

Indonesia Passenger's Right Compensation for Transport Accidents: Is It Fulfilling a Sense of Justice?

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Abstract: The mode of transportation—whether on land, at sea, or in the air—plays a crucial role in passenger mobility across various countries. Between passengers and carriers, binding contracts establish their legal relationship. However, a persistent issue remains: to what extent should carriers be held liable in cases of loss, injury, or death of passengers, and what are their obligations regarding compensation? The key question revolves around the scope of the carrier's responsibility to compensate passengers. As such, regulations governing carrier liability and compensation have become a critical focus in international legal studies, including in Indonesia, with comparisons drawn to several Southeast Asian countries. This research employs normative legal methodology with a conceptual framework. It is analyzed descriptively using a qualitative approach and concludes through deductive reasoning. The findings suggest that passenger compensation in several Southeast Asian countries does not fully satisfy the sense of justice. While there are regulations addressing compensation, they are often insufficiently stringent. In cases where accidents lead to legal action, the compensation amount is typically determined by the presiding judges on a case-by-case basis.

Keywords: Compensation Limits; Passengers; Transportation Law; Carrier Liability; Justice

1. Introduction

The risks associated with transportation—whether on land, at sea, or in the air—can arise unexpectedly, posing a constant threat to passenger safety. One approach to mitigating these risks is through proactive measures by transportation companies, particularly in the form of compensation for accidents.¹ However, the scope of compensation is largely determined by agreements between passengers and carriers, raising questions about fairness and adequacy. The menace of using transportation, whether on land, at sea, or in the air can occur abruptly. One modus operandi is to narrow down the risk through mitigation from the transportation companies, namely in compensation. The extent of the compensation is, however, based on the agreement between the passengers and the carrier company.

In Indonesian civil law, an agreement is deemed valid if it fulfills all the elements in Article 1320 of the Indonesian Civil Code.² The first element is all parties to the agreement must mutually consent. Then, the second element is all parties to the agreement have to be

¹ Drake, Sara. "Delays, cancellations and compensation: Why are air passengers still finding it difficult to enforce their EU rights under Regulation 261/2004?." *Maastricht journal of European and comparative law* 27, no. 2 (2020): 230-249.

² R. Subekti and R. Tjitrosudibio, *Kitab Undang-undang Hukum Perdata*, 41 ed. (Jakarta: PT Balai Pustaka, 2022), p. 371.

legally competent under Indonesian civil law. This is further elaborated in Article 330 of the Indonesian Civil Code as they have to be at least an adult who is either past 21 years old and/or has gotten married, and is not under guardianship due to their health issue, especially if it affects their memory and mental state. The third element is the agreement contains specific clauses, then the fourth element requires the agreement to have lawful causes. Hence, the agreement establishes the obligation for companies to ensure the safety of their passengers from departure to arrival. To take pleasure in this service, passengers have to pay transportation costs,³ in the form of tickets. This applies to all modes of transportation, whether in the air,⁴ at sea,⁵ or on land.⁶

One main issue in the transportation agreement is meeting accidents along the way, resulting in inflicting injuries, the loss of passengers, and/or casualties. As a consequence, the transportation company must compensate the passengers.⁷ In Jakarta, the capital city of Indonesia, the number of public transportation accidents are constantly high, notably road transportation accidents. Even though traffic density has been much reduced,⁸ there was a decrease in the number of accidents due to a decrease in social mobility and an increase in traffic discipline, based on data from the Traffic Directorate of Metro Jaya District Police.

According to BPS-Statistics Indonesia, the number of traffic accidents in 2022 are 130.258 cases, consisting of 28.131 killed persons, 13.364 serious injuries to persons, 160.449 slight injuries to a person, and 280.000 million rupiahs of material losses.⁹ Furthermore, based on data from the Ministry of Transportation, the number of cases of road accidents in Indonesia peaked at 103,645 cases in 2021. This is a proliferation of 3.62% compared to 2020.¹⁰ While in Singapore through the Annual Report 2023 of the Singaporean Police Force, which had 122 cases of traffic accidents in 2022 and 133 cases of traffic accidents in 2023, that related to accidents causing fatalities. In those cases of accident, there would be no discussion concerning the liability of the carrier to pay compensation for the passengers.

