



# Refund Policy Due to Flight Cancellations Caused by the Covid-19 Pandemic: Consumer Protection Law's Perspective

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## Abstract

The Covid-19 pandemic affects various aspects, including air transportation activities e.g., the Government of Indonesia has to impose travel restrictions to prevent the spread of the Covid-19 virus. In accordance with this policy, the airline cancelled flights and issued travel vouchers for reimbursements. This study aims to analyse the refunds by airlines to airplane passengers because of flight cancellations due to the Covid-19 pandemic, as an impact of Government policies in perspective of the Consumer Protection Law. This research was conducted using a normative juridical method and the research specification is analytical-descriptive, because this article describes the implementation of the ticket refund by Garuda Indonesia (GIAA) to then be analysed to see if it has the potential to cause a violation of the Consumer Protection Law. The results showed that the implementation and handling of flight cancellations by rescheduling tickets and then refunding tickets by providing travel vouchers basically did not violate the provisions of laws and regulations in the field of aviation, and there were no violations of consumer rights. Furthermore, prospective passengers who experience financial losses can demand a refund in the form of cash to GIAA.

**Keywords:** Covid-19; Flight Cancellation; Ticket Refund

## A. Introduction

The Corona Virus Disease 2019 (Covid-19) pandemic that occurred in early 2020 has spread throughout the world, including in Indonesia, as the announcement of the first Covid-19 case in Indonesia by President Joko Widodo on March 2, 2020.<sup>1</sup> More than 591.6 million

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<sup>1</sup> "Perkembangan Terkini Penanganan dan Pencegahan Penyebaran Virus Korona di Indonesia, 2 Maret 2020, di Beranda Belakang Istana Merdeka, Provinsi DKI Jakarta," Cabinet Secretariat of the Republic of Indonesia, accessed March 2, 2020, <https://setkab.go.id/perkembangan-terkini-penanganan-dan-pencegahan-penyebaran-virus-korona-di-indonesia-2-maret-2020-di-beranda-belakang-istana-merdeka-provinsi-dki-jakarta/>.

confirmed cases worldwide as of August 22, 2022, resulting in more than 6.4 million deaths and more than 6.4 million confirmed cases in Indonesia, resulting in more than 157,000 deaths.<sup>2</sup> This condition has never happened before (unprecedented).

Taking into account the increasing number of cases and the number of deaths as well as the widespread of Covid-19 across regions and countries, the Government, through Presidential Decree Number 11 of 2020 concerning the Determination of the Covid-19 Public Health Emergency, dated March 31, 2020, stipulates the condition of the Covid-19 pandemic as a public health emergency and must make efforts to overcome it.

The Covid-19 pandemic has negatively affected various business sectors globally and nationally, one of which is the aviation sector. Referring to data from the Central Statistics Agency,<sup>3</sup> the number of Indonesian domestic flight passengers throughout 2020 decreased by 55.46% compared to 2019, reaching 36.5 million people in 2019 to 16.3 million people in 2020. International passenger traffic decreased by 80.94%, from 17.1 million in 2019 to 3.2 million in 2020 (Figure 1).



Figure 1. Number of Flight Passengers in Indonesia in 2019 and 2020<sup>4</sup>

To explain Figure 1, as an illustration, at Soekarno-Hatta airport, until February 2020, before the Covid-19 was declared to have entered Indonesia, the number of domestic passengers was 1,551,967 people. At the end of March 2020, after the official announcement of the Covid-19 being declared in Indonesia, the number of passengers fell to 1,211,697. This

<sup>2</sup> “Data Sebaran,” Covid-19 Response Acceleration Task Force, accessed August 22, 2022, <https://covid19.go.id/>.

<sup>3</sup> “Jumlah Penumpang Pesawat di Bandara Utama (Orang), 2020,” Badan Pusat Statistik, accessed August 22, 2022, <https://www.bps.go.id/indicator/17/66/3/jumlah-penumpang-pesawat-di-bandara-utama.html>.

<sup>4</sup> Result from research by the Authors.

number continued to decline in April and May, namely during the travel ban of Eid al-Fitr season, to only 191,002 people and 27,500. This situation occurred in parallel at five other domestic airports nationally, namely Polonia, Juanda, Ngurah Rai and Hasanudin.

The decline in the number of passengers is the impact of implementing Government policies that impose restrictions on community mobility and travel restrictions to prevent the spread of the Covid-19 virus. In its development, anticipating a surge in the number of Covid-19 cases after the Eid al-Fitr homecoming period in 1441 Hijri, on April 23, 2020, the Government, through the Minister of Transportation Regulation Number PM 25 of 2020 (Permenhub 25/2020), stipulates a temporary ban on the use of transportation facilities, including air transport. This resulted in the airline having to cancel flights from April 24, 2020, to May 31, 2020.

