



LEGAL PROTECTION OF PASSENGERS FOR LOSS AND DAMAGE OF LUGGAGE ON AIR AIRLINES BASED ON THE 1999 MONTREAL CONVENTION AND NATIONAL LAW CASE STUDY RULING NUMBER 44/PDT-Sus-BPSK/2023/PN.PDG

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Abstract

Air transportation plays a strategic role in the mobility of people and goods, but the risk of loss and damage to baggage is an important issue that requires legal regulation. The Montreal Convention 1999 and national laws, including Law Number 1 of 2009 concerning Aviation, provide the legal basis for airlines' liability to passengers. These regulations set limits on airline liability and compensation claim procedures that aim to provide protection and legal certainty for passengers. This study uses a descriptive method with a normative legal approach, utilizing primary, secondary, and tertiary data that are analyzed qualitatively. The results of the study indicate that the legal regulations related to airline liability for loss and damage to baggage are quite comprehensive. However, its implementation still faces obstacles, such as complicated and less transparent claim procedures. Incidents of loss or damage to goods have material and psychological impacts on passengers and can damage the airline's reputation. Therefore, steps are needed to improve the effectiveness of the implementation of the rules, including simplifying claim procedures, increasing transparency, and monitoring airline compliance in order to protect consumer rights.

Keywords: Protection, Lost, Damaged, Goods

A. Introduction

In the treasury of Indonesian and even world historiography, aviation history has hardly received a proper place like other histories. Unlike political, economic, social,

agrarian, and cultural history, aviation

history can be said to still be a minor study

that has not received equal attention among

historians in general. Indirectly, this shows

that there is still a "historiographic bias".¹

¹ Dadan Adi Kurniawan, *Menelusuri Jejak Awal Penerbangan Di Indonesia (1913-1950-An)*, Jurnal

Program Studi Pendidikan Sejarah Universitas Sebelas Maret Surakarta, 2019, hlm. 1



This is in line with the word "land-air", which etymologically has not accommodated "air" as a sovereign spatial entity, although de facto it has. The continued neglect of the study of Indonesian aviation history is due to the fact that aviation (mode of transportation) itself was only born in the 20th century and developed rapidly after independence. For most historians, this period is rather uninteresting. In addition to being relatively new, in their eyes, there is not much that can be explored from this topic. Whatever it is, in fact, serious studies on the history of aviation, both military and civil, in Indonesia are still minimal.²

Increasingly advanced aviation technology has led to changes to the Warsaw Convention.³ In 1955, a new regulation emerged to improve the Warsaw Convention

called the Hague Protocol of 1955. The outline of the contents of the Hague Protocol is to increase the amount of compensation, simplify transportation documents, both passenger tickets, baggage tickets, and air waybills.

It is undeniable that every flight activity has risks that arise from both technical and non-technical errors such as lost or damaged baggage, delays that cause losses to passengers or more fatal risks, namely accidents that result in physical disability or death. Every flight accident always causes losses to passengers which of course gives rise to legal problems, especially regarding responsibility.

The Commercial Air Transportation Legal Regulations used in this writing are the 1999 Montreal Convention and Law Number 1 of 2009 concerning Aviation. The

² *Ibid*,

³ H.K Martono dan Agus Pramono, *Hukum Perdata*

Udara Internasional dan Nasional, (Jakarta: Raja Grafindo Persada, 2013), hlm. 63



regulation of this Convention is based on Indonesia having ratified the Montreal Convention as stipulated in the 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 (Convention on the Unification of Certain Rules Regarding International Air Transport) as an international regulation on the responsibility of commercial air transport in international terms. The Montreal Convention 1999 is an international legal instrument that regulates the legal responsibility of carriers on international flights. The Montreal Convention 1999 complements various previous rules and agreements in the Warsaw Convention 1929 system into one simpler document. The Montreal Convention 1999 has been in effect since November 4, 2003 and has so far been

ratified by approximately 125 ICAO member countries including Indonesia. One of the main updates in the Montreal Convention 1999 is the increase in the amount of compensation that can be given to passengers. Under the Warsaw Convention, the airline's liability limit for passenger losses is very low and is often insufficient to cover the actual losses experienced by passengers. The Montreal Convention increases the limits of compensation for death or injury to passengers, and for damage or loss of baggage. These limits of liability are also indexed to inflation, so that compensation remains relevant to current economic conditions.

