

The Legal Framework of Trade of Services in Air Transportation for Asean Single Market (Asam) 2015 : Indonesia and Asean Point Of View

Dyah Ayu Ambarwati

Faculty of Law, University of Gadjah Mada, Yogyakarta, Indonesia

Email: dyah_ayuambarwati@yahoo.com

Abstract

On January 1, 2015, is the beginning of era for ASEAN as in that date ASEAN Community has been effective. Indonesia, as well as the other nine member states of ASEAN have to face reality that trade of service effective of that date will be freely flowing from one ASEAN member states to another (ASEAN Secretariat, 2013), including air transportation. It is both a good news and bad news for Indonesia, as not all of air transportation services traded, namely “hard rights” and “soft rights”, are well prepared by the Indonesia side, as only few of them has been prepared well by Indonesia compared to other ASEAN member states (Martono, et.al., 2013).

This law paper is conducted using normative descriptive method and is aimed to analyze two aspects. Those are: analyzing legal framework for air transportation “hard right” as well “soft rights” traded among ASEAN member states and analyzing the legal framework available in Indonesia prior to the official announcement of ASEAN Community in 2015 as well as effective date to start the ASEAN Single Aviation Market (ASAM).

The result of this paper will be the broad view of the rate of advancement in air transportation trade of services legal framework in each ASEAN member states. For Indonesia, this paper will be a guide to develop the lagging air transportation legal framework compared with other ASEAN member states and is hoped that can be used as a roadmap for Indonesia to be leveled with other advanced ASEAN member states.

Keywords : ASAM, Indonesia, Legal framework, Trade of Service

ACKNOWLEDGEMENT

Indonesia as the market of aviation with the fastest growth in Asia and probably in the world makes it become the centre of attention for other countries, particular ASEAN countries (Martono, Hernowo, & Wahjono, 2013). The combination between the archipelagic state and high-populated people with the high-growth of middle class and its economic condition has been increasing, have already shown about the high demand towards domestic airlines (Martono, Hernowo, & Wahjono, 2013). It can be shown that Indonesia's domestic airlines has been grown up as 16% in 2011 to 60 million of passengers, and will be expected increase gradually with speed of 20% every year, and will be expected that the amount of passengers will reach up to 100 millions of passengers in 2015 and 180 millions of passengers in 2021 (Martono, Hernowo, & Wahjono, 2013).

Economic integration in ASEAN began in 1992 with ASEAN Free Trade Area (AFTA) that covers trade in goods, complemented by the 1995 ASEAN Framework Agreement on Services (AFAS) and the 1998 ASEAN Investment Area (AIA) agreement; and in 2003, ASEAN agreed to deepen economic integration with formation of the ASEAN Economic Community (AEC), to create a unified market and production base via a free flow of goods, services, foreign direct investment, skilled labour, and freer flow of capital (Chia, 2013).

Recognising that well-integrated and sustainable air transportation network is imperative for the acceleration of ASEAN's economic development and market integration and to enable ASEAN to leverage its location at the cross roads of Northeast Asia, South Asia, and Oceania to grow ASEAN's strategic significance, ASEAN endorsed the initiative of establishing an ASEAN Single Aviation Market (ASAM) by 2015 in support of the development of the ASEAN Economic Community (AEC) (Flimsy). The ASAM is one of the key pillar that establishment of the AEC via facilitating of free, efficient, safe, and secure movement of people and goods within and potentially beyond ASEAN (Flimsy). Besides, the development of the ASAM would include necessary actions and measures essential in improving the overall performance of the ASEAN air transport and the ASAM will contribute towards a more competitive and resilient ASEAN, as it will bring people closer

together and facilitate the efficient, safe, and secure movement of goods, services, and capital closer together (Flimsy).

In line with the goals set for the AEC, ASEAN Member States aspire to : (a) take necessary measures towards creating an efficient and competitive air transport market characterised by open market access, thereby contributing to the economic growth, competitiveness and shared prosperity of ASEAN; (b) move decisively towards a flexible business operating environment for the ASEAN air transport industry to foster its growth and facilitate its timely response to challenges and opportunities; (c) formulate consistent principles, guidelines and regulations related to activities in the ASEAN air transport sector to foster fair competition and a level playing field; (d) enhance aviation safety, aviation security and air traffic management through the harmonisation and convergence of standards and procedures regionally; and (e) further strengthen engagement with Dialogue Partners in the development of the ASEAN air transport sector, while maintaining ASEAN's centrality as the primary driving force (Flimsy).

