

National and International Air Transport Regulations in Indonesia

Dr Amad Sudiro¹, Dr K.Martono²

¹S.H. (Trisakti University), M.H.(Tarumanagara University), M.M.(College of Economics) is currently the Law Faculty dean at Tarumanagara University, Jakarta, INDONESIA

²SH(Indonesian University), LL.M (Mc Gill), PhD (Diponegoro University) previously served as the chief of the legal division of the Directorate General of Civil Aviation at Indonesia's Ministry of Communications

Abstract: This Article deals with an introduction ; the Civil Aviation Act 2009; domestic air transportation regulation such as scheduled air transportation consist of class of service and business permit, tariff regulation of air transport, tariff for airport use and related services such as tariff for domestic passenger flight service, landing service, stand parking services, aircraft storage services, flight air navigation services and hajj air transport service; non-scheduled air transportation; best tariff practices; pioneer air transportation including pioneer air transportation regulations, pioneer air transportation routes, cabotage; international air transportation regulations including international scheduled air transportation, implementation of international air transportation, tariff regulation of international air transportation including scope of tariff, general principle governing tariff, procedures for establishment of tariff, validity of tariff, control of tariff, international flight passenger service fees, international air navigation services fees, landing fees, stand parking service fees and finally international non-scheduled air transportation.

Key words: national and international air transport, tariff, pioneer air transport, Indonesia.

I. Introduction

The number of passengers carried by air in Indonesia has been increasing significantly. There is an average passenger increase of 15-20% a year.³ The expansion in the number of air travelers is consistent with the rate of national economic development in Indonesia generally. The purpose of this is describe the Civil Aviation Act of 2009; domestic air transport regulations such as scheduled air transportation including class of services, business permit; domestic tariff regulations of air transport including development of tariff, aviation tariff policies, passenger tariffs for scheduled air transport; tariffs for airport use and related services including domestic passenger flight service fees, domestic passenger flight service fees, landing service fees, stand parking service fee, aircraft storage service fees, flight air navigation service fees, hajj air transport service fees; best tariff practices including scheduled airlines operation and control of the applicable tariff as follows.

II. The Civil Aviation Act 2009

The Indonesian Civil Aviation Act that came into force on 12 January 2009 (the CAA of 2009) aims to promote the development of Indonesian air transportation.⁴ It regulates a host of matters related to aviation, from sovereignty in airspace, aircraft production, operation and airworthiness of aircraft to aviation safety and security, aircraft procurement, aviation insurance, the independence of aircraft accident investigation, and the licensing of aviation professionals. The CAA of 2009 also regulates scheduled as well as non-scheduled air transportation, airline capital, the ownership of aircraft, aircraft leasing, tariffs, the liability of air carriers, air navigation facilities, airport authorities and services, and law enforcement related to air transportation. The CAA of 2009 also has provisions aimed at supporting the development of national and international air transportation in Indonesia, including provisions regarding the creation of a public services institute to further those goals. Due

¹ Dr. (University of Indonesia) Amad Sudiro, S.H. (Trisakti University), M.H.(Tarumanagara University), M.M.(College of Economics) is currently the Law Faculty dean at Tarumanagara University, Jakarta, INDONESIA. He actively researchs and writes books and articles in various scientific journal on various matters relating to airspace law.

² Prof.Dr.H.K.Martono, SH(Indonesian University), LL.M (Mc Gill), PhD (Diponegoro University) previously served as the chief of the legal division of the Directorate General of Civil Aviation at Indonesia's Ministry of Communications. He has written extensively about aviation law and regulations in Indonesia and was the parliamentary resource person for when Indonesia was drafting the Civil Aviation Act of 2009.

³ Bambang Soesantono, "Domestik MRO Contribution to Airlines on Safety and Quality Facing Market's Growth and Competitive Toward ASEAN Single Aviation Market (ASAM)" (Keynote Speech on RUA-IAMSA delivered at Jakarta, 21 November 2012)[unpublished].

⁴ Act concerning Civil Aviation, Act No.1 of 2009 [Civil Aviation Act], Ministry of Transportation, the Republic of Indonesia, online: Directorate General of Civil Aviation <http://hubud.dephub.go.id/?en/uu>

to the comprehensive nature of the CAA of 2009, the present article is only able to discuss and highlight certain matters that have potential impact on the development of the air transportation sector in Indonesia.

The aim and objective of the CAA of 2009 is to promote the development of Indonesian air transportation and to ensure Indonesia's air transportation sector can support the national economic development and is viable to compete and survive nationally, regionally and internationally and most pertinent to the current discussion, the tariffs that can be charged for the provision of air transport services and charges related to the use of aviation facilities.

III. Domestic Air Transport Regulations

As above-mentioned, under the CAA of 2009, matters related to air services have been more clearly regulated, both from the point of view of classification of types and the grouping of air services. The CAA of 2009 differentiates between scheduled air services and non-scheduled air services, and then further groups them into domestic and foreign scheduled air services and domestic and foreign non-scheduled air services.⁵ Each category of air service has its own separate regulations under the CAA of 2009, and depending on the air service provided, there are different requirements regarding which entities may operate such services, the permits required and the tariffs that can be charged.

3.1. Scheduled Air Transportation

The meaning of the term air service can be found in Article 96(a) of the Chicago Convention of 1944, which provides that air service is "any scheduled air service performed by aircraft for the public transport of passengers, mail or cargo."⁶ Domestic scheduled air transportation is an air transportation activity providing air transportation from one airport to another airport within Indonesian territory. Article 1(14) of the CAA of 2009 stipulates that air transportation is any activity which uses an aircraft for transporting passengers, cargo and/or post on one or more routes from one airport to another airport or several airport.⁷ In relation the level of service, air transportation can provide full services, medium services, or no-frill services.

3.1.1. Class of Services

A scheduled air transportation company is obliged to inform the consumers regarding the conditions and specifications of services being provided.⁸ Full service means that during the flight, the passengers are given food and beverages, snacks, and the use of an executive lounge for business class and first passengers. A medium level of service includes provision of light food (snacks) during flight and other facilities such as executive lounges for passengers holding certain classes of tickets. No-frill services have only one class of service, without any provision of food or beverages, snacks or an executive lounge. With a no-frill service, baggage can generally only be checked for a fee.

Scheduled airlines providing medium and no-frill services are business entities operating on a low cost carrier basis, however they are still obliged to meet aviation safety and security requirements. They have to submit a request for authorization to the MOC and the MOC will create a scheduled air transportation business entity after all stipulated requirements are fulfilled. The scheduled air transportation company will need to be periodically evaluated, and must adhere to strict requirements regarding licensing.

