



ISSN 2809-672X (Online)

YURIS (Journal of Court and Justice)

Vol 1 Issue 3, 2022

<https://journal.ifpublisher.com/index.php/jci>

Legal Protection for Grabfood Drivers Against Fictitious Orders as Default Actions: A Civil Law Perspective

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ABSTRACT

The business world in Indonesia is growing rapidly along with the technology development, especially for the business that uses technology as a medium. One example is Grab application which provides GrabFood feature where all activities are conducted online including the payment method. However, with the financing through cash, there is one consequence of GrabFood transaction resulting in fictitious order which can be described as an act of default. In this research, the authors discuss the legality of GrabFood online transactions in terms of positive law in Indonesia and the regulation of legal protection for Grabfood drivers against fictitious orders in civil law as a harmed party due to default. In this research, the authors use Juridical-Normative Research method that the legal materials obtained are sourced from secondary legal materials, statutory approach and case approach. This research is using a descriptive analytical specification in answering the research problem. Based on the research result, PT. Grab Indonesia does not have repressive legal protection against the occurrence of fictitious orders which can be used as an action to provide legal protection to drivers who receive fictitious orders, and provide full compensation to Grab drivers who receive fictitious orders.

Keywords: *Legal Protection, Fictitious Order, Default*

INTRODUCTION

In today's modern era, the technology is starting to take over human life that caused them to communicate through social media.¹ and encouraged the emergence of new crimes that occur in cyberspace. The technological developments also have an adverse effect, called easier access to find and disseminate other people's data. However, the technology is also considered to have a beneficial impact for some parties.² since all human activities are mostly conducted on internet platform, especially in current pandemic era which limits the offline activities. The information technology is facilitating everyone to access another individual's information anywhere and everywhere. Unfortunately, this easy access is used with other parties with bad intentions that caused the emergence of new crimes committed on cyber platforms.

One of the features that Grab has is GrabFood that one services in Grab application to order and deliver food. The way to order food in Grabfood is by selecting the shop, cafe or restaurant that you want to order, choosing the menu listed on the application and it will appear the total price of all chosen food. From the order, it will be sent to Grab server and Grab information system which then forwarding it to closest Grab driver around. The drivers receive the orders from customers' application and order it to restaurant. There are two payment method for GrabFood, called online financing using OVO where buyers top up their OVO balances via ATMs or through Grab drivers, and cash payment that will have consequence of GrabFood transaction with fictitious order. There are the elements of fictitious order that there are parties who do not conduct this agreement in ordering via GrabFood, but they are not responsible for what they ordered, such as:

1. Not accepting the orders
2. Not paying for the order
3. Cannot be contacted after confirmed order
4. Using other people's addresses and profiles to orders.

In this research, the researchers discuss the legality of GrabFood online transactions in terms of positive law in Indonesia and the regulation of legal protection for Grabfood drivers against fictitious orders in civil law as a harmed party due to default.

¹ Putu Dina Marta Ratna Sari and I Made Dedy Priyanto, "PERLINDUNGAN HUKUM KEPADA KONSUMEN TERHADAP PENGGUNAAN KLAUSULA BAKU YANG TERCATUM PADA TOKO ONLINE," *Kertha Semaya: Journal Ilmu Hukum* 7, no. 1 (January 17, 2019): 1, <https://ojs.unud.ac.id/index.php/kerthasemaya/article/view/45887>.

² Suhariyanto, *Tindak Pidana Teknologi Informasi* (Depok: Rajawali Press, 2012).

RESEARCH METHODOLOGY

The researchers used a type of juridical-normative research method, which means that the author will take a statutory approach and a case approach through library materials or secondary legal materials, including primary legal materials, secondary law and tertiary law materials. Normative Juridical Research is a legal research method that conducted by examining library materials or secondary materials.³ The analysis of legal materials is conducted qualitatively that the discussion and research results are described in words based on legal materials obtained. The collected legal materials will be analyzed by finding and determining the relationship between the legal materials obtained from the research and the problems raised in this study.

RESULTS AND DISCUSSION

The Legality of Grabfood's Online Transactions

An agreement is a promise in which two or more parties bind themselves to conduct something which called an achievement. The agreement then forms a legal relationship, which there is a pledge of promise or ability both in writing and orally.⁴ For this matter, the agreement can also be considered as the deal of the parties to do something or an achievement. The agreement is considered to have the same meaning simultaneously. In contract law, the adopted system is an open agreement system which has very broad freedom to the parties concerned, including its content and regulations, as long as it does not violate the values of decency and the values of public order.

