

# Responsibility of Pioneer Airlines for the Damage or Loss of Goods Transported in the Event of an Accident



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## Abstract

*The presence of innovative cargo air transportation plays a significant role in meeting the transportation needs of individuals residing in remote and underdeveloped regions, commonly referred to as 3T areas, in Indonesia. The primary objective of pioneering air transport is to mitigate the adverse effects of price disparities on the residents of the 3T region. Nevertheless, the implementation of pioneering cargo air transport has faced numerous challenges in reality, leading to a higher incidence of aviation accidents compared to commercial flights. This study aims to investigate the legal status of pioneering cargo air transport in Indonesia and subsequently ascertain the liability of pioneer airlines in relation to aviation safety and the financial consequences resulting from cargo destruction in the event of an accident. The research employed a normative juridical approach, which involved an examination of concepts and relevant regulations. The findings of the study suggest that pioneering cargo carriers possess a legal status that extends beyond their role as mere carriers in cargo transport agreements. They also maintain a legal connection with the government through contractual arrangements, which are integral to the execution of public services. Pioneer airlines, in collaboration with local governments, airport authorities, and relevant stakeholders, bear the responsibility of ensuring flight safety as a proactive measure to prevent accidents. In the event of an accident resulting in the destruction of the cargo, it is the responsibility of the airline to provide compensation to the sender. This compensation should be commensurate with the damages incurred and should adhere to the regulations governing air transportation.*

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## 1. Introduction

Air transport is an integral part of the social, economic, and development activities of the Indonesian people. As a provider of inter-island and inter-regional transport services, air transport is one of the important factors for equitable distribution of community needs, especially for people in the outer islands of Java, underdeveloped areas, and Indonesia's outermost regions. The important role of air transport must be accompanied by the fulfilment of safety, efficiency, and operational regularity. However, cases of air

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transport accidents still occur in Indonesia both for large capacity aircraft and small capacity aircraft or also called pioneer aircraft.<sup>1</sup>

In the field of aviation, it is imperative for all stakeholders, including airline companies, governmental bodies, and relevant ministries, to adhere to the zero risk principle in order to effectively mitigate accidents. In broad terms, aircraft accidents can be attributed to two primary factors: human error and technical malfunctions. Aircraft accidents resulting from human error manifest in the form of pilot errors during aircraft operation, excessive workload imposed on pilots in pioneering flights, particularly in terms of flying hours, or errors in flight navigation services. Accidents resulting from technical factors can be attributed to adverse weather conditions, operational issues, and non-compliance of flight infrastructure with the requisite standards. In addition to the aforementioned primary factors, an additional factor exists, specifically organisational error, which pertains to aircraft accidents resulting from maintenance practises that deviate from airworthiness standards in order to mitigate maintenance expenses.<sup>2</sup>

Aviation encompasses the utilisation of airspace, aircraft operations, air transportation, airports, flight navigation, aviation safety and security, as well as the provision of supporting facilities and public infrastructure associated with aviation, all of which are conducted within an integrated framework. Aviation is categorised into two distinct types based on the flight route: commercial air transport and pioneer air transport. Pioneer air transport refers to a form of domestic commercial air transport that operates flight networks and routes primarily aimed at facilitating connectivity to remote and underdeveloped regions, as well as areas lacking alternative modes of transportation and lacking commercial viability. Pioneer aviation in Indonesia is a distinct form of aviation that aims to facilitate the provision of essential goods and services to remote and underdeveloped regions. This type of aviation places significant emphasis on ensuring the successful execution of flights while considering various crucial factors.<sup>3</sup>

Pioneer air transport is a component of the government's national programme aimed at addressing the challenges faced by communities residing in remote and underdeveloped areas, characterised by limited access to the distribution of fundamental necessities and other essential commodities. The aforementioned condition is outlined in the Explanation of Law No. 17/2007 concerning the National Long-Term Development Plan 2006-2025. It highlights that one of the primary concerns of government development efforts is the impediment to progress in underdeveloped regions inhabited by marginalised communities or indigenous peoples. The presence of various factors contributes to the existence of development obstacles. These factors include limited accessibility to transportation systems that connect underdeveloped regions with more developed areas, dispersed settlement patterns characterised by low population

<sup>1</sup> Ahmad Iqbal Morgan, *Kecelakaan Pesawat Terbang, and Bentuk Pertanggungjawaban, 'Bentuk Pertanggungjawaban Pidana Korporasi Maskapai Penerbangan Sipil Terhadap Kecelakaan Pesawat Terbang', Recidive*, 9.2 (2020), 153–60.

<sup>2</sup> John f O'Connell and George Williams, 'Transformation of India's Domestic Airlines: A Case Study of Indian Airlines, Jet Airways, Air Sahara and Air Deccan', *Journal of Air Transport Management*, 12 (2006), 358–74.

<sup>3</sup> Bharat Rao, Ashwin Goutham Gopi, and Romana Maione, 'The Societal Impact of Commercial Drones', *Technology in Society*, 45 (2016), 83–90 <<https://doi.org/10.1016/j.techsoc.2016.02.009>>.

densities, inadequate availability of natural and human resources, and exclusion from regional development agendas.

