

The Urgency of the Aviation Professional Council on Legal Liability in Aircraft Accidents in Indonesia

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Abstract: Air transportation is the most efficient means of transportation and can reach all regions in Indonesia and even reach remote areas. So, the choice of air transportation capital because this type of mode has characteristics, namely being able to reach the destination in a fast time and using high technology so that air transportation does not escape accidents that may occur due to human failure, failure of machines and structures, failure of procedures and weather conditions. So in this study aims to the urgency of the Aviation Profession Council on legal liability in aircraft accidents in Indonesia. The result of the research is that the Government Regulation regarding the further investigation of aircraft accident investigation which regulates the Aviation Professional Council. In the responsibility of further investigation of aircraft accidents, the Aviation Professional Assembly must be formed immediately in accordance with the mandate of Law Number 1 Year 2009 concerning Aviation. Then it is expected that the formation of rules regarding the mechanism for holding legal responsibility for flight personnel who are at fault in an aircraft accident..

Keywords: Air Transportation, Aviation Professional Council, aircraft accident, Liability, International Civil Aviation Organization

INTRODUCTION

Transportation is an important element and serves as the lifeblood of economic, social, political, and population mobility developments that grow simultaneously and follow developments that occur in various fields and sectors. But what is urgent is the role and importance of transportation in relation to the economic and socio-economic aspects of the state and society.¹

¹ Abdul Kadir, 2006, *Transportasi: Peran Dan Dampaknya Dalam Pertumbuhan Ekonomi Nasional*, Jurnal Perencanaan dan Pengembangan Wilayah, Volume 1 Nomor 3, Sumatra Utara, hlm. 123.



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Transportation is beneficial to society, in the sense that the production products and raw materials of an area can be marketed to industrial companies. The results of finished goods produced by factories are sold by producers to the public or companies engaged in marketing. To transport raw materials and finished goods, transportation services are needed. In addition, transportation carries out the distribution of population and equitable development.²

In this modern era, fast and efficient transportation is needed, therefore air transportation is highly preferred by the public. One of the transportation that is quite in demand in this era of globalization is air transportation. Air transportation in Indonesia itself plays a very important role in carrying out movement activities, both goods and people.³ Air transportation is a means of transportation using air lines by flight. Air transportation uses very different transport equipment compared to other means of transportation, namely land and sea transportation. Air transportation is a transportation service that has several advantages, which are able to reach from one area to another area that is geographically difficult to reach by land or sea transportation modes, as well as travel time that is relatively faster than land and sea transportation modes.⁴

In Indonesia, which is the largest archipelago in the world, air transportation is the most efficient means of transportation and can reach all regions in Indonesia and even reach remote areas. Thus, air transportation capital was chosen because this type of mode has characteristics, namely being able to reach the destination in a fast time and using high technology.⁵ This has resulted in the use of air transportation, which is in line with the increasing growth in the number of existing aircraft.⁶ On the other hand, air transportation is not free from accidents that may occur due to human failure, failure of machinery and structures, failure of procedures and weather conditions. The frequency and intensity of such accidents are very high, which results in countless human suffering in the form of death and physical disability.⁷ Airplane accidents will cause various legal issues related to the rights and obligations of victims of airplane accidents that must be fulfilled by the relevant airline company.⁸ Therefore, a regulation is needed in air law to regulate the investigation of aircraft accidents and then also provide legal certainty on aspects of legal liability in aircraft accidents.

Aircraft accidents are regulated in International Air Law and National Air Law.⁹ In the Convention on International Civil Aviation (Chicago Convention 1944) Article 26 regarding accident Investigation "in the event of an accident to an aircraft of a Contracting State occurring in the territory of another Contracting State, and involving death or serious injury, or indicating

² *Ibid*, hlm. 128.

