

## **Analysis of Aviation Legal Aspects in Indonesia: Administrative Sanction, Liability, Criminal Acts and Cases.**

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**Abstract:** This article purported to analysis legal aspect civil aviation. It consisting of three parts. Part one regarding legal ground of aviation includes historical, philosophy and civil aviation act; part two regarding administrative sanction such as administrative sanction related to registration, aircraft airworthiness, aircraft operation, aircraft maintenance, safety and security in aircraft during flight, endangering, placement of disability passengers, license holder, insurance on aircraft operation, aircraft operation, non-commercial air transportation, airport operational certificate, airport facilities, airport personnel, airport-related services, liability for indemnity, flight navigation personnel, flight navigation facilities, aviation service provider safety management system, aviation safety culture, aviation security facilities, tariff applications, aviation security facilities, aircraft in flights; liability in the aviation activities such as concept of liability regimes, liabilities provided in the CAA of 2009; criminal acts, aviation criminal investigation, mediation of disputes, cases of criminal acts; part three regarding conclusion and recommendation.

**Keywords :** Administrative sanction, liability, mediation, criminal act

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### **I. INTRODUCTION**

In the era of Reformation (Reformasi) under the administration of General Soesilo Bambang Yodoyono (SBY), the regulation of air transportation tended to liberal. Private airline, including companies providing scheduled, non-scheduled air services, air cargo and general aviation, grew rapidly.<sup>5</sup> Based on Ministerial Decree Number KM 81 of 2004,<sup>6</sup> the requirements to establish a new airline company were very easy to meet. Airlines could compete without regard for the consumer's interest<sup>7</sup> though this liberalization could have truly benefitted consumers without having a negative effect on other modes of transportation.

The negative effect of the liberalization is that the airlines are force to heavily compete. They tend to reduce fares under the standard recommended by the government. Airlines price setting has become predatory. Since liberalization policy, the USA-FAA assessed Indonesian's civil aviation authority and found no compliance with ICAO standards. As a result, the USA-FAA lowered the rating from Category 1 to Category 2 in 2007. Under category 2 rating, Indonesia with lacked of laws and regulations necessary to oversee air carries in accordance with minimum ICAO standards, or its civil aviation authority was deficient in one or more areas, such as regulations of technical expertise, trained personnel, record-keeping, or inspection procedures and the USA-FAA downgraded the national safety rating,<sup>8</sup> following the Indonesian airlines were banned to fly to the

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<sup>5</sup> *Indonesian Aviation Outlook 2010* (Jakarta : Indonesian National Air Carrier Association, 2010).

<sup>6</sup> Ministerial Decree *Concerning Engagement of Air Transport*, Ministerial Decree No. KM 81 (2010).

<sup>7</sup> There are a lot of complaints regarding delays, cancellations, aircraft accidents, and finally consumer victimization as result of rigid competition.

<sup>8</sup> <file:///E:/SEPT%202%20FAA%20announces%20aviation%20safety%20rating%20for%20Indonesia%20-%20The%20Insider%20Stories.html>.

USA since 2007. The USA-FAA aviation regulator had downgraded Indonesia's aviation safety to Category 2 in 2007 following a series of airline accidents of Lion Air and Solo, Garuda Indonesia in the river of Solo, Garuda Indonesia in Yogyakarta and Adam Air Strait of Sulawesi at the time, as well as a lack of regulations on qualifications and monitoring procedures. In the same year, ICAO audits revealed 121 loopholes in the Indonesian air safety oversight system, which was seen as contributing to the FAA downgrade. The upgrade has been the ministry's main goal in improving the country's aviation safety, with around 60 new regulations on the matter issued last year alone.

The former Act No.83 Year 1958,<sup>9</sup> as well as the former Act No.15 Year 1992,<sup>10</sup> no mentioned with regard to administrative sanction provided in the civil aviation act. In the framework of preparation to formulate the Act of 2009, the International Civil Aviation Organization (ICAO) urges in order the new civil aviation act such as the Civil Aviation Act of 2009,<sup>11</sup> shall be provided administrative sanction. With refer to the ICAO request the CAA of 2009 provided at least 21 articles out of 466 Articles related to administrative sanction.

With regards to the administrative sanction, mostly provide that administrative sanction consist of warning, and/or revocation of certificate,<sup>12</sup> or warning, freezing of permit, and/or permit revocation,<sup>13</sup> or warning, decrease of airport service tariff, and/or certificate revocation,<sup>14</sup> or warning, permit freezing and/or permit revocation,<sup>15</sup> or warning, freezing of license and/or license revocation,<sup>16</sup> or warning, permit freezing and/or permit revocation,<sup>17</sup> or warning, freezing of certificate or license and/or revocation of certificate or license.<sup>18</sup> It is not clear the reason make it differently formulation.

## **Part One**

### **LEGAL GROUND OF CIVIL AVIATION**

#### **Historical Background**

An Indonesian's old order regime tends to be of a socialist ideology, regulator conducted by the Ministerial of Air Communications (MOAC), whilst air transportation conducted by state-owned enterprises such Garuda Indonesian Airways (GIA)<sup>19</sup> and Merpati Nusantara Airlines (MNA).<sup>20</sup> Within the old order, there were no airlines owned by private companies, and there was no competition between airlines. In the new order under the administrative regime of General Soeharto started to introduce a mixed ideology between socialist and liberal ideology known neo-liberal.<sup>21</sup>

On the neo-liberal ideology, the new order regime issued Act No.1 Year 1967,<sup>22</sup> and Ministerial Decree No.SK13/S/1971,<sup>23</sup> to permit a new airline owned by private companies. State-owned enterprise such as GIA serve trunk line and MNA serve feeder lines together with private owned companies. In addition, there are non-scheduled airlines as general aviation to cater to the aerial work and other activities using an aircraft.<sup>24</sup> Based on the Ministerial Decree Number 31/U/1970,<sup>25</sup> the government issued a license for general aviation to serve an oil

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<sup>9</sup>.Act *Concerning Civil Aviation*, Act No.83 Year 1958, State Gazette of the Republic of Indonesia No.....Year 1958, Supplement State Gazette No....

