

## Relevance of Law Consumer Protection on Aircraft Post Master Flight Agent

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### ABSTRACT

At the time of the accident on the Lion Air flight JT 610, there were many ideas to close the flight operating permit. In fact, if reviewed further, for whatever reason, in some "corners", there are other rights that have not even received certain legal about their protection. One of them is about airline ticket agents. Basically, according to the Consumer Protection Act, protection is not only given to consumers but businesses are also included in carrying out their trading activities. Business actors reach up to the airline agents. Moreover, before having a ticket sales permit, the agent must make a deposit to the airline ticket being sold. However, the protection that should be given in the laws and regulations does not explain the airline's obligation to return deposits to travel agents, who are likely to suffer fatal losses.

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### 1. INTRODUCTION

Technological progress in all aspects of human life is growing very rapidly especially in the era of the industrial revolution 4.0. All lines of life are facilitated by the development of information technology including transportation. Although the distance can be close to online facilities, but specifically for aircraft users remains the main alternative for many consumers, especially in an archipelago such as Indonesia.

Usually for traveling, consumers rely on the services of airline agents to get adequate services. Services offered range from ticket reservations to aspects that can spoil its customers. Unfortunately, these services can be drastically ignored by consumers when a plane crash occurs, which is certainly not the fault of the airline travel agent.

After the case of Adam Air, Malaysian Air, and Air Asia, recently the Lion Air JT 610 airline had an accident which caused its crew to die. This event invited many ideas including the closure of the flight operations permit. Even the public usually demanded that the flight be closed due to security improper reasons. In fact, if it is reviewed further regarding the closure of an airline, for whatever reason, in some "corners", there are other rights that have not even received legal certainty about its protection. One of them is about airline ticket agents.

Basically, according to the Consumer Protection Act, UUPK protection is not only given to consumers but businesses are also included in carrying out their trading activities. Business actors coverage up to the airline agent. Moreover, before having a ticket sale permit, the agent must make a deposit to the airline ticket being sold. However, the protection that should be given in the laws and regulations does not explain the airline's obligation to return deposits to travel agents, who are likely to suffer fatal losses. Based on the background of the problems mentioned above, then the problem formulation in this study include: the legal relationship between the Ticket Sales Agent and the Scheduled Commercial Commerce Air Transport Company and the relevance of the principle of legal certainty in the Consumer Protection Act in relation to paying deposit / deposit fees for Ticket Sales Agents.

## **2. METHOD**

This research is a normative legal research, which is an activity.<sup>1</sup> in this case the primary legal material used is Law Number 8 of 1999 concerning Consumer Protection, hereinafter referred to as the Consumer Protection Act. Law Number 7 of 2014 concerning Trade, hereinafter referred to as Trade Act. Minister of Transportation Regulations Number KM 25 of 2008 concerning Operation of Air Transport, hereinafter referred to as Minister of Transportation Regulations regarding PAU. Rules of trade ministry Number 11 / M-Dag / Per / 3/2006 concerning Provisions and Procedures for the Issuance of Agent or Distributor Registration Signs of Goods and / or Services, hereinafter referred to as Rules of trade ministrys concerning Issuance of SKT Agents or Distributors. Rules of trade ministry No. 22 of 2016 concerning General Provisions on the Distribution of Goods, hereinafter referred to as Rules of trade ministry concerning KUDB. The Civil Code, hereinafter referred to as the Civil Code. Secondary legal materials used are books, journals, and writings describing primary legal materials and legal concepts relating to the issues discussed. The approach used is the statutory approach and conceptual approach. The legal material will be analyzed qualitatively<sup>2</sup> and presented descriptively to solve the problems raised. Processed and presented in a descriptive manner by describing, describing and explaining according to the issues raised and reviewed in this research.<sup>3</sup>

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<sup>1</sup> Peter Mahmud Marzuki. (2005). *Penelitian Hukum: Edisi Revisi, Cet ke-13*. Jakarta: Kencana. pp. 60.

<sup>2</sup> Julianto Jover Jotam Kalalo, Chyntia Novita Kalalo Kalalo. (2018). Legal Protection Against Health Workers in Taking First Aid Medical Measures. *Musamus Law Review*, 1(1), 40-52

<sup>3</sup> Arhjayati Rahim. (2019). Diversion in the Form of Protection of Human Rights. *Musamus Law Review*, 1(2), 87-94

### 3. RESULTS AND DISCUSSION

#### 3.1 Form of Legal Relationship between Ticket Sales Agents and Scheduled Commercial Air Transport Companies

For the sake of this paper, at least the researcher must first state the definition of an agent according to positive law in Indonesia. This does not mean that the Researcher is sufficiently accepting the understanding of the agents contained in the law, but this is an attempt to formulate the nature of the Ticket Sales Agent and his legal relationship with the Scheduled Commercial Commerce Air Transport Company. In the Trade Law, an Agent is one of the general distribution chains that aims to indirectly distribute goods to the public.<sup>4</sup> There are 2 meanings about agents in positive law in Indonesia, namely:

