

A Creative, Innovative, and Solutive Transportation for Indonesia with Its Setbacks and How to Tackle Them: A Case Study of the Phenomenal GOJEK

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ABSTRACT

Indonesia is home to 300 million people and has one of the most densely populated cities in the world. Unfortunately, it is still listed as one of developing countries. Responding to the absence of a quality public transportation system, the private and informal sectors for transportation have been developing solutions. They fill a gap in the lack of quality transportation system in Indonesia by providing an effective means of transport for the people amidst the economic downturn. One of the most rapidly growing private public transportation is PT Gojek Indonesia or GOJEK. Gojek is an online courier company which uses creative and innovative motorcycle fleets because it is not only a transportation business, but also covers almost all the scopes of people's needs. Clearly, the users find the service useful. However, it comes with certain setbacks. The aim of this paper is to describe how Gojek influenced the Law-Maker formulation of the regulation governing Gojek. The results of this study shows that albeit Gojek has a great potential in improving the economy, it replaces the conventional transportation. The existence of Gojek business which has not been regulated in Indonesia has also triggered similar sectorial conflict.

Keywords: Law, Economic, Gojek, Indonesia

1. INTRODUCTION

Gojek is an Indonesian application that helps its costumer to book motorcycle taxi within their driver to move to one place to other, charging reasonably low fare compared to the conventional *ojek*. As the first local startup based in Indonesia to offer such services, it has high brand recognition and broad network of driver in most of the big cities in Indonesia. The Gojek itself gradually evolved to a gigantic business network, initially only offering motorbikes rides, and now expanding to other daily needs such as food delivery, courier, taxi

rides, buying tickets online, house cleaning services, buying medicine, and other services as well.

Establishing such a big network business, Gojek has undergone massive growth since it is first founded. It has successfully attracted huge amount of investment funds. Currently valued \$3 billion, Gojek is the first and only unicorn company in Indonesia. The way Gojek operates helped the people in their daily lives. It changed the way how people travel around their city in Indonesia.

The success of Gojek arguably by its ability to solve one of the major problems in the most of the big cities in Indonesia, absence of the quality public transportation system in those densely populated cities, which was not solved by the unpractical conventional *ojek*. Moreover, chronic congestion in the big cities in Indonesia is also one of the factors the consumers chose motorbike transportation. The Gojek also provides haggles-free and cheaper rides compared to the conventional *ojek*. Further, this emerging Gojek has also positively contributed to the employment rate in Indonesia by providing thousands of jobs as the Gojek driver all around Indonesia.

Unfortunately, despite the rapid growth of Gojek business network and its positive impact on the lives of many, several issues have also sparked along the growth of Gojek. It went through several big demonstrations by many parties, such as the conventional *ojek* whose income has been heavily disrupted by the birth of Gojek, and by the Gojek driver itself, seeking certainty on their status as the Gojek driver, whether as an employee or partner and their insurance as well. Further, some of local authority in the cities such as Padang has banned Gojek to operate their business in the city under the reason that it is illegal and unregulated. Issues has also sparked by allegation that Gojek won the competition not entirely because of its new technology, but also due to the lack of constriction and supervision by the government as there is no existing law to specifically regulate the Gojek business, especially on the matter of price competition between conventional *ojek* and Gojek, and on the matter of permit and tax paying as well.

This all issues have come to the problem that the existing specific current legal framework governing the Gojek business has not been established in Indonesia. The current law-maker in the state has tried several times to pass the law on this specific business. However, none of them has succeeded in the effort.

This leads to the no specific regulation to regulate this gigantic business. Lacks of regulation means there are no protection offered by the state to the operation of the Gojek business itself since it is the first in Indonesia. Further, legality of the said business is questionable while the business itself made enormous progress in creating and dominating its own market.

The aim of this paper is to describe how Gojek influenced the Law-Maker in formulating the regulation governing Gojek. To observe such influence, we will be

examining several law passed by the government in order to regulate the operation of the Gojek business.

2. LITERATURE REVIEW

2.1. A Creative, Inovative, and Solutive Framework

Creative is defined by Oxford dictionary as “Relating to or involving the use of imagination or original ideas to create something.” According to James R. Evans, creativity is an ability to determine new relationships, in viewing the subject from a new perspective, so that it will determine the combinations of a concept that has been imprinted in the mind. Meanwhile, the definition of creative by Havvel is a person's ability to create a system or a combination that is still new.

