



REGULATION OF MAXIMUM TARIFF OF FLIGHT TICKETS FOR ECONOMIC CLASS PASSANGERS IN INDONESIA

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ABSTRACT

Minister of Transportation Decree No. 106 of 2019 is a government reaction to soaring flight ticket fare on domestic routes. This Minister Decree aims to prevent unfair business competition practices as mandated by Law No. 5 of 1999. On the other hand, Law No. 5 of 1999 itself does not provide an explanation of what kind of price fixing referred to by Article 5 of the Act. This then raises a question regarding business competition between business actors. This legal issue starts from the most basic condition whether the airline have carried out the sale of airline tickets that do not harm passengers, and of course there is a legal basis. The society's need for air transportation is increasing every year, but is constrained by the increasingly expensive airline ticket rates. The society and business actors need the role of the government to be able to make policies that are impartial while still considering the interests of the society and business doers.

Keywords: Tariff Policy; Business Competition; Commercial Air transport Scheduled.

I. INTRODUCTION

Legislation, including ministerial level regulations, is a legal product that is generally created by a political policy or a ruler, so that the interests of the political elite or the ruler are more dominant than the law. Thus, it can be assumed that law is a political product that views law as the formalization or crystallization of interacting and competing political wills. This opinion is actually common in various parts of the world, because basically anything that is made by humans cannot be separated from the interests or needs of legislator or society at that time. It can also be argued that qualifications regarding the political configuration and character of legal products cannot be identified absolutely. In some contexts of problems, it is often found that there are regulatory clashes over certain matters which ironically have references to regulatory instruments that are independent and sovereign, for example, what happens in the context of consumer protection in the aviation sector where national aviation regulations and regulations consumer protection each claims to have its own sovereignty.

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Refer to that point, it can be interpreted that between law and politics have a causal relationship, there are at least 3 types that can be used as an answer to this. First, the determinant law of politics in the sense that political activities are regulated by and must be subject to legal rules. Second, the determinant politics of law, because law is the result or crystallization of political wills that interact and (even) compete with each other. Third, politics and law as social subsystems are in a position with a balanced degree of determination from one another, because even though law is a product of political decisions, it must comply with legal rules.¹

In general and clichés and what we may also often find in idioms of fact in other industries, aviation consumers in Indonesia have not received adequate protection. Despite Law No. 8 of 1999 concerning Consumer Protection has provided a strong foundation, the understanding of business actors and consumers is inadequate. In fact, consumer attitudes are also less supportive of a climate of protection. Moreover, the government has issued Law No. 1 of 2009 concerning Aviation which has been equipped with several implementing regulations governing the responsibility of airlines to consumers. So complete or sarcastically, it can be said that the laws and regulations that apply in the context of this problem make the resolution of this massive issue in society even more interesting. Protection of consumers also includes setting the maximum and lowest fare of airline tickets. The Ministry Transportation of the Republic of Indonesia in 2019 has stipulated the Decree of the Minister of Transportation No. 106 of 2019 concerning the Maximum Fares for Economy Class Passengers of Domestic Scheduled Commercial Air Transport. The Decree of the Minister of Transportation is a reaction from the government to the soaring price of airplane tickets on domestic routes. The air fare prior to this increase was the result of a fare war between airlines. Among other factors, this is also the cause of the flight ticket rates not soaring high, so that after this tariff war is over, according to the government's point of view, it will have an impact on the high rates of these airline tickets.

With regard to price fixing by business actors, even though in a number of cases there is price fixing that is meant to be detrimental is the determination of the maximum price (excessive price) which is detrimental to consumers. However, Law No. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition itself does not provide an explanation as to what the price fixing referred to in Article 5 is, whether it is the setting of the maximum price or the fixing of the minimum price or including other payment terms.² This condition then raises a question regarding the business competition that occurs among airlines. Previously, the high price of domestic fuel, which was 20 percent higher than the international price, was said to be the culprit for the increase in airline ticket rates some time ago. However, the high price of fuel was also not without reason. PT Pertamina (Persero) is suspected of having monopolized the sale of fuel to airlines.³

The Ministry of Transportation of the Republic of Indonesia in 2019 has stipulated the Decree of the Minister of Transportation No. 106 of 2019 concerning the Maximum Tariff for Passenger Services for Economy Class Domestic Scheduled Commercial Air Transport ("KM 106/2019") where with the KM 106/2019 the Minister of Transportation Decree No. 72 of 2019 concerning the Maximum Tariff for Service Passengers for Economy Class Domestic Scheduled Commercial Air Transport ("KM

¹ Moh. Mahfud MD, *Politik Hukum Di Indonesia*, PT. Pustaka LP3ES, Jakarta

² Desiana Chrismasari, Skripsi, "*Filed Rate Doctrine Dalam Hukum Persaingan Usaha (Studi Kasus Penetapan Komponen Harga Fuel Surcharge Dalam Industri Jasa Penerbangan Domestik (Putusan KPU No. 25/KPPU-I/2009))*", Depok: UI, 2012), page 2

³ <https://katadata.co.id/berita/2019/02/12/kenaikan-harga-tiket-kppu-telisik-kebijakan-industri-penerbangan>, "*Kenaikan Harga Tiket, KPPU Telisik Kebijakan Industri Penerbangan*", downloaded on 14th of November 2019, page 1

72/2019”) is revoked and declared invalid since the promulgation of KM 106/2019. KM 106/2019 and KM 72/2019 are the implementing regulations of the Regulation of the Minister of Transportation of the Republic of Indonesia Number PM 20 of 2019 concerning Procedures and Formulations for Calculating Maximum Tariff for Domestic Scheduled Commercial Air Transport Economy Class Service Passengers (“PM 20/2019”) set and promulgated on March 28, 2019.

