

Airline Company Responsibilities for Transporting Corpses as Cargo



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ABSTRACT: This research delves into the legal framework governing the transportation of corpses by air in Indonesia, with a focus on airline company responsibilities. Employing a scientific, statutory, and comparative approach, it utilizes descriptive analytical research specifications and secondary legal materials to qualitatively analyze primary, secondary, and tertiary legal sources. The study reveals that classification significantly impacts the legal protection afforded to senders of bodies in cases of loss or damage during transport. By addressing issues such as uncertainty regarding proper corpse handling and disparities in compensation for loss or damage, the research underscores the necessity for a more fitting legal structure for air transportation of human remains. Its findings advocate for improved regulations to ensure consistency and fairness in handling these sensitive matters, thereby enhancing the overall reliability and accountability of air transportation services for the deceased.

KEYWORDS: Air Transportation; Corpse; Responsibility; Indonesian Aviation Law; Legal Protections.

I. INTRODUCTION

The aviation industry in Indonesia appears to be developing. This is proven by the increasing number of airline companies that have been established to serve domestic routes in Indonesia. Indonesia is recognized as the second-fastest-growing aviation market globally, following China, in terms of aircraft purchases and trade value. As the world's largest archipelago, comprising approximately 17,000 (seventeen thousand) islands stretching over 5,150 (five thousand one hundred and fifty) kilometers from east to west, air transportation is the most efficient means of traversing the nation. According to the International Air Transport Association (IATA), Indonesia is projected to become the world's sixth-largest market for air transport by 2034.¹

In a state with a geography like Indonesia, air transportation is indeed a reliable means of connecting a number of cities in remote parts of the country which are quite far away. The distance between Jakarta-Jayapura or Jakarta-Banda Aceh if taken by ship will take a matter of days and weeks, even if the sea waves are high the speed of the ship must be reduced, while using an airplane it will only take minutes or hours. Apart from being used by the public for business or tourism purposes, air transportation is also used as a delivery service in the form of documents, packages, and goods.

Under international law, several regulations govern air transportation and the liability of air carriers. Key conventions include the 1929 Warsaw Convention and the 1999 Montreal Convention, which serve as important references in the industry. Beyond these conventions, two prominent institutions play significant roles in shaping air transportation: The International Air Transport Association (IATA) and the International Civil Aviation Organization (ICAO).

The responsibilities of air carriers are governed by the Aviation Law and its implementing regulations. The law defines air transportation as the activity of transporting passengers, cargo, or post from one airport to another or several airports. Additionally, the law outlines the carriers' responsibilities to passengers, baggage, and cargo senders. This encompasses the transportation of passengers, passenger baggage, cargo, and postal services. The law restricts the responsibilities of the carrier to these specific modes of transport. However, with the growth and diversification of air transportation services, air transport also includes the transportation of corpses.

The legal status of corpse in air transportation is a critical consideration in determining the scope and extent to the liability of air carrier. The current research attempts to investigate legal framework governing the carriage of corpses by air, with a specific focus on the position of the corpse in the several aviation regulations and the responsibilities of airline company in the event of

¹ Statista. (n.d.), Aviation Industry in Indonesia. Retrieved April 24, 2024, from <https://www.statista.com/topics/5822/aviation-industry-in-indonesia/> accessed on April 24th, 2024

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damaged or lost. The study will examine the existing international law provisions, national laws, case study, and expert opinions to elucidate the circumstances surrounding the transportation of human remains by air. The significance of this research lies in its attempt to address the need for a more comprehensive legal framework that respects and protects the dignity and value of human remains during air transportation.

The legal classification of human remains in international and national air transportation has been categorized as cargo. This classification has significant implications for the legal protection afforded to the sender of the remains in the event of loss or damage during transportation. In the present time, there are neither international nor national laws that explicitly outline the compensation that should be provided when a corpse is damaged or lost during a flight. The Indonesian Law No. 1 of 2009 concerning Aviation also lacks clear regulations regarding the responsibility of air transport companies for damage or loss of the bodies as cargo being transported, leaving a gap in legal protection for those involved in the transportation process.

