



## RESPONSIBILITIES OF RAILWAY FACILITIES OPERATORS IN INDONESIA IN THE PERSPECTIVE OF TRANSPORTATION LAW

### Tanggung Jawab Penyelenggara Sarana Perkeretaapian di Indonesia dalam Perspektif Hukum Pengangkutan

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#### **ABSTRACT**

*Along with the development of the transportation industry, various problems arise that result in losses for consumers. These losses can be time losses, cost losses, energy losses, and health losses. The existence of such losses raises the responsibility of the carrier to compensate for the loss. The researcher tries to analyze legal issues using legal research through two approaches, namely the statute approach and the conceptual approach based on transportation law and consumer protection law, using several laws and regulations relevant to existing legal issues. The researcher views PT KAI as the land transportation operator, including business actors and train passengers, including consumers. The relationship between PT KAI as the operator of transportation and passengers as consumers raises the carrier's responsibility to be able to fulfill the rights of train passengers as consumers. Therefore, the author will analyze the responsibilities and legal protection for the parties.*

**Keywords:** *Transportation, Railways, Responsibilities, Business Actors, Consumers.*

#### **ABSTRAK**

Seiring dengan berkembangnya industri pengangkutan, muncul lah berbagai permasalahan yang mengakibatkan kerugian bagi para konsumen. Kerugian tersebut dapat berupa kerugian waktu, kerugian biaya, kerugian tenaga, dan kerugian kesehatan. Adanya kerugian tersebut memunculkan tanggung jawab bagi pihak pengangkut untuk mengganti kerugian. Peneliti mencoba menganalisis isu hukum menggunakan penelitian hukum (*legal research*) melalui dua pendekatan yakni pendekatan peraturan perundang-undangan (*statute approach*) dan pendekatan konseptual (*conceptual approach*) berdasarkan pada prinsip-prinsip dalam hukum pengangkutan dan hukum perlindungan konsumen dengan menggunakan beberapa peraturan perundang-undangan yang relevan dengan isu hukum yang ada. Secara garis besar, peneliti memandang PT KAI sebagai penyelenggara pengangkutan darat termasuk dalam pelaku usaha dan penumpang kereta api termasuk dalam konsumen. Hubungan antara PT KAI sebagai penyelenggara pengangkutan dan penumpang sebagai konsumen menimbulkan tanggung jawab pengangkut untuk dapat memenuhi hak penumpang

kereta sebagai konsumen. Oleh karena itu, penulis akan menganalisis tentang tanggung jawab dan perlindungan hukum bagi para pihak

**Kata kunci:** Pengangkutan, Perkeretaapian, Tanggung Jawab, Pelaku Usaha, Konsumen

## INTRODUCTION

Transportation is a service production activity for people in need and is very useful for moving/delivering goods from one place to another. That way, fulfilling the fundamental interests gives rise to handy Place Utility and Time Utility.<sup>1</sup> One form of transportation is by land. Land transport is the process of moving goods and or people from one place to another through highways and rails (land) and using means of transport, such as pickup cars, trucks, trains, and others. Land transportation is a public transportation company that gets an operating license from the government using public transportation by charging a fee. Law No. 22 of 2009 concerning Road Traffic and Transportation<sup>2</sup> (referred to as the LLAJ Law) is regulating land transportation by public transportation. The General Transportation Company transports the goods after the agreement of carriage has been agreed, or the sender has made payment of the freight costs of the goods. According to the provisions of LLAJ Law in Article 1 point 8, a motorized vehicle is any vehicle driven by mechanical equipment in the form of a machine other than a vehicle that runs on rails. In addition, a general motorized vehicle is any vehicle used for the transportation of goods and or people for a fee as stated in Article 1 number 10 of the LLAJ Law.

In the transportation process, some elements must be present transportation to support the smoothness of transportation. The elements of transportation themselves are:<sup>3</sup> 1) The presence of cargo being transported; 2) The existence of a vehicle as a means of transportation; 3) There is a walkable path; 4) There are origin and destination terminals; 5) And there are human resources; 6) The organization or management that drives the transportation activities.

If one of the above elements is not present, then the transportation process will not run smoothly. As a condition for the validity of an agreement, the land transport agreement is also an agreement based on the provisions of Article 1320 Burgerlijk Wetboek (starting now referred to as BW). A freight agreement is an agreement in which the carrier commits himself to carry out the safe transportation of goods from one place to another, and the owner of the goods commits himself to pay the cost of transportation. Land transport documents by public transport consist of passenger tickets and freight letters. Regulation of land transport documents is in the LLAJ Law Article 166. A passenger ticket or letter of transportation of goods is a sign of proof that there has been a transportation agreement and payment of transportation costs.

