

**THE PROBLEM FACING BY PT. METRO BATAVIA TO PROVIDE COMPENSATION TO
COSTUMERS BASED ON THE CONSTITUTION**

(A case study concerning Bankruptcy of PT. Metro Batavia)

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ABSTRACT

Bankruptcy happened to airlines companies causes troubles not only on debtors but also on consumers as the expectant passengers that have purchased flight tickets. When PT. Batavia Air was sentenced bankruptcy by the Commerce Court then all operational activities shall stop. These halted Operational activities resulted loss on consumers since thousand of consumers that have bought tickets cannot fly. Verdict of Commercial Court of Jakarta Pusat No.77/Pailit/2012/PN.NIAGA.JKT.PST on January 30th, 2013 decided all activities concerning on properties are delegated to curator appointed by the court stated on verdict. For consumers that demand any compensation of loss, it is suggested to register a debt note in curator office. On Act No. 1 of 2009 concerning on airlines and Minister Regulation No. 77 of 2011 concerning responsibility of airline, it is stated that airlines are responsible to repay the whole cost of ticket spent by passengers. However, in the reality it is impossible to consumers to get the compensation since they stand as *concurrent* creditors which have no rights to get advanced repayment. The full repayment can only be possible to gain by *consumers* after curator complete the whole repayment process to separative and preference creditors.

Keywords: *Bankruptcy, PT. Metro Batavia*

A. Introduction

1. Background

The wide spread of airlines companies in the last 10 years gives positive implication for society as the user of air transportation to choose various airlines services. Besides, great number of airlines companies creates the competitive atmosphere that leads to cheap air fare for enthusiast consumers. However, this competition leads some worries concerning on low quality particularly on plane maintaining due to the cheap price of ticket. The worries are also supported with many reports of airplane accidents¹.

In commercial air transportation system, there two parties involved, airline companies as services provider and consumers as services users. Those two parties are bound by transportation agreement. Since an agreement is a manifestation of civil legal affair, there will be rights and obligations to obey and fulfill that are also known as “achievement”².

In transportation law, the obligations of transportation cover transporting people and/or goods safe and sound as a whole to the destination, giving excellent services, and compensating passenger for any loss. Airlines companies that cannot compete well will be shoved aside and bankrupt. One of bankruptcy

cases in airline is Batavia Air that was sentenced by Commercial Court of Jakarta Pusat verdict number 77/Pailit/2012/PN.NIAGA.JKT.PST on January 30th, 2013. However, regardless bankruptcy faced by a company, it is still an inevitable obligation to repay the debts, besides the verdict stated bankruptcy status of a company is aimed to take control on company’s properties and assets to pay all debtor’s debts considerably. Bankruptcy happens when a debtor cannot pay off at least one debt according to its due and the status shall be judged by the district court.

Basically, bankruptcy can be associated as public foreclosure to debtor’s properties and assets bone by creditor. Debtors that are convicted bankrupt loss possession on their properties and assets. The settlement of *boedel*³ bankruptcy will be delegated to curator under the supervision of the Judge. this is what happened to Batavia Airlines that has to stop all its operational activities since the claim of bankruptcy made by International Lease Finance Corporation (ILFC) to Commerce Court of Jakarta Pusat. The decision upon bankruptcy of PT. Metro Batavia was caused by the debt of USD 4.68 millions cannot be paid according to its due. The claim was registered on December 20th, 2012 and sentenced by court on January 30th, 2013.

¹ E. Saefullah Wiradipraja, 2006, *Tanggung Jawab Perusahaan Penerbangan Terhadap Penumpang Menurut hukum Udara Indonesia*, Jurnal Hukum Bisnis Vol 25, Jakarta. P. 5-6.

² Wagiman, 2006, *Refleksi dan Implementasi Hukum Udara: Studi Kasus Pesawat Adam Air*, Jurnal Hukum Bisnis Vol 25, Jakarta. P.13.

³ In Netherland Dictionary by S. Wojowasito, *Boedel* means (1) heritage (2) bankrupt’s possession (3) all kinds of furniture. From those three definitions of *Boedel*, the second one is the most appropriate to use in this study.

Regarding to consumers that have purchased the tickets, one of curators of Batavia Air (Turman Panggabean) said that the repayment cannot be done unless the existence of new investor.⁴ This statement indicated that there will be any hope to refund the ticket money that was purchased by the passengers of Batavia air. So the passengers who have purchased the tickets had been harmed, as has happened in Bengkulu province. Dozens of passengers with tickets that have been purchased as proof came into Batavia Air office at Jl. Pintu Batu to ask for accountability from Batavia Air. The passengers who have purchased tickets of Batavia Air should get refund, but the passengers were asked to wait without any clarity. They were promised to be paid as soon as possible and be given a receipt of filing refund for tickets that have been purchased. Under section 1 item 3 of the Ministerial Decree No. 7 of 2011, it is the responsibility of transporters and air Transportation Company to replace the losses suffered by the passengers and / or to send goods as well as the third party.

