

## **Laws and Regulations of Drugs, Alcohol and Narcotics Related to Aviation Activities in Indonesia Asean and Others Countries**

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**ABSTRACT:** *This article purported to describe drug and alcohol regulation provided by ICAO, IATA related airport concession and lounges, boarding, passenger, behavior of passengers, Tokyo Convention of 1963, the Montreal Protocol of 2014; drug and alcohol regulations in Brunei Darusalam such as misuse of drug act and its application; in Malaysia such as act no.366 (revised-1989), powers of enforcement officer, examination of premises, aviation personnel violation of psychotropic; in Singapore such as policies of drugs consumption, misuse of drug act, the law enforcement, drug and air transportation, psychological test, penalty of drugs trafficking, strict penalty for drug possession, drug use; Thailand; The Philippine such as war on drug, the strict penalty for drug possession and use, aviation employees; others' countries such as Australia, Portugal and the USA includes cabin crew's training related to drug, testing of aviation personnel; laws and regulations applicable in Indonesia such as legal ground of drug and alcohol, narcotics and civil aviation act, drug testing program and for commercial pilot, strict penalty, health check before flying, license revocation, air crew drug's abuse, refusal to submit to an alcohol test, pilot license and drug or alcohol, penalty and conclusion and recommendation.*

**Keywords:** *Indonesia, laws and regulations, drug, penalty*

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### **I. INTRODUCTION**

A pilot of Airbus A-320, Capt. Tekad Purna, was suspected of being under the influence of drugs or alcohol after made a garble announcement just before the plane as due to take off from Juanda International Airport in Surabaya, East Java to Soekarno-Hatta International Airport in Cengkareng, Banten. In this connection, Budi Karya Sumadi, the Ministry of Transport (MOT) intends to enhance its supervision over airline and evaluate existing rules as well as enforce the law more strongly to ensure passengers safety.

According to Budi Karya Sumadi, Capt. Tekad Purna, the pilot of Airbus A-320 had violated aviation safety procedures for its cockpit crews, including health checks and pre-departure briefings. As a result of this occurrence, there are two executives of the air carrier, namely president director Albert Burhan and operational director Hadinoto Soedigno, announced their resignations although the resignations still await approval from its board of commissioners as well as the board of directors of its parent company, national flag carrier Garuda Indonesia.<sup>4</sup> Scandals involving drug and alcohol abuse among cabin crew have lingered in the country<sup>5</sup>, among the latest incidents was a raid on a drug party in Tangerang, Banten. The drugs and alcohol abuse also occurs in Australia and other countries such as New Zealand. High profile incidents involving substance use have occurred in Australia and New Zealand, most notably the accident that killed nine people on the Franz Josef Glacier in 1993.<sup>6</sup> This article purported to describe the laws and regulations of drugs, alcohol and narcotics related to aviation activities provided by the International Civil Aviation Organization (ICAO), International Air Transport Association (IATA) and ASEAN countries such as Brunei Darusalam, Malaysia, Singapore, Thailand, and The Philippines, plus other countries such as Australia, Portugal and the United States of America, Indonesia, finally conclusions and recommendation as follows.

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<sup>4</sup> Nyoman Budhiana., Transportation Ministry vows to improve safety control over airlines. Jakarta Post 31 December 2016.

<sup>5</sup> In 2011, authorities recorded five drug arrests involving Lion Air pilots and crew members.

<sup>6</sup> <https://www.casa.gov.au/standard-page/testing-safety-sensitive-personnel-alcohol-and-other-drugs-project-ss-0601>.

## **INTERNATIONAL DRUGS AND NARCOTICS REGULATION**

### **1. International Civil Aviation Organization.**

The Chicago Convention of 1944 (the CC of 1944),<sup>7</sup> as an international civil aviation's constitution has quasi-legislative's authority to set up standard and recommended practices (SARPs) such as Annexes to the CC of 1944. These standards are binding upon member States that fail to notify the ICAO of the differences in their domestic law. Every member's State of the ICAO requires to keep its regulations uniform, to the greatest extent possible with the SARPs, and cooperate in achieving the highest practicable degree of uniformity in regulations, standards, procedures, and organization in relation to aircraft, personnel, airways and auxiliary services in all matters in which uniformity will facilitate and improve air navigation, therefore, ICAO's 188 member States<sup>8</sup> have an affirmative obligation to conform their domestic laws, rules, and regulations to the international leveling standards adopted by ICAO.

The ICAO's member States are required to promulgate domestic laws and regulations to certify airmen, aircraft, and aircraft operators as worthy and competent to carry out safe operations in international aviation.<sup>9</sup> The legal regime effectively assumes that States are in compliance with these safety mandates. This assumption of universal compliance goes further with the CC of 1944 requirements that an airman or operator certificate, or certificate of or airworthiness, issued by one contracting State shall be recognized as valid by all others. In addition, the member's State of ICAO are obliged to recognized the validity of certificate of airworthiness and personnel licenses issued by the State in which the aircraft is registered<sup>10</sup> so long as the standards under which such certificate or licenses were rendered are at least as stringent as those established under the CC of 1944.<sup>11</sup>

For the purpose of implementation of the above-mentioned provisions, the ICAO Council is authorized to adopt international SARPs on issues affecting the safety and efficiency of air navigation and, for convenience, designate them as Annexes to the CC of 1944.<sup>12</sup> Such SARP's become effective as Annexes to the CC of 1944 not less than three months after approval provided by a two-thirds vote of the Council, unless during that period they are disapproved by a majority of the members of the ICAO General Assembly.

With regards to drugs and alcohol regulations, the ICAO Standards provides that States ensure their safety critical personnel are not under influence of alcohol or drugs, while Annex 1 of the CC of 1944 provides license holders shall not exercise the privileges of the licenses and related ratings while under the influence of any psychoactive substance which might render them unable to safety and properly exercise those privileges. Psychoactive substance includes drugs and alcohol but excludes coffee and tobacco, whilst license holders "shall not engage in any problematic use of substances. For the purpose to implement the ICAO's SARP's, Indonesia issued Civil Aviation Act of 2009.<sup>13</sup>

## **II. International Air Transport Association (IATA)**

### **a. Introduction**

The safety, security and comfort of passengers and crew are of the highest priority to airlines. This provision consistent with the aims and objective of the ICAO to ensure and the safe and orderly growth of international civil aviation throughout the world.<sup>14</sup> For that reason, airlines promote the safe and responsible service of alcohol on board their aircraft and comply with all applicable national as well international regulations. On airlines where alcohol is available for purchase and/or service, the crewmembers monitor its consumption and mitigate any behaviors of concern. Passengers and crew want to get their destination safely, on time, comfortably and without incident. Airlines and specifically the cabin crew do not want to deal with a

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<sup>7</sup> *Convention on International Civil Aviation*, signed at Chicago on 7 December 1944; For the text see Michael Milde., *Annals of Air and Space Law*, Vol. XVIII-I (1993). Toronto : The Carswell, Company Ltd, 1993.

<sup>8</sup> Dempsey. P.S., *Annals of Air and Space Law*, Vol. XXX-I-2005. Toronto : The Carswell Company Ltd. 2005 at 51.

<sup>9</sup> Article 44(a) of the CC of 1944.

<sup>10</sup> Articles 19 and 33 of the CC of 1944.

<sup>11</sup> Article 33 of the CC of 1944.

<sup>12</sup> There are eighteen such as Annex 1 Concerning Personnel Licensing; Annex 2 concerning Rules of the Air; Annex 3 concerning Meteorological Service for International Air Navigation; Annex 4 concerning Aeronautical Charts; Annex 5 concerning Units of Measurement to be Used in Air and Ground Operations; Annex 6 concerning Operation of Aircraft; Annex 7 concerning Aircraft Nationality and Registration Marks; Annex 8 concerning Airworthiness of Aircraft; Annex 9 concerning Facilitation; Annex 10 concerning Aeronautical Telecommunications; Annex 11 concerning Air Traffic Services; Annex 12 concerning Search and Rescue; Annex 13 concerning Aircraft Accident and Incident Investigation; Annex 14 concerning Aerodromes; Annex 15 concerning Aeronautical Information Services; Annex 16 concerning Environmental Protection; Annex 17 concerning Security: Safeguarding International Civil Aviation Against Acts of Unlawful Interference; Annex 18 concerning The Safe Transport of Dangerous Goods by Air.

