

REGULATION AND COMPENSATION IN AIRCRAFT ACCIDENT CASES: AN EXAMINATION OF AVIATION REGULATION IN INDONESIA

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ABSTRACT

Aviation is widely acknowledged as one of the safest modes of transportation; however, the risk of aircraft accidents continues to be a pressing concern. Ensuring fair and just compensation for victims requires the implementation of clear and robust regulatory frameworks. Every aircraft accident reflects a nation's level of compliance with international aviation safety standards, which are continuously evaluated through safety audits conducted by competent authorities. The 2020 ICAO Safety Report highlights a concerning trend, showing an increase in fatal aviation accidents worldwide. This development emphasizes the urgent necessity of establishing stringent compensation regulations, not only to safeguard the rights of passengers and their families but also to provide legal certainty for aviation industry stakeholders. This study employs a descriptive and normative qualitative approach, making use of both primary and secondary data, analyzed deductively. The findings underscore that the presence of strict regulations is indispensable for guaranteeing equitable compensation for those impacted by aircraft accidents. Furthermore, insurance companies play a strategic role in mitigating risks arising from such incidents. By offering financial coverage, they enable victims and their families to receive appropriate compensation in accordance with applicable legal frameworks. Ultimately, effective collaboration among government regulators, airlines, and insurers is crucial to strengthen trust and accountability within the aviation sector.

Keywords: aviation, aircraft, accident, insurance

1. PREFACE

While aircraft are a prevalent means of transportation and are generally viewed as safe, the risk of accidents remains a critical concern. The necessity for stringent regulations to ensure fair compensation for victims of such incidents is paramount. Each aircraft accident reflects a country's adherence to aviation safety standards, which are assessed through safety audits (Graham & Dobruszkes, 2019). According to the 2020 Aviation Safety Report, there was a 12 percent rise in fatal accidents compared to the previous year. Although crashes are infrequent, their consequences can be catastrophic, often resulting in loss of life. Thus, robust policies are essential to guarantee equitable compensation for victims, providing legal clarity for all stakeholders, including airlines and passengers. The International Civil Aviation Organization (ICAO) views every aviation incident—regardless of the presence of casualties—as significant when evaluating a nation's compliance with safety regulations, as indicated by their safety audits (Citaristi, 2022; Olganathan & Amihan, 2021).

Several elements contribute to aviation accidents, such as individuals involved, the aircraft's design, environmental conditions, operational practices, and management strategies. The occurrence of a fatal aircraft incident often results from the interplay of these factors. Given the potential loss of life, aviation accidents are relatively rare. Safety is paramount in the aviation sector, and it is critical that stringent safety regulations are maintained to prevent such incidents (Michella & Sudiro, 2019).

Law 1/2009 has stipulated that commercial airlines are directly liable without the need for additional evidence. Primarta (2018), Law 1 of 2009 on Aviation Putra & Dramanda (2019), Government Regulation number 17 of 1965 which regulates the implementation of the Mandatory Passenger Accident Insurance Fund by PT (Persero) Jasa Raharja Insurance, and Minister of Transportation Regulation number 77 of 2011 concerning Air Transport Liability (Putra & Dramanda, 2019; Fadhillah & Yunari, 2023). In this case, responsibility is associated with the actions we have taken that have an impact or influence and therefore replaced or repaired in a way that is considered responsible; in addition, it is associated with something that is necessary and required for him to fulfill that obligation (Uzni & Sudiro, 2019).

The right for consumers to sue goods/services providers if there is a loss has been regulated through Law 8/1999 (Maulana & Ambardi, 2021). Although strengthening is needed, the protection of aviation service consumers must ensure safety and justice for all parties involved in the plane crash incident (Maulana & Ambardi, 2021).

Problem Formulation

Based on the explanation above, the subject matter of this study is "how is the analysis of regulation and compensation in the case of aircraft accidents; a review of regulations in the context of aviation in Indonesia?"

2. RESEARCH METHOD

The study methodology applied to this writing approach is descriptive qualitative research and normative law. This method relies on secondary data by supporting primary data, then analyzed qualitatively and using a deductive paradigm to conclude the results of the study and discussion. Through the research results and discussion of this study, if it has been found, there will be regulations that can be implemented.

3. RESULTS AND DISCUSSIONS

The liability of airlines and compensation in cases of aircraft accidents in Indonesia have significant implications in the context of aviation law and consumer protection. The Minister of Transportation Regulation No. PM.77/2011 is the main guideline in setting the standard of liability and the amount of compensation in the case of an aircraft accident. The definition of an aircraft accident in the regulation includes significant loss of equipment, loss of life, or serious injury, and stipulates that the carrier is liable for such losses (Kementerian Perhubungan, 1996).

The culmination of the gradual legal change was the formation of the concept of total liability. In contrast to the principles of negligence and default, which are based on the fault of the consumer, the principle of absolute liability assigns responsibility to producers and sellers for defective products without placing the burden on consumers or parties in doubt to prove their fault. This approach is considered more sensitive to the interests of consumers (Priardanto & Sudiro, 2024).

