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CUSTOMER LEGAL PROTECTION AGAINST TRAVEL AGENT ON FAILING TO SEND UMRAH PILGRIMS IN INDONESIA

Muhammad Arassi Maulana Saputra¹, Gianto Al Imron^{2}*

¹Department of Civil Law, Faculty of Law, Universitas Airlangga

²Department of Civil Law, Faculty of Law, Universitas Airlangga, Surabaya, Indonesia.

*Corresponding author: gianto@fh.unair.ac.id

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ABSTRACT

Background: Travel agent service provider is a new form of business in the era of advanced information technology and transportation. The rapid growth of travel agent business is supported by one need of the majority of Indonesian people as Muslims, namely to travel for Umrah. Customers of travel agent service need legal protection to minimize and overcome any issues.

Objectives: This study focuses on analyzing the liability of a travel agent as a business actor and the government to prospective pilgrims who failed to go for their pilgrimage travel as a form of consumer protection.

Method: This study uses a normative method based on positive Indonesian law, through a legal approach and conceptual approach.

Results: The act of a travel agent as a business actor who fails to send its customers (prospective Umrah pilgrims) violates the provisions of Article 4 No. 7 and No. 8 UUPK No. 8 of 1999, and must resolve its liability in accordance with Article 19 paragraph (1) of UUPK. As an authority, the government delegates its responsibility to the Minister of Religion in accordance with Article 29 and Article 30 of UUPK. **Conclusion:** A travel agent is responsible for compensating the damages by either returning the money or sending the customers off on their pilgrimage. The government is responsible for ensuring the fulfillment of the right to compensation.

INTRODUCTION

The development in information technology and transportation creates opportunities for businesses actors to establish various types of businesses. (Setianto and Pratiwi, 2019). One type of business that is often popular is travel

agent service. The rapid growth of travel agent business is supported by one need of the majority of Indonesian people as Muslims, namely travelling for Umrah. (Cahyaningrum, 2009). In carrying out its business activities, a travel agent must observe the interests of its consumers (Maggalatung, 2017). So, when the customers use the service of a travel package, they will not experience any problems. To protect the customers, the government established Law No. 8 of 1999 regarding Consumer Protection (hereinafter, UUPK)(Yuanitasari, 2016).

One of the travel agencies that offers Umrah package services is PT First Anugerah Karya Wisata (First Travel). One feature that distinguished First Travel from other Umrah travel agents was that it offered a different fee scheme. A significant lower price attracted a lot of people who became interested in using their services with the hope that they could perform their worship and come to Mecca at a relatively lower cost. In 2017, First Travel failed to send its Umrah pilgrims to Mecca. The Indonesian Ministry of Religion has exploited a number of resources, unfortunately First Travel still failed to show any good faith in taking care of the problems (Cahyaningrum, 2009; Maggalatung, 2017). Based on the above description, this study focuses on analyzing the liability of the travel agent as a business actor and the government to prospective pilgrims who failed to go for their pilgrimage travel as a form of consumer protection.

METHOD

This is a normative juridical research based on positive Indonesian law. It uses two approaches namely legal approach and conceptual approach. The legislative approach provides a prescription of the required legal practice, related to customer legal protection on the failure to send Umrah pilgrims in Indonesia. The conceptual approach is carried out by examining established doctrines in order to find a framework of ideas on the liability of the travel agent and the government for the failure of Umrah pilgrimage in Indonesia.

RESULTS AND DISCUSSIONS

Travel Agent's Liability (First Travel)

Business actors and customers are constantly interrelated (Setianto and Pratiwi, 2019). A business actor produces goods/services and a customer enjoys the goods/services produced by the business actor (Handriana, 2017). As a legal subject, the provisions regarding business actors and customers are regulated in UUPK. Article 3 Regulation of Minister of Religion of (PMA) No. 18 of 2015 regarding Implementation of Umrah states: "The management of Umrah Pilgrimage aims to provide guidance, service, and the best protection to the pilgrims, so the pilgrims are able to perform their worship in accordance with the provisions of Islamic law".

