



JiHK is licensed under a Creative Commons Attribution 4.0 International license, which permits unrestricted use, distribution, and reproduction in any medium, provided the original work is properly cited.



DOI: 10.46924/jihk.v7i1.279



Airline Legal Liability for Lost Cabin Baggage: A Review of Consumer Protection in Air Transportation

Evan Fernando Agung Wibowo^{1*} & Amad Sudiro²

Fakultas Hukum, Universitas
Tarumanagara, Jakarta, Indonesia

Correspondence

Evan Fernando Agung Wibowo,
Fakultas Hukum, Universitas
Tarumanagara, Jakarta, Indonesia,
Taman S. Parman No.1, Grogol
Petamburan, RT.6/RW.16,
Tomang, Kec. Grogol
petamburan, Kota Jakarta Barat,
Daerah Khusus Ibukota Jakarta
11440, e-mail:
evanfernando0307@gmail.com

How to cite

Wibowo, Evan Fernando Agung,
& Sudiro, Amad. 2025. "Airline
Legal Liability for Lost Cabin
Baggage: A Review of Consumer
Protection in Air Transportation".
Jurnal Ilmu Hukum Kyadiren 7 (1),
116-134.
<https://doi.org/10.46924/jihk.v7i1.279>

Original Article

Abstract

This study examines the legal liability of airlines for the loss of passengers' belongings stored in cabin baggage—an issue that frequently arises yet remains largely overlooked by current legal frameworks. In contrast to checked baggage, cabin baggage remains under the direct supervision of passengers, leading airlines to often deny responsibility for losses. Employing a normative legal approach, this research analyzes applicable laws, regulations, and case studies, particularly judicial decisions involving disputes between passengers and international airlines. The findings indicate that legal, administrative, technical, and economic barriers constitute significant obstacles for passengers seeking compensation. The study underscores the need to re-evaluate the principle of limitation of liability, enhance cabin security standards, and strengthen consumer dispute resolution mechanisms to establish a more equitable and effective system of protection.

Keywords: *Consumer Protection, Cabin Baggage, Airline Liability, Flight Disputes*

Abstrak

Penelitian ini membahas tanggung jawab hukum maskapai penerbangan terhadap kehilangan barang milik penumpang dalam bagasi kabin, sebuah isu yang kerap terjadi namun luput dari perhatian hukum positif. Berbeda dari bagasi tercatat, bagasi kabin berada dalam pengawasan langsung penumpang, sehingga maskapai kerap melepaskan tanggung jawab. Kajian ini menggunakan pendekatan normatif dengan menelaah peraturan perundang-undangan serta studi kasus, terutama putusan sengketa antara penumpang dan maskapai internasional. Ditemukan bahwa hambatan hukum, administratif, teknis, dan ekonomi menjadi penghalang utama bagi penumpang untuk memperoleh ganti rugi. Penelitian ini menekankan pentingnya evaluasi ulang prinsip limitation of liability, peningkatan standar keamanan, serta penguatan lembaga penyelesaian sengketa konsumen guna menciptakan sistem perlindungan yang lebih adil dan efektif.

Kata kunci: *Perlindungan Konsumen, Bagasi Kabin, Tanggung Jawab Maskapai, Sengketa Penerbangan*

1. INTRODUCTION

In Indonesia, the term mode of transportation refers to the various means used to travel from one location to another. These modes can generally be categorized into three types: land-based, water-based (including sea and inland waters), and air-based transportation. Among these, air transportation has become increasingly vital in meeting human needs. It is the fastest and most modern form of transportation, offering broad accessibility and several advantages¹, such as speed—air transportation employs aircraft that are capable of reaching high velocities, accessibility—it can serve areas without developed road infrastructure, such as mountainous regions and ravines, cost-effectiveness for long distances—over long distances, air transportation is more economical in terms of time and convenience, schedule regularity—flights tend to have consistent schedules and frequencies, airplanes, as a primary form of air transportation, are equipped with various passenger facilities, including luggage compartments, allowing passengers to store their belongings securely during travel and avoid inconvenience.

As a nation governed by law, Indonesia regulates all aspects of transportation, including air travel. Several legal instruments govern this sector, such as Law Number 1 of 2009 concerning Aviation (hereinafter referred to as the Aviation Law), Government Regulation Number 70 of 2001 concerning Airports, and Regulation of the Minister of Transportation Number 77 of 2011 concerning the Responsibilities of Air Carriers. These regulations impose legal obligations on airlines to safeguard consumer and passenger rights, particularly in matters of safety and security.

One such obligation includes ensuring that passengers' belongings are neither lost nor damaged. When a passenger purchases a ticket—recognized as a legal transportation document—an agreement is formed between the passenger and the airline. This agreement confers rights upon the passenger and corresponding responsibilities upon the airline.²

Despite these regulations, many users of airline services have reported dissatisfaction, particularly regarding lost or damaged baggage.³ There are recurring incidents involving baggage loss or damage. For example, on a flight from Geneva to Jakarta, a passenger discovered that items from their cabin luggage were missing as the aircraft descended into Indonesian airspace. When the cabin lights were turned on, the passenger checked their belongings and found some items missing. The incident was immediately reported to the cabin crew, who explained that they did not have the authority to search other passengers. The captain was then informed, and the airline

¹ Rustian Kamaluddin, *Ekonomi Transportasi: Karakteristik, Teori, Dan Kebijakan* (Jakarta: Ghalia Indonesia, 2003).

² Edie Harnyoto, *Transportasi Pro Rakyat* (Jakarta: Gramedia Pustaka Utama, 2013).

³ H. K. Martono, *Pengantar Hukum Udara Nasional Dan Internasional* (Depok: PT. RajaGrafindo Persada, 2007), <https://www.rajabrafindo.co.id/produk/pengantar-hukum-udara-nasional-dan-internasional/>.

assured the passenger that an inspection would be conducted upon landing. However, once the plane landed, all passengers were instructed to disembark without any inspection taking place.

