



Inclusion of an Exoneration Clause in a Standard Agreement on the Transfer of Liability on the Terms of Use of Gocar

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Article	Abstract
Keywords: Standard Agreement; Exoneration Clause; Consumer Protection Principles; Liability	<i>Standard agreements contain provisions referred to as standard clauses. The Consumer Protection Law regulates the inclusion of certain standard clauses in Article 18. These provisions are made to realize the equal position of the relationship between business actors and consumers. GoCar's terms of use include an exoneration clause in point 2E. The clause is not in accordance with the provisions of Article 18 paragraph (1) letter a of the GCPL Law, which states that business actors are prohibited from including standard clauses in agreements if they contain statements transferring the responsibility of business actors. This study aims to analyze the suitability of the Terms of use of Gocar with the principles of consumer protection and the form of liability that should be carried out by Gojek to consumers for losses in terms of safety in driving. This research uses normative legal research methods with research approaches in the form of statutory approaches and conceptual approaches. The results showed that the provisions of the use of GoCar are not in accordance with the principles of consumer protection listed in Article 2 of the GCPL. The provisions of the use of GoCar are not in accordance with the principles of justice and the principles of consumer security and safety. The form of liability of business actors can be carried out in accordance with the provisions of Article 19 of the GCPL, namely by returning money or goods/services, health care, and providing compensation. The liability mentioned in Article 19 paragraphs (1) to (4) is carried out with proof of fault by the business actor. This responsibility for fault is regulated in Article 19 paragraph (5), Article 22, and Article 28 which state that the burden of proof for fault is the obligation of the business actor. This emphasizes that liability is carried out with the principle of responsibility based on the element of fault.</i>

INTRODUCTION

The era of the Industrial Revolution 4.0 is very close to the rapid development of internet technology. The rapid development of the internet makes people indirectly have to adapt. This is because most aspects of life in society have been connected and can be accessed via the internet (Mitrohardjono, M. and Yunus, M., 2021). The development of the internet in the era of the Industrial Revolution 4.0 has positive

benefits in helping people to carry out their daily lives. One of the fields affected by the development of the internet in the Era of the Industrial Revolution 4.0 is the transportation sector.

Transportation facilities in social life act as a function of support, development, and transportation, both people and goods. The transportation function in question is the process of moving passengers and / or goods from one place to another (Abbas Salim, A., 2016 © 1993). Transportation facilities with good quality play a role in helping people to carry out their daily activities quickly and practically. The means of transportation available in Indonesia include air, sea and land transportation. One of the means of transportation that is in great demand by people in Indonesia to travel is using a car. People feel more comfortable when driving by car. This is because driving by car is felt to be more relaxed and avoid the heat of the sun (Affandi and Parikesit, 2022). Transportation service providers are oriented towards this to provide transportation services using cars, namely taxis.

In the Era of the Industrial Revolution 4.0, technological developments in the field of transportation are evidenced by the emergence of *online* transportation services. *Online* transportation services are services that allow users to place transportation orders such as taxis, *motorcycle* taxis, or cars using applications based on information technology with tariffs whose amounts have been determined in the application (Wahyuruddin S., 2023). *Online* transportation services are more attractive to the public, because of their practical implementation, reasonable rates, and the features provided through the application tend to provide convenience for consumers (Hasang and Nur, 2020). *Online* transportation services have developed in Indonesia since 2015. *Online* transportation services have a legal basis regulated in the Minister of Transportation Regulation Number PM 118/2018 concerning the Implementation of Special Rental Transportation (hereinafter referred to as Permenhub No. PM 118/2018). The definition of Special Rental Transportation according to Article 1 Point 7 of Minister of Transportation Regulation No. 118/2018, namely:

"Special Rental Transport is a door-to-door transportation service with a driver, has an operating area within urban areas, to and from airports, ports, or other transportation nodes, and reservations are made using an information technology-based application with the tariff amount stated in the application." Gojek is a subsidiary of PT GoTo Gojek Tokopedia

