

Pro Cons The Policy of Involvement of Foreign Airlines in Indonesia Domestic Flights Routes (International and National Law Perspectives)

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Abstract

The involvement of foreign airlines in Indonesian domestic flights was launched by the Government as a solution to reduce the price of expensive domestic aeroplane tickets to reap the pros and cons in the society. The participation of foreign airlines is expected to make a competitive climate to increase national airline services. This study aims to determine the suitability and appropriateness of foreign airline involvement policies at domestic flights routes in accordance with international law and national law perspectives. The research method used doctrinal legal research that is prescriptive in nature through literature studies using data analysis techniques related to the themes discussed. The novelty of this study to know about the policy is appropriately implemented as long as there are mechanisms and conditions agreed upon between the Indonesian Government and foreign airlines. The implementation of this policy requires clear legal regulation because was not allowed by international and national law principles.

Keywords: *foreign airlines, domestic flight routes, international law principles, national law principles*

1. Introduction

Transportation is a very important element for humans because it can help in carrying out their life activities. The vital role of transportation as the mobilization of goods or people from one place to another becomes a driver for economic growth and the development of the quality of life of a region. (Kadir, 2002). In the modern era, demands for a fast and efficient transportation model can be obtained from the aviation sector. The effect of globalization plays a large role in connecting humans from one place to another. (Hakim, 2010)

A few times ago a policy discourse was issued by the Government of Indonesia to including foreign airlines to entered as one of the service providers of domestic flight routes. This research is aim to stabilize domestic airplane ticket prices which soared at the beginning of 2019. The high ticket prices of domestic aircraft were suspected due to the structure of the flight markets which are controlled by two airlines namely Garuda Indonesia Group and Lion Air Group which reach 96% of the airline market domestic. This condition is certainly a condition for the existence of bargain terms of price-fixing between the two business actors which caused by high price tickets.

The policy to include foreign airlines in domestic flights is expected to change the structure of the domestic aviation market so that it is not only controlled by two companies. Also, the policy is expected to have an impact on the community to get more flight options so that flights in Indonesia are increasingly competitive and provide better quality services.

The current condition of Indonesian domestic flights, 12 airlines was serving domestic passenger flights that are list on the Ministry of Transportation's website, namely PT. Garuda Indonesia, PT. Indonesia AirAsia, PT. Lion Mentari Airlines, PT. Wing Abadi Airlines, PT. Sriwijaya Air, PT. Travel Express Aviation, PT. Citilink Indonesia, PT. Transnusa Aviation Mandiri, PT. Batik Air Indonesia, PT. NAM Air, PT. ASI Pudjiastuti Aviation, and PT. Aviastar Mandiri. (Komisi Pengawas Persaingan Usaha, 2019)

Although the number of domestic passenger airlines is large scale, only controlled by two companies, which are Garuda Indonesia Group with 46% or around 738 domestic flights each day and Lior Air Group 50% or around 779 domestic flights per day. (Direktorat Jenderal Perhubungan Udara, 2019). Other airlines that also serve large scale flight routes such as the two groups are the AirAsia Group Indonesia, but the percentage is only 2% or about 46 domestic flights. While other airlines only serve small flights. but the percentage is only 2% or about 46 domestic flights. While other airlines only serve small flights. (Direktorat Jenderal Perhubungan Udara, 2019).

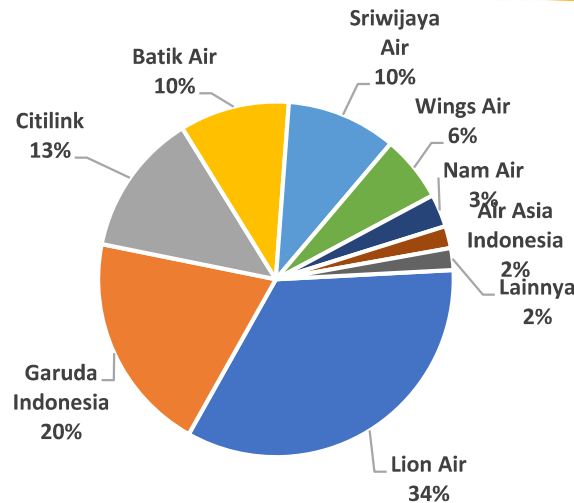


Figure 1 Table of Airlines Domestic Aviation Services in Indonesia in 2019 (Komisi Pengawas Persaingan Usaha, 2019)

The entry of foreign airlines on domestic flights will indeed increase the number of airlines, but it does not guarantee that it can reduce the price of domestic flight tickets. Before foreign airlines operate on domestic flights, it needs to be studied in depth-first related to the regulation of both international law and national law relating to this matter. based on these problems, the researcher will explain whether the policy discourse to involve foreign people in domestic flights is appropriate or not from an economic perspective, international law, and national law.

