

Criminal Law Enforcement Against Perpetrators of the Crime of Flying Hot Air Balloons (Study of Decision Number 114.Pid.B/2022/PN Mjy)

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ABSTRACT

Hot air balloon flights are considered as dangerous for aviation safety because they can interfere with air traffic and endangered aircraft, particularly when balloon materials risk being drawn into aircraft propellers. The Ministry of Transportation states that unauthorized hot air balloon flights may be subject to Article 411 of Law Number 1 of 2009 on Aviation, which provides for a maximum imprisonment of two years and a fine of up to IDR 500,000,000. This study examines the hot air balloon case decided in Decision Number 114/Pid.B/2022/PN Mjy, involving several defendants. The main legal issue concerns the judges' considerations in applying Article 411, given that the provision does not explicitly mention hot air balloons in its elements. Using normative juridical research based on secondary data and qualitative analysis, the study finds that the judges imposed criminal sanctions on the grounds that the defendants' actions violated Article 411 of the Aviation Law and Ministry of Transportation Regulation Number 40 of 2018. The defendants were sentenced to one month's imprisonment and a fine of IDR 1,000,000 each. However, ideally, criminal sanctions should not have been imposed due to the absence of explicit regulation of hot air balloons in Article 411.

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1. INTRODUCTION

Hot air balloon flights are considered a serious threat to aviation safety, as their presence can disrupt air traffic and endanger the safety of aircraft passengers. Balloon materials risk becoming entangled in aircraft propellers or engines, potentially causing air accidents (Yohanis Aldi, 2020). If this practice is allowed to continue, it will not only threaten national aviation safety but also Indonesia's international image, particularly if hot air balloons disrupt international flight routes, as has happened in Bangkok and Brisbane, leading to international flight restrictions (Hisar Pasaribu, 2025).

Law Number 1 of 2009 concerning Aviation confirms that aviation safety includes the use of airspace, airports, flight navigation, aircraft, and other supporting facilities as formulated in Article 1 number 48 (Law Number 1 of 2009). The prohibition on carrying out activities that endanger the safety of aviation

operations is regulated in Article 210, with the threat of criminal sanctions as regulated in Article 421 paragraph (1) and paragraph (2) of the law (Law Number 1 of 2009).

In addition, the Ministry of Transportation emphasized that flying hot air balloons without a permit can be subject to Article 411 of Law Number 1 of 2009 as a criminal sanction for violating Article 53 paragraph (1) which prohibits the operation of aircraft that endanger flight safety and public order (Hisar Pasaribu, 2025).

Legal issues arose in Decision Number 114/Pid.B/2022/PN Mjy, in which the defendants who flew hot air balloons together were sentenced under Article 411 of Law Number 1 of 2009. The Panel of Judges was of the opinion that hot air balloons can be equated with aircraft, although normatively the definition of hot air balloons and aircraft is regulated differently in laws and regulations (Madiun District Court Decision Number 114/Pid.B/2022/PN Mjy). The difference in definition is stated in Article 1 number 1 of the Minister of Transportation Regulation Number 40 of 2018 and Article 1 number 3 of Law Number 1 of 2009, which gave rise to legal debate regarding the basis for enforcing criminal law and sentencing of hot air balloon flight perpetrators (Aksi Sinurat, 2024).

2. METHODS

This research uses a normative juridical legal research approach, namely research that positions law as a set of written and binding norms or rules (law in books), rather than as actual behavior in society (law in action). The main objective of this research is to conduct a prescriptive and conceptual legal study through an analysis of legal principles, the structure and systematics of laws and regulations, and the appropriateness of the application of legal norms in court decisions (Marzuki, 2017). Normative juridical legal research is often referred to as doctrinal legal research, because its analysis is based on legal doctrine and the thoughts of experts examined through literature studies or legal document reviews (Muhaimin, 2020). Thus, the data sources in this research come entirely from written legal materials. The legal materials used in this research are classified into primary, secondary, and tertiary legal materials. Primary legal materials include laws and court decisions that have direct relevance to the research object. Secondary legal materials include law textbooks, scientific journal articles, and the views of legal experts. Meanwhile, tertiary legal materials in the form of legal dictionaries and legal encyclopedias were used to clarify legal terms and concepts (Soekanto and Mamudji, 2019). The research approaches applied included the statute approach, the conceptual approach, and the case approach. All legal materials were analyzed qualitatively through legal reasoning and interpretation to construct coherent, logical, and prescriptive legal arguments (Marzuki, 2017).

