

THE IMPLEMENTATION OF EXTRA JURISDICTION HIJACKING

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Abstract

Plane hijacking is a relatively new form of crime; the motives behind the hijacking varied, ranging from economic to political. The international community considers that acts of hijack can threaten international peace and security. This article aims to discuss the efforts of the international community in the fight against this aircraft hijacking crime. The results showed that the international community's efforts were to make various conventions to protect international aviation activities. In the convention, the international community made various efforts to prevent and eradicate aircraft hijacks, such as allowing each country to expand its jurisdiction.

Keywords: *Hijack, Air Law, Jurisdiction.*

I. INTRODUCTION

The state is one of the subjects of international law, and experts have agreed on this matter. There is certain literature that says that the state is the only subject of international law, but nowadays the state can no longer be declared as the sole subject of international law because there have been significant dynamics and changes in the international community. Subjects of international law are defined as any holders, owners, or supporters of rights and bearers of obligations based on or according to law. Subjects of international law can enter into legal relations among themselves. These legal relations give birth to the rights and obligations of the parties concerned.²

According to the 1933 Montevideo Convention implemented in Montevideo, Uruguay held by countries that are members of the Organization of American States (Organization of American States) regarding state rights and obligations, the qualifications of a country to be called a subject of international law are 4 (four), namely:

- 1) Permanent residents;
- 2) Definite territory;
- 3) Sovereign government; And
- 4) The ability to establish relations with other countries.

In this paper the author will specialize in discussing certain regional points, the reason for this specialization is due to the legality of these territorial boundaries which will provide full justification for whether or not there is sovereignty and/or

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² Parthiana, I Wayan. (2003). *Pengantar Hukum Internasional*. Bandung: Mandar Maju.

national jurisdiction of a country. State boundaries are imaginary boundaries on the surface of the earth that separate the territory of the country from other countries consisting of land, sea, and air borders. The territory of a country must have clear boundaries, both on land, sea, and air which are determined based on national law and international law.³

Today, with the rapid development of the times, the mobility of people's movements is no longer between regions within the country but has started to frequently carry out activities abroad for reasons of work, tourism, health, or education. To facilitate this mobilization, air transportation is used, namely by using an airplane. Even though the flight only takes a relatively short time to get to the destination, this does not mean that during or during the flight there are no incidents. The occurrence of these events must still be taken into account, although it must be admitted that preventive measures as early as possible are the best steps. So to ensure the safety of passengers, aircraft crew, aircraft, and goods being transported, the implementation of civil aviation is regulated by various international conventions.

In public international air law, there is the 1944 Chicago Convention which is the constitution of international civil aviation. The convention is used as a reference in making national laws for member countries of the International Civil Aviation Organization (International Civil Aviation Organization, hereinafter referred to as ICAO) for the operation of international civil aviation. In fact, since 1902, France, as the pioneer of international air law, has discussed the competence of jurisdiction over criminal acts of violations and crimes that occur in airplanes, as well as the actions that need to be taken during the flight.

The discussion was continued in an international conference discussing international aviation in 1910 known as the 1910 Paris Conference. At this conference, various legal aspects were put forward by international air law experts and other international bodies. These legal aspects include air sovereignty, aircraft use, aircraft registration, aircraft crew certification, aircraft certification, explosives transportation, flight permits, landing permits, flight navigation equipment, and others.⁴

Specifically regarding the discussion of criminal offenses and new crimes, it began in 1950 and was then ratified at a diplomatic conference in Tokyo in 1963 under the auspices of ICAO which was proposed by the Mexican delegation, in their concept they used the principle of the jurisdiction of the aircraft register country and the principle of territorial jurisdiction. In this concept, it is proposed that a

³ Syafei, Muhammad. "Kewenangan Pengelolaan Pembangunan Kawasan Perbatasan Kalimantan Barat - Sarawak (Studi Dari Aspek UU Nomor 43 Tahun 2008 Tentang Wilayah Negara)". *Yuriska: Jurnal Ilmiah Hukum*, Vol. 3, No. 1, 2011. <https://doi.org/10.24903/yrs.v3i1.190>.

