



## Liability of Airlines That Unilaterally Cancel Flights in Indonesia

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### Abstract.

**Background,** Aviation is one of the significant forms of business deregulation in Indonesia. The existence of aircraft makes it easy for passengers to move between regions quickly and efficiently for various purposes. The commercial air transportation sector is growing rapidly, as seen by the increasing number of airlines providing flight services and the rising public interest in using these services. However, in reality, many consumer rights have not been fully fulfilled by airlines, especially in the case of flight delays. For this reason, strict legal regulations are needed to regulate airlines' responsibilities to protect consumer rights. In its implementation, it turns out that passengers submit many complaints to the airline due to various problems.

**Aim,** Clear and firm legal regulations are needed to regulate airlines' responsibilities to protect passengers' rights. This research focuses on two main issues, namely how the airline's liability to passengers is related to flight schedule delays and how to claim compensation for airline passengers related to flight schedule delays.

**Methods,** This study uses a normative juridical approach by analysing laws and regulations related to legal protection for consumers. The data obtained was analysed qualitatively to understand the issue more deeply.

**Results,** The study results show that the Regulation of the Minister of Transportation Number 89 of 2015 expressly regulates the rights of consumers affected by flight delays and stipulates the obligations of airlines to aggrieved passengers.

**Conclusions,** The legislation was made to ensure that passengers get safety and security in running flights, as well as passengers, are more independent and know the importance of the issuance of the law.

**Implication,** Furthermore, the regulation can be used as a foothold for passengers' legal protection against problems.

**Keywords:** Responsibility, Consumer, Delay

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## INTRODUCTION

With the advancement of the times, air transportation has become an important part of people's activities. Indonesia, with thousands of islands and vast waters and waters, relies heavily on air transportation other than land and sea to connect various regions throughout

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DOI 10.62885/jurnallegisci.v2i5.680

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the archipelago. Transportation not only facilitates the movement of people and goods but also contributes to the progress of national development, such as the distribution of development resources, the equitable distribution of results, and the development of important sectors such as industry, trade, tourism, and education. In air transportation, the relationship between the provider and the user of the service is regulated through a transportation agreement, which is an agreement that governs the rights and obligations of both parties. In this agreement, the carrier is responsible for delivering passengers or goods safely to the destination, while the service user is obliged to pay the fee according to the agreement. (Hartono, 1999) However, behind the great contribution of air transportation in supporting mobility and development, various problems remain challenges that affect the quality of services received by consumers.

Although air transportation provides ease of mobility for the public, these services cannot always guarantee safety, comfort, and user satisfaction. Various obstacles often arise, such as flight schedule delays, route cancellations, and passengers who are not transported due to limited aircraft capacity. In addition, incidents and accidents in recent times have also increased public concern. External factors such as poor weather conditions or technical breakdowns in aircraft are also challenges that can interfere with smooth flight operations. (Rosadi, 2008)

Flight delays or *delays* can occur due to various factors, such as inaccurate schedules by airlines, inefficient flight time management, limited fleet numbers, cabin crew work schedules, and unfavourable weather conditions. *Delays* have a detrimental impact on both airlines and passengers. Flight delays cause losses for airlines, including the obligation to compensate or compensate passengers, additional costs for managing the situation, as well as disruption to operational efficiency and subsequent flight schedules. Meanwhile, for passengers, delays can result in lost time and disruption of plans that have been prepared. Thus, the airline has an obligation to compensate passengers in accordance with applicable regulations.

Problems in air transportation services that are the responsibility of the company should be minimized through the implementation of an effective and professional management system. The company's liability is based on the agreement that has been agreed with the consumer. After the transportation agreement is agreed, a legal relationship is formed between the company and the passenger, where the company is obliged to provide

transportation services, while the passenger is obliged to pay the fee according to the agreement. However, air transportation services often face various obstacles that hinder operations, both from technical problems and weather conditions that cannot be easily predicted. (Satiani, 2016)

Carriage is an agreement between the carrier and the shipper, where the carrier is responsible for ensuring the safe delivery of goods or passengers from the point of origin to the destination. In return, the shipper is obliged to pay the cost of transportation in accordance with the terms agreed in the agreement. (Purwosutjipto, 2003) The carriage agreement aims to create a legal relationship that governs the rights and obligations between the carrier and the shipper during the carriage process.

Article 1313 of the Civil Code (KUHPerdata) explains that an agreement is between two or more parties, where one or all parties promise to do or not to take specific actions for the benefit of the other party. This agreement forms a binding legal relationship requiring each party to comply with the agreed terms. If there is a party that does not fulfill its obligations, there will be sanctions applied in accordance with the applicable legal provisions. Thus, this agreement is the legal basis that regulates the rights and obligations between the parties involved.

