TANGGUNG JAWAB PENGANGKUT DALAM PENERBANGAN INTERNASIONAL: STUDI KASUS PUTUSAN MAHKAMAH AGUNG NO.1517 K/PDT/2009 DAN PUTUSAN PERKARA *BRINKERHOFF MARITIME DRILLING CORP AND ANOTHER v. PT AIRFAST SERVICES INDONESIA AND ANOTHER APPEAL [1992] 2 SLR 776; [1992] SGCA 45*

INTISARI

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Transportasi udara merupakan moda transportasi yang berkembang pesat saat ini. Karakteristik transportasi udara yang tidak mengenal batas wilayah negara, menyebabkan terjadinya pertautan atau singgungan antara hukum berbagai negara. Hal ini menyebabkan banyaknya hukum yang dapat diberlakukan pada transportasi udara, khususnya pada penerbangan internasional. Untuk mengatasi pertautan atau singgungan antara hukum berbagai negara tersebut, *Internasional Civil Aviation Organization / ICAO* (Organisasi Penerbangan Sipil Dunia) membentuk konvensi – konvensi internasional mengenai tanggung jawab pengangkut udara sebagai unifikasi tanggung jawab pengangkut udara di dunia.

Penelitian ini bertujuan untuk memperoleh gambaran dan pemahaman yang menyeluruh tentang praktek hakim Indonesia dan hakim Singapura dalam menerapkan *Convention for the Unification of Certain Rules Relating to International Carriage by Air Signed at Warsaw on 12 October 1929* (Konvensi Warsawa 1929) dan hukum nasional tentang tanggung jawab pengangkut pada Putusan Mahkamah Agung No.1517 K/Pdt/2009 dan Putusan Perkara *Brinkerhoff Maritime Drilling Corp and Another v PT Airfast Services Indonesia and Another Appeal [1992] 2 SLR 776; [1992] SGCA 45*, serta perbandingan penerapan Konvensi Warsawa 1929 oleh hakim Indonesia dan Singapura pada putusannya tersebut. Data yang digunakan dalam penelitian ini adalah data sekunder. Data tersebut dianalisis secara kualitatif yaitu dengan memperhatikan data yang ada pada dua putusan tersebut dikaitkan dengan data yang diperoleh dari studi pustaka yang kemudian ditarik kesimpulan sebagai jawaban atas permasalahan yang diteliti.

Dari hasil penelitian dapat disimpulkan. Pertama, Hakim Indonesia, dalam hal ini hakim agung dalam putusannya pada Putusan No.1517 K/Pdt/2009 tidak secara eksplisit menerapkan Konvensi Warsawa 1929, namun secara implisit di dalam putusannya terdapat jiwa dari Konvensi Warsawa 1929. Kedua, Hakim Singapura, dalam hal ini hakim *High Court* dalam putusannya memberlakukan Konvensi Warsawa 1929 sebagai dasar pertimbangan hukumnya. Ketiga, baik hakim Indonesia maupun hakim Singapura, keduanya sama – sama menerapkan Konvensi Warsawa 1929 dalam mengadili kasus yang diajukan ke hadapannya.

Kata kunci: Tanggung Jawab Pengangkut Angkutan Udara, Penerbangan Internasional, Hukum Pengangkutan Udara, Konvensi Internasional tentang Tanggung Jawab Pengangkut Udara.

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AIR CARRIER LIABILITY IN INTERNATIONAL FLIGHT: CASE STUDY ON THE DECISION OF SUPREME COURT NUMBER 1517 K/PDT/2009 AND THE DECISION ON BRINKERHOFF MARITIME DRILLING CORP AND ANOTHER v. PT AIRFAST SERVICES INDONESIA AND ANOTHER APPEAL [1992] 2 SLR 776; [1992] SGCA 45

ABSTRACT

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Air Transportation is a vastly growing mode of transport in the past years. The characteristic of air transport that make countries more connected with each other, causing linkage or intersection between the law in the laws of the countries involved. This is creating the fact that there are many laws that are applicable in air transportation, especially on international flights. To deal with these linkages or intersection between the laws in these countries, ICAO formulates international conventions regarding air carrier liability as a unification of the liability of air carrier in the world.

This research objective is to get a complete picture and understanding about the adjudicating process of Indonesian and Singaporean judge in applying the *Convention for the Unification of Certain Rules Relating to International Carriage by Air Signed at Warsaw on 12 October 1929* (Warsaw Convention 1929) and national law regarding the air carrier liability in the Supreme Court Decision number 1517K/Pdt/2009 and the decision on *Brinkerhoff Maritime Drilling Corp and Another v PT Airfast Services Indonesia and Another Appeal [1992] 2 SLR 776; [1992] SGCA 45* case, and also to compare the application of the Warsaw Convention 1929 by the Indonesian and Singaporean Judge in their decision. Data that is used in this research is secondary data that analyzed qualitatively by sorting the data in the two decisions associated with the data gathered from literature study and making hypothesis as the answer to the problem being researched.

Based on the research, there are some conclusion. First of all, the Indonesian Judge, in this case the Supreme Court Judge in their decision on the decision number 1517K/Pdt/2009 is not explicitly applied the Warsaw Convention 1929, but implicitly the decision content the essence of the Warsaw Convention 1929. Secondly, the Singaporean Judge, in this case the High Court judge in their decision applied the Warsaw Convention 1929 as a legal basis for their decision. Thirdly, either Indonesian Judge and Singaporean judge were both applying the Warsaw Convention 1929 in adjudicating the case brought upon him.

Keywords: Air Carrier Liability, International Flight, Air Carrier Law, International Convention On Air Carrier Liability.

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