PalArch's Journal of Archaeology of Egypt / Egyptology

THE LEGAL CONSEQUENCES OF ELECTRONIC TICKET AGENCY AGREEMENT

Azhar Rahadiyan Anwar[1], Agus Yudha Hernoko[2]

[1,2]Department of Civil Law, Faculty of Law, Universitas Airlangga, Surabaya, Indonesia

Correspondence author : [1]yudha@fh.unair.ac.id

Azhar Rahadiyan Anwar, Agus Yudha Hernoko. The Legal Consequences Of Electronic Ticket Agency Agreement-- Palarch's Journal Of Archaeology Of Egypt/Egyptology 17(3), 1754-1762. ISSN 1567-214x

Keywords: Agency, Agreement, Electronic Ticket, Liability.

ABSTRACT

The legal rules between e-ticket agents and the principal in Indonesia have not been substantially complete. Although the agency matter has been declared as one of the legal forms of intermediaries that develops in Law Number 6 of 1968, the regulation is deemed unable to fulfill all aspects. This incompleteness causes the obscurity of legal relationship between the parties, namely between the principal and the agent in the agreement. The purpose of this study is to review the legal consequences of electronic ticket agency agreements if it harms one of the parties. The result of this study indicated that the legal consequences arising from the absence of rules with a complete substitution in the agreement between the principal and the agent is the existence of liability for the party that harms the other party.

INTRODUCTION

Along with the current development, ticket sales are no longer carried out offline but also online (lio and Okada, 2020). Electronic ticket is ticket that is considered valid by the airlines and the railway service operator. The legal relationship that is carried out electronically by integrating the network of computer-based information systems with the system is an agreement between two or more parties that is carried out using computer media, especially the internet network (Agustina, 2008).

The regulation for tickets itself is regulated in Law Number 1 of 2009 which discusses flights and implementing regulation and Law Number 23 of 2007 concerning railways. In addition, Law No. 11 of 2008 concerning information and electronic transaction in article 1 number 17 explains the electronic contract, namely the agreement of the parties which made through the electronic

system and *Permendag* (Ministry of Internal Affair Regulation) No. 11/2006. Even though there are rules relating to electronic ticket agencies, business actors do not pay more attention to the suitability of the substance in them. Business actors assume that as long as an agreement has been made, the agreement can be considered valid.

This obscurity of law needs to be reviewed to anticipate conflict. Through the relevant Law and Regulation also the other sources of literature can be found the legal rule, legal principle, and legal doctrine in order to answer the legal issues encountered. Through this research, the characteristic of legal relationships between parties in electronic ticket agency agreements that have been mapped through the Law and Regulation is then analyzed. The result of the analysis can show the legal consequences of the electronic ticket agency agreement if it harms one of the parties.

This research shows that the agency agreement is included in the innominaat agreement. Characteristics of electronic ticket agency agreement is similar to power of attorney as regulated in Burgerlijk Wetboek (BW), but have differences regarding the way of giving. Violation of this agreement is divided into two. The first is default, which is a violation of the agreement made by the parties. The second is an act that violates the law, that is, a violation committed by one of the parties because it has committed an action which is contrary to the applicable law. The obscurity about the legal relationship of the parties in an agency agreement is able to result in the legal relationship in an agreement affecting the legal consequences arising if a dispute occurred. Responding to these problems, this research aims to determine the legal consequences of academic ticket agency agreement if it occurred harm for one of the parties.

RESEARCH METHOD

In this research, an electronic ticket agent case study was used considering that electronic ticket purchases were wide-spread in Indonesia. This type of research was normative, which was finding the legal rules, legal principles, and legal doctrine in order to answer the legal issues encountered (Wiratraman, 2019). This research used a statute approach and a conceptual approach. The statute approach was used to assess juridical normative by looking at the form of Law and Regulation and reviewing the contents of the material regarding several aspects which related to the legal issues encountered and to determine the provision of the Law and Regulation that can be used for agency agreement. These Law and Regulation would be used as reference material in determining the characteristic of online ticket agency agreement in Indonesia. The conceptual approach was used to assess the problem that has been formulated referring to the legal principles in the opinion expressed by several scholars or legal doctrines (Marzuki, 2008).

