

## CHAPTER FOUR

### FINDING AND ANALYSIS

#### **A. The Legal Protection of Consumers for failed departure of *Jemaah Umrah* of “First Travel”**

Indonesia is a country that has a majority Muslim population. This is what makes business opportunities to hold *Umrah* become popular in Indonesia.<sup>75</sup> Before 1995, the *Umrah* services was carried out conventionally, that is, consumers went to the *Umrah* travel agency and filled out the registration forms and deposited a certain amount of money as the *Umrah* registration fee in accordance with the travel package desired by consumers along with other administrative requirements. But in the last few years, the First Travel *Umrah* service has begun to worry the public as consumers.

#### **1. The Legal Protection of Consumers for Failed Departure of *Jemaah Umrah* of “First Travel” Based on Law No 8 Year 1999 about Consumer Protection.**

##### **a. The Rights of *Jemaah Umrah* of “First Travel”**

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<sup>75</sup> Dian Cahyaningrum, 2017, *Tanggung Jawab Hukum PT. First Travel Anugrah Karya Wisata Dalam Kasus Penipuan, Penggelapan, dan Pencucian Uang Dengan Modus Umrah*. (Majalah Info Singkat Hukum, Vol.XI. No.16/II/Puslit,2017), p. 1

In essence, human beings from birth can be said to be consumers until death because basically humans always use or consume goods or services since they were born. Based on this, *Jemaah Umrah* can also be said to be consumers, because they use a service from a business actor in organizing Umrah. In the development of an increasingly modern society and accompanied by technological developments consumers have a greater risk than business people, in other words consumer rights are very vulnerable. Due to the relatively weak consumer bargaining position, consumer rights are very risky to be violated.

President John. F Kennedy put forward four consumer rights that must be protected,<sup>76</sup> namely:

1. The right to safety

This aspect is aimed at consumer protection from the marketing of goods and/or services that endanger consumer safety. In this position, the intervention, responsibility and role of the government in ensuring the safety and security of consumers is very important. Therefore, the regulation of consumer protection is needed to safeguard consumers from the behavior of producers who can later harm and endanger the safety of consumers.

2. The right to choose

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<sup>76</sup> Vernon A. Musselman dan John H. Jackson, *Introduction to modern business* diterjemahkan kusma wiriadistara, (jakarta:Erlangga, 1992) p. 294-295, inosentius samsul, *Hukum Perlindungan Konsumen, Penerapan Tanggung jawab Mutlak*, (Jakarta: Universitas Indonesia, 2004) hlm 7 Bismar Nasution, *Keterbukaan dalam Pasar Modal*, (Jakarta: Program Pascasarjana Fakultas Hukum Universitas Indonesia, 2001) p. 121, Mariam Darus Badrul Zaman, *Pembentukan Hukum Nasional dan Permasalahannya*, (Bandung: Alumni, 1981) p. 2. Donald P.Rothschild dan David W. Carrol, *Consumer Protecting; Reporting Service*, Vol. I (Maryland: National Law Publishing Corporation 1986) p. 20 di dalam buku Zulham, *Hukum Perlindungan Konsumen*, (Jakarta: Kencana Prenada Media Group, 2013) p. 47

For consumers, the right to vote is the prerogative right of the consumer whether he will buy or not buy an item and/or service. Therefore, without being supported by the right to get honest information, the right level of education, and adequate income, this right will not mean much. Especially with the increasing use of market techniques, especially through advertising, the right to vote is determined more by factors outside the consumer.

3. The right to be informed

This right has a very fundamental meaning for consumers when viewed in terms of their interests and economic life. Any information about something that will be bought or will bind itself must be given as completely as possible and with full honesty. Information both directly and in general through various communication media should be mutually agreed upon so as not to mislead consumers.

4. The right to be heard

This right is intended to guarantee consumers that their interests must be considered and reflected in government policies, including being heard in the formation of these policies. In addition, consumers must also be heard of each complaint and hope in consuming goods and / or services marketed by the manufacturer.

United Nations through Resolution Number A/RES/39/248/ dated 16 april 1985 about Guildelines for Consumer Protection (Perlindungan Konsumen) formulates the six consumer interests that must be covered, including:<sup>77</sup>

1. Protection of consumers from hazards to their health.
2. Promotion and protection of consumers' social economic interests.
3. The availability of adequate information for consumers to provide their ability to make the right choices according to personal wishes and needs.
4. Consumer education.
5. Availability of effective compensation.
6. Freedom to form consumer organizations or other relevant organizations and provide opportunities for these organizations to express their opinions in making decisions concerning their interests.

International Organization of Consumer Union (IOCU) added four basic consumer rights that must be protected, namely:<sup>78</sup>

1. The right to obtain necessities of life.
2. The right to obtain compensation.
3. The right to obtain consumer education.
4. The right to obtain a clean and healthy living environment.

The European economic community has also established the basic rights of consumers who need protection, namely:

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<sup>77</sup> Inosentius Samsul, 2004, *Perlindungan Konsumen, kemungkinan Penerapan Tanggung Jawab Mutlak*, Jakarta: Universitas Indonesia, pp. 27-28

<sup>78</sup> Ahmadi Miru dan Sutarman Yodo, 2004, *Hukum Perlindungan Konsumen*, Jakarta: Raja Grafindo Persada, p. 39

1. The right to health and safety protection.
2. The right of economic interest.
3. The right to get compensation
4. The right to information.
5. The right to be heard.

