

# Criminal Acts Related To Aviation: National and International

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## Criminal Acts Related To Aviation: National and International

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**Abstract:** This article purported to explore criminal acts related to aviation in the national and international level. Part one regarding national instrument of criminal acts such as Act No.2 Year 1976, Act No.4 Year 1976, Act No.1 Year 1979, Act 15 Year 1992; high light of Act No.1 Year 2009 includes criminals act, imprisonment and/or fine, airport authority, examination of passengers and criminals investigation; Act No.35 Year 2009 includes regulation of drugs and alcohol, drug and alcohol testing for aviation personnel, violation of drugs and alcohol regulations; several criminal acts cases such as Partemania P-68 Registration VH-PFP, F-18 Hornet the US Air Force, PT Rimba Raya, Boeing 737-300 Registration AP-BEH, Aerojlot in 1982, drugs' abuse, enter into cockpit and violation of security investigation; part two regarding international instruments of civil aviation and drug act such as Tokyo, The Hague and Montreal Convention, authority of pilot in command, right and obligation State Party, unruly passenger behavior; other instrument of international criminals acts such as extradition agreements and AMAAS; criminal acts related to drug abuse and civil aviation in Australia, Brunei Darusalam, Malaysia, Singapore, Thailand, The Philippines and the USA.

**Key words:** criminal acts, drugs, and its cases

### I. INTRODUCTION

The Republic of Indonesia (ROI) is a country which adopt the laws system of the Netherlands (Dutch) and is bound by the Indonesian constitution of 1945. Article 1 transition rule of Constitution provides that all existing legislation is still valid as long as a new one has not been enacted according to this constitution. Indonesia adopts a hierarchy system of legislation and the Indonesian constitution of 1945 is highest in the hierarchy of legislation. Sources of law inherited from the Dutch, related to aviation activities, are no longer applicable in Indonesia. The aviation laws within the regime of the Dutch, were (Stb.1933-118), (Stb.1939-100). However after Indonesia's independence, the source of laws and regulation related to aviation criminal acts are found in Penal Code (KUHP), (former) Act of 1958, Act No.2 of 1976, Act No.4 of 1976, Act No.1 of 1979, (former) Act of 1992, Act.No.5 of 1997, Act No.30 of 2002, Act No.1 of 2009, and Act. No.35 of 2009, whilst criminal acts related to aviation in the international level are found in: Tokyo Convention of 1963, The Hague Convention of 1970, Montreal Convention of 1971, Montreal Convention of 1991, Beijing Convention of 2010 and Beijing Protocol of 2010, ASEAN Multilateral Agreement on Air Service (AMAAS). Additionally, Criminal drug acts related to aviation can be found in Brunei Darusalam, Malaysia, Singapore, Thailand and the Philippines and other countries such as Australia and the United States of America.

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## II. NATIONAL INSTRUMENTS RELATED TO CIVIL AVIATION CRIMINAL ACTS

### Introduction

National instruments related to civil aviation criminal acts can be found in Penal Code (KUHP), Act No.2 of 1976, Act No.4 of 1976, Act No.1 of 1979, (former) Act 15 of 1992, Act.No.5 of 1997 and Act No.1 of 2009 and its implementation of the provision as follows :

1. <sup>46</sup> **Act No.2 of 1976**

<sup>18</sup> Act Concerning the ratification of Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo 1963, Convention for the Suppression of Unlawful Seizure of Aircraft, signed at the Hague on 16 December 1970 and Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, signed at Montreal on 23 September 1971, Act No.2 of 1976 (27 August).

2. **ACT No.4 of 1976**

With regard to crimes relating to aviation and aviation facilities provided in Articles 479a to 479r of Penal Code (KUHP). These articles regulate that unlawfully renders useless or damages a building used for safeguarding air navigation<sup>4</sup> any person who by negligence causes destruction, incapability of use or damage of a building used for safeguarding air navigation;<sup>5</sup> unlawfully destroys, damages, removes or displaces a sign or an instrument for safeguarding air navigation places wrong sign or instrument;<sup>6</sup> negligence cause destruction, removal, displacement of a sign or an instrument for safeguarding air navigation or causes a sign or instrument for safeguarding air navigation not be operated or causes its misplacement;<sup>7</sup> unlawfully destroys an aircraft or causes damage to an aircraft which wholly or partially belongs to another person;<sup>8</sup> unlawfully causes disaster to an aircraft, destroys, renders an aircraft incapable of use or damage an aircraft negligence causes disaster or destruction to an aircraft or causes an aircraft to be rendered incapable of use or cause damage to an aircraft;<sup>9</sup> benefit himself or another, unlawfully, to the detriment of an insurer causes a fire or an explosion, disaster, destruction, damage, to an aircraft or causes on aircraft to be rendered incapable of use;<sup>10</sup> etc. shall be punished imprisonment.

Such imprisonment ranking from at least 3 (three) years up to 15 (fifteen) years. Any person who by negligence causes destruction, incapability of use or damage of a building used for safeguarding air navigation, or frustration of measures for safeguarding said building, shall be punished by a maximum imprisonment of three years;<sup>11</sup> whilst any person who with intent to benefit himself or another, unlawfully, to the detriment of an insurer, causes a fire or an explosion, disaster, destruction, damage, to an aircraft in flight or causes on aircraft to be rendered incapable of use, of which the aircraft itself or its cargo or the fee due for the transport of the cargo has been insured against above mentioned accidents or of which the insurance money for the cargo has been paid, shall be punished by a maximum imprisonment of 15 (fifteen) years.<sup>12</sup>

<sup>4</sup> .Art. 479a; See also Amad Sudiro and Martono K., *Aviation Criminal Laws Applicable in Indonesia*. Vol. 9(2) [www.iosrjournals.org](http://www.iosrjournals.org) 50 (February 2016).

<sup>5</sup> .Art.479b

<sup>6</sup> .Art.479c

<sup>7</sup> .Art.479d

<sup>8</sup> .Art.479e

<sup>9</sup> .Art.479g

<sup>10</sup> .Art.479h

<sup>11</sup> .Art.479b

<sup>12</sup> .Art.479h

### 3. Act No.1 of 1979

Criminal acts related to extradition of the suppression of hijacking and any other crimes involving aviation activities. For those purposes, Indonesia issued Act Number 1 of 1979, and signed some an extradition between Indonesia and with Australia, India, Malaysia, Papua New Guinean, the Philippines, Singapore and Thailand, as follows:

With reference to <sup>43</sup> Article 5 Paragraph (1) and Article 20 Paragraph (1) of the Constitutional of 1945, with the approval of the House Representative of the ROI, the President of the ROI issued Act Number 1 of 1979. The Act Number 1 of 1979 provides general provisions, principle of extradition, requirement for arrest requested by the requesting state, investigation of the person claimed for extradition, revocation and prolongation of arrest, decision on the request for extradition, surrender of the person claim for extradition, evidence, request for extradition by the government of the ROI, transitional provision and closing provision.

