

SELECTED ESSAYS:

Essays on Constitution, Human Rights,
Private and Criminal Law Perspectives

Faculty of Law of Universitas Sriwijaya, Indonesia and
Fakulti Undang-Undang, Universiti Kebangsaan Malaysia



EDITORS :

Assoc. Prof. Dr. Febrian, S.H., M.S

Assoc. Prof. Dr. Hj. Annalisa Y., S.H., M.Hum

Assoc. Prof. Dr. Haniff Ahamat

Assoc. Prof. Dr. Mada Apriandi, S.H., MCL

Drs. H. Murzal, S.H., M.Hum

Nurhidayatuloh, S.Hl., S.Pd., S.H., LL.M., M.H., M.HI



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**Sanctions for Violation of Article 113
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Universitas Sriwijaya

Unsri Palembang Campus

Jalan Srijaya Negara Bukit Besar Palembang 30139

Phone: +62-1- 0711-360969

Email ; unsri.press@yahoo.com | penerbitunsri@gmail.com

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FOREWORD

This book contains selected essays as a result of collaboration between the Faculty of Law Universitas Sriwijaya (FH UNSRI) and the Faculty of Law Universiti Kebangsaan Malaysia (FUU UKM), in a form of various legal themes written by various authors, including students. These essays are also arranged based on several main themes to make them easier to read and understand.

In addition, these also discuss legal policy practices, such as automatic exchange of financial accounts in the context of tax law enforcement, investment development and growth and regional autonomy. In private law, this book discusses material law related to the division of tangible objects with intangible objects as well as movable and immovable objects respectively regulated in Article 503, 504 of the Civil Code. In public law, it discusses the perspective of juvenile criminal law and human rights. Crimes against children must be prevented by the state. There must be an effort to ensure legal certainty to protect children's rights. Furthermore, these selected essays also contain articles written by academics from the Faculty of Law at the National University of Malaysia who discuss current issues of the Malaysian legal system on maritime security. The geographical conditions of the States in Southeast Asia, especially in the Malacca Strait, are very vulnerable due to the threat of piracy, terrorism, conflict, and environmental disasters.

By the publication of these selected essays, it can hopefully lead readers to gain new insights, as well as contribute ideas to the development and knowledge of law. As a conclusion, it is hoped that these selected essays will fulfill the expectations and desired goals.

Palembang, July 2022

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Accessibility to Disable Passangers in Commercial Flights in Indonesia

Annalisa Y, Ridwan, and Firman Muntago¹

1. Introduction

1.1 Air Transportation in Indonesia

Air transportation in Indonesia is a type of high demand transportation by consumers, because it is the most efficient². Moreover, Indonesia as an archipelago has more than 17,000 islands and airspace of 5,500 km from East to West and 2,430 km from North to South, covering the earth's equator³. Therefore transportation by air becomes very important for services on various islands which also contribute to the growth of the economic⁴, trade and tourism sectors⁵.

The number of passengers carried by air in Indonesia has been increasing significantly. There is an average passenger increase of 15-20% annually⁶. Indonesia has issued permits for 247 domestic routes connecting 125 cities in Indonesia and for 57 international routes which connect 5 cities in 13 countries. Indonesia has 233 airports including 29 airports serving international flights. Soekarno-Hatta International Airport is an Indonesia main gateway, which is also named as the 11th

¹ This article has been presented in the limited forum Cooperation between Faculty of Law, Sriwijaya University and Faculty of Law, National University of Malaysia on 24 February 2020

² Gunadi Ariawan and K. Martono, 'Current Indonesian Air Transportation', *Journal of Applied Chemistry*, 9.10 (2016), pp. 12-31.

³ Kemis Martono, Sandriana Marina, and Aditya Wardana, 'Domestic Air Transport Regulations in Indonesia', *Jurnal Manajemen Transportasi Dan Logistik*, 3.1 (2017), pp. 1-19 <<https://doi.org/10.25292/j.mtl.v3i1.137>>.

⁴ Adya Paramita Prabandari ; Wahyu Satrio Utomo; Martono, 'Indonesian Aviation Human Resources : An Evaluation', *OSR Journal Of Applied Chemistry*, 9.6 (2016), pp 20-30 <<https://doi.org/10.9790/5736-0906022030>>.

