

## Current Indonesian Air Transportation (2016)

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### I. Introduction

Indonesia's aviation industry is rapidly growing towards meeting its enormous potential. With more 250 million people living on 17,000 islands across 5,200 km East to West and nearly 2,000 km North to South, this is a country suitable for air transport expansion. As growing numbers of Indonesians are discovering, air transportation is the most efficient option for getting around. With 70% of visitors arriving by air, the importance of aviation to the lucrative tourism industry is undeniable. It may be less obvious, but even more important to note, that aviation connectivity connects Indonesian businesses to markets around the world.

Aviation is big business in Indonesia today. But the potential is even bigger. By 2034, it is expected that Indonesia will rank 6th globally when it serves the needs of some 270 million passengers. That would be three times the size of today's market. Wherever aviation grows, it brings prosperity—creating jobs and stimulating business. It is absolutely in Indonesia's interest to see its aviation sector flourish. But, there is a big role for collective leadership among industry partners—including the government—to make that happen. Tony Tyler (Director General of IATA) hopes that the future will bring about a common vision and find the ways to work together to realize it. Without disregarding other items, this article intends to provide an analysis on air transport policy in Indonesia during Idul Fitri Holidays, Cape Town Convention of 2001, tariff's policy, charter air services, EU and USA-FAA Ban as follows.

### II. Air Transport Within Idul Fitri 1437 H

#### 1. Introduction

The peak of the *mudik*-exodus usually occurs three to four days ahead of Idul Fitri Holidays, locally known *Lebaran*, and is always accompanied by severe traffic jams, especially in Toll Gate (TG) Brebes Timur, Central of Java. Transport companies have to hard work over hours to provide additional services in this period to absorb the sudden jump in passenger numbers. It was estimated the number of people who use bus transportation is expected 4.57 million, whilst the number of train passengers is expected to reach 4.11 million.

The highest growth was air transport passengers estimated 4.64 million, taking into account, that Indonesians now have a higher purchasing power, and improvements that have been made and have led to better standards of airport services and higher flight discipline. Usually the government, through the MOC instructs airport management authorities across the country to extend the working hours of airports in order to accommodate the expanded flight scheduled.

The total of travelers from air, train and land transportation was estimated up to 13,32 million peoples. They will celebrate with the traditional dish *ketupat* and visiting with family and friends. Charity donations (*amal*) are traditionally given at this time. Just prior to Lebaran a mass exodus (*mudik*) from Jakarta of millions of people occurs as residents return to their villages to celebrate with family and friends. Begging of forgiveness for any transgressions or slights in the past year is expressed during visits, with the quote, "Mohon Maaf Lahir dan Batin". In urban areas *halal-bihalal* (mutual begging of pardon) gatherings are held.

It is also interesting to note here that the *mudik* tradition gives rise to an enormous boost in the money circulation across the Archipelago as millions of people travel to the rural areas to spend some days with their families. It is estimated that these people carry trillions of rupiah (hundreds of millions of US dollars) with them to the rural regions. As consumption increases (on food products, but also on clothes, bags, and shoes) there usually occurs a peak in inflation around the Ramadan and Idul Fitri celebrations Holidays.

With regards to security, the Indonesian National Police and the Indonesian Army (TNI) is obliged to provide additional personnel at the Soekarno-Hatta International Airport, Hasanuddin International Airport, Patimura International Airport, Ambon, and so on to safeguard public order during *mudik* period. In addition, PT.Angkasa Pura II also enhanced their security in the Soekarno-Hatta International Airport to anticipate bomb threats. Without disregards to train, land and sea transportation, this article intend to analyze air transportation, especially related to tariff, safety and security provided in the Civil Aviation Act of 2009 (the CAA of 2009).

#### 2. The Civil Aviation Act of 2009

The philosophy of the CAA of 2009, as other states, is that airlines companies do not need a lot of airlines but must be able to compete and develop resilience. It is better to have a small but capable to fulfill the

air transportation demand in support of national economic development, capable to compete at national, regional and global levels. It is the reason, the CAA of 2009 provides the requirement of establishment of airlines companies in order to survive and compete in the national, regional and global levels. For those purpose, the airlines shall have bank guarantee, enough aircraft ownership, capital intensive, single majority shares, professional human resources supported by aviation operation principles such as safety, security, fully regulated industry, compliances, law enforcement, high technology and just culture. All of the requirements are intended to lay down a legal ground in order that the airlines are capable to compete at regional and global levels with foreign airlines and at national level between national airlines. The CAA of 2009 also provides for cooperation between airlines, national as well as foreign airlines, however, 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.

### **3. Type of Air Transportation in Indonesia**

With regards to type of air transportation, there are commercial domestic scheduled and non-scheduled air transportation, pioneer air transportation and general aviation, whilst in the international level there are scheduled and non-scheduled air transportation.

#### **a. Domestic Scheduled Air Transportation**

Commercial domestic scheduled air transportation is any activity using an aircraft for transporting passengers, cargo, and/or post for one route or more from one airport to another airport or several airports within Indonesian territory. Article 97 of the CAA of 2009 provides scheduled air services. It consists of full services, medium services and no-frill services. Full services meant that during the flight, passengers are served with food and beverages, snacks, and executive lounge are provided for business class and first class.

A medium service is purported among others provisions of light food and other facilities such as executive lounge for passengers holding certain types of economic class are given to the passengers during flight, whilst no-frill services have only one class of service without any provision of foods and beverages, snacks, executive lounge, and check-in baggage and for this, a fee shall be charged from the passengers during the flight. The scheduled air transportation company shall be obliged to inform the consumers regarding the condition and specification of services being provided. The scheduled airlines providing medium and no-frill services shall be a business entity with low cost carrier basis and shall be obliged to meet aviation safety and security as well.

They have to submit a request for authorization to the MOC and MOC shall enact a scheduled air transportation company shall be periodically evaluated. Air transportation activities may be done with scheduled services and/or non-scheduled air services by national and/or foreign air transportation entity for passenger and cargo shipment or freighter, however, domestic air transportation shall only be done by national airlines that have already obtained a business permit for air transportation.

An air transportation activity shall be implemented by business entities in the field of national air transportation. The business permit will be given by the MOC after fulfilling administrative requirements bank guarantee, aircraft ownership, airlines capital, majority share-holders, and professional human resources. Administrative requirement among others are submitting founding act (establishment deed) of Indonesian business entity whose business is in the field of scheduled is enacted by the Minister in charge, tax identification number, domicile letter issued by the authorized agency, approval letter from the agency responsible for capital investment sector if the company utilizes capital investment facilities, evidence of capital already deposited, bank guarantee and the business plan for minimum of five years.

The business plan requirement for obtaining a business permit is provided in Article 110 of the CAA of 2009. It provides that the business plan shall contain the type and total number of aircraft(s) to be operated, core plan of flight operation and flight routes for scheduled air transportation, marketing aspect in the form of potential air transportation market demand, human resources consisting of management, technicians/engineers, aircraft crew, preparedness and operational worthiness and economic and financial aspect analysis and evaluation.

Aircraft ownership requirements for obtaining a business permit are provided in Article 118(2) of the CAA of 2009. It provides that scheduled air transportation shall own at least five units of aircrafts and possess at least five units aircraft of the type(s) suitable for supporting its business sustainability in accordance with the routes served. Air transportation, especially for cargo, shall own at least one unit of aircraft and possess at least two units of aircrafts of the type(s) suitable for supporting its business sustainability in accordance with the routes and operational areas to be served.

Capital requirement for obtaining business permit can be found in Article 109 (1)(e). It provides that an air transportation business entity shall submit the evidence of capital already deposited, whilst share-holder requirements for obtaining business permit is provided in Article 108(3) of the CAA of 2009. It provides that in

the case of capital of the national airlines owned by an Indonesian legal entity(s) or an Indonesian citizen(s) being divided, one of the national share-holders must remain larger than any foreign share-holders (single majority shares). Air transportation business permit shall be valid as long as the permit holders remain operating actual air transportation activities by continuously operating aircrafts in accordance with the permit granted, it shall be evaluated annually. The result of evaluation shall be used as consideration for allowing the holder to remain running its business activities.

In relation to human resources requirements for obtaining a business permit, it can be found in Article 110 (e) and 111 of the CAA of 2009. Article 110(e) provides that the business plan shall contain the human resources consisting of management, technicians/engineers and air crew, while Article 111 of the CAA of 2009 provides management requirements. It provides that any individual may be appointed as a director of airlines after fulfilling the requirement of possessing operational and managerial competence, air transportation business management, certified as being fit and after a proper test conducted by the MOC. These requirements shall not be applicable for managing director of any air transportation business entity.

The commercial air transportation business permit cannot be transferred to another party before operating aircraft in actuality as described in the business permit given. Transfer of commercial air transportation business permit may only be done after the permit holder runs the operation, and obtains the approval of the MOC. Any holders of air transportation business permit violating the provision shall be imposed with administrative sanction, namely revocation of permit. Further provisions regarding the requirements, system and procedures of obtaining air transportation business permit and appointment of director of airlines shall be stipulated under a Ministerial Regulation. For that reason, based on Article 464 and 465 of the CAA of 2009, Ministerial Decree KM 25 Year 2008 will be applied.

