

ONLINE-BASED TRANSPORT ACCOUNTABILITY FOR LOSS OF CONSUMER GOODS IN FREIGHT SERVICES

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ABSTRACT

Company of online transportation in a shipping service which has a role as a subject in carrying of the industry have an obligation and responsibility that relate with Act No. 8 in the year of 1999 about Consumer protection. This research was purposed to determine the accountability of online transportation. The research method used is normative juridical research and using library data. The data derived from primary sources, secondary sources, and tertiary sources that are analyzed descriptively. In the loss of goods when shipping, the company is obliged to be responsible for loss, limitation of responsibility is not by Article 18 of Act No. 8 in the year 1999, because of the existence of a standard clause on the transfer of responsibility

Keywords: Responsibility, consumers protection, loss of goods

1. Introduction

In the era of technological advances nowadays, transportation is essential as the mobility needs of everyday society in Indonesia are especially in Jakarta. The importance of the role of transportation services can be seen from the increasing demand for transportation services for the mobility of people and mobility for goods to all parts of Indonesia. Transportation is divide into three kinds of transportation; Land transportation, water transport, and air transport.¹

Based on the characteristics of online transportation can't be separated from the understanding of road transport. Like, when we want to know someone's character, we must first understand who the person.²

The first is online, which means "in the network" when it is interpreted as Indonesian. Online understanding is the situation where the computer is connected or connected to the internet network. The means that if our computer is connected to the internet network, then we can use internet access and can search for information in any case that is on the internet.

This online-based transportation began to be known in 2010 and inaugurated in 2014, the first online-based transportation established in Indonesia is GO-JEK. Since it was officially established GO-JEK has a very rapid development with a variety of features and services that are increasingly sufficient. These can be seen from the number of drivers that exist up to tens of millions of people who download this GO-JEK app service on the Play Store and App Store. GO-JEK's leading service is to take passengers to their destination. GO-JEK also serves several benefits, namely Go-send, a service between files and goods, Go-food is a food ordering service.

Then followed by other online-based transportation companies, namely, GRAB from Malaysia and Uber from America. This online-based transportation has the same service, which is to take consumers using motorcycles or cars to destinations that are booked through an online application.

Because of the high mobility in Indonesia, the number of online sellers in Indonesia is increasing because many people today want to do or buy an item quickly and easily these

¹ H.M.N Poerwosutjipto, *Pengertian Pokok Hukum Dagang Indonesia* jilid 3, Jakarta: Djambatan, 1995, hlm. 2.

² Andika Wijaya, *Aspek Hukum Bisnis Transportasi Jalan Online*, Jakarta: Sinar Grafika, 2016, hlm. 9

supported by the number of online sellers because it does not require capital to purchase or rent a store for their business goods and the number of online store containers such as e-commerce in Indonesia such as Tokopedia, Bukalapak, Shopee, and make online sellers increasingly exist in the virtual world. E-commerce services and online sellers are certainly many who take advantage of shipping services. These absolute because the world of online commerce can not run well without shipping or transportation services. This means that goods sold by online merchants can reach the hands of consumers only using delivery services.

Transport of goods or delivery of goods itself is an activity that uses transportation to move goods from one place to another.³ The transportation or delivery of these goods is indispensable for the community in moving or sending goods elsewhere to meet their needs.

One of the services that are on the rise is through services that are in online-based transportation. Delivery of goods services through online-based carrier itself is included in the delivery service that is included quickly because the service can arrive within a maximum of 8 hours for the delivery of fellow cities and goods delivery services through online-based transportation can operate 24 hours indefinitely and can be tracked the presence of couriers and goods. This online-based transportation delivery service can only be done for sellers and consumers in 1 city because the service has a maximum limit of delivery of only up to 40km.⁴

Carriage or delivery itself is an alliance derived from an agreement. The agreement derived from the agreement is done by two persons or two parties who agree. According to Poerwosutjipto, transportation is a reciprocal agreement between the carrier and the sender, in which the carrier binds itself to carry out the transportation of people and/or goods from one place to a specific destination. In contrast, the sender binds himself to pay money to the transportation service. From this understanding, there is a reciprocal relationship between the carrier and the sender of goods, but both have their responsibilities.⁵ An agreement or agreement in a goods delivery service company that is where a company is obliged to send goods or documents to consumers or addresses that have been agreed by the parties, such obligations are the full responsibility of the company.

