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Legal Aspects of Air Transportations and Environmental Pollution In Indonesia

Dr.Tundjung,¹ Dr.Gunardi,² Dr.K.Martono³

Abstract: This article purported to describe Indonesian Constitutional Law of 1945 related to aviation and environmental; concept of legal liability such as liability principles, contractual relationship concept and special agreement; Part One regarding legal aspect of civil aviation such as air transport policy, civil aviation act of 2009, regulations of air transportation includes liability of air carriers, legal liability with respect to passengers, cabin baggage, delay, cargo and airport operators; disputes settlement; compensation with respect to the passenger, cargo and goods, delay passengers and third party; time limit of claim; authority of civil servant and criminal provision; Part two regarding legal aspect of environmental pollutant such as legal ground of environmental includes Act No.6 Year 1994, Act No.23 Year 1997, Act No.17 Year 2004, Act No.32 Year 2009 and Presidential decree No.46 Year 2008, applicability, the class action of lawsuit, compensation, time limit of claim, authority of civil servant, criminal and crime against humanity, finally conclusion and recommendation.

Keywords: legal aspect of civil aviation and environmental pollutant, compensation, liability

I Introduction

Indonesia is the world's largest archipelago's State. Its consists of 17,508 Islands, about 6,000 of which are inhabited. Referring to the 2010 national census, the population of Indonesia was 237, 6 million. In archipelagic State such as Indonesia, air transportation has a major role to play in connecting the Islands. It shall provide connectivity for national, regional, international and remote areas and it connects Indonesia to national, regional as well as international destinations. It enables to transport goods, passengers, business travel as civil servant, leisure peoples, business peoples, tourism, employment, family visit, friends and finally increase to support the national economic development in Indonesia.⁴ In addition, air transportation also provides for rapid, efficient, affordable prices, and connections to support national logistic flow of goods, including when necessary government missions for disaster relief. However, sustainable development of air transport and the aviation industry shall be consider and consistently keep an optimum balance between economic, social and global **environmental factors** (*emphasize added*).⁵

The impact of global warming is already evident in Indonesia and it will likely worsen due to further human-*induce* climate change. The review from the global conservation organization, climate change in Indonesia affects for human and nature. Highlights that annual rainfall in Indonesia is ready down by 2 to 3 per cent, and the seasons are changing. The combination of high population density and high levels of biodiversity, together with a staggering 80,000 kilometers of coastline and 17,500 Island, make Indonesia one of the most vulnerable country to the impacts of climate change.

Shifting weather patterns have made it increasingly difficult for Indonesia's farmers to decide when to plant crops and erratic droughts and rainfall has led to crop failures. A recent study by a local research institute provides that Indonesia had lost 300,000 tons of crop production every year between 1997-2000, three times annual loss in the previous decade. Climate change in Indonesia means millions of fishermen are also facing harsher weather conditions while dwindling fish stocks affect their income.⁶

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⁴ Dr Gunardi, Ronnie and K.Martono, *Legal Aspects, Economic and Aircraft Water's Bombing Related to Forest Fires in Indonesia*, Vol.6 (3) IJBM, March 2017.

⁵ Dr Gunawan Djajaputra, Dr Ahmad Redi, and Dr.K.Martono.,*The Civil Aviation, Climate Change Reduction and Legal Aspects of Forest Fires in Indonesia*, Vol.9(7) IOSR-JAC 1(July 2016).

⁶ *Ibid*.

As rainfall decreases during critical times of the year translates into higher drought risk, consequently a decrease in crop yield, economic instability and drastically more undernourished people. This will undo Indonesia's progress against poverty and food insecurity. World Wide Forest (WWF)'s review shows that increased rainfall during wet time of the year may lead to high flood risk, such as in the Garut, West Bandung District, Bandung cities, (West Java), Sampang district (East Java), Sayung Village, Demak District (Central Java), Flores Timur's⁷ flood and others provinces that killed people, land fall (known tanah longsor- Indonesian language) in Ponorogo district, East Java⁸ and displaced nearly half a million people, with economic losses of US\$ 450 million.

Climate change impacts are noticeable throughout the Asia-Pacific region. More frequent and severe waves, floods, extreme weather events and prolonged droughts will continue to lead to increased injury, illness and death. Continued warming temperatures will also increase the number malaria and dengue fever cases and lead to an increase in other infection as a result of poor nutrition due to food production disruption. The Indonesian government has taken its role seriously and lead the way in the fight against national and global climate change. In addition, Indonesia has to take up the challenge of climate change, putting climate adaptation in the development agenda, promoting sustainable land use, as well as demanding support from industrialized nations. Indonesia is already a significant emitter of GHG emission due to deforestation and land-used change estimated at 2 million hectares per year and accounts for 85 per cent of the country's annual GHG emissions. It is also a serious coal producer and use in the region.

Global climate change has impact to the air transport and aviation industry, taking into account that air transport and aviation industry growth can affect global climate change and contributes to the greenhouse gas (GHG) pollutant in terms of carbon emissions. In this connection, the President of the Republic of Indonesia (ROI) Joko Widodo, issued the Presidential Decree No.61 of 2011.⁹ The Presidential Decree No.61 of 2011 provides for GHG emission reduction and the obligation for the energy and transport Sector is 26% cumulative up to the year 2020 and 41% with contribution of international support.¹⁰ This article purported to explore the legal aspects of air transport and environmental pollution Indonesia as follows.

1. Indonesian Constitutional Law Of 1945

The law of the ROI provides that all acts shall refer to the Indonesian constitution of 1945, for that reason the Civil Aviation Act of 2009,¹¹ as well as Act Concerning environmental shall also refers to Indonesian Constitutional of 1945 as follows :

a. Constitutional Law of 1945 related to Aviation

With regard to civil aviation, the Indonesian constitution of 1945 provides that the united country of the ROI is an archipelago country characteristic with the unity of a variety of ethnics united within a fast sea-water and space boundary whereby its borders, rights, and sovereignty duly stipulated by the laws. It is the reason that in efforts to achieve national aims based upon Pancasila (5 Foundations) and the 1945 Constitution of the ROI in realizing an Archipelago Perspective and consolidating national perseverance, it is imperative to have a national transportation system viable in supporting economic growth and territorial development, improving international relations, and strengthening national sovereignty.

The civil aviation is a part of national transportation system, which has the characteristics of being able to move in an short time, utilizes high technology, capital heavy, and outstanding management, and requires high level of safety and security, needs to develop its potentials and roles in order to realize an effective and efficient transportation system, and helps to create a solid and dynamic pattern of national distribution. In addition, the national and international strategic environment development demand the existence of aviation operations in line with technology and science development, participation of private sector and business competition, consumer protection, international regulations adjusted to national interests, governance accountability and regional autonomy.

⁷ Daily Kompas, dated 11 February 2017, at 21.

⁸ Daily Kompas dated 4 April 2017

⁹ Presidential Decree Concerning National Action Plan to reduce GHG emissions (RAN-GRK) (Pres. Decree No.61 Year 2011).

¹⁰ Dr Gunawan Djajaputra, Dr Ahmad Redi, and Dr.K. Martono., *The Civil Aviation, Climate Change Reduction and Legal Aspects of Forest Fires in Indonesia*, Vol.9(7) IOSR-JAC 1(July 2016).