³ Siti Nurbaiti, *Hukum Pengangkutan Darat (Jalan Dan Kereta Api) (Land Transport Law (Road and Rail))*, 2nd ed. (Jakarta: Universitas Trisakti, 2020).

⁴ Zahputra Taufik Hamzah, "Kewajiban Dan Tanggung Jawab Hukum Pihak Pengangkut Pada Pengangkutan Udara Niaga Di Indonesia," *Lex Privatum IX*, no. 9 (2021): 84; Inggit Kereh, "Tanggung Jawab Pengangkut Memberikan Ganti Rugi Terhadap Penumpang Menurut Undang-Undang Nomor 1 Tahun 2009 Tentang Penerbangan," *Lex Privatum 9*, no. 2 (2021).

⁵ Yudhi Setiawan Ahmad Adhitya Pratama, Sudiarto, "Tanggung Jawab Pengangkut Terhadap Penumpang Yang Menggunakan Jasa Angkutan Laut," *Commerce Law 2*, no. 1 (2022), <https://doi.org/10.29303/commercelaw.v2i1.1351>.

⁶ Luh Putu Suryani Nyoman Gede Fajar Septiawan Putra, Desak Gede Dwi Arini, "Perlindungan Hukum Terhadap Konsumen Khusus Jasa Penumpang Angkutan Darat," *Jurnal Interpretasi Hukum 1*, no. 1 (2020): 83–88.

⁷ Kereh, "Tanggung Jawab Pengangkut Memberikan Ganti Rugi Terhadap Penumpang Menurut Undang-Undang Nomor 1 Tahun 2009 Tentang Penerbangan."

⁸ Basuki Setiyo Budi Roselina Rahmawati, Marsudi, Dianita Ratna K, Martono, "Studi Tingkat Kecelakaan Lalu Lintas Jalan Di Indonesia Pada Masa Sebelum Dan Pada Saat Pandemi Covid Tahun 2020 Berdasarkan Data KNKT Komite Nasional Keselamatan Transportasi 2015-2020 (Road Traffic Accident Rates of Previous and During Pandemic Covid19)" (Jakarta, 2020).

⁹ BPS-Statistics Indonesia, "Traffic Accident, Killed Person, Seriously Injured, Slight Injured and Expected of Material Losses Value, 2022," Transport, 2022, <https://www.bps.go.id/en/statistics-table/2/NTEzIzI=/jumlah-kecelakaan--korban-mati--luka-berat--luka-ringan--dan-kerugian-materi.html>.

¹⁰ Vika Azkiya Dihni, "Jumlah Kasus Kecelakaan Lalu Lintas Di Indonesia (2017-2021)," *databoks Transportasi & Logistik*, 2022, <https://databoks.katadata.co.id/datapublish/2022/03/24/angka-kecelakaan-lalu-lintas-di-indonesia-meningkat-di-2021-tertinggi-dari-kecelakaan-motor>.

2. Method

This research employs normative research, namely research on legal norms and principles¹¹ with a conceptual approach related to transportation laws, related to the determination of compensation limits for passengers in transportation law in Indonesia. The data studied is data of accidents. The nature of the research is descriptive¹² which describes the determination of the compensation for passengers in the transportation law in Indonesia. For concluding the conclusion, we use the reasoning of deductive concept¹³ that is concluding legal concepts in the transportation law relating to the liability of transportation companies in providing compensation, then special conclusions are drawn, namely regarding the determination of compensation for passengers.

