

# The Disruptive Innovation in Competition Law: Regulation Issues of on Line Transportation in Indonesia

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**Abstract:** *The rapid development of digital technology encourages businesses to innovate their products and services. But these business innovations often create an unexpected leap leading to disruptive innovation, for example, the growth of online transportation business. As a result, the existing regulation cannot reach this leap. This study aims to study: (1) the legal position of disruptive innovation in competition law; and (2) analyzing the status of application-based transportation in competition law. The method of this research is normative legal research, which examines various legal principles, legal theories, and legislation. Findings from this study are, first: disruptive innovation indeed creates chaos in business competition, but as long as it does not violate regulation about (1) activities that are prohibited; (2) agreements that are prohibited; and (3) abuse of dominant position and run fairly, obey the law and doesn't inhibit the entry of competitors, it does not violate the competition law. Second, application-based transportation business raises new problems concerning with the regulation that must be applied. Though the business platform is completely different from conventional transport companies, this new business platform does not violate business competition law.*

**Index Terms:** *Disruptive Innovation, Competition Law, Online transportation*

## 1. INTRODUCTION

Innovation is a must for business actors to maintain business sustainability. A business that does not innovate will be crushed by the competitors who constantly innovate. Digital technology assistance is very influential in the rapid development of these innovations, but business innovation with the help of technology often creates unexpected leap that is not covered by regulations on business competition which lead to disruption, for example in the business of online transportation. The issues of competition law that arises because of disruptive innovation are: First, the business system is totally changed, not only in the quality of products and services but also in principle it has changed the business model of public transport that was previously managed by a transport company into the business in ride sharing. Therefore, the transportation law experienced chaos in regulating it because the business platform of these two businesses was totally different. Currently, the one being heavily accused as a disruptive innovation in Indonesia is the birth of innovations in the transportation business, namely the Go Jek application.

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On the other hand, the presence of Go Jek is considered very helpful by the consumer and those who partner with Go Jek. Second, in terms of business competition, there is an imbalance in the position among business actors. Disruptive innovation is commonly used by newcumbent with different strategies from the incumbent. This strategy seeks to enter the market without dealing with the incumbent. In the case of online transportation, the companies of conventional transportation have capital in the form of large vehicles and drivers as workers. On the other hand, online transport businesses do not need capital, because vehicles are belonging to the partners who join and also work as the drivers. Inequality of efficiency of these two business models cannot necessarily be considered as a form of unfair business competition. It is because their business forms are principally very different. Conventional taxi is transported companies, while online transportation companies are application companies. The speed of technological progress has also created disruptive innovation in various types of business. For example is the giant manufacturer of Nokia mobile phone and Blackberry, which were hit by Apple and Samsung products, Yahoo lost to Google and Facebook, and the disappearance of Kodak due to the birth of digital photography. Disruptive innovation raises from the business strategy which using technology support and it is not intentionally used as the disruptive competition strategy. The unexpected leap in this business strategy creates chaos in the business competition. It is not because unfair deed, but such a new business model cannot be reached by the market logic.

In the law of business competition, it is not easy to regulate the raises of an unexpected leap in the business competition. The Law No 5 of 1999 concerning the Ban on Monopolistic Practices and Unfair Business Competition (the Antimonopoly Act 1999) does not mention the prohibition of innovative product development for business actors, even in the theory of free market, it was stated by Adam Smith that "the economic practice has to be seen as liberty of trying, and it's not the government policy but the market that will rule and create the mechanism". On the other words, every regulation come from the ruler will inhabit the economic activities, then it will always inhabit the growth of the market. Disruptive innovation has interferent the legal logic and business order. Therefore, the concept of disruptive innovation is interested

to be discussed further in order to decide its status based on the legal norms. Also, it needs to be reviewed the online transportation strategy model that is considered as a disruptive innovation in the competition law.

## II. RESEARCH PROBLEMS

From a variety of problems that have been described in the background above, the researchers propose some research problems as follow:

1. What is the legal position of disruptive innovation in competition law?
2. What is the legal status of application-based transportation in the competition law?