<sup>13</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>14</sup> Article 44 (a) of the Chicago Convention of 1944; See Dempsey P.S., (2005 Vol. XXX-I, Ann. of Air & Sp.L.32.

passenger who has become intoxicated and disruptive. These types of incidents can be very difficult and at times even traumatic for both passengers and crew.<sup>15</sup>

As is similar in other industries, there are many considerations and competitive aspects that are factors within the aviation industry. Airlines are committed to the safety and comfort of their customers, and the large volume of passengers carried smoothly each year is a testament to the airlines industry's shared objective of providing a safe, secure and valued service to a diverse customer base. When a passenger chooses to order and consume an alcoholic beverage on board, they usually enjoy their choice beverage responsibly and without incident. IATA acknowledges that the topic of the abuse of alcohol consumption on board and the resulting intoxication is related to a minority of passengers who choose to consume excessive amounts of alcohol prior to boarding or on board, and/or behave in an unruly manner during the flight. However, the overconsumption of drugs or alcohol has been identified as one of a number of triggers to unruly passenger behavior. With this stated, it is important to note that there are other triggers to unruly passenger behaviors on board which have no relation to alcohol consumption.<sup>16</sup>

Depending on the airlines service policy, which often varies by the class of services, the destination or route flown, whether the service is offered on a short haul or long haul flight, the service of alcohol beverages is provided on board as either a complimentary or for sale service. This service is relatively controllable by cabin crew. However, this can be difficult on large transport category aircraft with multi crew members, cabin or decks.<sup>17</sup>

#### **b. Airport Concessions and Lounges**

Passengers may consume alcohol before boarding their flights, either before arriving at the airport or at the airport itself while waiting for departure. It is important for airport concessions and lounges that offer alcohol beverages to be responsible in their service as passengers will ultimately be boarding a flight. It is important to be aware that it takes the Blood Alcohol Content (BAC) from thirty to sixty minutes to reach their highest peak and maximum effect. Therefore, within that timeframe, ground staff or cabin crew may not yet be fully aware of the effects of alcohol on a passenger.<sup>18</sup>

#### **c. Aircraft Boarding's Passengers**

Cabin crew have no control over the condition of a passenger's level of intoxication at time of the boarding of the aircraft other than to assess a passenger's condition at the point in time. Communication between the ground staff and cabin crew in these cases is of utmost importance. In obvious cases of concern, the ground staff and the crew, in consultation with the pilot-in-command, will assess the passenger's ability to travel. By carefully assessing a passenger's overall behavior, including any signs or symptoms, the ground staff and cabin crew can determine whether acceptance for carriage on board is the recommended decision or not.<sup>19</sup>

Key aspects to mitigating or managing incidents are a robust, well-communicated airlines policy and related procedures for unruly passenger prevention and management (this includes intoxicated passengers) and the airlines staff knowing they are supported on the front line by their airlines management. It is advisable for airlines to authorize their ground staff and crew members to assess passengers of concern and when deemed necessary, to deny boarding to passengers where there are reasonable grounds to believe that their faculties are impaired by alcohol to an extent that will present a hazard to the safety of the aircraft, to persons on board (both crew or passengers) or to the passenger themselves. Each situation will need to be assessed on an individual case-by-case basis and as per the airline's procedures.<sup>20</sup> If the passenger is deemed appropriate to travel, ground staff and cabin crew members should communicate this information to each other so that cabin crew members may be aware of any potential passengers of concern in order to monitor them throughout the flight. It may also be determined that no or limited service of drugs or alcohol beverages to these passengers is the most prudent plan of action in mitigating a possible worsening situation.

#### **d. Unruly Passenger Behavior**

##### **1). Passengers**

Unruly passenger behavior on board aircraft continues to be a significant issue of concern for airlines. Each incident marks an unacceptable inconvenience to passengers and crew and compromises safety and security. IATA is working with its member airlines to defend the rights of their passengers and crew, who are entitled to enjoy their journeys free from disruptive or other unacceptable behavior. For that reason, IATA has

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<sup>15</sup>.IATA., *Guidance on the Safe Service of Alcohol on Board*, 1st edition, 70 Years, at 1.

<sup>16</sup>.*Ibid.*

<sup>17</sup>.*Ibid.*, at 4

<sup>18</sup>.*Ibid.*

<sup>19</sup>.*Ibid.*

<sup>20</sup>.*Ibid.*

developed a comprehensive range of measures to assist airlines with this issue. In addition, IATA has also been working on other aspects, including strengthening national as well as international air law so that it acts as an effective deterrent to unruly passenger behavior. Five years of intense work by the ICAO adopted the Montreal Protocol to amend the Tokyo Convention of 1963.<sup>21</sup> Finally, at the 70<sup>th</sup> IATA Annual General Meeting in June 2014, IATA's member airlines' unanimously endorsed a set of core principles for dealing with unruly passengers.

## **2). Tokyo Convention of 1963**

Unruly behavior or acts by passengers, due to alcohol intoxication or otherwise, is against international air law based on the Tokyo Convention of 1963. The Tokyo Convention of 1963 states that :”.... *Acts which, whether or not they are offences, may or do jeopardize the safety of the aircraft or of persons or property therein or which jeopardize good order and discipline on board...*” (**emphasize added**). Among other things, the Tokyo Convention of 1963 authorizes the pilot-in-command to disembark or deliver an unruly person to law enforcement.<sup>22</sup>

Furthermore, Article 10 of the Tokyo Convention of 1963 grants flight crew and cabin crew members immunity from subsequent legal proceedings for actions taken against an unruly passenger :...”*for action taken in accordance with the Convention, neither the aircraft commander, any other member of the crew, any passenger, the owner or the operator of the aircraft, nor the person on whose behalf the flight was performed shall be held responsible in any proceeding on account of the treatment undergone by the person against whom the action were taken....*”<sup>23</sup>

### **III. The Montreal Protocol of 2014**

The issues of unruly passengers continue to be a concern to the airline industry. It is the reason, ICAO and Member's States reviewed the Tokyo Convention of 1963 as applicable to the issue of unruly passengers in 2014. The Tokyo Convention of 1963 was updated and amended by Montreal Protocol of 2014 in order States increased legal powers to pursue unruly passengers. It also clarifies certain behavior which should be considered, at a minimum, as an offence, and encourages States to take appropriate criminals or other legal proceedings. These include addressing physical assault or a threat to commit such assault against a crew member and refusal to follow a lawful instruction given by or on behalf the aircraft commander.<sup>24</sup>

#### **Part Three**

#### **ASEAN AND OTHERS COUNTRIES**

##### **1. Brunei Darusalam**

##### **a. The Misuse of Drugs Act (Revised Edition 2001)**

In Brunei Darusalam, drug regulated in Laws of Brunei (Revised Edition 2001, Chapter 27) regarding Misuse of Drugs. Such laws provide, among other thing, preliminary provisions, offences involving controlled drugs; evidence, enforcement and punishment, general provision. With regards criminal act, provides in Part II includes trafficking in controlled drug, possession for purpose of trafficking, manufacture of controlled drug, importation and exportation of controlled drug, possession and consumption of controlled drug, possession of pipes, utensils etc., cultivation of cannabis, opium and coca plants; responsibilities of owners and tenants etc.; abetments and attempts punishable as offences; offences by corporations.<sup>25</sup>

##### **b. Applicability**

Article 3 provides that, except as authorized by this Act or the regulations made thereunder, it shall be an offence for a person [*includes civil aviation personnel (emphasize added)*], on his own behalf or on behalf of any other person [*includes civil aviation personnel (emphasize added)*], whether or not such other person is in Brunei Darusalam to traffic in controlled drug; offer to traffic in a controlled drug; or do or offer to do any act preparatory to or for the purpose of trafficking in a controlled drug. If any controlled drug is found in any

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<sup>21</sup>.*Convention on Offences and Certain Other Act Committed on Board Aircraft*, signed at Tokyo on 14 September 1963; For text see Dempsey P.S., (2005) Vol. XXX-Part I, Ann. of Air & Sp. L. at 185-193; Michael Milde., (1993) Vol. XVIII-Part II, Ann. of Air & Sp. L. at 169-187.

