

Flight Dispute Resolution (Based on Law Number 8 of 1999 Concerning Consumer Protection): Lion Air JT 610 Accident Case

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Abstract— In carrying out air transportation, there is always a possibility of a risk that can be detrimental the passenger. Nowadays not all the risk can be accounted by the carrier. But it does not rule out the possibility that passenger can sue the airline as a business actor. The passenger who suffered by the air transportation can file the accusation or claim which is regulated in the law number 8 of 1999 concerning consumer protection which can be pursued through two dispute resolution paths, namely the court and off court lane, both of which are recognized by the law number 8 of 1999 concerning consumer protection. The problem of this article are to analyze how flight accident dispute resolution reviewed from consumer protection. This research uses normative legal research processing by the use of deductive method to solve the legal problems accordingly the law number 8 of 1999 concerning consumer protection.

Keywords: *air transportation, risk, dispute resolution*

I. INTRODUCTION.

The Lion Air aircraft with flight number JT 610 falls around Karawang waters on October 29, 2018. Boeing 737 Max 8 aircraft are still in operation, with good weather conditions, and experienced pilots. The plane carrying 189 passengers and crew members lost contact after 13 minutes after taking from Soekarno Hatta Airport to Depati Amir Airport in Pangkal Pinang

Air transportation has become one of the important modes of transportation for various cosmetics and international routes. air transportation facilities are fast, effective, efficient and convenient means of transportation. Aircraft have the characteristics of being able to reach their destination quickly, using high technology, and do not know the borders compared to other modes of transportation.

Airlines in Indonesia currently adhere to a full service system by implementing a low cost carrier (LCC), which means the airline offers lower rates to consumers with the consequence of several deletions and reductions in services and facilities obtained by regular flights. So that it is prone to flight safety and will have an adverse impact on the safety, comfort and protection of passengers as consumers.

Public transport accidents, including commercial aircraft, can occur anytime and anywhere. An accident is an event that is beyond the capabilities of a human that occurs as long as the passenger is in an airplane from the departure airport to the destination airport, resulting in death, serious injury or loss. There are various factors that can cause aircraft accidents, it can be due to damage from aircraft engines, bad weather, or related to factors of human negligence.

Based on a survey conducted by the Indonesian consumer institution foundation (YLKI) Lion Air is the airline with the highest number of complaints in 2014 with average complaints such as poor ticket compensation services, delays, and baggage security. And during 2016 until 2017 the ministry of transportation has imposed sanctions on Lion Air in the form of freezing routes until payment of compensation of up to 1.7 billion

This study examines and analyzes the forms of flight dispute resolution if viewed from Law Number 8 of 1999 [1] concerning consumer protection against the use of air transportation services as consumers who have an accident.

II. METHOD

The research method used in this study is normative legal research using a legal approach and using the study of documents or library materials. This approach is carried out by

examining all laws and regulations relating to the flight dispute resolution reviewed from Law Number 8 of 1999 [1] concerning Consumer Protection. By analyzing qualitatively and describing the data generated from research into a systematic explanation. So that a clear picture of the problem under study is obtained. The results of the data analysis are deductively deduced, then presented in the form of descriptive analysis.

III. RESULTS AND DISCUSSION

A. *The Airline Responsibility For The Passengers*

In contract law, transportation is a form reciprocal agreement between the carrier and the party being transported (passenger and / or sender) where the carrier binds itself to carry out the transportation of goods and / or people to a particular destination, and the passenger and / or sender binds himself to pay a sum of money or fees transportation.

Engagement that occurs between transporters and passengers is indicated by ticket purchase. After passengers use flight services, the legal reparation will have legal consequences both for the carrier and for the passengers, therefore it is necessary to regulate the protection of passengers as consumers in accordance with the law.

Legally a transportation agreement has been formed since the agreement was reached between the carrier and passengers. Based on Article 1 point 29 of Law Number. 1 of 2009 [2] concerning Aviation (UUP), an air freight agreement is an agreement between the carrier and the passenger and / sender of cargo to transport passengers and / cargo by airplane, in return for other services.

Pursuant to article 141 paragraph (1) Law Number. 1 of 2009 [2] concerning flights that the carrier / airline is responsible for losses to passengers who have died, suffer permanent disability, or injuries caused by the occurrence of air transportation in the aircraft and / or boarding and descending aircraft.

