

JURIDICAL APPROACH TO THE OPERATIONAL TECHNICAL EVIDENCE IN ACCORDANCE WITH ARTICLE 146 OF LAW NUMBER 1 OF 2009 ON AVIATION

I Wayan Partama Putra

Fakultas Hukum, Universitas Dwijendra

Email : partamap@gmail.com

ABSTRACT

Article 146 of the Aviation Law requires carriers to be responsible for losses caused by delays in the transportation of passengers, baggage, and cargo, unless they are able to prove that such constraints were due to weather factors or operational technical issues. However, this legal provision contains significant ambiguities in the phrases "to prove" and "operational technical," which create legal uncertainty. This study examines the impact of this ambiguity on the contractual liability of airlines and the legal protection of passengers. The research analyzes two main issues: the nature of the norm's ambiguity and its effects on the rights and obligations of the parties involved. The normative juridical method with a conceptual approach and legislation study was employed, alongside grammatical and systematic interpretation analysis of the Aviation Law, the Civil Code, and related regulations. The study finds that the ambiguity in the norm creates legal gaps that can be exploited by airlines, thereby necessitating regulatory revisions to clarify the evidentiary mechanisms and strengthen consumer protection in order to balance rights and obligations in the aviation industry.

Keywords: *Evidence, Aviation, Consumer Protection*

1. INTRODUCTION

Aviation as one of the main modes of transportation plays a strategic role in supporting the mobility of society, the economy, and connectivity between regions, both domestically and internationally. The increasing population has led to a rise in mobility. (Ira Apriyanti dan Muhammad Adiyami Munthaha, 2017, p. 7) As a fast and efficient mode of transportation, aviation has become the primary choice for modern society. It contributes to increasing community income and expanding employment opportunities. (Jakson Arnold Klasibin, dkk, 2017, p. 13) However, the rapid growth of the national aviation sector not only brings positive impacts but also raises various legal and operational challenges. One critical issue frequently encountered is flight delays, which have the potential to cause losses to passengers, both economic, such as wasted costs and time, and non-economic, such as discomfort and psychological stress.

Aviation is part of a transportation system characterized by its ability to move quickly, using advanced technology, capital-intensive operations, reliable management, and requiring optimal safety and security guarantees. One of the objectives of conducting aviation activities is to realize aviation operations that are safe (safety), orderly and regular (regularity), comfortable (comfortable), and economical (economy for the company). (M. N. Nasution, 2007, p. 2). According to the author's view, law is a set of norms and rules that regulate human behavior in society, which are binding and have sanctions for violators in order to realize order, justice, and legal certainty. Legal protection is the effort and mechanism provided by the legal system to safeguard the rights of individuals and groups from harmful actions, so that everyone can feel safe and obtain justice in social life. Consumer

protection is a term used to describe the legal protection given to consumers in their efforts to fulfill their needs from matters that harm the consumers themselves. (Zulham, 2013, p. 21). The term consumer protection is related to legal protection, thus consumer protection inherently contains legal aspects. The subject matter protected is not only physical but also related to abstract rights. Therefore, consumer protection is closely linked to the legal protection given to consumer rights. (Partama Putra, I Wayan, dkk. 2025, p. 163)

Article 146 of Law Number 1 of 2009 Concerning Aviation (hereinafter referred to as the Aviation Law) regulates the responsibility of airlines in providing legal protection to passengers, stating:

"The carrier is responsible for losses suffered due to delays in the transportation of passengers, baggage, or cargo, except if the carrier can prove that the delay was caused by weather factors and operational technical reasons."

Although textually the provision seems to favor passengers, there remain fundamental normative issues, particularly related to the phrases "to prove" and "operational technical." The absence of explanations regarding the form, standards, and procedures for proof that must be carried out by airlines causes legal uncertainty in its implementation. This condition creates a protection gap, as passengers are in a weak position when airlines present technical reasons without the obligation of concrete and measurable proof.

The issue of evidence in Article 146 of the Aviation Law is closely related to the principles in civil law, especially as regulated in the Civil Code (Kitab Undang-Undang Hukum Perdata - KUH Perdata). The legal relationship between passengers and airlines is a contractual relationship subject to the principles of obligations. Based on Article 1239 of the Civil Code, the party that fails to perform an obligation in an agreement must bear the resulting losses unless it can be proven that the breach occurred due to force majeure. However, force majeure in civil law requires an unforeseen and uncontrollable condition that objectively obstructs the fulfillment of legal obligations.

