

Legal Protection Due to Flight Delays Reviewed from Transportation Law in Indonesia

Ni Putu Sawitri Nandari¹, I Gusti Bagus Yudas Swastika², Kadek Julia Mahadewi³,
I Wayan Suderana⁴, I Putu Edi Rusmana⁵

^{1,2,3,5} Faculty of Law, Universitas Pendidikan Nasional
gusyudha06@gmail.com

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Abstract

As an air transport passenger, it is very important to know about the rights as consumers so that when there are irregularities or violations, passengers can demand their rights to be fulfilled. Currently, it is not uncommon in air transportation activities, airlines do not fulfill their obligations as business actors. The problem in this study is what is the legal protection due to flight delays in terms of transportation law in Indonesia? and what efforts can be made by passengers in minimizing flight delays? The research method used in this study is normative legal research with a statutory approach, a fact approach, and a conceptual approach. This research uses primary legal materials and secondary legal materials. The technique of collecting legal materials used in this study was obtained from literature research. In this study, the legal material analysis technique used is a juridical descriptive technique. Preventive legal protection in flight delays is regulated in Article 146 of Law Number 1 of 2009 concerning Aviation. Meanwhile, repressive legal protection in resolving disputes that have arisen due to flight delays is regulated in Article 9 paragraph 1 of the Minister of Transportation Regulation Number 89 of 2015 regulating flight delay compensation. Provisions related to administrative sanctions for business actors who have violated their obligations are regulated in Article 60 paragraph 2 of the Law. Efforts that passengers can make in minimizing delays are by choosing a reliable airline by paying attention to On Time Performance (OTP) as a service standard

I. Introduction

The Unitary State of the Republic of Indonesia is an archipelagic country that has thousands of islands and millions of residents stretching from Sabang to Merauke. These islands are geographically separated by very long distances, and to establish connections between these distant islands or regions, transportation services are very necessary. This is what causes transportation services in Indonesia to have a very important role in reaching the islands in Indonesia (Mahardika, 2022). One part of the transportation system that has the character of being able to move from one place to another in a short time, applies high technology, is capital intensive and good management, has the best security and safety guarantees, and uses its potential and role effectively and efficiently to Helping with transportation is air transportation.

Air transportation services in Indonesia are starting to experience growth with the number of airline companies to meet people's mobility, airlines are also providing innovation and the newest and best offers for air transportation consumers in a competitive manner (Dewi, 2021). Based on data quoted from the Directorate General of Civil Aviation the number of airline organizations/airlines in Indonesia currently is 26 airlines, namely Garuda Indonesia, Trigana Air Service, Pelita Air, Indonesia Airasia, Lion Air, Wings Abadi Airlines, Tri-Mg Airlines, Nusantara Air, Indonesia Air Transport (IAT), Sriwijaya Air, Kalstar Aviation, PT. Travel Express Aviation Services, Asialink, My Indo Airlines, Jayawijaya Dirgantara, Citilink, Transnusa Aviation Mandiri, Batik Air, Indonesia Air Asia Extra, Nam Air, Cardig Air, PT. Super Air Jet, PT. BBN Airlines Indonesia, PT. ECA, PT. Raffles Global Angkasa (RGA), PT. Rusky Aero Indonesia. The development of aviation services in Indonesia can increase the number of users of air transportation services (Mailawati & Wahyuni, 2021).

The emergence of many competitors providing air transportation services will have an impact on increasingly tight commercial competition, which requires airline business actors to use various methods to promote their airlines so that they can attract as many passengers as possible (Ardhana et al., 2022). However, on the other hand, it is important to know that even though airlines offer cheap prices, they often do not pay attention to standards as befits a flight. Apart from the decline in the quality of service, what is more worrying is the decline in the quality of aircraft maintenance, which can result in decreased flight safety and cause serious problems that have a negative impact on passenger comfort.

