

LAW ENFORCEMENT AGAINST UNAUTHORIZED FOREIGN AIRCRAFT ENTERING THE TERRITORY OF THE UNITARY STATE OF THE REPUBLIC OF INDONESIA

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Abstract

Law enforcement against unauthorized foreign aircraft entering the territory of the Unitary State of the Republic of Indonesia is a crucial aspect in maintaining air sovereignty and national security. This research examines the legal policies and procedures implemented in dealing with violations by foreign aircraft, as well as the challenges and solutions faced by Indonesian authorities. The main focus of this research includes the identification of relevant national and international regulations and law enforcement mechanisms. The research methods used include legal analysis and case studies of violations that have occurred. Research results show that although Indonesia has a clear legal framework for dealing with violations, its implementation is often hampered by limited resources and the complexity of international diplomacy. The recommendations put forward include increasing law enforcement capacity, improving coordination between relevant institutions, as well as strengthening international cooperation to improve the law enforcement system in the aviation sector. It is hoped that this research can contribute to the development of more effective policies and practices in maintaining Indonesia's air sovereignty.

Keywords: Law Enforcement, Foreign Aircraft, Sovereignty, Airspace.

Abstrak

Penegakan hukum terhadap pesawat udara asing tidak berizin yang memasuki wilayah Negara Kesatuan Republik Indonesia merupakan aspek krusial dalam menjaga kedaulatan udara dan keamanan nasional. Penelitian ini mengkaji kebijakan dan prosedur hukum yang diterapkan dalam menangani pelanggaran oleh pesawat udara asing, serta tantangan dan solusi yang dihadapi oleh otoritas Indonesia. Fokus utama penelitian ini meliputi identifikasi peraturan nasional dan internasional yang relevan dan mekanisme penegakan hukum. Metode penelitian yang digunakan meliputi analisis hukum dan studi kasus pelanggaran yang pernah terjadi. Hasil Penelitian menunjukkan bahwa meskipun Indonesia memiliki kerangka hukum yang jelas untuk menangani pelanggaran, pelaksanaannya sering kali terkendala oleh keterbatasan sumber daya dan kompleksitas diplomasi internasional. Rekomendasi yang diajukan mencakup peningkatan kapasitas penegakan hukum, perbaikan koordinasi antara lembaga terkait, serta penguatan kerja sama internasional untuk memperbaiki sistem penegakan hukum di bidang penerbangan. Penelitian ini diharapkan dapat memberikan kontribusi bagi pengembangan kebijakan dan praktik yang lebih efektif dalam menjaga kedaulatan udara Indonesia.

Kata Kunci : Penegakan Hukum, Pesawat Udara Asing, Kedaulatan, Wilayah Udara.

A. INTRODUCTION

One of the most important things that a nation must protect is the sovereignty of its country. The existence of a territory, population, and sovereign government are necessary for the formation of a state, as has been established in constitutional literature. A country that has supreme authority, or supreme power, is said to be sovereign because it is not burdened by the power of other countries and is free in the broadest sense from the inside out. Since Jean Bodin's writings, regarding implementation governance, sovereignty has become a major topic of

controversy in contemporary state instruments originating from international law.¹

The strength of Indonesia's legitimacy cannot be separated from international recognition of airspace as a component of state sovereignty. Airspace refers to the area of air space above a country's land and sea borders. A country's territory is usually divided into three parts: land, sea, and air.²

However, not all countries have territorial waters (sea) or are said to be two-dimensional countries, such as Laos, Cambodia, Nepal, Kazakhstan, Switzerland, Austria, Iraq, Congo, Nigeria, and so on, which in international law terms are called landlocked states. Meanwhile, those which have complete three dimensions, namely Indonesia, Singapore, Malaysia, Philippines, India, Pakistan, England, Netherlands, United States, Canada, Argentina, China, Korea, Japan, and so on. The part of territory that all countries definitely have is territory. air, regardless of geographic shape.³

The Unitary State of the Republic of Indonesia (NKRI), is an archipelagic state, consisting of large and small islands, which according to the latest calculations number 17,499 islands, with a sea area of ± 5,900,000 km² and a coastline of ± 81,000 km². The sovereign territory of the Republic of Indonesia is so vast, that Indonesia has a very large air space to be used by air vehicles for civil and military aviation purposes.⁴

On September 12 2008 at 11.21 East Indonesian time, a Partenavia P-68 civil aircraft with Pilot William Henry Scott Bloxam, along with 4 passengers flying from Horn Island Australia, landed at Mopah Airport in Merauke without documents. flight approval and security clearance.

