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Indonesian Aviation Law Reform

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ABSTRACT: Significant role of air transportation in Indonesia, especially from a political and economic perspective, it has led to rapid developments in the world of national aviation. This remarkable development of air transportation is not supported by adequate laws and regulations, especially those relating to the requirement to obtain compensation in the event of a loss suffered by the passenger due to an error made by the air carrier. Law Number 1 of 2009 Concerning Aviation which is expected to bring about reforms within Aviation Law in Indonesia, especially regarding the terms of liability of the air carrier for losses suffered by air transport service users, there are not many fundamental changes when compared to the provisions contained in the Air Freight Ordinance (Luchvervoer Ordonantie). It is necessary to review the status of Law Number 1 of 2009 as a form of renewal of aviation law in Indonesia. Conditions for accidents need to be expanded, not only accidents experienced by air transportation modes, but accidents experienced by users of air transportation services since paying the transportation costs are the liability of the air carrier. The terms of embarkation so far need to be expanded in terms of meaning, starting from the time the transportation agreement is agreed upon by the payment of transportation costs by the transportation service user and the meaning of disembarkation ending when the transportation service user leaves the destination airport building.

KEYWORDS: Aviation; Air Transportation; Law Reform

INTRODUCTION

Based on the area and population distribution in Indonesia,[1] the role and function of air transportation[2] in Indonesia has important and strategic position, both in terms of national unity, socio-cultural life, economy, government, defense and security. Refers to the significant role of air transportation in Indonesia, especially from a political and economic perspective, it has led to rapid developments in the world of national aviation.

This development is not only in the number of aircraft, but also in the number of airlines operating in Indonesia. Data obtained in the Ministry of Transportation of the Republic of Indonesia, until 1998 the number of airlines operating in Indonesia were Garuda Indonesia, Merpati Nusantara Airlines, Bouraq Indonesia Airlines, Pelita Air Service, Sempati Air Transport. Meanwhile, the number of airlines until 2020 there are 40 airlines registered, both large and small. The number of aircraft in Indonesia until 2020 for the top five airlines is the Lion Group with 268 fleets of various types; Garuda Indonesia as many as 144 fleets of various types; Citilink as many as 58 aircraft; Sriwijaya airlines and Air Asia Indonesia each have 24 aircraft.

However, the significant development of air transportation is not supported by adequate laws and regulations, especially those relating to the requirement to obtain compensation in the event of a loss suffered by the passenger due to an error made by the air carrier. The regulations that underlie the operation of air transportation in Indonesia refer to:

1. Air Freight Ordinance (Luchvervoer Ordonantie) Stb. 1939 Number 100 (hereinafter referred to as OPU) as a follow-up after the ratification of the 1929 Warsaw Convention.
2. Law Number 15 of 1992 Concerning Aviation (State Gazette of the Republic of Indonesia 1992 Number 53, Supplement to the State Gazette of the Republic of Indonesia 1992 Number 3481).
3. Law Number 1 of 2009 Concerning Aviation (State Gazette of the Republic of Indonesia of 2009 Number 1 and Supplement to the State Gazette of the Republic of Indonesia Number 4956).

[1] The total area of Indonesia is approximately 1,919,440 km2, with a total of 17,508 islands and a population according to the BPS in 2020 as many as 270.2 million people.

[2] Air Transportation according to Article 1 Number 13 of Law Number 1 of 2009 Concerning Aviation is any activity using aircraft to transport passengers, cargo, and/or post for one or more trips from one airport to another or several airports. air.

Indonesian Aviation Law Reform

Law Number 1 of 2009 Concerning Aviation which is expected to bring about reforms within Aviation Law in Indonesia, especially regarding the terms of liability of the air carrier for losses suffered by air transport service users, there are not many fundamental changes when compared to the provisions contained in the OPU. Even the provisions contained in the OPU are still enforced in the air transport agreement in Indonesia, especially for domestic transportation. This provision can be seen in the terms of the domestic regulatory agreement for each domestic passenger ticket and baggage.[3]

The conditions for providing compensation by air carriers contained in the OPU are as follows:

1. There is an accident;
2. There is a relationship with the aircraft;
3. In an aircraft;
4. Embarkation and disembarkation.

