

Valuation of non-financial loss due to death: A study from Aircraft Passenger on Airplane Crash in Indonesia

Gregorius Lanang¹, Maycarl Bernandinus², Elisabeth Sundari³

^{1,2}Students of Postgraduates Faculty of Law, Universitas Atma Jaya Yogyakarta.

³Lecturer of Faculty of Law, Universitas Atma Jaya Yogyakarta

Date of Submission: 20-06-2023

Date of Acceptance: 29-06-2023

ABSTRACT: Generally, the amount of non-financial civil damages is difficult to determine under the Indonesian legal system. This research aims to demonstrate a new approach to valuing non-financial losses resulting from death by studying passengers involved in airplane crashes in Indonesia. The research examines legal policies that govern the determination of non-financial losses resulting from passenger deaths in aircraft crashes within the Indonesian legal system. The qualitative data will be analyzed to explain the emergence of a new valuation era for non-financial losses caused by death. The results reveal that Ministerial Regulation No. 77 of 2011 serves as a pioneer in the Indonesian legal framework, setting the value of damages resulting from death, serious injury, and permanent disability due to aircraft accidents at Rp.1,250,000,000. The establishment of this value for intangible losses, on one hand, provides certainty to judges and ensures consistency in determining the amount of damages resulting from death, thereby avoiding disparities. On the other hand, for the victims, it may serve as an unfair limitation since the value of damages resulting from death, serious injury, or permanent disability is inherently subjective.

KEYWORDS: Valuation, Non-Financial Loss, Airplane Crash.

I. INTRODUCTION

Airplanes are one of the best choices for consumers in traveling both short and long distances. Aircraft transportation is a popular transportation medium for the community because it provides convenience for consumers to be able to move from one city to another. Aircraft is a part of the aviation system which consist of the use of airspace, aircraft, airports, air transportation, flight navigation, safety and security, the environment, as

well as supporting facilities and other public facilities.

Even Though aircraft is the most efficient and fast air transportation, on the other hand, the operation of aircraft, both civil and state, has the potential risk of having an accident, even the current aviation technology is very sophisticated. Accidents can still occur and users of transportation services often suffer losses due to several factors. The U.S aviation industry for instance, faced severe financial losses after the 9/11 incident. The financial loss that occurred between 2000 and 2009 in the U.S. alone was \$54 billion dollars. The rate of fatal accidents and hull losses is steadily decreasing over time. However, once an air accident occurs, it can be certain that it will result in almost all passengers being killed. Therefore, safety, efficiency and strict regulations are very important in air transportation. Any disruption to air transportation will harm passengers, cargo shippers, and can endanger the aircraft and the flight itself. Some airplane accidents are usually caused by several things such as human error, weather, technical, hitting other objects, airport facilities and unknown factors.

Even with good technology and operational standards, it does not guarantee that aircraft with modern technology can also experience loss of aircraft control or human error. Even with steadfast technological advancement, human error still carries the highest percentage of causal factor in aviation accidents. Human error is an unintentional act and is generally caused by skill-based errors. Human error is a form of error or failure that occurs because it is in the process of achieving certain goals. For example, in the case of a traffic accident, the driver was drowsy, drunk, tired, unskilled, disorderly, emotionally uncontrolled, and using a cell phone while driving.

Human error may cause loss of aircraft control that can be defined as the loss of control of the aircraft that causes an accident incident and when the pilot loses control to maintain the rudder of the aircraft during flight. In addition to loss of aircraft control, there are many other factors that cause aircraft accidents in flight such as:

a. Machine malfunction

As much as 20 percent of airplane accidents are caused by damaged engines. Although aircraft engines are routinely repaired, sometimes the engine is quite badly damaged.

b. Unfavorable weather

One of the other factors causing aviation accidents is weather conditions that are less favorable for flight. Approximately 12 percent of airplane accidents are caused by weather conditions. Although today's aviation technology is advanced and supported by flight navigation, it is useless in front of extreme weather such as storms or snow.

c. Sabotage above the clouds

Sabotage above the clouds needs to be watched out for. It is a contributing factor to accidents. Less than 10 percent of flight failures in Indonesia come from sabotage. Indeed, the level of accidents due to sabotage is not as great as one might think, but throughout the history of aviation there have been quite astonishing incidents.

d. Airline negligence

The next factor that causes airplane accidents is negligence on the part of the airlines, specifically the federal air traffic controllers. In 1991 a US Airways plane crashed and collided with a SkyWest plane, resulting in 35 deaths and 29 injuries.

