

CHAPTER FOUR FINDING AND ANALYSIS

A. Legal Protection for Gojek Partner in Online Food Orders

The Legal protection for Gojek partner in online food order shall rely on the contract that has been made between all parties and its compatibility with the law. Therefore, In order to know the legal protection for Gojek partner in online food order, first step is to understand and analyse the nature of its contract. The consent in the contract is expressed through simply presses the click button provided in the electronic contract. When this happens it becomes a statement of agreement for this contract so that this contract is valid, binding on the parties and applicable.⁵⁴ This shows that the method used in accepting the e-contract between partners and Gojek is click-wrap. If the Partner does not agree to these Terms, the Partner may choose not to access or use the Application.

The author examined the e-contract of PT AKAB and Partner then found no protection on fictitious orders in conducting his obligations of serving Go-food that suffered by the partner. The e-contract only cover protection regarding on the accident that may physically harm the partner whether on-trip or off-trip. Regarding to the compensation, in the Contract PT AKAB do not give any protection for the drivers on his loss by fulfilling his obligations. PT AKAB only gives accident compensation for the drivers and it is divided

⁵⁴ Article 5 Paragraph 2 of the Partnership Contract of PT Aplikasi Karya Anak Bangsa, taken from <https://www.gojek.com/app/driver-contract/>, accessed on 1 July 2019, at 19.50 pm.

into two based on the condition of the driver when the accident happens.⁵⁵

There are accident compensation for drivers while on-trip and off-trip. The on-trip compensation are consist of:

- a) Passed away while carrying out an order worth Rp20,000,000.
- b) Sickness resulted in the death of Rp. 500,000.
- c) Accident not dead/ not permanent disability is worth compensation up to Rp 5,000,000.
- d) The accident resulted in permanent disability worth compensation of up to Rp 10,000,000.
- e) Experienced intimidation while carrying out orders worth compensation up to Rp 5,000,000.

Meanwhile the off-trip compensation are:

- a) Died due to illness worth Rp500,000.
- b) Death due to an accident while not carrying out an order worth Rp2,000,000.
- c) There is no compensation for accident recipients whose not dead/ not permanently disabled.

Meanwhile, based on Article 31 Paragraph (1) in implementing the services in Special Transportation Rental on The Minister of Transportation Regulation Number 118 of 2018 on Special Rental Transportation in

⁵⁵ Go-Jek, "Panduan Klaim Santunan Kecelakaan dari Go-jek untuk Driver Go-Car", taken from <https://driver.go-jek.com/s/article/Panduan-untuk-Klaim-Santunan-Kecelakaan-dari-Gojekuntuk-driver-gocar>, accessed on 7 September 2019, 22.30 pm.

conjunction to The Minister of Transportation Regulation Number 17 of 2019 on the Amendment of Regulation Number 118 of 2018 on Special Rental Transportation there shall be a protection for both driver and consumer. The protection shall consist of:⁵⁶

- a) Driver complaints and resolution services.
- b) The registration of the driver is done face to face.
- c) Criteria of account suspension
- d) Notice or warning before account deactivated (suspend)
- e) Clarification.
- f) Refutation rights along with the assistance of the Partnership Section of Business Competition Supervision Commission (KPPU).

Indeed based on the contract, the relationship between PT AKAB and Gojek Partners are partner which shall equally get the benefits and loss of the business. Etymologically, the word ‘partner’ can be translated as mate, ally, or campaigner.⁵⁷ Hafsah explained that the definition of partnership is a business strategy that is carried out by two or more parties within a certain period of time to gain profits together with the principle of mutual need and mutual nurturing.⁵⁸ As such, it can be understood that the meaning of partnership as a way of doing business where suppliers and customers trade with one another to achieve common business goals.⁵⁹ As the use of internet as a means of developing cross social hierarchy, service-oriented architectures (SOA)

⁵⁶ Article 32 Paragraph (3) of the Ministry of Transportation Regulation Number 118 of 2018.

⁵⁷ Ambar Teguh Sulistiyani, 2004, *Kemitraan dan Model-Model Pemberdayaan*, Yogyakarta, Gaya Media, p. 129.

