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**APPLICATION OF SUBROGATION IN CASE OF
COMPENSATION TO THE HEIRS OF SRIWIJAYA AIR SJ-182
PLANE CRASH VICTIMS**

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Abstract

The invention of airlines as a mode of transportation has made transnational mobility much more efficient than ever. The super high speed technically imperative for air travel without any pivot attached to the grounds makes the vehicle control a difficulty, especially when factoring in various determinants for example, technical failure, bad weather, errors or lack of experience on the part of the pilot. The amount of casualties and the risk of financial loss posed by a single doomed flight, although with number of occurrence lower than road traffic accidents, render it one of the unforeseen events worthy of coverage by travel insurance i.e., to ease the burden of air carriers' liability in an eventual disaster. In the past, unfortunately, there have been cases where (the heirs of) disaster victims tried and filed compensation claims to several parties they considered capable of being held responsible and milked for indemnities, among others, airlines and travel insurance providers, as well as aircraft manufacturers. Therefore, with the recent disaster involving Sriwijaya Air SJ-182, this study was conducted to analyze the rights due to the legacy of victims of aviation disasters in Indonesia. The results showed that they were eligible to receive compensation from airlines, in addition to cash benefits from PT. Jasa Raharja, and other benefits and/or insurance packages obtained by disaster victims, if any.

Keywords: compensation, cash benefits, aviation disasters.

I. Introduction

Technological advances have made human life easier, no exception in terms of mobility. Travel between cities or even continents that used to take days to months by boat can now be covered in a matter of hours by air carriers. The high demand for domestic and international routes indicates that people desires for time efficiency in travel, so the number of airlines continues to increase as the number of passengers increases.¹

The increase of flight numbers benefits consumers as it succeeds in making the airline industry more competitive rather than exclusive so that the prices offered are competitive. However, this must be balanced with good care and maintenance by prioritizing the safety and

security of passengers and avoiding accidents in transportation, especially human transport. Carriage itself is a reciprocal agreement in which the carrier binds itself to transport goods and/or persons from one place to another that is the destination safely without defects and injuries, while the passenger binds himself to pay the cost of transportation.²

Many members of the public are not aware that every trip by public transportation is insured when purchasing a travel ticket. The price of the travel ticket includes mandatory dues that will be used as compensation in the event of an accident that occurs to passengers. The risk of air travel accidents may occur at given any time; in the last 10 (ten) years alone there have been 4 (four) aircraft accidents in Indonesia that killed

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¹ Pepen Pendi, *Kupas Tuntas Penerbangan*, (Yogyakarta: Deepublish, 2016), Pp. 1.

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² H.M.N. Purwosutjipto, *Pengertian Pokok Hukum Dagang Indonesia, Hukum Pengangkutan Jilid 3*, (Jakarta: Djambatan, 1991), Pp. 2.

a total of 535 people, consisting of 162 people killed in the Air Asia QZ8501 plane crash on December 28, 2014, 122 people died in the plane crash of Air Force C-130 on June 30, 2015, 189 people died in the Lion Air JT-610 plane crash on October 29, 2018, and the last one was the Sriwijaya Air plane crash on January 9, 2021 that killed 62 people.³⁴

Any losses resulting from accidents are not always automatically reimbursed; there are procedures that must be followed and not infrequently the victim or the family left behind need to file a claim first to get reimbursement in accordance with the losses suffered, either because of the intervention of a third party or because the insurer does not want to assume liability. Considering this has an impact on the rights/entitlement that can be obtained by (the heirs of) the victims of plane accidents, the problem that the author intends to raise in this study is how the rights (the heirs of) the victims of the Sriwijaya Air SJ-182 plane crash are to be viewed academically, especially related to Article 284 of the Commercial Code jo. Article 1400-1403 of the Civil Code.

2. Method

The approach taken in this study to review and obtain information on the issue at hand, namely about the rights of victims of the Sriwijaya Air SJ-182 plane crash (and/or the heirs), is a statute approach, which is carried out by studying the relevant laws and regulations. This research is of juridical-normative nature and is conducted through library research,⁵ featuring literature assessment⁶ by studying materials in the form of secondary data as well as non-legal materials⁷

³ Minister of Finance, Regulation of the Minister of Finance Number 15/PMK.010/2017 concerning the Mandatory Compensation and Contributions for Insurance Benefits in Accidents for Passengers of Public Transportation on Land, River/Lake, Ferry/Crossing, Sea, and Air (State Gazette of the Republic of Indonesia year 2017 Number 278) ["PMK No. 15/PMK.010/2017"], Article 4 Paragraph (1).

⁴ Harry Suhartono, "Jet Cram Adds to The Long List of Aviation Disasters in Indonesia", *Bloomberg*, <https://www.bloomberg.com/news/articles/2021-01-10/jet-crash-adds-to-long-list-of-aviation-disasters-in-indonesia>, retrieved February 26, 2021 at 1:12 PM.

i.e., books, research reports, online articles and product description/ advertisements, as well as journals relevant with the legal issues in question, beginning with an attempt to group together the laws and regulations related to the legal issues at hand, which are then compiled in a systematic framework to facilitate the analysis process.