³ Sigit Sapto Nugroho, 2019, *Hukum Pengangkutan Indonesia*, Cetakan I, Navida, Surakarta, hlm. 11

⁴ Zawir Shulfi dan Sofyan Syahnur, 2017, *Analisis Kausalitas Transportasi Udara dan Pertumbuhan Ekonomi di Indonesia*, Jurnal Ilmiah Mahasiswa Ekonomi Pembangunan Fakultas Ekonomi dan Bisnis Unsyiah, Banda Aceh, Volume 2 Nomor 4, ISSN: 2549-302, hlm. 628.

⁵ Ashar Sinilele, 2016, *Perlindungan Hukum Terhadap Penumpang Pada Transportasi Udara Niaga Pada Bandara Sultan Hasanuddin Makassar*, Jurnal Hukum Pidana & Ketatanegaraan, Sulawesi Selatan, Volume 5 Nomor 2, ISSN: 2580-5797, hlm. 201.

⁶ Alyssa Agustia Adrianti, 2017, *Tinjauan Hukum Mengenai Pendaftaran Pesawat Udara Sipil di Indonesia Berdasarkan Konvensi Chicago 1944 dan Undang-Undang Nomor 1 Tahun 2009 Tentang Penerbangan*, Diponegoro Law Journal, Fakultas Hukum Universitas Diponegoro, Jawa Tengah, Volume 6 Nomor 2, hlm. 1

⁷ Abdul Kadir, *Op.Cit*, hlm. 126.

⁸ Robert Dicky Syahputra, 2023, *Perlindungan Hukum Terhadap Korban Kecelakaan Pesawat Menurut Undang-Undang Nomor 1 Tahun 2009 Tentang Penerbangan (Kecelakaan Lion Jt-610 Tanggal 29 Oktober 2018)*, Jurnal Dinamika Fakultas Hukum Universitas Islam Malang, Volume 29 Nomor 2, Jawa Timur, hlm. 8213

⁹ Saharuddin Daming, 2014, *Telaah Perwujudan Kedaulatan Negara Atas Wilayah Udara Dalam Perspektif Hukum*, Jurnal Hukum dan Hukum Islam, Volume 1 Nomor 2, Bogor, hlm 26.



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serious technical damage to aircraft or air navigation facilities, the State in which the accident occurred shall conduct an investigation into the circumstances of the accident, in accordance with such procedures as may be recommended by the International Civil Aviation Organization, to the extent permitted by its laws. The State in which the aircraft is registered shall be given the opportunity to designate observers to be present at the investigation and the State conducting the investigation shall submit its report and findings in the matter to that State."¹⁰ National Air Law that discusses aircraft accidents is contained in Law Number 1 Year 2009 concerning Aviation article 357, namely the Government conducts further investigations and inquiries regarding the cause of every accident and serious incident of civil aircraft that occurs in the territory of the Republic of Indonesia. And carried out by a national committee formed and responsible to the President. Where the national committee is an independent institution in carrying out its duties and functions and has membership selected based on competency standards through fit and proper tests by the Minister.¹¹

In Government Regulation of the Republic of Indonesia Number 62 of 2013 concerning Transportation Accident Investigation article 4 states that the implementation of a transportation accident investigation which is carried out to reveal a transportation accident event professionally and independently in order to obtain data and facts about the causes of transportation accidents is carried out by the National Transportation Safety Committee.¹² The National Transportation Safety Committee based on Law Number 1 of 2009 concerning Aviation, is an independent committee to carry out its responsibilities in accordance with the guidelines for the implementation of aviation safety recommendations International Standards and Recommended Practices Annex 13 of the International Civil Aviation Organization. The duties and authority of the National Transportation Safety Committee is to carry out aircraft accident investigations with the sole purpose of finding the causes of accidents that will be used to make recommendations for changes to support aviation safety and security, not to determine fault and negligence in aircraft accidents.¹³ Article 364 of Law Number 1 Year 2009 on Aviation states that, as a follow-up in order to determine fault and negligence due to aircraft accidents, a further investigation will be held. In the implementation of this follow-up investigation, the National Committee will form an Aviation Professional Assembly which has the task of upholding professional ethics and competence of personnel in the field of aviation, carrying out mediation between aviation service providers, personnel and service users and interpreting regulations in the field of aviation.¹⁴

In Article 369 of Law Number 1 Year 2009 on Aviation, further provisions regarding aircraft accident investigations and follow-up investigations are regulated by Government Regulation. However, here there is a norm vacuum where until now the Government Regulation regarding the follow-up investigation of the Aviation Professional Assembly has not been realized.

