

Diplomacy Review of Delegation of Republic of Indonesia to the International Civil Aviation Organization in Montreal Canada

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Info Artikel

Keywords:

ICAO, KKIP, aviation
diplomacy, civil aviation, politics
in aviation

Abstract

The International Civil Aviation Organization (ICAO) is an important institution that mandates the world's civil aviation authorities to play a role in reforming Standards and Recommended Practices (SARPs) of civil aviation. SARPs are the main reference for all parties related to the issue of international civil aviation. Indonesia's relationship and cooperation with the ICAO is therefore, important and should be a priority. ICAO is an organization where Indonesia is able to protect and defend its national interests. Relations and cooperation with ICAO are priorities in order to help and improve Indonesian civil aviation safety and security. This study was based on observations made by the Permanent Delegation of Republic of Indonesia on the diplomatic role played in ICAO during 2020 by studying the latest aspects of ICAO governing bodies, development of specific issues, pending issues and follow-up of Indonesia diplomatic role in ICAO. In general, the aim of the diplomatic role in ICAO is focused on supporting the achievement of three items; 1) securing Indonesia's national interest in international civil aviation cooperation; 2) support international civil aviation programs and issues that are ICAO's priority; and 3) improve Indonesia's position in ICAO, especially in order to prepare for Indonesia's candidacy to the ICAO Council.

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INTRODUCTION

International Civil Aviation Organization (ICAO) is a special agency of the United Nations (UN) which is responsible for the safety international civil aviation. ICAO was established through the Convention on International Civil Aviation 1944 (Chicago Convention 1944) which was signed on December 7, 1944. ICAO currently has 193

member countries with Dominica as the last country to officially join on April 13, 2019.

ICAO is tasked with developing Standards and Recommended Practices (SARPs) and formulating civil aviation policies that support the safety, security and efficiency of civil aviation. ICAO is also tasked with supporting the goals of sustainable economic development and environmental

preservation in relation to civil aviation. In addition, ICAO also coordinates assistance and capacity building for the state, compiled a global action plan to improve the safety and air navigation aspects of civil aviation, conducts safety and security audits of civil aviation and monitors the growth of the global air transportation industry.

In carrying out its duties, ICAO is guided by the Chicago Convention 1944 and 19 Annexes which contain more than 12,000 SARPs and are the main reference for all civil aviation stakeholders (civil aviation authorities, regulators, airlines, airport authorities, immigration and international civil aviation organizations). ICAO also developed Procedures for Air Navigation (PANS) to explain and complement the SARPs, Regional Supplementary Procedures (SUPPs) which apply specifically to certain areas and Guidance Materials. The majority of the work of the ICAO organization is centered on the development (standards-making process) and / or modernization (amendment process) of SARPs, PANS, SUPPs and Guidance Materials. The Indonesian government became a member of the ICAO on December 17, 1950 and 1962, officially a Category III Council Member. Indonesia ceased to be a Council Member during 1965 - 1968 period when the Indonesian Government decided not to be represented in international organizations in accordance with political policies. Indonesia then became a member of the ICAO Part III Council again for the period 1968 - 2001. Furthermore, Indonesia was failed to be elected as a member of the ICAO Part III Council in 2001, 2004, 2007, 2013 and 2016 ICAO Assembly Sessions.

As a country that has a large airspace and a fast-growing civil aviation industry, Indonesia has a vested interest in being actively involved in various committees / commissions / working groups within ICAO responsible for the preparation of SARPs, PANS, SUPPs, Guidance Materials and other technical documents. Indonesia now needs to strive to become a member of the ICAO Council again to play a more strategic role in the ICAO decision making process. Indonesian Government has already signed a Management Service Agreement (MSA) which provides a basis for cooperation between Indonesia and ICAO. This has led to the establishment of the Delegation of Republic of Indonesia Office at ICAO in Montreal (KKIP Montreal) on February 2, 2012. The Montreal KKIP Office's role is to

further enhance Indonesia's active role and position in ICAO.

GOVERNING BODIES ICAO

ICAO has 4 (four) main governing bodies, namely:

1. ICAO Assembly (Assembly)

The ICAO Council is the highest decision-making and policy-making body in ICAO and meets once every three years (triennium). The ICAO Assembly has the task of selecting member countries of the Council, discuss and decide on strategic issues submitted / reported by the Council, determining the organization's budget arrangements, and determine the direction of the organization's strategic policies and making decisions on all issues raised at Assembly meetings.

The ICAO Assembly can be said to be a 'rubber-stamp' for most of the policies that have been identified under the control of the ICAO Council and its committees / commissions / working groups. Member countries can propose an initiative to be discussed and decided on together at the ICAO Assembly meeting. However, given the limited time and the large number of the discussion agendas, the initiative of member countries is usually discussed intensively behind the scenes before being officially submitted to the Assembly. The last ICAO Assembly Session was held for the 40th time at the ICAO Headquarters, Montreal, 24 September - 4 October 2019.

2. ICAO Council

The ICAO Council is the highest executive body in ICAO. This agency establishes SARPs, PANS, SUPPs, Guidance Materials and other technical documents designed and proposed by the Aviation Navigation Commission (ANC). It further discusses an identified ICAO issues in an effort to achieve the organization's strategic objectives as well as organizational administrative issues.

The ICAO Council is chaired by the President of the Council which is currently served by Mr. Salvatore Sciacchitano, who was elected on 25 November 2019 for a period of three years commencing on 1 January 2020. The ICAO Council members consist of 36 countries for the 2019-2022 period:

Part I: States of Chief Importance in Air Transport
Australia, Brazil, Canada, China, France, Germany, Italy, Japan, Russia, UK and the United States (11 countries);

Part II: States which make the largest contribution to the provision of facilities for international civil air navigation

Argentina, Colombia, Egypt, Finland *, India, Mexico, Netherlands *, Nigeria, Saudi Arabia, Singapore, South Africa and Spain. (12 countries);

Part III: States ensuring geographic representation

Costa Rica *, Ivory Coast *, Dominican Republic *, Equatorial Guinea *, Greece *,

Malaysia, Paraguay *, Peru *, South Korea, Sudan *, Tunisia *, United Arab Emirates, and Zambia * (13 countries).

