

# Airline Responsibility for Loss and Damage to Passenger Goods From the Perspective of Wahbah Az-Zuhaili

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## Abstract

Responsibility can be defined as a condition of being obliged to bear something if there is something that can be claimed, disputed, allowed, and so on, in the context of legal relations between one person and another with more emphasis on individual interests, private in nature. This paper aims to find out how airlines are responsible for damage and loss of passenger goods. In order to approach this problem, a reference to qualitative theory is used. Data was collected through secondary and primary data sources and analyzed qualitatively. This study concludes that even the students who damage the goods are caused by general workers, so the one who guarantees it is the instructor because he is the one who is basically responsible, so it is as if he himself did the damage.

**Keywords:** Accountability; Airline; Loss of Goods.

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## INTRODUCTION

Currently, human life is inseparable from tertiary needs, one of which is vehicles. Transportation is a means of transportation that is driven by machines and controlled by humans and is a means of supporting the economic progress of a country throughout the world (Suwardi & Boediningsih, 2019).

Transportation is a necessity, even a necessity in our daily lives, because in human life it cannot be separated from transportation. Transportation is divided into three types: land, sea, and air. The definition of transportation is an effort to move, transport, move, or transfer an object from one place to another, or a transfer of goods and people from the place of origin to the destination (Ismayanti, 2010). Specifically discussing air transport, the definition of air transport is a person or legal entity that enters into an agreement for the carriage of people by aircraft and receives a reward (Levine, 1964; Wells, 2007; Wensveen, 2023).

The emergence of these airlines has resulted in a lot of competition among airlines, so each airline has its own advantages in the form of various facilities according to the standard rules and capacities set by the airline company concerned, not forgetting its obligation to provide the best service for passengers and passengers' belongings safely to their destination. But this will work well if accompanied by a good air transportation system as well (Button & Stough, 2000; Vasigh et al., 2018). Therefore, the Government supports this, marked by the issuance of flight regulations to guarantee the rights and obligations of every community that uses air transportation and limit the airlines themselves so as not to be arbitrary in carrying out their business.

As found in the Quran, Surah Al-Ahzab, verse 72:

أَنَا عَرَضْنَا الْأَمَانَةَ عَلَى السَّمَوَاتِ وَالْأَرْضِ وَالْجِبَالِ فَأَبَيْنَ أَنْ يَحْمِلْنَهَا وَأَشْفَقْنَ مِنْهَا وَحَمَلَهَا الْإِنْسَانُ إِنَّهُ كَانَ ظَلُومًا جَهُولًا

Means : Verily We have offered commissions to heaven, earth, and mountains; But all of them were reluctant to bear the commission, and they feared that they would not carry it out (hard), and then the commission was carried by men. Truly, man is very zhalim and very stupid.

In addition to the verse in the Quran, Surah Al-Ahzab, verse 72, there is also a hadith regarding accountability as follows:

عَنْ سَمُرَةَ بْنِ جُنْدُبٍ عَنِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ عَلَى أَلْيَدٍ مَا أَخَذْتَ حَتَّى تُؤَدِّيَهُ وَ قَالَ ابْنُ بَشِيرٍ حَتَّى تُؤَدِّيَ

Means : From Samurah bin Jundub, the Prophet Sallallahu 'alaihi wasalama said: The one who holds must be responsible for what he takes until he fulfills it (gives it). Said Ibn Basyir: Until the goods are given. (HR. Imam Ahmad in his Musnad).

Article 2 of Law Number 1 of 2009 concerning Aviation states that aviation is organized based on the principles of benefits, joint and familial efforts, fairness and equity, balance, harmony, public interest, integration of law enforcement, independence, openness, antimonopoly, environmental insight, state sovereignty, nationality, and internationality. The article must be based on the principle of protecting the rights and obligations between airlines and passengers when using air transport services.

There are several previous studies related to airline answers, including research Deny pala'langan, with the title "Liability of Airlines against Loss of Passenger Baggage." The research uses normative juridical research methods, while this study uses empirical juridical methods. The research discusses it in general terms, while this study discusses it in terms of Islamic sharia, which is derived from the opinion of Wahbah Az-Zuhaili (Pala'langan, 2017).

