

## **CHAPTER FOUR**

### **FINDING AND ANALYSIS**

#### **A. The Formulation of Regulation of Minister of Transportation No. 26/2017 and The Verdict of Supreme Court No. 37 P/HUM/2017 Cancellation Argumentation**

The consideration of Minister of Transportation in the formulation of The Regulation of Minister of Transportation No. 26/2017 about the Implementation of the People Transportation by Public Transportation Which Not in Route is to provide legal certainty toward the aspects of safety; security; convenience; equality; affordability; and regularity also accommodate the development of people needs in implementation of the people transportation by public transportation which not in route. It needs to replace The Regulation of Minister of Transportation No. 32/2016 about Implementation of the Public Transportation by Public Transportation Which Not in Route.<sup>1</sup> However, there are 18 articles that adverse online taxi service providers (special rental transportation service providers) and it is only beneficial for the conventional taxi service providers (legal entity-conventional service providers). These 18 articles also contrary with The Regulation of Minister of Transportation formulation especially on legal certainty towards the aspect of equality; convenience; and affordability, such as the Article 5 paragraph (1) letter e;

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<sup>1</sup> Kementerian Perhubungan, *Peraturan Menteri Perhubungan tentang Penyelenggaraan Angkutan Orang Dengan Kendaraan Bermotor Umum Tidak Dalam Trayek*, Permenhub No. 26/2017, Pertimbangan Menteri Perhubungan, letter b.

Article 19 paragraph (2) letter f; Article 19 paragraph (3) letter e; Article 20; Article 21; Article 27 letter a; Article 30 letter b; Article 35 paragraph (9) letter a number 2; Article 35 paragraph (10) letter a number 3; Article 36 paragraph (4) letter c; Article 37 paragraph (4) letter c; Article 38 paragraph (9) letter a number 2; Article 38 paragraph (10) letter a number 3; Article 43 paragraph (3) letter b number 1 sub-letter b; Article 44 paragraph (10) letter a number 2; Article 44 paragraph (11) letter a number 2; Article 51 paragraph (3); Article 66 paragraph (4).

Meanwhile, the Supreme Court revoked the application object namely 18 articles in The Regulation of Minister of Transportation No. 26/2017 because the application object is contrary with the higher legislation, such as Article 3, Article 4, Article 5, and Article 7 of Law No.20/2008 about Micro, Small, and Medium Entrepreneurs and Article 183 paragraph (2) of Law No. 22/2009 about Traffic and Road Transportation<sup>2</sup> so these 18 articles do not have the legal binding power as legal basis of *lex superior derogat legi inferiori* where the higher legislation override lower legislation.<sup>3</sup>

There are 18 articles in The Regulation of Minister of Transportation No. 26/2017 that were revoked by Supreme Court which have been grouped based on equation of content and meaning of these. They are as follow:

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<sup>2</sup> Mahkamah Agung, “Putusan Nomor 37 P/HUM/2017”, Pg. 75.

<sup>3</sup> Zainal Asikin, 2013, *Pengantar Ilmu Hukum*, Jakarta, Rajawali Pers, Pg. 102.

1. Article 5 paragraph (1) letter e

*“tarif angkutan berdasarkan argometer atau tertera pada aplikasi berbasis teknologi informasi.”*

The consideration of the Minister of Transportation in the formulation of this article is to guarantee one of legal certainty against the aspects of equality in the Implementation of the People Transportation by Public Transportation Which Not in Route.<sup>4</sup> However, in fact, this article does not guarantee one of legal certainty against the aspects of equality in its implementation because the transportation tariff is determined according to the taximeter or stated on the technology-based application. This matter decreases the opportunity of online taxi service providers to get more consumers with cheap tariff within a reasonable distance.

The Supreme Court revoked this article because it is contrary with the higher legislations, such as Article 3; Article 4; Article 5; and Article 7 of Law No. 20/2008 about Micro, Small, Medium Entrepreneurs<sup>5</sup>, as follows:

a. Article 3

*“Usaha Mikro, Kecil, dan Menengah bertujuan menumbuhkan dan mengembangkan usahanya dalam rangka membangun perekonomian nasional berdasarkan demokrasi ekonomi yang berkeadilan.”*

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<sup>4</sup> *Loc. Cit.* Kementerian Perhubungan.

<sup>5</sup> *Loc. Cit.* Mahkamah Agung.

b. Article 4

*“Prinsip pemberdayaan Usaha Mikro, Kecil, dan Menengah: a. penumbuhan kemandirian, kebersamaan, dan kewirausahaan Usaha Mikro, Kecil, dan Menengah untuk berkarya dengan prakarsa sendiri; b. perwujudan kebijakan public yang transparan, akuntabel, dan berkeadilan; c. pengembangan usaha berbasis potensi daerah dan berorientasi pasar sesuai dengan kompetensi Usaha Mikro, Kecil, dan Menengah; d. peningkatan daya saing Usaha Mikro, Kecil, dan Menengah; dan e. penyelenggaraan perencanaan, pelaksanaan dan pengendalian secara terpadu.”*

c. Article 5

*“Tujuan pemberdayaan Usaha Mikro, Kecil, dan Menengah: a. mewujudkan struktur perekonomian nasional yang seimbang, berkembang, dan berkeadilan; b. menumbuhkan dan mengembangkan kemampuan Usaha Mikro, Kecil, dan Menengah menjadi usaha yang tangguh dan mandiri; dan c. meningkatkan peran Usaha Mikro, Kecil, dan Menengah dalam pembangunan daerah, penciptaan lapangan kerja, pemerataan pendapatan, pertumbuhan ekonomi, dan pengentasan rakyat dari kemiskinan.”*

d. Article 7

*“(1) Pemerintah dan Pemerintah Daerah menumbuhkan Iklim Usaha dengan menetapkan peraturan perundang-undangan dan kebijakan yang meliputi aspek: a. pendanaan; b. sarana dan prasarana; c. informasi usaha; d. kemitraan; e. perizinan usaha; f. kesempatan berusaha; g. promosi dagang; dan h. dukungan kelembagaan.  
(2) Dunia Usaha dan masyarakat berperan serta secara aktif membantu menumbuhkan Iklim Usaha sebagaimana dimaksud pada ayat (1).”*

And Article 183 paragraph (2) of Law No. 22/2009 about Traffic and Road Transportation<sup>6</sup>, as follows:

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<sup>6</sup> *Ibid.*

Article 183 paragraph (2)

*“Tarif Penumpang untuk angkutan orang tidak dalam trayek dengan tujuan tertentu, pariwisata, dan di kawasan tertentu sebagaimana dimaksud dalam Pasal 151 huruf b, huruf c, dan huruf d ditetapkan berdasarkan kesepakatan antara Pengguna Jasa dan Perusahaan Angkutan Umum.”*

2. Article 19 paragraph (2) letter f

*“penentuan tarif dilakukan berdasarkan tarif batas atas dan tarif batas bawah atas dasar usulan dari Gubernur/Kepala Badan yang ditetapkan oleh Direktur Jenderal atas nama Menteri setelah dilakukan analisa.”*

The consideration of the Minister of Transportation in the formulation of this article is to guarantee one of legal certainty against the aspects of equality in the implementation of the people transportation by public transportation which not in route.<sup>7</sup> Yet, in fact, this article does not guarantee one of legal certainty against the aspects of equality in its implementation because of the tariff determination that is committed based on the upper limit tariff and lower limit tariff on the basis of a proposal from the Governor/Head of Board established by the Directorate General on behalf of the Minister after the analysis. This matter raise unfairness business competition between online taxi service providers and conventional taxi service providers and also limit the online taxi service providers in determining the transportation tariff.

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<sup>7</sup> *Loc. Cit.* Kementerian Perhubungan.

Meanwhile, the Supreme Court revoked this article because it is contrary with the higher legislations, such as Article 3, Article 4, Article 5, and Article 7 of Law No.20/2008 about Micro, Small, and Medium Entrepreneurs and Article 183 paragraph (2) of Law No. 22/2009 about Traffic and Road Transportation.<sup>8</sup>

3. Article 19 paragraph (3) letter e

*“dilengkapi dokumen perjalanan yang sah, berupa surat tanda nomor kendaraan (STNK) atas nama badan hukum, kartu uji, dan kartu pengawasan.”*

The consideration of the Minister of Transportation in the formulation of this article is to guarantee one of legal certainty against the aspects of equality in the implementation of the people transportation by public transportation which not in route.<sup>9</sup> Yet, in fact, this article does not guarantee one of legal certainty against the aspects of equality in its implementation because the vehicles are owned by the service providers should be equipped with The Vehicle Registration Certificate (*STNK*) on behalf of the legal entity, test card, and supervision card. This is obviously adverse the online taxi service providers which only have the Vehicle Registration Certificate (*STNK*) on behalf of individual and it does not has any vehicle supporting documents that needs additional time and additional cost in its procurement. This only beneficial for one party

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<sup>8</sup> *Loc. Cit.* Mahkamah Agung.

<sup>9</sup> *Loc. Cit.* Kementerian Perhubungan.

namely conventional taxi service providers in performing transportation service.