Aviation safety is one of the most important aspects of aviation planning. Aviation safety is the fulfillment of safety regulations when using airspace, aircraft, airports, flight navigation, repair facilities, and other public facilities, in accordance with Law Number 1 of 2009 governing Aviation (Martono et al., 2023).

In the context of the death of a passenger, the heirs have the right to receive airplane crash compensation, which is stipulated in the regulation. However, this provision also covers

situations where the heirs cannot be identified or there are no legal heirs, with the compensation then given to the state after deduction of funeral expenses. This shows care in ensuring that the rights of victims or their heirs are recognized and respected (Fadhillah & Yunari, 2023).

The amount of compensation stipulated in the regulations varies depending on the victim's condition, such as death on board the aircraft, an accident while boarding or disembarking the aircraft, or total or partial permanent disability (Siregar et al., 2022). However, further discussion can be carried out on the appropriateness of the compensation amount that has been determined, and whether the amount reflects the actual loss or still requires further adjustment. In addition, it is important to consider effective claims and dispute resolution mechanisms in the context of airplane accidents (Bawole & Chernovita, 2019). The claims process should be easily accessible to eligible parties, with clear and non-burdensome requirements. The implications of international law should also be considered, especially in cases where the journey covers international routes, which may affect jurisdiction and applicable law.

In some cases, airlines may offer release and discharge agreements as part of an amicable settlement of claims. However, it is important to understand the legal ramifications of such agreements, especially in terms of losing the right to claim additional compensation if it is revealed that the accident was caused by the company's fault or an aircraft product defect. In addition, such actions may be seen as a violation of consumer protection principles and civil law, as well as potentially violating existing regulations.

Insurance companies play an important role in managing the risk of aircraft accidents, both for airlines and passengers. In the context of aviation law in Indonesia, insurance companies have significant implications in relation to compensation liability in the case of an aircraft accident. First of all, insurance companies provide financial guarantees for airlines to cover compensation costs for losses incurred due to accidents. Liability standards and compensation amounts stipulated in regulations, such as the Minister of Transportation Regulation No. PM.77/2011, serve as guidelines for insurance companies in setting insurance premiums and assessing risks.

Second, insurance companies also play a role in responding to compensation claims from victims or their heirs. Effective claims and dispute resolution mechanisms are important in ensuring that victims' rights are recognized and fulfilled in a timely manner. Insurance companies have a responsibility to facilitate the claims process quickly and fairly. However, in some cases, airlines may offer a release and discharge agreement as part of an amicable claim settlement. This may affect the insurer's role in settling the claim, as the agreement may limit the victim's right to claim additional compensation. Therefore, insurance companies must ensure that the legal consequences of such agreements are properly understood by all parties involved (Kamajaya et al., 2020).

In addition, insurers also have a responsibility to ensure that the claims process is easily accessible to eligible parties, including passengers or beneficiaries who may require assistance in making a claim. This includes providing clear information on claim requirements and providing the necessary support during the claim process (Asri et al., 2017).

In the context of consumer protection, insurance companies must also ensure that the rights of victims or their heirs are not only recognized theoretically, but can also be effectively applied in practice. This includes educating the public about their rights and explaining the claims process

in a transparent manner. Thus, insurance companies have an important role in managing the risk of aircraft accidents and ensuring that fair compensation is provided to victims or their heirs in accordance with applicable legal regulations. Therefore, it requires close cooperation between airlines, insurance companies, and aviation authorities to ensure that the compensation system runs smoothly and efficiently.

Insurance Aspects of Aviation

In air law, insurance can be viewed from 2 (two) aspects, namely:

Economic Aspects

An organization called insurance distributes or retains risk for others. Risk is the potential to suffer a loss; it is never guaranteed and always has a negative connotation. Therefore, the purpose of insurance is to transfer the risk of the insured to the insurer (insurance company).

Legal Aspects

According to Article 246 of the Code of Commerce (KUHD) which reads as follows, insurance is an agreement: "Insurance is an agreement by which an insurer binds himself to an insured, by receiving a premium, to compensate him for a loss, damage or loss of expected profit, which he may suffer due to an unspecified event". There are at least four components of liability insurance, which includes transportation insurance. These are as follows:

- (a) Insurer, who provides protection.
- (b) The insured, who receives protection.
- (c) An event [accident] that is unexpected or unknown in advance and the event suffers a loss.
- (d) The insured interest, which may suffer a loss caused by the event (Sudiro & Priardanto, 2023).

The Principle of Presumption of Guilt in Aviation Company Liability

The Presumption of Liability is a key foundation in aviation law that addresses compensation related to commercial aircraft accidents (Ekaratri & Yunari, 2021). This concept stipulates that the airline is automatically liable for the accident without having to prove its negligence (Dwi et al., 2019). This principle originates from civil law, where the assumption of responsibility is enforced as a method to protect parties who may be harmed in certain situations (Pamuraharjo et al., 2023). In the context of aviation, the 1999 Montreal Convention and Law 1 of 2009 are the legal embodiments that govern this principle, setting the standard of liability for commercial airlines (Hidayatullah & Nurbaiti, 2019).

