

**CHAPTER IV**  
**LEGAL ANALYSIS OF JUDGES' LEGAL CONSIDERATIONS**  
**IN DISPUTES OF ELECTRONICAL CONTRACT VALIDATION BASED**  
**ON DECISION NUMBER**  
**1391 K/PDT/2011 SUPREME COURT**

**A. Case Position Case Number 1391 K/Pdt/2011 Supreme Court**

**1. Position Case**

**Plaintiff**

Hastjarjo Boedi Wibowo, residing at Nila Street No. 3 B, RT 04, RW 01, Ciganjur Village, Jagakarsa District, South Jakarta, hereinafter referred to as the Plaintiff.

**Defendant**

PT INDONESIA AIRASIA, domiciled at the Management Office Building 2nd Floor Soekarno-Hatta, Tangerang, hereinafter referred to as the defendant, in this case the defendant is represented by his attorney Destivano Wibowo, S.H., LL.M., and friends. Advocate with an office at Menara Karya 7th Floor, Unit B & C, Jalan H.R. Rasuna Said Kav. 1-2, Kuningan, Jakarta.

**2. Fact of The Cases**

The Plaintiff is a Visual Communication Design Lecturer at Binus University Jakarta and is often to be a guest lecturer/speaker in Jakarta, in connection with the Plaintiff's profession as a Lecturer, The Plaintiff was invited

to be the sole speaker of the Visual Communication Design Study Program Workshop at the Yogyakarta Indonesian Art Institute entitled “The Challenges of Globalization to the Visual Communication Creative Design Industry” on December 12, 2008 at 09.00 WIB; to attend the event, on December 5, 2008 the Plaintiff purchased 2 (two) AirAsia flight tickets online through the website, namely for flights from Jakarta to Yogyakarta on December 12, 2008 at 06.00 WIB with AirAsia QZ7340 aircraft and for flights from Yogyakarta to Jakarta on 14 December 2008 At 16.30 WIB with AirAsia flight QZ7345 whose booking fee was paid by the Plaintiff using a visa credit card from Bank Citibank, after the Plaintiff purchased AirAsia flight tickets online, the Plaintiff then received a confirmation status stating that the Plaintiff was the Defendant's passenger for the flight schedule.

On December 11, 2008 at 14.00 WIB, the Defendant suddenly cancelled the flight unilaterally via Short Message Service (SMS) to the Plaintiff without any reason and prior notification from the Defendant to the Plaintiff, the text of the Defendant's SMS was as follows: “AirAsia: Your flight QZ7340 CGK JOG 12DES08 at 06.00 WIB was moved to QZ7344 at 15.05 WIB. For information call 021-50505088, Sorry for the inconvenience. Thank you.

After the Plaintiff received information via SMS stating that the Plaintiff's flight was cancelled, the Plaintiff immediately contacted the Defendant's call centre to inquire about the cancellation of the flight, and the Defendant's employee could only explain that the AirAsia QZ7340 plane was going to be boarded by the Plaintiff was damaged without any clear explanation, after the

Plaintiff contacted the Defendant's call centre without a clear explanation regarding the flight cancellation, the Plaintiff then asked the Defendant to replace the flight with another aircraft on the same day and time, but the Defendant stated that he was not willing to provide such accountability to the Plaintiff.

The notification via SMS from the Defendant to the Plaintiff regarding the flight cancellation which was made on December 11, 2008 at 14.00 WIB without changing the flight made the Plaintiff uneasy because the Plaintiff had to find a replacement flight ticket, whereas on December 11, 2008 the Plaintiff had to attend the 2008 odd UAS preparation meeting/ 2009 Department of Visual Communication Design located at BINUS University, Jakarta at 15.00 – 17.00 WIB. After that the Plaintiff also had to attend the Member Recruitment and Gatherings Night 2008 Indonesian Graphic Designers Association (ADGI) at 18.00 WIB which took place at 9clouds Menara Jasmsostek Lt. 9, Jl. Gatot Subroto No. 38 Jakarta;

The density of activities on December 11, 2008 made it difficult for the Plaintiff to find a replacement plane ticket that could bring the Plaintiff to Yogyakarta on time, the Defendant did not pay attention to the Plaintiff's interests as a prospective flight service user, this can be seen from the Defendant's employee who offered to return the money for the Plaintiff's ticket purchase, which can only be received by the Plaintiff within 30 working days from the notification from the defendant, then the defendant gives an ultimatum that the decision is final and invites the Plaintiff to take steps that are deemed necessary if the Plaintiff does not accept the decision.

