

The Role of Air Laws and Regulations to Stimulate the National Economic Development in Indonesia

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Abstract: *This article purported to explore the role of air law and regulations to stimulate the national economic development in Indonesia. Its consisting of three parts. Part one regarding an Indonesian civil aviation such as the development of air transport; air transport policy and high light of the civil aviation act of 2009; part two regarding the role of air law and regulations to stimulate the national economic development such as domestic scheduled air transportation includes air services provided by airlines; business permit, determination of routes and flight network; domestic non-scheduled air transportation; international scheduled and non-scheduled air transportation includes procedures and requirements to obtain flight approval; general aviation includes operation permit and business plan; pioneer air transportation includes routes, tariff, subsidy, implementation, compensation, subsidy for Papua and pioneer airport; tourists' industry includes economic aspects, tourists' destination and how to get the tourists' destination; others of economic aspects related to air transport such as new year and Christmas holidays and urban tourism as well.*

Keywords: *air transport policy, national economic development, tourism industry, urban tourism*

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I. Introduction

Indonesia is the world's largest archipelago State. It is consisting of 17,508 Islands, about 6,000 of which are inhabited. Referring to the 2010 national census, the population of Indonesia was 237,7 million. In archipelagic State such as Indonesia, air transportation has a major role in connecting the Islands. It shall provide connectivity for national, regional and remote areas and connect Indonesia to national as well as international destinations. It is enable to transport goods, passengers, business travel as civil servant, leisure peoples, business peoples, tourism, employment, family visit, friends and finally increase to support the national economic development in Indonesia. In addition, air transportation also provides for rapid, efficient and affordable connections to support national logistic flow of goods, including when necessary government mission for disaster relief.⁴ The function of scheduled air transportation is to carriage out of passengers, goods, from the departure of aircraft to the destination based on the routes pre-determination, whilst non-scheduled air transportation based on contractual relationship between the provider and the user. The function of general aviation is to carriage director, commission, employers, worker and its equipment from the head quarter business entity to the center of activity to support their activities in which core business other than air transport, whilst the function of pioneer-flight is to open the remote area in which no any other of mode transportation. Scheduled and non-scheduled air transportation, general aviation as well pioneer air transportation purported to

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⁴ Gunawan Djajaputra, Hari Purwadi and Martono K., *Indonesian Civil Aviation Act of 2009 : Aviation Safety, Security and Climate Change*. Vol. 6(1) www.ijbmi.org 1 (January 2017).

stimulate the economic development, enhance tourism, increase economic regional, social welfare of the community, when necessary government mission, for that reason scheduled and non-scheduled air transportation, general aviation and pioneer air transport shall be rigidly regulated by the government to ensure the safety, security, compliances, efficiency, just culture as follows.

II. An Indonesian Civil Aviation

1. The Development of Air Transport

After the World War II, Great Britain and the Netherlands needed to connect their colonies with the mother countries.⁵ Two airlines, Imperial Airways and *Koninklijke Luchtraart Maatschappij (KLM)* competed to serve Far Eastern countries, with Imperial Airways intending to connect the British colonies of India, Malay, Singapore, Hong Kong and Australia, and KLM intending to connect Batavia (Jakarta) as soon as possible. In this competition, Imperial Airways' position was more advantageous, but KLM's load factors were superior to those of Imperial Airways because KLM provided speedier and more convenient.⁶

In 1924, A.N.G.Thomassen landed in Clilitan Airbase, now Halim Perdanakusama International Airport, next to Jakarta. On 23 July 1927, Capt.G.J.Geyserdoffer conducted the first commercial flight to Jakarta. In September 1929, regular air services was being conducted twice a week to Jakarta. In September 1930, KLM signed an agreement with the Netherlands Indies authorities to carry approximately 500 kg of post.⁷

2. Air Transport Policy

The ideology of old order regimes under the first President Soekarno administration tended to socialist in nature. Air transport completely regulated by the Ministerial of Air Communications (MOAC) as regulator, whilst operator conducted by state-own enterprises such Garuda Indonesian Airways (GIA,⁸ and Merpati Nusantara Airlines (MNA).⁹ Within the old order, there was no airlines owned by private companies and there was no competition between airlines taking into account that all tariffs was set by the regulator. On the other hand, the new order in the regime of General Soeharto started to introduce a mixed ideology between socialist and liberal ideology known neo-liberal in nature.

The political ideology under the regime of Soeharto administration, clearly tended neo-liberal which was a mix between socialist and liberal ideology. Based on such ideology, the government issued Act Number 1 Year 1967,¹⁰ following Ministerial Decree No.SK13/S/1971,¹¹ which permit a new airlines owned by private companies. State-owned enterprise such as GIA served trunk lines and MNA served feeder lines together with private owned companies. In addition, there is general aviation to cater to the aerial work and other activities using an aircraft.¹² Based on Ministerial Decree Number 31/U/1970,¹³ the government issued for general aviation to serve on oil company, agribusiness, plumbing, banking and religion mission. The general aviation is non-commercial, just serving its own need between a headquarter and the center of activities, to carry the directors, employees, workers and equipment owned by the legal entities concerned, with not remuneration sale of all or part of its capacity with replacement of money for the use an aircraft. The policy under the new order is limited multi airlines system, provided by state-owned enterprises together with private owned companies. All routes, frequencies, type of aircraft used, capacity and tariff shall be control and over-sighed rigidly by the

⁵. Martono., *Angkutan Udara di Indonesia Sebelum Kemerdekaan*” in Martono K., *Hukum Udara, Angkutan Udara dan Hukum Angkasa*. Bandung : Penerbit Alumni, 1987, at 4

⁶ Martono K.,and Ariawan Gunadi., *Current Regulation of Aviation Tariffs in Indonesia*. (2014) Vol.XXXIX Ann of Air & Sp.L.at 22

⁷. *Ibid*.

⁸ Government Regulation Concerning Change from State enterprise (PN) *Perhubungan Udara to Limited Liability Company (PT) Garuda Indonesian Airways*, Govern.Reg.67 Year 1971 (1971)

⁹. Government Regulation concerning Change from State-owned enterprise (PN) *Perhubungan Udara Daerah dan Penerbangan Serba Guna Merpati Nusantara Airlines to Limited Liability Company (PT) Merpati Nusantara Airlines*, Govern.Reg.No.70 Year 1971.

¹⁰.Act Concerning Foreign Investment, Act.No.1 Year 1967.

¹¹ Ministerial Decree Concerning Requirements and Provisions Regarding Using Airplane for Commercial Purposes, Ministerial Decree No. SK 13/S/197 Year 1971 (18 January 1971).

¹².Martono and Amad Sudiro.,*New Indonesian Air Transport Policy Based on Civil Aviation Act of 2009*. Submitted to Third Annual International Conference on Law & Regulation of Air Transport and Space Application, 26-29 April 2012, National Law University, New Delhi, INDIA, at 77.

¹³.Miniserial Decree Concerning Requirement and Provision of General Aviation Within the Republic of Indonesia, Ministerial Decree No.31/U/1970 (2 February 1970).

MOC. The routes regulated based on Ministerial Decree Number T 14/4/4-U Year 1961,¹⁴ determined GIA to serve trunk line routes, whereas, those regulated based on Ministerial Decree Number S.8/2/5-Mph Year 1969,¹⁵ determine MNA to serve regional routes. In the reformation order under the regime of General Soesilo Bambang Yoedoyono, the policy of air transportation tended to relax. Private airlines, scheduled, non-scheduled airline, air cargo, charter flight as well as a general aviation increasing rapidly. Based on Ministerial Decree No.KM 81 Year 2004,¹⁶ the requirements to establish a new airlines company were very easy. They compete without paying attention to the consumers' interest. The relaxation policy truly benefits consumers, without having negative effect against other modes of transportation. The negative effect of the relaxation policy is that the airlines are forced to compete rigidly. They reduce tariff under standard recommended by the government. Even they become predators. The existing war tariff indirectly kills other airlines companies. The result of the relaxation policy is that the lands transportation by bus from Jakarta to Medan and Padang went bankrupt.