Through the establishment of ASAM, it means that all of ASEAN member states should have prepared many aspects to trade the trade of service. For the developed community such as European Union, there is undoubtedly in preparing of those aspects, yet, in the developing community such as ASEAN, there is significant problem that can occur prior the establishment ASEAN Community in 2015 as well as effective date to start the ASEAN Single Market (ASAM); namely legal framework in ASEAN for air transportation "hard rights" as well as "soft rights" traded among ASEAN member states and legal framework of air transportation in Indonesia. The purpose of this paper is hoped will be the broad view of rate advancement in air transportation trade of service in each ASEAN member states and for Indonesia, as a guide to develop the lagging air transportation legal framework compared to other ASEAN member states. The writer will use normative descriptive methodology to find the problem in this paper and materials that will be used is secondary data, consisting of primary legal sources, such as international agreements and secondary legal sources such as journals, books, reports, papers, etc, which are related to this title of paper.

RESULT AND DISCUSSION

A. ASEAN LEGAL FRAMEWORK TO ESTABLISH ASEAN SINGLE AVIATION MARKET (ASAM) 2015

ASEAN in establishing the unification of aviation market should arrange the liberalisation of flights towards to each other countries in ASEAN. This liberalisations consists of two types, among others: (a) *Hard Rights* namely the transfer atau the change of rights related to traffic rights directly, and in ASEAN Transport Working Group Meeting was agreed the ASEAN Roadmap for Air Transport Integration which consist of three phases, among others : (1) Liberalisation to air freight services; (2) Liberalisation to scheduled passengers services intra ASEAN cooperation region in sub regional; and (3) Liberalisation to air transport in all ASEAN region; and (b) *Soft Rights* namely the transfer or the change of commercial rights, which is based on ASEAN Framework Agreement in Services (AFAS) (Martono, Hernowo, & Wahjono, 2013). This AFAS consists of fourteen Articles and Member States shall strengthen and enhance existing cooperation efforts in service sectors and develop cooperation in sectors that are not covered by existing cooperation arrangements, through inter alia : (a) establishing or improving infrastructural facilities; (b) joint production, marketing and purchasing arrangements; (c) paper and development; and (d) exchange of information (ASEAN, ASEAN Multilateral Agreement on Air Services, 2009).

A1. LEGAL FRAMEWORK OF “HARD RIGHTS” TO ESTABLISH ASAM 2015

As the implementation of Hard Rights’ liberalisations, there are three signed of multilateral agreements in related to establish ASEAN Single Aviation Market (ASAM) 2015, as follows :

1. ASEAN Multilateral Agreement on Air Services (AMAAS)

This Agreement was adopted by the Transport Ministers of ASEAN Member States at the 14 ASEAN Transport Ministers Meeting in Manila, Philippines on 20 May 2009 (ASEAN, ASEAN Multilateral Agreement on Air Services, 2009). The main purpose of this Agreement is changing the flights rights multilaterally based on liberalization policy; promoting the unification of single aviation market to each other countries in ASEAN region phasesly; designating the multi designated airlines

system, no capacity restriction; flexibility of airlines ownership an effective control, and emitting the tariff barriers and route of flights phasesly (Martono, Hernowo, & Wahjono, 2013). Furthermore, started in 2015, the barriers of flights route, principally, will be eliminated and it means the single aviation market in ASEAN will be established automatically (Martono, Hernowo, & Wahjono, 2013).

