

# Regulations of Drug, Alcohol And Narcotics Related To Aviation Activities in Indonesia

*by* Gunardi Lie

---

FILE	EGULATION_OF_DRUG,_ALCOHOL_AND_NARCOTICS_RELATED_TO_AV IATION.PDF (472.15K)		
TIME SUBMITTED	12-NOV-2020 05:45PM (UTC+0700)	WORD COUNT	11401
SUBMISSION ID	1443787743	CHARACTER COUNT	61395

## Regulations of Drug, Alcohol And Narcotics Related To Aviation Activities in Indonesia

Gunardi,<sup>1</sup> Ariawan<sup>2</sup>, Martono K<sup>3</sup>

Corresponding Author: Gunardi

**Abstract:** This article purported to explore the regulations of drug, alcohol and narcotics related to aviation activities in Indonesia. It is consisting of three chapters. Chapter one regarding the effects of drugs and alcohol on pilot performance such as drugs and alcohol, airport concessions and lounges, aircraft boarding's passengers, a drugs, abuse by aviation personnel; Chapter two regarding international legal ground such as Chicago Convention of 1944, Tokyo Convention of 1963, the Montreal Protocol of 2014 and International Air Transportation Association; Chapter three regarding national legal ground of drugs and alcohol such as narcotics act of 2009, civil aviation Act of 2009, drugs and alcohol regulations, a drug and alcohol testing program, a drug and alcohol testing for commercial pilot; the strict penalty for drugs possession and drug use; health check before flying; suspension and revocation of pilot's license; Indonesian air crew drug's abuse; refusal to submit to an alcohol test; pilot's license and drugs or alcohol; penalty of drugs trafficking; drug and alcohol provided in condition of carriage such Garuda Indonesia, Air Asia, Lion Air etc. ;drugs' cases related to aviation in Indonesia and closing provisions.

**Keywords:** Drug, alcohol, narcotics abuse; aviation activities; and its legal ground.

44

Date of Submission: 21-12-2017

Date of acceptance: 03-01-2017

### I. INTRODUCTION

On 4 December 2017, a civil aviation pilot was arrested by Satnarkoba Polres Kupang Kota, East Nusa Tenggara (NTT). The pilot of Lion Air JT924 aircraft initials "MS" was arrested in T-more Hotel Kupang, NTT. MS is suspected of using a shabu type drug. When arrested, the police secured 0,3 grams of methamphetamine evidence. Additionally, a beautiful woman participated in the arrest of the pilot. The unknown woman was allegedly married. Photos of MS and the woman are circulated and given room reliable source. Both were photographed while still in the hotel room where the crime occurred. MS wearing blue T-shirt with the chest written "Iron Maiden combined jeans".<sup>4</sup>

Another case, was 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

<sup>1</sup> Dr.Gunardi, S.H. (Parahiyanan University), M.H. (Indonesian University) , PhD (Tarumanagara University). Previously served as The Dean of Law Faculty, Tarumanagara University. He has written some scientific journals. Dr. Gunardi, S.H., M.H. serves as the Chairman of Tarumanagara Foundation and Lecturer at Law Faculty, The University of Tarumanagara.

<sup>2</sup> Dr Ariawan Gunadi,S.H.,M.H.,(Tarumanagara University), PhD cum laude (University of Indonesia) is a lecturer at the Law Faculty of Tarumanagara University and a legal consultant specialist in, among other topics, International Law, International Trade Law, International Business Transactions, and International Relations. He is a member of the Board of Executive and Legal Head of the Tarumanagara Foundation.

<sup>3</sup> Prof.Dr.H.K.Martono, S.H.(Indonesian University).LL.M (Mc Gill), PhD (Diponegoro University) Previously served as the chief of the legal division of the Directorate General of Civil Aviation, at Indonesia's Ministry of Communications. He has written extensively about aviation law and regulations in Indonesia and was the parliamentary resource person for when Indonesia was drafting the Civil Aviation Act of 2009.Prof.Dr.H.K.Martono serves as lecturer at the University of Tarumanagara and the Islamic University of Jakarta (UID).

<sup>4</sup>[https://www.google.co.id/search?q=pilot+lion+nyabu&rlz=1C1AVFB\\_enID747ID747&oq=PILOT+&aqs=chrome.69i59j69i57j0l4.11173j0j8&sourceid=chrome&ie=UTF-8](https://www.google.co.id/search?q=pilot+lion+nyabu&rlz=1C1AVFB_enID747ID747&oq=PILOT+&aqs=chrome.69i59j69i57j0l4.11173j0j8&sourceid=chrome&ie=UTF-8)

7 Juanda International Airport in Surabaya, East Java to Soekarno-Hatta International Airport in Cengkareng, Banten. Such pilot of Airbus A-320 had 7 related aviation safety procedures for its cockpit crews, including health checks and pre-departure briefings. Scandals involving drug and alcohol abuse among cabin crew have lingered in the country, among the latest incidents was a raid on a drug party in Tangerang, Banten.<sup>5</sup> 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>

