

Indonesian Airspace Sovereignty; Perspective Of Law No. 1 Of 2009 On Aviation And The Flight Information Region (Fir) Agreement Between Indonesia And Singapore 2022

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Abstract

The existence of the Agreement between Indonesia and Singapore on the adjustment of the FIR boundary signed on January 25, 2022 should strengthen Indonesia's sovereignty by prioritizing national interests. However, this has not been achieved. This prompted the author to conduct research with the aim of finding the concept of Indonesian airspace sovereignty in Law no. 1 of 2009 concerning Aviation, as well as reviewing and analyzing the perspectives of policy makers in the 2022 FIR agreement as outlined in Presidential Regulation 109 of 2022; sovereignty or safety . The method used is normative juridical with a focus on qualitative analysis through the descriptive analysis method carried out through literature studies, with a statute approach and a conceptual approach

. The conclusion obtained based on the results of the analysis is that the sovereignty of Indonesian airspace in Law no. 1 of 2009 concerning Aviation is not only placed on the safety element alone but is also full and exclusive based on the principles of independence and state sovereignty so that the delegation of FIR to Singapore, although stated not to reduce sovereignty , but in practice Singapore's management of airspace will more or less reduce Indonesia's independence in managing its airspace. The perspective of policy makers in the 2022 FIR agreement as outlined in Presidential Regulation 109 of 2022 is conceptually not in line with the spirit of Law no. 1 of 2009 which prioritizes flight safety and efficiency. This is certainly ironic, considering that when the benchmark is safety and efficiency, which basically can be built, but by setting aside state sovereignty, in essence there is an erosion of sovereignty over Indonesia's airspace.

I. Introduction

The agreement to adjust *the Flight Information Region (hereinafter referred to as FIR)* boundaries between Indonesia and Singapore in 2022 has been ratified through Presidential Regulation 109 of 2022 so that it has binding legal force. The agreement broadly agrees to adjust the boundaries between the Indonesian FIR and the Singapore FIR. FIR in the general sense is a certain airspace area that functions to provide flight area information including flight information services (*Flight Information Service*) and warning services (*Alerting service*). Flight information services are a form of service that provides full advice and information for flight safety and efficiency. While warning services are services to flights when they need help including search assistance. ¹The scope of airspace is very broad and intersects between one country and another so that internationally applicable flight traffic or navigation regulations are needed for flight safety. For this purpose, it is agreed that the airspace area is divided into several Information Areas that are connected and adjacent between one airspace and another.

In the contents of the agreement, several agreements were reached, including the obligation of Indonesia to delegate the management of Indonesian airspace in several sections of Indonesian airspace in Batam and Natuna from ground level to an altitude of 37,000 feet to Singapore. ². Management of airspace in the zone is delegated to Singapore, which has been managing the airspace in the zone and of course already has adequate aviation technology and infrastructure. In addition, it was also agreed that during the agreement it would be valid for 25 (twenty five) years which could be extended according to the agreement of both parties, and the agreement of the Singapore Government to collect on behalf of and for the Indonesian government the cost of air navigation services for civil aircraft flights crossing sectors A and B managed by Singapore (*Route Air Navigation Service Charge*) . With this delegation, all aircraft in the airspace zone will be guided by the Singapore State air navigation service unit. All aircraft that cross, take off or land *must first* obtain approval from Changi Airport, including Indonesian aircraft.

fairly long negotiation process between the Indonesian and Singaporean governments. From the government's perspective, this FIR agreement is a step forward and is very beneficial for Indonesia, especially with the increase in non-tax state revenues from the navigation service fees that will be charged by Singapore above. It is expected that state revenues from the aviation sector can be obtained optimally and can be used to improve people's welfare through development in the aviation sector.

