



## THE CORPORATE LIABILITY OF AIRLINE SERVICE BUSINESS ACTORS IN INDONESIA: AN ISLAMIC LAW PERSPECTIVE

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### ARTICLE INFO

**Keywords:**

Airlines; Business;  
Corporate, Islamic; Service.

**DOI :**

10.26532/jh.v40i2.36986

### ABSTRACT

*This study aims to analyze the weaknesses of the corporate liability arrangements of airline service business actors for consumer protection in the perspective of Islamic law in Indonesia. Legal research in the form of prescriptive, with statutory, case, conceptual and comparative approach. Comparative legal studies were conducted with Malaysia, Singapore and Australia supported by the theory of maqashid shariah, welfare state theory and justice theory. The research shows that; First, there are weaknesses in the regulation of liability of business actors in the Consumer Protection Law and the Aviation Law, which have not been able to reach the liability. Beside that, it is not fulfilled the principle of Al-adl because of justice, balance, and equality that describe the horizontal dimension. Second, there is prescription for future arrangements in the corporate liability of airline business actors in the perspective of Islamic law. The position of consumers and business actors should be equal based on the maqashid shariah. Aviation Service Business Actors must be responsible for consumer losses whose rights are violated as regulated in the Qur'an and Hadith. Based on the principle of Al-adl in maqashid shariah, it is necessary to reconstruct the regulation of aviation law and consumer protection law.*

## 1. Introduction

The modern rule of law adopted by most countries in the world has the goal of creating public welfare. The welfare state includes security and safety governance in protecting society. In law, there is a principle that reads *salus populi suprema lex esto*, which means that the safety of the people is the highest law.<sup>1</sup> The conception of a welfare state is actually a development of the conception of a material law state that places the state or government not only

1 e. Elviandri., Quo Vadis Negara Kesejahteraan: Meneguhkan Ideologi Welfare State Negara Hukum Kesejahteraan Indonesia, *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada*, Vol.31 No.2, June 3, 2019, page.252

as a guardian of security or public order, but has the responsibility to realize welfare. In an effort to create the welfare of the people, the conception of a welfare law state emerged. The ideology of the welfare state is the basis for the position and function of the government (*bestuursfunctie*). The ideals of the welfare law state are enshrined in the Preamble of the 1945 Constitution of the Unitary Republic of Indonesia.<sup>2</sup> Efforts to save the Indonesian people who are consumers of aviation services cannot be separated from the responsibility of the government in charge of regulating security and safety governance at airports, especially airports are national vital objects.<sup>3</sup> One legal issue that shows the disharmony between economic and legal factors can be seen from the problems that occur at Soekarno-Hatta International Airport.<sup>4</sup> As the main regional and international gateway for the movement of people and goods, we like it or not experience the impact of globalization, with the emergence of vulnerabilities on a national and international scale.<sup>5</sup> Threats and vulnerabilities at the airport, if no mitigation is carried out, will certainly lead to events that have an impact on the protection of aviation service consumers. Until now, still often encounter incidents of lost items in restricted areas of airports or in airline baggage. Including what made a stir recently, the luggage of a son of the President of the Republic of Indonesia, Kaesang Pangarep, was wrongly sent to Medan, even though the item was carried in the luggage of the plane along with the owner as a passenger.<sup>6</sup> Another incident that still often occurs is the delay of airline under the pretext of operational and weather reasons.

Based on the description of some of the cases above, which include: frequent delays in flight schedules (delays), low security protection of passenger luggage, discrimination against passengers with special needs (disabilities) and the vulnerability of breaking into airline tickets.<sup>7</sup> The state through the government as a state instrument in providing legal protection and serving the Indonesian people who are consumers of aviation services must provide a sense of security. Citizens have a constitutional right to security and protection as stipulated in the Constitution Article 28 D paragraph 1 in order to obtain fair legal certainty. The fact is there are some problems, such as: security, safety and comfort at the

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2 Ekberth Vallen Noya and Ade Walakutty., Hukum Berparadigma Cita Hukum Indonesia Demi Tercapainya Keadilan, *Sanisa: Jurnal Kreativitas Mahasiswa Hukum*, Vol.2 No.2, 2022, page. 69–80.

3 Ahmadi Miru and Suratman Yodo., *Hukum Perlindungan Konsumen*, Revisi Cet, Jakarta, Rajawali Pers, 2017.

4 Tumpal Silitonga et al., Implementation of ICAO Standards for Civil Aviation Security in Indonesia," *Journal of Positive School Psychology*, No.5, 2022, page.8193–8203

5 Anggriani Ibrahim et al., Tanggung Jawab PT . Garuda Indonesia Terhadap Kerugian Kehilangan Atau Kerusakan Barang Bagasi Konsumen Di Bandara Djalaludin, *Jurnal Ilmu Hukum Dan Administrasi Negara*, Vol.1 No.4, 2023, page.143–64.

6 Retia Kartika Dewi., Penyebab Koper Kaesang Nyasar Di Medan, Ini Kata Batik Air, *Kompas.Com*, November 14, 2022, <https://www.kompas.com/tren/read/2022/11/14/120000165/penyebab-koper-kaesang-nyasar-di-medan-ini-kata-batik-air?page=all>.

7 Gatot Subroto Widagdo, Seti Citra Datu, and Hamzah Robbani., Analisis Kasus Kecelakaan Lion Air JT610: Tinjauan Pidana Dan Tanggung Jawab Korporasi Dalam Keselamatan Penerbangan, *Decisio Law*, Vol.1 No.1, 2024, page. 34–39.

airport. These existing conditions require answers regarding who the business actors should be responsible for.

The relationship between consumers and aviation service actors begins with a contractual relationship in the form of airline tickets.<sup>8</sup> However, legal problems occur because the protection of aviation service consumers from upstream to downstream sectors involves many parties in the responsibility for consumer protection.<sup>9</sup> Problems from upstream start from consumers buying tickets, but it turns out that there are several processes of business actors not alone, namely there are travel agents and airport managers, so that it affects the downstream sector, namely aviation service business actors.<sup>10</sup> Regulations regarding consumer protection are currently regulated in Law No. 8 of 1999 concerning Consumer Protection, especially Article 19. However, the existing regulations overlap horizontally with Articles 141 through 147 of Law No. 1 of 2009 concerning Aviation. Vertically, the regulation of liability of aviation service business actors also overlaps with the 1945 Constitution Article 28 D Paragraph 1 because it cannot provide fair legal certainty for consumers of aviation services.

The principles of consumer protection have actually been applied since the Prophet Muhammad SAW has not been appointed as an Apostle, he carried the merchandise of Khadijah bin Khuwailid by getting a reward.<sup>11</sup> Although there is not much literature that talks about aspects of consumer protection at that time, the principles of consumer protection can be found from the business practices carried out by the Prophet Muhammad SAW. The honesty, justice and integrity of the Prophet were not doubted by the people of Mecca, so that this potential increased his reputation and ability to do business<sup>12</sup>. After Muhammad SAW was appointed as a Messenger, consumers received considerable attention in Islamic teachings, both in the Qur'an and Hadith. A fair and honest business according to the *Qur'an* is a business that does not oppress and is not oppressed. Allah SWT says in QS. Al-Baqarah verse (279): The explanation of the letter is that If you do not do it, then declare war from Allah and His Messenger. But if you repent, then you are entitled to your principal. You do not do injustice (*harm*) and are not wronged (*harm*).

In Indonesia, there is a special law that regulates consumer protection issues, namely Law No. 8 of 1999 concerning Consumer Protection. This study is interested in studying the issue of corporate liability of aviation service business

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8 Hasan Sidik., Tanggung Jawab Pengangkut Udara Atas Kelambatan, *Intermestic: Journal of International Studies*, Vol.1 No.1, 2016, page.62–76

9 Annalisa Yahanan, Febrian Febrian, and Rohani Abdul Rahim., The Protection Of Consumer Rights For Aviation Safety And Security In Indonesia And Malaysia, *Sriwijaya Law Review*, Vol.1 No.1, January 2017, page. 027.