On the occasion of an airplane crash, Article 141 paragraph 1 of Indonesian Law 1 of 2009 concerning Aviation states that the carrier is strictly liable for the loss of passengers who die, permanent disability, or injury, caused by air transportation events in the aircraft and / or up and down the aircraft. Paragraph 2 of Article 141 provide the carrier liability based on fault. This legal policy protects passengers of airplane as the consumer in the event of aircraft injury in two principles. First, consumer protection based on strict liability as promulgated in Article 141 Paragraph 1. Second, consumer protection based on liability based on fault as provided in Article 141 Paragraph 2. Passengers who suffer losses as a result of an accident can claim compensation. There are two different losses that can be claimed

according to law, the economic or financial losses, and non-economic losses.

Non-financial losses are losses that can't be easily determined, such as pain, suffering, and emotional distress. The ambiguity of these boundaries leads to uncertainty regarding both the measurement and magnitude, which in turn affects the lack of clarity in providing protection for victims of wrongful acts, including passengers as victims in airplane accidents. Research on consumer protection for airplane passengers who experience accidents in Indonesia is still relatively small. Dewi, Yuliana, Pratama, , emphasize their research focus on consumer protection over flight delays. Turisno, et al, Sukadana, Taira study about consumer protection in case of delay and baggage lost. This study focuses on different aspect relating with legal policy to passengers who are the victims of airplane crash. The results of this study can contribute to better efforts to protect airplane passengers in the future.

II. RESEARCH METHODS

This research uses normative legal research, normative legal research is a process to find legal rules, legal principles, and legal doctrines to answer the legal issues at hand. It examines the Indonesian consumer protection legal policies together with its implementation. The data includes Law No.1 of 2009 concerning Aviation, Law 8 of 1999 on Consumer Protection, Minister of Transportation Regulation No. 77 of 2011 regarding the Liability of Air Carriers. Minister of Finance Regulation No. 37/Pmk.010/2008 concerning the Amount of Compensation and Mandatory Contributions to the Mandatory Passenger Accident Insurance Fund for Public Passenger Transport by Land, River/Lake, Ferry/Crossing, Sea, and Air. The data will be analyzed qualitatively to show the dynamic of consumer protection implementation in the case of airplane accidents. The results are drawn with a deductive mindset to make conclusions.

III. RESULT AND DISCUSSION

In recent years, air transportation activities have witnessed a series of frequent accidents, resulting in losses for passengers as consumers. Airplane accidents can be caused by various factors, including human factors, aircraft machinery, and weather conditions. According to the International Civil Aviation Organization (ICAO), the definition of a civil aircraft accident (Accident) is "an event related to the operation of an aircraft that occurs from the time a person boards the aircraft for the purpose of flight until a

time when all persons have left (disembarked from) or exited the aircraft". According to ICAO, there are 7 types of aircraft accidents, namely: Runway Excursion, Abnormal Runway Contact, System/Component Failure, Loss of Control In-flight, Controlled Flight Into Terrain, Undershoot/Overshoot, and FIRE (F-NI and F-POST). According to Article 1 point (2) of the Minister of Transportation Regulation No. 77 of 2011, an accident is an event in the operation of an aircraft that results in serious damage to the equipment or facilities used and/or loss of life or serious injury.

The Rights of Aircraft' Passenger as Consumer

Airplane passengers are consumers because they are users of services offered to the public, specifically aviation services, which are not intended for trading or are air transportation service users. As consumers, passengers have certain rights and also obligations, of course. The rights of airplane passengers can be seen in several provisions of Law No. 1 of 2009 concerning Aviation. These rights are a form of legal protection provided to consumers.

