

The Linkage of the Board of Directors and the Status of Aviation Industry Licensing Law

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ABSTRACT

Aviation business is a capital intensive and high risk in terms of safety. Legislation in force in Indonesia requires enterprises should cost in the form of a limited liability company that is obliged to deposit the basic capital of 500 billion rupiah. The capital cannot be made in working capital which is useful for the collateral to a third party. The regulations for a limited liability company are to be established by at least 2 people. The purpose of this research is to analyze the linkage of the board directors and the status of aviation industry licensing law. The position of the legal status of business entities where shareholder is only one person is to be studied in this descriptive study. The result shows that the airlines company should provide the capital risk and high insurance of the third party. UUPT also has given the authority of the shareholders (who owns 20 % of the share) to be decision makers in the company. However, without independent surveillance, it is possible that the shareholders do some mistakes in making decisions. Some mistakes are related to the policy, the using of authorized capital, and others.

Keywords : limited liability company, business aviation, legal status.

INTRODUCTION

Based on the data of the scheduled airplanes accidents from 1967 taken from Sudibyo (2011) can be found that started in February 16th there was an accident of Garuda Indonesia flight 708 route Makassar – Manado when it landed in Sam Ratulangi Airport. There were 22 dead passengers and 70 were survived. In Januari 1st, 2007, Adam Air flight 574 route Surabaya – Manado crashed in Makassar Strait of more than 2000 m above sea level. All passengers and cabin crew passed away in that crash. After the accident, PT. Adam Connection Airlines (Adam Air for further use) is using LCC (Low Cost Carrier) as the strategy to increase the number of passengers. In 2007, Adam Air got 6.25 million passengers, the highest number of passengers it has of all time. However, the Adam Air management cannot support these achievements with safety flight condition. Adam Air finally grounded due to its many times accidents.

There are some factors needed to be successful airlines company. Some are from passengers point view; the airplanes have standard safety procedures, complete services, and affordable cost, from the employees point of view; the airlines should perform high welfare and services and also provide two ways of communication, from the government view; the airlines should apply the regulations.

Adam Air had created an image as the best LCC in domestic airlines industry at its times in Indonesia which is now owns

by Lion Air though still receives complaints from the customers.

Adam Air is limited company based on the regulations no. 40 / 2007 that “a ltd company is board treated like people on law which creates and owns its own wealth and justified in front of the law and assisted by the people inside”.

Based on that law, Adam Air should at least owns by 2 shareholders. Luckily, Adam Air is owned by a spouse Adam Aditya Suherman and Sandra Aang and two other companies. Regulations above (UUPT for further use) separates the wealth owns by the shareholders and owns by the company in order to save the company from misuse in the future of a law suit. In any case, airplanes accidents caused airlines paid some money to the passengers which are not covered entirely by the insurance company due to its large amount.

Based on some journals about airplanes accidents, such as “Study on Air Crash Compensation based on Private International Law Development Trend” (Pengfei, 2015), the research do not focus on the analysis of the accidents and its relation to the international law and give advises to the problems instead. Other researcher, Jorge M. Herrera (2009), discussed about the age of the airplanes. Jean Claude Bosch (1998) studied about the effects of accidents to the shareholders transition which until now there has not been any record about research talks about the relation between the airplanes accidents and the percentage

of the shareholders owns as the decision makers which the decision could create an operational misuse of the flights and or the airlines license law. Jean research is titled "Competitive Impact of Air Crashes: Stock Market Evidence."

The purpose of the study is to find out and analyse the relations of the shareholders linkage to the low safety flight and the license law status that connected to the flight operational license. The study focuses on Adam Air due to its many accidents though reach the achievement as the best LCC airlines. The study uses descriptive method that is used to describe the collected data without taking general conclusions as stated by Sugiyono (142:2003).

The scope of the study, then, is a qualitative research which collecting sample purposively and the researcher uses some considerations based on the theories used, the curiosity of object characteristics. The source of the data is documents (articles about rules and regulations in electronic devices or manual books). The data taken from the secondary data is narrated to descriptive article and analyzed systematically.