Meanwhile, the Supreme Court revoked this article because it is contrary with higher legislations, such as Article 3, Article 4, Article 5, and Article 7 of Law No.20/2008 about Micro, Small, and Medium Entrepreneurs.<sup>10</sup>

#### 4. Article 20

*“pelayanan angkutan sewa khusus merupakan pelayanan dari pintu ke pintu dengan wilayah operasi dalam kawasan perkotaan.”*

The consideration of Minister of Transportation in the formulation of this article is to guarantee the legal certainty against the aspect of convenience and affordability in the implementation of the people transportation by public transportation which not in route.<sup>11</sup> Yet, in fact, this article does not guarantee the legal certainty against the aspects of convenience and affordability in its implementation because online taxi services is a door to door service that is only commit in urban areas. This matter limits the online taxi service providers in growing and developing their business to performing service.

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<sup>10</sup> *Loc. Cit.* Mahkamah Agung.

<sup>11</sup> *Loc. Cit.* Kementerian Perhubungan.

Meanwhile, the Supreme Court revoked this article because it is contrary with higher legislations, such as Article 3, Article 4, Article 5, and Article 7 of Law No.20/2008 about Micro, Small, and Medium Entrepreneurs.<sup>12</sup>

## 5. Article 21

*“angkutan orang dengan tujuan tertentu ditetapkan dengan mempertimbangkan perkiraan kebutuhan jasa angkutan orang dengan tujuan tertentu dan adanya potensi bangkitan perjalanan.”*

The consideration of Minister of Transportation in the formulation of this article is to guarantee one of legal certainty against the aspects of convenience in the implementation of the people transportation by public transportation which not in route.<sup>13</sup> Yet, in fact, this article does not guarantee one of legal certainty against the aspects of convenience in its implementation because the determination vehicles number will limit the places availability for people who want to join as online taxi service providers consider the obscurity of its predestination mechanism. This matter certainly adverse online taxi service providers in establishing the vehicle supplies plan for 5 (five) years and perform vehicle maintenance each year that take more additional cost also additional time that covered by the individual. This matter will only beneficial for conventional taxi

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<sup>12</sup> *Loc. Cit.* Mahkamah Agung.

<sup>13</sup> *Loc. Cit.* Kementerian Perhubungan.



service providers because the vehicle supplies plan and vehicle maintenance are covered by their transportation company.

Meanwhile, the Supreme Court revoked this article because it is contrary with the higher legislation, such as Article 3, Article 4, Article 5, and Article 7 of Law No.20/2008 about Micro, Small, and Medium Entrepreneurs.<sup>14</sup>

6. Article 27 letter a

*“memiliki paling sedikit 5 (lima) kendaraan yang dibuktikan dengan Surat Tanda Nomor Kendaraan (STNK) atas nama badan hukum dan surat tanda bukti lulus uji berkala kendaraan bermotor.”*

The consideration of Minister of Transportation in the formulation of this article is to guarantee the legal certainty against the aspect of convenience and equality in the implementation of the people transportation by public transportation which not in route.<sup>15</sup> Yet, in fact, this article does not guarantee the legal certainty against the aspects of convenience and equality in its implementation because the service providers must have at least 5 (five) vehicles as evidenced by the Vehicle Registration Certificate (*STNK*) on behalf of the legal entity and vehicle periodic tested certificate. This matter obviously adverse online taxi service providers because they only has less than 5 (five) vehicle as

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<sup>14</sup> *Loc. Cit.* Mahkamah Agung.

<sup>15</sup> *Loc. Cit.* Kementerian Perhubungan.

evidenced by the Vehicle Registration Certificate (*STNK*) on behalf of individual and they do not have vehicle periodic tested certificate that is published periodically. This matter is beneficial for conventional taxi service providers because they have at least 5 (five) vehicles in each service branch area and they have the Vehicle Registration Certificate (*STNK*) on behalf of a conventional taxi service providers company also they have vehicle periodic tested certificate that covered by their transportation company.

Meanwhile, the Supreme Court revoked this article because it is contrary with the higher legislation, such as Article 3, Article 4, Article 5, and Article 7 of Law No.20/2008 about Micro, Small, and Medium Entrepreneurs.<sup>16</sup>

#### 7. Article 30 letter b

*“menggunakan tanda nomor kendaraan bermotor sesuai domisili cabang tersebut.”*

The consideration of Minister of Transportation in the formulation of this article is to guarantee the legal certainty against the aspect of convenience and affordability in the implementation of the people transportation by public transportation which not in route.<sup>17</sup> Yet, in fact, this article does not guarantee the legal certainty against the aspects of

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<sup>16</sup> *Loc. Cit.* Mahkamah Agung.

<sup>17</sup> *Loc. Cit.* Kementerian Perhubungan.

convenience and affordability in its implementation because service providers must use the Vehicle Registration Number in accordance with the branch area domicile of their service. This matter limits the online taxi service providers in transportation service perform in order to get more consumers because not all Vehicle Registration Number of people who want to become online taxi service providers in accordance with branch area domicile of their service. This matter is beneficial for conventional taxi service providers because they have many branches in every region that allows conventional taxi service providers to have several vehicles with Vehicle Registration Number in accordance with branch area domicile of their service.

Meanwhile, the Supreme Court revoked this article because it is contrary with the higher legislation, such as Article 3, Article 4, Article 5, and Article 7 of Law No.20/2008 about Micro, Small, and Medium Entrepreneurs.<sup>18</sup>

8. Article 35 paragraph (9) letter a number 2; Article 35 paragraph (10) letter a number 3; Article 38 paragraph (9) letter a number 2; Article 38 paragraph (10) letter a number 3; Article 43 paragraph (3) letter b number 1 sub-letter b; Article 44 paragraph (10) letter a number 2; and Article 44 paragraph (11) letter a number 2.

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<sup>18</sup> *Loc. Cit.* Mahkamah Agung.

“*salinan Sertifikat Registrasi Uji Tipe (SRUT) kendaraan bermotor.*”

The consideration of Minister of Transportation in the formulation of this article is to guarantee the legal certainty against the aspect of convenience and equality in the implementation of the people transportation by public transportation which not in route.<sup>19</sup> Yet, in fact, this article does not guarantee the legal certainty against the aspects of convenience and equality in its implementation because the service providers must have the copy of the Vehicle Type Test Certificate (*SRUT*). This matter adverse online taxi service provider to have Vehicle Type Test Certificate (*SRUT*) which requires high cost and covered by individual and it may spend more time in conducting vehicle periodic maintenance although the vehicle is in new condition as conducted by conventional taxi service providers. This matter is beneficial for conventional taxi service providers because they have Vehicle Type Test Certificate (*SRUT*) that is covered by their company.

Meanwhile, the Supreme Court revoked this article because it is contrary with the higher legislation, such as Article 3, Article 4, Article 5, and Article 7 of Law No.20/2008 about Micro, Small, and Medium Entrepreneurs.<sup>20</sup>

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<sup>19</sup> *Loc. Cit.* Kementerian Perhubungan.

<sup>20</sup> *Loc. Cit.* Mahkamah Agung.

9. Article 36 paragraph (4) letter c and Article 37 paragraph (4) letter c

*“salinan Surat Tanda Nomor Kendaraan Bermotor (STNK) yang masih berlaku atas nama perusahaan.”*

The consideration of Minister of Transportation in the formulation of this article is to guarantee one of legal certainty against the aspects of equality in the implementation of the people transportation by public transportation which not in route.<sup>21</sup> Yet, in fact, this article does not guarantee one of legal certainty against the aspects of equality in its implementation because service providers must have the copy of Vehicle Registration Certificate (*STNK*) which still valid on behalf of the company. This matter obviously adverse the online taxi service providers because the copy of Vehicle Registration Certificate (*STNK*) should be under the company ownership and it makes service providers no longer wanted independently but rather as an employee of the service providers under transportation company management. However, this matter beneficial for conventional taxi service providers because they have the copy of Vehicle Registration Certificate (*STNK*) on behalf of their company.

Meanwhile, the Supreme Court revoked this article because it is contrary with the higher legislation, such as Article 3, Article 4, Article 5,

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<sup>21</sup> *Loc. Cit.* Kementerian Perhubungan.

and Article 7 of Law No.20/2008 about Micro, Small, and Medium Entrepreneurs.<sup>22</sup>

10. Article 51 paragraph (3)

*“larangan bertindak sebagai penyelenggara angkutan umum, meliputi kegiatan: menetapkan dan memberikan promosi tariff di bawah tarif batas bawah yang telah ditetapkan; merekrut pengemudi; memberikan layanan akses aplikasi kepada orang perorangan sebagai penyedia jasa angkutan; dan memberikan layanan akses aplikasi kepada Perusahaan Angkutan Umum yang belum memiliki izin penyelenggaraan angkutan orang tidak dalam trayek.”*

The consideration of Minister of Transportation in the formulation of this article is to guarantee the legal certainty against the aspects of comfort, affordability and equality in the implementation of the people transportation by public transportation which not in route.<sup>23</sup> Yet, in fact, this article does not guarantee the legal certainty against the aspects of convenience, affordability, and equality in its implementation because service providers were forbidden to establishing and providing promotion in under the lower limit tariff that has been established; driver recruiting; providing application access service to the individual as transportation service provider; and providing application access service to the Public Transportation Companies which do not have the permission of the implementation of people transportation by public transportation which not

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<sup>22</sup> *Loc. Cit.* Mahkamah Agung.