Legal materials are then analyzed using qualitative analysis methods, namely by deciphering and interpreting legal materials to obtain deductively formulated conclusions, ranging from general to special circumstances in approaching the rule of law. The principles of the common law are applied into these special circumstances to draw conclusions on related legal issues, which in this study is about the rights (of the heirs) of the plane crash victims, especially in the Sriwijaya air crash SJ-182.⁸

3. Discussion

A. The Theory of Transfer of Receivables

There are 3 (three) ways that can be done to do debt relief, namely:

1. Assignment (cessie)

Cessie is "the submission of receivables other bodily materials on behalf of another, performed by making an authentic or under hand deed, by which the rights of the material are conferred upon others." The object transferred in a cessie transaction is the right to *movable, intangible goods*, which are usually receivables on behalf of a third party, in which a person sells his/her billing rights to another person. One of the most common example is in the legal event of granting Home Ownership Loan (*Kredit*

⁵ Peter Mahmud Marzuki, *Penelitian Hukum Edisi Revisi*, 14th printing (Jakarta: Prenada Media, 2019), Pp. 133, 158.

⁶ *Id.*, hal. 52.

⁷ Muhammad Fikri Podungge, "Metode Penelitian Hukum". Muhammad Fikri Podungge Official Blog <http://fikripodungge.blogspot.co.id/2014/09/metode-penelitian-hukum.html>

⁸ Soerjono Soekanto and Sri Mahmudji, *Penelitian Hukum Normatif Suatu Tinjauan Singkat*. 11th Printing, (Jakarta: Raja Grafindo Persada, 2009), Pp. 192.

⁹ Indonesia, *Indonesian Civil Code* ("Civil Code"), Section 613.

Pemilikan Rumah/KPR) involving customers/debtors, banks/creditors, and developers (*estate developers*).

Through the description above, it can be concluded that *cessie* can also be referred to as a form of transfer of receivables because the legal consequences arising from the implementation of *cessie* is the change of creditors. While in the transfer of debt, the legal event that occurs is the transfer of the debtor, i.e. the party from whom the creditor has the right to collect. Reimbursement of debtors does not fall within the scope of *cessie* but can be categorized as a form of novation, namely passive subjective novation or so-called subrogation (delegation).¹⁰

2. *Novation*

Unlike amendments that change certain clause(s) in an agreement, novation is a renewal of the agreement, so that the old agreement no longer applies and the legally valid and subsequent agreement is the new agreement made in exchange for the old one. The renewal of the agreement can be followed by an update on the clauses containing the terms (both subjective terms and objective terms of the agreement as referred to in Article 1320 of the Civil Code), the circumstances, even the parties contained in the agreement. Applied in the context of the renewal of the debt-receivable agreement, the debtor and creditors put a signature on the debt renewal deed, which will then be a guideline or reference for the parties in executing each stages of the debt renewal.¹¹

3. *Subrogation*

Subrogation as stipulated in Article 1400 of the Civil Code is the transfer of creditor's rights to third parties paying to creditors, made through payments by third parties to creditors either directly or indirectly through debtors who

borrow money to third parties. Subrogation is often done as a preventive measure so that one does not enrich oneself unfairly¹² (*unjust enrichment*) because it gets compensation beyond the losses suffered, for example when the creditor receives reimbursements twice, namely from both debtors and third parties, or the debtor thought to have been freed of debts after paying off debts to creditors when in actuality he has not paid off his debt to a third party.

Therefore, a third party¹³ must apply for subrogation to replace the position of the old creditor as the new creditor against the debtor. Subrogation is not the same as debt relief so the arrangement must be expressly stated; a third party makes payments to creditors to take their place, not to relieve the debtor of the obligation to pay debts to creditors. Third parties acting as new creditors are entitled to collect the debtor's debts and to execute the submitted collateral/guarantees such as pledges, hypothec, and mortgages in the event of the debtor's defaults.^{13,14}

Subrogation itself may occur by covenant or as determined by law, as described below:^{15,16}

a. *Subrogation due to agreement*

The entire subrogation process is the result of an agreement between creditors and third parties. As is common with agreements, agreements cannot be made by one party and Article 1320 of the Civil Code takes part to determine the validity of the agreement. Article 1401 of the Civil Code explains that there are only 2 (two) possible limitations to subrogation made through agreement, which means that no other subrogation arises due to an agreement other than what has been stipulated in the agreement. The 2 (two) possibilities are:^{17,18}

1) *Subrogation on creditor's initiative*¹⁹

The creditor submits an application for subrogation to the third party to make the

¹⁰ Research Report of The Indonesian Legal Aid Foundation (YLBHI) as contained in Rachmad Setiawan and J. Satrio, *Penjelasan Hukum tentang Cessie*, (Jakarta: National Legal Reform Program, 2017), Pp. 39.

¹¹ Abdul Rasyid Saliman, *Hukum Bisnis untuk Perusahaan: Teori dan Contoh Kasus* (Jakarta: Kencana, 2017), Pp. 92.

¹² Civil Code, Article 1400.

¹³ Cypress Harvia Santri, *Pelaksanaan Prinsip Subrogasi pada Asuransi Kendaraan Bermotor Menurut Kitab Undang-Undang Hukum Dagang*, *UIR Review Law*, Volume 2, No. 2, 2018, Pp. 360.