1. Agent is a Distribution Business Actor who acts as an intermediary for and on behalf of the party who appoints him based on the agreement to carry out marketing activities of the Goods.<sup>5</sup>
2. Agent is a national trading company that acts as an intermediary for and on behalf of the principal based on an agreement to carry out marketing without transferring the physical rights of goods and / or services owned / controlled by the principal who appointed it<sup>6</sup>

From this description, the agents according to positive law in Indonesia are as follows:

1. Distribution Business Actors who are national trading companies. This means that to be called an Agent, Article 1 number 10 of the Regulation of the Minister of Trade on KUDB and Article 1 number 4 of the Regulation of the Minister of Trade regarding the Issuance of SKT Agents or Distributors determines that agents are legal entities in the form of national trade companies that distribute goods indirectly to obtain economic benefits. Distribution of goods is the marketing of goods.
2. Act as an intermediary. This means that the agent's job is to bridge the consumer with the party who entered into an agreement with the agent, in positive doctrine and law called the principal.
3. For and on behalf of parties to an agreement. This means that the legal consequences of the work done, which can change the position of the principal law either in the form of binding the principal into an agreement or releasing the assets of the principal that is binding.<sup>7</sup>

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<sup>4</sup> Basically, lawmakers divide the distribution of goods into direct distribution of goods and indirect distribution of goods. It should be noted that the phrase "goods" in the Trade Law is sharply distinguished from service. Systematically it can be concluded based on the Trade Law that indirect distribution of goods is the distribution of any tangible or intangible objects, both movable and immovable, both can be spent or cannot be spent to consumers through general distribution chains.

<sup>5</sup> Article 1 number 10 Rules of trade ministry KUDB

<sup>6</sup> Article 1 number 4 of the Regulation of the Minister of Trade concerning the Issuance of SKT for Agents or Distributors.

<sup>7</sup> Aries Buwana. (2012). *Analisis Terhadap Perjanjian Keagenan Dikaitkan Dengan Buku Iii Kuhperdata Dengan Peraturan Menteri Perdagangan Republik Indonesia Nomor: 11/M-Dag/Per/3/2006 Tentang Ketentuan Dan Tata Cara Penerbitan Surat Tanda Pendaftaran Agen Atau Distributor Barang Dan/Atau Jasa*. Jakarta: Skripsi Fakultas Hukum Universitas Indonesia. pp. 29.

4. Without transferring the physical rights of goods and / or services owned / controlled by the principal who appointed it.

From the description in point 4, it can be stated that the government limits the authority of agents in acting for and on behalf of the principals in implementing regulations, namely not to act to release the binding assets of principals that are binding. Based on the doctrine, that the consequences of actions for and on behalf of the parties to an agreement are acts carried out by an agent that can bind the principal to an agreement or release the assets of the principal. But this is limited to the act of binding the principal into agreement only.

The relationship between agents and principals is based on the form of agency agreement. Researchers see that the agency agreement is one form of a power of attorney agreement. The Agreement on granting power of attorney is regulated in Article 1792 of the Civil Code as follows:

"The granting of power of attorney is an agreement with which a person grants power to another person, who receives it for and on behalf of the authorizer carries out an affair".

The following elements of the power of attorney agreement can be described:

- a. An agreement. In this case the agreement is a power of attorney agreement. One example of a power of attorney agreement is an agency agreement.
- b. A person gives power to another person. In this case a person is the principal.
- c. Receive it for and on behalf of the Power of Attorney. In this case the recipient for and on behalf of the Authorizer is an agent.
- d. Carrying out an affair. Carrying out an affair is the object of an agency agreement

It should be noted that in carrying out a business (object of agreement), the power of attorney gives an equal position between the principal and the agent, because the agent can then act for and on behalf of the principal. Besides that the power of attorney can occur without pay.<sup>8</sup> Related to the object of the agreement, namely carrying out a business / doing work, the Civil Code does not provide concrete limits on what work can be promised in the power of attorney agreement. So it can be stated that the legislators emphasized the principle of freedom of contract for the parties as long as what was promised did not conflict with the provisions of the law, public order, and decency.<sup>9</sup> This seems to be adopted in the provisions of Article 21 paragraph (1), (2), and (7) Minister of Trade Regulation regarding Issuance of SKT for Agents or Distributors, namely:

1. The engagement between the principal and the agent, sole agent, distributor or sole distributor of foreign production goods and / or services must be in the

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<sup>8</sup> Ibid. pp 3.