This Government decision has an impact on the Eid al-Fitr homecoming trip in 1441 Hijri, which has been planned by prospective passengers. One of them was experienced by Mr. HDS, who, on March 11, 2020, had purchased three GIAA tickets online for flights scheduled for May 21, 2020, from Cengkareng to Semarang for a total of IDR3,031,891. On April 28, 2020, via electronic mail (email), GIAA informed of the schedule change from May 21 2020 to June 2 2020. Then, as suggested by GIAA, Mr. HDS asked for a refund of the rescheduled ticket to GIAA, because he could not travel on the new ticket date. Furthermore, on May 19, 2020, GIAA had approved the refund process, but in the form of a travel voucher. On September 24 2020, the GIAA travel voucher changed its validity period to June 1, 2021. Unfortunately, on 28 April 2022, Mr. HDS received information that two vouchers had been automatically extended until 31 December 2022, but one other voucher was said to have been issued at the Garuda Sales Office in Gunung Sitoli on 8 March 2022, even though Mr. HDS had never use that one voucher. Based on the results of further investigation by GIAA, confirmation was obtained that the incident occurred because of an error in inputting the voucher number by the ticketing personnel at the Garuda Sales Office Gunung Sitoli. Previously, the refund method in the form of a travel voucher was not informed in advance before Mr. HDS asked for a refund, and even after that there was no confirmation of approval from the passengers afterwards.

Noting the chronology of the problems experienced by Mr. HDS, where the airline tends to unilaterally set the terms and conditions in the process of refunding airline tickets that have

been cancelled as a result of the Covid-19 pandemic, it is then interesting to examine whether the implementation of the refund policy by the GIAA is in accordance with the provisions of the regulations. Furthermore, in the event of a discrepancy in the implementation of the refund policy by the GIAA, it is also interesting to analyse further the legal protection efforts for ticket holders' rights in the capacity as consumers for the GIAA, as an effort to ensure the fulfilment of consumer rights as mandated in Consumer Protection Law and/or other laws and regulations. As a potential passenger, Mr. HDS should be treated as consumer that needed to get protection. This protection has legal aspects related to material, not only the physical protection, but also consumer rights.<sup>5</sup>

Several previous studies discussed legal protection for aviation service users in the midst of Covid-19 pandemic<sup>6</sup> and the Covid-19 pandemic as a justification for force majeure in business contracts<sup>7</sup>. This study complements previous studies that have been carried out regarding the protection of consumers who experience flight cancellations and/or delays with updates in this study in the form of different scope, namely those caused by force majeure, other than those caused by unlawful act or default.

The discussion will first describe the arrangements related to airline responsibility, then describe theories regarding passenger rights for flight delays and/or cancellations, then analyse the limitations of airline liability, and then finally conclude about the potential for violations of passenger rights in the event of flight cancellations by airlines due to the Government's travel ban policy as a result of the Covid-19 pandemic.

This study uses a normative juridical approach with descriptive analysis. Where, the author conducts research preparation by elucidating and studying legal requirements and then modifying them to fit current conditions. In addition, the study uses secondary data sources consisting of primary legal materials in the form of Consumer Protection Law and Law Number 1 of 2009 concerning Aviation (Aviation Law). Then, secondary legal materials in the form of books and legal journals related to the problem being researched, tertiary legal materials in the form of legal dictionaries and mass media then other required reading sources. In a pandemic

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<sup>5</sup> Celina Tri Siwi Kristiyanti, *Hukum Perlindungan Konsumen* (Jakarta: Sinar Grafika, 2011), 30.

<sup>6</sup> Patricya Wedha Hutapea. "Perlindungan Hukum Bagi Pengguna Jasa Penerbangan di Tengah Pandemi Covid 19." *Jurist-Diction* 4, no. 3 (2021): 1085, <https://doi.org/10.20473/jd.v4i3.26984>.

<sup>7</sup> Waras Putri Andrianti, *et. al*, "Pandemi Covid-19 Sebagai Justifikasi dalam Kontrak Bisnis," *Jurnal Notarius* 14, no. 2 (December 2021): 751, <https://doi.org/10.14710/nts.v14i2.43801>.

condition, data collection techniques are carried out online with data analysis techniques starting from collecting, sorting data, displaying data and drawing conclusions on the data so that an analysis is created in this study.

## **B. Discussion**

### **B. 1. Flight Cancellation Policy as an Impact of the Covid-19 Pandemic**

In the Aviation Law, the relationship of rights and obligations between passengers and airlines arises because of an agreement between the two parties in the form of an air transportation agreement. According to Article 1 of the Aviation Law, an air carriage agreement is defined as an agreement between the airline as the carrier and the passenger to transport passengers by airplane in exchange for payment or in the form of other services. Referring to the definition of the air carriage agreement, it can be concluded that there is a reciprocal relationship in fulfilling rights and obligations between the two parties.

As previously described, Government policies in response to the Covid-19 pandemic, including travel restrictions using air carriage. This situation led the airlines to cancel scheduled flights or in other words violates the air carriage agreement between airlines and passengers. According to Indonesia Civil Code Article 1236, each party is responsible for mistakes that cause loss to the other party. The error referred to in Article 1236 is known as a default, which is a condition where the creditor or debtor does not or neglects to carry out the agreed agreement. The Civil Code further stipulates that default can take the form of not doing what was agreed at all, doing what was agreed but late, or doing what was agreed but wrongly.

In certain situation, one of the parties, both the passenger and the airline, may be in breach of the contract of carriage. Airlines often do not carry out flights on time according to their schedule, do not carry passengers on flights due to aircraft capacity reasons (over-booking), or flight schedule cancellations due to technical problems or weather factors. In the term of a violation of the air carriage agreement, the airline is considered to have defaulted because it did not carry out what it promised. On the other hand, the passenger may also violate the contract of carriage, for example, by smoking on the plane. In such an incident, the passenger is considered to have defaulted because he did something that, according to the agreement, should not be done.

