



ASSEMBLY — 40TH SESSION

LEGAL COMMISSION

Agenda Item 40: Other issues to be considered by the Legal Commission

**HARMONIZATION OF AIR CARRIER LIABILITY ON DOMESTIC
AND INTERNATIONAL FLIGHTS IN INDONESIA**

(Presented by Indonesia)

EXECUTIVE SUMMARY

This paper provides the latest information about the regime of Indonesian air carrier liability on domestic flights and future plans for evaluating the regulation of the Indonesian domestic air carrier liability, the purpose of this evaluation is to ensure equality of air passenger protection on both domestic and international flights in Indonesia.

<i>Strategic Objectives:</i>	This working paper relates to all Strategic Objectives.
<i>Financial implications:</i>	Not applicable.
<i>References:</i>	Not applicable.

1. INTRODUCTION

1.1 Air passenger protection is a major concern in the aviation industry. Recent aviation accidents, including the Lion Air flight JT610 in October 2018 and Ethiopian Airlines flight ET302 in March 2019, where all passengers and crew died in the accident, show that the legal certainty for the air passengers is necessary.

1.2 The Republic of Indonesia applies two regimes for the air passenger protection. The domestic flights refer to the Regulation of the Minister of Transportation number: 77 of 2011 on Air Carrier Liability, while the international flights, Indonesia has ratified the 1999 Montreal Convention through Presidential Regulation number: 95 of 2016.

1.3 In the context of simplification and equality of air passenger protection on both domestic and international flights, the Republic of Indonesia commits to improve the air passenger protection system to a higher level.

2. REGULATION OF AIR CARRIER LIABILITY REGIME

2.1 In accordance with the mandate of Act number 1 of 2009 on Civil Aviation, air transport carriers are responsible for losses suffered to passengers, baggage, and cargo caused by air transport activities. There are two regulatory regimes related to air carrier liability in Indonesia, namely for domestic flights and international flights.

2.1.1 Regulation of air carrier liability for domestic flights refers to the Regulation of the Minister of Transportation number 77 of 2011. The Regulation Number 92 of 2011 with the amount of compensation in Rupiah currency at the time this regulation was made, is equivalent to the amount of the original compensation limit at the 1999 Montreal Convention in SDR currency value established by the International Monetary Fund (IMF).

2.1.2 There are two phases of regulation of air carrier liability for international flights in Indonesia. The first phase prior to 2016 refers to the provisions of Warsaw Convention of 1929 with minimal compensation compared to the amount of domestic flight compensation above at point 2.1.1. The next phase is the post-ratification of the Montreal Convention in 1999 by Indonesia through Presidential Regulation Number 95 of 2016, the Republic of Indonesia has submitted to the provisions of the Montreal Convention in 1999 to ensure that Indonesia applies the highest level of air passenger protection globally

2.1.3 The enactment of two different regimes for the regulation of air carrier liability on international and domestic flights in Indonesia provides an opportunity for Indonesia to customly apply special rules for Indonesian domestic flights by adjusting the characteristics/conditions in Indonesia with the compensation amount in Rupiah currency. The challenge is to ensure an equal level of air passenger protection between domestic and international flights with regard to the development of the global economy and the development of the aviation industry.

3. REGULATION OF AIR CARRIER LIABILITY REVIEW

3.1 The Republic of Indonesia is committed to ensuring an equal level of air passenger protection between domestic and international flights. In accordance with the mandate of the eighth part (responsibility of the carrier) of Act number 1/2009 especially Article 172 where the compensation amount for the air carrier liability is evaluated at least once a year by the Minister of Transportation, considering the following factors:

- A decent standard of living for the citizens of Indonesia;
- The sustainability of Aviation Companies;
- Cumulative inflation rate;
- Per capita income;
- Estimated life expectancy; and
- Currency exchange rate.

3.2 Global factors that have contributed to the air carrier liability review on domestic flights in Indonesia refer to Secretary General of ICAO letter ref: LE 3 / 38.1-19 / 50 dated June 28 2019 which

states that according to article 24 of the Montreal Convention in 1999, the limit of liability is reviewed by the Depositary (ICAO) at five-year intervals. It was stated that based on the results of the 2019 review, it has been determined that the inflation factor for the relevant review cycle had been determined to exceed 10 per cent (13.9 per cent). As a consequence, the limit of liability would need to be adjusted.

3.3 Regional factors that have contributed to the air carrier liability review on domestic flights in Indonesia refer to the ASEAN Economic Community Blueprint 2025 Part II.B.2. related to Customer Protection with strategies including:

- Establish a common ASEAN consumer protection framework through higher levels of consumer protection legislation, improve enforcement and monitoring of consumer protection legislation, and make available redress mechanisms, including alternative dispute resolution mechanisms;
- Promote consumer protection measures in products and services sectors such as finance, e-Commerce, **air transport**, energy, and telecommunications.

3.4 In addition to evaluating the compensation amount, the Directorate General of Civil Aviation will go into the possibility of adopting Article 28 of the Montreal Convention 1999 in the national law *“In the case of aircraft accidents resulting in death or injury of passengers, the carrier shall, if required by its national law, make advance payments without delay to natural person or persons who are entitled to claim compensation in order to meet the immediate economic needs of such persons. Such advance payments shall not constitute a recognition of liability and may be offset against any amounts subsequently paid damages by the carrier”*.

3.5 The regulation of air carrier liability review is planned to take place in Q4 2018 to Q2 2020 involving all relevant stakeholders. The implementation of the resulting regulations is expected to be put into effect no later than the end of 2010.

4. CONCLUSIONS

4.1 Indonesia is committed to ensuring the equal level of air passenger protection between domestic and international flights.

4.2 The evaluation and renewal of regulations related to air transportation responsibilities is expected to be implemented by the end of 2020.

4.3 The conference is invited to note the information contained in this paper.