Tbk which is a private company engaged in digital services. Gojek has a significant role in economic development in Indonesia. In 2021 Gojek contributed IDR 249 Trillion or 1.6% of Indonesia's total GDP in 2020. Gojek is an *online* application that provides paid services. Gojek offers several services in the transportation sector, such as GoRide, GoCar, GoSend, GoBox, and GoBlueBird. Of the several types of transportation services offered by Gojek, the majority of people choose GoCar services which are transportation services using cars as a means of *online*

transportation to be used to support daily activities. Before using the gojek application and using the services in it, all users must first agree to comply with the terms of use of the Gojek application and the terms of use of GoCar. This is an interaction between consumers as service users and Gojek as a service provider written in the form of an agreement.

According to Subekti (2005), "Agreement is an event where one party promises another party, where both parties agree or agree on something that is agreed upon." Agreements that are often found in everyday life are sale and purchase agreements, namely agreements made by business actors and consumers. The agreement is not infrequently carried out in the form of a standard agreement. *A standard agreement* or what is referred to in English as a *standard contract*, is an agreement that has been prepared and outlined in the form of a form by one party and the other party only has the option to agree or not to the contents of the agreement, without the opportunity to negotiate the contents of an agreement (Shidarta, 2006).

The agreement is made in the form of a standard agreement. *A standard agreement* or what is referred to in English as a *standard contract*, is an agreement that has been prepared and outlined in the form of a form by one party and the other party only has the option to agree or not to the contents of the agreement, without the opportunity to negotiate over the contents of an agreement (Shidarta, 2006). Standard agreements contain provisions referred to as standard clauses. This standard clause is a provision in the agreement that is formed unilaterally to simplify the negotiation process carried out by the parties to the agreement (Handayani, 2020).

The inflexibility of the negotiation process on standard clauses causes consumers to be placed in a weak situation and can be indirectly controlled by business actors. This creates concerns over the inequality between the position of consumers and business actors in the agreement. The Consumer Protection Law regulates the inclusion of certain standard clauses in Article 18, which states:

"Business actors in offering goods and/or services intended for trade are prohibited from making or including standard clauses in every document and/or agreement if:

- a. states the transfer of responsibility of the business actor;
- b. states that business actors have the right to refuse the delivery of goods purchased by consumers;
- c. states that business actors have the right to refuse the return of money paid for goods and / or services purchased by consumers;
- d. states the granting of power from consumers to business actors, either directly or indirectly, to take all unilateral actions related to goods purchased by consumers in installments;
- e. regulate the proof of the loss of usefulness of goods or utilization of services

- purchased by consumers;
- f. give the right to business actors to reduce the benefits of services or reduce the consumer's property which is the object of buying and selling services;
- g. state that consumers are subject to regulations in the form of new rules, additions, continuation and / or further changes made unilaterally by business actors during the period when consumers utilize the services they buy;
- h. state that consumers authorize business actors to encumber mortgage rights, liens, or security rights against goods purchased by consumers in installments."

These provisions are made to realize the equal position of the relationship between business actors and consumers in standard agreements. These provisions are based on the principle of freedom of contract and uphold the equal rights and obligations of consumers and business actors. The standard agreement in the terms of use of GoCar regulates several things such as general provisions, service requirements, determination of service fees, rules regarding goods left behind, and other provisions. The GoCar Terms of Use contain an exoneration clause in point 2E, this point states the transfer of responsibility for the safety of GoCar passengers which states:

"e. Passengers are responsible for their own safety. Therefore, passengers are required to wear seat belts while traveling using the GoCar Service. You understand that you are required to keep the number of passengers in accordance with the carrying capacity of the four-wheeled vehicle driven by the Driver Partner. The Driver Partner has the right to refuse or cancel your GoCar Service order if the Driver Partner knows that the number of passengers will exceed the carrying capacity of the four-wheeled vehicle."

The clause is not in accordance with the provisions of Article 18 paragraph (1) letter a of the Consumer Protection Law, which states:

"Business actors in offering goods and/or services intended for trade are prohibited from making or including standard clauses in every document and/or agreement if:

- a. states the transfer of responsibility of the business actor."