The conditions for providing compensation "on board the aircraft" contained in the OPU were solely intended to protect the interests of the air carriers, because at that time the air transport industry was a capital-intensive industry with enormous risks. Thus, the "in-aircraft" requirement contained in the OPU is a must to stimulate the air transportation industry in Indonesia.

Meanwhile, in Law Number 1 of 2009, the liability of the carrier to the passengers as stated in Article 141 Paragraph (1) that the carrier is liability for the loss of passengers who die, permanent disability, or injuries caused by the incident of air transportation in the aircraft. and/or boarding the aircraft. In the Elucidation of Article 141 Paragraph (1), what is meant by "air transportation incident" is an incident that is solely related to air transportation.

The conditions on the aircraft contained in Article 141 Paragraph 1 of Law Number 1 of 2009 Concerning Aviation are no longer relevant considering the risk of compensation by the air carrier which is their liability has been transferred to the insurance party, because in Article 179 of Law Number 1 In 2009 it was mandatory for air carriers to insure their liabilities for the passengers and cargo they carry. Therefore, based on this explanation, it is necessary to review the status of Law Number 1 of 2009 as a form of renewal of aviation law in Indonesia.

RESEARCH RESULTS & DISCUSSION

Carriage Agreement

Talking about the liability of air carriers, it cannot be separated from talking about the agreement;[4] as an agreement, the air carriage agreement cannot be separated from the formulation of the agreement itself. Law Number 1 Year 2009 formulates an air carriage agreement as an agreement between the carrier and the passenger and/or cargo shipper to transport passengers and/or cargo by aircraft, in exchange for payment or in the form of other service fees.[5] Abdul Kadir Muhammad formulated the meaning of an agreement as an agreement in which two or more people bind themselves to carry out a thing in the field of wealth.[6] In this formulation, it can be drawn a common thread that clearly shows the consensus between the parties; one party agrees and the other party also agrees to do something.

The consensual principle in the carriage agreement does not require a written carriage agreement, the carriage agreement is considered sufficient if there is an agreement of will between the parties. In the law of transportation there is a document called a letter of charge or vrachtbrief and also a ticket for passengers. These documents are not an absolute requirement for the existence of a carriage agreement. Without these documents a carriage agreement also exists, meaning that the absence of these documents does not invalidate the existing carriage agreement. Thus, these documents are not an element of the carriage agreement but are only evidence of the existence of a carriage agreement. It can be concluded that the carriage agreement is consensual.

Air freight documents can be in the form of tickets or air cargo letters. Basically, ticket is a "document in printed form, through an electronic process, or in other forms, which is one of evidence of the existence of an air transportation agreement between the passenger and the carrier, and the passenger's right to use the aircraft[7] or be transported by aircraft. While airway

[3] Furthermore, it can be seen in the terms of the domestic regulatory agreement for each passenger ticket and domestic baggage on each ticket, the point which states that: "This carriage agreement is subject to the provisions of the Indonesian Air Transport Ordinance (Stbls 1939/100) as well as to the terms -conditions of carriage, tariffs, service regulations (except the departure times and arrival times mentioned therein) and other regulations of the carrier which are an inseparable part of this agreement and which can be checked at carrier's offices.

[4] A carriage agreement is a reciprocal agreement between two parties, where the first party called the carrier binds himself to transport from and to the destination, both goods and passengers safely, and the second party, called the user of transportation services, has an obligation to pay transportation costs.

[5] Article 1 Number 29 of Law Number 1 of 2009 Concerning Aviation.

[6] Abdul Kadir Muhammad, Hukum Perikatan, Alumni, Bandung, 1982 (hereinafter referred to as Abdul Kadir Muhammad I), page 78.

