

TRANSCENDENTAL LAWS : AIR TRANSPORTATION OF HAJJ AND UMRAH¹

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Abstract- This article is meant to explore air transportation of hajj and umrah (minor hajj). It consists of six items. Item one regards legal ground of air transportation such as civil aviation act of 2009, liability of air carrier includes second, third party and insurance liability; Item two regarding legal ground of hajj and umrah such as liability of air carrier including liability based on fault, presumption and strict liability regimes, contractual relationship; item three regards ratification; item four regarding Montreal convention of 1999 such as documentation, liability of air carrier, compensation, advance payment, insurance, law suit and jurisdiction; item five regards legal ground of umrah (minor hajj) such as memorandum of understanding, airlines operation, minor hajj; umrah case, item six regards Malaysia such as passengers' liability, baggage and cargo, loss, damage or delay, cost and of other expenses and Qatar Airways case and finally conclusion and recommendation provided.

Key words : *Hajj, Umrah, Montreal Convention of 1999 and Memorandum of Understanding*

INTRODUCTION

Indonesia's flag carrier Garuda Indonesia starts carrying a total of 221,000 Hajj pilgrims from the island country which has the largest population of Muslims in the world. The first flight of Garuda Indonesia GA 1101 started from Sultan Hasanuddin International Airport, Makassar on July 27 and reach Madinah International Airport on July 28, 2017. The second flight of Garuda Indonesia GA 7261 flew on July 27

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from Jakarta International Airport and reached Madinah on July 28, 2017. Three more flights of Garuda Indonesia GA 6030, GA 6040 and GA 6201 departed Soekarno-Hatta International Airport departing for Saudi Arabia on July 27, 2017. Garuda Indonesia operated a total of 285 flights from different embarkations points in the country to carry 221,000 haj pilgrims. The last flight of Garuda Indonesia departed for Jeddah Haj Terminus in Saudi Arabia on August 26, 2017 (<http://ummid.com/news/2017/July/17.07.2017/hajj-flight-schedule-2017-from-indonesia-garuda.html>)

Previously, M. Arif Wibowo, the President Director of Garuda Indonesia, signed a Memorandum of Understanding (MoU) with Abdul Jamil, the Director General of Hajj and Umrah at the Ministry of Religious Affairs, to ensure the best service for Indonesian pilgrims. The fleet consisted of three Boeing 747-400s, each able to carry 428 passengers in a two-class configuration, four B777-300ERs, of which each can carry 318 passengers in a three-class configuration, and seven two-class Airbus 330-300 with 257 passengers' capacity (Ummid.com News Network : 2017)

With regard to the hajj price of 2017, the Government and Commission VIII of the House of Representatives (DPR-RI) overseeing religious affairs had earlier agreed on the new hajj price this year. The new hajj price this year amounts to IDR 34,890,312, rising by 0,72% (IDR 249,000) compared to that of last year. The new Hajj price included airplane ticket, *passenger service charge*, housing, and living allowances. Specifically, the hajj price is allocated for airplane ticket (IDR 26,143,812), housing (950 Saudi Riyal, which equals to (IDR3.391,500.) and living allowances (1,500 Saudi Riyal, which equals to IDR 5,355,000.) (<http://ummid.com/news/2017/July/17.07.2017/hajj-flight-schedule-2017-from-indonesia-garuda.html>)

RESEACH METHOD

This research is library research using the normative juridical type with normative legal research methods, including reviewing and analyzing the legal material and legal issues related to air transportation of hajj and minor hajj. In this research, the result will be achieved in the form of prescriptions about what have to be done to resolve the issue. The sources of legal materials used in this research consist of 1st, 2nd and 3rd law material. The 1st law materials which are authoritative legal materials, meaning that such legal materials have the authority, namely legislation, official records. Such legislations used as the 1st legal materials are the Chicago Convention of 1944 (ICAO Doc.7300/8), Montreal Convention of 1999 (ICAO Doc.9740), the constitutional of the Republic of Indonesia of 1945, Foreign Investment Act (Act : 1967), the Civil Aviation Act of 2009 (Act : 2009) including its implementation regulations, whilst the 2nd law materials are over all publications regarding the law and regulation which are not official documents but related to the subject matter. Such publication concerning the law and regulations includes text books, theses, law dissertation. The 3rd law materials used in the research are legal dictionaries, comments on the court decision,

also the opinions of legal experts published via journals, magazines or others (Amad Sudiro, Martono K:2016)

