

Devotional response that arises in the agreement between the captain gold driver with the TPI Grab's participants

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Abstract

The emergence of the phenomenon of Taxi Online / Motorized Vehicles Not in Route Like the welcome for consumers of financial institutions, especially the ease of procession of registering vehicles for online taxis certainly adds to the passion of the community to run this business, unfortunately not only the benefits that may be obtained by financial institutions business activists consumers but also risks, Bisnis Taxi Online as the application seller does not require registration of vehicle status in detail, regarding whether the vehicle registered is an object of fiduciary guarantee or not. Responding to the need for a vehicle with a secure credit system, Grab as one of the giant companies in online transportation mode, has raised / collaborated with companies known as Indonesian Transportation Technology / TPI Preferred Grab's Partner, as a driver / driver business partner by offering ease of ownership vehicles for taxi purposes online through the Gold Captain program.

Keywords: taxi online; non-route public vehicles; TPI preferred grab's partner; gold captain program

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1. Introduction

Transportation is a major requirement for humans in carrying out their daily activities. With the existence of transportation makes it easy for humans to move from one place to another in order to meet their daily needs. In the Indonesian Language Dictionary, transportation is the transportation of goods by various types of vehicles according to technological progress (Wahya, M. Num, Suzana & Ernawati Waridah, 2013: 666). Before the existence of an adequate means of transportation, the community carried out traditional transportation activities, and even they did not recognize the existence of transportation equipment. But along with the development of time and technology, then a means of transportation was created to facilitate human activities.

Globalization from the economic side is a world change that is fundamental or structural and takes place side by side with the rapid pace of technological progress. In the era of globalization and digitalization the role of transportation and communication is very important and does not escape the development of technology which becomes a necessity. This has been proven in several business fields, including transportation and communication which have become more accessible, more efficient and productive, and ultimately benefited the community, both from the perspective of users and suppliers of goods or services.

Technological collaboration has also accelerated the production process (both goods or services) and moved products from one place to another at a cheaper or more effective and efficient cost. This technological progress has a negative or positive impact especially on conventional businessmen to produce services and goods that are domestic, because conventional entrepreneurs must adjust to technological advancements to serve

the market, if not the business actors will be crushed by technological advances due to difficulties serving the market or consumers who have received far better service from entrepreneurs who have used contemporary technology. Negative influences on conventional entrepreneurs can also be caused by current technology-based entrepreneurs who are increasingly mastering especially the domestic market so that they can get rid of conventional entrepreneurs who are left behind because of their low competitiveness. As for the positive impact, all entrepreneurs will compete in a healthy manner to compete to provide the best service for consumers or the community, which ultimately the market will be able to determine the balance of demand and supply with better product conditions and prices that increasingly benefit the community.

Technology-based innovations have penetrated the modes of transportation, where an application that can be used to order driving vehicle services is only available through smartphones, one of which is GRAB, which comes with applications that allow users / consumers to order driving vehicles online, calculate travel costs and drivers will pick up the location of the customer (user / consumer) then deliver it to the destination.

Grab first set foot on the Indonesian market in June 2014 with GrabTaxi service, initially there were no problems with this service, because, GrabTaxi only became an application provider that connects consumers with conventional taxi drivers. In other words, this service makes it easier for conventional taxi drivers to look for passengers.

Like day and night, behind the success story of an online-based transportation business there are also problems that welcome it. The earliest problem of business is the market, where the rapid growth of consumers in the business, will never be separated from the business competition that preceded it, as a modern transportation business, conventional transportation is the main business opponent, which in 2016 taxi drivers Conventionally conducted a large-scale demonstration until the government (Ministry of Transportation) issued Minister of Transportation Regulation No. 32 of 2016 concerning the Implementation of Non-Route Public Transport of Motor Vehicles, despite reaping a lot of controversy, this regulation was a legal umbrella and the emergence of the first legal term for taxi businesses online in Indonesia, especially the public needs for this mode of transportation are increasingly mushrooming, both among users / consumers and among drivers / drivers.

