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Reconstruction of the Law on Air Transportation Tariff in order to Achieve Legal Certainty and Justice in Indonesia

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Abstract: This study aims to formulate a legal reconstruction model for airfare setting to achieve legal certainty and justice in Indonesia. The method used is normative juridical, with statutory and analytical approaches, to Law Number 1 of 2009 concerning Aviation and its derivative regulations. The results indicate that the rigid price caps regulation has proven ineffective in accommodating fare surges driven by fundamental market forces, such as rising fuel costs, unfavourable exchange rates, and modern market mechanisms. Legal reconstruction is suggested through a hybrid tariff regulatory framework that balances state control with market flexibility, allowing market forces to drive efficiency while simultaneously defending the market from anti-competitive abuse and robustly protecting the rights of consumers. This model is expected to create an adaptive tariff system, provide legal certainty, ensure social justice, and support the sustainability of the aviation market in Indonesia.

Keywords: legal reconstruction, air transportation tariffs, legal certainty, justice.

INTRODUCTION

The transformation of airfare regulations has become inevitable amidst the rapidly evolving and complex and dynamic modern aviation industry. The shifting paradigm of the global aviation industry, marked by market liberalization, digitalization of sales systems, and the implementation of dynamic pricing mechanisms, demonstrates that conventional, static regulations are no longer adequate (Haryanto, 2018). In the context of national law, airfare regulations as stipulated in Law Number 1 of 2009 concerning Aviation, particularly Articles 126 and 127, have provided a basic framework for tariff setting, but have not fully addressed the need to adapt to market dynamics. The derivative provisions, namely Minister of Transportation Regulation Number 20 of 2019 and Minister of Transportation Decree Number KM 106 of 2019, tend to maintain a static regulatory approach, making them unresponsive to changes in cost structures and market demand patterns (Susanto, 2023). The rigid price control model, while intended to protect consumers, demonstrates notable drawbacks for industry sustainability. This situation underscores the urgency of regulatory

reform to ensure balancing the competing interest of the stipulated stakeholders, by providing legal framework that is sustainable for the industry, safe for the public, and fair for the passenger.

Within this framework, the state acts as a regulator and controller in balancing market mechanisms and public interests (Zazili, 2008). Article 33, paragraph (2) and paragraph (3) of the 1945 Constitution of the Republic of Indonesia govern that essential industries affecting many people must be controlled by the state to maximize public prosperity, rather than private benefit. This mandates constitutional legitimacy for the state to manage air transportation tariffs as part of public policy (Martono, 2016). In the context of essential public services, tariffs serve as service prices and also as an instrument for distributing welfare, aimed at ensuring affordability and justice for the community. The stipulated regulations allow a balance between economic efficiency and social justice. (Nugroho dan Haq, 2019)

Nevertheless, the current tariff regulation model still exhibits various limitations, particularly in the price caps schemes stipulated in Ministerial Decree No. KM 106 of 2019. This model, while intended to manage fare affordability, demonstrates notable drawbacks for industry sustainability as well as limits airlines' flexibility in adjusting prices against market conditions. In large, the regulation has proven ineffective in accommodating modern market mechanisms characterized by dynamic, data-driven, and real-time markets. (Putra, 2021) Article 23 of Minister of Transportation Regulation Number 20 of 2019 stipulates the obligation to evaluate tariffs periodically whenever cost components change significantly. The rigid price cap provision, which lacks of flexibility and responsiveness, frequently fails to adapt to rapid and dynamic business, such as the aviation industry (Yanengga, 2022). Therefore, a more adaptive legal approach is needed so that regulations can be more effectively conducive to a dynamic and growing industry.

Progressive and responsive legal approaches are relevant as a foundation for reconstructing airfare regulations. The progressive legal framework by Satjipto Rahardjo suggests that law should not be static but law must move beyond rigid procedural formality to provide justice that aligns with evolving societal norms and community needs and awarding substantive justice. Tariff regulation, pursuant to progressive legal principle, embraces a flexibility to the dynamism of market, beyond rigid and inflexible norms. This principle also aligns with the general principles of good governance as stipulated in the Article 10 of Law Number 30 of 2014 concerning Government Administration, which emphasizes the importance of legal certainty, benefit, impartiality, and openness aspects. The reconstruction of air transportation tariff law shall address the primary weakness of the rigid model by providing a formal certainty and also create substantive justice for all stakeholders.

