

LEGAL STATUS OF ACCIDENT INVESTIGATION RESULTS OF SPACE ACTIVITIES IN THE PROCESS OF ENFORCEMENT OF SPACE LAW ENFORCEMENT IN INDONESIA: BETWEEN PROCEDURAL JUSTICE AND SUBSTANCE JUSTICE

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Abstract

Investigation findings and information obtained as a consequence of investigations cannot be treated as state secrets or utilized as evidence in court. This principle, which is followed by international aviation law, has generated controversy in Indonesian law enforcement practices, particularly when it comes to criminal and civil procedural laws, which acknowledge that the findings of investigations can serve as a foundation for further inquiries to identify suspects. The study's findings revealed that, first, the ad hoc team's philosophical investigation of space accidents within the framework of international law aims to determine the causes of spacecraft accidents to ensure that they don't happen again in the future within the context of the main legal goal of benefit and justice for more people (the most people with the most happiness possible). While compensation claims are based on liability and without error (strict liability), police investigations as described in Articles 95 through 100 are intended to find criminal acts in space activities. There is no functional relationship between the two processes, so the findings of police or special team investigations cannot be used as the basis for carrying out legal actions. Given the obvious differences between the team's investigation and the police's investigation, there must be coordination between the technical team of the ministry and the police regarding the responsibilities and functions of these two institutions, each of which has a unique position and set of legal obligations. With this knowledge, it is believed that there won't be any criminal prosecutions brought against the crews of spacecraft, similar to those brought against pilots in situations involving aviation accidents.

Keywords: Accident Investigation; Justice; Spaceship

1. INTRODUCTION

Indonesian space disaster inquiry is still a legal problem, both theoretically and practically. The idea established in Law Number 21 of 2013 concerning space has put space accident investigations based on the notion that the findings of investigations into space accidents cannot be used as evidence in court proceedings and information about the findings cannot be utilized as a state secret. International aviation law, which differs from Indonesian law enforcement procedures, upholds this premise. When dealing with Indonesian criminal procedural law and civil procedural law, which recognize that the outcomes of

investigations by law enforcement can be used as a basis for conducting investigations to find suspects in the case of space accidents that occur within Indonesian jurisdiction, this problem will become a serious problem.

The major problem, namely conceptual variations in interpreting the purpose of the research or investigation, leads to variances in techniques in placing the outcomes of investigations into space operations. The investigation of aircraft accidents or space operations is positioned by the international aviation and space law regime as a tool to look into the causes of incidents to ensure that they will not happen again in the future.¹ While law enforcement investigations are conducted to determine if a legal occurrence includes a crime, the ultimate goal is to identify suspects for the criminal justice system. In the sphere of Indonesian aviation law enforcement, for example, in the investigation of an aircraft accident, the findings of the police probe are used as a tool to identify suspects, as they did in the Pilot Marwoto case in 2008.² The pilot was charged with four Articles of the Criminal Code (KUHP), namely Article 479f letters a and b, Article 479g letters b concerning aviation crimes with the threat of life imprisonment³⁷, Article 359, and Article 360 paragraph (1) concerning negligence which result in death.³

The legal concerns surrounding the inquiry into the aforementioned activity accident influence how Indonesian law relates to aviation accidents under international law, which does not accept the findings of investigations into space activity accidents as evidence. How space accident investigation activities are handled under Indonesian law is another important factor.

Conceptual differences in investigations into accidents involving space activity could have an impact on other legal constructions, such as whether law enforcement should be involved in such investigations or if an independent government agency should be enough. Can the investigation's findings then be used as proof to determine whether a suspect exists or not? Can the investigation's findings be used as a justification for suing the nation or firm that lost money on the victims of the space aircraft crash?

