

COMPENSATION AND ABSOLUTE LIABILITY PRINCIPLE ON THE CASE OF AIR ASIA QZ 8501 AIRPLANE ACCIDENT 2014

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ABSTRACT

This study investigates the issue of compensation based on the absolute responsibility principle in the Air Asia QZ 8501 airplane accident in 2014. This study uses normative juridical legal research with secondary data as primary data obtained through literature study. The results indicate a lack of clarity in the implementation of compensation as regulated in the National Aviation Law regarding the maximum amount of time required in insurance claims toward the heirs. Without a precise time limit, airlines and insurance companies will create many obstacles during the data collection process and the documents involved. It is recommended that the government strengthen the rules regarding the provisions in implementing compensation, especially related to the insurance claim process toward the heirs. In addition, it is also recommended for airlines and insurance companies to consistently set a precise time limit for the investigation and identification of the victims to speed up the issuance of the necessary documents from the Court.

Keywords: Airplane Accident, Compensation, International Air Freight, Principle of Liability, Strict Liability.

INTRODUCTION

As a vast archipelagic country, Indonesia requires affordable and fast transportation such as air transportation to connect one island to another. Air transportation services also offer various other advantages, such as the relatively short travel time required, wide-coverage, affordable fares for the community, comfort and security (Nugroho, 2006). The emergence of various airlines in Indonesia was preceded by ratifying the *World Trade Organization/General Aviation Training & Testing Service* (WTO/ GATTs). The ratification of the WTO/ GATTs obligated all WTO members to open up their airspace to commercial air transportation (Sidik, 2016).

This situation forces private companies to compete fiercely against each other, one of which is by providing relatively cheap tariffs. But unfortunately, this affordable rate also affects the quality of the services offered and causes a reduction in the quality of aircraft maintenance, which can impact the safety and security of passengers (Zazili, 2008). To overcome this, the Minister of Transportation issues Decree (KM) No. 81 of 2004, which became KM Transportation No. 25 of 2008, and subsequent issuance of Law of the Republic of Indonesia No. 1 of 2009 concerning Aviation. This law ensures that national airlines can compete and survive at both the national and international levels by providing a clear legal basis. The law requires the airline company to have adequate aircraft

availability, competence/professionalism of the personnel, mastery of high technology, and increasing knowledge of aviation safety culture (Martono and Sudiro, 2010).

Following the terms of the Warsaw Convention, various laws regulating international air transport operating within a State's territory have been drafted. On October 12, 1929, the Warsaw Convention (Convention for the Unification of Certain Rules Relating to International Carriage by Air) was signed in Warsaw, resulting in the unification of many independent laws relating to international air transport (Akbar, 2010). The International Civil Aviation Organization (ICAO) revised and adopted the Warsaw Convention, along with its system, on May 29, 1999, in Montreal, Canada, and it is now known as the Montreal Convention. The Montreal Convention was ratified by approximately 130 countries in 2016, including Indonesia, to provide legal certainty and protect airlines with limited liability in compensation under Article 21 Section 1 of the Montreal Convention, which determines compensation for passengers suffering from or dying as a result of an airplane accident up to IDR.2.03 billion (Direktorat Jenderal Perhubungan Udara, 2017).

Before the issuance of Law of the Republic of Indonesia No. 1 of 2009 concerning Aviation in Indonesia, victims of airplane crashes suffered twice: the first time as a result of the plane crash itself, and the second time as a result of a gap in the aviation law (Suherman, 1983). The gap here is not defined in the sense that no legal arrangement regulates it but rather that no carrier's responsibility has been regulated in air law. However, today, both in national or international air law, such as the Warsaw Convention of 1929, the carrier is liable for losses incurred by passengers who die or become permanently disabled. One example of an accident in air transportation services is the Air Asia QZ 8501 plane crash in 2014.

On an Airbus A320-216 aircraft, an Air Asia flight with the flight number QZ 8501 took off from Djuanda International Airport in Surabaya, East Java, and flew to Changi International Airport in Singapore, carrying 162 passengers. According to the official, the plane lost contact around the Karimata Strait on the morning of December 28, 2014, at 06:17 WIB. The preliminary investigation determined that the aircraft may have flown into storm clouds (Aldrian, Amsal, Rizal, and Kadarsah, 2014).

