

AIRCRAFT HIJACKING: A LEGAL PERSPECTIVE

Agus Pramono

Faculty of Law, Diponegoro University, Semarang,
email : ap_300655 @ yahoo.com

Abstract

According to International Law, the aircraft crime which is often called as “aircraft hijacking” is considered as one of the crimes against humanity. It is totally condemned by international community because the impact of this crime devastates the humanity values, threatens lives, and destroys belongings. The motives underlines this crime may be derived from personal motive, hostage taking, political reason or being refugee. It is the state who has the full responsibility, based on international law, to resolve the case of aircraft hijacking. The effort to resolve this aircraft hijacking can be done through international networks, bilateral agreement and the extradition of those who commits aircraft hijacking.

Keywords : Aircraft Hijacking, States Responsibility.

Abstrak

Kejahatan penerbangan merupakan salah satu tindak pidana yang dalam Hukum Internasional sering disebut “*Aircraft Hijacking*”. kejahatan penerbangan tersebut menurut Hukum Internasional merupakan salah satu kejahatan kemanusiaan. Kejahatan penerbangan tersebut oleh komunitas internasional sangat dikutuk karena menghancurkan nilai-nilai kemanusiaan, mengancam jiwa manusia dan merusak barang dan harta benda. Bahwa motivasi tindakan kejahatan penerbangan meliputi motif yang bersifat : pribadi, penculikan, politik dan pengungsian. Dalam rangka penanggulangan tindakan kejahatan penerbangan, berdasarkan hukum internasional, Negara mempunyai tanggung jawab penuh untuk mengatasinya. Upaya penanggulangan dapat dilakukan antara lain melalui kerjasama internasional dan ekstradisi pelaku kejahatan pembajakan udara.

Kata kunci : Kejahatan Penerbangan, Pertanggungjawaban Negara.

A. Introduction

1. Background of the research

An aircraft crime which is also commonly called as “aircraft hijacking” in international law terminology is one of the crimes within the range of international law that is condemned by international community who loves peacefulness and maintains humanity values. Aircraft hijacking is one of the crimes against humanity that devastates humanity values, threatens lives, and destroys belongings.

Aircraft hijacking continually occurs, committed by different hijackers with whatever motives, for as long as there are national and

international commercial flights. This fact is suggested from the data collected since 1961 up to 2009. Every year, there are always cases of aircraft hijacking, although there have always been preventive efforts conducted both by the government, nationally and internationally, and by governmental and non governmental organizations, that have used up a lot of fund and energy.¹

In United States, the preventive efforts and suppression aircraft hijacking have been done in various ways, such as by conducting psychological² research to figure out the nature of hijackers, maintaining sophisticated electronic device to detect

¹ Indonesian airlines had been hijacked twice, one was *Vickers Viscount* owned by Merpati Nusantara Airlines that was hijacked on February 5th, 1972 in Yogyakarta and the other one was DC-9 Voyla owned by Garuda Indonesia that was hijacked on March 28th, 1981 in Bangkok. The hijackers of these two cases were arrested. On September 11th, 2001 United Airlines 175 and 11 were hijacked and crashed on World Trade Centre (WTC) building, in New York City.

² Beside that, United States has also been the member of *Convention on Offences and Certain Other Acts Committed on Board Aircraft, Convention for the Suppression of Unlawful seizure of Aircraft, Convention for the Suppression of Unlawful Acts Againsts the safety of Civil Aviation*. See IV AO Doc, 9327 Annual Report of the Council -19 : Documentation for the session of the Asembly in 1981, page 186-189.

any metal objects that are usually used to commit hijacking, performing physical checking on each passenger, stationing security personnel to secure the flight, organizing various aviation security seminar³, forming extradition agreement with other states, and campaigning to various states to condemn every aircraft hijacking whatever the motive, as well as asking those states to sentence heavy penalty for the arrested hijackers by signing *Bonn Declaration*.⁴ United States' wholeheartedly efforts can be understood easily since it is the US which owns the most airlines in the world.

The development of telecommunication, information, globalization, aviation technology, and different ideologies in different nations are the dominant factors that influence the increased cases of aircraft hijacking. The aircraft which flies in such a height and in such high speed is an easy target for hijackers. The aircraft is their means to achieve their goals. By hijacking the aircraft, they can easily flee to the other state which has different ideology and politics to escape from any penalty which may be sentenced as the result of the crime they committed. Likewise, by hijacking, they can demand for the freedom of their imprisoned friends, they can ask for political asylum to the state which may give protection. They can also collect money or other belongings for their private ends or for their groups.

