

State Responsibilities on the Disturbance of the Flight Path to Yogyakarta by Air Balloons to Guarantee Flight Safety

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ABSTRACT

Safety in the aviation world is a major factor that cannot be contested and must be a top priority in the world of aviation. The importance of this safety is regulated in the 1944 Chicago Convention as outlined in Act Number 1 of 2009 concerning Aviation and requires the state to maintain flight safety. Therefore, the state in this case carries the obligation and responsibility to guarantee safe flight activities by providing guidance that covers aspects of regulation, control, and supervision. The presence of an uncontrolled air balloon will certainly disrupt aircraft flight pathways that will cause flight safety is threatened. Traffic traversed by aircraft in the flight path is crucial in ensuring flight safety. Therefore, any form of disruption in the flight path that has the potential danger must be immediately addressed to ensure flight safety

Keywords: Responsibility, Air Balloons, Flight Safety

1. INTRODUCTION

•Issue

As mandated by Pancasila and the 1945 Constitution of the Republic of Indonesia, namely to achieve national goals, strengthen the archipelago's insight and strengthen national resilience, a national transportation system is needed that can support economic growth, regional development, strengthen relations between nations, and strengthen state sovereignty. So aviation is considered to have the characteristics of a transportation system that is able to move quickly, uses high technology, is capital intensive, reliable management, and really requires optimal security.¹⁾

Realizing the importance of the role of air transportation for the continuity of the country, the operation of flights must be organized in an integrated national transportation system and is able to realize the availability of

transportation services that are balanced with the level of need, safe, secure, effective and efficient in order to ensure the implementation of flight safety for users. air transportation mode. Aviation safety itself is contained in Article 1 Number 48 and Article 308 of Law Number 1 of 2009 concerning Aviation, which is a condition where safety requirements are met in the use of airspace, aircraft, airports, air transportation, flight navigation, and facilities. supporting and other public facilities.²⁾

In the operation of air transportation, it is not necessarily that every owner of an aircraft airline can carry out a flight according to their respective wishes. Each aircraft that will operate has a predefined schedule, route and flight path. This is to ensure the regular flow of flight traffic and the safety of the movement of the aircraft itself, this is stated in Article 266 of Law No.1 of 2009 concerning Aviation.³⁾ In order to ensure flight safety, which is the main element in carrying out air transportation activities, the government is responsible for providing flight navigation services for aircraft operating in the air space served, which is established in an institution with a special purpose to

¹⁾ Undang-Undang Republik Indonesia Nomor 1 Tahun 2009 Tentang Penerbangan.

²⁾ Ibid.

³⁾ Ibid.

prioritize aviation safety, as mandated by Article 271 Law Number 1 of 2009 concerning Aviation, the navigation service is carried out by taking into account the structure of the flight path, the flow of aviation traffic, and the efficiency of aircraft movement.⁴⁾

At present, threats to aviation safety in the implementation of air transportation are widely found, this in particular refers to the threat due to the lack of public participation in awareness to participate in maintaining order and flight safety and security. Recently in June 2019, there has been a serious threat to the flight routes of Central Java and East Java. The threat that occurs is in the form of wild air balloons entering the flight path, in this case the highest threat occurs on the flight path to the Special Region of Yogyakarta. This was found based on reports from pilots who saw dozens of hot air balloons flying wildly around the Jakarta-Yogyakarta flight path. It is estimated that the balloons were flown from areas that have a tradition of flying hot air balloons, one of which is Wonosobo Regency, Central Java. PT. Air Navigation Indonesia (PT. AirNav Indonesia) Yogyakarta branch also said the direction of flying a hot air balloon is difficult to predict because it depends on the wind direction, if the wind is to the north then the existence of the hot air balloon can also disrupt the Jakarta-Semarang-Surabaya flight path. Until now, PT. AirNav Indonesia Yogyakarta branch has received 27 related reports. Although the number of reports has decreased compared to similar cases that occurred in 2018 which reached 49 reports, PT. AirNav Indonesia emphasized that wild air balloon flights are very disruptive to flights, because they are a threat to flight safety.⁵⁾ PT. AirNav Indonesia also said that the presence of wild air balloons is difficult to detect because they are made of plastic, and are also traditionally made without a transmitter responder or transponder, namely a device to transmit signals at a certain frequency, if you don't have that, the hot air balloon is obliged to attach a tether to it. ground, so the balloons don't fly anywhere.⁶⁾ The Society is not prohibited in releasing air balloon to carry the tradition but must comply with the provisions that have been created specifically for the presence of balloons namely the Minister of Transportation Regulation No. 40 Year 2018 concerning the Use of Air Balloon On Cultural Events Society.⁷⁾