DISCUSSION AND THE RESULT

1. Legal Ground of Air Transportation.

a. Civil Aviation Act of 2009

Civil Aviation Act of 2009 (Act : 2009) is consisting of 466 Articles and 24 Chapters. It came into force on 12 January 2009, aiming to promote the development of air transportation. It regulates a host of matters related to aviation, form sovereignty in airspace, aircraft production, operation and airworthiness of aircraft to aviation safety and security, aircraft procurement, aviation insurance, the independence of aircraft accident investigation, and the licensing of aviation professionals. The CAA of 2009 also regulates scheduled and non-scheduled air transportation, airlines capital, the ownership of aircraft, aircraft leasing, tariffs, liability of air carriers, air navigation facilities, airport authorities and services, law enforcement related to air transportation. The CAA of 2009 also has provisions aimed at supporting the development of national and international air transportation in Indonesia, including provisions regarding the creation of a public service institute to further those goals (Gunawan Djajaputra, Hari Purwadi and Martono K., :2017)

b. Liability of Air Carriers

With regards to air carrier, the CAA of 2009 provides several provisions such as liability to the second party, the third parties' liability and air carrier's liability insurance as follows:

1). Second Party Liability

Air carrier shall be liable for death passengers, permanent defects, injuries caused by accident on board aircraft and/or whilst getting off or getting on aircraft; damage(s) due to cabin baggage losses or damage, for any losses suffered by any passenger due to loss, destruction, or damage of any check-in baggage as a result of air transportation activities whilst the check-in baggage under supervision of the air carrier; for damage/ losses suffered by any cargo shipper for losses, destruction, or damage of cargo caused by any air transportation activities, whilst the cargo in under supervision of the air carrier, for losses incurred due to any air transportation of passengers, baggage, or cargo except when the carrier can prove that the delay is caused by weather and operational technical factors such as flood, etc.(Dwi Handayani, Alexander Sukiman Sugita, Haryono Kuswanto and Martono K.,:2017)

2). Third's Party Liability

As far as a third's party liability is concerned, the CAA of 2009 provides that anybody who is operating an aircraft shall be liable for damages, losses suffered by third party as a result of the aircraft operation, aircraft accident, or falling down of other

objects from the aircraft being operated. The indemnity on damages, losses suffered by a third party shall be given in accordance with the actual damages, loss suffered. Further provisions regarding calculation of the amount of indemnity, compensation, requirements, and procedure of claiming compensation shall be stipulated under the MOC Regulation. Any air carrier may claim a third party causing the damages, loss suffered by the passenger, shippers, or cargo beneficiaries that are the carrier's liability. It is worthwhile to note here, no mentioned the obligation of air carriers to insure their liability, but the best practice the carriers insure their liability (Mia Hadiati, Gunawan Djajaputra, Martono K., :2017)

3). Air Carrier's Liability Insurance

With regards to air carrier's liability insurance, the CAA provides that air transport business permit holder, shall be obligated to purchase liability insurance with liability value equal to insurance coverage for regular passenger air transportation proven by valid insurance policy. Additionally, air transport business entity permit holder shall also be obligated to serve potential passengers fairly without discrimination on ethnic, religion, race, inter-group and economic and social status and submit monthly air transportation activity report including delays and cancellation of flight, no later than on the 10th of the next for each moth to the MOC (Dwi Handayani, Gunawan Djajaputra and Martono K.,:2017)

2. Legal Ground of Hajj and Umrah Air Transportation

As far as related to hajj and umrah flight, there are two type of private air law convention such as Warsaw Convention of 1929 (Warsaw Convention : 1929; Milde M.,:1993; Dempsey P.S.,:2005), and Montreal Convention of 1999 (ICAO Doc. 9740).Taking into account that Indonesia on 20 March 2017 deposited its instrument of accession to the Convention for the Unification of Certain Rules for international Carriage by Air, signed on 28 May 1999 (MC 99) with ICAO, the hajj and umrah flight of 2017 applies MC99.

a. Liability of Air Carrier

There are at least three types concept of liability regimes namely liability based of fault regimes, presumption of liability regimes and strict liability regimes as follows:

1). Liability Based on Fault

Usually, the concept of liability based on fault regimes applies to cabin baggage. This type of liability in Indonesia is found in the CAA of 2009. It provides that no air carrier shall be liable for damage due to cabin baggage losses or destruction or damage(s), except when the passenger proves that the loss was caused by the action of the air carrier. The reason of this regime is that cabin baggage is under the supervision of the passengers themselves. With regards the amount of compensation for cabin baggage is determined to the maximum actual loss suffered by the passengers (Dwi Handayani, Alexander Sukiman Sugita, Haryono Kuswanto and Martono: 2017),.