Air transportation services are currently the most effective choice because they are fast, efficient and economical for inter-regional and inter-island transportation, especially for goods and passenger transportation to large islands and even remote areas that can be reached if the area has a port. air. Therefore, flight operations must be coordinated and organized within a unified national transportation system to achieve balanced, safe, reliable, effective and efficient

transportation services in accordance with passenger requests. In essence, in an air transportation service there are two parties involved with each other, namely business actors as providers of air transportation services, in this case called airlines, and consumers as users of air transportation services, in this case called passengers. Both parties are bound by a Carriage Agreement. This air transportation occurs because there is an agreement between the carrier and the passenger in the form of a transportation document (TITAWATI, LOILEWEN, & ARDIKA, 2021). There are certain rights and obligations in a civil legal relationship that must be fulfilled and implemented. The transport agreement document contains the rights and obligations of the carrier and the service user or passenger, the conditions of which must be in accordance with the provisions of Article 1320 of the Civil Code regarding the conditions for the validity of an agreement.

The document is in the form of an airplane ticket in printed form, e-ticket or in other forms. It is important for passengers as consumers to know their rights, so that passengers can demand that their rights be fulfilled when a violation or deviation occurs (Fahrizal, Anatami, & Nurkhotijah, 2022). The rights and obligations of passengers as consumers are regulated in Articles 4 and 5 of Law no. 8 of 1999 concerning Consumer Protection. Currently, in air transportation activities it is not uncommon for airlines to make mistakes and not carry out their obligations which can be said to be a default. Defaults can take the form of flight cancellations, unsatisfactory passenger service, flight delays, changes to departure schedules, etc. If seen from the governing legal provisions, according to Article 147 paragraph 1 of Law no. 1 of 2009 concerning Aviation which determines that "The carrier is responsible for not transporting passengers, according to the schedule that has been determined for reasons of aircraft capacity" and Article 147 paragraph 2 determines "Responsibility as intended in paragraph (1) by providing compensation to passengers in the form of: a. divert to another flight without paying additional fees; and/or b. provide food, accommodation and transportation costs if there are no other flights to the destination.

The provisions of this article only determine the carrier's responsibility for not transporting passengers due to air capacity, resulting in a blurring of norms. Meanwhile, non-transportation of passengers due to flight delays is not included in these provisions along with their responsibilities. So, in these laws and regulations, it is not clear what legal protection is provided for due to delays in flight schedules so that passengers do not receive maximum legal protection. So of course what we know is that in practice the relationship between the two is not balanced (David, 2020). For things or situations that are not or have not been regulated, there can be legal uncertainty (*rechtsonzekerheid*) or uncertainty about legal regulations in society which will further result in legal chaos (*rechtsverwarring*) (Seki & Kongres, 2022). Passengers as the main profitable assets of airlines, in air transportation services their rights must be protected,

especially in terms of compensation (Yaurwarin & Siwabessy, 2023). So the author raised the title "Legal Protection Due to Flight Delays in View of Transportation Law in Indonesia".

2. Research Method

The research method used is normative legal research, which can also be called doctrinal legal research (Rizkia & Fardiansyah, 2023). This normative legal research uses legal theories, legal principles and legal principles. This, normative legal research is used to obtain research results (Priscyllia, 2019). The types of approaches used in this research are the statutory approach (Statute Approach), the fact approach (Fact Approach), and the conceptual approach (Conceptual Approach) (Benuf & Azhar, 2020).

3. Results and Discussion

Legal Protection Due to Flight Delays Viewed from Transportation Law in Indonesia

Penerapan hukum yang efektif untuk menangani keterlambatan penerbangan di Indonesia menjadi penting, terutama ketika keterlambatan tersebut memberikan dampak negatif bagi penumpang dalam bentuk kerugian materi dan immateri. Masalah keterlambatan ini tidak hanya berkaitan dengan kehilangan waktu, tetapi juga sering kali mengakibatkan hilangnya kesempatan bisnis, terganggunya jadwal penting, hingga dampak emosional yang merugikan psikologis penumpang. Perspektif hukum transportasi menjadi vital dalam memberikan pedoman tentang hak dan tanggung jawab penumpang dan maskapai untuk menciptakan keseimbangan yang adil. Seiring berkembangnya sektor penerbangan sebagai transportasi yang makin diminati, pengaturan hukum terkait tanggung jawab maskapai dalam hal keterlambatan ini pun mendapatkan perhatian luas untuk menghindari ketidakpastian bagi penumpang yang merasa dirugikan (Dewi, 2021).