This situation also can be considered as an unlawful act. An unlawful act is an act that violates statutory provisions.<sup>8</sup> This is one of the elements of Article 1365 of the Civil Code, which stipulates that “every act that violates the law and causes harm to others obliges the person who caused the loss because of his mistake to replace the loss”. An example of an unlawful act in the aviation sector is the decision of the Central Jakarta District Court Number 309/Pdt.G/2007/PN.Jkt.Pst in the case of a flight delay of 1.5 hours by Lion Air airline, which experienced a passenger named David M.L. Tobing. The court sentenced the airline to compensate the passengers for the price of the plane ticket, which was IDR718,500.

In the event that the non-fulfilment of the obligations of one of the parties is caused by an unforeseen and unavoidable event, for example, a natural disaster, a non-natural disaster, a social disaster, a strike, or a fire, then the violation is not categorized as default or unlawful act because of the circumstances force (force majeure; *overmacht*). One of specific form of force majeure is Government regulation or law.<sup>9</sup> Referring to Articles 1244 and 1245 of the Civil Code, force majeure is an excuse for parties who do not carry out their obligations to be released from the obligation to pay compensation.

In force majeure, the debtor is not obliged to pay compensation, and in a reciprocal agreement, the creditor cannot demand cancellation because the engagement is considered void.<sup>10</sup> The justification for force majeure in a business contract can be examined based on the possibility of performing the obligations in the contract. Force majeure in a contracts law can be classified as absolute force majeure and relative force majeure. Cancellation in a business contract is considered relative force majeure if it only affects the parties to the agreement, while the cancellation of a business contract is considered absolute force majeure if the cancellation applies generally to all members without exception.<sup>11</sup> Force majeure, for example, the cancellation of public flight schedules to and from Palu due to damage to Mutiara Sis Al Jufri airport due to the natural disasters of the earthquake, tsunami, and liquefaction in 2018.

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<sup>8</sup> Ida Bagus Bayu Mahardika and I Ketut Sandhi Sudarsana, “Perbuatan Melanggar Hukum Oleh Maskapai Penerbangan Terkait Pembatalan dan Keterlambatan Pengangkutan,” *Jurnal Kertha Semaya* 2, no. 1 (February 2014): 3, <https://ojs.unud.ac.id/index.php/kerthasemaya/article/view/8116>.

<sup>9</sup> Annisa Dian Arini, “Pandemi Corona Sebagai Alasan Force Majeur Dalam Suatu Kontrak Bisnis,” *Supremasi Hukum* 9, no. 1 (June 2020): 52, <https://doi.org/10.14421/sh.v9i1.2129>.

<sup>10</sup> Daryl John Rasuh, “Kajian Hukum Keadaan Memaksa (Force Majeure) Menurut Pasal 1244 Dan Pasal 1245 Kitab Undang-Undang Hukum Perdata,” *Lex Privatum* 4, no. 2 (February 2016): 174, <https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/11366>.

<sup>11</sup> Waras Putri Andrianti, “Pandemi Covid-19”, 751.

The Covid-19 pandemic situation was used as a reason for force majeure, causing debate for many experts. Some experts consider that the pandemic situation cannot necessarily be used as a reason to determine force majeure because of its temporary nature, but some others consider Presidential Decree Number 11 of 2020 as legitimacy that the Covid-19 pandemic is a force majeure so that it can be used as a reason to cancel the contracts.<sup>12</sup> Permenhub 25/2020 clearly impose travel ban for preventing Covid-19 spreads only in certain time.

Seeing the impact of the pandemic forced restrictions on people mobilities, and travel restrictions in particular, it is understandable that GIAA cancelled the flight as the its obligation because of the ban on going home for Eid al-Fitr. In the case experienced by Mr. HDS, the GIAA airline cancelled the flight schedule from the previous date of May 21, 2020, and rescheduled the schedule to June 2, 2020.

However, according to Article 4 letter h of Indonesia Consumer Protection Law, the consumers who are entitled to receive compensation or replacement, if the goods and or services received are not in accordance with the agreement or not as they should be. Consumers whose plane tickets were cancelled during the Covid-19 pandemic are entitled to receive compensation.

Regarding the cancellation of the flight, the airline obliged to refund a certain amount of money to the passenger which has also regulated in Article 24 of Permenhub 25/2020, where the cost returns can be done in the following ways: 1) by rescheduling, prospective passengers who already have tickets are free of charge; 2) change flight routes or in other terms is re-route, prospective passengers who already have tickets are not charged if the original route on the ticket could not be enter the area; 3) compensating the amount of air transportation service fees to earn points in the airplane membership which can be used to purchase products offered by the airplane; or 4) giving ticket vouchers in the amount of the ticket purchased by the passenger which can be used to buy another flight ticket and valid for a minimum of one year and can be extended a maximum of one time. In the case of Mr. HDS, the cost returns are given in the form of voucher or as mentioned in point 4.

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<sup>12</sup> Wardatul Fitri, "Implikasi Yuridis Penetapan Status Bencana Nasional Pandemi Corona Virus Disease (Covid-19) Terhadap Perbuatan Hukum Keperdataan," *Supremasi Hukum* 9, no. 1 (2020): 82, <https://doi.org/10.14421/sh.v9i1.2125>.