¹⁰ Atip Latipulhayat, 2015, *The Function and Purpose of Aircraft Accident Investigation According to The International Air Law*, Jurnal Mimbar Hukum, Universitas Gadjah Mada, Volume 27 Nomor 2, Yogyakarta, hlm. 313

¹¹ Welly Pakan, 2009, *Penanganan Kecelakaan Pesawat Udara di Indonesia*, Warta Ardhia Jurnal Perhubungan Udara, Volume 35 Nomor 4, Jakarta Pusat, hlm. 134.

¹² Monica Palungan, 2022, *Tinjauan Yuridis Hak Atas Informasi Hasil Investigasi Kecelakaan Pesawat Terbang Dalam Perspektif Hak Asasi Manusia*, Jurnal Lex Privatum, Volume 10 Nomor 3, Manado, hlm. 8

¹³ Eko Poerwanto, 2016, *Analisis Kecelakaan Penerbangan di Indonesia untuk Peningkatan Keselamatan Penerbangan*, Jurnal Angkasa, Yogyakarta, Volume 8 Nomor 2, ISSN: 2085-9503, hlm. 9.

¹⁴ Joshua Tambalean, 2020, *Investigasi Kecelakaan Pesawat Udara Sipil Menurut Undang-Undang Nomor 1 Tahun 2009 Tentang Penerbangan*, Jurnal Elektronik Bagian Hukum dan Masyarakat Fakultas Hukum Unsrat, Manado, Volume 8 Nomor 1, ISSN: 2337-9758, hlm. 117.



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This norm vacuum is one of the factors regarding the establishment of the Aviation Professional Council until now has not been realized and is difficult to realize.¹⁵ Based on International Standards and Recommended Practices Annex 13 point 5.4.1 "Any investigation conducted in accordance with the provisions of this Annex shall be separate from any judicial or administrative proceedings to apportion blame or liability". This has the consequence that an investigation for the purposes of law enforcement and liability, whether for the imposition of administrative sanctions, civil sanctions or criminal sanctions must be held separately.¹⁶

LITERATURE REVIEW

Legal liability

Legal accountability is closely related to the concept of rights and obligations. The concept of rights is a concept that emphasizes the notion of rights paired with the notion of obligation. According to Hans Kelsen in his theory of legal responsibility states that a person is legally responsible for a certain act or that he bears legal responsibility, the subject means that he is liable for a sanction in the event of a contradictory act".¹⁷ The imposition of a sanction in the case of an adverse action. Normally, in cases where a sanction is imposed on the perpetrator it is his or her own conduct for which the person is liable."¹⁸ Hans Kelsen divides responsibility into 4, namely:¹⁹

1. Individual liability, in which an individual is responsible for his or her own offenses;
2. Collective liability, i.e. an individual is responsible for an offense committed by others;
3. Fault-based liability, whereby an individual is liable for an offense committed intentionally and foreseeably with the purpose of causing harm;
4. Absolute liability, i.e., an individual is liable for an offense committed unintentionally and unpredictably.

Airplane Accident

In article 1 point 3 of the Minister of Transportation Regulation Number 10 of 2023 concerning Civil Aviation Safety Regulation Section 176 on Search And Rescue in Aircraft Accidents states that "Aircraft Accident is an event that befalls an Aircraft that can endanger and/or threaten human safety". According to the International Civil Aviation Organization (ICAO), the definition of a civil aircraft accident (Accident) is "an event related to the operation of an aircraft that occurs from the time a person boards the aircraft for the purpose of flight until a time when all persons have left (disembarked from) or exited the aircraft".