<sup>10</sup>.Act No.15 Year 1992, State Gazette of the Republic of Indonesia No... Year 1992, Supplement State Gazette No....

<sup>11</sup>.Act *Concerning Civil Aviation*, Act No.1 Year 2009. State Gazette of the Republic of Indonesia No.1 Year 2009, Supplement State Gazette of the Republic of Indonesia No.4956.

<sup>12</sup>. Articles 27, 39, 44, 50, 52, 53, 56, 59, 63, 220, 219, 223.

<sup>13</sup> Article 102

<sup>14</sup>.Article 217

<sup>15</sup>.Articles 234, 314

<sup>16</sup>.Article 293

<sup>17</sup>.Article 298

<sup>18</sup>.Article 321

<sup>19</sup>Government Regulation Concerning change from State-owned enterprise (PN) Garuda Indonesian Airways to Limited Enterprise Company (PT) Garuda Indonesian Airways, Govern. Reg.No.67 Year 1971

<sup>20</sup>. Government Regulation Concerning Change from State-owned enterprise (PN) .....\*\*).

<sup>21</sup>.Gunawan Djajaputra, Hari Purwadi and Martono K., *Indonesian Civil Aviation Act of 2009 : Aviation Safety, Security and Climate Change*. Vol. 6(1) [www.ijbmi.org](http://www.ijbmi.org) 2 (January 2017)

<sup>22</sup>. Act *concerning Foreign Investment* (Act No.1 Year 1967)

<sup>23</sup>.Ministerial Decree *concerning Requirements and Provisions Regarding Using Airplane for Commercial Purposes*, Ministerial Decree No.SK 13/S01971 (18 January 1971).

<sup>24</sup>. Martono K and Amad Sudiro., *New Indonesian Air Transport Policy Based on Civil Aviation Act of 2009*. Submitted to Third Annualo International Conference on Law & Regulation of Air Transport and Space Application, 26-29 April 2012, National Law University, New Delhi, INDIA, at 177.

<sup>25</sup>.Ministerial Decree *concerning Requirements and Provision of General Aviation Within the Republic of Indonesia*, Ministerial Decree No.31/U/1970 (2 February 1970).

company, agribusiness, plumbing, banking and region mission. The general aviation is non-commercial, just serving its own need between a head quarter and the center of activities, to carry the directors, employees, workers and equipment owned by the legal entities concerned, with no remuneration or sale of all or part of its capacity with replacement of money for the use an aircraft.

In the era reformation order under the regime of General Soesilo Bambang Yodoyono (SBY), the policy of air transportation tended to relax. Private airlines, scheduled and non-scheduled airlines, air cargo, charter flight as well as general aviation increasing rapidly. Based Ministerial Decree No.KM 81 Year 2004,<sup>26</sup> the requirements to establish a new airlines company were very easy. They compete without paying attention to the consumers' interest. The relaxation policy truly benefits consumers, without having a negative effect against other modes of transportation. The negative effect of the relaxation policy is that the airline are forced to compete rigidly. The reduce tariff under standard recommended by the government. Even they become predators. The existing war tariff indirectly kill other airlines companies.<sup>27</sup>

### **Philosophy of Civil Aviation**

The philosophy of the civil aviation of 2009, as other states, is that airlines companies do not need a lot of airlines but they have capability to compete and are not too weak. It is better small but capable to fulfill the air transportation need to support national economic development, capable to compete at national, regional and global levels. For that reason, the civil aviation act of 2009 provides the requirements of establishment of airlines companies in order to survive and compete in the national, regional and global levels. The requirements of airlines establishment consisting of five pillars such as enough aircraft ownership, capital intensive, single majority shares, bank guarantee, professional human resources qualities as well as quantities supported by aviation operation principles such as safety, security, fully regulated industry, compliances, law enforcement, high technology and just culture.<sup>28</sup>

### **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, aviation safety and security, aircraft procurement, aviation insurance, the independence of aircraft accident investigation, and the licensing of aviation professionals. In addition, the CAA of 2009 also regulates scheduled and non-scheduled airlines, airline capital, the ownership of aircraft, aircraft leasing, fares, the liability of air carriers, air navigation facilities,<sup>29</sup> airport authorities and services law enforcement related to air transportation. The act aimed at supporting the development of national and international air transport 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.<sup>30</sup>

## **Part Two**

### **LEGAL ASPECTS OF AVIATION ACTIVITIES**

#### **Administrative Sanction**

There are several type of administrative sanction provided in the CAA of 2009 such as administrative sanction related to registration, aircraft airworthiness, aircraft operation, aircraft maintenance, safety and security in aircraft during flight, endangering, placement of disability passengers, license holder, insurance on aircraft operation, aircraft operation, non-commercial air transportation, airport operational certificate, airport facilities, airport personnel, airport-related services, liability for indemnity, flight navigation personnel, flight navigation facilities, aviation service provider safety management system, aviation safety culture, aviation security facilities, tariff applications, aviation security facilities, aircraft in flights as follows.

#### **a. Aircraft Registration**

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<sup>26</sup>. Ministerial Decree *Concerning Engagement of Air Transport*, Ministerial Decree No.KM. 81 Year 2004 (2004)

<sup>27</sup>. Gunawan Djajaputra, Hari Purwadi and Martono K. *supra* note 18 at 3.

<sup>28</sup>. Toendjoeng, Gunardi and Martono K., *Legal Aspects of Air Transportations and Environmental Pollution in Indonesia*. Vol. 6(4) [www.ijbmi.org](http://www.ijbmi.org) 47 ( April 2017).