Similar policies on cost returns can be found in Commission Recommendation (EU) 2020/648 of May 13, 2020 on vouchers offered to passengers and travellers as an alternative to reimbursement for cancelled package travel and transport services in European Union Member States in the context of the Covid-19 pandemic. According to the recommendation, the passengers have the choice between cash reimbursement and reimbursement in the form of a voucher. Because of the large number of flight cancellations caused by the Covid-19 pandemic, this action has resulted in unsustainable cash flow and airline liquidity problems. The Commission also recommends that vouchers must be valid for at least one year, transferable, and refundable if not used.<sup>13</sup>

## **B. 2. Aspects of Consumer Protection in Aviation**

Consumer protection is all efforts that ensure legal certainty to provide protection to consumers. The main consumer protection legal instrument is the Consumer Protection Law. The legal relationship is the reciprocal relationship between the rights and obligations of consumers and business actors in the agreement, as referred to in Articles 4 to d. Article 7 of the Consumer Protection Law is presented in Table 1 below.

The principle of responsibility in Indonesia Consumer Protection Law follows developments in the US and Europe i.e., the principle of absolute responsibility or strict liability. This was influenced by a shift in principles from product oriented to consumer oriented. The Indonesia Consumer Protection Law accommodates two important principles of responsibility, namely product liability and professional responsibility.<sup>14</sup>

The most important aspect of the implementation of the air transportation agreement is the responsibility for losses that are beyond calculation.<sup>15</sup> The carriage agreement is evidenced by passenger tickets and cargo documents.

One of the problems in implementing air carriage agreements is that airlines experience flight schedule delays or even cancels. There are three reference rules related to passenger rights in the event of flight cancellations, namely: 1) Regulation of the Minister of

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<sup>13</sup> Mark Giancaspro, "Consumer Law and Policy Relating to Change of Circumstances Due to the Covid-19 Pandemic," *Journal of Consumer Policy* 437 (2020): 11, <https://doi.org/10.1007/s10603-020-09463-z>.

<sup>14</sup> Andi Sri Rezky Wulandari and Nurdiana Tadjuddin, *Hukum Perlindungan Konsumen* (Bogor: Penerbit Mitra Wacana Media, 2018), 42.

<sup>15</sup> Ritka Jayanti Ningsih, "Tanggung Jawab Maskapai Penerbangan Ketika Terjadi Barang Penumpang Hilang Atau Rusak" (Bachelor's Thesis, Faculty of Law, Universitas Muhammadiyah Jember, Jember, 2018), 3.



Transportation Number: PM 77 of 2011 concerning Responsibilities for Air Transport (Permenhub 77/2011); 2) Regulation of the Minister of Transportation Number: PM 89 of 2015 regarding the Delay Management in Scheduled Commercial Air Transport Business Entities in Indonesia (Permenhub 89/2015); and 3) Regulation of the Minister of Transportation Number: PM 185 of 2015 concerning Standards for Economy Class Passengers of Domestic Scheduled Commercial Air Transport (Permenhub 185/2015). Rights and obligations regarding flight cancellations are presented in Table 1 below.

No	Consumer Rights (Article 4 Consumer Protection Law)	Consumer Obligations (Article 5 Consumer Protection Law)	Business Actors' Rights (Article 6 Consumer Protection Law)	Business Actors' Obligations (Article 7 Consumer Protection Law)
1	The right to comfort, security, and safety in consuming goods and/or services;	Read or follow information instructions and procedures for the use or utilization of goods and/or services, for security and safety	The right to receive payments in accordance with the agreement regarding the conditions and exchange rates of traded goods and/or services	Have good intentions in carrying out their business activities
2	The right to choose goods and/or services and to obtain such goods and/or services in accordance with the exchange rate and the promised conditions and guarantees;	In good faith in making transactions to purchase goods and/or services	The right to obtain legal protection from the actions of consumers who have bad intentions	Provide correct, clear and honest information regarding the condition and guarantee of goods and/or services as well as provide an explanation of the use, repair and maintenance
3	The right to correct, clear and honest information regarding the conditions and guarantees of goods and/or services;	Pay according to the agreed exchange rate	The right to carry out proper self-defense in the legal settlement of consumer disputes	Treat or serve consumers correctly and honestly and non-discriminatory
4	The right to have their opinions and complaints heard on the goods and/or services used;	Follow legal efforts to settle consumer protection disputes properly.	The right to rehabilitate reputation if it is legally proven that consumer losses are not caused by traded goods and/or services	Guarantee the quality of goods and/or services produced and/or traded based on the provisions of the applicable quality standards of goods and/or services
5	The right to get advocacy, protection, and efforts to settle consumer protection disputes properly;		Rights regulated in the provisions of other laws and regulations	Provide opportunities for consumers to test, and/or try certain goods and/or services as well as provide guarantees and/or guarantees for goods manufactured and/or traded
6	The right to receive consumer guidance and education;			Provide compensation, compensation and/or compensation for losses due to the use, use and utilization of traded goods and/or services
7	The right to be treated or served correctly and honestly and not discriminatory;			Provide compensation, compensation and/or replacement if the goods and/or services received or utilized are not in accordance with the agreement
8	The right to obtain compensation, compensation and/or replacement, if the goods and/or services received are not in accordance with the agreement or not properly;			
9	Rights regulated in the provisions of other laws and regulations.			

