

**AIRLINE RESPONSIBILITY TO PASSENGER AIR TRANSPORT DUE TO
FORCE MAJEURE REVIEW FROM LAW NUMBER 1 YEAR 2009
CONCERNING FLIGHT**

(PT. Batik Air Indonesia Banyuwangi Airport Branch)

Rudi Mulyanto

Lecturer of the Faculty of Law, University of 17 August 1945 Banyuwangi,

Email: rudimulyanto@untag-banyuwangi.ac.id

ABSTRACT

The implementation of flights often cannot be done either from the passenger side, or from the airline side. Flight cancellations made by airlines are a form of flight delays. Departure times are delayed, even cancellations without prior notification are very detrimental to passengers because they cannot arrive at their destination according to the expected time. Force majeure is one of the reasons airlines cancel their flight schedules due to bad weather or natural disasters. In the rules, the carrier's obligation is to give full responsibility to passengers, one of which is to ensure timely transportation. all have been regulated in Law Number 1 of 2009 concerning Aviation and its implementation is regulated in the Regulation of the Minister of Transportation.

In this study, the author uses empirical research that uses descriptive analysis and a qualitative approach. Sources of data were collected through observation, interviews and documentation. After the data is collected, the data is processed by editing, classifying, and grouping according to the problem formulation. Then, it is reviewed and analyzed by connecting the data and literature review. The conclusions of this study are: 1) The responsibility of the airline company in the event of a flight delay or cancellation of the party acting as the carrier has the responsibility for the loss suffered by the passenger. The form of compensation in the case of flight cancellations can be in the form of a refund or ticket refund, rescheduling, or reroute. 2) Flight cancellations by airlines can cause material and immaterial losses for passengers. Airlines have provided compensation in terms of material losses, namely in the form of ticket refunds or ticket refunds, but in practice there are still shortcomings and are not in accordance with regulations.

Keywords: *Liability, Airline, Indemnity*

1. INTRODUCTION

The importance of transportation is reflected in the increasing need for transportation services for the mobility of people within the country, to and from abroad, as well as acting as a driver and driving force for regional growth and regional development.

According to Prof. Subekti a carriage agreement is an agreement, in which one party undertakes to safely transport people or goods from one place to another while the other party undertakes to pay the fare. Meanwhile, according to HMN Purwosutjipto SH, a carriage agreement is a reciprocal agreement between a carrier and a passenger or shipper, in which the carrier binds himself to carry out the safe transportation of goods or people from a certain destination, while the shipper or passenger binds themselves to pay transportation fees.

The proliferation of airlines in Indonesia, on the one hand, can have positive implications for the public who use flight services, namely many choices for flight operators with a variety of services. In addition, the large number of airlines has created a competitive climate between one airline and another which in the end gave birth to cheap tickets that are enthusiastically hunted by the public. However, this competition on the other hand also raises concerns that low ticket prices will have an impact on the quality of service from airlines, especially services for aircraft maintenance.

The implementation of flights often cannot be done either from the passenger side, or from the airline side. Flight cancellations made by airlines are a form of air transport delays other than flight delays and passengers are not transported by reason of aircraft capacity. Based on Article 2 (e) of the Regulation of the Minister of Transportation Number 77 of 2011 concerning Responsibilities of Air

AIRLINE RESPONSIBILITY TO PASSENGER AIR TRANSPORT DUE TO FORCE MAJEURE REVIEW FROM LAW NUMBER 1 YEAR 2009 CONCERNING FLIGHT (PT. Batik Air Indonesia Banyuwangi Airport Branch)

Rudi Mulyanto

Transport Carriers, it stipulates that carriers operating air transportation must be responsible for losses for delays in air transportation.

In its arrangement, the carrier's obligation is to give full responsibility to passengers, one of which is to ensure timely transportation, all of which have been regulated in Law No. 1 of 2009 concerning Aviation and its implementation is regulated in Regulations.

Minister of Communications.