While Article 1 paragraph 3 of Ministerial Regulation Number 77 of 2011 [3] 1 defines the responsibility of air transport carriers as the obligation of air transport companies to compensate for losses suffered by passengers and / or goods senders and third parties.

Provisions regarding the type of responsibility and amount of compensation are regulated in Chapter II of Ministerial Regulation Number 77 of 2011 [3] while Article 2 explains that transporters operating aircraft must be responsible for damages to: Passengers who have died, permanent or injured defects; Lost or damaged cabin baggage; Lost, destroyed, or damaged checked baggage Lost, destroyed, or damaged cargo; Delay in air transportation; and Losses suffered by third parties. Therefore, the responsibility of air transport carriers in this case

is the airlines, from rising to falling passenger aircraft.

There is a limitation regarding the responsibility of the carrier to the passenger. The accident that occurs must have a relationship with air transport. the intention is an accident Which causes loss to the passenger has nothing to do with air transportation, so that the carrier cannot be held responsible. As is such provisions, the scope of responsibility of domestic air carriers in Indonesia is narrower than the scope of responsibility of the carrier on international transportation

The existence of this requirement is a form of limitation on the responsibility of the carrier. Whereas in the Warsaw Convention of 1929 [5] there was no limitation on the responsibility of the enforcer. Article

17 of the Warsaw Convention of 1929 [5] states that although the loss suffered by passengers is not related to air transportation, provided that it is caused by an accident and occurs in an aircraft or at the time embarkation, the carrier must be responsible.

Provisions for conditions must be related to air transport activities if associated with the principle of absolute liability (strict liability) then this is not necessary cause in the principle of absolute responsibility, that the carrier is always responsible.

In the law of transport there are three principles in determining responsibility of the carrier, namely:

1. *The principle of responsibility is based on fault or liability based default principle, this principle determines the responsibility of transportation based on the view that those who prove the fault of the carrier are the losers.*
2. *The principle of responsibility for the rebuttable presumption of liability principle, according to this principle the defendant is considered always guilty unless the defendant can prove that he is innocent or can put forward things that can free him from mistakes. So this principle is almost the same as the first principle, it's just that the burden of proof is reversed, that is, the defendant proves that the defendant is innocent.*
3. *The principle of strict liability, according to this principle, that the party that causes harm in this case the defendant is always responsible without seeing the presence or absence of errors or not seeing who is guilty or a principle of accountability that sees the error as irrelevant to the issue whether in fact exists or does not exist. The carrier may not be free of responsibility for any reason that causes harm to the passenger or the sender of the goods. So that it can be formulated that the carrier is responsible for any losses incurred due to any event in carrying out*

transportation.

Beside that article 18 Ministerial Regulation Number 77 of 2011 [3] concerning the Responsibilities of the Air Transport Carrier said that the responsibility starts from the passenger leaving the airport waiting room to the aircraft until the passenger enters the arrival terminal at the destination airport. Although the regulations have determined the responsibility of the carrier, some requirements must be fulfilled, so that they can be implemented. Requirements for these requirements include:

1. The loss is caused by an accident
2. Accidents occur on board
3. Accidents that occur when boarding or descending a plane

Article 43 of Law Number. 15 of 1992 [4] states that an airline will be liable if the death or injury of a passenger is caused by an accident during air transportation and occurs in an airplane or accident during air transportation and occurs in an airplane or accident while riding to or get off the airplane. Included in terms of passenger injuries are physical disabilities and / or mental disabilities. However, the criteria referred to by the accidents are not determined by law.

So it needs to be discussed about the criteria of a plane accident. Based on Annex 13 of the Chicago Convention in 1944 [6], there are two notions of aircraft accidents, namely accidents and incidents, both of which have different meanings. Accident is an event that happens unexpectedly with regard to the operation of an aircraft that has been going on since the passenger boarded an airplane (boarding) with the intention of flying to the destination until all passengers descend from the aircraft at the destination airport.

Such accidents can cause people to die or seriously injured, minor injuries, permanent or temporary injuries that are acclaimed:

1. Conflict with aircraft
2. Direct contact with aircraft parts and
3. Being hit directly from an aircraft jet engine Based on [6] Annex 13 of the Chicago Convention in 1944 the notion of events or incidents was events other than accidents that occurred during the flight that took place related.