In collaboration with the insurance company, the airline has agreed to compensate the heirs of the 155 civilian passengers who died in the plane crash. The Financial Services Authority (OJK) ensures that the heirs of the victims in this accident will receive a maximum compensation of IDR. 1.25 billion per person, and according to the contract, passengers who purchase a Jiwasraya insurance policy will receive IDR.100 million per person. If calculated, the value of life insurance for the Air

Asia QZ 8501 crash victims totals IDR.206.175 billion (Djumenana, 2015). However, until the end of 2015, only 11 people had been reimbursed, amounting to 23.35 billion. Only 10% of the compensation has been paid out of the total amount due to the heirs. The issue raised here is how the procedure for implementing civil aviation compensation is regulated in the National Aviation Law? And what obstacles the airline and insurance are facing regarding identifying the heirs of the QZ 8501 plane crash victims?

RESEARCH METHODS

This article uses a normative juridical approach, in which the law is identified as a normative rule. The primary sources are obtained from secondary data by conducting *library research*. The secondary data comprises tertiary, primary, and secondary legal material (Faculty of Law USK, 2018). The secondary data in this study were obtained from a literature study on air transportation regulation. Other legal materials are collected by reading, analyzing, and studying laws, regulations, international conventions, journals, books, articles, and other scientific data related to the issues discussed (Amirudin and Asikin, 2004).

The primary legal materials in this study are composed of:

- a. Annex ICAO (*International Civil Aviation Organization*);
- b. The Warsaw Convention of 1929;
- c. The 1999 Montreal Convention;
- d. Law of the Republic of Indonesia No. 1 of 2009 concerning Aviation.

FINDING AND ANALYSIS

1). Procedures for Implementing Civil Aviation Compensation Regulated in National Aviation Law

The status of international treaties in Indonesia is still underdeveloped in terms of law, doctrine, and practice due to the lack of rules regarding the relationship between national and international law. As a result, it is divided into two lines of thought in practice. The first line of thought places the ratified international treaties as part of international law. Meanwhile, the second school of thought maintains that separate national legislation must implement approved international treaties.

Indonesia has ratified the Montreal Convention through Presidential Regulation No. 95 of 2016. This rule applies to every international flight (PerPres No. 95, 2016). Based on the Regulation, the range of compensation for retribution that should be received by the victim or heir is as follows:

- a. Passengers who suffer or die from an airplane accident will receive compensation of 100 thousand SDR or equivalent to IDR. 1.5 billion (at an exchange rate of \$1 = IDR. 15,000). If the victim or his heirs wish to apply for compensation more than the value, it can be applied based on fault liability (*liability based on fault*). Thus, the airline needs to prove that there were no mistakes made intentionally on its part.
- b. If aircraft delays cause losses, the airline must provide compensation with a maximum value of 4150 SDR.
- c. If there is loss or damage to baggage or luggage, the airline's responsibility in providing compensation is limited to a maximum value of 1000 SDR.
- d. For cargo delivery, if there is loss or damage to the cargo, the sender is entitled to receive compensation with a maximum limit of 17 SDR per kilogram.

According to Sarah Amalia and Adhy Riadhy Arafah (2019), there are five (5) types of responsibilities in aviation law, namely:

a. *Based on Fault Liability*

Based on Fault Liability is the concept of responsibility based on fault. The concept is written in the Civil Code Article 1365, which reads:

"Every action that breaks the law and impacts another person obligates the person who caused the loss due to his mistake to replace for the damage.".

Therefore, parties legally responsible in aviation law are not limited to airlines but include other parties participating in-flight activities, such as cabin staff or other airline workers.

In this concept, the shipper or passenger holds the burden of proof. The passenger must indicate the airline or travel company's mistake, the actual damage experienced, and the causal relationship between the error and the loss. This approach cannot be applied in aviation law because the passenger may not have sufficient information to establish proof.

b. *Presumption of Liability*

Presumption of Liability is a liability based on a presumption of guilt or a reversed burden of proof, in which the airline bears the burden of proof rather than the passenger. The airline is always considered guilty and must provide compensation to passengers without the need for initial evidence.