Consumer protection is a concept that aims to provide legal protection to consumers in their efforts to fulfill their needs and protect them from losses that can arise from the products or services they consume. This term is becoming increasingly important along with the increasingly complex products and services available on the market, as well as the higher risk of loss that can be experienced by consumers. In an effort to protect consumers from the risks of losses that may occur, the law as a regulation that regulates the rights and obligations for consumers establishes sanctions for producers of service providers and services that violate consumer rights. Consumer protection is regulated in Law No. 8 of the Year on Consumer Protection. Article 1 point 1 of Law No. 8 of 1999 on Consumer Protection states that "Consumer protection is all efforts that ensure legal certainty for the protection of consumers". The meaning of consumer protection stipulated in Article 1 paragraph (1) of Law Number 8 of 1999 concerning Consumer Protection is all efforts that ensure legal certainty to provide protection to consumers.

Passengers who suffer losses in an accident are both victims and consumers who require protection. The definition of victims according to Arif Gosita is those who suffer physically and mentally as a result of the actions of others who are against their own interests or other people who seek the fulfillment of their own

interests or other people who are against the interests of the human rights of those who suffer. According to Happy Sutanto, legal certainty to provide protection to consumers in the form of protection of consumer rights, which is strengthened through a special law, gives hope that business actors will not act arbitrarily which is always detrimental to consumer rights.

Consumer protection is based on several principles, including:

a. The principle of responsibility based on negligence.

Responsibility based on negligence is a subjective principle of responsibility, meaning that responsibility is determined by the element of negligence in the producer's behavior.

b. The principle of responsibility based on Breach of Warranty.

Claims based on breach of warranty can be accepted even without a contractual agreement, but considering that in the current business context, distribution and advertising are done directly to consumers through mass media. Therefore, a binding contractual relationship between the producer and the consumer is not required.

c. The principle of Absolute Liability.

The basis of this principle is that consumers have limitations in protecting themselves from the risks of losses caused by defective products. Therefore, the application of this principle provides protection to consumers without burdening them to prove the manufacturer's fault regarding the use of a product.

According to Article 3(a) of Law No. 1 of 2009, there are two main principles that must be observed, namely that air transportation must be conducted to ensure safety and security. This safety and security are aimed at the aircraft itself, passengers, and the cargo being transported by the aircraft. The provision regulates the rights of airplane passengers regarding flight safety and security. The rights to safety and security of passengers as consumers are also known as general consumer rights as regulated in Article 2 and Article 4, letter a of Law No. 8 of 1999.

In addition to the principle of safety and security, Article 2 of Law No. 8 of 1999 on Consumer Protection also regulates other principles of consumer protection, namely the principles of benefit, justice, balance, and legal certainty. The principle of safety and security aims to protect consumers. The rights of consumers regulated in the Consumer Protection Law are the

implementation of consumer protection, including:

- a. the right to comfort, security, and safety in consuming goods and/or services;
- b. the right to choose goods and/or services and receive them according to the promised exchange value, conditions, and guarantees;
- c. the right to accurate, clear, and honest information about the condition and guarantee of goods and/or services;
- d. the right to express opinions and complaints about the goods and/or services used;
- e. the right to advocacy, protection, and fair dispute resolution efforts in consumer protection;
- f. the right to consumer education and training;
- g. the right to be treated or served correctly, honestly, and without discrimination;
- h. the right to receive compensation, indemnification, and/or replacement if the received goods and/or services do not conform to the agreement or as they should be;
- i. rights regulated in other relevant laws and regulations.

To ensure the safety and security of passengers, according to the provisions of Article 55 of Law No. 1 of 2009, the aircraft pilot-in-command is authorized to take actions to ensure safety, order, and security during the flight. This includes situations such as aircraft engine malfunctions, weather disturbances, or disruptions caused by passengers that endanger the safety and security of the aircraft.

The government regulates the requirements for flight safety and security. These requirements include that aircraft must meet airworthiness standards, in accordance with the applicable provisions. The operation of an aircraft that violates airworthiness standards can be subject to criminal penalties under Article 406 of Law No. 1 of 2009.

