

## Forms of legal liability for pt kereta api indonesia (Persero) for the loss passenger baggage items

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### Abstract

This study aims to see the form of responsibility of PT Kereta Api Indonesia (Persero) in the event of loss of passenger luggage based on the principles of transportation law in Indonesia and legal norms that govern rail traffic. The research method used in this research is normative legal research which is strengthened by interviews with accountable sources. The results of the research that the authors found were that in the event of baggage loss experienced by passengers of PT KAI based on Government Regulation Number 72 of 2009 concerning Railway Traffic and Transportation, PT KAI is not responsible for compensating for lost luggage. PT KAI as the Railways Facility Operator is only responsible for the Passenger Carried in the event of PT KAI's negligence, and the responsibility for the goods transported by freight train. Meanwhile for passenger baggage items, such as baggage items in train cars while traveling, PT. Kereta Api Indonesia (Persero) is not responsible. This is because the missing items are not transported specifically using a carriage or luggage cart (not the passenger's luggage).

**Keywords:** responsibility, Kereta, Forms, luggage, passenger

### 1. Introduction

Transportation is the activity of loading passengers or goods into the means of transport, moving passengers or goods to their destination by means of transportation, and unloading passengers or unloading goods from transportation means at the agreed destination <sup>[1]</sup>. The function and role of transporters are very important in people's lives and affect various aspects, both socio-cultural and even legal aspects. Legal aspects have a role in the field of transportation regarding legal provisions in rights, obligations and responsibilities as well as insurance in case of an accident or loss <sup>[2]</sup>. The transportation industry has rights and obligations between transporter and shipper. The reciprocal relationship between the carrier and the sender occurs because of an act, incident, or condition in the transportation process.

During the implementation of transportation, the safety of passengers or the goods being transported is basically the responsibility of the transportation company. The main obligation of the transporter is to maintain the safety of the goods or passengers they carry until they arrive at the agreed destination and the carrier is entitled to the transportation costs that have been carried out. So here the passenger also has to pay the transportation fare according to the agreement with the carrier. This provision regarding transportation is regulated in Law Number 22 of 2009 concerning Road Traffic and Transportation.

Transportation can be divided into 3 (three) types of transportation, namely land transportation, sea

transportation and air transportation. In land transportation, it can be further classified into 2 (two) types, namely transportation by motorized vehicle (road) and transportation by train. We know that most people use the services of PT Kereta Api Indonesia (Persero) (hereinafter referred to as PT KAI) which provides land transportation services by train. According to Law Number 23 of 2007 concerning Railways (hereinafter referred to as UUKA 2007), a train is a means of railroad with mobile power, either running alone or connected with other rail facilities, which will or is moving on the railroad associated with train travel. fire.

The operation of rail transportation is basically the same as the operation of other types of transportation, starting with a transportation agreement between the passenger or the sender of the goods and PT KAI with a ticket issued by PT KAI. PT KAI issues transportation documents in the form of passenger tickets and cargo certificates. Passenger ticket serves as proof of the occurrence of a passenger transportation agreement, this provision is regulated in Article 132 paragraph (3) of the 2007 UUKA, while the cargo certificate serves as proof of the occurrence of an agreement for the transportation of goods. Just as in each agreement there are rights and obligations as well as responsibilities of the parties that promise, likewise in the train transportation agreement there are rights and obligations from the operator of the carriage and the passenger.

According to Article 132 paragraph (1) of the 2007 UUKA, railroad operators are obliged to transport people who have a ticket. Every passenger who has a ticket is entitled to service according to the selected service level. This obligation of the carrier is a contra-achievement of the rights possessed by passengers who have paid the transportation cost and have a ticket as evidence of a train transportation

<sup>1</sup> Abdulkadir Muhammad. 2013. *Hukum Pengangkutan Niaga*. Bandung: Citra Aditya Bakti. hlm 4

<sup>2</sup> Muhammad Sofyan Rudi Santoso & Moch Najib Imanullah, Tanggung Jawab Keperdataan PT Kereta Api Indonesia (Persero) Atas Kecelakaan Yang Terjadi Saat Mengangkut Penumpang, *Privat Law* Vol. IV No. 2 Juli - Desember 2016. hlm 36

agreement. As the operator of the railway facilities, PT KAI has the responsibility to maintain the safety of passengers or railway service users, in terms of this responsibility, there are two forms that are distinguished between the responsibility of the railway infrastructure operator and the railway facility operator. A railway infrastructure operator is a party operating railway infrastructure in the form of the operation of railway infrastructure and / or railway facilities, while the operator of railway facilities is a business entity that operates public railway facilities currently carried out by PT KAI<sup>[3]</sup>.

