

DISPARITY OF COURT DECISIONS IN THE CASES OF PASSENGER NOT ACCOUNTING FOR THE REASON OF AIRCRAFT CAPACITY

MUHAMMAD HARIDDIN

Faculty of Law, Khairun University, Ternate, Indonesia

RUSDIN ALAUDDIN

Faculty of Law, Khairun University, Ternate, Indonesia

NAM RUMKEL

Faculty of Law, Khairun University, Ternate, Indonesia
namrumkel@gmail.com

Received 21 March 2020 • Revised 30 April 2020 • Accepted 20 May 2020

Abstract

One of the cases where passengers were not transported due to an overcapacity of the aircraft (overseat) occurred on the Lion Air Manado - Jakarta flight with flight number JT 743 on 19 October 2011, in connection with this case there were two passengers who objected and suffered losses for this incident, and filed a civil suit to the Central Jakarta District Court for the settlement process with Decision Number: 42/Pdt.G/2012/PN.JKT.PST. and Decision Number: 260/Pdt.G/2014/PN.JKT.PST. This paper will discuss more deeply the basis for judges' considerations so that there are disparities in court decisions. The type of research used is juridical normative, with a statutory approach and a case approach. The data collected is then analyzed qualitatively. The results showed that District Court Decision Number 260/PDT.G/2014/PN.JKT.PST where the Plaintiff filed a lawsuit for act against the law but the Judge decided that the Defendant was guilty of default for the act of not carrying passengers on the grounds of aircraft capacity, this was related to the application of the passive judge principle and the ultra petitem partium principle which had broad meaning in good faith by the judge, then on District Court Decision Number 42/PDT.G/2012/PN.JKT.PST the judge decided that the Defendant was guilty of committing an unlawful act in terms of the absence of passengers on the grounds that the aircraft's capacity was in accordance with the Plaintiff's claim.

Keywords: *aircraft, court decision, disparity.*

INTRODUCTION

Indonesia is a country characterized by an archipelago and consists of various islands, both large and small and separated from one another by oceans and seas which have a very wide area and population distribution and are rich in natural and mineral wealth. As an archipelago, the interaction between one region and another is a must, it is an effort to achieve the national development goals as mandated by Pancasila and the Constitution of the Republic of Indonesia.

In order to realize the insight of the archipelago and strengthen national resilience, it is necessary to have a national transportation system that has an important and strategic position in national development that is environmentally sound. Transportation is also a means of smoothing the wheels of the economy, opening access to remote or remote areas, strengthening national unity and integrity, upholding state sovereignty, and influencing all aspects of community life. The importance of transportation is reflected in the increasing need for transportation services for the mobility of people

and goods within the country, from and outside the country, as well as playing a role as a driving force for regional growth and regional development.¹ Therefore, the role of transportation is expected to provide the best possible service in accordance with its function, namely moving goods and people from one place to another with the aim of increasing the use of value.²

Commitment to being able to achieve a development destination as expected, then as an archipelagic country a strengthening that can be seen from various aspects, then one of them quickly and so that the economic value of an object can increase, a transportation capital that has characteristics of fast and efficient is needed. In this modern era, fast and efficient transportation is a must. The development of human civilization, especially in the field of technology, has brought human civilization into a transportation system that is more advanced than the previous era.³ Given the geographical conditions that occur, the transportation referred to is air transportation using an airplane as a means of transportation.

The geographic location of the Indonesian nation from one region to another, which has fast and long distances with various existing problems. So, in the context of Indonesia, the choice of using an airplane is one type of transportation tool that can answer the question of the need for fast and efficient transportation equipment. One of the advantages that can be obtained by using an airplane is the shorter time to arrive at the destination when compared to using other means of transportation.

Every country would want good relations with other countries.⁴ Almost all countries that use the world of aviation as the main transportation as a means of transportation, can certainly have a high level of risk, because a few mistakes made by the people who work in its operations will have fatal consequences for both the aircraft itself, passengers and goods. being transported as well as against third parties. Therefore, the safety and security factor in transportation is the most important factor, considering the risk that occurs if the aircraft has an accident. Activities that use an airplane to transport people, goods for one trip or more from one airport to another airport or several airports are air transportation activities, this is in accordance with the definition of air transportation as contained in Law Number 1 Year 2009.

