

## Flight Cancellations: Infringement of the Carriage Agreement Between Airlines and Passengers

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### Abstract

*Flight cancellations lead to passenger inconvenience and financial loss, as pre-purchased plane tickets are rendered null and void. The primary objective of this research is to examine whether flight cancellations by airlines, impacting passengers as consumers, constitute a breach of contract or not. This research also identified the legal responsibilities of airlines as business entities in such scenarios. Several research questions were proposed. The first issue is whether flight cancellations by airlines for passengers as consumers represent a breach of contract?; Second, we examined the legal responsibilities of airlines towards passengers as consumers when flights are canceled. Finally, we approached the legal responsibility of airlines for cancelled flights from a prophetic law perspective. In this normative research, a statutory approach was used to analyze the legal framework on the issue. This research regarded secondary data collected through library research, including primary, secondary, and tertiary legal materials. This research concludes that airline flight cancellations constitute a breach of contract from the perspective of passengers as consumers under Indonesian law. Besides that, two primary forms of legal responsibilities for airlines in cases of flight cancellations were identified. Airlines can either rebook affected passengers on the next available flight or refund the full ticket price previously paid by the passenger in cash and non-cash compensation. Moreover, those legal responsibilities imposed on the airlines are known in Islamic law with the 'daman' concept and in line with prophetic law pillars.*

**Keywords:** Flight Cancellation, Passengers, Prophetic Law

### INTRODUCTION

Consumer demand for air travel has dramatically increased in recent years. This trend is evidenced by the proliferation of government and privately operated airlines – formally known as Scheduled Commercial Air Transport Business Entities – that offer a range of domestic and international flights to accommodate the public's travel



needs.<sup>1</sup> In Indonesia for example, there are currently around 23 airlines, including notable names such as Garuda Indonesia, Pelita Air, Indonesia AirAsia, Lion Air, Wings Air, etc.<sup>2</sup>

In the context of air passenger transportation services, any airline providing such services enters into a contractual agreement with the passenger, who becomes the service consumer. This contract is known as a carriage agreement, which is a commitment by the carrier to safely transport passengers and/or goods from one location to another. The passenger or the goods' owner agrees to pay for these transportation services.<sup>3</sup> Like any contractual agreement, a carriage agreement creates a legal relationship that spells out the rights and responsibilities of both parties.<sup>4</sup> The specific rights and obligations of the carrier, as the service provider, and the passengers, as the consumers, are typically detailed and/or outlined in the transportation agreement document.<sup>5</sup>

In discussions concerning air carriage agreements for passengers, it is essential to acknowledge that the carrier (the airline) and the service recipient (the passenger) maintain reciprocal rights and obligations as stipulated in the contract, typically represented by the ticket.<sup>6</sup> Article 1 poin 27 of Law No. 1 of 2009 on Aviation, a ticket is recognized as proof, whether in printed, electronic, or other forms, of the agreement for air transport services between the passenger and the carrier, thus confirming the

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<sup>1</sup>Ni Made Trisna Dewi, "Perlindungan Hukum Bagi Penumpang Pesawat Udara Jika Terjadi Keterlambatan Jadwal Penerbangan Menurut Undang - Undang Nomor 1 Tahun 2009 Tentang Penerbangan," *Kertha Wicaksana* 15, no. 2 (July 21, 2021): 122–29, <https://doi.org/10.22225/kw.15.2.2021.122-129>; Ennio Piovesani, "The Response to the Impact of the Covid-19 Pandemic on Contracts for the Carriage of Passengers by Air and Package Travel in the German and Italian Law Systems," *ELTE Law Journal*, no. 2 (2021): 49–68, <https://doi.org/10.54148/ELTELJ.2021.2.49>.

<sup>2</sup> Isnar Rifka Ari Rahayu and Muhammad Idris, "Daftar Nama Maskapai Penerbangan Di Indonesia," *money.kompas.com*, December 30, 2021, [https://money.kompas.com/read/2021/12/30/154240326/daftar-nama-maskapai-penerbangan-di-indonesia?page=all#google\\_vignette](https://money.kompas.com/read/2021/12/30/154240326/daftar-nama-maskapai-penerbangan-di-indonesia?page=all#google_vignette).

<sup>3</sup> Weny Ridiyan, Lita Tyestas Alw, and Anggita Doramia Lumbanraja, "Perlindungan Hukum Bagi Pengguna Jasa Penerbangan Atas Keterlambatan Angkutan Penerbangan," *Notarius* 13, no. 1 (May 2, 2020): 277–87, <https://doi.org/10.14710/nts.v13i1.30397>.

<sup>4</sup> Serlika Aprita and Atika Ismail, *Hukum Dagang*, 1st ed., vol. 1 (Jakarta: Kencana, 2023).

<sup>5</sup> Muhamad Rizal Aljufri, Godlieb N Mamahit, and Meiske T Sondakh, "Tanggungjawab Para Pihak Dalam Perjanjian Pengangkutan Barang Melalui Laut," *Lex Privatum* 8, no. 2 (April 2020): 116–25; Claudia Hipp, "The Enforcement of Air Passenger Rights: An Analysis and Comparison of Claims Management Companies and Recently Established Conciliation Bodies," in *Eurasian Business Perspectives*, ed. Mehmet Huseyin Bilgin et al., vol. 10/1, Eurasian Studies in Business and Economics (Cham: Springer International Publishing, 2019), 341–53, [https://doi.org/10.1007/978-3-030-11872-3\\_22](https://doi.org/10.1007/978-3-030-11872-3_22).