Regarding the regulation regarding ticket refunds, it has been regulated in Article 12 paragraphs (1) and (2) of Ministerial Regulation Number 77 of 2011 concerning Air Transport Responsibilities, namely:

1. In the event of a flight cancellation, the carrier must notify the passenger at least 7 (seven) calendar days prior to the flight.
2. The flight cancellation as referred to in paragraph (1), the carrier is obliged to return all the ticket money that has been paid by the passenger.

Flight cancellations made by airlines are caused by several factors / reasons so that the airline cannot operate flights as scheduled. One of the reasons airlines cannot carry out flights is force majeure such as bad weather or natural disasters. The force majeure situation is indeed an unexpected and unavoidable situation that causes losses and even risks for air transport passengers, especially if the passenger has more than 1 destination or transits in an area. Not only that, another disadvantage is that airlines can cancel flights (cancel flights), and or reschedule flights, which of course is a reason for passenger safety.

Based on the description and cases mentioned above, the authors are interested in knowing and further researching these problems with the title "Airline Responsibilities to Air Transport Passengers Due to Force Majeure in Review of Law Number 1 Year 2009 concerning Aviation. (PT Batik Air Indonesia Banyuwangi Airport Branch).

Based on background of the problem, then the main problems of this research are:

1. What is the form of airline responsibility to air transport passengers who are harmed due to force majeure?
2. How to implement settlement of compensation to passengers, due to force majeure?

2. RESEARCH METHODS

This research is a type of empirical legal research. Empirical legal research is a legal research method that uses empirical facts taken from human behavior, both verbal behavior obtained from interviews and real behavior through direct observation. Empirical research is also used to observe the results of human behavior in the form of physical relics and archives (Mukti Fajar and Yulianto Achmad, 2010:280). Data analysis in the study was carried out before entering the field, during the field and after completion in the field. Data analysis is the process of systematically compiling data obtained from interviews, field notes, and documentation by organizing data into categories, describing them into units, synthesizing.

3. RESULTS AND DISCUSSION

3.1. Responsibilities of Batik Air Airline to Air Transport Passengers

Passengers and airlines are parties that will touch each other if there are problems in flight. One of the problems that often occurs is flight delays. Passengers who should be able to depart according to the agreed or scheduled flight schedule cannot depart due to a cancellation from the airline. The flight cancellation is a form of flight delay.

Air transportation delays as regulated in Article 9 of the Regulation of the Minister of Transportation Number 77 of 2011, consist of:

- a. flight delays (flight delayed).
- b. Passengers are not transported by reason of aircraft capacity (denied boarding passenger); and

c. Flight cancellations.

In connection with the flight delays carried out by several airlines, especially Batik Air, the authors have examined the responsibility of Batik Air to passengers affected by force majeure. The author examines a case that occurred at Banyuwangi Airport, where the airline Batik Air has canceled flights due to force majeure conditions, namely the Mount Raung Eruption in last February. As a result of the flight cancellation, some passengers were not transported to their destination according to the time that had been promised or previously scheduled.

On February 7, 2021, volcanic ash from the eruption of Mount Raung has spread in the airspace around Banyuwangi Airport. This is evidenced from the map of the distribution of volcanic ash of Mount Raung owned by the National Disaster Management Agency (BNPB) and a paper test conducted by the Banyuwangi Airport. In the paper test conducted by the Banyuwangi Airport, it was seen that black volcanic ash fell on the paper, so it became a consideration for Banyuwangi Airport to immediately raise the operational level to be alert and report this incident to the Regional III Airport Authority Office. Immediately after reporting to the Regional III Airport Authority Office, a Notice To Airman (NOTAM) is issued by the Aeronautical Information Service Unit (PIA) of Airnav Indonesia.

Banyuwangi Airport has been declared closed by Notam issued by PIA Airnav Indonesia, and this has an impact on flight operational activities. Several planes that were scheduled to fly were canceled, including one of them, namely Batik Air.

The note issued by PIA became the basis for Batik Air and other airlines to inform passengers that their flights were cancelled. This incident becomes serious because if the flight is still carried out with the distribution of volcanic ash from Mount Raung, it will have an impact on the safety of passengers. Volcanic ash from the eruption of Mount Raung that enters the aircraft engine can cause the engine heat sensor to be disturbed, and the engine to misread the sensor thinking that the engine is not hot when in reality the engine is already hot. So that the fuel supply continues to be added which causes the engine to overheat and get stuck (dead). In addition, aircraft indicators can also show fast numbers when in reality the aircraft is maneuvering at a lower speed.