With regards to the obligation of air transportation business permit holder, it can be found in Article 118 of the CAA of 2009. It provides that holders of air transportation business permit shall be obliged to perform air transportation activities in reality (*de facto*) no later than 12 months upon issuance of permit by at least operating the minimum number of aircraft owned and in possession in accordance with its business or activity scope, own and possess total number of aircraft, fulfill the provisions of mandatory transportation for shipment, civil passenger flight, and other provisions in accordance with the rules of law and regulations, purchase shipment liability insurance with liability value equal to insurance coverage for regular passenger air transportation proven by valid insurance policy, serve potential passengers fairly without discrimination on ethnic, religion, race, inter-group, and economic and social strata, submit monthly air transportation activity report, including delays and cancellation of flights, no later than on the 10<sup>th</sup> of the next month for each month to the MOC, submit annual financial report duly audited by a registered public auditor firm which contains at the least a balance sheet, profit and loss, cash flow, detailed expenditures, no later than the end of April of the next year of reporting year to the MOC, report any changes of management or ownership of air transportation business entity, changes of domicile of air transportation business entity and changes of aircraft ownership, to the MOC and fulfill stipulated service standard.

Relation to flight network and routes of air transportation business can be found in Article 122 of the CAA of 2009. It provides that domestic flight network and routes for scheduled air transportation shall be determined by the MOC. The domestic flight network and routes shall be determined, at least with the considerations of demand for air transportation services, fulfillment of technical qualifications for flight operation and airport facilities, airport facilities in conformation with aviation safety and security, all regions having airports are served, flight operation center of each air scheduled air transportation business entity, and integration of domestic and international routes.

#### **b. Pioneer Air Transportation**

Pioneer air transportation is a domestic air transportation activity serving flight route and network linking remote and underdeveloped regions not yet served by other modes of transportation. It is served by the commercial air transportation business entity. The regional government has to guarantee availability of land site, infrastructure. The pioneer air transportation shall be implemented integrity with other sectors based on the regional development approach and evaluated annually by the MOC. The result of evaluation may change a pioneer air transportation routes into commercial routes. Pioneer air transportation activities shall be given compensation to ensure sustainability to service on the routes and scheduled stipulated. Such compensation shall be in the form of other route(s) outside the pioneer route(s), financial assistance for operation, and/or financial assistance for the fuel.

#### **c. General Aviation**

General aviation is air transportation used for personal purposes to support his/her business activities which core business other than air transportation. General aviation may be carried out by the government, regional government, social organizations, sports association, individual and/or other Indonesian legal entity. It

consists of air transportation for aerial work such as agriculture spraying, air photography, survey, mapping, search and rescue, calibration, air transportation for aircraft operation personnel activities or other air transportation of which core activity is not air transportation business. The MOC may be given to holders of general aviation activities for purpose of passenger and goods transportation in certain regional(s), by fulfilling certain requirements that are temporary in nature. Holders of general aviation permit violating the conduct of air transportation activities shall be imposed with administrative sanction, namely warning, freezing of permit, or permit revocation.

With regard to the permit of general aviation, activities shall be conducted after obtaining the MOC's approval. In order to obtain operation permit for general aviation activities by the Government, regional government, Indonesian business entity, and certain organization(s), one shall have to possess clearance from the agency supervising the company(s) core activities, founding/establishment act/deed of the business entity or the organization approved by the Minister in charge, tax identification number, domicile letter for business site issued by the agency in charge, and air transportation plan.

Other requirements to obtain business permit for general aviation activities undertaken by an individual are possessing a personnel identity card issued by the authorized agency, tax identity number, domicile letter of his/her business site issued by the authorized agency in charge and air transportation activity plan. The documents of clearance from the agency supervising the company core activities, founding/establishment act/deed of the business entity or the organization approved by the Minister in charge, tax identification number, domicile letter for business site issued by the agency in charge, shall be submitted in copies legalized by the issuance agency, and the original documents shall be shown to the MOC.

The activities plan shall at least contain type and total number of aircrafts to be operated, core of activity of flight operation, human resources consisting of technicians, engineers and air crew as well as preparedness and worthiness of operation. The general aviation business permit shall be valid as long as the permit holder remains de facto operating air transportation activities by continuously operating aircrafts. However, the permit shall be evaluated on performance of a permit holder of general aviation air transportation activity every year. The result of evaluation shall be used as consideration of letting the holder maintain his/her/its business activities. Further provision regarding the requirements, system and procedures of obtaining general aviation permit shall be stipulated under MOC.

#### **d. International Scheduled Air Transportation**

International scheduled air transportation is an air transportation activity serving air transportation from one airport in one country to another airport outside the territory of the Republic of Indonesia (ROI). An international scheduled air transportation may be done by a national scheduled air transportation company and/or a foreign scheduled air transportation company for the purpose of passenger and cargo shipment based on an air transportation agreement by the ROI with one foreign country as a contracting party.

In the case of the foreign scheduled air transportation operation regulated under a multi-sector or multilateral agreement, its operation shall remain implemented by means of a bilateral agreement. Bilateral air transport agreement that is specific or general in nature, entered into by the Government of the ROI with several foreign countries as the contracting parties and membership to this type of agreement shall be permanent in nature, shall be made in accordance with the law and regulations and shall consider, among others, the interests concerning state sovereignty, national holistic territory, national economy, and sustainability of national air transportation business based on the principles of fairness and reciprocity.

National scheduled air transportation company must be an air transportation company assigned by the government of the ROI and obtain the approval of the foreign country concerned. Foreign scheduled air transportation company must also be an air transportation company appointed/assigned by the country concerned and has the approval from the Government of the ROI. In case Indonesia enters into an agreement entered into by one country and a state community organization or between state community organizations having an open membership on air transportation with a foreign countries community organization, the implementation of the agreement shall be contemplated in accordance with the bilateral agreement between Indonesia and each country member of the community. In the case of Indonesia as a member of the country community organization entering into an agreement in one country and a state community organization or between state community organizations having an open membership on air transportation with another country community, organization, the implementation of the agreement shall be contemplated in accordance with the provisions agreed upon in the agreement.

A national scheduled air transportation company may contemplated collaboration of air transportation with other national scheduled air transportation companies in domestic and international transportation services. A national scheduled air transportation company may contemplated collaboration with a foreign scheduled air transportation company international transportation services. Any foreign scheduled air transportation company,

specifically transporting cargo may unload and load cargo within the territory of the ROI based on a bilateral or multilateral agreement and implementation shall be conducted through a mechanism duly binding the parties.

The bilateral or multilateral agreement shall be in accordance with provisions of the law and regulations and national interests shall be taken into consideration based on the principle of fairness and reciprocity. A foreign scheduled air transportation company, specifically transporting cargo, must be an air transportation company appointed by the country concerned and having obtained authorization from the Government of the ROI. With regard to open sky policies, the CAA of 2009 provides that opening of air transportation markets toward open sky from and to Indonesia for foreign air transportation shall be implemented in stages based upon bilateral or multilateral agreements and its implementation shall be carried out under a mechanism duly binding all the parties.

In this connection, “unlimited air transportation rights” means implementation of air transportation rights without limitation on, among others, places of destination, frequencies, capacity, tariff applications and freedom of the air, while the term “in stages” mean that it will be done, among others, in accordance with a competitiveness preparedness of national air transportation companies. The bilateral or multilateral agreement shall be issued in accordance with the laws and regulations and by giving consideration to national interest based on the principles of fairness and reciprocity. In this connection, „opening of air transportation markets” is meant to give an opportunity/chance to foreign air transportation companies to serve the flights from and to the territory of the ROI under limitation of air transportation rights.

#### **4. Aviation Safety and Security**

The aims and objective of the ICAO to develop the principles and techniques of international air navigation and to foster the planning and the development of international air transport so as to insure the safe and orderly growth of international of civil aviation through-out the world. With regards to aviation safety and security, in Indonesia provided in Chapters VIII and XIV adopted in the CAA of 2009.

In Indonesia, safety in the industry’s top priority, for that reason Chapters VIII and XIV of the CAA of 2009 regulates safety and security. It regulates aircraft airworthiness, aircraft operation, aircraft maintenance, safety during aircraft flight, aircraft personnel, insurance on aircraft operation. To insure the aviation safety, the operation of aircraft shall complies with the ICAO recommendation. In this regard Indonesia continues to fully support all relevant ICAO program and policies, including the Global Aviation Safety Plan (GASP), the Universal Safety Oversight Audit Program (USOAP) and its CMA component and implementation of performance based navigation (PNB). The DGAC has made significant efforts during the past years to enhance aviation safety, including the implementation of the National Safety Program (NSP) for Indonesia, the implementation of the Safety Management System (SMS) for all aviation services providers, and a revision of a large number of national standards, procedures and national regulations to bring them fully in accordance with the ICAO-SARPs and requirements. The DGAC is continuing these efforts and gives this matter very high priority. In order to validated the progress made, Indonesia have the intention to invite ICAO at the appropriate time to perform a validation to Jakarta, with regards to aviation security, all aviation activities complies with the regulations.

#### **5. Analysis of Air Transport During the Idul Fitri Holidays**

##### **a. Passengers**

In the framework of the celebration of Idul Fitri Holidays, the highest growth this year is air transport passengers. It was estimated 4.64 million, Indonesian use air transportation to travel back to their homeland, taking into account, Indonesian now have a higher purchasing power and the improvements that have been made led to a better standards of airport services and higher flight discipline. In addition, air transportation is better than land transportation considering to the traffic jams, more road accidents and a high level of stress, speed from Jakarta to Solo less than two hours, whilst land transportation from Jakarta to Solo takes more than 48 hours, get tire and time consuming as well.

