

Laws and Regulations of Civil Aviation Insurance Applicable in Indonesia

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ABSTRACT: *This article purported to describe historical background of aviation insurance includes Act Number 33 Year 1964, Act Number 15 Year 1992, Act Number 1 Year 2009 and Finance Service Authority (OJK); existing aviation insurance in Indonesia includes aviation insurance market and the growth of aviation insurance; aviation insurance players such as PT Chartis Insurance, PT Mega Life, PT Insurance Raya, PT MNC Insurance and Bank; Obligation to insure a legal liability such as air carriers' obligation, aircraft insurance, second party liability, third party liability insurance, airport operators' legal liability, insurance on aircraft operation, third party liability insurance certificate; other business entities in the airport such as legal status of airport operator business entities, airport operators' legal liability, liability of business entities in the airport, individual or business entities in the airport; type of aviation liabilities insurance such as public liability insurance, third party liabilities, passengers liability insurance and multimode transportation.*

I. INTRODUCTION.

The Republic of Indonesia (ROI) is a large archipelagic country with more than 17,000 islands and airspace spanning 5,500 km from East to West and 2,430 km from North to South, covering of the earth's equator, air transport links are therefore vital for Indonesia' economy. Air transport services are aimed to support the growth of the economic, trade and tourism sectors. For that reason, Indonesia has issued business permits for 247 domestic routes connecting 125 cities in Indonesia and for 57 international routes which connect 5 cities in 13 countries. Indonesia has recorded strong growth in passengers traffic since 2008 with an average of 15% per year, Indonesia's passenger traffic in 2011 was 114 million passengers.

With regards to aircraft accident, Indonesia also does not immune against aircraft accident. Within period of 76 (seventy six) years from 1940 to 2016, the total aircraft accident in Indonesia are 71 (seventy) cases. In the fifth last years from 2000 to 2015 there are 37 (thirty seven) cases of aircraft accidents. In accordance with the Aviation Safety Network, between 1945 and 2014 there were at least 127 fatal aircraft accident in Indonesia resulting in 2,576 casualties. The period between 2007-2009 was particularly bad time for the national aviation industry.

For that reason, air carries should provide an insurance to protect the damage resulting of the aircraft accidents and/or serious incident. Taking into account of the aircraft accident, the common practice is all aviation companies in Indonesia to cover insurance for their passengers. These is due to high potential risk of passengers are not insured. In the event of aircraft accident airlines companies may go into liquidation if they do not insure their passenger.

The aviation industry in Indonesia has grown fast with the growing number of air passengers. Airlines are more aggressive in increasing the number of their aircraft to serve new routes. The rapid growth of the airlines industry, contributed to expansion of aviation insurance business as well. The demand for insurance protection is growing for the aircraft and passengers' insurance. Insurance business firm also offer loss insurance for airlines and firms operating in related to aviation industries such as ticket sales agents, travel agents and tour operators.

In accordance with the Indonesian Association of General Insurance Companies (AAUI) aircraft insurance premiums grew 16.33% to IDR 1, 21 trillion in 2011 from IDR 1.04 trillion in 2010. Increase in the aircraft insurance premium was attributable to growing number of aircraft being insured. Airline like Garuda Indonesia, Lion Air increase the number of their aircraft in 2012. The increase also attributable to flight risk with the opening of new routes, mean whilst, aircraft insurance claims also increase. According to data at the AAUI, aircraft insurance claims as a result of aircraft accidents reached IDR 154.47 billion in 2012 or an increase of 213.6 percent from IDR 49.26 billion in 2011. There were also claims for take-off delays. However, development of aviation insurance industry does not depend only on aviation industry in Indonesia as expansion industry has been recorded mainly for budget airlines which tend to seek efficiency including in premium payments.

II. HISTORICAL BACKGROUND OF AVIATION INSURANCE

In the early years of the 20th Century aviation insurance was first introduced. The first-ever aviation insurance policy was written by Lloyd's of London in 1911. The company stop writing aviation policies in 1912 after bad weather at an air meet caused crash, and ultimately losses, on those first policies. The first aviation policies were underwritten by the marine insurance underwriting community. The first specialist aviation insurers emerged in 1924.

In 1929, the Warsaw Convention was signed. The convention was an agreement to establish terms, conditions and limitation of liability for carriage by air, this was the first recognition of the airline industry as we know it today. Realizing that there should a specialized industry sector, the International Union of Marine Insurance (IUMI) first set up an aviation committee and later in 1933 created the International Union of Aviation Insurance (IUAI), made up the eight European aviation insurance companies and pools.