Border regions experience similar challenges as regions that are underdeveloped. The limited progress in the development of underdeveloped regions can be attributed to the government's policy prioritising strategic areas, such as Java Island or provincial capitals, for development efforts. The existing regional conditions not only impose constraints on the transportation requirements of the community but also give rise to disparities in the costs of essential commodities. The price disparities observed can be attributed to the restricted distribution of fundamental and indispensable goods, which is primarily influenced by the geographical conditions of the region, challenging terrain, insufficient demand, and varying levels of accessibility. The aforementioned factors exert a significant influence on the expenses associated with transporting commodities, resulting in elevated prices for specific essential goods in geographically isolated, economically disadvantaged, and peripheral regions.<sup>4</sup>

Nevertheless, the implementation of pioneer air transport is widely regarded as falling short of meeting the established aviation security and safety standards. This aligns with the data regarding aircraft crash incidents provided by the National Transportation Safety Commission (KNKT). Based on the available data, it is evident that a total of 51 instances of aircraft crashes occurred between the years 2000 and 2020. Out of the total number of 51 aircraft crash incidents, it has been established that small aircraft accidents accounted for the majority, specifically 50.98% or 26 cases. The aviation companies that encountered accidents in their early stages were primarily comprised of flights operated by PT Sinar Mas Super Air and PT Susi Air.

Aviation accidents encompass not only passenger aircraft but also cargo aircraft. Several instances of cargo pioneer aircraft accidents can be cited. For instance, in 2021, there was the crash of Rimbun Air in Sugapa District, Intan Jaya Regency, Papua, where the aircraft was transporting essential commodities and construction materials. Another incident involved Smart Air's Cessna 208 Grand Caravan, which crashed into the runway at Aminggaru Airport, Ilaga, Papua, also in 2021. Additionally, in 2022, the Pilatus SMART PK-SNB derailed in Bayabiru Village, Nabire, Papua, due to adverse runway conditions caused by rainfall. Therefore, it is widely acknowledged that the rate of aviation accidents among pioneers remains significantly elevated. Pioneer aviation accidents may arise due to a variety of factors, including human error involving pilots, airport officials, officers, and technicians, as well as runway conditions, weather conditions, terrain conditions, and the deterioration of aircraft engines.

In order to ascertain the meteorological conditions at the intended destination, pioneering aviators typically engage in communication with the destination airport, seeking accurate and reliable information regarding prevailing weather conditions, which subsequently informs their decision-making process pertaining to the feasibility of initiating a flight and executing a safe landing. Conversely, it is important to acknowledge the potential impact of passenger and cargo demands in situations where flight delays

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<sup>4</sup> Alice Kennard, Pengfei Zhang, and Sriram Rajagopal, "Technology and Training: How Will Deck Officers Transition to Operating Autonomous and Remote-Controlled Vessels?", *Marine Policy*, 146, January (2022), 105326 <<https://doi.org/10.1016/j.marpol.2022.105326>>.

occur due to adverse weather conditions.<sup>5</sup> Specifically, such delays may result in a shortage of food supplies for residents at the destination, as the timely delivery of essential goods is hindered. In light of the issue surrounding the significant occurrence of accidents on pioneer flights, it is imperative to conduct a comprehensive examination of the initial problem formulation. This pertains to the legal status of pioneer airlines as providers of cargo transportation services in Indonesia. This analysis is crucial in addressing the subsequent problem formulation, which concerns the extent of responsibility borne by pioneer airlines as providers of air transportation services.

## 2. Research Method

This research is a normative legal research, using a statutory approach and conceptual approach to discuss the legal issues raised in this research.<sup>6</sup> Various laws and regulations are used to be able to comprehensively describe the responsibility of pioneer airlines for damage or loss of goods transported in the event of an accident, besides that various legal literature is also used to obtain arguments to strengthen the arguments that the author builds in writing this paper.<sup>7</sup> Then the author also builds arguments based on the provisions of existing laws and regulations in Indonesia as well as in international treaty agreements or legal provisions in various countries to formulate various models of liability that can be applied to pioneer airlines for damage or loss of goods transported in the event of an accident.

## 3. Results and Discussion

### The Legal Status of Pioneer Airlines as Providers of Cargo Transport Services in Indonesia

Cargo air transportation is a component of the governmental efforts to implement public services aimed at mitigating price disparities for essential commodities in underdeveloped, remote, outermost, and border regions of Indonesia. The regulation of public services implementation is governed by Law Number 25 of 2009 on Public Services, hereinafter referred to as the Public Services Law. According to paragraph (1) of Article 1 in the Public Service Law, public service is delineated as a collection of organised activities carried out by public service providers with the objective of meeting the community's demands for goods, services, and/or administrative services, in accordance with established laws and regulations. The term "public service providers" refers to a range of entities that are responsible for delivering services to the public. These entities can be categorised into four main types: state organising institutions, independent public service institutions, corporations, and public service legal entities.

Regarding the execution of public services in the domain of freight transportation, the

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<sup>5</sup> Junyi Zhang and Yoshitsugu Hayashi, 'Research Frontier of COVID-19 and Passenger Transport: A Focus on Policymaking', *Transport Policy*, 119, February (2022), 78–88 <<https://doi.org/10.1016/j.tranpol.2022.02.014>>.

<sup>6</sup> Rian Saputra, 'Pergeseran Prinsip Hakim Pasif Ke Aktif Pada Praktek Peradilan Perdata Perspektif Hukum Progresif', *Wacana Hukum*, 25.1 (2019), 10–18.