<sup>15</sup> The term “extradition” means the surrender by one State to another State which request the surrender of a person who is accused or convicted on account of the commission of crime outside the territory of the surrendering state and within jurisdiction of the territory the state requesting the said surrender based on its right to try and convict the said person. The most important provision of Act Number 1 of 1979, is the principle of extradition. In accordance with Article 2 extradition shall be granted on the basis of a treaty, however, in the absence of a treaty, extradition may be granted on the basis of good relationship and if the interest of the State of the ROI so <sup>25</sup> uest. This provision is in line with the Article 8 of the Hague Convention of 1970 which purportedly has no extradition treaty, and it may opt to consider the Hague Convention of 1970 as legal basis for extradition with respect to the offence. Extradition shall be subject to the other conditions provided by the law of the requested State.

### 4. Act No.15 Year 1992

Act Concerning Civil Aviation, Act No.15 Year 1992,<sup>13</sup> consists of 76 Articles and 14 Chapters with general provisions, aims and objective, sovereignty in the airspace, supervisions, nationality, registration mark and utilization of guarantee, utilization of aircraft, aviation safety and security, airports, search and rescue and aircraft accident investigation, air transport, environmental impact, investigation and final provisions.

With regards to criminal acts regulated by Article 54 to 37. Such articles include violation of airspace, operating civil aircraft without nationality and registration mark, operating helicopter without nationality and registration mark, change of registration of aircraft, foreign aircraft flying over the territory of the Republic of Indonesia without permission, taking off and/or landing beyond airport determination, operating aircraft endangering passenger, goods and community, photo from the aircraft without proper aircraft, operating aircraft without airworthiness certificate, operating aircraft without providing the proper facilities, operating a special airport without permission etc. Anybody violating the above-mentioned provisions shall be condemned with imprisonment from at least 6 (six) months to 6 (six) years or fine at least IDR 18.000,000.00 (eighteen million) to IDR 72.000,000.00 (seventy two millions).

### 5. Act No.1 of 2009

#### a. High Light of the CAA of 2009

Act Concerning<sup>14</sup> consisting of 466 Articles and 24 Chapters. It came into force on 12 January 2009, aiming to promote the development of Indonesian air transportation. It regulates a host of matters related to aviation, form sovereignty in airspace, aircraft production, operation and airworthiness of aircraft to aviation safety, aircraft procurement, aviation insurance, the independence of aircraft accident investigation, and the licensing of aviation professionals. The CAA of 2009 also regulates scheduled and non-scheduled air transportation, airlines capital, the ownership of aircraft, aircraft leasing, tariffs, liability of air carriers, air

<sup>13</sup> .Act Concerning Civil Aviation ,Act No.15 Year 1992, State Gazette of the Republic of Indonesia No. 53, Supplement State Gazette of the Republic of Indonesia No. 3481.

<sup>14</sup> . Act Concerning Civil Aviation, Act No. 1 Year 2009, State Gazette of the Republic of Indonesia, Supplement State Gazette No.4956 .

navigation facilities, airport authorities and services, and law enforcement related to air transportation. The CAA of 2009 also has provisions aimed at supporting the development of national and international air transportation in Indonesia, including provisions regarding the creation of a public service institute to further those goals.<sup>15</sup>

**b. Criminals Acts**

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

**c. Imprisonment and/or Fine**

Anybody violating the above-mentioned provisions shall be condemned with imprisonment from at least one year to 15 (fifteen) years and fined a minimum amount of IDR 200,000,000.00 (two hundred million rupiah) to maximum amount of IDR 1,000,000,000.00 (one billion rupiah) subject to the violation mentioned above. In addition, anybody undertaking maintenance of aircraft, engine, airplane propellers and components shall be condemned with imprisonment for a maximum 1 (one) year or fine a maximum amount of IDR 200,000,000.00 (two hundred million rupiah) and any aircraft personnel performing his/her duties without possessing of competency certificate or license shall be condemned with imprisonment for a maximum 1 (one) year of a fine of a maximum of IDR 200,000,000.00 (two hundred million rupiah), however in cases causing death of a person, the aircraft personnel shall be condemned with imprisonment for a maximum of 15 (fifteen) years and a fine of a maximum amount of IDR 1,000,000,000.00 (one billion rupiah).

The CAA of 2009 also provides that any person shall be prohibited from conducting any acts of unlawful interference endangering aviation and air transportation safety such as taking unauthorized control of an aircraft during flight or on the ground; taking hostage(s) inside an aircraft or at an airport; entering an aircraft, restricted security area, or aeronautical facilities area without any authorization; carrying a weapon, dangerous goods and equipment, or a bomb into an aircraft or airport without permit; and giving false information (bomb hoax) that endangering aviation safety.<sup>16</sup>

**d. Airport Authority**

Airport authority, airport operator, airport operation unit, airport business entity, and/or air transportation business entity shall be obligated to eradicate unlawful acts. Eradication of unlawful acts shall be formulated as a type of contingency plan. In the case of an unlawful act the MOC shall coordinate and delegate a task and command for eradication of the unlawful act to the institution responsible for and in charge of security sector.<sup>17</sup>

<sup>15</sup> Gunawan Djajaputra, Hari Purwadi and Martono K. *Indonesian Civil Aviation Act of 2009 : Aviation Safety, Security and Climate Change*. Vol. 6(1) [www.ijbmi.org](http://www.ijbmi.org) (January 2017) at 5.

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

<sup>17</sup> *Ibid.*, at 9

To eradicate unlawful acts, all passengers, air crews, baggage, cargo and post to be transported shall have to pass the examination and fulfill aviation security requirements. Specific passengers and cargo may be given special treatment with regards to security examination. Any diplomatic pouch shall not be examined, except upon request by the agencies in charge of international relationship (foreign affairs) and national defense. Any airplane passenger carrying any weapon shall obligated to report and hand-over 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 destination airport.

**e. Examination of Passengers**

In relation to the examination of passengers, air crews, baggage, cargo and post, on 5 July 2017, a passenger with initial JOW passed the X-ray gate, the airport officer asked JOW to release her watch to be put on an X-ray machine in accordance with the applicable rules, however, JOW scolded and hit the airport officer concerned on the arm using her hand. After the beating, another airport officer came to intervene and the perpetrators scolded and beat the women on the left side of her face using their hands. In this case, there were two reports handled by the police, reports from airport officers of beating and JOW's reports complaining to airport officials on suspicion of misconduct. The refusal to release her watch to be put on an X-ray machine is a violation of the regulation to ensure the aviation safety.