2. ASEAN Multilateral Agreement on the Full Liberalization of Air Freight Services (MAFLAFS)

This Agreement was signed by the Transport Ministers at the 14 ASEAN Transport Ministers Meeting in Manila, Philippines on 20 May 2009 (ASEAN, ASEAN Multilateral Agreement on the Full Liberalisation of Air Freight Services , 2009). This Agreement consists of twenty Articles which arranging about : definitions; grant of rights; designation and authorisation of airlines; withholding, revocation, suspension and limitation of authorisation; safety; aviation security, tariffs; operation of leased aircraft; commercial activities; change of gauge; user charges; fair competition; safeguards; application of laws and regulations; statistics; consultation and amendment; settlement of disputes; relationship to other agreements; and final provisions; and two Protocols, which consists of Protocol 1: on unlimited third, fourth, and fifth freedom traffic rights among designated points in ASEAN, which is divided into four Articles, among others : definitions; routing & traffic rights; capacity and frequency; specification of points; operational flexibility; timetable approval and supplementary flights, and final provisions; and Protocol 2: on unlimited third, fourth and fifth freedom traffic rights among all points with international airports in ASEAN, which consists of definitions; routing and traffic rights; capacity and frequency; operational flexibility; timetable approval and supplementary flights; and final provisions (ASEAN, ASEAN Multilateral Agreement on the Full Liberalisation of Air Freight Services , 2009).

The main desires of this Agreement are ensuring the highest degree of safety and security in international air transport and jeopardise the safety of property, adversely affect the operation of air transportation, and undermine public confidence in the safety of civil aviation; facilitating and enhancing air freights services and their related activities, to complement the other transport facilitation and liberalisation efforts in ASEAN; and removing restrictions, on a gradual basis, so as to achieve

greater flexibility and capacity in the operation of air freight services in ASEAN with a view to build a single unified aviation market of ASEAN by 2015 (ASEAN, ASEAN Multilateral Agreement on the Full Liberalisation of Air Freight Services, 2009).

3. ASEAN Multilateral Agreement on the Full Liberalization of Passenger Air Services (MAFLPAS)

This agreement was signed by Transport Ministers in Bandar Seri Begawan, Brunei Darussalam on 12 November 2010 (ASEAN, ASEAN Multilateral Agreement on the Full Liberalization of Passenger Air Services, 2010). This Agreement consists of nineteen Articles that arranging definitions; grant of rights; designation and authorisation of airlines; withholding, revocation, suspension and limitation of authorisation; safety; aviation security; tariffs; operation of leased aircraft; commercial activities; user charges; custom duties; fair competition; safeguards; application of laws and regulations; statistics; consultation and amendment; settlement of disputes; relationship to other agreements; and final provisions; and two Annexes, which consists of Annex 1: scheduled air services, which is divided into two Sections, among others : routing and traffic rights; and operational flexibility; and Annex 2: implementing protocols (ASEAN, ASEAN Multilateral Agreement on the Full Liberalization of Passenger Air Services, 2010).

The main desires of this Agreement are ensuring the highest degree of safety and security in international air transport and reaffirm ASEAN grave concern about acts or threats against the security of aircraft, which jeopardise the safety of persons or property, adversely affect the operation of air transportation, and undermine public confidence in the safety of civil aviation; and facilitating and enhancing air services and ASEAN related activities, to complement the other transport facilitation and liberalisation efforts in ASEAN (ASEAN, ASEAN Multilateral Agreement on the Full Liberalization of Passenger Air Services, 2010).

There are the data for list of designated cities accordance to AMAAS from Protocol 1, Protocol 2, Protocol 3, Protocol 4, Protocol 5, and Protocol 6 (ASEAN, ASEAN Multilateral Agreement on Air Services, 2009)

I. List of Designated Cities accordance to Protocol 1 AMAAS (Unlimited Third and Fourth Freedom Traffic Rights within The ASEAN Sub Region)

BIMP-EAGA (Brunei, Indonesia, Malaysia, the Philippine - East ASEAN Growth Area) : Manado, Balikpapan, Tarakan, Pontianak, Makassar, Solo, Kota Kinabalu, Miri, Labuan, Kuching, Sandakan, Tawau, Mulu, Johor Baru, Bandar Seri Begwn, Davao, General Santos, Zamboanga, Puerta Princessa, Cayaga de Oro, and Cebu

IMT-GT (Indonesia-Malaysia-Thailand Growth Triangle) : Medan, Banda Aceh, Nias, Padang, Ipoh, Langkawi, Penang, Kota Bharu, Alor Star, Hat Yai, Pattani, Narathiwat, Trang, and Nakon Si Thammarat

CLMV (Cambodia-Lao PDR-Myanmar-Vietnam) : Phnom Penh, Vientiane, Luang Phabang, Pakse, Yangon, Mandalay, Hanoi, Ho Chi Minh City, Da Nang, Dien Bien Phu, Phu Bai, Cat Bi, and Lien Khuong