<sup>29</sup>. Gunardi, Ronnie and Martono K., *Legal Aspects, Economic and Aircraft's Water Bombing Related to Forest fires in Indonesia*. Vol. 6(3) [www.ijbmi.org](http://www.ijbmi.org) 10 (March 2017).

<sup>30</sup>. Ms Mia Hadiati, Gunawan Djajaputra and Martono K., *Laws and Regulations of Civil Aviation Insurance Applicable in Indonesia*. Vol. 6(2) [www.ijbmi.org](http://www.ijbmi.org) 28( February 2017).

The airplane, helicopter, passenger air balloon and airships already possessing registration identity of Indonesia and Indonesian national identity shall be obligated to equip themselves with the national flag of the Republic of Indonesia (ROI). Aircraft other than airplane, helicopter, passenger air balloon and airships may be exempted from requirement to have Indonesian national identity. Anybody violating the obligation to equip themselves with the national flag of the ROI to the airplane, helicopter, passenger air balloon and airship already possessing registration identity of the ROI shall be imposed with administrative sanction such as warning, and/or revocation of certificate (\*\* Article 27 of the CAA of 2009\*\*).

#### **b. Aircraft Airworthiness**

Each aircraft operated shall be compelled to meet the requirements for airworthiness standard. Such aircraft having met the airworthiness standard shall be given a certificate of airworthiness by the Ministry of Communications (MOC) after passing an examination and test of airworthiness. The airworthiness certificate shall consist of standard airworthiness certificate, and specific airworthiness certificate. Anybody violating the obligation to meet the requirements for airworthiness standard shall be imposed administrative sanction such as warning, freezing of certificate and/or revocation of certificate.<sup>31</sup>

#### **c. Aircraft Operation**

Anybody operating an aircraft for air transportation activity shall be obligated to possess a certificate such as air operator certificate (AOC), extended to an Indonesian legal entity operating a civil aircraft for commercial transportation purposes; or aircraft operating certificate, extended to an Indonesian individual or legal entity operating civil aircraft for non-commercial air transportation. Both type(s) of certificate shall be given upon passing examination and testing, and the applicant demonstrates his/her capability to operate the aircraft. Anybody violating the obligation to possess a certificate shall be imposed with administrative sanction such as warning, freezing of certificate and/or revocation of certificate.<sup>32</sup>

#### **d. Aircraft Maintenance**

Anybody operating aircraft shall be obligated to perform maintenance on the aircraft including the aircraft engines, airplane propellers, and the components for keeping up the competency and continues airworthiness. In order to perform maintenance of aircraft, aircraft engines, airplane propellers and the components, one must issue a maintenance program and shall be approved by the MOC. The maintenance of aircraft, aircraft engines, airplane propellers and the components may only be conducted by an air transportation company already owning air operator certificate (AOC), a legal entity organization of aircraft maintenance already owning approved maintenance organization certificate, or a maintenance expert personnel already possessing an aircraft maintenance engineer license. The aircraft maintenance certificates such as a legal entity organization of aircraft maintenance already owning approved maintenance organization certificate, or a maintenance expert personnel already possessing an aircraft maintenance engineer license shall be granted by the MOC upon passing an examination and testing. Anybody violating the obligation to conduct the maintenance of aircraft, aircraft engines, airplane propellers and components shall be imposed administrative sanction such as freezing of certificate, and/or revocation of certificate.<sup>33</sup>

#### **e. Safety and Security in Aircraft During Flight**

Each Indonesian or foreign civil aircraft arriving or departing from Indonesia may land or take-off from the airport(s) pre-determined for that purposes, however, the provision regarding to land and take-off from the airport(s) pre-determined shall not be valid during emergency circumstances. Anybody violating the provision regarding to land and take-off from the airport(s) pre-determined shall be imposed with administrative sanction such as warning, freezing of certificate and/or revocation of certificate.<sup>34</sup>

#### **f. Endangering**

Anybody shall be prohibited from operating and/or flying an aircraft that may endanger aircraft safety, the safety of passengers, crews, and cargo, endanger the safety of third party, disturb public security and order; and/or damage(s) other people's property. Anybody violating prohibition from operating and/or flying an aircraft that may endanger aircraft safety, the safety of passengers, crews, and cargo, endanger the safety of third

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<sup>31</sup>.Article 39

<sup>32</sup>. Article 44.

<sup>33</sup>.Article 50.

<sup>34</sup>. Article 52

party, disturb public security and order; and/or damage(s) other people's property shall be imposed with administrative sanction such freezing of certificate, and/or revocation of certificate.<sup>35</sup>

**g. Placement of Disability Passengers**

The aircraft commander shall have the authority to take action for the purpose of ensuring safety, order, and security during flight. It shall be prohibited in-flight to place any passenger with disability to act on an emergency at seats near emergency exits of the aircraft. Anybody violating to place disability to act on an emergency at seats near emergency during flight, shall be imposed with administrative sanction such as warning, freezing of certificate and/or revocation of certificate.<sup>36</sup>

**h. License Holder**

Aircraft personnel with direct involvement in operating an aircraft shall be obligated to possess legitimate and valid license. Such license shall be issued by the MOC after the aircraft personnel concerned meet the requirements such as administrative, physically and mentally fit to fly, holding certificate of competency in his/her field, and declared passing professional tests. The license shall be obtained through education and/or training organized by accredited institution. Such aircraft personnel shall be obligated to carry out his/her duty as stipulated in the assignment, maintain his/her professionalism skill and undergo medical examination periodically. License holder violating the obligation to carry out his/her duty as stipulated in the assignment, maintain his/her professionalism skill and undergo medical examination periodically shall be imposed with administrative sanction such as warning, freezing of license and/or revocation of license.<sup>37</sup>

