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Faulty Implementation of Flight Delay Compensation in Indonesian Regulation: A Study Based on the Montreal Convention

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ABSTRACT

As the Montreal Convention has been ratified by Indonesia, the main regulation concerning aviation in Indonesia has not been updated to follow the standard upheld by the Montreal Convention, especially for any compensation for passengers and baggage. This research aims to the compliance of national legislation towards international obligations, especially in compensation for delayed flights. This research will also delve into the terms & conditions of Indonesian airlines serving international flights as they are the most affected to any regulatory change. This research is an empirical normative method where research results shows that the national legislation is not up to par with the Montreal Convention while Indonesian airlines have adapted to use International Convention in their terms & conditions to make up for the outdated regulation. This paper will highlight the difference in standard employed under the Montreal Convention and the current flight Indonesian regulation with a general conclusion to update current regulation. A recommendation on the current regulation would be to create a reimbursement system to cover the compensation for the passenger.

Keywords: compensation; flight delay; montreal convention.

INTRODUCTION

Commercial air transportation has been a part of the Indonesian national transportation system with the characteristics of being able to move great distances in short time spans, capital intensive, reliable management, and having an optimal safety and security guarantees.¹ The system of which international commercial air transportation in the modern world is governed, could be differentiated between 2 systems the Warsaw system and Montreal system each from their respective international treaties.²

This article will focus on the Montreal Convention as Indonesia is one of the member states of the International Civil

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¹ Mumeck, R. W., Waha, C. J. J., & Sondakh, M. K. (2023). Tanggung Jawab Hukum Pengangkutan Udara Niaga Menurut Konvensi Montreal 1999 Dan Undang-Undang Nomor 1 Tahun 2009 Tentang Penerbangan. *Lex Crimen*, 7(3), 1234.

² Bartsch, R. I. C. (2018). *International aviation law: A practical guide (2nd edition)*. Routledge. 16.

Aviation Organization (ICAO) and has ratified the Montreal Convention. The Ratification of the Montreal Convention is done through Presidential Regulation of the Republic of Indonesia Number 95 of 2016 Concerning Ratification of the Convention for the Unification of Certain Rules for International Carriage by Air and is considered the benchmark for the responsibility for commercial air transportation in international terms. The legal regulations used in writing are the 1999 Montreal Convention, Law Number 1 of 2009 concerning Aviation (Aviation Law), and its derivative regulations. Law Number 1 of 2009 concerning Aviation is has several principles of the Montreal Convention, however, is not a ratification of the convention of itself.

The Aviation Law encompasses many parts of civil aviation wit multiple derivative regulations being created to implement it. This paper focuses on compensation for delays of flights, specifically compensation for the passenger mandated in applicable laws and some examples from the publicly available records or policies of Indonesian airlines. Research in this area of the aviation law quite common but focuses mostly on compliance of airlines policies to domestic legislation.³ Approaches from consumer domestic consumer protection law⁴ and actual events of flight delays⁵ have been well and thoroughly researched to its fullest extent, however, the underlying regulations have been not been assessed to Indonesia's international obligation and the prevailing regulations can be considered quite 'outdated' as the Aviation Law and most of its derivative regulation is passed before the ratification of the Montreal Convention.

Firstly, this study focuses on the basic legal regulations surrounding compensation for flights delays in Indonesia and how their relation to Indonesia's international obligation, especially regarding the Montreal Convention. Furthermore, the airline policies of some selected Indonesian airlines are compared to check if they have fulfilled national and international obligations in regards to compensation for delayed flights. Noting the importance of the reality if the regulations are implemented correctly or if the airlines rather refer to other regulation as a standard for compensation. Lastly, a final assessment will be made regarding the implementation for compensation concerning delays of flights in Indonesia in regards to the Montreal Convention with future

³ Qalbi, N., & Jayadi, A. (2020). Aspek Hukum Ganti Kerugian Keterlambatan Penerbangan (Flight Delay) Maskapai Penerbangan Komersial Indonesia. *Alauddin Law Development Journal*, 2(3), 302.

⁴ Fahrizal, D., Anatami, D., & Nurkhotijah, S. (2022). Analisis Yuridis Tanggung Jawab Pelaku Usaha Terhadap Konsumen Akibat Keterlambatan Penerbangan. *Jurnal Ilmiah Hukum dan Hak Asasi Manusia*, 2(1), 15-27.

