

## CRIMINAL OFFENSES ARE IN CERTAIN AREAS OF THE AIRPORT WITHOUT PERMISSION FROM THE AIRPORT AUTHORITY

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### Abstract

Only sometimes flights can be carried out well according to the rules because bad things still happen during their implementation. Aware that undesirable things are still happening at airports, anyone is prohibited from being at the airport without permission from the authorized official; this is in line with the contents of Article 210 of Law Number 1 of 2009 concerning Aviation. This research determines the elements of material offenses for criminal acts of being in certain areas at the airport without permission from the airport authority (study Decision Number 725/Pid.B/2020/PN.Sda). This research uses normative legal analysis with a case and statutory approach. The research materials consist of primary legal materials, namely statutory regulations and judge's decisions. The conclusion in this research is that the material offense element of a criminal act is in a particular area at the airport without permission from the airport authority in Decision Number 725/Pid.B/2020/PN Sda, which is correct because it fulfills the elements in Article 421 paragraph 91) Law Number 1 concerning Aviation, the material aspects of which consist of Any person who is in a particular area at the airport, without obtaining permission from the airport authority as intended in Article 210.

**Keywords:** *Crime; Located in a Certain Area; Airports*

## INTRODUCTION

The Indonesian state is a legal state based on the ideology of Pancasila and the 1945 Constitution, which upholds human rights and guarantees that all citizens have equal status under the law and Government. Both national and international air transportation are increasing rapidly from year to year. This transportation growth will positively impact society's welfare because with this growth, national and international air transportation can increase economic, social, cultural, defence, and security growth and aviation safety.

The development of the times has created technological innovations in various sectors that support human life. This technological development emerged because it followed the increasing demands of human needs, including the transportation sector. Aviation in Indonesia faces various challenges, including infrastructure that is in poor condition, outdated, or exceeds its capacity, as well as human error, bad weather, smoke from land and forest fires, and volcanic ash ejected by volcanic eruptions in Indonesia which can disrupt flights.

Aviation security and safety has a strategic role in aviation operations, so the Government controls its implementation. The Government carries out the development of a unified civil aviation security and safety service system. The development carried out by the Government consists of several aspects, namely:

1. Arrangements.
2. Control and supervision of development activities.
3. Utilization and development of security service systems;
4. aviation safety;

This is an effort to create safe, fast, smooth, secure, orderly, orderly and integrated flight operations. Actualizing the Government's efforts to ensure safety, security, and aviation services is carried out by improving the aviation monitoring system, not only that, but airport security conditions must also be paid attention to.

Thus, to maintain security conditions at airports and their surroundings, the Government established the Airport Authority based on Minister of Transportation Regulation Number 41 of 2011 concerning Organization and Work Procedures of Airport Authority Offices and Regulation of the Director General of Civil Aviation Number 459 of 2015 concerning Guidelines for Implementing Ministerial Regulations Transportation Number 2011 concerning the Organization and Work Procedures of the Airport Authority Office. The Airport Authority has the task of regulating, controlling, and supervising aviation activities at airports. Strict Standard Operating Procedures (SOP) and selectively applied in passenger screening and even carried out multiple times, both inspection of passengers and luggage

The Airport Authority is one of the environmental technical implementation units of the Ministry of Air Transportation (Ministry of Transportation), which is under or responsible to the Ministry of Transportation . Directorate General of Air Transportation Airports are one of the vital objects that have a high risk of various forms of threats and security disturbances. Considering the importance of security at airports, basically anyone is prohibited from being at the airport, unless there is written or unwritten permission. Airport authorities also have an important role as coordinators of other government functions in the operation of an airport, such as Customs, Immigration and Quarantine. Airlines must provide excellent service to candidates and passengers as long as they are still consumers.

With the existence of airport authority, several authorities from the Directorate General of Air Transportation are automatically delegated to the airport authority. Besides that, with the existence of an airport authority, the Government can easily monitor airport activities under the management of PT.Angkasa Pura I and PT. Angkasa Pura II.

