

Responsibility of Air Transport Companies as Businesses Actors for The loss of Passengers' Baggages in Review of Law Number 8 of 1999 Concerning Consumer Protection



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ABSTRACT: Consumer protection law is part of consumer law which contains principles or rules that are regulating and contains properties that protect the interests of consumers, while consumer law is law that regulates relationships and problems between various parties related to goods or services. included in the case of flight. The data collection technique in this research is using the library research method. While the analysis technique carried out on the legal materials that have been collected by the author will be done deductively. The results of the study indicate that there are 9 (nine) consumer rights regulated in Law Number 8 of 1999 concerning Consumer Protection. The responsibility of the airline company for the loss of consumer goods is to compensate the loss suffered by the consumer in accordance with the value experienced. This is based on Article 19 paragraph (1) of Law no. 8 of 1999 concerning Consumer Protection which explains that business actors are responsible for providing compensation for damage, pollution, and/or consumer losses due to consuming goods and/or services produced or traded.

KEYWORDS: Consumer Protection, Aviation Law, Flight Responsibility.

INTRODUCTION

Air Transportation is any activity using Aircraft to transport passengers, cargo and/or post for one or more trips from one airport to another or several airports. The rapid commercial aviation growth in Indonesia is shown by vast number of passengers and large number of existing airlines, both domestic and international, serving flight services to various flight path or airline route. Besides as passenger transportation services, aviation also transports goods that usually placed in aircraft baggage.

In this case, passengers and people who use air transport to deliver their goods are categorized as consumers whose rights must be protected. Law Number 8 of 1999 concerning Consumer Protection defines consumer protection as any effort that guarantees legal certainty to provide protection to consumers. The Act defines "Consumer" as a person who acquires or uses goods and/or services available in the community, both for personal use, as well as for the interest of their families, other people and other living creatures and not intended for trading. ¹Meanwhile, in another term, the notion of consumers comes from the word consumer, which literally its meaning is opposite of "producer", namely everyone who uses goods.²

The protection of consumer rights is the responsibility of carriers or airlines which is regulated in Law Number 1 of 2009 concerning Aviation in Articles 144 to Article 147. ³This arrangement is necessary because there are some cases that befell consumers which cause losses.

One such case occurred on November 16, 2013 on Lion Air flight JT 781 with route flight from Palu to Manado, a passenger named Mobilani Sandag experienced missing baggage. This passenger is a doctor from West Silianvillage, Southeast Minahasa, North Sulawesi. All his luggage which amounts to approximately Rp. 8,000,000 lost. Mobilani immediately reported about his lost

¹ Augustinus Simanjuntak . Hukum Bisnis.Rajawali Pers, Depok, 2018. Page.185

²A.S. Hornby, Gen. Ed., Oxford Advance Learner's Dictionary of Current English, (Oxford University Press, 1987), hlm. 183

³The 1945 Constitution of the Republic of Indonesia

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to Lion Air service office, and obtained answer from PT. Lion Mentari Airlines Surabaya City that it will be replaced. However, there was no clear action from PT. Lion Mentari Airlines Surabaya City to compensate Mobilani.⁴

Another case happened to a passenger named Sy Muchlisin on Lion Air flight with route flight from Batam to Jakarta, he was aggrieved because his suitcase was lost in checked baggage. When landed at Soekarno-Hatta Airport, Sy Muchlisin was waiting at baggage claim to take 1 suitcase and 1 travel bag. However, he only got 1 travel bag, and not found his suitcase. Then Sy Muchlisin reported to Information Center, and was received by Brother Anwar from Lion Air Party who then ordered Sy Muchlisin to fill out the loss form. Sy Muchlisin was promised that if his luggage was found, the carrier would contact him, but after 10 days there was no response from Lion Air as the responsible party for this case. Finally, Lion Air did not respond to the loss that harmed Sy Muchlisin.⁵ Thus, in this case, protection of consumers is needed to ensure that aviation fulfill consumer Rights.

PROBLEM FORMULATION

1. How are the arrangements of legal protection for aviation consumers?
2. What is the responsibility of airlines companies to consumers?

RESEARCH METHOD

In this study the data was collected used library research by examining various secondary data sources in form of books, journals, legislation and other legal writings related to the research discussion. The data that had been collected were analyzed by deductively, which is drawing conclusions from a general problem to the concrete problems, in order to answer the legal issues in this research.

THEORITICAL FRAMEWORK

Consumer Protection Theory

Legal protection as protection by using legal or protection provided by law, is aimed to protect certain interests, by forming interests that need to be protected into a legal right. Based on this law, in the context of consumer discussion in Indonesia, therefore consumer rights has been regulated in Consumer Protection Act.

