

## **The Development of Civil Aviation Laws and Regulations Applicable In Indonesia**

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**ABSTRACT:** *The modern Indonesian civil aviation regulations provided in the Civil Aviation Act of 2009. This article purported to discuss the substance of the civil aviation in the Act of 2009 such as aviation safety includes aircraft production, registration and nationality mark, aircraft operation and maintenance, safety and security in aircraft during flight; aviation security includes national aviation security, aviation security supervision, airport security, aircraft operational security and eradication of unlawful acts; and international interest in aircraft object, however before discussion the above-mentioned necessarily to describe the historical background and methodology of research.*

**Keywords:** *aviation safety and security, international interest in aircraft object.*

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### **I. INTRODUCTION**

The Republic of Indonesia (ROI) is a country which adopts the laws system of the Netherlands (Dutch) is bound by the Indonesian constitution of 1945. Article 1 transition rule of Constitution provides that “:all existing legislation are still valid as long as a new one has not been enacted according this constitution”(emphasize added). Sources of law inherited from the Dutch, as far as related to aviation activities, no more applicable in Indonesia.

Source of law and regulation regarding civil aviation among other includes legislation, customs, and jurisprudence. Indonesia adopts a hierarchy system of legislation and the Indonesian Constitutional of 1945 is the highest in the hierarchy of legislation in Indonesia, as far as related to aviation activities follows by, within the regime of the Dutch, civil aviation regulated in (Stb.1933-118), (Stb 1939-100), and after the Indonesian independence replaced by (former) Act of 1958 (Act : 1958 ), (former) Act of 1992 (Act : 1992) and Act of 2009 (Act :2009), plus its implementation of the provisions.

### **II. RESEARCH METHOD**

Research is a fundamental tool in the development of science. The research's aim to reveal the truth systematically, methodologically and consistently, including legal research. Legal study is a science of its own kind, legal studies has a distinctive character which is normative in nature (Dr Irawan Soerodjo 2016:30). Thus the method of research in the legal studies also has its own method. This research uses the normative juridical type with normative legal research methods, including reviewing and analyzing the legal materials and legal issues related to the problem studied. In this research, the result will be achieved in the form of prescriptions about what have to be done to resolve the issue.

This research uses the historical and the conceptual approach. Historical approach enables the researcher to fully understand the law deeper about a system or an institution or a specific legal arrangement so as to reduce errors, both in the understanding and application of an institution or specific legal provision. The organization of law which is now prevailing contains the elements of the organization of the law in the past and they form seeds of the organization of law in the future (Dr Irawan Soerodjo, 2016 : 30). The historical approach is performed by examining the background of what is being studies and the development of the legal issues at hand. The research is done in order to tracking the history of civil aviation laws and regulations in Indonesia. On the other hand the researcher shall also look for basic philosophy of the dynamics of the law from time to time, such as study towards the civil aviation laws and regulations.

The conceptual approach is an approach that departs from the views and doctrines in legal studies. These views and doctrines will find ideas that give birth to notions of law, legal concepts and principles of laws that are relevant to the legal issues encountered in this study. Sources of legal materials used in this research consist of 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> law material. The 1<sup>st</sup> law materials which are authoritative legal materials, meaning that such legal materials have the authority, namely legislation, official records or treaties. Such the legislations used as the 1<sup>st</sup> legal materials are the constitution of the Republic of Indonesia of 1945, (Stb 1933-118), (Stb 1939-100), Civil Aviation Act of 1958 (Act : 1958), Civil Aviation Act of 1992 (Act : 1992) and the Civil

Aviation Act of 2009 (Act : 2009), whilst the 2<sup>nd</sup> law materials are over all publications regarding the law and regulations which are not official documents but related to aviation activities. Such publication concerning the law and regulations includes text books, theses, law dissertation. The 3<sup>rd</sup> law material used in the research are legal dictionaries, comments on the court decision, also the opinions of legal experts published via journals, magazines or others.