This research used primary and secondary legal sources. The primary legal source came from the constitution of the Republic of Indonesia, Burgelijk Wetboek, and the book of commercial law. While secondary legal sources came from other writings relating to agency agreement, legal protection of agent, general legal terms of agreement and electronic contract (Pribadi, 2010).

RESULT AND DISCUSSION

The Electronic Ticket Agency Agreement

In order to improve services (Manwaring, 2011), transportation service provider such as state-owned or private companies, in this case was travel and individual that cooperated with the transporter, opened up opportunity for the society to become an intermediary in the business sequence of buying and selling electronic tickets with the offer to become an agent. Each agent has different characteristics, depending on the object being sold by the agent. Even with the same object, it was also possible that the character of an agent can also differ among agents of one company and another, including electronic tickets. The parties in the electronic ticket agency agreement were the Principal (business actor that have products sold by the agent) and the Agent (company that sells the principal products on behalf of the principal). The nature of the electronic ticket agency agreement was as follows:

a. The Form of Agreement

The form of agreement which usually used to make an agency agreement was the written form. If the agreement was issued by an official airline or *PT. Kereta Api Indonesia/ PT. KAI* (Indonesian Railways Company), then the form of the agreement was as usual, namely the agreement along with its clause, whereas if the issuer was an online reservation system or a private business actor that has partnered with the airline or PT. KAI, it was usually in the form of term and condition which listed in the website. The establishment of the electronic ticket agency agreement was based on the plea which was submitted by the prospective agent to the principal.

b. The Conditions to be an Agent

The majority of principals applied several terms and conditions for someone if they wanted to be an agent. One of the examples was the term and condition of BIZTRAVEL which demanded the condition to become an agent if an individual was a person who was at least 18 years old to be able to register or visit the website or use the service in any way, by registering, visiting the website or using it.

The Characteristic of Electronic Ticket Agency Agreement

The agency appeared together with the distributor and developed because of the provision of article 6a of Law No. 6 of 1968 concerning Domestic Investment. In one of the Law provisions determined the time limit of business for foreign companies, both new and long in the field of trade, would expire on December 31, 1977. As a follow up to the implementation from the provision of Article 6a of Law Number 6 of 1968, the government then issued Government Regulation Number 36 of 1977 concerning Foreign Business Activities in the Field of Trade (PP 36/1977).

The Government Regulation was later amended by PP 19/1988 which basically said that foreign companies in the production field in order to implement the provision of Law No. 11 of 1970 concerning Foreign Investment could sell their own production to the distributor level by establishing joint ventures between foreign companies with national companies as agents/ distributors. These regulations only regulated the statement. This created obscurity as to how the agency and distributor should be. Because of this, the basis of the agency and distributor's validity still referred to the regulation in Burgerlijk Wetboek and KUHD, namely (Samadani, 2013):

1. Article 1338 Burgerlijk Wetboek concerning freedom of contract
2. Article 1792-1819 Burgerlijk Wetboek concerning authorization
3. KUHD Article which regulated regarding the concept of broker
4. KUHD Article which regulated regarding the commissioner
5. And others.

As time went by, in 2006 a technical regulation regarding agency and distributor was born, namely the Trade Minister Regulation of the Republic of Indonesia Number 11: M-DAG/PER/3/2006. The substance which was regulated in the regulation was basically the procedure for registration and appointment of agent and distributor. The explanation regarding the subject matter of the agency was also explained in the regulation. The parties that have the possibility to become the subject were as follows:

1. Principal was an individual or business entity in the form of legal entity or not the foreign or domestic legal entity that appointed the agent or distributor to sell goods and/ or services that were owned/ controlled. Principal was divided into producer principal and supplier principal.

2. Producer Principal was an individual or business entity in the form of legal entity or not legal entity, having the status of producer that appointed another business entity as an agent, single agent, distributor or single distributor to carry out sales of goods production and/ or services owned.

