

Determination of Fares for Online Transportation Applications with A Fare Bargaining System is Linked to Business Competition Law in Indonesia

Bernadetta Satyaayu Regitaningtyas Kalaj, Elisatris Gultom, Deviana Yuanitasari

Universitas Padjadjaran, Bandung, Indonesia

Email: Bernadetta20001@mail.unpad.ac.id, elisatris68@gmail.com,
deviana.yuanitasari@unpad.ac.id

Correspondence: Bernadetta20001@mail.unpad.ac.id*

KEYWORDS

Bidding System; Predatory Pricing; Online Transportation.

ABSTRACT

This research aims to understand the practice of fare determination through a bidding system on online transportation applications based on Competition Law in Indonesia and to examine the supervision of fare determination actions through a bidding system on online transportation applications based on the applicable laws and regulations. This research employs a normative juridical analysis with a descriptive-analytical method by explaining the practice of fare determination using a bidding system and subsequently analyzing it using existing legal theories and norms. The results of this research indicate that the fare determination actions taken by online transportation business operators using a bidding system potentially violate the provisions of Article 20 of the Business Competition Law regarding the prohibition of predatory pricing and the Decree of the Minister of Transportation Number KP 667 in conjunction with the Decree of the Minister of Transportation Number KP 1001 concerning the Guidelines for Calculating Service Costs for Motorcycles Used with Applications, as well as the Minister of Transportation Regulation Number 12 of 2019 on the Protection of Safety for Motorcycle Users Used for Community Interests. Supervision of the actions of online transportation business operators in setting prices using a bidding system is conducted by two institutions, namely KPPU (Commission for the Supervision of Business Competition) and the Ministry of Transportation, both preventively and repressively.

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1. Introduction

Transportation is one of the factors used to support the activities of each individual. The increasing mobility of the community is of course in line with the increasing demand for adequate

transportation facilities. Therefore, to support economic progress in Indonesia, various modes of transportation are needed that can be reached and accessed by all people in Indonesia. The need for affordable and effective transportation has spurred innovation. As in the past decade, various innovations have emerged in the development of the transportation sector by utilizing the Industry 4.0 era. The industrial world combines automation technology with cyber technology, where people's activities are interconnected with the internet or satellite network, so that a paradigm emerges, an era of very sophisticated human life (Hatmoko et al., 2021). Until finally now industrial civilization has been more advanced with the era of society 5.0. This era is a period that is human-centered and technology-based. The shift of this era allows artificial intelligence (artificial intelligence) to be fully dedicated to improving human ability to find and open up various opportunities owned by human beings (Rahmawan & Effendi, 2022). This gives rise to a technological sustainability that causes all activities to always be connected to the Internet network commonly called the Internet of Things (IoT) (Ariyanti, 2016).

The development of integration between technology and daily needs has given rise to the latest innovation with the presence of online transportation applications. An online transportation application is an application that can be downloaded on a user's mobile phone that provides transportation services using an online platform, such as an application that connects passengers with driver-partners, passengers determine the pick-up location and destination and with a certain fare, where this service is managed by a third party, namely a transportation network company (Pham et al., 2017). This is what distinguishes online transportation applications from conventional transportation providers, where there is a third party, namely the application manager (Pratama et al., 2016). With the emergence of this online transportation application service, of course, it makes it easier for people to choose a variety of transportation modes.

The development of integration between technology and daily needs has given rise to the latest innovation with the presence of transportation applications Online. Transportation applications Online is an application that can be downloaded on the user's mobile phone that provides transportation services using Online Platform, such as an application that connects passengers with driver-partners, passengers determine the pick-up location and destination and with a certain fare, where this service is managed by a third party, namely a transportation network company (Christina et al., 2018). In Indonesia itself, the development of transportation applications Online began to be known in 2010 with the establishment of Go-Jek as the first local company to provide transportation application services Online. Then in 2011 followed by Grab and Uber in 2014. This was followed by the proliferation of other applications such as inDriver, Maxim, Call Jack, Ojekkoe, Topjek, LadyJek, Bluejek, Ojek Argo, etc (Dewi, 2023). Since then, the development of online transportation application services has begun to become more varied and competitive with the emergence of various other applications that offer similar services.

