

Liability to Third Parties for State Aircraft Accidents: An International and National Air Law Perspective

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ABSTRACT

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This research underscores the alarming absence of state aircraft regulations and underscores the urgent need for action. Civil and state planes coexist in the same airspace, making it crucial to comprehend their interaction. However, legal instruments at both international and national levels have primarily focused on regulating air transportation and navigation for civil aircraft, conveniently excluding state aircraft from their purview. The research method for this study was normative juridical, involving the examination of library materials or secondary data using deductive thinking methods. The findings of the study are unequivocal: Firstly, in international law, the Convention on Compensation for Damage Caused by Aircraft to Third Parties 2009 and the Convention on Compensation for Damage to Third Parties 2009, Resulting from Acts of Unlawful Interference Involving Aircraft 2009 should serve as a standard for compensating third parties for losses resulting from aircraft activities. Secondly, at the national level, Law No. 1 of 2009 concerning Aviation and Minister of Transportation Regulation No. 77 of 2011 concerning the Responsibility of Air Transport Carriers must be used as a benchmark for providing fair compensation for losses to third parties due to aircraft activities. It is imperative that governments step up and ensure the safety and well-being of their citizens.

Keywords: State Aircraft, Compensation, Third Parties

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INTRODUCTION

As a state founded on the rule of law, Indonesia places the supremacy of law as the cornerstone for governing all aspects of societal life, including the aviation sector. With its unique geography as the largest archipelagic nation in the world, aviation plays a critical role in connecting its scattered regions, supporting economic growth, and facilitating the mobility of its people (Syalabi, 2017). Indonesia's airlines, both state-owned entities like Garuda Indonesia and private carriers, operate under stringent national and international regulations. The government, through the Ministry of Transportation, establishes comprehensive rules to ensure the safety, security, and comfort of air travel. Law Number 1 of 2009 on Aviation serves as the primary legal framework governing all aspects of air transportation, encompassing airline certification, passenger protection, airport management, and operational oversight (Ghaisani, 2024).

These regulations also extend to consumer rights protection, safeguarding passengers against issues such as delays, flight cancellations, or baggage loss, with clear provisions for compensation (Mahfira, Mohammad & Rahman, 2021). Furthermore, aviation safety regulations adhere to standards set by the International Civil Aviation Organization (ICAO), including the implementation of Safety Management Systems (SMS) by airlines and airport operators. Conversely, legal violations within the aviation sector, such as overbooking or non-transparent practices, are subject to strict sanctions as outlined in the law (Kamajaya, Sihombing & Situmorang, 2020). Enforcing these regulations is vital to ensuring fairness and safeguarding the interests of the public as aviation service users. Through robust regulatory measures and consistent enforcement, Indonesia aims to enhance the quality and competitiveness of its aviation industry (Sembiring, 2024).

The need for regulations regarding state aircraft activities in airspace can also be addressed. (Bourbonniere & Haeck, 2001). The absence of rules will be a problem since civil and state aircraft share the same airspace, and their interaction is unavoidable. So far, in the international scope, no organization has a specific mandate to regulate the safety of state aircraft activities. In the national scope, Indonesia does not have a state institution that regulates the safety and responsibility of military aircraft. With the implementation of aviation safety regulations, you cannot avoid

accidents altogether, but you will reduce accidents to as few as possible (Latipulhayat, 2015). Each type of aviation fulfills its unique tasks, which brings about differences in detailed areas of flight safety risks. One thing, however, is sure: one must utilize the experience gathered within the entire set of different types of aviation (Jemielniak, 2014). Losses arising from air accidents can impact several parties: Aircraft owners, in the form of loss of aircraft; Passengers or their heirs; Owner of the goods/cargo being transported; and Third Parties (Ricky, 2014). Aviation safety is a shared responsibility directly and indirectly involving the government and other parties involved in aviation operations (Alves, 2015).

Airlines play a crucial role in driving economic growth and enhancing societal mobility in Indonesia, the world's largest archipelago. With thousands of islands stretching from Sabang to Merauke, air transportation serves as a vital link connecting regions that are otherwise inaccessible by land or sea (Sazpah, Wantu & Kasim, 2020). Airlines, ranging from national carriers like Garuda Indonesia to low-cost operators such as Lion Air and Citilink, significantly contribute to fostering economic exchange, cultural integration, and social connectivity (Zulfikar, Ardhana & Hosnah, 2024). However, Indonesia's aviation industry faces significant challenges, particularly in regulatory compliance and legal enforcement. Despite these regulations, the industry grapples with issues such as flight delays, unilateral cancellations, and occasional air accidents, highlighting the pressing need for consistent and robust legal enforcement (Morgan, 2020). As globalization and technological advancements introduce new complexities, such as cybersecurity and aviation data management, Indonesia's aviation laws must continually adapt to balance industry growth with public safety and consumer protection (Herwin, Gultom & Mardianis, 2023).

