

**THE VERDICT OF SUPREME COURT NO. 37 P/HUM/2017:
A STUDY OF UNFAIRNESS BUSINESS COMPETITION BETWEEN
CONVENTIONAL TAXI AND ONLINE TAXI SERVICE IN INDONESIA**

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ABSTRACT

After going through a long discussion, the Government finally enacts the Regulation of the Minister of Transportation (Permenhub) No. 26/2017 on the Implementation of the People Transportation by Public Transportation Which Not in Route. However, there are some articles in this regulation that are contrary with the higher legislation and do not have a legal binding power as stated in The Verdict of Supreme Court No. 37 P/HUM/2017. In addition, there is a possibility of indication of unfairness business competition found within the Regulation of Minister of Transportation No. 26/2017 which arises the problems between the conventional taxi and taxi online service provider. The research aims to answer how are the Regulation of Minister of Transportation No. 26/2017 formulation and The Verdict of Supreme Court No. 37 P/HUM/2017 cancellation argumentation also to answer how The Regulation of Minister of Transportation No. 26/2017 violates the business competition law. This is a normative legal research and used library study which uses statute analytical approach. The result of this research shows that the 18 articles of The Regulation of Minister of Transportation No. 26/2017 only discourage online taxi and not for conventional taxi. There are only several articles of The Regulation of Minister of Transportation No. 108/2017as revision that resolved that legal issues.

Keywords: conventional taxi, online taxi, business competition law

1. INTRODUCTION

At the beginning, the society uses the conventional way to use public transportation and currently they change their habits as there is switch to communications technology for ordering online public transportation. In the

transportation sector, the transport services transformation of conventional service into online service is part of the technology innovation. The competition in the business world is prevalent. However, the competition between conventional taxi and online taxi service appears to be an unbalanced competitive.

After a long discussion, finally, the Government through the Minister of Transportation specifies the Regulation of the Minister of Transportation (*Permenhub*) No. 26/2017 as a revision against Regulation of Minister of Transportation No. 32/2016 about the Implementation of the People Transportation by Public Transportation Which Not in Route. However, The Head of Communications and Public Information of the Minister of Transportation explained that in the Verdict of the Supreme Court, there are some articles from the result of trial which stated that The Regulation of Minister of Transportation No. 26/2017 is contrary with the higher legislation and does not have a legal binding power. There are about 14 points in the Regulation of Minister of Transportation No. 26/2017 which is considered contrary with the higher law such as Law No.20/2008 about Micro, Small, Medium Enterprises and Law No. 22/2009 about Traffic and Road Transportation.

Addressing this matter, the Minister of Transportation enacts The Regulation of Minister of Transportation No. 108/2017. However, it turns out

that these rules are re-applied. As a result, the Supreme Court removes these rules that complicate the online transportation. There are several articles which according to Supreme Court are repeated loading of norm material that has been canceled by The Verdict of Supreme Court No. 37 P/HUM/2017 on June 20, 2017. Thus, Supreme Court decided these articles were not valid and these articles did not apply to public. These articles also considered contrary with the higher legislation, such as Article 4 and Article 5 of Law No. 20/2008 about Micro, Small, and Medium Entrepreneurs.

Based on the explanations above, the researcher chooses the title of “The Verdict of Supreme Court No. 37/P/Hum/2017: A Study of Unfairness Business Competition between Conventional Taxi and Online Taxi Service in Indonesia” because there is a possibility of indication of unfairness business competition that has been found within the Regulation of Minister of Transportation No. 26/2017 which arises the problems between the conventional taxi service providers and online taxi service providers.

2. RESEARCH METHOD

2.1. Type of Research

As already stated by Soerjono Soekanto, normative legal research include research on the legal principles, research on legal systemic, research on legal synchronization, research on legal historical, and

research on legal comparison. Therefore, the researcher will analyze this research with use normative legal research relating to The Verdict of Supreme Court No. 37 P/HUM/2017 against The Regulation of Minister of Transportation No. 26/2017: A study of Unfairness Business Competition between Conventional Taxi and Online Taxi Service in Indonesia which is adjusted with the business competition principles in order to develop Indonesian welfare.