The definition of onboard the aircraft does not mean when the passenger is physically on the plane, but also includes if the passenger is physically outside the aircraft due to abnormal conditions, meaning the presence of passengers outside the aircraft is not due to the end of the trip as stated in the transport agreement, so that if the passenger suffers a loss or accident during the flight due to abnormal conditions the carrier must

still be responsible. However, if the loss or death is caused by the passengers themselves, of course the transporter can avoid responsibility.

B. Consumer Protection on Commercial Transportation

Consumer protection is defined as all efforts that guarantee legal certainty to provide protection to consumers. Law No. 8/1999 [1] provides a definition of consumers, is that every person who uses goods and/or services available in the community both for his own personal interests, family, others, and for other living creatures that are not traded. Law No. 8/1999 [1] Consumer Protection basically protects every occupant who uses flight services.

Article 4 of Law No. 8/1999 [1] concerning Consumer Protection, if constructed on activities commercial air transportation, passengers have the right to comfort, safety and safety in consuming goods and / or services offered by airlines, meaning airlines as business operators have an obligation to provide comfort, safety to passengers. Thus passengers can claim their rights as consumers in air transportation. There are several aspects of consumer protection in commercial transportation.

1. Safety Aspects

This aspect aims to provide protection to users of commercial transportation services, in this case all companies need to anticipate the possibility of accidents for their passengers. Furthermore it is also said that service providers are obliged to ensure the safety and security of every passenger who uses flight services, which means that the guarantee of safety is closely related to the condition and airworthiness of the aircraft to be used.

Passengers as consumers can claim if an aircraft is found that does not comply with the criteria stipulated in Government Regulation Number. 3 of 2001 [7], passengers can make demands on airlines in accordance with the Minister of Transportation Number. 77 of 2011 [3] concerning the responsibility of air transport carriers

Moreover the factors of human resources involved in aviation activities are also related to aspects of aviation safety. Aviation safety is the overall result of a combination of various factors, namely the factors of aircraft, personnel, aviation facilities, flight operations and flight regulatory agencies

2. Aviation Security Aspects

Airline companies must guarantee safety during flight. In addition to the aspects of airplane accidents, the

security aspect is the most obvious aspect by consumers of users of air transportation services. What is meant by aviation security is safe from a variety of disturbances, both technically and disturbances from robbery, seizure and terrorist attacks.

3. *Comfort Aspects*

The flight comfort aspect is closely related to the flight of airplanes such as seats, complete facilities, air conditioning, airport facilities during flights are also aspects of comfort in flight, which must be provided by commercial airlines to passengers. It is advisable to keep all the given values.

4. *Business Service Aspects*

As one form of service trade, service air transportation is one indicator often chosen by prospective consumers, therefore the aspects of service in air transportation such as in the procedure of purchasing airline tickets and seating procedures (boarding passes). so that airlines must properly regulate the problem of determining seating for passengers so that there is no double seat which is certainly very detrimental to consumers.

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5. *Tariff Determination Aspect*

In the implementation of commercial air transportation, it is necessary to regulate the issue of tariffs so as not to impose on consumers. there are several factors that play a major role in determining transport fares, namely the air transport system, competition and fair rates. Tariff is a combination of various cost components in carrying out commercial air transportation. The air transport system is a system based on the main policy regarding air transportation, which then describes the policy in the form of arrangements regarding "airline system" in Indonesia, the structure of flight routes and the development of the air transport industry.

6. *Aspects of the Air Transport Agreement*

Aspects of the transport agreement are one of the most important elements in order to provide consumer protection for users of commercial air transportation services. The airline company is obliged to provide passenger tickets as evidence of an air freight agreement. Tickets or air transport agreement documents provided by the company are listed as standard clauses or commonly known as standard agreements.

7. *Aspect of Submitting Claims*

In aviation activities the risk of accidents often results in a loss for passengers, in connection with this it requires consumer protection for passengers, namely the procedure of settlement or submission of claims that are easy, fast and satisfying. Easy procedures mean that, the procedures taken to resolve cases are not complicated, complicated in realizing the rights of heirs of passengers who are victims. Whereas a cheap procedure means that passengers or heirs who have an accident do not need to spend expensive costs to settle compensation. Furthermore, rapid dispute resolution implies that the procedure does not take a long time, meaning that it can use dispute resolution outside the court, because dispute resolution through court lines tends to require a considerable amount of time.

