

An Adjudicative Filter for SMS Manual Gaps in Pilot Education: The Maritime Court Design Precedent

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Abstract

Formal safety-reporting norms exist internationally, nationally and institutionally, yet protection for reporters in Indonesian pilot training remains inoperative. This study asks why, and what design closes the gap. It compares the Safety Management System Manual of the Indonesian Civil Pilot Academy of Banyuwangi (Issued 02, Revision 02) with ICAO Annex 19, Third Edition, using normative legal research with a documentary case study. Soekanto's legal-effectiveness theory supplies the diagnosis; responsive regulation, developed by Ayres and Braithwaite and refined by Baldwin and Black, supplies the prescription. Three connected gaps emerge. First, reporter protection travels through six referring levels, from the Manual's "to the extent permissible by law" clause down to the 2017 Director General Regulations, which provide administrative de-identification only and whose delegating basis Ministerial Regulation 2/2026 revoked without a transitional provision. Second, the Manual grants cadets disciplinary immunity but withholds identity confidentiality. Third, no enforcement rung exists between internal correction and criminal proceedings. Annex 19 permits a non-judicial competent authority; Articles 364-369 of Law 1/2009 already provide for one. Because Government Regulation 62/2013 implemented only the investigation half of Article 369, the article proposes operationalising the Aviation Profession Council as a technical-professional adjudicative filter, on the Maritime Court design precedent.

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1. Introduction

A safety management system depends on people's willingness to admit error and report it. Protecting reporters from legal exposure is therefore a precondition of the system rather than a secondary administrative concern: without a working protective mechanism, the reporting flow dries up and the system exists on paper while ceasing to function.

ICAO Annex 19 Third Edition raises that requirement. Amendment 2 was adopted on 23 June 2025, became effective on 4 November 2025, and becomes applicable on 26 November 2026, when the Third Edition supersedes all previous editions; its obligations are settled but not yet operative, placing Indonesia inside the implementation window.¹ Chapter 5, now titled "Development of Safety Intelligence," requires States to operate a safety data collection and processing system and a voluntary safety reporting system, and to protect what they generate.² Under Appendix 3, point 2.1(a), such data may not be used in disciplinary, civil, administrative or criminal proceedings unless a principle of exception applies.³

At the level of the training institution, the SMS Manual of the Indonesian Civil Pilot Academy of Banyuwangi, Issued 02, Revision 02, already contains a corresponding formulation. Chapter 8.4, point 2 excludes disciplinary measures against employees or students who report safety occurrences, but point 4 qualifies that assurance.⁴ It protects a reporter's identity only as far as the law allows, and the national law it invokes supplies none of the three elements the clause presupposes: no statutory privilege attaches to safety information, no evidentiary rule governs its admission in criminal proceedings, and no procedure exists through which a claim to protection could be raised and decided. The clause thus transfers its operative force to an empty set. An earlier stage of this research termed this structure, a protective norm that extinguishes itself through its own referring clause, a "Normative Firewall Deficit".⁵

The Manual itself anticipates this erosion. Chapter 8.3 acknowledges that access-to-information laws make confidentiality difficult to guarantee, and limits the information provided to the minimum needed for a report.⁶ Its drafters therefore foresaw that protection would be eroded, not merely that it might be.

The ministerial regulation that should supply the missing law repeats the pattern. Point 19.51(a) of Minister of Transportation Regulation Number 2 of 2026 requires aviation service providers to protect safety data obtained through reporting, but locates the basis of that protection in the National Aviation Safety Programme, which the Regulation neither defines

¹ ICAO, *Annex 19 to the Convention on International Civil Aviation: Safety Management*, 3rd ed. (Montréal: ICAO, 2025), Foreword and Table of Amendments (Amendment 2).

² ICAO, Annex 19, Chapter 5, 5.2.1, 5.2.4, and 5.4.1.

³ ICAO, Annex 19, Appendix 3, 2.1(a).

⁴ Akademi Penerbang Indonesia Banyuwangi, *Safety Management System Manual for Indonesia Civil Pilot Academy (ICPA)*, Issued 02 Revision 02 (Banyuwangi: API Banyuwangi, 2024), Chapter 8.4 point 2.

⁵ API Banyuwangi, SMS Manual, Chapter 8.4 point 4.

⁶ API Banyuwangi, SMS Manual, Chapter 8.3.

nor identifies by instrument. Point 19.51(b) then adds an open-ended exception.⁷ Safety data may not be disclosed or used for purposes other than safety “unless requested by the Director General,” an exception without conditions that binds only service providers and says nothing to investigators or courts.

Nor does the statute close the gap. Article 321(2) of Law Number 1 of 2009 on Aviation offers reporters some protection, but Article 322 delegates only the procedure for sanctions under Article 321(3). Article 359 is explicit but narrow: results of a national committee investigation into an accident or serious incident under Article 357(1) cannot be used as evidence in court.⁸ Voluntary pre-accident reports, occurrences below the serious-incident threshold and internal organisational documents fall outside it, although it is precisely pre-accident reporting that a safety management system depends on.

These layered deficiencies were first mapped in an earlier document review, which identified 22 gap aspects between the SMS Manual and Annex 19 Third Edition, 11 critical and 11 partial.⁹ This article selects those satisfying two criteria: the gap concerns the legal protection of reporters rather than documentary completeness, and it cannot be closed by the Academy alone because its resolution depends on norms above the institutional level. Five aspects meet both and form the focus of Section 3. The question pursued is why those gaps persist despite formal standards at several levels, and what regulatory design could close them.

1.1. Review of prior studies

Existing scholarship follows three lines, each stopping short of this question. The first treats safety culture as a function of legal awareness and oversight capacity: Purba shows that enacting technical standards is insufficient without stakeholder legal awareness.¹⁰ Nugraha examines oversight performance and institutional reform of the civil aviation authority, and Kusumadewi et al. assess the conformity of Indonesian standards with international air law.¹¹ These studies remain at the level of broad policy and commercial operators.¹² Pilot-training institutions, whose students are not yet certified personnel, have not been studied separately.

⁷ Peraturan Menteri Perhubungan Nomor 2 Tahun 2026 tentang Peraturan Keselamatan Penerbangan Sipil Bagian 19 (Civil Aviation Safety Regulation Part 19) Manajemen Keselamatan [Minister of Transportation Regulation Number 2 of 2026 on Civil Aviation Safety Regulation Part 19, Safety Management], point 19.51(a) and (b).

⁸ *Undang-Undang Nomor 1 Tahun 2009 tentang Penerbangan* [Law Number 1 of 2009 on Aviation], Articles 321–322 and 357–359 with their Elucidation.

⁹ Matriks Kesenjangan SMS Manual Issued 02 Revisi 02 [SMS Manual Gap Matrix], Table 20, Final Research Report, RISTA, Akademi Penerbang Indonesia Banyuwangi, 2026.

¹⁰ H. Purba, “Mewujudkan Keselamatan Penerbangan dengan Membangun Kesadaran Hukum Bagi Stakeholders Melalui Penerapan Safety Culture” [Achieving Aviation Safety by Building Stakeholders’ Legal Awareness through the Application of Safety Culture], *Jurnal Hukum Samudra Keadilan* 12, no. 1 (2017): 95–110.

¹¹ Ridha Aditya Nugraha, “Improving Aviation Safety in Indonesia: How Many More Accidents?,” *Hasanuddin Law Review* 2, no. 3 (2016): 328–348.

¹² P. M. Kusumadewi et al., “Analisis Standar Penerbangan di Indonesia Berdasarkan Hukum Udara Internasional” [An Analysis of Aviation Standards in Indonesia under International Air Law], *Masalah-Masalah Hukum* 52, no. 3 (2023): 262–271.