In discussing the strategies carried out by every business actor, not long ago in 2019 entered a new online transportation application, namely inDrive, which offers a pricing system that is different from other online transportation application services (Rochman, 2022).

The difference between inDrive with other applications is that inDrive shows that its tariff setting model is done on a peer-to-peer basis without involving complex algorithms like other companies. This is contrary to the meaning of the online transportation application itself, which in general the price of this online transportation application service is fixed. Meanwhile, inDrive provides flexibility for partners and customers to set and choose their prices.

The fare bidding system on online transportation applications is not common in Indonesia. The majority of online transportation applications in Indonesia, such as Gojek, Grab, Maxim, and others, use a fixed price by dynamic pricing system or fare calculation based on distance and travel time. In a fixed price system, the rate displayed to the user is a price that has been determined by the system's algorithm and is non-negotiable. Recently, Gojek even tried a similar bidding system for GoRide Nego services in certain areas (Saputro, 2023).

The problem related to online transportation application services is that the rates set can of course have an impact on similar business actors. With the freedom to bid and price tariff services for its services. This can lead to the possibility of offering lower app rates or higher rates. While this approach has significant benefits, it also raises several issues that need to be considered, especially related to business competition. Similar business actors have provided fixed rates with rates that have been adjusted to the rules that have been set by the Ministry of Transportation with the Decree of the Minister of Transportation Number KP 667 of 2022 concerning Guidelines for the Calculation of Service Fees for the Use of Motorcycles Used for the Benefit of the Community carried out with applications (KP 667 of 2022).

The fare bidding system offers flexibility but also raises concerns about business competition and pricing fairness. With the price bidding system, this can cause price offers that tend to be lower than the lower brick tariff as regulated in KP 667 of 2022. This tends to meet the element of predatory pricing. As regulated in the type of prohibited activities, namely Market Domination with the provisions of Article 20 of Law Number 5 of 1999 (Law 5/1999) concerning "Business actors are prohibited from supplying goods and or services by selling at a loss or setting a very low price with the intention of getting rid of or shutting down the business of their competitors in the market concerned so that it can result in monopolistic practices and/or unfair business competition." This could lead to market domination and reduce the number of available apps, limiting consumer choice.

2. Materials and Methods

The approach method used in this study is the normative juridical analysis method, which is carried out by researching and studying literature materials, secondary data consisting of primary legal materials, and secondary legal materials, and this method uses the object of the study of tertiary legal materials that will be analysed qualitatively. The main reference in this study is Law Number 5 of 1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition. Legal research in the event of potential violations of predatory pricing in the implementation of the bargaining system in online transportation applications was reviewed based on Law No. 5 of 1999 and assisted by the Regulation of the Business Competition Supervisory

Commission No. 5 of 2010 concerning Guidelines for the Implementation of Article 20 of Law No. 5 of 1999.

3. Result and Discussion

Predatory Pricing as Regulated in Law Number 5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition.

To achieve the welfare of Indonesian citizens, community involvement in economic development is essential, especially through the participation of business actors. However, the pursuit of maximum profits by these actors has led to monopolistic practices, corruption, and unfair competition, which contradict the principles outlined in Article 33 of the 1945 Constitution. In response to the economic crisis and under pressure from the International Monetary Fund (IMF), Indonesia enacted Law 5/1999., this was a key part of economic reforms aimed at curbing corruption, collusion, and nepotism, and fostering a competitive business environment. The law plays a crucial role in promoting fair competition, innovation, and efficiency, aligning with the constitutional goal of economic democracy and national welfare.

Law Number 5 of 1999 establishes regulations to prevent practices detrimental to healthy and fair business competition, focusing on three main areas: prohibited agreements, prohibited activities, and abuse of dominant positions. Prohibited agreements involve contracts between business actors that result in monopolistic practices and unfair competition, as outlined in twelve specific articles. Prohibited activities, on the other hand, can be carried out by a single business actor and include actions like monopolies and market control that disrupt fair competition. The abuse of dominant positions, described in four articles, occurs when a business actor dominates the market, impacting competition. Each prohibition is governed by specific elements and regulations, with the main difference between agreements and activities being the number of parties involved (Indonesia, 2019).

