

Compensation for Victims of Air Transportation Accident under Indonesian Legal Regime:

A Review Towards Sriwijaya Air SJ-182 Accident*

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Abstract

บทความนี้จะตรวจสอบกรอบกฎหมายของอินโดนีเซียเกี่ยวกับค่าชดเชยสำหรับการที่ผู้โดยสารเสียชีวิตจากอุบัติเหตุทางอากาศยาน โดยวิเคราะห์จากอุบัติเหตุเที่ยวบิน Sriwijaya Air SJ-182 ที่กำลังดำเนินการตรวจสอบอยู่จนถึงเดือนตุลาคม พ.ศ. 2564 ประเด็นหลักที่พิจารณาในบทความเมื่อทำการเปรียบเทียบกับอุบัติเหตุเที่ยวบิน Lion Air JT-610 ที่เกิดขึ้นก่อนหน้านี้ พบว่าขั้นตอนในการจ่ายค่าเสียหายใช้ระยะเวลายาวนาน จำนวนเงินค่าชดเชยไม่เพียงพอ และการขาดบทบัญญัติการจ่ายค่าชดเชยล่วงหน้า นอกจากนี้บทความยังกล่าวถึงบทบาทของ BPJS Ketenagakerjaan ที่รับผิดชอบการประกันสังคม และการประกันภัยการขนส่งภาคบังคับ (Jasa Raharja) ในการชดเชยค่าเสียหาย บทความได้เสนอข้อเสนอแนะทางกฎหมายและนโยบายเพื่อหาจุดสมดุลระหว่างสายการบิน หน้าที่ของรัฐบาลในการคุ้มครองประชาชน และความพยายามที่จะคุ้มครองผู้โดยสารในอินโดนีเซีย โดยเฉพาะอย่างยิ่งเมื่อพิจารณาถึงจำนวนเที่ยวบินภายในประเทศที่เพิ่มขึ้นก่อนและหลังเหตุการณ์โควิด-19

Keywords:

การจ่ายค่าชดเชยล่วงหน้า ความรับผิดชอบของสายการบิน การคุ้มครองผู้โดยสาร

* ค่าชดเชยสำหรับผู้เสียหายจากอุบัติเหตุการขนส่งทางอากาศภายใต้ระบบกฎหมายอินโดนีเซีย : การพิจารณาจากอุบัติเหตุ Sriwijaya Air SJ-182

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Abstract

This article shall examine the Indonesian legal framework concerning compensation for death of passengers in aircraft accidents. The analysis follows the ongoing progress of the Sriwijaya Air SJ-182 accident up until October 2021. The main issues discussed in this article, compared to the previous Lion Air JT-610 accident, are the time-consuming process in granting compensation, inadequate amount of compensation, and the absence of advance payment clause. In addition, the role of social security (BPJS Ketenagakerjaan) and mandatory state transportation insurance (Jasa Raharja) in the compensation process is also discussed. Finally, this article provides legal and policy recommendations to find the equilibrium among the interests of airlines, the government's duty in protecting its citizens, and the efforts to promote passenger protection in Indonesia— particularly in regards to the increasing number of domestic flights prior and post the Covid-19 pandemic.

Keywords:

advance compensation, airline liability, passenger protection

1. Introduction

The unfortunate Sriwijaya Air SJ-182 crash in January 2021 marked the fourth scheduled flight accident within the decade. The previous accidents were the AirAsia QZ-8501 in 2014, Trigana Air Service IL-267 in 2015, and Lion Air JT-610 in 2018. All four accidents bore no survivor. Furthermore, in March 2021, Trigana Air Service PSK-YSF cargo flight skidded off the runway during emergency landing in Halim Perdanakusuma Airport. There were no fatalities among the crew, but the aircraft had to be cut into three pieces for evacuation purposes.¹

Out of the four aforementioned accidents, three were domestic flight. With around 89 million domestic passengers prior to the Covid-19 pandemic, specifically between 2015-2019;² there is a real urgency to update the regulations to protect the passengers and their heirs at the highest possible level. Unfortunately, the previous Lion Air JT-610 compensation shows otherwise. The airline liability clauses stipulated within the enacted laws and regulations were not properly enforced, particularly pertaining to compensation for the family of the deceased. The Sriwijaya SJ-182 crash is forcing the Minister of Transportation to implement its own regulations as they are due.