Table 1. Rights and Obligations of Consumers and Business Actors<sup>16</sup>

The rights and obligations of passengers and the rights and liability of airlines are as stipulated in the Aviation Law are presented in Table 2 below.

<sup>16</sup> Result from research by the Authors; summarized from the Consumer Protection Law.

No	Passenger Rights (Aviation Law)	Passenger Obligations (Aviation Law)	Airline Rights (Aviation Law)	Airline Liability (Aviation Law)
1	Persons with disabilities, elderly people, children under the age of 12 (twelve) years, and/or sick people have the right to receive services in the form of special treatment and facilities from commercial air transportation business entities.	Comply with all flight rules	For cargo that has exceeded the time limit as referred to in paragraph (1), the carrier has the right to sell it and the proceeds are used for payment of costs incurred as a result of the cargo not being taken by the recipient.	Closing the carrier's liability insurance with an insured value of compensation for commercial air transport passengers as evidenced by an insurance closing agreement  The carrier is obliged to insure its liability to the passengers and cargo being transported as referred to in Article 141, Article 143, Article 144, Article 145, and Article 146.
2	In the event that a passenger dies as referred to in Article 141 paragraph (1), those entitled to receive compensation are the heirs of the passenger in accordance with the provisions of the legislation.	Everyone on an aircraft is prohibited from doing any act that can endanger the security and safety of the flight	The carrier is not responsible and may refuse to transport a sick passenger, unless he/she can submit a doctor's certificate to the carrier stating that the person is allowed to be transported by airplane.	Serve prospective passengers fairly without discrimination on the basis of ethnicity, religion, race, intergroup, as well as economic and social strata;  The carrier is responsible for the loss of passengers who die, permanent disability, or injuries caused by air transportation incidents in the aircraft and/or boarding and down the aircraft.
3	A passenger who is on a missing aircraft is deemed to have died, if within 3 (three) months after the date the aircraft is supposed to land at its final destination, no news is obtained regarding the passenger, without a court decision being required.		The carrier is not responsible for any loss due to the loss or damage of cabin baggage, unless the passenger can prove that the loss was caused by the actions of the carrier or the person he employs.	Commercial air transportation business entities are obligated to transport people and/or cargo, and post after the agreement of carriage has been agreed.  The carrier is responsible for the loss suffered by the passenger because the checked baggage is lost, destroyed, or damaged as a result of air transportation activities while the checked baggage is under the carrier's control.
4				Commercial air transportation business entities are required to provide appropriate services to each user of air transportation services in accordance with the agreed transportation agreement.  The carrier is responsible for losses suffered due to delays in the transportation of passengers, baggage, or cargo, unless the carrier can prove that the delay is caused by weather and operational technical factors.
5				The carrier must hand over the ticket to individual passengers or collective passengers.  The carrier is responsible for the non-transportation of passengers, according to a predetermined schedule by reason of aircraft capacity.
6				The carrier is obliged to hand over the baggage identification as referred to in Article 150 letter c to the passenger.

Table 2. Rights and Obligations of Airline and Passenger<sup>17</sup>

Passenger rights and airline obligations regarding flight cancellation are presented in Table 3 below.

<sup>17</sup> Result from research by the Authors; summarized from the Aviation Law.

No	Permenhub 77/2011	Permenhub 89/2015	Permenhub 185/2015
1	In the event of a flight cancellation, the Carrier is obliged to notify the passenger at least 7 calendar days prior to the flight date.	Flight delays in the form of flight cancellations are grouped as category 6 delays,	Handling flight delays, flight cancellations and denied boarding passengers refers to the regulations governing the handling of flight delays.
2	In the event of flight cancellation, the Carrier is obliged to return all the ticket money that has been paid by the passenger.	For category 6 delays, the transportation business entity the air must divert to the next flight or return the entire ticket fee (refund ticket).	Domestic scheduled commercial air transportation business entities are required to return the air transportation service fee that has been paid by the prospective passenger (refund ticket) if the passenger cancels his flight, provided that: a. returns over 72 hours get a refund of at least 75% of the basic rate; b. returns under 72 hours s.d. 48 hours get a refund of at least 50% of the base rate; c. returns under 48 hours s.d. 24 hours get a refund of at least 40% of the base rate; d. returns under 24 hours s.d. 12 hours get a refund of at least 30% of the base rate; e. returns under 12 hours s.d. 4 hours get a refund of at least 20% of the base rate; and f. returns under 4 hours get a refund of at least 10% of the basic fare and/or in accordance with the policies of the scheduled commercial air transportation business entity.
3	Flight cancellation in the form of changes flight schedule (retiming or rescheduling) which is carried out less than 7 calendar days until the specified departure time, the provisions of Article 10 letters b and c apply.	Air transportation business entities are required to return in cash or by transfer to an account.	Passengers can request a refund of the air transportation service fee (refund ticket) in the event of a force majeure equal to the price of the ticket purchased by the passenger, provided that: a. for full service flights, a 20% administrative fee is deducted; b. for medium service flights, a 15% administrative fee is deducted; and c. for no-frills flights, a 10% administration fee is deducted.

