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Voyage rights in review: Indonesian tourism and aviation legislation

Adhy Riadhy Arafah[a], Yaries Mahardika Putro[b], Alifia Nuril Bais[a], Son Solita[c] and Satria Unggul Wicaksana Prakasa[d]

[a]Faculty of Law, Universitas Airlangga, Surabaya, Indonesia; [b]Faculty of Law, Universitas Surabaya, Surabaya, Indonesia; [c]English Language Based Bachelor of Law Program, Royal University of Law and Economics, Phnom Penh, Cambodia; [d]Faculty of Law, Universitas Muhammadiyah Surabaya, Surabaya, Indonesia

ABSTRACT

Indonesia's ratification of the Montreal Convention 1999 in 2016 and its implementation in national law has significantly affected the protection rights of Indonesian citizens globally and locally. This Convention ensures that Indonesian travelers are entitled to international benefits, provisions, and compensation for damages caused by airline services. Through an examination of Indonesian statutes, cases, and a comparative approach, the authors have concluded that there is a significant need to amend the Indonesian Aviation Act to solve the conflict of law that exists between the Montreal Convention of 1999 and Indonesian law. Specifically, this conflict exists with respect to the implementation of the Montreal Convention 1999 in Indonesian domestic law because of the superior hierarchy of the Convention over Indonesian law. While the Montreal Convention 1999 applies to all international carriage activities, the Indonesian Aviation Act covers domestic and international carriages only to and from Indonesia's territory and to all Indonesian carriers outside Indonesia's territory. This study discusses the legal consequences that impact Indonesian air travelers according to the differences between international conventions and domestic law.

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REVIEWING EDITOR
Heng Choon (Oliver) Chan, Department of Social Policy, Sociology, and Criminology, University of Birmingham, UK

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1. Introduction

Passenger rights are a top priority in air transportation in terms of consumer protection. The protection of air transport passengers from all possible damage caused by accidents, delays, overbooking, and baggage loss is commonly recognized by international and Indonesian law. Two significant aircraft accidents occurred in Indonesia in 2014. The first was Indonesia-AirAsia QZ 8501, en route from Surabaya to Singapore, where the majority of passengers were Indonesian. The flight had an accident above the Java Sea that killed all passengers (BBC News, 2015). Another such event occurred in 2014 when Malaysia Airlines MH17 from Amsterdam to Kuala Lumpur crashed, and no passengers survived, including 12 from Indonesia (Parliana & Gunawan, 2014). Both occurred in the context of an international flight, and both had many Indonesian passengers. As a result, all Indonesian passengers in both catastrophes were compensated under Indonesian domestic law rather than the Montreal Convention 1999, including the second accident in which the aircraft was Malaysia Airlines MH17.

The Indonesian Aviation Act Number 1/2009 regulates compensation that may be incurred for damage caused by airline operations. Under Article 141, Paragraph 1, this Act obliges all airlines to be liable for the damages that occur to passengers due to the death or injuries they may suffer from accidents or incidents. However, it does not specify the compensation amount. Instead, compensation is covered under Article 3 of the 2011 Ministerial Regulation of Transportation, Number 77, specifically stating the following:

CONTACT Adhy Riadhy Arafah adhy@fh.unair.ac.id Faculty of Law, Universitas Airlangga, Indonesia

a. An aircraft crash or an incident that is solely related to airlift will be given a loss of Rp.1,250,000,000;
b. Passengers who died due to an event that was solely related to air transport at the time of leaving the airport waiting room to aircraft at the destination airport and/or transit airport (transit) will be given a loss of Rp. 500,000,000;
c. Passengers who experience a fixed disability will be given a loss of Rp. 1,250,000,000;
d. Passengers who are injured and must undergo treatment at a hospital, clinic, or treatment hall as an outpatient and/or outpatient will be given a loss of the most real care costs, Rp. 200,000,000.

No specific national regulation or provision currently differentiates between international and domestic flights or between Indonesian nationals and foreigners for compensation amount. However, Indonesian Ministerial of Transportation Regulation 77/2011 indicates that even for international transport, Indonesian travelers' rights will be less protected in compensation than foreigners' rights (Nugraha, 2018). Non-Indonesian passengers enjoy compensation pursuant to Article 21 of the Montreal Convention 1999, with a maximum compensation of 128,821 Special Drawing Rights (SDRs) or approximately 2,500,000,000 in the Indonesian local currency rupiah.

As a result, in the Indonesian AirAsia QZ 8501 accident, all Indonesian passengers received far less compensation than non-Indonesian passengers such as South Koreans, Malaysians, and Singaporeans (ABC News, 2014). While Indonesian passengers still received compensation according to the Indonesian Ministerial Regulation of Transportation, non-Indonesians obtained compensation under the Montreal Convention 1999, which was almost double the amount received by Indonesians. The same rule was also applied to all Indonesian passengers in the Malaysia Airlines MH17 accident, where they were first offered US$ 65,000 compensation from the airline compared to US$ 165,000 offered to non-Indonesian passengers (Ministerial of Transportation Regulation No.77, 2011), even below as mentioned in Indonesian Ministerial of Transportation Regulation 77/2011.