¹¹ Act Concerning Civil Aviation, Act No.1 Year 2009. State Gazette of the Republic of Indonesian No.1 Year 2009, Supplement State Gazette of the Republic of Indonesian No.4956.

b. Constitutional Law of 1945 Related to Environmental

With regards to environmental sustainability, Indonesian Constitution Law of 1945 provides that a good and healthy environment shall be come the fundamental right to every citizen of Indonesia, it is the reason the national economic development shall be organized based on the principles of sustainable and environmentally-friendly development. The environmental quality that is currently declining and has threatened the survival of human life and other living things and there is a need of protection and environmental management on serious and consistent basis by all the stakeholders. In relation with the global is increasing to result a climate change that is exacerbating the environmental degradation, therefore it is necessary to conduct protection and management of environment. In order to ensure the legal certainty and the protection of the right of every person to earn a good and healthy living environment as part of the overall protection of the ecosystem, it shall be necessary to issue an Act to enhance public welfares and achieve happiness of life based on the Pancasila, and implement environmentally sustainability development guided by an integrated and comprehensive national policy which take into consideration the needs of present as well as future generation.¹²

2. Concept Of Legal Liability

a. Liability Principles

There are three type of liability principles such as liability based on fault, presumption liability and strict liability regimes. In civil aviation, the liability based on fault regime applies to cabin baggage. Article 143 of the Civil Aviation Act Number 1 Year 2009 provides that no air carrier shall be liable for damage due to cabin baggage losses or destruction or damage, except when the passenger prove that the loss was caused by the action of the carrier or its employees. The reason of this regime is that cabin baggage is under the supervision of the passengers themselves. The amount of compensation for cabin baggage is determined to the maximum actual loss suffered by the passenger.¹³

In civil aviation, the presumption of liability regime applies to passenger, check-in baggage, and cargo transportation. Article 141 of Law Number 1 Year 2009 provides that a carrier is liable for indemnities for death, permanent disability, or injury of passenger caused by incidents or accident on board the aircraft and/or while getting on or getting off the aircraft. If the death of passengers, permanent disabilities or injury of passengers, loss of check-in baggage, and cargo is incurred due to the intentional action or default of the carrier or willful misconduct,¹⁴ of its employees, the carrier shall liable for damages incurred and will not be able to use the provision of Law Number 1 Year 2009 to limit its liability, which means that the liability of carrier is unlimited.

In addition, Article 144 of Law Number 1 Year 2009 also provides that a carrier is 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 while the check-in baggage is under the supervision of the air carrier, whilst Article 145 of Law Number 1 Year 2009 provides that an air carrier shall be liable for damage/loss suffered by any cargo shipper for losses, destruction, or damages to cargo caused by any air transportation activity while the cargo is under the supervision of the carrier.

A strict liability regime applies to third party liability. Article 184 of Law Number 1 Year 2009 provides that anybody who is operating aircraft shall be liable for damages/loss suffered by a third party as a result of the aircraft operation, aircraft accident, or the falling of objects from the aircraft being operated. The reason for this regime is that it is impossible for the third party to prove the fault of the carriers. The compensation for damage/loss suffered by a third party these liability shall be given in accordance with the actual damage/loss suffered.

Example of best practices in relation to the strict liability regime were the aircraft accident of Garuda Indonesia flight number GA 421 in the Bengawan Solo River in 2001 and the fall of a Japan Airline's Aircraft left engine in the Cengkareng region in 2000. Garuda Indonesia was liable for indemnity for farm land belonging to the property of individual in the community and paid compensation for the environmental destruction suffered and in relation to falling of the left engine belonging to a Japan Airlines (JAL) aircraft in Cengkareng in 2000, the airlines paid compensation for the destruction of houses.¹⁵

¹² Article 33; See also Dr Gunawan Djajaputra, Dr Ahmad Redi, and Dr K Martono...supra note 4 at 2.

¹³ Martono and Amad Sudiro, *A Book Chapters : Aviation Law and Regulations Applicable in Indonesia*. ,Chapter 3. Jakarta : Rajagrafindo, 2017 at.55.

¹⁴ Bin Cheng, *Willful Misconduct : From Warsaw in The Hague and from Brussels to Paris*, (1977) II Ann. Air & Sp. L. at 55 [hereinafter Bin Cheng].

¹⁵ Martono and Amad Sudiro, *A Book Chapters : Aviation Law and Regulations Applicable in Indonesia*. Jakarta : PT Rajagrafindo, 2017,Chapter 3 at.55.

b. Contractual Relationship Concept

In accordance with Part Eight of Law Number 1 Year 2009, air transportation involves an air transport business entity, such as an air carrier transporting passengers, check-in baggage and cargo for reward, using an aircraft. The characteristics of transportation are its openness to the public and the revenues (or income) resulting there from.¹⁶ For that reason, the contractual relationship between air carrier and its customers is mainly connected with the rights and obligations established by a contractual relationship. This provision is consistent with Article 1 paragraph (1) and Article 31 paragraph (1) of the Warsaw Convention of 1929.¹⁷ This public transportation must be for hire or commercial purposes. Ferry flights or aircrew training flights or general aviation activities are not classified as commercial flight. Gratuitous transportation is considered to be the same as common commercial air transportation because the enterprise endeavors to attract more passengers to its flights by issuing free tickets.¹⁸ Public transport enterprises which are not capable of becoming a party to a contract with the air carriers will be excluded from the ensuring discussion since they fall outside the scope of carrier liabilities.

c. Special Agreement

A carrier is prohibited from entering an agreement or imposing a special agreement that eliminate the carrier's liability or determined a limit on compensation lower than that regulated by Law Number 1 Year 2009. Further provisions regarding carrier's liability will be governed by Ministerial Regulation. This provision is intended to protect the interest of passengers and shippers of cargo.

Part One

Legal Aspects Of Civil Aviation

1. Air Transport Policy

According to Prof Dr P.P.C. Haanappel, Mc Gill University, Montreal, Canada, public service, including a national air transportation policy, is subject to the political ideology of the state concerned. In a socialist ideology, air transportation is classified as public services and shall be controlled by the state and its supervision implemented by the government. The supervision consist of regulation and control by a monopolized system such as by a state-owned enterprise to guarantee stabilization of public services.¹⁹

An Indonesian's old order regime tends to be of a socialist ideology, for that reason, air transportation is completely conducted by state-owned enterprises such as Garuda Indonesian Airways (GIA)²⁰ and Merpati Nusantara Airlines (MNA),²¹ while the regulation is conducted by the Ministry of Air Communications (MOAC). All routes, frequencies, type of aircraft, capacities and tariff, utilization of jet or propelled aircrafts are controlled by the MOAC. Within the old order regime, there were no airlines owned by private companies, and there was no competition between airlines because all tariff was set up by the government. On the other hand, the new order regime of General Soeharto's administration started to introduce a mixed ideology between socialist and liberal ideology known a neo-liberal.

In the new order regime of General Soeharto's administration, based on Act Number 1 of 1967,²² the political ideology clearly tended to be neo-liberal which was a mix between socialist and liberal ideologies. Based on this ideology, the government issued a Minister Decree SK 13/S/1971²³ to permit a new airline owned by private companies. State-owned enterprises such as GIA served trunk lines and MNA served feeder lines together with private-owned companies such as Zamrud Aviation, Bouraq Indonesia Airlines, Mandala Airlines, Seulawah Air Services, Indonesian Air Transportation. Besides scheduled and non-scheduled air transportation, there is also general aviation to cater to the aerial work and other activities using an aircraft.

¹⁶ Wu Jianduan, *Air Carrier Liability in China*. (2208) XXXVIII Ann. Air & Sp.L at 14 (hereinafter Wu. Jianduan).