## III. RESEARCH METHOD

This research is normative research that studies the legal principles, rules, theories, and doctrine related to the disruptive innovation and the competition law on online transportation business. This research was conducted by using the conceptual approach, statute approach, and case approach. Legal materials used include primary legal materials such as laws and the other legal documents, the secondary legal material in the form of articles, books and research results and non-legal material in the form of infographic data, business information and the other related documents. The research results will be analyzed prescriptively, i.e., by providing legal justification for disruptive innovation and competition law related to online transportation business.

## IV. LITERATURE REVIEW

### A. Disruptive Innovation

Disruptive Innovation in Bahasa means innovation that disrupting and disturbing. The word “disruptive” cannot be defined easily. In line with the development of technology, the term of disruptive means the rise of new technology innovation that will disturb the existence of conventional technology. The term disruptive innovation was popularized by Clayton M. Christensen in 1997. The term disruptive innovation was firstly popularized with the term of disruptive technology. Christensen introduced the disruptive innovation as a form of interference by a newcomer. This theory explains that Disruptive Innovation is a process in which a company with the limited resource can break the power of an incumbent business (market ruler).

The incumbent usually focuses on the enhancement of product and service quality while the newcumbent enter the market – which is ruled by the incumbent, by providing the quality that fulfills the demand of consumer in lower price. When the majority of consumer move from the incumbent to the newcumbent, then the disruption occurs.

### B. The Online Transportation

The renewal activities (innovation) which are conducted by the entrepreneur will create an efficiency. The efficiency will cause the decrease of the product’s price periodically.

An innovation in the transportation industry was marked by the emergence of the online transportation business. The online transportation is the Internet-based transportation services in every transaction activity, starting from ordering, lane monitoring, payment and assessment on the services. Uber is the businessmen which mark the revolution of transportation in 2014; Uber was “taking over” the customer of Medallion taxi (private license taxi) by decreasing the price and increasing the number of vehicles. For the first time in decades, the Medallion taxi faced tight competition from a newcomer which operating in different and flexible regulatory framework. The innovation of Uber was then followed by businessmen in various Countries including Indonesia which is reflected in the form of the online transportation business. The online taxi innovation was developed rapidly and causes chaos in a conventional taxi. Moreover, the market share of the conventional taxi was decreasing average of 7.5% every year. Early, the government of Indonesia has regulated the issue of an online taxi by issuing the Minister for Transportation Regulation No 26 of 2017 on Online Transportation, this regulation was then submitted to Judicial Review to the Supreme Court. Furthermore, this regulation was then changed by the Minister for Transportation Regulation No 108 of 2017 on the Transportation Procurement of Public Vehicle without Route (Permen 108). This regulation already cancelled by the Supreme Court in September 2018. In Indonesia, the online-application-based transportation is one of disruptive innovation. The existence of conventional transportation seems to be defeated by the existence of online transportation. This thing is caused by many easiness and cheaper rates provided by online transportation, as a consequence, a lot of consumer of conventional transportation move to online transportation.

### C. Unfair Business Competition

The term competition in English was defined by Webster as “... a struggle or contest between two or more persons for some objects”. One form of competition in the economic field is business competition, which can be simply defined as competition among sellers in “seizing” the buyers and market share. Ningrum Natasya Sirait defined competition is an action of individualistic and only oriented in unilateral interest by way of making every possible effort to achieve maximum profit. There are two types of competition, i.e., fair competition and unfair competition. Antimonopoly act didnt explained explicitly about the definition of business competition. However, it can be drawing the definition of business competition from the definition of unfair competition which stated in section 1 subsection 6, i.e., the unfair business competition is the competition among business actors in carrying out activities of production and or marketing of goods and or services carried out in an unfair or unlawful act or hamper business competition. Therefore, the definition of business competition is the same as the definition of unfair business

competition mentioned above without using the terms of the unfair or unlawful act or hamper business competition.

The forms of unfair business competition according to the Antimonopoly Act 1999, among others are:

1. The prohibited agreement, regulated in the Antimonopoly Act 1999 section 4 – 16, i.e. (a) Oligopoly; (b) Pricing; (c) Area distribution; (d) Boycott; (e) Cartel; (f) Trust; (g) Oligopsony; (h) Vertical Integration; (i) Closed Contract; and (j) Contract with Foreigner Party.

