

Liability of Commercial Air Transport Service Providers in the Carriage of Corpse

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Abstract

In general, objects in air transportation are passengers, baggage, cargo, and/or post. However, in its development, the existing air transportation also carries out the transportation of corpses. If it is related to the responsibility of the air carrier, then the position of the corpse in air transport is important to be studied in order to determine the form and limits of the air carrier's responsibility. Therefore, this study aims to discuss the position of the corpse in the law of air transportation, as well as the responsibility of the carrier in transporting the corpse by air. The method used in this research is legal research with conceptual approach, statutory approach, comparative approach, and case approach. Based on the research that has been done, it can be found that the position of the corpse in international and national air transportation law has been positioned as cargo. Consequently, the responsibility of the air carrier in the transportation of corpses is also based on the responsibility of the carrier in the carriage of cargo. This is of course inappropriate when applied to the transportation of corpses, because with such arrangements, heavier body will receive greater compensation than lighter body.

Keywords: *air transportation; corpse; responsibility; legal protection.*

A. Preliminary

This article will discuss the responsibilities of commercial air transport service providers in air transportation. In general, objects in air transportation are passengers, baggage, cargo, or post. However, in its development, air transportation also carried out the transportation of bodies. Suppose it is related to the responsibility of the air carrier. In that case, the position of the corpse in air transportation becomes essential to study in order to determine the form and limits of the air carrier's responsibility. Therefore, this research will examine the body's position in air transportation and legal protection for the sender of the body in air transportation if it is related to the principles and conditions of air carrier responsibility.

As is known, high human mobility, followed by geographical conditions and globalization, has driven the need for the availability of modes of transportation. In other words, transportation is an essential part of human life.¹ Transportation is the activity of moving passengers or goods from one place to another destination using specific modes or means of transportation.² Thus, transportation facilitates mobilization, transportation, and transactions. In addition, transportation is also a means of development so the regular transportation process will support the creation of smooth activities and the delivery of information between communities.³

The definition of an aircraft, translated as an airplane in Indonesian, is mentioned in Chapter 1.1, Annex 6 of the 1944 Chicago Convention. According to the Annex, what is meant by an aircraft is "any machine that can derive support in the atmosphere from the reactions of the air other than the reactions of the air against the earth's surface." Based on this definition, an *airplane* is any machine that can fly in the atmosphere due to lifting from the reaction of the air, but not due to the reaction of the air on the earth's surface. The exception "but not due to the reaction of the air on the surface of the earth" is to exclude hovercraft from the definition

¹ Ananda Amalia Tasya dan Hilda Yunita Sabrie, "Implementasi Sifat Hukum Pengangkutan Dalam Pelaksanaan Ojek Online", *Perspektif* 24, No. 3 (2019): 156.

² Virginia Gladys Randang, "Pengembangan Pengaturan Pengangkutan Multimoda Dalam Hukum Pengangkutan Niaga Di Indonesia", *Lex Administratum* 3, No. 5 (2015): 5 - 6.

³ Sentosa Sembiring, *Hukum Pengangkutan Laut* (Bandung: Penerbit Nuansa Aulia, 2019), p. 7.

of an aircraft.⁴ As for what is meant by a hovercraft is an amphibious vehicle designed to drive and move with the support of rubber cushions and low-pressure air that is expelled downward against the surface cover underneath.⁵

In addition to being regulated in the 1944 Chicago Convention, the definition of an airplane is also regulated in Article 1 point 3 of the Aviation Law, which reads, "any machine or device that can fly in the atmosphere due to the lift force from the air reaction, but not because the air reaction to the earth's surface is used to flight." Based on this understanding, several means of transportation are included in aircraft, for example, airplanes and helicopters.

Meanwhile, according to Article 1 point 4 of the Aviation Law, what is meant by an airplane is an airplane that has the characteristics of being able to fly under its power, has fixed wings, and is heavier than air. On the other hand, according to Article 1 point 5 of the Aviation Law, a helicopter is an aircraft with characteristics including rotary wings with its rotor driven by an engine and a weight that is more than air.

Furthermore, the Aviation Law differentiates air transportation into two types: commercial air transportation and non-commercial air transportation. Based on Article 1, points 15 and 16 of the Aviation Law, the difference between the two lies in their intended use. Non-commercial air transportation is air transportation for private purposes. On the other hand, commercial air transportation is air transportation intended for the public by charging fees. Furthermore, Article 1 point 26 of the Aviation Law states that air transportation is carried out by carriers, namely "commercial air transportation business entities, holders of permits for non-commercial air transportation activities that carry out commercial air transportation activities based on the provisions of this Law, or business entities other than the commercial air transportation business entity that draws up a commercial air transportation agreement contract.

In International Law, several provisions concerning air transportation and the carrier's responsibility must be considered. Several conventions are generally used as references in air transportation, such as the 1929 Warsaw Convention and the 1999 Montreal Convention. In addition to the international conventions that have been mentioned, in the world of air transportation, two institutions are known, namely IATA and ICAO. The International Air Transport Association, or IATA, is a trade association consisting of 260 airlines worldwide.⁶ On the other hand, The International Civil Aviation Organization or ICAO is established under Part II of the 1944 International Civil Aviation Convention, also known as the 1944 Chicago Convention. Under the United Nations, it is tasked with developing techniques and principles of air navigation. In international territory and international air freight to create targeted growth.⁷ The two institutions are also an essential part of the discussion on air transportation law because the guidelines are also used as the basis for the implementation and responsibility of air transportation.

Furthermore, in the Indonesian context, the responsibility of air carriers is also regulated in the Aviation Law with the implementing rules of the law. Article 1 point 13 of the Aviation Law regulates air transportation: "every activity using an airplane to transport passengers, cargo or post for one trip or more from one airport to another airport or several airports." In addition, part eight, paragraph 2 of the General Explanation of the Aviation Law regulates the various responsibilities of carriers for passengers and baggage they carry, as well as for cargo senders. In other words, the Aviation Law at least limits the carrier's responsibilities to several objects of transportation, namely responsibility for the transportation of passengers, baggage carried by passengers, transportation of cargo, and post.