Considering those backgrounds, the problems that will be studied in this research are what are the motivations for aircraft hijacking? And how is the regulation for the states responsibilities in resolving the aircraft hijacking?

2. Research Method

The method used in this research is juridical normative, that is by conducting an advanced study on the regulation of aircraft hijacking and states responsibilities in the scope of International law. The data are collected through library study method. The approach used to analyze the data is an analysis

approach on the Convention of International Civil Aviation by examining the concepts and the cases. The data are analyzed descriptively and qualitatively to answer the research questions.

3. Literary Framework

International Civil Aviation Organization (ICAO) has established several international conventions in the efforts to prevent and to resolve aircraft hijacking in addition to the Annex 17 of Chicago Convention of 1944 along with its manual and ICAO Model Agreement as explained below.

Tokyo Convention of 1963 uses national jurisdiction principle, territorial jurisdiction principle, the site of the first landing, and the site of the last taking off. National Jurisdiction principle has been mentioned first by Paul Fauchille since 1903. This principle has its strength and weaknesses. The strength of this principle is that this principle may prevent the occurrence of lawless territory. Its weaknesses, however, may occur if the plane lands in other state, the state may not be able to sentence any penalty for the hijackers.

Territorial jurisdiction principle is sourced at the general law doctrine in criminal law. According to this principle, the state who owns the jurisdiction is the state in which the crime is committed. This principle also has its strength and its weaknesses. Its strength applies when there is an occurrence of aircraft hijacking; it is possible to call the local police immediately to arrest the hijackers because it is in accordance with the states sovereignty, and there will be no problem in hijackers' extradition. However, the weaknesses in applying territorial jurisdiction principle is that it is difficult to decide quickly the site of the crime, because airplane can move at a such speed passing several states without paying attention to the state sovereignty.⁵

Although a state has its sovereignty, it does not mean that the state is free from taking the responsibility. The principle applied in the sovereignty

³ On Juli 20th – 22nd, 1982, *Department of Transport FAA USA held The Third International Civil Aviation Security Conference*. From the conference, it was revealed that there were many groups of international terrorists. Turkish Airlines flight 1476, in 2006 was hijacked when it reached Greek, during its journey from Tirana to Istanbul.

⁴ *Bonn Declaration* is an agreement signed by 7 states: USA, Canada, Great Britain, Italy, Japan, French, and West Germany. The agreement stated that each state would extradite any hijacker arrested in their state. If they violate the agreement, all flights from and to their state will be ceased off. See: *W. Schwenk, The Declaration on Hijacking*, in Matte N. M (ed), *Annals of Air and space Law* (Vol. IV; Toronto : The Carswell Company Limited, 1978), page. 308-322.

⁵ See further on Martono, 1987, *Hukum Udara, Angkutan Udara dan Hukum Angkasa*, Bandung : Alumni, page. 42.

is that in the sovereignty there is always an obligation not to misuse that sovereignty. Therefore, it is possible to ask a state responsibility for its actions which misuse its own sovereignty.

What makes a state has a responsibility in International law is the fact that no state is able to enjoy its rights completely without paying respect to the other states rights. Every violation toward a states rights will result in the violators' obligation to fix the condition. In other words, the state who violates the other states right must take the responsibility.⁶

The law on how a state must take the responsibility is related with the states jurisdiction. The law on a states jurisdiction is the law which regulates the states authority in conducting an action (in this case is how to make the jurisdiction comes into force). Meanwhile, the law on a states responsibility is a law on the states obligation which arises each time the state conducts or does not conduct an action.⁷

According to Rosalyn Higgins, the law on a states responsibility is the law which regulates the accountability of a violation toward an international law. If a state violates an international obligation, the state must take the responsibility for the violation it commits.⁸

Rosalyn Higgins uses the word accountability in addition to the word responsibility. The word accountability has two meanings; first, the word means that the state has a willingness to conduct an action and/or has mental capacity to realize what the state is doing. Second, the word means that there is what is named as the states liability for any of the states internationally wrongful behavior and that the liability must be performed.⁹