II. List of Designated Cities accordance to Protocol 2 AMAAS (Unlimited Fifth Freedom Traffic Rights within The ASEAN Sub Region)

BIMP-EAGA (Brunei, Indonesia, Malaysia, the Philippine - East ASEAN Growth Area): Manado, Balikpapan, Tarakan, Pontianak, Makassar, Solo, Kota Kinabalu, Miri, Labuan, Kuching, Sandakan, Tawau, Mulu, Johor Baru, Bandar Seri Begwn, Davao, General Santos, Zamboanga, Puerta Princessa, Cayaga de Oro, and Cebu

IMT-GT (Indonesia-Malaysia-Thailand Gowth Triangle) : Medan, Banda Aceh, Nias, Padang, Ipoh, Langkawi, Penang, Kota Bharu, Alor Star, Hat Yai, Pattani, Narathiwat, Trang, and Nakon Si Thammarat

CLMV (Cambodia-Lao PDR-Myanmar-Vietnam) : Phnom Penh, Vientiane, Luang Phabang, Pakse, Yangon, Mandalay, Hanoi, Ho Chi Minh City, Da Nang, Dien Bien Phu, Phu Bai, Cat Bi, and Lien Khuong

III. List of Designated Cities accordance to Protocol 3 AMAAS (Unlimited Third and Fourth Freedom Traffic Rights between The ASEAN Sub-Regions)

BIMP-EAGA (Brunei, Indonesia, Malaysia, the Philippine - East ASEAN Growth Area) : Manado, Balikpapan, Tarakan, Pontianak, Makassar, Solo, Kota Kinabalu,

Miri, Labuan, Kuching, Sandakan, Tawau, Mulu, Johor Baru, Bandar Sri Begwn, Davao, General Santos, Zamboanga, Puerta Princessa, Cayagan de Oro, and Cebu
IMT-GT (Indonesia-Malaysia-Thailand Growth Triangle) : Medan, Banda Aceh, Nias, Padang, Ipoh, Langkawi, Penang, Kota Bharu, Alor Star, Hat Yai, Pattani, Narathiwat, Trang, and Nakon Si Thammarat

CLMV (Cambodia-Lao PDR-Myanmar-Vietnam) : Phnom Penh, Vientiane, Luang Phabang, Pakse, Yangon, Mandalay, Hanoi, Ho Chi Minh City, Da Nang, Dien Bien Phu, Phu Bai, Cat Bi, and Lien Khuong

IV. List of Designated Cities accordance to Protocol 4 AMAAS (Unlimited Fifth Freedom Traffic Rights between The ASEAN Sub-Regions)

BIMP-EAGA (Brunei, Indonesia, Malaysia, the Philippine - East ASEAN Growth Area) : Manado, Balikpapan, Tarakan, Pontianak, Makassar, Solo, Kota Kinabalu, Miri, Labuan, Kuching, Sandakan, Tawau, Mulu, Johor Baru, Bandar Sri Begwn, Davao, General Santos, Zamboanga, Puerta Princessa, Cayagan de Oro, and Cebu
IMT-GT (Indonesia-Malaysia-Thailand Growth Triangle) : Medan, Banda Aceh, Nias, Padang, Ipoh, Langkawi, Penang, Kota Bharu, Alor Star, Hat Yai, Pattani, Narathiwat, Trang, and Nakon Si Thammarat

CLMV (Cambodia-Lao PDR-Myanmar-Vietnam) : Phnom Penh, Vientiane, Luang Phabang, Pakse, Yangon, Mandalay, Hanoi, Ho Chi Minh City, Da Nang, Dien Bien Phu, Phu Bai, Cat Bi, and Lien Khuong

V. List of Designated Cities accordance to Protocol 5 AMAAS (Unlimited Third and Fourth Freedom Traffic Rights within ASEAN Capital Cities)

ASEAN Capital Cities : Jakarta, Kuala Lumpur, Bandar Seri Begawan, Singapore, Manila, Bangkok, Hanoi, Pnom Penh, Vientiane, and Yangon

VI. List of Designated Cities accordance to Protocol 6 AMAAS (Unlimited Fifth Freedom Traffic Rights between ASEAN Capital Cities)

ASEAN Capital Cities : Jakarta, Kuala Lumpur, Bandar Seri Begawan, Singapore, Manila, Bangkok, Hanoi, Pnom Penh, Vieneelwo is tiane, and Yangon