As is commonly known, the incident resulted in the passenger being unable to recover the lost money, as the suspects had already disembarked from the aircraft without undergoing any prior inspection. The airline had a responsibility to safeguard its passengers and prevent such incidents of lost or stolen property. Passengers, as consumers, are entitled to protection under existing consumer protection laws.

In this case, a verbal agreement was formed between the passenger and the airline when the passenger reported the loss of cabin baggage to the cabin crew. The airline promised to inspect the other passengers; however, this promise was not fulfilled. This failure constitutes a breach of contract, as defined by Article 1338 of the Indonesian Civil Code, which states that all legally executed agreements shall apply as law to those who have made them. This provision embodies the principle of freedom of contract, allowing parties the liberty to make or abstain from making agreements, to choose with whom they enter into agreements, to determine the content, implementation, and terms of the agreement, and to decide its form, whether oral or written.

In accordance with Articles 49 to 58 of Law No. 8 of 1999 on Consumer Protection (hereinafter referred to as the Consumer Protection Law or UUPK), the Consumer Dispute Settlement Agency (BPSK) is authorized to resolve disputes between consumers and business actors. In this case, BPSK played a key role in mediating the conflict between the passenger and the airline. The complainant, Mr. Leo Mualdy Christoffel, filed a claim against Qatar Airways, the defendant in the case.⁴ BPSK ultimately ruled that the airline was liable for the losses suffered by the passenger.

Consumer protection law, as a subset of consumer law, consists of rules and principles designed to uphold the rights and interests of consumers. According to Az. Nasution, consumer protection law refers to the legal framework that is both regulatory and protective in nature, aimed at ensuring fairness and accountability in the relationship between consumers and business entities. Consumer law broadly encompasses all legal principles and norms that govern interactions and disputes related to goods and services in society.⁵

Under Article 1, Number 13 of the Aviation Law, air transportation is defined as any activity involving the use of aircraft to transport passengers, cargo, and/or mail from one airport to another, whether over a single leg or multiple legs of a journey.

⁴ Andi Saputra, "Alasan Lengkap MA Hukum Qatar Airways Karena Uang Penumpang Di Kabin Hilang," detikNews, 2016, <https://news.detik.com/berita/d-3331493/alasan-lengkap-ma-hukum-qatar-airways-karena-uang-penumpang-di-kabin-hilang>.

⁵ Berlian Berlian and Permai Yudi, "The Protection Law to Consumers for The Right to Get Information from Imported Product," *Legal Brief* 11, no. 5 (2022): 2890–2894, <https://legal.isha.or.id/index.php/legal/article/view/514>.

Aviation law regulates all aspects of air transportation and the broader context of aviation operations.

According to Article 1, Number 24 of the Aviation Law, checked baggage refers to items that are handed over by passengers to the airline for transport on the same aircraft. Meanwhile, cabin baggage refers to personal items carried by passengers and retained under their own supervision throughout the flight. As stipulated in Article 1, Number 25, responsibility for cabin baggage rests entirely with the passenger, not with the airline. In the case involving the flight from Geneva to Jakarta, the court ruled in favor of the airline. Consequently, the consumer who suffered financial loss did not receive any compensation or acknowledgment of liability from the airline.

According to Article 2 of Ministerial Regulation No. 77 of 2011 concerning the Responsibility of Air Transport Carriers, airlines operating aircraft are required to assume responsibility for various types of passenger and third-party losses. These include: passenger death, permanent disability, or injury; loss or damage to cabin baggage; loss, destruction, or damage to checked baggage; loss, destruction, or damage to cargo; flight delays; and losses incurred by third parties.

In the context of air transportation, there are three fundamental legal liability concepts: fault-based liability, presumed liability, and strict or absolute liability.⁶ Similarly, in the realm of consumer protection, three principal theories of legal responsibility are commonly referenced: Caveat Emptor (let the buyer beware), The Due Care Theory, and The Privity of Contract doctrine.

Several prior studies have addressed the legal responsibility of airlines for lost passenger baggage. However, the majority of these studies have concentrated primarily on checked baggage. For instance, Rosalita Ardiani Putri and Bambang Eko Turisno investigated legal protections related to lost passenger baggage in air transportation using John Rawls' theory of justice. Their findings underscore inequities in both the content of transportation agreements and the compensation amounts awarded to passengers.⁷

Govind Rayigel Polado Simbolon explored consumer legal protection in cases involving lost or damaged baggage under Law No. 8 of 1999 on Consumer Protection. The findings indicate that although protective legal provisions exist, in practice, passengers' rights are frequently disregarded.⁸ Hendra Winata and Martono examined airline liability for checked baggage within the framework of both international

⁶ H.K. Martono and Argus Pramono, *Hukum Udara Perdata Internasional Dan Nasional* (Depok: PT. RajaGrafindo Persada, 2013), <https://www.rajagrafindo.co.id/produk/hukum-udara-perdata-internasional-nasi/>.

⁷ Rosalita Ardiani Putri and Bambang Eko Turisno, "Perlindungan Hukum Yang Adil Atas Hilangnya Bagasi Penumpang Dalam Pengangkutan Udara," *Law Reform* 11, no. 1 (2015): 53–64, <https://doi.org/10.14710/lr.v11i1.15755>.

⁸ Govind Rayigel Polado Simbolon and Made Aditya Pramana Putra, "Perlindungan Hukum Terhadap Penumpang Atas Kerusakan Dan Kehilangan Koper Bagasi Tercatat Oleh Pihak Maskapai," *Kertha Negara: Journal Ilmu Hukum* 12, no. 5 (2024): 480–91, <https://ojs.unud.ac.id/index.php/kerthanegara/article/view/107978>.

conventions and national regulations, focusing on liability limitations and compensation conditions, particularly in cases where passengers declare the value of their belongings.⁹

Princess Anggun Octafiany conducted a comparative analysis of two judicial decisions regarding lost baggage, emphasizing inconsistencies in the application of consumer protection laws by judges.¹⁰ Meanwhile, Fadilah Abuld Azis et al. investigated the liability of airlines at Sultan Hasanuddin International Airport, Makassar, in relation to damage and loss of checked baggage, incorporating an Islamic legal perspective.¹¹

Collectively, these studies have largely centered on checked baggage and have analyzed liability within national, international, and Islamic legal frameworks. In contrast, the present study offers originality by focusing specifically on cabin baggage, a topic that has been relatively neglected in legal scholarship. While checked baggage is formally entrusted to the airline, cabin baggage remains under the passenger's supervision during the flight, yet it is frequently subject to loss or damage.