The second line examines organisational SMS instruments. Lestary, Surtiningtyas and Aswia draft an institution-level SMS Manual for an aviation polytechnic, and Fiyanzar, Nusraningrum and Arofat study SMS implementation in an air navigation service provider.¹³ Both treat the just-culture clause as a matter of documentary completeness.¹⁴ Neither asks what happens when a clause complete on paper binds its protective force to a national law that has not supplied the mechanism.

The third line, almost entirely maritime, studies profession-based accident-review bodies.¹⁵ Siswanto traces the Maritime Court's juridical power, and Sarwono, Ismail and Iryani the authority it should hold.¹⁶ Anggraeni, Ananda and Haryanto propose merging it with the Fisheries Court, while Kesumadiksa, Walangitan and Rezaldy advocate a full Maritime Court.¹⁷ Three of its features transfer to aviation: a composition drawn from the regulated profession, a jurisdiction confined to departures from professional standards, and a sanction ceiling limited to professional consequences. Two do not: its placement under the Minister, which the literature criticises, and a procedure built for post-accident examination rather than for protecting pre-accident reports. None of these studies uses shipping as a reference for aviation.

On the theoretical side, both frameworks used here appear in Indonesian legal literature. Suryanto, Arresti and Makky apply Soekanto's five factors to enforcement driven by pressure outside the legal system.¹⁸ Rizki, Sari and Yusrizal examine responsive-law ideas in legislative drafting.¹⁹ A search of Google Scholar and the Garba Rujukan Digital (Garuda) database, the two comprehensive indices of record for Indonesian legal scholarship, and the

¹³ D. Lestary, S. R. Surtiningtyas, and P. R. Aswia, "Perancangan Safety Management System Manual Level Institusi Politeknik Penerbangan Indonesia Curug" [Designing an Institution-Level Safety Management System Manual for the Curug Indonesian Aviation Polytechnic], *Langit Biru: Jurnal Ilmiah Aviasi* 16, no. 3 (2023): 183–194.

¹⁴ A. E. Fiyanzar, D. Nusraningrum, and O. Arofat, "Penerapan Safety Management System pada Lembaga Penyelenggara Pelayanan Navigasi Penerbangan Indonesia" [Implementing a Safety Management System at Indonesia's Aeronautical Air Navigation Service Provider], *JMTransLog: Jurnal Manajemen Transportasi dan Logistik* 3, no. 2 (2016): 205–215.

¹⁵ A. H. Siswanto, "Kewenangan Yuridis Mahkamah Pelayaran Berdasarkan Peraturan Perundang-Undangan" [The Maritime Court's Juridical Authority under Legislation], *Lex Jurnalica* 15, no. 3 (2018): 239–249.

¹⁶ S. Sarwono, Ismail, and D. Iryani, "Kewenangan Ideal Mahkamah Pelayaran Dalam Menyelesaikan Kecelakaan Kapal Untuk Mewujudkan Keadilan" [The Maritime Court's Ideal Authority in Resolving Ship Accidents to Achieve Justice], *Collegium Studiosum Journal* 8, no. 2 (2025): 585–596.

¹⁷ Reni Putri Anggraeni, Ahmad Alveyn Sulthony Ananda, and Nova Fajar Haryanto, "Gagasan Pengadilan Maritim Dalam Tata Hukum Indonesia: Integrasi Pengadilan Perikanan dan Mahkamah Pelayaran Sebagai Pembaharuan Hukum" [The Idea of a Maritime Court within Indonesia's Legal Order: Integrating the Fisheries Court and the Maritime Court as Legal Reform], *Jurnal RechtsVinding: Media Pembinaan Hukum Nasional* 12, no. 3 (2023): 459–481; K. Kesumadiksa, G. T. Walangitan, and Rezaldy, "Urgensi Pembentukan Pengadilan Maritim Bagi Industri Maritim di Indonesia" [The Urgency of Establishing a Maritime Court for Indonesia's Maritime Industry], *Media Iuris* 7, no. 3 (2024): 499–526.

¹⁸ M. H. Suryanto, F. T. Arresti, and A. Makky, "No Viral No Justice Perspektif Teori Efektivitas Hukum Soerjono Soekanto" [No Viral, No Justice: A Perspective from Soerjono Soekanto's Theory of Legal Effectiveness], *Widya Yuridika: Jurnal Hukum* 7, no. 3 (2024): 513–522.

¹⁹ D. Rizki, E. Sari, and Yusrizal, "Penerapan Hukum Responsif Dalam Pembentukan Undang-Undang di Indonesia" [Applying Responsive Law in Indonesia's Statute-Making], *Suloh: Jurnal Program Studi Magister Hukum* 10, no. 1 (2022): 31–45.

source of both comparator studies cited above, covering the period 2009 (the enactment of Law No. 1 of 2009 on Aviation) to 2025, using the search terms (“teori efektivitas hukum” OR “legal effectiveness theory” OR “Soerjono Soekanto”) AND (“penerbangan” OR “pilot” OR “keselamatan penerbangan” OR “pendidikan penerbang” OR “aviation safety”), and (“hukum responsif” OR “responsive regulation” OR “responsive law”) AND (“penerbangan” OR “pilot” OR “just culture” OR “aviation safety”), did not identify a study applying either framework to the regulation of pilot-training safety. The claim advanced here is accordingly one of unaddressed scope rather than of absolute absence.

Taken together, this literature leaves two gaps. No study has diagnosed theoretically why normative gaps persist in a pilot-training institution’s safety-policy document despite existing norms, and none has linked that diagnosis to an institutional precedent already operating elsewhere in Indonesian law.

1.2. Problem statement and novelty

Three questions are asked. Why does a normative gap persist between the SMS Manual of the Indonesian Civil Pilot Academy of Banyuwangi and ICAO Annex 19 Third Edition despite formal norms at the international, national and institutional levels? What regulatory design would close it? Can the Aviation Profession Council under Articles 364–369 of Law 1/2009 lawfully perform the filtering function that design requires, and within what limits?

The contribution lies not in pairing two theories but in the propositions they yield together. Soekanto’s five factors, applied to one institutional document, show that reporter protection fails structurally rather than through poor drafting: the norm is present at every level and operative at none, because each level delegates its content downward until the chain ends in an administrative procedure that never reaches the data. Responsive regulation, advanced by Ayres and Braithwaite and refined by Baldwin and Black, shows that what is missing is a rung rather than a norm: a technical-professional forum between internal correction and criminal process. The principal claim follows from a statutory reading: that rung has existed in Indonesian law since 2009 and has never been operationalised. The Maritime Court, under Law Number 17 of 2008 as amended by Law Number 66 of 2024, shows that such a rung is not alien to the Indonesian legal system.

2. Method

This is prescriptive-analytical normative legal research, conducted through a documentary case study of one institutional policy document and supplemented by one expert-validation interview. The normative analysis carries the argument; the case study fixes its level of resolution; the interview has the limited function described below. The first stage explains why a protective norm is ineffective, the second constructs a design that could remedy it. Three approaches are combined: a statutory approach tracing one protective clause through each level of regulation; a conceptual approach using the doctrines of just culture, legal effectiveness and responsive regulation; and a documentary case-study approach that follows the chain of norms to its terminus.

The SMS Manual of the Indonesian Civil Pilot Academy of Banyuwangi, a Ministry of Transportation training institution, is the object of normative analysis, not an empirical research site. Three criteria governed its selection: its cadets must report operationally before full certification, so the scope question in Annex 19 arises in its sharpest form; the Manual is a current, comprehensive and operative instrument rather than a draft;²⁰ and it reproduces the clause architecture standard for approved training organisations, so the referring structure found is significant beyond this institution. No statistical representativeness is claimed.

