

PROTECTION OF AIR PASSENGER RIGHTS IN AIR LAW: A REVIEW PF CONSUMER LAW PERSPECTIVES

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No. Telp:

Submitted 4 Juni 2024

Accepted 9 Juni 2024

Published 10 Juni 2024

ABSTRACT

The problem in this study is the regulation of legal protection for passengers who use scheduled national commercial air transportation services, as well as legal remedies for passengers who are harmed by scheduled national commercial air transportation companies. This study is normative legal research conducted by tracing the legislation relating to legal protection against commercial air transport passengers. Normative-qualitative analysis of data. The results showed that in the positive legal order in Indonesia, there are several laws and regulations relating to legal protection for air transportation passengers, namely: Law No. 15 of 1992, Law No. 8 of 1999, and Government Regulation No. 40 of 1995. The regulated legal protection material includes the responsibility of the air carrier company, which consists of responsibility for passengers, responsibility for goods, responsibility for delays (delays), and insurance responsibility. Considering that the legal instruments relating to the protection of air transportation passengers are old, it is necessary to review the materials or substances because they are no longer in accordance with the times (up to date), especially regarding the provisions of the Compensation Value. Therefore, it is expected that the legislator will immediately form a new law that accommodates the interests of the community as consumers.

Keywords: Air Transport; Protection of Passenger Rights; Consumer Law.

INTRODUCTION

Air transportation is a type of transportation system that is widely used for passengers, cargo, and goods, both domestic and international. As we all know, in everyday life, transportation cannot be separated from supporting time efficiency, so transportation has become one of the most important roles for the world community, such as cars, trains, ships, and planes. In today's modern era, aviation transportation is one of the modes of transportation that is in great demand by the entire world community. Indonesia is one of the countries that supports the advancement of air transportation.

The aviation industry is one of the industries engaged in services. The aviation industry has experienced very rapid development; this is evidenced by the soaring number of passengers and airlines since the regulation of the aviation industry. The growth of the aviation industry is marked by the establishment of many domestic private airlines, such as LionAir, Batavia Air, Sriwijaya Air, Wings Air, and several other airlines. In addition, the growth of the aviation industry is also evidenced by the growth in the number of domestic passengers, which is increasing quite high every year with an average annual growth of 22% (Utama and Rezki, 2021).

Air transportation is divided into two categories: commercial flights and non-commercial flights. Indonesia, especially commercial aviation, is experiencing a fairly rapid development driven by an increase in the proportion of middle-class people in Indonesia. The existence of income growth resulted in the growth of the proportion of middle-class people. This also resulted in an increase in an increase in the level of consumption for the aviation



industry, which is characterized by the growth trend of users of aviation services both for transportation within the country and abroad. This can be seen in the graph below, which illustrates the trend of increasing the number of passenger departures at Indonesian airports from year to year, namely from 1999 to 2019 (Megawati and Glam, 2022).

The legal arrangements for commercial air transport used in this writing are the Montreal Convention of 1999 and Law No. 1 of 2009 on Aviation. This convention arrangement is based on the fact that Indonesia has ratified the Montreal Convention as stipulated in Presidential Regulation of the Republic of Indonesia number 95 of 2016 concerning the ratification of the Convention for the Unification of Certain Rules for International Carriage by Air (Convention on the Unification of Certain Rules on International Air Transport) as an international regulation on the responsibility of commercial air transport in international terms.

The passenger's obligation is to pay the transportation fee that has been determined and keep the goods under his supervision, reporting the types of goods carried, especially dangerous goods. The provisions also apply in the activities of transportation or air transportation, in this case the carrier or airline is obliged to transport passengers safely and safely to the destination in a timely manner, and as compensation for the implementation of these obligations, the airline company gets paid as the cost of organizing the transportation of passengers.

Law No. 8 of 1999 on consumer protection in Article 2 describes that consumer protection bersendikan expediency, justice, balance, comfort, consumer protection, and legal certainty. The same thing was also revealed by aviation law No. 1/2009 in Article 1 Number 1, which states that aviation is a whole process that includes the territorial elements of aerospace, aircraft, airports, aerospace transportation, air traffic control, security, the environment, and the units that support it, as well as other public entities. Then, as reaffirmed in Article 146 of Aviation Law No. 1/2009, the carrier is liable for losses caused by the delay in the in the transportation of people and luggage, unless the carrier can prove that the delay was due to weather or operational reasons.