<sup>9</sup> Article 1337 of the Indonesian Criminal Code "A cause is prohibited, if prohibited by law, or if it is contrary to good decency or public order". Accessed from the KUHPer Translation archive on [hukum.unstrat.ac.id/uu/bw3.htm](http://hukum.unstrat.ac.id/uu/bw3.htm) on July 10, 2019

- form of an agreement notarized by a Public Notary and a certificate from the Trade Attache of the Republic of Indonesia or the Representative Office of the Republic of Indonesia Representative Office in the principal country.
2. The engagement between the principal and the agent, sole agent, distributor or sole distributor of domestic production goods and / or services must be in the form of an agreement notarized by a notary.
  3. The agreement referred to in paragraph (1) and paragraph (2) contains at least:
    - a. Full name and address of the parties who made the agreement;
    - b. The purpose and objectives of the agreement;
    - c. Agency or Distributorship status;
    - d. Types of goods and / or services agreed upon;
    - e. Marketing area;
    - f. Rights and obligations of each party;
    - g. Authority;
    - h. Duration of the agreement;
    - i. How to terminate the agreement;
    - j. Methods of dispute resolution;
    - k. Law used;
    - l. Settlement deadline.

The essence of the power of attorney agreement is to carry out an assignment authorized by the recipient of the Power of Attorney for and on behalf of the authority, with specific purposes and objectives. If it is then concretized in the agency agreement between the agent and the principal, according to the researcher, the nature of the agency agreement is to carry out marketing a certain object of the agreement to create an effective and efficient distribution of trading objects to consumers. because the agent becomes an extension of the principal as a Business Actor or producer to channel the object of trade up to the hands of consumers, the agent itself is an inseparable part in the trading process.

The position of the parties in this matter is not only producers / business actors and consumers, but also includes agents who carry out the task of distributing trading objects. Furthermore, the Consumer Protection Act implicitly states that agents as Business Actors (although not stated in the consumer protection law, the researchers are of the opinion that distributors who also distribute goods are included in article 1 number 3 of the Consumer Protection Act) are an inseparable part of consumer protection , which must be protected based on the principle of meaningful legal certainty so that both Business Actors and consumers obey the law and obtain justice in the implementation of consumer and state protection ensuring legal certainty. unfortunately in the explanation of article 1 number 3 governing "Business Actors included in this understanding are corporate companies, SOEs, Cooperatives, Importers, Traders, Distributors, etc." have not explicitly included agents in the Consumer Protection Act. Whereas the existence of an agent in this case greatly influences the wheels of the economy, because then the principal as a Business Actor can market widely through an indirect distribution chain which in this case is his agent

and network. Based on the description of the concept of agents and principals, the researcher will then try to construct the reasoning between the Ticket Sales Agent and the Scheduled Commercial Air Transport Company.

In this case the form of legal relationship that occurs between the Scheduled Commercial Air Transport Company and the Ticket Sales Agent is an Authorization Agreement. One form of a power of attorney agreement is an agency agreement. Commercial Air Transport Company Scheduled as Principal is one of the companies operating air transportation activities. In Article 2 paragraph (1) of the PAU Ministerial Regulation regulated "Air transport activities consist of: a. commercial air transport; and b. Non-commercial air transportation. "Furthermore, paragraph (2) regulates" Commercial air transportation activities as referred to in paragraph (1) letter a include: a. scheduled commercial air transportation; and b. Commercial air transportation is not scheduled. "Scheduled commercial air transportation is defined as commercial air transportation that is carried out on fixed and regular routes and flight schedules, at certain rates and published. Whereas Ticket Sales Agents are not given a specific definition but can then be analyzed as Ticket Sales Agents are agents appointed by the Scheduled Commercial Air Transport Company to mediate between Scheduled Commercial Air Transport Company and consumers in this case are scheduled commercial air transport passengers. The Scheduled Niaga Air Transport Company is the principal (the proxy), and the Ticket Sales Agent is the agent (the proxy).

Specifically, the relationship between the two subjects is regulated in Article 96 Paragraph 1 of the PAU Ministerial Regulation which states as follows:

The Scheduled Commercial Air Transport Company can carry out marketing and ticket sales cooperation with Ticket Sales Agents. Basically, the two subjects regulated in the PAU Regulation, are Business Actors. If then judging further Article 1 number 5 of the Regulation of the Minister of Trade on KUDB, basically "Business Actors are any Indonesian citizens or business entities in the form of legal entities or non-legal entities established and domiciled in the jurisdiction of the Unitary State of the Republic of Indonesia conducting activities trade business ". As a Business Actor, Ticket Sales Agents conduct marketing services and ticket sales activities, while the Scheduled Niaga Air Transport Company operates air transportation services business activities. Furthermore, the Minister of Trade's Regulation on KUDB provides an explanation that a Business Actor can become a Distribution Business Actor when the Business Actor conducts goods distribution activities. This means that the Distribution Business Actor is a species of the Business Actor.<sup>10</sup> In further provisions in article 3 (3) the Regulation of the Minister of Trade concerning KUDB states: Distribution Business Actors who use Agents and their networks as referred to in paragraph (1) letter b consist of: Agents; Sub-agent; Prelude; Wholesaler; and retailers.