<sup>23</sup> *Loc. Cit.* Kementerian Perhubungan.

in route yet. This matter obviously limits the online taxi service providers in growing and developing their business to get more income.

Meanwhile, the Supreme Court revoked this article because it is contrary with the higher legislation, such as Article 3, Article 4, Article 5, and Article 7 of Law No.20/2008 about Micro, Small, and Medium Entrepreneurs and Article 183 paragraph (2) of Law No. 22/2009 about Traffic and Road Transportation.<sup>24</sup>

11. Article 66 paragraph (4)

*“Sebelum masa peralihan Surat Tanda Nomor Kendaraan Bermotor (STNK) menjadi atas nama badan hukum harus dilampirkan dengan perjanjian yang memuat kesediaan Surat Tanda Nomor Kendaraan Bermotor (STNK) menjadi badan hukum dan hak kepemilikan kendaraan tetap menjadi hak perorangan.”*

The consideration of Minister of Transportation in the formulation of this article is to guarantee the legal certainty against the aspects of equality and convenience the implementation of the people transportation by public transportation which not in route.<sup>25</sup> Yet, in fact, this article does not guarantee the legal certainty against the aspects of equality and comfort in its implementation because before transitional period of Vehicle Registration Certificate (*STNK*) to behalf of a legal entity, the service providers must attach the agreement containing the willingness of Vehicle Registration Certificate (*STNK*) to behalf of a legal entities and the

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<sup>24</sup> *Loc. Cit.* Mahkamah Agung.

<sup>25</sup> *Loc. Cit.* Kementerian Perhubungan.

right of vehicle ownership remains the right of individuals. This matter adverse and complicates online taxi service providers in determining the vehicle ownership and vehicle authority that used in performing their service.

Meanwhile, the Supreme Court revoked this article because it is contrary with the higher legislation, such as Article 3, Article 4, Article 5, and Article 7 of Law No.20/2008 about Micro, Small, and Medium Entrepreneurs.<sup>26</sup>

Analysis of 18 articles in The Regulation of Minister of Transportation No. 26/2017 that was revoked by the Supreme Court along with The Regulation of Minister of Transportation No. 26/2017 formulation reason by Minister of Transportation and The Verdict of Supreme Court No. 37 P/HUM/2017 cancelling argumentation by Supreme Court above can be summarized in the following table:

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<sup>26</sup> *Loc. Cit.* Mahkamah Agung.



**Table 1: The Regulation of Minister of Transportation No. 26/2017**

**Formulation and The Verdict of Supreme Court No. 37 P/HUM/2017**

**Cancellation Argumentation**

No.	Articles on The Regulation of Minister of Transportation No. 26/2017 That Has Been Revoked	The Formulation Reason by Minister of Transportation	The Cancellation Argumentation by Supreme Court
1.	Article 5 paragraph (1) letter e	To guarantee the aspects of equality. Yet, in fact, this article does not guarantee the aspect of equality between online taxi service providers and conventional taxi service providers in determining the tariff based on the taximeter or stamped on the technology-based application. It minimizes their chance to gain more consumers with cheap tariff based on reasonable mileage.	This article is contrary with article 3, article 4, article 5, and article 7 of the Law No. 20/2008 about Micro, Small, and Medium Entrepreneurs and Article 183 paragraph (2) of the Law No. 22/2009 about Traffic and Road Transportation.
2.	Article 19 paragraph (2) letter f	To guarantee the aspects of equality. Yet, in fact, this article does not guarantee the aspect of equality between online taxi service providers and conventional taxi service providers in determining the tariff based on lower limit tariff and upper limit tariff that already set by Minister of Transportation.	This article is contrary with article 3, article 4, article 5, and article 7 of the Law No. 20/2008 about Micro, Small, and Medium Entrepreneurs and Article 183 paragraph (2) of the Law No. 22/2009 about Traffic and Road Transportation.
3.	Article 19 paragraph (3)	To guarantee the aspects of equality. Yet, in fact,	This article is contrary with

	letter e	this article does not guarantee the aspect of equality between online taxi service providers and conventional taxi service providers in having the Vehicle Registration Certificate ( <i>STNK</i> ) under the legal entity ownership.	article 3, article 4, article 5, and article 7 of the Law No. 20/2008 about Micro, Small, and Medium Entrepreneurs.
4.	Article 20	To guarantee the aspects of convenience and affordability. Yet, in fact, this article does not guarantee the aspect of convenience and affordability between online taxi service providers and conventional taxi service providers in determining service area that is limited.	This article is contrary with article 3, article 4, article 5, and article 7 of the Law No. 20/2008 about Micro, Small, and Medium Entrepreneurs.
5.	Article 21	To guarantee the aspect of convenience. Yet, in fact, this article does not guarantee the aspects of convenience between online taxi service providers and conventional taxi service providers in determining the vehicle supplies plan for 5 (five) years period and committing evaluation every year which had been set by the Government.	This article is contrary with article 3, article 4, article 5, and article 7 of the Law No. 20/2008 about Micro, Small, and Medium Entrepreneurs.
6.	Article 27 letter a	To guarantee the aspect of convenience and equality. Yet, in fact, this article does not guarantee the aspect of convenience and equality between online taxi service providers and conventional taxi service providers in having at least 5 (five) vehicles which proved by Vehicle	This article is contrary with article 3, article 4, article 5, and article 7 of the Law No. 20/2008 about Micro, Small, and Medium Entrepreneurs.

		Registration Certificate ( <i>STNK</i> ) under the ownership of a legal entity.	
7.	Article 30 letter b	To guarantee the aspects of convenience and affordability. Yet, in fact, this article does not guarantee the aspect of convenience and affordability between online taxi service providers and conventional taxi service providers in using the vehicle registration number in accordance with branch area domicile in performing service.	This article is contrary with article 3, article 4, article 5, and article 7 of the Law No. 20/2008 about Micro, Small, Medium and Entrepreneurs.
8.	Article 35 paragraph (9) letter a number 2	To guarantee the aspect of convenience and equality. Yet, in fact, this article does not guarantee the aspect of convenience and equality between online taxi service providers and conventional taxi service providers in having the copy of Vehicle Type Test Certificate ( <i>SRUT</i> ).	This article is contrary with article 3, article 4, article 5, and article 7 of the Law No. 20/2008 about Micro, Small, and Medium Entrepreneurs.
9.	Article 35 paragraph (10) letter a number 3		
10.	Article 38 paragraph (9) letter a number 2		
11.	Article 38 paragraph (10) letter a number 3		
12.	Article 43 paragraph (3) letter b number 1 sub-letter b		
13.	Article 44 paragraph (10) letter a number 2		
14.	Article 44 paragraph (11) letter a number 2		
15.	Article 36 paragraph (4) letter c	To guarantee the aspects of equality. Yet, in fact, this article does not guarantee the aspect of equality between online	This article is contrary with article 3, article 4, article 5, and article 7 of the Law No.
16.	Article 37 paragraph (4)		

	letter c	taxi service providers and conventional taxi service providers in having the copy of Vehicle Registration Certificate ( <i>STNK</i> ) which still valid under the ownership of a legal entity.	20/2008 about Micro, Small, and Medium Entrepreneurs.
17.	Article 51 paragraph (3)	To guarantee the aspects of convenience, affordability, and equality. Yet, in fact, this article does not guarantee the aspects of convenience, affordability, and equality between online taxi service providers and conventional taxi service providers in assigning and delivering promotional tariff below the lower limit tariff that has been set; driver recruiting; providing service to the individual application access as providers of transportation service; and providing access to application services to the public transportation companies which do not have yet the permission of the implementation of public transportation which is not in the routes.	This article is contrary with article 3, article 4, article 5, and article 7 of the Law No. 20/2008 about Micro, Small, and Medium Entrepreneurs and Article 183 paragraph (2) of the Law No. 22/2009 about Traffic and Road Transportation.
18.	Article 66 paragraph (4)	To guarantee the aspects of equality and convenience. Yet, in fact, this article does not guarantee the existence of aspects of equality and convenience between online taxi service providers and conventional taxi service providers in determining the vehicle	This article is contrary with article 3, article 4, article 5, and article 7 of the Law No. 20/2008 about Micro, Small, and Medium Entrepreneurs.

		ownership and vehicle authority based on the vehicle support documents.	
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**B. The Regulation Comparison Between Conventional Taxi and Online Taxi in The Regulation of Minister of Transportation No. 26/2017 and The Regulation of Minister of Transportation No. 108/2017 Based On The Unfairness Business Competition Law Perspective**

After knowing the Minister of Transportation considerations in formulating The Regulation of Minister of Transportation No. 26/2017 about the Implementation of the People Transportation by Public Transportation Which Not in Route and the cancellation agreement by Supreme Court on The Verdict of Supreme Court No. 37 P/HUM/2017 which considered contrary with its regulation basis consideration and contrary with higher legislation, the 18 articles that has been revoked also violate the business competition law. Addressing this matter, then The Minister of Transportation revises The Regulation of Minister of Transportation No. 26/2017 becomes The Regulation of Minister of Transportation No. 108/2017. However, as a result, the Supreme Court also revoked several articles of its regulation that considered contrary with the higher legislation and these articles violate the business competition law.