METHOD

This research was carried out using normative juridical research (normative legal research method), which was carried out by examining library materials or secondary data (Soekanto & Mahmudji, 2003). Data analysis in this research was carried out using qualitative data. Qualitative analysis is data analysis that starts from efforts to discover principles and information. The collected data is then analyzed using a qualitative juridical analysis method, namely non-statistical analysis with the starting point of existing norms, principles, and statutory regulations

as positive legal norms. These are then analyzed qualitatively to be interpreted and analyzed by researchers to conclude (Mahmudji, 2005).

DISCUSSION AND ANALYSIS

Aviation is a unified system consisting of airspace, aircraft, airports, air transportation, flight navigation, safety and security, the environment, supporting facilities, and other public facilities. Aviation offers several advantages, including comprehensive coverage, relatively short travel times, fares that are still affordable for the public, and the safety and comfort obtained from these transportation services (Darwis, 2017). Advances in aviation technology have increased flight comfort and safety but will not be able to eliminate these risks. Aspects of aviation activities are always related to international elements, so countries must be actively involved in formulating and implementing aviation safety rules by paying attention to international legal instruments (Darwis, 2017). One of the most critical legal issues in air transportation activities is the carrier's responsibility towards parties who experience losses caused by accidents in the transportation context. Aircraft carriers' duties in transportation include responsibilities toward parties with a legal relationship, namely a legal relationship with the airline, such as passengers and third parties. The central point of any discussion regarding carrier responsibility is the applied principle of responsibility (Putri, 2015). There are at least three known principles or theories regarding responsibility, namely: The principle of responsibility is based on the existence of an element of fault (fault liability, liability based on fault principle); The principle of responsibility is based on the presumption (rebuttable presumption of liability principle); and the principle of absolute responsibility (no-fault liability, absolute or strict liability principle) (Wiradipraja, 2014). The fault is focused on the party who caused the loss, having been proven guilty, and the victim who suffered the loss has the right to receive compensation or compensation.

Compensation for Third-Party Losses on the Earth's Surface Caused by State Aircraft Activities According to International Law

The Convention for the Unification of Certain Rules Relating to International Carriage by Air 1929, better known as the 1929 Warsaw Convention, is one of the regulations governing air transportation activities (Amelia, Supriyadhie & Pramono, 2016). The 1929 Warsaw Convention

determines the limits of an airline's liability. Still, it does not determine the exact amount of compensation, where the provision of compensation must be proven by the passenger as the injured party so that this convention makes the airline or carrier responsible for its passengers based on the presumption of liability (Ramadan, 2014). When air transportation became more developed, there was a need to adjust some of the provisions of the 1929 Warsaw Convention, which was considered to provide too much protection to airlines and was detrimental to the interests of passengers/shippers (Leon, 2012).

To adapt to these needs, international conventions related to carrier responsibility continue to develop, such as the Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air 1929, which was signed in The Hague 1955 hereinafter referred to as The Hague Protocol 1955; Convention Supplementary to the Warsaw Convention for the Unification of Certain Rules Relating to International Carriage by Air Performed by a Person Other Than the Contracting Carrier, which was signed in Guadalajara 1961 hereinafter referred to as the Guadalajara Convention 1961; and the Convention For The Unification Of Certain Rules For International Carriage By Air signed in Montreal 1999 hereinafter referred to as the 1999 Montreal Convention which has entered into force, and the Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air, Signed at Warsaw on 12 October 1929, as Amended by the Protocol Done at The Hague on 28 September 1955, Signed at Guatemala City 1971 hereinafter referred to as the Guadalajara Convention 1971 and 4 (four) Montreal Conventions signed in 1975 which are still not in force (Kurniawijaya & Latifah, 2019).