The composition and categorization of the ICAO Board is mandated by the Chicago Convention (Article 50). However, this mandate also causes the nomination and election of DPR members to become a kind of political game between regional groups so that the nominations of ICAO Council member countries, especially for Part II and Part III, are generally the result of an intra-regional rotation political agreement and mutual support between regions in a specific ICAO Region. The political picture of regional rotation in ICAO is identified in Fig 1 below. :

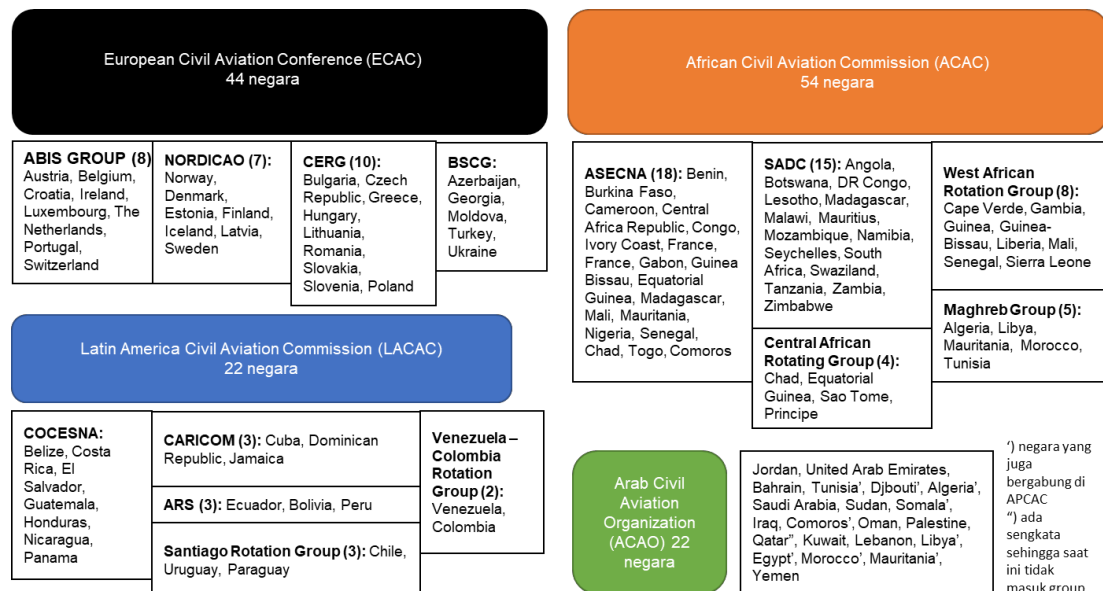


Figure 1. The Politics of Regional Rotation at ICAO

Asia Pacific is the only region that does not have a representative group in ICAO. This causes Asia Pacific to have a relatively weak position in ICAO when compared to other regions. Currently, the Asia Pacific region is only represented at ICAO by 7 countries, namely Australia, China, India, Japan, Malaysia, Rep. Korea, and Singapore. This number is small when compared to the number of ICAO Council member countries representing the Latin America and the Caribbean region with 9 countries and even Africa with 8 countries. Indonesia's main competitors for the nomination of ICAO

Council membership in the Asia Pacific region for Part III are Malaysia and Rep. Korea.

The ICAO Council holds three trial sessions in one year, namely in winter (February), spring (June) and winter (November). One trial session is held in 3 weeks.

3. Air Navigation Commission (ANC)

ANC is a strategic committee tasked to design the technical aspects of international civil aviation and contained in Standard and Recommended Practices (SARPs) and Procedures for Air Navigation Services (PANS). In simple terms, ANC is the

"kitchen" that deliberate all of the main ICAO Panel recommendations of on safety, security and air navigation and environmental protection before submitting it to the ICAO Council for approval.

The ANC is chaired by Mr. Nabil Naoumi and consists of 19 expert commissioners nominated by the state and based on the level of expertise in the field of civil aviation. Indonesia is currently represented by two alternate representatives as observers in the ANC.

4. ICAO Secretariat

The ICAO Secretariat is permanently employed staff responsible for facilitation and implementation of daily organizational tasks. The ICAO Secretariat is led by a Secretary General who is currently chaired by Dr. Fang Liu (for the period 1 August 2018 - 31 July 2021), and assisted by 7 Regional Office Directors (RO), 5 Bureau Directors, and 6 Chiefs of Office Administration.

DEVELOPMENT OF ISSUES AT ICAO

1. Aviation Safety Issues (Safety)

Enhancing the safety of the global air transport system is the basic goal of ICAO. The ICAO even aspirational safety goal, is realizing zero fatalities in the operation of civil aviation by 2030. For this reason, ICAO continues to innovate to achieve this goal through various activities like policy making and standardization, monitoring key safety trends and indicators, implementing safety analysis and implementation of programs addressing safety issues.

In 2019 there was an increase in the number of airplane accidents, namely 114 accidents compared to 98 of the previous year. Accident rates in 2019 also increased to 2.9 accidents compared to the 2018 rate of 2.6. However, the number of fatal accidents in 2019 decreased to 6 accidents compared to 11 accidents recorded in 2018. The number of fatalities also decreased in 2019 to 239 people compared to 514 people in 2018.

At the 40th ICAO Assembly Session in September 2019, member countries agreed to Resolution A40: 1 concerning ICAO global planning for safety and air navigation, which was ratified in the 2020 – 2022 Global Aviation Safety Plan (GASP, Doc 10004) which would guide harmonization of regulations and global policies in the field of aviation safety in order to achieve zero accident aspirational safety goals.

In addition, the ICAO 40 Assembly also agreed on several other resolutions related to safety, namely:

- a. A40-2: Protection of accident and incident investigation records;
- b. A40-3: Protection of safety data and safety information collected for maintaining or improving safety and of flight recorder recordings in normal operations;
- c. A40-5: Regional implementation support mechanisms;
- d. A40-8: Global provisions for design, certification and operations of water aerodromes.