Within this reconstruction framework, the principles of legal certainty and justice must be placed as the primary foundation of the tariff-setting system. Legal certainty is no longer understood as a rigid norm, but rather as a certainty to adapt on rapid growth and significant socio-economic evolution. Furthermore, distributive justice shall be created through tariff policies that guarantee accessibility for all levels of society, as mandated in Article 28H paragraph (1) of the 1945 Constitution, which ensure non-discrimination in accessibility and opportunity. (Setiani, 2015) The accommodation of dynamic pricing mechanisms into the national legal framework is crucial, but must be accompanied by clear provisions to protect consumers from excessive pricing. Transparency and accountability in tariff setting must be strengthened as part of the principles of good governance so that the public has right to clear and accountable information. (Sefrus, 2017)

Reconstruction of the air transportation tariff law must also strengthen the state's role in ensuring social justice through structural and sustainable policies. Strengthening the Public Service Obligation (PSO) scheme as a subsidy instrument for disadvantaged, frontier, and

outermost (3T) regions is one concrete step to reduce the gap in accessibility to air transportation. This is align with the principle of fair efficiency and sustainability as stipulated in Article 33, paragraph (4) of the 1945 Constitution. The legal reconstruction includes a hybrid regulation model that integrates market mechanisms with proportional state intervention, periodic regulatory evaluations, and synchronization between sectoral policies. The research objective is to reconstruct legal framework of air transportation tariff that is not only able to solve existing problems, but also provides academic and practical contributions in preserving air tickets' affordability and availability, ensuring long-term industry sustainability, and delivering fairness to consumers.

METHOD

This research uses a normative juridical method that employs law as a system of norms to evaluate the principles, rules, and governing law of the stipulated air transportation tariffs by using a legislative approach and an analytical approach. The legislative approach is carried out through a comparative analysis of various relevant laws and regulations, including Law Number 1 of 2009 concerning Aviation, especially Articles 126 and 127, Regulation of the Minister of Transportation Number 20 of 2019 concerning Procedures and Formulations for Calculating Upper Limit Tariffs, and Decree of the Minister of Transportation Number KM 106 of 2019, to examine the consistency, synchronization, and suitability of norms in the hierarchy of laws and regulations. Meanwhile, an analytical approach is used to critically review legal norms using the theories of legal certainty, justice, progressive law, and responsive law, to identify weaknesses in static regulations and to formulate a legal reconstruction concept that is adaptive to the dynamics of the aviation industry. Through a combination of these two approaches, this research aims to produce comprehensive legal arguments as a basis for developing an air transportation tariff regulation model that is able to guarantee legal certainty, social justice, and the sustainability of the industry in Indonesia.

RESULTS AND DISCUSSION

The Weaknesses of the Air Transportation Tariff Regulatory and the Need for Adaptive Legal Reconstruction

The legal basis of Indonesian air transportation tariff regulatory model established through Law Number 1 of 2009 concerning Aviation, specifically Article 126 regulating tariff components, and Article 127 authorizing the Minister of Transportation to set a tariff ceiling and a tariff floor for an economy class ticket on domestic routes. The framework is designed to achieve two objectives simultaneously: protect consumers from excessive pricing and shield airlines from potentially ruinous price wars. These provisions are further elaborated in Minister of Transportation Regulation Number 20 of 2019 concerning Procedures and Formulations for Calculating Tariff Ceilings and Minister of Transportation Decree Number KM 106 of 2019, which establishes the maximum permissible fare and minimum fare. This regulatory framework normatively aims balancing competing interests between consumers and business sectors, while maintaining the stability of the national aviation industry. However, this regulatory model exhibits several fundamental weaknesses practically due to its inability to respond to the modern aviation industry. (Simanjuntak, 2016)

Main issue of airfare problems lies in the static nature of regulations while aviation industry is very dynamics and heavily influenced by fundamental market factors, such as rising input costs (fuel prices, exchange rates, and other major operational costs) or aircraft supply shortages. The calculation of the price ceiling is highly structured. The Ministry of Transportation through Regulation Number 20 of 2019 determines the ceiling based on a formula that multiplies a basic tariff by the flight distance. This calculation also considers

factors like aircraft type (with different rates for jet and propeller aircraft), value-added tax, mandatory passenger insurance, and potential surcharges for fluctuating fuel costs. Furthermore, the article 23 stipulates that fare evaluations shall be conducted in response to a significant change on cost structure at least 10% on the operational cost. In practice, these evaluation provisions have not been adequately implemented. The tariff caps have been unadjusted for more than eight years since established in 2019 resulting the formula becomes irrelevant to actual industry conditions. It indicates a mismatch between legal norms and empirical reality, which has implications for the ineffectiveness of regulations (Talib, 2015).