Responsibility of carrier in this case is indemnified amount of losses suffered by the passengers related to the purchased tickets. In accordance with law No. 1 of 2009 on Aviation and Ministerial Decree No. 77 of 2011 on the Responsibility of Air Freight Carrier, Batavia Air must complete responsibility to the passengers. In article 140 law No. 1 of 2009 on

the Aviation, commercial air transport enterprises shall transport people and / or cargo, and mail that already has a ticket and cargo documents. Commercial air transport enterprises are required to provide adequate services to individual users of air transport services. In case of flight cancellation, as stipulated in article 12 verse (2) the Ministerial Decree No. 77 of 2011, the airline must replace the entire ticket money paid by the passengers.

Under the rules above, it is clear that the passengers are entitled to compensation. As a result of the fall of the bankruptcy decision, thousands of passengers who have already bought ticket suffered losses. They demanded that the refund is ticket they buy, but until now there is no clarity about it.

Therefore, the author felt the need to examine how the responsibility of the airlines to the consumer as the injured party, which will be poured into the form of journal, entitled: **The Constraints of PT. Metro Batavia in Providing Compensation to The Passengers in Accordance with Laws and Regulations (Case Studies of PT. Metro Batavia Bankruptcy).**

2. Problem identification

1. How was the liability of Flight Company of PT. Metro Batavia to consumers harmed by the bankruptcy?
2. What were obstacles faced by PT. Metro Batavia in providing compensation to the passengers

⁴ Redaksi, Batavia Langsung Ganti Asalkan...., accessed at 17th January 2014

in accordance with the provisions of the legislation?

B. Research methodology

This type of research is empirical legal research. The data collection used in this study is primary data and secondary data. The primary data is the data obtained from field research by conducting interviews and questionnaires (questionnaire). Interviews were conducted with respondents in accordance with the list of questions prepared in advance and was developed at the interview by limiting the questions according to the problem aspects studied. The method of interview is used to determine and find out deeper the information as well as to get the data needed and to answer the existing problems properly, which is by gathering the information and obtain data regarding to the responsibility of the airlines to the harmed consumers as the injured party due to the bankruptcy (Batavia Air bankruptcy case studies). The secondary data was obtained from the study of literature by doing library research that aims to find the data in the form of concepts, theories, opinions, views, doctrines-doctrines, and principles of law that are closely related to the subject matter researched. The data obtained either primary or secondary data were grouped and

classified according to the subject, then it was studied and checked again whether all the questions have been answered or was there no relevance to the question and answer.⁵ The data analysis applied the qualitative juridical analysis. For the analysis of qualitative data, the data was grouped according to specific categories that have been previously applied, and then it was interpreted based on the meanings given by the people. Herein after the data was described in detail and clearly as a phenomenon that was the focus of research as well as answering the research problem and answering the research problem.

C. Research result and discussion

1. The responsibility of the Airlines Company to the consumers as the injured party due to bankruptcy (Batavia bankruptcy Air case studies)

Competition among businesses, consumers actually constitute the most disadvantaged, which are by offering cheaper prices and the increasing number of alternative goods or services offered. This alternative provides the opportunity for consumers to be able to choose the goods or services that have better quality

⁵ Ronnya Hanitijo Soemitro, 1990, *Metode Penelitian Hukum dan Jurimetri*, Ghalia Indonesia, Jakarta

but has a relatively cheaper price compared to other similar goods or services.

Through decisions number: 77/pailit/2012/PN.Niaga,JKT.Pst dated January 30th, 2013, the District Court of Central Jakarta has declared that PT. Metro Batavia (Batavia Air operator) was bankrupt and stopped operating started January 31st 2013. The bankruptcy decision of PT. Metro Batavia was caused by the debt as much as USD 4.68 million, equivalent to 45 billion rupiah which was overdue but not being paid. In addition to the lawsuit of ILFC, Batavia Air also had the debt in the amount of USD 4.94 million to Sierra Leasing Limited which due on December 13th 2012. Analysis of OSK research Sdn Bhd in October 2012 estimated that the total debt of Batavia Air was for \$ 40 million.