⁵ Lyston And K. Martono Ariawan, Gunardi, 'Air Transport , Hotel , Tour Operator , Tourism Destinations And Others Popular Women', *International Journal of Humanities and Social Science Inventatipn (IJHSSI)*, 7.06 (2018), pp. 1-15.

⁶ Asep Adang Supriyadi and K. Martono Amad Sudiro, 'National And International Air Transport Regulations In Indonesia', in *Aviation Law s And Regulations Applicable In Indonesia*, ed. by Martono And Amad Sudiro, 1st edn (Depok: PT RajaGrafindo Persada, 2017), p. 533.

busiest airport in the world by Airport Council International (ACI) in 2012 and the 4th busiest in Asia with 51.1 million passengers in 2011⁷.

To implement the International Civil Aviation Organization (ICAO) Recommendation, the Republic of Indonesia issued Law No. 1 of 2009 concerning Civil Aviation. It came into force on 12 January 2009. Law No. 1 of 2009 aims to promote the development of Indonesian air transportation. The Law also aims at supporting the development of national and international air transportation in Indonesia, including provisions regarding the creation of a public services institute to further those goals. Almost all the provisions of the Chicago Convention in 1944 had been adopted by the Law No. 1 of 2009. Thus, Indonesia has fully complied with the Chicago Convention in 1944⁸.

Every company service to passengers as consumers including disability passenger services is an important factor for the success of every airline industry service company⁹. Moreover, the safety standards for passengers in aircraft include information and safety facilities in the shape of availability information and the emergency safety tools for passengers in aircraft¹⁰ including passengers with disability. Regarding passenger services, it was noted that two Indonesian airlines won and received awards from Skytrax (a global rating agency from the UK), namely PT. Garuda Indonesia Airways for raising the quality standards

⁷ Martono, Marina, and Wardana.

⁸ Ms Mia and Martono Hadiati, 'Contribution of Indonesia to International and Regional Civil Aviation', *Journal of Electronics And Communication Engineering*, 11.4 (2016), pp. 46–64.

⁹ Sarah M. Hubbard Wesley L. Major, 'An Examination of Disability-Related Complaints in The United States Commercial Aviation Sector', *Journal of Air Transport Management*, 78 (2019), pp. 43–53.

¹⁰ Annalisa Yahanan, Febrian Febrian, and Rohani Abdul Rahim, 'The Protection of Consumer Rights for Aviation Safety and Security in Indonesia and Malaysia', *Sriwijaya Law Review*, 1.1 (2017), 027 <<https://doi.org/10.28946/slrev.vol1.iss1.7.pp.027-043>>.

of cabin crew services¹¹ and Citilink received a four star Low Cost Carrier award¹².

In general, transportation legislation in Indonesia related to passenger services provides the best service including disability services by providing special treatment¹³. Providing that special treatment in the transportation sector is in the context of creating equal rights and justice for less helpless citizens. In some studies, this special treatment is only listed in legal documents. While in its implementation it is less than optimal which actually creates a legal anomaly, which by Satjipto Rahardjo it is called: "teaching order finding disorder"¹⁴.

Then what about commercial flights operating in Indonesia, has the accessibility arrangement for the fulfillment of the rights of passengers with disabilities provided comfort to passengers? Or even in practice it actually creates discrimination that can harm passengers. In this study as a material for further analysis, two cases highlighted are presented in connection with the non-fulfillment of passenger rights by airlines being sued to the Court, namely "Dwi Maryani vs Etihad Airways" through Decision Number 846 / Pdt.G / PN. Jkt.Sel and "Ridwan Sumantri vs Lion Mentari Airlines (Lion Air)" through Decision No. 231 / Pdt.G / 2011 / PN.Jkt. Pst.

1.2 Accessibility of Disable Passengers

Accessibility is a measure of the ease and comfort of a location to interact with one another¹⁵. According to the Decree of the Minister of

¹¹ Nurmayanti, 'Garuda Indonesia Raih Penghargaan Kabin Kru Terbaik Di Dunia Untuk Kelima Kalinya' (Indonesia: liputan6.com, 2018), p. 2.

¹² Shinta Angriyana, 'Citilink Indonesia Raih Predikat Bintang 4 Dunia Versi APEX', *TRAVEL NEWS* (Jakarta, October 2018).