The rigid price caps may force airlines to establish most of the pricing allocations in the upper limit, diminishing discounted tickets allotment. The fact, where fares have surged to record highs despite the presence of price caps, demonstrates that these regulations are a blunt instrument, incapable of defying powerful market forces like sharp increases in fuel costs or severe aircraft supply shortages. The stiff tariff regulations have hampered the sub-classes strategy and dynamic pricing flexibility of airlines to promote a large range of pricing distribution. This model was designed to protect consumers from unfair pricing practices, but in practice, it actually hinders the efficiency and dynamism of market forces. In the global aviation industry, dynamic pricing mechanisms are a primary strategy for optimizing revenue for given seat inventory level and maintaining business sustainability by adjusting prices based on demand, booking time, add-on services, flight term and conditions, and passenger segmentation. When the regulations do not allow for this mechanism, price distribution is distorted, with airlines tending to sell tickets near the ceiling and reducing the allocation of low-cost tickets. The price control model, while intended to create justice and balancing competing interest, demonstrates notable drawbacks for price affordability and industry sustainability (Yuniza, 2020)

From a legal perspective, this situation indicates the failure of regulations to promote the principles of adaptability and responsiveness alligned with progressive legal theory. Progressive legal thinking by Satjipto Rahardjo suggests that the law must adapt to societal norms and community needs rather than trapped in rigid procedural formality. In this context, airfare regulations should not only be oriented towards formal legal certainty, but also towards utility and substantive justice dimensions. This agrees with the general principles of good governance as stipulated in Article 10 of Law Number 30 of 2014 concerning Government Administration. When regulations fail to adapt to any changes, the law loses its relevance and is no longer effective in governing public life. (Hidayat, 2017)

While born of a well-intentioned desire to protect consumers and meet basic needs, the price control model has not been supported by certain sectoral policies and macroeconomic conditions, contrariwise driving up the tariff. Any extra cost emerged from fiscal, energy, or exchange rate policies will greatly govern airfare cost structure. From a legal perspective point of view, a disharmony between air transportation and related policies led to inefficiency and injustice. In fact, Article 33, paragraph (4) of the 1945 Constitution emphasizes that the national economy must be managed accordingly based on the principles of efficiency with justice, sustainability, and balancing the stakeholders' interest. Therefore, tariff regulations should be designed comprehensively and linked integrally to some certain sectoral policies and macroeconomic conditions related to the aviation industry to reflect overall economic conditions. (Wulandari, 2024)

Based on the explanation, the weaknesses of the current air transportation tariff regulation model lie in its static-formed nature, its lack of adaptability to market dynamics, and its lack of integration with other relevant policies. This situation demonstrates the need for legal reconstruction that can bridge the gap between industry norms and realities. This reconstruction should be directed toward the creation of flexible regulations, based on periodic evaluation, and able to accommodate modern market mechanisms such as dynamic

pricing. A robust legal and regulatory framework that are not only provide legal certainty but also support competitive markets, protect the right of customers, create justice and sustainability in the Indonesian aviation industry.