### **III. DISCUSSION AND ITS RESULT**

#### **1. The Historical Background of Civil Aviation Laws and Regulations**

An Indonesian's old order regime tends to be of a socialist ideology, air transportation is completely conducted by state-owned enterprises such as Garuda Indonesian Airways (GIA) (Indonesia Reg. 67.:1971) and Merpati Nusantara Airlines (MNA) (Indonesia Reg.70:1971), whilst the regulation is conducted by the Ministry of Communications (MOC). All routes, frequencies, type of aircraft, capacities, tariff, utilization of jet or propelled aircrafts are controlled by the MOC. Within the old order, there were no airlines owned by private companies, and there was no competition between airlines because all tariff was set by the government. On the other hand, the new order in the regime of General Soeharto started to introduce a mixed ideology between socialist and liberal ideology (neo-liberal). (Martono K.H.Prof. & Dr.Ariawan Gunadi 2014: 204).

In the order in the regime of General Soeharto, based on ( Act: 1967) the political ideology clearly tended to be neo-liberal which was a mix between socialist and liberal ideologies. Based on this ideology, the government issued a (Ministerial Decree : 1971) to permit a new airline owned by private companies. State-owned enterprises such as GIA serves trunk lines and MNA serve feeder lines together with private-owned companies such as Zamrud Aviation, Bouraq Indonesia Airlines, Mandala Airlines, Seulawah Air Services, Indonesian Air Transportation. Besides scheduled and non-scheduled air transportation, there is also general aviation to cater to the aerial work and other activities using an aircraft.

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

Based on the (Ministerial Decree : 1970), the government issued a license for general aviation to serve an oil company, agribusiness, plumbing, banking and religion mission. The general aviation is non-commercial, just serving its own need between a headquarter and the center of activities, to carry the directors, employees, workers and equipment owned by the legal entities concerned, with no remuneration or sale of all or part of its capacity with replacement of money for the use an aircraft. The policy under the new order is limited to airlines system, provided by state-owned enterprises together with private owned companies. All routes, frequencies, type of aircraft used, capacity and tariff shall be controlled and over-sighed rigidly by the MOC.

In the air transportation policy with the old and new order mentioned above, all routes, frequencies, type of aircraft used, capacity of airlines and tariff available were rigidly regulated by the MOC. The routes regulated based on (Ministerial Decree: 1961) determine GIA to serve trunk lines routes, whereas, those regulated based on (Ministerial Decree : 1969) determine MNA to serve regional routes. There is a restriction of using jet aircraft. Only GIA was permitted to use jet aircraft, while private-owned companies only operated a propelled aircraft. This restriction was also applied for tariff. In the order, there was no competition between airlines and it was rigidly regulated by the MOC. All tariffs provided by private-owned companies shall be below GIA's tariff, and especially first class GIA's tariff was permitted 15% higher than normal price, for airbus aircraft.

In the era reformation order in the regime of General Soesilo Bambang Yoedoyono, the policy of air transportation tended to relax. Private airlines, scheduled, non-scheduled airlines, air cargo, charter flight as well as general aviation increasing rapidly. Based on (the Ministerial Decree : 2004), the requirement to establish a new airlines company were very easy. They compete without paying attention to the consumer's interest. The relaxation policy truly benefits consumers, without having a negative effect against other modes of transportation.

The negative effect of the relaxation policy is that the airlines are forced to compete rigidly. They reduce tariff under standard recommended by the government. Even they become predators. The existing war tariff indirectly kills other airlines companies, as well as sea transportation. The result of the relaxation policy is that the land transportation by bus from Jakarta to Padang and from Jakarta to Medan goes bankrupt, ships owned by state-owned enterprise operated by the Indonesian Sea Transportation (PELNI) is forced to be transferred to Indonesian Navy because commercially it is not feasible. If the land and sea transportation has

been killed, it is quite possible to kill airlines companies and the airlines which have a marginal capital will become bankrupt. Finally, only the giant airlines can operate, and consumers will be victimized.

The government, though, realizes that the negative effect of the relaxation policy. For that reason, the (Ministerial Decree : 2008) requests that a new airlines must have a minimum of five aircrafts. Two of them shall be owned and the rest can be leased for a scheduled airlines and a minimum of three aircraft for non-scheduled airlines. One unit aircraft out of three units of aircraft shall be owned and the rest can be leased to support the operation of airlines. The total number of aircraft requirements is necessary because in reality very often delay in operations is due to lack of aircraft, especially for scheduled air transportation with holiday. As a result of the relaxation policy, the MOC has cancelled 27 business permits of airlines because they do not fulfill the requirements.