¹³ Musa Taklima, 'Penyebab Tidak Bekerjanya Hukum Pemenuhan Hak Penyandang Disabilitas Pada Layanan Transportasi Di Jawa Timur Perspektif Perlindungan Konsumen Dan Maqashid Syariah', *Jurisdiction*, 10.1 (2019), pp. 33–55 <<https://doi.org/10.18860/j.v10i1.5830>>.

¹⁴ Satjipto Rahardjo, *Pidato Emiritus Guru Besar 'Mengajarkan Keteraturan Menemukan Ketidakteraturan (Teaching Order Finding Disorder)'* (Semarang, 2000).

¹⁵ John Black, *Urban Transport Planning Theory and Practice*, 1st edn (London: Croom Helm Ltd, 1981).

Public Works No. 468 / KPTS of 1998 concerning Technical Requirements for Accessibility in Public Buildings and the Environment, mentioning accessibility is "convenience provided for people with disabilities to realize equal opportunities in all aspects of life and livelihood". The regulation also discussed principles of good accessibility criteria as a basic guideline for providing access to facilities and infrastructure, which include¹⁶:

- a. Convenience, that is, everyone can reach all places or buildings that are common in an environment;
- b. Use, that is, every person must be able to use all places or buildings that are general in an environment;
- c. Safety, i.e. any building that is general in a built environment, must pay attention to the safety of all people; and
- d. Independence, i.e. everyone must be able to reach, enter and use all the places or buildings that are common in an environment without the need for help from others.

Furthermore, accessibility involves a wide range of disabilities, including visual, auditory, physical, speech, cognitive, language, learning, and neurological disabilities¹⁷. The four criteria for good accessibility as mentioned above at least color the arrangements related to passenger services on Indonesian commercial flights including disabled passengers. What about arrangements for the accessibility of disabled passengers in Indonesia? In general, the law on disability issues has not developed much in Indonesia¹⁸. That makes people with disabilities as the object of policies which only focus on welfare, health, and compensation programs. Thus, it makes people with disabilities become an integral part of society in general, and then injures the

¹⁶ Tamba Jefri, 'Aksesibilitas Sarana Dan Prasarana Bagi Penyandang Tunadaksa Di Universitas Brawijaya', *IJDS*, 3.1 (2016), pp. 16–25.

¹⁷ Beklaris. et.al, *Research for TRAN Committee - Transport and Tourism for Persons with Disabilities and Persons with Reduced Mobility*, 1st edn (Brussel: the European Parliament's Committee on Transport and Tourism., 2018) <<https://doi.org/10.2861/564274>>.

¹⁸ Fajri Nursyamsi Et.al, *Kerangka Hukum Disabilitas Di Indonesia: Menuju Indonesia Ramah Disabilitas*, 1st edn (Jakarta: Pusat Studi Hukum Dan Kebijakan Indonesia, 2005).

principle of equality¹⁹. From a number of studies, the accessibility of passengers in transportation law from the regulatory aspects in several regions in Indonesia needs to be appreciated for trying to fulfill the rights of persons with disabilities as citizens. However, it still needs to be improved from the aspect of its implementation, for example the accessibility of facilities does not meet the established standards²⁰.

2. Research Methodology

This research is a normative research that examines the purpose of law, values of justice, the validity of the rule of law, legal concepts, and legal norms. Normative legal research is a process to find the rule of law, legal principles, and legal doctrines to answer the legal issues faced related to the rights of passengers with disabilities. The approaches used in this research are statute, conceptual, and case approaches as the basis for answering problems. The cases studied are the case of Dwi Maryani vs. Etihad Airways (Decision Number 846 / Pdt.G / 2017 / PN JKT. SEL) and the case of Ridwan Sumantri vs. Lion Mentari Airlines or Lion Air (Decision No. 2368 K / Pdt. / 2015). Meanwhile, the types and sources of legal materials used are primary, secondary and tertiary. The processing of research legal materials is carried out by systematizing and making classifications for further analysis and legal construction. Conclusions are drawn using a deductive method so that it can be interpreted and concluded with the special legal rules to answer the problems studied.

3. Fulfilling Disable Passenger Rights in Regulation

Accessibility is "convenience provided for persons with disabilities to realize equal opportunities. Furthermore, the implementation and fulfillment of the rights of persons with disabilities is based on

¹⁹ Theresia Degener, 'International Disability Law- A New Legal Subject on the Rise', *Berkeley Journal of International Law*, 18.1 (2000), pp. 180–95 <<https://doi.org/10.15779/Z383P9C>>.