The government, though, realize that the negative effect of the relaxation policy. For that reason, the Ministerial Decree KM 25 Year 2008,¹⁷ request the new airlines must have a minimum of five aircrafts. Two of them shall be owned and the rest can be leased for a scheduled airlines and a minimum of three aircraft for non-scheduled airlines. One unit aircraft out of three units of aircraft shall be owned and the rest can be leased to support the operation of airlines. The total number of aircraft requirements is necessary because in the reality very often delay in operations is due to lack of aircraft, especially for scheduled air transportation with holiday. As a result of the relaxation policy, the MOC has to cancelled 27 business permits of airlines because they do not fulfill the requirements.¹⁸ The philosophy of the Civil Aviation Act of 2009, as other states, is that airlines companies do not need a lot of airlines but they have capability to compete and are not too weak. It is better small but capable to fulfill the air transportation need to support national economic development, capable to compete at national, regional and global levels. For that reason, the Civil Aviation Act of 2009 provides the requirement of establishment of airlines companies in order survive and compete in the national, regional and global levels. The Civil Aviation Act of 2009 provides for requirements of enough aircraft ownership, capital intensive, single majority shares, bank guarantee, professional human resources qualities as well as quantities, supported by civil aviation operation principles such as aviation safety, security, fully regulated industry, law enforcement, high compliance, high technology and just culture. The CAA of 2009 requests that the new airlines shall transfer bank guarantee, owned aircraft enough to support license given by the MOC for scheduled and non-scheduled air services, charter flights. All of the requirements are intended to lay down a legal ground in order the airlines are capable to compete with foreign airlines. The CAA of 2009 also provides for cooperation between airlines, national as well as international airlines. But in the case of cooperation between domestic airlines and foreign airlines or Indonesian legal entities, the majority shares shall be owned by Indonesian citizens or Indonesian legal entities.¹⁹

3. High Light of the Civil Aviation Act of 2009

The Indonesian Civil Aviation Act of 2009 (the CAA of 2009),²⁰ aims to promote the development of Indonesian air transportation. It regulates as host of matters related to aviation, from sovereignty in airspace, aircraft production, operation and airworthiness of aircraft to aviation safety and security, aircraft procurement, aviation insurance, the independence of aircraft accident investigation, and the licensing of aviation professionals. The CAA of 2009 also regulates scheduled as well as non-scheduled airlines, airline capital, the ownership of aircraft, aircraft leasing, tariffs, the liability of air carriers, air navigation facilities, airport authorities and services, laws enforcement related to air transportation. The CAA of 2009 also has provisions aimed at supporting the development of national and international air transportation in Indonesia including the creation of a public services institute to further those goals. Due to the comprehensive in nature the CAA of 2009, the present article is only able to analysis and high light certain matters that have potential impact to the national economic development such as domestic scheduled and non-scheduled airlines, general aviation and pioneer flight. In addition, the aims and objective of the CAA of 2009 is to promote the development of

¹⁴.Ministerial Decree *concerning Garuda Indonesian Airways Permit*, Ministerial Decree No.T14/4/4-U (11 July 1961).

¹⁵.Ministerial Decree *Concerning Route Structure PN Merpati Nusantara Airlines*, Ministerial Decree No.S.8/2/5-Mph (13 January 1969).

¹⁶.Ministerial Decree No.KM 81 Year 2004 *Concerning Engagement of Air Transport*, Ministerial Decree No.KM 81 Year 2004 (2004).

¹⁷.Ministerial Decree *Concerning Engagement of Air Transport*, Ministerial Decree No.KM 25 Year 2008.

¹⁸.Gunawan Djajaputra, Hari Purwadi and Martono K., *supra* note 4 at 3..

¹⁹.*Ibid.*

²⁰.*Act Concerning Civil Aviation*, Act No.1 Year 2009. State Gazette of the Republic of Indonesia No.1 Year 2009, Supplement State Gazette of the Republic of Indonesia No.4956.

Indonesian air transport and to ensure Indonesian air transportation sector can support the national economic development and viable to compete and survive nationally, regionally and internationally.²¹

III. The Role Of Air Law And Regulations To Stimulate The National Economic Development

With regards to the role of air laws and regulations to stimulate the national economic development in Indonesia, there are several types of air transportation namely domestic scheduled commercial air transportation, non-scheduled commercial air transportation, cabotage, pioneer air transportation and general aviation as follows:

1. Domestic Scheduled Commercial Air Transportation

Domestic scheduled commercial 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. Based on the transportation of passengers, cargo and/or post for one route or more from one airport to another airport will increase value added of the cargo and enhance the economic in another places. A similarly for the transportation of passenger to another place will increase the passenger's services.

a. Air Services Provided by Airlines

The CAA of 2009,²² provides scheduled air services.²³ It consisting of full services, medium services and no-frill services. Full services meant that during flight, passenger 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 providing provisions of light food and other facilities such executive lounge for passengers holding certain type of economic class are given to the passengers during flight, whilst no-frill service have only one class of services without any provision of foods and beverages, snack, executive lounge, and check-in baggage and for this, a fee shall be charged from the passengers during 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 by aviation safety and security as well.²⁴

Domestic air transportation shall only be done by national airlines that have already obtain a business permit for air transportation. For that reason, they have to submit a request for authorization to the MOC and the MOC shall enact a scheduled air transportation company shall be periodically evaluated. Domestic air transportation 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.

b. Business Permit of Commercial Air Transportation

To obtain a business permit issued by the MOC, scheduled commercial air transportation shall fulfill the requirements such as aircraft ownership, airlines capital, majority shares holder, bank guarantee and professional human resources as follows. An air transportation activity shall be implemented by business entities in the field of national air transportation. It does mean that business entities other than national air transportation does not entitle to operate an air transportation business. The business permit will be given by the MOC after fulfilling administrative requirements such aircraft ownership, airlines capital, single majority shares, and professional human resources, bank guarantee. Administrative requirements 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 charged, 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 CAA of 2009 provides that the business plan shall contain the type and total number of aircraft 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,

²¹ Amad Sudiro and Martono K., *National and International Air Transport Regulations in Indonesia*. Vol. 9(3) www.iosrjournals.org 7 (March 2016).

²² Article 97

²³ Article 96 (a) of Chicago Convention of 1944. "Air Services" means any scheduled air services performed by aircraft for the public transport of passengers, mail and cargo. For text see Dempsey P.S., (2005) Vol. XXX-Part I Ann of Air & Sp. L.at 19-51

²⁴ Ariawan Gunadi and Martono K., *Current Indonesian Air Transportation (2016)*. Vol. 9(10) www.iosrjournals.org 13 (October 2016).

technicians/engineers, aircraft crew, preparedness and operational worthiness and economic and financial aspect analysis and evaluation.²⁵

(1). Aircraft Ownership

In addition, the CAA of 2009 also provides that scheduled air transportation shall own at least five units of aircraft and possess at least five units aircraft of the type(s) suitable for supporting its business sustainability in accordance with the routes served.²⁶ Air transportation, especially for cargo, shall own at least one unit of aircraft and possess at least two units of aircraft of the type(s) suitable for supporting its business sustainability in accordance with the routes and operational areas to be served.²⁷

(2). Airlines Capital

Capital requirements for obtaining business permit also provides in the CAA of 2009. It provides that an air transportation business entity shall submit the evidence of capital already deposited, whilst share holder requirements for obtaining business permit if provided in Article 108(3) of the CAA of 2009.

(3). Majority Shares-Holders

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-holder must remain larger than any foreign share-holder (single majority shares). Air transportation business permit shall be valid as long as the permit holder remain operating actual air transportation activities by continuously operating aircraft 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.

(4). Human Resources

With regard to human resources, the CAA of 2009 provides that the business plan shall contain the human resources consisting of management, technician/engineers and air crew.²⁸ Any individual may be appointed as a director of airlines after fulfilling the requirement of possessing operational and managerial competence, air transport 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 business permit cannot be transferred to another party before operating aircraft in actually 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 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 transport business permit and appointment of director of airlines shall be stipulated under the MOC regulations.

(5). Bank Guarantee

Article 109 of the CAA of 2009 and the Ministerial Decree No.KM 25 year 2008,²⁹ requires that scheduled and non-schedule air transportation companies provide proof of bank guarantees. The bank guarantee is very important for business operation sustainability. Article 109 of the CAA of 2009 provides that to obtain a business permit, non-scheduled air transportation 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 business permit for air transportation, such supporting business enterprises must also fulfill bank guarantee requirements.³⁰

c. Obligation of Business Permit Holder

Article 122 of the CAA of 2009 regulates the obligation of business permit holder. It provides that business permit holders of air transportation 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 possession in accordance with its business or activity scope, owned and possess total number of aircraft, fulfill the provision 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

²⁵.Article 110 of the CAA of 2009.

²⁶ Article 118(2)

²⁷. Ariawan Gunadi and Martono K., *supra* note 24 at 13

²⁸.Article 110(e)..

²⁹ Ministerial Decree, *supra* note 17.

³⁰. Ariawan Gunadi and Martono K., *supra* note 24 at 25.

