

## The Criminal Liability of Air Flight Accidents

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**Abstract:** Aircraft as a means of air transportation has its own characteristics and advantages compared to land and sea transportation modes. This is related to the speed of movement and reaching large areas in a short time. Safe and secure operation is the most important guarantee in aviation, considering the dangers and accidents that are easily caused by the use of an aircraft. The purpose of this study is to determine and analyze criminal liability in aircraft accidents. The results of the study found that the criminal liability of flight captains in aircraft accidents in terms of Law No.1 of 2009 is Article 411 of Law No.1 of 2009 and Article 438 of Law No.1 of 2009, where the two articles can be the basis for holding the flight captain criminally liable in the event of intentionally flying an aircraft that endangers flight security and safety.

**Keyword:** Air Flight Accident, Criminal Liability.

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### 1. Introduction

Transportation has an important and strategic position in supporting national development. The importance of this transportation need can be indicated by the increasing need for transportation services for the mobility of people and goods within the country, from or outside the country, as well as acting as a driver, and a driver for regional growth and regional development. Aircraft as a means of air transportation has its own characteristics and advantages compared to land and sea transportation modes. This is related to the speed of movement and reaching large areas in a short time (Verschoor, 1991).

Airspace brings benefits to human interests or can be said for the state, namely as a means of transportation and communication, unifying media, national resources, and national defense and security media. In the current international community, several international conventions have been established to regulate aviation activities, namely the Convention Relating to the Regulation of Aerial Navigation 1919 and the Chicago Convention on International Civil Aviation 1944. The 1982 UNCLOS also regulates aviation traffic. Indonesia is one of the State parties to the 1944 Chicago Convention. As an implementation of state sovereignty in airspace through Law Number 1 of 2009 concerning Aviation and the sovereignty of the Indonesian state

over airspace, which states that the Unitary State of the Republic of Indonesia is fully and exclusively sovereign over the airspace of the Republic of Indonesia. Indonesia's status as an archipelagic State as stipulated in UNCLOS 1982, Indonesia has the authority to determine the archipelagic sea lanes and regulate the implementation of foreign aircraft traffic through the airspace of the State of Indonesia (Yustitiningtyas, 2019).

The purpose of organizing national aviation in Law Number 1 of 2009 concerning Aviation includes realizing the implementation of orderly, regular, safe, safe, comfortable flights at reasonable prices and avoiding unfair business competition practices. The safe and secure organization above is the most important guarantee in aviation, considering the dangers and accidents that are easily caused by the use of an aircraft.

Progress in the field of air law is closely related to the density of air traffic flow which is increasingly felt with the needs of society in general as consumers of service users / passengers. Often there are accidents in flight, violations of an airspace committed by aircraft in other countries which result in that passengers are not safe. The element of safety in aviation ranks first because it directly affects the interests of passengers, namely those concerning their souls.

The most important juridical aspect in the event of an aircraft accident is the matter of responsibility for the losses incurred, both due to the death of passengers and due to the destruction of property. Meanwhile, from the technical aspect, the cause of the aircraft accident must be sought to prevent the recurrence of accidents with the same cause in the future. Air transportation is carried out when there is interaction between human factors and other factors, as well as aircraft accidents that occur due to the interaction between human factors and other accident-causing factors (Saputra, 2016).

An aircraft accident is any event related to the operation of an aircraft for flight up to the time all leave the aircraft that results in a person being killed or seriously injured by being on the aircraft or by being directly touched by a part of the aircraft, including a detached part of the aircraft or by a direct jet engine blast, unless seriously injured or killed by natural causes, self-harmed, or injured by another person or on board the aircraft outside the area designated for passengers or crew of the aircraft (Pakan, 2008).

ICAO (International Civil Aviation Organization) or in Indonesian called the International Civil Aviation Organization is a United Nations Institution. It develops the techniques and principles of international air navigation and assists the development of international air transportation planning and development to ensure its growth is planned and safe. Law Number 1 Year 2009 on Aviation as the current aviation regulation, in the criminal provisions stipulated in Chapter XXII does not provide rules related to criminal liability for accidents. As with previous regulations, this law is only limited as a complementary criminal legislation of the Criminal Code, so that if the same accident occurs, the applicable rules are the criminal rules in the

Criminal Code as long as the formulation of the elements in the imposed article is fulfilled by the event and the perpetrator.