With the airport authority, it is hoped that there will be authority to delegate licensing from the Directorate General of Civil Aviation to make licensing procedures more effective and efficient. Not only that, air transportation services at airports will also run smoothly, safely and orderly, but as time goes by, the increase in the aviation business is increasingly popular with the public, but this is not in line with improvements in facilities and infrastructure, especially in security, which is an important issue. very important both in terms of quantity and quality.

Only sometimes flights can be carried out well according to the rules, because bad things still happen during their implementation. Aware that undesirable things still occur at airports, anyone is prohibited from being at the airport without permission from the authorized official, this is in line with the contents of Article 210 of Law Number 1 of 2009 concerning Aviation (Aviation Law) which states emphasize that " *Every person is prohibited from being in certain areas at airports, creating obstacles, and carrying out other activities in aviation operation safety areas that could endanger aviation safety and security, unless obtaining permission from the airport authority. "To build stakeholders in aviation*

*activities* who have a culture of complying with legal rules related to aviation activities, this is by creating legal awareness (*rechtsbewustzijn*) for stakeholders in aviation activities.

One of the cases of violations in the world of aviation in 2019 was precisely at Juanda Airport in Surabaya, one of the most important airports in Eastern Indonesia. This airport is also an important transportation network node because it directly connects Surabaya with various cities in Indonesia and other countries. Based on the study of Decision Number 725/Pid.B/2020/PN.Sda, where in May 2019 the Defendant Bayu Utomo entered Terminal 2 of Juanda Airport and was in the Immigration Area which is a restricted security area, without valid permission from the Juanda Airport authorities Surabaya, so the Public Prosecutor charged the Defendant's actions with Article 210 in conjunction with Article 421 paragraph (1) of the Aviation Law and has been declared proven and guilty of committing the criminal act of being in a certain area at the airport without permission from the airport authority by the Panel of Judges at the Sidoarjo District Court. According to the author, based on the criminal acts that occurred, it can be said that since the enactment of several national legal regulations, in particular criminal law, overall cases of criminal acts have occurred in certain areas at airports without permission from the airport authorities as contained in Article 210 of the Aviation Law, has not been able to experience a decline related to aviation crimes.

## RESEARCH METHOD

The type used in this research is normative judicial research. Normative juridical research is an approach carried out by studying concepts, theories and, laws and regulations related to aviation crimes. The normative research approach is divided into several approaches, such as the case *approach* statutory approach (*statute approach*).

## RESULTS AND DISCUSSION

### Aviation Crime

In criminal law, the principle of legality is adhered to, namely the principle that determines that an act is a criminal act if there is a rule governing this matter that existed before the act was committed. Criminal law is necessary to ensure that the legal interests of society are not violated, where all of these interests are aimed at the interests of society itself. If these norms are violated then sanctions arise, which are the legal consequences of violating these norms, this is useful so that the perpetrators of law violations are deterred.

Article 344 of the Aviation Law states that "Every person is prohibited from carrying out unlawful actions that endanger the safety of flights and air transportation in the form of:

- a) illegally controlling an aircraft in flight or on the ground;
- b) holding people hosted in an aeroplane or at an airport;
- c) entering an aircraft, an airport's restricted security area, or an aeronautical facility area illegally;
- d) bringing weapons, dangerous goods and equipment, or bombs into an aeroplane or airport without permission; And
- e) conveying false information that endangers aviation safety.

Aviation crimes are criminal acts committed in the field of civil aviation, whether committed:

- a. In an airplane
  - 1) Criminal acts committed on board an aircraft during flight;
  - 2) Certain other acts violate the aircraft's discipline and rules while in *flight* .
- b. Against airplanes
  - 1) By unlawful means, by force and threats, or by intimidation, seize and take control of the aircraft;
  - 2) Attempts to commit piracy (hijacking );
  - 3) Helping carry out piracy (hijacking).
- c. Unlawful acts against civil aviation safety
  - 1) Carrying out violence against people on board the aircraft during the flight, which could result in endangering the safety of the aircraft;
  - 2) Damaging an in-service aircraft resulting in the aircraft being unable to fly or endangering the safety of the pilot;
  - 3) Placing or causing to be placed in an aircraft in service a device or substance, by any means, which can destroy the aircraft, or cause damage that makes the aircraft unable to fly, or causes damage that can endanger the safety of the aircraft in flight ;

- 4) Destroying or damaging aviation facilities or disrupting the operation of aviation facilities if such actions could endanger the safety of aircraft in flight;
  - 5) Providing information that is known to be incorrect, thus endangering the safety of the aircraft in flight
  - 6) Attempt to commit a criminal act;
  - 7) Helping to commit the crime or helping to experiment.
- d. Violence inside the airport
- 1) Committing violence against people at international airports that causes disability or death;
  - 2) Destroying or damaging international airport facilities or disrupting services at the airport if the crime endangers the safety of the international airport.