Legal certainty is one of the rights that must be upheld by the state for its citizens, and in this case the law is a tool and medium that is expected to provide trust and certainty for every community that is bound to it. Law is used as a trustworthy instrument to build public trust. Quoting the 1945 Constitution of the Republic of Indonesia Article 28 D paragraph I, it is stated that: "Everyone is entitled to, recognition, guarantees, protection and certainty of a fair law and equal treatment before the law" (Sudiro & Priardanto, 2023).

Release and discharge Agreement in the Context of Aircraft Accident Compensation: Legal Implications and Consequences

A release and discharge agreement is a legal instrument used in settling compensation claims for aircraft accidents (Nilasary et al., 2022). Airline companies are not always bound by the

release and discharge agreements they offer to settle claims amicably, especially if the contracts are signed without sufficient knowledge or under duress (Kamajaya et al., 2020).

The principle of responsibility applied is heavy responsibility, also known as absolute responsibility, which means that the bearer is absolute and does not need to show his guilt (Atmadja & Sudiro, 2023). As stated in Article 3 letter a of Minister of Transportation Regulation No. 77 of 2011 that: "the carrier, which in this case is the Airline, is obliged to provide compensation in the event of an aircraft accident to each heir of the victim in the amount of Rp. 1,250,000,000 (one billion two hundred and fifty million rupiah)".

The heirs of the victims may apply and/or request compensation beyond that specified in the regulations based on Article 141 paragraph (3) of Law Number 1 Year 2009 on Aviation and Article 23 of Minister of Transportation Regulation Number 77 Year 2011 on the Liability of Air Transport Carriers. statutory requirements through a number of procedures that are also described in the laws and regulations, because in addition to human error, there are other factors that can cause aircraft accidents, such as possible product faults.

In essence, it can be said that the payment of compensation or indemnity resulting from an aircraft accident is an obligation of the airline company towards the heirs of the victim. In this particular case, unusual circumstances or certain value reductions not covered by legislative restrictions should not be able to limit this requirement. In other words, the airline company must assume full responsibility and provide compensation without any obstacles or reductions that could reduce the amount of the debt settlement to the heirs of the victims of the plane crash, in accordance with the legal statutes governing the matter.

Aircraft Accident Investigation: Purpose, Limitations, and Legal Implications

In Indonesia, aircraft accident investigations are governed by Law No. 1/2009 concerning Aviation, which highlights the significance of these inquiries as essential components of aviation safety initiatives. The Ministry of Transportation is empowered by Article 141 of this law to carry out investigations into aircraft accidents. Additionally, Article 33, paragraph (3) of the 1945 Constitution asserts that the state is responsible for managing and utilizing land, water, and natural resources for the utmost benefit of the populace, linking this responsibility to the objective of enhancing public safety through such investigations, which aligns with government policy (Herwin et al., 2023). Furthermore, Article 1, point 12 of Minister of Transportation Regulation 77/2011 provides a specific definition of aircraft accidents, establishing a clear basis for conducting investigations (Herwin et al., 2023).

In the context of law, the investigation of aircraft accidents is governed by essential principles. These include the responsibility of the state to ensure citizen safety as mandated by the 1945 Constitution, the right to compensation for consumers as outlined in Law No. 8/1999 on Consumer Protection, and civil law tenets that determine the liability of airlines towards victims or their families. Consequently, these investigations play a crucial role within Indonesia's legal framework for aviation, aiming to uphold and protect both consumer rights and public safety (Hamzah, 2021).

4. CONCLUSIONS AND RECOMMENDATIONS

Aviation accidents pose a significant challenge that necessitates stringent regulations to guarantee appropriate compensation for those affected. In Indonesia, various legal frameworks, including the Aviation Law, Government Regulations, and Minister of Transportation

Regulations, establish liability standards and compensation guidelines in the event of an aircraft mishap. The presumption of liability principle safeguards victims by assigning immediate responsibility to the airline, though adjustments may be required to determine the compensation amounts accurately. Additionally, it is essential to emphasize the need for efficient claims and dispute resolution processes while ensuring consumer rights are upheld and regulations are adhered to. The role of insurance companies is also important in managing the risk of aircraft accidents, both in providing financial guarantees to airlines and responding to compensation claims from victims or their heirs. However, the insurer's role can be affected by the airline's offer of a release and discharge agreement and should be thoroughly understood by all parties involved. By ensuring that eligible parties can easily access the claims process and that the rights of victims or their beneficiaries are recognized and effectively applied, insurers can play a role in ensuring that fair compensation is provided in accordance with applicable legal requirements. This can be achieved through close cooperation between the various stakeholders in the aviation industry.

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