

THE CHANGES OF REGULATION PERTAINING AIRCRAFT IN INDONESIA: BEFORE AND AFTER 9/11 CASE: A LEGAL STUDY VIEWED FROM A 9/11 CASE

Bambang Widarto

Postgraduate Student Faculty Of Law, Borobudur University

Email : bwidarto1@gmail.com

Citation: Bambang Widarto., The Changes of Regulation Pertaining Aircraft in Indonesia: Before and After 9/11 Case: A Legal Study Viewed from a 9/11 Case. *LEX LAGUENS: Jurnal Kajian Hukum dan Keadilan* 2.2.2024. 21-28

Submitted:25-07-2024 **Revised:**01-08-2024 **Accepted:**04-08-2024

Abstract

An aircraft hijacking as one of crimes in the field of aviation has been recognized as an international crime. The crime more often involved multiple numbers of state's jurisdictions, both the place of occurrence, its consequences, and the motives of the crime itself. The motive and goal of the crime can or cannot be driven by a politically reason. Initially, many thoughts that one of the characteristics of this crime was taking hostage of people onboard, either flight crew or passengers. However, in the 9/11 case, we can see that perpetrators did not take any people as hostage in an airplane but grabbed a flight control from the pilot in command and used the plane as an air to ground weapon to target civilian objects on the ground. In accordance with the Indonesian Code of Penal Number 1 issued in 2023 under article 579 (1) criminalized a person for committing as air piracy, any person who seizes or maintains the seizure or unlawfully controls an airplane in flight. This article is based on prior normative research, utilizing both secondary data, secondary data consisted of primary and secondary sources were obtained from relevant literature and international and national law. This means that even the newest Law Number 1 of 2023 still requires an element of piracy in the air and an element of an airplane in flight. It is more adequate if the regulations in Indonesia new Criminal Code adopts the provisions of the 2010 Beijing Protocol which has no longer used the element of 'onboard' and also modifies the word 'in flight' to 'in service'.
Keyword : Regulation, Aircraft, Hijacking

A. INTRODUCTION

Since the airplane was first discovered and flown by the Wright Brothers, namely Orville Wright and Wilbur Wright, airplanes have experienced rapid development in terms of design and technology. Even though modern aircraft are equipped with up-to-date navigation and communication systems and highly sophisticated security, this does not guarantee that they will escape the threat of danger, especially in terms of security and safety, namely aircraft hijacking, especially civil and cargo aircraft. leading to acts of terrorism.

The hijacking of civil aircraft is one of international crimes. The crime usually was committed in an individual state territory but in many cases, it commonly involved a number of states. A simple instance that involving more than one single state was shown by a Woyla case that occurred in 1981. A Garuda flight registered in Indonesia serving domestic flight was hijacked during a flight from Palembang to Medan, Indonesia. However, the hijacked aircraft was finally landed at Don Mueang Airport in Bangkok, Thailand. Thailand and Indonesia worked together to tackle the hijackers and to release of the hostages. In spite of the place where the accident occurred, the crime was also characterised by other factors including the

perpetrators who may come from different nationality, the intention that may aim a foreign target locating abroad and taking hostages of aircrew and passengers who are holding numerous citizenships. The terrorists' motives might be driven by political or non-political reasons. The world evidences that the hijacking murdered numbers of innocent lives and left the late victims' family members suffered from the loss. The loss of civilian lives also degraded a global justice of humankind. The crime, of course invited a worldwide reaction, varying from a state's condemnation to urge the United Nation Security Council to settle the crime before the international tribunal or to authorize military forces to eradicate the terrorists.

Likewise, other states in the world, Indonesia has a state sovereignty. Sovereignty is an important and fundamental attribution to all respective states. Therefore, each state which is as an organisation and an organism is trustworthy to act as an international entity to defend its sovereignty. In relation to other states, each state obliges to promote the principle of mutual respect of others in conducting its international cooperation. In light to the obligation, all states have responsibility and duty to prevent and to exterminate terrorist, including the one who commits the crime of hijacking.

The initial stage of hijacking, the perpetrators were motivated by a reason to take a control of the flight and to take hostage of aircrew and passengers on board. However, in the current case which occurred in 9/11 event demonstrated that the terrorists were not only driven to take a flight control and to take hostage but also turn the defenceless aircraft into a lethal weapon. The deadly 'air to ground' weapon that targeted the innocent people and civilian facilities both on board and on the ground.