##### **b. Tariff Applicable**

Those scheduled commercial air transportation company who engage air transportation within the Idul Fitri Holidays shall determine the tariff and shall be obliged to inform the customers regarding the condition and specification of the services being provided. In this regards, most of Indonesian airlines who engage air transportation in the framework of I’dul Fetri have informed the customers. The passengers tariff from Yogyakarta, Jakarta and Bandung to Bali International Airport are IDR 359,000; IDR 429.000 and IDR 459.000, respectively with term and condition a non-refundable processing fee is applicable for payments via credit, debit or charge card; tariff includes airport taxes; seats are limited and may not be available on all flights; valid for new purchases only; all tariff are quoted for single journey only; all taxes must be paid at the time of purchase unless otherwise stated; foreign tariff are subjected to currency exchange rates; offer is subject

to availability and conditions of carriage; no refunds are permitted after payment has been made; guests travelling need to provide all necessary travel documents at the time of departure; airlines reserves the right to deny guests from boarding without proper documents; full payment shall be made upon booking; changes to flights and dates are permitted subject to change fees; changes to name are not permitted; only available for online bookings. This condition of contract in line with the applicable regulation, no violation of the regulation.

**c. Garuda Indonesia (Fully Services)**

With regards to the obligation to inform the customers regarding the condition and specification of the service being services provided, Garuda Indonesia informs the customers that the ticket price Garuda Indonesia Jakarta to Kualanamu International Airport in Medan within July 2016, optimized IDR 1.629.000 and the lowest IDR 911.000.73 Those prices do not higher than the ceiling prices determined by the MOC and does not violation to the provision of tariff applicable. The tariff determined by Garuda Indonesia also in line with the regulation in which determined the lowest and maximum price.

**d. Aviation Safety**

As above-mentioned, in Indonesia safety is aviation's top priority and the biggest concern for the successful development of aviation, for that reason, in the frame-work of Idul Fitri Holidays, on 22 July 2016, Ignasius Jonan, the MOC inspected the improvements that have been made and have led to a better standard of airport services in Sultan Hasanuddin International Airport in Makassar, South Sulawesi and Pangkalan Bun Airport, Central Kalimantan. It is interesting to note here, that during Idul Fitri Holidays (from 1 July to 10 July 2016), no accident occurrence in Indonesia, except the accident of the Bell 50 Chopper in Yogyakarta. On Friday 8 July 2016, an army helicopter crashed, in a village in the Yogyakarta district of Sleman, Yogyakarta. The Bell 50 chopper, carrying five people, crashed into a house in Taman Martani village in the Kalasan sub-district around 3 p.m. local time. The helicopter was heading to Adi Sucipto International Airport in Yogyakarta from Adi Sumarmo Airport in Solo, Central Java, intended to secure the open house of the President Jokowi in Yogyakarta. This accident no directly related to air transportation in the framework of I'dul Fitri, but rather then related to the celebration of I'dul Fitri holidays.

**e. Aviation Security**

In the framework of Idul Fitri implementation, the Indonesian National Police and the Indonesian Army (TNI) provides an additional personnel in the Soekarno-Hatta, Hasanuddin, Patimura Airport and so on to safeguard public order. In addition, PT Angkasa Pura II also enhance security personnel to anticipate the terrorist at the airport. The result of additional police, army personnel provided by Angkasa Pura II, as far as related to air transport, no occurrence of unlawful acts, however in relation to public order, on 5 July 2016, there was a suicide bomber attempted to enter the Central Java Police complex on a motorcycle around 7.30 a.m. The suspect acted suspiciously and an officer pursued him. Shortly after he fled the scene the bomb exploded. It was a low-explosive bomb and the suspect was killed whilst the officer sustained minor injury. This bomb attacked no directly related to air transportation, rather than directly related the celebration of Idul-Fitri Holidays.

**6. Conclusion**

Based on the above-mentioned analysis, could be concluded that the air transportation engagement in the framework of celebration of Idul Fitri Holiday in 2016 was successful, taking into consideration that no violation of commercial air transportation against the regulations, no aircraft accident directly related to air transport and no unlawful acts against the air transportation as well.

**III. Cape Town Convention Of 2001**

**1. Introduction**

The need and demand for world travel has drastically risen over the last few decades with developed and emerging markets alike scrambling to fill it. Over the last 30 years, demand for global air travel has grown four times faster than world GDP. One of the largest obstacles has been for companies to secure financing for new aircraft. Following more than a decade of research, world experts created the Convention on International Interests in Mobile Equipment and the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment in 2001, which have since been ratified by sixty (60) and fifty-four (54) states, respectively.

The Cape Town Convention established an asset-based international registry whereby all international interests in an aircraft can be registered if the debtor is situated in a member State. This registry also has the benefit of establishing international priority in an aircraft. The Cape Town Convention of 2001 (the CTC of 2001) and Aircraft Protocol also provide for basic remedies and enforcement and stipulate which country's laws

would apply in cases of default. All of these factors lead to more transparency in the industry, which, in theory, will make financing much easier to secure.

## **2. Background of the Cape Town Convention of 2001**

On 16 November 2001, a Diplomatic Conference held in Cape Town, South Africa, under the co-sponsorship of the ICAO and the International Institute for the Unification of Private Law (UNIDROIT), adopted an international convention ("Cape Town Convention") specifically designed to facilitate asset-based financing and leasing. Fifty-three (53) States signed the Final Act of that Conference. The CTC of 2001 as applied to aircraft equipment through a protocol, came into force three months after the eight (8) ratifications, acceptances, or accessions to the Protocol.

The CTC of 2001 creates a uniform international legal framework to protect investors in aircraft objects. It provides International Registration for creditors and debtors to register their security interests, and creates a set of basic remedies in the event of debtor default. The Protocol complements the CTC of 2001 and adapts its provisions to meet the particular requirements of financing mobile equipment such as aircraft. For example, it provides additional remedies for creditors, such as the ability to request deregistration and export of an aircraft object. These measures increase the security of creditors and reduce their risks, which may reduce the cost and provide more accessible financing of aircraft objects for those countries that are party to the Cape Town Convention.

### **Economic Benefit of the CTC of 2001**

The CTC of 2001 will reduce the risk applicable to asset-based financing and leasing transactions by establishing an international legal framework backed by convention relations and where necessary, by implementing national laws. The reduced risk will increase the availability and reduce the cost of aviation credit, thus broadening the spectrum of financing alternatives available to aircraft operators.

The CTC of 2001 benefits the government, airlines, commercial aircraft manufacturers and their suppliers, aviation industry investors and passengers and other end users. The benefits to the government are first through reduced debt levels to governments whose credit in the form of sovereign guarantees or national debt is used to finance aircraft acquisitions; secondly, as risk reduction to the government providing export credit to support aircraft sales; and thirdly to enhance privatization where applicable, whilst the benefit for the airlines is through reduced financing costs and enhanced access to funds and funding sources, increased operating efficiency and improved profitability.

The benefit for commercial aircraft manufacturers and their supplies is through higher sales, output and employment levels as well as expanded markets, whilst the benefit for aviation industry investors is through increased returns on, and higher valuations of, investments as well as enhanced security, and the benefit for passengers and other end users is to bypass through price reductions and increased levels of services. The cost-savings and external debt level reduction benefits are slanted in favor of developing economics whose systems do not currently reflect asset-based financing principles. In these countries, the CTC of 2001 would generate greater relative improvement. Conversely, fleet planning, export and employment related benefits are, as a general proposition, slanted in favor of developed economies.

## **3. Implementation of the CTC of 2001 and its Protocol in Indonesia.**

Taking into consideration of the economic benefit the above-mentioned, Indonesia has ratified the CTC of 2001 and its protocol by Presidential Decree No. 8/2007. The CTC of 2001 and its Protocol regulates four elements in Mobile Equipment, specifically on Aircraft. Those are the International Interests, the International Registration, the Priority Rules and the Default Remedies. These four elements should be implemented in the national laws of Indonesia as a state party to the CTC of 2001. The CAA of 2009 incorporated the elements of the CTC of 2001 and its Protocol in Chapter IX, from Articles 71 to 82. Ratification of the CTC of 2001 and its Protocol will support aircraft procurement for national airlines of Indonesia. In addition to the CAA of 2009, other obligations arising out of the CTC of 2001 have been established. Those regulations are Ministerial Decree Number KM 49 of 2009 and DGAC Regulation No. SKEP/166/VII/2009.

In general, Articles 71 to 82 of the CAA of 2009, regulates a number of principles mentioned in the CTC of 2001 and its protocol. Article 71 provides that an aircraft may be subject to an international interest as a result of a security agreement, a title reservation agreement, and/or a leasing agreement. Aircraft objects include airframe, aircraft engine and helicopters as regulated in the CTC of 2001. Furthermore, the definition of airframe, aircraft engine and helicopter can be found in the explanation chapter of this Act. By this article, the definition of an International Interest means an interest obtained by a creditor based on security agreements, a title reservation agreement, and/or a leasing agreement under the CTC of 2001.

