

# A New Paradigm Of Air Area Violation (A Case Study Of Violations Of Indonesian Airspace)

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## Abstract

The 1919 Paris Convention and the 1944 Chicago Convention provide a strong foundation for the sovereignty of a country, where each country has full and absolute sovereignty over its territory, including the air space over its territory. This implies that no aircraft belonging to any country may pass through the airspace of another country without permission. Automatically all countries in the world must understand and recognize the law. Many countries have ratified the convention, including Indonesia with Law Number 1 of 2009 concerning Aviation and Government Regulation number 4 of 2018 concerning Security of Indonesian Airspace. However, until now there are still many violations of Indonesian airspace, both by foreign aircraft and foreign civil aircraft. The dynamics of the development of the global and regional strategic environment as well as the rapid development of aerospace technology have led to an increasing number of airspace violations that can pose a threat to state sovereignty in the air. The researcher discusses the causes of the many violations in Indonesia's national airspace, using qualitative research methods with a case study approach, with the aim of analyzing the causes of violations in Indonesia's national airspace, so that solutions can be found to overcome them.

**Keywords:** Airspace Sovereignty, Airspace Violation, State Aircraft, Air Area Security

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## Background

The sovereignty of a country is full and absolute over its territory. This has been regulated by international law where the sovereignty of airspace begins with the Paris Convention 1919. Article 1 of the 1919 Paris Convention states that every country has full sovereignty over the air space above its territory . This was later strengthened by the 1944 Chicago Convention which emphasized that the state has full and exclusive sovereignty over its air space . Referring to the two conventions, the sovereignty of the state in air space is absolute so that there is no right of peaceful passage for foreign aircraft in the air space, meaning that no aircraft belonging to any country may pass through the airspace of another country without permission.

The provisions in the convention are one of the basic foundations of international law governing air space, and according to international law, airspace is an area located above land, inland waters, and sea areas. On the basis of the above, automatically all countries in the world must understand and recognize the law.

Many countries have ratified the 1944 Chicago convention, including Indonesia by enacting Law Number 1 of 2009 concerning Aviation, which in Article 5 states that the Unitary State of the Republic of Indonesia has full and exclusive sovereignty over the Airspace . With full and complete sovereignty over the airspace , the Government of the Republic of Indonesia is fully authorized to secure the airspace for the benefit of national defense and security and aviation safety in Indonesia.

This is stated in Government Regulation number 4 of 2018 concerning Security of Indonesian Airspace .

However, until now there are still many violations of Indonesian airspace. In June 2021 the Air Force Chief of Staff (KSAU) Marshal TNI Fadjar Prasetyo said that violations committed by foreign military aircraft in Indonesian airspace increased in the past year by foreign military aircraft in the former Military Training Area (MTA) 2 which located in the north of Bintan Island and the airspace above the Indonesian Archipelago Sea Lane (ALKI) and the activity of foreign military flights experienced a significant increase, especially related to the escalation of unilateral claims disputes in the South China Sea .

Likewise, violations of airspace that occur in areas that are still in dispute, such as the occurrence of violations in the Ambalat area due to the unfinished business of border areas between Indonesia and Malaysia. The TNI commander stated that violations of airspace would further trigger conflicts between countries . Air Force Chief of Staff Marshal Yuyu Sutisna also revealed that there were many violations against Indonesian airspace that threatened the sovereignty of the country, including in Ambalat which could be a threat in itself .

Violations also occur in the Indonesian Archipelagic Sea Lane (ALKI) area where Indonesia as an archipelagic country has the consequence of having to provide archipelagic sea lane passage and air lanes above it for the purposes of crossing foreign ships and aircraft in accordance with the United Nations Convention on the Law of the Sea 1982 (UNCLOS 1982), which Indonesia has ratified with Law Number 17 of 1985 concerning Ratification of the United Nations Convention on the Law of the Sea, and Government Regulation of the Republic of Indonesia Number 37 of 2002 concerning the rights and obligations of foreign ships and aircraft in exercising their passage rights through the designated archipelagic sea lanes. The existence of this ALKI has resulted in large violations of sovereignty and law in the airspace. As stated by Kasau Marshal TNI Fajar Prasetyo that the number of flights of foreign military aircraft in various parts of Indonesia is still high, especially the air route over ALKI .

