspiring with other business actors to intentionally set up the prices of goods and services (Law No 5 of 1999).

In addition to these three things, the business competition must not violate the principles of fair business competition, which can be categorized into 2 (two), namely:

Unfair competition: this term is usually used to indicate intentional errors to confuse consumers about the source of the product (also known as misleading business practices).

Unfair trade practices: unfair trade practices and all other forms of unfair competition.

In Indonesia, the principles of unfair competition are: (a) competition must not be carried out dishonestly, i.e., by misleading or giving false information; (b) or unlawful acts, namely an illegal act which damage another party which is in accordance with article 1365 of the Indonesian Civil Code; and (c) inhibiting business competition in an effort to prevent entry of competitors into the market (Nurhayati: 2011). Business communities and the government make agreements or regulations that obstruct the entry of competitors. As like as the case of Aqua Vs Le Minerale, through the Decision No 22/KPPU-I/2016, KPPU decides Tirta Investama/TIV and Balina Agung Perkasa/BAP) are guilty.

The tentative conclusion from the above norm analysis is if there are innovations that produce a new product and service, there is no indication of those three prohibited things and do not violate the principle of unfair competition; then those innovations do not infringe competition law. Competition is a relatively simple concept. In a perfectly competitive market, there are a large number of buyers and sellers with comprehensive information, producing homogenous goods and services, and with no barriers to entry or exit to or from the market (Whish: 2012, p. 4). The market under ideal competition provides optimum allocative and productive efficiency. Unfortunately, perfect competition and the resultant perfect market are, for the most part, illusions, never to occur in the real world (Whish: 2012, p. 4).

Therefore, when the innovation presents a leap or chaos, the social disorder will occur. Norms are rules, provisions, order, or rules that are used as guidelines, controlling behavior (government and society): According to Kelsen, legal norms will determine which are legal and illegal (Kelsen: 2006, p. 4). Norms are realized to create justice, certainty and expediency (Ali: 2002, p. 82-84). All of this is manifested in the form of public order (Mertokusumo: 2004, p. 11). It means a phenomenon is considered guilty by law when it results in social disorder. Thus, it is necessary to study further disruptive innovation, whether this innovation disrupts social order through the following discussion.

First, by answering the question of whether Disruptive Innovation is a legal event or legal action? This is to determine whether it should be measured by norms and legal conditions or not. "Legal fact" is an event in a society that moves a specific legal regulation, so that the provisions contained will be realized (Rahardjo: 2000, p. 35). Meanwhile, "legal acts" are any human actions that give rise to rights and obligations (Soeroso: 2011, p. 292). Therefore, an innovation that is applied in society is a legal act in a legal fact, because it provides various rights, obligations and responsibilities which are from the application of a legal provision.

The definition of public order in various regulations is an organized life as the reflection of no violations committed in public places against applicable regulations. Similar to the definition mentioned before, Iredell Jenkins said that: order refers to regular and determinate sequences that exhibited in the behavior of distinct entities that are so related among themselves as to constitute organized (Jenkins: 1980, p. 20). The vision of how society establishes and maintains social order determines the way that one interprets the nature and role of law within that order. Sociologically, the Durkheimian state that law belongs to the normative system that facilitates co-operation and makes it possible for complex societies to exist in a state of solidarity (Kurkchayan: 2013). Otherwise, from the perspective of legal aspect, Benjamin Cordozo stated that: Law is the expression of a principle of order to which men must conform in their conduct and relation as member of society (Jenkins: 1980, p. 22). Based on various conceptions mentioned before, if the existence of disruptive innovation does not violate any law, it can be considered that disruptive innovation does not infringe social order.

Second, assigning disruptive innovation at the standard of the norm; what should happen, then innovation is something that should happen. Communities cannot live in a static state continuously. Naturally, human life in society must change and develop. Therefore, innovation is the right thing based on the standard of the norm. The issue of innovation is a sustaining change or has caused disruption to established business entities; it's just a matter of business competition, not a matter of norms. Kenneth Arrow even emphasized that competition is driving innovation (Fang Wei: 2016). Thus, innovation must be given space by the government through regulation rather than being restricted or prohibited (Messi: 2018). Nevertheless, Florian Baumann and Klaus Heine mentioned that if businesses entities introduce innovation too early, risks to consumers can occur at any time (Baumann: 2012). From this point, the emphasis on the need for innovation regulations is more on the consequences that might endanger consumers, not on competition among business entities.