3. Comparative Analysis of Carrier Liability and Passenger Compensation in Indonesia's Transportation Sector

The transportation or transportation sector for the State of Indonesia with a geography consisting of approximately 1500 islands, large and small, is a sector that plays an important role that determining the life of the nation and the State because transportation is a means to facilitate the economy, which can affect all aspects of life and the increasing need for transportation services for the mobility of people and goods.¹⁴ As an activity that has various aspects of life, transportation activities both on land, at sea and in the air have various problems as well. One of the most important problems is the relationship between transportation companies as carriers and passengers as consumers of public transportation. Without consumers, all the investments invested in public transportation facilities and infrastructure will be worthless. In this regard, it is important to examine how the liability of the transportation company for losses incurred to passengers, especially in terms of how to the compensation is to be paid by the carrier. Prior to answering these problems, several things related to the compensation of payment will be described, namely:

3.1. Liability of the Carriers to the Passengers

Transportation is a reciprocal agreement between the carrier and the shipper and/or passengers, where the transportation company binds itself to carry out the transportation of goods and/or people from a place to the agreed place of destination safely, while the obligation of the service user, both the shipper and/or passengers pays the freight fare.¹⁵

¹¹ Kornelius Benuf and Muhamad Azhar, "Metodologi Penelitian Hukum Sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer," *Gema Keadilan* 7, no. 1 (April 2020): 20–33, <https://doi.org/http://doi.org/10.14710/gk.7.1.20-33>.

¹² I Made Pasek Diantha, *Metodologi Penelitian Hukum Normatif: Dalam Justifikasi Teori Hukum*, 2nd ed. (Jakarta: PT Fajar Interpratama Mandiri, 2017).

¹³ Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Depok: Rajawali Pers, 2021).

¹⁴ Republic of Indonesia, "Law Number 17 of 2008 Concerning Shipping," Pub. L. No. State Gazette No. 4849 (2008).

¹⁵ Leyla Maulinasari, "General Review of Legal Relations and Responsibility of Carriers in Sea Transportation," *International Law Discourse in Southeast Asia* 1, no. 1 (2022): 96.

Based on that agreement, the elements of transportation are:¹⁶

- a. The nature of the agreement is reciprocal, where each party has the same rights and obligations;
- b. Carrying out transportation based on an agreement, where the parties must meet the conditions for the validity of the agreement as stipulated in Article 1320 of the Civil Code, the existence of an agreement, skills, certain things, and legal causes;
- c. To the agreed destination. The agreed objectives are in accordance with the objectives of the agreement at the beginning of the agreement;
- d. Safely. It means safely to the destination with nothing less. The goods sent are intact in the sense that they are not damaged, while passengers do not suffer injuries, be it minor injuries, serious injuries, permanent disabilities, mental stress. However, if the transportation is not carried out safely in the sense that the goods being shipped are destroyed, lost or partially damaged and the passenger suffered injuries, be it minor injuries, major injuries, permanent disability, mental stress, then the carrier must be liable to pay compensation to the passengers.

Liability of carriers are regulated in 4 (four) Transportation Laws in Indonesia, namely:

- a. Law Number 23 of 2007 concerning Railways in conjunction with Government Regulation Number 72 of 2009 concerning Railway Traffic and Transportation;
- b. Law Number 17 of 2008 concerning Shipping in conjunction with Government Regulation Number: 20 of 2010 concerning Transportation in Waters;
- c. Law Number 1 of 2009 concerning Aviation in conjunction with Regulation of the Minister of Transportation Number: 77 of 2011 concerning Aviation;
- d. Law Number 22 of 2009 concerning Road Traffic and Transportation.

Each of these laws specifically regulates liability of the transportation company to pay compensation to passengers in the event of an accident including the limit of compensation (Table 1). Based on the regulations regarding the liability of the transportation company, whether on land, at sea or in the air, it can be said that all transportation laws, expressly provide for the liability of the transportation company for the death or injury of the passengers being transported, i.e. if the transportation company does not fulfill its obligations to carry passengers to their destination safely, in accordance with the transportation agreement agreed between the transportation company and the passengers.

In this case, it can be noted that the regulation of the carrier's liability on road transportation, rail transportation and sea transportation regulates only the liability of the carrier for the death or injury of passengers, while the regulation of the air transportation company's liability regulates not only liability for the death or injury of passengers, but also regulates the liability of the transportation company for the mental stress suffered by passengers, even though they are not physically injured, but mentally experience prolonged trauma.¹⁷ Thus, the regulation of air carrier's liability is better than the regulation of liability of roads, railways, and sea transportation.

¹⁶ Siti Nurbaiti, *Hukum Pengangkutan Darat (Jalan Dan Kereta Api) (Land Transport Law (Road and Rail))*.

