

LEGAL OBSTACLES TO FULFILLING THE RIGHTS OF COMPENSATION OF PUBLIC MOTOR VEHICLE PASSENGERS IN INDONESIA

OBSTÁCULOS LEGAIS PARA O CUMPRIMENTO DOS DIREITOS DE INDENIZAÇÃO DOS PASSAGEIROS DE VEÍCULOS AUTOMÓVEIS PÚBLICOS NA INDONÉSIA

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ABSTRACT

Objective: This study aims to explain the factors that inhibit the fulfillment of passenger compensation rights from carriers. Second, the gap between the norms of passenger rights and carrier obligations must be bridged by organizing passenger transportation by public motorized vehicles in Indonesia.

Method: Doctrinal legal research uses a statutory and conceptual approach, namely, reviewing and analyzing primary, secondary, and empirical legal materials. This approach is carried out by analyzing the philosophical and sociological foundations of primary legal materials. In contrast, the conceptual approach is carried out by analyzing legal concepts and principles.

Result: The results of this research contribute to the development of a system for fulfilling carrier responsibilities to passengers through a fair general motor vehicle passenger insurance program, harmonizing carrier responsibility insurance norms into the general motor vehicle passenger insurance guarantee system, and forming the legal culture of society to understand and be aware of their rights as passengers of public motorized vehicles.

Conclusion: There is no regulation of the amount of compensation, so carrier liability insurance cannot yet be implemented. The payment of compensation for passenger



accident funds is misunderstood because it is considered to fulfill the carrier's responsibility. Although the carrier's liability insurance has not yet been implemented, passengers still have the right to sue the carrier for compensation through a breach of contract lawsuits. Consequently, passengers can claim material and immaterial compensation.

Keywords: motorized vehicles; passenger compensation; passenger rights; public transportation

RESUMO

Objetivo: Este estudo visa explicar os fatores que inibem o cumprimento dos direitos de indenização dos passageiros pelas transportadoras. Em segundo lugar, a lacuna entre as normas dos direitos dos passageiros e as obrigações das transportadoras deve ser colmatada através da organização do transporte de passageiros em veículos públicos motorizados na Indonésia.

Métodos: A pesquisa jurídica doutrinária utiliza uma abordagem estatutária e conceitual, ou seja, revisando e analisando materiais jurídicos primários, secundários e empíricos. Esta abordagem é realizada através da análise dos fundamentos filosóficos e sociológicos dos materiais jurídicos primários. Em contrapartida, a abordagem conceitual é realizada por meio da análise de conceitos e princípios jurídicos.

Resultados: Os resultados desta pesquisa contribuem para o desenvolvimento de um sistema para cumprir as responsabilidades da transportadora para com os passageiros por meio de um programa justo de seguro geral de passageiros de veículos automotores, harmonizando as normas de seguro de responsabilidade da transportadora no sistema de garantia de seguro geral de passageiros de veículos automotores e formando a cultura jurídica da sociedade compreender e ter consciência dos seus direitos enquanto passageiros de veículos públicos motorizados.

Conclusão: Não há regulamentação do valor da indenização, portanto o seguro de responsabilidade civil da transportadora ainda não pode ser implementado. O pagamento de indenizações por acidentes de passageiros é mal compreendido porque se considera que cumpre a responsabilidade da transportadora. Embora o seguro de responsabilidade civil da transportadora ainda não tenha sido implementado, os passageiros ainda têm o direito de processar a transportadora para obter compensação através de ações judiciais por quebra de contrato. Consequentemente, os passageiros podem reclamar indenizações materiais e imateriais.

Palavras-chave: veículos motorizados; indenização de passageiros; direitos dos passageiros; transporte público.

1 INTRODUCTION

Organizing passenger transportation using public motorized vehicles is a supporting factor in an efficient economy. Without good public passenger



transportation, there will be no efficient economy (Vickerman, 2024). Public passenger transportation practices, including business activities that endanger passenger safety (Sánchez Hernández, 2021) because according to statistical data, traffic accidents in 2022 will reach 139,258 cases, 28,131 deaths, 13,364 serious injuries, 160,449 light injuries, and material losses of IDR 280,009,000,000 (Badan Pusat Statistik, 2022).

