

Interface truth material with prohibition of use of the results of the aircraft accident investigation as a tool of evidence

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ABSTRACT

Ratio legis of Article 359 of the aviation law (number 1 of 2009) is results of the investigation is not made for the judicial system but rather aims of improving flight safety and prevent accidents with the same cause. Validating the material truth in aircraft accidents can still be achieved, although the results of the investigation can not use as evidence.

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I. Introduction

Article 6 paragraph (2) of law number 48 the year 2009 concerning judicial Authority (State Gazette year 2009 number 157, supplementary State Gazette number 5076 from now on called Law 48/2009) governs that:

"No one can be sentenced to criminal, unless the court is due to legally valid proof of evidence, having the conviction that a person is deemed accountable has

been guilty of the deed he or she has taken over. "I¹

Following the article, in article 183 of Law No. 8 of 1981 on Criminal Proceedings (State Gazette 1981 Number 76, additional State Gazette number 3209, from now on referred to²as KuhaP) also governs that:

"The Judge should not impose a criminal to a person except when with at least two legitimate proof tools He gained the conviction that a criminal offense

¹ The law Power Justice Have Experience 3 (Three) times Change. However Content Article 6 Verse (2) The Since Set In Law no.14 Years 1970 About Terms and Conditions Staple Power Justice To Now Remain Maintained. hal It Prove That Substance From Article This Still Appropriate With Development Law When This.

² By Order Lines Great Bow Countries Ordinances Assembly 'S Consultative People Republic Indonesia Number IV/MPR/3978) yang States Insights To Reach Goal Development Law National Is Insights The Indonesian Archipelago In Field Law

States That Entire Islands Nusantara This As One Unity Law. Hal This Can Also Interpreted That Only ada One Law National That Serve On Interests National. M.Karjadi Dan R.Soesilo, *Book Law Law Event Criminal With Explanation Official Dan Comments* Politeia, Bogor, 1997, Hlm.8. Order It Implemented With Plan Codification Dan Unification Law Event Criminal That on Time It Still Divided Between RIB dan HIR, Results Codification Dan Unification That That Called Book Law Law Event Criminal CRIMINAL PROCEDURE CODE *in Casu* The law Number 8 Years 1981 About Law Event Criminal.

occurred and that I have been guilty of doing it. "

Moeljatno argues that the most important part of each criminal process is the question of proving because the answer to this depends on whether the accused will be convicted or released. proof me is part of the event law, then certainly the purpose of both(P³ and law) in addition to resolving the matter also to discover the truth.

The truth itself in the doctrine of the event law divide into 2 (two):⁴

- a. Formyl truth
- b. Material Truth

The achievement of the above truths distinguished by the method of proving. Family's truth accomplishes when the judges solely tied to a legitimate proof of instrument; in other words, the *preponderance of the evidence*. This truth used in the law of civil proceedings. While in the law of the criminal proceedings, as a consequence of attachment to the instrument of evidence and under the evidence that the judge gained conviction

(*Beyond Reasonable doubt*) so it sai the purpose of being achieved truth material.⁵

On the other hand, on 24 May 1950, Indonesia declared *adhere* (submission) to the Chicago⁶ Convention and formally became a member of the *International Civil Aviation Organization* (yang from now on referred to ICAO) on 27 May 1950. Consequently, Indonesia must follow 18 policies of ICAO outlined in the *Annex* and its derivative policies.⁷

One of the 18 (eighteen) Annex ES is the annex 13 governing aircraft accident and Incident investigation: Provisions on uniformity and investigative notices, and reports on aircraft accidents are instructing to all participating countries in *Chapter 5*. Number 12 that:

"The State investigating an accident or incident shall not make the following records available for purposes other than accident or incident investigation"

As the Pengejewantahan 5.12 *Annex*, 13 Law No. 1 the year 2009 on flights (Government Gazette year 2009 number 1,

³ Moeljatno, *Law Event Criminal*, Sexy Kepidanaan Faculty Law Seoul University Elephant Mada, P. 132 in In Ratna Nurul Afiah *Goods Evidence In Process Criminal* Rays Graphics Jakarta, 1989, Hlm. 14.

