

Responsibilities of Aviation Companies on Passenger Due to Cancellation of the Transporter Ssepting Based on Law Number 1 of 2009 Concerning Flight (Study of Cassation Decision Number 975 / K / PDT / 2019)

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ABSTRACT

Aircraft as air commercial air transport business entities are obliged to transport people, and / or cargo and post after the agreed transportation agreement. The rights and obligations of both the employer and the carrier are stated in the airplane ticket as one of the agreements. Passenger tickets and cargo documents as must be proven in the transportation agreement. Passenger tickets and a letter of carriage of goods are proof that a transportation agreement has occurred between the carrier and the passenger or sender. If a system error occurs in the aircraft, the passenger still has the right to be flown. So that the relationship between the passenger and the carrier is an agreement that has been binding on both parties. The agreement does not have a prohibition from a public official, so the agreement is valid, meaning that the airline has no right to refuse because of the agreement. If the passenger or carrier has good communication, the carrier when the passenger buys a ticket has to check the name of the passenger so there is no system error and ask passengers to bring complementary documents.

Keywords: *agreement, ticket, system error*

1. PRELIMINARY

• Background

Indonesia is a vast country so it consists of various islands because of that inter-island relations get very far and difficult, but to carry out various activities, the movement between islands must be well connected to achieve progress for the development of human civilization. Therefore the relationship between one island and another island is very much needed a mode of transportation. Indonesia is a country of law where everything must be based on law including air transportation. Regarding air transportation, several legal rules have been regulated, including Law No. 1 of 2009 concerning Aviation, Government Regulation Number 70 of 2001 concerning Aerospace, as well as Minister of Transportation Regulation No.38 of 2015 concerning Domestic Air Transport Passenger Service Standards. These laws and regulations aim at establishing orderly and safe flight.

Air transportation makes it easy for consumers to arrive at their destination with a relatively short time when compared to generally is one example of the development of transportation or transportation that has advantages

compared to other means of transportation or transportation. But air transportation is a business that is fully regulated or will obey the rules. All aspects are regulated in detail because air transportation is a high-risk business. Therefore, airlines are bound by several rules to ensure the safety of flying, one of which is the obligation to prohibit flying passengers. Basically, airlines are obliged to transport after an agreement on fees. In fact, all the obligations of employers or carriers have been stated in the airplane ticket as one of the agreements.

With the advances in aircraft technology, electronic ticket reservations can be expected to simplify and speed up ticket reservations as domestic and / or international transportation documents 24 hours via the internet. Paper-based air tickets are physical documents that are issued in the form of documents printed with a computer currently used by all airlines. If each party respects and carries out the agreement well, there should not be a deep dispute.

In the case studied, it was experienced by four passengers of Air Asia airlines. Regina Goenawan, et al. Regina had to leave using the XT7680 to Surabaya from terminal 2F Soekarno Hatta Airport. On the day of departure Regina Goenawan et al. was present and checked-in at the counter but a bad incident happened to Regina Goenawan because Air Asia refused to fly Regina Goenawan. In the end, Regina Goenawan was taken to the special Air Asia counter for further inspection, but because the name Regina

Goenawan was blacklisted on the flight, the Air Asia asked Regina to show additional data in the form of a passport as proof of identity. Regina Goenawan refused the request because according to her the request of the Air Asia airline was groundless and groundless because the flights carried out were domestic flights. Regina Goenawan, et al. decided to book Citilink tickets to Surabaya at 11.40 at Terminal 1F Soekarno-Hatta Airport.

On November 14, 2016, Regina Goenawan sent a letter to Air Asia asking for clarification and clarification related to the name of Regina Goenawan in the blacklist and complaints regarding the actions of one of Air Asia's employees who were unethical and unprofessional in providing services to consumers. Then Air Asia clarified that Air Asia's action to ask for a passport from Regina Goenawan on the grounds that Air Asia had conducted a black list for passengers on behalf of Regina Goenawan because in 2013 there had been violence on the airline, the name Regina Goenawan was blocked in the defendant's reservation system. because it is identified as having the same element with the name blocked in the reservation system.