B. METHOD

This article is based on prior normative research, utilizing both secondary data, secondary data consisted of primary and secondary sources were obtained from relevant literature and international and national law. Comparative study or comparative research is a kind of descriptive research that wants to find answers fundamentally about cause and effect, by analyzing the factors that cause the occurrence or emergence of a particular phenomenon. So a comparative study is research that aims to compare two or more variables, to get answers or facts whether there is a comparison or not of the object being studied. This approach can also assist in identifying the weaknesses and strengths of each legislation and provide a more complete picture of the regulation and handling of criminal acts of terrorism on aircraft. In writing this article using normative juridical legal research or often referred to as library

research. Peter Mahmud Marzuki defines legal research as a process to find legal rules, legal principles and legal doctrines to answer the legal issues at hand.

C. RESULT AND DISCUSSION

Public International Air Law

In public international air law there is the 1944 Chicago Convention which is the constitution of international civil aviation. The convention is used as a reference in making national law for member countries of the International Civil Aviation Organization (International Civil Aviation Organization, hereinafter referred to as ICAO) for the operation of international civil aviation. In fact, since 1902, France, as the pioneer of international air law, has discussed the competence of jurisdiction over criminal acts of violations and crimes that occur in airplanes and the actions that need to be taken during the flight. In order to combat the crime of airplane hijacking, the international community made various conventions, starting from the 1963 Tokyo Convention, The Hague Convention 1970 and the 1971 Montreal Convention. several universal legal instruments and legal amendments governing the prevention of acts of terrorism, particularly criminal acts of terrorism on airplanes, among others:

1. 1963 Convention on Offences and Certain Other Acts Committed On Board Aircraft (Aircraft Convention);
2. 1970 Convention for the Suppression of Unlawful Seizure of Aircraft (Unlawful Seizure Convention). 2010 Protocol Supplementary to the Convention for the Suppression of Unlawful Seizure of Aircraft;
3. 1971 Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation (Civil Aviation Convention);
4. 1973 Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons (Diplomatic Agents Convention);
5. 1979 International Convention Against the Taking of Hostages (Hostages Convention);
6. 1988 Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (Extends and Supplements the Montreal Convention on Air Safety) (Airport Protocol);
7. 2010 Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation (New Civil Aviation Convention).

International agreements regarding aviation crimes , especially on civil aviation were then perfected through The Hague Convention 1970 which was aimed at actions /actions/activities that were against the law against the aircraft itself. The deficiencies in the 1963 Tokyo Convention were further refined. Along with the progress and development of the world of aviation , improvements were made to The Hague Convention 1970 by making the 1971 Montreal Convention which was more directed towards the protection of civil aviation, because the Montreal Convention was more aimed at actions carried out in and/or from outside aircraft that threaten the safety of civil aviation. The establishment of the 1971 Montreal Convention is expected to reduce and even close meetings against acts of international civil aviation crimes. The act of aviation crimes in other words " unlawful seizure of aircraft/unruly passengers/disruptive passengers " in the 1963 Tokyo Convention applies when the crime is committed on board an aircraft, which is in flight (in flight).

A crime which targets aviation assets such as aircraft, airport terminal, and air navigation facility is categorized as one of terrorism acts because such properties are vulnerable and defenceless. The crime targets such properties is also known as an aviation crime. The crime is also considered as a crime against humanity due to the fact that in the aviation assets contain a large number of people. The crime is also seen as a threat to the state sovereignty because such aviation properties are considered as a strategic national vital object that must be protected and safeguarded by both police and military forces. In spite of serious domestic threat, the hijacking of aviation assets is taken into account as a serious international crime as it also disgraces the international state of security.

A number of the Resolutions have been issued by the General Assembly of the United Nations in preventing and eradicating international terrorism and one of which is the Resolution Number 49/60, dated back on 9 December 1994. The UN Resolution articulates, as follows:

"The States Members of the United Nations solemnly reaffirm their unequivocal condemnation of all acts, methods and practices of terrorism as criminal and unjustifiable, wherever and by whomever committed, including those which jeopardize the friendly relations among States and peoples and threaten the territorial integrity and security of States".

Even though the UN Resolution has been published, the occurrence of the hijacking is still happening. One of the most shocking event of terrorist attacks was 9/11 one that took place inside the Continent of America. The event involved four civil aircraft hijacked and thousands of people lost their lives. The event which happened on 11 September 2001 was commemorated as the most catastrophic terrorist attacks in the human history.