RESULTS AND DISCUSSIONS

Business entity in Indonesia is categorized into two: corporate and unincorporated. In corporate company, the subject of the law is the corporate itself which means when the company is insolvent the wealth taken by the law only the wealth owns by the corporate only, aside of the owner's wealth. The corporate

in this study refers to the limited liability company. Based on UUPT, it is a corporate established based on agreement which the authorized capital shared in a share.

The Limited Company established by at least 2 people with minimum authorized capital shared is 50 million rupiahs. For airlines company, the capital must be around 300 to 500 billion based on the Regulation of the Minister of Transportation PM 45 in 2015 article 13 (2) about the Capital Ownership Requirements Enterprises in Transport Sector. The authorized capital cannot be used as the working capital and should be settled as long as the company does its business. Based on the regulations no 1 in 2009, the scheduled airlines company is required to have at least two airplanes and rent at least three which can be predicted the spending cost for airplanes availability. As an example, Boeing 737 – 900 as personal ownership needs more or less 4 trillion rupiahs.

The shareholders share percentage, based on UUPT, is above 20 % for each of the shareholders (at least two people) acts also as the decision makers. According to Redjeki (2000), this kind of corporate or limited company often found in the society due to its characteristics that are different from other business institutions. The characteristic is a limited responsibility of the shareholders who put the authorized capital into working capital and will get the dividend of the share percentage. The shareholders do not need to risk their own wealth in the company due to their limited responsibility of the shared wealth.

However, this limited responsibility could be omitted if there are things happened such as (UUPT article 104 (4)) the characteristics as the corporate is not fulfilled. If it is happened then there will be personal consequences directly or indirectly to the shareholders and the founder of the corporate. The situations are when the shareholders have bad intention for their own personal use, the shareholders involve in the act against the law, the shareholders use the corporate authorized or working capital which impacts on the inability of the company to fulfill the debt / loan.

On the other hand, Board of Directors has its directors to take the responsibility. It has the presumption of guilt for all the member of directors. It means when there is a risk taken for the board based on the decisions made by the directors, whole members of the boards are assumed guilty and take the same responsibilities. In Article 97 paragraph 2, UUPT requires the boards to take the responsibility with good intentions. Good intentions mean that the boards in doing their duties and responsibilities based on the norms and values and achieve remarkable performance.

It can be concluded that the board only acts for the sake of the company, do not use their positions for their personal interests and try to avoid problems of interests among the members. The board of directors is trying to do the fiduciary duty in doing their wide and autonomous authority. This duty is a form of board responsibility as the trustee. The directors need to have

some characteristics which are showing care and loyalty, having good intentions, and performing honesty to the company. Directors can be at least two people. In this kind of corporate, the capital can be gained more than other kind of corporate, the corporate could develop itself, could design local, national, and international business, could anticipate long term risk, and could cooperate between the subsidiaries without taking over the existence.

There are three divisions run the companies; General Meeting of Shareholders, Directors, and Commissioners which are expected to run the company in maximum capacity and decrease the risk of the shared problems. The dismissal of the limited company can be found in Article 142 of UUPT. The dismissal is due to the decision of the General Meeting, the end of the time period, and based on the court decisions when the company breaks the rules. If there are two shareholders who have the same share (50 %) and one of them wants to dismiss the company then they need a court decisions based on the proposal. The air transport management is arranged based on the Decree of the Minister of Transportation no. 25 (2008) in Article 49 (1) that the Limited Company is allowed to manage the air transportations based on the rules of UUPT and the airlines licensing law.

Based on some sources from the media and also from the Ministry of Transportation, the researcher found some airlines that the licenses were revoked and the companies were dismissed (Table 1).

