



B. 15

A BOOK CHAPTERS

AVIATION LAWS AND REGULATIONS APPLICABLE IN INDONESIA

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CIVIL AVIATION REGULATIONS AND THE NATIONAL AIR POWER¹

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I. Introduction

Civil aviation is a part of national air power. For that reason this article describes the content of Law Number 1 Year 2009 concerning Civil Aviation. This article deals with legal grounds of civil aviation; sovereignty over airspace including violations, economic considerations; flight information regions; civil aviation personnel; airports and joint-utilization of aircraft and military airbases including structures of airports, determination of airport locations, airport construction, airport operation, airport facilities and maintenance, airport personnel, activity management in airports, joint utilization of airports and airbases; air navigation services; aviation safety; aviation security; search and rescue; aircraft accident investigation; aviation industry and technology development; aviation information systems, human resources including preparation and development, education and training, competency certificates and licenses, contribution of aviation service providers and working hours, and finally public participants.

II. Legal Grounds of Civil Aviation

For the purpose of this article, the definition of civil aviation is a unified system consisting of usage of airspace territory, aircraft, airports, airlines, air transportation,

air navigation, safety and security, the environment, and other supporting and general facilities⁴, while air power is a combination of the use of civil aircraft and state aircraft for the purpose of the national interest.⁵

The legal grounds for civil aviation are provided in Law Number 1 Year 2009 concerning Civil Aviation. It regulates a host of matters related to aviation, from sovereignty in airspace, aircraft production, operation and airworthiness of aircraft to aviation security and safety, aircraft procurement, aviation insurance, aircraft accident investigation, and the licensing of aviation professionals. In addition, the Civil Aviation Act of 2009 also regulates scheduled and non-scheduled air transportation, airlines' capital, the ownership of aircraft, aircraft leasing, fares, the liability of air carriers, air navigation facilities, airport authorities and services, and law enforcement related to air transportation. The Act also has provisions aimed at supporting the development of national and international air transportation in Indonesia, including provisions regarding the creation of a public services institute to further those goals.⁶ Due to the comprehensive nature of the 2009 Act, the present article only describes and highlights certain matters related to national air power in accordance with the above mentioned subject.

The philosophy of the Civil Aviation Act of 2009 is that it is necessary to have many airlines,⁷ so that existing airlines will perform competitively. It is better for airlines to be small but capable of fulfilling air transportation needs to support national economic development, and capable of competing at national, regional and global levels. For that reason, the Civil Aviation Act of 2009 laid down five pillars for the establishment of airlines: aircraft ownership, capital investment, national majority shares holders, bank guarantees; and professional human resources capabilities⁸ combined with operational principles such as safety, security, regulated industry, law enforcement, advanced technologies, and legal compliance.

⁴arti. 1 paragraph (1) of Act Concerning Civil Aviation, Act No.1 of 2009 (Civil Aviation Act).

⁵In accordance with Ian MacFarling, air power is a subset of combat power and is defined as the ability to project military force in the third dimension - which includes the environment of space - by or from a platform above the surface of the earth, see Ian MacFarling, *Air Power Terminology*. Australia: Aerospace Center, 2nd Edition.

⁶Martono and Amad Sudiro, *Current Air Transport Regulations in Indonesia*. (2013) XXXVIII Ann. Air & Sp.L.at 55-89 [Martono and Amad Sudiro: 2013].

⁷Martono and Amad Sudiro, *The Role of Air Transport in Stimulating National Economic Development in Indonesia*. Article presented in The International Conference in Anticipation of ASEAN Economic Community: A Study of Economy, Law and Information Technology" held Universitas STIKUBANK, Semarang, August 29-30, 2013 (Martono and Amad Sudiro: 29-30, 2013).

⁸Martono and Amad Sudiro, *New Indonesian Air Transportation Policy Based on Civil Aviation Act of 2009*. Article submitted to Third Annual International Conference on Law & Regulation of Air Transport and Space Applications, 26-29 April 2012, National Law University, New Delhi, INDIA (Martono and Amad Sudiro: 2012)

III. Sovereignty Over Airspace

In accordance with Article 1 of the Chicago Convention of 1944,⁹ Indonesia has complete and exclusive sovereignty over the airspace above Indonesian territory. In accordance with the United Nations Convention on the Law of the Sea, Indonesia has the right to establish an area of territorial sea up to limit not exceeding 12 miles measured from the baseline.¹⁰ For that reason, Indonesia has sovereignty above the territorial sea as well. Based on the sovereign right mentioned above, Indonesia has the right to determine areas as prohibited for reasons of national economy, state defense, and security considerations. For example, the airspace over the Bontang Area was declared a prohibited area for reasons of national economy whilst no aircraft may fly above a military airbase for defense reasons¹¹ and areas prohibited for security reasons, including the no-fly zone above the Presidential Palace. In addition, Indonesia has also the right to institute prohibitions taking into account the safety of aircraft during natural disasters such as volcanic eruptions. Indonesia is prohibited from declaring an area a no fly zone for political reasons, because Indonesia has not ratified the International Air Services Transit Agreement.