### Elements of Aviation Crime

The elements of criminal acts in the aviation sector related to the provisions in UURI Number 1 of 2009 concerning Amendments to UURI Number 15 of 1992 concerning Aviation are:

- a. Everyone, both individuals and corporations,
- b. Flight Captain, and
- c. Any air traffic services personnel, who:
  - 1) Illegal control of an aircraft in flight or on the ground;
  - 2) Taking people hosted in an airplane or at an airport;
  - 3) Unauthorized entry into an aircraft, airport restricted security area, or aeronautical facility area;
  - 4) Carrying weapons, dangerous goods and equipment, or bombs into an aeroplane or airport without permission; And
  - 5) Conveying false information that endangers aviation safety.

The criminal sanctions imposed on perpetrators of aviation crimes are imprisonment and fines (Provisions of Article 401 to Article 443 UURI Number. 1 of 2009 concerning Amendments to UURI Number. 15 of 1992 concerning Aviation). Meanwhile, the imposition of criminal penalties on perpetrators of aviation crimes is a logical juridical consequence of enforcing the provisions of this law.

### Airport Definition

To improve operational services and ensure aviation safety, it must be supported by adequate facilities that comply with aviation safety standards. Airports are one of the most important elements in aviation, which greatly influences flight safety.

In Indonesia itself, the aviation law defines an airport as an area on land and/or waters with certain boundaries that is used as a place for aircraft to land and take off, boarding and disembarking passengers, loading and unloading of goods, and a place for intra-transfer, and between modes of transportation equipped with aviation safety and security facilities, as well as basic facilities and other supporting facilities.

According to the 2010 Minister of Transportation Regulation concerning the National Airport Arrangement, an airport is an area on land or water with certain boundaries which is used as a place for aircraft to land and take off, boarding and disembark passengers, loading and unloading of goods, and a place for intra-transfer and modes of transportation. , which is equipped with aviation safety and security facilities, as well as other basic and supporting facilities, consisting of general and special airports; hereafter available airports are referred to as airports.

An airport is a specified area on land or water (including buildings, installations and equipment) intended to be used, in whole or in part, for the arrival, departure and ground movement of aircraft.

In general, airport development is often called the airport master plan. An airport master plan is a document that shows the result of an airport so that it can meet future needs. The complexity and size of an airport master plan depends on the size of the airport itself.

Before the 1960s, airport master plans were developed based on local aviation needs. However, after the 1960s, these plans were combined into an airport master plan that did not only consider the needs of a region, province, or country. So that airport planning efforts for the future are successful. The airport master plan is planned for 20 years. The FAA notes that the master plan must be updated every 20 years as changes occur around the airport. An airport master plan shows the planning concept of the ultimate development of an airport. The master plan is implemented to modernize and expand the existing airport regarding size, role and function.

In relation to airports, to determine the choice of port location (*Airport Site Selection*), several factors must be taken into account, namely:

- a. Regarding types of development of the surrounding area.
- b. Local weather conditions.
- c. Land transportation around the area.
- d. Is there any provision of land for airport expansion?
- e. Are there other airports in the area?
- f. Are there any obstacles in that area?
- g. What would it look like economically if the airport were located there?
- h. Procurement of necessities and things used around the airport.
- i. Factors that influence airport size.

About airports, airports in Indonesia are managed and operated by State-Owned Enterprises. And for Indonesia itself, the State-Owned Enterprise which operates in airport services and services related to airports in the Western Indonesia region is PT. Angkasa Pura II, while PT manages airports in the eastern Indonesia region. Angkasa Pura I.