B. Finding and Discussion

1. Motivation for Aircraft Hijacking

The study on this matter becomes a crucial one, as the responsibility mentioned here is related with the main subject of International law; that is a state. For that reason, the experts on International

law admit that the study on the states responsibility is a significant study. Besides, its study is also related with fundamental principle of International law.¹⁰

Viewed from the area of its occurrence, the aircraft hijackings are mostly committed in Middle East and Cuba. The aircraft hijackings directed to Cuba has been successfully committed for 180 times, and only 69 times that has been failed. Of the 724 aircraft hijackings committed throughout the world since 1931 up to 1983, 30% of them have been committed in Cuba.¹¹

According to the data, the motives underlying aircraft hijackings can be grouped into four motives; those are (1) personal motive, (2) hostage taking motive, (3) pure political motive and political motive with violence, and (4) gaining political asylum motive.

The personal motives of aircraft hijackings may be due to various criminal reasons such as being pure criminal, being mentally disturbed, being in broken home condition, being home sick, having blind love, etc. The aircraft hijacking which is purely derived from criminal motive¹² is a crime which is intended to collect money or belongings for private goal. This was what happened to Trans World Airlines (TWA) in June 1970. The hijackers demanded to be given a hundred thousand US dollars as the ransom. Fortunately, before they could gain what they demanded for, they were arrested by Federal Bureau of Investigation (FBI) and were forced to be landed on International Dulles Airport, Washington DC. Another hijacking committed due to personal motive occurred in May 1971. The hijackers who hijacked an airplane flying from Miami, New York – to Nassau demanded for five hundred thousand for the ransom. However, the hijackers were arrested by the police in Bahama. Another hijacking was committed due to other personal motive; that is being mentally disturbed¹³. The hijackers were not able to cope with the life in United States as everything was expensive, the economic situation was bad, they live in a small, crowded apartment, and those, in the end, disturbed them mentally. After watching a movie

⁶ Cited from Huala Adolf, *Aspek Negara Dalam Hukum Internasional*, Raja Grafindo Persada, 2010, page. 203.

⁷ *Ibid.*

⁸ *Ibid.*, page. 204

⁹ *Ibid.*, page. 204

¹⁰ *Ibid.*, page. 204.

¹¹ As one of the efforts to prevent aircraft hijacking, ICAO has legalized 2 International Conventions; *The Hague Convention of 1970* (Convention for the Suppression of Unlawful seizure of Aircraft) and *Montreal Convention of 1971* (Convention for the Suppression of Unlawful Acts Againsts the safety of Civil Aviation).

¹² Evan A.E., *Air Hijacking : Its Cause and Cure*, *American Journal and International Law*, Vol. 63. 1969, page. 705.

¹³ *Ibid.*

on airplane hijacking, or reading a magazine on the same issue, they were provoked to hijack an airplane. These kinds of hijacking are easy to be recognized and therefore, it is easy for the authority to arrest the hijackers.

An aircraft hijacking due to the motive of being in a broken home condition was committed by a Sri Lankan named Ekanayaka Sapala to one of the airplanes owned by Alitalia airlines. On 30 June 1982, he hijacked Boeing 747 of Alitalia airlines during its journey from New Delhi to Bangkok (Thailand). He demanded to be united with his separated wife and children and a ransom of three hundred thousand US dollars. After he was united with his children and his wife – who was an Italian - he surrendered to the authority in Bangkok.

The aircraft hijacking with home sick motive was committed in United States and in South America.¹⁴ The motive for such hijacking was usually aimed at going to Cuba. This hijacking was also committed for a simple purpose; that is to be taken to Cuba. Once they arrived at Cuba, they would surrender. This kind of hijacking has the smallest risk, and therefore, to resolve such hijacking, usually the flight crew is ordered to fulfil the hijackers' demand. Based on that experience, TWA instructed all of the flight crew to fulfil all of the hijackers' demands.

The aircraft hijacking with the motive of hostage taking may be committed with or without government's involvement.¹⁵ The hijacking which involved the government may relate with political condition. The examples of such hijacking were committed by Ben Bella in 1956, by Libya Air Force to British Overseas Airways Corporation (BOAC). The other victim of such hijacking were the Vice Minister of Kongo, Mose Thsome in 30 June 1967, US Navi on 10 October 1985, and Israel Army on 3 February 1986. The hijacking with the motive of hostage taking without government's involvement was committed by Boyton on 1968 and by Jessi on 4 August 1968 by hijacking Cessna of Naples Airlines.

