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Aviation Criminal Laws Applicable In Indonesia¹

Dr Amand Sudiro and Dr K.Martono

Abstract: This Article deals with introduction, legal ground of aviation criminal law, aviation criminal law for domestic flight including (a) penal code (KUHP), (b) Act Number 15 of 2003, (c) Act Number 1 of 2009; aviation criminal law for international flight includes (a) Tokyo Convention of 1963 includes the main content of the Tokyo Convention of 1963, jurisdiction, power of the aircraft commander and duties of States, (b) The Hague Convention of 1970 includes scope of application, jurisdiction, (c) Montreal Convention of 1971, (d) Montreal Protocol of 1988; aviation criminal law related to ASEAN includes (a) aviation security in the AMAAS, (b) counter-terrorism action plan in Indonesia; Aviation criminal cases and others in Indonesia includes (a) hijacking, (b) aviation criminal related to aircraft accidents, (c) aviation criminal related to terrorism, and (d) entering the Indonesian territory without permission.

Keywords: aviation criminal, hijacking, terrorism, and Indonesia.

I. Introduction

Within the period of 30 (thirty) years from 1980 to 2010, hijacking incidents have accounted to 46 (forty six) events which shook the international community. One of the eventful incidents that occurred in Indonesian territory was the hijacking of flight Garuda Indonesia GA 206 on March 28, 1981. This was the first serious Indonesian airline hijacking, since it was conducted by a desperate Marine hijacker who was killed by the pilot himself. With regards to terrorist attacked, within 10 (ten) years the total of terrorist attacked at least 12 (twelve) occurrence² such as assassination attempt on President Sukarno, a bomb attack in Perguruan Cikini, Central Jakarta.³ In addition, there were also occurrences of foreign aircraft entering the territory of the Republic of Indonesia (ROI) without getting diplomatic clearance, security clearance as well as flight approval given by the authorities concerned. It is the reason to discuss the violation of the law and regulations in Indonesia, especially related to aviation criminal law. This article deals with Penal Code (KUHP), the Act Number 15 of 2003 and the Act of 2009 for domestic flight and Act Number 2 of 1976 for international flight.

II. Legal Ground Of Aviation Criminal Law

As in other member states of the International Civil Aviation Organization (ICAO), Indonesia applies two legal regimes of aviation criminal laws such as national aviation criminal laws for domestic flights such as Penal Code (*Kitab Undang-Undang Hukum Pidana-KUHP*), the Act Number 15 of 2003,⁴ the Act Number 1 of 2009,⁵ and the Act Number 2 of 1972,⁶ the Act Number 4 of 1976,⁷ applicable of international aviation criminal law. Penal Code (KUHP) is *lex generalis* applicable to any criminal act in Indonesia, Act Number 15 of 2003 is *lex specialist* applicable to any terrorism wrong doing, whilst the Act Number 1 of 2009 is *lex specialist* applicable for domestic aviation criminal laws. The Acts Number 2 of 1976⁸ and Number 4 of 1976, both are *lex specialist* applicable for international criminal laws.

Taking into consideration that Indonesia is a signatory to the Chicago Convention of 1944 (the CC of 1944)⁹, the state is committed to comply with the international criminal aviation laws and regulations adopted by Resolution of the ICAO General Assembly,¹⁰ and Standard and Recommended Practices (SARP) adopted by ICAO. This article explains the content of the international convention regarding aviation penal laws for international flight and aviation penal laws applicable for domestic flight. Indonesia has repeatedly voiced its

¹ Edited by Mr Edy Tarlesno, the University of Tarumanagara Jakarta, INDONESIA

² Topo Santoso, *Anti-terrorism Legal Framework in Indonesia: Its Development and Challenges*. MIMBAR HUKUM Volume 25, Nomor 1, Februari 2013, p.8

³ List of terrorist incidents in Indonesia. Wikipedia, the free encyclopedia. Jump to: navigation, search.

⁴ Act Concerning Terrorist, Act.No.15 of 2003.

⁵ Act Concerning Civil Aviation, Act No.1 of 2009

⁶ Act Concerning the Ratification of Tokyo 1963, The Hague of 1970 and Montreal Convention of 1971. Act No.2 of 1976.

⁷ Act concerning the supplement of KUHP, Act No.4 of 1976

⁸ Act concerning the Ratification of *Convention on Offences and Certain Other Act Committed on Board Aircraft*, signed at Tokyo on 14 September 1963. For full text see P.S. Dempsey Ed., *Annals of Air and Space Law Vol.LXXX Part 1 – 2005*. Toronto : The Carswell Company Ltd pp.>>>>

⁹ Indonesia adhered the Chicago Convention of 1944 on 27 April 1950, see Paul Stephen Dempsey Ed., *Annals of Air and Space Law*, 2005 Volume XXX-Part I. Toronto : The Carswell Company Ltd, p.52 [hereinafter Chicago Convention of 1944].

¹⁰ ICAO Doc.10022, Assembly Resolutions in Force (as of 4 October 2013)