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LEGAL PROTECTION FOR CONSUMERS OF ONLINE TRANSPORTATION SERVICE GOJEK

Astrid Aulia Rachman¹, Gianto Al Imron²

^{1,2}Department of Civil Law, Faculty of Law, Universitas Airlangga, Surabaya, Indonesia

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

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ABSTRACT

This research aims to study the legal protection for consumers of online transportation service users if something happens that is detrimental to the consumer for errors or omissions from the driver or from the business provider of application service providers. The author uses the normative juridical method. The results of the study show that there are no regulations governing legal protection for consumers of online transportation service users if the consumers are harmed due to errors, negligence on the part of the driver, or from the business provider of application service providers. The purpose of this study is to determine the legal relationship between GOJEK consumers and GOJEK transportation service business operators to determine the liability of their parties, as well as knowing what legal remedies can be done by consumers in the event of a loss by consumers in using GOJEK transportation services. The government should act as a regulator in facilitating the public with the regulations on online transportation services as a means to protect the rights of consumers.

INTRODUCTION

Nowadays the community is serviced by the emergence of online transportation. GOJEK transportation services have become a new breakthrough in the world of transportation. Online transportation services is very helpful for the community as a new means of transportation that is suited with the needs of the community. Business actors utilize online media whose scope of access is very broad and even worldwide for promotion and sale of goods and/or services (Fajrina, 2015).

Rigorous recruitment of drivers is carried out very selectively and thoroughly by PT. GOJEK Indonesia to employ drivers who are able to provide the best service for consumers. The drivers were asked to provide guarantees in the form of a recent

education diploma and other identification certificates such as marriage certificates for married people, photocopies of family cards, so that if there is something undesirable due to driver error, PT. GOJEK Indonesia can identify which drivers must be held accountable (Biografi.com, 2015).

GOJEK is one of the application used for online transaction. The contractual relationship between businesses and consumers is based on electronic transactions is regulated in Law No.11 of 2008 concerning Information and Electronic Transactions (hereinafter referred to as IET Law). Before the enactment of the IET Law, all forms of contracts were guided by the Civil Code (Fajrina, 2015).

There are several complaints received by GOJEK through its social media accounts, one of which is drivers who are not careful, violate traffic signs, waiting for orders disorderly in random places which often causes traffic jams. These things are, of course, very dangerous to consumers. Other complaints regard the late arrival of the drivers. What is desperately needed is a holistic perspective that unites not only consumer law and sustainability but that also analyses the role and function of the digital economy and society (Mathios et al, 2020). The most difficult problem is introducing an effective system of applied legislation and jurisdiction (Elena et al, 2016).

GOJEK's transportation arrangements are deemed necessary, it is not yet clear whether the type of transportation itself is in the form of mass transportation or not since the motorcycle used is a private vehicle, so problems arise when a loss befalls consumers who will be held accountable.

The purpose of this study is to determine the legal relationship between GOJEK consumers and GOJEK transportation service business operators to determine the liability of their parties, as well as knowing what legal remedies can be done by consumers in the event of a loss by consumers in using GOJEK transportation services.

RESEARCH METHODS

This study is a normative juridical research based on all laws and regulations relating to consumer protection of transportation services and electronic transactions (Marzuki, 2005). Legal materials used in this study include the Staatsblad Civil Law Book 1847 Number 23, Law Number 8 of 1999 Concerning Consumer Protection, hereinafter referred to as CPL, Law Number 13 of 2013 concerning Labor, hereinafter referred to as the Manpower Act, Ministerial Decree Industry and Trade, hereinafter referred to as Kepmenperindag No.350/MPP/12/2001 concerning the Implementation of Duties and Authorities of Consumer Dispute Resolution Bodies, etc.

Relationship between Legal Actors and Liability

According to article 1 paragraph (1) the Company Law confirms that a limited liability company is a legal entity that has the following elements: a). Separate

wealth; b). Shareholders; and c). Management (Budiarto, 2009). PT. GOJEK Indonesia can be said as a legal entity business, namely a Limited Liability Company (PT in Indonesian), because it fulfills the elements of a business actor as explained and confirms the status of the legal entity as a PT or Limited Liability Company with the name PT. GOJEK Indonesia.