35 Additionally, on 21 June 2017, The National Narcotics Agency (BNN) arrested Lion Air pilot Rahul Sharma (30) for smoking hashish at the Lombok International Airport. The Indian pilot was then tested for urine, which came out positive for marijuana, then he was taken to BNN's head office in East Jakarta. According to Budi Waseso, Chief BNN, during questioning, Rahul Sharma had been smoking hashish for about three months. From Rahul Sharma's, BNN officers seized 5.03 grams of hashish and some smoking papers that were kept inside a metal can.<sup>7</sup>

4 Rahul Sharma wouldn't be the first airline crew caught by BNN for illegal narcotics consumption. In 2015, BNN arrested a pilot and two flight attendants who worked for budget airline Lion Air at 4 'drug party' in South Tangerang, and, between 2012-2015, three Lion Air pilots were arrested for drug use. Though not narcotics-related, the most recent pilot scandal in Indonesia involved a visibly intoxicated pilot for Citilink almost flying a plane. Possession of illegal narcotics is punishable by the death penalty in Indonesia. The country had executed foreign nationals in the past for drug possession and trafficking, such as the Bali Nine drug smugglers, despite outcry from the global community.<sup>8</sup>

In this connection, Ignasius Jonan, the former Minister of Transportation (MOT), has promised to heavily sanction the suspects, especially the pilot, if they are found guilty. "If the report from BNN is true, that the cockpit crew did indeed consume drugs, the former MOT will rescind his pilot's license and the pilot's license would be revoked indefinitely to ensure aviation safety. Between 2010-2012, authorities arrested three Lion Air pilots suspected of consuming illegal narcotics. Four Lion Air pilots arrested for drugs this decade alone is a worrying statistic, and there may be more that we don't know about yet. If Ignasius Jonan is serious about upholding aviation safety standards, the former MOT should sanction Lion Air for failing to prevent drug use amongst its crew members. We all remember how Ignasius Jonan reactively and angrily revoked Air-Asia's permit to fly the Surabaya-Singapore route after the QZ8501 tragedy. Therefore, it's probably best for Ignasius Jonan to be proactive and give similarly tough sanctions to Lion Air before an unwanted tragedy strikes the airline

## II. RESEACH METHOD

This research uses the normative juridical type with qualitative normative legal research methods, including reviewing and analyzing the legal material and legal issues related to the drug, alcohol and narcotics. In this research, the result will be achieved in the form of prescriptions about what have to be done to resolve the issue. The sources of legal materials used in this research consist of 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> law material. The 1<sup>st</sup> law materials which are authoritative legal materials, meaning that such legal materials have the authority, namely legislation, official records. Such legislations used as the 1<sup>st</sup> legal materials are the Chicago Convention of 1944,<sup>9</sup> Tokyo Convention of 1963,<sup>10</sup> the constitutional of the Republic of Indonesia of 1945, Act No.35 Year

<sup>5</sup>-Dr Gunardi, Dr Gunawan Djajaputra and Prof .Dr.Martono.,*Laws and Regulations of Drugs, Alcohol and Narcotics Related to Aviation Activities in Indonesia, ASEAN and Others Countries*. www.ijbmi.org Vol. 6(4) 45(April 2017).

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

<sup>7</sup>.TEMPO.CO.Jakarta.

4 <sup>8</sup><https://coconuts.co/jakarta/news/foreign-pilot-arrested-hash-drug-inspection-lombok-airport/>

43 <sup>9</sup>.ICAO Doc.7300/8, *Convention on International Civil Aviation*, signed at Chicago on 7 December 1944; For the Text see Dempsey P.S.,(2005) Vol. XXX-Part I Ann of Air & Sp.Lat 19-51; Milde M., (1993) Vol. XVIII- Part II Ann of Air & Sp.Lat 5-77

2009,<sup>11</sup> Act No.1 Year 2009,<sup>12</sup> including its implementation regulations, whilst the 2<sup>nd</sup> law materials are over all publications regarding the law and regulation which are not official documents but related to the subject matter. Such publication concerning the law and regulations includes text books, theses, law dissertation. The 3<sup>rd</sup> law materials used in the research are legal dictionaries, comments on the court decision, also the opinions of legal experts published via journals, magazines or others.<sup>13</sup>

### III. DISCUSSION AND ITS RESULT

#### Chapter One

#### Drugs and Alcohol Related to Aviation Activities

This chapter consist of the effects of drugs and alcohol on pilot performance such as drugs and alcohol; airport concessions and lounges; aircraft boarding's passengers; a drug, abuse by aviation personnel as follows:

#### 1. The Effects of Drugs and Alcohol on Pilot Performance

From the initiation of the pre-flight process through the securing of the aircraft at the end of the flight, there are hundreds of decisions to be made and actions to be taken, by the pilot-in-command (PIC), ranging from weather interpretation, fuel uplift and route of flight selection to the operation of the aircraft and its systems to the navigational aspects of the flight. Proper procedures must be observed and executed to affect the safe completion of the flight and to ensure that no hazard is created to either the aircraft in question or to other airplane in its proximity. Obviously, anything that impairs a pilot's ability to make decisions or execute the associated tasks will increase the potential for an accident. Generally, the regulation provides that prohibit the intake of alcohol within the 8 hours prior to flight and some regulators and many companies have extended that prohibition to the period starting 12 hours before reporting for duty or, in some cases, even longer. Likewise, there are numerous regulations prescribing minimum time periods that must be observed between certain medical procedures, anaesthetics and injections and the subsequent return to flying status. The effects of alcohol and of some drugs are as follows:

##### a. Drugs

Drugs, and the condition or illness for which they are being taken, can negatively impact on pilot performance and efficiency, as a consequence, can pose a significant risk to safety of flight. Both prescription and non-prescription drugs can impair judgement and degrade coordination. The effects of some of these drugs can be even more pronounced at altitude than they are on the ground. Drugs can also have a cumulative effect and, if more than one drug is taken at the same time, the combined negative effect may be well in excess of that of the individual drugs. Likewise, prescription drugs such as antibiotics or antidepressants can have a pronounced affect on judgement, mental acuity and coordination. The advice of a qualified aviation medical practitioner should be sought to ensure that it is safe to fly during the course of a prescribed drug regimen. Obviously, the use of any illicit drug is completely incompatible with flight safety.<sup>14</sup>

According to Budi Waseso, the chief of BNN, most of Indonesia's airline accidents have involved pilots who tested positive for drugs including Lion Air jet that slammed into the sea several years ago while trying to land on Bali. Additionally, almost all air accidents in Indonesia, whether it was just a skid or whatever, the pilots are indicated to be positive for drugs, however, the National Transport Safety Committee (NTSC) and

<sup>10</sup>. ICAO Doc 8364, *Convention on Offences and Certain Other Act Committed on Board Aircraft*, Signed at Tokyo on 14 September 1963.

<sup>11</sup>.Act *Concerning Narcotics*, Act. No.35 Year, State Gazette of the Republic of Indonesia No.143 Year 2009 (12 October 2009).

<sup>12</sup>.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 Indonesia No.4956.

<sup>13</sup>.Ahmad Sudiro and Martono K., *The Development of Civil Aviation Laws and Regulations Applicable in Indonesia*. Vol. 5(12) www.ijmi.org 46 (December 2016)

<sup>14</sup>.[https://www.skybrary.aero/index.php/The\\_Effects\\_of\\_Alcohol\\_and\\_Drugs\\_on\\_Pilot\\_Performance](https://www.skybrary.aero/index.php/The_Effects_of_Alcohol_and_Drugs_on_Pilot_Performance)



the MOT declined to comment. This comment has been made at a ceremony on Bali to inaugurate traditional village security guards as anti-drug volunteers. The comments are another blow to the image of the country's airline industry after a video circulated online showing an apparently intoxicated pilot in the cockpit of aircraft.<sup>15</sup>

## b. Alcohol

When alcohol is consumed, it is very rapidly absorbed into the blood and tissues of the body but the process of detoxification is quite slow. The impairing effects of alcohol are apparent quite soon after ingestion but it takes about 3 hours for the effects of 1 ounce of alcohol to wear off. Nothing, inclusive of sleep, coffee, exercise, will speed up this process or minimize the effects of the alcohol. It has been recently determined that alcohol is absorbed into the fluid of the inner ear and will stay there after it has been eliminated from the blood, brain and body tissues. Since the inner ear affects balance, the presence of alcohol within the vestibular apparatus can lead to spatial disorientation and the potential of vertigo.<sup>16</sup>

The presence of alcohol in the blood interferes with the normal absorption of oxygen by the tissues and can result in histotoxic hypoxia. As the reduced cabin pressure at high altitudes has already reduced the ability of the haemo-globin to absorb oxygen, the effect of alcohol in the blood, during flight at high cabin altitudes, becomes much more pronounced than it would be at sea level. The negative effects of one drink can be magnified as much as 2 to 3 times due to the cumulative effects of alcohol and altitude.<sup>17</sup>

## 2. 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>

## IV. AIRCRAFT BOARDING'S PASSENGERS

Cabin crew have to 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. It obvious cases of concern, the ground staff and the crew, in consultation with the pilot-in-command (PIC), 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 airline 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 at 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. If the passenger is deemed appropriate to

<sup>15</sup>.Top Indonesian cop says most lane crashes due to; See also <https://www.cbsnews.com/news/indonesia-narcotics-chief-plane-crashes-mostly-airline-pilots-on-drugs/>

<sup>16</sup>.[https://www.skybrary.aero/index.php/The\\_Effects\\_of\\_Alcohol\\_and\\_Drugs\\_on\\_Pilot\\_Performance](https://www.skybrary.aero/index.php/The_Effects_of_Alcohol_and_Drugs_on_Pilot_Performance)

<sup>17</sup>.[https://www.skybrary.aero/index.php/The\\_Effects\\_of\\_Alcohol\\_and\\_Drugs\\_on\\_Pilot\\_Performance](https://www.skybrary.aero/index.php/The_Effects_of_Alcohol_and_Drugs_on_Pilot_Performance)

<sup>18</sup>.IATA., Guidance on the Safe Service of Alcohol on Board, 1st edition, 70 Years, at 1.