In connection with this case, the Business Competition Supervisory Commission (“KPPU”) has followed up on allegations of violations of Article 5 and Article 11 of Law no. 5 of 1999 by several business actors including PT Garuda Indonesia Persero, Tbk, (“Garuda Indonesia”), PT Citilink Indonesia (“Citilink”), PT. Sriwijaya Indonesia (“Sriwijaya Air”), PT NAM Air (“NAM Air”), PT Batik Air (“Batik Air”), PT Lion Mentari (“Lion Air”), PT Wings Abadi (“Wings Air”). In its allegations, the KPPU considered that the increase in rates for airplane tickets was carried out at the same time. Business actors are proven by the KPPU as stated in its Decision Case No. 15 / KPPU-I / 2019 concerning Alleged Violations of Article 5 and Article 11 of Law No. 5 of 1999 Regarding Scheduled Commercial Air Transport Services for Domestic Economy Class Passengers dated June 22, 2020. The KPPU's consideration is that there is a concerted action or parallelism of airlines, so that there has been an agreement among business actors (meeting of minds) in the form of an agreement to eliminate discounts or create uniform discounts, and an agreement to eliminate products offered at low prices in the market. This has resulted in limited supply and high prices for scheduled commercial air transport services for economy class passengers in Indonesian territory. The concerted action or parallelism was carried out through the reduction of subclasses at low prices by the Reported Parties through an unwritten agreement between business actors (meeting of minds) and has led to an increase in prices and high ticket prices paid by consumers.⁴ In connection with the allegation on Article 11, the Commission Council stated that business actors were not proven to have practiced cartel on airplane tickets. Article 11 is located in Chapter Five, which relates to cartels, which according to the author is the main problem that is being sued by KPPU against business actors as previously mentioned. In its decision, the Commission Council stated that there were elements in the cartel qualifications that could not be fulfilled, namely the existence of an element of agreement. Several reported parties stated that they did not agree with the KPPU's decision. Lion Air Group, which are Lion Air, Batik Air, and Wings Air have submitted objections to the KPPU's decision through the Central Jakarta District Court with case register number 365/Pdt.Sus-KPPU/2020/PNJkt.Pst. which is stated in the verdict are as follows:

1. To grant the objection applicant's application;
2. To cancel the Decision of the Respondent for Objections/Business Competition Supervisory Commission Number 15 / KPPU-I / 2019, dated June 23, 2020;
3. To punish the Respondent's objection to pay the court fee, which to date has been set at Rp. 356,000, - (three hundred and fifty six thousand rupiah).⁵

With the decision of the Central Jakarta District Court which canceled the KPPU's decision on Case No. 15/KPPU-I/2019 dated September 1, 2020, so as long as KPPU does not declare an appeal against the decision of the Central Jakarta District Court, the KPPU's decision is not valid. With this case, according to the author, it is very interesting to study, related to the regulation of MAXIMUM limit and lower limit tariffs and legal protection for consumers and their application by business actors, in this case, scheduled commercial air transportation.

⁴ Andi Saputra. *PN Jakpus Putuskan Lion Air Group Tidak Terlibat Kartel Harga Tiket Pesawat*. Tersedia di <https://news.detik.com/berita/d-5213152/pn-jakpus-putuskan-lion-air-group-tak-terlibat-kartel-harga-tiket-pesawat>. downloaded on 16th October 2019, hal 1

⁵ http://sipp.pn-jakartapusat.go.id/index.php/detil_perkara. downloaded on 20th October 2020

In connection with this background, the things that can be used as problem formulations are as follows:

1. Why do the policies of Upper and Lower Tariffs apply to air transportation in Indonesia?
2. How is the legal protection in the regulation of Upper and Lower Tariffs for service users and business actors?

II. RESEARCH METHODS

The form of research used in this research is normative juridical, namely using written legal norms as the basis of research.⁶ The research was conducted by using literature study. The research is directed at the effort to study positive law which consists of legal inventory, discovery of legal principles and legal synchronization. The type of data used in this research is secondary data, namely data obtained through literature study, documents and reports that have something to do with the problem under study.

In legal research there are several legal approaches. This approach is carried out in order to obtain answers to the problem formulation taken by the author. The approaches taken by the authors include the following:

- a) The Law Approach (Statue Approach);

The statutory approach is carried out by examining all laws and regulations related to the legal issue that is being handled.⁷

The author takes an approach including the statutory regulations, both laws, ministerial regulations and ministerial decrees relating to tariff policies, consumer protection and business competition.