Based on the background that has been described, the writer shown some problems that the author wants to examine in this writing:

1. What are the conditions for implementing the policy of involvement of foreign airlines as domestic service providers in Indonesia?
2. What is the perspective of the view of national and international law in examining the application of the policy of involvement of foreign airlines as domestic flight service providers in Indonesia?

2. Material and Methods

The type of research used by the author is normative legal research which is also called doctrinal legal research. This study focused on positive legal norms in the form of legislation and is done by studying the laws as regulations related to the problems under study. The author in this study uses data analysis qualitatively, that is, the collected data will be selected and processed based on the quality that is relevant to the objectives and research problems to find an overview of the policy to involve foreign airlines in domestic flights in Indonesia. The method of data collection approach has been used by the author is focus on data that has relevance to the themes that the author want to discuss, various sources such as books, journals, or valid online news to support the validity of the data used.

3. Result and Discussion

3.1 Conditions For Implementing The Policy of Involvement of Foreign Airlines as Domestic Service Providers In Indonesia

The discourse of involving foreign airlines in the service of domestic flights has indeed reaped many pros and cons in the community. However, this is a natural phenomenon where certainly a policy issued by the government will get support from its supporters and from people who have the same thoughts and vice versa will get a rejection from parties that are not in line with government thinking. Moreover, humans are creatures that are independent in thinking, each one of them must not always be the same.

The high price of airplane tickets at this time has led to several profound impacts. The immediate impact is that in the last few years there has been a downward trend in the number of passengers using air services. Based on data from the Director-General of Civil Aviation, the number of passengers served in 2014 which reached 87 million passengers decreased to 12 million passengers in 2016. Although there was an increase in the number of passengers in 2018 to 14 million passengers, the increase was still relatively small.

Meanwhile, up to July 2019, only 764 thousand passengers have been served by domestic airlines. Most people eventually turn to more affordable means of transportation such as ships or trains.

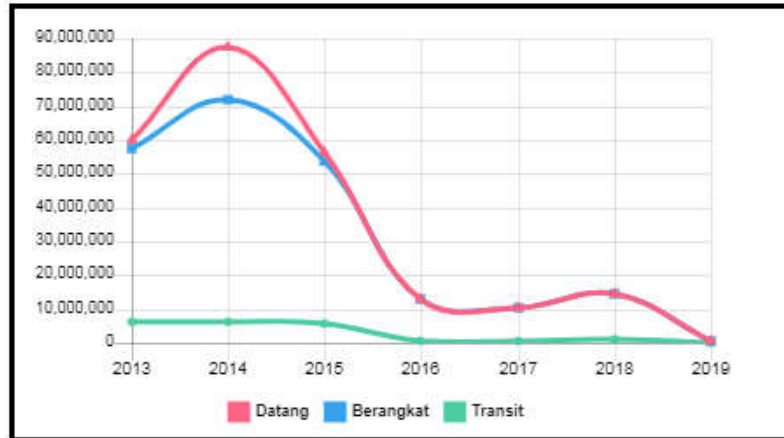
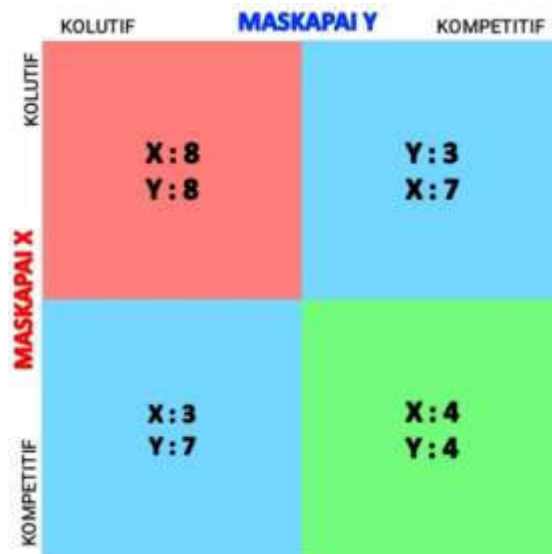


Figure 2 Table of Aviation Airlines Activities in Indonesia (Dirjen Perhubungan Udara Republik Indonesia, 2019)

The price as a symbolization of war both airplane companies, which are free to regulate the price tickets, because they are the main players. The efforts have been taken by the Indonesian government to reducing the upper tariff limit to 16%, regulating avtur fees, and providing tax discounts for airlines. However, these efforts it's not effective to reduce the cost of airplane ticket prices. It was shown that airlines market are still dominated by the two big airlines, it is difficult to reduce the price of airline tickets.

