

CHAPTER I

A. Context of Study

Indonesia is an archipelago country. As an archipelago, Indonesia desperately needs good transportation services in order to connect between one island and the other islands.

By considering such large number of consumers, a transportation business or air transportation business services is a lucrative business since it, as is required by the service users to connect between islands in Indonesia in order to facilitate and accelerate the trip more efficiently.

There are several models of transportation business in Indonesia, such as ground transportation, air transportation and sea transportation. By having various transportation models, consumers can choose one of the transportation model for inter-city travel, or even between islands.

Air transportation nowadays is the first choice for traveling, especially for long distance travel, like a trip across town or across provinces in Indonesia, and the inter-island travel.¹

The role and function of air transportation for Indonesia has a strategic position in terms of several aspects. Air transportation is the only alternative for a fast, efficient, and economical travel between islands and between regions, especially between remote areas. Besides, air transportation is also

¹E.Sefullah Wiradipraja, 2008, *Hukum Transportasi Udara dari Warsawa 1929 ke Montreal 1999*, PT.Kiblat Buku Utama:Bandung, p.5

an important instrument for the development of tourism industry in Indonesia as a country that is rich in cultural traditions.²

The number of people who use the services of air transportation cause rapid growth of the national airlines. These developments are not only in the number of aircraft but also in the amount of the national airline.

In the world of aviation business in Indonesia, from the operational aspects, air transportation business consists of scheduled commercial air transportation and unscheduled commercial air transportation both for domestic and international.³ Commercial air transportation business is conducted in a regularly scheduled flight routes. Sometimes, commercial air transportation services are not tied to routes and fixed flight schedules. It is organized by commercial air transport enterprises of national and/or foreign enterprises for transporting passenger and cargo or special just for shipping cargo.⁴

Unlike the scheduled commercial air transportation business, the unscheduled commercial air transportation is not tied to a particular flight schedule. The scheduled commercial air transportation business has a specific schedule.

² *Ibid*,p18

³ H.K.Martono,Amad Sudiro, 2011, *Hukum Angkutan Udara Berdasarkan UURI No.1 tahun 2009*, PT.Raja Grafindo Persada:Jakarta, p54

⁴ Article 83 of Aviation Act No.1 year 2009

The focus of this thesis research is scheduled commercial air transportation business. Scheduled commercial air transportation businesses more widely used by the public as having a particular flight schedule airline in serving consumers. People as consumers prefer this model of airline transportation service in their daily life, both for business and holiday trips. Therefore, the accuracy of the flight time, such as departure and arrival schedule, is a very important aspect of an airline company in providing services to the users of air transportation services. This important aspect is expected by passengers in term of the safety aspects and comfort, especially for passengers who travel for business purposes.

Punctuality in the implementation of the flight schedule is a major consideration of passenger and a fixed scheduled flight increases the trust of passenger of air transportation services. It is because people who live in modern era, value time as top priority. Therefore, the airlines are required to perform the best service in term of punctuality.

Flight delays that are caused by airline enterprises will have a direct impact on operational costs, and might give negative image of the airlines themselves. Therefore, any airline company that wants survive in the model of competition with other domestic airlines must be able to provide good quality services to passengers, and it should be supported by good flight punctuality. Since, the most crucial issues in the flight business are delayed flight schedule.

Delayed flight that is done by an airline company caused by two factors, namely internal factors that can be controlled by airlines and the external factors that cannot be controlled by the airlines.⁵ Internal factors are including technical factors and operational factors. Meanwhile, the external factors are extreme weather, a demonstration, natural disasters such as floods, volcanic eruptions. However, the factors that cause a delayed flight are technical and operational factors.

Technical factors and operational factors often become the reason behind a delayed flight. The airlines, which do not want to be blamed in the case of delayed flight often, avoid from their liability because of 2 main reasons above.

