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RESEARCH ARTICLE

VIOLETION OF THE SOVEREIGNTY OF INDONESIA AIRSPACE BY FOREIGN AIRCRAFT.

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Abstract

State sovereignty in the airspace is complete and exclusive guaranteed by international law. This research is a normative or library research that examines the legal and enforcement arrangements sovereignty in Indonesian airspace. The results of the study are Aircraft entered Indonesian airspace without permission is a violation of Indonesia national law and international law. And as a sovereign state can take measures to preserve the sovereignty of their airspace in accordance with Indonesian national law and international law.

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Introduction:

In article 5 of Law No. 1 of 2009 on Aviation that "the Republic of Indonesia full and exclusive sovereignty over the airspace of the Republic of Indonesia".As a sovereign state, the Republic of Indonesia has sovereignty fully and completely in the airspace of the Republic of Indonesia, in accordance with the provisions of the 1944 Chicago Convention on International Civil Aviation and the Convention on the Law of the Sea 1982 which has been ratified by Law No. 17 of 1985 concerning the Ratification of the United Nations Convention on the Law of the Sea.¹

The provisions in this article only confirms the authority and responsibility of the Republic of Indonesia to regulate the use of airspace, which is part of the territory of Indonesia, while about the sovereignty of the Republic of Indonesia as a whole remain applicable provisions of the legislation in the field of national defense. In order to safeguard the sovereignty of the airspace of the Republic of Indonesia, to do the acquisition and development of technology so that the Unitary Republic of Indonesia can be as high as possible control of its airspace for the benefit of the widest possible for people, especially for the benefit of flight.²

Sovereignty is one element of the existence of a state. From the point of linguistic sovereignty can be interpreted as a highest authority of the Governmentstate, local, and so on. In the context of the science of statecraft, Parthiana said that sovereignty can be defined as the highest authority is absolute, complete, round and can not be divided and therefore can not be placed under the authority of another. However, in the process of further development, there has been a change in the meaning of state sovereignty.³

¹Explanation of article 5 of Law No. 1 of 2009 on Aviation

²Explanation of article 5 of Law No. 1 of 2009 on Aviation

³Suryo Sakti Hadiwijoyo. 2011. *Perbatasan Negara Dalam Dimensi Hukum Internasional*, Yogyakarta: Graha Ilmu. p. 8

The sovereignty of a country is no longer an absolute or absolute, but in certain limits must respect the sovereignty of other countries, which is governed by international law. It is then known as Relative Sovereignty of State. In the context of international law, a sovereign state in essence must submit to and respect international law, as well as the sovereignty and territorial integrity of other countries.⁴

Management and defense issues in the border region are closely linked to the basic conception of the state as a sovereign entity, population and territory as well as the interpretation or perception of the threat. Thus, the management and defense of the border region can be considered as all efforts to realize the existence of a state that is characterized by protection of sovereignty, population and territory of the various types of threats. This conception is part of an understanding of the totality of the concept of 'national security' which in essence is "the ability of states to protect what is defined as core values, where achievement is a continual process, using all elements of power and resources that exist and embraces all aspects of life."⁵

Each state has a standard secure air space region closely. The national air space of a country entirely closed to foreign aircraft both civilian and military, and only with the permission of the state under the first place either through bilateral and multilateral agreements, the national air space can be entered or passed by foreign aircraft.

Violation of airspace is a condition, in which the aircraft of a country's civilian or military airspace entering another country without the prior permission of the state which he entered. Judging from several cases of cross-border violations in Indonesia are ordinary and not so threatening, but the Indonesian state must act decisively because the country's sovereignty is violated by another country. It is in fact on the ground a lot of violations of our air border areas by foreign nationals either of civilian aircraft and military aircraft.

Standard guarding the air space in Indonesia is still considered to be less due to several factors such as lack of technology owned by Indonesia, Weak radar system in Indonesia as well as the lack of the number of aircraft and defense equipment makes supervision Indonesian airspace to be not optimal.

Many foreign aircraft crossing the airspace of the Indonesian state without permission from the control tower located on land and most of the military aircraft belonging to another country in violation to fly all the way into Indonesian airspace.⁶

This issue becomes important warning about the security and sovereignty of the territory of Indonesia that could be threatened due to the many foreign planes passing Indonesian air territory without a permit to fly in advance of the government in this case the Air Force.

