

# The Political Law of Government in Responding to The Development of Online Transportation in Indonesia

Ashintas Sekar Bidari<sup>1\*</sup>

<sup>1</sup> Department of Civil Law at the Faculty of Law, University of Surakarta, Surakarta, Central Java, Indonesia

**Abstract.** Government legal policy related to online transportation arrangements must provide the greatest benefit for all actors of online transportation and pay attention to all the interests of both non-online operators. Problems related to online motorcycle taxi and conventional motorcycle taxi that must be resolved by the Government are to realize fair business competition between online transportation and conventional transportation in Indonesia. The presence of new players in the transportation business, in the midst of poor public transport problems, has triggered tensions and even led to violence. This online-based transportation business if its existence must be supported by good regulations in order to balance conventional pre-existing companies with online-based companies so that there is healthy competition.

## 1 Introduction and literature review

Interesting to study the presence of online transportation in the world of transportation business in the digital era. Today's society is shifting to business transactions in the modern era using internet media known as *Electronic Commerce (E-Commerce)*. The presence of online transportation has its own polemic impact, namely the occurrence of conflict with conventional transportation, especially the issue of legal issues that often arise about business competition. The solution to the polemic is very much determined by the Indonesian Government Law Politics that is responsive to the existing online transportation innovations. Based on that, the writer is interested in studying the legal politics of the government in response to the development of online transportation in Indonesia.

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\* Corresponding author : [ashintasb.lawfaculty@gmail.com](mailto:ashintasb.lawfaculty@gmail.com)

## 1.1 Legal Politics

Etymologically, legal politics is a translation of the Dutch language *rechtspolitiek*, namely *recht* and *politiek*. *Recht* law and meaning, a *political* which means the policy (*policy*). Briefly, legal politics has a policy meaning law[1]. Political Law comes from two words, namely: Politics which is a vocabulary that has various meanings which embody the meaning of a country's political system or that relates to the goals to be achieved in political life itself. Politics is identical with the steps taken by a country to make a form of wisdom[2].

Law and politics are talking about how the law works in a particular political situation. In this case what is meant is law as the embodiment of the values that are developing and the values in question are justice[3]. According to Bernard L. Tanya, the legal politics between realism lives with the demands of idealism. Legal politics must not be bound to *what is* but seek a way out of *what ought*. Legal politics is an aspiration / hope, there is a predetermined legal vision which then forms and contents of law is built to realize that vision[4].

National law politics can include the implementation of existing legal provisions consistently, legal development which in essence is a renewal of existing and presumed legal provisions and the creation of new legal provisions needed to meet the demands of developments that occur in society, affirmation of institutional functions law enforcers or implementers and fostering their members, increasing public awareness of the law by addressing the perception of elite policy makers[5].

At the political level, the aim of Indonesian legal politics is the establishment of a democratic rule of law. At the social and economic level, legal politics aims to realize social justice for all Indonesians, the general welfare and the greatest prosperity of the people. While at the normative level, national law politics aims at upholding justice and truth in every aspect of community life[6].

## 1.2 Online Transportation

Transportation is the activity of moving passengers and goods from one place to another. In transportation there is an element of movement, and physically there is a transfer of place of goods or passengers with or without transport to another place. The transportation system is a form of attachment and linkage between passengers, goods, infrastructure, and facilities that interact in the context of the movement of people or goods covered by an order, both naturally and artificially / engineered.

transportation is a very important area of activity in the lives of Indonesian people. Recognizing the importance of the role of transportation, traffic and road transportation must be arranged in a national transportation system in an integrated manner and able to realize the availability of transportation services that are in accordance with the traffic needs and transportation services that are orderly, comfortable, fast, smooth and low-cost[7].

The importance of transportation for Indonesian people is caused by several factors, among others, the geographical condition of Indonesia which consists of thousands of small and large islands, waters consisting of most of the seas, rivers and lakes that allow transportation to be carried out by land, water and air to reach the entire region Indonesia. Another thing that is also equally important for the needs of transportation equipment is the need for comfort, security, and smooth transportation that support the implementation of development in the form of dissemination of development needs, equitable development, and

distribution of development results in various sectors throughout the country, for example, industrial sector, trade, tourism and education.