The victims of relaxation policy are not limited to land, sea and railways transportation, but also to the airlines themselves. The old players with the new order regime such as Zamrud Aviation, Bouraq Indonesia Airlines, Mandala Airlines, Seulawah Air Services and Indonesian Air Transportation went bankrupt due to their inability to compete with the new airlines players. In the development of era reformation, the victims are not limited to the old airlines players, even the new airlines players are forced to go bankrupt because they cannot guarantee to survive their operation. They come without enough capital, professional human resources, victimize the consumers and go bankrupt as victims of the relaxation policy. The new airlines risk against accidents, one fatal aircraft accident and the airlines goes directly bankrupt.

The philosophy of the Civil Act of 2009, as other states, is that airlines companies do not need a lot of airlines but they have capability to compete and are not too weak. It is better small but capable to fulfill the air transportation need to support national economic development, capable to compete at national, regional and global levels. For that reason, the Civil Aviation Act of 2009 provides the requirement of establishment of airlines companies in order to survive and compete in the national, regional and global levels. The Civil Aviation Act of 2009 provides for requirement of enough aircraft ownership, capital intensive, single majority shares, bank guarantee, professional human resources qualities as well as quantities, law enforcement and full regulation, regulated industry, high compliances, high technology, aviation safety, security and just culture.

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

## **2. Systematic of Civil Aviation Act of 2009**

There are 24 (twenty four) views on the systematic of aviation law, namely general provisions, foundations/Bases and Objectives, scope of law validity, supervisions, aircraft design and production, registration and nationality of aircraft, aircraft airworthiness and operation, international interests in aircraft object, air transportation, air carrier's liability, airports, flight air navigation, aviation safety, aviation security, search and rescue in aircraft accident, investigation and follow-on investigation in aircraft accident, empowerment of aviation industry and technology development, aviation information system, human resources, public participation, criminal investigation, criminal provisions, transition provisions and closing provisions.

## **3. The Result of Discussion**

### **a. Substance of the CAC of 2009**

The Indonesian Civil Aviation Act of 2009 (the CAC of 2009) that came into force on 12 January 2009 aims to proMOCe the development of Indonesian air transportation. It regulates a host of matters related to aviation, from sovereignty in airspace, aircraft production, operation and airworthiness of aircraft to aviation safety and security, aircraft procurement, aviation insurance, the independence of aircraft accident investigation, and the licensing of aviation professionals. The 2009 Act also regulates scheduled and non-scheduled air transportation, airline 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 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 services institute to further those goals. Due to the comprehensive nature of the Act of 2009, the present article is only able to discuss and highlight certain matters such as aviation safety, aviation security and international interest in aircraft objects as follows:

## **b. Aviation Safety**

The aviation safety regulations consist of aircraft production, registration and nationality mark, aircraft operation and aircraft maintenance and safety and security in aircraft during flight as follows:

### **1). Aircraft Production**

Aviation safety provided in Chapter VI of the Civil Aviation Act of 2009 (CAC). In accordance with article 13 any aircraft, any engine, and any airplane propeller to be produced and eligible for utilization must have a conceptual design and have an approval letter from MOC after its airworthiness standard has been examined and test. The examination and testing must fulfill airworthiness standard requirements stipulated under provisions of the law and regulations. In addition, every person conducting any activity on conceptual design of an aircraft, aircraft engine, and airplane propeller shall be obligated to obtain an approval letter.

In order to produce any aircraft, aircraft engine and airplane propeller to be made based on the conceptual design must possess a type certificate. The type certificate shall be given by the MOC after the applicant completes demonstration of compliance with the certification basis such as an examination on conformity to initial airworthiness standard and has passed the type certification test. Any aircraft, aircraft engine, and airplane propeller designed and produced abroad and imported into Indonesia, must obtain a type certificate validation from the MOC. Further provision on the system and procedure of obtaining approval letter on conceptual design, design activities and change to aircraft design, type certificate, and type certificate validation shall be regulated under a Ministerial Regulation (Art : 18)

Every Indonesian legal entity conducting production and/or assembling activities of aircrafts, aircraft engines, and airplane propellers, must possess certificate of production. In order to obtain production certificate, the Indonesian legal entity must meet requirements such as possession of type certificate or production license for manufacture based on an agreement with other party(s); production facilities and equipment; organizational structure having at least production and quality control divisions; competent production and quality control personnel; quality control warranty system; and product examination and production testing system (Art.19). The certificate of production shall be given after examination and testing are administered with a result of meeting the airworthiness standard (Art.20). Certification process of aircraft, engines, and airplane propellers shall be implemented by a public service management institution (Art: 21). With regards to payments/fee, certification process shall be charged with payment/fee. Further provision on the public services management institution shall be regulated by the MOC.