On the basis of passenger safety as the main priority, Batik Air canceled its flight and the passengers failed to fly. Batik Air did not transport passengers to their destination due to force majeure conditions from the eruption of Mount Raung. The passengers who failed to fly asked Batik Air as the airline to be responsible for providing solutions. Batik Air has provided a solution for passengers, namely passengers can choose to refund tickets (refund tickets), and reschedule flights (reschedule tickets) until conditions can be declared airworthy and there is no flight date limit. So, according to Batik Air, they did not abandon passengers due to this force majeure.

As long as Banyuwangi Airport is still closed due to the eruption of Mount Raung, 6 Batik Air planes have experienced flight cancellations on the Banyuwangi - Jakarta route, starting from February 7, 2021 to February 19, 2021. There are approximately 400 Batik Air passengers affected by this flight cancellation (interview with Mr. Fajar Apriawan Station Manager of Batik Air Banyuwangi Airport). In one week Batik Air is scheduled to operate for 3 times, namely Wednesday, Friday and Sunday. According to Law Number 1 of 2009 concerning Aviation, it is stated that: The carrier is responsible for losses suffered due to delays in the transportation of passengers, baggage or cargo under the supervision of the carrier. Flight delays cause passengers to lose time waiting for flight delays, let alone lead to flight cancellations. The carrier must compensate for the loss suffered by the passenger because the business actor in this case does not fulfill his performance.

The legal relationship between the passenger and the airline is a legal relationship that occurs because of an agreement between the passenger and the airline. This relationship creates the rights and obligations of each party. Something that is a right on one side is an obligation on the other and an obligation on one party is a right on the other. The forms of responsibility of the flight service provider in this case, namely the Batik Air airline, are:

a. Civil liability for

AIRLINE RESPONSIBILITY TO PASSENGER AIR TRANSPORT DUE TO FORCE MAJEURE REVIEW FROM LAW NUMBER 1 YEAR 2009 CONCERNING FLIGHT (PT. Batik Air Indonesia Banyuwangi Airport Branch)

Rudi Mulyanto

the basis of the agreement or contract from the Batik Air airline to passengers. This agreement or contract from the airline and passenger is contained in the flight ticket which is a carriage agreement between the Batik Air airline and the passenger;

- b. Civil liability for losses suffered by consumers as a result of using airline services. This liability is based on unlawful acts. The elements in this unlawful act are errors, losses and the causal relationship between the unlawful act and the resulting loss. This responsibility occurs when one party makes a mistake that harms the other party. In this case, Batik Air's fault is the delayed departure of passengers, flight cancellations and delays in refunding ticket refunds. This error is purely the fault of the airline so that it is the responsibility of the Batik Air airline to the passengers as the injured party.

The obligations of the Batik Air airline which are its responsibilities to passengers consist of:

- a. Airline side

obliged to provide information on all matters relating to the operation of flight services offered to consumers, so that consumers understand correctly in the use of these flight services. General provisions regarding information that must be notified to consumers are regarding prices, types or classes of flights, flight schedules and other information that can assist passengers in deciding to buy flight tickets according to their needs;

- b. The airline must be responsible for the losses suffered by consumers as a result of using their services directly.

- c. Service delivery

Aviation must have the ability to ensure comfort and safety in its implementation. Business actors must provide a safe and comfortable mechanism as well as maximum service to passengers.

Furthermore, in the concept of responsibility, the airline which is a professional actor in transportation services has a professional responsibility. Professional liability is legal responsibility in relation to professional services rendered to clients. This professional responsibility may arise because the airline Batik Air does not fulfill the agreement they agreed with their passengers or as a result of the airline's negligence resulting in an unlawful act.