The absence of explicit legal limits in Article 146 regarding the standards of proof for claims of technical disturbances potentially leads to inconsistent interpretations among aviation business actors. In the civil law system, the burden of proof regarding force majeure lies with the party making the claim. However, due to the lack of clear guidelines, airlines can unilaterally present technical reasons without adequate verification, which ultimately contradicts the principles of legality and legal certainty.

On the other hand, the principle of responsibility in civil law obliges compensation for breaches of contract (non-performance) not caused by force majeure. The ambiguity of the norm in Article 146 can result in negligence regarding the fulfillment of the rights of aggrieved passengers, both in terms of material restitution and legal recognition of the losses suffered. The impact is not only limited to individuals but also implies unequal access to justice in consumer dispute resolution practices.

In the context of contractual relationships, civil law emphasizes the importance of balance between the rights and obligations of the parties. The unclear norm in Article 146 not only affects the implementation of the airline's obligations but also threatens consumer protection as users of aviation services. This lack of clarity creates room for airlines, which have economic advantages and better access to information, to exploit legal loopholes to evade their responsibilities, thus creating structural imbalances between business actors and consumers.

Based on the above issues, this study aims to further examine the ambiguity of the norm in Article 146 of the Aviation Law through a civil law approach. The focus of the study is directed at analyzing the phrase "to prove" in the context of

"operational technical," and to what extent this phrase influences the implementation of the airline's contractual responsibility and legal protection for passengers. This research is expected to contribute to formulating normative recommendations for improving aviation sector regulations.

The research question posed is: How does the ambiguity of the norm related to the phrase 'to prove' in connection with 'operational technical' as regulated in Article 146 of the Republic of Indonesia Law Number 1 Year 2009 on Aviation?

2. RESEARCH METODOLOGY

This research is a normative legal study that positions law as a system of norms analyzed through a legislative regulation approach and a conceptual approach. Data were obtained through library research by reviewing written legal sources such as laws, academic literature, and opinions from legal experts.

The legal materials used include primary legal materials (legislation), secondary materials (legal literature and journals), and tertiary materials (dictionaries and legal encyclopedias). Data collection techniques were carried out using an archival system based on discussion topics. Data analysis was conducted with grammatical interpretation and content analysis methods, while conclusions were drawn deductively from general norms to specific issues.

3. RELATED RESEARCH/LITERATUR REVIEW

Studies on the responsibility of airlines and legal protection for passengers in the context of flight delays have been widely discussed by legal researchers through both normative and empirical approaches. Chandra, Cindy et al. (2016) highlighted the responsibility of airlines in the case of Rolas Budiman Sitanjak against PT. Lion Mentari Airlines, where an imbalance was found between the legal positions of passengers and airlines due to the absence of clear standards of proof regarding the causes of the delay. The research showed that operational technical excuses are often used by airlines as justification without the obligation of adequate proof.

In general, previous literature indicates that the main issue in the implementation of Article 146 of the Aviation Law lies in the ambiguity of the phrases "to prove" and "operational technical." This ambiguity causes the absence of uniform standards of proof in practice, resulting in frequent neglect of passengers' rights. By reviewing various studies and legal theories above, this research emphasizes the need to reconstruct norms and more explicit guidelines for proof to create legal certainty and balance the rights and obligations between airlines and passengers.

4. RESULTS AND DISCUSSION

Based on Article 2 of Law Number 1 of 2009 concerning Aviation, the main objective of organizing aviation activities is to facilitate the mobility of people and goods through air routes by emphasizing aspects of safety, comfort, and protection of air transportation activities. This objective is directed to support the smooth operation of national economic activities. With the implementation of an effective air transportation system, the public benefits in terms of time and energy efficiency in mobility activities.

The provision regarding airline responsibility for flight delays is regulated in Article 146 of Law Number 1 of 2009 concerning Aviation. The article states that the carrier is responsible for losses arising from delays in the transportation of passengers, baggage, or cargo, except if it can be proven that the delay was caused by weather factors or unavoidable operational technical conditions. Thus, the law provides an exception to liability if the airline can present strong evidence regarding the cause of the delay.