However, the reasons of the Air Asia airline still cannot be accepted by Regina Goenawan due to the fact that if Regina Goenawan was blacklisted in passengers since 2013, she should not have been able to fly with Air Asia airlines, but in fact Regina Goenawan could still fly. In March 2017, Regina Goenawan et al. finally filed a lawsuit against PT. Indonesia Air Asia Extra and PT. Traveloka Indonesia and declared that Air Asia had taken legal action in decision No. 9 / Pdt / 2018 / PT.BTN for not flying passengers on the grounds that the names of the passengers were on the black list.

• *Formulation of the problem*

Based on the background described above, the issues that will be discussed in this journal are:

1. Is the decision No. 975 / K / Pdt / 2019 in accordance with Law Number 1 of 2009 regarding compensation in the unilateral cancellation of the carrier to the passenger?
2. What is the airline's responsibility to the passengers due to the unilateral cancellation of the carrier based on Law Number 1 of 2009 concerning Aviation?

2. RESEARCH METHODS

• *Types of research*

This type of research used by researchers in this study is the type of normative research.¹⁾ Selected normative research by researchers because the authors use legal theories and positive legal regulations to analyze all regulations and are used to examine legal issues.²⁾

• *Nature of Research*

The nature of research in research is prescriptive because of the prescription of what should be or proposed legal issues. Related to its prescriptive nature, what is learned is the purpose of law, values of justice, validity of the rule of law, legal concepts and legal norms.

• *Data Type*

The type of data used is generally only recognizing the existence of legal material as research sources.

1. Primary Legal Materials

Primary legal materials used by researchers in this paper consist of laws and court decisions and primary legal materials used, among others: Law Number 8 of 1999 concerning Consumer Protection, Law Number 1 of 2009 concerning Aviation, Ministerial Regulation Transportation Number 77 Year 2011 concerning Air Transport Transportation Responsibility, PT Indonesia Air Asia Extra Passenger and Baggage Transport Regulations and Tangerang District Court Decision Number 169 / Pdt.G / 2017 / PN.Tng, DKI High Court Decision Number 9 / Pdt / 2018 / PN. Banten and the Supreme Court's Decision Number 975 K / Pdt / 2019.

2. Secondary Legal Material

Teutama secondary legal materials are law books and journals including legal thesis. In addition, dictionaries and opinions or comments on court decisions

3. Non-legal materials

Non-legal materials used in this study are interviews, dialogue results, non-legal books, non-legal research, non-

¹⁾ Peter Mahmud Marzuki, Legal Research, 13th Edition (Jakarta: Kencana Prenada Media Group, 2017), p.35.

²⁾ Mukti Fajar ND and Yulianto Achmad, Dualism of Normative & Empirical Law Research, 4th Edition (Yogyakarta: Student Library, 2017), p.34.

legal research, non-legal journals that have relevance to the research topic.

• **Research Approach**

The research approach used is the statute approach, which is an approach that is carried out by examining all laws and regulations or regulations that are relevant or related to the legal issues being addressed.

Data collection technique

Because this collection technique is normative, the data collection technique is literature study on non-law. Searching for legal materials can be done by reading, seeing, listening to, and now a lot of searching for legal materials through the internet media.

3. DISCUSSION

• **Position Case**

At the date of November 4, 2016, Regina Goenawan and her friends should have departed using XT7680 to Surabaya from terminal 2F of Soekarno Hatta Airport. On the day of departure Regina Goenawan et al. was present and checked-in at the counter, but a bad incident happened to Regina Goenawan because Air Asia officials refused to fly Regina Goenawan on the grounds that the name of Regina Goenawan on the reservation system was blacklisted on Air Asia flights. Then Regina Goenawan was taken to the Air Asia special counter for further inspection, but because the name Regina Goenawan was blacklisted in the flight, the Air Asia asked Regina to show additional data in the form of a passport as proof of identity.