Alex Candra, Muhammad Japri, and Romanius, with the title of airline liability for loss of luggage based on Law Number 1 of 2009 concerning aviation. The previous study used normative juridical research methods, while this study used empirical juridical research. The research discusses the law, while this study discusses it in terms of Islamic sharia, taken from the opinion of Wahbah Az-Zuhaili. Muhammad Ferdian, with the title consumer protection for loss or damage to air transport baggage items. The study used normative research. The research discusses in general only the sedanngkan in this study in terms of Islamic sharia, taken from the opinion of Wahbah Az Zuhaili.

Adelia, as a Lion Air service user: "I have used this air transportation service several times; in fact, you could say often, but to lose luggage, thank God I have never experienced it, but if the goods are damaged, it is often. Maybe it's because of the slam, or how, I don't know. But I never had a problem because I was too lazy to have a long affair.

Salman Amrillah Djiharkah was the 27th National MTQ participant from West Java on the return flight from North Sumatra. The Rp 18 million earned as the 3rd place prize was lost in the suitcase during a flight using City Link. Salman said the money was missing from his suitcase, mentioning that their contingent flew from Kuala Namu airport on City Link on Saturday, October 13, 2018. But when he flew, it turned out that his baggage had not been flown to Bandung. The baggage was only flown the next day, and after being received by him, it was already in a state of broken and torn seals, and the money worth 18 million, which was the 3rd place prize for the MTQ N competition, was gone. Being probed by City Link also didn't care, instead blaming Salman completely.

Pendi Manalu, a passenger on Lion Air flight JT 305 on the Medan-Jakarta route. The suitcase was badly damaged, and a number of valuables were lost when passengers arrived at Soekarno Hatta Airport in Cengkareng. I lost a pair of rings. According to Wahbah Az-Zuhaili, whatever damage and loss suffered by passengers, if it is caused by the negligence and fault of air transport business actors, then they must be responsible. This proposes that the existence of a reciprocal relationship should be able to place equality between the two parties, but in practice, there are still many air transport passengers who do not know their rights and obligations as explained in Law Number 1 of 2009 and According to Wahbah Az-Zuhaili (Zuhaili, 2010).

Based on the description above, the author is interested in conducting research entitled Airline Liability for Loss and Damage to Passenger Goods from the perspective of Wahbah Az-Zuhaili.

## **RESEARCH METHODS**

The method used in this study is empirical juridical research, also called field research, namely legal research conducted by researching directly or using mere secondary data (Sugiyono, 2013). This study employs the kind of research that is acceptable and pertinent to the study's goal. This research must follow a specific procedure in order to function smoothly and produce data and outcomes that can be explained. Direct research and library research, which highlights the source of information from legal literature, such as pertinent books, documents, journals, papers, and writings on websites that are in line with the aim of study, both complement this research methodology. (Creswell, 2016).

## **RESULTS AND DISCUSSION**

### **Rights and Obligations of Airlines and Passengers**

According to the Big Dictionary, Indonesian responsibility can be defined as the condition of being obliged to bear everything; if there is something, it can be demanded, disputed, allowed, and so on, in the framework of legal relations between one person and another, with more emphasis on individual interests. This responsibility serves as a facilitator to balance the rights and obligations between airlines as providers and air transport passengers as air transport service users and third parties and to provide legal certainty between service providers and air transport service users in conducting air transport service engagements.

In general, rights can be interpreted as claims or ownership of individuals or something else. A person is said to have rights if he has a claim to perform an act in a certain way or if another person is obliged to perform an act in a certain way for him. Rights can come from a legal system that allows a person to act in a certain way against him; this is called a legal right. In the implementation of the agreement, of course, there are achievements and counterachievements. In an air carriage agreement, since the time of agreement or agreement from both parties, both airlines and passengers have given rise to legal relationships that give rise to rights and obligations that must be fulfilled by both parties in accordance with the agreement agreed by both parties.

