

**THE ILLEGAL ENTERING OF FOREIGN CITIZENS
INTO THE TERRITORY OF REPUBLIC OF INDONESIA
WITHOUT IMMIGRATION PROCESS IN THE EVENT OF
LION AIR JT161 AIRCRAFT DISEMBARKATION
AT DOMESTIC ARRIVAL TERMINAL
OF SOEKARNO HATTA INTERNATIONAL AIRPORT**

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On May, 10th 2016, Lion Air JT161 Aircraft route Singapore . Jakarta has landed in R51 (as known as remote parking area 51) Soekarno Hatta International Airport, in which after such disembarkation there are foreign citizens that entering the territory of Republic of Indonesia without any immigration process at Soekarno Hatta International Airport. Regarding such event, there are many versions of news in mass media. Some of them stated that the Lion Air JT161 Aircraft has landed in the wrong area, in which in domestic terminal, as a matter of facts such aircraft came from Singapore to Jakarta (international route). Some of them also stated that the entry of foreigners to Indonesia without immigrations checking is because of the Lion Air bus driver drove JT161 passengers into the wrong way, in which after the landing of JT161 passengers shall drive to International arrival terminal at Soekarno Hatta International Airport. Instead the Lion Air bus driver drove JT 161 passengers to domestic arrival terminal at Soekarno Hatta International Airport. Another version of this event is the officer of Soekarno Hatta International Airport Aviation Security aware of such procedural error and took action by directing the passengers to go back to the bus so they can go to international arrival terminal and through the immigrations checking.

As a matter of facts, in an airport in Indonesia there are many institutions that have authorities and responsibility regarding the air transport procedures, started from passengers ticket checking until the passengers disembarkation at the destination airport. Since there are many institutions involved in the air transport procedures, it needs the separation of authorities and a clear job description so it won't be any overlapping or job deficiency between institutions. One of Indonesian regulation that regulated regarding the division of tasks and authorities of such institution in the airport regarding air transportation is Regulation of Minister of Transportation of Republic of Indonesia Number PM 61 Year 2015 regarding Air Transportation Facilities (FAL) (**Transportation Minister Reg. No. 61/2015**).

If we read such Transportation Minister Reg. No. 61/2015 carefully, then it is clear that the institution that carries responsible burdens regarding the air transportation procedures by aircraft started from departure airport to destination airport is not just immigration institution and/or customs institution. To make it clearer, we herewith explain among others as follows:

1. The airport organizer must install a clear signs recommended by international regulation for the sake of passengers interest at the airport and provide flight information display (regulated in the attachment of Transportation Minister Reg. No.

61/2015, Chapter III regarding the Divisions of Task and Responsibility, letter D number 5 and 6).

It is need to be reviewed regarding the installation of immigrations checking signs for foreigners who (intend or unintended, in a normal or special condition) has landed in domestic arrival terminal. Even Indonesian citizens needs to find and look for the information display for them to check in or boarding, moreover the foreigners who is uncommon with locations to do immigrations checking after such aircraft landing at the domestic arrival terminal.

2. Institution that is responsible for immigration at the airport must check all arrived passengers (regulated in the attachment of Transportation Minister Reg. No. 61/2015, Chapter III regarding the Divisions of Task and Responsibility, letter F number 5).

The landing sequence of Lion Air JT161 aircraft and the transportation of the passengers by Lion Air bus drivers obviously did not happen suddenly, or in other words there are more than just 3 (three) seconds event. During such time, there should be any actions, communications and coordination that can be done by airport institutions so that the immigration officer might act quickly to prepare all immigrations process to avoid the entry of foreigners to Indonesia without any immigrations checking.

3. The Institution who responsible for customs at the airport must supervise the arrival and departure of passengers (regulated in the attachment of Transportation Minister Reg. No. 61/2015, Chapter III regarding the Divisions of Task and Responsibility, letter G number 3).

Customs officer should inspect one by one the tickets and id cards every passenger who wants to exit from arrival terminal. Not all foreigners has a sharp physical differences with Indonesian citizens, therefore customs officer cannot just rely on their sight to find out whether the passenger is a foreigners or Indonesian. And after it is proven (by ticket and id card checking) that the passenger who disembarked in domestic arrival terminal is foreigners, customs officer must have a coordination immediately with immigration officers so such foreigners could conduct the immigrations process before entering the territory of Republic of Indonesia.

4. The airlines (in this case is Lion Air) has the responsibility since the passengers and airline crew got off the plane until the immigration check and allowed them to come in after given the signs by immigration officers at immigration checking, and after that being the responsible of related work unit (regulated in the attachment of Transportation Minister Reg. No. 61/2015, Chapter VI regarding The Arrival and Departure of Passengers and Luggage, number 6 regarding Immigration Procedure, letter C).

It is clear that in this event, even if Lion Air JT161 has landed at the correct area but their bus driver drive the passengers into the wrong way to domestic arrival terminal, then Lion Air must be responsible for this misconduct because basically Lion Air has

powers to have a coordination with other institutions at the airport so there would be any foreigners entering Indonesian territory without immigration checking.

Even if Lion Air stated that it is their bus driver mistakes who is their employee so Lion Air as the company do not have obligation to be responsible for these misconduct, it will be better if we look at article 1367 Civil Law (*Burgerlijk Wetboek*) as follows:

Someone is responsible, not only for the losses that caused by their acts, but also for any damages caused by the acts of people who is under their charge, or caused by goods under their supervision.

By letting the foreigners entering Indonesian territory without immigration checking certainly something improper to be taken as a simple mistake. What if this misconduct happens again in the future and the foreigners is member of narcotics syndicate? Or member of terrorist group? There is an expensive price to be paid for this misconduct, more than just about country sovereignty but also the security of Indonesian citizens. However the entering of such foreigner into Indonesian territory without immigration checking also caused by the omission of airlines and authorized institutions at Soekarno Hatta International Airport. Therefore it is wrong if the cynicism directed to foreigners because certainly such foreigners was confused to find immigration checking office because such foreigners embarked at domestic arrival terminal, moreover if there is no such information from authorized institutions at Soekarno Hatta International Airport.

The following legal effect that might be happen is if one day such foreigner suffering losses that caused by such misconduct of immigration checking and/or the embarkation of Lion Air JT161, then it will be possibility that Lion Air and authorized Institutions at Soekarno Hatta International Airport must be responsible to indemnify such foreigners if it is proven that Lion Air and authorized institutions at Soekarno Hatta International Airport is committed tort.