The establishment of Angkasa Pura II aims to carry out management and business in the field of airport services and airport-related services by optimizing the empowerment of the potential of its resources and implementing good corporate governance practices.

Airports, according to their use, are divided into:

- a. airports that are open to serve air transportation to/from abroad;
- b. airports that are closed to serve air transportation to/from outside.

According to their management, airports are divided into general and special airports. Implementing activities at public airports consists of implementing Government functions, airport operators and Indonesian Legal Entities, which provide airport services related to aircraft, passenger, cargo and postal traffic.

Airports have a role as:

- a. A node in the air transportation network is described as an airport location point where several flight networks and routes meet according to the airport hierarchy;
- b. The gateway to economic activity in an effort to equalize development, economic growth and stability as well as the harmony of national development and regional development which is described as the location and area around the airport which is the entry and exit point for economic activity ;
- c. Place of activity for changing modes of transportation, in the form of interconnection between modes at transportation nodes in order to meet the demands for integrated and sustainable improvement in service quality which is described as a place for transferring air transportation modes to other modes of transportation or vice versa;
- d. Encouraging and supporting industrial, trade and/or tourism activities in driving the dynamics of national development, as well as integration with other development sectors, is described as an airport location that facilitates air transportation in the surrounding area ;
- e. Opening regional isolation, described by the location of airports which can open isolated areas due to geographical conditions and/or because of the difficulty of other modes of transportation;
- f. Development of border areas, illustrated by the location of airports taking into account the priority level of development of border areas of the Unitary State of the Republic of Indonesia in the islands and/or on the mainland ;
- g. Disaster management, illustrated by the location of the airport which takes into account the ease of air transportation for handling natural disasters in the surrounding area;
- h. Infrastructure strengthens the Archipelagic Insight and state sovereignty, illustrated by airport location points connected to a network and flight routes that unite the territory and sovereignty of the Unitary State of the Republic of Indonesia.

### **Being in Certain Areas at the Airport Without Permission from the Airport Authority**

The speciality of legal norms lies precisely in their coercive nature with sanctions in the form of threats of punishment. An instrument of state power that seeks to ensure that legal regulations are obeyed and implemented. Each norm has at least several elements, namely:

1. Source, namely where the norm comes from;
2. Nature, namely the conditions when the norm applies;
3. Purpose, namely for what purpose the norm was made;
4. Sanctions, namely what reactions (coercive tools) will be imposed on people who violate or do not comply with these norms.

Article 210 of the Aviation Law states: " *Every person is prohibited from being in certain areas at airports, creating obstacles, and/or carrying out other activities in flight operation safety areas that could endanger aviation safety and security unless obtaining permission from the airport authority. Air* ". According to the Explanation to Article 210 of the Aviation Law, what " obstacles " means buildings, piles of land, piles of building materials, or excavated objects, whether temporary or permanent, including trees and buildings that have previously been erected. Meanwhile, what is meant by "other activities" includes, among other things, flying kites, herding livestock, using radio frequencies, crossing runways, and activities that generate smoke.

By referring to Article 210 of Law Number 1 of 2009 concerning Aviation as mentioned above, it is clear that this law prohibits every person from being in certain areas at airports and/or carrying out other activities in flight operation safety areas which could endanger aviation safety and security without obtaining permission from the Airport Authority.

Sanctions for those who violate Article 210 of the Aviation Law are contained in Article 421 of the Aviation Law:

- a. Any person who is in a certain area at the airport without obtaining permission from the airport authority as intended in Article 210 shall be punished with imprisonment for a maximum of 1 (one) year or a fine of a maximum of IDR 100,000,000.00 (one hundred million rupiah).
- b. Any person creating an obstacle *and* /or carrying out other activities in the aviation operations safety area which endangers aviation safety and security as intended in Article 210 shall be punished with imprisonment for a maximum of 3 (three) years and/or a fine of a maximum of Rp. 1,000,000,000.00 (one billion rupiah).

The quite heavy sanctions concerning aviation, as stated in Article 421 of Law Number 1 of 2009, are intended as a coercive tool to ensure that all community members obey the rules.