2.2. The Types of Data and Legal Materials

In this research, the researcher does a library study that examines legal materials. There are certain forms of data as legal material in this research, such as:

1. The Primary legal material is the legal material that has an authority. Primary legal materials consist of legislation, official records or transcripts in the making of legislation, and the judge decision. There are primary legal materials in this research consists of The Law No. 5/1999 about The Prohibition of Monopoly Practice and Unfairness Business Competition; Law No. 20/2008 about Micro, Small, Medium Entrepreneurs; Law No. 22/2009 about Traffic and Road Transportation; The Regulation of Minister of Transportation No. 26/2017 about the Implementation of the People Transportation by Public Transportation Which Not in Route; The Regulation of Minister of Transportation No. 108/2017 about the Implementation of

the People Transportation by Public Transportation Which Not in Route; and The Verdict of Supreme Court No. 37/P/HUM/2017.

2. Secondary legal materials can be in the form of all publications about the law that is not the official documents, such as the legal publication that includes text books, law dictionaries, legal journal, and the comments on the court decision. There are secondary legal materials in this research as follows, scientific books related to this research; other research results related to this research; the seminar papers related to this research; journals and literature related to this research; and the doctrines, opinions and the testimony of the legal experts either written or not written.
3. Tertiary legal materials can be a custom dictionary and encyclopedia.

2.3. The Techniques of Data or Legal Materials Collection

The technique of data collection in the normative legal research conducted with library study of legal materials, including primary legal materials, secondary legal materials, and tertiary legal materials. Relating to this searching of legal materials, it can be done by reading, seeing, hearing, or searching problems through internet. Legal materials consist of primary legal materials, secondary legal materials, and tertiary legal materials in this research will be obtained through various national and local libraries also printed mass media and internet media.

2.4. The Techniques of Data or Legal Materials Processing

In the normative legal research, material processing activities are done in order to make systematization against the written legal materials. In this matter, material processing done with perform a secondary legal materials selection and then do the classification based on legal materials and arrange the data research results systematically that is done logically.

2.5. Techniques of Data or Legal Materials Analysis

The legal materials obtained in this research will be evaluative analyzed by using statute analytical approach. It means the researcher needs to understand the hierarchy and principles within the legislation. Also the researcher looking for the meaning of the legal terms that can be found in legislation.

3. DISCUSSION

3.1. The Formulation of Regulation of Minister of Transportation No. 26/2017 and The Verdict of Supreme Court No. 37 P/HUM/2017 Cancellation Argumentation

The consideration of Minister of Transportation in the formulation of The Regulation of Minister of Transportation No. 26/2017 about the Implementation of the People Transportation by Public Transportation Which Not in Route is to provide legal certainty toward the aspects of

safety; security; convenience; equality; affordability; and regularity also accommodate the development of people needs in implementation of the people transportation by public transportation which not in route.. These 18 articles also contrary with The Regulation of Minister of Transportation formulation especially on legal certainty towards the aspect of equality; convenience; and affordability, such as the Article 5 paragraph (1) letter e; Article 19 paragraph (2) letter f; Article 19 paragraph (3) letter e; Article 20; Article 21; Article 27 letter a; Article 30 letter b; Article 35 paragraph (9) letter a number 2; Article 35 paragraph (10) letter a number 3; Article 36 paragraph (4) letter c; Article 37 paragraph (4) letter c; Article 38 paragraph (9) letter a number 2; Article 38 paragraph (10) letter a number 3; Article 43 paragraph (3) letter b number 1 sub-letter b; Article 44 paragraph (10) letter a number 2; Article 44 paragraph (11) letter a number 2; Article 51 paragraph (3); Article 66 paragraph (4).

