

RELEASE AND DISCHARGE AGREEMENT IN THE COMPENSATION SETTLEMENT BY AIRLINES COMPANY (A NATIONAL AND INTERNATIONAL LAW PERSPECTIVE)

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ABSTRACT

This paper analyses the rules and implementation regarding the Release and Discharge Agreement in the compensation settlement process by airlines company based on national and international law. The results show that this release and discharge agreement is not per Article 186 of the Aviation Law, which regulate that the carrier as a business actor is prohibited from making special agreements or requirements that negate the carrier's responsibility or determine a lower limit than the current compensation limit. According to international law, this release and discharge agreement does not follow Article 26 of the 1999 Montreal Convention, which regulates that airlines companies are not allowed to form contracts that may reduce or eliminate the amount of liability. Hence, obstacles arise in the compensation settlements when using Release and Discharge Agreement documents, the method of airline liability, and proving the cause of the accident to exclude the payment of compensation settlements to passengers. It is recommended to improve the rules related to the carrier's responsibility to ensure that passengers could get their rights according to the provisions contained in the legislation and maximize the implementation of international conventions related to aviation that have been ratified into national regulations.

Keywords: Compensation, Liability, Release and Discharge Agreement, Airline Company, Passenger.

INTRODUCTION

Airspace is an essential dimension in every aspect of both national and international community life nowadays. Air space is space located above land and sea space around the state's territory and attached to the earth where a country has jurisdictional rights.¹ Since the development of aviation, in terms of avoiding problems, a uniform legal regime was established regarding the responsibility of air carriers, known as the Warsaw Convention in 1929. The signing of this Convention aims to standardize international air transportation documents such as baggage tickets, passenger tickets, and luggage tickets. This Convention applies only to international air transport.

There have been several amendments to the Warsaw convention, and the most recent one is the 1999 Montreal Convention which is a source of international air law in the form of a multilateral

¹ Adi Kusumaningrum dan Wisnu Virgiaswara Purtra, *Hukum Udara: Kepentingan Indonesia di Ruang Udara Nasional*, (Ed. Pertama, UB Press 2019) 1.

treaty. The contents of this convention explain responsibility for death, the injured person, luggage, baggage, lateness, liberation, compensation, and the amount of payment.²

As for the carrier, the obligations stipulated in the law of transportation include: safely, undivided, and safely transport passengers and/or goods to their destination, compensate passengers who suffer losses, and provide full service. If an air transportation accident occurs, the liability system for air transportation service providers is based on an absolute liability system, as specified in Article 141 of Act No. 1 of 2009 on Aviation. The carrier is responsible for the passenger's loss, such as death, permanent disability, or injury caused by an air transportation accident in the aircraft and/or boarding and descending the plane. The responsibility principle being applied is the Strict Liability principle which the airline is liable for regardless of whether the user of air transportation services is at fault.³

Signing the Release and Discharge Agreement has become necessary to compensate accident victims. However, Article 18 of the Consumer Protection Law states that the use of this release and discharge agreement is prohibited. These regulations impose restrictions on business actors who provide or offer goods and/or services for trading. If one of them requires business actors to transfer duty, they are prohibited from loading or establishing standard clauses in documents and/or agreements.

The signing of this Release and Discharge Agreement violates the carrier's absolute responsibility and is also not stipulated in Ministerial Regulation Number 77 of 2011.⁴ However, the signing of the Release and Discharge Agreement still occurs, such as in the Lion Air JT-610 plane crash in 2018. Some consumers' heirs from flight JT-610 have not yet received compensation from Lion Air for the plane crash due to *PT. Lion Mentari Air Lines'* requirement that the heir signs a release and discharge agreement. The specific problems discussed here are as follows: (1) what are rules related to the Release and Discharge Agreement in the compensation payment process from national and international law? And (2) how is the implementation of airline compensation payments to the victims of plane crashes?

² Novi Dwi, (*et.al*), "Tanggung Jawab Perusahaan Penerbangan Air Asia Terhadap Keselamatan dan Keamanan Penumpang QZ-8501 Ditinjau Dari Konvensi Montreal 1999", *Diponegoro Law Journal*, Vol. 8 No. 4, hlm. 2627, 2019.

³ Retno Wulansari, "Keabsahan *Release and Discharge Agreement* Dalam Proses Pembayaran Kompensasi Kecelakaan Transportasi Udara", *Literasi Hukum*, Vol. 4 No. 1, hlm. 64, 2020.

⁴ *Ibid*, hlm. 66.

