
Legal Protection for Gojek Drivers Against Fictitious Orders with Cash On Delivery Payment

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ABSTRACT

Transportation and humans are two things that cannot be separated. Currently, people often use transportation services with an online system in the form of applications on smartphones, especially Gojek. One of the Gojek services is the existence of food delivery services or Gofood, this service makes it very easy for consumers who cannot buy food directly. However, when doing their job it is not uncommon for the driver to experience losses, especially during cash on delivery transactions. This is due to fictitious orders by irresponsible consumers which can cause losses to drivers. Based on this background, this paper raises the following problem formulations a) How is legal protection for gojek drivers against fictitious orders with cash on delivery payments? b) How is the form of corporate liability of PT Gojek Indonesia for gojek drivers against fictitious orders with cash on delivery payments? The type of research used is normative juridical research, namely research that examines statutory provisions. Legal research uses various approaches with the aim of obtaining information from various aspects of the problem under study. The results of this study are that the legal protection of gojek partners for GoFood fictitious orders made by consumers is still not optimal. However, referring to article 1267 KUHPer gojek partners get legal protection when consumers make fictitious order actions, on the other hand these consumers have violated article 5 point (b) of Law Number 8 Year 1999 concerning Consumer Protection. PT Gojek Indonesia provides compensation in the form of a full refund in accordance with the loss of fictitious orders experienced by gojek drivers as a form of PT Gojek Indonesia's responsibility with its partners. The compensation process can be claimed by the customer to the Gojek Indonesia company with the loss claim procedure as determined by PT Gojek Indonesia. Submission of compensation claims can be submitted to the Branch Office of the gojek driver's operational area.

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I. INTRODUCTION

Due to their social nature, humans have complex psychological and physiological needs. These requirements cannot be met by one sector alone. To meet these needs, people need access to several modes of transportation that are used to move people or goods from one location to another. Transportation and people are two things that cannot be separated. As time goes by, transportation is also growing. With transportation, the

time needed to get to the destination is shorter. The benefit of increasing mobility in transportation for the public interest is to reduce negative impacts on economic, social and environmental aspects.¹

Currently, people often use transportation services, especially land transportation in their daily activities. One type of land transportation that is often used is motorcycle taxis, in modern times the use of this transportation has used an online system in the form of applications on smartphones. In the General Dictionary of Indonesian Language, J.S. Badudu and Sutan Mohammad Zain provide an understanding of ojek, ojek is a motorcycle made into a public vehicle to deliver to its destination.²

One example of a company engaged in online transportation services is PT Gojek Indonesia or more commonly known as Gojek. PT Gojek Indonesia was born in Jakarta which was founded on October 13, 2010 by Nadiem Makarim, Kevin Aluwi, and Michaelangelo Moran, whose idea of establishment arose from the personal experience of one of the founders, namely Nadiem Makarim who used motorcycle taxi transportation almost every day to get through traffic jams. As a person who often uses motorcycle taxi transportation, Nadiem sees that most of the time ojek drivers spend just waiting for passengers. In fact, according to him, ojek drivers will get a decent income if many passengers order orders. From his experience, Nadiem Makarim saw this opportunity to create a service that can connect passengers with ojek drivers.³

The presence of Gojek as a means of technology-based online transportation services is very helpful in facilitating the community in carrying out their daily activities, especially the various e-commerce-based services offered by Gojek are felt to meet the needs of the community for various services, which makes the community helpful and very efficient. Ecommerce is a dynamic whole arrangement of technology, applications and processes of a business as a connector between companies, consumers and communities through electronic transactions and trade in goods, services and information carried out electronically.⁴

Online ojek is gaining popularity due to the advantages of this mode of transportation. These advantages include convenience in terms of saving time and money as well as a wider service area and unique features such as green helmets and jackets with the company logo. In its business activities Gojek provides service products such as GoFood, GoRide, GoCar, GoSend, GoMart and several other products. Basically the existence of services in the GoJek application all facilitate messaging and delivery services for consumers or users of the Gojek application. With the existence of food delivery services or GoFood, it is very easy for consumers who cannot buy food directly for certain reasons to still be able to buy food using this service. However, when doing their job it is not uncommon for the driver to experience losses, especially during cash transactions or cash on delivery. This is due to fictitious orders caused by irresponsible consumers or even fake accounts using GoFood services in the Gojek application. Consumers will provide a fake destination address to the driver which of course this will cause losses to the driver because the payment system in the service is charged to the driver. The losses suffered by Gojek drivers can be in the form of material and non-material losses. Material losses felt such as not getting paid and not getting points from the application system due to booking cancellations. While the non-material losses felt are reducing the percentage of driver performance in the application and if you cancel orders too often, you will get sanctions in the form of breaking partners or being stopped as a driver.

