

THE APPLICATION OF MONTREAL 1999 CONVENTION TO CLAIM COMPENSATION ON FLIGHT DISRUPTION

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Abstract

The purpose of this article aims to analyze the application of the montreal 1999 convention and responbsibility of airlines company to the flight accidents. This article uses a case study approach and normative juridical approach, This normative research used secondary data consisting of primary, secondary, and tertiary legal materials.. The research describes the position of montreal 1999 convention based on Indonesian regulation and the extent of responbsibility of airlines company to the flight accidents. The results of this article show that, include liabilities arising in case of an air accident by the airline concerned, which are, indicate that the application of the montreal 1999 convention is able to guarantee the rights of consumers, who feel disadvantaged by accidents, also the liability of airlines in flight disruption depends on the consequences experienced of the goods and victims. Suggestions from researchers that the government should focus on cooperating airlines as well as a bridge to the victims in solving problems relating to the compensation.

Keywords: Airlines ,Air transportation law, Compensation, Montreal 1999 Convention

I. Introduction

1.1. Background

In the era of economic globalization, each country will pursue the best way, so that the country is able to achieve a lot of benefits in trying to improve the welfare of its citizens, and instead of trying to push a little loss, even if it could, it completely eliminates the negative impact, by building various forms economic cooperation with other countries.²However, such cooperation should be supported by the kind and details related regulations, the rights and obligations of the actors of cooperation / agreement can be filled with another satusama. No exception in the law of air transport., Where domestic air transportation in Indonesia in 2015 were shocked by the mass media about the many delays in departures and the rise of an aircraft accident. Many passengers and flight service users feel disappointed. These delays have occurred in previous years, but in 2015 recorded cases of severe delays and the worst

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² Zainal, I. & Fitriyanti, F. "The Indonesian analyis Of Intention To Join Transpacific Partnership Based On The Principles Of Democratic Economy System", Proceedings of the 5th International Conference On Law And Society, Fatoni University Thailand, No 2 (2016).h 220.

record for flight delays Indonesia. Various reasons why the delays were raised by the airline, but from the viewpoint of the transport law in the realm of transportation, This condition is a blurred portrait of the aviation industry in Indonesia. The aviation industry in Indonesia, so-so to say, on the one hand seems to have developed.

This is evidenced by the increasing number of airline companies which stand to serve domestic routes in Indonesia, but with the condition of the national aviation footage that shocked the whole world, it makes its own low national spotlight. With the geographical conditions such as Indonesia, air transport is a reliable means to connect a number of cities throughout the country a short distance. The distance between Jakarta-Jayapura from Jakarta to Banda Aceh or if taken by ship will take in days and weeks, even if the high-speed ship sea waves instead be reduced, while if using aircraft in a matter of minutes and hours. On the other hand,

Five months have passed since the accident of airplane accident on Pangkal Pinang route from Jakarta that killed 189 people on October 29 last year, but dozens of families of the victims claimed to have not received compensation for refusing to sign an agreement that served.³ Even one of the victim's family who lost his daughter in the incident, said that until now his family has not been compensated by airline for refusing to sign the agreement, prepared by airline itself.

Although Permenhub No. 77 of 2011 stipulates that the airline is obliged to provide compensation for damages requires Rp 1.25 billion per passenger dies, there are rumors that the many airlines made eligible for the compensation, the treaty made waiver clause victims families to sue the airline and associate , after receiving compensation. If the family agreed with the items listed in the Release and Discharge clause that The airline will give compensation of US \$ 1.3 to 2 billion. But the majority of the victims families feel so pressing the contents of the agreement. Because the signatures that we remove our right to sue, demanding anything, anywhere, to any time, to any party. So far, from the data obtained from Anton Sahadi, a victim's family, it is known that the new compensation received by relatives of 68 victims, while families of 71 other victims to bring this case to court. Families of 27 victims called Anton ready to sign the agreement, while the other victim's family of 26 had not submitted complete documents to be compensated.

