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Amid Continuing Controversy, Minister Revisits Online Taxi Issue with New Regulation

Minister of Transportation Regulation No. PM 32 of 2016 on Unscheduled Public Transportation Services (“**MOTR 32/2016**”),ⁱ which was issued on 1 April 2016 and came into force on 1 October 2016, clearly failed to resolve the tension between conventional taxi providers and the providers of app-based, online taxis. On one hand, conventional taxi providers argued that MOTR 32/2016 effectively legalized the operation of online taxis, while on the other hand, the online taxi providers complained that the regulation adversely affected their business model through such things as the requirement that their vehicles have a minimum of 1,300 cc and that they provide car pool facilities. These requirements, they argued, were akin to those applicable to conventional taxi providers. The intense competition to attract customers continued and even led to violence in several areas.

The Minister of Transportation has responded to the deficiencies inherent in MOTR 32/2016 by revoking and replacing it with Regulation No. PM 26 of 2017 on Unscheduled Public Transportation Services (“**MOTR 26/2017**”), which was issued on 31 March 2017.ⁱⁱ The Minister presumably believes that MOTR 26/2017 is more accommodating to the demands of both parties. For example, MOTR 26/2017 introduces a new term, “Special Rental Vehicle (*Angkutan Sewa Khusus*),” which is defined as a *door-to-door transportation service with driver, operating within an urban area, and reserved using an IT-based application*. Through this term, MOTR 26/2017 attempts to accommodate online taxis and distinguish them from other forms of public transportation. An online taxi is no longer required to use a yellow number plate to indicate that it is a public transportation vehicle, but rather can use the black number plate used by normal private vehicles, subject to its being marked by a special sign indicating that the vehicle is operating as an online taxi. Conversely, despite protests by online taxi providers, the Vehicle Registration Number Certificate / *Surat Tanda Nomor Kendaraan* (“**STNK**”) of an online taxi must be in the name of a legal entity, and may not be in the name of an individual owner. This provision is in line with Law No. 22/2009, which states that public transportation services may be provided by state enterprises (“**BUMN**”), local government enterprises (“**BUMD**”), and/or other legal entities in accordance with the prevailing laws and regulation. This requirement purports to protect customers in the event of a dispute. The fact that the vehicle must be in the name of a legal entity provides some degree of comfort as to where a complaint or claim should be directed. In addition, this requirement is also aimed at facilitating the collection of taxes from online taxi providers.

It should be noted that MOTR 26/2017, as was the case with MOTR 32/2016, only applies to unscheduled public transportation services using vehicles with four or more wheels. Consequently, motorcycle taxis are not affected. This is somewhat surprising given that there have been a number of signals from the Minister that the motorcycle taxis would be regulated as well (*see our alert of 26 April 2016: Government Moves to Regulate App-based Transportation Service Providers*).

One of the key, and most controversial, aspects of MOTR 26/2017 is the regulation of fares. Local governments have been given the authority to determine maximum and minimum fares for online taxis based on pricing mechanism as determined by the governor in the case of Online Taxi providers whose operations cover more than one regency (county) or municipality within a single province (outside Jakarta, Bogor, Depok, Tangerang, and Bekasi) or the Head of Jakbodetabek Transportation Management Board, in the case of Online Taxi providers whose operations cover more than one province in the Jakarta, Bogor, Depok, Tangerang, and Bekasi (Jabodetabek) area. This may help discourage alleged predatory pricing among online taxi providers. In practice, the price war between online taxi providers has adversely affected drivers’ earnings. As most of them acquire their vehicles through leasing, a “race to the bottom” in pricing terms could obviously affect their ability to pay their instalments and eventually lead to repossessions.

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MOTR 26/2017 also provides authority to the Governor or Head of the Jabodetabek Transportation Management Board, as the case may be, to determine quotas for online taxis operating in their region for a period of 5 (five) years. This provision is intended to create a balance between the number of vehicles on the roads and road capacity so that a headlong rush to get online taxis onto the road can be avoided.

While some argue that MOTR 26/2017 tends to favour conventional taxi providers, in reality it also accommodates the interests of online taxi providers by reducing the minimum engine capacity of online taxis from 1,300 cc to 1,000 cc, replacing the requirement to provide a car pool facility to only providing a vehicle parking facility, and simplifying the requirement to own a maintenance facility (garage) so that it will now be possible to collaborate with other garages to provide maintenance facilities.