The Ambiguity of the Phrase "To Prove" Related to Operational Technical

Norm ambiguity is a condition where a norm exists but lacks a clear meaning or the norm generates more than one meaning, causing it to be vague or unclear. (Akbar Rakhmat Irhamulloh Abbas dan Arinto Nugroho, 2017, p. 4) The ambiguity of the norm in Article 146 can be linked to the Minister of Transportation Regulation Number 89 of 2015 concerning Flight Delay Management, particularly regarding the aspect of airline responsibility towards passengers. Although the law provides an exemption from liability if the delay is caused by weather or operational technical factors, there is no adequate explanation of the standard of proof or the definition of operational technical conditions themselves. Consequently, airlines have the potential to interpret the phrase broadly to absolve themselves of legal responsibility.

From a grammatical interpretation perspective, the word "to prove" derives from the root word "evidence", which in the Indonesian dictionary means something that states the truth of an event, actual information, or a sign. The term "evidence" originated from the Dutch word "bewijs," which is understood as something that states the truth of an event. (<https://kbbi.web.id/bukti>) In legal dictionaries, "bewijs" refers to anything showing the truth of certain facts or the falsity of other facts by the parties in a court case, providing material for the judge's assessment. Meanwhile, "prove" means to show evidence, and "proof" is defined as the process, act, or method of proving (Eddy O.S. Hiariej, 2012, p. 3)

According to the author's view, the legal relationship between passengers and airlines falls under carriage contracts as regulated in Article 1233 of the Civil Code (KUHPer), where legal obligations may arise from agreements or laws. Therefore, provisions regarding liability in Article 146 of the Aviation Law should be interpreted with regard to Article 1243 on breach of contract (wanprestatie) and Articles 1244 and 1245 on force majeure.

Force majeure is a circumstance occurring after an agreement is made that hinders the debtor from fulfilling their obligation, where the debtor cannot be blamed, does not bear the risk, and could not have anticipated it at the time the agreement was made, prior to the debtor's failure to perform (P.N. H. Simanjuntak, 2017, p. 295) If the airline claims that the delay was due to operational technical reasons, then based on Article 1244 of the Civil Code, the airline must prove that the cause of the delay was genuinely beyond its control and not due to negligence. Therefore, the burden of proof regarding force majeure should lie with the airline, not the passenger.

In relation to the Minister of Transportation Regulation Number 89 of 2015, Article 146 of the Aviation Law needs to be interpreted harmoniously. The regulation explicitly governs passenger rights in the event of delays, including the airline's obligation to provide compensation if the delay exceeds thirty minutes.

Ministerial Regulation Number 89 of 2015 also outlines the factors causing flight delays in Article 5 paragraph (1), stating that such factors include airline management, operational technical factors, weather, and others. (Chandra, Cindy, 2016, p. 7) However, the regulation also provides an exception if the delay is caused by force majeure or unavoidable operational technical disruptions. The issue is that the phrase "operational technical" in both provisions is not elaborated in detail, which creates the potential for differing interpretations among interested parties.

In practice, airlines often use aircraft technical malfunctions as an operational technical excuse to absolve themselves from compensation obligations. However, if analyzed based on the principle of legal certainty, damages that are predictable

or preventable through regular maintenance cannot be categorized as force majeure but rather as negligence, which still imposes legal responsibility on the airline.

The Implications of Norm Ambiguity in Legal Practice

The issue of evidence in flight delay disputes is a crucial aspect that requires in-depth analysis. Article 146 of the Aviation Law creates uncertainty about which party should bear the burden of proof. This ambiguity leads to legal uncertainty, directly affecting the protection of passenger rights and the enforcement of airline obligations.

In civil law, the principle *actori incumbit onus probandi* means the burden of proof lies with the party bringing the lawsuit or claiming a right, as stated in Article 1865 of the Civil Code. Theoretically, passengers who feel aggrieved must prove the existence of damages caused by the delay and the airline's responsibility for the incident. However, in cases of delays due to operational technical factors, the burden of proof is unbalanced because only airlines have access to flight technical data and information.

The ambiguity of the phrase "to prove" in Article 146 opens opportunities for airlines to avoid responsibility by stating that the delay was caused by circumstances beyond their control, often categorized as force majeure.

Under the concept of force majeure, the claimant must prove that:

1. The circumstance genuinely occurred beyond their control.
2. There was no element of fault or negligence in operational management.
3. Reasonable steps were taken to avoid or minimize the delay. (R. Subekti, 2005, p. 40)

Because the norm does not specify a clear standard of proof, airlines often provide operational technical reasons without adequate evidence to passengers or aviation authorities. This condition contradicts the principle of fairness in evidence law, where the party controlling the evidence should bear the obligation to prove the truth of their claim.