### **2). Registration and Nationality Mark**

Taking into account that Indonesia is member of 1944 Chicago Convention (Convention : 1944), all aviation regulation shall consistent with Chapter III of 1944 Chicago Convention. For that reason, the CAC of 2009 provides that every aircraft operated in Indonesia shall be obligated to have a registration marks. Such registration marks can be registered in Indonesia shall be given an Indonesian registration mark upon fulfilling the requirements such as not registered in other country; and owned by Indonesian citizen or Indonesian legal entity; owned by a foreign citizen or foreign legal entity and operated by an Indonesian citizen or Indonesian legal entity for a minimum utilization period of 2 (two) years continuously based on an agreement/contract; owned by government agency or regional government and the aircraft is not utilized for law enforcement mission; or owned by a foreign citizen or foreign legal entity whose aircraft is in possession of an Indonesian legal entity based on an agreement/contract subject to the law agreed upon by the parties for purposes of aircraft storage, hire/rental, and/or commerce (Art.25).

Registration of aircraft shall be submitted by the owner or holder of power of attorney with the requirements such as showing proof of ownership or possession of the aircraft; showing proof of de-registration or being not registered in another country; meeting the requirement of aircraft age (hours and cycles) limit predetermined by the MOC; proof of aircraft insurance; and proof of having met aircraft procurement requirements. For aircraft meeting the requirements a registration certificate shall be issued (Art.26). The registration certificate shall be valid for 3 (three) years.

Any airplane, helicopter, passenger air balloon and airship having registration certificate of Indonesia shall be given Indonesian national identity. The airplanes, helicopters, passenger air balloon and airships already possessing registration identity of Indonesia and Indonesian national identity shall be obligated to equip themselves with the national flag of the ROI. Aircrafts other than airplanes, helicopters, passenger air balloon and airships may be exempted from requirement to have Indonesian national identity. Anybody violating provision shall be imposed with administrative sanctions, such as warning; and/or revocation of certificate (Art : 27).

Every person shall be prohibited to provide signatures or change identities as such as it obscures the registration marks, national identity, and flag of the aircraft. Anybody obscuring the registration marks, national identity shall be imposed with administrative sanction, such as warning; and/or revocation of certificate (Art:



28). Aircrafts having registration marks may have its registration revoked or cancelled, if requested by the owner or an individual bearing a power or attorney under the following

### **3)–Aircraft Operation**

Anybody operating an aircraft for air transportation activity shall be obliged to possess a certificate. Such certificate consist of air operator certificate, extended to an Indonesian legal entity operating a civil aircraft for commercial transportation purpose; or aircraft operating certificate, extended to an Indonesian individual or legal entity operating civil aircraft for non-commercial air transportation. The certificate shall be given by the MOC upon passing examination and testing, and the applicant demonstrates his/her capability to operate the aircraft (Art.41). In order to obtain an air operator certificate an operator has to own a commercial air transportation business permit; own and possess aircraft(s) in accordance with the business permit owned; own and/or possess competent aircraft personnel in a total number of adequate ratio to operate and to maintain aircrafts; own an organizational structure of minimum divisions of operation, maintenance, safety, and quality control assurance; own competent management personnel in an adequate number; own and/or possess aircraft operational facilities; own and/or possess adequate spare-part supplies; own a company operation manual and a company maintenance manual; own a standard operating procedure; own a standard aircraft maintenance procedure; own educational facilities and a company training manual; own a company quality assurance manual for keeping up continuous operating and technical performance; *and* own a safety management system manual (Art.42).

In order to obtain an aircraft operating certificate an operator has to owning a non-commercial air transportation activity permit; owning and possessing aircraft(s) in accordance with the activity permit owned; owning and/or possessing aircraft operational personnel and aircraft maintenance personnel; owning standard aircraft operating manual; *and* owning standard aircraft maintenance manual (Art.43). Anybody violating the provisions shall be imposed with administrative sanctions such as warning; freezing of certificate; and/or revocation of certificate. Further provisions on the system and procedures of obtaining aircraft operator certificate or aircraft operating certificate and the imposition of administrative sanctions shall be regulated under a MOC.