In the case of David M.L Tobing vs. PT.LION AIR that happened on August 16, 2007 ago, David was about to use the services of Lion Air to travel to Surabaya. However, after waiting more than 90 minutes and there is uncertain departure time, David decided to buy another ticket. Unfortunately, there was no official explanation on the delayed flight from Lion Air. At that time, Lion Air still delayed flight due to technical reasons. Lion Air also made some excuse, such as the weather, the condition of plane and airport condition that was not safe for embarking flight. If the plane cannot flight since August 15, 2007, the airline should be able to predict the

⁵ <http://kumpulankaryasiswa.wordpress.com/2011/10/17/faktor-faktor-apa-saja-yang-menyebabkan-delaynya-pesawat-garuda-indonesia-di-jeddah/>.last accessed September 13,2012 at 20.30

certainty of flight departure on January 16, 2007. If the departure was still uncertain, the airline should provide a substitute flight. However, it did not happen.⁶

In another case, on Monday, May 21, 2012, Lion Air Passengers of flight number JT 231 IT had to wait for 7 hours at the domestic departure terminal Polonia International Airport, Medan, before embarking to Padang, West Sumatra. Their flight was delayed due to broken. Based on the schedule, the Lion Air with Medan-Padang route was supposed to leave at around 6 :30 a.m. However, the new flight departed from Medan around 15:00 pm. After the airplane completed repairs.⁷

In the case of hundreds of Garuda passengers of flight number GA 216, the passengers were furious on the delay for 7 hours. This plane should embark at 17:10 pm but the flight finally departed at 21:55 pm. When the first announcement of delayed flight happened, passengers were calm. However, the passengers did not expect another delay. The furious passengers rallied in Soetta Airport. No mercy for passengers who came late for boarding, but in turn is no compensation at all for passengers on 7 hours delayed flights. It was not the first incident that was caused by the trusted airline. Previously there had been many similar cases that invoked emotions of the passengers. This point should not be underestimated. Instead of

⁶ <http://www.hukumonline.com/berita/baca/hol18432/idelayi-pemberangkatan-penumpang-lion-air-dihukum-ganti-rugi>. last accessed September 1, 2012 at 15.45

⁷ http://waspada.co.id/index.php?option=com_content&view=article&id=247535:keterlaluannya-lion-air-harus-dihukum&catid=77:fokusutama&Itemid=131. Last accessed September 3, 2012 at 18.33

providing best service for the passengers, the performance of Garuda is getting worse.⁸

Furthermore, as quoted in Kompas, November 10, 2012 edition, Batavia Air Passengers from Sultan Mahmud Badaruddin Palembang, South Sumatra, to Soekarno Hatta Tangerang, on Thursday (10/11/2011), were upset due to delayed flight. The flight number of Y 6-516 was supposed to depart at 14:20 pm. However, at check in, the clerk informed that the departure was delay of 1.5 hours. At 15:30 pm, there was no any information to the passengers. Information center renewed the delayed flight schedule to the passengers notified when officers gave lunch box and a glass of mineral water. According to Batavia officers, new flight took off from Soekarno Hatta Airport at 16.00 pm. As the result, total time for delayed flight was more than 2 hours.⁹

A similar experience happened to Hermansyah Son when he was about to return to Batam on 8 April 2007 from Medan to Batam with Garuda Citilink which was scheduled at 14.00, the flight then was delayed until 20.30. He knows this new information during the check-in at 12.00p.m. Check-in clerk said that they did not have enough time to inform passengers on delayed flights. Since he was not in the hotel, he was forced to wait at the airport. At 15:30 pm, there was a new notification informing that Citilink flight was cancelled again. Passengers were required to report to Citilink

⁸<http://ekonomi.kompasiana.com/manajemen/2011/11/20/delay-7-jam-buat-garuda-di-ujung-tanduk/>.last accessed October 24, 2012 at 16.50

⁹<http://regional.kompas.com/read/2011/11/10/16441449/Delay.2.Jam..Penumpang.Batavia.Air.Kesal>.last accessed October 24,2012 at 21.20

counter. Garuda was not able to provide a solution either. Even the compensation was not given. The Supervisor Mr. Endra Siswandi could not help much. Since, he stated that there was no ticket refund 125% for passengers (as already checked in) in accordance with existing regulations such as other policy to replace hotel, or other flight-and also the cost of meals. Garuda supervisor did not have a good ability to make customers satisfied disappointing the passengers by the flight cancellations. Assistant Manager was contacted to give to solve the problem but he could not give any solution either.¹⁰

Based on several cases previously, it is clear that the passengers were disadvantaged in terms of time for delayed flight by the airlines. Passengers felt aggrieved because they had to waste their time to wait for their departure to the destination. Delay that is done by the airlines can also be determined to financial condition of passengers besides immaterial loss.