The categorization of corpses as cargo in air transportation is deemed inappropriate due to the inherent disparity in the treatment of human remains and goods. It is essential to establish a distinct category for the transportation of corpses, separate from goods, cargo, or post, to ensure that the dignity and value of human life are respected. Furthermore, the responsibility of airlines in transporting human remains underscores the need for a regulatory framework that provides fair compensation for loss or damage, with specific compensation amounts distinct from those for goods. This approach would acknowledge the unique value of human remains and ensure that the dignity and respect due to the deceased are maintained throughout the transportation process.

The sources of law and regulation regarding civil aviation in Indonesia include the Indonesian Constitution of 1945, various laws and regulations enacted since Indonesian independence, and international conventions and agreements. The Civil Aviation Act of 2009 is the primary legislation governing civil aviation in Indonesia, and it is complemented by regulations issued by the DGCA and other laws and regulations. The Indonesian government has also ratified several international conventions and agreements that impact civil aviation in the country. These include the Chicago Convention on International Civil Aviation, the Montreal Convention for the Unification of Certain Rules for International Carriage by Air, and the Kyoto Convention on the Recognition and Enforcement of Judgments in Civil and Commercial Matters.²

In the realm of transportation law, losses are a common occurrence for the parties involved, including the service user. To address these losses, transportation law employs several principles of responsibility. Prabowo and Pujiono in their book write that there are several principles of legal responsibility in transportation.³

The principles governing liability in various contexts include the fault principle, which assigns responsibility based on wrongdoing; the principle of responsibility based on presumption, where liability is determined by the presence of certain conditions; the principle of absolute responsibility, where liability is imposed regardless of fault; the principle of presumption which explain the carrier is not always responsible, which implies that the carrier may not always be held accountable; and the principle of limitation of liability, which sets boundaries on the extent of liability.

The research focuses on the regulation of corpses as cargo under numerous international and national aviation regulations. The primary concern is how corpses are categorized and handled as cargo, particularly in the event of an airplane accident. This involves examining the legal frameworks that govern the transportation of corpses, including international conventions such as the Warsaw Convention and the Montreal Convention, as well as national regulations. The study aims to understand how these regulations impact the responsibility of airline cargo companies in the event of an accident, including the compensation and liability that may be owed to the families of the deceased.

The research also highlights the challenges and inconsistencies in the current regulatory framework. For instance, the Montreal Convention categorizes corpses as cargo, which means that the airline's liability is limited to a fixed amount per passenger. This approach is improper because it does not account for the inherent dignity and value of human life. The study suggests the need to address the special arrangements of transporting corpses, ensuring that the legal protection and compensation provided are more in line with the dignity and respect due to the deceased. The study also emphasizes the importance of harmonizing international and national regulations to ensure a consistent and ethical approach to the transportation of human remains.

² Sudiro, A., & Martono, K. National and International Air Transport Regulations in Indonesia. IOSR Journal of Applied Chemistry (IOSR-JAC), 9(3), 2016, p 07-22.

³ Prabowo dan Pujiono, *Buku Ajar Hukum Dagang*, (Yogyakarta: Penerbit Renggang Education 2016), p 137

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II. RESEARCH METHODS

In this study the method used is the normative juridical research method or what is known as the doctrinal approach to the statutory approach. Normative juridical research involves the examination of legal rules or regulations as a cohesive system related to a specific legal event or phenomenon. The primary focus of the study is law, which is seen as a social norm or rule that governs air cargo in several aviation regulation. Hence, positive law inventory, legal principles and doctrine, comparative law, and legal history are the main areas of normative legal research.⁴

This type of research is descriptive analytics research. According to Nasir, the descriptive method is a research approach that involves examining the current state or condition of a human group, an object, a set of circumstances, a system, a concept, or an event in the present situation.⁵ Descriptive research merely presents the data as it is; it neither tests nor use hypothesis.⁶ The data in this study are secondary data, which include primary legal document such as laws and regulations, secondary legal document such as books, journals, and articles.