R. Setiawan argued that the definition contained in Article 1313 of the Civil Code is inadequate, because it only includes unilateral consent and has too general a scope. This is mainly due to the use of the term "act," which can include actions outside the context of the agreement, such as voluntary representation or unlawful acts. To improve this definition, he put forward several proposals: (1) Interpreting "deeds" as legal acts, which are actions that are specifically intended to cause legal consequences; (2) Adding the phrase "or binding each other" in Article 1313 of the Civil Code aims to describe the meaning of the agreement more precisely.

R. Setiawan argued that an agreement should be understood as a legal act in which one or more parties commit to binding themselves to the other. This approach aims to provide legal clarity and certainty so that the agreement can be implemented firmly without causing doubt for the parties involved. (Setiawan, 2004) The formulation provides a firm legal basis for regulating the relationship arising from the agreement and ensuring that the parties involved can comply with and carry out the agreement with binding legal certainty.

Air transportation has become an important part of daily life, especially in Indonesia, which is an archipelago of thousands of islands from the western tip to the east. The increase in people's mobility and the need for time efficiency make airplanes one of the top choices in transportation. Airplanes allow for faster and more comfortable travel compared to other modes of transportation, especially when the distance traveled is very long. However, with the high frequency of flights, aircraft delays are frequent and can significantly impact consumers. Flight delays disrupt travel schedules and potentially cause financial losses, stress, and inconvenience for passengers who are forced to wait long at the airport or have to overhaul their travel plans abruptly.

Legal protection for consumers is a very important issue. Consumers are entitled to services in accordance with the agreement and fair compensation when violations occur. When these rights are not properly enforced, passengers can feel disadvantaged and lose trust in the services provided by the airline. Before the flight, the airline is required to compensate passengers in case of delays in accordance with existing regulations. Consumer rights in the air transportation sector are regulated in the Regulation of the Minister of Transportation Number 89 of 2015, while Article 1320 of the Civil Code is the legal basis that guarantees the validity of agreements between airlines and passengers. This provision is designed to protect consumers and ensure they receive appropriate compensation in flight delay situations. However, in its implementation, the protection of consumer rights is often less than optimal. Many passengers are unaware of their rights or face difficulties in claiming them. Article 9 of the Regulation of the Minister of Transportation Number 89 of 2015 regulates in detail the obligation of airlines to compensate passengers in the event of flight delays. The form of compensation provided can be in the form of drinks, meals, transfer to the next flight, or transfer of passengers to another airline.

Article 10 stipulates that if the flight delay exceeds 4 hours, the airline is required to compensate the passenger in the amount of Rp. 300,000. In addition, in case of flight cancellation, the airline must refund all ticket fees that have been paid, provided that the notice of cancellation is submitted no later than 7 days before the scheduled departure. The provision protects consumer rights and provides legal certainty in case of flight delays or cancellations.

One of the disputes between airlines and consumers occurred when a passenger with ticket number 9902139819276 in the name of the Plaintiff, who had a flight schedule for the

Pontianak-Ketapang (06:25-07:10) and Ketapang-Pontianak (15:55-16:40) routes, experienced a flight cancellation. The ticket was issued on October 31, 2019. Flights to Ketapang went smoothly without a hitch, but the flight back to Pontianak scheduled for 15:55 was canceled. Ketapang Airport only announced the cancellation of flight IW 13.45 at 17:20 without providing a clear reason or explanation regarding the cancellation.

On the next day, the consumer again asked for information regarding his departure, but the airline on duty did not give a clear answer or a definite reason. As a result, consumers are forced to pay additional fees to buy new flight tickets using NAM AIR airline with a scheduled departure on November 1, 2019, at 11:45 from Ketapang to Pontianak. This situation causes consumers to suffer materially and immaterially losses due to flight cancellations without a clear time limit.

This case involves flight delays that cause losses, both material and immaterial, for the Plaintiff/Appellant. The plaintiff then filed a lawsuit with the Pontianak District Court and proceeded to the Pontianak High Court on September 22, 2020. During the trial process, it was revealed that the Respondent had committed an act contrary to the law (*onrechtmatige daad*) that resulted in losses to the Plaintiff/Appellant, as stipulated in Article 1365 of the Civil Code.