10 Muhammad Saiful Rizal, Yuliati Yuliati, and Siti Hamidah., Perlindungan Hukum Atas Data Pribadi Bagi Konsumen Dalam Klausula Eksonerasi Transportasi Online, *Legality: Jurnal Ilmiah Hukum*, Vol.27 No.1, 2019, page.68

11 Nurhalis Nurhalis., Consumer Protection In The Perspective Of Islamic Law And Law Number 8 Of 1999, *Jurnal IUS Kajian Hukum Dan Keadilan*, Vol.III No.8, 2015, page.525–42.

12 Masyitah., Tinjauan Hukum Islam Terhadap Perlindungan Konsumen Pada Transaksi Jual Beli Online, *Petita: Jurnal Kajian Ilmu Hukum Dan Syariah*, Vol.2 No.1, April 2017, page.78–91

actors in Indonesia from Islamic law perspective. This is considering that Islam provides freedom for each individual to exercise his or her rights in accordance with the will as long as it does not conflict with *shariah*. However, in Indonesia the position of consumers and the perpetrators of consumer protection is different. However, in Indonesia the position of consumers and airline service business actors is not equal. Consumers are in a weak position, this is certainly not in accordance with *shariah*, as stated in the word of Allah Surat *An-Nisa* verse 29, which means: "O you who believe, do not eat each other's wealth by means of false means, except in trade that is consensual between you. And do not kill yourselves. Indeed, Allah is Most Merciful to you".

The weakness of the regulation of the liability of aviation service business actors has an impact on the empirical level.<sup>13</sup> The lack of synchronization between the liability arrangements of aviation service business actors in the Consumer Law and the Aviation Law creates problems at the empirical level regarding who is responsible in cases such as; hacking of airline tickets, loss or damage to goods, mixed or misdirected passenger goods, discrimination against disabilities, frequent aircraft delays or the length of time passengers wait at the ground handling when the plane lands and various existing conditions, indicating that the existing liability arrangements are not optimal in providing protection to consumers.<sup>14</sup> Efforts to analyze future regulatory prescriptions are important to study given the urgency of the state's obligation to protect Indonesian citizens, especially for consumers of aviation services, in order to create fair legal certainty.

## 2. Research Methods

The research method used is normative legal research, with typical research that is descriptive and prescriptive.<sup>15</sup> This legal research examines prescriptively the vagueness of norms formulated in the provisions of the liability of aviation service business actors in Law No. 8 of 1999 concerning Consumer Protection and Law No. 1 of 2009 concerning Aviation and is studied using Islamic legal sources derived from the *Al-Qur'an* and *Al-Hadith*. The study uses a constitutional approach, a case approach, a conceptual approach and a comparative approach. Comparative legal studies are conducted with Malaysia, Singapore and Australia supported by the theory of *maqashid syariah*, welfare state theory, justice theory and comparative law theory.<sup>16</sup> The *maqashid syariah* approach is used because the majority of airline users are Muslims and the

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13 I Kadek Surya., Efektivitas Undang-Undang Nomor 1 Tahun 2009 Tentang Penerbangan Khususnya Mengenai Larangan Penggunaan Telepon Genggam Selama Penerbangan Berlangsung, *Ganec Swara*, Vol.16 No.1, 2022, page.1321

14 Wreda Danang Widoyoka Yora Selia Permono., Perlindungan Hukum Bagi Penumpang Maskapai Akibat Pembatalan Keberangkatan Secara Sepihak Menurut Undang-Undang Perlindungan Konsumen Nomor 8 Tahun 1999, *Judiciary Jurnal Hukum Dan Keadilan*, Vol.1 No.2, 2017, page.64–86.

15 Hartiwiningsih, Hartiwiningsih, Lego Karjoko, and Soehartono Soehartono., *Metode Penelitian Hukum*, ed. Universitas Terbuka, Pertama, Jakarta, Universitas Terbuka, 2019.

16 Irwansyah Irwansyah., *Penelitian Hukum-Pilihan Metode Dan Praktik Penulisan Artikel*, ed. Ahsan Yunus, 4th ed., Jogjakarta, Mirra Buana Media, 2021.

consequence of the Indonesian state adhering to the welfare ideology according to the opening of the 1945 Constitution paragraph 4, then in substance and legal structure it must protect the community. So the *maqashid syariah* theory is important for the analysis of this study.

### **3. Results And Discussion**

#### **3.1 Weaknesses in the liability norms of aviation service business actors in Indonesia**

The Indonesian people who are always increasing every year are a potential market share for business actors, including the airline service business.<sup>17</sup> If seen from the definition of consumer, which states that a consumer is anyone who uses goods or services, then very many Indonesian citizens, the majority of whom are Muslims, become consumers of aviation services.<sup>18</sup> In the perspective of a welfare state, the state must be present to protect its citizens who become consumers. This is in line with Pancasila as the National Philosophy and the 1945 Constitution as the basic law (*grundnorm*). The Preamble of the 1945 Constitution mandates: "The Government of the Republic of Indonesia shall protect the entire nation of Indonesia and the entire homeland of Indonesia and promote the general welfare, and the intellectual life of the nation".<sup>19</sup>

As a consequence of Indonesia's welfare state, the Government is obliged to create laws that protect consumers of aviation services. This regulation includes two things, namely legal substance and legal structure. There are many theories regarding the substance of good law, the basic idea of a welfare state dates back to the 18th century when Jeremy Bentham promoted the idea that governments have a responsibility to ensure the greatest happiness (or welfare) of the greatest number of their citizens.<sup>20</sup>

Bentham's ideas on law reform, the role of the constitution and social research for the development of social policy made him known as the 'father of the welfare state'.<sup>21</sup> Bentham used the term utility to explain the concept of happiness or welfare.<sup>22</sup> He is the originator and leader of the 'utility' school of thought. According to Bentham, the essence of happiness is enjoyment and a life

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17 Wetria Fauzi., Airline Customers Conflict Resolution in The Framework of Legal Protection For Consumers in Indonesia, *UNES Law Review*, Vol.6 No.1, September 2023, page.35–43

18 Oman Sukmana., Konsep Dan Desain Negara Kesejahteraan (Welfare State), *Jurnal Sosial Politik*, Vol.2 No.1, 2017, page.103

19 Marilang Marilang., Menimbang Paradigma Keadilan Hukum Progresif, *Jurnal Konstitusi*, Vol.14 No.2, 2017, page.315

20 Endang Pratiwi, Theo Negoro, and Hassanain Haykal., Teori Utilitarianisme Jeremy Bentham: Tujuan Hukum Atau Metode Pengujian Produk Hukum?, *Jurnal Konstitusi*, Vol.19 No.2, 2022, page. 268

21 Edi Suharto., Peta Dan Dinamika Welfare State Di Beberapa Negara, in *Mengkaji Ulang Relevansi Welfare State Dan Teribosan Melalui Desentralisasi Otonomi Di Indonesia*, ed. Edi Suharto, Bandung, PT. Graha Kencana Press, 2006, page.1–145.

22 Jeremy Bentham and John Stuard Mill, *Utilitarianism and Other Essays*, Germany, Penguin Group, 1987.

free from misery.<sup>23</sup> The rule of law can be said to have good value, if the impact resulting from the application of the rule of law itself is good, the emergence of a sense of happiness, and the reduction of suffering and vice versa is considered bad, if its application produces unfair consequences, losses and only increases suffering.<sup>24</sup> Article 28D paragraph (1) of the 1945 Constitution stipulates "the right of every person to be recognized, guaranteed, protected, and given fair legal certainty and equal treatment without distinction before the law." This provision implies that the rights of consumers and business actors of aviation services need to be regulated in order to provide protection and legal certainty. Legal certainty according to Gustav Radbruch is controlled by the state which is given power or the state plays a decisive role when justice can be established because the state has the will and power to do so.<sup>25</sup> The state through the government as a state instrument in providing legal protection and serving the Indonesian people who are consumers of aviation services must provide a sense of security.<sup>26</sup> Citizens have a constitutional right to security and protection, then the factual context, there are safety problems at the airport and whose responsibility is it?