- b) Case Approach;

The Case Approach is carried out by analyzing cases related to the issues faced and which have become court decisions that have permanent legal decisions.⁸ In this study the authors approached the KPPU Decision Case No. 15 / KPPU-I / 2019 Regarding Alleged Violation of Article 5 and Article 11 of Law Number 5 Year 1999 regarding Scheduled Commercial Air Transport Services for Domestic Economy Class Passengers and the Decision of the Central Jakarta District Court on Case No. 365 / Pdt.Sus-KPPU / 2020 / PN Jkt.Pst.

- c) Historical Approach;

The historical approach is carried out by examining the background of what was studied and the development of regulations regarding the issues that have to be faced.⁹ The author will approach the history or background of the tariff policy for scheduled commercial air transport in Indonesia, both during the enactment of Law no. 15 of 1992 concerning Aviation (hereinafter referred to as "Law No. 15 of 19992) or at the time Law no. 1 of 2009. The purpose of using this approach is to express the philosophy and mindset that gave birth to something related to the tariff policy;

- d) Comparative Approach;

⁶ Soerjono Soekanto dan Sri Mamudji (1). *Penelitian Hukum Normatif Suatu Tinjauan Singkat*. PT.Raja Grafindo Persada. Jakarta. 2006. Page 13

⁷ Marzuki, Peter Mahmud. *Penelitian Hukum*. Kencana Prenanda Media Grup. Jakarta. 2013. P. 133

⁸ Ibid. p. 134

⁹ Ibid

The comparative approach is carried out by conducting a comparative legal study. Comparative law study is an activity to compare the laws of a country with the laws of another country or laws from a certain time with laws from another time.¹⁰

The author uses a comparative approach to make a comparison of the tariff policy or scheduled commercial air transport in Indonesia with other ASEAN countries, in this case Malaysia and Singapore.

III. DISCUSSION AND RESULTS

1. Enforcement of The Maximum and Lowest Tariff Policy on Air Transportation in Indonesia

1.1. The Legal Politics of Aviation Before Law No. 1 of 2009

Air transportation economic policy (flight route, flight frequency, aircraft type, seat capacity and air transport tariff) cannot be separated from Indonesia's political ideology. The political ideology during the Old Order era under President Sukarno tended to be socialist, therefore the economy of air transportation was regulated and controlled by the state.¹¹ Socialism is a notion that was formed with the aim of prospering a collective and productive society by limiting individual property. In social ideology/economic socialism, it is collective in nature that can bring justice to the entire community to achieve people's welfare. As for the characteristics of the ideology of socialism, which are¹²:

- a) Socialism does not recognize the existence of a class between the rich and the poor, so there is no such thing as employers or workers because all have equal rights.
- b) Creating a society that can cooperate with each other and foster solidarity with equal rights.
- c) Limited ownership of the means of production will be recognized.
- d) Socialism has principles of equality and equity for the people.
- e) Religious matters, socialism is influenced by the thought of religious teachings that humans are obliged to help each other.
- f) To achieve public welfare, it is carried out in a peaceful and democratic manner.
- g) In terms of politics, this understanding assumes that a state is needed to foster and coordinate community togetherness.
- h) Reject capitalism and abolish it in a way that the workers unite to fight for it.
- i) Refusing full freedom because it tends to side with the interests of property rights.

In the field of air transportation, such as in the USSR, air transportation is carried out by the Civil Aviation Administration (CAA), while in China air transportation is carried out by the Civil Aviation Authority of China, in Singapore by the Civil Aviation Authority of Singapore. (CAAS). Both in the USSR and in China were civil servants. Air transportation is carried out by government-owned airlines (state owned enterprises) or by private companies with very strict regulations by government agencies or departments or ministries. Thus, in a socialist country, both the regulator and operator are carried out by the government.¹³

In Indonesia during the Old Order, the political ideology tended to be socialist, therefore the implementation of air transportation was carried out entirely by state-owned companies, each of which was Garuda Indonesian Airways which was established based on notarial deed No. Raden Kadiman.

¹⁰*Ibid.* p. 173

¹¹K. Martono. *Aspek Hukum Tarif Transportasi Udara Di Indonesia*. downloaded at <http://www.cakrawalanews.co.id/artikel/2873/Aspek-Hukum-Tarif-Transportasi-Udara-Di-Indonesia/> on 6th January 2020

¹²Downloaded at <https://belajargiat.id/pengertian-dan-ciri-ciri-sosialisme/> on 6th January 2020.

¹³K. Martono, Amad Sudiro. *Hukum Angkutan Udara. Op.Cit.* P. 8

137 dated 31 March 1950 and Merpati Nusantara Airlines which was established based on Government Regulation No. 19 of 1992 as supplementary. Thus that the implementation of air transportation is fully carried out by the government, so that all policies on air transportation are determined entirely by the government without involving the private sector.

At the time when Law no. 15 of 1992 the government plays a very important role in determining all policies, because the full authority rests with the government. In the old order policy which is socialist and the new order which is neo-liberal in nature, all flight routes, types of aircraft, flight frequencies, air transport rates and airport services as mentioned above, the seating capacity provided by airlines is strictly regulated by the government. So that during the New Order era there was no stiff competition between airline companies. At that time, Garuda Indonesian Airways passenger fares were allowed to increase the tariff by 15% (fifteen percent) of the normal fare, so that the Garuda Indonesian Airways passenger fare was higher than the tariff of private airlines.¹⁴

1.2. The Legal Politics of Aviation After Law No. 1 Of 2009

Law No. 1 of 2009 was born due to the fact that Law Number 15 of 1992 concerning Aviation was no longer in accordance with the conditions, changes in the strategic environment, and the needs of current aviation operations so that it needed to be replaced by a new regulation.