**i. Insurance on Aircraft Operation**

Every person operating an aircraft shall be obligated to insure aircraft being operated, aircraft personnel being employed, second party insurance, third party liability insurance and investigation activities on any aircraft accident of aircraft being operated. Anybody violating the obligation to insure aircraft being operated, aircraft personnel being employed, second party insurance, third party liability insurance and investigation activities on any aircraft accident of aircraft being operated shall imposed with administrative sanction such warning, freezing of certificate and/or revocation of certificate. Further provision regarding insurance obligation for aircraft operation and imposition of administrative sanction shall be regulated by the MOC.<sup>38</sup>

**j. Aircraft Operation**

Aircraft operation within the territory of the ROI may only be conducted using Indonesian aircraft, however, under circumstances within limited period of time, operation of foreign aircraft within the territory may only be conducted upon authorization from the MOC. Foreign civil aircraft may be operated by national air transportation company for flights from and to foreign countries upon securing international agreements. Operation of foreign aircraft using Indonesian aircrafts and operation of foreign aircraft conducted upon authorization from the MOC must meet airworthiness requirements. Anybody violating the obligation of using Indonesian aircraft, foreign aircraft conducted in Indonesia without authorization, using Indonesian aircraft and foreign aircraft without complying the airworthiness shall be imposed with administrative sanction such as warning, freezing of certificate and/or revocation of certificate.<sup>39</sup>

**k. Non-Commercial Air Transportation**

Holders of air transportation permit shall be prohibited to conduct commercial air transportation activities, unless with a permit from the MOC. The MOC's permit may be given to holders of non-commercial air transportation activities for purposes of passenger and goods transportation in certain region(s), by fulfilling certain requirements and is temporary in nature. Holders of non-commercial air transportation permit violating the obligation to have permit from the MOC shall be imposed with administrative sanction such as warning, freezing of permit, and/or permit revocation.<sup>40</sup>

**l. Airport Operational Certificate**

Any airport to be operated shall be compelled to fulfill aviation safety, security and airport services. For airport already meeting aviation safety, security and services, the MOC shall gives airport certificate – for

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<sup>35</sup> .Article 53.

<sup>36</sup> . Article 56

<sup>37</sup> . Article 59

<sup>38</sup> . Article 62.

<sup>39</sup> . Article 63

<sup>40</sup> .Article 102

airports serving aircrafts of a capacity of more than 30 (thirty) seats or a maximum weigh during take-off of more than 5,700 (five thousand seven hundred) kg , or airport registration – for airports serving aircraft of a maximum capacity of 30 (thirty) seats or a maximum weight during take-off of 5,700 (five thousand and seven hundred)kg.

Airport certificate as for airports serving aircrafts of a capacity of more than 30 (thirty) seats or a maximum weigh during take-off of more than 5,700 (five thousand seven hundred) kg, shall be given to any airport possessing an aerodrome manual and fulfillment of technical requirements/conditions of personnel, facilities, airport operational procedures and airport operational safety management system. Airport registration – for airports serving aircraft of a maximum capacity of 30 (thirty) seats or a maximum weight during take-off of 5,700 (five thousand and seven hundred kg shall given to any airport possessing an aerodrome manual and fulfillment technical requirements/condition of personnel, facilities and airport operational procedures. Anybody operating an airport without fulfillment of airport services shall be imposed with administrative sanction such as warning, decrease of airport service tariff, and/or certificate revocation.<sup>41</sup>

In addition, any airport to be operated shall be compelled to fulfill aviation safety, security and services. Such airport operation shall have to be performed by managerial personnel having the capability and competence in airport technical field and/or airport operation. Any individual violating the obligation to fulfill aviation safety, security and airport services shall be imposed with administrative sanction such as warning, freezing of certificate and/or certificate revocation.<sup>42</sup>

#### **m. Airport Facilities**

Every airport business entity or airport operation unit shall be obligated to provide airport facilities meeting the requirements of aviation safety, security and services in accordance with stipulated services standard. Such airport facility shall be given a worthiness certificate by the MOC. In order to maintain preparedness of airport facilities, the airport business entity, or the airport operation unit shall be obligated to conduct periodical maintenance by means of checking, testing, verification and/or calibration. In addition, in order to maintain and improve performance of facilities, procedures, and personnel, the airport business entity or airport operation unit shall be obligated to conduct periodical training/drill of emergency management.

Any individual violating the obligation to provide airport facilities meeting the requirements of aviation safety, security and services in accordance with stipulated services standard; to conduct periodical maintenance by means of checking, testing, verification and/or calibration and to conduct periodical training/drill of emergency management shall be imposed with administrative sanction such as warning, freezing of certificate, and/or certificate revocation.<sup>43</sup>

#### **n. Airport Personnel**

Each airport personnel directly involved in operating performance and/or maintenance of airport facilities must own legitimate and valid license. Such license shall be issued by the MOC upon meeting the requirements of administrative, physically and mentally fit, possessing competence of the field and passing the examination/test. The certificate of competency shall be obtained through education and/or training conducted by any institution duly accredited by the MOC. The airport personnel owning license shall be obligated to perform his/her duties in accordance with the policies in his/her field, maintain competence and undergo periodical medical checks. Any airport personnel violating the obligation to own license or competence certificate shall be imposed with administrative sanctions such as warning, freezing of license and/or license revocation.<sup>44</sup>

#### **o. Airport-Related Services**

In performing airport services, the airport business entity and airport operation unit shall be obligated to provide airport facilities worthy of operation, competent personnel for airport facilities maintenance and operation, up-dated every procedure of airport facilities operation and maintenance, services to airport users in accordance with services standard stipulated by the MOC, traffic facilities for aircraft operational personnel and operational staff; and maintain airport facilities worthiness, improve competency of personnel responsible for maintenance and operation of airport facilities, airport safety, security, smooth process and comfort, airport security and discipline, environmental preservation; comply with provisions of the rules of law; undertake internal supervision and control on airport facilities worthiness; implementation of maintenance procedures and

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<sup>41</sup>.Article 217

<sup>42</sup>.Article 220.