3.2. Implementation of Compensation Settlement for Air Transport Passengers Due to Force Majeure

Compensation as regulated in Article 19 paragraph (2) of the UUPK can be in the form of refunds or replacement of goods and/or services of a similar or equivalent value, or health care and/or the provision of compensation in accordance with the provisions of the applicable laws and regulations. In this case, Batik Air has harmed passengers who have fulfilled their achievements, namely by buying flight tickets, but cannot get to their destination due to flight cancellations.

If you look at Article 10 paragraph 3

Regulation of the Minister of Transportation Number 185 of 2015 Passengers can request a refund of the air transportation service fee (refund ticket) in the event of a force majeure equal to the price of the ticket purchased by the passenger with the following conditions:

- a. for flights with a full service service group, an administrative fee deduction of 20% (twenty percent);
- b. for flights with the medium service group, an administrative fee deduction of 15% (fifteen percent); and
- c. for flights with no-frills service group, an administrative fee deduction of 10% (ten percent).

From the results of research on Batik

Air Banyuwangi Airport Branch, it can be seen that Batik Air has compensated passengers affected by flight cancellations due to force majeure by refunding tickets or returning all ticket money to passengers. Unpredictable natural disasters make Banyuwangi Airport and Batik Air dependent on natural conditions. If in the flight schedule in 1 week, Batik Air should be scheduled to fly 3 times, but during this force majeure condition which occurred for approximately 2 weeks, 6 Batik Air aircraft failed to fly. From passenger data, it can be seen that all Batik Air passengers affected by the

flight cancellations caused by this force majeure amounted to 481 passengers for 6 flights to Jakarta. Passengers prefer refund tickets, compared to rescheduling this due to several factors, such as being confused about choosing a date if the passenger chooses to reschedule their flight. The choice of passengers who choose to reschedule is also quite a lot because some of them are tourists who still want to be in Banyuwangi or are residents of the original Banyuwangi domicile. Passengers who live in Banyuwangi choose to reschedule their flights because they can be used at a later time if the eruption conditions of Mount Raung have subsided and the airport has been operating normally. (interview with Mr. Fajar Apriawan Station Manger Batik Air Banyuwangi Airport) Compared to rescheduling, this is due to several factors, such as being confused about choosing a date if the passenger chooses to reschedule their flight.

The choice of passengers who choose to reschedule is also quite a lot because some of them are tourists who still want to be in Banyuwangi or are residents of the original Banyuwangi domicile. Passengers who live in Banyuwangi choose to reschedule their flights because they can be used at a later time if the eruption conditions of Mount Raung have subsided and the airport has been operating normally. (interview with Mr. Fajar Apriawan Station Manger Batik Air Banyuwangi Airport) Compared to rescheduling, this is due to several factors, such as being confused about choosing a date if the passenger chooses to reschedule their flight. The choice of passengers who choose to reschedule is also quite a lot because some of them are tourists who still want to be in Banyuwangi or are residents of the original Banyuwangi domicile. Passengers who live in Banyuwangi choose to reschedule their flights because they can be used at a later time if the eruption conditions of Mount Raung have subsided and the airport has been operating normally. (interview with Mr. Fajar Apriawan Station Manger Batik Air Banyuwangi Airport) The choice of passengers who choose to reschedule is also quite a lot because some of them are tourists who still want to be in Banyuwangi or are residents of the original Banyuwangi domicile. Passengers who live in Banyuwangi choose to reschedule their flights because they can be used at a later time if the eruption conditions of Mount Raung have subsided and the airport has been operating normally. (interview with Mr. Fajar Apriawan Station Manger Batik Air Banyuwangi Airport) The choice of passengers who choose to reschedule is also quite a lot because some of them are tourists who still want to be in Banyuwangi or are residents of the original Banyuwangi domicile. Passengers who live in Banyuwangi choose to reschedule their flights because they can be used at a later time if the eruption conditions of Mount Raung have subsided and the airport has been operating normally. (interview with Mr. Fajar Apriawan Station Manger Batik Air Banyuwangi Airport)

In terms of ticket refunds, Batik Air has its own provisions regarding the refund process as follows:

- a. Those who are entitled to apply for a refund process are the ticket owner or one of the ticket owners;
- b. If represented, they must bring a power of attorney stamped with Rp. 6000,- along with a photocopy of the identity and ticket owner/authorizer;
- c. The applicant must show the original identity card and attach a photocopy;
- d. If the passenger's name is not the same as the name in the account then *refund form* this also applies as a letter statement;
- e. The tickets will be processed *refund* after verifying / checking suitability by Batik Air and meeting the requirements for a refund;
- f. Payments made at Batik Air for tickets that meet the applicable terms and conditions (deduction of fines and administrative fees);
- g. For *refund* in a foreign currency if the receipt of the refund is converted into rupiah currency, the exchange rate will be charged according to the rate of exchange from Batik Air at the time of payment;
- h. Refund process *refund* for the purchase of CASH tickets, ATMs, or internet banking will be done through a transfer process to the passenger account number / payer's account;

AIRLINE RESPONSIBILITY TO PASSENGER AIR TRANSPORT DUE TO FORCE MAJEURE REVIEW FROM LAW NUMBER 1 YEAR 2009 CONCERNING FLIGHT (PT. Batik Air Indonesia Banyuwangi Airport Branch)

Rudi Mulyanto

- i. Purchase tickets via ATM when funds *refund* transferred to the payer's account must be accompanied by proof of payment in the form of an atm receipt & the name or account number on the ATM receipt must be the same as the name or account number on the refund form;
- j. The time period for the refund transfer process is 15 working days from the date the application is received by Batik Air;
- k. Bank administration fee (Rp. 10,000,- *persegment*) for ticket purchase transactions via the web / internet / atm remains an obligation or borne by the passenger;
- l. Ticket owner is responsible full responsibility for the discrepancy of the data provided in this refund form.

From the terms of the refund process, it can be seen that passengers must apply for their own ticket refund process and if they are represented they must be accompanied by a power of attorney stamped. What needs to be underlined is the refund process period, which is a maximum of 15 working days from the application received by Batik Air, this is in accordance with the provisions in the Regulation of the Minister of Transportation Number 185 of 2015 concerning Standards for Economy Class Passenger Service for Domestic Scheduled Commercial Air Transport. In addition to the time period, the suitability of data from passengers is also a concern in the terms of the refund process issued by the Batik Air airline.

In research at the Batik Air airline, the author also found a problem where the refund process was not in accordance with the Regulation of the Minister of Transportation Number 185 of 2015. Funds from refund tickets received by passengers in fact exceeded the maximum limit of 15 working days, even 1 or 2 months were received by passengers. This is clearly a serious problem when the government has set a maximum period of refunding ticket refunds to passengers, which is 15 working days, but the reality says otherwise. Of course, the passengers who were harmed in this case came back, because of the unilateral flight cancellation by the airline and also the late refund of the ticket refund. Not to mention if in one booking code there are more than 5 passengers, the data of each passenger must match the original identity when filling in the refund form. Passengers can file a claim for compensation to the airline on the basis of an unlawful act. The data discrepancy and the large number of refund application processes are the main reasons why there can be problems with delays in refunding ticket refunds to passengers. (interview with Mr. Fajar Apriawan Station Manager of Batik Air Banyuwangi Airport)

In this case, the airline has complied with the regulations made by the government, but the process of refunding the ticket to the passenger requires a long and complicated process. After the passenger chooses to refund the ticket, the passenger is also required to fill in the data correctly and there should be no mistakes in the name, identity and account number listed. After that, passengers are asked to wait no later than 15 working days for the ticket refund money to return to the passenger's account. This problem is of course contrary to the rules made by the government, namely in Article 10 paragraph 5 of the Regulation of the Minister of Transportation Number 185 of 2015 which states the period for refunding tickets, namely:

- a. Ticket refunds to passengers from ticket purchases in cash must be made no later than 15 (fifteen) days work since submission; and
- b. Ticket refunds to passengers from ticket purchases with credit or debit cards must be made no later than 30 (thirty) working days from the date of submission.

The use of the principle of absolute responsibility in the case of flight cancellation by the airline has an application called risk liability which means the obligation to compensate for losses and the burden of proof is on the business actor in this case the airline.