8. *Protection Aspects Through Insurance*

In Indonesia, it is known as mandatory insurance for *Jasa Raharja* services. In this insurance the payer is the passenger himself, while the airline company is only acting as a collector. however, airlines generally insure themselves against risk risks that are likely to arise in the conduct of their flight activities, including insuring the risk of liability to passengers. In addition to insurance covered by the airline,

C. *Legal Measures Taken By Passengers As Consumers*

Stated in Article 23 of the Consumer Protection Act, that passengers on commercial air transportation are included in the category of consumers who can file a lawsuit against the airline company.

Law Number 8 of 1999 [1] on Article 45 is stated:

- a. *Every aggrieved consumer can file a lawsuit aimed at the business actor through an institution whose task is to resolve disputes between consumers and business actors as well as through courts in the general court environment.*
- b. *Consumer dispute resolution can be carried out through court channels and out-of-court channels that are based voluntarily from the parties to the dispute.*
- c. *Settlement of disputes through outside the court referred to in paragraph (2) does not eliminate criminal responsibility as stipulated in the Act.*
- d. *In the case of efforts to resolve consumer disputes outside the court, the claim through the court can only be reached if the effort is declared*

unsuccessful by either party or by the parties to the dispute. In the explanation of Paragraph (2) it is stated: The settlement of consumer disputes as referred to in this paragraph does not rule out the possibility of a peaceful settlement by the parties to the dispute.

Furthermore article 23 of the minister of transportation regulation number 77 of 2011 [3] is regulated regarding the choice of law mechanism that can be taken for heirs of passengers who suffer losses as consumers to be able to sue transporters through the district court or through outside court in the form of arbitration and alternative dispute resolution in accordance with regulations legislation

Based on the above provisions, it can be stated that consumers who feel harmed by a business actor can make a claim. Consumer dispute resolution can be done through a line outside the court or through the court. Same as consumers in commercial air transportation, then the provisions of the article can also be applied, namely for passengers who are harmed by the airline company can file a lawsuit against the airline company. Settlement of the dispute can be reached through a court or outside the court.

At each stage of dispute resolution it is endeavoured to use a peaceful settlement by both parties to the dispute. Peaceful settlement is the settlement carried out by both parties to the dispute (business actors and consumers) without going through a court or consumer dispute resolution body and not in contravention of this Law.

Other than that the lawsuit was filed by a group of consumers, non-governmental or governmental consumer protection agencies.

1. Consumer Dispute Resolution Through Court

Court Dispute Settlement is regulated in Article 48 of law Number. 8 of 1999 [1] concerning the protection of consumers stating: Consumer dispute resolution through the court refers to the provisions concerning the prevailing general court by taking into account the provisions in Article 45. Whereas article 46 regulates provisions concerning parties those who can file a lawsuit for violations of business actors can be carried out by:

- a. Consumer whose interests are disadvantaged or the heirs concerned;
- b. Group of consumers who have the same interests; c. non-governmental consumer protection institutions that fulfill the requirements, namely in the form of legal

entities or foundations, which in their statutes expressly state that the purpose of establishing the organization is for the benefit of consumer protection and have carried out activities in accordance with their articles of association;

- c. Government and / or related institutions if the goods and / or services consumed or utilized result in substantial material losses and / or victims that are not small.

Consumers or air transportation passengers who want to make a lawsuit against the airline through the court, the consumers concerned must meet the provisions and procedures of litigation in court. Including having to prepare:

- a. Compile a lawsuit
- b. Preparing evidence or documents relating to air transportation, such as airplane tickets
- c. Make details of the losses experienced
- d. Compile a chronology or process from starting the ticket purchase, check in, boarding pass, waiting at the departure airport until arriving at the destination airport. Provisions regarding the settlement of Out-of-Court

2. Consumer Dispute Resolution Out Court Lane

Provisions regarding the settlement of Out-of-Court Dispute Settlement, regulated in Article 47 of Law Number 8/1999 [1] concerning consumer protection which states that consumer dispute resolution outside the court is held so that an agreement is reached regarding the form and amount of compensation and / or regarding certain actions to guarantee that there will be no recurrence of the losses suffered by consumers. Consumer dispute resolution outside the court can be done through several dispute resolution models, among them through Alternative Resolution Issues (ARM) at the Consumer Dispute Settlement Agency, Non-Governmental Consumer Protection Institutions, or through the Directorate of Consumer Protection or other locations that are good for both parties has been approved.

- a. Completion through the Consumer Dispute Settlement Agency (BPSK) Procedures for Settling Disputes through BPSK can be done by conciliation, mediation and arbitration.