RESEARCH METHODOLOGY

This study falls under normative legal research, which aims to collect objective facts. Data was gathered using literature review methodologies on primary legal materials, which are legally binding and serve as the foundation for research, such as Act No. 1 of 2009 on Aviation and Minister of Transportation Regulation No. 77 of 2011 on Air Transport Carriers' Responsibilities. The Warsaw Convention of 1929 and the Montreal Convention of 1999 are two more legal documents employed. Secondary legal materials include textbooks and legal writings in books and journals; tertiary legal materials include legal dictionaries, Indonesian dictionaries, English dictionaries, and related newspapers.

RESEARCH RESULTS AND DISCUSSION

1. The Use of Release and Discharge Agreement in Payment of Compensation by Airline (Case of Lion Air JT-610 Plane Crash)

Article 1, number 22 of Act Number 1 of 2009 states that "Carrier Liability is the responsibility of Air Transportation Company to pay indemnity for any loss suffered by any passenger and/or cargo shipper and the third party."⁵ Airlines' obligations as carriers to passengers are contained in Act Number 1 of 2009 concerning Aviation. Article 141 states that:⁶ " (1) any carrier shall be liable for indemnity for the death of passengers, permanent defects, or injuries caused by incidents onboard the aircraft and/or while getting on or off the plane; (2) if the loss as meant in item (1) incurred due to intentional action or fault of the carrier or any of its employees, the carrier shall be liable for damages incurred and shall not be able to use the provisions under this law to limit its liability; (3) any beneficiary/next of kin of the victim or the victim suffered due to air transportation incident as meant in item (2) shall submit a lawsuit to the court to get additional compensation other than the predetermined compensation for losses."

The responsibility of the carrier based on article 1 paragraph (3) of the Ministerial Regulation Number 77 of 2011 on the Responsibility of the Air Transport Carrier is the obligation of the air transportation company to compensate for the losses suffered by passengers and/or shippers, as well

⁵ Shofian Rifan Lindo, "Pengaturan Hukum Pertanggungjawaban Pengangkut Atas Kecelakaan Dalam Pengangkutan Udara Menurut Undang-Undang No. 1 Tahun 2009 Tentang Penerbangan", *Lex Et Societatis*, Vol. 7 No. 5, hlm. 23, 2019.

⁶ Retno Puspendari, "Tanggung Jawab Perusahaan Jasa Penerbangan Terhadap Kecelakaan Pada Penumpang Berdasarkan Undang-Undang Nomor 1 Tahun 2009 Tentang Penerbangan", *Privat Law*, Vol. 5 No. 1, hlm. 98, 2017.
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as third parties. Article 2 (a) explains that the aircraft carrier must be responsible for passengers who die, are permanently disabled or injured.⁷

Indonesia has experienced several cases of scheduled commercial air transportation accidents, one of which is the Lion Air JT-610 plane crash case. On October 29, 2018, the Lion Air JT-610 plane bound for Jakarta-Pangkalpinang crashed in Karawang waters, and all 189 passengers were declared dead. The head of the KNKT (National Transportation Safety Committee) said that the data obtained showed the plane had stalled, so it fell.⁸ Boeing's Chief Executive, Dennis Muilenburg, admitted that the planemaker committed a mistake in two 737 MAX crashes that killed at least 346 people.

According to applicable laws, Lion Air, as the air transportation services provider, must compensate consumers who suffer material losses. If the loss is in the form of death, the payment must be submitted to the consumer's heir. However, several heirs of the JT-610 flight victims have not yet received payment from Lion Air because of PT. Lion Mentari Air Lines compel the heir to sign the agreement of release and discharge. The main point of the deal is that the heir waives their rights to file a lawsuit against Lion Air, Boeing, and several of their partners, and this agreement will take effect after the consumer's heir obtain compensation from PT. Mentari Lion Airlines.

The main instrument to check the validity of an agreement is provided in Article 1320 of the Civil Code. Four conditions must be met for a contract to be valid: Agree with those who bind themselves; The ability to make an agreement; there is an object or things; and a legal cause.⁹ The first and second requirements are about the agreement's subject, while the third and fourth requirements are about the agreement's object. The difference between the two conditions is that one can render a contract null and void, whereas the other can cause a contract revocable.¹⁰ If one party requests cancellation, the contract can be canceled; however, the agreement remains binding on the parties as long as it is not canceled (by the judge) at the party's request that has the right to request

⁷ Adyt Dimas Prasaja Utama dan I Gusti Ngurah Parikesit Widiatedja, "Tanggung Jawab Perusahaan Penerbangan Terhadap Penumpang", *Kertha Semaya*, Vol. 4 No. 2, hlm. 3, 2016.

⁸ Muhammad Usman Syahirul Azmani, "Perlindungan Hukum Korban Kecelakaan Penerbangan Dalam Memperoleh Ganti Rugi", *Negara dan Keadilan*, Vol. 8 No. 2, 2019, hlm. 2.