From the provisions in international law and national law, it can be concluded that the objects of transportation in general in air transportation are passengers, baggage, cargo, or post. However, in its development, existing

⁴ Khairandy, *Pokok-Pokok Hukum Dagang Indonesia* (Yogyakarta: FH UII Press, 2013), p. 432.

⁵ Aulia Rahman, Iwan Setiawan, dan Darjat, "Perancangan Sistem Stabilisasi Roll Dan Yaw Pada *Prototype Hovercraft* Menggunakan Sensor Imu 6 Dof Dengan Metode *Self Tuning Fuzzy Pid*", *Transient* 6, No. 4 (2017): 1 - 2.

⁶ The International Air Transport Association, "About us", <https://www.iata.org/en/about/>, accessed May 27, 2022.

⁷ The International Civil Aviation Organization, "About ICAO", <https://www.icao.int/about-icao/Pages/default.aspx>, accessed May 27, 2022.

air transport also carried bodies, which became an everyday thing. This is evidenced by the availability of several choices of air transport service providers that provide funeral services, such as Garuda Indonesia and Lion Air⁸, and Citilink⁹.

Not only that, several events that became the spotlight of the country's people also involved the transport of bodies. For example, when Ani Yudhoyono, the wife of the former president of the Republic of Indonesia, Susilo Bambang Yudhoyono, died at the National University Hospital Singapore in 2019. Ani Yudhoyono's body was brought to Indonesia on Sunday, 2 June 2019, at 7.00 Singapore time by plane and arrived at Jakarta's Halim Perdana Kusuma Airport at 8.00 WIB.¹⁰

Apart from that, the Indonesian public was also shocked by the news of the disappearance of Emmeril Kahn Mumtadz alias Eril, son of Ridwa Kamil, Governor of West Java Province. On May 26, 2022, Eril was declared missing and drifted away while swimming in the Aare River, City of Bern, Switzerland. A search was launched, and 14 days later, Eril's body was found in the Engehalde Dam. Through DNA testing, the body found at the dam was positively identified as Eril's.¹¹ After this discovery, Eril's body was finally flown to Jakarta from Zurich Airport, Switzerland. Eril's body departed on the same plane as his father, Ridwal Kamil. The plane carrying Eril's body arrived at Soekarno-Hatta Airport on Sunday afternoon, 12 June 2022.¹²

Based on this background, objects in air transportation are not only limited to passengers, baggage, cargo, or post but also bodies. If it is related to the air carrier's responsibility, then the corpse's position in air transportation becomes essential to study to determine the form and limits of the air carrier's responsibility. Therefore, this research will examine the existing provisions in international law, national law, jurisprudence, and expert opinion regarding the position of bodies in air transportation. Apart from that, departing from the position of the bodies in air transportation, this research will also discuss legal protection for the sender of bodies in air transportation concerning the principles and provisions of the responsibility of air carriers in the event of damage or matters that cause harm to the bodies being transported.

Regarding the research method used in this article, the method used is legal research. Legal research is research by researching secondary data. Legal research has several approaches, including statutory, conceptual, comparative, and case approaches. The statutory approach (statute approach) is an approach that examines legal rules related to legal research issues. On the other hand, a conceptual approach in legal writing examines the views and doctrines in the science of law. In addition, it is also known as a comparative approach which is carried out by comparing regulations or the application of law in the legal systems of other countries. Then, the case approach is an approach that examines the judge's decisions and reasons for imposing decisions in court. Based on this explanation, this paper is a legal research that uses statutory, conceptual, comparative, and case approaches.

B. Position of The Corpse in Air Transportation

The Big Indonesian Dictionary ('KBBI') does not define the word 'corpse'.¹³ However, in KBBI, it is stated that the words 'corpse' are synonymous or have the same meaning. Furthermore, KBBI understands that a corpse is the body or body of a person who has died, so "corpse" can be interpreted the same.¹⁴

⁸ Lion Air, "Ketentuan Memberangkatkan Jenazah", <https://lionairgroupsupport.freshdesk.com/support/solutions/articles/70000467989-ketentuan-memberangkatkan-jenazah>, accessed May 29, 2022.

⁹ Citilink, "Citilink Cargo", <https://www.citilink.co.id/citilink-cargo>, accessed May 29, 2022.

¹⁰ Reza Gunadha, "Potret Ani Yudhoyono Setelah Dinyatakan Meninggal Dunia", <https://www.suara.com/news/2019/06/01/144227/potret-ani-yudhoyono-setelah-dinyatakan-meninggal-dunia>, accessed June 2, 2022.

¹¹ Mutia Fauzia, "Penemuan Jenazah Eril Anak Ridwan Kamil di Bendungan Engehalde Swiss Setelah 14 Hari Pencarian", <https://nasional.kompas.com/read/2022/06/10/05233151/penemuan-jenazah-eril-anak-ridwan-kamil-di-bendungan-engehalde-swiss-setelah>, accessed June 21, 2022.

¹² Dewi Rina Cahyani, "Jenazah Eril Diterbangkan Satu Pesawat Dengan Ridwan Kamil", <https://dunia.tempo.co/read/1600775/jenazah-eril-diterbangkan-satu-pesawat-dengan-ridwan-kamil>, accessed June 21, 2022.

¹³ Kamus Besar Bahasa Indonesia Daring, "Je.Na.Zah", <https://kbbi.kemdikbud.go.id/entri/jenazah>, accessed May 29, 2022.

¹⁴ Kamus Besar Bahasa Indonesia Daring, "Ma.Yat", n.d.