⁴⁾ *Ibid.*

⁵⁾ Ristu Hanafi, Sukma Indah Permana "Balon Udara Liar Masih Mengancam Penerbangan di Langit Yogya", m.detik.com , pada tanggal 02 Desember 2019, pukul 20.01.

⁶⁾ Fajar Febrianto, Wahyu Dhyatmika "Airnav Indonesia: Balon Udara Tradisional Tak Terdeteksi", www.tempo.co, pada tanggal 05 Desember 2019, pukul 06.49.

•Statements of Problem

Based on the description described in the background, the authors formulate the problems, namely:

1. What is the state's responsibility to protect the flight path (airway) from the threat of hot air balloons to ensure flight safety?
2. How has the government made efforts to ensure flight safety?

2. RESEARCH METHODS

The definition of method, comes from the Greek word "methodos" which means a way or towards a path. The research method is a process, principles or procedures for solving problems faced in conducting research, which is an attempt to find, test the truth of a knowledge carried out by using scientific methods. The method in the book written by Soejono Soekanto is an absolute element that must be present in a research that functions to develop science. Legal research is a scientific activity based on methods, systematics and certain thoughts that aim to study one or more specific legal symptoms by analyzing them. The collection is to find the materials, facts and data needed for this research using the following methods:

• Types of Research

Jenis penelitian yang Penulis gunakan adalah penelitian hukum normatif. Penelitian hukum normatif adalah penelitian hukum yang mencakup penelitian terhadap asas-asas hukum, sistematika hukum, taraf sinkronisasi hukum, sejarah hukum, dan perbandingan hukum baik secara horizontal dan vertikal.⁸⁾ Normative legal research itself includes research on legal principles..

•Types of Research

⁷⁾ Ristu Hanafi, "Dalam 9 Hari, 24 Balon Udara Masuk Jalur Penerbangan Yogya", m.detik.com, pada tanggal 06 Desember 2019, pukul 10.21.

⁸⁾ Soerjono Soekanto, *Pengantar Penelitian Hukum*, Cetakan ke-3, (Jakarta: Universitas Indonesia, 1986), Hlm.51.

The type of research used in this research is Normative Law Research, which means that it is research on building the norm system. The system of norms in question is regarding the principles, norms, rules of the statutory regulations, court decisions. In conducting this research, the author will analyze and also examine the protection of consumer rights that must be obtained in accordance with the problems contained in the articles used in this study.

•Types of Approach

There are 7 types of approaches in normative legal research, namely, Legislative Approach, Concept Approach, Analytical Approach, Comparative Approach, Historical Approach, and Case Approach. This type of approach is a statutory approach, in which the researcher uses statutory regulations as the initial basis for conducting the analysis..

•The Characteristic of Research

The characteristic of this research is descriptive analytical which aims to describe or obtain a description of the legal conditions prevailing in a certain place and at a certain time or regarding the juridical symptoms that occur in society.

1. Types Of Data

The type of data that the author uses in this study is secondary data. Secondary data or library data, also known as legal materials. The legal material is in the form of various literatures which are grouped into⁹⁾:

Primary legal material, which consists of statutory regulations, jurisprudence or court decisions and international treaties. Peter Mahmud Marzuki said that primary legal materials are legal materials that are authoritative, meaning they have authority. The primary legal materials in this study are divided into:

- a. The 1945 Constitution of the Republic of Indonesia ,
- b. Law Number 1 of 2009 concerning Aviation
- c. Convention on International Civil Aviation, Chicago 1944.
- d. Regulation of the Minister of Transportation Number 40 of 2018 concerning the Use of

⁹⁾ Ibid. Hlm. 51.