¹⁷ Christiawan, Rio, Haris Zuan, Sufian Jusoh, and Ridha Aditya Nugraha. "Foreign Direct Investment in ASEAN Airline Industry." *Hasanuddin Law Review* 10, no. 1 (2024): 43-63.

Table 1. Carriers Liability based on Indonesia Legislation

Legislation	Articles	Condition of the Passengers
Law No. 23/2007	Article 57 para (1) The Railway Transportation Company is responsible for service users who suffer losses, injuries, or death caused by the operation of the train.	Died or injured
Law No. 17/2008	Article 41 para. (1) The transportation company in the waters, is responsible as a result of the operation of the ship, for the death or injury of the passengers being transported.	Died or injured
Law No. 1/2009	Article 141 para. (1) Air transportation companies are responsible for the loss of passengers who die, and permanent disability including mental stress or injuries caused by incidents in air transportation, both those that occur on the plane and when boarding and/or disembarking from the plane.	Death, permanent disability, mental stress or injuries.
Law No. 22/2009	Article 192 para. (1) Public transport companies are responsible for losses suffered by passengers who die or are injured.	Died or injured.

Source: Indonesia legislation, 2007-2009 (Edited).

3.2. The Compensation of Payment

All applicable carrier's liability systems, namely Law No.23 of 2007; Law No.17 of 2008; Law No.1 of 2009 and Law No.22 of 2009 have determined the amount of compensation to be obtained by the injured passenger or his heirs. Based on these provisions, the regulatory system regarding the determination of compensation limit contained in three laws, namely Law No.23 of 2007 jo Government Regulation No.72 of 2009; Law No.17 of 2008 and Government Regulation No.20 of 2010 and Law No.22 of 2009 does not provide a clear system and there is no confirmation on compensation amount that must be paid.

For example, Article 192 sub article (2) which prescribes compensation to be calculated on the actual losses suffered. For the deceased passenger, it is very improper and inhumane, because losses for human life cannot be calculated. Likewise, Article 157 sub article (3) of Law No.23 of 2007, only states that the liability of the carrier is calculated based on the actual losses suffered, the limit for passengers who are injured or died is not even determined, then with the issuance of Article 168 sub article (2) of Government Regulation No. 72 of 2009, the provision of compensation for the injured based on medical expenses and compensation for passengers who died has been separated, but still not determined the limit. Moreover, in Article 43 of Law No.17 of 2008 and Government Regulation No.20 of 2010, there is not specify the amount of the limit of compensation for deceased or injured passengers cause improper and inhumane regulation, because there is no certainty in determining the amount of the limit, which is detrimental to the passengers who died or were injured. What is still better is the determination of compensation for passengers who died or were injured or seriously injured in an aircraft accident.

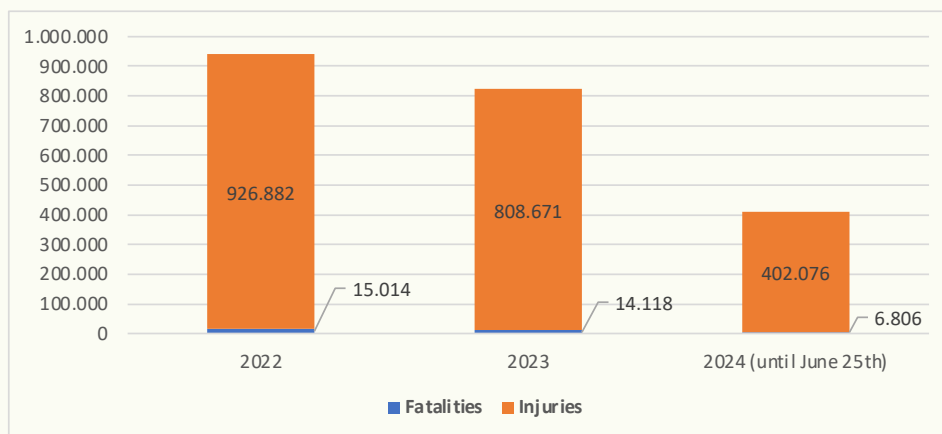
3.2. Comparison with Other Countries

To provide a comprehensive understanding of how transportation laws and carrier liabilities differ across countries, it is essential to compare Indonesia's legal framework with those of neighboring Southeast Asian countries such as Malaysia, Singapore, and Thailand. This comparison will highlight not only the similarities and differences in how these countries regulate compensation for passengers but also reveal how some nations have more stringent penalties and clearer regulations in place to address transportation-related accidents. By examining these legal frameworks, we can better understand the gaps and strengths within Indonesia's system, especially in relation to compensating victims of transportation accidents. Below is a detailed analysis of the transportation laws and compensation systems in Malaysia, Singapore, and Thailand.

