



Aviation safety legal review based on act number 1/2009 related with the authority of local government and passenger protection in air transport business activities

Jopie JA Rory¹, J Ronald Mawuntu², Wulanmas APG Frederik³, Flora P Kalalo⁴

¹ Ph.D. Student, Departement of Law, Graduate Program, Sam Ratulangi University, Manado, Sulawesi Utara, Indonesia

² Professor, Departement of Law, Graduate Program, Sam Ratulangi University, Manado, Sulawesi Utara, Indonesia

³ Departement of Law, Graduate Program, Sam Ratulangi University, Manado, Sulawesi Utara, Indonesia

Abstract

Based on Act Number 1/2009 on Aviation, it is known that aviation safety is essentially the realization of airspace, aircraft, airport, air transport, air navigation, and other supporting factors that complement each other. Several cases or facts that can be categorized as violations by the carrier are not providing aviation safety and security to passengers, namely, the occurrence of a plane crash causing deaths and/or defects to passengers, flight cancellations, delays, loss or damage of baggage of passengers, poor service, unclear information about services offered, etc. As revealed from the monitoring of the National Consumer Protection Agency (NCPA), it is recorded that about six airlines namely Air Asia, Lion Air, Garuda, Sriwijaya Air, Merpati and Susi Air are usually complained about by customers. Based on this background, the statements of problems are: 1). What is the position of the Indonesian Aviation Navigation Service Provider and Aviation Safety Supervisory Board in realizing aviation safety? And 2) What is the Authority of the Regional Government regarding the policy and regulations of spatial arrangements to realize the safety of aviation? The research approach used in this study is Juridical Normative. The results of this study indicate that *first*, with the enactment of regional autonomy in accordance with Act Number 23/2014, the Regional Government also has the authority in the air safety guarantee system. Such authority is related to the authority of infrastructure and spatial support facilities and spatial authority in the territory of the Airports; and *second*, the Authority of the Regional Government concerning the policy and regulations of spatial arrangement to realize the safety of the flight is to control the area of the airport's interest environment, the regional government shall establish a detailed spatial plan of the area around the airport by taking into account the master plan of the airport and the national master plan of the airport. The regional authority in this case is the development and maintenance of the airport environment in accordance with Government Regulation Number 70/2012 on the Development and Conservation of the Environment of Airports.

Keywords: aviation, government authority, passenger protection

1. Introduction

The proliferation of airlines in the past 15 years on one hand provides positive implications for the aviation service community, which is the choice of many airlines with various services. In addition, the number of airlines that have created a competitive climate amongst each other which in turn spawned cheap tickets that the public is very enthusiastic about. However, this competition on the other hand also raises concerns that cheap ticket prices will have an impact on the quality of service, particularly the service of aircraft maintenance. Such concerns arise as a result of frequent accidents and aviation events^[1].

Among others, aviation accidents that have occurred in Indonesia within the last 20 years are as follow^[2]: AirAsia QZ 8501 aircraft crashed on December 28, 2014, the plane with 155 passengers departed from Juanda Airport to Changi Singapore. The Sukhoi Superjet-100 aircraft that took off from

Halim Perdanakusuma Airport, Jakarta on May 9, 2012 crashed into a cliff of Mount Salak, West Java. In this accident everyone in the plane, 45 people in total, were declared dead on September 29, 2011, Nusantara Buana Air Flight Number 823 crashed in Langkat, North Sumatra, 18 passengers and 2 crew members were killed. April 17, 2009, Mimika Air Flight Number 514 on route from Mulia to Ilaga crashed in Mount Gergaji, Papua. Ten people were killed in the accident. August 2, 2009, Merpati Nusantara Airlines Flight Number 9760 Jayapura-Oksibil crashed into a mountain. All 15 passengers and crew members were killed. The Adam Air plane crash on January 1, 2007 became a bad record for Indonesian flights. The aircraft took off at 12:55 Western Indonesia Time from Juanda Airport, Surabaya and should have arrived at Sam Ratulangi Airport, Manado at 16:14 Central Indonesia Time. However, the plane lost contact at 14:53 Central Indonesia Time and was thought to have crashed over the waters of the Makassar Strait. The 102 people on board are presumed to have died in this tragic accident.

Mandala Airlines plane on route Medan-Jakarta crashed in the area of Padang Bulang, Medan, North Sumatra in September

¹ Wagiman, 2006, Refleksi dan Implementasi Hukum Udara: Studi Kasus Pesawat Adam Air, (Jakarta: Jurnal Hukum Bisnis Vol 25) p. 13

² www.wikipedia.com/daftar-kecelakaan-dan-insiden-pesawat-penumpang-di-Indonesia-Wikipedia-bahasa-Indonesia, 8 April 2015

of 2005. The plane took off in an improper position at Polonia airport, consequently crashing into an electricity pole thus crashing into a residential area just 100 meters from the airport. This accident killed 100 people inside the plane and 49 local residents. December 19, 1997, 104 people were killed in a SilkAir plane that crashed over the Musi River, South Sumatra. The Singapore-based airline was on route from Jakarta to Singapore. Until now the cause for the plane crash is still uncertain, but United States investigators stated that Tsu Way Ming, the Singaporean pilot, deliberately crashed the plane or committed suicide. However, the National Committee for Transportation Safety (NCTS) stated if the cause of the accident is undetermined.

One of the worst accidents in the aviation world of Indonesia was recorded in September of 2007. A Garuda Indonesia Airbus A300 crashed in the mountainous area of the Buah Nabar village, Sub-district of Sibolangit, Regency of Deli Serdang, North Sumatera. The visibility of the plane that should have landed at Polonia Airport, Medan was limited due to thick smoke from forest fires until it finally crashed into a mountain cliff. This tragedy killed 234 people who were on the plane. The aircraft type de Havilland Twin Otter 300 that was owned by Merpati Nusantara airlines disappeared over open waters. The plane carrying 14 passengers was on a journey between islands in Indonesia. Until this day the plane along with the 14 passengers and crew were never found.

Based on Act Number 1/2009 on Aviation, it is known that aviation safety is essentially a manifestation of several complementary factors, among others: airspace, aircraft, airport, air transport, air navigation, and other supporting factors. During this time the dominant factor in aviation safety is only associated with air navigation and aircrafts. The airport factors themselves are mostly linked to the technical conditions, regardless of their relation to the development of local governments. As is well known, among the most frequent problems of an airport ^[3] that surface are the inadequate airport conditions that only meet the minimum standards.