Meanwhile, the Supreme Court revoked the application object namely 18 articles in The Regulation of Minister of Transportation No. 26/2017 because the application object is contrary with the higher legislation, such as Article 3, Article 4, Article 5, and Article 7 of Law No.20/2008 about Micro, Small, and Medium Entrepreneurs and Article 183 paragraph (2) of Law No. 22/2009 about Traffic and Road Transportation so these 18 articles do not have the legal binding power.

There are 18 articles in The Regulation of Minister of Transportation No. 26/2017 that were revoked by Supreme Court which have been grouped based on equation of content and meaning of these. They are as follow:

1. Article 5 paragraph (1) letter e

This article does not guarantee one of legal certainty against the aspects of equality in its implementation and the Supreme Court revoked this article because it is contrary with the higher legislations.

2. Article 19 paragraph (2) letter f

This article does not guarantee one of legal certainty against the aspects of equality in its implementation and the Supreme Court revoked this article because it is contrary with the higher legislations.

3. Article 19 paragraph (3) letter e

This article does not guarantee one of legal certainty against the aspects of equality in its implementation and the Supreme Court revoked this article because it is contrary with higher legislations.

4. Article 20

This article does not guarantee the legal certainty against the aspects of convenience and affordability in its implementation. Meanwhile, the Supreme Court revoked this article because it is contrary with higher legislations.

5. Article 21

This article does not guarantee one of legal certainty against the aspects of convenience in its implementation and the Supreme Court revoked this article because it is contrary with the higher legislation.

6. Article 27 letter a

This article does not guarantee the legal certainty against the aspects of convenience and equality in its implementation. Meanwhile, the Supreme Court revoked this article because it is contrary with the higher legislation.

7. Article 30 letter b

This article does not guarantee the legal certainty against the aspects of convenience and affordability in its implementation. Meanwhile, the Supreme Court revoked this article because it is contrary with the higher legislation.

8. Article 35 paragraph (9) letter a number 2; Article 35 paragraph (10) letter a number 3; Article 38 paragraph (9) letter a number 2; Article 38 paragraph (10) letter a number 3; Article 43 paragraph (3) letter b number 1 sub-letter b; Article 44 paragraph (10) letter a number 2; and Article 44 paragraph (11) letter a number 2.

This article does not guarantee the legal certainty against the aspects of convenience and equality in its implementation. Meanwhile, the Supreme Court revoked this article because it is contrary with the higher legislation.

9. Article 36 paragraph (4) letter c and Article 37 paragraph (4) letter c

This article does not guarantee one of legal certainty against the aspects of equality in its implementation and the Supreme Court revoked this article because it is contrary with the higher legislation.

10. Article 51 paragraph (3)

This article does not guarantee the legal certainty against the aspects of convenience, affordability, and equality in its implementation. Meanwhile, the Supreme Court revoked this article because it is contrary with the higher legislation.

11. Article 66 paragraph (4)

This article does not guarantee the legal certainty against the aspects of equality and comfort in its implementation. Meanwhile, the Supreme Court revoked this article because it is contrary with the higher legislation.

3.2. The Regulation Comparison Between Conventional Taxi and Online Taxi in The Regulation of Minister of Transportation No. 26/2017 and The Regulation of Minister of Transportation No. 108/2017 Based On The Unfairness Business Competition Law Perspective

The 18 articles of The Regulation of Minister of Transportation No. 26/2017 that has been revoked also violate the business competition law. Addressing this matter, then The Minister of Transportation revises The Regulation of Minister of Transportation No. 26/2017 becomes The Regulation of Minister of Transportation No. 108/2017. However, as a result, the Supreme Court also revoked several articles of its regulation that considered contrary with the higher legislation and these articles violate the business competition law.

These articles can be categorized into several forms of monopoly practice and unfairness business competition such as the prohibited agreement; the prohibited activity; and the prohibited dominant position

also several elements of unfairness business competition that the most fundamental as already stated in the Article 1 letter f of the Law No. 5/1999 on The Prohibition of Monopoly Practice and Unfairness Business Competition, such as it may not honest; it may unlawful action; it may discourages business competition.