3.1.2. Business Permit

In accordance with the requirements to operate an airline, an air transportation company must obtain a business permit.⁹ To recap, a business permit will only be issued by the MOC after fulfilling administrative, share holder, capital, aircraft ownership, business plan and human resources requirements. Administrative requirements, among others, include the submission of a founding act, (establishment deed) of an Indonesian business entity whose business is in the field of scheduled or non-scheduled air transportation. This founding act is granted by the Minister in charge, and contain a tax identification number and a domicile letter issued by the authorized agency. If the airline company utilizes capital investment facilities, an approval letter from the agency responsible for the capital investment, evidence of capital already deposited, a bank guarantee and a business plan for minimum of five years are all required.

Shareholder requirements for obtaining a business permit are provided in Article 108(3) of the CAA of 2009. The CAA of 2009 provides that where the capital of a national airline owned by an Indonesian legal entity

⁵ *Ibid.*, Art 83(3)

⁶ *Convention on International Civil Aviation, signed at Chicago on 7 December 1944*, Art 96(a).

⁷ *Act Concerning Civil Aviation*, Act No.1 of 2009 [1 January 2009] Art 1(14). State Gazette of the Republic of Indonesia Number 1 (2009), Supplemental State Gazette Number 4956 of the Republic of Indonesia. This provision provides that commercial air transportation is public air transportation when it charges payment.

⁸ *Ibid.* Art 97(5)

⁹ *Ibid.* Art 84

or an Indonesian citizen is divided, one of the national shareholders must maintain a larger holding than any foreign shareholder. Meanwhile, capital requirements for obtaining a business permit can be found in Article 109(1)(c) of the CAA of 2009. This Article 109(1)(c) of the CAA of 2009 provides that an air transportation business entity must submit evidence of capital already deposited. An air transportation business permit will be valid as long as the permit holders continue actual air transportation activities by consistently operating aircraft in accordance with the permit granted, which will be evaluated annually. The results of the evaluation will be used as consideration for allowing the holder to continue its business activities.¹⁰

Aircraft ownership requirements for obtaining business permits are provided in Article 118(2) of the Civil Aviation Act of 2009. This provision states that scheduled air transportation companies must own at least five units of aircraft and possess at least five units of aircraft of the type(s) suitable for supporting its business sustainably in accordance with the routes served. Air transportation companies, especially those providing cargo services, must own at least one unit 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 to be served.

Human resource requirements for obtaining a business permit can be found in Article 110(e) and 111 of the Civil Aviation Act of 2009. Article 110(e) provides that the business plan must contain human resources information regarding management personnel, technician/ engineers and aircrew, while Article 111 of the Civil Aviation Act of 2009 specifically provides management requirements. This Article states that any individual may be appointed as a director of an airline after fulfilling the following requirements : possessing operational and managerial competence as well as experience in air transportation business management and certification of fitness after a proper test conducted by the MOC. These requirements are not applicable to the managing director of any air transportation business entity

A commercial air transportation business permit cannot be transferred to another party before the operation of aircraft as described in the business permit commences. Transfer of a commercial air transportation business permit may only be concluded after the permit holder begins the business operation and obtains the approval of the MOC for the transfer.¹¹ Any holders of air transportation business permits violating this provision will receive administrative sanctions, namely the revocation of their business permit.¹² Further provisions regarding the requirements, systems and procedures of obtaining air transportation business permits and the appointment of airline directors are stipulated under a ministerial regulation. For these reasons, based on Article 464¹³ and 465¹⁴ of the Civil Aviation Act of 2009, Ministerial Decree Number KM 25 of 2008¹⁵ will be applied.

Obligations of air transportation business permit holders can be found in Article 118 of the Civil Aviation Act of 2009. This Article provides that holders of air transportation business permits are be obliged to perform air transportation activities in reality (de facto) no later than twelve months following the issuance of a permit. This is achieved by operating at least the minimum number of aircraft owned by and in possession of the company in accordance with its business or activity scope; owning and possessing the correct total number of aircraft; fulfilling the requirements for mandatory cargo transportation, civil passenger flights, and other provisions in accordance with rules of law and regulations. In addition, a scheduled air transport company must purchase transportation liability insurance with a liability value equal to the insurance coverage for regular passenger air transportation proven by presentation of valid insurance policies. There are obligations for an air transportation company that services paying passengers to treat all passengers fairly without discrimination on ethnic, religious, racial, group, economic or social grounds.¹⁶

Furthermore, to continue operating, the air transportation company must submit to the MOC monthly air transportation activity reports, including information regarding delays and cancellation of flights, no later than on the tenth of the next month for each month.¹⁷ Annual financial reports that contain at least a balance sheet, profit and loss statement, cash flow statement and a list of detailed expenditures and that are duly audits by a registered public auditing firm must be submitted to the MOC no later than the next reporting year. Any changes in the management or ownership of the air transportation business entity, as well as any changes in the domicile or changes of aircraft ownership must be duly reported to the MOC. Further provisions regarding the obligations of air transportation business permit holders as well as the requirements, systems, and procedures of sanction imposition are stipulated under a ministerial decree.

¹⁰ Ibid. Art 112

¹¹ Ibid. Art 113

¹² Ibid. Art 113

¹³ Ibid. Art 464, which provides that at the time of this law becoming effective, all implementing regulations under the Act No.15 of 1992 on Aviation shall remain valid as long as it is not contrary with or changed by a new provision under this law.

¹⁴ *Civil Aviation Act, supra* note 7, Art 465. This provision provides at the time this law becomes effective, the Act No.15 of 1992 on *Civil Aviation* (State Gazette of the Republic of Indonesia 53,(1992) Supplement 3481) shall be revoked and thereafter declared invalid.

¹⁵ Indonesia, *Ministerial Decree Concerning Organizing the Air Transportation.*, Ministerial Decree, KM 25 (25 November 2008)

¹⁶ *Civil Aviation Act, supra* note 7, Art 118(1)(e)

¹⁷ Ibid. Art 118(1)(f).

With regards to flight networks and routes of air transportation business can be found in Article 122 of the CAA of 2009. This Article provides that domestic flight networks and routes for scheduled air transportation are determined by the MOC. The domestic flight network and routes will be determined with consideration for demand for air transportation services, fulfillment of technical qualifications for flight operation and airport facilities, provision of airport facilities in compliance with aviation safety and security serving all regions, and will take into consideration the flight operation centre of each scheduled air transportation business entity and the integration of domestic and international routes.¹⁸

3.2. Tariff Regulations of Air Transport

3.2.1. Development of Tariff

In 1924, ANG Thomassen landed in Cililitan Airbased, now Halim Perdanakusuma International Airport, next to Jakarta. On 23 July 1927, Capt.G.J.Geysersdiffer conducted the first commercial flight to Jakarta. In September 1929, regular air service 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. With regard to tariff regulation, the tariff for the transportation of post was negotiated between the Netherlands Indies authorities and KLM.