The airline is obliged to organize the sacrifice or transport people to a place or destination safely, and the airline will receive its right to receive payment from passengers in accordance with the agreement agreed by both parties. While the passer-in-law is obliged to pay the fare of carriage coming to check in no later than 30 minutes before the departure of the aircraft and must not carry baggage that endangers flight safety and does not put valuables such as jewelry, money, and securities into the side of the checked baggage carried by the carrier, the passenger has the right to be transported to a certain destination with the airline safely and comfortably.

### Legal Protection of Passengers

The Indonesian government has provided special protection that regulates the compensation and responsibility of air carriers toward air transport consumers. The State provides legal protection to air transport consumers in general provisions governing Law Number 8 of 1999, Articles 4 and 5, concerning Consumer Protection, namely: (1) rights and comfort, security, and safety in consuming goods and services. (2) The right to choose goods or services and obtain such goods or services in accordance with the exchange rate, conditions, and guarantees promised. (3) The right to true, clear, and honest information about the conditions and guarantees of goods and services (4) the right to appropriate advocacy, protection, and resolution of consumer protection disputes. (5) The right to be heard and complaints about the goods and services used (6) The right to be treated or served properly and honestly and not discriminate. (7) The right to compensation, indemnity, or replacement if the goods or services received are not in accordance with the agreement or as appropriate. As stipulated in Article 45 of Law Number 8 of 1999 concerning consumer protection, every aggrieved consumer can sue business actors through institutions in charge of resolving disputes between consumers and business actors or through courts located in the general judicial environment. Dispute resolution can be reached through the courts on a voluntary basis between the parties to the dispute.

How much pay for travelers who bite the dust or experience because of airplane mishaps ultimately depends on 113,100 Extraordinary Drawing Freedoms (SDR), or around Rp 2.03 billion, as per Article 21 section (1). In the event that a traveler wishes to present a case surpassing the 113,100 SDR limit, the rule of obligation in light of issue applies. The aircraft should demonstrate that there was no adamant offense on its part as per Article 21 section (2). In case of misfortunes brought about via airplane delays, carriers are expected to give remuneration of a limit of 4,694 SDRs or roughly Rp 84.2 million as per Article 22 section (1). For misfortune, harm, or obliteration of gear and stuff, the air transporter's obligation is restricted to a limit of 1,131 SDRs or roughly Rp 20.3 million as per Article 22 section (2). In case of misfortunes brought about via airplane delays, carriers are obliged to remunerate a limit of 4,694 SDRs or roughly 84.2 million as per article 22 section (1); for misfortune, harm, or obliteration of gear and stuff, the air transporter's obligation is restricted to a limit of 1,131 SDRs or around Rp 20.3 million as per article 22 passage (2); for freight conveyance, in case of harm, misfortune, deferral, or obliteration of freight, the shipper is qualified for pay of a limit of 19 SDRs or around Rp 341 thousand for each kilogram as per article 22 passage (3).

### Liability of Airlines for Damage to and Loss of Statutory Baggage Items and Wahbah Az-Zuhaili

Airlines are obliged to carry passengers or luggage safely, completely, and safely to their destination. If passenger baggage in the Indonesian air transportation system is lost or damaged, the airline must be responsible. Some problems that are often encountered in the air transportation system are losses experienced by passengers, one of which is loss and damage to passenger goods. Relating to the airline's liability for losses suffered by passengers due to baggage damage. It has been regulated in several regulations, and the form of settlement must be adjusted to the principle of responsibility derived from agreements and laws. Liability for the airline for loss of goods based on the principle of responsibility on the basis of presumption of guilt by searching baggage for 14 days. During the 14 days, if the goods are found, they will be returned to the owner; if they are not found, the passenger will be compensated. The Carrier is required to provide waiting money in accordance with Article 5 of the Regulation of the Minister of Transportation Number 77 Paragraph (3) of 2011. There are two ways to resolve consumer disputes: through out-of-court settlement and through court (Ferdian, 2021).