Along with the rapid development of the times, the problems of land transportation in Indonesia are increasingly complex. Moreover, the emergence of this problem is caused by an interrelated system, so that a problem caused by one unit will affect the system, such as:

- a) Air pollution.
- b) Fuel.

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<sup>1</sup> Soegijatno Tjakra Negara, Hukum Pengangkutan Barang dan Penumpang, PT. Rineka Citra, Jakarta, 1995, h.1

<sup>2</sup> Undang-Undang Nomor 22 Tahun 2009 tentang Lalu Lintas dan Angkutan Jalan

<sup>3</sup> Wawan Susilo, Perlindungan Hukum Terhadap Pengguna Jasa Pengangkutan Barang Angkutan Darat, Jurnal Ilmu Hukum, Vol 2 No.1, 2015, h.50

- c) Traffic accidents.
- d) Natural disasters.
- e) Human behavior in the form of demonstrations on the highway, undisciplined traffic, or roads used for parking for street vendors.
- f) Delay in the departure of buses, trucks, and trains from the original schedule for no apparent reason.
- g) Congestion.

Based on the various problems encountered by inland transportation, it is undeniable that it will cause various losses. The types of losses felt include:

- a) Loss of time, namely the length of time needed to arrive at the specified destination.
- b) Cost losses, namely the increase in additional costs incurred in addition to transportation costs, such as fuel costs.
- c) Loss of energy, namely the non-functioning energy because it does not work, reducing the use-value.
- d) Loss of health, namely fatigue, tiredness, or experiencing mental stress that can cause illness that requires treatment.<sup>4</sup>

Comprehensive regulation of good transportation also supporting the enforcement of safety requirements. In addition, financial liability for damage and injury to shippers and public members is also clearly regulated.<sup>5</sup> In this paper, the researcher tries to analyze the forms of responsibility and protection of the parties on the railway facilities, which first reviews the parties' responsibilities and the parties' legal protection on land transportation in general. Then answers the various legal issues that are rife experienced by the operators of the facilities—railways in Indonesia.

## METHOD

This study uses legal research with 2 (two) approaches namely the statutory and conceptual approaches. These two approaches will go hand in hand to provide the author's understanding of building legal concepts. First, implicitly mentioned in the legislation and then solving the existing legal issues. It is essential to review and study the relevant laws and regulations to the legal issues.<sup>6</sup> In this case, a study of the opinions of legal scholars or legal doctrines becomes necessary to test the legislation obtained from books, journals, articles, and the internet.

## RESULTS AND DISCUSSION

### Responsibilities of the Parties to Land Transport

The Carrier must bear all damage, occurs to other transportation goods after receiving the goods for transportation, except for damage caused by a defect in the goods themselves due to compelling circumstances or due to the fault or forgetfulness of the sender (Article 91 of the KUHD). The responsibility in the law of transportation based on Article 1236 BW is that the Carrier is obliged to compensate for the costs, losses, and appropriate interest that must be received if he does not deliver or does not take proper care to save the transportation goods. As stated in Article 438 paragraph 3 of the Commercial Code<sup>7</sup> (referred to as the KUHD), namely: *“Ia bertanggung jawab atas perbuatan dari mereka, yang dikerjakannya dan untuk segala benda yang dipakainya*

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<sup>4</sup>*Ibid*, h.283

<sup>5</sup>R. Clay Porter and Elenore Cotter Klingler, *The Mythology of Logo Liability: An Analysis of Competing Paradigms of Lease Liability for Motor Carriers*, *Transportation Law Journal*, Vol 33 No 1, 2005/2006, p. 2

<sup>6</sup> Peter Mahmud Marzuki, *Penelitian Hukum Edisi Revisi*, Cet. 14 Prenadamedia Group (Divisi Kencana), Jakarta, 2019, h. 131-132.

<sup>7</sup> Kitab Undang-Undang Hukum Dagang

*dalam menyelenggarakan pengangkutan tersebut.”* (He is responsible for their deeds, for what he does, and for all the things he wears in arranging the transport).

