

# Justice Principles and Balance of Interests of Online and Conventional Taxi Business Competition in Indonesia

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**Abstract**—Justice is the ideal of law which is the basic right of every human being that must be realized in all aspects of life. One of them is business competition. The justice in business competition actualized in the principle of economic democracy basically makes public welfare the goal to be achieved. However, it has not been felt by conventional taxi industrialists because of the presence of online taxis that determine tariffs lower than those of conventional taxi so that many conventional taxi users begin to switch to online taxis resulting in a decrease in conventional taxi companies' turnovers. According to justice theory proposed by Aristotle, Roscoe Pound, and John Rawls, using document study method with legal analysis, it was found that Minister of Transportation Regulation No. 118 of 2018 issued by the Minister of Transportation of Indonesia is a manifestation of justice and balance of interests between online and conventional taxis in Indonesia. In the Minister of Transportation Regulation, the upper and lower limit tariff determination is the solution to the problem of non-significant tariff differences between online and conventional taxis. In addition, the regulation of operational terms and conditions in Minister of Transportation Regulation No. 118 of 2018 is intended to equal the rights and obligations of business people so that they can create a healthy business environment among them.

**Keywords**—Justice principles, balance of interests, business competition, online taxis, conventional taxis.

## I. INTRODUCTION

Justice is the ideal of law, a fight for humanity evolving in accordance with time and space rhythms. It will never stop and still continue yesterday or tomorrow until humans no longer move.<sup>1</sup> Justice has universal moral values, which are human rights and basic needs throughout the world.<sup>2</sup> The moral values of justice must be realized on all fronts of life. Every human product must contain the values of justice as unjust behaviour and products will actually give birth to imbalances and inconsistencies that result in damage.<sup>3</sup> Justice

must be realized in order to be able to interpret legal supremacy, eliminate legal impartiality, and remain in justice entities.<sup>4</sup>

However, justice can only be understood if it is positioned as a condition intended to be realized by law,<sup>5</sup> like justice in business competition. With science and technology development, the business world has always undergone changes and developed rapidly along with increasing human needs. To fulfil the increasing human needs and increasingly sophisticated technological advancements so as to provide freedom, speed, and creativity for business people in carrying out their business activities, various businesses are carried out with an online system that can facilitate and expand business people's business activities, one of which is transportation service business. With current technological advances, the emergence of online transportation business activities is quite welcome by Indonesian people. The presence of online transportation is a superfine breakthrough in building the economy and providing jobs and big challenges in the business world. One of the biggest challenges is to create a healthy business competition environment among business people.

Since 2014, various types of online-based taxis such as Grab taxi, Uber taxi, Gocar, and others have started to appear. Middle- to upper-class communities that usually use conventional taxi services began to switch to online-based taxis, which are considered cheaper and more practical. In addition to being cheaper and more practical, online-based taxis also have another advantage, which is more security where passengers can share their position, driver's name, and car police number with their relatives because they have been recorded online. However, the main factor people consider in deciding to choose online-based transportation, especially taxis, is price.<sup>6</sup>

<sup>1</sup>Muhammad Erwin, (2013) "*Filsafat Hukum Refleksi Kritis Terhadap Hukum (Legal Philosophy of Critical Reflection Against Law)*" PT. Raja Grafindo Persada, Jakarta, p. 219.

<sup>2</sup>Emmy Latifah, (2015) "Eksistensi Prinsip-Prinsip Keadilan Dalam Sistem Hukum Perdagangan Internasional (Existence of Justice Principles in the International Trade Law System)" *PJIH (Padjadjaran Jurnal Ilmu Hukum)*, Vol. 2, No 1, p. 65

<sup>3</sup> Sukarno Aburaeradkk, (2013) "*Filsafat Hukum Teori dan Praktik (Legal Philosophy Theory and Practice)*" Kencana Purnama Media Group, Jakarta, p. 177

<sup>4</sup>*Ibid*, p. 178

<sup>5</sup> Carl Joachim F., (2010) "*Filsafat Hukum Perspektif Historis (Historical Perspective Legal Philosophy)*" Nusa Media, Bandung, p. 239

<sup>6</sup>Edmira Rivani, (2017) "Kebijakan Penyesuaian Tarif Taksi Berbasis Online (Online-based Taxi Tariff Adjustment Policy)", *Majalah Info Singkat Ekonomidandan Kebijakan Publik*, Vol. IX, No. 06/II/Puslit/Maret, <http://berkas.dpr.go.id>, p. 13