RESEARCH METHOD

The research uses a type of normative legal research. Normative legal research is research conducted

¹⁵ Alpin Hardiansah, 2021, Pemerintah Dianggap Langgar UU, FGD PATLI Ungkit Urgensi Pembentukan Majelis Profesi Penerbangan, <https://www.kabarpenumpang.com/pemerintah-dianggap-langgar-uu-fgd-patli-ungkit-urgensi-pembentukan-majelis-profesi-penerbangan/>, diakses pada tanggal 01 November 2023.

¹⁶ Juan M. S. Gerungai, 2022, *Pertanggungjawaban Pidana Terhadap Pengaturan Lalu Lintas Penerbangan Menyebabkan Terjadinya Kecelakaan Pesawat Menurut Undang-Undang Nomor 1 Tahun 2009 Tentang Penerbangan*, Jurnal Lex Privatum, Volume 10 Nomor 4, Manado, hlm. 8.

¹⁷ Youky Surinda, "Konsep Tanggung Jawab Menurut Teori Tanggung Jawab Dalam Hukum" (On-line) tersedia di : <http://id.linkedin.com>

¹⁸ Ridwan HR, 2016, *Hukum Administrasi Negara*, Jakarta : Rajawali Pers, h. 318-319

¹⁹ Hans Kelsen, 2006, *Teori Hukum Murni*, terjemahan Rasul Mutaqien, Bandung : Nuansa & Nusa Media, h.140.



by examining library materials (secondary data) which includes legal principles and legal systematics. In addition, normative legal research can be called a research based on the construction of a system of norms that relies on the principles of norms and rules that include legislation, court decisions, agreements, and doctrines.²⁰ By using a statutory approach (or jurisprudence related to the legal issues under study. Research materials in research from various books, journals, papers, newspapers and articles related to the issues discussed in the study. Data collection is done by observation and recording techniques. The data obtained from the results of this research and data collection are organized systematically and logically in order to obtain a broad and clear picture of the Urgency of the Aviation Professional Assembly for Legal Liability in Airplane Accidents in Indonesia.

Establishment of Aviation Profession Council

Law Number 1 Year 2009 on Aviation states that the implementation of investigation and further investigation of aircraft accidents is carried out by a national committee formed and responsible to the President. The national committee is an independent institution in carrying out its duties and functions and has a membership that is selected based on competency standards through a fit and proper test by the Minister. The national committee is tasked with conducting investigation activities, research, further investigation, final report, and providing recommendations in order to prevent accidents with the same cause.

In Law Number 1 Year 2009 on Aviation in the section on further investigation of aircraft accidents Article 364, the national committee establishes the Aviation Professional Assembly to carry out further investigations, enforcement of professional ethics, implementation of mediation and interpretation of the application of regulations. Explanation of Article 364 of Law No. 1 of 2009 Concerning Aviation, what is meant by "further investigation" is a process to provide protection and legal certainty for aviation personnel for actions, decisions or omissions made based on the results of their training and experience (actions, omissions or decisions are taken by those commensurate with their experience and training) as well as the determination from the side of the profession which behavior is acceptable or intolerable (the role of domain expertise is to assess whether it is acceptable or unacceptable).

In Article 367 of Law Number 1 Year 2009 concerning Aviation, the Aviation Professional Council that has been formed by the national committee at least comes from elements of the profession, government, and the public who are competent in the fields of: Law, Aircraft, Flight navigation, Airports, Aviation Medicine and Civil Servant Investigators.

In Article 365 of Law Number 1 Year 2009 concerning Aviation, the Aviation Professional Council has the task of upholding professional ethics and competence of personnel in the field of aviation, carrying out mediation between aviation service providers, personnel and users of aviation services, and interpreting the application of regulations in the field of aviation.