One of the events or cases of negligence of the carrier, namely the absence of passengers by reason of excess aircraft capacity, this case is a rare case of flight delay, where passengers are not transported by reason of excess aircraft capacity (overseat), overseat is excess capacity passengers due to a change from a certain capacity to a certain capacity, so that the passenger flight schedule is diverted to the next flight. This is clearly detrimental to passengers because there are many scheduled activities that have to be changed or canceled.

One of the cases where passengers were not transported due to an overcapacity of the aircraft (overseat) occurred on the Lion Air Manado - Jakarta flight with flight number JT 743 on 19 October 2011, in connection with this case there were two passengers who objected and suffered losses for this incident, and filed a civil suit to the Central Jakarta District Court for the settlement process. The passenger who filed a civil suit against Lion Air as a defendant was Hari Sunaryadi filed a lawsuit that Lion Air had committed unlawful acts but the Panel of Judges decided that the Defendant had committed Default and sentenced the Defendant to pay for material losses, as stated in the Decision Number: 260/Pdt.G/2014/PN.JKT.PST, while the other passengers on behalf of Rolas Budiman Sitingjak also filed a lawsuit that Lion Air had committed illegal acts and the Panel of Judges decided that Lion Air was found guilty of committing illegal acts and sentenced the Defendant to pay for material losses, as stated in the Decision Number: 42/Pdt.G/2012/PN.JKT.PST.

Observing these decisions, with the same cases both at the time of the incident and the place of the incident, but there are differences in the judges' verdicts, one of which states that passengers are not transported on the grounds that the excess capacity of the aircraft is an act of default born from the agreement made by the carrier to passengers, namely not fulfilling their obligations as carriers, while in another decision that the passenger not being transported by reason of the excess capacity of the aircraft was negligence, the carrier error which caused losses to the passenger as the consumer, and the carrier had committed an illegal act because it had fulfilled the elements of the act. Against the law based on Article 1365 of the Civil Code, namely an act that is against the law, an error, a loss and a relationship between the act and the loss. Based on this explanation, this paper will discuss more deeply the basis for judges' considerations so that there are disparities in court decisions.

¹ Abdul Kadir, *Transportasi: Peran dan Dampaknya dalam Pertumbuhan Ekonomi Nasional*, (Yogyakarta: without year), p.122.

² Soekardono R., *Hukum Dagang Indonesia*, (Jakarta: Rajawali Pers, 1981), p. 4

³ Sution Usman Adji, *Hukum Pengangkutan di Indonesia*. (Jakarta: PT Rineka Cipta, 2005), p. 1

⁴ Kadarudin, *Antologi Hukum Internasional Kontemporer*, (Yogyakarta: Deepublish, 2020), p. 4

METHOD

The type of research used is juridical-normative, which is research that is focused on examining the application of the rules or norms in positive law.⁵ This research uses a statutory approach and a case approach.⁶ The data collected is then analyzed qualitatively, namely data obtained from both library research is grouped and selected then combined with the problems to be studied according to quality and truth so that they will answer the existing problems.

RESULTS AND DISCUSSION

The Basis for the Judges' Considerations so that there is Disparity in Court Decisions

Based on the theory of the judge's decision, in a decision that can be interpreted as a good, perfect judge's decision, the decision should fulfill legal principles in civil procedural law/formal law, the principles in judge decisions, and find material law, and should This decision can be tested with 4 basic criteria for questions (the four way test) in the form of:⁷ (1) Is this my decision true, (2) Am I honest in making decisions, (3) Is it fair to the parties in the decision, (4) Is this my decision useful . Based on this theory by looking at the decision of the panel of judges against the two lawsuits, conceptually the panel of judges has carried out according to this theory, but the decision should have provided education to the public, especially justice seekers by filing the lawsuit, there should be no disparity in the decision. other hopes and facts must be proven both in theory and in practice, especially seeing from the subject matter in the lawsuit.