Resolution A40-8, was achieved by Indonesia and Canada where both countries submitted a working paper on this specific issue.

ICAO also has an aviation safety audit program for member countries known as the Universal Safety Oversight Audit Program Continuous Monitoring Approach (USOAP-CMA). The USOAP-CMA program was initiated in 1999 and has undergone a significant evolution from initially being limited to audits for compliance with Annex 1 (Personnel Licensing), Annex 6 (Operation of Aircraft) and Annex 8 (Airworthiness of Aircraft), to being expanded to include Annex 11 (Air Traffic Services), Annex 13 (Aircraft Accident and Aircraft Investigation) and Annex 14 (Aerodromes). In addition, the audit mechanism was also expanded to add new features such as a web-based platform, online framework and the State Safety Program Implementation Assessment (SSPIA) cycle.

The results of USOAP - CMA can be in the form of lack of effective implementation (LEI) or effective implementation (EI) and become a potential safety indicator of a country's civil aviation safety audit.

2. Issues of Capacity Building and Efficiency of Flight Navigation (Air Navigation)

The 40th ICAO Assembly Session in September 2019 has authorized the sixth edition of the Global Air Navigation Plan 2016-2030 (Doc.9750) as a strategic policy document for global civil aviation navigation. The sixth edition of GANP is a comprehensive elaboration of the development efforts to implement the evolution of performance-driven air navigation capacity and efficiency, by proposing a multi-layer directive strategy, namely: (i) Layer 1: Global (casting a vision, conception framework and global

performance ambition); (ii) Layer 2: Global Technical (encourages operational improvements and technical planning of cost-effective and performance-based air navigation services through the implementation of Basic Building Blocks / BBBs, Aviation System Block Upgrades / ASBUs, and Search and Rescue Procedures / SAR) ; (iii) Layer 3: Regional (adapting GANP to the target achievement of Regional Air Navigation Plans (R-ANPs); and (vi) Layer 4: National Planning.

In an effort to implement the sixth edition of the GANP, ICAO recommends harmonizing and strengthening the operation and capacity of airports, integrated Communications, Navigation, Surveillance (CNS), and qualified meteorological information services. In addition, ICAO also seeks to strengthen the interoperability of global aviation navigation systems, including the application of System-Wide Information Management (SWIM), Air Traffic Flow Management (ATFM), and Civil / Military Cooperation (CMC).

ICAO is also currently formulating policies, regulations and SARPs that are able to facilitate the challenges of the latest aviation technology advances that impact air navigation such as Operations above Flight Level 600 (OPS > FL600), Operations below 1000 Feet (OPS < 1000F), Remotely Piloted Aircraft System (RPAS), Unmanned Aerial System (UAS) / Drone, Cyber Security, Supersonic Aircrafts, and Commercial Space Operations.

3. Security and Aviation Facilitation Issues (Security and Facility)

The issue of security has become a major concern in global civil aviation since the terrorist attack in the United States on September 11, 2001. Prior to that, ICAO's performance related to security was only limited to developing SARPs for Annex 17 (Security). However, currently, ICAO's performance in aviation security is focused on 3 areas namely policy initiatives, audits that are focused on the capabilities of member countries and assistance to member countries that are unable to overcome the serious security deficiencies found in ICAO audits. Security audits are carried out within the framework of the Universal Security Audit Program - Continuous Monitoring Approach (USAP-CMA).

In addition, the ICAO Council in 2017 also endorsed the Global Aviation Security

Plan (GASeP) as the ICAO policy framework and program in the field of global civil aviation security. GASeP will replace the ICAO Comprehensive Aviation Security Strategy (ICASS) by providing reinforcement and guidance for countries and industry to set priorities for action, tasks and targets in the field of aviation security. Through GASeP, ICAO is expected to help prioritize tasks, work program and cooperation frameworks in the field of aviation security that are harmonious and mutually supportive at the national, regional and global (international) levels. GASeP is also expected to support ICAO's No Country Left Behind (NCLB) initiative to assist all member countries to implement ICAO Standards and Recommended Practices (SARPs) in the field of aviation security.

Aviation safety issues also cannot be separated from the support of flight facilitation in accordance with Annex 9 of the Chicago Convention. Facilitation support is through efforts to maximize the efficiency of formal border controls, clearance and security procedures related to immigration, customs, quarantine and health at points of entry and exit of the country's territory while maintaining the quality of security and law enforcement at the border.

Two sub-themes of ICAO Facilitation are to the implementation of the ICAO Traveler Identification Program (ICAO TRIP Strategy) and Public Key Directory (PKD).

ICAO TRIP is closely related to the management of border crossers (traveler identification management) which consists of five key elements, namely (i) proof of identity of border crossers; (ii) electronically standardized machine readable travel documents (MRTD) (such as e-Passports); (iii) issuance and monitoring of travel documents; (iv) MRTD system inspection and verification tools; and (v) application interoperability and the MRTD protocol.

PKD is a central repository managed by ICAO and contains information on immigration data of member countries to facilitate e-passport authentication when entering the immigration area. Prior to the PKD, immigration officers who wish to authenticate e-passports of passengers from other countries had to have access interoperability e-passport of information systems, which often encountered problems.

PKD is important as a way for a country to identify passengers. Currently, the UN has collaborated with ICAO in the field of counter-terrorism which is one of the UN

Agenda items. In this case, the United Nations and ICAO are committed to improve the traveler identification system through the TRIP and PKD facilitation program to simplify the identification process at the airport and minimize security risks that arise due to human mobility.

Border authorities now have a person's biometric data before the person arrives at the airport of the destination country. ICAO is targeting all non-MRTD passports not to be in use globally by 2022. Indonesia issued e-Passports since 2016 and is now encouraging its use nationally, as the next step. Indonesia officially became the 69th PKD member at the 40th ICAO Assembly meeting in September 2019.