One of the cases that occurred in 2018 befell one of the consumers using GoCar services in Manado, North Sulawesi who had an accident while using GoCar services. The accident occurred due to the negligence of the GoCar driver when driving his vehicle on a steep road, which caused the car to slide quickly, killing a toddler passenger.

This shows a conflict between norms, because there is a mismatch in the inclusion of standard clauses in the GoCar terms of use with the provisions contained in the Consumer Protection Law. The research on the standard clauses in the GoCar terms of use agreement was conducted because consumers are required to agree to one of the provisions stating the business actors' exemption from liability for the safety of

consumers as passengers and users of GoCar services.

Based on this description, the purpose of this study is to understand the suitability of the GoCar Terms of Use standard agreement point 2E with the principles of consumer protection listed in Article 2 of Law Number 8 of 1999 concerning Consumer Protection; and understand the responsibilities of Gojek and *Driver* partners in the GoCar Terms of Use for losses suffered by GoCar passengers related to driving safety.

METHOD

This research was conducted using the normative juridical method. The author approaches the problem by conceptualizing the law as written in the applicable laws and regulations used in this study, such as the Civil Code and Law Number 8 of 1999 concerning Consumer Protection or as norms used as a benchmark for society in acting. The approach taken to carry out this research is in the form of a *statute* approach and *conceptual* approach. The statutory approach used in this research, namely legal regulations relating to the use of exoneration clauses in agreements, consumer protection principles and Gojek's responsibility as legal protection for consumers from the inclusion of exoneration clauses in the terms of use of GoCar. The conceptual approach is carried out by using the legal concept of consumer protection of exoneration clauses based on doctrines developed by legal scholars to find definitions, legal concepts, and principles that are in line with the problems studied.

The author collects data using the literature study method. The analysis technique that the author uses in this research is the prescriptive technique, namely by providing an assessment and argumentation of right, wrong, or what is right according to the law (norms, principles, legal principles, doctrines, or legal theories) on the facts or legal events studied (Suyanto, 2023).

RESULTS AND DISCUSSION

A. Conformity of the Gocar Standard Terms of Use Agreement Point 2e with the Principles of Consumer Protection Listed in Article 2 of Law Number 8 Year 1999 on Consumer Protection

Principles are basic thoughts contained in or behind the legal system formulated in the form of legislation. A legal principle can be in the form of a legal norm whose position is high and many things depend on it. The principles of legislation or legal principles in the formation of legislation are values that are used as guidelines in pouring norms or regulatory content into the desired form and structure of legislation (Rokilah and Sulasno, 2021).

GCPL is a piece of legislation that certainly has principles and principles contained in it. The principles of the GCPL are listed in Article 2 which contains:

"Consumer protection is based on benefits, justice, balance, consumer safety and

security, and legal certainty."

The principles in the GCPL show that in consumer protection efforts, this law is guided by the benefits, justice, balance, security and safety of consumers, as well as legal certainty. The principles in the GCPL, when explained according to the elucidation of the GCPL, are:

"Consumer protection is organized as a joint effort based on 5 (five) principles that are relevant in national development, namely:

1. The principle of benefit is intended to mandate that all efforts in the implementation of consumer protection must provide the maximum benefit for the interests of consumers and business actors as a whole.
2. The principle of justice is intended to maximize the participation of all people and provide opportunities for consumers and business actors to obtain their rights and carry out their obligations fairly.
3. The principle of balance is intended to provide a balance between the interests of consumers, business actors, and the government in a material or spiritual sense.
4. The principle of consumer security and safety is intended to provide guarantees of security and safety to consumers in the use, use and utilization of goods and/or services consumed or used.
5. The principle of legal certainty is intended so that both business actors and consumers obey the law and obtain justice in the implementation of consumer protection, and the state guarantees legal certainty."