Martono K., Amad Sudiro., 2017)

2). Presumption of Liability Regime

The concept of presumption liability regime applies to passenger, check-in baggage and cargo. The carrier is liable for damage sustained in the event of the death or wounding of a passenger or any other bodily injury suffered by a passenger, loss of check-in baggage or cargo, if the accident which caused the damage so sustain took place on board the aircraft or in the course of any of the operations of embarking or disembarking. If the death of passenger or wounding of passenger or any other bodily injury suffered by a passenger, loss of check-in baggage or cargo is incurred due to the intentional action or default of air carrier or willful misconduct, of its employees, the air carrier shall be liable for damage incurred and will not be able to limit its liability, means that the air carrier is liable for unlimited liability.

3). Strict Liability Regimes

A strict liability regime applies to third party liability. Anybody who is operating aircraft shall be liable for damages/loss suffered by a third party as a result of aircraft operation, aircraft accident, or the falling of objects from the aircraft being operated. The reason for this regime is that it is impossible for the third party to prove the fault of the air carriers. The compensation for damages/loss suffered by a third party these liabilities shall be given in accordance with the actual damages/loss suffered (Gunawan Djajaputra, I Gusti Ayu Ketut Rachni Handayani, Martono K.,:2017)

3. Contractual Relationship

According to MC99, the national as well as foreign air service provider of hajj and umrah flight shall delivered an individual or collective document containing an indication of the place of departure and destination, if the places of departure and destination are within the territory of a single State Party, one or more agreed stopping places being within the territory of another State, an indication of at least one such stopping placed, however, non-compliance with such document shall not affect the existence of the validity of the contract of carriage between the national as well as foreign air service provider of hajj flight and the hajj candidate.

Based on contractual relationship between airlines and hajj/umrah, the airlines has the right of payment and the hajj/umrah has an obligation to pay the transportation fees and has the right to the destination safely, for that reason the airline is liable for damage sustained in case of death or bodily injury of hajj/umrah upon condition only that the accident with caused the death or injury took place on board the aircraft or in the course of any of the operations of embarkation or debarkation.

4. Ratification of Montreal Convention of 1999.

After Focus Group Discussion (FGD) in which participated by Prof. Dr. L. Weber (Legal Adviser of the Director General of Air Communications -DGAC), Indonesian National Air Carriers Association (INACA), International Air Transport Association

(IATA), the Supreme Court, Ministry of Law and Human Rights (MOLHR), Ministry of Foreign Affairs (MOFA), and other stakeholder related to aviation activities in Solo, Central Java, the DGAC strongly intend to ratify the Montreal Convention of 1999 as soon as possible. The intention to ratify the Montreal Convention of 1999 (ICAO Doc.9740) in line with the General Assembly Res.A-38-19, which urges all states that have not done so to become parties to the MC99 as soon as possible (General Assembly Rec.A 38-20 ; 1999). Finally, on 20 March 2017, Indonesia deposited its instrument of accession to the Convention for the Unification of Certain Rules for international Carriage by Air, signed on 28 May 1999 (MC 99) with International Civil Aviation Organization (ICAO).

Previously, Indonesia had only ever sign up to the Warsaw Convention of 1929, and had failed to sign up to the 1955 Hague Protocol or any of the Montreal Protocols. Ratification of MC99 does, therefore, represent a huge leap forward for Indonesia and will no doubt be welcomed by most participants in the civil aviation industry, especially regard to hajj flight during pilgrimage season. The ratification of MC99, hopefully spell the end of the uncertainty relating to liability limits for international carriage of hajj flight and cargo to and from Indonesia. There is currently some uncertainty in Indonesia relating to how the Poincare Franc liability limits stated in the Warsaw Convention of 1929 should be converted into a traded currency. In relation to the carriage of cargo specially, MC99 is a prerequisite for the industry's e-cargo initiative, such as the e-air waybill and e-freight. The ascension of Indonesia to MC99 will, therefore, be a key piece in IATA's jigsaw to achieve 100% e-freight (Indonesia ratifies Montreal Convention 1999, March – Lexology)