⁵⁸ Muhammad Jafar Hafsah, 1999, *Kemitraan Usaha*, Jakarta, Pustaka Sinar Harapan, p. 43.

⁵⁹ Ian Linton, 1997, *Kemitraan Meraih Keuntungan Bersama*, Jakarta, Hailarang, p. 10.

become the trend of virtual bussiness and as the partner, the loss and profits shall burdened equally on both sides.⁶⁰

This motivate the establishment of electronic partnership contract between *rechtpersoon* and *naturlijkepersoon*. In order to examine whether or not the drivers is shall be the partner or worker of PT AKAB, there are some elements to be considered. Based on Law Number 13 of 2003 on Manpower, the elements of workers are work, wages, and orders.⁶¹ These elements if applied in the relationship between PT AKAB with the partners are as follows:

- 1) Work Element: this element can be fulfilled if the worker in carrying out his work is a work that provided by the company, whereas in practice PT Gojek Indonesia does not give jobs to drivers, but those who give jobs are passengers or consumer connected by the Gojek application.
- 2) Wage Element: this element can be fulfilled if workers get compensation in the form of a certain amount of money which is fixed or the same amount in a certain period, and also not based on commission/percentage. In practice what happened between PT AKAB Indonesia with a motorcycle taxi driver ie Partner does not get a direct wage from PT AKAB Indonesia, but rather get wages or payment from passengers or consumers. Motorcycle taxi drivers'

⁶⁰ Cristian Prisacariu, 2007, "A Formal Language for Electronic Contract", *International Federation for Information Processing Review*, Oslo, p. 174.

⁶¹ Article 1 Paragraph 15 of the Law Number 13 of 2003 on Employment.

wages are also not fixed or the same every month, this depends on how many passengers or customers that obtained.

- 3) Command Element: this element can be fulfilled if there is a work order from the company to the worker, not at the initiative of the worker. In practice, orders to pick up/ drop off passengers, pick up/deliver goods and deliver food to consumers themselves are linked by the Gojek application.

By not fulfilling these elements, the relationship between PT AKAB Indonesia and Partner is clearly not a working relationship. Therefore, it is correct if PT AKAB mentioned its contract with the driver as a partnership contract. Therefore, in carrying out the principle of partnership, of course there are important elements that shall fulfilled as a way of achieving the desired goals. The essential elements of partnership, namely:⁶²

- 1) Business Cooperation, which is based on equal position or having the same degree for both parties in partnership, there are no parties who are disadvantaged in partnership with the common goal of increasing profits or income through any development without exploiting each other and developing mutual trust among them.
- 2) Between large or medium-sized entrepreneurs and small-scale entrepreneurs, it is hoped that large or medium-sized businesses can work together for mutual benefit with other economic actors (small businesses) to achieve mutual prosperity.

⁶² Mohammad Jafar Hafsa, 1999, *Kemitraan Usaha*, Jakarta, Pustaka Sinar Harapan, p. 6.

- 3) Guidance and development, which is carried out by large or medium- sized businesses towards small businesses, has to be in the form of fostering the quality of production, improving the quality of Human Resources (HR), fostering production management, etc.
- 4) The principle of mutual need, mutually reinforcing and mutually beneficial, which will be intertwined because the partners will and mutually recognize each other's position of strengths and weaknesses which will have an impact on efficiency and lower production costs. Because the partnership is based on the principle of a win-win solution, the partners will have an equal bargaining position based on their respective roles. The hallmark of the partnership is the alignment of position, no party is harmed and aims to increase mutual benefits through cooperation without exploiting one another and the growing trust between them.