The principle in the GCPL shows that in order to achieve consumer protection, its implementation is necessary to achieve justice and security and safety for consumers and business actors. The inclusion of an exculpatory clause that states the transfer of responsibility by the business actor may contradict this principle. The inclusion of an exoneration clause by Gojek in the Gocar Terms of Use Point 2E states that:

"e. Passengers are responsible for their own safety. Therefore, passengers are required to wear seat belts while traveling using GoCar Services. You understand that you are required to keep the number of passengers in accordance with the carrying capacity of the four-wheeled vehicle driven by the Driver Partner. The Driver Partner has the right to refuse or cancel your GoCar Service order if the Driver Partner knows that the number of passengers will exceed the carrying capacity of the four- wheeled vehicle."

The clause contains the inclusion of an exoneration clause which contains a transfer of responsibility by Gojek as a business actor for providing guarantees of safety to GoCar passengers as consumers. The principle of consumer protection states that consumer protection is carried out in accordance with the principles, one of which is the principle of justice and the principle of consumer security and safety.

The principle of justice has the aim that in the implementation of consumer

protection, the participation of all parties can be realized and result in equality for consumers and business actors in terms of obtaining rights and implementing their obligations fairly. The clause in GoCar Terms of Use Point 2E can be classified as an exoneration clause. In general, an exoneration clause is a clause that takes advantage of the weak state of consumers by stating the limitation of the responsibility of business actors. GoCar Terms of Use Point 2E states the limitation of Gojek's responsibility as the GoCar service provider for consumer safety when using its services. GoCar Terms of Use Point 2E states that "Passengers are responsible for their own safety". In fact, as a Special Rental Transportation whose operation is regulated in Permenhub No. 118/2018, one of the obligations of Application Companies that provide transportation services according to Article 28 is to provide consumer protection in accordance with the provisions of laws and regulations.

The laws and regulations related to consumer protection are the GCPL. GCPL in Article 18 Paragraph 1 has stated that business actors are prohibited from including an exoneration clause stating the transfer of responsibility of the business actor. However, in practice, Gojek as a business actor still includes an exoneration clause in the GoCar Terms of Use in point 2E. The inclusion of the exoneration clause states that there is an unfair situation between business actors and consumers. Consumers become liable for their own safety, whereas this safety should be guaranteed by business actors, because this is one of the consumer rights. This right is stated in Article 4 letter a of GCPL which states:

"Consumer Rights are: a. The right to comfort, security, and safety in consuming goods and services."

Article 4 letter a of the GCPL also proves that in its implementation, the GoCar Terms of Use are also not in accordance with the principles that form the basis of Consumer Protection, namely the principle of consumer security and safety. One of the consumer rights is to receive security and safety in using services provided by Gojek, including GoCar. However, in the GoCar Terms of Use, Gojek states that passenger safety is the responsibility of the passenger himself. Although Gojek on its website states that they have provided additional insurance in the form of Safe Travel + Insurance, this is not stated in the GoCar Terms of Use agreement which is binding on the parties. Thus, the content of the Gocar Terms of Use agreement shows a discrepancy with the principle of consumer security and safety stated in the GCPL. GCPL also regulates the obligations of business actors, which are listed in Article 7. Article 7 of GCPL states that:

"The obligations of business actors are:

- a. act in good faith in conducting its business activities;
- b. provide correct, clear and honest information about the conditions and guarantees of goods and/or services and provide explanations for use, repair and maintenance;

- c. treat or serve consumers correctly and honestly and not discriminatory;
- d. guarantee the quality of goods and/or services produced and/or traded based on the provisions of the applicable quality standards for goods and/or services;
- e. provide opportunities for consumers to test, and/or try certain goods and/or services and provide guarantees and/or warranties for goods made and/or traded;
- f. provide compensation, compensation and/or reimbursement for losses due to the use, consumption and utilization of goods and/or services traded;
- g. provide compensation, compensation and/or replacement if the goods and/or services received or utilized are not in accordance with the agreement."