To protect the interests of the parties in the trade or business traffic, Islamic law establishes several principles that serve as guidelines in conducting transactions, namely: Unity of Allah (*at-tauhid*), trust given by Allah (*istikhlaf*), benefiting others (*al-ihsan*), trusted by everyone (*al-amanah*), honesty in business (*ash-shiddiq*), equality between humans (*al-adl*), rights in business actors (*al-khiyar*), helping each other (*at-ta'wun*) and agreement between sellers and buyers (*at-taradhin*).<sup>27</sup> The intent of each of these principles, first to impress or consider Allah is one, second by replacing or acting a duty, third by the principle of doing good to others, fourth by keeping that which was inserted inviolate, fifth by the appropriate approach of honesty by Allah SWT, sixth by referring to the concept of justice, seventh by using a common covenant, the eighth with an attitude of mutual ownership or necessity between fellow humans and the latter of a principle of mutual favor means a mutual agreement. Some of these principles may be viewed as the ideal basis or principle for engaging in business activities.<sup>28</sup>

In the consumer protection law, the principle of consumer protection is regulated in Article 2 which states that "Consumer protection is based on benefits, justice, balance, security, and consumer safety, and legal certainty". The main principle

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23 Schmid Von., *Pemikiran Tentang Negara Dan Hukum Dalam Abad Ke-19*, ed. Schmid Von, Pertama, Jakarta, Pembangunan Press, 1961

24 Lili Rasjidi, *Hukum Sebagai Suatu Sistem*, Perdana, Bandung, PT. Mandar Maju, 2003.

25 Gustav Radbruch, Emil Lask, and Jean Dabin., *The Legal Philosophies of Lask, Radbruch, and Dabin*, Harvard: Harvard University Press, 1950.

26 Heather Leawoods., *Gustav Radbruch: An Extraordinary Legal Philosopher Gustav Radbruch: An Extraordinary Legal Philosopher Gustav Radbruch: An Extraordinary Legal Philosopher*, 2000.

27 N S Hidayatullah and M Afif., *Paradigma Perdagangan Dalam Islam (Telaah Taradhin Dalam Akad Jual-Beli)*, *El-Kahfi/ Journal of Islamic Economic* , Vol.05 No.01, 2024, page. 1–13

28 Mohammad Sulthon., *Peranan Masalah Mursalah Dan Masalah Mulghah Dalam Pembaruan Hukum Islam*, *Al-Qanun: Jurnal Pemikiran Dan Pembaharuan Hukum Islam* , Vol.25 No.1, 2022, page.59–70

or foundation of all business activities in Islamic law is placed on the highest principle, namely tawhid (glorifying Allah SWT) <sup>29</sup>. From this principle, the principle of *istikhlaf* was born, which states that what is owned by humans is essentially a trust from Allah SWT, humans are only as trustees given to them. From the principle of tawhid also gave birth to the principle of *al ihsan* (benevolence), which means carrying out good deeds that can provide benefits to others without any specific obligations that require him to carry out these actions <sup>30</sup>. The three principles above gave birth to the principles of Unity of Allah (*at-tauhid*), trust given by Allah (*istikhlaf*), benefiting others (*al-ihsan*), trusted by everyone (*al-amanah*), honesty in business (*ash-shiddiq*), equality between humans (*al-adl*), rights in business actors (*al-khiyar*), helping each other (*at-ta'wun*) and agreement between sellers and buyers (*at-taradhin*).<sup>31</sup> According to the principle of *al-amanah*, every business actor is a trustee for the future of the world with all its contents (*kholifah fi al-ardhi*), therefore whatever he does will be held accountable before humans and before the creator (Allah SWT). *Ash shiddiq* is honest behavior, the most important thing in doing business is honesty <sup>32</sup>.

The relationship between consumers and aviation service actors begins with a contractual relationship in the form of airline tickets. However, legal problems occur because the protection of aviation service consumers from upstream to downstream sectors involves many parties related to the responsibility for consumer protection. Problems from upstream begin when consumers buy tickets, but it turns out that there are several processes of business actors not alone, namely there are travel agents and airport managers, so that they affect the downstream sector, namely aviation service businesses;

### 3.1.1 Ticket Buying Process

Nowadays, electronic transactions are an alternative choice for shopping for goods and services for the public. This is in line with the increase in the number of internet users in Indonesia by 10.2% with a total of 175.2 million users, which has reached 64% of the total number of Indonesians. These users use the internet to share information, read news, watch videos, and shop via the internet. Starting from shopping for necessities such as groceries, clothing, electronic devices to other needs carried out online. Convenience and a large selection of companies that provide discounts are the reasons users shop online. A study noted that from several types of e-commerce businesses, airline ticket

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29 Muhammad Yusri., Kajian Undang-Undang Perlindungan Konsumen Dalam Perspektif Hukum Islam, *Jurnal Justisia Ekonomika: Magister Hukum Ekonomi Syariah*, Vol.3 No.1, June 2019, page.87–99

30 Neni Sri Imaniyati., Perlindungan Konsumen Dalam Perspektif Hukum Bisnis Islam, *Asas*, Vol.6 No.1, 2014, page.95–105.

31 Hidayatullah and Afif., Paradigma Perdagangan Dalam Islam (Telaah Taradhin Dalam Akad Jual-Beli).

32 Mundhori Mundhori, "Tinjauan Hukum Islam Dan Undang Undang Perlindungan Konsumen (UUPK) Terhadap Jual Beli Barang Berformalin," *Jurnal Hukum Ekonomi Syariah* 6, no. 01 (June 2022): 77–95, <https://doi.org/10.26618/j-hes.v6i01.7717>.

sales occupied the third position as the most popular business by consumers using the internet <sup>33</sup>.

Air transportation will always start with a transportation agreement.<sup>34</sup> Law No. 1 of 2009 concerning Aviation provides a definition of a transportation agreement as an agreement between the carrier and the passenger and / or cargo shipper to transport passengers and / or cargo by aircraft, in exchange for payment or in the form of other service rewards will always begin with negotiations that occur between the parties to the agreement. Regulation of the Minister of Transportation Number 185 of 2015 concerning Standard Economy Class Passenger Services for Domestic Scheduled Commercial Air Transport divides service categories into 3 (three) namely before flight (pre-flight), during flight (in-flight), and after flight (post-flight). In Article 4 pre-flight is categorized in the process of booking tickets (reservation), issuing tickets (ticketing), reporting on tickets (check-in), and entering the air carrier aircraft (boarding) as well as handling related to flight delays and cancellations. The role of OTAs in air transportation is in the process of booking and issuing tickets or transportation documents <sup>35</sup>.

An example of a ticket breach case that occurred at PT Global Tiket Network as the manager of Tiket.com. This incident is known to have started when the manager of tiket.com as a travel agent reported to the Criminal Investigation Police that their access was hacked into the tiket.com buying and selling application system which took place from November 11 to 27 <sup>36</sup>. The brain behind this break-in case is SH (19). According to the results of the investigation, the junior high school graduate and his three colleagues MKU (19), NTM (27) and AI (19) have managed to break into 4,600 sites. The total loss is estimated to reach 4.1 billion Rupiah. SH hacked the Tiket.com site to get a username and password to enter the Citilink server using the ID. The goal was to get the booking code for Citilink airline tickets and then sell them to buyers. However, Haikal did not work alone, he had a team consisting of MKU, NTM, AI who were recruited through communication on social media and online games. MKU played a role in offering airline ticket sales through Hairul Joe's account on the Facebook social network MKU also helped SH hack the Tiket.com website. NTM is obliged to find prospective buyers through a Facebook account named Nokeyz Dhosite Kashir. After getting a prospective buyer, the prospective buyer's data is given to AI for further processing. AI is in charge of entering Citilink airline ticket order data from buyers, then the data is entered into the Citilink airline sales application using the username and password belonging to the Tiket.com travel

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33 Merdeka.com., Pembobol Tiket.Com Ditangkap, Lulusan SD & Belajar Hacking Otodidak," Merdeka.com, 2017.

