

Due to Late Check-In Passenger Who Had Losses in the Organization of Flights in Indonesia (Case Study on Decision Number 612/Pdt.G/2019/PnJkt.Pst)

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ABSTRACT

Indonesia is a country with thousands of islands, therefore it requires transportation as a means to connect the islands. Many Indonesians prefer to use air transportation, because it is considered more affordable and very time efficient. Over time, there were also passengers who, because they could not fly, sued the airline even though the fault was in the passengers themselves. What are the legal consequences if passengers who check-in late and cannot fly sue the airline? The author examines the problem by using the normative method, which is a method to examine a problem based on the law. The data and theory used by the author shows that there are errors that arise from the passengers themselves, where passengers arrive late to the airport, experience late check-in and cannot make flights. We recommend that passengers if they don't.

Keywords: *Because of law, Flight, Late Check-In*

1. INTRODUCTION

1.1. Background

The development of aviation technology is currently growing rapidly, the need for transportation (airplanes) is very high. Airplanes have a strategic function for every country that we can see in various aspects, such as: military, economic, passenger transportation, freight transportation and others. Although the use of airplanes has a high accident risk impact, it remains the only alternative as a fast, efficient, and economical transportation for the world community, both in domestic and international flights.[1]

The law of transportation is divided into 3, namely the law of land, sea and air transportation, each of which is regulated in the law specifically in accordance with the principle of *lex specialis derogate legi generalis* from the Civil Procedure Code. The law of air transportation is regulated in Law No. 1 of 2009 concerning Aviation in Article (1) of the definition of Air Transport transportation is any activity using an aircraft to transport passengers, cargo, and/or post for one trip or more from one airport to another. another airport or several airports. Commercial Air Transportation is air transportation for the public by collecting payment.[2]

Air transportation is an agreement made by a person or legal entity that carries out the act of transporting passengers by airplane and by receiving a reward. Air transportation is regulated by Law No.1 of 2009 concerning Aviation. Air transportation is carried out by agreement between the parties. Passenger tickets or

baggage tickets are proof that an agreement of carriage and payment of transportation costs have been made. In this thesis there is Lion Air which is a national private airline from Indonesia which was legally established on November 15, 1999 and started operating for the first time on June 30, 2000, by serving flight routes from Jakarta to Pontianak using Boeing 737-200 aircraft. which at that time amounted to 2 units.

Headquartered at Lion Air Tower, Jl. Gajah Mada No. 7 which is located in the Central Jakarta area, PT. Lion Mentari Airlines or commonly known as Lion Air is a low cost airline (Low Cost Carrier) with the slogan "We Make People Fly". Through this, Lion Air tries to realize and change the stigma of society that anyone can fly with Lion Air while still prioritizing aspects of safety, security, and flight quality at a low cost. Fifteen more years in the air and serving the public, until now Lion Air has flown to 183 flight routes which are divided into domestic routes spread throughout Indonesia from Sabang to Merauke, and international routes to a number of countries such as Singapore, Malaysia, Saudi Arabia. and China.

The number of routes will certainly continue to grow because of the aviation market in Indonesia which continues to grow so rapidly. With 112 aircraft ownership, the fleet is divided into several types such as Boeing 747-400, Boeing 737-800, Boeing 737-900 ER, and Airbus A330-300. The number of the fleet will also increase in accordance with the delivery of aircraft orders made by Lion Air.[3]PT Angkasa Pura II (Persero) is one of the State-Owned Enterprises which is engaged in the business of airport services and airport-related services. PT Angkasa Pura II has won the trust of the Government of

the Republic of Indonesia to manage and strive for the exploitation of Jakarta Cengkareng Airport which has now changed its name to Jakarta Soekarno-Hatta International Airport and Halim Perdana Kusuma Airport since August 13, 1984.