The article states that one of the obligations of business actors is to act in good faith in carrying out their business activities. According to Sinaga (2021), good faith is a situation where in an agreement, the parties have the principle to prioritize the interests of both parties and have no intention of harming others. Consumers in GoCar Terms of Use point 2E have a tendency to be harmed by Gojek as a business actor in the event of an accident caused by a GoCar driver. Passengers as consumers in this case cannot hold Gojek accountable, because in the GoCar Terms of Use point 2E, Gojek has stated that passenger safety is the responsibility of the passengers themselves. Gojek here can be classified as carrying out its business activities in bad faith, because it indirectly puts its consumers in a disadvantageous situation if an accident occurs due to the use of GoCar services. One of the obligations of business actors mentioned in Article 7 of GCPL is the obligation to provide compensation and compensation, due to the use of services traded. Business actors have an obligation to provide compensation to their business consumers who suffer losses due to the use, in this case services, that they trade. When referring to GoCar Terms of Use Points 2E and 4C, Gojek states not to be responsible for problems related to losses experienced between passengers and Gojek Partners in the use of GoCar services. This can be interpreted that Gojek states that they cannot be held liable for losses incurred to consumers in the use of GoCar services. Whereas Article 7 Letter f of GCPL states that compensation and compensation for the use of services are the obligations of business actors, in this case Gojek.

Article 7 Letters a and f that are not fulfilled are evidence that Gojek as a business actor does not carry out its obligations in accordance with the Laws and Regulations. Unfulfilled obligations that should be carried out by business actors to consumers threaten consumers' rights to safety. This shows that the GoCar Terms of Use are not in accordance with the Principle of Consumer Safety and Security in Article 2 of GCPL. This principle is explained in the Explanation of Article 2 of GCPL, as follows: "The principle of consumer safety and security is intended to provide guarantees of security and safety to consumers in the use, use and utilization of goods and/or services consumed or used."

The explanation proves that there are consumer rights and/or obligations of business actors that are not carried out by Gojek through the GoCar Terms of Use, so the Gojek Terms of Use do not fulfill the principle of fairness in consumer protection. The achievement of the principle of fairness according to the Explanation of Article 2 of GCPL is so that the parties can have equal opportunities in the fulfillment of their rights and the implementation of their obligations. GoCar Terms of Use also do not meet the provisions of the principle of consumer protection, namely the principle of consumer safety and security. The GoCar Terms of Use contain provisions stating that Gojek is not responsible for compensating for losses incurred by consumers. This is also inversely proportional to the purpose of the principle of consumer safety and security described in the Explanation of Article 2 of the GCPL which states that this principle has the intention of ensuring the safety and security of consumers in using goods or services provided by business actors.

B. Forms of Responsibility of Gojek Parties and Driver Partners in the Terms of Use of Gocar for Losses Experienced by Gocar Passengers Regarding Safety in Driving

An agreement causes binding rights and obligations for the parties bound by the agreement. GoCar Terms of Use bind several parties in it, namely Service Users / Passengers, *Driver* Partners, and PT GoTo Gojek Tokopedia Tbk. GoCar as an *online* transportation service in the Gojek application network has a legal basis regulated in Permenhub No. 118/2018 concerning Special Rental Transportation. Permenhub No. 118/2018 regulates several obligations for Application Companies, which are listed in Article

28 paragraph (1). Article 28 paragraph (1) of Minister of Transportation Regulation No. 118/2018 discusses the obligations for Application Companies, which reads:

"(1) Application Companies must:

- a. be an Indonesian legal entity;
- b. prioritize transportation safety and security;
- c. provide consumer protection in accordance with the provisions of laws and regulations;
- d. provide access to the Digital Dashboard to the Minister or Governor in accordance with the authority;
- e. provide application access to Drivers whose vehicles already have a Special Rental Transportation operating license in the form of a Service Standard Electronic Card;
- f. cooperate with Special Rental Transportation Companies that already have a license to operate Special Rental Transportation in recruiting drivers; and
- g. open a branch office and appoint a person in charge of the branch office in the city in accordance with the operating area."

The article states that one of the obligations of App Companies that provide

Special Rental Transport services is to prioritize transportation safety and security, and provide consumer protection, which is currently regulated in the GCPL. One of the consumer protections mentioned in the GCPL is the provision of compensation for losses suffered by consumers.