Basically, the relationship between producers and consumers is a relationship that is dependent on the producer's needs and is very dependent on the support of consumers as customers, and vice versa, consumers' needs are very dependent on the production of producers. Interdependence exists because these needs can create relationships that are continuous and continuous throughout time in accordance with the level of dependence on uninterrupted needs (Hartono, 2000:81).

According to the provisions of laws and regulations, in the event of events or circumstances that cause losses to passengers, the carrier is responsible for compensating losses suffered by passengers, but in practice, consumers or passengers have difficulty fighting for their rights as consumers. In connection with this, it is necessary to empower consumers who use air transportation services by various competent parties.

Theoretically, the legal relationship requires equality between the parties, but in practice, the legal relationship often runs unbalanced, especially in the legal relationship between producers and consumers. This also happens in the legal relationship between consumers or passengers and carriers in commercial air transportation, where consumers or passengers do not get their rights properly.

In addition, there are other laws and regulations whose substance is strongly related to commercial aviation activities, namely Law No. 8 of 1999 on Consumer Protection. Because in commercial aviation activities there is a legal relationship between producers and consumers,

Producers in this case are companies or airlines that act as business actors, while consumers are passengers who use air transportation services offered by airlines. In Law No. 8 of 1999 concerning consumer protection, the rights and obligations of businesses and consumers are regulated. During this time, the rights and obligations of the parties in air transportation activities often do not run in a balanced manner, where consumers are in a weak and helpless position when compared to the position of business actors, who are in stronger positions. In fact, the positions of the parties should be balanced and equal because, in principle, they need each other and are dependent. In this regard, it is interesting to conduct studies in order to empower consumers.

METHOD

Research is a scientific activity related to the analysis and construction of a methodologically determined, systematic, and consistent. Methodology means according to a certain method or way; systematic is based on a system; and consistent means the absence of contradictory things within a certain framework (Soekamto, 2006:42). Legal research is an effort to seek and find the right knowledge about the law, namely knowledge that can be used to answer or solve a problem correctly about the law. Search and find it; of course there is a way, namely through the method (Syamsudin, 2007:21). This study uses normative research, which is to study the various laws and regulations relating to the legal protection of passengers in commercial air transportation.

Research Subject

In this study, the object of research is the legal protection of passengers on national scheduled commercial air transportation. In relation to the object of the study, in an effort to obtain a clear, detailed picture, the normative juridical approach is used. The normative approach is done by reviewing the applicable provisions relating to scheduled commercial air transportation activities so that a clear picture can be obtained about the governing provisions that can be used in order to provide legal protection to passengers who use scheduled commercial air transportation services.

Data Collection Tools

The data used in this study is secondary data. Secondary data collection is done by using the method of library studies, also known as the study of documents. Secondary data in the form of primary legal materials that will be reviewed in the form of legislation relating to the legal protection of scheduled commercial air transportation passengers, namely, among others:

1. Law No. 8 of 1999 on Consumer Protection;
2. Law No. 15 of 1992 on Aviation;
3. Government Regulation No. 3 of 2001 on aviation security and safety;
4. Government Regulation No. 40 of 1995 on Air Transport.

Secondary legal materials, which are used in the form of legal materials that provide explanations of primary legal materials, include legal science literature and legal knowledge, journals that the author obtained from the library, and articles related to problems.

Research Procedure

The data obtained is further processed by the following steps:

1. Data selection, namely the examination of data to determine whether the data is complete in accordance with the purposes of research;
2. Classification of data, namely placing data in accordance with the subject area for easy analysis;
3. Data systematics, namely the preparation of data according to the systematics set forth in the study so as to facilitate the analysis.

Data Analysis Method

The data that has been processed is analyzed in a normative-qualitative manner, that is, to give meaning and interpret each piece of data that has been processed, and then described comprehensively and deeply in the form of systematic sentence descriptions for later conclusions to be drawn. There are three stages of water models in data analysis: data reduction, data presentation, and data verification. All three stages will be performed simultaneously.