The London insurance market is still the largest single center for aviation insurance. The market is made up of the traditional Lloyd's of London syndicated and numerous other traditional insurance markets. Throughout the rest of the world there are national markets established in various countries, each dependent on the aviation activity within each country. The United States of America (USA) has a large percentage of the world general aviation fleets and has a large establish market. According to the 2014 report from General Aviation Manufactures Association (GAMA), there are 362,000 general aviation aircraft worldwide, and 199,000 (or roughly 55%) are based in the USA.

With regards to aviation insurance in Indonesia, there is no exact written the development of aviation insurance, but possible growing consistent with the development of air transportation in Indonesia. Most airlines, except general aviation, provide liability insurance, taking into consideration the high potential risk of passengers are not insured. In the event of aircraft accident airlines companies may go into liquidation if they do not insure their passenger. Insurance industry could not be separately with the liability of air carriers.

III. LEGAL GROUND OF AVIATION INSURANCE

Aviation insurance provision could be found in the Act Number 33 of 1964, Act number 2 of 1992, Act Number 15 Year 1992, Act Number 1 Year 2009. These Acts have been issued based on Article 5 paragraph (1), Article 20 paragraph (1) and Article 33 Paragraph (2) of the 1945 Constitutional of the Republic of Indonesia (ROI). Basically, Act Number 33 Year 1964 regulates the insurance social security in nature, Act Number 2 Year 1992 regulates insurance business characteristic in nature, whilst Act Number 15 Year 1992 and Act Number 1 Year 2009 regulates civil aviation and characteristic mandatory insurance in nature but all of these acts applicable for aviation insurance.

A. Act Number 33 Year 1964

Act Number 33 Year 1964 provides passenger's mandatory accident insurance fund. It is one of the insurance social security in nature. Based on Article (1) paragraph (a) each passenger of public transportation, including air transport, shall pay premium of passengers' mandatory accident insurance fund through the airlines concerned. The airlines prohibited to issue a ticket without payment of passengers' mandatory accident insurance fund. The airlines shall transfer the payment of passengers' mandatory accident insurance fund to the PT Jasa Raharja. PT Jasa Raharja shall compensate for indemnity for death of passengers, permanent defects, or injuries caused by aircraft accident on board the aircraft and/or whilst getting on or off the aircraft. The amount of the compensation shall be stimulated by the Ministerial of Finance (MOF) of the ROI.

For the purpose of implementation of Act Number 33 of 1964, the government of the ROI issued a Government Regulation Number 17 of 1965. In the Government Regulation Number 17 of 1965 provides, among others, the amount of premium of insurance, rules and procedure of payment, evidence of passengers' mandatory accident insurance fund, utilization of premium before the payment of compensation and beneficiary/next of kin the victim or the victim suffered due to aircraft accident. Furthermore, the Ministerial of Finance (MOF)' Decree Number 37/KMK.010/2008 determines the amount of compensation for death of passengers,' permanent defects, or injuries as a result of aircraft accident on board the aircraft and/or whilst getting on or off the aircraft is IDR 25.000.000, 00 (twenty five million) equivalent US\$ 1,900 and the passengers shall pay a premium of passenger accident insurance IDR 100.00

B. The Act Number 15 of 1992

The Civil Aviation Act of 15 Year 1992 (the CAA of 1992) consisted of fourteen Chapters and 76 Articles. With regard to aviation insurance found in Articles 47 and 48 of the CAA of 1992. The air carrier is liable for damage or any other bodily injury suffered by a passenger carriage out, destruction or loss of or damage to any baggage or cargo, delay of passenger and/or goods carriage out by the air carrier. In addition, any person of air transport business entity operate an aircraft is liable to the third party as a result of the aircraft accident or operating an aircraft or the falling thing from the aircraft. Such liability for damage or any other bodily injury suffered by a passenger carriage out, destruction or loss of or damage to any baggage or cargo, delay of passenger and/or goods carriage out by the air carrier or the third liability of air carrier **shall be insured** (*emphasize added*) by air carriers. The CAA of 1992 also provides mandatory insurance for aircrew. Any person or air transport business entity shall insured its aircrew being employed.

C. Civil Aviation Act of 2009

The Civil Aviation Act of 2009 (the CAA of 2009) aims to promote the development of Indonesian air transportation. It regulates a host of matters related to aviation, from sovereignty in airspace, aircraft production, operation and airworthiness of aircraft to aviation security and safety, aircraft procurement, aviation insurance, the independence of aircraft accident investigation, and the licensing of aviation professionals.