Malaysia has established legal provisions addressing negligence in transportation under Section 304A of the Malaysian Criminal Code. According to this section, individuals found guilty of negligence in transportation operations may face a penalty of up to two years' imprisonment, along with a fine, although the exact fine amount is not specified. For lesser offenses, Section 337 of the Malaysian Criminal Code imposes penalties of up to six months' imprisonment and a fine of MYR 1,000. Additionally, Malaysia has regulations specific to rail transportation outlined in the Railway Act of 1991, particularly in Sections 21 and 22, as well as rules for air transport under the Air Act of 1972.

In Singapore, air transportation is governed by the Air Act of 1988, with key regulations found in Sections 17, 19, and 21 of the act, which address various aspects of air transport. As for Thailand, its Civil and Commercial Code, particularly Sections 420, 438, 448, 608, and 609, outlines legal provisions for compensation, but the specific amounts for fines are not clearly defined. Similarly, under Section 78 of the Road Traffic Act B.E. 2522, which regulates land transportation, the penalties for violators are not explicitly stated.

Chart 1. Total of traffic accidents in 2022-2024



In the context of air transportation, including aircraft and helicopters, Thailand's Air Navigation Act B.E. (1954) regulates the sector, though Section 15 does not specify details about penalties either. Thailand is the second highest country in the world for traffic

accidents, behind Libya (Chart 1).¹⁸ According to the Global Status Report on Road Safety 2023 by the World Health Organization (WHO) as cited in Table 3, a total of 17.000 people died and 15.000 people were impaired due to road injury in 2022 alone. Not to mention that Thailand even ranked first in the world (2019), for the most death rate due to motorcycle accidents.

Table 2. Compensation for land transportation in Thailand.

Acts	Sections	Compensation
The Road Traffic Act, B.E. 2522 (1979)	Sections 157/1 and 43 bis Compensation regarding a driver who consumes narcotics	1. If it causes physical or mental injury to another person, the perpetrator shall be liable to imprisonment for 1-5 years and a criminal fine from Thai Baht 20.000-100.00. 2. If it causes serious injury, the perpetrator shall be liable to imprisonment for 2-6 years and a criminal fine from Thai Baht 40.000- 120.000.
	Article 160 ter If the perpetrator drives under the influence of alcohol (DUI) or another intoxicant	1. If the perpetrator causes physical or mental injury to another person, the perpetrator shall be liable to imprisonment for 1-5 years and a criminal fine of Thai Baht 20.000-100.000. 2. If it causes serious injury to another person, the perpetrator shall be liable to imprisonment for 2-6 years and a criminal fine of Thai Baht 40.000-120.000

Regarding transport law, Thailand has more complex domestic laws concerning transportation on land, water and in the air. For the transportation on land, especially the Road Traffic Act B.E. 2522 (1979), the compensation for traffic accident caused by a driver who consumes narcotics can be seen in Table 2. While in land transportation, based on Section Section 56, If a vehicle of the transport operation licensee causes injury to any person’s life or body, the owner of the vehicle shall be liable for preliminary expenses to injured persons or in case the injured person is dead, be liable to his/her heir.

There are also several regulations produced by the Thai Government in the field of transportation, such as the Highway Act B.E> 2523 (1992), the Navigation in the Thai Waters Act B.E. 2456 (1913) as amended, the Act on the Prevention of Collision of Ships, B.E. 2522 (1979), the Civil Aviation Authority of Thailand Emergency Decree, the Civil Aviation Authority of Thailand (CAAT) is the state agency incharge; The Air Navigation Act, B.E. 2497 (1954) as amended by Ait Navigation Act No. 14, B.E. 2562 (2019), which provides the obligations set out in the Chicago Convention on International Civil Aviation; and Act on Certain Offences against Air Navigation B.E. 2558 (2015) which governs the offences committed against air navigation and aircraft; the jurisdiction and their responsibilities and competencies.