Gojek as a transportation service provider company has *Driver* partners as implementers of the services it provides, one of which is GoCar. *Driver* partners are bound to Gojek by a separate agreement called the Partnership Agreement for Partners of PT Paket Anak Bangsa (hereinafter referred to as the Partnership Agreement). The agreement includes many things that regulate the relationship between partners and the company. One of the things regulated in the agreement discusses the responsibilities as a partner and the limits of Gojek's responsibility.

The partnership agreement discusses how much responsibility is carried by Gojek Partners. In Point 3.2 of the Partnership Agreement, Partners are asked to be personally responsible for safety, security, and fairness in carrying out their duties as executors of services provided by Gojek. Partners are also asked to agree to a statement that Partners are responsible for their own safety in providing services and are required to take the necessary preventive measures in carrying out services. Point 3.3 of the partnership agreement also states that the partner is responsible for carrying out obligations and responsibilities to Gojek and / or third parties that arise when carrying out services. Then at Point 10.2 of the Partnership Agreement states that the partner expressly releases Gojek from all kinds of claims or consequences experienced by the partner in connection with the implementation of services by the partner.

In Point 10.2 there are reasons for the emergence of consequences, demands, lawsuits, one of which is "the implementation of partner services by you". The implementation of this partner service relates to the duties and obligations of the partner as a service implementer. Partners who will later contact / meet directly with passengers. *Driver* partners will have the task of picking up passengers from the pick-up point to take passengers to the drop-off point. That is what is referred to as Partner Service Implementation. So, from Point 10.2, the Partner states that he has an obligation to release Gojek from all claims, consequences, lawsuits, and other responsibilities arising from the implementation of partner services. Partners also have the obligation to be fully responsible for what happens in the implementation of partner services, including accidents.

Point 11.4 of the Partnership Agreement also states that the partner is responsible for accidents, death, fraud, and/or other illegal acts caused by the Partner's fault or negligence in carrying out its services. This point of the agreement proves that the partner and Gojek Party have agreed to place the responsibility for the occurrence of death and/or injury caused by the partner's error or negligence, to be the full responsibility of the partner. The responsibility applies while the Partner is still bound

by the Partnership Agreement. However, this Partnership Agreement must still follow the laws and regulations in force in Indonesia.

The above points of the Partnership Agreement prove that Partners and Gojek have agreed on liability. Liability to third parties or in this case passengers, is fully held by the Partner. In the event of an accident that causes death, responsibility for the losses suffered can be requested or accounted for by the partner in accordance with the contents of the Partnership Agreement.

If in the event of an accident that causes loss or death caused by the utilization of services provided by gojek, namely GoCar, but there is no good faith from Gojek or *Driver* Partners to resolve the problem. Liability for losses has been regulated in GCPL and Minister of Transportation Regulation No. 118/2018.

GCPL regulates liability for losses in several Articles, namely Article 19, Article 22, Article 23, Article 24, and Article 28. Three of these Articles regulate provisions related to *product liability*. Article 19 of GCPL is an Article that regulates the regulation of compensation from business actors to consumers (Ardhya, 2019). Article 19 of GCPL reads:

- "(1) Business actors are responsible for providing compensation for damage, pollution, and/or consumer losses due to consuming goods and/or services produced or traded.
- (1) The compensation as referred to in paragraph (1) may be in the form of a refund or replacement of goods and/or services of a similar or equivalent value, or health care and/or compensation in accordance with the provisions of applicable laws and regulations.
 - (2) The provision of compensation shall be carried out within 7 (seven) days after the date of the transaction.
 - (3) The provision of compensation as referred to in paragraph (1) and paragraph (2) shall not eliminate the possibility of criminal prosecution based on further evidence of the existence of elements of fault.
 - (4) The provisions as referred to in paragraphs (1) and (2) shall not apply if the business actor can prove that the fault is the fault of the consumer."

Article 19 stipulates that business actors can make compensation in several ways, namely:

- a. refund or return of goods/services
- b. health care
- c. compensation.