Article 72 of the CAA of 2009 gives the right to the parties to choose the choice of law and jurisdiction of the agreement as regulated in Article 71. This agreement, being in essence an international contract, should

consider the principles of choice of law and choice of jurisdiction based on private international law. If the agreement is governed under Indonesian Law, it should be made in an authentic deed which contains the identity of the parties, the identity of the aircraft objects and the rights and obligations of the parties, as stipulated in Article 73 of the CAA of 2009.

With regard to the implementation of the agreement between the debtor and creditor which establishes an international interest, when a debtor is in default or does not comply with the obligations of the agreement, the creditor may request the deregistration of the aircraft to the MOC with an the application of an irrevocable deregistration and export authorizing request (“IDERA”) using the form available at the DGCA. Deregistration can be enforced only by an IDERA signed by the debtor, which has been acknowledged by the MOC and can not be annulled without the approval from the creditor named therein in the IDERA as the authorized party as regulated in Article 74 of the CAA of 2009.

Upon the creditor’s request, the MOC shall remove the registration and the nationality of the aircraft or helicopter within a maximum of 5 (five) days of the request being made. These provisions are set out in Article 75 of the CAA of 2009. Articles 74 and 75 of the CAA of 2009 provide default remedies, when a default is caused by the debtors, and therefore give rights to the creditors to submit the deregistration request to the Minister. Article 76 of the Civil Aviation Act of 2009 provides the remedies to be enforced by the MOC and the other related ministers to expedite the enforcement of those remedies. The remedies and creditors' rights referred to in the previous articles are established upon the signing of the agreement by the parties in accordance with Article 77 of the CAA of 2009.

The International interest registered in the international registration has priority over other interests, including national interests in accordance to the Article 78 of the CAA of 2009. The International Registration is the facility managed by the ICAO. Furthermore, Article 79 of the CAA of 2009 provides that in the situation of a debtor’s default, the creditors may request provisional measures from the court based on the agreement mentioned in Article 71 of the CAA of 2009 without the submission of the case to be decided in the Indonesian court and without complying with the mediation procedure required in the general courts. These measures are in line with the declaration made by Indonesia when ratifying the CTC of 2001.

In the situation of a debtor’s bankruptcy, the court, the curator, and/or debtor shall hand over control of the aircraft object to the creditor within 60 calendar days as declared by Indonesia in the attachment of Presidential Decree number 8 of 2007. In the situation of a debtor’s bankruptcy, a number of invoices may have priority over the international interest of the aircraft object. This regulation on bankruptcy is regulated in Article 80 and 81 of the CAA of 2009. These regulations differ from the Indonesian law on bankruptcy in general and hence need to be communicated to Indonesian judges. These matters have not been tested before Indonesian courts.

Article 82 of the CAA of 2009 provides that the international convention on International Interests in mobile equipment and the Aircraft Protocol are legally binding on Indonesia and shall be implemented as *lex specialist* in Indonesian Law. In the Explanation Chapter, the definition of *lex specialist* means that in the case of inconsistency or discrepancy between the provisions of the Convention, protocols and declarations with Indonesian Law, the provisions of the CTC of 2001 and its Protocol and the declaration shall prevail.

#### 4. Best Practices in Indonesia

Some Indonesian airlines have taken advantage of the CTC of 2001 and its Protocol for the purpose of facilitating aircraft financing, and securities, which are useful for fleet modernization. As above-mentioned, in terms of economic results, the CTC of 2001 and its protocol has been very helpful for Indonesian airlines; between 2009 and 2013, Indonesian national airlines have procured at least 299 aircraft with the support of the CAA of 2009, which is supposed to incorporate the financing facilities provided by the CTC of 2001 and its Protocol.

Indonesia as a party of the CTC of 2001 and its Protocol has the obligation to implement the rules of the CTC of 2001 and its Protocol in its national laws. As earlier discussed, the objectives of the CTC of 2001 are to give assurance to the creditor that he has security in case the borrower is in default, to facilitate aircraft procurement and to obtain economic advantages, such as reducing the cost of procurement. On the other hand, to obtain the economic advantages from the CTC of 2001, a number of documents are required to be prepared by debtors and creditors, i.e. the parties explicitly state that the agreement is subject to the CTC of 2001.

The implementation of the CTC of 2001 and its Protocol in Indonesia is by virtue of Article 71 to 82 the CAA of 2009, Presidential Decree No. 8/ 2007 as the ratification instrument which contains the declarations, Ministerial Decree KM No. 49/2009, regarding IDERA. With regard to the implementation of IDERA, the International Interest and International Registration, in the best practice, an Indonesian national laws and regulations are sufficient to implement the obligations based on the CTC of 2001 and Its Protocol. Thus far, implementation of IDERA is stipulated in Articles 74 and 75 of the CAA of 2009. Based on these articles, an



IDERA using the form prepared and available at the DGCA will have to be prepared by the borrow/lessee/operator of the aircraft and submitted to the DGCA for recordation and acknowledgment.

In the event of default, only the party named in the acknowledged IDERA and holding the original thereof can apply for deregistration of the aircraft in accordance with Articles 74 and 75 of the CAA of 2009. Otherwise, the DGCA will only process the aircraft deregistration if it is submitted by a creditor/or a lessor and the deregistration application must enclose an original deregistration power of attorney which usually covers the right to export the aircraft and an original consent letter from the lessee for deregistration of aircraft. The latter were not provided in any of the DGCA's regulations, but we encountered at least two situations in relation thereto. For the interest of creditors, those two documents need to be made available not only for a new delivery, but also for any restructuring, including sale and lease back as this may require revocation of the existing IDERA and submission of a new IDERA which may take some time before the new creditor/lessor receives a new acknowledged IDERA.

Garuda Indonesia, the Indonesian flag carrier, does not have thus far any experience with regard to deregistration. It is means that Garuda was able to comply with the obligations of the agreement, which establishes an international interest of rights. Implementation of the Cape Town Convention and its Protocol have not been tested in practice, specifically with regard to the deregistration request. Furthermore, it is interesting to consider a successful airline established in Indonesia in recent years: Lion Air. Lion Air is a privately owned airline founded in 1999, which today is the largest privately domestic carrier in Indonesia procures 298 unit aircraft facilities by Cape Town Convention of 2001. The airline's success owes much to the purchase of a new generation of Boeing aircraft, which have lower operating costs, which in turn translates into lower fares. Indonesia's ratification of the Cape Town Convention and the associated Protocol greatly assisted Lion's growth and expansion, as it provided an internationally recognized standard on the rights of creditors should a debtor (in this case, an airline) default or become insolvent.

## **Conclusion**

The CAA of 2009 was an ambitious legislative attempt to adopt almost all the provisions of the Chicago Convention of 1944 and implementation all of the standards and recommended practices of the ICAO in one uniform national law. Perhaps the most successful element of the CAA of 2009 is the incorporation of elements of the CTC of 2001 and its Protocol. The success of these elements has been proven by Garuda Indonesia, Lion Air, Air-fast and Sriwijaya Air. Garuda Indonesia procures a lot of aircraft unit facilitated by CTC of 2001 and Lion Air in relation to the procurement of aircraft. In the future, the role of the CAA of 2009 will be very important for the development of Indonesia's aviation industry as well as national economic development more generally. For the sake of legal uniformity and clarity, there is no valid reason national airlines should not comply with the CAA of 2009.

Based on common practice, the implementation of the CTC of 2001 and its protocol is sufficient with regard to the Act and Regulations, namely the CAA of 2009 and the Ministerial Decrees. The CAA of 2009 regulates the International Interest, International Registration, Priority Rules, and Default Remedies. Those are the four elements provided in the CTC of 2001 and its Protocol. One of the obstacles in the implementation of the CTC of 2001 and its Protocol in Indonesia is in disseminating the CTC of 2001. Pursuant to Article 82 of the CAA of 2009, any agreement which is subject to the CTC of 2001 shall be binding in Indonesia and constitutes *lex specialist*. At present, Indonesia is preparing a law regarding Security Rights in which will include Indonesian Aircraft for financing by Indonesian creditors.

## **IV. Aviation Tariff Policy In Indonesia**

### **1. Scope of Aviation Tariff Policies**

Aviation tariffs in this Article refer to all tariffs, rates, fares, fees, charges or any other payments related to aviation activities. Tariff could therefore concern matters as wide-ranging as ticketing, international and national passenger service fees, air navigation service fees, landing fees, stand parking service fees, aircraft storage service fees, hajj service fees, the fees associated with the certification process and also on. Domestic tariffs are discussed in Part four of the CAA of 2009, and consist of tariffs for scheduled air transportation of passengers and shipment of cargo. Basically, tariff policies are neo-liberal in nature since the tariffs consist of economy and non-economy tariffs. Economy class tariffs are regulated by the MOC to protect consumers, whilst non-economy class tariffs are determined by airline companies based on market forces.

### **2. Passenger Tariffs for Scheduled Airlines**

The tariffs set by the MOC have an upper limit which takes into account factors such as the need to protect consumers and prevent unfair competition. On the whole, Indonesia's aviation regulations protect consumers by indirectly specifying a lower limit for the determination of tariffs, and at the same time the tariff regulations also prevent under pricing practices by air service providers that aim to squeeze competing carriers

out of the market. At first glance, however, it appears that this determination of tariffs does not adequately factor in the commercial side of the air service industry, especially for those offering premium services.