⁵ Habibah, I. W. E., & Kusuma, N. M. P. (2024). Analisis Penanganan Kompensasi Delay pada Maskapai Lion Air terhadap Kepuasan Penumpang oleh PT Kokapura di Bandar Udara Jenderal Ahmad Yani Semarang. *El-Mal: Jurnal Kajian Ekonomi & Bisnis Islam*, 5(2), 540-553.

considerations and recommendations to be taken by the government and airline industry in general.

RESEARCH METHOD

This research uses an empirical normative method where document studies was performed (Library Research). This research starts from data obtained directly from research results, both in repositories, books, and journals which are the results of scientific works concerning compensation for flight delays. A sociological juridical was also used by the authors which is an approach used by highlighting various facts that occur in reality between flight service users and flight service providers in efforts to compensate for airline flight delays. The data garnered was through government repositories for domestic legislation and the International Air Transport Association website. This study will focus only the compensation for passengers in regards to flight delays.

DISCUSSION

Compensation for Flight Delays from International Regulations to Domestic Regulations

The first notion of compensation for the delay of flights in a national regulation is noted in Article 146 of the Aviation Law where it is stated that the carrier is responsible for losses suffered due to delays in the transportation of passengers, baggage or cargo, unless the carrier can prove that the delay was caused by weather and technical operational factors. The previously mentioned article is the general rule for compensation of flight delays in Indonesia with the amount of compensation for flight delays is further regulated by a Ministerial Regulation.⁶ The original clause for compensation in the Montreal Convention could be seen in Article 19 of the convention where

“The carrier is liable for damage occasioned by delay in the carriage by air of passengers, baggage or cargo. Nevertheless, the carrier shall not be liable for damage occasioned by delay if it proves that it and its servants and agents took all measures that could reasonably be required to avoid the damage or that it was impossible for it or them to take such measures.”

Various principles have been the basis for carrier liability in air law Principle of liability based on fault, The principle of liability based on presumption, and The principle of absolute liability. On the issue of carrier liability, E. Saefullah Wiradipradja

⁶ Qathrinada, A. & Pranoto. (2019). Kompensasi Sebagai Bentuk Tanggung Jawab Pihak Maskapai Penerbangan dalam Keterlambatan Jadwal Penerbangan Komersial di Indonesia. *Jurnal Privat Law*, 7(1), 124.

argues that the central point of any discussion of carrier liability generally lies in the liability principle applied.⁷ In transportation accident cases, the application of liability based on fault principle often puts the passenger in a weak position in pursuing their rights. In order to recover for their losses, passengers must be able to prove the carrier's fault, which is often not easy to do. In addition, the accident insurance program as a form of carrier responsibility.

The principle of liability on the basis of fault states that in determining transportation liability is based on the view that it is the injured party or plaintiff who proves the carrier's fault. While strict liability forces the liability on one of the parties whoever have may caused the injury, usually the carrier. The idea of liability based on fault and strict liability are widely used in the Montreal Convention.

A significant deviation could be seen where the requirement for reasonable were taken or the impossibility of the event which caused the delay of the flight are changed with a delay caused by weather or technical operational factors. The interpretation of where an airline is considered free of liability is different with the Aviation Law taking a more 'relaxed' approach for the limitation of liability for airlines. The main point to take into account is the fact that the Aviation Law was created and enforceable far before the ratification of the Montreal Convention, making some of the provisions in the Aviation Law bring incompatible or not in line with the provisions in the Montreal Convention.

The principle of absolute liability implies that the carrier will be subject to absolute liability without regard to the presence or absence of fault of the carrier, the air carrier must pay compensation in the event of a loss suffered by passengers. It is said to be limited because of the limitation or limitation of the amount of compensation that must be paid by the airline. This limited absolute liability only applies to the death, permanent disability or injury of passengers and responsibility for the destruction, damage or loss of goods. While the responsibility for delay applies the principle of responsibility based on the presumption of liability principle. This is based on the wording of the element of fault of the carrier. This means that the carrier will be liable if the delay is proven to be the fault of the carrier.⁸ The question, however, relates to wherever the compensation given is compatible under the Montreal Convention.

Even though the regulation could be considered 'outdated', it is still applicable for cases for delay. An in-depth view of the compensation for flight delays could be seen on 2 derivative regulations of the Aviation Law. The 2 derivative regulations under the

⁷ Wiradipraja, E. S. (1989). *Tanggung Jawab Pengangkut dalam Hukum Pengangkutan Udara Internasional dan Nasional* (Ed. 1, cet. 1). Liberty, 44.

⁸ *Ibid.* 56.