Regina Goenawan refused the request because the flight carried out was domestic and if the name of Regina Goenawan was recorded in the reservation system as a blacklist then in the past Regina Goenawan could not buy the ticket, but in fact in 2015 and 2016 Regina Goenawan could still make flights to another place. On November 14, 2016, Regina Goenawan sent a letter to Air Asia asking for clarification and clarification related to the name of Regina Goenawan in the blacklist and complaints regarding the actions of one of Air Asia's employees who were unethical and unprofessional in providing services to consumers. Then Air Asia clarified that Air Asia's action to ask for a passport from Regina Goenawan on the grounds that Air Asia had conducted a black list for passengers on behalf of Regina Goenawan because in 2013 there had been violence on the airline, the name Regina Goenawan was blocked in

the defendant's reservation system. because it is identified as having the same element with the name blocked in the reservation system.

In the end, Regina Goenawan was only left to wait without being given compensation and facilities in any form and caused all the agendas that had been prepared by Regina Goenawan to become messy, so Regina Goenawan decided to book tickets online using the Citilink airline to Surabaya. Feeling the service and actions of one AirAsia employee were considered unprofessional and not given any clarification Regina Goenawan submitted a complaint against the AirAsia airline. In the complaint letter against AirAsia also assessed by Regina Goenawan, it did not provide a clear explanation why Regina Goenawan was not flown, even though Regina Goenawan had fulfilled one of the obligations. namely paying for flight tickets.

In the end, Regina Goenawan filed a lawsuit lawsuit against PT. Indonesia Air Asia Extra and PT. Traveloka Indonesia and declared that Air Asia had taken legal action in decision No. 9 / Pdt / 2018 / PT.BTN for not flying passengers on the grounds that the names of the passengers were on the black list. Regina requested that the Tangerang District Court be able to examine and try and give a ruling. In the decision of the Regina District Guagatan District Court, it was stated that it had a lack of clarity on the lawsuit for various reasons, namely, Regina did not dispute the contractual relationship between Regina Goenawan and the defendant and the vague and unclear lawsuit because the lawsuit was based on broken promises, but her claim was an illegal act. The decision from the District Court prevented Regina from accepting it and then filing it again.

So that the appeal memory of the Appellant is groundless and is ruled out with several reasons, one of which is rejecting the entire Comparator's lawsuit / the original Plaintiff can be defended and strengthened. In the end, Regina Goenawan still could not accept the decision of the High Court and proceeded to the Cassation level. It turned out that Regina Goenawan's persistence to continue until the cassation level bore fruit. in Cassation Decision Number 975 / K / Pdt / 2019 Regina Goenawan was won. After the Supreme Court reads and examines, the Supreme Court has several reasons that Regina Goenawan won by the Judge as follows:

1. The validity of the Cassation Respondent's legal actions refuses to check in on behalf of the Cassation Appellant using the Cassation Respondent's XT 7680 Jakarta-Surabaya route on 4 November 2016, which according to the Cassation Appellant is against the law;
2. Whereas the Cassation Appellant's lawsuit in this case is a clear lawsuit namely regarding illegal acts by the Cassation Respondent even though it contains aspects of broken promises because the Cassation Applicant cannot enjoy the flight promised by the Respondent Cassation even though the Cassation Applicant has paid the price of the flight ticket;
3. That as a flight service provider, the Cassation Respondent has the right to determine the requirements

that must be fulfilled by prospective passengers to be able to take part in the flight (check in), but these requirements must be notified before the prospective passenger purchases an airplane ticket, which is not proven to be done by the Cassation Respondent;