When compared to the prevailing legal provisions in South Korea, it is evident that the compensation provided to the deceased is significantly greater than that stipulated in Article 77 of Indonesian Ministerial of Transportation Regulation 77/2011. Based on Article 905 of the Korean Revised Commercial Law 2014 provides compensation amounting to 113,100 Units of Account (Special Drawing Rights) for death or injury passengers (Doo-Hwan Kim, 2015). If it is converted into Indonesian local currency (Rupiah), each passenger who experiences death or injury will receive Rp. 2,300,000,000. It is evident that this amount is significantly higher compared to the compensation stipulated by Indonesian Ministerial of Transportation Regulation 77/2011.

The two significant accidents mentioned above highlight the Indonesian government's efforts to successfully enact the Montreal Convention 1999 into Indonesian Law. In 2016, the Indonesian government officially ratified the Montreal Convention 1999, adopting the Presidential Regulation Number 95. The Convention entered into force in Indonesian law on May 19, 2017, or 60 days after its official accession to the International Civil Aviation Organization (ICAO, 1999). However, according to the Indonesian legal hierarchy, the Presidential Decree that ratified the Convention ranks lower than the Indonesian Aviation Act. Consequently, the Montreal Convention 1999 provisions ratified by Presidential Decree should not conflict with the Indonesian Aviation Act.

Despite these efforts, it is necessary to recalling the establishment of the Montreal Convention 1999 as a core of this study. On May 28, 1999, the International Civil Aviation Organization (ICAO) issued the Convention for the Unification of Certain Rules for International Carriage by Air, or the Montreal Convention 1999, to protect passengers' rights to international carriage. This Convention replaces and unifies previous international regulations in protecting passengers' rights to air travel, such as

a. Convention for the Unification of Certain Rules Relating to International Carriage by Air (the Warsaw Convention 1929)
b. Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air (the Hague Protocol 1955)
c. Convention Supplementary to the Warsaw Convention for the Unification of Certain Rules Relating to International Carriage by Air Performed by a Person Other Than the Contracting Carrier (the Guadalajara Convention 1961)

d. Montreal Protocol No. 4 to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air (the Montreal Protocol 1975)
e. Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air (the Guatemala City Protocol 1971)

Before the inception of the Montreal Convention of 1999, the Warsaw Convention of 1929 was the first to regulate passenger rights to international carriage and came into force on February 13, 1933. For the Dutch East Indies (now Indonesia), the ratification process by national law was documented in *Luchtvervoer Ordonnatie Staatsblad* Number 100 in 1939. Until 1999, the Warsaw Convention succeeded in establishing uniform liability rules for passengers, baggage, and cargo on international flights. However, during its implementation, many significant issues arose in adopting regulations that aligned with subsequent international regulations, as mentioned above (United Nations Conference on Trade and Development, 2006).

Three decades later, additional international regulations were issued to meet the needs of travelers and airline business models which were difficult for the Warsaw Convention of 1929 to fulfil. Some significant issues included increasing compensation and establishing new cooperative business models among airlines (Neenan, 2012). The use of multiple airlines in a single contract for international destinations in codeshare flights has consequences for the availability of the contract among passengers, contractual carriers, and the actual carrier (Sein & Uusen-Nacke, 2010).

Since the enactment of the Warsaw Convention in 1929, the number of countries that ratified other international conventions on liability after the Warsaw Convention 1929 has not been significant (Cheng, 2004). Consequently, the principles outlined in the Warsaw Convention of 1929 are still widely used internationally despite some international regulations, such as the Hague Protocol 1955, the Guadalajara Convention 1961, the Montreal Protocol 1975, and the Guatemala City Protocol 1971. However, the different approaches to implementing international law among nations has posed difficulties for stakeholders in the aviation industry, such as airlines, passengers, and cargo company services (Gazdikt, 1962; Neenan, 2012).

Regarding international passenger protection rights, a significant issue arose from the recommendation of many Japanese airline companies to request an increase in compensation for passengers on international flights. The Japanese member companies argued that the compensation for accidents in the context of land transportation in Japan was higher than that for international flights (Serrao & Etil, 1999).

In addition, the large number of requests by airline companies and passengers to create a new provision that could handle the needs can be found in the preamble of the Montreal Convention 1999, which stated that the Convention recognized the need for the consolidation and modernization of the Warsaw Convention 1929. Additionally, the Convention ensures the air carriers' protection of passengers' interests and equitable compensation based on the restitution principle. The Convention also intends to achieve an equitable balance of interests. Nevertheless, it has been viewed as granting airlines more advanced positions in terms of consumer protection in an accident and as an obligation of unlimited liability (Sipos, 2020). The Convention also guarantees that damage to harmed passengers will be handled based on the same rules in many places worldwide.

Despite the existence of various international treaties or conventions issued to address passenger protection rights and the evolving airline business model, Indonesia never ratified any of the international instruments introduced after the Warsaw Convention of 1929. This stance remained until it ratified the Montreal Convention 1999 in 2016. Following the entry into force of the Montreal Convention 1999 in 2003 until 2016, Indonesia struggled to convince many local stakeholders, such as national airlines, insurance companies, and other government bodies involved the implementation of the Convention.