These articles can be categorized into several forms of monopoly practice and unfairness business competition such as the prohibited agreement; the prohibited activity; and the prohibited dominant position<sup>27</sup> also several elements of unfairness business competition that the most fundamental as already stated in the Article 1 letter f of the Law No. 5/1999 on The Prohibition of Monopoly Practice and Unfairness Business Competition, such as it may not honest; it may unlawful action; it may discourages business competition.

Before committing the analysis of several articles in The Regulation of Minister of Transportation No. 26/2017 and The Regulation of Minister of Transportation No. 108/2017 that most of it has been revoked by Supreme Court, there are several forms of monopoly practice and unfairness businesses competition that needs to know, such as the forms of prohibited agreement including price fixing agreement; market division/allocation agreement; boycott agreement; cartel agreements; the trust agreement; oligopsony agreement; vertical integration agreement; tying agreement/exclusive dealing; and agreements with foreign parties.<sup>28</sup> While the forms of prohibited activity including monopoly practice activity; monopsony practice activity; market control activity; and conspiracy activity.<sup>29</sup> In addition, there are the forms of dominant position including the misuse of dominant position; interlocking directorate; stock majority ownership in several companies; and the merger or

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<sup>27</sup> Rachmadi Usman, 2013, *Hukum Persaingan Usaha di Indonesia*, Jakarta, Sinar Grafika, Pg. 101-102.

<sup>28</sup> *Ibid.* Pg. 102.

<sup>29</sup> *Ibid.* Pg. 103.

foundries or takeover of the company's shares.<sup>30</sup> However, not all forms of monopoly practice and unfairness business competition is the violation of 18 articles in The Regulation of Minister of Transportation No. 26/2017 that has been revoked by Supreme Court.

If several articles in The Regulation of Minister of Transportation No. 26/2017 and The Regulation of Minister of Transportation No. 108/2017 that most of it has been revoked by Supreme Court contains the forms of monopoly practice and unfairness business competition, so these articles also contains monopoly practice and unfairness business competition elements, such as it may not honest; it may unlawful action; and it may discourage business competition that are contrary with the Pancasila ideals and the mandate of the 1945 Constitution which stated that "Just and Civilized Humanity". So, according to Article 2 of the Law No. 5/1999 was established the principle of economic democratic as the basis of economic development.<sup>31</sup> That is, a conventional taxi service providers and online taxi service providers in Indonesia should be based on the honest economic democratic, it may not unlawful action, and it may not discourages business competition in running their business activities also regard for the balance between the interests of service providers and the public.

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<sup>30</sup> *Ibid.*

<sup>31</sup> *Ibid.* Pg. 89.

There are several articles in The Regulation of Minister of Transportation No. 26/2017 that has been revoked by Supreme Court which is grouped based on equation of content and meaning in the articles along with the elements and forms of unfairness business competition law, as follows:

1. Article 5 paragraph (1) letter e

*“tarif angkutan berdasarkan argometer atau tertera pada aplikasi berbasis teknologi informasi.”*

This article violates business competition law because it contains the elements of monopoly practice and unfairness business competition, namely the element of discourage business competition and the element of unlawful action against article 3, article 4, article 5, and article 7 on the Law No. 20/2008 about Micro, Small, and Medium Entrepreneurs and Article 183 paragraph (2) of the Law No. 22/2009 about Traffic and Road Transportation.<sup>32</sup> In addition, this article is also categorized into the one of form of monopoly practice and unfairness business competition especially on price discrimination<sup>33</sup> because with the determined of transportation tariff based on taximeter or stated on the technology-based application, so it may possible if service providers determine the different tariff with other service providers to get more benefit relating to consumer interest.

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<sup>32</sup> *Loc. Cit.* Mahkamah Agung.

<sup>33</sup> *Op. Cit.* Rachmadi Usman, Pg. 244.



Service tariff should be set based on the agreement<sup>34</sup> and it shall not set by the taximeter or stated on the technology-based application that can result the difference tariff on each consumer because there is no clear determination in terms of the distance tariff. This matter certainly discourages business competition among service providers in committing service and it is categorized as unlawful act because it is contrary with the higher legislation.

2. Article 19 paragraph (2) letter f

*“penentuan tarif dilakukan berdasarkan tarif batas atas dan tarif batas bawah atas dasar usulan dari Gubernur/Kepala Badan yang ditetapkan oleh Direktur Jenderal atas nama Menteri setelah dilakukan analisa.”*

This article violates business competition law because it contains the elements of monopoly practice and unfairness business competition, namely the element of discourage business competition and the element of unlawful action against article 3, article 4, article 5, and article 7 on the Law No. 20/2008 about Micro, Small, and Medium Entrepreneurs and Article 183 paragraph (2) of the Law No. 22/2009 about Traffic and Road Transportation.<sup>35</sup> In addition, this article is also categorized into the one of form of monopoly practice and unfairness business competition especially price fixing agreement<sup>36</sup> because with the determined of service tariff based on the upper limit tariff and lower limit tariff which established by

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<sup>34</sup> .R.I. *Undang-Undang Nomor 22 Tahun 2009*, tentang “Lalu Lintas dan Angkutan Jalan”, Art. 183, Par. 2.

<sup>35</sup> *Loc. Cit.* Mahkamah Agung.

<sup>36</sup> *Op. Cit.* Rachmadi Usman. Pg. 212.

the Director General on behalf of the Minister, so the service providers cannot growing and developing their business in determining the proper transportation tariff.

Service tariff should be set based on the agreement<sup>37</sup> and it shall not be set by the Director General on behalf of the Minister based on the upper limit tariff and upper limit tariff. This matter certainly discourages business competition of online taxi service providers in growing and developing their business. This matter also can be categorized as unlawful action because it is contrary with the higher legislation.

3. Article 19 paragraph (3) letter e

*“dilengkapi dokumen perjalanan yang sah, berupa Surat Tanda Nomor Kendaraan (STNK) atas nama badan hukum, kartu uji, dan kartu pengawasan.”*

This article violates business competition law because it contains the elements of monopoly practice and unfairness business competition, namely the element of discourage business competition and the element of unlawful action against article 3, article 4, article 5, and article 7 on the Law No. 20/2008 about Micro, Small, and Medium Entrepreneurs.<sup>38</sup> In addition, this article is also categorized into the one of form of monopoly practice and unfairness business competition especially market control

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<sup>37</sup> *Loc. Cit.* .R.I. Undang-Undang Nomor 22 Tahun 2009.

<sup>38</sup> *Loc. Cit.* Mahkamah Agung.

activity<sup>39</sup> because the service providers must have the Vehicle Registration Certificate (*STNK*) on behalf of a legal entity, the test card, and the supervision card which does not beneficial for all service providers.

This matter adverse online taxi service providers because they must have the vehicle document on behalf of a legal entity also other vehicle support documents that needs more time and more costs covered by individual. Meanwhile, this matter is beneficial for conventional taxi service providers because they have vehicle document on behalf of their transportation company and other vehicle support documents covered by conventional taxi company. Obviously, this matter discourages online taxi service providers in committing business competition and it is categorized as unlawful action because it is contrary with the higher legislation.

#### 4. Article 20

*“pelayanan angkutan sewa khusus merupakan pelayanan dari pintu ke pintu dengan wilayah operasi dalam kawasan perkotaan.”*

This article violates business competition law because it contains the elements of monopoly practice and unfairness business competition, namely the element of discourage business competition and the element of unlawful action against article 3, article 4, article 5, and article 7 on the

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<sup>39</sup> *Op. Cit.* Rachmadi Usman, Pg. 406.

Law No. 20/2008 about Micro, Small, and Medium Entrepreneurs.<sup>40</sup> In addition, this article is also categorized into the one of form of monopoly practice and unfairness business competition especially market division/allocation agreement<sup>41</sup> and market control activity<sup>42</sup> because the special rental transportation service is door to door service commit in urban area which does not beneficial for all service providers.

This matter limits the online taxi service providers in performing service that is only committed within the city area and the service unavailable for intercity. While this matter beneficial for conventional taxi service providers because there are no provisions regulating the service area restrictions. Obviously, this matter discourages online taxi service providers in committing business competition and it is categorized as unlawful action because it is contrary with the higher legislation.

## 5. Article 21

*“angkutan orang dengan tujuan tertentu ditetapkan dengan mempertimbangkan perkiraan kebutuhan jasa angkutan orang dengan tujuan tertentu dan adanya potensi bangkitan perjalanan.”*

This article violates business competition law because it contains the elements of monopoly practice and unfairness business competition, namely the element of discourage business competition and the element of

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<sup>40</sup> *Loc. Cit.* Mahkamah Agung.

<sup>41</sup> *Op. Cit.* Rachmadi Usman, Pg. 273.

<sup>42</sup> *Ibid.* Pg. 406.

unlawful action against article 3, article 4, article 5, and article 7 on the Law No. 20/2008 about Micro, Small, and Medium Entrepreneurs.<sup>43</sup> In addition, this article is also categorized into the one of form of monopoly practice and unfairness business competition especially oligopsony<sup>44</sup> because the determination of the vehicle number that are referred to by this article will restrict the place availability for people who want to join as online taxi service providers consider the obscurity of its predestination mechanism which does not beneficial for all service providers.