Such conditions are somewhat influenced by changes in government systems from centralization to decentralization (regional autonomy). Although it has been regulated in Act Number 32/2004 on Regional Government which was later amended by Act Number 23/2014 on Regional Government, matters relating to the distribution of regional and central affairs, in practice there are various differences in airport management. The existence of the difference is certainly based on the authority given to each institution in carrying out its main duties and functions in the field of government. In letter O number 3 of the Appendix to Act Number 23/2014 on Regional Government concerning the distribution of government affairs in the field of transportation of the aeronautical sub-affairs states that the authority of the central

³ Airport according to Article 1 number 33 of Act Number 1/2009 Concerning Aviation is a land area and/or water area with certain limits used for aircraft landings and take-offs, passengers, loading and unloading of goods and places intra and intermodal transport, equipped with aviation safety and security facilities as well as basic facilities and other supporting facilities.

government is the regulation ^[4], control ^[5] and supervision ^[6] of civil aviation activities, while the local government concerns the issuance of building permits for landing sites and helipads.

In practice of the commercial air transport activity, it is often that the carrier does not fulfill its obligations properly and correctly or it can be said to have committed "a violation ^[7]."

Several cases or facts that can be categorized as violations by the carrier are not providing aviation safety and security to passengers, that is, in the occurrence of a plane crash causing passengers to die and/or be injured, flight cancellations, delays, loss or damage of baggage of passengers, poor service, unclear information about services offered, etc. As revealed from the results of research and monitoring of the National Consumer Protection Agency (NCPA) has recorded about sever airlines that are often complained about by consumers. The sever airlines are Air Asia, Lion Air, Garuda, Sriwijaya Air, Merpati and Susi Air. Consumer complaint forms submitted include, delayed flight schedules, baggage losses, forfeited tickets, multiple seat numbers, refused phone bookings, and other complaints such as baggage abandonment, refunds, attitude of steward/stewardess, security and hygiene ^[8].

Any aviation accidents always cause losses for passengers which of course breed legal issues, particularly with respect to the responsibility of the airline or carrier of passengers either as parties to the transport agreement or as a consumer, other than that another issue for the consumer is the existence of delay in the implementation of air transportation that sometimes exceeds the tolerance limit. There is no legal remedy for this problem ^[9].

In principle, air transport activities are civil legal relations though considering that air transport has become a widespread public need, it is necessary for the government to interfere in air activity that is determining policies or regulations related to air transportation activities so that the interests of consumers of air transport service users are protected. Although the transport agreement is essentially subject to the articles of the general sections of the *Burgerlijk Wetboek* (Civil Code), it has been stipulated by various laws specifically for the public interest to limit freedom in the conduct of the transport agreement, namely putting special

⁴ According to Article 10 number 3 of Act Number 1/2009 on Aviation, the arrangements referred to shall include the determination of general and technical policies comprising the determination of norms, standards, guidelines, criteria, plans and procedures including aviation safety and security requirements and licensing.

⁵ According to Article 10 number 4 of Act Number 1/2009 on Aviation, such Control shall include the provision of referrals, guidance, training, licensing, certification, as well as technical assistance in the field of development and operation.

⁶ According to Article 10 number 5 of Act Number 1/2009 on Aviation, Supervision is meant to cover the activities of development and supervision and operation to comply with laws and regulations including corrective action and law enforcement.

⁷ A violation is a condition in which the debtor (a person who owes something) does not carry out his/her performance/end of the bargain properly towards the creditor in accordance with the agreement.

⁸ <http://www.majalahkonstan.com>

⁹ Ridwan Khairandy, 2006, *Tanggung Jawab Pengangkut dan Asuransi Tanggung Jawab Sebagai Instrumen Perlindungan Konsumen Angkutan Udara*, (Jakarta: Jurnal Hukum Bisnis Vol 25) p. 20-21.

obligations to the carrier which shall not be excluded in the agreement^[10]. In this regard, according to Sri Redjeki Hartono^[11] the state has an obligation to arrange for facing interests to be reconciled in ideal harmony and harmonization. To that end, the state has the authority to regulate and intervene in predicting the likelihood of violations by providing a set of regulatory instruments while providing a threat of sanctions in the event of any violation by any economic agent.

A legal protection system for air transportation service consumers is a system comprising legislation and procedures governing all aspects that are directly or indirectly concerning the interests of the consumer of air transport services, consumer protection is total legal protection that will provide protection to passengers from the stage of aircraft manufacturing until the time he/she has arrived safely at the destination, or if he/she has an accident, until he/she or heirs are entitled to obtain compensation in an easy, cheap and fast procedure. Comprehensive consumer protection elements of air transport services cover various aspects including safety aspects; security aspects; comfort aspects; service aspects; fare aspects and air transportation agreement aspect.

In determining the protection of aviation safety, the carrier must refer to the prevailing provisions, so that it can be determined by the parties responsible, the things that can be accountable, the forms of liability, how much compensation there is, etc.

In relation to the aviation activities between the carrier and the passenger as well as the aforementioned airport it is necessary to conduct research to find out how the position and strategic role of each stakeholder and how their responsibilities are governed and implemented. Based on the above descriptions, the researcher decided on the title “*Aviation Safety Legal Review Based on Act Number 1/2009 Related with the Authority of Local Government and Passenger Protection in Air Transport Business Activities*”

Based on the background mentioned above, then the statement of the problems to be studied is as follows:

1. What is the position of Indonesian Aviation Navigation Service Provider and Aviation Safety Supervisory Board in realizing aviation safety?
2. What is the Authority of the Regional Government regarding the policy and regulation of spatial arrangements to realize aviation safety?

The purposes of this study are:

1. To explain the position of the Indonesian Aviation Navigation Service Provider and Aviation Safety Supervisory Board in realizing aviation safety.
2. To explain the Authority of the Regional Government regarding the policy and regulation of spatial arrangements to realize aviation safety.\

2. Thinking Framework

2.1 Theoretical Framework

2.1.1 Authority Theory

The authority theory is a theory that examines and analyzes: “the power of the organs of the government to exercise their

authority, both in the fields of private law and public law^[12].

Authority can be distinguished according to its source, importance, territory, scope, and according to governmental affairs.

Authority according to its source is divided into two kinds, namely: Personal authority; and Official authority^[13].