[7] Article 1 Number 27 of Law Number 1 of 2009 Concerning Aviation.

bill is a "document in printed form, through an electronic process, or in other forms, which is one of evidence of the existence of an air carriage agreement between the cargo shipper and the carrier, and the cargo receiver's right to pick up the cargo."

In the air transportation agreement there are parties, the parties in the air transportation agreement are the carriers and the users of air transportation services can be in the form of shippers of goods or passengers. The air carriage agreement is reciprocal, meaning that both parties each have obligations and rights. The carrier's obligation to carry out transportation from one place to the destination is safe and secure.[8] The "unsafe" condition for passenger transportation means that the passenger dies or suffers temporary or permanent injury/disability, due to an event or incident. If the passenger is in an unsafe condition, it will be the liability of the carrier. In the air transportation law in Indonesia, until now, the carrier's liability adheres to the Presumption of Liability Principle as well as the Fault Liability Principle.

According to this principle, the carrier could free himself from his obligation to provide compensation to the user of the transportation service if he and his employees can prove that the accident was not due to his fault. This means that the carrier's guilt or innocence must go through a court judge's decision, because only a judge authorized to declare a person is culpable for a specified wrongdoing. Regarding to the settlement of aircraft accident cases in Indonesia, it was only resolved once through the district court, namely when the case of the Garuda Indonesia airplane crash on Mount Burangrang, West Java, known as the Mrs. Oswald Vermaak Case. After a long case at the Jakarta District Court between Mrs. Oswald Vermaak and PT Garuda Indonesia,[9] the settlement of an aircraft accident in Indonesia has never been resolved in court as required by law.[10]

This is because the users of air transportation services who are victims of accidents realize that resolving claims for compensation through the courts takes a long time and there is no guarantee that their demands will be granted by the judge. Meanwhile, on the air carrier side, they no longer use courts to settle compensation cases, because using a district court will destroy the trust of air transport service users[11] towards the carrier, especially with regard to liability.[12] Therefore, every time an airplane crash occurs in Indonesia, the carrier always pays the victim or his heirs for the accident. The compensation is given by the carrier after obtaining the results of an investigation conducted by the KNKT (National Transportation Safety Committee).[13]

The amount of compensation for victims who die or become permanently disabled according to government regulation Number 40 of 1995 is IDR 40,000,000. This regulation has been abandoned by the air carriers.[14] The last regulation that regulates

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[8] The term safely means that if the air transportation is not safe, it will be the liability of the carrier, quoted from Abdul Kadir Muhammad, Hukum Pengangkutan Darat, Laut, dan Udara, Citra Aditya, Bakti, Bandung, 1994 (hereinafter referred to as Abdul Kadir Muhammad II), page 21).

[9] In the history of aviation in Indonesia, on January 24, 1961 a Garuda Indonesia aircraft with Flight Number PK GDI had an accident at Mount Burangrang, near Bandung, which resulted in the death of its passengers, one of the passengers was Ferdinand Josef Leo Oswald, a citizen of South Africa. The carrier – Garuda Indonesia – relieved itself of its obligations because the accident was not caused by his fault. The carrier's reason is because he can prove that he has taken all steps to avoid the accident, or that he is in such a state that he cannot take any steps to avoid the accident. The heir of the victim, Mrs. Oswald Vermaak sued Garuda Indonesia at the Jakarta District Court and the Jakarta District Court defeated Mrs. Oswald Vermaak for the reasons mentioned above, but Mrs. Oswald Vermaak's reason stated that the carrier did not take any action to avoid the accident, namely when passing Purwakarta and seeing the very bad weather he should have flown higher, higher than the highest mountain peak around the flight route or decided to return to Jakarta before entering the dangerous corridor. The reason for Mrs. Oswald Vermaak's lawsuit was accepted by the judge at the appeal level and Mrs. Oswald Vermaak was won. At the cassation level, Mrs. Oswald Vermaak won. The duration of the case was from 1961 and ended in 1968. This is one of the weaknesses of the application of the Presumption of Liability Principle. Chaidir Ali, *Yurisprudensi Hukum Dagang*, Alumni, Bandung, 1982, page 3.