⁴ Very Rarely Found Discussion About Law Event Especially That Concerning About Goal Prove That do not Put Second Truth This In His. As Example Following Opinion Subekti "In Law Event Criminal Judge Find Truth Genuine (*Material Truth*) While Law Event Civil Judge Find Truth formal". View Subekti, *Law Prove*, Pradnya Paramita, Jakarta, 2001, Hlm. 9.

⁵ Achmad Ali and Rajkumar Directly, *Principles Law Prove Civil*, Kencana, 2012, Hlm. 9.

⁶ On Years 1944 United State of Amerika Invite 55 countries and Authority To Attend ICAC Or International Civil Aviation Conference (Conference Aviation Civil International) on Months November 1944. There are 54 countries that Present Dan A Convention About Aviation Civil International Was inaugurated Dan Approved By 32 countries. This

That Then Known As Convention Chicago. Konvensi The Form International Civil Aviation Organization (ICAO) Or Organization Aviation Civil International To Create Regulations Dan Standard, and also Procedure Dan Standard That seseragam May Among Countries Participants. To Winarto *Investigation Accident Flight tickets* [IDNJournal](#), Attadale Western Australia, June 2012. Hlm. 3.

⁷ Compliance Against Standard Flight International Is Aspects That Very fundamental. Ada Less More 10.000 Standard and the 40 *Almost-Standard* yang tercantum In *Annex 1-8 ICAO* With Documents Dan sirkulernya (*circular*). Was A Country do not Ever Send Difference (*differences*) To ICAO Then Means Country The Should Comply with All The standard Was ICAO. Indonesia Including The country do not Ever Send Note Difference To ICAO. This Means Indonesia Should Comply with All Standard That Have Set ICAO. Author do not Unknown, chapter. II Settings Safety Flight, Accessed at 12 February (199 2016 Repository. USU.ac.id/bitstream/.../3/Chapter%2011.pdf.

supplementary State Gazette number 4956, from now on called the Law 1/2009) governs in article 359 paragraph (1) that:

"Investigative results cannot be used as evidence in judicial proceedings."

The investigation of Transport accidents is held based on three principles, i.e., not for fault seeking (*no blame*), not to give sanctions/penalties (*No judicial*), and not to seek out who is responsible for the loss (*No liability*).⁸ But it is to repair the flight safety system and to prevent it from happening accident Airplane again with the same cause.⁹

It's a weighing consideration that then raises the author's interest in discussing the matter.

B. Problem formulation

The discussion of the journal titled "**Evidence in aircraft accidents**" will be limited by the following issues:

1. What is the *leg* is the ratio of the investigation results can not use as evidence in the judicial process?
2. How to prove material truth in an airplane crash?

C. Discussion

a. The ratio of the Legis to investigation results cannot use as evidence in the judicial process

Article 359 paragraph (1) Law 1/2009 governs that the investigation results cannot use as evidence in judicial proceedings. The thing to note in this article Formulation is that the use of the word can not be that if it reviews in terms of language has The meaning is not allowed, not permitted, or prohibited.¹⁰ With the underlying, it sees that article 359

paragraph (1) Law 1/2009 contains the norm of Prohibition. Jj. H. Bruggink, who writes the distribution of behavior, restrictions, permits, and dispensations, and also gives the definition that The Prohibition (*verbod*) is a "general obligation not to do anything."¹¹ But it does not explain the basis of a ban or a simple language why that deed must be banned.

LAW 1/2009 made by State institutions that have the function of legislation, namely the representative Council of the Republic of Indonesia (DPR RI). The law is declared its validity by being loaded into the Gazette of the state, which suggests that everything contained in law 1/2009 is the will of the state, and expects that every People in scope territorial The state of the Republic of Indonesia behave in a manner that corresponds to that outlined to aim (interests) the formation can achieve. H.L. A Hart has also explained that:

"Those who took part in the legislation knowingly worked out a procedure to make the law, just as well as the person who gave an order consciously using the form of certain words to ensure that their will be understood and obeyed."¹²

Every rule of law while It is a commandment and order, of course, has a specific basis of purpose (importance), p Ertanyaannya now is whether the basis of the establishment of Article 359 paragraph (1) Law 1/2009 so that the investigation of the results can not use as evidence in the judicial process.

Referring to *Annex 13*, which is the basis for the Establishment of 1/2009 Law,

⁸<http://www.hukumonline.com/berita/baca/lt525f8cb20b210/status-hukum-hasil-investigasi-kecelakaan-transportasi> Accessed Date 12 February (199 2016).