Although online-based taxi services have different tariff systems, they are still cheaper than conventional taxi tariffs. The cheap tariff of online-based taxis compared to that of conventional ones is due to relatively small investments as they do not have a pool like conventional taxis. The pool itself is an expensive investment. Besides functioning as a gathering place for conventional taxi fleets, the pool also functions to check the vehicle condition. It also requires cost. This is in contrast to online-taxi services that are low risk. For example, if the car is damaged, the online-taxi company owner can directly stop using the car. In addition, this online-based taxi service does not require many offices and employees. The existence of these mushrooming online-based taxis has raised a number of demonstrations from a number of taxi and public transport drivers in several major cities such as Jakarta, Bali, Yogyakarta, Malang, Tangerang, and Solo. Most of the demonstrators, taxi and public transport drivers, demanded online-based taxis to be closed. They consider the application has caused the proliferation of online-based taxi providers, which has an effect on the decrease of their income.<sup>7</sup>

The decline in conventional taxi drivers' income certainly affects the company's turnover. In general, the land transportation business in 2016 decreased to 60%, especially for several sectors such as taxis, public transports, and microbus. Conventional taxis experienced a decrease of 40-50%, and microbus of 30%. In addition, two taxi operators have been closed because they are unable to compete with online-based taxis.<sup>8</sup> In economic or business activities, the existence of a business competition between business actors with one another is a common thing. However, the tight and imperfect business competition between online taxis and conventional taxis has resulted in changes in consumer behaviour due to the low cost of online taxis which make their penetration in a short time able to erode the conventional taxi market, resulting in unhealthy and unbalanced competition. Then, the value of justice and balance of interests are important to create fair business competition. Even though the meaning of justice may vary from one to another user, its definition is important for its realization. Justice comes from the word 'just', adopted from Arabic language 'al-'adl', which is very close to the meaning of the word 'al-qisth' that is straight in the soul, not defeated by lust, judging by truth, not common, balanced, equal, and so on.<sup>9</sup> In Indonesian, the word just means equally heavy, impartially heavy, not siding, adhering to the truth, rightly, not arbitrary.<sup>10</sup> According to Priyanka Kansara, Justice is not a matter of reason at all; this is one of those that is precisely sensitive and has the right sense for injustice. The requirements of the

justice theory become the reason to play with justice and injustice diagnosis.<sup>11</sup>

Aristotle emphasized justice theory in proportion.<sup>12</sup> Aristotle's justice theory is based on equality principles. In the modern version, the theory is formulated with the expression that justice is carried out when the same things are treated equally and different things are treated unequally.<sup>13</sup> Aristotle distinguishes justice into two, namely distributive justice (*justitia distributive*) that requires everyone to get their rights and cumulative justice (*justitia commulative*) that requires everyone to get the same amount of rights. Meanwhile, Roscoe Pound sees justice in concrete results that can be given to the community.<sup>14</sup> John Rawls stated that justice is the main policy in social institutions, as is the truth in the system of thought.<sup>15</sup> From the definitions of justice put forward by the legal philosophers above, the value of justice embodied in the law will set limits or controls in the business activities of conventional taxi and online taxi business people in Indonesia. However, it is necessary to examine how this form of justice and balance is manifested in the law. This paper analyses and assesses the actualization or manifestation of the value of justice and the balance of interests of conventional and online taxi business competition based on regulations that apply in Indonesia. The study in this writing is a new study that has never been done before.

This study was inspired by previous research written by Melisa Safitri in *Jurnal Keadilan Progresif*, Vol. 6 No.2, Bandar Lampung, September 2015, and Berla Wahyu Pratama in *Jurnal Persaingan Usaha*, *Jurnal KPPU*, first edition of 2009. The two journals focus on discussing tariff determination which is alleged to have violated Law Number 5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition, but do not examine aspects of justice and balance of interests as discussed in this paper.

## II. METHOD

Research can be interpreted as an attempt to find, develop, and test the truth of a knowledge, symptom or hypothesis, and efforts carried out using scientific methods.<sup>16</sup> The type of research used is normative legal research or has similarities

<sup>11</sup>Priyanka Kansara, "Theories of Justice and Constitution of India" *International Journal of Law and Legal Jurisprudence Studies*: ISSN:2348-8212: Volume 2 Issue 4, p.2

<sup>12</sup>Bahder Johan Nasution, (2014) "Kajian Filsafat Tentang Konsep Keadilan Dari Pemikiran Klasik Sampai Pemikiran Moderen (Philosophical Study on the Concept of Justice from Classical to Modern Thought)" *Yustisia*, Volume 3 Number 2, May-August, p. 120

<sup>13</sup>*Ibid*,

<sup>14</sup>Satjipto Raharjo, (2000) "*Ilmu Hukum (Legal Science)*" PT. Citra Aditya Bakti, Bandung, p. 50

<sup>15</sup>John Rawls, (2011) "*Teori Keadilan Dasar-Dasar Filsafat Politik Untuk Menuju Kesejahteraan Sosial Dalam Negara (Justice Theory: Basics of Political Philosophy for Social Welfare in the Country)*" *Pustaka Pelajar*, Yogyakarta, p. 3

<sup>16</sup>Sutrisno Hadi, (1989) "*Metode Penelitian Hukum (Legal Research Method)*", UNS Press, Surakarta, p. 4.