3. Supplier Principal was an individual or business entity in the form of legal entity or not legal entity which was appointed by the producer principal to appoint another business entity as an agent, single agent, distributor or single distributor in accordance with the authority given by the producer principal.

4. Agent was a national company that acted as an intermediary for and on behalf of the principal based on the agreement to carry out marketing without transferring the physical rights of physical goods and/ or services owned by the principal that appointed it.
5. Sub-agent was a national trading company that acted as an intermediary for and on behalf of the principal based on the appointment or agreement of the agent or single agent to carry out marketing.

Not only that, regulation in the Trade Minister Regulation of Republic of Indonesia Number 11: M-DAG/PER/3/2006 also regulated regarding clauses which should be listed in an agency and distributor agreement.

The relationship between principal and agent in its principle was based on the deal (consent), which was the agent agreed to do a legal action for principal and on the other hand the principal agreed to legal action which was carried out by the agent. Former Supreme Court Judge, Z. Asikin said that the agency legal principle was an exception from the general legal principle that applicable, that someone who has committed a legal action would be bound by his own legal action (Lana, 2006).

Referring to the provision in Article 1319 BW and was supported by the provision of Article 1338 paragraph (1) BW, the type of agreement based on its name was divided into 2 (two), namely the nominaat agreement and the inominaat agreement. Nominaat agreement was an agreement which was known in BW, its included buying and selling, leasing, granting, safekeeping of goods, civil alliance, lending and borrowing, authorization, etc. as regulated in book III BW (Salim Hs, 2019). While innominaat agreement was agreement that arose, grew, and developed in society. The type of innominaat agreement was not regulated in BW (Salim Hs, 2019), it included franchise, renting and buying, leasing, joint venture, contract of work, distributor, etc. including agency without exception the electronic ticket agency. The concept of agency in BW has similarity with the power of attorney agreement which was regulated in Articles 1792 to 1819 BW. As one of the innominaat agreement, in accordance with the provisions of Article 1319 BW Jo Article 1338 BW that the agreement that has binding power was a legal agreement, the agency agreement was binding on the parties making it as long as it fulfills the legal conditions of an agreement as regulated in Article 1320 BW namely:
1. Agree among the parties that make it;
2. The ability of the parties to make an engagement;
3. The agreement is made for a certain thing, the nature and extent of the object of the agreement can be determined (Isnaeni and Shomad, 2013);
4. A reason that is halal or not prohibited or permissible (Muljadi and Widjaja, 2003).

The Violation against Agency Agreement

Violation has different legal consequences and criteria. One of the examples was in the violation of unlawful act has not been created a contractual relationship, aka there has not been an agreement from the parties, whereas in default of violation was committed after the contractual relationship between the parties. For those who have committed such violations there would definitely be a legal consequence. As a result of this law, it was known as liability (Hajar, 2013). The liability was as a form of the responsibility for the violation that caused harm.

The Default

Agreement and Law were one of the sources from engagement. Reciprocal engagement always created an active and passive side of the parties related to the agreement made. The active side gave rise to the right for creditors to demand the fulfillment of achievement, while the passive side gave rise to a burden of obligation for the debtor to carry out their achievement. Achievement was one of the important elements in the engagement besides legal relationship, parties - that was two or more, and assets (patrimonial).

The liability from the agent if carrying out a default was (i) compensation arising due to non-implemented achievement as stated in the agreement, and (ii) carrying out the achievement or fulfilling the achievement, for example by transferring money to the online reservation system as a deposit in the period of time specified so that the access of agent was not suspended. Whereas the regulation regarding principal liability, namely EzyTravel in the electronic ticket agency agreement which was in the form of term and condition of service use, did not state specifically what agent can demand if the principal carried out the defaults. This gave rise to the question "what can an agent demand if the principal carries out a default?". Based on the provision of article 1243 BW, the agent can demand for (i) main compensation or compensation which has the nature as a substitute for achievement that was not implemented, (ii) fulfillment of the achievement plus compensation as a complement, and (iii) discontinuation of the agency agreement with the principal either accompanied by compensation or not.