<sup>6</sup> Ridiyan, Tyestas Alw, and Lumbanraja, "Perlindungan Hukum Bagi Pengguna Jasa Penerbangan Atas Keterlambatan Angkutan Penerbangan."

passenger's right to air travel.<sup>7</sup> Essentially, an airplane ticket symbolizes a written agreement wherein the airline and the passenger mutually agree to the terms of air transportation. This agreement implies that passengers agree to the airline's regulations and are entitled to protection under air transport services.<sup>8</sup> Given the negotiating advantage airlines hold over passengers, it is critical for passengers to thoroughly understand the terms specified on their tickets to be aware of their rights. This understanding is vital for ensuring that passengers can assert their rights and seek proper recourse in cases of airline non-compliance or service irregularities.<sup>9</sup>

Furthermore, there have been numerous recent instances where airlines have failed to adequately or correctly fulfill their obligations to passengers in air transport activities. This is evidenced by the significant number of flight cancellations, delays in passenger departure times, and failures to transport passengers due to overselling seats. Flight cancellations particularly stand out among these issues, drawing considerable passenger ire. For instance, a notable incident involved the Indonesian airline AirAsia, which canceled a Jakarta-Johor Bahru flight scheduled for August 13, 2022, at 21:20 local time, citing operational reasons for not departing until 23:45 on the same date.<sup>10</sup> Another case from AirAsia involved the cancellation of a Sorong-Jakarta flight on August 28, 2022, with the flight being canceled the day before departure through the ticket purchasing application without a clear explanation.<sup>11</sup> These incidents underscore a broader trend, as commercial entities, failing to meet their obligations towards passengers, a situation that directly contravenes article 140 paragraph (1) of the Aviation Law. This law mandates that Commercial Air Transport Business Entities

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<sup>7</sup> "Law No. 1 of 2009 on Aviation" (n.d.).

<sup>8</sup> Dewi, "Perlindungan Hukum Bagi Penumpang Pesawat Udara Jika Terjadi Keterlambatan Jadwal Penerbangan Menurut Undang - Undang Nomor 1 Tahun 2009 Tentang Penerbangan."

<sup>9</sup> Ridiyan, Tyestas Alw, and Lumbanraja, "Perlindungan Hukum Bagi Pengguna Jasa Penerbangan Atas Keterlambatan Angkutan Penerbangan."; Hinnerk Gnutzmann and Piotr Śpiewanowski, "Can Consumer Rights Improve On-Time Performance? Evidence From European Air Passenger Rights," *Transport Policy* 136 (June 2023): 155–68, <https://doi.org/10.1016/j.tranpol.2023.03.017>.

<sup>10</sup> Poniman, "AirAsia Membatalkan Penerbangan Sepihak Pada Saat Keberangkatan," *Media Konsumen*, August 15, 2022, <https://mediakonsumen.com/2022/08/15/surat-pembaca/airasia-membatalkan-penerbangan-sepihak-pada-saat-keberangkatan>.

<sup>11</sup> Admin Radar Sorong, "Pembatalan Sepihak, Penumpang Air Asia Kecewa," *Radar Sorong*, October 28, 2022, <https://www.radarsorong.id/2022/10/pembatalan-sepihak-penumpang-air-asia-kecewa/>.

are obliged to transport people and/or cargo upon the agreement of a carriage contract.<sup>12</sup>

This research differs from prior investigations as it focuses more intently on the legal protections available to passengers utilizing air transportation services and the legal recourse available to those adversely affected by air transportation companies.<sup>13</sup> In contrast, other studies have been identified that primarily explore the legal ramifications for airlines in significant delays that cause detriment to passengers.<sup>14</sup> This research aims to examine whether the practice of airline flight cancellations, impacting passengers as consumers, amounts to a breach of contract. The problem statements being addressed inquire into whether such flight cancellations constitute a breach of contract and seek to define the legal liabilities of airlines as commercial entities when they cancel flights for passengers as consumers.

## METHODOLOGY

This study applies a normative research methodology by employing a statutory and conceptual approach. The statutory approach analyzes the existing law on aviation and consumer protection. The conceptual approach designs the concept of passenger rights protection under Indonesian domestic and Islamic law. The data used in this study consists of secondary data, which consists of primary, secondary, and tertiary legal materials. The data collection technique used in this study is a literature study with qualitative descriptive analysis techniques.

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<sup>12</sup> Law No. 1 of 2009 on Aviation.

<sup>13</sup> Dwi Rahayu et al., “Perlindungan Konsumen Bagi Penundaan (Delay) Dalam Penerbangan,” *Consensus* 2, no. 2 (November 17, 2023): 65–76, <https://doi.org/10.46839/consensus.v2i1.44>; Marko Pavliha, *Transport Law on Passenger Rights*, 1st ed. (London: Routledge, 2021), <https://doi.org/10.4324/9781003182504>.

<sup>14</sup> Tora Yuliana, “Perlindungan Hukum Terhadap Penumpang Pesawat Atas Keterlambatan Penerbangan (Flight Delayed),” *Disiplin : Majalah Civitas Akademika Sekolah Tinggi Ilmu Hukum Sumpah Pemuda* 28, no. 2 (June 24, 2022): 99–108, <https://doi.org/10.46839/disiplin.v28i2.78>; Elfrida Ratnawati, “The Impacts of Government Policy on Covid-19 to Airlines Liability: A Case Study in Indonesia,” *Jambura Law Review* 3, no. 1 (December 21, 2020): 72–92, <https://doi.org/10.33756/jlr.v3i1.7227>.

## RESULT AND DISCUSSION

### Flight Cancellation as a Breach of Contract Under Indonesian Law

The term "breach of contract" is intricately linked with "achievement," where achievement refers to the realization of agreed-upon terms within a contract.<sup>15</sup> Conversely, breach of contract describes a situation in which the debtor fails to meet their obligations to the creditor, attributable directly to their actions. Ridwan Khairandy, in his book "Indonesian Contract Law in a Comparative Perspective," delineates breach of contract as the debtor's failure to execute what has been promised.<sup>16</sup> He further elaborates that breach of contract may stem from negligence, broken promises, or contract violations, especially when the debtor undertakes actions expressly forbidden by the agreement.