Third, if disruptive innovation cannot be normatively accused, what about the consequences of its implementation against social order? Disruptive innovation, in its outward form, has created chaos in the market system. Thus, based on this conventional view, disruptive innovation can be justified as "unlawful acts" according to the law because it has "disrupted the order" of the market. There are many facts of social conflict arising from this new business model.

For example, is the Air BnB business. It is not a hospitality business; it's only a business which provide rooms for people who need it. Then, this business does not require legal provisions regarding hospitality. Also, it cannot be mistaken legally for people who provide a place to take a rest. Another example is the electronic mall business, such as Bukalapak, Lazada, Amazon etc. The same licensing for conventional malls cannot be applied to that business. Although, in fact, there is the competition that occurs in the same market (Regulation of Trade Minister No 70/M-DAG/PER/12/2013). This phenomenon shows that there are differences in the principles of how to do business. For this reason, the same law cannot be applied necessarily.

The analysis needs to be criticized and reconstructed because disruptive innovation is established from an idea that is different from the logic of sustaining innovation, although it cannot be said to be part of an opponent or contradiction. Conceptually, the idea is established by a completely different way of thinking, even if it is not contradictory. Thus, an innovative legal logic is needed in providing standardization of wrong or true of an innovation.

Disruptive innovation is a business phenomenon that "disrupts" competition between new cumbent and incumbent but does not infringe any principles of competition law. Still, the regulations on these issues are urgently needed. The impact of all these technologies is unknown, even to a certain extent, it cannot be known. Disruptive innovation triggers a controversial political response. Disruptive innovation affects established business models and settled social norms. The focus rises in

the community is the way to regulate innovation. In the context of that uncertainty, the role of law, legislators, courts and regulators is very important (Kolacz: 2019, p. 1-3). Alexandre de Stree and Pierre Larouche stated that enforcement of competition law must adjust the methods in dealing with and protecting the innovation process. The adjustments can be made in the existing laws. The regulation must adjust to the literature on innovation by directing a change from static efficiency and price evolution towards dynamic efficiency and innovation incentives. The regulation also directs a shift in emphasis from the market definition against market behavior and the theory of lawlessness (De Steel: 2015, p. 7).

These innovations lead to the need of the reassessment on the effectiveness of the existing legal framework, and if it is appropriate, the legal reforms will be held. Law has been defined by Fuller as 'the enterprise of subjecting human conduct to the governance of rules' (Fuller: 1969, p. 96), and taken further as 'the human attempt to establish social order as a way of regulating and managing human conflict' (Beyleveld: 1986, p. 2). The latter definition it is suggested is particularly apt for antitrust, particularly when it is pointed out that competition law is attempting to combat "two of the most innate proclivities in human nature (Steuer: 2012, p. 543).

Law tends to regulate competition in three ways. First, rules that authorize an independent national competition institution (competition authority) to regulate anti-competitive business activities. Second, law enforcement for legal subjects of business entities who are competing to obey the competition law. Third, the criminalization of certain anti-competitive activities carried out by legal subjects of business entities in unfair competition. The three processes seemed to harm free market. By creating a competition law and competition authority, it is expected that the market can be free from the control of certain parties and there is no unfair competition.

Identification and Evaluation of the Policies on Online Transportation Industry Management in Indonesia

Disruptive Innovation in Indonesia often appear even has entered into the free-market competition. However, in this sub-chapter, the focus of the discussion is on the government's efforts to regulate online transportation (Go Jek - Grab, and Uber), which has led to normative conflicts accompanied by riots between the incumbent and new cumbent. This phenomenon also happens in various other countries. On the other hand, legislators and regulators are also competing with time to ensure that the regulations can keep up this rapid market development. This makes the legislature and regulator get pressure from businessmen and consumers to regulate or even prohibit the implementation of Disruptive Innovation (Government Advocacy and Disruptive Innovations, Special Project Report International Competition Network Annual Conference, Singapore 2016).

Legislators deal with a difficult choice: let the judge decide according to current legislation, or issue new legislation. Even though both options are equally special, in fact, both options are overlapping. Therefore, the legislator let the judge impose a decision based on the existing legislation. After these new dynamic phenomenon can be understood comprehensively, a bill can be arranged, or the existing legislation can be amended.