In addition, the Montreal Convention of 1999 introduced a mechanism to simplify the rules for compensation claims. Under the Warsaw Convention, the claims process could be very complex and time-consuming, often involving multiple jurisdictions and



different legal procedures. The Montreal Convention introduced a more uniform and efficient procedure, making it easier for passengers to file claims and receive compensation. This simplified process also includes clearer provisions regarding the jurisdiction of courts, reducing legal uncertainty for passengers. The Montreal Convention also updated the rules regarding passenger tickets. Under the Warsaw Convention, a physical ticket is the primary evidence of the contract between the passenger and the airline, and the loss of the ticket could result in the passenger forfeiting their right to compensation. The Montreal Convention recognizes the use of electronic tickets, reflecting technological advances and modern practices in the airline industry. This not only simplifies the check-in and boarding process for passengers, but also improves the operational efficiency of airlines. Overall, the reforms introduced by

the Montreal Convention 1999 are designed to improve protection for passengers, ensuring that they receive fair and timely compensation in the event of loss or damage. The convention also reflects advances in the aviation industry and the need to adapt regulations to technological developments and modern business practices. As such, the Montreal Convention 1999 provides a more relevant and effective legal framework for international aviation.

Based on the provisions of the Montreal Convention 1999 point (1), namely, this convention applies to all international transportation of passengers, baggage, or cargo carried out by commercial aircraft. This convention applies to aircraft carrying out non-commercial air transportation activities. In commercial air transportation activities, airlines have the responsibility to protect the rights and interests of service users, such as passengers,



cargo, and mail. The airline's responsibility includes liability for losses suffered by parties who have a legal relationship, such as a legal relationship with passengers or owners of goods who suffer losses due to the fault of the carrier or airline.

Under the Montreal Convention 1999, aircraft baggage is divided into two main types: checked baggage and cabin baggage. Checked baggage is the items that passengers hand over to the airline to be transported in the cargo compartment of the aircraft, and the passenger receives a baggage receipt. Cabin baggage, on the other hand, is the items that passengers carry into the aircraft cabin and stow in the overhead compartment or under the seat. The Montreal Convention stipulates that airlines are liable for damage, loss, or delay of checked baggage, with a compensation limit of 1,131 Special Drawing Rights (SDR) per passenger, unless the passenger declares a

higher value of the goods in advance and pays an additional fee. For cabin baggage, the airline remains liable but with a lower limit of liability and in accordance with each airline's policy.

Losses usually occur in checked baggage when checked in, but it is also possible for baggage carried into the cabin. This aircraft baggage problem is certainly often experienced by passengers. However, most passengers are confused about where to complain and wonder if there is actually compensation for lost or damaged items in aircraft baggage. Not infrequently, items lost or damaged in the baggage are very valuable, important, or even priceless. This is very detrimental to consumers as air transportation users. If we look at the issue of lost or damaged baggage on the plane, from a civil law perspective, a legal relationship arises between the carrier and the passenger regarding rights and



obligations. If there is loss or damage to checked baggage on the plane, it is the carrier's responsibility to provide compensation for the loss of its passengers.

The government has provided legal protection for consumers through the Ratification of the Convention for the Unification of Certain Rules for International Carriage by Air, or better known as the Montreal Convention 1999, which has been adopted into Indonesian national regulations through Presidential Regulation of the Republic of Indonesia Number 95 of 2016 dated November 21, 2016 concerning Ratification of the Convention for the Unification of Certain Rules for International Carriage by Air. National laws also regulate consumer protection in general, namely through Law Number 8 of 1999 concerning Consumer Protection and Indonesia already has a law on carrier responsibility for national flights,

namely the Regulation of the Minister of Transportation No. PM 77 of 2011 concerning Responsibility of Air Transport Carriers.