Due to the increasing online sales activity in Indonesia, more and more are using goods delivery services through online-based transportation. Because in value, this is reasonably practical and fast until, but the security aspect has not been fully fulfilled in the delivery service online-based transportation.

The number of drivers from rogue online-based transportation partners makes the number of consumers harmed, starting from the number of drivers or online-based transportation partners themselves who carry the goods that immediately carry the escape. The driver disappears without a trace,⁶ cases that exist today are very detrimental to many consumers, and a fairly severe case that is one of the drivers of online-based transportation companies carrying Mobile iPhone⁷. But in reality, the company only insures up to Rp. 10,000,0000 (ten million rupiah).⁸ So this is not following Law no.8 of 1999 on Consumer Protection, in article 4 letter H, which states that if the goods and/or services received are not following the agreement or not as appropriate, the consumer has the right to obtain compensation, compensation and/or reimbursement.⁹

The above events and cases are certainly very detrimental to users of goods delivery services through online-based transportation ranging from consumers to sellers or businesses. This case proves that the online-based transportation company is less concerned about the safety and

³ Soegijatna Tjakranegara, *Hukum Pengangkutan Barang dan Penumpang*, Jakarta: Rineka Cipta, 1995, hlm. 1

⁴ www.go-jek.com/gosend

⁵ Suharnoko, *Hukum Perjanjian*, Jakarta: Prenada Media, 2004, hlm. 117

⁶ <https://www.cnnindonesia.com/teknologi/20160812215504-185-151101/antar-ponsel-pakai-gosend-sopir-GO-JEK-hilang-tanpa-jejak>

⁷ <https://chirpstory.com/li/384787>

⁸ <http://www.go-jek.com/faq/layanan/go-send/>

⁹ Indonesia, Law No.8 of 1999 on Consumer Protection.

security of the goods sent. Therefore, due to the company's agreements or ties with its service users, the company must be required to handle cases that occur to be resolved.

2. Result And Discussion

Every online transportation company must have rights and obligations that must be applied in that company. One of the obligations is a form of corporate responsibility for the transportation or delivery of goods. Liability can be seen or can be felt by service users in the event of a problem such as loss or damage to the package of goods.

Responsibility is an obligation, so the safety of goods is the responsibility of the carrier. Thus, the carrier is obliged to bear all losses suffered by the consumer operator of the carrier.¹⁰ However, in its implementation, there are many omissions committed by drivers of online-based transportation operators as transportation companies. A result of such negligence is the responsibility of the online-based transportation operator.

The issue of the accountability of businesses or online-based transportation operators can be attributed to consumer protection laws. In the trade of goods and/or services, the primary purpose of such companies is to obtain profit from the obligation of consumers to pay a certain amount of price that has been set and delivered to businesses or online-based transportation operators. However, because the consumer has paid for something, the consumer has the right to obtain enjoyment of the goods and/or services traded by the business. The form of pleasure of what consumers get for goods and/or services includes a sense of security and safety.¹¹

Based on the principles of consumer safety and security contained in the Consumer Protection Law, it is intended that businesses provide security and safety guarantees to consumers in the use, use, and utilization of goods and/or services consumed or used. The warranty is formulated in several articles on the Liability of businesses if it is proven that the consumer's right to safety and security is not fulfilled.¹²

Based on article 19 paragraph (2) of the Consumer Protection Act, the form compensation for damage, pollution, and/or consumer losses due to consumer goods and/or services produced or traded can be in the form of refunds, health care, compensation.¹³ The structure of responsibility for transportation there are three concepts, i.e.:

a. Liability by Mistake

Any fault of the carrier in carrying out the carriage shall be responsible for paying any losses arising due to its error, and the aggrieved party shall prove the carrier's guilt. The burden of proof is on the harmed party, not on the carrier. Such Liability is in article 1365 of the Indonesian Civil Code concerning unlawful acts as a general rule. While the specific rules are specified in the laws and regulations governing each type of carriage.¹⁴

b. Liability under a presumption

According to this Liability, the carrier is held responsible for any losses arising from its transportation services. However, if the carrier can prove that the carrier is innocent, he can be freed from the responsibility to pay the damages. In this case, it means that the innocence of the carrier can prove that he did not commit negligence, has tried to avoid the occurrence of losses, or that the incident is impossible to avoid. In this Liability, the

¹⁰ Ridwan Khairandy, *Pengantar Hukum Dagang I*, Yogyakarta: Graha Media, 2000, hlm. 184.