This matter discourages online taxi service providers in setting the vehicle supplies plan for 5 (five) years and perform vehicle maintenance every year that need more time also need additional costs covered by individual. Not all online taxi service providers can fulfill these requirements. Meanwhile, this matter only benefit for conventional taxi service providers because the vehicle supplies plan and vehicle maintenance are covered by their transportation company. Obviously, this matter discourages online taxi service providers in committing business competition and it is categorized as unlawful action because it is contrary with the higher legislation.

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<sup>43</sup> *Loc. Cit.* Mahkamah Agung.

<sup>44</sup> *Op. Cit.* Rachmadi Usman, Pg. 312.

6. Article 27 letter a

*“memiliki paling sedikit 5 (lima) kendaraan yang dibuktikan dengan Surat Tanda Nomor Kendaraan (STNK) atas nama badan hukum dan surat tanda bukti lulus uji berkala kendaraan bermotor.”*

This article violates business competition law because it contains the elements of monopoly practice and unfairness business competition, namely the element of discourage business competition and the element of unlawful action against article 3, article 4, article 5, and article 7 on the Law No. 20/2008 about Micro, Small, and Medium Entrepreneurs.<sup>45</sup> In addition, this article is also categorized into the one of form of monopoly practice and unfairness business competition especially market control activity<sup>46</sup> because service providers must have at least 5 (five) vehicles as evidenced by Vehicle Registration Certificate (*STNK*) on behalf of the legal entity and vehicle periodic tested certificate which does not beneficial for all service providers.

This matter discourages online taxi service providers because they only have less than 5 (five) of the vehicle and Vehicle Registration Certificate (*STNK*) on behalf of individual also they do not have any vehicle supporting documents that published periodically. While, this matter only benefits for conventional taxi service providers because they have more than 5 (five) of the vehicle in each service region branch and

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<sup>45</sup> *Loc. Cit.* Mahkamah Agung.

<sup>46</sup> *Loc. Cit.* Rachmadi Usman.

they have Vehicle Registration Certificate (*STNK*) on behalf of conventional taxi service providers company also they have several vehicle supporting documents that is published periodically that are covered by their transportation company. Obviously, this matter discourages online taxi service providers in committing business competition and it is categorized as unlawful action because it is contrary with the higher legislation.

7. Article 30 letter b

*“menggunakan tanda nomor kendaraan bermotor sesuai domisili cabang tersebut.”*

This article violates business competition law because it contains the elements of monopoly practice and unfairness business competition, namely the element of discourage business competition and the element of unlawful action against article 3, article 4, article 5, and article 7 on the Law No. 20/2008 about Micro, Small, and Medium Entrepreneurs.<sup>47</sup> In addition, this article is also categorized into the one of form of monopoly practice and unfairness business competition especially market control activity<sup>48</sup> because service providers must use the Vehicle Registration Number in accordance with the branch area domicile of their service which does not beneficial for all service providers.

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<sup>47</sup> *Loc. Cit.* Mahkamah Agung.

<sup>48</sup> *Loc. Cit.* Rachmadi Usman.

This matter discourages online taxi service providers because not all online taxi service providers using the vehicle registration number in accordance with the branch area domicile of their service. While this matter beneficial for conventional taxi service providers that have several vehicles in every branch area that allows conventional taxi service providers use the vehicle registration number in accordance with the vehicle branch area domicile of their service. Obviously, this matter discourages online taxi service providers in committing business competition and it is categorized as unlawful action because it is contrary with the higher legislation.

8. Article 35 paragraph (9) letter a number 2; Article 35 paragraph (10) letter a number 3; Article 38 paragraph (9) letter a number 2; Article 38 paragraph (10) letter a number 3; Article 43 paragraph (3) letter b number 1 sub-letter b; Article 44 paragraph (10) letter a number 2; and Article 44 paragraph (11) letter a number 2

*“Salinan Sertifikat Registrasi Uji Tipe (SRUT) kendaraan bermotor.”*

This article violates business competition law because it contains the elements of monopoly practice and unfairness business competition, namely the element of discourage business competition and the element of unlawful action against article 3, article 4, article 5, and article 7 on the



Law No. 20/2008 about Micro, Small, and Medium Entrepreneurs.<sup>49</sup> In addition, this article is also categorized into the one of form of monopoly practice and unfairness business competition especially market control activity<sup>50</sup> because the service providers must have the copy of the Vehicle Type Test Certificate (*SRUT*) which does not beneficial for all service providers.

This matter discourages online taxi service providers because they must have the copy of the Vehicle Type Test Certificate (*SRUT*) that needs additional cost and covered by individual and it needs additional time in performing vehicle maintenance periodically although the vehicle is in new condition as done by conventional taxi service providers. While this matter beneficial for conventional taxi service providers because they have a copy of the Vehicle Type Test Certificate (*SRUT*) which covered by their transportation company. Obviously, this matter discourages online taxi service providers in committing business competition and it is categorized as unlawful action because it is contrary with the higher legislation.

9. Article 36 paragraph (4) letter c and Article 37 paragraph (4) letter c

*“salinan Surat Tanda Nomor Kendaraan Bermotor (STNK) yang masih berlaku atas nama perusahaan.”*

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<sup>49</sup> *Loc. Cit.* Mahkamah Agung.

<sup>50</sup> *Loc. Cit.* Rachmadi Usman.

This article violates business competition law because it contains the elements of monopoly practice and unfairness business competition, namely the element of discourage business competition and the element of unlawful action against article 3, article 4, article 5, and article 7 on the Law No. 20/2008 about Micro, Small, and Medium Entrepreneurs.<sup>51</sup> In addition, this article is also categorized into the one of form of monopoly practice and unfairness business competition especially market control activity<sup>52</sup> because service providers must have the copy of Vehicle Registration Certificate (*STNK*) which still valid on behalf of the company which does not beneficial for all service providers.

This matter discourages online taxi service providers because they only have the Vehicle Registration Certificate (*STNK*) on behalf of the individual. So, they do not have the Vehicle Registration Certificate (*STNK*) on behalf of company. Meanwhile, this matter is beneficial for conventional taxi service providers because the conventional taxi service providers are the transportation company that have Vehicle Registration Certificate (*STNK*) on behalf of their transportation company which possible to have a copy. Obviously, this matter discourages online taxi service providers in committing business competition and it is categorized as unlawful action because it is contrary with the higher legislation.

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<sup>51</sup> *Loc. Cit.* Mahkamah Agung.

<sup>52</sup> *Loc. Cit.* Rachmadi Usman.

10. Article 51 paragraph (3)

*“larangan bertindak sebagai penyelenggara angkutan umum, meliputi kegiatan: menetapkan dan memberikan promosi tariff di bawah tarif batas bawah yang telah ditetapkan; merekrut pengemudi; memberikan layanan akses aplikasi kepada orang perorangan sebagai penyedia jasa angkutan; dan memberikan layanan akses aplikasi kepada Perusahaan Angkutan Umum yang belum memiliki izin penyelenggaraan angkutan orang tidak dalam trayek.”*

This article violates business competition law because it contains the elements of monopoly practice and unfairness business competition, namely the element of discourage business competition and the element of unlawful action against article 3, article 4, article 5, and article 7 on the Law No. 20/2008 about Micro, Small, and Medium Entrepreneurs and Article 183 paragraph (2) of the Law No. 22/2009 about Traffic and Road Transportation.<sup>53</sup> In addition, this article is also categorized into the one of form of monopoly practice and unfairness business competition especially market control activity<sup>54</sup> because service providers were forbidden to establishing and providing promotion in under the lower limit tariff that has been established; driver recruiting; providing application access service to the individual as transportation service provider; and providing application access service to the Public Transportation Companies which do not have the permission of the implementation of people transportation by public transportation which not in route yet which does not beneficial for all service providers.

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<sup>53</sup> *Loc. Cit.* Mahkamah Agung.

<sup>54</sup> *Loc. Cit.* Rachmadi Usman.

This matter discourages online taxi service providers because online they were limited in growing and developing their efforts to get more income. Meanwhile, this matter is beneficial for conventional taxi service providers because their transportation company basically can commit recruiting drivers and provide application access service to the individual as a conventional taxi service provider. Obviously, this matter discourages online taxi service providers in committing business competition and it is categorized as unlawful action because it is contrary with the higher legislation.

11. Article 66 paragraph (4)

*“Sebelum masa peralihan Surat Tanda Nomor Kendaraan Bermotor (STNK) menjadi atas nama badan hukum harus dilampirkan dengan perjanjian yang memuat kesediaan Surat Tanda Nomor Kendaraan Bermotor (STNK) menjadi badan hukum dan hak kepemilikan kendaraan tetap menjadi hak perorangan.”*

This article violates business competition law because it contains the elements of monopoly practice and unfairness business competition, namely the element of discourage business competition and the element of unlawful action against article 3, article 4, article 5, and article 7 on the Law No. 20/2008 about Micro, Small, and Medium Entrepreneurs.<sup>55</sup> In addition, this article is also categorized into the one of form of monopoly practice and unfairness business competition especially market control

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<sup>55</sup> *Loc. Cit.* Mahkamah Agung.

activity<sup>56</sup> because before transitional period of Vehicle Registration Certificate (*STNK*) to behalf of a legal entity, the service providers must attach the agreement containing the willingness of Vehicle Registration Certificate (*STNK*) to behalf of a legal entities and the right of vehicle ownership remains the right of individuals which not in route yet which does not beneficial for all service providers.