Di Indonesia, regulasi utama yang mengatur hak-hak penumpang atas keterlambatan penerbangan adalah Undang-Undang Nomor 1 Tahun 2009 tentang Penerbangan. Undang-undang ini memberikan landasan hukum bagi kewajiban maskapai untuk menghormati hak-hak penumpang dan memastikan pelayanan yang layak. Pada Pasal 146 ayat (1), misalnya, dijelaskan bahwa penumpang memiliki hak atas pelayanan sesuai perjanjian pengangkutan, yang meliputi keselamatan dan kenyamanan selama perjalanan. Pengaturan ini menunjukkan upaya legislatif dalam mengatur standar pelayanan dan mencegah praktik-praktik yang merugikan penumpang secara sepihak. Dengan landasan ini, penumpang yang merasa dirugikan oleh maskapai dalam hal keterlambatan seharusnya bisa menuntut kompensasi sebagai bentuk tanggung jawab maskapai atas kerugian yang dialami penumpang.

Lebih lanjut, Peraturan Menteri Perhubungan Nomor 89 Tahun 2015 tentang Penanganan Keterlambatan Penerbangan menguraikan kewajiban maskapai dalam menyediakan kompensasi kepada penumpang berdasarkan durasi keterlambatan. Maskapai penerbangan harus memberikan kompensasi berupa makanan ringan untuk keterlambatan yang terjadi selama 30 hingga 60 menit, makanan berat untuk keterlambatan 60 hingga 120 menit, dan seterusnya hingga pengembalian penuh biaya tiket atau penggantian jadwal bagi penumpang yang mengalami keterlambatan lebih dari 4 jam. Ketentuan ini bertujuan memberikan kejelasan dan kepastian bagi penumpang, serta menuntut maskapai bertanggung jawab secara proporsional sesuai lama keterlambatan. Kebijakan ini juga memperjelas bahwa pengaturan hak penumpang dalam transportasi udara telah mencapai tingkat yang lebih maju dalam mendukung transparansi pelayanan kepada penumpang (Hidayat, 2020).

Sebagai bagian dari ketentuan dalam Peraturan Menteri Perhubungan tersebut, maskapai juga diwajibkan untuk memberikan informasi secara transparan terkait alasan dan estimasi waktu keterlambatan yang terjadi. Pasal 3 Peraturan ini mewajibkan maskapai untuk berkomunikasi langsung dengan penumpang dan memberikan penjelasan rinci terkait keterlambatan, agar penumpang tidak merasa ketidakpastian dan dapat merencanakan waktu mereka dengan lebih baik. Persyaratan ini mencerminkan pentingnya aspek komunikasi dan informasi dalam menjaga kepercayaan konsumen terhadap maskapai. Ketentuan ini menjadi landasan bagi maskapai dalam menjaga komitmen pelayanan yang optimal, sekaligus memberikan kontrol terhadap kualitas layanan agar tidak merugikan penumpang secara sepihak. Ini adalah aspek penting dari hukum transportasi yang mengedepankan informasi yang akurat dan transparansi sebagai jaminan bagi penumpang (Yaurwarin & Siwabessy, 2023).