Facing the increasingly dynamic global and regional strategic environment development as well as the rapid development of technology, especially aerospace technology, it has resulted in an increasing number of airspace violations. This can be a threat to the sovereignty of the country in the air. From here the author wants to investigate further about what is the cause of the airspace violation.

## **Problem statement**

From the description of the background above, a research problem is summarized regarding "What are the causes of many violations in Indonesia's national airspace".

## **Research purposes**

The purpose of this study is to analyze the causes of many violations in Indonesia's national airspace.

## **Research methods**

The research method used is a qualitative method with a case study approach.

## **Research result**

The research results obtained through interviews, Small Group Discussions, Focus Group Discussions, Round Table Discussions, Seminars, and existing documentation, can be summarized in the analysis of the causes of many violations in Indonesia's national airspace as follows:

### **1. Direct airspace violation.**

Direct airspace violations occur mainly as a result of dispute areas, non-compliance with ALKI provisions, non-compliance with the flight corridor for Malaysia that connects eastern Malaysia with western Malaysia, and violations of aviation regulations that apply in Indonesia.

## 2. Indirect airspace violations.

Airspace violations indirectly occur mainly due to pandemics, natural disasters, and budget constraints.

## Discussion

### 1. Direct Causes of Airspace Violations.

a. **Dispute Area.** Dispute Area is caused by several things, including:

1. Flight Information Region (FIR) controlled by another country. There is a delegation of Indonesian airspace for FIR control to other countries which results in:
  - a. Law enforcement in the FIR area is hampered and has the potential to become an air threat, because there is no obligation for aircraft crossing Indonesian airspace with the aim of not going to Indonesia to complete the license.
  - b. Indonesian State Aircraft will not be able to carry out air operations in the FIR area.
  - c. Air Traffic Controller Indonesia cannot implement standard direct communication with aircraft that pass through the FIR area route in accordance with ICAO regulations to inquire about destinations, routes and flight permits because the airspace is controlled by other countries.



Figure 1: FIR Jakarta after MOU on 25 January 2022<sup>1</sup>

2. **Unclear Status of Ex-Military Training Area (MTA) 1 and 2.** The agreement on the use of the MTA was not completed so that its status became unclear because the Indonesian House of representative (DPR) had not yet approved the agreement. Although the status is unclear, the MTA 2 Area has been unilaterally designated as a Danger Area, so that it cannot be passed by Indonesian Aircraft, Foreign Aircraft, Indonesian Civil Aircraft and Foreign Civil Aircraft. This has the impact that until now there are still military activities of other countries in the airspace and by Indonesia it is considered a violation of airspace sovereignty.

<sup>1</sup> <https://www.beritasatu.com/nasional/886129/keberhasilan-perundingan-fir-akhiri-status-quo-di-kepri-dan-natuna>, 2022