Chairman of the Indonesian Consumers Foundation (YLKI) Tulus Abadi said no such agreement is legally flawed because it conflicted with Permenhub 77 in 2011 and the Consumer Protection Act and the Montreal Convention of 1999. It could be convicted because of the shape of standard clauses, ie clauses of agreement that harm one party. Airlines for whatever reason could not make it as a requirement to provide compensation. Therefore should the Ministry of Transportation should be reprimanded and provides firm sanctions on Lion because it makes such a clause.

The authors here feel the need to study the problems of compensation should be made by airline to the families of the victims for airplane crash accident is based on the Montreal 1999 Convention as a source of law to the international transport that are already binding on all components of the State of Indonesia, although it is low in the above problems is low domestic but still there is the role of Montreal's convention on the settlement of the above compensation.

³ <https://www.liputan6.com/bisnis/read/3936653/keluarga-korban-lion-air-jt-610-sulit-dapat-ganti-rugi-rp-15-m-karena-hal-ini>, Accessed on October 28 at 18:00 pm

1.2. Formulation of the problem

1. How can the impact of ratification of the Montreal Convention 1999 for aviation in Indonesia?
2. How obligations of business entities against casualty airplane crash accident is based on the Montreal 1999 Convention?

1.3. Purpose

1. Analyze the impact of the ratification of the Montreal Convention 1999 for aviation in Indonesia
2. Analyze the airlines Enterprises obligation to casualty airplane crash accident by the Montreal 1999 Convention.

II. Research Methods

In this study, the authors use normative legal research, legal principles that the study focused on assessing the implementation of the rules or norms of positive law. The normative legal research includes studies on the systematics of law, a study of the level of synchronization of law, legal history research and comparative law research. In this normative research approach of legislation (statute approach) and the approach of the case (case approach) that is supported by the primary legal materials in the form of legislation in force and secondary legal materials in the form of law books that are relevant to the legal issues as well as descriptive analytical source materials used in this study is the material that comes from legislation or from the legal materials, either the primary legal materials, secondary law and tertiary legal materials. Data for this study was obtained through primary legal materials laws and secondary legal materials, namely in the form of textbooks by legal experts.⁴ In writing this paper the author uses the method of approach and the case law approach. That is penuliakan investigate a case or legal issues that exist within the community associated with a legal norm, then with the issue of the law will be associated with a rule of law that are relevant to the above issues.

III. Result and Discussion

3.1 Impact of the Montreal Convention 1999 Ratification to Indonesia

Recently the Ministry of Transport through the Directorate General of Civil Aviation, as an institution of the initiator, has successfully ratified the Convention for the Unification of Certain Rules for International Carriage by Air (the Convention on the Unification of Rules Specific About the International Air Transport), or better known as the Convention Montreal 1999. As an Information, before some country try to do the ratification of the Montreal Convention 1999 , usually it did the ratification of Convention Paris 1919 or Convention of Chicago first.⁵ For Indonesia itself, before ratifying Montreal 1999 Convention, it has used national regulations and ratified World Trade Organization/General Aviation Training & Testing Service (WTO/GATTs) as regulations of air transportation and aviation law.⁶ Then, the

⁴Hari Sutra Disemadi , "Adultery Child Status In Islamic Law And The Civil Code", *Jurnal Hukum Legal Standing* 3, No.2, (2019),h 6.

⁵ Kusumaatdja, Mochtar. *Pengantar Hukum Internasional*(Binacipta, Bandung, 1990),h 1

⁶ Saefullah Wiradipradja, "Tanggung Jawab Perusahaan penerbangan Terhadap Penumpang Menurut hukum udara Indonesia", *Jurnal hukum Bisnis* 25, No.1, (2006), h.5

ratification of the Montreal Convention 1999 has been adopted into national legislation Indonesia through Presidential Regulation No. 95 in 2016 on 21 November 2016 on the Ratification of the Convention on the Unification of Certain Rules on Air Transport International. The Presidential Decree comes into force since 23 November 2016. This ratification while also ensuring that Indonesia is ready to apply the standards of international standard in the national aviation system.⁷ While the 1929 Warsaw Convention, the Hague Protocol 1955 and the Montreal Agreement in 1966 and the Montreal Convention of 1999, is a private law on provisions governing the contractual relationship between the air carrier and the passenger. In it there are also rules on air carrier liability to passengers in the event of losses suffered by the passengers.⁸