In accordance with Article 3 of the Chicago Convention of 1944, Indonesia must refrain from resorting to the use of weapons against civil aircraft in flight and, in case of interception, the lives of persons on board and the safety of the aircraft must not be endangered. Indonesia, in the exercise of its sovereignty, is entitled to require the landing at some designated airport of a civil aircraft flying above Indonesian territory without authorization. Indonesia may resort to any appropriate means consistent with the relevant rules of international law, including the Chicago Convention of 1944.¹²

In relation to Article 3 bis of the Chicago Convention of 1994, Law Number 1 Year 2009, provides that any aircraft violating the sovereign territory of the Republic of Indonesia, must be given a warning and ordered to leave the area by air traffic control officers, whilst aircraft approaching and having entered prohibited and restricted areas must be warned and ordered to leave the areas concerned by the air traffic control officers as well.

⁹art. 1 of the Chicago Convention of 1944: "The contracting States recognize that every State has complete and exclusive sovereignty over the airspace above its territory". See (2005) XXX-Part I, Ann. Air & Sp.L.at 19-50.

Paul Stephen Dempsey, Ed., *Annals of Air and Space Law, Volume XXX – Part I – 2005*. Toronto, Canada: The Carswell Company Ltd, pages 19-50, hereinafter cited as *Dempsey*.

¹⁰Article 2 of the United Nations Convention on the Law of the Sea, hereinafter cited as UNCLOS of 1982.

¹¹Airbase means a zone on land and/or on the water surface with certain borders within the Republic of Indonesia used for taking off and landing of airplane for the purpose of national defense by the Indonesian Military.

¹²Ghislaine Richard, KAL 007: *The Legal Fallout*, in Nicolas Mateesco Matte Ed., *Annals of Air and Space Law, Volume IX-1994*. Toronto, Canada: The Carswell Company Ltd, page 152, hereinafter cited as *Ghislaine Richard*.

It is the obligation of air traffic control officers to inform the authorities concerned, especially the institution responsible for national defense, that an aircraft has violated sovereign territory or prohibited area. In the case that the aircraft refuses to obey the warning and order to leave, the Air Force of the Republic of Indonesia will force the violator to leave the territory of the Republic of the Indonesia or the prohibited and restricted areas, or force the violator to land at – a stipulated airbase or airport within the territory of the Republic of the Indonesia.

The crew, the aircraft and all other loads of an aircraft violating the sovereign territory of Indonesia will be examined and interrogated in accordance with valid laws and regulations.¹³ Further provisions regarding violation of Indonesia's sovereign territory, stipulation of prohibited areas, restricted areas, execution of action against the aircraft and crew, and the system and procedure for enforcing action by state aircraft will be regulated by Government Regulations.¹⁴

A. Airspace Violation

In the framework of implementation of state sovereignty over the airspace territory of the Republic of Indonesia, Indonesia may, for reasons of military necessity or public safety, restrict or prohibit uniformly the aircraft of other States from flying over certain areas of Indonesian territory, provided that no distinction in this respect is made between Indonesian aircraft engaged in international scheduled airlines services- and the aircraft of other contracting States likewise engaged. In addition, Indonesia also reserves the right, in exceptional circumstances or during a period of emergency, or in the interest of public safety, and with immediate effect, to temporarily restrict or prohibit flying over the whole or any part of Indonesian territory, on condition such restriction or prohibition shall be applicable without any distinction of nationality to aircraft of all other States. The Government will determine prohibited and restricted airspace areas. Indonesian aircraft or foreign aircraft will be prohibited flying through prohibited areas: The prohibition is of permanent and holistic nature, whilst the restriction may be waived for state aircraft purposes.¹⁵

There have been at least four incidents of violations of Indonesia's airspace by a Parternmavia P-68 registration VH-PFP owned by Cape Air Transport, an F-18 of the United States of America airforce, a Boeing 737-300 registration AP-BEH owned by Pakistan International Airlines (PIA) and by PT Rimba Raya. On 12 September 2008, a Parternavia P-68 registration VH-PFP owned by Cape Air Transport, Australia, piloted by Capt. William Henry Scott-Bloxam landed in Mopah Airport, Merauke without diplomatic clearance issued by the Department of Foreign Affairs or flight approval issued by the Ministry of Communications and security clearance issued by the Ministry of Defense. Consequently,

¹³Article 8 of the Law Number 1 Year 2009 concerning Civil Aviation

¹⁴Article 9 of the Law Number 1 Year 2009 concerning Civil Aviation

¹⁵Article 7 of Law Number 1 Year 2009 concerning Civil Aviation.

the pilot was fined IDR 50 million. The second violation of airspace was by an F-18 Hornet owned by the United States of America Airforce. The state aircraft flew over the transit passage, due to the United States of America interpreting the United Nations of the Law of the Sea as not legally binding the United States of America as a party.

The third violation was by a Boeing 737-300 registration AP-BEH belonging to Pakistan International Airlines (PIA) and piloted by Capt. Tariq Khalil Rechman Awan, with 49 passengers without diplomatic clearance, security clearance or flight approval. This aircraft was intercepted and forced to land at Hasanuddin Airport by the Indonesian air force. The Boeing 737-300 was released by Danlanut of Sultan Hasanuddin airbase after payment of a penalty.¹⁶ The fourth violation of airspace, by PT Rimba Raya, was considered to be general aviation.¹⁷

B. Economic Consideration

Airspace also produces national income for the government especially with regard to the exchanging of traffic rights. Indonesian airspace can be exploited for the purpose of national income. The exchange of the first freedom, second, third, fourth and fifth freedoms of the air create national income in bilateral air transport agreements. Indonesia has the right to exploit the airspace for economic purposes. In addition, Indonesia also has the right to protect Indonesian citizens or business legal entities against attack from aircraft of foreign states. Airspaces should not be used as a means to attack the Republic of the Indonesia.