Aviation Law which concerns about delay of flights and its compensation are Regulation of the Minister of Transportation Number 89 of 2015 concerning Handling of Flight Delays and Regulation of the Minister of Transportation Number 77 of 2011 concerning Air Carrier's Responsibilities.⁹

Under Regulation of the Minister of Transportation Number 77 of 2011, the amount of compensation for passengers due to flight delays is Rp.300,000.00 per passenger for a delay of more than 4 hours. Alternatively, the carrier could also offer another destination that is closest to the passenger's final flight destination (re-routing) along with a compensation of Rp.150,000.00 per passenger while providing connecting flight tickets or other modes transportation to the destination if there is no mode of transportation other than air transportation. Lastly, in the case of being transferred another flight, passengers are exempt from additional costs or a compensation the remaining excess money from the ticket purchased without any other further compensation. There are no provisions for delays under 4 hours to receive compensation, it could only be remedied by a re-route or exemption of additional costs.¹⁰

While under Regulation of the Minister of Transportation Number 89 of 2015, delays are more classified and regulated with a rigid system to determine what type of compensation is given towards the passenger. Article 3 of the regulation classifies delays with 6 categories on differing time frames of lateness which start from:¹¹

- a. Category 1 delay of 30 minutes to 60 minutes, compensated in the form of soft drinks;
- b. Category 2, delay of 61 minutes to 120 minutes, compensated in the form of drinks and snacks (snack box);
- c. Category 3, delay of 121 minutes to 180 minutes, compensation in the form of drinks and heavy meals;
- d. Category 4, delay of 181 minutes to 240 minutes, compensated in the form of drinks, snacks (snack box), and heavy meals;
- e. Category 5, delay of more than 240 minutes, compensated in the form of cash in amount of Rp.300,000.00; and

⁹ Hidayat, M. T. (2017). Perlindungan Hukum Terhadap Pengguna Jasa Angkutan Udara dalam Perspektif Peraturan Perundang-undangan Tentang Penerbangan. *Al-Adl : Jurnal Hukum*, 8(3), 41.

¹⁰ Yaurwarin, W., & Siwabessy, D. J. (2023). Perlindungan Hukum Terhadap Pengguna Jasa Angkutan Udara Akibat Keterlambatan Penerbangan. *PUBLIC POLICY (Jurnal Aplikasi Kebijakan Publik & Bisnis)*, 4(2), 325.

¹¹ Nugraha, R. A., & Kovudhikulrungsri, L. (2017). Aviation Legal Issues in Indonesia and Thailand: Towards Better Passengers' Rights in ASEAN. *Indonesia Law Review*, 7(1), 29.

- f. Category 6, flight cancellation, compensated as the airline is required to transfer a new flight to exchange the cancelled one or a refund of the entire ticket cost (refund ticket).

Another legislation on the obligation for airlines to compensate in the event of flights delays is Government Regulation Number 40 of 1995 concerning air transportation. Under Article 43 of the regulation, it is stated that compensation for delays experienced by passengers due to carrier errors is only given for losses actually suffered by prospective passengers, up to a maximum of Rp.1,000,000.00. In overview, the compensation for flight delays can be in the form of snacks and drinks, compensation in the form of heavy meals, compensation in the form of compensation of Rp.300,000, and refund of all ticket costs (refund ticket). While another regulation states that flight delays caused by the carrier error could be compensated with a maximum of Rp.1,000,000.¹²

Under the Montreal Convention, when a delay has taken place, the damage may include the cost of accommodations or transportation in connection with the connecting flight and expenses incurred by the passenger in order to reach the next flight.¹³ The maximum compensation set under the Montreal Convention for delays is 5,346 Special Drawing Rights (SDR) or around Rp. 110,968,466,00, taking into account the price of the flight and other factors.

In an example event, Hundreds of passengers protested after hearing the announcement of the delay of Lion Air flight JT 316 on the Surabaya - Banjarmasin route on Sunday. The scheduled flight JT 316 was actually scheduled to take off from Surabaya to Banjarmasin at 15.55 WIB, however was delayed for 5 hours.¹⁴ The amount settled was the domestic regulation with a compensation of Rp.300,000.00 and a heavy meal.

As exemplified, the gap between the amount which could be received from received by a prospective passenger who got their flight delay is significantly lower under prevailing Indonesian domestic regulations than the Montreal Convention. This also does not take into account the differing requirement for proving such a delay with the leniency taken by Indonesian legislation to what accounts under the liability of the air carrier. It could therefore be concluded here that under prevailing domestic regulations that the amount of compensation for flight delays are not in line with the Montreal Convention. The main reasoning for the discrepancy between the amount agreed in the Montreal Convention and domestic legislation is that the domestic

¹² Damayanthi, N. W. M. I., & Parsa, I. W. (2015). Pelaksanaan Tanggung Jawab Maskapai Penerbangan Terhadap Keterlambatan Penerbangan. *Kertha Semaya: Journal Ilmu Hukum*, 3(1), 11.

