

CHAPTER I

INTRODUCTION

1.1 Background

Law in Dutch is called *recht*, which is a term derived from the Latin word *rectum*, meaning demand or guidance, order or government.¹ The term law comes from the Latin *lex* or *lesere* which means to gather or invite people to be given order.² *Lex* also comes from the term *legi*, understood as the regulations or laws made and approved by authorized authorities, therefore law, *lex* or *legi*, besides holding the meaning law also means legislation.³ The term law, is very dependent on the development of a society or country in which the law is born, grows or develops in accordance with the background conditions and circumstances of the respective country. In general, the term law that developed in European countries then became a reference for other nations and countries in various parts of the world, when the European nations expanded and controlled other nations of the world, in which the term law became familiar and known by the local community and becomes a reference by scholars or legal experts, even though in fact they have their respective laws.⁴

Abdul Manan, a legal expert in Indonesia, explained that the law is a series of rules that control certain behaviors or actions of humans in social life, where the law regulates human interests and for anyone who violates the law will be

¹ Rahman Amin, *Pengantar Hukum Indonesia*, (Deepublish, 2019), p. 2

² *Ibid.*

³ *Ibid.*

⁴ *Ibid.*, p. 3

subject to sanctions in accordance with what has been determined.⁵ Similarly, Achmad Ali also explained that the law is a set of written or unwritten rules arranged in a system that determines what is allowed and what is not allowed for humans as members of the community in a social life and if such rules are violated, the State grants authority to certain authorities to impose sanctions on the violators.⁶

From the description above, the law is the entirety of written or unwritten norms and rules which contains orders of what is allowed and what is prohibited used as a guideline for the behavior, deed or actions of each individual in the community, where if violated may be subject to sanctions in order to achieve order, peace, serenity in the life of the people, nation and state.⁷

Indonesia is a country of law, which means that every aspect of life in society, government and state must be based on the law⁸ and the necessity of a legal system. A legal system is an orderly arrangement of law consisting of a whole complex of elements which are regulations, court decisions, institutions or organizations and values that are continuous, sustainable and autonomous, functioning to maintain or strive for the balance of order in society (*restito in intergrum*).⁹ The legal systems adopted by countries develops in accordance with the conditions and circumstances of their respective countries. There are various types of legal systems, yet the legal system that applies in the world in general

⁵ Neni Sri Imaniyati and Panji Adam, *Pengantar Hukum Indonesia; Sejarah dan Pokok-Pokok Hukum Indonesia*, (Jakarta: Sinar Grafika, 2018), p. 5

⁶ *Ibid.*

⁷ Rahman Amin, *Pengantar Hukum Indonesia*, (Deepublish, 2019), p. 5

⁸ Article 1 paragraph 2 of UUD 1945

⁹ Utang Rasyidin and Dedi Supriyadi, *Pengantar Hukum Indonesia: Dari Tradisi ke Konstitusi*, (Bandung: CV. Pustaka Setia, 2014) p. 100

seems to be divided into two major legal systems, namely the Common Law system and the Civil Law system.

The Common Law system, also known as the Anglo-Saxon Law or the unwritten law system as adopted by the English and Americans, began to develop in England in the 11th century. In essence, the Common Law System is a judge made law meaning that the law is established by a judicial institution then maintained based on the authority and power given to the judge in applying the precedent principle.¹⁰ The source of law in this system is the decisions of judges in court (judicial decisions) that embody legal certainty, principles and norms and become a binding rule of law in general. The principle is that earlier judicial decisions, usually of the higher courts, made in a similar case, should be followed in the subsequent cases, i.e. that precedents should be respected, known as the principle of *stare decisis* and has never been legislated but is regarded as binding by the courts which can even decide to modify it.¹¹ Though, common law is also based in large part on statutes, which the judges are supposed to apply and interpret in much the same way as the judges in civil law such as through statutes of the Sale of Goods Act, 1979 and the Uniform Commercial Code.¹²

Whereas, the Civil Law system, also known as the Continental System is derived from the codification of law in force in the Roman empire during the reign of Justinian emperor also called *corpus juris civilis*, which then became the basic principle in the formulation and codification of law in European countries such as Netherlands, France, Italy including Indonesia since the Dutch colonial

¹⁰ Rahman Amin, *Pengantar Hukum Indonesia*, (Deepublish, 2019), p. 71

¹¹ Jon Rush and Michael Ottley, *Business Law*, (Cengage Learning EMEA, 2006), p. 125