<sup>7</sup>*Ibid*, p. 13-14

<sup>8</sup>*Ibid*, p. 14

<sup>9</sup>Emmy Latifah, *Op Cit*. P.66

<sup>10</sup> The Great Indonesian Dictionary (KBBI) Online "<https://kbbi.web.id/adil>"

with doctrinal research.<sup>17</sup> Normative legal research is doctrinal research, also referred to as library-based research or document study focusing on reading and studying primary and secondary legal materials.<sup>18</sup>

This research used primary materials including relevant legislation, among others, namely; Article 33 of the 1945 Constitution, Law Number 5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition, and Minister of Transportation Regulation Number 118 of 2018 concerning the Implementation of Special Rental Transportation, in lieu of Minister of Transportation Regulation Number 108 of 2017. Other primary data were doctrines that provide understanding and explanation of legal principles relevant to the research problem that is justice principle. The secondary data in this research were legal materials that explain primary legal materials such as literatures, papers, national and international journals, and so on.

Legal materials were collected through an inventory procedure and identification of legislation, as well as classification and systematization of legal materials library research as the data collection technique. Literature study was carried out by reading, analysing, and recording library material review related to justice principles and the balance of interests of conventional and online taxi business competition in Indonesia. The data were then analysed with legal interpretation.

### III. JUSTICE PRINCIPLES AND BALANCE OF INTERESTS IN INDONESIAN ECONOMY

Justice is one of the most discussed purposes of law throughout the course of the legal philosophy history.<sup>19</sup> It is something abstract in the sullen world, which grows philosophically in the human realm, but it cannot be denied that everyone craves justice.<sup>20</sup> Justice is an important milestone in life.<sup>21</sup> In economic activities justice and balance of interests are two components that cannot be separated because to realize justice, a benchmark is needed, namely balance, which is one dimension of justice. The balance in this case is clearly different from equality, in line with the justice theory proposed by Aristotle that emphasizes justice in balance or proportion.

Justice and balance of interests in Indonesian economy are basically economic civilizations that are built on the basis of Pancasila and the 1945 Constitution of the Republic of Indonesia.<sup>22</sup> Economic justice is often associated with the notion of economic democracy. According to Muhammad Hatta, political democracy and economic democracy are needed to achieve a just and prosperous people based on humanity and social justice. Such economic democracy fits the original life of Indonesian people who commonly deliberate to reach consensus.<sup>23</sup> Economic democracy is a concept initiated by the founding fathers of Indonesia to find an appropriate form of economy and in accordance with Indonesian characters. The implementation of this concept is still being sought and developed to date as it is not easy to form an economic system typical of Indonesia, but still in accordance with the times. Sritua Arief and Juoro considered that economic democracy contains moral consequences, but is specifically highlighted as a form of integration of politics, economy, and cultural morals.<sup>24</sup>

Many modern democratic models emerge and are embraced by existing countries in the world, from conservative, liberal, and social democracy models. The characteristic of democracy inherent in the Republic of Indonesia is as Mohammad Hatta mentioned that Indonesian democracy is a people's democracy based on people's sovereignty. The people have the power and the government must reflect on people's conscience in carrying out the tasks of managing the state.<sup>25</sup> The difference of the basis of Indonesian democracy, as emphasized by Muhammad Hatta, is not in the individualism spirit, which will strengthen the liberalism and capitalism spirit as proposed by JJ. Rousseau, but in the togetherness spirit in the sense of collectiveness, not equality.<sup>26</sup>

Economic democracy principles are contained in Article 33 of the 1945 Constitution of the Republic of Indonesia. In Article 33 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, it is stated that the economy is structured as a joint effort based on kinship principles. The article formulated by the founding fathers nuances socialism in a spirit of family, group, and collectiveness rather than competition. Yet, it does not rule out the possibility of implementing market economy system principles.<sup>27</sup> In line

<sup>17</sup> Johnny Ibrahim, (2006) "*Teoridan Metodologi Penelitian Hukum Normatif, edisirevisi(Normative Legal Research Theory and Methodology, revised edition)*" Banyumedia Publishing, Malang, p. 46

<sup>18</sup> *Ibid*, p. 44.

<sup>19</sup> Dardji Darmohardjo, Shidarta., (2006) "*Pokok-pokok filsafat hukum: apadan bagaimanafilisafat hukum Indonesia (Principles of legal philosophy: what and how is Indonesian legal philosophy)*", Jakarta: Gramedia Pustaka Utama, p. 155.

<sup>20</sup> Bahder Johan Nasution, (2015) "*Hukum dan Keadilan (Law and Justice)*", Bandung: MandarMaju, p. 174.