This study analyzes the applicability of the Montreal Convention 1999 to Indonesian law. The authors also question the extent to which Indonesian national law is in line with the provisions of the Montreal Convention 1999. As a result, the Indonesian Aviation Act of 1/2009 and Indonesian Ministerial of Transportation Regulation 77/2011 contain certain provisions that need to be revised to conform with the definitions and regulations specified in the Montreal Convention 1999. This is necessary to ensure alignment with the international standards and best practices in the aviation industry. This article is highly recommended for air travel passengers, lawyers, and regulators to read and implement the law in their daily work related to air transport activities and liability. This study uses a comparative approach to international and domestic law.

2. Methods

This study used a comparative, doctrinal, and normative legal approach to analyze and compare the provisions provided by both the Montreal Convention 1999 and Indonesian domestic law in its implementation. The main legal instruments relied upon for the analysis were the Montreal Convention 1999, Indonesian Aviation Act, and Ministry of Transportation Regulation 77/2011 on how these regulations apply to protect domestic and international travelers to or from Indonesia.

1. Comparative Legal Approach:

This part of the research focused on a thorough comparison between the regulations specified in the Montreal Convention 1999 and those incorporated in the domestic law of Indonesia. The study aimed to identify inconsistencies, similarities, and possible points of agreement or disagreement between the two legal structures through a methodical examination.

2. Doctrinal Legal Approach:

An academic study of legal principles, precedents, and jurisprudence within the relevant legal texts, known as the doctrinal legal approach, was used. This approach was utilized to scrutinize the underlying doctrines that guide aviation law on both the international and domestic level. The study aimed to provide a comprehensive understanding of the legal bases that underpin the regulatory frameworks (Varuhas, 2023).

3. Normative Legal Approach:

The legal analysis focused on evaluating the normative principles present in both the Montreal Convention 1999 and Indonesian domestic law. This research aimed to determine the intended normative effects of these legal frameworks on the aviation industry and the level of protection offered to passengers.

In order to enhance the thoroughness of our analysis, this study also incorporated insights from secondary sources, including authoritative books, peer-reviewed journals, and reputable online news reports. These supplementary sources provided valuable context for the legal issues in question, leading to a more exhaustive and knowledgeable examination of the topic.

3. Result and discussion

3.1. Passenger protection

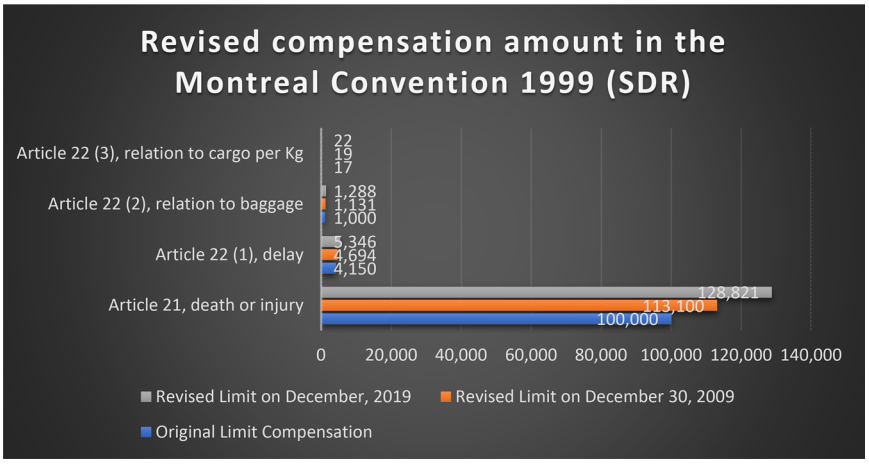
Many positive aspects of the Montreal Convention 1999 exist, and the majority of countries worldwide have embraced since it came into force on November 2, 2003 (ICAO, 1999). The Convention simplifies dealing with diverse legal jurisdictions across various States. Passengers of various nationalities and airlines enjoy a streamlined legal process in terms of regulations, jurisdictional issues, compensation amounts, and aviation accident terminology.

Compensation amounts are addressed by the Montreal Convention 1999 through provisions in Articles 21, 22, and 23, which are updated every ten years (ICAO, 2019). The Convention is considered moderate due to its use of the cumulative inflation rate in the United States, Japan, China, the European Union, and the United Kingdom, which is then compared with the average consumer price indices (Kiragu & Kirimi, 2019). The periodic update is as follows (Table 1):

In addition, the use of Special Drawing Rights (SDR) as a nominal currency helps international travelers receive fair compensation regardless of the value of their local currency with regard to the distortion of global economic adjustment (Truman, 2023). For Indonesian travelers, this provision significantly helps in the case of value depreciation of the rupiah to other currencies, such as the U.S. dollar, Australian dollar, or euro (Thorbecke, 2020). This contrasts with Indonesian domestic law, which does not provide substantial assistance to Indonesian travelers, and no periodic evaluation of compensation amounts has occurred since 2011. Therefore, it is important to conduct an evaluation process to make the necessary adjustments to inflation values.