34 Nafisa Khaerani Affap., The Influence Of Electronic Payment Systems And Impulsive Buying On Online Shopping Intentions At Shopee Indonesia, *International Journal of Education, Vocational and Social Sciences*, Vol.03 No.03, 2024, page.34–53.

35 Kristin Hutabarat and Adi Sulistiyono., Perlindungan Hukum Atas Pembatalan Sepihak Penerbitan Dokumen Pengangkutan Elektronik Oleh Online Travel Agent, *Privat Law*, Vol.10 No.April, 2022, page.13–22.

36 Merdeka.com., Pembobol Tiket.Com Ditangkap, Lulusan SD & Belajar Hacking Otodidak.



agent and after the airline booking code is obtained, then the booking code is sent to the buyer <sup>37</sup>.

In addition to the risk of customer data theft, this system weakness can be used by malicious people to reap financial benefits. Hackers may take a frequent flyer's flight data to benefit themselves. Hackers could also circumvent the system to obtain vouchers and book flights for themselves. Some airlines claim to have heard about the exposure, and are preparing to implement better cybersecurity systems. The problem is that the international ticket booking system with its six-digit code was not designed with the internet in mind. Most airlines are also comfortable with the current ticketing mechanism. Problems related to ticket hacking show that there are weaknesses in Indonesia's consumer protection laws regarding who should be responsible for the security of passenger tickets. Because so far, airline passengers or consumers of aviation services are in a weak position and airlines will certainly delegate the responsibility of this problem to the Online Travel Agent (OTA).<sup>38</sup>

### 3.1.2 Airport Process;

The weakness of the relationship between consumers and airline service business actors in the second phase is during the process at the airport. There are problems with the liability of business actors because the relationship between consumers and airline service business actors does not only depend on airlines as business actors, but also involves airport managers. This has an impact on the protection of consumers whose rights are violated. If in the process at the airport, consumers experience loss of goods, damaged or mixed luggage and wrong delivery or if consumers with special needs are not provided with wheelchair lanes or consumers in general, do not get good facilities at the airport and experience aircraft delays. It makes the airline will shift the responsibility for not fulfilling the principles of comfort, security and safety of consumers to the airport manager.

Regulations regarding the governance of airport business activities have not been accompanied by strict and clear regulations. The current management of airport services in Indonesia is still centralized, centered on state control rights. The monopoly nature of airports in Indonesia is still confirmed by the delegation of authority given by the government to certain business actors. The business actor is PT. Angkasa Pura (Persero) which is divided into PT. Angkasa Pura I (Persero) and PT. Angkasa Pura II (Persero) for two different areas of authority that are an extension of the government. PT. Angkasa Pura to become an airport operator as well as a regulator who is authorized to issue policies in the form of Directors Decree and determine which business actors can cooperate in conducting business activities at the airport. <sup>39</sup>

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37 Aiyad Khaiyat, *Analisa Kasus Tiket Pesawat Di Indonesia*, Surabaya, 2017.

38 Gannis Indra Setyawan, Kurniawan Kurniawan, and Lalu Wira Pria Suhartana., *Perlindungan Hukum Terhadap Hak Konsumen Penumpang Pesawat Udara Dalam Pembelian Premi Asuransi Melalui Situs Traveloka*, *Jurnal IUS Kajian Hukum Dan Keadilan*, Vol.7 No.1, April 2019, page.98–123,.

39 Angkasa Pura II., *Aviation Security Manual*, 9th Editio, Jakarta, Angkasa Pura II, 2014

Pancasila is the basis of thought in an aviation activity in Indonesia, the Indonesian economy is adjusted to the views of the people in Indonesia, so that the formulation of an aviation system based on Pancasila and the 1945 Constitution.<sup>40</sup> Where in Pancasila humans find a balance between life as a person, and life as a member of society. As stated in the 2nd and 5th precepts. The 2nd Precept states that a just and civilized humanity is a relationship between the prospective contributor and the flight manager must be based on a just and civilized humanity.<sup>41</sup> The 5th precept states that social justice for all Indonesian people that PT. Angkasa Pura II must maintain a balance between rights and obligations and respect the rights of others. In Law No. 1 of 2009 concerning Aviation there are principles and objectives in aviation, namely: 1) Providing maximum benefits for humanity, improving the welfare of the people and development for citizens, as well as efforts to improve the defense and security of the State, 2) The principle of joint business The principle of benefits, 3) The principle of fairness and equality, 4) The principle of balance, harmony, and harmony, the implementation of aviation must be carried out in such a way, 5) The principle of public interest, 6) The principle of integration, 7) The principle of the rule of law, 8) The principle of independence, 9) The principle of openness and anti-monopoly, 10) The principle of environmental insight, 11) The principle of State sovereignty, 12) The principle of nationality and 13) The principle of nationality, that every aviation operation always pays attention to the interests of the entire territory of Indonesia and the organization of aviation carried out by the region is part of the National aviation system based on Pancasila.<sup>42</sup>

### 3.1.3 Onboard Process;

The third relationship between consumers and Aviation Service Business Actors is the process when passengers enter the aircraft and fly to the destination airport. Some aspects of consumer protection in transportation that must be fulfilled by airlines are aviation safety aspects, in flight comfort aspects and aspects of claim submission.<sup>43</sup>

Aviation safety aspects contain the main objective of commercial aviation activities is flight safety. This aspect is closely related to consumer protection for users of commercial air transportation services, in this context, all airlines are obliged to anticipate all possibilities that can *harm* their passengers, therefore every commercial airline company is required to provide a fleet of reliable and flightworthy aircraft. Beside that, aviation safety aspects involve flight security

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40 Tiarto Tiarto., Kebandarudaraan Dan Fungsi Keamanan Penerbangan, *Jurnal Aviasi Langit Biru*, Vol.5 No.11, 2001, page.16–35.

41 Pujiyono Pujiyono and Umi Khaerah Pati., Legal Protection for the Loss of the Passenger of Online Transportation, *Yustisia Jurnal Hukum*, Vol.8 No.2, 2019, page.220

42 Teguh Hartono and Pujiyono Suwadi., Harmonization of Security Authority Arrangements in The Restricted Area at Soekarno-Hatta International Airport, in *Proceedings of the 3rd International Conference of Humanities and Social Science, ICHSS 2023, December 27, 2023, Surakarta, Central Java, Indonesia, 2024*, page.77–88.