⁹ Devy Kumalasari dan Dwi Wachidiyah Ningsih, "Syarat Sahnya Perjanjian Tentang Cakap Bertindak Dalam Hukum Menurut Pasal 1320 Ayat (2) K.U.H.Perdata", *Jurnal Pro Hukum*, Vol. 7 No. 2, hlm. 5, 2018.

¹⁰ Retna Gumanti, "Syarat Sahnya Perjanjian (Ditinjau Dari KUHPdata)", *Jurnal Pelangi Ilmu*, Vol. 5 No. 1, hlm. 4, 2012.

cancellation. Meanwhile, null and void are if the objective conditions are not met, then from the beginning, the agreement is invalid or is considered to have never existed.¹¹

In paying compensation for air transportation accidents, additional provisions such as signing a release and discharge agreement are contrary to the element of lawful causality of the agreement. A legal cause is the deal's content, and the agreement becomes void if the object agreed upon in the agreement is illegal, contrary to decency or public order. Theoretically, lawful causes exist in terms of goals and motives. The judge will use the rationale to determine what motivation moves the parties to agree. In the case of Lion Air compensation, the reasons and primary objectives of the party making the release and discharge agreement have to be supervised to know whether the provision in the release and discharge contract is appropriate. The problem will arise if the release and discharge agreement was formed to limit the responsibilities of business actors.¹²

Several essential principles in contract law form the basis of the parties' will to agree, namely:¹³ the principle of freedom of contract, the principle of consensual, the principle of *pacta sunt servanda*, the principle of good faith, and the principle of personality. The release and discharge agreement should be based on the parties' bargaining position balance.

In this article's case, there is an imbalance in the bargaining position between the parties. Lion Air Company as a business actor has a higher position than the heir of the victims. A coercive action from the business actor by adding the requirement to provide compensation only after signing a release and discharge agreement. The Consumers are harmed because they will not get compensation if they do not agree to the agreement. Therefore, business actors violate the principle of freedom of contract by forming conditions that their party has made arbitrarily or as a standard agreement.¹⁴

"A standard agreement is an agreement in which the user has standardized almost all of the clauses, and the other party does not have the opportunity to negotiate or ask for changes," says Sutan Remy Sjahdeini.¹⁵ In the contract, the creditor unilaterally prepares a standard agreement and usually contains conditions that limit the creditor's obligations. These conditions are called exoneration

¹¹ Dian Samudra dan Ujang Hibar, "Studi Komparasi Sahnya Perjanjian Antara Pasal 1320 K.U.H.Perdata Dengan Pasal 52 Undang-Undang Nomor 13 Tahun 2003 Tentang Ketenagakerjaan", *Res Justitia*, Vol. 1 No. 1, hlm. 28, 2021.

¹² Retno Wulansari, *Op. Cit.*, 72.

¹³ Niru Anita Sinaga, "Peranan Asas-Asas Hukum Perjanjian Dalam Mewujudkan Tujuan Perjanjian", *Binamulia Hukum*, Vol. 7 No. 2, hlm. 115, 2018.

¹⁴ Retno Wulansari, *Op. Cit.*, 75.

¹⁵ Zakiyah, "Klausula Eksonerasi Dalam Perspektif Perlindungan Konsumen", *Al'Adl*, Vol. 9 No. 3, hlm. 438, 2017.

clauses or exemption clauses.¹⁶ In standard agreements, the exoneration clause transfers responsibility from business actors to consumers, which is not allowed by the law.¹⁷

In this research's case, the release and discharge agreement contains an agreement of the victims' heirs to release their lawsuits against the Boeing company and several partner companies related to the plane crash. After the heir agrees and sign, they will receive compensation from Lion Air following applicable regulations, Rp. 1.250,000,000 (one billion two hundred and fifty million rupiah). Indeed there are legal consequences for this agreement; for the heir who has signed it, they cannot sue Boeing and also some of its partner companies.¹⁸

However, Article 186 paragraph 1 of the Aviation Act states, "1) Any carrier shall be prohibited from entering into an agreement or imposing a special requirement that eliminates the carrier's liability or determines a compensation limit lower than this law." Based on this article, the release and discharge agreement contents are contrary to the provisions in the Aviation Law.¹⁹

In international law, the provision of compensation for international flights is mentioned in the Montreal Convention 1999, and this convention consists of 7 chapters and 57 articles.²⁰ Indonesia has ratified the Montreal Convention into national regulation by enacting Presidential Regulation No. 95/2016. The 1999 Montreal Convention is legally binding, and it contains a rule stating that airlines company are not allowed to form an agreement that reduces or eliminates the amount of their liability, Article 26 of the 1999 Montreal Convention. The agreement is null and void if the airline forms an agreement to lower the compensation less than the amount in the Montreal Convention 1999.²¹

The provisions under Article 21 Paragraph (1) of the Montreal Convention 1999 explain "..., *the carrier shall not be able to exclude or limit its liability*". The article shows that the carrier cannot exclude or limit its liability and responsibility to compensate the victims.²²

2. The Obstacles in the Implementation of Compensation Payments by Airlines

¹⁶ *Ibid*, hlm. 439.