Traffic accidents can be caused by several factors such as humans, vehicles, and the environment. However, ordinary drivers play an essential role in ensuring security, safety, and order because they are the dominant factors in road accidents (Abolvardi et al., 2023; Consunji et al., 2022; Debnath et al., 2021; Disassa & Kebu, 2019; Fitri, Nur; Hilal, 2023; Gupta et al., 2024; Hail & McQuaid, 2021; Martinussen et al., 2017; Papadimitriou et al., 2022; Timmermans et al., 2019; Watson-Brown et al., 2019).

Considering that the potential losses that will befall passengers are significant, to ensure carriers' ability to compensate passengers for losses, Article 189 of Law Number 22 of 2009 concerning Road Traffic and Transportation (RTT) requires carriers to insure their responsibilities. Article 309 of the RTT threatens every carrier who neglects liability insurance obligations with a maximum penalty of imprisonment of six months or a fine of up to IDR 1,500,000. A set of regulations governing society, including road traffic laws, can be enforced if supported by a more severe, firm, and transparent sanctions system (Utsman, 2010). Various studies have explained that harsher penalties can increase compliance with road traffic laws (Auksé et al., 2022).

According to Article 186 RTT, the birth of an agreement that places the carrier's obligation on compensating passengers for losses originates from the legal relationship of the carriage agreement. The carrier's main achievement in a carriage agreement is to safely, comfortably, and safely transport passengers from their place of origin to destination. Suppose that during a transportation operation, passengers suffer losses due to death, injury, or lost/damaged luggage due to the negligence of the carrier. In this case, the carrier is deemed not to perform properly (default).

Normally, two legal instruments can be used alternatively to fulfill passengers' compensation rights from carriers: first, through insurance legal instruments, as regulated in Article 189 RTT; second, through legal instruments, compensation claims based on default.



However, these two legal instruments do not work, so the passenger's right to compensation from the carrier has never been fulfilled. Even though passengers' rights have never been fulfilled, no passenger has yet become a victim to file a claim for compensation against the carrier. Within this framework, this research answers the question of what factors inhibit the fulfillment of passenger compensation rights from carriers.

This study aims to explain the factors that inhibit the fulfillment of passenger compensation rights from carriers. Second, the gap between the norms of passenger rights and carrier obligations must be bridged by organizing passenger transportation by public motorized vehicles in Indonesia.

The results of this research contribute to the development of a system for fulfilling carrier responsibilities to passengers through a fair general motor vehicle passenger insurance program, harmonizing carrier responsibility insurance norms into the general motor vehicle passenger insurance guarantee system, and forming the legal culture of society to understand and be aware of their rights as passengers of public motorized vehicles.

This research is different from previous research because in previous research (Nurbaiti, 2013), it is explained that there is no problem for passengers without carrier liability insurance because the right to obtain compensation remains, even though that right has never been fulfilled. The novelty of this study is that carrier liability insurance is a legal instrument that aims to ensure the fulfillment of passengers' compensation rights. If no carrier liability insurance exists, passengers must take legal action based on procedural law. Thus, the factor inhibiting the fulfillment of passengers' compensation rights is the absence of liability insurance, because no regulations limit the amount of compensation. In addition, even though passengers have rights, they need to exercise their rights to claim compensation based on breach of contract, because the implementation of Law Number 33 of 1964 concerning Compulsory Passenger Accident Insurance Funds (CPAIF) was misunderstood.