¹⁴ Jifer Naki

"Subrogasi Sebagai Salah Satu Alasan Hapusnya Perikatan Menurut Kitab Undang-Undang Hukum Perdata (BW)", *Lex Privatum*, Volume VII, No. 1, 2019, Pp. 31.

¹⁵ Civil Code, Article 1401.

¹⁶ Civil Code, Article 1402.

¹⁷ M. Yahya Harahap, *Segi-segi Hukum Perjanjian* (Bandung: Alumni, 1982), Pp. 132.

¹⁸ Tan Thong Kie, *Studi Notariat dan Serba-serbi Praktek Notaris* (Jakarta: Ichtiar Baru van Hoeve, 2013), Pp. 688.

¹⁹ *Ibid.*, Pp. 689.

payment by stating that the third party replaces the creditor's rights to the old debtor. In this type of subrogation, the debtor is only informed that the receivables have switched to a third party and that the debtor must make payments to the third party. This must be done expressly, with absolute provisions expressly set forth in a deed to avoid unclear subrogation that must be painstakingly inferred from mere words or verbally expressed promises, which give loopholes and opportunities to old creditors to act fraudulently to the detriment of the debtor.

2) *Subrogation on debtor's initiative*²⁰

In this type of subrogation, the debtor is active, not even involving creditors, so subrogation agreements are only done between third parties and debtors. The debtor can borrow money from a third party to pay off his debt to the creditor, then stipulate that the third party will replace the creditor's rights to the debtor to receive the payment, so that through the event of subrogation, 2 (two) legal relationships are produced, namely the borrowing of money between the debtor and the third party who became the new creditor, and the repayment of the debtor's debt to the old creditor. This subrogation must be stated in an authentic deed, where the repayment of debts by third parties to creditors is affirmed as the background of subrogation.²¹

b. Subrogation determined by law

In this type of subrogation, payment is made by a third party that meets the elements of one of the events mentioned in Article 1402 of the Civil Code. The events are:^{22,23}

- 1) Creditors in their own interests pay off to another creditors the debts of debtors who have the right to precede (*voorrecht van uitwinning*);²⁴
- 2) The buyer of an immovable object that is being encumbered with collateral in the form of a mortgage first pays off the seller's debt attached to the object he purchased so that the object is free from the burden of mortgages;
- 3) In the event that some debtor is obliged to pay off the debt to a creditor, if one [8] the debtors makes a payment to the creditor to pay off the debt, the debtor who makes the payment

by itself takes over the position of the creditor against the other debtors; and

- 4) An heir pays off all debts that are tied to the inheritance, so that the rights and demands attached to the inheritance turn to said heir who has paid the inheritance debt.

The Indonesian Commercial Code in Article 284 describes subrogation more specifically, namely regarding the replacement of the insured position by an insurer "in all rights obtained from a third party in connection with the occurrence of losses related to an insured item when the insurer has paid for the loss". In the context of insurance, the reimbursement is done by the insurer because the insured has routinely made payments in the form of insurance premiums to provide protection against risk in his legal relationship with third parties. However, even if the position is replaced by the insurer in the event of any undesirable loss related to the goods and/or certain insured item, the insured remains liable "for any acts that may harm the rights of the insurer to the third parties...." to whom the insurer will provide compensation.

When the previously insured risk eventually occurs so that there is a loss to the third party which, based on the insurance agreement, makes the insurer responsible for reimbursing the loss on behalf of the insured, there are 3 (three) solutions to complete the indemnification process between the insurer, the insured, and the third party. The first solution is that a third party may recover damages from the insurer *and* the insured, or in other words, this solution allows the third party to file and obtain double recovery for a loss. The second solution has implications for which the insurer will benefit because the third party refuses to accept compensation from the insurer after having previously received its right to compensation from the insured. The last solution is where the insurer subrogates the liabilities for entitlements of the insured to the third party, so that the obligations of the insured

²⁰ *ibid.*, Pp. 680.

²¹ Herlien Budiono, *Ajaran Umum Hukum Perjanjian dan Penerapannya di Bidang Kenotariatan* (Bandung: Citra Aditya, 2010), Pp. 176.

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²² J. Satrio, *Cessie, Subrogatie, Novatie, Kompensatie dan Pencampuran Utang* (Bandung: Alumni, 1999), Pp. 72.

²³ Civil Code, Article 1402.