The CAA of 2009 also regulates scheduled and non-scheduled air transportation, airline capital, the ownership of aircraft, aircraft leasing, fares, the liability of air carriers, air navigation facilities, airport authorities and services and law enforcement related to air transportation. The Act aimed at supporting the development of national and international air transportation in Indonesia, including provisions regarding the creation of a public services institute to further those goals. Almost all the provisions of the Chicago Convention of 1944 has been adopted by the CAA of 2009. Thus, Indonesia has fully complied with the Chicago Convention of 1944.

Previously, air transport regulated in Act Number 83 of 1958, replaced by Act Number 15 Year 1992 and then Act Number 1 Year 2009, whilst aviation insurance regulated by Act Number 33 Year 1964 including its implementation regulation, supplemented Act Number 2 Year 1992 and finally Act Number 1 Year 2009. These legislation in line with the 38th General Assembly Res.A38-4 which urges all member States to continue to examine the existing legislation and adjust as necessary or act laws and regulations to protect all the relevant safety data to the extent possible, on the legal and other guidance developed by ICAO.

The CAA of 2009 consisted twenty-four Chapters and four hundred and sixty six Articles. With regard to aviation insurance found in Article 62 regarding insurance on aircraft operation, Articles 179 and 180 concerning mandatory insurance. In according to Article 62 of the CAA of 2009, every person operating an aircraft shall be obligated to insure aircrafts being operated, second party liability, liability of airport operator, on aircraft operation, on aircraft operation, third party legal liability. Anybody violating the obligation to insure shall be imposed with warning, freezing of certificate, and/or revocation of certificate.

D. Finance Service Authority (OJK)

Article 35 of Act Number 40 Year 2014, requires that insurance and re-insurance companies optimize the utilization of local insurance and/or re-insurance. The elucidation to this article further provides that the optimization of local re-insurance capacity will be undertaken by placing as much re-insurance as possible with local insurance and/or reinsurance companies whether individually or together, taking into account risk management principle. Article 37 of the Act No.40 year 2014 further provides that the government and/or the finance service authority (OJK) will encourage the same by, for example, setting up a reinsurance company, merging various state-owned insurance companies to undertake reinsurance activities, providing incentives to form a “pool” or consortium for certain risks e.g. natural disaster, or minimizing double taxation for the insurance industry.

IV. AVIATION INSURANCE INDUSTRY IN INDONESIA

A. Aviation Insurance Market in Indonesia

According to AAUI gross premium of general insurance reached IDR 34.3 trillion in 2011 or increase of 19.5 percent from IDR 28.7 trillion in 2010. The premium of aviation insurance IDR 1.21 trillion. In the first of 2012, the premium income of general insurance reached IDR 18.89 trillion, the aviation insurance had a market share 2.8 percent with premium income reaching IDR 528 trillion or a surge of 131.2 percent from IDR 228 billion in the same period in the previous year. The surge was attributable to expansion by a number of airline notably Lion Air and Garuda Indonesia respectively increasing the number of their aircraft by 15 units and 20 units in 2012.

B. The Growth of Aviation Insurance Industry

The premium from aviation insurance has grown the highest but the largest is premium from motor vehicle insurance, general insurance and property insurance. Premium from aviation insurance has increased fast with the expansion of aviation industry. AAUI estimated that premium from aviation insurance reached IDR 746 billion in 2012, whilst gross aviation insurance claims also increased almost doubling to an estimated IDR 161.7 billion in 2012 from IDR 82.9 billion in 2011. The surge in claim was partly because part of the claims for 2011 were paid in 2012 such as claim for Lion Air aircraft accident in 2011. The claim was paid only in 2012.

V. AVIATION INSURANCE PLAYERS

There are, at least, a number of aviation insurance players such as PT Chartis Insurance Indonesia (PT CII), PT Mega Life (PT ML), PT Insurance Raya (PT IR), PT MNC Insurance Indonesia (PT MNC II) and a number of banks have issued travel cards for business or pleasure trip by air.

A. PT Chartis Insurance Indonesia

PT Chartis Insurance Indonesia (PT CII) cooperated with Citilink, low cost air carrier subsidiary of Garuda Indonesia to launch Citilink Shield. The product is an additional insurance for the passengers of Citilink. Being an additional insurance, passengers are free to use the insurance or not. Citilink Shield is a insurance service especially designed by Chartis Travel Guard, for the protection of Indonesian Tour and Travel in launching insurance for domestic air passengers with a compensation of IDR 50 million per passenger. The insurance product is sold at certain travel agents. There are 1,600 travel agents selling the product.

B. PT Mega Life

PT Mega Life (PT ML) cooperated with the Association of Ticket Selling Companies and Association of Indonesian Tour and Travel in launching insurance for domestic air passengers with a compensation of IDR 50 million per passenger. The insurance product is sold at certain travel agents. There are 1,600 travel agents selling the product.