¹² *Ibid.*

period.¹³ The basic principle of the civil law system is that the law obtains binding legal force as it is manifested in regulations in the form of laws (*Undang-undang*) and is systematically arranged in certain codifications or compilations.¹⁴ This principle is held in view that the main value which is the goal of law is legal certainty where it can only be realized if human actions in the association of life are regulated written in law and that judges cannot freely create laws that have general binding force¹⁵, in which the judge only establishes and interprets regulations within the limits of his authority, therefore judge's decisions are only binding on the parties in courts (*doktrin res adjudicata*).¹⁶

Indonesia as a country which adopts the civil law system, must be able to follow the development of society in which will affect the development of law in the country. Presently, the current era is characterized by rapid technological advancements.¹⁷ Technology is being developed everyday throughout people's lives varying from the lower class to the highest, in efforts to achieve welfare and increased human dignity for the community.¹⁸ As a nation that continues to grow, Indonesia must follow the development and progress of the era.¹⁹ The rapid advancement of technology requires mastery, utilization and progress to

¹³ Rahman Amin, *Pengantar Hukum Indonesia*, (Deepublish, 2019), p. 68

¹⁴ *Ibid.*, p. 69

¹⁵ Caslav Pejovic, *Civil Law and Common Law: Two Different Paths Leading to the Same Goal*, (Kyushu University), 2001, p. 11

¹⁶ R. Abdoel Jamali, *Pengantar Hukum Indonesia*, (Jakarta: PT. RajaGrafindo Persada, 2011), p. 69

¹⁷ Nanat Fatah Natsir, *The Next Civilization* (Media Maxima, 2012), p. 224

¹⁸ *Ibid.*

¹⁹ *Ibid.*

strengthen Indonesia's position globally.²⁰ Therefore, such development must be in line with globalization.

Globalization, the processes that interconnect individuals and social groups across specific geopolitical borders²¹ creates a shift in traditional patterns of international production, investment, and trade.²² Technology transfers by multinational firms, combined with the desires and expectations of well-informed consumers throughout the world, will speed the pace of globalization forward.²³ Improvements in technology, communication and transportation enable transitions in labor markets and industrial sectors and its development has more than any other single factor accelerated globalization.²⁴ Specifically, improvements in transportation led to the exchange of ideas and objects and the movement of people, it facilitates the development of global systems.²⁵ Globalization transforms the international and domestic transportation industries by redefining the standard for cargo and passenger movements and creating a rapid evolution within the industry to meet progressive demand for goods and services in the world market.²⁶ The global air transportation industry focuses on the movement of

²⁰ *Ibid.*

²¹ George Ritzer, *Globalization: A Basic Text* (John Wiley & Sons, 2010), p. 2

²² Barbara Parker, *Introduction to Globalization and Business: Relationships and Responsibilities* (SAGE, 2005), p. 5

²³ Erdener Kaynak and Salah Hassan, *Globalization of Consumer Markets: Structures and Strategies* (Routledge, 2014), p. xv

²⁴ JoAnn Chirico, *Globalization: Prospects and Problems* (SAGE, 2013), p. 23

²⁵ *Ibid.*

²⁶ Ashish K. Vaidya, *Globalization: Encyclopedia of Trade, Labor and Politics* (ABC-CLIO, 2006), p. 432

passengers and freight worldwide using many types of aircraft.²⁷ Hence, the demand for air transportation is on the rise, particularly in the commercial area.²⁸

The civil aviation industry in Indonesia is regulated primarily by Law No. 1 Year 2009 on Aviation (“Aviation Law”) replacing the previous Aviation Law No. 15 Year 1992 and is one of the most highly regulated industries in Indonesia.²⁹ Besides Aviation Law, there are a number of other implementing regulations, most of which are issued by the Ministry of Transportation³⁰, such as the Ministry of Transportation Regulation No. 77 Year 2011 on the Liability of Air Carrier (“MoTR 77/2011”).

