

Legal Protection For Online Transportation Drivers In The Case Of Fictional Order In Indonesia

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ABSTRACT

The development of technology and information has penetrated all aspects of life, one of which is the problem of transportation. Transportation is an important aspect for humans in their activities. Changes in the mass transportation system infiltrated by technological sophistication make conventional methods gradually abandoned. There are several companies that provide online transportation services due to the changing times that humans use for time efficiency and effectiveness. Among them are Gojek, Grab, and Maxim who have contributed greatly to helping the community's economy by creating millions of jobs. The benefits that the company presents to partners and consumers, there is a serious problem that occurs due to fictitious orders from some unscrupulous consumers that harm drivers. This study aims to unravel the problem of fictitious orders that occur and how the legal protection for the driver is related to the case that happened to him. In conclusion, the company's efforts to protect new drivers are limited to solving problems internally. No decisive action has been taken to eradicate rogue consumers if this continues, it will interfere with the performance of the driver itself. Online transportation service companies must immediately evaluate services and make SOPs that are not only preventive in nature but also repressive in resolving cases firmly and thoroughly as regulated in the Civil Code and the Consumer Protection Law.

ABSTRAK

Perkembangan teknologi dan informasi telah merambah ke segala aspek kehidupan, salah satunya adalah masalah transportasi. Transportasi merupakan aspek penting bagi manusia dalam melakukan aktivitasnya. Perubahan sistem transportasi massal yang disusupi kecanggihan teknologi membuat metode konvensional lambat laun ditinggalkan. Ada beberapa perusahaan yang menyediakan jasa transportasi online karena perubahan zaman yang digunakan manusia untuk efisiensi dan efektifitas waktu. Diantaranya adalah Gojek, Grab, dan Maxim yang telah berkontribusi besar membantu perekonomian masyarakat dengan menciptakan jutaan lapangan pekerjaan. Manfaat yang dihadirkan perusahaan kepada mitra dan konsumen, ada masalah serius yang terjadi akibat pesanan fiktif dari beberapa oknum konsumen yang merugikan pengemudi. Penelitian ini bertujuan untuk mengungkap permasalahan perintah fiktif yang terjadi dan bagaimana perlindungan hukum bagi pengemudi terkait dengan kasus yang menimpanya. Kesimpulannya, upaya perusahaan untuk melindungi pengemudi baru terbatas pada penyelesaian masalah secara internal. Belum ada tindakan tegas untuk memberantas konsumen nakal jika hal ini terus berlanjut akan mengganggu kinerja pengemudi itu sendiri. Perusahaan jasa transportasi online harus segera mengevaluasi pelayanan dan membuat SOP yang tidak hanya bersifat preventif tetapi juga represif dalam menyelesaikan kasus secara tegas dan tuntas sebagaimana diatur dalam KUHPerdara dan UU Perlindungan Konsumen

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I. INTRODUCTION

Indonesia is a sovereign and dignified country, where the Indonesian nation has determined the direction of national development as one of the efforts to implement the ideals of the nation's founders. The Indonesian people have also committed to making Indonesia a state of law as clearly written in the Constitution of the Republic of Indonesia (UUD 1945) Article 1 paragraph (3) which states that Indonesia is a state of law. Therefore, every problem faced by the Indonesian nation must refer to the applicable positive law. Because basically the purpose of law is to protect the rights and obligations of every citizen, because the rights of each individual are limited by the rights of other individuals.(Judge, 2011). The law regulates relations between humans, in addition to creating order and comfort in the community, it is also expected to be able to overcome potential conflicts that may occur in the midst of people's social life. The law also enhances and develops the relationships that are already established among the people(Mertokusumo, 2019).

In the 4.0 era, digital literacy is a must for every individual. Digitalization has not only penetrated the millennial generation and the centennial generation, but also the colonial generation. So like it or not, like it or not, and ready or not, all generations must be able to adapt to technological advances. One of the technological advances that have entered Indonesia is the transportation sector. Transportation is actually an instrument used by humans for activities for efficiency and time effectiveness. Transportation can take everyone from one place to another in a short time(Miro, 2005). Going forward, transportation modes have made significant progress, starting from land transportation in the form of two, three, and four-wheeled vehicles, sea transportation, to air transportation.

Land transportation mode is one of the *prima donnas* for people whose intensity of use is quite large, especially transportation within the city. Even in the era of technological advances, there has been a change in the method of utilizing land transportation from the conventional way, namely ordering manually to ordering online. It can be said that today's transportation is based online, starting from online motorcycle taxis, online taxis, even ordering food and various needs online.(Amina, 2016). Online-based transportation was created to make it easier for someone who wants to travel using mass transportation but can be a private transportation by ordering using an application that is on a communication tool that is also based on technological sophistication or termed a smartphone.(Willy Tanjaya, 2019).