Aircraft hijackings with hostage taking motive by involving the government were usually targeted

to civil flight and committed by the states which were in hostility. The most popular example in this case was what had been done by Israel government in taking two Aljazeera senior officials as hostages during their scheduled flight of BOAC. When the flight made its transit in Tel Aviv, during its journey from Karachi to London, the officials were taken hostage and were forced to leave the plane. Such case was committed first in 1966 when Guinean 19 officials, including the minister of Foreign Affairs, were taken hostage by Ghana Government from the flight of Pan American Airways (Pan Am), when it made its transit at Accra Airport. Ghana government demanded the freedom of 100 Ghanaians who were imprisoned by Guinean government. Likewise, the government of Ivory Coast also took hostage of Guinean ambassador when *Koninklijke Luchvaart Maatschapaj* (KLM) made its transit at Abidjan airport. Actually, such aircraft hijacking does not suit the basic definition of aircraft hijacking as defined in Convention of Tokyo, 1963 or Convention of Den Haag 1970.

The research conducted by Interpol¹⁶ revealed that 64,4 percent of all aircraft hijacking cases in the world are committed due to political motive. The political motives underlined the aircraft hijacking are divided into two; pure political motive and political motive with violation. Pure political motive that underlined aircraft hijacking was once committed on 9 November 1968. Two Italian hijackers, named Giovine and Panichi hijacked the *Olympic Airways* plane that had just taken off in Paris for its journey to Athena. The hijackers demanded the plane to return to Paris and spread out banners which were meant to support the democracy in Athena, Greek. In that case, there was no injured party and the hijackers were arrested and were sent to prison. In Paris, there are many cases of aircraft hijacking with pure political motives like the case mentioned above.

Aircraft hijacking with political motive sometimes are committed with violation. This kind of hijacking often results in many victims both lives and destruction. The groups which committed such hijacking were Black Panther in USA, the communist

¹⁴ See Fick R.L., Gordon, J.L, dan Patterson J.C. Aircraft Hijacking : *Criminal and Civil Aspects*, University of California Law Riviw, Vol. 22, 1969-1970, page. 83.

¹⁵ Loc.Cit.

¹⁶ Horvitz J.F., *Arab Terrorism and International Aviation : Deterrent vs The Political Act*, Chitty is Law Journal, Vol. 24, 1979, page. 145.

group of Red Army in Japanese and South Korea, members of some political movements in Middle East, Ethiopia, some of Portuguese colonies in South Africa, Kashmir, some of the radical right and left wings of Jewish fascism in Soviet Union, and *Komando Jihad* (Jihad Command) which hijacked Garuda Indonesia Woyla.

Aircraft hijacking committed due to political motive¹⁷ with violation started to take place in 1960s. Generally, the hijackers take hostage of the plane, the passengers, and the crew, and demand the freedom of their imprisoned friends, or the friends which were brought to justice by their enemies. The cases of such hijacking were at its top during the dispute between the Arabian states and Israel in Middle East. The first hijacking was committed by *Popular Front for the Liberation Palestine* (PFLP)¹⁸ in 1968 by hijacking the airplane owned by EL AL during its trip to Aljazeera and demanded the freedom of their friends who were imprisoned in Israel.

Political motive underlined aircraft hijacking with violation reached its top cases in 6 September 1970.¹⁹ In one day, there were five airplanes hijacked. Of the five airplanes, three of which belonged to Swissair, Trans World Airlines (TWA), and BOAC, which all were blown up in Downsonfield Airport in Jordanian. One airplane, Boeing 747, owned by Pan Am, were led to Cairo, Egypt, where it was exploded. The last plane, belonged to EL AL airways, was landed at Heathrow, London as the hijacking was failed and the hijacker, Laila Khaled was arrested. All of those aircrafts were hijacked by PFLP as their attempt to free their friends who were imprisoned by Israel, West Germany, and Swiss government. After the negotiation, Germany and Swiss government agreed to free 6 of the hijackers' friends as well as Laila Khaled.

