


## Legal Protection for Airline Passengers Experiencing Loss of Cabin Baggage During Flights

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ABSTRACT	ABSTRAK
<p>Airplanes frequently transport passenger baggage, which may be susceptible to loss or damage. The case of Leo, who lost valuable items during a flight from Geneva to Jakarta with Qatar Airways, highlights this issue. The thesis entitled “Analysis of Legal Protection for Airline Passengers Experiencing Loss of Cabin Baggage during Flights (A Study of Supreme Court Decision No. 117PK/Pdt.Sus-BPSK/2017)” examines: 1) regulations regarding legal protection for passengers; 2) the liability of airlines; and 3) an analysis of the Supreme Court ruling concerning legal protection for passengers. The research method employed is normative juridical with a legislative approach and case studies. The data analyzed is secondary, with conclusions drawn deductively. The findings indicate that legal protection and compensation for passengers are governed by Law No. 1 of 2009 and the Minister of Transportation Regulation No. 77 of 2011. The liability of airlines includes the obligation to pay compensation if the passenger can demonstrate the fault of the airline staff. It is recommended that the government formulate regulations related to the proof of damage or loss of baggage.</p> <p>Kata Kunci: Airlines, Cabin Baggage, Flight.</p>	<p><i>Pesawat udara sering kali mengangkut bagasi penumpang, yang berisiko mengalami kehilangan atau kerusakan. Kasus Leo, yang kehilangan barang berharga saat penerbangan dari Jenewa ke Jakarta dengan Qatar Airways, menyoroti permasalahan ini yaitu 1) regulasi mengenai perlindungan hukum bagi penumpang; 2) tanggung jawab maskapai penerbangan; dan 3) analisis terhadap putusan Mahkamah Agung terkait perlindungan hukum bagi penumpang. Metode penelitian yang digunakan adalah yuridis normatif dengan pendekatan perundang-undangan serta studi kasus. Data yang dianalisis bersumber dari data sekunder, dengan kesimpulan yang ditarik secara deduktif. Hasil penelitian menunjukkan bahwa perlindungan hukum dan kompensasi bagi penumpang diatur dalam Undang-Undang Nomor 1 Tahun 2009 serta Peraturan Menteri Perhubungan Nomor 77 Tahun 2011. Tanggung jawab maskapai mencakup kewajiban membayar ganti rugi apabila penumpang dapat membuktikan kelalaian dari pihak maskapai atau stafnya. Disarankan agar pemerintah merumuskan regulasi yang lebih jelas terkait pembuktian atas kerusakan atau kehilangan bagasi.</i></p> <p>Keywords: Bagasi Kabin, Maskapai Penerbangan, Penerbangan.</p>

### Article History

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## 1. Introduction

In national air transportation law, the issue of liability for air transportation enterprises (carriers) is primarily regulated by the Air Transport Ordinance (OPU) Stb. 1939 No. 100. The principles of liability established by this ordinance are generally consistent with those adopted in the Warsaw Convention of 1929 and the Warsaw Convention of 1955. The principle of liability adhered to is based on a rebuttable

presumption of liability, whereby, under this principle, the carrier is presumed to be liable for any loss incurred unless it can be proven that the carrier and/or its employees took all necessary actions to prevent the loss, or that it was impossible for them to do so while applying this principle of liability. (Purba, 2010)

The victim is not required to prove any element of fault on the part of the carrier in order to claim compensation for the losses suffered. It is sufficient for the victim to merely demonstrate the existence of the losses incurred during air transport. Conversely, if the carrier wishes to be relieved of liability, it must prove that it took all necessary actions to avoid the loss, or an aircraft is equipped with a facility known as baggage. According to the terminology of air transportation, specifically in Article 1 Numbers 24 and 25 of Law Number 1 of 2009 on Aviation, “there are two types of baggage: checked baggage and cabin baggage. The distinction between these two types is that checked baggage refers to items of passenger baggage that are handed over by the passenger to the carrier for transportation on the same aircraft, while cabin baggage refers to items carried by the passenger and kept under the passenger's supervision.” (Purba, 2010)

