



Unlawful Actions in the Case of Unilateral Cancellation of Hotel Rooms by Traveloka According to Business Law (Case Study Decision Number 354/PDT/2020/PT.DKI)

Edi Wahjuni, Emi Zulaika,
Alfonsa Anugrah Dwi Cahyaningtyas
Universitas Jember

ABSTRACT

Traveloka is a type of e-commerce which is a popular medium for selling tickets, entertainment services and online hotel reservations in Indonesia. Problems occurred in making hotel room reservations due to unilateral cancellation as a breach of contract. In a lawsuit against the law, the plaintiff must prove all the elements of the violation of the law in addition to being able to prove that there was a mistake made by the debtor. In its development, merging claims is permitted if the two have a close relationship (innerlijke samenhangen). At the appeal level the judge stated that the defendant's original actions were unlawful. The consequence of an unlawful act is compensation. Article 1365 of the Civil Code regarding unlawful acts does not explain in detail regarding compensation for unlawful acts, the fulfillment of claims for immaterial losses is left to the Judge. Normative juridical approach method with a statutory approach and a conceptual approach. The legal materials used are primary legal materials and secondary legal materials using the library study method of collecting legal materials with research analysis using deductive methods. The conclusion of the problem is that the defendant's actions in case Number 354/PDT/2020/PT.DKI are categorized as a case of unilateral cancellation of a hotel room by the Traveloka application, which is categorized as an unlawful act, not a tort because in accordance with the provisions of Article 1365 of the Civil Code, PT Traveloka fulfills the following elements: 1) the existence of actions; 2) there is an error; 3) there is a loss; and 4) there is a causal relationship between unlawful acts. Merging claims in one letter of claim if between one claim and another (between torts and unlawful acts) there is a close relationship or connection (innerlijk samenhangen). subject to different procedural laws and subject to different absolute competencies, excluding combining them.

Keywords: *unlawful act; unilateral cancellation; business law.*

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I. INTRODUCTION

E-commerce is an electronic transaction between sellers, buyers and other parties in a contract using electronic media (Marbun, 2020). Traveloka is a type of e-commerce in Indonesia. Traveloka is a popular online ticket sales, entertainment service and hotel reservation medium in Indonesia. In ordering hotel rooms, it is much easier for users because they don't need to come to the place directly.

In the world of commerce, including electronic transactions, there are many unlawful acts. An unlawful act arises if a person carries out an act that is contrary to the rights and obligations, morality or prudence in society. This has the consequence that as a result of an unlawful act, the party must bear the losses as stated in Article 1365 of the Civil Code (hereinafter referred to as the Civil Code).

In the decision being studied, namely appeal decision Number 354/PDT/2020/PT.DKI, starting from a lawsuit filed by Ellen Rumambi as the Plaintiff against PT Trinusa Travelindo (Traveloka) as the defendant. The plaintiff made a reservation for 3 (three) hotel rooms at the Aryaduta Makasar Hotel on 30 November 2018 for the New Year's Eve celebration via Traveloka or one month before the turn of 2019. On 31 December, the plaintiff and his family will check in at the hotel that has been booked. the month before that. However, the Plaintiff's hotel room order was rejected by the Hotel on the grounds that the Defendant never confirmed to the Aryaduta Makassar Hotel regarding the Plaintiff's order. The Plaintiff also contacted the Defendant regarding the inconvenience, but the Defendant offered to change to another hotel.

When the lawsuit is appealed by the plaintiff and the defendant, the High Court judge has different considerations from the first instance judge. The appellant has convinced the judge that the appellee's actions constitute an unlawful act, not a breach of contract. The appeal judge's consideration was that there was an unlawful act on the part of the appellee, namely the failure to confirm information regarding the plaintiff's booking that the Aryaduta Makassar Hotel from 31 December 2018 to 1 January 2019 was full. This is in accordance with Article 4 letter (c) UUPK which states the consumer's right to clear/correct and honest information regarding the condition of goods or services.