Moreover, this study adopts a distinct approach by emphasizing the legal, procedural, and practical barriers faced by passengers when attempting to hold airlines accountable for the loss of items stored in cabin baggage—an issue that has not been systematically examined in previous research. As such, this study addresses a significant research gap and contributes meaningfully to the advancement of consumer protection law in the field of air transportation.

Based on the problem background described above, the objectives of this study are as follows: 1) to identify and analyze the challenges faced by passengers in pursuing legal accountability from airlines for the loss of items stored in cabin baggage. 2) to explain and assess the forms of airline responsibility for such losses under applicable national laws and regulations, using both positive legal frameworks and theoretical perspectives.

2. RESEARCH METHODOLOGY

This research constitutes a normative legal study aimed at analyzing the legal liability of airlines for lost items in cabin baggage. The study examines relevant laws and regulations, legal principles, doctrines, and decisions rendered by dispute resolution institutions. A normative approach was selected because the primary focus lies on legal

⁹ Hendra Winata and H. K. Martono, "Analisis Tanggung Jawab Perusahaan Penerbangan Terhadap Kerugian Penumpang Akibat Hilangnya Bagasi Tercatat Yang Memuat Barang Berharga Tanpa Sepengetahuan Pengangkut Berdasarkan Konvensi Warsawa 1929 Sebagai Lex Specialis," *Jurnal Hukum Adigma* 2, no. 2 (2019): 1–25, <https://doi.org/10.24912/adigama.v2i2.6699>.

¹⁰ Princess Anggun Octafiany, "Ganti Rugi Terhadap Penumpang Pesawat Terbang Komersial Atas Hilangnya Barang Di Bagasi Pesawat Terbang," *Innovative: Journal Of Social Science Research* 4, no. 1 (2024): 12181–12196, <https://j-innovative.org/index.php/Innovative/article/view/6108>.

¹¹ Fadilah Abdul Azis, Abdain Abdain, and Takdir Takdir, "Pertanggungjawaban Pihak Maskapai Terhadap Kehilangan Dan Kerusakan Bagasi Menurut Peraturan Menteri No. 77 Tahun 2011 Tentang Tanggung Jawab Pengangkut Angkutan Udara," *Al Manhaj: Jurnal Hukum Dan Pranata Sosial Islam* 5, no. 2 (2023): 1059–1072, <https://doi.org/10.37680/almanhaj.v5i2.2496>.

norms rather than empirical phenomena, and therefore the data sources consist exclusively of secondary data derived from authoritative legal materials.¹² The research employs three principal approaches:

- 1) A legislative (statutory) approach to analyze regulations such as Law No. 1 of 2009 on Aviation, Law No. 8 of 1999 on Consumer Protection, and Ministerial Regulation No. 77 of 2011 on Carrier Responsibility;
- 2) A conceptual approach to explore foundational legal concepts including legal liability and freedom of contract;
- 3) A case-based approach to examine the practical application of legal norms in specific disputes, such as the case involving Qatar Airways.

The legal materials utilized in this study are categorized as follows: primary legal materials (statutes and judicial decisions), secondary legal materials (legal literature, scholarly journals, and expert commentary), and tertiary legal materials (legal dictionaries and encyclopedias). Data collection was conducted through a comprehensive literature review, tracing relevant legal texts and sources. The analysis was carried out using qualitative methods, primarily through interpretive analysis of legal content, correlated with established legal theories and principles, with the objective of producing conclusions grounded in legal reasoning.

This study focuses specifically on incidents involving the loss of cabin baggage on international flights, particularly on the Geneva–Jakarta route. It evaluates both the legal obligations of airlines and the barriers faced by passengers in pursuing claims for compensation. Ultimately, the study aims to enhance understanding of consumer legal protection in international air travel and to evaluate the effectiveness of existing legal norms in real-world application.

3. RESEARCH RESULT AND DISCUSSION

3.1. Obstacles Faced by Passengers in Holding Airlines Accountable for Lost Items in Cabin Baggage

The loss of personal belongings in cabin baggage remains a prevalent issue in the aviation industry. Although airlines are obligated to protect passengers' property during flights, in practice, passengers encounter numerous challenges in pursuing claims against airlines for lost items.¹³ These challenges can be broadly categorized into legal,

¹² Peter Mahmud Marzuki, *Penelitian Hukum*, 19th ed. (Jakarta: Prenada Media Group, 2019), <https://prenadamedia.com/product/penelitian-hukum-edisi-revisi/>.

¹³ Tuhana Tuhana and Subandriyo Adi Prasetyo, "Tanggung Jawab Maskapai Penerbangan Atas Kehilangan Dan/ Atau Kerusakan Barang Bagasi Tercatat Milik Penumpang Dalam Angkutan Udara Ditinjau Dari Aspek Hukum Perdata: Studi Kasus Maskapai Garuda Indonesia Di Bandara Adi Soemarmo Boyolali," *Private Law* 2, no. 5 (2014): 94–103, <http://jurnal.hukum.uns.ac.id/index.php/privatelaw/article/view/502>.

administrative, technical, and economic barriers, each of which contributes to the difficulty of obtaining compensation or a fair resolution.

1) Legal Barriers

Legally, airline liability for lost items is governed by multiple regulations, including the Montreal Convention of 1999, which establishes the framework for airline liability on international flights, Law No. 1 of 2009 on Aviation, which outlines the rights and responsibilities of airlines operating in Indonesia, and Ministerial Regulation No. 77 of 2011 on Carrier Responsibility, which stipulates compensation for passenger losses. However, several legal obstacles often hinder passengers from successfully asserting their rights: limitation of liability clauses—many airlines include provisions in their contracts that limit or exclude liability for lost cabin baggage, arguing that items in the cabin are the personal responsibility of the passenger and burden of proof—passengers frequently struggle to prove that the loss occurred on the aircraft, as opposed to during boarding or while at the airport.