⁴ Martono, K. (2007). *Pengantar Hukum Udara Nasional dan Internasional*. Jakarta: Raja Grafindo Persada.

country that has jurisdiction over criminal acts of violations or crimes on airplanes is the country that registers the aircraft.

There are several motives behind airplane hijacking, such as asking for ransom, psychiatric disorders, and political motives. The action was carried out to cause a great deal of fear in a particular person or group of people in general (Martono, 1995). Aircraft hijacking is more common in commercial aircraft or civil aircraft because commercial aircraft can carry many passengers. What's more, the several advantages of the aircraft itself, namely it is a very long range, high speed and all kinds of services for goods, humans and even animals from one country to another in a short time, were recorded from 1968 to 1985 not less than 45 (four twenty-five) air hijacks carried out by terrorists, and the airline that was most often hijacked was Lufthansa, which was 3 (three) times (Aviation Safety Network, 2020). Insecurity in using air transportation has occurred in Indonesia, on March 28, 1981, the DC 9 Woyla aircraft with flight number GA 206 belonging to Garuda Indonesian Airways which was carrying out domestic flights from Jakarta to Medan and transiting in Palembang was hijacked by terrorists.⁵

Hijacking on commercial airplanes is more often done because of the enormous psychological and political impact because the passengers usually consist from various nations and countries. Various ways have been taken to suppress the criminal act of hijacking this aircraft, both by each country and by international organizations. Therefore, laws were formed to provide very severe punishment for the perpetrators of the crime of plane hijacking, as the author has previously described. Increased cooperation with other countries to prevent air terrorism, and even in developed countries preventive measures have been taken such as destroying organizations suspected of being the perpetrators and masterminds of air terrorism.

In its development, problems were also found in handling the criminal act of aircraft hijacking, namely the right to prosecute the perpetrators of criminal acts or the jurisdiction of a country in dealing with aircraft hijackings, as well as how international conventions attempt to protect international civil aviation from the threat of air hijacking.

The research method that the author uses in this article is normative juridical which is carried out by examining library materials or secondary data as basic material for research by searching for regulations and literature related to the problem under study.⁶

II. DISCUSSION

⁵ Kompas. (2019). Tiga Menit yang Menegangkan dalam Operasi Pembebasan Pesawat Woyla. Retrieved from Kompas website: <https://nasional.kompas.com/read/2019/10/06/07253061/tiga-menit-yang-menegangkan-dalam-operasi-pembebasan-pesawat-woyla?page=all>.

⁶ Wiradipradja, E. Saefullah. (2015). *Penuntun Praktis Metode Penelitian Dan Penulisan Karya Ilmiah Hukum*. Bandung: Keni Media.

Aircraft Hijacking

The development of technology that gave birth to the airplane to become a means of air transportation is the most modern development when compared to the development of other means of transportation. This is proof that it was only in 1903 that the Wright brothers for the first time in world history made an air flight.⁷

Even though the use of air transportation is so perfect, it does not guarantee that it will be safe from the criminal act of airplane hijacking. So that in this section the author will discuss the meaning of one of the aviation crime acts, namely, aircraft hijacking. If referring to the 1963 Tokyo Convention which is often referred to as the convention on air piracy there, we can see what is the meaning of aircraft hijacking, Article 11 of the 1963 Tokyo Convention says that:

(1) When a person on board has unlawfully committed by force or threat thereof an act of interference, seizure, or other wrongful exercises of control of an aircraft in flight or when such an act is about to be committed, Contracting states shall take all appropriate measure to restore control of the aircraft to its lawful commander or to preserve his control of the aircraft; (2) In the case contemplated in the preceding paragraph, the Contracting State in which the aircraft lands shall permit its passengers and crew to continue their journey as soon as practicable, and shall return the aircraft and its cargo to the persons lawfully entitled to possession.