Discussing breach of contract necessitates the identification of core elements that establish whether an individual or entity has engaged in such a breach of contract. Supeno outlines five critical elements to determine the presence of a breach of contract as follows: a written agreement between both parties, a certain party breaches the agreement, the breach results in losses for both parties, there is a causal relationship between losses experienced and breach of contract, and a subpoena states that one of the parties has been declared negligent, whether the court has issued a warning or not.<sup>17</sup>

Additionally, when considering instances of flight cancellations initiated by the airline and aiming to establish conclusively that the airline has breach of contract, the involved party must meet all the criteria of breach of contract, as outlined earlier. The connection between the concept of breach of contract and the airline's decision to cancel flights is detailed below:

- a. A written agreement between the parties;

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<sup>15</sup> Teng Berlianty and Yosia Hethari, *Hukum Perikatan* (Klaten: Lakeisha, 2023).

<sup>16</sup> Supeno, *Dasar-Dasar Hukum Perikatan: Hukum Perjanjian Pada Umumnya, Perjanjian Dalam Perspektif Hukum Internasional, Dan Perjanjian Dalam Perspektif Hukum Islam* (Jambi: Salim Media Indonesia, 2019).

<sup>17</sup> Supeno.

The concept or significance of an agreement can be understood in broad and narrow terms. An agreement's definition is broadly encapsulated in article 1313 of the Civil Code, which describes an agreement as an act whereby one or several individuals commit themselves to one or several others.<sup>18</sup> Specifically, narrowly defined, an agreement is a commitment between two or more parties to execute a specific material action within property rights.<sup>19</sup>

Observing the evolution of agreements in line with societal practices, it becomes apparent that agreements manifest in two primary forms, written and unwritten. A written agreement is documented in writing, while an unwritten agreement is based on oral commitments between parties.

For an agreement to be legally binding, it must satisfy four essential conditions outlined in article 1320 of the Civil Code. These conditions include: a binding agreement, capacity to enter into an agreement, a certain subject matter, and a legal subject matter, nor prohibited under other legal provisions.<sup>20</sup>

In instances where an airline has canceled flights, it is acknowledged that such actions were predicated upon a contractual agreement manifesting in the form of a plane ticket. It is universally recognized that an airline ticket constitutes a contractual arrangement between the airline and the passenger, delineating each party's respective rights and duties.<sup>21</sup>

Moreover, when a plane ticket is considered in light of various contractual legal principles, it becomes evident that the ticket, serving as a tangible manifestation of a contractual agreement, is established based on a mutual consensus between the airline and the passenger, devoid of any form of duress. Additionally, concerning the competency requirement for entering into contractual agreements, it is understood that the entities involved in issuing airline tickets are parties endowed with the necessary legal capacity and

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<sup>18</sup> "Indonesian Civil Code" (n.d.).

<sup>19</sup> Subekti, *Pokok-Pokok Hukum Perdata* (Jakarta: Intermasa, 1994).

<sup>20</sup> Indonesian Civil Code.

<sup>21</sup> Dewi, "Perlindungan Hukum Bagi Penumpang Pesawat Udara Jika Terjadi Keterlambatan Jadwal Penerbangan Menurut Undang - Undang Nomor 1 Tahun 2009 Tentang Penerbangan."

judgment. Typically, an airline ticket includes details such as the reservation code, travel itinerary, flight number, and departure date. Hence, it can be inferred that airline tickets also encapsulate terms pertaining to specific contingencies.

Given that all requisite legal conditions for a contract, as delineated above, are met, the airline ticket is definitively characterized as a written contract. Consequently, an airline ticket as a written contractual document which fulfills the requirement for a consensually agreed-upon written contract between the involved parties

b. A certain party breaches the agreement

If one party does not carry out what has been previously agreed upon, breach of contract is possible. According to Subekti, breach of contract is the negligence of a debtor, which can take several forms of breach of contract, namely: not fulfilling agreed-upon obligations; partially fulfilling promises, but not to the agreed standard; completing agreed tasks, albeit belatedly; and undertaking actions that are prohibited by the agreement.<sup>22</sup>

Furthermore, in scenarios where an airline initiates the cancellation of flights for passengers, it can be asserted that the airline represents the party failing to fulfill its obligations, specifically in not providing the service it had committed to, as outlined previously. An airline's failure to transport passengers and its decision to cancel flight schedules directly illustrate a breach of performance obligations. Consequently, this situation satisfies the criterion concerning a party's failure to execute its contractual duties as expected.

c. The breach of contract results in losses for both parties

In the context of breach of contract, the recognized category of damages is material loss. Material losses typically encompass the actual losses incurred and the anticipated profits the creditor was poised to receive.<sup>23</sup> Pertinent to this

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<sup>22</sup> Subekti, *Pokok-Pokok Hukum Perdata*.

<sup>23</sup> Cendono Mulian, "Kerugian Immateriil Tak Terperinci di Gugatan Tak Dapat Dikabulkan Hakim," February 23, 2023, <https://www.antvklik.com/berita/581287-kerugian-immateriil-tak-terperinci-di-gugatan-tak-dapat-dikabulkan-hakim>.

category of loss, article 1243 of the Civil Code expressly provides that creditors are entitled to lodge claims for the reimbursement of costs, compensation for losses, and interest on the losses endured. The terms "costs," "losses," and "interest" are delineated as follows: cost refer to the total expenses genuinely incurred by one party, loss pertains to the detriment from damage to the other party's property, attributable to the one party's negligence, and interest represents the anticipated or projected profit the creditor would have realized had the breaching party not been negligent. <sup>24</sup>

Furthermore, article 1243 Civil Code outlines two methods for establishing the commencement date for calculating compensation: in the absence of a specified timeframe within the agreement, compensation calculation begins from the moment a party is declared negligent and continues as it is, and when the agreement specifies a certain timeframe, compensation calculation starts when this predefined period expires <sup>25</sup>

When the airline initiates flight cancellations, passengers, as consumers, invariably incur material losses. Such losses are manifest in the financial detriment experienced due to the procurement of an airline ticket, which, consequent to the cancellation, becomes forfeited and unutilized. The occurrence of these losses satisfies the criterion regarding the repercussions of non-fulfillment of obligations, resulting in detriment to both parties involved.