Following the Air Asia QZ8501 accident in 2014, which primarily affected Indonesian residents and citizens, compensation amounts were based on domestic law as stated in Ministerial Regulation of Transportation Number 77 of 2011 (The Jakarta Post, 2015). This regulation did not cover three South

Table 1. Revised compensation amount in the Montreal Convention 1999.



Sources: International Civil Aviation Organization (ICAO, 2019).

Korean passengers, as well as one passenger each from Singapore, Malaysia and the United Kingdom. Significant differences in the compensation amounts exist between Indonesian and non-Indonesian travelers owing to differences in the applicable law. This places Indonesian travelers at a disadvantage compared to non-Indonesian travelers, even if the use of legal basis among the Montreal Convention 1999, Warsaw Convention 1929, and the Indonesian Aviation Act does not depend on passengers' nationality.

In its aim to protect passengers and establish the cause of accidents, the Convention also introduces the 'strict liability' principle to protect passenger's interests by allowing them to seek compensation for damages without the obligation to provide evidence of caused the accident when passengers or relatives file lawsuits against airline companies (Koning, 2008). The principle of strict liability requires an airline company that has a connection to all aspects of the aircraft's operation to prove that it did not cause damage to the passenger or if there was a contribution to the damage by the passenger, as stated in Article 20 of the Montreal Convention 1999. This principle requires the airline be strictly liable for proven damage (Konert, 2011). It is assumed that passengers cannot be held liable for causing an accident due to their lack of access and ability to investigate the accident, which is in contrast to the airline company's liability. Hence, passengers are only required to provide evidence of damage, regardless of whether it was caused by the aircraft's operation or the unavailability of information that led to the damage. However, the airline company shall be wholly or partly exonerated from its liability if it successfully proves that there was negligence, a wrongful act, or an omission that contributed to the passenger's harm. This provision also applies to the heirs of deceased passengers in the case of air transport accidents.

3.2. 'Understanding the legal terms and contract validity for international carriage tickets'

Article 1, Paragraph 1 of the Montreal Convention 1999 specifies that it is applicable solely to international carriage, covering all transportation of individuals, luggage, or cargo by aircraft. In addition, Article 1, Paragraph 2 defines international carriage as any transportation in which, according to the agreement between the parties, the departure and destination points, with or without a break in the carriage or transshipment, are situated either within the territories of two State Parties or within the territory of a single State Party if there is an agreed stopping place within the territory of another State, even if that State is not a State Party.

The term 'agreement' mentioned in the Article refers to the contract between the passenger and the airlines, commonly known as a 'ticket' (Edmunds, 1930), which indicates whether the flight is an international or domestic one. As a legal basis of the contract, under Article 3, Paragraph 4, the detailed information of passengers and provisions through the applicability of the Montreal Convention 1999 for flights should also be written. However, noncompliance with the information that should be stated in a contract does not affect the existence or validity of the contract of carriage. Hence, under Article 3,

Paragraph 5, the limitations set forth in the Montreal Convention 1999 still apply to contracts. Therefore, if an airline fails to detect passengers with false identities during the flight process, it may protect them through compensation. However, there is a maximum limitation on the liability of the airline in paying compensation.

Unlike the Indonesian Aviation Act, valid information attached to the contract must be fulfilled and classified as a 'ticket' according to Indonesian Aviation Act. Based on Article 151, Paragraphs (2) and (3) its states:

> *The passenger ticket…… shall, at least, contain: (a) number, place and date of issuance; (b) name of the passenger and name of carrier; (c) place, date, and time of departure and destination; (d) flight number; (e) landing places planned between the place of departure and destination, if any; and (f) statement that the carrier shall comply with the provisions under this Act.*
>
> *The one eligible to use a passenger's ticket is the person whose name is written on the ticket and shall be proven by a legal identity document.*

Generally, the lack of a contract between passengers and airlines means that passengers cannot obtain compensation. While a contract has legal consequences in terms of rights and obligations, according to the Act, failure to carry a passenger without valid information written in the contract will be part of the liability of the airline company. According to Article 151, Paragraph (4), the airline, under this condition, states:

> *If a ticket is not filled in with information as meant in Paragraph (2) or is not given by the carrier, then the carrier shall not be entitled to use any provision of this Act to limit its liabilities.*

Hence, under this provision, the airline company will bear full liability without limitations for any damage caused by its failure to allow passengers to fly without tickets or valid tickets. Therefore, passengers may seek compensation from legal sources other than the Indonesian Aviation Act, potentially resulting in higher compensation than that stipulated in Ministerial Regulation of Transportation Number 77/2011. In contrast, the airline company may not use the Indonesian Aviation Act as a source of law to limit its liability but could use other sources of law.

Furthermore, regarding the definition of international carriage, Article 1, Paragraph 2 of the Montreal Convention 1999 states that the flight route should be in a different place or location of states between the departure and destination. For example, the terms of international flights could be where the place of departure is located in Indonesia; subsequently, the destination should be outside of Indonesia, and *vice versa* (Figure 1).