In its appeal, the Appellant requested that the Panel of Judges of the Appellate Level grant the appeal application, cancel the Pontianak District Court Decision Number 176/Pdt.G/2020/PN Ptk dated June 24, 2020, and accept all lawsuits filed by the Appellant, and require the Appellant to pay all case costs. In response, the Appellant, through his appeal memorandum, requested that the Chief Justice of the Pontianak High Court reject the Appellant's appeal and uphold the Pontianak District Court's decision, as well as charge the Appellant all case costs.

The Panel of Judges at the appellate level decided to accept the appeal from the Appellant but still upheld the Pontianak District Court Decision Number 176/Pdt.G/2019/PN Ptk dated June 30, 2020. In addition, the Panel of Judges also decided that all case costs at both levels of court must be borne by the Appellant, with the case fee for the appeal level of Rp150,000.00. This decision was taken after examining the case file, a copy of the official decision of the Pontianak District Court, as well as the memory and counter-memory of the appeal submitted. The Panel of Judges concluded that no new facts were significant enough to change the previous decision.

The objection raised by the Appellant's Attorney through the appeal memory is considered to only repeat the arguments that were considered in the first instance. The Panel of Judges of the Court of Appeal considered that the legal basis used by the Court of First Instance was appropriate, both in terms of applying the law and in assessing the evidence submitted. Therefore, the Panel of Judges approved and reaffirmed these considerations in the appeal decision.

This decision refers to Article 2 of Law Number 8 of 1999 concerning Consumer Protection, which ensures the right of consumers to obtain accurate and transparent information. In this case, the consumer filed a lawsuit against the airline for failing to provide sufficient information, which is contrary to the provisions of Article 7 of the Regulation of the Minister of Transportation Number 89 of 2015 concerning the management of flight delays. This lawsuit also includes claims for material and immaterial losses suffered by consumers in accordance with Article 1365 of the Civil Code. This decision emphasizes the importance of transparency and accountability in providing consumer services.

This study aims to analyze the implementation of legal responsibility to consumers in the air transportation sector. The focus includes identifying and analyzing airlines' legal liabilities to consumers, dispute resolution mechanisms, and the effectiveness of consumer protection related to flight delays. It is hoped that this research can contribute ideas in strengthening legal protection for consumers, improving existing policies, and encouraging the improvement of service quality in the air transportation industry in Indonesia. In addition, this study aims to provide recommendations to airlines and regulators to improve service quality and build public trust in air transportation in Indonesia.

Transport documents, such as passenger tickets, baggage tickets, and air bills of lading, are not considered air transport agreements per se. Instead, these documents serve as evidence of an agreement between consumers and air transportation service providers in accordance with the provisions regulated in Law Number 1 of 2009. Flight tickets serve as proof that consumers have fulfilled their obligations by paying the agreed fees. Thus, consumers have the right to obtain their rights based on the principle of equality between rights and obligations. After fulfilling their obligations, consumers are entitled to receive services in accordance with what has been agreed in the agreement. Flight tickets are not only a sign of payment but also reflect a legal commitment that binds both parties and

contains conditions that must be complied with by consumers and service providers. (Sinilele, 2016).

Flight tickets are the legal basis governing the rights and obligations between passengers and carriers during the journey. In the event of an event that is detrimental to passengers, the carrier is obliged to provide compensation in accordance with applicable regulations. This responsibility includes the provision of compensation or compensation in accordance with applicable regulations. The compensation includes losses caused by delays in the delivery of goods and baggage, and losses suffered by passengers due to delays in reaching their destinations.

## **METHODS**

This research uses a normative juridical approach, which focuses on studying applicable theories, concepts, and regulations related to the topics discussed. The approach used is qualitative with a descriptive method. Abdulkadir Muhammad explained that descriptive legal research aims to provide a comprehensive overview of the legal situation that applies in a region or society and the application of the law in real life. (Moleong, 1998)

## **DISCUSSION**

### **Form of Liability of the Airline for Passengers' Delayed Flight Schedule**

Regulation of the Minister of Transportation Number 89 of 2015 defines flight delay as the difference between the scheduled times for departure or arrival and the time recorded when the aircraft stops at the apron of the destination airport. These delays include delays in departures, the inability to transport passengers due to limited aircraft capacity, and flight cancellations. In general, air transport passengers expect planes to arrive on time according to their tickets and want their luggage to remain safe, not lost, damaged, or carried away to other airports. However, due to frequent flight delays, these expectations are often not achieved. This problem has become a common experience for passengers in many countries, including Indonesia. Flight delays experienced by passengers in Indonesia show that airlines often fail to comply with applicable regulations. This statement underscores the importance of stronger law enforcement to protect consumer rights and ensure airlines meet their obligations in accordance with relevant regulations.