<sup>22</sup>.Article 6 provides the aircraft commander may, when he has reasonable grounds to believe that a person has committed. Or is about to commit, on board aircraft, an offence or an offences against penal law or act which, whether or not they are offences, may or do jeopardize the safety of the aircraft or of persons or property therein or which jeopardize good order and discipline on board, impose upon such person reasonable measures including restraint which are necessary to protect the safety of the aircraft, or of persons or property therein or to maintain good order and discipline on board, or to enable him to deliver such person to competent authorities or to disembark him in accordance with the Tokyo Convention of 1963.

<sup>23</sup>.IATA, *supra* note 15, at 14.

<sup>24</sup>.*Ibid.*, at 15.

<sup>25</sup>.Laws of Brunei (Revised Edition 2001, Chapter 27 *regarding Misuse of Drugs*).

aircraft it shall be presumed, until the contrary is proved, that such drug has been imported in such ship or aircraft with the knowledge of the master or the captain thereof.

## **2. Malaysia**

### **a. Act No.366 (Revised – 1989)**

The Malaysian Act No.366 (Revised-1989),<sup>26</sup> provides among other thing, establishment of poison, and proceeding board; powers of board to regulate proceedings; power of minister to amend poisons list; application; control of imports, export, manufacture, sale by wholesale or retail of psychotropic; prohibition of sale to persons; restriction on the sale of poison generally; supply of poisons for the purpose of treatment; group of poisons; prescription; licenses and it register; sanction to prosecute and conduct of prosecutions; and powers of investigation, examination and entry into premises as follows :

### **b. Powers of Drug Enforcement Officer**

The licensing officer may authorize in writing any registered pharmacist in the public service to exercise the powers of a Drug Enforcement Officer (DEO) and may investigate the commission of an offence. DEO making an investigation may examine orally any person [*including aviation personnel, (emphasize added)*] supposed to be acquainted with the fact and circumstances of the case. The person concerned shall be bound to answer all questions relating to the case put to him by the DEO except that he may refuse to answer any question if the officer fails or refuses on demand to produce to him the authorization in writing given by the Licensing Officer (LO) and that such person may refuse to answer any question the answer to which would have a tendency to expose him to a criminal charge or penalty or forfeiture.

### **c. Examination of Premises**

When any DEO, any police not below the rank of Inspector or any Senior Customs Officer (SCO) has a reasonable cause to believe that an offence made thereunder has been or is being committed in any premises or in connection with any business carried on in ay premises, he may at all reasonable time by himself or by some other person accompanying him and acting under his instruction and in his presence enter, search and examine such premises and may inspect, remove and detain any substance reasonably believe to be or to contain a poison, book, document, equipment, instrument, material or any other article found therein which in his opinion may furnish evidence of the commission of an offence made thereunder and may, in case of obstruction or resistance, break open any outer or inner door of such premises and any cupboard, chest, trunk, package or other receptacle and by force if necessary, enter upon any part of such premises and remove any obstruction to such entry, search and seizure and detain any person found in such premises until the search has been completed.<sup>27</sup>

Any police officer not below the rank of Inspector or any SCO may, in the exercise of his powers arrest any person, being in such premises, in whose possession such article may be found or who is reasonably suspected by such officer to have concealed or deposited such article therein.<sup>28</sup> Any person who obstructs or impedes a DEO in the performance of his duties made thereunder shall be guilty of an offence and shall be liable to a fine not exceeding three thousand ringgit or to imprisonment for a term not exceeding one year or to both.<sup>29</sup>

### **d. Aviation Personnel Violation of Psychotropic**

No person [*include aviation personnel (emphasize added)*] shall import, export, manufacture, compound, mix, dispense, sell, supply, administer, possess or use any psychotropic substance otherwise than in accordance with any applicable regulations. In any prosecution for an offence, any person [*including aviation personnel (emphasize added)*] who is found to have in his custody or under his control any psychotropic substance shall be deemed to have possession of the substance and to have known the nature of the substance until he proves to the contrary. Any person [*including aviation personnel, (emphasize added)*] who contravenes substance or any regulations made relating to psychotropic substance shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding then thousand ringgit or to imprisonment for a term not exceeding four years or both .

### **e. Pilot's Violation of Drugs' Regulations**

The 30-year-old commercial pilot of a Malaysian Airline was charged with two counts of importing a commercial quantity of a border controlled drug, one allegedly relating to drug deal in a Sydney hotel in last August. Customs officers searched the man's bag after the pilot disembark at Sydney airport and allegedly uncover six packages containing a "white crystalline substance," which test contained five kilograms of methamphetamine charged.<sup>30</sup>

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<sup>26</sup>. Act Concerning Poisons of Act 1952 (Revised – 1989), Act. No.366.

<sup>27</sup>.Section 31(8) of Act No.366.

<sup>28</sup>. Section 31(9) of Act No.366.

<sup>29</sup>.Section 31(10) of Act No.366.

<sup>30</sup>.Amy Dale., *Malaysian Airlines pilot arrested with 5kg of methamphetamine*. <http://www.airliners.net/forum/viewtopic.php?t=531777>  
Daily Telegraph. JANUARY 12, 20127.

**f. Strong Penalty**

Malaysia has as equally strict drug laws as Singapore and Indonesia. Under Malaysia's Dangerous Drugs Act, the government of Malaysia can execute any person found trafficking drugs or in possession of drugs Act, and death sentences for courier are often imposed. Malaysia is a much larger country than Singapore and has a considerable ocean territory. With Malaysia sharing the only land border with Singapore, it means that the majority of drugs in Singapore come through Malaysia. Having such strict laws does not seem to stop drug trafficking altogether, with 18 Malaysians caught trying to smuggle drug into the country in March 2016. The 30-year-old had flown a passenger flight from Malaysia with five kilograms of the drug ice in his suitcase. The criminal maximum penalty in Malaysia for the offences is life imprisonment and/or an AS\$ 25,000 fine and 25 years imprisonment and or a S550,000 fine respectively.<sup>31</sup> Since Thailand also carries the death penalty for possession of heroin, it is irrelevant which side of the border the men were caught, although Thailand does not execute as many people as Malaysia for drug offence.

**g. The Strict Penalty for Drug Possession and Drug Use**

Malaysia has equally strict drug laws as Singapore. Under Malaysia's Dangerous Drugs Act, the government of Malaysia can execute any person found trafficking drugs or in possession of drugs, and death sentence for couriers are often impose. Malaysia is a much larger country than Singapore and has a considerable ocean territory. With Malaysia sharing the only land border with Singapore, this means that the majority of drug in Singapore come through Malaysia. Having such strict laws does not seem to stop drug trafficking altogether, with 18 Malaysians caught trying to smuggle drugs into the country as recently as March 2016. Since Thailand also carries the death penalty for possession of heroin, it is irrelevant which side of the border the men were caught, although Thailand does not execute as many people as Malaysia for drug offences.<sup>32</sup>

**3. Singapore**

**a. Policies of Drugs and Alcohol Consumption**

All Singapore carriers already have strict policies and procedures for drugs and alcohol consumption and zero-tolerance policies for drug and alcohol abuse. They also have aptitude and psychological testing as part of their selection process for pilots. Most of airlines have peer support groups, the airline has a comprehensive psychological support framework which involves trained peer counselors, an aviation psychiatrist and psychologist, and the Civil Aviation Medical Board (CAMB). This is to ensure flight safety and the mental well-being of pilots. This support structure has been in place for the last 10 years and, in that time, pilots have been helped. The Budget carriers Scoot-Tiger Air and Jet-star Asia also provide similar support for their pilots.

