

Liability for Damages Due to Airline Negligence Based on Law Number 8 Year 1999 Concerning the Consumer Protection (A Study on the Decision No. 433/Pdt.G/2019/Pn.Jkt.Pst)

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ABSTRACT

Service standard, that serves as a benchmark, is used as a guideline for the implementation of domestic-scheduled commercial air-transportation services and a reference for measuring the service quality, which is the obligation of a scheduled commercial air-transportation business entity to prospective passengers as well as to economy-class passengers in the context of quality, fast, and easy services, in the case of David M. L. Tobing, about the absence of multimedia facilities, that should have become the standard of maximum service. So, what is the responsibility of airlines to passengers due to the negligence in supervision that causes the rights of passengers/consumers being not fulfilled based on the Law Number 8 Year 1999 concerning the Consumer Protection? This paper used the normative-legal research method using interview to support the data. The result of this study reveals that there is a form of responsibility according to the Civil Code Article 1365, stating that every act that violates the law, causes harm to others, obliges people, because of their mistakes to compensate for the loss. Business actors have the responsibility to provide the compensation for pollution, damage, and/or consumer losses, as the result of consuming the traded goods and/or services.

Keywords: *Consumer Protection, Responsibility, Aviation*

1. INTRODUCTION

The Unitary State of the Republic of Indonesia is an archipelagic country consisting of thousands of islands, stretching from Sabang to Merauke, located between two continents and two oceans, as well as a very wide airspace. Indonesia's position as an archipelagic country requires Indonesia to have facilities to facilitate this situation.

Transportation is very important, reflected in the increasing need for transportation services for the mobility of people and goods both domestically, as well as from and abroad, as well as acting as a driver and driving force for regional growth and regional development.

The development of the air force industry today has an impact on the increasing number of commercial airlines (airlines) in Indonesia. This rapid increase in airlines began with the ratification of the World Trade Organization/General Agreement on Tariffs and Trade Service (WTO/GATTs) by Indonesia, which prevented the Indonesian government from conducting a monopoly in the field of aviation service companies. This has an impact on business actors who are competing to establish air transportation companies until in 2007 there were about

twenty domestic airlines, both scheduled and unscheduled, that had been established.

Basically, in air transportation service activities there are two parties involved, namely the business actor as a provider of aviation transportation services in this case is the company and the user of transportation services in this case is called the passenger. Users of transportation services or can also be referred to as passengers can be classified as consumers. As has been regulated in Article 1 number 2 of Law Number 8 concerning Consumer Protection which reads; "Consumer is every person who uses goods and/or services available in the community, both for the benefit of oneself, family, other people, and other living creatures and not for trading."

Indonesia is a legal country in which everything must be in accordance with the law, including air transportation. Regarding the air transportation, some legal rules have been regulated, among others, Government Regulation Number 70 Year 2001 concerning Airports, as well as Regulation of the Minister of Transportation Number 38 Year 2015 concerning the Domestic Air Passenger Service Standards. These laws and regulations aim to create orderly, safe, and comfortable flights, to facilitate the flow of people and/or goods by air by prioritizing and

protecting the air transportation and passengers who use these services.

However, air transportation is a business which is fully regulated. All aspects have been regulated in details, because this business contains high risk. Therefore, airlines are bound by several rules that guarantee flying safety, one of which is the obligation to prohibit passengers from flying.

There are two important parties in the implementation of flight activities, namely passengers and airlines. Passengers and airlines are bound in a contractual relationship, namely a carriage agreement. The passenger is obliged to pay a sum of money and the airline is obliged to pay a sum of money and the airline is obliged to take the passenger to the destination that has been determined.

Meanwhile, the passenger's obligation is to pay the transportation costs, the amount of which has been determined, and to take care of the types of goods carried in relation to transportation. The rights and obligations of the parties are usually stated in a carriage agreement document.

Airline companies are obliged to do this because theoretically a carriage agreement is an agreement in which one party undertakes to safely carry people or goods from one place to another while the other party undertakes to pay a fee.

In this regard, according to Sri Redjeki Hartono, the state has an obligation to arrange so that opposing interests must be brought together in an ideal harmony and harmonization. For this reason, the state has the authority to regulate and intervene in predicting possible violations that occur by providing a series of regulations that regulate as well as provide threats in the form of sanctions in the event of a violation by any economic actor. in this case the carrier or airline is obliged to transport passengers safely and safely to their destination on time.