2) Administrative Barriers

Passengers are often required to report the loss within a short timeframe, provide proof of ownership, and undergo lengthy verification processes. In addition, airlines frequently fail to provide clear information regarding claims processes and passenger rights, leading to confusion and delays in filing claims.

3) Technical Barriers

Many airlines lack effective systems for tracking cabin baggage, making it difficult to locate lost items. In addition, theft or loss often occurs due to a lack of oversight by cabin crew, particularly on crowded flights where monitoring is challenging.

4) Economic Barriers

Pursuing legal action against an airline can be prohibitively expensive, especially when the value of the lost items is relatively low. In addition, even when compensation is granted, the amount is often significantly lower than the actual value of the lost items, discouraging passengers from pursuing further action.

These challenges indicate that despite the existence of legal frameworks regulating airline liability, their implementation is frequently ineffective. Improvements are needed in cabin baggage supervision, claims procedures, and legal enforcement to ensure passengers' rights are adequately protected. Passengers often experience a lack of accountability, delayed responses from airlines, dismissal of claims, and inadequate

compensation that fails to reflect the principle of justice. Although airlines are obligated to compensate for lost or damaged baggage, they may deny liability under certain conditions, such as when the loss is attributed to passenger negligence or third-party actions, or when the airline has implemented sufficient preventive measures. To pursue accountability, passengers are advised to immediately report the loss to airline staff, file a Property Irregularity Report (PIR), report the incident to the police, contact their insurance provider (if applicable); and submit a formal written claim to the airline's Lost and Found Unit. The amount of compensation is regulated under Ministerial Regulation No. 77 of 2011, which outlines the responsibilities of air carriers in cases of passenger loss or damage to baggage.

3.2. Airline Liability for the Loss of Passenger Belongings in Cabin Baggage

Air travel has become one of the primary modes of transportation in modern society due to its efficiency and convenience. However, despite the comfort it offers, air travel is not without its problems. One recurrent issue experienced by passengers is the loss of personal belongings stored in cabin baggage. Such losses not only result in material harm to consumers but may also cause psychological distress—particularly when the lost items have sentimental value or are essential to the traveler's journey. From a legal standpoint, the question of an airline's liability for lost items in cabin baggage presents a compelling area of study.

Cabin baggage is technically under the direct supervision of the passenger. According to Article 1, Paragraph 25 of the Aviation Law, cabin baggage refers to items carried by passengers that remain under their own supervision. This implies that passengers are primarily responsible for the safety and security of their cabin baggage. However, in certain situations—such as when overhead storage is limited or when airline policies dictate—cabin crew may instruct passengers to store their belongings in specific areas, such as designated compartments.¹⁴

In practice, passengers occasionally lose items from their cabin baggage due to various causes, including personal negligence, third-party interference (such as theft), or factors involving the airline itself. When the loss occurs due to airline-related circumstances, questions arise concerning the extent to which the airline can be held legally accountable. This study focuses on the core legal issue of determining the airline's liability for the loss of passenger belongings stored in cabin baggage.

The legal responsibility of airlines for the damage or loss of passenger baggage is clearly addressed in the Aviation Law. Article 144 stipulates that the carrier is liable for losses incurred by passengers as a result of the loss, destruction, or damage of checked baggage, provided the baggage is under the carrier's supervision during the course of air

¹⁴ Syahmin Syahmin, Meria Utama, and Akhmad Idris, *Hukum Udara Dan Luar Angkasa (Air And Outer Space Law)*, 2nd ed. (Palembang: Unsri Press, 2013).

transportation. Additionally, Article 1, Paragraph 22 of the same law defines carrier liability as the obligation of an air transport operator to provide compensation to passengers, consignors, or third parties who have suffered loss. Similar provisions are reinforced in the Minister of Transportation Regulation No. 77 of 2011, particularly Article 1, Paragraph 3, which obligates carriers to compensate for losses suffered by passengers or other related parties.

The issue of passenger baggage continues to be a significant concern, as practical cases of lost or damaged baggage frequently result in passenger dissatisfaction and financial harm.¹⁵ Article 168 of the Aviation Law further states that compensation for checked baggage is governed by Ministerial Regulations. Importantly, passenger baggage is classified into two categories: cabin baggage and checked baggage, as outlined in Articles 1, Paragraphs 24 and 25 of the Aviation Law. The primary regulatory reference concerning carrier liability is Ministerial Regulation No. 77 of 2011 on the Responsibility of Air Carriers, which clearly delineates the obligations of airlines operating in Indonesia.

According to Article 2 of the Aviation Law, the scope of this legislation encompasses provisions on air transportation and the responsibilities of carriers. With respect to the loss or damage of items in cabin baggage, Article 2 serves as the general legal foundation linking all aspects of aviation regulation, including the rights and duties of air carriers and the protection of passengers. However, specific provisions regarding liability for cabin baggage losses are addressed in Article 168, which stipulates that compensation for checked baggage shall be determined through further implementing regulations. In this context, Ministerial Regulation No. 77 of 2011 provides the framework distinguishing between the legal responsibilities of carriers concerning cabin baggage and checked baggage.¹⁶

Cabin baggage is technically under the direct control of the passenger. Consequently, in many cases, airlines are not fully liable for the loss or damage of items stored within it—unless the loss results from negligence on the part of the airline or its cabin crew. Therefore, the relationship between Article 2 of the Aviation Law and the issue of liability for cabin baggage lies in the broader regulatory framework that establishes the principle of carrier liability, which is further detailed in other legal provisions such as Article 168 of the Aviation Law and Ministerial Regulation No. 77 of 2011.¹⁷

The principle of liability plays a crucial role in consumer protection law. In situations involving the violation of consumer rights, it is essential to analyze carefully

¹⁵ Regino G. Salindeho, “Perlindungan Hukum Terhadap Konsumen Atas Pengguna Barang Menurut Undang-Undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen,” *Lex Crimen* 5, no. 7 (2016): 35–42, <https://ejournal.unsrat.ac.id/index.php/lexcrimen/article/view/13496>.