The old political and economic regime in Indonesia tended to have a socialist ideology, and air transportation was conducted by state-owned enterprises such as Garuda Indonesian Airways (GIA)¹⁹ and Merpati Nusantara Airline (MNA).²⁰ Indonesia's Ministry of Communications (MOC) acted as the regulator of tariffs, and there was no competition between the airlines. Under the era of the "New Order", General Suharto then introduced a neo-liberal ideology that represented a mix between socialist and liberal ideology.²¹

Under the New Order, the MOC issued Ministerial Decree SK 13/S/1971²² to permit the creation of new airlines owned by private companies. State-owned companies, such as GIA,²³ would serve trunk lines, while MNA²⁴ would serve feeder services together with privately-owned companies such as Zamrud Aviation, Bouraq Indonesia Airlines, Mandala Airlines, Seulawah Air Service and Indonesia Air Transport.²⁵ As far as tariffs are concerned, in order to prevent unhealthy competition between airlines, GIA set price leadership. The air transport policy under the New Order set up a limited multi-airlines system,²⁶ which was composed of state-owned enterprises together with privately-owned companies. All tariffs were controlled by the MOC.²⁷ There was no competition between airlines due to the tariffs set and regulated by the MOC.²⁸ All tariffs provided by privately-owned companies had to be below GIA's tariff, whilst GIA's first-class tariff was permitted to be 15% higher than normal prices²⁹ for flights served using Airbus aircraft.³⁰

In the reformation (*Reformasi*) Era under General Soesilo Bambang Yoedoyono, air transport policy was generally less strict. Private airline including companies providing scheduled and non-scheduled air service, air cargo, and charter flights, as well as general aviation, grew rapidly.³¹ Based on the MOC Decree Number KM 81 Year 2004,³² the requirements to establish a new airline company were very easy to meet.³³

¹⁸ Ibid. Art 123

¹⁹ Garuda Indonesian Airways was previously a state enterprise (PN) and later changed to become a Limited Company Liability (PT). See Indonesia, *Regulation Concerning Change from State-owned Enterprise (PN) Perhubungan Udara to Limited Company Liability (PT) Garuda Indonesian Airways*. Indonesia Reg.67/1971 (1971). See generally Martono K., & Amad Sudiro, "Current Air Transport Regulations in Indonesia" (2013) XXXVIII Ann Air & Sp L 55 [Martono & Sudiro, "current"].

²⁰ Merpati Nusantara Airlines was previously named a state-owned enterprise (PN), which later became Limited Company Liability (PT). See *Regulation Concerning Change from State-owned enterprise (PN), Perhubungan Udara Daerah dan Penerbangan Serba guna "Merpati Nusantara" to Limited Company Liability (PT) Merpati Nusantara Airlines (MNA)*, Indonesia Reg.70/1971 (1971). generally Martono K., & Amad Sudiro, "Current Air Transport Regulations in Indonesia" (2013) XXXVIII Ann Air & Sp L 55 [Martono & Sudiro, "current"].

²¹ Ibid. Martono & Amad Sudiro, "Current", *supra* note 20.

²² Indonesia, *Ministerial Decree Concerning requirements and Provisions Regarding Using Airplanes for commercial Purposes*, Ministerial Decree No.SK 13/S/1971 (18 January 1971).

²³ Indonesia, *Ministerial Decree concerning Garuda Indonesian Airways Permit*, Ministerial Decree No. T 14/4/4-u (11 July 1961).

²⁴ Indonesia, *Ministerial Decree Concerning Route Structure of PN Merpati Nusantara Airlines*, Ministerial Decree No. S 8/2/5-Mphb (13 January 1960).

²⁵ Indonesia, *Ministerial Decree Concerning Home Based of Airlines*, Ministerial Decree No. SK 402/S/70 (30 December 1969).

²⁶ Fachri Mahmud, *The Development of Transport Policy in Indonesia* [unpublished].

²⁷ Indonesia, *Ministerial Decree concerning Higher Tariff for Garuda Indonesian Airways then Private Airlines*, Ministerial Decree No.KM 96/PR.303/Phb-84 (1 May 1984).

²⁸ Martono & Sudiro, "current", *supra* note 20 at 60.

²⁹ Indonesia, *Ministerial Decree Concerning first Class Domestic Tariff for Airbus*, Ministerial Decree No.KM 157/PR.303/Phb-83 (1 August 1983).

³⁰ Indonesia, *Ministerial Decree Concerning Domestic Tariff Changes*, Ministerial Decree No.KM 96/PR.303/Phb-84 (1 May 1984).

³¹ *Indonesian Aviation : Outlook 2010* (Jakarta: Indonesia National Air Carrier Association, 2010)

³² Indonesia, *Ministerial Decree Concerning Domestic Tariff Change*, Ministerial Decree No.KM 96/PR.303/Phb-84 (1 May 1984).

³³ Martono & Sudiro, "Current", *supra* note 20 at 60.

Airlines could compete freely with little regard for the interests of consumer.³⁴ As a consequence of a more liberal air transport policy that that encouraged heavy competition, 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 as sea transportation companies. As a result, only giant airlines could successfully operate, and consumers were disadvantaged in the long term run.

3.2.2. Aviation Tariff Policies

The main function of tariff³⁵ regulation is to secure the economic for the benefit of the travelling public and to eliminate the hazards of free competition.³⁶ In addition, a tariff can have a significant influence on airlines, travelers and regulator. For the airlines, a tariff that is too low may jeopardize the sustainability of an air carrier's operations, whilst a tariff is too expensive may make it unaffordable for travelers to travel. For the regulator, a tariff is a means to regulate the balance of the sustainability of airlines' operations and to guarantee that travelers can afford the price for the benefit of the travelling public. For these reasons, tariffs must be carefully regulated by the regulator.

As discussed above in bilateral, and as standardized by ICAO, aviation tariffs in this Act 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, and also on.

Domestic tariffs are discussed in Part four of the Civil Aviation Act of 2009,³⁷ 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.

3.2.3. Passenger Tariffs for Scheduled Air Transport

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.³⁸

In determining tariffs, the MOC considers the interest of aviation safety and security, as well as the needs of the public and airlines' operation.³⁹ MOC Decree Number 26 of 2010⁴⁰ 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 consist of a basic average fee plus a reasonable profit a value-added tax based on taxation regulations.⁴¹ 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 bear due to lack of passengers on returning flights, outbound or inbound, are also included in the calculation of he 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.⁴²

³⁴ There were, and continue to be, a lot of complaints regarding delays, cancellations, and aircraft accidents, which is evidence of consumers becoming victims as a fierce competition. Ibid.