With regard the intrusion of an aircraft into its airspace, Indonesia is prohibited from shooting down the aircraft since the act is inconsistent with aviation safety philosophy and in violation of the aims and objectives of the International Civil Aviation Organization (ICAO)¹⁸. In international law, shooting down an unarmed aircraft is contrary to human rights and inconsistent with the doctrine of self-defense. Under the doctrine of self-defense, an act may only be justified to balance a threat. If the act of defense is bigger than the threat, then it would not be categorized as self-defense but instead as murder. In this regard inconsistent with the best practice in the case of nine eleven case in the United State of America.

¹⁶Vivanews 7 March 2011

¹⁷Martono dan Amad Sudiro, *Hukum Udara Nasional dan Internasional: (Public International and National Air Law)*. Jakarta: Radjagrafindo, 2012.

¹⁸Article 44 paragraph (a) provides: "The aims and objectives of the Organization are to develop the principles and techniques of international air navigation and foster the planning and development of international air transport so as to insure the safe and orderly growth of international civil aviation throughout the world."

IV. Flight Information Region

Indonesia has been a member of the Chicago Convention of 1944 since April 1950, and is bound to provide air navigation facilities to facilitate air navigation in accordance with the Convention of 1944. In addition, Indonesia must implement standard systems of communications, surveillance, and other operational practices and rules of the air, pursuant to the Chicago Convention of 1944.

In relation to air navigation services, the Natuna Island's delegated to Singapore under the Chicago Convention of 1944, and the Natuna Island. Under Annex 11 to the Chicago Convention of 1944, the Act Number 1 Year 2009 provides that navigation services have been based on agreement must be evaluated and approved by the operating agency no later than 15 days after the end of the obligation of the Republic of the Indonesia taking into account of national security.

V. Civil Aviation Personnel

Every aircraft personnel is composed of pilots, cabin crew, and ground crew. Aircraft personnel with direct involvement in the operation of an aircraft must hold legitimate and valid licenses. The license holder after the aircraft personnel concerned has been declared physically and mentally fit to fly and have passed professional tests. The training organized by accredited institutions. The aviation officer(s) includes air traffic controllers, flight attendants, and cabin crew. Personnel may be reserved for military service based on certified competency. The regulation of civil aviation in Indonesia since the Jaya independence, where all civil aviation is regulated by the government.

VI. Airports and Joint Utilization

Airport regulations are found in the Act Number 1 Year 2009. They govern airport operations and joint utilization of airports.

¹⁹Article 28 of the Chicago Convention of 1944. *XVIII-Part II-1993*. Toronto, Canada: The International Civil Aviation Organization.

construction; airport operation including airport operation certificates, airport facilities, airport personnel; airport management including government activities in airports, airport authorities, business activities at airports; special services and facilities; liability for indemnity; airport tariff services; special airports; international airports. Regulations with regard to joint utilization as airports and military airbases are found in Articles 257, 258 and 259 of Act Number 1 Year 2009. They provide that under certain circumstances an airport may be utilized as a military airbase. In reverse, under certain circumstances a military airbase may be used jointly as an airport. Joint utilization of an airport or a military airbase must conform to the need for air transportation services, aviation safety, security, and expedite procedures, state security and defense; and legal regulations.²⁰

A. Structure of Airports.

National airport structure must be created in the framework of having a competent, integrated, efficient and globally competitive network of airports, in order to support national and regional development with an Archipelagic Perspective as its base. The airport structure applies to the national airport planning system which illustrates interdependence, interrelation, and synergy among all elements such as natural resources, human resources, geography, economic potential, and security and defense in the framework of achieving national objectives. The airport structure contains the roles, function, utilization, hierarchy, and classification of airports, and national airport master plan.²¹

Airports act as hubs for the transportation network in accordance with their hierarchy, as entry point for economic activities, as a place for transportation mode transfers, as a booster and supporter of industrial and/or trading activities, as an opener of isolated regions, border regional development, and disaster management; and as infrastructure strengthening the archipelagic perspective and sovereignty of the country. In addition, airports have a function as a place for operations of governance and/or entrepreneurship. With regard to utilization, airports consist of international and domestic airports.

The airport hierarchy consists of hub airports and spoke airports. Hub airports classified by scale of services consist of primary, secondary and tertiary hub airports, whilst spoke airports consist of destination airports or supporters of hub airports and serve as infrastructure supporting local services. The classification of airports consists of several classes of airports determined based upon the airport's service capacity and operational activities.

The national airport master plan serves as guidelines for determining the location, master plan formulation, construction, operation and development of airports and must be formulated a consideration of the national spatial plan, provincial spatial plan, regional/

²⁰Article 257 Law Number 1 Year 2009 concerning Civil Aviation

²¹Article 193 of Law Number 1 Year 2009

municipal spatial plan; regional socio economic potential and growth; natural resources potential; national transportation system; integration of inter mode and multimode transport; and the role of airports as infrastructure strengthening the Archipelagic Perspective and sovereignty of the country.²²

B. Determination of Airport Location

The Minister of Communications shall determine the locations. The determination of airports locations must contain airport coordinate points and an airport master plan. The determination of location of airports must be made by taking into consideration the national airport master plan; aviation safety and security; harmony and equilibrium with local culture and other related activities in the location of the airport; feasibility of economic, financial, social, regional development, technical and operational aspects of construction; and environmental feasibility.²³ The airport master plan must contain at least the projected demands for passenger and cargo transportation services; the need for facilities, the facility site plan, the phases of construction work, the needs and utilization of land space, working environmental areas, interest environment areas, aviation operational safety zones and noise limit/zone borders.²⁴