¹⁶ Martono and Pramono, *Hukum Udara Perdata Internasional Dan Nasional*.

¹⁷ Adyt Dimas Prasaja Utama and I Gusti Ngurah Parikesit Widiatedja, “Tanggung Jawab Perusahaan Penerbangan Terhadap Penumpang,” *Kertha Semaya: Journal Ilmu Hukum* 4, no. 2 (2015): 2303–0569, <https://ojs.unud.ac.id/index.php/kerthasemaya/article/view/15302>.

who should be held accountable and the extent of that responsibility.¹⁸ In general, the principles of liability under aviation law include the following:

1) Fault-Based Legal Liability

This principle is regulated in Article 1365 of the Indonesian Civil Code, which addresses unlawful acts and applies broadly, including to airlines. The article stipulates that any act in violation of the law that causes harm to another party requires the wrongdoer to provide compensation. Consequently, both individuals and legal entities are held accountable for their actions. If a party's actions result in damage or loss to another, that party is obliged to make restitution.

Furthermore, Article 1367 of the Civil Code expands this liability to include losses caused by employees, agents, or representatives while performing their duties. This liability hinges on the elements of fault, causation, and actual loss. The burden of proof lies with the injured party. If fault is established, liability is unlimited; however, if no causal link is found between the act and the loss, the company cannot be held liable.

2) Presumption of Liability

Under this principle, the airline is presumed liable for losses suffered by passengers or consignors without requiring the plaintiff to initially prove fault. The airline may, however, exonerate itself by demonstrating that it was not at fault. In such cases, the passenger only needs to report the loss that occurred during the flight.

3) Strict Liability (Liability Without Fault)

Although not explicitly stated, this principle is implied in the Warsaw Convention and related Air Transport Ordinances. It applies primarily to hand baggage, which remains under the passenger's control, as opposed to checked baggage, which is surrendered to the carrier. The Warsaw Convention does not extend its regulations to hand baggage, thereby making passengers entirely responsible for their safety and security.

4) Absolute Liability

This principle holds that the air carrier is automatically liable for any loss or damage that occurs during air transport, regardless of whether fault can be proven. Under this rule, the burden of proof is irrelevant, and liability arises solely from the occurrence of the loss.

¹⁸ Happy Susanto, *Hak-Hak Konsumen Jika Dirugikan: Panduan Praktis*, ed. Yoga Yoga and Dwi In (Jakarta Selatan: Transmedia Pustaka, 2008).

5) Limited Liability

This principle allows business entities to include exoneration clauses within standard contracts, thereby capping their liability. However, Article 18, Paragraph 1, Letters a and g of the Consumer Protection Law prohibits such clauses if they are unilaterally determined by business actors to the detriment of consumers. According to Shidarta, limiting liability in this way is harmful to consumers. Therefore, under current regulations, businesses may only limit their liability if it is explicitly permitted by statutory provisions.

Negligence on the part of business actors, including airlines, in fulfilling their obligations to consumers often leads to legal disputes. This includes cases involving the loss of items stored in cabin baggage. In general, consumer disputes arise from two main sources:¹⁹

- a. **Statutory Disputes:** These occur when business actors fail to fulfill their legal obligations, including violations of statutory responsibilities and prohibitions in conducting business. Such disputes are classified as arising from the law.
- b. **Contractual Disputes:** These occur when either party—business actor or consumer—fails to honor the terms of a previously agreed contract, resulting in a breach of the obligations stipulated therein. This category is referred to as a dispute arising from the contract.

As stipulated in the Consumer Protection Act, consumer dispute resolution is addressed in Article 45, which provides the following provisions:

- a. Consumers who suffer losses are entitled to file a claim against business actors through a dispute resolution body or a general court.
- b. Disputes may be resolved either through the judiciary or through non-litigation means, based on a voluntary agreement between the disputing parties.
- c. Resolution of disputes outside the courts does not eliminate criminal liability as regulated by applicable laws and regulations.
- d. If the parties elect to resolve their dispute out of court, a claim may only be filed in court if the non-judicial resolution attempt is declared unsuccessful by one or both parties.

In accordance with the Consumer Protection Act, consumer dispute resolution can be pursued through judicial or non-judicial avenues. The legislation provides a mechanism through which consumers can report violations of their rights by business actors, including through dedicated consumer complaint institutions. One such

¹⁹ Janus Sidabalok, *Hukum Perlindungan Konsumen Di Indonesia* (Bandung: Citra Aditya Bakti, 2006), https://citraaditya.com/product/hukum-perlindungan-konsumen-di-indonesia_janus-sibalok/.

institution accessible to airline passengers is the Community-Based Consumer Protection Institute (Lembaga Perlindungan Konsumen Swadaya Masyarakat, or LPKSM), as specified in Article 44 of the Act. LPKSM is officially recognized by the government and plays an active role in advocating for consumer rights.

According to Article 3 of Government Regulation No. 59 of 2001, LPKSM is responsible for assisting consumers in asserting their rights, receiving complaints, and supervising the implementation of consumer protection in collaboration with the government and the broader community. However, LPKSM's role is limited to accepting complaints and filing lawsuits on behalf of consumers; it does not have the authority to adjudicate disputes. The authority to resolve such disputes lies with the District Court.

The Consumer Dispute Settlement Agency (Badan Penyelesaian Sengketa Konsumen, or BPSK), established under Articles 49–58 of the Consumer Protection Act, serves as a specialized consumer court (similar to a small claims court) with the objective of facilitating a fast, simple, and affordable dispute resolution process.²⁰ BPSK is authorized to settle disputes between consumers and business actors through mediation, arbitration, or conciliation. It also holds the authority to impose administrative sanctions on business actors who violate consumer protection laws.