Reconstructing of the Law on Air Transportation Tariff : The Principles of Legal Certainty and Justice

The principles of legal certainty and justice are two fundamental pillars underpinning the reconstruction air transportation tariff regulation in Indonesia. Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia governs that every public policy, including the determination of air transportation tariffs, must be based on clear, consistent, and predictable laws. Legal certainty in this context is not only defined as the existence of written norms, but also encompasses clarity of substance, consistency of implementation, and the ability of these norms to provide protection for all parties. Law Number 1 of 2009 concerning Aviation, through Articles 126 and 127, provides a constitutional mandate for the Government to manage tariff determination. In practice, the concept of legal certainty is required to prevent constructing a rigid regulation but instead build a responsive and adaptive regulation. (Yuniza, 2020)

Reinterpreting legal certainty is crucial given the highly dynamic nature of the aviation industry, which is greatly influenced by various external factors such as fuel prices, exchange rates, and other dynamism in market. Legal certainty, solely focused on normative stability without considering changing empirical conditions, can actually promote new uncertainties in practice. Legal certainty shall be seen as an adaptive legal certainty, namely the ability to provide clarity and flexibility in accommodating any changes. It aligns with the general principles of good governance as stipulated in Article 10 of Law Number 30 of 2014 concerning Government Administration, which emphasizes on legal certainty, benefit, and transparency. In this context, the reconstruction of the tariff system shall integrate normative certainty with policy flexibility. (Ulya, 2023)

On the other hand, the principle of justice in controlling air fares must be interpreted as distributive justice that guarantees equal access for all levels of society. It aligns with the mandate of Article 28H paragraph (1) of the 1945 Constitution, which states that everyone has the right to receive facilities and special treatment to obtain the same opportunities and benefits to achieve equality and justice. In the context of air transportation, distributive justice means that tariff policies must be able to guarantee the affordability of services for the public, including low-income groups and those in disadvantaged, frontier, and outermost (3T) regions. Furthermore, the principle of justice also requires a balance between the interests of consumers and business sectors. Tariff policies do not only protect the public as service users but also ensure the sustainability of the aviation industry.

The state's role in realizing legal certainty and justice in controlling air fares has a strong constitutional basis, as stipulated in Article 33 paragraphs (2) and (3) of the 1945 Constitution that governing all essential industries affecting many people must be controlled by the state to maximize public prosperity. In this context, air transportation - a strategic sector - places the state as the primary actor in regulating and controlling tariff policies. The state does act not only as a regulator but also as a guarantor for the balance between market mechanisms and public interest. Therefore, the reconstruction of the tariff system shall strengthen the state's role in ensuring that adopted policies do not solely follow market logic but also consider of social justice and public welfare' aspects.

The principles of legal certainty and justice are implemented through a transparent and accountable tariff system. While transparency in tariff setting is crucial for public to understand the basis for ticket price calculations, it may also increase public trust in government policies. This aligns with the principles of openness and accountability as

stipulated in Article 10 of Law Number 30 of 2014 concerning Government Administration, providing a guidance to every administrative decision based on clear and accountable information. Furthermore, accountability also requires an effective monitoring and evaluation mechanism of tariff implementation, so that any deviations can be promptly addressed. Thus, a transparent and accountable tariff system will strengthen legal certainty while simultaneously fostering justice for the public.

The reconstruction of the airfare controlling regulation shall be based on an integration of adaptive legal certainty and distributive justice orientation towards public welfare. This approach demands a paradigm shift from rigid regulations to flexible and responsive regulations based on the needs of society and industry. Furthermore, the role of the state shall be strengthened in ensuring a balance between the interests of consumers and business actors, as well as in ensuring that tariff policies align with constitutional principles as stipulated in the 1945 Constitution. The tariff system established through legal reconstruction will not only provide legal certainty but also foster social justice and the sustainability of the aviation industry in Indonesia.

Adaptive and Sustainable Model for Legal Reconstruction of Air Transportation Tariff in Indonesia

Legal reconstruction of air transportation tariff determination in Indonesia shall begin with a reformulation of tariff policies based on the dynamism of operational costs. The normative basis is Law Number 1 of 2009 concerning Aviation, particularly Articles 126 and 127. Its derivative, the Minister of Transportation Regulation No. 20 of 2019, shall be reconstructed to be more agile against market changes. One of the reconstruction programs is to equip the tariff system by an automatic tariff evaluation mechanism (automatic adjustment mechanism) based on economic indicators such as aviation fuel prices, exchange rate, and other major airline operational costs. The tariff evaluation mechanism, as mandated by Article 23, is conducted by transforming a conventionally manual and sampling review to a transparent digital monitoring system. The other program is the establishment of an independent body consisting of multi-stakeholder on air transportation industry (regulators, academics, industry, consumers, the state's primary economic role and other related parties) to validate the cost structure as a basis for tariff.