Referring to Wong Agung Waliyullah's research with the title of legal protection against Gojek drivers for fictitious orders in the city of Yogyakarta which discusses how the form of fictitious order practices against Gojek drivers in the city of Yogyakarta and legal protection against Gojek drivers.⁵ In addition, referring to the research of Sinthiarahma Felyna Megawati with the title of legal protection for online motorcycle taxi drivers against unilateral cancellation by consumers who are not in good faith, here the research discusses the legal protection against unilateral cancellation by consumers who are not in good faith based on Law Number 8 of 1999 concerning consumer protection.⁶ Related to these two studies, the author has an idea to discuss the legal protection of Gojek drivers which is still not optimal, and discuss the liability of the company PT Gojek Indonesia against gojek drivers for the actions of consumers who make fictitious GoFood orders. The two studies did not discuss the liability of PT Gojek, while this study emphasizes more on the form of legal protection and liability for Gojek drivers when experiencing fictitious orders. Therefore, the author has an idea with the title of legal protection against fictitious orders with cash on delivery payment.

¹ Caroline Sutandi, "Pentingnya Transportasi Umum Untuk Kepentingan Publik", *Jurnal Administrasi Publik Administrasi Publik* 12, No. 1 (2015): 4

² J.S.Badudu dan Sutan Mohammad, 1994, *Kamus Umum Bahasa Indonesia*, Jakarta: PT. Integraphic, hal. 48.

³ Agung Supriyanto, Nadiem Makarim, Pendiri CEO Gojek Indonesia: membangkitkan Gairah Usaha Tukang Ojek, dikutip dari laman: <https://www.republika.co.id/berita/044e4715/nadiem-makarim-pendiri-dan-ceo-gojek-indonesia-membangkitkan-gairah-usaha-tukang-ojek>; diakses pada 16 Mei 2023

⁴ Imam Sjahputra, 2010, *Perlindungan Konsumen Dalam Transaksi Elektronik*, Bandung: Erlangga Pustaka, hal. 2.

⁵ Waliyullah, Wong Agung, "Perlindungan hukum terhadap pengemudi Go-Jek Atas pesanan fiktif di kota Yogyakarta", skripsi fakultas syaria'ah dan hukum, Universitas Islam Negeri Sunan Kalijaga Yogyakarta, (2020), 6

⁶ Sinthiarahma Felyna Megawati, "Perlindungan Hukum Bagi Driver Ojek Online Terhadap Pembatalan Sepihak Oleh Konsumen Yang Tidak Beritikad Baik", *Jurnal Hukum Adigama* 3, No. 2 (2020): 2

II. RESEARCH PROBLEMS

Based on the background that has been described, the problems to be discussed are: a) How is legal protection for gojek drivers against fictitious orders with cash on delivery payments? b) How is the form of corporate liability of PT Gojek Indonesia for gojek drivers against fictitious orders with cash on delivery payments?

III. RESEARCH METHODS

In this journal, the type of research used is normative juridical research. The normative juridical research method is research that examines statutory provisions. Legal research uses various approaches with the aim of obtaining information from various aspects of the problem under study. In this study, a statutory approach (statue approach) is used, namely the Consumer Protection Law relating to the subject matter and the case approach. the laws and regulations used as primary legal materials include: 1) Civil Code; 2) Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection; 3) Law of the Republic of Indonesia Number 11 of 2008 concerning Electronic Information and Transactions. While secondary legal materials, namely such as books, legal journals, and research results that have a relationship with research can also be used tertiary legal materials, namely legal materials that explain primary and secondary legal materials such as KBBI and legal dictionaries. This research uses a literature study data collection method, namely by conducting studies with various reading sources, therefore data processing in this study is carried out through a systematic method of written legal materials.

IV. RESULT AND DISCUSSION

1. Legal protection for gojek drivers against fictitious orders with cash on delivery payment

Legal protection is where a protection of Human Rights (HAM) when people who experience losses caused by others so that this protection can be provided by the legal apparatus to people who experience these losses with a sense of security from the threat of any party.⁷ Legal protection is one form of protection that has been recognized from human rights that are only owned by legal subjects as a collection of rules or rules based on the provisions of getting protection from something else. In addition, Gojek drivers are motorcycle taxi drivers who have a partnership relationship between motorcycle taxi drivers and the company PT Gojek Indonesia. Gojek is an online-based transportation service using an application that can be downloaded on a smartphone and is one of the works of the nation's children which was founded in 2010 in the city of Jakarta and in 2015 the company PT Gojek Indonesia developed rapidly by following technology, for the number of partners owned by the Gojek company currently reaches around 2.5 million Gojek partners.⁸

Legal protection of Gojek drivers at PT Gojek is actually still not optimal, in Law Number 13 Year 2003 concerning Manpower there are only laws governing the rights of employee workers at PT Gojek Indonesia, therefore Law Number 13 Year concerning Manpower cannot be used as a legal basis for Gojek drivers because Gojek drivers only have a partnership relationship between PT Gojek Indonesia and Gojek drivers where the partnership relationship refers to the principle of mutualism between the two parties which has a mutually beneficial nature.⁹ In addition, with regard to consumers that the law governing how the rights of consumers are contained in Law Number 8 Year 1999 concerning Consumer Protection, but currently there are many cases of consumers deliberately making fictitious orders that cause Gojek drivers to suffer material losses.