Table 1 The Dismissal of the Airlines Corporate Company

No	The Airlines Company	Established	Dismissed
1.	PT.Metro Botavia	2001	2013
2.	PT.Adam connection airlines	2003	2008
3.	PT.Sempati air transport	1968	1998
4.	PT.Bouraq	1970	2007
5.	PT.Indonesian airlines avia patria	1999	2003
6.	PT.Lintasan nusantara	2004	2009
7.	PT.Jatayu Gelang Sejahtera	2000	2015
8.	PT.Asia avia megatama	2003	2007
9.	PT.Eka sari lorena airlines	2007	2009
10.	PT.Star air	2000	2008
11.	PT.Air paradise internasional	2003	2005
12.	PT Indonesian Airlines Aviapatria	1999	2003
13.	PT.Bayu indonesia	1980	2006
14.	PT.Seulawah NAD air	2002	2009
15.	PT.Efata papua airlines	2005	2007
16.	PT.Pelita air service	1970	2002

Source : Ministry of Transportation

Some of the airlines companies above were dismissed due to the license revoked, stop operating, lose in competing with other companies, struck by the economic crisis, move to chartered business, and never operated though got the grant. In this article, Adam Air was one of those airlines which dismissed due to bad managements caused many fatal accidents. Adam Air (established by Adam Sky Connection Airlines) is a private airlines company based on West Jakarta, Indonesia. The airlines, at the time it was operated, had 20 domestic route and international services to Penang and Singapore.

The main basis of the airlines was in Soetta Airport. It started to operate in 19 Desember 2003 with its first flight to Balikpapan. The first airplane used was

two rented Boeing 737. Adam Air claimed that the Boeings were new though in fact, they were old more than 15 years. Boeing has stopped the production of 737 – 900 for many years. In November 9th 2006, Adam Air received an Award of Merit in the Low Cost Airline Category of the Year 2006 in the 3rd Annual Asia Pasific and Middle East Aviation Outlook Summit in Singapore.

After having some bad incidents of the flights in Indonesia, the government ranked the airlines companies. Based on the rank announced in March 22nd 2007, Adam Air was in the third rank which means the company only fulfilled law standard of the safety regulations and some yet implemented requirements caused the flight safety. Adam Air got the administrative sanction which was reviewed every three months. If there was no performance improvement in 3 months, the Air Operator Certificate of Adam Air was frozen. In April 2007, PT. Bhakti Investama through its subsidiary the Global Transport Service (PT. GTS) and Bright Star Persada (PT. BPS), bought 50 % of the share of Adam Air from Sandra Aang and Adam Suherman as the vice president and the finance director which created the shareholders management to 50:50.

However, a year later in March 14th 2008 the shareholders of PT. Bhakti Investama took all the shares due to the neglected of Adam Air in improving the flight safety and no transparency which made PT. GSP and BSP took all their shares. The operational activities of Adam Air was stopped since March 17th 2008 and would

be continued if there is a new investor who support the 50 % shares taken by PT. GSP and BSP. Based on the regulations in UUPT, after PT. Bhakti Investama took its share, the Adam Sky Connection Airlines became the only shareholder which caused Adam Air to find another investor in the coming 6 months. If Adam Air cannot have other shareholder then the government could automatically revoked the operational license based on the regulations of Ministry of Transportation Article 2 (2) 2015.

The most important thing of the Adam Air lawsuit was related to the decision making. The decision was taken by one shareholder only (Adam Air) while the owner of the company shared 50:50 of two shareholders which caused decisions must be taken by both. This kind of problem could befall to the other 15 companies on the table above which the status are stop operating. From the shareholders management, actually, Adam Air was already manageable. Though in reality, the decision making still did not follow the regulations in UUPT which caused the other shareholders took their shares of the airlines company.

We could learn from the dismissal of Adam Air about the capital. Based on the regulations, the company should have around 300 to 500 billion rupiahs as the authorized capital which cannot be used as the working capital. After one of the shareholders took out its share, then it means the authorized capital was only less than 300 million rupiahs. This sum cannot support the availability of at least 5

Airbus used by the company (around 719 billion rupiahs). Furthermore, the company cannot provide enough working capital of the staff and the risk of having accident which caused high compensation for the passengers.

CONCLUSIONS

The airlines company should provide the capital risk and high insurance of the third party. UUPT also has given the authority of the shareholders (who owns 20 % of the share) to be decision makers in the company. However, without independent surveillance, it is possible that the shareholders do some mistakes in making decisions. Some mistakes are related to the policy, the using of authorized capital, and others.

The researcher suggests that there is a third party who manage the business of airlines company and surveyed thoroughly by a certain government department especially the finance internal management surveillance such as the ministry of transportation, safety and flight navigation.

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