Article 2 of Law Number 8 of 1999 concerning Consumer Protection underlines the importance of protecting consumer rights based on principles that include utility, fairness, balance, comfort, security, and legal certainty. These principles are also in line with the provisions of Law Number 1 of 2009 concerning Aviation, especially in Article 1, which mentions crucial elements in aviation, such as aircraft, airports, airspace, and aviation safety. Furthermore, Article 146 of the law requires airlines to be liable for losses passengers suffer due to flight delays unless the delay is caused by factors such as bad weather or other operational problems.

Any carriage agreement between the carrier and the passenger is legally binding on both parties. This indicates that each party involved in the agreement must fulfill the obligations that have been agreed upon in accordance with the applicable provisions. If one of the parties does not fulfill its obligations, it will be subject to sanctions in accordance with the agreement's content. The agreement continues until the passenger and/or goods transported arrive safely at the agreed destination.

The agreement must meet four conditions listed in Article 1320 of the Civil Code to be considered valid. The first is the existence of an agreement between the parties that is made without any coercion or fraud. Second, the parties involved must have legal skills, for example, having reached the age of majority. Third, the object of the agreement must be clear and identifiable, such as certain goods or services. Fourth, the agreement's purpose must be in accordance with applicable law, not contrary to moral norms, and not disturb public order. Therefore, agreements must comply with existing regulations and align with the values that apply in society. If these conditions are not met, the agreement may be deemed null and void. It is common in society that passengers often face flight delays without much to do. In fact, filing a protest is often considered fruitless. Passengers, in general, can only accept the policy set by the airline, considering delays a natural occurrence due to technical problems on the aircraft.

Article 2 of Law Number 8 of 1999 concerning Consumer Protection states that consumer rights must be protected based on the principles of utility, justice, balance, convenience, security, and legal certainty. These principles align with the provisions of Law Number 1 of 2009 concerning Aviation, especially Article 1, which regulates basic elements in the world of aviation, such as aircraft, airports, airspace, and aviation safety. In addition, Article 146 of this law stipulates that the airline is liable for losses incurred by passengers as

a result of delays unless adverse weather factors or specific operational reasons cause the delay. Any contract of carriage agreed between the airline and the passenger has the force of law binding on both parties, so both parties must comply with the terms that have been agreed. If one of the parties does not fulfill its obligations, then sanctions will be applied in accordance with the provisions stated in the agreement. This contract remains valid until the passenger and/or goods transported arrive safely at the agreed destination.

According to Article 1320 of the Civil Code, an agreement is considered valid if it meets four conditions, namely: (1) There is an agreement that is made without any element of coercion or fraud; (2) The parties involved must have legal skills, such as having reached the age of majority; (3) The object of the agreement must be clear and identifiable, such as a specific good or service (4) The agreement's purpose must not violate the law, moral norms, or public order. The agreement may be declared void if any of these conditions are not met. In society, flight delays are often considered commonplace, even though passengers are usually disadvantaged. Even when passengers protest, the response received is frequently unsatisfactory. Many passengers tend to accept the airline's policies and consider delays as a consequence of technical constraints.

Flight delays often occur, including incidents at airlines that resulted in abandoned passengers at Airport X. On Wednesday, January 16, 2018, hundreds of passengers with the Samarinda-Surabaya destination expressed their frustration because they felt abandoned. Passengers were disappointed because the airline did not notify them of the flight's cancellation that day. The 17-hour delay was caused by bad weather that hit the Tepian City area, disrupting air traffic so that flights could not be resumed.

A similar case occurred to another airline at Y Airport on February 13, 2023, with a prolonged delay due to operational technical problems and weather factors. Problems with the plane's wheels require repairs that take a long time, causing long delays. In addition, bad weather prevented the aircraft from flying, further extending the delay. This situation triggered emotions and complaints from many passengers. For this reason, more effective and strategic steps are needed from the airline to deal with these problems. This study examines delay and complaint *delay management* at airlines at Y Airport.

In both cases, there is a similarity in flight delays caused by weather factors. However, there are differences in the handling. In the first case, the airline did not provide adequate compensation or services to passengers and did not provide adequate information

or clarification regarding changes in flight schedules. Meanwhile, in the second case, the airline has provided better handling with the following measures: (1) Convey information to passengers clearly and accurately; (2) Coordinate between officers and airlines; (3) Involve relevant parties such as Air Transport Business Entities, airport managers, and other relevant parties in handling flight delays, while ensuring that passengers receive appropriate compensation and compensation.