Consumers Finance offers a solution for a credit mechanism to be able to own motorized vehicles without having to pay in full. The provision of loans or credit is made by entering into an agreement between creditors as the party that gives loans to the debtor as the recipient of the loan. With the making of the debt agreement, the creditor is obliged to pay a sum of money worth the motor vehicle agreed to the manufacturer / dealer, so that the debtor must return all costs arising from this process in accordance with the agreement. This kind of agreement is known as Fiduciary.

Fiduciary "fiduciare eigendomsoverdracht" (surrender of property rights on the basis of trust) was first known as "bierbrouwerij arrest" Decision of Hoge Raad in 1929 (Abdulkadir Muhammad, 2000: 173). Fiduciary is the transfer of property rights on the basis of trust provided that the object whose ownership rights are transferred remains in the possession of the owner of the object. Furthermore, it is said that fiduciary guarantee is one of the means of legal protection for the security of a Bank or a Financing Institution, with the intention of obtaining a legal certainty about the statement of a customer or debtor who will repay his loan. A fiduciary guarantee agreement is not a right born because of the law, but must be agreed in advance in this case between the financial institution and the customer / debtor. Therefore the juridical function of binding fiduciary

guarantees is more specific. This means that the binding of fiduciary collateral in the fiduciary guarantee deed is an integral part of the credit agreement. And this further confirms the position of financial institutions as preferred credit providers.

The emergence of the phenomenon of Taxi Online / Motorized Vehicles Not in Route Like the welcome for consumers of financial institutions, especially the ease of procession of registering vehicles for online taxis certainly adds to the passion of the community to run this business, unfortunately not only the benefits that may be obtained by financial institutions business activists consumers but also risks, Bisnis Taxi Online as the application seller does not require registration of vehicle status in detail, regarding whether the vehicle registered is an object of fiduciary guarantee or not.

If the vehicle registered for online taxi belonging to / on behalf of the driver as in the application is certainly not a problem, it becomes risky and has potential problems if the vehicle registered is an object of fiduciary collateral, with a different name between the vehicle owner (fiduciary debtor) and driver (name registered in application and operation of taxi online) considering that the Fiduciary Guarantee Law has expressly prohibited debtors from transferring, transferring and or renting fiduciary collateral objects. This is regulated in Article 23 paragraph (2) of Law Number 42 of 1999 concerning Fiduciary Guarantees, namely.

The Fiduciary is prohibited from transferring, pawning, or renting out to other parties Objects that are objects of Fiduciary Assurance that are not in stock, except with prior written approval from the Fiduciary Recipient.

This is where the risk arises for Consumer financing institutions, because it turns out that investors who have the ability to penetrate vehicle loans with a Fiduciary Guarantee exceeding one unit, begin to explore this online taxi business, so the risk of violations of Article 23 paragraph (2) of Law Number 42 1999 concerning Fiduciary Assurance, because it is not possible if one person can own and drive more than one online taxi driver account for one vehicle

2. Main Heading of the Analysis

Actually the notion of accountability is not explicitly known in Indonesian laws and regulations, but is often matched with the term accountable or accountability (Martono & Amad Sudiro, 2010: 214). Accountable in the Black Law Dictionary means responsible, liability. Whereas according to The Contemporary English-Indonesian Dictionary is accountability. The definition of accountability in the sense of responsibility according to the Big Dictionary of Indonesian Language is the condition of having to bear everything that if something happens can be prosecuted, blamed for prosecution and so on:

Error liability is also referred to as the English term liability base on fault or in the Dutch language "Schuldaansprakelijkheid" (Leonora Bakarbesy & Ghansam Anand, 2018: 259). The definition of responsibility in liability according to the Big Indonesian Dictionary means to bear all the losses that occur as a result of actions or the actions of other people acting for and in his name. Therefore, one element of accountability is loss, if there is a mistake but there is no loss. certainly be accountable.

Peter Mahmud Marzuki (2008:258) menyampaikan penggunaan istilah tanggung gugat berada dalam ruang lingkup privat, kemudian menurut J.H Nieuwenhuis (1985:135) bahwa tanggung gugat merupakan kewajiban untuk menanggung ganti kerugian sebagai akibat pelanggaran norma, perbuatan melanggar norma tersebut dapat terjadi disebabkan karena perbuatan melawan hukum dan prestasi.