In the Transport Law, there are also several principles of responsibility, namely:

1. Based on Fault (*Prinsip Tanggung Jawab Berdasarkan Atas Kesalahan*). This is regulated in Article 1365 BW or what is called *onrechtmatigedaad* (acts against the law), namely: *“tiap perbuatan melanggar hukum yang membawa kerugian kepada seorang lain, mewajibkan orang yang karena salahnya menerbitkan kerugian itu, mengganti kerugian tersebut”* (Every unlawful act harmful to another person obliges the person who, because of his fault, issued the loss to compensate for the loss). In the case of transportation by motorized vehicle, this responsibility is stipulated in Article 234 paragraph (1) of the LLAJ Law, which states: *“Pengemudi, pemilik Kendaraan Bermotor, dan/atau Perusahaan Angkutan Umum bertanggung jawab atas kerugian yang diderita oleh Penumpang dan/atau pemilik barang dan/atau pihak ketiga karena kelalaian Pengemudi”* (Drivers, owners of Motorized Vehicles, and or Public Transportation Companies are responsible for losses suffered by Passengers and or owners of goods and or third parties due to Driver's negligence).
2. Presumption of Liability (*Praduga bahwa pengangkut selalu bertanggung jawab*), in this case, the injured party has no obligation to prove that there is an unlawful act on the part of the carrier or not. This principle is based on contractual liability.
3. Presumption of Non Liability (*Praduga bahwa pengangkut selalu tidak bertanggung jawab*). This applies, among other things, to luggage that is under the passenger's control.
4. Absolute atau Strict Liability (*Prinsip Tanggung Jawab Mutlak*). This principle implies that legally wrong or not; the carrier must be responsible with no burden of proof. According to Siti Nurbaiti, this principle is widely applicable in the system of responsibility in the Air Transport Law. Public transportation companies are responsible for losses suffered by passengers or shippers due to their negligence in carrying out transportation services as stipulated in Article 188 of the LLAJ Law.
5. Limitation of Liability (*Prinsip Pembatasan Tanggung Jawab*).<sup>8</sup> The carrier's liability is limited by law. In the law, this carrier is determined for all losses arising from errors, except a. Force majeure; b. Defects of the goods themselves; c. Errors and omissions of the sender or owner of the goods.

The provisions of Article 1247 BW limit the carrier's liability limit. Thus, the carrier is only required to pay for costs, losses, interest, either expected or reasonably foreseeable. Even the engagement is concluded, except if the non-fulfillment of the engagement is due to his deception and 1248 BW. Thus, reimbursement of costs, losses, and interest, which causes the sender to suffer losses and profits, only includes matters that directly result from the non-performance of the engagement.

In implementing transportation, the public transportation company is responsible for passengers' safety of goods transported. Thus, it is appropriate if the public transportation company is responsible for any loss suffered by the passenger or the shipper of the goods arising from the transportation carried out.<sup>9</sup> Per LLAJ Law Article 186, the public transportation company responsible to the owner of the goods (sender) starts from the time the received goods for transportation and or made payment of transportation costs until the delivery of the goods to the sender or recipient

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<sup>8</sup> Siti Nurbaiti, *Hukum Pengangkutan Darat (Jalan dan Kereta Api)*, Universitas Trisakti, Jakarta, 2009, h. 25-39.

<sup>9</sup> Putra Halomoan, *Pertanggungjawaban Hukum Pengangkutan Terhadap Penumpang Dan Barang Angkutan Disebabkan Kelalaian*, *Jurnal Al-Hikam*, Vol 9 No.1, 2017, h. 162

as agreed by both parties. The amount of compensation is equal to the actual loss; this is a statutory provision that the carrier may not deviate through the terms of the agreement in his favor because this provision is coercive (*dwingendrecht*).

### **Legal Protection for Parties to Land Transport**

Legal Protection for Land Transportation of Goods is part of consumer protection. In addition, legal protection in transportation itself has a purpose: to protect the parties so that the parties have comfort and peace of mind in carrying out transactions and agreements for the Carriage of Goods.<sup>10</sup> Legal protection for goods transportation services is also regulated in Article 186 of the LLAJ Law. Public transportation companies are obliged to transport people and or goods after a transportation agreement is agreed upon and or payment of transportation costs by passengers/or freight forwarders. According to Articles 187-189 of the LLAJ Law, the carrier is always responsible for any losses arising from the transportation he carries out. If the carrier can prove that he is innocent, he is released from the responsibility to pay compensation for the loss. The burden of proof rests with the carrier, not on the injured party. The aggrieved party is sufficient to show that the carrier carries out a loss suffered in the transportation. The legal protection for the transportation of goods is in the form of an agreement made by the transportation company and the owner of the goods to find out the mutual obligations and rights of the parties arising from legal events. Article 191 of the LLAJ Law also states that public transportation companies are responsible for losses caused by all actions of people employed in transportation organizing activities.

