

LIABILITY OF AIR TRANSPORT COMPANIES TO TRANSPORT SERVICE USERS

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A. Introduction

To achieve development goals, transportation has a very important and strategic position in environmentally sound development, facilitating the economy, strengthening unity, and influencing all aspects of national and state life.

For the community, transportation has a considerable benefit, which is very instrumental in supporting all forms of daily activities, or it can be said that transportation has many dimensions and urgencies.

Transportation has the function to transport people or goods from one place to another with a purpose for increasing the usability and usefulness of the goods or people transported. The aim of transportation is the arrival of people or goods at the destination safely and punctually. The risk of possible unsafe and imprecise arrivals is fully the responsibility of the transportation company.

One form of transportation is air transportation. This type of transportation is currently experiencing rapid development, and it is the latest and fastest means of transportation with a wide range.

Based on Article 1 point 13 of Law Nr. 1 of 2009 on Aviation (hereinafter referred to as Law Nr. 1 of 2009), it states that air transport is any activity using an aircraft to transport passengers and cargo/ goods for one or more trips from one airport to other airports or several airports.

The rapid development of air transport can be seen from the number of companies or airlines that serve flight services to various domestic and international flight routes all over Indonesia.

There are several reasons why consumers use air transportation services for business purposes, tourism interests, and various other matters. This type of public transportation using airplanes is now quite popular with the public. It is influenced by various advantages of the transport compared to other types of transport.

There are several advantages of transport by air, i.e.:

1. Speed factor; air transport uses aircraft with high speed.
2. Air transport is more profitable for the transport in long distances;
3. The presence of the regularity of flight schedules and frequencies¹.

The development of the number of airlines, on the one hand, is beneficial for the users of air transport services (passengers and cargo owners) because there will be many choices. These companies compete to attract as many passengers as possible by offering cheaper rates or various bonuses.

On the other hand, The low tariffs often reduce the quality of service. In addition, it is even more worrying that it will reduce the quality of aircraft maintenance so that it is vulnerable to flight safety and will have an adverse impact on consumer security, comfort and protection²

The development of the number of companies/ airlines, on the one hand, has positive implications on the community of flight service users in terms of many choices for flight operators with various services. In addition, the number of airlines has created a competitive atmosphere between one airline and other airlines which at the end results in cheap tickets pursued by people enthusiastically. On the other hand, the competition also raises a concern that cheap ticket prices will have an impact on the quality of services, particularly the services for aircraft maintenance. As a result, aircraft accidents frequently occurred.

In the operation of air transport, there are several parties involved, such as the transporter (in this case, the company or airlines) and the service users or consumers (the passenger or owner of the goods). The parties are bound by an agreement, which is called the transport agreement.

In making an agreement, each party makes an effort in order that the agreement is beneficial for him/ her and he/ she gets the smallest risk. Therefore, in addition to the rights and obligations as set by the parties, the law also needs to impose the rights and

¹ Rustian Kamaluddin, *Ekonomi Transportasi: Karakteristik, Teori Dan Kebijakan (Transportation Economy: Characteristics, Theory and Policy)*, Ghalia Indonesia, Jakarta, 2003, p. 75

² Saafullah Wiradipradja, *Tanggung Jawab Perusahaan Penerbangan Terhadap Penumpang Menurut Hukum Udara Indonesia (Responsibilities of Aviation Companies Against Passengers According to Indonesian Air Law)*, Journal of Business Law Vol 25 No 1, 2006, p. 5.

obligations so that justice can occur for those who make an agreement. The rights and obligations of the parties are usually set forth in a transport agreement document.

In carrying out air transport activities, the carrier frequently does not carry out its obligations properly and correctly or it can be said to perform "default". Some examples that can be categorized as the forms of default by the carrier are: it does not provide flight safety and security to passengers in the form of aircraft accidents that result in the death of the passengers and/ or, flight delays in air transport that sometimes exceed the tolerance limits, loss or damage to the baggages of the passengers, and unsatisfactory service. Every flight accident always causes loss to the transportation service users (passengers and/ or property owners).