[10] Article 29 OPU, Article 43 Law Number 15 of 1992, Article 141 Paragraph (2) of Law Number 1 of 2009.

[11] Sudiarto, Penyelesaian Ekstra Yudisial Kecelakaan Pesawat Udara di Indonesia, Thesis, Universitas Diponegoro Semarang, 1998.

[12] From the several aircraft accidents that occurred in Indonesia, including the Merpati plane crash on October 10, 1971 in Ujung Pandang, March 29, 1977 in Tinombala, the Garuda plane on July 11 1979 in Polonia Medan, the Merpati plane in 1985 in Banjarmasin, the Garuda plane on April 4 1987 at Polonia Medan, Merpati aircraft on 23 May 1987 at Ruteng NTT, Garuda aircraft on 26 September 1997 in Sibolangit, North Sumatra, Silk Air aircraft on 19 December 1997 in Palembang, Garuda aircraft on 16 January 2002 in Bengawan Solo, Lion Air aircraft on November 30, 2004 at Adi Sumarmo Airport in Solo, Mandala aircraft on September 5, 2005 at Polonia Medan, Adam Air aircraft on January 1, 2007 in West Sulawesi and Garuda aircraft on March 7, 2007 at Adi Sucipto Airport in Yogyakarta. Of all the airplane accidents that claimed the lives of the above, the air carrier provides compensation to the victims or their heirs without waiting for a lawsuit in the district court. This means that the Presumption of Liability Principle as adopted in Indonesia has so far been no longer applied but has used the Strict Liability Principle.

[13] The National Transportation Safety Committee or KNKT is an independent institution established under Presidential Decree Number 105 of 1999. This commission is liable for investigating accidents on land, sea and air transportation and then making suggestions for improvement so that the same accidents do not happen again in the future. This commission is under the Ministry of Transportation. This commission consists of five people who are appointed by the President for a term of five years.

[14] The Garuda plane crash at Adi Sutjipto Airport Yogyakarta for victims of death and permanent disability is given Rp. 300,000,000,- and the Lion Air accident at Adi Sumarmo Airport, Solo, the amount of compensation is Rp. 400,000,000.

the amount of compensation given to air transportation service users who die, permanent total disability due to aircraft accidents in Indonesia is the Minister of Transportation Regulation Number 77 of 2011 concerning the Liability of Air Transport Carriers, which is Rp. 1,250,000,000,- (one billion two hundred and fifty million rupiah) which came into force on November 1, 2011, however, the implementation of this Regulation of the Minister of Transportation of the Republic of Indonesia was postponed from its entry into force with the issuance of the Regulation of the Minister of Transportation Number PM 92 of 2011 which stated that the provisions contained in the Regulation of the Minister of Transportation PM Number 77 of 2011 is implemented effectively starting January 1, 2012 with the consideration that there is no insurance consortium to guarantee liability for air transportation claims to service users; and also there are still some air transportation business entities that are not ready with these rules, especially regarding the direct application of compensation for delays.[15] The determination of the amount of compensation contained in the Regulation of the Minister of Transportation Number 77 of 2011 does not refer to the amount of compensation contained in international conventions, but is based on the criteria specified in the laws and regulations in Indonesia.

Seeing the fact that aircraft operations in Indonesia are very difficult to separate from international flights, the form of liability of air carriers to users of air transportation services and how to resolve cases of aircraft accidents in Indonesia need to be re-examined. Discussing liability, according to Martono[16], general responsibility can mean three kinds, namely accountability, responsibility and liability.

