

**LEGAL PROTECTION FOF GOJEK PARTNERS IN ONLINE FOOD
ORDER IN YOGYAKARTA**

PUBLICATION MANUSCRIPT



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UNIVERSITAS
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Unggul & Islami

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LEGAL REMEDIES FOR GOJEK PARTNER IN ONLINE FOOD ORDER IN YOGYAKARTA

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ABSTRACT

The more Go-Jek application users, the more problems occur, especially on Go-Food services cancellation. Driver as the partner of PT Aplikasi Karya Anak Bangsa and other involved parties are partner by signing the partnership e-contract. UNCITRAL Model Law on Electronic Commerce 1996 and the Law number 11 of 2008 on Information and Electronic Transaction as the umbrella law of e-contract emphasized that any information in the e-contract cannot be denying the legal effect, validity or enforcement of it. Using the normative legal research, the author examines library materials and regulations in order to analyze the Legal Protection for Go-Jek drivers in online food orders in Yogyakarta. The research shows that the partnership e-contract of PT AKAB do not have protection on fictitious order in Go-Food. The protection available in Ministry of Transportation Regulation number 118 of 2018 *jo* Ministry of Transportation Regulation number 17 of 2019 on the Amendment of regulation number 118 of 2019. The legal remedies method is quasi-judicial, using deliberation and District Court. Based on article 31 Paragraph (1) point (g) of Ministry of Transportation Regulation number 118 of 2018 on Special Transportation Rent this contract shall provide Driver complaints and resolution services. The Minister or Governor in accordance with his authority may provide administrative sanctions to the Special Rental Transport Company in form of warning, suspension of operating licenses, and revocation of operating licenses.

Keywords: *E-contract, Go-food, Go-jek, Legal Protection*

I. Introduction

The advantages and conveniences provided by the Gojek cannot be avoided, as well as the losses given. The more Gojek application users, the more problems occur, especially on Gofood services. There is a cancellation by the consumers and by that conduct, the consumer do not

pay for food or drinks that they have ordered. Economically, this is detrimental to Gofood drivers because they have bought food or drinks that consumers order using their personal money, but there is no compensation he gets. Socially, the practice of cancellation by the consumer led to the sympathy of the community towards Gofood drivers who deserved to receive the right to receive wages by the consumer, as required if the work was completed. Moreover, Gojek is an application made by PT Aplikasi Karya Anak Bangsa (AKAB) with the aim of facilitating the fulfillment of the needs of an item or service for the community but in fact, several articles in the terms of the contract that are not profitable for the partners and there is no space for the partners to review, rebuttal and offer as part of the agreement elements in the contract.

The Gofood driver serves as partner of PT AKAB and other involved parties by signing the partnership e-contract. According to Article 1313 of the Civil Code, an Agreement is the Border with which one or more persons are bound to one or more other people. Therefore in the Gojek application, there is an element of contract that in accordance with the Civil Code article 1313 and 1320. In terms of implementation, e-contract is new in Indonesia and by that reason may cause problems that often unconsciously detrimental for the involved parties. In the time when a party realizes, it will be too late or they have no other option rather than to obey the contract since that party economically needs the contract. Whilst the e-contract do not provide any protection for the loss of partner in

fictitious order, the Ministry of Transportation Regulation number 118 of 2018 on Special Rental Transportation in conjunction to Ministry of Transportation Regulation number 17 of 2019 regulates the protection for partner in a special rental transportation.

Special Rental Transportation Company is a company or legal entity or micro business actor or small business actor that provides Special Rental Transportation Services. Special Rental Transportation is a door-to-door transport service with drivers, has operating areas in urban areas, from and to airports, ports, or other transportation nodes and reservations using information technology-based applications, with the tariff rates listed in the application. Based on the problems stated above, the author would like to discuss and further examine the problems written in the research title Legal Protection for Go-Jek drivers in online food orders in Yogyakarta.

II. Problem Formulation

How does the legal remedy for the aggrieved Gojek partners in online food order in Yogyakarta?