In the first case, a violation of the provisions stipulated in the Regulation of the Minister of Transportation Number 77 of 2011 was found. This regulation covers various aspects, including compensation to passengers, compensation for damage to or loss of checked baggage, compensation for cargo, and compensation related to flight delays. This regulation also regulates liability to third parties, insurance obligations, and limitations on liability that airlines, lawsuit filing procedures, and dispute resolution mechanisms must fulfil. In addition, there are provisions regarding the evaluation, reporting, supervision, and application of sanctions, including transitional provisions.

Airlines on the Samarinda-Surabaya route must inform passengers about flight delays at least one hour before the scheduled departure time. This is important to prevent passengers from being stranded for 17 hours without adequate follow-up from the airline. Article 7 of the Regulation of the Minister of Transportation Number 89 of 2015 stipulates that airlines must provide transparent, accurate, and timely information regarding flight delays to passengers. Responsibility in the business world refers to the obligations that must be fulfilled by business actors, which are often referred to as product liability. This shows that business actors are responsible for all losses caused by the products or services they provide, either in the form of personal injury or property damage, including loss of profits that consumers should obtain. (Susanto, 2008)

Business actors need to ensure the quality of the products and services offered, not only to avoid losses for consumers but also to ensure their satisfaction and protect consumer rights. In the aviation industry, the principle of responsibility is applied to protect consumers and ensure that airlines carry out their obligations fairly and in accordance with existing regulations. In the Aviation Law, three principles of liability apply to the carrier, namely: (1) The Principle of Responsibility based on Error; (2) The Principle of Presumption of Guilt Responsibility; (3) The Principle of Absolute Responsibility.

### **The Principle of Responsibility based on Fault**

The principle of responsibility based on fault affirms that a party will only be responsible if it is proven to have committed a mistake that is the cause of the loss. These mistakes can be intentional actions or omissions. Assessment of the actions of business actors is based on reasonable standards of human behaviour, namely the ability to determine when an action needs to be done and when it should be avoided. (Wiradipraja, 1989) This aims to ensure that business actors are held accountable only when they have failed to meet their obligations or acted carelessly.

The principle of liability based on fault consists of two main aspects. First, justice is realized when the party who caused the loss is obliged to compensate the aggrieved. Second, the innocent party should not be obliged to pay. This principle focuses more on the first aspect, which highlights the importance of the responsibility of business actors in ensuring that the products or services provided do not harm consumers, where victims are entitled to receive compensation if the fault can be proven. (Muhammad, 2008) Therefore, the burden of proof is significant in this principle and must be proven by the consumer who makes the claim. Thus, consumers who want to file a claim for mandatory compensation can show that the losses they have experienced are caused by mistakes or negligence on the part of the business actor.

### **Principle of Presumption of Guilt Responsibility**

The principle of liability with a presumption of guilt, which is provided for in the Warsaw Convention and the Air Carriage Ordinance, is different from the principle of liability, which is based on fault with regard to the burden of proof. In the principle of presumption of guilt, the airline as the carrier is considered liable for losses incurred during the carriage unless they can prove that there was no negligence or that they have taken appropriate precautions. (Hartini, 2008) In case of flight delay resulting in loss to the passenger, the airline has an obligation to compensate in accordance with the applicable regulations, no proof of fault on the part of the airline by the passenger is required. Passengers only need to show that the flight delay directly caused the losses they suffered.

### **Principle of Absolute Responsibility**

The principle of *Strict Liability* is often compared to *Absolute Liability*, although the two principles have fundamental differences. In absolute liability, the plaintiff is not required to prove that there is a mistake in filing a claim for damages. This principle applies as *a lex specialis* in cases related to unlawful acts in general. Meanwhile, absolute liability is a principle that requires the responsible party to bear the consequences of the loss regardless of fault, and does not provide any exceptions for the sued party. (Purwosutjipto, 2003)

The principle of absolute liability requires the carrier to be liable for losses incurred during carriage without the need to prove negligence. This approach provides more protection for consumers, because the carrier is still obliged to bear all losses experienced by passengers. With the application of this principle, a balance is created between the airline as a service provider and the passenger as a service user. Airlines are also faced with the provision of a maximum limit of compensation that can be given, which must not exceed a certain amount under any circumstances. This principle ensures the protection of consumer rights while providing legal certainty regarding the limitation of the carrier's liability.

Regulation of the Minister of Transportation Number 92 of 2011, which replaces Ministerial Regulation Number 77 of 2011, stipulates that airlines' responsibility includes carriers who manage charter flights and other parties who act as parties to the contract of carriage. These terms are valid as long as no specific agreement is agreed upon and as long as they do not conflict with existing regulations. This policy is designed to ensure that the carrier's responsibilities cover various types of air freight services to protect the interests of consumers.