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 flight, no later than on 10th 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 charges of management or ownership of air transportation business entity, changes of domicile of air transportation business entity and changed of aircraft ownership, to the MOC and fulfill stipulated service standard.³¹

d. Routes and Flight Network

The most important with regards to scheduled commercial air transportation is routes and flight network,³² taking into account that routes is differentiated between scheduled and non-scheduled of airlines. Scheduled airline serves route pre-determined, whilst non-schedule service all over the territory of the Republic of Indonesia. With regards to routes and network, the CAA of 2009 provides that domestic flight routes and network 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 scheduled air transportation business entity, and integration of domestic and international routes.³³

2. Domestic Non-Scheduled Air Transportation

To obtain a business permit issued by the MOC, non-scheduled commercial air transportation shall fulfill the requirements such as aircraft ownership, airlines capital, majority shares holder, bank guarantee and professional human resources as follows.

a. Aircraft Ownership

To obtain a business permit issued by the MOC, non-schedule commercial air transportation shall have at least one unit of aircraft must be owned and at least two units aircraft of type(s) suitable for supporting its business sustainability must be possess in accordance 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 aircraft must be possess in keeping with the operational areas to be served. Previously, the requirements of aircraft ownership, was stipulated in the Ministerial Decree Number KM 81 Year 2004.³⁴ It provides the establishment of new non-scheduled airlines was at least two units of aircraft shall be owned, and this was amended by the Ministerial Decree Number KM 25 Year 2008,³⁵ stipulating that an airline company must owned at least three units of aircraft and possess at least two units of aircraft of the type(s) suitable for supporting its business sustainability in accordance with the routes and operational areas served.

b. Airlines Capital

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 airlines companies concerned. Such credits are employees' salaries, workers' insurance, aviation turbine fuel, ground handling fees, ramp handling fees, passenger's handling fees, catering fees, landing fees, air navigation services charges, parking stand fees, aircraft storage charges, office rental, building rental, room rental, aircraft maintenance fees, airport services charge, aircraft leasing, aircraft insurance, air crew insurance, legal liability insurance, third parties legal liability insurance, advance ticket booring, 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 airlines company will affect consumers. For the purpose to implement the above-mentioned provision, the MOC released Ministerial Regulation Number 45 Year 2015. It provides that for the establishment of a new airlines should have IDR 150 billion maximum 70 seats capacity for non-scheduled airlines. For existing airline the capital requirements should be fulfilled at leas in 2018. In addition, the authority will also strict the implementation of each airline which should deliver their last year audited financial statement by registered public account not more than 14 April of the current year routes.³⁶

³¹. Ariawan Gunadi and Martono K. , *supra* note 24 at 13.

³². Flight route is the track of aircraft from airport of origin to airport of destination through already pre-determined airways.

³³. Ariawan Gunadi and Martono K., *supra* note 24 at 13

³⁴. Ministerial Decree No.KM 81 Year 2004, *supra* note 16.

³⁵. Ministerial Decree, *supra* note 17..

³⁶. Ariawan Gunadi and Martono K., *supra* note 24 at 25.

c. Majority Shares Holder

The CAA of 2009 require that an Indonesian citizen or an Indonesian airlines must owned a majority of share holders in an airlines. The capital of the national air transportation business must be, entirely or in the majority, owned by an Indonesian legal entity. In case that the capital that capital of the national airlines owned by an Indonesian legal entity or citizen is divided, one of the national shares holders must maintain a larger holding than any foreign shareholder (single majority).

d. Bank Guarantee

Article 109 of the CAA of 2009 and the Ministerial Decree No.KM 25 year 2008,³⁷ requires that scheduled and non-schedule air transportation companies provide proof of bank guarantees. The bank guarantee is very important for business operation sustainability. Article 109 of the CAA of 2009 provides that to obtain a business permit, non-scheduled air transportation 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 business permit for air transportation, such supporting business enterprises must also fulfill bank guarantee requirements.³⁸

e. Professional Human Resources

Basically, the government is responsible for preparing and developing professional human resources in the aviation field. The aims and objective 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 objective, the MOC stipulates policies on the preparation and development of human resources in aviation field covering manpower planning, education and training expansion of job opportunities and supervision and the monitoring and evaluation of personnel.

Domestic non-scheduled air transportation regulated in the Ministerial decree No.66 Year 2015.³⁹ It provides advance booking charter, affinity group, inclusive tour charter, including a charter for the purpose of pilgrimage, non-season n pilgrimage (umroh), tour package, meeting, incentive, conference, special even charter, student charter, owned used charter. Air transportation activities may be done with national non-scheduled airline for passenger and cargo shipment or freighter. The scheduled air transportation may be operated non-scheduled air transportation activities upon approval from the MO, however, non-scheduled air transportation operated by scheduled air transportation company, may not disturb the services on the routes if its owned responsibility and on the route are still served by other scheduled air transportation company.⁴⁰

3. International Scheduled Air Transportation.

According to Article 6 of the Chicago Convention of 1944,⁴¹ no scheduled international air services may be operated over or into the territory of the ROI. For the purpose to implement such provision, Indonesia issued the CAA of 2009. It provides international scheduled air transportation. In accordance to the CAA of 2009 international scheduled air transportation is an air transportation activity providing air transport from one airport in the country to another airport outside the territory of the ROI. For the purpose of passenger and cargo transportation based an air transport agreement between Indonesia and a foreign country, a national scheduled air transport company and/or a foreign scheduled air transportation. A national scheduled air transportation company may contemplate collaboration in air transportation with other national scheduled air transportation carriers that conduct domestic and international air transportation services. A national scheduled air transportation company may also contemplate collaboration with a foreign air transportation company in the conduct of international services.⁴² Bilateral or multilateral agreements will implemented in accordance with the relevant provisions of law and regulations, and national interest will be taken into consideration based on the principle of fairness and reciprocity. Foreign scheduled air transportation company specifically transporting cargo must be appointed by the country concerned and possess authorization form the government of the

³⁷ Ministerial Decree, *supra* note 17.

³⁸ Ariawan Gunadi and Martono K., *supra* note 24 at 25.

³⁹ Ministerial Decree *Concerning Non-Scheduled and General Aviation Flight to and from the Republic of Indonesia*, Ministerial Decree No.66 Year 2015.

⁴⁰ Ariawan Gunadi and Martono K., *supra* note 24 at 24.

⁴¹ Article 6 : No scheduled international air service may be operated over or into the territory of a contracting State, except with the special permission or other authorization of that State, and in accordance with the terms of such permission or authorization; For the text see Dempsey P.S (2005) Vol.XXX-Part I Ann of Air & Sp. L. at 21.

⁴² Article 88.

Indonesia.⁴³ Bilateral air transport agreements can be specific or general in nature, and are entered into by the government of the ROI with several foreign countries as contracting parties. Membership in this type of agreement is permanent in nature, and is conducted in accordance with relevant laws and regulations. Such agreements must consider, among other issues: sovereignty, national territorial integrity territory, national economy and sustainability of national air transportation business based on the principles of fairness and reciprocity. National scheduled air transportation companies must be assigned by the government of the ROI and obtain the approval of the foreign country concerned. Foreign scheduled air transportation companies must also be appointed/assigned by the country concerned and hold approval from the government of the ROI.⁴⁴ With regards to international scheduled air transportation, overseas passenger traffic to and from Indonesia has not declined even following the global economic crisis of 2008. National airlines generally still restrict themselves to some short-haul destinations. But have started medium-haul routes to the Middle East. Consumers in domestic aviation, apart from business and vacation destinations, are also primarily supported by the large number of outbound travelers from Indonesian labor market, and those individual undertaking religious journeys when the operators need to add extra flights in certain seasons.⁴⁵

The main problem faced by Indonesian's national airlines is their capability to compete against foreign airlines. For this reason, the government has taken steps to protect the national airlines against foreign airlines by giving cross subsidies, such as reducing the import tax for spare parts, reducing value added tax and the fuel consumption price. Further, the government needs to facilitate administrative formalities, establish aviation parks and develop aircraft maintenance procedures that allow national airlines to be and remain competitive internationally.⁴⁶

4. International Non-Scheduled Air Transportation.

Basically contracting States agree that all aircraft of other contracting States, being aircraft not engage in scheduled international (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,⁴⁷ however, the best practice, no contracting States of Chicago of 1944 complies with the provision.

a. Requirements to Obtain Flight Approval

For the purpose to implement the above-mentioned provision, Indonesia issued the CAA of 2009. Articles 92 to 96 of the CAA of 2009 stipulates non-scheduled commercial air transportation activity may be in the form of affinity group, inclusive tour charter, owned use charter, air taxi or other non-scheduled commercial air transportation activity undertaken by national and foreign commercial air transportation company shall be obliged to obtain flight approval from the MOC. In addition, a foreign non-scheduled commercial air transportation compelled to obtain diplomatic clearance from Ministerial of Foreign Affair (MOFA) and security clearance from Ministerial of Defense (MOD) before getting flight approval from the MOC. Further provision regarding non-scheduled commercial air transportation is regulated by Ministerial Decree No.PM 66 Year 2016,⁴⁸ and the Directorate General of Air Communications (DGAC) No. SKEP/1657/VIII/1976,⁴⁹ regulates advance booking charter, affinity group charter, inclusive tour charter, including a charter for the purpose of pilgrimage, non-season pilgrimage, tour packages, meeting, incentive, conference, special even charter, own use charter. Air transportation activities may be done with non-scheduled national airlines for passenger and cargo shipment or freighter.⁵⁰

⁴³. Article 89.