43 Weny Ridiyan, Lita Tyestas ALW, and Anggita Doramia Lumbanraja., Perlindungan Hukum Bagi Pengguna Jasa Penerbangan Atas Keterlambatan Angkutan Penerbangan, *Notarius*, Vol.13 No.1, 2020, page.277–87

means being safe from various disturbances, both technical and disturbances from robbery, seizure, and terrorist attacks. In this aspect of security, the airline is obliged to guarantee safety during the flight.<sup>44</sup>

In-flight comfort aspects consists of the aspect of comfort in aviation, it means that commercial airlines are obliged to provide comfort to their passengers. The comfort aspect of the flight is closely related to the completeness of the aircraft such as seating, facilities, air conditioning, airport facilities.<sup>45</sup> The last aspect is claim submission aspects. In aviation activities, there is often a risk of accidents that cause losses to passengers, in connection with this, consumer protection is needed for passengers, namely the existence of settlement procedures or filing claims that are easy, fast and satisfying.<sup>46</sup>

The problems of airlines' liability for consumer protection in this process, in fulfilling the aspects of security, safety, comfort and claim submission, can be seen in the following cases; On April 3, 2016, Ms. Dwi Aryani had entered the Etihad Airways plane, at Soekarno-Hatta airport, which would fly her to Geneva via Abu Dhabi. She had already occupied the seat as stated in her boarding pass, but the cabin crew and the captain of the pilot refused to carry her and told her to exit the plane because she was using an unaccompanied wheelchair, which was considered to endanger the flight. Ms. Dwi protested because she had a ticket, had checked in according to procedures, had a boarding pass and was even assisted by ground handling staff to enter the plane. But in the end, she was still kicked off the flight. Saturday, June 9, 2018, a child traveling with his parents had undergone the check-in process and had received a boarding pass for a Citilink flight from Adi Sucipto airport, Yogyakarta, to Balikpapan. While waiting for the boarding process, the child was crying and screaming uncontrollably, which attracted the attention of Aviation Security (AvSec) officers. The officer then took the child (along with his mother) to the Port Health Office (KKP) for a health check. Subsequently, the doctor stated that the child with autism was not fit to fly and prohibited Citilink from flying him. The child's parents are regular customers who often take their children on Citilink<sup>47</sup>.

This means that people with disabilities are not sick people and should not be considered the same as sick people. The needs of people with disabilities are different from the needs of sick people, so the services and facilities provided are

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44 Oke Hendra, Rini Sadiatmi, and Zulham Hidayat., Governance Network On Aviation Safety: A Systematic Literature Review," *Journal of Airport Engineering Technology (JAET)*, Vol.4, no. 1 (December 2023): 01–11, <https://doi.org/10.52989/jaet.v4i1.114>.

45 Mansur Armin Bin Ali., Legal Status of Accident Investigation Results of Space Activities in The Process of Enforcement of Space Law Enforcement in Indonesia: Between Procedural Justice and Substance Justice, *Jurnal IUS Kajian Hukum Dan Keadilan*, Vol.11 No.2, August 2023, page.65–89

46 Paulina Chikha and Jacek Skorupski., The Risk of an Airport Traffic Accident in the Context of the Ground Handling Personnel Performance, *Journal of Air Transport Management*, Vol.105 No.4, October 2022, page.102295

47 Ambaranie Nadia Kemala Movanita., Perjuangan Dwi Aryani Mencari Keadilan Setelah Diusir Etihad Airways, *Kompas.com*, 2017, <https://nasional.kompas.com/read/2017/12/05/06575201/perjuangan-dwi-aryani-mencari-keadilan-setelah-diusir-etihad-airways?page=all>.

also different. International Air Transport Association/ IATA Resolution 700 regulates the acceptance and transportation of passengers with reduced mobility. Passengers with reduced mobility include people with physical or mental disabilities, or with certain medical conditions, who require special attention or assistance entering or exiting the aircraft, during flight and ground services. These services are provided upon special request by the passenger and/or his/her relatives or by medical personnel to airline personnel and/or its agents<sup>48</sup>.

Law No. 8 of 1999 on Consumer Protection as the legal basis used by consumers to defend their rights by demanding responsibility is based on several provisions, including articles 4 and 5 of the Consumer Protection Law regarding consumer rights and obligations. In addition, Articles 6 through 13 of the Consumer Protection Law regarding the rights and obligations of business actors and prohibited acts for business actors can also be used as the basis for consumer lawsuits. Meanwhile, articles specifically concerning the responsibility of business actors/producers are found in Articles 19, 23, 24, 25, 27 and 28 of the Consumer Protection Law. The provisions of the form of responsibility of business actors for products (product liability) and (strict liability) in the State of Indonesia can be described in Article 19 Paragraph 1 of the Consumer Protection Law which stipulates: "Business actors are responsible for providing compensation for damage, pollution, and / or consumer losses due to the consumption of goods and / or services produced or traded."

The concept of absolute responsibility is also contained in the provisions of Article 144 of Law No. 1 of 2009 concerning Aviation which states that the carrier is responsible for losses suffered by passengers due to lost, destroyed, or damaged checked baggage caused by air transportation activities as long as the checked baggage is in control. Regarding the amount of compensation is one of the important points to provide solutions to legal protection and build a security and comfort system related to public trust when passenger goods in the aircraft baggage are damaged or lost, this has been regulated in the provisions of article 5 paragraph (1) Permenhub 77 of 2011 which states that when there is a loss of checked baggage or the contents of checked baggage or checked baggage are destroyed, passengers have the right to compensation of Rp 200 thousand per kilogram and a maximum of Rp 4 million per passenger. However, when associated with the five cases above, of course the compensation provided for in the statutory provisions is not in accordance with the losses suffered by consumers.<sup>49</sup>

Arrangements regarding Cabin baggage in Article 143 of the Aviation Law are emphasized that the carrier is not responsible for the loss / damage of goods in cabin baggage unless the passenger can prove that the loss was caused by the

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48 Rizky Prayoga., *Internasional Liability Of Air Carrier To Passenger Disability Because Of Act Against Law Based On International Law Pendahuluan Kemajuan Pengangkutan Adalah Sebagai Akibat Kebutuhan Manusia Untuk Bepergian Ke Lokasi Atau Tempat Yang Lain Guna Mencari Bar*, Vol.3 No.1, 2019, page.129–43.

49 Harun Efendi and Renhard Harvee., *Pertanggungjawaban Maskapai Terhadap Kehilangan Barang Penumpang Pada Bagasi Pesawat (Studi Putusan Pengadilan Negeri Denpasar Nomor:6/PDT.G.S/2018/PN.DPS)*, *Lex Lectio Law Journal*, Vol.1 No.2, 2022, page.116–34.

actions of the carrier or the person employed by him. While the provisions regarding checked baggage according to Article 144 of the Aviation Law, the carrier is responsible for losses suffered by passengers in the form of loss of goods, destroyed or damaged due to air transportation activities as long as the baggage is checked and is in the custody of the carrier.<sup>50</sup> However, this article refers to the compensation contained in Minister of Transportation Regulation Number 77 of 2011 Article 5 paragraph 1, which of course causes losses on the part of consumers. Meanwhile, according to the Consumer Protection Law, especially Article 19 paragraph 4 states that the provision of compensation as referred to in paragraphs 1 and 2 does not eliminate the possibility of criminal prosecution based on further proof of the existence of elements of guilt.

The absolute liability of business actors is regulated in Article 141 through Article 147 of Law No. 1 of 2009 concerning Aviation, which has the weakness that it is only limited to regulating responsibility for the loss of passengers who die, permanent disability, or injuries caused by air transportation incidents in the aircraft and losses suffered by passengers due to lost, destroyed, or damaged checked baggage caused by air transportation activities while the checked baggage is under surveillance.<sup>51</sup> However, there is a legal loophole in Article 146 related to "unless the carrier can prove that the delay was caused by weather and technical operational factors.". Moreover, the amount of loss regulated in Article 5 of the Minister of Transportation Regulation Number 77 of 2011 concerning Air Carrier Liability, determining the loss of checked baggage or the contents of checked baggage or checked baggage destroyed is given compensation of IDR 200,000.00 (two hundred thousand rupiah) per kg and a maximum of IDR 4,000,000.00 (four million rupiah) per passenger, has not provided fair legal certainty for consumers of aviation services. Especially when relying on the norm of business actor responsibility in Article 19 Paragraph (1) of Law No. 8 of 1999 concerning Consumer Protection, which is only limited to stipulating "Business Actors are responsible for providing compensation for damage, pollution and / or consumer losses due to consuming goods and / or services produced or traded."

