

Settlement of Fictitious Ordering Cases Made by Users of Information Technology-Based Application Services on Online Transportation

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Abstract. Online transportation is facing a problem called fake orders, which causes loss for many people. This study aims to understand regulations about fake orders and the solution. The approach method used in this study is juridical-empiric with research specifications as the descriptive-analytical. The sample is determined through purposive and accidental sampling, then data collected by literature study and interviews, data is analyzed through juridically qualitative techniques. The result of the study shows that fake orders are seen as defaults and can be resolved through a court lawsuit or alternative resolution dispute. On the other hand, companies choose to compensate drivers as the most popular solution to solve the problem of fake orders.

Keywords: Online Transportation, Fake Orders, Defaults, Compensation.

1 Introduction

Transportation is an essential part of people's daily needs due to the increasing mobility of the community. With the rising public demand for transportation, various modes of transportation have emerged that can be used according to the choices and needs of the community [1].

The development of science has brought extraordinary development through technology. Technology has improved the quality and standard of human life through efficiency and convenience [2]. With technology, developments in transportation have also emerged, namely online transportation. Online transportation has now become a popular mode of transportation among the public due to its easy, fast, and fixed prices.

Online transportation is not only limited to the transport of people, but there are also goods transportation services (buying ordered goods and delivering them to the customer's house), cleaning services, and other services. In Indonesia itself, many online transportation service providers have sprung up, service providers who use applications and social media as platforms for these online transportation activities transportation in online transportation is not only limited to the transportation of people, but there are also goods transportation services (buying ordered goods and delivering them to the customer's house), cleaning services, and other services. In Indonesia itself, many online transportation service providers have sprung up, and service providers use applications and social media as platforms for these online transportation activities. Transportation itself is based on an agreement. According to Article 1313 of the Civil Code, it is stated that an agreement is an act in which one or more people

bind themselves to one or more people. Parties to this contract of carriage are the sender or passenger with the carrier, where the two parties' position is equal.

Along with the development of online transportation activities, there will certainly be disturbing problems and obstacles, one of which is the case of fictitious orders. This fictitious order occurs when a service user orders an item with a cash payment system, where the driver has completed the order according to the customer's request but when the order has been delivered to the location the customer does not pay the cost of the goods and services that have been ordered and cannot be contacted for accountability, with In other words, a fictitious order is an order given by a consumer (user) which is then entered into a special application for online transportation drivers but the consumer does not keep the promise made in the application.

The agreement has several principles, one of which is the principle of binding force. The obligatory principle is the principle that determines that the parties who have made a contract will be bound by the agreement in the contract, the engagement is only limited to the appearance of rights and obligations [3]. Article 1338 of the Civil Code states that all agreements made are validly valid as law for those who make them. The agreement can be withdrawn other than by agreement of both parties or for reasons determined by law. The agreement must be carried out in good faith. This article means that every party bound by the agreement must obey the agreement like the law, so that if there is a violation of the agreement, the sanctions or consequences that have been stated in the agreement must also be obeyed like the law.

In carrying out an agreement, there are obligations of each party. This obligation is referred to as an achievement. If one of the parties does not fulfill its performance, it can be said as a default. Default, also known as breach of contract; defaults; non-fulfillment; or breach of contract, is a condition of not carrying out an achievement/obligation as it should have been mutually agreed upon as stated in the contract [4]. In the Civil Code, this default is regulated in Article 1238, "The debtor is declared negligent by a warrant, or by a similar deed, or based on the strength of the engagement itself, i.e. if this engagement results in the debtor being deemed negligent with the passage of the specified time". In fictitious orders, there are defaults made by service users, namely when the user makes an order but does not fulfill his performance to pay for the order that the driver has made. So, the problems that can be arranged in this research include:

1. How does Indonesian law regulate fictitious bookings on online transportation?
2. How to resolve cases of fictitious orders that can be taken by providers of online transportation applications, either through court or out of court?