Max Webber divides authority into four types, which include: Charismatic, traditional and rational (legal) authority; Official and unofficial authority; Personal and territorial authority; and Limited and complete authority^[14].

In Black's Law Dictionary^[15], authority can be divided into 17 types, including: The power delegate; Legal power; Apparent authority; Authority by estoppels; Authority coupled with an interest; Express authority; General authority; Implied authority; Actual authority; Incidental authority; Inferred authority; Inherent authority; Limited authority; Naked authority; Ostensible authority; Special authority; and Unlimited authority.

In addition to the above divisions, authority is also divided on the basis of government affairs. Government affairs are:

“the functions of government which are the rights and obligations of each level and/or structure of government to regulate and administer those functions which are in their power in order to protect, serve, empower and prosper the society^[16].”

There are three levels of government running the affairs of the government. These three levels include: Government; Provincial government; and District/city government.

Government affairs under the authority of the government, include: Foreign policy; Defense; Security; Justice; National monetary and finance; and Religion^[17].

2.1.2 Legal Protection Theory

The term legal protection theory comes from the English language, namely legal protection theory, while in Dutch it is called *theorie van de wettelijke bescherming*, and in German it is called *theorie der rechtliche schutz*.

Grammatically, protection is shelter; or case (deed) to protect. Protecting is causing or making shelter. The meaning of refuge, includes: (1) placing oneself out of sight, (2) hiding), or (3) asking for help. Meanwhile, the definition of protecting includes: (1) covering to be invisible or unseen, (2) maintaining care or nurture, saving or giving help^[18].

According to Salim HS, protection is: “an attempt or a form of service provided by the law to a subject of law as well as

¹² Salim HS dan Erlies Septiani Nurbani, Penerapan Teori Hukum pada Penelitian Tesis dan Disertasi, Jakarta, RajaGrafindo Persada, 2013, p. 186.

¹³ Diah Restuning Maharani, Teori Kewenangan, <http://restuningmaharani.blogspot.com/2009/10/teori-kewenangan.html>, accessed on May 4, 2016

¹⁴ Soerjono Soekanto, *Sosiologi Suatu Pengantar*, Jakarta, Raja Grafindo Persada, 2005, p. 280-288.

¹⁵ Henry Campbell Black, *Black's Law Dictionary*, Amerika Serikat, West Publishing Co., 1978, p. 121.

¹⁶ Article 1 number 5 of Government Regulation Number 38/2007 on the Division of Government Affairs.

¹⁷ Article 2 paragraph (2) of Government Regulation Number 38/2007 on the Division of Government Affairs.

¹⁸ Departemen Pendidikan dan Kebudayaan, *Kamus Besar Bahasa Indonesia*, Jakarta, Balai Pustaka, 1989, p. 526.

¹⁰ R. Subekti, Op cit p. 71

¹¹ Sri Redjeki Hartono, 2007, *Hukum Ekonomi Indonesia*, (Malang: Bayu Media) p. 132

matters of a protected object ^[19].

The elements listed in the definition of the legal protection theory include: The existence or form or purpose of protection; Subject of law; and Object of legal protection.

Any legislation, in which the form or purpose of protection afforded to the subject and object of its protection is different from one another. Theoretically, the form of legal protection is divided into two forms, namely: Preventive protection; and Repressive protection ^[20].

Preventive legal protection is a form of legal protection that is meant to prevent. Protection provides an opportunity for the people to file an objection (*inspraak*) on their opinion before a government decision gets a definitive form. Thus, the protection of this law aims to prevent the occurrence of disputes and is very meaningful for the actions of government based on freedom of action. And with the preventive law it encourages the government to be careful in making decisions related to the principle of *freies ermesen*, and the people can make a statement of be consulted about the decision plan.

Repressive legal protection serves to resolve in the event of a dispute. Indonesia today has various bodies partially addressing the legal protection of the people grouped into two bodies: Courts within the scope of general courts; and Government agencies which are administrative appeals agencies.

2.1.3 Responsibility Theory

The Theory of Legal Responsibility ^[21], which in English is called the theory of legal liability, in Dutch is called *de theorie van wettelijke aansprakelijkheid*, whereas in German it is called *die theorie der haftung*, it is a theory that analyzes the responsibility of a legal subject or perpetrator who has committed an offense or a criminal offense so as to cause loss or disability. There are three elements contained in the theory of legal liability, including: Theory; Responsibility; and Law.

The word responsibility in Bahasa Indonesia means that circumstances must bear everything (if anything happens to be prosecuted, blamed, estimated, and so on). Bear is defined as being willing to bear the cost (take care, maintain). Ensure, states the state of willingness to perform obligations ^[22].

According to Algra, *et al*, responsibility or *verantwoordelijkheid* is: “the duty to assume responsibility and bear the harm suffered (if prosecuted), both in law and in the field of administration ^[23].”

The theory of legal liability was developed by Hans Kelsen, Wright, Maurice Finkelstein, and Ahmad Sudiro. Hans Kelsen put forward a theory that analyzes the legal responsibilities, which he called traditional theory. In the traditional theory, responsibility is divided into two types: Responsibility based

on error; and Absolute responsibility ^[24].

Wright developed the theory of responsibility, called interactive justice, which speaks of: “the negative freedom of a person to others in their interaction with one another. The essence of interactive justice is the existence of compensation as a tool that protects everyone from harmful interaction, commonly applied in tort law, contract law and criminal law. According to Wright, the limitation of civil/private liability is determined by the presence or absence of a specified standard of conduct to be the basis of a judgment consisting of (1) no worse off limitation, (2) superseding cause limitation, and (3) risk play-out limitation ^[25].”

The theory of legal liability is a theory that examines and analyzes the willingness of legal subjects or offenders to bear the costs or losses or to impose criminal punishment for their mistakes and for their negligence.

The principle of liability can be divided into two types, namely: Liability based on fault; and Strict liability ^[26].

Liability based on fault, only to receive compensation if they succeed in proving a mistake by the defendant. Errors are the elements that determine accountability, which means that if there is no evidence of error, there is no obligation to compensate. The order to prove it was introduced in article 1865 of the Civil Code. Article 1865 of the Civil Code reads: “whoever proposes the events upon which he based a right, is required to prove events to deny the rights of others, is required to prove those events”.