Aircraft hijacking with a motive of seeking political asylum were mostly committed during 1958 until 1961. The hijackers, who were from Cuba, were seeking political asylum to USA during the regime of

Fidel Castro. They fled from Cuba because they disapproved the communist politics run by Castro. Since 1967, the case of aircraft hijacking with the motive of seeking political asylum has been decreasing in number, but it transformed into other motive involving crime such as robbery or taking hostage for ransom. The number of aircraft hijacking cases has been decreasing²⁰ since its top period cases of 385 incidents during 1967 until 1976. From 1977 until 1986 the total number of aircraft hijacking cases was decreasing to 300 incidents, and from 1987 until 1996 it became 212 incidents.

The hijacking, however, is continued to be committed periodically, though the number of hijacking with the motive of seeking political asylum continues to decrease. On 4 December 1980, two persons from Poland hijacked a flight of Antonov 24 and demanded to be taken to Templehoff, an American air force base in West Germany. The hijackers were seeking political asylum to United States.

2. The Law in Regulating States Responsibility for Resolving Aircraft Hijacking

The law in regulating states responsibility is a difficult subject. In general, scholars of international law admit the complexity of the subject. Based on the data, the number of aircraft hijacking cases by December 1983 had reached 724 incidents of hijacking all over the worlds on various airways and with various motives. Realizing how dangerous the effects of aircraft hijacking for humans and their belongings are, the states of the members of International Civil Aviation Organization (ICAO) and other aviation organizations both nationally and internationally, individually or together, are trying to prevent or to resolve any aircraft hijacking in accordance with their own need. The efforts in preventing aircraft hijacking have been done juridically by legalizing national law, ratifying international convention related to civil aircraft hijacking, establishing bilateral agreement, extraditing, or

¹⁷ Aircraft hijacking is a crime, and it may be committed as a means to get away from any political problem, see Priyatna Abdurrasyid, *Beberapa Bentuk Hukum Sebagai Pengantar Menuju Indonesia Mas, 2020, Fikahati Aneka dan Badan Arbitrase Nasional Indonesia*, 2008, page 80.

¹⁸ Loc.Cit..

¹⁹ B. Rein, *A Government Perspective*, *Journal of Air Law and Commerce*, Vol. 37, 1971, page 188.

²⁰ Downloaded from Google, 28 September 2012.

preventing and resolving any hijacking both in land or air.

The rights and obligations of pilot in command are regulated in Chapter III of Tokyo Convention 1963. According to the chapter, the pilot in command has the right to take any particular actions in securing the flight – similar to what the police would do – since the police are not in the flight to secure the flight. The pilot in command can arrest a passenger, whom he suspects as a hijacker or whom he thinks may endanger the flight or the other passengers. The pilot in command can force a passenger to leave the plane once he suspects the person to be dangerous or he can hand over the passenger to the police once the flight lands. All of those actions are legalized by Tokyo Convention 1963 that will make him free of any accusation or charge. These pilot privileges which are explained clearly in Chapter III are suggested by *International Federation Airlines Pilot Association* (IFALPA) which was also supported by *British Association Airlines Pilot* (BAAP).

The pilots' privileges are in the effects from the start when the plane is on the edge of the runway and is ready to take off until the end when the plane is on the edge of the runway and finishes landing, as regulated in Article 1 (3) of Tokyo Convention 1963. If the plane makes any emergency landing, the pilots will still hold those privileges until that duty is taken over by the authority on land. Those privileges must not be put into effect for any crime related to politics, religion, discrimination in the bases of race, religion, tribe, nation, or the color of the skin. The difficulty faced by the pilot in arresting a passenger is that there is no room in the plane that can be used to lock up the passenger. The possible place would be to lock him up in the bathroom; still this remains a problem as the bathroom can be opened from inside.²¹ If the pilot in command is not able to do that function, the privileges may be carried out by first officer, navigator, engineer, cabin crew, and even by the other passenger.

The rights and the obligations held by the states as the members of Tokyo Convention 1963 are regulated in Chapter IV article 12 until 15. As the members of Tokyo Convention, the states are required to give permission for the pilot to disembark the

hijacker or the suspected passenger. The state where the hijacker is disembarked is required to arrest him and to conduct a preliminary investigation toward the suspect and the states which have jurisdiction and the other states which may be related with the hijacking. The state where the suspect is arrested, after detaining the suspect for a certain period of time, should give the suspect permission to continue his journey, unless the suspect is sentenced to prison or to be extradited.