⁹<http://www.hukumonline.com/berita/baca/ho17914/temuan-knkt-tidak-bisa-dijadikan-batang-bukti> Accessed Date 12 February (199 2016).

¹⁰<http://kbbi.web.id/tidak>, Accessed Date 30 Maret 2016.

¹¹ Jj. H. Bruggink, *Reflection About Law*, (terjemahan B. Arief Sidharta), Citra Aditya Bakti, Bandung, This. IV 2015, Hlm.100.

¹²H.L.a Hart, *Concept Law*, (terjemahan M.Khozim), Nusa Media, Bandung, Cet. V 2011.Hlm.70.

especially in *Chapter 3 art. 1 (3.1)* explains that:

"The sole objective of the investigation of an accident or incident shall be the prevention of accidents and incidents. It is not the purpose of this activity to apportion blame or liability."

Based on the explanation above, it appears that the objective of investigating an airplane accident is not to look for mistakes and to find out who is responsible but to Prevent accidents and incidents. *Civil Aviation Safety Regulation Part 830* (CaSR 830) which has been loaded with regulation of the minister of Transportation number: PM 14 Year 2015 concerning civil *Aviation Safety Regulation 830 Part 830* Notification and reporting of accidents, Serious incidents of civil aircraft and investigation procedures for accidents and serious incidents of civil aircraft (State Gazette of the Republic of Indonesia Year 2015 number 112 from now on called PM 14/2015) in Sub. Section 830 number 3 (830.3) about the objective of the investigation gives an explanation that:

"The investigation aims to conduct research activities on the causes of accidents and serious events of civilian aircraft to avoid accidents and Serious incidents of civilian aircraft with the same cause, and not to find fault, prosecution and indemnity."

ICAO has determined that *no blame, no judicial, and no liability* has been the goal of the investigative activity as well as the principle by the investigator. Even ICAO in Annex 13 expects an airplane accident not approached with a criminal law approach.

ICAO has also made *Legal Guidance for the Protection of Information Gathered from Safety Data Collection and Processing Systems* to assist member countries in making laws and regulations to protect the information collected from the safety Data collection and system processing (SDCPS) from use for other purposes other than the purpose for flight safety.

The principles of safety Information Protection in question are as follows: ¹³¹⁴

General principles :

- 1) The sole purpose of protecting safety information in the improper use is to ensure continued availability so that proper preventive measures may take, so that flight safety is enhanced.
- 2) Tested protects safety information not to interfere with judicial administration in the Contracting State.
- 3) The national law and regulation that protects safety information must ensure that the balance between the need for protection of safety information in order to accommodate the safety of Aviation, and the need for judicial Administration remains awake.
- 4) H.the national AW and regulation that protects safety information should prevent improper use.
- 5) Protecting eligible safety information under certain conditions is part of the responsibility of the country's security law.

Principles of information protection :

- 1) Safety information must be eligible for protection from use that is not following certain conditions that cover it, but

¹³In Writing This Will Often Also Written About Information Safety As terjemahan From *safety information* That Is Front From Information Secret That Written On Page Previous.

¹⁴Regional Aviation Safety group-pan-American (RASG-PA), *Proposal for Amendment to Aeronautical Legislation to Protect safety Information*

sources, Approve 22 October 2012, Hlm.16-17. (Appendix A, Attachment E to Annex 13 on Accident and Accident Investigation, Legal Guidance for the protection of information gathered from safety data collection and processing systems.).

not limited to: the collection of information that has clear its purpose for safety and disclosure Information that inhibits the availability of further information.

- 2) Protection must be specific to each SDCPS, based on the nature of the safety information it contains.
- 3) A formal procedure must establish to protect qualified safety information, following the specifications of the condition.
- 4) Safety information may not use deviating from the purpose of which data collected.
- 5) The use of safety information in various disciplines such as civil, administrative, and criminal only conducted according to appropriate protections of national law.

The principle of exclusion of the above principles is as follows:

- 1) There is evidence that the incident caused by an action that takes into account, following the law, the deliberate action causing damage, or action on knowledge, will likely result in damages, equivalent to the action Fatal negligence or intentional misconduct.
- 2) The competent institution considers that such an incident, likely to indicate considerable circumstances caused by the action to deliberately cause harm, or action on the knowledge that it is likely to result in damage, equivalent With reckless action, negligence or willful misconduct.
- 3) Rereview by the authorized institution determines that the disclosure of safety information is necessary for the feasibility of administrative justice and that if it not disclosed more adversely affects national and international interests such as possible availability of safety information in the future.