However, the provisions of the Warsaw Convention Article 20 section 1 provide a loophole for airlines to avoid the requirement of compensation if the airline can provide evidence that the company has attempted to prevent incurring losses:

"The carrier is not liable if he proves that he and his agents have taken all necessary measures to avoid the damage or that it was impossible for him or them to take such measures."

c. *Limitation of Liability*

Limitation of Liability is given to protect the airline from unlimited compensation. It has also been written in Warsaw Article 22 section 1, which reads:

In the carriage of passengers, the carrier's liability for each passenger is limited to 125,000 francs. Under the law of the Court seized of the case, damages may be awarded in periodical payments. The equivalent capital value of the said payments shall not exceed 125,000 francs. Nevertheless, by particular contract, the carrier, and the passenger may agree to a higher limit of liability.

The provision stipulated that the amount of compensation value offered should follow the decision of the Court where the case is being heard and may not exceed the predetermined limit unless both parties have agreed to a specific contract or special agreement.

d. *Presumption of Non-liability*

The presumption of non-liability is a responsibility based on the premise of innocence where the airline does not have to continue to be fully responsible or even if there is no need for accountability unless there is evidence that the airline caused the loss.

e. *Liability without Fault*

Liability without Fault is a responsibility based on no-fault or absolute responsibility. This principle states that any prosecution of compensation does not have to have an element of error that caused the loss. Thus, as long as someone suffers a loss as a result of the actions of others, the aspect of error does not need to be questioned, and that person must be held accountable.

As regulated in the Regulation of the Minister of Transportation number 77 of 2011 (PM Perhubungan No. 77, 2011), airlines must be responsible for losses for:

- a. A passenger who is permanently disabled, injured, or dies;
- b. Damaged or lost cabin baggage;
- c. Lost, damaged, or destroyed checked baggage;
- d. Damaged, destroyed, and lost cargo;
- e. Airfreight delays; and

f. Losses suffered by third parties.

Additionally, the Regulation specifies that passengers who die in an airplane accident that has nothing to do with air transportation are entitled to compensation of IDR 1.25 billion per person. Meanwhile, passengers who experience destruction, damage, and loss of baggage will receive compensation of IDR.200,000 per kilogram and a maximum of IDR.4,000,000 per passenger. However, it is also explained that the airline is not responsible for losses unless the passenger can provide evidence that the loss was caused by the airline's attitude or the people working in it.

According to the Civil Law, the airline's responsibility to passengers begins when the traveler leaves the airport waiting area until it arrives at the destination airport's arrival terminal. However, the principle of absolute liability (strict liability) has been implemented in accordance with the Montreal Convention's 1999 conclusions, which state that passengers should be permitted to seek compensation for losses sustained without establishing fault. Since Indonesia has ratified the 1999 Montreal Convention, a similar concept should have been implemented.

Compensation claims for losses suffered by shippers, passengers, or third parties may be made if the following evidence exists:

- a. Documents establishing the heirs under applicable law, proof of checked baggage (claim tags), tickets, airwaybills, or other supporting evidence that can be accounted for;
- b. A certificate issued by a local party authorized to certify the loss of body and soul and/or property to a third party who has suffered aircraft-related losses.

The amount of compensation regulated in the Regulation of the Minister of Transportation number 77 of 2011 and its amendments does not rule out the possibility for heirs, passengers, cargo recipients, or third parties to have the opportunity to sue the airline to the District Court in Indonesia or other alternative dispute resolutions (UU No.1, 2009). It stated in Law No. 1 of 2009 on Aviation that:

"Passengers, owners of cabin baggage, owners of checked baggage, cargo shippers, and/or passengers' heirs, who suffer losses as regulated in Article 141, Article 143, Article 144, Article 145, and Article 173 can file a lawsuit against the carrier in a district court in the territory of Indonesia using Indonesian law."