It is important for airlines to pay attention to and fulfill their responsibilities and legal protection in order to provide safe and comfortable commercial air transportation services for their service users. Based on the background explained earlier, it can be seen that legal regulations and legal protection in the field of commercial air transportation are very important considering the risk of losses that can occur to the parties involved in the transportation. A Garuda Indonesia passenger, Rendy Lesmana, admitted to losing a kacer bird worth IDR 150 million which was stored in the plane's luggage. The bird was one of the songbirds that Rendy brought to Jakarta from Pontianak to take part in the kicau mania contest, Thursday



(12/12/2019) last week. Rendy flew from Jakarta to Pontianak, Tuesday (17/12/2019) carrying 8 birds consisting of 3 types of birds, 3 magpie robins, 2 kecer, and 3 love birds. The case of loss in the plane's luggage, as experienced by Rendy, is not the first time it has happened in Indonesia. The case of loss also befell Noveria Nazara. On October 5, 2017, Noveria flew from Binaka Airport, Gunungsitoli, Nias to Hang Nadim Airport, Batam using Wings Air. While at Binaka Airport, the officer ordered her bag containing Rp28 million in cash to be put in the luggage compartment. Upon arrival at Hang Nadim Airport, she found that her bag was empty.

When an incident occurs such as lost or damaged luggage, the impact is not only felt materially but also emotionally, especially if the item has high value or is sentimental. This shows how such problems can affect public perception of the quality of

airline services. In international law, the 1999 Montreal Convention has set standards of protection for passengers through the regulation of airline liability for lost or damaged luggage. This convention provides clear compensation limits, reduces legal uncertainty for passengers, and introduces a simpler claims mechanism compared to previous regulations. As one of the international legal instruments ratified by Indonesia, this Convention is an important part of the consumer protection framework in the aviation sector, along with the increasing flow of cross-country air travel.

Based on the explanation above, it is important to conduct this research with the title "**Legal Protection for Passengers for the Loss and Damage to Luggage on Air Carriers Based on the 1999 Montreal Convention and National Law**".

B. Problem Formulation

Based on the background above, the



problem can be formulated as follows:

1. How are the legal arrangements for passengers for the loss and damage of luggage on airlines in the 1999 Montreal Convention and national law?
2. What is the impact of the loss and damage of luggage on airlines in the 1999 Montreal Convention and national law?
3. How is the implementation of consumer protection for passengers for the loss and damage of luggage on airlines in the 1999 Montreal Convention and national law?

C. Research Objectives

The aim of this research is:

1. To analyze and understand the legal arrangements for passengers for the loss and damage of luggage on airlines according to the 1999 Montreal Convention and national law.
2. To analyze and understand the impact of the loss and damage of luggage on airlines according to the 1999 Montreal

Convention and national law

3. To analyze and understand the implementation of consumer protection for passengers for the loss and damage of luggage on airlines according to the 1999 Montreal Convention and national law.

D. Research Methods

The research method used is the normative legal research method, namely "legal research that examines positive legal norms as the object of its study". In normative legal research, law is no longer seen as something that is merely utopian but has been institutionalized and written in the form of existing legal norms, principles and institutions. Normative legal research is also known as dogmatic legal research that examines, maintains and develops positive legal structures with logical structures. Normative legal research is carried out by examining primary legal materials, secondary legal materials and tertiary legal



materials.⁴

E. Research Results and Discussion

1. Legal Provisions For Passengers For Loss And Damage To Airline Carriage In The 1999 Montreal Convention And National Law

International Air Law is a law that regulates relations between countries globally, regionally or bilaterally which is intended to create an orderly and peaceful world, where each country can make efforts to fulfill its respective national goals. International air law is very important to provide guidelines, guidance and direction so that each country in making efforts to realize national goals both long-term and short-term, known as national interests, so as not to clash or conflict with other countries, thus creating

a world that is peaceful, orderly and peaceful.⁵

To better understand the concept of air law, there is a definition of air law according to Otto Riese and Jean T. Laccour who argue that: ("Air law is all legal norms that specifically concern aviation, aircraft and airspace in their role as elements necessary for aviation"). Then Suherman defines air law as all provisions that regulate air and its use for aviation.⁶

From the definition above, it can be seen that air law is all regulations regarding the air, one of which is aviation law. So it can be concluded that aviation law is air law in the narrow sense, therefore what is meant by aviation law is "the law that regulates transportation by air, including ground support services, aviation personnel and

⁴ Muhaimin, *Metode Penelitian Hukum*, Mataram University Press, Mataram, 2020, hlm. 46.