The author found that of the five articles governing the rights and obligations of the parties, there are several articles that are contrary with the partnership principles and detrimental to the partner, namely:

- 1) Article 2 on Cooperative Relationship Paragraph (b)

This Article stated that:

“AKAB, as at its sole discretion, may change or add to the terms of this contract and may inform changes to the Terms that apply from time to time. Changes or additions to this contract or these Terms will take effect after the changes or additions to these Terms are announced through electronic media or other communication media selected by the AKAB which may

include changes or additions to the policies that already exist in this contract or additional Terms or terms and conditions. The Partner agrees that the continued access or use of the Partner to the Application as well as the continued partnership of the Partner after the date of the announcement of changes to the Terms will mean that the Partner agrees to be bound by the Terms, as amended or added.”⁶³

In this case, when the Partner agrees that the access or use of the Partner will continue to the Application and the continued cooperation of the Partner after the date of the announcement of the amendment to the Terms, the Partner agrees to be bound by the Terms, as amended or added without any discussion in order to achieve consensus. Since the e-contract was prepared and made by PT Aplikasi Karya Anak Bangsa, without the involvement of the partners (Gojek driver) to provide a refutation, additions and corrections to the contents of the agreed clause in both the pre-contract stage and implementation. This causes the e-contract to be considered as a standard clause because the contents of the clause are made one-sided by PT Aplikasi Karya Anak Bangsa (AKAB).

Because a contract is a deed of a person to binds oneself to another or more persons,⁶⁴ then the legal act of ‘binding itself’ in creating a contract containing a "statement of will" between the parties. With this, then there is a burden of deeds that must be completed by both parties with their respective capacities. The

⁶³ Article 2 Paragraph b of the Partnership Contract of PT Aplikasi Karya Anak Bangsa, taken from <https://www.gojek.com/app/driver-contract/>, accessed on 1 July 2019, at 19.30 pm.

⁶⁴ Article 1313 of the Civil Code.

burden sometimes only put on one-sided profit.⁶⁵ In Dutch, the term standard clause is known as *standaardregeling* and *algamene voorwaarden*. In German literature, the term used is *algemeine geschäfts bedingun*, *standaardvertrag* and *standaardkonditionen*.⁶⁶

The hallmark of the standard clause is that the weak party does not have a bargaining position. The law allows the standard clause to be used in any form of document but it comes with some prohibitions.⁶⁷

2) Article 3 on the Use of the Gojek Paragraph (4) Letter (b) of the Partnership Contract

This Article stated that:

“ The Partner hereby agrees that the PT AKAB or any of its affiliates are not responsible for any losses, including indirect losses which include loss of profits, loss of data, personal injury or property damage in connection with, or resulting from the use of the Application, or the provision of services by the Partner to the Consumer. The Partner agrees that AKAB is not responsible for damage, obligations or losses arising from the use or dependence of the Partner on the Application or the inability of the Partner to access or use the Application.”

This contradicts with the provisions of Article 1339 of the Civil Code which states that the agreement is not only binding on what is explicitly stipulated therein, but also everything that is by nature agreed based on justice, custom, or the law.⁶⁸ This article shows that when a partner loses due to a cancelation of order cannot be held accountable to PGS, AKAB, or DAB. Cancelation that occurs in the

⁶⁵ M. Yahya Harahap, 1986, *Segi-Segi Hukum Perjanjian*, Bandung, Alumni, p. 23.

⁶⁶ Sutan Remy Sjahdeni, *Op. Cit.*, p. 66-68.

⁶⁷ Mariam Darius Badruzaman, *Op. Cit.*, p. 47-48.

⁶⁸ Article 1339 of the Civil Code.

Go-food feature can be very detrimental to partners because they have purchased customer orders with partner's money which then should have been paid by the customer to partners, but this did not happen. seen from the clauses of this article, it can be assumed if PT AKAB is aware of the possibility of losses as a result of the fulfillment of obligations by partners. Clearly it can be assumed if in the making of the contract PT AKAB is prioritizing its own interests.