Law Number 15 of 1992 concerning Aviation needs to be improved in order to align with the development of science and technology, paradigm shift and strategic environment, including regional autonomy, competition at regional and global levels, community participation, business competition, international conventions on aviation, protection profession, as well as protection consumer.

In the operation of flights, this Law aims at realizing an orderly, orderly, safe, secure, comfortable flight at a reasonable price, and avoiding unfair business competition practices, smoothing the flow of people and/or goods by air by prioritizing and protecting air transportation in the framework of expediting national economic activities, fostering the spirit of aerospace, upholding the sovereignty of the state, creating competitiveness by developing national air transport technology and industry, supporting, mobilizing and encouraging the achievement of national development goals, strengthening national unity and unity in the context of realizing the Archipelago Insight, increase national resilience, and strengthen relations between nations, and are based on benefits, joint and familial efforts, fair and equitable, balance, harmony and harmony, public interest, integrity, upholding the law, independence, anti-monopoly and openness, with an environmental perspective, state sovereignty, nationality, and nationality.¹⁵

There have been many changes from Law no. 15 of 1992 if compared to Law No.1 of 2009. Law no. 1 of 2009 aims to create better conditions in the conduct of flights, such as conditions for airlines that are able to survive due to sufficient and good capital and business plans. This is certainly able to protect business actors and service users and it is also hoped that national airlines can survive and compete at the national, regional and international levels. These provisions include those relating to:

- a. requirements for aircraft ownership;
- b. capital ownership;
- c. capable and professional personnel;
- d. principle of high compliance;
- e. a detailed aviation safety program;

¹⁴ KM 96/PR.303/Phb-84 concerns The Adjustment of Air Transportation Tariff In Indonesia

¹⁵ Law No. 1 of 2009 concerns Aviation part Explanation

- f. the obligation to transfer responsibility to a 3rd party (insurance);
- g. protection of passengers;
- h. dispute resolution;

This Law has made a real paradigm shift in the context of a strict separation between the functions of the regulator, operator and airline service provider. In addition, several existing operators were also merged into one navigation service provider and for aircraft certification and registration, an autonomous service unit was also established, prioritizing aviation safety and security, which is not profit-oriented, financially independent, and costs incurred. withdrawn from users returned for investment costs and operational improvements (cost recovery).

1.3. The Implementation of Rate Policy Based on Minister Decree No. 106 of 2019

Air transportation is one of the aspects regulated by law in Indonesia. Law No. 1 of 2009 Article 1 mentions several definitions relating to air transportation, which concern the author as follows:

" Article 1

- 13. Air Transportation is any activity using an airplane to transport passengers, cargo and/or post for one or more trips from one airport to another or several airports.
- 14. Commercial Air Transportation is public air transportation by collecting payment.
- 15. Air Transport Business Entity is a state-owned company, regional-owned company, or Indonesian legal entity in the form of a limited liability company or cooperative, whose main activity is to operate aircraft to be used to transport passengers, cargo, and/or post by collecting payment.”¹⁶

To get a general understanding of tariffs, the authors obtained from the journal as follows: “In the Civil Aviation Act of 2009, tariffs refer to all tariffs, rates, fares, fees, charges or any other payments related to aviation activities. Tariff could therefore concern matters as wide-ranging as ticketing, international and national passenger service fees, air navigation service fees, landing fees, stand parking service fees, aircraft storage service fees, hajj service fees, and also on.”¹⁷ Thus, in general, the fare is the entirety of everything that arises in the course of the flight, not only for ticket prices but also for the operational costs that must be paid for the operation of both passenger and cargo flights, both domestic and international. In addition, a tariff can have a significant influence on airlines, travelers and aeronautical authorities. For the airlines, a tariff that is too low may jeopardize the sustainability of an air carrier’s operations, while a tariff is too expensive may make it unaffordable for travelers to travel. For aeronautical authorities, a tariff is a means to regulate the balance of the sustainability of airlines’ operations and to guarantee that travelers can afford the price for the benefit of the travelling public. For these reasons, tariffs contained in bilateral and multilateral agreements must be carefully regulated by aeronautical authorities.¹⁸ The government has an important role in the business continuity of the business entity where the non-conforming tariff policy will make it difficult for scheduled commercial air transport business entities to survive, while from the passenger side as service users, of course, they allow low fares that can be reached by these passengers.

¹⁶ Law No. 1 of 2009 about Aviation

¹⁷ Martono, Kemis, Sandriana Mariana, Aditya Wardana. *Domestic Air Transport Regulation In Indonesia*. Jurnal Manajemen Transportasi & Logistik (JMTranslog). Vol 03. (Maret 2016). P. 2

¹⁸ *Ibid*

Law No. 1 of 2009 does not provide a general understanding of tariffs, however, the Law specifically regulates the provisions for scheduled domestic air transport rates for passengers and cargo where passenger rates are divided into non-economic and economic rates. Indonesia experienced a change in policy on air transport in the reform era, where the private sector was given space to be able to run a business in the air transport sector. In Indonesia during the Old Order, the political ideology tended to be socialist, therefore air transportation was carried out entirely by state-owned companies (staat-owned enterprises). All fares, use of jet or propeller aircraft types, routes and flight networks are strictly regulated and supervised by the Minister of Civil Aviation.¹⁹ These changes are as stated in Law no. 1 of 2009 which opens space for air transport business entities other than government-owned.

