



Responsibilities of air carriers on international flights

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Abstract

In international air transportation, it is sure to talk about the responsibility of the carrier, which cannot be separate from the discussion of international agreements, namely, in this case, the 1999 Montreal Convention, which contains the issue of the responsibility of international air carriers. This study aims to determine the guilt of air carriers on international flights to passengers, shippers, and third parties in the event of an aircraft accident. The approach method used in this research is normative juridical (legal research), using legal materials as the primary material. The carrier's responsibility is based on the absolute principle; the page is responsible but is still limited by the limitation principle (the carrier's responsibility is limited to a certain amount). The airline's responsibility is based on the presumption and limitation of liability for consignments and baggage. The carrier is always considered responsible until the airline can prove that it is not guilty of the event that caused the loss. The carrier's responsibility for baggage should be absolute because, by the time the passenger brings the bags, it has passed several checks that have confirmed that the goods in the luggage are not problematic.

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1. Introduction

Today, accidents often occur in using land, sea, and air transportation services. Where it turns out that there are still many accident victims who do not understand the rights they should receive based on the legal protection that applies as a result of the accident, especially those related to the responsibility of the carrier. In international air transportation, it must also talk about the responsibility of the page, which cannot be separate from the discussion of international agreements, namely, in this case, the 1999 Montreal Convention, which contains the issue of the responsibility of international air carriers.

The carrier, as the operator of flight activities, has the responsibility and obligation to compensate for the losses suffered by the users of its services as a result of the fault of the carrier. Because by law, users of transportation services are protected, following the Law of the Republic of Indonesia Number 1 of 2009 concerning Aviation, it can be seen in Articles 141 to 149 regarding the carrier's responsibility to passengers and cargo shippers. (Hidayat, 2013)

The problem of the carrier's responsibility in the world of transportation (especially international air transportation) is an important issue related to the obligations of the page in the transportation agreement, one of which is to provide compensation to passengers as users of transportation services. Passengers, in general, have not been able to understand their rights to claim this compensation properly. An agreement is a legal action where one or more people bind themselves to one or more people. (Setiawan, 2016) Furthermore, (Subekti, 2005) stated that a contract is an event in which one person promises to another or where two people promise each other to do something (Subekti, 2005).

Based on the carriage agreement between the carrier and the passenger, the airline is obliged to carry out the transportation until it arrives at

its destination 'safely.' The term 'safely' implies that if the vehicle goes 'unsafely,' it is the responsibility of the carrier. An unsafe condition means the passenger dies or suffers temporary or permanent injury/disability due to an event or incident. (Kadir, 1994)

The carriage agreement occurs based on an agreement regarding the time of departure, date of release, place of origin, and destination of the flight with the obligation to pay an amount of money by the agreed price. The existence of a passenger ticket is evidence of this carriage agreement. Of course, there are rights and obligations in using transportation services, where the passenger's responsibility is to pay a sum of money for the transportation services used. The passenger's request is to use the transportation service to arrive at the destination by the contract or agreement contained in the ticket held by the passenger. Business entities of scheduled commercial air transportation are required to meet aviation safety and security standards. Therefore, passengers as consumers need to be protected by the government, and their rights are guaranteed. (Adriani, 2015)

With such unsafe transportation conditions, the carrier is responsible for compensating the victims or their heirs; what is meant by aircraft accident victims in this paper are those on board the aircraft, regardless of their status. They are aircrew (crew), reserve aircraft crew (extra crew), observers (observers), and legitimate and illegitimate passengers (not protected by transportation documents in the form of tickets).

Based on research by Annalisa Yahanan and Kamal Halili in the legal pulp journal, air carriers are responsible for passengers whose rights are violated and cause losses as mandated in the aviation law. However, the implementation of the responsibility of air carriers to passengers is still low. This condition is known to be still lacking in airlines' response to the loss of passengers who suf-

fer losses. Thus, the position of passengers is still weak as users of flight services; therefore, in this study, the author will discuss the responsibilities of air carriers on international flights.

2. Methods

The approach method used in this research is normative juridical (legal research), using legal materials as the primary material. The normative juridical approach can be carried out in two ways, namely statute approach, primary legal materials, which are legal materials consisting of essential regulations and other laws and regulations, and a theoretical approach (conceptual approach) in the form of secondary legal materials that provide explanations of primary legal materials, including draft laws, research results, academic work from legal experts. So that the collected legal materials can be accounted for and can produce the correct answer, an appropriate analytical technique is needed. Analysis of legal materials is the next step to processing research results into a report. Analysis of legal materials is an effort made by working, organizing, sorting into manageable units, looking for and finding patterns, and finding what is essential and what is learned. Based on the type of research, the analytical technique used is content analysis, which is used by completing the analysis of secondary legal material.