⁴⁴. Article 45.

⁴⁵ Martono K., "New Indonesian Air transportation Policy Based on Civil Aviation Act of 2009". (Paper submitted to the Third Annual International Conference on Law & Regulations of Air transportation and Space Applications, at National Law University, New Delhi, India, May 2012 .

⁴⁶. Martono K.,and Amad Sudiro.,*Current Air Transport and Regulations in Indonesia*, (2013), Vol .XXXVIII Ann of Air & Sp.L.at 78.

⁴⁷ Article 5 of the Chicago Convention of 1944; for complete text see Dempsey P.S., (2005) Vol. XXXIX Ann of Air & Sp. .L. at

⁴⁸. Ministerial Decree No.PM 66 Year 2016, *supra* note 37

⁴⁹.The Director General of Air Communications Decreed *Concerning Type(s) and Implementation of International Non-Scheduled to and from the Republic of Indonesia*. DGAC Decree No. SKEP/1657/VIII/76.

⁵⁰. Ariawan Gunadi and Martono K., *supra* note 24 at 23.

b. Procedure Obtaining Flight Approval

Flight approval for foreign non-scheduled commercial or commercial air activities using foreign civilian aircraft must be proposed by foreign legal entity representative in Indonesia who will be conducting the flight; agent appointed by a foreign citizens/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, scheduled, name and identity of the flight crew, passengers or cargo list for transport; charter contract for charter flight; recommendations on flight time slot from the authorized work unit according to the provision 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. Freighter.⁵¹ Request for flight approval must be submitted at least or 3(three) work days before the flight to the DGAC; approval or rejection of request for flight approval is given by the DGAC at the latest of 1 (one) day before the flight after all requirements have been duly and properly received. Flight approval number issued by the MOC shall be used as flight clearance for foreign unscheduled commercial and non-scheduled commercial air transportation using foreign civil aircraft.

5. General Aviation

Basically, 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 government, regional government, social organization, sports association, individual and/or other Indonesian legal entity. It consisting 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 the holders of general aviation activities for the purpose of passengers 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.⁵²

a. Operation Permit of General Aviation

The activities of general aviation shall conduct after obtaining the MOC's approval. In order to obtain operation permit for general aviation activities by the government, regional government, Indonesia's 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 operation permit for general aviation activities undertaken by an individual are possessing a personnel identity card issued by the authorized agency, tax identification number, domicile letter of his/her business site issued by the authorized in charge and air transportation activity plan. The document of clearance from the agency supervising the company core activities, founding establishment act/deed of the business entity or the organization approved by 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.⁵³

b. Business Plan of General Aviation

The general aviation shall set up business plan activities. Such business plan shall at least contain type and total number of aircraft to be operated, core of activity of the flight operation, human resources consisting of technicians/engineers and aircrew as well as preparedness and worthiness of operation. General aviation operation permit shall be valid as long as the operation permit holder remains de facto operating air transportation activities by continuously operating aircraft. However, the operation 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 holder maintain his/her/its business activities. Further provision

⁵¹. *Ibid.*, at 27

⁵². *Ibid.*, at 15

⁵³. *Ibid.*

regarding the requirements, system and procedures of obtaining general aviation permit shall be stimulated under the MOC.

6. Pioneer Air Transportation

By definition, a pioneer air transportation service is a domestic air transportation activity serving flight routes to link remote and underdeveloped regions not yet served by other modes of transportation.⁵⁴ In the context of opening up isolated areas throughout Indonesia, the CAA of 2009 guarantees a role for vanguard carriers to stimulate increasing economic activity in isolated areas. In relation thereto, the Civil Aviation Act of 2009 stipulates various provisions to subsidies operators of scheduled air services or holders of non-scheduled air services permits that operate vanguard routes.

To stimulates pioneer air transportation, the regional government would provide assistance with air services operating costs, and/or required to guarantee availability of land and infrastructure to support these operations. Pioneer air transportation must be implemented integrally with other sectors based on a regional approach to development and must be evaluated annually by the government. The results of this evaluation may transform pioneer air transportation into scheduled commercial routes.

With regards to pioneer air transportation, the Ministry of Communications (MOC) is responsible to control and supervision the implementation of the pioneer air transportation. Such supervision shall be conducted by paying attention to improvement of pioneer air transportation and may be delegated to unit(s) under the MOC. Based on Article 11 paragraph (4), the MOC issued the Ministerial Decree No. PM 26 of 2016. Basically, pioneer air transportation must be operated by the government, and its implementation shall be conducted by national commercial air transport business entity based on an agreement with the government of the ROI. In operating pioneer air transportation, regional government must guarantee availability of land site, air transport infrastructure, aviation safety and security and others compensation. The implementation of pioneer air transportation shall be evaluated. The result of evaluation may change pioneer air transportation routes into commercial routes.⁵⁵

a. The determination of Pioneer Routes

Previously, pioneer route, determined at least fulfilling pioneer criteria such as to links remote areas, under developed and yet served by any other modes and commercially un profitable; to encourage the growth and regional development; to stabilized state defense and state security especially the border crossing. In this regards, the government divides domestic routes into three categories. Those categories such as routes for jet engine aircraft 319 routes, routes for propeller-engine aircraft 367 routes and pioneer routes 132 routes. In order to provide proper air transportation for people in remote area, the government opened pioneer routes.

1) Typical of Pioneer Routes

The typical of pioneer routes i.e., located in isolated and under developed area, and unprofitable. Air fares for passenger and freight in these routes are determined by government under the MOC Decree No.44 of 2012.⁵⁶ According to the CAA of 2009, the government offer 3 incentives to invite airlines companies to serve pioneer routes i.e., to give other commercial routes to support airlines business, operating costs subsidy and fuel subsidy.⁵⁷

The DGAC under the MOC is continuing to make efforts toward supporting the creation of inter-regional connectivity. Example, the DGAC continually look at development of airport infrastructure for the pioneer air transport. In the 2013, the DGAC began operations in 12 new airports across the country. The DGAC developing 19 airlines serving 261 routes in 121 cities and are increasing the spread of remote air freight too. In fact, in 2013 air freight serviced 114 cities and connected 118 pioneer routes.⁵⁸ The DGAC evaluate the implementation of pioneer air transport at least one a year, KPA, airport authority or regional government. The results of this evaluation must transform pioneer air transportation into scheduled commercial routes.⁵⁹

To obtain licenses or other rights to operate particular routes, the government as particular routes operator will tenders the license to operate particular routes to either a commercial air transport or non-commercial air transport in the absence of commercial air carriers which are willing to serve the routes. The

⁵⁴ *Ibid.*, art 122(1), explanatory notes.

⁵⁵ Art.104

⁵⁶ Ministerial Decree *Concerning Tariff for Pioneer Routes*. Ministerial Decree no.44 of 2012.

⁵⁷ *Organization for Economic Co-operation and Development*. DAF/COMP/WD (2014) 70 28 May 2014

⁵⁸ *Better inter-regional Connectivity Through Improve Air Infrastructure*. The World Folio, Thursday, February 2016.