⁵ Azwar Ananda, *Pengantar Hukum Udara Internasional dan Indonesia*, Fakultas Pendidikan Ilmu Pengetahuan Sosial, (Padang: Institut Keguruan dan Ilmu Pendidikan, 1997), hlm 20

⁶ Fitra, Refaldi. *Prinsip Sovereignty Dalam Tindakan Force Down Pesawat Asing Tanpa Izin Di Indonesia Menurut Chicago Convention 1994*, Skripsi, Universitas Islam Riau, 2022.



equipment and people and goods transported". So aviation law is the law that regulates aviation issues both within a country (domestic) and between countries (international). The development of the aviation industry which is starting to flourish, gave birth to other conventions such as; The Guadalajara Convention of 1961, which is a supplement to the Warsaw Convention of 1929, regulates International Carriage by Air Carried Out by Parties Other than Contracting Carriers, the Montreal Convention of 1999 regulates the liability of airlines in the event of loss, damage or delay of goods, as well as personal injury or death of passengers occurring during the flight, the Convention, and the Convention on International Civil Aviation (hereinafter known as the "Chicago Convention of 1944"), which is the "Magna Charta" for international law on aviation.⁷

Goods/Cargo are any goods transported by aircraft. So even though it is goods transported by charter aircraft, it is still called cargo., The sender and recipient of goods/cargo are parties who may be entitled to compensation, in the event of lost, damaged or destroyed cargo., The carrier (air carrier) is "a person or entity that enters into an agreement to transport passengers, baggage or goods by aircraft., The operator is a person who uses an aircraft when a loss is incurred, provided that control over the navigation of the aircraft remains with the party who grants the authority to use the aircraft, either directly or indirectly., A third party according to the Rome Convention, a third party is "a party that has nothing to do with a particular flight, except that he suffers a loss because of the flight., Transportation by several carriers in succession, is when to reach a destination, a passenger uses more

⁷ *Ibid*



than one carrier. In line with the purpose of creating international law in general, air law is made internationally with the aim of guaranteeing justice and security for users of air transportation services from risks that may arise in the implementation of such transportation. The most extreme example is in an airplane accident. If we look at an airplane accident, the parties who are harmed are the aircraft owner, in the form of the loss of the aircraft, passengers or their heirs if the passenger dies and the owner of the cargo being transported. As an additional legal basis for the classification or qualification of an aircraft whether it is included in the category of civil aircraft or state aircraft, the 1944 Chicago Convention in Articles 5 and 6 explains several things regarding scheduled and unscheduled international flight activities. Article 5 states that unscheduled

international flights have the right to cross the airspace of other participating countries, make non-stop landings, land in the territory of participating countries not for air traffic purposes with the consent of the participating country concerned. The purpose of the provisions of the above article is that with regard to international unscheduled flights, it is not necessary for such flights to obtain permission from the host country in terms of crossing its territory, but it is necessary to pay attention to the requirements that have been set by the host country.⁸

Then in the provisions of Article 6 of the Chicago Convention of 1944, an explanation is stated regarding international scheduled flights. The provisions of this article broadly state that no international scheduled flight can carry out its activities before obtaining permission from the host

⁸ Sari, Ni Putu Purnama. *Status Hukum Pesawat Udara Komersial Yang Digunakan Untuk*

Penerbangan Kenegaraan, Dinamika 26, No. 6 (2020): hlm. 788-802



country. The purpose of this article is that every international scheduled flight, in this case a civil aviation activity that is commercial or trade in nature, is not allowed to cross or even carry out its activities without first obtaining permission from the host country. This means that there must be a permit application made by every actor in international scheduled flight activities in advance so that the flight will later obtain the rights of freedom of flight which are in accordance with the flight activities it carries out. Based on Article (1) of the Paris Convention of 1919 which was strengthened by the Chicago Convention of 1944, it is emphasized that the state has full and exclusive sovereignty over its airspace. In this case, the state has full power over the sovereignty of its airspace and over the management therein. Violation of airspace sovereignty by foreign aircraft can affect

bilateral and multilateral relations between countries which can also result in actions by countries whose sovereignty is violated which often carry out direct executions against foreign aircraft by shooting down foreign aircraft when warnings are ignored because they enter another country's airspace without permission. As stated in Article 6 of the 1944 Chicago Convention which explains that every foreign aircraft flying over another country must first request permission from the host country or the country it is flying over.⁹

The implementation of domestic and international civil aviation must refer to applicable international and national legal norms, in order to ensure the safety of passengers, aircraft crew, air travelers and also the goods transported therein. The implementation of civil aviation is regulated in various international conventions, namely:

⁹ *Ibid*,



the Warsaw Convention (1929), the Guanaja Convention 1961, the Montreal Convention 1999, the Cape Town Convention 2001, and the International Civil Aviation Convention. By ratifying the Montreal Convention, the ratifying countries of this convention will also apply the provisions contained in the Warsaw System. Meanwhile, for countries that ratify the Warsaw Convention but do not ratify the Montreal Convention, there will be problems in terms of uniformity of regulations in the field of air transportation. This convention came into effect on November 4, 2003, and already has 69 member countries. In the Montreal Convention it is emphasized that this convention is no longer a convention to protect airlines. This convention recognizes the importance of protecting the interests of consumers of international air transport and

the need for compensation in accordance with the principle of restitution.¹⁰

Aircraft are a means of transportation used in every flight activity, where the flight activity can be carried out by civil aircraft or state aircraft. So it is necessary to distinguish which is a civil aircraft and which is a state aircraft. Civil aircraft in general are aircraft that in their activities carry out commercial or commercial flights, which have limitations related to the flight rights owned and carried out by the public in general.¹¹

Meanwhile, state aircraft are aircraft whose flight activities are carried out by elements within the scope of the government, as well as institutions whose work is accountable to the government. From the nature of its flight activities, state aircraft are aircraft that are not commercial or commercial in nature, but are only used in

¹⁰ *Ibid*,

¹¹ Hidayat, Mhd Ridho, *Analisis Yuridis Kewenangan Otoritas Bandar Udara Terhadap Pemenuhan Hak*

Penumpang Jasa Penerbangan, Doktrina: Journal Of Law 3, No. 1 (2020): hlm 53-76



certain conditions that are not bound by a fixed flight schedule, and are carried out based on the needs of the state.¹²

As explained in the previous sub-chapter, the Montreal Convention 1999 applies to all international transportation, whether it is the transportation of people, goods or cargo organized by profitable airlines (Article 1). This Convention can also be applied to transportation carried out by non-profit airlines. This Convention defines "international transportation" as transportation carried out based on an agreement between the parties, where the place of departure and the place of destination are in the territory of two countries, or in the territory of one country with a stopover in another country, including in a country that is not a party to the convention (Article 1 (2)). Transportation carried out by several airlines, in accordance with this Convention, can be

considered as one inseparable transportation if it is considered by the parties as one operation, either agreed in one contract or in several contracts of transportation and does not lose its character as international transportation due to these contracts (Article 1 (3)).¹³

The Montreal Convention 1999 regulates the liability of airlines for loss, damage or delay of baggage in Article 17 Paragraph (2). This article states that the carrier is liable for loss or damage to checked baggage if the incident occurs while the baggage is under the carrier's custody, unless the airline can prove that the loss was not caused by their negligence or if the loss occurred due to the condition of the baggage itself. For losses related to cabin baggage, the airline is liable if the loss was caused by the negligence of the carrier or their agents, as set out in the same provisions.

¹² *Ibid*

¹³ *Ibid*,



2. Impact Of Lost And Damaged Carriage On Airlines In The 1999 Montreal Convention And National Law

Legal responsibility for international air transport is regulated by the Warsaw Convention of 1929 and a number of additional protocols and conventions, including the Montreal Convention of 1999 and the Montreal Agreement of 1966.¹⁴ The Warsaw Convention of 1929 regulates international transport documents (passenger tickets, baggage tickets, air waybills), limited liability, and the jurisdiction of member states. The Warsaw Convention of 1929 applies the concept of presumption of guilt liability, whereby a company is considered guilty until proven innocent, with a limit on the amount of damages specified.¹⁵

In the 1929 Warsaw Convention and other International Conventions relating to liability, the following principles of liability can be concluded: Presumption of Liability, Presumption of non Liability, Absolute Liability / Strict Liability, Limitation of Liability.¹⁶

The Montreal Convention of 1999 regulates the liability of carriers for damage, loss or delay of baggage, limited to 1,000 SDR per passenger, unless otherwise stated and additional charges are made. This provision does not apply if the loss is due to the fault or willful misconduct of the carrier or its agents.