In addition, international carriage can also be classified when both the departure and destination points are in the same country, but there is an agreed stopping place outside the countries of departure and destination. This logic only applies if the passenger has a return ticket. For example, passengers traveling from Indonesia to Amsterdam for a vacation and returning to Indonesia at the end of their trip will have their place of departure and destination both within Indonesia. Amsterdam, as their vacation destination, will be considered an agreed-upon stopping place (Figure 2).

Furthermore, international carriage can also apply when a passenger flies from one point to another in one country with a code-shared flight due to cabotage principles or other operational reasons, even if the place of departure and destination, as stated in the contract, are not located in the same country. Therefore, it is possible for a flight to be called a 'domestic flight' even when some passengers are on an international flight. In this scenario, compensation amounts vary among passengers depending on their contracts or tickets. For example, passengers traveling to Surabaya from Amsterdam with KLM may stop at Jakarta before continuing to Surabaya. The next flight from Jakarta to Surabaya is typically

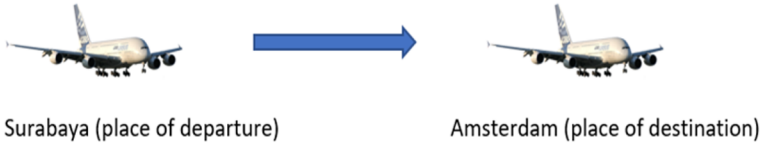


Figure 1. Illustration of international flight by the authors.

Figure 2. Illustration of international flight with agreed stopping place by the authors.

Figure 3. Illustration of international flight (with domestic route) by the authors.

carried out by a domestic airline, Garuda Indonesia, even if passengers have an international flight ticket (e.g. a KLM ticket) (Figure 3).

According to the Indonesian Aviation Act, international carriage is defined in Article 1, Point 18, as 'International Air Transportation' which indicates a commercial air transportation activity that serves air transportation from one airport in the country of Indonesia to another airport outside the territory of the Republic of Indonesia and *vice versa*.

Hence, the transportation of passengers from Singapore to Malaysia would not be considered international air transportation under the Indonesian Aviation Act. In contrast to the Montreal Convention 1999, this flight route falls under the classification of international carriage because it involves different countries between the places of departure and destination, without specifying any particular state. Consequently, if there is an accident or damage during a flight on that route, neither an Indonesian traveler nor a foreign traveler can claim their flight as international under the definition of the Indonesian Aviation Act. In such cases, the Montreal Convention 1999 is more appropriate to apply.

3.3. Jurisdiction issues

Language barriers, different legal systems, and jurisdictional possibilities are elements for passengers in deciding the appropriate court for filing their cases. In addition, international flights often involve passengers with diverse nationalities claiming compensation. Therefore, Indonesian travelers facing significant jurisdictional issues encounter two conflicting principles between the Indonesian Aviation Act and the Montreal Convention 1999.

Indonesian travelers must consider how to use the Indonesian Aviation Act to claim compensation for damages in the context of court jurisdiction that can enforce this act. This is because of the correlation of the jurisdictional principle established in Article 4 of the Indonesian Aviation Act:

This act is valid for:

a. *All utilisation activities of air/space territory, flight navigation, aircraft, airports, airbases, air transportation, aviation safety and security, and other related supporting and general facilities, including preservation of the environment within the territory of the Republic of Indonesia;*
b. *All foreign aircraft conducting activities from and/or to the territory of the Republic of Indonesia; and*
c. *All Indonesian aircraft present outside the territory of the Republic of Indonesia.*

Article 4 of the Act prioritizes the use of all air transportation activities covered under its provisions, including international flights to or from Indonesia's territory or all Indonesian aircraft flying outside Indonesia's territory. Article 176 of the Indonesia Aviation Act stipulates the following in general terms:

> *The passengers, owners of baggage, and/or cargo shippers and/or passengers' beneficiaries, suffering losses as a regulation under Articles 141, 143, 144, 145, and 173 may file a lawsuit against the carrier at the state court within the territory of Indonesia using Indonesian Laws.*

Article 176 regulates the possibility of bringing jurisdiction to Indonesian courts with the conditions in Article 4, in addition to the jurisdiction issue in Article 33, Paragraphs 1 and 2 of the Montreal Convention 1999:

a. *An action for damages must be brought, at the option of the plaintiff, in the territory of one of the States Parties, either before the court of the domicile of the carrier or of its principal place of business, or where it has a place of business through which the contract has been made or before the court at the place of destination;*
b. *In respect of damage resulting from the death or injury of a passenger, an action may be brought before one of the courts mentioned in paragraph 1 of this Article, or in the territory of a State Party in which at the time of the accident the passenger has his or her principal and permanent residence and to or from which the carrier operates services for the carriage of passengers by air…*

Both regulations require certain conditions to determine a state's jurisdiction. Comparing these provisions, for example, an Indonesian traveler who purchased a flight ticket in Jakarta for an international route from Singapore to Malaysia with Qantas Australia Airlines shall not invoke the Indonesian Aviation Act in an Indonesian jurisdictional court. According to the Indonesian Aviation Act, a flight involving Indonesian travelers may not meet the following criteria:

a. Located in Indonesia's territory;
b. To and from Indonesia's territory;
c. Used Indonesian air carrier.

