

THE RESPONSIBILITY OF AVIATION COMPANY LAWS AGAINST GIVING AMOUNT COMPENSATION BENEFITS FOR AIRASIA ACCIDENT VICTIMS QZ8501 TO INDONESIAN CITIZENS

by Sabungan Sibarani

Submission date: 24-May-2019 01:34PM (UTC+0700)

Submission ID: 1135287937

File name: The_Responsibility_of_Aviation_Company_Laws_etc_-_revision.docx (33.71K)

Word count: 3382

Character count: 17704

THE RESPONSIBILITY OF AVIATION COMPANY LAWS AGAINST GIVING AMOUNT COMPENSATION BENEFITS FOR AIRASIA ACCIDENT VICTIMS QZ8501 TO INDONESIAN CITIZENS

Sabungan Sibarani
Law Faculty, Borobudur University, Jakarta, Indonesia

ABSTRACT

Air transport is an option to transport passengers between cities and between countries, with the possibility of a relatively higher consideration of other transport services. The research method used in this research is the method of legal research of normative that is research which gives systematic explanation of rules governing a certain legal category, analyze the relationship between regulation explain the difficulty area and may predict future development. The result of the research indicates that the legal effort which can be used as the basis for the compensation claim for Air Asia QZ8501 accident victim of Indonesian citizen is Article 141 Paragraph (1) Law Number 1 Year 2009 concerning Flight and Article 2 Sub-Article a of Implementation of Minister of Transportation Number 77 Year 2011 About Responsibilities of Air Transporters. And the Indonesian government's efforts to provide protection to passengers especially in the case of national aviation accident compensation are to demand AirAsia to provide compensation of 1.25 Billion Rupiah with reference to the provisions in Ministry of Transport Regulation (Permenhub) No.77 Year 2011 on Responsibilities of Air Transport Carrier. AirAsia Company pursuant to Permenhub No 77 Year 2011 that the airline should provide compensation or compensation of Rp1, 2 billion - Rp1, 4 billion if consumers who died due to plane crash.

Keywords : Flight law, compensation, AirAsia.

A. INTRODUCTION

It is undeniable that in this dynamic world the development of all aspects of life is so advanced, supported by the development of science and technology. In world of commerce for example, distance is not a problem for the implementation of a sale and purchase transactions because of advances in the field of transportation that support the implementation of the sale and purchase transactions. Advances in the field of land, sea and air transportation, as is happening now more smoothly the flow of goods delivery between inter-city, inter-island, and even between countries. (Soegijatna, 1995: 2)

The importance of transportation is reflected in the increasing need of transportation services for the mobility of people and goods in the country, from and abroad, which acts as a driver and driver of regional growth and regional development. The responsibility will be greater if the distance traveled in terms of transporting passengers further away. For that the underwriters answer will

usually try to use the means of transportation that is fast, safe and cost is not too high compared with other modes of transportation (Martono, 1987: 102) Air transport is an option to transport passengers between cities and between countries, with the possibility of a relatively higher consideration of other transport services.

The higher the flight technology, the flight safety level will be higher also. However, the fact proves that the calamity that hit the aviation world is still happening, as well as the accident that hit Air Asia flight number QZ8501 that fell in the waters of Karimata strait, Central Kalimantan.

Aircraft type Air Bus A320 series 200 was made in 2005, first flown on 5 September 2008 and accepted by Air Asia airlines on October 16, 2008. On December 28, 2014, Air Asia flight QZ8501 Surabaya-Singapore flight route is flying from Surabaya at 05.20 WIB and scheduled to arrive in Singapore at 08.30 local time, but the Juanda Airport control tower, Surabaya, East Java declared last contact with the aircraft at 7:55 pm. In the manifest plane carrying carrying 162 Passengers, consisting of 138 adult passengers, 16 children, 1 baby, and 7 crew (nasional.harianterbit.com).

In a note black box is not seen any indication of the effect of weather as the cause of the fall of the aircraft. He stated, before the discovery of the cause of damage to the aircraft type Airbus A320, there are four times the activation of a warning sign or master caution. The first disturbance occurred in the system Rudder Travel Limiter Unit (RTLU) at around 06:01 pm when the plane at an altitude of 32,000 feet. "The pilot performs the procedure as stated in Electronic Centralized Aircraft Monitoring (ECAM). The second disturbance occurred the next 8 minutes, and still on the RTLU system. Similarly, which occurs during the third disturbance around 06.13, the pilot can still continue the flight.