Responsibility in the sense of liability according to Martono is legal responsibility according to civil law. The obligation to pay compensation for the loss or suffering suffered by the victim as a result of the perpetrator's actions. The victim can sue before a civil court to pay the loss to the perpetrator, either the person or legal entity that caused the loss.[17]

Peter Mahmud Marzuki interprets liability as a translation of liability/aansprakelijkheid which is a specific form of responsibility. According to him, the notion of liability refers to the position of a person or legal entity that is deemed to have to pay a form of compensation or compensation after a legal event or legal action. He, for example, must pay compensation to another person or legal entity because he has committed an unlawful act (onrechtmatige daad) so as to cause harm to the other person or legal entity. The term liability is within the scope of private law.[18]

J.H. Nieuwenhuis,[19] stated that this liability rests on two pillars, namely violations of the law and mistakes. The person who causes harm to another person is liable, as long as the loss is the result of a violation of a norm (a violation of the law) and the perpetrator can be regretted for having violated that norm (a mistake). Apart from this, the perpetrator in question is declared free; this is called fault liability (schuldaansprakelijkheid); here guilt is given a broad meaning which also includes the unlawful nature of the act.

Refers to Nieuwenhuis's opinion, an understanding can be drawn that liability can occur because:

a. The error that occurs is due to an agreement between the parties that harms one of the parties as stipulated in Article 1365 of the Civil Code (lawful acts). This kind of liability is known as liability based on the element of guilt and in its development also – because of the evidence – becomes the liability on the basis of the presumption of guilt.
b. Constitution; it means that a certain person/party is declared liable not because of the wrong he did, but he is liable because of the provisions of the law.

Recent Implementation of Air Carrier Liability

The provisions governing the conditions for air carriers to be liable are not clearly described in Law Number 1 of 2009 Concerning Aviation. In order to obtain clarity on the conditions under which air carriers are liable, it is found in the Warsaw Convention 1929 which is contained in Article 17 which states that the carrier is liable for losses that arise, the conditions that the loss must be caused by an accident; the accident must occur in the aircraft; the accident must occur at the time of embarkation or disembarkation (in the course of any of the operations of embarking or disembarking).

In tracing cases of international aircraft accidents, it is concluded that in order for an incident to be qualified as an "accident" within the meaning of Article 17 of the Warsaw Convention, the incident on board the aircraft causing the loss must be an extraordinary event (unusual) or could not be foreseen (unexpected).[20] Furthermore, if the incident or accident is the result of a

[15] Legal and Public Relations Division of the Directorate General of Civil Aviation at the Ministry of Transportation, Israfulhaya as published in the Jawa Post, Wednesday, November 9, 2011 page 7.
[16] K. Martono, *Kamus Hukum dan Regulasi Penerbangan*, First Edition, RajaGrafindo Persada, Jakarta, 2007 (hereinafter shortened to Martono I), page 306-307.
[17] *Ibid*, page 308.
[18] Peter Mahmud Marzuki, *Pengantar Ilmu Hukum,* Kencana Prenada Media, Jakarta, 2008, page 258.
[19] J.H. Nieuwenhuis, *Hoofdstukken Verbintenissenrecht,* Translate Version, Universitas Airlangga, Surabaya, 1985, page 135.
[20] Kahn-Freund, as stated by Saefullah Wiradipradja I, *Ibid.* page 58.

physical condition of the passenger or the defect of the goods or a condition that has nothing to do with air transport, it is not an accident as referred to in Article 17 of the Warsaw Convention. It is logical that the carrier cannot be held liable for a loss or accident caused by the physical condition or health of the passenger or the defect of the goods themselves, because it has nothing to do with air transportation.

In the Dictionary of Aviation Law and Regulations,[21] an accident is an event that occurs unexpectedly by humans related to the operation of an aircraft that takes place from the moment the passenger gets on the plane (boarding) with the intention of flying to the destination until all passengers get off (disembarkation). from the aircraft at the destination airport. The incident causes people to die or be seriously injured, minor injuries, permanent or temporary injuries resulting in (a) collision with an aircraft or (b) direct contact with aircraft parts or (c) being hit by a direct blow to an aircraft jet engine or (d) the aircraft requires major repair or (e) requires replacement of components of the aircraft or (f) the aircraft is completely lost.