The corpse, which is a 'dead body', requires fast transportation services because the body is easily decomposed even though it has been given a preservative.¹⁵ Thus air transportation becomes an alternative solution for transporting bodies, especially if the bodies are in faraway places. The Berlin Agreement of 1937 was an effort to unify the regulations regarding the international transport of bodies.¹⁶

The Berlin Agreement of 1937 did not explicitly mention the legal position of the 'corpse' in air transportation, but The Berlin Agreement 1937 contains provisions that can be applied in carrying out corpse transportation activities. In The Berlin Agreement of 1937, Article 1 to Article 4 contains general provisions that must be implemented for parties carrying out the activities of transporting bodies using any transportation. Furthermore, Article 7 of The Berlin Agreement of 1937 contains provisions for transporting bodies by air.

Article 1 of the Berlin Agreement of 1937 states that under any circumstances, the body must be sent with a particular document (special laissez-passer) which contains the last name, first name, and age of the body and also contains the place, date, and cause of death of the body. The competent authority must issue particular documents at the place of death. In addition, the particular document contains at least 2 (two) languages, namely the language in which the particular document is issued and the language most used in international relations. Furthermore, Article 2 of The Berlin Agreement of 1937 contains a provision that the particular document referred to in Article 1 is provided by the sender (where the body is sent from). The country of destination and country of transit does not need to provide the documents referred to in Article 1. If no particular documents are issued (in the delivery of the body) by a particular institution, then the body sent must have (1) a copy of the death certificate; (2) An official certificate stating that the transport of the bodies is carried out following the procedures stipulated in the regulations. Article 3 of the Berlin Agreement of 1937 contains provisions regarding the types of crates used to carry out the process of transporting bodies. The provision in question is that the body must be placed in a coffin made of metal, and a specific layer has covered the bottom as thick as 5 cm. The layer used is an absorbent substance such as peat soil, sawdust, charcoal, or the like, and an antiseptic agent is added. If an infectious disease causes the corpse's death, the body must be wrapped in a shroud dipped in an antiseptic liquid. Article 4 of The Berlin Agreement of 1937 states that the shipment of bodies that have died due to certain diseases (epidemic) such as cholera, small-pox, or typhoid may not be carried out until at least 1 (one) year after the death of the body.

The following provision, Article 7 of The Berlin Agreement of 1937, contains provisions regarding transporting bodies using air transportation. Article 7 states that the general provisions mentioned in Articles 1 to 4 must be fully met in transporting bodies using air transportation. Furthermore, Article 7a states that the coffin must be carried in a special airplane used only for transporting corpses or in a compartment used explicitly for transporting corpses by ordinary airplanes. They indicated that the body in transportation is a special cargo. This can be concluded because the provisions contained detail of the procedures, completeness of particular documents, and packing procedures which must be adjusted according to the cause of death of the body. International aviation organizations such as the International Air Transport Association (IATA) also have regulations regarding the transport of bodies. One of them is IATA HAM 810 April 1998 Annex A January 2002, which divides cargo into 3 (three) categories according to its type: general cargo, special cargo, and certain product cargo.¹⁷ Ordinary cargo is common goods that do not require special handling. *Special cargo* is goods that require special handling. Examples of special cargo are animals, corpses, valuables, dangerous goods, etc. In IATA provisions, special cargo categories are indicated by codes such as AVI, DG, HUM, PER, PES, PEM, HEA, and so on. Furthermore, IATA also has special regulations for transporting bodies contained in Chapter III of the IATA Airport Handling Manual. It regulates the procedure for transporting bodies by air, namely that the bodies must be carried in certain types of crates.¹⁸ This is to keep

<https://kbbi.kemdikbud.go.id/entri/MAYAT><https://kbbi.kemdikbud.go.id/entri/MAYAT>, accessed May 29, 2022.

¹⁵ Riri Murniati, "Nanokomposit Karet Alam/Silikon Sebagai Otot Sintetik Dengan Sifat Mekanik Seperti Otot Manusia", *Jurnal Ilmu Fisika Universitas Andalas* 10, No. 1 (2019): 39.

¹⁶ Ruwantissa Abeyratne, "Acceptance of Human Remains for Carriage by Air- Some Concerns in Security and Safety", *Journal of Transportation Security* 5, No. 4 (2012): 308.

¹⁷ Tiga Permata, "Karakteristik Pengiriman Via Cargo Udara", <https://www.3pe.co.id/2016/10/karakteristik-pengiriman-via-cargo-udara/>, accessed May 29, 2022.

¹⁸ The International Air Transportation Association, *Airport Handling Manual* 310, 149.

the body safe until it reaches its destination. Based on the Airport Handling Manual, it can be concluded that IATA defines Human Remains or corpses as special cargo.

IATA is not the only international aviation organization. The International Civil Aviation Organization is an international aviation organization under the United Nations (UN). As an international aviation organization, ICAO often studies international conventions and establishes transport and flight procedures regulations. One is a study carried out by the ICAO council in the 1957 Thirty Second Session, which discussed the 'Carriage of Sick Persons, Pregnant Women, Live Animals, and Coffins: sanitation on board aircraft.'¹⁹ The result of this discussion is that ICAO agrees with IATA's recommendation, namely that in addition to the general requirements for transporting bodies (that the body must be placed in a tightly closed casket and covered with an outer layer) the body must be preserved before being placed in the casket. In addition, ICAO also agreed that the transport of bodies must be accompanied by certain documents and obtain permission and approval from the country of origin, transit country, and destination country prior to carrying out the transportation process as recommended by IATA. ICAO also emphasizes that bodies are handled appropriately in the transportation process so that they can be received by the family properly and urges countries to make special regulations regarding the transportation of bodies and acceptance of corpse transportation in national regulations. In this discussion, it was also not found explicitly regarding the body's position in air transportation. However, it can be concluded that, like The Berlin Agreement, ICAO, in discussing the transportation of bodies, also stated that bodies must be handled specifically. 72 (seventy-two) countries attended this discussion. Several countries stated they were subject to and bound by The Berlin Agreement of 1937. Some others said they had regulations specifically governing the transport of bodies by air, but 13 (thirteen) countries said they had not ratified international agreements or regulations governing the transport of bodies.²⁰

Based on the several international provisions described above, it can be concluded that bodies are considered general and special cargo in international provisions. Not only are the provisions in international law in Indonesia, but there are also several regulations governing the transport of bodies by air.