Flight cancellations made by Batik Air can also cause immaterial losses for passengers. Immaterial losses are moral losses that cannot be assessed in a definite amount even though they are still valued materially or in money. Examples of immaterial losses are feelings of anxiety, loss of comfort and

fear. With so many passengers affected by flight cancellations and the uncertainty of the airline, passengers also have to sacrifice their interests at their destination.

4. CONCLUSION

Based on the results of the discussions that have been carried out, the following conclusions can be drawn:

1. In the case of aviation, *force majeure* can be caused by weather factors such as natural disasters, heavy rain, flooding, lightning, storms, fog, smoke, visibility below the minimum standard or wind speed that exceeds the maximum standard that interferes with flight safety. For passengers who experience flight cancellations due to the force majeure of Mount Raung Eruption, PT. Batik Air Banyuwangi Airport Branch has given a choice to passengers as a form of airline company responsibility, namely to refund tickets (refund tickets), and reschedule flights (reschedule tickets) until the operational conditions of the flight can be declared airworthy. PT.
2. Flight cancellations made by airlines can cause material and immaterial losses for passengers. The airline has completed the settlement of material compensation to passengers, namely by providing a form of compensation for flight cancellations in the form of ticket refunds, rescheduling and reroutes. However, in its implementation there are still shortcomings and it is not in accordance with the regulations so that passengers have to wait longer to get their ticket money back. In addition to material losses, airlines must also complete compensation for passengers' immaterial losses such as the emergence of a sense of anxiety, loss of comfort and fear.

REFERENCES

READING LIST

Book :

- Arikunto, 2006. Research Procedure A Practical Approach. Jakarta: Rineka Cipta.
Gunawan Wijaja, 2001. Law on Consumer Protection. Jakarta: Gramedia Pustaka Utama.
HS Salim, 2012. Law of Loan Agreement Contracts and Grants. Jakarta: Sinar Graphic.
MN Nasution, 2010. Transportation Management. Bogor: Ghalia Indonesia.
M. Suparmoko, 2011. Practical Research Methods. Yogyakarta: BPFPE.
Mukti Fajar and Yuliyanto Achmad, 2010. Dualism of Empirical & Normative Legal Research. Yogyakarta: Student Library.
Saefullah Wiradipradja, 2008. Air Transportation Law. Bandung: PT Qibla Book Utama.
Soerjono Soekanto, 2018. Introduction to Legal Research. Jakarta: UI Press.
Sugiyono, 2014. Quantitative, Qualitative and R&D Research Methods. Bandung: Alfabeta.
Suharsimi Arikunto, 2018. Procedure Research: A Practical Approach. Jakarta: Rineka Cipta.
Uli Sinta, 2006. Transportation of a Multimodal Transport Legal Overview. Medan: USU Press.
Widyoko, 2014. Research Instruments Preparation Techniques. Yogyakarta: Student Library.

JOURNAL:

- Baiq Setiani, 2016. Airline Responsibilities as Flight Service Providers to Passengers Due to Flight Delays. ISSN Law Journal: 1412-6834 Vol.7 No.1, 2016.
Vermonita Dwi Caturjayanti, 2020. Legal Protection for Consumers against Flight Delays Due to Fire Smog. ISSN Law Journal: 2721-8384 Vol.2 No.2, 2020.

LAW – LAW:

- Code of Civil law.
Law No. 1 of 2009 concerning Aviation.

AIRLINE RESPONSIBILITY TO PASSENGER AIR TRANSPORT DUE TO FORCE MAJEURE REVIEW FROM LAW NUMBER 1 YEAR 2009 CONCERNING FLIGHT (PT. Batik Air Indonesia Banyuwangi Airport Branch)

Rudi Mulyanto

Regulation of the Minister of Transportation Number 92 of 2011 concerning Responsibilities of Air Transport Carriers.

Regulation of the Minister of Transportation Number 185 of 2015 concerning Standards for Economy Class Passenger Services for Domestic Scheduled Commercial Air Transport.

Law Number 8 of 1999 concerning Consumer Protection