So far, in Indonesia, the interpretation of the definition of accident contained in Article 17 of the Warsaw Convention or Article 24 of the Air Transport Ordinance (OPU) 1939 has never been questioned, because every time an aircraft crash occurs, the settlement of compensation is determined based on government policy which is always accepted by the government. both sides

1. Definition of "There is a Relationship with Air Freight"

As the second condition stipulated in Article 24 of OPU, to determine the scope of liability of the carrier, if the accident is related to air transportation. If the accident that causes harm to passengers has nothing to do with air transportation, the air carrier cannot be held liable for the lawsuit.

Thus, the scope of liability of domestic air carriers which refers to the provisions of the Air Carriage Ordinance as well as laws and regulations concerning aviation in Indonesia is narrower than the scope of liability of international air carriers who use the 1929 Warsaw Convention. suffered by the passenger has nothing to do with air transportation, as long as it is caused by an accident and occurs on an aircraft or during embarkation and disembarkation, the carrier must be held liable.[22]

For example, a passenger suffers an injury due to being stabbed by another passenger beside him without the knowledge of the carrier or his crew, then according to the Warsaw Convention the carrier remains liable, while according to the regulations in force in Indonesia the carrier is not liable. Another example, a passenger dies on an airplane without an accident, then according to the 1929 Warsaw Convention the carrier must be held liable, the case of Munir's death on a Garuda Indonesia airplane with a flight route from Jakarta to Amsterdam with a transit at Changi Singapore, can be used as an example case. Meanwhile, according to the regulations in Indonesia, the carrier is not liable; take for example the case of the death of Dr. Ridawan, a lecturer at the Faculty of Animal Husbandry, University of Mataram, on a Garuda Indonesia flight from the Mataram-Jakarta route.

2. Definition "On Board of The Aircraft"

Understanding in aircraft; as in the case of accident, there is no understanding of what is meant by an airplane by the 1929 Warsaw Convention. At first glance it seems that the expression 'in an airplane' provides a clear limitation on when the carrier is liable; but in practice this is not the case. If a plane has an emergency landing, the passengers are asked to get off and wait around the plane and then have an accident, can the accident be interpreted as occurring on an aircraft as referred to by the Warsaw Convention?

According to Saefullah Wiradipraja,[23] saying that from a juridical point of view, the notion of 'on board the aircraft' does not mean only when the passenger is physically on the plane, but also includes when the passenger is (physically) outside the aircraft caused by abnormal circumstances; means that the presence of passengers outside the aircraft is not due to the end of the journey as stated in the air carriage agreement. So that if the passenger suffers a loss or accident while outside the plane due to abnormal conditions, the carrier must still be liable. Of course, the carrier can be released from his liability if the loss or accident is caused by the passenger's own fault or because of his health condition.

3. Definition of "Embarkation and Disembarkation"

Definition of embarkation and disembarkation; The Warsaw Convention does not specify what is meant by boarding or leaving the aircraft (in the course of the operations of embarking or disembarking). As a result, there are differences in interpretation, especially regarding when the embarkation process begins and when the disembarkation process ends.

It is clear and no longer a problem that an accident suffered by a passenger while he or she is boarding or disembarking an aircraft will be deemed to have occurred at the time of embarkation or disembarkation. However, in practice problems arise in the event of an accident or loss when the passenger is in the airport waiting room before boarding the plane or while waiting for

[21] Martono I, *Op. Cit*, page 111.
[22] Saefullah Wiradipradja, *Tanggungjawab Pengangkut dalam Hukum Pengangkutan Udara Internasional dan Nasional*, Liberty, Yogyakarta, (hereinafter mentioned as Saefullah I), page 166.
[23] *Ibid*, page 64.

baggage after getting off the plane. The question is, does such a situation fall within the scope of Article 17 of the Warsaw Convention?