There are weaknesses in regulations and relations in the accountability of aviation service business actors in Indonesia. The accountability norms in the consumer protection law as a lex specialist for consumer protection are not yet based on legal benefits because the rules are open to multiple interpretations regarding the accountability of business actors because they do not differentiate the definition of goods business actors with service providers and combine goods and/or services so that they become confusing.<sup>52</sup> Returning goods is possible but

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50 Sitti Ma'rifah Nisrina Arifin and Dea Larissa., Pertanggungjawaban Hilang Atau Rusaknya Barang Bagasi Pesawat Di Bandara Sultan Hasanuddin Makassar, *Siyasatuna: Jurnal Ilmiah Mahasiswa Siyasa Syar'iyah*, Vol.1 No.2, 2020, page.318–28.

51 Kadek Oka Putra Astawa and Yulia Aji Puspitasari., Analisis Pengamanan Pagar Perimeter Dalam Menunjang Keamanan Penerbangan Di Bandar Udara Internasional Adi Soemarmo, *El-Mal: Jurnal Kajian Ekonomi & Bisnis Islam*, Vol.5 No.1, 2023, page.274–89

52 Alfadilla Khunaini et al., Mengoptimalkan Sistem Keamanan Pada Industri Penerbangan Dengan Konsep Dasar Manajemen Sekuriti, *Jurnal Ilmu Multidisplin*, Vol.2 No.1, 2023, page.

the regulation on how to return services has not been regulated (Article 19 and Article 1). Likewise, the rules for including standard clauses in Article 18 which are open to multiple interpretations have the potential to cause arbitrariness. There are contradictory norms in Articles 54 and 56 of the consumer regulation, which mandate *Badan Penyelesain Sengketa Konsumen* (BPSK) as a consumer dispute resolution institution whose decisions are final and binding but can be objected to. The next weakness is the institutional structure of *Badan Penyelesain Sengketa Konsumen* (BPSK) as a dispute resolution body as well as a government institution that oversees the inclusion of standard clauses (Article 54 letter c). And it has an impact on the regulation not being able to be implemented. The problem of relations, the relationship between consumers and aviation service actors begins with a contractual relationship in the form of airline tickets. However, legal problems arise because consumer protection for aviation services from upstream to downstream sectors involves many parties related to responsibility for consumer protection.

### **3.2 The Reconstruction of Liability Arrangements for Airline Service Business Actors in Indonesia in The Perspective of Islamic Law**

The legal liability of Aviation Services business actors in Indonesia is currently regulated based on Article 19 paragraph 1 of the Consumer Protection Law, namely: "Business actors are responsible for providing compensation for damage, pollution, and / or consumer losses due to consuming goods and / or services produced or traded", has many shortcomings because in addition to vague liability norms, the position of business actors and consumers is not equal, putting consumers in a weak position.<sup>53</sup> Therefore, it is necessary to reconstruct the regulation of the norm of liability of aviation service business actors in Indonesia in order to protect consumers in order to obtain fair legal certainty as mandated by the Preamble of the 1945 Constitution in the Fourth Paragraph, the Precepts of Fair and Civilized Humanity, the Precepts of Social Justice for All Indonesian People and Article 28D Paragraph (1) of the 1945 Constitution.

This is in line with the sources of law in Islam which have been agreed upon by a person who understands the rules (*Faqih*), namely based on the *Qur'an*, *Sunnah*, *Ijma'*, and *Qiyas*. These sources of law are used as a reference in making consumer protection law in Islam. The Qur'an is the first source of law (primary source) in Islamic teachings. Sunnah is the second source of law (secondary source) after the Qur'an, and can be used as the first source of law (primary source) if no explanation of a problem is found in the Qur'an. As for *ijma'* is the agreement of all *mujtahids* from among Muslims at a time, after the death of the Prophet Muhammad on Islamic law regarding an event or case<sup>54</sup>. *Ijma'* is only determined after the death of the Prophet Muhammad and can only be used as a

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53 Jennifer Angela and Pande Yogantara., *Perlindungan Hukum Terhadap Konsumen Akibat Perubahan Sepihak Jadwal Penerbangan Tiket Transportasi Udara*, *Jurnal Kertha Desa*, Vol.11 No.7, 2023, page.2975–84.

54 Pratiwi Pusphito Andini., *Perlindungan Hukum Bagi Konsumen Muslim Terhadap Kehalalan Produk*, *Jurnal Kajian Konstitusi*, Vol.2 No.2, December 2022, page.181.

source of law if no explanation or legal norms are found in the Qur'an or sunnah regarding a problem or case. While qiyas is linking an event that has no statute (*nash*) to an event that has statute (*nash*) in the law that has been determined by the *nash*. *Qiyas* is a method of law-making based on the legal *illat* (*qiyas* element) contained therein <sup>55</sup>.

According to Islamic law, there are six consumer rights that require serious attention from business actors, namely<sup>56</sup>; 1. The right to obtain information that is true, honest, fair, and free from falsification 2. The right to product safety and a healthy environment 3. The right to advocacy and dispute resolution 4. The right to protection from abuse of circumstances 5. The right to compensation for negative consequences of a product 6. The right to choose and obtain a fair exchange rate In Islam, the loss or physical *harm* suffered by consumers due to product defects or fraud is an act that is not justified, therefore business actors / producers must be responsible for their actions.

Liability if connected with the cause of compensation (*dhaman*) can be divided into five, namely<sup>57</sup>: 1. Compensation for Damage (*Dha man Itlaf*) 2. Compensation for Transactions (*Dhaman 'Aqdin*) 3. Compensation for Actions (*Dhaman Wadh'u Yadin*) 4. Compensation for Detention (*Dhaman al-Hailulah*) 5. Compensation for Deceit (*Dhaman al-Maghrur*). *Dhaman Itlaf* is compensation for damage to goods. *Itlaf* compensation is not only related to property damage, but also concerns the human soul and limbs. *Dhaman 'aqdin* is the occurrence of an agreement or transaction as the cause of compensation or responsibility. *Wadh'u yadin* compensation is compensation for damage to goods that are still in the hands of the seller if the goods have not been delivered in a valid contract and compensation for taking someone else's property without permission. *Dhaman al-hailulah* is compensation for the service of entrusting goods (*alwadi*) in the event of damage or loss, whether the damage or loss is caused by negligence or intent of the person entrusted. *Dhaman al-maghrur* is compensation for deceit. *Dhaman al-maghrur* is very effectively applied in consumer protection, because all forms of actions that can *harm* others the culprit must pay compensation as a result of his actions <sup>58</sup>.

The main principle or foundation of all business activities in Islamic law is placed on the highest principle, namely *tawhid* (glorifying Allah SWT). From this principle, the principle of *istikhlaf* was born, which states that what is owned by humans is essentially a deposit from Allah SWT, humans are only as trustees

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55 Amanda Tikha Santriati., *Perlindungan Hak Konsumen Dalam Perspektif Hukum Islam Dan Undang-Undang Nomor 8 Tahun 1999*, *Opinia de Journal*, Vol. 2 No. 2, 2022, page.526–42.

56 Liantika Rizky Rindani., *Perlindungan Konsumen Menurut Undang-Undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen Dan Hukum Islam*, *Al-Mazaahib: Jurnal Perbandingan Hukum*, Vol.5 No.1, June 2017, page.21–54

57 Hamzah Hamzah and Muhammad Anis., *Perlindungan Hukum Terhadap Konsumen Pengguna Jasa Laundry Dalam Perspektif Hukum Islam*, *El-Iqtishady: Jurnal Hukum Ekonomi Syariah*, Vol.4 No.1, 2022, page.185–97.