5. Montreal Convention of 1999

Taking into account that Indonesia has deposited its instrument of accession to the MC 99 with ICAO, the MC99 applies to hajj flight of 2017. According to Article 1 paragraph (2) of the MC99, the carriage from embarkation airport in Jakarta to debarkation airport in Saudi Arabia and from embarkation airport in Saudi Arabia to debarkation airport in Indonesia applies MC99. Such MC99 applies to all international carriage of hajj, baggage or cargo performed by aircraft for reward. It applies equally to gratuitous carriage by aircraft performed by an air transport undertaking.

a. Documentation

With regards to documentations, the national as well foreign air service provider of hajj flight shall deliver documents of passenger, baggage and cargo. In respect of carriage of passengers, an individual or collective document of carriage shall be delivered containing an indication of place of departure and destination, if the place of departure and destination are within the territory of a single State Party, one or more agreed stopping places being within the territory of another State, an indication

of at least one such stopping place. In addition, the national as well foreign air service provider of hajj flight, shall also deliver to the candidate or hajj baggage identification tag for each piece of checked baggage.

In respect of the carriage of cargo, an air waybill shall be deliver by the national as well foreign air service provider of hajj flight or any other means which preserves a record of the carriage to be performed may be substitute for the delivery of an air waybill. If such other means are used, the national as well foreign air service provider of hajj and umrah flight shall, if so requested by the consignor, deliver to the consignor a cargo receipt permitting identification off the consignment and access to the information contained in the record preserved by such other means.

b. Liability of Air Carrier.

The air service provider of hajj flight is liable for death or injury, damage to baggage and cargo as well. Additionally, air service provider of hajj flight is liable for damage sustained in case of death or bodily injury of a hajj upon condition only that the accident which caused the death or injury took place on board the aircraft or in the course of any of the operations of embarkation or disembarkation. In addition, the air service provider of hajj flight liable for damage sustained in case of destruction or loss of, or of damage to, check-in baggage upon condition only that the event which caused the destruction, loss or damage took place on board the aircraft or during any period within which the check-in baggage was in the charge of the national as well as foreign air service provider of hajj flight (Martono K., Amad Sudiro:2013)

In respect of cargo, the service provider of hajj flight 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 sustained took place during the carriage by air. However, the air service provider of hajj flight is not liable if and to the extent it proves that the destruction, or loss of, or damage to, the cargo resulted from one of more (a) inherent defect, quality or vice of that cargo; (b) defective packing of that cargo performed by person other than the national as well as foreign air service provider of hajj flight or its servants or agent; (c) an act of war or an armed conflict; (d) an act of public authority carried out in connection with the entry, exit or transit of the cargo (Article : 18)

c. Compensation

The air service provider of hajj flight is liable for damage sustain in the case of death or bodily injury to hajj, upon condition only that the accident which caused the death or injury took place on board the aircraft or in the course of any of the operations of embarking or disembarking. In case of death or injury of hajj, the compensation will not exceed 100,000 Special Drawing Rights (SDR) for each hajj, and the air service provider of hajj-flight cannot exclude or limit its liability (Ariawan Gunadi and Martono : 2017). However, the service provider of hajj flight is not be liable for damages in case of death or injury of hajj, to the extent that they exceed for each hajj

100,000 SDR if the air service provider of hajj flight proves that (a) such damage was not due to the negligence or other wrongful act or omission of air service provider of hajj flight or its servants or agent; (b) such damage was solely due to the negligence or other wrongful act or omission of a third party. Previously, before Indonesia ratified the MC99, the amount of compensation was 125,000 Franc or 10,000 SDR based on the Warsaw Convention of 1929 (Dempsey P.S.; 2005)

d. Advance Payment.

In accordance with Article 38 of the MC99, that in case of aircraft accidents resulting in a hajj's injury or death, if required by Indonesian national law, the air service provider of hajj flight shall provide advance payments without delay in order to assist entitled persons in meeting immediate economic needs. The amount paid will be deductible from the final settlement and do not constitute a recognition of liability. This advance payment is a new provision, taking into account that previously no such provision in the Warsaw Convention of 1929 (Ariawan Gunadi and Martono: 2017)

e. Insurance

Article 50 of the MC99 provides a mandatory insurance. At the core of this provision is the right of any State Party to request, from the air service provider of hajj flight operating into that State, to furnish evidence to the effect that adequate insurance coverage is maintained by the air service provider of hajj flight. A mandatory insurance clause had become, at least in principle, a matter of consensus during the preparatory stages of the MC99. It is expected that the heightened degree of vigilance resulting from this clause and the involvement of the insurance sector will have a positive effect for the overall safety of air transport operation (Ludwig Weber and A. Jakob: 1999). It is worthwhile to note here that no provision regarding mandatory insurance in the Warsaw Convention of 1929, however in the best practice, insurance involves the liability of air carriers.

f. Jurisdiction

The MC99 provides jurisdiction to protect the hajj. In this regard, an action for damages must be brought, at the option of the plaintiff, in the territory of one of the State Parties, either before the court of the domicile of the national as well as foreign air service provider of hajj, before the court of its principal place of business, before the court where it has a place of business through which the contract was made, or before the court at the place of destination.