The party who files a lawsuit in court often confuses a lawsuit for breach of contract and a lawsuit against the law (innerlijke samenhangen). It often happens that a party files a lawsuit against the law but from the arguments put forward it can be seen that the lawsuit is a breach of contract. Errors in the arguments for the lawsuit can be a loophole that will be exploited the defendant in his rebuttal.

Acts against the law and breach of contract have similarities with certain limitations. Not all court judges reject cases containing a combination of claims for breach of contract and unlawful acts in one lawsuit. Supreme Court Jurisprudence in Supreme Court Decision No. 2686/Pdt/1985 dated 29 January 1987. The Supreme Court's decision stated that the claim stated in the lawsuit was an unlawful act and the actual legal event was a breach of contract. Combining lawsuits requires that the two have a close relationship (innerlijke samenhangen), the lawsuits being combined must fall under the absolute authority of one judicial body.

Based on this background description, the problem outlined is whether the defendant's actions in the case of unilateral hotel room cancellation in decision Number 354/PDT/2020/PT.DKI are categorized as an unlawful act?

II. RESEARCH METHODS

The type of research in this paper is normative juridical legal research, referring to statutory regulations or examining existing library materials as support. This type of normative juridical legal research serves as a guide for writers to answer legal issues by studying norms and theories in accordance with existing legal rules, statutory regulations, doctrine or opinions of legal experts, jurisprudence and various other legal sources. The study was carried out in collaboration and mapping so that it could answer the legal problems being studied (Susanti and Efendi, 2005). Research with a problem approach taken is: 1) The conceptual approach is an approach that examines the meanings, concepts, laws and issues faced by the author, 2) The statutory approach is an approach based on appropriate statutory regulations. with the issue being studied.

III. RESULTS AND DISCUSSION

The Defendant's Actions In Unilaterally Canceling A Hotel Room Are Categorized As Unlawful Acts

It is very interesting to study in depth the decision of the High Court judge who agreed that the unlawful act demanded by the plaintiff against the defendant from PT Traveloka was not a breach of contract. Judges have a big influence in directing and deciding cases (inquisitorial). The judge's basis for deciding cases is based on written and valid statutory regulations.

Based on Article 10 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power, it is not permissible for a court to refuse to examine, try and decide on a case simply on the grounds that the law is unclear or does not exist. According to *ius curia novit*, judges are considered to know all the laws so as a consequence the court cannot refuse and try cases just because the law does not exist or is unclear (Dyah Ochtorina Susanti and A'an Efendi, 2005). Judges must be able to create laws as long as they do not conflict with legislation and meet the needs of the times.

Table 1. Comparison of Judges' Decisions in Civil Cases at District Court and High Level Courts

| PN Level Decision Decision No. 517/Pdt.G/2019/PN Jkt.Brt | PT level decision Decision No. 354/PDT/2020/PT.DKI |
|--|--|
| <ul style="list-style-type: none"> - - Accept the defendant's exception - - Declaring the Plaintiff's Claim Unacceptable (Niet Onvankelijk Verklaard); - - Sentence the Plaintiff to pay the court costs arising in this case amounting to IDR 1,341,000 (One Million Three Hundred Forty One Thousand Rupiah); | <ul style="list-style-type: none"> - - Received the appellant's appeal request - - Cancel the first instance decision - - Rejecting the defendant's original appeal (in the exception) - - Granted the Appellant's original claim, the Plaintiff in part; - - Declare that the Defendant's original actions constitute an unlawful act; - - Sentenced the original defendant to pay material losses amounting to IDR 8,627,000 (eight million six hundred and twenty seven thousand rupiah). |

Data Source: Decision No. 517/Pdt.G/2019/PN Jkt.Brt and Decision no. 354/PDT/2020/PT.DKI

The judge at the first instance declared the lawsuit unacceptable and granted the defendant's exception. The judge's considerations at first instance stated that the lawsuit was unclear because in the lawsuit the plaintiff stated that the defendant had acted against the law. Meanwhile, the appeal judge was of the opinion that what Traveloka had done was an unlawful act, of course there was a contradiction between the opinions of the first level judge and the appeal.