RESULTS AND DISCUSSION

Regulation of Legal Protection of Passengers in Commercial Air Transport

The air transportation mode has an important and strategic role both in the perspective of business activities and in the perspective of archipelago insight, namely as a means of connecting between regions. Air transportation, in addition to being a means of migration or movement of both people and goods, is also a means of supporting the mobility of business and trade people both at the local and international business levels. Air transportation capital is chosen because this type of mode has characteristics, namely being able to reach the destination in a fast time, using high technology, and having a high level of safety. However, in the past few years, there have been many accidents on air transportation that consume or cause a lot of loss of both life and property.

Every occurrence of the accident will certainly have an impact legally, because it always brings the impact of losses that give birth to legal responsibility. In this case, especially for airlines or carriers against passengers and owners of goods, both as parties to the agreement and as consumers, In addition to the large number of plane crashes that resulted in death and disability, it turned out that in the practice of organizing commercial air transportation, there are many violations of passenger rights by airlines, in connection with which it is necessary to enforce the law.

In determining the responsibility of the carrier, of course, must refer to the legislation so that there is legal certainty, what is the form of responsibility, what are the requirements to be responsible, how much loss must be paid and others. The determination of the responsibility of aviation companies in a legal perspective is a means of legal protection for consumers of air transportation service users. Based on the results of the study, in the National positive legal system there are several laws and regulations relating to the legal protection of commercial air transportation passengers. The legislation includes the following:

1. Law No. 15 of 1992 on Aviation

Law No. 15 of 1992 on Aviation was published in the State Gazette of 1992 No. 53. In addition to the National Register of Historic Places No. 3481, The birth of Law No. 15 of 1992 was based on a situation where the aviation world has experienced a

very rapid development, so that existing laws are considered no longer in accordance with the times. As stated in the preamble to the explanation, which states, “In addition, in order to develop national law and to further strengthen the realization of legal certainty, Law No. 83 of 1958 on aviation needs to be replaced by this law because it is no longer in accordance with the times, scientific and technological progress, and has not been arranged in one unit. With the birth of this law, Law No. 83 of 1958 on Aviation was revoked and declared no longer valid.

In addition to keeping up with the Times and advances in science and technology, the birth of Law No. 15 of 1992 is also based on a necessity to obey international law in the field of aviation because Indonesia, as one of the member states of the International Civil Aviation Organization (ICAO), as stated in the Chicago Convention of 1944 and its Annexes and operational technical provisions, must be adhered to in accordance with national interests.

2. Government Regulation No. 3 of 2001 on Aviation Security and Safety

Government Regulation No. 3 of 2001 was issued to implement the provisions of Law No. 15 of 1992 concerning aviation, especially regarding aviation security and safety. In the explanation, it is clearly stated that flight activities are full of very high risks; the slightest mistake made by the carrier can be fatal, namely the occurrence of a plane crash that can result in losses for passengers. Therefore, the issue of security and safety in aviation has received serious attention in the world of aviation because it concerns the human psyche.

3. Government Regulation No. 40 Of 1995 On Air Transport

Government Regulation No. 40 of 1995 on Air Transport was promulgated on November 17, 1995, in State Gazette No. 68. The background of the issuance of this legal product is to follow up on the provisions contained in Law No. 15 of 1992, as stated in its consideration that the birth of PP No. 40 of 1995 is to implement the provisions of Law No. 15 of 1992 on aviation. According to the theory of legislation, this legal product is of a technical regulatory nature.

4. Law No. 8 Of 1999 On Consumer Protection

Law No. 8 of 1999 on Consumer Protection, promulgated in Jakarta on April 20, 1999, in the Statute Book of 1999 Number 42. This legal product was born against the background of, among others:

- a) Carrying out the mandate of Pancasila as the ideal of Indonesian law, which is also a philosophical foundation, and the 1945 Constitution, especially Article 27 paragraph (2), every citizen has the right to obtain a decent life for humanity; the provisions of the 1945 Constitution are a constitutional juridical foundation.
- b) Implement the provisions contained in the resolution of MPR RI No. II/MPR/1993. Regarding the state guidelines, in Chapter IV, letter F item 4a, it is stated, “Trade development is intended to facilitate the flow of goods and services in order to support increased production and competitiveness, increase the income of producers, especially smallholder agricultural producers and traders, and protect the interests of consumers. In the context of legal politics in

Indonesia, the state guidelines are a source of direction or guidance in formulating national legal development policies in order to realize national goals.