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<sup>10</sup> Article 1 number 6 of the Regulation of the Minister of Trade concerning KUDB states "Distribution Business Actors are Business Actors that carry out domestic Distribution of Goods activities."



With regard to this provision, the researcher can point out that the scope of the legal relationship specified in the Minister of Trade Regulation is too narrow. If a Scheduled Commercial Air Transport Company (Business Actor) wants to appoint a Ticket Sales Agent to market a ticket (Distribution Business Actor), then the Scheduled Commercial Air Transport Company must become a Distribution Business Actor (distributing his own ticket). this closes the possibility if the Scheduled Commercial Air Transport Company does not market its own tickets, but only wants the marketing to be carried out by general distribution chains (agents, sub agents, wholesalers, wholesalers, and retailers). If the Scheduled Niaga Air Transport Company (Business Actor) then does not become a Distribution Business Actor, normatively, there is a closed space for the Scheduled Niaga Air Transport Company (Business Actor) to enter into an agency agreement with the agent and its network. Scheduled Niaga Air Transport Company to be able to make an appointment to the agent based on the agreement must first meet the requirements as a Distribution Business Actor in this case is to market his own ticket. according to the researchers this limits the freedom of contracting the Scheduled Commercial Air Transport Company, even slows the distribution of air transportation services, because the Scheduled Commercial Air Transport Company must first issue funding to distribute its own air transportation services, then it can then appoint an agent to market the Transportation Company ticket The Scheduled Commercial Air. Furthermore Article 96 paragraph 1 of the PAU Ministerial Decree states that there are two collaborations that can be carried out between Ticket Sales Agencies and Scheduled Commercial Air Transport Companies, namely marketing and sales. In the perspective of economics, there is a fundamental difference between the concept of marketing and the concept of sales. thus Article 96 gives rise to contradictory meanings.

This difference is based on a paradigm shift in the company's management system. In the past there were various different orientations of the company, such as production orientation. Here the central point is the production process, the others are complementary to this function. Also known is the period in which the company is financially oriented. The financial function holds command during this period. also known as the period where the orientation of the company tends to sell goods that have been produced as much as possible. The next symptom that can be observed regarding company orientation is marketing orientation.<sup>11</sup> According to Phillipe Kotler, marketing is a social and managerial process where individuals and groups get their needs and desires by creating, offering and exchanging things of value to each other.<sup>12</sup> whereas sales is an integrated effort to develop strategic plans directed at satisfying the needs and desires of buyers, in order to get sales that generate profits.<sup>13</sup>

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<sup>11</sup> Mohammad Kanzunudin, *Konsep Penjualan Versus Konsep Pemasaran*, Jurnal Fokus Ekonomi Vol. 4 No. 2 Desember 2009. pp. 2.

<sup>12</sup> Wahyuni Alfira. Perbedaan Konsep Penjualan Dengan Pemasaran. [https://www.academia.edu/11662164/PERBEDAAN\\_KONSEP\\_PENJUALAN\\_DENGAN\\_PEMASARAN](https://www.academia.edu/11662164/PERBEDAAN_KONSEP_PENJUALAN_DENGAN_PEMASARAN) accessed on July 12, 2019, 00.49.

<sup>13</sup> Ibid, pp. 5

Based on the concept of sales, the company's success is to maximize the sales volume of a product that starts from existing products, then do sales and promotions on a large scale to achieve profitable sales, so that more concerned with sales rather than customer satisfaction. The seller is not reluctant to use methods (promotion) that are not honest to influence consumers to be willing to buy. Such methods will ultimately harm the company itself, because many buyers will then feel and will not repeat their purchases, so the formation of subscriptions will not be expected.<sup>14</sup> While companies that use marketing concepts emphasize that the company's success is to maximize knowledge of the needs and desires of the target market and provide desired satisfaction better than competitors, meaning that the company has a well-defined market, focus on customer needs, and integrate all marketing activities that affect customers.<sup>15</sup> The concept of marketing is a consequence of the current tight market competition. the marketing concept is present as an effort of the company to grow a unique advantage in order to continue to exist. But of course the country must still be present to maintain a fair business competition climate. In connection with article 96 paragraph 1 of PAU Transportation Decree, this needs to be considered, because sales and marketing are two different economic concepts.