²⁰ Rima Setyaningsih, 'Pengembangan Kemandirian Bagi Kaum Difabel (Studi Kasus Pada Peran Paguyuban Sehati Dalam Upaya Pengembangan Kemandirian Bagi Kaum Difabel Di Kabupaten Sukoharjo) Rima', *Jurnal Sosiologi DILEMA*, 31.1 (2016), pp. 42–52 <<https://doi.org/10.1017/CBO9781107415324.004>>.

accessibility, and has accessibility” (articles 2 and 3 of Law Number 8 of 2016 concerning Persons with Disabilities). Disabled passenger has the right to justice and legal protection for equal treatment before the law, be recognized as legal subject, be protected from all discrimination, gain access to services, obtain accessibility in justice services, all are expressly stated in Article 9 of Law Number 8 Year 2016 concerning Persons with Disabilities.

Meanwhile, the understanding of person with disabilities is any person who experiences physical, intellectual, mental, and/or sensory limitations in the long term that in interacting with the environment can experience obstacles and difficulties to participate fully and effectively with other citizens based on equal rights (Article 1 Regulation of the Minister of Transportation of the Republic of Indonesia No.PM 98 of 2017 concerning the Provision of Accessibility to Public Transportation Services for Users with Special Needs). Therefore, it is necessary to further regulate the accessibility of the fulfillment of the rights of passengers with disabilities in commercial flights. The right of accessibility for persons with disabilities includes the right to get accessibility to utilize public facilities and the right to get adequate accommodation as a form of accessibility for individuals (Article 18 of Law Number 8 Year 2016 concerning Persons with Disabilities)

Accessibility facilities for persons with disabilities in Law No. 1 of 2009 concerning Aviation have not been specifically regulated. However, it only mentions facilities (accessibility) for boarding and alighting from aircraft and when entering airport gates and arriving with passengers exiting the gate after flight without mentioning accessibility in aircraft. Thus the accessibility of passengers with disabilities is still not optimal, especially the accessibility during flight in aircraft. Regulations on the accessibility of disability facilities and infrastructure in general are regulated in Minister of Transportation Regulation of the Republic of Indonesia No. PM 98 of 2017. At least if Law No. 1 of 2009 was revised, it is necessary to affirm the regulation of accessibility disability in aircraft²¹.

²¹ Wesley L.Major.

Accessibility of disabled passengers can experience obstacles at the departure airport, the fuselage and the destination airport. Not only in Indonesia, but also in the United States aircraft accessibility is a major problem. More complaints and disability levels, coupled with projected increases in the number of disabilities, indicate that the airline industry and each airline need to identify ways to improve services for disabled passengers.

Commercial airlines need to provide transportation facilities and transportation infrastructure to fulfill the accessibility rights of passengers with disabilities, the arrangements of which are referred to in Articles 3 and 4 of the Ministerial Regulation No.PM 98 of 2017. If these facilities and means of transportation are not prepared, it causes disability dependency. However, if it is analyzed the disability transportation facility and infrastructure arrangement more leads to physical disability regulation compared to sensory disability, intellectual disability, mental disability and sensory disability (Article 4 of Law No. 8 of 2016 concerning Persons with Disabilities). Means of transportation such as: aids to get up and down from and to the means of transportation; safe and easily accessible door; audio/visual information about travel that is easily accessible; special signs/instructions on the service area in an easily accessible transportation facility; priority seating and easily accessible toilets; and the provision of assistive facilities that are easily accessed safely and comfortably). Meanwhile transportation facilities such as guiding block tiles on transportation infrastructure: pedestrian, counters, toilets etc.; special signs/instructions in the service area that is easily accessible (parking, counters, restrooms etc.); visual/audio information related to travel information; an accessible door/gate with dimensions suitable to the width of the wheelchair; the area of passenger up and down (drop zone); ramp with suitable slope; access for passengers to board and board which is accessible to multi-story buildings; an accessible toilet with a toilet door dimension that matches the width of the wheelchair; ticketing counters/particular counters that are easily accessible; waiting room with priority seats; nursing room/nursery room is equipped with sofa facilities, women's waist height baby table, air conditioning, sink,

trash can, and drinking water dispenser; Polyclinic; children's playroom; parking lot; fire hazard access; and the availability of wheelchairs that are ready to use).