2.2 Conceptual Framework

The Conceptual Framework in this research is as follows:

a. Aviation

Aviation is a unified system comprising the use of airspace, aircraft, air transport, flight navigation, safety and security, the environment, as well as supporting facilities and general facilities ^[27].

b. Aircraft

An aircraft is any device that can fly in the atmosphere because of the lifting force of the air reaction, but not because of the air reaction to the earth's surface used for flight ^[28].

c. Air Worthiness

Air worthiness is the fulfillment of aircraft type design requirements and is in a safe condition to operate ^[29].

d. Air Transport

Air transport is any activity by aircraft to transport passengers, cargo, and/or mail for one or more trips to another or several other airports ^[30].

¹⁹ Salim HS dan Erlies Septiani Nurbani, Penerapan Teori Hukum pada Penelitian Tesis dan Disertasi, Jakarta, RajaGrafindo Persada, 2013, p. 262.

²⁰ Phillipus M. Hadjon., *Perlindungan Hukum bagi Rakyat Indonesia*, Surabaya: PT. Bina Ilmu, 1987. hlm. 2

²¹ Salim HS dan Erlies Septiani Nurbani, Buku Kedua: Penerapan Teori Hukum pada Penelitian Tesis dan Disertasi, Jakarta, RajaGrafindo Persada, 2014, p. 207

²² Departemen Pendidikan dan Kebudayaan, *Op.Cit.*, p. 899.

²³ N.E. Algra, dkk., *Kamus Istilah Hukum Fockema Andreae Belanda Indonesia*, Jakarta: Binacipta, 1983. p. 68.

²⁴ Hans Kelsen, *Teori Umum tentang Hukum dan Negara*, Bandung: Nusa Media, 2006. p. 95.

²⁵ Edmon Makarim, *Tanggung Jawab Hukum Penyelenggara Sistem Elektronik*, Jakarta: Rajawali Pers, 2010. p. 14.

²⁶ Koesnadi Hardjasoemantri, *Hukum Tata Lingkungan*, Yogyakarta: Gadjah Mada University Press, 1988, p. 334-335.

²⁷ Act Number 1/2009 on Aviation, Article 1 paragraph 1

²⁸ *Ibid*, Article 1 paragraph 3

²⁹ *Ibid*, Article 1 paragraph 10

³⁰ *Ibid*, Article 1 paragraph 13

e. Commercial Air Transport

Commercial Air Transport is public air transport by collecting payment^[31].

f. Non-Commerce Air Transport

Non-Commerce Air Transport is an air transport that is used to serve self-interest undertaken to support activities with substantial efforts other than in the field of air transport^[32].

g. Flight Route

The flight route is the aircraft's flight from the departure airport to the destination airport via the predetermined flight path^[33].

h. Carrier Responsibility

The responsibility of the carrier is the obligation of the air carrier company to indemnify the losses suffered by passengers and/or shippers and third parties^[34].

i. Carrier

The carrier shall be a commercial air carrier, a holder of a non-commerce air transport activity undertaking commercial air transport activities under the provisions of the Act, and/or a business entity other than a commercial air carrier entity making an air transport agreement contract^[35].

j. Flight Personnel

Hereinafter referred to as personnel, are licensed or certified personnel that are assigned duties and responsibilities in the aviation field^[36].

k. Passenger

A passenger is an air transport user who has paid, proven with a ticket document.

l. Air Transport Agreement

An air transport agreement is an agreement between the carrier and the passenger and/or cargo by aircraft, in return for payment or in the form of other services^[37].

m. Delay

A delay is the occurrence of a time difference between the scheduled time of departure or arrival with the realization of the time of departure or arrival^[38].

n. Ticket

A ticket is a printed document, through electronic process, or other form, which is an evidence of an air transport agreement between the passenger and the carrier, and the right of the passenger to use the aircraft or transport by airplane^[39].

o. Air-porting

Air-porting shall be anything related to the operation of the airport and other activities in carrying out the safety, security, smoothness and order functions of the traffic flow of aircraft, passengers, cargo and/or post, intra and/or intermodal shifts and enhancing national and regional economic growth^[40].

p. Airport

An airport is an area of land and/or water with certain limits used for aircraft landings or take-offs, passenger-dropping, loading and unloading of goods, and intra-transport and intermodal transport sites, equipped with aviation safety and security facilities, as well as basic facilities and other supporting facilities^[41].

q. Airport Authority

The Airport Authority is a government institution appointed by the Minister and has the authority to exercise and supervise the compliance of statutory provisions to ensure the safety, security and flight services^[42].

r. Aviation/Flight Safety

Aviation/Flight Safety is a condition of the fulfillment of safety requirements in the utilization of airspace, aircraft, airport, air transport, flight navigation, as well as supporting facilities and other public/basic facilities^[43].

3. Research Methods

Judging from its type, this research is a normative juridical study that analyzes the legal norms both contained in legislation or in an agreement/contract^[44].

Data source is where the data is obtained^[45] For this research/study the data sources are:

- Primary data sources were obtained from the Ministry of Justice and Human Rights, Ministry of Transportation, Outer Space, Airlines, Courts, Consumer Protection Agency, and society/the people.
- Secondary data sources were obtained from literature.

In legal literature, data sources are called legal substances^[46] The legal substances reviewed and analyzed in this study are:

- Primary legal materials, including: norms or basic rules, namely the Preamble of Indonesian Constitution, *Undang-Undang Dasar Negara Republic Indonesia Tahun 1945*; the basic regulations, namely the body of *Undang-Undang Dasar Negara Republic Indonesia Tahun 1945*; legislation, Act Number 1/2009 on Aviation, Act Number 8/1999 on Consumer Protection; customary law; jurisprudence; treaties; and the Criminal Code, Civil Code.

³¹ *Ibid*, Article 1 paragraph 14

³² *Ibid*, Article 1 paragraph 15

³³ *Ibid*, Article 1 paragraph 19

³⁴ *Ibid*, Article 1 paragraph 22

³⁵ *Ibid*, Article 1 paragraph 26

³⁶ *Ibid*, Article 1 paragraph 29

³⁷ *Ibid*, Article 1 paragraph 29

³⁸ *Ibid*, Article 1 paragraph 30

³⁹ *Ibid*, Article 1 paragraph 27

⁴⁰ *Ibid*, Article 1 paragraph 31

⁴¹ *Ibid*, Article 1 paragraph 33

⁴² *Ibid*, Article 1 paragraph 45

⁴³ *Ibid*, Article 1 paragraph 48

⁴⁴ Soerjono Soekantodan Sri Mamuji, *Penelitian Hukum Normatif Suatu Tinjauan Singkat*, Jakarta, Raja Grafindo Persada, 2010, p. 13-14.