3. FINDINGS AND DISCUSSION

Criminal Law Enforcement Against Perpetrators Who Fly Hot Air Balloons

Uncontrolled unmanned hot air balloon flights conducted by the public, particularly during religious holidays such as Eid al-Fitr and during certain traditional activities, have become a serious concern in Indonesia. While some view this practice as a form of cultural expression, from a legal and aviation safety perspective, unauthorized hot air balloon flights pose a serious threat to public safety and violate applicable laws and regulations. Uncontrolled hot air balloons can enter the flight paths of commercial aircraft, posing a risk of fatal air accidents.

In law enforcement practice, there are two main legal instruments that are often used as the basis for taking action against perpetrators of unlicensed hot air balloon flights, namely Law Number 1 of 2009 concerning Aviation and Regulation of the Minister of Transportation Number 40 of 2018 concerning the Use of Hot Air Balloons in Community Cultural Activities.

Law Number 1 of 2009 concerning Aviation firmly places aviation safety and security as the country's top priority. Article 411 of the law stipulates that any person who intentionally flies or operates an aircraft that endangers the safety of the aircraft, passengers, goods, residents, or property belonging to others may be subject to criminal sanctions in the form of a maximum imprisonment of

two years and a maximum fine of five hundred million rupiah (Law Number 1 of 2009). This criminal threat reflects the state's seriousness in protecting aviation safety from all forms of activity that have the potential to cause harm.

In addition, Article 421 paragraph (1) and paragraph (2) of Law Number 1 of 2009 regulates the prohibition of being in certain airport areas without permission as well as the prohibition of creating obstacles or carrying out other activities in flight safety operation areas. Violation of these provisions is punishable by imprisonment of up to three years and/or a maximum fine of one billion rupiah, which shows that acts that directly endanger flight safety are qualified as serious violations that require strict law enforcement (Law Number 1 of 2009).

As a special regulation for community cultural practices, the government also issued Minister of Transportation Regulation Number 40 of 2018 concerning the Use of Hot Air Balloons in Community Cultural Activities. This regulation emphasizes that the use of hot air balloons in cultural activities must be carried out by tethering and meet certain administrative and technical requirements, such as activity reporting, restrictions on balloon size and color, and determination of location, area, and time of use (Minister of Transportation Regulation Number 40 of 2018).

The Ministerial Regulation also details the licensing process, including the requirement to submit activity plans to the police, local government, and local airport authorities prior to implementation. It also establishes technical criteria such as maximum height limits, safe distances from airports, and the requirement to obtain approval from relevant agencies if hot air balloons are operated in certain airspace (Ministerial Regulation No. 40 of 2018).

The use of hot air balloons does not stop at the licensing stage; it must also be accompanied by an effective oversight mechanism. Oversight is a systematic effort to ensure that activities comply with established safety standards, while also detecting and correcting deviations that could potentially endanger flight safety (Maulana, 2023). In this context, Article 11 of Ministerial Regulation Number 40 of 2018 stipulates that supervision is carried out by the Directorate General of Civil Aviation, the Police, Regional Governments, and the Airport Authority Office.

The Directorate General of Civil Aviation (DGCA) conducts oversight through the Air Navigation Inspector, who ensures that hot air balloon use complies with licensing requirements and safety standards. The police play a role in taking repressive action against violations, particularly against those flying hot air balloons without permits. Meanwhile, the Regional Government, through the Transportation Agency, focuses more on preventative measures, such as public awareness campaigns and education about the dangers of unmanned hot air balloon flights (Sari, 2019).