The airline owner operating an aircraft that does not meet the required standards may also be subject to criminal sanctions as regulated in Article 62(1) of Law No. 8 of 1999. If such violations result in serious injury, severe illness, disability, and/or death, other criminal provisions may be applied, such as Article 359 and 360 of the Indonesian Criminal Code (KUHP), as well as Article 406(3), Article 434, Article 438 of Law No. 1 of 2009. Similarly, airport personnel and navigation personnel who operate airports or engage in navigation that endangers the safety and security of passengers may be subject to criminal penalties under the provisions of Article 411, Article 413, 422, 423, 424, 428 of Law No. 1 of 2009.

Responsibility in the event of an aircraft accident

Safety and security for airline passengers are not solely the responsibility of the carrier company, but also the responsibility of the airport operator. This can be seen in Article 217(1) of Law No. 1 of 2009, which stipulates that every operated airport must comply with aviation safety and security provisions, as well as airport service provisions. Article 206 of Law No. 1 of 2009 regulates that the flight operation safety area consists of: a. landing and takeoff approach area; b. potential accident hazard area; c. area below the transition surface; d. area below the inner horizontal surface; e. area below the conical surface; and f. area below the outer horizontal surface. In the event of a violation of airport safety and security, according to Article 228 of Law No. 1 of 2009, the Airport Authority has the duty and responsibility to: a. ensure safety, security, smoothness, and comfort at the airport. This responsibility includes the obligation to provide compensation as stated in Article 240(1) of Law No. 1 of 2009, which states that the airport business entity is liable for the damages suffered by airport service users and/or third parties caused by airport operations.

In the end, based on the provisions of Article 308 and Article 323 of Law No. 1 of 2009, the ultimate responsibility for the protection of airline passenger safety and security lies with the state, specifically the Minister of Transportation. Article 308 of Law No. 1 of 2009 states that "(1) The Minister is responsible for national aviation safety. (2) To ensure national aviation safety as referred to in paragraph (1), the Minister establishes a national aviation safety program (state safety program)." Article 323 of Law No. 1 of 2009 also states: "The Minister is responsible for national aviation security. (2) To fulfill the responsibilities as referred to in paragraph (1), the Minister has the authority to: a. establish a national aviation security committee; b. establish a national aviation security program; and c. oversee the implementation of the national aviation security program".

If there is a violation of passenger rights as consumers, according to the provisions of Article 19 of Law No. 8 of 1999, the airline as the business entity is responsible for providing compensation for damages, pollution, and/or losses suffered by consumers as a result of using air transportation services. The responsibility of the airline as the carrier is also regulated under Article 141 of Law No. 1 of 2009. It stipulates absolute liability for any losses suffered by passengers who die, suffer permanent disability, or sustain injuries

due to incidents that occur during air transportation inside or while boarding or disembarking from an aircraft, as well as liability based on fault or negligence. However, in the case of air transportation, the amount of compensation for each passenger who dies, suffers permanent disability, or sustains injuries as referred to in Article 141 is not freely determined by the passenger as a consumer, but is determined by the government through Ministerial Regulation. Peraturan Menteri yang dimaksud adalah Peraturan Menteri Perhubungan No.77 Tahun 2011 tentang Tanggung Jawab Pengangkut Angkutan Udara.

The compensation provision due to Article 3 letter a of the Minister of Transportation Regulation Number 77 Year 2011 on the Responsibility of Air Transport Carriers, states that "passengers who die in an aircraft due to an aircraft accident or an incident solely related to air transportation are given compensation of Rp.1,250,000,000.00 (one billion two hundred fifty million rupiah) per passenger". "Passengers who are permanently disabled as a direct result of an accident according to article 3 letter c, namely passengers who are declared totally permanently disabled by a doctor within a period of no later than 60 (sixty) working days from the occurrence of the accident are given compensation of Rp. 1,250,000,000.00 (one billion two hundred fifty million rupiah) per passenger".