In the practice of passenger transportation, problems such as passengers losing their luggage cannot be avoided. Many carriers ignore the problem of losing passenger luggage so that passengers in the passenger transportation business of various modes of transportation feel uncomfortable with their luggage. Every loss experienced by passengers are a legal problem, especially the legal responsibility of passenger transport companies. The main obligation of the transporter is to maintain the safety of the goods or passengers they carry until they arrive at the agreed destination and the carrier is entitled to the transportation costs that have been carried out. In this case, the passenger must also pay the transportation fare in accordance with the agreement with the carrier. Provisions regarding this transportation are regulated on Road Traffic and Transportation. Regarding transportation, it is definitely not free from accidents or loss of transported goods (luggage) that occur during the trip, therefore this paper will answer the responsibility of PT KAI for lost passenger luggage.

## 2. Research Methods

This study uses a normative approach with a positivist legal approach<sup>[4]</sup>. This positivist legacy concept views law as a normative system that is independent, closed and separated from the real life of society<sup>[5]</sup>. The writing of this research is described in descriptive analytical, descriptive meaning that it describes the applicable laws and regulations associated with legal theory and practice of positive law enforcement. Analytical means that then an analysis will be carried out on the aspects under study with legal principles, legal principles, and various legal definitions related to the problems under study. Data collection was carried out by several methods. Secondary data in normative research are used as the main data. Secondary data in this case were collected using the library and documentary inventory methods such as legislation, official documents, and literature. The use of this collection method is a logical consequence of the use of secondary data<sup>[6]</sup>. The data that has been collected is presented in the form of a description.<sup>[7]</sup> The data obtained will be analyzed in a qualitative normative manner, which in conducting discussion and elaboration of the research results will remain based on norms and theories and legal doctrines that are relevant to

the issues under study<sup>[8]</sup>.

## 3. Discussion

PT. KAI is a transportation company that operates a transportation business. In this case, PT KAI is a carrier that has a legal relationship with passengers. The legal relationship between the carrier and the passenger gives rise to a legal relationship called an engagement. Starting from this agreement, the legal relationship between PT. KAI with passengers arise. Mariam Darus Badzrulzaman said that "An engagement is a legal relationship between two or more parties in the field of wealth, where one party is entitled to an achievement and the other party is obliged to fulfill the achievement".<sup>[9]</sup> The agreement can arise or be born from an agreement and / or from law. The engagement that arose between PT. KAI as a carrier with passengers as consumers due to agreements and laws. An agreement arising from an agreement is proven by the existence of a transportation agreement made by PT. KAI and consumers. According to Soegijatno Tjakranegara, "A transportation agreement is an event that has bound someone to carry out transportation because that person has promised to carry out something in the form of transportation, while someone else has also promised to carry out something in the form of giving rewards or wages"<sup>[10]</sup>.

Basically, this agreement of carriage is made orally, but there must be supporting documents to prove that there has been a transportation agreement. The agreement of transportation or supporting documents for the train transportation agreement is called a ticket or ticket or letter of transportation which is described in Article 121 paragraph (1) of Government Regulation Number 72 of 2009 which states "Tickets are proof of the occurrence of an agreement for transportation of people". Tickets as referred to in Article 121 paragraph (1) at least contain information on service classes, names of stations of departure and destination stations, date and time of departure and arrival, and ticket prices.<sup>[11]</sup> In addition to an agreement arising from an agreement, an agreement between PT. KAI with consumers also arise from the law. It is said so because it can be seen from the existence of several laws that regulate the engagement between PT. KAI with consumers. As stated in the UUPK, UUKA, PM.48 of 2015 concerning Minimum Service Standards for Transportation of People by Train, and so on. The law regulates the legal relationship between PT. KAI with consumers, as well as the rights and obligations that each party must fulfill.