The Indonesian Consumers Indonesia (YLKI) added one more basic right as a complement to the four basic consumer rights proposed by John F. Kennedy, namely the right to a good and healthy environment. So that the whole is known as “Five Consumer Rights”.<sup>79</sup>

According to Prof. Hans W. Micklitz, the consumer protection can be taken in two policy models. *The first* is a complementary policy, which is a policy that requires businesses to provide adequate information to consumers (the right to information). *Second*, compensatory policy, which is a policy that contains protection for consumers' economic interests (the right to security and health).<sup>80</sup>

Consumers are not sufficiently protected only on the basis of complementary policies (providing information), but also by comparative policies to minimize the risks borne by consumers. For example by preventing dangerous products from reaching the market before passing the test.

Indonesia through Law No 8 of 1999 about Consumer Protection stipulates consumer rights as follows:<sup>81</sup>

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<sup>79</sup> Sidharta, 2000, *Hukum Perlindungan Konsumen Indonesia*, Jakarta: Grasindo, p. 16

<sup>80</sup> *Ibid.*

<sup>81</sup> Ruli Firmansyah, 2014, “Perlindungan Hukum Bagi Para Pihak Dalam Perjanjian Jual Beli (Studi Kasus Namomi Tote Bag Palu)”, *Jurnal Ilmu Hukum Legal Opinon*, Vol 2, 2014, pp. 20-30

1. The right to security, comfort and safety in consuming goods and/or services.
2. The right to choose goods and/or services and get the goods and/or services in accordance with the exchange rate and conditions and guarantees promised.
3. The right to information that is true, clear and honest and regarding the condition and guarantee of goods and/or services.
4. The right to get advocacy, protection and appropriate efforts to resolve consumer protection disputes.
5. The right to get consumer education and guidance.
6. The right to be treated or served correctly and honestly in a non-discriminatory manner.
7. The right to receive compensation, compensation and/or replacement, if the goods and/or services received are not in accordance with the agreement or not as they should be.
8. Rights regulated in other statutory provisions.<sup>82</sup>

In addition to these consumer rights, the Consumer Protection Act also regulates consumer rights formulated in the following articles, namely about the obligations of business actors. Obligations and rights are actually an antinomy in the law, so that the obligations of business actors can be seen and as part of consumer rights. The obligations of business actors include:

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<sup>82</sup> Such as the right to a good and healthy environment, Article 5 point (1) Law No. 23 about Environmental Management.

1. In good faith in conducting business activities.
2. Provide correct, clear and honest information about the conditions and guarantees of goods and/or services and provide explanations of announcements, repairs and maintenance.
3. Treating or serving consumers correctly and honestly and not discriminatory.
4. Ensure the quality of goods and/or services produced and/or traded based on the provisions of the quality standards of goods and/or services that apply.
5. Give consumers the opportunity to test, and or provide guarantees and / or guarantees for goods made and/or traded.
6. Providing compensation, compensation and/or substitution for losses due to the use, use and use of goods and/or services traded
7. Provide compensation and/or reimbursement if the goods and/or services received or utilized are not in accordance with the agreement.

Furthermore, Law No 8 Year 1999 concerning Consumer Protection stipulates restrictions on business actors which results in consumer losses, violations of these prohibitions constitute criminal acts.

Business actors are prohibited from producing and/or trading goods and/or services that:<sup>83</sup>

1. Not meeting or not in accordance with the required standards and statutory provisions.

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<sup>83</sup> Article 8 point (1) Law No 8 Year 1999 about Consumer Protection

2. Not in accordance with the net weight, the net or net content, and the amount in the count as stated in the label or etiquette of the item.
3. Not match the size, scale and amount in terms of actual size.
4. Not in accordance with the conditions, guarantees, privileges or efficacy as stated in the label, etiquette or description of the goods and/or services.
5. Not in accordance with the quality, level, composition, processing, style, mode, or certain uses as stated in the label or description of the goods and/or services.
6. Not in accordance with the promise stated in the label, etiquette, information, advertisement or promotion of the sale of the goods and/or services.
7. Not specify the expiration date or the best usage/utilization period for certain goods.
8. Not follow the provisions of halal production, as stated in the label “halal”.
9. Not put a label or make an explanation of the item that contains the name of the item, size, net/net weight/content, composition, usage rules, date of manufacture, side effects, name and address of the business actor, as well as other information for use according to the conditions must be install/make.



10. Not include information and/or instructions on the use of goods in Indonesian in accordance with the provisions of the applicable laws and regulations.

**b. Application of The Legal Consumers Law for Failure Departure of *Jemaah Umrah* of “First Travel”**

The consumer protection means guarantee or certainty about fulfilling consumer rights. The importance of legal protection for consumers is due to the weak bargaining position of consumers. Legal protection for consumers requires a partiality to a weak bargaining position, so that it can guarantee legal certainty to provide legal protection for the rights, and obligations of consumers in relation to business actors must be respected by business actors and vice versa.

Law Number 8 of 1999 aims to provide legal protection for consumers this matter is regulated in article 1 number 1 which states all efforts to ensure legal certainty to provide protection to consumers.