Additionally, in respect of damage resulting from the death or injury of a hajj, an action may be brought in the territory of a State Party in which at the time of the accident the hajj had his/her principal and permanent residence and/or from which the air service provider of hajj flight operates service for the carriage of hajj by air, either on its own aircraft or another service provider of hajj flight pursuant to a commercial agreement.

g. Law Suit

The owners of baggage, and/or cargo shippers and/or the hajj's beneficiaries for indemnity for death, permanent defects, or injury caused by accidents on board the aircraft and/or whilst getting on or off the aircraft, damage due to cabin baggage losses or damages, loss, destruction or damage of any check in baggage as a result of hajj flight whilst the check-in baggage is under the supervision of air service provider of hajj flight, damage or losses, destruction or damages of cargo caused by air service provider of hajj flight whilst the cargo is under supervision of the air service provider of hajj flight may file a law suit against the air service provider of hajj flight at the state court within the territory of Indonesian laws (Article: 176). The right to file law suit for damages suffered by hajj or shipper against the air service provider of hajj flight shall be declared expired after a period of 2(two) years from the date and baggage should have arrived at the place of destination (Article:177).

6. Legal Ground of Umrah (Minor Hajj)

With regards to international flight, is found in Article 86 of the CAA of 2009. It provides that foreign scheduled air transportation company for the purposes of passengers and cargo shipment shall be based on bilateral or multilateral agreement. In the case of the foreign scheduled air transportation operation regulated under a multilateral agreement, its operation shall remain implemented by means of a bilateral agreement. Bilateral or multilateral agreement shall be made in accord with the law and regulations and shall consider national interests based on the principles of fairness and reciprocity. The foreign scheduled air transportation company must be a commercial air transportation company appointed/assigned by the country concerned and has the approval from the ROI.

a. Memorandum of Understanding (MoU)

Based on Article 1 of Chicago Convention of 1944 (ICAO Doc.7300/8), basically, no international air services may be operated over or into the territory of a contracting State, except with the special permission of that State, and in accordance with the term of such permission. It is the reason, during King Salman's state visit to Jakarta, Indonesia and Saudi Arabia signed a memorandum of Understanding to increase hajj quota for Indonesian and flight frequencies (ANTARA Indonesia: 2017)

According to Agus Santoso, the Director General of Air Communications (DGAC) of the MOC, Indonesia and Saudi Arabia has agreed on unlimited flight frequency between two countries. Such unlimited frequency would be effective in five airports in Indonesia and four airports in Saudi Arabia. According to Maryati Karma, Director of Air Transport (DOAT), the MOC, airports that would serve unlimited flight from Saudi Arabia include Kualanamu Airport in Medan, Sultan Hasanuddin Airport in Makassar, Juanda Airport in Surabaya, Ngurah Rai International Airport in Denpasar, and Soekarno-Hatta International Airport in Banten, whilst four airports Saudi airports namely in Madinah, Damam, Riyadh, and Thaif. In this connection,

flight frequency to the airport in Taif is currently 7 (seven) flights per week. The agreement would be effective for an indefinite period of time and it has been effective since January 2017 (ANTARA Indonesia : 2017).

