



# Responsibility of Airlines Company to the Passenger After The Ratification of the Montreal Convention 1999 by Indonesia\*

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## Abstract

Aviation is a strategic business owned by a country, whether managed by a state company or a private company. In Indonesia, airplanes are the most important transportation. It is said to be able to connect every city, province, and inter-island very quickly compared to land and sea transportation. The importance of air transportation must be accompanied by regulations that guarantee the safety and security of airlines and passengers who are users of air transportation services. Security and safety are regulated through national and international rules which must be followed by every airline and passenger for the creation of a good aviation business. The main problem in the aviation business is aircraft accidents which result in aircraft destruction and death to all passengers and crew members. This cannot be avoided because the cause of the accident could be from aircraft engine damage, weather, or error from the pilot. This aircraft accident, not only damage airlines that have planes worth billions of rupiah but can damage passengers and heirs. Due to the risks involved in the aviation business. Although it is said that air transportation is very safe because the technology used by aircraft is the latest, accidents can not be avoided if it occurs.

**Keyword:** Responsibility; Airlines Company; Passenger; Montreal Convention 1999

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## **Pertanggungjawaban dari Maskapai Penerbangan kepada Penumpang berdasarkan Ratifikasi Montreal Convention 1999 oleh Pemerintah Indonesia**

### **Abstrak**

Penerbangan merupakan salah satu bentuk usaha strategis dalam sebuah negara, baik dikelola oleh perusahaan negara sendiri, maupun oleh perusahaan swasta. Di Indonesia sendiri, perusahaan penerbangan merupakan transportasi yang paling penting karena jenis transportasi ini dapat menghubungkan setiap kota, provinsi, dan antar pulau dengan cepat dibandingkan dengan transportasi darat maupun laut. Pentingnya transportasi udara ini, tentu harus dibarengi dengan aturan yang menjamin keamanan dan keselamatan maskapai penerbangan serta penumpang yang menjadi pengguna jasa transportasi udara. Keamanan dan keselamatan tersebut, diatur melalui aturan nasional dan aturan internasional yang wajib diikuti oleh setiap perusahaan penerbangan dan penumpang demi terciptanya bisnis penerbangan yang baik. Permasalahan utama dalam bisnis penerbangan adalah kecelakaan pesawat terbang yang seringkali mengakibatkan hancurnya pesawat terbang dan kematian kepada seluruh penumpang dan juga kru pesawat. Hal ini tidak bisa dihindarkan dikarenakan penyebab kecelakaan tersebut bisa dari kerusakan mesin pesawat, cuaca, maupun kesalahan dari pilot. Kecelakaan pesawat terbang ini tidak hanya merugikan maskapai penerbangan yang memiliki pesawat yang harganya miliaran rupiah, namun dapat merugikan penumpang dan ahli warisnya, dikarenakan resiko yang ada dalam bisnis penerbangan. Meskipun, dikatakan transportasi yang sangat aman karena teknologi yang digunakan pesawat adalah teknologi yang mutakhir, namun kecelakaan tersebut tidak dapat dihindarkan jikalau terjadi. Artikel ini membahas masalah pertanggungjawaban Pertanggungjawaban dari Maskapai Penerbangan kepada Penumpang setelah adanya Ratifikasi Montreal 1999 oleh pemerintah Republik Indonesia.

**Kata Kunci:** Tanggungjawab; Maskapai Penerbangan; Penumpang; Konvensi Montreal 1999

### **Ответственность авиакомпании перед пассажирами после ратификации Индонезией Монреальской конвенции 1999 г.**

#### **Аннотация**

Авиация - это стратегический бизнес, принадлежащий стране, независимо от того, управляется ли он государственными или частными компаниями. В Индонезии самолеты - самое важное средство передвижения. Говорят, что он может очень быстро соединить каждый город, провинцию и острова по сравнению с наземным и морским транспортом. Важность авиаперевозок должна сопровождаться правилами, гарантирующими охрану и безопасность авиакомпаний и пассажиров, пользующихся услугами авиаперевозок. Охрана и безопасность регулируются национальными и международными правилами, которые должны соблюдаться каждой авиакомпанией и пассажирами, чтобы создать хороший авиационный бизнес. Основная проблема в авиационном бизнесе - авиационные происшествия, в результате которых самолет выходит из строя и гибнут все пассажиры и экипаж. Это неизбежно, потому что причиной аварии могло быть повреждение двигателя самолета, погодные условия или ошибка пилота. Эта авиакатастрофа не только ставит в невыгодное положение авиакомпания, владеющие самолетами на миллиарды рупий, но также может причинить вред пассажирам и их наследникам. Из-за рисков, связанных с авиационным бизнесом, хотя говорят, что воздушные перевозки очень безопасны, поскольку в самолетах используются новейшие технологии, несчастных случаев нельзя избежать, если они происходят.