4. That the action of the Cassation Respondent refuses the check-in process on behalf of the Cassation Appellant to be carried out without prior notification of the prospective passenger black list where the name of the Cassation Applicant / Plaintiff I is included and after the notification sent by the Respondent to the Cassation Applicant regarding the flight hours is an act contrary to propriety value so that it is an act against the law;
5. Whereas the Cassation Respondent's actions have caused material losses in the form of airplane ticket prices that have been issued by the Cassation Appellant, while the claim for immaterial loss is not supported by a valid reason regarding the occurrence of the loss so the claim for immunity compensation must be rejected;
6. That the Cassation Respondent's actions can also occur to other potential passengers, so it is reasonable to punish the Respondent's Cassation for apologizing to the Cassation Appellant.

After the appeal of Regina Goenawan was rejected in 2 (two) court. Regina Goenawan's party filed an appeal to the Supreme Court. Based on the Supreme Court Decree No. 975 / K / Pdt / 2019, the Panel of Judges decided on the case that is giving material damages of Rp5,296,665.00 (five million two hundred ninety six thousand six hundred sixty five rupiah) and sentencing the Respondent to Cassation to make a request sorry to the Cassation Appellants.

• *Air Freight Law*

The transportation agreement is an agreement made between the carrier and the passenger, whereby the carrier is bound to carry the transportation of passengers and / or goods from the departure airport to the specified destination airport in a safe condition while the passenger or the owner of the goods commit themselves to pay a sum of money as a transportation fee and the passenger has the right to obtain a transportation service. According to E. Suherman, the carrier is the person or body that makes an agreement to carry out the transportation of passengers, baggage or goods using an airplane.³⁾

³⁾E Suherman, Problems of Responsibility in Aircraft Charter and Several Other Problems in the Field of Aviation, (Bandung: Alumni, 1979), p. 87.

• *Unilateral Cancellation of Flight Departure*

The act of not transporting passengers without giving a clear reason on the part of the airline is an act that does not have good faith towards the passenger. The act also contradicts the provisions of the airline in an agreement. Customer satisfaction is created through the quality of service from the carrier to the passenger. Customer satisfaction with passengers can be seen from the best choice of customers using airlines, customers need airline services, customers are satisfied with the decision to use airlines, customers feel wise using airlines, airlines are very pleasant and exceed the expectations of customers and customers have good experience using airline.

But as we know in this case Plaintiffs received unfavorable treatment from the airline i.e. the plaintiff was only left waiting without explanation and no other flight was given to Surabaya and caused all agendas prepared by the plaintiff to fall apart, so the plaintiff decided to order tickets online using the airline Citilink to Surabaya. Feeling that the airline's service quality did not have good faith so that it made customer satisfaction with the airline also disappointed because AirAsia employees were considered unprofessional and did not give any clarification to Plaintiffs regarding complaints against AirAsia airlines. According to Prof. Dr. HK Martono, SH, MH, an aviation expert who is also a lecturer at Tarumanagara University said transportation is an agreement, in which the passenger pays for the ticket to be transported and vice versa the passenger is entitled to receive services from the carrier and so on. Ticket is one proof of the agreement because of the agreement, the carrier is responsible if the blacklist is outside the rules because the relationship between the plaintiff and the defendant is a legal relationship in the form of rights and obligations. Basically an agreement must not violate / contravene the public interest and is binding for everyone. Regarding material loss and immaterial loss, if there is insufficient material compensation for passengers because an error occurs in the carrier, namely the reservation system problem that causes the passenger name to be blacklisted. In this case the carrier must provide immaterial compensation must be determined from the status of the passenger. So that a passenger status can be seen from the facts of the passenger such as the age of the passenger, then the position of a passenger then an analysis of how much compensation should be given by the carrier to a passenger.