C. PT Insurance Raya

PT Insurance Raya (PT IR) signed cooperation with the Association of Flight Tickets Sales Agents (ASTINDO) and the Association of the Indonesia Tours & Travel Agency (Asita) Jakarta in providing guarantee of implementation (performance bond) to ticket sales agents. Since 2010, PT IR has focused business operation on business in the middle to low segments with five main classes such as motor vehicle insurance, personal accident insurance, property or fire insurance, cargo or transport insurance and surety bond.

D. PT MNC Insurance Indonesia

PT MNC Insurance Indonesia (PT MNC II) of the MNC Group grew 199.4 percent in the first half of 2012 with premium income of IDR 34.83 billion mainly from aviation insurance business. Aviation insurance contributed IDR 16.83 billion or 48 percent to its total premium income. In addition to aviation insurance, income of PT MNC Insurance Indonesia also came from motor vehicle insurance reaching IDR 11.53 billion or 33 percent of its total premium.

E. Banks

The rapid growth of the aviation industry is also attributable to support from the banking sector. A number of banks have issued travel cards for business or pleasure trip by air. Bank ANZ Indonesia and VISA Worldwide Indonesia launched ANZ Travel Card for business people and tourist in Indonesia. The card is accepted by 60 airlines all over the world, and could be used also by the family members of the holders. In addition, in 2011 Sriwijaya Air cooperates with Bank BNI in launching Sriwijaya Air-BNI Travelling Card, a card with insurance coverage by PT Insurance Raya.

VI. OBLIGATION TO INSURE A LEGAL LIABILITY

A. Air Carriers' Obligation

With regards insurance, air transportation business permit holder, shall be obliged to purchase shipment liability insurance with liability value equal to insurance coverage for regular passenger air transportation proven by valid insurance policy. In addition, air transportation business permit holder shall be obligated to serve potential passengers fairly without discrimination on ethnic, religion, race, inter-group, and economic and social strata and submit monthly air transportation activity report, including delays and cancellation of flights, no later than on the 10th of the next month for each month to the MOC, annual financial report duly audited by an registered public auditor firm which contains at the least a balance sheet, profit and loss, cash flow, detailed expenditures, no later than the end of April of the next year of reporting year to the MOC, to report any charges of management or ownership of air transportation business entity, changes of domicile of air transportation business entity and changes of aircraft ownership, to the MOC and fulfill stipulated service standard. Further provisions regarding the obligation of air transportation business permit holders, the requirements, system, and procedures of sanction imposition shall be stipulated under a Ministerial Regulation.

B. Aircraft Insurance

With regards to aircraft being operated in Indonesia shall be obligated to have a registration marks. For this purposes, civil aircraft can be registered in Indonesia after fulfilling the requirements not registered in other country; owned by Indonesian citizen or Indonesian legal entity; owned by a foreign or foreign legal entity and operated by an Indonesian citizen or Indonesian legal entity for a minimum utilization period of 2(two) years continuously based on an agreement/contract; owned by government agency or regional government and the aircraft is not utilized for law enforcement mission; or owned by a foreign citizen or foreign legal entity whose aircraft is in possession of an Indonesian legal entity based on an agreement/contract subject to the law agreed upon by the parties for purposes of aircraft storage, hire/rental, and/or commerce.

Such aircraft registration shall be submitted by the owner or holder of power of attorney with showing proof of ownership or possession of the aircraft, showing proof of de-registration or being not registered in another country in line with the Article 18 of Chicago Convention of 1944, meeting the requirements of aircraft age (hours and cycles) limit predetermined by the MOC, proof of **aircraft insurance** (*emphasize added*), proof having met aircraft procurements. For aircraft fulfilling the above-mentioned requirements shall given certificate of registration will valid for 3 (three) years.

C. Second Party Liability

Air carriers shall be obligated **to insure their liabilities** (*emphasize added*) towards second party liability such as for death passengers, permanent defects, injuries caused by incident on board aircraft and/or whilst getting on or off aircraft; for damage due to cabin baggage losses or damage; for any losses suffered by any passenger due to loss, destruction, or damage of any check-in baggage as a result of air transportation activities while the check-in baggage is under supervision of the carrier; for damage/losses suffered by any cargo shipper for losses, destruction, or damage of cargo caused by any air transportation activity while the cargo is under supervision of the carrier; for losses incurred due to any delay of the transportation of passengers, baggage, or cargo, except when the carrier can prove that the delay is caused by weather and operational technical factors.