Indonesia will always be committed to ratify and implement the rules set by the airline which has the International Aviation Organization to improve safety and security and the comfort of the national airlines. Indonesia's success in ratifying the Montreal Convention 1999 have also received recognition and appreciation from the International Air Transport Association (IATA), an International Civil Aviation Association is very important to the development of civil air transport in the world. The recognition was poured through a letter from the Regional Vice President - Asia Pacific IATA to the Minister of Transportation Budi Karya Sumadi on December 19, 2016 last. Montreal Convention 1999 is an amendment to the Warsaw Convention 1929, which has been established by the International Civil Association Organization (ICAO),

Indonesia general purpose ratification of the Montreal Convention 1999 of which is to enforce the provisions of the International as a national legal framework in regulating responsibility of carrier conducted by the international air transport. Especially if the use of a conveyance drawn transport costs, which is often called by the transport trade.⁹ And ensuring legal certainty for passengers as existing customers since their producers to make a dedicated services to consumers.¹⁰ Goods, baggage and cargo, or in this case object itself is anything that is used to achieve the purpose of the transport law¹¹ in international air transport. And to provide protection for the airline in the form of their responsibilities magnitude limit compensation to passengers, baggage, cargo and international flights.¹²

⁷ E.Suherman, *Hukum Udara Indonesia dan Internasional*, (Bandung: Alumni, 1983), h.225.

⁸ Puspa Amelia, Kabul Supriyadhie, Agus Pramono. "Tanggung Jawab Pengangkut Terhadap Pelaksanaan ganti Rugi Atas Keterlambatan Angkutan Udara Dalam Prespektif hukum Internasional (Studi Kasus Keterlambatan Angkutan Udara Luar Negeri Pesawat Udara Boeing 777-300 Garuda Indonesia GA088 Cengkareng-Amsterdam Tahun 2015)". *Diponegoro Law Review* 5, No 2, (2016). h 3

⁹ Fitriyani Fadia, Yulianugroho Sentot. *Hukum Perniagaan Internasional*, (Yogyakarta, Lab Hukum UMY, 2007). h 71

¹⁰ Ferry Irawan Febriansyah, "Perlindungan Hukum Pada Konsumen Dalam Transaksi Jual Beli Online-Commerce", *Jurnal Hukum Legal Standing* 1, No.2, (2017), h 9

¹¹ Abdulkadir Muhammad, *Hukum Pengangkutan Darat, Laut dan Udara*, (Bandung : Citra Aditya Bakti, 1991) h 61

¹² HMN. Purwosutjipto (1), *Pengertian Pokok Hukum Dagang 3 Hukum Pengangkutan*, (Jakarta : Djambatan, 1981), h. 2.

According to the Head of Cooperation and Public Relations of the Ministry of Transportation DGCA, Agoes Subagio¹³, the Montreal Convention 1999 governs the legal responsibility of the prevailing international carrier. Namely for the carriage of passengers, baggage and cargo were transported by international flights, in case of injury, loss or damage during transport it. Montreal Convention 1999 also offers simplification of responsibility for air cargo and facilitating the use of documents electronically cargo. In the conditions stipulated, also makes it easy for service users (passengers) international air transport that have been harmed to pursue a lawsuit in which they live / domicile.

With the ratification of the Montreal Convention 1999, Indonesia is now able to implement the provisions stipulated in the Montreal Convention 1999 into their national regulations and has put itself into a position parallel to the 122 ICAO member countries that also have ratified the 1999 Montreal Indonesia also can increase their bargaining power in international forums such as APEC and the ICAO. As well as gain the trust of the international world in which one of them will have an impact on the increasing number of international flight frequencies into Indonesia.

The latest value carrier liability in accordance with that specified in the Montreal Convention 1999¹⁴(1) The amount of compensation for passengers who died or suffered as a result of aircraft accidents up to 113 100 Special Drawing Rights (SDR), or about US \$ 2.03 billion in accordance with Article 21, paragraph 1, (2) If a passenger wants to make a claim exceeds the limit of 113 100 SDR, apply the principle of responsibility based on the element of fault (liability based on fault). The airline must prove that there is no willful misconduct on his part in accordance with Article 21, paragraph 2, (3) In the case of losses caused by the delay of the aircraft, the airline is obliged to provide the maximum compensation 4,694 SDR or approximately USD 84.2 million in accordance with Article 22 paragraph 1 (3) for the loss of, damage to, or destruction of baggage and luggage, the responsibility of the air carrier is limited to a maximum of 1.

