Juridical Review of the Exoneration Clause on Lion Air Airlines Terms and Conditions According to Law Number 8 of 1999 Concerning Consumer Protection

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Abstract
To protect consumers the government have passed Consumer Protection Law no 8 of 1999 which in article 18 provide about prohibition on inclusion of exoneration clause by Vendors in every document and or agreement that contained one, the Primary Subject that writer research about how the exoneration clause substance that created by Airlines in Terms and Conditions that enacted are already fulfilled the requirement dictated by Consumer Protection Law, also when and how the consumer could solve a dispute should it arise. The Research Method used by the writer are Jurisdical Normative, a research that based on source in form of Law and Regulation that still in effect, Court decisions, Scientific Journal or even article and Theories. Analysis on Exoneration clause in Airlines Terms and Conditions using the data from The Terms and Condition it self, also Consumer Protection laws, before subsequently explained by the writer take on the subject, the result of this research could be seen through law consequences received by consumers because the existence of exoneration law on Terms and Conditions and the Legal Effort for Consumer that have been done by Airlines in the allocation of compensation

Keywords: Exoneration Clause, Terms and Conditions, air transportation

I. Introduction

In line with the rapid advance of technology and era especially in field of information hastening the era of globalization and free trade, this broadening the space for trade of goods and labor between nations, this phenomenon in one side beneficial for broader side of society, but in the other hand also causing the disposition become unbalance. In this modern era Transport service rapidly grows among society, Aerial transport for instance already widespread and could be rode by every stratum of society because airlines had prepared different flight classes like Economy, Business, or even Executive with different price option and perks, therefore the role of carrier hopefully could provide the best service according to its function, as prime movers of people and goods from one place to another with the intention to increase it usability and value. In line with that economic goal there is also another, non economic-natured one, that's it to heighten national integrity, and also to enhance National Security and defense, therefore the position of passangers need to be protected with real effort that have been done by The government, in this instance one of them are the approval of Consumer Protection Law.
no 8 of 1999 that came into effect in 2000. Consumer Protection Law regulate several important things, among them is the Vendor’s Obligation to guarantee quality of service or product so it wouldn’t incur losses to consumer, the Obligation and rights of consumers, dispute settlement if such event arose including the penalties.

The Current trading world have becoming a Free Trade era that resulting in ease of selling and purchase transaction and access in transportation for business. Likewise for The Airlines business, the ever cheaper airlines tickets price makes the circulation of trade becoming easier. But in Trades there is always an agreement, the agreement that exist in this airlines in form of Terms and Conditions. According to Consumer protection Law in every Trade agreement in this case a transportation agreement doesn’t allow the inclusion of clause that could incur loss to one of the involved parties, but in reality many agreement in form of exoneration law that contained several agreement that have been prepared previously by The vendor for their passenger so the passenger wont have any other option except to accept or declined it. In the everyday practice this also exist and included in airplane ticket that created by airlines in form of exoneration law that generally contained diversion even erasure of Airlines obligation, that in this case the rights of passenger becomes outright ignored. The existence of mutually dependence relationship between airlines and passenger as service user should be enough to put Airlines and passenger as Equal. However, in day to day activity there is many passenger that experiencing event that frankly put them into disservice. Ocassionaly vendors made their consumers as tool to gain as many profit as possible through means they dictate including implementation of exoneration clause or exoneration agreement, the use of exoneration clause in the field of airlines is a unavoidable option primarily for service of passenger promptly and efficiently when still retaining legal certainty. With the use of exoneration law it didn’t give other alternative for the passenger that forced them to accept the terms dictated by Airlines, although its already a norm for the vendor to grab as many profit as possible from their business, for the society as consumer in this case as airlines passenger to discover the specifics of regulations to maintain equality between vendors and consumers.

II. Method
The research method that used by the author are Normative or Jurisdicial Normative, in line with the Jurisdicial-Normative type of research, the approach that used are legal approach on still enforced law in Indonesia (positive law) that usually using or based on data sourced from statutory approach. Normative research is a type of research that done by analyzing reference materials or secondary data consisted of Primary legal source, secondary legal source, dan Tertiary legal source, before getting arranged and later studied further and finally to draw conclusion in the regards with problem that currently being studied.

III. Main Heading of the Analysis or Results

A. Exoneration law according to Consumer protection Law no 8 of 1999

Exoneration is an agreement that created by vendor in form of contract or agreement that regulate the Rights and Obligation of Vendor in the manners addressing customer. Exoneration law regulated in Clause 18 of Consumer protection law. based on the definition according to Consumer protection law, that exoneration law is further divided into 2 form, namely:

A. A in form of an Agreement In this form, concept of the agreement already prepared beforehand by one of the party, generally the producers, this agreement contained general arrangement that usually written in every existing agreement, that also contained specific requirement in regards with the implementation of the agreement , concerning about specific conditions and or the end of the agreement itself

B. B in form of Terms, this agreement also could exist in another form, and that being special provisions contained in various form of receipt, recipient order or sales order, specific cards, notice board that placed on reception hall, or in open field, and particular piece of paper that stuffed inside a packaging or any related product packaging

Also there is 4 (four) kind of exoneration clause:

a) Unilateral exoneration clause

b) Government implemented exoneration clause

c) Exoneration clause that determined by lawyers and Notary community


d) Mutual exoneration clause

The terms that regulate exoneration clause exist on Clause 18 of Consumers Protection law.