An Indonesian airline that have served the Saudis route, namely Garuda Indonesia, Sriwijaya, Arab Saudi, Citilink, and Lion Air. Previously, Indonesia and Saudi Arabia had limited the flight frequency between the two countries to 35 flights per week. The authority has also set three more airports to serve flights to Saudi Arabia from Palembang, Solo, and Balikpapan, however, it was not unlimited; there were only seven flights per week. Such a reciprocal cooperation is important for both countries. According to Maryati Karma, Indonesia has a market potential of Hajj pilgrims and Saudi Arabia is home to Mecca and Madinah (ANTARA Indonesia: 2017)

b. Airlines Operation

At present, only three domestic airlines are Garuda Indonesia, Citilink Indonesia and Lion Air fly to Saudi Arabia. They provide routes to Dammam, Jeddah, Madinah and Riyadh. According to Toto Nursatyo, Commercial Sriwijaya Air, the commitment to unlimited air travel provides opportunities for Indonesian and Saudi Arabian airlines to take advantage of the market. Sriwijaya currently operates a fleet of 52 narrow-body aircraft and planned to welcome 17 more aircraft this year, two of which would be wide body. The use of wide body aircraft was considered more efficient for airlines in flying long-haul (Farida Susanty: 2017, <https://www.pressreader.com/indonesia/the-jakarta-post/20170310/282033326994733>).

Saudi Arabian airlines can fly to five Indonesian cities, namely Kualanamu International Airport in Medan, Hasanuddin International Airport in Makassar, Juanda International Airport in Surabaya in East Java, Ngurah Rai International Airport, Denpasar in Bali and Soekarno-Hatta International Airport in Banten. It is worthwhile to note here that last year, one million passengers flew from Indonesia to Saudi Arabia. However, with the previous limitation of 35 flights per week, airlines of both countries only facilitated 400,000 passengers of the total figure. Such a limitation forced a lot of passengers to transit in other countries, like from Jakarta to Kuala Lumpur, Malaysia then to Jeddah Saudi Arabia. Based on MoU, several other cities and towns, including Taif in Saudi Arabia, Palembang in South Sumatra, Solo in Central Java and Balikpapan in East Kalimantan, would also offer flights to Saudi Arabia. (Farida Susanty.:2017 <https://www.pressreader.com/indonesia/the-jakarta-post/20170310/282033326994733>

c. Haj Umrah (Minor Haj)

Additionally, the MoU was also seen as a positive move for umrah [minor haj] activities. An average of 650,000 people go to the holy city each year just for umrah. According to Maryati Karma, the DOAT, the MOC, when the flight frequencies is unlimited, the flight fare for umrah will fall, taking into account private air

carrier such as Lion Air would look into the possibility of penetrating the market deeper. It currently flies to Madinah and Jeddah from cities like Jakarta, Surabaya and Makassar. Lion Air would explore the possibility of connecting a Saudi city to Bali, which enjoyed flourishing tourism in the wake of King Salman's visit. The plan to connect Bali was also in Garuda Indonesia's mind as it had previously stated it would consider connecting Riyadh to Bali. The Tourism Ministry targeted 360,000 Saudi tourist visits to Indonesia this year, an increase from 240,000 last year. It is worthwhile to note here that with an annual business value worth around US\$1 billion (Farida Susanty: 2017 <https://www.pressreader.com/indonesia/the-jakarta-post/20170310/282033326994733>)

7. Umrah Case

The police coordinate with the Center for Financial Transaction Reporting and Analysis (PPATK) to track the flow of funds from 31 savings accounts belonging to "First Travel (FT)", the company being investigated in an alleged umrah scam. According to Brig. Gen. Hery Rudolf Nahak, the National Police's Criminal Investigation Department (NPCID), on 22 August 2017 the police ask to PPATK to check the existing 31 bank books with different account number belonging FT. According to PPATK, FT uses umrah funds to purchase private assets. There are 13 more savings accounts related to FT that have been frozen. Such accounts belong to Andika Surachman (CEO), Anniesa Desvitasari (Director), Siti Nuraida Hasibuan (Commissioner), and FT (Zoom Out Zoom In Normal., Police Work with PPATK to Trace First Travel Umrah Scam Funds .See also <https://en.tempo.co/read/news/2017/08/22/055902189/Police-Work-with-PPATK-to-Trace-First-Travel-Umrah-Scam-Funds>)

According to Hery Rudolf Nahak, 72,682 people signed up for cheap umrah travel packages offered by FT from December 2016 to May 2017. Within that period, 14,000 people who have been flown to Saudi Arabia. The alleged scam has incurred FT's victims about Rp848 billion in total loss. Additionally, Andika also owes Rp85 billion to ticket providers, Rp9.7 billion to visa processing services, a Rp24 billion to hotels in Saudi Arabia. FT sold umrah packages through its agents for Rp14.3 million, Rp25 million and Rp54 million per person. In this connection, the police have named Andika, Anniesa and Siti Nuraida Hasibuan as suspects in the alleged scam, embezzlement and money laundering (**Zoom Out Zoom In Normal., Police Work with PPATK to Trace First Travel Umrah Scam Funds .See also <https://en.tempo.co/read/news/2017/08/22/055902189/Police-Work-with-PPATK-to-Trace-First-Travel-Umrah-Scam-Funds>)

8. Miscellaneous

a. Malaysia

Malaysia is a member of Warsaw Convention of 1929, for this reason, carrying out passengers, baggage check as well cargo applies Warsaw Convention of 1929. The

liability of air carrier during hajj flight from Iran to Saudi Arabia as follows.