58 Khotimah Nurul Kurniawan Akta., *Analisis Hukum Islam Tentang Perlindungan Hukum Terhadap Konsumen Menurut Undang-Undang No. 8 Tahun 1999*, *Jurnal Hukum Ekonomi Syariah*, Vol.1 No.8, 2021, page.1–10.

given to him. From the principle of tawhid also gave birth to the principle of *al-ihسان* (benevolence), which means carrying out good deeds that can provide benefits to others without any specific obligations that require him to carry out these actions. Of the three principles above gave birth to the principles of *al-amanah*, *ash-shiddiq*, *al-adl*, *al-khiyar*, *at-ta'wun* and *at-taradhin*. According to the principle of al-amanah, every business actor is a trustee for the future of the world with all its contents (*kholifah fi al-ardhi*), therefore whatever he does will be held accountable before humans and before the creator (Allah SWT). *Ash-shiddiq* is honest behavior, the most important thing in doing business is honesty.<sup>59</sup>

From the discussion above, it can be explained that the principles of consumer protection in Islamic law are broader and more comprehensive than the principles of consumer protection in the consumer protection act, which in Islamic law not only regulates horizontal relationships, namely the relationship between business actors and consumers or business actors with other business actors (*hablum minannas*), but Islamic law also regulates vertical human relations (*hablum minallah*), namely the relationship between humans (*business actors and consumers*) and Allah SWT as the owner of this universe and its contents. Meanwhile, the consumer protection act only regulates the relationship between business actors and consumers as stipulated in Article 2. This is as in QS. *An-Nisa*: 29 as follows:

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالَكُم بَيْنَكُم بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِّنْكُمْ ۗ وَلَا تَقْتُلُوا أَنْفُسَكُمْ ۗ إِنَّ اللَّهَ كَانَ بِكُمْ رَحِيمًا

The meaning: *O you who believe! Do not eat from one another's wealth by false means, except in trade that is consensual between you. And do not kill yourselves. Indeed, Allah is Most Merciful to you.*

Reconstruction of the settlement of the corporate liability of aviation service business actors can be carried out in several aspects: 1). Reconstruction of the substance of the regulation of the liability of aviation service business actors, namely based on the benefits of normative law regarding the rights and obligations of consumers, the rights and obligations of goods and service providers, standard agreement standards, consumer protection settlement mechanisms, implementation of consumer protection institutions, improvement of regulations on prohibitions on goods and service providers. 2). Reconstruction of the regulation of the institutional structure of the government related to the interests of consumers who have the function of protecting aviation service consumers and resolving settlements. Firmly and clearly regulate the main tasks and functions and authorities of *Badan Penyelesain Sengketa Konsumen* (BPSK) and *Badan Perlindungan Konsumen Nasional* (BPKN). And in order to protect aviation service consumers, it is necessary to form a Directorate of Consumer Protection at the Ministry of Transportation, as has been established at the

59 Jaya Miharja., Konsep Ganti Rugi Perspektif Hukum Islam, *Mu'amalat: Jurnal Kajian Hukum Ekonomi Syariah*, Vol.8 No.2, December 2016, page.133–55



Ministry of Energy and Mineral Resources. There must be a dedicated section/person or a special section for consumer protection in government institutions/agencies regarding the protection of aviation service consumers. 3). Reconstruction of security governance arrangements at airports in order to fulfill the principles of security, safety and comfort. The role of the police must be involved in airport security governance because the *Kepolisian Republik Indonesia* (POLRI) institution has the resources and infrastructure to implement three strategies in protecting aviation service consumers. The three strategies include strategies on early detection and pre-emptive, preventive and repressive-investigative functions as implemented in Malaysia, Singapore, Australia and America as fellow ICAO members. Only Indonesia does not involve police officers in the restricted area of the airport, unless there has been an unlawful act.

*Al-adl* is justice, balance, and equality that describes the horizontal dimension and relates to the harmonization of everything in this universe. *Al khiyar* is the right to choose in business transactions, Islamic law establishes this principle to maintain disputes between business actors and consumers. *Ta'awun* is helping, *ta'awun* has a very important meaning in this life because there is not a single human being who does not need help from others, so helping each other is a necessity, especially in an effort to increase goodness and piety to Allah SWT. For this reason, in relation to transactions between consumers and producers, this principle must be imbued by both parties<sup>60</sup>. The principle of security and safety, in Islamic law there are five things that must be guarded and maintained (*al-dharuriyyat alkhamisah*), namely: (1) maintaining religion (*hifdh al-din*), (2) maintaining the soul (*hifdh al-nafs*), (3) maintaining the mind (*hifdh al-aql*), (4) maintaining offspring (*hifdh nasl*), and maintaining property (*hifdh al-maal*)<sup>61</sup>. The principle of *at-taradhi* (willingness). One of the conditions for the validity of buying and selling in Islam is *aqad* or transaction. *Aqad* or transaction will never occur except with *shighat (ijab-qabul)*, which is anything that shows the willingness or agreement of both parties (seller and buyer).<sup>62</sup>

A good regulation of the liability of aviation service business actors to protect consumers must basically provide strict sanctions if there is a violation of consumer rights.<sup>63</sup> We can take a comparison of liability arrangements related to compensation in Malaysia, which is a majority Muslim country and uses Islamic law as one of the references for making the Consumer Protection Law. The maximum liability for businesses in the event of lost or delayed baggage is 1,131 Special Drawing Rights (SDR). The value of SDR is based on five major currencies - the US dollar, Euro, Japanese Yen, Pound Sterling and Chinese

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60 Asmuni., Teori Ganti Rugi Dalam Perspektif Hukum Islam The Compensation Theory in Islamic Law Perspectives, *Jurnal Hukum Dan Peradilan*, Vol.II No.1, 2013, page.45–66.

61 Lidia Fathaniyah et al., Pandangan Hukum Islam Terhadap Ganti Rugi Dalam Pengadaan Tanah Yang Dipergunakan Untuk Kepentingan Umum, *Proceedings Series on Social Sciences & Humanities*, Vol.5, 2022, page.39–44

62 Ro'fah Setyowati and Bagya Agung Prabowo., Sharia Principles in the Financial Services Authority Regulation on Dispute Settlement Alternatives, *Sriwijaya Law Review*, Vol.5 No.1, January 2021, page.56

63 Elfrida Ratnawati., The Impacts of Government Policy on Covid-19 to Airlines Liability: A Case Study in Indonesia, *Jambura Law Review*, Vol.3 No.1, December 2020, page.72–92.

renminbi (all of which fluctuate against the Ringgit from time to time) <sup>64</sup>. So the compensation covered by the airline for lost or delayed baggage is IDR 22,630,733 when converted to Indonesian rupiah. If the customer leaves the airport and finds that the baggage is damaged, a report must be filed no later than seven (7) days from the date of receipt of the baggage through the online portal. It can also be done at the baggage office located within the baggage claim area/online via the Baggage Reporting portal. <sup>65</sup>.

When compared with the regulation of the corporate liability of aviation service providers in Singapore, in principle it is divided into two parts, namely for local consumers and non-local consumers. For local consumers traveling domestically, they are entitled to compensation under a Singapore law called the Civil Aviation (Carrier's Liability) Act. You can be compensated up to a maximum of \$3,000 for checked baggage and \$300 for unchecked baggage. So in nominal rupiah terms, the compensation received is between IDR 4,421,910 - 44,219,100. In principle, it depends on the form of lost goods owned by consumers <sup>66</sup>. For international travel, airline liability is covered by one of two international treaties: Montreal Convention or Warsaw Convention. These conventions have different compensation amounts so it is worth reviewing the website of each airline used and for next steps, e.g. filing a separate lost baggage claim <sup>67</sup>.