This article does not use the terms hijacking, skyjacking, air piracy, aerial piracy, aerial skyjacking, aircraft skyjacking, air bandits, or illegal diversion of aircraft in interpreting aircraft hijacking, but uses the term unlawful seizure of aircraft. Based on this article, aircraft hijacking is not only unlawful control of aircraft but actions that disrupt or take over aircraft are also included in the category of air piracy. According to Edward M. Wise, hijacking is based on three classifications regarding the types of international crimes, which fall into the second category, namely types of international crimes related to acts of terrorism.⁸ Meanwhile, according to Basiouni, this act of air piracy has fulfilled transnational and international elements. Regarding the level of seriousness regarding air piracy, Basiouni has also reviewed that the threat posed by hijacking to world peace and security is at a level that has significant potential, while the impact that arises for various countries in the world (more than one country) is in a very dangerous position. Furthermore, regarding the grouping of types of international crimes, Basiouni classifies hijacking into international offenses, together with slavery, torture, piracy, drug offenses, etc.⁹

⁷ Wiradipradja, E. Saefullah. (2014). Pengantar Hukum Ruang Udara dan Angkasa (Buku I Hukum Udara). Bandung: Alumni.

⁸ Atmasasmita, Romli. (2006). Pengantar Hukum Pidana Internasional. Bandung: Refika Aditama.

⁹ Wahjoe, Oentoeng. (2011). Hukum Pidana Internasional (Perkembangan Tindak Pidana Internasional dan Proses Penegakannya. Bandung: Erlangga.

The problems arising from aircraft hijacking are very complex, due to the fast movement of the aircraft itself making it difficult to identify the exact location of the unlawful act. Especially if the crime occurred over the high seas, then the tug of war between countries is very strong. It could be that countries that have an interest in wanting to impose sanctions such as the country that registered the aircraft, the country that the plane passed through, the country where the plane took off or landed, or it could even be that each of these countries even seem hands off or trying to avoid responsibility. responsible for investigating the unlawful act, especially if the perpetrator is not a citizen.

In general, air piracy is carried out through violence, for example by hitting pilots, threatening to use firearms, and even opening fire to take over flights. The requirement to be included in the category of aircraft hijacking is that the action is carried out by a person whose condition is on board the aircraft, it could be that the perpetrator is a passenger or even the crew of the aircraft itself, and the act of hijacking must be carried out on an airplane that is in flight (in flight).¹⁰

Meanwhile, what is meant by in-flight is when an airplane with full power is ready to take off (take off position) until the aircraft makes a landing on the runway (landing position). Airplanes with full power but not for take-off are not included in the in-flight category, so the provisions of the 1963 Tokyo Convention cannot apply. Meanwhile, airplanes that are forced to land at an airport as a result of piracy are still included in the in-flight category. Article 1 paragraph (3) of the 1963 Tokyo Convention). So a crime committed in an airplane when the airplane is on the ground or in a hangar is not included in the category of piracy according to the 1963 Tokyo Convention. So what applies is the national law where the incident took place.

However, if we refer to The Hague Convention 1970 which is a refinement of the 1963 Tokyo Convention, Article 3 paragraph (1) of The Hague Convention 1970 says that what is meant by in flight is since all the outer doors are closed followed by the departure of the aircraft until the arrival passengers when the plane finishes landing perfectly. Thus, a crime that occurs in the terminal can apply to The Hague Convention of 1970.

The next requirement for it to be called aircraft hijacking is that the action must be against the law. Whether the action is against the law or not must be measured by the national criminal law of each country that registers the aircraft. The next requirement is that the action be carried out by force or threat. Naturally, the threat is in the form of a physical threat to the pilot captain or aircraft crew, or other passengers so that the pilot captain wants to change the direction of his flight, but this threat is not always in the form of a physical threat.¹¹ It could be that the threat is related to the family of the flight captain.

¹⁰ Martono, K, loc. Cit.

¹¹ Martono, K, Ibid.