The Air Asia accident event QZ8501 certainly left deep wounds for the victims' families. What else is there are issues stating that the flight is illegal so as to panic the family because of concerns will not get compensation in accordance with what is regulated by national and international legislation.

The Air Asia QZ8501 accident case is the alleged flight outside of the flight schedule so that the flight is declared an illegal flight. This is complicated, because according to the Executive Director of the General Insurance Association of Indonesia (AAUI) Julian Noor, insurance will not guarantee events that are against the law and violate public policy (Prathe: 2018).

At the level of international practice, the value of compensation and insurance is governed by the Montreal Convention 1999. The international agreement is known as the MC99 document code, which refers to a meeting *The International Civil Aviation Organization* (ICA) in Montreal-Canada, in 1999. The Montreal Convention 1999 to date has not been ratified by Indonesia so that it has implications for the provision of indemnification by the victim's heirs. In the case of the Air Asia accident QZ8501, Martono considers the convention as applicable as the Warsaw Convention of 1929 because this Convention has been ratified by Indonesia (Martono, 2018).

B. LITERATURE REVIEW

1. Concept of Consumer Protection Based on the Principle of Responsibility

The main basis of this theory of legal responsibility theory, states that if consumers suffer losses due to using services and / or a product, then the business actor must pay compensation to the consumer as a form of responsibility. Thus, the settlement of the problems caused by aviation accidents, the users of air transport services suffering losses due to aircraft accidents² was born due to the demands of responsibility based on justice in exercising the rights and obligations of the parties involved in the operation of air transport by considering the principle of expediency and the principle legal certainty (Sudiro, 2015:3).

In the transport law there are three principles or teachings to determine the responsibility of the carrier, as follows: (Martono, 2007:146)

1. Principles of liability based on fault or liability based on fault principle ;
2. Principles of responsibility on the basis of the presumption (*rebuttable presumption of liability principle*);
3. The principle of absolute liability principle (*no fault, or strict liability, absolute liability principle*).²⁰

The theory of responsibility based on the *presumption of liability theory* states that the defendant is always held liable, until the defendant can prove otherwise that the defendant is innocent. Thus the burden of proof in filing a lawsuit for compensation with the application of *presumption of liability theory* is still placed on the defendant. In addition, the responsibilities based on the presumption of responsibility have 4 (four) variations in the lawsuit lawsuit comprising: (Atiyah, 1975:411)⁵

- a. The Defendant may acquit himself to pay compensation to the plaintiff, if the defendant can prove that the loss is caused by matters outside the defendant's power;⁵
- b. The Defendant may acquit himself to pay compensation to the plaintiff, if the defendant can prove that his party has taken an action necessary to avoid any loss;⁵
- c. The Defendant may acquit himself to pay compensation to the plaintiff, if the defendant can prove that the losses incurred are not due to the fault or negligence of the defendant.⁵
- d. The Defendant is not liable to pay compensation to the plaintiff, if the loss is by the plaintiff's own fault or negligence.

The amount of compensation for carrier losses continues in the Government Regulation, while the Government Regulation is Government Regulation Number 40 Year 1995 stipulated in Article 43 through Article 45 of Government Regulation Number 40 Year 1995 concerning Air Transports regulating the compensation states that:

- a. Limit compensation for passengers who died is set at Rp. 40.000.000,00, -;
- b. For passengers who suffer injuries from an aircraft crash or any event within the aircraft or during the time between embarkation and debarkation take place, set as high as Rp. 40,000,000.00;

- c. The limit of compensation for passengers who suffer permanent disability due to air accidents is determined based on the level of permanent disability experienced up to as high as Rp. 50.000.000,00, -;
- d. For checked baggage, including delayed losses shall be as high as Rp 100,000.00 per kilogram;
- e. For cabin baggage because the carrier error is limited to a maximum of Rp.1.000.000,00,0 for each passenger;
- f. For indemnification of cargo including loss due to delays due to error of carrier is limited to a maximum of Rp 100,000.00, - for each kilogram;
- g. Benefit for a deceased third party is set at Rp.40.000.000,00, -;
- h. Benefits for third party injuries are set as high as Rp.40.000.000,00, -;
- i. Compensation benefits for third parties who suffer permanent disability due to plane crash are determined based on fixed defect of Rp. 50.000.000,00, -;

