

Legal Relations Between Drivers and Online-Based Transportation Companies

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ABSTRACT

The purpose of this research is to find a form of legal protection for online motorcycle taxi drivers called partnerships. This research method combines normative juridical research methods. What is meant by normative juridical research is research based on document study studies that collect literature study materials related to the discussion and processing of the journal material by using the descriptive method by looking at problems that occur in the midst of people's lives, the focus of the study stems from regulatory provisions applicable laws and regulations, accompanied by theories and legal principles related to the problem under study. The results of the electronic agreement (e-contract) between PT. GOJEK, AKAB, and GOJEK's prospective partners have clauses that can be categorized as standard clauses which in fact are prohibited in Law Number 8 of 1999 concerning Consumer Protection and contain the principle of mutualism in which the agreement is mutually beneficial between the two parties. So in the agreement it can be said that PT. GOJEK Indonesia is not fully responsible when GOJEK partners experience fictitious orders because the agreement contains the principle of mutualism and is prohibited by Law Number 8 of 1999 concerning Consumer Protection.

Keywords: Online Gojek, Transportation, Law, Constitution

1. INTRODUCTION

Transportation is a field of activity that is very important in the life of Indonesian society. By realizing the important role of transportation, traffic and transportation must be arranged in an integrated national system that is capable of realizing the availability of transportation according to the level of public needs in an orderly and comfortable manner.

In this modern era, people have various kinds of activities, to meet these needs requires transportation as a means of support or assistance in carrying out their activities (Nasution, 2018). Transportation entrepreneurs as business actors are competing to innovate to improve services, one of which is by utilizing technology.

Technological developments are progressing very fast in this era, all needs, starting from primary needs to secondary needs, are easy to get breast milk. This can be seen from how quickly the community has used it. Technology can be used as a means to gain profits in the form of goods or services (Khalid, 2019b).



In this case one that is used by several transportation companies to facilitate customers. The public can now order transportation vehicles online, for example motorcycle taxis through an application that uses service standards (Korbafo et al., 2019). Previously, motorcycle taxis operated with an area-based base system at corners and at the mouths of alleys. Other ojek drivers cannot stop at random in an area without permission from the ojek driver in that area, even to use ojek services passengers have to pay cash and it is not uncommon to have bargains between passengers and drivers (Tasya & Sabrie, 2019). Today, motorcycle taxis do not only deliver passengers, but motorcycle taxis nowadays can pick up goods and deliver goods. With the use of technology in the field of transportation, transport companies have made new breakthroughs where transport services can now be accessed online. Online transportation is a transportation service in which every activity is connected to the internet, starting from ordering payments, to monitoring and evaluating these transportation services. One of the online transportation tools that exists this time is GOJEK, where this transportation system uses an application to access it (Pahlevi, 2018).

GOJEK is a trademark in the form of an application, where this application will later be used as a tool for access between consumers and online motorcycle taxi drivers (Fillaili, 2019). To become a go-jek driver, prospective drivers can first register through the application. After being declared to have agreed to the agreement that was given by PT Gojek Indonesia to prospective gojek drivers, this is where the agreement will arise rights and obligations.

An agreement is a legal relationship between two or more people, based on which one party has the right to demand something from the other party, and the other party is obliged to comply with that claim. The agreement entered into by GOJEK drivers with PT Gojek Indonesia is a partnership agreement, which is an electronic mechanism (Khalid, 2019a).

The cooperative relationship between PT Gojek Indonesia and Gojek Drivers is a partnership relationship. Partnership is cooperation in business relations both directly and indirectly on the basis of the principles of mutual need, trust, strengthening and benefit involving micro, small and medium business actors and large businesses. With the existence of a partnership carried out by gojek drivers, of course, it will give birth to an agreement between the two parties. An agreement is an event where a person promises to someone else or two people promise each other to do something (Ayunita et al., 2018).

In the agreement, there are several legal conditions as follows:

- 1) They agree to be bound.
- 2) The ability to make an agreement.
- 3) A certain thing.