³⁵ International Civil Aviation Organization's *Standard Bilateral Tariff Clauses*, ICAO Doc.9228-C/1036 (1978) [*Standard Bilateral Tariff Clauses*], define "tariff" as follows:

Tariff means the prices or charges to be paid for the carriage of passengers, baggage and cargo and the conditions for agency and other auxiliary services, but exclusive remuneration and condition for the carriage of mail.

³⁶ LCJ Lehtonen, *The Bilateral Air Transport Agreement of Finland: A Study in Public International Air Law* (LLM Thesis, Mc Gill University Institute of Air and Space Law, 1977) at 178 [unpublished].

³⁷ Act on Civil Aviation, *supra* note 7.

³⁸ Martono & Sudiro, "current", *supra* note 19 at 81

³⁹ *Civil Aviation Act*, *supra* note 7, Art 126

⁴⁰ Indonesia, *Ministerial Decree Concerning the Calculation Mechanism and Determination of Ceiling Passengers for Economy Tariff Class of Air Transportation Domestic Services*, Ministerial Decree No.26 (14 April 2010)[Decree Concerning the Calculation]

⁴¹ Martono & Sudiro, "Current", *supra* note 19 at 81

⁴² Indonesia, *Ministerial Regulation Concerning the Amount of Surcharges of Domestic Scheduled Transportation Tariffs*, Ministerial Regulation No. PM 2 of 2014 (16 February 2014).

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.⁴³

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.⁴⁴ 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.

3.2. 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).⁴⁵

3.3.1. Domestic Passenger Flight Service Fees

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.

3.3.2. Landing Service Fees

All aircraft engaged in domestic aviation which land at Indonesia airports are charged 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, while landing service fees for flight training crew or flight tests are 25% of the tariff for domestic landing fees. Tariffs for domestic scheduled flights 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.⁴⁶

3.3.3. Stand Parking Services 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 fee of charge.

3.3.4. Aircraft Storage Service Fees

All air carriers engaged in domestic aviation and which store 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.

⁴³ Martono & Sudiro, "Current", *supra* note 19, at 82

⁴⁴ Decree concerning the Calculation, *supra* note 40 at 163

⁴⁵ Ibid. Arts 244, 245.

⁴⁶ Indonesia, Ministerial Decree KM 24 Year 1996 Concerning Landing Fees, Parking Stand Fees and Airport Storing Fees of International Flight (1996) Art 11

3.3.5. Flight Air Navigation Service Fees

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.⁴⁷

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.⁴⁸ Regulation No.77 of 2012 established the state-owned enterprise Indonesian Air Navigation Service Agency (IANSAs),⁴⁹ 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).⁵⁰ All services provided by the IANSAs will be charged in accordance with the MOC Decree.⁵¹

3.3.6. Hajj Air Transportation Air Services Fees

As Indonesia is the most populous Muslim country in the world, hajj flights⁵² 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.

As per Article 464 and 465 of the CAA of 2009, non-scheduled airlines⁵³ are regulated by the MOC Decree No. SKEP/1657/VIII/76 of 1976. This decree lists different types of international non-scheduled airlines, such as advanced booking charters, affinity group charters, including tour charters, student charters, and pilgrimage charters. Hajj air service transportation is classified as a charter flight. However, in accordance with the Director of Hajj and Umrah of the Religious Ministry, hajj air service transportation is scheduled during Hajj season, and for this reason is considered a scheduled flight.

Hajj candidates departing from a domestic airport to another airport in Indonesia have to pay domestic passenger service fees, while 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 Technical Implementation Unit (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.

IV. Domestic Non-Scheduled Air Transportation

4.1. Type(s) of Non-Scheduled Air Transportation

In Indonesia, The DGAC Decree SKEP/1657/VIII/76 first regulated international non-scheduled air transportation.⁵⁴ The Act goes on to provide that in a situation where the demand for transportation services cannot be met or served by regular air transportation companies for certain routes, and where such demand is temporary in nature, a domestic non-scheduled air transportation company may undertake scheduled air transportation activities after obtaining an authorization of approval from the MOC. Similarly, however, non-scheduled air transportation operated by a scheduled air transportation company, may not disturb the services on its own routes or on the routes served by other scheduled air transportation companies.⁵⁵ Examples of non-scheduled air transportation includes charters booked in advance, affinity group charters, inclusive tour charters, including charters for the purposes of pilgrimage, non-season pilgrimage, tour packages, MICE

⁴⁷ *Civil Aviation Act, supra note 7, Art 271.*

⁴⁸ *Ibid. Art 277*

⁴⁹ *Indonesia, Government Regulation Number 77 of 2012, Concerning Indonesian Air Navigation Services Agency (IANSAs).*

⁵⁰ *Ibid. Art 3*

⁵¹ *Ibid. Art 5*

⁵² Martono & Amad Sudiro, *Aspek Hukum Transportasi Udara Jamaah Haji Indonesia* (Jakarta : PT Rajagrafindo, Devisi Perguruan Tinggi, 2013 at77. See Indonesia, *The Director General of Air Communications (DGAC) Decree No. SKEP/1675/VIII/76, Concerning Type and Requirements of the Implementation of International Charter Flight to and/from the Territory of Indonesia.*

⁵³ See Werner Guldimann, "The Distinction Between Scheduled and Non-Scheduled Air Service", (1979) IV Ann Air & Sp L 135; G. Romanelli & M.Miszerak, "Charter Flight and the Role of the Tour Operator" (1978) III Ann Air & Sp L,207

⁵⁴ Directorate General of Air Communications Decree Concerning Type(s) and Implementation of International Non-scheduled Air Transportation to and from Indonesia, Director General of Air Communications Decree No. SKEP/1657/VIII/76

⁵⁵ *Civil Aviation Act, supra note 7, Art 85*

(meeting, incentive, conferences and exhibition transportation), special events charters, student charters, charters for personal use, as well as transportation for natural disaster assistance, or transportation to enable national and international activities.

Non-schedule air transportation activities may also take the form of air taxi or split charters to cater to humanitarian program for sick persons (patients) or parachuting activities.⁵⁶ A government, local government agency and/or a national air transportation company may thus, should the need arise, initiate temporary scheduled air transportation. Temporary scheduled air transportation activities must not cause any disturbance o air transportation services on the routes that are served by the existing scheduled air transportation companies.

Domestic non-scheduled air transportation may be only be conducted by national airlines possessing non-scheduled air transportation business permits and must be conducted based on flight approval. Meanwhile, non-scheduled air transportation companies must own at least one unit of aircraft and possess at least two units of aircraft of the type(s) suitable for supporting its business sustainably in accordance with the operational areas to be served.