The Concept of Jurisdiction in International Law

One of the rights held by a subject of international law, in this case, the state, is the right to make, enforce, implement, and or impose its national law or a legal object whether it exists or occurs within or outside the boundaries of the territory. This right according to international law is called jurisdiction.¹²

Jurisdiction means the legal power or authority of the state over people, objects, or events that occur within its territorial boundaries. According to Robert Cryer jurisdiction is "the power of the state to regulate pursuant affairs to its laws. Exercising jurisdiction involves asserting a form of sovereignty".¹³ Furthermore, Oppenheim defines jurisdiction as: "Jurisdiction is the term that describes the limits of legal competence of a State or other regulatory authority (such as the European Community) to make, apply and enforce rules of conduct upon persons. It concerns the essential extent of each State's right to regulate conduct or the consequences of events".¹⁴

Antonio Cassese also defines jurisdiction as the authority of the central government of a country to carry out public functions for individuals within its territory. Based on this definition, it can be said that jurisdiction is a reflection of the sovereignty of a country. Without sovereignty, a state cannot exercise its jurisdiction. Jurisdiction also creates equality between sovereign countries which results if there is intervention regarding a country's internal problems, then it is a violation for the country that intervenes.¹⁵

In the context of state borders and state boundaries, state jurisdiction can be reviewed based on the space or location of the problem object. The said object can be located or occurs within the boundaries of a country's territory or can also occur outside the country's territory, or is a combination of both of these. So that problems can occur in an area that is not the territory of the country, but in that area the national law of the country concerned applies. In this regard, state jurisdiction based on the space or location of the problem object can be divided into 5 (five) jurisdictions, namely: territorial jurisdiction, quasi-territorial jurisdiction, extra-territorial jurisdiction, universal jurisdiction, and exclusive jurisdiction.¹⁶

Efforts of the Internatioal Community in Combating Aircraft Piracy

Along with the occurrence of unlawful acts committed on board aircraft, whether civil or criminal in nature, this has generated quite a strong debate in the

¹² Parthiana, I Wayan. (2006). *Hukum Pidana Internasional*. Bandung: Yrama Widya.

¹³ Cryer, Robert. (2010). *An Introduction To International Criminal Law And Procedure*. Cambridge: Cambridge University Press.

¹⁴ Oppenheim. (1992). *International Law Volume 1: Peace* Edited by Sir Robert Jennings and Sir Arthur Watts. Harlow: Longman.

¹⁵ Adolf, Huala. (2011). *Aspek-Aspek Negara Dalam Hukum Internasional*. Bandung: Keni Media.

¹⁶ Parthiana, I Wayan, loc. Cit.

field of international law, because the problem of air piracy is not as easy as one might imagine. The increase in the frequency of crimes committed on airplanes began to be felt in the 1960s to 1970s when the international community began to pay attention to looking for various efforts so that these crimes could be prevented and eradicated. Apart from doing technical things to prevent it, one of which is the development of technology and discoveries in the field of aviation, the international community also holds various international conferences to discuss and formulate various conventions regarding aviation crimes.¹⁷

In the period before the existence of the convention governing aircraft hijacking, there were many decisions indicating that often national laws and regulations were inadequate to punish unlawful acts that occurred in aircraft. An example of the United States vs. Diego Cordova which occurred in 1950 when a United States airplane flew over the high seas from San Juan Puerto Rico to New York. During the flight over the high seas, Diego Cordova was involved in a fight with other passengers. At the time of the incident, the crew tried to break up the fight, but instead, the crew was beaten by Diego Cordova, so the case was filed in the United States Federal Court. During the trial process, the United States felt that they had no jurisdiction over the crime because according to the national law of the United States, it does not apply to any criminal acts that take place while on the high seas, except when the incident occurs on a ship, so Diego Cordova was released. by the United States Federal Court. Not wanting to be missed a second time, the United States Congress amended a law that could threaten criminal acts in aircraft flying over the high seas based on the extra-territorial jurisdiction principle.¹⁸ In connection with this case, proves how necessary international provisions are to be able to resolve problems that arise in connection with unlawful acts committed onboard aircraft.