The Articles in contract agreement has a function as law that legally binding on the parties concerned, it may be deleted or changed when an agreement has been approved. The legal freedom of this agreement allows everyone to make their own rules or provisions and returns, as long as it does not violate the decency and public order. However, when the parties do not regulate the contents and rules of the agreement, it considered as quietly subject to positive laws regarding the applicable agreement. The Civil Code clearly states about the agreement, one of which is in Article 1338 paragraph (1) that explains that a valid agreement will apply as a binding law for the parties concerned.

In general, electronic contracts have complied the requirements for contracts making contained in Article 1320 of Criminal Code. The form of an electronic

³ Henni Muchtar, "ANALISIS YURIDIS NORMATIF SINKRONISASI PERATURAN DAERAH DENGAN HAK ASASI MANUSIA," *neliti* 14, no. 1 (2015).

⁴ Radhy Alfian Santara, "PERLINDUNGAN HUKUM ASURANSI BAGI PENUMPANG BUS ANTAR KOTA DALAM PROVINSI (AKDP) YANG TIDAK LAIK JALAN BERDASARKAN HUKUM POSITIF DI INDONESIA (STUDI PADA BUS AKDP TRAYEK BANDUNG-BOGOR)" (Universitas Pasundan, 2017).

contract is same as a conventional contract, the difference between it only that electronic contracts are made through internet media and the parties concerned do not meet or face during the contract making until contract signing. Based on this phenomenon, there several legal issues regarding the validity of electronic contracts, called the determination of competence between parties.

Based on the principle of contract freedom, the existence of electronic contract is a manifestation from the parties' initiative to make an engagement, and this contract is highly protected by Article 1338 of Civil Code that states; "All agreements that legally made are apply as law to those who make them. All agreements cannot be withdrawn without an agreement of both parties concerned, or for reasons which are sufficient by law. An agreement must be executed in good purpose."

An electronic contract is an agreement that is agreed upon by the parties concerned that uses an electronic system as a medium to make a deal. This system is what distinguish the electronic contract from a conventional contract, because the parties do not face each other in their contract making.

Article 1 number 17 of ITE Law is used in giving full acknowledgment of this agreement, that all forms of agreement between the parties are made online or electronically. The electronics system here are described as electronic circuits in storing and processing the information in electronic form. In general, the electronic contract itself is same as other contract agreements, that agreed by the parties concerned, the difference is the media used to make the agreement. E-contract arrangements have been described in Article 5 paragraph 3 of ITE Law, that electronic documents are considered valid as other agreement documents when they are conducted on a certified electronic system.

These mandatory requirements are a precautionary measure for rogue elements who have reasoned with illegal electronic contracts and are not legally binding. This is actualized for the E-contract agreement implementation are remains with the law ideals, does not violate the applicable rules and stays under government monitoring. The ITE Law also adheres to a source called Uncitral Model Law.

In this model, the legal requirements are clearly regulated in chapter II articles 5 to 8 that the evidence is recognized as valid if:

1. The data can be guaranteed its correctness and can be accessed any time without limitation.
2. A recognizable signature of ownership. Electronic signatures are conducted in safe and correct method.
3. Data must be guaranteed authentic and can be shown

Law no. 11 of 2008 is not the only guideline for electronic transactions, there is PP. 71 of 2019 concerning the implementation of electronic systems and transactions. There are also many laws that fully discuss about online-based transactions such as grabs.

Article 45 in ITE Law states that the parties are give each other legal consequences. Therefore, it is hoped that the parties will always be careful for not to violate each other's rights and not give bad consequences for other parties. In its process, the parties are expected to focus on the following actions and principles, such as:

1. Good intention
2. Based on precautionary principle
3. Clarity
4. Certainty, and
5. Fairness

The implementation of e-commerce is based on ITE Law and other electronic contracts as long as it is derived on a mutual agreement approved by the parties. An e-contract is considered valid if:

1. Mutual agreement
2. Legally competent parties
3. The object must be permissible in law
4. Atas tujuan tertentu
5. Has a specific purpose
6. Objects must not = contravene with applicable regulations and norms

Based on the description above, the grab agreement with driver-partner is confirmed to have complied with legal requirements and agreement elements based on various regulations, including Civil Code, UU ITE and PP No. 71 of 2019. In article 45 PP No. 71 of 2019 concerning the Implementation of Electronic Systems and Transactions, an agreement between the parties, called Grab and its driver partner, who previously agreed to bind himself to another party, with full awareness and without coercion or threats from any party concerned. The parties have been confirmed to be legally competent and have the documents required by grab. On this basis, a partnership emerged between Grab and driver partners was legal and did not conflict with the law.