Indonesia is one of the largest archipelagic countries in the world with a territorial area of around 5.18 million km², consisting of land and sea areas. ³It is the authority and responsibility of the government to regulate airspace for the interests of aviation, national economy, national defense and security, social crocodiles and the air environment based on state sovereignty.⁴

¹ Abeyratna Ruwantisa, *Air Navigation Law*, Quebec: Springer, 2012, p 9

² Article 2 of the Agreement between the Government of Indonesia and the Government of the Republic of Singapore on Adjustment of Boundaries Between the Jakarta Flight Information Region and the Singapore Flight Information Region 22 January

³<https://www.big.go.id/content/berita/big-serahan-peta-nkri-kepada-kemenkokesra>

The concept of state sovereignty over airspace has been recognized since Roman times , known as the adagium *cujus est solum, ejus est usque ad coelum* , meaning whoever owns a piece of land (individual or state), then the ownership rights apply not only to what is above the surface of the land , but also to what is in the land and above it. In this context, we can clearly conclude that what is above the land is included in airspace. ⁵With the recognition of Indonesia as an archipelagic country, *the* Indonesian airspace area is increasingly wide.

The concept of *sovereignty* began to be echoed by Jean Bodin (1530-1596) who stated that sovereignty is one of the absolute requirements of a country. Without sovereignty, there is no such thing as a country. ⁶Article 1 of Montevideo 1933 requires territory as one of the important elements that must be fulfilled for the legitimacy of a country in addition to a sovereign population and government (sovereignty) and the ability to relate to other countries.⁷ Mukhtar Kusumaatmadja asserted that sovereignty over a country's territory can only be limited by where the power of another country begins. From various theories about territorial sovereignty, it is strengthened that Indonesia's control over all airspace, both land, sea and airspace above it as a whole is under the sovereignty of the Unitary State of the Republic of Indonesia.

More specifically , the theory of state interest in aviation airspace must be based on the principles of benefit, independence and public interest ⁸. Public interest here means prioritizing the interests of the community based on one's own abilities and strengths.

Aviation is a unified system consisting of the use of airspace, aircraft, airports, air transportation, flight navigation, safety and security, the environment and supporting facilities and other public facilities. ⁹which has the characteristics of being able to move quickly, using high technology, capital intensive, reliable management and requiring optimal safety and security guarantees and helping to create a stable and dynamic national distribution pattern. Air transportation is the best alternative to connect one country to another, in addition to being able to cut travel time, transportation is also the best choice to be used as comfortable transportation.

The purpose of aviation, among others, is to facilitate the flow of people and goods by prioritizing and protecting air transportation in order to facilitate national economic activities and strengthen the unity and unity of the nation in order to realize the archipelago perspective. ¹⁰The meaning of the archipelago perspective reflects the interests of the state in airspace as a whole.

It is the government's duty, responsibility and authority to regulate airspace, among others, for the interests of aviation, national economy, national defense and security, including in terms of regulating and managing airspace. With the enactment of the 2022 FIR agreement, it certainly has implications for the management of Indonesian airspace, especially in terms of sovereignty.

⁵ Priyatna Aburrasyid, *State Sovereignty in Airspace* , Jakarta: Center for Space Law Research, 1972 p. 44

⁶ Andrew Clapham, *Brierly's Law of Nation* , United Kingdom: Oxford University Preess, 2012, p 7

⁷ Article 1 Montevideo on the rights and duties of states 1933 stated the state as a person of international law should possess the following qualifications: a permanent resident; a defined territory; government and capacity to enter into relations with the other states.

⁸ Article 2 of Law no. 1 of 2009

⁹ Article 1 of Law no. 1 of 2009

The author identified 2 (two) problems that arose, *first* , how is the concept of Indonesian airspace sovereignty in Law no. 1 of 2009 concerning Aviation?, *second* , what is

the perspective of policy makers in the negotiation of the 2022 FIR agreement which was ratified in Presidential Regulation (Perpres) 109 of 2022; sovereignty or *safety* ?

2. Research Method

The method used is normative juridical with a focus on qualitative analysis through descriptive analysis methods carried out through literature studies, with a statute approach *and* a conceptual approach . The statutory approach examines laws and regulations related to sovereignty issues, especially air sovereignty. The conceptual approach examines views and theories related to state sovereignty and airspace.