Legal Certainty Theory

According to Salim HS, legal certainty is a feature that interrelated with law, especially for written legal norms. Law without the value of certainty will lose its meaning because it can no longer be used as a behavioral guide for everyone. Ubi jus incertum, ibi jus nullum (where there is no legal certainty, there is no law).⁶ Legal certainty has two aspects. First, regarding the matter can be determined (bepaalbaarheid) law in concrete money matters. This means that parties who seeking justice want to know about law in particular case, before starting a case. Second, legal certainty means legal security. This means protection for the parties against arbitrariness.⁷

RESEARCH RESULTS AND DISCUSSION

Consumer protection law is part of consumer law which contains principles or rules that are regulating and contains properties that protect the interests of consumers, while consumer law is a law that regulates relationships and issues between various parties related to goods or services in social life.⁸ However, there are also those who argue that consumer protection law is part of consumer law. Consumer law has a wider scale because it includes multiple legal aspects in which there are consumers interests and one part of consumer law is the aspect of protection, for example how to defend consumer rights against interference from other parties.⁹ The

⁴Laurencius Simanjutak, 5 cases of lost baggage while flying with PT. Lion Mentari Airlines Surabaya City (online), , <http://www.merdeka.com/peristiwa/5-kasus-bagasi-hilang-saat-terbang-dengan-lion-air/dokter-dari-minahasa-kehilangan-bagasi-saat-naik-lion-air.html> (minggu, 5 Januari 2014 06:01) 2014

⁵lost of luggage in Lion Air flight baggage, <http://www.ylki.or.id/consults/view/311>

⁶lost of luggage in Lion Air flight baggage, <http://www.ylki.or.id/consults/view/311>

⁷Shidarta, Indonesian Consumer Protection Law Revised Edition, (Jakarta: Gramedia Widhiarsa Indonesia, 2006), page 82

⁸Shidarta, Indonesian Consumer Protection Law Revised Edition, (Jakarta: Gramedia Widhiarsa Indonesia, 2006), page 11.

⁹Shidarta, Indonesian Consumer Protection Law Revised Edition, (Jakarta: Gramedia Widhiarsa Indonesia, 2006), page 12.

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purpose of the planned implementation, development and regulation of consumer protection is to increase the dignity and awareness of consumers, and directly encourage business actors to carry out their business activities with high responsibility.¹⁰

The regulation regarding consumer protection itself is contained in Law Number 8 of 1999 concerning Consumer Protection. There are 9 (nine) consumer rights regulated in Law Number 8 of 1999 concerning Consumer Protection, including:¹¹

1. the right to have comfort, security, and safety in consuming goods and/or services;
2. the right to choose goods and/or services and to obtain such goods and/or services according to the exchange rate, conditions and guarantees as promised;
3. the right to correct, clear, and honest information regarding the condition and guarantee of goods and/or services;
4. the right that their opinions and complaints about goods and/or services used should be listened to;
5. the right to obtain advocacy, protection, and endeavor to properly settle disputes over consumers protection;
6. the right to obtain consumer guidance and education;
7. the right to be treated or served appropriately, honestly and indiscriminatory;
8. the right to obtain compensation, and/or refund, if the goods and/or services received are not in accordance with the agreement or are not as they should be;
9. the rights regulated in the provisions of other laws and regulations

Transportation services users are also categorized as consumers who use air flight services; therefore, the rights of these consumers are protected in Article 19 paragraph (1) of Law no. 8 of 1999 concerning Consumer Protection which mention that business actors are responsible to provide compensation for damage, pollution, and/or consumer losses due to consuming goods and/or services produced or traded.¹²

The responsibility of airline company is to compensate the loss suffered by consumer according to their value. Regarding compensation as the liability of business actors based on Article 19 paragraph 2 of Law no. 8 of 1999 concerning Consumer Protection, that the provision of compensation that received by consumers, as referred to paragraph (1) can be in the form of money refund or replacement of similar or equivalent value of goods and/or services, or health care and/or providing compensation. in accordance with the provisions of the applicable legislation.

CONCLUSION

In accordance with the explanation that mentioned above, it can be concluded that there are 9 (nine) consumer rights regulated in Law Number 8 of 1999 concerning Consumer Protection. The responsibility of air transport company is to compensate the loss suffered by consumer according to the loss value. This is based on Article 19 paragraph (1) of Law no. 8 of 1999 concerning Consumer Protection which mention that business actors are responsible to provide compensation for damage, pollution, and/or consumer losses due to consuming goods and/or services produced or traded.

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¹⁰Abdul Halim Barkatullah, Consumer Protection Law(Jakarta: Sinar Grafika, 2008), hlm 18.

¹¹Article 4 of Law no. 8 of 1999 concerning Consumer Protection

¹²Article 19 paragraph (1) of Law no. 8 of 1999 concerning Consumer Protection