The amount of insurance indemnity value shall be at least the same as the amount of compensation stipulated by the MOC Regulation for death passengers, permanent defects, injuries caused by incident on board aircraft and/or while getting on or off aircraft. The amount of indemnity is the amount of compensation given by

the commercial air transportation business entity outside the indemnity paid by the insurance company as stipulated by the Government, whilst the amount of compensation for each check-in baggage and cargo shall be further stipulated under a MOC Regulation. The amount of compensation for partial or total damages or loss of check-in baggage or cargo shall be calculated based on the weight of the lost, destroyed, or damage being check-in or cargo being shipped. If the partial damage or loss causes the whole baggage or cargo becomes useless, the air carrier shall be liable for the entire weight of that useless baggage or cargo.

D. Third Party Liabilities Insurance

As far as third party liability is concerned the policy of the government of the ROI provides that anybody who is operating an aircraft shall be liable for damages, loss suffered by third party as a result of the aircraft operation, aircraft accident, or falling down of other objects from the aircraft being operated. The compensation/indemnity on damages, loss suffered by a third party shall be given in accordance with the actual damages, loss suffered. Further provisions regarding calculation of the amount of indemnity, compensation, requirements, and procedure of claiming compensation shall be stipulated under a MOC Regulation, and any carrier may claim a third party causing the damages, loss suffered by the passengers, shippers, or cargo beneficiaries that are the carrier's liability. It is worthwhile to note here, with regard to insurance, no mentioned the obligation of air carriers to insure their liability. The best practice the air carriers insure their liability.

E. Airport Operator's Legal Liability

Airport business entities shall be liable for any losses suffered by airport services users as and/or third parties a result of the airport operation. Such losses shall consist of death or physical injury of human being; destruction, loss, or damages of equipment operated; and/or environmental impact on the surrounding areas of the airport due to airport operation. The risk of death or physical injury of human being; destruction, loss, or damages of equipment operated; and/or environmental impact on the surrounding areas of the airport due to airport operation shall be mandatory insured. Any individual violating the obligation to insure shall be imposed with administrative sanction namely warning, freezing of certificate, and/or certificate revocation,

There are a contractual relationship between an airport business entities and users of airport services. The airport users pay a certain amount of payment to the airport business entities, and the airport business entities obliged to pay compensation for damage as a result of its services. It is the reason, airport business entities shall be liable for any losses suffered by airport services users and/or as third party as a result of the airport operation. Such liability shall consist of death or physical injury of human being, destruction, lost, or damages of equipment operated; and/or environmental impact on the surrounding areas of the airport due to airport operation. The risks on liability for damages shall be mandatory insured. Any individual violating the mandatory insured shall be imposed with administrative sanction namely warning, freezing of certificate; and/or certificate revocation.

F. Insurance on Aircraft Operation

Every person operating an aircraft shall be obligated to insure aircrafts being operated, aircraft personnel being employed, second party liability and investigation activities on any incident and/or accident of aircraft. Any body violating activities the provision of insurance shall be imposed with administrative sanction such as warning, freezing of certificate and/or revocation of certificate. Further provisions regarding insurance obligation shall be regulated under a MOC.

G. Third Party Liability Insurance Certificate

An operator shall ensure that the original documents or true copies verified by the Director General of Air Communications (DGAC) thereof are carried on each flight **third party liability insurance certificate(s)** (*emphasize added*). In addition, the flight also provided with other documents such as certificate of registration, certificate of airworthiness, noise certificate (noise Statement or Equivalent Doc), operation specification, aircraft radio permit, journey logbook. In addition, each flight crew member shall, on each flight, carry a valid flight crew license with appropriate rating(s) for the purpose of the flight. Air carrier as holders of commercial air transportation business permit shall be obligated to purchase shipment liability insurance with liability value equals to insurance coverage for regular commercial passenger air transportation, proven by valid insurance policy.

VII. OTHER BUSINESS ENTITIES IN THE AIRPORT

A. Legal Status of Airport Operator Business Entities

In Indonesia, there are two airports operators namely PT Angkasa Pura I and PT Angkasa Pura II respectively, both airports operator are state-owned enterprises. PT Angkasa Pura I manages thirteen airports in Central and Eastern Indonesia, whilst PT Angkasa Pura II manages Western's Area of Indonesia. Previously, based on Government Regulation Number 5/1992 Angkasa Pura was public company changed to PT Angkasa Pura I (State-owned limited liability company) by the Notarial Deed drawn up by Muhani Salim S.H., dated January 1993, approved by the Minister of Justice by Decree Number C2-470.HT.01.01 of 1993, dated 24 April 1993. Basically, the task of both airport operators are managing and undertaking an airport in Indonesia. Taking into account the legal status of both airport operators are limited liability company, the both airport operators is liable to compensate in the damage as a result of their operations.