In the general principle, explain that the purpose of Information protection is to ensure future safety information available to be made rapid and Appropriate. Then ICAO also added that the purpose for this protection is not to interfere with the judicial process in each state of the participant, but ask each country participants to Balance between the purpose of information protection to improve flight safety and the purpose for Judicial proceedings thereby preventing Improper use of safety Information.

Prohibition on the use of investigative results as a tool of evidence in the procedure stipulated in article 359 paragraph (1) of law 1/2009 base on the division of investigations that are technical investigations and juridical investigation. The investigation carried out by Knkt is aimed at improving the safety system and preventing accidents from happening with the same cause (safety reasons). So that knkt investigation results are not as reasonably used other than the original purpose of its creation.

If further investigated the reason for salvation by dividing the form of investigation, it will be found that the rationale comes from concern. The increased safety system relies heavily on the availability of information, covering all incidents and accident information. The concern is the unavailability of information because 3 (three) things are:

- a. Used for judicial purposes;
- b. *Self Incrimination*;
- c. Destruction of the data.

Not available information because it used for Judicial purposes is The most common thing found. The information used for judicial purposes can make Safety Recommendations Unable to be made as soon as possible and timely due to a long time - consuming judicial process. Then the second about *self-incrimination* is a strong issue if prioritizing the judicial process. If the approach used is criminal, then the causes of the people involved

in the flight will Endeavor in such a way as to conceal any matters relating to Salvation for fear of claiming himself. Lastly, the destruction of the data is most rare because, however, This kind of destruction is an act against the law. However, because of the possibility, it could have happened because the one discussed now is a group of Professions in the flight that could have made the information system Safety does not work as very important to be prevented.

b. Material correctness in aircraft accidents

The proof, which is the most important basis of the judicial process in principle, is the effort to demonstrate the truth that believed. Even the Holy Qur'an also mentions the importance of proving about righteousness. Allah subhanahu Wa Taala says in Surah Al-Baqarah verse 111:

"Hatuu burhaanakum inkuntum shaadiqiin
(show proof of your truth if you are the right person)."

Following the Word of Allah subhanahu Wa taalan above, the prophet **Muhammad** peace alaihi Wa Sallam also said in Saheeh Muslim who narrated that Sa'd bin Ubadah asked the messenger of Allaah alaihi Wa Sallam :

"Do you have to go to the temple in the village"... Khola: Na'am. (had I found my wife with another man, I let her till I bring forth four witnesses? He replied, ' yes.
' "15

The author intentionally incorporates both Basic or referral above, believing that it is very unethical to discuss the truth without giving the correct reference or basis that it has believed, or At least by most people are believed to be

true. Apart from Plato's *divided line* theory that explains that the knowledge of the truth can be achieved through a hierarchy of 4 (four) levels. The lowest level consists of estimates and imagination because they are based solely on Impersi or estimates. The next ranking is trust, and it is said that belief is a state of mind that takes over a person because of the strong influence of religion, wisdom, tradition, indoctrination any popular view of the time. Next up is the scientific knowledge supported by empirical evidence, experimentation, and mathematical equations. And the top level of this hierarchy is the reasoning that Plato considers to exceed science and override its research values.¹⁶

Then what is the truth of the Material, as explained earlier, that the truth of the Material is a complete truthfulness or that according to the intrinsic Truth Subekti. Of course, the depiction is still very abstract and will only cause new questions. According to the author of Material, truth is the conformity of facts with criminal formulation, or the discrepancy of fact with a criminal offense, or the suitability of the fact of the exception with the formulation of criminal acts supported by the judge's belief.