Although BPSK provides a more expedient dispute resolution process compared to the courts, its decisions do not possess independent executory power. According to Article 57 of the Consumer Protection Act, enforcement of BPSK decisions requires ratification by a District Court. While BPSK decisions are considered final and binding, they remain subject to appeal and judicial review. Litigation becomes necessary under the following circumstances:

- a. The parties did not agree to resolve the dispute through a non-judicial mechanism; or
- b. The attempt to resolve the dispute outside the court is deemed unsuccessful by one or both parties.

With respect to the transportation of cabin baggage, the airline is not held liable and bears no burden of proof if it can demonstrate any of the following conditions:²¹

- a. The airline has taken all necessary measures to prevent loss;
- b. The airline has made reasonable and maximum efforts to prevent loss;
- c. The loss resulted from errors in piloting, operating the aircraft, or navigation;
- d. The loss was caused by another passenger's negligence; or

²⁰ Celina Tri Siwi Kristiyanti, *Hukum Perlindungan Konsumen*, 5th ed. (Jakarta: Sinar Grafika, 2016).

²¹ Trully Nikita Umboh, "Perlindungan Hukum Terhadap Konsumen Pengguna Jasa Penerbangan Atas Kerugian Yang Terjadi Dalam Pengangkutan Udara," *Lex Et Societatis* 7, no. 9 (2019): 62–70, <https://doi.org/10.35796/les.v7i9.27000>.

e. The loss was caused by the negligence of the passenger themselves.

Based on the foregoing analysis, it appears that the principle of presumption of non-liability may not be applicable in such cases. Rather, the principle of limited liability is more likely to be applied. This suggests that compensation may be limited, particularly when the passenger has taken reasonable measures to safeguard their cabin baggage, while the airline has only committed a minor act of negligence. Consequently, the burden of proof remains with the passenger who suffered the loss. In this context, the author argues that the Panel of Judges applied the principle of limited liability in rendering their decision.

Pursuant to Article 167 of the Aviation Law and Article 4, paragraph (2) of the Minister of Transportation Regulation No. 77 of 2011, compensation for passengers is limited to the actual loss incurred. Furthermore, the author contends that the airline's conduct in this case constituted mere negligence; thus, the Principle of Limitation of Liability was applied. However, the author argues that the judicial decision is unjust from the consumer's perspective.

According to Article 4 of the Minister of Transportation Regulation No. 77 of 2011 on the Responsibilities of Air Transport Carriers, airlines are not liable for the loss or damage of cabin baggage, as such luggage is deemed to be the sole responsibility of the passenger. Passengers are expected to supervise and safeguard their belongings while onboard. Nevertheless, in practice, airlines should not be entirely absolved of responsibility. Although in this instance the consumer may have been less vigilant in securing their cabin baggage, the airline, as a commercial entity, has a duty to ensure passenger safety and comfort—including the protection of personal belongings during transit.

Therefore, preventive measures are necessary to minimize the risk of cabin baggage theft. If airlines routinely disclaim responsibility for such losses, similar incidents are likely to recur. Notably, this particular case involved theft, a type of criminal act, and mirrors previous incidents involving the same airline, Qatar Airways.

To address these risks, airlines should strengthen their onboard security systems, particularly in the passenger cabin area. One recommendation is the implementation of a Cabin Video Monitoring System (CVMS), which is already in use by several international airlines. Additionally, airlines might consider incorporating enhanced security mechanisms, such as automated locking systems for cabin baggage compartments that can only be accessed with the assistance of flight crew. The installation of surveillance cameras around baggage storage areas would further deter theft and promote accountability.

From a legal standpoint, it appears the judge in this case primarily relied on statutory provisions as the basis for the decision. However, when applying the law, judges must also consider whether it upholds justice, ensures public benefit, and

guarantees legal certainty. This is essential because the law's fundamental objective is to promote justice. In this context, justice refers to legal justice, grounded in formal legislation. Nonetheless, under certain circumstances, the rigid application of statutory law may inadvertently result in injustice. This often occurs when evolving societal values render certain legal norms outdated or insufficiently responsive.

In executing their duties, judges must therefore not only enforce the law normatively but also in alignment with substantive justice as understood and experienced within society. This view aligns with Gustav Radbruch's legal philosophy, which emphasizes three core values in law: justice, utility (benefit), and legal certainty. Radbruch proposed that these values must be observed in a hierarchical order, with justice as the highest priority, followed by utility and then legal certainty.²²

Applying Radbruch's theory to this case suggests that justice should have taken precedence. Justice, in this context, encompasses the balanced fulfillment of rights and obligations between airlines and passengers. That balance has yet to be fully achieved, given that airlines currently disclaim responsibility for the loss of passenger property and fail to provide adequate onboard security infrastructure.

Accordingly, it is recommended that airlines adopt stricter safety protocols within the cabin area. The adoption of Cabin Video Monitoring Systems (CVMS) and automated baggage lock mechanisms—accessible only by authorized crew members—could significantly enhance security and ensure better protection of passengers' personal belongings during flight.

The second key legal principle applicable in this case is utility. The concept of legal utility is closely associated with the purpose of punishment, particularly its preventive function. Specific prevention aims to deter individuals from committing future unlawful acts, while general prevention serves to warn the public about the consequences of legal violations.

Therefore, the judge's decision must not only serve the cause of justice but also benefit society at large. The decision should take into account the necessity of preventive measures to avoid the recurrence of similar incidents, such as the loss of luggage in the aircraft cabin due to insufficient security measures by the airline. The loss of luggage on Qatar Airways is not an isolated incident; it represents a pattern that should have been prevented by the airline but was not.