### **4). Aircraft Maintenance**

Anybody operating aircraft(s) shall be obligated to perform maintenance on the aircraft(s) including the aircraft engines, airplane propellers, and the components for keeping up the competency and continues airworthiness. In order to perform maintenance of aircraft, aircraft engines, airplane propellers and the components, one must issue a maintenance program and shall be approved by the MOC (Art.46).The maintenance of aircrafts, aircraft engines, airplane propellers and the components may only be conducted by an air transportation company already owning air operator certificate; a legal entity organization of aircraft maintenance already owning approved maintenance organization certificate; or a maintenance expert personnel already possessing an aircraft maintenance engineer license. The aircraft maintenance certificate shall be granted by the Minister upon passing an examination and testing (Art.47).

In order to obtain an approved aircraft maintenance organization certificate it must meet the requirements such as owning or possessing maintenance facilities and sustainable supporting equipment; owning or possessing competent personnel holder(s) of maintenance engineer certificate in accordance with their scope of works; owning company maintenance and inspection manuals; owning up-to-date maintenance manuals issued by the manufacturer in accord with the type of aircraft(s) being operated; owning quality assurance manuals to ensure and maintain sustainable performance of aircraft, engine, propeller and component maintenance; owning or possessing spare-parts to maintain competence and continues airworthiness; *and* owning manuals of safety management system (Art.48). The aircraft maintenance organization certificate may be given to aircraft maintenance organization abroad upon possession of aircraft maintenance organization certificate issued by aviation authority from the country concerned (Art.49).

Anybody violating the provisions shall be imposed with administrative sanctions, such as freezing of certificate; and/or revocation of certificate (Art.50). Further provisions on the procedures and issuance of aircraft maintenance organization certificate, maintenance engineer license, and the imposition of sanctions shall be regulated under a MOC Regulation.

### **5). Safety in Aircraft During Flight**

Each Indonesian or foreign civil aircraft arriving or departing from Indonesia may land or take-off from the airport(s) pre-determined for that purpose. The provision shall not be valid during emergency circumstances. Anybody violating the provisions shall be imposed with administrative sanctions, such as warning; freezing of certificate; and/or revocation of certificate (Art.52). Anybody shall be prohibited from operating and/or flying an aircraft that may endanger aircraft safety, endanger the safety of aircraft passengers, crews, and cargo,

endanger the safety of third party, disturb public security and order; and/or damage other people's property(ies). Anybody violating the provisions shall be imposed with administrative sanctions, such as freezing of certificate; and/or revocation of certificate (Art.53).

#### **6). Security in Aircraft During Flight**

Any person during flight on an aircraft shall be prohibited to conducting behavior that may endanger aviation safety and security; violating in-flight procedures; taking or damaging aircraft equipment that may threaten safety; conducting a-social behavior; disturbing peacefulness; and/or operating electronic devises that may disturb flight navigation (Art.54). The aircraft pilot in command concerned shall have the authority to take action for purpose of ensuring safety, order, and security during flight (Art 55). It shall be prohibited in-flight to place any passenger with disability to act on an emergency at seats near emergency exits of the aircraft. Anybody violating the provisions shall be imposed with administrative sanctions, such as warning; freezing of certificate; and/or revocation of certificate (Art.56). Further provisions regarding safety and security in the aircraft during flight, the authority of Pilot in Command during flight, and imposition of administrative sanctions shall be regulated under a MOC Regulation.

#### **c. Aviation Security**

Indonesia has ratified aviation security instruments such as Tokyo Convention of 1963, The Hague Convention of 1970 and Montreal Convention of 1971, for that reason the CAC of 2009 provides aviation security to implement the aviation security instrument. Such provision provided at Chapter XIV from Articles 323 to 356 of the CAC. It consist of national aviation security, aviation security supervision, airport security, aircraft operation security, eradication of unlawful acts as follows:

##### **1) National Aviation Security**

The Minister shall be responsible for national aviation security. In order to implement responsibility with regards to aviation security, the MOC shall be authorized to establish a national aviation security committee; enact a state aviation security program; and monitor the implementation of state aviation security program (Art.323).The national aviation security committee shall have the duties to coordinate the implementation of state aviation security program (Art.324). The national aviation security program shall at least contain aviation security regulation; aviation security targets; aviation security personnel; division of responsibilities on aviation security; protection of airports, aircrafts, and flight navigation facilities; control and guarantee security of human and goods on aircrafts; eradication of unlawful acts; adjustment of security system towards security threat level; and aviation security supervision (Art.325).