⁵⁹ See http://jdih.dephub.go.id/assets/uudocs/permen/2016/PM_9_Tahun_2016.pdf

cooperation between the government and entity will in the form of a contract.⁶⁰ The tender participants (commercial air transport entity or non commercial air transport entity) are entitle to submit a written rebuttal with unsatisfactory results of the tender. The written rebuttal is submitted to the tender committee after the announcement of the winner and the tender committee must respond in writing to all of the rebuttals. As a response to the tender committee's response, the entity may further submit an appeal to the MOC, regional head, or head of the institution of the tender organizer by granting a guarantee.⁶¹

In accordance with the CAA of 2009 and the DGAC, Decree, the Government has a public service obligation to connect remote areas (not supported by other means of transport) that are commercially unprofitable, to encourage territorial development and promote defense and homeland security. The Government will tender a license to operated particular routes to either a commercial air transport entity or a non-commercial air transport air carrier (general aviation).⁶²

2) Classification of Routes

With regard to flight routes, there are classified flights routes such main routes, feeder line routes and pioneer routes. Main routes functioning to link hub airports including primary, secondary and tertiary hub ports, whilst feeder routes functioning to support main routes providing links between the hub port and small airports. Pioneer routes functioning to provide links to isolated and interior areas to which there is no access for other means of transport. Domestic airlines have expanded and opened new routes over the past several years. Among the new routes are to cities in Aceh, North Sumatra, Nusa Tenggara, Lombok, South Sulawesi and Papua. In 2012, the government offered 130 new routes to airlines especially to isolated area in a number regions.⁶³

b. Tariff Regulations of Pioneer Air Transportation

The regulations of tariffs is essential for air transport as a safeguard for the public against any abuse of the protected position which airlines enjoy under a system of controlled entry into the industry and to ensure the long-term economic stability of the industry by ensuring fair competition. With regard to tariff regulation, the tariff for the transportation of post was negotiated between the Netherlands Indies authorities and KLM.⁶⁴ By that time no competition between the airlines.

Under Old Regime, Indonesia's Ministry of Communication (MOC) acted as the regulator of tariffs, there was no competition between the airline, whilst under "New Order," General Suharto then introduced a neo-liberal ideology that represented a mix between socialist and liberal ideology. Garuda Indonesia set tariff leadership. All tariffs were controlled by the MOC.⁶⁵ All tariffs provided by privately-owned companies had to be below GIA's tariff and Garuda first-class tariff was permitted to be 15% higher than normal tariff⁶⁶ for flights served using Airbus Aircraft.⁶⁷

In the Reformation, airlines tended to charge a tariff less than that recommended by the MOC. Pricing became predatory and the ensuing tariff war indirectly eliminated other airline companies as well sea transportation companies. As a result, only giant airlines could successfully operate, and consumers were disadvantaged in the long run. The general principles governing tariffs provides that tariff shall be established at reasonable levels due regard being paid to all relevant factor.⁶⁸ These factors include the cost of operation, reasonable profit, characteristics of services (such as standard of speed and accommodation), and tariff charged by other air transport companies on the route. In this connection, in determining tariffs, the MOC considers the

⁶⁰ INDONESIA. *Wahyuni Bahar and Anggia Rukmasari*, in John Balfour and Mark Bisset, Contributing Editors', AIR TRANSPORT 2015.

⁶¹ *Ibid.*

⁶² *Ibid.*

⁶³ *Low Cost Carriers, supra note 2.*

⁶⁴ Martono, Prof.Dr., and Dr Ariawan Gunadi, *supra* note 24 at 200.

⁶⁵ *Ibid.*, at 202; Indonesia, *Ministerial Decree Concerning Higher Tariff for Garuda Indonesian Airways than Private Airlines*, Ministerial Decree No.KM 96/PR.303/Phb-84 (1 May 1984).

⁶⁶ Ministerial Decree *Concerning domestic Tariff for Airbus*, Ministerial Decree No. KM 157/PR.303/Phb-83 (1 August 1983).

⁶⁷ Ministerial Decree *Concerning Domestic Tariff Change*, Ministerial Decree No.KM96/PR.303/Phb-84 (1 May 1984).

⁶⁸ Martono K., *Route, Capacity and Tariff Clauses of Selected Bilateral Air Transport Agreements Concluded by Indonesia*. A thesis submitted to the Institute of Air and Space Law, McGill University, Montreal, Canada, unpublished, 1980, page 162.

interest of aviation safety and security as well as the needs of the public and air transportation companies' operation.⁶⁹

Basically, tariff policies under the CAA of 2009 are neo-liberal in nature since tariffs consist of economy and non-economy tariffs. Economy class tariffs are regulated by the MOC to protect consumers, whilst non-economy tariffs are determined by airline companies based on market forces. The MOC Decree Number 26 of 2010,⁷⁰ clarifies how passenger tariffs for economy class and pioneer air transportation (*emphasize added*) 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 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 consist of a basic average fee plus a reasonable profit plus a value-added tax based on taxation regulations.⁷¹ Mandatory passenger accident insurance is required by laws and regulations, whilst surcharge 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 bear due to lack of passengers on returning flights, outbound or inbound, are also included in the calculation of the tariff. 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.⁷²

c. Subsidy of Pioneer Air Transportation

Indonesia has 187 airports including large and small airports. Large airport are operated by state-owned PT Angkasa Pura and around 120 airport are under technical executive unit of (UPT) the Ministry of Communication (MOC). Most of 120 small airports function as pioneer air terminals serving flights to isolated areas (*emphasis added*). In relation to the fast growing air transport industry, the government has the program in air transport include development of pioneer air terminals, taking into consideration that air transport facility is vital for the archipelagic country such as Indonesia.

The MOC provides subsidy for pioneer airport serving isolated area. In 2005, subsidy for pioneer transport included IDR 19.98 billion for pioneer buses serving 124 routes, IDR 86.91 billion for pioneer flight serving 91 routes, IDR 2.73 billion for the transport of 2,342 drums of oil fuels, IDR 126.15 billion for sea transport serving 48 routes, and IDR 57.68 billion for pioneer ferry transport in 22.104 trips. By 2005, there were 90 routes from pioneer airports, up from 52 routes in 2001. The number of cities visited in pioneer flights rose to 81 in 2005 from 67 in 2001.⁷³ With regards to subsidy, pioneer air transport financial subsidies of Papua Island in 2008 is US\$ 5.7 million and increase 22,80%, amounting to US 7 million in 2009.

In addition, the CAA of 2009 stipulates various provisions to subsidize operators of scheduled air services or holders of non-scheduled air service permits that operate vanguard routes.⁷⁴ To stimulate pioneer air transportation, the regional government would provide assistance with air services operating costs, and/or assistance with fuel costs. Further, the regional government would be required to guarantee availability of land and infrastructure to support these operations. Pioneer air transportation must be implemented integrally with other sectors based on a regional approach to development and must be evaluated annually by the government. The result of this evaluation may transform pioneer air transportation routes into scheduled commercial routes.⁷⁵

d. Implementation of Pioneer Air Transportation

Pioneer air transportation must be operated by the Government of the ROI, and its implementation shall be conducted by national commercial air transportation business entity based on agreement with the Government. Such national commercial air transportation shall have business permit given by the MOC. A business permit will only be issued by the MOC after fulfilling administrative, capital, bank guarantee, aircraft ownership, business plan, human resources, and share-holder. Administrative requirements, among others, a founding act (establishment deed), of an Indonesian business entity whose business is in the field of scheduled or non-scheduled air services, a tax identification number, domicile letter issued by the authorized agency; evidence of capital already deposited; a bank guarantee; aircraft possession at least ten units of aircraft for

⁶⁹ Martono, Prof.Dr., and Dr Ariawan *supra* note 24 at 205.

⁷⁰ *Ibid.*, Art 126.

⁷¹ Dr. Martono and Dr Amad Sudiro., *supra* note 44 at 81

⁷² Ministerial Regulation concerning the Amount of Surcharge of Domestic Scheduled Air Transportation Tariffs, Ministerial Regulation No.PM 2 of 2014 (16 February 2014).