<sup>7</sup> Rian Saputra, Josef Purwadi Setiodjati, and Jaco Barkhuizen, 'Under-Legislation in Electronic Trials and Renewing Criminal Law Enforcement in Indonesia (Comparison with United States)', *JOURNAL of INDONESIAN LEGAL STUDIES*, 8.1 (2023), 243–88 <<https://doi.org/10.15294/jils.v8i1.67632>>.

implementation of public service obligations for freight transport entails providing freight transportation services with due consideration to the safety and security of transportation operations to and from underdeveloped, remote, outermost, and border regions of Indonesia, in accordance with established routes and itineraries. One method of implementing public service obligations involves the Government's establishment of pioneer flight routes through the air bridge programme, which is a component of the Government's National Programme. The implementation of the air bridge programme involves the utilisation of cargo air transport services, which operate under the framework of public service obligations for freight transportation to and from regions that are classified as underdeveloped, remote, outermost, and border areas. The classification of flight routes as pioneer routes is contingent upon certain criteria, one of which pertains to the connection of remote areas. The designation of the route as "remote" is attributed to the absence of alternative transport services that extend to the specified area. The selection of this route is intended to facilitate the advancement and satisfaction of the requirements specific to remote regions. Furthermore, the establishment of this route is aimed at ensuring the stability of the nation's territorial defence, particularly in areas that are contiguous or share borders with other countries.

Since pioneer cargo flights are included in the Government's air bridge programme, it can be inferred that the Government assumes the role of the service provider for these flights. Nevertheless, the direct execution of pioneer air transportation by the Central Government is unfeasible due to the extensive geographical coverage and numerous pioneer flight destinations distributed across various provinces and districts in Indonesia.<sup>8</sup> The implementation of the Air Bridge programme is executed by the government through the assignment of State-Owned Enterprises (BUMN) operating in the air transportation sector or by providing opportunities to private airlines through auctions. If the responsibility for implementing pioneer air transport is not delegated to State-Owned Enterprises (SOEs), private aviation businesses may be eligible to carry out pioneer flights through a government-conducted auction process. Subsequently, a contractual agreement would be established with the winning airline(s) of the auction, following the issuance of the Budget Implementation List.<sup>9</sup>

The mandatory articles stipulated in the contractual agreement between the pioneer airline and the government are governed by Article 19, paragraph (3) of Presidential Regulation Number 27 of 2021. These articles encompass the identification of the parties involved in the agreement, provisions outlining a comprehensive description of the agreed-upon subject matter, the rights and responsibilities of each party throughout the duration of the agreement, the monetary value and payment terms, specific technical specifications and terms, provisions addressing default situations, mechanisms for resolving disputes, and provisions addressing force majeure occurrences during the contractual period. The implementation of cargo pioneer flights is driven by the objective of mitigating price disparities. Consequently, the range of goods or cargo that can be transported is restricted to

<sup>8</sup> Hinnerk Gnutzmann and Piotr Śpiewanowski, 'Can Consumer Rights Improve On-Time Performance? Evidence from European Air Passenger Rights', *Transport Policy*, 136.November 2022 (2023), 155–68 <<https://doi.org/10.1016/j.tranpol.2023.03.017>>.

<sup>9</sup> Ridha Aditya Nugraha, 'Improving Aviation Safety in Indonesia: How Many More Accidents?', *Hasanuddin Law Review*, 2.3 (2016), 328 <<https://doi.org/10.20956/halrev.v2i3.321>>.

those specified in relevant laws and regulations. The regulation pertaining to the classification of goods is stipulated in Article 7, paragraph (1) of Minister of Transport Regulation Number PM 79/2017 in conjunction with Article 2, paragraph (3) of Presidential Regulation Number 27 of 2021. According to these regulations, cargo pioneer flights are only permitted to transport essential commodities and other significant goods, which encompass items such as rice, flour, oil, sugar, LPG gas, as well as iron, steel and various other crucial commo According to data collected from local government sources, pioneer flights allow for the transportation of not only basic necessities and essential goods, but also livestock and other commodities that are deemed necessary by the respective regions' populations.

Hence, the legal association that arises from the execution of pioneering cargo flights encompasses not only the contractual relationship between airlines and service users, but also entails a legal connection between pioneer airlines and the government. Private business entities have the potential to assume responsibility for the implementation of public services through contractual arrangements with the government. The legal association between the two entities is characterised by a coordinative relationship, wherein the parties are bound by contractual obligations as stipulated in accordance with regulations pertaining to pioneer cargo flights. These obligations primarily pertain to matters such as schedules, routes, and flight loads. The key distinction between the execution of cargo pioneer flight contracts and the execution of commercial flight contracts at large lies in the entitlement of cargo pioneer airlines to receive compensation from the government, sourced from APBN/APBD funds. This compensation is granted due to the inherently unprofitable nature of cargo pioneer flights, which primarily stem from governmental obligations in fulfilling public services. Flights that are deemed commercially unprofitable are referred to as such due to their low demand and supply in pioneer flight operations, which are primarily aimed at stimulating the economic development of the respective region.<sup>10</sup>

The allocation of compensation is determined by the provisions stated in Article 13, paragraph (1) of Minister of Transportation Regulation No. PM 79/2017. This regulation grants commercial air transport companies and entities with air transport activity permits the right to receive compensation. The purpose of this compensation is to ensure the uninterrupted provision of pioneer air transport services, as per the predetermined routes and schedules. Additionally, paragraph (2) asserts that a type of remuneration includes subsidies for operating costs and fuel expenses. A subsidy is a public expenditure policy implemented by the state to allocate budgetary resources in order to address the community's needs for goods and services, thereby enhancing accessibility, particularly for individuals belonging to the middle to lower economic strata. The government implements a subsidy programme in various national initiatives, all of which prioritise equitable distribution of resources and economic advancement. These initiatives include subsidies for sea tolls and air bridges.