There are several articles in The Regulation of Minister of Transportation No. 26/2017 that has been revoked by Supreme Court which is grouped based on equation of content and meaning in the articles along with the elements and forms of unfairness business competition law, as follows:

1. Article 5 paragraph (1) letter e

This article contains the elements of monopoly practice and unfairness business competition, namely the element of discourages business competition and the element of unlawful action. In addition, this article is also categorized as price discrimination.

2. Article 19 paragraph (2) letter f

This article contains the elements of monopoly practice and unfairness business competition, namely the element of discourages business competition and the element of unlawful action. In addition, this article is also categorized as price fixing agreement.

3. Article 19 paragraph (3) letter e

This article contains the elements of monopoly practice and unfairness business competition, namely the element of discourages business competition and the element of unlawful action. In addition, this article is also categorized as market control activity.

4. Article 20

This article contains the elements of monopoly practice and unfairness business competition, namely the element of discourages business competition and the element of unlawful action. In addition, this article is also categorized as market division/allocation agreement and market control activity.

5. Article 21

This article contains the elements of monopoly practice and unfairness business competition, namely the element of discourages business competition and the element of unlawful action. In addition, this article is also categorized as oligopsony.

6. Article 27 letter a

This article contains the elements of monopoly practice and unfairness business competition, namely the element of discourages

business competition and the element of unlawful action. In addition, this article is also as market control activity.

7. Article 30 letter b

This article contains the elements of monopoly practice and unfairness business competition, namely the element of discourages business competition and the element of unlawful action. In addition, this article is also categorized as market control activity.

8. Article 35 paragraph (9) letter a number 2; Article 35 paragraph (10) letter a number 3; Article 38 paragraph (9) letter a number 2; Article 38 paragraph (10) letter a number 3; Article 43 paragraph (3) letter b number 1 sub-letter b; Article 44 paragraph (10) letter a number 2; and Article 44 paragraph (11) letter a number 2

This article contains the elements of monopoly practice and unfairness business competition, namely the element of discourages business competition and the element of unlawful action. In addition, this article is also categorized as market control activity.

9. Article 36 paragraph (4) letter c and Article 37 paragraph (4) letter c

This article contains the elements of monopoly practice and unfairness business competition, namely the element of discourages

business competition and the element of unlawful action. In addition, this article is also as market control activity.

10. Article 51 paragraph (3)

This article contains the elements of monopoly practice and unfairness business competition, namely the element of discourages business competition and the element of unlawful action. In addition, this article is also categorized as market control activity.

11. Article 66 paragraph (4)

This article contains the elements of monopoly practice and unfairness business competition, namely the element of discourages business competition and the element of unlawful action. In addition, this article is also categorized as market control activity.

There are several articles in The Regulation of Minister of Transportation No. 108/2017 along with the elements and forms of unfairness business competition law, as follows:

1. Article 6 paragraph (1) letter e

This article contains repetition articles and categorized as unfairness business competition law because it contains the element of

discourage business competition and the element of unlawful action.
In addition, this article is also categorized as price discrimination.

2. Article 28 paragraph (1)

There is no repetition contains in this article. With this article, online taxi service providers and conventional taxi service providers have the equal competitiveness in growing and developing their business, so it produces a fairness business competition among service providers.

3. Article 27 paragraph (1) letter f

There is no repetition contains in this article. With this article, online taxi service providers and conventional taxi service providers have the equal competitiveness in growing and developing their business, so it produces a fairness business competition among service providers.

4. Article 26 paragraph (1)

There is no repetition contains in this article. With this article, online taxi service providers and conventional taxi service providers have the equal competitiveness in growing and developing their business, so it produces a fairness business competition among service providers.

5. Article 48 paragraph (1) and Article 57 paragraph (6)

There is no repetition contains in this article. With this article, online taxi service providers and conventional taxi service providers have the equal competitiveness in growing and developing their business, so it produces a fairness business competition among service providers.

6. Article 39 paragraph (1)

This article is a repetition of articles and categorized as unfairness business competition law because it contains the element of discourage business competition and the element of unlawful action. In addition, this article is also as market control activity.