⁴⁵ Alim HS dan Erlies Septiana, *Penerapan Teori Hukum pada Penelitian Tesis dan Disertasi*, Raja Grafindo Persada, 2013, p. 15

⁴⁶ *Ibid*, p. 16

- b. Secondary legal materials, including: academic texts, legislation drafts, and research of jurists.
- c. Tertiary legal materials are legal index indices, Indonesian Dictionary (*Kamus Besar Bahasa Indonesia*), English Dictionary, and encyclopedia.

This research uses legislation approach method ^[47], which is the approach used to examine and analyze all laws and regulations related to the issue of the law of aviation safety and passenger protection. The methods to collect data, or techniques used are literature studies or documentary studies, which collect documents related to aviation safety, consumer protection and air transport business activities.

The data collected is then analyzed by qualitative methods whose emphasis is on the content of legal regulation, and is carried out comprehensively and completely. Data analysis is defined as the process of organizing and scoring data in patterns, categories and sets of basic descriptions so that a theme can be found and workable hypotheses can be formulated as suggested by the data ^[48].

4. Discussion

4.1 Regional authority in relation to airport facilities and infrastructure with respect to responsible tasks for the safety of air transport operators

With the enactment of regional autonomy in accordance with Act Number 23/2004, the Regional Government also as authority in the air safety guarantee system. This authority is related to the authority of infrastructure and supporting facilities for airport and spatial authority in the territory of the Airports. The spirit to realize such autonomy is illustrated not only in its preamble, but also in the provisions of the article and its elucidation. Article 9 of Act Number 23/2014 on Regional Government describes Government Affairs, namely:

- a. Government affairs consist of absolute government affairs, concurrent government affairs, and general government affairs.
- b. The absolute government affairs as referred to in paragraph (1) shall be Government Affairs entirely within the authority of the Central Government.
- c. The concurrent government affairs as referred to in paragraph (1) shall be Government Affairs divided into Central Government, Provincial Region and District/City Region.
- d. The concurrent government affairs which are submitted to the Region become the basis of implementation of Regional Autonomy.
- e. The general government affair as referred to in paragraph (1) shall be Government Affairs which become the authority of the President as the head of government.

The enactment of Act Number 23/2004 on Regional Government, then the relationship between central and regional authorities is also experiencing changes. This is seen in the regulation of the distribution of government affairs

undergoing fundamental changes, as Hoessein puts it ^[49].

- a. Government Affairs that cannot be decentralized. This group of affairs is considered important for the organization and nation of Indonesia which includes foreign affairs, security, monetary, national fiscal, judiciary and religion. This governmental affairs group is organized according to the centralistic, deconcentrated principle to the government representative in this case the Governor and the vertical agency in the Province and the task of assistance to the autonomous region.
- b. This decentralized government affair, which is the element of government outside the first governmental affairs group and decentralized to the Governor as the government representative assigned to the autonomous Region and part of the governmental affairs should be decentralized and deconstructed to the autonomous Region as set forth in Article 10 paragraph (2) of Act Number 23/2014 that in the absolute government outside the government affairs as intended in paragraph (1), namely: self-executing; or delegate authority to existing Vertical Institutions in the Region or governor as representative of the Central Government based of Decentralization principle.

Aviation safety links central and regional authorities and aviation navigation agencies. Based on this matter, the parties are required to carry out their responsibilities in supporting aviation safety. In the Indonesian governmental and administrative system, the Regional Government is a subsystem of the State Government. With regard to this, then there are inter-governmental relationships that affect each other so as to create a unity of the State Government. Thus, in a state government there are two subsystems namely, First, the Central Government consisting of the president assisted by his ministers; and second, the subsystem of Regional Government, comprising of the Head of Region and the Regional People's Legislative Assembly with all regional apparatus supporting the implementation of the Regional Government, until the village government.

Government affairs which are the authority of the Regional Government, that is Provincial, District and City Governments as stipulated in Article 12 of Act Number 23/2014 on regional government.

In Article 12 it specifically regulates that matters which are under the jurisdiction of the Regional Government, among others are stated that:

- a. The Mandatory Government Affairs relating to Basic Services as referred to in Article 11 paragraph (2) includes: Education; Health; Public works and spatial arrangement; Public housing and residential areas; Peace, Public Order and Protection of the People; and Society.
- b. The Compulsory Government Affairs which are not related to Basic Services as referred to in Article 11 paragraph (2) include: work force; empowerment of women and child protection; Food; Land; Living environment; Population administration and civil

⁴⁷ *Ibid*, p. 18

⁴⁸ *Ibid*, p.19

⁴⁹ Bhenyamin Hoessein, *Kebijakan Desentralisasi*, Jurnal Administrasi Negara Vol. 1 No. 02, 2002, p. 207.

registration; community and village empowerment; population and family planning control; Transportation; Communications and information; cooperatives, small and medium enterprises; Capital investment; Youth and sports; Statistics; Encryption; Culture; Libraries; and Filing.

- c. The Government Affairs of Choice as referred to in Article 11 paragraph (1) includes: Marine and fisheries; Tourism; Agriculture; Forestry; Energy and Mineral Resources; Trading; Industry; and Transmigration.

Therefore, in order to carry out these matters both of the obligatory functions must be implemented by the Provincial Government as well as the choice of affairs based on the aspects of externalities, accountability and efficiency, the government shall form a pattern of government relations in the Region which is an important pillar in the implementation of governance in the Region as the spearhead of the implementation of Autonomy in the Region.

Therefore, according to Act Number 24/2014, the regional government has the authority to guarantee aviation safety related to the readiness and preparation of airport facilities and infrastructure. Aviation safety is realized when all stakeholders of the flight can perform their duties and functions properly. Tasks and functions can be implemented if the division of authority is set in detail and clear. So that every stakeholder has a reference/legal basis in carrying out its duties and functions. Referring to Act Number 1/2009 on Aviation and Act Number 23/2014 on Regional Government, it can be inventoried that some authorities of Regional Government in realizing the safety of aviation, among others:

a. Conducting flight/aviation coaching

Aviation/Flight coaching includes aspects of regulation, control and supervision. Regulatory aspects include the determination of general and technical policies comprising the determination of norms, standards, guidelines, criteria, plans, and procedures including aviation safety and security requirements and licensing. Control includes guidance, coaching, training, licensing, certification, as well as technical assistance in the field of development and operation. Supervision includes the activities of development supervision and operation to comply with legislation including corrective action and law enforcement.