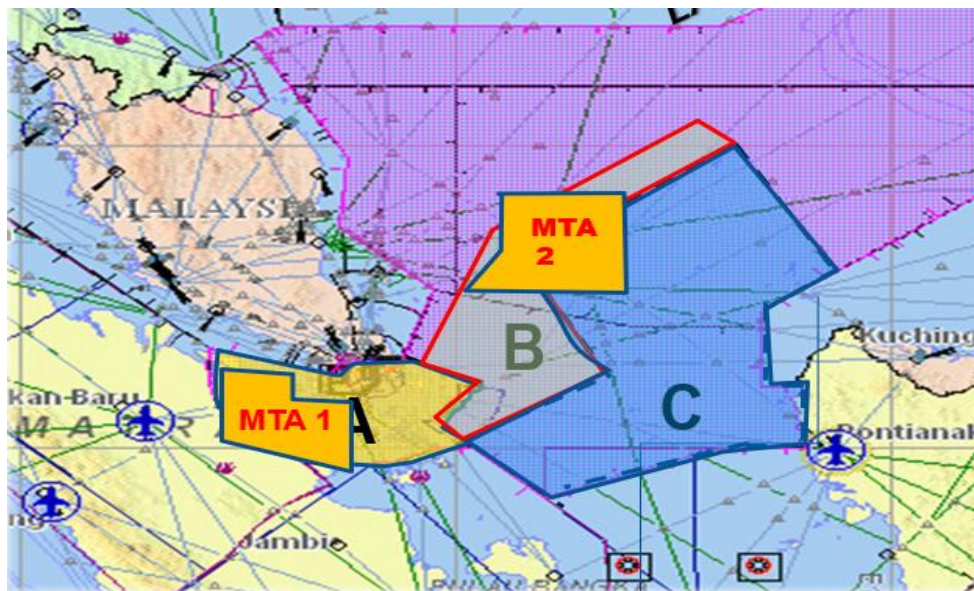


Figure 2: Ex-Military Training Area (MTA) 1 and 2 <sup>2</sup>

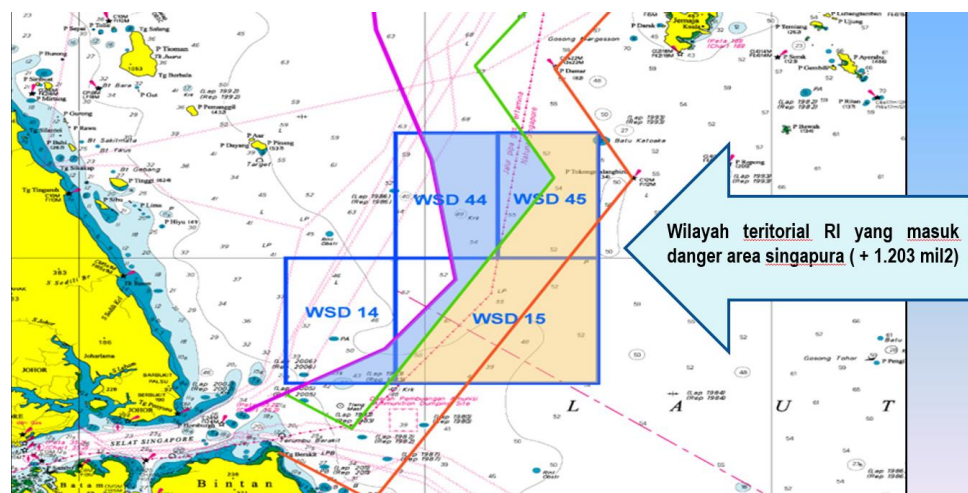


Figure 3: Danger Area in Ex-Military Training Area (MTA) 2 <sup>3</sup>

3. **Border area disputes.** There are still border disputes that have resulted in airspace violations, such as what happened in the area that is still in dispute, namely the Ambalat area, due to the unfinished business of border areas between Indonesia and Malaysia. The form of violation that occurs is a flight that enters the disputed area. Air Force Chief of Staff Marshal Yuyu Sutisna revealed that there was a violation of Indonesian airspace in Ambalat which threatened the sovereignty of the country . Vice President Jusuf Kalla also conveyed that the Indonesian side certainly questioned the purpose of the entry of Malaysian aircraft into the Ambalat waters since early 2015, because the entry of the neighboring country's aircraft into Indonesian sovereign territory had occurred long ago and had been resolved with the results of border negotiations .

<sup>2</sup> Kohanudnas, 2020

<sup>3</sup> *Ibid*



Figure 4: Dispute Area in Ambalat <sup>4</sup>

- b. **Non-Compliance with the provisions of ALKI.** Non-compliance with the requirements for the use of Right of passage in ALKI by foreign aircraft in carrying out activities or maneuvering while passing through ALKI. In accordance with Government Regulation Number 37 of 2002 concerning the Rights and Obligations of Foreign Ships and Aircraft in Implementing the Right of Archipelagic Sea Lane Passage, namely:
- 1) Pass quickly through or fly over archipelagic sea lanes in the normal way, solely for continuous, direct, fast and unobstructed transit.
  - 2) During the crossing, they must not deviate more than 25 (twenty five) nautical miles to both sides of the axis line of the archipelagic sea lanes, provided that they are not allowed to sail or fly close to the coast less than 10% (ten percent) of the distance between these points, the closest point on the islands bordering the archipelagic sea lanes.
  - 3) No threats or use of force against the sovereignty, territorial integrity or political independence of the Republic of Indonesia, or in any other way that violates the principles of international law contained in the United Nations Charter.
  - 4) When exercising the right of archipelagic sea lane passage, you are not allowed to conduct war games or exercises using any kind of weapon using ammunition.
  - 5) Except in a force majeure situation or in the event of an accident, aircraft exercising the right of archipelagic sea lane passage may not land in Indonesian territory.
  - 6) No illegal broadcasting or interference with the telecommunications system and no direct communication with unauthorized persons or groups within the territory of Indonesia.