The Airport Authority Office also plays a strategic role in oversight, including direct supervision of hot air balloon activities and festivals to ensure they comply with safety assessments. This oversight often involves coordination with the police to maintain security and order during the event (Maulana, 2023).

In addition to civilian agencies, the Indonesian Air Force (TNI AU) also plays a role in hot air balloon surveillance, particularly in the context of maintaining the sovereignty and security of national airspace. This role aligns with Article 10 of Law Number 34 of 2004 concerning the Indonesian National Armed Forces, which emphasizes the TNI AU's role in enforcing the law and maintaining the security of airspace within national jurisdiction.

Forms of Criminal Penalty for Perpetrators Who Fly Hot Air Balloons

The legal basis for imposing sanctions on those flying hot air balloons without a permit is stated in Article 13 of the Minister of Transportation Regulation Number 40 of 2018 concerning the Use of Hot Air Balloons in Community Cultural Activities. This provision emphasizes that any form of negligence and/or deviation in the operation of hot air balloons that does not comply with the ministerial regulation will be subject to sanctions in accordance with the provisions of applicable laws and regulations (Minister of Transportation Regulation Number 40 of 2018). This norm serves as a

normative bridge that links administrative violations with the possibility of applying criminal sanctions based on sectoral laws.

In the context of law enforcement, the Transportation Agency plays a strategic role as a technical agency authorized to supervise and control civil aviation activities. The Transportation Agency not only plays a role in monitoring and regulating, but also provides technical recommendations to law enforcement officials regarding violations of Law Number 1 of 2009 concerning Aviation, particularly those related to aviation safety and security. Furthermore, the Transportation Agency also carries out a preventive function through outreach and education to the public so that cultural activities, including the use of hot air balloons, are carried out in accordance with safety, altitude, size, and material standards stipulated in the regulations (Sari, 2019).

Criminalization Process for Perpetrators

The criminal process for those involved in the unauthorized hot air balloon flight begins with an investigation by the police. In this case, the investigation began with a public report regarding a planned hot air balloon flight in Banaran Village, Geger District, Madiun Regency. Police officers moved to the location and secured the perpetrators and evidence after the hot air balloon was released. The case was then handed over to the Civil Servant Investigators (PPNS) of the Directorate General of Civil Aviation, who have special authority to investigate crimes in the aviation sector as regulated in Article 399 of Law Number 1 of 2009 concerning Aviation (Law Number 1 of 2009).

The investigation phase was conducted by Civil Aviation Investigators to determine the suspect's status and determine the articles violated. During this process, several suspects were found guilty of jointly flying a hot air balloon without a permit, along with the confiscation of evidence in the form of remaining hot air balloon material and video footage of the unmanned hot air balloon flight. Witness examinations were also conducted to strengthen the evidence.

During the detention phase, investigators and prosecutors did not detain the suspects. The case then proceeded to the trial phase, which included the reading of the indictment, the examination of witnesses and expert witnesses, and the filing of criminal charges by the prosecutor. In their indictment, the prosecutor demanded imprisonment and fines for the defendants for violating Law Number 1 of 2009 concerning Aviation.

The final stage of the criminal justice process is the reading of the verdict by the panel of judges in an open session to the public as a manifestation of the principles of transparency and accountability in the judiciary (Sugianto, 2018). Based on the court's decision, the defendants were sentenced to one month in prison and a fine of one million rupiah each.

This form of punishment indicates that the judge imposed criminal sanctions in the form of imprisonment and a cumulative fine. This sanction aligns with Article 10 of the Criminal Code, which classifies imprisonment and fines as primary penalties. Therefore, the punishment for the perpetrator of the unauthorized hot air balloon flight meets the formal legal requirements of the Indonesian criminal law system.

Analysis of the judge's decision on the case study of Decision Number 114/Pid.B/2022/PN Mjy

Based on the facts revealed in the trial as previously described, the defendants were flying a hot air balloon, not an airplane. Meanwhile, in the construction of Article 411 of Law Number 1 of 2009 concerning Aviation, the element of an airplane is mentioned, not a hot air balloon. Criminal law teachings have prohibited the use of analogy in enforcing criminal law. This is due to the principle of legality adopted in Indonesia, namely *nullum delictum, nulla poena sine praevia lege poenali*. This means that there is no criminal act, no punishment, without prior statutory provisions. No act may be punished if there is no legal regulation governing it.