In Sidharta's opinion that because of a weak consumer position, he must be protected by law. one of the characteristics, as well as the purpose of the law is to provide protection to the community.<sup>84</sup>

In Janus Sidabolok's opinion that the achievement of legal protection is for consumers. The significance of regulating consumer rights through the Law is part of the implementation of a welfare state, because the 1945 Constitution as a

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<sup>84</sup> Shidarta, 2006, *Hukum Perlindungan Konsumen Indonesia*, Jakarta: PT. Gramedia Widiasarana, p. 25

political constitution is also called an economic constitution, which is a constitution that contains the mandate of the state welfare.<sup>85</sup>

Based on the explanation above, *Jemaah Umrah* as consumers of the First Travel are entitled to their rights for *Umrah's* departure and obtain legal certainty regarding *Umrah's* departure. However, the fact is that this is not fulfilled by the business actor in this case First Travel who did not depart 57,682 (fifty seven thousand six hundred eighty two) of 72,682 (seventy two thousand six hundred eighty two) *Jemaah Umrah*. The losses reached IDR 1,000,000,000,000 (one trillion rupiah).<sup>86</sup>

The legal relationship between *Jemaah Umrah* and First Travel as a business actor has arisen when *Jemaah Umrah* and First Travel are bound by an *Umrah* departure service agreement. The facts in the field of the *Umrah* congregation have given their achievements by paying IDR 14,300,000 (fourteen million three hundred thousand rupiahs) for the services of the *Umrah* departure. Therefore the *Jemaah* can be said to be consumers who are entitled to Legal Achievement and Protection.

Article 4 letter H of Act Number 8 of 1999 concerning Consumer Protection has stipulated that consumers have the right to receive reimbursement, compensation, and/or replacement, if the service received is not in accordance with the agreement or as it should be. Therefore *Jemaah Umrah* of First Travel have legal protection rights which are regulated by the Laws and have the right to

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<sup>85</sup> Janus Sidabolok, 2006, *Hukum Perlindungan Konsumen di Indonesia*, Bandung: PT. Citra Aditya Bakti, p. 17

<sup>86</sup> Yusuf Asyari, "Bos PT. First Travel Anugrah Karya Wisata Hidup Mewah di Balik Tangis Jamaah", December, 2017, *Jawa Pos*

legal certainty regarding *Umrah's* departure and can file a claim for compensation against business actor –First Travel.

**c. Business Actors Sanctions Based on Law No 8 Year 1999 about Consumer Protection**

Law Number 8 Year 1999 about Consumer Protection regulates administrative sanctions and criminal sanctions for business actors, regulated sanctions include:

1) Administrative Sanctions

- a) The Consumer Dispute Settlement Agency has the authority to impose administrative sanctions on business actors who violate Article 19 paragraph (2) and Paragraph (3), Article 20, Article 25 and Article 26
- b) Administrative Sanctions in the form of compensation at a maximum of IDR 200,000,000 (two hundred million rupiah)<sup>87</sup>

Administrative sanctions can be imposed on business actors who commit acts that are prohibited by business actors. In this case, non-implementation of *Umrah's* departure by First Travel has violated the Article 26 of Law No 8 Year 1999 about Consumer Protection which states is Business actors who trade in services must fulfill the guarantees and/or guarantees agreed and/or agreed upon.

Therefore, normatively these sanctions can be imposed on First Travel because they do not provide guarantees and/or guarantees on the departure of *Jemaah Umrah*.

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<sup>87</sup> Article 60 Law No 8 Year 1999 about Consumer Protection

## 2) Criminal Sanctions

- a) Criminal prosecutions can be carried out against business actors and/or their administrators.
- b) Business actors who violate the provisions referred to in Article 8, Article 9, Article 10, Article 13 paragraph (2), Article 15, Article 17 paragraph (1) letter a, letter b, letter c, letter e, paragraph (2), and Article 18 is sentenced to a maximum of 5 (five) years imprisonment or a maximum fine of IDR 2,000,000,000 (two billion rupiah).
- c) Business actors who violate the provisions referred to in Article 11, Article 12, Article 13 paragraph (1), Article 14, Article 16, and Article 17 paragraph (1) letter d and letter f shall be sentenced to a maximum of 2 (two) year or fine of a maximum of IDR 500,000,000 (five hundred million rupiah).
- d) Against criminal sanctions as referred to in Article 62, additional penalties can be imposed, in the form of:
  - 1) Deprivation of certain items;
  - 2) Announcement of the judge's decision;
  - 3) Payment of compensation;
  - 4) Orders to terminate certain activities that cause consumer losses;
  - 5) Obligation to withdraw goods from circulation; or

6) Revocation of business licenses.<sup>88</sup>

Law No 8 Year 1999 about Consumer Protection regulates criminal provisions that provide legal protection for consumers, criminal sanctions that can be imposed on First Travel are Article 62 of Law No 8 of 1999 about Consumer Protection in violation of article 16 which states:

Business actors in offering goods and/or services through orders are prohibited from:

- a. Not keeping the order and/or settlement time agreement as promised;
- b. Not keeping promises of services and/or achievements.

The fact that First Travel markets *Umrah* travel services at low prices, namely IDR 14,000,000 (fourteen million rupiahs) to subsequently not fulfill the order and/or agreement on the settlement time as promised.

Based on the explanation above, the legal protection provided by the Consumer Protection Law is imperative if legal remedies are implemented, but in fact this legal effort is not carried out by *Jemaah Umrah* of First Travel.<sup>89</sup>

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<sup>88</sup> Article 62 and 63 Law No 8 Year 1999 about Consumer Protection.

<sup>89</sup> Budi Sam Law Malau, 2018, "Pasutri Bos First Travel dituntut Jaksa Pidana Penjara 20 tahun", taken from <http://www.tribunnews.com/nasional/2018/05/07/pasutri-bos-first-travel-dituntut-jaksa-pidana-penjara-20-tahun>, accessed on Wednesday, august 1, 2018 at 07.15 a.m.