Furthermore, researchers need to make sense of article 6 paragraph 1 letters c and d of the Minister of Trade Regulation regarding KUDB. Distribution Business Actors in distributing Goods indirectly, as referred to in Article 3 paragraph (2) and paragraph (3) must fulfill the provisions: Agents can only distribute Goods to Sub Agents, Wholesalers, Wholesalers and / or Retailers; and Sub-Agents can only distribute Goods to Wholesalers, Retailers.

Based on the regulation above, agents and sub agents are limited to distributing goods to the network, namely, Sub-agents, Wholesalers, Wholesalers and or Retailers for agents and wholesalers, wholesalers and or retailers for sub-agents. Concretely, based on Article 6 paragraph 1 letters c and d of the Minister of Trade Regulation regarding KUDB, Ticket Sales Agents, cannot directly market to consumers, but can only market to the network below. As for the network that is underneath (excepted by sub-agents, because sub-agents are then limited, they can only market goods to wholesalers, wholesalers, and retailers (Article 6 paragraph (4) of the Minister of Trade Regulation on KUDB)). According to the researcher, the limitation of ticket sales agents only to do ticket marketing to the network below does not have a strong foundation. It should be remembered, that the context of freedom of contract guarantees the parties to determine the contents of the agency agreement, including the agreement to hold ticket marketing directly to consumers. Then if there is an argument that states that the limitation of agents only to do marketing in the network underneath is with the aim of creating a fair business competition climate and fostering middle-to-low distribution

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<sup>14</sup> Mohammad Kanzunudin, Ibid, pp. 4.

<sup>15</sup> Ricky Yudha Saputra. (2018). *Strategi Pemasaran Agen AJB BUMIPUTERA 1912 Dalam Mempertahankan Loyalitas Nasabah BP-Link Syariah (Studi Kasus AJB Bumiputera 1912 Cabang Blitar)*. Tulungagung: Skripsi Institut Agama Islam Negeri Tulungagung. pp. 21.



business actors, because it is feared that there will be a monopoly by the agent by mass marketing of tickets. the wrong one. However, the principle of freedom of contract cannot be ignored, with the reason of increasing the economic growth of one of the parties. However, this does not mean that the state cannot regulate the legal relationship between the Ticket Sales Agent and the Scheduled Commercial Air Transport Company. Countries can still impose restrictions such as Ticket Sales Agents can still do ticket marketing with certain restrictions, for example limiting the number of airplane tickets sold by Ticket Sales Agents, so that there is no monopoly in trade.

The limitation that the researcher intends is to attempt to balance the value of legal certainty and freedom. Legal certainty is then characterized in how then each law regulation harmonizes with each other.<sup>16</sup> The difference between the marketing concepts is one example of the disharmony of the current legal arrangements regarding agents. the consequence of the disharmony is that it raises problems at the theoretical level of what can be promised in the agency agreement. It should also be pointed out that sales are then compared to marketing in the above explanation, not the same as selling goods which are an integrated part of marketing.

- It appears that there is a blurring in the phrases "marketing" and "selling" in the regulation of the PAU, the Regulation of the Minister of Trade on the KUDB, and the Trade Law. This raises legal uncertainty about the concept of an agent that can be promised in an agency agreement.
- Lawmakers should clearly distinguish between marketing concepts and sales concepts, because this is related to creating legal certainty about the concept of agents in Indonesia. according to the researcher it is appropriate that lawmakers use the concept of marketing in agents in Indonesia. thus creating a business climate that does not merely view consumers as objects in the production process.
- In addition, related objects that can be promised in an agency agreement create legal uncertainty, because in the Regulation of the Minister of Trade regarding the issuance of SKT Agents or Distributors, goods and / or services are mentioned, while in the Trade and Rules of trade ministry Act concerning KUDB states that only goods can be distributed. Consequently Ticket Scheduled Commercial Air Transport Company tickets cannot be distributed through

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<sup>16</sup> Harmonious state is one element in the legal norm system. According to Romi Librayanto, the legal norm system consists of validity, harmonization, and interpretation elements. In relation to harmonization, there are 3 forms of linkages that characterize a harmonious legal norm system, which is vertical harmonization (between a regulation and its implementing regulations to the lowest level), horizontal harmonization (between a regulation and other regulations, at the same level and have the substance and the related regulations that are regulated), and diagonal harmonization, which is a regulation with other regulations that do not have the same level and are not implementing regulations with each other, but have the substance of the substance that is regulated. Read more Romi Librayanto. (2016). *Sistem Norma Hukum Dalam Mewujudkan Rumusan Norma Hukum Yang Ideal (Kajian Terhadap Peraturan Perundang-Undangan Bidang Pendidikan Di Indonesia)*. Makassar: Disertasi Fakultas Hukum Universitas Hasanuddin.

marketing by the Ticket Sales Agent, because the object is air transportation services.