Judges in examining a case also need proof, where the results of that evidence will be used as material for consideration in deciding a case. Proof is the most important stage in examination at trial. Evidence aims to obtain certainty that an event being submitted actually occurred, in order to obtain a correct and fair decision of the judge. The judge cannot issue a decision before it becomes clear to him that the event actually happened, that is, it is proven true, so that there is a legal relationship between the parties.

In the two court decisions there are differences in the application of the simple principle of justice, fast and low cost. In this case, the Panel of Judges has implemented the provisions of the simple principle of quick trial and low-cost deviating from the provisions, because in the explanation in Law Number 48 Year 2009 concerning Judicial Power and according to experts, it is very clear what is meant by the principle of simple, quick trial and low-cost. In the case of examination and settlement of cases in court, one must remain thorough and careful in seeking truth and justice. Judges may not for the sake of simple principles, quick trial and low-cost, then judges easily and easily change the plaintiff's petition, where what this judge does is contrary to the principles of other procedural law, namely the principle of passive judges and the principle of the judge's decision, namely the principle of *ultra petitum partium* (to decide exceed demands). Of the two decisions in this case, what makes this decision so that there is disparity is in the application of the simple principle of quick trial and low-cost which deviates from the provisions, namely the District Court Decision Number: 260/Pdt.G/2014/PN.JKT.PST.

Violating the Application of Passive Judge Principles

In general, judges in examining civil cases are passive in the sense that the scope or extent of the principal of the dispute submitted to the judge for examination is principally determined by the parties in the case and not by the judge. Judges only help justice seekers and try to overcome all obstacles and obstacles in order to achieve justice (Article 4 paragraph (2) Law Number 48 Year 2009), meaning that judges are only bound by cases submitted to them, judges have no right to determine the main area case, must not reduce it or add to it.

In the two court decisions there are differences in the application of the passive judge principle, the following are descriptions of the results of the analysis, namely:

In the District Court Decision Number: 260/Pdt.G/ 2014/PN.JKT. PST, the author sees that there are judges 'considerations and judges' decisions that violate the provisions of the passive judge principle in civil cases, namely the legal considerations:

"After observing and examining the Plaintiff's claim, it turns out that the basis for the legal relationship between the Plaintiff and the Defendant was due to an electronic ticket purchase agreement with Ticket Number 9902170216630 for the Manado-Jakarta destination (on October 19, 2011) with Flight Number, JT. 743, on Sunaryadi/Hari (Mr), namely on behalf of the Plaintiff

⁵ Johnny Ibrahim, *Teori dan Metodologi Penelitian Hukum Normatif*, (Jawa Timur: Bayu Media Publishing, 2006), p. 295

⁶ Kadarudin, *Riset Sederhana di Bidang Ilmu Hukum*, (Ponorogo: Uwais Inspirasi Indonesia, 2020), p. 63

⁷ Lilik Mulyadi. *Kekuasaan Kehakiman*. (Surabaya: Bina Ilmu, 2007), p. 136

itself, so that the Panel of Judges is of the opinion that the Plaintiff's lawsuit describes an act against the law but the intent contained therein and described in relation to the Default act,

Furthermore, in the next legal consideration, the Panel of Judges stated:

"Considering, therefore, that the Panel of Judges is of the opinion that the Defendant has committed an act of Default or Injury of promise so that petitum number 2 requests that the Defendant legally declare the Defendant guilty of committing an unlawful act (Onrechmatige daad) must be granted with an editorial change as follows declaring the Defendant legally guilty. commit acts of default / breach of promise".

So that in its decision, the Panel of Judges decided on the subject of the second dictum case, which are "Legally declaring that the Defendant was guilty of performing the act of default/breach of contract."

As for the petitum of the Plaintiff in its lawsuit at number 2, requesting the Panel of Judges to examine, hear, decide as follows "Legally declaring the Defendant guilty of committing acts against the law (onrechmatigedaad)."