III. FINDINGS AND DISCUSSION

A. The Incongruity Position of Corpses in The Cargo Category in Air Transportation Regulation

1. Classification and The Position of Corpse as Cargo Under Numerous International and National Aviation Regulations

The transportation of human remains, often referred to as the "dead body," poses unique challenges due to the inherent fragility and susceptibility to decomposition of the deceased. This delicate nature of the body requires careful consideration and specialized handling to ensure that the remains are transported safely and with dignity. In this context, air transportation emerges as a viable alternative for transporting the corpses across borders.

International aviation organizations, including IATA have established regulations for the transportation of human remains. One such regulation is IATA HAM 810, which was updated in April 1998 and further revised in January 2002. This regulation categorizes cargo into three distinct groups based on their categories: ordinary cargo, special cargo, and specific product cargo. This categorization serves as a framework for ensuring the safe and efficient transportation of various goods, including human remains, by air.⁷

In accordance with IATA, the categorization of special cargo using specific codes, such as AVI for live animals, DG for dangerous goods, HUM for human remains or corpses, and PER for perishable goods, among others. These codes are used to identify the unique requirements for handling and transporting these items, ensuring compliance with relevant regulations and standards. IATA also has dedicated regulations for transporting human remains or corpses, outlined in Chapter III of the IATA Airport Handling Manual outlines the procedures for transporting human remains by air, emphasizing the importance of using specific types of crates that ensure the safety and dignity of the deceased during transportation. According to the manual, IATA categorizes human remains as special cargo, requiring special handling and care to maintain their integrity and respect during the transportation process.

The International Civil Aviation Organization (ICAO) aligns with the International Air Transport Association's (IATA) recommendation that human remains should be preserved before being placed in a casket, in addition to the standard guidelines for body transportation. These guidelines stipulate that the body must be placed in a tightly closed casket and covered with an outer layer. Prior to executing this transportation procedure, ICAO emphasizes the need for specific documentation and authorization from the countries of origin, transit, and destination. The organization underscores the significance of proper handling and transportation of human remains to ensure that they are received by the family in a respectful manner, adhering to the standards and regulations set forth by ICAO and IATA.

In light of the several international provisions mentioned above, international regulations categorize human remains as a distinct type of cargo in air transportation, requiring specialized handling and consideration. This classification is not limited to general cargo, but rather is governed by specific regulations that address the unique requirements and considerations associated with the transportation of human remains. These regulations are not only present in international law but also are implemented through national regulations in various countries, including Indonesia, which have their own set of rules regulating the airborne transportation of bodies.

⁴ Abdul Kadir, Hukum dan Penelitian Hukum, (Bandung: PT. Citra Aditya Bakti. 2004), p 52.

⁵ Moh Nasir, Metode Penelitian (Jakarta:Ghali Indonesia, 1988), p. 63.

⁶ Mardalis, Metode Penelitian Pendekatan Suatu Proposal (Jakarta: Bumi Aksara, 2007), p. 26.

⁷ Tiga Permata, "Karakteristik Pengiriman Via Cargo Udara", <https://www.3pe.co.id/2016/10/karakteristik-pengiriman-via-cargo-udara/>, accessed May 9, 2024.

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Under the Indonesian aviation regulation, specifically Law Number 1 of 2009, there is no direct mention of the role of bodies in air transportation. However, the Regulation of the Minister of Transportation of the Republic of Indonesia Number 53 of 2017, in Article 24, outlines specific security measures for certain types of cargo and post transported by aircraft. This includes provisions for special inspection and handling of certain cargo and post, including bodies transported in crates, which are categorized as special cargo for security purposes. This regulatory approach effectively positions Indonesia to treat bodies as a distinct category of cargo for security considerations in air transportation.

In the context of aviation regulations, corpses are categorized as cargo under both national and international frameworks. In Indonesia, bodies are specifically classified as special cargo, mirroring the categorization under international standards outlined in IATA and ICAO. However, the Chicago Convention defines corpses as dangerous goods, which is distinct from the cargo classification. The shared characteristic among these regulations is that they all treat corpses as cargo, which is defined as the load of goods in transit or the transportation operation itself.