²⁴ Civil Code, Articles 1831 and 1402.

and, accordingly, the rights they have against the third party, are transferred along to the insurer.²⁵

B. Factors Causing Air Transport Accidents

Sriwijaya Air flight SJ-182 that ended disastrously did not just happen because of a technical malfunction of the aircraft. Boeing 737-524 used in the flight is known to be 26 (twenty-six) years old and was first operated in Indonesia in May 2012 when the aircraft was 18 (eighteen) years old. The age of the aircraft does not violate the regulations applicable at the time of its first operation, namely Regulation of the Minister of Transportation Number KM 5 Year 2006 concerning the Rejuvenation of Air Fleet for the Category of Air Transport for Passengers. Aircrafts that are designed for this category can be registered and operated for the first time in the territory of the Republic of Indonesia must not exceed 20 (twenty) years old, with a maximum number of landings of 50,000 times²⁶ (*cycle*). The age of the aircraft that is in operation has reached 26 (twenty-six) years is still in accordance with the applicable regulations, which is less than 30 (thirty) years for the category of normal transport or commuter for passenger air transport.^{27,28}

Broadly speaking, aviation accidents can occur due to pilot/human error, technical damage to the aircraft, and/or natural factors such as bad weather. Aviation accidents rarely occur due to only a single factor, but generally multiple factors come into play at once. In Sriwijaya Air

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²⁵ Spencer L. Kimball and Don A. Davis, "The Extension of Insurance Subrogation", *Michigan Law Reviews*, Volume 60, 21, 7 of 1962, Pp. 841.

²⁶ Rully R. Ramli, "Apakah Pesawat SJ 182 yang Berusia 26 Tahun Melanggar Ketentuan Penerintah?", Kompas,

<https://money.kompas.com/read/2021/01/11/210000126/apakah-pesawat-sj-182-yang-berusia-26-tahun-melanggar-ketentuan-pemerintah>, accessed on February 1, 2021 at 16:54.

²⁷ Minister of Transportation, Regulation of the Minister of Transportation Number KM 5 Year 2006 concerning the Rejuvenation of Air Fleet for the Category of Air Transport for Passengers, Article 2 Paragraph (1).

²⁸ Minister of Transportation, Regulation of the Minister of Transportation of the Republic of Indonesia Number PM 7 of 2016 concerning Amendments to Regulation of the Minister of Transportation Number PM 160 of 2015 concerning The Rejuvenation of Commercial Air Transport Fleet

SJ-182 flight, it can be said that the age of the aircraft itself has nothing to do with the accident because the aircraft that is allowed to fly has gone through many inspection procedures at the time of preparation. Even a plane cannot be judged simply by whether it is perceived as old or young, but rather from the flight history that shows an aircraft's ins and outs of flying. Many commercial aircraft can operate for more than 30 (thirty) years, although it also depends heavily on how many flying and flight hours and landings have been completed. If the aircraft has reached the maximum allowable flight hours and/or flight and landing^{29,30} *cycle* thresholds, the metal strength weakens and may cause problems if it continues to be used.³¹

C. Air Transport Accident Compensation

There are 2 (two) main legal sources under Articles 1233-1234 of the Civil Code, which stipulate that "[a]ll obligations [to give, to do, or not to do something] are created either by agreement or by law." In both sources this is regulated so that certainty is obtained regarding the rights and obligations of the parties in a legal event. Similarly, it can be found in the study of the events of the aviation accident and the compensation process that followed. First of all, Indonesia has ratified the Montreal Convention 1999 regulating the aviation industry as contained in Presidential Regulation No. 95 of

(State Gazette of the Republic of Indonesia year 2016 Number 64), Article 28 Paragraph (1).

²⁹ Amad Sudiro, "Ganti Kerugian Terhadap Korban Wajib Diberikan Tanpa Syarat Apapun" (Presented in Seminar on the Rights of Heirs of Aviation Accidents Victims in Indonesia, Jakarta, January 23, 2021).

³⁰ Chappy Judge, "Menduga Penyebab Jatuhnya Pesawat". National Library of Indonesia, <https://www.perpusnas.go.id/artikel-dan-opini-detail.php?lang=id&id=210110110320xBRo1cvEHK#:~:text=Secara%20%20great%2C%20aircraft%20accidents,%20%20prost%20prost%20titik%20,200>, accessed on February 1, 2021 at 2:37 PM.

³¹ Gabriel Leigh, "Nothing but numbers? Age of Aircraft Explained", *flightradar24*, <https://www.flightradar24.com/blog/nothing-but-a-number-aircraft-age-explained/#:~:text=Most%20commercial%20airplanes%20might%20last.and%20landings%20they%27ve%20completed>, accessed on February 1, 2021 at 5:01 PM.

2016 concerning the Ratification of the Convention for the Unification of Certain Rules for International Carriage by Air, in which it is stipulated that the heirs of victims who died in air transport accidents on international routes are entitled to compensation worth more than Rp.2,000,000,000,-.³²

Regulation of the Minister of Transportation Number PM 77 Year 2011 concerning Responsibility of Air Carriers then obliges the transport business entity operating the aircraft/airline to be responsible for the losses suffered by passengers, in the form of compensation for passengers who died, suffered permanent defects, or injuries; loss, destruction, or damage to cabin baggage, checked baggage, and/or cargo; air transport delays; and other losses suffered by passengers. The amount of compensation for passengers who died, permanently disabled, or injured is determined as follows:^{33,34}

1. Passengers who died on board the aircraft due to an aircraft accident or incident related to air transport are compensated in the amount of Rp.1,250,000,000,-/passenger;
2. Passengers who died as a result of an incident related to air transport when leaving the airport lounge to the aircraft or when disembarking from the aircraft to the arrival hall at the destination airport and/or stopover are awarded compensation of Rp.500,000,000,-/passenger;
3. Passengers suffering disabilities receive compensation depending on the deformed part of the body and the level (permanence) of disability;
4. Passengers who are injured and must undergo treatment at hospitals, clinics, or medical centers as inpatients and/or outpatients are compensated for the cost of treatment that must be incurred amounting up to Rp200.000.000,-/passenger.