In addition, the Civil Aviation Authority of Singapore (CAAS) recommends that all local carriers must have at least two people in the cockpit at all times is being reviewed. This recommendation follows feedback from airlines and industry studies that have found few benefits in the practice. The CAAS is working with Singapore carriers to review the recommendation, though not compulsory, it has been adopted by all carriers in Singapore, including Singapore Airlines (SIA). CAAS was one of several countries to introduce the policy after a German-Wing co-pilot-later discovered to have suffered from severe depression, locked his captain out of the cockpit and crashed an Airbus 320. The purpose of two-person policy in the cockpit, aims to enhance safety by ensuring that a pilot is never left alone, for example, if the other pilot has to step out.

In the short-haul flights typically have just two pilots on board, and on longer flights the third pilot is usually taking a break when the other two are flying, it is usually a cabin crew member who ends up in the cockpit when one pilot walks out. With no, or perhaps little, knowledge of flight operations, there is not much the cabin crew member can do if the pilot has malicious intentions. The European Aviation Safety Agency (EASA) has suggested that there are better ways to prevent a repeat of the crash in the French Alps. The key is for airlines to focus on pilots' mental health, and to have in place processes and procedures to ensure troubled pilots are detected early and given the necessary support.

**b. The Misuse of Drug Act**

In Singapore, drugs and alcohol stipulates in the Misuse of Drugs Act is classified into three categories such as Class A, B and C. Section 44 of the Misuse of Drugs provides that Minister may, by an order published in the Gazette, add, remove, or transfer drug among the classes. The statute's penal provisions are draconian by most nations' standard, providing for long terms of imprisonment, canning, and capital punishment. The law creates a presumption of trafficking for certain threshold amount e.g. 30 grams of cannabis.

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31.<http://www.abc.net.au/news/2012-01-1...arged-over-importing-drugs/3769982>

32.*Drug Laws in Singapore versus Southeast Asia: Who's Got It Right?* <https://www.thecabinsingapore.com.sg/drug-laws-in-singapore-and-southeast-asia/>. May 19, 2016.

**c. The Law Enforcement**

The Misuse of drugs Act also creates a presumption that a person possesses drugs if anyone possesses the keys to a premises containing the drugs, and that any person found in or escaping from any place or premises which is proved or presumed to be used for the purpose of smoking or administering a controlled drug shall, until the contrary is proved, be presumed to have been smoking or administering a controlled drug in the company of drug users. In addition, the law also allows officers to search premises and individuals, without a search warrant, if anyone reasonably suspects that there is to be found a controlled drug or article liable to seizure.<sup>33</sup>

**d. Drug Related to Air Transportation**

The possession, consumption, manufacturing, import, export, or trafficking of these and other controlled drugs in *any* amount are illegal. Persons caught with less than the Mandatory Death Penalty amounts of these controlled substances face penalties ranging from caning[9] (up to 24 strokes) to life in prison. Pursuant to a law change in 2009, cannabis (marijuana) and marijuana mixtures (diluted with other substances) are treated the same under Singapore law—the presumed *intent* is trafficking. In this regards, the Singapore embarkation card contains a warning to visitors about the death penalty for drug trafficking. Warning signs can be found at the Johor-Singapore Causeway and other border entries. Singapore Airlines and Jet-star Asia Airways also announces similar warnings to the passengers during flights to the country.<sup>34</sup>

**e. Pilot Psychological Tests**

The European safety authority has made some recommendations, which it hopes will be implemented globally to the ICAO. Among the recommendations, the EASA is pushing for mandatory drug and alcohol testing for all new pilots. It also wants countries to ensure that pilots undergo compulsory aptitude and psychological tests. Peer support groups for pilots should also be compulsory. Singapore is aware of the recommendations, and a CAAS spokesman said that while there are currently no regulations for mandatory drug and alcohol testing, aptitude and psychological testing, and peer support groups, the CAAS will take into consideration the recommendations.

**f. Penalty of Drugs Trafficking and Substance**

Southeast Asia such as Indonesia, Malaysia and Singapore has its problem with drug trafficking and substance abuse, and each country in the region has been tackling this issue differently. The most ideal way to combat drugs or does any one of its neighbors is strict drug law of Singapore,<sup>35</sup> taking into account that Singapore's drug laws are known globally for delivering some of the strictest penalties for drug possession and drug use a resulting Singapore has some of the lowest rates for drug use among its citizens.

The human rights groups have long-voice concern that the death penalty that the country doles out is too strict, for that reason in 2012, the government altered the laws slightly to offer life in prison sentences rather than the death penalty to some drug couriers, depending on the situation. However, Singapore's Misuse of Drug Act,<sup>36</sup> still mandates a death sentence for anyone found in possession of over 30g of cocaine, 500g of cannabis or 250g of methamphetamine. Those accused of such offences until the contrary is proved, are to be presumed to have had that drug in his possession. Mandatory death penalty by hanging for drug kingpins or distributors remains.<sup>37</sup> Taking into consideration that it is strict laws that make Singapore's citizens think twice about using drugs, or trafficking them into the country. These laws are very strict compared to the laws of western countries with regards to drug possession of distribution. The strict law of drugs are better examples of what laws and punishments are (or could be) the ultimate drug deterrent.

**g. The Strict Penalty for Drug Possession and Drug Use**

Singapore's drug laws are known globally for delivering some of the strictest penalties for drug possession and drug use, and consequently Singapore has some of the lowest rates for drug use among its citizens. In addition, Singapore as benchmark to follow in regard to combating illicit drugs like cocaine and heroin, human rights groups have long-voiced concerned that the death penalty that the country doles out is too strict. In 2012, the government of Singapore altered the laws slightly to offer life in prison sentences rather than the death penalty to some drug couriers, depending on the situation.

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<sup>33</sup>.[https://en.wikipedia.org/wiki/Misuse\\_of\\_Drugs\\_Act\\_\(Singapore\)](https://en.wikipedia.org/wiki/Misuse_of_Drugs_Act_(Singapore))

<sup>34</sup>.[https://en.wikipedia.org/wiki/Misuse\\_of\\_Drugs\\_Act\\_\(Singapore\)](https://en.wikipedia.org/wiki/Misuse_of_Drugs_Act_(Singapore))

<sup>35</sup>.Drug Laws in Singapore versus Southeast Asia: Who's Got It Right?, *supra* note 32.

<sup>36</sup>.Misuse of Drugs (Amendment) Bill 27-2012.

<sup>37</sup>.Drug Laws in Singapore versus Southeast Asia: Who's Got It Right ?, *supra* note 32.

Despite this, Singapore's Misuse of Drugs Act still mandates a death sentence for anyone found in possession of over 30g of cocaine, 500g of cannabis or 250g of methamphetamine. Those accused of such offences until the contrary is proved, are to be presumed to have had that drug in his possession. The mandatory death penalty by hanging for drug kingpins or distributors remains. It is these strict laws that make Singapore's citizen think twice about using drugs, or trafficking them into the country. Still, these laws are very strict compared to the laws of western countries in regard to drug possession or distribution.<sup>38</sup>

#### 4. Thailand

With Thailand being one of the larger producers of drugs in Southeast Asia, it is one country that perhaps should tighten up the enforcement of its drug laws and punishments. Thailand's Narcotics Act has a discretionary death penalty for producers, importers or exporters of hard drugs, including opium. However, Thailand, at least nowadays, is conservative about sentencing the death penalty; between 2010-2015, there were no state sanctioned executions.<sup>39</sup>

#### 5. The Philippines

##### a. Legal Ground of Drug and Alcohol

In the Philippines, drug and alcohol regulated in the Republic Act No.9165,<sup>40</sup> came into force on 30 May 2002, provides, among other things, unlawful act and penalties; dangerous drugs test and record requirements; participant of the family, students, teachers and school authorities in the enforcement; promotion of a national drug-free workplace program with the participation of private and labor sectors and the department of labor and employment; participation of the private and labor sector; participation of local government units; program for treatment and rehabilitation of drug dependents; dangerous drugs board and Philippines drug enforcement agency; appropriations, management of funds and annual report; jurisdiction over dangerous drugs cases; implementing rules and regulations.