¹⁸ Rewwadee Petsirasun Nuntaporn Klinjun, Matthew Kelly, Chanita Praditsathaporn, “Identification of Factors Affecting Road Traffic Injuries Incidence and Severity in Southern Thailand Based on Accident Investigation Reports,” *Sustainability* 13, no. 22 (2021), <https://doi.org/https://doi.org/10.3390/su132212467>.

4. The Liability of Transportation Company

The liability of the transportation company and the limit of compensation provided by the transportation company to passengers who die or injured. However, in addition to the dangers public transportation accidents that occur on land, at sea or in the air. Each of transportation mode were discussed in the following paragraphs.

4.1. Road Public Transportation

In 2020 there were 7565 cases. The death were 489 people, The number of seriously injured victims were 1368 people, and minor injuries were 7.044. Furthermore, based on data from the Ministry of Transportation, the number of cases of road accidents in Indonesia reached 103,645 cases in 2021, an increase of 3.62% compared to 2020. This is due to the improvement in community mobility¹⁹. The number of traffic accidents is one with public transport accidents, as shown in the Table 3:

Table 3. Traffic Accident on the Highway

No	Year	Total Accidents	Condition of Passengers
1	2020	100.028	Die, major and minor injured
2	2021	103.645	Die, major and minor injured
3	2022	130.258	Die, major and minor injured

Source: Vika Azkiya Dihni, 2022; BPS-Statistics Indonesia, 2022 (Edited).

4.2. Railway Transportation

There were no public transport accidents involving dead or injured train passengers. Most accidents occur at the crossing of a plot, involving a third party.

4.3. Railway Transportation

Data on air transportation accident cases only occurs 1 (one) accident case, namely the crash of *Sriwijaya Aircraft*, as shown in the table 4.²⁰

Table 4. Traffic Accident in the Air

Airline Company	Occurred	Condition of Passenger
<i>Sriwijaya Air</i> . Flight Number SJ 182, crashed in the vicinity of the Thousand Islands on a flight from Soekarno-Hatta Airport to Pontianak Supadio Airport.	Saturday, January 9, 2021	All 56 passengers died, including 2 pilots and cabin crews.

Source: Ridha Aditya Nugraha, 2021 (Edited).

¹⁹ Dihni, "Jumlah Kasus Kecelakaan Lalu Lintas Di Indonesia (2017-2021)."

²⁰ Ridha Aditya Nugraha, "Compensation for Victims of Air Transportation Accident under Indonesian Legal Regime: A Review Towards Sriwijaya Air SJ-182 Accident," *Journal of Transport and Maritime Law*, 2021.

4.4. Public Transportation in Water

For sea transportation accidents throughout 2020, there have been 4 accidents in the water, several passengers were killed, missing and injured.²¹ The cases of accidents can be seen in the table 5:

Table 5. Traffic Accident on the Water/Sea

No	Name of Ship	Date	Condition of Passenger
1	<i>The Selgabadan</i> engine ship sank in the waters of <i>Trangan Island</i> , Aru-Maluku Islands.	Saturday, May 22, 2020	19 passengers were killed
2	The <i>Kasih 25</i> engine ship, sunk due to big waves while sailing from Kupang to Rote-Ndao-East Nusa Tenggara	Sunday, July 5, 2020	Out of 17 passengers, 3 were killed and 1 was missing
3	<i>Wicky Jaya Sakti</i> engine ship broke and sank because of the big waves.	Monday, May 24, 2021	7 people died and 1 person is missing
4	<i>Karya Indah</i> engine ship, on the Ternatae-Sasana route, caught fire and sank in the waters of the Limfato-Sula Island.	Saturday, May 29, 2021	1 of 275 passengers were declared missing

Source: Luthfia Ayu Azanella, 2020 (Edited).