Ratification of International transporter legal responsibility completes the legal responsibility of carrier in Indonesia. Earlier, Indonesia already has legal responsibility for the national airline carrier. Namely the Minister of Transportation Regulation No. PM 77 in 2011 on the Responsibility of Air Transport Carrier. In comparison, for compensation for domestic flights, as contained in the Minister of Transportation no. PM 77 in 2011 is¹⁵(1) The amount of compensation for passengers who died in the accident or incident that has to do with the air transport of air inside the plane was USD 1.25 billion, in accordance with Article 3, paragraph a, (2) The amount of compensation for passengers who died as a result of events that have to do with the transport aircraft when leaving the airport lounge to the plane or when leaving the plane to the airport's arrival hall destination or transit airport is USD 500 million in accordance with Article 3, paragraph b, (3) Passenger declared total permanent disability by a doctor during a period of at least 60 working days from the occurrence of the accident was given compensation of Rp 1.25 billion. As for partial disability compensable maximum of Rp 150 million, (4) In the case of losses caused by the delay

¹³<http://beritatrans.com/2017/02.16/konevensi-montreal-tawarkan-penyerdehanaan-tanggung-jawab-kargo-penerbangan>. Diakses pada tanggal 28 Oktober pukul 19.00 WIB

¹⁴ Article 21-22, 1999 Montreal Convention.

¹⁵Pasal 1-5, Peraturan Menteri Perhubungan No. PM 77 tahun 2011 tentang Tanggung Jawab Pengangkut Angkutan Udara

of aircraft more than 4 hours, the airline is obliged to provide compensation of Rp 300,000, - per passenger, or 50 percent of these provisions if the airline provides an alternative to routes nearby and is required to provide transportation free secondary to the airport purpose in accordance with Article 10, paragraph / a / and / b, (5) for the loss of, damage to, or destruction of baggage and luggage after 14 calendar days, the airline must compensate Rp 200.000, - per kg and a maximum of \$ 4 million. In the waiting period, the passengers got money waiting for Rp 200,000, - per day for up to three days in accordance with Article 5, paragraph / 1 /, / 2 /, / 3, (6) For cargo damage, the sender gets compensation Rp 50.000, - per kg. whereas for the loss or destruction of cargo, the sender gets compensation of Rp 100.

3.2 Obligations of business entities against Casualty Airplane Crash Accident by the Montreal 1999 Convention.

Airplane accident often occur in the aviation, recently there were airplane accident in Indonesia by route Pangkal Pinang to Jakarta, then by the victim search team, the victim's body had been found. The number of victims reached 178 adult passengers, one children, two infants and 8 crew including the pilot, co-pilot, flight attendants and technicians. The victims left injured grief for the families of the deceased. Accidents can not be avoided, but there are rights of the victims after the fateful accident. There are several provisions governing compensation and the compensation received by victims of the plane crash. These flights are the first to be responsible for the accident victims. This is because the airlines legally responsible to provide compensation to the victims. This provision applies internationally by the Montreal Convention of 1999. The ratification of the International legal responsibility of carrier completes the legal responsibility of carrier in Indonesia. Earlier, Indonesia already has legal responsibility for the national airline carrier. Namely the Minister of Transportation Regulation No. PM 77 in 2011 on the Responsibility of Air Transport Carrier.