The rights given to consumers as service users are none other than a form of legal protection for consumers for legal certainty based on the principles of justice, benefits, balance of security and consumer safety. But in fact, sometimes the rights of these consumers are forgotten by PT. KAI even though consumers have fulfilled their obligations. One of the rights of consumers that is sometimes not paid attention to as contained in Article 4 letter a UUPK which reads "Consumer rights are the right to comfort, security and safety in consuming goods and / or services". The right to

<sup>3</sup> Aflah, Tanggung Jawab PT Kereta Api Indonesia Dalam Penyelenggaraan Pengangkutan Penumpang Menurut Undang-Undang Nomor 23 Tahun 2007 Tentang Perkeretaapian, *Jurnal Abdi Ilmu*, Vol 2 No 1 2009, hlm 148

<sup>4</sup> Soerjono Soekanto, 1985, *Penelitian Hukum Normatif*, Raja Grafindo Persada, Jakarta, hlm.15.

<sup>5</sup> Rony Hanitijo Soemitro, 1988, *Metode Penulisan dan Jurimetri*, Ghalia Indah, Jakarta, hlm.11.

<sup>6</sup> M. Syamsyudin, 2007, *Operasionalisasi Penelitian Hukum*, Rajawali Press, Jakarta, hlm. 101-102.

<sup>7</sup> Ronny Hanitijo Soemitro, 1982, *Metodologi Penelitian*, Ghalia Indonesia, Jakarta, hlm.107.

<sup>8</sup> Soerjono Soekanto dan Sri Pamuji, *Op. cit.*, hlm.255.

<sup>9</sup> Mariam Darus Badzrulzaman, dkk, 2001, *Kompilasi Hukum Perdata*, Bandung, Citra Aditya Bakti, hlm 1.

<sup>10</sup> Soegijatno Tjakranegara, 2005, *Hukum Pengangkutan Barang dan Penumpang*, Jakarta, Rineka Cipta, Hlm. Hlm. 9.

<sup>11</sup> Pasal 121-122 Peraturan Pemerintah Nomor 72 Tahun 2009, tentang "Lalu Lintas dan Angkutan Kereta Api"

consumer convenience is one of the rights that sometimes does not pay attention to PT. KAI.

Therefore, with the existence of a transportation agreement between the carrier and the consumer, both of them have legal ties and give birth to legal consequences. The nature of the agreement is reciprocal, where each party has rights and obligations that must be carried out. The obligation of the carrier is to carry out the transportation of goods and / or people from a place to their destination safely, while the obligation of the sender / passenger is to pay transportation costs. Transportation agreement by PT. KAI occurred when PT. KAI binds itself to organize transportation, and passengers agree to include themselves in the transportation process by paying transportation costs to the carrier. Transportation by train is carried out after the cost of transportation is paid by the passenger. Previously, prospective passengers could buy tickets in advance by coming to the station or online through the official website of PT. KAI, namely at <http://kereta-api.co.id> or buy tickets at the nearest mini market. Each prospective train passenger is required to have a valid ticket, as proof of the occurrence of a transportation agreement, where PT. KAI is obliged to carry out transportation and passengers who already have tickets are entitled to receive services according to the selected class.

Purchasing tickets other than at the station counter will get proof of the transaction in the form of a receipt, email, sms notification or other form containing the booking code, personal data and passenger travel data. The booking code must be exchanged for tickets no later than one hour before the scheduled train departure at the station counter or at the standalone ticket printing machine at the station. After the prospective passenger gets a ticket, then transportation can be carried out. When a passenger buys a ticket, a transportation agreement has been agreed, in which the parties, namely the carrier and the passenger, have rights and obligations that must be fulfilled during transportation. When purchasing a ticket as a transportation agreement, the passenger has also entered into an insurance agreement. Where in it there are rights and obligations of the parties, namely passengers as the insured with PT. Jasa Raharja (Persero) as the guarantor.