The establishment of Angkasa Pura II aims to carry out management and exploitation in the field of airport services and airport-related services by optimizing the empowerment of potential resources owned and implementing good corporate governance practices. Angkasa Pura II's progress has shown rapid progress and business improvement in the airport service business through the addition of various infrastructure facilities and improving the quality of service at the airports it manages. Now, Angkasa Pura II manages 16 Indonesian airports.[4] In the event of problems and losses arising in the implementation of transportation activities, the aggrieved party can file a lawsuit to the local court. The lawsuit filed can be based on an unlawful act or a lawsuit based on default. From the lawsuit filed, there will be responsibilities that will be charged to the party causing the loss, where the responsibility given is in the form of compensation that must be in accordance with the losses incurred.

The principle of responsibility of the carrier is divided into 3, namely:

1. The principle of absolute responsibility (Absolute Liability)[5]
2. The principle of responsibility based on fault (Based on Fault Liability)
3. The principle of responsibility for the presumption of guilt (Presumption of Liability)

The principle of absolute responsibility means that the carrier will be responsible if the carrier makes negligence or mistakes such as flight delays and flight cancellations, in this case the form of responsibility given by the carrier such as giving snacks, heavy meals, a sum of money, flight diversions and ticket refunds. in the event of flight cancellation.

The formulation regarding the amount of compensation charged to the carrier is quite fair and balanced from the form and amount of compensation that must be received by the passenger as a result of the carrier's negligence, Regulation of the Minister of Transportation Number 77 of 2011 concerning the Responsibilities of Air Transport Carriers places the carrier and passengers in a balanced position. and equally guaranteed a sense of justice because the value of the compensation is quite wise for passengers and airlines or carriers.[6] Regulation of the Minister of Transportation Number 77 of 2011 concerning Responsibilities of Air Transport Carriers is an implementing regulation of Law no. 1 of 2009 concerning Aviation. Thus, the implementation applies the principle of *lex superior derogat lex imperio* where this regulation is subject to the laws and regulations that exist above it.

Before coming to the limitation, the author will examine what is the responsibility of the carrier and what is not the responsibility of the carrier. To find out what is the responsibility of the carrier and what is not the

responsibility of the carrier, the author uses the Regulation of the Minister of Transportation Number 77 of 2011 article 18 paragraph (1) as a legal basis to determine whether the carrier must be responsible in the event of negligence on the part of the passenger.

Limitations are often found in every field of life, one of which is in the field of law, one can find limitations in this case the limitation of responsibilities. This principle of carrier responsibility is more specifically regulated in the Regulation of the Minister of Transportation Number 77 of 2011 article 18 paragraph (1).[7] In general, restrictions on compensation made by the carrier often cause losses for passengers, so that the restrictions made by the carrier are more profitable. However, if the compensation demanded by the passenger exceeds the loss suffered, it can cause the carrier to suffer huge losses and even go bankrupt.

Regarding the problem of limiting the liability of the carrier, the author intends to conduct research by taking an example of a case regarding the limitation of liability by the carrier where there is a case of 1 person who will fly from Jakarta to Pangkal Pinang but does not fly because he cannot check-in and sues that it is not in accordance with The negligence/mistake made by the passenger due to the lawsuit will cause the Lion Air plane to suffer huge losses and may even go bankrupt. In this case example, there are Muhammad Chozin as the plaintiff and the defendants, namely PT Lion Mentari Airlines as the defendant, PT TrinusTravelindo or known as Traveloka as the first defendant, PT Angkasa Pura II (Persero) as the second defendant, and the President of the Republic of Indonesia, CQ Minister of Transportation of the Republic of Indonesia. Indonesia,

Decision case number 612/Pdt.G/2019/Pn Jkt Pst [8] starting with the plaintiff (Muhammad Chozin), based on the print-out of the Defendant's flight ticket booking, then the Plaintiff is scheduled to depart from Soekarno-Hatta Airport on June 2, 2019 at 10.05 West Indonesia Time (WIB) and is scheduled to land in Pangkal Pinang at 11.30 WIB on the same day. The plaintiff then left for the airport and when he arrived at the airport he immediately carried out the check-in process at counter 26 at 08.00 WIB but then the plaintiff's check-in registration was rejected by the officer on the grounds that the seat was fully occupied, even though at the time of the incident, it was only at 08.20 WIB. The counter officer 26 also said that the plaintiff could not check-in because he did not check-in online first.