People with disabilities are still part of the minority community which is still not being given enough attention by the government, one of which is in the aspect of accessibility, so they have difficulty in mobility. What about the regulation of accessibility of persons with disabilities in legislation in Indonesia? Laws on disability issues do not develop much in Indonesia²². That makes people with disabilities the object of policies that only focus on welfare, health, and compensation programs. Thus making persons with disabilities an integral part of society in general, which then harm the principle of equality²³.

Facilities in the form of physical and non-physical accessibility for persons with disabilities are relatively very limited, making it difficult for them to be able to carry out their activities independently. Therefore, it can be said that the principles and conceptions of the regulations in the transportation law that still use the concept with the term disabled have to be immediately revised, so that the perspective developed currently can change in accordance with the principles set out in the Convention on the Rights of Persons with Disabilities (CRPD), through Law No. 19 of 2011²⁴.

Ideally, every citizen has the same right to get services provided by the government without exception²⁵. Persons with disabilities are lack of access to accessibility services which can facilitate their activities and they receive discrimination when they use air transportation. This discrimination treatment can harm them so that it can also lead to the realm of the Court as the case of Dwi Aryani vs Etihad (2017) in the Ridwan Sumantri vs Lion Air case (2016).

²² Ibid.

²³ Degener.

²⁴ Maria Farida Indrati, *Ilmu Perundang-Undangan : Jenis, Fungsi Dan Materi Muatan*, 1st edn (yogyakarta: kanisius, 2007).

²⁵ Budi Hassanah, 'Pelayanan Aksesibilitas Jalan Umum (Jalur Pedestrian) Bagi Penyandang Disabilitas (Studi Kasus Di Kota Serang)', *Ijtimaiya : Journal of Social Science Teaching*, 1.1 (2017), p. 61.

Laws on disability issues have not developed much in Indonesia. That makes people with disabilities are still included in the policy object that only focuses on welfare, health, and compensation programs. The use of labeling "persons with disabilities" in the law in the field of transportation as mentioned above shows the process of discrimination against persons with disabilities.

Providing special treatment in the field of transportation in the context of creating equal rights and justice for citizens who are less helpless, is a form of protection for citizens who use transportation whether on land, sea and air. However, protection for person with disabilities is not only limited to legal documents, but must be realized in the fulfillment of the rights of persons with disabilities in everyday life. So that people with disabilities are independent in their lives. Giving special treatment to persons with disabilities in the field of transportation needs to be considered, in order to create equal rights and justice for Indonesian citizens who are less helpless²⁶.

The transportation law mentioned above is a reflection of the constitutional rights of persons with disabilities as mandated from Article 28 H Paragraph (2) of the 1945 Constitution (2nd Amendment) that states "Everyone has the right to get special facilities and treatment to obtain the same opportunities and benefits in order to achieve equality and justice ". Ideally, every citizen has the same right to get services provided by the government without exception²⁷.

The Transportation Law still considers humans as objects in fulfilling the rights of persons with disabilities, so that the policies compiled are still dominated by compassion (charity based). The developing perspective at this time is to see interaction between human as the main object. Thus the policy formulated is to create conditions that are non-discriminatory because all humans have the same right (right based).

²⁶ Taklima.

²⁷ Budi Hasanah, 'Pelayanan Aksesibilitas Jalan Umum (Jalur Pedestrian) Bagi Penyandang Disabilitas (Studi Kasus Di Kota Serang)', *Ijtimaiah*, 1.1 (2017), pp. 61–78.

Accessibility arrangements for people with disabilities (a term in the Aviation Act) in Law No. 1 of 2009 concerning Aviation needs to be changed with the consideration that it is not in accordance with changes in the strategic environment and the need for transportation service users to achieve the realization of ease and independence for service users with special needs in using transportation. It needs to be emphasized again about the regulation of the rights of persons with disabilities to get accessibility to public transportation services including air transportation. Passenger service standards are needed as benchmarks used for guidelines for service delivery and reference to assessing service quality as obligations and promises of organizers to the public in the context of quality, fast, easy, affordable and measurable services.