The Unlawful Act

Mary Charman in her book Contract Law Fourth Edition stated that "Although an injured party may not be able to obtain a satisfactory remedy in contract law, it should always be remembered that a remedy may exist in another area of law. This particularly arises with the close relationship of the law of contract with the law of tort. " (Charman, 2013). In connection with the opinion of Mary Charman, it provided an argument when the injured party did not get satisfactory compensation in the contract law, but it must be remembered that there was the possibility of regulation regarding compensation in another area of law including the law regarding unlawful act or tort.

Liability regulation for unlawful act was contained in the provision of article 1365 BW which stated "" every act that violates the law, which brings harm to someone else, obliges the person who because of his mistake to issue the harm, compensates for the harm. " from the provision of this article it could be seen that the party injured due to an unlawful act could request compensation to the actor or the person who committed it. In other words, the actor was liable for violating the law which he has done in the form of compensation payment.

The Exception against the Violation of Agreement

From the two previous sub-chapters relating to the defaults and unlawful act, there were several exceptions which could be used by one party as an excuse for them not to perform the obligation or achievement as regulated in the agreement made. Exception against the violation of agreement that was classified as the default could submit an objection in several ways namely (Hernoko, 2013):

a. Based on the doctrine of "liberation of rights" (rechtsverwerking), the liberation of the rights was based on the attitude of the creditor that seemed to accept the achievement of the debtor, even though the achievement was not in accordance with what was promised. This attitude could be shown explicitly or implicitly.

b. Based on the doctrine of "exception non adimpleti contractus", this doctrine was due to the defense for the debtor against the argument of the creditor's lawsuit, in which the debtor's rebuttal stated that the creditor himself did not implement the achievement. "Exceptio non adimpleti contractus" only applied if it was not regulated in the law.

c. Submitted a rebuttal because of an overmacht (force majeure, forced power).

Relating to overmacht, book III BW regulated spread in several articles, which was part IV concerning Reimbursement of Cost, Loss, and Interest due to the non-fulfilled of an agreement (Articles 1244 - 1245 BW) and part VII concerning the Destruction of the ordered goods (Article 1444 - 1445) (Hernoko, 2013).

Based on the provision of these articles, it could be concluded that overmacht was an unexpected event that occurred outside the debtor's mistake after the closure of the contract which prevented the debtor from fulfilling his achievement. The events that were categorized as overmacht brought legal consequences, as follows (Hernoko, 2013):

a. The creditors could not demand the fulfillment of achievement.
b. The debtor could no longer be declared negligent.
c. The debtor was not required to pay compensation.
d. The risk did not switch to the debtor.

In connection with the electronic ticket agency agreement, one of the parties, both the principal and the agent, if it is harmed due to an unlawful act, the injured party may request compensation for the harm arising from the unlawful act. The form of liability of each party, both the agent and principal, was to pay compensation for the harm arising from the unlawful act which has been carried out. The payment of compensation was not based on contractual relationships among the parties, but rather came from the Law and Regulation. The compensation provided could be in the form of an amount of money or the return to the original condition before the unlawful act was carried out. The example of cases relating to unlawful acts in the implementation of electronic

ticket agency agreement was when agents falsified the data in booking tickets through the website or in canceling printed tickets. Falsification of data could be said as an unlawful act because it fulfilled all the elements of the unlawful act. Based on this and Article 1365 BW the form of liability from an agent due to have been committed an unlawful act was to pay compensation to the principal for the harm arising from falsification of data which was committed. Compensation could be in the form of money or return to the original condition. The compensation demand for unlawful act could be carried out in an electronic ticket agency agreement both by the principal and the agent. However, the liability in the electronic ticket agency agreement was less effective to use because in the electronic ticket agency agreement, a contractual relationship has been formed between the agent and the principal. Meanwhile, the unlawful act was a form of norm violation that occurred outside or not derived from the agreement.