In the context of proving the judiciary, it needs to be distinguished between attempts to find truth and effort to demonstrate truth. Attempts to find the truth are in the process of investigation, while the effort to demonstrate the truth is in the process of proving in court. The process of investigation in KUHAP interpreted as an attempt to find evidence to create a criminal offense. Once it believed that there is a conformity between one's evidence and the other, investigators will continue the matter in the next process. In the next process, the truth believed by the support of evidence will be demonstrated before the judge to judge

¹⁵ Imam Taqiyuddin Abu Bakar Muhammad Al Hushni To Husaini Ad-Dimasyiq, The "Tahqiq" by Abdul Qadir Al Arnauth, New, *Kifayatul Akhyar Book 3 Discussion About Jinayah, Sanctions HaddJihad Animals Category Editor: Dan Animals*

Sacrifice, Race Dan Archery, Oath Dan Vows, Judicial, And Pemerdakaan Slaves (terjemahan Misbah), Library Azzam, Jakarta, 2016, Hlm.555.

¹⁶ Sam S. Souryal, *Ethics in Criminal Justice, In Search of the Truth* (Translated By Kunarto " Ethics In Judicial Criminal, Efforts Find Truth), Copyright Manunggal, Jakarta, 1999, Hlm. 14-16.

whether the truth is following the conviction of the judge. If it shown to prove (the evidence gives conviction to the judge) that there is a true criminal offense that occurs, ma ka will give criminal sanction. It shown to be true that there is a criminal offense, but according to the judge, there is a reason for criminal erasers will be disconnected from all demands hu Kum. The stated tool evidence does not pose any conviction to the judge about a criminal offense (unproven) then it will be disconnected freely.

The material truth is closely related to criminal liability. Ruslan Saleh writes that there are two basic notions in the criminal law, and they are the pillars (the pillar), the criminal act and the criminal answer.¹⁷ The reason is that this criminal liability is one of the determinants of whether a person who has committed a criminal deed may be subject to criminal sanctions. The means of determining this is proof.

Based on the explanation above, it can conclude that the investigation process is an important part of the process of proving. Because to be able to refer to something, then something should be present, and vice versa, if something is not there, then nothing can be demonstrated. The evidence contains truth, and even evidence is the truth itself. Therefore it needs to be found by investigation and present it to the judicial process.

Two conditions must be fulfilled so that the evidence can be used and have a value of proof on the judicial process that the evidence must be "correct" and "legitimate." True, in the sense of such evidence, contains facts that can explain an event while it is legitimate to refer to two things that are legitimate ways of the law and legally used.

This discussion will only focus on the second legal requirement that is legally used by law. For example, In Fact is in article 359 paragraph (1) of LAW 1/2009 and article 359 paragraph (2) of LAW 1/2009.

In line with the previous explanation that the results of the investigation can not be used as evidence in the judicial process because as stipulated in article 359 law 1/2009 because it does not make for that, It is to improve the flight safety system and to prevent accidents from happening with the same cause.

The question that then arises is whether under this purpose can shut down the correctness of the alleged criminal offense? Is it on purpose that the cause of the same accident does not happen again, then the damaged object, the wound of the body, and the loss of life protected by criminal law should not be held accountable? If the answer is "no," the next question is how investigators and prosecutors prove material truth in an airplane accident.

Answering the question, it is necessary to affirm that the purpose of the Law, in General, is justice and justice before the truth is a false justice. Because it is the same as promising to 2 (two) children each 1 (one) toy, but never given at all or the toy is only given to 1 (one) child. Therefore, the truth must accomplish so that justice can also achieve.

The discussion in the previous Chapter mentioned that, in principle, protection against confidential information is not intended to interfere with the judicial process criminal but only aims to protect information for improper purposes. Referring to the principles of *There is no rules without exception*, this principle also has an exception that contains circumstances under which information disclosure is permitted Confidential, i.e., If there is a proof device or an authorized institution (the author: in this case Knkt) states that there is a strong suspicion that the accident resulted from the act of gross negligence or is intentional or in the event after being reviewed by an authorized institution (author: In this case the aviation profession assembly) determine that the disclosure of safety information is necessary for

¹⁷ Ruslan Saleh *Thoughts About Sum Insured Answer Criminal*, Ghalia Indonesia, Jakarta, 1982, p. 3.

administrative feasibility per fairness and that if not expressed more adversely affect national and international interests such as possible availability of safety information in the future. But unfortunately, This principle has not been firmly regulated in law 1/2009.

The author strongly agrees with the principle of exclusion, because in fact, the purpose of Investigation and investigation is the same as the Improvement of the safety system and prevent the event not repeated with the same cause.