This article strives to identify the legal issues as well as loopholes concerning airline liability in parallel with social security and mandatory state transportation insurance within the Indonesian legal framework in light of passenger protection. The timeframe of this article is from the accident in January until October 2021.

2. Passenger Protection Regulations in Indonesia

2.1. Aviation Law Regime in Indonesia

The Indonesian Aviation Law No. 1/2009³ sets up the basis of liability, which is further regulated through Minister of Transportation regulations. The law was enacted eight years prior to the ratification of the Montreal Convention of 1999⁴, but still holds the principle

¹ Nirmala Maulana Achmad (reporter) and Icha Rastika (editor), 'Pesawat Trigana Air Dipotong Jadi 3 Bagian untuk Permudah Evakuasi' (KOMPAS, 21 March 2021) <<https://megapolitan.kompas.com/read/2021/03/21/14205181/pesawat-trigana-air-dipotong-jadi-3-bagian-untuk-permudah-evakuasi>> accessed 8 May 2021.

² Indonesian National Air Carriers Association (INACA) Annual Report 2019.

³ Indonesia, Law No. 1 Year 2009 on Aviation.

⁴ Convention for the Unification of Certain Rules for International Carriage by Air (adopted in Montreal on 28 May 1999, entered into force on 4 November 2003). Date of the deposit of the instrument of ratification by the Republic of Indonesia on 20 March 2017. The Convention came into force since 19 May 2017.

of passenger protection to some extent – as influenced by the Warsaw Convention of 1929⁵. Airline is liable for any passenger's injury or death at certain limit; and such limit shall become unlimited in case the accident is caused due to the airline negligence or fault.⁶ This concept encourages breakable liability limits in Indonesian domestic flight as stipulated within the Warsaw-Montreal regime. The possibility for unlimited liability ensures an appropriate compensation for the family of the deceased, especially if said victim was the breadwinner.

The Indonesian Minister of Transportation Regulation No. 77/2011 (the “MoT Regulation No. 77/2011”) specifically regulates liability pertaining to death and bodily injury⁷ two years after the enactment of the Indonesian Aviation Law No. 1/2009. However, psychological or mental injuries are not thoroughly stipulated within the MoT Regulation No. 77/2011. For example, even though the regulation defines mental injuries, there are no further details explaining whether bodily injury should occur first to trigger mental injury.⁸ This situation leaves the enforceability of compensation for mental injury in the grey area.

The death of a passenger resulting from an accident or incident on-board an aircraft is evaluated at IDR 1.25 billion (approximately SDR 60,000).⁹ Meanwhile, deaths occurring when the passenger is embarking or disembarking an aircraft are compensated IDR 500 million (approximately SDR 24,000).¹⁰ The latter situation might have more to do with airport liability. Furthermore, both limitations are deemed as the first tier, which are breakable if the accident is proven to be caused by intentional action or fault of the airline and/or its agent(s).¹¹

The aforementioned limits are still valid until today and there has not been any revision. Such amount is considered outdated noticing the regulation was introduced a decade

⁵ Convention for the Unification of Certain Rules Relating to International Carriage by Air (adopted in Warsaw on 12 October 1929, entered into force on 13 February 1933).

⁶ Indonesia, Law No. 1 Year 2009 (n 3) art. 141, paras 1 and 2.

⁷ Indonesia, Minister of Transportation Regulation No. PM 77 Year 2011 on Airline Liability (*Peraturan Menteri Perhubungan No. PM 77 Tahun 2011 tentang Tanggung Jawab Pengangkut Angkutan Udara*). See arts. 2 and 3.