Based on from the concept is under Nash-Game Theory proposed by the famous economist John Forbes Nash, Jr. where the rationale of this theory has relevance to the arguments that the author will present in this paper. Nash Game Theory states that in a condition of competition between two competitors, assuming the two do not work together, then an Equilibrium solution will emerge where if both competitors move a little from the Equilibrium, they will lose (Cabrales,-).

Game Theory focuses on the results of each decision and each individual tries to decide the best by looking at the decisions of his opponent. There is one unique phenomenon from Game Theory that is stability. Stability will be disrupted if one of the players intends to get more profits. What happens is the opposite, he will lose because the opponent will do the same (to stabilize the atmosphere) and both ended with a situation of equal loss.



In this 2x2 matrix, if we assume that 2 airlines have the largest market share, namely X Airlines and Y Airlines. Based on Nash's theory, the "best" result for both of them is to raise ticket prices to the eighth

grade naturally, even without the need to establish contact with each other between decision-makers in both companies.

Illustration of figure 8 is the most stable point for both airlines to increase ticket prices but the prices that appear are still very high relative. To solve this problem, Nash Game Theory has a solution to overcome the conditions of business competition, which is to add one competitor, for example, Airline Z, the stable point is guaranteed to change because the matrix used is 3X3.

The situation that occurs is the same as what is currently happening in Indonesia, where the aviation market which is only controlled by two major airlines has resulted in the ticket prices appearing still very high. Therefore, by involving foreign airlines in domestic flight services, the competition will become more competitive and automatically each airline will adjust their respective companies to provide prices that can be relatively low.

Even though it is felt that the policy is right, it should be noted that some basic things should be implemented if the policy of involving foreign airlines is correct. First, related to air law (cabotage principle), that is, for domestic routes, it can only be exclusively served by domestic airlines.

There is even a universal ban on foreign airlines serving domestic flights in a country. Second, don't let policies involving foreign airlines cause liberalization of the national aviation industry. Do not let the policy later cause regret in the future if foreigners have actually entered and are then banned. The government will find it difficult to stem the role of foreign airlines even with statutory regulations.

An example is in our banking industry where the majority of bank ownership is foreign. Initially when the financial crisis occurred at the bank opening foreign investors to own a local bank was considered a solution. However, lately, many local banks have been acquired by foreign investors. As a result, profits go to foreign investors and sacrifice national economic interests. Therefore, if this policy is properly implemented, the government should prepare an agreement between the government and foreign airlines, especially agreements that can protect Indonesia's national economic interests in the future. An agreement needs to be made so that the liberalization of the banking industry does not occur in the aviation industry either.

3.2 International and National Law Perspectives

Based on a study of the perspective of international law and national law, this principle does not allow foreign airlines to be involved in providing flight services for domestic routes of a country. From the perspective of international law, there is a Cabotage principle stated in the ICAO (International Civil Aviation Organization) Conference which can be specifically found in Article 7 of the Chicago Convention in 1994. (ICAO)

The article clearly states that "The contracting States recognize that every state has complete and exclusive sovereignty. "Based on these rules, several fundamental things can be drawn and can be relevant to the regulatory mechanism involving foreign airlines in a country's domestic flight service provider.

The regulation stipulates that a country has full sovereignty and authority in managing sea transportation, air transportation, and various other types of transportation to protect its territorial sovereignty.

This rule implies that when it comes to aviation regulation in Indonesia, it relates to the authority of a country, including Indonesia, whether to allow or prohibit the participation of foreign airlines as providers of aviation services for domestic routes in Indonesia.

Therefore, the participation of foreign airlines as domestic flight service providers is a wholly owned authority of Indonesia whether to grant operating licenses for foreign airlines in the provision of domestic services such as cargo collection, passenger transportation, or other things that can be done based on the objectives commercial that can benefit the corporation / company that manages the operations of the foreign airline.