2 METHOD

Doctrinal legal research uses a statutory and conceptual approach, namely, reviewing and analyzing primary, secondary, and empirical legal materials. The primary legal materials are RTT, CPAIF, Indonesian Civil Code (Civil Code), Law Number 40 of 2014 concerning Insurance Business, Government Regulation Number 17 of 1965 concerning Provisions for Implementing the CPAIF, and Regulation of the Minister of Finance of the Republic of Indonesia Number 15/PMK.010/2017 concerning Compensation and Compulsory Contributions for Compulsory Accident Insurance Funds for Passengers of Public Passenger Transport Equipment on Land, Rivers/Lakes, Ferries/Crossings, Sea, and Air (PMK Number 15 of 2017), while secondary legal materials consist of literature on transportation law and insurance law, and various relevant legal materials, such as books, scientific articles, seminars, or other scientific meetings. The empirical legal material consists of data and information from public transport entrepreneurs who are administrators of the Central Leadership Council of the National Road Transport Entrepreneurs Organization (ORGANDA), who were determined as respondents using purposive sampling. This approach is carried out by analyzing the philosophical and sociological foundations of primary legal materials. In contrast, the conceptual approach is carried out by analyzing legal concepts and principles. Research has been conducted to explain legal concepts, rules, and principles through interpretation methods to propose solutions to the problem of fulfilling carrier responsibilities to passengers through insurance programs by developing arguments, theories, or new concepts to overcome these problems.

3 RESULT AND DISCUSSION

3.1 FACTORS INHIBITING PASSENGER COMPENSATION RIGHTS THROUGH INSURANCE PROGRAMS

3.1.1 There is no regulation on the amount of compensation for passenger losses and the effect of the carrier's responsibility system

Article 188 of the RTT stipulates that public transportation companies are obliged to compensate for losses suffered by passengers or goods senders due to negligence in transportation. The types of passenger losses referred to are regulated



in Article 192 paragraph (1) and paragraph (4), namely, passenger losses due to death; second, passenger losses due to injuries; and third, passenger losses due to damaged or lost luggage. Article 192 paragraph (5) mandates the regulation of the amount of compensation, based on the type of loss, through government regulations. This provision is related to Article 189 of the RTT, which stipulates that the carrier's responsibility must be insured, as referred to in Article 188. The type of insurance object referred to in Article 189, according to Law No. 40 of 2014 concerning Insurance Business, Article 1 number 25 is the carrier's legal responsibility to the passenger.

Insurance aims to transfer the risk initially borne by the carrier; then, the risk is transferred to the insurance company as a guarantor (Prakoso and Murtika, 2004; Sri Rejeki Hartono, 1997). This obligation includes covering premium payments for carriers who are required to enter an insurance agreement. The carrier's obligation to insure its liability is classified as a mandatory type of insurance, as intended in Article 1 point 32 of Law No. 40 of 2014 concerning Insurance Business (Mashudi and Ali, 1998). Because of the insurance program, Article 189 requires carriers to obtain protection from the risk of legal liability as regulated in Articles 188 and 192.

The urgency to regulate the amount of compensation for carrier losses to passengers, as mandated by Article 192, paragraph (5), is to become the basis for determining the amount/value of coverage that must be included in the insurance agreement. Every insurance agreement must contain the amount/value of coverage, which will be the basis for calculating the premium that must be paid by the insured (Abdulkadir Muhammad, 1999, p. 102). Every insurance agreement must contain events and compensation (Abdulkadir Muhammad, 1999; Prakoso and Murtika, 2004). As long as there is no regulation on the carrier's compensation liability amount for passengers, the carrier's liability insurance cannot be implemented. This is why carrier liability insurance, as regulated in Article 189, cannot be implemented because there is no regulation on the amount of compensation for passengers, as mandated by Article 192, paragraph (5).

From the perspective of the responsibility system, the type of passenger loss regulated in Article 192 paragraph (1), namely loss due to death or injury, adheres to the presumption of liability principle, namely that the carrier is obliged to pay compensation to passengers who experience losses due to death or injury unless they can prove if the loss arises through no fault of his own or because of the passenger's



fault. Meanwhile, the type of responsibility in Article 192 paragraph (4), namely passenger losses in the form of damage or loss of luggage, applies the presumption of non-liability; namely, the carrier is not responsible unless the passenger can prove that the loss was the result of the carrier's fault.

Articles 188 and 192, paragraphs (1) and (4), must be understood as a set of interrelated norms regulating the carrier's responsibility to compensate for passenger losses. The link between the norms of Articles 188 and 192 paragraphs (1) and (4) is that Article 188 is a norm for imposing responsibility on passengers on carriers. Article 192, paragraph (1), adheres to the presumption of liability, meaning that the carrier is always considered responsible for passenger losses unless the carrier can prove that the passenger's losses were not caused by his fault. The legal consequence of applying the liability principle presumes that the carrier can be freed from responsibility if the loss arises through no fault of his/her own. If the passenger's loss is not due to a carrier's fault, the passenger is not entitled to compensation through an insurance claim based on Article 189.