The examples of cases regarding a sleepy driver and their responsibilities are as follows:

Andi is a freelance driver (works when there is a call). At first, Andi was called by a customer who usually asked him to be delivered. At that time, Andi was called to take his customer to XYZ Hospital by using the customer's private car. However, when on his way back to Sidoarjo, Andi had an accident in the Bungkul Park area, due to sleepiness and then hit a lamp post in the middle of the sidewalk so that the pole collapsed. Then from the Department of Transportation asked for compensation for the collapse of the pole. From the customer, Andi delegated all the compensation costs to the Department of Transportation and then to Andi all, while Andi could not afford it if all the costs were charged to him. Furthermore, in this case, there were no injuries or fatalities. So the question is, Should Andi take full responsibility?

Before getting to the main problem for this case, the answer is using the provisions of the LLAJ Law. Based on the provisions of Article 1 point 1, road traffic and transportation itself is a unified system consisting of traffic, road transport, traffic and road transport network, traffic and road transport infrastructure, vehicles, drivers, road users, and their managers. Of course, in the implementation of road traffic and transportation, there are goals, namely: a) the realization of safe, safe, orderly, smooth, and integrated road traffic and transportation services with other modes of transportation to encourage the national economy, promote public welfare, strengthen national unity and integrity, and be able to uphold the dignity of the nation; b) the realization of traffic ethics and national culture; and c) the realization of law enforcement and legal certainty for the community. In this case, Andi's position is the driver. The driver himself is a person who drives a motorized vehicle on the road that already has a Driving License ("SIM"); this is regulated in Article 1 number 23 of the LLAJ

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<sup>10</sup> Soegijatna Tjakranegara, *Op. Cit*, h. 128

Law. In addition, in this case, Andi drives a vehicle which is an individual motorized vehicle of the type of passenger car (Article 47 paragraph (2) letter b in conjunction with Article 47 paragraph (3) letter an of the LLAJ Law), because Andi's customer includes as the passenger category. The problem, in this case, is driving when sleepy, even though Article 106 paragraph (1) of the LLAJ Law has stipulated that everyone who drives a motorized vehicle on the road **must** (*wajib*) drive their Vehicle moderately and with **total concentration** (*penuh konsentrasi*). Full concentration is definite, as is any person who drives a Motorized Vehicle with full attention and is not distracted due to illness, tiredness, **drowsiness** (*mengantuk*); using the telephone or watching television or videos installed in the Vehicle, or drinking beverages containing alcohol or drugs that affect the ability to in driving the Vehicle. Furthermore, because this case has resulted in property loss, namely the damage to the lamppost, it can be categorized as a traffic accident. The definition of a traffic accident in Article 1 number 24 of the LLAJ Law is an incident on the road that is **unexpected and unintentional** (*tidak diduga dan tidak disengaja*) involving a vehicle with or without other road users resulting in human casualties and or **property loss** (*kerugian harta benda*). With no minor injuries or fatalities, this traffic accident is also classified as a minor traffic accident (Article 229 paragraph (2) of the LLAJ Law). There are 3 (three) factors that cause traffic accidents, namely: a) **negligence of road users** (*kelalaian pengguna jalan*), b) vehicle unfitness, and c) road and or environmental unfitness. Suppose it is proven that Andi's negligence caused the traffic accident experienced by Andi, namely being sleepy while driving. In that case, Andi can be processed with a criminal justice program which, of course, is under the provisions of the legislation. So, if Andi continues to travel, which requires driving while he is sleepy, then Andi may be subject to a maximum penalty of 3 (three) months or a maximum fine of Rp. 750.000,- (Article 283 UU LLAJ). For the issue of accountability to third parties, which is the Department of Transportation and so on. Based on Article 234 paragraph (1) and paragraph (2) of the LLAJ Law: (1) Drivers, Motorized Vehicle owners, and or Public Transportation Companies are **responsible for losses** (*bertanggung jawab atas kerugian*) suffered by Passengers and or property owners and or **third parties** (*pihak ketiga*) due to: **Driver negligence** (*kelalaian pengemudi*). (2) Every Driver, Motorized Vehicle owner, and or Public Transportation Company is responsible for damage to roads and or road equipment due to Driver's negligence or fault. The **road equipment** (*perlengkapan jalan*) referred to here is a lamp post.

In conclusion, the Department of Transportation and Traffic here does have the right to ask Andi to be responsible for compensation for the damage to the lamppost. Andi's liability borne himself must be seen or noted that the liability is by the level of error due to his negligence. If Andi is unable to bear the burden of compensation costs, it would be better if, in the future, it is discussed further with Andi's customers; maybe it can be borne together.