2 Research Methods

The method used in this study is a juridical-empirical approach, namely research on secondary data and data found in the field. The data that has been found in the field will later be examined using secondary data sourced from various scientific writings and regulations. The research specification used is descriptive-analytical, in which the research object is analyzed by describing the situation and circumstances. The data obtained are presented as they are, then analyzed which will finally produce conclusions. There are two sampling techniques used in this research. The first is purposive sampling, the sample is determined based on a specific purpose. This technique is used to determine samples from Osaga and Jeggboy, the company's representatives. While the second technique is accidental sampling,

where the sample is determined by accident or directly. This technique was used to determine samples from Grab and Gojek, where the driver who was the resource person was chosen by accident.

Data were collected through library research and interview methods. Literature study to obtain secondary data, namely books, laws and regulations, as well as other scientific writings and papers that are used as the basis and study material for the legal issues to be studied as well as other data contained in the field which also will be studied together with other secondary data. While the interviews were conducted in a non-guided manner, di where the researcher combines free interviews and guided interviews so that discussions could produce data with a broad scope but still according to the topics that the researchers had determined before the interviews were conducted. After collecting data, the data that has been collected will be analyzed in a qualitative juridical manner, using the interpretation of legal materials and other secondary data and then connecting them to the legal issues to be discussed.

3 Results and Discussion

3.1 Regulations Regarding Fictitious Bookings on Online Transportation the Parties to Online Transportation and Their Legal Relations

In online transportation, there are several parties involved in its implementation, namely business actors (service providers), drivers, service users, and third parties.

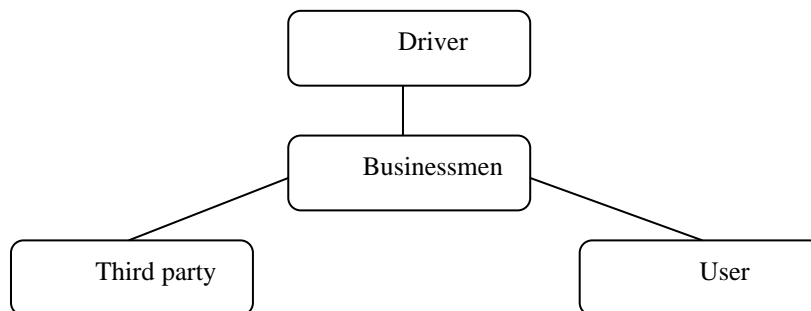


Fig. 1. Chart of the relationship of the parties

Business actors are explained explicitly in Article 1 of the Regulation of the Minister of Transportation No. 12 of 2019 concerning the Protection of the Safety of Motorcycle Users Used for the Interest of the Community, two points contain definitions relating to business actors in online transportation. First, No. 2 Article 1 No. 2 states that the Electronic System Operator is every person. Business actors are explained explicitly in Article 1 of the Regulation of the Minister of Transportation No. 12 of 2019 concerning the Protection of the Safety of Motorcycle Users Used for the Interest of the Community, there are two points that contain definitions relating to business actors in online transportation. First, in Article 1 No. 2, the Electronic System Operator is every person, Then Article 1 point 3 explains that an Application Company is an Electronic System Operator that provides technology-based

applications in the field of land transportation. From the two sources of regulation, we can understand that in the field of online transportation, business actors are parties in the form of individuals or legal entities, based on agreements to carry out business activities in the economic field, which play a role in realizing business activities, such as the procurement of electronic systems and applications (if using) and other supporting activities [5, 6].

With regard to liability in the event of a fictitious order, in this case, a form of compensation suffered by the driver. The business actor through a cooperation contract or direct statement states that all losses suffered by the driver, as long as this loss does not arise due to the fault of the driver himself is the responsibility of business actors, so that business actors have an obligation to compensate for any form of loss if the driver suffers this kind of loss [7].