##### b. The Philippines's War on Drug

President Rodrigo Duterte was elected to office in May on a platform of cracking down on crime, particularly illegal drugs. Since taking office in early June, his police force has waged a bloody war on drug dealers and users, resulting in the death of thousands of suspects at the hands of police and vigilantes. The figures released by the Philippine National Police (PNP) span the period from July to 12 December of total 2,086 were killed in police operations and 3,841 in extra-judicial or vigilante-style killings and more than 40,000 suspects have been arrested. In this connection, there are growing number of opposition voices within government.<sup>41</sup>

##### c. The Strict Penalty for Drug Possession and Drug Use

Philippines laws against drug or Republic Act No.9165 (RA 9165) is very strict, just like other ASEAN countries such as Indonesia, Malaysia and Singapore. Article II Section 4 of RA 9165 provides importation of dangerous drugs and/or controlled precursors and essential chemicals. The penalty of life imprisonment to death and a fine ranging from five hundred thousand pesos (P500,000.00) to ten million pesos ( P10,000,000.00) shall be imposed upon any person [*including aviation personnel (emphasize added)*], who, unless authorized by law, shall import or bring into the Philippines any dangerous drug, regardless of the quantity and purity involved, including any and all species of opium poppy or any part thereof or substances derived therefrom even for floral, decorative and culinary purposes.

According to RA 9165, a person [*including aviation personnel (emphasize added)*] who is found to be positive for the use of any restricted drug, after a confirmatory test, shall be imposed a penalty of a minimum of six months rehabilitation in a government center for the first offence. Rehabilitation centers in the Philippines are not what you may think of in the UK or the USA, generally its hard labor and community work in prison. The word "rehabilitation" is just a nice word for it. For larger cases the maximum penalty is *death (emphasize added)*. Drug traffickers are sentenced to death, at the last count there were at least 66 nationals on death row. Anyone may be presumed to be drug traffickers if the one have more than a third of an ounce of a drug in his possession, either way getting caught is going to seriously ruin his parents lives and seriously going to make a lot of less enjoyable, unless he likes the idea of languishing in prison, the foods not great, the rooms are crowded, the guests are pleasant and there are better places to stay for sure.

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<sup>38</sup>.*Ibid.*

<sup>39</sup>.*Ibid.*

<sup>40</sup>.Act *Concerning Instituting the Comprehensive Dangerous, Drugs Act of 2002, Repealing Republic Act. No.6425, Otherwise Known as The Dangerous Drugs Act of 1972, as Amended, Providing Funds Therefore, and Other Purposes, Republic Act No.9165 ( 23 February 2001).*

<sup>41</sup>. Sherwin Alfaro and Elizabeth Roberts, CNN, <http://edition.cnn.com/specials/asia/philippines-drugs-war> Updated 0315 GMT (1115 HKT) December 13, 2016.

**d. Drug Related to Civil Aviation Employees**

With regard to civil aviation industry, the Civil Aviation Authority of the Philippines (CAAP) underwent drug testing. According to Eric Apolonio, spokesman of CAAP, the result of drug testing is thirty of the more than 5,000 employees of the CAAP have been terminated after they tested positive for drug use. The airport workers who failed the drug testing have dismissed from service and still waiting for the result of the drug testing of the remaining eight percent of CAAP employees from other facilities and station. The CAAP declared five airports under its supervision as drug-free such as the airport in Davao, Laoag, Tuguegrao, Puerto Princesa and Tacloban. The CAAP supervises 81 airport nation-wide and manage airside operation of the Ninoy Aquino International Airport, Subic, Clark and Cebu-Mactan International airport.

**6. Others' Countries**

**a. Australia**

Australia does not impose a death penalty for the trafficking or possession of large quantities of illegal drugs, rather, states Australia impose prison sentences of between 15-25 year for drug trafficking. Since Australia's rules are not as stringent as Singapore's laws, and the retail price of drugs in Australia is high, this encourages drug suppliers and distributors to target Australians. The demand for drugs in Australia is steadily increasing as illegal high are becoming cheaper than alcohol. Singapore could potentially face a similar problem in the future if the drug laws were to be relaxed because many Singaporeans can afford to pay the high price for drugs.

**b. Portugal**

In Portugal, which decriminalized drug use and focuses more on treating addiction as a health issue. Over the past 1 years, Portugal has radically changed Portugal from a country with one of the highest drug related death rate to the second lowest in Europe, whilst Portugal still punishes drug dealers and manufacturers, citizens found with less than a 10-day supply of drugs are given rehabilitation treatment rather than a fine or jail time.

**c. The United States of America**

**1). Cabin Crew's Training Related to Drug and Alcohol**

With regard to airlines, the United States of America (USA) requires airlines to have adequate procedures outlining the specific duties of crew members related to disturbances caused on board related to alcohol, for example :... "*procedures to handle disturbances that may occur involving the service of alcoholic beverages; procedures regarding the removal of a passenger who appears to be intoxicated; and procedures to handle passengers who may have brought their own alcoholic beverages on board*"(**emphasize added**). The Federal Aviation Administration (FAA) info 13013 of December 2013 also informs air operators of the requirement to provide cabin crew with training regarding serving alcohol to passengers, recognizing intoxicated passengers, and dealing with disruptive passengers.

The purpose of the drug and alcohol regulations is to establish a program designed to help prevent accidents and injuries resulting from the use of prohibited drugs or the misuse of drugs and alcohol by employees who perform safety-sensitive functions in aviation. Anyone who performs safety-function such as flight crew member, flight attendant, flight instruction, aircraft dispatcher, aircraft maintenance and preventive maintenance, ground security coordinator, aviation screening and air traffic control shall be tested for drugs and alcohol.

**2). Testing of Aviation Personnel Test**

In the USA, there are five types of employee tests are required such as pre-employment, reasonable suspicion, post accident, random and return to duty (periodic). Pre-employment conducted prior to the first time an employee performs a safety-sensitive function, the employer must ensure that the employee is tested and has a negative result for marijuana, cocaine, opiates, amphetamines and alcohol. For alcohol, pre-employment testing is discretionary. If the employer chooses to administer an alcohol test, the individual must have an alcohol concentration level below 0.02 before he or she is allowed to perform a safety-sensitive function, while reasonable suspicion conducted shall be conducted by employer when it has a reasonable suspicion that the employee has used a prohibited drug or is under the influence of alcohol. A reasonable and articular able belief that the employee is using a prohibited drug on the basis of specific contemporaneous physical, behavioral or performance indicators of probable drug use.<sup>42</sup>

Whenever a human life is loss in a transportation accident, and that post-accident testing also may be required by the Department of Transportation (DOT) if bodily injury, significant property damage, or other serious accident occurs. As soon as practicable, and not more than 32 hours following an accident involving an

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<sup>42</sup>.FAR 14 CFR § 120.109.

accident, the employer must test an employee if his/her performance either contributed to an accident or cannot be completely discounted as a contributing factor to the accident.<sup>43</sup>

In addition, The DOT may prescribe regulations for conducting periodic recurring testing of transportation employees responsible for safety-sensitive functions for the misuse of drugs or alcohol or a controlled substance in violation of law or government regulation. The selection of such employees for random drug and alcohol testing shall be made by a scientifically valid method so as to ensure each employee has an equal chance of being tested each time tests are conducted. The dates for conducting the random testing should be spread reasonably throughout the year, though they should be performed at least quarterly. Random testing for alcohol misuse is restricted to safety-sensitive performance, while random drug testing may be performed at any time throughout the workday.

The minimum annual percentage rate for random drug testing is 50 percent of covered employees, and 10 percent for alcohol testing. Once an employee has failed or refused to take a drug or alcohol test, an Substance Abuse Professional (SAP) must evaluate the employee, prescribe a treatment regimen, and determine whether the employee has fulfilled the SAP's recommendations. Before such an employee is allowed to return to a safety-sensitive job, he or she must have passed the return to duty drug test, and if the SAP so determines, an alcohol test. Whenever the SAP determines it appropriate, the employee may be subjected to unannounced follow-up drug and/or alcohol testing.

Follow-up testing for drug abuse or alcohol misuse shall consist of at least six tests within the first 12 months of the employee's return to duty. The SAP, and not the employer, determines whether the employee requires up to 60 months of follow-up testing. The SAP determines both the length of follow-up testing and the number of follow-up tests. Several States have legalized medical marijuana. The DOT's Drug and Alcohol Testing Regulation (DATR) in the United States of America does not authorize medical marijuana under a state law to be a valid medical explanation for a transportation employee's positive drug test result. It provides that an MRO must not verify a test negative based on information that a physician recommended that the employees use a drug.