The working environment areas of airport are areas possessed by the airport business entity or airport operation unit which will be utilized for construction works, development and operation of the airport. Within the pre-determined working environment areas of airport, land and/or water surface utilization rights may be given in accordance with the provisions of the laws.²⁵ For transportation services, the Minister of Communications may determine a city check in counter outside the working environment of an airport. The city check in counter will be an inseparable part of the airport working environment area and have to observe aviation security aspects.²⁶

Airport interest environment areas are areas outside the airport working environment areas that are used to ensure aviation safety and security, and smooth accessibility for passengers and cargo. Airport interest environment areas will be utilized upon approval from the Ministry of Communications,²⁷ whilst the airport operational safety zone consists of approach and take off zones, accident vulnerability zone, subsurface surface transitional zone, inner horizontal surface zone, conical surface zone and outer horizontal surface zone.²⁸ With regard to the noise limit/border zone, Article 207 of Law Number 1 Year 2009 provides that the noise limit/border zone is a certain zone surrounding the airport

²²Article 194 of Law Number 1 Year 2009

²³Article 201 of Law Number 1 Year 2009

²⁴Article 202 of Law Number 1 Year 2009

²⁵Article 203 of Law Number 1 Year 2009

²⁶Article 204 of Law Number 1 Year 2009

²⁷Article 205 of Law Number 1 Year 2009

²⁸Article 206 of Law Number 1 Year 2009

that may be affected by the aircraft engine sound waves, consisting of level I noise, level II noise and level III noise.²⁹

C. Airport Construction

In construction of a building with specific functions, any construction work on airport must observe aviation safety and security requirements, airport service quality requirements, environmental preservation requirements and inter mode and multimode integration requirements. The government will issue an airport construction permit after coordination with the regional government. The airport construction/building permit will be issued upon evidence of land ownership and/or possession; recommendations given by related agencies on utilities and accessibility for airport operation; evidence of airport location approval; detailed technical proposals for basic airport facilities and environmental preservation.³⁰ Further provisions regarding construction of airport will be governed by Government Regulation.

Any work of construction, renovation, or preservation of buildings, and planting or tending of plants in an aviation operational safety zone will be prohibited from exceeding the height limit for the aviation operational safety zone. Exceptions to the provision on construction, renovating, or preserving buildings will have to be approved by the Ministry of Communications, and have to be a facility absolutely required for aviation operation, provide specific aeronautical analysis, and be in accord with technical aviation operational safety requirements. Information on buildings exceeding the limit will have to be given through aeronautical information services.³¹

D. Airport Operation

Any airport to be operated must fulfill aviation safety and security provisions, and airport service standards. The Minister of Communications will give airport certificates – for airports serving aircraft with a capacity of more than 30 (thirty) seats or a maximum weight during take-off of more than 5,700 (five thousand seven hundred) kilograms, airport registrations – for airports serving aircraft with a maximum capacity of 30 (thirty) seats or a maximum weight during take-off of 5,700 (five thousand seven hundred) kilograms. The certificates will be given to any airport possessing an aerodrome manual and meeting requirements of personnel, facilities, airport operational procedures and the airport operational safety management system.

Airport registration will be given to any airport possessing an aerodrome manual and meeting requirements of personnel, facilities and airport operational procedures.

²⁹Article 207 of Law Number 1 Year 2009

³⁰Article 215 of Law Number 1 Year 2009

³¹Article 208 of Law Number 1 Year 2009

Any person operating an airport without fulfilling provision on airport services will be liable to administrative sanctions such as warnings, decrease of airport service tariff, and/or certificate revocation.³² Further provisions regarding the mechanism and procedures for obtaining airport certificates and registrations and the imposition of administrative sanctions will be governed by Ministerial Regulation.³³

E. Airport Facilities and Maintenance

Every airport business entity or airport operation unit must provide airport facilities performing to the requirements of aviation safety and security, and airport services in accordance with the stipulated standards. Thus airport facilities will be given a fitness certificate by the Minister of Communications. In order to maintain the preparedness of airport facilities, the airport business entity, or the airport operation unit must conduct periodical maintenance by means of checking, testing, verification and/or calibration and in order to maintain and improve the performance of facilities, procedures, and personnel, the airport business entity or airport operation unit must conduct periodic training/drills in emergency management. Any individual violating the provisions to provide facilities, maintenance and conduct periodic training/drills will be liable to administrative sanctions such as warning, suspension of certificate, and/or certificate revocation.³⁴

Airport operation fulfilling requirements for aviation safety, security and services must be carried out by managerial personnel having capability and competency in airport technical fields and/or airport operation. Any individual violating the provisions of managerial staff will be liable to administrative sanctions such as warning, freezing of certificate, and/or certificate revocation.³⁵ Further provisions regarding airport facility operation and the mechanism and procedures for imposition of administrative sanctions will be governed by Ministerial Regulation.³⁶

F. Airport Personnel

All airport personnel must have licenses or competency certificates. All airport personnel directly involved in operation performance and/or maintenance of airport facilities must have legitimate and valid licenses. The licenses will be issued by the Minister of Communications upon the candidate meeting the administrative requirements, being physically and mentally fit, possessing competency certificates in the field, and passing an examination/test. The competency certificate will be obtained through education and/or training conducted by any institution duly accredited by the Minister of Communications.³⁷