Aviation/Flight coaching is conducted by taking into account all aspects of community life and directed to:

1. Expedite the mass flow of people and/or goods through air transport safely, securely, quickly, smoothly, orderly and regularly, comfortably and efficiently, at reasonable cost;
2. Improve the organization of air transport activities, airports, safety and security, and environmental protection as part of the whole modes of transportation in an integrated manner by utilizing the development of science and technology;
3. Develop the capability of the national air transport fleet that is strong and supported by a reliable aircraft industry so as to meet the needs of transport, both domestically and internationally;
4. Develop a reliable and competitive national air transport service business supported by the ease of obtaining

financing, tax relief, and a strong aircraft industry so as to be self-sufficient and competitive;

5. Enhance the capability and role of airport and aviation safety and security by ensuring the availability of flight routes and flight navigation in order to support air transport;
6. Manifest aerospace, professional, and capable aerospace human resources capable of meeting the needs of the operation of aviation; and
7. Comply with environmental protection and pollution prevention and mitigation efforts resulting from air transport and airport activities, and prevention of climate change, and the safety and security of aviation ^[50].

The regional government is mandated to participate in the promotion of aviation in accordance with its authority ^[51]. The authority referred to in accordance with the explanation of this article is the authority which has been submitted by the Government to the regional government in accordance with the provisions of the legislation. If we look at Act Number 23/2014 on the division of authority of the central government and regional government, the transportation sector is indeed one of the government's obligations ^[52]. However, if we explore more about the authority referred to by Act Number 1/2009 on Aviation in Act Number 23/2014 on Regional Government in the Air Transportation Department, especially Aviation, there is no authority of the Provincial Government in terms of the division of authority for flight development ^[53]. Within the framework of regional autonomy, especially in the involvement of the Regional Government in assisting the realization of aviation safety, special regulations may be required, in the form of a Government Regulation, to regulate the distribution of aviation authority as mandated by Act Number 1/2009 on Aviation.

In the operation of the airport, the regional government plays a role in determining the spatial plan of the area around the airport by taking into account the master plan of the airport as well as ensuring the accessibility and development of the airport. Airport development will strengthen connectivity between regions. The airport also plays a role in providing regional revenue because the airport will become a center of the economy due to traffic off goods or people.

Article 199 paragraph (2) of Act Number 1/2009 on Aviation states that: The national aircraft master plan as referred to in paragraph (1) shall be prepared by taking into account: the national spatial plan, provincial spatial plan, district/city spatial plan; potential and regional socio-economic development; the potential of natural resources; the development of strategic environments, both nationally and internationally; national transportation system; intermodal and multimodal integrity; as well as the role of airports.

The authority of the regional government in preparing spatial plans based on the potential and socio-economic development of its territory becomes the consideration of the central government in arranging and building new airports. Article

⁵⁰ Article 10 paragraphs 1-6 of Act number 1/2009 on Aviation

⁵¹ Article 10 paragraph 8 of Act number 1/2009 on Aviation

⁵² Articles 10-12 of Act Number 23/2014 on Regional Government

⁵³ Appendix to Act Number 23/2014 on Regional Government

201 paragraph (3) of Act Number 1/2009 on Aviation explains in detail how the government determines the location of the airport as stated below: Determination of the location of the airport as referred to in paragraph (1) shall be conducted by taking into account: the national master plan of the airport; aviation safety and security; harmony and balance with local culture and other related activities at the airport location; economic, financial, social, regional development, technical development and operation; and environmental feasibility.

Determination of the location of the airport must pay attention to the safety and security aspects of aviation, as well as aspect related to the condition of the area where the location of the airport is determined. In the elucidation of Act Number 1/2009 on Aviation it is explained that what is meant by "economic feasibility" is a feasibility that is considered to provide economic benefits for the development of the region, either directly or indirectly.

b. Controlling the Aviation Safety Operation Area (ASOA)

In order to ensure the safety of aviation and airport development, the regional government shall control the environmental area of airport interest. Article 210 of Act Number 1/2009 on Aviation states that in order to control the regional environmental interests of regional government airports shall establish a detailed spatial plan of the area around the airport with due regard to the master plan of the airport and the national master plan of the airport. This can then be regulated in the Regional Regulation on Aviation Safety Operation Area (ASOA), especially related to the height of buildings and noise areas that must also be regulated in the Regional Regulation on spatial/layout and regional governance. The government and/or regional governments are also in accordance with their authority to ensure accessibility of danutilities to support airport services.

4.2 The authority of the Regional Government concerning the policy and arrangement of spatial arrangements to realize aviation safety

In order to control the environmental area of airport interests, regional governments shall establish detailed spatial plans of the area around the airport with due regard to the master plan of the airport and the national master plan of the airport^[54]. What is meant by detailed plan of spatial area around the airport is the arrangement of land use around the airport. As it is known that the land used as a place for airports generally comes from agriculture land and plantations. Changes in land function will certainly have a significant impact on the regional layout (spatial plans and territories). Productive land that is focused on helping food needs is transformed into a special economic zone.

The airport is an element that has an important role in the organization of aviation, in the hopes that the airport can play a role in terms of growth, driving or moving and equity of national development. The airport is the entrance to a region and becomes a liaison between regions. According to Presidential Decree Number 15/2002 that to distribute a portion of the burden of activities from downtown to other areas, and to accelerate the development of the city, one way

in which the embodiment is to move the airport located in the city center to another area where it is buffer zone capital city. The presence of airports not only makes an impact socially, politically and environmentally but also has an impact on regional economic growth. With the construction of airports the rate of transportation of goods and people will be higher, the regional income from the tax/retribution sector will increase. However, on the other hand the presence of the airport will also change the structure of the surrounding community. From farmers who manage farms or plantations.

This change is sometimes not anticipated by the community and regional government, this giving a negative impact to the community around the airport that changed professions but cannot last long. It takes strategic cooperation between the airport and regional government to keep empowering the surrounding community so that it can be competitive. The effect on the employment field is to create employment either directly or indirectly in order to assist the government in the fulfillment of employment, especially in the field of air transportation industry. According to the Air Transport Action Group (ATAG), an international independent organization consisting of several groups of companies, especially in the field of air transportation industry, the contribution of air transport in the field of direct employment is the creation of industrial employment from the air transport itself and indirect is to create employment in the field of procurement of goods and services to meet operational needs / air transport production.