With its Ratification of the Montreal Convention in 1999, it is the responsibility of the new flight carrier include, (1) The amount of compensation for passengers who died or suffered as a result of an aircraft accident, up to 113 100 Special Drawing Rights (SDR), or about Rp2.03 billion, according to the Article 21, paragraph 1, (2) If a passenger wants to make a claim exceeds the limit of 113 100 SDR, apply the principle of responsibility based on the element of fault (liability based on fault). The airline must prove that there is no willful misconduct on his part in accordance with Article 21 paragraph (3) In the case of losses caused delay of the aircraft, the airline is obliged to provide the maximum compensation 4,694 SDR or about Rp84,2 million in accordance with Article 22, paragraph 1, (4) for the loss, damage,

Article 21 listed in important documents concerning the responsibility of international airlines or Essential Documents on the International Air Carrier Liability regulates compensation in case of death or injury of passengers. This provision calls, the airline is responsible for the damage sustained in case of death or physical injury of passengers, the compensation awarded 100 thousand special drawing rights. Special Drawing Rights (SDR) is the foreign currency reserve assets of complementary set and managed by the International Monetary Fund or the International Monetary Fund (IMF). SDR was initially defined equivalent to 0.88 grams of pure gold, which at the time was also equivalent to one US dollar. By doing so, the replacement of air crash victims a maximum of \$ 100 thousand dollars, equivalent to 1.5 billion. The compensation arises because the montreal convention 199 contains the principle of

strict liability applicable at the time of primitive society. It was still valid pattern "a man acts at his peril", that any act committed by a person and cause harm to another person, then that person can be held responsible. Thus suffering losses suffered by other people should get compensation or compensation regardless of the motivation or purpose of the person who caused the damages.¹⁶

As one of the countries that ratified the Montreal Convention of 1999, Indonesia also set provisions on flights by Law No. 1 of 2009. Article 141, Paragraph 1 of the Aviation Law establishes the carrier responsible for the loss of passengers who died, disability, or injuries resulting in the occurrence of air transport in air and / or up and down aircraft. Derivatives are Transport Minister Regulation Number 77 of 2011 Concerning Air Transport Carrier's Liability. Article 3 Letter a Permenhub was set up, the amount of compensation to passengers who died in an aircraft as a result of an aircraft accident or incident which solely has to do with air transport awarded damages amounting to 1,25 billion per passenger.

The parties in the transport agreement was transporters and shippers for the transport of goods, the carrier and the passenger for the transport of passengers. Carriage agreements are reciprocal, meaning that the two sides each have rights and obligations.¹⁷The first party that is responsible for the plane crash victims is airline. So the airline must have insurance for its passengers flying. Aside from the airline, passengers who are victims of accidents are also entitled to receive 'compensation' from the insurance company Prog. This is as stated in the Regulation of the Minister of Finance (Ministry Decree) No. 15 of 2017 On the Great Contribution Compensation and Compulsory Accident Insurance Fund Compulsory Passenger Transport Public Transport on Land, River / Lake, Ferry / Crossing, Sea and Air. Article 3 Paragraph 2 Letter a Permenkeu ruled that the heirs of the passengers who died are entitled to compensation amounting to Rp50 million.

In this case, The Airline confirmed that it will provide compensation and money waiting and condolence money to the heirs of the victim fall in cape plane Rp 5,000,000, Rp 25,000,000 grief money, and the money of death benefit in accordance Regulation of the Minister of Transportation No. 77 2011, amounting to Rp 1,500,000,000, according to statement by K Martono in his book "Pengantar Hukum Udara Nasional dan Internasional".¹⁸

Actually, Indonesia has ratified the Montreal Convention flight rules corresponding 1999 by 2017. Under this rule, the victims died receive compensation value of more than USD 2 billion. However, the amount of compensation of Rp 2 billion is only valid for the flight abroad, not domestic. So that compensation for the victims refers to PM 77 in 2011.

Not only that, the compensation to the victims also will be provided by Jasa Raharja (Persero) has been mandated by guaranteeing every ride public transportation, that pursuant to Law No 33 and PMK No. 15 in 2017, the victim died, Prog ready to transfer the rights to compensation amounting to Rp 50 million. A fund or compensation given to the families of the victims died aviation accidents is the

¹⁶E. Saefullah Wiradipradja, *Hukum Transportasi Udara dari Warsawa 1929 ke Montreal 1999* (Bandung, PT. Kiblat Buku Utama, 2008) h. 68-69.