### **Rail Transport**

The railway is one of transportation's unique characteristics and advantages, especially in its ability to transport both people. Also, goods in bulk save energy, save space, have a high safety factor, have a low level of pollution, and are more efficient than

other modes of transportation. roads for long-distance transportation and areas with heavy traffic, such as urban transportation.<sup>11</sup>

Railways organize to facilitate the mass movement of people and or goods safely, comfortably, quickly, and smoothly, precisely, as a driver, and as a driving force for national development; this has been stated in Article 3 of Law Number 23 of 2007 concerning Railways (referred to as Law No. 23/2007).

PT. KAI is a State-Owned Enterprise that provides rail transportation services. The operation of the railway is in the form of the operation of railway infrastructure and railway facilities. Railway infrastructure includes railway lines, train stations, and rail operating facilities.<sup>12</sup> The operator of railway facilities is a business entity that operates public railway facilities. Railway facilities include locomotives, trains, carriages, and special equipment.

In this case, PT KAI acts as a business actor. As Article 1 point 3 of Law Number 8 of 1999 concerning Consumer Protection<sup>13</sup> (referred to as UUPK) explaining that a business actor is any individual or business entity, whether in the form of a legal entity or not, a legal entity established and domiciled or conducting activities within the jurisdiction the Republic of Indonesia, either alone or jointly through an agreement to carry out business activities in various economic fields. This definition includes the business actors: companies, corporations, BUMN, cooperatives, importers, traders, distributors, and others.<sup>14</sup> Based on consumer rights as regulated in Article 4 of the UUPK, consumers have the right to comfort, security, and safety in consuming goods and or services. In this case, consumers who use train services who have valid tickets have the right to get comfortable seats. Therefore, feasible and comfortable while traveling by train.<sup>15</sup>

The definition of a *consumer* based on Article 1 number 2 of the UUPK is anyone who uses goods and or services available in the community, both for the benefit of themselves, their families, other people, and other living creatures, and not others for trading. While PT KAI acts as a business actor who carries out business activities in the field of services, which in the UUPK also explains that service is any service in the form of work or achievements provided for the community to be utilized by consumers. With these definitions, it becomes clear that the UUPK binds the relationship between PT KAI and passengers.<sup>16</sup> Therefore, in the recognition implementation, it is necessary to pay attention to the principles of consumer protection regulated in Article 2 of the UUPK, namely consumer protection based on the principles of benefit, justice, balance, security, and consumer safety as legal certainty.

Transportation as an agreement is always preceded by an agreement between the carrier and the passenger or sender. The agreement contains the obligations and rights of both the carrier and the passenger, and the shipper.<sup>17</sup> Transportation by train can be

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<sup>11</sup> Benedictus Bismo B.P., 'Tanggung Jawab Hukum PT. Kereta Api Indonesia Terhadap Kerugian Penumpang Akibat Kecelakaan Kereta Api', *eJournal UAJYS's Library: Fakultas Hukum Universitas Atma Jaya Yogyakarta*, 2015, h. 6 <<http://e-journal.uajy.ac.id/id/eprint/7986>>.

<sup>12</sup>*Op. Cit.* h.7

<sup>13</sup> Undang-Undang Nomor 8 Tahun 1999 tentang Perlindungan Konsumen

<sup>14</sup> Justicia Mayrendika dan Gianto Al-Imron, 'Aturan Penjualan Tiket Tanpa Tempat Duduk Bertentangan Dengan Hak-Hak Konsumen Dalam Undang-Undang Nomor 8 Tahun 1999 tentang Perlindungan Konsumen', *Jurnal Hukum Bisnis: Universitas Narotama Surabaya*, Vol 2, No 2, 2018, h.68

<sup>15</sup> Tetuko Bayu Aji, *Perlindungan Hukum Terhadap Pengguna Jasa Transportasi Kereta Api Prameks (Prambanan Ekspres)*, Skripsi, Program Sarjana Universitas Muhammadiyah Surakarta, Surakarta, 2018, h. 2

<sup>16</sup>*Ibid.*

<sup>17</sup> Suwardjoko Warpani, *Merencanakan Sistem Pengangkutan*, Penerbit ITB, Bandung, 1990, h. 2

done if the passenger has purchased a train ticket in advance. The carriage agreement between the passenger and the carrier is when the passenger accepts the public offer made by PT. KAI, which desire was born to be transported to a particular destination and followed by the act of buying train tickets.<sup>18</sup> The passenger ticket contains the following information:<sup>19</sup> a) Name of the departure station and destination station; b) Type and a class of train service; c) Tariffs for transportation costs; d) Date of issuance of tickets; e) Time and date of train departure; f) Jasa Raharja's insurance; g) Sign of the carrier.