European court of justice advocate general Maciej Szpunar ruled that uber may be innovative, but it falls within the field of transportation. If upheld, the ruling would mean that uber would fall under national regulations and would be required to obtain the necessary licences and authorizations. As the grown of uber, there are too many efforts to impose regulation the numerous jurisdiction employing a wide range of measures (Katz: 2015, p. 1067).

The next question that arises is "should Disruptive Innovation in the field of online transportation be specifically regulated?" There are two conflicting opinions on this question. Government Advocacy and Disruptive Innovations, Special Project Report International Competition Network Annual Conference summarizes the following reasons:

Disruptive Innovation needs to be regulated to address public problems. If traced back to the online transportation industry, there are non-compliance with existing laws and industry standards, insufficient insurance and workers compensation, lack of industrial relations arrangements and regulation of prices. For example, Uber has been accused by San Francisco and Los Angeles district lawyers for giving false guarantees to the public that the driver is safe. The accusation was revealed when the driver's background check system failed to screen out sex offenders, thieves, kidnappers and murder convicts in California.

Disruptive innovation needs to be specifically regulated for the sake of justice. Newcumbent companies compete the incumbents without obeying the same standards and rules, even without any rules. For example, is the incumbent taxi company in Singapore, which revealed that the new cumbent taxi booking application should also meet the service requirements as imposed on the incumbent taxi company.

New cumbent companies also require legal certainty. This fact is expected to be able to define and validate the existence of their identity that is definite, relevant and not burdensome. In Singapore, Uber and Grab supported the steps of the Singapore Land Transport Authority to issue a regulation for the ridesharing platform industry. New cumbents argue that clear regulations are critical to increase investor trust and avoid mismanagement of platforms that can threaten the company's reputation and credibility.

There is also an opinion about Disruptive Innovation in online transportation does not need to be specifically regulated. This opinion is based on the following reasons:

Regulations imposed by the government are too high-cost, slow and rigid. On the other hand, some people believe that the rapid growth of Disruptive Innovation reduces the need for many regulations. Also, disruptive innovation provides products and services that are better at serving consumer needs. Self-regulation is a user rating and online review on the quality of products/services that can be a more effective way to overcome the problems that arise in many digital platform-based innovations rather than issuing laws. This statement arises because this business relies heavily on user reviews, where negative reviews will dramatically affect its popularity. According to Elinor Ostrom, government intervention might hamper progress rather than protect the parties.

Regulations do not always act to maximize social welfare. Regulations can be vulnerable to be implemented because they further emphasize the interests of the government rather than the public interest. Incumbents often oppose new regulations that are high-cost because they provide barriers to the entry of new competitors and the development of new businesses.

The Philippines was the first country to regulate uber on a national basis; uber has urged other countries to use the Philippines legislation as a model to create similar nationwide legislation (Alba: 2015).

The Indonesian government has arranged online taxis by issuing the Minister for Transportation Regulation No 32 of 2016 (*Peraturan Menteri Perhubungan/PM*) on the organization of public motorized vehicles transportation outside the route which then revised and replaced by the Minister for Transportation Regulation No 26 of 2017 on the organization of public motorized vehicles transportation outside the route.

This Minister for Transportation Regulation was proposed for judicial review at the Supreme Court. The Supreme Court, through its Decree No 37 P/HUM/2017 decided to revoke 18 sections because these sections seem to inhibit the entry of new cumbent and violate the people right to get a jobs (Indonesian Supreme Court Verdict No 37 P/HUM/2017). This Minister for Transportation Regulation was then abolished and replaced by the PM No 108 of 2017 on the organization of public motorized vehicles transportation outside the route. This regulation is expected to be the legal protection for online taxis or special rental transportation. This regulation is also the revision of PM No 26 of 2017, which has received material testing from the Supreme Court.

The Ministry of Transportation has issued a new regulation that regulates special rental transportation or online taxis. The new regulations are contained in the Ministerial Regulation No 118 of 2018. This regulation revokes the rules on the obligation to install stickers on online taxi glass, the KEUR test obligation, the obligation to have a vehicle storage area and the rules regarding online taxi operators must have at least 5 vehicles, suspend distribution into several criteria, i.e., light, moderate, heavy and very heavy and the predetermined lower limit rates and upper limit rates.