The legal classification of human corpses as goods or rights has far-reaching implications, as it influences the legal rights and obligations that arise from their presence. If a corpse is categorized as a good, it can be used as collateral, giving rise to property rights, usage rights, and other rights in the future. This distinction is critical in understanding the legal framework governing the management and disposal of human remains, as it affects the legal rights and responsibilities associated with their existence.

The corpse does not meet these criteria. Firstly, the corpse lacks economic value, as it is not a commodity that can be bought, sold, or traded. It does not possess any monetary worth or utility that would make it a valuable asset. Secondly, the corpse cannot be used as collateral for a debt, as it is not a tangible asset that can be pledged as security. Additionally, the corpse does not possess the capacity to generate pleasure, satisfaction, or utility, which are fundamental characteristics of objects that can be enjoyed or utilized in a manner similar to other commodities.⁸ The corpse, being a deceased human body, does not possess any inherent value or utility that would allow it to be enjoyed or used in a way that is similar to other objects.

Given these characteristics, it can be concluded that the corpse does not fit the definition of an object under civil law. The corpse's legal status is distinct from that of other objects, and its management and disposal are governed by different regulations and cultural practices. The corpse is often treated with respect and dignity, and its disposal is typically subject to specific laws and customs that reflect its unique nature and the emotional significance it holds for individuals and society. Hence, it would be erroneous if corpses were categorized as goods in the national and international regulations.

2. The Importance of Respect and Dignity towards Transporting Corpses to Respect Human Rights

When it comes to transportation, corpses are not like other objects such products or goods. As human remains, they require a heightened level of consideration and care that is not typically necessary for ordinary goods. This distinction is crucial, as it acknowledges the profound impact that the transportation of corpses can have on the families and communities involved, as well as the cultural and religious practices that surround death and mourning. Culture and religion have a big influence on how corpses are handled and moved, and these beliefs can differ greatly amongst communities. For instance, the transporting of bodies is considered a necessary but unpleasant delivery in certain cultures, but a sacred obligation in others.

In Anglo-American legal systems, the deceased human body is not viewed as a commodity or good, thereby precluding the possibility of property rights being applied to it. Instead, it is classified as a 'quasi-property,'⁹ reflecting the unique value and dignity that remains attached to the corpse. This distinction is rooted in the understanding that certain entities, such as human bodies, cannot be reduced to mere goods or objects, as they possess inherent value and significance that transcends their material existence.

The concept of quasi-property acknowledges that there are entities that cannot be categorized as goods or other types of property, and that these entities are not susceptible to ownership or control. This is because the value and significance of these entities are not solely based on their material worth, but rather on their inherent dignity and worth as human beings. In the context of Anglo-American law, the concept of quasi-property was developed to address the unique challenges and complexities that arise when dealing with human bodies. This classification recognizes that human bodies are not simply objects or commodities that can be bought, sold, or traded, but rather are sacred and deserving of respect and dignity.

The value of a corpse is different from the value of things or objects because it has spiritual, moral, and emotional significance. A person's body is a tangible representation of who they are, consequently losing it frequently causes them great emotional suffering and sorrow. In contrast, most people consider goods and items to be nothing more than immaterial

⁸ Trisadini Prasastinah Usanti, *Lahirnya Hak Kebendaan*, Perspektif 17, No. 1 (2012): 44.

⁹ Rose, Carol M. *A Legal Status of No-Property*, Houston Law Review, 57, 2 (2019) : 377-403.

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commodities that have no moral or emotional value.¹⁰ Furthermore, the categorization of a corpse as an object can have serious implications as it can lead to a dehumanization of the deceased, reducing them to mere objects or commodities that can be handled and disposed of without regard for their dignity or the emotional impact on those who are left behind.

The classification of a corpse as a mere commodity or cargo is complicated because it fails to acknowledge the inherent value and dignity of the human being who has passed away. The corpse, while no longer a living, breathing individual, still embodies the essence of humanity and deserves respect and dignity. Thus, it cannot be reduced to a mere object or good, but rather should be recognized as a unique entity that occupies a continuum between a person and property.