The fictitious order referred to in this problem is one of the acts of fraud committed by consumers against Gojek drivers in the form of GoFood, where in this study there is one problem, namely the Gojek driver gets a GoFood order and pays in advance the price of food to the destination restaurant to buy food according to the order as requested by the consumer and later replaced by the consumer with additional travel costs from the pickup point to the delivery location, but when the Gojek partner has arrived at the delivery location, the consumer is not at the location point and cannot be contacted.

In the partnership agreement between the company PT Gojek Indonesia and Gojek drivers has the principle of freedom of contract which can refer to Article 1338 of the KUHPer, namely in all agreements made in accordance with the agreement, the law applies to those who have made the agreement. So it can be said that when consumers make fictitious orders, Gojek drivers have no right to sue the company PT Gojek Indonesia because the clauses that have been made by PT Gojek Indonesia are considered to have agreed to the clauses in the partnership agreement. So that when consumers make fictitious orders, Gojek drivers can refer to the legal protection that can be used in Article 1267 of the KUHPer, where the injured party can choose to prosecute the cancellation of the agreement with compensation, as well as interest costs. Regarding consumers who harm

⁷ Ari, Muhammad As, "Perlindungan Hukum Terhadap Perjanjian Jasa Transportasi Online", *Islamic business law review* 1, No. 1 (2019): 5

⁸ Ari, Muhammad As, "Perlindungan Hukum Terhadap Perjanjian Jasa Transportasi Online", *Jurnal Hukum* 5, No. 1 (2017): 8

⁹ Agus Pribadiono, "Transportasi online vs Transportasi Tradisional non-online persaingan tidak sehat aspek pemanfaatan aplikasi oleh penyelenggara online", *Lex Jurmalica* 13, No. 2 (2016): 13

Gojek partners for actions in fictitious orders, they have violated Article 5 point (b) of Law Number 8 Year 1999 concerning Consumer Protection which states that good faith in conducting transaction activities in purchasing goods and / or services.

2. Form of corporate responsibility of PT Gojek Indonesia for Gojek drivers against fictitious orders with cash on delivery payment

The form of cooperation between with gojek drivers is a partnership agreement relationship, the partnership agreement between PT Gojek Indonesia and gojek drivers is made and approved electronically. Electronic partnership agreements have been regulated in Law Number 11 of 2008 concerning Electronic Information and Transactions, besides that it is also regulated in Government Regulation No. 82 of 2012 concerning System Operators and Electronic Transactions. In the agreement between PT Gojek Indonesia and gojek drivers as partners, it is stated that partners must agree that PT Gojek Indonesia or any of its affiliates are not responsible for any losses experienced by its partners either directly or indirectly, losses due to data loss, personal injury, property damage, data loss or losses caused by application users or the provision of services by gojek drivers to customers. And partners also agree that PT Gojek Indonesia is not responsible for all losses incurred due to the inability of partners to use and access the application. But in reality PT Gojek Indonesia is responsible for partners who experience fictitious orders, namely in the form of compensation in the form of money in accordance with the amount of orders from consumers by reporting the incident of fictitious orders experienced then customer service from the gojek company will trace whether there has been a fictitious order on the driver then if there has been a fictitious order then the gojek driver can apply for compensation to the gojek office by visiting the gojek office and submitting proof of payment for the food from the fictitious order and the gojek driver can wait for the gojek office to process a refund for the losses he experienced within a period of 1 to 7 days. In this case gojek drivers have the right to claim or not claim losses to the gojek office according to the individual wishes of each driver, if the driver claims to the company then the food from the fictitious order will be given to the orphanage but if they do not claim to the gojek office then the food is usually eaten alone or shared losses with fellow gojek communities. Based on the description above, the researcher believes that PT Gojek Indonesia is responsible for providing compensation to gojek drivers who have suffered losses due to fictitious orders, the compensation action from the Gojek Company is a form of responsibility from the Company to protect its partners from losses caused by fictitious orders made by customers.

V. CONCLUSION

Legal protection of gojek drivers for GoFood fictitious orders made by consumers is still not optimal. However, referring to article 1267 of the KUHP, gojek partners get legal protection when consumers make fictitious order actions, on the other hand these consumers have violated article 5 point (b) of Law Number 8 Year 1999 concerning Consumer Protection, namely good faith in the transaction activities of purchasing goods and / or services. In an effort to protect its partners who get fictitious GoFood orders with COD (cash on delivery) payments made by customers, PT Gojek Indonesia provides compensation in the form of a full refund in accordance with the loss of fictitious orders experienced by gojek drivers as a form of PT Gojek Indonesia's responsibility with its partners. The compensation process can be claimed by the customer to the Gojek Indonesia AKAB company with the loss claim procedure as determined by PT Gojek Indonesia. Submission of compensation claims can be submitted to the Branch Office of the gojek driver's operational area.

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