¹⁷ Nabila, "Wanprestasi Pada Suatu Bill Of Landing Dalam Pengangkutan Barang Melalui Laut", *Pakuan Law Review* 1, No 2, 2015, h 20

¹⁸K. Martono, *Pengantar Hukum Udara Nasional dan Internasional* (Jakarta, PT Raja Grafindo Persada, 2011) h. 202-203.

obligation of the airline and related parties as a result of the accident based on the Regulation of the Minister of Communications No. 77 of 2011, in addition to the provision of such compensation does not terminate the rights of victims and their heirs to sue, obligation or responsibility of the parties to be unlimited if the casualties were caused by human error.

Besides the implementation of each activity will have the risk of flying losses due to product defects, which then affects the legal consequences. Completion of the risk associated with compensation to the passengers as a form of liability (legal liability) company as a manufacturer. The risk of loss is borne aircraft manufacturer relating to product responsibility, then the risk was transferred to the insurance company as an insurer in accordance with the value of the collateral insured with meneria payment of the premiums of aircraft manufacturers (third party insurance). Passengers as consumers who suffered losses in aircraft accidents due to defective products can sue for damages against those deemed responsible. Completion of compensation to passengers who died, were injured or disabled as a result of an aircraft accident as one of the legal responsibilities of the organizers of the flight. Importance for manufacturers to study the behavior of consumers is to put the consumer as a central point of marketing attention and guarantee the rights of the consumer so that the consumer understands will lead smoothly and his solemn cooperation in the transport process.¹⁹

Compensation is obtained from mandatory dues Prog (IWJR). Since 2001, air passengers charged Rp5 thousand per person of tickets bought. The amounts of fees in accordance with Article 8 of PMK No. 15 in 2017. IWJR become a constituent of the air ticket. Thus, if accumulated, the total funds for compensation and benefits received by families of victims of a plane crash Rp1,3-2 billion per person.

Efforts non-litigation dispute resolution can save costs compared memalui litigation, but the victims and their attorneys will only do the settlement of disputes through such means if they see the good faith made by those responsible for the accident flight.

In the accident flight routes between countries, based on the rules of the Montreal Convention 1999 which has been ratified into the Presidential Decree No. 95 of 2016, mediation or compensation in respect of death, article 33 of this Convention, or Article 33 of the Presidential Decree explains that the heirs of the victim can sue accountability through the courts by the jurisdiction where the company is domiciled carrier, in which the court the victim's domicile, in the jurisdiction where the crash occurred, or where the court dilakukan.Sementara haulage agreement for disputes over passenger cargo, article 34 of regulation number 95 in 2016 says that the dispute resolution only can be done through arbitration.

Against the domestic aviation accidents, Transport Minister Regulation No. 77 of 2011 does not restrict the rights of victims or their heirs to ask for compensation, the responsibility of the airline could be resolved through litigation and non litigasi.Tidak path rule if the accident is caused by defective products. then the victim's right to conduct mediation in a lawsuit in state court by the aircraft manufacturer comes, therefore, can only be done by following the demands of the Common Law, which adheres to jurisprudence, and because the manufacturer is also responsible for the product (product liability).

¹⁹ Ferry Irawan Febriansyah, *op cit*.

With through the efforts of the international law, these efforts are divided into public international law and international civil law. As the authors summarize the book *Introduction to International Law*, written by Mochtar Kusumaatmadja and Ety R. Agoes, international civil law is overall rules and principles of law megatur civil relations that cross borders. In other words, the laws governing civil legal relationship between actors whose respective laws are subject to civil law (national) belainan. which distinguishes international law with public international law lies in the nature of law that regulates relations or issues (objects).

4. Conclusion

1. With the ratification of the Montreal Convention of 1999, Indonesia is now able to implement the provisions stipulated in the Montreal 1999 Convention into their national regulations and has put itself into a position parallel to the 122 ICAO member countries, also with this ratifying the Montreal 1999 Convention, Indonesia can increase their bargaining power in international forums.
2. Airlines should make sure will provide compensation and condolence money to the heirs of the victim Rp 5,000,000, Rp 25,000,000 grief money, and the money of death benefit in according Regulation of the Minister of Transportation No. 77 in 2011 and the Montreal Convention of 1999, which amounted to USD 1.25 billion. In order to fulfil the rights of consumers

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