Furthermore, legal reconstruction shall explicitly accommodate dynamic pricing mechanisms within the constructing legal framework. It can be achieved through adjusting derivative regulations by adding the norms governing price band flexibility within the Upper and Lower Tariff Limit corridors. The relevant constructing framework is establishing a multi-tiered pricing system that allows airlines to vary prices based on booking time, demand levels, and passenger segmentation, while providing the necessary state-enforced guardrails to ensure fairness and maintain a level playing field. This approach embraces the dynamism and efficiency of a market-driven system but actively steers it with strong oversight and monitoring by the stipulated regulation.

Transparency and accountability must also be key pillars of this reconstruction model. The regulator as a mandated party should be continuously tracking the prices in the market and enforcing punishment for any violation according to the law. This requires exhaustive engagement amongst air transportation' stakeholders and also full readiness of relevant infrastructures, for instance through an integrated price reporting' platform easily overseen by the government. This aligns with the principle of transparency as stipulated in Article 10 of Law Number 30 of 2014 concerning Government Administration. This transparency will increase public trust and strengthen state' supervision.

Strengthening oversight and law enforcement are also crucial elements in reconstructing the fare system, for instance through establishing a dedicated fare monitoring

unit of the Directorate General of Civil Aviation and adopting big data analytics technology to detect any violations quickly and accurately. Furthermore, firm and proportionate administrative sanctions against fare violations, ranging from fines to route restrictions or even route blockage, need to be indiscriminately implemented to create a deterrent effect. This step is crucial to ensure that regulations are not merely normative but also having an effective enforcement power in practice.

In order to build social justice, this reconstruction model shall also strengthen the role of the state through the Public Service Obligation (PSO) scheme, as mandated by Article 33 paragraphs (2) and (3) of the 1945 Constitution, for instance by expanding the scope of PSO routes, increasing airfare subsidies based on the real needs of 3T regions and certain remote areas not having alternative mode of transportations, and implementing a cross-subsidy scheme between commercial and non-commercial routes. Furthermore, integrating PSO policies with regional development planning will be strengthening the function of air transportation as a national instrument for equitable development.

The proposed legal reconstruction model is a hybrid tariff regulation model combining the state control with the flexibility of market mechanisms. A concrete action includes harmonizing cross-sectoral regulations, including fiscal, energy, and transportation policies, to create an integrated sustainable air transportation system. Government shall establish a long-term roadmap for air transportation tariff regulatory reform, including implementation stages, performance indicators, and also periodic evaluation mechanisms. With this approach, the resulting tariff system is not only adaptive to industry dynamics but also able to guarantee legal certainty, social justice, and the sustainability of the aviation industry in a balanced manner in Indonesia.

CONCLUSION

Based on the discussion, it can be concluded that the current air transportation tariff regulation model is unable to meet the basic needs of public and also the dynamic needs of the aviation industry. It has also not fully promoted legal certainty and social justice as mandated by Law Number 1 of 2009 concerning Aviation and Article 33 of the 1945 Constitution of the Republic of Indonesia. These static regulations - that limit the airlines in accommodating modern market mechanisms – and the issues on monitoring and law enforcement, indicate an urgent need for a legal reconstruction. This reconstruction shall be oriented towards progressive and responsive legal approaches that integrate adaptive legal certainty with distributive justice, creating a balance between consumer protection, business interests, and the sustainability of the aviation industry. A hybrid regulatory model that combines state control with market flexibility is an ideal solution to address the gap between industrial norms and realities.

In this regard, it is recommended that the Government comprehensively reformulate air transportation tariff regulations by revising the Ministerial Regulation Number 20 of 2019 and refining the tariff ceiling and floor policies by incorporating an automatic evaluation mechanism based on economic indicators and dynamic pricing policies. Furthermore, transparency needs to be strengthened through an integrated price reporting platform and the development of a digital-based fare monitoring system, as well as enhanced oversight and strict law enforcement against fare violations. The government shall also expand and optimize the Public Service Obligation scheme to ensure the accessibility in the 3T (third-to-third) and certain remote regions as a form of social justice. With these steps, it is hoped that Indonesia's airfare-setting system will become more adaptive, accountable, affordable and equitable, while simultaneously supporting the long-term sustainability of the aviation industry.

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