<sup>21</sup> MuhdNorizam, at all, (2017) "*Keadilan Teras Kepimpinan Raja-Raja Melayu: Dari Era Tradisi Ke Kontemporari (Terrace Justice of Malay King Leadership: From Traditional to Contemporary Era)*", *Jurnal Melayu Bil.* 16(1), p 65

<sup>22</sup> Tulus Tambunan, (2006) "*Keadilan Dalam Ekonomi (Economic Justice)*" Kadin Indonesia-Jetro, p. 6

<sup>23</sup> Tulus Tambunan, *Op Cit*, p.6

<sup>24</sup> Reka Dewantara, (2014) "*Rekonseptualisasi Asas Demokrasi Ekonomi Dalam Konstitusi Indonesia (Reconceptualization of Economic Democracy Principles in Indonesian Constitution)*" *Arena Hukum* Volume 7, Number 2, August, p 199

<sup>25</sup> Monika Suhayati, (2016) "*Penyederhanaan Izin Bagi Pelaku Usaha Mikro dan Kecil dari Perspektif Hukum; Studi Di Daerah Istimewah Yogyakarta (License Simplification for Micro and Small Business People from a Legal Perspective; A Study in Yogyakarta Special Region)*" *Jurnal Negara Hukum: Membangun Hukum untuk Keadilan dan Kesejahteraan (Building Law for Justice and Welfare)*, Vol.7 No.2, November, p. 243

<sup>26</sup> *Ibid*,

<sup>27</sup> Reka Dewantara, *Op. cit*,

with the justice theory put forward by Roscoe Pound and John Rawls, economic democracy basically prioritizes public prosperity, not personal prosperity. Therefore, the economy is structured as a joint effort based on kinship principles.<sup>28</sup>

In addition to achieving people's prosperity in general in Article 33 of the 1945 Constitution of the Republic of Indonesia, it is also stated that production branches important to the State and controlling many people's lives must be controlled by the State. If not, the production will fall into the hands of the powerful and the people will be oppressed. Only companies that do not control many people's livelihood may be in the hands of individuals. Earth, water, and wealth contained in the earth are the main points of people's prosperity. Therefore, they must be controlled by the State and used for people's prosperity at most.<sup>29</sup> The phrase, "controlled by the state", according to Muhammad Hatta, does not mean that the state itself is the entrepreneur, businessman or *ordenemer*, but the state power lies in making regulations for the smooth running of the economy.<sup>30</sup>

The former chairman of the national economic council, Emil Salim, explained the meaning of "controlled by the state" as follows; The state controls the earth, the water, and the wealth contained in it, which is the principal for people's prosperity. The implementation of "the right to control" needs to be maintained in order that the system development does not lead to etatism. Therefore, "the state's right to control" must be seen in the context of the implementation of state's rights and obligations as; (1) owners, (2) regulators, (3) planners, (4) implementers, and (5) supervisors. Thus, "the right of control" means that the government can claim natural resources even though they are the government's ownership by means of regulation, planning and supervision.<sup>31</sup> Besides that, the Indonesian economic democracy system is emphasized in paragraph (4) Article 33 of the 1945 Constitution of the Republic of Indonesia which states that national economy is organized based on economic democracy with togetherness, efficiency, justice, sustainability, environmental insight, and independence principles, as well as by maintaining a balance of progress and unity of the national economy.<sup>32</sup>

In economic democracy, it is stated that the principle is togetherness, but still implementing the fair efficiency principle. Togetherness is important as a normative foundation because the essence of social and economic life is a collectively joint life, but the economic work principle is efficiency, which is to produce goods and services for human life that are cheap, good, and quality. With this efficiency

principle, the economic growth rate can be developed faster. Opportunities to create prosperity are far greater with high economic growth compared to low economic growth, but the efficiency principle contains elements of competition with negative externalities. The negative elements are eliminated by ethics, norms, and justice principles.<sup>33</sup>

#### IV. ACTUALIZATION OF JUSTICE PRINCIPLES AND BALANCE OF INTERESTS OF ONLINE AND CONVENTIONAL TAXI BUSINESS COMPETITION IN INDONESIA

People's main purpose to run business activities is to obtain profits and income in order to meet their primary, secondary, and tertiary needs. The life need fulfilment is basically what drives many people to carry out business activities, both similar and different business activities. Such a situation is what actually raises or gives birth to business competition among business people. Therefore, business competition is something common. Even, it can be said that competition in the business world is a *conditio sine qua non* or an absolute requirement for the implementation of a market economy. Nevertheless, it is recognized that business competition sometimes is fair (fair competition) and can also be unfair (unfair competition).<sup>34</sup> All business competition in the business world among business people will encourage businesses to concentrate on a series of processes or activities to create products and services related to their core business. With the concentration on the core business, business people as producers will be able to produce a number of products and services that have good quality and competitiveness.