⁸ Ibid art. 1 paras. 14,15 and 17. Mental injury only occurs at the definition part in article 1 para. 17. The original wordings mentions, “*Mental Injury is the malfunction or damage related to the mind and human character and not a damage of the body or power*”. Free translation from “*Cacat Mental adalah tidak berfungsi atau kerusakan yang bersangkutan dengan batin dan watak manusia yang bukan bersifat kerusakan badan atau tenaga*”.

⁹ Ibid art. 3. All Indonesian Rupiah (IDR) to Special Drawing Rights (SDR) conversion rate in this article are per-April 2021.

¹⁰ Ibid art. 3(b).

¹¹ Indonesia, Law No. 1 Year 2009 (n 6). In Bahasa Indonesia, from linguistic perspective, the terminology of “*kelalaian*” (negligence) is part of “*kesalahan*” (fault).

ago, thus the provision does not fit with current living standards based on inflations.¹² The MoT Regulation No. 77/2011 does not stipulate any condition on automatic increase in calculation of liability limits. In other words, a periodic review should be conducted to amend the enacted regulation whenever it is deemed necessary.¹³ In 2021, there is an ongoing discussion within the Ministry of Transportation to amend the MoT Regulation No. 77/2011.

2.2. *Jasa Raharja State Insurance*

Jasa Raharja, as the state-owned insurance company, provides a compensation amounting to fifty million Rupiah (approximately SDR 2,400) for deaths occurring in any mode of transportation - including air transportation.¹⁴ The compensation is paid to the heir of victim, and if there is no heir, an amount of four million Rupiah (approximately SDR 192) will be disbursed for funeral service.¹⁵ However, such compensation only applies under the following two conditions, namely i.) the victim was flying domestic routes served by Indonesian airlines; and ii.) the victim was on a special flight for Muslim pilgrimage to Mecca, Saudi Arabia (*hajj* flights),¹⁶ conducted through a special charter flight.

A premium of IDR 5,000 (approximately SDR 0,24) is charged to each passenger.¹⁷ Such premium is automatically included within the ticket fee and considered affordable for all walks of life. The disbursement usually does not take long compared to compensation based on aviation law. Within eleven days after the Sriwijaya SJ-182 accident, on 20 January 2021, *Jasa Raharja* had distributed the due compensation to 39 heirs from a total of 43 victims that had been identified.¹⁸ *Jasa Raharja* does not distinguish whether the accident occurred due to the negligence of airline, the aircraft manufacturer, or other causes, hence the compensation is not delayed— as seen in the Sriwijaya Air SJ-182 and Lion Air JT-610 cases.

2.3. *BPJS Ketenagakerjaan*

¹² Ridha Aditya Nugraha, 'The Urgency to Amend the Indonesian Aviation Law on Passengers Protection: Lessons Learned from Lion Air JT-610 and Sriwijaya Air SJ-182 Accidents' (2021) 20 *The Aviation & Space Journal* 47, 48-49.

¹³ *Ibid.*

¹⁴ Indonesia, Minister of Finance Regulation No. 15 Year 2017, art. 3(2).

¹⁵ *Ibid.* art. 5.

¹⁶ *Ibid.* art. 9.

¹⁷ *Ibid.* art. 8.

¹⁸ Ira Gita Natalia Sembiring (reporter) and Egidius Patnistik (editor), 'Jasa Raharja Telah Beri Santunan ke 39 Ahli Waris Korban Sriwijaya Air SJ 182' (KOMPAS, 21 January 2021)

<<https://megapolitan.kompas.com/read/2021/01/21/19480071/jasa-raharja-telah-beri-santunan-ke-39-ahli-waris-korban-sriwijaya-air-sj>> accessed 17 April 2021.