7. Article 57 paragraph (6)

This article is a repetition of article and categorized as unfairness business competition law because it contains the element of discourage business competition and the element of unlawful action. In addition, this article is also as market control activity.

8. Article 48 paragraph (10) letter a number 2; Article 48 paragraph (11) letter a number 3; Article 51 paragraph (9) letter a number 2; Article 51 paragraph (10) letter a number 3; Article 56 paragraph (3) letter b

number 1 sub b; Article 57 paragraph (10) letter a number 2; and Article 57 paragraph (11) letter a number 2

This article is a repetition of articles and categorized as unfairness business competition law because it contains the element of discourage business competition and the element of unlawful action. In addition, this article is also as market control activity.

9. Article 48 paragraph (10) letter a number 1 and Article 48 paragraph (10) letter b number 1

There is no repetition contains in this article. With this article, online taxi service providers and conventional taxi service providers have the equal competitiveness in growing and developing their business, so it produces a fairness business competition among service providers.

10. Article 65

This is a repetition of articles that have been revoked by Supreme Court and categorized as unfairness business competition law because it contains the element of discourage business competition and the element of unlawful action. In addition, this article is also categorized as market control activity.

Responding to these crucial issues, The Business Competition Supervisory Commission (*KPPU*) gives special attention to help the Government in resolves the problem in the transportation services industry policy, as follows:

1. The Business Competition Supervisory Commission asked the Government to remove the determination of lower limit tariff policy that is enforced for conventional taxi.
2. The Business Competition Supervisory Commission suggested the Government to not set the quotas or the amount of vehicle for conventional taxi and online taxi which operating in the certain area.
3. The Business Competition Supervisory Commission suggested the Government to remove the Vehicle Registration Certificate (*STNK*) of online taxi that required on behalf of a legal entity.

When The Business Competition Supervisory Commission recommendations associated with the business competition elements and monopoly practice and unfairness business competition forms, then the three points contain the business competition elements, namely the service providers should be honest; they do not against the law; and they do not adverse other service providers.

As analysis above, there are several articles of The Regulation of Minister of Transportation No. 108/2017 that are considered to have

followed the recommendation of The Business Competition Supervisory Commission, such as the Article 28 paragraph (1) and Article 28 paragraph (2); Article 27 paragraph (1) letter f; Article 26 paragraph (1); Article 48 paragraph (1) letter h and Article 57 paragraph (2) letter h; Article 48 paragraph (10) letter a number 1 and Article 48 paragraph (10) letter b number 1.

Yet, unfortunately, several articles of The Regulation of Minister of Transportation No. 108/2017 also revoked by Supreme Court through The Verdict of Supreme Court No. 15 P/HUM/2018. This matter resulted that there has been no regulation yet as legal protection which equitable for online taxi in Indonesia.

4. CONCLUSION AND SUGESTION

4.1. Conclusions

Based on the analysis that has been explained in Chapter Four on this research, the conclusion can be generated as follow:

1. The Supreme Court revoked the application object namely 18 articles in The Regulation of Minister of Transportation No. 26/2017 because the application objects are contrary with the higher legislation and contrary with this regulation formulation which discourage online taxi service providers and it only beneficial for conventional taxi service providers.

2. These 18 articles of The Regulation of Minister of Transportation No. 26/2017 also violate the business competition law. Addressing this matter, then The Minister of Transportation revises this regulation becomes The Regulation of Minister of Transportation No. 108/2017. But, these articles also contain several repetition articles from previous regulation that do not resolved the legal issues between conventional taxi service provider and online taxi provider. This matter resulted that there has been no regulation yet as legal protection which equitable for online taxi in Indonesia.

4.2. Recommendations

Based on the conclusion that has been generated, the researcher recommends several suggestions as follows:

1. The Ministry of Transportation needs to revise the articles that are considered contrary with the higher legislation and it violates the business competition law.
2. The drafting of the regulation in the technology-based transportation sector should be enhanced based on the principle of deliberation that involves the entire stakeholder in transportation services sector.

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