

PROTECTION OF CIVIL LAW AND CRIMINAL LAW FOR ONLINE FOOD DELIVERY APPLICATION PARTNERS AGAINST COUNTERFEIT ORDER CRIME

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Abstract

Currently, many transportation companies create features/applications that offer transportation and food delivery services. As the innovation of this technology develops, several cases of crimes often appear in online motorcycle taxi applications for food delivery, namely the large number of fictitious orders. This type of research is normative juridical research with a statute approach through qualitative descriptive analysis. This research is intended to determine efforts to protect civil law and criminal law for online food delivery application partners against the crime of fake/fictitious orders. This research shows that legal protection for online food delivery application partners in terms of civil and criminal law in the crime of fictitious orders.

Keywords: *Legal Protection; Online Crime; Fictitious Order*

I. INTRODUCTION

The increasing number of smartphone users impacts people's activities regarding fast and practical buying and selling activities. Buying and selling, which initially could only be done directly on the spot, can now only be done using a smartphone and the internet at home or even anywhere. The practice of buying and selling online is regulated in Article 1 paragraph 2 of Law No. 19 of 2016 concerning Amendments to Law No. 8 of 2011 concerning Information and Electronic Transactions. This article explains that electronic transactions are legal acts carried out using computers, computer networks and other electronic media.³

Currently, transportation companies are developing features/applications that can offer transportation and delivery services in their way. An example of using a transportation company is GO-JEK. This transportation application, often called "Ojek Online", is also a form of technological progress expected to make people's daily activities easier. The services offered by the online motorcycle taxi company include public transportation services such as motorcycle taxis or online taxis, transportation of goods, and one of the most frequently used by the public is food or drink delivery services.

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Unfortunately, this causes many crimes to occur along with the development of technological innovation. In several cases, what we can see about crimes that often appear in online motorcycle taxi applications is the large number of fictitious orders. The definition of a fictitious order itself is an action carried out by someone who makes an order such as food or drink by providing a name, address, telephone number, or other data that is incorrect or fake, thereby causing losses to online food delivery people.⁴

Regarding the practice of fictitious orders, consumers as perpetrators of fictitious orders order using the cash payment method. Here, the party who the consumer harms is the delivery partner or what is usually referred to as the driver. According to Tarsisius Murwadji, the quality of law is the conformity between *das sollen* and *das sein*. *Das sollen* is what should happen, in other words the regulations that regulate it, namely statutory regulations, while *das sein* is what happens as a reality in society or the standardization of legal quality. Legal effectiveness is the level of conformity between *das sein* and *das sollen*.⁵

The difference between actions carried out by Drivers and consumers is that the actions carried out by Drivers are usually by falsifying consumer accounts and restaurant accounts so that it appears as if he is placing an order and delivering the order. Still, he is controlling it only from home. Meanwhile, fictitious orders made by consumers are done by ordering food or drinks using another account that is not theirs, then they give a fake name, address or telephone number to the online food delivery driver. This action causes losses to online food delivery drivers, such as loss of petrol, energy, money and time. Let's look at the perpetrator's actions. There is a criminal act in the form of falsifying data such as addresses or telephone numbers, categorized as a criminal act of fraud. A criminal act is an unlawful act committed by a person and fulfills the elements of a crime so it deserves to be punished according to the law. formulated in the Criminal Code. Apart from that, this can also be detrimental to the victim in terms of civil law.

II. DISCUSSION

Civil Law And Criminal Law Protection Efforts For Online Food Delivery Application Partners Against Fake Order Crimes

1. Civil Law Protection

The word for protection in English is called protection. Protection comes from the basic word "Protect" which means to protect, maintain, prevent, defend and fortify. According to the KBBI, the term protection can be equated with the term protection,

⁴Widya Nengsih, *Perlindungan Hukum Bagi Driver Online Akibat Orderan Fiktif Di Tinjau Dari UU No. 13 Tahun 2003 (Studi Kasus Pt. Maxim Kota Kendari)*, E-Journal IAIN Kendari, Vol. 3, No. 2, 2021, p. 33.