In national law, Law Number 1 of 2009 concerning Aviation (in the future referred to as the 'Aviation Law') does not mention the body's position in the air transportation process. The body's position in air transportation can be found in Article 24 of Regulation of the Minister of Transportation of the Republic of Indonesia Number 53 of 2017 concerning the Security of Cargo and Post and the Supply Chain of Cargo and Post Transported by Aircraft. Paragraph (1) states that certain types of cargo and post are subject to special inspection, and paragraph (2) contains provisions regarding certain types of cargo and post referred to in paragraph (1). Article 24, paragraph (2) letter states that a body in a crate is a certain type of cargo and post. Although the Aviation Law does not mention the position of the body in transportation, following Article 24 of the Regulation of the Minister of Transportation of the Republic of Indonesia Number 53 of 2017 concerning the Security of Cargo and Post and the Supply Chain of Cargo and Post Transported by Aircraft it can be concluded that the Indonesian state through its regulations positioning the bodies as special cargo.

Based on the abovementioned provisions, national and international regulations state that bodies are classified as cargo. In Indonesia, bodies are classified as special cargo in international provisions, namely The Berlin Agreement, IATA, and ICAO. Meanwhile, The Chicago Convention classifies bodies as dangerous goods. All agreed that the bodies were cargo. By definition, cargo is the load of goods in transit or the process of transportation.²¹ Cargo in Aviation Law is goods that are transported by airplane. This is stated in Article 1, number 23. The goods are animals and plants other than postal, goods needed during the flight, luggage, or goods not owned. The definition of cargo in international conventions is contained in Chapter 1 of Annex 9 of the 1944 Chicago Convention, namely "any property carried on aircraft other than mail, stores, and accompanied or mishandled baggage" flights, and mastered or unmastered luggage. However, based on subsequent considerations, it would be inappropriate for the body to be classified as cargo or goods as

¹⁹ Abeyratne, "Acceptance of Human Remains", 312.

²⁰ Abeyratne, "Acceptance of Human Remains", 312.

²¹ Kamus Besar Bahasa Indonesia Daring, "Kar.Go", <https://kbbi.kemdikbud.go.id/entri/kargo>, accessed May 22, 2022.

stipulated in the provisions of international and national law. Corpses are not properly classified as goods due to the characteristics of goods in civil law. Article 499 BW defines *objects* as anything that can be an object of property rights, and what can be an object of property rights can be in the form of goods or rights. Objects referred to in BW are objects in the form of goods, while objects in the form of rights (intangible objects) are regulated in other regulations.²² The consequences of something being called are not just "names" but give birth to other consequences. Objects in civil law are something that gives enjoyment.²³ The enjoyment referred to in this case is that in the future, rights can arise for the existence of an object, for example, property rights, usage rights, and other rights. In addition, the nature of the object is that it can be used as collateral.²⁴ Based on the two properties of objects according to Civil Law, a conclusion can be drawn that objects have economic value.²⁵ The two properties of objects in civil law do not arise from bodies classified as objects in the practice of air cargo. The corpse does not provide enjoyment because it cannot be owned or given 'pleasure' like other objects in civil law. Nor can the body be used as collateral for a debt. In addition, the corpse is also not economically valuable.

In Anglo-American or contemporary American law, the body of a dead human is not a 'property' or good and cannot be attached to property rights. A human's dead body is classified as a 'quasi-property'.²⁶ The important reason behind this concept is that a dead human body cannot simply be categorized as good because values that must be respected are still attached to corpses. The concept of quasi-property in Anglo-American law originally existed because, in this world, there are things that cannot be categorized as 'goods' but also cannot be categorized as other things (for example, humans).²⁷ Something that is included as a quasi-property cannot become the property of someone.²⁸

The existence of a quasi-property status departs from American law, which classifies the types of goods. Initially, goods in American law were divided into 2 (two), namely goods that could be owned by individuals or private property and goods owned by the public or public property. The quasi-property status arose from a legal principle that states that lawmakers cannot simply classify something into the two classes of goods that already exist in Anglo-American law.²⁹ One such thing is that under Anglo-American law, the division of two classes of goods determines whether or not a good can be traded. Public property, such as goods in parks, schools, and bus stops, cannot be used as objects of trade because they are public facilities. On the other hand, private goods are goods that can be traded or can be commercialized. In this case, corpses cannot be categorized as goods because corpses cannot be traded, but bodies cannot be categorized as public goods. In short, corpses cannot be categorized as goods because corpses cannot be owned nor can they be traded.³⁰

In line with the position of the body as a quasi-property in Anglo-American law, Zhen Chen, a Civil Law expert from the University of Groningen, in his research, argues that the body should be qualified not as a person or object but as something between.³¹ A corpse cannot be called an item because, in the corpse, there is a 'value' that cannot be equated with the 'value' of goods or objects. Classifying a corpse as an object is considered inappropriate because it is contrary to morality and degrades the dignity of every human being.³² However, the corpse also cannot be classified as human. This is because the corpse cannot carry out legal

²² Yoyon M Darusman, "Kedudukan Serta Perlindungan Hukum Bagi Pemegang Hak Paten Dalam Kerangka Hukum Nasional Indonesia Dan Hukum Internasional", *Yustisia Jurnal Hukum* 5, No. 1 (2016): 204.

²³ Trisadini Prasastinah Usanti, "Lahirnya Hak Kebendaan", *Perspektif* 17, No. 1 (2012): 44.

²⁴ Regita A Mumek, "Hak-Hak Kebendaan Ditinjau Dari Aspek Hukum Perdata", *Lex Administratum* 5, No. 2 (2017): 6.