⁷³ *Air Transportation Infrastructure in Indonesia*, The Free Library Periodicals – Literature

⁷⁴ Dr. Martono and Dr Amad Sudiro., *supra* note 44 at 76;

⁷⁵ *Ibid.*

scheduled airlines for supporting the business sustainability in accordance with the routes served or 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; business plan for minimum of five years are all required; human resources.⁷⁶

e. Compensation

Where national commercial air transportation entity cannot be met, the general aviation may undertake pioneer air transportation after obtaining the MOC's approval. In order to obtain an operation permit for general aviation, the business entity must be granted clearance by the agency supervising the core activities of the entity. In the case of a general aviation permit, the business entity must furnish the establishment deed of the business entity that is approved by the Minister in charge, along with a tax identification number, a domicile letter for a business site issued by the agency in charge, and an air transportation plan. The activity plan must at least contain information regarding the type and total number of aircraft to be operated, the core of activities of flight operations, human resources information regarding technicians, engineers and aircrew, as well as information regarding preparedness and worthiness of operation.⁷⁷

The commercial air transportation business entity or the general aviation implementing pioneer air transportation shall be given compensation to ensure sustainability of pioneer air transportation service on routes and scheduled stipulated in the contract with the government. The compensation shall in the form provision of other route(s) outside the pioneer route(s) for regular commercial in order to support the pioneer air transportation activities; financial assistance for air transportation operation; and/or financial assistance for fuel transportation. The operator of pioneer air transportation activity shall be imposed with administrative sanction namely disallowance of following the next year bidding in the case the operator does not conduct activities in accord to on-going contract.⁷⁸ Further provisions regarding pioneer air transportation shall be stipulated under a Ministerial Regulation.⁷⁹

f. Requirement of Commercial Air Transportation

The implementation of pioneer air transport conducted by commercial air transport entity after tendering process in accordance with the applicable rules. In the implementation of pioneer air transportation, the commercial air transport entity subsidized by the government in the form of air transport operation costs, subsidized fuel consumption in the pioneer airport location in case there is no depo of aviation fuel turbine and compensation in the form given other routes outside pioneer air transport routes.

For the purpose of implementation of pioneer air transportation, the commercial air transport entity shall fulfill requirements as follow :

- 1). owned business permit for the commercial air transport entity or operating permit issued by the DGAC for the general aviation;
- 2). owned Air Operator's Certificate (AOC) or Operator Certificate still valid;
- 3). have never been involved in any criminal legal conviction related to air transportation operations, and have never been declared bankruptcy during the management of the company;
- 4). One unit aircraft must be owned and reserved aircraft of the type(s) specified for supporting the pioneer routes air transportation, and
- 5). obligated to provide an evidence of applicable business permit for the commercial air transport entity or operating permit issued by the DGAC for general aviation implemented the pioneer air transportation routes.

g. Subsidy for Papua Pioneer Air Transportation

Pioneer air transportation in Papua Island is a leading transportation since 1976 and continuous to his day. Thus, the need assessment of the extent of the effectiveness of the policy. Pioneer air transport financial subsidies of Papua Island in 2008 is US\$ 5.7 million and increase 22,80%, amounting to US 7 million in 2009. Funds used in the pioneer air transportation is a system that has some characteristics of the multimodal, multi-sector, multi-issue and multi disciplinary. For that reason, through a systematic approach to transportation problems can be solved. Pioneer air transportation is a commercial air transport activity that serve domestic routes network and for connecting remote and disadvantaged areas or areas not served by other modes of

⁷⁶ *Ibid.*, at 70.

⁷⁷ *Ibid.*

⁷⁸ Art.106

⁷⁹ Art.107

transportation and not commercially profitable. Pioneer air transportation policy in effect not only meet the target opening isolation area, but it is expected the development of the area behind the area.⁸⁰

h. Pioneer Airports

In relation to private airport management, the Government announced it would offer regional airport management contracts to the private sector under a public-private partnership (PPP) scheme. Thus the government announced that tenders for the management of three airports located in Lampung, Komodo Palu and Sulawesi. It is hope private airport management will also deliver budget savings, freeing funds to develop other airport such as pioneer airport in remote area have been cited as the intended beneficiaries of increased state investment out of reallocated funds. There are ten airports proposed for the PPP management scheme such as Raden Inten II Lampung Selatan Airport, Komodo Airport, Sentani Airport, Matahora Airport, Tjilik Riwut Airport, H.A.S.Hanadjoedin Airport, Juwata Airport, and Sultan Babullah Airport.AC⁸¹

7. Tourists Industry

Air Transportation is the easiest and most comfortable means of travel in Indonesia. Air service are available to all provincial district capitals and other remote areas operated by Indonesian airlines. There are at least 27 domestic scheduled airlines⁸² and at least 8 (eight) charter airlines.⁸³ Garuda Indonesia, the national flag air carrier, operates on both international and domestic routes. It serves 33 cities including all the provincial capital. It has several daily flights from Jakarta to destination of commercial and touristic importance.⁸⁴ In addition, it also operates shuttle flight to Surabaya and Semarang several time a day. Special for visitors Garuda Indonesia has introduced Visit Indonesia Air Passes which offers special fares on its domestic flights.⁸⁵

Air transport industry and tourism are complemented each other. Tourism depends on transportation to bring visitors, whilst the transportation industry depends on tourism to generate demand for its services. The growth in tourism industry directly reflects onto the air transportation. Over the last 25 years, the number of international tourists has more than doubled. The expansion of international tourism has a large impact on the discipline of transport geography. Transport is the cause and the effect of the growth of tourism. To start with, the improved facilities have stimulated tourism, and the expansion of tourism has stimulated transport. Accessibility is the main function behind the basics of tourism transport. In order to access the areas that are mainly aimed, tourists will use any transportation mode. However, air transport is the main mode for international tourism. Air transport plays a dominant role in inter-regional movements of tourists, which normally entails travel over long-distance. Growth rates of international air traffic are pegged with growth rates of international tourism. Attractive package tours, competitive airfare attract more and more tourist day by days, therefore both the industry is expanding rapidly

⁸⁰ Jamaluddin Rahim, M.Yamin Jinca, Shirly Wunas, Tahir Kasnawi, *Effectiveness of Perintis Air Transportation System In Papua Island of Indonesia*. International Refereed Journal of Engineering and Science (IRJES) Volume 2, Issue 1 (January 2013) pp.30-35.

⁸¹ Private Airport management in Indonesia-Tenders expected in 2014.

⁸² Airfast Indonesia, Airmark Indonesia, Air Regional, Aviastar (Inonesia), Batik Air, Citilink, Dimonim Air, Garuda Indonesia, Indonesia Air Asia, Indonesia AirAsia X, Indonesia Air Transport (IAT), Jhonlin Air Transport, Kalimantan Air Services, Kalstar Aviation, Kaltim Airlines, Lion Air, NAM Air, Pelita Air Services, Sky Aviation, Sriwijaya Air, Susi Air, Transnusa Air Services, Travira Air, Trigana Air Services, Wing Air and Xpress Air.

⁸³ Air Born Indonesia, Eastindo, Gatari Air Services, Mimika Air, Nusantara Air Charter, Nusantara Buana Air, Premiair and transwista Prima Aviation; See https://en.wikipedia.org/wiki/List_of_airlines_of_Indonesia

⁸⁴ Banda Aceh, Medan, Pekanbaru, Jambi, Padang, Pangkal Pinang, Palembang, Batam, Bandar Lampung, Tanjung Pandan, Tanjung Pinang, Bengkulu; Kalimantan Island such as Pontianak, Balikpapan, Palangkaraya, Banjarmasin, Tarakan, Berau; Bali Denpasar; Lombok Island such Lombok, Timor Island, Kupang; Sulawesi Island such as Manado, Gorontalo, Palu, Makasar and Kendari; Jawa Island such as Jakarta, Bandung, Semarang, Solo, Yogyakarta, Malang, Surabaya; Maluku Island such as Ternate, Ambon; Papua Island such Biak, Jayapura, Timika, Sorong, Manokwari; see <https://www.garuda-indonesia.com/id/en/destination/route-map/index.page>

⁸⁵ The passes are sold in conjunction with air travel on Garuda from Europe, USA, Australia and Japan and have to be purchased from Garuda Offices in these areas. On its international network, Garuda Indonesia serves London, Amsterdam, Brussels, Frankfurt, Paris, Zurich, Rome, Vienna, Cairo, Abudhabi, Jeddah and Riyadh. In Asia and to points South, destinations are Ho Chi Min city, Bangkok, Hong Kong, Taipei, Manila, Tokyo, Kuala Lumpur, Nagoya, Seoul, Singapore, Brunei, New Zealand, Sydney, Melbourne, Perth, Darwin, Portheland and Auckland. Garuda serves Honolulu and Los Angeles as well .

a. Economic Aspects

The connectivity provided by international air transport facilities the fast-growing global tourism industry. It is estimated that over half of international tourists travel to their destination by air. Tourism makes a major contribution to the global economy of State. It directly contributed US\$ 2.2 trillion to world Gross Domestic Product (GDP) almost 10% of the global economy in 2015 and provided over 108 million jobs globally. By 2014, the World Travel & Tourism Council (WTTC) expects direct employment in the tourism industry to be more than 126 million people globally. When looking at the jobs and GDP supported through the indirect and induced impacts of tourism, the figures are significantly higher at 285 million jobs. By 2016, tourism could support some 370 million jobs and US\$ 11 trillion in GDP.⁸⁶

In Indonesia, air transportation also has a significant role to contribute the Indonesian economy. It creates jobs and generate wealth. Airlines, airport operators, airport on-site enterprises such as restaurants and retail, aircraft manufacturers, and air navigation services providers employed 190.000 people in Indonesia in 2014. In addition, by buying goods and services from local suppliers the sector supported another 530,000 jobs. On top of this, the sector is estimated to have supported a further 140,000 jobs by paying wages to its employees, some or all which are subsequently spent on consumer goods and services. Foreign tourists arriving by air to Indonesia who spend their money in the local economy, are estimated to have supported an additional 1.7 million jobs in 2014.⁸⁷

The air transport industry is estimated to have supported a US\$.4 billion gross value-added contribution to GDP in Indonesia in 2014. Spending by foreign tourists supported a further US\$ 14 billion gross value-added contribution to the country's GDP. This means that 2.7 per cent of the country's GDP is supported by the air transport sector and foreign tourists arriving by air in Indonesia.⁸⁸ This article purported to analysis air and transport and tourism in Indonesia.