An agreement is a legally binding contract entered into by one party and one or more additional parties, wherein they mutually commit to fulfilling obligations towards one another. When entering into a contractual arrangement, it is imperative for the involved parties to adhere to the legal prerequisites outlined in Article 1320 of the Civil Code. In the

<sup>10</sup> Muhammet Deveci and others, 'Impact of COVID-19 Pandemic on the Turkish Civil Aviation Industry', *Sustainable Operations and Computers*, 3.May 2021 (2022), 93-102 <<https://doi.org/10.1016/j.susoc.2021.11.002>>.

event that a condition stipulated in an agreement is not met at the time of its formation, there exists a potential risk of the agreement being rendered void or invalidated. A legally binding contract possesses the force of law and governs the actions and obligations of the involved parties. Based on the aforementioned legal principles, it can be comprehended that an agreement denotes a mutual commitment between involved parties to mutually obligate themselves to the terms and conditions outlined within the agreement. Any deviation from these terms would consequently constitute a breach of promise, commonly referred to as default.<sup>11</sup>

The transport agreement is a mutually reciprocal agreement between the sender and the carrier. The carrier fulfils the agreement by executing the transportation of goods to and from the designated destination. In the interim, it is incumbent upon the shipper to remunerate the shipping expenses in accordance with the mutually agreed-upon price. Transport agreements can be established through written documentation as well as through oral communication, if the involved parties express a preference for this mode of agreement. In the event that a written agreement is established, the respective obligations of the involved parties can be ascertained by examining the contents of the transport document or the proof of transport, which typically takes the form of a bill of lading. This document encompasses essential details such as the identification of the goods, including their name, weight, size, and brand, as well as information regarding the consignee, carrier, transport tariff, delivery date, and the signature of the sender or expeditor. Nevertheless, in the event that the agreement is reached verbally, the responsibilities of the involved parties can be adequately discerned through the implementation of the transportation process.<sup>12</sup>

Following the finalisation of the transportation agreement, a legally binding association is established between the carrier and the shipper. The concept of legal relations refers to the establishment of reciprocal rights and obligations between parties as a result of a legal event, specifically an agreement (consensus) regarding the transportation of goods from the shipper. The parties involved in the transport agreement hold an equal and coordinated position, wherein if one party fails to fulfil their obligations, the aggrieved party retains the legal right to initiate a lawsuit seeking the fulfilment of the default. Typically, the entities involved in the execution of goods or cargo transportation encompass the shipper, expeditor, and carrier, thereby resulting in two distinct agreements: the expedition agreement and the transportation agreement. The expedition agreement is a legally enforceable contract entered into by the shipper and the expeditor. The expeditor is required to document in the daily register the type and quantity of goods being transported, and may also be required to include the value of the goods upon request.<sup>13</sup> The expeditor bears the responsibility of ensuring the cleanliness, safety, and timely delivery of the goods entrusted to them. This entails meticulous attention to all modes of transportation employed to facilitate successful delivery. The transport agreement is a legally enforceable contract between the expeditor and the carrier. The expeditor assumes the role of a representative for the shipper, responsible for the

<sup>11</sup> Gregorius Lanang, Maycarl Bernandinus, and Elisabeth Sundari, 'Valuation of Non-Financial Loss Due to Death: A Study from Aircraft Passenger on Airplane Crash in Indonesia', 5.6 (2023), 863–70 <<https://doi.org/10.35629/5252-0506863870>>.

<sup>12</sup> Nugraha.

<sup>13</sup> Ruth Banomyong, Vinh V. Thai, and Kum Fai Yuen, 'Assessing the National Logistics System of Vietnam', *Asian Journal of Shipping and Logistics*, 31.1 (2015), 21–58 <<https://doi.org/10.1016/j.ajsl.2015.03.002>>.

selection and assurance of a secure and suitable transportation method for the goods being transported. In practical application, certain expeditors assume the role of carriers due to their possession of proprietary transportation methods.

In every instance of air transportation, it is imperative to have an accompanying airway bill. This document, whether in printed, electronic, or alternative format, serves as evidence of an agreement for air transportation between the sender of goods or cargo and the carrier. The airway bill, serving as a document for air transport, includes essential information such as the date and location of its creation, the departure and arrival airports for the cargo, and the identification of the involved parties (shipper, carrier, and recipient). Additionally, it provides specific details about the goods, including the number, type of packaging, any distinctive markings, as well as the cargo's unique number, type, quantity, weight, and size. Furthermore, the airway bill contains a statement acknowledging compliance with legal regulations regarding carriage, which is signed by the shipper (or their representative) and the carrier. The airway bill serves as a legitimate form of evidence, substantiating the cargo recipient's entitlement to retrieve the cargo.<sup>14</sup>

The categorization of air transport carriers can be divided into two main types: commercial airlines and pioneer airlines, based on the type of airline involved. Moreover, pioneer air transport operations can be categorised into two distinct types: passenger pioneer air transport and cargo pioneer air transport. Pioneer Cargo Air Transport is a company that offers domestic cargo air transport services, catering to regions in Indonesia that are underdeveloped, remote, outermost, and located near the borders. The characteristics of cargo air transport can be identified as follows: Firstly, it serves as a component of public service obligations. Secondly, its operations are governed by contractual agreements between the central government and airlines. Thirdly, priority flight routes are restricted to underdeveloped, remote, outermost, and border areas within Indonesia. Fourthly, the transportation of cargo is limited to specific types of goods determined by the central government and local authorities.<sup>15</sup>