The issue of baggage on aircraft frequently arises, particularly concerning the loss or damage of items within baggage. Reports of lost baggage are common in Indonesia's aviation industry. This situation constitutes one of the risks associated with flying, linked to the handling processes of ground staff as well as other factors. Loss typically occurs with checked baggage during check-in; however, it is also possible for cabin baggage to be affected. This baggage issue is certainly a recurring experience for passengers. Nevertheless, many passengers are often confused about where to lodge complaints and wonder whether there is any compensation available for lost or damaged items in their baggage. It is not uncommon for the lost or damaged items to be of great value, importance, or even irreplaceable (Ferdian, 2021).

Loss typically occurs with checked baggage during check-in; however, it can also happen with cabin baggage. An illustrative case is that of Leo, who was returning from Geneva to Jakarta on May 12, 2015, on flight QR 956. Due to adverse weather conditions, the flight was diverted to Doha for one hour.

On that flight, Leo had his bag placed in the cabin not far from his seat. During the journey from Doha to Jakarta, Leo checked his bag and was shocked to discover that valuable items inside it were missing. He then complained to the flight crew but did not receive a satisfactory response, which led to Leo losing track of the actual culprit, despite the fact that checks could have been conducted for each passenger before disembarking the aircraft. Upon arriving in Jakarta, Leo filed a claim for his lost money with the Consumer Dispute Resolution Agency (BPSK).

On December 10, 2015, in Decision No. 006/A/BPSK-DKI/XII/2015, BPSK Jakarta Barat ordered Qatar Airways to compensate Leo for 50% of the value of the lost items, with the remaining 50% to be borne by Leo himself. Qatar Airways objected and submitted an appeal to the West Jakarta District Court (PN Jakbar). In Decision No. 649K/Pdt.Sus-

BPSK/2016, the panel of judges rejected Qatar Airways' appeal, upholding the previous ruling that Qatar Airways was responsible for 50% of the loss incurred by Leo regarding the missing items.

Qatar Airways continued to reject the ruling of the District Court and filed a petition for review. This time, the ruling brought good news for Qatar Airways, as evidenced by Decision No. 117PK/Pdt.Sus-BPSK/2017, which granted the petition for review from Qatar Airways, declaring that the airline would not be held responsible for the loss of Leo's belongings. The decision annulled the previous rulings of the Supreme Court, the West Jakarta District Court, and the BPSK, while also dismissing the plaintiff's lawsuit in its entirety. The consideration was that the Supreme Court found no evidence that the loss of the plaintiff's cabin items was caused by the actions of the carrier or its employees.

Based on the above, there is a clear difference in the legal regulations applied in the decision-making processes by the BPSK and the Supreme Court (MA). The BPSK relied on Law Number 8 of 1999 concerning Consumer Protection, while the Supreme Court referenced Law Number 1 of 1999 concerning Aviation. According to the principle of *Lex Specialis Derogat Legi Generali*, which states that specific law prevails over general law, it is evident that Law Number 1 of 1999 on Aviation is more appropriately applied in resolving this case. Therefore, this research is essential to conduct.

## **2. Method**

This research is a normative juridical study with a descriptive analytical nature. The research approach employs both a statutory approach and a case approach. The data utilized in this study includes primary, secondary, and tertiary legal materials, comprising official documents, books, reports, research findings, and other relevant materials collected through library research methods. Data collection techniques include documentary studies. Once the data is collected, it is analyzed qualitatively, employing deductive reasoning for conclusions.

## **3. Result & Discussion**

### **A. Regulation of Legal Protection for Air Passengers Experiencing Loss of Cabin Baggage Based on Aviation Law and Other Provisions**

Based on Articles 143 and 144 of Law Number 1 of 2009 concerning Aviation, the carrier is obligated to be responsible for losses suffered by passengers due to the loss of checked baggage, which is caused by air transportation activities while the checked baggage is under the carrier's supervision. The carrier is also liable for the loss of cabin baggage belonging to passengers if such losses are caused by the actions of the carrier or its employees. The form of responsibility that the carrier must fulfill, according to the Aviation Law, is to provide compensation in the form of a specified monetary amount to the victims (passengers). In the explanation of Article 144, it is clarified that "Transportation Supervision" refers to the period during which the goods are received from

the passenger at check-in until the retrieval of the goods upon arrival at the destination airport (Monica & Sudiro, 2021).