The principle of strict liability of the Montreal Convention of 1999 requires carriers to be liable for damage without cause

¹⁴ Amelia, Puspita dkk. *Tanggung Jawab Pengangkut Terhadap Pelaksanaan Ganti Rugi Atas Keterlambatan Angkutan Udara Dalam Perspektif Hukum Internasional (Studi Kasus Keterlambatan Angkutan Udara Luar Negeri Pesawat Udara Boeing 777-300 Garuda Indonesia Ga088 Cengkareng-Amsterdam Tahun 2015)*, DIPONEGORO LAW REVIEW, Volume 5, Nomor 2, 2016, hlm. 5

¹⁵ Martono, K. *Analisis dan Evaluasi Hukum tentang Perjanjian Internasional di Bidang Perhubungan Udara*, Jakarta, Badan Hukum Nasional Departemen Kehakiman dan HAM RI, Tahun 2004, hlm. 21

¹⁶ K. Martono, Ahmad Sudiro, *Hukum Angkutan Udara*, (Jakarta : Rajagrafindo, 2011), hlm. 223



unless the victim is also at fault. Article 22 of the Montreal Convention establishes liability for baggage up to 1,000 SDR unless otherwise stated. This provision is excluded if the loss is due to the willful misconduct of the carrier or its agents within the scope of work.

Law Number 1 of 2009 regulates the general liability of carriers, which is clarified through the Regulation of the Minister of Transportation Number 77 of 2011 and Number 92 of 2011 concerning the liability of carriers, including unscheduled commercial transportation. The principle of presumption of liability requires carriers to be responsible for losses in air accidents, with the burden of proving fault on the carrier.¹⁷

The principle of strict liability applies to third party losses, as regulated in Article 21 of the Minister of Transportation Regulation

Number 77 of 2011, with claims for compensation based on valid documentary evidence.

Lost and damaged baggage can cause financial loss, emotional distress, and inconvenience. The Montreal Convention 1999 and Indonesian national law regulate the airline's responsibility to protect passengers.

Lost baggage results in direct economic loss, especially if the goods are of high value. The Montreal Convention 1999 stipulates the airline's liability with a compensation limit of 1,131 SDR, unless the loss is due to the fault of the passenger or a third party.

Damage to baggage causes inconvenience and material loss. The Montreal Convention 1999 stipulates the airline's liability for damaged baggage with compensation of up to 1,131 SDR, unless the

¹⁷ Supit, Donald, *Tanggung Jawab Pengangkut Dalam Pengangkutan Kargo Udara Domestik*, Jurnal

Hukum Unsrat 1, no. 3 (2013), hlm. 13-23.



damage is caused by the nature of the goods, poor packaging, or factors beyond the airline's control.

Social and emotional impacts, such as stress, dissatisfaction, and wasted time, often occur as a result of lost or damaged baggage. Complicated claims processes add to the burden on passengers.

3. Implementation Of Consumer Protection For Passengers Against Lost And Damaged Carriage On Airlines In The 1999 Montreal Convention And National Law

The government has established a legal protection system for consumers through Law Number 8 of 1999 concerning Consumer Protection. Regarding the definition of consumer protection, it is contained in the provisions of Article 1 number 1 of Law Number 8 of 1999 concerning Consumer Protection, that: "Consumer protection is all efforts that

guarantee legal certainty to provide protection to consumers". Based on this definition, it can be concluded that legal protection for air transportation consumers is a law that protects the rights and obligations of users as air transportation consumers and business actors as air transportation business actors. The Indonesian government has provided special protection that regulates compensation and liability of air carriers towards air transport consumers, specifically regulated through the Ratification of the 1999 Montreal Convention, namely the Convention for the Unification of Certain Rules for International Carriage by Air, which has been adopted into Indonesian national regulations through Presidential Regulation of the Republic of Indonesia Number: 95 of 2016 dated November 21, 2016 concerning Ratification of the Convention for the Unification of Certain Rules Concerning International Air Transport



and Regulation of the Minister of Transportation Number PM 77 of 2011 concerning Liability of Air Transport Carriers.

The case of Yonnis Fendri v PT Lion Mentari illustrates consumer protection for lost baggage in flight. Yonnis Fendri traveled from Bandar Lampung to Padang on November 25, 2022, and lost his luggage at Minangkabau International Airport. Although Lion Air offered compensation based on Permenhub No. 77 of 2011, Yonnis filed a lawsuit with the BPSK of Padang City, which ruled in favor of the consumer with greater compensation. This decision was upheld by the Padang District Court, citing Article 6 paragraph (3) of Supreme Court Regulation No. 01/2006 and Law on Consumer Protection No. 8/1999, especially Article 4 paragraph (c) concerning consumer rights to clear information about goods. The

Padang District Court's decision increased the compensation to IDR 39.9 million, including material and immaterial losses, and imposed an administrative sanction of IDR 30 million. This decision emphasizes the supremacy of the Consumer Protection Law compared to Permenhub No. 77 of 2011, and reflects the principles of the Montreal Convention 1999 which regulates airline liability for lost or damaged baggage. This case sets an important precedent, underlining the importance of broader consumer rights protection at the national level despite international regulation.