III. Research Method

A. Type of Research

This research is an empirical and normative legal research with descriptive qualitative approach. Normative legal research may define as research based on the library research, the focus is on reading and analysis of secondary sources such as law or provisions that related to

the title. Meanwhile, the empirical legal research is a method to collect empirical fact through interviews.¹

B. Type of Data

The data used in this research are primary and secondary legal data, namely:

1. Primary Data

The primary data is a method of research to collect data from an interview with the Go-Jek Partners within the area of Yogyakarta.

2. Secondary Data

Secondary data is a method of research to collect data from the library research or literature study. The secondary data are, namely:

a) Primary Legal Material

The primary legal materials taken from legal documents, legislation, and treaties, which are relevant to this research are:

- 1) 1945 Constitution.
- 2) Indonesian Civil Code.
- 3) UNCITRAL Model Law on Electronic Commerce 1996.
- 4) The Law number 30 of 1999 on Arbitration and Alternative Dispute Resolution.
- 5) The Law number 13 of 2003 on Employment.
- 6) The Law number 11 of 2008 on Information and Electronic Transaction.

¹ Mukti Fajar ND, Yulianto Achmad, 2017, *Dualisme Penelitian Hukum Normatif dan Empiris*, Yogyakarta, Pustaka Pelajar, p. 154.

7) Law Number 22 of 2009 concerning Road Traffic and Transportation (LLAJ).

8) The Ministry of Transportation Regulation number 118 of 2018 on the Special Rental Transportation *juncto* Ministry of Transportation Regulation number 17 of 2019 on the Amendment of regulation number 118 of 2018 on Special Rental Transportation.

b) Secondary Legal Material

Secondary legal material consists of several books, journals, news, and related Articles to the topic.

c) Tertiary Legal Material

The tertiary legal material means any other materials which support the research. It covers the legal materials that provide instructions or explanations of primary and secondary legal materials from the outside field of law, e.g., the field of politics, sociology, and language as supporting material of complementary. In this research, the tertiary legal materials are:

1) Law Dictionary: Black's Law Dictionary written by Henry Campbell; and

2) English Dictionary: Kamus Inggris Indonesia, written by John M. Echols and Hassan Sadily.

C. Method of Data Collection

The methods of collecting data in this research will be done not only through interviews with the appropriate respondents to the object of research but also library research with the literature study.²

D. Method of Data Analysis

The data were analyzed systematically through a descriptive quantitative approach. The descriptive method is used to clearly describe the actual conditions and qualitative analysis of the data stated by the respondent and then described to obtain an understanding of the real condition.³

IV. Result and Discussion

A. 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. Therefore, In order to know the legal remedies for Gojek partner in online food order, first step is to understand and analyse the nature of its contract that has been made between all parties and its compatibility with the law. A contract occurs when acceptance is communicated to the offeror, by the offeree of the offer made.⁴ The establishment of e-contract is the same as a conventional contract,

² Jhonny Ibrahim, *Op. Cit.*, p. 47-48.

³ Mukti Fajar ND and Yulianto Achmad, *Op. Cit.*, p. 123.

⁴ Rosa Agustina, 2008, "Kontrak Elektronik dalam Sistem Hukum Indonesia" *Gloria Juris*, Vol.8 No. 2, Januari-April, p. 10.

where the offer and acceptance can be given orally or in writing, even can be done by doing.⁵ However, acceptance is usually carried out in a manner that has been determined by the offeror or by other reasonable means.⁶

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 into two based on the condition of the driver when the accident happens.⁷

Since the partner cannot rely on the e-contract for the legal protection, the Ministry of Transportation regulation provide remedies 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. Based on article 31 Paragraph (1) in implementing the services in special

⁵ S. Blount, 2015, *Electronic Contracts: Principles from Common Law*, LexisNexis Butterworths, Sydney, Vol. 2 No. 4, p. 22.

⁶ Mari Carmen Martinez Lopez, 2017, *Electronic Contract within the European Union*, *European Journal of Political Research*, 2017, Vol. 2 No. 3, p. 99.