For taxibike, the government has arranged the bill of special regulation through the Ministry of Transportation No 12 of 2019 on the Safety Protection for Motorcycle Users for the Public Interest. According to Djoko Setiowarno, this regulation is appropriate because online transportation is not included in public transportation. However, this regulation is discretionary because online transportation is not public transportation; then, the Ministry of Transportation has no authority to regulate it.

For online transportation, the government has regulated and divided the lower and upper limit rates into 3 (three) zones in the Ministry for Transportation Decree of the Republic of Indonesia (KP) No 348 of 2019 on Guidelines for Calculation of Motorbike Services by Application for the Interest of the Community. Thus, the online transportation industry in Indonesia is currently legal.

The legality of this online transportation is regulated by the issuance of PM No. 118 of 2018 on the implementation of special rental transportation for online taxis, and PM No. 12 of 2019 on the safety protection for motorcycle users in the interest of the community for online transportation.

Some Regulations of the Minister for Transportation Regulation that was once applied and amended can be seen from the following table:

Point	The Minister for Transportation Regulation PM No 32 of 2016 on the organization of public motorized vehicles transportation outside the route	The Minister for Transportation Regulation PM No 26 of 2017 on the organization of public motorized vehicles transportation outside the route	The Minister for Transportation Regulation PM No 108 of 2017 on the organization of public motorized vehicles transportation outside the route	The Minister for Transportation Regulation PM No 118 of 2018 on the organization of special rental transportation	The Minister for Transportation Regulation PM No 17 of 2019 on the organization of special rental transportation
Type of License	Decree of permit to carry out transportation; Statement of ability to fulfil the obligation to carry out the transportation in accordance with the license; and supervision card	same	same	The license consists of: Decree of a permit for the implementation of Rental Transportation; and Service Standard Electronic Card	
Licensors	Director-General of Land Transportation	Head of Jabodetabek Transportation Management Agency (<i>Badan Pengelola Transportasi Jabodetabek/BPTJ</i>) for the area of <i>Jabodetabek</i> Governor for the area outside of Jabodetabek (Jakarta-Bogor-Depok-Tangerang-Bekasi)	Director-General of Land Transportation for transport whose operations exceed provincial areas except for Jabodetabek/BPTJ untuk Jabodetabek Governor for transport whose operating area exceeds the district Regent for transportation operating in one district	The operating license for Special Rental Transportation is provided by: Minister, for Special Rental Transportation whose operational area exceeds 1 (one) provincial area and which exceeds more than 1 (one) provincial area in the Jakarta, Bogor, Depok, Tangerang, Bekasi area; and The Governor for Special Rental Transportation whose area of operation is in 1 (one) province as a deconcentration task.	License for Special Rental Transportation operation granted by the Minister is signed by: Director-General of Land Transportation on behalf of the Minister, for Special Rental Transportation whose operational area exceeds 1 (one) province, in addition to the Jakarta, Bogor, Depok, Tangerang and Bekasi regions; and Head of Transportation Management Agency Jakarta, Bogor, Depok, Tangerang, and Bekasi on behalf of the Minister, for Special Rental Transportation whose operational area exceeds more than 1 (one) province in the Jakarta, Bogor, Depok, Tangerang and Bekasi

regions.

Minimum Requirements	have at least 5 (five) vehicles with evidenced by Vehicle Registration Number (STNK) on behalf of the company and a letter of proof of passing the periodic test of motorized vehicle	have at least 5 (five) vehicles proven by STNK in the name of a legal entity and a letter of proof passing periodic testing of motorized vehicles	has at least 5 (five) vehicles proven by Book vehicle owners (BPKB) or STNK in the name of a legal entity or can be in the name of an individual for legal entities in the form of cooperatives	There are no special provisions
Driver License	employ drivers who have a driver's license (SIM) according to the vehicle class	Driving License (SIM) according to Vehicle class	Driving License (SIM) according to Vehicle class	Driving License (SIM) according to Vehicle class
Vehicle capacity	use public car vehicles minimum of 1300cc	Public Rental Transportation of at least 1,300 cc; Special Rental Transportation at least 1,000 cc	There are no provisions	There are no provisions
KEUR (KIR) Periodic test marks of the vehicle	Periodic test marks of the first motorized vehicle (KIR) are carried out using tapping	Periodic test marks for motorized vehicles (KIR) are carried out by embossing	Proved by showing the license	Replaced by periodic test marks for motorized vehicles in accordance with the standards of Brand Holder Agents (<i>Agen Pemegang Merek/ APM</i>)
Pool	permission to operate public transport must have a 'pool.'	have/master the storage area of the vehicle that can accommodate the number of vehicles owned.	Same	There are no provisions
Garage	provide vehicle maintenance facilities (workshop) proven by ownership documents or cooperation agreements with other parties	provide vehicle maintenance facilities (workshops) as evidenced by ownership documents or cooperation agreements with other parties	Same	There are no provisions