³²Article 217 of Law Number 1 Year 2009

³³Article 218 of Law Number 1 Year 2009

³⁴Article 219 of Act Number 1 Year 2009

³⁵Article 220 of Act Number 1 Year 2009

³⁶Article 221 of Act Number 1 Year 2009

³⁷Article 222 of Law Number 1 Year 2009

Airport personnel having the required license must perform their duties in accordance with the policies in their field, maintain competency and undergo periodic medical checks. Any airport personnel found to be in violation of the above will be liable to administrative sanctions such as warning, freezing of license and/or license revocation. Airport personnel licenses issued by another country will be considered valid after going through a legalization and validation process by the Minister of Communications. Further provisions regarding the requirements, mechanism and procedures for obtaining licenses, educational and/or training institutions, and enforcement of administrative sanctions will be governed by Ministerial Regulations.³⁸

G. Activities Management in Airports

Activities management in airport is divided into government activities, airport authority and business activities at the airport. The government activities at an airport include supervision of aviation activities, customs, immigration and quarantine. Supervision of aviation activities is implemented by the airport authority, whilst customs, immigration and quarantine are carried out in accordance with the provisions of law and regulations. Further provisions regarding government activities in the airport will be governed by Ministerial Regulations.³⁹

The airport authority shall be determined by and report to the Minister of Communications. The airport authority will be established for one or several nearby airports. In performing its duty, the airport authority must coordinate with the local government. The airport authority will have the duty and responsible to guarantee safety, security, smooth processing, and comfort at the airport; ensuring implementation and fulfillment of aviation safety and security requirements, and conditions for smooth processing and comfort at the airport; assuring well maintained preservation of the airport environment; settling any problems that may disturb the smooth operational activities at the airport which is considers cannot be solved by other agencies; reporting to the highest management in the case of any government officials neglecting their duty and responsibilities and ignoring and/or not following the policies and regulations existing at the airport; and reporting implementation of the airport authority's duty and responsibilities to the Minister of Communications.⁴⁰

The airport authority shall have the authority to arrange, control and oversee the implementation of provisions on safety, security, processing, and comfort at airport, implementation of provisions on environmental preservation, the utilization of land and/or water surface of the airport in accordance with the airport master plan, the utilization of aviation operational safety zones and airport working environment areas and airport interest

³⁸Article 225 of Law Number 1 Year 2009

³⁹Article 226 of Law Number 1 Year 2009

⁴⁰Article 228 of Law Number 1 Year 2009

environment areas; the implementation of operational performance standards for provision of services at the airport. In addition, the airport authority shall have authority in coordinating government activities at the airport and imposing administrative sanctions on airport business entities, airport operation units, and/or other business entities failing to meet the requirements of aviation safety, security, smooth processing, and comfort in accordance with the rules of law.⁴¹

The airport authority apparatus are civil servants in possession of competency in the aviation sector according to the standards and criteria set forth by the Minister of Communications. Further provisions regarding airport authority will be governed by Ministerial Regulations.

Business activities at airports, are governed by Articles 232 to 238 of Law Number 1 Year 2009. Article 232 defines airport management activities as consisting of airport services and airport related services. Airport services cover aircraft services, passenger, cargo and post services, consisting of the supply and/or development of facilities for aircraft landing, taking-off, maneuvering, parking, and airplane hangars; terminal facilities for passenger, cargo and post services; facilities for electronics, electricity, water, waste installation facilities, and land for buildings, fields, and industry and other buildings or construction connected with the smooth operation of air transportation.

Airport-related services cover aircraft operation services at the airport, consisting of provision of airplane hangars, aircraft maintenance workshops, warehousing, aircraft catering, passenger and baggage services, aircraft technical ground handling, passenger and baggage services, and cargo and post handling, whilst services related to passenger and cargo services support consist of availability of lodging/hotel(s) and transit hotels, availability of shops and restaurants, motor vehicle storage, health services, banking services and/or money changer(s), and ground transportation. Value added services related to providing airport management consist of the availability of playgrounds and recreation, office business facilities, sport facilities, education and training facilities, fueling stations for motor vehicles, and advertisements.

H. Joint Utilization of Airports and Airbase

In a peaceful situation, the civil aviation regulations apply to a jointly utilized military airbase, whilst oversight and control of aviation operational safety zone at jointly utilized military airbase will be undertaken by the airport authority after obtaining an approval from related agencies.⁴² Any airport and military airbase to be jointly utilized must be determined by Presidential Decree. Joint utilization of airports and military airbases can be seen at Adi Sucipto Airport in Yogyakarta, Adi Sumarmo Airport in Solo and Achmad Yani Airport in Semarang.

⁴¹Article 229 of Law Number 1 Year 2009

⁴²Article 258 Law Number 1 Year 2009 concerning Civil Aviation

VII. Air Navigation Services

Air navigation regulation are found in Chapter XII Articles 261 to 307 of Law Number 1 Year 2009. They provide the structure of national flight navigation including air space served, air space classification, flight routes; flight navigation service operations including objectives and type of flight navigation services, flight navigation service certification, flight navigation service charges, air traffic services, aeronautical telecommunication services, aeronautical information services, aeronautical meteorological services, search and rescue information services; flight navigation personnel; flight navigation facilities; aeronautical radio frequencies including frequencies utilized and charges. With regard to flight navigation service charges, state aircraft operations are excluded from paying for such services, all flight air navigation facilities provided by civil aircraft can also be utilized for national defence purposes.