- Business Actors should not need to be a Distribution Business Actor to be able to make an appointment to a Ticket Sales Agent through an agency agreement to be able to do ticket marketing. This aims to protect the freedom of the Scheduled Commercial Air Transport Company, and to accelerate and improve the distribution of goods and / or services in the form of ticket marketing.
- Agents and sub agents should also be able to market tickets directly to consumers. Article 6 paragraph 1 letters c and d of the Minister of Trade Regulation regarding the KUDB injure the principle of freedom of contract, because it should be given the opportunity for a Scheduled Commercial Air Transport Company if it wants marketing done by the Ticket Sales Agent to consumers directly. According to the researcher, the limitation is enough to tighten the requirements regarding ticket marketing by Ticket Sales Agents to consumers.

Next, the researcher will present what elements of the Ticket Sales Agent and the Scheduled Commercial Air Transport Company should be in an agency agreement.

Ticket Sales Agent Elements:

- a. Distribution Business Actors, namely national trading companies, which distribute goods and or services indirectly to obtain economic benefits in the form of commissions from the agreed business. The distribution referred to here is the marketing of services, the service in this case is the Scheduled Commercial Air Transport Company ticket.
- b. Acting as an intermediary. i.e. bridging consumers through the marketing of services in the form of Scheduled Commercial Air Transport Company tickets, and / or marketing services in the form of Scheduled Commercial Air Transport Company tickets to the agent network, namely Sub-Agents, Submissions, Wholesalers, and Retailers.
- c. For and on behalf of the Scheduled Commercial Air Transport Company in an agreement. This means that due to the legal consequences of the work carried out by the Ticket Sales Agent, it can change the legal position of the Scheduled Commercial Air Transport Company that is binding on the Scheduled Commercial Air Transport Company in an agreement with a third party (passenger / ticket buyer in marketing the Ticket Sales Agent to the consumer. , wholesaler, wholesaler and retailer in marketing Ticket Sales Agents to the network below)

Scheduled Commercial Air Transport Company Elements:

- a. Business Actors or Distribution Business Actors, namely Scheduled Commercial Air Transport Company, whose business activities are trading air transportation services.

- b. Acting as Principal. In this case the Scheduled Commercial Air Transport Company which appoints agents for the marketing of air transportation services that are owned / controlled.
- c. Tied to a third party for the actions of a Ticket Sales Agent in the ticket marketing hall of the Scheduled Niaga Air Transport Company.

### **3.2 The Legal Protection of Ticket Sales Agents in Relation to the Payment of Deposits / Deposits by Ticket Sales Agents.**

The function of law as a social control tool is to establish the behavior that is considered to be from the rule of law.<sup>17</sup> Therefore the rule of law formed must reflect the philosophy of life of the nation or at least not in conflict with the nation's moral values and Pancasila values.<sup>18</sup> First, it is necessary to state Article 96 paragraph (2) of the Minister of Trade's Regulation:

If in the cooperation as referred to in paragraph (1) the Scheduled Commercial Commerce Air Transport Company requires the Ticket Sales Agent to surrender the security deposit, then the security deposit can be paid through an escrow account or clearing house or designated bank based on an agreement between the two parties.

The legal facts that can be identified are as follows:

- a. The intended collaboration is cooperation in an agency agreement. This researcher pointed out by linking exposure to the first sub discussion.
- b. Air transport can require / not require that the Ticket Sales Agent submit a security deposit.
- c. Regarding the mechanism of payment of bail, Article 96 paragraph (2) Minister of Transportation Regulations PAU does not provide a regulation that is forced (*dwingenrecht*) but only regulates (*aanvullenrecht*) and is left to the freedom of the parties. This can be observed in the words "can" and the phrase "or".

It is important to remember that the security deposit provided for in article 96 paragraph (2) is not subject to the legal context of the guarantee. The guarantee law regulates the legal relationship between the guarantor and the recipient of the guarantee in relation to the civil liability agreement. This does not have a correlation because the "security deposit" is given not based on the events of the loan agreement, but was born from a civil event authorization agreement (concretely the agency agreement). Ticket Sales Agent, has never entered into a debt agreement with the Scheduled Niaga Air Transport Company to market tickets from the Scheduled Niaga Air Transport Company. So that the phrase guarantee money is not appropriate and provides multiple interpretations (multiple interpretations). The next question is whether the obligation to pay a security deposit is in line with the principle of propriety? It should be stated what are the parameters of the propriety principle. In this case, "contrary to propriety" is if: (1) the act is very detrimental to others without

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<sup>17</sup> Fitri Pratiwi Rasyid, Audyna Mayasari Muin. (2019). Adjustment of the Foundation's Articles of Association Judging from the Law Enforcement Perspective. *Musamus Law Review*, 1(2), 73-86

<sup>18</sup> Julianto Jover Jotam Kalalo. (2018). *Politik Hukum Perlindungan Hak Ulayat Masyarakat hukum Adat di Daerah Perbatasan*. Makassar: Disertasi Universitas Hasanuddin. pp. 98

proper interests, and (2) the act is useless or poses a danger to others. The misuse of rights (*misbruik van recht*) that occurred in the famous "fake chimney" case decided by the Colmar Court on May 2, 1855, proves that vain and harmful actions of others are also against the law.<sup>19</sup> then it is necessary to ask the first question whether the obligation to pay a deposit is very detrimental to Ticket Sales Agents without proper interests? The second is whether the obligation to pay a security deposit is not useful for Ticket Sales Agents?