The Indonesian Social Security Program (*BPJS Ketenagakerjaan*) scheme also plays a role in compensating the heirs of the deceased, mainly for Indonesian nationals.¹⁹ *BPJS Ketenagakerjaan* only provides such compensation to its active members or those who have already registered and regularly pays their share.²⁰ Each person's compensation is different depending on their respective reported salary. In parallel, victims who are flying for work purposes are given higher cap, which stands at 48 times of the victim's reported monthly salary to *BPJS Ketenagakerjaan*.²¹ Meanwhile those flying for non-work purposes are compensated far lower at IDR 32 million and IDR 10 million for funeral cost (approximately SDR 2,015 in total).²²

BPJS Ketenagakerjaan also guarantees education access for a maximum of two of the victim's children, from elementary school until their bachelor's degree, with a maximum cap of IDR 174 million Rupiah (approximately SDR 8,349).²³ This scheme is effective starting from 1 April 2021 after the enactment of the Minister of Manpower Regulation No. 5/2021. Only legitimate children are eligible for such guarantee, including stepchildren and/or foster children.²⁴ Furthermore, the child i.) must not be working; ii.) is unmarried; and/or iii.) is below 23 years old.²⁵ However, such education scheme does not apply if the deceased was flying for non-work purposes.²⁶

Any foreigner is entitled to join *BPJS Ketenagakerjaan* under the condition that the person has worked for a minimum of six consecutive months.²⁷ The compensation must be claimed no later than five years after the accident occurs.²⁸

The noticeable gap between the compensation for victims flying for work and those for non-work purposes, especially regarding their children's education facilities, recalls the urgency in adding advance payment clause within the Indonesian aviation law regime. In fact,

¹⁹ Employees Social Security Program (Badan Penyelenggara Jaminan Sosial Ketenagakerjaan or BPJS Ketenagakerjaan) as regulated through Indonesia, Law No. 24 Year 2011 and Law No. 40 Year 2004.

²⁰ Indonesia, Government Regulation No. 82 Year 2019.

²¹ 'Jaminan Kecelakaan Kerja' (BPJS Ketenagakerjaan) <<https://www.bpjsketenagakerjaan.go.id/jaminan-kecelakaan-kerja.html>> accessed 17 April 2021.

²² Indonesia, Government Regulation No. 82 Year 2019 (n 20) art. 1(2).

²³ Ibid art. 1(1). See Indonesia, Minister of Manpower Regulation No. 5 Year 2021, arts. 103-109; See also 'Jaminan Kecelakaan Kerja' (BPJS Ketenagakerjaan) <<https://www.bpjsketenagakerjaan.go.id/jaminan-kecelakaan-kerja.html>> accessed 16 April 2021.

²⁴ Ibid art. 1(1). See Indonesia, Minister of Manpower Regulation No. 5 Year 2021, art. 103(4).

²⁵ Indonesia, Minister of Manpower Regulation No. 5 Year 2021, art. 103(3).

²⁶ Indonesia, Government Regulation No. 82 Year 2019 (n 20) art. 1(3).

²⁷ Indonesia, Minister of Manpower Regulation No. 5 Year 2021 (n 25) art. 1(13).

²⁸ Indonesia, Government Regulation No. 82 Year 2019 (n 20) art. 1(2).

only 18 out of 62 victims of Sriwijaya Air were registered in *BPJS Ketenagakerjaan*.²⁹ Meanwhile, in the Lion Air JT-610 crash in October 2018, 31 out of 189 victims (three of whom were children) were covered by *BPJS Ketenagakerjaan*— those 31 victims were flying for work purposes.³⁰ The previous AirAsia QZ8501 accident in 2014 also showed very low percentage of passengers covered by *BPJS Ketenagakerjaan*.³¹

This situation shows that sharing reliance on aviation liability upon *BPJS Ketenagakerjaan* is not feasible. There is not much awareness to join the social security program aside from those working with well-established companies and formal workers, thus there are probably less passengers that might be compensated in case of aircraft accident. Furthermore, allegedly, the salary of Lion Air JT-610 pilot salary was reported below the actual salary, a fact that is detrimental for their heirs.³² This dilemma is well and alive within the realms of passenger and crew protection in Indonesia.