VIII. Aviation Safety

Aviation safety⁴³ regulation is found in Chapter XIII Articles 308 to 322 of Law Number 1 Year 2009. They provide for a national aviation safety program; aviation safety oversight; aviation safety law enforcement; aviation service provider safety management systems; and aviation safety culture. With regard to aviation safety related to national air power, in a peaceful situation, the civil aviation regulations recommended by the International Civil Aviation Organization apply.

IX. Aviation Security

Aviation security⁴⁴ regulations are found in Chapter XIV Articles 323 to 351 of Law Number 1 Year 2009. They provide for national aviation security; aviation security supervision; airport security; aircraft operational security; prevention of unlawful acts; and aviation security facilities. With regard to aviation security related to national air power, the government is responsible for establishing a national aviation security committee, enacting a state aviation security program and monitoring the implementation of a state aviation security program.⁴⁵ The national aviation security committee will have the duties of coordinating the implementation of the state aviation security program.⁴⁶ The national aviation security program must contain at least aviation security regulations, aviation security targets, aviation security personnel, separation of responsibility for

⁴³Aviation safety means a condition meeting safety requirements for utilization of airspace territory, aircraft, airport, air transportation, flight navigation and supporting facilities and other general facilities, see Article 1 paragraph (49) of Law Number 1 Year 2009 Concerning Civil Aviation.

⁴⁴Aviation security means a condition providing protection to aviation against any violation of law(s) through integrated utilization of human resources, facilities and procedures, see Article 1 paragraph (5) of Law Number 1 Year 2009

⁴⁵Article 323 of Law Number 1 Year 2009

⁴⁶Article 324 of Law Number 1 Year 2009

aviation security, protection of airports, aircraft, and flight navigation facilities, control and guaranteed security of humans and goods in aircraft, prevention of unlawful acts, adjustment of security systems to security threat levels and aviation security supervision.

In addition, the Minister of Communications is responsible for supervising national aviation security as well. The supervision will be continuous to ensure compliance with aviation security regulations, covering audits, inspections, surveys and tests. The Minister of Communications will take corrective and law enforcement actions based on the results of such monitoring.

Airport security, means that any person, vehicle, cargo, or post entering a restricted area must have an entrance permit into the restricted areas, or airplane tickets for passengers, and security checks will be enforced by personnel competent in the aviation security sector.⁴⁷ Passengers, aircrews, baggage, cargo and post to be transported must pass examinations and fulfill aviation security requirements. Specific passengers and cargo may be given special treatment with regard to security examination. Any airplane passenger carrying a weapon must report and handover the weapon to the air transportation business entity transporting the passenger concerned. The air transportation business entity shall be responsible for the weapon received until the time it is returned to the owner at the designated airport. An airport business entity and airport operation unit must provide or appoint an area at the airport territory as an isolated parking area for aircraft experiencing security disturbances or threats.

X. Search and Rescue

It is worthwhile to point here, to the missing flight MH 370 belonging to Malaysian Airlines with regard to search and rescue. Law Number 1 Year 2009 concerning Civil Aviation also provides regulations for search and rescue of missing aircraft. They are found in Chapter XV Articles 352 to 356 of Law Number 1 Year 2009. The government⁴⁸ and regional governments⁴⁹ shall be responsible for conducting search and rescue for any aircraft experiencing an accident within the territory of the Republic Indonesia. Search and rescue must be done immediately, appropriately, effectively and efficiently to reduce casualties. Any person operating an aircraft must assist search and rescue efforts in aircraft accident(s). In practice, taking into account humanitarian efforts, search and rescue operation may not be limited to within the territory of the Republic of Indonesia, but extend to foreign countries as in the case of MH 370 recently.

⁴⁷Article 334 of Law Number 1 Year 2009

⁴⁸The Government means the President of the Republic of Indonesia holding the governing authority in the country of the Republic of Indonesia, as defined by the 1945 Constitution of the Republic of Indonesia

⁴⁹Regional Governments are the Governors of Provinces, Heads of Kabupaten (Regents), or Mayors of Municipalities/Cities, and regional apparatus as element(s) of regional government administration.

The obligation does not apply only to the Government but also aircrews. Any pilot in command of an aircraft experiencing a dangerous condition or aware of any other aircraft showing indication(s) of facing dangerous conditions during flight must immediately inform the air traffic control unit on duty and the air traffic control unit on duty must immediately inform the agency in charge of search and rescue after receiving such notification or knowing an aircraft is in a dangerous condition or lost during flight.⁵⁰

XI. Aircraft Accident Investigation

Pursuant to Article 26 of the Chicago Convention of 1944,⁵¹ Indonesia as a member of International Civil Aviation Organization,⁵² issued regulations of aircraft accident investigation as found in Chapter XVI Articles 357 to 369 of Law Number 1 Year 2009. They provide that the government must conduct investigations and follow-on investigations regarding the causes of every civil aircraft accident and serious incident within the territory of the Republic of Indonesia. The above must be conducted by a national committee formed for the purpose and reporting to the President. The national committee must be an independent institution in performing its duties and functions and shall consist of members selected through a standard competency fit and proper test administered by the Ministry of Communications. The committee's duties will be to conduct investigations, research, follow-on investigations, final reports, and provide safety recommendations in the framework or preventing accidents from the same causes and the recommendations will have to be followed up by actions from the related parties.⁵³ With regard to aircraft accident investigations, pertaining to the national air power, the case stands indirectly related a necessary exchange of experience to investigate the aircraft accident investigation.