3. Result and Discussion

3.1 Carrier responsibility principle

The implementation of transportation by air is due to an agreement between the carrier and the passenger. The performance of air transportation in commercial flight activities does not mean anything without the presence of passengers. In the aviation industry, passengers are one of the critical assets that airlines need to consider to achieve profits. Therefore, passengers who use flight services need to have their rights protected,

especially the right to compensation if the passenger experiences an accident (which causes death, injury, or permanent disability), damage or loss of baggage, and delays. (Musa & Hassan, 2012)

The carrier's responsibility to consumers using domestic and commercial air transportation services in Indonesia is carried out as part of the effort to protect consumer rights if losses arise from air transportation activities either due to intentional actions or mistakes of the carrier or the person employed. Victims or their heirs can file prosecutions in court to obtain additional compensation other than the compensation stipulated by the legislation.

Responsibility can also be interpreted as an obligation to pay money or perform other services, which must ultimately carry out. The Aviation Law defines the carrier's responsibility as the obligation of the air transportation company to compensate for the losses suffered by passengers and goods as well as third parties. Thus, we can interpret liability as to the obligation to pay compensation for losses suffered by other parties; for example, in an air carriage agreement, an airline is responsible for the safety of passengers and goods transported to their destination. Therefore, if the passenger suffers a loss, the airline must be accountable in terms of liability. (Supit, 2013)

Compensation is divided into two forms: payment due to default and unlawful acts. Settlement obtained due to default results from not fulfilling the main or side obligations in the agreement. The obligation to pay compensation results from applying the provisions in the deal, a legal requirement both parties voluntarily submit to under the contract. (Vanda, 2018)

The existence of air transportation requires international legal regulations that regulate the relationship of interest in the implementation of air transportation for uniformity; in this case, it is determined by an international body, namely, the International Civil Aviation Organization, which

has issued various conventions on air transportation, including the Warsaw Convention 1929, the 1999 Montreal Convention along with several protocols others. (Amelia, 2016)

In the Law of International Air Transport, the regulations concerning the liability of international air carriers that have been enforced are the Warsaw Convention of 1929, which has been amended several times as stated in the Hague Protocol in 1955 Montreal Agreement in 1966, Guatemala Protocol in 1971. The Rome Convention in 1952 explicitly regulates the responsibility of international air carriers to third parties. And the last one that is still in force is the 1999 Montreal Convention. In these regulations, the following basic principles regarding the responsibility of the carrier are known: the principle of "Presumption of Liability," Principle of "Limitation of Liability," Principle of "Presumption of Non-liability," and the "Absolute Liability" or "Strict Liability" principle.

The Presumption of Liability Principle. The defendant always applies responsibility until he can prove he is useless. The law of air transportation is regulated in the air transportation ordinance. There are four variations in this doctrine: a) The carrier can absolve himself of responsibility if he can prove that matters of power caused the loss. b) The carrier frees himself from liability if he can prove that he took the necessary measures to avoid the loss. c) The carrier can absolve himself of liability if he can prove that the loss was not due to his fault. d) The carrier is not responsible if the loss is caused by the fault/negligence of the passenger or because the quality/quality of the goods transported is not good. (Hamzah, 2021) In the principle of presumption of liability, the carrier is considered responsible for any losses arising from the transportation it carries out. However, if the airline can prove he is innocent, he can be released from the obligation to pay compensation.

The presumption of liability provides better protection for users of transportation services than the principle of 'based on fault' because the service user of transportation no longer needs to prove that there is an error on the carrier's part. This is quite logical because it will be easier for the airline to prove his innocence, rather than the victim or user of the transportation service having to confirm that the carrier's fault caused the loss. (Sudiro, 2019) This principle is related to other principles of responsibility related to the provision of compensation. This principle is a balance from strengthening the position of transportation service users who no longer need transportation service users to carry out the burden of proof for the occurrence of a loss and are not allowed to enter into agreements that negate responsibility.