• *Responsibilities of the Airlines as a Carrier*

The airlines offer transportation services of people and goods using airplanes to other places and receive a number

of payments as bound in a transportation agreement that is essentially. Regarding the responsibility of the carrier, it can be linked to the ticket if it is related to the principle, the principle is an argument that does not need to be proven which says that the agreement must not be in conflict with the public interest if the blacklist is the government / acting then he wins but if it is an airline then that is an agreement then do not have public authority. Passenger is obliged to make a number of payments to the carrier for the transportation service as agreed in the transportation agreement.⁴⁾ This act is contrary to article 140 of Law Number 1 Year 2009 concerning Aviation regarding the provisions of airlines which are obliged to carry passengers after the agreement. principles of transport responsibility in air transport in a written journal by Dr. Ahmad Sudiro SH, MH, MM, Mkn. He said to know the boundaries of the responsibility of the carrier, there are principles of responsibility. There are 5 (five) according to him interpreted as the principle of transport responsibility, which are as follows:⁵⁾

1. The principle of responsibility is based on the existence of an element of error (liability based on fault principle);
2. The principle of responsibility is based on the presumption that the carrier is always assumed to be responsible (presumption of liability principle);
3. The principle of absolute liability (strict liability principle);
4. The principle of responsibility is based on the presumption that the carrier is assumed to always be irresponsible (the presumption of non-liability principle);
5. The principle of limitation of liability;

In the process of solving it, we often experience difficulties regarding the principle of what responsibility can be imposed on the carrier. By clarifying and reviewing the principle of responsibility that can be imposed on the carrier it will get clarity. the responsibility system is expected to find a solution to the carrier that is appropriate to be applied in the legislation concerning domestic air transportation in the context of developing or updating national air transport regulations. Related forms of responsibility are responsibilities based on the existence of an element of error (liability based on fault principle).

One reason that responsibility is based on the existence of an element of error is because the notion of responsibility is based on an element of error (liability based on fault principle). One of the things in the principle of

responsibility based on the existence of an element of error is the problem of the burden of proof. In this responsibility, every carrier who makes a mistake in carrying out the transportation so as to cause harm to the user of the transportation service, is responsible for paying compensation due to his mistake. In this case, there is free evidence for the injured party (the plaintiff). The principle based on error still adheres to the principle traditionally, which contains 2 (two) aspects, namely:⁶⁾

1. Fair if the person who caused the loss of another party is required to compensate the victims.
2. It's fair if the person who caused the loss of the other party without his mistakes need not compensate.

In this case the Defendant's mistake, as stated by Lawyer from the Complainers, is a system error in the Defendant's airline that caused the Plaintiff to not fly to its destination and was not given a clear reason to the Plaintiff. Responsibility on the basis of mistakes must meet the elements of error, there are losses and losses have to do with mistakes, victims must prove the existence of mistakes. When it is proven that there is an error resulting in an unlimited amount of compensation. The victim as a plaintiff and the company as a defendant have the same position in the sense that they can prove one another. The element of error has been traversed by Air Asia with a letter of apology. The victim (Regina) could also prove an error because Air Asia claimed that the Plaintiff was blacklisted in 2013. Whereas, in 2016, the Plaintiff traveled twice with one of his family also using the Air Asia airline during 2016. At the time that, the transport was successfully carried out. If related to Law No. 8 of 1999 concerning Consumer Protection Article 19 which states several things:

- a. Business actors are responsible for providing compensation for damage, pollution and / or loss of consumers due to consuming goods and / or services produced or traded;
- b. (1) Compensation as referred to in paragraph (1) may be in the form of refunds or replacement of goods and / or services that are of equal value or value, or health care and / or compensation given in accordance with the provisions of the applicable laws and regulations;
- c. Provision of anti-loss is done within a period of 7 (to) the day after the date of the transaction;
- d. Giving compensation as referred to in paragraph (1) and paragraph (2) does not eliminate the possibility of

⁴⁾ Abdulkadir Muhammad, *Commercial Transportation Law*, (Bandung: Citra Aditya Bakti, 2008), p. 51.