Based on this, the provisions of Article 189 must be interpreted to mean that the carrier's responsibility, which must be insured, is based on the presumption of the liability principle. Implementation of the presumption of the liability principle always refers to the burden of the proof process in civil cases because if the carrier wants to free itself from responsibility, it must be able to prove that there is no fault. Insurance claims through the provisions of Article 189 seem easy. However, technically, they can be much more complicated and take a long time because every insurance claim must be preceded by proof that there is or is not a carrier at fault through a criminal and civil court decision, which has a permanent legal force. To arrive at a court decision with permanent legal force requires a relatively long judicial procedure because it must fulfill the terms and conditions of criminal or civil procedural law. Therefore, fulfilling passengers' compensation rights through the carrier's liability insurance program must be done after some time, because it still requires proof of the carrier's negligence through a general court process.

The provisions of Article 192, paragraph (5), mandate the existence of regulations limiting the amount of compensation for losses that the carrier must bear to determine the amount of coverage that must be insured. Referring to the provisions limiting the amount of compensation, it becomes a guideline for determining the



compensation that passengers or their heirs can claim from an insurance company. However, to date, the provisions limiting the amount of compensation that carriers must bear to passengers have yet to be issued, so it is difficult to determine the amount of coverage that carriers must insure.

Based on this, Nurbaiti (2013) said that whether there is carrier liability insurance is not a problem for passengers because even if they are not insured, the right to obtain compensation is still there. Although this opinion does not directly place carrier-responsibility norms originating from liability insurance norms in legal practice, the absence of carrier liability insurance directly impacts the effectiveness of the carrier's fulfillment of passenger compensation rights. Based on this reasoning, when the norms of Article 189, which originate from the norms of Articles 188 and 192 (1) and (4), cannot work because there are no implementing regulations, then other relevant legal provisions are sought and reviewed so that the norms Article 188 and Article 192 (1) and paragraph (2) can become effective without waiting for the implementation of Article 189.

The existence of the provisions of Article 189 is not a provision that negates the responsibility of the carrier but a provision that aims to guarantee the fulfillment of the carrier's responsibilities to passengers by transferring the risk, which was initially borne by the carrier and then transferred to the insurance institution. Therefore, even if the carrier ignores the provisions of Article 189, this does not mean that the carrier's responsibility to passengers is lost or nonexistent because the carrier's responsibility exists from birth until the end of the carriage agreement. Substantively, the carrier's responsibility still exists and should be implemented even though there are no implementing regulations that contain the amount of compensation to passengers.

3.1.2 Passengers misunderstand compensation from the Compulsory Accident Insurance Fund

CPAIF, ratified by President Soekarno on December 31, 1964, was then promulgated on December 31, 1964, by State Secretary Mohd. Ichsan. The CPAIF contains ten articles, including the closing article, issued three months before it was promulgated and ratified by Law Number 3 of 1965 concerning road traffic and transportation on April 1, 1965. The implementation regulations for the CPAIF were



regulated in the Government Regulation Number 17 of 1965 concerning Provisions for Implementing the CPAIF, ratified on April 10, 1965, or April 9, the day before Law Number 3 of 1965 was passed, on April 1, 1965.

The aim and objective of establishing CPAIF in conjunction with Government Regulation Number 17 of 1965 concerning Provisions for Implementing the CPAIF is to guarantee the payment of compensation to passengers of public transportation who have experienced accidents. Article 3, paragraph (1) stipulates that every authorized passenger of a public motorized vehicle must pay a fee through the carrier to compensate for passenger accidents. This provision shows that passengers must insure themselves by paying mandatory fees each time they travel.