In accordance with Government Regulation No. 62 of 2013, article 22 states that the Air Transport Business Entity, aviation service providers or the Ministry that organizes government affairs in the field of transportation must notify an aircraft accident or serious incident to the NTSC. The reporting flow is the flow of reporting an aircraft accident that must be carried out by stakeholders to the NTSC and DGCA shows that there is no integrated information system in air transportation.

There are several methods for accident investigation that are based on diverse principles. The selection of the appropriate method and approach depends on the reason for the investigation. Examples of objectives and situations are firstly, finding out what happened with a quick and simple investigation. Second, determining responsibility for the accident which may involve regulations, financial compensation to the injured person and so on. Third, in the case of a major accident, obtain a satisfactory understanding and explanation and pursue a thorough and detailed investigation. Fourth, conduct research as part of a plan to gather information on weaknesses in the system.

In systems that are planned to have a high level of safety, consider accidents as system failures. The investigation will provide an opportunity to improve the system. In accordance with articles 53 and 411 of Law No. 1 of 2009, it is not allowed to fly an aircraft that endangers the safety of aircraft, passengers, goods and residents, for example, if a pilot flies an aircraft below a predetermined altitude and speed or flies an aircraft but the weather is not good or it is not possible to fly an aircraft in weather conditions that can cause an accident, it is punishable.

## **2. Research Method**

This research uses normative juridical legal research, which places the law as a building system of norms regarding principles, norms, rules from laws and regulations, court decisions, agreements and doctrines. The research approach used is the statue approach case approach. This research uses descriptive analysis research. Descriptive analysis research is research to obtain suggestions in overcoming certain problems in a criminal liability in an air flight accident. The data used is secondary data consisting of primary legal materials, secondary legal materials and tertiary legal materials. Then, legal materials are collected using documentation techniques. Legal materials that have been obtained from literature research are analyzed using qualitative methods based on deductive thinking logic.

## **3. Result and Discussion**

Crime is a real portrait of the development of community life which directly or indirectly, that community life undoubtedly has a gap of vulnerability that has the potential to give birth to individuals behaving deviantly. In society there is an association of interests that are not always fulfilled in the right way, meaning that

there are improper and unlawful ways carried out by a person or group of people to fulfill their interests (Wahid, 2005).

The laws described previously are laws that have been applicable in the world of aviation. And after Law No.15 of 1992 was revoked, it was replaced by Law No.1 of 2009 concerning aviation. Many changes have occurred in this law, adding more and more chapters and articles. Law No.15 of 1992 only consists of 15 chapters and 76 articles, while Law No.1 of 2009 consists of 24 chapters and 466 articles. Thus, it can be seen that there are many significant changes in the new aviation law.

The use of articles in the Criminal Code is not a form of overriding special legislation (*lex specialis*), but it is done because the aviation legislation in force before, namely Law Number 15 of 1992, does not provide special rules that can accommodate aircraft accidents in the aspect of criminal provisions.

In relation to Law Number 1 Year 2009 as the current aviation regulation, the use of the provisions in Chapter XXIX A of the Criminal Code can still be done because the criminal provisions contained in the law largely emphasize on acts committed with an element of intent, but the acts containing elements of negligence are not regulated at all. The rules on aviation crimes regulated in CHAPTER XXII A of the Criminal Code explicitly provide rules related to aviation crimes that contain elements of negligence in the acts committed.

The results of an interview with Chandra Gumilar Manager of Branch Communication and Legal at Angkasa Pura II Deli Serdang Company, "Law Number 1 Year 2009 concerning Aviation as the current regulation. However, this law is not complete and detailed in exploring all the problems that exist in the world of aviation."

Law Number 1 Year 2009 on Aviation as the current aviation regulation, in the criminal provisions stipulated in Chapter XXII does not provide rules related to criminal liability for accidents. As with previous regulations, this law is only limited as a complementary criminal legislation of the Criminal Code, so that if the same accident occurs, the rules applied are criminal rules in the Criminal Code as long as the formulation of the elements in the imposed article is fulfilled by the event and the perpetrator.

The more things that are regulated in the world of aviation, as well as criminal offenses that may occur during flight whether it is committed by the crew consisting of flight captains (pilots), co-pilots, aircraft technicians, briefing office personnel, Air Traffic Control (ATC) operations personnel, and passengers of the aircraft itself, the better it is regulated in this law. The criminal provisions in this law are contained from Article 401-Article 443. Mistakes can be made by anyone in the flight crew.