This matter adverse and complicates online taxi service providers in determining the vehicle ownership and the vehicle authority that used in performing their service. Meanwhile, this matter is beneficial for conventional taxi service providers because basically the Vehicle Registration Certificate (*STNK*) owned by their transportation company, so the vehicle ownership right is under transportation company ownership right. Obviously, this matter discourages online taxi service providers in committing business competition and it is categorized as unlawful action because it is contrary with the higher legislation.

There are several articles in The Regulation of Minister of Transportation No. 108/2017 along with the elements and forms of unfairness business competition law, as follows:

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<sup>56</sup> *Loc. Cit.* Rachmadi Usman.

1. Article 6 paragraph (1) letter e

*“pelayanan angkutan orang dengan menggunakan taksi wajib memenuhi pelayanan besaran tarif angkutan sesuai dengan yang tercantum pada argometer atau pada aplikasi berbasis teknologi informasi.”*

This article was made in order to make a better article and replaces the articles that have been revoked by Supreme Court in The Verdict of Supreme Court No. 37 P/HUM/2017. However, apparently this article of The Regulation of Minister of Transportation No. 108/2017<sup>57</sup> is a repetition of articles that have been revoked by Supreme Court and categorized as unfairness business competition law because it contains the elements of monopoly practice and unfairness business competition, namely the element of discourage business competition and the element of unlawful action against article 3, article 4, article 5, and article 7 on the Law No. 20/2008 about Micro, Small, and Medium Entrepreneurs and Article 183 paragraph (2) of the Law No. 22/2009 about Traffic and Road Transportation.<sup>58</sup> In addition, this article is also categorized into the one of form of monopoly practice and unfairness business competition especially on price discrimination<sup>59</sup>. This is because with the determined transportation tariff based on taximeter or stated on the technology-based application, it may possible if service providers determine the different

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<sup>57</sup> Kementerian Perhubungan, *Peraturan Menteri Perhubungan tentang Penyelenggaraan Angkutan Orang Dengan Kendaraan Bermotor Umum Tidak Dalam Trayek*, Permenhub No. 108/2017, Art. 6, Par. 1.

<sup>58</sup> *Loc. Cit.* Mahkamah Agung.

<sup>59</sup> *Loc. Cit.* Rachmadi Usman.

tariff with other service providers to get more benefit relating to consumer interest which does not beneficial for all service providers.

Service tariff should be set based on the agreement<sup>60</sup> and it is not set by the taximeter or stated on the technology-based application that can result the difference in tariff on each consumer because there is no clear determination in terms of the distance tariff. This matter certainly discourages business competition among service providers in committing service and it is categorized as unlawful act because it is contrary with the higher legislation.

## 2. Article 28 paragraph (1)

*“penetapan tarif angkutan sewa khusus dilakukan berdasarkan kesepakatan antara pengguna jasa dan penyedia jasa transportasi melalui aplikasi teknologi informasi dengan berpedoman pada tarif batas atas dan tarif batas bawah.”*

This article was made in order to make a better article and replaces the articles that have been revoked by Supreme Court in The Verdict of Supreme Court No. 37 P/HUM/2017. This matter has been proved in the determination of the special rental transportation tariff which committed based on the agreement basis between transportation service users and transportation service providers through technology-based applications

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<sup>60</sup> *Loc. Cit. R.I. Undang-Undang Nomor 22 Tahun 2009.*

based on the upper limit tariff and lower limit tariff.<sup>61</sup> With this article, online taxi service providers and conventional taxi service providers have the equal competitiveness in growing and developing their business, so it produces a fairness business competition among service providers.

3. Article 27 paragraph (1) letter f

*“kendaraan yang dipergunakan untuk pelayanan angkutan sewa khusus wajib memenuhi persyaratan dilengkapi dokumen perjalanan yang sah.”*

This article was made in order to make a better article and replaces the articles that have been revoked by Supreme Court in The Verdict of Supreme Court No. 37 P/HUM/2017. This matter has been proved that vehicles which used to special rental transportation service is obligated to fulfill the requirement of the valid travel documents ownership.<sup>62</sup> With this article, online taxi service providers and conventional taxi service providers have the equal competitiveness in growing and developing their business, so it produces a fairness business competition among service providers.

4. Article 26 paragraph (1)

*“angkutan sewa khusus merupakan pelayanan angkutan dari pintu ke pintu dengan pengemudi, memiliki wilayah operasi dan pemesanan menggunakan aplikasi berbasis teknologi informasi.”*

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<sup>61</sup> *Op. Cit.* Art. 28, Par. 1.

<sup>62</sup> *Ibid.* Art. 27, Par. 1.



This article was made in order to make a better article and replaces the articles that have been revoked by Supreme Court in The Verdict of Supreme Court No. 37 P/HUM/2017. This matter has been proved that special rental transportation is a service from door to door with the driver; it has the operation area; and the reservation using technology-based applications method.<sup>63</sup> With this article, online taxi service providers and conventional taxi service providers have the equal competitiveness in growing and developing their business, so it produces a fairness business competition among service providers.

5. Article 48 paragraph (1) and Article 57 paragraph (6)

*“surat pernyataan kesanggupan memiliki dan/atau bekerja sama dengan pihak lain yang mampu menyediakan fasilitas pemeliharaan kendaraan bermotor, bermeterai, dan ditandatangani pimpinan badan hukum.”*

This article was made in order to make a better article and replaces the articles that have been revoked by Supreme Court in The Verdict of Supreme Court No. 37 P/HUM/2017. This matter has been proved that affidavit of promissory to own and/or cooperate with other parties that are able to provide vehicle maintenance facility; legal; and signed by the chairman of legal entity.<sup>64</sup> With this article, online taxi service providers and conventional taxi service providers have the equal competitiveness in

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<sup>63</sup> *Ibid.* Art. 26, Par. 1.

<sup>64</sup> *Ibid.* Art. 48 Par.1 and Art. 57, Par. 6.

growing and developing their business, so it produces a fairness business competition among service providers.

6. Article 39 paragraph (1)

*“kendaraan dibuktikan dengan Buku Pemilik Kendaraan Bermotor (BPKB) atau Surat Tanda Nomor Kendaraan (STNK) atas nama badan hukum atau dapat atas nama perorangan untuk badan hukum berbentuk koperasi.”*

This article was made in order to make a better article and replaces the articles that have been revoked by Supreme Court in The Verdict of Supreme Court No. 37 P/HUM/2017. However, apparently this article is a repetition of articles that have been revoked by Supreme Court and categorized as unfairness business competition law because it contains the elements of monopoly practice and unfairness business competition, namely the element of discourage business competition and the element of unlawful action against article 3, article 4, article 5, and article 7 on the Law No. 20/2008 about Micro, Small, and Medium Entrepreneurs.<sup>65</sup> In addition, this article is also categorized into the one of form of monopoly practice and unfairness business competition especially market control activity<sup>66</sup> because service providers must have the vehicles as evidenced by Vehicle Registration Certificate (STNK) on behalf of the legal entity or it can be under the ownership of an individual which corporate with the

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<sup>65</sup> *Loc. Cit.* Mahkamah Agung.

<sup>66</sup> *Loc. Cit.* Rachmadi Usman.

cooperatives-form legal entity<sup>67</sup> which does not beneficial for all service providers.

This matter discourages online taxi service providers because they have the Vehicle Registration Certificate (STNK) on behalf of individual and they would not necessarily have any cooperative with other legal entity. While, this matter only benefits for conventional taxi service providers because they are conventional taxi company which have the Vehicle Registration Certificate (STNK) on behalf of their company. Obviously, this matter discourages online taxi service providers in committing business competition and it is categorized as unlawful action because it is contrary with the higher legislation.

#### 7. Article 57 paragraph (6)

*“surat persetujuan penyelenggaraan angkutan orang dengan kendaraan bermotor umum tidak dalam trayek menjadi dasar bagi pemohon untuk pengajuan rekomendasi tanda nomor kendaraan motor umum dan/atau kode khusus tanda nomor kendaraan bermotor umum yang dikeluarkan oleh Gubernur DKI Jakarta, Bupati/Walikota sesuai dengan domisili perusahaan.”*

This article was made in order to make a better article and replaces the articles that have been revoked by Supreme Court in The Verdict of Supreme Court No. 37 P/HUM/2017. However, apparently this article is a repetition of articles that have been revoked by Supreme Court and

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<sup>67</sup> *Op. Cit.* Art. 39, Par. 1.

categorized as unfairness business competition law because it contains the elements of monopoly practice and unfairness business competition, namely the element of discourage business competition and the element of unlawful action against article 3, article 4, article 5, and article 7 on the Law No. 20/2008 about Micro, Small, and Medium Entrepreneurs.<sup>68</sup> In addition, this article is also categorized into the one of form of monopoly practice and unfairness business competition especially market control activity<sup>69</sup> because service providers must have approval letter of the implementation of people transportation by public transportation which not in route yet became the basis for applicants for the submission of public vehicle registration number recommendations and/or special code number for public vehicle registration number which signed by General Governor, Regent/Major in accordance with company domicile<sup>70</sup> which does not beneficial for all service providers.