Then, based on Article 19 Paragraph (3) of the GCPL Law, compensation can be given to consumers within seven days of the transaction with the business actor. So, if the business actor does not make or seek compensation to consumers within seven days, the business actor can be said to have no good faith. This is because

compensation is one of the obligations that needs to be fulfilled by business actors if they are at fault and is a provision stipulated in the Legislation, namely the GCPL Law. Compensation made by business actors to consumers does not rule out the possibility that consumers will take it to legal channels to be criminalized in accordance with the mistakes made. This is allowed because it is stated in Article 19 Paragraph (4) of GCPL which is carried out on the basis of further proof by the authorities and the element of guilt through the court. However, compensation for this loss may not be made if the business actor can prove its innocence.

Proof of fault is explained again in Article 19 paragraph (5) and Article 28 of GCPL. Both Articles explain that the business actor has the responsibility of proving whether or not there is an element of fault in the claim for compensation. This is related to the principle of responsibility. According to the contents of Article 19 and Article 28 of the GCPL, the principle of responsibility contained in the GCPL is the principle of responsibility based on the element of fault.

The principle of responsibility based on the element of fault is one of the general principles widely used in criminal and civil law. In the principle of responsibility with the element of fault, the person who can be held liable must have previously committed a form of fault first and can be proven guilty (Wulandari and Tadjuddin, 2018). So, in this principle, a certain party must first make a mistake and if it has been proven to have made a mistake, that party can be held accountable for his actions (Utomo, A. 2020). The principle of liability for the element of fault is acceptable and has been applied in society. This is because there is fairness in this principle, that someone who is proven to have committed a mistake and caused harm must compensate for the losses suffered by the victim. This provision is explained in Article 19 paragraph (5) and Article 28 of GCPL. Article 19 paragraph (5) of GCPL explains that:

"(5) The provisions referred to in paragraphs (1) and (2) shall not apply if the business actor can prove that the fault is the fault of the consumer."

Then, Article 28 of GCPL explains that:

"Proof of the existence or absence of elements of fault in a claim for compensation as referred to in Article 19, Article 22, and Article 23 shall be the burden and responsibility of the business actor."

Both Articles explain the burden of proof for which the business actor is responsible. Proof of the presence or absence of fault committed by the business actor affects whether or not the business actor should be held accountable for the losses suffered by consumers.

Referring to the principle of responsibility based on the element of fault in Article 19 paragraph (5) and Article 28 of GCPL. If Gojek and *Driver* Partners have been proven to have made mistakes that cause losses in the implementation of GoCar services, then based on the principle of responsibility based on the element of fault,

Gojek and *Driver* Partners have the responsibility to compensate. Compensation that can be made by Gojek and *Driver* Partners can be adjusted to the provisions listed in Article 19. If business actors cannot carry out their responsibilities in accordance with the provisions stipulated in Article 19 of the GCPL, then Article 23 of the GCPL has regulated the settlement related to this matter. Article 23 of GCPL states that if the business actor does not provide compensation, the consumer can file a lawsuit to the Consumer Settlement Body or to a judicial body. The following is the content of Article 23 of GCPL:

"Business actors who refuse and/or do not respond and/or do not fulfill compensation for consumer demands as referred to in Article 19 paragraph (1), paragraph (2), paragraph (3), and paragraph (4), may be sued through a consumer dispute resolution body or submit to a judicial body at the consumer's domicile."

Business actors who do not compensate may be subject to administrative sanctions as stipulated in Article 60 of the GCPL. The article regulates sanctions for business actors who violate Article 19 paragraph (2) and paragraph (3), Article 20, Article 25, and Article 26. Business actors who violate these articles may be subject to administrative sanctions in the form of a determination of compensation with a maximum nominal value of Rp 200,000,000. The following is the content of Article 60 of the GCPL:

- "(1) The consumer dispute resolution body is authorized to impose administrative sanctions on business actors who violate Article 19 paragraph (2) and paragraph (3), Article 20, Article 25, and Article 26.
- (2) Administrative sanctions in the form of a determination of compensation of a maximum of Rp. 200,000,000.00 (two hundred million rupiah).
- (3) Procedures for determining administrative sanctions as referred to in paragraph (1) shall be further regulated in laws and regulations."