In this connection, on 28 July 2017, Citilink extends its routes from Jakarta to Gorontalo transit in Makassar. The purpose of new routes is to support the regional economic development. The extension of Citilink's route could enhance the aircraft's utilization and profitable operation of low costs air carrier. Citilink operated 49 aircraft with 9 hours aircraft utilization a day. Gorontalo has significant economic development. In 2016 the economic development was 6,5%, is higher than national economic development was 5,02%.⁸⁹

b. Tourist's Destination

Large and small Islands in Indonesia offers a variety of natural, art and culture charms that will not be easy forgotten. An archipelago is divided into thousands of islands must offer exceptional beauty, such as beaches, underwater scenery, mountains to the jungle filled with various flora and fauna. Not only that, the people who live across archipelago this country also have different customs and cultures and even their languages are different from one another. It will be an incredible experience. Indonesia was gifted beautiful beaches, from soft white sand, clear and calm water to the challenging waves for surfers and also offers the natural beauty of the amazing underwater up that it is a paradise for divers such as Weh Island in Nanggroe Aceh Darussalam, Karimunjawa in Central Java, Wakatobi in Southeast Sulawesi, Bunaken in North Sulawesi, to the beauty of the underwater world Raja Ampat in West Papua that is so fascinating. In addition, there are the charm of the land such as Karo traditional house in the village of Linga, North Sumatra, the famous Jam Gadang (big clock) in Bukittinggi, West Sumatra, the elephants in Way Kambas National Park Lampung and Raflessia Arnoldii, the largest flower in the world, is grown on the island of Sumatra, Bengkulu province, the presence of endangered orangutans in Kalimantan, the enchantment of Blue fire in the crater of Mount Ijen, Banyuwangi, East Java etc.⁹⁰

c. How to get the Tourists' Destination

There are two type (s) of Aircraft Operating Certificate (AOC) such as AOC 121 and AOC 135 to get the tourists' destination. AOC 121 is for commercial scheduled airlines with more than 30 passengers, whilst AOC 135 is for commercial scheduled airlines with more than 30 passengers and chartered airlines, there are 22 AOC 121 holders and 32 AOC 135 holders. Aviation market share in Indonesia are Lion Air 41.6%, Garuda Indonesia 23.5%, Sriwijaya Air 10.4%, Citilink 8.9%, Wing Air 4.7% Indonesian Air Asia 4.4% and Others 6.5%. With regard to domestic scheduled airlines there are 27 airlines such as Airfast Indonesia, Airmark Indonesia, Air Regional, Aviastar (Indonesia), Batik Air, Citilink, Dimonim Air, Garuda Indonesia, Indonesia Air Asia, Indonesia AirAsia X, Indonesia Air Transport (IAT), Jhonlin Air Transport, Kalimantan Air Services,

⁸⁶ . <http://aviationbenefits.org/social-development/tourism/>

⁸⁷ .IATA ,Economics., The Air Transport Sector Makes a Major Contribution to the Indonesian Economy .

⁸⁸ .*Ibid.*

⁸⁹ Daily Kompas, dated 29 July 2017

⁹⁰ . Welcome INDONESIA, WONDEFUL INDONESIA.

Kalstar Aviation, Kaltim Airlines, Lion Air, NAM Air, Pelita Air Services, Sky Aviation, Sriwijaya Air, Susi Air, Transnusa Air Services, Travira Air, Trigana Air Services, Wing Air and Xpress Air and there 8 (eight) charter airlines such as Air Born Indonesia, Eastindo, Gatari Air Services, Mimika Air, Nusantara Air Charter, Nusantara Buana Air, Premiair and transwista Prima Aviation.

8. Others of Economic Aspects Related to Air Transport

a. New Year Holiday

The New Year holiday of 2017 is national holiday in nature. Most of Indonesian citizens, by air transportation, euphoria holiday especially to the tourist destination such as Bandung, Kuta Coast (Bali), Borobudur and Malioboro (Yogyakarta), Tawangmangu (Solo), Lombok, Losari (Makassar), Berastagi (Medan) and other places. The characteristic of travelers are tourism in nature within the framework of national holidays to increase the development of tourist destination. The theme of New Year Holiday of 2017 is unity of the nations, without any discrimination based on race, religion, group and whatever the reason.

The euphoria's holiday of tourist destination is also given rise to an enormous boost in the money circulation across the cities as millions of peoples travel to the others cities to spend some days with their families and friend. In the tourist destination, they need hotels, restaurant, souvenir, animal product, gift, consumption on food products, clothes, bags, shoes and finally increases the temporary economy in the tourist destination.⁹¹

b. Christmas Holidays

Indonesia have many opportunities to enjoy long week-ends and holidays as there are 13 national holidays proclaimed by the government. In addition, Indonesia have also collective leave should be taken on some days, mostly a Monday or Friday, before or after a national holiday in order to create a long week-end. This policy is intended to promote domestic tourism and the growth of economy in the region. Everyone can also take advantage of the fact that many hotels in tourist areas, especially in Bali, offer special rates to holders or expatriate residents during these long weekends for greater capes from city life. Most of them come over to the tourist destination by air transportation.⁹² Just prior to Christmas celebration, mass exodus from Jakarta of millions of peoples occurs as residents return to their villages to celebrate with their family and friends. It is also interesting to point out that exodus tradition given rise to an enormous boost in the money circulation across the archipelago as millions of peoples travel to the rural areas to spend some days with their families and friends. It is estimated that these people carry trillions of rupiah (hundreds of millions of US dollars) with them to the rural regions will increase a temporary economic activities such as a regional transportation, tourism, hotels, restaurant, souvenir, animal product, gift, consumption on food products, clothes, bags, shoes and increase a temporary region economic and finally increase the prosperity of the people in the region, however, in line with the increasing economic activities, there are inflation rate within Christmas celebration of 2016.⁹³

c. Urban Tourism

Ied-ul-Fitri celebration mostly called long weekend is an annual traditional culture of Indonesia in nature. In that time, the exodus of Indonesian workers from the cities back to their hometowns ahead of Ied-ul-Fitr celebration and they celebrated at people's place of origin, implying that Indonesian cities become more-or-less deserted for one week. The peak of the exodus occurs three to four days ahead of Ied-ul-Ritr and is accompanied by severe traffic jams due to the country's lack of quality and quantity of infrastructure.

Not only the Moslem community of Indonesia will return to their places of origin, but also people adhering to other religions traditionally use this public holiday to visit their parents or make a short holiday as urban tourism and stay at the home stay residence (*emphasize added*). There are several home-stay available in another city such as Jakarta, Bandung, Yogyakarta, Solo, Bali, Samarinda, Balikpapan, Palembang and any other city such as Medan, Lombok, Manado, Makassar, Banuwangi,⁹⁴ etc. The price of home-stay affordable by the exodus peoples, but the price increase compared with previously. The price of home-stay in Banyuwangi increase from IDR 400,000.00 to IDR 800,000.00/night.⁹⁵ There is nice swimming pool and awesome breakfast. The urban tourism (*emphasize added*) also create a job for the local people taking into account that they lease

⁹¹. Gunawan Djajaputra, I Gusti Ayu Ketut Rachmi Handayani and Martono K., *An Indonesian Air Transport : A Critical Analysis of Christmas Celebration of 2016 and New Year Holidays of 2017*. Vol. 6(2) www.ijbmi.org 61 (February 2017).

⁹². *Ibid.*

⁹³. *Ibid.*, at 57

⁹⁴. Daily Kompas dated 23 June 2017.