<sup>19</sup>.Dr Gunardi, Dr Gunawan Djajaputra and Prof .Dr.Martono.,supra note 5 at 45;., See also, IATA., Guidance on the Safe Service of Alcohol on Board, 1st edition, 70 Years, at 1.

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 limited service of drugs or alcohol beverages to these passengers is the most prudent plan of action in mitigating a possible worsening situation.

## V. A DRUG'S ABUSE BY AVIATION PERSONNEL

On 9 February 2012, pilot of Lion Air arrested on suspicion of possessing crystal methamphetamine, a psychostimulant that increases alertness and concentration and can create feelings of euphoria. It was the fourth such arrest of a Lion Air employee in seven months, rising fresh concerns about the airline industry's safety and security standards, and heightening pressure on the government to enact stricter airline regulations. Rising demand from Indonesia's growing middle class has pushed airlines to add routes and purchase more planes. The number of airline passengers increased 15% last year, to 66 million, according to the (MOT), which expects demand to rise further this year. To accommodate the demand, Lion Air signed a \$21.7 billion deal with Boeing last November for 230 short-haul 737 jets, the biggest commercial order in the U.S. plane maker's history.<sup>20</sup>

Some Indonesian transportation officials say the industry is understaffed, with pilots under pressure to work long hours. Indonesia has 57 airlines, including charter services, and about 7,000 pilots. According to Bambang Erwan, the spokesman for MOT, it is not enough. In this regard, Lion Air has faced several arrests of its employees over alleged drug use. Ertata Lananggalih, Lion Air's managing director, denied that its pilots did not receive sufficient ground time, explaining that the airline was subject to bimonthly audits to ensure it adhered to regulations on health and safety. The airline would work with the BNN to monitor pilots' activities regularly. The management will know how to more effectively prevent drug use, starting from recruitment and training.<sup>21</sup>

Over the past year, the MOT has withdrawn the flying licenses of the four Lion Air pilots arrested in the last seven months. The police, after an early-morning raid on a hotel in Surabaya, in the province of East Java, found the pilot, Syaiful Salam, 44, was in possession of 0.4 grams of methamphetamine, he was scheduled to fly later that morning. According to Benny Mamoto, the head of the narcotics agency's operations task force, drug use was part of a lifestyle among some pilots who have money to buy drugs like crystal meth and ecstasy.<sup>22</sup>

## Chapter Two International Drugs, Alcohol and Narcotics Regulations

6

In this chapter consist of Chicago Convention of 1944 (CC of 1944), Tokyo Convention of 1963, the Montreal Protocol of 2014, International Air Transportation Association (IATA) as follows.

## 8 VI. CHICAGO CONVENTION OF 1944

8 an international civil aviation's constitution, ICAO has quasi-legislative's authority to set up standard and recommended practices (SARPs) such as Annexes to the CC of 1944.<sup>23</sup> These standards are

32

<sup>20</sup> SARA SCHONHARDT., Indonesia Confronts Drug Use Among Pilots; See also <http://www.nytimes.com/2012/02/10/business/global/indonesia-confronts-drug-use-among-pilots.html>

<sup>21</sup> *Ibid.*

<sup>22</sup> *Ibid.*

<sup>23</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.

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 have an affirmative obligation to conform their domestic laws, rules, and regulations to the international leveling standards adopted by ICAO.

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 their 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>24</sup>

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>25</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 a contracting State shall be recognized as valid by all others. In addition to, the member's State of ICAO are obliged to recognize the validity of certificate of airworthiness and personnel licenses issued by the State in which the aircraft is registered 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>26</sup>

In connection with 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 their 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>27</sup>

## 1. 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 PIC to disembark or deliver an unruly person to law enforcement<sup>28</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

<sup>24</sup>.Act Concerning Civil Aviation, *supra* note 12.

<sup>25</sup>.Articles 19 and 33 of the CC of 1944.

<sup>26</sup>. Article 44(a) of the CC of 1944; See also Gunardi, Gunawan Djajaputra and Prof.Martono K *supra* note 5 at 4

<sup>27</sup>.Act Concerning Civil Aviation, *supra* note 12.

<sup>28</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>13</sup> 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 ( emphasize added)....”<sup>29</sup>

## VII. 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>12</sup> Unruly passenger behavior on board aircraft continue 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 developed a comprehensive range of measures to assist airlines with this issue.

Additionally, 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>30</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.

## VIII. INTERNATIONAL AIR TRANSPORT ASSOCIATION (IATA)

<sup>17</sup> In international air transportation, 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>31</sup> It is the 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 crew members 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 passenger who has become intoxicated and disruptive. These types of incidents can be very difficult and at time even traumatic for both passengers and crew.<sup>32</sup>

As is a similar in other industries, there are many considerations and competitive aspect that are factors within the aviation industry. Airline 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 customers base. When a passenger chooses to order and consume an alcoholic beverage on board, they usually enjoy their choice beverage responsibly and without incident.<sup>33</sup>

<sup>29</sup> IATA., Guidance on the Safe Service of Alcohol on Board, *supra* note 18.