The development of non-scheduled air transportation indicates that, as a whole, and in line with the increase in infrastructure development and economic activities in Indonesia generally, the number of non-scheduled air transportation companies is increasing. The new Act has facilitated this growth, and in particular the islands of Sumatra, Kalimantan and Papua are large markets for non-scheduled air transportation.

4.2. Passenger Tariff 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,⁵⁷ whilst the tariffs for international scheduled passenger air transportation are determined based on bilateral agreements.

V. Best Tariff Practices

5.1. Scheduled Airlines Operations

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 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. and 9.30 a.m., which are very pricey, and tickets for flights between 12.00 p.m. and 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, Sundays and Monday 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 promotional tariffs and normal economy tariffs. Promotional 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

5.2. Holiday Season of Scheduled and Non-Scheduled Operations

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. For non-scheduled airlines, and, in response to the increase in demand during peak travel periods, tariffs are subject to negotiation between the user and the provider of air transportation.

5.3. 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

⁵⁶ Ibid. Art 92, see explanatory notes.

⁵⁷ *Civil Aviation Act, supra* note 7, Art 128.

revoked.⁵⁸ 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.

VI. 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.⁵⁹ In the context of opening up isolated areas throughout Indonesia, the Civil Aviation Act 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.

6.1. Pioneer Air Transportation

The MOC Decree Number PM 9 of 2016⁶⁰ provides type of pioneer air transportation, pioneer routes criteria, engagement of pioneer air transportation, implementation of pioneer air transportation, evaluation of pioneer air transportation and the obligation of pioneer air transportation operator. Pioneer air transportation consist of passenger pioneer air transportation, cargo pioneer air transportation.

6.1.1. 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 unprofitable; to encourage the growth and regional development; to stabilized state defense and state security especially the border crossing.

6.1.2. Engagement of Pioneer Air Transportation.

The determination of opening pioneer air transportation based on proposal by budgeting authorization (KPA) after coordination with the Airport Authority, Airport Technical Implementation Unit (UPT) and Regional Government to the DGAC; Attachment of supporting data such as statement from the KPA, route pioneer proposal and other supporting data related to accessibility data and regional potential.

6.1.3. Implementation of Pioneer 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 (AVTUR) 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 such as owned business permit for the commercial air transport entity or operating permit issued by the DGAC for the general aviation; owned Air Operator's Certificate (AOC) or Operator Certificate still valid; 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; one unit aircraft must be owned and reserved aircraft of the type(s) specified for supporting the pioneer routes air transportation, and 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. 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.⁶¹

⁵⁸ Martono & Sudiro, "Current", *supra* note 19 at 82.

⁵⁹ *Ibid.* Art 122(1), explanatory notes.

⁶⁰ Indonesia *Ministerial Decree Concerning the Criteria and Engagement of Pioneer Air Transport*, Ministerial No.PM 9 of 2016 (27 January 2016).

⁶¹ See <http://jdih.dephub.go.id/assets/uudocs/permen/2016/PM 9 Tahun 2016.pdf>

6.2. Pioneer Air Transport Routes

The typical of pioneer routes i.e., located in isolated and under developed area, and unprofitable. The government divides domestic routes into three categories, such as routes for jet engine aircraft 319 routes, routes for propeller-engine aircraft 367 routes and pioneer routes 132 routes. 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.⁶² In order to provide proper air transportation for people in remote area, the government opened pioneer routes. Air fares for passenger and freight in these routes are determined by government under the MOC Decree No.44 of 2012.⁶³

The new regulation covers fuel surcharge as part of ticket prices. The component of cost for airlines consist of direct operating costs includes fixed costs, depreciation cost/leasing cost, insurance costs, salary for crew, salary for technical personnel; variable costs such as lubrication costs, fuel cost, crew allowance, maintenance costs, airport cost, navigation service, ground handling cost, catering costs; indirect operating costs such as organization cost and marketing cost.

Based on the CAA of 2009, fuel surcharge is determined by government. Due to fuel price fluctuation and increasing Dollars exchange rate, government issues Ministerial Decree No. 2 of 2014.⁶⁴ Based on the tariff regulation, airline companies are restricted to some boundaries when setting their own tariff. Basic fare for each route and other ticket price component are subject to regulation. The sum of each component will reflects the ticket price level. According to the CAA of 2009, passenger's ticket price is split into 2 categories, i.e., economy and non-economy. The economy ticket consist of basic fare, value added tax, insurance and surcharges.

6.3. Pioneer Air Transportation Subsidy in Papua

Pioneer air transportation is a commercial air transport activities that serve domestic routes network and for connecting remote and disadvantaged areas or areas not served by other modes of 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.⁶⁵ Pioneer air transportation in Papua Island is a leading transportation since 1976 and continue to his day. 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.

VII. Cabotage

In line with Article 7 of the Chicago Convention of 1944,⁶⁶ the CAA of 2009 provides cabotage. The CAA of 2009 provides that the right to transport goods or passengers domestically,⁶⁷ is discussed in Article 85 the CAA of 2009, In accordance with this Article, scheduled air transportation in the country may only be operated by national airlines that have already obtained business permits for scheduled air transportation. However, the CAA of 2009 foresees that there are certain situations when regular air transportation cannot accommodate the capacity required. Thus, to cater for the likes of tourism packages, MICE (meeting, incentive, conference, and exhibition transportation), air transportation for pilgrimages and natural disasters, and transportation for other national and international activities, the CAA of 2009 does allow for temporary irregular transportation.⁶⁸

VIII. General Aviation

General (non-commercial) aviation is air transportation used for private purposes to support business activities other than air transportation. The government, regional government, social organization, sports associations, individuals and/or other Indonesian entities may carry out general aviation.⁶⁹ It consist of air transportation for aerial work such as agricultural spraying, aerial photography, surveying, mapping, search and

⁶² *Organization for Economic Co-operation and Development*. DAF/COMP/WD (2014) 70 28 May 2014

⁶³ Indonesia, *Ministerial Decree Concerning Tariff for Pioneer Routes*. Ministerial Decree No.44 of 2012.

⁶⁴ Indonesia, *Ministerial Decree Concerning Surcharge*, Ministerial Decree No.2 of 2014.

⁶⁵ 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.

⁶⁶ Article 7 of the Chicago Convention of 1944 provides cabotage. See P.S.Dempsey Ed., *Annals of Air and Space Law Vol.XXX Part 1 - 2005*. Toronto: The Carswell Company Ltd, pp.17-49

⁶⁷ For a detailed discussion of cabotage principles, see Jan Ernst C.de Groot, "Cabotage Liberalization in the EEC and Article 7 of the Chicago Convention of 1944" (1989) XIV Ann Air & Sp 1 139, at 157-166. See also *Convention on International Civil Aviation*, 7 December 1944, 15 UNTS 295, ICAO Doc.7300/6 [Chicago Convention], art 7:

Each contracting State shall have the right to refuse permission to the aircraft of other contracting States to take on in its territory passengers, mail and cargo carried for remuneration or hire and destined for another point within its territory. Each contracting State undertakes not to enter into any arrangements which specifically grant any such privilege on an exclusive basis to any other State or an airline of any other State, and not to obtain any such exclusive privilege from any other State.