Sebagai pelengkap, Undang-Undang Perlindungan Konsumen Nomor 8 Tahun 1999 juga memberikan dasar perlindungan bagi penumpang yang mengalami keterlambatan. Pasal 4 Undang-Undang ini menyatakan hak konsumen atas kenyamanan, keamanan, dan keselamatan dalam menggunakan jasa, termasuk dalam konteks penerbangan. Apabila terjadi keterlambatan tanpa kompensasi yang layak, penumpang sebagai konsumen berhak menuntut perlindungan dari maskapai. Aturan ini menegaskan bahwa dalam setiap transaksi antara maskapai dan penumpang terdapat hubungan kontraktual yang harus dijaga dengan baik, serta mencegah pelanggaran terhadap hak penumpang sebagai konsumen. Melalui landasan ini, pemerintah menunjukkan upaya yang lebih luas dalam melindungi hak-hak penumpang dari berbagai bentuk pelanggaran (Waty, 2020).

Ketentuan hukum internasional pun turut menjadi rujukan dalam hal keterlambatan penerbangan. Salah satu perjanjian internasional yang relevan adalah Montreal Convention 1999, yang diratifikasi Indonesia melalui Peraturan Presiden Nomor 95 Tahun 2016. Perjanjian ini mengatur tanggung jawab maskapai terhadap penumpang dalam situasi keterlambatan, termasuk hak penumpang untuk mendapatkan kompensasi apabila terjadi kerugian material akibat keterlambatan yang berkepanjangan. Dengan ratifikasi ini, penumpang di Indonesia memiliki dasar

hukum yang kuat untuk menuntut kompensasi dan memperjuangkan hak-hak mereka sesuai standar internasional. Namun, penerapan konvensi ini di Indonesia perlu pengaturan lebih lanjut agar terintegrasi dengan hukum domestik, terutama dalam aspek kompensasi yang berlaku.

Meskipun peraturan-peraturan ini cukup jelas, ada tantangan nyata dalam implementasi perlindungan hukum tersebut di lapangan. Kurangnya pemahaman dan sosialisasi terkait hak-hak penumpang membuat banyak penumpang tidak menyadari hak mereka atas kompensasi ketika penerbangan tertunda. Di sisi lain, beberapa maskapai juga masih enggan untuk mematuhi ketentuan kompensasi secara penuh, atau sering kali memberikan alasan yang tidak jelas. Ini menunjukkan bahwa perlindungan hukum penumpang masih memerlukan pembenahan dari segi sosialisasi dan pengawasan oleh pihak yang berwenang, terutama dalam memantau kesesuaian praktik maskapai dengan ketentuan yang telah diatur (Kurniawan, Heryanti, & Triasih, 2022).

Selain pemahaman penumpang, akses untuk mengajukan klaim atau keluhan atas keterlambatan penerbangan pun sering kali tidak mudah. Banyak penumpang yang enggan melalui proses yang panjang dan rumit, sehingga menghindari proses klaim meskipun merasa dirugikan. Hal ini menunjukkan bahwa proses birokrasi yang berbelit dapat menjadi kendala serius dalam penegakan hak penumpang. Dalam hal ini, penguatan lembaga-lembaga penyelesaian sengketa konsumen dan mekanisme penyelesaian yang lebih cepat sangat penting untuk mengurangi beban penumpang dan mempercepat akses mereka ke kompensasi yang layak.

Kementerian Perhubungan memiliki peran besar dalam pengawasan pelaksanaan peraturan mengenai kompensasi keterlambatan penerbangan. Selain memantau, kementerian memiliki wewenang untuk memberikan sanksi administratif kepada maskapai yang melanggar peraturan ini. Akan tetapi, sanksi yang diterapkan sering kali tidak memberikan efek jera yang cukup kuat, sehingga maskapai terkadang masih mengabaikan kewajiban kompensasi. Oleh karena itu, diperlukan langkah yang lebih tegas dari pihak kementerian dalam memberikan sanksi, baik berupa teguran, denda, atau pencabutan izin beroperasi bagi maskapai yang melakukan pelanggaran secara berulang. Kebijakan sanksi yang lebih kuat dan tegas diharapkan bisa mendorong maskapai untuk lebih patuh dalam melaksanakan ketentuan yang ada (Masita & Widiyanto, 2023).