In accordance with Article 19 of PP No. 4 of 2018 it is stated that Foreign Aircraft passing outside the Archipelagic Sea Lane must have a Diplomatic Permit (diplomatic clearance) and a Security Permit (security clearance).

An example of a violation of ALKI was on July 3, 2003, when five (5) US Navy F-18 Hornet aircraft flew in Indonesian airspace. The five aircraft came from the USS Carl Vinson (CVN-70) aircraft carrier which passed through ALKI 2 and carried out combat training for several hours northwest of Bawean Island .

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<sup>4</sup> *Ibid*



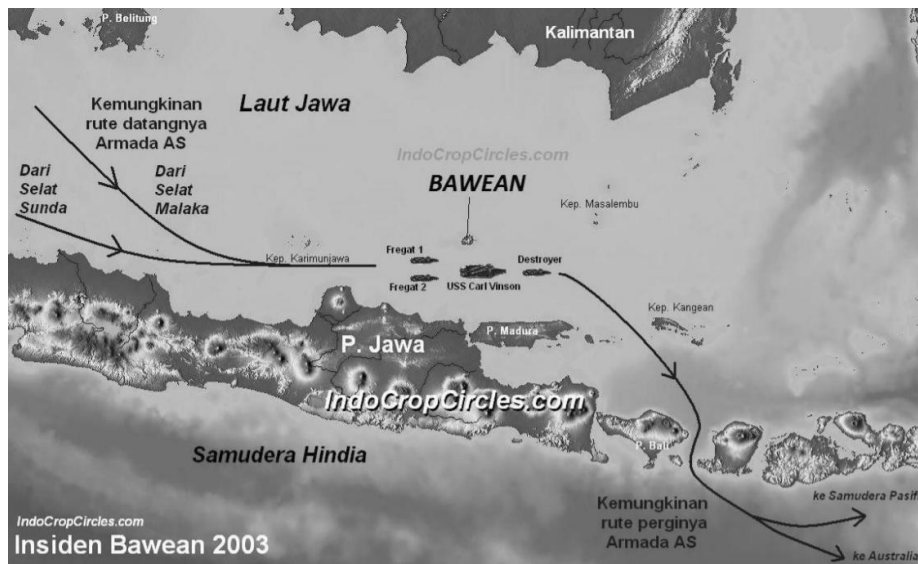


Figure 5: Bawean Incident in 2003<sup>5</sup>

- c. **Non-compliance with the flight corridor for Malaysia that connects eastern Malaysia and western Malaysia.** There is a tendency that the east-west corridor that has been mutually agreed upon between Indonesia and Malaysia since 1983 for Malaysian aircraft has not been complied with, so that aircraft from West Malaysia to East Malaysia violate the corridor. Also often used by foreign planes from other countries to cross the corridor so that it violates Indonesian airspace (especially in the Natuna-Area).



Figure 6: Malaysia Flight Corridor<sup>6</sup>

- d. **Violation of the applicable flight regulations in Indonesia.** Violations of airspace are the result of not properly understanding the laws and regulations that apply in Indonesia, such as Law Number 1 of 2019 concerning Aviation and Government Regulation Number 4 of 2018 concerning Security of Indonesian Airspace. Article 10 of PP no 4 of 2018 states that Foreign Aircraft flying to and from or through the Airspace must have a Diplomatic Permit (diplomatic clearance) and a Security Permit (security clearance). Unscheduled foreign civil aircraft flying to and from or through the airspace must have diplomatic clearance, security clearance and flight approval. If you don't have a permit (clearance) then it is considered a violation. Like the case of the Ethiopian plane on January 14, 2019, which was forced to land because it did not have a permit .