**f. Criminals Investigation**

The CAA of 2009 also provides aviation criminal investigation. Such criminal investigations are provided in Articles 399 and 400 of the CAA of 2009. Article 399 of the CAA of 2009 provides that designated civil servants officials of an agency which duty and responsibility scope is in aviation field shall be given specific authority as aviation criminal investigator. In carrying out their duty, the civil servants officials shall be under the coordination and supervision of the police of the ROI.

The authority of the civil servants investigator shall be performed such as inspecting, searching, and collecting information regarding aviation criminals actions in aviation field; receiving reports on any aviation criminal action in aviation field; calling people for hearing and investigation as witness and/or suspect of aviation criminal action in aviation field; arresting person(s) suspected of aviation criminals; asking information and evidence from person(s) suspected of committing aviation criminals action in the aviation field; photographing and/or recording through electronic media of person(s), goods, aircraft, or anything that can be considered as evidence of any aviation criminals action(s) occurred in aviation field; examining documents related to aviation criminals action(s); taking finger-prints and identity of people; searching aircraft and certain places suspected of any aviation criminal actions in the aviation field; confiscating goods strongly suspected as the goods used for committing aviation criminal action(s) in the aviation field; isolating and securing goods and/or documents(s) that may be taken as evidence related to any aviation criminal action in aviation field; inviting expert witness as needed; suspending investigation process; and requesting assistance of the ROI Police or other agencies in handling aviation criminal action(s) in aviation field.<sup>18</sup>

**6. Act No.35 of 2009**

The Indonesian Narcotics Act came into force on 12 October 2009 and aims to bring to the people of Indonesia even prosperity and wealth both spiritually and materially. This is based on Pancasila and the Constitutional of the Republic of Indonesia (ROI) of 1945, which includes even distribution of human resources as one of the goals of national capital development. The Indonesian Narcotics Act of 2009 consists of Chapters and 152 Articles. This Act of 2009 provides, among other things, general provisions; based, principles and objective; the scope of application; procurement; import and export; circulation; labels and publications; narcotics precursor; treatment and rehabilitation; guidance and monitoring; prevention and eradication; investigation, prosecution and inspection in the trial court; community participation; awards; criminal provisions; transition provisions and closing provision.

With regards to criminal law related to aviation activities, provided that provides that any person [include aviation personnel such as air crew, airport personnel, air navigation and any other personnel related to activities (**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,

<sup>18</sup>.Amad Sudiro and Martono K., *supra* note 4 at 52.

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 to Act No. 35 of 2009.

a. **Regulation of Drugs and Alcohol**

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

With regards to drugs and alcohol related to aviation personnel, found in item 91.17 of the Ministerial Decree No.KM 18 of 2010. According to item 91.17 of such Ministerial Decree No.Km 18 of 2010, no person may act or attempt to act as a crewmember of a civil aircraft within 8 hours after consuming alcohol, whilst under the influence of alcohol, using any drugs that affects the person's faculties in any way contrary to safety; or having 0.04% by weight or more in 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.<sup>19</sup>

b. **Drug and Alcohol Testing for Aviation Personnel**

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. It is the reason, the MOC issued circular regarding a drugs and alcohol testing program that would apply to all people involved in air transportation related work on a daily basis. The drugs and alcohol program testing apply to air traffic controllers, ground crews, technicians and airport security personnel as well.<sup>20</sup>

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 stated clearly in the contract with the pilot that pilots or air crew members found to be using drugs or alcohol will have their contracts automatically terminated. In this regard, Garuda Indonesia also fully supported the government's effort to decrease drugs abuse among pilots and flight crew as well. It is strict about pilots and air crew member health. The circular as a government effort to remind airlines to put safety first.<sup>21</sup>

It is worthwhile to note here that major accidents involving drug and alcohol usage have driven proposals internationally to implement testing program 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) establishment 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.

c. **Violation of Drugs and Alcohol Regulations**

In this connection, a pilot of Airbus A-320, Capt.Tekad Purna, was suspected of being under the influence of drugs or alcohol after making garble announcement just before the plane as due to take off from Juanda International Airport in Surabaya, East Java to Soekarno-Hatta International Airport in Cengkareng,

<sup>19</sup>.Gunardi, Gunawan Djajaputra and Martono K. *Laws and Regulations of Drugs, Alcohol and Narcotics Related to Aviation Activities in Indonesia, ASEAN and Other Countries*. Vol. 6(4) [www.ijbmi.org](http://www.ijbmi.org) 46 (April 2017).

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

<sup>21</sup> *The Jakarta Post*, 22 December 2015

Banten. In this regard, Budi Karya Sumadi, the Ministry of Transport (MOT) intends to enhance its supervision over airline and evaluate existing rules as well as enforce the law more strongly to ensure passengers safety.<sup>22</sup> On 23 May 2017, a passenger who was a family member of the pilot of a Lion Air flight went into the cockpit plane flight number JT015 route Denpasar, Bali to Jakarta. The incident was first known by one of the passengers of the plane, Citra Rienanti. The incident was recorded and upload to her social media accounts by Rienanti. Andy M Saladin, public relations Manager of Lion Air, has contact the passenger concerned and has apologized for the inconvenience.<sup>23</sup>

## 7. Cases of Criminal Acts

There are some of criminal acts occurred in Indonesia namely Partemania P-68 Registration VH-PFP, F-18 Hornet the US Air Force, PT Rimba Raya and Boeing 737-300 Registration AP-BEH, Aeroflot in 1982, drugs' abuse, enter into cockpit, violation of security investigation as follows:

### a. Partemania P-68 Registration VH-PFP

On 12 September 2008, aircraft type of Partemania P-68 registration VH-PFP owned by Cape Air Transport, Australia piloted by Captain William Henry Scott-Bloxam landed in Mopah Airport, Merauke, Papua without diplomatic clearance, security clearance and flight approval. The entering to the territory of the ROI is violation of the Civil Aviation Act No.15 of 1992. As a result, Captain Willian Henry Scott-Bloxam was sentence three years in jail and fined IDR 50 million by the local court.<sup>24</sup>

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

A few years ago, state aircraft F-18 Hornet owned by the United States of America flew over the Bawean Island of the territory of the ROI. Due to the legal status of the aircraft is a state aircraft, the violation of F-18 hornet could not be forced to land by the Indonesian Air Force, but the state aircraft has been given warning to leave the territory of the ROI. In this case, the Ministerial of Foreign Affair of the ROI could send claim to the American Embassy in Jakarta. The flying over the F-18 Hornet is a possible provocation in nature, taking into account that the United States of America provides Indonesia 5 (five) sea lane passages, whilst Indonesia only provide three sea lane passages.<sup>25</sup>

### c. PT Rimba Raya

In 190's PT Rimba Raya used a general aviation applications for import to the MOC, not yet provided by the diplomatic clearance, security clearance and flight approval from the ministerial in charge, but an aircraft has entered into the territory of the ROI. This entering of the aircraft was violating the regulations.