¹⁷ It applies to air transportation as performed by a public air transport enterprise using an aircraft, but not to that performed by entities other than public air transportation enterprises. Article 1 paragraph (1) of the Warsaw Convention of 1929 provides "This convention applies to all international carriage of person, luggage or goods performed by aircraft for reward." Article 31 paragraph (1) of Warsaw Convention of 1929 provides " In the case of combined carriage performed partly by air and partly by any other mode of carriage, the provisions of this Convention apply only to the carriage by air, provided that the carriage by air falls within the terms of Article 1. Full text of Warsaw Convention of 1929, see Dempsey P.S., *Annals of Air and Space Law*, 2005-Vol.XXX-Part I. Toronto : The Carswell Company Ltd,327-352 [hereinafter Dempsey P.S.]

¹⁸ Wu Jianduan, *supra* note 16 at 14

¹⁹ Martono and Amad Sudiro., *supra* note 12, Chapter One at 2.

²⁰ Garuda Indonesian Airways previously name state enterprise (PN) Garuda Indonesian Airways changed to Limited Company Liability (PT) based on the Government Regulation Number 67 Year 1971 *Concerning Change form State Enterprise (PN) Perhubungan Udara to Limited Company Liability (PT) Garuda Indonesian Airways*.

²¹ Merpati Nusantara Airlines previously name state enterprise (PN) change to Limited Company Liability (PT) based on the Government Regulation Number 70 Year 1971 *Concerning Change from State Enterprise (PN) Perhubungan Udara Daerah dan Penerbangan Serba Guna " Merpati Nusantara Airlines " to Limited Company (PT) Merpati Nusantara Airlines*.

²² Act *Concerning Foreign Investment*, Act No.1 Year 1967.

²³ Ministerial Decree *Concerning Requirements and Provisions Regarding Using Airplane for Commercial*. Ministerial Decree No.SK 13/S/1971 (18 January 1971).

Previously, GIA opened as the main carrier, while private-owned companies functioned as supplement operators. In addition, GIA also set price leadership or guidance of tariff to prevent an unhealthy tariff competition between airlines. Tariff is determined by the government with consideration of market forces in flexible ways. In addition, there is also a possibly of cooperation with private-owned companies, but in the development based on the proposal of representative of chairman of Temporary General Assembly (MPRS) Subchan, the position of the state-owned enterprise, in this case GIA and MNA, is similar to private-owned companies without any discrimination based on any other reason.²⁴

Based on the Ministerial Decree 31/U/1970,²⁵ the government issued a license for general aviation to serve an oil company, agribusiness, plumbing, banking and religion mission. The general aviation is non-commercial, just serving its own need between a headquarter 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. The policy under the new order is limited to airlines system, provided by state-owned enterprises together with private owned companies. All routes, frequencies, type of aircraft used, capacity and tariff shall be controlled and over-sighed rigidly by the MOC.

In the air transportation policy with the old and new order above-mentioned, all routes, frequencies, type of aircraft used, capacity of airlines and tariff available were rigidly regulated by the MOC. The routes regulated based on Ministerial Decree T.14/4/4-U,²⁶ determine GIA to serve trunk lines routes, whereas, those regulated based on Ministerial Decree S. 8/2/5-Phb²⁷ determine MNA to serve regional routes. There is a restriction of using jet aircraft. Only GIA was permitted to use jet aircraft, while private-owned companies only operated a propelled aircraft. This restriction was also applied for tariff. In the old order, there was no competition between airlines and it was rigidly regulated by the MOC. All tariffs provided by private-owned companies shall be below GIA's tariff, and especially first class GIA's tariff was permitted 15% higher than normal price²⁸ for airbus aircraft.

In the era reformation order in the regime of General Soesilo Bambang Yoeodyono, the policy of air transportation tended to relax. Private airlines, scheduled, non-scheduled airlines, air cargo, charter flight as well as general aviation increasing rapidly. Based on the Ministerial Decree Number KM 81 Year 2004,²⁹ the requirement to establish a new airlines company were very easy. They compete without paying attention to the consumer's 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 airlines are forced to compete rigidly. They reduce tariff under standard recommended by the government. Even they become predators. The existing war tariff indirectly kills other airlines companies, as well as sea transportation. The result of the relaxation policy is that the land transportation by bus from Jakarta to Padang and from Jakarta to Medan goes bankrupt, ships owned by state-owned enterprise operated by the Indonesian Sea Transportation (PELNI) is forced to be transferred to Indonesian Navy because commercially it is not feasible. If the land and sea transportation has been killed, it is quite possible to kill airlines companies and the airlines which have a marginal capital will become bankrupt. Finally, only the giant airlines can operate, and consumers will be victimized.³⁰

The government, though, realizes that the negative effect of the relaxation policy. For that reason, the Ministerial Decree Number KM 25 Year 2008³¹ requests that a new airline must have a minimum of five aircrafts. Two of them shall be owned and the rest can be leased for a scheduled airlines and a minimum of three aircraft for non-scheduled airlines. One unit aircraft out of three units of aircraft shall be owned and the rest can be leased to support the operation of airlines. The total number of aircraft requirements is necessary because in reality very often delay in operations is due to lack of aircraft, especially for scheduled air transportation within holiday. As a result of the relaxation policy, the MOC has cancelled 27 business permits of airlines because they do not fulfill the requirements.

The victims of relaxation policy are not limited to land, sea and railways transportation, but also to the airlines themselves. The old players with the new order regime such as Zamrud Aviation, Bouraq Indonesia Airlines, Mandala Airlines, Seulawah Air Services and Indonesian Air Transportation went bankrupt due to

²⁴ Martono and Amad Sudiro, *supra* note 12, Chapter One at 4.

²⁵ Ministerial Decree Concerning Requirement and Provisions of General Aviation With the Republic of Indonesia, Ministerial Decree No.31/U/p/1970 (2 February 1970).

²⁶ Ministerial Decree Concerning Garuda Indonesian Airways Permit From Jakarta to Medan, Palembang, Bitung, Telukbetung, Kutaradja and Bengkulu, Ministerial Decree No.T14/4/4-U :See also Martono and Amad Sudiro, *supra* note 12, Chapter One at 4.

²⁷ Ministerial Decree Concerning Routes for PN Merpati Nusantara Airlines, Ministerial Decree No. S 8/2/5-Phb; See also Martono and Amad Sudiro, *supra* note 12, Chapter One at 5.

²⁸ Ministerial Decree Concerning First Class Domestic Tariff for Airbus, Ministerial Decree No.KM 96/PR.303/Phb-83.

²⁹ Ministerial Decree Concerning Engagement of Air Transport, Ministerial Decree No.KM 81 Year 2004; See also Martono and Amad Sudiro, *supra* note 12, Chapter One at 5).

³⁰ Martono and Amad Sudiro, *supra* note 12, Chapter One at 5.

³¹ Ministerial Decree Concerning Air Transport Engagement, Ministerial Decree No.KM 81 Year 2008.

their inability to compete with the new airlines players. In the development of era reformation, the victims are not limited to the old airlines players, even the new airlines players are forced to go bankrupt because they cannot guarantee to survive their operation. They come without enough capital, professional human resources, victimize the consumers and go bankrupt as victims of the relaxation policy. The new airlines risk against accidents, one fatal aircraft accident and the airlines goes directly bankrupt.³²

The philosophy of the Civil Act 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 requirement of establishment of airlines companies in order to survive and compete in the national, regional and global levels. The requirement of airlines establishment consist of five pillars such as enough aircraft ownership, capital intensive, single majority shares, bank guarantee, professional human resources qualities as well quantities supported by aviation operation principles such as safety, security, fully regulated industry, compliances, law enforcement, high technology, and just culture.

The Civil Aviation Act of 2009 requests that the new airlines shall transfer bank guarantee, own aircraft enough to support license given by the MOC for scheduled and non-scheduled air services, charter flights. All of the requirements are intended to lay down a legal ground in order that the airlines are capable to compete with foreign airlines. The Civil Aviation Act of 2009 also provides for cooperation between airlines, national as well as foreign airlines. But in the case of cooperation between domestic airlines and foreign airlines or Indonesian legal entities, the majority shares shall be owned by Indonesian citizens or Indonesian legal entities.