4) A lawful cause.

By fulfilling all the legal terms of the agreement above, the two parties are bound to each other, but the contents of the agreement include the rights and obligations of both parties that are not balanced and less profitable for online gojek drivers. But in the Civil Code it is stated in article 1618 which reads "a partnership is an agreement by which two or more people bind themselves to enter something into a partnership, with the intention of sharing the profits that occur because of it". It is considered that this article exists, so the partnership should get a balance between the gojek driver and PT Gojek Indonesia, for example there is accountability related to the loss of gojek drivers with fictitious orders (Subakdi & Nugroho, 2019).

Where in this case there is no filtering between fictitious orders and real orders (Real). At present there are many cases of fictitious orders, which are often experienced by online motorcycle taxi drivers and have the impact of causing losses for online motorcycle taxi drivers. The problem in question is that the order is fake (fictitious), for example one of the gojek drivers has received an order in the form of 2 (two) portions of typical Senayan satay with a total expenditure of Rp. 232,500, - (Two hundred thirty-two thousand five hundred rupiah), the gojek driver (driver) reconfirmed the customer's order after buying it but what power, disappointment actually got when he arrived at the address of the customer (customer) he met was not the the customer, but other parties (Astawa and Atmaja, 2019).

The actions contained in the example above are a form of violation committed by a customer (Customer) which is a fictitious order. This fictitious order is a form of violation related to the provisions of article 5 of law number 8 of 1999 concerning consumer protection.

From a consumer protection point of view, there is protection for go-jek drivers which states:

- a. The right to receive payments in accordance with agreements regarding conditions and exchange rates for traded goods and/or services.
- b. The right to obtain legal protection from consumer actions with bad intentions.
- c. The right to defend oneself is appropriate in the legal settlement of consumer disputes.
- d. The right to rehabilitate a good name if it is not legally proven that the consumer's loss was not caused by the goods and/or services being traded.
- e. The rights regulated in the provisions of other laws and regulations.

To overcome legal certainty, it is contained in article 1267 of the Civil Code which reads "a party against whom the agreement is not fulfilled, can choose whether he, if this can still be done, will force the other party to fulfill the agreement, or he will demand cancellation agreement, accompanied by compensation for losses. Therefore, the losses suffered by gojek drivers caused by



fictitious order actors should be a problem for both parties (Astawa and Atmaja, 2019). To find out more details regarding the partnership relationship and accountability between gojek drivers and PT Gojek Indonesia, the author is interested in writing in a paper entitled: "Legal relationship between drivers and online-based transportation companies"

2. RESEARCH METHODS

This research method uses normative juridical research methods, what is meant by normative juridical research is research based on document study studies that collect literature study materials related to the discussion and processing of journal materials by using the description method by looking at the problems that arise. occurs in the midst of people's lives, the focus of the study stems from the provisions of the applicable laws and regulations, accompanied by theories and legal principles related to the problems studied. Thus this research, refers to laws and regulations with a discussion that is descriptive analytical in nature, namely focusing on solving actual problems by collecting legal materials, compiling, classifying, and then analyzing them.

Legal materials for this research were obtained through library research in order to obtain various materials related to the problem under study, books and scientific works, papers, newspapers which are expected to provide an overview of the problem under study, and collected and processed. in order to obtain legal material that is ready for analysis. The analysis of legal materials is carried out deductively in accordance with the problem approach in this study. By way of analysis like this, will be able to provide conclusions on the problems discussed in this paper.

3. RESULTS AND DISCUSSION

Overview of the Partnership Agreement Between Drivers and Pt Gojek

In this case each company has regulations and procedures for registering whether it's a work relationship or a partnership, one of the sophistications of this era is that many have used smartphones (smart phones) to take opportunities work, for example becoming a partner of GOJEK. Before becoming a Gojek partner, there are mechanisms that must be considered by potential partners so that potential partners can access the application and become GOJEK partners. There are ways to become a Gojek driver (partner), which include:

- 1) Install an application that is on a smartphone or mostly called a smartphone.
- 2) The second step is to click the register column to become a partner.