Even if Indonesian plaintiffs can file lawsuits in an Indonesian court, they cannot rely on the Indonesian Aviation Act as a legal basis. In contrast to the Indonesian Aviation Act, in the Montreal Convention 1999, the Indonesian traveler has a choice in this case to use the Convention and bring jurisdiction to the court if:

a. Malaysia is a place of final destination;
b. Indonesia is a place where the contract was made and is the claimant's place of residence;
c. Australia is the location of Qantas Australia's main office.

In general, the ratification of the Montreal Convention 1999 into Indonesian domestic law addresses the deficiencies in national legislation found in the Indonesian Aviation Act and the lower hierarchy, as regulated by Ministerial Regulation 77/2011. For the consistency principle, the jurisdiction and legal terms of the article are the most crucial to amend in the Indonesian Aviation Act. These circumstances arose from the Act being drafted before Indonesia ratified the Montreal Convention 1999 in 2016 (Figure 4).

Furthermore, there is a need to amend the Indonesian Aviation Act because of the contradiction in its applicability, as discussed in Articles 4 and 176, as stated in its elucidation:

> *A lawsuit may be filed to the state court with jurisdiction of the place of ticket purchasing, good shipping, domicile of carrier office, branch office and domicile of defendant or claimant within the territory of the Republic of Indonesia. This is meant to provide facilitation to the victim.*

It is important to note that the elucidation of a Law or an Act should not be used as a source of law. Therefore, if the plaintiff chooses an Indonesian court for jurisdiction according to the elucidation of Article 176 of the Act, the plaintiff will use sources of law other than the Indonesian Aviation Act, as stated earlier (Arafah & Amelia, 2019).

3.4. Insurance obligation issues

For Indonesia, the ratification of the Convention after the Air Asia QZ8501 accident would have significant implications for the ability of Indonesian airlines to pay compensation and the applicability of

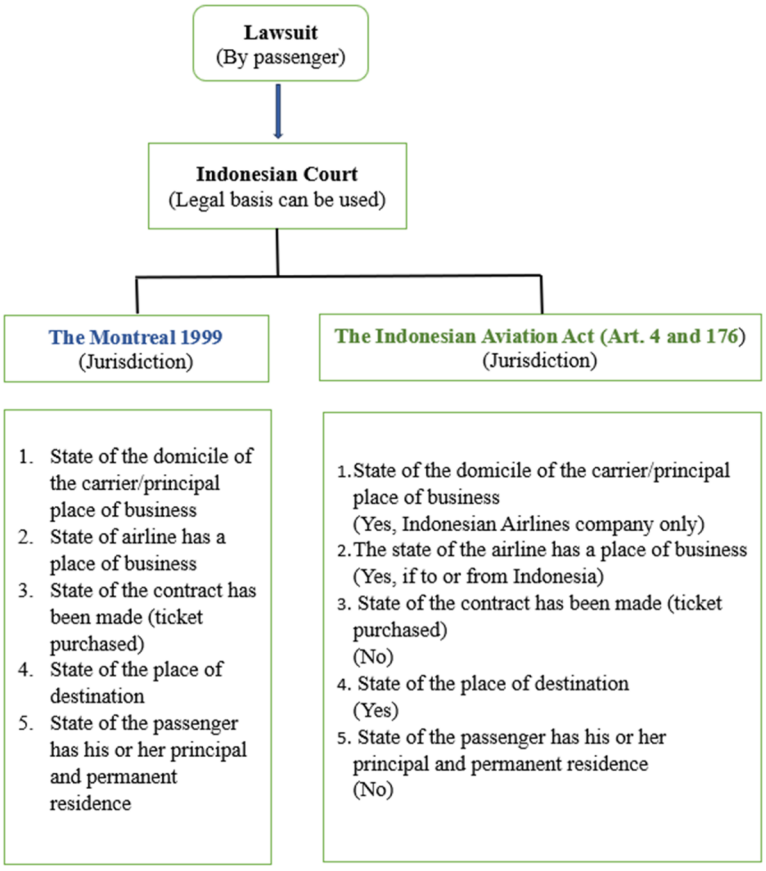


Figure 4. Flow chart for utilizing a legal basis.
Source: (The Montreal Convention, 1999 and Indonesian Aviation Act, 2009).

Indonesian national law principles. Faced with this challenge, Article 50 of the Montreal Convention 1999 requires all airlines to maintain adequate insurance to cover the compensation mandated by the Convention. The same obligations are attached in Article 179 of the Indonesian Aviation Act, which stipulates that airline companies shall be obligated to ensure their liabilities towards passengers and the cargo they transport.

Furthermore, the process of ratifying the Montreal Convention 1999 into Indonesian Law has raised significant concerns for Indonesian airline companies regarding the potential doubling of compensation amounts compared to local compensation standards, as stated in the Ministerial Regulation of Transportation Number 77 of 2011. According to Article 180 of the Indonesian Aviation Act, it is mandatory that the amount of insurance indemnity value, as stated in Article 179, shall be at least the same as the amount of compensation stipulated in Articles 165, 168, and 170 of the Act.