Primary legal materials are Law No. 1 of 2009 on Aviation; Law No. 1 of 2023 on the Criminal Code (Articles 36, 474, 475 and 584); Law No. 17 of 2008 on Shipping as amended by Law No. 66 of 2024; Government Regulation No. 62 of 2013; Minister of Transportation Regulations No. PM 93 of 2016, No. PM 62 of 2017 and No. 2 of 2026; and Director General Regulations KP 241, KP 242, KP 243 and KP 245 of 2017. ICAO Annex 19 Third Edition is not Indonesian positive law; its Standards bind Indonesia through Article 38 of the Chicago Convention, and it serves as the benchmark for assessment. The SMS Manual and the earlier gap analysis are institutional policy documents, analysed as the object of the protective norm rather than as its source. Secondary materials are journal articles and monographs; tertiary materials are legal dictionaries and encyclopaedias.

Statutory texts were taken from official publications and every quotation was checked against the original. The analysis had three steps. First, each protective clause was decomposed into four elements: what is protected, who is protected, the conditions of exception, and its consequence. A gap was recorded where a clause was silent on an element or delegated it to an instrument that does not supply it. Conflicting norms were resolved by hierarchy and, at equal rank, by the later and more specific rule; conflicts not resolvable on those grounds are reported as unresolved. Second, each gap was assigned to the Soekanto factor that best explains it, using the criteria stated at the start of Section 3.1; where several apply, all are listed in Table 1 and the first carries the primary weight. Third, the feasibility of the adjudicative filter was assessed by comparing the aviation and shipping frameworks along the dimensions in Table 5.

One expert-validation interview was held on 19 August 2026 with informant AH-03, a scholar of air and space law, after the document analysis was complete. Its sole function was to test whether the interpretation reached is one a specialist considers tenable. It is not a source of legal authority, establishes no proposition in Section 3, and no conclusion would change without it; one informant cannot validate an interpretation, only indicate that it is not idiosyncratic. Where the informant diverged from the statute, for instance on the Council's composition under Article 367, the statute was followed. Quotations are lightly edited without change of meaning, and the informant's identity is withheld by agreement.

²⁰ Hari Sutra Disemadi, "Lenses of Legal Research: A Descriptive Essay on Legal Research Methodologies," *Journal of Judicial Review* 24, no. 2 (2022): 289; Peter Mahmud Marzuki, *Penelitian Hukum* [Legal Research] (Jakarta: Kencana Prenada Media Group, 2019), 133–137.

3. Analysis and Discussion

3.1. Legal effectiveness and the SMS Manual's normative gap

Soerjono Soekanto identifies five factors of legal effectiveness: the legal rule, its enforcing agents, supporting facilities, the society it addresses, and that society's legal culture.²¹ The framework fits because the problem is not an absence of rules but their ineffectiveness. A gap is assigned to legal substance where the defect lies in the norm's content or coherence, including circular delegation; to enforcement officials where the norm presupposes an actor not designated or not competent; to facilities where it presupposes an instrument not yet built; to society where its protective scope misses those on whom the duty falls; and to legal culture where non-use is the rational course for those it addresses. Table 1 lists every applicable factor, the first named carrying the primary weight.

Table 1. Categories of gaps in the SMS Manual and the relevant factors of legal effectiveness

Gap category	Example finding	Factor of legal effectiveness
Technical-operational	The cross-reference list in the manual states that points 19.65 and 19.67 are marked "not applicable," meaning that they have not been treated in the Manual. These points relate to a safety-intelligence framework, management of interfaces, a risk governance matrix, and an SMS maturity assessment.	Facilities and means; legal substance
Legal-normative	The "to the extent permissible by law" clause in Chapter 8.4, point 4; no qualified privilege for safety information currently exists; Chapter 15 of the Manual, recorded as fulfilling point 19.69, addresses only the physical security of records; and no distinction is drawn between safety data and safety information.	Legal substance; law enforcement officials
Reporter protection	A six-level chain of references: Chapter 8.4 of the Manual refers to national law; Article 322 of Law 1/2009 provides no protective mechanism for Article 321(2); point 19.51(a) of Ministerial Regulation 2/2026 refers to the National Aviation Safety Programme; point 3.1.3.6 of PM 93/2016 protects only voluntary reports, not SMS reports, and point 3.1.3.7 delegates the mechanism to a Director	Legal substance; law enforcement officials; legal culture

²¹ Soerjono Soekanto, *Faktor-Faktor yang Mempengaruhi Penegakan Hukum* [Factors Affecting Law Enforcement] (Jakarta: Rajawali Pers, 1983), 8–9.

	General regulation; KP 242 and KP 243 of 2017 provide de-identification only for the national database, do not affect the admissibility of evidence, and direct reporters back to an organisation's internal SMS; and their legal basis (PM 62/2017) was revoked by Article 14 of Ministerial Regulation 2/2026 without a transitional provision.	
Protected population	Chapter 8.4 point 2 reaches employees and students, and point 4 reaches only employees; the just-culture definition in Chapter 3.1 is formulated for front-line operators without mentioning students.	Society; legal culture

Source: Taken from the SMS Manual of API Banyuwangi, Issued 02 Revision 02, Law No. 1 of 2009; Ministerial Regulation No. 93 of 2016; Ministerial Regulation No. 2 of 2026; and the Third Edition of ICAO Annex 19 (2025).

3.1.1. Legal substance: a circular reference

The protection passes through six referring levels without ever becoming operational; Figure 1 sets out the chain. Chapter 8.4, point 4 of the Manual defers to the law; Article 321(2) of Law 1/2009 is not operationalised, since Article 322 reaches only Article 321(3); and point 19.51(a) of Ministerial Regulation 2/2026 in turn refers to the National Aviation Safety Programme.

That Programme, enacted as PM 93/2016 under Article 308 of Law 1/2009, is more specific: voluntary reporters are guaranteed freedom from legal threat and sanction. Its weakness lies in the provision that follows.²² It delegates the national reporting system to a Director General regulation,²³ so that the strong protection is handed down once more.²⁴ Ten years later, point 19.49 of Ministerial Regulation 2/2026 repeats the delegation.

The Programme's protection is also narrower than it appears. Of the four database sources in point 3.1.3.2, inspection reports, accident reports, SMS reports and voluntary reports, point 3.1.3.6 protects only the fourth; SMS reports are excluded.²⁵ Since reports generated in pilot training are SMS reports, the protection has lost the data it is meant to cover before the chain even reaches the Director General.

²² *Peraturan Menteri Perhubungan Nomor PM 93 Tahun 2016 tentang Program Keselamatan Penerbangan Nasional* [Minister of Transportation Regulation Number PM 93 of 2016 on the National Aviation Safety Programme], Annex, point 3.1.3.6.

²³ PM Nomor 93 Tahun 2016, Lampiran, butir 3.1.3.7 [Annex, point 3.1.3.7].

²⁴ PM Nomor 2 Tahun 2026, butir 19.49 [Ministerial Regulation 2/2026, point 19.49].

²⁵ PM Nomor 93 Tahun 2016, Lampiran, butir 3.1.3.2 [Annex, point 3.1.3.2].

At the Director General level the promised mechanism finally appears, in four regulations of 22 September 2017: KP 241 and KP 245 on mandatory occurrence reporting, and KP 242 and KP 243 on voluntary reporting.²⁶ Staff Instruction 19-02 describes the voluntary system as non-punitive and identity-protecting,²⁷ and requires the administrator to remove names, organisations, addresses, telephone numbers and flight numbers from reports.