Further regulated in the Regulation of the Minister of Transportation Number 77 Year 2011 on Responsibilities of Air Transport Transporters in lieu of Government Regulation No. 40 of 1995 on Air Transport, namely the limits of responsibility of air transport carriers. The limits of responsibility for air transport carriers are:

- a. On passengers commencing since passengers leave the airport waiting room to aircraft until the passenger enters the arrival terminal at the destination airport;
- b. On checked baggage begins since the carrier receives checked baggage at the time of *check-in* until receipt of checked baggage by passenger; and
- c. On cargo begins since the shipper receives a copy of the air cargo letter from the carrier until the time is set as the capture limit as stated in the *airway bill*.

2. Insurance theory

Insurance or coverage is an agreement, whereby an insurer binds himself to the insured by accepting a premium, to provide reimbursement to him for a loss, damage or loss of expected profit, which he may suffer for an event which is not certain. (Code of Commercial Law)

Article 1 point 1 of Law Number 40 Year 2014 concerning Insurance states that insurance or coverage is an agreement between two or more parties, whereby the insurer binds itself to the insured, accepting the insurance premium, to provide reimbursement to the insured, due to loss, damage or loss of expected profits, or legal liability to a third party that may be subject to the insured, arising from an uncertain event, or to provide a payment based on the death or life of an insured person.

Based on the above for regulation whether contained in Article 246 of the Code of Commercial Law and Article 1 Sub-Article 1 of Law Number 40 Year 2014 there is a difference in the definition of insurance, where Article 246 of the Code of Trade Law covers only the definition of liability insurance only, while the definition of insurance listed in Article 1 of Law Number 40 Year 2014, covers the definition of life insurance and loss insurance which includes life insurance and liability insurance. The definition given in Article 1 of Law No. 40 of 2014 is broader, able to follow the development.

C. RESEARCH METHODOLOGY

This study, using normative legal research is research done by studying the legislation and legal materials relating to this writing. (Soekanto, 1986:52)

The data used in this study include:

1. Primary legal materials in the form of legislation, which is binding and authenticated by the competent authorities, namely the Warsaw Convention 1929, the Montreal Convention of 1999, Act No. 1 of 2009 on low and Regulation of the Minister of Communications No. 77 of 2011 on the responsibility of Carrier Transport Air.
2. Secondary law, legal materials that support the primary legal materials such as books, articles, papers and research results such as journals, etc.
3. Tertiary legal materials, ie materials that give legal instructions and explanations of the primary and secondary legal materials such as the Indonesian dictionary.
4. Material non-law is research material consisting of textbooks is not a law-related research as a political book, economic book, census data, the company's annual report, dictionaries and general encyclopedias. This material is important because it supports the process of legal analysis. In this study, the non-legal entity can be obtained from interviews with the Department of Transportation.

D. RESULTS AND DISCUSSION

1. Remedies to cite this as the Basis of Compensation Claims For Accident Victims QZ8501 Air Asia Indonesia Citizen

The carrier which in this case is Air Asia, should be responsible for passengers who are victims. It is written in the Law of the Republic of Indonesia Number 1 Year 2009 on Aviation. In Article 141, Paragraph (1) of the Law of the Republic of Indonesia Number 1 Year 2009 on Aviation states that "the carrier responsible for the loss of passengers who died, disability, or injuries caused by the incidence of air transport in the fuselage and / or increased down the aircraft." There is a matter that needs to be underlined, that restitution is applicable to per passenger. Although many of the victims were from one family, fixed compensation in the form of compulsory insurance provided is per passenger, not per family.