1). Passengers' Liability

In the carriage of persons, the liability of the carrier for each passenger is limited to the sum of two hundred and fifty thousand francs. Where is in accordance with the law of the court seized of the case, damages may be awarded in the form of periodical payments, the equivalent capital value of the said payments shall not exceed two hundred and fifty thousand francs. Nevertheless, by special contract, the carrier and the passenger may agree to a higher limit of liability (Article: XI para. (1))

2). Baggage and Cargo

In the carriage of registered baggage and of cargo, the liability of the carrier is limited to a sum of two hundred and fifty francs per kilogram, unless the passenger or consignor has made, at the time when the package was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless he proves that that sum is greater than the passengers' or consignor's actual interest in delivery at destination (Article XI para.2 (a))

3). Loss, Damage or Delay

In the case of loss, damage or delay of part registered baggage or cargo, or any object contained therein, the weight to be taken into consideration in determining the amount to which the carrier's liability is limited shall be only the total weight of the package or packages concerned. Nevertheless, when the loss, damage or delay of a part of the registered baggage or cargo, or of an object contained therein, affects the value of other packages covered by the same, baggage check or the same air waybill, the total weight of such package or packages shall also be taken into consideration in determining the limit of liability [Article: XI para.2 (b)]

4). Cabin Baggage

With regards to the objects of which the passenger takes charge himself, such as cabin baggage, the liability of the carrier is limited to five thousand francs per passenger.

5). Cost and of Other Expenses

The limits items (a), (b), (c) and (d) above-mentioned shall not prevent the court from awarding, the whole or part of the court costs and of the other expenses of the litigation incurred by the plaintiff. The foregoing provision shall not apply if the amount of the damages awarded, excluding court costs and other expenses of the litigation, does not exceed the sum which the carrier has offered in writing to the plaintiff within a period of six months from the date of the occurrence causing the damage, or before the commencement of the action, if that is later [Article :XI para. (4)]

b. Qatar Airways

At least 65 Indonesian haj pilgrims have been transferred from Qatar Airways to other airlines following severed ties between some Arab countries and Qatar resulting in the closure of flights from and to Qatar. According to Maria Kristi Endah Murni, the DOAT, the MOC, 20 pilgrims were shifted to Saudi Airlines and 45 others reassigned to Garuda Indonesia. The priorities' handling pilgrims traveling via Qatar, so far, things have been under control. In relation to visa, data shows at least 200 pilgrims have obtained visas to fly to Arab Saudi through Qatar. Qatar Airways has offered two options to passengers, the passengers can get a full refund or be transferred to other airlines. The DOAT, the MOC has deployed officers to anticipate stranded pilgrims. In addition, the DOAT, the MOC would also monitor connecting flights from Qatar to other countries since four countries, Saudi Arabia, Egypt, Bahrain and United Arab Emirates, have banned any flights from Qatar (*New Desk*. The Jakarta Post: 2017:<http://www.thejakartapost.com/news/2017/06/06/65-indonesian-haj-pilgrims-affected-so-far-by-qatar-crisis-ministry-says.html>)

CONCLUSION and RECOMMENDATION

1. Conclusion

As a result of the King Salman's state visit to Indonesia, Saudi Arabia and Indonesia signed a memorandum of Understanding to increase hajj quota for Indonesia and flight frequencies. The total quota is 221,000 hajj pilgrims and an average 650,000 people go the holy city each year just for umrah. When the flight frequencies is unlimited, the flight fare for umrah will fall, taking into account that the private air carrier such as Lion Air would look into the possibility of penetrating the market deeper. Lion Air would consider connecting Riyadh to Bali, which enjoyed flourishing tourism in the wake of King Salman's visit.