In the Regulation of the Minister of Transportation of the Republic of Indonesia Number 33 of 2015 concerning Access Controlling Access to Restricted Security Areas at Airports, it is stated that several ways can be done to obtain permission to enter restricted areas at airports, namely by preparing air transport documents consisting of from:

1. Airport Pass issued by the airport authority office. To obtain an airport pass, the head of the agency/entity must submit a written application to the work unit, attaching the requirements, namely:
  - a. Statement letter from the supervisor where the applicant works;
  - b. Curriculum vitae ;
  - c. Personal identity (KTP, Passport or KITAS );
  - d. Background check from the Police, Police Record Certificate (SKCK), except for agency employees;
  - e. government and state-owned enterprises;
  - f. Employee Decree or work contract.
2. Directorate General of Civil Aviation Inspector Identification Card; Identity of Pilots and Cabin Personnel

### **Elements of Material Offense for Criminal Acts of Being in Certain Areas at the Airport Without Permission from the Airport Authority (Study Decision Number 725/Pid.B/2020/PN Sda)**

Basically, a criminal act is an act or series of acts to which criminal sanctions are attached. Thus, seen from the term, only the characteristics of the act constitute a criminal act, while the features of the person who commits the criminal act are part of another issue, namely criminal responsibility . The criminal act of being in a certain area of the airport without permission from the airport authority is a criminal act committed in the field of civil aviation, this criminal act is clearly stated in Article 210 of Law Number 1 of 2009 concerning Aviation (Aviation Law). This criminal act is a special offence for which no crime is in the Criminal Code (KUHP). So only aviation law clearly regulates certain actions against people which cannot be carried out by anyone other than certain people, including the criminal act of being in certain areas of the airport without the permission of the airport authority.

The sanctions for those who violate Article 210 of the Aviation Law are contained in Article 421 of the Aviation Law which stipulates:

1. Any person in a certain area at the airport without obtaining permission from the airport authority as intended in Article 210 shall be punished with a maximum imprisonment of 1 (one) year or a maximum fine of Rp. 100,000,000,- (one hundred million rupiah);
2. Every person who creates obstructions and/or carries out other activities in the aviation operations safety area that endangers aviation safety and security as intended in Article 210 shall be imprisoned for a maximum of 3 (three) years and/or a fine of a maximum of Rp. 1,000,000,000,- (one billion rupiah).

An act can be said to be a criminal act if it fulfils the elements of the offence formulation regulated in statutory regulations, while the elements related to article 421 of the Aviation Law are:

1. Whose element;
2. Elements on purpose;
3. The element of being in certain areas at the airport without obtaining permission from the airport authority.

As has been explained, the criminal act of being in a certain area at an airport without permission from the airport authority is a material criminal act, namely a criminal act that can be considered as having been completed by the perpetrator with prohibited consequences or which are contrary to regulations. applicable law. Being in certain areas at the airport without permission from the airport authority is included in the complaint offence, which will only be processed by the authorities if there are complaints and reports from people who have been harmed or become victims of criminal acts.

To achieve material truth in Decision Number 725/Pid.B/2020/PN SDA, the Panel of Judges has carefully and thoroughly examined all actions, events or circumstances that took place during the trial where the facts were unearthed from the evidence to the items evidence to obtain confidence that the Defendant has been legally and convincingly proven to have committed a criminal act while in a certain area at the airport without obtaining permission from the airport authority as charged by the Public Prosecutor.

Based on Decision Number 725/Pid.B/2020/PN Sda, the Panel of Judges at the Sidoarjo District Court stated firmly that the Defendant was guilty of committing the crime of "being in a certain area at the airport without obtaining permission from the airport authority" based on Article 421 paragraph (1) Law Number 1 of 2009 concerning Aviation.

Based on the legal facts of the case linked to the article above, it can be seen that the Defendant's actions fulfilled the elements of Article 421 paragraph (1) of Law Number 1 of 2009 concerning Aviation, as follows:

1. Whose elements?

That, what is meant by "whoever" is a person who is deemed competent of responsibility;

Meanwhile, in the trial, according to the Public Prosecutor, he presented a person named Bayu Utomo as the Defendant, whose identity had been stated and matched with the identity in the indictment, and in this case, the Defendant had confirmed this.