⁵Tarsisius Murwadji, "Integrasi Ilmu Mutu ke Dalam Audit Mutu Hukum di Indonesia", *Jurnal Hukum POSITUM*, Volume 1 Nomor 2, Juni 2017, p. 152.

which means a place of refuge, the thing (action) of protecting.⁶ Legal protection is an activity to safeguard, maintain and protect human rights and obligations in order to achieve justice. Legal protection is literally a method, process, act of protecting based on the law or it can also be a protection provided through the law.⁷ According to Endang Purwasih in his book *Legal Protection* is divided into:

- a. Preventive legal protection aims to prevent this from happening dispute.
- b. Repressive legal protection, aimed at literally resolving disputes. Legal protection can be interpreted as a method, process, act of protection based on law, or it can also be interpreted as protection provided through legal means.

Nowadays there are many cases of fictitious orders/orders. Consumer actions with bad intentions cause the losses experienced by drivers. This action takes the form of consumers ordering online foodservice delivery services. But consumers' whereabouts often do not match the data in the application.

Law has a function as an instrument for protecting human interests so that the interests of humans can be protected, so that the law must be enforced as fairly as possible. The law enforcement process can take place peacefully in accordance with what is envisioned, but sometimes there are legal violations in law enforcement itself. In law enforcement there are elements of legal certainty, expediency and justice.⁸

The act of placing a fictitious order by a consumer is categorized as an unlawful act, as regulated in Article 1365 of the Civil Code. This article stipulates that an unlawful act is an act that violates legal provisions, brings losses, and creates an obligation for the perpetrator to compensate for these losses. The elements of an unlawful act are that there is an act, the act violates legal provisions, there is an error, there is a loss, and there is a cause-and-effect relationship between the act and the loss.⁹

If we relate the elements of an unlawful act to a fictitious order carried out by a consumer, then the first element is that the consumer carries out an act.

The second element is that the consumer's actions violate legal provisions, namely Article 1338 paragraph (3) of the Civil Code which requires parties to an agreement to carry out the agreement in good faith. The third element is that there is an error on the part of the consumer as the perpetrator of the act of ordering fictitiously. The fourth element is the losses experienced by online motorcycle taxi drivers. With the act of ordering fictitiously by consumers, this can be detrimental to online motorcycle taxi drivers. The final element is that there is a cause-and-effect relationship between the actions carried out by consumers and the losses suffered by online motorcycle taxi drivers. About fictitious orders made by consumers as users of online transportation service provider applications, this is related to losses suffered by online motorcycle taxi

⁶Dendi Sugiono, *Kamus Besar Bahasa Indonesia* Jakarta: Pusat Bahasa, 2008, p.9

⁷Endang Purwasih, *Hukum Bisnis*, Bogor: Ghalia, 2010, p.34.

⁸Sudikno Mertokusumo, *Mengenal Hukum*, Yogyakarta: Liberty, 1999, p. 145.

⁹ Indah Sari, "Perbuatan Melawan Hukum (PMH) dalam Hukum Pidana dan Hukum Perdata", *Jurnal Ilmiah Hukum Dirgantara*, Volume 11 Nomor 1, September 2020, p. 65-67.

drivers, namely the act of fictitious orders by consumers as the cause and losses experienced by drivers as a result. For an act to be categorized as an unlawful act, the act must fulfill all the elements of an unlawful act.¹⁰

Let's compare it with the civil law of other countries, for example Malaysia in this fictitious order case. It provides a strong legal basis for handling disputes between food delivery drivers and consumers related to fraud. One important aspect of civil law is contracts. When a food delivery driver receives an order from a consumer, this is considered a contract between the food delivery party and the consumer. This contract includes an agreement between the driver and the consumer regarding the price, delivery time and goods to be delivered.¹¹ Suppose consumers deliberately deceive drivers by providing false information or ordering food without the intention of paying for it. In that case, drivers can take legal action through civil courts to claim compensation or recovery of losses suffered.¹²

Malaysian civil law also protects food delivery drivers from fraud by protecting intellectual property. If a driver has created a system or technology specifically for its operations and consumers or competitors try to copy or use it unlawfully, the driver can use intellectual property law to protect its innovation and sue for damages for such misuse. Additionally, in the context of civil law, Malaysia has strong consumer laws that provide consumers and service providers (including food delivery drivers) with certain rights and protections. If consumers intentionally or with bad intentions commit fraud, drivers can use these consumer laws to protect their rights and seek compensation. However, drivers must also ensure that they have carried out their duties in good faith and by the requirements set out in consumer law¹³.