²⁵ Bekartini Caroline, "Pengkualifikasian Merk Sebagai Benda Untuk Dapat Dijadikan Objek Jaminan", *Jurnal Wawasan Yuridika* 34, No. 1 (2016): 102.

²⁶ Rose, "A Legal Status of No-Property", 377.

²⁷ Rose, "A Legal Status of No-Property", 379.

²⁸ Rose, "A Legal Status of No-Property", 379.

²⁹ Carol M. Rose, "The Comedy of the Commons : Custom, Commerce, and Inherently Public Property", *University of Chicago Law Review* 53, No. 3 (1986): 720.

³⁰ Rose, "The Comedy of the Commons", 736.

³¹ Zhen Chen, "Is a Mummy a Person or a Property: The Classification and Choice of Law of Cultural Objects in Private International Law", *The Chinese Journal of Comparative Law* (2022): 1.

³² Edward H Ayau and Honor Keeler, "Injustice, Human Rights, and Intellectual Savagery in Human Remains in Museums and Collections", *A Review in : H-Soz-Kult* , 14, 4 (2017): 91 ; Chen, "Is a Mummy a Person or a Property", 11.

actions as a human being a legal subject.³³ Therefore, the corpse should be categorized separately as a 'continuum between a person and property'.³⁴ In other words, Zhen Chen believes that a corpse should be classified as a quasi-person or special property with certain rights attached to it.³⁵

In the end, bodies should not be categorized as goods, let alone cargo. This is because the body as a human who has died is still attached to 'human dignity'.³⁶ *Human dignity* is an international principle in the Preamble and Article 1 of the 1948 Universal Declaration of Human Rights of the United Nations. The 1948 Universal Declaration of the United Nations preamble states, "All human beings are born free and equal in dignity and rights. Humans are endowed with reason and conscience and should act as brothers and sisters with other humans. Human dignity is inherent and cannot be erased, eliminated, or separated from a human being."³⁷

C. Legal Protection for Corpse Senders in Air Transportation

A transport agreement is an agreement that underlies a legal relationship between parties involved in transportation activities, including commercial air transportation, namely between passengers or freight forwarders and carriers.³⁸ In making a transportation agreement, there are at least four main principles underlying the agreement.³⁹ First the consensual principle, which means that an agreement alone is sufficient to create a transportation agreement. In other words, the transportation agreement is not required to be made in written form. However, in general, the transportation agreement is stated in written form or accompanied by written evidence of the agreement. In air transportation, Article 140 paragraph (3) of the Aviation Law states that tickets and cargo documents are evidence of a transportation agreement. Furthermore, Article 151 paragraph (1) of the Aviation Law stipulates that the carrier must hand the ticket to the passenger. Not only that, in the case of cargo shipments, Article 155 of the Aviation Law requires cargo senders to prepare bills of lading and hand them over to the carrier. In addition, the second principle is the principle of coordination. This principle means an equal position between the parties in the transportation agreement. *The third* is the mixed principle, which generally means that the transportation agreement contains more than one object of the agreement. For example, in an agreement for the transportation of goods, the contents of the agreement contain an agreement for the authorization to carry out the delivery of goods, an agreement for the storage of goods, and an agreement to carry out the transportation work. Fourth, the principle of no right of retention means that in the transportation of goods, there is no right for the carrier to hold the goods.⁴⁰

In particular, in transporting bodies by air, several requirements must be met by the sender of the bodies. For example, Lion Air Group, which is one of the commercial air transportation business entities operating in Indonesia, requires several documents that the sender must fulfil, including a death certificate from the hospital, a death certificate from the police (if needed), a certificate using formalin from the hospital, a letter of approval from the Port Health Office at the airport of departure, a copy of the ticket for the delivery/companion of the corpse, or if there is no companion, then the complete data of the sender and recipient of the body must be provided.⁴¹ Not only that but the sender of the bodies is also required to pay attention to and comply with the guidelines set by the Minister of Health to be able to transport the bodies, as stated in the Decree of the Minister of Health Number 424/Menkes/SK/IV/2007 concerning Guidelines for Port Health Efforts in the Context of Health Quarantine.

Based on the guidelines in the Appendix to the Decree of the Minister of Health, several administrative requirements need to be met by shippers of bodies to send bodies by air. First, the local civil service or the

³³ Chen, "Is a Mummy a Person or a Property", 16.

³⁴ Chen, "Is a Mummy a Person or a Property", 23.

³⁵ Chen, "Is a Mummy a Person or a Property", 16.

³⁶ Abeyratne, "Acceptance of Human Remains", 2.

³⁷ Paul Sourlas, "Human Dignity and the Constitution", *Jurisprudence* 7, No. 1 (2016): 30.

³⁸ Sondakh, "Tanggungjawab Para Pihak Dalam Perjanjian", 117.

³⁹ Moh Anwar, "Perjanjian Pengangkutan Barang Pada PT. Kerta Gaya Pusaka (KGP) Dan Akibat Hukumnya Jika Terjadi Wanprestasi", *Jendela Hukum* 1, No. 2 (2014): 25.

⁴⁰ Anwar, "Perjanjian Pengangkutan Barang", 25.

⁴¹ Lion Air Group, "Ketentuan Memberangkatkan Jenazah",

<https://lionairgroupsupport.freshdesk.com/support/solutions/articles/70000467989-ketentuan-memberangkatkan-jenazah>, accessed May 27, 2022.

police stated verbally and legally regarding the funeral. Second, there is a doctor's certificate containing a statement regarding the cause of death of the body, and the cause of death was not due to an infectious disease. Third, the certificate is submitted along with the body and will be signed by the Port Health Office (KKP) doctor. Apart from that, several technical requirements must be met by shippers of bodies to send bodies by air. First, the sender ensures that the body has been injected with a drug that holds the body so that it does not decompose. A statement from the doctor accompanies this. Second, the body is placed in a coffin made of metal and an absorbent base with a thickness of approximately 5 cm. Third, the coffin is placed in a wooden coffin with a minimum thickness of 3 cm, nailed at a distance of 20 cm, and reinforced with metal tires so that the inside casket does not move.