In Economy, there is a term called creative economy. According to Paul Romer, an economist, ideas are very important economic goods and ideas are a major factor in the creation of a creative economy, which keeps the economy growing. In John Howkins's book, "How People Make Money from Ideas," it is mentioned that the creative economy is the creation of values as a result of ideas, so Howkins emphasizes an economy on a thoughtful idea that can produce better results. The world has entered a new phase where economic competition is very fierce, so that if the creative economy supported by technology development, it has the potential to build a better economy of a country as well as pushing the development of the said country.

Solutive in this context, is to produce a solution. The solution is a way of solving problems. It can create ideas that solve existing problems and that this problem can be solved. While Innovation by Everett M. Rogers is an idea, idea, practice or object / object that is realized and accepted as a novelty by a person or group to be adopted. While Stephen Robbins defines innovation as a new idea which is applied to initiate or improve a product, process and services. According to Van de Ven and Andrew H, Innovation is the development and implementation of new ideas by people who over a period of time conduct transactions with others in an organizational setting. While the positive law in Indonesia, namely the Law No. 19 Year 2002 on Copyrights has also defined Innovation as a research, development, and / or engineering activity aimed at developing the practical application of new values and scientific contexts, or new ways of applying existing science and technology into products or production processes.

Innovation has a broader meaning than inventions. According to Kamus Besar Bahasa Indonesia (KBBI), innovation is the introduction or introduction of new things, renewals, new discoveries that are different from existing or previously known. From the various definitions of innovation can be concluded that innovation is the creative process in doing new discovery different from existing ones while the innovative ability of an entrepreneur is a process of turning opportunities into an idea or ideas that can be sold.

2.2. Legal Framework

In the existing legal framework in Indonesia, there are 3 frameworks which directly relates to the operation of the Gojek, which is the stipulation on Sharing Economy, Regulation on Micro, Small, and Middle Business (hereinafter “UMKM Law”), and the Regulation on Transportation.

First, Indonesian constitution does not explicitly states sharing economy is an recognized economic principle, but the stipulation in the constitution contain certain degree of recognition over the sharing economic. Indonesian Constitution stipulates that the economy shall be organized as a common endeavor based upon the principles of family system. (Indonesian Constitution, Fourth Amendment, 1945) It further stipulates that the organization of the national economy shall be conducted on the basis of economic democracy upholding the principles of togetherness, self-efficiency, and keeping a balance in the progress and unity of the national economy. (Indonesian Constitution, Fourth Amendment, 1945) This principle of economy is similar to the sharing economy. In the work of Schor and associates (Dubois, et al., 2014; Schor, 2014, 2015; Schor & Fitzmaurice, 2015; Schor et al., 2014), the sharing economy is defined as digitally connected economic activities including the following possible categories (examples in parentheses are those made by Cristiano Codagnone and Bertin Martens as author of JRC Technical Reports “Scoping the Sharing Economy: Origins, Definitions, Impact, and Regulatory Issues): recirculation of goods (i.e. Craigslist, eBay); increased utilization of durable assets (i.e. Zipcar, Relay Rides, Uber, CouchSurfing, Airbnb); exchange of services (i.e. Time banking, TaskRabbit, Zaarly); sharing of productive assets; and building of social connections (i.e. Mama Bake, Soup Sharing, and EatWithMe).

Second, the UMKM Law is a fundamental regulation on the business concerned. It is stipulated under the Act No. 22 Year 2009. The law was passed to encourage and foster the existence of the starting business in order building the national economy. (Article 3, UMKM Law, 20/2008) The empowerment of micro, small, and middle business is also aimed to raise the employment rate, decreasing income inequality, and poverty alleviation (Article 5, UMKM Law, 20/2008). This regulation shows that every business established with the mean of building the national economy must possess clear legal certainty. Therefore, in the operation of the business will be able to give the positive contribution to the national economy growth.

The traffic and road transport is a whole system which consists of the traffic, road transport, traffic network and road transport, infrastructure of the traffic and road transport, vehicles, drivers, road users, and the organizer. In term of organizing, the organizer of road transport cannot unilaterally determine the tariff rates. For the taxi tariff rates, it has to be approved by the government (Art. 183 Clause 1, Traffic Act, 22/2009), while for the non-routes individual-to-individual transport shall base on the agreement between service user and public transportation company (Art. 183 Clause 2, Traffic Act, 22/2009).