Deeper and more philosophical problems are impacted by the distinction between the national and international legal frameworks used to investigate space accidents. Justice-related philosophical issues are undoubtedly impacted by investigations into space accidents that seek to determine their causes to prevent future occurrences that are similar to them. These investigations differ from police *pro Justicia* investigations, which seek to identify criminal acts. While the police's investigation into the accident's causes aims to punish those responsible for the spaceship crash, the Technical Team's investigation into the spaceship accident seeks justice and benefits for the future to prevent another plane crash.

¹ Eko Poerwanto, Uyuunul Mauidzoh, Analisis Kecelakaan Penerbangan Di Indonesia

Untuk Peningkatan Keselamatan Penerbangan, Jurnal Angkasa, Volume Viii, Nomor 2, November 2016, Pg. 14.

² Neni Ruhaeni Dan Iman Sunendar, Tanggung Jawab Pilot Dalam Kecelakaan Pengangkutan Udara Menurut Perspektif Hukum Pengangkutan Udara Dan Hukum Pidana, Prosiding Snapp2010 Edisi Sosial Issn: 2089-3590, Pg.15.

³ *Ibid.*

It would be useful to first examine how Indonesian space activity accident investigations are governed legally. What is the framework for applying the findings of space accident investigations to Indonesia's efforts to enforce space law? Finding a model for applying the findings of space accident investigations to the process of enforcing space legislation in Indonesia is the second goal of this paper, which first attempts to explore and evaluate the legal framework of space activity accident investigations in Indonesia.

The normative legal research methodology was applied in this study. International space treaties, regulations governing the space industry, as well as court rulings serve as the fundamental sources for this legal research. The study's findings were then examined using a juridical-qualitative methodology.

2. DISCUSSION

Legal Construction of Space Accident Investigations based on Law Number 21 of 2013: Several legal problems

According to Law Number 21 of 2013 Concerning Space, the legal framework created in the investigation of space accidents is developed as a component of the process of dealing with falling objects in space as well as the search and rescue of astronauts. The government is required to investigate the causes of every serious accident and/or disaster in space activities on the sovereign territory of the Unitary State of the Republic of Indonesia under the provisions of Article 60 paragraph (1) of law number 21 of 2013 regarding outer space.

“The government is obliged to investigate the causes of every serious accident and/or disaster in Space activities in the sovereign territory of the Unitary State of the Republic of Indonesia”

Legislation number 21 of 2013's article 60 paragraph (1), which is the standard, mandates that the government conduct an inquiry. Not only is it a legal responsibility under national law, but also under international law, to conduct an inquiry.⁴ According to Article 64 paragraph (1), an official representative from the country where the space vehicle is launched, the country where the business entity for launching the space vehicle, the country where it is designed, and the country where it is manufactured can be included in the investigation as long as it does not conflict with the sovereignty or jurisdiction of the Unitary State of the Republic of Indonesia.⁵ The Government of the Republic of Indonesia is required to conduct an investigation, according to Article 60 paragraph (2), if a space vehicle registered on behalf of Indonesia has an accident

⁴ Michael Milde, Aircraft Accident Investigation In International Law , [Air And Space Law Volume 9, Issue 1](https://www.kluwerlawonline.com/Journalarticle/Air+And+Space+Law/9.1/Aila1984013) (1984) Pp. 61 – 65, <https://www.kluwerlawonline.com/Journalarticle/Air+And+Space+Law/9.1/Aila1984013>

⁵ Yu Takeuchi, Legal Aspects Of International Regime For Space traffic Management, A Thesis Submitted To McGill University In Partial Fulfillment Of The Requirements Of The Degree Of Master Of Law, October, 2014 Pg. 6

outside the borders of the Unitary State of the Republic of Indonesia and the country where the accident occurred does not conduct an investigation.

The government establishes a group of technical experts who work together to implement the directive in Article 60 paragraph (1) and who answer to the Minister. The minister created a technical team that will be assembled on-demand (ad hoc) in the event of an Indonesian space mishap or tragedy. The expert technical team's membership at the very least includes experts in the:

- a. Mastery of Space technology;
- b. Mastery of aviation technology;
- c. Foreign relations;
- d. Nuclear; And
- e. Aerospace law.