From the point of view of airline, they do not want to be responsible for the delay they made. Another example for airlines responsibility is the requirement in the "Conditions of Contract" that is written on the passenger ticket and baggage of domestic companies.¹¹ The requirements stated that:¹²

4. *The carrier is not liable for any losses caused by the cancellation and /or delay of transport, including any delays coming passengers and /or baggage delays.*

¹⁰ <http://suarapembaca.detik.com/read/2007/04/14/074922/767275/283/garuda-citilink-tidak-tanggung-jawab>.last accessed October 24, 2012 at 19.45

¹¹ See: example in Garuda Indonesia Airways ticket

¹² E.Saefullah Wiradipraja, 1989, *Tanggung jawab Pengangkut Dalam Hukum Pengangkutan Udara Internasional dan Nasional*, Liberty: Yogyakarta, p.178

Passengers should be aware in dealing with delayed flights issue since most of airlines attempt to avoid from their liability. Liability can be interpreted as an obligation to pay compensation over the loss, for example in air transportation agreement, the airlines are liable for the safety of passengers and/or goods shipment, and they are liable for passenger comfort. In the event of losses of passenger that is caused by airlines actions, the airline should be responsible in the sense of "liability".¹³

However, the liability principles, which are applied in the event of delayed flight, should be a principle of presumption of responsibility, not an absolute responsibility, considering that the delays can occur due to things outside the control and supervision of the airline.¹⁴

In Indonesia, the responsibility of air transportations service is arranged in Aviation Law No.1 of 2009 and Ministerial Decree No.77 of 2011.Ministerial Decree No.77 of 2011 governing about the responsibility of the carrier.¹⁵

¹³H.K.Martono,Amad Sudiro, *Opcit*, p.217

¹⁴E.Saefullah Wiradipraja, *Opcit*. p.179. (See also *Analisa dan Evaluasi Hukum Tertulis Tentang Ketentuan-Ketentuan Hukum yang Berkenaan dengan Penentuan Jumlah Ganti Rugi dalam Bidang Pengangkutan Udara*, Badan Pembinaan Hukum Nasional Departemen Kehakiman: Jakarta, p.19)

¹⁵Article 10 of Ministerial Decree No.77of 2009 : Total compensation for delayed flight for passengers as referred to in Article 9 letter a set as follows: a.delay of more than 4 (four) hours awarded compensation amounting to Rp 300.000,00 per passenger, b. Awarded damages of 50% (fifty percent) of the provisions of sub-paragraph a destination when the carrier offers other passengers closest to the final destination (re-routing), and the carrier must provide flight tickets or provide other transportation to the destination if it is not No mode of transportation other than air transport,c. transferred to the next flight orf light-owned by the other Scheduled Commercial Business EnterpriseS ervices, passengers exempt from charges, including an increase in the class of service (up grading class)or if a decline in class or sub-class of service, then the passenger must be given to the rest of the excess money from the ticket purchased.

The regulation system about aviation that exists in Indonesia is the implementation of the international convention, like Warsaw Convention 1929, The Hague Convention 1955, Guadalajara Convention 1961, and Montreal Protocol 1966. In the conventions, there are 3 kinds of air carrier liability that are *based on fault liability, presumption of liability, and absolute liability or strict liability*. The Aviation Law No.1 of 2009 which exists in Indonesia now apply the principle of *presumption of liability* in which the airlines company presume fault, so that the airlines company should pay a compensation to the passenger if there is any losses which is suffered by the passenger, except the airlines company can prove that there are not guilty, and applied the *principle of based on fault liability* especially for the cabin baggage.¹⁶

Although Indonesia already has regulations which organize about the compensation, however, practically, that the airlines do not give their responsibilities for aviation consumers. It implies that the airline did not want to be responsible for passenger's losses.

Based on the previous explanations, this thesis focused on discussion regarding "AIR TRANSPORTATION LIABILITY FOR DELAYED FLIGHT TO THE PASSENGERS" which is elaborated in problem statements.

¹⁶ H.K.Martono, Amad Sudiro, *Opcit*, p.293

B. Problem Statements

1. Do the passengers already get adequate protection related to any delayed flight?
2. How do the delayed flight passengers obtain compensation claim from the airlines?