It is very clear that the steps taken by the judge in examining, hearing and deciding this case have violated the provisions of the passive judge principle, where the passive judge, the judge is not entitled to determine the main area of the case, may not reduce it or add to it making changes to the main case, and the judge is bound by case submitted to him, as it is known that case number: 260/Pdt.G/2014/PN.JKT. PST, the Plaintiff submits a lawsuit against the law and is explained by the Plaintiff in his posita and petitum clearly and supported by valid and sufficient evidence.

Meanwhile, the District Court Decision Number: 42/Pdt.G/2012/PN.JKT.PST. The Plaintiff in his lawsuit filed a lawsuit against the Law, which is explained in detail and clearly in the posita and in his petitum, The Plaintiff's petitum in case Number: 42/Pdt.G/2012/PN.JKT.PST., Reads "PLAINTIFF sincerely begs the Central Jakarta District Court to be willing to examine and try and decide this case with the following rulings:

IN THE MAJOR OF THE CASE

1. To grant the plaintiff's claim in its entirety;
2. Legally declare the DEFENDANT guilty of committing acts against the law (onrechmatige daad);
3. Declare that the losses suffered by PLAINTIFF were the result of the actions of DEFENDANT I;
4. etc

Plaintiff by presenting valid and sufficient evidence, the Panel of Judges in the process of examining, trying and deciding cases upholds the principle of passive judges, so that the Panel of Judges decided in the subject matter of the second dictum, were "Legally declaring Defendant I committed an act against the law."

From the explanation above, the two court decisions that are the object of the study, there are disparities in the judges' decisions in the application of the passive judge principle. In the District Court Decision Number: 260/Pdt.G/2014/PN.JKT.PST, the judge had deviated from the passive judge principle, while in the District Court Decision Number 42/Pdt.G/2012/PN.JKT.PST, judges obey and obey the principle of passive judges.

Violating the Application of the Ultra Petitum Partium Principle

Civil procedural law system contained in HIR/R.Bg. leave it to the judge to play a role in presiding over the trial starting from the beginning of the case process until the end of the case process. Then whether the role given to the judge to lead the litigation process is so broad that the judge is not bound by the contents of the petitum or even the judge can decide beyond the petitum submitted by the parties (ultra petitum partium). Provisions of Article 178 HIR/189 R.Bg. has regulated the above matters, namely:

- (1) Judges, due to their position during deliberation, are obliged to provide all legal reasons that have not been put forward by both parties.
- (2) The judge is obliged to judge all parts of the claim.
- (3) Judges are not permitted to render decisions on cases which are not being challenged or give than those being accused.

Article 178 paragraph (3) HIR/189 paragraph (3) R.Bg has limited the authority of judges and does not allow judges to render decisions on cases that are not requested or exceed what is

demanded by the parties.

In the two decisions that were the object of study, there were differences in the application of the *ultra petitem partium* principle, namely in the District Court Decision Number: 260/Pdt.G/2014/PN.JKT.PST. The plaintiff filed a lawsuit against the law, and described the events and the legal basis of his lawsuit on *posita*, so that the plaintiff asked the panel of judges to examine, hear and decide as stated in *dictum 1* and *dictum 2* *petitem* as follows:

1. To grant the Plaintiff's claim in its entirety;
2. Legally declare that the Defendant was guilty of committing an unlawful act (*onrechmatigedaad*).

However, the panel of judges, in their decision, decided on cases that were not challenged, namely from a lawsuit against the law it was decided to become "Legally declaring that the Defendant was guilty of performing the act of default/breach of contract."

The legal considerations for the panel of judges are for the sake of implementing the principles of simple, fast and low cost, as stated in their legal considerations as follows:

"After observing and examining the Plaintiff's claim, it turns out that the basis for the legal relationship between the Plaintiff and the Defendant was due to an electronic ticket purchase agreement with Ticket Number 9902170216630 for the Manado-Jakarta destination (on October 19, 2011) with Flight Number, JT. 743, on Sunaryadi/Hari Mr, namely on behalf of the Plaintiff itself, so that the Panel of Judges is of the opinion that the Plaintiff's lawsuit which describes the act against the law but the intentions contained therein and described are related to Default, this is for the sake of implementing simple, fast and costly principles. light can be viewed as an act of default (see Supreme Court Decision No.194/Pdt/1996 dated 28 December 1998 and Supreme Court Decision No.2014/Pdt/1998 dated 30 June 1999)".