Because they did not get a solution, the plaintiff was finally directed to the defendant's customer service counter, after waiting for a long time, the plaintiff finally met with the customer service officer and informed the plaintiff's problems. After telling the problem to the customer service, it turned out that the customer service couldn't help with the excuse that it was too late. In the sequence of events above, there are inconsistent statements used by one counter with another counter. At counter 26, it was rejected on the grounds that the seats were already filled with other people. While at the customer service counter it was said that the seat was still empty, but due to late check-in, finally the Plaintiff could not enter. Even

though, The delay occurred as a result of the long-winded and time-consuming complaint process for the inconsistent statements. The plaintiff confronted the customer service officer, but he could not give an answer.

Upon the refusal of the flight schedule departure by the defendant, then the plaintiff bought flight tickets through other airlines at a price of Rp. 5,000,000.00 (five million rupiah) for Eid in my hometown in Pangkal Pinang, Bangka. The plaintiff hereby sues the defendant by compensating for material losses of Rp. 106,145,200.00 (one hundred six million one hundred forty five thousand two hundred rupiah) and immaterial losses of Rp. 100,000,000,000.00 (one hundred billion rupiah). Based on the foregoing, the author intends to conduct research in a thesis entitled the legal consequences of late check-in for passengers who experience losses in the operation of flights in Indonesia (Case Study on Decision Number 612/Pdt.G/2019/Pn Jkt Pst).

1.2. Formulation of the Problem

Departing from the description of the background, the main problems are:

1. What are the legal consequences of late check-in for passengers who experience losses in the operation of flights in Indonesia in the case study of the decision Number 612/Pdt.G/2019/PN Jkt Pst based on Law No.1 of 2009 Juncto article 18 paragraph (1) of the Regulation of the Minister of Transportation Number 77 of 2011?
2. What are the legal consequences of late check-in for passengers who experience losses in the operation of flights in Indonesia in the case study of the decision No. 612/Pdt.G/2019/PN Jkt Pst based on Law No. 8/1999 on Consumer Protection?

1.3. Research Method

1. Research Type
This journal research uses normative legal research methods. Normative research examines laws and the focus of their research is on conceptualizing law as a norm or rule that applies to society, as well as being a reference for everyone's behavior. [9]
2. Types of Data and Legal Materials
The type of data used in this research is secondary data. In this study, the secondary data sources are literature, articles, journals and sites on the internet related to the research conducted.
 - a. The primary legal materials used include:
 - 1) Law Number 1 Year 2009 concerning Aviation
 - 2) Regulation of the Minister of Transportation Number 77 of 2011 concerning Responsibilities of Air Transport Carriers
 - 3) Copy of Central Jakarta District Court Decision Number 612/PDT.G/2019/PN JKT. PST

- b. Secondary legal materials, namely legal materials that can explain primary legal materials such as books, legal journals, and research results.
- c. Tertiary legal materials, namely legal materials that explain primary and secondary legal materials such as the KBBI and legal dictionaries.
3. Data collection technique
In assisting the research process, the researcher used data collection techniques by conducting a literature study.
4. Research approach
The approach used in legal writing according to Peter Mahmud Marzuki is as follows:
 - a. Case approach
 - b. Legislative approach (Statute Approach)
 - c. Historical Approach (Historical Approach)
 - d. Comparative Approach
 - e. Conceptual Approach (Conceptual Approach)

The approach used by the author of the above approaches is the statutory approach (Statute Approach) and the case approach (Case Approach). The statutory approach is an approach taken by examining all laws and regulations related to the legal issues being handled. The case approach is an approach that is carried out by examining cases related to the issues at hand which have become court decisions that have permanent legal force.

5. Data analysis technique
Data analysis is an activity in research in the form of conducting a study or review of the results of data processing assisted by theories that have been obtained previously. The data analysis technique used in this study is a qualitative approach, namely research on descriptive research that tends to use analysis.