For the validity of e-contract, it has also been described in accordance with article 47 which explained that electronic contract is made in the form of a standard clause contains the rights and obligations for the parties concerned, it is binding and has a function as a law for its parties. Then, the partnership agreement between PT. Grab Indonesia and its driver partners are declared as a legal relationship.

According to Article 1 of Law Number 20 of 2008 concerning Micro, Small, and Medium Enterprises, it is stated that partnership is cooperation in business linkages, either directly or indirectly based on the principle of mutual need, trust, strengthening, and benefit involving MSME actors with large businesses. Partnerships are built based on mutual need, benefit, and strengthening with

functions and responsibilities by the capabilities and proportions possessed by each party involved in the partnership.⁵

The written agreement regarding a partnership in practice regulates its business activities, the rights and obligations of the parties, how to develop and resolve when there is a dispute between the parties in the future. The partnership agreement must be reported to the party who has the authority to record according to law. The terms of partnership agreement are same as the agreement in general, that it is not allowed to prohibit the decency and independence of MSMEs. This agreement is also expected to reduce the dependence of MSMEs on large companies. In monitoring the partnership implementation process, the minister can form a coordinating agency for national and regional business partnerships.

A reciprocal agreement that occurs between the carrier and the passenger, which is then called transportation, occurs when there is an agreement between the carrier to bind himself to carry out the transportation activities for goods and people, from a certain point to a certain point as agreed with safe conditions, as well as the ability to fulfill other achievements in transportation costs.

Transportation with an online system is considered as a transportation innovation based on technology and times revolution that based on an online application, with all online-based processes. This has been regulated in Law No. 22/2009 which discusses traffic and road rules, and in Article 1 number 20 that clearly states the wheeled motorized vehicles which in its part are without a side carriage are referred as motorcycle. Online motorcycle is considered and included in the classification mentioned in Article 1 number 20, called motorized bicycles used for carrying or transporting people and objects to a certain drop off point.

The Regulation Regarding Fictitious Orders for Grabfood Drivers

As Philipus M.Hadjon argued that legal protection includes respect for dignity and the recognition of human rights that all human beings are equal based on the law and are prohibited from injuring their rights based on arbitrariness. A legal protection can be discussed with these elements, such as:

- a. Government guarantee
- b. Definite law
- c. The recognition citizens' rights
- d. Penalty

Therefore, legal protection must be implementes in every legal relationship that occurs, including in the case of fictitious orders that happens to grab drivers. PT. Grab Indonesia has a legal relationship with its partners/drivers called a partnership relationship, and it's not through elements of wages or orders, but from the equality. Then, the legal relationship between Grab drivers and Grab consumers

⁵ Rendi Febria Putra, Kismartini Kismartini, and Retno Sunu Astuti, "The Effectiveness of Minang Mart Partnership Pattern in Empowering Local Micro, Small, and Medium Enterprises in West Sumatra," *Jurnal Administrasi Publik : Public Administration Journal* 12, no. 1 (June 5, 2022): 66–78, <http://ojs.uma.ac.id/index.php/adminpublik/article/view/6269>.

is as a merchant or business actor and the party that implementing the service.⁶ Meanwhile, according to Hadjon's, there are two types of legal protection, including:

1. Preventif : The public can file a report for their dissatisfaction or complaint.
2. Represif : Intended to resolve the disputes.

In European countries, the concept of state law is known as *reechstaat*. While in other countries that adhere to Anglosaxon, it is known as the rule of law. Both of it has the difference in their focus. The concept of *rechstaat* based on continental law principle which tends to have an administrative character. While the concept of the rule of law has a foundation on the legal system with a judicial character.⁷ There are many cases of fictitious orders related to this problem, there are consumers who are not irresponsible in using Grab application. The Grab application users must conduct their rights and obligations for reach an agreement that the make transactions must based on good intentions as stated in article 1338 paragraph (3) of Civil Code.