The government requires airlines to compensate passengers and provide clear information in the event of flight delays. This policy aims to reduce airlines' unfair treatment of passengers and change the perception that flight delays are normal. With this regulation, it is hoped that passengers can receive their rights in a more transparent, fair, and in accordance with applicable regulations.

The standard compensation for passengers who are delayed by a flight includes several rules, such as snacks for delays of more than 30 minutes, heavy meals for delays exceeding 90 minutes, and accommodation for passengers if the delay lasts more than 180 minutes, provided that no alternative flight is available. This obligation to provide compensation applies in cases of delays caused by the airline's internal factors, such as

technical glitches or other operational issues. With this regulation, airlines are obliged to fulfill their responsibilities and must not ignore or abandon passengers at the airport when a flight is delayed.

### **How airline passengers claim compensation for flight delay**

The relationship between passengers and flight service providers is established through the fulfillment of the rights and obligations of both parties. Passengers are obliged to pay for the assigned ticket, while the airline is responsible for fulfilling passengers' rights, including maintaining flight punctuality. However, in its implementation, airlines often do not meet these obligations, resulting in many passengers filing complaints about flight delays directly or through various media channels.

Law Number 8 of 1999 concerning Consumer Protection is an important legal basis for protecting consumer rights and stipulating obligations that airlines must fulfill. This law provides clear guidelines regarding consumer rights in transactions, airline obligations to passengers, how to determine airline liability, and the amount of losses that must be compensated.

Article 12 of the Regulation of the Minister of Transportation Number 89 of 2015 stipulates provisions related to flight delays in Category 5, and airlines must provide insurance that provides compensation guarantees to passengers. Airlines are required to cooperate with insurance companies that meet the applicable legal requirements. Insurance companies must offer procedures that make it easier for passengers to access indemnity payments. This compensation can be disbursed in cash, cashable vouchers, or directly transferred to the account concerned. It must be completed within 3x24 hours after the flight delay or cancellation. This rule clearly gives passengers the right to file a claim for compensation for flight delays through a transparent and secure procedure.

### **Airline's Liability for Flight Delays**

The airline company is responsible for the losses suffered by passengers. In the event of a default, passengers can file a lawsuit against the airline in court. Airline liability can be analyzed through two main approaches: the principle of *liability based on fault* and the principle of strict liability. The first principle prioritizes mistakes made by airlines. In contrast, the second principle requires airlines to be responsible without the need to prove

mistakes, in accordance with the doctrine of *onrechtmatige daad* regulated in Article 1365 of the Civil Code.

The principle of absolute responsibility is designed to provide greater protection to consumers, given the difficulty in proving errors. With this principle, consumers no longer need to show evidence of fault from the responsible party. This principle does not require proof of fault, but the plaintiff still needs to show that the losses suffered are directly related to the defendant's actions through evidence of causality.

As a transportation service provider, airlines are legally obligated to comply with air transportation agreements with passengers. This includes liability for flight delays, inability to carry passengers due to full aircraft, or flight cancellations. This responsibility is stated in Article 9 of the Regulation of the Minister of Transportation Number 77 of 2011, which regulates carriers' obligations in air transportation. This article regulates several forms of violations for which airlines are responsible, namely: (1) *Flight delay*: Departure or arrival that exceeds the scheduled time; (2) *Denied boarding passengers*: Occurs when the number of passengers exceeds the capacity of the aircraft; (3) *Cancellation of flight*: The planned flight is not carried out.

This provision aims to protect passengers' rights and ensure that airlines are liable for violations of air transport agreements. Thus, passengers are assured of better legal protection and respect for their rights.

### **Legal Remedies**

As transportation service providers, airlines are legally liable if they violate the agreement with passengers. This includes in the event of a flight delay, passengers not being transported because the plane is full, or the flight is canceled. Rules regarding airline obligations can be found in Article 9 of the Regulation of the Minister of Transportation Number 77 of 2011, which regulates carriers' responsibility in air transportation.

Airlines are required to comply with the applicable laws and regulations in Indonesia. However, in practice, they often do not fulfill these obligations. One example of a violation is the airline's inability to provide compensation to aggrieved passengers. This causes dissatisfaction and harms consumer rights.

Material damages refer to Article 1248 of the Civil Code, which states that if the breach of the covenant occurs due to negligence or dishonesty of the debtor, then the

reimbursement of costs, losses, and interest only includes direct losses and the loss of reasonable potential profits. The loss must have a clear causal relationship with the breach of engagement.