After the enactment of Law No.1 of 2009, the Government through the Ministry of Transportation of the Republic of Indonesia as the regulator has the authority to determine maximum and lowest tariffs on business transportation, one of which is domestic scheduled commercial air transport tariffs. This authority is stated in Law No.1 of 2009 concerning Aviation Chapter IV regarding Tariffs, including as follows:

"Article 126

(3) The fare for economy class service passengers as referred to in paragraph (1) is calculated based on the following components:

- a. distance rates;
- b. tax;
- c. compulsory insurance contributions; and
- d. surcharge.²⁰

Based on Article 126 (3) above, the tariff factor is not only based on the operational factors of the airline but also from the government's own policy in determining taxes.

The factors as referred to in points a to d are factors that determine the Maximum tariff as stated in Article 127 of Law No. 1 of 2009 as follows:

"Article 127

- (2) The maximum tariff as referred to in paragraph (1) shall be determined by the Minister by taking into account the aspects of consumer protection and scheduled commercial air transportation business entities from unfair competition."
- (3) The fare for economy class passengers for domestic scheduled commercial air transportation as stipulated by the minister as meant in paragraph 1 must be published to consumers.
- (4) Domestic scheduled commercial air transportation business entities are prohibited from selling economy class tickets exceeding the maximum rate set by the Minister."²¹

Meanwhile, with regard to non-economic tariffs as stated in Law No.1 of 2009, the government recommends scheduled commercial air transport companies to provide 40% (forty percent) of seating capacity for non-economy while the remaining 60% is for economy class. In accordance with the neo-liberal ideology 60% of the seat capacity of scheduled commercial air transport is for economy class which is regulated by the government, while 40% of the seating capacity for scheduled commercial air

¹⁹ K Martono. *Loc.Cit.* P. 9

²⁰ Law No. 1 ...*Loc.Cit*

²¹ *Ibid.*

transport is reserved for non-economy class which is freely sold under market law (supply and demand) by scheduled commercial air freight company.²²

Law No. 1 of 2009, as previously mentioned, has differentiated tariffs, namely in the form of a maximum tariff and a lowest tariff. The maximum tariff is the highest / maximum service price permitted by the scheduled commercial air transportation business entity, which is calculated based on the components of the distance rate, value added tax, compulsory insurance fee and surcharge. This definition is as stated in the Minister of Transportation Regulation No. 20 of 2019 concerning Procedures and Formulations for Calculating the Maximum Tariff of Passengers on Domestic Scheduled Commercial Air Transport Services (hereinafter referred to as "PM No. 20 of 2019").

In PM No. 20 of 2019 states that the Surcharge is a fee charged because there are additional costs incurred by air transport companies outside of calculating the distance fare determination. Costs incurred by the air transportation company outside the calculation of the Distance Fare are costs of fuel surcharge, costs borne by the air transport company due to the departure or return of a flight without passengers, especially on Christmas day or other day. Eid al-Fitr. That the tariff is applied based on the coordination between the government and the national airline association by taking into account input from the aviation service user association.

The maximum tariff is applied based on the service group provided by the scheduled commercial air transportation company with reference to the Scheduled Commercial Air Transport Economy Class Passenger Service Standard.

The rate set by the government is as stated in PM No. The 20 of 2019 are grouped based on passenger service groups as referred to above, which consist of:

- I. Application of a tariff of 100% (one hundred percent) of the maximum tariff that provides services with a maximum standard (full services);
- II. Application of a maximum tariff of 90% (ninety percent) of the maximum tariff for medium standard services;
- III. Application of a maximum tariff of 85% (eighty five percent) of the maximum tariff for services with minimum standards (no frills services);

This government authority should be wisely implemented by the government in order to protect passengers so that they pay for tickets at a reasonable rate and provide protection to airlines so as not to harm airlines.

The government had previously implemented the Minister of Transportation Regulation No. 14/2016 on the Calculation and Determination of Maximum and Lowest Rates for Economy Class Passengers of Domestic Scheduled Commercial Air Transport which was later repealed by Ministerial Regulation No. 20 of 2019 concerning Procedures and Formulations for Calculating Maximum Tariff for Economy Class Passengers of Domestic Scheduled Commercial Air Transport. Implementation of PM No. 20 of 2019 is one of the government's reactions to suppress the many protests expressed by the community, in this case, users of economy class scheduled commercial air transport for the high cost of these aircraft. In Article 1 paragraph (5) PM, it is stated that the Maximum Tariff is the highest/maximum service price permitted to be imposed by the Scheduled Commercial Air Transportation Business Entity of the established Distance Tariff.²³ Based on the PM, the rates currently

²² K. Martono, Amad Sudiro. *Hukum Angkutan Udara. Op.Cit.* P. 27

²³ Ministerial Regulation No. 20 of 2019 concerning Procedures and Formulations for Calculating Maximum Tariff for Economy Class Passengers of Domestic Scheduled Commercial Air Transport

imposed by airlines basically do not violate the provisions, because they are still using the maximum tariff permitted by laws and regulations. This is evidenced by the absence of a sanctioned airline for imposing tariffs above the maximum tariff.