Even here, three limits remain. The regulations govern only the Directorate General's database; none addresses the admissibility of data as evidence or law-enforcement requests. Protection covers voluntary reporting only: Staff Instruction 19-01 and Advisory Circular 19-01 contain no equivalent confidentiality or non-punitive rule, and their statement that reporting does not aim to assign blame expresses intent rather than protection.²⁸ Finally, both voluntary-reporting documents direct reporters to their organisation's internal SMS system where available.²⁹ Such reports never reach the national database or its de-identification, and fall back under the Manual's "to the extent permissible by law" clause.

The status of the four regulations must be stated carefully, because three distinct possibilities are easily conflated. They implement points 19.57 and 19.59 of PM 62 of 2017,³⁰ which Article 14 of Ministerial Regulation 2/2026 revokes; Article 13 gives service providers six months to adjust and point 19.49 orders new technical guidance.³¹ Express repeal has not occurred, since only the delegating regulation was revoked. Loss of delegated basis has occurred, since no transitional provision preserves them. Continued administrative application also persists: the Ministry's Legal Documentation and Information Network still lists all four as in force from 22 September 2017, verified on 1 September 2026.³² The finding is therefore neither invalidity nor a legal vacuum but an administrative anomaly with legal consequences: a reporter relying on KP 242 or KP 243 cannot know whether the procedure remains legally grounded, contrary to the function that a transitional provision is meant to serve.³³

²⁶ *Peraturan Direktur Jenderal Perhubungan Udara Nomor KP 241 Tahun 2017* (Staff Instruction 19-01); *Nomor KP 245 Tahun 2017* (Advisory Circular 19-01); *Nomor KP 242 Tahun 2017* (Staff Instruction 19-02); dan *Nomor KP 243 Tahun 2017* (Advisory Circular 19-02) [Director General of Civil Aviation Regulations KP 241, KP 245, KP 242 and KP 243 of 2017].

²⁷ Staff Instruction 19-02, Chapter 2 and point 5 on removing concealment information from report.

²⁸ Advisory Circular 19-01, angka 2 tentang objective [point 2, on objective].

²⁹ Staff Instruction 19-02, Chapter 2; Advisory Circular 19-02, Chapter I point 2.

³⁰ *Peraturan Menteri Perhubungan Nomor PM 62 Tahun 2017 tentang CASR Part 19 Manajemen Keselamatan* [Minister of Transportation Regulation Number PM 62 of 2017 on CASR Part 19 Safety Management], points 19.57 and 19.59; *Peraturan Menteri Perhubungan Nomor 2 Tahun 2026*, Articles 13 and 14.

³¹ PM Nomor 2 Tahun 2026, Pasal 13 dan Pasal 14 [Ministerial Regulation 2/2026, Articles 13 and 14].

³² Jaringan Dokumentasi dan Informasi Hukum Kementerian Perhubungan [Ministry of Transportation Legal Documentation and Information Network], entries for Director General of Civil Aviation Regulation Numbers KP 241, KP 242, KP 243, and KP 245 of 2017, accessed September 1, 2026.

³³ *Undang-Undang Nomor 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-undangan* [Law Number 12 of 2011 on the Formation of Laws and Regulations], as last amended by Law Number 13 of 2022, Annex II, point 127: a transitional provision adjusts legal actions and relations formed under the replaced instrument, to avoid a legal vacuum, ensure legal certainty and protect affected parties.

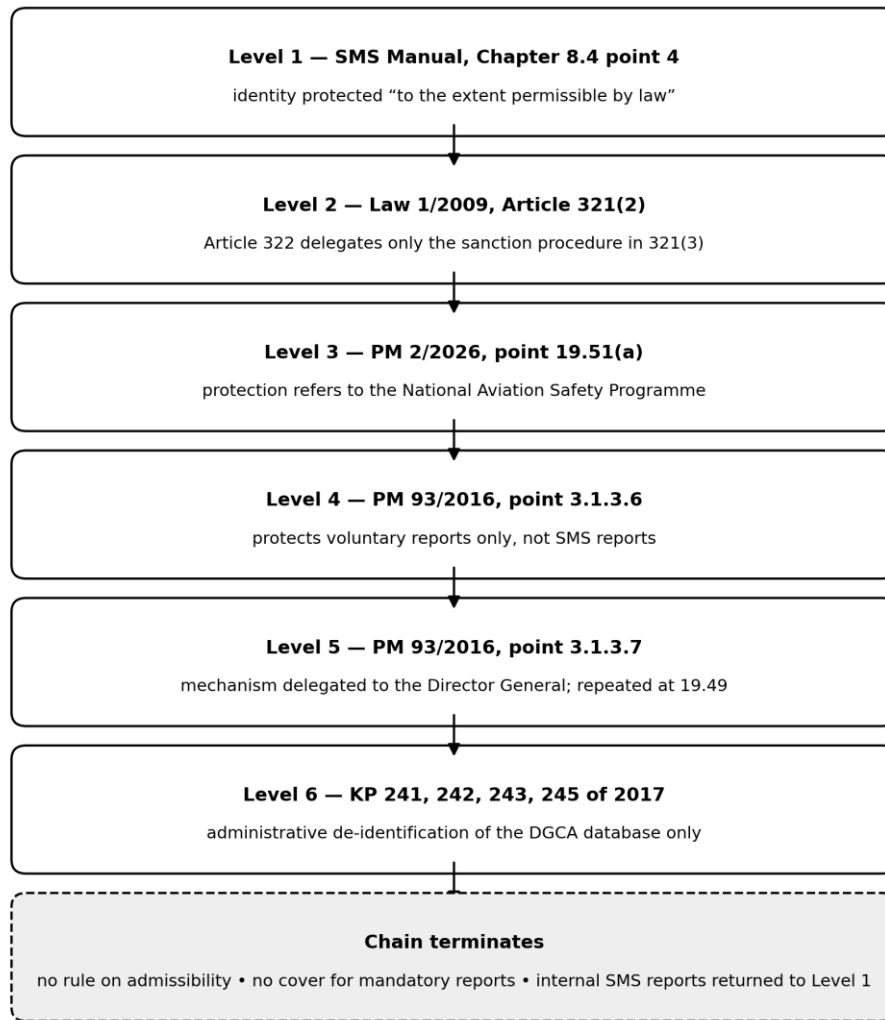


Figure 1. The six-level referring chain of reporter protection. Source: SMS Manual of API Banyuwangi, Issued 02 Revision 02; Law No. 1 of 2009; PM 93 of 2016; PM 2 of 2026; KP 241, 242, 243 and 245 of 2017.

Annex 19 is explicit on precisely what this chain lacks, although its provisions carry different normative force. Appendix 3, point 1.1(c) requires States to specify the conditions under which safety data qualify for protection,³⁴ and point 2.2(b) requires a formal protective procedure; both are Standards.³⁵ So is point 2.2(d), requiring authoritative safeguards for any use under an exception, and Chapter 5, point 5.4.1 on protecting voluntary reporting. Point 5.4.2, extending protection to mandatory reporting, and point 5.4.7, on advance arrangements with the justice sector, are Recommended Practices. Indonesia’s lack of qualifying conditions, a formal procedure, authoritative safeguards and a designated competent authority are therefore departures from Standards engaging Article 38 of the Chicago Convention, whereas the non-extension to mandatory reporting and the absence of advance arrangements depart only from Recommended Practices, though they bear directly on whether the system works.

³⁴ ICAO, Annex 19, Appendix 3, 1.1(c) and 2.2(b).

³⁵ ICAO, Annex 19, Chapter 5, 5.4.1 and 5.4.2.