Regarding the liability for compensation imposed on the transportation business entity

³² Indonesia, Presidential Regulation Number 95 Year 2016 concerning the Ratification of the Convention for the Unification of Certain Rules for International Carriage by Air (State Gazette of the Republic of Indonesia of 2016 Number 249), Articles 1 and 21.

³³ Indonesia, Law Number 1 Year 2009 concerning Aviation (State Gazette of the Republic of Indonesia

operating the aircraft/airline, the aviation regulations have been updated in 2020 with the issuance of Law No. 11 of 2020 on Job Creation (or better known as Omnibus Law). Article 58 point 51 amended Article 118 paragraph (1) letter d of Law Number 1 Year 2009 concerning Aviation *jo*. Article 65 paragraph (1) letter d of Government Regulation No. 32 of 2021 concerning the Implementation of Aviation Law ("PP No.32/2021"), which obliges licensees operating commercial air transportation sector (which transports passengers) to "cover the carrier's liability with insurance coverage in the amount equal to the compensation entitled by commercial air transport passengers as evidenced by the insurance closing agreement." Violation of the provision is threatened with administrative sanctions in the form of warning, freezing of operational activities of business entities, imposition of administrative fines, and/or revocation of business license, as stipulated in Articles 125-126 PP No.32/2021 with provisions on the imposition of sanctions and the determination of penalty to be regulated further in a Ministerial Regulation.

In addition, Regulation of the Minister of Finance No. 15/PMK.010/2017 concerning Mandatory Compensation and Contributions for Insurance Benefits in Accidents for Passengers of Public Transportation on Land, River/Lake, Ferry/Crossing, Sea, and Air also stipulates that passengers who fall victims to accident while using the available means of public transportation in the air or their heirs are entitled to compensation whose premiums are collected by PT. Jasa Raharja from the accumulation of mandatory dues of Rp5,000 (five thousand rupiah) whether or not the passengers are realized of said collection, has been paid by each passenger every time using public passenger transportation, including public passenger transportation in the air. The amount of compensation that must then be distributed by

year 2009 Number 1, Supplement to the Statute Book of the Republic of Indonesia Number 4956) ["Aviation Law"], Article 141. Regulation of the Minister of Transportation Number PM 77 Year 2011 concerning the Responsibility of Air Carriers (State Gazette of the Republic of Indonesia year 2011 Number 486) ["Permenhub No.77/2011"], Article 2.

³⁴ Permenhub No.77/2011, Article 3.

PT. Jasa Raharja in the event of a disaster are:^{35,36,37}

1. The heirs of passengers who died are entitled to compensation of Rp50,000,000,-.
2. Passengers with disabilities are still entitled to compensation that is calculated based on certain percentage of the amount of compensation entitled to dead passengers according to the defective body parts and the level (permanence) of disability.³⁸
3. Passengers who require medical treatments are entitled to the following compensation:
 - a. Reimbursement of doctor's treatment and medical costs <Rp25,000,000,-;
 - b. The cost of ambulance or vehicle carrying passengers to a health facility <Rp500,000,-; and/or
 - c. The cost of first aid in an accident <Rp1,000,000,-.

Through the descriptions above, it is clear that the minimum amount of compensation for each passenger who dies, permanently disabled, or suffered injuries has been established in the body of positive law through the Ministerial Regulation. Compensation must be distributed by commercial air transport business entities/airlines in addition to the cash benefit

provided by the institution established and set by the Government to undertake said responsibility. The positive law also specifies that airlines are obliged to transfer this liability burdened upon it by law to insurance companies through a scheme of transfer of obligations and rights based on the concept of subrogation, so that the risk of losses during unintended disasters can be minimized. In addition, airlines in accordance with internal policies and long-term market strategies can also make their own agreements with passengers to determine a higher amount of compensation than stipulated by the Ministerial Regulation so as not to harm the passenger and/or his heirs and at the same time maintain the reputation of the airline concerned.^{39,40}

In addition to airlines and government-designated institutions specifically to distribute such compensation, some credit card providers also provide travel insurance facilities to customers for free without the need to buy their own insurance policies, especially when using air transportation modes. This facility can generally be obtained if the travel ticket is purchased using a credit card issued by the credit card provider. Some of the banks that provide these facilities include:

Card Issuer	Coverage Value & Indemnity Qualification	Other Coverages	Beneficiary
Maybank ⁴¹	Rp500 million (Maybank Platinum) or Rp1 billion (Visa Infinite Maybank)		
UOB ⁴²	Death, one or both eyes went blind, lost one or both hands and/or feet: < Rp7 billion (UOB Visa PRIVI Miles)		Primary or additional card holder, along with his/her legal wife/ husband and biological child aged < 23 years.
Citibank ⁴³	Death and loss of limbs:	1. Loss of baggage (checked-in baggage);	Holders of primary and additional cards,

³⁵ PMK No. 15/PMK.010/2017, Article 4 Paragraph (1)⁴⁴

³⁶ PMK No. 15/PMK.010/2017, Article 8.