Furthermore, if the passenger or the sender of goods is burdened with obligations, so is the carrier. In general, the carrier must safely carry out the transportation of passengers or goods to their destination. ⁴² The term "safe" implies that if the transportation proceeds "unsafely", then it is the responsibility of the carrier. In the context of the transportation of goods, the condition of "unsafe" has two meanings. First, the item is there, but it is partially or completely damaged. Second, the goods do not exist, disappear, completely destroyed.⁴³ In connection with the carrier's responsibility, there are at least five principles of the carrier's responsibility theoretically. These principles include::

The principle of the carrier is responsible for errors (liability based on fault)⁴⁴

The carrier must be responsible for the loss suffered by the passenger or the sender of the goods in the transportation if the carrier's fault causes the loss. This principle is generally accepted in civil law provisions, for example, Article 1365 Burgerlijk Wetboek. According to Article 1365 Burgerlijk Wetboek, "an act is referred to as an unlawful act if it fulfills several elements, among others, the element of the act, the element of error, the element of loss, and there is a causal relationship between the error and the loss that arises.

- " The principle of presumption that the carrier is always responsible (presumption of liability).⁴⁵
The carrier is always responsible for the loss of the sender of goods or passengers in transportation unless the carrier can prove that the loss incurred was not caused by his fault. In other words, the carrier bears the burden of proof to prove his innocence.
- The principle of presumption that the carrier is not always responsible (presumption of non-liability)⁴⁶
Based on this principle, the carrier is considered not always responsible. In this case, it is the sender of the goods or the passenger who proves that there was an error on the part of the carrier or the person he employs. If the sender of goods or passengers cannot prove the carrier's fault, then the carrier is considered irresponsible and does not need to compensate for the loss of the sender or passenger.
- The principle of the carrier is absolutely responsible (strict liability)⁴⁷
The carrier is always considered to be responsible. The carrier is always responsible for losing the sender of goods or passengers arising from the transportation he organizes. The carrier is said to be responsible because there is no need to prove whether or not there is a carrier error to make the carrier responsible.
- The principle of limitation of liability)⁴⁸

⁴² Ahmad Sudiro, "Kewajiban Pengangkut Kepada Pihak Yang Menderita Kerugian Dalam Undang-Undang Penerbangan Nasional", *Jurnal Lex Publica* 1, Issue 1 (2014): 16.

⁴³ Rosalita Ardiani Putri dan Bambang Eko Turisno, "Perlindungan Hukum Yang Adil Atas Hilangnya Bagasi Penumpang Dalam Pengangkutan Udara", *Jurnal Law Reform* 11, No. 1 (2015): 54.

⁴⁴ Anak Agung Ngurah Gede Lunar Ksatriagana dan I Made Arya Utama, "Tanggung Jawab Perusahaan Terhadap Konsumen Atas Rusaknya Barang Yang Dikirim Melalui Jasa Pengiriman Barang Di Kota Denpasar", *Jurnal Kertha Negara* 8, No. 5 (2020): 55.

⁴⁵ Epafras Nyong Eli Massie, Hendrik Pandaag, dan Suriyono Soewikromo, "Tanggung Jawab Perusahaan Ekspedisi Muatan Kapal Laut Atas Kerusakan Dan Kehilangan Barang Dengan Menggunakan Transportasi Laut", *Lex Privatum* 9, No. 3 (2021): 249.

⁴⁶ Krisnandi Nasution, "Penerapan Prinsip Tanggung Jawab Pengangkut Terhadap Penumpang Bus Umum", *Mimbar Hukum* 26, No. 1 (2014): 61.

⁴⁷ Rhirien Adriani, "Tanggung Gugat Pengangkut Berdasarkan Peraturan Menteri Perhubungan Nomor 77 Tahun 2011 Tentang Tanggung Jawab Pengangkut Angkutan Udara", *Jurnal IUS* 3, No. 8 (2018): 103.

⁴⁸ Nedi Fernando, Busyra Azheri, Wetria Fauzi, "Perlindungan Hukum Terhadap Konsumen Atas Kerusakan Barang Pengguna Jasa Pengiriman Angkutan Online", *Soumatra Law Review* 4, No. 1 (2021): 147.

the carrier is only responsible for the loss of the passenger or sender up to certain limits. In other words, there are certain limitations in the implementation of responsibilities by the carrier, such as a maximum limit for the carrier to be responsible and provide compensation

In particular, when it comes to transporting bodies by commercial air transportation, as discussed in the previous section, the position of bodies in air transportation law is special cargo. Thus, the provisions that apply regarding the responsibility of a commercial air carrier in transporting corpses are the provisions on the responsibility of the carrier in terms of transporting cargo. These provisions can be found in both international law and national law. According to international law, provisions regarding the responsibility of shipping cargo were originally regulated in the Protocol to Amend the 1929 Convention Concerning the Unification of Certain Rules for International Air Transport, also known as The Hague Protocol 1955, and then amended and refined in the 1999 Montreal Convention. Therefore, in national law, the provisions regarding the responsibility for transporting cargo are regulated in the Aviation Law and its implementing regulations.