This matter discourages online taxi service providers because not all online taxi service providers using the vehicle registration number in accordance with the company domicile. While this matter beneficial for conventional taxi service providers that have several vehicles in every branch area that allows conventional taxi service providers use the vehicle registration number in accordance with their company domicile. Obviously, this matter discourages online taxi service providers in

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<sup>68</sup> *Loc. Cit.* Mahkamah Agung.

<sup>69</sup> *Loc. Cit.* Rachmadi Usman.

<sup>70</sup> *Op. Cit.* Art. 57, Par. 6.

committing business competition and it is categorized as unlawful action because it is contrary with the higher legislation.

8. Article 48 paragraph (10) letter a number 2; Article 48 paragraph (11) letter a number 3; Article 51 paragraph (9) letter a number 2; Article 51 paragraph (10) letter a number 3; Article 56 paragraph (3) letter b number 1 sub b; Article 57 paragraph (10) letter a number 2; and Article 57 paragraph (11) letter a number 2;

*“Salinan Sertifikat Registrasi Uji Tipe (SRUT) kendaraan bermotor.”*

This article was made in order to make a better article and replaces the articles that have been revoked by Supreme Court in The Verdict of Supreme Court No. 37 P/HUM/2017. However, apparently this article is a repetition of articles that have been revoked by Supreme Court and categorized as unfairness business competition law because it contains the elements of monopoly practice and unfairness business competition, namely the element of discourage business competition and the element of unlawful action against article 3, article 4, article 5, and article 7 on the Law No. 20/2008 about Micro, Small, and Medium Entrepreneurs.<sup>71</sup> In addition, this article is also categorized into the one of form of monopoly practice and unfairness business competition especially market control

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<sup>71</sup> *Loc. Cit.* Mahkamah Agung.

activity<sup>72</sup> because the service providers must have the copy of the Vehicle Type Test Certificate (SRUT)<sup>73</sup> which does not beneficial for all service providers.

This matter discourages online taxi service providers because they must have the copy of the Vehicle Type Test Certificate (SRUT) that needs additional cost and covered by individual and it needs additional time in performing vehicle maintenance periodically although the vehicle is in new condition as done by conventional taxi service providers. While this matter beneficial for conventional taxi service providers because they have a copy of the Vehicle Type Test Certificate (SRUT) which covered by their transportation company. Obviously, this matter discourages online taxi service providers in committing business competition and it is categorized as unlawful action because it is contrary with the higher legislation.

9. Article 48 paragraph (10) letter a number 1 and Article 48 paragraph (10) letter b number 1

*“salinan Surat Tanda Kendaraan Bermotor (STNK) yang masih berlaku.”*

This article was made in order to make a better article and replaces the articles that have been revoked by Supreme Court in The Verdict of

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<sup>72</sup> *Loc. Cit.* Rachmadi Usman.

<sup>73</sup> *Op. Cit.* Art. 48, Par. 10; Art. 48, Par. 11; Art. 51, Par. 9; Art. 51, Par. 10; Art. 56, Par. 3; Art. 57, Par. 10; and Art. 57, Par. 11.

Supreme Court No. 37 P/HUM/2017. This matter has been proved that the copy of Vehicle Registration Certificate (*STNK*) ownership which still valid.<sup>74</sup> With this article, online taxi service providers and conventional taxi service providers have the equal competitiveness in growing and developing their business, so it produces a fairness business competition among service providers.

#### 10. Article 65

*“perusahaan aplikasi di bidang transportasi darat dilarang bertindak sebagai penyelenggara angkutan umum meliputi: pemberian layanan akses aplikasi kepada perusahaan angkutan umum yang belum memiliki izin penyelenggaraan angkutan orang dengan kendaraan bermotor umum tidak dalam trayek; pemberian layanan akses aplikasi kepada perorangan; dan perekrutan pengemudi.”*

This article was made in order to make a better article and replaces the articles that have been revoked by Supreme Court in The Verdict of Supreme Court No. 37 P/HUM/2017. However, apparently this article is a repetition of articles that have been revoked by Supreme Court and categorized as unfairness business competition law because it contains the elements of monopoly practice and unfairness business competition, namely the element of discourage business competition and the element of unlawful action against article 3, article 4, article 5, and article 7 on the Law No. 20/2008 about Micro, Small, and Medium Entrepreneurs and Article 183 paragraph (2) of the Law No. 22/2009 about Traffic and Road

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<sup>74</sup> *Ibid.* Art. 48, Par. 10.

Transportation.<sup>75</sup> In addition, this article is also categorized into the one of form of monopoly practice and unfairness business competition especially market control activity<sup>76</sup> because service providers were forbidden to establishing and providing promotion in under the lower limit tariff that has been established; driver recruiting; providing application access service to the individual as transportation service provider; and providing application access service to the Public Transportation Companies which do not have the permission of the implementation of people transportation by public transportation which not in route yet<sup>77</sup> which does not beneficial for all service providers.

This matter discourages online taxi service providers because online they were limited in growing and developing their efforts to get more income. Meanwhile, this matter is beneficial for conventional taxi service providers because their transportation company basically can commit recruiting drivers and provide application access service to the individual as a conventional taxi service provider. Obviously, this matter discourages online taxi service providers in committing business competition and it is categorized as unlawful action because it is contrary with the higher legislation.

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<sup>75</sup> *Loc. Cit.* Mahkamah Agung.

<sup>76</sup> *Loc. Cit.* Rachmadi Usman.

<sup>77</sup> *Op. Cit.* Art. 65.



Analysis of several articles in The Regulation of Minister of Transportation No. 26/2017 that has been revoked by Supreme Court and The Regulation of Minister of Transportation No. 108/2017 as revised by the Minister of Transportation along with the elements and forms of unfairness business competition law also the resolution of legal issues which can be summarized in the following table:

**Table 2: The Regulation Comparison Between Conventional Taxi and Online Taxi in The Regulation of Minister of Transportation No. 26/2017 and The Regulation of Minister of Transportation No. 108/2017 Based On The Unfairness Business Competition Law Perspective**

No.	The Articles in The Regulation of Minister of Transportation No. 26/2017	The Elements and Forms of Unfairness Business Competition Law	The Articles in The Regulation of Minister of Transportation No. 108/2017	The Resolution of Legal Issues
1.	Article 5 Par. (1) letter e	It discourages the elements of competition and contains unlawful action against Article 3; Article 4; Article 5; and article 7 of the Law No. 20/2008 of Micro, Small, and Medium Entrepreneurs; and Article 183 paragraph (2) of the Law No. 22/2009 about Traffic and Road Transportation.	Article 6 Par. (1) letter e	This article is repetition article of The Regulation of Minister of Transportation No. 26/2017 that has been revoked within The Verdict of Supreme Court No. 37 P/HUM/2017. So, this article is not resolves the legal issues yet because it adverse any party including conventional taxi

		It categorized as Price Discrimination Agreement.		service provider and online taxi service provider.
2.	Article 19 Par. (2) letter f	It discourages competition and contains unlawful action against Article 3; Article 4; Article 5; and article 7 of the Law No. 20/2008 of Micro, Small, and Medium Entrepreneurs; and Article 183 paragraph (2) of the Law No. 22/2009 about Traffic and Road Transportation. It categorized as Price Fixing Agreement.	Article 28 Par. (1)	This article resolves the legal issues because it proven to be not adverse any party including conventional taxi service providers and online taxi service providers.
			Article 28 Par. (2)	
3.	Article 19 Par. (3) letter e	It discourages competition and contains unlawful action against Article 3; Article 4; Article 5; and article 7 of the Law No. 20/2008 of Micro, Small, and Medium Entrepreneurs. It categorized as Market Control Activity.	Article 27 Par. (1)	This article resolves the legal issues because it proven to be not adverse any party including conventional taxi service providers and online taxi service providers.