³⁷ PMK No. 15/PMK.010/2017, Article 4 Paragraph (2).

³⁸ Indonesia, Government Regulation Number 17 Year 1965 concerning the Provisions for the Implementation of Mandatory Insurance Fund for Accident Passengers (State Gazette of the Republic of Indonesia of 1965 Number 38), Article 10 Paragraph (3) a.

³⁹ Aviation Law, Article 165.

⁴⁰ Aviation Law, Article 166.

⁴¹ Maybank, "Traveling Accident & Travel Inconvenience", <https://www.maybank.co.id/en/creditcard/shopping-page/travel-inconvenient>, accessed on January 31, 2021 at 4:17 PM.

⁴² UOB, "Asuransi Kecelakaan Perjalanan", <https://www.uob.co.id/personal/kartu-kredit/uob-privi-miles/>, retrieved 31 January 2021 at 16:56.

⁴³ Citibank Indonesia, "Kartu Kredit", https://www.citibank.co.id/bahasa/credit_card/travel

(Insurance facility from PT. Allianz Main Insurance Indonesia)	< Rp13 billion (Citi Prestige)	2. Flight delays; 3. Missed connecting flights due to delays of the first flight and alternative connecting flights are not available; 4. Cancellation of travel due to death or serious injury due to accident or serious illness, unforeseen strikes, riots, civil unrest; 5. Medical expenses abroad due to accident or illness.	including husbands, wives, and children who are dependents domiciled in Indonesia and who travel as commercial passengers using land, sea, and air public transportation.
BCA⁴⁴ (Automatic insurance facility from BCA Insurance / PT. BCA General Insurance)	Death, loss of one or both hands or feet, or loss of all vision of one or both eyes: Rp1 billion (BCA Platinum, JCB Black, BCA UnionPay, MasterCard Platinum Bag/Black, Visa Platinum/B ¹⁹ k) IDR600 million (BCA Everyday Card, BCA Indomaret, BCA Matahari, Visa Batman, BCA BWS, MasterCard Platinum)	1. Medical expenses abroad; 2. Travel delays; 3. Loss or damage to baggage.	The holder of the main and additional card along with wife or husband and a maximum of 3 legal children between 3 months and 23 years old.

The crash of Sriwijaya plane, as they were in other air accidents, involved several parties looking from legal perspective. First, the victims or passengers (and/or their heirs). Second, the airline that transported passengers, in this case was Sriwijaya Air. The third are other parties, such as travel insurance companies, life insurance companies, credit card issuers, and aircraft manufacturers such as Boeing and Airbus.

In relation to the theory of subrogation, Article 1402 of the Civil Code states that one occurrence of subrogation by law is when "a person who is along with or for another person obliged to pay a debt, or otherwise having a vested interest in paying off the debt." This provision may be applied in the relationship between the airline, travel insurance company, and passengers who suffered losses in previously insured air travel, where the airline as the insured, whose obligation to pay debts in the

form of compensation to the victims and/or their heirs who suffered losses in air travel is taken over by the insurer, namely the travel insurance company, through a subrogation-based insurance agreement.

Therefore, in the event of a transfer of liability in the form of subrogation as is the case in the use of travel insurance, the victim should not demand compensation from all parties so as to exceed his rights. Airlines as transportation service providers should indeed put safety and consumer protection first, as well as provide the best service possible, even going as far as providing satisfactory after-sales service, including by facilitating the process of applying for compensation to insurance companies when consumers suffer losses. However, [Law No. 8 of 1999 on Consumer Protection](#) requires not only businesses/service providers to conduct their business in good faith, but also consumers to act in good faith in making purchases of goods

-insurance.htm, accessed on January 31, 2021 at 15:50.

¹⁹ Anonymous "Fasilitas Asuransi Otomatis Pemegang Kartu Kredit BCA", <https://www.bca.co.id/~media/files/product-files/20200429-sertifikat-asuransi.ashx>, accessed on January 31, 2021 at 16:43.

and/or services (Article 5). That being said, businesses/service providers are "entitled to legal protection from consumers who are acting in bad faith" (Article 6).

Therefore, when disasters occur that are never expected by any party, especially those concerning human safety and life, the compensation provided should not be used by consumers in bad faith, namely with the intention of obtaining multiple profits and enriching themselves unfairly (*unjust enrichment*). In the event of an aviation accident for example, this happens when the consumers place the blame on and demands double or as much compensation from several parties at once for the occurrence of the accident, namely airlines, travel and life insurance companies, credit card issuers, even aircraft manufacturers.

In fact, not all goods and/or services can be measured in monetary value. The negative perception often addressed when legal issues are assessed in close connection with economic principles is that the use of economic principles has the potential to keep legal norms away from the moral values that should be contained in legal norms: organ transplantation, adoption and use of surrogate mother to have children, legalization of prostitution, gambling, and marijuana consumption in certain countries, bank secrecy, very low tax rates, even government policies establishing subsidies for education and health services, all are legal issues where the moral elements in legal norms compete with economic considerations.