The development of information technology has caused the world to be borderless and cause significant social changes that take place so quickly. Where information technology is now a double-edged sword, because in addition to contributing to improving human welfare, progress and civilization, it is also an effective means of unlawful acts. The use of technology has changed the market share of business people one of them in the transportation business, namely by electronic transactions. Electronic transactions according to Article 1 of Law Number 11 Year 2008 concerning Information and Electronic Transactions are legal actions carried out using computers, computer networks and or other electronic media.

Current technological developments also affect the development of transportation in Indonesia, namely the emergence of online transportation. Creative revolution in the field of transportation services originated from the increasingly sophisticated communication tools. In the past if we needed transportation services, such as taxis, we had to call first, and if we needed an ojek, we had to go to the motorcycle taxi station and then negotiate the price, then now just push the button on the smartphone screen, the motorcycle taxi drivers came to us and were ready to deliver something for the purpose and without the need to negotiate tariff issues. Online transportation service providers are Gojek, Uber and Grab in our country.

Gojek is a motorcycle taxi service provider that is integrated with our smartphone. We can call a motorcycle taxi with just the touch of a finger, can also make payments via the application, even Gojek can be used to send goods or food delivery. Gojek has colored transportation in various major cities in Indonesia. Competition between the two conventional transportation service providers (ojek pangkalan) and virtual (Ojek Online) has recently been widely reported in the mass media. The existence of Gojek services will bring new colors among various transportation services. But on the other hand, the existence of Gojek has made the motorcycle taxi base public space threatened, because Gojek is more organized and technology-based through smartphone management, so passengers without the need to negotiate tariffs and without meeting at an ojek base.

Uber is a four-wheeled passenger transportation service company using a mobile application Online Taxi application in order to make shuttle bookings for passengers from a user-defined place and delivered according to the destination of the mobile Online Taxi application. Uber Online Taxi Application in its use is controlled by GPS as a map tool or location map. The Uber company was founded by duet Travis Kalanick and Garrett Camp. Uber services were born in San Francisco in 2010. Uber currently operates in many countries, including Indonesia[8].

People of all ages, backgrounds and professions have the same perception of online transportation (GO-JEK). According to researchers, in the era of globalization and modern, if a company is not just a service, the entire company if it is not supported by sophisticated technology will be left behind and the business built will not advance. This is the case with online transportation that uses electronic media in every service. GO-JEK is able to read opportunities and follow the times. Given GO-JEK as an intermediary between consumers and drivers.[9]

## **2 Objective of the study**

This study examines the legal politics of the Indonesian government in response to the development of online transportation. Related to legal issues that arise that online

transportation causes competition between modes of transportation, especially conventional transportation to be unhealthy.

### 3 Methodology

Based on the title and issues raised in writing this article, this research is an empirical or *socio-legal research* and is qualitative descriptive. Data sources used are primary data sources and secondary data sources. Data collection methods used by the author of the interview method (*interview*), observation and literature study. Methods of interviews and observations were conducted at the Jakarta Business Competition Supervisory Commission.

### 4 Discussion

Conflict needs to be interpreted as a way or means to change society. Openness and seriousness in breaking down the root causes of conflict and good and open communication between interested parties is a way of handling conflicts that need to be put forward [10]. Changes in the social dynamics of the community related to the presence of online-based transportation are caused by technological factors. Literally the technology comes from the Greek language, which is *tecnologia* which means systematic discussion of all arts and crafts. The term has the root word "techne" in Ancient Greek meaning art (art) or craft (craft). From the literal meaning, technology in Ancient Greek can be defined as the art of producing the means of production and using them. The definition then developed into the use of science in accordance with human needs. Technology can also be interpreted as "knowledge about how to make things (know-how of making things) or how to do something (know-how of doing things) in the sense of the ability to do something with high value, both the value of benefits and the selling value [11]

The presence of online-based transportation by utilizing communication and information technology radically changes the business mechanism in products and services. The country of Indonesia is one of the countries where in less than 2 years online transportation has developed rapidly. The rapid development of transportation has brought its own polemic when dealing with conventional transportation that feels disadvantaged by online transportation. Some of the existing conventional transportation business actors include Gojek, Uber and Grab.