⁷ 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, at 22.30 pm.

transportation rental on Ministry of Transportation Regulation number 118 of 2018 on Special Rental Transportation *jo* Ministry 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:

1. Driver complaints and resolution services.
2. The registration of the driver is done face to face.
3. Criteria of account suspension
4. Notice or warning before account deactivated (suspend)
5. Clarification.
6. Refutation rights along with the assistance of the Partnership Section of Business Competition Supervision Commission (KPPU).

Although the Ministry Regulation do not provide specific protection regarding the loss by fictitious order that felt by the partner but it have the legal remedies that might be taken by the Gojek Partner. On the contract, the relationship between PT AKAB and Gojek drivers are partner, hence shall equally get the benefits and loss of the business but the effects of economic coercion and job demands are one thing that forces partners to agree to the unequal partnership. As the use of internet as a means of developing cross social hierarchy, service-oriented architectures (SOA) become the trend of virtual

bussiness and as the partner, the loss and profits shall be burdened equally on both sides.⁸ This is in accordance with what Hafsah explained as the definition of partnership, 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.⁹ As etymologicaly, it can be understood that the word ‘partner’ can be translated as mate, ally, or campaigner.¹⁰

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.¹¹ It can be concludes that in the e-contract PT AKAB uses the quasi-adjudicative

⁸ Cristian Prisacariu, 2007, A Formal Language for Electronic Contract, *International Federation for Information Processing Review*, Oslo, Vol. 9 No.6, p. 174.

⁹ Muhammad Jafar Hafsah, 1999, *Kemitraan Usaha*, Jakarta, Pustaka Sinar Harapan, p. 43.

¹⁰ Ambar Teguh Sulistiyani, 2004, *Kemitraan dan Model-Model Pemberdayaan*, Yogyakarta, Gaya Media, p. 129.

¹¹ Article 5 (1) Paragraph (2) of the Partnership Contract of PT Aplikasi Karya Anak Bangsa, taken from <https://www.go-jek.com/app/driver-contract/>, accessed on 1 September 2019, at 22.00 pm.

method, means that it is a dispute resolution mechanism that combine consensual and adjudicative elements.¹²

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. There are another options and the analysis of its compatibility in this disputes. The author analyse the suitability of dispute resolution method that likely to be chosen by the PT AKAB 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.¹³ 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

¹² Bambang Sutiyo, 2006, *Penyelesaian Sengketa Bisnis*, Yogyakarta, Citra Media, p. 8.

¹³ Henry Campbell Black, 1989, *Black's Law Dictionary*, United States, West Publishing Co, p. 286.

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. The neutral third party is called a mediator.¹⁴ 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.¹⁵ 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 Judgement

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

¹⁴ Munir Fuady, 2003, *Pengantar Hukum Bisnis; Menata Bisnis Modern di Era Global*, Bandung, Citra Aditya Bakti, p. 314.

¹⁵ Henry Campbell Black, *Op. Cit.*, p. 262.

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.

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.¹⁶ 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.¹⁷ 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.¹⁸ Then, they have to wait for another 1 (one) week for the money to be given back to their Gopay account. The

¹⁶ Nevey Varida Ariani, 2012, Alternatif Penyelesaian Sengketa Bisnis di Luar Pengadilan, *Jurnal Rechts Vinding*, Vol.1 No. 2, Jakarta, p. 283.

¹⁷ Interview with Mr. Budi Wakito and Mr. Nanda Prasetyo as Gojek Partner (driver) for 2 (two) years in Yogyakarta on November 25th, 2019, at 10.00 am.

¹⁸ *Ibid.*

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.¹⁹

Hence, deliberation clauses are often prioritized than the settlement of disputes by court or arbitration in business agreements because they are cheap, easy, confidential, and win-win. While negotiations are activities to get what they want from others.²⁰ 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.²¹ The deliberation was attended by representatives of each party who became the negotiator on their respective parties.²²

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

¹⁹ *Ibid.*

²⁰ Suyud Margono, 2004, *Alternative Dispute Resolution dan Arbitrase: Proses Pelembagaan dan Aspek Hukum*, Jakarta, Ghalia Indonesia, p. 49.