Turman M. Panggabean as a curator appointed in the bankruptcy decision numbers: 77/pailit/2012/PN.Niaga,JKT.Pst declared that the changing of passengers' ticket could be done on the condition that there is new investors. So it seems to have dashed hopes for ticket holders to get cash refund. Based on the interview with bankruptcy curator of Batavia Air,

M. Turman Panggabean⁶ explained that the completion of Batavia Air bankruptcy had decided to be take care by four curators, they are M. Turman Panggabean, Permata Nauli Daulay, Andra Reinhard Pasaribu, and Alba Sumahadi. The curator's office is housed in the shop Cempaka Mas B-24, Jl. Lt. Suprpto, Central Jakarta.

By Ministerial Regulation of Transportation No. 77 of 2011 the passengers' rights are prioritized even with 4 hours delay, the passengers get the damages amounting to Rp300,000, - (three hundred thousand rupiah). Here it is seen that the passenger rights guaranteed by the government but when PT. Metro Batavia was declared bankrupt. The passengers' rights were prioritized if the loss is transformed into the most recent rights, responsibilities of compensation that must be resolved firstly is the separatist creditors, preferred creditors and unsecured creditors. The passengers is on the lowest position named the unsecured creditors which means that that passengers receive the remainder of payments to creditors and preferred creditor separatists. When

⁶ Turman M. Panggabean, *Curator of Batavia Air Bankruptcy*, interview on December 2014.

seeing from the curator testimony that the debtor's assets of PT Metro Batavia was insufficient even to pay its debts to creditors separatists. It meant that the passengers could only be to let they money gone and did not get compensation. In Bankruptcy Law the passengers' position is not protected because it is in a very weak position which is as unsecured creditors.

According to article 1133 of the Civil Code, a creditor is given the position to take precedence over the other creditors if the person concerned is:⁷

- a. bill that is a privilege
- b. bills secured by liens
- c. bills secured by a mortgage

Article 1133 of the Civil Code reads as follows:

"The right to precedence among the creditors incurred because of the privilege, liens and mortgages. Concerning liens and mortgages were arranged in the twentieth and twenty-first chapter of this book".

By the arranged of the Law and order of repayment priority level of each of the creditors is stipulated in the Civil Code as well as setting how the division of wealth proceeds to repay repayment of

each receivable is arranged in Bankruptcy Law which is Failissementsverordening S 1905 N0 217 JO.S 1906 no. 348 as amended and added to the legislation in 1998. No.4. Thus it is clear that the Civil Code and the laws of bankruptcy laws cannot protect the passengers because they are unsecured creditors who have the lowest priority to the repayment of compensation. Passenger fund as a victim due to a lack of accountability debtor can only be surrendered to the harm suffered. Although some passengers have been taking steps juridical order fulfillment of their rights, among others through a consumer dispute resolution body or apply to the judiciary in the domicile of the consumer, consisting of individual lawsuits, legal standing for the Agency, and class action (class action). But these efforts were only futile because the assets of the debtor are insufficient to pay and pay off debts to creditors. Even the secure creditor and preferred creditor have not received repayment in full.

2. What is an obstacle of Metro Batavia Ltd. (limited liability company) in providing Indemnify to passengers in accordance with the legislations' provision.

⁷ Sutan Remy Sjahdeini,, 2002, *Hukum Kepaailitan (Memahami Faillissementsverordening Juncto Undang-UndangNo.4 Tahun 1990)*, Cetakan Pertama, PT. Temprint, Jakarta, page 9

Based on the interview with a Judge of the Commercial Court named Agus Iskandar,⁸ it was obtained the informations that in judgement was described that Batavia Air has qualified to be declared bankrupt, in accordance with the constitution number 37 year 2004 about bankruptcy. In the judgement was mentioned that the candidates of passenger and with the position as concuren (unsecured) creditor were the most recent fulfillment of its obligations. The liabilities to new customers can be met after the division of the bankruptcy estate to the creditors and preferred separatists. This concuren (unsecured) creditors were the creditors with *pari passu* rights and proration which means that the creditors together to have acquittal (without precedence). Furthermore, according to a Judge, Agus Iskandar, this condition surely being the main obstacle of Metro Batavia Ltd. in giving the accountability to the passengers and in accordance with the legislations' provision, or maybe Metro Batavia Ltd. cannot refund the money prospective passengers and for entire treasure has been exhausted or even less

to resolve the arrears on companies precedence (to the secure creditor and preferred) so no more have the ability to pay for that passengers.

In giving the accountability to the passengers and there were a differentiation between creditor and passenger so that it could be a curator consideration in giving the compensation to the passengers.