Similarly, in the event of compensation especially when it involves human life, it is difficult to determine with precision the dollar value that is adequate to cover the losses incurred, and as such, the value that is then determined by the Government as a neutral party through legislation is then used as a reference that is deemed adequately balanced in meeting the sense of justice by accommodating the interests of all parties involved. Efforts to demand indemnities from multiple parties for a single occurrence of disaster merely show the moral impropriety of the victims who are trying to take advantage and reap benefits out of a disaster that were not anticipated to happen.

Airlines themselves have usually included travel insurance premiums as one of the components in the ticket price sold to

prospective passengers, which activates the provisions on subrogation when insured events occur so that it no longer has an obligation to compensate passengers and/or their heirs directly, regardless of any claim filed by the victim in attempting to obtain multiple damages both from the airline *and* travel insurance company. However, in such case, it is also possible for the airline to issue a policy to provide an amount of compensation that exceeds the amount specified by the legislation. Although it is by no means mandatory and since it will cause no detriment to the airlines financially, this step can be taken with consideration to demonstrate their sense of responsibility and, therefore, to maintain a good public image and secure the long term sustainability of the airline's business in the air transportation service market.

In some aviation disasters, the aircraft manufacturer was also dragged as the responsible party, yet it was notably more difficult to involve them and only renders them worth prosecuting if there are sufficient convincing indications which can (later) be proven that the disaster was caused by a production defect or a lack of fulfillment of security standards with regards to the disastrous aircraft in question. However, this is certainly difficult to prove if the aircraft is recorded to have operated for many years smoothly and safely without reports of any technical problems related to production.

A slightly different perspective is worth applying in terms of compensation by life insurance companies as third parties where aviation accidents take a fatality. In this position, instead of subrogation that transfers the airline's liability as insured to a third party, passengers who are victims of aviation accidents have made periodic payment of life insurance premiums called *cost of insurance*, not only against the risk of death that specifically occurs due to air travel accidents that are uncertain and will not necessarily occur, but against the event of death that will *certainly* occur for any reason (except for murder by the heirs or suicide). This can be seen as a measure of anticipation carried out with full consideration and careful planning by the insured, to cover the costs of management related to his death while providing inheritance and financial protection that is expected to be

sufficient for his heirs left behind to provide for their lives after his death.

Lastly, the credit card issuer used by the victim to pay for the cost of the travel ticket. In this case, compensation is given solely because of the occurrence of obligations based on the agreement or promise of the credit card issuers specifically to customers who owned and have used their credit cards to pay for the disastrous flight ticket. This relationship is usually based on a special service/privilege provided by credit card issuers as an effort to promote and/or provide the best consumer services and to improve their consumer experience without involving the airlines, so it is not in any way related to the airline's indemnity obligations under the legislation. However, this obligation remains in effect because the promise of benefits given by the credit card issuer has resulted in an agreement that "applies as law to those who make it" and which nevertheless "shall be executed in good faith", pursuant to Articles 1233 and 1338 of the Civil Code.

4. Conclusion

Based on the description above, it can be concluded that (the heirs of) the plane crash victims, including Sriwijaya Air SJ-182, are entitled under the legislation for a compensation of at least Rp1,250,000,000,- from airlines or the travel insurance companies that have made subrogation agreements with airlines, in addition to cash support of Rp50,000,000,- from PT. Jasa Raharja derived from the accumulation of mandatory dues, as well as other additional insurance coverage owned by the victim, if any. The good faith of the airline to compensate for post-disaster losses should be well received by the victims and/or their heirs without the intention to exploit the circumstances by attempting to obtain unfair advantages (*unjust enrichment*) exceeding the mandatory value specified by the legislation.

BIBLIOGRAPHY

- [1] Anonymous. "Fasilitas Asuransi Obligasi Pemegang Kartu Kredit BCA". <https://www.bca.co.id/~media/files/product-files/20200429-sertifikat-asuransi.ashx>, retrieved January 31, 2021 at 6:43.
- [2] Budiono, Herlien. *Ajaran Umum Hukum Perjanjian dan Penerapannya di Bidang Kenotariatan*. (Bandung: Citra Aditya, 2010).
- [3] Citibank Indonesia. "Kartu Kredit". https://www.citibank.co.id/bahasa/credit_card/travel-insurance.htm, retrieved January 31, 2021 at 15:50.
- [4] Judge, Chappy. "Menduga Penyebab Jatuhnya Pesawat". National Library of Indonesia. <https://www.perpusnas.go.id/artikel-dan-opini-detail.php?lang=id&id=210110110320xBR01cvEHK#:~:text=Secara%20the%20%2C%20aircraft%20accident,%20%20prodence%20start%20%20,200%20>, retrieved February 1, 2021 at 2:37.
- [5] Harahap, M. Yahya. *Segi-segi Hukum Perjanjian*. (Bandung: Alumni, 1982).
- [6] Indonesia. Indonesian Commercial Code.
- [7] _____. Indonesian Civil Code.
- [8] _____. Law No. 1 Year 2009 concerning Aviation.
- [9] _____. Government Regulation No. 17 Year 1965 concerning Provisions for Implementation of Mandatory Insurance Fund for Accident Passengers.
- [10] _____. Presidential Regulation No. 95 Year 2016 concerning the Ratification of the Convention for the Unification of Certain Rules for International Carriage Air.
- [11] Kie, Tan Thong. *Studi Notariat dan Serba-serbi Praktek Notaris*. (Jakarta: Tiara Baru van Hoeve, 2013).
- [12] Kimball, Spencer L. and Don A. Davis. "The Extension of Insurance Subrogation". *Michigan Law Review*. Vol. 60, No. 7, 1962.
- [13] Leigh, Gabriel. "Nothing but numbers? Age of Aircraft Explained", *flightradar24*. <https://www.flightradar24.com/blog/nothing-but-a-number-aircraft-age-explained/#:~:text=Most%20commercial%20airplanes%20might%20last,and%20findings%20they%27ve%20completed,> approximately on February 1, 2021 at 5:01 PM.