<sup>30</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>31</sup> Article 44 (a) of the Chicago Convention of 1944; See Dempsey P.S., (2005 Vol. XXX-I, Ann. of Air & Sp.L.32.

<sup>32</sup> . IATA., Guidance on the Safe Service of Alcohol on Board, *supra* not 18;., See also Dr Gunardi, Dr Gunawan Djajaputra and Prof.Dr.Martono.,*supra* note 5 at 45.

<sup>33</sup> . *Ibid.*



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 nil relation to alcohol consumption.<sup>34</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>35</sup>

### Chapter Three National Drug, Alcohol and Narcotics Regulations

In this chapter consist of legal ground of drugs and alcohol such as narcotics act of 2009, civil aviation Act of 2009, drugs and alcohol regulations, a drug and alcohol testing program, a drug and alcohol testing for commercial pilot; the strict penalty for drugs possession and drug use; health check before flying; suspension and revocation of pilot's license; Indonesian air crew drug's abuse; refusal to submit to an alcohol test; pilot's license and drugs or alcohol; penalty of drugs trafficking; drug and alcohol provided in condition of carriage such Garuda Indonesia, Air Asia, Lion Air etc. ;drugs' cases related to aviation in Indonesia and other countries as follows.

#### INTRODUCTION

Indonesia also has strict drug, alcohol and narcotics' laws.<sup>36</sup> It 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 East to West and nearly 2,000 km North to South,<sup>37</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 drugs, alcohol and narcotics' law 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>38</sup>

#### 1. Legal Ground of Drugs, Alcohol and Narcotics

##### a. Narcotics Act of 2009

The Indonesian Narcotic Act of 2009,<sup>39</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

<sup>34</sup> *Ibid.* See also IATA., Guidance on the Safe Service of Alcohol on Board, *supra* note 18.

<sup>35</sup> . Dr Gunardi, Dr Gunawan Djajaputra and Prof.Dr.Martono. *supra* note 5 at 45;., See also IATA., Guidance on the Safe Service of Alcohol on Board, *supra* note 18.

<sup>36</sup> .Act *Concerning Narcotic*, Act No.35 Year 2009,*supra* note 11; 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>37</sup> . Ariawan Gunadi and Martono K.,Current Indonesian Air Transport (2016), Vol. 9(10) IOSR-JAC 12(Oct.2016).

<sup>38</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/>.

<sup>39</sup> .Act *Concerning Narcotics*, Act. No.35 Year, *supra* note 11.

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 consisting 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** (*emphasize added*); 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>40</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.

#### c. Drugs and Alcohol Regulations

On 19 March 2010, the MOT issued Ministerial Decree No.KM<sup>24</sup> 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 Minister<sup>25</sup> 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** <sup>26</sup>**member 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. 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

<sup>40</sup>. Act Concerning Civil Aviation, *supra* note 12.

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.

#### **d. 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% 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 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.

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

Similarly in Australia, the MOT in Indonesia also issued the circular was in line with the Civil Aviation Safety Regulations (CASR) related to drugs and alcohol and sanctions for violating safety regulation linked to drugs and alcohol. Additionally, 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% of all aircraft accidents between 2007 and 2011 were caused by human error. For that reason, the MOT issued circular regarding a drug 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 connection, 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 measures 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>41</sup>

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 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>42</sup>

#### **f. Drug and Alcohol provided in Condition of Carriage**

##### **1). Garuda Indonesia**

With regard to drug, alcohol and narcotics, the Garuda Indonesia's condition of carriage (CoC) provides that in the reasonable exercise of Garuda Indonesia's discretion, Garuda Indonesia may refuse to carry the passenger or his baggage if Garuda Indonesia have notified the passenger in writing that Garuda Indonesia would not after the date of such notice carry the passenger on Garuda flights. In this regard, the passenger will be entitled to a refund. Additionally, Garuda Indonesia may also refuse to carry the passenger or his baggage if one or more of the following have occurred or Garuda Indonesia reasonably believe may occur (a) the carriage of passenger or his baggage may endanger or affect the safety, health, or materially affect the comfort of other passenger or crew; (b) passengers, for example, due to impairment from alcohol or drugs (emphasize added) presenting a hazard or risk to the passenger's himself, to passengers, to crew, or to property. If there is a suspected abnormal situation regarding a passengers' health condition (physical/mental), medical approval from the health unit of the carrier is required.<sup>43</sup>

##### **2). Lion Air**

With regards to drug, alcohol and narcotics, the Lion Air's condition of carriage provides that the carrier may impose sanctions on any person who engages in or has engaged in any conduct or behavior on the carrier's aircraft, or to the knowledge or reasonable belief of the carrier, on any airport property or other carrier's aircraft, that the carrier determines, in its reasonable judgment, may have a negative effect on the safety, comfort or health of that person, passengers, the carrier's employees or agents, aircrew or aircraft or the safe operations of the carrier's aircraft such as prohibited conduct that could give rise to the imposition of sanctions include (a) significant impairment arising from the consumption or use of alcohol or drugs prior to boarding (emphasize added) or while on board an aircraft of the carrier; (b) engaging in belligerent, or obscene behavior toward a passenger or employee or agent of the carrier; (c) threatening, harassing, intimidating, assaulting or injuring a passenger or employee or agent of the carrier; (d) tampering with or willfully damaging an aircraft, its equipment or other property of the carrier; (e) failing to comply with all instructions, including all instructions to cease prohibited conduct, given by the carrier's employees; (f) unauthorized intrusion or

<sup>41</sup>. The Jakarta Post 22 December 2015.