As a result of the Defendant's act of cancelling the flight unilaterally, the Plaintiff had to find another flight ticket. With efforts that took time, energy and thought, the plaintiff finally managed to get another flight ticket which departed at 07.50 and arrived at Yogyakarta Airport at 09.05 WIB so that the plaintiff only arrived at the Workshop location at 10.00 WIB. In other words, the plaintiff was late for 1 (one) hour in carrying out his duties as a sole speaker at the Yogyakarta Institute of the Arts;

The plaintiff is very disappointed with the service provided by The Defendant, so that on his way home on December 14, 2008 the Plaintiff decided to use the Argo Wilis executive train service at 13.26 from Kutoarjo to Bandung, the Defendant's act of cancelling the flight unilaterally was clearly an unlawful act which greatly harmed the Plaintiff.

#### **B. Judge's Consideration of Case Number 1391 K/Pdt/2011 Supreme Court**

The judge's decision is the culmination of a case that is being examined and was put on trial by the judge. Therefore, of course, judges making decisions must pay attention to all aspects in it, starting from the need for prudence, avoiding inaccuracy as little as possible, both formal and material, to the existence of technical skills to make it.

The Judge says that the decision was born, grow, and develop due to moral satisfaction's aptitude or character if later the decision can become a benchmark for the same case, or can be a reference material for theorists and legal

practitioners as well as it could be the satisfaction of one's conscience if the decision is confirmed and not cancelled by the higher court.

The judge of the district court has made a decision, namely the decision Number 305/Pdt.G/2009/PN.TNG, the verdict is as follows

1. Granted the Plaintiff's claim in part;
2. To declare that the Defendant has committed an unlawful act;
3. Stating standard clauses on transfer of responsibility on airline tickets which contain:
  - Indonesia AirAsia will carry passengers and their baggage according to the date and time of flight that has been booked by the passenger but does not guarantee full accuracy, Indonesia AirAsia may make changes without prior notice;
  - In the event of circumstances beyond the ability to cause delays or cancellations of flights, Indonesia AirAsia will try to transfer passengers to other flights and any additional costs incurred will be the full responsibility of the passengers.

Considering, whereas at the level of appeal against the Defendant's application, the decision of the District Court has been upheld by the Banten High Court with its decision Number 54/Pdt/2010/PT.BTN, dated October 18, 2010.

The judge's consideration of the case number 1391 K/Pdt/2011 of the Supreme Court is as follows:

Considering, whereas the Supreme Court has an opinion that the *judex facti* is not wrong in applying the law, because there is no legal provision that prohibits the *judex facti*/High Court from taking over the consideration of the decision of the District Court which is considered correct and appropriate, so that it can be

taken into account for the decision of the High Court itself. Likewise, based on the evidence presented at the trial in accordance with the applicable legal provisions, it turned out that the Plaintiff succeeded in proving the Defendant's actions which did not transport the Plaintiff to Yogyakarta using plane No. Flight QZ7340 belonged to the Defendant and there was no force majeure that occurred at the time it was an act against the law by the Defendant.

Considering, whereas based on the above considerations, it is also evident that the *judex facti* decision in this case does not conflict with the law and/or legislation, then the cassation petition filed by the PT INDONESIA AIRASIA Cassation Petitioner must be rejected.

Considering, whereas since the cassation request from the Cassation Petitioner is rejected, the Cassation Petitioner is sentenced to pay court fees at this level of cassation.

### **C. Judge's Decision Number 1391 K/Pdt/2011 Supreme Court**

The judge's decision in the case Number 1391 K/Pdt/2011 of the Supreme Court, namely:

1. Reject the appeal from the Cassation Petitioner: PT INDONESIA AIRASIA.
2. Sentencing the Cassation Petitioner/Defendant to pay court fees at the cassation level of Rp. 500,000 (five hundred thousand rupiahs).

#### **D. Legal Analysis of Judges' Legal Considerations in the Disputes of Electronical Contract Validity Based on Decision Number 1391 K/Pdt/2011 Supreme Court**

Judicial process ends with a final decision (verdict) in which there is a sanction (punishment) against the guilty defendant, and in that decision the judge expresses his opinion about those has been considered and those become a verdict.