There are data of list of designated cities accordance to MAFLPAS from Protocol 1 and Protocol 2 (ASEAN, ASEAN Multilateral Agreement on the Full Liberalization of Passenger Air Services, 2010)

VII. List of Designated Cities accordance to Protocol 1 MAFLPAS (Unlimited Third and Fourth Freedom Traffic Rights between Any ASEAN Cities)

ASEAN Member State and its Designated Cities

Indonesia : Jakarta, Medan, Surabaya, Denpasar, and Makassar; Brunei Darussalam : Bandar Seri Begawan; Singapore : Singapore; Malaysia : All cities with international airports (8); Thailand : All cities with international airports (9); Philippines : All cities with international airports (12); Cambodia : All cities with international airports (3); Lao PDR : All cities with international airports (3); Myanmar : All cities with international airports (3); Vietnam : All cities with international airports (8)

VIII. List of Designated Cities accordance to Protocol 2 MAFLPAS (Unlimited Fifth Freedom Traffic Rights between Any ASEAN Cities)

ASEAN Member State and its Designated Cities

Indonesia : Jakarta, Medan, Surabaya, Denpasar, Makassar; Brunei Darussalam : Bandar Seri Begawan; Singapore : Singapore; Malaysia : All cities with international airports (8); Thailand : All cities with international airports (9); Philippines : All cities with international airports (12); Cambodia : All cities with international airports (3); Lao PDR : All cities with international airports (3); Myanmar : All cities with international airports (3); Vietnam : All cities with international airports (8)

There are data of list of designated cities accordance to MAFLAFS from Protocol 1 to Protocol 2 (ASEAN, ASEAN Multilateral Agreement on the Full Liberalisation of Air Freight Services , 2009)

IX. List of Designated Cities accordance to MAFLAFS Protocol 1 (Unlimited Third, Fourth, and Fifth Freedom Traffic Rights among Designated Points in ASEAN)

ASEAN Member State and its Designated Cities

Indonesia : Batam, Balikpapan, Pontianak, Makassar, Manado, Palembang; Brunei Darussalam : Bandar Seri Begawan; Singapore : Singapore; Malaysia : Kuala Lumpur; Thailand : Bangkok, Chiang Mai, Hat Yai, Khon Kaen, Phuket, U Tapao, Ubon Ratchathani; Philippines : Clark, Subic, Cebu, Davao, Iloilo, Laoag; Cambodia

: Pnom Penh; Lao PDR : Vientiane, Luang Phabang, Pakse; Myanmar : Yangon, Mandalay; Vietnam : Hanoi, Da Nang, Ho Chi Minh City, Chulai

X. List of Designated Cities accordance to MAFLAFS Protocol 2 (Unlimited Third, Fourth, and Fifth Freedom Traffic Rights among All Points with International Airports in ASEAN)

ASEAN Member State and its Designated Cities

Indonesia : Jakarta, Medan, Surabaya, Denpasar, Makassar, and 21 other international airports; Brunei Darussalam : Bandar Seri Begawan; Singapore : Singapore; Malaysia : All cities with international airports (8); Thailand : All cities with international airports (9); Philippines : All cities with international airports (12); Cambodia : All cities with international airports (3); Lao PDR : All cities with international airports (3); Myanmar : All cities with international airports (3); Vietnam : All cities with international airports (8)

A2. LEGAL FRAMEWORK OF “SOFT RIGHTS” TO ESTABLISH ASAM 2015

As the implementation of Soft Rights’ liberalisation, ASEAN has agreed Guidelines for Liberalization of the ASEAN Air Transport Ancillary Services, that was approved in Meeting of 27th STOM on 27-29 May, 2009, in Da Nang City, Vietnam, which consists 13 (thirteen) aspects, as follow : 1. Aircraft Repairs and Maintenance Services (has SoC (Schedule of Commitment)); 2. Selling and Marketing Air Transport Services (has SoC); 3. Computer Reservation System Service (has SoC); 4. Aircraft Leasing without Crew (has SoC); 5. Aircraft Leasing with Crew; 6. Airfreight Forwarding Services (has SoC); 7. Cargo Handling; 8. Aircraft Catering Services; 9. Refueling Services; 10. Aircraft Line Maintenance; 11. Ramp handling; 12. Baggage handling; and 13. Passenger handling.