Table 3. Passenger Rights and Airline Obligations Regarding Flight Cancellation<sup>18</sup>

Based on the description above, the consumer's right to compensation related to the cancellation of airline tickets can be described briefly as follows (Figure 2):

1. If the flight ticket cancellation is caused by a passenger's request, the airline is obliged to return the air transportation service fee that has been paid by the prospective passenger (refund ticket) at the amount in accordance with the provisions of Article 10 paragraph (2) of the Permenhub 185/2015.
2. If the flight ticket cancellation is due to the airline's decision and it has been notified to the passenger no later than 7 calendar days, the airline is obliged to return all the ticket money that has been paid by the passenger in accordance with the provisions of Article 12 paragraph (2) of the Permenhub 77/2011.
3. If the flight ticket cancellation is due to the airline's decision and it is notified to passengers in less than 7 calendar days, then the airline is obliged to facilitate re-routing or diversion

<sup>18</sup> Result from research by the Authors; summarized from Permenhub 77/2011, Permenhub 89/2015 and Permenhub 185/2015.

to other flights in accordance with the provisions of Article 12 paragraph (3) and Article 10 letters b and c of the Permenhub 77/2011.

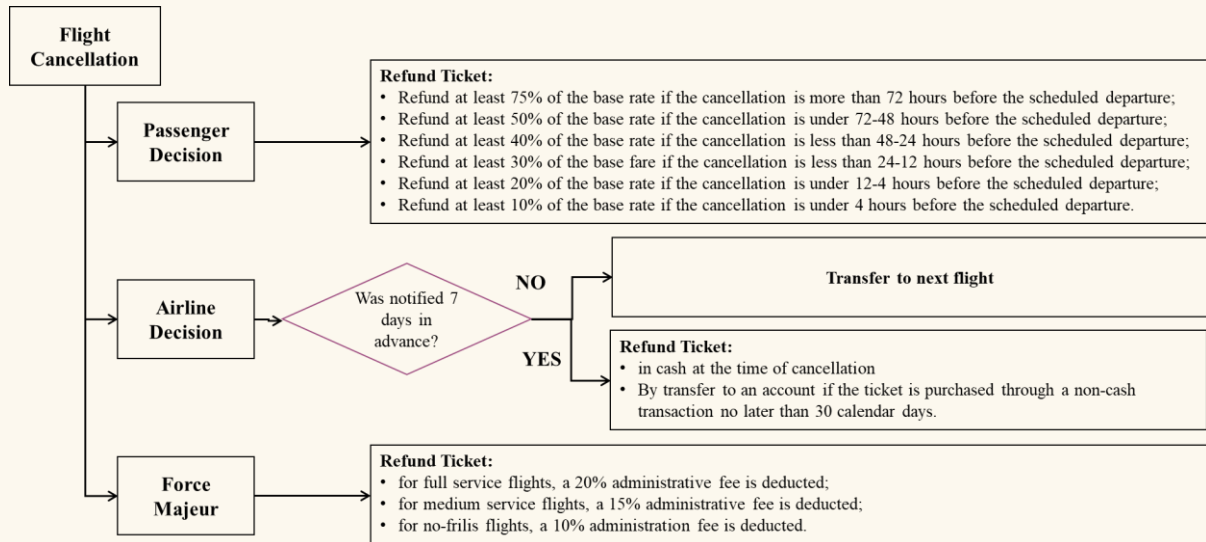


Figure 2. Consumer Compensation Rights Regarding Airline Ticket Cancellation<sup>19</sup>

### **B. 3. The Implementation of Airline Ticket Refunds from the Perspective of Consumer Protection Law**

In analysing consumer rights related to flight cancellations, the first thing to do is to analyse the reasons why airlines do not carry out their obligations to carry passengers as scheduled on tickets that have been purchased by passengers. The reason for the violation will determine the follow-up to the compensation obligation by the airline as a party that violates the air carriage agreement.

The main elements that are most decisive in analysing the flight ticket cancellation policy by the GIAA are:

- a. The airline is unable to carry out its obligations to fly passengers on the date stipulated on the ticket, namely May 21, 2020;
- b. Flight cancellations are not caused by the airline's fault but because of an operational ban from the regulator, as stipulated in Permenhub 25/2020;
- c. The cause of flight cancellations is an event that was previously unexpected and unavoidable by the airline, namely non-natural disaster conditions, in the form of a massive spread of Covid-19; and

<sup>19</sup> Result from research by the Authors.

- d. The flight ban was issued by the Ministry of Transportation on April 23, 2020, while ticket reservations had been made previously on March 11, 2020.