¹¹ Andika Wijaya, *Op.Cit.*, hlm.113.

¹² *Ibid.*

¹³ *Ibid*, hlm. 114

¹⁴ Abdulkadir Muhammad, *Hukum Pengangkutan Darat, Laut dan Udara*. Bandung: PT. Citra Aditya Bakti, 1991

obligation to prove is the carrier and not the party that was harmed. The aggrieved party only indicates any losses incurred.¹⁵

c. Absolute Liability

Based on this Liability, the carrier is responsible for any losses incurred in the carriage service without any obligation to prove the carrier's fault. This accountability does not recognize the burden of proof and the element of error. This absolute Liability is not stipulated in the Act of carriage. It is not regulated because businesses in the field of transportation services are not burdened with severe risks. The parties may promise using this Liability for practical purposes in the resolution of responsibilities based on the principle of freedom of contract.¹⁶

In public transportation, business practices are responsible for losses suffered by passengers, shippers, or third parties, due to negligence or error in carrying out transportation services. The amount of compensation is the number of losses manifestly suffered by passengers, shippers, or third parties. The responsibility of the public transport operator to the passenger begins from the moment the passenger arrives at the agreed destination of the carriage. The responsibility of the owner of the goods starts from the receipt of the goods to be carried until the delivery of the goods to the sender and/or recipient of the goods.¹⁷

The Indonesian Book of Trade Law adheres to responsibility based on the presumption that if the goods transported are not delivered in part or in whole or damaged, the carrier is responsible for indemnifying the sender unless he can prove that it is not due to events that cannot be prevented or unavoidable (*Force Majeure*).¹⁸

In addition, based on article 19, paragraph (1) of the Consumer Protection Law is determined by the absence or absence of wrongdoing in businesses. If damage, pollution, is a consumer's fault, then the provisions of responsibility in article 19 paragraph (1) and paragraph (2) in the Consumer Protection Law does not apply or can be waived in the responsibility of compensation if it can prove that the error is the fault of the consumer.¹⁹

Thus it is clear that Indonesian transport law adheres to the responsibility based on errors and based on presumptions. Responsibility based on misunderstanding is the basis, while responsibility based on view is an exception. In other words, the carrier shall be liable for any losses incurred. However, if the carrier can prove that the complainant is innocent or negligent, the carrier is exempt from such Liability.²⁰

Based on article 19 paragraph (4) of the Consumer Protection Act, the awarding of compensation does not eliminate the possibility of criminal charges based on further evidence of an element of wrongdoing. Thus, the responsibility of business actors is divided into 2 (two) aspects, namely the civil aspect (private law) and the criminal aspect (public law).²¹

The extent of the responsibility of the carrier other than contained in the Consumer Protection Act is also specified, in Article 1236, which reads, "The debtor is obliged to reimburse the creditor for costs, losses, and interest if he makes himself unable to deliver the goods or does not take good care of them to save them." Article 1246, which reads "Costs, damages, and interest, which the creditor can sue, consist of the losses he has suffered and the benefits he or she can obtain, without prejudice to the exceptions and changes mentioned below" contained in the Indonesian Civil Code.

¹⁵ *Ibid*, hlm. 54.

¹⁶ *ibid*, hlm. 56.

¹⁷ *Ibid*, hlm. 50.

¹⁸ *Ibid*, hlm. 55.

¹⁹ Andika Wijaya, *Op.Cit.*, hlm.115.

²⁰ Abdulkadir Muhammad, *Op.Cit.*, hlm. 55.

²¹ *Ibid*.