Violations under the Business Competition Law are analyzed using two approaches: the *per se* illegal approach and the rule of reason. The *per se* illegal approach automatically deems certain activities or agreements as illegal without requiring further proof of their impact, focusing on inherently harmful actions. In contrast, the rule of reason approach involves a more detailed analysis to determine whether the conduct in question unreasonably restricts competition. The choice of approach depends on the specific type of prohibition outlined in Law No. 5 of 1999.

Article 20 of the Business Competition Law prohibits predatory pricing, where business actors supply goods or services at a loss or set very low prices with the intent to eliminate competitors, leading to monopolistic practices and unfair competition. This regulation outlines several key elements necessary to prove predatory pricing, including the involvement of business actors, the supply of goods or services, setting very low prices, and the intent to drive competitors out of the market. The law also differentiates between product and geographical markets, emphasizing that predatory pricing becomes anti-competitive when it leads to monopolistic control or unfair competition. Predatory pricing is not inherently illegal; it becomes

a violation only if it meets specific criteria, such as shutting down competitors, creating barriers to entry, or pursuing future profits at the expense of competition. To prove predatory pricing, several tests are employed, including the Price Cost Test, Areeda Turner Test, Average Total Cost Test, Average Avoidable Cost Test, and Recoupment Test. KPPU conducts a three-stage assessment process to evaluate predatory pricing cases, examining the reasonableness of pricing, the potential for recoupment of losses, and a detailed price-cost comparison to determine whether the conduct is anti-competitive.

The Practice of Applying Bidding System in Online Transportation Application Tariff Activities

In Indonesia, the online transportation sector has seen rapid growth since the introduction of services like Uber, Gojek, and Grab. Despite initial challenges such as limited infrastructure and public awareness, the sector gained popularity as internet usage increased. This shift has impacted the conventional transportation industry, leading some traditional providers to adopt online platforms to remain competitive. Online transportation applications in Indonesia are governed by the Regulation of the Minister of Transportation Number 12 of 2019, which focuses on the safety of motorcycle users employed for public purposes. These applications are not classified as public transportation but are instead categorized as technology-based platforms that facilitate the use of motorcycles for community benefits. The regulation defines key elements such as electronic system operators, application companies, drivers, passengers, and motorcycles, providing a legal framework for the operation and use of these services. This framework ensures that the platforms operate within the bounds of the law while prioritizing user safety.

The Regulation of the Minister of Transportation Number 12 of 2019 outlines safety, security, comfort, affordability, and regulatory aspects that online transportation companies and drivers must adhere to. These guidelines emphasize driver health, proper vehicle maintenance, compliance with traffic rules, and the provision of secure and comfortable services for passengers. The regulation also includes specific provisions regarding the determination of service fees, considering factors like vehicle depreciation, fuel costs, and application rental fees, ensuring that tariffs are fair and non-discriminatory. The regulation is further supported by the KP 667 of 2022 decree, which addresses the pricing structure of online transportation services in Indonesia, including the calculation of service fees, upper and lower fare limits, and adjustments based on market conditions. It also highlights the differences between commission fees and application fees, which affect drivers' earnings and operational costs. Despite these regulations, there remains some ambiguity in the exact formula for calculating application fees, leaving room for further clarification by the Directorate General of Land Relations.

The online transportation market in Indonesia has seen the introduction of different pricing strategies, including fixed pricing, dynamic pricing, and bidding systems, as exemplified by the arrival of inDrive. Unlike other platforms that use complex algorithms for fare calculation, inDrive allows users and drivers to negotiate fares directly, offering flexibility but also raising concerns about potential market dominance and unfair competition. The competitive nature of the industry has driven companies to innovate in pricing and services, though the impact of

bidding systems on market fairness remains a topic of ongoing debate, especially in relation to existing regulations designed to prevent monopolistic practices.

Determination of Tariffs with a Bidding System on Online Transportation Applications Based on Competition Law in Indonesia

The presence of tariff wars within the online transportation application industry requires careful monitoring and scrutiny, as it poses a potential risk of violating the provisions outlined in Law Number 5 of 1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition. Specifically, the Business Competition Law contains two relevant provisions concerning pricing: Article 7 and Article 20. To determine the appropriate legal framework for analysis, it is crucial to understand the distinctions between these two articles (Wibawa et al., 2018).