The Warsaw Convention 1929 was the first act of this type, governing an air carrier's civil liability. In practice, some problems in its application and interpretation occurred. The Warsaw Convention was initially prepared in French. Translating the Convention into the languages of the States Parties often created interpretation problems; some institutions were not known to the domestic legislators. Also, the practice of the states, mainly the Anglo-Saxon ones, exceeded the compensation amounts within the limits of the Warsaw Convention. It was a stimulus for changes. The Hague Protocol 1955 increased the amount limits of liability and modified the liability principle. The next step was adopting the Guadalajara Convention 1961, which introduced the term of the contractual carrier and the actual page as well as governed joint and several airlines' liabilities. The dynamic technical development and the increased number of transported passengers entailed further changes, lobbied mainly by the United States. The Guatemala Protocol 1971, which was to make the liability of the air carriers stricter, to introduce increased liability limits as well as some novum in the field of selection of jurisdiction, was to be the response to these problems (but it was not appli-

cable due to a failure to obtain the required number of thirty ratifying countries). Further changes came in 1975 when four Montreal Protocols were signed in Montreal, which, first of all, changed the “currency” used to determine the amount of the compensation. (Mendala, 2021)

In the Warsaw Convention of 1929 and the Air Carriage Ordinance No. 100 of 1939, this responsibility principle is combined with other responsibility codes (Musa & Hassan, 2012). This can be seen in Article 22 of the Warsaw Convention of 1929 and Article 30 of the Air Transport Ordinance no. 100 of 1939. Likewise, Article 17 paragraph (1) of the Guatemalan Protocol of 1971 combined the principle of absolute liability with the code of limiting liability that cannot exceed or have an unbreakable limit. In the 1971 Guatemalan Protocol, the amount of compensation or the limitation of liability of the carrier set is relatively high, namely US \$ 100,000 - for each passenger (excluding court fees) or US \$ 120,000 for each passenger (including court fees). In Law No. 15 of 1992, the principle of limitation of liability is also used, as seen in the regulation of compensation limits contained in Article 43, Article 44, and Article 45 of Government Regulation no. 40 of 1995. In this law, this principle is combined with other codes of responsibility.

While the principle of presumption of non-liability, the carrier is always considered not responsible for the losses suffered by passengers/users of transportation services on hand baggage, namely goods brought by and under the supervision of passengers/users of transportation services themselves, in this case, the burden of proving the responsibility of the carrier lies with the passenger/user of the transportation service so that the new page is responsible if there is an error on the part of the carrier himself.

The Warsaw Convention of 1929 and the Air Carriage Ordinance No. 100 of 1939 applies the principle of “presumption of non-liability” to hand

baggage, as contained in Article 6 in conjunction with Article 30 of the 1929 Warsaw Convention and Article 6 in conjunction with Article 31 of the Air Carriage Ordinance no. 100 of 1939. However, in 1971 Guatemalan protocol no longer used this responsibility principle. The principle of absolute liability, in general, the term total liability is a responsibility that applies absolutely, without the possibility of liberating oneself, except in the case of losses caused or contributed to by the party who suffered the loss himself. This can be said to be responsible without the necessity of an error/omission.

Some theoretical experts often distinguish the term strict liability from the time absolute liability. According to E. Saefullah Wiradipradja (Musa & Hassan, 2012), strict liability is the principle of responsibility that stipulates that the fault is not a determining factor. Still, some exceptions allow one to be released from duty, for example, in a state of “force majeure.” At the same time, absolute liability is the principle of responsibility without error and no exception.

Other experts state that the difference between strict and absolute liability is in the presence or absence of a causal relationship between the person who made a mistake. There is a causal relationship in strict liability, while in absolute liability, it does not. Therefore, in unlimited liability, there is no possibility for the carrier to avoid responsibility because anyone can be responsible; there is no need for the person who directly makes a mistake himself. However, many experts state that there is no difference between strict and absolute liability.

The principle of absolute responsibility is the principle of air transport responsibility contained in the Guatemala Protocol of 1971, which is a replacement of Article 17 of the Warsaw Convention of 1929 with a new Article 17 paragraph (1), which is the abolition of the provisions for the release of the carrier’s liability based on Article 20

paragraph (1) The Warsaw Convention of 1929, which states “the carrier shall not be liable if he and his employees have taken all necessary measures to avoid loss, except in the case of delay.” This means that the principle of responsibility of the air carrier becomes absolute, and there is no possibility of being free.

The principle of absolute responsibility is a principle that protects and benefits users of transportation services because the carrier is obliged to provide compensation to victims/users of transportation services without questioning whether the airline has made a mistake/negligence. This is something that users of transportation services should accept to ensure the safety of users of high-risk air transportation services.

In addition to benefiting users of transportation services, this principle helps the carrier because, with the focus on absolute responsibility, there is no need to settle cases through the courts, which will take a long time and require high costs. So the principle of accountability is more efficient in applying problem-solving.

3.2 The carrier’s responsibilities to passengers, shippers, and third parties

The carrier’s responsibilities to passengers, the 1999 Montreal system, and the air carrier’s obligations for passengers are stated in article 17 (1), which reads as follows: The carrier is liable for damage sustained in case of death or bodily injury of a passenger upon condition only the accident which caused the death or injury took place on board the aircraft or in the cause of any of the operations of embarking or disembarking.