Indonesia currently can be said to have quite a number of social policy instruments governing the rights of persons with disabilities, such as health services, education, employment, and accessibility. On one hand, this development must be responded positively as a form of the seriousness of the Indonesian government to the welfare of its citizens²⁸. Likewise, transportation service policy instruments related to disabled passenger. The policies stipulated in the legislation include: Law No. 1 of 2009 concerning Aviation, Law Number 39 of 1999 concerning Human Rights, Law Number 19 of 2011 concerning Ratification of the Convention on the Rights of Persons with Disabilities, Law Number 8 of 2016 concerning Persons with Disabilities and Regulation of the Minister of Transportation of the Republic of Indonesia No. PM 38 of 2015 concerning Domestic Air Transport Passenger Service Standards and Regulation of Minister of Transportation of the Republic of Indonesia No. PM 98 of 2017 concerning the Provision of Accessibility to Public Transportation Services for Users with Special Needs. Thus the accessibility arrangements in the laws and regulations in Indonesia are better so that in the future it can create benefits, justice and not discriminative.

²⁸ Prasetyo.

Special treatment for persons with disabilities such as the provision of facilities for accessibility to boarding and alighting from aircraft is regulated in Article 134 paragraph (2) letter b of the Aviation Law. It's just that this arrangement is still limited and needs to be revised, because it doesn't regulate the facilities on board the aircraft during the flight or on the plane. Likewise in the Regulation of the Minister of Transportation of the Republic of Indonesia No.PM 38 of 2015 only mentions passenger service standards for domestic air transportation starting at the entrance of the airport gate and until the exit of the passenger from the gate after the flight.

The adoption of the term "disability" has implications for the Government of Indonesia's policy orientation since the ratification of the Convention on the Rights of Persons with Disabilities in 2011. In addition, the use of the term disabled (impairment) has to be improved by using the term disabled. But even so the terminology in the Aviation Law which uses the term "disabled (impairment)" needs to be changed. Vehmas and Makela emphasized that the perspective of social construction is the basis of ontology and epistemology in the study of disability. The social construction perspective views disability as: "Disability is not the same as impairment, and cannot be understood properly on the basis of impairment. Although the notion of equating impairment with disability is deeply rooted in our culture, it is not determined by the nature of things; it is not inevitable. "The 'Western's conception of disability as an individual's biological condition is incorrect and harmful."²⁹

In this regard, there is actually quite a lot of literature that attempts to define "impairment", "disability, and" handicapped ". One good definition to analyze is to classify the contextual differences between impairment, disability, and handicapped as follows³⁰:

- a. Impairment is the functional limitation within the individual caused by physical, mental, sensory impairment. Meanwhile disability is the loss or limitation of opportunities to take part in

²⁹ S. Vehmas and Makela.P.

³⁰ Smith.

the normal life of the community on an equal level with others due to physical and social barriers;

- b. Disability exemplifies a continuous relationship between physically impaired individuals and their social environment, so that they are disabled at some times and under conditions, but are able to function as ordinary citizens at other times and other conditions;
- c. Handicapped is considered a person to be disabled when one is unable to do things which are important to one. This inability must stem from a combination of internal (such as impairment) and external factors (such as a wheelchair-unfriendly public transportation system).

Thus, the use of the word "disability" in Indonesian legislation has a broader spectrum, not merely the refinement of the phrase with person with disability or impairment. The use of disability terminology aims to invite all stakeholders to explore disability issues by identifying and analyzing causality between internal factors (functional impairment) and external (social barriers) of people with disabilities³¹. The term disability comes from English with the origin of the word different ability, which means humans have different abilities. The term disability is better used as a substitute for the term with impairment that has a negative sense of value and seems discriminatory. The term disability is based on the reality that every human being is created differently. So that what is actually just a difference is not impairment or abnormality³².

3.1. Unlawful Acts of Airlines on Disable Passengers

The number of passengers carried by air in Indonesia has been increasing significantly. There is an average passenger increase of 15-

³¹ Prasetyo.

³² Utami Dewi dan Marita Ahdiyana Sugi Rahayu, *Pelayanan Publik Bidang Transportasi Bagi Difabel Di Daerah Istimewa Yogyakarta* (Yogyakarta, 2013).

20% a year³³. The increase should be balanced with good service to passengers as users of commercial aviation services. If the passenger rights are not fulfilled, it can cause discrimination and disadvantage the passengers, which in turn will lead to conflicts that will end in court.