Air Balloons in Community Cultural Activities.

2. Secondary legal materials, namely legal materials that can provide explanations for primary legal materials, which can be in the form of legislation drafts, research results, text books, scientific journals, newspapers, and internet news.
3. Tertiary legal materials, namely materials that provide guidance and explanation for primary and secondary legal materials, such as legal dictionaries.

2. Data Collection Technique

In this paper, the data collection technique used is literature study. Literature study is all the efforts made by researchers to gather information relevant to the topic or problem that will be or is being researched by examining library materials or what is called secondary data. This information can be obtained from scientific books, research reports, articles, scientific essays.¹⁰⁾

3. Data Analysis Technique

Data analysis is an activity in research in the form of reviewing the results of data management assisted by theories that have been previously obtained. The data analysis technique used is qualitative normative analysis. In analyzing this research the writer used 1 (one) approach, namely the statutory approach (Statute Approach), it is intended that the researcher uses statutory regulations as the initial basis for conducting the analysis. According to Law Number 12 of 2011 concerning the Formation of Laws and Regulations, Legislation is a written regulation that contains legally binding norms and is formed or stipulated by state institutions or authorized officials through procedures stipulated in statutory regulations. invitation. Thus, the statutory approach is an approach using legislation and regulations.

¹⁰⁾ Ibid. Hlm. 21.

3. STUDY

• *State Responsibilities on the Disturbance of The Flight Path To Yogyakarta By Air Balloons To Guarantee Flight Safety.*

The purpose of transportation activities is to move people and / or goods from one place to another safely. Long-distance transportation that is often used to save travel time is air. Aircraft are part of the world of aviation. In the world of aviation, safety is a top priority to achieve. This is stated in Article 3 of Law Number 1 Year 2009 concerning Aviation, regarding flight destinations.

Aviation safety from object disturbances that endanger the aircraft during flight activities is highly dependent on the cooperation between pilots in charge of the Navigation Service, which in Article 271 of the Aviation Law explains that the government is responsible for carrying out flight navigation services for aircraft in air space served. Furthermore, the navigation service itself is described in Article 270 of the Aviation Law, one of which includes air traffic services.

The state has an important role in monitoring and protecting disruption to flight paths. The role of the state in maintaining aviation safety is regulated in Article 3 letter d of the 1944 Chicago Convention which requires each state to maintain safety in that country. The Ministry of Transportation holds the administration in the government domain. In accordance with Article 10 of Law Number 1 of 2009 concerning Aviation which states that aviation is controlled by the state and its guidance is carried out by the government. Guidance is meant to include aspects of regulation, control and supervision. The regulatory aspect in this article includes the establishment of general and technical policies which consist of determining norms, standard guidelines, criteria, planning and procedures including aviation safety and security requirements and licensing. The aspects of control referred to in this article include providing direction, guidance, training, licensing, certification, as well as technical assistance in the field of construction and operation. The aspect of supervision referred to in this article includes activities to supervise development and operations in accordance with statutory regulations, including taking corrective actions and law enforcement. Reflecting on the article above, the author can conclude that the world of aviation as a single system is owned by the state and all factors that support the achievement of flight operations are the responsibility of the state.

The uncontrolled existence of a hot air balloon is one of the objects of flight path disruption which has an impact on the insecure aspects of flight safety in the operation of flight activities. The government is mandated in Article 308 Paragraph (1) of the Aviation Law in CHAPTER XIII regarding aviation safety, that the Minister is responsible for national aviation safety.

Based on the facts in the field as well as the writer's observations and the observations of experts and aviation

observers, that similar events have continued to occur since the issuance of PM Number 40 of 2018 concerning Air Balloon Arrangement in Community Cultural Activities until 2020, with ongoing disturbances, aviation safety has become not guaranteed in flight activities.