3. The Compensation for Sriwijaya SJ-182 Flight Accident

As of February 2021, only 11 families have received the IDR 1.25 billion (approximately SDR 60,000) compensation for the crash.³³ The minister hopes that the remaining 47 families finish the administrative works to speed up the compensation process.³⁴ However, the

²⁹ ‘BPJS Naker Siapkan Rp5 M Untuk Santunan Korban Sriwijaya Air’ (CNN Indonesia, 15 January 2021) <<https://www.cnnindonesia.com/ekonomi/20210115132758-78-594158/bpjs-naker-siapkan-rp5-m-untuk-santunan-korban-sriwijaya-air>> accessed 30 October 2021.

³⁰ Antara (reporter) and Ali Akhmad Noor Hidayat (editor), ‘Sandiaga: Destinasi Pariwisata Prioritas Akan Miliki Wisata Otomotif’ (TEMPO, 18 April 2021) <<https://bisnis.tempo.co/read/1453863/sandiaga-destinasi-pariwisata-prioritas-akan-miliki-wisata-otomotif>> accessed 17 April 2021.

³¹ Hafid Fuad, ‘Dari 62 Korban Sriwijaya Air, Hanya 18 Orang Peserta BPJS Ketenagakerjaan’ (SINDONEWS, 11 January 2021) <<https://ekbis.sindonews.com/read/297920/34/dari-62-korban-sriwijaya-air-hanya-18-orang-peserta-bpjs-ketenagakerjaan-1610373670>> accessed 17 April 2021.

³² Kartika Anggraeni (reporter) and Martha Warta Silaban (editor), ‘Gaji Pilot Lion Air Rp 3,7 Juta, Ini Kata BPJS Ketenagakerjaan’ (TEMPO, 1 November 2018) <<https://bisnis.tempo.co/read/1142055/gaji-pilot-lion-air-rp-37-juta-ini-kata-bpjs-ketenagakerjaan/full&view=ok>> accessed 30 October 2021.

³³ ‘Sriwijaya Air Sudah Ganti Rugi Rp1,25 M ke 11 Korban SJ 182’ (CNN Indonesia, 3 February 2021) <<https://www.cnnindonesia.com/ekonomi/20210203141221-92-601759/sriwijaya-air-sudah-ganti-rugi-rp125-m-ke-11-korban-sj-182>> accessed 30 April 2021.

³⁴ Francisca Christy Rosana (reporter) and Martha Warta Silaban (editor), ‘Menhub: Sriwijaya Air Sudah Beri Kompensasi Rp 1,25 M ke Keluarga Korban SJ 182’ (TEMPO, 3 February 2021) <<https://bisnis.tempo.co/read/1429389/menhub-sriwijaya-air-sudah-beri-kompensasi-rp-125-m-ke-keluarga-korban-sj-182>> accessed 30 April 2021.

compensation for the previous Lion Air JT-610 case took years to be paid,³⁵ due to the release and discharge agreement controversy presented to the passengers' heirs. They were repeatedly hampered with a condition to sign the release and discharge agreement which forbids them from filing a lawsuit against any third party which caused the accident in order to receive the 1.25 billion Indonesian Rupiah compensation.³⁶

This situation is a breach towards the Indonesian Aviation Law of 2009 which clearly stipulates that any carrier is prohibited from signing agreements or set up requirements that nullify carrier's liability or establish a lower compensation limit than it should be.³⁷ Furthermore, the Minister Regulation No. 77 regulates that any loss of life shall be compensated for 1.25 billion Indonesian Rupiah and not a single cent less, regardless of age, gender, or status. In other words, in both Lion Air JT-610 and Sriwijaya SJ-182 cases there is no room for the release and discharge agreement; and any such agreement which has been signed by the passengers' relatives shall be deemed as null and void. However, Lion Air JT-610 case showed otherwise, and it is reasonable to fear that the same thing might occur in Sriwijaya Air SJ-182 case.