While the definition of consumers according to Law 8/1999 UUPK article 1 number 2 is "every person who uses goods and/or services available in the community both for self, family, others, and other living things without trading it". In this case the consumers are users of GOJEK's transportation services.

According to the structure of PT. GOJEK, the driver is a worker of the system run by PT. GOJEK Indonesia to provide GOJEK transportation services to consumers. PT. GOJEK Indonesia is only running the application system that has been initiated. Agreements made by business actors, consumers and drivers can be said as electronic agreements because of the scope of the agreement that uses the internet network and online. Hence, it can be said that the process is included in electronic transactions.

This electronic or online transaction is basically a trade transaction contract between the seller and the buyer using the internet media. Thus, the processes of ordering the goods and/or services, payment transactions, and the delivery are communicated via the internet (Adnan, 2015).

The Consumer Protection Law regulates the relationship between business actors and consumers in carrying out trade, exchange of goods and/or services. As regulated in article 1 paragraph (1) the CLP states that "Consumer Protection is any effort that guarantees legal certainty to provide protection to consumers". Therefore speaking of consumer protection means questioning the guarantees or certainty about the fulfillment of consumer rights.

GOJEK arrangement is similar to motorcycle taxi, but the media is different in which GOJEK uses online application. GOJEK is more organized, causing consumers to feel more comfortable and efficient in getting their services. However, in the event of loss suffered by consumers and consumer rights violation, the verification will be difficult because there are no regulations governing and there are strict rules regarding GOJEK which are not yet considered as a public transportation. This is very risky for consumers of the services provided by GOJEK business actors.

Relationship between PT. GOJEK Indonesia and the driver, that is in the form of a partnership, must be explored again; this regards what partnership patterns are regulated in the partnership agreement, such as whether the work process follow the rules of work agreement or not. "Partnership is a form of business activity that can be established with capital, expertise and ability to operate."

Evidence that the legal relationship between GOJEK drivers and PT. GOJEK Indonesia is a partnership is the agreement between PT. GOJEK Indonesia with GOJEK drivers. The contract should be in a written form and is agreed by both parties as a partnership agreement. The agreement was made by PT. GOJEK Indonesia which contains the obligations of the parties and regulations as long as the driver becomes a partner of PT. GOJEK Indonesia, which was later agreed to become a joint agreement.

PT. GOJEK Indonesia has full control over the system that is in GOJEK and its drivers, and GOJEK is a form of limited liability company so all forms of liability are on PT. GOJEK and its systems. If the consumer suffers losses from obligations that are not fulfilled by the business actor, the business actor is obliged to compensate the losses received by the consumer. Business actors must be held accountable by providing compensation for damage, pollution and/or loss of consumers for utilizing the goods and/or services produced as stated in Article 19 paragraph (2) of CLP.

Legal Efforts of Each Party

In article 45 number (2) of the CLP it is explained that the form of legal remedies that can be done by consumers in resolving disputes is taken through the court (litigation) or outside the court (non litigation) based on voluntary choices of the parties to the dispute. So that if the consumer suffers a loss of dispute resolution efforts according to article 45 of the CLP is through peaceful dispute resolution, non-litigation, and litigation. Settlement of disputes regulated in the CLP is also the same as those governed by the IET Law, namely individuals or communities as representatives who can file lawsuits for losses incurred by those who operate electronic systems, which in this case application service providers, and/or who use information technology systems in this is the consumer described in article 38 of the IET Law.

PT. GOJEK Indonesia has a special team or customer services that handles complaints from the public regarding the services provided by GOJEK if the consumer experiences an event that is felt to be detrimental to the consumer. Consumers can report complaints in the form of criticism or suggestions or events experienced by consumers if the incident is detrimental to consumers due to using GOJEK transportation services. For the sake of consumer safety, PT. GOJEK Indonesia is collaborating with an insurance company, Allianz, to provide compensation for accidents for all GOJEK customers. Consumers will receive reimbursement up to Rp. 10,000,000 (ten million rupiah) and hospital costs up to Rp.5.000.000 (five million rupiah).