Article 20 of the Business Competition Law prohibits business actors from supplying goods or services at a loss or setting prices excessively low with the intent to eliminate or cripple competitors in the relevant market, which may lead to monopolistic practices and/or unfair business competition. This article addresses individual conduct by business actors that does not involve cooperation with other competitors. Conversely, Article 7 prohibits business actors from entering into agreements with competitors to set prices below market value, which may result in unfair competition. This article focuses on collaborative actions among competitors.

Considering these legal provisions, the pricing practices employed by online transportation application businesses are carried out individually rather than in collusion with other business actors. Therefore, it can be concluded that these activities do not constitute an agreement under Article 7. Instead, tariff determination activities within the bidding system of online transportation applications are more appropriately analyzed under Article 20 of the Business Competition Law. Specifically, the practices may constitute predatory pricing, an aggressive price competition intended to eliminate competitors, as outlined in the KPPU Guidelines.

The analysis of pricing activities by business actors in the online transportation sector must be examined through the lens of Law 5/1999, as well as the Regulation of the Ministry of Transportation. The study focuses on whether the bidding system used in online transportation apps like inDrive and Gojek constitutes a violation of the law, specifically related to monopoly practices and unfair competition. The concern is that aggressive price competition, potentially leading to predatory pricing, could result in monopolistic practices. Law 5/1999 prohibits business actors from setting prices so low that it eliminates competition. Article 20 of the law is particularly relevant, as it addresses the issue of selling at a loss to eliminate competitors. The analysis indicates that pricing activities in the online transportation sector, where business actors set prices individually rather than in collusion with others, are more likely to fall under Article 20 rather than Article 7, which deals with cooperative price-setting among competitors.

The study identifies several key elements that need to be fulfilled to prove predatory pricing under Article 20, including Business Actor Elements, Supply Elements, Goods Elements, Service Elements, Selling Loss Elements, Very Low Price Elements, With Intentions, Eliminating or Deadly Elements, Elements Competitors' Businesses, Market Elements, Relevant Market

Elements, Monopolistic Practice Elements, and Unfair Business Competition Elements., The online transportation companies in question, such as inDrive and Gojek, meet the basic requirements of these elements. However, additional analysis is necessary to determine whether their pricing strategies, particularly those involving very low prices, fulfill the criteria for predatory pricing as outlined in the law.

Another critical element is whether these companies set prices with the intent to eliminate competition. The analysis suggests that the intense competition in the online transportation market, coupled with aggressive pricing strategies, could be aimed at driving out competitors. However, the proof of intent requires deeper investigation. The impact of such pricing on competitors must be assessed to determine if it results in the removal or elimination of rival businesses from the market. Further economic analysis is needed to determine if the companies are engaging in monopolistic practices or unfair competition. This involves evaluating whether one company is gaining a dominant market share through predatory pricing. The analysis also needs to consider if the pricing strategies result in unfair competition by disadvantaging smaller competitors who cannot match the low prices offered by larger companies like inDrive and Gojek.

The Ministry of Transportation's regulations also play a crucial role in this analysis. The Decree of the Minister of Transportation Number KP 667 of 2022 outlines the guidelines for calculating service fees in online transportation, including setting lower and upper fare limits. Tariffs determined by a bidding system must comply with these regulations to ensure fairness and protect all parties involved. Additionally, pricing and supervision are based on specific zones as dictated by the decree. For instance, fare prices vary across applications, such as GrabBike, GoRide, Maxim, and inDrive, with significant differences in the distance and fare calculations. The regulation outlines guidelines for calculating service fees, including lower and upper limit fares, to ensure fair competition and protect consumer interests.

The inDrive app demonstrates significant fare differences compared to other apps due to discrepancies in distance calculations, leading to concerns about compliance and market impact. While inDrive appears to comply with legal regulations, further investigation is needed to determine if the lower fares are the result of manipulated distance calculations. However, discrepancies in distance calculations, as seen in the inDrive app, suggest potential manipulation of fare prices, which could distort market competition and impact compliance with regulatory standards. These discrepancies have a substantial effect on market prices and may raise questions regarding inDrive's adherence to regulations on safety, security, and efficiency. The Gojek app with The GoRide Nego option, another service in the online transportation market, has eliminated application service fees, potentially violating Article 12 of the Ministry of Transportation Regulation Number 12 of 2019.