Substance fails a second time at the boundary with criminal law. Law No. 1 of 2023 on the Criminal Code distinguishes intention from negligence without grading negligence further.³⁶ Just culture needs at least four categories: honest error, at-risk behaviour, gross negligence and wilful misconduct. The Manual adopts that grading, sparing front-line operators for errors beyond their training and experience while holding them to account for wilful, reckless or extremely careless conduct.³⁷ With no corresponding graduation in positive law and no forum to apply one, honest error and gross negligence enter the criminal process through the same door.

3.1.2. Law enforcement officials: an unappointed competent authority

Annex 19 also presupposes an actor that Indonesia has not designated. Appendix 3, point 3 allows an exception to protection only when a competent authority determines that the facts reasonably indicate gross negligence, wilful misconduct or criminal activity under national law, or, after reviewing the data, that release is necessary for the administration of justice or for safety and that its benefits outweigh the harm to the future availability of safety data. In each case a determination is required, not a request.³⁸ Table 2 maps each determination onto the proposed Council with its procedural safeguard.

Table 2. The three determinations required by Appendix 3, point 3, mapped onto the proposed Aviation Profession Council

Determination required by Appendix 3, point 3	Proposed decision-maker	Procedural safeguard
(a) the facts and circumstances reasonably indicate gross negligence, wilful misconduct or criminal activity	Aviation Profession Council, applying the professional standard in Article 365 and the Elucidation of Article 364	Reasoned written determination; right to be heard; identity withheld until the determination is final
(b) release is necessary for the proper administration of justice and its benefits outweigh the adverse effect on future availability	The Council determines the safety-availability side; the requesting judicial authority determines the justice side; release only where both are satisfied	De-identified release by default; a disclosure register; a protective order where proceedings follow
(c) release is necessary for maintaining or improving safety, on the same balancing test	The Council, on the recommendation of the Safety Review Board	Aggregate or summarised form; no attribution to an identified reporter

Source: ICAO Annex 19 Third Edition, Appendix 3, points 2.2(d) and 3; Law No. 1 of 2009, Articles 364–368.

³⁶ Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana [Law Number 1 of 2023 on the Criminal Code], Article 36.

³⁷ API Banyuwangi, SMS Manual, Chapter 3.1, definition of “Just culture”.

³⁸ ICAO, Annex 19, Appendix 3, 3(a)–(c).

Ministerial Regulation 2/2026 designates who may request data but specifies none of the three determinations. Point 19.51(b) bars providers from using safety data beyond safety purposes unless the Director General requests it.³⁹ The request requires no finding of gross negligence, no balancing test and none of the safeguards in point 2.2(d).⁴⁰ Two acts are merged here. A request for access is administrative and settles who may hold the data; a determination that an exception applies is legally operative and settles whether, and against whom, the data may be used. Appendix 3 requires the second; point 19.51(b) provides only the first. The adjudicative filter is designed to supply that missing determination. Moreover, the provision binds service providers only and prescribes nothing to investigators or courts: a firewall addressed to the wrong party.

Without a designated authority, safety information enters criminal proceedings through the ordinary route. Investigators exercise the general powers of examination and seizure under the Criminal Procedure Code (Law Number 20 of 2025 on the Criminal Procedure Code [Kitab Undang-Undang Hukum Acara Pidana], Article 7 on investigators' powers and Articles 44–47 on seizure, including of documents), and documents so obtained may be tendered as documentary evidence. The only aviation-specific exclusion, Article 359 of Law 1/2009, covers post-accident investigation results, not voluntary pre-accident reports, sub-threshold occurrences or internal SMS documents. The decision is thus left to ordinary criminal-justice officials, with no weighing of its effect on future reporting. Annex 19 recommends advance arrangements between aviation and justice authorities through legislation, protocols or memoranda; none exists.⁴¹

3.1.3. *Facilities and means: safety-intelligence instruments not yet built*

The instruments that would carry protection into practice are also missing, beginning with confidentiality. Two functions share the word protection. Record protection keeps a document legible, identified, retrievable and safe from damage or loss; its addressee is the custodian and its failure is destruction. Information-use protection limits the purposes and persons for which content may be used; its addressee is anyone seeking access, including investigators and courts, and its failure is disclosure. The Manual's cross-reference list records point 19.69 on "Confidentiality and Appropriate Use of Information" as fulfilled by Chapter 15, yet Chapters 15.1 to 15.3 concern only legibility, numbering, storage and protection of records from damage, deterioration and loss.⁴² The institution's own compliance record thus treats a document-control rule as discharging a confidentiality obligation.

Safety intelligence is likewise undeveloped. Points 19.65 on flight data analysis and 19.67 on occurrence analysis and follow-up are marked "not applicable," although occurrence analysis is central to the safety intelligence of Annex 19, Chapter 5.⁴³ Confidentiality is not

³⁹ PM Nomor 2 Tahun 2026, butir 19.51 huruf b [Ministerial Regulation 2/2026, point 19.51(b)].

⁴⁰ ICAO, Annex 19, Appendix 3, 2.2(d) with note 2, which lists a protective order, closed proceedings, in-camera review, and data de-identification as forms of authoritative safeguards.

⁴¹ ICAO, Annex 19, Chapter 5, 5.4.7 with its note.

⁴² API Banyuwangi, SMS Manual, Cross Reference CR-2 and Chapters 15.1–15.3.

⁴³ API Banyuwangi, SMS Manual, Cross Reference CR-2.

the default either: under Chapter 9.4 a hazard report is confidential only if the reporter asks.⁴⁴ The burden of securing protection therefore falls on the party with the least power.⁴⁵

3.1.4. *Society: protection that does not reach cadets*

The protected population is also uneven, even within one chapter. Chapter 8.4, point 2 grants disciplinary immunity to any employee or student who reports, but point 4 protects the identity only of “any employee”.⁴⁶

The just-culture definition in Chapter 3.1 does not mention students, while Chapter 9.15 requires cadets, like staff, to report hazards within 72 hours.⁴⁷ As Table 3 shows, the asymmetry lies in identity confidentiality and inclusion in the definition, and runs in the least defensible direction: the group with the same duty, the weaker position and the most to lose from identification receives the least identity protection. This grounds the “Double Burden Vulnerability” construct of an earlier stage of this research in the institutional document itself.

Table 3. Asymmetry of protection between employees and cadets under the SMS Manual

Dimension	Employees	Cadets
Duty to report	Yes (Chapter 9.15, within 72 hours)	Yes (Chapter 9.15, within 72 hours)
Immunity from disciplinary action for reporting	Yes (Chapter 8.4, point 2)	Yes (Chapter 8.4, point 2)
Confidentiality of identity	Yes (Chapter 8.4, point 4, “any employee”)	No; not extended
Named in the just-culture definition	Yes (Chapter 3.1, front-line operators)	Not mentioned

Source: SMS Manual of API Banyuwangi, Issued 02 Revision 02, Chapters 3.1, 8.4 and 9.15.

3.1.5. *Legal culture: gross negligence without a determining procedure*

Chapter 11.6 of the Manual provides that admitted human error should not be punished unless gross negligence is present.⁴⁸ The substantive standard exists in Chapter 3.1 and the Elucidation of Article 364: whether the conduct was commensurate with training and experience. What is missing is the procedure, which would require five elements before any disciplinary escalation: an independent decision-maker rather than the employing institution; the burden of proof on the party asserting gross negligence, to a clear and convincing standard; a right to be heard, with access to the material relied on; a reasoned written decision; and review by a body other than the one that decided.

⁴⁴ ICAO, Annex 19, Chapter 5, particularly 5.3.1(d).

⁴⁵ API Banyuwangi, SMS Manual, Chapter 9.4.