4.	Article 20	It discourages competition and contains unlawful action against Article 3; Article 4; Article 5; and article 7 of the Law No. 20/2008 of Micro, Small, and Medium Entrepreneurs. It categorized as Market Division/Allocation Agreement and Market Control Activity.	Article 26 Par. (1)	This article resolves the legal issues because it proven to be not adverse any party including conventional taxi service providers and online taxi service providers.
5.	Article 21	It discourages competition and contains unlawful action against Article 3; Article 4; Article 5; and article 7 of the Law No. 20/2008 of Micro, Small, and Medium Entrepreneurs. It categorized as oligopsony.	Article 48 Par. (1) letter h	This article resolves the legal issues because it proven to be not adverse any party including conventional taxi service providers and online taxi service providers.
			Article 57 Par. (2) letter h	
6.	Article 27 letter a	It discourages competition and contains unlawful action against Article 3; Article 4; Article 5; and article 7 of the Law No. 20/2008 of Micro, Small, and Medium Entrepreneurs. It categorized as Market Control Activity.	Article 39 Par. (1)	This article is repetition article of The Regulation of Minister of Transportation No. 26/2017 that has been revoked within The Verdict of Supreme Court No. 37 P/HUM/2017. So, this article is not resolves the legal issues yet because it adverse any

				party including conventional taxi service provider and online taxi service provider.
7.	Article 30 letter b	It discourages competition and contains unlawful action against Article 3; Article 4; Article 5; and article 7 of the Law No. 20/2008 of Micro, Small, and Medium Entrepreneurs. It categorized as Market Control Activity.	Article 57 Par. (6)	This article is repetition article of The Regulation of Minister of Transportation No. 26/2017 that has been revoked within The Verdict of Supreme Court No. 37 P/HUM/2017. So, this article is not resolves the legal issues yet because it adverse any party including conventional taxi service provider and online taxi service provider.
8.	Article 35 Par. (9) letter a number 2	It discourages competition and contains unlawful action against Article 3; Article 4; Article 5; and article 7 of the Law No. 20/2008 of Micro, Small, and Medium Entrepreneurs. It categorized as Market Control Activity.	Article 48 Par. (10) letter a number 2	This article is repetition article of The Regulation of Minister of Transportation No. 26/2017 that has been revoked within The Verdict of Supreme Court No. 37 P/HUM/2017. So, this article is not resolves the legal issues yet because it adverse any party including conventional taxi service provider
9.	Article 35 Par. (10) letter a number 3		Article 48 Par. (11) letter a number 3;	
10.	Article 38 Par. (9) letter a number 2		Article 51 Par. (9) letter a number 2	
11.	Article 38 Par. (10) letter a number 3		Article 51 Par. (10) letter a number 3	
12.	Article 43 Par. (3) letter b number 1 sub-letter b		Article 56 Par. (3) letter b number 1 sub b	

13.	Article 44 Par. (10) letter a number 2		Article 57 Par. (10) letter a number 2	and online taxi service provider.
14.	Article 44 Par. (11) letter a number 2		Article 57 Par. (11) letter a number 2	
15.	Article 36 Par. (4) letter c	It discourages competition and contains unlawful action against Article 3; Article 4; Article 5; and article 7 of the Law No. 20/2008 of Micro, Small, and Medium Entrepreneurs. It categorized as Market Control Activity.	Article 48 Par. (10) letter a number 1	This article resolves the legal issues because it proven to be not adverse any party including conventional taxi service providers and online taxi service providers.
16.	Article 37 Par. (4) letter c		Article 48 Par. (10) letter b number 1	
17.	Article 51 Par. (3)	It discourages competition and contains unlawful action against Article 3; Article 4; Article 5; and article 7 of the Law No. 20/2008 of Micro, Small, and Medium Entrepreneurs; and Article 183 paragraph (2) of the Law No. 22/2009 about Traffic and Road Transportation. It categorized as Market Control Activity.	Article 65 letter a	This article is repetition article of The Regulation of Minister of Transportation No. 26/2017 that has been revoked within The Verdict of Supreme Court No. 37 P/HUM/2017. So, this article is not resolves the legal issues yet because it adverse any party including conventional taxi service provider and online taxi service provider.
			Article 65 letter b	
			Article 65 letter c	
18.	Article 66 Par. (4)	It discourages competition and contains unlawful	Unavailable	Unavailable

		action against Article 3; Article 4; Article 5; and article 7 of the Law No. 20/2008 of Micro, Small, and Medium Entrepreneurs. It categorized as Market Control Activity.		
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Responding to this crucial issues, The Business Competition Supervisory Commission (*KPPU*) gives special attention to help the Government in resolves the problem in the transportation services industry policy, particularly related to the arrangement of conventional taxi and online taxi. There are three recommendations that are given by The Business Competition Supervisory Commission to the Government, so that the issued policy could push the implementation of the transportation service industry according to principles of a fairness business competition, as follows:<sup>78</sup>

1. The Business Competition Supervisory Commission asked the Government to remove the determination of lower limit tariff policy that is enforced for conventional taxi. Instead, this referee of business competition suggested that the Government set up the determination of the upper limit tariff only. The determination of the lower limit tariff will have an impact on inefficiency within taxi transport services industry as a

<sup>78</sup> Komisi Pengawas Persaingan Usaha Republik Indonesia, *KPPU Berikan Tiga Rekomendasi ke Pemerintah Terkait Kisruh Taksi Online dan Konvensional*, March 28<sup>th</sup>, 2017, <http://www.kppu.go.id/id/blog/2017/03/kppu-berikan-tiga-rekomendasi-ke-pemerintah-terkait-kisruh-taksi-online-dan-konvensional/> (18.20).

whole and boils down to the expensive tariff for consumers. The lower limit tariff also discourages the innovation to increase the transport service industry efficiency. The further lower limit tariff can be a source of inflation.

2. The Business Competition Supervisory Commission suggested the Government to not set the quotas or the amount of vehicle for conventional taxi and online taxi which operating in the certain area. Thus, the determination of vehicle amount for transportation entrepreneur submitted to market mechanisms. Every entrepreneur will adjust the amount of their vehicle according to the consumer needs. The arrangements by the Government would reduce the competition and ultimately adverse consumers. However, the Government as the regulator should oversee the owner of taxi transportation services licensees strictly. The Government should resolutely by provide the sanctions in the form of revocation operations or issuing the entrepreneur from the market if they violate the regulation. So, the super tight supervision will keep the conventional taxi and online taxi operators performance to meet the minimum service standard. The Government also should set up the minimum service standard which detailed and must be obeyed by all taxi service entrepreneurs. The Government should act decisively against any violations which committed by entrepreneurs.

3. The Business Competition Supervisory Commission suggested the Government to remove the Vehicle Registration Certificate (*STNK*) of online taxi that required on behalf of a legal entity. This matter held because the ownership obligation of Vehicle Registration Certificate of online taxi on behalf of a legal entity has the meaning of the ownership transfer from the individual. The Government should develop regulation which can accommodate online taxi system with cooperative legal entities with assets owned by the members. So, even though the Vehicle Registration Certificate remain recorded as belonging to an individual However, it can fulfill the entire obligation as taxi transportation service company within the auspices of the cooperatives legal entity. Thus, the pattern of this Vehicle Registration Certificate arrangement can provides the space for people who want to join the online taxi industry.

These recommendations provide the space for the application-based transportation industry to grow and develop in the business world. The task of Government aims to commit the very tight supervision, so it compliance with the regulation that pro-business competition.<sup>79</sup>

Recommendations of The Business Competition Supervisor Commission aim to conventional taxi service providers and online taxi service providers can

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<sup>79</sup> Mukti Fajar Nur Dewata dan Reni Budi Setianingrum, 2018, “Inovasi Bisnis Dalam Perspektif Hukum Persaingan Usaha (Kajian Mengenai *Disruptive Innovation* Dalam Industri Transportasi Berbasis Aplikasi)” (Laporan Penelitian Unggulan Prodi, Magister Ilmu Hukum Universitas Muhammadiyah Yogyakarta), Pg. 40.



grow and develop their business without adverse either party. When The Business Competition Supervisory Commission recommendations associated with the business competition elements and monopoly practice and unfairness business competition forms, then the three points contain the business competition elements, namely the service providers should be honest; they do not against the law; and they do not adverse other service providers. In addition, the three points are not categorized as the forms of monopoly practice and unfairness business competition, namely the prohibited agreement; the prohibited activities; and dominant position. So, The Business Competition Supervisory Commission expects the recommendations that have been established are not adverse the conventional taxi service providers and online taxi service providers.

After the establishment of recommendations by Business Competition Supervisory Commission (*KPPU*), the government through Minister of Transportation established The Regulation of Minister of Transportation No. 108/2017 about the Implementation of the People Transportation by Public Transportation Which Not in Route. As analysis above, there are several articles of The Regulation of Minister of Transportation No. 108/2017 that are considered to have followed the recommendation of The Business Competition Supervisory Commission, such as:

1. Article 28 paragraph (1) and Article 28 paragraph (2) relating the determination of the special rental transportation tariff which committed based on the agreement basis between transportation service users and transportation service providers through technology-based applications based on the upper limit tariff and lower limit tariff which different with previous regulation and that has been considered as regulatory improvement;
2. Article 27 paragraph (1) letter f relating the vehicles which used to special rental transportation service is obligated to fulfill the requirement of the valid travel documents ownership which different with previous regulation and that has been considered as regulatory improvement;
3. Article 26 paragraph (1) relating the special rental transportation is a service from door to door with the driver; it has the operation area; and the reservation using technology-based applications method which different with previous regulation and that has been considered as regulatory improvement;
4. Article 48 paragraph (1) letter h and Article 57 paragraph (2) letter h relating affidavit of promissory to own and/or cooperate with other parties that are able to provide vehicle maintenance facility; legal; and

signed by the chairman of legal entity which different with previous regulation and that has been considered as regulatory improvement;

5. Article 48 paragraph (10) letter a number 1 and Article 48 paragraph (10) letter b number 1 relating the copy of Vehicle Registration Certificate (STNK) ownership which still valid which different with previous regulation and that has been considered as regulatory improvement.

Yet, unfortunately, several articles of The Regulation of Minister of Transportation No. 108/2017 also revoked by Supreme Court through The Verdict of Supreme Court No. 15 P/HUM/2018. This matter resulted that there has been no regulation yet as legal protection which equitable for online taxi in Indonesia.<sup>80</sup>

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<sup>80</sup> *Ibid.* Pg. 3.