- 3) After opening the list column to become a partner, the next step is to enter an active cellphone number for verification.
- 4) After getting the verification code from the application which has been sent via SMS, they are immediately directed to enter the code in the application.
- 5) After the above is done, you will then be directed to the registration column, for this column you will first be directed to choose to be a 2 (two) wheel motorbike driver or a 4 (four) wheel car driver.
- 6) After making these choices, it will then be shown to fill in the personal data form.
- 7) After completing your personal data, you will be directed to upload the required documents in JPG format.
- 8) After all these things are completed, the registration will be further verified by the application, meanwhile the potential partner will be told to wait for the completion of the verification.
- 9) After everything has been verified, the potential partner will be sent an SMS to come to the gojek branch office closest to the domicile of the potential partner.

After doing the things described above, the partner is able to carry out the partner's duties and is already binding on the partner parties and PT Gojek. If the above cannot be done, potential partners can directly contact or come to the nearest Gojek branch office.

Responsibilities of the Partnership Agreement Executor

There are several responsibilities that are borne by partners after entering into an agreement with PT Gojek, which include:

- 1) Partners have full authority to sign user terms and carry out partner obligations based on the agreement.
- 2) Partners can operate vehicles and have the required permits (including the operation of vehicles, partners must already have a valid driving license and apply all the necessary permits.
- 3) Partners own or have the legal right to operate vehicles meeting safety and maintenance standards for vehicles that comply with industry practices and minimum service standards that apply to said vehicles, are in good condition to operate, operate the Vehicle within the permitted operating area, and are in clean and comfortable conditions for the provision of Partner Services in accordance with Applicable Law.
- 4) Partners are at least 18 years of age who are permitted to provide services under applicable law.



- 5) The Partner has and maintains a valid insurance policy to drive a Vehicle to carry out Partner Services and/or business activity insurance to provide protection for any anticipated losses related to the provision of Partner Services, which, as the case may be, provides protection for Partners, Users, Passengers, every item, your vehicle, and/or any other third parties, in the level of protection that meets the minimum requirements as stipulated in the Applicable Law and Partner Terms of Use. Gojek may, to the extent permitted and in accordance with Applicable Law, provide features and/or facilities in the Partner Application, with or without cooperation with Gojek Business Partners, to help Partners meet the minimum requirements and premium payments to meet insurance needs in accordance with applicable Laws. apply;
- 6) The Partner will always comply with all Applicable Laws, and will immediately notify Gojek if you violate the Applicable Laws.

The above is the responsibility of partners in carrying out the obligations of gojek partners. Not to forget that there is general accountability according to the Civil Code if there is an unlawful act into 2 (two) groups, namely:

Direct responsibility.

This is regulated in article 1363 of the Civil Code (Book of the Civil Code) which reads "Every person who commits an unlawful act is required to compensate for losses arising from his mistakes. "So many things that previously could not be prosecuted or subject to sanctions or punishments, now there are perpetrators to be held accountable to pay compensation.

Indirect responsibility.

According to article 1367 of the Civil Code (Book of the Civil Code), a legal subject is not only responsible for unlawful acts he has committed, but also for acts committed by other people who are dependents and goods under his control (Wijaya, 2022). Responsibility for the consequences of unlawful acts in civil law, responsibility lies not only with the perpetrators themselves but also with other parties or with the State, depending on who did it.

There are three modes of accountability, namely:

- 1) Accountability with an element of error (intentional and negligent) as stated in Article 1365 of the Civil Code which reads "any unlawful act, which causes harm to another person, obliges the person who because of the mistake of issuing the loss, compensates for the loss." the."



- 2) Responsibility with an element of error, especially negligence as stated in article 1366 which reads "everyone is responsible not only for losses caused by his actions, but also for losses caused by negligence or carelessness."

- 3) Absolute responsibility (without fault) as contained in article 1367 of the Civil Code.