## **2. The Legal Protection of Consumers for Failure Departure of *Jemaah Umrah* of “First Travel” Based on Civil Code.**

According to Article 1233 of the Civil Code which states the source of the engagement is an agreement and law. Engagement is a legal relationship in the field of law of wealth where one party has the right to claim an achievement and the other party has an obligation to carry out an achievement.<sup>90</sup>

Mutual engagement always creates side between the active side and the passive side. The active side raises the rights of *Jemaah Umrah* (creditors) to demand fulfillment of performance, while the passive side can incur a burden of obligation for First Travel (debtor) to carry out its achievements. In the normal situation, achievements and counter-achievements will exchange, but, in certain conditions the exchange of achievements does not go as it should, so there emerges an event called default.<sup>91</sup>

According to Ridwan Khairandy, Fulfillment of achievement is the essence of an agreement that occurs between the debtor (First Travel) and creditor (*Jemaah Umrah*). The obligation to fulfill the performance of the debtor (First Travel) is always accompanied by responsibility, meaning that the debtor (First Travel) risks his assets as collateral to fulfill his debts to the creditor (*Jemaah Umrah*) in carrying out the achievements. There are times when a debtor (First Travel) cannot carry out his achievements or obligations which should be carried

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<sup>90</sup>Suharnoko, 2004, *Hukum Perjanjian Teori dan Analisa Kasus*, Jakarta, Kencana Prenada Media Group, p. 118

<sup>91</sup> Agus yudha Hernoko, 2013, *Hukum Perjanjian Asas Proporsionalitas dalam Kontrak komersial*, Jakarta, Kencana Prenada Media Group, p. 263

out for the creditor party (*Jemaah Umrah*). There is a barrier when the debtor (First Travel) carries out the intended performance, there are two possible reasons for not fulfilling the obligation, such as:

- a. Because of the fault of the debtor, both intentional and negligent.
- b. Because of the force (*force majeure, overmacht*), something that happens beyond the ability of the debtor, the debtor is not guilty.<sup>92</sup>

If the fulfillment of achievement obligations is not fulfilled by the debtor (First Travel), both from intentions and negligence and all of them can be blamed on him, then First Travel is said to be in default. Another term of default is breaking a promise to an agreement that has been made between one party and another.

Default in the agreement law means that the debtor (First Travel) does not carry out his performance obligations or does not carry out properly until the creditor (*Jemaah Umrah*) does not obtain what is promised by the opponent (First Travel).<sup>93</sup> Elements of default are:

- a. Debtors are not performing at all,
- b. Debtor is wrong,
- c. Debtors have no achievement at all.

According to Subekti, the debtor default (First Travel) can be implemented in several ways, namely:

- a. Do not do what he is willing to do;
- b. Carry out what is promised, but not as agreed;

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<sup>92</sup>Ridwan Khairandy, 2014, "Hukum Kontrak Indonesia dalam Perspektif Perbandingan", FH UII PRESS, Vol. 1, P. 278

<sup>93</sup>*Ibid.*

- c. Doing something that is agreed but late;
- d. Do something that according to the agreement should not be done.

The occurrence of default comes from the fault (*schuld*) of the debtor, namely not carrying out the contractual obligations that should be fulfilled by the debtor. This mistake is a mistake in the broadest sense, which is in the form of intentions (*opzet*) or negligence (*onachtzaamheid*). In a narrow sense, mistakes only mean intentions.<sup>94</sup> Errors in default are errors that cause losses to creditors. The act in the form of default causes loss to the creditor, and the act must be blamed on the debtor.

The loss must be blamed on the debtor (First Travel). If the element of intent or negligence in an event that causes a loss to the creditor (*Jemaah Umrah*) and can be accounted for by the debtor. The loss suffered by the creditor can be in the form of costs incurred by the creditor to fulfill its obligations to the debtor (First Travel), loss that befell the property of the creditor, or loss of expected profit.<sup>95</sup>

Based on the explanation above, it can be concluded that the Civil Code provides Legal Protection for both parties, both creditors and debtors to guarantee the performance of the achievements of both parties, if one party does not carry out its achievements, the injured party has legal protection and legal certainty for demanding their rights legally. because of the fact that *Jemaah Umrah* as the creditor suffered material losses reaching IDR1,000,000,000,000 (one trillion rupiahs) because of the debtor's exhaustion, First Travel. Based on this, *Jemaah*

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<sup>94</sup> Ridwan Khairandy, *op.cit*, p. 281

<sup>95</sup> *Ibid.*



*Umrah* as the debtor can claim compensation to the creditor in this case First Travel because the *Jemaah Umrah* as the debtor has the right to legal protection based on the Civil Code.<sup>96</sup>

### **3. The Legal Protection of Consumers for Failure Departure of *Jemaah Umrah* of “First Travel” Based on Criminal Code.**

One of the fundamental things in the legal protection is the equality before law (*persamaan di depan hukum*). This basic principle is closely related to the role of the state in the process of law. Besides enforcing law, state also has an obligation to provide legal protection for its citizens. Legal protection (criminal law) is provided through a system namely a criminal justice system consisting of the Police, Attorney General's Office, Judiciary and Correctional Institution, this is given by the state as a form of protection for every citizen in conflict with the law whether they are perpetrators or victims from a crime.<sup>97</sup>

From the criminal aspect, criminal liability can be requested from First Travel because it is considered to have made a mistake. Errors are very important to determine a person committing a crime or not because in a known criminal principle “there is no crime without error” (*geen straf zonder schuld*), in connection with this, there are some errors or criminal acts committed by First Travel, that is:

#### **a. Crime of fraud (article 372 of the Criminal Code)**

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<sup>96</sup> Satria Sukananda, *Tanggung Jawab Badan Usaha Bandar Udara Terhadap Perusahaan Penerbangan Akibat Adanya Return To Base di Indonesia*, (Surabaya: Jurnal Hukum Justitia Fakultas Hukum Universitas Muhammadiyah Surabaya, Vol 1 No. 1 October 2018)

<sup>97</sup> Sigit Prihanto, *Penegakan Hukum Terhadap Tindak Pidana Penipuan Calon Jemaah Umrah*, (Jurnal Hukum Khairah Ummah Vol. 12 No.4 December 2017), p. 887

- b. Crime of fraud (Article 378 of the Criminal Code)
- c. Crime of money laundering (Law No. 8 of 2010 concerning Prevention and Eradication of Money Laundering). PPATK suspects that funds belonging to prospective *Jemaah Umrah* of First Travel, apart from being used to dispatch prospective *Jemaah Umrah*, are also used by suspects to purchase assets for personal gain.

The Criminal Code provides imperative legal protection to *Umrah* pilgrims who are victims of crimes committed by First Travel. And the facts that happened were that the perpetrators of First Travel had been sentenced to prison, namely Andika Surachman and Anniesa Hasibuan as the Director of First Travel is sentenced for 18 Years of Prison and IDR 10,000,000,000 (ten billion rupiah) of sanction, Siti Nuraidah Hasibuan as director of finance and commissioner of First Travel is sentenced to 15 years in prison and with IDR 5,000,000,000 (five billion rupiah).<sup>98</sup>

Criminal justice that is applied to criminal cases carried out by First Travel has been applied correctly by using the principle of material truth which puts the evidence to the truth. This can be seen from the witness, Syahrini, who is endorsed since she is considered to enjoy free *Umrah* travel facilities and allegedly participated in enjoying the proceeds of crime committed by First Travel even though the trial was not proven.<sup>99</sup>

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<sup>98</sup> Pengadilan Negeri Depok, 2018, "Sidang Perdana Kasus First Travel", taken from <http://www.pn-depok.go.id/index.php/berita/arsip-berita/324-sidang-perdana-kasus-first-travel>, accessed on Wednesday, august 1, 2018 at 10.00 a.m

<sup>99</sup> Pengadilan Negeri Depok, 2018, "Sidang Perdana Kasus First Travel", taken from <http://www.pn-depok.go.id/index.php/berita/arsip-berita/324-sidang-perdana-kasus-first-travel>, accessed on Wednesday, august 1, 2018 at 10.00 a.m

#### **4. The Legal Protection of Consumers for Failure Departure of *Jemaah Umrah* of “First Travel” Based on Law No 37 Tahun 2004 about Bankruptcy and Suspension of Payment Obligation (PKPU)**

To avoid the establishment of bankruptcy by the court with a fixed judge's decision, a legal effort will be made that can balance the existence and function of the bankruptcy law itself, namely by Suspension of Payment Obligation (PKPU). Suspension of Payment Obligation can be submitted by debtors and creditors who have good faith, in which the application for filing a Suspension of Payment Obligation must be submitted before the decision of the bankruptcy statement is pronounced. Postponement of Debt Payment Obligations is an offer of a plan by the debtor which is to provide an opportunity for debtors to restructure their debts, which may include payment of all or part of the debt to the creditor. Suspension of Payment Obligation will bring legal consequences to all debtor assets, where during Suspension of Payment Obligation, debtors cannot be forced to pay their debts, and all execution actions that have been initiated to obtain debt repayments must be suspended.

The legal protection based on Law No. 37 Year 2004 about Bankruptcy and Suspension of Payment Obligation (PKPU) can apply the Suspension of Payment Obligation (PKPU) has been carried out by Debtors (First Travel) and Creditors (*Jemaah Umrah*). The creditor (*Jemaah Umrah*) is allowed to apply for a Suspension of Payment Obligation (PKPU), if the creditor (*Jemaah Umrah*) has

more than one creditor<sup>100</sup> and not in a position to predict that it will not be able to continue repaying the debts that have fallen and can be collected.<sup>101</sup> The Suspension of Payment Obligation (PKPU) must be submitted by the Debtor (First Travel) before there is a bankruptcy decision, after the bankruptcy statement is said, the debtor can no longer apply the Suspension of Payment Obligation (PKPU). Submission of the Suspension of Payment Obligation (PKPU) by Creditors aims to allow the debtor (First Travel) to submit a peace plan which includes part or all of the debt offer to its creditor (*Jemaah Umrah*).

Creditors (*Jemaah Umrah*) are allowed to submit applications for Suspension of Payment Obligation (PKPU). The definition of concurrent creditor is a creditor who does not have collateral rights on the assets of the debtor (First Travel) as collateral for payment of debt, while the understanding of Preferred Creditor or Separatist is the creditor holder of collateral rights and specifically the creditor.

Permanent Suspension of Suspension of Payment Obligation (PKPU) that has been terminated by the Commercial Court has a subsequent extension period which cannot exceed 270 (two hundred seventy) days from the date the decision of the Suspension of Payment Obligation (PKPU) is terminated by the Commercial Court. Concurrent creditors have the right to determine a permanent Suspension of Payment Obligation (PKPU) for a Debtor, while the Commercial

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<sup>100</sup>Law No 37 Year 2004 about Bankruptcy and Suspension of Payment Obligation (PKPU) Article 222 point 1.