4. Economic Development Issues in the Air Transport Sector

Air transport economic development issues are among the slowest currently developing in ICAO. This is accepted as reasonable due to a close connection with the issue of liberalization of air transport and freedom of the air, which from the beginning of the signing of the Chicago Convention has received opposition from member states, who prefers to protect their domestic air transport industry.

In this field, ICAO aim is to harm the air transportation cooperation framework and focus on economic policies and other supporting activities in order to ensure that international civil aviation has an economic value that can contribute to the global and national economy.

ICAO seeks to realize an economically viable international civil aviation system in all of its operational processes (from airports, airlines, aviation navigation services, etc.), and to strengthen efficiency and transparency in facilitating access to funding for the development of a solid civil aviation infrastructure so that ensures continued growth, development, and economic value.

For this reason, ICAO focuses on strengthening the provision of aviation data and database services, economic analysis and forecasting, competition compendium, infrastructure management and joint financing and investment as outlined in a number of ICAO Air Transport Policy and Regulations. ICAO is also currently attempting to harmonize regulations and economic development policies in the air transportation sector by designing the Global Air Transportation Plan (GATP) which is being

drafted by the ICAO Secretariat for further discussion at technical expert meetings.

Since the COVID-19 pandemic hit, ICAO's focus on air transport has been on the economic impact analysis of the impact of COVID-19 on air transport which is regularly monitored and updated by the ICAO Secretariat.

5. Environmental Protection Issues

The issue of environmental protection has become a major concern for ICAO since 2004. Based on the Fifth Assessment Report of the UN Intergovernmental Panel on Climate Change, the civil aviation sector, both domestic and international, contributes to the release of 2% of global carbon emissions. International civil aviation contributes to 1.3% of total global carbon emissions. For this reason, ICAO is currently working to prevent and mitigate the adverse impacts on the environment from global civil aviation activities through two aspirational goals, namely (i) increasing aviation fuel efficiency by 2 percent per year until 2050, and (ii) carbon neutral growth starting from 2020 (CNG2020).

In striving to achieve these aspirational goals, ICAO identifies four areas as a basket of measures, namely (i) development of aircraft technology and standards for improvement; (ii) operationalization and operational improvement of air traffic (air traffic management and operational improvement); (iii) development of sustainable alternative fuels for aircraft; and (iv) implementation of the Carbon Offsetting Reduction Scheme for International Aviation (CORSIA).

The ICAO Council, at its 214th Session of 2018, approved Annex 16 - Environmental Protection, Vol. IV - CORSIA as a new SARPs package in the implementation of CORSIA. At the end of 2017, 72 countries representing 87.7% of total air transportation activities, that stated that they joined the CORSIA pilot phase which will commence in 2021. Indonesia is one of the countries that have first declared joining CORSIA.

At the 40th ICAO Assembly meeting, member countries have adopted 3 main resolutions to affirm the country's commitment to achieve these aspirational goals and basket of measures, namely:

- a. Resolution A40-17: Consolidated statement of continuing ICAO policies and practices related to environmental protection - General provisions, noise and local air quality.

- b. Resolution A40-18: Consolidated statement of continuing ICAO policies and practices related to environmental protection - Climate change.
- c. Resolution A40-19: Consolidated statement of continuing ICAO policies and practices related to environmental protection - Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA).

However, the issue of CORSIA and Sustainable Aviation Fuels (SAF) recently received rejection from several countries represented on the ICAO Council, especially China, India and Russia who want a comprehensive review. These three countries do not want a carbon neutral growth target starting in 2020, despite the offsetting and carbon trading schemes.

These country's argument is that the 2020 and CORSIA carbon neutral growth mechanism is unfair because it imposes the obligation to reduce emissions on airlines not on individual countries according to the UNFCCC and Paris Agreement standards. In addition, the CORSIA offsetting calculation method that uses a sectoral approach is also considered to impose a greater burden on airlines in developing countries than in developed countries, even though so far developed countries have contributed the largest in greenhouse gas emissions.

China, Russia and India claim that the international aviation industry of developed countries has achieved maximum growth so that they will not be burdened by carbon-neutral-growth obligations on the basis of their total carbon emissions in 2020 which are already very high. On the other hand, developing countries are currently still trying to develop the international aviation industry so that the need for carbon emissions will continue to increase. The results of Russian research even show that the implementation of CORSIA offsetting using sectoral growth will be more burdensome for airlines in developing countries than in developed countries.

In addition, the viewpoint of these countries is that during the COVID-19 pandemic, the number of international flights has dropped dramatically and many airlines suffered financial losses and even facing bankruptcy. Therefore, the focus of the air transportation industry at this time should be on recovery and the target of reducing aircraft carbon emissions in CORSIA is considered to hinder this goal.

For the SAF issue, China, India and Russia have the view that the sustainability criteria underlying eligible fuels is unfair because they only use standards proposed by developed countries such as direct / indirect land-use change DLUC / ILUC. The issue of CORSIA and the determination of SAF criteria is currently being discussed at the ICAO Council, CAEP and related working groups.

6. Pandemic COVID-19

Pandemic COVID-19 had a very significant impact on the air transportation sector. In its October 2020 report, ICAO provides an estimate of the potential losses of world airlines throughout 2020 (January - December) of up to USD \$ 400 billion. The COVID-19 pandemic has also resulted in the largest reduction in aircraft passengers in history, namely 59% - 62% when compared to 2019. In 2020, global airlines also experienced a decrease in revenue passenger kilometers (RPKs), as much as 54.7%, for both domestic and international flights. Asia - Pacific is the worst affected region with a loss of up to 429 million passengers, resulting in a reduction in aircraft seat capacity by -74% and a potential loss of USD 89 billion.

The pandemic also had an impact on the airport industry. According to the Airport Council International (ACI), the global airport industry experienced a decrease in passenger volume by 59.6% or \$ 5.6 billion passengers throughout 2020. This impact reduced airport revenues by USD 104.5 billion or 60 % when compared to 2019. The decrease in the number of passengers directly impacts the global tourism industry sector where UNWTO estimates that the tourism sector's losses in 2020 will reach USD 1.1 trillion.