**Ключевые Слова:** ответственность; авиакомпания; пассажир; Монреальская конвенция 1999 г

## A. INTRODUCTION

Airplane is efficient transportation, that chosen by many people to move from one city to another, or between countries. Air transportation is a great-demand business in many countries including Indonesia. There are 14,568,573 passengers of the air transportation services in 2018 in Indonesia (Directorate General of Air Transportation 2019).

In the last 10 years, the number of air transportation passengers in Indonesia was fluctuated, in which 2009 the number was 39,915,283 people and in 2018 the number of passengers was 14,585,145. However, there was an increase in 2014 that the passengers up to 86,270,836. (Directorate General of Air Transportation 2019) The International Air Transport Association ( IATA) predicts that Indonesia will become the largest airline market in ASEAN and the 6th largest in the world in 2034, with approximately 240 million passengers travel from and to Indonesia (Tyler 2015).

Indonesia has 34 scheduled airlines companies and 44 non-scheduled airlines companies that consist of commercial and cargo. (Directorate General of Air Transportation 2019) Aviation safety issues still become a challenge for the aviation business in Indonesia. Some accident gives the bad reputation for the aviation safety of Indonesia as one of the unsafe aviation in the world. According to Arnold Barnett, the number of casualties of the airplane accident in Indonesia in the last decade is 1:1,000,000 passengers, this the highest number in the world (Fuller 2015).

The reason why Indonesia ratified the Montreal Convention 1999 was that all the rules governed by the Warsaw Convention 1929 were amended by the Montreal Convention 1999. With the amendment of the Convention, Indonesia, which had ratified the convention, had to make legal reforms governing airlines that adopted the Warsaw Convention 1929 by adopting the Montreal Convention 1999. Indonesia shall be implemented international provisions, which form the basis of national law in regulating the responsibility for carrying out carried out by airlines (Hertiawan 2018).

However, after the ratification of the Montreal Convention 1999, there was no change to the existing aviation regulations in Indonesia, the government and airlines continued to use Law No. 1 of 2009 on Aviation, through by Minister of Transportation 77 of 2011 on the Responsibility of Air Transport Carrier. Indonesia still has no legal framework that gives a mandate to the

airlines in Indonesia, to provide accountability following the Montreal Convention 1999.

The airplane accident is a legal issue that cannot be predicted in advance by the passengers, including the pilot and cabin crew. Airplane accidents are caused by system damage in the aircraft and human error. The legal impact of the airplane accident, that is: 1). Casualties; 2). Disabled or injured; 3). Material loss; 4). Damage and loss of baggage.

Accordingly, the airlines as the air transportation provider shall have a safety standard and safety instrument for passenger, if an airplane accident occurs. The Indonesian government, through the Directorate General of Air Transportation, the Ministry of Transportation, needs to systematically implement the organization of air transportation and ensure the safety of air transport in the organization of air transport with the intention of it creates a risk. The society shall be clear, the legal effort which can be made by society if the airline does not perform its liability to provide the compensation of the airplane accident.

The airline still uses the legal basis of Article 141 of Law no. 1 of 2009 of Aviation concerning liability obligations to passengers and/or victims of aircraft accidents. The provisions of Article 141 of the Law above are through by Minister of Transportation Regulation No. 77 of 2011 which is explained in more detail in Articles 3-13, regarding the amount of compensation given to victims or heirs.

After the ratification of the Montreal Convention 1999 by the government, it can be used as a legal basis by Boeing Company and Airbus Company as the provider the commercial airplane or the industry of airplane that operated by Lion Air also given the responsibility to the airlines' company and the passengers as the user of the airplane. The aviation industry and the majority airplane that used by the most airlines in the world, Boeing Company and Airbus Company shall have a responsibility to the result of the production of an accident that happened on the airplane that makes by the Industry.