XII. Aviation Industry and Technological Developments.

As described above, Law Number 1 Year 2009 comprehensively regulates all matters related to aviation activities as recommended by the International Civil Aviation Organization. It also regulates to an Aviation industry and technologies developments as found in Chapter XVII Articles 370 to 374 of Law Number 1 Year 2009. It provides that the government must undertake empowerment of the aviation industry and

⁵⁰Article 355 of Law Number 1 Year 2009

⁵¹Article 26 of the Chicago Convention of 1944: "In the event of an accident to an aircraft of a contracting State occurring in the territory of another contracting State, and involving death or serious injury, or indicating serious technical defect in the aircraft or air navigation facilities, the State in which the accident occurs will institute an inquiry into the circumstances of the accident, in accordance, so far as its laws permit, with the procedure which may be recommended by the International Civil Aviation Organization. The State in which the aircraft is registered shall be given the opportunity to appoint observers to be presented at the inquiry and the State holding the inquiry shall communicate the report and findings in the matter to that State."

⁵²Indonesia adhered to the Chicago Convention of 1944 on 27 April 1950

⁵³Article 357 of Law Number 1 Year 2009

technological developments to strengthen national air transportation. The strength of national air transportation, includes at least design, production, etc.; engines, propellers, and components of aircrafts; aviation safety and security facilities; aviation technology, information and navigation; airport operation/management; and educational and training facilities for aviation personnel.⁵⁴

Empowerment of national air transportation must be undertaken by the government through development of market research and saleable designs; developing standardization and aviation components by using, as much as possible, local content and transfer of technology; developing raw materials and components of the industry; providing facilitation in financing and taxation; facilitating cooperation with similar industries and/or markets for domestic and international users; and determining an integrated aviation industrial zone.⁵⁵ With regard to empowerment of the aviation industry and technological developments in relation to national air power, the enhancing of domestic technologies will strengthen the procurement of state aircraft fleets to meet the needs of the Department of Defense. The Department of Defense could order the fleets it needs domestically and save financial expenditure.

XIII. Aviation Information System

Aviation information system regulation is found in Chapter XVIII Articles 375 to 380 of Law Number 1 Year 2009. It provides that the Ministry of Communications must implement an aviation information system covering collection, processing, analysis, recording, presentation, and dissemination of aviation data to improve services to the community and the public and support policy formulation in the aviation sector. The aviation information system must cover at least national civil aviation regulations, targets and results of aviation performance achievement, the number of operating national and foreign air transportation business entities, number and breakdown of the national air transportation fleet, routes and capacity available for regular domestic and international transportation, aircraft types operated on flight routes, air transportation traffic data in public airports, level of aircraft punctuality to scheduled times, level/rate of air transportation services, airport classes and status, airport supporting facilities and the results of aircraft accident and incident investigation which are not categorized as non-disclosure information.⁵⁶

Implementation of the aviation information system will be carried out by building and developing an effective, efficient, and integrated information network involving the related parties utilizing information and communication technological developments,⁵⁷ but advertisements in airport working environment areas must not disrupt aviation safety and security, disrupt aviation information and services or disrupt airport aesthetics.

⁵⁴Article 370 paragraph (2) of Law Number 1 Year 2009

⁵⁵Article 379 paragraph (3) of Law Number 1 Year 2009.

⁵⁶Article 376 of Law Number 1 Year 2009

⁵⁷Article 377 of Law Number 1 Year 2009

Any person undertaking an activity in the aviation sector must present data and information on their activities to the Minister of Communications. The Minister of Communications will update aviation data and information periodically to produce data and information suitable to needs, which is accurate, current and reliable in nature. The aviation data and information must be documented and published and may be accessed and used by the public needing the data and information using information and communications technology. Processing of the aviation information system by the Minister of Communications may be undertaken through cooperation with other parties. Further provisions regarding the mechanism of presentation and processing of the aviation information system will be governed by Ministerial Regulations.⁵⁸

With regard to the aviation information system especially all the above mentioned aviation data, in relation to the national air power, it will be valuable to know the capability of the national civil aviation to support the Ministry of Defense. In addition, the above mentioned data is also needed by the International Civil Aviation Organization. In accordance with Article 21 of the Chicago Convention of 1944, Indonesia undertakes to supply to any other contracting State or to the International Civil Aviation Organization information concerning all data available. The data thus obtained by the International Civil Aviation organization will be made available by it on request to other contracting States.⁵⁹

XIV. Human Resources

Human resources regulation is found in Chapter XIX Articles 381 to 396 of Act Number 1 Year 2009. It consists of preparation and development, education and training, competency certificates and licenses, contribution of aviation service providers and working hours arrangement.

A. Preparation and Development

Article 381 of Law Number 1 Year 2009 provides that the government is responsible for the preparation and development of human resources in the aviation sector. With the aim creating human resources that are professional, competent, disciplined, reliable, and having integrity in the fields of aircraft, air transportation, airport management, flight air navigation, aviation safety, and aviation security. In order to achieve the above mentioned objectives, the Minister of Communications will issue policies on the preparation and development of human resources in the aviation sector, covering manpower planning, education and training, expansion of job opportunities, and supervision, monitoring and evaluation. Further provisions regarding preparation and development of human resources in the aviation sector will be governed by Ministerial Regulations.