¹³ Nase, V. (2017). Reflections On Liability of Air Carriers for Delay. *The University of Notre Dame Australia Law Review*, 19(4), 4.

¹⁴ Tempo. (2024). Delay 5 Jam, Penumpang Lion Air SUB-BDJ Desak Kompensasi Rp 300 Ribu. *Tempo.Com*.

regulations are created before taking into account the ratification of the Montreal Convention.¹⁵ Thus, leading to a huge gap between the international obligations needed under the Montreal Convention and the requirement for national airlines.

The Reality of Compensation for Delays Taken by Airlines and Policy Implications for the Indonesian Government

Another point to be addressed in this article are the policies of Indonesian airlines in compliance with international obligations. A significant number of Indonesian airlines have been operating in Indonesia with many of their flights serving both domestic and international with a documented amount being considered 'late' or 'delayed'.¹⁶ While all Indonesian airlines serve domestic travel, international flights are reserved for airlines with stricter compliance with international aviation rules which include the Montreal Convention. A few of the flights which serve international travel are Garuda Indonesia, Lion Air, Batik Air, and Indonesia Air Asia.¹⁷

The main point looked into are the delay and compensation policies of each airline if publicly available and to see if it complies with international obligation. As all airlines based in Indonesia have to comply with domestic regulation, domestic regulation will be minimum standard for delays and compensation, however, as established previously it would not comply with international obligations.

The first delay policy taken into account is the Lion Air Terms & Condition which is publicly available on their website.¹⁸ It is stated that any international flights under Lion Air will comply with Warsaw Convention. Both the Warsaw and Montreal Convention apply here as both have been signed by Indonesia. However, it is usually noted that the amount compensated under the Warsaw Convention is comparatively less than the Montreal Convention.¹⁹ However, this goes back to the passenger preferring a specific airline's policy agreed through by purchasing the ticket. While Lion Air does not in writing comply with the Montreal Convention, it does to its predecessor in the Warsaw Convention.

The second delay policy looked into is Batik Air with their general terms and conditions being available in their website.²⁰ A great deal of detail has been given

¹⁵ Purnamaningrat, I. G. A. I., & Udiana, I. M. (2022). Ganti Rugi Dalam Penerbangan Internasional Menurut Konvensi Montreal 1999. *Kertha Semaya : Jurnal Ilmu Hukum*, 10(3), 529.

¹⁶ Asmah, A. (2017). Kajian Hukum Dampak Regulasi Peraturan Menteri Perhubungan Terhadap Maskapai Penerbangan BUMN dan Swasta. *Al Daulah : Jurnal Hukum Pidana dan Ketatanegaraan*, 6(2), 231.

¹⁷ Wilson, N. (2019). The Impact of Service Quality and Brand Image toward Customer Loyalty in the Indonesian Airlines Industry. *Jurnal Manajemen Indonesia*, 18(3), 222.

¹⁸ Lion Air. (2024). Terms & Conditions, Privacy Policy. <https://www.lionair.co.id/en/terms-conditions>

¹⁹ Zhang, J. (2016). *Exploration on Domestic Flight Delay and Compensation*. International Conference on Education, Management, Computer and Society, 91.

²⁰ Malindo Air. (2024). General Terms & Conditions. <https://www.malindoair.com/terms-and-conditions>

towards their terms and conditions with a separation between domestic and international flights. Domestic flights are considered to comply with domestic regulations while international flights are specifically stated to comply with the Montreal Convention under Article 9 of their terms and conditions. The same situation could be seen under the Air Asia Terms and conditions for Indonesia based flights.²¹ The terms and conditions refer to the Montreal Convention for international flights for any form of liability for the airline.

The third delay policy looked into are used in Garuda Indonesia's terms and conditions.²² The terms and condition refer to multiple conventions and their supplementing protocols in Article 1 and an applicability clause under Article 2 of said terms and conditions which allows the usage of the Warsaw Convention & protocols, the Guadalajara Supplementary Convention, or the Montreal Convention for applicability in each country of destination.

