

**AIRLINE RESPONSIBILITY FOR PASSENGER DEPARTURE CANCELLATIONS
DUE TO NOT COMPLETING HEALTH REQUIREMENTS (*RAPID TEST*)
(Research Study at Kuala Namu Airport)**

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ABSTRACT

Factors that cause airlines to cancel flights include commercial, technical, operational, weather, and airport factors. Airlines are responsible for canceling departures due to health care requirements (accelerated testing): if a passenger tests positive for antigen, they must undergo a PCR test; if negative, they can continue, and the price of the ticket is returned to fly back at least 3 days later. If the passenger gets a PCR test, they must quarantine for 14 days, rescheduling the ticket according to the passenger's status after quarantine. Or the entire ticket will be refunded. There are no specific provisions for consumer legal protection for departure cancellations due to failure to complete health care (accelerated testing), but compliance is not limited to Law Number 1 of 2009 concerning Aviation is not achieved. However, passengers as consumers have legal protection under the Consumer Protection Law relating to passenger rights as consumers of air transportation services, and the Civil Code relating to the status of passengers as parties to a transportation contract with airlines.

Keywords: Responsibility, Departure Cancellation , (*Rapid Test*).

A. INTRODUCTION

Obligations in aviation are regulated in regulations related to aviation in Indonesia, namely Law Number 1 of 2009 concerning Aviation, Regulation of the Minister of Transportation Number 77 of 2011 concerning Aviation Responsibility, and Regulation of the Minister of Transportation Number 89 of 2015 concerning Resolution of Flight Delays. In addition, there is Law Number 8 of 1999 which provides legal protection to consumers whose rights are violated by producers. Consumer Protection is all efforts that guarantee legal protection for consumers.

Confidence in the law is an external characteristic of man, he does not doubt the good or bad of a person's inner morals, what concerns him is the nature of his external actions. Legal certainty does not exclude someone with a defective mental condition, but what is acceptable is to characterize a damaged mental condition, or make it a real action or fact.

One example of a departure cancellation is due to additional departure

requirements due to the health crisis (*accelerated testing*). This is in accordance with Circular Letter Number 11 of 2022 concerning Domestic Travel Arrangements During the Coronavirus Disease 2019 (COVID-19) Pandemic. The draft letter is effective because it was signed by Chief of Staff Suharyanto on March 8, 2022. The scope of this letter is health policies for Domestic Passengers (PPDN) using any mode of transportation throughout Indonesia.

In this New Normal, the public and those wishing to board are asked to coexist and adapt to Covid-19 by continuing to follow the recommendations of the Covid-19 Task Force, namely maintaining cleanliness and being required to wear protective clothing in accordance with personal health safety protocols. Passengers are also asked to complete the necessary travel documentation and disclose their completeness. Therefore, if the requirements are incomplete, especially accelerated screening, it will result in legal consequences in the form of flight cancellations for passengers.

Flight cancellations inevitably result in losses for passengers as consumers, so it's only natural that airlines compensate or assume responsibility for the losses suffered by passengers. However, the aviation industry still falls short of legal consumer protection guarantees, despite frequently hearing that problems and challenges facing vulnerable consumers persist .

B. LITERATURE REVIEW

1. Civil Liability

Responsibility is a consequence of a person's freedom of moral or ethical choices in carrying out an action. Under civil law, basic liability is divided into two categories: fault and accident. Therefore, it is known as *non-liability based on fault* and *non-liability on known fault* , which is also called *accident liability* or *total liability (strict liability)* .

2. Default

Default comes from the Dutch language, *wanprestie*, which means not fulfilling the obligations that are mandatory and implied in a contract, whether a contract arising from a contract or law.

3. Air Freight

The word "transportation" comes from the word "angkutan," which means to lift and carry, load, or send. At this point, it can be concluded that transportation is the process of moving from one place to another.