The insurance agreement in question is PT. KAI as an intermediary between the insured and the insurer has insured the safety of passengers to a social insurance company, namely PT. Jasa Raharja (Persero). If a passenger has an accident as a result of transportation, then the passenger will get compensation in the form of money from PT. Jasa Raharja (Persero). Because the passenger has made 2 (two) agreements, the passenger can get compensation from the carrier and the insurer at the same time, not only from the insurer if an accident occurs. The insurance agreement between the passenger and the insurance company is regulated in Law Number 33 of 1964 concerning Compulsory Accident Insurance Funds for Passengers. According to Article 1 sub c, the compulsory insurance for passenger accidents is funds collected from contributions, with the exception of the amount to be determined by the Minister for compensation payments for passenger accidents. As a transportation company, PT. KAI collects mandatory fees or what is commonly known as premiums, through tickets purchased by passengers. The price of existing tickets includes premiums which will be used by PT. Jasa Raharja (Persero) to cover the cost of

losses due to transportation in the event of an accident. The amount of mandatory contribution or premium that must be paid by train passengers is IDR 120.00 (one hundred and twenty rupiahs).

There are 3 (three) principles of responsibility in the law of transportation, first, the principle of responsibility based on mistakes. In Indonesia, the principle of responsibility based on error refers to the provisions contained in Article 1365 of the Civil Code. The application of the provisions of Article 1365 has consequences for the burden of proof on the injured party, in this case the passenger. To prove that the losses suffered was the result of the actions of the defendant, in this case the carrier. Second, the principle of responsibility based on presumption. The principle of responsibility is based on presumption, which is also the principle of responsibility based on an error, but by reversing the burden of proof to the defendant. Third, the principle of absolute responsibility. The principle of absolute responsibility is that the defendant or carrier is always responsible regardless of whether or not there is a mistake or not seeing who is guilty.

Based on Law Number 23 of 2007 and Government Regulation Number 72 of 2009 concerning Traffic and Railways, there is a difference between passenger luggage and luggage. The meaning of baggage goods is goods carried by special carriage as stated in Article 158 paragraph (1) of Law Number 23 of 2007, that some of the organizers, namely PT Keret Api Indonesia, are responsible for the losses incurred, due to the loss, due or the destruction caused by the operation of train transportation.<sup>[12]</sup> Losses such as those mentioned above are losses arising from the service of train carriage and must be proven by an Indonesian superintendent who is an officer of the General Manager. Tanggung jawab sebagaimana dimaksud pada ayat (1) Pasal 158 Undang-Undang No. 23 Tahun 2007 dimulai sejak barang diterima by penyelenggara sarana perkeretaapian sampai dengan diserahkannya barang kepada penerima, serta dijelaskan dalam ayat (3) Pasal 145 Undang-Undang No. 23 Tahun 2007 bahwa In the many things that were involved, it was damaged, sent, or lost due to the failure of the organizer of the train, which resulted in an immediate loss.

Meanwhile, Article 177 of Government Regulation Number 72 Year 2009 concerning Railway Traffic and Transportation regulates the responsibility for compensation by railroad operators, namely for passengers and goods transported. Then regarding the responsibility for passengers in the form of providing compensation and medical costs for injured passengers and compensation for passengers who died. Meanwhile the responsibility for goods is in the form of compensation for the negligence of the operator of the railway facilities in the operation of rail transport, such as:

- a. Partially or completely missing items;
- b. Partially or completely damaged;
- c. Destroyed;
- d. Misdirected; and / or
- e. The number and / or types of goods delivered are not in accordance with the transport letter.

In this case, what is meant by goods is goods transported by train and carried by carriage or luggage cart (specifically for goods). Based on these provisions, items that are lost either

<sup>12</sup> Undang-Undang Nomor 23 Tahun 2007 Pasal 158

at the station or in the train passenger car during the trip are not included in the responsibility of PT. Kereta Api Indonesia (Persero). This is because the goods carried by passengers are not transported specifically using a carriage or special luggage cart.

This is different if the service user uses a special delivery service for goods, so that the goods are placed specifically in luggage carriages and have supervision by officers. In the case of goods delivery using freight trains specifically, then based on Article 177 PP Number 72 of 2009, PT. The train has an obligation to be responsible for any loss and / or damage suffered by the goods. It is related to the theory that the principle of responsibility applied by PT KAI is related to the loss of passenger luggage, namely the principle of responsibility based on mistakes. This refers to the obligations imposed on service users. The responsibility of the train is canceled if the service user does not file a claim for compensation as of seven days from the incident as stated in Article 175 paragraph (2) and paragraph (3) PP Number 72 of 2009.