The next comparison of liability arrangements for airline service business actors is with Australia. Compensation arrangements for consumers in Australian airports if items in checked baggage are lost and considered delayed by the airline for the first 21 days. At that time, the airline is responsible for finding it and delivering it to the consumer. If the airline cannot find it by then, the consumer receives compensation for the loss of his or her item. The rules vary slightly depending on whether the purpose of traveling is within Australia or not. To apply for compensation for lost items, there are two different aspects:<sup>68</sup> the first from Airlines, it is most airlines officially consider a consumer's baggage lost when it has been missing for 21 days for both domestic and international flights. Once these three weeks have passed, consumers can file a claim with the airline. This does not take too long, and usually involves filling out a claim form on the airline's website. The second from Travel insurance, airlines tend to only cover what is legally expected of them; usually up to \$1,600 for checked baggage. If there is a shortfall between what the airline pays the consumer and the value of

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64 Malaysian Aviation Commission., Lost, Damaged and Delayed Baggage in Malaysia., Malaysian Aviation Commission, 2023, <https://www.mavcom.my/en/consumer/lost-damaged-and-delayed-baggage/>.

65 Malaysia Airlines., Mishandled Baggage, Malaysia Airlines, 2023, <https://www.malaysiaairlines.com/my/en/help/mishandled-baggage.html>.

66 Singapore Airlines., Delayed or Damaged Baggage, Singapore Airlines, 2023, [https://www.singaporeair.com/it\\_IT/it/travel-info/baggage/delayed-or-damaged-baggage/](https://www.singaporeair.com/it_IT/it/travel-info/baggage/delayed-or-damaged-baggage/).

67 Maurice Blackburn Lawyers., Lost Luggage? Know Your Rights, Maurice Blackburn Lawyers, 2022, <https://www.mauriceblackburn.com.au/blog/consumer-protection/lost-luggage-know-your-rights/>.

68 Lily Jones., What Happens When an Airline Loses Your Luggage?, Finder Australia, 2021, <https://www.finder.com.au/lost-luggage#:~:text=International travel-,Domestic travel within Australia,passenger for your carry-on.>

the loss or possessions, then the remaining consumer can make a claim for the difference with the travel insurance used.<sup>69</sup>

Based on the several comparisons related to compensation for consumers in several countries have different rules and in Indonesia referring to the rules of the Minister of Transportation Regulation Number 77 of 2021 it turns out that the value of compensation received by consumers is not commensurate. This results in legal certainty for the safety of goods and people that cannot be achieved in a fair and balanced manner. Regulating the liability of aviation service business actors in the future (*ius constituendum*) can be done in several aspects, namely: Redefinition of the terminology of Aviation Service Producers or Business Actors in the Consumer Protection Law and Aviation Law as well as the *Al-Quran and Hadith*, Reconstruction of the Norms of Liability of Aviation Service Business Actors in the Law on Consumer Protection or the Aviation Law or harmonization of regulations related to the liability of aviation service business actors using the principles of consumer protection in Islamic law and the last by Reconstructing the regulation of the liability of aviation service business actors in the event of negligence or error through alternative dispute resolution, by empowering the Consumer Dispute Resolution Agency and the Non Governmental Consumer Protection Agency, including involving the *Majelis Ulama Indonesia* (MUI) to help resolve consumer disputes quickly and efficiently, by prioritizing consensus. *Majelis Ulama Indonesia* (MUI) is expected to play a role in socializing on the rights of the consumer aviation service as well as encouraging a culture of islamic law to have equality between business and flight service users and regularity properly regulated by the government.<sup>70</sup>

Based on the above description of the importance of reconstructing the regulation of the liability of aviation service business actors in Indonesia is in line with what is conveyed in QS. *Al Baqarah*: 279 regarding the prohibition of committing *harmful* acts between others. Consumer protection in Islamic law is more comprehensive in viewing equality between business actors and weak consumers. So the prescription in the future based on the *Qur'an and Al-Hadith* is to look more at equality and not to *harm* each other, if you look at the responsibility of business actors, the essence of regulating compensation for consumer rights is not feasible so that it *harms* consumers. This is related to consumer protection, so it is necessary to balance the bargaining position so as not to *harm* and make mutual oppression as in the following verse:

فَإِنْ لَّمْ تَفْعَلُوا فَأْذَنُوا بِحَرْبٍ مِّنَ اللَّهِ وَرَسُولِهِ وَإِنْ تُبْتُمْ فَلَكُمْ رُءُوسُ أَمْوَالِكُمْ لَا تَظْلِمُونَ وَلَا تُظْلَمُونَ

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69 Majeed Omer, Breunig Robert, and and Adrian Domazet., *How Competition Impacts Prices: The Australian Aviation Sector*, Australia, 2024

70 Muhammad Maulana Hamzah., Peran Dan Pengaruh Fatwa Mui Dalam Arus Transformasi Sosial Budaya Di Indonesia, *Millah: Journal of Religious Studies*, Vol.17 No.1, 2018, page.127–54

The meaning: *If you do not do so, then announce war from Allah and His Messenger. But if you repent, then you have the right to your property. You have neither wronged nor been wronged.*

Referring to the verse of *Al Baqarah* above, it shows that fellow human beings are not allowed to commit violence. The meaning of the verse explains that between humans should not do things that *harm* each other. This, if correlated with the problem above, becomes ideal because in presenting the problem of solutions for aviation service business actors by reconstructing existing regulations with an Islamic law approach. The ideal concept found in overcoming the weak corporate responsibility of aviation service business actors, can be done by: Reconstructing the substance of the regulation of the responsibility of aviation service business actors, namely based on the benefits of normative law. In addition, Reconstructing the regulation of the institutional structure of the government related to the interests of consumers who have the function of protecting aviation service consumers and resolving the settlement. government related to the protection of aviation service consumers. Finally, with the Reconstruction of security governance at the airport in order to fulfill the principles of security, safety, and comfort. This is reminded in QS. *Al Baqarah*: 279 so that as much as possible the position between aviation service business actors and consumers is balanced. This condition is considering that in resolving using Islamic law it is easier because in its application it prioritizes people who need immediate assistance without harming other parties. In addition, with the Islamic legal approach, the application of this problem also does not result in any party being harmed, namely consumers. The conditions above will be different if the existing problems are studied using a legal theory approach because with some theories used, happiness is prioritized first so that it has an impact on the number of people who are sacrificed for the solutions that are carried out or discarded. Therefore, it is important to have an Islamic legal approach considering that in QS. *Al Baqarah*: 297 it prioritizes common interests without having to sacrifice many parties in making decisions or policies on a problem.

#### **4. CONCLUSION**

The accountability corporate of aviation service business actors in Indonesia has so far been weak in regulations and relationships in consumer protection laws. The norm of accountability as a specialist lex for consumer protection has not been based on legal benefits because it has not fulfilled the principle of *Al-adl* because of justice, balance, and equality that describe the horizontal dimension and are related to the harmony of everything in this universe. In this case, it is related to aviation service crimes that are stronger and tend to oppress consumers who are in a weak position. There are rules that have multiple interpretations regarding the accountability of business actors because they do not differentiate the definition of goods business actors with service providers and combine goods and/or services so that they become confusing. Returning goods is possible but the regulation on how to return services has not been regulated. Likewise, the rules for including standard clauses in also have the

potential to cause arbitrariness. There are contradictory norms related to *Badan Penyelesain Sengketa Konsumen* (BPSK) as an institution for resolving consumer settlements whose decisions are final and binding but can be approved. The institutional structure of *Badan Penyelesain Sengketa Konsumen* (BPSK) as a dispute resolution body as well as a government institution that oversees the inclusion of standard clauses has an impact on the rules not being able to be implemented. The problem of relationships, the relationship between consumers and aviation service actors begins with a contractual relationship in the form of airline tickets. However, legal problems occur because consumer protection of aviation services from upstream to downstream sectors involves many parties related to the responsibility for consumer protection. So based on the *Al-adl* principle in *maqashid syariah* and as a consequence of Indonesia adopting a welfare state as regulated in the constitution, it is necessary to reconstruct the regulations in the form of: Reconstruction of the Accountability Norms of Aviation Service Business Actors in the Consumer Protection Law or Aviation Law. In addition, Reconstruction regarding the regulation of the accountability of aviation service business actors in the event of negligence or error through alternative resolution, by empowering the Consumer Dispute Resolution Agency.

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