This continuum is characterized by a set of rights and interests that are distinct from those of a living person, yet still reflect the inherent value and dignity of the deceased individual. For instance, the corpse may have rights related to its handling and disposal, such as the right to be treated with dignity and respect, or the right to be buried or cremated in a manner that is consistent with the deceased's beliefs and wishes. The corpse may also have interests that are distinct from those of a living person, such as the interest in being preserved or memorialized in a particular way. These interests are not necessarily tied to the deceased individual's own desires or preferences, but rather reflect the cultural, social, and emotional significance of the corpse as a symbol of the deceased person's existence.

Deceased human body cannot be classified solely as a human or solely as a commodity. This is because a corpse lacks the capacity to engage in legal actions, a fundamental characteristic of a legal subject. Instead, it is more accurate to categorize a corpse as a distinct entity that occupies a continuum between personhood and property. This entity, often referred to as a quasi-person or special property, is endowed with certain rights that are unique to its status. Furthermore, the classification of a corpse as a good or cargo is not appropriate, as it is still imbued with the inherent value of human dignity.

The concept of human dignity is a cornerstone of international law, as it is explicitly mentioned in the Preamble and Article 1 of the 1948 Universal Declaration of Human Rights (UDHR) adopted by the United Nations. This principle underscores the inherent value and worth of every individual, transcending their nationality, race, gender, or any other characteristic. The UDHR emphasizes that all human beings are born free and equal in dignity and rights, and that human dignity is an inherent and inalienable aspect of human existence, which cannot be diminished, eliminated, or separated from a person.

The notion that bodies should not be classified as goods or cargo is grounded in the fundamental principle of human dignity. By reducing the deceased to mere commodities or objects, there is a risk of diminishing the inherent value and dignity that is inherent to every human being. In contrast, the law should recognize the body as a distinct entity that embodies the essence of humanity, and treat it with the respect and dignity that is due to every human being. This approach acknowledges the inherent value of human life and the dignity that is attached to the human body, even in death.

The current lack of specific regulations regarding the transportation of corpses leaves a significant gap in the legal framework, which can lead to inadequate compensation and lack of accountability in the event of accidents or loss. Therefore, it is necessary to establish a special category or regulation that specifically addresses the transportation of corpses. This category should recognize the unique nature of human remains and provide a framework for their safe and respectful transportation. The regulation should also ensure that the rights of passengers and their families are protected, including adequate compensation in the event of accidents or loss of the corpses.

B. Airline Company Responsibilities on the Damage Corpse towards Consumer based on Applicable Regulation

1. Compensation and Liability Limits According to Regulation

To ensure uniformity in the implementation of air transportation regulations, international legal frameworks that govern the relationship between parties involved are essential. In this context, ICAO has issued several conventions and protocols, including the 1929 Warsaw Convention and the 1999 Montreal Convention, which provide a framework for the regulation of air transportation and help maintain consistency across different jurisdictions.¹¹

The Warsaw Convention's limitation of liability has had a significant impact on the international air transportation industry. It has established a uniform framework for resolving disputes and ensuring that carriers are held accountable for any losses or damages that occur during transportation. The Convention's provisions have been widely adopted and have become the standard for international air transportation liability. Accordingly, the carrier's obligation to provide compensation in the event of cargo

¹⁰ Edward H Ayau and Honor Keeler, Injustice, Human Rights, and Intellectual Savagery in Human Remains in Museums and Collections, A Review in : H-Soz-Kult , 14, 4 (2017): 91 ; Chen, "Is a Mummy a Person or a Property", 11.

¹¹ Amelia, P., Supriyadhie, K., & Pramono, A. Tanggung Jawab Pengangkut terhadap Pelaksanaan Ganti Rugi Atas Keterlambatan Angkutan Udara dalam Perspektif Hukum Internasional (Studi Kasus Keterlambatan Angkutan Udara Luar Negeri Pesawat Udara Boeing 777-300 Garuda Indonesia Ga088 Cengkareng-amsterda. Diponegoro Law Journal (2016), 5(2), 1-17.

