Legal Protection For Grab Drivers Due to Default Related to Double Order Payments on Grabfood Services By PT. Indonesian Technology Grab

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Abstract: The development of information technology forces conventional activities to be abandoned and people begin to switch to using information technology, like buying and selling food. GrabFood is a food delivery service provided by the GRAB application. the GrabFood service has a Double Orders. Double Orders funding is below what it should be, so that indicates a default on the agreement. The type of legal research used in this research is normative juridical. This research uses a statutory approach which is carried out by examining all laws and regulation. The data collection method used in this research is library research, papers, articles, the internet, research results, laws and regulations. The data analysis method uses a descriptive analytical research method. In the case of Double Orders on the GrabFood service, the GRAB Applicator has committed a default in the form of carrying out what has been promised but not as promised. Preventive legal remedies that GRAB drivers can take to fulfill rights that are not fully granted are by urging the government to immediately issue laws or regulations prohibiting system fraud which is detrimental to online motorcycle taxi drivers in general. The Partnership Agreement between the GRAB Driver and the GRAB Applicator explains that if a dispute occurs, it will be resolved through a non-litigation route, namely through arbitration.

INTRODUCTION

The development of information technology forces conventional activities to be abandoned and people begin to switch to using information technology that is newer, easier and does not require much time to use. As in the case of buying and selling food. Information technology that connects customers with restaurants via courier is a business opportunity that is exploited by private stakeholders in creating a company that has a product, namely an application that will work with restaurants and couriers in answering problems that arise from consumers or customers. One of them is GRAB. GRAB is a technology company that provides a platform for consumers to obtain or obtain goods or services provided by partners (Grab Indonesia, 2021). GRAB or PT Grab Teknologi Indonesia provides Platforms in connection with GrabCar, GrabBike, Grocery Services, GrabFresh, Grab for Business, GrabHealth, GrabGift, GrabTaxi and other services (Grab Indonesia, 2021).

To carry out its services, PT Grab Teknologi Indonesia cooperates with drivers to work together with partner status. These GRAB drivers will later be drivers whose job is to become motorcycle taxi drivers to deliver people and couriers to deliver packages or food. GrabFood is a food delivery service provided by the GRAB application. Orders can be made through the GRAB application, then head to the GrabFood menu. When getting an order, the GRAB driver will confirm with the restaurant, wait, and deliver the order to the customer according to the conditions or SOP set by the GRAB application. In its implementation in the field, the GrabFood service contains an order known as a Double Orders. Double Orders are conditions where GRAB driver partners receive two orders simultaneously. The two orders in question can be either taking orders from the same restaurant and delivering them to two different customers or taking orders from two different restaurants and delivering them to two different customers. The provision of service fees or shipping costs for Double Orders by the GRAB application is only counted for one trip when the GRAB driver partner is working on two orders simultaneously.

Funding for Double Orders is below what it should be, so there is cost reduction for Double Orders by the GRAB application which indicates a default on the agreement between the applicator and the driver-partner. In addition to financing problems, Double Orders also harm GRAB driver-partners in their implementation, such as requiring longer queues and if you have to pick up at a different restaurant the food will be left in the vehicle which is prone to being lost. Customers also experience disadvantages such as longer waiting times which result in food being cold or when ordering drinks can make the ice melt and other problems.

METHODS

The type of legal research used in this research is normative juridical (normative legal research method). The normative legal research method is a scientific research procedure to find the truth based on the scientific logic of law from its normative side (Ibrahim, 2005)

This research uses a statutory approach which is carried out by examining all laws and regulations that are related to the legal issues being handled (Marzuki, 2006). For normative legal researchers, they only know secondary data consisting of primary legal materials, secondary legal materials, and tertiary legal materials. Secondary data comes from library materials such as books in the library, laws and regulations, scientific works, including articles.

The data collection method used in this research is library research, papers, articles, the internet, research results, laws and regulations and other supporting information.
The data analysis method uses a descriptive analytical research method, the data analysis used is a qualitative approach to primary data and secondary data, which is obtained from literature studies and then interprets to obtain answers and conclusions related to problems, as well as determines the content or meaning of legal rules used as a reference in resolving legal issues that are the object of study.