5. Compensation Limit and Passengers' Rights in Indonesian Transportation Law

The current state of compensation for passengers involved in road and water transport accidents in Indonesia is fraught with uncertainty, as the laws governing these areas do not explicitly define compensation limits. This leaves the responsibility to the discretion of transportation companies, often based on their financial capacity and good faith, creating a potential imbalance between passengers' rights and corporate interests. In contrast, air transportation accidents, such as the Sriwijaya Air crash in 2020, are regulated more clearly, with victims' families receiving compensation as stipulated by the Regulation of the Minister of Transportation No. 77 of 2011. However, the compensation limit set in this regulation—Rp1.250.000.000—has not been updated in over a decade, rendering it potentially insufficient due to inflation and changes in the economic landscape.

Based on the previous data, it can be seen the limit of compensation for passengers who died or were permanently disabled or injured in accidents that occur on transportation on the Road and in the Waters in Indonesia, is still unknown. This is a result of no expressly stated amount of compensation in the regulations of the Road Traffic and Transportation

²¹ Luthfia Ayu Azanella, "Kaleidoskop 2020: 5 Kecelakaan Transportasi Air Di Indonesia (Kaleidoscope 2020: 5 Water Transportation Accidents in Indonesia)," *Kompas.Com*, 2020, <https://www.kompas.com/tren/read/2020/12/16/140400965/kaleidoskop-2020--5-kecelakaan-transportasi-air-di-indonesia>.

Law and the Shipping Law.²² It depends on the good faith of the Road and Waters transportation companies. While according to the previous studies such as in Sri Lanka, showed that fatalities related to the road traffic accidents reflects an estimation of the human capital-related economic cost.²³

Another study on the road traffic crashes in Cameroon, showed there are five cost components that should be estimated in road traffic crashes, namely: production loss, human costs, medical costs, property damage costs, and administrative costs.²⁴ In another study from Haddis and Afesha, if the compensation assessment should consider another element of personal injury, the Court shall process the assessment of damage based on a rule of equivalency, that ended with the need of detailed provisions or legal reform.²⁵

Besides, the socialization of the law or procedure that can be implemented for the victim to claim compensation will also be considered as an urgent need as well. For example, the merger of compensation claims in traffic criminal case and the implementation of Article 98 of the Criminal Procedure Code shall be applied in the first step.²⁶ The Government needs to determine the methods for road accidents claims of compensation. According to Azmi and Ram,²⁷ several methods can be applied, such as: the method of human capital approach, the life insurance approach, the Court award approach, the Implicit public sector valuation approach, the values of the risk-change approach or the willingness-to-pay approach (WTP), and the hybrid method. In addition, according to Miller, there are four major categories concerning losses resulting from traffic accidents, namely: medical costs, cost associated with other resources, work loss cost, and life satisfaction value of pain, suffering, and quality of life lost to victims and their families. These four categories can be considered as the total cost of all resources.

Viewed from theory of justice stated by John Rawls, concerning the contract social as the basis of justice. Rawls stated that his theory aimed to protect the parties who do not or

²² Ridwan Labatjo, "Analisis Yuridis Tentang Kedudukan Prinsip Tanggung Jawab Mutlak (Absolut of Liability) Dalam Penyelenggaraan Pengangkutan Barang Dengan Kapal Laut Di Indonesia," *Jurnal Yustisiabel* 3, no. 1 (2019): 1–15; Karen Lebacqz, *Teori-Teori Keadilan, Six Theories of Justice*. Bandung: Nusa Media, p. 62.

²³ PCJ Nayanalochana TL Gunaruwan, "Economic Cost of Human Fatalities Due to Road Traffic Accidents in Sri Lanka" An Estimation Based on the Human Capital Approach," *Journal of South Asian Logistics and Transport* 3, no. 1 (2023): 39–57, <https://doi.org/http://doi.org/10.4038/jsalt.v3i1.59>.

²⁴ Wim Wijnen Peter Taniform, Luca Persia, Davide Shingo Usami, Noella Bajia Kunsoan, Mary M Karumba, "An Assessment of the Social Costs of Road Traffic Crashes in Cameroon," *Sustainability* 15, no. 2 (2023), <https://doi.org/https://doi.org/10.3390/su15021316>.