This insurance system is social because it is ordered by Article 3, paragraph (1), letter A, and the government fully controls its management. Moreover, some passengers are exempt from paying mandatory contributions but are still entitled to compensation to improve community welfare (Mashudi and Ali, 1998). According to Article 2, Article 3 paragraph (1a), and Article 4 paragraph (1), passengers' right to receive compensation payments originates from the legal relationship of mandatory passenger accident coverage created between the passenger (fund contribution payer) and the fund authority (PT Jasaraharja). The construction of a legal relationship is direct between the payer of fund contributions and PT Jasaraharja, the body appointed by the government as a fund authority.

The purpose of paying mandatory passenger fees, as regulated in Article 3 paragraph (1c), is to compensate for losses due to death and permanent disability experienced by passengers from accidents. According to PMK Number 15 of 2017, if every passenger of a public motorized vehicle involved in an accident dies, their heirs are entitled to compensation of IDR 50,000,000. In contrast, if they experience permanent disability, they are compensated based on the percentage regulated in Article 10, paragraph (3) Government Regulation Number 17 of 1965 concerning Provisions for Implementing the CPAIF. For example, if a person has a permanent disability, both arms, legs, eyes, or mind, which causes him to be unable to work, he will receive 100% compensation of IDR 50,000,000. Meanwhile, if the disability is permanent in one eye, you will receive compensation of 30% of IDR 50,000,000 or IDR 15,000,000 and reimbursement for treatment costs of IDR 20,000,000.



General motor vehicle passenger insurance (Abdulkadir Muhammad, 1999) aims to reduce the risk of loss. Initially, the risk of loss is borne by the passenger, and then, through insurance, the risk of loss is transferred to the insurance institution. Meanwhile, insurance aims to transfer the risk arising from an event whose time cannot be determined by another person who takes over the risk to compensate for the loss (Prakoso and Murtika, 2004; Sri Rejeki Hartono, 1997). The party who transfers the risk is the party that was initially supposed to be responsible for carrying the risk (the insured). The party intends to transfer the risk to another person (the insurer) by paying a certain amount as a premium. The essence of insurance is that the transfer of risk should initially be borne by yourself, but because you do not want to bear the risk yourself, you appoint another party, and another party will compensate for the loss if the risk occurs later. This is different from the essence of general motor vehicle passenger insurance, which is regulated in the CPAIF. From the beginning, the risk of passenger loss was the carrier's responsibility, as regulated in Article 188 and Article 192 RTT, but why is it precisely the passenger who is burdened with the obligation to insure himself? This is because of the influence of the material content of the road traffic law that was in effect at the time the CPAIF was born.

CPAIF was born concerning road traffic regulations during the Dutch colonial period in Indonesia or referred to as Wegverkeersverordening in the official gazette of the Dutch East Indies (Staatsblad) Number 138 of 1933 or Road Traffic Law, last amended by Law Number 7 of 1951, which was born in 1933, during the era of the Dutch East Indian government. The Wegverkeersverordening (Staatsblad 1933 No. 138) does not explicitly regulate the carrier's responsibility to compensate for losses suffered by passengers, as regulated in Article 188 and Article 192 RTT, and the obligation to ensure the carrier's liability, as currently regulated in Article 189 RTT. The regulation of carrier responsibilities towards passengers has begun to be explicitly regulated in Article 24 of Law Number 3 of 1965, concerning Road Traffic. This law was passed four months after the birth of the CPAIF on April 1, 1965. Thus, it is understandable that CPAIF material does not refer to Law No. 3 of 1965. Initially, the birth of the CPAIF was an effective solution for providing compensation guarantees to passengers as part of the social welfare guarantees. However, after the compensation guarantees were placed and charged to the carrier, passenger insurance obligations, as regulated in the CPAIF, became irrelevant. Even if similar passenger insurance is



maintained, it must be transformed from social insurance to voluntary insurance. The social insurance model implemented by the CPAIF treats passengers with different abilities to make mandatory contributions. Differences in the application of rules, not because of differences in the ability to pay mandatory contributions, but based on the type of transportation service, such as urban transportation, passengers are free to pay contributions but have the same insurance rights as passengers who pay mandatory fees. Treating different things the same is a form of injustice because, according to Plato, justice is treating the same and equally towards the same things, not the same and equal towards those who are different (Bernard et al., 2006). In addition, this legal practice deviates from the concepts of equality of opportunity, harmony, equity, and social justice in transportation (Hail & McQuaid, 2021). Therefore, we have a general obligation not to worsen injustice worse (Hellman, 2018; Lippert-Rasmussen, 2023), treat passengers with the same or equal ability to pay mandatory fees equally.