RESULTS AND DISCUSSION

Forms of Default Made by Grab Applicators Related to Double Orders on Grabfood Services to Grab Drivers

In determining the existence of achievements or defaults made by the parties, it is necessary to know in advance the legal relationship that occurs between the GRAB driver and the GRAB Applicator. A legal relationship is a relationship between a legal subject and other legal subjects or a relationship between a legal subject and a legal object, which is governed by legal rules giving rise to legal consequences (Nurhayati, 2020). Rights and obligations arising from the existence of a legal relationship regulated by law, as stated in Article 1457 of the Civil Code concerning engagement (verbintenis), which arise as a result of an agreement (overeenkomst) (Ishaq, 2006). So that a right and obligation arising from a legal relationship must be protected by law.

The legal relationship between the GRAB Driver and the GRAB Applicator with objects, namely work and money that is arranged or made based on an agreement between the GRAB Driver and the GRAB Applicator as parties to the agreement, which gives rise to a right and obligation or achievement that must be carried out by the GRAB Driver and the GRAB Applicator is a Relationship Contractual. Contractual relationship is a legal relationship that is created due to an agreement. The agreement that creates a contractual relationship between a GRAB Driver and a GRAB Applicator is the Partnership Agreement. When a GRAB Driver gets this service, the GRAB Driver’s status is referred to as a Delivery Driver, according to the definition of Article 2.17, namely:

“2.17. “Delivery Driver” means, You who has submitted the online or offline registration, and agree under this Agreement as SPI’s delivery partner, to provide delivery services”

This article explains that the agreement that forms the basis of the contractual relationship between the GRAB Driver and the GRAB Applicator is a partnership agreement. The partnership agreement will bind the GRAB Driver the moment a person registers and starts running the GRAB Application for Drivers.

The contractual relationship between the GRAB Driver and the Applicator is not a working relationship, so it is not bound by the laws and regulations governing Employment. The law governing employment regulates employment relations, while the contractual relationship between a GRAB driver and a GRAB applicator is not an employment relationship. This is because the elements of the Employment Relations are not fulfilled in the Contractual Relationship between the GRAB Driver and the GRAB Applicator based on the partnership agreement. The Partnership Agreement becomes an agreement in which the parties are equal and agreed without coercion, so that the law governing the Partnership Agreement is the same as agreements in general, namely the Civil Code.

Legal relations have 3 (three) elements, namely as follows: (1) There are legal subjects whose rights and obligations face each other; (2) There are objects that apply based on rights and obligations; (3) There is a relationship between the owner of the right and the bearer of the obligation, or a relationship with the object in question (Ishaq, 2006).
In the Contractual Relationship between the GRAB Driver and the GRAB Applicator, the parties have fulfilled all three elements of the legal relationship. The first element, GRAB Drivers and GRAB Applicators have rights and obligations that are interconnected. The second element is the object that applies based on rights and obligations. The object that applies in the Contractual Relationship between the GRAB Driver and the GRAB Applicator is Money, this is because the transaction that occurs after the fulfillment of the obligations between the parties is Money. This third element is fulfilled, because the GRAB Driver and GRAB Applicator carry out orders from the customer, they are the rights holders and bearers of their obligations, in this Contractual Relationship there is an object that applies, namely money.

Based on the previous elaboration where a legal relationship gives rise to legal consequences, namely the rights and obligations between the parties. It can be concluded that the rights and obligations of the GRAB Applicator are:

1. Obliged to distribute and provide an order to GRAB Driver Partners as field implementers;
2. Obliged to distribute payments received from customers to GRAB Driver Partners after the order is completed according to the applicable agreement;
3. Has the right to receive a commission of 20% (twenty percent) of the payment received by the GRAB Driver Partner according to the terms of the Partnership Agreement;
4. Has the right to give punishment in the form of a warning, suspension, to termination of the partner if the GRAB Driver Partner does something that is prohibited; and
5. Entitled to recruit and accept new GRAB Driver Partners.

Meanwhile, GRAB Drivers have rights and obligations, including:

1. Obliged to carry out orders that have been given in accordance with the service standards determined by the GRAB Applicator;
2. Obliged to share 20% (twenty percent) of the payment given as a form of commission in accordance with the Partnership Agreement;
3. Obliged to comply with the rules that apply in the implementation of GRAB services; and
4. Entitled to receive payment for a completed order.