The actions carried out by Traveloka as the appellee were declared by the appellate level judge to be unlawful. This is different from the first instance judge who stated that the plaintiff's claim was unclear (mixing up breach of contract and unlawful act). Article 1243 of the Civil Code regarding default contains at least 3 (three) elements of breach of contract, including that there is an agreement, there is a party who breaks their promise or violates the agreement; and was declared negligent, but still did not carry out the contents of the agreement. Compensation for default based on this article consists of compensation for costs, losses and interest.

Meanwhile, unlawful acts since the Hoge Raad decision are not limited to those that conflict with written legal regulations, but those that have violated the rules of decency and appropriateness of social life. If someone is declared to have committed an unlawful act, they must be held responsible for compensation.

Sudikno Mertokusumo stated that in order to propose an objective compilation, in general it is not required that the demands must have a close relationship or connectivity with each other, but in practice usually between the combined demands there is connectivity which is associated with inner relationships (innerlijke samenhangen). (Susanti and Efendi, 2005). This requirement for connectivity was followed by the Supreme Court Book II Court and several Supreme Court decisions, including decision Number 1518 K/Pdt/1983, decision Number 1715 K/Pdt/1983 and decision Number 2990 K/Pdt/1990.

The requirement for connectivity was also terminated by Raad van Justitie Jakarta on 20 June 1939. Although there were differences of opinion regarding the connectivity requirements, they agreed on the two things below to allow for the accumulation of lawsuits in terms of:

1) Merged claims are subject to different events.

If the lawsuits are subject to different procedural laws, then the lawsuits cannot be combined, for example in a trademark cancellation case it cannot be combined with an unlawful act case because the trademark cancellation case is subject to procedural law regulated in the trademark law which does not recognize appeal, while cases of unlawful acts are subject to ordinary procedural law which recognizes appeal. Due to their positions in different procedural laws, there cannot be any comparison between the two.

2) Combined claims are subject to different absolute competencies. The claims that are accumulated must fall under the absolute authority of one judicial body so that several claims which are under the absolute authority of different judicial bodies cannot be combined. Inheritance dispute cases for Muslim people which fall under the authority of religious courts cannot be combined with cases of unlawful acts which fall under the authority of general courts.

Referring to Article 1313 of the Civil Code, an agreement is a form of action by one or more people binding themselves to one or more people. The legal relationship that occurs gives rise to legal consequences, therefore before an agreement is entered into, an agreement needs to be made (Sudikno Mertokusumo, 1999). The legal relationship that occurs is a relationship between the creditor as the party who has the rights and the debtor who has obligations for the agreed performance (Maria, 2017).

According to Subekti, extracting from Article 1365 of the Civil Code, there are elements of unlawful acts, namely:

"Proof of the elements of this unlawful act consists of:

1. There is an "act" against the law;

2. There is an error;

3. There is a loss; And

4. There is a causal relationship between unlawful acts, errors and losses" (Subekti, 1979).

From the analysis of the case above, the case between Ellen Rumambi and Traveloka shows that it is an unlawful act. Proof of the elements of this unlawful act is due to the fulfillment of the following elements:

1) There is an unlawful act

On December 31 2018, the Plaintiff's family had been waiting at the Aryaduta Makassar Hotel since 13.00 WITA to open/check in the 3 (three) hotel rooms that the Plaintiff had booked through the Defendant. However, in fact the hotel room that had been booked by the Plaintiff one month earlier was apparently rejected by the Hotel on the grounds that the defendant or appellee (Traveloka) never confirmed the hotel's booking for the plaintiff (Ellen).