- d. There is a causal relationship between losses experienced and broken promises (breach of contract)

Delving deeper into this principle reveals an underlying notion that losses endured by creditors, which are not attributable to the negligent actions of the debtor, cannot be recognized as compensable losses. This interpretation is grounded in article 1248 of the Civil Code, which stipulates that "even if the

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<sup>24</sup> Fauzan Thariq Nurdianto, "Pembayaran Ganti Rugi Oleh Debitur Kepada Kreditur Akibat Wanprestasi Dalam Perjanjian Berdasarkan Pasal 1236 Kuhperdata," *Lex Et Societatis* 6, no. 7 (September 2018): 58–65, <https://doi.org/10.35796/les.v6i7.21605>.

<sup>25</sup> Supeno, *Dasar-Dasar Hukum Perikatan: Hukum Perjanjian Pada Umumnya, Perjanjian Dalam Perspektif Hukum Internasional, Dan Perjanjian Dalam Perspektif Hukum Islam*.



non-fulfillment of the agreement stems from the debtor's deception, the obligation for compensation of costs, losses, and interest is limited to the losses directly incurred by the creditor and the profits foregone, comprising solely those consequences that directly emanate from the non-fulfillment of the obligation."<sup>26</sup> This provision underscores a dual aspect of causality: the loss must result from the unfulfilled promise and directly result from this breach.<sup>27</sup>

In situations where an airline cancels a flight, the action of failing to perform its promised duty (namely, not fulfilling its obligation to provide transportation) constitutes a breach of contract, leading to repercussions for passengers. These repercussions materialize as material losses. Consequently, the existence of a causal link between the incurred losses and the breach of contract represents the fourth criterion in determining the presence of a breach of contract.

- e. A subpoena states that one of the parties has been declared negligent.

The term "subpoena," derived from the Dutch "*ingebrekestelling*," signifies a warning or reprimand. A subpoena constitutes a formal notification from the creditor to the debtor detailing the creditor's demand for immediate performance or fulfillment within a specified timeframe.<sup>28</sup> In practical terms, creditors can issue subpoenas independently or with a court's support.

Pursuant to article 1238 of the Civil Code, subpoenas are categorized into several types, which include:<sup>29</sup>

#### 1) Warrant

A warrant is issued by a judge, typically in a judicial decision. Through this order, the bailiff verbally notifies the debtor of the latest date by which they must fulfill their obligations. This process is often referred to as bailiff execution.

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<sup>26</sup> Indonesian Civil Code.

<sup>27</sup> Supeno, *Dasar-Dasar Hukum Perikatan: Hukum Perjanjian Pada Umumnya, Perjanjian Dalam Perspektif Hukum Internasional, Dan Perjanjian Dalam Perspektif Hukum Islam*.

<sup>28</sup> Medika Andarika Adati, Marnan A T Mokorimban, and Laurens L S Hermanus, "Wanprestasi Dalam Perjanjian Yang Dapat Di Pidana Menurut Pasal 378 Kitab Undang-Undang Hukum Pidana," *Lex Privatum* 6, no. 4 (June 2018): 5–15.

<sup>29</sup> Nindyo Pramono, *Hukum Komersial*, 1st ed. (Jakarta: Universitas Terbuka, 2003).

2) Equivalent Documents

Such document may be a private agreement or a notarized deed.

3) Stipulated in the Agreement.

The creditor has specified the deadline for breach of contract within the agreement at its creation.

When the airline cancels flights, the provisions for such eventualities are often pre-defined within the contractual agreement itself, typically encapsulated within the plane ticket terms. The terms of the ticket delineate the airline's obligations, thereby implicitly serving as a preemptive summons or notice regarding potential cancellations and their consequences. Thus, the fifth criterion pertaining to a breach of contract involving a summons that indicates a party's negligence is satisfied through the contractual terms agreed upon at the ticket purchase.

Furthermore, it is important to note that, from a legal perspective, the issuance of a summons does not inherently carry enforceable legal consequences that compel the debtor to perform or pay damages. Should the debtor choose to disregard or not comply with the summons, the creditor is not automatically granted the authority to enforce compliance. The role of a summons is more aligned with exerting psychological pressure and inducing embarrassment in the debtor. The aim is to encourage the debtor to settle their obligation or, at the very least, demonstrate a willingness and good faith effort to resolve the matter. This underscores the importance of a summons as a tool for facilitating dialogue and resolution between the creditor and debtor rather than serving as a direct mechanism for enforcement.<sup>30</sup>

Given that all criteria for breach of contract have been met appropriately, it can be stated unequivocally that the action of canceling flights undertaken by the airline against passengers as consumers amounts to a breach of contract for which the airline may be held legally accountable. In accordance with article 1276 of the Civil Code, several remedies can be sought against an entity proven to have breached a contract.

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<sup>30</sup> Komang Indra Apsaridewi, "Tindakan Hukum Penyelamatan Kredit Bermasalah Pada Bank," *Kertha Wicaksana: Sarana Komunikasi Dosen dan Mahasiswa* 17, no. 1 (February 1, 2023): 59–73, <https://doi.org/10.22225/kw.17.1.2023.59-73>.