How is the responsibility of the airline company to passenger after ratification the Montreal Convention 1999 by Indonesia?

## Literature Review

### 1. Aviation

Based on Article 1 Number 1 Law No. 1 of 2009 on Aviation, Aviation is defined as One unit of a system consisting of the use of space, aircraft, airports, airlines, air transport, navigation, safety and security, living environment and other support and general facilities. On the activity of the air transport company, and some subject that as a basic part of aviation, not only aircraft and passengers.

Based on the Aviation Law does not analyze the term of airlines company, however, based the Law on Article 1, Air Transport Company is defined as a business entity owned by the state, the region/province or an Indonesian legal entity in the shape of a limited private company or cooperative which main activity is to operate aircraft for transportation of passengers, cargo, and post by charging fees/payments.

According to the above definition, Airline is a company according to Molengraaf is that all actions are carried out continuously, running businesses outside to get income, by trading goods or services. (Khairandi 2013) Another definition can be found in Law No. 8 of 1997 on Company Documents Article 1 Number 2, that a company is a form of business that conducts activities permanently and continuously to obtain profits and/or profits held by individuals or business entities in the form of legal entities or not a legal entity, established and domiciled in Indonesia.

In running aviation business in Indonesia, airlines, have 2 routes that are run, namely:

1. Domestic Flight. Domestic Air Transportation is a commercial air transportation activity serving air transportation from one airport to another within the territory of the Republic of Indonesia.
2. International Flight. International Air Transportation is a commercial air transportation activity serving air transportation from one airport in the country to another airport outside the territory of the Republic of Indonesia and vice versa.

In carrying out the aviation business Indonesian airlines use a fleet produced by Boeing and Airbus as the largest commercial aircraft manufacturer in the world. Garuda Indonesia airlines, which are Government-owned airlines, and their competitors Lion Air, use the most Boeing type fleets, in this case, what distinguishes Boeing from Airbus.

The most basic difference from aircraft which is often used by airlines in Indonesia is the shape of the nose of the aircraft. Indonesian airlines themselves use many types of Boeing 737-800NG and Airbus A320-200 aircraft for domestic and regional flights in Asia. The difference in the shape of the aircraft from Boeing and Airbus lies in the shape of the nose, Boeing has a pointed or pointed nose, and Airbus has a rounded nose. Another difference lies in the aircraft's tail, which has an impact on the aircraft's aerodynamics and manoeuvrability that can be carried out by the aircraft.

## **2. Montreal Convention 1999**

Montreal Convention 1999 is the Convention for the Unification of Certain Rules for International Carriage by Air 1999 that signed in Montreal, Canada on 28 May 1999. Based on Article 1 Paragraph 1 of the Montreal Convention, This Convention applies to all international carriage of persons, baggage or cargo performed by aircraft for reward. It applies equally to gratuitous carriage by aircraft performed by an air transport undertaking.

The Montreal Convention 1999 is the Convention that regulates the latest international flights, where the first form of the Convention is the Convention for the Unification of Certain Rules Relating to International Carriage by Air signed in Warsaw on October 12, 1929, called the Warsaw Convention 1929. the growth of the aviation industry in the world, the Warsaw Convention 1929 has been completed and modified several times through its derivative protocols. The Warsaw Convention 1929 and its derivative protocols are known as the Warsaw system (McKay 2002).

The Warsaw Convention 1929 which aspired to regulate the unification of airborne responsibilities and transport documents on international flights, in practice was otherwise unified through the 1955 Hague Protocol, Guatemala Protocol 1971, and Montreal Additional Protocol 1-4. (Cheng 2004) Because of this disunification, the International Civil Aviation Organization (ICAO) Assembly in October 1995 mandated the ICAO Council to modernize the Warsaw system. In 1999 the Convention for the Unification of Certain Rules for Air Carriage was born Signed in Montreal on May 28, 1999 (hereinafter referred to as the Montreal Convention 1999) (Cheng 2004).

## **3. Liability of Airlines**

The concept of responsibility of regulatory airlines is regulated by international law before it is implemented as national law. In 1929, the adoption

of the Warsaw Convention 1929 was the first rule governing international aviation law. The Warsaw Convention 1929 was intended to unify rules relating to liability in full international aviation (McKay 2002).