Article 5 No. (1) and (2) PMA No. 18 of 2015 regarding the Management of Umrah Pilgrimage stipulates that: (1) The management of Umrah pilgrimage by a travel agents must obtain an operational permit as PPIU; and (2) Operational license as PPIU as referred to in paragraph (1) which is determined by the Minister. Based on the above article, as a travel agent, First Travel must obtain

a permission from the Minister of Religion in conducting its business activities (Maggalutung, 2017). The pilgrims who bought services from First Travel for Umrah pilgrimage to Mecca are consumers as regulated in UUPK Article 1 point 2. The above description explains that there is a relationship between First Travel and the pilgrims (Cahyaningrum, 2009; Maggalutung, 2017).

Based on the agreement that binds the parties, First Travel must send the Umrah pilgrims to Mecca in accordance with the agreement that was agreed upon by both parties (Gumanti, 2012). In line with Article 1 No. (4) PMA No. 18 of 2015 regarding the Management of Umrah Pilgrimage, the agreement between First Travel and the prospective pilgrims is considered valid because the parties are considered legally competent. As referred to in article 1320 BW, the parties have fulfilled both subjective and objective requirements (Maggalutung, 2017).

By failing to send Umrah pilgrims to Saudi Arabia on March 28, 2017 where the pilgrims were placed in a hotel nearby Soekarno-Hatta Airport, this means that First Travel had acted a negligence on the pilgrims thereby violated the provisions of Government Regulation No. 79 of 2012 Article 65 letter a. As the legal consequence, First Travel was subjected to administrative legal sanctions i.e. its operational permit was revoked based on Article 25 paragraph (1) PMA No. 18 of 2015 stipulated through a Decree of Minister of Religion (KMA) No. 589 of 2017 dated August 1, 2017 (Maggalutung, 2017).

The UUPK provides the provisions related to compensation in Article 19 paragraph (2) of UUPK. In the case that First Travel failed to send the pilgrim for Umrah, based on Article 19 paragraph (2) number 1 and 2, the compensation provided by First Travel may be given as refunds or a replacement of similar service or of equivalent value (Hasbi, 2015). First Travel must award the compensation for the losses borne by the pilgrims within 7 (seven) days after the transaction date based on Article 19 paragraph (3) of UUPK. With regard to the compensation given by First Travel to the pilgrims, it is basically based on a breach of contract and Unlawful Act (PMH) (Ariawan and Griadhi, 2013).

First Travel and the prospective pilgrims are bound by an agreement. If one party does not fulfill its obligations as promised, the pertaining party may be sued on the basis of default. (Gumanti, 2012). The civil relation between First Travel as PPIU with its prospective pilgrims is regulated in Article 45 paragraph (1) letter c Law No. 13 of 2008 which states that the organizer of Umrah pilgrimage is obligated to provide the service to the pilgrims in accordance with the written agreement agreed between PPIU and the pilgrims (Maggalutung, 2017).

The Government Responsibility as Pilgrim Protection (Customer)

The government also contributes to consumer protection (Mahy, 2013). To meet the objectives of consumer protection as referred to in Article 3, it is necessary to provide guidance and supervision to both businesses and customers (Hariyati, Tjahjadi and Soewarno, 2019). Such guidance and supervision are expected to

ensure consumer rights and vice versa to ensure the fulfillment of business actors' obligations (Nottage, 2015).

With regard to the provisions of Article 29 of the UUPK, the government can provide mentoring in terms of consumer empowerment through consumer education and guidance. Providing customer education aims to make customers understand their rights (Hariyati, Tjahjadi and Soewarno, 2019). In connection with the provisions of Article 30 of the UUPK, the government takes measures in consumer protection by way of supervision. The supervision duty is given more on the community and Non-Governmental Consumer Protection Agencies, therefore the government is assumed to act less active in providing supervision (Maggalatung, 2017). Recognizing the lack of active role from the government in supervising the implementation of consumer protection, PP No. 58/2001 provides clearer provisions related to the supervisory duties (Ariawan and Griadhi, 2013).

Government responsibility related to the implementation of Umrah in the context of consumer protection (pilgrims) is generally regulated in Government Regulation (PP) No. 79 of 2012 regarding Implementation of Law No. 13 of 2008 regarding Implementing Hajj Worship, and more specifically regulated by PMA No. 18 2015 regarding the Management of Umrah Worship (hereinafter, PMA No. 18/2015). In addition, Law No. 10 of 2009 regarding Tourism also provides the emphasis to government responsibilities.