The public misunderstands the substance of the CPAIF in the legal practice of passenger accident insurance according to the CPAIF. The insurance compensation paid by PT Jasaraharja to the victim/victim's family based on the CPAIF is a part of the carrier's responsibility. This misunderstanding has spread massively in society (Legowo, 2019; Nurbaiti, 2013) because it considers that the compensation received by passengers or their families is the implementation of the carrier's responsibilities, as regulated in Article 188 and Article 192, paragraph (2) and paragraph (4) of the RTT. However, carrier liability insurance, referred to in Article 189, differs from passenger insurance regulated by the CPAIF (Jaddou and Marouf, 2023). The difference is that the passenger insurance regulated by the CPAIF is social insurance, which is charged with paying mandatory contributions to passengers. In contrast, carrier liability insurance, regulated in Article 189 RTT, is mandatory insurance, which is charged to the carrier to ensure its liability from the possible risk of loss to passengers due to death, injury, or lost/damaged luggage.

The carrier's responsibility is the risk of loss to passengers, so passengers only need to insure themselves if they wish to do so. However, this wish must come from expressing his awareness and freedom, which is not stipulated as a legal obligation as regulated in the CPAIF. Therefore, passenger insurance regulated in the CPAIF should



not be social insurance, but voluntary insurance, which can complement carrier liability insurance.

3.2. OBSTACLES TO FULFILLING PASSENGER COMPENSATION RIGHTS FROM CARRIERS BASED ON TORT CLAIMS AND THEIR LEGAL CONSEQUENCES.

Fulfillment of the passenger's right to receive compensation for losses from the carrier, based on a lawsuit for breach of contract, because it places a legal obligation relationship between the carrier and the passenger, which originates from the carriage agreement. Default is part of the carriage contract, which gives rise to rights and obligations, and people are bound together by it (Liau, 2021). In fulfilling passengers' rights promised by the carrier, the carriage agreement is placed as part of contract law, a general law, whereas the carriage agreement regulated in RTT is placed as a particular law. Based on the adage, *lex specialis derogate lex general*; if it is not regulated by a particular law, then general law applies. Suppose that this particular law does not regulate the amount of passenger compensation owing to the carrier's default. In this case, the provisions of contract law as a general law, namely the Civil Code, can be applied.

The provisions of Article 186 RTT explicitly regulate the formation of an agreement between the carrier and passenger originating from the carriage agreement. The carriage agreement is reciprocal because the carrier's rights become the passenger's obligation. Conversely, the carrier's obligations become passengers' rights (Syaifuddin, 2012). The carrier's and passenger's rights and obligations arising from the carriage agreement are as follows: First, the carrier has the right to receive transportation costs, and the passenger is obliged to pay the transportation costs; Second, the carrier is obliged to transport passengers from the place of origin to the destination safely, comfortably and securely, on the other hand, Passengers have the right to obtain transportation services from their place of origin to their destination safely, comfortably and safely. The carrier's obligation to transport passengers from their place of origin to their destination safely, comfortably, and safely is a contractual obligation that the carrier must fulfill, similar to other types of agreements.

Placing Articles 188 and 192 paragraphs (1) and (2) RTT as special laws, namely legal provisions that specifically regulate the carrier's responsibility to



compensate passengers of public motorized vehicles who die, are injured, or have lost/damaged luggage, as a result of the implementation of the carriage agreement. Passenger losses arise because the carrier fails to fulfill its contractual obligations. When a passenger experiences a loss, it can be categorized as a carrier by default because it does not fulfill its obligation to take the passenger to their destination safely and comfortably (Sumiarni & Christiani, 2023). Putting in place the legal relationship between the carrier and passenger, in regulating the carrier's responsibility to the passenger, the passenger's losses are formulated as a result of the carrier's default according to the Civil Code. The Civil Code was used to determine the amount of compensation for passengers as intended in Articles 192 (1) and (4) RTT, because Article 192 paragraph (5) as a particular law does not yet regulate the amount of compensation for passengers in question.