<sup>42</sup>. Air Asia Flight 8501 spotlights Indonesia's air safety practices .

<sup>43</sup>. Article 7, Garuda Condition of carriage.



attempted intrusion onto the flight deck of an aircraft; (g). smoking or attempted smoking in an aircraft; (h) swearing or carrying dangerous or deadly weapons on aircraft (other than on duty escort or peace officers who have complied with the carrier's guidelines).<sup>44</sup>

### 3). Citilink

Citilink may have the right to refuse to carry the passenger, even if the passenger hold a valid ticket and or have a boarding pass or the baggage to remove his baggage from Citilink flight for reasons of safety and security if, in the exercise of Citilink's discretion, Citilink determine that such action is necessary in order to comply with any applicable laws, regulations or orders of any State or country to be flown from into or over:

- (a) the passenger refuses the Citilink's request for, or requests to take copies of, information about the passengers himself including information requests for government;
- (c) the passenger's conduct, age or mental or physical condition is such as to require special assistance from Citilink beyond that which is requires by applicable laws, or cause discomfort, or make the passenger himself objectionable, to other passenger, or involve any hazard or risk to passenger himself or to other persons or to property;
- (d) the passenger has made a hoax bomb, or other safety or security, threat or have committed a criminal offence during the check-in or boarding process or on board the aircraft;
- (e) the passenger has committed misconduct on a previous flight and there is a likelihood that such conduct may be repeated;
- (f) the passenger not obeyed the instructions of ground staff or a member of the crew of the aircraft relating to safety or security;
- (g) the passenger has used threatening, abusive or insulting words towards ground staff or another passenger or a member of air crew;
- (h) the passenger have behaved in a threatening, abusive, insulting or disorderly way toward a member of ground staff or a member of the crew;
- (i) the passenger have deliberately interfered with a member of the aircraft crew carrying out their duties;
- (j) the passenger refused to submit to a security check on himself or his baggage, or having submitted to such a check, the passenger fail to provide satisfactory answers to security questions at check-in or at the boarding gage, or the passenger fail a security profiling assessment or analysis, or the passenger tamper with or remove any security seals on his baggage or security stickers on his boarding pass;
- (k) the applicable fare or any charges or taxes payable have not been paid;
- (l) the payment of his fare is fraudulent;
- (m) the passenger does not have the proper documents for travel;
- (n) the booking of Citilink's seat has been done fraudulently or unlawfully or has been purchased from a person an authorized by Citilink;
- (o) the credit card by which passenger's paid for the fare has been reported lost or stolen;
- (p) the itinerary or booking is counterfeit or fraudulently obtained;
- (q) the itinerary has been altered by anyone other than Citilink's authorized agent, or has been mutilated or<sup>45</sup>

It is worthwhile to note here that as far as related to carrying of drugs, alcohol and narcotics no clearly mentioned that Citilink may has the right to refuse such drugs, alcohol and narcotics, however, the author assume that considering the impact of drugs, alcohol and narcotics abuse Citilink could refuse in necessarily .

## 2. The Strict Penalty for Drug Possession and 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 ROI 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>46</sup>

<sup>44</sup>. Article 5, Lion Air's condition of carriage.

<sup>45</sup> <https://www.citilink.co.id/en/condition-of-carriage>

<sup>46</sup>. Drug Laws in Singapore versus Southeast Asia: Who's Got It Right?, supra note 32.

### 3. 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 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.

### 4. 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.

### 5. 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-evaluate 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 drug 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.

### 6. 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, marijuana, depressant or 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 warning, freezing of license and/or revocation of license.<sup>47</sup>

### 7. Indonesian Air Crew Drug's Abuse

<sup>47</sup>.Article 61.

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>48</sup> According to local media, the authorities aimed to have 600 cabin crew, including pilots and flight attendants, take the drug 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.

### 8. 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 30 to 1 year after the date of that refusal or suspension or 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.

### 9. Pilot's License and Drugs or Alcohol

No person may 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 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.

### 10. Penalty of Drugs Trafficking

<sup>48</sup>. Bachary Lee., Co-pilot, flight attendant fail drug tests.



Indonesia also has strict drug laws,<sup>49</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>50</sup>

#### 10. Others

According to international law, the applicable law regulation of airline is the law and regulation in which the airlines registered, it is the reason each State is supposed to have sufficient inspectors from an effective government air safety agency to enforce those regulations and oversee their air carrier, then each State's carriers fly under the regulations of State's registry no matter where they are in the world. For that reason, foreign airline crash in Indonesia, the Indonesian Civil Aviation Authority do not have to be alcohol and drugs testing, taking into consideration that this occurrence beyond the jurisdiction of Indonesia, consequently, foreign airline pilots who crash a plane in Indonesia, 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 subject to alcohol and drugs testing. To fully understand this situation, one should know the status of airlines in the international law.<sup>51</sup>

### IX. CONCLUSIONS

Based on 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.