In fact, all the rights and obligations of both the entrepreneur or the carrier have been stated in the plane ticket as one of the agreements. In Article 140 paragraph (3) of Law Number 1 Year 2009 it is written that the transportation agreement as referred to in paragraph (1) is proven by passenger tickets and cargo documents. With the development/advancement of technology, airplane passengers can order electronic tickets, which is expected to simplify and speed-up ticket bookings as domestic and/or international transportation documents for 24 hours via the internet. Paper-based air tickets are in form of physical documents issued in the computer-printed documents, which is currently applied by all airlines.

In general, there are four basic rights of consumers including the right to security (the right to safety), the right to get information, the right to vote, and the right to be heard. In addition, consumer rights are more specifically regulated in Article 4 regarding the rights and obligations of Law Number 8 Year 1999 concerning the Consumer Protection. As in Article 4 Point 1 it is stated that; "Consumer rights are the right to comfort, security, and safety in consuming goods and/or services.". In Article 4 point 8 which reads: "The right to receive compensation, compensation and/or replacement, if the goods and/or

services received are not in accordance with the agreement or not as they should be."

If each party can respect and implement the agreement properly, no dispute may exist.

The case contained in this paper, was experienced by one Garuda Indonesia airline passenger, namely David M. L. Tobing, S.H. On July 24, 2019, at 3:15 pm David M. L. Tobing, S.H. buy airline tickets with maximum standard (full service) for flights on July 25, 2019 with flight routes from flight routes from Pontianak to Jakarta. On July 25, 2019 David M. L. Tobing, S.H. received a boarding pass with seat number 48A and during the boarding process the airline did NOT provide information to David M. L. Tobing, S.H. that the entertainment media in the plaintiff's seat is not functioning where the entertainment media is the right of David M. L. Tobing, S.H. as a Passenger to use it during the flight.

The plane on which David M. L. Tobing, S.H. was a Boeing 737 800 NG and after sitting in seat 48A, David M. L. Tobing, S.H. trying to turn on the monitor sitting in the chair David M. L. Tobing, S.H. but the monitor is not working, and at the bottom right of the monitor there is a sticker that says "IFE Monitor Deactivated". After that David M. L. Tobing, S.H. asked the cabin crew and was informed by the cabin crew that the entertainment media in seats 47 and 48 have not worked because these seats are new settings. Hearing this explanation, David M. L. Tobing, S.H. protest because David M. L. Tobing, S.H. feel that the Garuda Indonesia airline did not provide clear and correct information regarding flight service facilities, because there are facts that David M. L. Tobing, S.H. purchase flight tickets for services with a maximum standard (full service) which means that Garuda Indonesia as an Air Transportation Business Entity is required to provide full services, including entertainment media. With the absence of entertainment media on Garuda Indonesia aircraft with full service, it has also escaped the supervision of the Minister of Transportation of the Republic of Indonesia who should carry out flight guidance, one aspect of which is supervision.

1. In accordance with the Law Number 1 Year 2009 concerning the Aviation Article 10 paragraph (1), (2), (5), and Article 11 paragraph which states that Aviation is controlled by the state and its guidance is carried out by the Government, Aviation Development as referred to in paragraph (1) covers the aspects of regulation, control, and supervision.
2. The supervision as referred to in paragraph (1) includes the activities to supervise the construction and operation to comply with the laws and regulations, including taking corrective actions and law enforcement. The guidance as referred to in Article 10 paragraph (1) is carried out by the Minister.

On July 26, 2019, David M. L. Tobing, S.H. finally immediately filed a lawsuit against PT. Garuda Indonesia (Persero) Tbk., and the Minister of Transportation of the Republic of Indonesia and declare that PT. Garuda Indonesia (Persero) Tbk. has taken legal action in the

decision Number 433/Pdt.G/2019/PN Jkt.Pst. because they have been negligent in providing information and have not carried out good supervision so that the rights of the aircraft passengers are not fulfilled.