Regarding airport area and the area around the airport to support aviation safety, Act Number 26/2007 on Spatial Planning explains several strategic areas accommodated in the spatial and regional layout in each region that is a strategic area from the point of interest of defense and security, economic growth, social, culture, utilization of natural resources and/or high technology, as well as the function and carrying capacity of the environment. However, in the elucidation of this act it is not mention explicitly that the airport area is one of the strategic areas. Although it can be understood that the airport area is included as a strategic area from the point of economic growth. Indeed, in the elucidation of the spatial act mentioned below which includes strategic areas in terms of economic growth interests, among others, are metropolitan areas, special economic zones, integrated economic zones, underdeveloped areas, as well as free trade and port areas. This is referred to in Act Number 23/2014 on Regional Government.

If we look at Act Number 23/2014 on Regional Government, then the same term with the strategic area in question as stated in the elucidation of the Spatial Planning Act is approaching the term specific area in the Regional Government Act. Special Area is a part of a territory within provincial and/or regional/city area determined by the Central Government to perform government functions that are specific to the national interest regulated in the provisions of legislation. In Article 360 of Act Number 23/2014 on Regional Government, it is mentioned that in order to carry out certain government functions that are strategic to the national interest, the Central Government may designate special areas within provincial and/or regional/city areas. Special areas include: Free trade zones and/or ports; Free; Protected forest areas; Conservation

⁵⁴ See Article 211 of Act Number 1/2009 on Aviation

forest areas; Marine park areas; Hunting areas; Special economic zones; Bonded zones; Army areas; Industrial areas; Archaeological areas; Nature reserve areas; Cultural heritage areas; Authorized areas; and Areas/Regions for other national interests which shall be governed by provisions of acts and regulations.

To establish a special area of the Central Government to include the relevant Regions. Therefore the area of each region has the authority regulated by the Government Regulation, unless the authority of the Region has been regulated in the provisions of legislation. The authority of this region shall be the development and maintenance of the airport environment in accordance with Government Regulation Number 70/2001 on Airports and Government Regulation Number 40/2012 on the Development and Conservation of the Airport Environment.

The National Aviation Safety Program is governed by Act Number 1/2009 on Aviation and includes guidelines that comply with the ICAD provisions on the State Safety Program (SSP). The Minister is responsible for the safety of national aviation. To ensure the safety of national aviation, the Minister shall establish the National Aviation Safety Program. The Minister is responsible for establishing a team to evaluate the National Aviation Safety Program on an ongoing basis. The Directorate General of Civil Aviation on behalf of the Minister is responsible for drafting, guaranteeing and monitoring the implementation of the National Aviation Safety Program. ICAD standards require each Member State to develop a National Aviation Safety Program in order to achieve an Acceptable Level of Safety (ALoS). ICAD explicitly requires member states to set an Acceptable Level of Safety (ALoS) to be achieved, as a guideline to ensure satisfactory performance of the State Safety Program (SSP) and the Safety Management System (SMS) on the provider of aviation services. ICAD describes the State Safety Program (SSP) as “a set of integrated rules and programs aimed at improving safety”.

The ICAD 9859 document describes the eight unit entities required to implement the National Aviation Safety Program and Safety Management System:

- a. The Commitment of the Supreme Leader. The Minister of Transportation whose authority is delegated to the Director General and each supreme leader of the aviation service provider shall be committed to implement flight safety management. Every Director within the Directorate General of Civil Aviation must be a driving force and supervisor for the consistency and sustainability of the implementation of the National Aviation Safety Program. Policies need to be established to ensure safety aspects are used in management system standards.
- b. Effective Safety Reporting System. To control safety, every organization needs safety data that can be obtained through a voluntary reporting system or self-reporting system. Each aviation service provider must have a working environment with appropriate initiatives for reporting where management also supports effective flight safety reporting by aviation personnel. All aviation personnel are required to understand their responsibility for voluntary reporting.
- c. Use of Information. The aviation organization shall

monitor the safety data collection system on an ongoing basis and analyze the information collected and distribute information about aviation safety and the results of the analysis performed by the airline service providers.

- d. Learning. Investigations of safety events should be undertaken with the aim of identifying the deficiencies contained in the aviation safety system, not to blame/accuse someone. It is not important to determine the culprit, the important thing is to study the cause of the incident. Fixing system deficiencies is far more effective than dismissing incompetent personnel. Learning/teaching to the public to understand the benefits of the importance of safety culture.
- e. Sharing experiences. Aviation organizations should share the lessons gained from safety experience and the best practice is through the exchange of safety information.
- f. Training. Aviation organizations should integrate aviation safety training with eligible training programs for aviation personnel.
- g. Standard procedure. Effective adoption of Standard Operating Procedures (SOPs), including the use of checklists and guidance is one of the most effective ways for aviation personnel to embark on duties and responsibilities and to be a large mandate on the part of aviation organization on the highest management procedures determining aviation activities. With SOPs that have a realistic understanding of safety, which is well recorded and adhered to at all times, checklist fulfillment and direction cannot be ignored.
- h. Continuous Improvement. The aviation organization must have a continuous improvement plan for aviation safety management. Safety management is a sustainable activity so that its success can be achieved by continuous improvement.

In connection with the clear authority of the regional government on aviation safety it is necessary to coordinate with technical institutions to realize synergy. Judging from the context of state responsibility, aviation safety reflects the national capability of a country to maintain a safe and secure transportation system. This ability correlates with the state's ability to fulfill its responsibilities. Airplane accidents that resulted in the fear of aviation service users became the responsibility of the government as a party that is obliged to audit the safety provisions. The Government is the party that is obliged to conduct a national audit of safety regulations. The government in any plane crash cannot necessarily blame the airline provider, in this case the airline alone, though also must evaluate the performance of the national audit that has been carried out by the government to provide certainty of safety, whether the audit that has been done by the government was done correctly, measurably and routinely ^[55]. The determination of the flight safety standard is centered on the Directorate General of Civil Aviation, while the application and quality control lies with the airline service providers. The Directorate General of Civil Aviation is responsible for the National Aviation Safety Program whose implementation is undertaken by each Directorate within the

⁵⁵ See Yaddy Supriyadi, *Op.Cit*, p 177

Directorate General of Civil Aviation Environment with support from the relevant Government Agencies. This is where the role of aviation safety supervisors are required to audit and monitor the implementation of the national aviation safety program.