Unlawful acts by businesses can cause harm to the consumer. If the airline harms the passenger, it must be responsible. Legal liability can be requested if there is an element of error it did. If someone harms another party, then they must be responsible for the losses done as mentioned in Article 19 paragraph (1) of Law Number 8 of 1999 concerning Consumer Protection, namely "business actors are responsible for providing compensation for damage, pollution and/or losses consumers due to consuming goods and/or services produced ". Liability for damages applies the principle of fault liability or liability based on fault³⁴, which is a principle which states that a person can only be held legally liable if there is an element of error committed as stated in Article 1365 of the Civil Code, namely: "Every act that violates the law and brings harm to others, obliges the person who caused the loss due to his mistake to indemnify it".

Based on Article 1365 of the Civil Code which is commonly known as an article about acts against the law, requires the fulfillment of four main elements, namely: a) an act; b) the element of fault; c) any loss suffered; d) there is a causal relationship between fault and loss.

The element of fault in question is an element that is contrary to law. Understanding the law is not only contrary to the law but also propriety and decency in society. Being accountable to the community, means being willing to provide the best possible service without differentiating between paid services and free services and producing quality services, which have a positive impact on the community. The services provided are not solely motivated by profit, but also devotion to fellow human beings. Responsible also dare to bear all risks arising

³³ Bambang Soesantono, *Domestic MRO Contribution to Airlines on Safety and Quality Facing Market's Growth and Competitive Toward ASEAN Single Aviation Market (ASAM)* (Jakarta, 2012).

³⁴ Sidharta, *Hukum Perlindungan Konsumen Indonesia*, ed. by revition (Jakarta: Gramedia Widiasarana Indonesia, 2006).

from the service³⁵. Unlawful acts carried out by airlines to disabled passengers as mentioned in 2 (two) cases below, are related to physical disability passengers due to non-fulfillment of passenger rights.

3.2. Dwi Maryani vs Etihad Airways (Decision Number 846 / Pdt.G / 2017 / PN JKT. SEL) and Ridwan Sumantri vs Lion Mentari Airlines or Lion Air (Decision No. 2368 K / Pdt. / 2015)

Based on the two cases that have been described above, it shows that the services of airlines, both foreign airlines and national airlines, still do not provide good services to disabled passengers which must receive special treatment as stipulated in the legislation. Even though in the Ridwan Sumantri case, the verdict still uses the term handicapped and not disability, but at least it has given a sense of justice to people with disabilities who need to get legal protection from the treatment of discrimination against passengers. Even in the United States it happened. So the airline industry and each airline need to identify ways to improve services for disabled passengers. The result of quantitative analysis research shows that the number and level of disability complaints significantly exceeds the number and level of general consumer complaints for air services³⁶. People with disabilities have the same position as sick people, even though they are not. So that in flights often occur persons with disabilities are asked to sign a sick statement by the cabin crew. Even though they are not sick or not being sick³⁷.

4. Conclusion

Based on the results and findings described above, it can be concluded that the regulations on the accessibility of disabled passengers in Indonesia have not been fully accommodated, especially in commercial flights. Accessibility regulation for the rights of passengers with disabilities is still not optimal, especially regulation of accessibility in aircraft. Meanwhile, disability transportation facilities and

³⁵ Abdulkadir Muhamad, *Etika Profesi Hukum* (Bandung: Citra Aditya Bakti, 2001).

³⁶ Wesley L.Major.

³⁷ Directory of the Supreme Court Decisions of Republic of Indonesia.

infrastructure arrangements are more directed towards "physical disabilities" compared to intellectual disabilities, mental disabilities and sensory disabilities. In connection with that, it is necessary to improve the human resources services of airlines related to special expertise in providing information to sensory disabilities. It is necessary to reform the terminology "persons with disabilities" in the Law on Transportation in Indonesia by using the term "disabled" in accordance with convention on the rights of person with disabilities. The term person with a disability is considered to not reflect the actual condition of persons with disabilities and this terminology has a negative connotation and even denigrates the sufferer.

Unlawful acts to disabled passengers are much carried out by commercial airlines that are proven to have violated the law and caused material and immaterial losses. The forms of acts against the law include: not serving passengers with special treatment such as not providing wheelchair services that are needed by passengers, not helping passengers to access the fuselage, passing down (canceling) the departure of disabled passengers to fly without fundamental legal reasons, not using prepared facilities which in turn can endanger and harm the passengers. Even disability passengers are considered as passengers who are categorized as sick people so they are asked to sign a sick certificate. An unlawful act committed by an airline is an act that must be accounted for to the aggrieved disabled passenger.

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