These remedies include: fulfilling or executing the agreement, fulfilling the obligation along with the duty to pay compensation, terminating the agreement, and terminating the agreement with the inclusion of compensation.<sup>31</sup>

### **Legal Responsibility for Airlines as Business Actors who Cancel Flights to Passengers as Consumers**

Air travel consumers commonly complain about airlines' perceived decline in service quality. This dissatisfaction frequently stems from unexplained or inadequately justified flight cancellations, often attributed to vague operational or technical issues, leaving passengers in the lurch.<sup>32</sup> Such cancellations disrupt travel plans, causing inconvenience and frustration for frequent flyers.

In regulatory terms, a flight cancellation is defined as the failure of an airline to operate a scheduled flight as planned.<sup>33</sup> This situation is considered a subset of flight delays, as outlined in article 2, paragraph c, of the Minister of Transportation Regulation No. 89 of 2015 concerning the Management of Flight Delays in Scheduled Commercial Air Transportation in Indonesia. According to this regulation, both flight delays and cancellations are subject to specific management protocols to mitigate their impact on passengers.<sup>34</sup>

When airlines cancel flights, such actions are deemed a breach of contract, thereby imposing legal responsibility on the airline due to their actions. As defined by Ampera, legal responsibility refers to the duty of legal entities, whether individuals (*persoon*) or organizations (*recht person*), to fulfill their obligations, including bearing penalties for any breach that adversely affects either party involved or the public at

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<sup>31</sup> Supeno, *Dasar-Dasar Hukum Perikatan: Hukum Perjanjian Pada Umumnya, Perjanjian Dalam Perspektif Hukum Internasional, Dan Perjanjian Dalam Perspektif Hukum Islam*.

<sup>32</sup> Shidarta, "Keterlambatan Dan Pembatalan Penerbangan," [business-law.binus.ac.id](https://business-law.binus.ac.id), January 19, 2018, <https://business-law.binus.ac.id/2018/01/19/keterlambatan-dan-pembatalan-penerbangan/>.

<sup>33</sup> Nafiatul Munawaroh, "Ini Aturan Kompensasi Pembatalan Penerbangan oleh Maskapai," [hukumonline.com](http://hukumonline.com), February 17, 2023, <https://www.hukumonline.com/klinik/a/kompensasi-pembatalan-penerbangan-lt4e6e56a7b9e82/>; Annalisa Yahanan, Febrian Febrian, and Rohani Abdul Rahim, "The Protection of Consumer Rights for Aviation Safety and Security in Indonesia and Malaysia," *Srinivajaya Law Review* 1, no. 1 (January 30, 2017): 027, <https://doi.org/10.28946/slrev.Vol1.Iss1.7.pp027-043>.

<sup>34</sup> "Regulation of the Minister of Transportation of the Republic of Indonesia No. 89 of 2015 on Handling of Flight Delays (Delay Management) in Scheduled Commercial Air Transport Business Entities in Indonesia" (n.d.).

large.<sup>35</sup> Given their role as service providers in the aviation industry, airlines must assume responsibility as stipulated in article 19 of Law Number 8 of 1999 on Consumer Protection.

Article 19 of the Law No. 8 of 1999 on Consumer Protection outlines the responsibilities of business operators who cause harm to consumers. In this context, the term 'responsibility' implies that business operators are obligated to offer compensation, which may include refunds or replacements of goods and/or services, to uphold the standard of their products or services.<sup>36</sup> The specifics of article 19 of the Law No. 8 of 1999 on Consumer Protection are as follows.<sup>37</sup>

- (1) Business entities are obligated to compensate consumers for any harm, pollution, and/or losses incurred by using their products or services.
- (2) Such compensation, as mentioned in paragraph (1), may include refunds, replacements of goods and/or services of similar or equivalent value, medical care, and/or other forms of compensation as dictated by relevant laws and regulations.
- (3) Compensation must be provided within 7 (seven) days following the transaction date.
- (4) The obligation to provide compensation as detailed in paragraphs (1) and (2) does not preclude the potential for criminal charges if further evidence reveals negligent conduct.
- (5) The obligations outlined in paragraphs (1) and (2) are not applicable if the business entity can demonstrate that the consumer was at fault.

Article 19 of the Law No. 8 of 1999 on Consumer Protection, detailing the obligation of business actors – such as airlines – to provide compensation, serves as an enactment of one of the responsibilities stipulated under article 7 (g) of the Law No. 8 of 1999 on Consumer Protection. This specific provision mandates that business actors offer compensation or restitution in instances where the goods or services rendered to

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<sup>35</sup> Ampera Matippanna, *Tanggung Jawab Hukum Pelayanan Medis Dalam Praktek Kedokteran*, 1st ed. (Ponorogo: Uwais Inspirasi Indonesia, 2019).

<sup>36</sup> Kristania Montolalu, Jemmy Sondakh, and Boby Pinasang, “Tanggung Jawab Pelaku Usaha Terhadap Konsumen Tentang Kesalahan Pengiriman Pesanan Makanan Melalui Aplikasi Gojek,” *Lex Administratum* 11, no. 4 (May 2023): 1–10.