Article 308 paragraph (1) of Act Number 1/2009 on Aviation, assigns responsibility for aviation safety to the Minister of Transportation. Furthermore it is said in Article 312 (3) that in performing this obligation the minister establishes a Work Unit or Public Service Provider Institution to conduct Monitoring of National Aviation Safety. Aviation Safety Supervision is an ongoing supervisory activity to observe the compliance of the aviation safety regulations implemented by the airline service providers and other stakeholders including: Audit; Inspection; Observation (surveillance); and Monitoring^[56].

Furthermore, Regulation of the Minister of Transportation Number 8/2010 on the National Aviation Safety Program explains that national aviation safety control is one of the functions of the Directorate General of Civil Aviation to ensure compliance with relevant standards, procedures and regulations. Aviation safety control is an ongoing supervisory activity to observe the compliance of flight safety regulations implemented by the airline's provider and other stakeholders including: auditing, inspection, surveillance and monitoring. The Directorate General of Civil Aviation develops regulations based on safety risk management principles, to ensure regulations are appropriate and in accordance with by considering hazards and risks. The Directorate General of Civil Aviation establishes the implementing guidance to ensure that aviation service providers can identify hazards and manage safety risks. The implementing guidance covers the procedures and safety monitoring procedures.

Observation of national aviation safety is an in-depth search of particular part of the airline's organization's procedures, facilities, personnel, and documentation to see the level of compliance with applicable rules and regulations. The main activities to ensure the sustainable national aviation safety of airline service providers are:

- a. Product (checking individual work, activity or process); or Product observations are aimed at ensuring compliance with regulations, implementing guidelines and flight service provider procedures. The Government undertakes a thorough observation of activities for the fulfillment of responsibilities aimed at national aviation safety.
- b. System (checking the whole process on companies and systems).

Observation of the system aims to ensure the overall management of aviation service providers manage their responsibilities to ensure the safe operation of the flight.

An audit is a scheduled, systematic, and in-depth examination of the organization's procedures, facilities, personnel, and documentation of service providers to see the level of compliance with applicable rules and regulations. The Directorate General of Civil Aviation conducts an audit that combines a product and system approach consisting of:

- a. Scheduled audits are audits based on the calendar cycle;

- b. Unscheduled audits are event-based audits, executed at the time the inspector is at the site or the audit program to be run;
- c. Risk-based Audits are audits based on the risk profile of an air carrier that indicates that the service provider is managing the risks well. Governments may conduct risk-based audits at any time or without prior notice. Risk-based audits can be a follow-up audit of a scheduled audit if a flight service provider is found to have a weakness in the aviation safety aspect.

Furthermore, these functions are distributed in the work units controlled by the Directorate of Civil Aviation, including the Directorate of Airworthiness and Aircraft Operations, the Directorate of Flight Navigation, the Directorate of Airports, the Directorate of Aviation Security and the Directorate of Air Transport. Therefore, the Ministry of Transportation must immediately perform the mandate of Act Number 1/2009 to establish a new work unit until that is the Directorate of Aviation Safety of Aviation Safety Supervisory Agency where all functions mandated by the Aviation Act can be incorporated in one work unit or institution formed.

The Ministry of Transportation can also accommodate the formation of Independent for Flight Safety Foundation / Independent Air Force Safety Foundation. This Independent Institution/Foundation, for example, is inhabited by experts in the aviation world in Indonesia who are expected to contribute or become independent inspectors of our aviation safety. Similar institutions already exist in the US under the name Flight Safety Foundation with more than 1000 organizations, are independent and nonprofit and move a lot on aviation safety issues. They are better known as safety experts who are willing to share knowledge about safety, education about safety, and also help to advocate the operator and communication to the public.

Coordination between the NTSC (KNKT) and the regional government should also be emphasized and clarified for the synchronization of the flight safety guarantee system. The National Transportation Safety Committee (NTSC) is established by Presidential Decree as an independent investigative institution. NTSC is responsible for investigating serious incidents and transportation accidents and providing recommendations for action to improve transport safety, one of which is air transport to prevent similar accidents from occurring to the Director General and flight service providers. The main responsibility of the NTSC relating to the investigation of serious incidents and accidents is the application of the requirements of ICAD Annex 13. The position of the NTSC is to provide recommendations for the preparation of transport safety policies and prevention of transportation accidents. Especially in the field of aviation safety, this recommendation must be implemented by the Ministry of Transportation as the material of aviation safety evaluation.

5. Closing

5.1 Conclusion

Based on the results of the study and discussion, several conclusions can be drawn, namely.

- a. The position of the Indonesian Aviation Navigation

⁵⁶ See Article 312 of Act Number 1/2009 on Aviation

Service Provider and Aviation Safety Supervisory Board in the effort to implement the National Aviation Safety Program, the Ministry of Transportation in its function as a regulator is assisted by several government institutions as mandated by Act Number 1/2009 on Aviation.

- b. The authority of the Regional Government regarding the policy and spatial arrangement to realize the safety of aviation refers to Act Number 1/2009 on Aviation and Act Number 23/2014 on Regional Government there are several Regional Government authorities in realizing the safety of aviation, among others: Conducting flight guidance; Establishing and developing airports in the regions; Controlling the Area of Flight Operation Safety (AFOS); Coordinating with the Airport Authority to ensure flight safety and security (Articles 227-231).

5.2 Suggestions

- a. The safety of aviation should be a real commitment of all aviation stakeholders, especially the government (cq the Ministry of Transport) and institutions established to ensure the implementation of aviation safety. Therefore, the Indonesian Navigation Service Provider (Ainav Indonesia) has been duly sealed according to its designation. It is expected that the Government is committed to change the status of *LPPNI* legal entities from State-Owned Enterprises of Public Enterprises to Public Service Bodies, to be able to ensure their functions and authorities are running according to existing legislation. The government is also advised to immediately establish an aviation supervisory agency.
- b. In order to avoid overlapping authority between the government, regional government and other stakeholders in ensuring the creation of aviation safety, it is necessary to conduct a deeper review of existing legislation. Particularly with regard to the central and regional authorities, and the authority of the region and the authority of the aerodrome/airport. Regulatory synchronization is necessary to minimize the legal loopholes that arise in the implementation of the tasks and functions of their respective institutions.

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