⁶⁸ *Civil Aviation Act*, *supra* note 19, Art 85, explanatory notes.

⁶⁹ *Civil Aviation Act*, *supra* note 7, Art 101

rescue operations, calibration operations and air transportation for personnel activities or other air transportation for a business entity, the primary activity of which is not the conduct of air transportation.⁷⁰ MOC approval may be given to participants in general aviation activities for the purpose of passenger and cargo transportation in certain regions, after fulfilling certain requirements that are temporary in nature. Holders of general aviation permits violating the requirements for the conduct of air transportation activities will receive administrative sanctions, namely in the form of warnings, and may have their permits frozen or even revoked.⁷¹

With regard to the general aviation permit, activities must be conducted only after obtaining the MOC's approval. In order to obtain an operation permit for general aviation, the regional government business entity or other organization(s), must be granted clearance by the agency supervising the core activities of the entity. In the case of a general aviation permit, the government or business entity must furnish the establishment deed of the business entity or organization 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 operation, human resources, information regarding technicians, engineers and aircrew, as well as information regarding preparedness and worthiness of operations.⁷²

The general aviation business permit will be valid as long as the permit holder continues operating air transportation activities by consistently operating aircraft. However, the permit will be evaluated based on the performance of a permit holder of general aviation air transportation activity every year. The results of the evaluation will be used to determine if the holder should be allowed to continue aviation business activities.⁷³ Further provisions regarding the requirements, systems and procedures for obtaining a general aviation permit are stipulated by the MOC.

IX. International Air Transport Regulations

9.1. International Scheduled Air Transportation

International scheduled air transportation is an air transportation activity providing air transportation from one airport in the country to another airport outside the territory of the ROI. For the purpose of passenger and cargo transportation based on an air transport agreement between Indonesia and foreign country, a national scheduled air transportation company may carry out international 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 transportation services. A national scheduled air transportation company may also collaborate with a foreign air transportation services.⁷⁴ Bilateral or multilateral agreements will be implemented in accordance with the relevant provisions of law and regulations, and national interests will be taken into consideration based on the principle of fairness and reciprocity. Foreign scheduled air transportation companies specially transporting cargo must be appointed by the country concerned and possess authorization from the government of the Indonesia.⁷⁵

Bilateral agreements can be specified 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: State 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 form the government of the ROI.⁷⁶

With regard 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 destination, are also primarily supported by the large number of outbound travelers from the Indonesian labor market, and those individuals undertaking religious journeys when the operators need to add extra flights in certain seasons.⁷⁷

⁷⁰ Ibid. Art 101, explanatory notes.

⁷¹ Ibid. Art 102

⁷² Ibid. Art 116

⁷³ Ibid.

⁷⁴ Ibid. Art 88

⁷⁵ Ibid. Art 89

⁷⁶ Ibid. Art 45

⁷⁷ Martono and Amad Sudiro, "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 the National Law University, New Delhi, India, May 2012).

The main problem faced by Indonesia's national airlines is their capability to compete against foreign airlines. It is the 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. Furthermore, 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.

9.2. Implementation of International Air Transportation

The implementation of international air transportation is regulated in the bilateral or multilateral agreement signed by the ROI. Such regulations provides, as usual, designation of airlines; authorization of services; inauguration of services; revocation of permits; amendment of modification; miscellaneous provision including entry into force of the agreement, the duration of agreement, the consultation provisions, the transfer of funds, the confirmation of the multilateral agreement and settlement of disputes provisions.⁷⁸

In addition, the bilateral or multilateral agreement also provides route structure including points of departure, intermediate points, points of destination, if necessary, point beyond the territory; pattern of international services including through services and terminating services; traffic stream including total-route traffic and inter-parters traffic, national traffic, grantor's traffic and third country traffic,⁷⁹ whilst exchange of capacity including general principles governing capacity including capacity criteria such as total-route traffic criteria, inter-parters criteria and national traffic criteria and predetermination of capacity and change of gauge.

9.3. Tariff Regulation of International Air Transport

With regard to tariff provisions, the bilateral or multilateral agreement concluded by Indonesia provides scope of tariff, general principles governing tariff, procedures for establishment of tariffs, validity of the tariff and control of tariffs as well.

9.3.1. Scope of Tariff.

In line with the Standard Bilateral Tariff Clauses issued by the ICAO on 8 March 1978,⁸⁰ the scope of tariff includes the prices or charges and condition for agency and other auxiliary services. In this regard, the majority of Indonesian bilateral air transport agreement provide for the tariff together with the rates of agency commission used in conjunction with them.⁸¹ The agreement with the United States of America specifies the scope of tariff application by adopting the provision respecting tariffs incorporated in Article 7(1) if the ECAC Standard Clauses.⁸²

9.3.2. General Principles Governing Tariff

The agreement between Indonesia and India lays down certain general principles for the regulation of tariffs. This agreement stipulated that the tariffs "shall be established at a reasonable levels due regard being paid to all relevant factors."⁸³ These factors include the costs of operation, reasonable profit, characteristics of services (such as standard of speed and accommodation), and tariff charged by other airline on the routes. With slight variations in wording, a majority of Indonesian bilateral air transport agreements⁸⁴ provide that the tariff shall be established at reasonable levels.

9.3.3. Procedures for Establishment of Tariffs.

With regards to procedures for establishment of tariff, most an Indonesian bilateral air transport agreement refers expressly to the International Air Transport Association (IATA) ratemaking machinery as the channel through which agreement the airlines is to be made and consultation with other airlines conducted.⁸⁵ The simplest agreement, the one with Taiwan, merely provide that the rate to be charged for the carriage of

⁷⁸ Martono K., *Route, Capacity and Tariff Clauses of Selected Bilateral Air Transport Agreement Concluded by Indonesia*. A Thesis submitted to the I.A.S.L. McGill University, Montreal, 1980, unpublished.

⁷⁹ Ibid.

⁸⁰ *Standard Bilateral Tariff Clauses*, ICAO Doc.9928-C/1036, Montreal, 1978.

⁸¹ Agreements with the United Arab Republic, Burma, Belgium, Cambodia, (former) Ceylon, Denmark, France, Malaysia, the United Kingdom, India, Italy, Lebanon, Norway, the Philippines, Singapore, Sweden, Thailand and the (former) Union of Soviet Socialist Republics. See also Martono K., *supra* note 19.