Likewise, the state used as the site for landing, may not arrest the plane, the crew, the passengers, or their belongings. They are allowed to continue their journey. The hijackers, however, must be deported to their citizenship state as they may not stay in the state which does not hold their citizenship. In the case where the hijackers' citizenship state is not known, they may be deported to the state which is believed to be the site where the hijackers start the flight they hijacked.

In taking certain actions, passengers' safety must be considered first. Their journey must not be delayed too long as well. Different states may interpret certain articles in Tokyo Convention 1963 differently.²² In such case, those different interpretations may be settled through negotiation. If they are unable to reach any agreement, they may forward the case to International Arbitration. If, the International Arbitration is also unable to settle the differences, the case may be forwarded to International Court.

Den Haag Convention 1970 signed in 16 December 1970 is established as the complement of Tokyo Convention 1963. Those two conventions are commonly called as convention on aircraft hijacking. Since 1969, the cases of aircraft hijacking have been increasing significantly, both in number and on its quality. Unfortunately, Tokyo Convention has not yet put into effect. Therefore, the increased cases have become the challenge for international civil aviation. There are many efforts conducted, such as campaigning against aircraft hijacking, or condemning the aircraft hijacking. As the cases of aircraft hijacking increases, the Law Committee of International Civil Aviation Organization (ICAO) is requested to establish

²¹ *Loc.cit.*

²² *Loc.cit.*

new international convention which will give heavier punishment for the aircraft hijackers. It is realized that Tokyo Convention 1963 has some weaknesses, and therefore is unable to solve every aircraft hijacking case.

In 1968, the Law Committee of ICAO has prepared a new concept for international convention called *Convention for the Suppression of Unlawful Seizure of Aircraft*. The concept is legalized in a diplomatic conference attended by 77 states, and the conference itself was opened for every member of ICAO. The main purpose of the conference was to set an agreement for which the hijackers may not get away without being punished, but they should not be punished twice by different states for doing the same crime. The principle that holds is that every state member of ICAO must sentence heavy penalty for aircraft hijackers. The state which has the right to put the case in court may conduct its jurisdiction, to give an opportunity to arrest the hijackers, or to extradite the hijackers if the state is unable to put the case in court.

The state which has the jurisdiction is the state in which the airplane is registered; therefore that state is the state which has the right to sentence penalty. However, when the plane was hijacked, most likely the plane will land in another state. That is why, Article 4 of Den Haag Convention 1970 requires all of the states as the members of Den Haag Convention 1970 to take particular actions so that the jurisdiction privilege can still be conducted by the state registering the planes. How to conduct this privilege becomes a complex problem when the plane is in the status of dry lease, in other words it is rented by another state without its crew for a long period of time. In this case, the state renting the plane should be given jurisdiction privilege as long as the period of renting the plane.

Even when the plane is in the status of dry lease, and the state which rents the plane (lessee) is given jurisdiction privilege, there is still problem because the hijacked plane may be landed in different state, and not in the state where the plane is registered. Therefore, Article 4 (2) in Den Haag Convention 1970 regulates that the state where the hijacked plane is landed may take several actions

to extradite the hijackers or to sentence heavy penalty to them. In practice, this is difficult to conduct because there is a possibility that the hijackers may not violate the national law established in the state where they land the plane. The penalty can be directly sentenced to the hijackers if the hijackers are prosecuted under the law in international crime, such as in the case of piracy. Meanwhile, in the case of hijacking, the law implemented is not the law in international or universal crime.

Article 6 of Den Haag Convention 1970 states that the state in which the aircraft hijacking occurs must take actions or arrest the hijackers. The arrest must be in accordance with the states national law and it is only conducted to process the case so that the hijackers can be extradited to the state having jurisdiction. The process can also be carried on for the states need to sentence a penalty to the hijackers. The state in which the hijackers land the plane, must conduct a preliminary investigation immediately. The result of the investigation must be reported to the state where the plane is registered. If the state imprisons the hijackers, the state must also give that information to the state where the hijackers hold citizenship. After that then, the state must make its verdict, whether to extradite the hijackers, or to sentence a penalty in accordance to its national law.