Business actors who violate Article 18 of the GCPL can also be subject to criminal sanctions. According to Article 62 paragraph (1) of GCPL, business actors who violate Article 18 can be punished. Criminal punishment can be in the form of imprisonment for a maximum of 5 years or a maximum fine of Rp 2,000,000,000.

Minister of Transportation Regulation No. 118/2018 also regulates the liability of Special Rental Transportation Companies. Liability related to safety is carried out if in carrying out its duties in providing transportation services for passengers causes fatalities due to negligence. The provisions are listed in Article 34 paragraph (4), Article 36, Article 37, Article 40 of Minister of Transportation Regulation No. 118/2018. Article 34 explains the types of violations that can be committed by Special Rental Transportation Companies. Article 34 paragraph (4) explains the serious violations that can be committed by Special Rental Transportation Companies, one of which is negligence in operating the vehicle which causes accidents with fatalities.

Minister of Transportation Regulation No. 118/2018 in Article 35 explains that the violations previously mentioned in Article 34 are determined by:

1. The results of officer supervision
2. Evaluation conducted by the Minister or governor
3. Reports from the public
4. Information obtained from mass media
5. Reports from application companies

If there are indications that a violation occurred, the violation is divided into minor, moderate, and severe violations. For these violations, administrative sanctions may be imposed in accordance with the provisions listed in

Article 36 paragraph (2). Article 36 paragraph (2) states that:

"(2) Administrative sanctions as referred to in paragraph (1) include:

- a. written warning;
- b. suspension of the operating license; and
- c. revocation of the operating license."

If there is a violation of the threat to the safety of passengers in using special rental transportation services that causes loss of life, then the special rental transportation company can be classified as committing serious violations. According to Article 40 of the Minister of Transportation Regulation No. 118/2018, the Special Rental Transport Company may be subject to revocation of the operating license. Article 40 of Minister of Transportation Regulation No. 118/2018 reads:

- "(1) Serious violations as referred to in Article 34 paragraph (1) letter c shall be subject to administrative sanctions in the form of suspension of the operating license for a minimum of 6 (six) months and a maximum of 12 (twelve) months.
- (2) In the event that the severe violations as referred to in paragraph (1) are not corrected, the operating license shall be revoked."

CONCLUSION

Based on the analysis of the discussion above, the author can conclude that:

1. The provisions of the use of GoCar Point 2E are not in accordance with the principles of consumer protection listed in Article 2 of the GCPL. The GoCar Terms of Use are not in accordance with the principles of fairness and the principles of consumer security and safety. The principle of fairness has the aim that the achievement of rights and obligations between consumers and business actors can be carried out fairly, but the GoCar Terms of Use contain an exoneration clause related to the transfer of responsibility of business actors which threatens to deprive consumers of their rights to safety, security and comfort. The principle of consumer safety and security has the aim of ensuring the safety and security of consumers when using services provided by business

actors, but the GoCar Terms of Use contain provisions that state that Gojek is not responsible for the safety and losses suffered by passengers as consumers. The above reasons make Clause Point 2E not in accordance with the principles of consumer protection, namely the principle of justice and the principle of consumer security and safety.

2. Liability for losses suffered by Gojek consumers is the responsibility of Gojek *Driver* Partners. Gojek *Driver* Partners have been bound by an agreement with Gojek which is a Partnership Agreement. Responsibility for this error is regulated in Article 19 paragraph (5), Article 22, and Article 28 which states that the burden of proof for errors is the obligation of the business actor. This emphasizes that liability is carried out with the principle of responsibility based on the element of fault. The form of responsibility carried out by business actors is carried out in accordance with the provisions of Article 19 of GCPL which regulates the requirements regarding the obligation to carry out responsibility by business actors.

Suggestion

From the results of the analysis, the author can provide suggestions, as follows:

1. PT GoTo Gojek Tokopedia Tbk can make agreements in accordance with the provisions of Article 18 paragraph (1) of Law Number 8 Year 1999 concerning Consumer Protection by not including an exoneration clause in the standard agreement made.
2. For consumers to be able to educate themselves in order to understand the rights and obligations that should be obtained in accordance with applicable laws and regulations.

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