⁵⁾ Amad Sudiro, *Compensation for Losses in Aircraft Accident US-Indonesia Comparative Study*, (Jakarta:

Center for Law and Economic Studies, Faculty of Law, University of Indonesia, 2011), p. 21-26.

⁶⁾ Amad Sudiro, *International Journal: Regulating Ballistic Missile Usage for Ensuring Civil Aviation Safety: As a Matter of Urgency*

criminal prosecution based on further evidence regarding the existence of an element of error;

- e. The provisions referred to in paragraph (1) and paragraph (2) do not apply if the business actor can prove that the error is the fault of the consumer.

Therefore responsibility on the basis of errors by the airline is regulated in Law No. 1 of 2009 concerning Aviation. It was further explained in Permenhub Number 77 of 2011 concerning Air Transport Transportation Responsibility.

4. CLOSING

• Conclusion

Based on the results of research conducted by researchers and after analyzing research data using theories and statutory provisions as a guide, the researcher draws the following conclusions:

1. Air transport companies are obliged to compensate for material and immaterial damages to passengers, in accordance with Law Number 1 of 2009. Article This is in accordance with Article 146 of Law Number 1 of 2009 concerning Aviation that the party acting as a carrier has the responsibility liable for losses suffered due to delays in the passenger force. compensation due to delay is stated more explicitly in Article 10 of the Minister of Transportation's Regulation Number 77 of 2011 concerning Air Transport Carrier Responsibility which states that the amount of compensation for passengers for flight delays is determined as follows:
 - A. Delays of more than 4 (four) hours are compensated in the amount of Rp. 300,000.00 per passenger;
 - B. A compensation of 50% (fifty percent) of the provisions of letter a is provided if the carrier offers another destination closest to the destination of the final passenger flight (re-routing), and the carrier is required to provide further flight tickets or provide other transportation to the destination if not There are modes of transportation other than air transportation;
 - C. In the case of being diverted to the next flight or flight of another Scheduled Commercial Business Entity, passengers are exempt from additional costs, including upgrading the class (up grading class) or if there is a decrease in class or service class, then the passenger must be given the remaining excess money from the ticket purchased.

Therefore, the author considers that compensation must be given in terms of Imatil to Passengers because through this

case passengers and families are abandoned without clarity at the airport for approximately 4 hours 30 minutes, meaning the Plaintiff is entitled to compensation of Rp. 300,000.00 per person. In addition, the Plaintiff and his family are also entitled to compensation in the form of a refund for Citilink tickets which the Plaintiff ultimately buys to send himself and his family to Surabaya.

2. The airline as a carrier that provides air transport services using aircraft is responsible for passenger losses due to non-transport of passengers. The concept of responsibility applied is responsibility based on the existence of an element of error (liability based on fault principle). Based on the element of error because responsibility is based on the existence of an element of error (liability based on fault principle). One of the important things in the principle of responsibility based on the existence of an element of error is the burden of proof. In this responsibility, every carrier who makes a mistake in carrying out the transportation resulting in a loss to the user of the transportation service,

• Suggestion

Based on the conclusions above, the authors provide the following advice:

1. The airline and the Judge can provide Imateriil compensation to the Passenger in accordance with law number 1 of 2009 and Permenhub number 77 of 2011. The Minister of Transportation can give a warning to the airline so that this incident does not happen again. On the part of the Directorate General of Civil Aviation, which has the duty as a supervisor to regulate, control and supervise air transportation, it must provide clear and strict sanctions on the airlines if they are not responsible to passengers. Law No. 1 of 2009 concerning Transportation and Minister of Transportation's Regulation number 77 of 2011 concerning Carrier Responsibility allows the parties to make a transportation agreement relating to the compensation costs suffered by passengers,
2. The airline should carry out its responsibilities as a carrier and be professional in air transportation activities. From the airline, the system should be justified first, then beforehand from the airline, check more clearly first, if indeed the name of the passenger is listed in the black list, the passenger should be notified first in order to bring supporting documents more like passenger passports,

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