In implementing national security program, the Government may cooperate with other countries. Cooperation shall cover exchange of information; education and training; improvement of security quality; and request for security support (Art.326). In the framework of aviation security, the ASEAN Multilateral Agreement on Air Services (AMAAS) in which Indonesia is a member also provides aviation security provisions (ASEAN : 2009). Airport business entity or airport operation unit shall be obligated to develop, implement, evaluate, and enhance airport security program at every airport with the national aviation security program as a guideline. Airport security program shall be legalized by the MOC; airport business entity or airport operation unit shall be responsible for financing airport security (Art.327).

Every airport authority or airport operation unit shall be responsible for monitoring and controlling of airport security program. In order to carry out the responsibility airport authority or airport operation unit shall establish an airport security committee. The airport security committee shall have the duties to coordinate the implementation of airport security program (Art.328). Every air transportation business entity shall be obligated to develop, implement, evaluate, and enhance an air transportation security program with the national aviation security program as the guideline. Air transportation security program shall be prepared by air transportation business entity and shall be legalized by the MOC. Airport transportation business entity shall be responsible for financing air transportation security (Art.329). Further provisions regarding the mechanism and procedures of development or implementation of state aviation security program shall be stipulated under a MOC Regulation.

##### **2). Aviation Security Supervision**

The MOC shall be responsible for supervision of national aviation security. Such supervision of aviation security is a continuous monitoring activities aiming to ensure compliance to aviation security regulation implemented by the aviation services providers or other relevant security institutions, covering activities such as audit; inspection; survey; and test. The MOC shall take corrective and law enforcement actions on the results of monitoring (Art.331). Airport authority, airport operation unit, airport business entity, and air transportation business entity shall be obligated to implement internal monitoring and shall report the

findings to the MOC (Art.332). Further provisions regarding national aviation security supervision shall be stipulated under a MOC Regulation.

### **3). Airport Security**

Anybody, vehicle, cargo, and post entering restricted security area shall be obligated to possess entrance permit into the restricted areas, or airplane tickets for passengers and security check shall be enforced. The security check as meant in item (1) shall be conducted by competent personnel in aviation security field (Art.334). Passengers, aircrews, 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 (Art.336). Any airplane passenger carrying any weapon shall be 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.

Airport business entity and airport operation unit shall be obligated to provide or appoint an area at the airport territory as an isolated parking area for aircrafts experiencing security disturbance or threat. Further provisions regarding the mechanism and procedures of airport operational security shall be stipulated under a MOC Regulation (Art.337).

### **4). Aircraft Operational Security**

Air transportation business entity shall be responsible for aircraft operational security at the airport(s) and while in flight. Responsibility towards aircraft operational security at airports shall at least include aircraft security examination prior to operation based on security risk rating (*check and search*); examination on passengers' cabin luggage left behind in the aircraft; examination on all personnel entering the aircraft; and examination on equipment, goods, food, and beverages entering the aircraft. Responsibility towards aircraft operational security while in flight shall at least include taking action necessary to guarantee aviation security; informing the pilot in command if there is any air marshal in the aircraft flight; informing the pilot in command of existence of any dangerous goods in the aircraft. Placement of security personnel on board of any foreign regular commercial aircraft from and to the territory of the Republic of Indonesia may only be done based on bilateral agreement (Art.340). Every air transportation business entity operating aircrafts of transport category shall be obligated to fulfill aviation security requirements. Further provisions regarding the system and procedures of implementation of aircraft operational security shall be stipulated under a MOC Regulation (Art.343).

### **5). Eradication of Unlawful Acts**

Any person shall be prohibited to do 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 facility 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 that endangering aviation safety (Art.344).

Airport Authority, 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 contingency plan type. In the case there is 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. Further provisions regarding the mechanism and procedures for eradication of unlawful acts and delegation of duty and commands of eradication shall be stipulated under the MOC Regulation (Art.347).