1. The background of agreement that spawned an engagement agreement between Metro Batavia Ltd. and International Lease Finance Corporation (ILFC) that banded into an lease agreement which is the Metro Batavia Ltd. acts as a tenant and ILFC as lessor. Inbility of tenant for paying amount of money will cause them to have amount of money to be paid for lessor. So tenants as the debtors will also pay the debts to creditors. While, between Metro Batavia Ltd. and passenger that was tied to the purchase agreement on the activity of Metro Batavia Ltd. tickets and act as seller and passenger as costumer. The costumer condition on pay amount of money to flight services will cause the sellers obligated to provide such services. So, in this occasion ILFC acts as creditors like that has been known in the Indonesia

⁸ Agus Iskandar, *Judge of The Commercial Court of Central Jakarta, interviewed on December 2014*

bankruptcy law, however the candidates of passenger will be as a costumer.

2. The differentiation of contra-achievements that have been given to the passenger candidates and the achievement that should be achieved by Metro Batavia Ltd. to the creditors is different from achieved to the candidates of passenger. In which, creditors have money credits while the passengers that bought tickets and it was canceled will effect them to have service credits that they have bought but from Metro Batavia Ltd.

So that, the differences on kind of credits should be differ on handling that should be given by curator to the candidates of passenger. One of the actions was redirecting the airline without any charge. Yet again it is very difficult to do when the curator liken notch passengers with unsecured creditors.

Indonesian Consumers Foundation asks curator who handles bankruptcy case at PT. Metro Batavia Air to focus on the needs of consumers. During this time if there is a bankruptcy case, the needs of consumers are always handled last. Curator settle debts of companies and other issues first, and later the consumers'. In addition to passengers, Batavia Air also must pay attention to the

fate of a ticket agent or travel agent. Currently around 80 billion rupiah owned by the ticket agent was stuck in Batavia.

The Ministry of Transportation is expected to do escorting. As the aviation regulator, the government must take responsibility. The Commerce Court's decision to conduct bankruptcy to Batavia Air, should not immediately stop flight operations, but given the time to serve customers. In the Bankruptcy Law, Rights of passengers is a priority in the event of the loss is transformed into the most recent rights, because when the dividends of bankruptcy bundle in the Bankruptcy Law was known the principles of balance and fairness. Only creditors who have collateral or the creditor which by the Law was raised to the level of privileged creditors was prioritized over creditors who do not have collateral. Bankruptcy Law also did not pay attention as well as the passengers or the owners of tickets who basically become a victim of the impact of the bankruptcy.

D. Closing

A. Conclusion

Based on the description of the discussion above, it can be concluded that:

1. The Responsibility of Flights Corporation to consumers as the injured party as a result of

bankruptcy (Case Study of Batavia Air Bankruptcy) regulated under Law No. 1 Year 2009 on Aviation and the Ministerial Regulation No. 77 Year 2011 on the responsibility of Air Freight, in which the airline will be responsible for replacing the entire ticket money that has been paid by prospective passengers through a travel agent. Legal Protection accepted by the ticket owner of his rights as a result of the bankruptcy ruling becomes Unprotected, although the guaranteed protection of passenger rights have been regulated under the Act No.1 of 2009 on Aviation and Ministry of Transportation No. 77 of 2011 on Liability of Air Transport Carrier in particular, and the Law No. 8 of 1999 on Consumer Protection in general. But all such regulations do not provide space for ticket holders for the rights to be prioritize in the event of a bankruptcy. Passengers as victim due to a lack of accountability can only

give in for the losses suffered. Although some passengers had taken juridical steps for the fulfillment of their rights, such as through a dispute resolution body or applying to the judiciary in the domicile of the consumer, consisting of a lawsuit by individuals, legal standing for the Witness and Victim Protection Agency, and groups (class actions). But the effort is just wasted because the assets of the debtor are insufficient to pay off the debts to creditors. Even the separatist creditors and preferred creditor has not received full repayment.

2. Constraints in the implementation of Flights Corporation Responsibility to consumers as the injured party as a result of bankruptcy is accountability airline PT. Metro Batavia which was declared to be bankrupt by the court toward the passengers and was not implemented, because in Decision No. 77/pailit/2012/PN.NIAGA.JKT. PST., states that PT Metro

Batavia was bankrupt with all the legal consequences. In the bankruptcy decision passenger and placed as unsecured creditors are creditors who do not have the right to first repayment than other creditors and should be shared equitably with other creditors.

B. Suggestion

1. For the government to make regulations that are expected to make changes to legislation in the field of consumer protection. The Ministry of Transportation, especially in the air transportation sector, is expected to conduct special surveillance and sanitation on the health of the airline before being closed or stopped operating.
2. For the ministry of transportation is expected to conduct special surveillance and sanitation on the health of the airline before being closed or stopped operating.

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