<sup>37</sup> Matippanna, *Tanggung Jawab Hukum Pelayanan Medis Dalam Praktek Kedokteran*; Magdalena Kučko, “The Right To Double Compensation Where The Re-Routed Flight Suffers A Long Delay – Upholding High Standards Of Eu Consumer Protection,” *Maastricht Journal of European and Comparative Law* 28, no. 1 (2021): 143–52, <https://doi.org/10.1177/1023263X20984635>.

consumers result in losses<sup>38</sup> To understand this in context, it is important to examine the entirety of article 7 of Law No. 8 of 1999 on Consumer Protection, which outlines the broader responsibilities of business actors as follows:<sup>39</sup>

The responsibilities of business entities include:

- a. Acting with integrity in all business dealings.
- b. Offering clear, accurate, and truthful details about the condition and warranty of products and/or services, including instructions for their use, maintenance, and repair.
- c. Serving and treating consumers fairly, honestly, and without discrimination.
- d. Ensuring the quality of goods and/or services meets the standards set by relevant quality regulations.
- e. Allow consumers the chance to test or sample specific goods and/or services and offer guarantees and/or warranties for the products sold.
- f. Compensating for any damages, pollution, and/or losses incurred from utilizing goods and/or services provided.
- g. Offering compensation and/or replacement for products and/or services that do not meet the terms of the agreement.

In addition to article 19 of Law No. 8 of 1999 on Consumer Protection, further details concerning the obligations of airlines, especially regarding flight cancellations, are elaborately specified in the Minister of Transportation Regulation No. 89 of 2015. This regulation serves as a detailed guideline protecting passengers utilizing air transportation services, focusing on the airlines' legal responsibilities to compensate in the event of flight cancellations.<sup>40</sup>

Minister of Transportation Regulation No. 89 of 2015 categorizes flight cancellations under category 6, the final category concerning flight delays, as specified in article 3(f). The categorization of flight cancellations within this segment has significant implications, as outlined in article 9, paragraph 1, letter f of the regulation. It mandates airlines to offer compensation to affected passengers as follows:<sup>41</sup>

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<sup>38</sup> Montolalu, Sondakh, and Pinasang, "Tanggung Jawab Pelaku Usaha Terhadap Konsumen Tentang Kesalahan Pengiriman Pesanan Makanan Melalui Aplikasi Gojek."

<sup>39</sup> "Law No. 8 of 1999 on Consumer Protection" (n.d.).

<sup>40</sup> Regulation of the Minister of Transportation of the Republic of Indonesia No. 89 of 2015 on Handling of Flight Delays (Delay Management) in Scheduled Commercial Air Transport Business Entities in Indonesia.

<sup>41</sup> Regulation of the Minister of Transportation of the Republic of Indonesia No. 89 of 2015 on Handling of Flight Delays (Delay Management) in Scheduled Commercial Air Transport Business Entities in Indonesia.

a. Transferring to the next flight;

The first option available to airlines for compensating passengers in the event of flight cancellations involves facilitating the transfer of passengers to the next available flight or to a flight operated by a different airline. In executing this option, airlines are required to waive any additional charges for the passengers. This includes providing complimentary upgrades in service class when available. Conversely, if the transfer results in a downgrade in the class or subclass of service, airlines are obligated to refund passengers the difference in cost from their original ticket.<sup>42</sup>

b. Refunding the ticket price

According to Imam, Fadli, and Euis, a refund constitutes the entitlement to receive compensation, redress, and/or replacement when the delivered goods and/or services fail to meet the expected standards. Such refunds can manifest either as monetary returns or as an exchange for goods/services of equivalent value.<sup>43</sup> In line with this understanding, Minister of Transportation Regulation 89 of 2015 outlines specific procedures that airlines must follow to process ticket refunds, as detailed in article 10, paragraphs (1) and (2).

Article 10, paragraph (1) of the Minister of Transportation Regulation No. 89 of 2015, states: "Air Transport Business Entities must refund the full ticket cost (ticket refund) as mentioned in article 9 letters f and g, for tickets purchased via cash transactions, by providing a cash refund when passengers present themselves to the air transport business entity."<sup>44</sup> Article 10, paragraph (2) of the Minister of Transportation Regulation No. 89 of 2015, states: "Air Transport Business Entities must refund the full ticket cost (ticket refund) as mentioned in article 9 letters f and g, for tickets purchased via non-cash transactions, by

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<sup>42</sup> Regulation of the Minister of Transportation of the Republic of Indonesia No. 89 of 2015 on Handling of Flight Delays (Delay Management) in Scheduled Commercial Air Transport Business Entities in Indonesia.

<sup>43</sup> Imam Ozali, Muhammad Fadli, and Euis Saribanon, "Analisis Perubahan Sistem Refund Tiket Pesawat Terhadap Minat Beli Pelanggan Maskapai Garuda Indonesia," *Jurnal Sosial Dan Teknologi* 2, no. 8 (August 15, 2022): 705–10, <https://doi.org/10.59188/jurnalsostech.v2i8.395>.

<sup>44</sup> Regulation of the Minister of Transportation of the Republic of Indonesia No. 89 of 2015 on Handling of Flight Delays (Delay Management) in Scheduled Commercial Air Transport Business Entities in Indonesia.

executing a refund through a transfer to the credit card account no later than 30 calendar days."<sup>45</sup>

Regarding the actions airlines must take in the event of flight cancellations, the relevant regulations allow them to fulfill their obligations by offering compensation to affected passengers through a couple of primary methods. As detailed in Minister of Transportation Regulation 89 of 2015, airlines are given the option to either rebook passengers on the next available flight or to provide a full refund of the ticket cost, whether in cash or non-cash form, to the passengers.<sup>46</sup>

### **The Prophetic Law Perspective of the Protection of Passenger Rights**

Apart from studying the legal responsibility imposed on the airline by cancelling flights as a form of protection for passengers based on an Indonesian law perspective, as explained above, the study of this matter can also be assessed with Islamic law in general and prophetic law in specific. From an Islamic law perspective, the legal responsibility of airlines as business actors who cancel flights to passengers as consumers, as previously explained, can be seen from the concept of *daman*. The main basis on which a person can be subject to *daman* is *waed maksur* (breach of contract in Islamic law). In general, there are three forms of *waed maksur*, which are prohibited actions (*al-ta'addi*), failure to perform obligatory actions (*al-taqshir*), or contravention of agreed terms (*mukhalafat al-shurut*).<sup>47</sup> Islam emphasizes the sanctity of contracts, drawing from teachings such as a hadith narrated by Imam Ahmad where Prophet Muhammad (peace be upon him) highlights the importance of truthfulness, fulfilling promises, and maintaining integrity in all dealings. All of those things must be done correctly, if they are not done properly there will be an implication that must be fulfilled.