The position of KPPU in the constitution is a (*state of auxiliary organ state auxiliary organ*) being banned by the President. KPPU is not a judicial institution but KPPU has the authority to carry out quasi judicial covering the authority possessed by the judicial institution namely investigation, prosecution, examining, adjudicating until deciding business competition cases at the first level [12]. The Business Competition Supervisory Commission (KPPU) stated that it was very appreciative of the presence of online transportation. KPPU also emphasized that online transportation that runs cannot be said to cause unfair business competition when competing with conventional transportation. It is normal when the community shifts to online transportation with the facilities and services provided. Conventional transportation must be able to compete with the development of technology and society. Conventional transportation must be able to compete in terms of price and service so that conventional transportation is not eroded by the presence of online-based

transportation. Conventional transportation business actors must make changes in terms of their human resources and their equipment prepared for the digital era.

Regarding government policy in responding to the presence of online transportation there are several Minister of Transportation Regulations that have been issued, among others:

- a. Minister of Transportation Regulation No. 32 of 2016 concerning Managing Transportation of People with Public Motor Vehicles Not in Routes;
- b. Minister of Transportation Regulation Number 26 of 2017 concerning Managing Transportation of People with Public Motor Vehicles Not in Routes;
- c. Minister of Transportation Regulation Number 108 of 2017 concerning Managing Transportation of People with Public Motorized Vehicles Not in Routes;

The Indonesian government, especially the Ministry of Transportation, cannot be said to be responsive to the development of online transportation. This began when the Ministry of Transportation asked the Ministry of Communication and Information to close applications or block online transportation applications. Government policy should not hamper the development that occurs in society. The rules issued by the Ministry of Transportation include the Minister of Transportation Regulation Number 26 of 2017 which has been canceled by the Supreme Court because it is considered that several points contradict Law Number 22 of 2009 concerning Traffic and Transportation and Law Number 20 of 2008 concerning Micro, Small and Medium Enterprises, then issued again Minister of Transportation Regulation No. 108 of 2017 concerning the Implementation of Transportation of Persons with Public Vehicles Not in Routes which eventually returned to the Supreme Court again.

As for the consideration of the Supreme Court in the Supreme Court Decree Number 37P / HUM / 2017 revoked some of the Articles in the Minister of Transportation Regulation Number 26 of 2017, among others:

- a. Special leasing based on online applications is a logical consequence of the development of information technology in transportation modes that offer better service , guarantee of travel security with a relatively cheap and timely price;
- b. The fact shows the presence of special rental vehicles has succeeded in changing the form of the market from monopoly to competitive market competition, by utilizing excellence on the technology side to partner with micro and small entrepreneurs with the concept of sharing economy that is mutually beneficial by promoting the principle of family as in Article 33 paragraph ( 1) The 1945 Constitution.
- c. The preparation of regulations in the field of transportation based on technology and information should be based on the principle of consensus deliberation that involves all stakeholders in the field of transportation services so that jointly can develop micro, small and medium-sized businesses without leaving the principle of family;
- d. In the petition for objection to the material test rights, the Supreme Court considers that the object of application is contrary to the higher laws and regulations, which are contrary to Article 3, Article 4, Article 5 and Article 7 of Law Number 20 of 2008 concerning Micro, Small and Medium Enterprises . Because it does not grow and develop business in order to build a national economy based on equitable economic democracy and the principles of empowering micro, small and medium enterprises, it is contrary to Article 183 paragraph (2) of Law Number 22 of 2009 concerning Traffic and Highway, because the determination The tariff is based on the upper and lower limit rates, on the proposal of the Governor / Head of Agency determined by the Director General on behalf of the Minister and not based on an agreement between service users and special leasing companies.

According to Philippe Nonet and Philip Selznick, good law should provide something more than just legal procedures. The law must be competent and fair. The law must be able to recognize the wishes of the public and have a commitment to achieving substantive justice[13] Based on responsive legal theory which states that the law should be able to respond to changes in society and can accommodate what is in the public interest in a legal product, namely the Law.

The root of the progressive law in understanding the symptoms of online transportation arrangements is an orientation that is quite appropriate considering the existing regulations. Arrangements are no longer able to answer business trading in general, especially online business. Online business opens the possibility of every person or legal subject to participate in online transportation services without having to form a legal entity either PT, Foundation or cooperative to accommodate online businesses. Personally it is possible and sufficient to join an online application company that provides applications and brokers to consumers of online transportation services.

## 5 Conclusion

Legal politics The government has not been able to respond to the presence of online transportation. The government has not been able to realize clear legal rules for online transportation. The government must make strict regulations without hampering the development of online-based transportation. Therefore the Government must wisely realize regulations that are responsive to the development of online transportation alongside conventional transportation.

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