William Bloxam by the Merauke District Court was found guilty of violating the national air sovereignty area in accordance with article 58 in conjunction with article 13 paragraph (2) of Law No. 15 of 1992 concerning Aviation "anyone who operates a foreign psu from, to or through the territory of the Republic of Indonesia without a bilateral or multilateral agreement or special permission the government was threatened with a 5 year PP and a fine maximum 60 million". (This law has been revoked with Law No. 1/2009 concerning aviation), in this case a prison sentence of 3 years and a fine of 50 million was imposed.

William Bloxam appealed to the Jayapura High Court and on March 5 2009 PT Jayapura decided to release all legal claims (release from all legal proceedings), with the legal

¹ Barus, Yan Jefry, Arif Arif, and Sutiarnoto Sutiarnoto. "A country's airspace jurisdiction in perspective international law." *Sumatra Journal of International Law* 2, no. 1 (2014): 164433.

² Lestari, Endang Puji Lestari Puji. "Reconception of State Control Rights Over Airspace in the Middle East Aviation Liberalization Policy." *Rechts Vinding Journal: National Legal Development Media* 4, no. 2 (2015): 327-343.

³ Lainatussara, Lainatussara. "The Importance of Air Defense Identification Zones in Indonesia." *Knowledge Journal Canon Hconviction* 21, no. 3 (2019): 459-472.

⁴ Novianto, Antonius Tri. "Strategy for Taking Over the Flight Information Region of the Natuna Islands." *Journal of Social Research* 1, no. 9 (2022): 939-948.

consideration of article 51 of the Criminal Code "a person who carries out an official order by the authorities may not be punished" (explanation: the judge is of the opinion that granting landing permission by pllp officers is considered an office order).

The Public Prosecutor submitted a cassation to the Supreme Court, and on 10 June 2009 (a bitter event) upheld PT Jayapura's decision, or the cassation request was rejected because on 12 January 2009 Law No. 1 of 2009 concerning aviation was issued, and in this law aviation is not a crime (In essence, there has been decriminalization of article 58 of UU No. 15 of 1992 concerning aviation, which was originally a crime/criminal, not criminal), where according to Article 8 of UU No. 1 of 2009 concerning aviation, it states "aircraft that violate the sovereign territory of the Republic of Indonesia are warned and ordered to leave the area by air traffic control personnel." (application of the principle of legality which applies the most extenuating law).

Based on this data, it appears that many foreign aircraft fly over Indonesian territory without permission. Considering the large number of foreign aircraft crossing Indonesian airspace without valid flying permits, this is an important reminder of the security and territorial sovereignty of the State of Indonesia.

B. RESEARCH METHODS

This type of research is normative legal research using a statutory approach method and conceptual approaches. The type of data in this research is secondary data. The data collection technique used in this research is the library research technique. Data collection tools can be in the form of document studies or library studies or library research to obtain secondary data. This research This is done by collecting relevant materials, including primary, secondary and tertiary legal materials related to the object of study. The method used in this research is a qualitative method, namely by arranging them systematically, connecting them to each other related to the problem being researched with applicable statutory provisions. others, paying attention to the hierarchy of laws and ensuring legal certainty.⁵Data analysis was carried out in this research using a qualitative approach .

C. RESEARCH RESULTS AND DISCUSSION

Violations and Law Enforcement

TNI Marshal Novyan Samyoga, who at that time served as Commander of the National Air Operations Command (Pangkoopsudnas), announced that on May 17 2021, there were 498 foreign military aircraft that violated airspace.

⁵ Ali, Zainuddin. *Legal research methods*. Sinar Graphics, 2021.