Article 1367 above is not limited to liability within the employment bond but also outside the employment bond where the work is carried out independently either on the leadership of the employer or only on instructions in accordance with the provisions of Article 1601a of the Civil Code concerning labor agreements. The scope of liability of Article 1367 paragraph (3) includes losses caused by actions that are not included in the tasks assigned to subordinates but have something to do with the duties of these subordinates so that the actions are considered to be carried out in the relationship in which the subordinate is used (Halim & Nurbaiti, 2018). Furthermore, Hoge Raad adheres to the organ theory which explains that a legal entity can be held liable in a civil manner based on Article 1365 of the Civil Code if its organ commits an unlawful act.

As the author mentioned above, unlawful acts in the Civil Code require a causal relationship between the loss and the environment, in the context of a legal entity, not all acts of an organ can be accounted for by a legal entity, but there must be an underlying relationship. If a person acts to fulfill the duties assigned to him and then the action turns out to be against the law, then the act of the organ is considered as an act of a legal entity and the legal entity must be held responsible. So that civil liability from legal entities can be directly based on Article 1365 of the Civil Code and indirectly (if carried out by organs/subordinates) based on Article 1367 of the Civil Code (Halim & Nurbaiti, 2018).

Legal Protection for Gojek Drivers

The agreement that has been made by GOJEK and partners is a partnership agreement. In the partnership cooperation agreement between GOJEK and partners, the objects are goods, namely applications provided by GOJEK, businesses, namely services offered by partners, and money resulting from business combinations and goods by GOJEK and partners. Legal protection is a form of protection that has been recognized from human rights which only belongs to legal subjects as a set of rules or norms based on provisions to get protection from something else (Lelisari et al., 2022). In connection with partnerships, only using production sharing agreements, this is in accordance with the principle of freedom of contract in article 1338 of the Civil Code which reads "All agreements made legally apply as laws for those who make them".



So because the legal relationship between the application provider company (GO-JEK Company) and GO-JEK Drivers is a partnership relationship, not a working relationship as an entrepreneur with workers as the relationship in Law number 13 of 2003 concerning Manpower, then the protection of work safety in the provisions Law Number 13 of 2003 concerning Manpower does not apply to GO-JEK drivers, so all rights and obligations including work safety protection for GO-JEK Drivers that apply are the partnership agreements of application provider companies (GO-JEK Companies) with GO-JEK Drivers .

In this case, to protect online motorcycle taxi vehicles, they still use the regulation of the Minister of Transportation of the Republic of Indonesia Number: PM 12 of 2019 concerning the protection of the safety of bicycle users. Instead of that, there are more things that need to be protected by gojek drivers as partners, namely protection from fictitious orders, where fictitious orders are orders that have been placed by consumers who have ordered and via Gojek, but when the driver is at the pick-up location there is no information on the continuation of the order. relating to consumers that the law governing how the rights of consumers are contained in Law Number 8 of 1999 concerning Consumer Protection, but currently there is a lot happening on the part of consumers deliberately making fictitious orders which cause GOJEK partners to suffer material losses. In the partnership agreement between GOJEK and the driver (partner) they have the principle of freedom of contract which can refer to Article 1338 of the Civil Code, namely that in all agreements made according to the agreement, the law applies to those who have made the agreement. (Tobing, 2017).

So it can be said that when consumers place fictitious orders, GOJEK partners have no right to sue PT. GOJEK Indonesia because of the clause that has been made by PT. GOJEK Indonesia is deemed to have agreed to the clause in the partnership agreement. So that when consumers make fictitious orders, GOJEK partners can refer to the legal protection that can be used contained in article 1267 of the Civil Code, namely where the aggrieved party can choose to prosecute the cancellation of the agreement with compensation for losses, as well as interest costs.