In civil law, an agreement is an important point because it contains many legal regulations based on a person's promise. An agreement issues an engagement, the agreement is a source of engagement in addition to other sources, namely the law. This can be seen in Article 1233 of the Civil Code which states that: Every engagement is born good because of approval, whether due to the law.<sup>163</sup>

The engagement shows the existence of a legal relationship between the parties that contains the rights and obligations of each party. According to Subekti, an engagement is a legal relationship between two parties, based on which one party has the right to demand something from the other party, and such party is obliged to fulfil it.<sup>164</sup>

The implementation of buying and selling electronic tickets (e-tickets) for AirAsia airlines via the internet is binding and applies to the parties who make it when the buyer agrees to the existing flight schedule and prices. Even though the

<sup>163</sup> Pasal 1233 KUH Perdata

<sup>164</sup> Subekti, Hukum Perjanjian, Jakarta : Intermasa, 2001, hlm.50

conditions for the validity of the agreement are not fulfilled, all of the requirements for the skills of the parties made by the merchant and customer are still valid and binding, because the skills requirements are included in subjective conditions where a requirement even though it is not fulfilled in the agreement does not cause the agreement to be invalid. However, this can be proven at the time of payment for electronic tickets that have been booked, because only adults have ATMs or credit cards. With the fulfilment of the conditions for the validity of the agreement according to the Civil Code (KUHPerdata), the AirAsia airline's electronic ticket sale and purchase agreement via the internet is valid and the provisions contained in the Civil Code (KUHPerdata) can be used. as the setting.

The validity of the agreement according to Article 1320 of the Civil Code states that there are 4 conditions for the validity of an agreement, namely: the agreement of those who bind themselves, the ability to make an engagement, a certain thing and a lawful cause.<sup>165</sup>

The existence of an electronic contract is actually a manifestation of the parties' initiative to make an engagement. This is highly protected by Article 1338 of the Civil Code which enforces the principle of freedom of contract. All agreements made legally apply as law to those who make them. An agreement cannot be withdrawn other than by agreement of both parties or for reasons which are stated to be sufficient by law. An agreement must be executed in good faith.<sup>166</sup>

<sup>165</sup> Pasal 1320 KUH Perdata

<sup>166</sup> Pasal 1338 KUH Perdata



The ITE Law provides recognition of this electronic contract in article 1 number 17, namely the agreement of the parties made through an electronic system,<sup>167</sup> furthermore, regarding the electronic system, it is stated that a series of electronic devices and procedures that function to prepare, collect, process, analyse, store, display, announce, transmit, and/or disseminate electronic information, article 1 number 5.<sup>168</sup>

The validity of an electronic contract is actually confirmed by the ITE Law in Article 5 paragraph 3 by requiring the validity of the contract (electronic document) when using an electronic system that has been certified as regulated in Articles 13-16 of the ITE Law.

Sentencing, the judge must be based on the evidence and the judge obtains the conviction that the defendant has actually done it. Apart from what is described above, what the judge needs to do is to be able to impose a sentence on the defendant, it is required that the act he has done fulfilling the elements that have been stipulated in the law. Viewed from the point of view of the occurrence of actions and the ability to take responsible, a person will be held accountable for his actions and deeds and there is no justification/forgiveness or negation of unlawful nature for his actions.

Decision Number 1391 K/Pdt/2011 The Supreme Court agrees with the decision of the Panel of Judges which considers that the defendant's action to

<sup>167</sup> Undang-Undang Nomor 19 Tahun 2016 tentang Perubahan Atas Undang-Undang Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik

<sup>168</sup> Undang-Undang Nomor 19 Tahun 2016 tentang Perubahan Atas Undang-Undang Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik

cancel the flight unilaterally is clearly an unlawful act that greatly harms the Plaintiff, as stipulated in Article 1365 of the Civil Code, which states "Every act that violates the law, who causes harm to another person, obliges the person due to his fault issued the loss, the must recover such loss."<sup>169</sup>

In addition to the above, the Judge also did not see any justification or excuse that could be the reason for the abolition of the punishment for the actions committed by the defendant. The Panel of Judges saw aggravating things, namely that the Defendant as an air transportation company had not carried out its legal obligations properly, namely by not carrying out the flight schedule that had been determined by itself so that it was very detrimental to the plaintiff.

Sentencing the defendant with the decision-making process carried out by the Panel of Judges in accordance with the applicable legal rules, namely based on valid evidence and agreeing with the verdict of the Panel of Judges which sentenced the defendant to reject the appeal from the Cassation Petitioner: PT INDONESIA AIRASIA and punish the Cassation Petitioner/Defendant to pay court fees in the cassation level of Rp. 500,000 (five hundred thousand rupiah).

<sup>169</sup> 9 Pasal 1365 KUH Perdata