### d. Boeing 737-300 Registration AP-BEH

In March 2011, Pakistan International Airlines (PAI), aircraft type of Boeing 737-300 carrying 54 passengers was piloted by Captain Tariq Khali ur Rehman Awan, detected by airport RADAR without communicating with the control tower entering the territory of the ROI. The plane was forced to land in Makasar international airport and parked while the crew and passengers were questioned by the airport authority, immigration and officials from the Indonesian Air Force. In accordance with information obtained from the passengers, all of which are Pakistani policemen who are serving in East Timor as part of the

<sup>22</sup>.Gunardi, Gunawan Djajaputra and Martono K., *supra* note 21 at 43

<sup>23</sup>.Tribunnews.com.Jakarta.

<sup>24</sup>.Amad Sudiro and Marton K., *The Suppression of Hijacking and Other Crimes Involving Indonesian Aviation Activities*, in Martono K.,and Amad Sudiro.,*Book Chapter : Aviation Laws and Regulations Applicable in Indonesia*. Jakarta : Rajagrafindo, 2017. Chapter 13 at 360.

<sup>25</sup>.*Ibid.*

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peacekeeping troops and the five crew members on board. The aircraft was released after inspection conducted by the official concerned.<sup>26</sup>

**e. Aeroflot in 1982**

Alexander Finenko, Chief Representative of Aeroflot have been involved in espionage and detained further processed for deportation, followed by closing the Aeroflot representative office and banned Aeroflot airplane at the airfield sovereign territory of the ROI. This espionage was initiated by the KGB in 1982, conducted by Sergei Egorov rank of Lieutenant Colonel, and served as assistant military attache at the Soviet Embassy I Jakarta. Egorov was caught in the act of buying and selling of confidential documents of the ROI in the form of the Banda Sea Hydrographic map.<sup>27</sup>

**f. Drugs' Abuse**

A pilot of Airbus A-320, Capt.Tekad Purna, was suspected of being under the influence of drugs or alcohol after making garble announcement just before the plane was due to take off from Juanda International Airport in Surabaya, East Java to Soekarno-Hatta International Airport in Cengkareng, Banten. In this regard, Budi Karya Sumadi, the Ministry of Transport (MOT) intends to enhance its supervision over airline and evaluate existing rules as well as enforce the law more strongly to ensure passengers safety.<sup>28</sup>

**g. Enter Into Cockpit**

On 23 May 2017, a passenger who was a family member of the pilot of a Lion Air flight entered the cockpit of the plane flight number JT015 route Denpasar, Bali to Jakarta. The incident was first known by one of the passengers of the plane that is, Citra Rienanti. Imagery of 30 event were uploaded to her social media page account, Facebook with the name Rienanti Image account. Andy M Saladin, public relations Manager of Lion Air, has contact the passenger concerned and has apologized for the inconvenience caused.<sup>29</sup>

The cockpit plane is a restricted area, no one come into cockpit, except the one who legally authorized such as pilot-in-command (PIC), mostly known aircraft commander. During the flight, aircraft PIC who has fully authority is likely to have power like the God. The PIC may, when he has reasonable grounds to believe that a person has committed on board aircraft an offence, or unruly or any other acts impose upon such person reasonable measures including restrain which are necessary to protect the safety of aircraft, passengers, property therein or 12 maintain good order and discipline on board aircraft.<sup>30</sup> For the actions taken by aircraft commander shall not be held responsible in any proceeding on account of the treatment undergone by the person against whom the actions were taken.<sup>31</sup> Those authority belong to PIC for the purpose to -prevent the offences committed on board aircraft, but no for the purpose to permit his family to enter the cockpit, for that reason if the PIC permits his family into cockpit area means that the PIC has abused his power, consequently the PIC shall be held responsible for his action .

**h. Violation of Security Investigation**

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<sup>26</sup> .Ibid.

<sup>27</sup> .Ibid.

<sup>28</sup> .Gunardi, Gunawan Djajaputra and Martono K., *supra* note 21 at 43.

<sup>29</sup> .Tribunnews.com.Jakarta..

<sup>30</sup> .Article 9 Tokyo Convention of 1963; See Dempsey P.S., Ed.,(2005), Vol .XXX-Part I Ann of Air & Sp. L. at 195; Milde M.Ed.,(1993) Vol. XVIII-Part II Ann of Air & Sp. L. 175

<sup>31</sup> .Article 10 of Tokyo Convention of 1963; The complete text see Dempo 10 P.S.,Ed., *Annals of Air and Space Law*, (2005) Vol. XXX Part I. Toronto : The Carswell Company Ltd, 2005; Milde M.Ed., *Annals of Air and Space Law*, Vol.XVIII-1993 Part II. Toronto : The Carswell Company Ltd, 1993.

On 5 July 2017, a passenger with initial JOW passes the X-ray gate, the airport officer asked JOW to release her watch to be put on an X-ray machine in accordance with the applicable rules, but JOW scolded and hit the airport officer concerned using her hand and hit the victim's arm. After the beating, another airport officer came to intervene and the perpetrators scolded and beat the women using their hands on the left side of the face. In this regard, there are two reports handled by the police, reports from airport officers of the beatings and JOW reports complaining to airport officials on suspicion of misconduct.<sup>32</sup> Those three events above-mentioned could not be separated from aviation safety and security. For that reason, this article purported to explore law regulations and its implementation of aviation safety and security applicable in Indonesia.

### III. INTERNATIONAL INSTRUMENTS RELATED TO CIVIL AVIATION CRIMINAL ACTS AND DRUG

#### Introduction

International convention involving terrorism has been discussed since 1934, when the League of Nations (LN) began the elaboration of a convention for the prevention and punishment of terrorism, although the convention was eventually adopted in 1937 and it never came into force.<sup>33</sup> As far as related to aviation, today at least there are 7 (seven) international conventions involving aviation in force such as Tokyo Convention of 1963,<sup>34</sup> The Hague Convention of 1970,<sup>35</sup> Montreal Convention of 1971,<sup>36</sup> Montreal Protocol of 1988,<sup>37</sup> Montreal Convention of 1991,<sup>38</sup> Beijing Convention of 2010 and Beijing Protocol of 2010.