2. The prohibited action, regulated in the Antimonopoly Act 1999 section 17 to 24, i.e. (a) Monopoly; (b) Monopsony; (c) Market Control; and (d) Conspiracy.

3. The abuse of dominant position is regulated in the Antimonopoly Act 1999 section 25 to 29.

## V. DISCUSSION

### 1. Disruptive innovation in the business competition law

If a business remains to exist, then innovation of product development is needed in the process of competition, for examples are the distribution, marketing, and pricing. The product innovation is defined as a new product or service which introduced in the market for the need of the market.

Making innovation is part of the effort in maintaining the sustainability of business because the consumer requires the innovation in order to have various choices of goods and services. From the explanation mentioned before, it can be seen that innovation in business is a good thing for both business actors and consumer. This process is often called as sustainable development. Sustaining innovation: takes place within the value network of the established firms and gives customers something more or better in the attributes they already value.

Some examples of sustaining innovation are:

a. The development of communication technology; from wearing wired phone to wireless phone or commonly known as a mobile phone. There are no significant changes. This sustaining innovation only creates a wireless telephone system.

b. Retail or store trading services; From the model of business, there is no significant changes, i.e., the way of selling goods in the store. However, the service model is changing from traditional becomes self-services which giving comfort to the consumer to choose the products.

Nevertheless, the pattern of development which different to sustaining innovation is called as disruptive innovation. Bower and Christensen (1995) explained: Disruptive innovation; takes place outside the value network of the established firms and introduces a different package of attributes from the one mainstream customer historically value. This innovation changes radically the existing business model. Competing with the incumbent in the same market. 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.”

Disruptive innovation seems like the unseen enemy for the incumbent. It comes without using formal competition, this

new competitor slowly and suddenly enters the field of the consumer through the help of Information Technology (IT), offering the same product at the different price. The consumers are served with unparalleled business diversification.

The company which using disruptive innovation is not a company with huge capital. Also, it is not a conventional SMEs company. Disruptive innovation is often committed by Startup company. The Startup companies are companies that have not been operating for a long time. Usually in the form of a Limited Liability Company with the legality of a business license and a taxpayer number. The company was founded and is in the development and research phase to find the right market. The term “startup” became popular internationally in the period of many dot-com companies were founded. This startup business is more synonymous with technology, web, internet and related to that realm. From this definition, it can be concluded that business competition in this millennial era is not always a competition between large companies and small companies. It is the competition between incumbents who use sustaining innovation with newcumbent uses disruptive innovation.

Some examples of business models with disruptive innovation are:

a. From telephone technology to information technology; The finding of the smartphone is disruptive innovation because it changes the function of the phone into various information transaction tools with increasingly diverse service features.

b. The Business of Modern Shopping (Mall) becomes an Electronic Mall; In term of the transaction, it is the same business model, but e-mall has changed the way people set up shop business and the way people shop becomes very practical and efficient. The consumers can shop, transact and pay online from the gadgets they have, and the goods are delivered to the customer’s door.

Regarding business competition law, a product innovation, both goods, and services is categorized as forbidden if it causes monopoly and unfair business competition. The competition law prohibits three things, namely (a) prohibited agreement; (b) unlawful act; and (c) the abuse of dominant position.

Also, business competition must not violate the principles of fair business competition. The law of unfair business competition consists of error that causes disruption/damage to

business activities through an unfair and illegal business practice.

In the Antimonopoly Act 1999 in Indonesia, the principles of unfair competition are: (a) competition must not be done dishonestly by deceiving or giving wrong information; (b) or against the law, i.e., an act that causes a loss as mentioned in section 1365 Civil Code ; or (c) hampering the business competition as an effort to block the entry of competitors into the market.





Furthermore, an unlawful act is an act that is contrary to the law that meets the requirements of four (4) elements, namely: (1) There is lawlessness;

(2) There are errors; (3) There is a loss; (4) There is causality. In the context of business competition law, it is said an unlawful act if: (1) Committing an act that violates the Antimonopoly Act 1999; (2) the act creates monopoly and unfair business competition; (3) the act creates loss for the other business actors; (4) the act is harming the other parties and can be proved directly.

However, if it is associated with a new product and service which entering the market and does not implement these three prohibited things mentioned before and violate the principle of unfair business competition, then disruptive innovation does not violate the competition law.