2.3. Relation between Economic and Law

The relationship between economy and law is mutually supportive. The economy will not work properly if there is no legal framework that protects economic actors in running their business activities. It is no wonder that the economic policy of a country will be very influential on economic life in the country.

According to Van Kan (Elsi Kartika Sari et al, 2008), law is the whole life-giving enforcing regime to protect human interest in the society. Meanwhile, according to Utrecht (Elsi Kartika Sari et al, 2008), the law is a set of rules, both in the form of orders and prohibitions that regulate the order in a society and should be obeyed by members of the community concerned. Thus, when we draw conclusions, the law can be interpreted as a human-made system to restrict human behavior so that it can be controlled as the law is the most important instrument in the implementation of the sequence of institutional power which has the duty to ensure legal certainty in society.

According to Samuelson (Paul A. Ekonomi, 1991) economics is the way that humans and groups do to utilize limited resources to acquire various commodities and distribute them for consumption by society.

The importance of relation between the two factors can be seen as the law directly determine in the development of a business (Neltje F. Katuuk, *Legal Aspects of Business*.1994), for instance, legitimacy of a company to operate its business is regulated by the law. Many are experiencing barriers in running and developing their business, both because there is no law or unsupportive regulation. In the development of a business, the relationship of the two factors plays a crucial rule. Currently, there are no more economic activities which do not related to the law. On the other hand, there is no a longer a legal activity unrelated to the aspect of economy. Thus the understanding of the two sciences as a whole has become a common need. On the other hand, the economy has its own influence on the law. This influence is in the form of profit-loss considerations that affect the work of the law.

There are two models in the economic development strategy, namely: a. economic model plan, b. model of market economy (Didik J Rachbini *Political Economy: Policy and Development Strategy*, 2004). Firstly, the model of economic planning, emphasizing purpose and relying on the law, will be seen as a transformation of economic activity. Country is the main support in the plan. The law works as a translator of goals to the form of norms and as a reference in the ideals. While the market economy is not driven from the center of power, it will not be the market mechanism, such as demand and supply. In this model, the law is seen as a forecast, a view, and a guarantee of legal certainty for the sake of smoothness of a business. And also as a creative media for business actors or as a protective guarantee to feel safe in the transaction.

From it all it can be believed that the relationship between law and economy is very close and reciprocal. Both of them affect each other and work with each other. Law works as the controller of economic development with its regulation. While the economy as the work

of the law itself. The role of law in economic development depends on the pattern of economic development adopted by the state. In the development of the state, the law functions as an economic orientation. In economic development, law serves as a support institution or guarantee of every activity

3. RESEARCH METHOD

This research will utilize a qualitative method research to gain a descriptive result to explain the condition, situation and problem being faced. Data were gathered through examination of regulation, court decision, news, observation, and in-depth interview conducted with the Gojek drivers. This collected data will be further discovered and analyzed deeply in line with the situation and condition of the object observed.

4. RESULTS

4.1. Gojek Indonesia

Gojek Indonesia is a genuine startup from Indonesia founded by Nadiem Makarim in 2010. Gojek initially only provides shuttle service through motorcycle by phone call booking only and until now gojek continue to develop and has had 15 types of features and services that have been operating in 50 cities in Indonesia. Before the presence of gojek, shuttle service in Indonesia has been using a motorcycle, known as Ojek, which is a conventional shuttle that is widely used by the public. The spread of Gojek based on 3 basic values: speed, innovation, and social impacts to be solutions for developing countries like Indonesia with the world's 4th largest population.

Gojek as company on-demand application-based service provider ranks 17th out of 56 companies named the "world change" company released by the Fortune in September 2017. It became the only Southeast Asian company that made it into the list, in the official site Fortune it has been stated that list of companies "change the world" based on the priority to companies with annual revenues above USD 1 billion and positive social impacts for the community through its core business strategy. It also mentioned that Mocking Services can shock the urban economy where UMKM business is helped by a revenue surge through a driver partner of more than 300,000 and the driver's partners can enjoy the sharing of health benefits, insurance, safety training, to microfinance services. In addition to the list of companies "change the world", Gojek also received an award as Fintech most active Company supporting Non-Cash National Movement (GNNT) inclusion and financial education and UMKM empowerment, and TOP 10 most powerful Brand Indonesia, TOP 3 Brand Performer, TOP 3 Most Powerful Transportation / logistic brands.