BW regulates the types of liability in illegal acts, namely:

1) Accountability for errors;

According to Article 1365, a person who causes harm to another person is liable, if the offender is guilty, in other words the act against the law is liable to the extent of the loss incurred based on the action he blamed him. The term error (*schuld*) is also used in the sense of negligence (*onachtzaamheid*), or inadvertence.

2) Sharpened liability:

a. Accountability for errors with reversal of burden of proof;

Liability with the return of the burden of proof in BW is regulated in Article 1367 paragraph (2):

"parents and guardians are responsible for losses, which are caused by children who are minors, who live in them, and for whom they exercise the power of parents or guardians "

Article 1367 paragraph (5):

"The responsibilities mentioned above end, if parents, guardians, school teachers and artisan heads prove that they cannot prevent actions that they should be responsible for"

And Article 1368 BW

"The owner of an animal, or who uses it, as long as the animal is used, is responsible for the loss that is issued by the animal, whether the animal is under its supervision, or lost or detached from its supervision.

From the explanation above, it is clear that the concept of accountability in this case focuses on the things that are attached to the maker of the error / which results in errors and / or losses, so that the tangible action is not only in direct action but also against someone who is in control (something that is not capable) so as to bring harm to the other party.

b. Responsibility for risk (Leonora Bakarbesy, 2018: 259).

The risk accountability is intended that the employer bears the risk of loss caused by employees who work for their interests, for example, it has been regulated in Article 1367 paragraph (3) BW:

Employers and those who appoint others to represent their affairs, are responsible for losses incurred by their servants or subordinates in carrying out work for which these people are used. "

In simple terms, the notion of risk accountability is the responsibility inherent in someone who has used power / power to another party, which is the occurrence of such a relationship an event that causes a loss and thus raises accountability on the basis of risk

Fifi Junita and Gianto Al Imron (2002: 10) state that basically liability has a scope including:

1. Accountability on the basis of a contractual relationship between the parties to the contract;

In doctrine, legal science is called the privity of contract, which contains the principle "there is no contractual relationship, there is no accountability".

2. Accountability on the basis of tortius / statutory obligation, which in this case does not require contractual relations;

Accountability based on unlawful acts does not require contractual relations between the parties concerned, so that the emergence of demands from a party is due to a loss that arises because of a negligence or error in the form of doing something or not doing something done by another party. Unlawful acts as intended must fulfill the following elements.

1. There is an illegal act;
2. There is a loss;
3. There is a general relationship between breaking the law and loss;
4. There is an error

In principle, liability is a condition to compensate for losses caused by default or unlawful actions, if caused due to contractual relations and problems arise regarding the failure to fulfill achievements, including in the default field as stipulated in Article 1246 BW, whereas if problems arise is something outside contractual matters then enter into the realm of acts against the law as stipulated in Article 1365 BW.

The element of loss in default according to Article 1246 BW consists of costs incurred, losses, and interest. Costs are costs or costs that have been explicitly issued by one party, then the loss / loss is a damage or loss / loss of something belonging to one of the parties caused by the actions or negligence of the other party, delay in an achievement, inappropriate or not the perfection of an achievement, including the implementation of something, or even doing something that is prohibited in an agreement, then interest is an advantage that should be obtained by one of the parties. Article 1243 BW states "reimbursement of costs, losses and interest due to not fulfilling an agreement, then begins to be compulsory, if the debtor, after being declared negligent in fulfilling the agreement, is still neglected or if something must be given or made, can only be given or made in grace the time he has spent.

Compensation based on contractual matters rests on the contents of the agreement that has been agreed upon by the parties, so that the parties responsible are only enshrined in the contract, there is no acknowledgment of any third party outside the contractual relationship who can file compensation claims based on the provisions -This provision, as in the doctrine of law "there is no contractual relationship, there is no liability" (privity of contract).

3. Juridical Review of the Agreement Between the Tpi Grab's Preferred Partner and the Gold Captain Driver

A contractual agreement is born based on the will of the parties who have agreed on the contents of the clause to be promised, where the parties certainly have their respective rights and obligations in carrying out the provisions contained in the agreement. As the birth of a legal relationship between TPI Grab's Preferred Partner and a Driver as part of a contractual agreement in participating in a program known as the Gold Captain Program.