In carrying out its business, Traveloka does not comply with UUPK rules because it does not provide correct or clear information regarding hotel room availability. In fact, as a business actor, you should be responsible for fulfilling consumer rights as regulated in Article (4) letter c UUPK.

2) There is an error

When someone makes a mistake against another person, whether the mistake comes from deliberate action or carelessness, they get the same legal consequences. The defendant, namely Traveloka, made a mistake, namely not providing correct, honest and clear information regarding hotel room reservations. Regarding Traveloka's mistakes, whether intentional or negligent, they are still considered to fulfill the elements of error so that they give rise to consequences for being responsible for their actions.

According to the defendant's answer to the court of first instance, that since the order was placed by the plaintiff, at that time the system on the Traveloka Site automatically forwarded the information to the vendor (Hotelbeds Pte., Ltd.), and it was received by Hotelbeds Pte., Ltd. . However, it turned out that on December 29 2018 (at 15.02 WIB), the Defendant received a notification from Hotelbeds Pte., Ltd. that all rooms at the Aryaduta Makassar Hotel were fully booked for December 31 2018 to January 1 2019. If so, Traveloka should have notified the plaintiff. With proof of booking 3 (three) hotel rooms in the name of Ellen Rumambi which has been paid in full, Traveloka should provide confirmation that the order in the name of Ellen Rumambi is cancelled.

3) There is a loss

The plaintiff felt the losses suffered due to the lack of clear confirmation regarding the status of the hotel room reservation in the name of Ellen Rumambi. This is because the booking via the Traveloka application made one month before the big day was paid in full in the amount of IDR 3,627,000.00. The plaintiff then contacted the defendant and conveyed the inconvenience that had occurred where the 3 (three) hotel rooms booked by the plaintiff in advance were rejected by the hotel on the grounds that the defendant had never confirmed the plaintiff's order which had been paid in full by the plaintiff through the defendant. The plaintiff remained in good faith by waiting with the plaintiff's extended family for approximately 5 hours at the hotel while hoping that the defendant would make an effort to resolve the problem. The plaintiff made a reservation for a new room at the Aryaduta Makassar Hotel directly through the hotel at a price of IDR 5,000,000 (five million rupiah).

4) There is a causal relationship between unlawful acts, errors and existing losses.

If explained from the beginning of the incident, the plaintiff booked a hotel room via the Traveloka application one month in advance to be occupied on New Year's Eve. The plaintiff has paid in full for the order. As a business actor, Traveloka should fulfill its obligation to provide correct or clear information regarding booking conditions on behalf of the plaintiff. In fact, in the trial facts which are further emphasized in the appeal decision, Traveloka committed an unlawful act because it confirmed the existence of a booking with the plaintiff's order number, but regarding the confirmation that the hotel was full from December 31 to January 1, Traveloka as the defendant should have confirmed it with the plaintiff first.

In relation to the merging of claims for breach of contract and claims for unlawful acts, it is permissible because they have a close relationship (innerlijke samenhang), it is indicated that merging claims requires that the two have a close relationship (innerlijke samenhang). Opinions that require connectivity or according to Soepomo's term inner relationship (innerlijke samenhang) include Yahya Harahap and Abdul Manan (Abdul Manan, 2000). In this case the defendant's actions can be said to be a breach of contract. It is said that there is a breach of contract in the agreement if one of the parties does not fulfill the obligations or achievements that are a mutual agreement. When filing a lawsuit alleging that someone committed breach of contract, the plaintiff only shows evidence of the agreement that was violated. When ordering a hotel room using the Traveloka application, the terms of service are presented at the beginning which is a standard agreement because the agreement is only made unilaterally by Traveloka while the user will click "I agree" or "I accept". As a consequence, according to article 1338 of the Civil Code, the agreement that has been agreed upon is binding on both parties and becomes law for the parties who are subject to it.