In accordance with Article 140 paragraph (2) of Law Number 1 Year 2009 concerning the Aviation, it is stated that commercial air transportation business entities are obliged to provide appropriate services to every user in accordance with the agreed transportation agreement. According to the provisions of laws and regulations, if an event or condition occurs that causes a loss to the passenger, the carrier has the responsibility to compensate for the loss suffered by the passenger. However, in practice, the consumer or passenger has difficulty fighting for their rights as a consumer. empowerment of consumers who use air transportation services by various competent parties. Based on the above background, the author is interested in studying further in a thesis entitled "Responsibility for Compensation Due to Airline Negligence Based on Law Number 8 Year 1999 concerning the Consumer Protection (A Study on the Decision No. 433/Pdt.G/2019/ PN Jkt. Pst.).

1.1. Related Work

Based on the description above, the title of the research entitled: Liability for Compensation Due to Airline Negligence Based on Law Number 8 Year 1999 concerning the Consumer Protection (A Study on the Decision No. 433/Pdt.G/2019/ PN Jkt. Pst.).

1.1.1. The Airlines' Responsibility to Passengers Due to the Negligence in Supervision

If it is proven that an error appears resulting in an unlimited amount of compensation, the victim as the plaintiff and the company as the defendant have the same position in the sense that they can prove each other. The element of error has been acknowledged by Garuda Indonesia by stating that the passenger seat occupied by the Plaintiff is a newly installed seat so that there is no multimedia according to the agreement. The victim (David M. L. Tobing) was also able to prove an error on the part of Garuda Indonesia, namely the absence of notification during the boarding process regarding the unavailability of the multimedia.

If associated with Law no. 8 of 1999 concerning Consumer Protection Article 19 which states as follows:

1. Business actors have the responsibility to provide the 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 form of a refund or replacement of goods and/or services of a similar or equivalent value, or health care and/or the provision of compensation in accordance with the provisions of the applicable laws and regulations;

3. The provision of anti-loss is carried out within a grace period of 7 (seven) days post-transaction date;
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.

Therefore, responsibility for errors by airlines is regulated in Law Number 1 Year 2009 concerning Aviation. This is further explained in Minister of Transportation Regulation Number 77 Year 2011 concerning the Responsibilities of Air Transport.

1.2. Our Contribution

Based on the explanation in the previous sections, the objective of this research is to reveal the responsibility of airlines to passengers due to the negligence in supervision that causes the rights of passengers/consumers to be fulfilled based on the Law Number 8 Year 1999 concerning about Consumer Protection.

1.3. Paper Structure

This paper uses the research method in order to collect, manage, and conclude the data according to the problem formulation. This legal research is to study the particular law. This legal research was conducted with a series of scientific activities based on methods, systematics, and a certain thought. The type of this legal research is normative research. The definition of normative research is the research that provides a systematic explanation of the rules that govern a certain legal category, as well as analyzing the relationship between regulations and future development. The author used three legal materials obtained from the results of literature review, library material, and other legal material.

2. BACKGROUND

2.1. Consumer Protection Theory

As we know that the challenge in the long-term development of the Indonesian nation is to improve the welfare of the people to create an advanced, prosperous, and independent society.

Based on that openness will provide so many challenges both as a consumer producer / entrepreneur or as a government. One aspect is that the problem of consumer protection will increase.

These impacts need to receive mutual attention because of the dynamic and continuous developments that occur in the economic sector, causing many new problems in the scope of Consumer Protection. Consumer protection is a

matter of human interest. Thus, it is a hope for all nations in the world to be able to envision it. The purpose of realizing the Consumer Protection is to realize the relationship among various dimensions, which are interconnected and interdependent between consumers, entrepreneurs, and also the government.

In line with that, as a member of the team for drafting the Law on Consumer Protection of the Ministry of Industry and Trade, it can be concluded that the purpose of the organizers, development and planned consumer protection regulations is to increase the dignity and awareness of consumers and indirectly encourage business actors in the industry. In carrying out its business activities, it is carried out with a full sense of responsibility.

Consumer protection arrangements are carried out by:

- a. Creating a consumer protection system that contains elements of open access and information, as well as guaranteeing legal certainty
- b. Protecting the interests of consumers in particular and the interests of all business actors
- c. Improving the quality of goods and services
- d. Provide protection to consumers from deceptive and misleading business practices
- e. Integrating the implementation of the development and regulation of consumer protection with other fields of protection.