The basic liability of the airlines as the provider of air transportation provides the transportation service from the origin until the destination. Otherwise, the airlines as the provider of air transportation have the right to fare from air transportation services. (Khairandi 2013) If the air transport provider has carried out the obligation occurred the passenger and cargo transportation, accordingly, the air transport provider is bound with the risk that shall run by the air transport provider. The liability for the passenger and cargo that on the transport service, and from the liability is held by the liability of the air transport provider (Khairandi 2013).

Based on the concept of strict liability, the airlines company shall be given strict responsibility for all material and immaterial losses to the third party, its the party that outside of the air transportation agreement that gets a loss from the impact of the airplane utilization, that occurred of the airplane accident impact without the proof from the airlines company and the authorized institution of the air transportation (Khairandi 2013).

The strict liability it's stipulated by the regulation that gives positive impact to casualties of airplane accident or the heir and family from the casualties of airplane accident to get compensation from the airlines. Strict liability gives the impact the air transport provider give the compensation to the casualties without proof the airlines make an accident or not. the principle of strict liability that following by Law No. 1 of 2009 on Aviation, that regulated for liability of airlines for domestic air transportation. (Khairandi 2013)

## **B. METHODS**

### **1. Type of Research**

In this research, the author uses a normative legal research method. It means that the research is based on the library research and analysis of legal research also focused on reading and analysis of the primary material and secondary material. (Ibrahim 2006) This research used the statute approach, which means the research will show the law that regulates the condition and how the application of it. This research will use the Convention for the Unification of Certain Rules for International Carriage by Air 1999 (Montreal Convention 1999) and the law that related the issues (Soemitro, Hanitijo, Ronny 1999).

## **2. The technique of Collecting Data**

The method conducted in this research was literature research by studying the existing literature. The method that the author did was to read, analyze and draw conclusions from several related documents, namely: convention, covenant, statute, regulation, law books, legal journals, book and other documents that related to the main problem the object of this research author will also interview several experts, including the Indonesian Aviation Law Expert, Director of Air Safety at the Directorate General of Air Transportation, and Safety Director for Garuda Indonesia.

## **3. Data Analysis**

The data in this research will be analyzed systematically based on a qualitative approach, which means that the analysis of the data in this research is based on applicable legal regulations, both nationally and internationally, especially flight laws. The qualitative approach can be interpreted as the research will relate to the principles of law, conventions, and related regulations (Nasution 2008).

## **C. RESULTS**

To analyze some case related to commercial airplane accident and the liability from the airlines to the passenger.

## **D. DISCUSSION**

### **1. The implication of Ratification of Montreal Convention 1999 by Indonesia**

Before the ratification of the Montreal Convention 1999 by the Government of Indonesia, the Government itself had ratified the initial rules of International aviation, which inheritance from the Dutch colonial, the Warsaw Convention 1929. The Convention created to overcome the intersection between laws of various countries related to the airline responsibilities for passengers, then the countries in the world hold a meeting to initiate a multilateral agreement governing international flights, namely; The Convention for the Unification of Certain Rules Relating to International Carriage by Air 1929. The Convention aims to unify the responsibilities of air carriers and transport documents on international flights. Preventing legal conflicts from countries, protecting the aviation business, and facilitating transactions between countries



around the world, besides the Warsaw Convention regulating the compensation given to passengers (Suzer 1984).

Warsaw Convention 1929 was signed in Warsaw on October 12, 1929, along with the growth of the aviation industry, Warsaw Convention 1929 was amended several times and supplemented with its derivative protocols to regulate the unification of air transport responsibilities and transport documents on international flights, in reverse practice occurred unification with the birth of The Hague Protocol 1955, the Guatemala Protocol 1971, and the Montreal Protocol 1-4. Because of this disunification of convention and protocol before, then the member of ICAO proposes the formation, which aims to modernize the system of the Warsaw Convention in 1929. They are the Convention for the Unification of Certain Rules for International Carriage by Air was signed in Montreal on May 28, 1999, which is called the Montreal Convention 1999 (H.K. Martono, Agus Pramono 2013).

The concept of the Montreal Convention 1999 is an initiative proposed by ICAO in 1995, the convention defended universal principles and aspects contained in the Warsaw Convention system. Although, the Montreal Convention 1999 emphasizes the provisions of unlimited compensation of carrier. The Montreal Convention 1999 created two significant changes from the Warsaw Convention 1929, namely regarding the compensation regime without limits, as well as the ability of passengers to choose their national law in compensation claims, based on consumer interests in the field of international air transportation and the need for balanced compensation based on the principle of restitution (Ayu 2006).