C. Objectives of Study

The purposes of this study are:

1. To get the best understanding that the passengers already get an adequate protections related with the delay
2. To get the best understanding how the delayed flight passengers obtain compensation claim from the airlines

D. Theoretical Framework

Many experts attempted to define the notion of consumers. According to some legal experts, consumers are the final users of goods and services which are delivered to them by the authorities. According to **Philip Kotler**, the meaning of consumers is all individuals and households who buy or acquire goods or services for personal consumption.¹⁷ According to **Aziz**

¹⁷<http://proposal-skripsi.blogspot.com/>. Last accessed June 29, 2012 at 19.35

Nasution, consumers in general are all people who acquire goods or services that are used for a particular purpose.¹⁸

Meanwhile, according to **Consumer Protection Law**:

"Consumer shall be anybody using goods and/or services which are available in the community, both for his own purpose, for the purpose of his family and other people as well as other living creatures and which are not to be traded."

One factor that supports an increase of profit and growth of a company is customer satisfaction. Customers who are satisfied with the services provided the company will spend their money to buy goods or service from company. According to some legal experts, they made definition of consumer satisfaction, as follows:

1. According to **Tse** and **Wilton** the definition of customer satisfaction is the customer response to the perceived in compatibility of evaluation after use.¹⁹
2. According to **Engel** the definition of customer satisfaction is a full evaluation to buy alternative selected in which at least equal or exceed customer expectations, while dissatisfaction arise if the results do not meet customer expectations.²⁰
3. According to **Kotler** the definition of customer satisfaction is the level of a person's emotional state which is the result of comparison

¹⁸ *Ibid*

¹⁹ <http://id.shvoong.com/business-management/marketing/2194641-pengertian-kepuasan-pelanggan-menurut-para/>. Last accessed august 13,2012 at 20.50

²⁰ *Ibid*

between the performance appraisal and final product in conjunction with customer expectations.²¹

Based on the definition put forward as the experts mentioned above, it can be concluded that customer satisfaction or dissatisfaction is the difference between the expectations before purchasing and the result they do after the purchasing. Consumer is a person who receives the service from a person or organization, and then they can determine the quality of the services.

Meanwhile, the definition of Air Law according to **De Rode Verschoor**, it is a set of rules that control the air space and its use in the aviation environment.²² According to **BinCheng**, law is a set of rules which regulate about the aviation and also regulate about the air transportation.²³

Besides, the meaning of carriage according to Ridwan Khairandy is a transfer of goods and people from the origin place to their destination.²⁴ Whereas, the transportation agreements are:²⁵ a. there is something transported; b. available vehicles as a means of transport; c. there are places that can be passed by carrier. While the meaning of carriage contract is a binding agreement (evidenced usually by an air waybill, bill of lading, or

²¹ *Ibid*

²² Prijatna Abdulrasjid.1972, *Kedaulatan Negara di Ruang Udara*, Pusat Penelitian Hukum Angkasa: Jakarta, p.22 quote De Rode Verschoor.1960.*Inleiding tot Het Luchtrecht*. Haarlem.p.1 (in Hartono Hadisoeparto, et al, 1988, *Pengangkutan Dengan Pesawat Udara*, Perpustakaan Fak.Hukum Universitas Islam Indonesia: Yogyakarta, p.2)

²³ Prijatna Abdulrasjid, *Beberapa Pokok Dasar Pengembangan Hukum Udara (paper)*, quote Bin Cheng, 1962, *The Law of International Air Transport*.London (in Hartono Hadisoeparto, et al, 1988, *Pengangkutan Dengan Pesawat Udara*, Perpustakaan Fak.Hukum Universitas Islam Indonesia: Yogyakarta, p.2)

²⁴ Ridwan Khairandy, 2006, *Pengantar Hukum Dagang*, UII Press: Yogyakarta, p.178

²⁵ *Ibid*

passenger ticket) which contains conditions of carriage that spell out the obligations and rights of a carrier and a shipper/passenger. The carrier undertakes to deliver goods/passengers from a named place of departure to a named destination, in consideration for freight/fare. This contract addresses issues associated specifically with what is being carried, and how the liability and compensation for damage or injury to (or loss of) the goods/passengers is assessed, apportioned, and paid. In airline, cruise ship, and other passenger-transport industries, it contains also the carrier's policy regarding baggage, bumping, cancellation and delays, claims, reservations, ticket validity.²⁶ Whereas, according to Ridwan Khairandy carriage contract is a reciprocal relationship between the carrier and shipper of goods and / or passengers of the carrier where he tied himself to organize the transportation of goods and / or people to a specific destination, and the shipper of goods and / or passengers bind him to pay for transportation.²⁷ Based on that definitions, in the carriage contract there are two parties that are carrier and passenger or consigner.