Baggage loss and damage is a serious issue in the aviation world. Data shows that airlines such as Republic Airways and American Airlines have recorded high losses, while low-cost carriers such as Allegiant Air have seen a 700% increase in baggage damage in one year.¹⁸

¹⁸ Merdeka, *Maskapai dengan Kasus Kehilangan*

Koper tertinggi, 2024,



Airports also contribute to the problem, with Chicago's O'Hare Airport reporting the highest number of lost luggage. Factors such as staff shortages and a surge in travel exacerbate the situation.

The 1999 Montreal Convention regulates airline liability for lost and damaged baggage, with compensation limits of up to 1,131 SDRs. In the US, DOT regulations set limits of up to \$3,800 for domestic flights.

Implementation of legal protection faces challenges such as slow claims processing at certain airlines and a lack of transparency in compensation, reflecting passengers' lack of awareness of their rights. In Indonesia, Law No. 1 of 2009 adopts the principles of the Montreal Convention. However, cases such as the loss of money in Lion Air's luggage show the need to educate

passengers about baggage policies.

The increase in baggage damage underscores the importance of tracking technology such as RFID. Airlines such as SkyWest Airlines that have implemented this system have shown better results in baggage management. Consumer protection under the Montreal Convention and Indonesian national law requires airlines to commit to improving services and legal compliance, as well as educating passengers to be more proactive in understanding their rights.

Articles 2 and 3 of Law No. 8 of 1999 concerning Consumer Protection (UUPK) has explained the principles and objectives of the issuance of the law. The principles of consumer protection are as follows:

- a. The Principle of Benefit, mandates that all efforts in consumer protection must provide the greatest possible



benefits for the interests of consumers and business actors as a whole.

- b. The Principle of Justice, the participation of all people can be realized maximally and provide opportunities for consumers and business actors to obtain their rights and carry out their obligations fairly.
- c. The Principle of Balance, provides a balance between the interests of consumers, business actors, and the government in a material or spiritual sense.
- d. The Principle of Consumer Safety and Security, provides a guarantee of security and safety to consumers in the use, consumption, and utilization of goods and/or services consumed or used.

Principle of Legal Certainty, both business actors and consumers obey the law and obtain justice in the implementation of

consumer protection and the State guarantees legal certainty. Ratification of the Montreal Convention 1999 provides a strong legal framework for air transportation in Indonesia, including the implementation of airline responsibilities based on national regulations such as PM 77 of 2011. Airlines have absolute responsibility for losses due to loss or damage to baggage. Passengers must report according to the baggage system implemented by the airline or ground handling.

F. Conclusion

The results of the study indicate that the legal regulations related to airline liability for loss and damage to baggage are quite comprehensive. However, its implementation still faces obstacles, such as complicated and less transparent claim procedures. Incidents of loss or damage to goods have material and psychological impacts on passengers and can damage the airline's reputation. Therefore,



steps are needed to improve the effectiveness of the implementation of the rules, including simplifying claim procedures, increasing transparency, and monitoring airline compliance in order to protect consumer rights.

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4. Legal Regulation

Konvensi Warsawa 1929 tentang
Pengangkutan Udara Internasional
Peraturan Menteri Perhubungan Nomor PM
77 Tahun 2011 tentang Tanggung
Jawab Pengangkut Angkutan Udara
Peraturan Presiden Republik Indonesia
Nomor 95 Tahun 2016 tentang
Pengesahan Convention for the
Unification of Certain Rules for
International Carriage by Air

(Konvensi Montreal 1999)

Protokol Den Haag 1955 sebagai
penyempurnaan Konvensi Warsawa
Undang-Undang Nomor 1 Tahun 2009
tentang Penerbangan
Undang-Undang Nomor 8 Tahun 1999
tentang Perlindungan Konsumen

5. Court Decision

Putusan Nomor 44/P dt.Sus-BPSK/2023/PN
Pdg