The Gojek application, available in the play store, has been downloaded by 10 million users. The plentiful features of services offered by Gojek can create a "multiplier effect" for industries and other economies as well. Based on the data from Indonesia Statistic Body, known as BPS (Badan Pusat Statistik), it is reported that the amount of labor force in

February 2017 was 131.55 million people, up by 6.11 million people compared to August 2016 and up 3.88 million people compared to February 2016. The population who works in Indonesia in February 2017 is 124.54 million people, up by 6.13 million people compared to the situation in August 2016 and increased by 3.89 million people compared to February 2016. Unemployment Rate Open (TPT) in February 2017 of 5.33 percent, decreased by 0.28 percentage points compared to August 2016 and decreased by 0.17 percentage points compared to February 2016. In February 2017, 58.35 percent of the population worked on informal activities, and the percentage of informal workers rose 0.07 percentage points compared to February 2016. Over the past year, we experienced an increase in the percentage of working population were the Community Service Sector (0.42 percentage points), Transportation, Warehousing and Communication (0.27 percentage points), Agricultural Sector (0.12 percentage points); and Industrial Sector (0.07 percentage points). Thus, application-based application phenomena such as Gojek and the others have helped increase employment in the transportation sector.

The success of this gig invited appreciation from various parties including the President of Indonesia Joko Widodo who has said that this award becomes the motivation for Indonesia to continue it as a commitment in giving positive grant to the vision of the government so that Indonesia can become the largest digital economic power in Southeast Asia in 2020. The government is currently promoting the movement of a thousand startups in various regions.

4.2. Government Reaction

First of all, author will explain the existing regulations related to the implementation of the transport of people and then author will explain the government's reaction to the phenomena Gojek Indonesia. The government by Ministry of Transportation firstly regulated the transport of people with vehicles by Ministry of Transportation Law 84 of year 2009, until then its revision by Ministry of Transportation through Law 31 of year 2003. Furthermore, that regulations was revoked in Agustus 20, 2013 and updated with Ministry of Transportation Law 35 of year 2013 about the transport people with vehicles.

Furthermore, Ministry of Transportation Republik Indonesia revoked the last regulation with Ministry of Transportation Law 32/3016 in April 1, 2016. That regulations will be enforced after 6 months start form the date when it is passed. However, the regulations postponed its entry into force 6 months again, so that the regulation will be effective in April 1, 2016.

Before the regulations is effectively apply, the government established a new regulation of Ministry of Transportation (Ministry of Transportation Law, 26/2017) on People Transportation System by Public Motor Vehicle not within Route which revoked the last regulation. So, that matter affected two regulations, which is not properly revoked as it does not explicitly stated the revocation and it is unable to be enforced.

Regulatory hurdles about implementation the transport of people with vehicle does not stop there. After Ministry of Transportation Law 26/2017 apply effectively, there are several

drivers online transportation feel aggrieved by the rules. Driver online transportation feel that regulations side with employers conventional vehicles. They filed the said regulation for the judicial review to the Supreme Court of Indonesia. Lastly, the Supreme Court accede the 6 drivers' request and annulled 14 Article of the Regulation.

Supreme Court in this case assumes that this Manistry of Transportaion Law contrary to another rules. There are at least four reason fo the Supreme Court revoking that regulastions. First, transportations based on online is a logical necessity of the development of information technology in transportation; second, the facts indicates the the presence of transportation online able to change the monopoly markter to competitive market competition, by leveraging technological advantages to partner with lower class society with the sharing economy concept which is mutually beneficial (Artical 33, Clause 1, Constitution of Indonesia 1945); third, the Regulation in question is in contrary to UMKM Law because that regulations do not develop business in order to building the national economy based on democracy economy which full of justice and principle of empowerment of micro, small, and middle business; and the also in contrary with the Article 183(2) of Law Number 22 of Year 2009 on Traffic and Highway, because the tariff rate determination is done, based on upper limit rate and lower bound rate, proposed by the Governor/head of the body set by General Director in the name of the Minister and it is not based on agreement between the between the service user and public transportation company.

5. CONCLUSIONS AND RECOMMENDATIONS

This paper concludes that there are several turmoil when passing the specific law regulating Gojek. The government is in dilemmatic position to comply to the needs of the People over transportation like Gojek, while trying to be able to cover the interest of the state and the Gojek itself as well.

Based on our research, we recommend the government to take a new approach related to technology and transportation so that they are harmonious in order to solve the problems immediately through the formulation of regulation which can accommodate the interests of both the state's interests related to income and licensing, as well as the interests of the people over the needs of transportation and others too.

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