In determining tariffs, the MOC considers the interest of aviation safety and security, as well as the needs of the public and airlines' operation. The MOC Decree Number 26 of 2010 clarifies how passenger tariffs for economy class are determined and that they are based on the distance flown, tax, mandatory accident insurance and surcharges. The distance tariff is the amount of tariff per flight route per trip, for each passenger, and is a calculation based on the basic tariff multiplied by the distance. This formula also factors in the nation's purchasing power or affordability of the tariff.

The distance tariff consists of a basic average fee plus a reasonable profit a value-added tax based on taxation regulations. Mandatory passenger accident insurance is required by laws and regulations. Surcharges are imposed based on additional costs that the air transportation company has to pay to operate the business. The provision stipulates that the distance tariff may be adjusted due to factors such as, among others, the fluctuation of fuel prices. Costs that the air transportation company must borne due to lack of passengers on returning flights, outbound or in bound, are also included in tariff calculation. With regard to the fluctuation of fuel prices, the MOC recently issued the increase the amount of surcharges consistent with the value of American dollars.

Tariffs ceiling for domestic economy class passengers are stipulated by the MOC to prevent the imposition of high tariffs by airline companies and protect consumers from misleading advertising. The tariff for scheduled economy class passengers is disseminated either by the MOC or by the airlines themselves through print and electronic media and/or presented to consumers wherever airplane tickets are sold. Domestic airlines are prohibited from selling economy tickets above the tariff ceiling provided by the MOC, and any airline violating this prohibition will receive sanctions in the form of a warning and/or flight route permit revocation.

In addition, domestic passenger tariffs for economy class consist of tariffs based on whether the aircraft used is a jet-powered or propeller powered aircraft. Indonesia's DGAC proposes the maximum tariff after coordinating with national air carrier associations and consumer associations, and the tariff is also reflective of the class of service provided. Airlines providing full service may charge 100% of the maximum tariff, whereas airline providing medium service may charge 90% of the maximum tariff, and airlines providing no-frills service may charge only 85% of the maximum tariff.

### **3. Tariffs for Airport Use and Related Services**

In relation to tariff provisions, a fee for the use of airport services and airport-related services is charged according to the service provided. The structure and grouping of airport service tariffs are determined by the MOC, but the amount of airport service tariffs at commercially operated airports is determined by the airport business entity itself. The tariff for airport-related services at airport not yet commercially operated is determined by government regulations while the amount of the tariff for airport-related services shall be determined based on the agreement between the service user(s) and provider(s).

As per Articles 464 and 465 of the CAA of 2009, domestic flight passenger service fees are regulated by the Ministerial Decree Number KM 26 of 1996. In accordance with this decree, domestic flight passenger service fees determined in accordance with the facilities provided by the airport operator in question. Similar to international flights, certain categories of passengers, such as transit/transfer passengers, guests from foreign governments, and DGAC personnel, are exempt from fees, whereas infant/baby passengers only pay 10% of the total amount.

All aircraft engaged in domestic aviation which land at Indonesia airports is charged with a landing service fee determined by the MOC, which is calculated based on the weight of aircraft and type of flight. Similar to international aviation services mentioned above, landing an aircraft without flight approval issued by the DGAC shall result in a fine 100 times the applicable landing service fees.

Landing service fees for a local flight are 50% of the tariff for domestic landing service fees, whilst landing service fees for flight training crew or flight tests are 25% of the tariff for domestic landing fees. Tariffs for domestic scheduled flight in the case of an emergency or a return to base are 50% of the tariff for domestic landing service fees. Again, certain aircraft, such as a state aircraft operating a non-commercial service, an aircraft engaging in search and rescue operations, and an aircraft owned by the DGAC for calibration activities are exempt from paying landing, parking and aircraft storage fees.

An aircraft engaged in a domestic aviation is also charged stand parking service fees, which are calculated based on, among other considerations, the weight of aircraft, type of flight, period of time since aircraft parking (block on) and aircraft take-off (block off). The parking of an aircraft for less than two hours is free of charge. All air carriers engaged in domestic aviation and which storage their aircraft at an Indonesian airport are charged aircraft storage service fees, the amount of which is calculated based on the weight of the aircraft, type of flight, and a number of aircraft storage service fees determined by the MOC. Aircraft storage service fees exclude the value-added tax.

The MOC is responsible for flight navigation service operation for aircraft operated within the airspace served, and to fulfill this obligation, the MOC has established an agency for flight navigation operation in order to provide flight air navigation services. Air navigation services provided by the above mentioned agency give priority to aviation safety. The agency is non-profit oriented and financially independent, and all fees charged to users shall be on a cost-recovery basis and used for investment. Based on the air navigation services provided, all domestic and foreign flights using navigation services provided by the agency shall be charged a fee rate determined by the MOC.

Provisions regarding the mechanism and procedures of flight navigation services, the establishment and certification of flight navigation services, and the service charge of flight navigation are stipulated by the MOC under its regulations. Regulation No.77 of 2012 established the state-owned enterprise Indonesian Air Navigation Service Agency (IANSAs), which is responsible for the provision of air traffic service (ATS), aeronautical telecommunications services (COM), aeronautical information service (AIS), aeronautical meteorological services (MET), as well as Search and Rescue (SAR). All services provided by the IANSAs will be charged in accordance with the MOC Decree.

#### **4. Other Fees Related to Aviation Activities**

The CAA of 2009 establishes a public service management institute to manage the certification process. All aspects of the operation and maintenance of an aircraft, such as the licensing of an air operator or certification of the competence of a maintenance engineer, must be certified in order to ensure compliance with the necessary safety and security standard. The fees associated with the certification process are regulated and charged by the MOC.

#### **5. Hajj Air Transportation Air Services**

As Indonesia is the most populous Muslim country in the world, hajj flights are a good example of how special and seasonal air transportation service is treated under existing regulations and what tariffs are applicable to these flights. Hajj air service transportation is classified as a charter flight. Hajj candidates departing from a domestic airport to another airport in Indonesia have to pay domestic passenger service fees, whilst hajj candidates departing from a domestic embarkation airport in Indonesia to the disembarkation airport in Saudi Arabia have to pay international flight passenger service fees.

Domestic and international flight passenger service fees are determined in function of the facilities provided by the airport operator concerned, and value-added tax must be added on top of that tariff. Domestic and international flight passenger service fees shall be charged in one payment by the airline, and the applicable fees are transferred to the UPT for the airport under the DGAC, MOC or the airport operator. In addition, airlines carrying hajj candidates taking off from domestic departure airports to domestic embarkation airports have to pay domestic air navigation service fees, whilst airlines carrying hajj candidates taking off from embarkation airports to Saudi Arabia have to pay international air navigation service fees.

#### **6. Best Practices of Aviation Tariff**

As mentioned earlier, tariff policies in Indonesia are basically neo-liberal in nature, as the tariffs consist of economy and non-economy tariffs. Economy class tariffs are regulated by the MOC in order to ensure the viability of public transportation and to protect the interest of the traveler. An upper limit is set by the MOC to prevent unfair competition between airlines and airlines are prohibited from selling economy tickets above the upper limit tariff established by the MOC. In the best practice, however, the competition between scheduled airlines can be very fierce, and, as a result of the operation of the market, air services have been classified into three categories of tickets in order to avoid the restrictions set by the MOC. There are daily, weekly and monthly fares.

Daily tickets consist of prime-time tickets for flights between 4.30 a.m. to 9.30 a.m., which are very pricey, and tickets for flights between 12.00 p.m. to 3.00 p.m., which are the cheapest. In the weekly category, flights on Tuesdays, Wednesdays and Thursdays are very cheap, and flights on Fridays, Saturdays and Sundays are very expensive. However, even if the price is very expensive, no price is higher than the upper limit tariff. In addition, there are other variations such as promotion tariffs and normal economy tariffs. Promotion tariffs are cheaper than normal economy class, whilst economy tariffs consist of regular economy class flexible economy class and rigid economy class fares. This strategy not only avoids the price restrictions set by the MOC, but also, in effect influences the behavior of consumers and the travelling public.

##### **a. Holiday Season of Scheduled**

Especially in the holiday months, such as school holidays, celebration of days significant to Muslims (such as Lebaran) and the Christmas holidays, tickets price almost reach the upper limit established by the

MOC. During those periods, the demand for travel increases significantly and almost all domestic scheduled airlines provide extra flights to cater to these demands.

#### **b. Control of the Applicable Tariff**

During school holidays, Muslim holidays and Christmas holidays, the MOC rigidly controls the implementation of tariff regulations. Scheduled airlines are obliged to disseminate the tariff through print and electronic media and/or by presenting the set price on every airplane ticket. Any airline violating these provisions will receive administrative sanctions in the form of a warning and/or risk the flight permit being revoked. In the three years since the CAA of 2009 came into effect, no scheduled airline has violated the upper limit on tariffs as set by the MOC, meaning that all scheduled airline are complying voluntarily with such regulations.

#### **7. Tariffs for Non-Scheduled Airlines**

With regard to non-scheduled airlines, the tariff is set based on market mechanisms. The tariffs for domestic non-scheduled airlines are determined based on the agreement between the user(s) and the provider(s) of transportation services, while the tariffs for international scheduled passenger air transportation are determined based on bilateral agreements.