In line with the development of Indonesian economic system, business competition has become one of the economic instruments since the beginning of reform. This is indicated by the issuance of Law Number 5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition. Law Number 5 of 1999 is a milestone for recognizing fair business competition as an economic pillar in the Indonesian economic system based on Pancasila and the 1945 Constitution.<sup>35</sup> The justice principles contained in the Business Competition Law are in line with the justice in Indonesian economic system. The justice principles in Indonesian business competition also contains economic democracy principles as stated in Article 2 of Law Number 5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition, stating that; "Indonesian business people, in carrying out their business activities, are based on economic democracy by taking into account the

<sup>28</sup><https://jdih.kemenkeu.go.id/fulltext/1945/UUDTAHUN~1945UUDPenj.htm>

<sup>29</sup>*Ibid*.

<sup>30</sup>Monika Suhayati, (2011) "KajianYuridisPrivatisasiBadan Usaha Milil Negara MelaluiMekanismePenawaranUmum (Juridical Study of State-Owned Enterprises through Initial Public Offering Mechanisms)", Jurnal Negara Hukum: MembangunHukumuntukKeadilandanKesejahteraan (Building Law for Justice and Welfare), Vol.7 No.2, June, p. 56.

<sup>31</sup>*Ibid*.

<sup>32</sup>RekaDewantara, *Op Cit*.

<sup>33</sup>*Ibid*.

<sup>34</sup>Hermansyah, *LocCit*, p. 9

<sup>35</sup>AndiFahmiLubis, et al, (2009) "HukumPersaingan Usaha AntaraTeks&Konteks (Business Competition Law Between Text & Context)" Published and Printed with Support of Deutsche GesellschaftfürTechnischeZusammenarbeit (GTZ) GmbH, <http://www.kppu.go.id>, October, p. x



balance of interests between business people and the public interest".<sup>36</sup>

The economic democracy principle of the balance of interests between business people and the public interest has an essential and strategic role in realizing a healthy and competitive business climate in Indonesia which in turn encourages the expected economic growth. In other words, the existence of Law Number 5 of 1999 is to ensure the realization of democracy in the economic field that is the existence of equal opportunities for everyone to run a business in producing and marketing goods and/or services. The realization of economic democracy in the economic field will encourage the creation of a healthy, effective, and efficient business climate, so as to encourage economic growth and the a fair market economy operation.<sup>37</sup>

However, with regard to increasingly fierce and imperfect competition among business people, fair business competition values need to receive greater attention in the Indonesian economic system. Competition law enforcement is an economic instrument often used to ensure that the competition among business people runs fairly and the results can be measured in the form of the increase of public welfare.<sup>38</sup>

Theoretically, in imperfect market competition conditions, business people individually or through concerted actions can set prices and allocate economic resources. Therefore, industrial economists have found an economic proposition that describes the correlation between structure (S), conduct (C), and performance (P). At first, industrial organizations are regulated by a paradigm of the existence of unidirectional correlation between structure, conduct, and performance (SCP). A relationship that illustrates that the structure (S) of an industry/sector will influence behaviour (C), which in turn will result in its performance (P). Industry performance can be in the form of industrial growth, efficiency, innovation, dividends, profitability, level of customer satisfaction, and so on that are part of people's welfare.<sup>39</sup>

In its development, the correlation between structure, conduct, and performance (SCP) is no longer one direction as mentioned above. Economic research results show that there is a two-directional relationship, causal relationship. For example, through efficiency (P), business people can be pushed to set a lower price (C) until he becomes a monopoly (S). Thus, performance can change behaviour and market structure. Finally, the old paradigm changes because monopoly does not always result in a decrease of people's welfare.<sup>40</sup> As in conventional and online taxi business competition in Indonesia, the presence of online-based taxis in Indonesia in 2014 which set lower prices than conventional

taxis resulted in changes in market behaviour and structure. This cheap tariff makes online taxi penetration in a short time is able to erode the conventional taxi market. This condition has triggered strong refusal from conventional taxi transportation companies to online taxis.<sup>41</sup> A new action or behaviour can be said to be anti-competitive by looking at the consequences of actions taken, as well as pricing.<sup>42</sup>

Therefore, to create business fairness between online and conventional taxis, a balance of interests between them is needed. This is in line with the justice theory proposed by Aristotelis, which emphasizes justice in equilibrium or proportion to create a fair business scope and avoid monopolies and unfair business competition. In addition to Article 2 of Act Number 5 of 1999, Indonesian government also provides justice and the balance of interests between conventional and online taxi business people in the Minister of Transportation Regulation Number 118 of 2018 concerning the Implementation of Special Rental Transportation.