Based on paragraph (2) it is stated that if within 7 (seven) calendar days from the time the goods arrive at the place of destination the railway facility operator does not notify the recipient of the goods as referred to in paragraph (1), the service user or goods recipient has the right to file a claim for compensation. Submission of claims for compensation must be submitted to the operator of the railway facility starting 7 (seven) calendar days after the right to claim for compensation is granted. If the recipient of the goods does not submit a claim for compensation within a period of seven days, the right to file a claim for compensation to the railway facility operator is void. [] Accordingly, based on the description above, there are two forms that are distinguished between the responsibilities of the Railway Infrastructure Provider and Railway Facility Operator, meanwhile railway facility operator is a business entity operating public railway facilities currently operated by PT KAI. The operation of public railway infrastructure is carried out by the Business Entity as the operator, either individually or in cooperation.

In the event that there is no Business Entity that operates public railway infrastructure, the Government or Regional

Government can administer public railway infrastructure. As for the responsibility of the railway infrastructure operator, among others, are as follows:

- a. The operation of railway facilities is responsible for the operation of railway facilities and third parties for losses resulting from accidents caused by errors in the operation of railway infrastructure. This responsibility is carried out by providing compensation which is calculated based on the losses suffered.
- b. The responsibility of the Railway Infrastructure Operator for the operation of the railway facilities is carried out based on a cooperation agreement between the two parties.
- c. The operation of railway infrastructure is responsible to a third party for property loss, injury or death caused by the operation of the railway infrastructure.

Regarding the loss of goods experienced by passengers, the train said that the lost luggage of passengers on the train is not the responsibility of the company and on every train trip the conductor always informs repeatedly that lost passenger items are not the responsibility of PT KAI. Pursuant to Article 177 PP Kereta Api, in the event of loss, PT KAI has the responsibility to compensate the Railway Facility Operator in the form of responsibility for the transported passengers; and Responsibility for the Goods Carried.

The responsibilities to passengers are in the form of: compensation and medical expenses for injured passengers; and compensation for passengers who die in the event of an accident on the train they are on. Meanwhile, responsibility for goods is in the form of compensation arising from the negligence of the railway facility operator in the operation of rail transport, such as: partially or completely lost goods; partially or completely damaged; destroyed; misdirected; and / or the number and / or type of consignments of goods delivered are not in accordance with the letter of transport. In this case, the lost goods that are compensated are goods transported by train and carried by car or luggage cart. Based on data from the results of research conducted by the author at PT KAI Operation Area 6 Yogyakarta in 2019 and 2020 vulnerable are as follows (see table):

#### Daftar Laporan Kehilangan Daerah Operasi 6 Yogyakarta

Table 1

No	Reporting Date	Rapporteur	Stuff	Reporting Station
1	1/23/2019 21:09	Wida Mahda Tsani	Laptop Axioo	YK
2	6/7/2019 13:35	Ahmad Bhintara	Backpack Contains Laptop	YK
3	11/15/2019 18:12	Manuel Abednego	Jas	YK
4	1/25/2020 19:43	Andika Dwi Santoso	Purse	YK
5	3/15/2020 9:49	Reyska Noer Alfita Nanda	Purse	YK
6	6/1/2019 17:01	Yayat A.H	Bag	LPN
7	8/12/2019 13:49	Ramadhan D	Passport	LPN
8	9/5/2019 17:48	Fadhlurrohman Z	Bag	LPN
9	11/12/2019 14:06	Christina Ismoyowati	Small Cardboard Contents of the Statue	LPN
10	2/22/2019 10:49	Priskila Gayatri Cenko	Samsung J7 Prime	SLO
11	9/25/2019 4:41	Sri Marwanti. Ir. Ms	Samsung Duos	SLO
12	2/18/2020 9:42	Naufal Ammar A.Y	Rigi Brand Wallet	SLO
13	3/16/2020 14:20	Diky Murdoyo Rahardiarto	Green Strip Black Backpack	SLO