Following up on PM No. 20 of 2019, the Ministry of Transportation issued a Decree of the Minister of Transportation No. 106 of 2019 concerning the Maximum Tariff for Economy Class Passengers of Domestic Scheduled Commercial Air Transport. This regulation stipulates not only the maximum tariff, but also the lowest tariff, that economy class service passengers can be applied by the Scheduled Commercial Air Transport Business Entity with the provision of at least 35% (thirty five percent) of the maximum tariff according to the group. specified service. It is explained in this regulation that the amount of the Maximum Tariff for Passenger Economy Class Services for Domestic Scheduled Commercial Air Transportation as referred to in this regulation does not include the following:

- a. Value Added Tax (VAT) collection;
- b. mandatory contributions to the insurance fund from PT. Jasa Raharja (Persero);
- c. additional cost; and / or
- d. Aircraft Passenger Service Rates (*PJP2U*). imposed in accordance with the provisions of laws and regulations.

In addition, the government also stipulates that there is an evaluation at least 1 (one) time in 3 (three) months which must be carried out in relation to the application of maximum and lowest tariffs by taking into account the following matters:

- a. increase/decrease in fuel prices;
- b. increase/decrease in the price of the rupiah exchange rate;
- c. increase / decrease in the price of other cost components;
- d. public interest;
- e. interests of aviation safety and security; and/or
- f. interests of commercial air transport operators.

KM No. 106 of 2019 is an implementing regulation from PM No. 20 of 2019. This KM is the government's response to soaring airplane ticket prices which has made the public uneasy and asked the government to reduce airplane ticket prices. Before the enactment of PM No. 20 of 2019, the government has also issued several ministerial regulations related to tariff policies.

In KM No. 106 of 2019 mentioned in the SECOND VERDICT are as follows:

"The determination of the maximum tariff for passengers on Economy Class Services for Domestic Scheduled Commercial Air Transport as referred to in the FIRST VERDICT, apart from being based on the tariff component in accordance with the provisions of laws and regulations, also considers:

- a. the impact on other sectors; and
- b. the socialization that has been carried out to air transport business entities, the public, national aviation associations, and aviation transportation service user associations. "

However, a problem arises, because that regulation does not explain how the government determines the tariff, because in PM No. 20 of 2019 has basically explained the tariff components. Referring to the literature on Air Transportation Law Based on Law No.1 of 2009, written by Prof. Martono and Ahmad Sudiro, 2010, it was explained that the recommendation of the International Civil Aviation Organization (ICAO), the rates charged to passengers in the international air transport

agreement are reciprocal so that must be agreed upon by the designated airline with prior joint discussion between the airlines concerned.²⁴ The agreement between the airlines, he continued, was related to the discussion of the amount of the tariff which had to be reasonable by considering operating costs, services, other elements and reasonable profits as well. Apart from that, the tariff setting must also consider the rates charged by other airlines. So that the government should first consider the factors that are taken into consideration in determining airplane rates by airlines such as fuel prices, aircraft rental and maintenance, taxes and other costs related to airport, before determining the maximum rate.

2. Legal Protection in The Regulation of Maximum Tariff and Lowest Tariff of The Customers and Business Actors

2.1. Legal Protection on the Passengers

Prior to the birth of the Consumer Protection Law (hereinafter referred to as the Consumer Law), the way in which the laws and regulations were implemented had actually experienced in society. Although the Consumer Law has been issued, it has not yet achieved the same development as in developed countries. In the Consumer Law Again, various weaknesses are found, both in the form of separation of the environment of the productive stream according to abundance, although the certainty of the troublesome rules to be applied along with goodness.²⁵

The main factor that becomes consumer weakness is the level of consumer awareness of their rights is still low. This is mainly due to the low education of consumers, so that consumers are not educated that in every item and / or service they buy, there are rights related to the goods or services. Law no. 8 of 1999 is intended to be a strong legal foundation for the government and non-governmental consumer protection organizations to make efforts to empower consumers through consumer guidance and education.

The purpose of Law No. 8 of 1999 is important because it is not easy to expect the awareness of business actors, which basically means that the economic principle of business actors is to get the maximum possible profit with the minimum capital possible. This principle has the potential to harm the interests of consumers, either directly or indirectly. On the basis of the conditions described above, it is necessary to empower consumers through the formation of laws that can protect the interests of consumers in an integrated and comprehensive manner and can be applied effectively in society.

Passengers or users of air transport services can be categorized as consumers who use air services so that the rights of these consumers are protected in Law No.8 of 1999 concerning Consumer Protection (Consumer Protection Law). Several regulations, such as the Regulation of the Minister of Transportation and the Decree of the Minister of Transportation as previously stated, constitute good faith from the government to try to provide protection to the public for the application of aircraft rates which the public considered at that time to be unreasonable tariffs. This is one of the applications of the protection of society as consumers.

Law no. 8 of 1999 is not intended to kill the business of business actors, but it is hoped that consumer protection can promote a healthy business climate that encourages the birth of companies that are tough in facing competition through the provision of quality goods and/or services.