The provisions of the regulation specifically regulate the criteria for online taxis. In this regulation, there are 46 Articles which consist of various subject matters such as service criteria, determination of operational areas and planning of the needs of public motor vehicles, commercialization of special rental transportation, tariffs, and the use of technology-based applications. Then, the main principles of the regulation also include supervision, protection of the people, people's participation, procedures for imposing administrative sanctions, and transitional provisions.

In this regulation, online taxis are known as special rental transports which have the same meaning as online taxis, which are door-to-door transportation services with the drivers that have operational areas in urban areas, from and to airports, in ports or other transportation nodes with information technology-based application booking, with the tariff listed in the application.<sup>43</sup> Provisions for tariff rates on online taxis or special rental transportation are determined based on the calculation of direct and indirect costs, which are stated in the information technology application along with electronic documents, with the direct and indirect cost calculation guideline stipulated by the Minister.<sup>44</sup> The applicable tariffs for online taxi transportation or special rental transportation are based the lower limit tariff (lowest tariff) and the upper limit tariff (highest tariff), which are

<sup>36</sup>Article 2 Law Number 5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition,

<sup>37</sup>Hermansyah, *Op Cit*, p. 57

<sup>38</sup>Andi Fahmi Lubis, et al., *Op Cit*,

<sup>39</sup>*Ibid*

<sup>40</sup>*Ibid*

<sup>41</sup>Melisa Safitri, (2015) "Tinjauan Hukum Persaingan Usaha Terhadap Konflik Antara Taksi Konvensional Dan Taksi Online (Legal Review of Business Competition Against Conflicts Between Conventional and Online Taxis)" *Jurnal Progresif Keadilan*, Vol. 06 No. 02 Bandar Lampung, p. 147

<sup>42</sup>Alum Simbolon, (2013) "Pendekatan Yang Dilakukan Komisi Pengawas Persaingan Usaha Menentukan Pelanggaran Dalam Hukum Persaingan Usaha (The Approach Conducted by the Commission for Business Competition Supervisors Determines Violations in Business Competition Law)" *Jurnal Hukum Ius Quia Iustum* No. 2 Vol. April 20, p. 191

<sup>43</sup>Article 1 Number 7 Minister of Transportation Regulation Number 118 of 2018 concerning the Implementation of Special Rental Transportation.

<sup>44</sup>Article 3 (2) – Number 4 Minister of Transportation Regulation Number 118 of 2018 concerning the Implementation of Special Rental Transportation.

determined by the Minister or Governor according to operational areas.<sup>45</sup>

Nowadays, the upper and lower limit tariffs of special rental transportation or online taxis are regulated in the Director General of Land Transportation Regulation Number: SK.3244/AJ.801/DJPD/2017. In this regulation, there are two area divisions. For Sumatra, Java and Bali areas, the upper limit tariff is Rp. 6,000/Km and the lower is Rp. 3,500/km. Meanwhile, Kalimantan, Nusa Tenggara, Sulawesi, Maluku, and Papua areas, the upper limit tariff is Rp. 6,500/km and the lower is Rp. 3,700/km.<sup>46</sup> This regulation also strictly regulates insurance premium. It says that the special rental transportation tariff for each Province includes JasaRaharja public passenger insurance premium of Rp. 60 per person and JasaRaharjaPutera passenger liability insurance of Rp. 40 per person.

The purpose of this tariff regulation is to protect consumers using limit tariffs so that there is no increase of online-based taxi tariffs based at specific times. Certain times are during rush hour, high demand, and bad weather such as rain. Meanwhile, the lower limit tariff regulation is carried out so that there is a fair business competition and the balance or equality in transportation businesses. Like lower limit tariffs in flights, online taxi services are also allowed to provide discounted prices with the implementation of upper and lower limit tariffs for online taxi tariff. This tariff adjustment can also have a positive impact to prevent the dynamics that have occurred so far so that the use of digital technology can be felt to the maximum by the people and does not lose conventional taxis that have already operated.<sup>47</sup> In the Minister of Transportation Regulation No. 118 of 2018, it is also stated that the special transportation service or online taxi application company is prohibited from setting the tariff and providing promotional tariffs below the stipulated lower limit tariffs.<sup>48</sup> The amount of direct and indirect costs of special rental transportation or online taxis can be regularly evaluated at least every 6 (six) months. In the event of a change that greatly affects the business continuity of special or online taxi transportation which results in direct costs of more than 20% (twenty percent) within 3 (three) consecutive months, the evaluation can be carried out before the 6 (six) month period.<sup>49</sup>

Besides regulating tariff determination, the Minister of Transportation Regulation Number 118 of 2018 concerning the Implementation of Special Rental Transportation also regulates the operational area determination and needs plans

of public motor vehicles. In this regulation, special rental transport operational areas are determined by considering;

- a. Determination of urban area classifications;
- b. Estimation of need for special rental transportation services;
- c. Development of urban areas; and
- d. Availability of adequate road infrastructure.