The international conventions that have been produced by the international community relating to aviation crimes are:

- 1) The 1963 Tokyo Convention, concerning Crimes and Certain Other Acts Committed on Board Aircraft (Convention on Offenses and Certain Other Acts Committed on Board Aircraft).
- 2) The Hague Convention 1970, concerning the Eradication of Unlawful Seizure of Aircraft (Convention for the Suppression of Unlawful Seizure of Aircraft).
- 3) The 1971 Montreal Convention, concerning the Eradication of Unlawful Acts That Threaten the Safety of Civil Aviation (Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation).

¹⁷ Diantha, I Made Pasek. (2014). Hukum Pidana Internasional Dalam Dinamika Pengadilan Pidana Internasional. Jakarta: Prenadamedia.

¹⁸ Wiradipradja, E. Saefullah, loc. Cit.

- 4) The 2010 Beijing Convention on Unlawful Acts Relating to International Civil Aviation (Convention for the Suppression of Unlawful Acts Relating to International Civil Aviation).

There is a clear difference between one and the other if we look at the names of each convention, the 1963 Tokyo Convention only applies to crimes committed on board aircraft, while the 1970 Hague Convention itself covers a wider area, the 1970 Hague Convention. This is aimed at the actions taken against the aircraft itself, this difference can be seen in the in-flight interpretation which the author will describe below. Whereas in the 1971 Montreal Convention, the intended target was the protection of civil aviation, therefore the emphasis in this convention was more on actions carried out on and or from outside the aircraft. It is different from the 2010 Beijing Convention because this convention is expected to be able to accommodate the latest types of crimes in terms of objectives, motives, and methods of aircraft hijacking.

- 1) Tokyo Convention 1963 (Convention on Offenses and Certain Other Acts Committed on Board Aircraft)

The most important effort in the 1963 Tokyo Convention to protect civil aviation from the threat of aircraft hijacking is by establishing jurisdiction, namely the jurisdiction of the country that registers the aircraft.

Subsequent efforts to protect civil aviation from the threat of air piracy can be seen in Article 11, namely that all member countries of the convention can take the necessary actions to prevent air piracy. These actions, for example, not informing the hijackers about weather information, not providing radio communication with the hijacked aircraft, or sending fighter planes to force the hijacked plane to land, or if the plane has not yet taken off (take off). off) then the local country, through the authorities, may block the runway so that the aircraft cannot take off.

The 1963 Tokyo Convention regulates the authority of member states over persons who are dropped off or surrendered by flight captains as stipulated in Chapter V Article 12 to Article 15 of the 1963 Tokyo Convention. According to the 1963 Tokyo Convention, member states must allow flight captains to disembark people who are suspected of endangering the safety of passengers, aircraft crew, aircraft, as well as goods being transported, or those that violate order and discipline in the aircraft. The member state is also obliged to accept persons surrendered by flight captains who are suspected of committing violations of national law.

If the country believes that the person on board is unlawfully controlling an airplane or that person has committed an act that

endangers the safety of passengers, aircraft crew, aircraft, or the goods being transported, the state is obliged to detain that person. The detention of persons must be based on the national law of the country and is permitted only to the extent necessary for the extradition proceedings of the accused. However, as explained earlier, the state that detains the accused must conduct a preliminary investigation, assist the accused to contact their country's representatives, contact countries related to violations of national law, contact the country where the aircraft is registered, and immediately decide whether to prosecute themselves or will extradite the perpetrators.

However, according to Article 14 paragraph (1), if the suspect is detained and it turns out that the suspect is not a citizen of the detaining country, the detaining country can grant the suspect the right to return to the country where the suspected person came from. or to the country where he started his journey because it could be that where he is detained, he will experience language, financial, and other difficulties.

2) The Hague Convention 1970 (Convention for the Suppression of Unlawful Seizure of Aircraft)

The efforts made by the 1970 Hague Convention are to provide a basis regarding extradition agreements to participating countries so that if there are participating countries that do not yet have an extradition treaty, they can use The Hague Convention 1970 as a legal basis.