The air cargo industry has also not escaped the impact of COVID-19. Although currently air cargo is experiencing a rebound due to the high demand for export-import goods, the cargo industry does not have the capacity to meet the fluctuating demand during the pandemic. IATA estimates that on average, the Cargo Tonne Kilometres (CTK) air cargo market during 2020 will decline by -14%. According to the WTO, this situation also resulted in a decrease in global merchandise trade volume during 2020 by 32% which ultimately resulted in a global recession. The IMF and World Bank projected that world GDP will be reduced by -4.9% to -5.2% due to the COVID-19 pandemic.

All stakeholders doubt that the recovery of the civil aviation industry can be achieved in the near future considering that there is no certainty regarding the production and distribution of vaccines / drugs for COVID-19. ICAO projects that in the first quarter of 2021 (January - March), the COVID-19 pandemic will continue to result in a decrease in aircraft seat capacity, ranging from 34% - 47%, with an average decrease in the number of passengers from 504 - 681 million people and potential losses up to USD 96 billion.

IATA issued a long-term air passenger forecast which illustrates that even if the global economic recovery is faster than projected, consumer confidence in air travel may not recover quickly. IATA estimates that if the travel restriction is lifted, there will be an increase in demand for air travel for the purpose of family visits, but no demand for business and leisure travel. For this reason, IATA projects that the target of recovering the aviation industry to the level before the new pandemic will only be achieved in 2024. IATA also predicts that airlines will find it difficult to show positive net profits until 2022 due to the COVID-19 pandemic. In fact, many airlines have been declared bankrupt or have ceased operation, such as LATAM, Avianca, Virgin Australia, Flybe, South African Airways and Miami Air International. Furthermore, IATA reports that currently the majority of airlines can only survive bankruptcy due to government assistance in the form of direct financial aid, subsidies, tax breaks and fuel charges, which total up to USD 160 billion. IATA warned that with a projected slow recovery, the airline industry will continue to need a financial injection in 2021, with a range of USD 5 - 6 billion per month.

ICAO main aim, is how it can help member countries to recover the air transportation industry from the COVID-19 pandemic. These efforts, include:

- a. Establish a Council Aviation Recovery Taskforce (CART). The ICAO Council established CART in early 2020 and currently, there are 3 documents related to CART (CART Take-off guidance, Phase I and Phase II) which basically contain 14 main recommendations to governments and industrial operators in an effort to restart the international air transportation sector.
- b. Establish a COVID-19 Response and Recovery Platform to provide forecasts, guidance and other sources of information needed by aviation authorities in member

countries responding to the COVID-19 pandemic.

- c. Establish COVID-19 Contingency Related Differences (CCRD) as part of Electronic Filing of Differences (EFOD), where member countries can submit inconsistent rules / standards or non-compliance with ICAO SARPs related to certification.

IMPORTANT ISSUES AND FOLLOW-UP

1. Indonesia's Candidacy Challenge on the ICAO Council

Since officially joining as a member of ICAO on April 27, 1950, Indonesia has been a member of the ICAO Council (Part III) for 36 years in 12 periods (1962-1965, 1968-1971, 1971-1974, 1974-1977, 1977-1980, 1980-1983, 1983-1986, 1986-1989, 1989-1992, 1992-1995, 1995-1998, and 1998-2001), and has experienced four failed candidacies election attempts (2001-2004, 2010-2013, 2013-2016 and 2016-2019).

In the election of ICAO Council members (Part III) at the 38th ICAO Council Session in 2013, Indonesia received 97 votes of support from 176 ICAO member countries. During the election of ICAO Council members (Part III) at the 39th ICAO Council Session in 2016, Indonesia received 96 votes from 172 ICAO member countries.

As explained above, the process of electing members to the ICAO Council is basically the result of an intra-regional rotation political agreement and mutual support between regions in ICAO. Regional politics has the most important role in gaining seats in the Council, especially for Part II and Part III. Countries such as Equatorial Guinea can be elected to the ICAO Part III Council at the 40th ICAO Assembly meeting even though the value of USOAP implementation is lower than Indonesia. This mainly due to the fact that the country is part of the Central African Rotation Group (CARG) replacing the Congo for the previous period and nominated by the ASECNA rotation group.

Except for Asia-Pacific which does not have a regional group, member countries that are part of other regional groups such as the African Civil Aviation Commission / AFCAC (54 countries), Arab Civil Aviation Commission / ACAC (22 countries), European Civil Aviation Conference / ECAC (44 countries) and the Latin American Civil Aviation Commission / LACAC (22 countries), generally have agreed on direct mutual support arrangements between regions, not between individual countries.

This was proven at the 40th ICAO Assembly meeting, where ACAC distributed a document containing the position of the agreement between ACAC, AFCAC, ECAC and LACAC to mutually support the names of countries nominated by each regional group - it did not list the names of countries nominated independently.

The dissemination of these documents was strongly protested by Qatar, which at that time ran independently as a violation of the ICAO Council election procedures, but the protest was not followed up by the Assembly or the ICAO Council. In the end, Qatar lost by only getting 112 votes in the ICAO Part III Council elections, despite having made significant campaigns and contributions, particularly in providing technical assistance and direct donors to ICAO and the African region.

Based on these realities, Indonesia face a big challenge to return as a member of the ICAO Council, especially for the 2022 election with less than 2 (two) years of preparation time left. The main challenges faced by the Indonesian government in the process of being nominated to the ICAO Council are summarized below.

a. The COVID-19 Pandemic Situation

The COVID-19 pandemic has made it difficult for Indonesian to operate in the ICAO arena, and more specifically because of the many on-site meetings that were canceled or changed to virtual formats. High-level conference meetings, which are usually held separately for each issue (aviation safety, aviation security meeting and environmental protection), are currently planned to be combined in one high-level conference in 2021 which is likely to be held virtually with a limited agenda. This situation makes it difficult for Indonesia's lobbying efforts to high-ranking officials from other countries.