### X. 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.

<sup>49</sup> Act Concerning Narcotic, Act No.35 Year 2009, *supra* note 11, 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>50</sup> Drug Laws in Singapore versus Southeast Asia: Who's Got It Right?, *supra* note 32.

<sup>51</sup> Dr. Gunardi, Dr. Gunawan Djajaputra and Prof. Dr. Martono, *Laws and Regulations of Drugs, Alcohol and Narcotics Related to Aviation Activities in Indonesia, ASEAN and Others Countries*. www.ijbmi.org Vol. 6(4) 57 (April 2017).



## BIBLIOGRAPHY

### Books

- [1]. Dempsey P.S., *Air and Space Law* (2005) Vol. XXX-Part I. Toronto : The Carswell Company Ltd 205.
- [2]. Milde M., *Air and Space Law* (1993) Vol. XVIII- Part II. Toronto : The Carswell Company, Ltd – 1993.
- [3]. Articles
- [4]. Ahmad Sudiro and Martono K., *The Development of Civil Aviation Laws and Regulations Applicable in Indonesia*. Vol. 5(12) [www.ijmi.org](http://www.ijmi.org) 46 (December 2016).
- [5]. Ariawan Gunadi and Martono K., *Current Indonesian Air Transport (2016)*, Vol. 9(10) IOSR-JAC 12(Oct.2016).
- [6]. Dr Gunardi, Dr Gunawan Djajaputra and Prof .Dr.Martono., *Laws and Regulations of Drugs, Alcohol and Narcotics Related to Aviation Activities in Indonesia, ASEAN and Others Countries*. [www.ijbmi.org](http://www.ijbmi.org) Vol. 6(4) 45(April 2017).

### Documents

- [7]. 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. 34
- [8]. 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 Indonesia No.4956.
- [9]. Act Concerning Narcotics, Act. No.35 Year 2009, State Gazette of the Republic of Indonesia No.143 Year 2009 (12 October 2009).
- [10]. 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
- [11]. Annex 1 Concerning Personnel Licensing;
- [12]. Annex 2 concerning Rules of the Air;
- [13]. Annex 3 concerning Meteorological Service for International Air Navigation;
- [14]. Annex 4 concerning Aeronautical Charts;
- [15]. Annex 5 concerning Units of Measurement to be Used in Air and Ground Operations;
- [16]. Annex 6 concerning Operation of Aircraft;
- [17]. Annex 7 concerning Aircraft Nationality and Registration Marks;
- [18]. Annex 8 concerning Airworthiness of Aircraft;
- [19]. Annex 9 concerning Facilitation;
- [20]. Annex 10 concerning Aeronautical Telecommunications;
- [21]. Annex 11 concerning Air Traffic Services;
- [22]. Annex 12 concerning Search and Rescue;
- [23]. Annex 13 concerning Aircraft Accident and Incident Investigation;
- [24]. Annex 14 concerning Aerodromes;
- [25]. Annex 15 concerning Aeronautical Information Services;
- [26]. Annex 16 concerning Environmental Protection;
- [27]. Annex 17 concerning Security: Safeguarding International Civil Aviation Against Acts of Unlawful Interference;
- [28]. Annex 18 concerning The Safe Transport of Dangerous Goods by Air.
- [29]. Garuda Condition of carriage. 46
- [30]. ICAO Doc.7300/8, Convention on International Civil Aviation, signed at Chicago on 7 December 1944
- [31]. ICAO Doc 8364, Convention on Offences and Certain Other Act Committed on Board Aircraft, Signed at Tokyo on 14 September 1963.
- [32]. Lion Air's condition of carriage.
- Others
- [33]. [https://www.google.co.id/search?q=pilot+lion+nyabu&rlz=1C1AVFB\\_enID747ID747&oq=PILOT+&aqs=chrome.4.69i59j69i57j0l4.11173j0j8&sourceid=chrome&ie=UTF-8](https://www.google.co.id/search?q=pilot+lion+nyabu&rlz=1C1AVFB_enID747ID747&oq=PILOT+&aqs=chrome.4.69i59j69i57j0l4.11173j0j8&sourceid=chrome&ie=UTF-8)
- [34]. IATA., *Guidance on the Safe Service of Alcohol on Board*, 1st edition, 70 Years, at 1.
- [35]. <https://www.casa.gov.au/standard-page/testing-safety-sensitive-personnel-alcohol-and-other-drugs-project-ss-0601>
- [36]. 18 hary Lee., Co-pilot, flight attendant fail drug tests.
- [37]. Drug Laws in Singapore versus Southeast Asia: Who's Got It Right?. <https://www.thecabinsingapore.com.sg/drug-laws-in-singapore-and-southeast-asia/>.
- [38]. 37 schonhardt., Indonesia Confronts Drug Use Among Pilots; See also
- [39]. <http://www.nytimes.com/2012/02/10/business/global/indonesia-confronts-drug-use-among-pilots.html>
- [40]. TEMPO.CO. Jakarta; See also
- [41]. 4 e Jakarta Post 22 December 2015.
- [42]. <https://coconuts.co/jakarta/news/foreign-pilot-arrested-hash-drug-inspection-lombok-airport/>
- [43]. 3 ps://www.skybrary.aero/index.php/The\_Effects\_of\_Alcohol\_and\_Drugs\_on\_Pilot\_Performance
- [44]. 3 p Indonesian cop says most lane crashes due to; See also
- [45]. <https://www.cbsnews.com/news/indonesia-narcotics-chief-plane-crashes-mostly-airline-pilots-on-drugs/>