The act of placing a fictitious order by a consumer can be said to fulfill all the elements of an unlawful act. Therefore, the legal consequence of the act of placing a fictitious order by a consumer as a user of an online transportation service provider application is that an obligation arises for the consumer as the perpetrator of the fictitious order to pay compensation to the driver for the losses experienced by the online motorcycle taxi driver. Drivers who experience losses due to fictitious orders have the right to apply for compensation to the perpetrator, namely the consumer. This is based on Article 1365 of the Civil Code which categorizes the act of ordering fictitiously as an unlawful act. In its regulation, it has been explained in Article 1365 of

¹⁰ Fitrah Rizqy dan Syahrizal, "Tinjauan Yuridis terhadap Perbuatan Melawan Hukum dan Sanksinya", *Jurnal Ar-Raniry*, 2019, p. 244.

¹¹ Kurniawan, F., Firmanda, H., & Bachtiar, M. (2020). Consumer Protection of Dissemination of Advertisements Which is Not According to Business Persons Based On the Responsibility Principles Absolute (Strict Liability). *Melayunesia Law*, 4(2), 146. <https://doi.org/10.30652/ml.v4i2.7773>

¹² Kaleck, W., & Saage-Maaß, M. (2010). Corporate accountability for human rights violations amounting to international crimes: The status quo and its challenges. *Journal of International Criminal Justice*, 8(3), 699–724. <https://doi.org/10.1093/jicj/mqq043>

¹³ Naemah Amin, & Roshazlizawati Mohd Nor. (2016). E-consumer Protection in Delivery of Goods: A Malaysian Perspective. *Journal of Education and Social Sciences*, 3 (Feb.), 38–44.

the Civil Code that every person who commits an unlawful act must be responsible for the harm he causes to other people, and this responsibility is mandatory.

Generally, consumers are not responsible for using one of the food delivery service applications such as GO-JEK, GRAB, or MAXIM. Application users should be obliged to carry out their rights and obligations and to reach transaction agreements based on good intentions as stated in Article 1338 Paragraph (3) of the Civil Code. The sale and purchase transaction agreement at the food delivery service company is reached. It is valid when the consumer purchases an order for a service in the online delivery service application. Conversely, if the consumer decides not to order or cancels the order before payment, then the agreement does not occur.

People who have ordered fictitious orders have violated these rules, namely that an agreement must be carried out on a good basis or reason and are valid according to law and do not violate the initial agreement, parties who carry out fictitious orders also violate Article 5 (b) UUPK.

This clause stipulates that consumers are obliged to carry out payment transactions. So what happened was that the driver suffered a loss because of a user who had bad intentions. As a result, Article 6 letter a of the Consumer Protection Law regarding the driver's right to receive a certain amount of payment is not fulfilled, because the perpetrator of the fictitious order cannot be contacted and the destination address is a fictitious address or someone else's address.

Acts against the law are said to be acts that are contrary to and not in line with the ideals of the law. In behavior or actions that are considered dangerous, the perpetrator or subject who commits an unlawful act must be responsible for what he or she caused to the victim for legal reasons.

2. Criminal Law Protection

According to Satjipto Rahardjo, legal protection aims to protect human rights that other people violate, and this protection is provided to the community and allows them to enjoy all the rights granted by law. In short, law enforcement officials need to offer various legal remedies so that legal protection provides physical and psychological peace from harassment and threats from various parties.¹⁴

In its application, legal protection uses means which are divided into two forms of means, namely preventive protection and repressive protection. According to Philipus M. Hadjon, preventive legal protection is legal protection given to legal subjects to provide an opportunity to raise objections or opinions before a government decision takes definitive form, then repressive legal protection is protection in the form of sanctions such as fines or compensation.¹⁵

¹⁴Satjipto Rahardjo, Ilmu Hukum, Bandung : Citra Aditya Bakti, 2000, p. 69.