Meanwhile, the amount of compensation that airlines must pay to consumers for lost or damaged goods is regulated in the Minister of Transportation Regulation No. 77 of 2011 concerning the Liability of Air Carriers. This regulation emphasizes that carriers operating aircraft are obliged to be responsible for losses suffered by passengers, including cases of death, permanent disability, or injury. Additionally, the carrier is liable for the loss or damage of cabin baggage, checked baggage, and cargo. Furthermore, the carrier's liability also extends to delays in air transportation and losses incurred by third parties (PMP et al., 2016).

Article 168 paragraphs (1) and (2) of the Minister of Transportation Regulation No. 77 of 2011 concerning the Liability of Air Carriers regulates the amount of compensation that must be borne by airlines regarding damages. Paragraph (2) outlines, in general, the penalties that airlines are required to pay to their consumers, which are determined based on the weight of the checked baggage. A more detailed explanation regarding the amount of compensation can be found in Article 2 letter C, which emphasizes that the airline, as the carrier, is fully responsible for losses experienced by consumers, particularly in relation to the damage and loss of items in checked baggage.

Article 5 paragraph (1) outlines the obligations that carriers must fulfill concerning checked baggage that is damaged, lost, or destroyed. Carriers are required to pay compensation based on the weight of the lost baggage, as recorded. The amount of compensation is set at Rp 200,000.00 (two hundred thousand rupiah) per kilogram, with a maximum payment limit of Rp 4,000,000.00 (four million rupiah) per person. For damage to checked baggage, compensation is provided based on the type, shape, size, and brand of the checked baggage. If checked baggage is deemed lost, as referenced in paragraph (1), it will be considered lost if it cannot be located within 14 days from the date and time of the passenger's arrival at the destination airport. In such cases, the carrier must also provide waiting money to the passenger for the checked baggage that has not been found and cannot yet be declared lost, amounting to Rp 200,000.00 (two hundred thousand rupiah) per day, for a maximum of three calendar days.

The Law Number 8 of 1999 on Consumer Protection outlines the mechanisms for dispute resolution between Business Actors and Consumers. These disputes can proceed through two pathways: court proceedings and out-of-court settlements. If the dispute continues via the non-court route, the resolution will be handled by the Consumer Dispute Resolution Agency (BPSK). This agency is specifically established by the government to manage disputes between aggrieved consumers and business actors. Typically, the cases brought to BPSK involve disputes that have not reached an agreement on the amount of compensation to be paid by the company (Shofie & Awan, 2004).

Article 60, paragraph (2) regulates the maximum compensation that can be granted by the Consumer Dispute Resolution Agency (BPSK). According to this article, the

maximum amount of compensation that can be imposed on business actors is Rp 200,000,000 (two hundred million rupiah). Broadly speaking, the Consumer Protection Law imposes a responsibility on business actors to provide compensation to consumers who suffer losses due to discrepancies in the products or services provided. This law outlines the obligations that business actors must fulfill across various sectors when consumers are harmed, including the time limits for compensation, the procedures for resolution through court or out-of-court channels, and the maximum amount of compensation that must be paid by business actors in monetary form.

#### B. Liability of Airlines in the Event of Loss or Damage to Cabin Baggage During Flights

The Aviation Law defines the concepts and responsibilities of carriers and the handling of baggage separately between checked baggage and cabin baggage, as well as the responsibilities regarding damage and loss of goods in air transportation. Checked baggage refers to the items handed over by passengers to the carrier for transport on the same aircraft. In contrast, cabin baggage consists of items carried by passengers and under their own supervision (Siagian, 2019).