The following are several incidents of violations of Indonesian jurisdictional airspace:⁶

1. As a result of entering Indonesian territory without having a flight permit, the Ethiopian Airlines Boeing B-777 callsign ETH3728 which was traveling from Addis Ababa to Hong Kong was forced to land at Hang Nadim Airport, Batam, Riau Islands, on Monday, April 14, at around 09.33 WIB. The pilot, who is known to be a Canadian citizen, was found to not have a valid flying permit in Indonesian territory based on the findings of the TNI-AU inspection. As a result, the TNI-AU handed over the case to Civil Servant Investigators (PPNS) for further investigation. The new aircraft was allowed to take off for Singapore after a long delay of more than 3x24 hours, according to information provided by the then Head of TNI-AU Base Intelligence Raja Haji Fisabilillah (RHF) First Lieutenant Sus Agustinus Sujatmito. This is because the assessment of the handling carried out by the relevant parties is considered less effective.
2. On March 7, 2011, a Boeing 737-300 aircraft operated by Pakistan International Airlines with registration AP-BEH violated airspace while traveling from Dili, Timor Leste, to Kuala Lumpur, Malaysia. Because there was no diplomatic agreement, the plane's entry into Indonesian airspace was considered unlawful. After that, it was intercepted by the Indonesian Air Force, which sent two Sukhoi planes to land at Sultan Hasanuddin Air Base. After an investigation, Pakistan International Airlines was found to have violated the law twice, namely during take-off and landing, and was charged an administration fee of Rp. 120,000,000.00.

A country's national airspace is completely off-limits to foreign aircraft, both military and civil. Due to its nature, national airspace does not grant foreign parties the same rights of innocent passage as a country's territorial sea. Foreign aircraft are only permitted to fly through national airspace with prior state permission, obtained either through bilateral or multilateral agreements.

When foreign aircraft, both civil and military, enter a country's airspace without permission, this is called an airspace violation (air intrusion). The event may have been planned (for example, a dark flight to a specific destination) or unplanned (for example, the plane was in an emergency or lost).

State Sovereignty in Air Space is complete and exclusive. Since State Sovereignty in Air Space was officially recognized, both through the 1919 Paris Convention and the 1944 Chicago Convention, it is still recognized today even though there are several dynamics as a consequence of aviation globalization. Through recognition of State Sovereignty in Air Space,

⁶ Razak, Askari, and Hambali Talib. "Handling Violations of Unlicensed Foreign Aircraft (Black Flight) in National Jurisdiction." *Journal of Lex Philosophy (JLP)* 3, no. 2 (2022): 144-157.

National Air Space is also an asset for development, both for security and welfare purposes.⁷

In order to utilize air space as a development asset, there are 2 main approaches, namely the Security approach (security approach) and the well-being approach (prosperity approach). From a security approach, air space is used to maintain territorial unity and integrity and as a factor deterrent against various forms of crime and violations in national air space. From a welfare approach, air space is used to increase prosperity, encourage economic growth, create jobs and make efforts to alleviate society from the shackles of poverty.⁸

To ensure state sovereignty in air space, it is necessary to take enforcement steps, both based on international regulations and applicable national regulations. By upholding state sovereignty in air space, the use of air space as a development asset will be able to be further optimized.

In defending the sovereignty of the Republic of Indonesia's airspace from air security threats, the Indonesian Air Force plays a very important role. The Indonesian Air Force has the task of carrying out the Indonesian Air Force's duties in the fields of defense, law enforcement and maintenance security of national jurisdiction areas. He also carries out TNI duties in developing the air dimension and empowering the air defense area. This is contained in Article 10 of Law Number 34 of 2004 concerning the Indonesian National Army. The Indonesian Air Force has the obligation to make every effort to create safe conditions in the airspace. Forms of Military Operations for War (OMP) and Military Operations Other Than War (OMSP) activities can be used to carry out the responsibilities mentioned above. In enforcing the law in cases of airspace violations, the Indonesian Air Force is a force to be reckoned with. As explained in the explanation of Article 8 Paragraph 1 of Law Number 1 of 2009, a violation of Indonesian sovereignty is defined as entering Indonesian airspace without permission, without paying attention to whoever commits the violation. In addition, aircraft entering the Restricted and Prohibited Air Zone and the Air Defense Identification Zone (ADIZ) were proven to violate state sovereignty.