2. DISCUSSION

2.1. Legal Consequences of Late Check-In of Aircraft Passengers Based on Law No.1 of 2009 Juncto Article 18 paragraph (1) of the Regulation of the Minister of Transportation Number 77 of 2011

In Indonesia there are several theories of responsibility that can be used as a theoretical basis to solve a problem, some of these theories are:

1. Based on Fault Liability
2. Presumption of Liability
3. Absolute Liability

The three theories above will be used as a theoretical basis to analyze the problem of how the legal consequences of check-in delays that cause harm to passengers are the legal consequences of responsible airlines or irresponsible airlines. Starting from the theory of responsibility on the basis of error where this theory has several elements that

must be met, namely: there is an error, there is a loss, there must be a relationship or correlation between the error and the loss and the passenger/victim must prove the mistake made by the airline. In this case, if it is associated with the case in the decision, there are several elements that are fulfilled and some elements that are not fulfilled. The element fulfilled in the case of this decision is a loss on the part of the passenger where the passenger cannot fly because the purchased ticket is forfeited and must buy a new ticket if he wants to fly. The element that is not fulfilled in the case of this decision is an error where the error arises from the passenger and not from the airline. The element of error and loss in the case of this decision also has no connection or correlation, an error that should arise causing a relationship with a loss if the error is made by the airline, but in this case the element of error arises because of the fault of the passenger, namely the passenger is late checking -in resulting in passengers unable to fly.

Furthermore, there is a theory of responsibility for the presumption of guilt where this theory immediately states that the defendant or airline is considered guilty, but in this theory there is reverse evidence where in the trial the airline is given the opportunity to prove that the airline is innocent and can not be responsible for the loss. experienced by passengers. If it is related to the decision case, in the trial the airline can prove that the error that arises is not from the airline but arises from the passenger himself, namely the passenger is late to check-in, so that based on the theory of responsibility, this presumption of guilt also creates legal consequences that airlines are not responsible for errors in late check-in experienced by passengers. The basis of the last theory is absolute responsibility where this theory is more suitable for cases of airplane accidents that cause death so that it is absolute for airlines to compensate for the loss of lives of many people.

Article 19 of the Minister of Transportation Regulation No. 77 of 2011 also states that the Carrier cannot be held responsible for paying the compensation as referred to in Article 3 letter b, Article 13 letter c point 2, Article 14, if the carrier can prove that:

- a. the incident was not due to the fault or negligence of the carrier or the persons employed by him or his agents; or
- b. the incident is solely caused by the fault or negligence of the passenger himself and or a third party.

Next is the analysis of the legal consequences of late check-in passengers who suffer losses based on Law No.1 of 2009 Juncto article 18 paragraph (1) of the Regulation of the Minister of Transportation Number 77 of 2011, where article 18 paragraph (1) of the Minister of Transportation No. 77 of 2011 reads:

Article 18

"The responsibility of the carrier to the passenger starts from the time the passenger leaves the airport waiting room for the aircraft until the passenger enters the arrival terminal at the destination airport." [10]

If the above article is related to the decision case, the airline is not responsible because the airline's responsibility to the passenger starts from the passenger entering the waiting room until the passenger enters the arrival terminal at the destination airport, in the case of the decision the passenger has not arrived in the waiting room due to late check-in. so that passengers are not able to enter the waiting room to make a flight. The above article also regulates the limit between when the airline is responsible for the loss suffered by the passenger and when the airline is not responsible for the loss suffered by the passenger. Furthermore, there are other implementing regulations that regulate the responsibility of airlines to passengers who experience losses, namely Minister of Transportation Regulation No.