¹⁵Philipus M. Hadjon, et.all, Pengantar Hukum Administrasi Indonesia, Yogyakarta: Gajah Mada University Press, 2011, p. 30

The crime of fake orders is an online-based fraud crime which, if we look at it, is actually the same as the crime of fraud as regulated in Article 378 of the Criminal Code. The basic difference between conventional fraud and technology-based fraud can be seen from the means of action. This is because conventional fraud as regulated in the Criminal Code is a common type of fraud and is aimed at fraud that occurs in the real world, not in cyberspace. Based on this, we can examine Article 378 of the Criminal Code where the article contains "Whoever to benefit himself or another person by violating the rights, either by using a false name or false circumstances, either by means of wit and deception, or by making up words." - lying, persuading someone to give something, creating a debt or writing off a receivable, shall be punished for fraud, with a maximum prison sentence of four years."

If the rules regarding fraud are regulated in Article 378, if explained, two main elements are contained in this article. Firstly, the objective element in Article 378 is persuading or moving other people by using a false name, false dignity, a series of lies/deceptive words, handing over goods, creating receivables, and writing off receivables. Furthermore, the subjective element contained in Article 378 is that it is intentional or to benefit oneself or others by violating the law.

Apart from that, if you compare the criminal law with other countries, in this case Malaysia, the criminal law has a crucial role in protecting food delivery drivers from consumer fraud. If the consumer's actions are considered a crime or criminal, the driver can report them to the authorities. In cases of fraud, the applicable criminal law articles include Articles 405 to 409 of the Malaysian Criminal Code which regulate fraud, forgery and cheating in transactions. When a food delivery driver becomes a victim of fraud, they can report it to authorities, such as the police, and file a crime report. The authorities will investigate to uncover the perpetrators of the fraud and bring them to justice if found guilty. In fraud cases, food delivery drivers can also work with the authorities to gather the evidence needed to prosecute the fraud perpetrators.

Malaysian criminal law also regulates sanctions and punishments for perpetrators of fraud. This includes prison sentences, fines, or a combination of both, depending on the severity of the fraudulent act. This is an important step in protecting food delivery drivers from fraud, because it can deter consumers with bad intentions. However, it is important to remember that food delivery drivers must also play an important role in protecting themselves in both civil and criminal law cases. They must ensure that they conduct their business in good faith, comply with applicable regulations, and have sufficient evidence to support their claims if they encounter fraud. This can include recording customer contact information, keeping proof of orders, and maintaining good transaction records.

Civil law and criminal law in Malaysia, alternative mechanisms such as mediation or arbitration can be used to resolve disputes between food delivery drivers and consumers. Mediation is a process in which disputing parties try to reach an agreement through the help of a neutral mediator. Arbitration, conversely, involves disputing parties submitting their dispute to an independent arbitrator who will issue a binding decision. In cases of fraud, mediation or arbitration can be an effective alternative to

resolve disputes in a faster and more economical way than going to court. However, food delivery drivers should ensure that they understand this process and their rights before taking these steps.

In Indonesia, the agreement made between the parties in a buying and selling transaction at a food delivery service company is a binding agreement which gives rise to rights and obligations, this principle confirms that "every agreement made legally applies as law for those who make it". By Article 1338 of the Civil Code. Therefore, agreements must be kept or an agreement made must be kept. This article explains that there is no reason for those involved in an agreement not to fulfill the achievements. If one party defaults, losses will arise for the other party so that they have the right to sue and ask for compensation from the party who does not fulfill their obligations.

Provisions regarding consumer good faith in implementing an agreement are also regulated in Article 17 paragraph (2) of Law Number 19 of 2016 concerning Amendments to Law No. 8 of 2011 concerning Information and Electronic Transactions and Article 5 of Law Number 8 of 1999 concerning Consumer Protection. The act of ordering fictitiously can be said to violate the principle of good faith. This is because consumers are considered to have done so intentionally and without rights or against the law, so that their actions can cause harm to other parties without the other party's knowledge. Suppose you look at the principles regulated in Article 3 of Law Number 19 of 2016 concerning Amendments to Law No. 8 of 2011 concerning Electronic Information and Transactions. In that case, there is the principle of legal certainty, the principle of benefit, the principle of prudence, the principle of good faith, and the principle of freedom to choose technology.