The argument continues between airline and aircraft manufacturer. Product liability, as Hursh defined, is the liability of a manufacturer, processor or non-manufacturing seller for injury to the person or property of a buyer or third party caused by a product which has been sold.³⁸ An inadequate instruction for handling a product put on the market is considered as one of the three grounds for a successful product liability claim.³⁹ This will lead to a tort action based on negligence, seeking responsibility from aircraft manufacturer and may held it liable. There should be no failure to identify the distinction between airline liability and aircraft manufacturer liability in case a product defect happens.

³⁵ Ridha Aditya Nugraha, 'Lion Air JT-610 Passenger Compensation: A Commentary and Review of the Current Progress' (2019) 18(2) *The Aviation & Space Journal* 22.

³⁶ Vincent Fabian Thomas (reporter) and Dewi Adhitya S.Koesno (editor), 'Ombudsman RI Sebut R&D Ganti Rugi Korban Lion Air Melawan Hukum' ([tirto.id](https://tirto.id/ombudsman-ri-sebut-rd-ganti-rugi-korban-lion-air-melawan-hukum-dlyH), 9 April 2019) <<https://tirto.id/ombudsman-ri-sebut-rd-ganti-rugi-korban-lion-air-melawan-hukum-dlyH>> accessed 10 October 2021.

³⁷ Indonesia, Law No. 1 Year 2009 (n 3) art. 186(1).

³⁸ R.D. Hursh and H.J. Bailey, *American Law of Products Liability*, Vol. 2(3) (Lawyers Co-operative Publ. Co.1974).

³⁹ Pablo Mendes de Leon, *Introduction to Air Law* (10th edn, Kluwer Law International 2017) 363.

In May 2021, airlines operating older 737 variants were ordered to conduct auto-throttle checks to detect flap synchronization component failure.⁴⁰ Sriwijaya Air's Boeing 737-500 that crashed was a 26-year-old workhorse without MCAS or any other new technology that plagued the Boeing 737 MAX crashes.⁴¹ This situation gives opportunity for the heirs to sue Boeing as the aircraft manufacturer— and in the same month, 16 of the victims' family have filed a claim towards Boeing.⁴² The United States Federal Aviation Administration (FAA) airworthiness notification for Boeing 737-300, 737-400 and 737-500 series on its auto-throttle computer is also written as one of the grounds for claim.⁴³

Most likely, the on-going investigation on Sriwijaya SJ-182 crash will share a similar fate— noticing how the Indonesian National Transportation Safety Commission (NTSC - *Komite Nasional Keselamatan Transportasi*) preliminary report mentions an indication of aircraft manufacturer's fault.⁴⁴ It needs around one year – which means January 2022 - before the Indonesian NTSC announce its final official report revealing the cause aircraft accident. In other words, the families seeking justice in Chicago court and those refusing to sign the release and discharge agreement in the case of Sriwijaya Air SJ-182 crash might need to wait years for the compensation.

Ideally, the compensation of 1.25 billion Indonesian Rupiah should be promptly disbursed to cover the family's immediate needs, such as funeral fees and other basic needs, especially if the victims were breadwinners. The Indonesian Aviation Law regime's best practice does not recognize compensation payment in stages; or in other words, the payment should be done once and for all. Both *Jasa Raharja* insurance – through its 50 million Indonesian Rupiah prompt payment – and *BPJS Ketenagakerjaan* – as *de facto* social security scheme – fill the gaps left by the lack of advance payment clause in the Indonesian Aviation Law of 2009. In May

⁴⁰ David Kaminski-Morrow, 'Sriwijaya 737-500 crash probe spurs order to check autothrottle computers' (FlightGlobal, 18 May 2021) <<https://www.flightglobal.com/safety/sriwijaya-737-500-crash-probe-spurs-order-to-check-autothrottle-computers/143792.article>> accessed 10 October 2021.

⁴¹ 'Indonesia Crash: What to Know About the Boeing Plane' (The New York Time, 2 July 2021) <<https://www.nytimes.com/2021/01/10/business/boeing-737-indonesia-plane.html>> accessed 10 October 2021.