⁴⁶ API Banyuwangi, SMS Manual, Chapter 8.4, points 2 and 4.

⁴⁷ API Banyuwangi, SMS Manual, Chapters 3.1 and 9.15.

⁴⁸ API Banyuwangi, SMS Manual, Chapter 11.6.

Earlier policy documents do not fill the gap, and the conflict is operative rather than terminological. The six safety-culture elements of the National Aviation Safety Programme, such as adherence to standards and procedures and allowing no bad habits to develop, are compliance duties running from individual to organisation. None obliges the organisation to treat an error commensurate with training and experience differently from a deliberate departure, or gives the individual any ground to resist punishment for it.⁴⁹ Such a compliance culture occupies the same regulatory space as just culture with an incompatible allocation of risk. The phrase itself never appears in the Programme, although the Elucidation of Article 364 has used it since 2009 and the Manual adopts it in Chapter 3.1.

Without a procedure, the decision is made outside the organisation, and reporting becomes the creation of a document others may use at their discretion. Annex 19 envisages the reverse.⁵⁰ Personnel should be able to trust that acts or omissions within their training and experience will not be punished, a trust hard to build on a clause that defers to a law that does not exist. For those asked to report, silence becomes the rational choice, which is the legal-culture failure that Soekanto's fifth factor describes.

3.2. Responsive regulation and the prospect of an adjudicative filter

Ayres and Braithwaite's enforcement pyramid begins with persuasion and escalates only when the regulated party does not respond.⁵¹ Baldwin and Black add that responsiveness must attend to the regulated actor's attitude, the regulator's institutional setting, the logic and performance of the instrument, and a changing context, and that regulatory flexibility can be limited.⁵² Table 4 applies those five dimensions to pilot-training safety governance.

Table 4. The five dimensions of really responsive regulation applied to pilot-training safety governance

Dimension	Application to pilot-training safety governance
Attitude of the regulated actor	The Academy adopts a non-punitive commitment in Chapter 8.4, point 2 and qualifies it in point 4; the attitude is compliant in form and constrained by the norms above it
Institutional setting of the regulator	The Directorate General holds both technical oversight and, under point 19.51(b), an unconditioned access power, combining two roles that Appendix 3 keeps separate
Logic of the regulatory instrument	A self-referring protective clause whose operative content is delegated downward at every level
Performance of the instrument	No indicator tracks whether protected reports are made or whether reporters were in fact protected; audit tests documentary adequacy only

⁴⁹ PM Nomor 93 Tahun 2016, Lampiran, butir 2.5.1 sampai dengan 2.5.6 [Annex, points 2.5.1 through 2.5.6].
⁵⁰ ICAO, Annex 19, Chapter 5, note to 5.4.
⁵¹ Ian Ayres and John Braithwaite, *Responsive Regulation: Transcending the Deregulation Debate* (New York: Oxford University Press, 1992), 35–51.
⁵² Robert Baldwin and Julia Black, "Really Responsive Regulation," *The Modern Law Review* 71, no. 1 (2008): 59–94.

Source: adapted from Baldwin and Black, “Really Responsive Regulation” (2008), applied to the instruments examined in Section 3.1.

Measured against that framework, the pyramid is lopsided (Figure 2). Its base is well defined: the Manual provides non-punitive reporting, safety committees, the Safety Action Group and Safety Review Board, internal audit and training. Its apex is equally defined: Articles 474 and 475 of Law 1/2023 criminalise negligence causing serious injury or death, and Article 584 negligence causing an aircraft accident. Missing is the middle rung, a forum competent to decide whether an occurrence was an honest mistake or gross negligence.⁵³ The Aviation Profession Council fits that rung better than another administrative mechanism, because Article 367 already composes it from the competences the decision requires and Article 368(a) links its output to administrative sanction and further investigation. Until the rung exists, occurrences should be expected to escalate directly to criminal negligence.

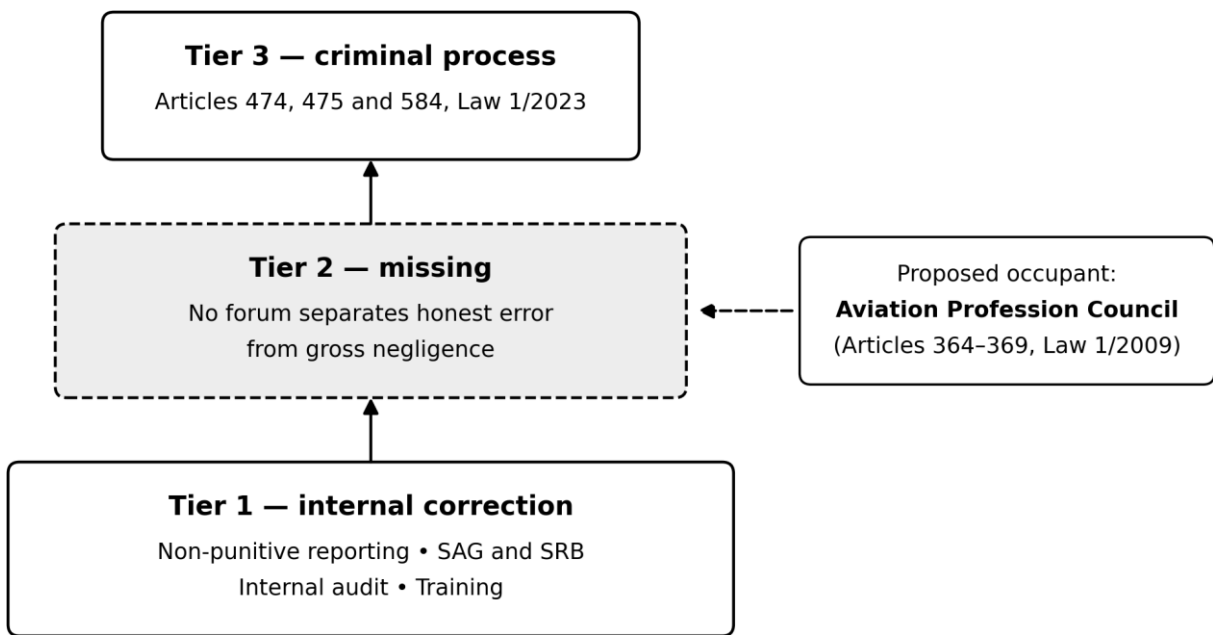


Figure 2. The lopsided enforcement pyramid in pilot-training safety governance. Source: SMS Manual of API Banyuwangi; Law No. 1 of 2023, Arts. 474, 475, 584; Law No. 1 of 2009, Arts. 364–369.

An institution is not enough on its own, however. Table 4 shows that feasibility also depends on the regulated actor’s attitude, the regulator’s setting and the measurement of performance, and the legal-effectiveness literature adds that providing for a norm does not ensure that the protected activity occurs. A responsive regulator should therefore test whether reports are made and reporters protected, rather than rely on an audit of the Manual’s adequacy.

⁵³ Undang-Undang Nomor 1 Tahun 2023, Pasal 474, 475, and 584 [Law Number 1 of 2023, Articles 474, 475, and 584].

Whether such a body may serve as the filter is first a question of international standards, and Annex 19 answers it textually. Note 2 to the principles of exception allows different competent authorities for different circumstances, including “judicial authorities or those otherwise entrusted with aviation responsibilities designated in accordance with national law.” A technical-professional aviation body can therefore act as the first-line filter.⁵⁴ Its authority is limited to deciding whether an exception to protection applies; it may not adjudicate criminal liability, impose criminal sanctions or displace the criminal courts. The designation governs the use of protected information, not criminal jurisdiction, and it still requires national legislation.