C. IMPLEMENTATION METHOD

This research is an empirical legal study, but the methodology used to conduct it utilizes a legal approach. The research used in writing this principle is descriptive. The data used in this study are derived from primary and secondary data. Qualitative data analysis was conducted .

D. RESEARCH RESULTS AND DISCUSSION

1. Factors Causing Departure Cancellations What Airlines Do

The public's dependence on aviation is currently very high. This trend allows airlines to compete to attract candidates through various means, from low ticket prices to

superior service. However, in general, in providing air transportation services to passengers, the aviation industry often encounters various obstacles, one of which is flight delays and cancellations.

Flight cancellation can be defined as the delay or change of a flight for a specific reason. Delays and cancellations of passenger departures are regulated by Law Number 1 of 2009 concerning Aviation , which includes:

- a. F commercial actor,
- b. F technical actor,
- c. F operating actor,
- d. F weather actors and
- e. F airport actor.

Business factors include onboarding issues and overcrowding. Activities include pilot delays and restaurant cancellations. Reasons for flight cancellations can be technical and non-technical. According to Article 146 paragraph (2) of the Aviation Law and Article 13 of the Minister of Transportation Regulation Number 77 of 2011, weather conditions such as heavy rain, lightning, storms, fog, smoke, flight cancellations are caused by visibility below the maximum threshold that disrupts flight safety. This is a flight control measure beyond operational technology.

P origin 13 paragraph (3) of the Decree of the Minister of Transportation Number 77 of 2011 on the grounds of Performance Engineering, including:

- a. The arrival and departure runways shall not be used for aircraft operations;
- b. The environment leading to the airport or airport is damaged, for example cracks, flooding or fire;
- c. Flights take off, land, or set the airport departure time in a linear manner; or
- d. Delay in oil injection .

Clarifying Article 146 of the Aviation Law that flight cancellations are caused by factors outside of Operational Technical, namely:

1. Delays by pilot, co-pilot and crew;
2. Restaurant delays;
3. Delay in ground operations;
4. Waiting for passengers, whether they have just checked *in* , changed flights (

transferred) or continued flights (*connecting flights*); and
5. Lack of aircraft maintenance .

Flight delays followed, including Lion Air flight JT898, the Jakarta-Makassar route. Passengers were impatient and even tried to intercept Lion Air flights on the same route that were about to take off. This was not the first time that Rusdi Kirana's airline had experienced delays. From January to November 2015, Lion Air experienced more than five delays.

Lion Air's first flight delay occurred in 2015, when hundreds of Lion Air passengers on the Jakarta-Ujung Pandang flight became angry and felt ignored. The passengers were angry because after boarding flight JT772, Lion Air asked them to disembark due to alleged faulty weather radar on the plane. The second delay occurred when a Lion Air flight from Jakarta to Surabaya was delayed for several hours at Soekarno-Hatta Airport. As a result, hundreds of passengers were stranded at Terminal 1A of Soekarno-Hatta Airport. Other delay scenarios could also be due to natural causes such as volcanic eruptions, which could disrupt flights.

2. Airline Responsibility for Departure Cancellations Due to Failure to Complete Health Requirements (*Rapid Test*)

The role of transportation in ensuring the smooth movement of goods and passengers during the Covid-19 pandemic is crucial. The contract between the carrier and the passenger or carrier is always a top priority in transportation services. A contract of carriage is a contract that binds the carrier to the safe transportation of passengers and/or goods from one point to another, and the passenger or carrier agrees to pay a specified amount for the transportation.

In full, in the Minister of Transportation Regulation No. 185 of 2015 concerning Standards of Service for Economy Class Passengers of Domestic Scheduled Commercial Air Transportation, the occurrence of excessive force during flight

operations will result in ticket cancellation. Due to direct excessive force, transportation will definitely fail according to the specified schedule. Considering this situation, they are based on Article 10 paragraph (1) of the Ministry of Transportation Number 185 of 2015 which states that airlines are required to refund the flight service fees paid by prospective passengers. This Article Paragraph (3) stipulates that the amount to be refunded depends on certain circumstances. For flights with a combination of *full service* An administration fee of 20% (twenty percent) will be charged. For flights with medium service, an administration fee of 15% (fifteen percent) will be charged, and for flights with passive service, an administration fee of 10% (ten percent) will be charged.