The pricing activities of online transportation companies like inDrive and Gojek appear to potentially violate both the Business Competition Law and Ministry of Transportation regulations, proving predatory pricing requires a detailed and thorough investigation. . More research is required to assess whether this constitutes predatory pricing. Both inDrive and GoRide's practices require further examination to determine if their pricing systems breach legal

regulations, especially in terms of long-term market impact and predatory pricing concerns. The study underscores the need for further analysis by the relevant authorities, such as KPPU, to ensure that the bidding system used in these apps does not lead to monopolistic practices or unfair competition in the market.

Implementation of Supervision of Tariff Determination Actions with a Bidding System carried out by the Online Transportation Application based on Applicable Laws and Regulations

Supervision involves ensuring that activities align with established plans or regulations. In the context of online transportation applications, supervision is crucial, especially for pricing, to avoid uncertainty and unfair competition. The supervision covers various aspects, including tariff setting, coordination, and monitoring service providers, with particular focus on tariff determination. Online transportation apps, such as inDrive and Gojek, have introduced bidding systems that offer fare flexibility. However, this has raised concerns about predatory pricing—selling at a loss to eliminate competitor, an action prohibited under the Business Competition Law. This scenario necessitates a robust supervision system to prevent market distortions and ensure fair competition.

KPPU plays a central role in supervising online transportation pricing strategies. As per Article 30 of the Business Competition Law, KPPU is authorized to investigate, decide on business competition cases, and impose sanctions on violators. It ensures that no unfair competition practices, such as predatory pricing, occur. KPPU's preventive supervision aims to prevent violations before they occur. It includes socialization, advocacy, coordination, and policy advising.

a. Socialization

Socialization involves educating online transportation companies about business competition laws, particularly regarding pricing strategies, while advocacy provides them with the principles of fair competition.

b. Advocacy

KPPU offers advocacy, wherein business actors can consult about business competition laws. Additionally, KPPU promotes the Business Competition Compliance Program, encouraging companies, especially dominant ones like inDrive and Gojek, to voluntarily comply with competition laws. This program, though still in its early stages, is expected to become more effective in the future..

c. Coordination

d. Coordination between KPPU, the government, and business actors is vital for supervision. The Ministry of Transportation, as the primary regulator, works closely with KPPU, especially when there are indications of predatory pricing.

e. Policy Advisor

Intended to offer guidance and recommendations to the government for the formulation of policies that promote fair business competition. KPPU is authorized to provide recommendations to the government in the form of proposals to review, repeal, or amend

specific policies. Additionally, KPPU is empowered to offer guidance and considerations to business entities, including operators of online transportation applications, concerning matters related to business competition.

KPPU's repressive supervision takes action to restore the conditions that have been violated to their original state. Repressive is the authority of the Deputy for Law Enforcement. Specifically in violation of Article 20 of the Business Competition Law, there are 2 (two) directorates that function to carry out repressive supervision, namely the Directorate of Investigation and the Directorate of Enforcement. The repressive tasks carried out by KPPU include assessing the activities of business actors, in this assessment it is generally carried out during and after the activities are carried out, with the following supervision process:

a. Evaluation

Supervision in the form of evaluation is aimed at assessing compliance with business competition regulations. The Indonesian Competition Commission (KPPU) conducts evaluations both actively and passively. Actively, KPPU, through its Economic or Investigation Departments, initiates market research on potential violations of Article 20 of the Business Competition Law. Passively, it responds to reports from the public and business actors regarding such violations. The outcomes of these evaluations serve as the basis for determining whether a case should advance to the investigation stage. According to KPPU, no complaints have been filed regarding the bidding system used by GoRide and inDrive in relation to Article 20 violations, although tariff war concerns have been raised in other contexts.

b. Follow-up

This authority is divided into active and passive powers. KPPU's active authority involves market research, investigations, drawing conclusions, summoning business actors and witnesses, seeking assistance from law enforcement, requesting information from government agencies, and imposing administrative sanctions. Its passive authority is triggered by reports from the public or business actors concerning monopolistic practices or unfair competition. After investigating alleged violations of Article 20 of the Business Competition Law, KPPU may summon business actors, witnesses, and experts to gather further evidence, including economic and communication evidence. KPPU's oversight process includes coordination with the Ministry of Transportation and relevant authorities, using a rule of reason approach to evaluate compliance.

c. Penalty

Sanctions imposed KPPU are a repressive measure aimed at restoring fair market conditions and enforcing business competition law. When business actors are proven to have violated Article 20 of the Business Competition Law, KPPU, under Article 47, can take administrative actions. These actions may include orders to cease activities that result in monopolistic practices, unfair competition, or harm to the public, as well as the determination of compensation payments. KPPU may also impose fines ranging from Rp 1,000,000,000.00 (one billion rupiah) to Rp 25,000,000,000.00 (twenty-five billion rupiah).