For passengers who suffer losses due to death, injury, or lost/damaged luggage during transportation operations, the loss occurs because of the carrier's default, which initially promises to transport passengers from their place of origin to their destination safely, comfortably, and securely. However, passengers do not arrive at their destinations safely or comfortably. The loss occurred because of the transportation agreement (agreement to do something), as regulated in Article 1239 of the Civil Code.

According to Article 1239 of the Civil Code, in every agreement to do something (such as a carriage agreement), the debtor (carrier) who cannot fulfill his/her obligations is obliged to provide compensation for costs, losses, and interest to the debtor (passenger). This obligation is not absolute because it can be excluded, as regulated in Articles 1244 and 1245 of the Civil Code. Except for the carrier's obligation to compensate passengers for costs, losses, and interest, the carrier can prove that the default was caused by force majeure or the debtor (passenger) himself was negligent (except non-dimple contracts) (Christiawan and Wulandari, 2023). This provision is similar to Article 192 paragraph (1) RTT, which stipulates that public transportation companies are obliged to compensate passengers for losses suffered due to death or injury as a result of transportation operations, unless the carrier can prove that the loss occurred because of an event that could not be prevented. Alternatively, passenger errors can be avoided. This provision adheres to the presumption of the liability principle, because the carrier is always assumed to be



responsible unless he can prove that the loss occurred through no fault of his own. A similar principle of responsibility, adopted by the British Supreme Court, in cases of transporting goods by sea, places the burden of proof on the carrier to prove that the victim's loss was not due to the carrier's fault (Taşkın, 2023) and Germany and Italy, in the case of traffic accidents (Guerra et al., 2022).

Article 192, paragraph (2), stipulates that passenger losses are calculated based on actual losses experienced or part of the service costs. There is no further explanation regarding the meaning of the phrase 'actual losses experienced or part of service costs' in this provision, so there is still the possibility of differences in interpretation. However, interpretation still refers to the basic concept of compensation in civil law. Initially, the principle of responsibility for compensation refers to the principle of reparation intégrale, which is based on the idea that victims should not enrich themselves from fulfilling civil responsibilities because the characteristic of civil responsibility is to return losses to their original state before the losses suffered by the victim (Bienenstock, 2019). Do these actual losses include losses in the form of income and material losses?

There are differences in the definitions of loss regulated in Articles 1244 and 1245 of the Civil Code, with Article 192 paragraph (1) and paragraph (2) RTT. According to Articles 1244 and 1245 of the Civil Code, defaulting creditors are obliged to compensate, first, costs, second, losses, and, third, interest, while Article 192 paragraph (1) and paragraph (2) RTT mentions that the phrase "must compensate for losses actually experienced." Therefore, the scope of the right to compensate passengers for losses regulated in Articles 192 (1) and (2) is narrower than the scope of the right to compensate debtors for creditors who are in default. The definition of losses, costs, and interest in the context of default, as regulated in Articles 1244 and 1245, has a broader meaning because it includes three things (Christiawan and Wulandari, 2023).

- a. Losses are losses that have suffered and profits intended to be obtained, including losses due to damage or loss of the creditor's property.
- b. Costs are all expenses incurred by the creditor, such as transportation costs paid to the carrier.
- c. Interest is any loss in the form of a loss of profit estimated or previously calculated.



Initially, losses due to default according to Articles 1244 and 1245 of the Civil Code were only material losses, but this was developed through Supreme Court Decision Number 2822 K/Pdt/2014, which expands the scope of losses due to default, namely to include immaterial loss.

Meanwhile, the scope of immaterial losses, according to the Supreme Court in Judicial Review Case No. 650/PK/Pdt/1994, "Based on Articles 1370, 1371, 1372 of the Civil Code, immaterial compensation can only be given in certain cases such as cases of death, serious injury, and humiliation."