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loss, damage, or delivery delay is determined by the weight total of the cargo, with a maximum compensation in the amount of 250 francs per kilogram. This is in accordance with the 1929 Warsaw Convention as amended by The Hague Protocol 1955.

The 1999 Montreal Convention, which refined and enhanced the provisions of the 1929 Warsaw Convention, establishes the framework for carriers' liability in cargo transportation based on the principle of limitation of liability. This approach shares similarities with the 1929 Warsaw Convention as amended by the 1955 Hague Protocol, which also introduced limitations on carrier liability. The Montreal Convention, on the other hand, employs Special Drawing Rights (SDR) units in place of the 1929 Warsaw Convention's franc-based compensation calculations. The International Monetary Fund (IMF) oversees SDRs, a type of global reserve asset, to supplement other global reserve assets and address future liquidity requirements.¹²

Concerning the substance of the provisions regarding the carrier's liability, the 1999 Montreal Convention's Article 22 paragraph (3) states that, in the event of cargo transportation, the carrier's liability is limited at 17 (seventeen) SDR unless the passenger or sender has specifically stated that a higher amount is required. Additionally, paragraph (4) of the same article states that the mass that must be taken into account in assessing the amount of responsibility of the carrier in the case of destruction, loss, damage, or delay in the delivery of cargo is limited to the whole mass of the cargo.

Under the Indonesian Aviation Law, Indonesia governs compensation for cargo losses or damages in Article 7 of the Regulation of the Minister of Transportation Number PM 77 of 2011, which adopts the principle of limitation of liability. Under this regulation, the carrier is obligated to compensate the cargo sender for losses or damages incurred, with the amount of compensation calculated based on the total weight of the cargo. Specifically, the carrier must provide IDR 100,000 (hundred thousand rupiah) per kilogram if the cargo is lost or destroyed.

The cargo is considered lost after a 14 (fourteen)-day period from the expected arrival date. In cases where part or all of the cargo is damaged, the carrier must provide compensation in the amount of IDR 50,000 (fifty thousand rupiah) per kilogram. This compensation structure is similar to international law, where the carrier's liability for losses, damages, or delays in cargo delivery is calculated based on the total weight of the cargo, with a specific compensation value limit per kilogram.

The aforementioned justification indicates that the current regulatory measures are insufficient to offer the sender of a body via air transportation sufficient legal protection. The corpse being transported is regarded as being in the same position as the cargo, which is by definition goods, under the present arrangement. Since the corpse's location cannot be considered a good, this naturally presents an issue. Additionally, the corpse or human remains still possess the dignity of the deceased person who has passed away. This cannot be contested. As was covered in the preceding sections, bodies are not worth more than human dignity.

The existing legal structure, which regards human remains equivalent to goods when they are transported by air, raises concerns regarding the possibility of receiving unfair compensation in the event that there is a delay, damage, or loss. In accordance with the current regulations governing cargo transportation, the carrier is in charge of making sure the products arrive at their destination safely. In the event that damage or loss results from an error on their part, they are obligated to compensate the full weight of the cargo. This method might result in an absurd scenario where a person's worth is based on their weight, with larger people getting compensated more than lighter people.

The arrangement is unfavorable since it implies that a heavier corpse is worth more than a lighter one, which goes against the idea that all people are valuable and deserving of respect, regardless of their physical attributes. Furthermore, bodies are positioned in the same position as cargo, which is by definition goods, under the current arrangement. This poses issues because the deceased person's human dignity is still affixed to the body or remains, and the corpse's position cannot be considered that of an object.

2. Absolute Responsibility (Strict Liability) Principle Should be Applied in Terms of Air Carriers Liability

The principle of absolute responsibility in transportation services ensures that users of these services are protected and benefited by the carrier's obligation to compensate for any losses or damages without requiring proof of negligence or error on the part of the carrier. This approach is crucial for the safety of users of high-risk air transportation services, as it encourages the carrier to prioritize their well-being. Additionally, the principle of absolute responsibility benefits the carrier by reducing the need for lengthy and costly court proceedings. This approach is particularly effective in resolving conflicts, as it streamlines the process and minimizes the financial burden on all parties involved.