In connection with consumers who harm GOJEK partners for actions in fictitious orders, they have violated Article 5 point (b) of Law Number 8 of 1999 concerning Consumer Protection which states that good faith in carrying out transaction activities for the purchase of goods and/or services. According to Article 18 of Law Number 8 of 1999 concerning Consumer Protection, it regulates this standard clause, so that in this electronic partnership agreement there is a standard clause that is prohibited and can result in the agreement being declared null and void. Based on the electronic agreement, the terms of use in the GOJEK application already exist when the consumer



downloads the GOJEK application, when the consumer places an order and performs a "click" action on the GOJEK application, at that time the consumer is deemed to have agreed to the agreement contained in the electronic agreement. The electronic agreement can be categorized as one of the standard agreements which according to Law Number 8 of 1999 concerning Consumer Protection is prohibited.

Legal Consequences of Forms of Electronic Partnership Agreements

Legal consequences are the result of an action taken to obtain an effect desired by the actor regulated by law, so in other words a legal consequence is the result of a legal action. Every legal relationship will lead to legal consequences, where the legal consequences will later have an impact on the legal subjects who carry out legal relations. The legal relationship is a union of legal subjects where both parties want to have a legal relationship based on the applicable legal regulations. One example of a legal relationship is a partnership agreement, a partnership is a legal relationship based on a business for profit.

Partnership agreements are agreements made between medium and/or large businesses and micro and/or small businesses. Medium and/or large businesses are obliged to provide partnership, mentoring and development programs for micro and/or small businesses. In principle, partnership relations must be based on a sense of mutual need, trust, strengthening and benefit as referred to in the provisions of Article 10 paragraph (2) PP No. 17 of 2013. Furthermore, Article 36 paragraph (1) UU UMKM jo. Article 10 paragraph (3) PP No. 17 of 2013. Also confirms that the position of both parties is equal.

It is clear that in this way no one party dominates the partnership and/or even controls the other party as explained in the provisions of Article 35 of the UMKM Law jo. Article 12 PP No. 17 of 2013. The implementation of partnership relations should create a relationship that is interdependent and mutually influencing one another. It's not that one party dominates the other party or even takes advantage of circumstances through making partnership agreements, thereby creating a condition where one party is dependent on the other party.

In the event that there is a partnership agreement that is indicated to create dependence, then the legal consequences that arise are that the agreement will be null and void and it is deemed that there has never been an agreement between the two parties. Null for the sake of law indicates that something is invalid or invalid that occurs automatically, immediately, spontaneously, or by itself, as long as the conditions or conditions that make it null and void are fulfilled. After an agreement is said to be null and void, it is not entirely clear that the agreement never existed. This



is because after all the agreement already exists or has occurred. It's just that the agreement has no effect or impact on such circumstances.

Vice versa if both parties have carried out the ruell of the agreement then the agreement has functioned to bind both parties. If the partnership agreement is carried out in good faith, it will create continuity for the perpetrators of the agreement and create social prosperity for every human being.

4. CONCLUSION

The agreement is a binder of rights and obligations between one legal subject and another legal subject, in the partnership agreement that Gojek has entered into with the driver (partner) there are several aspects of legal protection weaknesses for the driver (partner). Legal protection for GOJEK partners for fictitious orders made by consumers is not optimal, but we can refer to Article 1267 of the Civil Code that gojek partners receive legal protection when they receive fictitious orders. Besides that, consumers also violate article 5 point (b) of law number 8 of 1999 concerning consumer protection which reads in good faith in making purchases of goods and/or services. Regarding PT Gojek's responsibility to the driver (partner).

Electronic agreement (e-contract) between PT. GOJEK, AKAB, and GOJEK's prospective partners have clauses that can be categorized as standard clauses which in fact are prohibited in Law Number 8 of 1999 concerning Consumer Protection and contain the principle of mutualism in which the agreement is mutually beneficial between the two parties. So in the agreement it can be said that PT. GOJEK Indonesia is not fully responsible when GOJEK partners experience fictitious orders because the agreement contains the principle of mutualism and is prohibited by Law Number 8 of 1999 concerning Consumer Protection.

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