The provisions that specifically regulate the carrier's responsibility towards third parties on the surface of the earth are the 1952 Convention on Damage Caused by Foreign Aircraft to Third Parties or, commonly referred to as the 1952 Rome Convention, the 2009 Convention on Compensation For Damage Caused by Aircraft to Third Parties or General Risk Convention 2009, and Convention on Compensation for Damage To Third Parties, Resulting From Acts of Unlawful Interference Involving Aircraft 2009 or better known as Unlawful Interference Convention 2009. The 2009 General Risk Convention and the 2009 Unlawful Interference Convention impose strict responsibility on aircraft operators to compensate for losses incurred to third parties in the event of damage caused by an aircraft in flight. It should be understood that, in general, the

responsibility of an aircraft operator for losses suffered by third parties on the surface of the earth is a non-contractual responsibility, where the loss is sustained by an individual and owner of a property who does not have a contractual relationship with the aircraft operator. For passengers who die on board an aircraft, their concerns are covered by the 1999 Montreal Convention, as they are in a contractual relationship with the airline. Meanwhile, people who died in their homes and building owners whose homes were destroyed are people who are not in a contractual relationship with the operator but have suffered losses and have caused damage and, therefore, need to be given (entitled to) compensation (Artak, 2023). Thus, there is a need to ensure that sufficient funds are available to compensate for damage to the earth's surface.

While the 2009 General Risk Convention and the 2009 Unlawful Interference Convention are comprehensive in their scope, it's important to note that they do not apply to losses caused by state aircraft. However, in the event of an incident that causes harm to third parties on the surface of the earth, these conventions can still serve as a standard or reference in providing compensation. This means that if a loss occurs due to the activities of a military aircraft in a country's airspace, as long as the loss occurs while the aircraft is in flight, a third party on the surface of the earth can demand compensation for the loss.

The operator's responsibility to provide compensation under the 2009 General Risk Convention and the 2009 Unlawful Interference Convention is based on strict liability. This means that the operator is only responsible for compensating for losses if the damage is caused by an operating or flying aircraft. Despite the conventions' exclusion of losses caused by state aircraft activities, the military, customs, and police can still implement the provisions in these conventions to compensate for losses against third parties on the earth's surface. This underscores the importance of the International Fund system carried out by ICACF in ensuring that third parties on the surface of the planet who are harmed by the activities of state aircraft receive appropriate compensation (Tobing, 2021).

Compensation for Third-Party Losses on the Earth's Surface Caused by State Aircraft Activities According to National Law

Law Number 1 of 2009 concerning Aviation means that carrier responsibility is the obligation of air transportation companies to compensate for losses suffered by passengers, freight

forwarders, and third parties. The carrier's responsibilities are generally regulated in Articles 140 to Article 149. Article 141 Paragraph 1 of Law Number 1 of 2009 concerning Aviation states that the Carrier is responsible for losses to passengers who die, are permanently disabled, or are injured due to the incident—air transportation in an airplane and getting on and off. However, Article 148 of Law Number 1 of 2009 concerning Aviation explains that the provisions contained in Articles 141 to Article 147 concerning Carrier Responsibilities towards Passengers and Cargo Senders do not apply to postal transport, passenger and cargo transportation carried out by state aircraft, and non-commercial air transportation. Meanwhile, the carrier's responsibility towards third parties on the earth's surface is further regulated in Article 184 to Article 185. Article 184 paragraph (1) of Law Number 1 of 2009 concerning Aviation states, "Every person who operates an aircraft is responsible against losses suffered by third parties resulting from aircraft operations, aircraft accidents, or the fall of other objects from the aircraft being operated." Both Article 184 and Article 185, which regulate the carrier's responsibility towards third parties, do not explain that these provisions exclude state aircraft.

Even though the article does not explain in detail that there are exceptions for state aircraft carriers or operators, this article can be used as a basis for the idea that carriers or operators can operate aircraft and cause severe damage to the equipment used fatalities, and injuries. Serious due to the fall of other objects to third parties can be held responsible for the losses caused and are obliged to provide compensation or compensation for both the operation of civil aircraft and state aircraft, as long as several elements in Article 184 of the Aviation Law such as each person, the operation of the aircraft air, Accident, and other objects found in the accident.

Meanwhile, Minister of Transportation Regulation Number 77 of 2011 concerning the Responsibility of Air Transport Carriers, in alignment with Law Number 1 of 2009 concerning Aviation, provides clear guidelines on Carrier Responsibility. This regulation outlines the obligation of air transport companies to compensate for losses suffered by passengers, goods senders, and third parties. It specifies that carriers operating aircraft are required to be responsible for losses to passengers who die, are permanently turned off or injured; lost or damaged cabin baggage; lost, destroyed, or damaged checked baggage; loss, destruction, or damage to cargo; air freight delays; and losses suffered by third parties. However, it does not explicitly state whether these provisions apply solely to losses caused by civil aircraft activities or can also be implemented

to losses caused by state aircraft activities to third parties on the earth's surface, which may require further clarification.