Carriage by air means the transportation of passengers and/or baggage by air, gratuitously or for hire, and all services of Carrier incidental thereto.²⁸ In the carriage by air contract, there are two parties that are passenger and the airlines company, and each other have their own rights

²⁶ <http://www.businessdictionary.com/definition/contract-of-carriage.html> last accessed December 15,2012 at 09.45

²⁷ Ridwan Khairandy, *Opcit*, p.183

²⁸ <http://www.allegiantair.com/aaContractOfCarriage.php> last accessed December 15,2012 at 10.00

and obligations. The obligation of the passenger is to pay some of money to the airlines company and the right of passenger is to get the best service from the airlines company. Then, the obligation of airlines company are to give the best services to the passenger, transporting passenger to their destination, and also keep the safety of passenger and the right of airlines company is to get some of money from the passenger over the services that already given to the passenger. As explained previously that in the carriage contract, there are two parties that are carrier and passengers. If there have an agreement among them, it means that the transportation agreement has occurred. In this case, the carrier is liable for all things that interfere with the safety of passengers or goods during the transportation. Therefore, the carrier is obliged to bear all the losses which is suffered by passengers or goods that he brought.²⁹

The Convention for the Unification of Certain Rules Relating to International Transportation by Air usually referred to as the Warsaw Convention (convention) is an international convention which regulates liability for international carriage of persons, luggage, or goods performed by aircraft for reward. The convention was originally signed in 1929 in Warsaw. It was amended in 1955 at The Hague and in 1975 in Montreal. The principal purpose of the Warsaw Convention was to:³⁰

²⁹ Ridwan Khairandy, *Opcit*, p.184

³⁰ <http://aviation.uslegal.com/international-aviation-law/warsaw-convention/>. last accessed November 16, 2012 at 16.30

- a. Define the liability of the carrier in case of loss, damage, injury, or death due to accident on international flights;
- b. Spell out procedures for claims and restitution; and
- c. Lay down the requirements for format and content of air transport documents, passenger tickets, luggage tickets, and air consignment notes

E. Definition of Technical Terms

The definitions of terms which are used in this thesis are:

1. **Contract is** an agreement between the two parties that agreed to create, modify, or eliminate the legal relationship.³¹
2. **Carrier is** company that transports goods and/or people by air, land, or sea, in its own or chartered vessels or equipment, and is named as the carrier in the contract of carriage.³²
3. **Passenger is** someone who travels in a motor vehicle, aircraft, train, or ship but is not the driver or one of the people who works on it³³
4. **Delay is** a situation in which something happens later or more slowly than you expected.³⁴

³¹Munir Fuady., 2007, *Hukum Kontrak(Dari Sudut Pandang Hukum Bisnis)*, PT.Citra Aditya Bakti: Bandung, p.4

³² <http://www.businessdictionary.com/definition/carrier.html> last accessed December 16,2012 at 09.10

³³ <http://www.macmillandictionary.com/dictionary/british/passenger> last accessed December 17,2012 at 09.19

³⁴ <http://www.macmillandictionary.com/dictionary/british/delay> last accessed December 19,2012 at 10.30

Delay is a discrepancy between the time when one party is entitled to expect the performance of the carrier's duties and the time when these duties are actually performed.³⁵

5. **Flight** is a journey through air or space in a vehicle such as a plane³⁶

6. **Consumer Protection** is all the effort that ensures legal certainty to provide protection to consumers.³⁷

In accordance with article 3 of the Consumer Protection Act, the consumer protection has objectives as follows:

- a. To improve awareness, skills, and independence of consumers to protect themselves
- b. To raise the dignity of consumers by preventing them from negative excess of consumption on goods and/or services
- c. To increase empowerment of consumers in selecting, determining and demanding their rights as consumers
- d. To create systems that contains elements of consumer protection legal certainty and transparency of information and easy access to information