2. Recommendation

a. Implementation of the MOU

Based on the above-mentioned conclusion, the authors recommend that all stakeholder such as regulator, airport operator as well as airline operators to implement the MoU to increase the national economic development especially in the tourism sector in line with the Tourism Ministry target 360,000 Saudi tourist visits to Indonesia. It is worthwhile to note here that with an annual business value worth around US\$ 1 billion.

b. Prevention of Violation

Based on the above-mentioned recommendation, the authors appeal that transcendental law's experts prepare some regulation to prevent the existing violation of minor hajj to support the implementation of between Indonesia and Saudi Arabia.

Bibliography

Books

- Dempsey P.S., *Annals of Air and Space Law*, Vol. XXX-Part I-2005. Toronto : The Carswell Limited Ltd, 2005.
- Martono and Amad Sudiro., *A Book Chapter: Aviation Laws and Regulation Applicable in Indonesia*. Jakarta; Rajagrafindo 2017.
- Martono K., Amad Sudiro, *Aspek Hukum Transportasi Udara Jamaah Haji Indonesia*. Jakarta: Radjagrafindo, 2013..
- Milde M., *Annals of Air and Space Law*, Vol. XVIII-Part II-1993. Toronto : The Carswell Company Ltd, 1993.

Articles

- Ahmad Sudiro and Martono K., *The Development of Civil Aviation Laws and Regulations Applicable in Indonesia*. Vol. 5(12) www.ijmi.org 46 (December 2016).
- Ariawan Gunadi and Martono K., *Public and Private International Air Law Applicable in Indonesia : A Critical Evaluation*, in Martono K., and Amad Sudiro., *Books Chapter : Aviation Law and Regulation Applicable in Indonesia*, Chapter 16 at 507.
- Dwi Handayani, Alexander Sukiman Sugita, Haryono Kuswanto and Martono K. *Analysis of Aviation Legal Aspects in Indonesia : Administrative Sanction, Liability, Criminal and Cases*, Vol. 6(7) www.ijbmi.org 25 (July 2017).
- Gunawan Djajaputra, Hari Purwadi and Martono K. *Indonesian Civil Aviation Act of 2009 : Aviation Safety, Security and Climate Change*. Vol. 6(1) www.ijbmi.org (January 2017).
- Gunawan Djajaputra, I Gusti Ayu Ketut Rachmi Handayani, Martono K., *An Indonesian Air Transport : A Critical Analysis of Christmas Celebration of 2016 and New Year Holidays of 2017*, Vol.6(2)www.ijbmi.org 44(February 2017).
- Ms Mia Hadiati, Gunawan Djajaputra and Martono K. *Laws and Regulations of Civil Aviation Insurance Applicable in Indonesia*. Vol.6(2)www.ijbmi.org 30(Feb.2017).
- Ludwig Weber and A. Jakob., *Modernization of the Warsaw System: The Montreal Convention of 1999*, in Milde M. Ed., *Annals of Air and Space Law*, Vol.XXIV-1999. Toronto : The Carswell Company Ltd at 343.

Documents

- Act *Concerning Civil Aviation*, Act No. 1 Year 2009, State Gazette of the Republic of Indonesia, Supplement State Gazette No.4956.
- Convention for the Unification of Certain Rules Relating to International Carriage by Air, signed at Warsaw on 12 October 1929,
- General Assembly Res.A38-20 regarding Promotion of the Montreal Convention of 1999.
- ICAO Doc.7300/8, *Convention International Civil Aviation*, signed at Chicago on 7 December 1944.

ICAO Doc.9740, *Convention for the Unification of Certain Rules for International Carriage by Air*, signed at Montreal on 28 May 1999.

Others

ANTARA Indonesia, Saudi Agree on Unlimited Flight Frequency, January 2017.

Ummid.com News Network., 285 flights to carry 221,000 Hajj pilgrims from Indonesia beginning July 27. Monday July 17, 2017

<http://ummid.com/news/2017/July/17.07.2017/hajj-flight-schedule-2017-from-indonesia-garuda.html>

Farida Susanty., Jakarta Post 10 March 2017 <https://www.pressreader.com/indonesia/the-jakarta-post/20170310/282033326994733>

New Desk. The Jakarta Post, 6 June 2017; See also

<http://www.thejakartapost.com/news/2017/06/06/65-indonesian-haj-pilgrims-affected-so-far-by-qatar-crisis-ministry-says.html>

([Zoom Out](#) [Zoom In](#) [Normal](#)., Police Work with PPATK to Trace First Travel Umrah Scam Funds .See also <https://en.tempo.co/read/news/2017/08/22/055902189/Police-Work-with-PPATK-to-Trace-First-Travel-Umrah-Scam-Funds>)