Minister of Transportation Regulation Number 77 of 2011 concerning Responsibilities of Air Transport Carriers is a regulation related to Law Number 1 of 2009 concerning Aviation. This regulation, designed to ensure fairness, explains in detail the provisions for providing compensation or compensation to parties who suffer losses due to aircraft activities, including third parties on the earth's surface. The compensation for damage to property belonging to a third party is only for losses suffered based on a proper assessment, ensuring a just outcome. For example, for aircraft with a capacity of up to 30 (thirty) seats, a maximum of Rp. 50,000,000,000.00 (fifty billion Rupiah); for aircraft with a capacity of more than 30 (thirty) seats up to 70 (seventy) seats, a maximum of Rp. 100,000,000,000.00 (one hundred billion Rupiah); for aircraft with a capacity of more than 70 (seventy) seats up to 150 (one hundred and fifty) seats, a maximum of Rp. 175,000,000,000.00 (one hundred and seventy-five billion Rupiah); and for aircraft with a capacity of more than 150 (one hundred and fifty) seats, a maximum of Rp. 250,000,000,000.00 (two hundred and fifty billion Rupiah).

Suppose you compare the Minister of Transportation Regulation Number 77 of 2011 concerning the Responsibilities of Air Transport Carriers with the case of the TNI-AU's Super Tucano aircraft crash in Malang, East Java, Indonesia (Sasongko, 2017). In that case, the TNI-AU and the East Java Provincial Government have indeed implemented Article 14 of the Minister of Transportation's Regulation Number 77 of 2011 concerning the Responsibility of Air Transport Carriers properly, where third parties on the surface of the earth who die as a result of losses suffered due to state aircraft activities, can be given compensation of Rp. 500,000,000.00 (five hundred million rupiah) per person, and for aircraft with a capacity of up to 30 (thirty) seats, a maximum compensation of Rp. 50,000,000,000,- (fifty billion Rupiah). The amount of compensation mentioned above can be determined based on the criteria for a decent standard of living for the Indonesian people, the viability of the Air Transport Business Entity, cumulative inflation rate, per capita income, estimated life expectancy, and developments in the currency's value.

The implementation of Law Number 1 of 2009 concerning Aviation and Minister of Transportation Regulation Number 77 of 2011 concerning the Responsibilities of Air Transport

Carriers as a reference for providing compensation or forms of compensation can also be used in the case of the crash of the TNI AU's Hercules C-130 aircraft—, which killed civilians and destroyed buildings on the surface of the earth in Medan. Indeed, there was no further news or information regarding the process or amount of compensation provided by the Indonesian Government to the injured third parties; the obstacle at that time, according to Vice President Jusuf Kalla, was the absence of regulations governing the provision of compensation due to losses caused by state aircraft. This certainly proves that although Law Number 1 of 2009 concerning Aviation and Regulation of the Minister of Transportation Number 77 of 2011 concerning the Responsibilities of Air Transport Carriers do not expressly state that the provisions relating to providing compensation for losses to third parties on the surface of the earth can apply to state aircraft activities, these provisions can be implemented or used as a basis for providing compensation to third parties on the surface of the planet who suffer losses due to state aircraft activities if they occur in the future to achieve equitable justice.

CONCLUSION

In the international scope, the 2009 General Risk Convention and the 2009 Unlawful Interference Convention, in principle, should be used as standards for compensation for losses experienced by third parties on the surface of the earth caused by aircraft activities. Suppose losses occur due to flight activities of state aircraft such as the military, customs, and police. In that case, these parties can use the Convention on Compensation for Damage Caused by Aircraft to Third Parties 2009 and the Convention on Compensation for Damage to Third Parties, Resulting from Acts of Unlawful Interference Involving Aircraft 2009 as the basis for providing compensation where the two conventions apply the principle of strict liability so that compensation by operators is only given on condition that the aircraft is in flight condition. The amount of compensation will be given on the weight of the aircraft being used. Meanwhile, in the national scope, the Aviation Law and the Minister of Transportation's Regulation on Responsibility for Air Transport can be used as benchmarks for providing fair compensation for losses to third parties on the surface of the earth due to aircraft activities. As in the Malang, East Java case, the Indonesian Air Force has implemented compensation regulated by Law no. 1 of 2009

concerning Aviation and Minister of Transportation Regulation no. 77 of 2011 concerning Responsibility for Air Freight Transport. The elements that TNI AU aircraft operators must fulfill are as stated in Article 184 of Law no. 1 of 2009 concerning Aviation, such as every person, the operation of aircraft, aircraft accidents, and the fall of other objects; has been fulfilled and therefore, the Indonesian Air Force operator is obliged to provide compensation. The compensation given by TNI AU operators also meets the standards stated in Article 14 of Minister of Transportation Regulation No. 77 of 2011 concerning Responsibility for Air Freight Transport.

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