After discussing with the investigator Knkt and Pins on the Directorate General of Perhubud, the author can explain that in the realm of practice article 359, law 1/2009 not used rigidly because they're basically some things arranged in the article that can used as a tool of evidence in the judicial process with the Records obtained by the investigator.

For more details The following explanation of article 359 paragraph (2) of law 1/2009 which governs about matters including Confidentialinformation, among others:

- a) Statements from persons acquired in the investigation process ;
- b) Recording or transcript of communication between persons involved in the operation of the aircraft ;
- c) Information about the health or personal information of persons involved in accidents or events;
- d) Voice Recordings in the steering Chamber (*cockpit voice recorder*) and Word by Word Records (transcripts) from the sound recordings ;
- e) Recordings and transcripts of the airline's traffic service attendant talks (*Air Traffic Services*);
- f) The opinions expressed in the information analysis include flight *data recorders*.

Out of 6 (Six) plain Information Secret The, Point a,b,c, then e, Can Make As Tool Evidence Provided Retrieved Own By Investigators In Process Investigation. Opinion This Retrieved From Method *argumentum Contrary* Against

Article 359 Verse (1) UU 1/2009 yang Set That Results Investigation do not Can Make As Tool Evidence In Process Judicial So An *a Contrary* If Not Is Results Investigation Then Can Make Tool Evidence. As for point D and F, do not Can Made Tool Evidence Because Indeed Investigators In hal This do not Have Ability And Equipment Support To Read And Analyze *black box* (VCR dan FDR). Question Then Is Do If Investigators Provided Ability Dan Equipment Support To Can Read Dan Analyze *black box* (VCR dan FDR) Then *black box* This Can Made As Tool Evidence In Process Judicial?. By Explanation Previous Then Answer “iya.” Settlement Such This On Realm Practice Indeed Considered Due diligence, However Yet On Realm Theory. After Author Contemplate Back Settlement Such It Can Cause Problems That New, i.e., If Investigators Provided Ability To Read and to know *black box* Then What That Generated By Investigators Different With What That Obtained By investigator KNKT So Cause Confusion About What That Be Cause Accident Dan Impact On Repair System Safety. So Author Suggest agar Back On Principles Protection Information Secret Like That Described Previous.

Based on the explanation above that has been found a settlement in the theoretical and practical areas of the matter and criminal Justice process will not be disturbed by the arrangement of ARTICLE 359 Act 1/2009; therefore, investigators and prosecutors can guarantee the achievement of material Truth and Justice without worrying about the lack of evidence.

D. Conclusion

1. *The legis* Ratio of section 359 paragraph (1) of the 1/2009 most visible law is to refer to the investigation purpose, namely, for the improvement of the safety system and prevent an accidental accident with the same cause, not Another goal. However, if the investigation found to be a separation between investigations and investigations, each has its purpose. The reason

why separated between the two is because it based on the existence of 3 (three) worries, not the availability of safety information because 1. used for Judicial purposes, 2. *self-incrimination*, or 3. destruction of data. Why the information is important, the answer is for Flight Safety.

2. In the same theoretical Realm, ICAO has provided the principles of protection of confidential information as well as the exclusion principle that contains circumstances are allowed disclosure of Confidential information. The exclusion principle can apply in two circumstances first if the aviation profession Assembly determines that the disclosure of safety information is necessary for eligibility for judicial administration. Secondly, Otherwise expressed adversely affects national and international interests such as possible availability of safety information in the future. While in the practical Realm, Confidential information can be used as a means of evidence as long as acquired by the investigator in the investigation process. This Opinion derived from the method of the A contrario against Article 359 paragraph (1) of law 1/2009 governing that the outcome Investigations can not be used as a means of evidence in judicial proceedings so that a contrario if not a result of investigation can use as a proof tool.

E. Advice

1. The Assembly of Aviation Professions, as stipulated in article law 1/2009, should not be placed and formed by Knkt because it is very Tentangan with the principle of formation. The aviation profession assembly should be placed and formed by the Directorate of Air Transportation Ministry of Transportation.
2. The principles of LAW formed by ICAO should fully load on National

rules. ICAO In addition to providing the principles of protection of Confidential information also provides an exception to these principles. This should apply to article 359 Act 1/2009 by Adding paragraph 3, which contains the exception to the rule in paragraph 1 of article 359 Act 1/2009.

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