The function of an institution or formal institution is the existence of power in the form of rights and duties possessed by a person in his position in the organization to do something in accordance with their respective fields of duty. The function of an institution or institution is structured as a guide or direction for the organization in carrying out activities and achieving organizational goals.²¹

²⁰ Putu Agus Jodi Januarditama, Wayan Gde Wiryanan, I Wayan Eka Artajaya dan Ni Komang Sutrisni, 2024, The Effectiveness of Sanctions on Social Media Pornography Content, Pakistan Journal of Life and Social Sciences, Vol. 22, No. 1, E-ISSN: 2221-7630, P-ISSN: 1727-4915, h.5235-5240

²¹ Yoan Chintya, 2019, Analisis Tugas dan Fungsi Kepala Sekolah di Sekolah Menengah Kejuruan PGRI Pekanbaru, Skripsi, Universitas Islam Negeri Sultan Syarif Kasim Riau Pekanbaru, h. 11



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In Article 366 of Law Number 1 Year 2009 on Aviation, in carrying out its duties, the Aviation Professional Council has the function of upholding professional ethics and competence of aviation personnel, mediating the settlement of disputes in the field of aviation outside the court, and interpreting the application of regulations in the field of aviation. Function is closely related to authority, which is the ability to carry out a public legal action, or juridically authority is the ability to act given by applicable laws and regulations and to carry out legal relationships.²²

In Article 366 of Law Number 1 Year 2009 on Aviation, in carrying out its duties, the Aviation Professional Council has the function of upholding professional ethics and competence of aviation personnel, mediating the settlement of disputes in the field of aviation outside the court, and interpreting the application of regulations in the field of aviation. Function is closely related to authority, which is the ability to carry out a public legal action, or juridically authority is the ability to act given by applicable laws and regulations and to carry out legal relationships.²³ Delegation of Authority Attribution is the granting of authority to form laws and regulations granted by the Constitution or Law to a state/government institution.²⁴

In Article 368 of Law No. 1 Year 2009 on aviation, the Aviation Professional Council is authorized to provide recommendations to the Minister for the imposition of administrative sanctions or further investigation by Civil Servant Investigators, determine decisions in disputes between the parties as a result of accidents or serious events against aircraft, and provide recommendations on the application of aviation regulations.

The Urgency Of The Aviation Professional Council On Legal Liability In Aircraft Accidents In Indonesia

In Article 369 of Law Number 1 Year 2009 Concerning Aviation, further provisions regarding aircraft accident investigation and further investigation are regulated by Government Regulation. And in Article 452 of Law Number 1 Year 2009 Concerning Aviation that the Government Regulation for the implementation of Law Number 1 Year 2009 Concerning Aviation is stipulated no later than 2 (two) years after Law Number 1 Year 2009 Concerning Aviation comes into force. However, until now the Government Regulation has not been realized by the government which has caused the Aviation Professional Council to not be formed until now.

An important consequence of the occurrence of aircraft accidents in the juridical aspect is the responsibility for the losses incurred. While from the technical aspect, the responsibility is to prevent repeated accidents with the same cause in the future. The existence of a suitable and appropriate form of liability for aircraft accidents is expected to improve aviation safety and security conditions.²⁵

The form of responsibility for the occurrence of aircraft accidents after the holding of an investigation by the National Transportation Safety Committee is the provision of a report on the causes of accidents or serious incidents, where the most important part of this report is in the form of recommendations by the National Transportation Safety Committee to the parties involved in an aircraft accident. these recommendations have the aim of preventing repeated accidents with the same cause.

²² Prajudi Admosudirjo, 2001, Teori Kewenangan, PT Rineka Cipta, Jakarta, h. 4

²³ Ateng Syafrudin, 2000, Menuju Penyelenggaraan Pemerintahan Negara yang Bersih dan Bertanggung Jawab, Jurnal Pro Justisia Edisi IV, Universitas Parahyangan, Bandung, h. 22

²⁴ Zaelani, 2012, Pelimpahan Kewenangan Dalam Pembentukan Peraturan Perundang-Undangan, Jurnal Legislasi Indonesia, Volume 9 Nomor 1, h. 124.