²⁵ Nigussie Afesha Meaza Haddis, "Compensation Assessment for Personal Injury Owing to Extra-Contractual Liability: Case Study on Selected Courts," *Mizan Law Review* 17, no. 1 (2023), <https://doi.org/https://doi.org/10.4314/mlr.v17i1.2>.

²⁶ A Resopijani Maher Juanrez Lulu, Renny Rebeka Masu, "Juridical Review of the Merger of Compensation Claims in Traffic Accident Cases in Kupang City and Its Inhibiting Factors Based on Article 98 of the Criminal Code in Kupang Class 1 A District Court," *Artemis Law Journal* 1, no. 1 (2023), <https://doi.org/https://doi.org/10.35508/alj.v1i1.13325>.

²⁷ Sewa Ram Adil Ata Azmi, "Accident Victim Characteristics and Identification of Key Parameters for Compensation in Indian Context," *Urban Planning and Transport Research* 11, no. 1 (2023), <https://doi.org/https://doi.org/10.1080/21650020.2023.2235418>.

do not fulfill the senses of justice in society, both for the advantaged and the least advantaged persons in the society for the unity purpose.²⁸ The basic freedoms must be distributed in balance between rights and obligations in balance and must not be sacrificed for economic interest.²⁹ In the cases of public transportation accidents in Indonesia, the freedom to get balance between rights and obligations has not occurred, especially the passengers' rights to receive compensation. In this case, it seems that it does not fulfill a sense of justice as regulated in various transportation law in Indonesia which were protected under the economic interests of the transportation companies.

These schemes are provided by John Rawls Theory aiming on the relation to balance the rights and obligations in terms of the transportation agreement. This means that when the parties agreed, the balanced of the rights and obligations will arise for both parties, not for only one party. Determining passengers' rights to obtain compensation that is not accordance with a sense of justice will create a feeling of discomfort and safety if an accident occurs. It is necessary to set a definite compensation limit for passengers so that a sense of justice will be fulfilled.

Without a proper legal framework ensuring fair compensation for all modes of transport, passengers may feel unsafe, and their rights to justice may remain unfulfilled. To address this issue, it is crucial for the Indonesian government to revise the current laws and set definitive compensation limits, ensuring that they are reviewed and adjusted regularly in line with inflation and economic changes. Additionally, there is an urgent need to raise public awareness about the process for claiming compensation, including the possibility of merging compensation claims with criminal proceedings, as provided in Article 98 of the Indonesian Criminal Procedure Code.

Several methods for determining compensation could be implemented, such as the human capital approach, life insurance approach, court award approach, implicit public sector valuation, or willingness-to-pay approach. These methods, along with considerations of medical costs, work loss, and quality of life lost to victims and their families, could provide a more comprehensive and just framework for calculating compensation in the event of a transportation accident. Ultimately, revising the legal framework to establish fair compensation limits and ensuring passengers' rights are protected would align with Rawls' principle of justice, creating a balance between transportation companies and their passengers.

²⁸ Maduabuchi Dukor Tobenna ben Ikwuamaeze, "John Rawls' Concept of Justice: A Philosophical Evaluation," *Owijoppa* 6, no. 1 (2022): 65–80; Edor J Edor, "John Rawls's Concept of Justice as Fairness," *Pinisi Discretion Review* 4, no. 1 (2020).

²⁹ Karen Lebacqz, *Teori-Teori Keadilan, Six Theories of Justice* (Bandung: Nusa Media, 2015).

6. Conclusion

The discussion on the compensation for traffic accidents reveals an urgent need to address the current shortcomings. Due to the provisions among the regulations governing passenger's rights to obtain compensation in cases of transport accidents, the compensation payment for passenger's rights in Indonesian transportation law are still not fulfill a sense of justice for public transportation. The Government needs to establish a standardized compensation framework, because the regulations regarding limits are not strictly regulated. Including in these efforts are the determined claims processes to reduce hurdles, and the transparency for claims mechanisms. It is time for the government to review the transportation regulation which regulates passengers' rights in obtaining compensations in cases of accident in public transportation that meets the element of justice.

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