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<sup>45</sup> Regulation of the Minister of Transportation of the Republic of Indonesia No. 89 of 2015 on Handling of Flight Delays (Delay Management) in Scheduled Commercial Air Transport Business Entities in Indonesia.

<sup>46</sup> Cosmin Tileagă and Oana Oprișan, "Flights Delay Compensation 261/2004: A Challenge for Airline Companies?," in *Organizations and Performance in a Complex World*, ed. Ramona Orăștean, Claudia Ocrean, and Silvia Cristina Mărginean, Springer Proceedings in Business and Economics (Cham: Springer International Publishing, 2021), 335–44, [https://doi.org/10.1007/978-3-030-50676-6\\_27](https://doi.org/10.1007/978-3-030-50676-6_27).

<sup>47</sup> "Instruction of Dewan Syariah Nasional-Majelis Ulama Indonesia No. 129/DSN-MUI/VII/2019 on Real Costs as Ta'widh Due to Breach of Contract" (n.d.).

Every agreement, whether made verbally or in writing, must be honored and not breached.<sup>48</sup> This principle is echoed in Islamic teachings, notably through the words of Allah SWT in the Al-Qur'an. Specifically, Surah Al-Maidah verse (1), which states, "O you who believe, fulfill the covenants," underscores the importance of adhering to agreements. M. Quraish Shihab interprets this verse as a clear directive from the Qur'an, emphasizing the critical nature of honoring contracts in every form and aspect, advocating for their fulfillment beyond the expected measure, and condemning any form of negligence towards them. This verse signifies Allah SWT's command to the faithful to uphold and respect their commitments. Consequently, Islamic law places a high value on the integrity of keeping one's word, mandating that individuals adhere to their promises to others.<sup>49</sup>

Beyond the teachings found in the Al-Qur'an and Al-Hadith, Islamic law's stance on breach of contract is further detailed in the Compilation of Sharia Economic Law (KHES). Article 36 of KHES categorizes breach of contract into several scenarios: failure to perform a promised action, performing it differently than promised, delay in performing the promised action or performing an action that the agreement expressly forbids.<sup>50</sup> Building on this, article 37 of KHES clarifies the conditions under which a breach of contract is recognized. It states that a contracting party is deemed to have broken their promise if, through a warrant or a similar document, it is declared that they have failed to uphold their end of the agreement or if the agreement itself designates the party as being in breach of contract after the lapse of a specified time period from the commencement of the agreement. This provision explicitly defines the circumstances that constitute breach of contract.<sup>51</sup>

Airlines canceling flights represents a breach of contract or failure to fulfill commitments to passengers, an action that contradicts Islamic law's principles.

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<sup>48</sup> Ade Riyan Nasruloh, "Tinjauan Hukum Islam Terhadap Penyelesaian Wanprestasi Perjanjian Sewa Mobil Di Nugraha Trans Sleman" (Yogyakarta, Universitas Islam Indonesia, 2018), <https://dspace.uui.ac.id/handle/123456789/10291>.

<sup>49</sup> Muhammad Quraish Shihab, *Tafsir Al-Mishbah Volume 1 : Pesan, Kesan Dan Keserasian Al-Qur'an*, 1st ed., 1 (Jakarta: Lentera Hati, 2012).

<sup>50</sup> "Supreme Court Regulation No. 2 of 2008 on Compilation of Sharia Economic Law" (n.d.).

<sup>51</sup> Supreme Court Regulation No. 2 of 2008 on Compilation of Sharia Economic Law.



Muhammad Shohibul Itmam highlights that Islamic law fundamentally encourages the performance of good deeds, the avoidance of wrongdoing, and the prevention of harm.<sup>52</sup> The Qur'an reinforces this ethos in Surah Al-Isra verse (94), emphasizing the importance of honoring promises, stating, "and fulfill the promise, for the promise will indeed be questioned." In instances where promises are not kept, the aggrieved party is entitled to seek compensation, reflecting the principle of absolute liability for unfulfilled commitments.

Within the framework of Islamic law, particularly regarding compensation for breach of contract, the concept of *daman* plays a crucial role. *Daman* entails the obligation to replace or compensate for a loss with something of equal value or equivalent monetary worth.<sup>53</sup> It encompasses the responsibility to redress rights concerning property, as well as physical and emotional well-being. The standard for compensation should align with the extent of the loss incurred by the victim, although the financial capacity of the liable party may also be considered in certain situations<sup>54</sup>

*Daman* is bifurcated into two categories: *daman al-'aqd* and *daman al-'udwan*. *Daman al-'aqd* pertains to civil liability for compensating a breach of contract based on the failure to fulfill agreed-upon terms between parties. On the other hand, *daman al-'udwan* concerns civil liability for compensating harm resulting from wrongful acts (*al-fi'l al-darr*).<sup>55</sup> Applying these principles to the scenario of airlines canceling flights, the applicable form of compensation is *daman al-'aqd*. This categorization is due to the nature of the breach of contract—specifically, the failure to honor the promise of transporting passengers as scheduled. *Daman al-'udwan*, by contrast, is more aptly applied to scenarios involving unlawful acts within the purview of civil law, rather than breach of contract.

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<sup>52</sup> M. Shohibul Itmam, *Positivisasi Hukum Islam Di Indonesia* (Ponorogo: STAIN Po PRESS, 2015).