Article 50 of MOTR 26/2017 specifically regulates the role of an app-based transportation provider (“ATSP”). In this regard, the new regulation is actually quite similar to the provisions of MOTR 32/2016. In order to conduct its business, an ATSP is required to collaborate with a public transportation company that holds a transportation license. Given that an ATSP is prohibited from acting as a public transportation company, it is accordingly prohibited from:

1. Determining and collecting fares from passengers;
2. Hiring drivers;
3. Providing access to an app to an individual as a transportation service provider; and
4. Providing access to an app to a public transportation company that has not obtained a license from the relevant authorities.

Moreover, an ATSP must be established as an Indonesian legal entity and must fulfil the following criteria:

1. Enters into contracts, and conducts sales and/or services delivery, and bill collection;
2. Has a bank account in Indonesia to accommodate the proceeds of sales or services conducted or provided in Indonesia;
3. Has or controls a server or data centre in Indonesia;
4. Conducts marketing, promotion, and assistance operations; and
5. Provides a customer complaint service.

The new regulation also requires an ATSP to provide dashboard access to the government for supervision purposes. This access shall at least include the following information:

1. The name, person in charge, and address of the ATSP;
2. Information on all companies that the ATSP has entered into collaborative arrangements with;
3. Information on all vehicles and drivers that are registered in the ATSP system;
4. Access to operations monitoring in form of tracking the movement of vehicles and fares; and
5. Customer complaint service in the form of a dedicated phone number or email address for customer complaints.

Lastly, while MOTR 32/2016 did not include specific sanctions for errant ATSPs, MOTR 26/2017 provides that an ATSP that does not comply with the regulation may be subject to sanctions, as determined by the Ministry of Communications and Informatics (“MOCIT”), in form of the temporary blocking of access to the relevant app until such time as the violation has been remedied. This vesting of sanctioning authority in the MOCIT is rather curious, given that it is not responsible for transportation matters.

Conclusion

While the government attempted to create a level playing field for all players involved in public transportation, MOTR 26/2017 will not immediately resolve the conflict between conventional and online taxi providers. The new regulation has elicited a negative response from online taxi providers, especially

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as regards the restrictions on setting fares, which the government clearly believes is necessary to even things up as between conventional taxis and their online competitors.

From the customer's perspective, MOTR 26/2017 gives the impression that the government is at best lukewarm about the online taxi providers and the technological innovation that has spawned them. While the government appears to have sided with the conventional taxi providers by intervening in the pricing mechanism, what the average customer wants is the freedom to choose the most convenient mode of transportation, taking into account all of the factors involved, including the fare, convenience and accessibility. The fact that online taxi fares will now be regulated is sure to be unpopular.

In light of the above, the government's task now is to explain why such regulation is necessary so that all of the stakeholders can be persuaded of its wisdom and efficacy. Otherwise, we can look forward to further regulatory twists and turns on online transportation going ahead.

- i. *Peraturan Menteri Perhubungan Republik Indonesia No. PM 32 Tahun 2016 Tentang Penyelenggaraan Angkutan Orang Dengan Kendaraan Bermotor Umum Tidak Dalam Trayek.*
- ii. *Peraturan Menteri Perhubungan Republik Indonesia No. PM 26 Tahun 2017 Tentang Penyelenggaraan Angkutan Orang Dengan Kendaraan Bermotor Umum Tidak Dalam Trayek.*

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ASEAN Economic Community Portal

With the launch of the ASEAN Economic Community (“AEC”) in December 2015, businesses looking to tap the opportunities presented by the integrated markets of the AEC can now get help a click away. Rajah & Tann Asia, United Overseas Bank and RSM Chio Lim Stone Forest, have teamed up to launch “Business in ASEAN”, a portal that provides companies with a single platform that helps businesses navigate the complexities of setting up operations in ASEAN.

By tapping into the professional knowledge and resources of the three organisations through this portal, small- and medium-sized enterprises across the 10-member economic grouping can equip themselves with the tools and know-how to navigate ASEAN’s business landscape. Of particular interest to businesses is the “Ask a Question” feature of the portal which enables companies to pose questions to the three organisations which have an extensive network in the region. The portal can be accessed at <http://www.businessinasean.com/>.

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