Moreover, if it is reviewed widely when the innovation creates a leap or chaos, then there will be a social disorder. Therefore, it is needed a justification for whether it is right or wrong, or it should be based on the legal rules. The legal rules consist of normative fact (*das sollen*): whoever is considered as guilty must be punished.

Furthermore, to decide whether an act is categorized as “guilty” if it is violating the legal norm. The norm teaches “what should be done.” Norms are rules, provisions, order, or rules that are used as a guide, controlling behavior (government and society), or as a benchmark for assessing or comparing something. According to Kelsen, legal norms will determine what is legal and illegal.

Norms are realized in the form of various laws and regulations, agreements, or jurisprudence, with the intention of creating justice, certainty, and usefulness. This whole thing is manifested in the form of conditions of the public order. This means that an event is considered guilty by law when it creates social disorder.

To decide disruptive innovation in the perspective of law, it was conducted some steps of discussion as follow.

First, answering the question of whether disruptive innovation is a legal event or a legal act? This thing is conducted in order to decide whether it needs to be assessed by legal norms and rules or not.

According to Satjipto Rahardjo, a legal event is an event in the society that moves a particular legal regulation, so that the provisions contained in it can be realized. At the same time, legal actions are any human actions committed intentionally to give rise to rights and obligations.

Second, setting the disruptive innovation on the norm aspect, what should be done, then innovation is something that should happen. The community cannot live in a steady state continuously, naturally, it needs changes and develops. Therefore, innovation becomes something right from the norm aspect. The issue of innovation as a sustaining change or causing disruption to established business actors is only a matter of business competition, not a matter of norms. Even Kenneth Arrow claimed that the competition supports the occurrence of innovation. Therefore, the innovation must be given space by the government through regulation and not limited or prohibited. While Florian Baumann and Klaus Heine stated that the competition forces the business actors to

introduce the innovation earlier than the expectation, as a consequence, the risk to consumers is unavoidable.

Third, if disruptive innovation cannot be blamed normatively, then what about its effect on the social order? Disruptive innovation has created the chaos in the market system; then by this conventional point of view, it can be justified as “the wrong action” according to the law because it has “disturb the market order.”

The analysis above needs to be criticized and reconstructed because disruptive innovation occurs from the idea which different to the logic of sustaining innovation, even though it cannot be said to be partly an opponent or contradiction. Conceptually, the idea is born with a completely different way of thinking, even if it is not contradictory. Therefore, an innovative legal logic is also needed in providing the wrong standardization of an invention.

There are different principles of how to do business between conventional models and disruptive innovation models. Then, the same regulation cannot be applied to both models. It can be said that disruptive innovation is a product which then “disrupt” the competition between newcumbent and incumbent which also not violating the principles and the regulation of competition law.

### 2. The Online Transportation Business in the Competition Law

The online transportation is one of disruptive innovation. It is present using a new business platform model that is completely different from conventional transport business. It can be indicated from the using of the ordinary number plate without a taxi sign or telephone number, and the drivers are not wearing a company uniform. But these invisible opponents drastically reduce the number of conventional taxi consumers and make social turmoil demonstration of conventional taxi drivers in various countries. From the conventional transport business to ride sharing. The concept of ride sharing is the owner of vehicles establish a partnership with managers and use private vehicles to offer a ride with a certain fee. The managers do not need to invest in vehicles, operations, and permits. This business contrasts with the conventional modes of transportation where the companies must finance all operational costs, including expensive permits.

The concept of ride sharing is part of the sharing economy concept, which consists of sharing vehicles (for example, sharing bicycles), housing (e.g., AirBnB), real estate (e.g., workspace), and property (e.g., tool storage area). From the consumer side, the concept of ride sharing is very profitable; consumers get very low prices and a more definite route. The consumers only have enough to do transactions through smartphone applications, and online transportation modes will come, consumers are also given the means to express satisfaction and complaints via online. In term of security, the location of the mode of transportation is online and is very easy to track via GPS.

Nowadays, it can be seen that the rampant digital platform changes the business field and demands the government to regulate it. The existence of digital platform in online transportation modes rises two primary issues, i.e., first: the emergence of a lawsuit and often in the form of violent protests from drivers and managers of conventional taxis

because their markets are taken by online taxi. Second: the governments in many countries try to regulate and prohibit online transportation, this is contrary to the principle of free market, where the government cannot close the entry of new competitors into the market. Therefore, there was a backlash from drivers and managers of online transportation who felt their rights were restricted.