### **6). Aviation Security Facilities.**

The MOC shall stipulate aviation security facilities used for realization of aviation security. Provision of aviation security facilities shall be undertaken in accordance with the needs by considering effectiveness of equipment; airport classification; and level of threat and disturbance (Art.349). Airport business entity, airport operation unit, and air transportation business entity using aviation security facilities shall be obligated to provide, operate, maintain, and modernize in accordance with stipulated standard; maintain accuracy of its performance by calibrating; and obtain complete certification of equipment. Any airport business entity, airport operation unit, and air transportation business entity violating the provisions shall be imposed with administrative sanctions, in the forms of warning; freezing of permit or certificate; and/or revocation of permit or certificate. Further provisions regarding aviation security facilities shall be stipulated under a MOC Regulation.

#### **4. International Interest in Aircraft Objects**

Without disregards any other provisions, the author think that the most valuable provisions right now is the provision provided in Chapter IX regarding international interest in aircraft object, taking into account that almost Indonesian airlines take the advantage of this provision. This Chapter provides, among others, types of agreement, authorization for deregistration of aircraft, choice of laws, power of attorney as follows:

An aircraft object may be borne with international interests arising as a result of security agreements, title reservation agreement, and or leasing agreement. Such an agreement may be entered into based on the law of choice made by the parties to the agreement (Art.71). In the case the agreement is a subject under the Indonesian laws, the agreement must be drawn in an authentic deed containing at least identities of all the parties; identity of the aircraft object; and the rights and obligations of the parties (Art.73).

A debtor may issue an authorization for deregistration request to the creditor for the purpose of applying for registration annulment and export on the airplane or helicopter already obtaining an Indonesian registration marks and Indonesian nationality. The power of attorney of deregistration must be acknowledged and recorded by the MOC and may not be annulled without concurrence of the creditor. The power of attorney of deregistration shall remain valid at the time the debtor declared default or in a condition of inability to pay debts (insolvent). The creditor shall be the only party authorized to submit a request for annulment on the aircraft or helicopter registration in accordance with the terms in the authorization for deregistration request (Art.74).

In the case the debtor breaches the contract, the creditor may submit a request to the Minister, according to the power of attorney of deregistration to annul/cancel the registration and export of the airplane or helicopter. Based on the creditor's request the MOC shall be obligated to annul/cancel the registration marks and nationality of the airplane or helicopter no later than 5 (five) working days after the request is received (Art.75). The MOC and other government agencies shall have to assist and expedite any recovery attempt contemplated by any creditor based on an agreement. Creditor's rights and recovery attempt shall arise at the time of signing of the agreement by the parties (Art.77).

International interests, including every transfer and/or subordination of those interests, shall receive the priority status at the time of registration of the interests to the International registration office (Art.78). In the case the debtor breaches the agreement, the creditor may obtain a decision from the state court for temporary action based on the agreement without prior submission of law suit against the main case to enforce the claims in Indonesia and without having all parties undergoing mediation ordered by the court. The court decision as meant in item (1) shall be implemented within the period stated in the declaration made by the Government regarding the stated convention and protocol (Art.79).

The court, curator, bankruptcy committee, and/or debtor must transfer the possession of aircraft object to the rightful creditor within the period stipulated by the Government of the ROI ( Art.80). Certain invoices shall have priority against other invoices from holders of international interests registered on an aircraft object (Art.81). The provisions of the Convention on International Interests in Mobile Equipment and the Protocol to the Matters Specific to Aircraft Equipment, wherein Indonesia is a party to, shall have legal standing in Indonesian and shall become *lex specialis* in legal term.

## **IV. CONCLUSION AND RECOMMENDATION**

### **1. Conclusion**

The CAC of 2009 provides almost of the provision provided in the Chicago Convention of 1944. It modernizes instead of the former civil aviation Act. It modernizes taking into account that the CAC of 2009 has accommodate the recently development, especially related to Cape Town Convention of 2001 in which benefit for procurement of modern aircraft in Indonesia.

### **2. Recommendation**

Taking into consideration that the CAC of 2009, have been set up consistent with the provision of Chicago Convention of 1944 and accommodated the Cape Town Convention of 2001, the authors recommend that it should be complied by national as well as international airlines operated to and from Indonesia.

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