Based on the legal norms of the Supreme Court's decision, immaterial losses are a type of loss that passengers should receive, in addition to material compensation. Suppose that the determination of the scope of passenger losses is guided by the interpretation of the decision of the Supreme Court of the Republic of Indonesia, Number 2822 K/Pdt/2014. In that case, apart from the right to material compensation, there is also the right to immaterial compensation, namely, losses arising from the death of a husband or wife. This can be implemented by placing the provisions of Articles 192 (1) and (2) as special provisions, and the provisions of Articles 1244 and 1245 of the Civil Code as general provisions. When Articles 192 (1) and (2) do not specifically regulate the passenger's right to obtain immaterial compensation, the provisions of Articles 1244 and 1245 and their development in judicial practice can be applied by expanding the scope of passenger compensation, which was initially only material losses, and extended to include immaterial losses.

In addition, the provisions of Article 192 paragraph (1) of the RTT do not mention passenger losses in the form of permanent disability, even though permanent disability is one type of actual loss that every passenger can experience. Hence, this loss is beyond the responsibility of the carrier. The amount of compensation that the carrier must bear according to Article 192, paragraph (2), is calculated based on actual losses experienced or part of the service costs. Understanding actual losses experienced, there is no explanation in RTT because losses due to death or permanent disability it is difficult to create general standards due to differences in the social and economic status of each victim (Pamuraharjo et al., 2023). For example, a passenger who worked as a fisherman and had an average income of IDR 250,000 per day was injured and had to be hospitalized for one month. The actual losses for these passengers are, first, hospital treatment costs, second, transportation and



accommodation costs for the family looking after them during treatment, and third, losses due to loss of income of IDR 250,000 per day during treatment. The actual value of the loss will be different if the victim works as the head of a well-known company and has an income of hundreds of millions of rupiahs every month.

The legal consequence of using the Civil Code as the legal basis for imposing the carrier's responsibility to compensate passengers for losses is that the amount of compensation the carrier must pay to passengers cannot be predicted in advance and is unlimited. This is different from the essence of Article 192 paragraph (1), paragraph (2), and paragraph (4) RTT, which adheres to the principle of limited liability, namely, the amount of compensation for passengers who die, are injured, or have lost/damaged luggage, is limited as stipulated in implementing regulations of Article 192 paragraph (5) RTT. Limitations on the amount of compensation through statutory regulations are also known and applicable in Iraq, where judges may not decide on compensation that exceeds the demands or provisions of the law (Jaddou and Marouf, 2023). If the value of this compensation, compared with the value of compensation for

traffic accident victims in the Netherlands, is still relatively low, because in several decisions of the Dutch Supreme Court, car owners are burdened with 100% compensation if the victim is a child under 14 years old, but if the victim is an adult pedestrian or adult cyclist, the responsibility is to pay compensation of less than 100% (Snijders, 2010).

However, when implementing regulations for Article 192 (5) RTT do not yet exist, passengers can use the arguments for breach of contract regulated in the Civil Code as a legal basis for filing a claim for compensation against the carrier. However, this is unfortunate because, generally, passengers who experience losses neglect to exercise their right to compensation based on default (Jaddou and Marouf, 2023). Using the argument of breach of contract in filing a claim for compensation against a carrier requires a lengthy legal process. This is a breakthrough in the principle of carrier responsibility, regulated initially by Article 192 RTT, namely, the limited liability principle, changed to the unlimited liability principle.



4 CONCLUSIONS

Factors that hinder the fulfillment of passengers' compensation rights from carriers are as follows: there is no regulation of the amount of compensation, so carrier liability insurance cannot yet be implemented. Second, the payment of compensation for passenger accident funds is misunderstood because it is considered to fulfill the carrier's responsibility. Although the carrier's liability insurance has not yet been implemented, passengers still have the right to sue the carrier for compensation through a breach of contract lawsuits. Consequently, passengers can claim material and immaterial compensation.

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Declaration of Interest

The authors declare that they have no affiliations with or involvement in any organization or entity with any financial interest in the subject matter or materials discussed in this manuscript.

Author Contribution

All authors contributed to the study conception. Literature search, design and data analysis were performed by SB. The first draft of the manuscript was written by NSN and SB commented on previous versions of the manuscript. All authors read and approved the final manuscript.

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