The form of liability of the carrier (airline) concerning the amount of compensation for lost or damaged checked baggage is regulated in the Minister of Transportation Regulation No. 77 of 2011 in Article 5. The amount of compensation that can be claimed by passengers experiencing loss, destruction, or damage to checked baggage is established as follows. In the event of loss of checked baggage or its contents, the passenger is entitled to compensation of Rp. 200,000.00 (two hundred thousand rupiah) per kilogram, with a maximum limit of Rp. 4,000,000.00 (four million rupiah) per passenger. For damage to checked baggage, compensation is provided according to the type, shape, size, and brand of the checked baggage. Checked baggage is considered lost if it is not found within 14 (fourteen) calendar days from the date and time of the passenger's arrival at the destination airport. Additionally, the carrier is required to provide waiting money to passengers for checked baggage that has not been found and cannot yet be declared lost, amounting to Rp. 200,000.00 (two hundred thousand rupiah) per day, for a maximum of three (three) calendar days.

In contrast to checked baggage, cabin baggage, or commonly referred to as cabin baggage, is regulated in Article 4 paragraph (1) of the Minister of Transportation Regulation No. 77 of 2011. This article states that the carrier is not liable for losses due to the loss or damage of cabin baggage, unless the passenger can prove that the loss was caused by the actions of the carrier or persons employed by the carrier.

The article above emphasizes that airlines are not liable for any loss of passenger belongings, as such items are under the direct supervision of the passengers themselves. Therefore, in the event of loss or damage, the responsibility will fall entirely on the passengers. However, if passengers can prove that the cabin baggage was lost or damaged due to the actions of airline personnel, the airline may be held accountable. This is outlined

in Article 4 paragraph (2) of the Minister of Transportation Regulation No. 77 of 2011, which states that "if the passenger's proof as referred to in paragraph (1) is accepted by the carrier or based on a court decision that has permanent legal force (*inkracht*) declaring the carrier guilty, then compensation is set at most equal to the actual loss suffered by the passenger."

This article interprets that passengers are entitled to receive accountability from the airline in the form of compensation corresponding to the value of the lost or damaged items. However, this article imposes a requirement that the proof provided by the passenger must be based on a court decision that has permanent legal force. This means that passengers must first undergo legal proceedings in court and prove that the damage or loss of their belongings was indeed caused by the actions of airline employees before they can finally receive compensation. (Monica & Sudiro, 2021)

#### C. Analysis of Judicial Considerations and Rulings Regarding Legal Protection for Passengers Who Experience Loss of Cabin Baggage During Flights Based on Supreme Court Decision Number 117PK/Pdt.Sus-BPSK/2017

In the Supreme Court Decision Number 117 PK/Pdt.Sus-BPSK/2017, the Panel of Judges decided to grant the request for a judicial review from the applicant, Qatar Airways. The decision annulled the Supreme Court Decision Number 649 K/Pdt.Sus-BPSK/2016 issued on September 8, 2016, in conjunction with the West Jakarta District Court Decision Number 10/Pdt.Sus-BPSK/2016/PN Jkt. Brt dated February 23, 2016, in conjunction with BPSK Decision Number 006/A/BPSK-DKI/XII/2015, dated December 10, 2015. Furthermore, the Panel of Judges rejected the Plaintiff's lawsuit in its entirety and ordered the Respondent for the Judicial Review/Cassation/Objection to pay the court fees in the amount of Rp 2,500,000.00 (two million five hundred thousand rupiahs) for the judicial review proceedings.

In the BPSK ruling, Qatar Airways was found responsible for the loss of a passenger's cabin baggage. Although Qatar Airways had warned passengers through the printout of the ticket that the airline would not be liable for the loss or damage of personal belongings in the cabin, the ruling still established the airline's responsibility in this case. This indicates that despite the notification, the airline still has an obligation to account for the losses experienced by passengers concerning items lost in cabin baggage.