Country	Case
United States of America	Medallion taxi company ask the government to treat Uber equally and ask Uber to follow the rules
France	There was a gap because Uber does not obligate to have a public transportation license such as a conventional taxi
United Kingdom	Protests from Driver Association because Uber doesn't use standardized taximeters
South Korea	Protest by conventional taxi drivers because of competition and safety problems
Australia	Uber being rejected in Victoria and Melbourne
Canada	Many cases of disobedient Uber drivers, including noncompliance in driver training and vehicle's safety
Netherland	Uber is prohibited from operating because it violates rules of a commercial driver, some of Uber driver also don't have a driving license
India	Uber is prohibited from operating because the case of rape alleged by Uber drivers
Japan	Conventional taxi's technologies in Japan are more sophisticated than Uber so that Uber decides to cooperate with conventional taxi
Spain	Uber has stop operated in Spain since 2014 because Uber faced protest from taxi driver association
Taiwan	There was a great demonstration in 2014 protesting Uber; the government stated Uber as an illegal transportation
Indonesia	Uber, Grab, Gojek was rejected in many cities and trigger conventional driver demonstration
Germany	Uber was rejected because of tax problems
Malaysia	Uber and Grab considered disrupting business competition

In Indonesia, Uber was also rejected in many regions;

Uber Technologies stated that the refusal of an online taxi is because the government prioritizes to maintain the "comfort zone" of certain parties' interests. Besides Uber, the other online application-based taxi; GoJek and Grab, were also rejected in various regions in Indonesia. The refusal was caused because these companies were deemed not to have fulfilled the prevailing regulations at the central and regional levels, both the rules regarding licensing, the rules regarding vehicle feasibility testing, the rules regarding SIM B (Driving License B) for drivers as well as the rules regarding on the tax payments.

Syarkawi Rauf, the head of KPPU delivered three recommendations from the result of analysis of the Minister for Transportation Regulation No 32 of 2016 namely. First, KPPU asked the government to terminate the policy of setting a lower limit on tariffs that had been applied to conventional taxis. KPPU suggested the government to regulate the upper limit rates. This matter can be the legal protection for the consumers. Second, KPPU also suggested the government to not set the number of vehicles for regular taxi and online. The determination of the number of vehicles should be submitted to the market mechanism which is in line with the need of the consumer. Third, KPPU suggested the government to remove the policy of online taxi vehicle number certificates that are required on behalf of legal entities.

This means that the law on transportation that is applied to conventional transportation cannot necessarily be applied to the transportation sharing. Because online transportation does not meet the requirements and conditions that apply to a transport company. Although the activity is to transport people from one place to the destination by receiving payment. But the transportation business is very different from "trying to get people to ride." There is no norm in this world which states that riding with a vehicle is wrong according to the law. Certain regulations may be needed that must be fulfilled by online transportation businesses to ensure consumer safety. Like a registered driver, has a SIM and a vehicle that is declared safe.

Violations of competition law that are often accused of application-based transportation business are applying lower prices (predatory pricing). This is still a study by KPPU whether it violates Section 7 of the Anti-Monopoly Act 1999, which can lead to unfair business competition.

## VI. CONCLUSION

From the discussion mentioned above, the paper on disruptive innovation in business competition law, especially on application-based transportation business provides a conclusion as follows:

1. The innovation, both sustaining innovation, and disruptive innovation is a must for the business actors in order to survive in the free market.



2. Disruptive innovation is creating chaos in the competition between the business actors use conventional business model and new business platform. However, as long as there is no violation of (1) forbidden activities; (2) forbidden agreements; (3) no abusing dominant position and it was done honestly, lawfulness and not inhibit the entry of competitors, then the action is not categorized violating the law of business competition.

2. The application-based transportation business creates some issues in legal provisions that must be applied. Because based on the platform, this business is different to the conventional transport companies.

If the business does not acquire an acquisition that causes a monopoly or does not apply predatory pricing which creates unfair business competition, then it does not violate the business competition law.

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