The increase in compensation amount is typically reflected in the higher annual insurance payments made by the airline. Similar to problems encountered by other countries, the correlation between the value of compensation and the corresponding increase in annual insurance payments presents a significant matter that requires discussion and possible policy or regulatory changes to be implemented by the regulator (Bruford, 2023). However, the insurance company considers various factors when determining the annual payments to the airline. This includes the nationally applied compensation amount and other specific factors. A significant factor considered by insurance companies is the performance and track record of the airline, including the number of accidents and its operational management (Sherman, 2020).

Airlines with a higher number of accidents than others will, therefore, pose greater risks for the insurance company in terms of claims payments. Furthermore, aviation compensation is provided for damages related to bodily injuries and losses incurred owing to lost baggage and delays. In many aviation activities, the insurance company has other possibilities of payment through the airline business (Hadiati et al., 2017).

Therefore, during the approval of the annual payment deal with airlines, the insurance company considers performance and relevant management documents regarding delays and operational employment owned and operated by the airline (Sherman, 2020). Consequently, airlines are obliged to enhance their safety measures and management practices, thereby indirectly contributing to the protection of passenger rights.

3.5. Legal remedies

In 2016, the Indonesian government ratified the Montreal Convention of 1999 through Presidential Regulation Number 95. As stated in the presidential regulations, a consideration for the Indonesian government in ratifying the Convention is to provide protection and legal certainty to carriers and users of international aviation services. According to the norms of international law, if a country ratifies an international agreement, it is obligated to comply in good faith (Juwana, 2019). If a country is unable to fulfil its obligations, it cannot rely on domestic law for justification (Sidharta et al., 2017).

As previously mentioned, several Indonesian aviation regulations are inconsistent with the Montreal Convention 1999. Although the Indonesian government has fulfilled its obligations, it is not in accordance with the provisions of the Montreal Convention 1999, particularly regarding the legal terms for international carriage, jurisdiction issues, and nominal compensation for passengers injured in aircraft accidents. As the Indonesian government is bound by the Montreal Convention 1999, it should be able to fulfil its compensation obligations in accordance with the Convention's terms. Therefore, in the event of a discrepancy between national law and international agreements, the following question arises: What should be done to establish long-term legal harmony?

Prior to ratifying an international agreement, the Indonesian government must ensure conformity and harmony between the agreement's content and Indonesian national regulations (Juwana, 2019). This can be achieved by both the government and legislature if the ratification instrument is a law. It is also done to prevent inconsistencies following Indonesia's ratification of an international treaty. However, if these steps are not taken and inconsistencies arise after the treaty's ratification, the Indonesian government must amend its national laws to align them with the ratified international treaties. The House Representative can modify articles of the Indonesian Aviation Act that are not in accordance with the Montreal Convention 1999 or if the process of change through the legislature takes too long. Alternatively, through the President, the Indonesian government can issue a Government Regulation in Lieu of Law (*Perpu*) to prioritize efficiency, protection, and legal certainty for users of international air services.

While the formation of Government Regulation in Lieu of Law is considered more efficient than other legal remedies, such as a legislative or judicial review, the President must adhere to certain requirements to issue it. It is governed by Article 22, Paragraph 1 of the Constitution of 1945, which states: 'In the event compelling exigency, the President is entitled to stipulate government regulation in Lieu of Laws.' Moreover, according to Article 1, Point 4 of Law Number 15 of 2019, which amends Law Number 12 of 2011 on legislation, it states that 'Government Regulations in Lieu of Laws are Legislations issued by the President in the event compelling exigency.' Based on the two legal bases associated with the issuance of *Perpu*, 'compelling exigency' is the most important requirement for the President to issue a *Perpu*.

Referring to the opinion of Yuli Harsono, 'this involves the President's subjectivity in interpreting the "compelling exigency" that serves as the basis for issuing the Perpu' (Prayitno, 2020). The House of Representatives will assess whether the crisis that forced it actually occurred. This is supported by the opinion of Asshidiqie, who explained that

Article 22 authorises the President to subjectively assess the condition of the state or state-related matters that prevent the immediate formation of a law, while the need for material arrangements regarding matters that need to be regulated is so urgent that Article 22 of the 1945 Indonesian Constitution authorises the President to issue government regulations in Lieu of Laws.(Huda, 2010).

In decision number 138/PUU-VII/2009, the Constitutional Court formulated objective criteria for the issuance of *Perpu*, even though the President had discretion in the matter. Based on the Constitutional

Court's Decision, there are three conditions as parameters for the existence of 'compelling exigency' for the President to enact *Perpu*:

a. There is an urgent need to resolve legal issues quickly based on the law.
b. The required law does not yet exist, so there is a legal vacuum or there is a law, but it is insufficient.
c. This legal vacuum cannot be overcome by making laws in the usual manner because it takes too long.

Considering the subjective and objective requirements that must be met for the issuance of *Perpu*, the inconsistency of the Aviation Act provisions is a 'compelling exigency.' Some of these inconsistent provisions are fundamental issues that affect passengers' capacity to assert their rights. Provisions incompatible with the Montreal Convention of 1999 can jeopardize passengers' protection rights on international flights. An examination of the requirements for issuing *Perpu* based on the objective measures stipulated in the Constitutional Court's decision revealed that Act Number 1 of 2009 does not sufficiently regulate the fulfilment of passenger protection rights. Therefore, the President can use his subjectivity to issue a *Perpu* on matters that are inconsistent with the Montreal Convention 1999, ensuring that problems related to this inconsistency do not linger, and passenger rights can be protected.