Special rental transportation operational areas are stipulated by the Minister for special rental transportation operations that exceed 1 (one) provincial area and that exceed 1 (one) provincial area in the Jakarta, Depok, Tangerang, and Bekasi areas; as well as stipulated by the Governor for special transportation operational areas that exceed 1 (one) regency/city area in 1 (one) province.<sup>50</sup> Meanwhile, to fulfil the needs of special rental transportation services in an area, it is necessary to arrange a needs plan of motor vehicles for special rental transportation. The plan includes at least;<sup>51</sup>

- a. Research on trip rise potentials;
- b. Determination of variables that influence trip variable;
- c. Determination of capital for trip rise calculation;
- d. Calculation of trip rise for present conditions and 5 (five) years to come;
- e. The conspiracy of the number of the passenger trips into the number of public motor vehicles by considering; the level of use of public motor vehicles and the capacity of public motor vehicles that will serve.

The plan above is determined by the Minister or Governor in accordance with his authority after conducting an assessment with stakeholders. The needs plan determined by the minister is for the urban areas, which cover 1 (one) provincial area and which exceed 1 (one) provincial area in Jakarta, Bogor, Depok, Tangerang, and Bekasi areas; The need for special rental transportation to fulfil the people's demand on transportation services and the needs allocation for each regency/city in an urban area that exceeds 1 (one) provincial area and which exceeds 1 (one) province in Jakarta, Bogor, Depok, Tangerang, and Bekasi areas.<sup>52</sup> Meanwhile the needs plan of motor vehicles for special rental transportation is determined by the Governor for urban areas covering 1 (one) area in 1 (one) province; The need for special rental transportation vehicles to fulfil the people's demand on transportation services, and the needs allocation for each regency/city in an urban area that exceeds 1 (one) regency/city in 1 (one) province.<sup>53</sup>

<sup>45</sup>Article 22 (1) - (2) Minister of Transportation Regulation Number 118 of 2018 concerning the Implementation of Special Rental Transportation.

<sup>46</sup><http://www.dephub.go.id/post/read/menhub-aturan-angkutan-sewa-khusus-terbit-akhir-november?language=en>, accessed on March 20, 2019

<sup>47</sup> Melisa Safitri, *Op Cit*, p. 15-16

<sup>48</sup> Article 27 Minister of Transportation Regulation Number 118 of 2018 concerning the Implementation of Special Rental Transportation.

<sup>49</sup> Article 23 Minister of Transportation Regulation Number 118 of 2018 concerning the Implementation of Special Rental Transportation.

<sup>50</sup> Article 7 Minister of Transportation Regulation Number 118 of 2018 concerning the Implementation of Special Rental Transportation.

<sup>51</sup> Article 8 Minister of Transportation Regulation Number 118 of 2018 concerning the Implementation of Special Rental Transportation.

<sup>52</sup> Article 9 – 10 Minister of Transportation Regulation Number 118 of 2018 concerning the Implementation of Special Rental Transportation.

<sup>53</sup> Article 9 – 10 Minister of Transportation Regulation Number 118 of 2018 concerning the Implementation of Special Rental Transportation.

In order to carry out their activities, online taxi or special rental transportation companies must fulfil the provisions stipulated in the Minister of Transportation Regulation Number 118 of 2018 where special rental transportation companies are required to have special rental transportation licenses, which are charged for non-tax state revenues or regional retribution.<sup>54</sup> Special rental transportation companies must also be Indonesian legal entities in accordance with statutory provisions. The legal entities can be in forms of;

- a. State-owned enterprises
- b. Regionally-owned enterprises
- c. Limited liability company; or
- d. Cooperative

In addition to legal entities, special rental transportation can be operated by micro or small-scale business people in accordance with statutory provisions. This regulation is to make it easier for Indonesian people to open a transportation service business, especially online taxi transportation or special rental transportation.<sup>55</sup> Besides, special rental transportation or online taxi companies must;<sup>56</sup>

- a. implement the provisions stipulated in the special rental transportation license granted;
- b. comply with the provisions of minimum service standards;
- c. implement safety management systems, for special rental transportation companies in the form of legal entities;
- d. carry out safety commitments, for micro or small business people in the form of statement letter;
- e. register the drivers in *e-logbook*;
- f. provide proof of payment to service users;
- g. insure responsibility, namely mandatory premium and carrier's responsibility;
- h. provide services to disabled people, elderly people, children, pregnant women and sick people;
- i. report if there is a change in the management composition of the legal entity or the domicile of the legal entity; and
- j. report business activities every year to the Minister or Governor in accordance with the authority.