The advantage of the Montreal Convention 1999 compared to the Warsaw Convention 1929, is in the section providing compensation to passengers who are victims of the flying accident. The different amount of the compensation can be shown in the table below, as follows: (Ria 2015)

	Warsaw Convention 1929	Montreal Convention 1999
Passenger	125,000 Francs or equivalent with USD 22,120.33	100,000 XDR or equivalent with USD 139,663.10
Loss Baggage	5000 Francs or equivalent with USD 884.81	1000 XDR or equivalent with USD 1,396.63
Cargo	250 Francs per Kg	17 XDR per Kg

Changes in the amount of compensation per passenger, and the system of responsibility at international aviation conventions can be shown in the below table, as follows: (Sudiro 2010)

No.	International Convention	Compensation	Liability system
1	Warsaw Convention 1929	125,000 Francs or USD 22,120.33	Presumption of Liability
2	The Hague Protocol 1955	250,000 Francs or USD 44,240.65	Presumption of Liability
3	Montreal Agreement 1966	US \$ 58,000 and US \$ 75,000	Strict Liability
4	Guatemala City Protocol 1971	1,500,000 Francs or USD 265,443.92	Strict Liability
5	Montreal Convention 1999	100,000 XDR or USD 139,663.08	Strict Liability

The amount of compensation as stated in the Montreal Convention 1999 given to victims of an airplane accident was calculated using an XDR currency. (Sand 1962) The Convention, also stated that the amount of compensation provided is, compensation given to victims who died, for the damages arising under paragraph 1 of Article 17 of Montreal Convention 1999 not exceeding 100,000 Special Drawing Right for each passenger, the carrier shall not be able to exclude or limit the liability. In contrast with Indonesian Regulation, based on Law No. 1 of 2009 on Aviation through Ministry of Transportation Regulation No. 77 of 2011 on the Responsibility of Air Transport Carrier, the amount of compensation given is as follows, Passengers who die in an airplane due to accident or an incident that is solely related to air transportation are provided with compensation of IDR1,250,000,000.00 per passenger.

After ratification in 2016, no more airplane crashes with international flight routes. Furthermore, in 2018 there was a Lion Air plane crash with domestic flight routes from Jakarta to Pangkal Pinang. In this crash, Law No. 1 of 2009 on Aviation and Ministry of Transportation Regulation No. 77 of 2011 on the Responsibility of Air Transport Carrier can be applied. However, in the case of an aircraft accident, the airline company has an absolute responsibility in providing compensation to passengers.

The Lion Air crash in 2018, which used the type of Boeing 737-Max 8, the latest production aircraft from the Boeing Company, resulted in many victims killed as an investigation conducted by the National Transportation Safety Committee (NTSC). There are found that the Lion Air PK-LQP was not proper flying and suffered damage on previous flights. An investigation, in

collaboration with the FAA, found defects in the sensor production of the Boeing 737-Max 8 aircraft. The results of the investigation concluded that product defects become the main indicator of the Lion Air plane crash (Wahana Sazpah, Fence Wantu, Nur Mohammad Kasim 2020).

The results of the investigation, conducted by the NTSC and FAA, as well as the Boeing Company, stated that the Boeing 737 Max 8 had problems related to the MCAS sensor owned by the aircraft, resulting in difficulties in the pilot control. In this case, Lion Air is guilty of allowing the operation of the aircraft, because it had previously suffered damage in flights. This applies the principle set out in the Montreal Convention 1999 where the airline cannot escape its responsibility to provide compensation.

In this situation, Boeing as an aircraft manufacturer is also guilty of not providing manual flight of the aircraft and not pay attention to the certification given by the FAA when testing the flight. Boeing, in this case, was also partially responsible for providing compensation to victims.