<sup>43</sup>. Article 219

<sup>44</sup>.Article 223

operations of airport facilities and airport personnel's competence and submit periodical reports to the MOC and airport authority.

Anybody violating the obligation to provide airport facilities worthy of operation, competent personnel for airport facilities maintenance and operation, up-dated every procedure of airport facilities operation and maintenance, services to airport users in accordance with services standard stipulated by the MOC, traffic facilities for aircraft operational personnel and operational staff; and maintain airport facilities worthiness, improve competency of personnel responsible for maintenance and operation of airport facilities, airport safety, security, smooth process and comfort, airport security and discipline, environmental preservation; comply with provisions of the rules of law; undertake internal supervision and control on airport facilities worthiness; implementation of maintenance procedures and operations of airport facilities and airport personnel's competence and submit periodical reports to the MOC and airport authority shall be imposed with administrative sanction such as warning, permit freezing and/or permit revocation.<sup>45</sup>

**p. Liability for Indemnity**

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 for losses shall consist of death or physical injury of human being, destruction, lost, or damage(s) of equipment operated, and/or environmental impact on the surrounding areas of airport due to airport operation. The risks on liability for damage(s) shall mandatory insured. Any airport business entities violating the obligation to insure liability for losses shall consist of death or physical injury of human being, destruction, lost, or damage(s) of equipment operated, and/or environmental impact on the surrounding areas of airport due to airport operation.<sup>46</sup>

**q. Flight Navigation Personnel**

Flight navigation personnel directly related to operational performance and/or maintenance of navigation facilities shall be obligated to possess a legitimate and valid license. Such license shall be issued by the MOC upon fulfillment of administrative, physically and mentally healthy, possessing competence certificate in the field and passing the examination. The legitimate and valid license shall be obtained through education and/or training conducted by an institution accredited by the MOC.<sup>47</sup>

Flight navigation personnel already possessing a license shall be obligated to perform his/her work according to the rules in the field, maintain the competence possessed and undergo periodical medical examination. Any flight navigation violating the obligation to perform his/her work according to the rules in the field, maintain the competence possessed and undergo periodical medical examination shall be imposed with administrative sanction such as warning, freezing of license and/or license revocation.<sup>48</sup>

**r. Flight Navigation Facilities**

Flight navigation facilities shall consist of aeronautical telecommunication facilities, aeronautical information facilities and aeronautical meteorological information facilities. The flight navigation facilities to be installed and operated shall have to obtain an approval from the MOC, whilst installation of flight navigation facilities shall have to observe the operational needs, technology development, facility reliability and system integration. The above-mentioned navigation facilities shall be mandatory maintained by flight navigation service operator in accordance with valid provision. Any flight navigation service operator violating the obligation to mandatory maintained navigation facilities shall be imposed with administrative sanction such as warning, permit freezing and/or permit revocation.<sup>49</sup>

**s. Aviation Service Provider Safety Management System**

Every aviation service provider shall be obligated to formulation, implement and continuously improve safety management system with the state aviation safety program as a guide. Such safety management system of aviation service providers shall have to obtain legalized from the MOC. Any aviation service provider violating the obligation to formulate, implement and continuously improve safety management system with state aviation safety, shall be imposed with administrative sanction such as warning, permit freezing and/or permit revocation.<sup>50</sup>

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<sup>45</sup>. Article 234

<sup>46</sup>. Article 240

<sup>47</sup>. Article 292

<sup>48</sup>. Article 293

<sup>49</sup>. Article 298

<sup>50</sup>. Article 314

**t. Aviation Safety Culture**

Any aviation personnel in knowledge of occurrence of deviation or discrepancy in aviation procedure, or malfunction of any aviation equipment and facility shall be obligated to report the MOC. The aviation personnel reporting any occurrence shall be given adequate protection according to valid regulation. Any aviation personnel violating the obligation to report in knowledge of occurrence of deviation or discrepancy and facility to the MOC, shall be imposed with administrative sanction such warning, freezing of certificate or license and/or revocation of certificate or license.<sup>51</sup>

**u. Aviation Security Facilities**

Airport business entity, airport operator unit, and air transportation business entity using aviation security facilities shall be obligated to provide, operate, maintain, and modernize in accordance with stipulated standard; maintain accuracy of its performance by calibrating and obtain complete certificate equipments. Any airport business entity, airport operation unit and air transportation business entity violating the obligation to provide, operate, maintain, and modernize in accordance with stipulated standard; maintain accuracy of its performance by calibrating and obtain complete certificate equipments shall be imposed with administrative sanction such as warning, freezing of permit or certificate and/or revocation of permit or certificate.<sup>52</sup>

**v. Tariff Applications**

Tariff ceiling for domestic economy class passengers are stipulated by the MOC to prevent the imposition of high tariffs by airline companies and protect consumers from misleading advertising. The tariff for scheduled economy class passengers is disseminated either by the MOC or by the airlines themselves through print and electronic media and/or presented to consumers wherever airplane tickets are sold. Domestic airlines are prohibited from selling economy class tickets above the tariff ceiling provided by the MOC, and any airlines violating this prohibition will receive sanction in the form of a warning and/or flight route permit revocation.<sup>53</sup>

**w. Aviation Security Facilities.**

The MOC shall stipulate aviation security facilities used for realization of aviation security. Provision of aviation security facilities shall be undertaken in accordance with the needs by considering effectiveness of equipment; airport classification; and level of threat and disturbance.<sup>54</sup> Airport business entities, airport operation units, and air transportation business entities using aviation security facilities shall be obligated to provide, operate, maintain, and modernize in accordance with stipulated international standard; maintain accuracy of its performance by calibrating; and obtain complete certification of equipment. Any airport business entity, airport operation unit, and air transportation business entity violating the provisions shall be imposed with administrative sanctions, in the forms of warning; freezing of permit or certificate; and/or revocation of permit or certificate. Further provisions regarding aviation security facilities shall be stipulated under a MOC Regulation.