It is quite clear that the government bears the responsibility for supervising and controlling the course of Umrah implementation (Maggalatung, 2017). In practice, implementing the supervision and control which is the government responsibility via the Ministry of Religion, has not been running as it should. Supervision by the Ministry of Religion as a regulator of Hajj and Umrah implementation is considered weak. This is shown by the evidence that the Ministry of Religion already knows about the Umrah promotion price Rp. 14,000,000 per person which does not make sense. (Cahyaningrum, 2009).

In the case of Umrah The First Travel pilgrims, the Government via the Ministry of Religion is responsible for the failure, due to its negligence on supervising and controlling the travel agent in organizing the Umrah Pilgrimage of First Travel. (Ariawan and Griadhi, 2013; Setianto and Pratiwi, 2019). As the party that awards the accreditation and permission that allows First Travel to operate as PPIU, the government is responsible for providing legal protection to the pilgrims. The legal protection provided by the government may be in the form of providing compensation to Umrah pilgrims either through refunds or sending them to pilgrimage. (Achsien and Purnamasari, 2016).

CONCLUSION

One of the travel agencies, First Travel as a business actor in organizing Umrah pilgrimage is responsible for the losses suffered by the registered Umrah pilgrims who paid the costs because they could not go to Mecca. Based on Article 19 paragraph (2) points 1 and 2, the compensation provided by First

Travel may be in the form of refunds or reimbursement of services of similar or equivalent value. In accordance with Article 29 and Article 30 of the UUPK, the government has delegated the responsibility in terms of monitoring the supervision of the consumer protection implementation to the Minister of Religion. In the implementation, the government is responsible for ensuring that the customers receive their right to compensation.

REFERENCES

- Achsien, I. H. and Purnamasari, D. L. (2016) 'Islamic crowd-funding as the next financial innovation in islamic finance: potential and anticipated regulation in Indonesia', *European Journal of Islamic Finance*, (5).
- Ariawan, G. A. and Griadhi, N. M. A. Y. (2013) 'Tanggung Gugat Product Liability dalam Hukum Perlindungan Konsumen di Indonesia', *Kertha Semaya: Journal Ilmu Hukum*.
- Cahyaningrum, D. (2009) 'Tanggung Jawab Hukum First Travel Dalam Kasus Penipuan, Penggelapan, dan Pencucian Uang Dengan Modus Umrah', *Majalah Info Hukum Singkat DPR*, 9(16).
- Gumanti, R. (2012) 'Syarat Sahnya Perjanjian (Ditinjau dari KUHPerduta)', *Jurnal Pelangi Ilmu*, 5(01).
- Handriana, T. (2017) 'Consumer attitudes toward advertisement and brand, based on the number of endorsers and product involvement: An experimental study', *Gadjah Mada International Journal of Business*. Master of Management Program, Gadjah Mada University, 19(3), p. 289.
- Hariyati, H., Tjahjadi, B. and Soewarno, N. (2019) 'The mediating effect of intellectual capital, management accounting information systems, internal process performance, and customer performance', *International Journal of Productivity and Performance Management*. Emerald Publishing Limited.
- Hasbi, H. (2015) 'Islamic microfinance institution: the capital structure, growth, performance and value of firm in Indonesia', *Procedia-Social and Behavioral Sciences*. Elsevier, 211, pp. 1073–1080.
- Maggalatung, S. (2017) 'Legal Protection Against Indonesian Umrah Jemaah'. *Jurnal Cita Hukum*. Faculty of Sharia and Law UIN Jakarta.
- Mahy, P. (2013) 'The evolution of company law in Indonesia: An exploration of legal innovation and stagnation', *The American Journal of Comparative Law*. Oxford University Press, 61(2), pp. 377–432.
- Nottage, L. R. (2015) 'ASEAN Product Liability and Consumer Product Safety Regulation: Comparing National Laws and Free Trade Agreements', *Sydney Law School Research Paper*, (15/07).
- Setianto, R. H. and Pratiwi, A. (2019) 'Working capital management in Indonesia: An analysis on overinvestment and underinvestment firms', *Gadjah Mada International Journal of Business*. Master of Management Program, Gadjah Mada University, 21(1), p. 1.
- YUANITASARI, M. S. D. (2016) '12-N36-2712 Comparison Study Between Indonesia And United States Law In Regard To The Implementation Of Strict Liability Principles For Product Liability Within Indonesian Consumer Protection Law.', in *3rd Academic International Conference*

on Interdisciplinary Legal Studies, p. 65.