Service users or consumers are regulated in Article 1 No. 2 of Law No. 8 of 1999 which explains that, Consumers are every person who uses goods and/or services available in the community, both for the benefit of themselves, their families, other people, as well as other living things and not to be traded. Then in Article 1 No. 22 of Law No. 22 of 2009 concerning Road Traffic and Transportation, "Service Users are individuals or legal entities that use the services of Public Transportation Companies" The service user becomes a party related to the business actor in terms of using the service by the business actor or service provider but directly meets the driver as the party carrying out the service according to the user's request.

Furthermore, the definition of the driver himself can be found in Article 1 No. 23 of Law No. 22 of 2009 concerning Road Traffic and Transportation explains that a driver is a person who drives a motorized vehicle on the road that already has a driving license. The driver, also known as the driver, is a partner of a business actor. As reported from the official Gojek website, especially on the page containing the partnership contract, "Partners are parties who carry out the shuttle of goods and/or people, the delivery of goods that previously ordered by consumers, or other services through the Application by using two-wheeled motorized vehicles owned by the Partners themselves" (<https://www.gojek.com/app/kilat-contract/>). This partnership relationship is based on Article 15 paragraph (1) of the Regulation of the Minister of Transportation No. 12 of 2019 concerning the Protection of the Safety of Motorcycle Users Used for the Interest of the Community, "The relationship between application companies and drivers is a partnership relationship." This partnership relationship has a different position from workers who are bound by labor/employment contracts because partners do not receive wages but profit sharing, coupled with the absence of an element of command in the context of the relationship between superiors and subordinates [8].

The last party is a third party. The third party here is the owner of a shop, restaurant, or similar business that partners with a business actor. The legal basis for third party partnerships with business actors is contained in Article 25 paragraph (2) jo. Article 26 of Law No. 20 of 2008 concerning Micro, Small and Medium Enterprises has regulated the partnership relationship and the form of partnership between Micro, Small and Medium Enterprises (MSMEs) and Large Enterprises. Furthermore, in Article 36 paragraph (1) of Law No. 20 of 2008 concerning Micro, Small and Medium Enterprises which regulates the equality of positions between MSME partners and business actors, it is clear that the legal relationship between business actors and third parties is equal and only establish a partnership relationship to help the smooth running of each business.

3.2 Fictitious Orders Seen from the Civil Side

Fictitious ordering is an action taken by a service user who orders through online transportation services but the user does not fulfill his obligations in accordance with the agreement. This action certainly causes losses to the driver because most activities from fictitious orders occur when the driver has purchased the order with his money [9, 10]. If we examine this fictitious order, it can be said to be a default because of one of the parties. The service user does not fulfill his performance at all, namely his obligation to pay for the services he has received in this case. Because this loss is not caused by negligence on the part of the driver himself, the business actor is responsible for the losses suffered by the partner/driver if there has been a default by the consumer, as long as it is proven that the partner/driver is not at fault in the occurrence of the fictitious order [11]. Besides being classified as a default, this fictitious order also can be interpreted as an unlawful act (*Perbuatan Melawan Hukum/PMH*), because this action violates the law and causes harm to other parties. Unlawful acts themselves are regulated in Article 1365 of the Civil Code, "Every act that violates the law and brings harm to others, obliges others, obliges the person who caused the loss because of his mistake to replace the loss" [12, 13].

Fictitious orders associated with PMH can violate the ITE Law Article 28 paragraph (1), "Everyone intentionally or without rights spreads false and misleading news that results in consumer losses in Electronic Transactions." This gives rise to the possibility of multiple interpretations which mean that this fictitious order is a PMH as well as a default because both are caused by the actions of one-party causing losses. This will later raise the question, is it possible to combine default and PMH in one case when a lawsuit is filed? To answer this question, one can look at the jurisprudence sourced from the Supreme Court Decision. The first is Supreme Court Decision No. 1875 K/Pdt/1984 dated April 24, 1986, this decision affirmed that a lawsuit based on default and PMH could at the same time confuse the judge, thus making the lawsuit unclear (*obscur libel*). In addition, the Supreme Court Decision No. 879 K/Pdt/1997 dated January 29, 2001 added that claims based on default and PMH should be resolved separately to avoid the *obscur libel*. However, the merger of the claim for default with PMH is not allowed, looking back at the Supreme Court Decision No. 866 K/Pdt/2007 dated October 24, 2007 confirmed the cumulative objective between default and PMH, but with a note that these two things must be clearly explained separately, so as not to confuse judges [14].