In Wilandini's case, the person who has ordered a fictitious order for him violates the engagement that must be done with a good and valid reason according to law and does not violate the initial agreement, the party who making the fictitious order also violates Article 5 (b) of UUPK.

The clause stipulates that consumers are required to make transactions. payment. Based on what happened, the driver was experienced a loss because of a user who has bad intentions. As a result, Article 6 letter a of Consumer Protection Law concerning the driver's right to get a certain amount of payment is not fulfilled, since the perpetrator of a fictitious order cannot be contacted and the address is a fictitious address or the address of another person.

The acts against the law are stated as actions that are contrary to and not in line with the law. In his behavior or actions that are considered dangerous, the perpetrator or subject who commits an unlawful act must be responsible for what he causes to the victim. In its arrangement, it has been explained in Article 1365 of Civil Code that every person who commits an unlawful act must be responsible for the loss he causes to other people. This mandatory was explained in regulation includes:

1. Against the law

Acts that harm others for their mistakes and omissions are required to replace what they caused, or commonly called compensation.⁸

⁶ Vanda Widyawati Putri Augustti, "Tanggung Jawab PT Gojek Indonesia Terhadap Kerugian Yang Diderita Pengemudi Gojek Melalui Fitur Go-Food," *Jurnal Cakrawala Hukum* 9, no. 1 (2018).

⁷ Janpatar Simamora, "Tafsir Makna Negara Hukum Dalam Perspektif Undang-Undang Dasar Negara Republik Indonesia Tahun 1945," *Jurnal Dinamika Hukum* 14, no. 3 (2014).

⁸ Rocky Marbun, *Kamus Hukum Lengkap, Mencangkup Istilah Hukum Dan Perundang-Undangan Terbaru* (Jakarta: Visi Media, 2012).

2. Violate the law

Acts that result in the violation other legal subjects' rights, or behavior that deviates from appropriateness in society or in association with individuals, it also applies to wealth.

3. Individuals who intentionally, neglect their obligatory duties will be considered same as people who commit an act that violates the law.

In terminology, an act against the law is called *onrechmatigedaad*. This term is mentioned in Civil Code regarding contract agreement. Actually, the use of the words against and violates has become a pro and con for scholars. There are some scholars who use the sentence against and some vice versa. The comparison of several scholars' opinions, including Wirjono Prodjodikoro decided to use the term violates the law based on its original language, *onrechmatigedaad* that more referring to violate. He chooses to use a sentence for violates based on the mother tongue of the word itself, from Dutch language. The Civil Code stated that there are two perspective regarding the meaning of unlawful acts, they are:

a. Close perspective

An act against the law is considered to violate the rights of another legal subject, or is an act that considered to deviate from what is required by law to be implemented under the law. In this case, breaking the law is same as violating the law. The adherents of this perspective is Hoge Raad, which he claimed to adhere to before 1919, or before Arrest Hoge Raad.

b. Open perspective

The meaning of unlawful acts based on this perspective is an activity or action which violates the rights of other legal subjects or deviates from what he should be required to do with the subject or another subject's property, such as:

1. There must be an action

In determining whether an act is considered to violate the law or not, there must be an element of doing the act. It can mean doing what is prohibited by law. Any kind of action that is not in accordance with what has been regulated, and is not in accordance with the prevailing norms, Civil Code or Constitution, includes other laws and regulations in society is declared to be an act against the law.

2. There must be a mistake

One of the conditions that must exist is the presence of an error. A person can only be considered violates the law if there has been an element of error that he has committed. For example, in contract agreement he promised to pay IDR. 2.000.000, - but he only paid IDR. 1,990,000, - this is an element of error which violates the rules in the form of contract agreement.

3. Cause and effect

This condition must also exist in considering that the act against the law, an act must have an element or something that triggers it as well as its legal consequences, both for the party who violates or is violated. When an action does not have a causal element, it will be difficult to declared it as an act against the law because it will be difficult to prove it.

4. The loss

Loss is also a crucial element in determining the unlawful act. Therefore, an act can be considered as an unlawful act if there is a loss caused, such as the loss of other people rights, or there are other parties who are harmed in the form of material or immaterial.

In the case of Mr. Ramli, he experienced a fictitious order in ordering Solaria's food that amount to IDR. 172,500,00- . The grab driver named Ramli explained that the consumers were still active in replying his chat via the application, but when he wanted to deliver the food, the consumer could not be contacted until he arrived at the consumer's house. However, when the driver knocked on the door of consumer's house, the home owner admitted that he did not know the name used on the application, Jerry.