Indonesian law already goes further. The Elucidation of Article 364 of Law 1/2009 defines “further investigation” (*penyelidikan lanjutan*) as a process protecting aviation personnel for “actions, omissions or decisions taken by them that are commensurate with their experience and training,” with a professional judgement on what conduct is acceptable, the same formulation as Chapter 3.1 of the Manual and the note following point 5.4.2 of Annex 19.⁵⁵ An Elucidation, however, only explains the article it accompanies; it cannot create, extend or restrict a norm or found an independent right.⁵⁶ The claim is accordingly limited: the Elucidation confers no right on reporters but fixes the meaning of *penyelidikan lanjutan*, so that the just-culture content attaches to the statutory task of a specific institution. What is missing is not the concept or the legislative intention but the institution meant to carry it.

A precedent exists in shipping. The Maritime Court under Law 17/2008, as amended by Law 66/2024, conducts further examination of ship accidents after the harbourmaster’s preliminary examination and determines whether conduct departed from professional standards, imposing professional sanctions where it did.⁵⁷ The literature accepts its precedent value while questioning its position under the executive and the scope of its power.⁵⁸ That critique identifies what an aviation counterpart must do differently. Table 5 compares the two sectors across jurisdiction, appointment and independence, procedural guarantees, sanction ceiling and relation to investigators; its last two columns separate the aviation norm from aviation practice, because what aviation lacks is the operationalisation of the norm, not the norm itself.

⁵⁴ ICAO, Annex 19, Appendix 3, 3, note 2.

⁵⁵ Penjelasan Pasal 364 *Undang-Undang Nomor 1 Tahun 2009 tentang Penerbangan* [Elucidation of Article 364, Law Number 1 of 2009 on Aviation].

⁵⁶ *Undang-Undang Nomor 12 Tahun 2011, Lampiran II angka 176–177* [Law Number 12 of 2011, Annex II, points 176–177]: an Elucidation is only the official interpretation of a norm in the body of the Law; it cannot serve as a legal basis for further regulation and may not itself contain a norm.

⁵⁷ *Undang-Undang Nomor 17 Tahun 2008 tentang Pelayaran* [Law Number 17 of 2008 on Shipping], Article 1 point 58 and Article 251, as amended by *Undang-Undang Nomor 66 Tahun 2024* [Law Number 66 of 2024].

⁵⁸ Siswanto, “Kewenangan Yuridis Mahkamah Pelayaran,” 240–245; Sarwono, Ismail, and Iryani, “Kewenangan Ideal Mahkamah Pelayaran,” 588–592; Anggraeni, Ananda, and Haryanto, “Gagasan Pengadilan Maritim,” 465–472.

Table 5. Comparing technical-professional filters: the shipping sector and the aviation sector

Aspect	Maritime Court (operating)	Aviation - norm	Aviation - practice
Legal basis	Law No. 17 of 2008 as amended by Law No. 66 of 2024	Articles 364–369, Law No. 1 of 2009 (Aviation Profession Council)	GR No. 62 of 2013 implements only the investigation portion; further investigation is unregulated
Standing	An expert panel under, and accountable to, the Minister (Law 17/2008, Art. 1 point 58)	Established by a national committee (Art. 364), members from multiple professions: law, air and air navigation, airport, aviation medicine, and PPNS (Art. 367)	No evidence of operation found
Authority	Further examination of ship accidents after the harbourmaster's preliminary examination; enforcing professional ethics and competence (Art. 251)	Enforcing professional ethics, out-of-court mediation, interpreting regulations (Arts. 365–366), proposing administrative sanctions or ordering further PPNS investigation (Art. 368(a)).	No evidence of operation found
Just-culture formulation	Not formulated in just-culture terms (cf. Art. 251)	Following Article 364, actions, omissions, or decisions taken by them that are within the scope of their experience and training will be considered.	No forum yet applies it
Sanction ceiling	Administrative-professional, not criminal punishment (Law No. 17 of 2008 on Shipping [Pelayaran], art. 253(1)(a)–(b) and (2): warning or	Recommendatory; does not adjudicate criminal liability (Art. 368(a))	No evidence of operation found

	temporary suspension of the Seafarer's Competency Certificate)		
Link to Annex 19	Functions as a technical filter before the criminal domain (Art. 251)	Can be linked to the competent-authority function (Appendix 3, point 3, note 2)	No competent authority yet designated
Appointment and independence	Under, and accountable to, the Minister (Art. 1 point 58); criticised in the literature	Formed by the national committee, not the Minister (Art. 364)	Not yet constituted
Procedural guarantees	Not specified in Arts. 250–255	Not specified in Arts. 364–369	Absent
Link to investigators	Follows the harbourmaster's preliminary examination (Art. 251)	May recommend further investigation by PPNS (Art. 368(a))	Absent

Source: Based on Law No. 17 of 2008, amended by Law No. 66 of 2024; Law No. 1 of 2009; Government Regulation No. 62 of 2013; and ICAO Annex 19 Third Edition (2025).

The comparison changes the character of the proposal. A professional forum for aviation is usually discussed *de lege ferenda*, yet Articles 364 to 369 of Law 1/2009 have already created it. Article 364 charges the national committee with establishing the Council; Articles 365 and 366 give it professional ethics, competence, mediation and the interpretation of aviation regulation; Article 367 requires members from the professions, government and public competent in law, aircraft and air navigation, airports, aviation medicine and PPNS.⁵⁹ Article 368(a) lets it recommend administrative sanctions to the Minister or further investigation by PPNS, and Article 369 delegates the regulation of investigation and further investigation to a Government Regulation.⁶⁰ The proposal is therefore operationalisation, not creation, though two measures remain necessary: an implementing regulation for *penyelidikan lanjutan*, and the independence and procedural guarantees that Articles 364–369 do not supply.

That delegation has been answered only by half. Government Regulation 62/2013 cites Article 369 in its preamble but regulates only accident definitions, notification, investigation, reports and the investigation information system; nothing on ethics, mediation or the Council.⁶¹ Its text contains no occurrence of *penyelidikan lanjutan*, *majelis*,

⁵⁹ Undang-Undang Nomor 1 Tahun 2009, Pasal 364–368 [Law Number 1 of 2009, Articles 364–368].

⁶⁰ Undang-Undang Nomor 1 Tahun 2009, Pasal 369 [Law Number 1 of 2009, Article 369].

⁶¹ Peraturan Pemerintah Nomor 62 Tahun 2013 tentang Investigasi Kecelakaan Transportasi [Government Regulation Number 62 of 2013 on Transportation Accident Investigation], Considering clause and Chapters I through VIII.

etika or *mediasi* (Table 6). The blockage is thus precisely located: the investigation limb of Article 369 has been implemented, the further-investigation limb, where the just-culture function sits, has not for over a decade.

Table 6. The delegation in Article 369 of Law No. 1 of 2009, matter by matter

Matter delegated by Article 369	Implemented by GR 62/2013	Location
Definition and criteria of a transportation accident	Yes	Chapters I–III
Notification of accidents	Yes	Chapter IV
Conduct of accident investigation	Yes	Chapter V
Investigation reports	Yes	Chapter VI
Investigation information system	Yes	Chapter VII
Further investigation (<i>penyelidikan lanjutan</i>)	No	—
Enforcement of professional ethics	No	—
Mediation	No	—
Establishment and procedure of the Aviation Profession Council	No	—

Source: Law No. 1 of 2009, Articles 364–369; Government Regulation No. 62 of 2013. A full-text search of the Regulation returns no occurrence of *penyelidikan lanjutan*, *majelis*, *etika* or *mediasi*, although Article 369 is cited in its preamble.