The operational process of cargo pioneer flights commences with the departure of the cargo and concludes upon its arrival at the designated destination. During the pre-departure phase, the shipper undertakes the necessary preparations for the cargo, which includes the completion of transport documents such as the airway bill. These documents are prepared in accordance with the previously agreed upon specifications regarding the type and quantity of goods. The cargo and transport documents must be submitted to the sending airport officer at least one day prior to the scheduled departure.<sup>16</sup> The pre-departure stage is overseen by the Ministry of Trade and the Local Government in order to ensure compliance with relevant regulations regarding the types of goods being transported. Subsequently, the airport officer

<sup>14</sup> Sebastian Wandelt, Xiaoqian Sun, and Anming Zhang, 'Is the Aircraft Leasing Industry on the Way to a Perfect Storm? Finding Answers through a Literature Review and a Discussion of Challenges', *Journal of Air Transport Management*, 111.May (2023), 102426 <<https://doi.org/10.1016/j.jairtraman.2023.102426>>.

<sup>15</sup> Lucy Budd and Stephen Ison, 'Supporting the Needs of Special Assistance (Including PRM) Passengers: An International Survey of Disabled Air Passenger Rights Legislation', *Journal of Air Transport Management*, 87.November 2019 (2020), 101851 <<https://doi.org/10.1016/j.jairtraman.2020.101851>>.

<sup>16</sup> William G. Morrison and Jaap de Wit, 'US Open Skies Agreements and Unlevel Playing Fields', *Journal of Air Transport Management*, 74.November 2018 (2019), 30–38 <<https://doi.org/10.1016/j.jairtraman.2018.09.004>>.



proceeds to perform document inspection, assess the physical condition of the goods, determine their weight (which is subsequently recorded in the weighing proof document), affix labels to the inspected and weighed cargo, and, if necessary, store the cargo in the airport warehouse for subsequent transfer to the airline officer on duty in accordance with the flight schedule. This transfer is accompanied by a re-examination of the documents, physical goods, and weighed items, which are recorded in the manifest cargo document. Once the cargo data and accompanying documents have been verified and deemed suitable, the transportation of the cargo is initiated towards the designated airport of arrival.<sup>17</sup>

Upon arrival at the destination airport, the cargo is subsequently transferred to the destination airport officer, along with its accompanying documentation. The responsibility for conducting document inspection and overseeing the transfer of cargo is assigned to the individual holding the position of Head of the Airport Operator Unit. In certain cases, this duty may be delegated to a specifically authorised officer appointed by the aforementioned individual. Additionally, the cargo is transferred to the officer of the Regional Industry and Trade Office (Disperindag) or, if deemed necessary, temporarily stored in the airport warehouse. The cargo recipient refers to an entity that assumes the role of a distributor, responsible for marketing essential commodities to the local community residing in the 3T region. The aforementioned description of the pioneering aviation cargo transport mechanism illustrates the role of the pioneer airline as a carrier.<sup>18</sup> The shipper refers to the entity responsible for sending the cargo, which falls under the purview of the Ministry of Trade and the Regional Government during the shipping process. In the context of cargo transportation, the recipient refers to the individual or entity responsible for receiving the cargo and subsequently acting as a distributor within the designated destination area. Typically, the expeditor does not play a role in the pioneer flight mechanism as the arrangement between the shipper and the carrier is managed either through accommodation or falls directly under the purview of the local government. Conversely, the frequency of pioneer flights between different regions is significantly restricted, thereby diminishing the exigency for the expeditor's involvement.

The implementation of pioneer air transport necessitates the involvement of governmental bodies and ministries, who assume the responsibility of overseeing and managing cargo delivery operations. The integration of pioneer transportation within the government's national programme, as discussed in the preceding sub-chapter, necessitates the close oversight of authorities throughout the pre to post transportation process. This supervision is crucial in order to guarantee the successful attainment of the government's programmatic objectives. In contrast to the utilisation of commercial cargo air transportation, which encompasses the transportation of a wide range of goods beyond basic necessities and other essential commodities.

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<sup>17</sup> Weiqiang Lin, 'Transport Geography and Geopolitics: Visions, Rules and Militarism in China's Belt and Road Initiative and Beyond', *Journal of Transport Geography*, 81.May (2019), 102436 <<https://doi.org/10.1016/j.jtrangeo.2019.05.001>>.

<sup>18</sup> Uthej Vattipalli, 'Aviation Laws and Air Carrier Liabilities in India', *Transportation Research Procedia*, 48.2018 (2020), 60-73 <<https://doi.org/10.1016/j.trpro.2020.08.006>>.