⁸² Ibid. p 162

⁸³ Ibid.

⁸⁴ Ibid. Agreements with the United States of America, the (former) United Arab Republic, Australia, Belgium, Burma, Cambodia, (former) Ceylon, Czechoslovakia, the Peoples' republic of China, Denmark, France, Germany, the United Kingdom, India, Italy, Lebanon, Malaysia, the Netherlands, Norway, Pakistan, the Philippines, Singapore, Sweden, Thailand and the Union of Soviet Socialist Republics.

⁸⁵ Ibid. p.164

passengers and cargo shall normally be established by the rate-fixing machinery of IATA and subject to the approval of the aeronautical authorities of both contracting Parties.⁸⁶

9.3.4. Validity of the Tariff.

In the majority of Indonesian bilateral air transport agreements, the coming into force of the tariff is expressly made subject to the approval of the aeronautical authorities of both contracting Parties.⁸⁷ In the event of disagreement or dissatisfaction with the tariff, the parties concerned will have the legal duty to prevent the new tariff from coming into force, pending the final settlement of disputes. For the transition period, the agreement with Australia provides that the tariffs already in force shall be applied, whilst the agreement with Japan provides that, pending determination of the tariffs already in force shall prevail.⁸⁸

9.3.4. Control of Tariffs

Control of compliance with tariffs is usually exercised by the aeronautical authorities of both contracting parties under their owned national laws and regulations. The agreement with the United States of America contains a stipulation for tariff control. This agreement stipulates that the aeronautical authorities of both contracting Parties shall use their best effort to ensure that the rates charged and collected conform to the rates filed with either contracting Parties. Both contracting Parties shall endeavor to ensure that the airline's rabates any portion of such rates, by means, directly or indirectly.⁸⁹

9.3.5. International Flight Passenger Service Fees

As per Article 464 and 465 of the Civil Aviation Act of 2009,⁹⁰ international flight passenger service fees are regulated by Ministerial Decree Number KM 27 of 1996, according to which all international flight passengers must pay an international flight passenger service fees. International flight passenger service fees are determined according to the facilities provided by the airport operator concerned. However there are certain categories of passengers that are exempt from any charges such as infant/baby passengers who pay only 10% of the fees, a travelling group of foreign government guests, transit/transfer passengers, personnel of the Indonesian Directorate General Air Communications (DGAC) and extra crew members listed in the passenger manifest.⁹¹

9.3.6. International Air Navigation Service Fees

All aircraft flying over the territory of the Republic of Indonesia have to pay air navigation service fees, which are to be paid to the Technical Implementation Unit (UPT), which is an agency under the DGAC, MOC that implements airport regulations. At times, the fees are paid to the airport operator, which can be either the state-owned enterprise PT Angkasa Pura I (PAP I) or PT Angkasa Pura II (PAP II). State aircraft used for non-commercial service, aircraft used for the purposes of Search and Rescue (SAR) operations, for humanitarian missions, foreign civil aircraft used to transport a group of foreign government guests, civil aircraft owned by the DGAC for calibration activities, and crew training and missionary flights are all exempt from paying air navigation service fees.⁹²

9.3.7. Landing Service Fees

All aircraft engaged in international flights which land at Indonesian airports shall be charged landing service fees.⁹³ International landing service fees are calculated based on the weight of aircraft type of flight and a group of airports determined by the MOC, but the level of landing service fees excludes the value tax. Landing of an aircraft without prior flight approval issued by the DGAC shall result in a fine equal to 100 times the applicable landing service fees. Landing service fees for scheduled or non-scheduled flight shall similarly be paid to the UPT for the airport or the airport operator managed by the aforementioned state-owned enterprise.

9.3.8. Stand Parking Service Fees

An aircraft engaged in international flight which lands at Indonesian airports shall be charged stand parking service fees.⁹⁴ The stand parking service fees shall be calculated based on the weight of aircraft, type of

⁸⁶ Ibid. p.165.

⁸⁷ Ibid. p.172

⁸⁸ Ibid. p.173

⁸⁹ Ibid. p.174

⁹⁰ *Civil Aviation Act, supra* note 7.

⁹¹ Indonesia, *Ministerial Decree Number KM 26 year 1996 Concerning Domestic Aircraft Passenger Service Charged* (1 May 1996), Art 8.

⁹² Indonesia, *Ministerial Decree Number KM 23 Year 1996 Concerning Air Navigation Tariff for International Flight* (3 April 1996), Art 6

⁹³ Indonesia, *Ministerial Decree Number KM 24 Year 1996 Concerning Landing Fees, Parking Stand Fees and Aircraft Storage Fees for International Flight* (3 April 1996).

⁹⁴ Ibid.

aircraft, period of time since aircraft parking (block on) and aircraft take-off (block off), and a collection of parking stand service fees determined by the MOC. Parking of aircraft for less than two hours is free of charge. Any aircraft parking in the traffic stand for more than two hours shall be charged the aircraft parking surcharge determined by the MOC.⁹⁵ The abovementioned aircraft parking service shall be borne by the airlines or aircraft operator concerned and payment shall be made together with the payment of parking stand service fees, landing fees and aircraft storage fees.

Any foreign registered aircraft that engages in domestic flights shall be deemed to cater international flights and for that reason must pay an international aircraft storage service fees.⁹⁶ International storage service fees are calculated based on the weight of aircraft, type of flight, the time period is stored in and released from the hangar, and a collection of aircraft storage service fees determined by the MOC. Landing service fees for local flights are 50% of the tariff level for international landing service fees, whilst the landing service fees for flight training crews or flight tests are 25% of the tariff level for international landing service fees.⁹⁷ The tariff for an international scheduled flight due to emergency conditions or return to base is 50% of the tariff for international landing service fees. Certain aircraft, such as State aircraft used for non-commercial services, and aircraft used for the purposes of SAR, are exempt from paying air navigation service.⁹⁸

X. International Non-Scheduled Air Transportation.

National as well as foreign air transportation companies for passenger and cargo transportation may conduct non-scheduled air transportation.⁹⁹ Any international scheduled air transportation activities undertaken by national or foreign air carriers must be approved by the MOC. In addition, any international non-scheduled air transportation undertaken by foreign air transportation companies may be approved by the MOC only after acquiring prior clearance(s) from the Minister(s) responsible for diplomatic clearances and security clearances.¹⁰⁰

Any foreign non-scheduled air transportation company serving flight routes to Indonesia is prohibited from transporting passengers from Indonesia's territory, except with regard to their own inbound traffic. Any foreign non-scheduled air transportation company that violates this prohibition on transportation of passengers from Indonesian territory shall receive administrative sanctions. The systems and procedures for imposing administrative sanctions are stipulated under a government regulation regarding non-taxable State revenue.¹⁰¹ A foreign non-scheduled airfreight company serving routes to Indonesia is prohibited from loading cargo in Indonesian territory unless such activities are authorized by the MOC. Any foreign non-scheduled air transportation company specializing in cargo shipment that violate these provisions with regard to the prohibition on loading cargo in an Indonesian territory will also receive administrative sanctions. Furthermore, the provisions regarding non-scheduled air transportation, air transportation cooperation and the procedures with regard to the imposition of administrative sanctions are stipulated by the MOC.¹⁰²

XI. Conclusion

Based on the above-mentioned descriptions, could be concluded that with regards to the substance of domestic air transport has been described in line with the right of sovereign state provided in Article 1 of the Chicago Convention of 1944 and consistent with the principle regulation provided in the CAA of 2009, whilst with regards to international air transport has been described consistent with the guidance recommended by the ICAO as implementation of Article 6 of the Chicago Convention of 1944.