Article 1365 of the Civil Code states: "Every act that causes harm to another obliges the person at fault to compensate for the loss." Losses in law can be classified into two categories: Material Loss and Immaterial Loss. Material Loss refers to actual losses suffered by the plaintiff. Immaterial Loss refers to loss of potential benefits or profit that the plaintiff might have received in the future. (Brahmantya, I. B. B., 2023, p. 1118-1119)

The absence of a clear standard of proof results in passengers having difficulty claiming compensation for damages caused by delays, whether in the form of material losses such as additional costs or immaterial losses such as lost time and discomfort. Consequently, airlines can easily argue that the delay was beyond their control and evade legal responsibility.

The lack of explicit regulations regarding the limits of force majeure and breach of contract in this context potentially harms passengers. Therefore, a more systematic legal interpretation and policies clarifying the standard of proof and airline liability in flight delay cases are required. Systematic interpretation connects sections within relevant legislation or other laws, or reads legislative explanations to understand the intended meaning (Hanifah, Farhana Nabila dan Muliawan Anatomi, 2020, p. 119)

Within the consumer protection framework, the fundamental principle in providing aviation services requires that passengers as consumers receive legal protection for suffered losses. However, the ambiguity of the phrases "to prove" and

"operational technical" in Article 146 potentially weakens this protection. Without a definite standard of proof, airlines may avoid compensation obligations while passengers struggle to claim their rights, causing an imbalance between airlines and passengers, thus undermining the effectiveness of consumer protection.

The core of a legal protection system for air transport consumers is the consumer's interest because consumers are the center of all air transport activities. Without consumers, there would be no justification for large investments in air transport infrastructure. The importance of consumers becomes significant to air transport service providers when there is competition within the industry, offering consumers choices among several providers of comparable quality in equipment and service. (Trisna Dewi, Ni Made, 2021, p. 125)

Consumer protection is a term used to describe legal protection given to consumers in their efforts to meet needs and avoid harms (Article 1 paragraph (1) of the Indonesian Consumer Protection Law No. 8 of 1999). It encompasses protection related to goods and/or services, from acquisition to consequences of use. (Zulham, 2013, p. 22)

According to the principle of legal responsibility in carriage contracts, airlines must bear the consequences of breach of contract unless force majeure is proven. The burden of proof for force majeure should belong to the airline. However, since Article 146 does not detail proof standards, airlines often claim operational technical issues without concrete evidence, conflicting with legal responsibility principles and potentially ignoring passengers' right to compensation.

The principle of legal certainty demands that legal norms be clearly, firmly formulated, and applied consistently. The ambiguity of "to prove" and "operational technical" in Article 146 results in varied interpretations by airlines, passengers, and law enforcement, causing uncertainty in rights and obligations and enabling injustice, as passengers lack legal certainty while airlines exploit loopholes to avoid liability. Hence, clear and measurable proof guidelines are essential for fair, transparent, and consistent norm application.

5. CONCLUSION

The ambiguity of the norm in Article 146 of Law Number 1 of 2009 concerning Aviation, particularly in the use of the phrase "to prove" related to "operational technical," has significant implications for the attainment of legal certainty in the aviation sector. Juridically, the article intends to regulate the form of airline responsibility towards passengers in the event of flight delays. However, the absence of concrete explanations regarding the meaning and mechanisms of proof leads to various interpretations among passengers, airlines, and law enforcement authorities. The lack of clear standards concerning the party obligated to prove and the form of evidence required creates potential for abuse, especially by airlines attempting to evade compensation obligations.

In practice, this condition causes an imbalance in the legal standing between passengers and airlines. Airlines hold a dominant position because they have full control and access to technical information about the causes of delays, whereas passengers lack the ability or means to prove that the delay was due to the airline's negligence rather than external factors beyond control. As a result, the burden of proof becomes disproportionate, with passengers often in a weak position when asserting their rights, while airlines can hide behind operational technical reasons to avoid legal liability. This situation undermines legal protection for aviation service consumers, as passengers do not receive adequate guarantees to claim compensation for unjustified delays.