#### 1. Tokyo, The Hague and Montreal Convention

Under Tokyo Convention of 1963 prohibited acts committing an offence against penal law; performing an act which jeopardizes the safety of the aircraft or persons or property therein, or good order and discipline on board. In addition, under the Hague Convention of 1970 prohibited unfully, by force or threat or intimidation, seizing or attempting to seizure control of an aircraft; being an accomplice of a person who forms or attempts to perform any such act, whilst under the Montreal Convention of 1971 prohibited to perform an act of violence against a person at an international airport likely to cause serious injury or death; or destroying seriously damaging or disrupting international airport facilities or out-of-service aircraft located thereon, if such an act is likely to endanger safety at the airport.

Under the above-mentioned aviation security instruments, contracting States must control an offence against penal law; performing an act which jeopardizes the safety of the aircraft or persons or property therein, or good order and discipline on board of an aircraft. In addition, State shall control unlawfully seizure or interfered with to the PIC, or preserve his control, and permit the passengers and crew to continue on their destination as soon as practicable, and return the aircraft and its cargo to those entitled to lawful possession thereof. Taking into consideration, that Indonesia is member of the above-mentioned Tokyo Convention of

<sup>32</sup> Muhammad Taufiqqurahman ., *Spanking Husband of the newly retired General Police Airport Staff*. Detik News.

<sup>33</sup> *Anti-terrorism Legislation*, Edited from Wikipedia, the free encyclopedia, Jump to navigation, search .

<sup>34</sup> *Convention on Offences and Certain Other Acts Committed on Board Aircraft*, signed at Tokyo on 14 September 1963.

<sup>35</sup> *Convention for the Suppression of Unlawful Seizure of Aircraft*, signed at The Hague on 16 December 1970.

<sup>36</sup> *Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation*, signed at Montreal on 23 September 1971.

<sup>37</sup> *Protocol of the Suppression of Unlawful Acts of Violence at Airport Serving International Civil Aviation, Supplementary to the Convention for the suppression of Unlawful Acts Against the Safety of Civil Aviation, done at Montreal, on 23 September 1971*, signed at Montreal on 24 February 1988.

<sup>38</sup> *Convention on the Marking of Plastic Explosives for the Purpose of Detection*, signed at Montreal, on 1 March 1991.

1963, The Hague Convention of 1970, The Montreal Convention of 1971,<sup>39</sup> for that reason Indonesia issued Act No.1 of 1979.<sup>40</sup>

## 2. Authority of Pilot in Command

Based on the Tokyo Convention of 1963, the PIC may, when he has reasonable grounds to believe that a person has committed, or is about to commit, on board aircraft, an offence or act, impose upon such person reasonable measures including restraints which are necessary (a) to protect the safety of the aircraft, or of persons or property therein; or (b) to maintain good order and discipline on board; or (c) to enable him to deliver that person to competent authorities or to disembark him in accordance with the provision of the Tokyo Convention of 1963. The PIC may require or authorize the assistance of other crew members and may request or authorize, but not require or the assistance of passengers to restrain any person whom he is entitled to restrain.

On 23 May 2017, a passenger who was a family member of the pilot of a Lion Air flight entered the cockpit of the plane flight number JT015 route Denpasar, Bali to Jakarta. The incident was first known by one of the passengers of the plane that is, Citra Rienanti. Imagery of the event were uploaded to her social media page account, Facebook with the name Rienanti Image account. Andy M Saladin, public relations Manager of Lion Air, has contact the passenger concerned and has apologized for the inconvenience caused.<sup>41</sup>

In this connection, The PIC may, when he has reasonable grounds to believe that a person has committed on board aircraft an offence, or unruly or any other acts impose upon such person reasonable measures including restrain which are necessary to protect the safety of aircraft, passengers, property therein to maintain good order and discipline on board aircraft.<sup>42</sup> For the action taken by aircraft commander shall not be held responsible in any proceeding on account of the treatment undergone by the person against whom the actions were taken.<sup>43</sup> Those authority belong to PIC for the purpose to prevent the offences committed on board aircraft, but no for the purpose to permit his family or any other person enter to cockpit, for that reason if the PIC permits his family into cockpit area means that the PIC abuse of power, consequently the PIC shall be held responsible for his action.

## 3. Right and Obligation State Party

In accordance with the rights and obligations under the Tokyo Convention of 1963, The Convention of 1970 and Montreal Convention of 1971, Indonesia has the obligation to protect the civil aviation against acts of unlawful interference forms an integral part of such convention. Without limiting the generality of the rights and obligations under international law, Indonesia must in particular act in conformity with the provisions of the Tokyo Convention of 1963,<sup>44</sup> the Hague Convention of 1970,<sup>45</sup> the Montreal Convention of 1971<sup>46</sup> as well as any other convention or protocol relating to the security of civil aviation.

Indonesia must also provide upon request all necessary assistance to prevent acts of unlawful seizure of civil aircraft and other unlawful acts against the safety of such aircraft, their passengers and crew, airports

<sup>39</sup>Indonesia ratified the Tokyo Convention of 1963, The Hague Convention of 1970 and the Montreal Convention of 1971 on 7 September 1976; See Dempsey P.S., (2005) Vol. XXX-Part I, Ann of Air & Sp. L.at 195.

<sup>40</sup>. Act *Concerning Extradition*, State Gazette of the Republic of Indonesia No. 2 Year 1979, Supplement State Gazette of the Republic of Indonesia No.3130.

<sup>41</sup> .Tribunnews.com.Jakarta

<sup>42</sup> .Article 9 Tokyo Convention of 1963; *supra* note 32 at 175.

<sup>43</sup> .Article 10 of Tokyo Convention of 1963; *supra* note 33.

<sup>44</sup> .Convention, *supra* note 37

<sup>45</sup> .Convention, *supra* note 38.

<sup>46</sup> .Convention, *supra* note 39.

and air navigation facilities, and to address any other threat to the security of civil aviation. In addition, Indonesia must act in conformity with the aviation security provisions established by the ICAO and designated as Annexes to the Convention; require that operators of aircraft of their registry, operators of aircraft who have their principal place of business or permanent residence in their territory, and the operators of airports in their territory act in conformity with such aviation security provisions.