Based on the foregoing, it can be concluded that the cancellation of flights by GIAA as a result of the Covid-19 pandemic can be categorized as force majeure and is not a default or unlawful act of the air transport agreement. For this reason, the following is an analysis of the passenger's right to receive compensation for ticket cancellations that were cancelled by the airline due to the Covid-19 force majeure, as follows:

- a. As in Articles 1244 and 1245 of the Civil Code, airlines that do not carry out their obligations due to force majeure can be released from the obligation to pay compensation.
- b. However, from the perspective of consumer protection, as stated in Article 4 letter h of Consumer Protection Law and Article 12 paragraph (2) of the Permenhub 77/2011, and Article 10 paragraph (3) of the Permenhub 185/2015, flight cancellations by airlines caused by force majeure do not invalidate the passenger's right as a consumer to obtain compensation, compensation or replacement for the ticket purchased by the passenger.
- c. In practice, GIAA does not provide ticket refunds but reschedules the ticket to the date when the flight has been allowed, namely after the Eid al-Fitr homecoming period. The initial steps taken by GIAA to reschedule tickets can be considered as a form of GIAA's good faith to protect consumer rights in anticipation of the ticket being forfeited because passengers until the time that is approaching the flight schedule will be cancelled, do not apply for a refund ticket as stipulated in Article 10 paragraph (3) of Permenhub 185/2015. In this position, GIAA cannot automatically issue a refund ticket but must make a decision based on the passenger's request for a refund ticket.
- d. In terms of GIAA's interests, this flight schedule rescheduling can be understood as GIAA's effort to first secure ticket sales so that the potential revenue realization can be realized immediately if consumers agree to carry out flights according to the new schedule determined by GIAA. In accounting, the recognition of ticket revenue occurs after the airline's obligations are fulfilled,<sup>20</sup> namely to fly passengers, not at the point of sale of tickets. Referring to the Financial Statements of PT Garuda Indonesia Tbk. (Persero) in

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<sup>20</sup> Nur Hasanah and Tutik Siswanti, "Evaluasi Pengakuan, Pengukuran Dan Penyajian Pendapatan Berdasar PSAK 23 Pada PT. Angkasa Pura II (Persero)," *Jurnal Bisnis & Akuntansi Unsurya* 4, no.1 (2019): 39, <https://doi.org/10.35968/v4i1.262>.

2021, the number of payments received in advance from the sale of airline tickets as of December 31, 2021, was recorded at USD144,122,220,<sup>21</sup> or equivalent to IDR2,046,198,278,005.

- e. It can be added that considering that passengers may not be able to fly on the new schedule, GIAA has also, in good faith, accommodated the interests of consumers by providing suggestions so that passengers can immediately apply for ticket refunds to the airline.
- f. Furthermore, an analysis will be carried out in the form of the refund given to passengers, namely in the form of travel vouchers and not in the form of cash. In the event of ticket cancellation due to force majeure, Permenhub 185/2015 or other regulations do not further regulate the form or mechanism for submitting and/or granting refund tickets. As for refunds in the form of cash, it is clearly regulated for passenger flight ticket cancellations, as stated in Article 10 paragraph (1), and paragraph (5) of the Permenhub 185/2015. Taking into account the editorial use of “refund tickets” in Article 10 paragraph (5), which is different from the editorial use of “refunding air transportation services” in Article 10 paragraph (3) to explain “refund tickets”, it should be strongly suspected that the form of refund tickets is due to force majeure and is meant not to be in the form of cash. The determination of refunds in the form of travel vouchers is also not regulated by any regulations. GIAA’s steps to provide refunds in the form of travel vouchers can still be understood as a form of fulfilling consumer rights as stipulated in Article 19 paragraph (2) of the Consumer Protection Law that compensation by business actors can be in the form of refunds or replacement of goods and/or services of similar or equivalent value.<sup>22</sup>
- g. However, given the principle of consent in an agreement and the fact that the ticket refund process will result in a substantive change to the air carriage agreement.<sup>23</sup> In this case, the terms and conditions on the ticket, the author believes that passengers have the same rights and positions as the airline when it comes to determining changes to terms and conditions,

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<sup>21</sup> Financial Report of PT Garuda Indonesia Tbk (Persero) as of December 31, 2021; “Consolidated Financial Statement as of December 31, 2021,” PT Garuda Indonesia Tbk (Persero), accessed August 22, 2022, <https://www.garuda-indonesia.com/content/dam/garuda/files/pdf/investor-relations/financial-report/Consolidated%20Financial%20Statement%20as%20of%20December%2031.%202021.pdf>.

<sup>22</sup> Ni Wayan Melda Ika Damayanthi and I Wayan Parsa, “Pelaksanaan Tanggung Jawab Maskapai Penerbangan Terhadap Keterlambatan Penerbangan,” *Jurnal Kertha Semaya* 3, no. 1 (January 2015): 8, <https://ojs.unud.ac.id/index.php/kerthasemaya/article/view/42180>.

<sup>23</sup> Erman Mahendraputra, “Perlindungan Hukum Bagi Penumpang Terhadap Keterlambatan Penerbangan Pesawat” (Master’s Thesis, Universitas Islam Indonesia, Yogyakarta, 2015), 43.

including the form of refund tickets. For this reason, the determination of the form of the refund ticket should be based on the agreement of both parties. If the passenger does not refuse the form of a refund in the form of a travel voucher set unilaterally by the airline, then the principle of consent has been achieved. However, in the event that a passenger refuses a refund in the form of a travel voucher, the passenger should express his objection and ask the GIAA to grant the right to a refund in the form of cash, taking into account the provisions of Article 12 paragraph (2) of the Permenhub 77/2011 that “In the event of a flight cancellation, the carrier is obliged to return all the ticket money that has been paid by the passenger”. In addition, passengers also have the right to request a refund in the form of cash based on Article 10 paragraph (3) letter an of the Permenhub 185/2015. In the case of Mr. HDS, taking into account the status of GIAA, which is a full-service flight service,<sup>24</sup> a refund ticket can be given with an administrative fee deduction of twenty percent.