If something unexpected happens due to negligence from PT. GOJEK Indonesia or the driver, and cannot be resolved by compensation due to it being a very large loss, in which the consumer feels unresolved following a complaint to PT. GOJEK

Indonesia, the consumers can sue PT. GOJEK Indonesia either through litigation or non-litigation dispute resolution.

Dispute Resolution Agency

According to the Law of the Republic of Indonesia no. 39/1999 concerning the human rights of Indonesian, protection is a defense towards human rights. Every human being has the same rights and obligations, in which each has the same right to protection (Prakoso and Setyaningati, 2018). Therefore the dispute resolution effort can be carried out as a legal remedy for various parties. Within the scope of dispute resolution through the courts, there are 5 (five) authorized institutions in dispute resolution, namely: 1). general justice, the scope of dispute resolution in cases that handle civil and criminal disputes; 2). religious court, scope of dispute resolution regarding inheritance and other matters relating to Islamic law; 3). military justice, the scope of dispute resolution related to military membership and disputes; 4). state administrative court regarding dispute resolution over disputes relating to public officials. Whereas disputes go through non-litigation route if the arbitration of the competent agency is the National Arbitration Board, if Concerning consumer protection disputes use the Consumer Dispute Settlement Agency.

Avoiding dispute resolution in courts, the CPL provides an alternative solution to resolve disputes outside the court with an authorized institution, namely Consumer Disputes Resolution Agency (CDRA) which is formed by the government to settle disputes outside the court. "Article 49 paragraph (1) of the CPL explains that the establishment of CDRA is only in the Second Level Region (district), showing the intention of the legislators that the decision of CDRA as a consumer dispute resolution body outside the court is not open to appeal" (Miru and Yodo, 2010).

Dispute resolution through Non Litigation in CDRA is regulated in article 52 letter (a) of the CPL regarding the duties and authority of CDRA, there are 3 (three) types of dispute resolution procedures, namely Mediation, Arbitration and Conciliation. This is not a stage of dispute resolution, but rather options that might be that are desired and agreed upon by the parties and can be brought to CDRA if the claim for compensation is not more than Rp. 200,000,000.00- (two hundred million rupiah), Article 60 paragraph (2) explains that CDRA is formed to resolve consumer disputes that are easy, inexpensive, and fast. CDRA membership is regulated in article 49 of the CPL consisting of government elements, consumer elements, and business actors.

Dispute resolution through the court or litigation route is another option if the dispute resolution outside the court does not settle anything. In principle, it all depends on the parties desiring to resolve disputes through both litigation and non-litigation, in which each has their own advantages and disadvantages. Another reason for dispute resolution through general court is because the parties have not chosen efforts to resolve disputes outside the court. Article 45 Paragraph (1) of the

CPL explains that every disadvantaged consumer can sue a business actor through an institution tasked with resolving disputes between consumers and business actors or through the judiciary within the general court environment.

CONCLUSION

PT. GOJEK Indonesia is considered as a business actor according to Consumer Protection Law. The legal relationship between PT. GOJEK Indonesia with consumers is an agreement whereby business actors, in this case PT. GOJEK Indonesia, provides services in the form of transportation in the GOJEK application that is used by consumers and is carried out by executors who are part of GOJEK, namely GOJEK drivers. The relationship that occurs between the driver and PT. GOJEK Indonesia is in accordance with the agreement or contract that has been agreed upon, namely the partnership agreement. The liability lies with PT. GOJEK Indonesia as an application service provider. Referring to the Company Law where PT. GOJEK Indonesia is a limited liability company with a legal status, the company is therefore liable for its business fields, even though PT. GOJEK Indonesia claims its company as a technology company and the agreement is in the form of a partnership agreement, PT GOJEK Indonesia has full claim for all losses suffered by consumers because consumers are also a part of the system run by the company. Legal remedies that can be done by consumers following a loss suffered after using the service of the company and the pattern of dispute resolution according to article 45 of the CPL include peaceful settlement of disputes by the parties, dispute resolution through litigation or court, and through alternative dispute resolution or non-litigation route.

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