The principle of absolute responsibility in air transportation is governed by various international and national legal frameworks. At the international level, the principle is outlined in the Warsaw Convention of 1929, which was later amended by

¹² Marushia Li Gislén dan Maria Kangas, "Special Drawing Rights – the role as a global reserve asset, the Riksbank's experience and the way forward", <https://www.riksbank.se/globalassets/media/rapporter/ekonomiska-kommentarer/engelska/2020/special-drawing-rights--the-role-as-a-global-reserve-asset-the-riksbanks-experience-and-the-way-forward.pdf>, accessed May 17, 2024.

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the Montreal Convention of 1999. The Warsaw Convention established the principle of absolute liability for air carriers in the event of accidents, where the carrier is responsible for any damage or loss caused to passengers, baggage, or cargo, regardless of whether the carrier was at fault or not.

In Indonesia, the responsibility of transporting cargo is governed by the principle of liability based on fault, which emphasizes the forwarder's role in ensuring the safe and timely delivery of goods. This principle involves the forwarder maintaining detailed records of the goods in the daily register, including their nature and quantity, and guaranteeing efficient delivery. However, this approach is injustice for failing to provide sufficient legal protection for senders of human remains via air transportation, leaving them vulnerable to potential losses or damages during transit.

The classification of human remains as cargo in air transportation raises concerns due to the inherent distinction. The corpse, as a representation of a deceased human being, cannot be reduced to mere objects. The dignity and inherent value of a human being are still attached to the remains, making it challenging to equate them with goods. This disparity necessitates a more comprehensive regulatory framework that addresses the unique challenges and sensitivities involved in the transportation of human remains, ensuring that these remains are handled with the respect and dignity they deserve.

However, under Indonesian Aviation Law, the principle of absolute responsibility actually has been reflected in the laws and regulations. For instance, the principle is outlined in Law No. 1 of 2009 concerning Aviation, which states that air carriers are responsible for any damage or loss caused to passengers, baggage, or cargo, regardless of whether the carrier was at fault or not. The law emphasizes the absolute responsibility of air carriers in ensuring the safety and security of passengers, baggage, and cargo during air transportation. This means that the carrier is accountable for any damage or loss caused to these entities, regardless of whether the carrier was at fault or not.

The strict liability principle on airline company responsibilities for transporting corpses as cargo is an understanding that ensures the aviation industry manages the risks associated with transporting corpses as cargo and that those who uses the service share in the costs of risk management. The costs of air traffic safety, including the potential for crashes and forced landings, are factored into the charges paid by passengers and shippers. By paying these charges, they are effectively sharing the risk and helping to cover the costs of any losses that may occur during the transportation of corpses as cargo.

The strict liability principle should apply to the transportation of corpses, and the air carrier is liable for any damage or loss to the corpse during transport, regardless of fault or negligence on their part. In light of the Indonesian Aviation Law's status as a *lex specialis*, it is crucial that the legislation provides a more comprehensive and detailed explanation of the position of human remains in air transportation. Specifically, the law should clarify the compensation amounts that airlines must provide in the event of an accident involving the transportation of human remains.

The application of the principle of absolute responsibility or strict liability is considered more suitable in the context of air transportation of corpses due to its focus on passenger protection rather than airline interests. This approach ensures that the airline company bears the full responsibility for any loss or damage caused to the corpses, regardless of the magnitude of the compensation. This is particularly important in cases where the compensation is directly linked to the value of the corpse, which may not adequately address the emotional and psychological distress caused by the loss or damage of human remains.

The adoption of international standards and guidelines, such as those outlined in the Montreal Convention, is crucial in ensuring the protection of passengers and their families in the event of accidents involving the transportation of corpses, which provides for strict liability in the event of accidents involving the transportation of passengers and cargo, including corpses. The adoption of international standards and guidelines can help address the current regulatory gaps in the country's aviation law. The existing regulations, such as Ministerial Regulation of Transportation No. 77/2011, provide limited compensation for passengers and their families in the event of accidents.