BPSK dispute resolution through conciliation, firstly with the establishment of a body as a passive

facilitator, which is a body that allows the problematic to solve their problems thoroughly by themselves for the form and amount of compensation, then When a settlement is reached, it will be declared an agreement on reconciliation which is strengthened by the decision of BPSK which takes a maximum of 21 working days for completion

Dispute resolution uses Mediation BPSK first forms a function of the body as an active facilitator for provide guidance, advice and advice to parties in dispute.

This agency allows the problematic to solve their problems thoroughly from the form to the amount of compensation. Then, when a settlement is reached, a reconciliation agreement will be obtained which is reinforced by the decision of BPSK which will take a maximum of 21 working days.

Dispute resolution using arbitration, the party who suffers a loss chooses the CDSB body as an internal arbitrator solve consumer problems. then, the two sides completely let the body solve their problems.

BPSK makes a final and binding settlement and the settlement must be completed within a maximum of 21 working days. However, if both parties are not satisfied with the outcome of the settlement, both parties can submit a complaint to the district court within a period of 14 days after the settlement is informed. The district court of the judiciary is obliged to provide settlement within 21 working days; If both parties are dissatisfied with the court / settlement decision, they continue to provide the opportunity to obtain a quick legal force to the high court within 14 days. Court The height of the court body is obliged to provide a settlement within 30 days.

Users of air transportation services as consumers, if they experience losses, can solve it through the BPSK institution. As stipulated in Article 2 of Law Number 8 of 1999 [1] concerning Consumer Protection which states that every consumer in this case the injured passenger or his heirs can sue the business actor through BPSK in consumer domicile or the nearest BPSK.

However, BPSK authority in the case of flights is limited to certain things such as defaults that are carried out when conducting transactions, such as

delays, failure of passenger departures, loss of goods. BPSK does not have the authority to calculate the losses required by the heirs to the airline in the event of immaterial losses

- b. Consumer Dispute Resolution Through the Institute for Non-Governmental Consumer Protection (LPKSM)

The dispute resolution process through LPKSM according to the Consumer Protection Act can be resolved through mediation, conciliation and arbitration.

For the parties to the dispute / problem agreeing to choose the method of settlement, the results of the settlement process are stated in the form of an agreement written, which must be adhered to by both parties and the role of LPKSM only as a mediator, conciliator and arbitrator. The determination of points of agreement refers to regulations contained in the Consumer Protection Act and laws others who support.

Article 44 of Act Number 8 of 1999 [1] recognizes the existence of LPKSM, which states:

- a. The government recognizes self- supporting consumer protection institutions that meet the requirements.
- b. The non-governmental consumer protection institution has the opportunity to play an active role in realizing consumer protection.
- c. The task of the non-governmental consumer protection agencies includes the following activities:
 - i. Disseminating information in order to increase awareness of rights and obligations and consumer caution in consuming goods and / or services;
 - ii. Provide advice to consumers who need it;
 - iii. Working with relevant agencies in an effort to realize protection consumer;
 - iv. Assist consumers in fighting for their rights, including receiving complaints or consumer complaints;
 - v. Supervise with the government and the community towards the implementation consumer protection.
- d. Further provisions regarding the duties of the self-help consumer protection institutions as referred to in paragraph 3 are regulated in

Government Regulations.

For consumers who experience losses in using air transportation services, they can complete their dispute through the Self-Help Consumer Protection Agency, in accordance with the domicile of the passenger concerned.

One organization that is engaged in consumer empowerment, which is a form of the Society for Self- Help Consumer Protection, is the Indonesian Consumers Foundation (YLKI) which is an organization that actively advocates for consumers.

IV. CONCLUSIONS

From the above description with the holding of a transport agreement between the carrier as the business actor and the passenger as the consumer, a legal relationship arises which is indicated by the giving of a ticket from the carrier. In this relationship the two parties have the rights and obligations stipulated in law Number 8 Of 1999 [1] concerning Consumer Protection for air transport passengers who feel or experience losses can submit a claim or claim to the airline company, settlement of a lawsuit or dispute can be taken through two lines, namely the court line and the court outside the line where the two models of dispute resolution are recognized in law Number 8 Of 1999[1] concerning Consumer Protection.

However, in matters relating to BPSK compensation, it does not have the authority to calculate the immaterial losses demanded by the heir to the airline. so that if the heirs want to submit material demands to the business actor, they must use dispute resolution.

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