In addition to utility, another essential element is legal certainty. Legal certainty is a primary objective of law and is integral to the realization of justice. The tangible manifestation of legal certainty lies in the consistent and fair application and

²² Albert Lodewyk Sentosa Siahaan et al., "Legal Certainty of Gustav Radbruch Based on Tax Imposition on Land Acquisition and Building Rights on Sale and Purchase of Land and Building in Medan City," *International Journal of Religion* 5, no. 11 (2024): 2900–2907, <https://doi.org/10.61707/gvzncp60>; Heather Leawoods, "Gustav Radbruch: An Extraordinary Legal Philosopher," *Journal of Law and Policy* 2 (2000): 489–515, https://openscholarship.wustl.edu/law_journal_law_policy/vol2/iss1/16.

enforcement of legal rules. However, if a conflict arises between legal regulations and actual outcomes, Gustav Radbruch's theory advocates that justice should take precedence, followed by utility and legal certainty.²³ Therefore, in this case, justice for consumers must be the paramount priority. Consumers have suffered losses due to the loss of their goods in the aircraft cabin, a situation that should have been prevented by the airline. Consequently, the judge's decision must protect consumer rights and compel airlines to enhance their security measures.

Dispute resolution through the courts is generally regarded as the final legal recourse after attempts at out-of-court settlement have been exhausted. In cases of damage, loss, or destruction of passenger property within the aircraft's baggage, affected passengers have the right to pursue various mechanisms for consumer dispute resolution. However, out-of-court resolution is preferable as the first step. If such efforts fail, the passenger can initiate legal action against the airline in the District Court.

In this case, Qatar Airways filed an objection to BPSK Decision No. 006/A/BPSK-DKI/XII/2015 dated December 10, 2015, submitting a written objection on January 11, 2016. The objection was registered at the West Jakarta District Court Clerk's Office under registration number 10/Pdt.Sus-BPSK/2016/PN.JKT.BRT. Dissatisfied with the initial decision, Qatar Airways appealed the ruling, which was subsequently decided under Case Number 649 K/Pdt.Sus-BPSK/2016. Still unsatisfied with the outcome, Qatar Airways filed a judicial review (PK) request, which was granted in Decision No. 117PK/Pdt.Sus-BPSK/2017. This sequence of legal actions illustrates the multiple avenues for redress available under Indonesian positive law for consumers harmed by the use of goods or services, particularly when the loss results from a breach of contract or unlawful acts.

As stipulated by consumer protection regulations, air transport service users are categorized as end consumers—those who use goods or services for personal or household purposes, rather than for resale. Articles 19 to 28 of the Consumer Protection Law (UUPK) require business actors to compensate consumers for losses, damage, or other negative impacts arising from the use of their products or services, as outlined in Article 19. Additionally, under Article 7(a) of the UUPK, air transport providers, as business actors, are obligated to act in good faith to promote a healthy business environment and safeguard consumers from harm.

The responsibility of air carriers for losses associated with the loss of goods in aircraft baggage is governed by Article 19, paragraph (1) of the UUPK. If consumers suffer losses due to damage, pollution, or improper use of goods and services, business actors are required to provide compensation, which may include a refund, replacement of equivalent goods or services, or reimbursement for health-related expenses or other applicable benefits.

²³ Leawoods, "Gustav Radbruch: An Extraordinary Legal Philosopher."

Specific provisions regarding compensation by air carriers are detailed in Chapter X of the Aviation Law, which addresses air transportation and the carrier's responsibility with respect to compensation amounts. The legal relationship between airlines and passengers is established through a transportation agreement, which guarantees safety and defines the obligations of the carrier. Airlines are required to provide transportation as specified in the ticket and air cargo documentation, ensuring that services are delivered in accordance with the agreement.

Air carriers are liable for losses incurred due to the loss, destruction, or damage of checked baggage while under their supervision. In the case of lost cabin baggage, passengers must prove that the loss was directly caused by the carrier or its employees. Compensation for cabin baggage loss is limited to the actual loss based on the value of the goods at the time of the incident. For checked baggage, compensation levels are further specified in relevant ministerial regulations.

4. CONCLUSION

The issue of lost items in aircraft cabin baggage highlights the complexity of legal liability between passengers and airlines. Although various national and international regulations establish the rights and responsibilities within the aviation sector, practical implementation often reveals a gap between legal provisions and their enforcement. Legal barriers such as liability limitations and the burden of proof pose significant challenges for passengers seeking fair compensation. Additionally, complex administrative procedures, limited technical oversight in the cabin, and economic factors—such as the high cost of legal proceedings—further weaken consumers' bargaining power in dispute resolution.

To enhance consumer protection, airlines should strengthen cabin security standards by adopting technologies such as the Cabin Video Monitoring System (CVMS) and automated locking mechanisms for cabin baggage. Governments should also re-examine existing regulations, particularly those related to the principle of limitation of liability, to better support passengers who suffer losses. Moreover, airlines must take a proactive role in educating passengers and ensuring transparency in the claims process. Strengthening out-of-court dispute resolution mechanisms, such as the Consumer Dispute Settlement Agency (BPSK) and the Consumer Protection Institution (LPKSM), represents a strategic approach to providing timely and affordable access to justice.

Future research may focus on comparative analyses of airline liability frameworks for lost cabin baggage in other jurisdictions, with the aim of identifying a more effective consumer protection model. Empirical studies assessing the effectiveness of dispute resolution through BPSK and other non-litigation mechanisms could offer valuable insights into the practical challenges consumers face. Additionally, research may explore

the development of technological tools to enable real-time monitoring and safeguarding of cabin baggage as a preventive measure against theft or airline negligence.