Meanwhile, Article 1338 of the Civil Code, stated that the contract must be carried out in good faith. This article confirms that the parties in contract-making must be based on the principle of good faith and the principle of propriety, which implies the making of a contract between the parties must be based on honesty to achieve common goals. Implementation of the agreement must refer to what is appropriate. This principle is a principle that must be in every contract, and can not be removed even if the parties agree (immutable).⁶⁹ Good faith-testing must be carried out for each stage of the contract, both the pre-making (drafting) phase of the contract, the stage of making (signing) the contract and the post-making (implementation) phase. Objective testing of good faith with propriety must be conducted carefully and profoundly because propriety always changes according to the development of the values

⁶⁹ Ery Agus Priyono, 2017, "Peranan Asas Itikad Baik dalam Kontrak Baku", *Jurnal Diponegoro Private Law Review*, Vol. 1, Semarang, p. 19.

held by the people.⁷⁰ In this case, PT Aplikasi Karya Anak Bangsa is discriminatory towards its partners, which should put the partners in the same profit and loss position.

3) Article 5 on Other Provisions Paragraph (1) letter (a)

This Article stated that:

“ The Partner hereby acquits AKAB from all kinds of claims, lawsuits or other legal actions, both in a civil lawsuit and any criminal lawsuits experienced by the Partner, in any form related to the services offered, provided, organized or resolved by the Partner through the Application of the partnership based on this contract.”

This Article is contrary with the purpose of the contract which certainly not only concerns on the rights and obligations of the parties but also shall includes justice as the substance of the existence of the contract. It serves as the philosophical function of the contract, that aims to realize justice for the parties who made the contract.⁷¹ Therefore, the utilization of Information Technology and Electronic Transactions is carried out based on the principles of legal certainty, benefits, prudence, good faith, and freedom of choice of technology or technology neutral. Nevertheless, the application of e-contract as a standard agreement that made one-sided potentially causing a legal problem. Injustice will sacrifice the rights of one or several people only for the economic benefit of the other party because it conflicts with justice as fairness which demands the same

⁷⁰ Muhammad Syaifuddin, 2012, *Hukum Kontrak*, Bandung, Mandar Maju, p. 130.

⁷¹*Op. Cit.*, p. 37.

principle of freedom as the basis of social welfare. So justice must be understood as fairness, in the sense that not only those who have better talents and abilities are entitled to enjoy various benefits, but these benefits must also open up opportunities for those who are less fortunate to improve their prospects of life.⁷²

In conclusion, there are no legal protection provided by the e-contract regarding to the loss of driver in fictitious order as stated by the 3 (three) of Gojek Partners that are interviewed.⁷³ Meanwhile, Article 31 Paragraph (1) in implementing the services in Special Transportation Rental on the Minister of Transportation Regulation Number 118 of 2018 on Special Transportation Rental in conjunction to the Minister of Transportation Regulation Number 17 of 2019 on the Amendment of Regulation Number 118 of 2018 there shall be a protection for both driver and consumer. The protection shall consist of:⁷⁴

- g) Driver complaints and resolution services.
- h) The registration of the driver is done face to face.
- i) Criteria of account suspension
- j) Notice or warning before account deactivated (suspend)
- k) Clarification.
- l) Refutation rights along with the assistance of the Partnership Section of Business Competition Supervision Commission (KPPU).

⁷² Lawrence W. Friedman, 2001, *American Law: an Introduction*, Jakarta, Tatanusa, p. 196.

⁷³ Interview with Bagus Hali, Anshar as Gojek Partner (driver) for 2 (two) years and Imam Mahdi as Gojek Partner (driver) for 1 (one) year in Yogyakarta on November 24th, 2019.

⁷⁴ Article 32 Paragraph (3) of the Minister of Transportation Regulation Number 118 of 2018.

Economic coercion and job demands are one thing that forces partners to agree to the partnership. Since the partner cannot rely on the e-contract for the legal protection, the Ministry of Transportation regulation provide protection for partner in partnership contract with the aim to support development to realize prosperity and provide legal certainty on aspects of safety, security, comfort, equality, affordability, and regularity over the implementation of special rental transport. However, the Minister Regulation do not provide spesific protection regarding the loss by fictitious order that felt by the partner.