Under Article 2 point a Implementing Regulation of the Minister of Transportation No. 77 Year 2011 on Liability Carrier Air Transport stating that "the Carrier operating the aircraft shall be liable for damages against: (a) the passengers who died, disability or injury and Article 3 letter a Implementing Regulation of the Minister of Transportation No. 77 Year 2011 on Liability Carrier air Transport stating that "passengers who died in an aircraft as a result of an aircraft accident or incident which solely has to do with air freight given compensation amounting to Rp .1.250.000.000,00 (one billion two hundred fifty million rupiah) per passenger".

So in the case of aircraft accidents Air Asia QZ8501 crash victims who died one family, the heirs of the victim's parents and brother are both male and female, who are classified as second category. In this case to obtain compensation, as

already described previously, the Company Air Asia issued a requirement that must be fulfilled by the heirs of the victims died. These victims are residents of several diverse group of different breeds. These requirements are also listed in Permenhub Number 77 Year 2011 on Article 22 that the victim's family needs to submit evidence related documents evidencing as a heirs in accordance with the provisions of the legislation in force, tickets, proof of checked baggage or mail the charge of air or other evidence support and accountability.

2. Indonesian Government's efforts to Provide Protection for Passenger particular regarding the National Aviation Accidents Compensation

This international agreement issued by ICAO (the UN agency that handles civil aviation) based in Montreal Canada in 2009. In Article 21 of the Montreal Convention states that airlines should compensate passengers or families of passengers of 100,000 special drawing rights (SDR) for victims, injury or death.

Moreover, compensation for air freight has also arranged. If the goods are transported lost, damaged or late, the airline must provide compensation amounting to 17 SDR per kilogram. SDR is a currency unit used by the International Monetary Fund (IMF). Through its website, the IMF gave a value of 1 SDR is equivalent to US \$ 1,5 or exactly US \$ 1,449. SDR is a unit of measure which will then be converted to the local currency with equivalent value of 65 , 5 milligrams of gold per SDR, as the wording of Article 23, paragraph 1 MC99.

The issue, Indonesia has not ratified that convention to have implications for the absence of an obligation to follow these rules. Indonesia actually has regulations governing the responsibility of the air carrier, the Transport Minister Regulation No. 77 of 2011 on the Liability of Air Transport Carrier. Prior to 2011, the amount of money compensation for families of the victims died in Indonesian air crash Rp50 million per passenger from the insurance company PT Prog. These quantities, which are determined based on a number of norms of judgment and reason, is considered no longer adequate and too small.

AirAsia Indonesia demanded the government to provide compensation amounted to Rp1,25 billion rupiah with reference to the provisions in Permenhub 77 of 2011 on the Liability of Air Transport Carrier. Therefore, Permenhub No. 77 of 2011 on Liability Carrier Air Transport increased the amount of compensation be Rp1.250.000.000 , 00 (one billion two hundred fifty million rupiah) per passenger. Compensation rules of air transport has also been adapted to the rules of another higher as Act No. 2 of 1992 on Insurance Business which has been amended by Act No. 40 of 2014 on Insurance, Law No. 8 of 1999 on Consumer Protection, and of course Law No. 1 Year 2009 on Aviation.

Based on the authors' opinion, that the Indonesian government's efforts to provide protection to passengers in particular concerning the national aviation accident compensation is to sue the AirAsia to provide compensation of 1.25 billion rupiah with reference to the provisions in Permenhub 77 Year 2011 on Carrier's Liability Air transport. Compensation rules of air transport has also been adapted to other rules higher as Act No. 2 of 1992 on Insurance Business which has been amended by Act No. 40 of 2014 on Insurance, Law No. 8 of 1999 on Consumer Protection, and of course Law No. 1 Year 2009 on Aviation.

E. CONCLUSION

After authors analyzed data obtained from previous discussions and write the results of the analysis in Chapter IV, the author can draw the conclusion that:

1. Remedy which can be used as the basis for a claim for compensation for the victims of the crash of Air Asia QZ8501 Indonesian citizen is Article 141, Paragraph (1) of Law No. 1 Year 2009 on Aviation, noted that "the carrier responsible for the loss of passengers who died, disabled fixed, or injuries caused by the incidence of air transport in the wreckage and / or up and down the airplane. " and Article 2 a Implementing Regulation of the Minister of Transportation No. 77 Year 2011 on Liability Carrier air transport stating that "the carrier that operates the flight air shall be responsible for damages against: (a) the passengers who died, disability or injury "and Article 3 letter a Implementing Regulation of the Minister of Transportation No. 77 Year 2011 on Liability Carrier air Transport stating that" pe passengers who died world in the aircraft air because effect accident aircraft air or events that solely there relationship with transportation air given replace loss amount Rp.1.250.000.000,00 (one billion two hundred and fifty million rupiah) per passenger ".
2. Indonesia's efforts to provide protection to passengers in particular concerning the national aviation accident compensation is to sue the AirAsia to provide compensation of 1.25 billion rupiah with reference to the provisions in Permenhub 77 of 2011 on the Liability of Air Transport Carrier. Compensation rules of air transport has also been adapted to other rules higher as Act No. 2 of 1992 on Insurance Business which has been amended by Act No. 40 of 2014 on Insurance, Law No. 8 of 1999 on Consumer Protection, and of course Law No. 1 Year 2009 on Aviation.

REFERENC

- HK Martono, *Air Law, Air Transport and Space Law*, (Bandung, Alumni, 1987).
- HK Martono, *Introduction to the National Air and International Law*, (Jakarta: King Grafindo Persada, 2007) .
- PS Atiyah, *Accidents, Compensation and the Law*, 2nd Edition, (London: Weidenfeld and Nicolson, 1975).
- Soerjono Soekanto, *Introduction to Legal Research*, (Jakarta: UI Press, 1986) .
- Tjakra Negara Soegijatna, *Law Carriage of Goods and Passengers*, (Bandung: Publisher Rineka Copyright, 1995).
- Indonesia ⁹ *Government Regulation No. 40 of 1995 on Air Transport (Official Gazette of the Republic of Indonesia Year 1995 Number 68, Supplement to State Gazette of the Republic of Indonesia Number 3610).*
- Ridwan Khairandy, "Responsibility and Insurance Carrier Responsibility For Instrument Air Transport Consumer Protection", *Journal of Business Law*, Vol. 25, No.1, Jakarta, Business Law Development Foundation, 2006.

THE RESPONSIBILITY OF AVIATION COMPANY LAWS AGAINST GIVING AMOUNT COMPENSATION BENEFITS FOR AIRASIA ACCIDENT VICTIMS QZ8501 TO INDONESIAN CITIZENS

ORIGINALITY REPORT

22%

SIMILARITY INDEX

6%

INTERNET SOURCES

5%

PUBLICATIONS

19%

STUDENT PAPERS

PRIMARY SOURCES

1

Submitted to Universitas Mataram

Student Paper

8%

2

Submitted to School of Business and Management ITB

Student Paper

3%

3

ekonomisajalah.blogspot.com

Internet Source

2%

4

Submitted to HELP UNIVERSITY

Student Paper

1%

5

Submitted to International Academy of New Zealand

Student Paper

1%

6

bestlifeinsurance2011.blogspot.com

Internet Source

1%

7

bangsajurnal.blogspot.com

Internet Source

1%

8	Submitted to Sriwijaya University Student Paper	1%
9	zrandpartner.blogspot.com Internet Source	1%
10	Submitted to Universitas Internasional Batam Student Paper	1%
11	Andrew Shandy Utama. "Law Enforcement to Copyright Infringement of Songs on the Internet Media", FIAT JUSTISIA, 2018 Publication	<1%
12	Submitted to University of Huddersfield Student Paper	<1%
13	Submitted to National University of Singapore Student Paper	<1%
14	Submitted to Florida International University Student Paper	<1%
15	Nurul Listiyani, M. Yasir Said. "Political Law on the Environment: The Authority of the Government and Local Government to File Litigation in Law Number 32 Year 2009 on Environmental Protection and Management", Resources, 2018 Publication	<1%
16	Submitted to Universitas Airlangga Student Paper	<1%

17	sehatzaman-now.blogspot.com	<1%
Internet Source		
<hr/>		
18	Submitted to Cranfield University	<1%
Student Paper		
<hr/>		
19	Submitted to Udayana University	<1%
Student Paper		
<hr/>		
20	Submitted to University of Melbourne	<1%
Student Paper		

Exclude quotes Off
Exclude bibliography Off

Exclude matches Off