In this case, the online-based transportation operator is not a business actor in transportation; therefore, the responsibility it has is not the same as the responsibilities that transportation businesses have in general. Although the driver (partner) is not an employee of an online-based transportation company, then Liability also cannot be charged to the driver. After all, the driver is not included as a business because the driver only does the job and does not run the business. In other words, the driver (partner) of online transportation, including labor. Therefore, because online-based transportation companies are the only parties as businesses, then the online-based transportation companies must be responsible for losses suffered for using online-based transportation companies.

Carrying out an activity will indeed not be separated from the risks that occur because all activities carried out by humans certainly do not escape from negligence and mistakes. Troubles can happen anytime and anywhere, including implementing the delivery of goods through online-based transportation companies. The parties will not know when and where the risk of goods damage or loss will occur.

Online-based transportation companies are undoubtedly aware of the risks that occur on the streets because their partners are 90% on the road. Online-based transportation companies certainly have agreements and provisions with consumers regarding the transportation of goods. The existence of such contracts and conditions may result in a legal relationship. The legal relationship should have been referred to the existing laws and regulations in Indonesia and especially on the principles of consumer protection contained in Law No. 8 of 1999 on Consumer Protection. As an online-based transportation company, they should as businesses provide certainty and legal guarantees to their consumers. Online-based transportation businesses are obliged to protect every item they send through the delivery service they provide. The protection offered by online-based transportation businesses in the form of safety and security of goods such as good storage of goods at the time of delivery to provide responsibility in the form of compensation in case of negligence that causes loss in delivery of goods.

In the Consumer Protection Law written on consumer rights and obligations of perpetrators, it is clear that if consumers feel harmed, then businesses are obliged to replace all losses suffered by consumers. In the terms and conditions of gojek application has a provision on the prohibition of buying and/or transporting or sending valuables or goods worth more than Rp10.000.000,-²²

But nowadays, many consumers violate the rules, where many consumers buy goods with a price exceeding Rp. 10.000.000 (ten million Rupiah) in their delivery using the services of online-based transportation companies; usually, these consumers use this goods delivery service for delivery through purchases on e-commerce such as buying mobile phones and other electronic devices. In many cases, many of them are lost because they were taken away by partners or drivers of online service transport companies.²³

In this case, the online-based transportation company is not responsible for losses in the event of failure of goods that nominally exceed the insurance limit of Rp. 10,000,000 (ten million Rupiah) due to errors due to negligence of the partner or driver of the company. Whereas in the field, the delivery of goods worth Rp. 10,000,000 (ten million Rupiah) can still be carried out through e-commerce such as tokopedia and shopee. The delivery can be carried out using online-based freight delivery services such as GOJEK and GRAB.

Many problems arise because the general provisions of a business are not following the rule of law that has been in force, both public and special. Therefore, this study wants to see the elements of accountability of online-based transportation companies. Based on the rule of law in Article 18 of the Consumer Protection Act, which discusses the terms of the standard clause.

Article 1320 of the Civil Code, which discusses the terms of validity of an agreement. Therefore, concerning unilateral agreements, in the general provisions on the delivery of goods in online-based transportation companies have not been following the terms that have been determined from the contents of the rule of law Article 18 Of Law No. 8 of 1999 on Consumer

²² <https://www.go-jek.com/terms-and-condition/>.

²³ <http://jakarta.tribunnews.com/2018/03/08/diduga-driver-ojek-daring-bawa-kabur-iphone-x-saat-gunakan-layanan-kurir-barang#gref>

Protection and Article 1320 of the Civil Code. Because of the content of the general provisions on online-based transportation companies, there is no liability in case of loss or damage to goods whose nominal value exceeds Rp. 10,000,000 (ten million rupiah). However, in reality, online-based transportation companies are willing to accept orders to deliver goods whose nominal value exceeds Rp. 10,000,000 (ten million rupiah), it should be that if the company does not want to be responsible, the company does not need to do unaccountable work.