The goal of the technical expert team is to conduct investigations, compile final reports, and provide suggestions to avoid accidents with the same cause in the future. Related parties are expected to abide by the recommendations as a matter of law.

Article 67 of the legislation grants the technical team of specialists the following powers to carry out their tasks in accident investigations:

- a. present a person for questioning about the investigation process; And
- b. instruct someone to provide specific records, pieces, or elements of space objects or other items that are important to the inquiry.

According to paragraph 2 of Article 67, the technical team must notify the appropriate parties in writing before conducting an inquiry. The notification must be dated, signed by the expert technical team, and specify the location and time at which the individual is required to appear in person or provide any materials that would be useful to the inquiry. The expert technical team has the right to request testimony made either under oath or in writing.

The technical team is given additional authority to seize objects for as long as required for investigative purposes and make copies of documents or records if the objects are in the form of notes or documents, supporting the authority of the technical committee to carry out the task of looking into space accidents.

Another intriguing procedural law rule states that, if someone provides information about a space accident or other information they have obtained, directly or indirectly, they cannot be used as evidence against them in court proceedings, except for situations where they have given false testimony. According to Article 7's requirements, if someone passes up items or other information that were acquired directly or indirectly, it cannot be used against them in a criminal prosecution or a trial for monetary damages. Costs incurred by individuals brought in by the knowledgeable technical team may be reimbursed. The expert technical team is then required by Article 61 to inform the

Institute of all advances and research findings. In addition, the institution has the option of providing the necessary parties with a report on the investigation's findings.

The requirements of Article 62 (1), which states that "investigation results cannot be used as evidence in the judicial process," are the major provisions covered in this article. Then, according to paragraph 1 of article 62, "results of investigations which are not classified as confidential information, may be made public." In this article, two primary topics are worth talking about. The first is the idea that the investigation's findings cannot be used as evidence in a court of law. The author's reference to the legal process might be referring to the civil justice system, the criminal justice system, or the administrative justice system. Second, both general and classified material was included in the findings of the technical team's inquiry from the standpoint of state secrets. Information that is locked off and cannot be accessible by an unauthorized public, is solely kept by certain organizations or authorities, and information that is not a state secret are all examples of confidential information.

The two aforementioned difficulties will undoubtedly collide with Indonesia's procedural law system, which includes criminal, civil, and state administrative procedural laws that must also be taken into account in the context of investigation and law enforcement. Therefore, it is crucial for law enforcement officials like judges, prosecutors, police, and attorneys to comprehend how procedural law was created within the context of the aforementioned space law.

Aircraft Accident Investigation and Space Accident Investigation: A Comparison

Although it is governed in a distinct chapter, the legal framework for aviation accident investigation under the Indonesian national legal framework is created as a component of search and rescue for aircraft accidents. The investigation and follow-up investigation of aviation accidents is governed by Chapters XV and XVI, which also include regulations for aircraft accident search and rescue.

The government and municipalities are then required under the aviation law regime to be in charge of looking for and assisting every aircraft that suffers an accident on the Republic of Indonesian territory.⁶ Principles To minimize casualties, search and rescue operations are completed swiftly, precisely, successfully, and efficiently. According to institutional law based on Article 353, the National SAR Agency is in charge of coordinating and conducting search and rescue operations on behalf of the government.

According to Article 357, the government is responsible for conducting additional investigations and investigations into the causes of every accident and a serious incident involving a civil aircraft that takes place on Indonesian territory. This follows the principle of state responsibility in the search and rescue of aircraft accidents.