According to legal procedures, the supervision of checked baggage has been conducted since passengers check in before entering the airport. Qatar Airways always ensures that valuable items, including electronics and money, should be stored in cabin baggage, which is under the direct supervision of the passengers. This statement is reinforced by the Chief Lost and Found of Qatar Airways Indonesia at Soekarno Hatta Airport. Staff at the check-in counters routinely remind passengers to bring their personal valuables into the cabin for direct oversight. This serves as a preventive measure against the loss of valuable items belonging to consumers, which could lead to lengthy legal

disputes. Qatar Airways emphasizes this point because passengers often do not pay attention to their valuable items. If they feel their items are heavy, even if valuable, they may place them in checked baggage, which increases the risk of damage since they remain unsupervised during the flight. The airline encourages passengers to carry their valuables themselves for added safety and to minimize the occurrence of disputes, as experienced by Leo. In fact, at several airports, Qatar Airways has put up banners urging passengers to carry their valuables themselves.

In the case of Leo Christoffel, who lost items stored in his personal cabin, there was a clause in the ticket purchase agreement stating that the airline would not be responsible for the loss or damage of passenger belongings kept in the cabin. Despite this provision, Leo Christoffel disregarded it and chose to bring the dispute to the Consumer Dispute Settlement Board (BPSK), feeling aggrieved by the loss of money he suffered. Even with the clear stipulation in the agreement, Leo believed that his loss warranted legal attention and resolution, highlighting the complexities of the relationship between consumers and businesses regarding liability for lost or damaged goods.

If related to the obligations of consumers as stated in the Consumer Protection Law, specifically in Article 5 regarding such obligations, Article 5 stipulates that consumers must read or follow the instructions, information, and procedures for the use or utilization of goods and/or services for the sake of security and safety. This article mandates that consumers should read the sales agreement (in this case, the ticket). Therefore, Leo should have read and understood the contents of the agreement thoroughly, including the information regarding liability for damage.

The consumer explained that the loss of his money in the cabin was due to negligence in taking preventive measures and not doing anything about the theft he experienced. At that time, Qatar Airways had inquired about any suspicious passengers involved in the incident. However, the passenger responded that there were no suspicious individuals, making it impossible for the airline to conduct a search of all passengers who had just completed a long journey. Searching within the cabin of the aircraft is also not within the authority of the crew on duty at that time. The act of stealing cash cannot be resolved by the lost and found department or airport security; it must involve the police located at the airport. According to regulations from the Ministry of Transportation, incidents of theft are not the responsibility of the airline.

Compensation mandated under the Consumer Protection Law includes the refund of a certain amount of money or the replacement of goods and/or services that are similar or of equivalent value, or healthcare for consumers resulting from the goods and/or services traded, and/or the provision of financial assistance in accordance with applicable regulations in the law. The Consumer Dispute Settlement Agency (BPSK) also acknowledges that its members still possess many weaknesses in human resources, particularly regarding the understanding and application of the law. The decision made by BPSK in this case lacks a foundation of legal reasoning and theory behind the issuance of

the verdict, including considerations related to the technical regulations of the arbitrator that mandate the business actor to provide compensation (condemnatoir), which has no legal basis whatsoever.

#### 4. Conclusion

Based on the research findings and discussions presented, it can be concluded that the regulation of legal protection for passengers experiencing the loss of cabin baggage is governed by Law No. 1 of 2009, particularly Articles 143 and 144, as well as by Minister of Transportation Regulation No. 77 of 2011. Compensation for lost or damaged items is stipulated in Article 169, Paragraph 2, and Article 5, Paragraph 1 of the regulation. The airline's liability for the loss of baggage entails compensating for actual damages, provided that the passenger can prove the airline's employee's fault. This proof must be based on a court ruling that has become final and binding. In this context, the Supreme Court has overturned previous rulings by referring to Law No. 1 of 2009 and Ministerial Regulation No. 77 of 2011, which states that the carrier is not liable for the loss of cabin baggage unless the passenger can demonstrate that the loss was caused by the carrier's or its employees' actions. Therefore, it is recommended that the government formulate clearer and more definitive regulations regarding the proof of damage or loss of baggage, to provide better protection for passengers and ensure legal certainty in the compensation process.

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