The implementation of Soft Rights’s liberalisation is exist as well as Hard Rights’. Yet, Soft Rights’ implementation is more to Government to Government (G to G) and the impact is the data becomes confidential and is more restricted to be accessed by public (Martono & Wahjono, Soft Rights Exchange in facing ASAM , 2014). Hence, Soft Rights’ liberalisation will not be elucidated as well as Hard Rights’ liberalisation.

B. INDONESIA LEGAL FRAMEWORK OF AIR TRANSPORTATION PRIOR ASEAN SINGLE AVIATION MARKET (ASAM) 2015

Indonesia has legal regulation that regulates about aviation, namely Law Number 1 Year 2009 on Aviation (furthermore is called Law). In this Law, actually, Indonesia has regulated the provision about Open Sky before the arrangement of Open Sky provision in ASEAN Multilateral Agreement on Air Services (furthermore is called Agreement). It can be seen that in Law, the provision about Open Sky has entried into force on 12 January 2009 (Indonesia, 2009) and the provision about Open Sky has been regulated in Agreement on 20 May 2009, and it has entried into force on the date of the deposit of the third (3rd) Instrument of Ratification or Acceptance with the Secretary-General of ASEAN and shall become effective only among the Contracting Parties that have ratified, or accepted it (ASEAN, ASEAN Multilateral Agreement on Air Services, 2009); and clearly, Agreement has already entried into force in the end of 2009 (Martono, Hernowo, & Wahjono, 2013). Hence, the provision of Open Sky that has been meant in the Law is Open Sky meaning in generally or it can be refered too to “ASEAN Open Sky” because the discussion to create AMAAS draft had been started far away before the provision in the Law (Martono, Hernowo, & Wahjono, 2013).

In this Law, Open Sky has been regulated in Article 90 (1) which is stated “The opening of air transportation to airspace of open sky from and to Indonesia for designated airlines of foreign commercial will be conducted phasesly based on bilateral agreement or multilateral agreement and its implementation through binding mechanism to each party”.

Moreover, this Law has confirmed about the importance of air space towards the national interest and the existence of air transportation indirectly. This is can be seen in Article 5 and Article 6, which are stated “The Republic of Indonesia has its own full sovereignty and exclusively towards air space in Republic of Indonesia” (Article 5) and “In a framework of implementation of state sovereignty towards the Republic of Indonesia air space, the Government conducts its authority and responsibility in arrangement of air space for aviation interest, national economic, defence and security of state, social culture, and air environment” (Article 6)

This Law does not explain about the aviation policy in Indonesia explicitly, only, it regulates about the Establishment in one of parts in this Law. It can be seen from Article 10 (1), (2), and (6 (a) and (c)), which are stated “The Aviation will be dominated by state and its establishment will be conducted by the Government” (Article 10); “The Establishment of Aviation as mentioned in clause (1) covers aspect of arrangement, controlling, and supervision” (Article 10 (2)); and “The establishment of aviation as mentioned in Article (2) is conducted by concerning all aspects of society living and is directed to : (a) accelerate the flow of people and/or goods massively through air transportation by safe, secure, fast, accelerate, order, and regular; and (c) develop the capacity of firm national airlines and it is supported by firm industry of airplanes so it capable to fulfil the necessity of transportation, both in domestic and from and to foreign countries” (Article 10(6 (a) and (c))).

As it has seen in the Law, Indonesia has the law regulation which regulates the Open Sky provision as it is meant by the Agreement. Yet, if the Law is paid close attention to Article 10 (1) and Article 90, there are indirectly meanings that the Government of Indonesia has put towards open sky policys. In this case, Indonesia arranging the open sky; but in the other hands, it will be conducted phasesly and through bilateral agreement or multilateral agreement; whereas, in 2015, ASEAN Community will be established and it means automatically, ASAM will be entried into force to all ASEAN member states. Besides, the State of Republic of Indonesia still dominate and the Government still establish the aviation of Indonesia, which means, indirectly, the operational and controlling of air transportation are still under the State’s authority. So, from those provisions, it can be assumed that there is indirectly intend from the Government to protect the air transportation market in Indonesia. Even, Indonesia has ratified the first multilateral agreement through Presidential Decree Number 74 Year 2011 about the Ratification of ASEAN Multilateral Agreement on Air Services and Protocol 1 on Unlimited Third and Fourth Freedom Traffic Rights within the ASEAN Sub Region and Protocol 2 on Unlimited Fifth Freedom Traffic Rights within the ASEAN Sub-Regions (Martono, Hernowo, & Wahjono, 2013).