2. Civil Aviation Act of 2009

The Indonesian civil aviation act of 2009, which came into force on 1st January 2009, has been very important for the development of Indonesian air transportation due to its extra-territorial provisions regulating sovereignty in airspace, aircraft production, nationality of aircraft, aircraft operation and airworthiness, security in aircraft, aircraft procurement, aircraft insurance, independency of accident investigations, establishment of aviation professionals, establishment of public services institute, scheduled as well as non-scheduled air transportation, general aviation, international air transportation, airline capital, single majority shares, ownership and possession of aircraft, aircraft leasing, tariffs, passenger accident insurance, transportation of disabled people, dangerous goods transportation, shipping agencies, liability of air carriers, air carrier liabilities insurance, aviation human resources in technical operations as well as air navigation, air navigation facilities, airport authority, airport services, aviation safety and security, single air traffic service provider, law enforcement, administrative sanctions, prevention of unlawful acts and other provisions which had not been regulated previously to support national and international air transportation development in Indonesia.³³

3. Regulation of Air Transportation

With regards to air transportation, the government of the ROI issued Act Number 1 Year 2009.³⁴ It regulates the promotions of air transport development and to ensure Indonesia's air transportation sector can support national development and is viable to compete and survive nationally, regionally and internationally. Its regulates a host of matters related to aviation, ranging from sovereignty in airspace, aircraft production, operation and airworthiness of aircraft to aviation security and safety, aircraft procurement, aviation insurance, aircraft accident investigation, and licensing of aviation professionals. The 2009 Act also regulates scheduled as well as non-scheduled air transport, aircraft ownership and aircraft leasing, liability of air carriers, air navigation facilities, airport authorities, and most pertinent to the current discussion, the tariffs that can be charged for the provision of air transport services and charges related to the use of aviation facilities.

With regards environmental, the CAC of 2009, provides that airport business entity or airport operation unit shall be obliged to maintain environmental contamination at the airport(s) and surrounding areas in accord with threshold limit and standard quality determined by the government. In order to maintain environmental contamination, the airport business entity or airport operation unit may limit the time and frequency of decline aircraft operation. Airport business entity or airport operation unit shall be obligated to implement environmental management and monitoring.

³² Martono and Amad Sudiro, *supra* note 12, Chapter One at 6.

³³ Martono and Amad Sudiro, *supra* note 12.

³⁴ Act Concerning Civil Aviation, (Act No.1 Year 2009). State Gazette of the Republic of Indonesia (ROI) Number 1 Year 2009, Supplement Gazette of the Republic of Indonesia Number 4956.

4. Liability of Air Carriers

The regulations of private air law such as liability with respect to passengers, cabin baggage, to delay, cargo and airport operator as follows:

a. Liability With Respect to Passengers

An air carrier is liable for compensation for death, permanent disability or injury of passengers caused by aircraft accident or incidents on board the aircraft and/or while getting on or getting off the aircraft. The liability of air carrier includes passage from the waiting room to embarkation of the aircraft and from debarkation of the aircraft to baggage claim area in terminal building. If the death or permanent disability or injury of passengers are incurred due to the intentional or fault of the carrier or any of its employees, the air carrier is liable for damages incurred and shall not be liable to use the provision of Law Number 1 Year 2009 to limit its liability. This provision is similar to Article 25 of the Warsaw Convention of 1929, which provides that the limit on liability does not apply if it is proved that damage resulted from an act or omission of the carrier, its servants or agents, done with intent to cause damage or recklessly and with knowledge that damage would probably result, provided that, in the case of such act or omission of a servant or agent, it is also proved that he was acting within the scope of his employment.³⁵

b. Liability With Respect to Cabin Baggage

No air carrier is liable for damages due to losses of damages to cabin baggage, except when the passengers can prove that the loss was caused by the action of the carrier or its employees, but any air carrier is liable for any loss suffered by any passenger due to loss, destruction, or damage of any check-in baggage as result of air transportation activities while the check-in baggage in under the supervision of the air carrier.³⁶

c. Liability With Respect to Delay

Air carrier is liable for losses incurred due to any delay of the transportation of passengers, baggage, or cargo, except when the air carrier can prove the delay was caused by weather or operational technical factors. In this connection, "weather factor" are heavy rain, lightning, storm, fog, smoke, less than minimum standard visibility, or above maximum standard wind speed disturbing aviation safety, whilst "operational technical factor" includes airports of origin and destination not being usable for aircraft operation, environmental disturbance approaching the airport or the runway such as cracks, floods or fires, a queue of aircraft taking off, landing or a queue for departure slot time at the airport, or delay in refueling. Operational technical factors excluded among others lateness of pilot and cabin crew, lateness of catering, lateness of ground handling, waiting for passengers, whether the newly check-in, transfers or connecting flights and un-readiness of aircraft.³⁷

d. Liability With Respect to Cargo

In accordance with Article 145 of Law Number 1 Year 2009, air carrier is liable for damages/losses suffered by any cargo shipper for loss, destruction, or damage of cargo caused by any air transportation activities while the cargo is under supervision of the air carrier. In addition, the air carrier is liable for loss incurred by any delay of cargo, except when the air carrier can prove that the delay was caused by weather or operational technical factor(s).³⁸

e. Liability With Respect to Airport Operators

There is a contractual relationship between air carrier and an airport operator. The airport operator provides aviation services and airport operator have the right have payment from air carrier and air carrier have the right to have services but air carrier obligated to provide some payment, for that reason if an air carrier with an activity at an airport is liable for indemnity against any damage to the airport building or facilities of the airport as a result of the air carriers' activities.³⁹ In this regard, if an airport operator suffers damage as a result of an aircraft accident at the airport, the air carrier will be under an obligation to remove the wrecked aircraft. If the air carrier does not remove the wrecked aircraft immediately, the airport operator may remove the wrecked aircraft and the expenditure will be borne by air carriers. In addition, if the airport facilities are damaged as a result of the carrier, the air carrier will be liable for the damage.⁴⁰

³⁵ Wu Jianduan, *supra* note 16 at 14.

³⁶ Martono and Amad Sudiro, *supra* note 12 at 61.

³⁷ *Ibid.*, at 62.

³⁸ Article 146; *Ibid.*

³⁹ Article 241 of Law Number 1 Year 2009 provides "Any Indonesian citizen individual and/or business entity undertaking any activity at the airport shall be liable for indemnity against any damage to the airport building and/or facilities as a result of the activity.

⁴⁰ Martono and Amad Sudiro, *supra* note at 62.

5. Disputes Settlement

In order to conduct implementation of dispute arrangement, known mediation, the national committee shall establish an aviation professional agency. Such aviation professional agency shall have execution of mediation between aviation service 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 have becoming 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 fields 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.⁴¹

No detail provisions regarding mediation, but for the purpose to implement dispute settlement could be borrowed the dispute arrangement provided by the Law Number 32 Year 2009. Such dispute arrangement shall be settled at court or outside the court. The option on how to settle a dispute shall be voluntarily decided by the parties concerned. A lawsuit filed at court shall be allowed if the option to settle the dispute out of the court has been declared unsuccessful by one or both parties in dispute.