Concerning the carrier's responsibility in transporting cargo, the 1929 Warsaw Convention, as amended in The Hague Protocol 1955, applies the principle of limitation of liability. Article 22 paragraph (2) letter an of the 1929 Warsaw Convention as amended in The Hague Protocol 1955 stipulates that in the case of cargo transportation, the responsibility of the carrier is limited to the amount of two hundred and fifty francs per kilogram unless the passenger or sender has made a special statement regarding the additional amount if needed. Furthermore, letter b in the same paragraph and article stipulates that in the event of loss, damage, or delay in cargo delivery, the mass that must be considered in determining the carrier's responsibility is limited to the total mass of the cargo. However, if the loss, damage, or delay of a part of the cargo affects the value of another package, then the total mass of the other package must also be considered in determining the carrier's liability limit. Thus, based on the 1929 Warsaw Convention as amended in The Hague Protocol 1955, the responsibility of the carrier in providing compensation in the event of loss, damage, or delay in delivery of cargo, is calculated based on the total weight of the cargo with a limit of compensation value of two hundred and fifty francs per kilogram.

Not much different from the provisions of the 1929 Warsaw Convention as amended in The Hague Protocol 1955, the 1999 Montreal Convention, which revised and perfected the provisions of the 1929 Warsaw Convention, also regulates the carrier's responsibility in transporting cargo based on the principle of limitation of liability. However, unlike the provisions for compensation in the 1929 Warsaw Convention, which were calculated in francs, the Montreal Convention uses Special Drawing Rights (SDR) units. SDR is a global reserve asset managed by the International Monetary Fund (IMF) to meet potential liquidity needs and complement existing global reserve assets.⁴⁹ Based on Article 23 of the 1999 Montreal Convention, concerning operations and transactions, the value of the national currency of member countries of the IMF against the SDR must be calculated according to the valuation method applied by the IMF, which is in effect on the date of the court decision. Meanwhile, the value of the national currency of a party country that is not a member of the IMF against the SDR must be calculated according to the method determined by that country.

Concerning the substance of the provisions on the responsibility of the carrier, Article 22 paragraph (3) of the 1999 Montreal Convention stipulates that in the case of cargo transportation, the responsibility of the carrier is limited to the amount of 17 SDR unless the passenger or sender has made a special statement regarding the additional amount if necessary. Furthermore, paragraph (4) in the same article stipulates that in the event of destruction, loss, damage, or delay in the delivery of cargo, the mass that must be considered in determining the amount of responsibility of the carrier is limited to the total mass of the cargo. However, if the destruction, loss, damage, or delay of a part of the cargo affects the value of another package, then the total mass of the other package must also be considered in determining the carrier's liability limit. Thus, the 1999 Montreal Convention also stipulates that the carrier's responsibility in providing compensation when there is destruction,

⁴⁹ Marushia Li Gislén dan Maria Kangas, "Special Drawing Rights – the role as a global reserve asset, the Riksbank's experience and the way forward", <https://www.riksbank.se/globalassets/media/rapporter/ekonomiska-kommentarer/engelska/2020/special-drawing-rights--the-role-as-a-global-reserve-asset-the-riksbanks-experience-and-the-way-forward.pdf>, accessed May 27, 2022.

loss, damage, or delay in cargo delivery is calculated based on the total weight of the cargo with a limit of compensation value of 17 SDR per kilogram.

In addition, the provisions for transporting bodies considered special cargo are also regulated in the Aviation Law and implementing regulations under it. As previously explained, Article 24 paragraph (2) letter a Regulation of the Minister of Transportation Number PM 53 of 2017 Concerning Security of Cargo and Post and the Supply Chain of Cargo and Post Transported by Aircraft, as amended by Regulation of the Minister of Transportation Number PM 59 of 2019, categorizes bodies in crates as cargo that requires special inspection. Even though it is categorized as special cargo, national law has no regulations governing the carrier's responsibility in transporting bodies by airplane. Thus, the provisions on the responsibility of air carriers in terms of cargo transportation in general also apply to the transport of bodies.

Provisions for the responsibility of transporting cargo in Indonesia are regulated using the principle of liability based on fault and presumption of liability. In this case, Article 145 of the Aviation Law confirms "that the carrier is responsible for losses suffered by the cargo sender because the cargo sent is lost, destroyed, or damaged, provided that air transportation activities cause the loss while the cargo is under the control of the carrier." In addition, Article 146 of the Aviation Law also stipulates, "that the carrier is responsible for losses suffered due to delays in cargo delivery unless the carrier can prove that his fault did not cause the delay, but caused by weather and operational, technical factors."

Then, arrangements regarding compensation by the carrier are regulated in Article 7 of the Regulation of the Minister of Transportation Number PM 77 of 2011 concerning Responsibility for Air Transportation, using the principle of limitation of liability approach. According to the ministerial regulation's provisions, the carrier must provide compensation to the cargo sender in the amount of Rp. 100,000.00 (one hundred thousand rupiahs) per kilogram if the cargo sent is lost or destroyed. The cargo is declared lost after 14 calendar days since the cargo should have arrived at the destination. On the other hand, the carrier is required to provide compensation to the sender in the amount of Rp. 50,000.00 (fifty thousand rupiahs) per kilogram if part or all of the cargo sent is damaged. Thus, almost the same as the provisions in international law, the carrier's responsibility in providing compensation when there is loss, damage, or delay in the delivery of cargo, is calculated based on the total weight of the cargo with a certain compensation value limit per kilogram.

Furthermore, in practice, any transportation of goods or cargo, including the transportation of bodies, is not directly handed over by the sender to the carrier but also through an intermediary, for example, PT. Pos Indonesia is a business entity that provides intermediary services for sending and transporting bodies.⁵⁰ In this case, the position of PT. Pos Indonesia as an intermediary in transportation is referred to as an expeditor, namely an intermediary in a transportation agreement who acts in the interests of the sender of goods.⁵¹ In transporting cargo using expeditor services, there are two agreements made.⁵² First, the expedition agreement, namely the agreement made by the sender of goods with the forwarder. Second, the transport agreement, which is an agreement made by the forwarder for the benefit of the sender of the goods with the carrier.⁵³

In transporting goods, cargo and/or post, the expeditor's role is to carry out and ensure the management of the delivery of goods, cargo and/or post for the sender until he arrives safely at the destination, packing them according to the provisions⁵⁴, as well as finding a suitable carrier to carry out the transportation of goods, cargo or post⁵⁵. Therefore, to protect the sender of goods, cargo, or post from losses caused by the forwarder,

⁵⁰ Anisha Puspitasari, Muh. Jamal, dan Nur Hasanah, "Inovasi Layanan Pt.Pos Indonesia Dalam Peningkatan Kualitas Pelayanan Sebagai Upaya Menjaga Eksistensi Di Era Persaingan Global (Studi Kasus Kantor Pos Samarinda)", *eJournal Ilmu Pemerintahan* 7, No. 2 (2019): 155.