This research outlines as follows to explain: 1. Legal arrangements on airspace violations, 2. Enforcement sovereignty in the airspace of the Republic of Indonesia, 3. Barriers to enforcement Airspace Sovereignty in Indonesia.

Method of the Research:

This type of research is a normative legal research. The study began with an inventory of legal regulations in both the international and national laws regarding the violation of sovereignty in the airspace. Furthermore, to determine sovereignty on the enforcement of foreign aircraft violating airspace Indonesian nation and obstacles to the enforcement of the country's sovereignty in the airspace of Indonesia conducted interviews with the parties in the Command Headquarters of the National Air Defense Sector II (Kosekhanudnas II) Makassar.

Data obtained both primary and secondary processed first and then analyzed using qualitative descriptive method, which the researchers explain, describe, and illustrate in accordance with the problems closely related to the study, and then draw a conclusion based on the analysis that has been done.

⁴*Ibid.*

⁵Mufti Makarim. A. 2005. *Strategi Pengelolaan dan Pertahanan Wilayah Perbatasan Udara Republik Indonesia : Tantangan Aspek Politik*. Yuridis dan Operasional. p. 89

⁶Look <http://www.cnnindonesia.com/nasional/20151004173758-20-82703/ramai-penyusup-di-angkasa-garuda/>. Accessed on 08 Oktober 2015

Results and Discussion:

Legal Arrangements Against Foreign Aircraft Infringing the Sovereignty Airspace:

Very strategic area air space for defense and security under the state has been realized by forming the 1919 Paris Convention on the regulation of aerial navigation. Article 1 of the Paris Convention in 1919 boosted by The 1944 Chicago Convention on international civil aviation asserted that each country has full and exclusive sovereignty over the air space over its territory. As is the territory is its land and territorial waters associated with controlled for sovereignty, absolute power, protection or mandate of a country. The State has exclusive jurisdiction and authority full to control the air space above its territory. Words full and exclusiveshows how much of a nation's sovereignty over its air space.⁷

The extent to which the country's sovereignty in the air space can actually be viewed horizontally or vertically. Horizontally country has sovereignty over the air space above the land and waters to its territorial sea. The air space above the contiguous zone, EEZ is already not under the sovereignty of the country under. Likewise for the air space over the high seas belong to all mankind. The limits of sovereignty over the air space vertically up to now unclear. This is because the absence of an agreement to which the height of the air space and start what height space begins.⁸

With the full and exclusive sovereignty of its state reserves the right to make the adjustment to flights in the air space. This arrangement is necessary so as the flight takes place safely and efficiently and orderly. In addition to the Paris Convention in 1919, other important legal instruments are the 1944 Chicago Convention on civil aviation. As the name implies, this convention is intended for civil aircraft, not for State Aircraft.⁹

Article 1 of the 1944 Chicago Convention, recognize the sovereign rights in the territorial airspace of a State, which reads:

The contracting States Recognize that every State has complete and exclusive sovereignty over the airspace above its territory.

Article 3 as the implementation of article 1 Chicago Convention, explains:

(a) This Convention shall be applicable only to civil aircraft, and shall not be applicable to state aircraft. (b) Aircraft used in military, customs and police services shall be deemed to be state aircraft. (c) No state aircraft of a contracting State shall fly over the territory of another State or land thereon without authorization by special agreement or otherwise, and in accordance with the terms thereof. (d) The contracting States undertake when issuing regulations for Reviews their state aircraft, that they will have due regard for the safety of navigation of civil aircraft.

In Chicago Convention Article 3a only stated that the convention does not apply to state aircraft / military aircraft, but no detailed explanation about it, only in the form of a statement negative. According Boer Mauna distinction whether a plane including civilian plane flight or state depending on their function rather than quality owner.¹⁰

In Article 3b of this convention only mentions that "Aircraft used in military, customs and police services shall be deemed to be state aircraft". This is not a definition but only a rebuttable presumption (iuris presumptio). Many types of activities other countries that use the air which is also owned by the state such as coastguards, search and rescue, medical services, mapping or geological survey services, disaster relief, and Government VIP transport, and others. Thus, according to Michael Milda, what otherwise Article 3b is not something exclusive and comprehensive.¹¹