Article 21 states: 1) For damage arising under paragraph 1 of article 17 not exceeding 100.000 Special Drawing Rights for each passenger, the carrier shall not be able to exclude or limit its liability. 2) The carrier shall not be able for damages arising under paragraph 1 of article 17 to the

extent that they exceed for each passenger 100.000 SDR if the carrier proves that: a) such damages were not due to the negligence or other wrongful act or omission of the carrier or its servants or agents, or b) such damages were solely due to the negligence or other wrongful act or omission of a third party.

From these articles, we can conclude that every passenger who dies or suffers losses due to an aircraft accident is given compensation of up to 100,000 SDR (or approximately US \$ 135,000) based on absolute/strict liability. And suppose the passenger wants to file a claim exceeding the 100,000 SDR limit. In that case, the air carrier’s responsibility shifts from the absolute obligation to the principle of presumption of liability.

The responsibility of the carrier to the shipper of the Montreal system, in article 18, is stated: 1) The carrier is liable for damage sustained in the event of the destruction or loss of, or damage to, cargo upon condition only that the event which caused the damage so supported took place during the carriage by air. 2) However, the carrier is not liable if and to the extent it proves that destruction, or loss of, or damage to, the cargo resulted from one or more of the following: Inherent defect, quality or vice of that cargo; Defective packing of that cargo performed by a person other than the carrier or its servants or agents; An act of war or an armed conflict; An act of public authority carried out in connection with the entry, exit or transit of the cargo.

Responsibilities for registered and registered luggage: checked baggage is goods belonging to or under the control of passengers, which are handed over to the carrier before the aircraft departs to be transported and handed back to the passenger at the destination. For checked baggage, the airline makes a transport document called a baggage ticket, and in practice, it is generally combined with a passenger ticket.

The 1999 Montreal System, in Article 17 (2), states that: The carrier is liable for damage sustained in case of destruction or loss of, or damage to, checked baggage upon condition only that the event which caused the destruction, loss, or injury took place on board the aircraft or during any period within which the checked baggage was in charge of the carrier. However, the airline is not liable if and to the extent that the damage resulted from the inherent defect, quality, or vice of the baggage. In the case of unchecked baggage, including personal items, the carrier is liable if the damage resulted from its fault or that of its servants or agents.

The carrier's responsibility for hand baggage in the Montreal 1999 system, the carrier's responsibility for hand baggage is the same as for checked baggage. This is stated in Article 17 (4): Unless otherwise specified, in this convention, the term baggage means both checked and unchecked. The carrier's responsibility to third parties in the 1999 Montreal Convention, the carrier's responsibility to third parties on land is not explicitly regulated, so the carrier's responsibility to third parties on the ground still refers to the Rome Convention.

The carrier's responsibility for delays in the 1999 Montreal system the airline responsible for delays is regulated in Article 19, which reads as follows: The page is liable for damage occasioned by delay in the carriage by air of passengers, baggage, or cargo. Nevertheless, the carrier shall not be responsible for damages occasioned by delay if it proves that it and its servants and agents took all measures reasonably required to avoid the damage or that it was impossible for it or them to take such steps.

In the 1999 Montreal Convention (Putri & Sunarjo, 2018), jurisdictional issues are regulated in article 33, namely: 1) An action for damages must be brought, at the option of the plaintiff, in the territory of one of the States Parties, either

before the court of the domicile of the carrier or its principal place of business, or where it has an area of business through which the contract has been made or before the court at the home of destination. 2) In respect of damage resulting from the death or injury of a passenger, an action may be brought before one of the courts mentioned in paragraph 1 of this article or in the territory of a State Party in which at the time of the accident the passenger has their principal and permanent residence and to or from which the carrier operates services for the carriage of passengers by air, either on its aircraft, or on another carrier's aircraft under a commercial agreement, and in which that carrier conducts its business of carriage by air from premises leased or owned by the carrier itself or by another carrier with which it has a commercial agreement.

The party entitled to compensation in the 1999 Montreal Convention does not explicitly regulate who is entitled to compensation, so it can conclude that the person authorized to pay is the person concerned or the heirs of the person (according to the legislation in the local country).

4. Conclusion

The responsibility of air carriers on international flights to passengers as victims of airplane accidents can be divided as follows: to the passengers themselves, the carrier's responsibility is based on the absolute principle. Namely, the page is responsible but is still limited by the limitation principle (the carrier's responsibility is limited to a certain amount). The airline's responsibility is based on the presumption and limitation of liability for consignments and baggage. The carrier is always considered responsible until the airline can prove that it is not guilty of the event that caused the loss. The liability of the page is limited to a certain amount.

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