<sup>101</sup>Law No 37 Year 2004 about Bankruptcy and Suspension of Payment Obligation (PKPU) Article 222 point 2.

Court is the party authorized to determine this with the approval of a concurrent creditor.<sup>102</sup>

In connection with fraud cases, First Travel has been proposed by *Jemaah Umrah* through the Suspension of Payment Obligation (PKPU) through the Central Jakarta Commercial Court. On Wednesday 30 May 2018 the Central Jakarta Commercial Court Judges gave a decision on peace or granted a peace agreement from the creditor meeting of the Suspension of Payment Obligation (PKPU) from First Travel. This decision is a follow-up to the voting meeting, aka the peace vote on the creditor on 15 May 2018. Where the result, from 47,452 (forty seven thousand four hundred fifty two) First Travel creditors who present with a bill value of IDR 749,000,000,000 (seven hundred forty nine billion), 31,811 creditors with a bill of IDR 503,000,000 (five hundred three billion) approved the peace effort, while 15,641 creditors with a bill worth IDR 245,000,000,000 (two hundred forty five billion) refused. With this decision, the debtor must settle his bills to the creditor in accordance with the proposed peace proposal.

While in the peace proposal itself there are three main provisions proposed by First Travel. First, First Travel will send the *Jemaah to Umrah*. Second, it will refund those who don't want to depart. Third, First Travel asks for six to twelve months to form a new management, so that the new dispatch option can be implemented in 2019, while the refund option can only be done two years after

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<sup>102</sup> Law No 37 Year 2004 about Bankruptcy and Suspension of Payment Obligation (PKPU) Article 228 point 6.

homologation (ratification of the judge on the agreement between the debtor and concurrent creditor to end bankruptcy).<sup>103</sup>

## **5. The Legal Protection of Consumers for Failure Departure of *Jemaah Umrah* of “First Travel” Based on Regulation of Religion Minister No 8 Tahun 2018 about Implementation of *Umrah***

The organization of the pilgrimage is a series of travel activities of *Jemaah Umrah* outside the Hajj season which include the formation, service, and protection of *Jemaah*, which are carried out by the government and/or organizers of *Umrah*. Pursuant to Article 3 of Minister of Religion Regulation No. 8 Year 2018 about the Implementation of *Umrah*, the organization of *Umrah* Travel can be carried out by the Government and/or Organizing *Umrah* Travel, which is a travel agency that has obtained permission from the Minister to organize *Umrah* trips. *Umrah* Travel Organizations are carried out by tour and travel agencies that have operational permits from the relevant ministries.

Based on Article 20 of the Regulation of Religion Minister No 8 of 2018 about the Implementation of *Umrah*, *Umrah* Pilgrimage reserves the right to protection which includes:

- a. Life, health and accident insurance;
  - b. Management of *Jemaah* documents lost during the journey of worship;
- and

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<sup>103</sup> Anggar Septiadi, 2018, “PKPU First Travel Resmi berakhir Damai, <https://nasional.kontan.co.id/news/pkpu-first-travel-resmi-berakhir-damai>, accessed on Wednesday, August 1, 2018 at 10.20 a.m

- c. *Jemaah* management that is separated and / or lost during a trip in Saudi Arabia.
- d. The amount of insurance coverage/value of benefits as referred to in paragraph (1) letter a in accordance with the provisions in travel insurance.

Furthermore Article 25 of the Regulation of Religion Minister No. 8 of 2018 about Implementation of *Umrah*, *Jemaah Umrah* is entitled to the protection of the organizer of the *Jemaah Umrah* prohibited from abandoning the *Jemaah Umrah* who cause *Jemaah Umrah*:

- a. Failed to leave for Saudi Arabia;
- b. Violating visa validity period; or
- c. Threatened security and safety

Based on Article 29 and Article 30 of the Regulation of Religion Minister No. 8 Year 2018 about the Implementation of *Umrah*, *Jemaah Umrah* are entitled to complaint facilities and organizers of the *Jemaah Umrah* trip must:

- a. Providing means of delivering *Jemaah* complaints;
- b. Having a mechanism for handling complaints from *Jemaah* and
- c. Make an official report on the handling of *Jemaah* complaints.

Regarding Sanctions has been regulated in Article 41 to Article 47 of the Regulation of Religion Minister No. 8 of 2018 about Implementation of *Umrah* which states:

1. Article 41 (1) Implementation of *Umrah* which violates the provisions referred to in Article 7 paragraph (1), Article 8 paragraph (2) and

paragraph (3), Article 10 paragraph (2), Article 11 paragraph (2), paragraph (4), paragraph (5), paragraph (6), paragraph (7), paragraph (8), and/or paragraph (9), Article 12, Article 14 paragraph (3), paragraph (5) and paragraph (6), Article 15, Article 16, Article 17, Article 18, Article 20, Article 21, Article 22, Article 23, and Article 26 are subject to written warning sanctions. (2) Implementation of *Umrah* which commits repetition of violations as referred to in paragraph (1) shall be subject to sanctions for freezing the operating license for a maximum of 2 (two) years. (3) Implementation of *Umrah* who violate the provisions as referred to in Article 24 and Article 25 are subject to sanctions for revocation of operating permits. (4) In the event that Implementation of *Umrah* lends the legality of *Umrah* permits to other parties to organize a *Jemaah Umrah*, sanctions are imposed for revoking operating permits. (5) Visa providers who violate the provisions referred to in Article 27 paragraph (3) are subject to sanctions, contract approval cannot be granted as a condition to become a visa provider for a maximum of 2 (two) *Umrah* seasons. (6) If the operational permit as a tourist travel agency is revoked by the Minister who organizes affairs in the field of tourism, the Governor, Regent/Mayor, the *Umrah* operation permit is revoked. (7) In the event that sanctions are imposed for suspension or revocation, Implementation of *Umrah* is obliged to return *Umrah* Organizing Body (BPIU) to the *Jemaah*.