So far, the rights and obligations of the parties in air transport activities frequently do not run in a balanced manner in which the transportation service users (passengers / property owners) are in a weak and helpless position compared to the position of business operators (transport companies/ airlines) with stronger position. The position of the parties should be balanced and parallel because in principle they need each other and are dependent.

B. Problem Formulation

What are the responsibilities of air transport companies for transportation service users?

C. Discussion

1. Liability Principles in Transportation

In transportation activity, there is a legal relationship between carrier and passenger, and it must be based on the principles of law, both the principles of civil and public laws.

Such transportation function is not only applicable in the world of commerce, but it also applies in socio-politic, defense, law, economic, and other fields.

In a transport agreement, there must be several elements including the presence of parties or legal subjects, the existence of means of transport, the achievements that must be carried out by the carrier, and the rights and obligations of the parties in transportation.

In the transport law, it can be seen from the problem of the presence of obligation to prove and to whom the burden of proof is placed/ charged in the prosecution process that there are three principles of liability, i.e.³ :

a. Fault Liability, Liability Based on Fault

One's liability is put in the presence of fault. There is no liability without fault. When the service user (consumer) claims to the service provider, he/ she must be able to prove the presence of the fault of the service provider.

b. Presumption of Liability.

Defendant (transporter) is considered responsible for all faults that arise. When the defendant wants to release his responsibility, he/ she must be able to prove that he/ she is not guilty (absence of fault). Therefore, when the plaintiff (service user, consumer, passenger) will file a claim to obtain compensation, he/ she does not need to prove that the defendant (the transport organizer) is wrong. Yet, he/ she simply shows that the loss he/ she suffers occurs during the transportation operation.

c. Absolute Liability/ Strict Liability

Defendant (carrier) is always considered to be responsible regardless of the presence of fault or the guilty ones, so the elements of fault is unnecessary whether it is present or not.

2. Air Transport

Based on Article 1 point 13 of Law Nr. 1 of 2009 on Aviation, it states that air transport is any activity using an aircraft to transport passengers, cargo / goods for one or more trips from one to another airport or several airports.

Then, Article 83 of Law Nr. 1 of 2009 on Aviation divides the forms of air transport activities into commercial and non-commercial air transports. Commercial air transport is a public air transport by collecting payments, and non-commercial air transport has the most important feature that it is not for the public interest but for special needs such as state services and military interests. Air transport activities are carried out by air transport companies that operate airplanes to be used to transport passengers, cargo, and mail by collecting payments.

Furthermore, commercial air transport activities are distinguished into scheduled and unscheduled commercial air transports.

The commercial air transport activities based on article 83 paragraph 2 of Law Nr. 1 of 2009 consist of:

- a. Domestic air transport and;
- b. Foreign air transport.

³ Abdulkadir Muhammad, *Hukum Pengangkutan Niaga* (Law on Transportation of Commerce), Citra Aditya Bhakti Publisher, Bandung, 1998 p. 37

Domestic air transport can only be carried out by national air transport business entities with commercial air transport business licenses. Overseas scheduled air transport activities can be carried out by national scheduled air transport business entities and/ or foreign scheduled air transport companies to transport passengers and goods based on bilateral or multilateral agreements. National scheduled commercial air transport business entities can cooperate with foreign air transport companies to serve foreign air transport.

An air transport agreement is an agreement between an air carrier and the passenger or air shipper (the user of air transport services), in return for payment or other achievements. Passenger is a person who binds himself/ herself to pay for the transportation costs for himself/ herself that is transported or all persons / legal entities using transportation services.

The carrier in air transportation is any party that carries out a transportation agreement with the passenger or sender or consignee by which the agreement can be proven by a transport document provided to the passenger/ goods sender⁴.

In the implementation of commercial air transport activities, transporters are the carriers of air transport, commonly referred to as airlines or also called as flight operators.