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 dispute.⁴² The people shall 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 creation 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 be regulated under the government regulation.⁴³

6. Compensations

With regard to compensations, there are several type of compensations such as compensation with regard to passengers, cargo and goods, delay to passengers, third parties liabilities, parties entitled to received compensation and its evaluations as follows.

a. Compensation With Respect to the Passengers

The amount of compensation for each death, permanent, disability or injury of passengers will be governed by Ministerial Regulations Number PM 77 Year 2011.⁴⁴ According to Ministerial Regulation No.PM 77 Year 2011, compensation for each passenger death or disability is IDR 1,250,000,000.00 (one million two hundred and fifty thousand). This compensation given the air carrier is beyond the compensation paid by the insurance company as provided by the Government.⁴⁵ Any air carrier and any passenger may enter into a specific agreement to determine a higher amount of compensation than the amount provided under the above-mentioned Ministerial Regulation,⁴⁶ but may not enter into a specific agreement to determine amount of compensation than the amount provided under the Ministerial Regulation.

b. Compensation With Respect to Cargo and Goods

The amount of compensation for losses or damages or destruction of cargo is caused by the action of the carrier or its employees is determined at the maximum of actual loss suffered by the cargo shipper as further provided by a Ministerial Regulation.⁴⁷ According to the Ministerial Regulation No.PM 77 Year 2011, the amount of compensation for loss of cargo is IDR 100,000.00/kg (one hundred thousand)kg. In case of partial damages, the air carrier shall compensate the cargo shipper with IDR 50,000.00/kg (fifty thousand) kg.

The amount of compensation for losses or damages or destruction of goods suffered by a third party is governed by Ministerial Regulation No.PM 77 Year 2011.⁴⁸ According to the Ministerial Regulation No.PM 77 Year 2011 the amount for good or damages or destruction of goods suffered by a third party is a maximum of IDR 50,000,000,000.00 for an aircraft with a capacity of 30 (thirty) seats, a maximum IDR 175,000,000,000.00

⁴¹ Article 368 of the CAA of 2009

⁴² Article 85

⁴³ Article 86.

⁴⁴ Ministerial Regulation concerning Air Transportation Carrier Responsibilities.

⁴⁵ Act Concerning Civil Aviation, *supra* note 34 Article 165.

⁴⁶ *Ibid.*, Article 166.

⁴⁷ *ambil* judulnya PM 77 Year 2011.

⁴⁸ *ambil* judulnya PM 77 Year 2011.

for aircraft with more than 70 (seventy) seats and a maximum of IDR 250,000,000,000.00 for aircraft with a capacity more than 150 (one hundred and fifty) seats.⁴⁹

c. Compensation With Regard to Delay Passengers.

With regard to delay, according to the Ministerial Regulation Number PM 77 Year 2011, delay of passenger consist of flight delays, passengers being denied boarding and cancellation of flights. In the case of delay due to flight delay, the air carrier shall compensate passengers with IDR 300,000.00 (three hundred thousand) for a delay of more than four hours. If the air carrier offers re-routing to the passenger, the air carrier shall compensate each passenger with IDR 150,000.00 (one hundred and fifty thousand). In the case of delay caused by passengers being denied boarding, the air carrier shall give a refund to the passenger and provides additional payment, consumption, accommodation and other expenses if there is no flight to the destination. In the case of a delay due to cancellation of flight, the passenger shall be let know by the air carrier at least 7 (seven) calendar days before the date of the planned departure of the aircraft.⁵⁰

d. Compensation With Regard to Third Party.

The amount of compensation for each death, permanent, disability or injury of passengers is governed by the Ministerial Regulation No. PM 77 Year 2011.⁵¹ According to the Ministerial Regulation No. PM 77 Year 2011, compensation for each death of a passenger is IDR 500,000,000.00, the amount for each permanent disability is IDR 750,000,000.00, the compensation for each third party injury is IDR 100,000,000,000.00.⁵²

7. Time Limit of Claim

Law Number 1 Year 2009,⁵³ established time limit for claims for check-in baggage, delayed baggage, cargo and law suits. A claim for damages to any check-in baggage must be submitted at the time the baggage is picked-up by the passenger, whilst any claim or delay or baggage not being received must be submitted at the time the check-in baggage should have been picked-up by the passenger. Check-in baggage will be pronounced lost after 14 (fourteen) calendar days from the date of landing at the place of destination.

Any claim for lost check-in baggage shall be submitted after the above-mentioned the 14 (fourteen) calendar days from landing at the place of destination has passed. The right to file a law suit against the air carrier for damage suffered by the passenger or shipper will be declared expired after a period of 2 (two) years from the date when the cargo or baggage should have arrived at the place of destination.⁵⁴ With regard to liability of the air carrier Article 141 paragraph (1) provides the liability of the air carrier for death of passengers, permanent disability, or injury caused by incidents or accidents on board aircraft and/or while getting on (embarkation to the aircraft) or getting off the aircraft (debarcation of the aircraft).

The limit of compensation is governed by the Ministerial Regulation Number PM 77 Year 2011. The limit of compensation for each passenger who dies, is permanently disabled, injured, bodily, the loss, destruction or damage of check-in baggage; loss destruction or damages of cargo is determined by Ministerial Regulation. The amount of such compensation shall be evaluated at least once a year based upon the reasonable living standard of Indonesian people; sustainability of the air transportation company; cumulative inflation rate; income per capita; and average life expectancy⁵⁵

8. Authority of Civil Servant and Criminal Provision

a. Authority of Civil Servants

With regard to criminal investigation provided in Article 399 and 400. The designated Civil Government Officials (CGO) which duty and responsibility scoop is in aviation field shall be given specific authority as criminal investigation under the CAA of 2009. In carrying out their duty, such CGO shall be under the coordination and supervision of the police of the RO1.⁵⁶

The authority of the CGO shall be performed inspecting, searching and collecting information regarding criminals action in the field; receiving reports on any criminals action in aviation field; calling people for hearing and investigation as witness and/or suspect of criminals actions in the aviation field; arresting person(s) suspected of criminal action in the field of aviation; asking information and evidence from the

⁴⁹ Martono and Amad Sudiro, *supra* note 12 at 63).

⁵⁰ *Ibid.* at 64.

⁵¹ *ambil judulnya* PM 77 Year 2011.

⁵² Martono and Amad Sudiro, *supra* note 12 at 55.

⁵³ *Act Concerning Civil Aviation*, *supra* note 34.

⁵⁴ *Ibid.*, Article 177

⁵⁵ *Act Concerning Civil Aviation Act*, *supra* note 34, Article 172

⁵⁶ *Ibid.*, Article 399.

person(s) suspected of committing criminal action in aviation field; photographing and/or recording through electronic media of person(s), goods, aircraft, or anything that can be considered as evidence of any criminal action(s) occurred in aviation field; examining documents related to aviation criminals in aviation field; taking finger-prints and indentify of people; searching aircraft and certain places suspected of any criminal action in aviation field; confiscating goods strongly suspected as the goods used for committing criminal action in aviation field; isolating and securing goods and/or document(s) that may be taken as evidence related to any criminal action in aviation field; inviting expert witness as needed; suspending investigation process; and requesting assistance of the ROI Police or other agencies in handling criminal actions in aviation field.⁵⁷

b. Criminals Provisions

With regards to criminal provision found in Article 401 to 443 of the CAA. These article provide, among others, anybody operating aircraft entering any prohibited areas,⁵⁸ a restricted areas,⁵⁹ undertaking production and/or assembling of aircraft, aircraft engine, and/or propellers without any certificate of production,⁶⁰ operating an aircraft without any registration identity,⁶¹ giving signs or changing registration identity,⁶² operating an aircraft without fulfilling airworthiness standard,⁶³ operating an aircraft without possessing an aircraft operator certificate,⁶⁴ operating an aircraft without possessing aircraft operational certificate⁶⁵ shall be punished imprisonment ranking from at least 1 (one) year up to 8 (eight) years and/or imposed with fine ranking from a maximum at least IDR 500,000,000.00 (five hundred million rupiah) up to IDR 2,500,000,000.00 (two billion five hundred million rupiah), etc.