Source: PT KAI document, retrieved on May 29, 2020

All reports of loss have been responded to and accounted for

properly by PT KAI Operation Region 6 Yogyakarta, this

can be seen based on information based on interviews with Junior Manager Customer Care PT. Kereta Api Indonesia (Persero) Operation Region VI Yogyakarta. Data on reports of lost luggage items that entered the conductor's section regarding the Findings and Losses of the Service Control Center (Pusdalyan) for the January - February 2020 period, as many as 32 reports of conductors of SOT UPT Yk and Slo Daop 6 Yogyakarta. The details are as follows: []

The details of the 32 reports consist of UPT SOT YK: eleven (11) reports; UPT SOT SLO, as many as twenty one (21) reports. As many as 73 reports from other UPT SOT conductors who have entered PAM Daop 6 Yogyakarta. The types of goods that most often lose on trains are based on reports received by the Assistant Manager of Customer Care PT. Kereta Api Indonesia (Persero) Operation Region VI Yogyakarta, which consists of:

- a. Mobile
- b. Eyeglasses
- c. Bag
- d. Snacks
- e. Helmet

Based on the information of the passenger who lost luggage, Elytaning Risky, that the loss of goods occurred when the person took the train from Purwokerto to Yogyakarta on the Taksaka train. Elytaning Risky loses or leaves behind a bag on the train. Regarding the loss, Elytaning Risky has reported to the train conductor. Furthermore, based on this report, the conductor documented his personal identity data, and my telephone number was asked for notification. After arriving in Jogjakarta, Elytaning Risky received a call from 121 that my item had been found. According to Elytaning Risky, the railroad was alert and friendly in handling my report, it looked professional.

#### 4. Conclusion

The form of PT Kereta Api Indonesia (Persero) 's responsibility as a business actor to lose passenger luggage in PP No. 72 of 2009 concerning Railway Traffic and Transportation, PT KAI is not responsible for compensating for lost baggage items. PT KAI as the Railroad Operator is only responsible for the Passengers and their luggage carried in the event of negligence of PT KAI; and the responsibility for goods transported by freight train. Meanwhile for passenger baggage items, such as baggage items in train cars while traveling, PT. Kereta Api Indonesia (Persero) is not responsible. This is because the missing items are not transported specifically using a carriage or luggage cart (not the passenger's luggage). This is different if a passenger specifically uses a freight forwarder, so that the item is placed specifically in a baggage car and has supervision by the officer. If there is loss or damage, then in accordance with Article 177 PP No. 72 of 2009, PT. The train has an obligation to be responsible for any loss and / or damage suffered by the goods.

#### 5. References

1. Abdulkadir Muhammad. Hukum Pengangkutan Niaga. Bandung: Citra Adiyta Bakti, 2013.
2. Muhammad Sofyan Rudi Santoso, Moch Najib Imanullah, Tanggung Jawab Keperdataan PT Kereta Api Indonesia (Persero) Atas Kecelakaan Yang Terjadi Saat Mengangkut Penumpang, Privat Law, 2016, 4(2).
3. Aflah Tanggung Jawab PT Kereta Api Indonesia Dalam

- Penyelenggaraan Pengangkutan Penumpang Menurut Undang-Undang Nomor 23 Tahun 2007 Tentang Perkeretaapian, Jurnal Abdi Ilmu, 2009, 2(1).
4. Soerjono Soekanto. Penelitian Hukum Normatif, Jakarta: Raja Grafindo Persada, 1985.
5. Rony Hanitijo Soemitro. Metode Penulisan dan Jurimetri, Jakarta: Ghalia Indah, 1988.
6. Syamsyudin M. Operasionalisasi Penelitian Hukum, Jakarta: Rajawali Press, 2007.
7. Ronny Hanitijo Soemitro. Metodologi Penelitian, Jakarta: Ghalia Indonesia, 1982.
8. Mariam Darus Badzrulzaman, dkk, Kompilasi Hukum Perdata, Bandung: Citra Aditya Bakti, 2001.
9. Soegijatno Tjakranegara. Hukum Pengangkutan Barang dan Penumpang, Jakarta: Rineka Cipta, 2005.
10. Interview with Assistant Manager of Customer Care PT. Kereta Api Indonesia (Persero) Operation Region VI Yogyakarta, on May 27, 2020.