B. Legal Remedies for Gojek Partner in Online Food Orders

The legal remedies for Gojek partner in online food orders are provided in the Article 5 on other provisions in the partnership contract. In the e-contract of PT AKAB and partners, it is said that if a dispute arises in connection with the interpretation and/ or implementation of this Contract, PT AKAB and the Partners agree to settle the dispute by deliberation, if a dispute cannot be resolved by deliberation, PT AKAB and Partners agree to settle the dispute through the South Jakarta District Court, without prejudice to the right of PT AKAB to submit reports, lawsuits or claims both civil and criminal through the District Court, Police and other relevant agencies within the territory of the State Republic of Indonesia.⁷⁵ It can be concludes that in the e-contract PT AKAB uses the quasi-adjudicative method, means that it is

⁷⁵ Article 5 (1) Paragraph (2) of the Partnership Contract of PT Aplikasi Karya Anak Bangsa, taken from <https://www.gojek.com/app/driver-contract/>, accessed on 1 September 2019, at 22.00 pm.

a dispute resolution mechanism that combine consensual and adjudicative elements.⁷⁶

The deliberation method chosen by PT AKAB in the e-contract partnership can be likened to negotiation in alternative dispute resolution, even though philosophically and culturally have different meanings. Of the various dispute resolution options available, basically the parties can and have the right to resolve disputes that arise between themselves.⁷⁷ There are another options and the analysis of its compatibility in this disputes. Based on Law Number 30 on Arbitration and Alternative Dispute Resolution, namely:

1) Consultation

Consultation may be defined as a deliberation of persons on some subject. A conference between the counsel engages in a case, to discuss its questions or arrange the method of conducting it.⁷⁸ This types of dispute settlement will be not suitable for the cases of PT AKAB and Partner which has secrecy to be kept and legal certainty to be maintained.

2) Mediation

Mediation is a process of resolving disputes in the form of negotiations to solve problems through a neutral and impartial outsider, who will work with the disputing parties to help find a solution in resolving the dispute to the satisfaction of both parties.

⁷⁶ Bambang Sutiyo, 2006, *Penyelesaian Sengketa Bisnis*, Yogyakarta, Citra Media, p. 8.

⁷⁷ Article 6 Paragraph 2 of the Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution.

⁷⁸ Henry Campbell Black, 1989, *Black's Law Dictionary*, United States, West Publishing Co, p. 286.

The neutral third party is called a mediator.⁷⁹ In resolving business disputes, the involvement of third parties is often avoided to maintain the good name and company relations with other parties. Therefore, PT AKAB does not choose this method in the contract.

3) Conciliation

Conciliation may be defined as the adjustment and settlement of a dispute in a friendly, un-antagonistic manner.⁸⁰ The existence of a third-party intervention in conciliation is expected that the conciliator can play an active role even though the conciliator is not authorized to make decisions. This types of settlement still involving third party which are avoided in business dispute settlement.

4) Expert's Jugdement

Expert's judgments as part of the way or process of dispute resolution differ principally from expert statements because expert testimonies are given or submitted at a court hearing, whereas expert judgments are presented or submitted outside the court forum. Therefore, expert's testimony is defined as information given by a person who has special expertise on what is needed to make light of a criminal case for the purpose of examination. This method cannot be used in order to provide better solution for partner because of the problem that is faced is not a matter of definitive understanding of an article in a contract.

⁷⁹ Munir Fuady, 2003, *Pengantar Hukum Bisnis; Menata Bisnis Modern di Era Global*, Bandung, Citra Aditya Bakti, p. 314.

⁸⁰ Henry Campbell Black, *Op. Cit.*, p. 262.

Therefore choosing a forum outside the court to settle disputes in the business field is part of the freedom of the parties to make agreements on various object agreements. Deliberation brings together the disputed parties and directly to discuss the desired settlement without involving the third party as a giver of consideration of decision.⁸¹ Deliberation also emphasizes the value of togetherness and kinship in solving every problem. So that each outcome of deliberation can embrace all opinions and not only concerned with their interests.