3. Liability of Air Transport Companies to Transport Users

In the operation of air transport, there are several parties involved, such as transporter, air transport company or airline, and the party who uses the transportation or service consumer (the passenger or owner of the goods). The parties are bound by an agreement called the transport agreement.

In making an agreement, each party makes an effort so that the agreement has benefits for him/ her with the smallest risk. Therefore, in addition to the rights and obligations set by the parties, the law also needs to impose the rights and obligations so that justice can be provided for those who make an agreement.

Based on article 2 of the Regulation of the Minister of Transportation Nr. PM 77 of 2011 on the Responsibility of Air Transport, it states that Transporters operating airplanes must be responsible for the losses to:

a. *Passengers who are Dead, with Permanent Disability, or Injured.*

The passengers who die in an aircraft due to an airplane accident or an incident that is solely related to air transport are compensated for IDR.1,250,000,000 (one billion two hundred fifty million rupiah) per passenger.

The passengers who die as a result of an event that is solely related to air transport during the process of leaving the airport waiting room to the airplane or during the process of getting off an aircraft to the arrival hall at the destination airport and/ or transit airport are given the compensation of IDR 500,000,000 per passenger.

For the passengers who are declared by the doctor to have total permanent disability within 60 working days from the time of the accident, the air transport company is obliged to provide the compensation of IDR 1,250,000,000 per passenger. Then, the passengers who are declared to have a permanent disability in a period of no later than 60 working days from the time of the accident are given the compensation according to the part of the body with partial permanent disability.

COMPENSATION FOR PARTIAL PERMANENT DISABILITY

N0	Partial Permanent Disability	Compensation
a	One eye	150.000.000
b	Hearing loss	150.000.000
c	Right thumb	125.000.000
	- every one segment	62.500.000
d	Right index finger	100.000.000
	- every one segment	50.000.000
e	Left index finger	125.000.000
	- every one segment	25.000.000
f	Right Pinkie	62.500.000
	- every one segment	20.000.000
g	Left Pinkie	35.000.000
	- every one segment	11.500.000
h	Right Middle or Ring Finger	50.000.000
	- every one segment	16.500.000
i	Left Middle or Ring Finger	40.000.000
	- every one segment	13.000.000

⁴ Suherman, E. *Wilayah Udara Dan Wilayah Dirgantara (Air and Air Region)*, Bandung: Alumni Publisher. 1984, p. 79

The passengers who are injured and must have a treatment in hospitals, clinics or treatment centers to have inpatient and/ or outpatient cares must get the compensation from the carrier for the care cost in the maximum amount of IDR 200,000,000.00 (two hundred million rupiah) per passenger.

b. Lost or Damage Cabin Baggage

According to article 4 of the Regulation of the Minister of Transportation Number PM 77 of 2011, Transporters are not responsible for the losses due to the loss or damage to cabin baggage, unless the passengers can prove that the loss is caused by the transporter or the employed person actions. When the transportation service user (passenger) can prove the fault of the transporter, the compensation is set no higher than the actual loss of the passenger.

c. Loss, Destruction, or Damage of Registered Baggage

Article 5 of the Regulation of the Minister of Transportation Number PM 77 of 2011 states that registered baggage is considered lost when it is not found within 14 calendar days from the arrival date and time of the passengers at the destination airport, and the Carrier is obliged to provide waiting fee to the passengers for the registered baggage that has not been found and has not been declared missing in the amount of IDR 200,000 per day for a maximum of 3 calendar days. The fee for the loss, destruction, or damage of the registered baggage is at least IDR 200,000 per kg and in the maximum amount of IDR 4,000,000 per passenger. Then, the damage to the registered baggage gets the compensation according to the type, size and brand of the registered baggage.