### **Various forms of airline responsibility for the loss of cargo resulting from accidents in the pioneer era**

In addition to the aforementioned responsibilities associated with the transportation of cargo via air transport, there exist a range of provisions that must be duly fulfilled by aviation enterprises and affiliated entities throughout the entire process of air transport, spanning from pre-flight preparations to post-flight operations. It is noteworthy that accidents or incidents involving both conventional commercial aircraft and pioneering aircraft cannot be solely attributed to external factors, as there exist preventive measures that can effectively mitigate the occurrence of such accidents. At present, the legal framework governing the liability of both conventional commercial aircraft and innovative pioneer aircraft is identical. Nevertheless, in practical terms, pioneer flights encounter significant challenges stemming from various factors, including the geographical positioning of the airport, the state of airport infrastructure, the age of pioneer aircraft, insufficient aircraft maintenance equipment, and limitations in human resources.<sup>19</sup>

One of the primary obligations of business entities, particularly airline companies, is to ensure compliance with aviation security and safety protocols. Flight safety refers to the achievement of seamless flights that adhere to established operating procedures and airworthiness standards, while also considering the practicality of aviation facilities and infrastructure. In order to ensure the provision of safe and secure air transport services, regulatory measures mandate that airlines must conduct regular maintenance on their aircraft, encompassing engines, propellers, and various components.<sup>20</sup> This maintenance is crucial for upholding the ongoing airworthiness of the aircraft. The execution of such maintenance procedures can be undertaken by the air transport company in question, which encompasses both aircraft maintenance legal entities and holders of aircraft maintenance certificates. According to Article 17, paragraph (5) of Government Regulation No. 3 of 2001 on Aviation Security and Safety, air transport companies are required to fulfil certain criteria in order to conduct aircraft maintenance. These criteria include the possession and proficiency in aircraft maintenance facilities, the employment of competent personnel specialised in aircraft maintenance, and the implementation of an aircraft inspection and quality control procedure system as outlined in a guidebook. Ensuring the proper maintenance of aircraft is a fundamental responsibility for all airlines, including those operating pioneering flights, in order to adhere to the established standards of aircraft airworthiness. The attainment of these airworthiness standards is necessary in order to acquire an airworthiness certificate, which serves as the primary prerequisite for the provision of air transportation services.

In the event of non-compliance with the aforementioned aircraft operational reliability requirements, a series of up to three consecutive warnings will be issued, with each warning being granted a grace period of one month. In the event that the cautionary notice is disregarded, the certification will be subject to suspension for a duration not exceeding three months. In the event that the designated freezing period has elapsed without any discernible progress, the certificate shall be rescinded. The oversight and implementation of penalties for failure to meet aircraft operational reliability standards are crucial due to their association

<sup>19</sup> A. A. Marcus and R. S. Goodman, 'Victims and Shareholders: The Dilemmas of Presenting Corporate Policy During a Crisis.', *Academy of Management Journal*, 34.2 (1991), 281–305 <<https://doi.org/10.2307/256443>>.

<sup>20</sup> Lanang, Bernandinus, and Sundari.

with the varying levels of risk involved in the execution of inaugural flights. The entity accountable for the execution of said oversight is the Air Transport Inspector. The jurisdiction of the Air Transport Inspector encompasses the tasks of documenting, consolidating, and disseminating data pertaining to the regulation and oversight of air transportation. This pertains specifically to the assessment of aircraft adherence to established schedules and the determination of the airworthiness status of individual aircraft.

In accordance with the aforementioned obligations pertaining to airlines, which are equally applicable to air transportation conducted by pioneer aircraft, it is noteworthy that cargo pioneer airlines bear a significant burden of responsibility. This responsibility extends beyond mere liability for any potential damage, loss, or destruction of cargo. In addition, pioneer airlines are also accountable for ensuring the utmost adherence to flight safety measures. In the event that the airline in question fails to meet aviation safety standards during the contract implementation period, regardless of whether or not an accident occurs, it will be subjected to sanctions as outlined in Article 99 of Government Regulation No. 3/2001. The involvement of various entities, including the central government, airport authorities, airport operators, and relevant experts, is crucial in ensuring the fulfilment of safety and infrastructure responsibilities associated with pioneering flights. Pioneer airlines, in fulfilling their duties as cargo carriers, bear the onus of responsibility in the form of an obligation to provide compensation for any losses incurred by the consignor of goods and any third parties, should there be any damage or destruction of said goods while under their possession. The aforementioned responsibility arises from the underlying principle that once the airline personnel (carrier) takes possession of the goods, they assume full custody, supervision, and maintenance of the goods, regardless of their location, be it the airport, the aircraft, or any other place.

The liability of the carrier can be categorised into three distinct principles of liability, which are determined by the presence or absence of damage or loss to the cargo or goods as a result of the carrier's fault. These principles encompass: 1. The Liability Based on Fault Principle entails that the carrier, as the entity responsible for transportation, is obligated to assume liability for compensating damages or losses incurred by goods under its custody, control, and maintenance, provided that such damages are proven to be a result of the carrier's negligence. 2. The Absolute Liability Principle dictates that the carrier, as the party responsible for transportation, bears absolute responsibility for any damages or losses suffered. Absolute liability refers to the legal concept where responsibility is imposed without the requirement of proving fault. Additionally, the principle of liability based on presumption, also known as the Presumption of Liability Principle, holds that the carrier, as the entity responsible for transportation, is consistently deemed accountable for any losses resulting from the destruction or damage of the goods being transported. However, this presumption can be rebutted if it can be demonstrated.

The Commercial Code (KUHD) stipulates in Article 91 the obligations of the carrier, which include assuming liability for any damage incurred by the goods under its custody, except in cases where the damage is caused by defects in the goods, the shipper or expeditor's negligence, or force majeure circumstances. According to Article 468, paragraph (2) of the KUHD, it is explicitly stated that the carrier bears the responsibility of providing compensation for any losses incurred due to damage or complete loss of transported goods. However, the carrier may be exempt from this obligation if it can be demonstrated that the

circumstances leading to such losses were beyond their control.