According to Mr. Budi wakito and Mr. Nanda Prasetyo as Gojek Partner for the last 2 (two) years, in order to ask for reimburse of the loss on Gofood order, drivers are obliged to follow rules that even more detrimental.⁸² It is detrimental for the driver, because they have to call the customer service for Gojek Partner and wait for full 1 (one) week working-hours to know whether or not the submission for reimburse is accepted.⁸³ Then, they have to wait for another 1 (one) week for the money to be given back to their Gopay account. The requirement for the acceptance of the reimburse are screenshot of the order that ignored by the customer and a photo of the food that ordered is given to an orphanage.⁸⁴

Hence, deliberation clauses are often prioritized than the settlement of disputes by court or arbitration in business agreements because they are

⁸¹ Nevey Varida Ariani, 2012, "Alternatif Penyelesaian Sengketa Bisnis di Luar Pengadilan", *Jurnal Rechts Vinding*, vol.1, Jakarta, p. 283.

⁸² Interview with Mr. Budi Wakito and Mr. Nanda Prasetyo as Gojek Partner (driver) for 2 (two) years in Yogyakarta on November 25th. 2019.

⁸³ *Ibid.*

⁸⁴ *Ibid.*

cheap, easy, confidential, and win-win. While negotiations are activities to get what they want from others.⁸⁵ The term "Negotiation" is interpreted by Steven H. Gifis as a method of dispute resolution where either the parties themselves or the representative of each party attempt to settle conflicts without resort to the court; an impartial third party is not involved.⁸⁶ The deliberation was attended by representatives of each party who became the negotiator on their respective parties.⁸⁷ William Ury and Roger Fisher mentioned that there are five main obstacles faced by negotiators in negotiations, namely:⁸⁸

1) Reaction

In a pressurized condition, there is a tendency to react emotionally as respond to attacks. Our reaction can result in negotiations ending without getting any decision.

2) Emotions

Negative Emotions from other party negotiators are either uncooperative or always maintain their position without listening to others.

3) Positions

Other party negotiators who insist on their position often provoke us to reject their position.

⁸⁵ Suyud Margono, 2004, *Alternative Dispute Resolution dan Arbitrase: Proses Pelembagaan dan Aspek Hukum*, Jakarta, Ghalia Indonesia, p. 49.

⁸⁶ Steven H Gifis, 1984, *Law Dictionary*, Baroon's Educational Series, New York, p. 310.

⁸⁷ M. Marwan dan Jimmy P, *Op. Cit.*, p. 450.

⁸⁸ *Ibid*, p. 57.

4) Satisfaction

The results of the agreed negotiations sometimes do not cause mutual satisfaction. Basic human needs are reflected in the triangle of satisfaction theory which consists of substantive, psychological and procedural needs.

5) Power

Often the opposing party sees negotiation as a process that aims to create a win-lose solution because one party feels his position is higher, even though it should be in an equal position.

The negotiation process often consists of pre-negotiation, negotiation, closing negotiations (signing of a compromise deed), implementation of the deed. Article 6 paragraph (2) Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution states that dispute resolution or dissent through alternative dispute resolution (ADR) in a direct meeting of the parties (negotiations) is settled within a maximum of 14 days and the results set forth in written agreement. Then Article 6 paragraph (2) provides a provision that an agreement to settle a dispute or dissent in writing is final and binds the parties to implement it in good faith and must be registered at the District Court within 30 days from the signing. Dispute settlement agreements must be completed within 30 days of registration.⁸⁹ In the case of the implementation of the deed in the contract, as long as the parties implement themselves voluntarily, there is no need for registration of the agreement deed

⁸⁹ Article 6 Point 8 of the Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution.

in the District Court. However, if there is a concern that there will be parties who will violate the contents of the agreement, the registration needs to be done.

Although the settlement of business disputes by way of negotiation has been regulated in Law Number 30 of 1999, but there are no clear provisions regarding how the negotiation process should be carried out. In addition, there are no provision in the e-contract of PT AKAB and partner that specify how and where the deliberation will take place. If deliberation is conducted, it certainly will not find a solution for the driver as a partner because since the very beginning there are differences on bargaining positing of the driver and PT AKAB. Making the driver in an inferior position and PT AKAB superior. Even though the results of deliberation written down in a pact or registered in District Court to be implemented, still the partners are not profitable since they lose the important part which the negotiation.