During the examination of the case, the Defendant has the ability to follow the proceedings well, and can provide clear information on every question asked of him;

Based on these considerations, the Panel of Judges thinks that in this case there was no *error in persona* (mistake in trying someone), so what is meant by who in this case is the Defendant Bayu Utomo;

2. Elements of being in a certain area at the airport without obtaining permission from the airport authority as intended in Article 210

Witness Andik Setyawan as an employee of PT JAS Surabaya Juanda Airport was on duty at night to serve the Cathay Pacific flight which experienced a delay in arrival which was originally scheduled to land at 18.30 WIT but only landed at around 19.30 WIT, when it was in the lost n found area belonging to PT JAS, Witness Andik Setyawan received a report from Witness Tono as an employee of the PT Maspion Group in question. When he was in the Immigration Supervisor's room to serve guests, that he had seen someone using an Airport Pass belonging to PT JAS and serving Cathay Pacific flight passengers originating from Taiwan, then Witness Andik Setyawan went straight to the supervisor's room and asked if there was someone claiming to be a PT JAS officer serving passengers from Taiwan, then the immigration officer answered, namely Witness Sumar, where a VIP passenger said that he saw someone using an airport pass belonging to PT JAS, then Witness Andik Setyawan chased him. The person, namely the Defendant, came to the passenger baggage claim area and found the Defendant Bayu Utomo, then Witness Andik Setyawan asked for the Defendant's airport pass to be photographed and sent to the PT JAS Operational WA group as a report to superiors whether there were really PT.JAS employees from the city of Jakarta. , then Witness Andik Setyawan reported the Defendant to AVSEC officers who Witness Sukma Dwi Anggoro received, then the Witness looked for the Defendant, but the Defendant was no longer found;

That on Tuesday, 4 June 2019, at around 06.00 WIT, Witness Andik Setyawan was on morning duty at the Check-in counter to serve the Cathay Pacific departure process and Witness Andik Setyawan found the Defendant participating in assisting the Check-in process for passengers from Taiwan to return to his country and Witness Andik Setyawan immediately asked for help from AVSEC

officers to secure the Defendant to the AVSEC Command Post at Terminal 2 of Juanda Airport, Surabaya to ask for information and accountability for the accused's actions;

That Defendant obtained or made a fake Airport Pass card by taking a picture of a PT employee's Airport Pass. JAS used an iPhone 5 mobile phone, then the Defendant, with graphic design skills, edited using PhotoShop on the Defendant's Toshiba laptop, then the Defendant printed it at Metropolis Printing in the Citraland G-Walk area where the Defendant used to enter Juanda Airport, Surabaya;

That the Defendant entered Terminal 2 of Juanda Airport in the immigration area, which is a restricted security area, without valid permission from the Juanda Airport Authority, Surabaya;

Based on these considerations, the Panel of Judges believes that the second element in this case is fulfilled.

Law enforcement activities are intended to improve order and legal certainty in society. Within the framework of this effort, a coordination system and harmonization of tasks between law enforcement agencies will be strengthened. Law enforcement efforts also include activities to increase public trust in the law and its enforcers.

The application of criminal provisions in operating airports to forms of criminal acts in operating airports in its implementation needs to be applied in accordance with the applicable laws and regulations for forms of criminal acts that have been legally proven to have been committed by the perpetrator.

The authority of the Airport Authority Office after the enactment of the Aviation Law is to carry out and supervise development and operations so that they comply with statutory regulations, including corrective actions and law enforcement.

## CONCLUSION

Based on the description and research results by conducting a study related to being in a certain area at the airport without obtaining permission from the airport authority, the author can conclude as follows: Elements of material offense for the criminal act of being in a certain area at the airport without permission from the airport authority in Decision Number 725 /Pid.B/2020/PN Sda is appropriate because it fulfills the elements contained in Article 421 paragraph 91) of Law Number 1 concerning Aviation, where the material elements consist of Whoever is and is in a certain area at the airport , without obtaining permission from the airport authority as intended in Article 210. During the examination at trial, no reasons were found for eliminating criminal responsibility, either justification or excuse reasons, so the Defendant was declared capable of responsibility and must receive appropriate sanctions for his actions.

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