The agreement as a form of engagement is of course preceded by an offer from one party which is then accepted by the other party, quoted from Grab Indonesia's official web page regarding the existence of a vehicle unit ownership program through a loyalty

program for prospective driver partners (<https://www.grab.com/id/blog/driver/car/grabcar-jakarta-gold-driver-program/> accessed on February 28, 2019).

How effective this program, which originally only existed in Jakarta, has now penetrated other major cities, namely: Surabaya, Medan and Jakarta, with the expanding advertising power it seems that this program is increasingly in demand by prospective grab partners, so that leaflets also emerge. become a media offering to attract as many driver partners as possible.

As a first step in the emergence of contracts, advertisements as above are forms of promotion in accordance with Law Number 8 of 1999 concerning Consumer Protection, in the general provisions of Article 1 paragraph (6) mentioning:

"Promotion is an activity to introduce or disseminate information on an item and / or service to attract consumers' buying interest in goods and / or services that will be and are being traded".

Therefore all content that is in the promotion effort is part of the promise, which in the next step must be fulfilled by business people in this case TPI Grab's Preferred Partner to Drivers who take the Gold Captain program. After the prospective driver completes all the requirements set by the TPI Grab's Preferred Partner, of course before implementing the rights and obligations of the parties, first they will sign a contract, which turns out the concept that arises from this Program is rent, or commonly known with the term rentcar.

With the title of the contract "Vehicle rental agreement for the provision of driving vehicle services", it turns out that the driver has prepared a standard contract form, so that in principle the driver can only read the contents of the contract which then completes the identity until the contract is signed. The agreement meant that PT. Indonesian Pengangkutan Technology / TPI Grab's Preferred Partner has mixed several clauses, which in general is the existence of a security deposit, acceptance of movable objects in this case are car vehicles, vehicle use for driver vehicle services with the exclusivity rights of Grab and with certain job targets , to lease payments which include maintenance of the vehicle unit that is the object of the lease.

4. Legal Efforts That Can Be Done by Gold Captain Drivers

The agreement made by the parties applies as a binding law for the makers (*pacta sunt servanda*), but this is also bound on the basis of the freedom of contract stipulated in Article 1338 BW, so that in a contractual agreement, of course not only an agreement from the parties to a standard agreement, prepare an agreement whose contents are jointly developed by the parties concerned.

In a civil relationship it is very possible for a dispute between the parties concerned. Disputes can arise due to a dispute between the parties in implementing an agreement. There are two ways to resolve disputes between parties, namely through court channels (litigation) and off-court channels (non-litigation). But before discussing problem solving through these two lines, preventive steps should be taken, by optimizing pre-contract conditions, so that before an agreement starts, a mutual understanding should be built on the details of the contractual agreements to be carried out by the parties, including complete clarification. for information and promotions obtained by each party that will contract so that there will be no information error as part of the offer, as well as recognition of the rights of the parties to submit clauses as agreed later, which is expected to achieve a fair, balanced agreement not biased as part of the realization of good faith.

The first choice dispute resolution for parties is by way of court (non-judicial / non-litigation) better known as Alternate Dispute Resolution (APS) or Alternative Dispute Resolution (ADR). Article 1 of Article 10 of Act Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, means that Alternative Dispute Resolution as an institution to resolve disputes or differences of opinion through procedures agreed upon by parties namely Out-of-court Settlement by consultation, consolidation, mediation or assessment expert.

The alternative forms of dispute / conflict resolution can be stated, namely

a) Conciliation.

In this form the dispute is settled through a parliament or parliamentary seat where both parties discuss, debate openly or freely to reach an agreement.

b) Mediation

In this form both parties agreed to seek an advisor from a third party. Dispute resolution / conflict through this form the problem will be resolved through the help of someone or an expert or through a mediator. The third party that provides this assistance must be neutral or impartial. The mediator is obliged to carry out his duties and functions based on the wishes and wishes of the parties.

c) Arbitration

In this form the two sides agreed to get a legal decision as a way out for disputes / conflicts. Article 1 Grain 1 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution that Arbitration is a civil case outside the general court based on arbitration agreements made in writing by the parties to the dispute.

d) Deliberation (negotiation)

Deliberation as an effort to resolve disputes between parties without going through the court with the aim of reaching a collective agreement on the basis of more harmonious and creative cooperation.