In Indonesia, several types of online-based transportation companies have been known, which have contributed greatly to the benefit of the people, namely Gojek, Grab, and Maxim. It is said to have contributed greatly to the welfare of the people, and even helped the community's economy because these companies have created millions of jobs for the community who want to partner with companies as drivers, and have even helped the development of millions of MSMEs as other partners. And until now, the phenomenon of online motorcycle taxis has become a *prima donna* in all circles because of time efficiency, ordering methods, flexible services, and quite high roaming power.(Waruwu, 2019).

Over time, the existence of online transportation service companies are competing to offer the best service. Each company issues product features that can pamper loyal customers. Starting from only picking up customers and goods, until now you can order any food and drinks that partner with the company for up to 24 hours non-stop.(Suliantoro, 2020).

In previous studies, several researchers focused on unraveling the problem of fictitious orders carried out by the drivers themselves. Although it does not harm consumers, in this case it is detrimental to the company from a financial perspective because it has to issue incentives that should not be

issued (Rokhim, 2021; Setiawan, 2021). In other words, the driver has committed fraud. Therefore, this study will unravel the opposite problem, namely about fictitious orders carried out by consumers in various positive legal perspectives, both in terms of the types of crimes committed by fictitious consumers, the legal position of online transportation drivers, to what kind of legal protection is required. will be obtained by the driver related to the case that happened to him.

II. RESEARCH METHODS

This research uses normative legal research, which is a process to find the rule of law, legal principles, and legal doctrines in order to answer the legal issues faced. (Marzuki, 2010). The approach used is a sociological juridical approach, namely an approach that is guided by legislation, legal literature, and reference books related to the actual problems that will be discussed in this study. (Suliantoro, 2020), in this case related to legal protection for online transportation drivers in cases of fictitious orders in Indonesia.

III. RESULTS AND DISCUSSION

1. Online Transportation Fictitious Order Fraud Overview

Fictitious orders are defined as online transportation fraud crimes, namely fake orders made by consumers using online transportation service applications through the food order feature to be misused so that it can harm the driver as an online transportation company partner. The act of a fictitious order can be categorized as a criminal act of fraud (Chudri, 2019).

In Article 378 of the Criminal Code (KUHP) it is stated that "anyone with the intention of benefiting himself or another person by going against his rights, either by using a false name or false circumstances, either by reason or deceit, or by making up words telling lies, persuading people to give something, making debts or writing off debts, is punished for fraud with a maximum prison sentence of four years. So talking about a fictitious order, it can be classified as a criminal act of fraud as stated in the article.

The elements that must be met in Article 378 of the Criminal Code are objective elements and subjective elements. The objective elements contained in the case of a fictitious order by a customer include persuading other people with a propulsion device using a false name, false circumstances, a series of false words, and which of course causes the driver to be indebted to the company because he has to pay off the payment from the fictitious consumer. The subjective element is with the intention of violating the law carried out by fictitious consumers because they have harmed drivers. The act of fictitious consumers who falsify personal data so that it is difficult for the company to track it is a ruse and is considered an arbitrary act against drivers.

Article 378 of the Criminal Code can also be equated with Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions, it is stated in Article 28 paragraph (1) that "everyone intentionally and without rights spreads false news and misleading which results in consumer losses in electronic transactions". The ITE Law also regulates additional criminal acts as regulated in Article 36, namely "deliberately and without rights or against the law committing acts as referred to in Articles 27 to 34 that result in harm to others".

2. Legal Protection Overview

Legal protection is an activity to maintain, maintain, and protect human rights and obligations in order to achieve justice (Purwasih, 2010). Legal protection can also be said as an effort to protect the community from arbitrary actions by the authorities that are not in accordance with the rule of law, to create order and peace so that humans are expected to enjoy their dignity as human beings. (Setiono, 2004).

Legal protection can be passed in certain ways, namely: making regulations (by giving reputation) which aims to guarantee the rights of legal subjects, and enforcing regulations (by law enforcement). The legal protection is divided into two types, namely:

- 1) Preventive legal protection, aimed at preventing disputes from occurring;
- 2) Repressive legal protection aims to resolve disputes.(Purwasih, 2010)

Legal protection is an essential element and consequence of Indonesia as a legal state that is obliged to guarantee the legal rights of its citizens. It can be understood that legal protection is to provide justice, order, certainty, benefit, and peace. For this reason, all parties involved in online transportation service transactions are entitled to legal protection in accordance with applicable laws and regulations which if not fulfilled will be subject to legal sanctions.(Muhammad, 2000).