The Montreal Convention's strict liability principle can help ensure that passengers and their families receive fairer compensation. The adoption of international standards and guidelines can also help improve the overall safety and efficiency of air transportation in Indonesia. By aligning local regulations with international standards, the country can ensure that its aviation industry is better equipped to handle the unique challenges and risks associated with transporting corpses. This level of specificity is essential to ensure that the rights of passengers and their families are adequately protected, particularly in the context of accidents that result in loss of life or damage to human remains.

3. Dispute Resolution Mechanism

The Montreal Convention, does not explicitly mention arbitration or other forms of dispute resolution for resolving disputes between airlines and passengers regarding damage to checked baggage or cargo. The Convention primarily focuses on establishing comprehensive legal principles and rules for international air carriage, including liability for death or injury to passengers, but it does not specifically address the resolution of disputes related to damage to checked baggage or cargo. However, the Convention does provide for the possibility of alternative dispute resolution mechanisms, such as mediation or arbitration, in general terms.

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In Montreal Convention Article 33 allows for the parties to agree on a method of dispute resolution, which could include arbitration or other forms of Alternative Dispute Resolution (ADR). In practice, airlines and passengers may choose to use alternative dispute resolution mechanisms, such as mediation or arbitration, to resolve disputes related to damage to checked baggage or cargo. These mechanisms can provide a more efficient and cost-effective way to resolve disputes compared to traditional litigation, while also maintaining the privacy and confidentiality of the parties involved.

In Indonesia, when consumers are dissatisfied with how an airline handled their complaint, they can initially contact the airline's customer care division for further assistance. If the issue cannot be resolved directly through communication with the airline, consumers can escalate the matter to a specialized dispute resolution body or the airline's higher dispute resolution department. Customers who file complaints and do not hear back from the airline on the compensation they were given may settle the dispute through non-litigation or litigation.

Consumer issues with airlines can be settled with the assistance of Indonesian specialist dispute resolution organizations like the Indonesian Mediation Center (IMC) or Badan Arbitrase Nasional Indonesia (BANI). These organizations have defined protocols and rules for resolving conflicts, and they operate impartially and independently. Indonesian airlines also have formal dispute resolution procedures, which may include arbitration or mediation. This process aims to resolve disputes fairly and transparently, as well as ensuring that airlines comply with applicable regulations and procedures.

Dispute settlement through litigation described in the article 176 of Law Number 1 of 2009 concerning Aviation explains that:

"Penumpang, pemilik bagasi kabin, pemilik bagasi tercatat, pengirim kargo, dan/atau ahli waris penumpang, yang menderita kerugian sebagaimana diatur dalam Pasal 141, Pasal 143, Pasal 144, Pasal 145, dan Pasal 173 dapat mengajukan gugatan terhadap pengangkut di pengadilan negeri di wilayah Indonesia dengan menggunakan hukum Indonesia." The lawsuit can be submitted to the district court where the ticket was purchased, the goods were delivered, the domicile of the carrier's office, branch office and the domicile of the defendant or plaintiff throughout the territory of the Republic of Indonesia.

IV. CLOSURE

The categorization of corpse as special cargo under both international and national air transportation regulations has significant legal implications for the protection of senders in the event of loss or damage during transportation. At the moment, there are no specific regulations governing the compensation for losses or damages towards corpse during air transportation. However, since corpse are classified as cargo, the liability provisions and compensation rules for cargo damage also apply to bodies transported by air. In Indonesia, Article 24 of The Regulation of the Minister of Transportation of the Republic of Indonesia Number 53 of 2017 concerning the Security of Cargo and Post and Supply Chain of Cargo and Post Transported by Aircraft explicitly categorizes bodies as special cargo. This classification is crucial because it determines the legal responsibilities of the carrier.

The responsibility of the airline company towards the damage or loss of the corpses can be seen through the lack of specific regulations on compensation for lost or damaged bodies in air transportation. This circumstance means that the sender of the bodies must rely on general cargo damage compensation rules. These rules typically provide for a standard amount of compensation based on the value of the cargo, which in this case would be the value of the body. The carrier's liability for loss or damage to the bodies is usually limited to the value of the cargo, unless the sender has specifically insured the bodies for a higher value.

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