2. Article 42 (1) Imposition of sanctions as referred to in Article 41 paragraph (1) to paragraph (6) is carried out based on public complaints, results of accreditation, and/or results of supervision of Implementation of *Umrah* submitted to the Director General. (2) Complaints as referred to in paragraph (1) shall be submitted in writing by attaching the reporter's identity and proof of violation.
3. Article 43 (1) The Director General shall clarify the reporter, congregation, Implementation of *Umrah* permit owner and/or other related parties who are reported to have violated the Organization of *Umrah* Travel in accordance with the provisions of the legislation. (2) In the event that the Director General is required to assign the Head of the Regional Office to make clarifications as referred to in paragraph (1). (23) The results of clarification by the Head of the Regional Office as referred to in paragraph (2) shall be submitted to the Director General as the basis for imposing administrative sanctions on violations committed by Implementation of *Umrah*.
4. Article 44 (1) In the case of need, the Director General forms a team to review the results of clarification. (2) The team as referred to in paragraph (1) can call upon the complainant, *Jemaah*, Implementation of *Umrah*, and/or other relevant parties to complete the review of reports of violations in the organization of the *Jemaah Umrah*. (3) The results of the team's review as referred to in paragraph (1) shall be submitted to the Director General as the basis for imposing

administrative sanctions on violations committed by Implementation of *Umrah*.

5. Article 45 (1) The Director General on behalf of the Minister determines administrative sanctions against Implementation of *Umrah* permit holders who are proven to violate the provisions of the legislation. (2) The Director General on behalf of the Minister determines shareholders, commissioners, and directors who have been or are being sanctioned for violations of the Implementation of *Umrah* Travel.
6. Article 46 The determination of administrative sanctions as referred to in Article 45 shall be submitted to the head of Implementation of *Umrah* and forwarded to the Head of the Regional Office.
7. Article 47 The Director General announces Implementation of *Umrah* that are subject to administrative sanctions in the mass media.

Based on the explanation above, it can be concluded that Regulation of Religion Minister Number 8 Year 2018 Regarding the Implementation of *Umrah* has provided legal protection to *Jemaah Umrah* while providing Legal Certainty to *Jemaah Umrah*.

## **B. Legal Remedy of Consumer for Failed Departure *Jemaah Umrah* of “First Travel”**

In connection with fraud conducted by First Travel, *Jemaah Umrah* have been submitted through Suspension of Payment Obligation through the Central Jakarta Commercial Court. On Wednesday, May 30 2018, the Central Jakarta Commercial Court Judges Council gave a peace decision or granted a peace agreement from Suspension of Payment Obligation's First Travel creditors' meeting. This decision is a follow-up to the voting meeting, aka the peace vote on the creditor on 15 May 2018. Where the result, from 47,452 (forty seven thousand four hundred fifty two) First Travel creditors who present with a bill value of IDR 749,000,000,000 (seven hundred forty nine billion), 31,811 creditors with a bill of IDR 503,000.00 (five hundred three billion) approved the peace effort, while 15,641 creditors with a bill worth IDR 245,000,000,000 (two hundred forty five billion) refused. With this decision, the debtor must settle his bills to the creditor in accordance with the proposed peace proposal.

While in the peace proposal itself there are three main provisions proposed by First Travel. First, First Travel will send the *Jemaah* to *Umrah*, the second will return the refund (refund) for the *Jemaah* who do not want to leave. Third, First Travel asks for six to twelve months to form a new management, so that the new departure option can be implemented in 2019, while the refund option can only be

done two years after homologation (ratification of the judge on the agreement between the debtor and concurrent creditor to end bankruptcy).<sup>104</sup>

*Jemaah Umrah* as creditors and victims of criminal acts committed by First Travel can file legal remedies if the agreed peace proposal is not carried out as appropriate. The legal effort can be taken by filing a civil claim through the District Court.

Pursuant to Article 1267 of the Civil Code the party to which the engagement is not fulfilled can choose the method that is carried out which is to force the other party to fulfill the agreement, if it can still be done, or demand the cancellation of the agreement, with reimbursement of costs, losses and interest. From Article 1267 of the Civil Code, it can be concluded if a creditor (*Jemaah Umrah*) suffers a loss because the debtor (First Travel) defaults, the creditor has an alternative to take legal remedies or rights as follows:

1. Request the implementation of the agreement; or
2. Request compensation; or
3. Request the implementation of the agreement while requesting compensation; or
4. In a reciprocal agreement, an agreement can be requested at the same time requesting compensation.<sup>105</sup>

A very important consequence of the non-fulfillment of the engagement is that *Jemaah Umrah* can request compensation for the costs, losses and interest

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<sup>104</sup> Anggar Septiadi, 2018, "PKPU First Travel Resmi berakhir Damai, taken from <https://nasional.kontan.co.id/news/pkpu-first-travel-resmi-berakhir-damai>, accessed on august 1, 2018 at 10.20 a.m

<sup>105</sup> Ridwan Khairandy, *op.cit*, p. 282

suffered. The existence of compensation obligations for First Travel in the Civil Code determines that First Travel must first be declared as being negligent in carrying out the engagement to *Jemaah* which failed to depart by First Travel.<sup>106</sup>

This negligent statement institution is a legal effort from *Jemaah Umrah* where it notifies, reprimands, and warns First Travel when it is at the latest to fulfill its achievements. If it is exceeded, First Travel is negligent in this matter. As in Article 1243 of the Civil Code, reimbursement of costs, losses and interest due to a non-fulfillment of an agreement will only begin to be obliged if the debtor has been declared negligent in fulfilling the agreement, or if something that must be given or done can only be given within a period of time has been determined.