The Hague Convention Of 1970

The title of the convention is the suppression of unlawful seizure of aircraft. The treaty regulates an eradication of illegal control of an airplane. Article 1 of the concord defines the term ‘unlawful act of seizure an aircraft in flight’, as follows:

1. Person(s) boarded an aircraft during flight
2. Unlawfully, by force or threat or any other form of intimidation
3. Seizes or exercises the aircraft or attempts to perform any such act

The convention also urges each contracting state undertakes to make the unlawful act or offence punishable by severe penalties and include the punishment into its national regulations. This means that the respective state has a duty to capture and detain the perpetrator and judicate she or he or extradite she or he to another state.

The convention also defines the term of “in flight”. Article 3 of it articulates a term of “in flight”, as follows:

“at any time from the moment when its all external doors are closed following embarkation until the moment when any such doors is opened for disembarkation. In the case of a forced landing, the flight shall be deemed to continue until the competent authorities take over the responsibility for the aircraft and for persons and property on board.”

The convention includes a number of jurisdictions, as follows:

1. When the offence is committed on board an aircraft registered in that state (or is also known as state of registry).
2. When the aircraft on board which the offence is committed lands in its territory with the alleged offender still on board (or is also known as a landing state).
3. When the offence is committed on board an aircraft leased without crew to a lessee who has his principal place of business or, if the lessee has no such place of business, his permanent residence, in that state (or is also known as state of operator).

Each contracting state, article 11 also mandates member states to report to the Council of the International Civil Aviation Organization (ICAO) any appropriate evidence as soon as possible. The report’s procedure and mechanism shall be done according to the existing national regulation. The convention indicate that each state should regulate and publish its domestic law concerning the report to the ICAO Council. The reported information shall include, as follows:

1. The offence and its circumstances
2. The acts accomplished to tackle the crime

3. The procedures taken to the offender or alleged offender, particularly the results of extradition proceedings or other legal ones.

More importantly, the report should contain all procedures on how the state's authorities employ all relevant appropriate measures to tackle the offence or alleged offence. Then, to preserve or restore the flight control to pilot in command. Beside that the authority is also mandated to ensure that the flight may continue its journey.

After 9/11 Event

The outbreak of tragedy 9/11 event that shocked international community, aviation security had been more attention afterwards. The ICAO took appropriate measure through drafting an international convention. The international convention on the suppression of unlawful acts relating to civil aviation which is also known as the Beijing Convention of 2010. The Agreement aims to prevail Montreal Convention of 1971 and Montreal Protocol 1988. The Montreal Convention of 1971 regulates for the suppression of unlawful acts against the safety of civil aviation. While the Montreal Protocol of 1988 legalizes the suppression of unlawful acts of violence at airports serving international civil aviation. This Protocol is supplementary to the convention for the suppression of unlawful acts against the safety of civil aviation. At the same time the Beijing Convention of 2010 was concluded, the Protocol Supplementary to the Beijing Convention was also introduced. The protocol named Supplementary to the Convention for the Suppression of Unlawful Seizure of Aircraft. This protocol aims to modify the Hague 1970. One of provisions of the Beijing Convention of 2010 urges an international cooperation for preventing and handling unlawful acts against the safety of civil aircraft. While its protocol focuses more on an offence against the safety of aircraft.

The issuance of both the Beijing Convention and its Protocol aims to respond to the attacks of the WTC buildings that occurred on 11 September 2001 by terrorists who took a flight control of the hijacked aircraft and killed large numbers of blameless people. The Beijing Protocol and its Protocol are the product of cooperative works taken by global community to improve the legal capacity for enhanced security in the aviation field. through extending the form of the aircraft hijacking, including certain preparatory acts for the crime will reinforce the competency of states to prevent the commission of hijacking to prosecute and punish hijackers. The Beijing Protocol is also designed to play a significant role in implementing the United Nations Global Counter-Terrorism Strategy.

Indonesia Domestic Law

Relating to the hijacking of the civil aircraft, Indonesia has promulgated some regulations which are: the act number 4 of 1976, the act number 1 of 2009 on Aviation, and

the act number 1 of 2023 on the Penal Code. Despite that, Indonesia also issued the act number 5 of 2018 which amends the act number 15 of 2003 which enforces the act number 1 of 2002 on the Eradication the Offence of Terrorism. All these acts strengthen the Indonesian legal framework to counter terrorism, particularly terrorist attacks against civil aircraft.