A conviction for the violation of any Federal or State statute relating to the growing, processing, manufacturing, sale, disposition, possession, or importation of narcotics drug, marijuana, or depressant of stimulant drugs or substances is ground for denial of an application for any certificate for a period of up to 1 year after the date of final conviction; or suspension or revocations of any certificate or rating issued.<sup>44</sup> No person may act or attempt to act as a crewmember of a civil aircraft, within 8 hours after the consumption of any alcoholic beverage or while under the influence of alcohol, or while using any drug that effect the person's faculties in any way contrary to safety; while having 0,04 percent by weight or more alcohol in the blood.<sup>45</sup>

A crew member shall do, on the request of a law enforcement officer, submit to a test to indicate the percentage by weigh of alcohol in the blood, when the law enforcement officer is authorize under State or local law to conduct the test or to have the test conducted, and the law enforcement officer is requesting submission to the test to investigate a suspected violation of State or local law governing the same or substantially similar conduct prohibited within 8 hours after the consumption of any alcoholic beverage, or while under the influence of alcohol, or while having 0.04 percent by weigh or more alcohol in the blood.<sup>46</sup>

#### **Part Four**

### **LAWS AND REGULATIONS OF DRUGS AND ALCOHOL RELATED TO AVIATION IN INDONESIA**

#### **1. Introduction**

Indonesia also has strict drug laws,<sup>47</sup> and prescribes the death penalty for the trafficking of hard drugs with lesser penalties for softer drugs such as marijuana. Since the geography of Indonesia consists of approximately 17,000 islands, 11,000 of them uninhabited, across 5,200km km East to West and nearly 2,000 km North to South,<sup>48</sup> it is virtually impossible to control the borders or thoroughly locate the growing or manufacturing of drugs. This is in part why Indonesia's laws for trafficking and distribution are so strict. Indonesia, along with Thailand and the "Golden Triangle" area, the region where the borders of Thailand, Laos, and Myanmar intersect, which has ideal conditions for opium growing and trafficking, are the primary producers of drugs found in Singapore.<sup>49</sup>

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<sup>43</sup>.*Ibid.*

<sup>44</sup>.FAR 14CFR,61.15

<sup>45</sup>.FAR 14 CFR 91.11.

<sup>46</sup>.*Ibid.*

<sup>47</sup>.Act *Concerning Narcotic*, Act No.35 Year 2009, State Gazette of the Republic of Indonesia No.143 Year 2009, ( 12 October 2009), previously was Act *concerning Narcotics*, Act.No.22 Year 1997, State Gazette of the Republic of Indonesia No.67 Year 1997, supplement State Gazette No.3698 and Act *Concerning Type of Psychotropic Category*, Act.No.5 Year 1997, State Gazette of the Republic of Indonesia No.10, Supplement State Gazette No.3671.

<sup>48</sup> Ariawan Gunadi and Martono K.,*Current Indonesian Air Transport (2016)*, Vol. 9(10) IOSR-JAC 12(Oct.2016).

<sup>49</sup>.Drug Laws in Singapore versus Southeast Asia: Who's Got It Right?. <https://www.thecabinsingapore.com.sg/drug-laws-in-singapore-and-southeast-asia/>

## **2. Legal Ground of Drugs and Alcohol**

### **a. Narcotics Act of 2009**

The Indonesian Narcotic Act of 2009,<sup>50</sup> which came into force on 12 October 2009, has ensure to bring people of Indonesia prosperous, fair and wealthy, and evenly materially and spiritually based on Pancasila and the Constitution of the Republic of Indonesia (ROI) Year 1945, the equally of Indonesian human resources as one of the national development capital. It is consist of 27 Chapters and 152 Articles. Such Act of 2009 provides, among other things, general provisions; based, principles and objective; the scope of application; procurement; import and export; circulation; labels and publications; narcotics precursor; treatment and rehabilitation; guidance and monitoring; prevention and eradication; investigation, prosecution and inspection in the trial court; community participation; awards; criminal provisions; transition provisions and closing provision.

With regard to civil aviation activities, narcotic, basically, applicable to aviation personnel with reference to the criminal provision. In the criminals provision provides that any person [*include aviation personnel-(emphasize added)*] without right or against the law planning, maintain, possess, store, control; plant, maintain, possess, stores, control; import, export, or distribute; offering to be sold, selling, buying, receiving, brokered in the sale and purchase, exchange, or give; carrying, transfer, transport, or transit; using or to be used by another person resulted in the death of another or permanent disability; store, control, or provide the narcotics etc., shall be punished according the applicable laws and regulations.

### **b. Civil Aviation Act of 2009**

The Indonesian civil aviation act of 2009,<sup>51</sup> 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.

Every personnel of an aircraft shall be compelled to own license or certificate of competency. Aircraft personnel with direct involvement in operating an aircraft shall obligated to possess legitimate and valid license. Such license shall be issued the MOT 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 obtain through education and training by accredited institution. Further provisions regarding requirements, system and procedures to obtain license, or certificate of competency shall regulated by the MOT.

## **3. Drugs and Alcohol Regulations**

On 19 March 2010, the MOT issued Ministerial Decree No.KM 18 Year. Such MOT Decree regulates general provisions; flight rules; visual rules; instrument flight rules; equipment, instrument, and certificate requirements; special flight operations; maintenance, preventive maintenance and alterations; large and turbine-power multi engine airplanes; additional equipment and operating requirements for large and transport category aircraft; foreign aircraft operations and operations of Indonesian-registered civil aircraft outside of Indonesia; and deviation authority.

With regards to drugs and alcohol related to aviation personnel, found in item 91.17 of the Ministerial Decree No.KM 18 Year 2010. In according to item 91.17, of the Ministerial Decree No.KM 18 Year 2010 no person may act or attempt to act as a crewmember of a civil aircraft within 8 hours after consuming alcohol, whilst under the influence of alcohol, using any drugs that affects the person's faculties in any way contrary to safety; or having 0.04 percent by weight or more in the blood. Except in an emergency, no pilot of a civil aircraft may allow a person who appear to be intoxicated or who demonstrated by manner or physical indications that the individual is under the influence of drugs to be carried in that aircraft.

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<sup>50</sup>.Act *Concerning Narcotics*, Act. No.35 Year, State Gazette of the Republic of Indonesia No.143 Year 2009 (12 October 2009).

<sup>51</sup>.Act *Concerning Aviation*, *supra* note 13

A crewmember shall, on the request of a law enforcement officer, submit to a test to indicate the percentage by weight of alcohol in the blood, when the law enforcement officer is authorized by the law to conduct the test or to have the test conducted; and the law enforcement officer is requesting submission to the test to investigate a suspected violation of a law governing the same or substantially similar conduct prohibited within 8 hours after consuming alcohol, or under influence of alcohol or having 0.04 percent by weight or more in the blood.

Whenever the Director General of Air Communication (DGAC) has a reasonable basis to believe that a person may have violated within 8 hours after consuming alcohol, or under influence of alcohol or having 0.04 percent by weight or more in the blood, that person shall furnish the DGAC or authorize any clinic, hospital, doctor, or other person to release to the DGAC, the results of each test taken within 4 hours after acting or attempting to act as a crewmember that indicates percentage by weight of alcohol in the blood.

Whenever the DGAC has a reasonable basis to believe that a person may have violated using any drug that affects the person's faculties in any way contrary to safety, that person shall, furnish the DGAC or authorize any clinic, hospital, doctor, or other person to release to the DGAC, the results of each test taken within 4 hours after acting or attempting to act as a crewmember that indicates the presence of any drugs in the body. Any test information obtained by the DGAC may be evaluated in determining a person's qualifications for any airman certificate or possible violation.