The TNI AU is a body that is authorized to take action against territorial violations of national jurisdiction, in accordance with Article 9 of Law Number 34 of 2004 concerning the TNI. The Indonesian Air Force uses Air Defense Operations to detect, identify, respond, neutralize or reduce the impact of air threats in order to enforce the law and maintain regional security in Indonesian airspace.

The enforcement process carried out by Indonesian Air Force (TNI AU) fighter aircraft generally involves several important stages aimed at maintaining the sovereignty and security

⁷ Setiani, Baiq. "The Concept of State Sovereignty in Air Space and Efforts to Enforcement Violations of Sovereignty by Foreign Aircraft." *Constitutional Journal* 14, no. 3 (2017): 489-510.

⁸ Ida Bagus Rahmadi Supancana, Policies and Strategies for Increasing Cyber Security in Enforcing State Sovereignty in the Air Space, Unsuraya Seminar, 2024.

of Indonesian airspace. The following are some of the enforcement processes carried out by Indonesian Air Force fighter aircraft:

- a. Identification and Detection: Using radar and other surveillance systems to detect and identify aircraft entering or approaching Indonesian airspace without permission.
- b. Warning: Provides a warning via radio or visual signal to a foreign or unknown aircraft that has been detected.
- c. Intercept: Sends a fighter aircraft to intercept. Fighter aircraft will approach the detected aircraft to carry out visual identification and provide further warning.
- d. Escort: Escorting detected aircraft out of Indonesian airspace if they do not respond to warnings or do not have valid permission.
- e. Action: If a detected aircraft does not comply with warnings or displays a threat, the Indonesian Air Force may take further action, including forced landing or use of force required in accordance with applicable regulations.
- f. Reporting and Coordination: Report incidents to the relevant authorities and coordinate with other authorities, both domestic and international, for further handling.

These processes aim to ensure that Indonesia's air sovereignty is maintained and any threats or violations can be dealt with quickly and effectively.⁹

Challenges in Law Enforcement

Law enforcement against unauthorized foreign aircraft in the territory of the Unitary State of the Republic of Indonesia (NKRI) faces several obstacles. The following is an explanation of these obstacles and solutions that can be implemented:

1. Limitations of Air Surveillance Technology and Infrastructure
 - a. Detection: Some areas in Indonesia, especially remote and border areas, may not be equipped with adequate radar or air surveillance systems.
 - b. Communications: Limited communications infrastructure can hinder coordination between the various parties involved in air surveillance.
2. Inter-Agency Coordination
 - a. Overlapping Authorities: There are several institutions that have authority over air surveillance, such as the Indonesian Air Force, Ministry of Transportation, and the Maritime Security Agency (Bakamla). Unclear division of tasks and responsibilities can lead to less effective coordination.
 - b. Standard Operating Procedures (SOP): Lack of clear and mutually agreed SOPs between relevant agencies can hinder rapid response to foreign aircraft threats.
3. Personnel Capabilities

⁹ Ajita, Sekar Tanjung, and Bayu Setiawan. "The role of the Indonesian Air Force in enforcing the law and Sovereignty in Indonesia's National Air Space." *Jurnal Education and Development* 10, no. 1 (2022): 361-364.

- a. Training: Personnel tasked with airborne surveillance and enforcement may require further training to enhance their skills and knowledge of the latest technology and foreign aircraft handling procedures.
 - b. Number of Personnel: A shortage of personnel in certain areas can reduce the effectiveness of air surveillance.
4. Legal and Regulatory Support
- a. Enforcement of Sanctions: Implementation of legal sanctions for violations by foreign aircraft sometimes faces obstacles, including lengthy and complicated legal processes.
 - b. International Cooperation: A lack of cooperation and international agreements with neighboring countries can make it difficult to deal with violating foreign aircraft.