In the general provisions of online-based transportation companies contained above can be seen that the occurrence of a waiver to consumers. Based on Article 18 paragraph (1), letter (a) explains that businesses are prohibited from transferring the responsibility of business actors. However, if it is reviewed from the content of the rule of law Article 1320 of the Civil Code, concerning the valid terms of an agreement, then it can be said that the general provisions on online-based transportation companies with consumers have not met the terms of a formal agreement in Article 1320 of the Civil Code. Because in a contract, there must be a word of understanding from both parties, while in the general provisions, an agreement is made based on a unilateral decision that burdens consumer responsibility. The legal subject of the general provisions agreement on the delivery of goods contained in this online-based transportation company, namely: Consumers, online-based transportation companies, partners, or drivers.

In this case, that should compensate is an online-based transportation company as an intermediary service provider. However, according to the driver-partner in the field of compensation, if there is negligence done by the driver-partner then, the settlement must be done by the driver-partner. If the payment is wanted to be done by the online-based transportation company, the driver-partners must register insurance to the company office and pay a premium of Rp. 15,000 (fifteen thousand rupiah) for each month that the company only 50% of the item's price value.²⁴

In the provisions of online-based transportation companies, the company only wants to receive profit by taking orders from the parties, primarily e-commerce. If there is negligence in their driver-partners, who carry out such Liability, and in case of crimes committed by drivers or partners, the company imposes restrictions on Liability.

And with the supreme court cassation decision No. 2078 K / Pdt / 2009, which states about the parking case wherein this case Sumito Y. Viansyah as lost his motorcycle parked in fatmawati mas complex located on jalan RS. Fatmawati, South Jakarta managed by the defendant, namely PT. Securindo Packatama Indonesia (secure parking). Then the bike does not exist or disappears in the place where the bike is parked; finally asks for accountability to the defendant to replace his motorcycle, but the defendant is only concerned and sorry for the incident while stating that he can not do Liability based on Regulation No. 5 of 1999, Article 36 paragraph (2), it is stipulated that loss is the responsibility of the parking lot user. This case has been mediated, but the result of the defendant only paid compensation of Rp. 7,000,000 (seven million Rupiah) only, this was rejected by the litigant because the value is far from the value of the litigant's loss so that the litigant took the case to the supreme court and won the case in the District Court. The defendant made a cassation in the Supreme Court, with consideration because the defendant listed a standard clause on the transfer of Liability in violation of article 18 of Law no. 8 of 1999 concerning consumer protection, which contains businesses in offering goods/services intended for trading is prohibited from making or listing the standard clausula on each document and/or agreement if: a. transfer responsibility.

Therefore, Defendant is obliged to bear the loss of the Plaintiff's motorcycle in the place of management of the defendant because with the loss of the bike belonging to the litigant, then the defendant must be responsible. Therefore, the regulation and certainty of the standard clause made by businesses and in violation of Article 18 of Law No. 8 of 1999 consumer protection, the legal clause cannot apply.

Thus, with the example of the parking case that the supreme court has decided, then the online-based transportation company is obliged to indemnify all losses experienced by consumers if the party of the online-based transportation company is proven to have made a mistake because

²⁴ Interview with Go-jek driver partners

the standard clause governing the transfer of responsibility can not apply, online-based transportation companies are still obliged to reimburse all losses experienced by consumers due to negligence by partners or drivers of online-based transportation companies.

And according to the results of interviews conducted by the author, if an online-based transportation company is proven to have done wrong because of its recklessness to accept driver-partners who do not have good faith because of carrying goods in the service of delivery of goods then, it has entered the criminal realm. If it has been criminally proven guilty, then online-based service transport companies are obliged to replace the losses experienced by consumers even though the value of the goods exceeds the limits of Liability determined by online-based transportation companies.²⁵

3. CONCLUSION

The implementation of goods delivery services in online-based transportation companies is not a transportation company because its business license is not in the field of transportation, but rather an application company whose activities use application technology as one way of transactions to provide easy access for consumers in ordering transportation. However, in the case of freight services, online transportation transport remains responsible for the risks that occur. However, online-based transportation imposes Liability restrictions that make consumers lose if the Liability. There is a limitation of Liability because it is not following Law No. 8 of 1999 on Consumer Protection Article 18 because of the standard clause on the transfer of responsibility.

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²⁵ interview with vice chairman of BPSK