Article 165 of Law Number 1 of 2009: "the amount of compensation for each passenger who dies, is permanently disabled, or is injured as referred to in Article 141 paragraph (1) shall be determined by Ministerial Regulation. Based on Article 166 of the Law, The carrier and the passenger may make a special agreement to determine the amount of compensation higher than the amount of compensation as referred to in Article 165 paragraph (1). As provided in Article 173 paragraph (1), in the event that a passenger dies as referred to in Article 141, the person entitled to receive compensation is the passenger's heir in accordance with the provisions of laws and regulations.

The amount of liability regarding compensation that has been explained previously above does not include all responsibility for existing damages. Article 165 paragraph (2) of Law Number 1 Year 2009 states "The amount of compensation as referred to in paragraph (1) is the amount of compensation provided by the commercial air transportation business entity outside the compensation provided by the compulsory insurance institution established by the Government". The compulsory insurance

institution that has been established by the state itself is Jasa Raharja. The Jasa Raharja insurance is regulated in Law No. 33 of 1964 concerning the Compulsory Insurance Fund for Passenger Accidents and Liability Insurance. Article 3 of the Minister of Finance Regulation Number 37/PMK.010/2008, which is an implementing regulation of Law Number 33 of 1964, stipulates that passengers who become victims of accidents while on public air transportation or their heirs are entitled to receive compensation for death in the amount of Rp 50,000,000,-

Sanctions in the form of administrative and criminal sanctions can be imposed on business actors who do not fulfill their obligations, regulated in Article 60 of Law Number 8 of 1999 concerning consumer protection, which states:

"The consumer dispute resolution body is authorized to impose administrative sanctions on business actors who violate Article 19 paragraph (2) and paragraph (3), Article 20, Article 25, and Article 26. (2) Administrative sanctions in the form of a determination of compensation of a maximum of Rp. 200,000,000.00 (two hundred million rupiah). (3) Procedures for determining administrative sanctions as referred to in paragraph (1) shall be further regulated in laws and regulations."

Provisions regarding criminal sanctions are regulated in Article 62 of Law Number 8 Year 1999, which states

"(1) Business actors who violate the provisions as referred to in Article 8, Article 9, Article 10, Article 13 paragraph (2), Article 15, Article 17 paragraph (1) letter a, letter b, letter c, letter e, paragraph (2), and Article 18 shall be punished with a maximum imprisonment of 5 (five) years or a maximum fine of Rp.2,000,000,000.00 (two billion rupiah). (2) Business actors who violate the provisions as referred to in Article 11, Article 12, Article 13 paragraph (1), Article 14, Article 16 and Article 17 paragraph (1) letter d and letter f shall be punished with imprisonment for a maximum of 2 (two) years or a maximum fine of Rp. 500,000,000.00 (five hundred million rupiah). (3) For violations that result in serious injury, serious illness, permanent disability or death, the applicable criminal provisions shall apply."

Valuation of immaterial loss due to death of Aircraft Passenger on Airplane Crash

Airplane accidents are still a frightening event for consumers and receive attention from various parties, especially aviation consumers. Article 1 point 1 of Law Number 8 Year 1999

explains that "consumer protection is all efforts that ensure legal certainty to provide protection to consumers". The 1945 Constitution guarantees the protection of consumer rights with the right to comfort, security and safety in consuming goods and/or services. Airlines are obliged to fulfill their full responsibility for victims of accidents that occur. Dispute resolution if the airline is not responsible for fulfilling the compensation that has been determined by the Law of Consumer Protection, as regulated in articles 45, 46, 47, 48 of Law No.8 of 1999. It includes either settlement in court, or outside the court.

The airline is responsible for everything that happens to consumers who are harmed by the plane crash that occurred. Article 2 letter a of Law No. 77/2011 on the Responsibility of Air Transport Carriers also states "Carriers operating aircraft shall be liable for losses to passengers who die, are permanently disabled or injured". One of the efforts or ways the state protects the rights of victims of aircraft accidents is the existence of Law No. 1 of 2009 concerning aviation. "The carrier is responsible for the loss of passengers who die, permanent disability, or injuries caused by air transportation incidents in the aircraft and / or up and down the aircraft, as regulated in Article 141 of Law Number 1 Year 2009 concerning Aviation.