3. Results and Discussion

The Concept of Indonesian Airspace Sovereignty in Law No. 1 of 2009 Concerning Aviation

The regulation of a country's airspace in international law is regulated in the Convention on *International Civil Convention* (Chicago Convention 1944) which stipulates that a country's airspace is the airspace located above the land and sea territory of that country. In addition, in airspace there are no international navigation rights such as the right of innocent passage *known* in a country's territorial sea. To enter a country's airspace, permission must first be obtained from the country that owns the airspace (the undersea country) through an agreement or agreement that has been agreed upon previously. This is as regulated in Article 3 paragraph (3) of the Chicago Convention " *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*"

Thus, a country's airspace is completely closed to foreign aircraft, both civil and military. Only with prior permission from the host country, either through a bilateral or multilateral agreement, can a country's airspace be passed by foreign aircraft. The country then regulates in its national law how to establish the country's sovereignty over the airspace as a natural resource that can be utilized for national defense and the prosperity of the people¹¹.

The closed nature of such airspace can be understood considering that air as a medium of movement is very vulnerable in terms of defense and security of the underworld. Because military attacks using aircraft have many advantages and conveniences, such as speed , wide range , surprise *and penetration* can be carried out optimally. World history proves that flights in airspace are quite vulnerable in terms of defense and security. Many attacks carried out during war are launched from the air. This is what drives each country to tend to apply strict and rigid standards for guarding its national airspace.

In international air law , the concept of state sovereignty in airspace is regulated in Article 1 of the 1944 Chicago Convention . affirms that : " *The Contracting States recognize that every State has complete and exclusive sovereignty in the air space above its territory* " ¹².

¹¹E. Saefullah Wiradipradja in Baiq Setiani, "The Concept of State Sovereignty in Airspace and Efforts to Enforce Violations of Sovereignty by Foreign Aircraft", *Jurnal Konstitusi* , Volume 14, Number 3, September 2017, p. 495

The countries bound by this agreement agree to recognize that all countries have their own sovereignty in full and exclusively over their airspace. This Convention has provided guidelines for each country to recognize and respect the sovereignty of countries in their

territorial space . The recognition of state sovereignty over its airspace is a practice of countries that has been generally accepted. In other words, state sovereignty in airspace has become customary international law.

With full and complete sovereignty over its airspace, the state has exclusive jurisdiction and full authority to control and manage the airspace above its territory. The state has the authority to make laws and regulations in order to maintain sovereign territory and realize orderly use of airspace by considering the public interest. This principle also serves as a guideline for all provisions in the field of civil aviation, including provisions regarding commercial.

principle is also applied in the Indonesian national law, Law No. 1 of 2009 concerning Aviation (hereinafter referred to as Law No. 1 of 2009) which clearly states that the Republic of Indonesia has full and exclusive sovereignty over Indonesian airspace.¹³In the explanation, it is emphasized again the importance of utilizing airspace as an implementation of the sovereignty of the Republic of Indonesia which is complete and exclusive over its airspace, which contains the national airspace order to realize the implementation of reliable navigation services in the context of flight safety by referring to the standards set by the International Civil Aviation Organization (ICAO).

In principle, every country within its sovereign territory has the right to carry out, enforce and resolve cases that occur to people, objects, and various other problems based on its national laws. However, of course, this power is not so absolute that it cannot simply ignore the interests of other countries. Therefore, full and complete sovereignty must also respect the provisions that have been regulated in international law.

In Indonesia itself, before the enactment of Law No. 1 of 2009 concerning Aviation, regulations on aviation were first regulated in Law No. 83 of 1958 and Law No. 15 of 1992. Regulations on state sovereignty in Law No. 83 of 1958 are not explicitly regulated, but can be implicitly interpreted as a form of state sovereignty in airspace. Where it is stated in Article 2 which states that "It is prohibited to carry out flights other than with aircraft that have Indonesian nationality, or with foreign aircraft based on international agreements or government approval" . So in principle only Indonesian aircraft are allowed to fly over the territory of the Republic of Indonesia. However, it is not impossible for foreign aircraft to fly to the territory of the Republic of Indonesia or through the airspace of the Republic of Indonesia based on international agreements or government approval, specifically for international flights.¹⁴And in Article 5 paragraph (1) which reads "The Minister and/or Minister of Defense has the authority to prohibit flights over a part of the territory of the Republic of Indonesia without distinguishing between Indonesian and foreign aircraft".