However in practice some elements that are generally used to categorize an aircraft as military aircraft are as follows: 1. design of the aircraft and its technical characteristics; 2. registration marks; 3. ownership: the fact that the

⁷Sefriani. *Pelanggaran Ruang Udara Oleh Pesawat Udara Asing Menurut Hukum Internasional dan Hukum Nasional Indonesia*. Jurnal Hukum Ius Quia Iustum No. 4 Vol. 22 Oktober 2015. p. 544

⁸*Ibid.* p. 544

⁹*Ibid.* p. 545

¹⁰Sefriani. *Op.Cit.* p. 545

¹¹*Ibid.* p. 546

plane is owned by units of the military in certain cases not automatically could be proof that the plane was "used in military services"; 4. Type of operation, consisting of: the nature of the flight, documents Carried on board, flight plan, communications procedures, composition of the crew (military or civilian), Secrecy or open nature of the flight, etc.

Countries entitled to organize all kinds of activities that are above their airspace including defining areas that can be taken by civil and military flights. Flight status determination is also a determinant of the law enforcement in case of infringement. Offenses committed by civilian aircraft shall not constitute a responsibility of the state, if the breach is not directly or indirectly ordered by the state but rather delegated to the organizer or the owner of the aircraft. While the violations committed by the state or military aircraft, the state aircraft owners are responsible for the violations committed. Law enforcement against violations of airspace in accordance with applicable law in the country. In the event of a violation under the state can perform or ambush interception and forcing the plane to come down or landing at a base in accordance with the command of the country under. Violations of airspace of a country is a violation of national law and international law and international dispute resolution conducted in accordance with international law.

Basically the Indonesian national laws in line with international law that can be seen of which Article 5 of Law No. 1 of 2009 which states that "the Republic of Indonesia full and exclusive sovereignty over the airspace of the Republic of Indonesia", which adopted directly from Article 1 of the 1944 Chicago Convention.

In respect of the country's sovereignty over the airspace of the Republic of Indonesia, the Government has implemented the authority and responsibility for regulating the air space for the benefit of airlines, the national economy, national defense and security, social, cultural, and environmental air.¹²

Indonesian airspace own settings set by the government to establish areas where the air is prohibited and restricted. The authority to establish areas of prohibited and restricted air is under the authority of every sovereign state to regulate the use of their airspace, in the framework of the public safety, aviation safety, the national economy, the environment, defense and security.¹³

For sanctions against violators of the rule of Indonesian airspace governed by Article 401, 402 and 414.

In Article 401 Reads:

"Each person operating an aircraft Indonesian or foreign aircraft entering the airspace prohibited as referred to in Article 7 paragraph (2) shall be punished with imprisonment of 8 (eight) years and a maximum fine of Rp 500,000,000.00 (five hundred million rupiah). "

Article 402 Reads:

Each person operating an aircraft Indonesian or foreign aircraft that entered restricted airspace as referred to in Article 7 paragraph (4) shall be punished with imprisonment of three (3) years or a maximum fine of Rp 500,000,000.00 (five hundred million rupiah).

Article 414 Reads:

Each person operating foreign aircraft in the territory of the Republic of Indonesia without the permission of the Minister referred to in Article 63 paragraph (2) shall be punished by imprisonment of five (5) years or a fine of not more Rp2.000.000.000,00 (two billion rupiah).

Harmony and firmness in law enforcement to air violators sovereign territory of Indonesia, which can be a deterrent effect, it would be very necessary. Indonesian Aviation Law does not regulate differences in the treatment of types of foreign aircraft violating sovereign territory of Indonesia. For civilian aircraft is clear that this type of aircraft should be subject to Indonesian law when in the territory of Indonesia. The aircraft can be sanctioned under Indonesian law. State under the right to make an interception, forced down, even the legal process of civil aircraft with air crews who violate the sovereign territory of Indonesia.