CONCLUSION

Based on the explanation above, the characteristic of electronic ticket agency has the similarity with the authorization as regulated in Burgerlijk Wetboek, but it has fundamental differences related to the way of giving through online or offline, both formed the written agreement. However, an online purchase involved the username and password to the agent. The legal consequences occurred if the agency agreement harmed one of the parties, there was the liability for the party that harmed another party in the agreement. But, the liability of the electronic ticket agency was less effective. The ineffectiveness gave rise to the contractual relationship between the agent and the principal.

Ethical clearance

This research does not involve any participants, rather it is descriptive study. This research was carried out in accordance with the research principles. This study implemented the basic principle ethics of respect, beneficence, nonmaleficence, and justice.

ACKNOWLEDGEMENT

This study was self-funding by authors and gave critical comments when the study was conducted. All authors have agreed on the final form of the article manuscript.

REFERENCES

Agustina, R. (2008) ‘Kontrak Elektronik (E-Contract) Dalam Sistem Hukum Indonesia’, *Gloria Juris*, 8(1).

Charman, M. (2013) *Contract law*. Willan.

Hajar (2013) ‘TANGGUNG GUGAT PRINSIPAL DALAM PERJANJIAN KEAGENAN LPG’, *Yuridika*. Fakultas Hukum Universitas Airlangga, (Vol 28, No 3 (2013): Volume 28 No 3 September-Desember 2013). Available at: http://e-journal.unair.ac.id/index.php/YDK/article/view/352.

Hernoko, A. Y. (2013) ‘Azas Proporsionalitas Dalam kontrak Bisnis (Upaya

mewujudkan Hubungan Bisnis dalam Perspektif Kontrak yang berkeadilan)'. Laksbang Grafika.

Isnaeni, M. and Shomad, A. (2013) *Perkembangan hukum perdata di Indonesia*. Laksbang Grafika.

Lana, L. (2006) 'Keagenan Di Indonesia Analisis Yuridis dan Praktis', *Jurnal Hukum Bisnis*, Volume 25(Agustus).

lio, J. and Okada, T. (2020) 'An Experimental Trial of a Novel Ticketing System Using Biometrics'. Faculty of Global Informatics, Chuo University, 1-18 Ichigaya Tamachi, Shinjuku-Ku, Tokyo, 162-8478, Japan, pp. 499–507. Available at: https://www.scopus.com/inward/record.uri?eid=2-s2.0-85067667809&doi=10.1007%2F978-3-030-20454-9_50&partnerID=40&md5=210df35564c2b7bb3d0e31d13eacea9a.

Manwaring, K. (2011) 'Enforceability of clickwrap and browsewrap terms in Australia: Lessons from the U.S. and the U.K.', *Studies in Ethics, Law, and Technology*. University of New South Wales, Australia. Available at: https://www.scopus.com/inward/record.uri?eid=2-s2.0-79951522910&doi=10.2202%2F1941-6008.1102&partnerID=40&md5=03bd4b5eea5064a749b210841363b02f.

Marzuki, P. M. (2008) 'Pengantar Ilmu Hukum Edisi Revisi', *Kencana Prenada Media Group, Jakarta*.

Muljadi, K. and Widjaja, G. (2003) *Perikatan yang lahir dari Perjanjian*. Divisi Buku Perguruan Tinggi, RajaGrafindo Persada.

Pribadi, D. (2010) 'SH, MH perlindungan hukum bagi agen penjualan tiket apabila terjadi pembatalan', *Jurnal Hukum*, 18(18), pp. 29–31.

Salim Hs, S. H. (2019) *Perkembangan Hukum Kontrak Innominaat di Indonesia*. Sinar Grafika.

Samadani, A. (2013) 'Dasar-Dasar Hukum Bisnis', *Bandung, Mitra Wacana Media*.

Wiratraman, H. P. (2019) 'The challenges of teaching comparative law and socio-legal studies at Indonesia's law schools', *Asian Journal of Comparative Law*. Universitas Airlangga, Indonesia, pp. S229–S244. Available at: https://www.scopus.com/inward/record.uri?eid=2-s2.0-85072586347&doi=10.1017%2FASJCL.2019.15&partnerID=40&md5=33b9ae93db5e5b0ef0ad302d35c8f21f.