Part Two

Legal Aspect Of Environmental Pollutant

1. Legal Ground of Environmental

In Indonesia, environment regulated by Indonesian Constitution of 1945, Act Number 6 Year 1994,⁶⁶ Act Number 23 Year 1997,⁶⁷ Act Number 17 Year 2004,⁶⁸ Act Number 25 Year 2004,⁶⁹ Act Number 32 Year 2009,⁷⁰ and Presidential Regulation Number 46 Year 2008⁷¹ as follows:

a. Act No.6 Year 1994

Taking into account that global warming is a real threat to human welfare , Indonesia strongly supports the objective of the United Nations Framework Convention on Climate Change (UNFCCC) to prevent the anthropogenic gas concentration in the atmosphere exceeding a level that would endanger the existence of life on earth. For that reason, on 5 June 1992, Indonesia signed the UNFCC. For the purpose to implement the UNFCCC, the President of the ROI issued Act No.6 Year 1994.⁷² Act 6 of 1994 stipulates the right and obligation of the ROI. One of the obligations is to communicate actions taken to mitigate climate change. It is the reason, the Minister of Environmental and Forestry (MOEF) established the National Committee on Climate Change (NCCC) as described in the next description.

⁵⁷ *Ibid.*, Article 400

⁵⁸ *Ibid.*, Article 401

⁵⁹ *Ibid.*, Article 402

⁶⁰ *Ibid.*, Article 403

⁶¹ *Ibid.*, Article 404

⁶² *Ibid.*, Article 405

⁶³ *Ibid.*, Article 406

⁶⁴ *Ibid.*, Article 407

⁶⁵ *Ibid.*, Article 408

⁶⁶ Act Concerning Ratification of United Nations Framework Convention on Climate Change), State Gazette of the Republic of Indonesia Year 1994 Number 42, Supplement Gazette of the Republic of Indonesia Number 3557.

⁶⁷ Act Concerning Environment Management, (Act.No.23 Year 1997), State Gazette of the Republic of Indonesia Year 1997 Number 68, Supplement State Gazette of the Republic of Indonesia Number 3699.

⁶⁸ Act Concerning Ratification of Kyoto Protocol to the United Nations Framework Convention on Climate Change (Act No.17 Year 2004) State Gazette of the Republic of Indonesia Year 2004 Number 72, Supplement Gazette of the Republic of Indonesia Number 4403.

⁶⁹ Act Concerning National Development Planning System (Act No.25 Year 2004), State Gazette of the Republic of Indonesia Year 2004 Number 104, Supplement State Gazette of the Republic of Indonesia Number 4421.

⁷⁰ Act Concerning Protection and Management of Environment, (Act No.32 Year 2009), State Gazette of the Republic of Indonesia No.140 Year 2009 (3 October 2009).

⁷¹ Presidential Regulation Concerning National Council for Climate Change, (Pres.Reg.No.46 Year 2008) [4 July 2008]

⁷² Act Concerning (Undang-undang tentang Pengesahan Konvensi Kerangka Kerja PBB tentang Perubahan Iklim (Ratification of United Nations Framework Convention on Climate Change (Act.No.6 Year 1994) (June 5th, 1994), See also Dr Gunawan Djajaputra, Dr Ahmad Redi, and Dr K.Martono., *supra* note 5 at 3.

b. Act Number 23 Year 1997

Act No.23 Year 1997,⁷³ regulates environmental provisions. It provides, among others, general provision; basis, objectives and target; community, rights, obligation and the role; the authority of environmental management; preservation of environmental functions; environmental compliance requirement; environmental disputes settlement; investigation; criminal provision, transitional provisions and closing provisions.

With regard to climate change, found in Article 9 Act 23 of 1997. It provides that the government of the ROI determines national policies on environmental management. Such determination of policies, shall take into consideration of religious values, culture and traditional and living norms of the community, whilst the performing environmental management shall integrated manner by the government institution in accordance with their respective field of task and responsibility, the public and other agents of development and taking into consideration of the integrated planning. In addition, environmental management shall be performed in an integrated manner with spatial management, protection of non-biological natural resources, protection of artificial resources, conservation of biological natural resources and their ecosystems, cultural preservation, biodiversity and climate change (*emphasis added*) as well. For the implementation of such planning of the environmental is coordinated by the Ministry of Environment and Forestry (MOEF) of the ROI.

c. Act Number 17 Year 2004

The UNFCCC was adopted at the United Nations Headquarters, New York on the 9 May 1992. In accordance with Article 20 of the UNFCCC, it was open for signature at Rio de Janeiro from 4 to 14 June 1992, and thereafter at the United Nations Headquarters, New York, from 20 June 1992 to 19 June 1993. The Convention is subject to ratification, acceptance, approval or accession by States and by regional economic integration organizations. States and regional economic integration organizations that have not signed the Convention may accede to it at any time. The Convention entered into force on 21 March 1994, in accordance with Article 23 of the UNFCCC, that is on the ninetieth day after the date of deposit of the fiftieth instrument of ratification, acceptance, approval or accession. In this regards, Indonesia has ratified on 13 July 2004 and come into force on 3 December 2005, consequently, Indonesia has right and obligation to comply UNFCCC.⁷⁴

d. Act No.32 Year 2009

Act No.32 Year 2009,⁷⁵ amended Act No.23 Year 1997⁷⁶ and it provides, among others, general provision; principle, objective and scope; planning; utilization; control; maintenance; management of hazardous and toxic; substance and wastes; information system; duties and authorities of the government and local government; rights, responsibilities and prohibition; role of people; monitoring and administrative sanction; settlement of environmental disputes; investigation and evidence; criminal indictment; transition and closing provision.

e. Presidential Regulation Number 46 Year 2008.

The Presidential Regulation Number 46 Year 2008 regulates the establishment of the NCCC. In the consideration of the NCCC provides that the excessive increase in GHG emission let the global climate change,⁷⁷ which degrades the environment and harms of life, whilst the geographic position of Indonesia as an archipelagic State is prone to climate change that should be controlled on the principle that all are responsible in accordance with each country's social, economic and technological capacities. Based on the above-mentioned consideration, the President of the ROI established a NCCC to improve the coordination of control over the climate change and to strengthen the position of Indonesia in international forums on climate change.

The member of NCCC are ministry of environment, finance, home affairs, foreign affairs, energy and mineral resources, forestry, agriculture, industry, public works, national development planning/head of Bappenas, marine affairs and fisheries, transportation and health. The task of NCCC are, among others to formulate national policies, strategies, programs and activities to control climate change; to coordinate activities in controlling climate change including the activities of adaptation, mitigation, transfer of technology and funding; to formulate mechanism and procedure for carbon trade; to monitor and evaluating the implementation

⁷³ Act Concerning Environmental Management (Act No.23 Year 1997. State Gazette of the Republic of Indonesia No.68 Year 1997, Supplement State Gazette of the Republic of Indonesia No. 3699 (19 September 1997).

⁷⁴ http://unfccc.int/kyoto_protocol/status_of_ratification/items/2613.php (down load on 1 November 2016).

⁷⁵ Act Concerning Protection and Management of Environment, (Act No.32 Year 2009), State Gazette of the Republic of Indonesia No.140 Year 2009 (3 October 2009).

⁷⁶ Act Concerning Environment Management, (Act.No.23 Year 1997). State Gazette of the Republic of Indonesia Year 1997 Number 68, Supplement State Gazette of the Republic of Indonesia Number 3699, (19 September 1997).