Airport business entities shall be liable for any losses suffered by airport services users as and/or third parties a result of the airport operation. Such losses shall consist of death or physical injury of human being; destruction, loss, or damages of equipment operated; and/or environmental impact on the surrounding areas of the airport due to airport operation. The risk of death or physical injury of human being; destruction, loss, or damages of equipment operated; and/or environmental impact on the surrounding areas of the airport due to airport operation shall **be mandatory insured** (*emphasize added*). Any individual violating the obligation to insure shall be imposed with administrative sanction namely warning, freezing of certificate, and/or certificate revocation,

B. Airport Operator's Legal Liability

There are a contractual relationship between an airport business entities and users of airport services. The airport users pay a certain amount of payment to the airport business entities, and the airport business entities obliged to pay compensation for damage as a result of its services. It is the reason, airport business entities shall be liable for any losses suffered by airport services users and/or as third party as a result of the airport operation. Such liability shall consist of death or physical injury of human being, destruction, lost, or damages of equipment operated; and/or environmental impact on the surrounding areas of the airport due to airport operation. The risks on liability for damages shall be mandatory insured. Any individual violating the mandatory insured shall be imposed with administrative sanction namely warning, freezing of certificate; and/or certificate revocation.

C. Liability of Business Entities in the Airport

In addition, there are a contractual relationship between an airport business entities and an Indonesian citizen. An individual citizen and/or business entities pay an airport service charge and the airport business entities shall liable to the damage as a result of airport business entities. For that reason, any Indonesian citizen individual and/or business entity undertaking any activity at the airport shall also be liable for any indemnity against any damage(s) on airport building and/or facilities as a result of the activity. Further provisions regarding liability for losses and the mechanism and procedures as well as imposition of administrative sanction shall be stipulated under a MOC Regulation. In relation to insurance obligation, **no mention to insure** (*emphasize added*) the liability of airport operator as well as individual business entity, however, the common practice is most of business entities in the airport to cover insurance for their companies taking into account the high potential risk of activities at the airport. In the event of accident, companies may go into liquidation if they do not insure their companies.

D. Individual or Business Entities in the Airport

In addition, there are a contractual relationship between an airport operator and an Indonesian citizen. An individual citizen and/or business entities pay an airport service charge and the airport business entities shall liable to the damage as a result of airport business entities. For that reason, any Indonesian citizen individual and/or business entity undertaking any activity at the airport shall also be liable for any indemnity against any damage(s) on airport building and/or facilities as a result of the activity. Further provisions regarding liability for losses and the mechanism and procedures as well as imposition of administrative sanction shall be stipulated under a MOC Regulation. In relation to insurance obligation, no mention to insure the liability of airport operator as well as individual business entity.

VIII. TYPE OF AVIATION LIABILITIES INSURANCE

With regard to type of insurance, there are at least three type aviation of liability insurances such as public liability insurance, third parties liabilities, passenger liability insurance as follows:

A. Public Liability Insurance

Public liability insurance coverage or third party liability covers aircraft owners for damage that their aircraft does to the third party property, such as houses, cars, crops, airport facilities and other aircraft struck in a collision. It does not provide for damage to the insured aircraft itself of coverage for passengers injured on the insured aircraft. After an accident an insurance company will compensate victim for their losses, but if a settlement cannot be reached than the case is usually taken to court to decide liability and the amount of damages. Public insurance is mandatory in most countries and is usually purchased in specified total amounts per incident, such as US\$ 1,000,000 or US\$ 5,000,000.

B. Third Party Liabilities

As far as third party liability is concerned the policy of the government of the ROI provides that anybody who is operating an aircraft shall be liable for damages, loss suffered by third party as a result of the aircraft operation, aircraft accident, or falling down of other objects from the aircraft being operated. The compensation/indemnity on damages, loss suffered by a third party shall be given in accordance with the actual damages, loss suffered. Further provisions regarding calculation of the amount of indemnity, compensation, requirements, and procedure of claiming compensation shall be stipulated under a MOC Regulation, and any carrier may claim a third party causing the damages, loss suffered by the passengers, shippers, or cargo beneficiaries that are the carrier's liability. It is worthwhile to note here, with regard to insurance, no mentioned the obligation of air carriers to insure their liability. The best practice the air carriers insure their liability.

C. Passengers Liability Insurance

There are a contractual relationship between an airport business entities and users of airport services. The airport users pay a certain amount of payment to the airport business entities, and the airport business entities obliged to pay compensation for damage as a result of its services. It is the reason, airport business entities shall be liable for any losses suffered by airport services users and/or as third party as a result of the airport operation. Such liability shall consist of death or physical injury of human being, destruction, lost, or damages of equipment operated; and/or environmental impact on the surrounding areas of the airport due to airport operation. The risks on liability for damages shall be mandatory insured. Any individual violating the mandatory insured shall be imposed with administrative sanction namely warning, freezing of certificate; and/or certificate revocation.