### **V. Charter Air Services**

#### **7. Introduction**

Legally contracting States agree that all aircraft of the other contracting States, being aircraft not engage in scheduled international air services (non-scheduled international air services) shall have the right, subject to the observance of the term of the Chicago Convention of 1944, to make flight into or in transit non-stop across its territory and to make stop for non-traffic purposes without the necessary of obtaining prior permission, and subject to the right of the flown over to require landing, however, the best practice, no contracting States of Chicago Convention of 1944 complies with the provision.

For the purpose to implement the above-mentioned provision, Indonesia issued the CAA of 2009. Such CAA of 2009, came into force on January 1, 2009 and has promoted the development of Indonesian air transportation. It regulates, among others, sovereignty in the airspace, aircraft production, operation and airworthiness, aviation safety and security, aircraft procurement, independency of accident investigation, establishment of aviation professionals, public services institute, airlines capital, ownership of aircraft, leasing, tariff, air navigation facilities, airport authority and services, law enforcement, and any other provisions not regulated previously to support a national and international air transportation development in Indonesia.

With regard to non-scheduled airline provided in Articles 92 to 96 of the CAA of 2009. Non-schedule commercial air transportation activities may be in the form of affinity group, inclusive tour charter, owned use charter, air taxi or other non-scheduled commercial transportation activities. Any international non-scheduled commercial air transportation activity undertaken by national and foreign commercial air transportation company shall be obligated to obtain flight approval from the MOC. In addition, a foreign non-scheduled commercial air transportation compelled to obtain flight clearance from Ministerial of Foreign Affair (MFA) and Ministerial of Defense (MoD) before getting flight approval from the MOC. Further provision regarding non-scheduled commercial air transportation shall be stipulated under a Ministerial Regulation.

Non-scheduled air transportation is regulated by Decree of SKEP/1657/VIII/76 and the Ministerial Regulation No.PM 66 Year 2016. The DGAC Decree of SKEP/1657/VIII/76 regulates advance booking charter, affinity group, inclusive tour charter, including a charter for the purpose of pilgrimage, non-season pilgrimage, tour packages, meeting, incentive, conference, special even charter, student charter, own use charter. Air transportation activities may be done with non-scheduled national airlines for passenger and cargo shipment or freighter.

#### **8. Domestic Non-Scheduled Air Transportation**

Previously non-scheduled air transportation was stipulated by the DGAC Number SKEP/1657/VIII/76, and this was amended by Ministerial Regulation Number 66 Year 2015. Such Ministerial Regulation regulates advance booking charter, affinity group, inclusive tour charter, including a charter for the purpose of pilgrimage, non-season pilgrimage, tour packages, meeting, incentive, conference, special even charter, student charter, own use charter. Air transportation activities may be done with national non-scheduled airlines for passenger and cargo shipment or freighter.

Under the existing demands of capacity air transportation through certain routes that cannot be fulfilled by the capacity of air transportation service with flight route operates permanently and regularly operated in compliance to law provision for air transportation services that are not bound to permanent and regular flight routes and scheduled among others, tourism packages, MICE (meeting, incentive, conference, and exhibition),

air transportation for pilgrimage, natural disaster assistance, and national and international activities temporary in nature, scheduled air transportation may operated non-scheduled air transportation activities upon approval from the MOC, however, non-scheduled air transportation operated by scheduled air transportation company, may not disturb the services on the routes if its own responsibilities and on the routes are still served by other scheduled air transportation companies. Domestic non-scheduled air transportation may only be conducted by a national airline possessing a non-scheduled airlines business permit and shall be conducted based on the flight approval. In a situation where demands for transportation services cannot be met or served by regular air transportation companies for a certain route(s) and are temporary in nature, a domestic non-scheduled air transportation company may undertake scheduled air transportation activities after obtaining an authorization or approval from the MOC.

The temporary scheduled air transportation may be initiated by a government, local government agency and/or a national air transportation company. Temporary scheduled air transportation activities must not cause any disturbance to air transportation services on the routes still served by the other scheduled air transportation company. Non-scheduled air transportation activities may be in the form of affinity group, inclusive tour charter, own use charter, air taxi or that in one airplane there are various groups with different purposes (split charter), such as for sick persons (patients) humanely program, parachuting activities. Recently, the development of non-scheduled air transportation indicates that as a whole the number of non-scheduled air transportation is relatively strong, in line with the increase of markets of non-scheduled air transportation are the island of Sumatra, Kalimantan and Papua.

### **9. International Non-Scheduled Air Transportation**

Air transportation activities may be done with non-scheduled air transportation by national as well as foreign air transportation companies for passenger and cargo shipment or freighter. Any international non-scheduled air transportation activity undertaken by foreign air transportation shall be obliged to obtain flight approval from the MOC after getting prior diplomatic clearance(s) from the Minister responsible for diplomatic clearance and security clearance from the Minister responsible for security. Any foreign non-scheduled air transportation company serving flight routes to Indonesia shall be prohibited to transport passengers from Indonesian territory, except their own inbound traffic. Any foreign non-scheduled air transportation company violating prohibitions of transportation passengers from Indonesian territory shall be imposed with administrative sanction. The system and procedures of administrative sanction imposition shall be stipulated under a Government Regulation regarding to non-taxable state revenue.

A foreign non-scheduled air transportation company, specifically freighter, serving routes to Indonesia shall be prohibited to load cargo from Indonesian territory unless it is authorized by the MOC. Any foreign non-scheduled air transportation company specializing in cargo shipment violating the provisions prohibition to load cargo from an Indonesian territory shall be imposed with administrative sanction as well. Furthermore, the provision regarding non-scheduled air transportation, air transportation cooperation and the procedures of administrative sanction imposition shall be stipulated under MOC.

### **10. Business Permit Requirements of Non-Scheduled Air Transportation**

To obtain a business permit issued by the MOC, non-scheduled airline shall fulfill the requirements such as aircraft ownership, airlines capital, majority share-holders, bank guarantee and professional human resources as follows.

#### **a. Aircraft Ownership**

The establishment of a new non-scheduled airlines requires a business permit issued by the MOC. To meet the requirements for obtaining a business permit, non-scheduled airline should have at least one unit of aircraft must be owned and at least two units of aircraft of types suitable for supporting its business sustainably must be possessed in accordance with the operational areas to be served, whilst for non-scheduled cargo airlines, at least one unit of aircraft must be owned and at least two units of aircraft must be possessed in keeping with the operational areas to be served. Previously, the requirements of aircraft ownership, was stipulated in Ministerial Decree Number KM 81 of 2004. It provided the establishment of new airlines was at least two units of aircraft should be owned, and this was amended by the Ministerial Decree Number KM 25 of 2008, stipulating that an airline company must own at least three units of aircraft and possess at least two units of aircraft of the type(s) suitable for supporting its business sustainably in accordance with the routes and operational areas served.

The government determined holders, business entities and certain agencies are obliged to commence operation of their aircraft no later than twelve months after their operational permits are issued, in order to comply with the relevant laws and regulations on civil aviation and other valid laws and regulations. In addition,

they must also submit monthly air transportation activity reports to the MOC no later than the tenth of the preceding month, and report any changes of management, ownership of aircraft, or domicile to the MOC.

In the best practice, if non-scheduled airlines do not comply with the minimum aircraft possession requirements, the MOC urges the non-compliance airlines to establish joint enterprises, either between domestic and domestic airlines or between domestic airlines and foreign airlines. If the establishment between domestic and foreign airlines, an Indonesian citizen or an Indonesian legal entities must own the majority shares. The MOC will issue an administrative sanction to airlines in which do not comply with the minimum aircraft possession requirements in the form of a warning, a revocation or a cancellation of the offending airlines' business permit.

#### **b. Capital of Non-scheduled Airlines**

Aircraft accident of national airlines is a lesson for the future, because the negative effect of such a fatal accident is that a lot of creditors shall be paid by airline companies concerned. Such credits are employees' salaries, workers' insurance, aviation turbine fuel, ground handling fees, ramp handling fees, passengers' handling fees, catering fees, landing fees, air navigation service charges, parking stand fees, aircraft storage charges, office rental, building rental, room rental, aircraft maintenance fee, airport service charge, aircraft leasing, aircraft insurance, air crew insurance, legal liability insurance, third parties legal liability insurance, advance ticket booking, administrative fees, debt of the airlines company. Therefore, the CAA of 2009 requests that new airlines shall have enough capital to guarantee the survival of operation, because the bankruptcy of airline company will affect consumers.

For the purpose to implement the above-mentioned provision, the MOC has released Ministerial Regulation No.45 Year 2015. In accordance with the Ministerial Regulation No.45 Year 2015 provides that for the establishment of a new airlines should have IDR 150 billion maximum 70 seats capacity for non-scheduled airlines. For existing airlines the capital requirements should be fulfilled at least in 2018. In addition, the authority will also strict the implementation of each airlines which should deliver their last year audited financial statement by registered public accountant not more than 14 April of the current year.

#### **c. Majority Shares-holder Requirements**

Joint enterprises were first regulated by Ministerial Decree Number S.8/1/11-Phb of 1967, a regulation that was later amended by Ministerial Decree Number SK 13/S/1971. These Ministerial Decrees lay down the foundations for establishing joint enterprises between domestic and domestic airlines or domestic airlines and foreign airlines with the intension to prevent a monopoly held by GIA and MNA. Neither Ministerial Decree, however, requires that an Indonesian citizen or an Indonesian legal entity own a majority of the shares. In the best practice, often the shares have been highly divided and the majority of shares have been owned by foreign airlines.