⁷⁷ Climate Change is a change in the average condition of a climate and/or various climates from time to time as a result of human activities.

of policies on control of climate change; to strengthen the position of Indonesia and to encourage developed countries to be more responsible for controlling climate change.

In carrying out its task, the NCCC will be assisted by some working units composed of adaptation working unit, mitigation working unit, transfer-of-technology working unit, funding working unit, post-Kyoto 2012 working unit and forestry and land use conservation working unit. If deemed necessary, the executive director may establish working units other than the above-mentioned units. In addition, the membership of the working units shall be represented by relevant government agencies and experts.

2. Application of Liability

Strict of liability regime apply, for that reason party liable for a business and/or activity which gives rise to a large impact on the environment, which uses hazardous and toxic materials, and/or produces 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. 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 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. Where losses occur which have been caused by a third party, he third party is liable for paying compensation.

Every action which infringes the law in the form of environmental pollution and/or damage which gives rise to adverse impacts on other people 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 actions.⁷⁸

a. Disputes Settlement

The settlement of private law regime can be reached through the court or out of court known mediation based the voluntary choice of the parties in dispute, but out of court dispute settlement does not apply to criminal environmental actions.⁷⁹ If an out of court dispute settlement has already been chosen, legal action through the court can only be undertaken if such effort is declared to have not succeeded by one or several of the parties.⁸⁰ Out of court environmental dispute settlement is held to reach agreement on the form and size of compensation and/or on certain actions to ensure that negative impacts on the environment will not occur or be repeated.⁸¹ In out of court environmental dispute settlement as mediation, the services of the third party can be used, both which do not possess decision making authority and which possess decision making authority, to help resolve an environmental dispute.⁸² The Government and/or community can form environmental dispute settlement service providing agency which has a free and impartial disposition.⁸³

b. The Class Action of Lawsuit

The community has the right to bring a class action to court and/or report to law enforcers concerning various environmental problems which inflict losses on the life of the community. If it is known that the community suffers as a result of environmental pollution and/or damage to such an extent that it influences the basic life of the community, the governmental agency which is responsible in the environmental field can act in the community's interest.⁸⁴ In the scheme of implementing liability for environmental management consistent with a partnership principle, environmental organizations have the right to bring a legal action in the interest of environmental functions. The right to bring a legal action is limited to a demand for a right to carry out particular measures without the presence of a demand for compensation, except for expenses or real outlays. Environmental organizations have the right to bring a legal action if they meet the conditions such as they have the form of a legal body or foundation; in the articles of association of the environmental organization it is stated clearly that the goal of the founding of the organization concerned was in the interests of the preservation of environmental functions; activities consistent with its articles of association have already been carried out.⁸⁵

⁷⁸ Article 34

⁷⁹ Act Number 23 Year 1997

⁸⁰ *Ibid.*, Article 30.

⁸¹ *Ibid.*, Article 31.

⁸² *Ibid.*, Article 32.

⁸³ *Ibid.*, Article 33.

⁸⁴ *Ibid.*, Article 37

⁸⁵ *Ibid.*, Article 38

Procedures for the submission of legal actions in environmental problems by the community, refers to the applicable Civil Procedures Law.⁸⁶

c. Compensation

Every action which infringes the law in the form of environmental pollution and/or damage which gives rise to adverse impacts on other people or the environment, obliges the party liable for the business and/or activity to pay compensation and/or to carry out certain actions. 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 actions.

d. Time Limit of Claim

The limitation period for bringing legal actions to court follows the periods set out in the applicable Civil Procedures Law, and is calculated from the moment the victim knows of the existence of environmental pollution and/or damage. Stipulations on the limitation period for bringing legal actions do not apply to environmental pollution and/or damage which is caused by a business and/or activity which uses hazardous and toxic materials and/or produces hazardous and toxic waste.⁸⁷

3. Authority of Civil Servant, Criminal and Crime Against Humanity

a. Authority of Civil Servant

The Indonesia National Police Investigators (INPI), certain (CGO) associated with the government agency whose scope of functions and responsibility are in the environmental management field, are given special authority as investigators as Civil Investigator Officers (CIO) is provided in the laws appropriate with applicable Criminal Procedures Law (CPL). Such CIO have the authority to carry out examination of the correctness of a report or explanation in relation to a criminal action in the environmental area; to carry out examination of people or legal bodies who are suspected of criminal actions in the environmental field; to request an explanation and evidence from individuals or legal bodies in relation to a criminal incident in the environmental field; to carry out examination of account-keeping, notes and other documents which are relevant to a criminal action in the environmental field; to carry out examination at certain places which are suspected of containing evidence, accounts, notes, and other documents along with carrying out confiscation of materials resulting from infringements which can be used as evidence in criminal cases in the environmental field; to request experts assistance in the scheme of the implementation of the function of investigation of criminal actions in the environmental field. In addition, CIO shall inform INPI of the commencement and the result of their investigation and convey the findings of investigation to the Public Prosecutor (PP) through INPI. Investigation of environmental crimes in Indonesian waters and the Exclusive Economic Zone (EEZ) is carried out by investigators according to applicable laws and regulations.⁸⁸

b. Criminal Law Provisions

With regard to criminal law provision, there are at least six provisions regulate criminal law such as action in environmental pollution and/or damage or caused the death or serious injury of person,⁸⁹ any person who due to their negligence performs an action that causes environmental pollution and/or damage causes the death or serious injury of a person; any person who in violation of applicable legislation, intentionally releases or disposes of substances, energy and/or other components which are toxic or hazardous onto or into land, into the atmosphere or the surface of water, imports, exports, trades in, transports, stores such materials, operates a dangerous installation, whereas knowing or with good reason to suppose that the action concerned can give rise to environmental pollution and/or damage or endanger public health or the life of another person,⁹⁰ any person who in violation of applicable legislative provisions of the effective legislation, because of their carelessness performs an action.⁹¹

⁸⁶ *Ibid.*, Article 39.

⁸⁷ *Ibid.*, Article 36

⁸⁸ *Ibid.*, Article 40

⁸⁹ *Ibid.*, Article 42.

⁹⁰ *Ibid.*, 43

⁹¹ *Ibid.*, Article 44

The alleged criminal person penalized at least 3 (three) years and maximum of 15 (fifteen) years imprisonment and at least fine of Rp.500,000,000 (five hundred million rupiah) and maximum fine of Rp.750,000,000 (seven hundred and fifty million rupiah). If all a criminal action done by or in the name of a legal body, company, association, foundation, or other organization, criminal liability to a fine is increased by a third.

If a criminal action done by or in the name of a legal body, company, association, foundation or other organization, criminal charges are made and criminal sanctions along with procedural measures are imposed both against the legal body, company, association foundation or other organization concerned and against those who give the order to carry out the criminal action concerned or who act as leaders in the carrying out of it and against the two of them. If a criminal action done by or in the name of a legal body, company, association, foundation or other organization, and is done by persons, both based on work relations and based on other relations, who act in the sphere of a legal body, company, association, foundation or other organization, criminal charges are made and criminal sanctions imposed against those who give orders or act as leaders regardless whether the people concerned, both based on work relations and based on other relations, carry out the criminal action individually or with others.