The Aviation Law, is a specific sectoral law that governs civil aviation matters in Indonesia.³¹ The most significant update in Indonesia’s aviation law is the recent ratification of Convention for the Unification of Certain Rules for International Carriage by Air, The Montreal Convention 1999 (“Montreal Convention”) through its Presidential Decree No. 95 Year 2016, which establishes air carrier liability, particularly for international carriage, in the case of death, injury or delay to passengers, or in cases of delay, damage or loss of baggage or cargo.³² Regarding Aviation, the law intends to provide legal protection for the carrier, its passengers and beneficiaries. Legal protection is the provided protection for human rights that are harmed by others given to the community in order for all to benefit all rights provided by the law or it is a

²⁷ *Ibid*, p. 436

²⁸ *Ibid*, p. 436

²⁹ Sean Gates, *Aviation Law Review*, (Law Business Research Ltd., 2017)

³⁰ *Ibid*.

³¹ *Ibid*.

³² *Ibid*.

variety of legal efforts given by law enforcement officials to provide security, both mentally and physically from any disturbances and various threats from any party.³³ Muchsin also defined legal protection as the activity to protect individuals by harmonizing the relationship of values or principles that incarnate in attitudes and actions in creating order in the association of life among individuals.³⁴ Accordingly, Muchsin also stated that legal protection is a matter of protecting the subjects of law through applicable and enforceable laws implemented with sanctions, and therefore legal protection can be divided into two, namely:³⁵

1. Preventive Legal Protection

Protection provided by the government with the aim to prevent before the occurrence of violations. This is contained in the legislation with the intent to prevent a violation and provide guidelines or restrictions in carrying out obligations.

2. Repressive Legal Protection

The final protection in the form of sanctions such as fines, imprisonment, and additional punishment given if a dispute has occurred or a violation has been committed.

As one of the most known Low-Cost Carrier (LCC) in Indonesia which focuses on the safety, security and quality of flights,³⁶ Lion Air abide with laws regarding Aviation in order to uphold their obligations as a carrier whilst maintaining the legal protection of the company, their passengers and

³³ Satjipto Rahardjo, *Ilmu hukum*, (Bandung: Citra Aditya Bakti, Cetakan ke-V 2000). p. 74.

³⁴ Muchsin, *Perlindungan dan Kepastian Hukum bagi Investor di Indonesia*, (Surakarta; magister Ilmu Hukum Program Pascasarjana Universitas Sebelas Maret, 2003), p. 14.

³⁵ *Ibid.*, p. 20.

³⁶ BBC, <https://www.bbc.com/news/world-asia-48953892>, accessed on October 10, 2019

beneficiaries. Lion Air is a national private airline from Indonesia which was legally established on November 15, 1999 and started operations for the first time on June 30, 2000. On October 29, 2018, a Lion air flight JT 610, crashed and killed 189 passengers due to several problems which occurred simultaneously before the flight and reoccurred on the JT 610 flight. This accident arises an obligation for Lion Air to disburse compensation to beneficiaries of the JT 610 flight, however, beneficiaries claim to be forced into signing a Release & Discharge Agreement (“R&D Agreement”) by Lion Air to access compensation.³⁷ Even though the R&D Agreement is not provided in physical form as evidence towards the analysis of this thesis, the R&D Agreement does not fulfill the elements of consent due to the presence of economic duress and the element of an unlawful cause being based on claims and statements of beneficiaries provided by various Indonesian news. Therefore, from this analysis it is found that the R&D Agreement is problematic due to its withholding of disbursement of rightful compensation to beneficiaries.

Accordingly, the provisions in Aviation Law and MoTR 77/2011 regulates that in the event or condition that causes a loss to the passenger, the carrier is responsible for compensating the loss suffered. Efforts to overcome this can be done by holding an insurance program.³⁸

Insurance program provides insurance protection for air transport passengers and is held by insurance companies engaged in social insurance.³⁹

³⁷ *Ibid.*

³⁸ Radiks Purba, *Mengenal Asuransi Angkutan Darat dan Udara*, Djambatan, Jakarta, 2009, hlm.242.

³⁹ *Ibid.*

Social insurance includes insurances such as death insurance, health insurance and more.⁴⁰ Aviation Law, requires airline liability insurance for passengers as a guarantee for the safety of air transport passengers and is insured by the carrier through insurance companies engaged in the field of social insurance. Lion Air Group has insured the risk of loss in its activities to PT Asuransi Tugu Pratama Indonesia (“Tugu Insurance”), including losses due to the crash of Lion Air JT 610 and therefore receive protection against the risk of loss which includes loss or damage to the aircraft, liability arising from accidents and personal accident insurance.⁴¹ Lion Air also provides additional insurance by means of Travel Insurance providing coverage for unexpected events such as accidents and travel-related inconveniences such as personal accident with benefit of a lump sum cash payment of up to IDR 500,000,000 (for One-way plans) if the passenger suffer a serious or fatal accident while traveling by PT Chartis Insurance Indonesia (“Chartis Insurance”).⁴² The Indonesian government also guarantees the safety of air transport passengers by covering them with a social insurance from the insurance company PT Asuransi Jasa Raharja (“PT Jasa Raharja”) when they purchase a ticket as regulated under Law No. 33 Year 1964 and Government Regulation No. 17 Year 1965.