²⁵ Andre Paminto Wastuadhi, 2012, Penyelenggaraan Penyelidikan Dalam Mencari Penyebab Kecelakaan Pesawat Udara Sipil Yang Terjadi Di Wilayah Indonesia, Tesis, Universitas Indonesia, Jakarta, h.127



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Recommendations resulting from such investigations, do not impose blame and require legal liability which can usually be used as a means of imposing sanctions or penalties, whether administrative, civil or criminal.²⁶

Based on Article 357 in conjunction with Article 364 of Law Number 1 of 2009 concerning Aviation, the national committee will conduct further investigations, where the national committee will form an Aviation Profession Assembly, one of which aims to assess or determine from the professional side whether the actions of aviation professionals are acceptable or intolerable. Then this assembly will recommend to the minister to impose administrative sanctions or recommendations for further investigation by Civil Servant Investigators.

The purpose of aircraft accident investigation is to prevent aircraft accidents from happening with the same cause, not to find who is at fault and who can be held accountable.²⁷ Based on Law Number 1 of 2009 concerning Aviation Articles 431 and 437, the negligence committed by the Air Traffic Controller (ATC) is a criminal offense, which is also regulated in the Criminal Code Article 479g letters a and b. However, criminal prosecution of the Air Traffic Controller (ATC) related to the aircraft accident can cause new polemics in the community, especially the aviation community which has the view that this action is a form of criminalization of the Air Traffic Controller (ATC) profession in Indonesia. Moreover, based on the provisions of the 1944 Chicago Convention as an international aviation regulation. Added to that, the use of data contained in the aircraft black box as evidence in the trial, triggered an increasingly strong reaction from aviation personnel and aviation experts, because it also contradicted Annex 13 as a standard provision for the implementation of international aviation regulations that apply universally to member countries of the International Civil Aviation Organization (ICAO).

The mechanism for examining aviation personnel is carried out through the aviation professional council as stipulated in Article 364 of Law No. 1 of 2009 Concerning Aviation which determines that to carry out further investigations, enforcement of professional ethics, implementation of mediation and interpretation of the application of regulations, the national committee forms an aviation professional council, with the main tasks as specified in Article 365 of Law No. 1 of 2009 Concerning Aviation, namely:

1. uphold professional ethics and personnel competence in the field of aviation;
2. carry out mediation between aviation service providers, personnel and aviation service users;
3. interpreting the application of regulations in the field of aviation.

Improvement of investigation procedures for aircraft accidents and flight personnel is a step taken by the government as a regulator to obtain legal certainty in examining conditions that often occur in the aviation environment based on international aviation provisions, especially ICAO Annex 13 concerning Aircraft Accident and Incident Investigation which is universally applicable in world aviation and the provisions contained in the Civil Aviation Safety Regulation (CASR) as a standard provision of flight safety. Flight personnel are licensed or certified personnel who are assigned duties and responsibilities in the field of aviation.

CONCLUSION

²⁶ Ibid, h. 128

²⁷ Martono, H,K,. dan Amad Sudiro,. Hukum udara Nasional dan Internasional Publik (Public International anb Nasional Air Law),. Raja Wali Pers, Jakarta, 2012, hal 296



The regulation on the Aviation Professional Council is based on Law Number 1 Year 2009 on Aviation where to carry out further investigations, enforcement of professional ethics, implementation of mediation and interpretation of the application of regulations, the national committee establishes the Aviation Professional Council.

In the implementation of further investigation of aircraft accidents by the Aviation Professional Council, in accordance with Article 369 of Law Number 1 Year 2009 concerning Aviation, it is necessary to establish a Government Regulation regarding further investigation of aircraft accident investigation which regulates the Aviation Professional Council. In the responsibility of further investigation of aircraft accidents, the Aviation Professional Council must be immediately formed in accordance with the mandate of Law Number 1 Year 2009 concerning Aviation.

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