



The Aviation & Space Journal

ISSN 2281-9134
The Aviation & Space Journal
[online]

Website: www.aviationspacejournal.com

Editor

Anna Masutti

Board of Editors

Donatella Catapano

Vincent Correia

Massimo Deiana

Nikolai P. Ehlers

Liu Hao

Stephan Hobe

Pietro Manzini

Sergio Marchisio

Sofia M. Mateou

Pablo Mendes de Leon

Wolf Müller-Rostin

Sorana Pop

Alessio Quaranta

Alan Reitzfeld

Alfredo Roma

Raffaella Romagnoli

Giovanni Sartor

Kai-Uwe Schrogl

Francis Schubert

Neil Smith

Greta Tellarini

Filippo Tomasello

Leopoldo Tullio

Alexander Von Ziegler

Stefano Zunarelli

Serap Zuvin

The Issue's

Contributors:

Sara Dalledonne

María Jesús Guerrero Lebrón

Sofia Mateou

Andreas Mateou

Miraslava Kazłouskaya

Ridha Aditya Nugraha

Serap Zuvin

Simge Esendal

İlke Işın Süer

Carla Bonacci

CONTENTS

Aviation

Flight-Sharing in the European Union: Are Passengers Aware of the Real Meaning of this Practice?

By *María Jesús Guerrero Lebrón*

p.2

UASs as an Aviation Security Threat

By *Sofia Mateou and Andreas Mateou*

p.22

Who will Decide on Your Aviation Dispute? Jurisdiction in Aviation Dispute Resolution from a Turkish Law Perspective

By *Serap Zuvin, Simge Esendal and İlke Işın Süer*

p.29

State Aid to Airlines in the Times of Covid-19 Crisis: Could the Measures Taken by Governments in Order to Save the Industry Restrict the Competition?

By *Miraslava Kazłouskaya*

p.37

The Urgency to Amend the Indonesian Aviation Law on Passengers Protection: Lessons Learned from Lion Air JT-610 and Sriwijaya Air SJ-182 Accidents

By *Ridha Aditya Nugraha*

p.47

Space

About a New European Multi-orbit Connectivity System

By *Sara Dalledonne*

p.52

Miscellaneous Material of Interest

The enforcement of Regulation (EU) 2019/947 on the Operation of Unmanned Aircraft and the New ENAC UAS-IT Regulation

By *Carla Bonacci*

p.55

Forthcoming Events

Guest Lecturers in Air & Space Law Course, University of Bologna

p.59

The Urgency to Amend the Indonesian Aviation Law on Passengers Protection: Lessons Learned from Lion Air JT-610 and Sriwijaya Air SJ-182 Accidents

Ridha Aditya Nugraha *

Abstract

Two fatal accidents involving Lion Air JT-610 and Sriwijaya Air SJ-182 within the last three years has shown an existing inequality between the passenger and the industry. The passengers are less protected when flying the domestic routes. The main issues are the inadequate amount of compensation which has not been fixed since a decade ago and the absence of advance payment clause. This situation is at odds with international flights, in which more routes to and from Indonesia are covered by the Montreal Convention of 1999. This international convention ensures both advance payment and a higher amount of compensation. Some ASEAN Member States rely on the Montreal Convention of 1999 for domestic carriage to ensure a high standard of passenger protection. In the end, this article provides legal and policy recommendations to keep the balance between airlines' interest, government duty in protecting its nationals, and efforts to further promote passenger protection in Indonesia.

The State of Play

Around three years ago, the tragic Lion Air JT-610 flight enroute from Jakarta to Tanjung Pandan crashed in the Java Sea. The fatal accident on 29 October 2018 took the lives of all its 189 passengers and crew onboard. On 9 January 2021, the unfortunate Sriwijaya Air SJ-182 flight enroute from Jakarta to Pontianak crashed in the Java Sea within five minutes after departing from Soekarno-Hatta International Airport. In total, 62 lives perished. These accidents, which sadly involved Indonesian airlines, stressed the importance of a better passenger protection regulation.