The author has another opinion regarding the position of fictitious orders in the legal field, that fictitious orders have a tendency to be understood as default, not PMH. The reason for this opinion is that even though default and PMH are both unlawful acts that cause harm, there is a significant difference between the two. That is, in default there has been an agreement beforehand, so that the default has violated the agreement before causing losses, while in PMH the action is not based on any agreement but still causes losses to certain parties Fiction Order Case Dispute Resolution

3.3 Settlement of Fictitious Ordering Disputes Through ADR

How to resolve fictitious ordering disputes can also be resolved through the Alternative Resolution Dispute (ADR) route. One of the ways to solve problems through ADR is mediation. Mediation is one of the solutions among other forms of ADR that are often encountered, this is because in addition to being an alternative method of resolving disputes, mediation is also a mandatory thing to do in the settlement of civil cases in court. Mediation is an effort to achieve peace by bridging the parties in resolving disputes. The dispute to obtain the best solution for the litigants [15]. The basis of mediation itself is found in Supreme Court

Regulation (*Peraturan Mahkamah Agung/PERMA*) Number 1 of 2016 concerning Mediation Procedures in Courts, where mediation is one of the various breakthroughs made by the Supreme Court of the Republic of Indonesia on the basis of seeking to realize the principle of administering a simple, fast, low cost, and efficient judicial court [16–18]. Dispute resolution through mediation certainly has advantages and disadvantages. The advantages of mediation are the fast process, low cost, fair and confidential. There is individual empowerment, and the decisions are valid for a long time. On the other hand, the weakness of mediation is vulnerable to failure (do not find a solution), is not coercive, and the validity of the solution depends on the ability of the mediator [19].

In addition to PERMA Number 1 of 2016 there is also Law No. 8No. 8 of 1999 concerning Consumer Protection which discusses ADR including mediation. However, it should be underlined that the dispute resolution referred to in the Consumer Protection Law is the settlement of consumer disputes, so it cannot be used to examine cases of fictitious orders made by service users.

3.4 How to Settle Fictitious Order Cases Taken by Business Actors

In practice, it is found that one way is most preferable for business actors, namely compensation given to the driver so that no legal action is taken to resolve this problem. In short, this solution is carried out by the driver who reports to the company office. The office will try to help connect service users with the driver. If it is true that the service user does not respond or cannot be contacted and it is proven that a fictitious order has occurred, the driver will provide proof of purchase to the company, and the loss will be reimbursed. The data will be presented in the form of a table as follows:

Table 1. Interview Results.

No	Company name	Company name	Source person	Frequency	Solution	Solution
1	Ojek Salatiga (Osaga)	Ojek Salatiga (Osaga)	Operator [20]	Seldom	Compensation	Compensation
2	Jegg Boy & Girl	Jegg Boy & Girl	Sahono (Owner)[21]	Sometimes	Compensation	Compensation
3	Grab	Grab	Slamet (Driver)[22]	Often enough	Compensation	Compensation
4	Gojek	Gojek	Bayu (Driver)[23]	Often enough	Compensation	Compensation

Based on the data presented in the table, several things can be concluded. First, cases of fictitious orders are more common in large companies such as Grab and Gojek, where almost all drivers (about 6 out of 7 people) at a base claim to have encountered or experienced this fictitious order. Meanwhile, for companies whose operational areas are still within the scope of cities, the frequency of occurrence of fictitious orders tends to be lower. These fictitious bookings most often occur with new drivers who don't have enough experience and haven't gathered and communicated with other drivers with more experience. The driver actually has one way to detect, or at least a sign to be aware if the booker is a new account that does not have a rating from the driver and the number of orders is small to never make a booking. Fictitious ordering cases themselves are usually carried out by new accounts, either due to ignorance, fad, or even intentionally to benefit themselves. According to information from