B. Exoneration law that exist within Lion Air Terms and Conditions

In the exoneration law that exist within lion air terms and condition, in shape of agreement that exist inside particulary related product, this kind of exoneration clause is fall's on the Unilateral exoneration clause category where the provisions already pre determined by the airlines for the consumers to follow. This exoneration clause is written on Lion Airlines official website.

The lion airlines terms and conditions consist of 9 point that regulate personal information, ticket, cabin’s luggage rule, baggage, refusal to carry, carriage of passanger with disabilities, domestic travel, international travel, passport and visa, also including limitation on international flight passenger’s obligation. In every point exist another sub point that explain in detail about the rights and obligation of vendor and consumers about perks that gained, luggage arrangement and cabin, goods that allowed and doesn’t allowed to be carried, cancellation procedure, and ticket refund, check in regulation, to compensation in the event of default.

Exoneration clause on Lion Airlines terms and condition located on point 3.0 concerning regulation on cabin allowed luggage on reschedule sub point explaining that Lion Airlines di not inform about reschedule caused by tardiness and rescheduled earlier to their consumers causing unilateral loss for the consumers in terms of material and immaterial loss, if linked with exoneration clause provision on clause 9 (a) and clause 10 Ministry of Transportation Regulation No 77 of 2011 concerning compensation and Clause 2 and 9 Ministry of Transportation Regulation PM no 78 of 2015 concerning category of eligibility to receive compensation, there is stark discrepancy between what is given by vendor to consumer and what should be received by consumer in event of compensation that should be received and reschedule information because consumers have the rights to know the reason why there is flight reschedule according to vendor’s obligation that written in clause 7 letter b consumers protection law and Clause 4 number 8 consumers have the rights to receive compensation if its doesn’t match with what promised before.
C. Legal effort for Consumer for the loss that suffered because the existence of exoneration law within Terms and Conditions

Juridically speaking, the consumer dispute settlement process according Clause 45 of Consumer protection law, settlement effort could be went through court action, or non-litigation. Settlement via non-litigation is done by institution that have been chosen with the duty to settle the dispute between consumers and vendor.

The Legal Effort regulated in Clause 48 of Consumer protection could be proceed with submission of lawsuit to local district court by preparing lawsuit papers against involved Airlines to give compensation according to existing provision and loss that already suffered by the Airlines consumer rescheduled flight suitable with General Court provision that still in effect.

Compensation divided into two namely material compensation and immaterial compensation, material loss are form of tangible loss such as repair fees added with the loss of profit that hopefully could be compensated with money, goods, or returned to status quo, Immaterial loss is form of loss because there is a violation of personal integrity such as scar, disability, desu or indignity.

Material Compensation effort that done by the airlines are:

1. Appropriation of additional perks
2. Refund
3. Reschedule/Re-Routing

IV. Conclusion

The form of exoneration law on Lion Airlines Terms and conditions is that in form of Terms that already pre-determined unilateraly by the vendor, in this case Lion Airlines, that written in official Airlines website, in the Terms and Conditions there is 9 main point and in each point further exist several sub point, but the placement of this Airlines terms and conditions is not widely known by consumers because its only written on the official website, and not consistent with the exoneration clause requirement on Consumer protection law clause 18 subsection (2), in the terms and conditions, there is exist exoneration law on point 3.0 leading to sub point about reschedule that addressing Airlines can't inform the consumers about reschedule caused by delay, early reschedule,
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or Re-Routing without the consumers consent, that sub point is blatant violation of Clause 4 letter C about Consumer’s Rights to obtain correct, Clear, and honest information about the condition at hand, also Exoneration Law’s Clause 7 letter b

Legal effort for consumer’s in the matters of loss that incurred by the existence of exoneration law within terms and condition jurisically could be put trough via litigation or non litigation 2 Airlines are Oblige to provide legal effort for the consumers that incurred material or immaterial loss because of the existence of exoneration law that written on the airline’s the Terms and Condition, the Responsibility that given to them already regulated on Clause 9 Ministry of Transportation Regulation No 77 of 2011, and Clause 9 Ministry of Transportation Regulation No 89 of 2015 regarding Compensation that already given according to consumers Rights to receive such Compensation if the Goods/Service is not matching with what promised on Consumers Protection Law Clause 4 no 8.

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