There is no explanation in Article 3 of Ministerial Regulation No. 77 of 2011 regarding the interpretation of compensation amounting to Rp 1,250,000,000,- whether it refers to material damages only or both material and immaterial damages. The provision for compensation by Raharja Services for death resulting from an aviation accident, amounting to Rp 50,000,000,-, is also unclear whether it is compensation for material and immaterial damages or immaterial damages only. Meanwhile, in law, there is a distinction between material (financial) and immaterial (non-financial) damages. This can be seen in the provision of Article 1371 of the Civil Code, which states that anyone who causes injury or disability to someone intentionally or through negligence is entitled to the victim's right not only to claim reimbursement of medical expenses (financial damages) but also to claim compensation for damages caused by such injury or disability (non-financial damages). Furthermore, the assessment of compensation is based on the position and capabilities of both parties and the circumstances.

In Article 1371 of the Civil Code, the measure of value for immaterial damages is determined by "the position, capabilities of both parties, and the circumstances." Article 1370 and Article 1372 of the Civil Code also determine the

value of non-financial compensation based on fixed abstract principles, namely "compensation is assessed according to the position and wealth of both parties, as well as the circumstances." In the Indonesian legal system, there are provisions for the measure of value for immaterial damages, which are based on the position, capabilities of both parties, and the circumstances. However, there are no specific regulations regarding the exact amount.

The determination of compensation for the sense of loss and grief due to death, as regulated in Article 3 of Ministerial Regulation No. 77 of 2011 and Minister of Finance Regulation Number 37/PMK.010/2008, can be considered as one of the benchmarks for determining the amount of compensation for immaterial (non-financial) damages, which includes the sense of loss and grief over the death of a family member according to Indonesian law. On one hand, such determination provides legal certainty regarding the amount of compensation for immaterial damages, which has been unclear and subjective until now. Having a definite value for compensation will reduce the disparities that often occur in claims for immaterial damages.

On the other hand, passengers as consumers and victims have the right to claim not only for immaterial damages but also for material damages. However, the formulation of compensation or reimbursement in general terms in Article 3 of Ministerial Regulation No. 77 of 2011 and in Minister of Finance Regulation Number 37/PMK.010/2008 can be interpreted as encompassing the overall losses experienced by passengers in aviation accidents, including both financial and non-financial damages.

The heirs of passengers who die in an aircraft accident still have the opportunity to claim non-financial damages that they deem fair, through a "settlement" with the air carrier as regulated in Article 166 of Law Number 1 of 2009. The fulfillment of this depends on whether the air carrier is willing to provide compensation greater than what is already determined in Article 3 of Ministerial Regulation No. 77 of 2011 and Article 3 of Minister of Finance Regulation Number 37/PMK.010/2008 or not. If the carrier is unwilling, the heirs do have the right to pursue it through the courts, but the judge will assess the case based on existing laws, which stipulate a maximum compensation of Rp 1,250,000,000,- plus an insurance claim of Rp 50,000,000,-, as higher compensation can only be achieved through a "settlement".

Waruwu discovered the expansion of forms and measures of immaterial damages, which are carried out by judges through judge-made law. The verdict of Semarang District Court Number 304/Pdt/2011/PN.Smg, in conjunction with the Appellate Court verdict Number 254/Pdt/2012/PT.SMG and the Cassation verdict Number 820 K/Pdt/2013, in conjunction with the Judicial Review verdict Number 632 PK/Pdt/2014, determines the amount of immaterial damages based on a 'reasonable amount'. 'Disappointment' is not explicitly included in Articles 1371, 1372, and 1373 of the Civil Code, but it is considered an expansion of the form of immaterial damages allowed by the judges in that jurisprudence. Meanwhile, the verdict of Tangerang District Court Number 305/Pdt.G/2009/PN.Tng, affirmed by the Appellate Court verdict Number 54/Pdt/2010/PT.BTN, the Cassation verdict Number 1391 K/Pdt/2011, and the Judicial Review verdict Number 334 PK/Pdt/2014, determines the measure of immaterial damages in cases of claims for compensation due to unilateral flight cancellations based on fairness and justice.