General election activities are also a means of channeling the human rights of citizens who are very principle.<sup>20</sup> Related to the issue of proper interest and whether it is useful or not useful can be stated, the existence of the security deposit here is intended as part of the interests of the Scheduled Commercial Air Transport Company to see good faith and the capacity of the Ticket Sales Agent. In the event of doubt, then it is certainly a logical consequence for the Scheduled Commercial Air Transport Company to ensure that the agent will carry out the mediation of ticket marketing as well as possible. The phrase "if" in article 96 paragraph (2) Minister of Transportation Regulations PAU reflects the principle of freedom of contract. In this case the Scheduled Commercial Air Transport Company has the freedom to require / not require the Ticket Sales Agent to pay a security deposit. In the event that the Scheduled Commercial Air Transport Company does not hesitate, then of course the company will not provide a guarantee deposit obligation, because the Scheduled Commercial Air Transport Company believes that the Ticket Sales Agent will carry out its duties as well as possible. The opposite is true if the Scheduled Commercial Air Transport Company is in doubt in good faith or the capacity of the Ticket Sales Agent, the company will certainly require the agent to provide a security deposit as a "guarantee" if the results of the sale of the scheduled commercial air transport ticket are not available or not given by the Sales Agent Ticket. Here it can be seen that the interest is to convince the Scheduled Commercial Air Transport Company to have good faith and the capacity of the Ticket Sales Agent, while the ticket payment is to cover compensation for the Scheduled Commercial Air Transport Company if in this case the ticket sales results are not paid by the Ticket Sales Agent . The researcher is of the opinion that if the Scheduled Commercial Air Transport Company provides an obligation to pay bail by the ticket sales agent, this is appropriate.

Furthermore, what needs to be analyzed is whether the obligation to pay bail has provided legal certainty for Ticket Sales Agents? At the level of reality as explained in the background, there is absolutely no regulation that the guarantee money paid to the Scheduled Niaga Air Transport Company will return when something unexpected happens, such as if the Scheduled Niaga Air Transport Company is dissolved, or the company stop their business, so that even at the conceptual level, agents and principals

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<sup>19</sup> Shidarta. (2015). *Mengungkit Kembali Konsep Dasar "Perbuatan Melawan Hukum"*. Diakses melalui <https://bussiness-law.binus.ac.id/2015/01/27/mengungkit-kembali-konsep-dasar-perbuatan-melawan-hukum/> accessed on July 13, 2019, at 21.47.

<sup>20</sup> Yusdar. (2019). Accessibility of Persons with Disabilities in Realizing Elections with Integrity. *Musamus Law Review*, 1(2), 105-114

have an equal position, but at the empirical level, the position of the agent in this case is very weak. Whereas, as explained previously, agents are an inseparable part of Business Actors (Scheduled Commercial Air Transport Company) and consumers (passengers), so agents should also be specifically regulated in the Consumer Protection Act because agents are an important part of the trading process in this case. is the distribution of goods and or services. further arrangements regarding agents in general (including Ticket Sales Agents. Article 1 paragraph 1 of the Consumer Protection Act stipulates that Consumer Protection is any effort that guarantees legal certainty to provide protection to consumers. A sentence stating "all efforts that guarantee certainty law "is expected to be a stronghold to negate arbitrary actions which are detrimental to Business Actors only for the benefit of consumer protection. The principle of legal certainty in the Consumer Protection Law based on Explanation of article 2 paragraph 5 states" the principle of meaningful legal certainty so that both Business Actors and consumers obey law and obtain justice in the implementation of consumer protection and the state guarantees legal certainty. "Here the political policy of national law formation must not only protect the interests of consumers and also Business Actors, but also includes Distribution Business Actors such as agents conduct intermediaries to market goods and or services to consumers.