⁶ C. O. Miller, *Aviation Accident Investigation: Functional And Legal Perspectives*, 46 J. Air L. & Com. 237 (1981) https://Scholar.Smu.Edu/Jalc/Vol46/Iss2/2/?Utm_Source=Scholar.Smu.Edu%2fjalc%2fvol46%2fis-s2%2f2&Utm_Medium=Pdf&Utm_Campaign=Pdfcoverpages

Institutionally, a national committee that is constituted and answerable to the president implements inquiries and follow-up investigations. The National Aircraft Accident Investigation Committee has members who are chosen based on competency criteria through a fit and appropriate examination by the Minister, and the position is an autonomous institution in carrying out its responsibilities and activities. The National Committee's responsibilities include conducting research, follow-up investigations, final reports, and investigative operations to make suggestions to prevent accidents with the same cause. The wording of paragraph (4) of article 357 establishes obligations on the relevant parties to act swiftly on the suggestions. Two significant points in Article 357 should be noted. The first has to do with the purpose of the investigation's findings as well as their current state.

The follow-up procedure for the investigation of aviation accidents is governed by Article 358. The national committee is required to update the transportation minister on all developments and findings of its inquiries. The appropriate parties must receive a report from the finance minister detailing the findings of an inquiry into a specific aircraft. The nation where the air transportation business entity is based, the country where the aircraft was registered, the country that designed the aircraft, and the country that manufactured the aircraft must get copies of the draft final investigation report to respond. If within 12 (twelve) months, the final investigation report has not been completed, the national committee is obligated to produce an interim report on the inquiry's findings every year. The draft final investigation report will be prepared as soon as practicable.

The main clause in the discussion of an inquiry into an aviation accident is Article 359. It states that the findings of an investigation cannot be utilized as evidence in a legal proceeding. Results of investigations that are not considered to be secret information may be made public. First, the investigation of an aviation accident is not the same as the investigation of criminal conduct, which is the second of the two primary concepts contained in this article. Finding the cause of an aviation accident is the main goal of an inquiry into it, and suggestions are meant to be made to stop similar accidents from happening again in the future. The process of criminal act inquiry aims to identify criminal acts from a criminal incident. The goal is to identify a suspect who is accused of committing a crime if it is determined that the incident was not criminal. The investigation's findings are intended to identify suspects who can be held responsible. The conclusions of the study into the aircraft crash include technological suggestions to avert other aviation mishaps.

The ideal construction of using the results of space accident investigations in the process of enforcing the Space Act in Indonesia: substantive justice or procedural justice.

The paradigm for law enforcement established by Law Number 21 of 2008 concerning space is multipurpose. Three legal tools—civil law, administrative law, and criminal law—are used to enforce the law. Criminal sanctions adhere to civil procedural law processes, administrative sanctions adhere to administrative law, and law enforcement in the civil arena follows civil procedural law.⁷

The civil law strategy is applied using a compensation strategy. The Space Operator is subject to compensation claims whose implementation is carried out in line with the rules of laws and regulations for “every Space Activities carried out by the Space Operator which due to their mistake results in a loss.”⁸ Absolute responsibility (strict liability) and liability based on fault (liability based on fault) are the two types of liability that serve as the foundation for the recompense integrated into the lawsuit for damages. Responsibility for losses incurred by Space Activities occurring on the surface of the earth or aircraft in flight is based on an element of error, whereas liability for losses incurred in space and/or by space vehicles among space operators is based on an element of error and is determined by the parties’ agreement.

Anyone who breaches the terms of Article 21, Article 35, Article 45 paragraph (2), Article 48, Article 49, Article 51 paragraph (2), Article 56, or Article 65 is subject to administrative punishment. Administrative sanctions may take the following forms:

- a. written warning;
- b. temporary suspension of part or all of the activities;
- c. administrative fines;
- d. demolition of buildings;
- e. license revocation;
- f. dissolution of a corporation or legal entity;
- g. prohibition of occupying a position; and/or
- h. repeal.