The purpose of providing compensation is to restore the condition of the aggrieved party as close as possible to the state before the violation occurred. This principle shows that fairness and legal certainty are very important in contracts, so that the aggrieved party can get his rights according to the rules. In addition, business actors such as airlines must be held responsible if they violate the agreement by providing appropriate compensation to compensate consumers.

Cases of losses suffered by passengers indicate that airlines often do not comply with the provisions listed in Law Number 1 of 2009, the Air Transport Ordinance 1939, and Law Number 8 of 1999 concerning Consumer Protection. This shows that airlines do not always comply with regulations designed to protect consumer rights. These violations include flight delays, lost baggage, and flight cancellations without adequate compensation.

Stricter enforcement of the law is urgently needed to protect consumer rights and ensure airlines are held accountable for any violations. This is important to create justice for aggrieved passengers. In addition, consistency in the application of the law will encourage the improvement of the quality of services provided by airlines. Public trust in the aviation industry will also increase along with stronger and fairer law enforcement.

Article 4 of Law Number 8 of 1999 concerning Consumer Protection regulates various rights that must be received by consumers. These rights include the right to obtain clear and accurate information about goods or services, the right to lodge complaints, the right to obtain legal protection and fair dispute resolution, and the right to be treated fairly without discrimination. In addition, consumers are entitled to compensation or reimbursement if the goods or services received are not in accordance with the agreed agreement or promised standards.

Before taking legal action, consumers must understand the rights they have under the protections provided by the law. These rights provide a solid legal basis for consumers to demand the fulfillment of obligations that have not been fulfilled by airlines. Flight delays often reflect the airline's negligence in providing decent service and convenience to consumers. The time wasted due to flight delays, coupled with the lack of clear information regarding the causes of delays and uncertainty of departure schedules, causes great

inconvenience to passengers. This condition emphasizes the need for transparency and accountability from airlines to protect consumer rights.

Law Number 8 of 1999 concerning Consumer Protection stipulates that business actors have the obligation to provide optimal services, which includes the delivery of clear, accurate, and open information about the condition and guarantee of goods or services. In addition, business actors must provide adequate explanations regarding how to use goods or services and serve consumers with honesty and without discrimination. Business actors are also required to respond quickly to consumer complaints, and provide compensation, replacement, or compensation if the goods or services provided are not in accordance with the agreement or standards that have been set. This regulation aims to protect consumer rights and encourage business actors to be responsible for the quality of services provided.

Compensation can only be given after there is proof of the fault of the business actor. If business actors are unable to prove their actions within the specified time, they are required to compensate consumers for losses experienced. If this obligation is not met, the consumer has the right to file a lawsuit through the court for such negligence or error. Article 1365 of the Civil Code states that every person who commits an unlawful act that results in losses is obliged to provide compensation. If a business actor refuses or fails to fulfill the obligation of compensation in accordance with Article 19 of Law Number 8 of 1999, the consumer has the right to file a lawsuit through the consumer dispute settlement body or the court in the area where he lives. This provision provides clear legal protection to consumers and encourages business actors to fulfill their obligations in accordance with applicable regulations.

Law Number 8 of 1999 regulates the way of resolving disputes between consumers and business actors, both through the court and outside the court. In this case, there are three main institutions that help resolve disputes. First, there is the National Consumer Protection Agency (BPKN), which provides advice to the government to improve consumer protection. Second, the Non-Governmental Consumer Protection Agency (LPKSM), which helps consumers face problems with business actors. Finally, there is the Consumer Dispute Settlement Agency (BPSK), which resolves disputes quickly, cheaply, and efficiently without having to go through the court process. BPSK is a more practical alternative to dispute resolution for consumers and business actors. These three institutions play a crucial role in providing protection to consumers through an easier and faster dispute resolution

process. In addition to assisting consumers in solving the problems they face, these institutions also function to ensure that business actors follow existing regulations, so that the relationship between consumers and business actors can run fairly and in accordance with applicable regulations. The existence of these institutions is expected to increase public trust in the consumer protection system in Indonesia.

### **Out-of-court dispute resolution**

Dispute resolution through BPSK is regulated in Law Number 8 of 1999 concerning Consumer Protection and Decree of the Minister of Industry and Trade. BPSK provides a faster, simpler, and more affordable alternative to the formal judicial process, with the aim of protecting consumer rights and ensuring that business actors comply with applicable regulations. The existence of BPSK is very important throughout Indonesia to create more efficient processes and support consumer protection.