Actually the government is also researched the solution. The government, through the Ministry of Transportation, has lowered the maximum tariff between 12-16 percent on May 13, 2019. This 12

²⁴<https://www.hukumonline.com/berita/baca/lt5cdd4bf027598/tepatkah-kebijakan-pemerintah-turunkan-tarif-batas-atas-tiket-pesawat/>.downloaded on 14th November 2019. P.1

²⁵Ahmad Miru, *Prinsip-Prinsip Perlindungan Konsumen di Indonesia*, (Jakarta: PT Rajagrafindo Persada), P.70

percent reduction in the maximum tariff of flight tickets will be carried out on fat routes such as routes in the Java area, while other reductions will be made on routes. -the route is like the flight route to Jayapura.²⁶ The government should be open to the public, in this case passengers, regarding the determination of the amount of the maximum tariff. This is due to the lack of information to passengers, so what passengers believe is excessive charging of the fares that were previously cheap while currently experiencing a significant increase. The government should be open to the public, in this case passengers, regarding the determination of the amount of the maximum tariff. This is due to the lack of information to passengers, so what passengers believe is excessive charging of aircraft fares that were previously cheap while currently experiencing a significant increase.

In connection with the case as stated in the background of this research, there has been a condition that is quite anomalous in which the price of plane tickets in early 2019 has increased significantly which is burdensome for service users. Many service users previously were able to access air transportation but could not because ticket prices are quite expensive. The high price of airplane tickets also affects other industries such as the tourism industry.

Law No. 8 of 1999 protects consumers by providing protection and supervision instruments for consumers. This is stated in Article 30 of Law No. 8 of 1999 as follows:

- (1) The government, the public, and non-governmental consumer protection organizations shall supervise the implementation of consumer protection as well as the application of the laws and regulations.
- (2) The supervision by the government as meant in paragraph (1) is carried out by the Minister and/or the related technical ministers.
- (3) Supervision by the public and non-governmental consumer protection agencies is carried out on goods and/or services circulating in the market.
- (4) If the results of the supervision as referred to in paragraph (3) are found to deviate from the prevailing laws and regulations and endanger consumers, the Minister and/or the technical minister shall take action in accordance with the prevailing laws and regulations.
- (5) The results of supervision carried out by the community and non-governmental consumer protection agencies can be disseminated to the public and can be conveyed to the Minister and technical ministers.
- (6) Provisions for the implementation of supervisory duties as referred to in paragraph (1), paragraph (2) and paragraph (3) shall be stipulated in a Government Regulation.

The supervisory agency referred to by Law no. 8 of 1999 is the National Consumer Protection Agency (hereinafter referred to as "BPKN") which has the task of providing advice and considerations to the government in an effort to develop consumer protection in Indonesia. In the case of the high price of airplane tickets, BPKN evaluates the procedure for determining the upper and lower limit tariffs for domestic economy service passenger plane tickets. The adoption of the lower and maximum tariffs is too offensive and through the authority of the buyer to obtain a modifiable cost as a buyer of surplus.

BPKN in some of its opinions stated that the government should not use limit rates on the grounds that it is detrimental to consumers. BPKN advises the government to issue short-term and long-term

²⁶<https://www.liputan6.com/bisnis/read/3993742/headline-menekan-harga-tiket-pesawat-lewat-mekanisme-pasar-vs-regulasi-pemerintah>.downloaded on 14th November 2019. P. 1

regulations so that air transportation ticket prices are more affordable while still prioritizing security and safety aspects

The single tariff, in this case only the maximum tariff according to the author, is not sufficient to accommodate the objectives of Law no. 8 of 1999 itself, namely to create protection for consumers and also business actors. BPKN assumes that with a single tariff, business actors do not have the authority to play airplane prices. However, this means that it will lead to a tariff system with a market mechanism, where the market will indirectly determine the minimum price of airplane tickets.

In the absence of a lower limit tariff determination, it is very possible for a price war to occur as in previous years, where business actors who do not have sufficient capital will certainly lose to other business actors who are able to sell tickets at lower prices. It is hoped that with this tariff policy, these scheduled commercial air transport business entities can continue to survive and be able to provide services in accordance with the standards mandated in the provisions of laws and regulations.

The author opinion, that the single tariff will trigger one business actor and the other to compete with each other to provide prices, so that in addition to not protecting consumers, single tariffs can also trigger unfair business competition. The principle of benefit will emphasize that airplane ticket rates provide benefits to the community as service users to be able to reach these prices so that it helps people to be able to move from one place to another more quickly and safely using air transportation.

The principle of benefit protects service users from expensive tariffs that cannot be reached by service users. The principle of justice aims to ensure that service users get their rights fairly.

2.2. Protection on the Airlines

KPPU Case No. 15 / KPPU-1/2019 Regarding Alleged Violation of Article 5 and Article 11 of Law Number 5 of 1999 regarding Scheduled Commercial Air Transport Services for Domestic Economy Class Passengers which were terminated on June 22, 2020 and read publicly on June 23, 2020, is wrong a series of events regarding the increase in airline ticket prices in early 2019. The allegations that the KPPU as the reporter against business actors, namely Garuda Indonesia, Citilink, Sriwijaya Air, NAM Air, Lion Air, and Wings Air are related to Article 5 and Article 11 of Law No. 5 of 1999.