Crimes covered by Article 95, Article 6, Article 97, Article 98, Article 99, and Article 100 are subject to criminal penalties. Article 96 implements the launching of the Space Vehicle which intentionally does not comply with the requirements of the provisions referred to in Article 35, resulting in losses for goods or people, is a type of administrative crime, which is actually an administrative violation that uses criminal sanctions as an instrument of law enforcement. The criminal system structure established in Article 95 does not report research results that are sensitive and can have broad implications. The criminal penalties included in these articles are a particular maximum sentence with two possible punishments: imprisonment and fines.

⁷ Bratu, Ioana; Lodder, Arno R.; And Van Der Linden, Tina (2021) “Autonomous Space Objects And International Space Law: Navigating The Liability Gap,” Indonesian Journal Of International Law: Vol. 18 : No. 3 , Article 6. Doi: 10.17304/Ijil.Vol18.3.818 Available At: <https://Scholarhub.Ui.Ac.Id/Ijil/Vol18/Iss3/6>.

⁸ Dale Stephens, The International Legal Implications Of Military Space Operations: Examining The Interplay Between International Humanitarian Law And The Outer Space Legal Regim ,Int'l L. Stud. 75 (2018) Volume 94 2018, Stockton Center For The Study Of International Law,

Investigation findings “cannot be used as evidence in the judicial process,” according to the legal paradigm. The findings of the team’s inquiry cannot be utilized as evidence in civil court, an administrative court, or criminal court proceedings.⁹ The author claims that the space law distinguishes between two paradigms of terms: investigation and inquiry. The term “investigation” refers to a technical inquiry conducted primarily to ascertain the root cause of any significant mishap and/or catastrophe involving space operations. The goal is to stop similar incidents from occurring in the future on a global scale.¹⁰ A criminal act in a legal event is sought after using the word “investigation” in criminal procedural law.

By examining the construction of Article 62 Paragraph 1 as well as the aforementioned provisions for criminal, civil, and administrative sanctions, it is evident that the construction of criminal law is carried out by the police as a component of the criminal justice system, that the construction of civil law, which imposes legal responsibility in the form of compensation on parties with both absolute liability and liability based on guilt, and that administrative sanctions clearly demonstrate the diametric difference between criminal and civil sanctions.¹¹

The parties conducting inquiries and probes are impacted by these stark distinctions. An ad hoc technical team conducts the inquiry and creates a report that is delivered to the minister. However, police only look into criminal offenses that violate Article 95, Article 6, Article 97, Article 98, Article 99, and Article 100. The victim of an electrical engineering accident filed a case for damages. The government imposes administrative punishments along with state administration representatives. Therefore, pro-justice investigations, compensation requests, and administrative fines must be differentiated from the ideal notion of looking into the reasons behind space activity accidents.

3. CONCLUSION AND RECOMMENDATION

The study’s findings revealed that, initially, the goal of space accident investigations conducted by the ad hoc team within the parameters of international law is to identify the causes of spacecraft mishaps in order to prevent them from occurring again. This is in the framework of the primary legal objective of greater fairness and benefit for more people (i.e., the greatest pleasure for the largest number). While the investigation is conducted by the police following Articles 95, 96, 97, 98, 99, and 100 to discover criminal acts in space activities, claims for compensation are based on fault and without fault (*strict liability*), and there is no functional relationship between the two processes, the findings of the police investigation and the investigation of the special team cannot be used as a basis for carrying out further investigations.

⁹ Latipulhayat, Atip. “The Function And Purpose Of Aircraft Accident Investigation According To The International Air Law.” *Jurnal Mimbar Hukum*, Vol. 27, No. 2, 2015.

¹⁰ Martin Alan Rothblatt, *International Liability Of The United States For Space Shuttle Operations*, <https://Core.Ac.Uk/Download/Pdf/216912555.Pdf>.

¹¹ Caley Albert, *Liability In International Law And The Ramifications On Commercial Space Launches And Space Tourism*, 36 *Loy. L.A. Int'l & Comp. L. Rev.* 233 (2014). Available At: <https://Digitalcommons.Lmu.Edu/Ilr/Vol36/Iss2/2>.

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