³⁵ Georgette Miller, 1977, *Liability in International Air Transport*, Kluwer-Deventer-The Netherlands: New York, p.154

³⁶ <http://www.macmillandictionary.com/dictionary/british/flight> last accessed December 20, 2012 at 08.45

³⁷ Article 1(1) of Customers Protection Act

- e. To grow awareness of business actor on the importance of consumer protection in order to develop honest and responsible attitude when they do their business
- f. To improve the quality of goods and/or services which ensure the continuity of production of goods and/or services, health, comfort, safety, and support consumer safety

3. Consumer shall be anybody using goods and/or services which are available in the community, both for his own purpose, for the purpose of his family and other people as well as other living creatures and which are not to be traded.³⁸

4. Air transportation law is a set of rules (rules, norms) that regulate the air traffic problems which are associated with the transport of goods and people by using plane.³⁹

5. Business is any individual or business entity, either incorporated legal entity or not the legal entity established and domiciled or conducting activities within the territory of the Republic of Indonesia, in dependent or jointly through an agreement to carry on business in various economic fields.⁴⁰

³⁸<http://definisipengertian.com/2011/pengertian-konsumen>.last accessed august 13,2012.At 21.39

³⁹ Hartono Hadisoeparto, et al, 1988, *Pengangkutan Dengan Pesawat Udara*, Perpustakaan Fak.Hukum Universitas Islam Indonesia: Yogyakarta, p.2

⁴⁰<http://definisipengertian.com/2011/pengertian-konsumen> .Loccit

6. Services are any form of work or service performance which is provided for the community to be used by consumers.⁴¹

7. Airline is a public transportation service company that serves people who wish to travel using air transportation.⁴²

8. Transporting Agreement is an agreement which one party undertakes to safely carry people or goods from somewhere else, while the other party undertakes to pay the cost.⁴³

9. Transportation activity is defined as moving or shipping cargo (people and goods) from one place to another, from one place of origin to point of destination, from an origin to a destination or called Origin-Destination Travel.⁴⁴

F. Research Procedures

1. Object of Study

The objects of this research are:

- a. air carrier liability in the case of delayed flight
- b. customer protections which are given to the customers (passengers) that is related to delayed flights issue

⁴¹ *Ibid*

⁴² <http://www.anneahira.com/maskapai-penerbangan-lion-air.htm>. last accessed August 14, 2012 at 19.37

⁴³ Subekti, 1995, *Aneka Perjanjian*, PT.Citra Aditya Bakti : Bandung, p.69

⁴⁴ Sakti Adji Sasmita, 2012, *Penerbangan dan Bandar Udara*, Graha Ilmu : Yogyakarta, p.1

- c. the mechanism to get compensation when the delayed flights happened

2. Classification of Data

This research used secondary data which were collected from the documents or archives that related to the problems which discussed in this research. The purpose of data classification was to identify the data systematically in order to answer the problems.

Secondary data were divided into:

- a. Primary Legal Materials
 - 1) Aviation Act No.1 of 2009
 - 2) Consumer Protection Act No. 8 of 1999
 - 3) Indonesian Civil Code
 - 4) Ministry Regulation No.77 of 2011 about Air Carrier Liability
- b. Secondary Legal Materials
 - 1) Literatures
 - 2) Law journals
 - 3) Internet sources

3. Data Collection

Secondary data were collected from library research and document study and the data were obtained by collecting, learning, and understanding the Act, documents, textbooks, and articles from internet sources which are related to the study of research.

4. Approach of the Study

This research was a juridical normative research which identified legal norms and legal opinion from the scholars. The objective was to understand and answer the object of study by using juridical normative approach method.

5. Data Analysis

The data collection was organized by selecting the data that related to the discussed problem in this research. It was structured descriptively in order to answer the problem in a descriptive analysis. The data were collected, managed, and employed to answer the problems. The method of data analysis was qualitative method. It means that the obtained data were not in the form of numbers and statistic. Collected data were analyzed qualitatively and descriptively. The relevant data were analyzed in order to elaborate data descriptively and qualitatively. Moreover, it also portrays facts, the enforcement deal with the applicable legal aspects. The steps were defined as follow:

- a. Classification of the data collection based on the problems of the research
- b. Systemize data collection
- c. Systemize data is analyzed to achieve conclusion