**x. Aircraft in Flights**

Any person during flight on an aircraft shall be prohibited to conduct behavior that may endanger aviation safety and security, violating in-flight procedures, taking or damaging aircraft equipment that may threaten safety, conducting a-social behavior, hoax bomb, disturbing peacefulness, and/or operating electronic devices that may disturb flight navigation.<sup>55</sup> The aircraft pilot in command concerned shall have the authority to take action for purpose of ensuring safety, order, and security during flight.<sup>56</sup> It shall be prohibited in-flight to place any passenger with disability to act on an emergency at seats near emergency exits of the aircraft. Anybody violating the provisions shall be imposed with administrative sanctions, such as warning; freezing of certificate; and/or revocation of certificate.<sup>57</sup>

**Liability in the Aviation Activities**

**a. Concept of Liability Regimes**

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<sup>51</sup>.Article 321

<sup>52</sup>. Article 350

<sup>53</sup> Martono K.,Amad Sudiro.,*Current Air Transport Regulation in Indonesia*, (2013), XXXVIII, Ann. Air & Sp.L.at 82 ; See also Gunawan Djajaputra, Gusti Ayu Ketut Rachmi Handayani, Martono.,*An Indonesian Air Transport : A Critical Analysis of Christmas Celebration of 2016 and New Year Holidays of 2017*. Vol.6(2) [www.ijbmi.org](http://www.ijbmi.org) 53(February 2017)

<sup>54</sup> Art.349

<sup>55</sup> Art.54

<sup>56</sup> Art. 55

<sup>57</sup> Art.56

### **1). Liability Based on Fault**

There are three types of liability principles such as liability based on fault, presumption of liability and strict liability. The liability based on fault regime applies to cabin baggage. The CAA of 2009 provides that no air carrier shall be liable for damage due to cabin baggage losses or destruction or damage(s), except when the passenger prove that the loss was caused by the action of the air carrier or its employees. The reason of this regime is that cabin baggage is under the supervision of the passengers themselves. With regard to the amount of compensation for cabin baggage is determined to the maximum actual loss suffered by the passengers.<sup>58</sup>

### **2). Presumption of Liability Regimes**

Presumption of liability regimes applies to passenger, check-in baggage, and cargo transportation. The CAA of 2009 provides that air carrier is liable for indemnities for death, permanent disability passenger, or injury of passenger caused by aircraft accident on board the aircraft and/or whilst getting on or getting off the aircraft. If the death of passengers, permanent disability or injury of passengers, loss of check-in baggage, and cargo is incurred due to the intentional action or default of the air carrier or willful misconduct, of its employees, the air carrier shall be liable for damage(s) incurred and will not be able to use the provision of the CAA of 2009 to limit its liability, which means that the liability of air carrier is unlimited.

In addition, the CAA of 2009 also provides that a air carrier is also liable for any loss suffered by any passenger due to loss, destruction, or damage(s) of any check-in baggage as a result of air transportation activities whilst the check-in baggage is under the supervision of the air carrier. An air carrier also shall be liable for damage(s)/loss suffered by any cargo shipper for losses, destruction, or damage(s) to cargo caused by any air transportation activity whilst the cargo is under the supervision of the air carrier.

### **3). Strict Liability Regimes**

Every action which infringes the laws in the form of environmental pollution and/or damage(s) which gives rise to adverse impacts on other person or the environment, obliges the party liable for the business and/or activity to pay compensation and/or to carry out certain actions. As well as the burden of carrying out certain participatory actions, the judge can determine compulsory monetary payment to be made for every day of lateness in completion of such certain action.<sup>59</sup>

Strict of liability apply, for that reason party liable for business and/or activity which gives rise to a large impact on the environment, which uses hazardous and toxic materials, and/or products hazardous and toxic waste, is liable for losses which are given rise to, with the obligation to pay compensation directly and immediately upon occurrence of environmental pollution and/or damage(s). The party is liable for a business and/or activity can be released from the obligation to pay compensation if those concerned can prove that environmental pollution and/or damage(s) was caused by one of the following reasons: the existence of a natural disaster or war; or the existence of situation of coercion outside of human capabilities; the existence of actions of a third party which caused the occurrence of environmental pollution and/or damage(s). Where losses occur which have been caused by a third party, the third party is liable for paying compensation.<sup>60</sup>

### **b. Liabilities Provided in the CAA of 2009**

With regards to liability, the CAA of 2009 provides several provision such as liability of air carrier to the passenger, cabin baggage, check-in baggage, cargo and third party etc >>>>

#### **1). Air Carrier's Liability Insurance**

With regards to air carrier's liability insurance, the CAA of 2009 provides that air transport business permit holder, shall be obligated to purchase liability insurance with liability value equal to insurance coverage for regular passenger air transportation proven by valid insurance policy. In addition, air transport business permit holder shall also 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 flight, no later than on the 10<sup>th</sup> of the next month for each month to the MOC.<sup>61</sup>

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<sup>58</sup>.Martono and Amad Sudiro., *A Book Chapter: Aviation Laws and Regulation Applicable in Indonesia*.Chapter 3. Jakarta : Rajagrafindo 2017 at 55

<sup>59</sup>.Gunardi, Ronnie, Martono K., *supra* note 26 at 11.

<sup>60</sup>.Gunardi, Ronnie, Martono K., *Legal Aspects, Economic and Aircraft's Water Bombing Related to Forest Fires in Indonesia*.Vol.6(3) [www.ijbmi.org](http://www.ijbmi.org) 11(March 2017).

<sup>61</sup>. Ms Mia Hadiati, Dr Gunawan Djajaputra and Dr K.Martono., *Laws and Regulations of Civil Aviation Insurance Applicable in Indonesia*. Vol.6(2) [www.ijbmi.org.30](http://www.ijbmi.org.30) (Feb.2017).