The regulation governing the obligations of carriers is presently stipulated in Minister of Transportation Regulation Number PM 77 Year 2011, commonly known as Permenhub Number PM 77 Year 2011. This regulation serves as the implementing legislation for the Aviation Law. According to Article 1, point 22 of the Aviation Law, and Article 1, point 3 of Minister of Transportation Regulation PM 77/2011, carrier responsibility is defined as the duty of air transport companies to provide compensation for any losses incurred by passengers, freight forwarders, and third parties. The obligations of the cargo carrier commence upon the shipper's receipt of an air cargo letter from the carrier and persist until the goods are transferred to the recipient, as specified in the airway bill. Article 145 of the Aviation Law also contains the identical provision.

According to Article 2 of Minister of Transport Regulation No. PM 77/2011, it is specified that the carrier bears the responsibility for various types of losses, including those resulting from passenger fatalities, injuries, or disabilities, as well as the loss or damage of cabin baggage, checked baggage, or cargo, and flight delays. The designated remuneration for cargo that has been misplaced or damaged is Rp. 100,000 per kilogramme. The compensation for damaged goods is Rp. 50,000.00 per kilogramme. The determination of the overall remuneration is contingent upon the valuation of the consignment as indicated on the airway bill. In the event that the monetary worth of cargo that has been damaged, lost, or destroyed surpasses the value specified in the air cargo bill, any surplus value is ineligible for compensation.

According to Article 2 of Minister of Transport Regulation No. PM 77/2011, it is established that the carrier bears the responsibility for various types of losses, including those resulting from passenger fatality, injury, or impairment; the loss or damage of cabin baggage, checked baggage, or cargo; as well as flight delays. The compensation rate for lost or destroyed cargo is Rp. 100,000 per kilogramme. The monetary reimbursement for goods that have incurred damage is Rp. 50,000.00 per kilogramme. The determination of the overall remuneration is contingent upon the valuation of the goods as indicated on the airway bill. In the event that the value of the cargo that has been damaged, lost, or destroyed surpasses the value indicated in the air cargo bill, any additional value beyond that specified amount will not be eligible for compensation.

Regarding the contractual association between Pioneer Airlines and the government concerning the provision of compensation to facilitate the execution of pioneer flights, it is observed that the government's compensation fails to adequately encompass the expenses associated with indemnifying airlines for potential liabilities.<sup>21</sup> The limitation on compensation allocation for pioneer flights pertains to the provision of supplementary routes beyond the predetermined pioneer flight routes, subsidies for freight and/or subsidies for fuel. The freight subsidies that are incorporated into pioneer flight contracts are financial incentives granted to airlines, which are contingent upon their generated revenues. The determination of the government subsidy amount is derived by subtracting the actual revenue from the target revenue. The purpose of subsidising the operational expenses of pioneering cargo air transport is to maintain affordable transport tariffs, thereby mitigating the discrepancy in the prices of goods when traded at their destination. Through the provision

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<sup>21</sup> Gnutzmann and Spiewanowski.

of subsidies for operating expenses, it is anticipated that the burden of additional logistics costs will be alleviated for the general public. Hence, despite the lack of commercial profitability associated with pioneer flights, the pioneer airline assumes the responsibility for liability as the entity responsible for organising the pioneer flight contract in the event of any losses incurred during the transportation operations.<sup>22</sup>

When examined through the lens of the provisions outlined in the Korean Uniform Commercial Code (KUHD), Aviation Law, and corresponding regulatory frameworks, it becomes evident that air transportation places greater emphasis on the principle of liability rooted in the presumption of liability. The airline's liability provisions indicate that when the cargo or goods are under the possession of the airline operating the first cargo aircraft, any damage, loss, or destruction of the goods is legally considered the civil responsibility or liability of the airline. However, this liability can be exempted if it can be demonstrated that the carrier is not at fault for such circumstances.

The Aviation Law does not exclusively rely on the principle of presumptive liability as the foundation for its regulations. This phenomenon arises due to the fact that every potential loss is situated within a distinct context. In the context of cabin baggage damage liability, the governing principle is that of fault-based liability. In the specific context of cargo destruction resulting from flight accidents attributed to weather conditions, it is important to note that such conditions are not directly attributable to the carrier's negligence or within their sphere of influence. Nevertheless, the carrier assumes responsibility for the destruction of cargo when it is under their control. Consequently, the carrier bears responsibility for the damage incurred to the goods, alongside any potential insurance claims initiated by the affected party. These circumstances suggest that the carrier bears full responsibility for the damage incurred to the goods being transported.<sup>23</sup> An analogous scenario arises in the event of a passenger aircraft accident, wherein the airline bears full responsibility for the liabilities incurred as a result of the casualties.<sup>24</sup>

The air cargo letter is a contractual document established between the shipper and the carrier, serving as a legal instrument that not only serves as evidence of the parties' obligations during the agreement's validity, but also carries legal weight. The air cargo letter serves as a form of documentation that can substantiate claims for compensation that may arise during the transportation process, particularly when the goods have been transferred to the carrier.<sup>25</sup> The legal foundation for establishing evidence in compensation claims pertains to civil law, specifically guided by the *Burgelijk Wetboek* (BW), also known as the Civil Code. The term "formally" pertains to the concept of the HIR / RBg. An air cargo letter is classified as a covert action with evidentiary value that is currently lower than that of a genuine deed. Nevertheless, the air cargo letter retains its significant evidentiary value as a

<sup>22</sup> Javaneh Ramezani and Luis M. Camarinha-Matos, 'Approaches for Resilience and Antifragility in Collaborative Business Ecosystems', *Technological Forecasting and Social Change*, 151.November 2019 (2020), 119846 <<https://doi.org/10.1016/j.techfore.2019.119846>>.