From the above description, Article 3 of Ministerial Regulation No. 77 of 2011 can be considered as one of the pioneers in Indonesian legal system by determining the value of damages resulting from death, serious injury, and permanent disability, amounting to Rp 1,250,000,000,-. The establishment of the value for immaterial damages, on one hand, provides certainty to judges, ensuring uniformity in determining the amount of damages resulting from death, thus avoiding disparities. On the other hand, for the victims, it may be an unfair limitation because the value of damages resulting from death, serious injury, or permanent disability is inherently subjective.

IV. CONCLUSION

Based on the formulation of the problem of how the implementation of the principle of consumer protection for passengers who are victims of aircraft accidents in Indonesia, it is concluded that the state's attention to consumer protection is quite good because it is related to regulations that aim to create prosperity, by maintaining a balance between business actors and consumers, the community can achieve prosperity and success. regulations relating to consumer protection are quite complete and good at protecting the rights of consumers and / or passengers who are victims of aircraft accidents. Consumer protection is very important in ensuring that consumer rights are maintained and fulfilled. There is a need to increase public awareness of

consumer rights, so that they can understand what is expected from companies and what to do if their rights are violated. This can be done through educational campaigns, seminars and social media.

From the discussion above, Article 3 of Ministerial Regulation No. 77 of 2011 can be considered as one of the pioneers in the Indonesian legal system by determining the value of damages resulting from death, serious injury, and permanent disability, amounting to Rp 1,250,000,000,-. The establishment of the value for immaterial damages, on one hand, provides certainty to judges, ensuring uniformity in determining the amount of damages resulting from death, thus avoiding disparities. On the other hand, for the victims, it may be an unfair limitation because the value of damages resulting from death, serious injury, or permanent disability is inherently subjective.

As a proposal for better protection, if there is a claim for immaterial damages by the heirs that exceeds the amount determined by Ministerial Regulation No. 77 of 2011 and Minister of Finance Regulation Number 37/PMK.010/2008, the judge, through the Mediation Institution, can encourage the carrier to agree to provide a larger compensation for immaterial damages.

REFERENCES:

- [1]. Admin ITDA. October 13, 2022. Loss of Aircraft Control, Penyebab Kecelakaan Pesawat Terbang. <https://www.itda.ac.id/portal/blog/detail/607/loss-of-aircraft-control-penyebab-kecelakaan-pesawat-terbang>
- [2]. Airbus. Statistical Analysis of Commercial Aviation Accidents 1958-2020. Safety First The Airbus Safety magazine.hal.15. <https://accidentstats.airbus.com/sites/default/files/2021-03/Statistical-Analysis-of-Commercial-Aviation-Accidents-1958-2020.pdf>
- [3]. Baidzawi, I.J, N Mohd Nur; S Ahmad Shukri; Mohd Aris, K D; Asmadi, N L; Et Al. 2019. A Review Of Accidents & Incidents On Boeing And Airbus Commercial Aircraft's Avionics-Related System In Two Decades (1996-2015). IOP Conference Series. Materials Science And Engineering. Bristol. Vol. 697, Iss. 1. Doi:10.1088/1757-899x/697/1/012031.
- [4]. Dewi, Ni Made Trisna. 2021. Perlindungan Hukum Bagi Penumpang Pesawat Udara Jika Terjadi Keterlambatan Jadwal Penerbangan Menurut Undang-Undang Nomor 1 Tahun 2009 Tentang Penerbangan. Kertha Wicaksana Vol.15(2):122-129.