The provisions in Law No.15 of 1992 do not clearly mention the definition of flight crew or flight captain, but in Law No.83 of 1958 it is stated that the crew is the skipper and those who during and concerned with steering during the flight, perform duties in the aircraft. According to Law No.1 of 2009 concerning Aviation in Article 1 paragraph (11) it is explained that the Flight Captain is an aviator assigned by the company or

aircraft owner to lead the flight and is fully responsible for flight safety during the operation of the aircraft in accordance with the laws and regulations, and further in Article 1 paragraph (12) it is explained that what is meant by flight personnel are licensed or certified personnel who are given duties and responsibilities in the field of aviation.

The aviation crime listed in the regulation is generally described as the act of operating an aircraft that does not meet the airworthiness standards stipulated in Article 406 of Law No.1/2009. It is stated that if an aircraft has met airworthiness, it can be proven by the existence of an airworthiness certificate. To protect aviation security and safety from aircraft accidents, Article 34 paragraph (1) stipulates that every aircraft used for flying must have an airworthiness certificate. With this provision, every aircraft that will operate is expected to have received a thorough examination so that it is fit to fly or not. The inspection is carried out by the government on each aircraft periodically and accompanied by the relevant airline company.

Then, flying or operating an aircraft that endangers the safety of the aircraft is regulated in Article 411 of Law No.1/2009. What is meant by flying an aircraft that endangers the safety of the aircraft, passengers, goods and residents, for example, is when a pilot flies an aircraft below a predetermined altitude and speed. Furthermore, acts that may endanger aviation security and safety are regulated in Article 412 of Law No.1 of 2009. It is known that every aircraft has rules and regulations that require passengers or crew members to obey the rules because the rules are made for the benefit of all people on the aircraft. For example: smoking is prohibited during the flight both in the cabin and in the toilet. Aircraft have a series of equipment, both radar and aircraft navigation, which function to ensure flight security and safety. If any of these tools are taken away, the security and safety of the flight will be jeopardized. Every flight, flight attendants always remind us to turn off electronic devices because when the plane has reached an altitude of about 4500 feet, the autopilot mode is disabled to avoid causing serious flight chaos it only takes a little stray signal at the right time. It is these stray signals that have the potential to trigger various technological chaos in the cockpit. A simple example, making instruments in the cockpit function improperly.

Those are some of the regulations set out in the Law on aviation. As the researchers examined that the pilot's responsibility in taking responsibility for his actions when an accident occurred, he would be subject to punishment under the article Flying or operating an aircraft that endangers the safety of aircraft regulated in Article 411 of Law No.1 of 2009. What is meant by flying an aircraft that endangers the safety of aircraft, passengers, goods and residents, for example, is if a pilot flies an aircraft below a predetermined altitude and speed but the pilot deliberately violates these provisions.

Furthermore, if an aircraft accident occurs, the KNKT chairman will assign an investigation team in the accident and the chairman of the air transportation accident sub-committee as the leader. The results of the investigation will be discussed at the

NTSC meeting to make a decision on the cause of the accident. As a guideline in conducting investigations into aircraft accidents, the National Transportation Safety Committee (NTSC) publishes policies and guidelines for investigative procedures in handling aircraft accidents (Aircraft Accident Investigation Policy and Procedures Manual). To find out more about the work of the NTSC in handling aircraft disasters, the KNKT's work mechanism will be described as follows:

First, Investigation Planning and Preparation. To conduct a good investigation, managers and investigators from the NTSC must be fully prepared and must have a plan of action in place before an accident or incident occurs. Pre-investigation planning and preparedness involves several elements, including plans for the selection and deployment of staff to key positions on the investigation team. Proper planning and preparedness are essential in facilitating the arrival of investigators at the accident site and have a bearing on the efficiency of the investigation. The appointment of investigation personnel from the NTSC is based on government letters of endorsement, as prescribed by law and regulations (Aviation Law and operational regulations) regarding their authority and responsibilities. The letters of authorization contain photographs of the investigators that provide a legal basis for their work during accident and incident investigations. The NTSC also has agreements with aircraft accident investigation agencies in other countries to bring in other experts to assist at short notice without having to enter into formal agreements when needed. The NTSC will also provide consistent training of investigators in accordance with international standard training. Investigators must be aware of the potential hazards at the accident site and what precautions should be taken. For this reason, the NTSC will designate a staff member (appropriate person or person from another organization) as the site security and safety coordinator, and to oversee each investigator's use of personal protective equipment. The investigator in charge (IIC) or coordinator designate will inform the investigation team of all potential site hazards and will establish appropriate safety procedures. The accident site safety and security coordinator will also ensure that the provisions of the procedures regarding his or her health and safety are met during the investigation.