If charges are made against a legal body, company, association, foundation or other organization, the summons to face court and submission of the warrants is directed to the management at their place of residence, or at the fixed place of work of the management. If charges are made against a legal body, company, association, foundation or other organization, which at the time of the bringing of the legal action is represented by someone who is not a manager, the judge can make an order so that the management face the court in person.

c. Crime Against Humanity

Indonesia is the world's largest producer of palm oil and forest fires are frequently intentionally lit to clear the land with the resulting haze an annual headache. On 27 October 2015 a prolonged dry season and the impact of EL Nino have made the situation far worse, with one estimate that daily emission from the forest fires have surpassed the average daily emission of the entire US economy. The forest fires have caused the air to turn a toxic sepia color in the worst hit areas of Sumatra and Kalimantan, where levels of the PSI have pushed toward 2,000. PSI above 300 is considered hazardous. Such high PSI above 300 is endangered wildlife such as orangutans have also been forced to flee the forests because of the forest fires.⁹² Haze has caused the schools in neighboring Singapore and Malaysia shut down, flights grounded and events cancelled. In addition, Indonesia's forest fires also threaten a third of world's wild orangutans. Sutopo Puro Nugroho, the spokesperson for the Meteorology, Climatology and Geophysics Agency (BMKG) acknowledged that for months 43 million people on the two islands have been inhaling toxic fumes. The number of unrecorded cases was likely much higher. In the worst affected parts, on Sumatra and Kalimantan, ten people have died from haze-related illnesses and more than 500,000 cases of acute respiratory tract infections.⁹³ This is a crime against humanity of extraordinary proportions.

4. Criminals Jurisprudence

The lawsuit lodged by the MOEF in the Palembang District Court (PDC) in South Sumatra sought US\$ 570 million in damages, however the PDC rejected US\$ 570 million lawsuit against PT Bumi Mekar Hijau (BMH), a supplier to Sinar Mas Group (SMG), due to the evidence collected by the MOEF failed to prove its alleged criminality in the burning of 20,000 hectares of its concession in Organ Komering Ilir, South Sumatra, in 2014. The evidence could not prove that the BMH was guilty, because the BMH still able to plant acacia trees on the concession after it was burned, which meant there must be no environmental damage.⁹⁴

According to the Forum for the Environment (Walhi) the reasoning behind the verdict was illogical and do not know what the judges were thinking by exonerating BMH. The reasoning is so misguided and shows that the judges actually does not understand to handle forest fires cases inside companies.⁹⁵ In addition, according to Rasio Ridho Sani, the Director General of Law Enforcement, MOEF, the fact that BMH was not able to keep its concession from getting burned should be enough to punish the company. The truth is that massive forest fires happen inside concessions to cut the costs of land clearing and to shorten the planting period. Furthermore, the judges failed to take into account of the air pollution caused by the fires. The

⁹² Indonesia's fires labeled a 'crime against humanity' as 500,000 suffer. <https://www.theguardian.com/world/2015/oct/26/indonesias-fires-crime-against-humanity-hundreds-of-thousands-suffer>. On 27 October 2015.

⁹³ *Ibid.*

⁹⁴ Hans Nicholas Jong, *Court finds no damages after forest fires*. <http://www.thejakartapost.com/news/2015/12/31/court-finds-no-damages-after-forest-fires.html>. Jakarta 31 December 2015

⁹⁵ *Ibid.*

environmental damage should not only be seen from the damage to land. The forest fires caused the air Pollution Standard Index (PSI) to reach a hazardous level and that is enough to prove that there was environmental damages.

According to the regulations, a concession permit holder should be held responsible to fires occurs inside its locations, whatever the cause, however, the panel of judges did not take into consideration the fact of the case. The fact is that fires did happen and the company did not have adequate facilities to prevent and manage the forest fires. According to Muhnur Satyahaprabu, Walhi Legal and Executive Policy Manager, the decision might have been different had the MOEF demanded that the trial be presided by judges holding environmental licenses. Such case requires good understanding of regulations related to the environment.

The decision sets a bad precedent for similar cases that have yet to go to trial, with the government still pursuing other companies allegedly responsible for forest fires that have eased on account of monsoon rains. The government has sanctioned 23 companies over the forest fires, with three having land-use or environmental permits revoked, 16 having permits suspended and four issued government force sanction. If the lawsuit filed by the MOEF against BMH in 2014 was rejected, it was bad precedence.⁹⁶

In Palangkaraya, Central Kalimantan, the burning peat-land is seen uncontrolled peat fires. It can spread for kilometers underground and by air, causing a deadly smog. In 2015, this resulted in one of the greatest environmental disasters of the 21st century. With regard to lawsuit, the Ministry of Environmental and Forestry (MOEF) wins in the case in court against firm responsible for forest burning. The district court of Palangkaraya orders fine of US\$ 35 million for Waringin Argo Jaya. In the fighting against deforestation and forest fires, the MOEF is on a winning streak, with the court's ruling in favor of the government in cases against companies.⁹⁷

In its latest victory, the South Jakarta District Court found palm oil company PT Waringin Argo Jaya (WAJ) guilty illegally starting of forest fire to clear land in Ogan Komering Ilir, South Sumatra. The Court ordered the company to pay IDR 466.5 billion and IDR 173.5 billion of which will serve as compensation for the burning of 1,626 hectares of land in its land concession and another IDR 293 billion to cover the rehabilitation cost for the burned land. The fine was lower than the MOEF's demand of IDR 754 billion, however the enforcing of penalties remains weak.⁹⁸

In August 2016, PT National Sago Prima (NSP) was found guilty of illegally starting forest fires in its concession area in Meranti Islands regency, Riau and the court order to pay IDR 1.07 trillion in fines. In the same month, PT Bumi Mekar Hijau (BMH) found guilty of illegal starting fires in its concession in 2014. The Palembang High Court in South Sumatra had ordered the firm of PT BMH to pay IDR 78.5 billion in damages, a fraction of the IDR 7.8 trillion fine sought by the MOEF when it first filed the civil law suit against BMH in 2015.⁹⁹

Raio Ridho Sani, the Director General of Law Enforcement, the MOEF, acknowledged that it was a challenge for the MOEF to enforce verdicts. It takes time for verdict to be enforced because the MOEF has to wait for the official record of the verdicts to be available, which can take months to more than a year. Moreover, there is no standard operating procedure for the enforcement of forest-related rulings. The MOEF is pushing for the Supreme Court to issue a regulation on its judges to help with the enforcement of penalties.¹⁰⁰

Part Three Conclusions And Recommendation

1. Conclusion

Air transport in Indonesia has a major role to play in connecting the Island to provide connectivity for national, regional, international destination considering that air transportation enables to transport goods, passengers, business travel as civil servant, leisure peoples, business peoples, tourism, employment, family visit, friends and finally increase to support the national economic development in Indonesia. In addition, air transportation also provides for rapid, efficient, affordable prices, and connections to support national logistic flow of goods including when necessary government missions for disaster relief. However, sustainable development of air transport and the aviation industry shall be consider and consistently keep an optimum

⁹⁶ Hans Nicholas Jong., Court finds no damages after forest fires.

<http://www.thejakartapost.com/news/2015/12/31/court-finds-no-damages-after-forest-fires.html>. Jakarta 31 December 2015

⁹⁷ Han Nicholas Jong., Government wins in Forest Fire Case. <http://www.thejakartapost.com/news/2017/02/09/government-wins-in-forest-fire-case.html> 9 The Jakarta Post, February 2917.

⁹⁸ Han Nicholas Jong., Government wins in Forest Fire Case. <http://www.thejakartapost.com/news/2017/02/09/government-wins-in-forest-fire-case.html> 9 The Jakarta Post, February 2917.

⁹⁹ *Ibid.*

¹⁰⁰ *Ibid.*

balance between economic, social and global environmental factors. The development of air transportation could not be separately with the environmental development.

2. Recommendation

Taking into account the role of air transportation in Indonesia and the development of global warming, it is worthwhile to recommend that Indonesia shall undertaken measures to enhance fighting the increase of global warming and prevent the climate change especially related to forest fire in Indonesia.

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