The state in which the hijackers are arrested must immediately make its verdict, whether to extradite the hijackers or to sentence a penalty. The decision must be made based on their political consideration. For this issue, the developed state such as Russia and United States suggest that the state must extradite the hijackers whatever the motive. On the contrary, the developing states in general disagree with that suggestion. Therefore, in practice, the state members are free to make their decision, whether to extradite or to sentence a penalty. Furthermore, article 8 of Den Haag Convention 1970 regulates the extradition matter clearly. According to the article, if the state member needs an extradition agreement to extradite a hijacker, Den Haag Convention 1970 can be used as the bases for extradition law²³ as it is required by the national law. However, if the state members want to make their own extradition

²³ Samuel A, *The Legal Problems: An Introduction Journal on Air Law and Commerce*, 1971, Vol. 39, page 164.

agreement, the agreement must state clearly the kinds of aircraft hijacking that can be extradited.

Besides regulating new rules that were not regulated in Tokyo Convention 1963, Den Haag Convention 1970 also regulates some of the rules which were regulated in Tokyo Convention 1963. Some of those rules are when there is an aircraft hijacking, the state where the hijackers intend to land the plane must help and give permission for the plane to land. The state must also help the passengers and their belongings to continue their journey without much delayed. Whenever aircraft hijacking occurs, every state has obligation to help the investigation process by providing any necessary information or evidence related with the hijacking, as well as to give assistance in taking action as regulated in article 11 of that Convention.

The handing over of the hijackers to the state where the plane is registered is known as the extradition process. What is meant by extradition²⁴ here is the handing over of a person being prosecuted or imprisoned because he has committed a crime not in the state which hand him over to the state which asks him to be handed over because that is the state which has jurisdiction to bring him to court and to sentence a penalty to him. However, Tokyo Convention 1963 did not compel the state members to extradite the hijackers.

Den Haag Convention 1970 states that hijacking is considered as international crime or universal crime, and therefore, the hijackers can be extradited. However, Den Haag Convention 1970 did not compel the state members to extradite the hijackers. When drafting the concept of Den Haag Convention 1970 United States suggested that every state member is compelled to extradite the hijackers, but it was only Columbia which support the suggestion, in addition to Russia which stated clearly that there should be no option for the hijackers but automatically being extradited.

In such extradition agreement, it must be stated clearly what kinds of criminals that must be extradited. Giving extradition without a strong law base is against the right of sovereign state because a

sovereign state has a right to give asylum. Furthermore, extradition is also against human rights.²⁵ According to article 14 of International Covenant on Human Rights on 1966, every natural person has the right to ask for asylum to whatever state which s/he thinks is able to give her/him protection. Likewise, every state has a prerogative right to give asylum to every person in his territory, whether the person is its citizen or not. Even, the state may give asylum to a person who does not have any citizenship (state less), including the refugee of political crime.

According to international custom law, asylum is given to those who commit crime due to political differences or those who have political differences. Later on, many states expand the concept of politics to include aircraft hijacking and therefore, there may be cases where aircraft hijackers may not be extradited. The debate on hijackers' extradition held by United Nations in 1966 and 1970 confirmed that every state in which the hijackers land the plane has a right to give or not to give asylum, and this right is a prerogative right of a sovereign state which may not be interfered although the other state members also admit that hijackers can be extradited. Such extradition must be arranged based on the national law of each state. To respond this, United States, Brazil, and Sweden have made an extradition agreement which states that political criminal and political refugee must not be extradited. Likewise, extradition agreement between Cuba and Mexico also states that political criminal and political refugee must not be extradited.

Aircraft hijacking can be prevented and resolved physically both in air and on land; however the most effective way is to prevent or to resolve aircraft hijacking on land.

According to a research conducted in United States, psychologically, every hijacker has particular behavior that can be recognized easily. The hijacker tends to behave differently from the other passengers in general. At least there are 12 behaviors that can be differentiated from the other passengers. The airways' staffs have also been trained to recognize those

²⁴ Loc.Cit.

²⁵ *The Universal Declaration of Human Right on 1948*, gave inspiration on the establishment of *The International Covenant on Human Rights on 1966*.

behaviors even since the passenger checks in. Those different behaviors are orally reported in code to the security officers who then intensively observe the suspected passenger continuously.