# Regulations of Drug, Alcohol And Narcotics Related To Aviation Activities in Indonesia

## ORIGINALITY REPORT

%**22**  
SIMILARITY INDEX

%**15**  
INTERNET SOURCES

%**2**  
PUBLICATIONS

%**13**  
STUDENT PAPERS

## PRIMARY SOURCES

**1** [www.rappler.com](http://www.rappler.com) %**2**  
Internet Source

**2** [www.dw.com](http://www.dw.com) %**1**  
Internet Source

**3** [www.cbsnews.com](http://www.cbsnews.com) %**1**  
Internet Source

**4** [coconuts.co](http://coconuts.co) %**1**  
Internet Source

**5** [www.caa.co.uk](http://www.caa.co.uk) %**1**  
Internet Source

**6** Submitted to University of Bedfordshire %**1**  
Student Paper

**7** [www.thejakartapost.com](http://www.thejakartapost.com) %**1**  
Internet Source

**8** [www.mcgill.ca](http://www.mcgill.ca) %**1**  
Internet Source

**9** Submitted to University of Portsmouth

Student Paper

% 1

10

[www.inderscienceonline.com](http://www.inderscienceonline.com)

Internet Source

% 1

11

Submitted to Craven College, North Yorkshire

Student Paper

% 1

12

Submitted to Montclair High School

Student Paper

% 1

13

Submitted to The Chartered Insurance Institute

Student Paper

% 1

14

[blogs.wsj.com](http://blogs.wsj.com)

Internet Source

% 1

15

Submitted to Universitas Brawijaya

Student Paper

% 1

16

Submitted to University of Cambridge  
International Examinations

Student Paper

<% 1

17

[blog.klm.com](http://blog.klm.com)

Internet Source

<% 1

18

Submitted to Napier University

Student Paper

<% 1

19

Curdt-Christiansen, . "BACK MATTER",  
Principles and Practice of Aviation Medicine,  
2009.

<% 1

20	<a href="http://clem.mscd.edu">clem.mscd.edu</a> Internet Source	<% 1
21	<a href="http://edoc.pub">edoc.pub</a> Internet Source	<% 1
22	<a href="http://www.motleyrice.com">www.motleyrice.com</a> Internet Source	<% 1
23	<a href="http://www.jftaviation.com">www.jftaviation.com</a> Internet Source	<% 1
24	<a href="http://isddc.dot.gov">isddc.dot.gov</a> Internet Source	<% 1
25	Submitted to Middle Tennessee State University Student Paper	<% 1
26	Submitted to Leicester College Student Paper	<% 1
27	<a href="http://nationalinterest.org">nationalinterest.org</a> Internet Source	<% 1
28	<a href="http://www.geraldmiller.com">www.geraldmiller.com</a> Internet Source	<% 1
29	Submitted to Universitas 17 Agustus 1945 Surabaya Student Paper	<% 1
30	Submitted to Del Mar College Student Paper	<% 1



31	Submitted to Sim University Student Paper	<% 1
32	Submitted to Mont Blanc Palace Student Paper	<% 1
33	Submitted to Buckinghamshire Chilterns University College Student Paper	<% 1
34	Submitted to University of Aberdeen Student Paper	<% 1
35	<a href="http://www.expatindo.org">www.expatindo.org</a> Internet Source	<% 1
36	Submitted to Symbiosis International University Student Paper	<% 1
37	<a href="http://www.theresacatharinacampos.com">www.theresacatharinacampos.com</a> Internet Source	<% 1
38	Submitted to Hull College, Humberside Student Paper	<% 1
39	<a href="http://www.bbc.com">www.bbc.com</a> Internet Source	<% 1
40	Submitted to Daytona Beach Community College Student Paper	<% 1
41	Submitted to Newcastle College, Tyne & Wear Student Paper	<% 1

42	Submitted to EDMC Student Paper	<% 1
43	Submitted to The WB National University of Juridical Sciences Student Paper	<% 1
44	repository.stiesia.ac.id Internet Source	<% 1
45	rosap.ntl.bts.gov Internet Source	<% 1
46	"National Regulation of Space Activities", Springer Science and Business Media LLC, 2010 Publication	<% 1

EXCLUDE QUOTES OFF  
EXCLUDE BIBLIOGRAPHY OFF

EXCLUDE MATCHES OFF