The need for a law to provide the protection for Indonesian consumers is something inevitable, which is in line with our national development goals, namely the Indonesian people development as a whole.

The definition of Consumer Protection seems to be interpreted quite broadly, namely "All efforts that guarantee legal certainty to provide protection to consumers".

This understanding is adjusted to the definition of consumers, namely "Every person who uses goods and/or services available in the community, both for their own interests, family, other people and living things and not for trade."

The not-for-trade statement stated in the definition of the consumer is actually made in line with the definition of business actor provided by the law, where it is stated that what is meant by business actor is "Every individual or business entity, whether in the form of a legal entity or not a business entity, law established and domiciled or conducting activities within the jurisdiction of the Unitary State of the Republic of Indonesia, either individually or jointly through agreements to conduct business activities in various economic fields."

This means that it is not only manufacturers that produce goods and/or services that are subject to this law, but also agents, distributors, and networks that carry out the function of distributing and marketing goods and/or services.

Due to the weak position of consumers, consumers must be protected by law. One of the characteristics, even though the purpose of the law is to provide protection to the community. So, actually consumer protection law and consumer law are two areas of law that are difficult to

separate and delineate.

There are also those who argue that consumer protection law is part of a broader consumer law.

2.2 Liability Theory

According to the Big Indonesian Dictionary ("KBBI"), responsibility is an obligatory condition to bear everything (if something happens you can be prosecuted, blamed, sued, and so on).

1. Definition of Responsibility

The definition of responsibility according to Peter Salim can be grouped into three major groups, each "responsibility" in the sense of accountability and liability.

- a. Responsibility in the sense of accountability
According to Henry Campbell Black, responsibility in the sense of accountability is basically related to finance or bookkeeping as in the sentence: someone is asked to be "responsible" for the results of his books or in the sentence the accountant must be "responsible", the words "responsibility" contained in both the sentence means that accountability is related to financial matters.
- b. Responsibility in the sense of responsibility can be interpreted as "taking the burden" of the consequences of an action, for example in the sentence "responsible" are those who hold the command stick of command in a group of soldiers "responsibility here is defined as "who bears the burden".
- c. Responsibility in the sense of liability
Responsibility in the sense of liability can be interpreted as an obligation to pay compensation for losses suffered, for example in an air transportation agreement, the airline company is 'responsible' for the safety of passengers and/or consignments, therefore if a loss is suffered by the passenger and/or the sender of the goods, the airline company must be responsible in terms of liability. Liability in the sense of liability itself means that the airline company is "obligated to pay" compensation suffered by passengers and/or shippers due to the airline company defaulting. In this case, what is meant by "responsibility" is legal responsibility in the sense of legal liability, which means the obligation to pay all losses or costs arising from an aircraft accident carried out by the pilot captain and this obligation can be filed in a civil court.

3. CONCLUSION

1. In Decision No. 433/Pdt.G/2019/PN JKT.Pst if it is related to the Law Number 8 Year 1999 concerning the Consumer Protection, especially in Article 19 Letter (a)

which explains how business actors have the responsibility to provide the compensation for damage, pollution, and/or or consumer damage due to consuming the goods and/or services produced or traded;

If seen in the Plaintiff's case, they did not get any information from the airline that there were facilities that were not available in accordance with the agreed agreement. However, when the Plaintiff asked about the unavailability of these facilities, the airline did not offer any compensation in accordance with Article 4 paragraph 8 of Law Number 8 Year 1999 concerning the Consumer Protection which states that consumers are entitled to compensation and/or compensation if they do not receive the service and/or compensation or goods in accordance with the previously-agreed agreement.

2. Airline companies as carriers that provide services as carriers, the legal concept that can be used is the legal concept on the basis of error. If you use this concept, David M. L Tobing S.H as a Garuda Indonesia passenger who has the same position so that he can prove it. If in cases that are not in accordance with the passenger agreement or the plaintiff can prove the fault of the airline company, the airline company is responsible for unlimited, which means that any loss suffered by the passenger is the full responsibility of the airline company. This is in accordance with the provisions contained in the articles regulated in the Law Number 8 Year 1999 concerning the Consumer Protection and the Aviation Law.

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ACKNOWLEDGMENT

This work was supported by Universitas Tarumanagara.

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