⁴² Yohana Artha Uly (reporter) and Bambang P. Jatmiko (editor), 'FAA Temukan Cacat, Keluarga Korban Pesawat Sriwijaya SJ 182 Gugat Boeing' (KOMPAS, 21 May 2021) <<https://money.kompas.com/read/2021/05/21/051621226/faa-temukan-cacat-keluarga-korban-pesawat-sriwijaya-sj-182-gugat-boeing?page=all#page2>> accessed 10 October 2021.

⁴³ Ibid.

⁴⁴ The Republic of Indonesia, National Transportation Safety Commission (*Komite Nasional Keselamatan Transportasi*) Preliminary Report KNKT.21.01.01.04 - Aircraft Accident Investigation Report (9 February 2021).

2021, all families have received the *Jasa Raharja* insurance payment;⁴⁵ in contrast with the payment based on the Indonesian Aviation Law regime.

The recent Sriwijaya Air SJ-182 crash raises an urgency for the amendment of the Indonesian Aviation Law regime pertaining to liability, namely to include advance payment provision. It is expected to prevent other families from being coerced into signing a release and discharge agreement in foreign courts, which would absolutely be detrimental to their interests. The loss of breadwinner shall be compensated appropriately and promptly. Prior to the amendment, the Ministry of Transportation needs to take active role in protecting the passengers' family with sufficient information as well as official statements, especially on the consequences of release and discharge agreements, to protect them from ambulance chasers. Amid the very few aviation liability experts in the country, involving the academia is one of the most feasible ways.

Considering that the unfortunate Sriwijaya SJ-182 was flying a domestic route, in a scenario where all the passengers bought only end-to-end ticket (Jakarta to Pangkal Pinang), national laws shall fully apply and the Warsaw Convention of 1929 or the Montreal Convention of 1999 shall not be applicable at all. It shall be highlighted that a passenger could be subject to either conventions as well, depending on their journey and ticket booking method. Both conventions, namely the Warsaw Convention of 1929 - without the Hague Protocol of 1955⁴⁶ amendment – and the Montreal Convention of 1999 have been ratified and fully enacted in Indonesia. For example, a passenger buys a ticket from the airline to travel from Amsterdam to Surabaya, in which there is no direct flight. The passenger then has to connect with domestic flight at Jakarta to Surabaya. If the passenger only has a single ticket from Amsterdam to Surabaya, the Montreal Convention of 1999 is also applicable for the domestic leg.

Lastly, the question whether 1.25 billion Indonesian Rupiah as the first tier liability limit is still sufficient in compensating domestic route accidents also arises. Variables on living standards in Indonesia have increased during the last ten years since the MoT Regulation No. 77/2011 was enacted.

4. Conclusion and the Way Forward

⁴⁵ Thomas Manggalla, 'Jasa Raharja: Penyaluran Santunan Rp3 M untuk 62 Korban Sriwijaya Air Tuntas' (SINDONEWS, 7 May 2021) <<https://nasional.sindonews.com/read/421472/15/jasa-raharja-penyaluran-santunan-rp3-m-untuk-62-korban-sriwijaya-air-tuntas-1620385509>> accessed 30 July 2021.

⁴⁶ Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air (adopted at the Hague on 28 September 1955, entered into force on 1 August 1963).

Passenger protection in Indonesia is still at its ebb. Although the Indonesian Aviation Law has stipulated that any release and discharge agreement on airline liability shall be deemed null and void, the practice may show otherwise. The Indonesian Aviation Law regime is also silent regarding the prompt and adequate compensation for the passengers' family, namely through the absence of advance payment scenario.

Fortunately, both *BPJS Ketenagakerjaan* (the Indonesian social security program) and *Jasa Raharja* (the mandatory state transportation insurance) are somewhat acting as advance payment. Ideally, such scheme comes under the Indonesian Aviation Law regime— because not all Indonesians have joined the *BPJS Ketenagakerjaan* scheme, not to mention other issues regarding formal and informal employment status. The Sriwijaya Air SJ-182 crash calls for amendments towards the MoT Regulation No. 77/2011 for a better passengers protection which develops over time.