The rights and obligations stemming from the Contractual Relationship between the GRAB Driver and the GRAB Applicator based on the partnership agreement that has been agreed upon, this is an achievement. This has an impact on legal consequences in a legal relationship based on a partnership agreement consisting of two parties in which one party is obliged to give achievements and the other party is entitled to these achievements. This obligation often becomes a problem because there is one party who intentionally or unintentionally violates this with the aim of wanting his rights to be fulfilled without thinking about whether his obligations have been carried out or not, considering that this obligation is part of the rights that should be obtained for other parties. If the party intentionally only wants to gain personal benefits, it can harm the other party. This is known as an act of default so that there will be legal consequences for the violator. Default or what is known as a broken promise, namely the debtor’s obligation to fulfill an achievement, if in carrying out the obligation it is not affected by circumstances, the debtor is deemed to have broken a promise (Yahman, 2016).

In the case of Double Orders on the GrabFood service, the GRAB Applicator has committed a default in the form of carrying
out what has been promised but not as promised, the reason is because when a party has done what is in the Agreement, but in practice the party does not carry out what that has been promised, then this is called a default. The GRAB applicator in the case of Double orders on the GrabFood service deliberately creates a system that makes payment of delivery costs to the GRAB driver not full but based on the total distance traveled by the GRAB driver to complete the double order. In addition, the GRAB Applicator also intentionally creates a system that makes GRAB Drivers unable to exercise the Right to Refuse a Basic Income Service Offer by giving a penalty to GRAB Drivers who do this.

Creditors who suffer losses because the debtor defaults can choose from various possibilities, namely:

1. Creditors can ask for the implementation of the agreement, even though it is late;
2. Creditors can ask for compensation, namely losses because the debtor does not perform well, achieves but is not on time, or performs imperfectly;
3. The creditor may ask for the implementation of the agreement accompanied by compensation for losses as a result of the slow implementation of the agreement;
4. In a reciprocal agreement, one party’s negligence gives the other party the right to ask the judge to cancel the agreement accompanied by compensation. (Setiawan, 2014)

In the case of double orders in the grabfood service, the GRAB Driver as the party who is aggrieved as a result of a Default made by the GRAB Applicator can demand compensation or it can also be for the implementation of the agreement even though it is late by removing the Combined Order system on the GrabFood service or by giving the GRAB Driver the opportunity to carry out

The right to refuse an offer if it is felt that there is a discrepancy in the Shipping Costs for the Combined Order without any penalty being given.

**Legal Remedies Completed By Grab Drivers Harmed By Grab Applicators Related To Double Orders On The Grabfood Service**

In the case of Double Orders on the GrabFood service where the GRAB Applicator defaults by not fully paying the Delivery Fee to the GRAB Driver and does not exercise the Right to Refuse basic income offers for delivery services by imposing sanctions in the form of notifications, suspensions, to the work of partners if they do cancel as a step to reject the delivery service basic income offer that is deemed inappropriate, then the GRAB Driver can take legal action as an effort to regain rights that are not fully granted by the GRAB Applicator. Legal remedies can be divided into two, namely preventive legal remedies and repressive legal remedies. Preventive legal remedies are protections provided by the government with the aim of preventing before a violation occurs.

Preventive legal remedies that GRAB drivers can take to fulfill rights that are not fully granted are by urging the government to immediately issue a law or regulation that prohibits system fraud which is detrimental to online motorcycle taxi drivers in general. The government in question can be in the form of the DPR, the President, or the Ministry of Transportation as the ministry in charge of matters related to transportation that is used for the benefit of the community which is carried out by application. Legal remedies that can be taken by GRAB Drivers in realizing Preventive Legal Protection by the government are by holding demonstrations at the Ministry of Transportation, the Governor’s Office, and/or the GRAB Applicator’s Office.

Repressive legal remedies are the ultimate protection in the form of sanctions such as fines, compensation and additional
penalties given when a dispute has occurred or a violation has been committed. Repressive legal remedies can be carried out using non-litigation and litigation efforts. Repressive legal remedies through non-litigation are dispute resolution efforts that can be taken outside the court or with alternative dispute resolution institutions. Repressive legal remedies through non-litigation or commonly referred to as alternative dispute resolution are regulated in Law number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution (Arbitration Law) which explains that alternative dispute resolution is known in several ways, namely Consultation, Negotiation, Mediation, Conciliation, and Expert Judgment.