¹⁷ Marsha Angela Putri Sekarini dan I Nyoman Darmadha, "Eksistensi Asas Kebebasan Berkontrak Berkaitan Dengan Klausula Eksonerasi Dalam Perjanjian Baku", *Kertha Semaya*, Vol. 2 No. 3, hlm. 9, 2014.

¹⁸ Retno Wulansari, *Op. Cit.*, 79.

¹⁹ *Ibid*, hlm. 82.

²⁰ Rizky Prayoga dan Muazzin, "Tanggung Jawab Pengangkutan Udara Terhadap Penumpang Disabilitas Karena Perbuatan Melawan Hukum Menurut Hukum Internasional (*Liability Of Air Carrier To Passenger Disability Because Of Act Against Law Based On International Law*)", *Jurnal Ilmiah Mahasiswa*, Vol. 3 No. 1, hlm. 129, 2019.

²¹ Batara Manurung, (*et.al*), "Tinjauan Hukum Udara Atas Keselamatan Penerbangan (Studi Kasus *Runway Incursion Batik Air Dengan Trans Nusa Indonesia*)", *Diponegoro Law Journal*, Vol. 6 No. 1, hlm. 16, 2017.

²² Ahmad Sudiro, "Kajian Penyelesaian Santunan Terhadap Pengguna Jasa Angkutan Udara Nasional Yang Menderita Kerugian", *Warta Penelitian Perhubungan*, Vol. 23 No. 6, hlm. 13, 2011.

Insurance and compensation claims are a long process to establish whether the airline or the flight crew were at fault.²³ When it comes to compensation, the entire series of procedures refer to responsibility based on faults. Based on this form of responsibility, it must first be determined which party has committed an unlawful act and which actions can be blamed on the party because the act causes harm to the other party. This form of responsibility is no longer relevant because when referring to the laws and regulations related to aviation and consumer protection which is a more specific law, the form of responsibility by airlines is absolute responsibility.

There are inconsistencies between Act No. 1 of 2009 and Act No. 8 of 1999 with Minister of Transportation Regulation No. 77 of 2011. Article 19 of the Minister of Transportation Regulation explains that airlines can be released from the obligation to pay compensation if they can prove that an accident or loss experienced by consumers is not the airline's fault, and airlines can transfer the risks they experience to insurance. This provision contradicts the absolute responsibility system stated in Act Number 1 of 2009 and Act Number 8 of 1999.

This inconsistency also occurs in the payment of compensation. This problem occurs because the insurance will provide compensation payments after completing a series of investigations. Things like this are often time-consuming, and even the claim for compensation payments may not be implemented.

Regardless of the cause, according to strict liability, the airline has absolute responsibility for the occurrence of accidents. In practice, the airline must immediately pay the victims' compensation (although the airline can then transfer it to the insurance company). The relationship between the insurance company and the airline should be based on absolute responsibility. Therefore, it will speed up compensation payments and maximize the airline's cautious attitude in operation.

CONCLUSION

Release and Discharge Agreement is a form of standard agreement that contains an exoneration clause, which states the transfer of responsibility for business actors. This agreement violates several statutory provisions. In Indonesian law, this release and discharge agreement document violate Article 186 of the Aviation Law, which states that the carrier as a business actor is prohibited from making special agreements or conditions that negate the carrier's responsibility or determine a lower limit than the limit for compensation as regulated in the law. According to

²³ Rio Christiawan, "Menyoal Kompensasi Kecelakaan Penerbangan", Koran Sindo, edisi 15 Januari 2021, (<https://nasional.sindonews.com/read/301548/18/menyoal-kompensasi-kecelakaan-penerbangan-1610625664>), [diakses 27/7/2021].

international law, this release and discharge agreement violates Article 26 of the 1999 Montreal Convention, which states that airlines are not allowed to form agreements that reduce or eliminate the amount of liability.

All this time, insurance and compensation claims have to wait and follow a long process. This series of procedures aim to establish whether the airline or the crew who flew the plane in the flight accident made a mistake. When it comes to the provision of compensation, the entire process still refers to the form of responsibility based on errors. Such a model of accountability is no longer relevant. Referring to the aviation laws and consumer protection, which is *lex specialis* or laws more specific than the Civil Code, the strict liability responsibility is the liability attached to airlines that should be applied.

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