In practice, we often encounter various cases in the railway sector, especially those related to consumer rights. As for the first case, for instance, regarding ticket sales without seats by KA Rapih Dohon in 2010 (now no longer valid), where were the passengers' rights fulfilled when the case occurred? The answer is not yet. The provisions regarding the procurement of tickets without seats on the Rapih Dhoho train eliminates the price difference for passengers with seats or without seats (only distinguished by the distance traveled to the destination city). However, there are no handrail facilities so that many passengers stand in one train carriage, which allows passengers to fall while walking and endanger other passengers. Based on the facts, the Rapih Dhoho train has neglected the comfort, security, and safety factors so that it does not fulfill consumer rights in Article 4 point (a) UUPK and Article 4 of the Regulation of the Minister of Transportation of the Republic of Indonesia Number: PM 48 of 2015 concerning Minimum Service Standards for People Transport by Train Fire. The procurement of tickets without seats on the Rapih Dhoho train is not feasible because this train categorizes as an Urban Train, which should be an Inter-City Train or a Rapih Doho Train. Therefore, it must use a carriage design that complies with the criteria of the Urban Train so that the facilities provided are also adequate and fulfill the rights of consumers who have been guaranteed in UUPK. Apart from that, one of the obligations of business actors in Article 7 of the UUPK is to have good intentions in carrying out their business activities, so that as a service provider PT KAI must pay attention to consumer rights related to security, safety, and comfort so that they are applied in the services offered to consumers.<sup>20</sup> So it is necessary to improve facilities and add departure schedules for other trains in the same direction so that passengers are unconcentrated on the Rapih Dhoho train.

Then the second case, what is the form of fulfillment of the rights of the Prambanan Express train for the passengers. Prambanan Express train has 3 (three) series of trains with a capacity of 450 (four hundred and fifty) people. Therefore, forms of protection for passengers for their rights are:<sup>21</sup>

- a. The right to security and comfort, namely that every train series must have a Special Railway Police (Polsuska) to maintain order and security for train service users, but the facilities are incomplete and evenly distributed, and the carriages often feel crowded. Following the UUPK in conjunction with the Regulation of the Minister of Transportation Number: 48 of 2015 concerning Minimum Service Standards for the Transportation of People by Train;

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<sup>18</sup> Benedictus Bismo B.P., *Loc.Cit.*

<sup>19</sup> Abdulkadir Muhammad, *Hukum Pengangkutan Niaga*, PT Citra Aditya Bakti, Bandung, 2013, h. 133

<sup>20</sup> Justicia Mayrendika dan Gianto Al-Imron, *Op.Cit.* h. 80

<sup>21</sup> Annisaa' Nurawalina dan Herliana, *Perlindungan Hukum Terhadap Pemenuhan Hak Penumpang Kereta Api Prambanan Ekspres Oleh PT Kereta Api Indonesia (Persero)*, Skripsi, Program Sarjana Universitas Gadjah Mada, Yogyakarta, 2018, h. 84-105



- b. The right to choose and obtain goods and or services by the exchange rate and the promised conditions and guarantees, namely tickets purchased by passengers by the facilities provided by PT KAI, only need routine maintenance. Per the UUPK in conjunction with the Regulation of the Minister of Transportation Number: 48 of 2015 concerning Minimum Service Standards for the Transportation of People by Train;
- c. The right to having correct, transparent, and honest information regarding the conditions and guarantees of goods and or services; that passengers feel that PT KAI is not fully satisfied with the notification regarding delays because it does not explain the cause of the train's delay, even though PT KAI always provides information through loudspeakers at the station. Moreover, if there is a delay in long-distance travel notified by short service message or telephone. It is following the UUPK in the form of Government Regulation Number 72 of 2009 concerning Traffic and Rail Transport and Minister of Transportation Regulation Number 48 of 2015 concerning Minimum Service Standards for Transport of People by Train;
- d. The right to have their opinions and complaints heard on the use of goods and or services. PT KAI provides services to receive complaints from passengers through customer service both at the station and on the train directly, by telephone at 121 021 121, or via electronic mail to [cs@kai.id](mailto:cs@kai.id) and via social media Twitter, Facebook, and Instagram at KAI121. Following the UUPK in conjunction with the Regulation of the Minister of Transportation Number: 48 of 2015 concerning Minimum Service Standards for the Transportation of People by Train;
- e. The right to get advocacy, protection, and efforts to resolve consumer protection disputes correctly. PT KAI is willing to cooperate in resolving a problem starting peacefully or must go to court with sufficient evidence that the loss is PT KAI's fault so that later it can provide compensation. It is under UUPK in conjunction with the Regulation of the Minister of Transportation Number: 48 of 2015 concerning Minimum Service Standards for Transportation of People by Train;
- f. The right to receive guidance and consumer education based on the UUPK is the responsibility of the government and the Non-Governmental Consumer Protection Agency (*Lembaga Perlindungan Konsumen Swadaya Masyarakat*) in coordination with business actors;
- g. The right to be treated or served correctly and honestly and not discriminatory. The operator of the railway facility is obliged to transport passengers who have tickets. Those who are caught not having tickets will drop off at the nearest station by Law Number 23 of 2007 concerning Railways (UUKA) in conjunction with the Regulation of the Minister of Transportation Number: 48 of 2015 concerning Minimum Service Standards for the Transportation of People by Train;
- h. The right to get compensation, compensation, and or replacement of the goods and services received are not adequately followed by the agreement. Namely, PT KAI provides compensation when there is a delay to passengers up to hours. If it only occurs in minutes, then passengers receive food and drinks (long-distance travel) per UUPK in conjunction with the Regulation of the Minister of Transportation Number: 48 of 2015 concerning Minimum Service Standards for the Transportation of People by Train;
- i. The rights regulated in the provisions of other laws and regulations, namely the Minimum Service Standards, have guided the Prambanan Express train in transit. Therefore, it must contain safety, security, reliability, comfort, convenience, and equality.