At the moment, two national laws, namely the Indonesian Minister of Transportation Regulation No. 77/2011¹ (the “**Minister Regulation No. 77**”) and the Indonesian Minister of Transportation Regulation No. 89/2015² (the “**Minister Regulation No. 89**”), regulate airline liability in Indonesia. These are the implementing regulations of the Indonesian Aviation Law of 2009.³ The Minister Regulation No. 77 deals with liability for loss of life, bodily injury, and third-party damage; while the latter, namely the Minister Regulation No. 89, regulates explicitly liability for delays.⁴ Both regulations have yet to be amended until now.

The Minister Regulation No. 77 sets up a new standard in protecting air passengers' rights since 2011. The regulation evaluates a passenger's life at IDR 1.25 billion, which is equivalent to approximately 61,000 SDR or USD 88,000, for death that is a

*Air and Space Law Studies - International Business Law Program, Universitas Prasetiya Mulya, Indonesia.

The views expressed are purely those of the author.

Comments should be addressed to ridha.nugraha@prasetiyamulya.ac.id.



AVIATION

result of an accident or incident on-board an aircraft.⁵ That amount is around 47% of the Montreal Convention of 1999⁶ maximum value for a passenger life, which limit stands at 128,821 SDR.⁷ This amount is the first tier which limits are breakable if the accident was proven due to the negligence or fault of the airline.⁸ While a lower amount - IDR 500 million, is equivalent to approximately 24,200 SDR or USD 35,000 - is provided for the death of a passenger boarding or disembarking an aircraft at an airport.⁹

	Montreal Convention of 1999 (in SDR)	Warsaw Convention of 1929 (in SDR)	Minister of Transportation Regulation No. 77 of 2011 (in SDR)
Passenger's life	128,821	12,300 *approximately	61,000 *on board of aircraft
			24,200 *boarding or disembarking

Table 1 - Comparison of Airline Liability Applicable in Indonesia

The airline liability concept established by the Warsaw¹⁰ - Montreal Convention has already been adopted within domestic law through the Minister Regulation No. 77, albeit not all of them.¹¹ This article shall analyse the importance to include the two important pro-passenger rights provisions which currently are not included in the Indonesian regime, namely the advance payment and automatic increase of liability limits calculations. With around 79 millions passengers in domestic flights before Covid-19 pandemic,¹² definitely this is a real issue to address.

The Main Loophole: Absence of Advance Payment Provision

The Minister Regulation No. 77 does not mention in details how to compensate the passengers or its heirs. Based on the previous and on-going cases, namely the AirAsia QZ-8501, Lion Air JT-610, and Sriwijaya SJ-182 accidents, the Minister of Transportation stands firm with one-time compensation payment.

Unfortunately, the compensation did not always come promptly. In case there is any indication of aircraft manufacturer defect, which is one of the keys to prove the non-existence of airline negligence,¹³ the compensation payment would take years to be paid, as the case of Lion Air JT-610.¹⁴ Such situation happened due to the release and discharge agreement controversy as presented by Lion Air to the passengers' heirs. Most likely, the on-going investigation on Sriwijaya SJ-182 crash will share a similar fate— noticing how the Indonesian National Transportation Safety Commission (NTSC - *Komite Nasional Keselamatan Transportasi*) preliminary report mentions an indication of aircraft manufacturer fault.¹⁵ It needs around one year - which means January 2022 - before the Indonesian NTSC announce its final official report revealing the cause aircraft accident.