For the purpose to implement the Ministerial Decree No.KM 18 Year 2010, the MOT issued a circular requiring airline companies to intensify drug tests on pilots and crew members as required by Standard Operating Procedure for Drug Abuse Prevention (SOPDAP). The circular also demands that the procedures be applied to all types of commercial airlines. Previously, the drug prevention protocol did not apply to airlines holding a 135 Certificate or those operating aircraft with fewer than 30 seats. The MOT move follows a series of incidents involving pilots and crew members who were caught red-handed with drugs. The pilot was caught in possession of crystal methamphetamine in a karaoke bar in Makassar, South Sulawesi. In 2011, authorities recorded five drug arrests involving Lion Air pilots and crew members.

#### **4. A Drug and Alcohol Testing Program**

The circular was in line with the Civil Aviation Safety Regulations (CASR) related to alcohol and drugs and sanctions for violating safety regulation linked to drugs and alcohol. In addition, it confirmed that intensifying measures against drug use was a response to an alarming prevalence of drug use found among pilots and crews. According to the National Committee for Transportation Safety (NCTS), human error has been the biggest source of aircraft accidents in Indonesia, 52 percent of all aircraft accidents between 2007 and 2011 were caused by human error. It is the reason, the MOT issued circular regarding a drugs and alcohol testing program that would apply to all people involved in air transportation related work on a daily basis. The drugs and alcohol program testing program apply to air traffic controllers, ground crews, technicians and airport security personnel as well.

In this regards, operators were ready to intensify drugs and alcohol prevention measures, such as Lion Air welcomed the circular, it was necessary to increase safety measures and will increase urine sampling from 50 to 100. These measure clearly in the contract with the pilot that pilots or crew members found to be using drugs or alcohol will have their contracts automatically terminated. Garuda Indonesia also fully supported the government's effort to decrease drug abuse among pilots and flight crew as well. It is strict about pilots and crew member health. The circular as a government effort to remind airlines to put safety first.<sup>52</sup>

#### **5. A Drug and Alcohol Testing for Commercial Pilot**

In Australia, there is evidence that substance abuse occurs in aviation, across national borders and job description; people have died in substantial numbers where evidence or in appropriate substance use was confirmed and all manner of aviation operation- from micro lights to Boeing 747s- have been place at risk. For that reason, on 18 March 2004, the Australian Transport Safety Bureau (ATSB) publicly released its accident report on a fatal accident that occurred at Hamilton Island in September 2002. This evidence is a similarly with information provided by NCTS in Indonesia. In according NCTS, human error has been the biggest source of aircraft accidents in Indonesia, 52 percent of all aircraft accidents between 2007 and 2011 were caused by human error. A finding of this report was that the possible adverse effects on pilot performance of fatigue, recent cannabis use and post-alcohol impairment could not be discounted.

Major accidents involving drug and alcohol usage have driven proposals internationally to implement testing programs together with related safety measures e.g. rehabilitation, return-to-work initiatives, and peer support programs. In Australia, some industries including aviation are already pushing ahead to introduce testing, and it is appropriate that Government support those endeavors by (a) establishing a testing regime

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<sup>52</sup>.The Jakarta Post 22 December 2015.

incorporating minimum standards against which results can be monitored and acted upon as required, and (b) to encourage a broader response to drug and alcohol abuse, including the formalization of such initiative in safety management system.

In Indonesia, one of the most serious incidents occurred in 2007, when a Boeing 737 - operated by budget carrier Adam Air - crashed claiming the lives of everyone onboard. Some 102 passengers and crew lost their lives, other accident was Air Asia Flight QZ8501. On 28 December 2015, Air Asia flight QZ8501 lost contact with air traffic control, just after the pilots requested a change in course to avoid turbulence. On board the Airbus A320-200 - which was halfway through a two-hour flight from Indonesia's second-biggest city Surabaya to Singapore - were 162 people. 39 bodies have been retrieved so far. In this regards, the government should take steps to ensure that pilots operating in Indonesia are better-informed, better-trained, and working on adequate rest and mandating that all pilots attend briefing, before take-off, with flight operation officer. The briefings will discuss the weather, route and other issues and can take many other steps to improve the quality of pilots operating.

In connection with the drugs and alcohol abuse, the fact that several pilot have been caught with methamphetamines in the past year, for that reason the government shall to implement and increase enforcement of pre-empting, reasonable suspicion, random and post-accident drugs and alcohol testing for pilot, while the airlines do need to established a strong safety culture and invest in training of pilots and technicians as well. Experience in the cockpit only builds with flight hours, especially in a demanding operation environment like Southeast Asia.<sup>53</sup>

## **6. The Strict Penalty for Drug Possession and Drug Use**

Indonesia also has strict drug laws and prescribes the death penalty for the trafficking of hard drugs, with lesser penalties for softer drugs such as marijuana. Since the geography of the Republic of Indonesia consists of approximately 17,000 islands, 11,000 of them uninhabited, it is virtually impossible to control the borders or thoroughly locate the growing or manufacturing of drugs. This is in part why Indonesia's laws for trafficking and distribution are so strict. Indonesia, along with Thailand and the "Golden Triangle" area, the region where the borders of Thailand, Laos and Myanmar intersect, which has ideal conditions for opium growing and trafficking, are the primary producers of drugs found in Singapore.<sup>54</sup>

## **7. Health Check Before Flying**

In the wake of December's Air Asia crash, the MOT issued a new policy, aimed at improving safety and services. The MOT intent to re-evaluates its aviation safety performance. For that reason, The MOT issued the Ministerial Decree that request flight crews to undergo health checks before flying. This policy is a part of civil aviation safety regulations, aimed at combating the use of alcohol or drugs among pilots and flight staff and reducing the number of accident caused by human negligence. Each airlines will be responsible for providing doctors to run the health checks. The pilot blood pressure and their alcohol level who described the test as "simple and quick." In addition, around a week after Air Asia Flight 8501 crashed in the Java Sea en route to Singapore, the pilot forced to undergo direct weather briefing with dispatchers before pre-departure to ensure the flight safety.

## **8. Suspension and Revocation of Pilot's Licenses**

On 3 May 2016, the MOC issued Ministerial Decree No.PM 50 Year 2016. Such Ministerial Decree provides suspension of pilot license, offences involving alcohol or drug. Unless authorized by the DGAC, a person whose license is suspended may not apply for any pilot license during the period of suspension, unless the order of revocation provides otherwise, whilst a person whose pilot license is revoked may not apply for any pilot license for 1 (one) year after the date of revocation. A conviction for the violation of any national law relating to narcotics, drugs, marihuana, or depressant of stimulant drugs or substances is grounds for denial of an application for any license or rating for a period of up to 1 (one) year after the date of final conviction or suspension or revocation of any license or rating.

With regards to aircraft personnel as a license holder shall be obligated to carry out his/her duty as stipulated in the assignment, maintain his/her professionalism skill and undergo medical examination periodically. Aircraft personnel violating 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 sanctions such as warming, freezing of license and/or revocation of license.<sup>55</sup>

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<sup>53</sup> Air Asia Flight 8501 spotlights Indonesia's air safety practices.

<http://www.dw.com/en/airasia-flight-8501-spotlights-indonesias-air-safety-practices/a-18177204>.

<sup>54</sup>.Drug Laws in Singapore versus Southeast Asia: Who's Got It Right?, *supra* note 32.

<sup>55</sup>.Article 61.

#### **9. Indonesian Air Crew Drug's Abuse**

Two Indonesian crew members failed a drug test conducted by the Transport Ministry along with the National Anti-Narcotics Agency (BNN) at airport on Wednesday, 29 June 2016. The test comes right before Lebaran, a major national holiday in the country, which sees millions of Indonesians traveling home.<sup>56</sup> According to local media, the authorities aimed to have 600 cabin crew, including pilots and flight attendants, take the urine tests per day. So far, two failed the test. According to Bachtiar Tambunan, BNN Inspector General, the current result of the investigation is that a co-pilot and an air hostess are suspected having consumed amphetamine, while the co-pilot and flight attendant work for different airlines. The two members claimed that they were suffering from illness and had taken some medicine, even if they were truly sick, the two should not have flown and endangered the safety of the passengers. In this connection, the Ministry of Transport (MOT) also launched a series of drug test for bus drivers, train conductors and air crew as well. Around 6,000 air crew are expected to take the drug tests to ensure the safety of all passengers, who will travel during Ramadhan home coming. It is worthwhile to note here that in December 2015, BNN arrested a co-pilot and two flight attendants who worked for airline, for drug use. Although all of them were banned from working for the airlines, the airlines did not get any sanctions from the authorities.