The Indonesia Penal Code has reflected the provisions of the Hague of 1970. Article 479 point J of the Penal Code and its criminal sanction is regulated in article 479 point K of the Penal Code. Pursuant to 479 point K para (1) point d regulates severe penalties for unlawfully taking a flight control of civil aircraft. The criminal liability for the offence against the safety of flight is up to imprisonment for life or imprisonment up to twenty years.

Pursuant to article 479 point K para (2) articulates that if the offence causes death or destroy an aircraft is punishable to death penalty or to imprisonment for life or to imprisonment for twenty years. Therefore, article 479 point K of the Penal Code is a severe penalty to article 479 point I and article 479 point J of the Penal Code. Pursuant to the new Indonesia Penal Code which is the act of number 1 of 2023. The offence against aviation security and the offence against aviation assets are regulated in Chapter XXXII from article 575 to 590. The criminal elements which have been regulated in article 479 point J of the penal code and article 8 point J of the act number 15 of 2003 on the Eradication of the Terrorist Attacks. The Indonesia Penal Code has accommodated the Hague Convention of 1970 but not the Beijing Protocol of 2010 yet.

According to the provisions of the Indonesian law. It is worth noting that the new Penal Code still uses terms of ‘in-flight’ that should be superseded by the term of ‘in-service’ that expands the scope of the forms of hijacking. Moreover, the need to include jurisdiction to state of operator and landing state into Indonesia domestic aviation law rather than only maintain the state of registry that exists up to now.

D. CONCLUSION

To sum up, it is important for Indonesian legal experts to take into account legal consequences that may arise for every legal revision to ensure that the legal change in light to the public international air law issued by the ICAO after the 9/11 event. Therefore, Indonesia should ratify the Beijing Convention of 2010 and its Protocol of 2010 to fulfil states’ commitments in international fora in preventing and tackling aviation security.

REFERENCES

- I.P.H. Dideriksa Verschoor, *An Introduction to the Air Law*, Nederland, Wolter Kluwer, Nine Revised Edityion, 2012.
- Moctar Kusumaatmadja, *Pengantar Hukum Internasional*, Bina Cipta, Bandung, 1977.
- Convention on the Rights and Duties of States (1933). Treaty no. 3802. United Nations Treaty Series 165, pp. 19-413, Available at: <https://treaties.un.org/doc/Publication/UNTS/LON/Volume%20165/v165.pdf>
- Convention on International Civil Aviation (1944). Treaty no. 102. United Nations Treaty Series 15, pp. 295-374. Available at: <https://treaties.un.org/doc/Publication/UNTS/Volume%2015/volume-15-II-102-English.pdf>
- Charter of the United Nations General Assembly (1945). United Nations Treaty Series, Available at: <https://treaties.un.org/doc/publication/ctc/uncharter.pdf>
- Convention on Offences and Certain Other Acts Committed on board Aircraft (1963). Treaty no. 10106. United Nations Treaty Series 704, pp. 219-254, Available at: <https://treaties.un.org/doc/db/terrorism/conv1-english.pdf>
- Convention on the Suppression of Unlawful Seizure of Aircraft (1970). Treaty no. 12325. United Nations Treaty Series 860, pp. 105-157. Available at: <https://treaties.un.org/doc/db/terrorism/conv2-english.pdf>
- Convention on the Suppression of Unlawful Acts against the Safety of Civil Aviation (1971). Treaty no. 14118, United Nations Treaty Series 974, pp. 177-248. Available at: <https://treaties.un.org/doc/Publication/UNTS/Volume%20974/volume-974-I-14118-english.pdf>
- Convention on the Law of the Sea (1982). Treaty no. 31363. United Nations Treaty Series, 1833, pp. 397-581. Available at: <https://treaties.un.org/doc/Publication/UNTS/Volume%201833/volume-1833-A-31363-English.pdf> (Accessed: 25 October 2023).
- The Act Number 2 of 1976.
- The Act Number 4 of 1976.
- The Act Number 3 of 2002 on State Defence.
- The Act Number 34 of 2004 on Indonesia Armed Forces.
- The Act Number 26 of 2007 on Space Management.
- The Act Number 1 of 2009 on Aviation.
- The Act Number 1 of 2023 on Penal Code.