There several data about International Aviation Policy-Air Service Agreement (ASA) in ASEAN Member States (Price, et al., 2011) :

1. Brunei Darussalam : (a) 36 ASA; (b) Signed Multilateral Agreement on the Liberalization of Air Transport; (c) 3 bilateral Open Sky Agreements (US, New Zealand, Singapore); (d) 1997 ASA with Singapore eliminate all limitations of frequency, capacity, and type of airlines; (e) Brunei does not limit 3rd and 4th freedom route and traffic rights; and (e) 5th freedom rights is negotiated bilaterally
2. Cambodia : (a) 12 ASA, and 7 of 12 ASA are conducted with ASEAN Member States; (b) Cambodia has given 5th freedom rights to Vietnam to Ho Chi Minh City-Phnom Penh/Vientiane route; (c) There is no any dominate national carrier, it means there is no any input from airlines towards aviation policy
3. Indonesia : (a) 65 ASA, and 25 of 65 ASA are active agreements; (b) Open Skies Agreement on limited area with Malaysia and Thailand covering IMT-GT regions; and (c) Open Skies Agreement on limited area with Brunei, Malaysia, Philippine covering BIMP-EAGA regions.
4. Lao PDR : (a) 14 ASA, and 5 of 14 ASA are conducted with ASEAN member states and 6 of 14 ASA are inactive agreements; (b) the Government of Lao PDR supports CLMV Open Sky Agreement consists of full exchange of 3rd, 4th, and 5th freedom rights; (c) Lao PDR has the flexibility agreement with Cambodia and Vietnam; (d) Phnom Penh-Vientiane service is 5th freedom service which is operated by Air Vietnam
5. Malaysia : (a) 82 ASA, and 41 of 82 ASA are active agreements; (b) Except for Lao PDR, all of air transportation agreements with ASEAN member states have active status; (c) Open Skies agreement with US, Taiwan, New Zealand, Austria, Luxembourg, and Lebanon – all of airlines' Malaysia are free flying to international airports in these 6 countries; (d) Agreement of Air Transportation on limited area with Indonesia and Thailand in IMT-GT region; (e) Agreement of Air Transportation on limited area with Brunei, Indonesia, and the Philippines in BIMP-EAGA region (by giving 5th freedom rights on a case-by-case basis)

6. Myanmar : (a) 45 ASA, almost of them are inactive agreements; (b) Myanmar gives 5th freedom rights and it is being used by non-ASEAN carriers
7. Philippines : (a) 57 ASA, 22 of 57 ASA are active agreements; (b) Executive Order (E.O.) Number 219/1995 states that “the exchange of traffic rights with another country is based on (i) national interest; and (ii) reciprocity between Philippines and that country; (c) Adopting progressive liberalization policy with transport industry in generally; (d) Open Sky agreement with US on air cargo; and (e) Agreement of Air Transportation on limited area with Brunei, Indonesia, and Malaysia in BIMP-EAGA region
8. Singapore : (a) State Party of Multilateral Agreement on the Liberalization of International Air Transport (MALIAT); and (b) Signing many liberal or Open Skies of Bilateral Agreements
9. Thailand : (a) 94 ASA; (b) Agreement of Air Transportation on limited area with Indonesia and Malaysia covering IMT-GT region; (c) Thailand has liberal capacity arrangement with bilateral partner ASEAN namely Malaysia and Singapore; (d) Thailand has 5th freedom rights to operate route of Singapore-Jakarta once in a day
10. Vietnam : (a) 56 ASA; (b) It support CLMV Open Skies Agreement; (c) Support of gateway opening such as Da Nang and Hanoi to unlimited 3rd and 4th freedom; (d) Limited 5th freedom traffic rights is given to Singapore and Thailand; (e) Giving limited 5th freedom traffic rights to several non-ASEAN carriers