According to Gerry Soejatman PM 40 of 2018 concerning the Use of Hot Air Balloons in Community Cultural Activities, it is considered only effective in reducing the number of air balloon release activities, but not in eliminating them. The flight observer said that there must be further steps that can support the existing regulations. There is still a social and cultural responsibility of the government to the community regarding solutions that are more friendly to the traditional beliefs of the community. Based on the sources' observations, the ineffectiveness of the enforcement of this regulation is also supported by smooth or not coordination between the respective authorities, in this case the government relies heavily on intelligence cooperation from RT, RW, Military, Police and other authorized officers. Furthermore, based on Alvin Lie's observations, the implementation of PM 40 of 2018 concerning the Use of Hot Air Balloons in Community Cultural Activities is deemed ineffective, Alvin Lie considers that other solutions and further actions are necessary for perpetrators who are still determined to violate the enforcement of regulations and provide a deterrent effect. If it only sticks to regulations without solutions, intensive supervision, protection, and law enforcement, steps to overcome this problem will be difficult to resolve.

Alvin Lie then quoted the provisions in Article 1 point 3 of Law Number 1 of 2009 concerning Aviation in classifying that a hot air balloon is a type of aircraft that is lighter than air. Furthermore, in Article 53 Paragraph (1) of Law Number 1 Year 2009 concerning Aviation, it is explained that "Every person is prohibited from flying or operating an aircraft that can endanger the safety of the aircraft, passengers and goods, and / or residents or disturb security and order. general or detrimental to other people's property ". Based on this provision, Alvin Lie states that because hot air balloons are a category of aircraft, the provisions contained in Article 53 Paragraph (1) of Law Number 1 of 2009 concerning Aviation are sufficiently clear in prohibiting actions deemed to endanger flight safety, and these provisions can be a reference in taking legal action against the perpetrator who commits the violation. Then the provisions regarding sanctions have also been explained in the provisions of Article 411 of Law Number 1 Year 2009 concerning Aviation, which states that "Everyone deliberately flies or operates an aircraft that endangers the safety of the aircraft, passengers and goods, and / or residents or is detrimental to Property belonging to other people as referred to in Article 53 shall be punished with imprisonment of 2 (two) years and a maximum fine of Rp. 500,000,000.00 (five hundred million rupiah) ". However, based on Alvin Lie's testimony in observing the law enforcement process in the field, Alvin Lie regretted that the actions taken were only in the form of reprimands, investigations, and coaching in the absence of legal sanctions, and then the perpetrator was released again. This

is considered to greatly affect the community in providing a deterrent effect and the existence of firmness from the authorities. So in the repeated occurrences of this incident, no action has been found of the perpetrator who has been sentenced to a criminal sentence, so far the actions taken by the authorities are actions in the form of confiscation of the hot air balloon used, the perpetrator is summoned by the police, subject to compulsory reporting, and guidance, then the perpetrator released. The purpose of law is to protect human interests (law as tool of social engineering). This protection is a form of legal function, which is a concept in which law can provide justice, order, benefit, certainty, and peace as a means of protecting human rights.¹¹ Legal protection itself is divided into two, namely Preventive Legal Protection, which is protection provided by the government which aims to prevent before the occurrence of violations. Next is Repressive Legal Protection, namely legal protection which is the final protection in the form of sanctions such as fines, imprisonment, and additional penalties that are given when a dispute has occurred or an offense has been committed.¹² Based on the explanation of the legal protection theory above, the authors conclude that the implementation of regulations in dealing with this incident by the government has not completely fulfilled the two aspects of legal protection above. In terms of Preventive Legal Protection, the preventive activities carried out by the government and field officials have not yet found a bright spot that prevents people from releasing hot air balloons uncontrollably. In order to take a comprehensive action, the same thing should not have happened again, because in essence, in this incident, if there is negligence and the apparatus is not alert in the field, it will have an impact on accidents that can cause large numbers of victims, both from the crew and the wider community. be around the flight path. So it is necessary to take preventive legal protection measures in preventing dangerous activities before causing victims. Then the repressive legal protection, it appears that the government has not been properly implemented in punishing the perpetrators who violate the existing provisions. This certainly has an effect in providing a deterrent effect on the perpetrators so that similar dangerous events and activities can be stopped.