The absence of advance payment provision within the Minister Regulation No. 77 has put passenger protection at its ebb. Consequently, there is no legal obligation for the airline to pay the 1.25 billion Indonesian Rupiah compensation in stages. It is important to cover the basic immediate needs, such as funeral as well as the passengers' relatives' private matters, especially where those victims were breadwinners. The fact that Minister Regulation No. 77 was enacted six years prior to the ratification of the Montreal Convention of 1999 could answer the absence of advance pay-

AVIATION

ment for passenger death and injury clause within the domestic law.¹⁶

One essential step needs to be taken within the time being is to include advance payment provision for passenger death and injury. The practices within the neighbourhood could become an example to follow. Both Malaysia and the Philippines refer to the convention governing international flights in regards to death and bodily injury of a passenger in domestic carriage.¹⁷ This means an immediate payment of compensation will be granted noticing both countries have ratified the Montreal Convention of 1999.¹⁸

Vietnam, as another Association of South East Asia (ASEAN) Member State, also mentions advance payment within their domestic law.¹⁹ The liability limits for death and bodily injury also refer to the original Montreal Convention of 1999 limits, which stands at 100,000 SDR, as introduced in 2006.²⁰ However, the airline has the privilege to set up such advance payment amount as recorded within the airline's conditions of carriage.²¹ This situation provides a room among the Vietnamese airlines in determining the right measure in accordance with their financial conditions.

Three ASEAN Member States, namely Malaysia, the Philippines and Vietnam, have shown a better passenger protection in regards to domestic carriage. In fact, the Indonesian regulation is left behind. Learning from the prolonged Lion Air JT-610 compensation payment, the Minister Regulation No. 77 should immediately be revised by including advance payment provisions. All eyes are on Sriwijaya Air SJ-182 crash, as whether the compensation could be granted faster to the heirs. This is a momentum for the Ministry of Transportation to take action.

Increasing the Liability Limits for Domestic Carriage

The Minister Regulation No. 77 does not mention any automatic increase in liability limits calculation - nor any reference to inflation and living standards. As the regulation was introduced almost a decade ago, the current amount of IDR 1.25 billion for passengers death is considered low and outdated. There has not been any revision towards liability limits for passenger's death and injury since the enactment of Minister Regulation No. 77 in 2011.

The Ministry of Transportation has two options in amending the Minister Regulation No. 77. First, they can just amend the liability limits taking into account the current inflation rate and living standards in Indonesia. Then a periodic review should be conducted to propose amendment on the latest regulation whenever it is deemed necessary. However, there is no guarantee the Ministry of Transportation could enact a new regulation on time.

As the second option, the Ministry of Transportation can use the Montreal Convention of 1999 liability limits as the basis. This step will show that Indonesian lives, with the highest number of domestic fliers, are equal with all lives flying the international flights covered by the Montreal Convention of 1999. The latter case could be considered extreme noticing it will doubled the Indonesian IDR 1.25 billion for passengers death standard; but still realistic noticing efforts realized by other ASEAN Member States such as Malaysia, the Philippines, and Vietnam in protecting their nationals in particular when flying domestic flight.²²

Currently, only up to the Fifth Freedom of the Air within the ASEAN Single Aviation Market²³ is allowed for member ASEAN Member States' airlines. Cabotage is firmly opposed within the region. Noticing the huge amount of passengers and its future growth in Indonesia, this fact shows the urgency to increase the liability limits for

AVIATION

domestic carriage in the country.

Conclusion and the Way Forward

Passenger protection in Indonesia, especially pertaining to passenger death, is still at its ebb. The heirs could not obtain compensation easily and promptly even though it has been regulated straightforwardly within the domestic law.

The success to include advance payment provision as well as to increase the liability limits for passenger death and injury shall become a relieving news from the passengers' (heirs') perspective. The loss of breadwinner(s) is never easy, and it shall be compensated in appropriate and prompt manners. Speaking of the latter, its presence shall provide a legal ground for the Ministry of Transportation as the regulator in speeding up compensation payment - as could applicable for the ongoing Sriwijaya Air SJ-182 crash.

Finally, Indonesia could learn from some other ASEAN Member States legislation which extend the Montreal Convention of 1999 applicability to domestic law. This step shall guarantee the advance payment presence and automatically increases the liability limits. A definitive step to promote passenger protection within the region.