D. Multimode Transportation

Air transportation may become part of multimode transportation carried out by a multimode transportation business entity. Multimode transportation must be implemented based on an agreement between the air transportation business entity and the multimode transportation business entity, and/or other mode business entities. Multimode transportation must be operated by a business entity which has already obtained authorization/approval from the Minister to operate multimode transportation.

A multimode business entity will be liable for goods shipped from when they receive them until the goods are handed-over to the recipient. The liability for the multimode transportation covers losses or damages incurred and delays of goods. The liability of the business entity may be exempted if the multimode business entity or its agent can prove that operations was conducted according to the procedures for prevention of loss, damage and delay in transmitting the goods. The liability of the multimode transportation business entity will be limited in nature. The multimode transportation business entity must insure against its liability and further provision regarding multimode transportation will governed by Ministerial Regulation.

E. Insurance of the Third Party Liabilities

As far as third party liability is concerned the policy of the government of the ROI provides that anybody who is operating an aircraft shall be liable for damages, loss suffered by third party as a result of the

aircraft operation, aircraft accident, or falling down of other objects from the aircraft being operated. The compensation/indemnity on damages, loss suffered by a third party shall be given in accordance with the actual damages, loss suffered. Further provisions regarding calculation of the amount of indemnity, compensation, requirements, and procedure of claiming compensation shall be stipulated under a MOC Regulation, and any carrier may claim a third party causing the damages, loss suffered by the passengers, shippers, or cargo beneficiaries that are the carrier's liability. It is worthwhile to note here, with regard to insurance, no mentioned the obligation of air carriers to insure their liability. The best practice the air carriers insure their liability.

F. Mandatory Insurance of Air Carriers

For the purpose to implement of the CAA of 2009, the MOC issued Ministry Regulation Number PM.77 of 2011. The MOC Reg.No.PM 77 Year 2011 provides general provisions, type of air carrier's liability and the amount of compensation damage, mandatory liability insurance of air carriers, requirement and procedure for claim of damage, dispute provisions, evaluation, report and control. With regard to total amount of death passengers, the MOC Reg.No.PM 77 year 2001 provides Air Asia QZ8501 shall compensate IDR 1.250.000.000,00 (one billion and two hundred fifty million IDR). The MOC Reg. No. PM 77 Year 2011 is the implementation of the CAA of 2009, it is the reason applicable for domestic flight.

Like any other member's States of the ICAO, there are two legal regimes applicable in Indonesia such as a legal regimes applicable for national air transportations and a legal regimes applicable for international air transportation respectively. In this regards, Indonesia Air Asia flight QZ8501 was international flight, according to the international convention does not apply domestic law regime, consequently the compensation regime under the MOC Regulation No.PM 77 of 2011 does not apply to the Indonesia's Air Asia QZ8501 accident. This opinion is the polar opposite to the instruction from the House of Representative (DPR-RI). The Indonesia law makers have said that Indonesia's Air Asia QZ8501 must compensate each victim approximately IDR 1,250 billion as provided for under the MOC Regulation No.PM 77 of 2011. In response to this instruction Mr Widyatmoko, President Director of PT Indonesia Air Asia QZ8501 promise complies with the MOC Regulation No.PM 77 of 2011.

The CAA of 2009 and its implementing regulation does not apply to the Indonesia's Air Asia QZ8501 accident due to Indonesia's Air Asia QZ8501 is not under any obligation to fulfill to compensate the victims in accordance with the CAA of 2009 as instructed by the ROI. In Indonesia there are two applicable legal regimes in aviation laws, namely domestic and international legal regimes. Specific to the domestic flight regime, all aviation companies in Indonesia shall comply with the CAA of 2009 and its implementing regulations as well Law No.33 Year 1964, for international flight is covered by international convention ratified by Indonesia such as Warsaw Convention of 1929.

The Air Asia QZ8501 crash shall apply Warsaw Convention of 1929 due to Indonesia not yet ratify Montreal Convention of 1999. The total compensation for the death passenger according to Warsaw Convention is US\$ 10,000 (ten thousand US\$), however, if the Indonesian Air Asia QZ8501 compensate higher amount the US\$ 10,000 does not violate the Warsaw Convention of 1929. According to Article 23 any provision tending to relieve the carrier of liability or to fix a lower limit than that which is laid down in the Warsaw Convention of 1929 shall be null and void, it means the compensation higher than that provided in the Warsaw Convention of 1929 does not violate the Warsaw Convention of 1929.