Transportation Liability Article 141 of Law Number 1 states: (1) The Carrier shall be liable for the loss of passengers who die, are permanently disabled, or are injured as a result of the occurrence of air transport on board the aircraft and/or boarding and disembarking the aircraft. (2) The heirs or victims as a result of the air transport incident as referred to in paragraph (2) may proceed to the court for additional damages in addition to the stipulated damages. Article 142 (1) The carrier is not responsible and may refuse to carry a sick prospective passenger unless it can submit a doctor's certificate to the carrier stating that the person is permitted to be transported by aircraft. Passengers, as described in paragraph (1), must be accompanied by a doctor or nurse who is responsible and can assist them during the flight. Article 143 The carrier shall not be liable for damages due to loss or damage to cabin baggage unless hitchhikers can prove that the damage was caused by the actions of the carrier or its employees. Article 144: The carrier shall be liable for losses suffered by passengers due to lost, destroyed, or damaged checked baggage resulting from air transport activities while the checked baggage is in the custody of the carrier. Article 145: The carrier shall be liable for losses suffered by the shipper of destroyed, lost, or damaged cargo resulting from air transport activities while the cargo is in the custody of the carrier. Article 146: The carrier shall be liable for damages suffered due to delays in the carriage of passengers, baggage, or cargo, unless the carrier can prove that such delays were caused by weather and technical operational factors.

Each airport has a lost and found list provided by each airline. In cases of lost goods, usually the passenger concerned can report the item to the lost and found staff if it occurs during the flight. At the time of landing and passengers have dropped 100%, officers usually do cleaning, and if something is found belonging to passengers, it will be handed over to lost and found staff to be stored temporarily until passengers report their lost or left-behind items. If passengers do not report for 6 months, the stored items will be destroyed. However, if the above complaint occurs before the flight, passengers can report it to the airport information staff or aviation security post for follow-up. For damage to goods, depending on the case, if damaged goods are found after the flight and after checking it turns out that it is indeed due to negligence of the officer, passengers will be welcome to report to the lost and found staff to subsequently get a claim in the form of cash vouchers by the airline. Of course, each airline has its own policies and regulations, but of course at check-in passengers must estimate baggage packing so that the possibility of damage can be minimized because if it is found due to passenger negligence, the voucher claim does not apply. For example, damaged cardboard packaging But it should be underlined that if the item is not found by the officer, it is automatically completely not the responsibility of the airline; the officer is only helpful, not mandatory, for the goods carried by the passenger itself, such as handcarry or goods carried, and under full supervision together with the owner himself. So basically, if the item in question is not found, it is not the responsibility of the airline because there is a provision that valuables cannot be put in the baggage as the rules are found at the checkin counter, and the

checkin pass has also been conveyed to the airline. There is no garansu, and it is outside the context of the officer's supervision because the item is held directly by the owner (Sinaga, 2018).

The accountability of business actors is also discussed in the book Wahbah Az-Zuhaili in relation to rental services (ijarah). Shafi'iyah scholars divide ijarah contracts into two types: the absorption of goods (ijarah 'ain) and tenant responsibility (ijarah zimmah). Ijarah zimmah is ijarah for benefits related to the person renting out. There are two kinds of people: renters and general workers. Special workers are workers who work for someone else for a predetermined time. Therefore, he is not responsible for the damaged goods in his hands except for his trespass and negligence, and the worker has not committed an offense because he is allowed to hold them and the damage was not caused by him (Az-Zuhaili, 2011).

From the definition above, it can be seen that airlines include public works. Because working for the people is related to the concept of accountability for general workers in the book of Wahbah Az-Zuhaili, scholars differ on this matter. Abu Haneefah, Zufar, Hasan ibn Ziyad, the Hanabilah scholars in their shahih opinion in their madhhab, and Imam Shafii in the shahih opinion of the two opinions that the work of general workers is trustworthy just like that of special workers. Therefore, he shall not be liable for the damaged goods in his hands except for his trespass and negligence, because under the law of origin, a person is not obliged to replace them except for his transgression.

His work can affect the goods, guaranteeing damaged goods in his hands even if they are not caused by his violation or negligence if the goods include items that can be hidden. (Az-Zuhaili, 2011). From the definition above, it can be seen that airlines include general workers (ijarah zimmah). Because it works for the people, and in the book of Wahbah Az-Zuhaili on Ijarah, giving compensation in Islamic sharia aims to safeguard and preserve property from all destruction and provide a sense of security to its owner from harmful things. Al-Iz ibn Abd al-Salam explained that acts of harm to others are absolutely intolerable, especially when associated with the mistakes of businessmen who are not careful in exercising their rights (Saharuddin, 2016).