¹ The Indonesian Minister of Transportation Regulation No. 77 Year 2011 on Airline Liability.

² The Indonesian Minister of Transportation Regulation No. 89 Year 2015 on Delay Management on Scheduled Commercial Airline in Indonesia.

³ The Indonesian Aviation Law No. 1 Year 2009 on Aviation.

⁴ Ridha Aditya Nugraha, "The Revisited Indonesian Aviation Law: From Warsaw to Montreal", *The Aviation & Space Journal* Vol. XVII No. 1, pp. 3-5.

⁵ The Minister of Transportation Regulation No. 77 Year 2011, art. 3. Conversion rate to SDR is made in March 2021.

⁶ Convention for the Unification of Certain Rules for International Carriage by Air, done at Montreal on 28 May 1999. Date of the deposit of the instrument of ratification by the Republic of Indonesia on 20 March 2017. The Convention came into force since 19 May 2017.

⁷ International Civil Aviation Organization, 2019 revised limits of liability under the Montreal Convention of 1999. This action is pursuant to Article 24. Effective as of 28 December 2019.

⁸ The Indonesian Aviation Law, Article 180. See also the elucidation part.

⁹ The Indonesian Minister of Transportation Regulation No. 77 Year 2011, art. 3(b).

¹⁰ Convention for the Unification of Certain Rules Relating to International Carriage by Air, done at Warsaw on 12 October 1929.

¹¹ See Ridha Aditya Nugraha, "The Revisited Indonesian Aviation Law: From Warsaw to Montreal", *The Aviation & Space Journal* Vol. XVII No. 1.

¹² Indonesia National Air Carriers Association, INACA Annual Report 2019, p. 7.

¹³ Pablo Mendes de Leon, *Introduction to Air Law*, Tenth Edition, Kluwer Law International B.V., Alphen aan den Rijn (2017), p. 363. See also R.D. Hursh and H.J. Bailey, *American Law of Products Liability*, Vol. 2(3) (1974).

AVIATION

¹⁴ See Ridha Aditya Nugraha, “Lion Air JT-610 Passenger Compensation: A Commentary and Review of the Current Progress”, *The Aviation & Space Journal* Vol. XVIII No. 2.

¹⁵ The Republic of Indonesia, National Transportation Safety Commission (Komite Nasional Keselamatan Transportasi) Preliminary Report KNKT.21.01.01.04 - Aircraft Accident Investigation Report (9 February 2021).

¹⁶ See Ridha Aditya Nugraha, “Lion Air JT-610 Passenger Compensation: A Commentary and Review of the Current Progress”, *The Aviation & Space Journal* Vol. XVIII No. 2.

¹⁷ The Philippines, Department of Transportation and Communications (DOTC)-Department of Trade and Industry (DTI) Joint Administrative Order No. 01 (Series of 2012) or also known as Air Passenger Bill of Rights Year 2012, sections 15-16. Malaysia, Malaysian Aviation Consumer Protection Code 2016 as amended by the Malaysian Aviation Consumer Protection (Amendment) Code 2019.

¹⁸ Date of the deposit of the instrument of ratification by Malaysia on 31 December 2007, the Convention came into force since 29 February 2008. Date of the deposit of the instrument of ratification by the Philippines on 19 October 2015, the Convention came into force since 18 December 2015.

¹⁹ Vietnam, Law on Civil Aviation of 2006, art. 169.

²⁰ *Ibid.*, art. 166.

²¹ *Ibid.*, art. 169.

²² See The Philippines, Air Passenger Bill of Rights Year 2012, section 15. Vietnam, Law on Civil Aviation of 2006, art. 166. Malaysia, Malaysian Aviation Consumer Protection Code 2016 as amended by the Malaysian Aviation Consumer Protection (Amendment) Code 2019.

²³ ASEAN Multilateral Agreement on the Full Liberalisation of Passenger Air Services, done in Brunei Darussalam on 12 November 2010.