BPSK consists of members representing the government, consumers, and business actors. The collaboration between these three parties ensures that the dispute resolution process is carried out fairly, transparently, and effectively. Each party has a role to ensure that consumer rights are protected and business actors carry out their obligations. That way, BPSK can create a solution that benefits both parties.

One of the methods used by BPSK is mediation, which can be done at the request of one of the parties or through mutual agreement. In the dispute resolution process, the BPSK Council acts as a facilitator and advisor who supports communication between the parties to the dispute. The mediation process involves a mediator who acts as a neutral party to help both parties reach an agreement voluntarily and amicably. The mediator is impartial and only facilitates communication, so that both parties can find a mutually acceptable solution. With this approach, it is hoped that disputes can be resolved more efficiently without having to go through a formal judicial process. As an independent party, the mediator ensures that the process takes place objectively and fairly. Therefore, mediation is a faster and simpler alternative to resolving disputes compared to the formal legal process.<sup>1</sup>

Mediators have a role in helping the parties to the dispute find a solution that can be agreed upon amicably. The success of mediation depends entirely on the agreement reached by both parties. The results of mediation are not automatically binding, but depend on the

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<sup>1</sup> Yusuf Shofie, *Consumer Protection and Its Legal Instruments*, Bandung: Citra Aditya Bakti, 2003, p. 23  
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DOI 10.62885/jurnallegisci.v2i5.680

good intentions of both parties to comply with and implement the agreement that has been reached. Mediation emphasizes active participation and mutual agreement as the basis for dispute resolution.

Mediation offers a number of advantages, such as an approach that prioritizes dialogue and cooperation to reach a mutually beneficial solution, so that proof does not become a heavy burden. The mediation process provides a faster and more affordable solution compared to the litigation process. In addition, mediation maintains the confidentiality of the information shared by the parties involved, as this process is not publicized like a trial in court. This allows for more private dispute resolution and without compromising the privacy of the parties involved. In addition, mediation results in a neutral solution, without deciding which side wins or loses, thus reducing emotional tension. The mediation approach provides flexibility for both parties to formulate a solution that is beneficial to both. This process allows the parties involved to be more creative in finding solutions that suit their respective needs and interests.<sup>2</sup>

Flight delays can cause losses for passengers, such as frustration due to long wait times, disruption of planned activity schedules, and missed important opportunities. These negative impacts emphasize the importance of effective handling, including the implementation of firm responsibilities for air transport service providers. The implementation of regulations regarding carrier responsibility is very necessary to ensure fair legal certainty for consumers.

Passengers have the right to protect their interests, one of which is by demanding the application of sanctions against violators. The sanctions applied can be in the form of administrative or criminal sanctions. In addition, passengers have the option of filing a claim through litigation or resolving the dispute by non-litigation means, such as mediation with a third party, in accordance with the provisions of the Montreal Convention 1999. Article 19 of the Convention regulates flight delays, while Article 22 limits the carrier's liability in relation to delays, baggage and cargo.

In this case, the carrier is liable for any losses incurred as a result of the delay, unless they can demonstrate that the measures taken have been in accordance with the applicable procedures. Therefore, passengers who feel aggrieved by the delay have the right to file a

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<sup>2</sup> Ahmadi Miru and Sutarman Yodo, *Op. cit.*, p. 257  
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claim or lawsuit against the airline, either through court channels or alternative dispute resolution.

## CONCLUSION

According to the Regulation of the Minister of Transportation Number 89 of 2015, flight delays can be affected by four main factors. The first factor is related to airline management, which includes delays in flight crew such as pilots, co-pilots, and cabin crew, as well as delays related to catering services and ground handling. In addition, delays can also be caused by passengers who have just reported, changed planes, or have a connecting flight. The last factor is the unpreparedness of the aircraft to fly.

The airline's liability for losses due to flight delay includes the obligation to compensate passengers. This form of compensation includes a partial or full refund of the ticket cost, flight diversion at a cost borne by the airline, and the provision of consumption services, accommodation, and transportation if a connecting flight to the promised destination is not available.

Airlines are obliged to provide clear and complete information regarding delays to passengers to create certainty and transparency. In addition, they must ensure that the compensation provided is in accordance with applicable regulations. Airports are also responsible for sanctioning negligent airlines, especially in cases of delays caused by human error, in order to protect the rights of passengers and ensure the smooth operation of the airport. If consumers suffer losses due to flight delays, they have the right to file a lawsuit or claim for compensation to the airline. Dispute resolution can be done through the court route or alternative out-of-court settlement. These two pathways are regulated in Law Number 8 of 1999 concerning Consumer Protection, which gives consumers the freedom to choose the settlement path that best suits their situation.

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