#### **10. Refusal to Submit to an Alcohol Test**

When requested by a law enforcement officer or a refusal to furnish or authorize the release of the test results requested by the DGAC, a refusal to submit a test to indicate the percentage by weight of alcohol in the blood, is ground for denial of an application for any license for a period of up to 1 year after the date of that refusal or suspension of revocation of any license. A temporary pilot license effective for a period of not more than 30 days, may be issued to a qualified applicant pending a review of his qualifications and the issuance of a permanent license by the DGAC, whilst the permanent license is issued to an applicant found qualified and a denial thereof is issued to an applicant found not qualified. A temporary license issued expires at the end of the expiration date stated thereon or upon receipt by the applicant of the license sought of notice that the license sought is denied.

#### **11. Pilot's License and Drugs or Alcohol**

No person may act or attempt to act as a crewmember of a civil aircraft within 8 hours after consuming alcohol, or whilst under the influence of alcohol, or whilst using any drug that affects the person's faculties in any way contrary to safety or whilst having 0.04 percent by weight or more alcohol in the blood; except in an emergency, no pilot of a civil aircraft may allow a person who appears to be intoxicated or who demonstrates by manner or physical indications that the individual is under the influence of drugs (except a medical patient under proper care) to be carried in that aircraft.

A crewmember shall do the following, on request of a law enforcement officer, submit to a test to indicate the percentage by weight of alcohol in the blood, when the law enforcement officer is authorized by law to conduct the test or to have the test conducted; and the law enforcement officer is requesting submission to the test to investigate a suspected violation of a law governing the same or substantially similar conduct prohibited within 8 hours after consuming alcohol, under influence of alcohol or having 0.04 percent by weight or more alcohol in the blood.

Whenever the Director General of Air Communications (DGAC) has a reasonable basis to believe that a person may have violated prohibited within 8 hours after consuming alcohol, under influence of alcohol or having 0.04 percent by weight or more alcohol in the blood, that person shall, upon request by the DGAC, furnish the DGAC or authorize any clinic, hospital, doctor, or other person to release to the DGAC, the results of each test taken within 4 hours after acting or attempting to act as a crewmember that indicates percentage by weight of alcohol in the blood.

Whenever the DGAC has a reasonable basis to believe that a person may have violated using any drug that affects the person's faculties in any way contrary to safety, that person shall, upon request by the DGAC, furnish the DGAC or authorize any clinic, hospital, doctor, or other person to release to the DGAC, the results of each test taken within 4 hours after acting or attempting to act as a crewmember that indicates the presence of any drugs in the body. Any test information obtained by the DGAC may be evaluated in determining a person's qualifications for any airman certificate or possible violations of the CASRs and may be used as evidence in the proceeding.

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<sup>56</sup>Bachary Lee., *Co-pilot, flight attendant fail drug tests.*

<http://www.rappler.com/world/regions/asia-pacific/indonesia/english/138304-drugs-pilot-flight-attendant>.

Published Fri, Jul 1, 2016 6:17 AM.

## **12. Penalty of Drugs Trafficking**

Indonesia also has strict drug laws,<sup>57</sup> and prescribes the death penalty for the trafficking of hard drugs with lesser penalties for softer drugs such as marijuana. Since the geography of Indonesia consists of approximately 17,000 islands, 11,000 of them uninhabited, it is virtually impossible to control the borders or thoroughly locate the growing or manufacturing of drugs. This is in part why Indonesia's laws for trafficking and distribution are so strict. Indonesia, along with Thailand and the "Golden Triangle" area, the region where the borders of Thailand, Laos and Myanmar intersect, which has ideal conditions for opium growing and trafficking, are the primary producers of drugs found in Singapore.<sup>58</sup>

## **13. Others**

Foreign airline pilots who crash a plane in Indonesia, according to international laws, do not have to be alcohol and drugs tested, they can fly away to foreign shores untested. However if the foreign pilots were driving a car and caused an accident in Jakarta (Indonesia), the foreign pilots could be subjected to alcohol and drugs testing. To fully understand this situation, one should know the status of airlines in the international air law. The legal status of airlines, according to international air law, each airline has owned nationality. Each airline has a "residence" and registers in the States' of registration. In according to ICAO, the applicable laws and regulation of airlines is the law and regulation in which the airlines registered, for that reason each State is supposed to have sufficient inspectors from an effective government air safety agency to enforce those regulations and oversee their air carriers, then each States' air carriers fly under the regulations of States' registry no matter where they are in the world. In returned, based on the above-mentioned description, foreign airlines crash in Indonesia, the Civil Aviation Authority do not have to be alcohol and drugs testing, taking into account that this occurrence beyond the jurisdiction of Indonesia.

## **IV. CONCLUSTIONS AND RECOMMENDATION**

### **1. Conclusion**

Based the above-mentioned description, could be summarized that each country has his own laws and regulations related to their interest, but basically all of the drug or alcohol regulations, directly or indirectly, related to civil aviation activities. For that reason, it is worthwhile to study another drug and alcohol laws and regulations in other countries for the purpose to compare with the national laws and regulations applicable in Indonesia.

#### **a. Should Indonesia Change Its Drug Laws?**

With Indonesian neighboring countries such as Singapore and Malaysia imposing similarly strict laws for using, possessing or trafficking drugs, it is perhaps logical that Indonesia, like its neighbors, maintain the death penalty for drug trafficking or distribution. Otherwise, it is likely that the country will become flooded with illegal drugs. Imposing high penalties and even the death sentence on those involved with drugs reduces the incentives to use or traffic them. While the death sentence may seem too strict, it is the fastest way to decrease demand for drugs. If Thailand as a major drug producers, for example, were to tighten up its drug laws, then it is likely that Singapore and other countries in the region would experience the ripple effects of having lesser supply of drugs, and so over time lower drug usage. For now, Indonesian strict drug laws seem to be working, especially given that neighboring countries have similarly strict laws, it is interesting to consider any other alternative treatment such as rehabilitation of drugs and alcohol abuse suspects.

#### **b. Treatment Rather Than Criminalization Is Often the Solution**

When it comes to jailing drug users, it is important to note that substance addiction can be and often is rooted in environmental circumstances such as childhood trauma and even genetics. Moreover, and perhaps most importantly in regard to this discussion about drug laws, substance addiction is a brain based illness that requires cognitive treatment in order to rid it from someone's life. While drug laws certainly play a role in mediating the effects that drugs have on society, simply jailing people, especially those who are suffering from substance addiction, for drug related offences is likely not going to solve the core issues. Unless undergoing addiction treatment is an integrated part of their jail time, they will likely still be addicted upon leaving jail and be at high risk of returning to drug related patterns, including crime.<sup>59</sup>

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<sup>57</sup>.Act *Concerning Narcotic*, Act No.35 Year 2009, State Gazette of the Republic of Indonesia No.143 Year 2009, ( 12 October 2009), previously was Act *concerning Narcotics*, Act.No.22 Year 1997, State Gazette of the Republic of Indonesia No.67 Year 1997, supplement State Gazette No.3698 and Act *Concerning Type of Psychotropic Category*, Act.No.5 Year 1997, State Gazette of the Republic of Indonesia No.10, Supplement State Gazette No.3671.

<sup>58</sup>.*Drug Laws in Singapore versus Southeast Asia: Who's Got It Right?*, *supra* note 32

<sup>59</sup>.*Drug Laws in Singapore versus Southeast Asia: Who's Got It Right?*, *supra* note 32.

## Recommendation

Based on the above-mentioned conclusion, the authors recommends that Indonesia maintain the death penalty for drug trafficking or distribution. Otherwise, it is likely that the country will become flooded with illegal drugs. Imposing high penalties and even the death sentence on those involved with drugs reduces the incentives to use or traffic them, however it is worthwhile to consider the possibility treatment rather than completely criminalization to prevent environmental circumstances such as childhood trauma and even genetic effect.

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