For this incident, the home owner paid IDR. 172,500,00 to Mr. Ramli. In the interview, the author asked several drivers about the impact of fictitious orders by irresponsible people. The writer arranges the data based on the interview on Saturday, September 25th, 2021 that listed below

Type of loss:

- 1) Driver wages that should be given by consumers are not implemented, causing losses to drivers or other third parties
- 2) Loss of time, energy and motor fuel in driver's effort to complete the order
- 3) The uncertain income and having big worries over other incoming orders
- 4) When fictitious orders are remains conducted, it will cause huge losses for drivers, it can even lead to the termination of partner relations
- 5) Stuck in order

Researcher also conducted interviews with 10 drivers about their complaints regarding their fear of fictitious orders. 10 out of 10 drivers said that they felt disadvantaged of fictitious orders, which have the same result as the interview with Mr. Ramli that resulting the time, energy, material losses and a decrease in driver performance due to obstructed order.

The losses experienced by drivers are caused by consumers' actions who have bad intentions. The action is in the form of consumers in ordering grab services that not the same as the point where the order should be delivered, and consumers have a mode for the drivers remains to run the bike trips and the consumers can steal the driver's OVO wallet.

There is more than one user who has bad intentions in doing a fictitious order, where the user cannot be contacted through the application or regular telephone.

However, the driver is still required to complete his duties and the loss is received by the driver. From the principle theory of consumer security and safety, the Law Number 8, 1999 concerning Consumer Protection mentions guaranteeing security to consumers in the entire process of utilizing the selected services. The merchants have the right to receive money as a payment in accordance with what was agreed along with the condition of the goods being traded and the right to receive protection against acts of bad faith.⁹

The driver does not get direct legal protection from admin grab Tulungagung, the admin only solves application problems and not refunds. The protection provided by grab for fictitious orders is by giving a compensation/money service, but this is considered complicated because the order must be given to the orphanage and ask for a photo as proof that a fictitious order has occurred. The drivers also feel embarrassed when the orders purchased are only 2 to 3 types with a nominal price of less than IDR. 50,000.00 while there are dozens of orphans. Then the drivers choose to take the risk of losses caused by consumers.

The repressive Legal Protection by PT. Grab Indonesia describes the forms of responsibility between the parties in partnership agreement and the contents of provisions for the Grab application users. PT. Grab Indonesia in terms of preventive legal protection makes other options for making cashless payments through OVO and provides the option to call and send messages in ordering grabs. There is no legal protection by PT. Grab Indonesia to avoid the occurrence of fictitious orders, but when the driver gets a fictitious order PT. Grab Indonesia has provided a service to replace the driver's money that has been used to pay for the fictitious orders.

The existence of legal protection can be an effective solution to handle the fictitious orders cases experienced by Grab drivers from irresponsible consumers. PT. Grab Indonesia should immediately formulated the legal protection regulations that protect and control as well as evaluate the services used by consumers as service providers and managers of Grab application. When viewed from the point of view of default, it is possible to claim the compensation only in the form of material that divided into:

1. General compensation

Applies to all cases against the law. It is regulated in Civil Code articles 1243 to 1252, which can be in the form of compensation costs along with interest for the loss.

2. Special compensation

Applies to certain cases such as employment contracts, or other contracts regulated in other special agreements.

⁹ Indonesia, *Undang-Undang Republik Indonesia Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen* (Jakarta, 2007).

CONCLUSION

The electronic contract has complied the requirements for making an agreement contained in Article 1320 of Criminal Code. The form of an electronic contract is same as a conventional contract. The electronic contracts have been mentioned in article 1 number 17 of the same law, which is an agreement on something promised made by the parties through electronic or online media. Therefore, the partnership between PT. Grab Indonesia and its driver have been fully fulfilled and declared as a legal relationship under the law. As a large company, PT. Grab Indonesia does not have repressive legal protection against the occurrence of fictitious orders which can be used as an action to provide legal protection to drivers who receive fictitious orders, and provide full compensation to Grab drivers who receive fictitious orders based on the law Articles 1243 to 1252 of Civil Code, which can be in the form of compensation costs along with interest for losses as well as special compensation that applies to certain cases such as work contract.

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