

Have air disaster SAR costs been reimbursed?

A series of fatal accidents have plagued the national aviation industry over the past decade. AirAsia flight QZ8501, Lion Air flight JT610 and Sriwijaya Air flight SJ182 all crashed into the sea, respectively in December 2014, October 2018 and January 2021. Maritime search and rescue (SAR) operations focused on finding and saving possible survivors, plane debris and the aircraft's black boxes.

Annex I2 on Search and Rescue to the Chicago Convention of 1944, the "magna carta" of international aviation law, imposes state responsibility for SAR operations, both in sovereign territory and on the high seas. A nation's armed forces is generally involved through the deployment of defense equipment, such as warships, helicopters and maritime reconnaissance aircraft. In cases in which foreign passengers are among the victims, their countries of origin often offer assistance.

Indonesia's SAR operations fall under Law No. 29/2014 on Search and Rescue. The National Search and Rescue Agency (Basarnas) is the mandated implementing agency that coordinates SAR operations, including aviation-related operations in accordance with Article 352 of Law No. 1/2009 on Aviation.

In the above three commercial air disasters, Basarnas coordinated SAR operations that lasted more than seven days. In fact, searching for victims in the sea takes a longer time. Extending the seven-day period is permitted on request from the aircraft or vessel owner, new clues or information on the location of victims or the aircraft or vessel, or new developments emerging from evaluating the SAR operation. If the aircraft or vessel owner requests an extension, they must bear the costs of the extended operation.

Article 73 of Indonesia's SAR Law says that SAR operations may be financed by the state budget, the provincial budget and/or other legitimate and nonbinding funding sources. Insurance instruments belong to the last category.

An issue arises from the lack of further mention on provisions prioritizing the funding sources. The inclusion of the word "and/or" allows for a scenario wherein all SAR operating costs are shouldered by the state and provincial governments.

The state is responsible for carrying out SAR operations. However, in Indonesia's aviation industry, which involves high



AFP/Demy Sanjaya

Piece by piece: Indonesian Navy divers hold up pieces of debris recovered off the northern coast of Jakarta on Jan. 12 during recovery operations for Sriwijaya Air flight SJ182, which crashed shortly after takeoff from the capital on Jan. 9 with 62 people onboard.



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technology and large capital, airlines bear the SAR operational costs through insurance (and reinsurance) in accordance with the Aviation Law. This clause is extremely straightforward to ensure that not a single rupiah of public funds is spent on covering the costs of SAR operations.

For the sake of prompt and effective SAR operations, the government provides advance coverage. Basarnas thus races against golden time, avoiding any delays due to funding concerns. Maximum efforts are made to search for victims and the black boxes, including through the deployment of the Indonesian Navy, Air Force and the Marine and Air Police Corps, as they were in the three aforementioned plane crashes.

The black boxes are very important for the National Transportation Safety Committee (KNKT) in its crucial role to determine the cause of a crash. The findings of its investigation are used to prevent similar accidents from occurring. For the victims' families, the KNKT report could be used as a basis for claiming unlimited liability, if negligence or a defect is found on the part of the airline or aircraft manufacturer.

After the SAR operation ends, the airline that operated the fatal flight is obliged to repay all costs of the operation. The government has no right to seek to profit from the repayment, as an SAR operation is not a commercial activity.

In the three plane accidents, several areas in the Java Sea were searched to locate the black box. Considering the vast area and duration of the search, the costs of these SAR operations were not small. Reflecting on the search for Malaysia Airlines flight MH370 in the Indian Ocean, which remains missing, Australia, China and Malaysia spent more than US\$200 million on the search for the aircraft, according to ABC News.

This fantastic sum has the potential to hinder a country's development and could even bankrupt an airline if the insurance (and reinsurance) policy cannot cover at least some of the SAR costs. In aviation insurance, SAR costs carry a high liability premium. In fact, aircraft liability coverage is one of the most important policies, aside from aircraft hull coverage.

Article 62(1) of the Aviation Law prioritizes the use of insurance policies as "other legal and nonbinding funding sources" to

ensure that state and/or regional funds are used only when insurance coverage is insufficient. There is no haggling over this.

The airline (along with its insurer) has the right to defend itself if the government claims SAR costs that are deemed to be different from what it should be. If the talks do not go well, arbitration or a court will make a decision to ensure that the rule of law is upheld.

Finally, if the airlines of the three air disasters above have not fully reimbursed the government or started the process of repaying all SAR costs, the government's silence might indicate failure to protect state and regional funds. The worst outcome from government inaction regarding these disasters is to set a bad precedent in global aviation insurance that the Indonesian state will gladly cover all SAR costs for any air disasters that occur in its jurisdiction.

The Finance Ministry needs to oversee the state coffers, especially in the middle of a budget deficit due to the coronavirus pandemic. Two concrete steps that can be taken are: to open an investigation into the AirAsia QZ8501 and Lion Air JT610 disasters, and in parallel, to revise Article 73 of the SAR Law. The latter is imperative to call out the priority use of insurance as an SAR funding source in a straightforward manner.

This is vital for the sake of legal certainty and creating a conducive climate in Indonesia's aviation industry.