In the implementation of the Montreal Convention 1999 ratification by Indonesia in 2016, Lion Air has paid insurance claims to 75 passenger heirs of victims of the plane crash of IDR 1.25 billion for each passenger. Besides, getting insurance from PT. Jasa Raharja, whose claim amount is IDR 50 million for each passenger. The passenger heirs also received compensation from the Company. The compensation provided by the Company to each passenger totals USD 50 million, with an estimate of each heirs receiving USD 114,500 or equivalent with IDR 1.5 billion, each passenger. The insurance provided by the Boeing Company has been distributed to 25 heirs. (Athika Rahma 2019)

## **2. Conflict of Laws**

Ratification of the Montreal Convention 1999 by the Government of Indonesia through Presidential Regulation No. 95 of 2016, became a problem of aviation law in the country. Since Indonesia has Law No. 1 of 2009 on Aviation, which currently still applies as a basic reference for the running of the air transportation system. On the other hand, the Indonesian government also need to modernize the regulations relating to the protection of passengers as stated in the Montreal Convention 1999.

However, the form of ratification carried out by the government, using Presidential Regulation No. 95 of 2016, raises legal conflicts, where according to the hierarchy of regulations, higher regulation will defeat lower regulation,

which is explained in Article 7 Paragraph (1) of Law No. 12 of 2011 on Formation of Regulations and Their Amendments, as follows:

- 1) The 1945 Constitution;
- 2) Decree of the People's Consultative Assembly;
- 3) Law/Government Regulation in-Lieu-of-Law;
- 4) Government Regulation;
- 5) Presidential Regulation;
- 6) Provincial Regulations; and
- 7) Regional Regulations (Regional and City).

The problem that occurs related to the ratification of the Montreal Convention 1999, is the coinciding of the applicable laws in Indonesia, namely between Law No. 1 of 2009 on Aviation and Presidential Regulation No. 95 of 2016 on the Ratification of the Montreal Convention 1999. Ratified international law shall be implemented as applicable national law.

There are two theories used to understand the application of international law, namely monism and dualism. According to the theory of monism, international law and national law are two of the same elements of the universal legal framework. Whereas, according to the theory of dualism, international law and national law are two entirely separate legal structures. International law has an inherently distinct character from national law. The theory involves a large number of domestic legal systems, the theory of dualism is sometimes called the pluralistic theory, but in fact, the term dualism is more precise and not confusing (Hasanuddin Hasim 2019).

In this situation, Indonesia uses the theory of dualism in internalizing international law into national law. The making and ratification of international treaties between the Indonesian government and the governments of other countries, international organizations, and other subjects of international law is a very important legal act because it binds the country with other international legal subjects. Therefore, the making and ratification of an international treaty are carried out based on the law, including ratification of the Montreal Convention 1999 through Presidential Regulation No. 95 of 2016 (Hikmahanto Juwana 2019).

Ratification of international treaties by the Indonesian government is regulated in Law No. 24 of 2000 on Ratification of International Treaties, where the ratification of international treaties is carried out by Law and Presidential

Decree. Ratification of international treaties carried out by law when it comes to:

- a. Political, Peace, Défense and National security issues;
- b. hangs in the territory or determination of the territory of the Republic of Indonesia;
- c. Sovereignty or sovereign rights of the state;
- d. Human rights and the environment;
- e. Establishment of new legal rules;
- f. State loans and/or grants.

Ratification of an international treaty whose material does not include the material referred above, carried out by presidential decree/presidential regulation. In practice, the form of endorsement is divided into three categories, namely (a). ratification: if the country that will ratify an international treaty also signs the text; (b). accession: if the country that ratifies an international treaties does not sign the text; (c). acceptance and approval is a statement of accepting or agreeing from a state party to an international treaty on changes to international treaties in force after signing.

This form of ratification of international treaties used by Indonesia has resulted in legal conflicts. Whereas, the law that must be followed is Aviation Law No. 1 of 2009, through the Minister of Transportation's Regulation. Presidential regulations are made to carry out law or government regulation above it in the hierarchy of regulations. The ratification of the Montreal Convention 1999 should be an implementation of the mandate of the law or government regulation relating to Indonesian aviation (Hikmahanto Juwana 2019).

There are not stated in consideration Presidential Regulation 95 of 2016, that ratification of Montreal Convention 1999 as a mandate of Aviation Law No. 1 of 2009. This is a legal conflict because presidential regulations have no binding legal force different from the law. Indonesia's aviation law has binding legal force, because of its position as a national law through the Minister of Transportation Regulation No. 77 of 2011 concerning Responsibilities of Air Transport Carriers.