⁹⁵. Daily Kompas dated 23 June 2017.

bicycle, gifts, car rentals, tourist guide, restaurants and any other local business activity and finally rise the local economic.

The last phenomenon related to the Ied-ul-Fitr celebrations is that the number of people who return back to the cities after the Ied-ul-Fitr celebrations is bigger compared to the number of people that had left the cities prior to Ied-ul-Fitr. This phenomenon is particularly seen in Jakarta. It is common that an additional family member joins the journey back to the city in an attempt to find employment there to live in the city. As such, urbanization shows a little peak after the Ied-ul-Fitr celebrations. However, most of these newcomers have not completed senior high school. Lacking high skills this group is bound to work in the informal sector such as street vendors.⁹⁶ Several days after Ied-ul-Fitr usually marked with returning waves of Ied-ul-Fitr home-coming. People returning to cities of their workplaces from their hometowns, and just like the Ied-ul-Fitr it create massive temporary migrations that requires large amount of transportation for travelers that often resulted in gridlock traffic.⁹⁷

IV. Conclusion And Recommendation

Based on the above-mentioned analysis, the authors conclude that domestic scheduled and non-scheduled, international scheduled and international non-scheduled, general aviation as well as pioneer air transportation in Indonesia are potentially enhance tourism, increase economic regionally and support the national economic development. For that reason, the authors recommend that the government regularly supervises those air transport to ensure the safety and security compliance with the international standard.

Bibliography

Books

- [1] Dempsey P.S., *Annals of Air and Space Law* (2005) Vol. XXX-Part I. Toronto : The Carswell Company Ltd 2005.
- [2] Martono K., *Route, Capacity and Tariff Clauses of Selected Bilateral Air Transport Agreements Concluded by Indonesia*. A thesis submitted to the Institute of Air and Space Law, McGill University, Montreal, Canada, unpublished, 1980.

Articles

- [3] Amad Sudiro and Martono K., *National and International Air Transport Regulations in Indonesia*. Vol. 9(3) www.iosrjournals.org 7 (March 2016).
- [4] Ariawan Gunadi and Martono K., *Current Indonesian Air Transportation* (2016). Vol. 9(10) www.iosrjournals.org 13 (October 2016).
- [5] Gunawan Djajaputra, Hari Purwadi and Martono K., *Indonesian Civil Aviation Act of 2009 : Aviation Safety, Security and Climate Change*. Vol. 6(1) www.ijbmi.org 1 (January 2017).
- [6] Gunawan Djajaputra, I Gusti Ayu Ketut Rachmi Handayani and Martono K., *An Indonesian Air Transport : A Critical Analysis of Christmas Celebration of 2016 and New Year Holidays of 2017*. Vol. 6(2) www.ijbmi.org 61 (February 2017).
- [7] Jamaluddin Rahim, M.Yamin Jinca, Shirly Wunas, Tahir Kasnawi, *Effectiveness of Perintis Air Transportation System In Papua Island of Indonesia*. Vol. 2(1) www.irjesjournal.com 1(January 2013) PP 30-35
- [8] Martono., *Angkutan Udara di Indonesia Sebelum Kemerdekaan*” in Martono K., *Hukum Udara, Angkutan Udara dan Hukum Angkasa*. Bandung : Penerbit Alumni, 1987, at 4
- [9] Martono and Amad Sudiro.,*New Indonesian Air Transport Policy Based on Civil Aviation Act of 2009*. Submitted to Third Annual International Conference on Law & Regulation of Air Transport and Space Application, 26-29 April 2012, National Law University, New Delhi, INDIA, at 77.
- [10] Martono K.,and Amad Sudiro.,*Current Air Transport and Regulations in Indonesia*, (2013), Vol .XXXVIII *Ann of Air & Sp.L*.at 78.
- [11] Martono K.,and Ariawan Gunadi., *Current Regulation of Aviation Tariffs in Indonesia*. (2014) Vol.XXXIX *Ann of Air & Sp.L*.at 22
- [12] R.M.A van der Schaar, *Islam & Indonesian Culture: Impact of Ied-ul-Fitr on the Economy*, the Managing Director of Indonesia Investments.

Documents

- [13] Act Concerning Foreign Investment, Act.No.1 Year 1967.
- [14] Act Concerning Civil Aviation, Act No.1 Year 2009. State Gazette of the Republic of Indonesia No.1 Year 2009, Supplement State Gazette of the Republic of Indonesia No.4956.
- [15] Government Regulation Concerning Change from State enterprise (PN) Perhubungan Udara to Limited Liability Company (PT) Garuda Indonesian Airways, Govern.Reg.67 Year 1971 (1971)

⁹⁶ R.M.A van der Schaar, *Islam & Indonesian Culture: Impact of Ied-ul-Fitr on the Economy*, the Managing Director of Indonesia Investments.

⁹⁷.Lebaran, From Wikipedia, the free encyclopedia.

- [16] Government Regulation concerning Change from State-owned enterprise (PN) Perhubungan Udara Daerah dan Penerbangan Serba Guna Merpati Nusantara Airlines to Limited Liability Company (PT) Merpati Nusantara Airlines, Govern.Reg.No.70 Year 1971.
- [17] Ministerial Decree concerning Garuda Indonesian Airways Permit, Ministerial Decree No.T14/4/4-U (11 July 1961).
- [18] Ministerial Decree Concerning Route Structure PN Merpati Nusantara Airlines, Ministerial Decree No.S.8/2/5-Mph (13 January 1969).
- [19] Ministerial Decree Concerning Requirement and Provision of General Aviation Within the Republic of Indonesia, Ministerial Decree No.31/U/1970 (2 February 1970).
- [20] Ministerial Decree Concerning Requirements and Provisions Regarding Using Airplane for Commercial Purposes, Ministerial Decree No. SK 13/S/197 Year 1971 (18 January 1971).
- [21] Ministerial Decree Concerning domestic Tariff for Airbus, Ministerial Decree No. KM 157/PR.303/Phb-83 (1 August 1983).
- [22] Ministerial Decree Concerning Higher Tariff for Garuda Indonesian Airways than Private Airlines, Ministerial Decree No.KM 96/PR.303/Phb-84 (1 May 1984).
- [23] Ministerial Decree Concerning Domestic Tariff Change, Ministerial Decree No.KM96/PR.303/Phb-84 (1 May 1984).
- [24] Ministerial Decree No.KM 81 Year 2004 Concerning Engagement of Air Transport, Ministerial Decree No.KM 81 Year 2004 (2004).
- [25] Ministerial Decree Concerning Engagement of Air Transport, Ministerial Decree No.KM 25 Year 2008.
- [26] Ministerial Decree Concerning Tariff for Pioneer Routes. Ministerial Decree no.44 of 2012.
- [27] Ministerial Regulation concerning the Amount of Surcharge of Domestic Scheduled Air Transportation Tariffs, Ministerial Regulation No.PM 2 of 2014 (16 February 2014).
- [28] Ministerial Decree Concerning Non-Scheduled and General Aviation Flight to and from the Republic of Indonesia, Ministerial Decree No.66 Year 2015 .
- [29] The Director General of Air Communications Decreed Concerning Type(s) and Implementation of International Non-Scheduled to and from the Republic of Indonesia. DGAC Decree No. SKEP/1657/VIII/76.

Others

- [30] Air Transportation Infrastructure in Indonesia, The Free Library Periodicals – Literature
- [31] DAF/COMP/WD (2014) 70 28 May 2014, Organization for Economic Co-operation and Development.
- [32] Daily Kompas dated 23 June 2017.
- [33] <http://jdih.dephub.go.id/assets/uudocs/permen/2016/PM 9 Tahun 2016.pdf>
- [34] <https://www.garuda-indonesia.com/id/en/destination/route-map/index.page>
- [35] <http://aviationbenefits.org/social-development/tourism/>
- [36] IATA ,Economics., The Air Transport Sector Makes a Major Contribution to the Indonesian Economy .
- [37] The World Folio, Thursday, February 2016.,Better inter-regional Connectivity Through Improve Air Infrastructure.
- [38] INDONESIA. Wahyuni Bahar and Anggia Rukmasari, in John Balfour and Mark Bisset, Contributing Editors'., AIR TRANSPORT 2015.
- [39] Lebaran, From Wikipedia, the free encyclopedia.

Based on the above-mentioned analysis, the authors conclude that domestic scheduled and non-scheduled, international scheduled and international non-scheduled, general aviation as well as pioneer air transportation in Indonesia are potentially enhance tourism, increase economic regionally and support the national economic development. For that reason, the authors recommend that the government regularly supervises those air transport to ensure the safety and security compliance with the international standard.