International legal studies that underlie the rejection of the participation of foreign airlines as providers of domestic flight services beginning with the principle of the right to refuse in the 1919 Paris Convention, broadly discusses the sovereignty of a country in exploiting and exploiting air for commercial purposes is a concrete right and exclusively owned by a country.

However, it is important to emphasize that fundamentally this rule does not prohibit the involvement of foreign airlines as providers of flight services for domestic routes of a country, fundamentally only aiming to protect state sovereignty in managing and exploiting territorial territory especially in the air in order to obtain commercial benefits that become authority of a country.

This is what underlies the majority of countries in the world that refuse to include foreign airlines as domestic flight service providers in their countries, as evidenced by the existence of such strict protection

in the regulations of a country that regulates aviation, with the expected goal of being able to obtain maximum commercial profit from air flight management.

The policy of including foreign airlines in the provision of flight services for domestic routes of a country also fundamentally clashes with the regulation of flight regulations in Indonesia.

First, it contradicts Law Number 1 of 2009 concerning Aviation (here in after referred to as Law 1/2009), especially Article 85. Article 85 of Law 1/2009 (Direktorat Jenderal Perancangan Peraturan Perundang-Undangan, 2009) broadly discusses the adoption of provisions of international law regarding the principle of cabotage.

The cabotage principle affirms that domestic scheduled commercial air transportation can only be carried out by the operation of a national air transport business entity that has obtained an officially scheduled state transportation business license from Indonesia.

Second, contrary to Article 108 of Law 1/2009 that the national commercial air transport business entity owns all capital assets or a large majority of its owner must be owned by an Indonesian legal entity or an Indonesian citizen. Regulations regarding this matter relating to the operational licensing mechanism of foreign airlines as a provider of domestic service flights in Indonesia which have complicated procedures can sometimes not be fulfilled by foreign airlines which continue to insist on carrying out scheduled commercial air transport operations in Indonesia.

Third, contrary to Presidential Regulation Number 44 of 2016 concerning Closed and Open Business Fields in the Field of Investment. This regulation discusses the mechanism for determining the amount of capital that must be fulfilled by foreign airlines that want to operate in Indonesia. The regulation of the amount of capital invested by companies managing foreign airlines must meet the provisions of capital regulations that should not be greater than 49% of the total assets in foreign airlines wishing to operate in Indonesia.

Even so, foreign airlines can still carry out operational activities in the provision of domestic aviation services even though they are faced with a variety of problems such as contrary to the provisions contained in national law and international law. This is based on economic reasons that are used to meet the consumer needs of Indonesian domestic air services.

Foreign airlines can still operate on Indonesian domestic flight routes, but they must change their legal entity into an Indonesian legal entity as has been done by Air Asia Indonesia.

The same is true in other countries, such as Thai Lion, which despite its name is Lion, is the Indonesian airline, but its majority shareholder is Thailand, not the Lion Group Indonesia. Similarly, Malaysian Batik, the majority shareholder is also Malaysia, not Batik Air Indonesia. Therefore foreign airlines may enter Indonesia to serve domestic flight routes, but they must form an Indonesian legal entity and stock equity must also be controlled by Indonesia.

4. Conclusion

The aviation industry sector is a transportation need that is effective and efficient in meeting the demands of consumers in facilitating it in mobilizing the activities of life that are carried out.

Problems with expensive airline ticket prices for domestic flight routes in Indonesia are interesting studies discussed by the author as to why this phenomenon can occur based on the perspective of national law and international law perspective.

Finally, this article shows that this policy is appropriately implemented as long as there are mechanisms and conditions agreed upon between the Indonesian Government and foreign airlines. the condition in question is basically don't let policies involving foreign airlines cause liberalization of the national aviation industry. Do not let the policy later cause regret in the future if foreigners have actually entered and are then banned. The government will find it difficult to stem the role of foreign airlines even with statutory regulations. Moreover the implementation of this policy requires clear legal regulation because was not allowed by international and national law principles. Even so, foreign airlines can still carry out operational activities in the provision of domestic aviation services even though they are faced with a variety of problems such as contrary to the provisions contained in national law and international law. This is based on economic reasons that are used to meet the consumer needs of Indonesian domestic air services. Foreign airlines can still operate on Indonesian domestic flight routes, but they must change their legal entity into an Indonesian legal entity as has been done by Air Asia Indonesia.

So that in the future the study reviewed by the author can be used as material for consideration of the accuracy of involving foreign airlines as providers of service routes for domestic routes in Indonesia

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