⁵⁸Article 379 of Law Number 1 Year 2009

⁵⁹Article 21 of the Chicago Convention of 1944, printed in Paul Stephen Dempsey Ed., *Annals of Air and Space Law, Volume XXX-Part 1-2005*. Toronto, Canada: The Carswell Company Ltd, page 25.

B. Education and Training

Education and training in the field of aviation must be undertaken in the framework of the national educational system. The Minister of Communications will be responsible for supervision and organization of education and training. This responsibility will cover at least improvement of the quality of educators, development of curriculum, syllabus and methods in accordance with pre-determined standards, structuring, improvement, and certification of aviation educational and training organizations or management, and modernization and improvement of the technology of learning teaching facilities and infrastructure of aviation educational and training institutions.⁶⁰

Education and training may be implemented by the Government, regional government or the community through formal and/or non-formal educational paths. The formal educational path will be implemented in medium and higher education levels in accordance with the provisions of laws and regulations, whilst non-formal educational paths will be implemented by non-formal educational units that have the approval of the Minister of Communications.⁶¹

The Minister of Communications will determine the model by which aviation human resources education and training will be formulated. This model of human resources education and training will contain at least kinds and levels of education and training, requirements for participation in the education and training, curriculums, syllabuses and methods of education and training, qualifications of educators and trainers, infrastructure and facility standards for education and training, requirements for education and training operators, standards for determining educational and training charges, and control and oversight of the education and training.⁶²The Government will direct, supervise, and oversee the implementation of education and training, whilst regional governments will assist and provide facilities aiming for well implemented education and training.⁶³ Further provisions regarding the implementation/operation of education and training will be issued by the the Minister of Communications.⁶⁴

C. Competency Certificates and Licenses

The operators of education and training must provide certificates of competency or licenses⁶⁵ to students/trainers who have passed the education and/or training. Any personnel in the aviation sectors who have already passed competency exams will be given a

⁶⁰Article 382 of Law Number 1 Year 2009

⁶¹Article 383 of Law Number 1 Year 2009

⁶²Article 384 of Law Number 1 Year 2009

⁶³Article 385 of Law Number 1 Year 2009

⁶⁴Article 387 of Law Number 1 Year 2009

⁶⁵Certificate of competency is evidence that an individual has met the requirements of knowledge, expertise and qualifications in his/her field.

license by the Minister of Communications after fulfilling the requirements. In performing his/her work, personnel in the aviation field must possess a certificate of competency or license in accordance with the requirements pre-determined for his/her field of work.

Providers of aviation services or organizations operating in the aviation sector must employ aviation personnel possessing a certificate of competency or license, formulate training programs in the aviation sector for maintaining and improving the competence of aviation personnel employed. Further provisions regarding certificates of competency and licenses and the formulation of training programs will be governed by Ministerial Regulations.⁶⁶

D. Contribution of Aviation Service Providers and Working Hours

Aviation service providers or organizations having any activities in the aviation sector must give contributions to support personnel preparation and development in aviation. These contributions will consist of at least scholarship grants for education and training, establishment of educational and training institutes and/or provision of educational and training facilities, cooperation with existing educational and training institutes, and/or the extension of internship opportunities for education and training. Any person violating the provision will be liable to administrative sanctions such as warning, administrative fines, freezing of permit/license or revocation of permit/license.⁶⁷ In order to ensure aviation safety, regulations will be made on limits on working days, working hours, and breaks for flight operational personnel. Further provisions in this regard will be issued by the Minister of Communications.⁶⁸

With regard to human resources in relation to national air power, the human resources will have a supporting role in the case of the Ministerial of Defense needing human resources in the aviation sector, which in certain conditions, especially in times of peace, the personnel of the Department of Defense will assist civil aviation in air traffic control in the joint utilization of airports and military airbases as provided in Article 257 of Law Number 1 Year 2009.

XV. Public Participation

Public participation regulations are found in Chapter XX Articles 396, 397 and 398 of Law Number 1 Year 2009. Article 396 of Law Number 1 Year 2009 provides that in the framework of optimally improving aviation operations the public/community has equal and broad opportunities to participate in aviation activities. Such activities will be in the form of monitoring and safeguarding discipline in aviation operations; providing input to the

⁶⁶Article 392 of Law Number 1 Year 2009

⁶⁷Articles 393 and 394 of Law Number 1 Year 2009.

⁶⁸Article 395 of Law Number 1 Year 2009

Government regarding improvement of regulations, guidelines, technical standards in the aviation sector; providing input to the Government and regional governments in aviation, supervision, operation and oversight; giving opinions and considerations to officials in charge of aviation operational activities on any actions causing significant environmental impact; reporting any action(s) in deviation from aviation procedures, and malfunction of aviation equipment and facilities; reporting any accident or incident occurring on aircraft; prioritizing and promoting aviation safety culture; and/or taking class action(s) against aviation activities disrupting, damaging and/or endangering the public interest. The Government, regional governments and aviation service providers must follow up any input, opinions and reports submitted by the above mentioned, but, the public participants are responsible for maintaining aviation orderliness, safety and security. With regard to public participation in relation to national air power, the public/community has the role of supporting national air power through the national interest in aviation.

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AVIATION LAWS AND REGULATIONS APPLICABLE IN INDONESIA



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