REFERENCES

Journals

- Azis, Fadilah Abdul, Abdain Abdain, and Takdir Takdir. "Pertanggungjawaban Pihak Maskapai Terhadap Kehilangan Dan Kerusakan Bagasi Menurut Peraturan Menteri No. 77 Tahun 2011 Tentang Tanggung Jawab Pengangkut Angkutan Udara." *Al Manhaj: Jurnal Hukum Dan Pranata Sosial Islam* 5, no. 2 (2023): 1059–1072. <https://doi.org/10.37680/almanhaj.v5i2.2496>.
- Berlian, Berlian, and Permai Yudi. "The Protection Law to Consumers for The Right to Get Information from Imported Product." *Legal Brief* 11, no. 5 (2022): 2890–2894. <https://legal.isha.or.id/index.php/legal/article/view/514>.
- Leawoods, Heather. "Gustav Radbruch: An Extraordinary Legal Philosopher." *Journal of Law and Policy* 2 (2000): 489–515. https://openscholarship.wustl.edu/law_journal_law_policy/vol2/iss1/16.
- Octafiany, Princess Anggun. "Ganti Rugi Terhadap Penumpang Pesawat Terbang Komersial Atas Hilangnya Barang Di Bagasi Pesawat Terbang." *Innovative: Journal Of Social Science Research* 4, no. 1 (2024): 12181–12196. <https://j-innovative.org/index.php/Innovative/article/view/6108>.
- Putri, Rosalita Ardiani, and Bambang Eko Turisno. "Perlindungan Hukum Yang Adil Atas Hilangnya Bagasi Penumpang Dalam Pengangkutan Udara." *Law Reform* 11, no. 1 (2015): 53–64. <https://doi.org/10.14710/lr.v11i1.15755>.
- Salindeho, Regino G. "Perlindungan Hukum Terhadap Konsumen Atas Pengguna Barang Menurut Undang-Undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen." *Lex Crimen* 5, no. 7 (2016): 35–42. <https://ejournal.unsrat.ac.id/index.php/lexcrimen/article/view/13496>.
- Siahaan, Albert Lodewyk Sentosa, Budiman Ginting, Muhammad Yamin, and Faisal Akbar Nasution. "Legal Certainty of Gustav Radbruch Based on Tax Imposition on Land Acquisition and Building Rights on Sale and Purchase of Land and Building in Medan City." *International Journal of Religion* 5, no. 11 (2024): 2900–2907. <https://doi.org/10.61707/gvzncp60>.
- Simbolon, Govind Rayigel Polado, and Made Aditya Pramana Putra. "Perlindungan Hukum Terhadap Penumpang Atas Kerusakan Dan Kehilangan Koper Bagasi Tercatat Oleh Pihak Maskapai." *Kertha Negara: Journal Ilmu Hukum* 12, no. 5 (2024): 480–91. <https://ojs.unud.ac.id/index.php/kerthanegara/article/view/107978>.

- Tuhana, Tuhana, and Subandriyo Adi Prasetyo. "Tanggung Jawab Maskapai Penerbangan Atas Kehilangan Dan/ Atau Kerusakan Barang Bagasi Tercatat Milik Penumpang Dalam Angkutan Udara Ditinjau Dari Aspek Hukum Perdata: Studi Kasus Maskapai Garuda Indonesia Di Bandara Adi Soemarmo Boyolali." *Private Law* 2, no. 5 (2014): 94–103.
<http://jurnal.hukum.uns.ac.id/index.php/privatelaw/article/view/502>.
- Umboh, Trully Nikita. "Perlindungan Hukum Terhadap Konsumen Pengguna Jasa Penerbangan Atas Kerugian Yang Terjadi Dalam Pengangkutan Udara." *Lex Et Societatis* 7, no. 9 (2019): 62–70. <https://doi.org/10.35796/les.v7i9.27000>.
- Utama, Adyt Dimas Prasaja, and I Gusti Ngurah Parikesit Widiatedja. "Tanggung Jawab Perusahaan Penerbangan Terhadap Penumpang." *Kertha Semaya: Journal Ilmu Hukum* 4, no. 2 (2015): 2303–0569.
<https://ojs.unud.ac.id/index.php/kerthasemaya/article/view/15302>.
- Winata, Hendra, and H. K. Martono. "Analisis Tanggung Jawab Perusahaan Penerbangan Terhadap Kerugian Penumpang Akibat Hilangnya Bagasi Tercatat Yang Memuat Barang Berharga Tanpa Sepengetahuan Pengangkut Berdasarkan Konvensi Warsawa 1929 Sebagai Lex Specialis." *Jurnal Hukum Adigma* 2, no. 2 (2019): 1–25. <https://doi.org/10.24912/adigama.v2i2.6699>.

Books

- Harnyoto, Edie. *Transportasi Pro Rakyat*. Jakarta: Gramedia Pustaka Utama, 2013.
- Kamaluddin, Rustian. *Ekonomi Transportasi: Karakteristik, Teori, Dan Kebijakan*. Jakarta: Ghalia Indonesia, 2003.
- Kristiyanti, Celina Tri Siwi. *Hukum Perlindungan Konsumen*. 5th ed. Jakarta: Sinar Grafika, 2016.
- Martono, H. K. *Pengantar Hukum Udara Nasional Dan Internasional*. Depok: PT. RajaGrafindo Persada, 2007.
<https://www.rajagrafindo.co.id/produk/pengantar-hukum-udara-nasional-dan-internasional/>.
- Martono, H.K., and Argus Pramono. *Hukum Udara Perdata Internasional Dan Nasional*. Depok: PT. RajaGrafindo Persada, 2013.
<https://www.rajagrafindo.co.id/produk/hukum-udara-perdata-internasional-nasi/>.
- Marzuki, Peter Mahmud. *Penelitian Hukum*. 19th ed. Jakarta: Prenada Media Group, 2019. <https://prenadamedia.com/product/penelitian-hukum-edisi-revisi/>.
- Sidabalok, Janus. *Hukum Perlindungan Konsumen Di Indonesia*. Bandung: Citra Aditya

Bakti, 2006. https://citraaditya.com/product/hukum-perlindungan-konsumen-di-indonesia_janus-sibalok/.

Susanto, Happy. *Hak-Hak Konsumen Jika Dirugikan: Panduan Praktis*. Edited by Yoga Yoga and Dwi In. Jakarta Selatan: Transmedia Pustaka, 2008.

Syahmin, Syahmin, Meria Utama, and Akhmad Idris. *Hukum Udara Dan Luar Angkasa (Air And Outer Space Law)*. 2nd ed. Palembang: Unsri Press, 2013.

Web Pages

Saputra, Andi. "Alasan Lengkap MA Hukum Qatar Airways Karena Uang Penumpang Di Kabin Hilang." detikNews, 2016. <https://news.detik.com/berita/d-3331493/alasan-lengkap-ma-hukum-qatar-airways-karena-uang-penumpang-di-kabin-hilang>.