For that reason, the CAA of 2009, requires that an Indonesian citizen or an Indonesian legal entity must own a majority of shares in an airline. This, in turn, means the capital of the national air transportation business must be, entirely or in the majority, owned by an Indonesian citizen or an Indonesian legal entity. In the case that the capital of the national airlines owned by an Indonesian legal entity or citizen is divided, one of the national shareholders must maintain a larger holding than any foreign shareholder (single majority).

Even though there is a regulation providing that an Indonesian citizen or an Indonesian airline must owned 51% of the total capital, in the best practice, according to information made known to the author of this article, the capital is divided and ownership is not held by an Indonesian citizen or an Indonesian airline, but instead is owned by foreign airlines engaging in the management of joint airline enterprises. This best practice has been seen in the example of a certain national airline, which were established prior to the enactment of the CAA of 2009. After the 2009 Act came into effect, the national airline in question was required comply with the new regulation and ensure that the majority shareholders were Indonesian citizen or airlines. It is a matter of law enforcement for the MOC to ensure compliance with this new regulation. The MOC shall effectively control the implementation of the CAA of 2009.

#### **d. Bank Guarantee Requirements**

The CAA of 2009 and Ministerial Decree number KM 25 of 2008, requires that non-scheduled air transportation companies provide proof of bank guarantees. The bank guarantee requirement is very important for business operation sustainability. Article 109 of the CAA of 2009 provides that to obtain a business permit, non-scheduled airline must at least meet the requirement to provide a bank guarantee. In addition, any company engaging in activities supporting air transportation must obtain a permit from the MOC. In order to obtain the business permit for air transportation, such supporting business enterprises must also fulfill bank guarantee requirements.

**e. Professional Human Resources**

Professional human resources are stipulated in Chapter XIX, from Articles 381 to 395 of the CAA of 2009. Basically, the government is responsible for preparing and developing professional human resources in the aviation field. The aims and objectives with regard to aviation human resources are to create a professional, competent, disciplined, reliable and honest workforce. This workforce includes aircraft personnel, air transportation personnel, airport management, flight air navigation, aviation safety and security personnel as well. In order to achieve their aims and objectives, the MOC stipulates policies on the preparation and development of human resources in aviation fields covering manpower planning, education and training, expansion of job opportunities and supervision, and the monitoring and evaluation of personnel.

**11. The Liability of Non-Scheduled Airlines**

The CAA of 2009 regulates the liability of air carriers, airport operator and others business entities at airports. The legal regime of air carriers including liability based on fault, presumption of liability, strict liability regimes. The liability based on fault regime apply to cabin baggage. Article 143 of the CAA of 2009 provides that no carrier shall be liable for damages due to cabin baggage losses or destruction or damage, except when the passengers can prove that the loss was caused by the action of the carrier or its employees. The reason of this regime is that cabin baggage is under the supervision of the passengers themselves. The amount of compensation for cabin baggage is determined to the maximum actual loss suffered by the passenger.

The presumption of liability regime apply to passenger, check-in baggage, and cargo transportation. Article 141 of the CAA of 2009 provides that a carrier is liable for indemnities for death, permanent disability, or injury of passenger caused by incidents or accident on board the aircraft and/or while getting on or off the aircraft. If the death of passengers, permanent disability or injury of passengers, loss of check-in baggage, and cargo is incurred due to the intentional action or default of the carrier or willful misconduct, of its employees, the carrier shall be liable for damages incurred and will not be able to use the provisions of the CAA of 2009 to limit its liability, which means that the liability of carrier is unlimited. In addition, Article 144 of the CAA of 2009 also provides that a carrier is liable for any losses suffered by any passenger due to loss, destruction, or damage(s) of any check-in baggage as a result of air transportation activities while the check-in baggage is under the supervision of the carrier, whilst Article 145 of the CAA of 2009 provides that a carrier shall be liable for damage/loss suffered by any cargo shipper for losses, destruction, or damages to cargo caused by any air transportation activity while the cargo is under the supervision of the carrier.

A strict liability regime applies to third party liability. Article 184 of the CAA of 2009 provides that non-scheduled airline who is operating an aircraft shall be responsible for damage/loss suffered by a third party as a result of the aircraft operation, aircraft accident, or the falling of objects from the aircraft being operated. The reason for this regime is that it is impossible for the third party to prove the fault of the carriers. The compensation for damage/loss suffered by a third party these liability shall be given in accordance with the actual damage/loss suffered. Example of the best practices in relation to the third liability regime were the aircraft accident of Garuda Indonesia flight Number GA 421 in the Bengawan Solo River in 2001 and the fall of a Japan Airline's Aircraft's left engine in the Cengkareng Region in 2000. Garuda Indonesia was liable for indemnity for farmland belonging to the property of individual in the community and paid compensation for the environmental destruction suffered and in relation to the falling of the left engine belonging to a Japan Airlines (JAL) aircraft in Cengkareng in 2000, the airlines paid compensation for the destruction of houses.

**12. Liability With Respect to Airport Operator**

In accordance with Article 241 of the CAA of 2009, there is a contractual relationship between the airport operator and non-scheduled airlines in the airport operation. The airport operator has a right payment of services paid by non-scheduled airlines and the airport operator has an obligation to provides good services, in return non-scheduled airlines has an obligation to pay the services and non-scheduled airlines has the right to have a good services, for that reason airport operator is liable for indemnity against any damage resulting of airport operation suffer by non-scheduled airlines.

In addition, non-scheduled airlines with activity at an airport are liable for indemnity against any damage to the airport building or facilities of the airport as result of the air carriers' activities. In this connection, if an airport operator suffers damage as a result of an aircraft accident owned by non-schedules airlines at the airport, the non-scheduled airlines will be under an obligation to remove the wrecked aircraft. If the non-scheduled airline does not remove the wrecked aircraft immediately, the airport operator may remove the wrecked aircraft and the expenditure will be borne by non-scheduled airlines concerned. In addition, if the airport facilities are damaged as a result of the activities of the non-scheduled airline, the non-scheduled airlines will be liable for the damage.

### **13. Flight Approval of Charter Air Services**

Charter air services are classified as non-scheduled commercial air transport, and therefore are regulated under the regulations pertaining to non-scheduled air transport services. Such services may be conducted by a national air transport business entity carrying out domestic non-scheduled commercial air transport after getting a non-scheduled commercial air transport business permit after securing flight approval from the MOC.

#### **a. Foreign Non-Scheduled Air Services**

Foreign commercial air transport shall consist of scheduled and non-scheduled commercial air transportation. Foreign non-scheduled commercial air transportation can be affinity group, inclusive tour charter, air taxi, special international cargo and others activities of non-scheduled commercial air transport consists of, among others, in a aircraft composed of various groups and with different purposes (split charters), for the sick, humanitarian activities, and the activities of parachuting, whilst non-commercial air transport shall consist of domestic and foreign non-commercial air transport.

Non-commercial foreign air transport may opt to transport state officials or employees or those who are employed by companies that are licensed non-commercial air transport activities, air transport for private flight, air transport for sport activities, or other non-commercial air transport whose main activity is not commercial air transport. Non-commercial foreign air transport activities can be done by a foreign legal entity or individual foreign nationals, and shall obtain a diplomatic clearance from the Ministry of Foreign Affairs (MFA), security clearance from the Ministry of Defense (MOD) of the ROI. After getting diplomatic clearance and security clearance, non-scheduled commercial and non-commercial foreign air transport activities shall apply flight approval to the MOC. Such application shall contain information regarding technical provisions, the operation of aircraft in the territory of the ROI, pilot license, liability of the carrier to third parties, slot time at airport, technical aspect of aviation safety and security, a recommendation from the relevant authorities for humanitarian aid and medical side for medical evacuation flight.

#### **b. Procedures Obtaining Flight Approval**

Flight approval for foreign unscheduled non-commercial or commercial air activities using foreign civilian aircrafts must be proposed by foreign legal entity representative in Indonesia who will be conducting the flight; agent appointed by a foreign citizen / legal entity who will be conducting the flight; diplomatic representative from the country where the legal entity or aircraft is registered. Such request shall be proposed to the DGAC by attaching documents namely photocopy of Air Operating Certificate (AOC) or Operating Certificate (OC) from the foreign company; photocopy of Certificate of Registration (C of R) from the foreign aircraft; photocopy of Certificate of Airworthiness (C of A) from the foreign aircraft; photocopy of foreign Pilot's License; and photocopy of carrier's responsibility insurance coverage to a third party; flight plan request reference containing identity of aircraft, schedule, name and identity of the flight crew; passengers or Cargo List for transport; charter contract for charter flights; recommendations on flight time slot from the authorized work unit according to the provisions of law; recommendations on the technical aspects of flight safety and security from the authorized work unit, if necessary; and recommendations from the relevant institutions for humanitarian aid and the medics for medical evacuation.

Request for flight approval must be submitted at the latest of 3 (three) work days before the flight to the Director General; approval or rejection of request for flight approval is given by the Director General at the latest of 1 (one) day before the flight after all requirements have been duly and properly received. The Agent appointed by foreign citizens / legal entities as stated in Article 10 item b must be registered at the Directorate General of Air Transportation. Further provisions regarding the registration of flight approval agent as stated in Section (1) shall be regulated under the Director General's Regulations. Flight approval number issued by the Ministry of Transportation shall be used as flight clearance for foreign unscheduled commercial and non-commercial air transportation using foreign civil aircraft.