In addition to fare refunds, Passenger Service Charge (PSC) payments must also be returned. Regarding the return schedule, it is also stated in Minister of Transportation Regulation No. 185 of 2015, no later than 15 working days from delivery if the ticket was purchased in cash and 30 working days from delivery if purchased with a credit card. The airline will refund the costs incurred by the passenger based on the fare paid by the passenger according to the ticket selected by the airline. This has been planned based on Minister of Transportation Regulation No. 89 of 2015 .

Refunds are an inevitable part of buying and selling goods and services. A rebate is a refund offered by a seller to a buyer, subject to certain conditions. Refunds can be obtained in the form of clothing purchases or transportation tickets, whether land, sea, or air.

The reimbursement process varies widely, often based on feedback from suppliers or service providers. For example, when purchasing airline tickets, there's a 100% refund scenario. However, in other circumstances, full refunds aren't granted to consumers. Some vendors also don't explicitly implement refunds for goods and services sold. Furthermore, in terms of turnaround time for consumers, refund requests also vary widely, ranging from three

days, 60 days, to 90 days. So, how the gaming rebate rules apply to various rebate applications is certainly a question for consumers. Members of the public often don't understand their rights in the reimbursement process, leading to a tendency to remain silent. Refunds fall under the category of payments based on *default* or *non-performance*. There are at least three prerequisites for compensation: non-performance of an agreed-upon item, non-performance of the contract, and delayed performance.

In the current pandemic, the idea of refunding airline tickets by issuing flight vouchers with a nominal value equal to the flight price has been canceled by the airline or canceled by the passenger for certain reasons. Passengers can reuse the voucher to fly to their next destination and the voucher is valid for 1 (one) year from the date of issuance. Another type of payment is through rebooking, where passengers can rebook this flight 1 (one) to 2 (two) times according to the policy of the selected airline, this one, without additional fees. The government stated that this type of payment does not violate existing laws and regulations.

There is no law governing the nature of payments made by brokers in emergencies like this. According to Minister of Transportation Regulation No. 185 of 2015, whether or not a ticket is canceled due to *force majeure*, the airline is required to refund the flight service fee paid by the customer.

The same thing is also explained in the Minister of Transportation Regulation No. 25 of 2020, although this regulation only limits the prohibition of entering the house throughout 2020, it is clear from the regulation that reimbursement of costs as explained in the explanation above is still permitted, more precisely in article 24 which explains that commercial airlines in refunding airplane tickets can be booked in the following ways:

a. *Re-book (re-book)* for those who want to board passengers who already have a free ticket

b. Carrying out flight diversion (*rerouting*) for those who wish to board existing ticketed passengers free of charge if the route on the ticket does not intend to leave the area and/or enter as regulated in Article 2. Payment of the airline's service value to obtain membership points at the airline which can be used to purchase products offered by the airline.

c. The issuance of ticket coupons (*ticket vouchers*) for a number of flight services (tickets) purchased by passengers can be used to repurchase other flight tickets and is valid for a minimum of 1 (one) year with the possibility of a maximum extension of 1 (one) time.

Many sectors in the aviation industry have been impacted by the Covid-19 pandemic, including consumers as passengers, airlines as business actors, and travel agents as parties selling tickets to the general public. Consumer losses include those due to the person not flying because the airline cancels the flight or the passenger cancels for personal safety reasons. The future of the current Covid-19 pandemic, Minister of Transportation Regulation No. 25 of 2020 concerning Traffic Control During the Eid al-Fitr 1441 Hijriah Homecoming Period in the Context of Preventing the Spread of Corona Virus Disease 2019 (Covid-19).