- [14] Marzuki, Peter Mahmud. *Penelitian Hukum Edisi Revisi*. 14th printing. (Jakarta: Prenada Media, 2019).
- [15] Maybank. "Travel Accident & Travel Inconvenience". <https://www.maybank.co.id/en/creditcard/shopping-page/travel-inconvenient>, retrieved January 31, 2021 at 4:17 PM.
- [16] Minister of Finance. Regulation of the Minister of Finance No. 15/PMK.010/2017 concerning the Mandatory Compensation and Contribution for Insurance Benefits in Accidents for Passengers of Public Transportation on Land, River/Lake, Ferry/Crossing, Sea, and Air.
- [17] Minister of Transportation. Regulation of the Minister of Transportation Number KM 5 Year 2006 concerning the Rejuvenation of Air Fleet for the Category of Air Transport for Passengers.
- [18] _____. Regulation of the Minister of Transportation Number PM 77 Year 2011 concerning Responsibility of Air Carriers.
- [19] _____. Regulation of the Minister of Transportation of the Republic of Indonesia Number PM 7 Year 2016 concerning Amendments to Regulation of the Minister of Transportation Number PM 160 of 2015 concerning The Rejuvenation of Commercial Air Transport Fleet.
- [20] Naki, Jifer. "Subrogasi Sebagai Salah Satu Alasan Hapusnya Perikatan Menurut Kitab Undang-Undang Hukum Perdata (BW)". *Lex Privatum*. Volume VII, No. 1, 2019.
- [21] Pendi, Pepen. *Kupas Tuntas Penerbangan*. (Yogyakarta: Deepublish, 2016).
- [22] Purwosutjipto, H.M.N. *Pengertian Pokok Hukum Dagang Indonesia, Hukum Pengangkutan Jilid 3* (Jakarta: Djambatan, 1991).
- [23] Ramli, Rully R. "Apakah Pesawat SJ 182 yang Berusia 26 Tahun Melanggar ketentuan Pemerintah?" Kompas. <https://money.kompas.com/read/2021/01/11/210000126/apakah-pesawat-sj-182-yang-berusia-26-tahun-melanggar-ketentuan-pemerintah>, accessed on February 1, 2021 at 16:54.
- [24] Saliman, Abdul Rasyid. *Hukum Bisnis untuk Perusahaan: Teori dan Contoh Kasus* (Jakarta: Kencana, 2017).
- [25] Santri, Selvi Harvia. "Pelaksanaan Prinsip Subrogasi pada Asuransi Kendaraan Bermotor Menurut Kitab Undang-Undang Hukum Dagang". *UIR Law Review*. Volume 2, No. 2, 2018.
- [26] Satrio, J. *Cessie, Subrogatie, Novatie, Kompensatie dan Pencampuran Utang* (Bandung: Alumni, 1999).
- [27] Setiawan, Rachmad and J. Satrio. *Penjelasan Hukum tentang Cessie* (Jakarta: National Legal Reform Program, 2010).
- [28] Soekanto, Soerjono and Sri Mahmudji. *Penelitian Hukum Normatif Suatu Tinjauan Singkat*. 11th printing. (Jakarta: Raja Grafindo Pratadana, 2009).
- [29] Sudiro, Amad. "Ganti Kerugian Terhadap Korban Wajib Diberikan Tanpa Syarat Apapun". (Presented in the seminar on the Rights of Heirs of Aviation Accidents Victims in Indonesia, Jakarta, January 23, 2021).
- [30] Suharnoko and Endah Hartati. *Doktrin Subrogasi, Novasi, Cessie dalam Kitab Undang-Undang Hukum Perdata, Nieuw Nederlands Burgerlijk Wetboek, Code Civil Perancis dan Common Law*. (Jakarta: Prenada Media, 2005).
- [31] Suhartono, Harry. "Jet Crash Adds to Long List of Aviation Disasters in Indonesia". *Bloomberg*. <https://www.bloomberg.com/news/articles/2021-01-10/jet-crash-adds-to-long-list-of-aviation-disasters-in-indonesia>, retrieved February 26, 2021 at 1:12 PM.
- [32] UOB. "Asuransi Kecelakaan Perjalanan". <https://www.uob.co.id/personal/kartu-kredit/uob-privi-miles/>. Last accessed on January 31, 2021 at 16:56.

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