Apart from violating the principle of good faith, the act of ordering fictitiously by consumers also violates the principle of benefit and prudence. Fictitious orders violate the principle of benefit because consumers do not support the information process they undertake to improve people's welfare. This is not by the meaning of the principle of benefit itself. The act of ordering fictitiously is also not by Article 4 of Law Number 19 of 2016 concerning Amendments to Law No. 8 of 2011 concerning Information and Electronic Transactions which emphasizes that the use of information technology and transactions is carried out to provide a sense of security and justice for users. On the other hand, the act of ordering fictitiously does not support the welfare of society. It does not provide a sense of security and justice for online motorcycle taxi drivers. If a driver receives an order ordered via the cash payment method, the driver is haunted by the fear of getting a fictitious order.

Based on Article 35 in conjunction with Article 51 paragraph (1) of Law no. 19 of 2016 concerning Amendments to Law no. 11 of 2008 concerning Electronic Information and Transactions which explains that "any person who intentionally and without any right against the law manipulates, creates, changes, removes, destroys electronic and/or electronic documents with the aim that the electronic information and/or electronic documents are considered as if it were true." Where Article 35 contains the following elements:

a. The element "everyone", here what is meant by "everyone" is the person or legal subject who commits the act. in this case the perpetrator committed fraud by using a food delivery application.

b. The element "intentionally and without right", what is meant by intentionally is having the intention and will to carry out a prohibited act.

c. The element "Manipulating, creating, changing, transferring, destroying electronic information, with the aim of making the electronic information appear to be authentic data", what is meant by this element is that the perpetrator in carrying out the criminal act did not use his personal data but instead used fake data or even using other people's data taken without the account owner's knowledge to disguise himself so that it appears as if the data used to commit the fraud is his data.

Apart from that, if seen from the theory of consumer security and safety principles, Law Number 8 of 1999 concerning Consumer Protection states that consumers are guaranteed security in the entire process of utilizing the selected services. Online food service delivery drivers have the right to receive money as a form of payment in accordance with what was agreed at the beginning, the condition of the goods being bought and sold, and the right to receive protection against acts of bad faith.

Generally, Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection regulates the rights and obligations between business actors and consumers. This Consumer Protection Law exists and is intended to provide clarity, certainty, security and legal balance between business actors and consumers. In buying and selling transactions, consumer protection is very important. Consumers and producers can receive benefits that do not harm either party. Therefore, Law No. 8 of 1999 ensures honesty, information openness, and good faith from both parties, both consumers and business actors, in order to produce fair transactions.

The legal protection provided by companies to online food service delivery people is not optimal, this is because the legal relationship formed between the application company and online food delivery companies is a legal partnership relationship where the relationship assumes that the company and food delivery people have the same position and are mutually beneficial. This partnership legal relationship is stated in standard agreements, where sometimes there are still partnership work agreements that are not mutually beneficial in some online food delivery companies, so this is what makes the legal protection provided by companies to online food delivery companies not optimal. Even though several food delivery companies have provided preventive measures to avoid the crime of fake orders, namely by forming a Task Force, advising to be more careful, and Canceling Order menus, this is still not optimal in providing legal protection to online food delivery company.

If viewed from the legal aspect, whether criminal law or civil law, the current problem of legal protection for online food delivery is still adapting to existing and applicable legal arrangements based on the crimes that occur in online food delivery. Still, there needs to be a law that regulates it legally. Clear regarding legal protection for online food delivery people regarding fraud, especially crimes such as fictitious orders. Furthermore, it is hoped that the legal partnership between the company and the online

food delivery person stated in the standard agreement should be able to provide benefits for both parties and not be one-sided.

III. CONCLUSION

Legal protection protects human rights and the rights and obligations arising from legal relationships between legal entities. So far the regulations governing the protection and rights of business actors are contained in Law No. 8 of 1999 concerning Consumer Protection, where business actors have the right to receive appropriate payments, but do not specifically regulate the right to compensation for business actors who experience losses due to default. carried out by consumers. Therefore, online food service delivery people who experience fictitious orders will find it difficult to obtain protection through appropriate compensation. Apart from that, transactions carried out online are also regulated in Law No.11 of 2008 as amended by Law No.19 of 2016 concerning Electronic Information and Transactions. Reconciliation can also be carried out through civil law as regulated in the Civil Code. Legal protection is expected to be able to protect legal entities whose aim is to achieve justice, interests and legal certainty in society. It is hoped that the company can continue to improve and update the application system and can create a tracking system for fake order fraud to minimize cases of fake order fraud that end up causing losses for victims. In addition, as a preventive measure, companies should encourage application users to switch to electronic payment methods.

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