By elevating the level of ratification of the Montreal Convention from only Presidential Regulations into Law, there are principles of legal

interpretation that apply to carry out the rules of ratification. These principles, namely *lex posterior derogat legi priori*.

Ratification of the Montreal Convention 1999 in the form of Law, the basic applied principle *lex posterior derogat legi priori*, namely the principle of legal interpretation which states that the latest law defeats the old law. Then the rules of the Montreal Convention ratification will be used in resolving conflicts that occur because it is the latest that shall be followed. This principle is often used in carrying out international law adopted to national law (Firmansyah 2016).

Furthermore, legal conflicts that occur as a result of using the above legal principles in the ratification of the Montreal Convention 1999 with the 2016 Presidential Regulation, is the use of the legal basis of the Aviation Law 2009 and the Presidential Regulation in solving the Lion Air plane crash case in 2018. Lion Air still uses Aviation Law No. 1 of 2009 to provide protection and accountability, which through the Minister of Transportation Regulation No. 77 of 2011. However, the heirs of the accident victim demanded compensation that was greater than the compensation that had been given by the airline of IDR 1.25 billion.

There are claims filed by the victim's heirs after the completion of an investigation by the NTSC, FAA, and Boeing, which stated that Boeing was guilty of the accident because it did not provide manual flight guidance. Also, Lion Air was found guilty of the investigation, for flying an aircraft that was not fit to fly. In this case, the law used should have been the Montreal Convention 1999 which was ratified by the government with a 2016 Presidential Regulation.

There is dispute settlement, in this case, Lion Air provided protection and liability following Aviation, in the form of compensation of IDR 1.25 billion. Furthermore, Boeing also provided compensation due to the demands filed by the victim's heirs to arbitration in the US Federal District Court of Chicago-Illinois. With these demands, Boeing distributed funds of US \$ 50 million to 346 heirs of the Lion Air and Ethiopian Air crash victims, totalling 189 from Indonesia and 157 from Ethiopia. Boeing pays out a claim of US \$ 145,000 for each heir to Lion Air passengers in October 2019 (Wahana Sazpah, Fence Wantu, Nur Mohammad Kasim 2020).

The existence of two laws that apply in one case relating to the protection and responsibility that must be provided by Lion Air and Boeing, resulting in a legal conflict between Aviation Law No. 1 of 2009 and Presidential Regulation No. 95 of 2016 on the Ratification of the Montreal

Convention 1999. Supposedly, the protection and accountability provided refers to Presidential Regulation No. 95 of 2016, because it is the latest regulation resulted from the internalizing of the Montreal Convention 1999.

## **E. CONCLUSIONS**

Protection of passengers in the transport system in Indonesia is the responsibility of the organizers' guarantees transport, especially air transport. The protection is provided in the form of security and safety in aviation, as well as the guarantee of compensation in case of aircraft accidents. Guaranteed compensation due to accidents is the absolute responsibility of the airline, but in practice, the airline cooperates with the insurance company as a fundraiser from the airline in the form of a premium paid through the purchase of travel tickets.

Compensation guarantee that must be paid by insurance companies, namely: airline body insurance, passenger insurance, crew insurance, and baggage/cargo insurance. After the ratification of the Montreal Convention 1999 by the Government of Indonesia through Presidential Regulation No. 95 of 2016, it is expected that there will be an improvement of the flight system in Indonesia related to protection, which includes aspects of passenger safety and security, as well as accountability for passengers and victims of crash aircraft crashes.

However, after the ratification of the Montreal Convention 1999, there was no renewal of the Aviation Law, including the rules below that relating flight in Indonesia. Indonesian airlines, the Government, also INACA still use Aviation Law 2009, and the Ministerial Transportation Regulation No. 77 of 2011 on the Responsibility of Air Transport Carrier, as the executor of the Aviation Law relating to compensation. Due to the ratification of the Montreal Convention 1999 with the Presidential Decree has no binding legal force.

## **Recommendation**

In this research, the author recommends improving the system for flights in Indonesia with ratification Montreal Convention 1999 as Law, where the fixing system in Indonesia flights takes concerted new rules to modernize Indonesia's aviation system and has legal and binding sanction. These rules must be comprehensive and applicable in the implementation of the enforcement of these rules. This new regulation must also be fair to airlines and air transport service users, where previously the regulation caused a stretched

administration in its enforcement, especially the rules relating to liability or compensation in the event of an aircraft accident.

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