⁵¹ Rio Peranata Sebayang, "Pelaksanaan Perjanjian Ekspedisi Melalui Angkutan Udara (Studi pada PT Anugerah Semesta Persada)" (Tesis, Universitas Sumatera Utara, Medan, 2016), 3.

⁵² Sri Wahyuni Agus, Kamsilaniah, dan Andi Tira, "Legal Analysis Of Consumer Issuance In Transportation Of Goods Through Sea Transportation Mode", *Clavia: Journal of Law* 19, No. 2 (2021): 199.

⁵³ Tira, "Legal Analysis Of Consumer Issuance", 199.

⁵⁴ Michael Angelo, "Penyelesaian Sengketa Ekspediter Terhadap Keterlambatan Dan/Atau Hilangnya Barang Pada Konsumen (Studi Kasus PT. Pacific Express Cargo)", *Jurnal Analisis Hukum* 3, No. 1 (2020): 118.

⁵⁵ Hermawan Lumba, "Pertanggungjawaban Perusahaan Ekspediter Kepada Konsumen Berdasarkan Uu No. 8 Tahun 1999 Tentang Perlindungan Konsumen", *Mimbar Keadilan* 77 (2014): 75.

the Commercial Code (KUHD) regulates several responsibilities of the forwarder. First, Article 86 of the Criminal Code requires the forwarder to make consecutive notes in the daily register regarding the nature and quantity of the goods authorized to be sent. Second, Article 87 stipulates, "The forwarder is obliged to guarantee neat and expeditious delivery of the goods entrusted to him, taking into account all the means used to ensure good delivery." Third, Article 88 of the Criminal Code stipulates, "The freight forwarder bears damage or loss of goods authorized to him, caused by his mistakes or negligence." Fourth, Article 89 of the Criminal Code also stipulates that if a consignor uses an intermediary expeditor in the shipping process, the forwarder must bear the intermediary forwarder.

Based on the explanation above, the existing regulatory provisions have not been able to provide adequate legal protection for the sender of bodies via air transportation. With the current arrangement, the position of the corpse being transported is considered the same as the cargo, which by definition is goods. This, of course, raises a problem because the position of the corpse cannot be said to be an object. In addition, it cannot be denied that the dignity of a human being from the deceased who has died is still attached to the corpse or human remains. Human dignity makes bodies not equated with goods, as discussed in the previous sections.

Not only that, if the position of the corpse is judged to be the same as that of the cargo, and the provisions on the responsibility of the carrier in transporting the cargo are applied to the transportation of the corpse, then this will cause something absurd.⁵⁶ In this case, the provisions on the responsibility of the carrier in transporting cargo by air according to international law and Indonesian law are that the carrier is responsible for safely transporting the cargo to its destination, namely that the cargo cannot be lost or damaged, or delayed in transportation. If it turns out that there is loss, damage, or delay during transportation due to the carrier's mistake, then the carrier must be responsible by providing compensation. Compensation in cargo transportation is calculated based on the total weight of the cargo with a limit to the value of certain compensation per kilogram. If this provision is applied to the transportation of corpses, it can be concluded that humans with heavier mass weights will receive higher compensation than humans with thinner bodies with lower mass weights. This, of course, does not reflect a sense of justice because it is tantamount to stating that a corpse with a heavier weight has a higher value than a corpse with a lighter weight, even though it must be admitted that every human corpse is attached to the same basic value, namely dignity as a human being.

D. Conclusion

Based on the explanation described above, it can be found that the position of bodies in international and national air transport laws has been positioned as cargo. Explicitly, Article 24 of Regulation of the Minister of Transportation of the Republic of Indonesia Number 53 of 2017 concerning the Security of Cargo and Post and Supply Chain of Cargo and Post Transported by Aircraft has categorized bodies as special cargo. The arrangement of bodies in air transportation that are positioned as cargo also has implications for the legal protection of the sender of the bodies in the event of loss or damage to the bodies. Until now, there are no international and national regulations that specifically regulate the amount of compensation when a body is lost or damaged in the process of transportation. However, since the body is positioned as cargo, the provisions on the responsibility of the carrier and compensation for loss or damage to the cargo also apply to bodies in air transportation.

In connection with a quo situation, the authors suggest that it is necessary to make a sui generis arrangement relating to the body's position in transportation, especially air transportation. In this case, the position of the corpse, categorized as cargo, is inappropriate because this arrangement means placing the corpse in the position of goods. Therefore, the authors suggest that it is necessary to make a new arrangement that does not include bodies in the category of goods, cargo, or post but in a category that stands alone as one of the objects in air transportation. In addition, concerning the responsibility of air carriers in transporting corpses, the authors also suggest making a sui generis arrangement that regulates this responsibility. The author suggests that it is necessary to make a new arrangement regulating the value of compensation with a fixed value per body to respect human dignity inherent in everyone with the same value. This arrangement is not included in the arrangement of the carrier's responsibility for passengers nor the carrier's responsibility for the cargo being transported. However, arrangements related to conditions and limitations on the carrier's responsibility for the

⁵⁶Christopher Ogolla, Death Be Not Strange. "The Montreal Convention's Mislabeled of Human Remains as Cargo and Its Near Unbreakable Liability Limits". *Dickinson Law Review* 124, Issue 1 (2019): 57.

transportation of the bodies are regulated separately in separate sections, and the amount of compensation is separate

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