3. The Legal Position of Online Transportation Drivers in the Perspective of Employment Law in Indonesia

Employment law is a general provision that regulates employment relations carried out by certain parties, namely workers, laborers, employees, civil and private employees, to superiors in exchange for wages. The substance of the labor law emphasizes the relationship between workers and entrepreneurs as regulated in Law Number 13 of the Year of Manpower. There are two kinds of working relationships, namely based on a Specific Time Work Agreement (PKWT) and an employment relationship based on an Indefinite Time Work Agreement (PKWTT).(Sari, 2020).

The work agreement made by the driver and the online transportation company has also fulfilled the legal requirements of the agreement as regulated in Article 1320 of the Criminal Code, namely the agreement of both parties, legal competence for the driver, the existence of an object in the form of the agreed work, and the work is lawful and does not conflict with positive law. Based on this, the position of the driver is as a worker in an online transportation company, so that the rights and obligations between the two parties apply as stipulated in Law No. 13 of 2003 concerning Manpower.

So it is fitting for online transportation drivers to get legal protection on the basis of the above juridical analysis as also explained in the 1945 Constitution Article 27 paragraph (2) that "every citizen has the right to work and a decent living for humanity". The protection provided to workers is divided into 3 types:

- 1) Economic Protection, namely protection related to efforts to provide workers with an income sufficient for their daily needs;
- 2) Social Protection, namely protection related to community business;
- 3) Technical Protection, namely protection related to efforts to protect workers from the dangers of accidents that can be caused, both internally and externally(Khakim, 2003).

4. Legal Protection for Online Transportation Drivers In Case of Fictitious Order Fraud

In Article 1365 of the Civil Code (KUHPer) it is explained that "every act that violates the law, which brings harm to another person, obliges the person who, because of his fault, published the loss, compensates for the loss". The loss in question is in the form of reimbursement of fictitious orders made by fictitious consumers. Drivers must close transactions that have been made by consumers in the online transportation service application. However, the problem is that consumers who place fictitious orders are difficult to find because they have removed traces of orders and personal data on the application.

Of the three major online transportation service midwife companies in Indonesia, namely Gojek, Grab, and Maxim, there are several differences in the protection obtained by drivers if they experience cases of fictitious orders, namely:

1. At the Gojek Company, drivers who experience losses due to fictitious orders by rogue consumers will receive compensation from the company with several conditions, namely compensation is only given to fictitious orders in the go-food feature and compensation is not more than

- Rp.450,000. However, the problem is that the compensation process provided by the company takes a long time so most drivers prefer not to report the case and take their food home.(Suliantoro, 2020).
2. At the Grab Company, in terms of legal protection, preventive measures are taken by making the option of making cashless system payments through OVO and providing the option to call and send messages when ordering services. Meanwhile, if a driver experiences a case of a fictitious order, the company tries to provide money for the driver by attaching proof of a fictitious order. However, the company has not taken repressive measures in an effort to eradicate naughty consumers(Marpaung, 2021).
 3. At Maxim Company, even though drivers have received legal protection, they have not been able to fully protect drivers. There are 3 (three) points that must be underlined regarding driver protection, namely:
 - a) In terms of Economic Protection, drivers do not yet have an economic guarantee in the form of compensation by the company if they receive a fictitious order. In addition, the company should provide protection in the form of prevention and repression related to these problems;
 - b) In terms of Social Protection, drivers do not have health insurance provided by the company;
 - c) In terms of technical protection, drivers have received work safety facilities in carrying out their duties, namely masks, helmets, and raincoats.(Diab, 2021)

IV. CONCLUSION

From the discussion that has been described, several conclusions can be drawn regarding cases of fictitious orders experienced by online transportation drivers and their protection measures, namely:

Fictitious orders are defined as online transportation fraud crimes, namely fake orders made by consumers using online transportation service applications through the food order feature to be misused so that it can harm the driver as an online transportation company partner. The act of a fictitious order can be categorized as a criminal act of fraud because it has fulfilled the criminal elements in Article 378 of the Criminal Code and Article 28 of the ITE Law.

Legal protection is divided into two types, namely preventive to prevent disputes and repressive nature which aims to resolve disputes. Legal protection is an essential element as well as a consequence of Indonesia as a legal country that is obliged to guarantee the legal rights of its citizens, in this case including online transportation drivers who are victims of fictitious orders by delinquent consumers.

Driver Online transportation must get legal protection on the basis of the above juridical analysis as also explained in the 1945 Constitution Article 27 paragraph (2) that "every citizen has the right to work and a decent living for the people." The protection provided to workers is divided into 3 These are economic protection, social protection and technical protection.

The legal protection that has been obtained by partner drivers has been provided by online transportation companies, but it is only limited to solving problems internally. There has been no firm action in eradicating rogue consumers because if this continues, it will disrupt the performance of drivers itself. It is necessary to evaluate services and make standard rules that are not only preventive but also repressive based on the provisions of the Civil Code and the Consumer Protection Law.

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