Di sisi lain, mekanisme penyelesaian sengketa alternatif, seperti mediasi dan arbitrase, dapat dioptimalkan untuk memberikan solusi cepat bagi penumpang yang mengajukan klaim kompensasi. Pendekatan ini memungkinkan penyelesaian sengketa secara cepat dan efisien tanpa harus melalui jalur pengadilan yang cenderung memakan waktu dan biaya lebih besar. Mekanisme ini sebaiknya dijadikan opsi utama bagi penumpang yang mengalami keterlambatan, sehingga memudahkan proses klaim dan menekan biaya hukum. Penumpang dan maskapai dapat memasukkan klausul arbitrase dalam kontrak tiket, sehingga penyelesaian sengketa dapat dilakukan secara cepat dan hasilnya mengikat kedua belah pihak (Fahreza & Nasrullah, 2022).

Dalam era digital, penggunaan teknologi dalam pengelolaan kompensasi dan pelaporan keluhan terkait keterlambatan dapat meningkatkan efektivitas layanan dan transparansi bagi penumpang. Maskapai dapat mengembangkan aplikasi atau platform digital yang memungkinkan penumpang untuk mengajukan klaim kompensasi dan melacak prosesnya secara langsung. Penerapan teknologi ini telah terbukti efektif di negara-negara lain untuk memfasilitasi interaksi cepat antara penumpang dan maskapai. Inovasi ini dapat membantu meningkatkan transparansi layanan dan membuat proses klaim lebih mudah diakses oleh penumpang, sehingga memperkuat kepercayaan konsumen terhadap layanan penerbangan (Sena & Prayitno, 2024).

Efforts That Can Be Taken by Airlines To Minimize Flight Delays

Public interest in the use of airplanes has led to increased competition among airlines to attract more consumers, such as by setting cheaper ticket rates, adding flight routes to make them wider, increasing the number of flight hours so as to offer more choices to consumers and providing facilities to increase consumer convenience, making it possible for all interested groups to be able to use airplanes as a means of transportation. If a delay occurs, it is hoped that the airline will immediately take action to provide good and adequate service. Handling flight delays in question means that airlines are obliged to convey flight delay information through officers in the airport waiting room who have been specially appointed by each airline to explain or provide information to passengers. The officer must also coordinate with Air Transport Business Entities, airport operators and parties related to delays.

Regarding the handling of delays carried out by airlines, it is an effort to achieve the principle of public interest regulated in Article 2 of the Aviation Law, namely that flights must prioritize the interests of the wider community. So, passengers as consumers can also make efforts to minimize the occurrence of flight delays, namely first by choosing a reliable airline. In planning a departure via air travel, it is very important to choose an airline that is proven to be reliable or trusted in handling flight schedules so that it can guarantee rights. - consumer rights regulated in Article 4 UUPK. In deciding which airline to choose, consumers are expected to be able to look for information related to the track record of the airline they will choose, especially regarding changes in aircraft flight schedules. This information can be found through passenger reviews on airline websites, and other sources that can provide insight into the airline's performance in dealing with events that cause a change in departure schedule.

The timeliness of an airline's flight departure and arrival times is a crucial element of the service rendered by airlines to customers, alongside ensuring safety and comfort. This is particularly significant in the execution of responsibilities as a commercial entity, as stipulated in the regulations outlined in Article 7 of the UUPK. According to Article 7 UUPK letter d, business actors are required to ensure the

quality of products and/or services they manufacture or trade, in accordance with the relevant quality standards for goods and/or services, in order to prevent flight delays. The airline is well regarded as a dependable provider of services to its passengers. The legal framework governing the obligations of air transport enterprises in the event of delays is established by Minister of Transportation Regulation No. PM 77 of 2011, which pertains to the responsibilities of air freight carriers, and Minister of Transportation Regulation Number PM 89 of 2015, which addresses the management of flight delays in scheduled commercial transport business entities in Indonesia. Despite the observed improvement in flight accuracy rates, it is important to acknowledge that flight delays resulting from specific reasons continue to be a common occurrence.