Indonesia also has difficulty providing technical Trainair Plus Program (TPP) training to ICAO member countries due to the closure of territorial borders and other restrictions. It is also feared that the country's priority is currently more focused on efforts to recover the air transportation industry from the impact of the COVID-19 pandemic rather than discussing the election to the ICAO Council. It is therefore, difficult to find the right moment lobby support from other States for Indonesia's candidacy on the ICAO Council.

b. Increasing Real Contribution to Political Support of the Nomination of the ICAO Council

With the regional rotation process in the ICAO Council election, individual candidate countries have difficulty to gain support from other regional groups, especially the African region, which is supported by 54 member countries. This position is used by African countries to "sell" their votes to get financial assistance from ICAO and other countries. Individual candidate countries therefore, generally have to make 'extra efforts' to gain support from regional groups, which are generally carried out through the provision of contributions in the form of funds, technical cooperation projects (technical assistance) and training as well as development investments.

ICAO has a Regional Implementation Plan for Aviation Safety in Africa (AFI Plan) program which facilitates the provision of capacity building assistance to African countries for aviation safety and security issues and assists African countries in implementing ICAO SARPs. The Indonesian Government was recorded to have contributed to the AFI Plan in the form of cash funds during the 2015-2017 period of CAD 200,400, CAD; 188,000 CAD; and CAD 131,000. However, the Indonesian Government at this time no longer contributes cash funds to the AFI Plan program because so far the use of these funds has been administrated by ICAO which has instead transferred it in the form of training scholarships at the Singapore Aviation Academy (SAA). Indirectly, this is a claim for Singapore's achievement and does not show Indonesia's 'posturing' to African countries. In the latest report, the AFI Plan Security and Facilitation (SECFAL) program still requires funds of US \$ 1,160,000 and has only recently collected US \$ 872,200 in aid from contributions from the United States (US \$ 663,000), Saudi Arabia (US \$ 159,200) and Malaysia. (US \$ 50,000).

Apart from the AFI Plan program, individual candidate countries also make separate contributions to the ICAO program and other developing countries. Qatar, which nominated for the 40th ICAO Assembly meeting, was recorded as providing funding of US \$ 1 million to support the ICAO No Country Left Behind (NCLB) initiative. Singapore provides training scholarships through the Singapore Aviation Academy (SAA) an average of 400 scholarships per year for more than 55 years. Singapore claims that the total number of training participants that

SAA has provided to date is 70,000 participants from 190 countries, although in reality some sources of training funds come from state contributions to the AFI Plan, such as the case of Indonesia. South Korea contributes US \$ 100,000 per year for 3 (three) years to the ICAO Safety Fund. In addition, South Korea is currently the 10th largest financial contributor to ICAO. Malaysia is also following the same strategic path as Singapore and South Korea by providing training and financial contributions to the ICAO Safety Fund and the AFI Plan. Malaysia is also finalizing the MoU on Cooperation with AFCAC and ACAC.

Currently, Indonesia has not made a contribution to the ICAO program or to regional countries. Previously, there was a discourse to make a real contribution through providing ICAO training in Indonesia, given that BPSDMP, STPI Curug and API Banyuwangi are currently members of the ICAO Trainair Plus Program. However, with the COVID-19 pandemic, it seems unrealistic for physical training programs in Indonesia to be carried out at least until 2022. For this reason, the Indonesian Government needs to think about alternative strategies for real contribution to ICAO member countries, particularly in the African region and Pacific countries.

c. Increasing Indonesia's Active Role in ICAO

An active role is an important factor for improving the position of individual countries, especially for ICAO Council candidate countries lacking the support regional groups. For example, Singapore has 90 experts contributing to technical committees / working groups under ICAO and chair 16 technical committees/working groups. Although not as many as Singapore, the Indonesian Government has attempted to play an active role in several committees / technical working groups as follows:

1. Air Navigation Commission (ANC): Indonesia through the KKIP Montreal representatives has been an observer at the ANC since 2018. In its limitations as an observer without voting rights, the Indonesian Government has been quite active in encouraging the discussion of the Water Aerodrome Resolution and the issue of ADREP Reporting in the ANC which has received positive appreciation. However, given the many outstanding issues discussed at the ANC, the Montreal

KKIP needs to get substantial support and coordination from the center so that there is continuous input and feedback on issues and positions that are of interest to Indonesia.

2. Committee on Aviation Environmental Protection Steering Group (CAEP): Indonesia, through representatives of the Ministry of Transportation, has been a member of CAEP since 2016 and has played an active role in discussing environmental issues in the context of civil aviation. CAEP has several working groups that meet physically as well as videoconferences or email correspondence discussing specific issues such as the Fuel Task Group, Working Group 1 on Noise Technical and Working Group 4 on CORSIA. The Indonesian government needs to pay more serious attention to the issue of environmental protection at ICAO because it will be closely related to the national interest in protecting the growth of the air transportation sector and the issue of oil palm.
3. Working Group on the Review of the ICAO Rules for the Settlement of Differences (WG-RRSD): Indonesia is a member of the WG-RRSD which studies the possibility of revision of the ICAO Rules for the Settlement of Differences. The Indonesian Ambassador to Ottawa / Representative of Republic of Indonesia to the ICAO is also the vice-chair in this working group.
4. Legal Committee: The Legal Committee is a body under ICAO with the mandate to discuss international law issues related to civil aviation. The ICAO Legal Committee is open to all countries wishing to participate and a meeting is scheduled for once in the fourth quarter of 2020.
5. Ad-hoc USOAP-CMA Advisory Group: USOAP AG was established by the ANC to assist the ICAO Secretariat to find solutions for duplicate audits, inspections and assessments carried out under the ICAO framework USOAP CMA and other organizations such as FAA and EASA. Indonesia has one representative who sits as experts in this ad hoc group.
6. Secretariat Study Group on International Legal Issues Related to Pilotless Aircraft (SSG-ILIPA): The Secretary General of ICAO has requested the name of Indonesia's representative to sit as an expert in the Study Group. KKIP Montreal informed that the Ministry of