<p>TNKB/<i>Tanda Nomor Kendaraan</i> (Motor Vehicle Number)</p>	<p>equipped with a vehicle registration number with a color base of the black plate with white writing given special code for STNK provisions on behalf of the company</p>	<p>Public Motor Vehicles that have black Motorized Vehicle Number (TNKB) are only rental vehicles; Special rental transportation nomenclature to accommodate online taxi transportation services.</p>	<p>Same</p>	<p>There are no provisions</p>
<p>Supervision</p>	<p>Supervision is carried out at: a. tourist attraction; b. Roads; c. Place of departure or pool; and d. transportation stop Supervision of Vehicles Public Motorized Transport by Motor Vehicle supervisors using equipment manually and / or electronically The supervisors are Civil Servant Investigators in the field of traffic and road transport; and / or Indonesian National Police Officers.</p>	<p>Provisions for supervision are supplemented by the obligation to provide digital dashboard access to the Director-General of Hubdat and the granting of licenses to administer public transport</p>	<p>same</p>	<p>Supervision of Special Rental Services carried out by motor vehicle supervisors carried out using equipment manually and / or electronically in accordance with the provisions of the legislation. Supervision is carried out on the Urban Area road section, and transportation stops in accordance with the operating area. The motorized vehicle supervisor, as referred to in paragraph (1) includes: a. Civil Servant Investigation Officer in the field of traffic and road transportation; and/or b. Republic of Indonesia National Police Officer.</p>
<p>Vehicle Registration Number (STNK) Provisions</p>	<p>STNK provisions on behalf of the company</p>	<p>STNK provisions in the name of legal entities; STNK which is still on behalf of an individual remains valid until the expiration</p>	<p>STNK in the name of a legal entity or can be in the name of an individual for a legal entity in the form of a cooperative,</p>	<p>There are no provisions</p>

Sanctions	The licensor gives administrative sanctions Administrative sanctions in the form of: a. suspending transport vehicle surveillance cards motorized; and b. Revocation of vehicle surveillance cards motorized.	Director-General, Head of Agency, Governor, Regent, or the Mayor in accordance with his authority provides administrative sanctions in accordance with the same authority Administrative sanctions include: a. written warning; b. Administrative fines; c. Suspending motorized transport vehicle surveillance cards, and d. Revocation of vehicle surveillance cards motorized transportation.	Same Administrative sanctions include: a. written warning; b. Administrative fines; c. Suspending motorized transport vehicle surveillance cards, and d. Revocation of vehicle surveillance cards motorized transportation.	Same Type of sanction a. Written warning; b. Suspension of operating license; and c. Revocation of operating license.
Types of Violations	Administrative violations and restoration	Minor, moderate and severe violations	Minor, moderate and severe violations	same
Rates	payment of tariffs in accordance with the agreement between service users and transport companies	Transportation rates are listed on information technology-based applications	the amount of tariff stated in the information technology application with electronic documentary evidence	The amount of Special Rental Transportation rates is determined based on the calculation of direct costs and indirect costs and is listed in the application of information technology accompanied by electronic documentary evidence

Table 2: Development and Changes in the Regulation of Online Transportation in Indonesia

From the table, the following points can be analyzed:

First, online transportation regulations which are regulated through the Minister of Transportation Regulations (*Permenhub*) from No 32/2006 to No 17/2019 have experienced significant changes. In the initial regulation, online transportation was treated the same as conventional transportation in terms of permits, minimum requirements for vehicle capacity, KIR, pool, garage etc. This regulation indicates that the government does not understand yet the existence of a new business model with a ridesharing pattern. Thus, this regulation cannot be obeyed by online transportation businesses. This problem then led to several judicial reviews.