P origin 24 Permenhub No. 25 of 2020 where the government provides legal certainty to passengers who have failed flights through a full refund of airline tickets without charge and legal relief to airlines that are also lost with the same amount of money given by passengers to buy my grandfather's nominal ticket This is certainly in accordance with the purpose of Law Number 8 of 1999 concerning Consumer Protection, namely to guarantee legal certainty for passengers as consumers. However, if referring to the refund process by issuing vouchers, this is actually contrary to letter g of Article 18 paragraph (1) of Law Number 8 of 1999 concerning Consumer Protection, the reason is that the timing of airlines is a new rule. . unilaterally regulated by airlines that are

economically ranked higher than passengers as consumers.

The provisions relating to the validity period of vouchers unilaterally determined in advance by the airline damage or violate the provisions of the law, Article 18 paragraph (1) of Law Number 8 of 1999 concerning Consumer Protection, then in accordance with Article 18 paragraph (3) of Law Number 8 of 1999 concerning Consumer Protection, vouchers can be issued as a means of payment to consumers and are considered invalid. However, in the case of Covid-19, this can be an exception, because the laws issued by the government during the COVID-19 pandemic aim or attempt to balance the benefits between business actors and consumers because those affected by COVID-19 are not only consumers who are affected

Airlines' responsibility during this pandemic is to provide alternatives if passengers cannot board for reasons that justify their decision to do so. For example, if a potential flight is affected by the COVID-19 pandemic, airlines should offer more options. This responsibility is outlined in each airline's terms and conditions. For example, Lion Air allows passengers to reschedule their flights free of charge, as Lion Air allows passengers to change flights twice.

Meanwhile, if the passenger wants a refund, it is possible, but both airlines issue a voucher with a nominal value of 100% (one hundred percent) equal to the fare paid by the original passenger name, and the card validity period is within 1 year from the date of issuance of the certificate by party.airline. Actually, there are not many factors that affect the delay in a passenger's refund, this factor is due to the increasing demand for refunds during the pandemic so that every airline and travel agent is worried and this causes delays during the pandemic only to complete refunds.

In this case, passengers can be patient, as they can't be forced to request a quick refund, as everything is processed according to the queues entered into the airline and travel agent's systems. Each party has also

made every effort to issue refunds in a timely manner.

The airline's obligation to cancel a flight due to not meeting health requirements (accelerated screening), namely:

- a. If a passenger tests positive for antigen, they must undergo a PCR test. If negative, they can continue, and their ticket will be changed to fly back at least 3 days later.
- b. If a passenger tests positive for PCR, they must quarantine for 14 days. Tickets will be adjusted based on their quarantine status, or a full refund will be provided.

3. Consumer Legal Protection for Departure Cancellations Due to Failure to Complete Health Requirements (*Rapid Test*)

Law Number 8 of 1999 concerning Consumer Protection defines consumer protection as any effort to legally guarantee consumer protection. The need for consumer protection laws stems from the inherent weakness of consumers compared to producers. This process is carried out until the production of goods or services is achieved without minimal consumer intervention. Consequently, buyers in a vulnerable position must be protected by law. Consumer protection laws explicitly aim to increase consumer prestige and awareness, indirectly encouraging producers to conduct their businesses responsibly.

Balanced legal protection for businesses and consumers is inseparable from the regulation of the legal relationship between the parties. To ensure all consumer rights and intermediary obligations regarding purchases and sales, only end consumers are protected under Law Number 8 of 1999 concerning Consumer Protection.

Legal protection is divided into two parts: legal protection and oppressive legal protection. According to Philipus M. Hadjon, an interlocutory decision is a legal defense granted before a detrimental or undesirable event or situation occurs, so the purpose of an interlocutory decision is to prevent litigation.