In this case if the parties both the driver and TPI feel there are problems / disputes from the interpretation and or implementation of the agreed contractual agreement can make non-litigation efforts as mentioned above, and actually when looking at the value of the object agreed upon, the step of deliberation (negotiation) is the easiest and simplest way. By going through meetings and sitting together to try to find a way out together to reach a new consensus that hopes can be the best way of win-win solutions for related parties.

The next way is through judicial channels / litigation Settlement of disputes / conflicts through judiciary / litigation is regulated in Law Number 4 of 2004 concerning Judicial power. Article 1 of the Law expressly states that the power of the judiciary is the power of an independent State to hold a court in order to enforce law and justice for the implementation of the Republic of Indonesia Law as stipulated in Article 1 of the 1945 Constitution. carried out by judicial bodies, including general justice. According to Law Number 8 of 2004 concerning General Courts which has the authority to examine, hear and decide on civil cases.

In this case, if the driver feels that there is a discrepancy between the information he obtained based on the promotion submitted by the TPI, then he can file a lawsuit in either default or unlawful acts, becoming a default when the promotion carried out by the TPI is categorized as an offer / initial agreement which then is not regulated in the

standard agreement that has been determined unilaterally by the TPI, and can also be a realm of lawlessness when the driver will not get / own the object rental vehicle which in truth in promotional advertisements he knows should the gold captain program is a ownership program vehicle. Besides that, it can also use the basis of Law No. 8 of 1999 concerning Consumer Protection, with elements of acts against the law as stipulated in Article 1365 BW, as follows:

a. Actions

TPI conducts promotional activities as an offer to join the Gold Captain program;

b. There is an error element

The contents of the contract agreement are not in accordance with what is in the promotional advertisements of the TPI so that they do not fulfill the driver's rights as a consumer that has been regulated in Article 4 jo Article 8 of Act Number 8 of 1999 concerning Consumer Protection;

c. There is a loss suffered

material and immaterial losses arising from drivers during the gold captain program if later they do not get a vehicle as advertisements / promotions from TPI, and immaterially can disturb the peace of the driver having concerns during the gold captain program with contractual agreements that are not in accordance with the ad / promotions he got from the TPI;

d. There is a causal relationship between mistakes and losses

because the existing arrangement does not fulfill consumer rights in the Consumption Protection Act, there is a loss for consumers when using vehicle rental services with the TPI Party, especially the agreement with the standard clause provided by the TPI has also not been in accordance with the mandate of Article 18 of the Law Number 8 of 1999 concerning Consumer Protection.

Errors here are elements that are against the law. The definition of "law", not only contradicts the law, but also propriety and decency in society. In common sense, this principle of responsibility is acceptable because it is fair for the wrongdoers to compensate the injured party.

5. Conclusion

Basically liability has a scope including liability on the basis of contractual relations between the parties in the contract and liability on the basis of tortius / statutory obligation, which in this case does not require contractual relations. Accountability based on unlawful conduct does not require contractual relations between the parties concerned, so that the emergence of demands from a party is due to a loss that arises because of an omission or error in the form of doing something or not doing something done by another.

Information from promotional media by TPI and Grab regarding vehicle ownership through the gold captain driver program should be included in the contractual agreement as intended, because if it does not have the potential for violations / non-conformity with information on promotion and TPI is liable for this, especially if the vehicle does switch ownership belongs to the driver, not necessarily the vehicle as intended can still be used to carry out driver vehicle services through the Grab App, considering Grab itself has provisions for vehicles that can be used for Grabcar services, namely the maximum vehicle age of 5 years. So that the end of the vehicle rental period through the Gold Captain program certainly ends the age of the vehicle to be used in the Grabcar service.

The legal effort that can be done is beforehand with preventive efforts, namely optimization during pre-contract conditions, but if this is not implemented can make non-litigation legal efforts and litigation legal efforts

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