- https://www.researchgate.net/publication/367901528_Perlindungan_Hukum_Bagi_Penumpang_Pesawat_Udara_Jika_Terjadi_Keterlambatan_Jadwal_Penerbangan_Menurut_Undang-Undang_Nomor_1_Tahun_2009_Tentang_Penerbangan
- [5]. Gosita, Arif. 1993. Masalah Korban Kejahatan. Jakarta: Akademika Pressindo
- [6]. International Civil Aviation Organization. 2001. Annex 13 Aircraft Accident and Incident Investigation Ninth Edition. <https://www.icao.int/safety/airnavigation/aig/pages/documents.aspx>.
- [7]. Marzuki, Peter Mahmud. 2007. Penelitian Hukum. Jakarta: Kencana.
- [8]. Olganathan, Rajee, Mark Miller, and Bettina M. Mrusek. 2020. Managing Safety Risks in Airline Maintenance Outsourcing. *International Journal of Aviation Aeronautics and Aerospace*. Vol 7(1).1-21. <https://doi.org/10.15394/ijaaa.2020.1435>
- [9]. Pratama, Tary Rahma. 2019. Perlindungan Konsumen Terhadap Jasa Penerbangan Atas Keterlambatan Dan Perubahan Jadwal Maskapai Penerbangan. Universitas Islam Negeri Syarif Hidayatullah Jakarta. <https://repository.uinjkt.ac.id/dspace/bitstream/123456789/46182/1/TARY%20RAHMA%20PRATAMA-FSH.pdf>.
- [10]. Sudiro, Amad. 2011. Product Liability Dalam Penyelenggaraan Penerbangan. *Jurnal Hukum dan Pembangunan*. Vol. 41(1): 186-206. <http://dx.doi.org/10.21143/jhp.vol41.no1.237>.
- [11]. Sukadana, Dewa Ayu Putri. 2018. Perlindungan Hukum Bagi Penumpang Atas Hilang Atau Rusaknya Barang Dalam Pengangkutan Udara. *Kertha Semaya*. Vol.4(1): 1-14. <https://ojs.unud.ac.id/index.php/kerthasemaya/article/view/39953/24281>.
- [12]. Susanto, Happy. 2008. Hak-Hak Konsumen Jika Dirugikan. Jakarta: Visimedia.
- [13]. Taira, Krishna Satria Nugraha. 2017. Perlindungan Hukum Terhadap Penumpang Jasa Penerbangan Yang Barang Bawaannya Bermasalah. *Kertha Dyatmika*. Vol.14(2). <http://download.garuda.kemdikbud.go.id/article.php?article=1760514&val=18767&title=PERLINDUNGAN%20HUKUM%20TERHADAP%20PENUMPANG%20JASA%20PENERBANGAN%20YANG%20BARANG%20BAWAANNYA%20BERMASALAH%20STUDI%20KASUS%20DI%20PTGARUDA%20INDONESIA>
- [14]. The American College of Surgeon. Ending The Confusion: Economic, Non-Economic, And Punitive Damages. <https://www.facs.org/advocacy/federal-legislation/liability/guide-to-liability-reform/ending-the-confusion/>. accessed at June 1, 2023.
- [15]. Turisno, Bambang Eko, et. al. 2016. Tanggung Jawab Maskapai Penerbangan Terhadap Kerugian Konsumen Selaku Penumpang Atas Kehilangan Dan Kerusakan Barang Bagasi Tercatat. *Diponegoro Law Review*. Vol.5(2): 1-11. <http://www.ejournal-s1.undip.ac.id/index.php/dlr/>.
- [16]. Waruwu, Riki Perdana Raya. 12 September 2017. Perluasan Ruang Lingkup Kerugian Immateriil. *Kepaniteraan Mahkamah Agung*. <https://kepaniteraan.mahkamahagung.go.id/artikel-hukum/1458-perluasan-ruang-lingkup-kerugian-immaterial-oleh-dr-riki-perdana-raya-waruwu-s-h-m-h>
- [17]. Wong, Belle. October 7, 2022. What Are Punitive Damages? Definition and Examples. *Forbes Advisor*. https://www.forbes.com/advisor/legal/personal-injury/punitive-damages/#what_are_punitive_damages_section
- [18]. Yuliana, Tora. 2022. Perlindungan Hukum Terhadap Penumpang Pesawat Atas Keterlambatan Penerbangan (Flight Delayed). *Disiplin : Majalah Civitas Akademika Sekolah Tinggi Ilmu Hukum Sumpah Pemuda*. Vol.28(2). <http://disiplin.stihpada.ac.id/index.php/Disiplin/article/view/78/82>.
- [19]. Zulham. 2013. Hukum Perlindungan Konsumen. Jakarta: Kencana Prenada Media Group.