According to the researcher, the problem about the security deposit is not the amount of the security deposit, or whether the security deposit is appropriate or not, because the researcher has reasoned, that the security deposit is appropriate. Problems arise because the state does not interfere in regulating the mechanism of payment of bail, but only stipulates legal regulations that are complementary, not coercive. Article Minister of Transportation Regulations as long as the phrase "the security deposit can be paid through an escrow account or clearing house." The legal consequence of this phrase is that there is no compulsive obligation from the state regarding the mechanism of payment of bail, but it is left to the freedom of contract between the scheduled air transport company and the Ticket Sales Agent whether to use an escrow account or clearing house or bank which is then agreed between the two parties. This opens space for the Scheduled Niaga Air Transport Company to establish a standard clause in the agency agreement contract that the payment of security deposit must be submitted to a bank account owned by the Scheduled Niaga Air Transport Company, not to an escrow account (one example of a joint account) or clearing house (client transaction settlement agency). If this then occurs, and the company is dissolved or the company ceases its business, the Ticket Sales Agent has the potential to suffer loss if the security deposit is not returned, because there is no neutral third party to then supervise and assist the implementation of the client's transaction settlement.

According to the researcher, this is one concrete example of that the government must set restrictions on the principle of freedom of contract in certain circumstances. It is true that the principle of freedom of contract is a person's freedom of rights, and according to Peter Mahmud Marzuki, business would not be possible without the protection of the principle of freedom of contract. However, he also states that this



principle is impossible without absolute limitations. These limits can change seoring with the times and the public interest.<sup>21</sup> The researcher added that if a freedom has the potential to place one of the parties at a disadvantage, in this case a Ticket Sales Agent, the country should impose restrictions.

If the deposit payment by the Ticket Sales Agent is only submitted to the agreement of the parties without limitation in the form of payment obligations through a joint account or client transaction settlement agency, then there is no coercive tool for the scheduled commercial air transport company to return the security deposit previously paid by the Ticket Sales Agent . so according to the researchers, this creates legal uncertainty for Ticket Sales Agents regarding the refund of the security deposit that has been paid. One meaning of legal certainty is predictability to determine what laws apply to concrete problems.<sup>22</sup> In this case, there should be a mechanism governing the mechanism for how to pay bail by the Ticket Sales Agent and how to return the bail if the Scheduled Commercial Air Transport Company.

Furthermore, researchers can provide recommendations that the transportation ministry should change Article 96 paragraph (2) Minister of Transportation Regulations PAU on the phrase "can" become "mandatory" and eliminate the phrase "or bank designated based on an agreement between the two parties", because it creates legal uncertainty for Ticket Sales Agents. according to the researchers this is wise, because the solution to this problem must pay attention to the interests of the Scheduled Commercial Air Transport Company, and Ticket Sales Agents. in this case the Scheduled Commercial Air Transport Company can still determine the obligation to pay a security deposit if necessary, while the payment of the security deposit is required to do it through a joint account or client transaction settlement agency, so that it also guarantees the interests of the Ticket Sales Agent regarding refunding the security deposit, if any the agency agreement ends because the Scheduled Commercial Air Transport Company is dissolved or closes its business. It also explains that the regulation in article 96 paragraph (2) of the current PAU Decree is a supplementary law (*aanvullend recht*), which can be waived by the parties if it has been further stipulated in the agreement of the parties. after the amendment, the legal regulation will become a legal force (*dwingen recht*) so that it is forced and cannot be ruled out by the Scheduled Commercial Air Transport Company and Ticket Sales Agents. This recommendation can then be regulated in the Consumer Protection Act, because the Consumer Protection Act is a legal regulation that specifically addresses protection for parties involved in national trade in Indonesia, which also includes an agent (ticket sales agent) as an intermediary who distributes goods and / or services.

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<sup>21</sup> Peter Mahmud Marzuki, *Ibid.* pp. 172

<sup>22</sup> Van Apeldoorn's opinion about the meaning of legal certainty, the first is what can be determined what law applies to concrete problems, the parties to the litigation can already know from the outset what provisions will be used in the dispute. The second is legal protection, in this case the parties to the dispute can be avoided from arbitrary judgment, this means that legal certainty also limits parties who have authority related to one's life, namely judges and regulators. This explanation is quoted in Peter Mahmud Marzuki, *Ibid.* pp. 98.



#### 4. CONCLUSION

In this case the form of legal relationship that occurs between the Scheduled Commercial Air Transport Company and the Ticket Sales Agent is an Authorization Agreement. One form of a power of attorney agreement is an agency agreement. The state does not interfere in regulating the mechanism of payment of bail, but only stipulates legal regulations that are complementary, not coercive. Article Minister of Transportation Regulations as long as the phrase "the security deposit can be paid through an escrow account or clearing house" and the phrase "or a bank appointed based on an agreement between the two parties". The legal consequence of this phrase is that there are no compulsory obligations from the state regarding the mechanism of payment of bail, but it is left to freedom of contract between scheduled commercial air transport companies and Ticket Sales Agents whether to use an escrow account or clearing house or bank which is then agreed upon between the two parties.

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