Article 3

Flight delays are grouped into 6 (six) categories of delay, namely:

- a. category 1, delay of 30 minutes to 60 minutes;
- b. category 2, delay 61 minutes to 120 minutes;
- c. category 3, delay 121 minutes to 180 minutes;
- d. category 4, delay from 181 minutes to 240 minutes;
- e. category 5, delay of more than 240 minutes; and
- f. category 6, flight cancellation

Article 9 [11]

(1) The Air Transportation Business Entity is obliged to provide compensation in accordance with the category of delay as referred to in Article 3 in the form of:

- a. category 1 delay, compensation in the form of soft drinks;
- b. late category 2, compensation in the form of drinks and snacks (snack box);
- c. category 3 delay, compensation in the form of drinks and heavy meals (heavy meal);
- d. late category 4, compensation in the form of drinks, snacks (snack box), heavy meals (heavy meal);
- e. late category 5, compensation in the form of compensation of Rp. 300,000.00 (three hundred thousand rupiah);
- f. category 6 delay, the air transportation business entity is obliged to transfer to the next flight or return the entire ticket fee (refund ticket); and
- g. delay in categories 2 to. 5, passengers can be transferred to the next flight or return the entire ticket fee (refund ticket),

(2) The provision of compensation as referred to in paragraph (1) must be carried out actively by officers at the level of General Manager, Station Manager, other staff or appointed parties acting for and on behalf of the scheduled commercial air transportation business entity.

The responsibility based on article 3 and article 9 of the Minister of Transportation Regulation No. 89 of 2015 is also related to article 18 paragraph (1) of the Minister of Transportation No. 77 of 2011 then the airline will be responsible if the passenger has entered the waiting room and left the airport waiting room. to the aircraft until the passengers enter the arrival terminal at the destination airport.

So based on several theories and articles in the Minister of Transportation, it can be said that the legal consequences of late check-in passengers who experience losses in the operation of flights in Indonesia in the case study of the decision Number 612/Pdt.G/2019/PN Jkt Pst are the legal consequences of the airline. the flight is not responsible for late check-in where the delay is due to the fault of the passenger so the airline is not responsible.

2.2. Legal Consequences of Late Check-In of Airplane Passengers Based on Consumer Protection Law

Regarding the analysis of the legal consequences of late check-in for passengers who suffer losses based on the Consumer Protection Law, the author will examine the rights and obligations of consumers (passengers) in relation to the rights and obligations of business actors (airlines).

Article 4

Consumer rights are:

- a. the right to comfort, security, and safety in consuming goods and/or services;
- b. the right to choose goods and/or services and to obtain such goods and/or services in accordance with the exchange rate and the promised conditions and guarantees;
- c. the right to correct, clear and honest information regarding the condition and guarantee of goods and/or services;
- d. the right to have their opinions and complaints heard on the goods and/or services used;
- e. the right to obtain proper advocacy, protection, and efforts to resolve consumer protection disputes;
- f. the right to receive consumer guidance and education;
- g. the right to be treated or served correctly and honestly and not discriminatory;
- h. the right to obtain compensation, compensation and/or replacement, if the goods and/or services received are not in accordance with the agreement or not properly;
- i. rights regulated in the provisions of other laws and regulations.

Article 5

Consumer obligations are:

- a. read or follow information instructions and procedures for the use or utilization of goods and/or services, for security and safety;
- b. have good faith in making transactions for the purchase of goods and/or services;
- c. pay according to the agreed exchange rate;
- d. follow the legal efforts to settle consumer protection disputes properly.

Article 6

The rights of business actors are:

- a. the right to receive payments in accordance with the agreement regarding the conditions and exchange rates of traded goods and/or services;

- b. the right to obtain legal protection from consumer actions with bad intentions;
- c. the right to conduct appropriate self-defense in the legal settlement of consumer disputes;
- d. the right to rehabilitate reputation if it is legally proven that consumer losses are not caused by traded goods and/or services;
- e. rights regulated in the provisions of other laws and regulations.

Article 7

The obligations of business actors are:

- a. have good intentions in carrying out their business activities;
- b. provide correct, clear and honest information regarding the condition and guarantee of goods and/or services as well as provide an explanation of the use, repair and maintenance;
- c. treat or serve consumers correctly and honestly and non-discriminatory;
- d. guarantee the quality of goods and/or services produced and/or traded based on the provisions of the applicable quality standards of goods and/or services;
- e. provide opportunities for consumers to test, and/or try certain goods and/or services as well as provide guarantees and/or guarantees for goods manufactured and/or traded;
- f. provide compensation, compensation and/or compensation for losses resulting from the use, use and utilization of traded goods and/or services;
- g. provide compensation, compensation and/or replacement if the goods and/or services received or utilized are not in accordance with the agreement.