It can be added that the travel voucher in question is not given by GIAA to passengers, so that passengers do not control their travel vouchers. However, passengers can request a copy of their travel voucher from GIAA, which will then be provided electronically. On the other hand, the airline regularly provides updates regarding the extension of the voucher validity period as a notification and reminder to passengers via email. The travel voucher validity period extension is carried out automatically by GIAA during the pandemic period. According to the author, this can also be considered a form of GIAA's good faith to protect consumer rights.

Based on the things mentioned above, the implementation and handling of flight cancellations by rescheduling tickets and then refunding tickets by providing travel vouchers basically does not violate the provisions of laws and regulations in the aviation sector, and there are no violations of consumer rights. Especially in the incident experienced by Mr. HDS, which is Mr. HDS's travel voucher that used without the consent of the owner, and taking into account the fact that the GIAA, through one of its employees, in bad faith, had made an error in inputting the passenger voucher number data, resulting in a loss for the passenger, which then resulted in a material loss as a result of the GIAA's fault, then in principle, GIAA has defaulted. For this reason, taking into account the provisions of Articles 4 and 7 of the Consumer Protection Law, consumers are entitled to proper advocacy, protection, and efforts to resolve consumer

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<sup>24</sup> “Tentang Garuda Indonesia,” PT Garuda Indonesia Tbk. (Persero), accessed August 22, 2022, <https://www.garuda-indonesia.com/id/id/corporate-partners/company-profile/about/index>.



protection disputes and are entitled to receive compensation, compensation, and/or reimbursement for not receiving services in accordance with the agreement. In addition, business actors are obliged to provide compensation, compensation and/or reimbursement for not providing services under the agreement.

For consumer protection, the passengers are entitled to get compensation. When there is a dispute about the compensation, and the best solution for this matter is by the negotiation method, namely making an agreement between the airline and the passenger. With this mutual agreement, a certainty of the rights of passengers is obtain by the compensation as a form of responsibility for the airline.<sup>25</sup>

Regarding the amount of compensation, in the event of a violation due to default, according to Article 1246 of the Civil Code, compensation consists of costs, losses, and interest. In the event that the violation occurs because of an unlawful act, according to Article 1365 and Article 1371 paragraph (2) of the Civil Code, compensation can be given in the form of material compensation, and based on Articles 1370, 1371, and 1372 of the Civil Code, immaterial compensation can only be given in some instances, such as: cases of death, serious injury, and humiliation.<sup>26</sup>

On the other hand, both the Consumer Protection Law and the Aviation Law stipulate that compensation for the cancellation of passenger tickets be given at a maximum of the entire ticket amount that has been paid by passengers. In the event that a passenger dies due to a plane crash, the airline is responsible for providing compensation in the amount of IDR1,250,000,000 per passenger as referred to in Article 3 Letter A of Permenhub 77/2011.

As a comparison, flight cancellations policies made by Air France or KLM due to Covid-19 situation, the passengers are offered to choose between rebooking, a voucher or cash refund. Also, the passenger who already received refundable-voucher are able to opt for a cash refund. According to the European Union (EU) Regulation 261/2004 the passengers who have suffered a flight delay or cancellation are protected and may give rise to claim for compensation up to €600 per person. However, the passenger of Air France or KLM are not entitled to get

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<sup>25</sup> Ni Made Trisna Dewi, "Perlindungan Hukum Bagi Penumpang Pesawat Udara Jika Terjadi Keterlambatan Jadwal Penerbangan Menurut Undang-Undang Nomor 1 Tahun 2009 Tentang Penerbangan," *Kertha Wicaksana* 15, no. 2 (July 2021): 127, <https://doi.org/10.22225/kw.15.2.2021.122-129>.

<sup>26</sup> "Di Mana Pengaturan Kerugian Konsekuensial dalam Hukum Indonesia?" Hukum Online, accessed August 22, 2022, <https://www.hukumonline.com/klinik/a/di-mana-pengaturan-kerugian-konsekuensial-dalam-hukum-indonesia--lt4da27259c45b9>.

compensation based on the EU Regulation 261/2004 because Covid-19 is considered an extraordinary circumstance in the EU member states.<sup>27</sup>

### **C. Conclusion**

Flight cancellations related to travel bans caused by Covid-19 pandemic can be categorized as force majeure. However, from the perspective of consumer protection law, flight cancellations by airlines caused by force majeure do not invalidate passengers' rights to receive compensation or reimbursement for the ticket purchased by the passenger. The implementation and handling of flight cancellations by rescheduling tickets and then refunding tickets by providing travel vouchers basically does not violate the provisions of the laws and regulations in Indonesia's aviation sector. The suggestions that the article put forward are as follows: (1) In order to fulfil the principle of consent in an agreement, airlines should be able to first confirm to passengers regarding the form of refund ticket that can be issued; (2) The Ministry of Transportation as the regulator in the air transportation sector is necessary to pay special attention to ensure that airline is committed in fulfilling the rights of passengers as consumers following the provisions, including by properly, adequately, and transparently socializing (providing the information) regarding the rights of passengers.

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<sup>27</sup> Giancaspro, "Consumer Law and Policy," 444.

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