Transportation was discussing the name of the expert who represented Indonesia. KKIP has coordinated with the Ministry of Transportation to also propose KKIP representatives to the Study Group so that there are alternatives that can complement each other.

d. Improvement of Indonesia's Aviation Safety Rating (USOAP-CMA)

As explained above, the quality of performance of ICAO member countries in ensuring flight safety is measured through the Universal Safety Oversight Audit Program Continuous Monitoring Approach (USOAP-CMA). Meanwhile, flight safety and facilitation indicators are measured through an aviation security audit (Universal Security Audit Program Continuous Monitoring Approach / USAP-CMA). The audit provides an assessment of the extent to which the state is able to implement all SARPs in the field of aviation safety, security and facilitation. After Indonesia's failure to be elected to the ICAO Council in 2016, the Indonesian Government has made efforts to improve the USOAP-CMA compliance audit figures. In 2017 Indonesia succeeded in improving the number of effective USOAP-CMA implementation items significantly. Based on the results of the onsite audit implementation of the ICAO Coordinated Validation Mission (ICVM) on 10-18 October 2017 in Jakarta, Indonesia managed to achieve an EI figure of 80.34% in all 8 audit areas, namely Legislation (LEG), Organization (ORG), Personnel (PEL), Operations (Ops), Airworthiness (AIR), Accidents and Incidents (AIG), Navigation Services (ANS), and Airport (AGA). This figure is a significant improvement from the EI figure obtained by Indonesia during the implementation of off-site audits in 2014 of 45.33% and in 2016 of 51.61%. Thus, Indonesia's EI figure is above the global average EI rate of 65.1% and the Asia Pacific region at 60.1%. Indonesia's achievement in improving compliance with the SARPs implementation of aviation safety has also become a trigger in enhancing the European Commission's trust to lift the flight ban (EU Air Safety List) for all Indonesian airlines on 14 June 2018. All Indonesian airlines can now provide flight services throughout European Union member countries.

Overall, Indonesia's USOAP EI figure of 80.34% has met the GASP target of 60%, and is above the global EI average of 66.52% and the Asia Pacific region's EI average of

61.96%. The next challenge is how the Indonesian Government can not only maintain but also increase the number of USOAP-CMA effective implementations in order to compete with ICAO Council member countries in the Asia-Pacific region.

In the ICAO post-Audit conclusion, Indonesia needs to continue to improve three of the 8 USOAP CMA's Critical Elements (CEs) in order to increase Indonesia's EI figure in the future, namely:

1. CE-4: Qualified Technical Personnel (currently at 69.51%);
2. CE-7: Surveillance Obligations (currently still at 65.43%); and
3. CE-8: Resolution of Safety Issues (currently still at 49.12%).

However, overall Indonesia's USOAP EI figure of 80.34% has met the GASP target of 60%, and is above the global EI average of 66.52% and the Asia Pacific regional EI figure of 61.96%. As a comparison, the following are the USOAP-CMA EI figures for countries in the Asia Pacific region who are members of the ICAO Board (as of September 2018):

1. Australia: 94.98%
2. China: 86.49%
3. India: 59.38%
4. Japan: 90.28%
5. South Korea: 98.5%
6. Malaysia: 74.74%
7. Singapore: 98.38%

e. Enhancement of Indonesia's Aviation Safety Rating (USAP CMA)

Unlike the USOAP-CMA, the USAP-CMA RI EI figure after the ICAO flight security audit conducted in Indonesia from 25 September to 3 October 2017, actually decreased compared to the results of the audit conducted on 29 October-5 November 2015 which resulted in the EI USAP CMA figure of 93.75% with an average compliance of Indonesia with SARPs Annex 17 of 95.09%.

The Indonesian Embassy in Ottawa / KKIP Montreal was unable to obtain an EI number from the official USAP-CMA onsite audit in 2017, in accordance with ICAO regulations. Only the Director General of Civil Aviation of Ministry of Transportation of the Republic of Indonesia is authorized to receive the results of the USAP CMA audit conducted by ICAO in Indonesia on 2017.

Following up on this, KKIP has communicated with officials of the Directorate of Aviation Security at the Directorate General of Civil Aviation, but there are indications that

the USAP CMA RI figure has decreased. This is due to the consideration of confidentiality in treating ICAO USAP issues. The latest RI USAP-CMA EI figures have not been obtained from either ICAO or the Directorate General of Civil Aviation, based on information on corridor talks, the post-audit USAP-CMA EI figure in 2017 is slightly above the average EI USAP-CMA Global of 61.44% on average - Global compliance with SARPs Annex 17 of 49.20%.

The Indonesian Government has confirmed its readiness to accept the USAP-CMA follow-up audit in 2021. However, these plans may change due to the COVID-19 pandemic situation. Apart from this, the Indonesian Government needs to continued efforts to restore the EI number.

2. Determination of Indonesia's Decision on Ratification of the 2014 Montreal Protocol

Protocol to Amend the Convention on Offences and Certain Other Acts Committed on Board Aircraft 2014 (Montreal Protocol 2014) has officially entered into force on January 1, 2020. This protocol changes the provisions of the Convention on Offences and Certain Other Acts Committed on Board Aircraft 1963 (Tokyo Convention 1963) particularly to address the gap in law enforcement jurisdiction against unruly passengers in the Tokyo Convention 1963. So far, based on Article 3 Paragraph 1 of the 1963 Tokyo Convention, jurisdictional authority for unruly passengers is only given to the State of Registration. Meanwhile, in its development, many aircraft are operated in different countries from the State of Registration and have landed in other countries so that in practice it makes it difficult to prosecute unruly passenger violations.

To that end, Article 3 of the 2014 Montreal Protocol gives additional jurisdiction to law enforcement; (i) the country where the aircraft landed (State of landing) if the aircraft and unruly passengers landed in that country; and (ii) the country where the aircraft is operated by the airline company (State of Operator) if the aircraft is an unmanned chartered aircraft and is operated in a country different from the country of registration of the aircraft.