For example: If there are items left behind or lost, passengers can report them to the station officer, and they will be connected to the conductor on the train to be checked immediately, and if found, they will be sent back to the station where the passenger reported. This is in accordance with the UUPK in conjunction with the Regulation of the Minister of Transportation Number: 48 of 2015 concerning Minimum Service Standards for the Transportation of People by Train.

Based on Article 157 paragraph (1) UUKA regulates the responsibility of the operator of railway facilities in transportation starting from the user of rail transportation services getting on from the station to getting off at the agreed destination station: "*Penyelenggara Sarana Perkeretaapian bertanggung jawab terhadap pengguna jasa yang mengalami kerugian, luka-luka, atau meninggal dunia yang disebabkan oleh pengoperasian angkutan kereta api.*" (The Railway Facility Operator is responsible for service users who suffer losses, are injured, or die due to rail transportation operation).

The responsibility of the operator of the railway facility as a carrier uses the Absolute Liability Principle and the Presumption of Non-Liability, where the carrier is considered irresponsible. Here are some examples of cases based on the principle of liability:

- 1) What happens if a car or motorbike suspects break through the doorstop? Even a train has to pass through the rails so that the train crashes into a car/motorcycle?

PT KAI as the operator of railway facilities and direct rail transportation service company on the principle of absolute, unlimited liability of the carrier, states that direct responsibility does not require a relationship, only recognizes liberators as regulated in the relevant laws and regulations. There is no compensation (Article 133 paragraph 1 point (a) of Law No. 23 of 2007). On the suspicion that the car or motorcycle that is closing the door is guilty of violating the signs provided (sound signal, closed fire door,/or conditions) based on Article 181 paragraph (1) UUKA can be subject to imprisonment for a maximum of 3 months or a maximum fine of Rp. 15 million, or other sanctions based on Article 296 of the LLAJ Law, namely being sentenced to a maximum imprisonment of 3 months or a maximum fine of Rp. 750,000,-. So PT KAI sued for the losses that exist on the road users. However, PT KAI can be found guilty when the assignment is negligent during railroad crossings. It can be subject to criminal sanctions as stipulated in Article 359 of the Criminal Code and Article 361 of the Criminal Code and provide compensation and or medical expenses (PP Number 72 of 2009 in conjunction with Article 1365 BW). The explanation above is regulated in Article 157 UUKA that the Railway Facility Operator is responsible for service users in the event of an accident, as follows:

1. The Railway Facility Operator is **responsible for service users who suffer losses, are injured, or die** (*bertanggung jawab terhadap pengguna jasa yang mengalami kerugian, luka-luka, atau meninggal dunia*) due to rail transportation operation.
2. The responsibility, as referred to in paragraph (1), starts from the time the service user is transported from the origin station to the agreed destination station.
3. The liability, as referred to in paragraph (1), is calculated based on the actual loss experienced.

4. The Railway Facility Operator **is not responsible for any loss, injury, or death of passengers that are not caused by rail transportation operation** (*tidak bertanggung jawab atas kerugian, luka-luka, atau meninggalnya penumpang yang tidak disebabkan oleh pengoperasian angkutan kereta api*).