The carrier is exempt from the claim of compensation against the loss of the valuable belongings of the passengers stored in the registered baggage, except by the time of departure report (check-in), the passenger has stated and indicated that there are valuable items in the registered baggage, and the carrier agrees to transport them.

d. Loss, Destruction, or Damage of Cargo

Article 7 of the Regulation of the Minister of Transportation Number PM 77 of 2011 states that a cargo is considered lost after 14 calendar days from the time of arrival at the destination. The conditions due to the amount of compensation are as follows:

1. To lost or destroyed goods, the carrier is obliged to provide compensation to the sender of IDR 100,000 per kg.
2. To the damage of part or all of the cargo, the carrier must provide compensation to the sender for IDR 50,000 per kg.
3. When handing over to the carrier, the sender declares that the value of the cargo in the airway bill. Then, the compensation that must be paid by the carrier to the sender is in amount of the cargo value stated in the airway bill.

e. Flight Delayed.

Article 4 of the Regulation of the Minister of Transportation Number PM 89 of 2015 on Handling Flight Delayed states that flight delayed is calculated based on the time delay between the scheduled arrival or departure times and the realisation of the departure or arrival time when the plane leaves the apron (block off) or when the plane blocks on and parks at the apron of the destination airport.

Article 7 (1) of the Regulation of the Minister of Transportation Number PM 89 of 2015 states that the Air Business Entity shall inform the flight delayed through the attendant in the waiting list of the airport appointed in specific to explain and inform the passengers.

Article 9 (1) of the Regulation of the Minister of Transportation Number PM 89 of 2015 states that Air Business Entity shall provide compensation in accordance with the category of delay in the forms of:

- 1) The compensation in the form of soft drinks and snacks for the delay from 30 to 60 minutes,
- 2) The compensation is in the form of drinks and snack box for the delay from 61 to 120 minutes,
- 3) The compensation is in the form of drinks and heavy meal for the delay from 121 to 180 minutes,
- 4) The compensation is in the form of drinks, snack box, and heavy meal for the delay from 181 to 240 minutes,
- 5) The compensation is in the form of compensation fee in the amount of IDR 300,000 (three hundred thousand rupiahs) for the delay of more than 240 minutes,
- 6) For the delay until cancelation of flight., the carrier must transfer to the next flight or refund the whole ticket fee (refund ticket).
- 7) For the delay from 61 to more than 240 minutes, the passengers can be transferred to the next flight or refund the entire ticket fee (refund ticket).

The responsibility of the carrier to passengers starts when the passengers leave the airport waiting room to the airplane until the passenger enters the arrival terminal at the destination airport. The responsibility of the carrier against registered baggage begins when the carrier receives the registered baggage at the reporting time (*check-in*) until the receipt of the baggage registered by the passenger.

The responsibility of the carrier for the cargo starts when the sender of the goods receives a copy of the air cargo letter from the carrier until the time specified as the taking deadline as stated in the airway bill..

The carrier cannot be held responsible for paying compensation to passengers who die as a result of an incident which is solely related to air transport during the process of leaving the airport waiting room for the airplane or when the process of getting off the aircraft to the arrival hall at destination airport and/ or transit airport (transit). The passengers who is stated to have partial permanent disability by the doctor within 60 working days of the occurrence of the accident get the compensation for third party when the carrier can prove that the incident is not the mistake or the negligence of the carrier or the person employed by him or the incident is solely caused by the fault or negligence of the passenger and / or third party.

D. Conclusion

In carrying out air transportation, air transport companies (carriers) shall be responsible for all losses suffered by the transportation service users (passengers) against:

- (a) Dead passengers, having permanent disability, or injured,
- (b) Lost or damaged cabin baggage ,
- (c) the loss, destruction, or damage to registered baggage,
- (d) The loss, destroyed, or damaged cargo, and
- (e) Flight Delay.

The carrier cannot be held responsible for paying compensation to the passenger when the carrier can prove that the loss is not due to the fault or negligence of the carrier or the employed people, or the incident is solely caused by the fault or negligence of the passenger and / or third party.

E. Suggestion

In the law, it is necessary to strictly regulate the absolute liability with the sentence: "Carrier is responsible for any losses arising from any event in the transportation operation".

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