Thus, a lawsuit may be filed in any district court in Indonesia, regardless of where the ticket was purchased, the branch office, the delivery of goods, the airline's domicile, or the plaintiff's or

defendant's domicile. In addition, if the act that results in the loss has a criminal element, criminal sanctions can also be given.

2). Airline and Insurance Barriers to Identifying Heirs for Passengers in the Air Asia QZ 8501 Plane Crash

Air transport documents are critical for carrying out the obligations outlined in Article 22 section (1) of the 1929 Warsaw Convention to inform passengers of the amount of compensation they will receive in an accident. If the prospective passenger believes the compensation provided by the Warsaw Convention 1929 is insufficient, the prospective passenger may seek additional compensation by insuring himself (personally).

Additionally, Article 151 of the Aviation Law states that when a ticket is included in one of the air transportation documents, the airline must hand it to passengers. Tickets are one of the rights granted to passengers, both individually and collectively, and must include the date, passenger name, number, place of issue, date, time, landing destination, point of departure, as well as a statement that the carrier or flight is subject to Aviation Law provisions.

Air Asia confirmed that it would provide compensation to the heirs of the victims of QZ 8501 in the amount of 1.25 billion per passenger when the evacuation and identification process of the victims had been completed. While waiting for the completion of the evacuation and identification process, the heirs were given an advance payment of IDR.300 million (Taufik, 2015). In 2015, 8 of the 162 families of victims received their advance compensation of IDR.300 million.

Currently, the airline is experiencing technical difficulties with document completion. Additional documentation, from an heir certificate to a death certificate from a passenger whose body has not been located and thus cannot be identified, is required to make full payment. Apart from that, the release of death certificates is still subject to court approval. (Sukmana, 2015).

Concerning the insurance claim that the heirs of the victims of the Air Asia QZ 8501 plane crash are entitled to, the Mayor of Surabaya stated that the process must be handled carefully to ensure that funds are received by those who are entitled to them and not by those who are not beneficiary families (Andriansyah, 2015).

This precautionary principle is critical to avoid mistargeting compensation recipients or the appearance of subsequent claims. Insurance claim procedures are vulnerable to fraud by unscrupulous parties and are highly sensitive and complicated. A telephone complaint on behalf of the victim's family is an example of this type of fraud (Nurroni, 2015). As a result, it is also necessary to include

a letter from the sub-district for Indonesian citizens and a certificate of heirs issued by a notary for foreign citizens in the insurance claim process (Ferri, 2015).

Willy Djomi, a spokesman for the AirAsia QZ8501 plane crash victims, stated that the victim's family is aware that the accident was caused by pilot errors compounded by adverse weather or climate factors. Such a remark contradicts the National Transportation Safety Committee (NTSC) findings, revealing that some aircraft parts could not work properly (Riski, 2017). Unfortunately, the results of the NTSC investigation cannot be used as evidence for the trial. The reason is that both international law and national aviation regulations prohibit the results of the KNKT investigation from being used in the prosecution process in Court. This prohibition is based on the interpretation of Article 34 of Law (UU) No. 15 of 1992 on aviation and Annex 13 of the Chicago Convention, which states that the results of an investigation cannot be used in Court.

Additionally, the Decree of the Minister of Transportation No. 1 of 2004 segment 830 on the Notification of Aircraft Accident Reports stated that the KNKT investigation's objective is to determine the cause of the accident, not to decide who should be charged (Azmani, 2019).

CONCLUSION

The compensation mechanism regulated by the National Aviation Law is still unclear, particularly regarding the maximum period required to process insurance claims for heirs. On the other hand, airlines and insurance companies face numerous challenges during the document collection process, prevented by the lack of a precise time limit for investigating and identifying victims.

Although the government, airlines, and insurance companies have made numerous efforts, the law remains uncertain. As a result, it is recommended that the government emphasize and explain the provisions regarding the procedures for implementing compensation as regulated in the National Aviation Law, especially the maximum limit. The amount of time required to process insurance claims for the heirs. Furthermore, airlines and insurance companies must constantly set a time limit for researching and identifying victims to get proper the Court's issuance of the relevant paperwork.

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