This legal protection is stipulated in Law Number 8 of 1999 concerning Consumer

Protection and is contained in the transfer of rights and obligations to each party, namely traders and consumers as regulated in Article 4 of Law Number 8 to 7 of 1999 concerning four Consumer Protections. Furthermore, prohibited acts for brokers are regulated in Articles 8 to 17 of Law Number 8. The obligations of brokers are regulated in Articles 19 to 28 of Law Number 8. In this context, what is meant by oppressive legal protection is legal protection provided after the occurrence of an event or condition that is detrimental or undesirable. Oppressive legal defense aims to resolve conflicts that have arisen.

This oppressive legal protection is often articulated in the form of punitive action against entrepreneurs which can be in the form of administrative sanctions. In the Consumer Protection Law, the protection of legal oppression is regulated in Article 60 of Law Number 8 of 1999 concerning Consumer Protection, namely the determination of compensation of up to Rp. 200,000,000,- (two hundred million rupiah) can also be punished as regulated in Article 62 of Law Number 8 of 1999 concerning Consumer Protection, namely a maximum imprisonment of 5 (five) years or a maximum fine of Rp. 2,000,000,000,- (two billion rupiah), as well as other criminal sanctions as regulated in Article 63 of Law Number 8 of 1999 concerning Consumer Protection, if it is proven that the trader has violated consumer rights.

People who want to fly before departure do the business of booking airline tickets, then establish a legal relationship between the buyer (the person requesting the ticket) and the airline (even though the seller is a third party, such as sales provided online by four traveloka, tiket.com, or bureau). other ticket outlets).

The contractual relationship between online auction companies is regulated in an electronic contract agreed to in a standard contract that consumers agree to when filling out an airline ticket purchase form on the ticket company's website. All agreements in the deliberation and consensus are then used

as the basis for protection that can be provided to consumers. This is regulated in Article 1338 paragraph (1) of the Civil Code which states that "All legal contracts are valid as law for the parties thereto." This principle is often called the Pacta Sunt Servanda principle where the parties who make a contract must make and enforce the contract as law for them. Article 1338 of the Civil Code also contains the understanding that there is another principle besides the principle mentioned above, namely the principle of freedom of contract.

Based on the principle of freedom of contract, the parties are given the freedom to determine the form and content of the contract themselves, as long as it does not conflict with statutory regulations, convenience, and public order. The personal validity of the contract made by the buyer with the sales company is based on Article 1320 of the Civil Code which stipulates four conditions for the validity of a contract, namely.

1. Agreement of both parties;
2. Skills;
3. A particular subject matter;
4. A legitimate reason.

The first two conditions refer to logical properties, while the last two properties refer to objective properties. According to Subekti, violation of personal circumstances threatens the contract with the possibility of an application for cancellation. On the other hand, if the objective conditions are not met, the contract is threatened with cancellation. For contracts between consumers and ticket companies, all conditions stipulated in Article 1338 and Article 1320 of the Civil Code are met. Thus, subject to the provisions of both laws, contracts made by consumers with ticket sellers are valid and binding to provide protection to consumers and ticket sellers, starting with the agreement of both parties to the contract.

From a consumer protection perspective, based on *the Privileged Contract Theory*, businesses have an obligation to protect consumers, but they can only do so if there is a contractual relationship. This

contractual relationship then creates a sense of satisfaction that must be realized by the parties. According to J. Satrio, default is a situation where the debtor fails to fulfill their promise or fails to fulfill it properly, and all the blame can be placed on him.

Customers cannot question the availability of airlines that can transport passengers during the relevant period. This is a practice that is not permitted by the market based on applicable laws and regulations, as referred to in Article 9 paragraph (1) letter e, Article 4 letter (c), and Article 7 letter (1) b) of Law No. 8 of 1999 concerning Consumer Protection.

Customers are required to provide accurate, clear, and honest information regarding their appointments. If a flight is indeed canceled, businesses must be systematic and responsive in making adjustments and finding alternatives to avoid incurring losses for customers.