The Partnership Agreement between the GRAB Driver and the GRAB Applicator explains that if a dispute occurs, it will be resolved through a non-litigation route, namely through arbitration, in accordance with article 24 where the clause discusses dispute resolution, paragraphs one and two read:

"24.1 This Terms of Service shall be governed by Indonesian law, without regard to the choice or conflicts of law provisions of any jurisdiction, and any disputes, actions, claims or causes of action arising out of or in connection with this Terms of Service or the Service shall be referred to the Indonesian National Arbitration Board ("BANI"), in accordance with the BANI Regulations as modified or amended from time to time (the "Rules") by a sole arbitrator appointed by the mutual agreement of you and Grab (the "Arbitrator"). If you and Grab are unable to agree on an arbitrator, the Arbitrator shall be appointed by the chairman of BANI in accordance with the Rules. The seat and venue of the arbitration shall be Jakarta, in the English language and the fees of the Arbitrator shall be borne equally by you and Grab, provided that the Arbitrator may require that such fees be borne in such other manner as the Arbitrator determines is required in order for this arbitration clause to be enforceable under applicable law.

24.2. Each party hereby agrees that in connection with Article 60 of Law No. 30 of 1999 ("Arbitration Law"), the arbitral award is final and binding on the parties and based on that, the parties do not have the right to appeal the arbitral award. The parties hereby also expressly exclude the provisions of Articles 48.1 and 73 (b) of the Arbitration Law so that the mandate to the Arbitrator as stipulated through these Terms of Service remains valid until the final decision of the arbitration has been determined by the Arbitrator."

Repressive legal remedies through non-litigation are commonly used by business people such as GRAB Applicators due to their advantages such as providing a "win-win solution" agreement, guaranteed confidentiality of disputes between parties, avoiding delays caused by procedural and administrative matters, resolving problems in an comprehensive in togetherness, and maintain good relations. Apart from legal remedies through non-litigation, other repressive legal remedies are through litigation or trials.

CONCLUSION

The legal relationship that underlies the rights and obligations between the GRAB Driver and the GRAB Applicator is a Contractual Legal Relationship based on a partnership agreement. The partnership agreement between the GRAB Driver and the GRAB Applicator emphasizes that the agreement is not a work agreement but a partnership agreement, so that the provisions in the laws and regulations governing employment do not apply to the contractual relationship between the GRAB Driver and the GRAB Applicator. This contractual relationship applies since the GRAB Driver
registers and starts executing Orders on the GRAB application for Drivers, since then the rights and obligations are attached to each party and if one party does not carry it out, it can be said that the party committed a Default. The form of default carried out by the GRAB Applicator is carrying out what has been promised but not as promised, this is based on the fact that the GRAB Applicator does not provide full payment of Shipping Costs which is the right of the GRAB Driver and the GRAB Applicator does not give the Right to refuse basic income offers shipping services by imposing sanctions in the form of warnings, suspensions, to termination of the partner if canceling is a step to refuse the basic income offer for shipping services that are deemed inappropriate.

GRAB Drivers can take legal action as an effort to regain rights that are not fully granted by the GRAB Applicator. Legal remedies can be divided into two, namely preventive legal remedies and repressive legal remedies. Preventive legal remedies that can be taken by GRAB Drivers are by urges the government to immediately issue a law or regulation that prohibits system fraud that is detrimental to GRAB Drivers. Legal remedies that can be taken by GRAB Drivers are to carry out demonstrations against the relevant government. The demonstration is a human right that is protected by the constitution and carried out according to the applicable laws and regulations. Meanwhile, the repressive legal remedy that can be taken by the GRAB Driver is to sue the GRAB Applicator through a non-litigation route, namely Arbitration, this is in accordance with article 24 of the Partnership Agreement.

SUGGESTION

GRAB Drivers who feel aggrieved are expected to take legal action in accordance with the terms of the partnership agreement to be able to restore rights that were not fully granted by the GRAB Applicator. The government needs to hasten the formation of laws and regulations that provide legal protection for online motorcycle taxi drivers against a system that is detrimental to online motorcycle taxi drivers. The GRAB applicator must provide a container or forum to accommodate the aspirations of the GRAB Driver as his partner to look for problems that arise and provide a solution in implementing the partnership agreement between the parties.

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