Based on elucidation above, Indonesia has cooperated in air transportation sector by having significant bilateral agreements; but there is a highlight for Indonesia namely Indonesia still limits its market towards open sky policy. It can be seen that, even Indonesia has the open sky agreements with several ASEAN member countries, they only cover several or limited areas. Whereas, other ASEAN member states have alleviated their national national policy of open sky, although Myanmar really limits its existence of agreement, but in the other side, it still give right freedom to non ASEAN carrier. The possibility aspect that Indonesia restricts its aviation market is the airlines in Indonesia have not ready yet to compete with other ASEAN member

states' airlines, notably Singapore, Malaysia, and Thailand. The unreadiness of Indonesia' airliness is probably caused by the lack of human resource who is capable in air transportation; infrastructure, the mechanical equipments and technology; besides having the similiarity assumption between the Government and stakeholders in aviation field in order Indonesia can compete with other ASEAN member country in facing the ASEAN Single Aviation Market (ASAM) 2015.

Hence, Indonesia have some policies from stakeholders, operators, and regulators of Indonesia to face the ASEAN Single Aviation Market (ASAM) 2015 (Martono, Hernowo, & Wahjono, Studi Dampak Open Sky Tahun 2015 terhadap Kebijakan Angkutan Udara Dalam Negeri dan Luar Negeri Indonesia, 2013); as follow :

- a. The principle of Cabotage is still maintained, namely domestic route is only served by national airlines companies
- b. Development of cooperation to each other national airlines companis, both with partner countries and the third country to face the global competition
- c. The Hard Rights exchange and the opening of point in sub-region level (IMT-GT and BIMP-EAGA) are conducted wider than in ASEAN level because to encourage the growth of sub-region
- d. The opening of dialogue and giving the understanding clearly about the content of ASEAN air transportation agreement
- e. The determination of Hard Rights exchange for this period is the fifth freedom traffic rights
- f. The determination of 5 big cities namely Jakarta, Denpasar, Makassar, Surabaya and Medan to implementation of MAFLPAS
- g. The escalation of airports infrastructure which are prioritized in 5 big cities
- h. Giving the advice to airlines companies and the operator of airport to compile their own roadmap
- i. Determinate and revise the legal regulation related to standard of operational of air transportation, standard of minimal service, or standard of competency of human resources

CONCLUSION

Lesson learnt from the Legal Framework of Trade of Service in Air Transportation for ASEAN Single Aviation Market (ASAM) 2015 : Indonesia and ASEAN Point of View are as follow :

1. ASEAN Community and Indonesia in particular have the legal framework of trade of service in air transportation arranging Open Sky policy, both “Hard Rights” and “Soft Rights”
2. ASEAN in general and Indonesia in particular have to prepare the similiarity commitment to foster the establishment of freedom traffic rights through legal regulation prior to the official announcement of ASEAN Community in 2015 as well as effective date to start the ASEAN Single Aviation Market (ASAM) 2015
3. ASEAN in general and Indonesia in particular have to develop their capacity in other aspect to face ASAM 2015 such as human resource, infrastructure, and the supply of mechanical and/or technology to face the ASEAN Single Aviation Market (ASAM) 2015

Bibliography

- ASEAN. (1995, December 15). ASEAN Framework Agreement on Services.
- ASEAN. (2009, May 20). ASEAN Multilateral Agreement on Air Services.
- ASEAN. (2009, May 20). ASEAN Multilateral Agreement on the Full Liberalisation of Air Freight Services .
- ASEAN. (2010, November 12). ASEAN Multilateral Agreement on the Full Liberalization of Passenger Air Services.
- Chia, S. Y. (2013). *The ASEAN Economic Community: Progress, Challenges, and Prospects*. Tokyo: ASEAN Development Bank Institute.
- Flimsy. (n.d.). *ICAO International*. Retrieved September 6, 2014, from ICAO International: www.icao.int
- Indonesia, R. (2009, Januari 12). Undang-Undang Nomor 1 Tahun 2009 tentang Penerbangan.
- Martono, Hernowo, & Wahjono, T. D. (2013). *Studi Dampak Open Sky Tahun 2015 terhadap Kebijakan Angkutan Udara Dalam Negeri dan Luar Negeri Indonesia*. Jakarta: Balitbanghubud.
- Price, Laurie, Chris, Whittle, O'Donovan, H., Folley, P., et al. (2011). *National Strategy for the Implementation of ASEAN Open Sky Policy Stage 2*. Australia: Australian Aid-Indonesia Infrastructure Initiative.