²¹ Steven H Gifis, 1984, *Law Dictionary*, New York, Baroon's Educational Series, p. 310.

²² M. Marwan dan Jimmy P, *Op. Cit.*, p. 450.

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. 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 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.

Based on article 31 Paragraph (1) point (g) of Ministry of Transportation Regulation number 118 of 2018 on Special Rental

Transportation *jo* Ministry 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 as a way to complaint and ask for reimburse of the partner losses by conducting his obligation in online food order. 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).

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 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.²³

The Ministry of Transportation Regulation number 118 of 2018 on Special Transportation Rental *jo* Ministry 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. 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:

1. Does not report if there is a change in the management of the company and/ or cooperative.
2. Does not report if there is a change in the domicile of the company and/ or cooperative.
3. Does not report the operational activities of the Special Lease Transportation regularly.
4. Reduction or addition of Vehicle identity.
5. Does not maintain the cleanliness and comfort of the vehicle being operated.
6. Does not announce applicable rates.

²³ Komisi Pengawas Persaingan Usaha, “Advokasi Kemitraan”, taken from <https://www.kppu.go.id/id/kemitraan/advokasi-kemitraan/>, accessed on 8 October 2019, at 08.10 am.

7. Does not mention the amount of tariff on the application.

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

1. Violation of the amount of Transportation Tariff.
2. Has not paid the compulsory contributions to accident liability and the responsibility of the carrier.
3. Provide services not in accordance with the Minimum Service Standards that have been set.
4. 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.
5. 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.
6. Operating the vehicle is not in accordance with the type of service based on the operating license that is owned.
7. Does not comply with the provisions of work time and rest time for the driver.
8. Transporting passengers exceeds the specified capacity, and not pay administrative fines for minor violations.

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

1. Use a dual Service Standard Electronic Card.
2. Operate the vehicle beyond the designated operating area.

3. Falsifying Vehicle Number Certificates, Service Standard Electronic Cards, periodic vehicle maintenance books from Brand Holder Agents (APM).
4. 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).
5. Operate vehicles whose operating permits have expired.
6. Neglecting the operation of the vehicle causing an accident resulting in fatalities.
7. 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 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. 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.

The Minister or Governor in accordance with his authority provides administrative sanctions to the Special Rental Transport Company based on reports or information. Administrative sanctions that can be

given are written warnings, suspension of operating licenses, and revocation of operating licenses. 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 suspension can be applied for a period of at least six months and a maximum of 12 months.

V. Conclusion and Recommendation

A. Conclusion

The legal remedy method that used in the e-contract PT AKAB based on the Article 5 in the e-contract is the quasi adjudicative method, which a combination of deliberation and District court. The dispute could be settled by conducting deliberation and if in the meeting there are no deal that made, then the dispute settlement method is using South Jakarta District Court. The legal remedies for Gojek partner in online food order are established because of no protection on fictitious orders for the partner in conducting his obligations of serving Gofood that suffered by the partner.

Since the partner cannot rely on the e-contract for the legal protection, the Ministry of Transportation regulation provide legal remedies 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. The Ministry Regulation number 118 of 2018 on Special Rental Transportation *jo* Ministry Regulation number 17 of 2019 on the Amendment of the regulation number 118 of 2018 provide a refutation rights along with the assistance of the Partnership Section of the Business Competition Supervision Commission (KPPU).

There is a provisions on sanctions that may be imposed to PT AKAB. The sanctions are based on the category of the violations. The violations may take form into minor violation, moderate and gross violation. The Minister or Governor in accordance with his authority may provide administrative sanctions to the Special Rental Transport Company based on reports or information. Administrative sanctions that can be given are written warnings, suspension of operating licenses, and revocation of operating licenses

B. Recommendation

There shall be a dialog box for the Gojek Partner to complaint and ask for reimburse of their losses by conducting their obligation in online food order and PT AKAB shall allow their branch office to represents PT AKAB in the headquarters in conducting the second dispute resolution method which is District Court.

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