In addition, Indonesia must observe the security provisions required by the ICAO's member countries for entry into, departure from, and while within their respective territories and take adequate measures to protect aircraft and to inspect passengers, crew, and their carry-on items, as well as cargo and aircraft stores, prior to and during loading or unloading. In addition, Indonesia must also give positive consideration to any request from the ICAO's member countries for special security measures to meet a particular threat.

When an incident or threat of an incident of unlawful seizure of civil aircraft or other unlawful acts against the safety of aircraft, passengers and crew, airports or air navigation's facility occurs, Indonesia must assist by facilitating communications and other appropriate measures intended to terminate rapidly and safely such incident or threat. When Indonesia has reasonable grounds to believe that the ICAO's member countries has departed from the aviation security provisions, the aeronautical authorities of the ICAO's member countries may request immediate consultations with the aeronautical authorities of the ICAO's member countries. In addition, taking into account that Indonesia is a signatory to the Chicago Convention of 1944.<sup>47</sup> Indonesia is committed to comply with the international criminal aviation laws and regulations adopted by Resolution of the ICAO General Assembly, and Standard and Recommended Practices (SARP) adopted by ICAO.

#### **4. Unruly Passenger Behavior**

Unruly passenger behavior on board aircraft continue to be a significant issue concern for airlines. Each incident marks an unacceptable inconvenience to passengers and crew and compromise 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. In addition, IATA has also been working on other aspects, including strengthening national as well as international air law so that it acts as an effective deterrent to unruly passenger behavior. Five years of intense work by the ICAO adopted the Montreal Protocol to amend the Tokyo Convention of 1963. Finally, at the 70<sup>th</sup> IATA Annual General Assembly Meeting in June 2014, IATA's member airlines' unanimously endorse a set of core principles for dealing with unruly passengers.<sup>48</sup>

In connection of unruly passenger's behavior, ICAO and Member's States reviewed the Tokyo Convention of 1963 as applicable to the issue of unruly passengers I 2014. The Tokyo Convention of 1963 was up dated and amended by Montreal Protocol of 2014 in order States increased legal powers to pursue unruly passengers. It also clarified certain behavior which should be considered, at a minimum, as an offence, and encourages States to take appropriate criminals or other legal proceeding. These include addressing physical assault or a threat to commit such against a crew member and refusal to follow a lawful instruction given by or on behalf the aircraft commander.<sup>49</sup>

#### **5. Other Instrument of International Criminals Acts.**

In accordance with the rights and obligations under the bilateral air transport agreement between Indonesia and the Netherlands.<sup>50</sup> Indonesia shall reaffirm that Indonesia has the obligation to protect the security

<sup>47</sup> . Indonesia is a member of Chicago Convention of 1944, since 27 April 1950, see Dempsey P.S., (2005) Vol. XXX-Part I, Ann of Air & Sp.L.at 52.

<sup>48</sup>.Gunardi, Gunawan Djajaputra and Martono K., *supra* note 21 at 46

<sup>49</sup> *Ibid.*

<sup>50</sup> *Air Transport Agreement Between the Government of the Republic of Indonesia and the Government of the Kingdom of the Netherlands*, signed on 23 November 1990.

1 civil aviation against acts of unlawful interference forms an integral part of the bilateral air transport agreement. Without limiting the generality of the rights and obligations under bilateral agreement, Indonesia must in particular act in conformity with the provisions of the Tokyo Convention of 1963,<sup>51</sup> The Hague Convention of 1970,<sup>52</sup> the Montreal Convention of 1971,<sup>53</sup> as well as any other convention or protocol relating to the security of civil aviation.

1 Indonesia must provide upon request all necessary assistance to prevent acts of unlawful seizure of civil aircraft and other unlawful acts against the safety of aircraft, their passengers and crew, and airports and air navigation facilities, and to address any other threat to the security of civil aviation. In addition, Indonesia must, act in conformity with the aviation security provisions established by the ICAO and designated as Annexes to the Chicago Convention of 1944; require that operators of aircraft of their registry, operators of aircraft who have their principal place of business or permanent residence in their territory, and the operators of airports in their territory act in conformity with such aviation security provisions.

Indonesia must observe the security provisions required by the Netherlands Aeronautical Authority for entry into, departure from, and while within their respective territories and take adequate measures to protect aircraft and to inspect passengers, crew, and their carry-on items as well as cargo and aircraft stores, prior to and during loading or unloading. In addition, Indonesia must also give positive consideration to any request from the Netherlands Aeronautical Authority for special security measures to meet a particular threat.

When an incident or threat of an incident of unlawful seizure of civil aircraft or other unlawful acts against the safety of aircraft, passengers and crew, airports or air navigation's facilities occurs, Indonesia must assist by facilitating communications and other appropriate measures intended to terminate rapidly and safely such incident or threat. When Indonesia has reasonable grounds to believe that the Netherlands has departed from the aviation security provisions, the aeronautical authorities of the Netherlands may request immediate consultations with the aeronautical authorities of the Indonesian Aeronautical Authority. Failure to reach a satisfactory agreement within fifteen (15) days from the date of receipt of such request will constitute grounds to withhold, revoke, suspend, impose conditions on or limit the operating authorization and technical permission of an airline or airlines of the Netherlands. When required by an emergency, Indonesia may take interim action prior to the expiry of fifteen (15) days.

**a. Extradition Agreements**

17 Taking into account that Indonesia has ratified Tokyo Convention of 1963,<sup>54</sup> The Hague Convention of 1970,<sup>55</sup> and Montreal Convention of 1971,<sup>56</sup> through Act No.2 of 1976,<sup>57</sup> Indonesia shall comply with the those conventions. In this regard, Indonesia have an extradition with Australia, Malaysia, Papua New Guinean, the Philippines, Singapore, Thailand,<sup>58</sup> and India. The purpose of an extradition treaty it to make more effective the cooperation in the repression of crime between two countries. As far as criminal involving aviation, the extradition treaty between Indonesia and Malaysia, Papua New Guinean, Thailand no extraditable offences expressly mentioned relating to hijacking in the extradition treaties. Extradition treaty between Indonesia and the Philippines, provides that hijacking (emphasize added) characteristic as an extraditable offences. Extradition between Indonesia and India, Indonesia has not yet ratified, however, in according to Secretary

<sup>51</sup>.Convention, *supra* note 37

<sup>52</sup>.Convention *supra* note 38.

<sup>53</sup>.Convention, *supra* note 39

<sup>54</sup>.Convention, *supra* note 37.

<sup>55</sup>.Convention, *supra* note 38.

<sup>56</sup>.Convention, *supra* note 39.