Bayu [23] as the Gojek driver in Salatiga, there is a phenomenon called the "fictitious bomb", this occurs when an account that makes a fictitious order moves from one driver to another in a relatively short time. This fictitious bomb caused unrest among drivers because one account disrupted many drivers' operations. The way to stop this fictitious bomb was to ask the company to suspend the related account so as not to place a fictitious order again.

Compensation, according to the Big Indonesian Dictionary (*Kamus Besar Bahasa Indonesia*/KBBI) is "money given as compensation for losses" [23]. In the Civil Code, compensation is caused by 2 things, namely default or unlawful acts, for compensation due to default it is regulated in Article 1248 to 1252 of the Civil Code, while for unlawful acts it is regulated in Article 1365 of the Civil Code. For this fictitious order, because it is included in default, the legal basis used is Article 1248 to Article 1252 of the Civil Code. Even though the service user commits the default, the business actor is responsible for providing compensation to the driver in accordance with their respective procedures [7]. This method of settlement through compensation is an interesting matter.

Moreover, this method is closer to the realm of practice in the field than the academic realm, especially law. If we look back, several ways can be taken by litigation or non-litigation. In the author's opinion, this compensation method is the most realistic, practical, and efficient. Regarding the cost factor, the settlement is through a method that can cost a lot of money because a series of activities must be carried out, such as preparing files, registering cases, or other things. Then on the time and energy factor, of course taking this compensation settlement method saves a lot of time and energy because this method can be done by business actors independently, besides that if the time lost when a fictitious order case is resolved through other means has the potential to bring more losses. More than that time is used to cover the loss of fictitious orders from the company's operations.

3.5 Security Factors in Payment Methods for Online Transportation

In online transportation, there are two types of payments, cash payments and electronic money. The use of electronic/digital money has become a legal payment system in Indonesia and its practice has been justified by law. One of the legal bases for digital money itself is regulated in Article 1 number 3 of Bank Indonesia Regulation No. 20/6/PBI/2018 of 2018 concerning Electronic Money, which basically means that electronic payment instruments have the element of being issued under the money deposited to the issuer. the value of the money that has been deposited is stored in a media server or chip, and the electronic money is not a form of deposit. Furthermore, it is added with Article 5 paragraph (1) of Law Number 11 of 2008 concerning Electronic Information and Transactions, "Electronic information and/or electronic documents and/or their printed results are legal evidence" [24, 25]. The existence of electronic money becomes a legal thing as a means of payment and as evidence [26]. There are several reasons why electronic money is a safer payment method than cash [27]: 1. every expense is recorded in the system; 2. more practical and unobtrusive; 3. cannot be lost; and 4. layered security protection. In addition to the benefits, there are also several possible risks in using electronic money: 1. theft; 2. device duplication; and 3. malfunction.

4 Conclusions

A fictitious order that causes harm to several parties under civil law is considered a breach of contract that violates the carriage agreement between the service user and the business actor

represented by the driver. Ways that can be taken to resolve fictitious orders legally include courts and Alternative Dispute Resolutions. The practice carried out in the field states that the method chosen by business actors is to solve problems through compensation following the rules of the business actor himself or the partnership contract with the driver. However, in practice, the compensation process between business actors is different. Still, in practice, the solution to be achieved is the same: to prevent the driver from losses beyond the driver's control.

The advice given by the author through this study is that business actors must provide guidance to new drivers regarding contracts and general matters, including the risk of this fictitious order, as a preventive measure so that not many drivers experience the same problem and drivers can understand and know the actions what to do if they encounter a fictitious order for smooth troubleshooting. By law, the government must form regulations governing partnerships along with issues like this so that there is legal protection for the parties involved, both for business actors, drivers, and third parties.

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