Then Invite Law No. 15 of 1992 concerning Aviation, which replaced Law no. 83 of 1958 specifically regulates state sovereignty over airspace in Chapter III . Article 4 states that "The Republic of Indonesia has full and complete sovereignty over the airspace of the

¹³ Article 1 of Law no. 1 of 2009 concerning Aviation; The Unitary State of the Republic of Indonesia has Full and Exclusive Sovereignty over the airspace of the Republic of Indonesia.

¹⁴ Explanation of Article 2 of Law no. 83 of 1958

Republic of Indonesia". The principle of complete *and exclusive state sovereignty* contained in the 1944 Chicago Convention is applied in this law by interpreting *complete and exclusive* with the terms ' Full ' and ' United ' . As a form of manifestation of the full and complete state

sovereignty, Article 5 states that "in the framework of implementing state sovereignty over the airspace of the Republic of Indonesia, the government exercises the authority and responsibility for regulating airspace for the interests of state defense and security, aviation, and the national economy". So it is clear that the principle of sovereignty over airspace has been consistently upheld by national legal regulations, both since the legal products of Indonesia's independence up to the current positive legal regulations regulated in Law no. 1 of 2009 concerning Aviation.

In Law no. 1 of 2009 on p origin 5 it is emphasized that "The Unitary State of the Republic of Indonesia has ' Full ' and ' Exclusive ' sovereignty over the airspace of the Republic of Indonesia". At first glance, the provisions of this article are similar to the provisions of Article 4 of Law No. 15 of 1992, but if examined more closely far it turns out there is a slight difference in the use of the term 'U tuh ' with ' Exclusive ' . The term used is 'Full', not 'Utuh' which in the author's opinion has a similar meaning to the essence of the spirit of the sovereignty of the country's airspace as a main principle. As an implementation of state sovereignty in airspace, according to Article 6 of this Law, the government plays a full role in implementing state sovereignty in the form of authority and responsibility related to regulating airspace for the interests of aviation, the national economy, state defense and security, socio-culture, and the environment. air. The form of state sovereignty in the field of state defense and security can be carried out through the determination of prohibited and restricted air areas, the expulsion of aircraft that cross or fly without permission including carrying out coercive actions (*Intercept*) if necessary.

In order to maintain the sovereignty of the airspace of the Republic of Indonesia, technology must be mastered and developed so that Indonesia can control its airspace as much as possible for the broadest interests of the community, especially for aviation interests. With the independence to manage and control our airspace in full, all aircraft traffic passing through our airspace will be under the control of Indonesian airports (ATC), this not only shows the responsibility of the state as the owner of the airspace but also as a form of implementation of the true meaning of sovereignty.

In line with what was emphasized by Prof. Atip Latipulhayat, sovereignty must also be interpreted as an obligation for the country that owns the airspace to ensure that flight safety standards are met. " *Sovereignty should be understood as the responsibility of the state to ensure the fulfillment of aviation safety standards* ".¹⁵

Thus, the Law clearly upholds the sovereignty of the state over airspace and to immediately control Indonesia's own airspace. This is expressly mandated by the Law which provides a deadline until 2024 for the government to take over the FIR which is still delegated to other countries to be immediately served and managed by our own country.¹⁶

C.2. Policy Stakeholders' Viewpoints in the 2022 FIR Agreement as Embodied in Presidential Decree 109 of 2022; Sovereignty or Safety

¹⁵ Atip Latipulhayat, *Managing Flight Information Region (FIR) sovereignty or safety issues? The case of Indonesia-Singapore* . Indonesia: The Indonesian Center of Air and Space Law Faculty of Law Padjadjaran University, p 18.

¹⁶ Article 458 of Law no. 1 of 2009 concerning Aviation

Historically, Singapore's control of Indonesian airspace has been carried out since 1946 , which began with an agreement in the Regional Air Navigation Meeting (*RAN*) held by ICAO in 1946, where one of the agendas was to determine the FIR. In that meeting, it was agreed that England would manage the airspace, which then when England granted independence to

Singapore in 1965, its management was continued by Singapore. This delegation could not be avoided because at that time Indonesia had just become independent and was considered unable to control flights over the Riau Islands due to the limitations of Technology and Human Resources (HR) owned by Indonesia .

This delegation policy is based on the provisions of Annex 11 of the 1944 Chicago Convention where countries must delegate their airspace to provide flight navigation services and if they are not yet able to control it. This provision was issued to protect the common interests of the world community in terms of maintaining international flight safety.