17 <sup>57</sup>Act Concerning Ratification of Tokyo Convention of 1963, The Hague Convention of 1970 and Montreal Convention of 1971, Act No.2 of 1976.

<sup>58</sup> <http://www.thailawforum.com/database1/Treaty-of-Indonesia.htm>.

(East) in External affairs ministry Anil Wardha, in the absence of extradition, a pact signed and notify by Indonesia and India for deportation of each other's wanted person and cooperate in all criminal matters.<sup>59</sup>

In accordance with extradition treaty between Indonesia and the Philippines, provided that person shall be delivered up who are being proceeded against or have been charge with, founding guilty or convicted of, any of the following crimes provided that these crimes are punishable by the laws of Indonesia and the Philippines by a possible penalty of death or deprivation of liberty for a period exceeding one year such as murder, parricide, infanticide; rape, indecent assault sexual act with or upon minors under the age specified by the penal law of both parties; abduction, kidnapping; mutilation, physical injuries, frustrated murder or frustrated homicide; illegal or arbitrary detention; slavery, servitude; robbery, theft; swindling, fraud, cheating; extortion, threats, coercion; bribe; corruption, graft; falsification, perjury; forgery, counterfeiting; smuggling; arson, destruction of property; hijacking, piracy, mutiny; crimes against the law relating to narcotics, dangerous or prohibited drugs or prohibited chemicals; crimes against the laws relating to firearms, explosives, or incendiary device.

The extradition with Australia provides 33 extraditable offences. In this connection, there are some of the extraditable offences involving aviation criminals such as an act done with the intension of endangering the safety of person traveling on board of aircraft or of endangering or damaging an aircraft; an unlawful acts against the PIC; the unlawful seizure, or unlawful exercise of aircraft by force or threat of force or by any other form of intimidation; assault on board aircraft with intend to destroy life or cause grievous bodily harm; an unlawful acts of any kinds specified in The Hague Convention of 1970.

**b. ASEAN Multilateral Agreement on Air Services (AMAAS)**

The AMAAS's member who ratified Tokyo Convention of 1963, The Hague Convention of 1970 and the Montreal Convention of 1971 have the right and obligation to reaffirm that their obligation to one another to protect against of unlawful interference forms an integral part of the agreement. Without limiting the generality of their right and obligation under such agreement, the parties must in particular act in conformity with the provision of Tokyo Convention of 1963, The Hague Convention of 1970 and the Montreal Convention of 1971. They must provide upon request all necessary assistance to one another to prevent acts of unlawful seizure of civil aviation and other unlawful acts against safety of such aircraft, their passengers, crew, airports, and navigation facilities, and to address any other threat to the security of civil aviation. In addition, they must, in their mutual relations, act in conformity with the aviation security provision established by the ICAO and designated as Annexes to the convention; they must require that operators of aircraft of their registry, operators of aircraft to have their principal place of business or permanent residence in their territory, and the operators of airports in their territory act in conformity with such aviation security provision.<sup>60</sup>

When an incident or threat of an incident of unlawful seizure of civil aircraft or other unlawful acts against the safety of aircraft, passengers, crew, airports or air navigation facilities occurs, they must assist one another by facilitating communications and other appropriate measures intended to terminate rapidly and safely such incident or threat. When a contracting Party has reasonable grounds to believe that another Contracting Party has departed from the aviation security provisions, the aeronautical authorities of that Contracting Party may request immediate consultations with the aeronautical authorities of the other Contracting Party. Failure to reach a satisfactory agreement within fifteen days from the date of receipt of such request will constitute grounds to withhold revoke, suspend, impose conditions on or limit the operating authorization and technical permission of an airline of that Contracting Party. When required by an emergency, a Contracting Party may take interim action prior to the expiry of fifteen days. Each Contracting Party will require the airlines of a another Contracting Party providing service to the Contracting Party to submit a written operator security program which has been approved by the aeronautical authority of the Contracting Party of that airlines for acceptance.<sup>61</sup>

<sup>59</sup> <http://timeofindia.indiatimes.com/india/In-absence-of-extradition-treaty-recent-pact-with-Indonesia-may-help-India-get-get-Chhota-Rajan/articleshow/49543381.cms>.

<sup>60</sup> .Amad Sudiro and Martono K., *supra* note 25 at 123

<sup>61</sup> . *Ibid.* at 124.

## 6. Criminal Acts Related to Drug Abuse and Civil Aviation

With regards to criminal acts related to drugs and aviation, found in Brunei Darusalam, Malaysia, Singapore, Thailand and the Philippines does not immune against the misuse of drugs, alcohol, narcotics and similarly. For that reason Brunei Darusalam issued the Misuse of Drugs Act, Malaysia issued Act No.366, Singapore issued the Misuse of Drug Act, the Philippines issued the Republic Act No.9165. In addition, there are several States also found drug abuse regulation related to aviation activities as follows.

### a. Australia

Australia does not impose a death penalty for trafficking or possession of large quantities of illegal drugs, rather, states Australia impose prison sentences of between 15-25 year for drug trafficking. Since Australia's rules are not as stringent as Singapore's laws, and the retail price of drugs in Australia is high, this encourages drug suppliers and distributors to target Australian. The demand for drugs in Australia is steadily increasing as illegal high are becoming cheaper than alcohol. Singapore could potentially face a similar problem in the future if the drug laws were to be relaxed because many Singaporeans can afford to pay the high price for drug.<sup>62</sup>

### b. Brunei Darusalam

n. With regards to criminal acts, provided in Part II includes trafficking in controlled drug, possession for purpose of trafficking, manufacture of controlled drug, importation, exportation of controlled drug, possession and consumption of controlled drug, possession of pipes, utensils etc., cultivation of cannabis, opium and coca plant; responsibilities of owners and tenants etc., abetments and attempts punishable as offences; offences by corporations. If any controlled drug is found in any aircraft, it shall be presumed, until the contrary is proved, that such drug has been imported in such ship or aircraft with knowledge of the master or the captain thereof.<sup>63</sup>

### c. Malaysia

The Malaysian Act No.366<sup>64</sup> provides among other thing, establishment of poison, and proceeding board; power of board to regulate proceedings; power of minister to amend poison list; application; control of importation, exportation, manufacture, sale by wholesale or retail of psychotropic; prohibition of sale to persons; restriction on the sale of poison generally; supply of poison for the purpose of treatment; group poisons; prescription; licenses and it register; sanction to prosecute and conduct of prosecutions; and powers of investigation, examination and entry into premises.<sup>65</sup>

Malaysia has strict penalty for drug possession and drug use. Under Malaysia's Dangerous Drug Act, the government of Malaysia can execute any person found trafficking drugs or in possession of drugs, and death sentence. The 30-year-old commercial pilot of a Malaysian Airlines was charged with two counts of importing a commercial quantity of a border controlled drug, one allegedly relating to drug deal in a Sydney hotel in last August. Customs officers searched the man's bag after the pilot disembark at Sydney airport and allegedly uncover six packages containing a "white crystalline substance," which test contain five kilograms of methamphetamine charged. In addition, the 30-year-old had flown a passenger flight from Malaysia with five kilograms of the drug ice in his suitcase. The criminals maximum penalty in Malaysia for the offences is life imprisonment and/or an US 25,000 fine and 25 years imprisonment and or a S 550,000 fine respectively.<sup>66</sup>

### d. Singapore

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

<sup>63</sup>. Gunardi, Gunawan Djajaputra and Martono K., *supra* note 21 at 46.