There are several opinions regarding what is meant by embarkation (going to the aircraft) and disembarkation (leaving the aircraft):

1. The first opinion, driven by D. Lureau, stated that embarkation begins when the passenger leaves the airport building in order to get to the runway (run way), and disembarkation ends when the passenger enters the airport building at the destination.[24]
2. The second opinion, which was initiated by Matte and Kahn-Freund, states that the period of embarkation begins when the passengers are under the supervision of an employee of the airline company (the carrier) in order to get to the aircraft, and ends when the employee leaves the passengers after dropping off. they enter the airport building at their destination.[25]
3. The third opinion, from a court in the United States, states that the embarkation process begins at 'check in' and the disembarkation process ends after the passenger collects his or her registered luggage. This opinion is supported by a decision in the United States court which states that the carrier is liable for passengers who have an accident on the escalator while heading to the baggage claim. The Court of Appeal in Berlin in a case stated that the carrier is liable for the accidents experienced by passengers in the airport building after 'checking in' to the plane, because the carrier's obligation to supervise passengers and their belongings starts from the time the passengers check in.[26]

Implementation of Air Carrier Liability in the Future

The liability of the air carrier begins with a transportation agreement, namely an agreement between the carrier and the user of the transportation service, where the carrier is obliged to transport the user of the transportation service from one place to the destination safely and safely, while the user of the transportation service is obliged to pay for the transportation.

Departing from the definition of air transportation above, it is known that the carriage agreement is an agreement (consensus) between the carrier and the users of transportation services that must be adhered to by both parties. The obligation of the carrier is to transport users of transportation services from one place to the destination safely; while the obligation of users of transportation services is to pay transportation costs. If the user of the transportation service has arrived at his destination safely, then the carriage agreement is complete, but on the other hand, if the user of the transportation service does not arrive at his destination safely, it will be the liability of the carrier to provide compensation to the user of the transportation service, because the carrier does not fulfill its obligations. The question is, when did the contract of carriage start and when did it end?

As with the agreement in general, the agreement begins when there is an agreement (consensus) between the carrier and the user of the transportation service. The agreement occurs since the user of the transportation service agrees and pays the transportation fee offered by the carrier. With the agreement between the carrier and the user of the transportation service, the rights and obligations of each party come into effect. While the carriage agreement ends, when the user of the transportation service has arrived at his destination safely. With the payment of the transportation fee by the user of the transportation service, since then the carrier is liable for the user of the transportation service. Here, I broaden the meaning of embarkation, namely by proposing one opinion, that embarkation begins from the time the carriage agreement is agreed upon by the carrier with the air transport service user and disembarkation ends when the transport service user leaves the destination airport building.

Conditions that are closely related to the occurrence of the accident on an airplane, in my opinion, need to be corrected again, because these requirements were contained in the OPU because at that time the air transportation industry was still new and there was no insurance that accepted the transfer of liability risks that should have been charged to the carrier. Protection against the carrier at that time should have been given by complicating the terms of liability of the air carrier against the user of the transportation service in the event of a loss experienced by the user of the air transportation service.

The condition of air transportation today is not the same as the condition of air transportation 82 years ago with the implementation of the OPU. Since the insurance business in Indonesia has grown so rapidly, including liability insurance as mandated by Law Number 1 of 2009 Concerning Aviation. The air carrier's liability insurance premium has been paid in full by the air transport service user when paying the freight, because one item in the air ticket price includes the air carrier's liability insurance.

[24] *Ibid,* page 66.
[25] *Ibid.*
[26] *Ibid* page 172.

CONCLUSION

Based on the description above, in this paper I conclude that:

1. Conditions for accidents need to be expanded, not only accidents experienced by air transportation modes, but accidents experienced by users of air transportation services since paying the transportation costs are the liability of the air carrier;
2. The terms of embarkation so far need to be expanded in terms of meaning, starting from the time the transportation agreement is agreed upon by the payment of transportation costs by the transportation service user and the meaning of disembarkation ending when the transportation service user leaves the destination airport building.

RECOMMENDATION

It is hoped that the Government of the Republic of Indonesia will revise Law Number 1 of 2009 concerning Aviation, in particular Article 141 Paragraph (1) along with its explanation by expanding the meaning in aircraft and embarkation and disembarkation by considering the progress of the air transport industry in Indonesia.

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3) Ordonantie Pengangkutan Udara, Stb 1939 : 100