In addition to the inconsistency between the Indonesian Aviation Act and the 1999 Montreal Convention, Ministerial Regulation Number 77 of 2011 regarding the responsibility of air transport carriers is also inconsistent with the Montreal Convention 1999. As previously mentioned, the compensation amount provided by the airline to passengers who suffer death, permanent disability, or injury is irrelevant to the Montreal Convention 1999 provisions. As a sign of commitment and good faith on the part of the Indonesian government after ratifying the Montreal Convention 1999, these regulations must be immediately amended and adapted to align with the Convention's provisions.

4. Conclusion

The ratification of the Montreal Convention 1999 into Indonesian Law through a Presidential Decree significantly impacts the protection of Indonesian travelers on international flights. The provisions of the Convention ensure that Indonesian travelers have the same rights as foreign travelers do. However, significant provisions in the Indonesian Aviation Act of 1/2009 must be changed to align with the definitions and regulations of the Montreal Convention 1999.

The definition of international carriage, compensation amount, jurisdiction issues, and specific rules under the Ministerial Regulation level for collective insurance are examples of issues regulators need to address to effectively implement the Convention. Consistency in provisions among national regulations also must be harmonized to simplify Indonesian people's access to their rights under law.

Authors' contributions

Adhy Riadhy Arafah: concept, interpretation, methods; Yaries Mahardika Putro: concept, interpretation, methods; Alifia Nuril Bais: editing format; Son Solita: interpretation, editing format; Satria Unggul Wicaksana Prakasa: methods, editing format.

Disclosure statement

The authors report there are no competing interests to declare.

About the authors

Adhy Riadhy Arafah is a permanent lecturer at the International Law Department, Faculty of Law, Universitas Airlangga, Surabaya. He obtained a Bachelor of Laws (S.H.) from the Faculty of Law, Universitas Airlangga. Then he continued his education by obtaining a Master of Laws (LL.M.) at the International Institute of Air and Space Law

(IIASL), Universiteit Leiden, The Netherlands. The courses he teaches are International Law, International Dispute Resolution, International Organizational Law, and Air and Space Law. As an academic, he has also published various scientific papers in the fields of Air Law, Space Law, and Private Aviation Law. Besides being active in several teaching and research activities, he is also active in various Community Service activities. He is also the Director of Airlangga Institute of International Law Studies (AIILS).

Yaries Mahardika Putro is a distinguished legal scholar whose academic achievements and contributions to the field of law have garnered widespread recognition. With a strong educational background and a commitment to advancing legal knowledge, he stands as a notable figure in the global legal community. Yaries earned his Bachelor of Law degree with honors from the Faculty of Law at Universitas Islam Indonesia, showcasing his dedication to excellence in legal studies. He furthered his education by obtaining an LL.M. degree in European and International Business Law from the University of Debrecen, Hungary, where he graduated with summa honors. His impressive achievement in Hungary was made possible through the prestigious Stipendium Hungaricum Scholarship, a testament to his academic prowess. Yaries' research is characterized by its breadth and relevance to contemporary legal issues. His primary areas of focus include Air and Space Law, where he examines the intricate legal aspects of aviation and outer space activities. He also delves into Humanitarian Law, Refugee Law, and International Islamic Law, demonstrating a keen interest in matters of global significance. As a prolific writer and thought leader, Yaries consistently contributes to the academic discourse. His scholarly articles are featured in both national and international journals, enriching the legal community with his insights and expertise. Moreover, he actively engages with the broader public by sharing his perspectives on legal and global matters in national and international newspapers.

Alifia Nuril Bais is Law Student and Researcher at Airlangga Institute of International Law Studies (AIILS), Faculty of Law, Universitas Airlangga, Surabaya.

Son Solita is a Law Student at Royal University of Law and Economics, Phnom Penh, Cambodia. She is also hold International Relations Degree from Royal University of Law and Economics, Phnom Penh, Cambodia.

Satria Unggul Wicaksana Prakasa is a Dean at the Faculty of Law, Universitas Muhammadiyah Surabaya, Surabaya, Indonesia. He hold Master of Law degree from Faculty of Law, Universitas Airlangga, Surabaya, Indonesia. His research interest in international law.

ORCID

Adhy Riadhy Arafah http://orcid.org/0000-0001-7955-1726
Yaries Mahardika Putro http://orcid.org/0000-0002-5100-6280
Satria Unggul Wicaksana Prakasa http://orcid.org/0000-0002-5293-1734

Data availability statement

The data that support the findings of this study are available from the corresponding author, Adhy Riadhy Arafah. Restrictions apply to the availability of these data, which were used under license for this study. Data are available from the author Adhy Riadhy Arafah at https://data.mendeley.com/datasets/k2d9mbwhpb/1, with permission of the author at adhy@fh.unair.ac.id.

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