REFERENCE

- Abbas, A. R. I., & Nugroho, A. (2017). Tinjauan Yuridis Kewajiban Penggunaan Bahasa Indonesia Bagi Tenaga Kerja Asing Di Indonesia. *Novum: Jurnal Hukum*, 4(1), 4. <https://ejournal.unesa.ac.id/index.php/novum/article/view/20830>.
- Akbar Rakhmat Irhamulloh Abbas dan Arinto Nugroho, (2017), Tinjauan Yuridis Kewajiban Penggunaan Bahasa Indonesia Bagi Tenaga Kerja Asing Di Indonesia. *Novum : Jurnal Hukum : Vol 4. No. 1*, hlm. 4, tersedia di <https://ejournal.unesa.ac.id/index.php/novum/article/view/20830>.
- Brahmantya, I. B. B. (2023). Pertanggungjawaban Badan Hukum Dalam Tindakan Melawan Hukum: Studi Kasus Dalam Gugatan Ganti Rugi. *Syntax Idea*, 5(8), 1118. <https://jurnal.syntax-idea.co.id/index.php/syntax-idea/article/view/2457>.
- Chandra, Cindy, dkk, 2016, Tinjauan Yuridis Terhadap Tanggung Jawab Maskapai Penerbangan Atas Penundaan Penerbangan Yang Menyebabkan Kerugian Pada Penumpang (Studi Kasus Putusan No. 42/pdt.g/2012/pnjkt.pst Antara Rolas Budiman Sitanjak Melawan PT. Lion Mentari Airlines Dan Direktorat Jenderal Perhubungan Udara Kementerian Perhubungan Republik Indonesia). *Diponegoro Law Review: Vol 5. No. 2*, hlm. 7, tersedia di <http://www.ejournal-s1.undip.ac.id/index.php/dlr/>, diakses 13 Maret 2025
- Dewi, N. M. T. (2021). Perlindungan Hukum Bagi Penumpang Pesawat Udara Jika Terjadi Keterlambatan Jadwal Penerbangan Menurut Undang-Undang Nomor 1 Tahun 2009 Tentang Penerbangan. *Kertha Wicaksana*, 15(2), 125. <https://ejournal.warmadewa.ac.id/index.php/kertawicaksana/article/view/2750>.
- Eddy O.S. Hiariej, 2012, Teori dan Hukum Pembuktian, Erlangga, Jakarta.
- Ery Agus Priyono, Suradi, C. C. (2016). Tinjauan Yuridis Terhadap Tanggung Jawab Maskapai Penerbangan Atas Penundaan Penerbangan Yang Menyebabkan Kerugian Pada Penumpang (Studi Kasus Putusan NO. 42/PDT.G/2012/PNJKT.PST Antara Rolas Budiman Sitanjak Melawan PT. Lion Mentari Airlines Dan Direktor. *Diponegoro Law Journal*, 5(2), 1-19.
- Hanifah, Farhana Nabila dan Muliawan Anatomi, 2020, Implementasi Penerapan Penafsiran Hakim Tentang Pelanggaran Unsur Bertentangan Dengan Kewajiban Pegawai Negeri Dalam Perkara Tindak Pidana Korupsi. *JCA of Law: Vol 1. No. 1*, hlm. 119, tersedia di https://digilib.esaunggul.ac.id/public/UEU-Journal-21963-11_1861.pdf
- Ira Apriyanti dan Muhammad Adiyami Munthaha, (2017), Social Economic Conditions Around The Palm Oil Plant Company In Regency; *Agrinum*, Vol. 20, No. 3, hlm. 7, dapat diakses pada <https://jurnal.umsu.ac.id/index.php/agrium/article/view/1054>
- Jakson Arnold Klasibin, dkk, (2017), Persepsi Masyarakat Terhadap Dampak Sosial Ekonomi Dari Perusahaan Perkebunan Kelapa Sawit PT. Henrison Inti Persada Kabupaten Sorong Papua Barat; *Agri-Sosio Ekonomi Unsrat*, Vol. 14 No. 1, hlm. 13, dapat diakses pada <https://ejournal.unsrat.ac.id/index.php/jjsep/article/view/19450>
- Nasution, M. N., 2007, Manajemen Transportasi, Ghalia Indonesia, Bogor.
- P.N. H. Simanjuntak, 2017, Hukum Perdata Indonesia, Cetakan Ke-3, Kencana, Jakarta.
- Putra, I. W. P., & Darma, N. P. W. (2025, April). Legal Protection For Consumers Using Services From Illegal Private Pawnshops In Denpasar City. In *Proceedings Of The International Conference On Social Science, Environment And Technology Development* (pp. 159-168).
- R. Subekti, 2005, Hukum Perjanjian, Intermasa, Jakarta.
- Zulham, 2013, Hukum Perlindungan Konsumen, Kencana, Jakarta.