<sup>64</sup>. Act concerning Poison of Act 1952 (Reivse-1989, Act No.366.

<sup>65</sup>. Gunardi, Gunawan Djajaputra and Martono K., *supra* note 21 at 46

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

<sup>2</sup> In relation to drugs and alcohol consumption, the government of Singapore already have strict policy. The possession, consumption, manufacturing, import, export, or trafficking of these and other controlled drugs in any amount are illegal. Persons caught with less than the Mandatory Death Penalty amounts of these controlled substances face penalties ranging from 9 up to 24 strokes to life in prison. Pursuant to a law change in 2009, cannabis (marijuana) and marijuana mixtures (diluted with other substances) are treated the same under Singapore law – the presumed intent is trafficking. In this regards, the Singapore embarkation card contains a warning to visitors about the death penalty for drug trafficking. Warning signs can be found at the Johor-Singapore Causeway and other border entries. Singapore Airlines and Jet-star Asia Airways also announces similar warning to the passengers during flights to the country.<sup>67</sup>

Singapore have strict policies, procedures and zero-tolerance for drugs and alcohol abuse. They also have aptitude and psychological testing testing as part of their selection process for pilots. Most of airlines have peer support groups, the airlines has a comprehensive psychological support framework which involves trained peer counselors, an aviation psychiatrist and psychologist and the civil aviation medical board (CAMB). This is to ensure flight safety and the mental well-being of pilots. Budget air carriers Scoot-Tiger Air and Jet-Star Asia also provide similar support for their pilots.<sup>68</sup>

<sup>3</sup> The misuse of drugs Act creates a presumption that person possessed drugs if anyone possesses the keys to a premises containing the drugs and that any person found in or escaping from any place or premises which is proved of presumed to be used for the purpose of smoking or administering a controlled drug shall, until the contrary is proved, be presumed to have been smoking or administering a controlled drug in the company of drug users. In addition, the law also allows offices to search premises and individuals, without a search warrant, if any reasonable suspects that there is to be found a controlled drug or article liable to seizure.<sup>69</sup>

Singapore's drug laws are known the strictest penalties for drug possession and drug use, consequently Singapore has some of the lowest rates for drug use among its citizens. Singapore as benchmark to follow in regard to combating illicit drugs like cocaine and heroin, human rights groups have long-voiced concerned that the death penalty that the country doles out is too strict. In 2012, the government of Singapore altered the laws slightly to offer life in prison sentence rather than the death penalty to some drug couriers depending on the situation.<sup>70</sup>

**e. Thailand**

Thailand being one of largest producers of drugs in South East Asia, it is one country that perhaps should tighten up the enforcement of its drug laws and punishments. Thailand's Narcotics Act has a discretionary death penalty for produces, importers or exporters of hard drugs, including opium. However, Thailand, at least nowadays, is conservative about sentencing the death penalty; between 201-2015, there were no state sanctioned executions.<sup>71</sup>

**f. The Philippines**

In the Philippines, drugs and alcohol regulated in the Republic Act 9165,<sup>72</sup> came into force on 30 May 2002, provides, among others things, unlawful act and penalty; dangerous drugs test a record requirements; participant of the family, students, teachers and school authorities in the enforcement; promotion of a national drug-free workplace program with the participants of private and labor sectors and the department

<sup>67</sup>. *Ibid.*, at 49

<sup>68</sup>. *Ibid.*, at 48.

<sup>69</sup>. *Ibid.*, at 49

<sup>70</sup>. *Ibid.*

<sup>71</sup>. *Ibid.*, at 50

<sup>72</sup>. Act Concerning Instituting the Comprehensive Dangerous Drugs Act of 2002, Repealing Republic Act 6425, Otherwise Known as The Dangerous Drugs Act of 1972, as Amended, Providing Funds Therefore, and Others Purposes, Republic Act No. 9165 (23 February 2001).

of labor and employment; participant of the private and labor sector; participant of local government units; program for treatment and rehabilitation of drug dependents; dangerous drugs board and Philippines drug enforcement agency; appropriations, management of funds and annual report; jurisdiction over dangerous drugs cases; implementing rules and regulations.<sup>73</sup>

With regards to civil aviation industry, the Civil Aviation Authority of the Philippines (CAAP) underwent drug testing. According to Eric Apolonio, spokesman of the CAAP, the result of drug testing is thirty of the more than 5,000 employees of the CAAP have been terminated after they tested positive for drug use. The airport workers who failed the drug testing have dismissed from service and still waiting for the result of the drug testing of the remaining eight percent of the CAAP employees from other facilities and station. The CAAP declared five airports under its supervision as drug-free such as the airport in Davao, Laoag, Tuguegrao, Puerto Princesa and Tacloban. The CAAP supervises 81 airports nation-wide and manage airside operation of the Ninoy Aquino International Airport, Subic, Clark and Cebu-Macta International airport.<sup>74</sup>

**g. The United States of America**

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

A conviction for the violation of any Federal or State statute relating to the growing, processing, manufacturing, sale, disposition, possession, or importation of narcotics drug, marijuana, or depressant of stimulant drug or substance is ground for denial of an application for any certificate for a period of up to 1 year after the date of final conviction, or suspension or revocation of any certificate or rating issued. No person may act or attempt to act as a crew member of a civil aircraft, within 8 hours after the consumption of any alcoholic beverage or while under the influence of alcohol, or while using any drug that effect the person's faculties in any way contrary to safety; while having 0,04% by weight or more alcohol in the blood.<sup>75</sup>

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<sup>73</sup>. Gunardi, Gunawan Djajaputra and Martono K., *supra* note 21 at 50

<sup>74</sup>. Gunardi, Gunawan Djajaputra and Martono K., *supra* note 21 at 51 .

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