In order to assist the state in implementing the 2014 Montreal Protocol effectively, ICAO has also compiled a Manual on the Legal Aspects of Unruly and Disruptive Passengers (Doc 10117) which contains

guidelines for models of laws and regulations for regulating sanctions, types of violations and crimes against unruly passengers.

For Indonesia, the 2014 Montreal Protocol can provide legal certainty to take action against unruly passengers on board aircraft, especially those operated by airlines whose aircraft are not registered in Indonesia (State of operator) and / or who make landings in Indonesian territory (State of landing) . However, if Indonesia is to ratify the 2014 Montreal Protocol, there needs to be a change in national legislation in the field of civil aviation, in particular Law Number 1/2009 on Aviation. This is because the Aviation Law in practice still applies the Tokyo Convention 1963 regime, which only recognizes the jurisdiction of the State of registration in the prevention of unruly passengers. Indonesia has ratified the Tokyo Convention 1963 through Law Number 2 of 1976 which also ratifies the Convention on the Suppression of Unlawful Seizure of Aircraft 1970 (The Hague Convention 1970) and the Convention on the Suppression of Unlawful Acts Against the Safety of Civil Aviation 1971 (Montreal Convention 1971). The three Conventions have the same objective, namely to prevent various forms of aviation crimes that can threaten the safety of passengers and aircraft.

On the other hand, Indonesia has also ratified the Protocol Amendment to Article 83bis of the 1944 Chicago Convention which distinguishes between the State of registration and the State of operator and regulates the transfer of functions and obligations between the two countries. Article 83bis is the basic framework for recognizing the transfer of functions and obligations from the State of registration to the State of operators, including in the case of jurisdiction over unruly passengers. The distinction between State of registration and State of operator is also found in the 1970 Hague Convention and the 1971 Montreal Convention. Furthermore, the ratification of Article 83bis is accommodated in national law through Article 95 Paragraph 1 of the Criminal Code (KUHP) which states the following:

'Article 95a

- (1) What is meant by Indonesian aircraft is an aircraft registered in Indonesia.
- (2) Indonesian aircrafts are also chartered without crew and operated by Indonesian airlines. '

However, considering that Law 1/2009 is a *lex specialis*, in practice Indonesia still

implements the State of Registration regime in accordance with the 1963 Tokyo Convention even though its history has ratified the Article 83bis Amendment Protocol of the Chicago Convention 1944 and regulates the differentiation of State of registration and State of operator in the Criminal Code. This complexity will make it difficult to apply jurisdiction to unruly passengers in Indonesia if airlines such as Garuda Indonesia use chartered aircraft registered in other countries.

Jurisdictional gap as a State of landing has also been experienced by Indonesia in the case of a Virgin Australia passenger on the Brisbane - Denpasar route (VA 044) who made a scene on the plane and was arrested by the Indonesian Air Force at Ngurah Rai Airport but was finally released because Indonesia did not have the authority as the State of landing. Based on these conditions, Indonesia has an

interest in immediately ratifying the 2014 Montreal Protocol and for this purpose, the first step that can be considered is to revise Law 1/2009 to accommodate the jurisdiction of the State of operator and the State of landing.

3. Indonesian Issues Deficiencies Determination of Restricted Areas on International Airspace

As discussed at the APANPIRG-30 meeting, there are a number of air navigation deficiencies faced by Indonesia due to the establishment of restricted areas in the international airspace, as shown in the figure below.



Figure 2. Indonesia Restricted Area in International Airspace

The determination of these restricted areas is carried out by the Indonesian Air Force and results in finding air navigation deficiencies as follows:

- Deficiency in the implementation of SARPs 3.6.1. Annex 15 regarding AIS Quality Management System;
- Deficiencies in Annex 2 implementation related to the prohibition of determining restricted areas in international airspace.
- Deficiency in achieving the target of implementing 90% of the Asia Pacific

Search and Rescue Plan (APAC SAR Plan) in accordance with Annex 12.

During the APANPIRG / 30 meeting, Bangladesh was also known to have determined the danger area in Indian airspace so that it was categorized as an APANPIRG deficiency. This is because Annex 15 Aeronautical Information Services clearly states:

'2.1.2 Each Contracting State shall ensure that the provision of aeronautical data and aeronautical information covers its own

territory and those areas over the high seas for which it is responsible for the provision of air traffic services (ATS).'

Based on the Bangladesh case, it can be concluded that the issue of deficiencies in determining restricted / danger areas in the international airspace can be both a modality and an obstacle for the Indonesian Government in its attempt to take over FIR from Singapore. As is known, Singapore has so far designated the WSD-15 area as a danger area even though in fact the WSD-15 is within Indonesian territory. The Indonesian Government can discuss the WSD-15 violation at the APANPIRG meeting so that Singapore has the potential for the first time to receive a status deficiency and will indirectly provide pressure for the completion of the FIR realignment negotiations. However, the Indonesian Government also has the same problem due to the establishment of a restricted area in the WAR-1 military airspace area around Madiun which extends into Australian airspace.

The Indonesian government is expected to immediately resolve the deficiency problem in the WAR-1 area in order to comply with ICAO rules and at the same time have the legitimacy to discuss Singapore's deficiency in the WSD-15 area so as to strengthen Indonesia's position to complete the FIR realignment negotiations.

CONCLUSION

Indonesian Government diplomatic role at ICAO is generally focused on supporting the achievement of 3 things, namely to; 1) securing Indonesia's national interests in international civil aviation cooperation; 2) supporting international civil aviation programs and issues that are priorities of ICAO; and 3) increasing Indonesia's position in ICAO, especially in the context of preparing Indonesia's candidacy for the ICAO Council.

Very strong commitment and support is required from the Indonesian Government and all related stakeholders is to jointly improve Indonesian diplomatic position at ICAO and in the global aviation arena in order to support aviation development and provide maximum benefits for Indonesia's national interests.

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