In the event of a violation committed by special rental transportation companies, administrative sanctions can be given. Administrative sanctions can be in the form of written warnings, license suspension by suspending standard service electronic cards, and license revocation by revoking standard service electronic cards. The provisions of online taxi or special rental transportation regulations as mentioned above are intended to equal rights and obligations for both online

and conventional taxi business people. The different system of the two taxi companies can affect the determination of the tariff/price of transport services. Online taxis use a partnership-based system (with vehicle owners), so online taxi companies do not need to buy a fleet of transportation and spend maintenance costs like a conventional taxi companies. Therefore, online taxis dare to set cheap tariffs compared to conventional taxis. Then, the provisions in the Minister of Transportation Regulation are one of the important instruments in providing balance to business people.

In addition, business ethics is an important component in achieving justice and controlling the behaviour of business people. It is a significant problem in business both at the company level and broader phases. Ethics shows what is right and what is wrong. Businesses also direct employees and stakeholders with moral values. Ethics is the basis for an impartial internal environment in an organization. Justice ethics can be achieved if the executive leader of a company upholds work ethics standards on the basis of justice; the company can achieve the benefits of justice better than others. This is due to the fair organization's internal environment that motivates employees by satisfying their needs, improves organizational performance initially, and develops industries and the country.<sup>57</sup>

Business ethics is a component that is also important in achieving justice and controlling business people's behaviour. Business ethics is a significant issue in business both at the company level and broader phases. Ethics shows what is right and what is wrong. Businesses also direct employees and stakeholders with moral values. Ethics is the basis for an impartial internal environment in an organization. An ethical climate is formed on the basis of a fair and led by executives upholding ethical standards in the first example tends to be more achieved when compared with other companies, because the organization's internal environment is fair motivating employees by satisfying their needs, improving organizational performance initially, then bringing industrial development and country.

Ethics is a term derived from the Greek word *ethos* which means customs. The word *ethos* has the same meaning as *mosin* Latin which also means customs or good habits.<sup>58</sup> According to Austin Fagothey, Ethics is the study of human wills related to decisions about right and wrong in the form of human actions.<sup>59</sup> In line with Austin's definition of economics or business, business ethics is a multi-layered concept. In a broad sense, business ethics includes elements of morality and philosophy as applied to business. Morality is a reference to

<sup>54</sup> Article 11 Minister of Transportation Regulation Number 118 of 2018 concerning the Implementation of Special Rental Transportation.

<sup>55</sup> Article 12 (2) Minister of Transportation Regulation Number 118 of 2018 concerning the Implementation of Special Rental Transportation.

<sup>56</sup> Article 17 Minister of Transportation Regulation Number 118 of 2018 concerning the Implementation of Special Rental Transportation.

<sup>57</sup> AytaçGökmen and A. TuranÖztürk, (2012) "Issues of Business Ethics in Domestic and International Businesses: A Critical Study" International Journal of Business Administration, Published by Sciedu Press, Vol. 3, No. 5; p. 82

<sup>58</sup> Sukarno Aburaera, At all, (2014) "FilsafatHukumTeoridanPraktik (Legal Philosophy Theory and Practice)" KencanaPrenadamedia Group, Jakarta, p. 170

<sup>59</sup> Ibid,

standards held by individuals or groups about right and wrong, or good and bad.<sup>60</sup> In written law, ethics about right and wrong or good and bad will result in the achievement of justice and balance of interests in conventional taxi and online taxi business competition in Indonesia.

## V. CLOSING

### A. Conclusion

From discussion results above, it can be concluded that justice principles and balance of interests in business competition in Indonesia are actualized in economic democracy principles as stated in Article 33 of the 1945 Constitution of the Republic of Indonesia and also in Article 2 of Law Number 5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition. Specifically for business competition in transportation services, including online taxis and conventional taxis, the upper limit and lower limit tariff determination regulated in Minister of Transportation Regulation No. 118 of 2018 is the realization of justice for online taxis and conventional taxis. The determination is intended to protect consumers and create a fair and healthy scope of competition. Meanwhile, other applicable provisions in Minister of Transportation Regulation No. 118 of 2018 are intended to equal rights and obligations for entrepreneurs in carrying out their business activities.

### B. Suggestion

The number of policy changes, made by the Minister of Transportation in regulating online taxis or special rental transportation, is a proof that the Indonesian government has not been able to provide policies that can properly balance economic development, especially business competition. It is expected that in issuing policies, the government look at socio-economic conditions of all parties and people who will be affected and study more the needs and problems to be regulated and not be in a hurry to stipulate a regulation. In addition, the government should be more prepared to face the challenges of a growing business world. In this research, the author only focuses on the normal study of actualization of fair business competition between online taxis and conventional taxis in Indonesian regulations. To see whether this policy provides benefits and justice, it is imperative to conduct further research that is social and legal in nature by looking at the social conditions in the community so that justice values are not just legal norms.

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