Besides psychological checking through hijackers' behavior, to prevent hijacking can also be done on land by using metal detector. There are many devices applied a long the way, from the check in counter till the area where the plane is parked. Each passenger must walk through these detectors to find out whether the passenger brings metal which may endanger the flight. The metal detector is passive, and therefore it will not disturb the passenger's health nor will it damage the passenger belonging.

The pilot in command must inform the decision he made to the officers in flight observation tower because of the danger that he faces or his inability to obey the hijackers' command²⁶. It is important to coordinate what a pilot does and what the officers on land should do because without the coordination sometimes the result may be upsetting. As an example is the Northwest Airlines hijacking on its journey from Milwaukee to Detroit. At that time, the hijacker could be arrested, however, since there was no coordination among the federal police, the state police of Michigan, and the local police, as each of them arranged its on arresting plan, and insisted on their jurisdiction privilege, so none of the arrest the hijacker, and he managed to get away and landed in Cuba without any difficulty.

C. Conclusion

Considering the finding and the discussion in the previous chapter, the conclusion is stated in the followings:

- a. The motivations in hijacking aircraft are:
 - 1) Personal motive; the hijacking is committed based on personal motives which are derived from being mentally disturbed, being in broken home situation, being home sick, and committing pure crime that is to take others' belongings by force, or by asking ransom in a certain amount of money.

²⁶ *Loc.cit.*

- 2) Hostage taking motive; aircraft hijacking is committed by taking hostage of particular person or particular senior officers.
- 3) Political motive; aircraft hijacking with this motive can be divided into two; pure political motive, and political motive with violation.
- 4) Political refugee motive; aircraft hijacking with this motive is committed due to political reason. The hijacker is fleeing to other state because s/he feels depressed with a certain political practice in his/her state or s/he in the opposite position of the ruling political party.

b. The states responsibility to resolve aircraft hijacking basically has been regulated clearly in international convention and in each states national law. The action that must be taken by a state includes the preventive action on land, the pilot's effort in performing certain police duties during the flight, and the states action to arrest, imprison, and to process the case by bringing the hijackers to court. Besides, the states action in resolving aircraft hijacking is also carried out by extraditing the hijackers provided that the states have established extradition agreement.

REFERENCES

BOOK

- Abdurrasyid, Priyatna, Beberapa Bentuk Hukum Sebagai Pengantar Menuju Indonesia Emas, 2020, Jakarta : Fikahati Aneksa dan Badan Arbitase Nasional Indonesia, 2008.
- Adolf, Huala, Aspek-aspek Negara Dalam Hukum Internasional, Raja Grafindo Persada, 2010.
- Annual of Air and Space Law, 1978, Toronto, *The Carswell Company Limited*, Vol. IV.
- Annual Report of the Council ICAO, 1981, Documensation for the Session of the Asembly in 1981.

- Evan, A.E. 1969. "Aircraft Hijacking: Its Cause and Cure", dalam *American Journal of International Law*. Vol. 63.
- Fick, R.L, Gordon J.L., dan Patterson J.C. 1969-1970. "Aircraft Hijacking: Criminals and Civil Aspects", dalam *University of California Law Review*. Vol. 22
- Horvits, J.F. 1976. "Arab Terrorism and Internasional Aviation Deterrent vs the Political Act". dalam *Chitty's, dalam Chittys"Law Journal*, Vol. 24.
- Martono, 1987, Hukum Udara, Angkutan Udara dan Hukum Angkasa, Bandung : Alumni,
- Rein, B. 1971. "A Governement Perspective", in *Journal of Air Law and Commerce*. Vol. 37.
- Samuel, A. 1971. *The Legal Problems: An Introduction Journal on Air Law and Commerce*, Vol. 39.

Convention and Act

- Convention Relating to the Regulation of Aerial Navigation, 1919 (Paris Convention, 1919).*
- Convention on International Civil Aviation, 1944 (Chicago Convention, 1944).*
- Convention on Offences and Certain Other Acts Committed on Board Aircraft, 1963 (Tokyo Convention, 1963).*
- Convention for the Suppression of Unlawful Seizure of Aircraft, 1970 (The Hague Convention, 1970).*
- Convention for the Suppresson of Unlawful Acts Against the Safety of Civil Aviation, 1971 (Montreal Convention, 1971).*
- Convention for the Unification of Certain Rules for International Carriage by Air, 1999 (Montreal Convention, 1999).*