It is further explained that this principle contains three main concepts, including: (Amir Ilyas, 2012)

1. There is no act that can be punished (punished) if the act is not regulated in previous/previous legislation, so there must be a regulation that regulates it before the person commits the act;

2. To determine the existence of a criminal event (crime/offense), analogy may not be used; and
3. Criminal law/statutory regulations may not be applied retroactively;

The three main principles of legality as described above are contained in Article 1 Paragraph 1 of the Criminal Code which states:

An act cannot be punished, except based on the strength of existing criminal law provisions.

The defendant is more appropriately charged with Article 421 of Law Number 1 of 2009 concerning Aviation which states:

1. Any person who is in a certain area at an airport without obtaining permission from the airport authorities as referred to in Article 210 shall be punished with imprisonment for a maximum of 1 (one) year or a maximum fine of IDR 100,000,000.00 (one hundred million rupiah).
2. Any person who creates an obstacle and/or carries out other activities in the flight safety operations area which endangers flight safety and security as referred to in Article 210 shall be punished with imprisonment for a maximum of 3 (three) years and/or a maximum fine of IDR 1,000,000,000.00 (one billion rupiah).

The defendant is more appropriately charged under Article 412 of Law Number 1 of 2009 concerning Aviation because the actions committed have clearly endangered flight safety and/or flight facilities. This article states that anyone who carries out activities that could endanger the safety of aircraft, passengers, crew, or disrupt flight operations can be subject to criminal sanctions. The main element in this article is the existence of actions that pose a potential danger to flight safety, either directly or indirectly. In the context of this case, the defendants' activities not only violate public order, but also have the potential to threaten flight operations, for example by releasing objects into the air, disturbing airspace, or carrying out unauthorized activities around flight areas. Therefore, charging under Article 412 of the Aviation Law is considered more appropriate from a legal perspective, because the elements of the offense are in line with the consequences that arise, namely a threat to flight safety which is the main legal interest protected by the law.

4. CONCLUSION

First, criminal law enforcement against perpetrators who fly hot air balloons without permission is based on the provisions of Article 411 of Law Number 1 of 2009 concerning Aviation, as long as the act is proven to cause or has the potential to endanger flight safety. However, not every hot air balloon flight activity can be automatically qualified as a crime. If the use of hot air balloons is carried out by fulfilling the licensing, technical, and administrative requirements as stipulated in Articles 3 to 6 of the Minister of Transportation Regulation Number 40 of 2018 concerning the Use of Hot Air Balloons in Community Cultural Activities, then the act is not included in the category of criminal acts.

Second, the form of punishment imposed on the perpetrators of the hot air balloon flight in this case is in the form of imprisonment and a fine, each for one month in prison and a fine of Rp1,000,000.00. The punishment was given because the defendants were proven to have violated the provisions of Article 411 of Law Number 1 of 2009 concerning Aviation and the provisions of Article 3 of the Regulation of the Minister of Transportation Number 40 of 2018. The type of sanctions imposed is in line with the classification of the main crimes as regulated in Article 10 of the Criminal Code, as a legal consequence of the actions committed by the defendants.

Third, based on an analysis of Decision Number 114/Pid.B/2022/PN Mjy, the Panel of Judges sentenced the defendants to guilty based on Article 411 of Law Number 1 of 2009 concerning Aviation, considering that flying a hot air balloon endangered flight safety. However, this decision raises legal issues because Article 411 explicitly regulates only aircraft operations and does not explicitly include hot air balloons as an element of the crime. Therefore, ideally, the imposition of criminal sanctions for this act would be more appropriate if based on Article 421 of Law Number 1 of 2009 concerning Aviation, which regulates the prohibition of activities that endanger the safety of flight operations.

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