Based on the evidences and considerations, the Commission Council against the KPPU Decision Case No. 15 / KPPU-1/2019 decided as follows:

- i. Declare that Reported Party I, Reported Party II, Reported Party III, Reported Party IV, Reported Party V, Reported Party VI, and Reported Party VII have been legally and convincingly proven to have violated Article 5 of Law Number 5 Year 1999;
- ii. To declare that the Reported Party I, Reported Party II, Reported Party III, Reported Party IV, Reported Party V, Reported Party VI, and Reported Party VII are not proven to have violated Article 11 of Law Number 5 Year 1999;
- iii. Ordered the Reported Party I, the Reported Party II, the Reported Party III, the Reported Party IV, the Reported Party V, the Reported Party VI, and the Reported Party VII to notify the Business Competition Supervisory Commission in writing before adopting any policies of business actors which will affect the business competition map, ticket prices. paid by consumers and the public for 2 (two) years since this decision has permanent legal force.

With the existence of this KPPU Decree, it can be concluded that there has been a violation of the concept of business competition, in which several business actors involved have made it difficult

for other business actors to compete because they are not given access to the market. For example, is PT Indonesia AirAsia, which in the KPPU's Decision was stated to have been rigged by not displaying AirAsia's flight tickets on the online travel agent pages that cooperate with AirAsia, so that AirAsia does not get access related to online sales.

Referring to the KPPU decision and the Central Jakarta District Court decision, in the opinion of the author, Law no. 1 of 2009 and Law no. 5 of 1999 which is related to the tariff regulation has different objectives and applications. In Law no. 1 of 2009 the upper limit tariff is a limit used by the government so that business actors do not sell their services at prices that are not within the tariff limits.

Certainly this is to protect consumers in order to get a fair price. Whereas in Law no. 5 of 1999 the orientation is to protect consumers from the practices of selling services that are not in accordance with statutory regulations. Thus, the reported business actor's argument is that they do not violate any tariff limits, and cannot be subject to sanctions in accordance with Law No. 1 of 2009. According to the author, what should be the basis for the imposition of sanctions is if business actors violate the basic tariff which is an element of determining the upper limit tariff itself, so that the relationship between Law No.1 of 2009 and Law No. 5 of 1999 can be linked.

Airlines that serve domestic routes also have many considerations when determining service rates. YLKI Daily Coordinator, Tulus Abadi, is of the opinion that the Minister's steps can be understood in the context of public policies that the government must take. However, Tulus gave some notes on this regulation. First, the Minister's move should be presumed because of the climax of the Minister's annoyance over the high airfare rates. Even though they / the airlines have not violated the TBA provisions, what is expected, especially Garuda, can reduce the ticket price, because after all the fuel price has been lowered / has dropped. However, this is not done by all airlines.²⁷

Law No. 1 of 2009 does not specify a lowest tariff, however KM No. 108 of 2019 in FIFTH VERDICT states the lower limit rates are as follow:

"In addition to the determination of the maximum tariff as referred to in the FIRST VERDICT, the lowest tariff for economy class service passengers can also be applied by the Scheduled Commercial Air Transport Business Entity with the provision of at least 35% (thirty five percent) of the maximum tariff according to the service group set."

Furthermore, there are many factors caused by the government's own policies which ultimately result in high airplane fares. For example, the Value Added Tax for airplane fares currently stands at 10%, besides that the flight ticket component is also not only a matter of the MAXIMUM limit fare, but also the component of the airport tariff which increases every two years. This has an effect on flight ticket prices because airport fares (PJP2U) are included in the airline ticket rates. So that one of the effective solutions to mediate the problem of flight ticket fares is that the government through BUMN must reduce the burden on airlines. This is intended so that airlines do not impose this burden on consumers through ticket prices that are too expensive

VI. CONCLUSIONS

1. The high price of flight tickets is not only caused by factors from the business actor, in this case the airlines. Many factors contributed to the soaring prices for these plane tickets.
2. As a positive reaction from the government to public unrest, the government has urged airlines to lower the flight tickets by stipulating Ministerial Regulation No. 20 of 2019 concerning

²⁷ <https://www.hukumonline.com/berita/baca/1t5cdd4bf027598/tepatkah-kebijakan-pemerintah-turunkan-tarif-batas-atas-tiket-pesawat/>. downloaded on 14th November 2019. P. 1

Procedures and Formulations for Calculating the Maximum Tariff for Passengers on Economy Class Services for Domestic Scheduled Commercial Air Transport and Decree of the Minister of Transportation No. 106 of 2019 concerning the Maximum Tariff for Economy Class Passengers of Domestic Scheduled Commercial Air Transport. So far, that airline still does not violate the maximum and lowest tariff set by the government

3. The author recommends that the Government be more aggressive, in a positive way, to supervise airline ticket rates. So that the hope of the author is that it can be carried out in compliance with the evaluation of the rates as mandated in PM No. 20 of 2019
4. The next recommendation is for the Government to provide space for associations or business actors who are not members of the association to convey their aspirations either approving or having other options besides the options that the government has set out for the maximum tariff.

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