The time factor is very influential in the world of aviation. People use the time factor to choose which airline to use as a means of transportation. Seeing this, On Time Performance (OTP) has become an indicator of airline performance. One form of service provided by airlines to their users is in the form of on-time flights or often called OTP. OTP is inseparable from the term delayed or late, because if an airline is unable to reach OTP, the airline can be categorized as an airline that is experiencing delays. The more the OTP is not achieved, the more negative the impact will be on the consumer's possibility of choosing a product from a particular airline.

Airlines must pay attention to the punctuality factor, because punctuality is one of the important things in providing service to service users. Every airline operating in Indonesia must continue to be evaluated by the government so that the OTP factor can continue to increase. In order to pay attention to delay factors by airlines, the government has made regulations regarding compensation that must be received by service users, namely Minister of Transportation Regulation No. PM 89 of 2015 concerning Handling Flight Delays in Scheduled Commercial Transport Business Entities in Indonesia and Minister of Transportation Regulation Number PM 77 of 2011 concerning Responsibilities of Air Transport Carriers, passengers have the right to receive compensation from the airline if their flight is late or not on time. Choosing a reliable airline can be of great benefit to passengers as it can minimize the risk of experiencing sudden schedule changes that could disrupt travel plans. Airlines with a good track record in complying with flight schedules will provide confidence that they have an effective operational management system and are dedicated to providing a smooth flight experience for their passengers. Therefore, to avoid inconvenience due to unexpected schedule changes, passengers must choose an airline that has a reliable record of aircraft departure schedules.

When facing potential changes to flight schedules, passengers must ensure that they have accurate and up-to-date information regarding flight schedules. This is done by actively reading information about schedule changes that may occur. This can be done by checking emails, text messages, or official notifications coming from the airline in question. Official airline websites also often provide information portals that make it possible to check flight status and get updates regarding schedule changes. Through this step, it is hoped that we can avoid confusion or

misunderstandings that may arise due to changes in departure schedules. However, as a business actor, in accordance with Article 7 UUPK letter b, it is determined that business actors are obliged to provide correct, clear and honest information regarding the condition and guarantee of goods and/or services as well as providing explanations of use, repair and maintenance. So, passengers get clear information when they want to travel using air transportation services.

To confirm the flight departure time, you can also contact the customer service of the airline concerned. Through this contact person, passengers can obtain further information regarding upcoming schedule changes as well as find out the reasons behind these changes, and help passengers understand whether these changes are due to operational factors such as weather or technical problems. In addition, communicating with airline customer service provides an opportunity to explore options available to passengers affected by schedule changes. Airlines often have policies and procedures to deal with these situations. Passengers can ask about the possibility of a refund if the schedule change makes it impossible for the passenger to continue the trip as planned.

4. Conclusion

Preventive legal protection for flight delays is regulated in Article 146 of Law Number 1 of 2009 concerning Aviation and in the UUPK is carried out by fulfilling the rights of consumers and fulfilling the obligations of business actors as regulated in Articles 4 and 7 of the UUPK. Meanwhile, repressive legal protection in resolving disputes that have arisen due to flight delays is regulated in Article 9 paragraph 1 of Minister of Transportation Regulation Number 89 of 2015 which regulates compensation for flight delays and if after making a complaint there is no response, you can sue based on Article 23 UUPK. Provisions relating to administrative sanctions for business actors who have violated their obligations are regulated in Article 60 paragraph 2 UUPK which stipulates that "administrative sanctions are in the form of determining compensation of a maximum of IDR 200,000,000.00 (two hundred million rupiah)".

Efforts that passengers can make to minimize flight delays are first choosing a reliable airline by paying attention to the On Time Performance (OTP) of an airline which is one of the performance indicators in providing services to consumers using air transportation services. Second, confirm information to ensure the plane's departure schedule.

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