⁹⁵ Ibid. Art 14

⁹⁶ Ibid. Art 4

⁹⁷ Ibid. Art 5(2)

⁹⁸ Ibid. Art 11(1) (c)

⁹⁹ Ibid.

¹⁰⁰ Civil Aviation Act, supra note 7, Art 93

¹⁰¹ Ibid. Art 94

¹⁰² Ibid. Art 96

Personnel Identity



Prof. Dr. H.K. Martono S.H., LL.M., Mc.Sc., CLA

Name : K. Martono
Born : Surakarta, 14 January 1939
Titles : Professor (National and International Air Law), PhD (Diponegoro University, Semarang), LL.M. (Mc Gill University, Montreal), SH (Faculty of Law, The University of Indonesia).

: Kompleks Perhubungan Udara B/20 Rawasari Jakarta Pusat, 10570, INDONESIA

Gender : male
Passport Number : R 221753
Nationality : Indonesia
Mobile phone : 0813 808 72180
: 021 567 1748, 560 447; Fax 021 563 8336

: <http://hukum.tarumanagara.ac.id>

martono@fh.untar.ac.id or martono141@gmail.com or martono141@yahoo.com

Lecturer : Faculty of Law, the University of Tarumanagara

Educations

Civil Aviation Training Center CATC, Curug, graduate 1960

Faculty of Law, the University of Indonesia, graduate in 1971

Air and Space Law, Mc Gill University, Montreal graduate in 1980

Doctor in Law, Diponegoro University, graduate in 2006

Certificate of Mediator, Supreme Court of the Republic of Indonesia (short course)

Certified Legal Audit (C.L.A.) (short course)

Prof. Dr. K. Martono was previously the chief of legal division of the Directorate General of Air Communications, Ministerial of Communications, retired in 1944 and thereafter as a lecturer in the University of Tarumanagara. Prof. Dr. K. Martono has attended the legal committee meetings in ICAO, Montreal, Canada, and domestic as well international seminars as **participant, moderator, speaker** and also **resource person** for the House of People's Republic's Representative (DPR-RI) dealing with Civil Aviation Act Number 1 of 2009. Prof. Martono writes extensively on a variety of aviation law and regulations.

Academic Activities

a. Published Books : 14 books

International Journal

- [1]. *Current Air Transport Regulation in Indonesia*, published in Volume XXXVIII Annals of Air and Space Law 50-92 (2013).
- [2]. *Aviation Tariff Regulations in Indonesia*, published in Volume XXXIX Annals of Air and Space Law 162-212 (2014)
- [3]. *Law and Regulations of Aircraft Accident Investigation in Indonesia*, Published in Aviation Law Review, Publisher: Law Press-China (303-322)
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- [6]. *The INTERNATIONAL CONFERENCE : "Harmonizing ASEAN Legal System Through Legal Higher Education*, in Hotel Mercure Convention Centre, Jakarta, on 11 June 2014, entitled :"*The Legal Liability of Air Carriers and Others Business Activities at the Airport in Indonesia*."
- [7]. The Conference of *CELEBRATING 70 YEARS OF THE CHICAGO CONVENTION and 100 YEARSS OF WORLD COMMERCIAL AVIATION LAW FORUM*, Hosted by Northwest University of Political Science & Law, China and Mc Gill University Institute of Air & Space Law, Canada.

- Organized by the Institute of Air and Space Law, NWUPL, School of International Law, NWUPL, Xi'an, China December 18-19, 2014, entitled "The Indonesian Aviation Law in the Framework of ASEAN Multilateral Agreement on Air Services (AMAAS)."
- [8]. A Legal Analysis of the ASEAN Multilateral Agreement on Air Services, presented in the Civil Aviation Indonesian Congress (CAIC) on 5th February 2015, in Golden Ballroom2, Sultan Hotel Jakarta.
- [9]. Air Transport in Indonesia (Year 2015), presented in the Civil Aviation Indonesian Congress (CAIC) on 5th February 2015, in Golden Ballroom 2, Sultan Hotel, Jakarta.

Others

Resource person for the House of People's Republic's Representative (DPR-RI) dealing with Civil Aviation Act Number 1 of 2009.

Practices

Prof. Martono also practices as a researcher and testified an aviation expert in such disputes as Cengkareng populations vs JAL C.Ltd (2001), Mochamat Jusuf vs PT Eka Sari Lorena (2007), Daniel Setiawan vs Korean Airlines (2007), Polisi vs Capt. Marwoto (Yogyarta) (2007), Bambang Darwoto (Dir.ut PT Angkasa Pura I) vs Komisi Pengawas Usaha RI (2008), Kejaksaan vs Indera Setiawan (2008), Suciwati vs PT Garuda Indonesia (2008), Sigit Sucahyono vs Singapore Airlines (2008), Jimmy Turangan vs Lion Air (2008), Ario Wibisono vs Lion Air (2008), Polisi vs William Henry Scott-Bloxam (2008), PT Batavia Air vs PT GMF Aero (2008), PT GMF Aero vs PT Metro Batavia Air (2009), Polisi vs Mandala Airlines, PT Garuda Indonesia vs Yul Akhyari (2009), PT Angkasa Pura II vs Direktorat Jenderal Pajak (2009), Boeing vs Mandala Airlines (2010), PT Garuda Indonesia vs Maharani Caroline Salindeho, Ternate (2012), Simbolon & Partners Law Firm vs Pilatus Aircraft Ltd, Jakpus (2013), Fredrik J. Pinakunary Law Office vs Ellen Nawawi (Jakarta-July 9, 2013), IAT vs PT Badak Bontang (Sept.2014), Setneg (Kemayoran) vs Penggugat (PN Jakpus) 5 Nop.2014; Mahkamah Konstitusi (MK) antara Perhubungan Udara vs Penggugat Pasal 118 UURI No.1 Tahun 2009 pada bulan April 2015