## **2). 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 accident on board aircraft and/or whilst getting off or getting on aircraft; damage(s) 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 whilst the check-in baggage under supervision of the carriers, for damage/losses suffered by any cargo shipper for losses, destruction, or damage of cargo caused by any air transportation activities whilst the cargo is under supervision of the carrier; for losses incurred due to any air transportation of passengers, baggage, or cargo except when the carrier can prove that the delay is caused by weather and operational technical factors such as flood, etc.<sup>62</sup>

## **3). Third Party Liability**

As far as third party liability is concerned, the policy of the ROI provides anybody who is operating an aircraft shall be liable for damages, losses 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 indemnity on damage(s), loss suffered by a third party shall be given in accordance with the actual damage(s), loss suffered. Further provisions regarding calculation of the amount of indemnity, compensation, requirements, and procedure of claiming compensation shall be stipulated under the MOC Regulation, and any carrier may claim a third party causing the damage(s), loss suffered by the passengers, shippers, or cargo beneficiaries that are the carrier's liability. It is worthwhile to note here, no mentioned the obligation of air carriers to insure their liability, but the best practice the air carriers insure their liability.<sup>63</sup>

## **4). Airport Business Operator Liability**

There are a contractual relationship between airport business entity and airport service users. The airport users services pay a certain amount of payment to the airport business entity, 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 a third party as a result of the airport operation. Such liability shall consist of death or physically injury of human being, destruction, lost, or damage(s) of equipment operated; and/or environmental impact on the surrounding areas of the airport due to mandatory insured shall be imposed with administrative sanction namely warning, freezing of certificate, and/or certificate revocations.<sup>64</sup>

## **1. Criminal Acts**

With regards to aviation criminal laws and regulations, stipulated in Article 401 to 443 of the CAA of 2009. Such provision related to entering any restricted and prohibited areas; production and/or assembling aircraft without certification; aircraft operation without nationality and registration marks; operating an aircraft without possessing an aircraft operating certificate (AOC); aircraft landing and/or taking off not in the designated airport; endangering the safety of an aircraft, aviation facilities; conducting any wrong doing on board the aircraft; operating electronic device(s) that is disturbing flight air navigation; damaging an aircraft equipment; disturbing peacefulness on board aircraft; aviation personnel without certificate of competency; foreign aircraft operating an aircraft without getting diplomatic clearance from the Ministerial of Foreign Affair, flight clearance from the Ministry of Defense and flight approval from the MOC; operating an aircraft without fulfilling the airworthiness; operating commercial aircraft without business permit issued by the MOC; regular and/or irregular air transportation without flight approval; carrying an hazardous material; the owner of cargo, shippers, warehousing violating the transportation; appearing in certain area of an airport without authorizations from the authorities concerned; operating an airport without fulfilling aviation safety and security; carrying a weapon, dangerous goods or equipment or bomb into an aircraft; operating a specific airport for public interests without permit from the MOC and causing the death of a person etc.<sup>65</sup>

Anybody violating the above-mentioned provisions shall be condemned with imprisonment from at least one year to 15 (fifteen) years and a fine at least amount IDR 200,000,000.00 (two hundred million rupiah) to maximum amount of IDR 1,000,000,000.00 (one billion rupiah) subject to the violations above-mentioned. Anybody undertaking maintenance of aircraft, engine, airplane propellers and components shall be condemned with imprisonment for a maximum 1 (one) year or a fine a maximum amount of IDR 200,000,000.00 (two

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<sup>62</sup>. *Ibid.*

<sup>63</sup>. *Ibid.*

<sup>64</sup>. *Ibid.*

<sup>65</sup>. Amad Sudiro and Martono K., *Aviation Criminal Laws Applicable in Indonesia*. Vol. 9(2) [www.iosrjournals.org](http://www.iosrjournals.org) 51 (February 2016).

hundred million rupiahs)(\*\* Article 409 \*\*), and any aircraft personnel performing his/her duties without possessing of competency certificate or license shall condemned with imprisonment for a maximum 1 (one) year of a fine of a maximum of IDR 200,000,000.00 (two hundred million rupiahs), however in the case causing death of a person, the aircraft personnel shall be condemned with imprisonment for a maximum of 15 (fifteen) years and a fine of a maximum amount of IDR 1,000,000,000.00 (one billion rupiahs).<sup>66</sup>

## **2. Aviation Criminal Investigation**

With regard to aviation criminal investigation, the CAA of 2009 stipulates in Articles 399 and 400. According to Article 399 of the CAA of 2009, the designated civil servants officials of an agency which duties and responsibility scope is in aviation field shall be given specific authority as aviation criminal investigator. In carrying out their duty, the civil servants officials shall be under coordinator and supervision of the Police of the ROI.

The authority of the civil servants investigator shall be performed such as inspecting, searching, and collecting information regarding aviation criminal actions in aviation field; receiving reports on any aviation criminals action in aviation field; calling people for hearing and investigation as witness and/or suspect of aviation criminals action in aviation field; arresting person(s) suspected of aviation criminal; asking information and evidence from person(s) suspected of committing aviation criminal action in the aviation field; photographing and/or recording through electronic media of person(s), goods, aircraft, or anything that can be considered as evidence of any aviation criminal action(s) occurred in aviation field; examining documents related to aviation criminal actions; taking finger-prints and identity of people; searching aircraft and certain places suspected of any aviation criminal action in the aviation field; confiscating goods strongly suspected as the goods used for committing aviation criminal actions in the aviation field; isolating and securing goods and/or documents that may be as evidence related to any violation criminal action in aviation field; inviting expert witness as needed; suspecting investigation process; and requesting assistance of the ROI police or other agency in handling aviation criminal actions in aviation field.<sup>67</sup>

## **3. Mediation of Disputes**

Article 364 of the Civil Aviation Act of 2009 provides mediation. It provides that in order to conduct follow-on investigation, enforcement of professional ethics, implementation of mediation and interpretation of regulation enforcement, the national committee shall establish an aviation professional agency. Such aviation professional agency shall have execution of mediation between aviation providers, personnel, and users of aviation services and interpretation of regulation enforcement in aviation field. In carrying of the mediation, the aviation professional agency shall become mediator of dispute settlement in aviation field outside the court and becoming interpreter of regulation enforcement in aviation field. The aviation professional agency shall consist of elements from the government, community who are competent in the field of aviation such as laws, aircraft, flight air navigation, airport, aviation medicine and civil servant and have the authority making a resolution of disputes of the parties. The Director General of Air Communications (DGAC) or other official designated as authoritative mediator.