In the book of Wahbah Az-Zuhaili, volume 5, about ijarah, it is stated:

وَقَالَ الصَّاحِبَانُ وَأَحْمَدُ فِي رِوَايَةٍ أُخْرَى: يَدَ الْأَخِيْرِكُ يَدُ ضَمَانٍ فَهُوَ ضَامِنٌ لِمَا يَهْلِكُ فِي يَدِهِ وَلَوْ بَعِيْرٍ تَعَدَّى أَوْ تَقْصِيْرٍ مِنْهُ إِلاَّ إِذَا حَصَلَ الْهَلَاكُ بِحَرِيْقٍ غَالِبٍ عَامٍ أَوْ غَرَقٍ غَالِبٍ وَهَوَّ وَاسْتَدَلُّوا بِفِعْلِ عَمْرِ وَعَلِيٍّ الأَيْ بِيَا نَهْ . قَالَ البَغْدَادِي عَنْ بَعْضِ كُتُبِ الحَنْفِيَّةِ : وَبِقَوْلِ الصَّاحِبَيْنِ يُعْتَقَى اليَوْمَ لِتَغْيِيْرِ أَهْوَا النَّاسِ وَبِهِ يَحْصِلُ صِيْبًا نَهْ أَمْوَا لَهُمْ

"According to as-Shahiban (two companions of Abu Haneefah) and Ahmad in other narrations, the responsibility of the general worker is a guarantee (yad dhaman). Therefore, he is responsible for the damaged goods in his hands even if they were not caused by his trespass or negligence, unless the damage was caused by a general fire, drowning, or the like. They argued with the deeds of Umar and Ali, which will be explained later. Al-Baghdadi said, quoting from the Hanafi scriptures, that at this time it was fatwakan, in the opinion of Ash-Shahiban, because of the changing human condition. It is with this opinion that the property of the community can be preserved." (Az-Zuhaili, 2011, p. 419).

The opinion of Abu Haneefa and the scholars who agree with him in his book volume 4 is that the nature of trustworthiness can change into the nature of dhaman if in the following matters: First, not guarding it, that is, when workers are careless in guarding it. Negligence in guarding is what obliges dhaman (guarantee). It is like a man receiving his entrustment until his entrustment is gone. Second, Damage it if workers make mistakes such as deliberately damaging it or being excessive in transporting goods. So the damaged goods must be borne because the work allowed is work that provides goods, not destruction. That is because a reasonable person will not be willing to destroy his property. Damaged goods are caused by porters, so the instructor guarantees

the damage because he is the one who is responsible in essence, so it is as if he himself did the damage (Az-Zuhaili, 2011).

Based on Wahbah Az-Zuhaili's explanation above, passengers have the right to claim and get compensation for losses if they experience damage or loss of luggage in aircraft baggage with provisions that have been determined as a form of responsibility from the airline.

## CONCLUSION

Based on the above research, the author concludes that, regarding damage and loss of goods, the airline does not want to take responsibility for damage and loss of consumer goods directly. The airline will pay compensation if it has carried out the specified procedures. The amount of compensation provided by airlines refers to the Regulation of the Minister of Transportation. The existence of these regulations raises limits on the liability of airlines, and large quantities will be given to passengers. It shows that there are still weak regulations made in consumer protection.

Sharia has regulated the law of liability, as Wahbah Az-Zuhaili argues that the responsibility of public workers is a guarantee (yad dhaman). Therefore, he is responsible for the damaged goods in his hands even if they are not caused by his trespass or negligence, unless the damage is caused by a general fire, general drowning, or the like. They argued with the deeds of Umar and Ali. Al-Baghdadi said, quoting from the Hanafi scriptures, that at this time it was fatwakan, in the opinion of Ash-Shahiban, because of the changing human condition. It is with this opinion that people's property can be preserved.

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