From these conditions, business actors begin to justify various improper ways to be able to immediately resolve disputes and also make more profits from other parties involved in disputes. Then came the competitive and hard negotiation techniques.⁹⁰ Hard negotiation techniques see the other party's negotiator as an enemy, demanding an agreement he wants as a prerequisite for good relations and putting pressure to strengthen their bargaining position. While competitive negotiation techniques are often termed as tough negotiations. In addition, the negotiator provides and maintains high demands

⁹⁰ *Ibid*, p. 44-46.

throughout the negotiation process and uses excessive methods and throws accusations with the aim of creating tension and pressure on other party negotiators. The other method of negotiation is:⁹¹

1) The Nibble

Nibbling is asking for proportionally small concessions that haven't been discussed previously just before closing the deal. This method takes advantage of the other party's desire to close by adding "just one more thing."

2) Snow Job

Negotiators overwhelm the other party with so much information that he or she has difficulty determining which facts are important, and which facts are diversions. Negotiators may also use technical language or jargon to mask a simple answer to a question asked by a non-expert.

3) Good Guy/Bad Guy

The good guy/bad guy approach is typically used in team negotiations where one member of the team makes extreme or unreasonable demands, and the other offers a more rational approach.

After knowing the methods of negotiation, generally there are five methods in responding the disputes that settled using negotiation, namely:⁹²

⁹¹ Lewicki, R.J, D.M. Saunders, J.W. Minton, 2001, *Essentials of Negotiation*, New York, McGraw-Hill Higher Education, p. 81.

⁹² Prof E. Wertheim, 2012, *Negotiation and Resolving Conflicts: an Overview*, Massachusetts, Northeastern University Press, p. 3.

- 1) Competition, distributive (win-lose) bargaining. In this modes the principle that applies is satisfying your needs is important; satisfying the other's needs isn't important to you.
- 2) Collaboration, intergrative (win-win). The principe is satisfying both your needs and the other's needs is important.
- 3) Compromising, satisfying both your needs and the other's are moderately important.
- 4) Avoiding , you are indifferent about satisfying either your needs or the other's needs: no action is likely to be done.

Based on article 31 Paragraph (1) point (g) of The Minister of Transportation Regulation Number 118 of 2018 on Special Rental Transportation in conjunction to The Minister of Transportation Regulation Number 17 of 2019 on the Amendment of Regulation Number 118 of 2018 there shall provide Driver complaints and resolution services. In order to provide driver complaint and resolution services, PT AKAB may create a dialog box in the process of signing the e-contract. This may serves as the discussion steps in order to giving a consent and a prefentive action. Furthermore, another legal remedies that may be taken by the driver as the partner of PT AKAB is refutation along with the assistance of the partnership section of Business Competition Supervision Commission (KPPU).⁹³ This can be done because as stated in Article 1 Paragraph 13 of Law Number 20 Year 2008 referred to as Partnership is cooperation in business relations, both

⁹³ Article 32 Paragraph (3) of the Minister of Transportation Regulation Number 118 of 2018.

directly and indirectly, on the basis of the principle of mutual need, trust, strengthen and benefit involving the actors Micro, Small and Medium Enterprises with Large Enterprises. Business Competition Supervision Commission stated that In an effort to encourage and increase the contribution of MSMEs to national productivity, the function of legal protection to MSMEs becomes important and strategic, especially in establishing Business Partnership with medium or large business actors. It is because 99.99% of business operators in Indonesia are classified in micro, small and medium enterprises (MSMEs) and almost 97% of the workforce is absorbed in the categorization of micro, small and medium businesses.⁹⁴

The Minister of Transportation Regulation Number 118 of 2018 on Special Transportation Rental in conjunction to The Minister of Transportation Regulation Number 17 of 2019 on the Amendment of Regulation Number 118 of 2018 on Special Rental Transportation there are also provisions regarding sanctions. The sanctions given are administrative sanctions and divided into three groups of violations.⁹⁵ Article 34 paragraph (1) point a-c stated that the classification of violations is divided into minor violations, moderate violations and gross violations. The violation that considered as minor violation are as follows:

- a) Does not report if there is a change in the management of the company and/ or cooperative.