The supervision of online transportation applications falls under the jurisdiction of the Ministry of Transportation, both at the central and regional levels, as stipulated in Article 19 of the Regulation of the Minister of Transportation Number 12 of 2019 concerning the Protection of the Safety of Motorcycle Users for the Benefit of the Community. This regulation mandates that both central and regional governments oversee the use of motorcycles for public services. The Ministry of Transportation, particularly the Minister, is responsible for publicizing the formula and guidelines for calculating service fees, as outlined in Article 13 of the same regulation. The Minister's duties regarding the supervision of tariff determination are further clarified in Article 11 of the Regulation, which calls for the creation of derivative rules in the form of Guidelines for the Calculation of Service Fees.

Consequently, the Ministry issued the guideline KP 667 of 2022, which defines the roles of the Director General of Land Transportation, the Head of the Jabodetabek Transportation Management Agency, and regional authorities (governors, regents, or mayors) in supervising tariff-setting activities for online transportation applications. The primary focus of this supervision is on business actors that implement tariff determination using a bidding system. Currently, the inDrive application with its bidding system and Gojek's GoRide Nego service are subject to this oversight, ensuring their tariff-setting practices comply with the established regulations. These authorities are tasked with ensuring that these platforms adhere to the guidelines set forth in the relevant legal frameworks.

In terms of preventive oversight, the supervision by the Directorate General of Land Transportation, specifically conducted through the Directorate of Road Transportation in coordination with the Collection and Reporting Section, is responsible for coordinating, synchronizing, and controlling policies related to the preparation of plans, analysis, and the determination of levies in the transportation sector

a. Socialization

Supervision in the form of socialization aims to ensure that relevant information and regulations are effectively communicated to online transportation application business actors. The Ministry of Transportation must regularly and comprehensively disseminate the Regulation of the Minister of Transportation Number 12 of 2019 concerning the Protection of the Safety of Motorcycle Users Used for the Benefit of the Community, as required under Article 13. The Directorate General of Land Transportation is specifically tasked with socializing policies regarding the Guidelines for Calculating Service Fees, taking into account the zone-specific service fee calculation as outlined in the Decree of the Minister of Transportation Number KP 667 of 2022 in conjunction with KP 1001 of 2022. Socialization efforts must extend beyond the central government and reach each region. This is necessary because service fee rates are divided into three zones, and each region needs to be informed about the corresponding tariff for its zone. The Directorate General of Land Transportation, with the assistance of governors, regents, or mayors, is responsible for ensuring that regional socialization is conducted, ensuring that all regions are aware of their specific service fee rates. Regional heads are authorized to issue decrees to

implement and supervise the service fee tariffs for motorcycle use in their respective areas, based on the zone division. These decrees serve to enforce the provisions of the Decree of the Minister of Transportation Number KP 1001 of 2022 within each region.

b. Coordination

Supervision in the form of coordination is actively conducted by the Ministry of Transportation through direct collaboration with the Business Competition Supervisory Commission (KPPU). This coordination aims to streamline monitoring of the tariff determination process and facilitate early mitigation efforts when indications of violations arise. The Ministry of Transportation and KPPU work together to ensure that the tariff-setting practices of business actors, such as inDrive and GoRide Nego, do not violate business competition laws, particularly regarding predatory pricing. The tariff-setting activities by these business actors have shown potential indications of predatory pricing, which could breach Article 20 of the Business Competition Law. The Ministry of Transportation coordinates with KPPU to initiate actions against these alleged violations before they become formal breaches of the law. The collaboration includes comparing service tariffs set by online transportation companies operating under a bidding system with the regulatory minimum tariff rates for each zone. If tariffs are set below the minimum threshold, the Ministry of Transportation is obligated to report this to KPPU. In cases where violations are suspected, the Ministry of Transportation can actively participate in KPPU's case handling process, providing reports, evidence, and testimony as necessary. This ensures that both agencies work together effectively to uphold fair competition and compliance with regulations.