An aviation dispute shall be settle outside the court in order to reach a deals on type and amount of compensation, the recovery action with regard of the damage, specific action to ensure there is no reoccurrence damage and/or action or measure to prevent negative impacts to aviation. The dispute settlement outside the court shall not be allowed for any crime as regulated under the CAA of 2009. With regard to the settlement of dispute outside the court it shall be allowed to use the services of mediator and/or arbitrator to help resolve the aviation disputes.<sup>68</sup> The people shall be allowed to create an agency of services on how to settle the aviation dispute and the agency shall be independent and impartial. The government as well as the local government shall be allowed to facilitate the action of such an independent and impartial agency of services for the settlement of aviation disputes. Further provisions on the agency of services for the settlement of aviation dispute shall regulated under the government regulation.<sup>69</sup>

## **4. Cases of Criminal Acts**

With regards to criminals acts there are several criminals acts in Indonesia namely Partemavia P-68 Registration VH-PFP, F-18 Hornet the US Airforce, PT Rimba Raya and Boeing 737-300 Registration AP-BEH as follows.

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<sup>66</sup>. *Ibid.*

<sup>67</sup>. *Ibid.*

<sup>68</sup>. Article 85.

<sup>69</sup>. Toendjoeng, Gunardi and Martono K., *supra* note at 49

**a. Partemavia P-68 Registration VH-PFP**

Captain William Henry Scott-Bloxam was sentenced three years jail and penalty IDR 50 million by the local court due to on 12 September 2008 entering the territory of the ROI without diplomatic clearance issued by the Ministerial of Foreign Affairs of the ROI, security clearance issued by the Ministerial of Defense of the ROI and flight approval issued by the MOC.<sup>70</sup>

**b. F-18 Hornet the US Air Force**

State aircraft F-18 Hornet owned by the United States of America flying over the Bawean Island of the territory of the ROI. Due to the legal status of aircraft is state aircraft, the violation of F-18 Hornet could not be forced to land by the Indonesian Air Force, but the state aircraft has been given warning to leave the territory of the ROI. In this connection, the Ministry of Foreign Affairs of the ROI could send claim to the American Embassy in Jakarta. The flying over the F-18 Hornet possible provocation in nature, taking into account that the United States of America intends Indonesia provides 5 (five) sea lane passage, whilst Indonesia only provides three lane passage.<sup>71</sup>

**c. PT.Rimba Raya**

PT Rimba Raya is a general aviation applies for import to the MOC, not yet provided by the diplomatic clearance of the Ministerial of Foreign Affairs of the ROI, security clearance issued by the Ministerial of Defense of the ROI and flight approval issued by the MOC, but the aircraft has entered the territory of the ROI, it means violation of the CAA of 2009.<sup>72</sup>

**d. Violation of Indonesian Territory**

In accordance with the CAA of 2009, very plane planning to fly over an Indonesian's territory shall fulfilling three requirements namely a diplomatic clearance issued by the Ministerial of Foreign Affairs, security clearance issued by Ministerial of Defense and flight approval issued by the MOC. In this connection, in March 2011, Pakistan International Airlines (PIA), aircraft type of Boeing 737-300, carrying 54 passengers was polited by Captain Tariq ur Rehman Awan, detected by airport RADAR without communicate with the control tower entering the territory of the ROI. The plane was forced to land in Makassar international airport and parked whilst the crew and passengers were questioned by the airport authority, immigration and officials from the Indonesian Air Force. In accordance with information the passengers, all of which are Pakistani policemen who are serving in East Timor as part of the peacekeeping troops and five crew members on board.<sup>73</sup>

**e. Aeroflot Case**

Alexandre Finenko, Chief Representative of Aeroflot have been involved in espionage and detain further processed for deportation (discharged), followed by closing the Aeroflot representative office and banned Aeroflot airplane at the airfield sovereign territory of the ROI. This espionage was initiated by the KGB in 1982, conducted by Sergei Egorov rank of Lieutenant Colonel, and served as assistant military attache at the Soviet Embassy in Jakarta. Egorov caught in the act of buying and selling of confidential documents of the ROI in the form of the Banda Sea Hydrographic map.<sup>74</sup>

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<sup>70</sup>. Martono K., and Amad Sudiro., *A Book Chapter : Aviation Laws and Regulations Applicable in Indonesia*. Jakarta : Radjagrafindo, 2017, Chapter 13 at 360 ..

<sup>71</sup>. *Ibid.*

<sup>72</sup>. Amad Sudiro and Martono K., *supra* note 62 at 9.

<sup>73</sup>. *Ibid.*

<sup>74</sup> Martono K., and Amad Sudiro., *supra* note 55 at 361

**Part Three**

**II. CONCLUSION AND RECOMMENDATION**

Based on the above-mentioned analysis, the authors conclude that the CAA of 2009 is more modern compare with the former civil aviation act, taking into account the CAA of 2009 is comprehensive in nature due to it provides a lot of administrative sanctions to cater the imposition of violation. In addition, the CAA of 2009 has accommodated almost of the provision of the Chicago Convention of 1944 as a constitution of international air transport. For this reason, the authors recommend to enhance the law enforcement for the implementation of the CAA of 2009.

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