The next violation committed by the airline is consumer rights according to Article 4 letter (h) Jo. Article 7 letter (g) UUPK. Article 4 letter h of Law Number 8 of 1999 concerning Consumer Protection states that "consumers have the right to compensation, damages, and/or replacement, if the goods and/or services received do not comply with the contract." do not comply with what should be." Consumers have the right to compensation or damages from the Airline for delays/ flight cancellations to consumers. The right to compensation is intended to reverse the defective (unbalanced) situation resulting from the use of services that do not meet consumer expectations.

Flight cancellations tend to impact consumers or passengers, as airlines provide notice to consumers/passengers. Some consumers feel that airlines' regulatory processes are often ineffective (employees often waste time, and consumers need time to collect their rights). In addition, if consumers/passengers feel disadvantaged by flight delays, they can sue the airline for compensation.

The requirements and procedures for filing for compensation are regulated in

Minister of Transportation Regulation Number 77 of 2011 concerning the Responsibilities of Air Transport Authorities. Claims for compensation by injured consumers against airlines are made possible by Article 23 of the Responsibilities of Air Transport Operators in Minister of Transportation Regulation Number 77 of 2011, which stipulates:

The amount of compensation regulated in this article does not prevent passengers, heirs, carriers or third parties from submitting claims against the carrier to the district court in the territory of the United Republic of Indonesia or through arbitration or dispute resolution other than those stipulated by law.

Third party losses as referred to in Article 2 may only be based on the following evidence :

1. Documents proving that they are heirs in accordance with the provisions of applicable laws and regulations, tickets, proof of checked baggage (claim tag) or airway charges *or* other evidence that can be proven and verified;
2. A certificate from an authorized official to provide evidence of loss of life and body/or property to a third party who has suffered losses due to the operation of an aircraft .

The established payment system is subordinate to the system of the actual flight operator if the flight is operated by more than one Air Transportation Business Entity. Dispute resolution is regulated in Articles 23 and 24 of Minister of Transportation Regulation No. 77 of 2011 concerning the Obligations of Air Transportation Operators .

Article 23 :

The amount of compensation regulated in this article does not prevent passengers, heirs, carriers or third parties to the carrier from submitting an application to the district court in the territory of the United Republic of Indonesia or through arbitration or other terms and conditions for dispute resolution .

Article 24 :

The legal remedy of proof as regulated in section 19 may be obtained through arbitration or other processes in accordance with the provisions of the law .

Handling of consumer complaints by airlines is in accordance with the provisions for dispute resolution as regulated in Article 45 paragraph (2) of Law Number 8 of 1999 concerning Consumer Protection, which states that consumer disputes can be resolved through the courts or outside the courts based on the choice and agreement of the disputing parties.

Airline negligence (*default*) can be detrimental to consumers, so if the airline does not have an obligation to resolve the problem, consumers can report the problem to the Consumer Protection Agency. In the general provisions of Law Number 8 of 1999 concerning Consumer Protection, what is meant by a non-governmental consumer protection agency is a non-governmental organization registered and recognized by the government whose activities guarantee consumer protection.

E. CONCLUSION

1. Factors that cause airlines to cancel flights include business, technology, operations, weather, and airports. Business factors include onboarding issues and overcrowding. Operational factors include pilot and restaurant delays, and weather conditions such as heavy rain, lightning, storms, fog, smoke, and substandard visibility that compromise flight safety.
2. Airlines are required to cancel departures due to not exceeding health requirements (*expedited test*), namely if the passenger tolerates antigen, a PCR test must be carried out, if negative, must continue, and the ticket will be rescheduled to fly again at least 3 days in the future, and if the passenger has PCR, you must quarantine for 14 days, adjust the

ticket according to the passenger's status after quarantine or refund the entire ticket.

3. There is no specific statutory provision for consumer protection for departure cancellations due to failure to provide health care (expedited screening), but not limited to Law Number 1 of 2009 concerning Aviation that does not comply with the rules. However, passengers as consumers enjoy the legal protection of Law Number 8 of 1999 concerning Consumer Protection relating to the rights of passengers as users of air transportation services, and the Civil Code which is no longer applicable to the position of passengers as parties to a contract. airline.

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