<sup>5</sup> <https://rechtsvinding.bphn.go.id/artikel/Wulan.pdf>, 2019

<sup>6</sup> ICAO, 2011



Figure 7: Forced Down of Air Carrier Ethiopia Airline <sup>7</sup>

## 2. Indirect Causes of Airspace Violations.

- a. **Pandemic.** Pandemic means the number of cases of disease (epidemic) that has spread throughout the world, so that it has a global impact on the pattern of human life, especially in the economic sector. A real example of what happened was the Covid-19 pandemic which had a multi-dimensional impact on human life. The Covid-19 pandemic which has lasted more than 2 years has had an indirect impact on the readiness and decreased capacity of human resources, especially the decrease in the professionalism of Indonesian Air Force personnel as the executor of airspace security tasks, which in turn has reduced the readiness of national airspace security. The pandemic which directly impacts the economic sector has resulted in cuts in the defense budget for the budget for handling the impact of Covid-19. This has also had an impact on the decline in the readiness of the main weapon system equipment (Alutsista) of the Indonesian Air Force. According to the TNI Commander, the refocusing of the budget in the Indonesian Air Force is to fulfill incentives for medical personnel in a number of hospitals owned by the Indonesian Air Force. As well as the procurement of medical equipment, such as personal protective equipment.
- b. **Natural disasters.** Natural disasters are natural events that have a major impact on the human population. These events are in the form of floods, volcanic eruptions, earthquakes, tsunamis, landslides, hurricanes, droughts, heat waves, forest fires and other events that have a terrible impact on social life on a large or national scale. Indonesia's position is located between three tectonic plates, namely the Indo-Australian plate, the Eurasian plate, and the Pacific plate, which is very prone to natural disasters. Natural disasters have had a tremendous impact on the community, especially if the impact of the natural disaster hit the TNI-AU's defense equipment, resulting in a very significant decline in the readiness of the defense equipment. Such as the impact of the tsunami in Aceh which had a broad impact on the Indonesian Air Force's defense equipment.
- c. **Budget Limitations.** The budget for the state defense sector is an important component in building a reliable main tool strength of the Indonesian Air Force's defense system. As a case

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<sup>7</sup> Dispenau, 2019

study, the budget support for the Indonesian Air Force is still not fulfilled according to the ideal needs. In 2020, the Indonesian Air Force budget is only supported by 46.5% of the need. The budget shortfall has resulted in disruption of the fulfillment of the need for the preparation of defense equipment for airspace security duties.

## Conclusion

From the research results, the following conclusions can be conveyed:

1. That every country has full sovereignty over the airspace above its territory, in accordance with international law of the Paris Convention 1919 and the Chicago Convention of 1944. Therefore, the sovereignty of the state in the airspace becomes so absolute that there is no right of peaceful passage for foreign aircraft in the airspace, means that no aircraft belonging to any country may pass through the airspace of another country without permission.
2. Indonesia has ratified the 1944 Chicago Convention by enacting Law Number 1 of 2009 concerning Aviation, which affirms that the Unitary State of the Republic of Indonesia has full and exclusive sovereignty over its airspace. With full and complete sovereignty over the airspace, the Government of Indonesia has the authority to secure the airspace for the benefit of state defense and security and aviation safety in Indonesia by making Government Regulation number 4 of 2018 concerning Security of Indonesian Airspace.
3. The results of the research are integrated into 2 things that cause airspace violations, namely directly and indirectly. The direct causes of airspace violations occur due to dispute areas due to the Flight Information Region (FIR) controlled by other countries, the unclear status of Ex-Military Training Areas (MTA) 1 and 2 and still border area disputes. Failure to comply with ALKI provisions, non-compliance with the flight corridor for Malaysia that connects eastern Malaysia and western Malaysia, and violations of applicable flight regulations in Indonesia. The causes of airspace violations indirectly occur due to pandemics, natural disasters, and budget constraints.

## Recommendation

In order to keep the airspace free from violations, based on the research results, it is recommended as follows:

1. The Indonesian government immediately resolves the dispute area by taking full control of the Flight Information Region which is still controlled by another country, finalizing the Military Training Area 1 and 2 agreements and resolving border disputes in the Ambalat region and resolving the issue of the flight corridor for Malaysia that connects eastern Malaysia. and western Malaysia
2. The Indonesian government immediately conducts socialization of the applicable aviation regulations in Indonesia, including in the ALKI area.

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