Even though it is very explicitly stated in HIR/R.Bg. that the judge is bound by the *petitem* of the plaintiff and has limited the authority of the judge and does not allow the judge to render decisions on cases that are not requested or exceed what the parties demand. If the panel of judges wants to violate the provisions of the *ultra petitem partium* principle, the panel of judges should not be based in their legal considerations for the sake of implementing the simple principle of speed and low cost. To support the *ultra petitem partium* step, the judges should have sufficient legal reasons, namely referring to several Supreme Court decisions that justify the judge who decided violating the principle of *ultra petitem partium*, namely the Supreme Court Decision Number: 1043K/Sip/1971 dated 3 December 1974, Supreme Court Decision Number: 556K/Sip/1971 dated January 8, 1972, Supreme Court Decision Number: 425K/Sip/1975 dated July 15, 1975.

Then if we look carefully, case number: 260/Pdt.G/2014/PN.JKT.PST, there is nothing contradicting *posita* with *petitem* so that the Panel of Judges does not need to violate the provisions of the *ultra petitem partium* principle. The legal incident between case number: 260/Pdt.G/2014/PN.JKT.PST with case number: 42/Pdt.G/2012/ PN.JKT.PST, which is related to the absence of passengers on the grounds of aircraft capacity on the flight the same, where the contents of the lawsuit on both *posita* and *petitem* are also the same, so that the decisions in these two cases should be the same. However, judges have the authority to determine their decisions according to the authority given by law.

And keep in mind if the judge who grants more than the *petitem* of the plaintiff is deemed to have exceeded the limit of authority and the judge's decision is legally flawed.⁸

CONCLUSION

Disparities in court decisions can occur in a decision of a panel of judges because it is within its authority, but most importantly the substance of the disparity must be known by the public, in District Court Decision Number 260/PDT.G/2014/PN. JKT.PST where the Plaintiff filed a lawsuit for act against the law but the Judge decided that the Defendant was guilty of default for the act of not carrying passengers on the grounds of aircraft capacity, this was related to the application of the passive judge principle and the *ultra petitem partium* principle which had broad meaning in good faith by the judge, then on District Court Decision Number 42/PDT.G/2012/ PN.JKT.PST the judge decided that the Defendant was guilty of committing an unlawful act in terms of the absence of passengers on the grounds that the aircraft's capacity was in accordance with the Plaintiff's claim.

⁸ Yahya Harahap, *Hukum Acara Perdata tentang Gugatan, Persidangan, Penyitaan, Pembuktian, dan Putusan Pengadilan*, (Jakarta: Sinar Grafika. 2008), p. 802

REFERENCES

- Abdul Kadir, *Transportasi: Peran dan Dampaknya dalam Pertumbuhan Ekonomi Nasional*, Yogyakarta: without year.
- Johnny Ibrahim, *Teori dan Metodologi Penelitian Hukum Normatif*, Jawa Timur: Bayu Media Publishing, 2006.
- Kadarudin, *Antologi Hukum Internasional Kontemporer*, Yogyakarta: Deepublish, 2020.
- Kadarudin, *Riset Sederhana di Bidang Ilmu Hukum*, Ponorogo: Uwais Inspirasi Indonesia, 2020.
- Lilik Mulyadi. *Kekuasaan Kehakiman*, Surabaya: Bina Ilmu, 2007.
- Soekardono R., *Hukum Dagang Indonesia*, Jakarta: Rajawali Pers, 1981.
- Sution Usman Adji, *Hukum Pengangkutan di Indonesia*. Jakarta: PT Rineka Cipta, 2005.
- Yahya Harahap, *Hukum Acara Perdata tentang Gugatan, Persidangan, Penyitaan, Pembuktian, dan Putusan Pengadilan*, Jakarta: Sinar Grafika. 2008.