#### **c. Implementation of Non-Scheduled Air Services**

Except for the purpose of technical landing, VVIP flight, humanitarian aid flight, medical evacuation flight, submission of application by the leadership of the Ministry/Institution related to the Minister accompanied by reason of a strategic interest or special permission of the MOC, non-scheduled commercial and non-commercial foreign air transport activities by foreign civil aircraft only able to land or take-off from international airports. Such non-scheduled commercial and non-commercial foreign air transport activities serve only air transport from airports outside the territory of the ROI to the international airport in the territory of the ROI and vice versa.



**d. Drop of Passengers, Cargo, the Obligation of Applicant and Sanctions.**

Non-scheduled commercial and non-commercial foreign air transport activities with foreign civil aircraft by foreign legal entities can only drop of passengers and cargo to the territory of Indonesia and transporting passengers and cargo from flight derived in the previous flight (in-bound traffic). The applicant of flight approval shall submit reports on the implementation of non-scheduled commercial and non-commercial foreign air transportation activities, payment of airport services and comply with the laws and regulation applicable.

**VI. The European Ban (Eu-Ban) And The Usa-Faa Ban**

**14. The European (EU-Ban) of Indonesian Airlines**

Based on the Universal Oversight Audit Program (USOAP) conducted by the ICAO in February 2007, the EU bans an Indonesian airline. The audit resulted in over 120 findings not in compliance with the International Civil Aviation Safety Standards. The EU bans were in fact rather odd. The Indonesian aviation authority was regarded as failing to comply with international civil flight safety by referring to USOAP-ICAO findings. The EU, therefore considered Indonesia's civil flight operation unsafe; subsequently, all Indonesian airline companies' flights to Europe were banned and European citizens advised to avoid traveling on them.

In 2013 Lion Air ordered 234 Airbus jetliners. The French presidential office said the order worth US\$23.8 billion was the biggest in the history of Airbus. At that time, actually Lion Air was "banned" from flying to Europe. In 2014 Lion Group was listed as the biggest buyer of *aviation de transport regional* (ATR), totaling 100 aircraft, event though Lion Air was still banned from flying to Europe. Recently, on 16 June 2016, Lion Air were allowed to fly the EU.

In 2013 Garuda Indonesia also signed a tripartite cooperation agreement on the order of 25 ATR72-600s worth US\$625 million or Rp 7.2 trillion. The cooperation was between Garuda, the ATR manufacturer and Nordic Aviation Capital (NAC), based in France and Italy. In addition, Garuda Indonesia recently also ordered 60 Boeings and 30 Airbuses worth up to US\$20 billion, equivalent to Rp 266.3 trillion. After Garuda Indonesia and several other airlines were allowed to fly to the EU, recently Batik Air has successfully followed similar steps on June 16, 2016. Based on the above-mentioned analysis, EU conducted such ban based on commercial consideration instead of safety consideration, taking into account the competition between the US's aircraft manufacture and the European's aircraft manufactures.

**15. The FAA's Ban**

On 15 August, 2016 after the Federal Aviation Administration (FAA) lifted a ban that was imposed on account of safety reasons and has been granted a Category 1 rating, the USA-FAA officially cleared Indonesian airlines to fly to the USA. In this event, Indonesian airline operators expressed their appreciation for the government's successful efforts to secure the long-awaited safety ranking upgrade from U.S. aviation authorities, which opens up opportunities for them to offer services to more international destinations. National flag carrier Garuda Indonesia vice president of corporate communications Benny S. Butarbutar said that the airline was mulling flights to two U.S. cities, namely Los Angeles and New York, transiting in Narita in Japan, following the confirmation of the country's new safety status from the U.S.- FAA.

This is an advantage for all of Indonesian people, citing Garuda's plan to launch flights to US cities after Indonesia regains the right. Garuda Indonesia's President Director, Arif Wibowo, previously cited figures showing that 400,000 Indonesians to fly to the US every year, with 150,000 of them heading to Los Angeles. Maybe Garuda Indonesia will use two of Boeing 777 aircraft to fly to the USA, whilst Lion Air President Director Edward Sirait, said that although had no plans so far to fly to the USA, the upgrade opened up opportunities to push for overseas expansion. The DGCA, the MOC fully support the airlines who interested in flying to the USA. The DGAC will supervise and control the airlines to keep international standard recommended by the ICAO) and facilitates the airlines.

**a. Historical Back Ground of Banning**

In the era of Reformation (Reformasi) under the administration of General Soesilo Bambang Yodoyono (SBY), the regulation of air transportation tended to liberal. Private airline, including companies providing scheduled, non-scheduled air services, air cargo and general aviation, grew rapidly. Based on Ministerial Decree Number KM 81 of 2004, the requirements to establish a new airline company were very easy to meet. Airlines could compete without regard for the consumer's interest, though this liberalization could have truly benefitted consumers without having a negative effect on other modes of transportation.

The negative effect of the liberalization is that the airlines are force to heavily compete. They tend to reduce fares under the standard recommended by the government. Airlines price setting has become predatory. The resulting fare war indirectly kills other land, sea transportation and airline companies. As a result of the liberalization, land transportation by bus from Jakarta to Medan or Padang went bankrupt, ships owned by the

state-owned enterprise operated by the Indonesian Sea Transportation (PELNI) were forcibly transferred to Indonesian Navy because retaining them was not commercially feasible. After the land and sea transportation could be destroyed, it was quite possible to kill airline companies as well, as the airlines that have only marginal capital would become bankrupt. As a result, only giant airlines could successfully operate and consumers would be victimized.

The victims of liberalization are not only land and sea transportation companies, but airlines themselves. The old players airlines such as Zamrud Aviation, Bouraq Airlines, Mandala Airlines, Seulawah Air Services and Indonesian Air Transport, went bankrupt due to their inability to compete with the new airline players. With liberalization, victims have not even been limited to the old airlines players; even new airlines have been forced to declare bankruptcy because they cannot guarantee the survival of their operations. These new airlines entered the market without enough capital or sufficient professional human resource. In turn, new and financially insecure airlines were victimized. These new airlines did not sufficiently manage their risk against accidents, with the result that a single fatal aircraft accident could cause an airline to go immediately bankrupt.

#### **b. The FAA's Assessment**

Since liberalization policy, the USA-FAA assessed Indonesian's civil aviation authority and found it in compliance with ICAO standards. As a result the USA-FAA lowered the rating from Category 1 to Category 2 in 2007. Under category 2 rating, Indonesia with lacked of laws and regulations necessary to oversee air carries in accordance with minimum ICAO standards, or its civil aviation authority was deficient in one or more areas, such as technical expertise, trained personnel, record-keeping, or inspection procedures and the USA-FAA downgraded the national safety rating, following the Indonesian airlines were banned to fly to the USA since 2007. The USA-FAA aviation regulator had downgraded Indonesia's aviation safety to Category 2 in 2007 following a series of airline accidents at the time, as well as a lack of regulations on qualifications and monitoring procedures. In the same year, ICAO audits revealed 121 loopholes in the Indonesian air safety oversight system, which was seen as contributing to the FAA downgrade. The upgrade has been the ministry's main goal in improving the country's aviation safety, with around 60 new regulations on the matter issued last year alone.

#### **c. DGAC Effort and FAA-IASA**

The DGAC efforts to achieve Category 1 namely third technical review. The first IASA-audit review was on 10-14 September 2012 and the 2<sup>nd</sup> technical review on 04-08 May 2015. Based on the first and the second review showing there are decreasing finding in the first review was 83 findings, the second review was 21 findings and the third finding was 7 findings.

The final FAA- IASA audit conducted on 29 February – 04 March 2016 with reference to Annex 1, 6 and 8 of the Chicago Convention of 1944 consist of eight critical elements (CE) namely 283 Protocol Questions (PQs) such as CE-1 (primary aviation legislation) 21 PQs, CE-2 (specific operating regulations) : 70 PQs, CE-3 (Civil aviation system and safety oversight function : 25 PQs, CE-4 (qualification and training of technical personnel) : 39 PQs, CE-5 (procedures and technical guidance) : 16 PQs; CE-6 (licensing and certification obligation) : 87 PQs, CE-7 (surveillance obligations) : 17 PQs, CE-8 (resolution of safety concerns) : 8 PQs.

The team of FAA conduct IASA audit consists of 4 auditors and 2 observers. Based on the report of FAA-IASA there are 7 findings should be revised related to CE-3 (civil aviation system and safety oversight function), CE-4 (qualification and training of technical personnel) and CE-6 (licensing and certification obligation). On 29 February – 04 March 2016 FAA-IASA conducted audit and on 23-24 May 2016 the FAA-IASA consist of 3 auditors conducted final verification and the result was satisfactory and the DGAC shall report the implementation by December 2016. Finally on Monday 15 August 2016, the Embassy of the USA in Jakarta released the report of FAA-IASA from Category 2 since 2007 to since 2007 to Category 1.

## **VII. Conclusion**

As above-mentioned, in this event, Indonesian airline operators expressed their appreciation for the government's successful efforts to secure the long-awaited safety ranking upgrade from U.S. aviation authorities, which opens up opportunities for them to offer services to more international destinations. In this regard, Garuda Indonesia may be permitted to fly to the USA, especially Los Angeles and New York transiting in Narita airport in Japan.

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