¹²Article 6 of Law No. 1 of 2009 about Flights

¹³Explanation of article 7 paragraph 1 of Law No. 1 of 2009 about Flights

By contrast, if the offense is the best that the state aircraft, especially foreign military aircraft entered the sovereign territory of the State of Indonesia. In international law the state aircraft has diplomatic immunity. State aircraft should not be investigated and examined by the investigation authorities, however, state aircraft, can be driven out by state aircraft Indonesia in this case the Indonesia air forces to exit the sovereign territory of the Republic of Indonesia. Violations committed this type of aircraft bore the responsibility of state and settlement using the dispute settlement mechanism under international law. According to international law dispute resolution can be done through peaceful or violent means. Under state security authorities in the framework of self-defense is entitled dispel such a plane, interception or even shoot down aircraft that foreign. Shoot down aircraft that foreign country in violation of the territorial sovereignty of the country under a form of legitimate means of violence perpetrated by the state under a foreign country if the plane was suspected of conducting activities that endanger national security vault. A peaceful solution can be done either through legal or political. Admission of guilt and an apology from the country of origin aircraft violating the country is one of the best form of accountability countries of origin when they did. Other forms of accountability are compensated for losses suffered under the state.

Enforcement of State Sovereignty In Indonesia Airspace:

The competent institution as enforcing air sovereignty is the Air Force National Army of Indonesian. It is stated in Law No. 34 of 2004 of the Indonesian Armed Forces, in the article

To implement the task implementation and enforcement of rule of law in the national air space, it takes the role of the National Air Defense Command (Kohanudnas). Because Kohanudnas has the capability of detection, identification and prosecution of the entire air vehicle that violated the airspace of the Republic of Indonesia. Meanwhile, in carrying out this task, Kohanudnas implement the **Air Defense Operations, both active and passive**.¹⁴

Basically the implementation of the Air Defense Operations divided into two namely **Active Air Defense Operations**, which includes the following activities:¹⁵

1. Detection: is the process of surveillance of air targets electronically and visually.
2. Identification is the process of determining the classification of each comrade air targets, air targets are not known or enemy air targets.
3. Repression: a follow-up of activities carried out by the identification of fighters ambushed for shadowing, dispels, forced landing and destruction.

While the **Passive Air Defense Operations**, includes:¹⁶

1. Danger preaching Air, aims to safeguard personnel and facilities against air strikes and increased readiness of all units in the face of air attacks.
2. Reduction due to attacks by air, these efforts made to regional security measure air strikes, rescue people and prevent the emergence of new dangers as a result of air strikes.

The process action carried out by warplanes assault as follows:¹⁷

1. Shadowing.
2. Intervention.
3. Force down.
4. Destruction.

For foreign civil aircraft violating airspace, carried out actions in accordance with Law No. 1 Year 2009 on Aviation of article 8 is: be warned and told to leave the area by the air traffic control personnel. In the case of warnings and

¹⁴Interview with Inteligence Assistant The Command Headquarters of the National Air Defense Sector II (Kosekhanudnas II) Makassar

¹⁵Interview with Inteligence Assistant The Command Headquarters of the National Air Defense Sector II (Kosekhanudnas II) Makassar

¹⁶Interview with Inteligence Assistant The Command Headquarters of the National Air Defense Sector II (Kosekhanudnas II) Makassar

¹⁷Markas Besar TNI. 2003. *Buku tentang Pertahanan Negara Petunjuk Pelaksanaan OPSGAB TNI Tentang Operasi Hanud Nasional*. Jakarta. p. 19

orders are not obeyed, performed acts of coercion by the aircraft of the Republic of Indonesia. As well as inspected and investigated in accordance with the provisions of Indonesian law.

And for a military aircraft or a foreign country who violate the airspace of Indonesia, the Indonesian government in this case the Air Force can conduct air defense operations in the framework of self-defense which is entitled dispel such a plane, interception or even shoot down aircraft that foreign. Shoot down aircraft that foreign country in violation of the territorial sovereignty of the country under a form of legitimate means of violence perpetrated by the state under a foreign country if the plane was suspected of carrying out activities that threaten or endanger national security.