In Article 9 paragraph (1) of The Hague Convention 1970, it has been mandated regarding the obligations of convention member countries in dealing with acts of air piracy. According to this article, if an unlawful act occurs on board an aircraft that is in flight, either using force or through intimidation, which can jeopardize the safety of the aircraft, the member states are obliged to take certain steps to return control of the aircraft to the pilot in command who legally has the right to control the aircraft.

Apart from that, member countries in dealing with unlawful acts committed on board aircraft have been mandated by Article 9 paragraph (2) to immediately facilitate the journey of passengers and aircraft crew on the next flight and return the aircraft and its goods to their owners.

Regarding jurisdiction, this convention regulates it in Article 4 paragraph (1), in that article, it is emphasized that countries participating in the convention must take the necessary steps to determine their jurisdiction over acts of unlawful acts against aircraft. Article 4 paragraph (1) gives this authority to the state such:

a) The country where the aircraft is registered.

- b) The country where the aircraft lands and the perpetrators of the crime are also in it.
 - c) Countries that are business centers or permanent domiciles of unmanned aircraft charterers.
- 3) 1971 Montreal Convention (Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation)

The expansion of the scope of the convention as formulated in Article 1 regarding unlawful acts and Article 2 (b) which introduces the concept of service which is an extension of in-flight (aircraft currently on flight) shows the efforts made by the state convention participants to minimize or even to stop aircraft hijacking. It is hoped that in the formulation of these articles, there will be no action that could endanger the flight and the safety of the aircraft, and passengers who can avoid the provisions of the convention which have implications will not be free from criminal prosecution.

The next discussion is regarding jurisdiction, the formulation regarding jurisdiction in this convention is in Article 5 paragraph (1). The clear formulation in Article 5 paragraph (1) is:

Each contracting shall take such measures as may be necessary to establish its jurisdiction over the offenses in the following cases: (a) when the offense is committed in the territory of that state; (b) when the offense is committed against or on board an aircraft registered in that state; (c) when the aircraft on board which the alleged offender still on board; (d) when the offense is committed against or on board an aircraft leased without crew to a lessee who has his principal place of business or if the lessee has no such place of business, his permanent residence, in that state.

For the countries participating in the convention, the explanation above shows that countries are given benchmarks to determine their jurisdiction over aviation crimes as stated in Article 1. This jurisdictional provision is quite realistic because it is seen that a country that has this authority can effectively apply the law national law for aviation crime perpetrators.

- 4) Beijing Convention 2010 (Convention for the Suppression of Unlawful Acts Relating to International Civil Aviation)

The presence of the 2010 Beijing Convention answers hopes from the international community for efforts to prevent and even eradicate acts of aircraft hijacking in modern times after the WTC (World Trade Center) tragedy. It is hoped that the content of regulations that are considered quite broad regarding perpetrators, objects that are targeted, and jurisdictional arrangements are expected to be able to punish the perpetrators of crimes in the strictest sense.

Prevention efforts are also quite pronounced in this convention, it can be seen that participating countries must ensure that there are no hazardous materials to be brought onto aircraft such as biological, chemical, or nuclear weapons which could be used as prohibited destinations by potential perpetrators of acts of piracy. This convention can also be used as a means or basis for enhancing international cooperation in the context of combating aircraft piracy.

III. CONCLUSION

Based on the description above, in responding to the problem of aircraft hijacking, the authors conclude that the international community has made every effort to minimize the occurrence of aircraft hijacking. This effort has been contained in the 1963 Tokyo Convention concerning violations and certain other acts committed in aircraft, The Hague Convention 1970 concerning the eradication of unlawful control of aircraft, the 1971 Montreal Convention concerning the eradication of unlawful acts that threaten civil aviation security, as well as the 2010 Beijing Convention. The form of this effort is by establishing jurisdiction in the event of an airplane hijacking, as well as taking preventive measures such as ensuring that no hazardous materials are brought on board the aircraft.

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