Another point to be taken into account is for certain country, foreign regulation is taken into consideration by Garuda Indonesia. This can be seen as Garuda Indonesia complies with EU Regulation (EC) No 261/2004 which is applies a general rule for compensation for airline passengers with flights either delayed, cancelled, or other problems which applies to all European Union (EU) countries.²³ This is for the airline to have flights to and from the Eu without any legal issues of compliance. While this EU legislation is considered great for passenger rights, it is still considered flawed as many issues still arise from the interpretation of the Montreal Convention into national laws with issues from the lack of extraordinary circumstances to limit liability of the carrier, the length of a given delay or even the omission of compensation for connecting flight due to a delay.²⁴

The main point of the arguments above are to highlight the lacking compliance of Indonesian legislation with international obligations (i.e. the Montreal Convention). As Indonesian airlines adapt with the changing situation and newer laws of other countries in the race to comply with prevailing regulations, the issue of renewal for in Indonesian regulation is a requirement for Indonesia to stay competitive and up to date in the aviation industry. While it would not lead to an outright ban from counties like the safety

²¹ Air Asia. (2024). Terms and conditions of carriage for QZ flights. <https://www.airasia.com/aa/about-us/en/gb/terms-and-conditions-qz.html>.

²² Garuda Indonesia. (2024). Conditions of Carriage of Passenger and Baggage. <https://www.garuda-indonesia.com/oc/en/contact/condition-of-carriage>.

²³ Drake, S. (2020). Delays, cancellations and compensation: Why are air passengers still finding it difficult to enforce their EU rights under Regulation 261/2004?. *Maastricht Journal of European and Comparative Law*, 27(2), 231.

²⁴ Defossez, D. (2021). Proposed revisions of regulation 261/2004: Endangering passengers' rights and going against the international trend?. *Journal of Air Transport Management*, 91, 102008.

incident of 2010s where a significant number of Indonesian airlines with flights to the EU were temporarily banned due to safety concerns,²⁵ it may concern the competitiveness of the aviation industry in Indonesia compared to foreign airlines and could jeopardize passenger rights with the current condition.

The fact that foreign legislation is still considered by Indonesian based airlines while the national Aviation Law is considered in non-compliance of international obligation makes it difficult for airlines to operate for international commercial without any legal issues. The most straight-forward solution is to renew prevailing regulations to be consistent with the Montreal Convention to ensure compliance with the system and allow travelers and tourists to receive their rights as per the Convention.²⁶ Renewal of the Aviation Law should be a priority in the national legislative program where it is not seen as of the writing of this research.

CONCLUSION

As highlighted by the discussion, while the burden of liability is clear on the carriers side on delays, most of the time, the regulations around the aviation industry specifically on the compensation for the delay of flights is not up to standard with international obligations, specifically the Montreal Convention. The amount of compensation under the Aviation Law and its derivatives are significantly less than the ones agreed to in the Montreal Convention. In contrast, the international flight policies of Indonesian airlines, such as Garuda Indonesia, Lion Air, Batik Air, and Indonesia Air Asia are up to par with international standards and some even refer to the Montreal Convention directly. Garuda Indonesia even complies to EU regulation to make sure that flights coming or to EU are guaranteed.

As passengers/consumers, delays on their flights directly impact them and could jeopardize their interests from going to the same airline. Without any form of protection by the airline via regulation. This leaves a gap where airlines are forced to adopt international standards and of other countries as the domestic standards are not up to par in the airline industry. The most straight-forwards remedy is to renew and update the Aviation Law to comply with the Montreal Convention as have the terms of conditions of the airlines for international flights and allow compensation for delayed flights to be in line with international obligations.

²⁵ Kania, D. D., Ulfa, A., & Sari, M. (2020). Indonesia's Diplomacy on Flight Safety Issues. *Jurnal Manajemen Transportasi & Logistik (JMTRANSLOG)*, 7(2), 118.

²⁶ Arafah, A. R., Putro, Y. M., Bais, A. N., Solita, S., & Prakasa, S. U. W. (2024). Voyage rights in review: Indonesian tourism and aviation legislation. *Cogent Social Sciences*, 10(1), 2333980.

The suggestion given under this research are toward the Indonesian government and Indonesian airline currently operating international flights. The legislative body of the Indonesian government should focus on renewing the Aviation Law to comply with international standards and ease the concerns of non-compliance of domestic legislation with international regulation, in order to help the airlines industry streamline the rights between domestic and international rights, especially for compensation. The current regime should be updated to include a reimbursement system similar to the recommendation of the Montreal Convention.

Indonesian airline currently operating international flights should continue their practice with conforming with the latest development in the international aviation regime as this allows international flights taken by the airline to continue without any risk of being removed. This also removes the risk of lawsuits for the airline as the Montreal Convention is usually the international standard for any form of compensation, lessening the risk of unfair compensation in operating international routes.

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