For this reason, it is important for Lion Air to understand its obligations under various laws regarding its aviation activities, including insurance program,

⁴⁰ *Ibid.*

⁴¹ Sumatra, <https://sumatra.bisnis.com/read/20181102/444/855841/asuransi-penerbangan-tugu-tanggung-lion-air> accessed on 30 October 2019

⁴² Lion Air, <https://agent.lionair.co.id/LionAirAgentsPortal/Agents/Helps/Insurance/en/insurance-faq.html> accessed on 30 October 2010

especially regarding its obligation to compensate and for beneficiaries to understand the legal protection they obtain from various laws and regulations.

Based on the background and problems described above, the author is interested in analyzing the obligation of air carriers in disbursing compensation for beneficiaries with the requirement of a R&D Agreement, and therefore chose the title of this thesis as the **“LEGAL PROTECTION FOR BENEFICIARIES OF AIR TRANSPORT ACCIDENT FLIGHT JT 610 IN RELATION TO THE DISBURSEMENT OF COMPENSATION”**. For this reason, this thesis will mainly discuss matters relating to whether an R&D Agreement is a valid agreement as a requirement for the disbursement of compensation to beneficiaries while relating to the prevailing laws and regulations regarding the matter and what measures can beneficiaries take as a legal protection to their rightful compensation.

1.2 Problem Formulation

In regard to the topic of this thesis, the author would like to discuss the following formulation of issues:

1. How is the legal protection for beneficiaries of flight JT 610 Lion Air in relation to signing Release & Discharge Agreement for the disbursement of compensation according to the prevailing laws and regulations in Indonesia?

1.3 Research Objectives

Based on the previous subsection, the purpose of this research is to answer the problem formulation, namely:

1. To know the legal protection for beneficiaries of flight JT 610 Lion Air in relation to signing Release & Discharge Agreement for the disbursement of compensation according to the prevailing laws and regulations in Indonesia.

1.4 Benefits of the Research

The benefit of this research can be divided into two categories namely theoretical benefits and practical benefits.

1.4.1 Theoretical Benefits

In the academic aspect, this research is expected to give contribution in the development of the Indonesian law as well as providing information and inputs to the public, students and scholars of the legal science on Indonesian Law, particularly regarding Aviation activities.

1.4.2 Practical Benefits

In the practical aspect, this research is expected to provide an analysis of the existence of an agreement consisting of a clause that withholds the disbursement of compensation, in which can be used as reference for carriers, passengers, beneficiaries and the Indonesian government. This research can also

be used as reference to give knowledge, feedback, suggestion and information to all regarding aviation under the prevailing laws and regulations in Indonesia.

1.5 Framework of Writing

To simplify the reading of this paper, the author will put the discussion into brief chapters:

CHAPTER I : INTRODUCTION

The introduction chapter will be a discussion on background of problems, research questions, research purposes, research benefits, literature review, research method and framework of writing.

CHAPTER II: LITERATURE REVIEW

The second chapter will be a literature review of based on a theoretical and conceptual background concerning the formulation issues which include Aviation Law, Insurance Law and more regarding on the subject of compensation to beneficiaries due to air transport accident. With conceptual background of quoted definitions are references used in the thesis.

CHAPTER III: RESEARCH METHODS

The third chapter discusses the methods of legal research used in writing this thesis, which consists of the type of

research, procedures to collect research materials, the approach to make the analysis, as well as the obstacles and solutions during the process of writing this Thesis.

CHAPTER IV: DISUCSSION AND ANALYSIS

The fourth chapter analyzes the legal protection for beneficiaries on the disbursement of compensation, including the R&D Agreement reviewed from the laws and regulations in Indonesia.

CHAPTER V: CLOSING

The fifth chapter is the closing chapter. This chapter contains the conclusions and recommendations. The conclusion is directed to the designated problem. The recommendations are suggestions from the Author in order to solve the existing problem.