<sup>23</sup> Tanja Masson-Zwaan and Steven Freeland, 'Between Heaven and Earth: The Legal Challenges of Human Space Travel', *Acta Astronautica*, 66.11-12 (2010), 1597-1607 <<https://doi.org/10.1016/j.actaastro.2009.12.015>>.

<sup>24</sup> Lutfiie Ametova, 'International Interest in Space Assets under the Cape Town Convention', *Acta Astronautica*, 92.2 (2013), 213-25 <<https://doi.org/10.1016/j.actaastro.2012.09.007>>.

<sup>25</sup> Mark Casson, 'The Future of the UK Railway System: Michael Brooke's Vision', *International Business Review*, 13.2 (2004), 181-214 <<https://doi.org/10.1016/j.ibusrev.2003.10.002>>.

written document. Therefore, in the event of a claim for compensation arising from the loss of cargo resulting from an accident, it can be argued that the carrier has breached its contractual obligation to deliver the cargo, as stipulated in the air cargo letter. Under such circumstances, the shipper has the right to receive compensation in accordance with the air cargo letter, which serves as proof of the contractual agreement.<sup>26</sup>

The air cargo letter is a contractual document that establishes obligations between the shipper and the carrier. Its legal significance extends beyond being a mere letter of evidence, as it serves to define the rights and responsibilities of the parties involved throughout the duration of the agreement.<sup>27</sup> The air cargo letter serves as documentation to support claims for compensation that may arise during the transportation process, specifically when the goods have been transferred to the carrier. The legal foundation for substantiating compensation claims pertains to civil law, specifically guided by the *Burgelijk Wetboek (BW)*, also known as the Civil Code.<sup>28</sup> The term "formally" pertains to the HIR / RBg. An air cargo letter is classified as a covert action, the evidentiary value of which remains inferior to that of a genuine document. Nevertheless, the air cargo letter retains significant evidentiary strength as a written document.<sup>29</sup> Therefore, in the event of a claim for compensation arising from the loss of cargo resulting from an accident, it can be argued that the carrier has breached its contractual obligation to deliver the cargo, as stipulated in the air cargo letter. Under such circumstances, the shipper has the right to receive compensation in accordance with the air cargo letter, which serves as proof of the agreement.<sup>30</sup>

#### 4. Conclusion

A carrier-shipper contract of carriage commits both parties to the transportation procedure. Pioneer cargo flights target price gaps in distant, impoverished, and outlying Indonesia. These government-organized flights convey specified cargo and are compensated accordingly. In pioneer cargo transport, the government supervises and regulates cargo transportation. The pioneer airlines and government have a mutual agreement besides the transportation agreement. Pioneer flights implement the government's national initiative to reduce price discrepancies. An auction and contract for pioneering flight services on specified routes allow the airline and government to partner. Pioneer flight activities, which are unprofitable in the commercial sector, are subsidised from APBN/APBD monies to meet the government's national programme. Pioneer airlines must follow aviation safety and security regulations from pre-flight

<sup>26</sup> Novi Ratna Sari, 'Komparasi Syarat Sahnya Perjanjian Menurut Kitab Undang-Undang Hukum Perdata Dan Hukum Islam', *Repertorium*, 4.2 (2017), 83.

<sup>27</sup> Zil Aidi, 'Implementasi E-Court Dalam Mewujudkan Penyelesaian Perkara Perdata Yang Efektif Dan Efisien', *Masalah-Masalah Hukum*, 49.1 (2020), 80 <<https://doi.org/10.14710/mmh.49.1.2020.80-89>>.

<sup>28</sup> Herri Swantoro, Efa Laela Fakhriah, and Isis Ikhwanasyah, 'Permohonan Upaya Hukum Peninjauan Kembali Kedua Kali Berbasis Keadilan Dan Kepastian Hukum Menuju Pembaharuan Hukum Acara Perdata', *Mimbar Hukum*, 29.2 (2017), 189 <<https://doi.org/10.22146/jmh.22103>>.

<sup>29</sup> Bambang Sugeng Rukumono and others, 'Arrangement Registration Of Geographical Indications Of Traditional Alcoholic Beverages In Indonesia Based Multiculturalism', *Revista de Gestão Social e Ambiental*, 17.6 (2023), 1-14 <<https://doi.org/10.24857/rgsa.v17n6-001>>.

<sup>30</sup> Imam Surya Saputra and Ilyas Ismail, 'Akibat Hukum Adanya Penyalahgunaan Keadaan Pada Perjanjian Jual Beli Tanah Di Banda Aceh', *Jurnal IUS Kajian Hukum Dan Keadilan*, 8.2 Agustus (2020), 283-301 <<https://doi.org/10.29303/ius.v8i2.758>>.

through post-flight. If an accident damages cargo, the airline must compensate the shipper. The amount of compensation depends on the loss and may be decided by laws, rules, or the transport agreement. The injured party can obtain insurance funds in addition to reimbursement. Thus, transport law regulates pioneer airlines' liability similarly to commercial airlines. However, pioneer airlines face several problems, requiring the central government to improve and prioritise pioneer flying facilities and infrastructure. To overcome natural and technical challenges, the government should also monitor aircraft operations.

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