Implementation Case Interception and Force Down aircraft Foreign air include:¹⁸

- Interception in Bawean island between planes F-16, the Indonesian air force with F-18 US Air Force union.
- Force down in Manado, VH-RLS plane with pilot Paul Jacklin Greame and Mc Clean Richard Wayne, and imposed a penalty of 60 million rupiah.
- Force down in Pontianak, the plane containing three crews in order training (training) were identified as captain Tan Chin Kian (instructor, Singapore), Xiang Bohong (trainee, Chinese), and Zheng Chen (trainee, Chinese). And imposed a penalty of 60 million rupiah
- Force down in Kupang, private jet Saudi Arabian Airlines, captain pilot, Waleed Abdul Aziz and Abdullah Aziz Ibrahim; two co pilot, Mohammed Suliman and Mohammed Saud; two stewardess, Kaitouni Oulaya and Safa; as well as the passengers, namely Muhammed Dhafir, Sami Amadh, Muhammed Abdullah, Hussin Ali, Khalid Mushabbad, Atiah Ayed, and Domino Domingo. After inspection, the aircraft did not carry dangerous goods. Head of Information Lanud El Dance. And imposed a penalty of 60 million rupiah
- Force down in northern Borneo, the aircraft with callsign TS-3009 and TS-3011 with a pilot named James Petrick Murphy member US Navy Reserve. And imposed a penalty of 60 million rupiah.

Based on the cases of violation of the sovereignty of the airspace above it can be concluded that the Air Force can perform actions such as detection, identification and prosecution of the aircraft which breach the sovereignty of airspace Indonesia, for foreign civil aircraft which do not have the permission through Indonesian airspace then penalized in the form of administrative sanction, and pay a fine of Rp. 60,000,000 (sixty million rupiah). Whereas under Article 418 of Law 1 Year 2009 on Aviation mentioned, violation commercial flight unscheduled coming into Indonesia without permission fined a maximum of Rp.200,000,000.00. Fines were granted pursuant to the Decree of the Directorate General Air Transportation No. 195 of 2008 regarding Implementation Guidelines Approval Fly in Article 17. Fines Rp. Rp. 60,000,000.00 rated the Air Force is very small and is not comparable to the costs incurred for the country deploy fighter aircraft belonging to the Air Force (AU). According to TNI AU needed Rp.100,000,000.00 to 400,000,000.00 (one hundred million to four hundred million rupiah) for fighter aircraft Sukhoi be able to fly for an hour. As for the state aircraft or foreign military efforts are warning, interception and forced out of the territory and the sovereignty of the Indonesian government could send a Diplomatic Note to the country where their aircraft foul Indonesian airspace. However, if the warning and forced out the territory sovereignty of Indonesia not adhered even suggests actions that threaten or endanger national security and defense Indonesia, then to do the shooting and destruction of the aircraft.

Barriers in enforcing sovereignty in the airspace of the country of Indonesia:

In the monitoring of the airspace required vast Indonesian Defense System Main Equipment corresponding to an area of high and standard capacity. The Command Headquarters of the National Air Defense Sector II (Kosekhanudnas) in maintaining the sovereignty of airspace Indonesia operates 6 units of Radar, addition the National Air Defense Command (Kohanudnas) have Air Squadron 11 Wings 5 Lanud Hasanuddin consisting of a squadron of Sukhoi Su-30 MK2 and Su-27 SKM totaling 16 aircraft and escorting sky Indonesian air. But of all defense equipment owned by Kohanudnas especially Kosekhanudnas II Makassar, still far away with the minimum standards of military force should be owned by Indonesia. Then the next barrier is the human resources both in quantity and quality operate air defense equipment is still very limited due to the many personnel lack the advanced education technologies more renewable air defense.¹⁹

¹⁸Data The Command Headquarters of the National Air Defense Sector II (Kosekhanudnas II) Makassar

¹⁹Interview with Intelligence Assistant The Command Headquarters of the National Air Defense Sector II (Kosekhanudnas II) Makassar

Conclusion:

From the above results it can be concluded that the regulation of the air sovereignty violations committed by foreign aircraft as expressly provided in the 1944 Chicago Convention and Law No. 1 of 2009 on Aviation which states in its airspace sovereignty is recognized by international law. Every state entitled to organize all kinds of activities that are above their airspace including defining areas that can be taken by civil and military flights. Status of Flight is also a determinant of the law enforcement in case of violation. Enforcement sovereignty in the airspace of the responsibility of the Air Force by conducting air defense operations in the form of detection, identification, and prosecution. The limitations of the Main Tool defense capacity (Alutsista) owned by the Air Force who has not reached the minimum limit of the defense forces can be an obstacle to the enforcement of the rule of Indonesian airspace. As well as the quality and quantity of human resources who operate tools of defense also be a determining factor in any surveillance and defense operations Indonesian airspace.

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