The main equipment of the Defense System (Alutsista), namely everything related to weapons, vehicles and other military equipment as a supporting factor for national jurisdictional security, is still lacking and inadequate, causing a high number of airspace violations and cases not being handled. The benchmark for national airspace security vulnerabilities may be the presence of flights that are too low to be identified by the National Air Defense Command (Kohanudnas) radar, as well as air violations that are too high to be intercepted by Indonesian Air Force aircraft. This can affect a country's ability to defend its sovereignty by thwarting external threats and interference. This problem needs to receive more serious attention because it is related to national security, especially in the air sector where the Indonesian Air Force has the responsibility to maintain airspace security. However, if the defense equipment needs are not met, then the Indonesian Air Force's readiness to protect the entire nation could be in doubt.¹⁰

Maximum security for airspace Maintaining sovereignty in airspace is very important because without security, air attacks from outside will be a threat to that sovereignty. Therefore, to realize the highest level of national airspace security, the Indonesian Air Force, which is tasked with upholding airspace sovereignty and enforcing national law, must be able to fulfill all its interests.

Solutions for Law Enforcement against Unlicensed Foreign Aircraft Entering the Territory of the Unitary State of the Republic of Indonesia

1. Improved Technology and Infrastructure
 - a. Modernization of Radar and Surveillance Systems: Invest in modernization of advanced radar and air surveillance systems to improve detection and response to foreign aircraft.
 - b. Communication Infrastructure Development: Build and improve communication

¹⁰ Savitri, Rohannisa Naja Rachma, and Adya Paramita Prabandari. "TNI Air Force and Regional Security Indonesian Air." *Journal of Indonesian Legal Development* 2, no. 2 (2020): 236-245.

infrastructure in remote areas to ensure effective coordination between various agencies.

2. Strengthening Inter-Agency Coordination

- a. Establishment of a Coordination Team: Form a coordination team consisting of representatives from various related institutions to increase cooperation and avoid overlapping authority.
- b. Standardization of SOPs: Develop and implement clear and mutually agreed SOPs for handling foreign aircraft.

3. Increased Personnel Capabilities

- a. Training and Development: Conduct regular training programs for relevant personnel to improve their skills and knowledge.
- b. Recruitment: Increase the number of personnel in areas of need to increase the effectiveness of air surveillance.

4. Legal and Regulatory Support

- a. Simplifying the Legal Process: Reviewing and simplifying the legal process related to violations by foreign aircraft to speed up the enforcement of sanctions.
- b. International Cooperation: Increasing cooperation and agreements with neighboring countries for joint handling of airspace violations.

By overcoming these obstacles through implementing appropriate solutions, law enforcement against unlicensed foreign aircraft in the territory of the Republic of Indonesia can become more effective. This will ensure the sovereignty, security and safety of Indonesian airspace.

D. CONCLUSION

Law enforcement against unauthorized foreign aircraft in the territory of the Unitary State of the Republic of Indonesia (NKRI) is an important aspect in maintaining national sovereignty, security and safety. In enforcing the law in cases of airspace violations, the Indonesian Air Force is a force to be reckoned with. As explained in the explanation of Article 8 Paragraph 1 of Law Number 1 of 2009, Violation of Indonesian sovereignty is defined as entering Indonesian airspace without permission, without regard to whoever commits the violation. Even though there are various obstacles such as limitations in air monitoring technology and infrastructure, coordination between agencies, personnel capabilities, and legal and regulatory support, steps Strategic steps can be taken to overcome this. By improving technology and infrastructure, strengthening coordination between institutions, increasing personnel capabilities, and stronger legal support, Indonesia can be more effective in confronting and taking action against violating foreign aircraft.

E. SUGGESTIONS

To increase law enforcement against unlicensed foreign aircraft, it is necessary to modernize air surveillance technology and infrastructure by investing in advanced radars and surveillance systems and strengthening communications infrastructure in remote areas. Strengthening coordination between institutions is also key, by establishing a coordination forum involving all relevant parties and standardizing operating procedures for handling airspace violations. Apart from that, increasing personnel capabilities through regular training and adding and placing competent personnel in strategic areas is very necessary. Legal and regulatory support must also be strengthened by simplifying the legal process for foreign aircraft violations and increasing international cooperation and agreements with neighboring countries. With these steps, Indonesia can be more effective in maintaining the sovereignty and security of its airspace and ensuring the safety of national aviation.

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