G. Other Business Entity

According to Article 241 of the CAA of 2009, any Indonesian citizen individual and/or business entity undertaking any activities at the airport shall be liable for any indemnity again any damage(s) on airport building and/or facilities as a result of their activities in the airport. In relation to insurance obligation, no mention to insure the liability for any indemnity again any damage(s) on airport and/or facilities as a result of their activities, however in the common practice is mostly business entity undertaking at the airport to cover insurance for their companies taking into consideration the high potential risk of activities at the airport. In the event of damage(s) on airport building or aircraft accident in the airport or airport facilities, companies may go into liquidation if the business entities do not insure their companies.

BIBLIOGRAPHY

Books

- [1] Dempsey P.S., *Annals of Air and Space Law Vol. XXX Part I-2005*. The Carswell Company Ltd.
- [2] Milde M., *Annals of Air and Space Law, Vol.XXXVIII-1993*. Toronto : The Carswell Company Ltd

Article

- [3] Martono and Amad Sudiro, *Current Air Transport Regulations in Indonesia*. (2013), XXXVIII, Ann. Air & Sp.L.55-90.
- [4] Robert Sidauruk, Ali Salmande, *Hukumonline.com Monday February 09, 2015*.

Documents

- [5] The 1945 Constitutional of the Republic of Indonesia *Convention for the Unification of Certain Rules Relating to International Carriage by Air*, signed at Warsaw on 12 October 1929.
- [6] *Act Concerning Passenger's Mandatory Accident Insurance*. Act No.33 Of 1964 the State Gazette Number 137 of the Republic of Indonesia and Supplement State Gazette Number 2720
- [7] *Act Concerning Business Insurance*, Act No.2 Year 1992, the Republic of State Gazette Number13, the Supplement State Gazette Number 3462
- [8] *Act concerning Act Concerning Civil Aviation*, Act No.15 Year 1992, the Republic of State Gazette Number 53 Year 1992, the Supplement of State Gazette Number 3482.
- [9] *Act Concerning New Insurance*. Act No.40 of 2014, State Gazette of the Republic of Indonesian Number 337 Supplement State Gazette of the Republic of Indonesia Number 5618
- [10] *Act Concerning Aviation*, Act No.1 Year 2009, the Republic of State Gazette Number 1 , the Supplement of State Gazette Number 4956.
- [11] *Act concerning Civil Aviation*, Act No.1 of 2009 [Civil Aviation Act], Ministry of Transportation Republic of Indonesia, online: Directorate General of Civil Aviation <http://hubud.dephub.go.id/?en/uu>
- [12] Government Regulation *Concerning the Provision of Implementation to protect the passengers' of aircraft accident*.
- [13] Minister *Decree Concerning Announcement of the Notarial Deed Drawn up by Muhani Salim, S.H.*. Decree No. C2-470.HT.01.01 of 1993 (24 April 1993).
- [14] Ministerial Decree *Concerning Civil Aviation Safety Regulation, Part 170 regarding Air Traffic Rules*, Ministerial Decree No.KM 14 year 2009 (16 February 2009).
- [15] Ministerial Decree *Concerning Civil Aviation Safety Regulation (CASR) Part 47 Aircraft Registration*, Ministerial Decree KM 49 Year 2009 (10 June 2009).
- [16] Ministerial Regulation *Concerning Civil Aviation Safety Regulation (CASR) Part 91 Amend.2, General Operating and Flight Rules*. Ministerial Reg.No.KM 18 of 2010 (19 March 2010).
- [17] Ministerial Regulation *Concerning Air Carrier's Liability*. Ministerial Reg.PM 77 Year 2011 (8 August 2011).
- [18] 38th General Assembly Resolution, Montreal, 24 September – 4 October 2013 A38-4.

Others

- [19] *Accident : Insurance and Compensation* (Friday, January 09, 2015). See G:/AVIATION ASURANSI AIRCRAFT AC... Access 1/5/2016
- [20] Aviation Insurance – Wikipedia, the free...*AVIATION INSURANCE*, See G:/AVIATION ASURANSI PASSENGER LI
- [21] Aviation Insurance –Wikipedia, the free... access on 1/4/2016 Angkasa Pura I Laporan Tahunan /Annual Report 2008.
- [22] Hukumonline.com English, Issue Number 389, *Scheduled Commercial Flight Insurance*, Indonesian Commercial Newsletter, August 2011*Indonesia's Civil Aviation Development*, A paper submitted to Sixth Meeting of Worldwide Air List of accidents and incidents Involving Airlines in Indonesia, Wikipedia, the free encyclopedia, Jump to navigation, search access on 5 June 2016.
- [23] Transport Conference, Montreal, 18 to 22 March 2013.