Second, Organizing the Conduct of the Investigation. Each NTSC Personnel grouped as investigators will consist of: Pilots, Aircraft Engineers, Manufacturing, Flight Operation, Maintenance Engineers, Avionics Engineers, Air Traffic Control, Human Factors, Organization and Management, Flight Surgeon, and Legal Aspect, among others. The recruitment of new investigators/staff is at the discretion of the Committee and will be based on many factors that include the operational needs of the resource departments within each sub-committee.

Third, the organization of the investigation. In the conduct of an investigation, each NTSC personnel and investigator has the function and duty of notifying the local police or other authorized person to ensure the protection of the aircraft accident site, including the aircraft and its contents, until such time as the NTSC and designated investigator can immediately take over the custody and security of the aircraft and its contents. Then, ensure the aircraft, its contents, and other relevant evidence remain

undisturbed, until the arrival and inspection by the accredited representative if there is a request to do so. (If removal or disturbance is necessary, on-site personnel should document this with photographs or other appropriate equipment. Identify safety deficiencies during the investigation and in the Final Report of the investigation with a view to promoting safety measures with recommendations addressed to the appropriate authorities, agencies, and organizations in charge of aviation safety.

Fourth, Notification and Reporting. The NTSC implements a 24-hour duty officer, including a backup officer, to receive notification of accidents and serious incidents, whether the notification is from within the country or abroad. The NTSC's 24-hour contact information will also be published on the NTSC's website for the benefit of the international aviation community. Upon receiving notification of an accident or serious incident in Indonesia, the duty officer will alert NTSC management and the appropriate investigation team members. Team members should immediately prepare for departure to the accident site. The duty officer will also coordinate the notification with other government agencies and relevant organizations, such as SAR teams and police. Generally, the target date for completion of a minor accident investigation is six months from the date of the incident. Whereas the due date for completion of investigations in major incidents with more complex safety issues is twelve months or as soon as possible. If for some reason the final report cannot be issued within one year after the date of occurrence, the NTSC will issue an interim report detailing the progress of the investigation and any confirmed safety issues. The NTSC will also issue interim reports and/or safety recommendations, whenever it deems necessary to highlight any safety issues of interest to other organizations.

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.

Indeed, activities such as aviation and air transportation have their own potential hazards that will cause accidents and cause losses to certain parties. The parties who may be liable for such losses are the manufacturer of the aircraft if the accident was caused by faulty construction or quality of the materials used; the fuel manufacturer; the airline or its employees, including the crew; the air traffic controller; the passenger himself, if he caused or contributed to the accident; the owner of the goods or cargo, if the accident was caused by the nature of the cargo or goods; and third parties who caused the accident.

In accordance with its authority, the NTSC can monitor and ask for clarification of the parties that have been given safety recommendations, whether they have followed up on the recommendations in accordance with Article 357 paragraph (5) of Law Number 1 of 2009 concerning Aviation. However, there is no article that mentions whether there are sanctions for not following up on the results of the NTSC's recommendations, considering that this will affect flight safety and could one day lead to an accident with the same cause.



Regarding liability related to sanctions, be it administrative, civil or criminal, the NTSC in carrying out aircraft accident investigations is not authorized to blame or hold accountable (no blame or liability). So that the NTSC investigation is only to find the cause of the accident and provide recommendations to prevent repeated accidents in the future and improve safety conditions in aviation in Indonesia.

A violation of law is defined as any criminal act that may be or has been committed during the operation of an aircraft. When it is suspected that a violation of the law has occurred, the NTSC will immediately notify the police or the authorized PPNS, for appropriate investigation. In essence, any aviation safety issues should continue to be investigated through the normal process while maintaining cooperation with the police and other law enforcement agencies.

#### 4. Conclusion

The criminal liability of flight captain in an aircraft accident in terms of Law No.1 of 2009 is Article 411 of Law No.1 of 2009 and Article 438 of Law No.1 of 2009, where both articles can be the basis for holding the flight captain criminally liable in the case of intentionally flying an aircraft that endangers aviation security and safety or negligence not to notify a third party that his aircraft or another aircraft is in danger. The need for aviation regulations to be revised, considering that in several cases including in this case, articles contained in the Criminal Code were used, not in the Aviation Law, considering that when looking at the elements imposed, the Aviation Law should also be used.

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