So, the intention of being in a negligent state is a warning or statement from *Jemaah Umrah* when the First Travel party must perform at the latest. If the grace period is exceeded, then First Travel breaks the promise (default).

According to Ridwan Khairandy, the forms of negligent statements are as follows:

1. Warrant (*Bevel*)

Warrants are verbal orders (*Exploit*) of bailiffs to First Travel. In practice, said this exploit is a copy of the order containing the order that has been made left by the bailiff at First Travel who receives a warning (not an oral order)

2. Similar Deed (*Soortgelijke Akte*)

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<sup>106</sup>*Ibid.*

Deed is authentic evidence similar to the seizure's exploit. According to the doctrine, what is meant by “similar deed” is a similar legal act (*soortgelijke rechtschandelling*). So, it is similar to the order conveyed by the bailiff. For this reason, the warning of negligence can also be made through regular mail provided that in the letter there is an imperative notification that says “order” from *Jemaah Umrah* to First Travel about the deadline for fulfillment of achievements. In practice, such warning letters are known as subpoena (*sommatie*).

### 3. For the sake of the engagement itself

It may happen that the parties determine in advance when there is First Travel's negligence in an agreement, for example an agreement in the time schedule promised by First Travel. Theoretically in this case a negligent engagement is unnecessary, with the passing of a time, the negligence occurs by itself.

If First Travel has been warned or has been clearly billed as promised above, which if First Travel still does not carry out its performance, First Travel is in a default and can be stated that First Travel is in default.

With the case of default, *Jemaah Umrah* who have been harmed as a result of the failure of the contract implementation by First Travel have the right to sue in an effort to uphold their contractual rights. This is as stipulated in the provisions of Article 1267 of the Civil Code which states that Parties to whom the engagement is not fulfilled, can vote; forcing the other party to fulfill the agreement, if it can still be done, or to demand the cancellation of the agreement, by reimbursing costs, losses and interest.

The rights of *Jemaah Umrah* can be independently submitted or combined with other claims, including:

1. Fulfillment (*nakoming*);
2. Compensation (*vervangende vergoeding, schadeloosstelling*);
3. Dissolution, termination or cancellation (*ontbinding*);
4. Fulfillment plus supplementary compensation (*nakoming en aanvullend vergoeding*);
5. Dissolution plus supplementary compensation (*ontbinding en aanvullend vergoeding*).

Fulfillment (*nakoming*) is the primary achievement as expected and agreed between the *Umrah* Pilgrimage and First Travel at the close of the contract. Claims for fulfillment of achievements that occur can only be submitted if the fulfillment of these achievements has arrived the time can be submitted and implemented.

Compensation is an effort to recover losses whose achievements are subsidized, meaning that if fulfillment of achievements is no longer possible or can no longer be expected then compensation is an alternative that can be chosen by *Jemaah Umrah*.<sup>107</sup>

Based on Article 1243 the Civil Code discusses compensation which includes three things, namely:

1. cost (*konsten*) is all expenses or costs that have been incurred by the parties in the agreement.

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<sup>107</sup>Agus yudha Hernoko, 2013, *Hukum Perjanjian Asas Proporsionalitas dalam Kontrak komersial*, Jakarta, Kencana Prenada Media Group, p. 263

2. losses (*schade*) is a real loss suffered by property.
3. interest (*intresten*) is a loss to the expected loss of profit if the debtor does not default.

According to article 1244 of the Civil Code, where the First Travel position as a debtor must be punished to replace the costs and losses received by *Jemaah Umrah* due to the failure of the *Umrah* departure. If First Travel cannot prove that the engagement was not carried out or the timing of the engagement was not precisely due to something unexpected, which cannot be accounted for to him even though there was no bad faith in him. In reimbursement of costs, losses and interest because there is no fulfillment of an agreement that begins to be required. If the First Travel (debtor), even though it has been declared negligent, remains negligent to fulfill the agreement, or if something that must be given or done can only be given or done within a time that has elapsed.

According to this provision, *Jemaah Umrah* who suffer losses due to failure to leave *Umrah* or the incompatibility of service performance that has been agreed by First Travel can file a lawsuit against First Travel. The lawsuit can be submitted to First Travel, on the choice of the plaintiff in the District Court of all regions of Indonesia by using Indonesian law. Good before the court that has jurisdiction over the First Travel address or legal domicile designated in the agreement between First Travel and *Jemaah Umrah*.<sup>108</sup>

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<sup>108</sup> Satria Sukananda, *Tanggung Jawab Badan Usaha Bandar Udara Terhadap Perusahaan Penerbangan Akibat Adanya Return To Base di Indonesia*, (Surabaya: Jurnal Hukum Justitia Fakultas Hukum Universitas Muhammadiyah Surabaya, Vol 1 No. 1 Oktober 2018)