Second, the next regulations still indicate the same paradigm from the government in observing online transportation business as like as the other conventional transportation. This paradigm still exists even though the government has provided some easiness by eliminating the provision of KEUR, pool, workshop, TNKB, ownership of vehicle registration certificate. This regulation is different from the regulation made by the Philippine government. On 8 May 2015, Department of Transportation and Communication (DOTC) issued Department Order No. 2015-011, amending Department Order No. 97-1092 to promote mobility. Among the amendment is the provision of the Transportation Network Vehicle Service (TNVS), which refers to existing “ride-sharing” or “app-based ride-hailing” services like Uber and Grab. TNVS is private vehicles that can operate like PUV (general operators and are entitled to issue public vehicle license plates) and for liability purposes,

are likely to be treated as public transport. With the implementation of MC No 2018-016, the Philippines suffered a “supply crisis,” where the riding public agonized either a lack of or an insufficient supply of TNVS in the city due to regulatory restrictions. LTFRB announced on August 2018 that it would open 10,000 slots for new TNVS franchises to address the problems of slow bookings and higher fares, which TNCs have attributed to the lack of drivers (Mutiarin: 2019).

Third: the last regulation, i.e., PM No 118 of 2018 and revised by PM No 17 of 2019 on the organization of special rental transportation has implemented a more accommodating change against online transportation by revoking many provisions and requirements as in the previous regulation. The provisions such as the Minimum Requirements for Vehicle Capacity, KEUR (replaced by regular maintenance books as the guarantee for passenger safety), Pool, garage and others have been revoked.

Nevertheless, there are still some technical issues that could be obstacles, such as in Section 7 - 11 concerning the Establishment of Operational Areas and Public Motor Vehicle Needs Planning. This provision is contrary to Section 9 of Law Number 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Competition:

Business entities shall be prohibited from entering into agreements with their business competitors which have the purpose of dividing marketing territories or allocating the market for goods and services, which potentially causing monopolistic practices and or unfair business competition.

That policy is detrimental because it violates the right consumer to choose. However, in the context of PM No. 118 of 2018, the division of territory is regulated by the government based on Law No. 22 of 2009 on Road Traffic and Transportation. The technical problem is that what part is restricted? operational zone and routes of the platform? This issue needs to be studied and discussed more because the model of ride sharing based on online transportation is difficult to be subject by physical “restrictions.”

Furthermore, in Section 11 - 20 PM No 118 of 2018 concerning the Special Rental Services where the definition is explained in article 1: a legal entity or micro business that organizes Special Rental Services. In Section 11, subsection (1) Special Rental Companies are required to have a license to carry out the Special Rental Transportation and must be incorporated as (a). State-owned enterprises; (b). Regional owned enterprises; (c). Limited Liability Company; or (d). Cooperative. (Section 12 subsection (1) and (2)).

This norm becomes difficult to be applied by online transportation drivers who work personally. These drivers run a business by ride-sharing with other people on freelance based. The provisions for establishing a legal entity will be both normative and empirical problems. Therefore, this study recommends further research to formulate rules that are ideal for online transportation.

Conclusion

From the discussion above, the conclusion can be observed as follow:

From the perspective of competition law, disruptive innovation can be concluded not to infringe competition law because: First, the innovation does not act that are prohibited in competition law, namely (a) prohibited agreements; (b) prohibited activities, and; (c) misuse of dominant positions, which results in market control. Second, these innovations do not cause unfair competition, so there are no unlawful acts. Third, these innovations are not opposed to public order. In fact, disruptive innovation is a legal fact and legal action that uses a new platform that is different from conventional business models.

Online transportation is part of disruptive innovation, which became a problem in many countries in the world. The Indonesian government has tried to regulate disruptive innovation for several times by issuing the Minister of Transportation Regulation, which experienced claims of judicial review. It is because the Indonesian government still sees the online transportation business with a paradigm that is equated with the conventional transportation business. Nevertheless, in the end, an accommodative regulatory format has been formulated, where online transportation is referred to and equated with the term special rental transportation.

Recommendations

Disruptive innovation is an inevitability, it couldn't rejected or avoided. Government shall support any business innovation and ensure that these innovation are not infringe law. Indonesian regulation on online transportation claimed as the best regulation in South East Asia, though its still has weaknesses on provisions concerning areas and legal entity formed

business. These provision will restrict small and medium enterprise to enter this business and contradict with sharing economy concept.

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