2) Who should be responsible for passengers' luggage on the train

When train passengers carry personal belongings such as suitcases, bags, boxes, or so on, it is commonly called "hand-carry" or "luggage." The personal luggage is the passenger's full responsibility because there is no baggage provided; it is only a cabin above each passenger seat so that in the event of loss or damage to the goods. Therefore, it is not the responsibility of the carrier based on the Presumption of Non-Liability Principle because the passenger is deemed responsible for the loss or damage to the goods.

## CONCLUSION

The train is one of the means of land transportation that the community often uses. Based on the Consumer Protection Law, including PT KAI is in the business actors who should protect the rights of consumers. Therefore, as a land transportation business actor, PT KAI is obliged to carry out transportation operations by prioritizing passengers' rights as consumers as regulated by UUPK. The compensation obligation for the carrier in case of damage in transportation per Article 91 of the KUHD and 1236 BW. In connection with this, Article 186 of the LLAJ Law also explains that public transportation companies are responsible for compensation if their passengers suffer losses. In addition, provisions regarding the limitation of liability for losses by carriers per Article 1247 BW. The carrier is not obliged to compensate for the loss if there is a deception. Even there is a deception, the carrier can only compensate for the loss as significant as the direct result of the non-performance of the carriage agreement.

Legal Protection of Land Transportation of Goods is also included in consumer protection which aims to protect the parties' rights and is regulated in the provisions of the LLAJ Law. The legal protection for the transportation of goods is in the form of an agreement made by the transportation company and the owner of the goods to find out the mutual obligations and rights of the parties arising from legal events

## BIBLIOGRAPHY

### Book

Abdulkadir Muhammad (2013) Hukum Pengangkutan Niaga. PT Citra Aditya Bakti. Bandung.

Annisaa' Nurawalin dan Herliana (2018) Perlindungan Hukum Terhadap Pemenuhan Hak Penumpang Kereta Api Prambanan Ekspres Oleh PT Kereta Api Indonesia (Persero). Skripsi. Program Sarjana Universitas Gadjah Mada. Yogyakarta.

Peter Mahmud Marzuki (2019) Penelitian Hukum Edisi Revisi, Cet. 14. Prenadamedia Group (Divisi Kencana). Jakarta.

Suwadjoko Warpani (1990) Merencanakan Sistem Pengangkutan. Penerbit ITS. Bandung.

Soegijatno Tjakranegara (1995) Hukum Pengangkutan Barang dan Penumpang. PT. Rineka Citra. Jakarta.

Tetuko Bayu Aji (2018) Perlindungan Hukum Terhadap Pengguna Jasa Transportasi Kereta Api PRAMEKS (Prambanan Ekspres). Skripsi. Program Sarjana Universitas Muhammadiyah Surakarta. Surakarta.

### **Journal Articles**

Benedictus Bismo B.P (2016) Tanggung Jawab Hukum PT. Kereta Api Indonesia Terhadap Kerugian Penumpang Akibat Kecelakaan Kereta Api. eJournal UAJYS's Library: Fakultas Hukum Universitas Atma Jaya Yogyakarta. <http://e-journal.uajy.ac.id/id/eprint/7986>.

Justicia Mayrendika dan Gianto Al-Imron (2018) Aturan Penjualan Tiket Tanpa Tempat Duduk Bertentangan Dengan Hak-Hak Konsumen Dalam Undang-Undang Nomor 8 Tahun 1999 tentang Perlindungan Konsumen. Jurnal Hukum Bisnis: Universitas Narotama Surabaya. Vol 2 No 2.

Putra Halomoan (2017) Pertanggungjawaban Hukum Pengangkutan Terhadap Penumpang Dan Barang Angkutan Disebabkan Kelalaian. Jurnal Al-Hikam. Vol 9 No 1.

R. Caly Porter and Elenore Coter Klingler (2005) The Mythology of Logo Liability: An Analysis of Competing Paradigms of Lease Liability for Motor Carriers. Transportation Law Journal. Vol 33 No 1.

Wawan Susilo (2015) Perlindungan Hukum Terhadap Pengguna Jasa Pengangkutan Barang Angkutan Darat. Jurnal Ilmu Hukum. Vol 2. No 1.

### **Online Document**

Jose Asmanu (2017) Kendaraan Pribadi Melonjak, Pengguna Angkutan Umum Turun. Suaraturabaya.net. <https://www.suaraturabaya.net/kelanakota/2017/Kendaraan-Pribadi-Melonjak-Pengguna-Angkutan-Umum-Turun/>. Accessed 11 October 2021.

Silontong (2018) 10 Permasalahan Transportasi di Indonesia dan 3 solusinya. Silontong.com. <https://www.silontong.com/2018/04/21/permasalahan-transportasi-indonesia/>. Accessed 11 October 2021.