c. Compliance

Supervision of compliance is intended to evaluate reports submitted by online transportation business actors regarding their tariff determination activities. Under this supervision, the primary obligation of business actors is to provide the Directorate General of Land Transportation with an evaluation of their performance in implementing tariffs. In addition to internal supervision, the oversight of the performance evaluations of online transportation companies also involves external supervision. According to Dictum 8A letter d of the Decree of the Minister of Transportation Number KP 1001 of 2022, the annual financial statements of these business actors must be audited by a public accounting firm ranked within the top five. This requirement ensures that the Ministry of Transportation incorporates external audits as part of the supervisory process for tariff determination activities, adding an additional layer of oversight to ensure compliance with regulations.

Repressive supervision, the Ministry of Transportation takes action to restore the conditions that have been violated to their original state.

a. Follow-up

The Ministry of Transportation conducts follow-up actions on online transportation application business actors by periodically monitoring the tariffs implemented by these platforms. This oversight is based on reports from the public, drivers, performance

evaluations of the applicators, and data analysis obtained from the respective online transportation platforms. Following the reporting, further supervision ensures compliance with applicable regulations by the online transportation business actors.

b. Examination

The Directorate General of Land Transportation conducts a comprehensive and transparent inspection process that includes surveys, analysis of operational costs, market conditions, and driver income. Discussions and consultations are held with various stakeholders, including driver representatives, online transportation companies, and consumer organizations, to ensure that the tariff determination by these companies complies with existing regulations. This process is guided by findings and reports from the public, as well as performance reports from the applicators, which contain data on daily operations, passenger numbers, and driver income. Inspections are initiated based on reports from various sources, including public complaints regarding unreasonable tariffs or service issues under Article 3(2) of the Regulation of the Minister of Transportation Number 12 of 2019. The Directorate General then conducts field verification, holds meetings with relevant parties, and performs direct surveys with drivers and users to ensure the accuracy of the reported data. Periodic evaluations are also conducted to adjust tariffs in response to significant changes in operational costs or market conditions. If a business actor is found to have violated the provisions of the Decree of the Minister of Transportation Number KP 667 of 2022, the Directorate General of Land Transportation may take appropriate actions within the scope of its authority.

c. Penalty

Administrative sanctions in this context are classified as repressive supervisory measures that can be enforced by the Directorate General of Land Transportation. Online transportation application business actors who fail to comply with reporting obligations or experience delays in submission may be subject to administrative sanctions imposed by the Directorate General. These sanctions may include fines, suspension of operating licenses, or other legal actions as outlined in applicable regulations. However, to date, no formal written sanctions have been issued for non-compliance in reporting by online transportation application companies. This lack of enforcement has led to legal uncertainty and the perception of leniency towards business actors who violate compliance regulations.

4. Conclusion

The act of determining tariffs carried out by online transportation business actors using a bidding system has the potential to violate the provisions of Article 20 of the Business Competition Law regarding the prohibition of predatory pricing and the Decree of the Minister of Transportation Number KP 667 of 2022 jo. Decree of the Minister of Transportation Number KP 1001 of 2022 concerning Guidelines for the Calculation of Service Fees for the Use of Motorcycles It is carried out

with a application and Regulation of the Minister of Transportation Number 12 of 2019 concerning the Protection of the Safety of Motorcycle Users Used for the Benefit of the Community. Supervision of the actions of online transportation business actors in setting prices with a bidding system is carried out by 2 (two) institutions, namely KPPU and the Ministry of Transportation, both preventively and repressively.

Suggestions that can be given to the current regulations regarding the method of determining tariffs in the online transportation application environment are that it is hoped that the Government will develop a regulation that accommodates the setting of fares with a bidding system. This is necessary to prevent similar violations in fare setting. Additionally, for the Ministry of Transportation, it is recommended to create technical rules regarding the determination of sanctions and the amount of fines for online transportation application business actors who violate the established tariffs, thereby ensuring compliance and fairness in the industry.

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