Referring to the terms of services, dispute resolution is carried out through mediation at the Singapore Mediation Center, if it has not been resolved it will become part of the exclusive jurisdiction of the courts of the Republic of Singapore. Meanwhile, cases of unlawful acts fall under the authority of the general judiciary as stipulated in Article 50 of Law No. 2 of 1986. Due to differences in absolute competence, lawsuits which fall under the absolute authority of different judicial bodies, namely between the Singapore Media Center and the Singapore courts, cannot be combined with the courts. Indonesia on this matter.

Judge's Considerations in Deciding Case Number 354/PDT/ 2020/PT.DKI

In relation to the lawsuit, it was partially granted, namely regarding the non-fulfillment of the claim for immaterial compensation in Decision Number 354/PDT/2020/PT.DKI, which is interesting to discuss. The basic legal values that Radbruch has expressed consist of justice, expediency and legal certainty. This basic value is the hope for creating harmonization in the implementation of laws in society. Laws that protect society both

actively and passively are the goals to be achieved. Actively aims to create social conditions in accordance with rules and norms, while passively aims to prevent arbitrariness from law enforcers and injustice.

Claims regarding immaterial compensation should be given more consideration by judges. According to the regulations, there is no definite amount that can be given by a judge to fulfill immaterial compensation like material compensation that can be seen in real terms. Claims for unlawful acts can take the form of compensation for losses in the form of money, compensation in kind or returning the situation to its original state, a statement that the act carried out is unlawful, a prohibition on carrying out an act, canceling something that was held unlawfully, and the announcement of a decision or of something that has been improved (Moegni, 1976).

Fulfillment of demands for immaterial compensation, some of which originate from Supreme Court jurisprudence. The following is the Supreme Court's jurisprudence regarding the fulfillment of claims for immaterial compensation:

- (1) Supreme Court Jurisprudence Number 550.K/Sip/1979 stated that the petitum regarding compensation for damages was not accepted because the injured party did not specify the losses received.
- (2) Supreme Court jurisprudence in PK Number 650/PK/Pdt/1994 is that immaterial compensation is only given in certain cases such as cases of death, serious injury and insult
- (3) Supreme Court Jurisprudence Number 1226 K/Sip/1977 states that the amount of compensation concerns matters of feasibility and propriety so that it cannot be approximated by size.

Fulfillment of demands for immaterial compensation cannot be approached with measurements because this is related to feasibility. The judge's assessment is the main factor in whether or not demands for immaterial compensation for unlawful acts are fulfilled.

IV. CONCLUSION

Based on the discussion that has been studied previously, the author can conclude that the defendant's actions in case Number 354/PDT/2020/PT.DKI are categorized as a case of unilateral cancellation of a hotel room by the Traveloka application, which is categorized as an unlawful act because it complies with the provisions of Article 1365 of the Civil Code on the part of PT Traveloka. fulfills the elements: 1) the existence of an action; 2) there is an error; 3) there is a loss; and 4) there is a causal relationship between the unlawful act, the error and the loss to the plaintiff, namely Ellen Rumambi. Regarding combining a lawsuit for breach of contract with a lawsuit for an unlawful act, in principle each lawsuit must stand alone. Merging claims in one lawsuit letter if there is a close relationship or connection between one lawsuit and another (innerlijk samenhangen). The conditions for existence are based on Raad van Justitie Jakarta dated 20 June 1939. Regarding combined claims being subject to different procedural laws and the claims being filed are subject to different absolute competences, they exclude combining them. Disputes fall under the absolute authority of the Singapore Mediation Center and the jurisdiction of the Singapore courts, while unlawful acts fall under the authority of the District Court in Indonesia.

V. SUGGESTION

Court judges should be more careful in assessing or differentiating cases related to breach of contract and acts of misconduct. It is necessary to review whether or not the formulation of claims for breach of contract and unlawful acts can be carried out together with connectivity requirements. Apart from that, it is also necessary to review that apart from contextuality, if absolute competence in cases of breach of contract and unlawful acts have different grounds, then the lawsuit cannot be combined into one.

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