<sup>53</sup> Jaya Miharja, "Konsep Ganti Rugi Perspektif Hukum Islam," *Muamalat: Jurnal Kajian Hukum Ekonomi Syariah* 8, no. 2 (December 2016): 133–55, <https://doi.org/10.20414/mu.v8i2.1997>.

<sup>54</sup> Asmuni A. Rahmad, *Ilmu Fiqh 3* (Jakarta: Direktorat Pemberdayaan Wakaf direktorat Jendral Bimbingan Masyarakat Islam, 2007).

<sup>55</sup> Syamsul Anwar, *Hukum Perjanjian Syariah: Studi Tentang Teori Akad Dalam Fikih Muamalat*, 1st ed. (Jakarta: Raja Grafindo Persada, 2010).

Furthermore, if we talk about legal responsibilities (*daman*) imposed on someone (in this case, the airline that cancels flights for passengers) based on Islamic law, it seems incomplete if we do not include the prophetic law perspective as a complement. In simple terms, prophetic law can be seen as the foundation of knowledge; there are intuitive (faith) or a priori instructions because intuitive knowledge begins with human receptivity to what is conferred by revelation and direction, thereby rejecting the concept of doubt.<sup>56</sup> The main concept of prophetic law can be found in Surah Ali Imran verse (110), which states, “You are the best community ever raised for humanity to encourage good, forbid evil, and believe Allah”. In this surah, there are several principles used in prophetic law, which are humanization (*amar makruf*), liberation (*nahi munkar*), and transcendence (*tukminuna billah*). All of those pillars are geared toward the welfare of humanity (*baldatun thoyyibatu warabun ghafur*) in a perfect way (*kaffah*).<sup>57</sup> Prophetic law places Islamic values (both in Al-Qur’an and Hadith) as the main source in living life.<sup>58</sup>

First is the humanization pillar. This pillar can mean anything, from very individual things such as prayer, dhikr, and prayer to semi-social things such as respecting parents, building brotherhood, etc. For this reason, the word "humanization" is used. In Latin, humanity means "human being" or "the condition of being human". The goal of the humanization pillar is to humanize humans. It is known that the process of dehumanization occurs everywhere because the existing industrial society makes other parts of society become part of an abstract society without a human face. Objectivation takes place in the midst of political machines and market machines. Somehow, science and technology have also aided reductionistic tendencies that view humans in a partial way.<sup>59</sup>

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<sup>56</sup> Absori, *Pemikiran Hukum Profetik: Ragam Paradigma Menuju Hukum Berketuhanan* (Ruas Media, 2018), <https://books.google.co.id/books?id=1BiJzweEACAAJ>.

<sup>57</sup> M. Syamsudin, ed., *Ilmu Hukum Profetik: Gagasan Awal, Landasan Kefilsafatan, Dan Kemungkinan Pengembangannya Di Era Postmodern*, 1st ed. (Yogyakarta: Pusat Studi Hukum (PSH) FH UII kerja sama dengan FH UII Press, 2013).

<sup>58</sup> Mufidah and Abu Tamrin, “Pengembangan Ilmu Hukum Profetik Sebagai Model Integrasi Keilmuan Fakultas Syariah dan Hukum di PTKIN,” *Salam: Jurnal Sosial dan Budaya Syar-i* 9, no. 2 (April 4, 2022): 503–20, <https://doi.org/10.15408/sjsbs.v9i2.25539>.

<sup>59</sup> Kuntowijoyo, *Islam Sebagai Ilmu: Epistemologi, Metodologi, Dan Etika*, 1st ed. (Jakarta : Ujung Berung, Bandung: Teraju ; Didistribusikan oleh Mizan Media Utama, 2004).

The second is the liberation pillar. In everyday language, liberation can mean emancipation. The goal of this pillar is liberation from the cruelty of structural poverty, technological hubris, and the squeeze of abundance. As defined by Kuntowijoyo, "We feel one with those who are poor, those trapped in technocratic consciousness, and those displaced by the giant economy. We want to free ourselves from the shackles that we have built ourselves."<sup>60</sup> Third, transcendence pillar. Transcendence here refers more to theological terms (about divinity and supernatural beings). The purpose of transcendence from the perspective of prophetic law is to add a transcendental dimension. Again, Kuntowijoyo states, "Many of us have given in to the flow of hedonism, materialism, and decadent culture. We believe that something must be done, namely cleansing ourselves by remembering the transcendental dimension, which is a legitimate part of human nature. We want to experience this world again with God's grace. We want to live again in an atmosphere that is separated from time and space when we are in contact with the greatness of God."<sup>61</sup>

## CONCLUSION

Two key conclusions can be drawn from the discussions and explanations. Firstly, the act of flight cancellation on the departure date for passengers who are consumers by the airline constitutes a breach of contract. This assertion is based on the airline meeting the five criteria for determining whether a breach of contract has occurred. As a result of this breach of contract, airlines can be held legally accountable under article 1276 of the Civil Code.

Secondly, according to Minister of Transportation Regulation No. 89 of 2015, airlines' legal responsibility as business entities in instances of flight cancellations for passengers is twofold. First, airlines have the option to fulfill their responsibilities by either rerouting passengers to the next available flight or to another suitable alternative. Second, airlines may choose to refund the full ticket price previously paid by the passenger, whether in cash or through other non-cash means. Airlines must

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<sup>60</sup> Kuntowijoyo.

<sup>61</sup> Kuntowijoyo.

select one of these two options to address their accountability towards passengers appropriately.

Last but not least, from an Islamic law perspective, those legal responsibilities are included in the *daman al-'aqd* category. This categorization is due to the nature of the breach of contract—specifically, the failure to honor the promise of transporting passengers as scheduled. Moreover, prophetic law increasingly strengthens the position of the legal responsibility to airlines who cancel flights because there is nothing that is contrary to the pillars as adhered to.

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