Article 19

- (1) Business actors are responsible for providing compensation for damage, pollution, and/or consumer losses due to consuming goods and/or services produced or traded.
- (2) The compensation as referred to in paragraph (1) may be in the form of a refund or replacement of goods and/or services of a similar or equivalent value, or health care and/or compensation in accordance with the provisions of the applicable laws and regulations.
- (3) Compensation is given within a period of 7 (seven) days after the date of the transaction.
- (4) The provision of compensation as referred to in paragraphs (1) and (2) does not eliminate the possibility of criminal prosecution based on further evidence regarding the existence of an element of error.
- (5) The provisions as referred to in paragraph (1) and paragraph (2) shall not apply if the business actor can prove that the error is the fault of the consumer. If further examined regarding the rights and obligations of consumers (passengers) related to the rights and obligations of business actors (airlines) and then linked to the case decision, it can be seen that consumers (passengers) suffer losses because they do not carry out

several obligations stipulated in the Consumer Protection Law, namely:

1. Not reading or following information instructions and procedures for the use or utilization of goods and/or services, for the sake of security and safety. Consumers (passengers) do not follow the procedure in the form of not being able to check-in due to delays. [12]
2. Not having good intentions in making purchases of goods and/or services. Consumers (passengers) do not have good intentions by not arriving on time and being late in checking in so that the consumer (passenger) tickets are forfeited and the passengers cannot fly. [13]

Consumers (passengers) if viewed based on the Consumer Protection Law have violated 2 articles, namely Article 5 points a and b, besides that in Article 19 paragraph 5 indirectly states that business actors can be irresponsible if they can prove that the fault lies with the consumer (passenger).), in this case the mistake made by the passenger is the late check-in.

3. CLOSING

3.1. Conclusion

Based on the discussion above, the conclusions that can be conveyed are that:

Of the several theories used by the author to analyze the legal consequences of late check-in, the author uses 2 theories that serve as benchmarks in conducting the analysis, namely the theory of responsibility on the basis of fault (based on fault liability) and the theory of presumption of guilt. liability). Of these 2 theories, there are several elements in this theory that are not fulfilled when associated with cases in court decisions, the first is the theory of responsibility on the basis of fault (based on fault liability) where in this theory, when it is associated with a decision case, there are several elements that must be considered. not met, i.e. there is no element of error, where the one who made the mistake was on the passenger side who was late checking in so they could not make the next flight, the element that was not fulfilled in the decision case was the absence of a relationship between error and loss, in this case there was indeed a loss but the cause of the loss was in the the passenger who caused the loss to occur. Furthermore, in the theory of presumption of liability, it is known as reverse proof where if the airline can prove in court that the airline is innocent then the airline can be released from responsibility to compensate passengers, Furthermore, if this theory is related to the decision case, the airline can prove that the airline did not make a mistake because the error that arose was indeed the fault of the passenger himself, namely being late to check-in. Article 19 letter a also clearly stipulates that the airline is not responsible if the incident is not due to the fault or negligence of the carrier or the people he employs or his

agents. From the two theories, it can be concluded that the airline is not responsible if the loss suffered by the passenger occurs due to the fault and negligence of the passenger himself, namely the passenger arrives late to the airport and causes the passenger to check-in late so that the passenger suffers a loss, namely unable to fly.

Based on the Consumer Protection Law which regulates the rights and obligations of consumers (passengers) and business actors (airlines), it can be concluded that the airlines are not responsible for the losses suffered by passengers because the airlines have carried out all the obligations that must be carried out and even passengers who do mistakes for not carrying out their obligations so that they suffer losses.

3.2. Suggestion

The suggestions that the writer will write in this thesis are based on the discussion of the subject matter of the previous chapters, among others, for passengers to arrive at the airport 1 or 2 hours before check-in time to prevent unwanted things.

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