⁹⁴ Komisi Pengawas Persaingan Usaha, “Advokasi Kemitraan”, taken from <https://www.kppu.go.id/id/kemitraan/advokasi-kemitraan/>, accessed on 8 October 2019, 08.10 am.

⁹⁵ Article 34 Paragraph (1) of the Minister of Transportation Regulation Number 118 of 2018.

- b) Does not report if there is a change in the domicile of the company and/ or cooperative.
- c) Does not report the operational activities of the Special Lease Transportation regularly.
- d) Reduction or addition of Vehicle identity.
- e) Does not maintain the cleanliness and comfort of the vehicle being operated.
- f) Does not announce applicable rates.
- g) Does not mention the amount of tariff on the application.

Meanwhile, what is considered as moderate violations are as follows:⁹⁶

- a) Violation of the amount of Transportation Tariff.
- b) Has not paid the compulsory contributions to accident liability and the responsibility of the carrier.
- c) Provide services not in accordance with the Minimum Service Standards that have been set.
- d) Does not return the decision letter for the permit to operate and / or the Standard Service Electronic Card after a change in the permit to operate the Special Lease.
- e) Employ vehicle crews who do not meet the requirements in accordance with the provisions of the legislation and are not the drivers of the relevant Special Rental Transport Company.

⁹⁶ Article 34 Paragraph (3) of the Minister of Transportation Regulation Number 118 of 2018.

- f) Operating the vehicle is not in accordance with the type of service based on the operating license that is owned.
- g) Does not comply with the provisions of work time and rest time for the driver.
- h) Transporting passengers exceeds the specified capacity, and not pay administrative fines for minor violations.

Gross violations as referred to in paragraph (1) c include:⁹⁷

- a) Use a dual Service Standard Electronic Card.
- b) Operate the vehicle beyond the designated operating area.
- c) Falsifying Vehicle Number Certificates, Service Standard Electronic Cards, periodic vehicle maintenance books from Brand Holder Agents (APM).
- d) Operate vehicles not equipped with Vehicle Number Certificates, Service Standard Electronic Cards, and periodic vehicle maintenance books in accordance with standards from Trademark Holders (APM).
- e) Operate vehicles whose operating permits have expired.
- f) Neglecting the operation of the vehicle causing an accident resulting in fatalities.
- g) Not pay administrative fines for moderate violations.

There are several ways to assess the violations committed. Evaluation of violations carried out by motor vehicle inspectors, results of monitoring and

⁹⁷ Article 34 Paragraph (4) of the Minister of Transportation Regulation Number 118 of 2018.

evaluation conducted by the Minister or Governor in accordance with their authority, reports from the public, information from the mass media; and/ or report from the Application Company.⁹⁸ Reports or information as referred to in paragraph (2), shall be submitted to the Minister or Governor in accordance with their authority to be followed up in accordance with the provisions of the legislation.⁹⁹

The Minister or Governor in accordance with his authority provides administrative sanctions to the Special Rental Transport Company based on reports or information.¹⁰⁰ Administrative sanctions that can be given are written warnings, suspension of operating licenses, and revocation of operating licenses.¹⁰¹ This sanction can be given twice with a period of 30 days. (37) After this is done, if you still ignore the warning given then the license can be suspended. 30 days after the suspension of the license is carried out, while still ignoring the company's standard electronic service cards can be revoked. the suspense can be applied for a period of at least six months and a maximum of 12 months.

⁹⁸ Article 35 of the Minister of Transportation Regulation Number 118 of 2018.

⁹⁹ Article 35 (2) of the Minister of Transportation Regulation Number 118 of 2018.

¹⁰⁰ Article 36 (1) of the Minister of Transportation Regulation Number 118 of 2018.

¹⁰¹ Article 36 (2) of the Minister of Transportation Regulation Number 118 of 2018.