•Efforts That Have Been Made by the Government to Ensure Aviation Safety

According to Alvin Lie as an aviation observer and also one of the parties that played a role in the formation of PM Number 40 of 2018 concerning the Use of Air Balloons

in Community Cultural Activities, that at the time of the incident Alvin Lie invited Airnav Indonesia, the Directorate General of Civil Aviation, Government Regional, Police and Wonosobo Balloon Community, to hold a meeting in Semarang, Central Java. Most of the hot air balloon disturbances were in the Central Java and East Java areas. The meeting was held in Semarang, Central Java because most cases were in the Central Java region. The purpose of inviting the parties previously mentioned is for all stakeholders to meet and be able to discuss these issues together and find out about the problems at hand. The result of the forum was that the participating parties agreed that this hot air balloon activity was not prohibited, but needed to be regulated and controlled so that the existence of this hot air balloon did not interfere and did not endanger. The agreement is that there needs to be clear regulations, then there also needs to be an alternative for the distribution of these activities, so in 2018, for the first time a Balloon Festival was held in Wonosobo, Central Java, which was attended directly by Alvin Lie. The balloons that are included in the festival must comply with regulations, namely according to PM Number 40 of 2018 concerning the Use of Air Balloons in Community Cultural Activities, namely by adjusting the altitude level, not being released freely and so on. In 2019 the Air Balloon Festival was held more widely, which was also held in the area around Pekalongan, Central Java and several areas in East Java, because there was a request from the community in these areas. Participants in the Hot Air Balloon Festival which was held in 2019 experienced an increase, but even so, balloons were still being released without control into the air space until 2020, which in that year Indonesia was being affected by the Global Pandemic, namely Covid-19 and was being carried out during the PSBB (Large-Scale Social Restrictions).

4. CONCLUSIONS AND SUGGESTIONS

•Conclusion

Safety in the world of aviation is a major factor that cannot be contested and must be a top priority in the world of aviation. The importance of this safety is regulated in the Chicago Convention 1944 which is set forth in Law Number 1 of 2009 concerning Aviation and obliges the state to maintain aviation safety. So the state in this case has the obligation and responsibility to ensure the implementation of safe and secure flight activities by providing guidance

¹¹ Satjipto Rahardjo, "Penyelenggaraan Keadilan dalam Masyarakat yang Sedang Berubah", *Jurnal Masalah Hukum*, 1993, Hlm. 74

¹² Muchsin, *Perlindungan dan Kepastian Hukum bagi Investor di Indonesia*, (Surakarta: Magister

Ilmu Hukum Program Pascasarjana Universitas Sebelas Maret, 2003) *Hlm. 14*

which includes aspects of regulation, control and supervision. The presence of an uncontrolled hot air balloon will certainly result in disruption of the aircraft's flight path which will cause flight safety to be threatened. The traffic that airplanes pass in the flight path is crucial in ensuring flight safety. Therefore, all forms of disruption to the flight path that have a potential hazard must be immediately addressed to ensure flight safety.

•Suggestions

The author's suggestion is based on the research results that have been stated above, namely that the government should start taking firm action in dealing with these problems. Persuasive measures are considered ineffective considering the disruption of the flight path by free air balloon activities is still happening. Therefore, the government should have taken decisive steps in dealing with these problems. In addition to maintaining the effectiveness of a regulation, the government has taken firm steps to fulfill the government's obligations to ensure flight safety. This is also based on the fact that the author positions himself as a passenger and the main hope of the author as an airplane passenger is to arrive at the destination safely. Furthermore, the government must pay more attention to the socio-political and cultural aspects in approaching and implementing rules in dealing with cases that intersect with community traditions.

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