- c) Implementation of Law No. 7 of 1994 on the ratification of the Agreement Establishing the World Trade Organization. As a member of the World Trade Organization. Indonesia is obliged to comply with the provisions issued by the organization.

Legal Remedies for Passengers Who Suffer Losses on Commercial Air Transportation

Law No. 8 of 1999 on consumer protection, in addition to determining the rights and obligations of business actors and consumers, also regulates legal remedies that can be undertaken by consumers who experience losses due to the actions of business actors. In the context of the Indonesian legal system, efforts or means can be taken to fight for the rights of the community, which can be done by applying legal sanctions to parties who violate the law, both administrative sanctions and criminal sanctions, but it can also be done by filing a civil lawsuit to the court or settling the case through non-litigation, namely the settlement of disputes outside the court through intermediaries of other parties whose existence has been regulated in the legislation, namely Law No. 8 of 1999 on Consumer Protection.

As stipulated in Article 45, every consumer who is harmed can sue the business actor through an institution in charge of resolving disputes between consumers and business actors or through a court that is in the general judicial environment. Settlement of consumer disputes may be pursued through the courts or out of court based on the voluntary choice of the parties to the dispute. The out-of-court settlement of disputes referred to in Paragraph 2 does not eliminate the criminal liability provided for in the law. If an out-of-court consumer dispute resolution attempt has been selected, a lawsuit through the court can only be pursued if the attempt is declared unsuccessful by either party or by the parties to the dispute.

The above provisions expressly stipulate that consumer dispute resolution can be done in two ways, namely through the court and through out-of-court channels. Furthermore, in Article 46, it is stated that a lawsuit for violation of business actors can be carried out by: a consumer who is harmed or the heirs concerned; a group of consumers who have the same interests; Qualified non-governmental consumer protection institution, namely in the form of a legal entity or foundation, which in its articles of association expressly states that the purpose of establishing the organization is for the benefit of consumer protection and has carried out activities in accordance with its articles of association; the government and/or related agencies if the goods and/or services consumed or utilized result in large material losses and/or casualties are not small.

CONCLUSION

In the positive law of Indonesia, there are several laws and regulations that provide legal protection for scheduled commercial air transportation passengers. These regulations include Law No. 15 of 1992 on Aviation; Aviation Ordinance 1939 or OPU 1939; Government Regulation No. 40 of 1995 on Air Transport; Government Regulation No. 3 of 2001 on Aviation Security and Safety; and Law No. 8 of 1999 on Consumer Protection. These legal products can be used to file a lawsuit if passengers experience losses when using air transportation services.

For air transportation passengers who feel or experience loss, they can file a lawsuit or claim with the airline company. The settlement of a lawsuit or dispute can be taken through two channels, namely the court line and the line out of court. Both dispute resolution models are recognized in Law No. 8 of 1999 on Consumer Protection. Consumers are free to choose their dispute resolution model

REFERENCES

- Hartono, S. R. (2000). *Kapita Selecta Hukum Ekonomi*. Bandung: Mandar Maju.
- Megawati, Y & Glam, H.S. (2022). Dampak E-Service Quality Terhadap E-Loyalty Pada Situs Maskapai Penerbangan Lowcost Carrier Di Indonesia. *Jurnal Hospitality dan Pariwisata*, 8(2), 106-123.
- Soekamto, S. (2006). *Pengantar Penelitian Hukum*. Jakarta: Penerbit Universitas Indonesia.
- Syamsudin, M, (2007). *Operasionalisasi Penelitian Hukum*. Jakarta: Rajawali Pers.
- Undang-Undang Nomor 8 Tahun 1999 tentang Perlindungan Konsumen.
- Undang-Undang RI Nomor 1 Tahun 2009 tentang Penerbangan.
- Utama, B. D & Rezki, J.F. (2021). Perkembangan Industri Penerbangan dan Pertumbuhan Ekonomi di Indonesia. *Jurnal Ilmi Pemerintahan Suara Khatulistiwa (JIPSK)*, 6(2), 213-223.