The problem is therefore implementation, not legal basis, and Table 7 tests this in five steps: statutory authority is present, the implementing regulation is absent, and establishment, procedure and practice fail in consequence. The remedy is an implementing regulation, not new primary legislation, and the article’s concern is *de lege lata*: operationalising an institution required for more than fifteen years and linking it to the competent-authority function of Appendix 3.

Table 7. A five-step doctrinal test of the Aviation Profession Council

Step	Requirement	Status
1	Statutory authority for the institution	Present: Articles 364–369, Law No. 1 of 2009
2	Implementing regulation giving effect to the delegation	Absent for further investigation; GR 62/2013 covers investigation only
3	Institutional establishment	Not effected
4	Operational procedure	Not made
5	Actual practice	None identified

Source: compiled from Law No. 1 of 2009 and Government Regulation No. 62 of 2013. The blockage is located at step 2; steps 3 to 5 fail in consequence of it.

The statutory reading rests entirely on Articles 364–369 and their Elucidation. The following is the perspective of one expert informant, AH-03, offered as illustration only and not as corroboration. AH-03 describes the Council as a hurdle before any criminal provision: “we cannot go straight to that article, it has to go through the council first,” adding that it is “not a punisher” and that one acting professionally “will be free of criminal liability”.⁶²

AH-03 also separates possession of data from its admissibility as evidence, the question left unregulated at national level beyond Article 359 of Law 1/2009.⁶³

3.3. A two-theory synthesis

The two theories address different steps: legal effectiveness explains the gap, responsive regulation designs its closure, and the Maritime Court supplies the institutional comparator. Table 8 sets out the sequence on which the recommendations are built.

Table 8. The analytical sequence of the two-theory synthesis

Analytical step	Theory	Yield
Diagnosis	Soekanto, effectiveness	legal Circular substance; no designated competent authority; safety-intelligence instruments not built; protective scope excluding cadets; a legal culture in which silence is rational
Prescription	Ayres and Braithwaite; Baldwin and Black	The missing intermediate rung; designation of a competent authority under Appendix 3; design limits on regulatory flexibility
Institutional comparator	Maritime Court	A working non-judicial professional filter, adopted for its transferable features and not for its placement under the Minister

Source: constructed from the analysis in Sections 3.1 and 3.2.

4. Conclusion

The SMS Manual of the Indonesian Civil Pilot Academy of Banyuwangi does not lack standards corresponding to Annex 19 Third Edition; standards exist at all six levels examined but are incomplete in scope, circular in reference, internally inconsistent and unoperationalised. Chapter 8.4, point 4 defers identity protection to national law, yet Article 321(2) of Law 1/2009 is not operationalised, point 3.1.3.6 of the National Aviation Safety Programme protects only voluntary reports, and the chain ends in KP 242 and KP 243 of

⁶² Wawancara dengan AH-03, akademisi hukum udara dan antariksa, 19 Agustus 2026 [Interview with AH-03, an academic specialising in air and space law, 19 August 2026]. Quotations have been lightly edited for readability without altering their meaning.

⁶³ Wawancara dengan AH-03, 19 Agustus 2026 [Interview with AH-03, 19 August 2026].

2017, which offer administrative de-identification only, are silent on admissibility, and have lost their delegating basis without a transitional provision. Applying Soekanto's five factors, four deficiencies compound this: no competent authority, no safety-intelligence instruments, an inconsistent protected population, and no procedure for determining gross negligence, which is therefore decided outside the institution.

Responsive regulation calls for the missing intermediate rung. Appendix 3 permits a non-judicial competent authority to decide when an exception to protection applies, and Articles 364–369 of Law 1/2009 already establish the Aviation Profession Council, whose task the Elucidation of Article 364 frames in just-culture terms. The blockage lies in Government Regulation 62/2013, which implemented only the investigation limb of Article 369. The step required is *de lege lata*: operationalise the Council, connect it to the competent-authority function, and secure its independence from the executive, which the Maritime Court precedent lacks. The Council would decide only whether conduct fell within the just-culture standard and whether an exception applies; criminal liability remains with the courts, and its determinations, if cast as a *keputusan* under Article 368(b), would be reviewable by the administrative court.⁶⁴

4.1. Normative recommendations

The fourteen institutional recommendations for the SMS Manual derived from the baseline gap analysis, with their provenance, legal basis and required instrument, are set out in Supplementary File S1, since their operational detail is not entailed by the analysis here. The recommendations below follow directly from Section 3.

Recommendation 1, on Article 321(2) of Law 1/2009. The Ministry of Transportation should issue an implementing regulation that specifies the conditions under which safety data qualify for protection (Appendix 3, point 1.1(c)), establishes a formal protective procedure (point 2.2(b)) and designates the competent authority (point 3).

Recommendation 2, on point 19.51(b) of Ministerial Regulation 2/2026. The phrase “unless requested by the Director General” should be conditioned on the principles of exception, with a duty to record and justify each request and the safeguards of point 2.2(d).

Recommendation 3, on the 2017 Director General Regulations. The Ministry should determine and publish the status of KP 241, 242, 243 and 245 after the revocation of PM 62/2017, correct its legal database, and issue the guidance required by point 19.49.

Recommendation 4, on safety data in proceedings. That guidance should extend protection to mandatory reporting (point 5.4.2), reach internal SMS reports, and regulate admissibility and law-enforcement access.

⁶⁴ *Undang-Undang Nomor 5 Tahun 1986 tentang Peradilan Tata Usaha Negara* [Law Number 5 of 1986 on State Administrative Courts], Article 1 point 9 as last amended by Law Number 51 of 2009, read with *Undang-Undang Nomor 30 Tahun 2014 tentang Administrasi Pemerintahan* [Law Number 30 of 2014 on Government Administration], Article 87. A final determination under Article 368(b) would plausibly qualify; a non-final recommendation under Article 368(a) would not, and Article 2(d) of Law Number 5 of 1986 excludes decisions based on criminal law.

Recommendation 5, on the Council’s independence. A legislative feasibility study should specify six safeguards: appointment by the national committee rather than the Minister, as Article 364 already provides; fixed tenure with defined grounds for removal; exclusion of members with a supervisory or assessment relationship to the person concerned or drawn from the examined institution; a published procedure, reasoned determinations and a de-identified public register; a defined route of review; and a rule on whether PPNS may proceed with protected safety information before the Council has determined that an exception applies, the point at which the filter either works or fails.

Recommendation 6, for the Academy. Within its own competence, the Academy should extend Chapter 8.4 identity confidentiality to cadets, review the “to the extent permissible by law” clause, reactivate occurrence analysis and follow-up, and involve its legal function from the start of operational planning. Table 9 separates these measures from those requiring the Ministry or the legislature.

Table 9. Division of competence for the proposed measures

Actor	Measures within its competence
API Banyuwangi	Extend the confidentiality of Chapter 8.4, point 4 to cadets; review the “to the extent permissible by law” clause; reactivate the occurrence-analysis and follow-up functions recorded as not applicable; involve the legal function from the planning stage
Ministry of Transportation	Implementing regulation under Article 321(2); amendment of point 19.51(b); determination of the status of the 2017 Director General Regulations; new technical guidance under point 19.49
Legislature and Government	Government regulation implementing the further-investigation limb of Article 369; any amendment of Articles 364–369 needed to secure independence and procedural guarantees

Source: constructed from the analysis in Sections 3 and 4.

Finally, the adjudicative-filter proposition remains normative: this article does not demonstrate empirically that a professional review forum increases reporting. Four variables should be tested: voluntary reporting rates before and after a filter exists, the share of reports filed with identity attached, reporters’ perceived legal exposure, and the disposition of occurrences that previously escalated directly to criminal process. These form the next stage of this research.

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