In its development in several periods of Indonesian government , repeated attempts were made to take over the management of the airspace. A breath of fresh air blew when on September 18, 2015, President Joko Widodo instructed that the takeover of the FIR be accelerated to 2019. To support the takeover, the policy makers (stakeholders) in the government have made several preparations, the Indonesian Air Force as one of the *stakeholders* , for example, began building a security system in Batam . ¹⁷Also other policy makers who have conducted dozens of negotiations involving cross-ministerial and Indonesian state institutions so that at the peak the FIR agreement was agreed on January 25, 2022 which was then stipulated through Presidential Regulation (Perpres) Number 109 of 2022 concerning the Approval of the *Flight Information Region* (FIR). The signing of the second FIR adjustment agreement is also considered to have ended the status quo problem of FIR management over the Riau and Natuna Islands which have been controlled by Singapore since the beginning of Indonesian independence in 1947.

A number of positive benefits for Indonesia with the agreement include the expansion of the scope of the Indonesian FIR area and the ability to place members of the Indonesian air navigation service authority at the Changi Airport ATC. Another important point of the 2022 FIR agreement is that part of Indonesia's airspace, in sectors A and B from the surface to an altitude of 37,000 feet, is still managed by Singapore and as compensation Singapore helps collect air navigation service fees for civil aircraft crossing the sector and deposits them to Indonesia as the owner of the airspace. ¹⁸ The government said this delegation was intended to prevent fragmentation or frequency interference that could endanger flight safety.¹⁹

This agreement is clearly more oriented towards a safety and efficiency approach *by* setting aside the sovereignty aspect. The management of Indonesian airspace by Singapore is seen as merely a technical and operational problem and is believed to not be out of the context of flight safety and smooth air traffic. In addition, there is doubt from the government itself about the readiness of Indonesia's infrastructure in managing the airspace so that it will be safer *if* it is still managed by Singapore.

¹⁷<https://natunakab.go.id/pengambilalihan-fir-dari-tangan-singapura-dipercepat/>

¹⁸ Article 2 and Article 6 of the Agreement between the Government of the Republic of Indonesia and the Government of Singapore on the adjustment of the Jakarta and Singapore FIRs

¹⁹<https://dephub.go.id/post/read/kesepakatan-pengesuaian-fir-lalu-dipercepatkan-dengan-matang-dan-mendapatkan-besar-bagi-indonesia>

In addition, it was also agreed that the agreement period would be quite long, namely it would be valid for 25 (twenty five) years, so that Singapore would continue to control the management of Indonesian airspace until 2047. and can be extended with the agreement of both countries.

This is certainly contrary to the mandate of Article 458 of Law no. 1 of 2009 which clearly stipulates a deadline for taking over airspace navigation services delegated to other countries no later than 15 (fifteen) years since this Law comes into effect, meaning that in

2024 we should manage all of Indonesia's airspace ourselves in accordance with the principle of sovereignty over airspace which is full and exclusive and the principle of independence as mandated by Law.

4. Conclusion

Based on the discussion that was carried out, it can be concluded that, the concept of Indonesian airspace sovereignty in Law no. 1 of 2009 concerning Aviation stipulates a real spirit of full and exclusive sovereignty and upholds the principle of independence, so that the management of airspace to Singapore will more or less reduce Indonesia's independence and sovereignty in managing its airspace. So even though the Government states that this delegation has nothing to do with sovereignty, in practice of course the management of airspace by Singapore will "reduce" Indonesia's sovereignty. Traffic in Indonesian airspace such as permits to cross, boarding and disembarking aircraft, in the airspace delegated to Singapore will be monitored and regulated through the ATC of Changi Airport, Singapore so that every movement of aircraft passing through, whether Indonesian or foreign aircraft, is the authority of Singapore that regulates. The perspective of policy makers in the 2022 FIR agreement as outlined in Presidential Regulation 109 of 2022 conceptually tends to be pragmatic by prioritizing flight efficiency and safety over state sovereignty. The agreement on delegation for a period of 25 years is contrary to the mandate of Law no. 1 of 2009 which requires all Indonesian airspace to be managed independently. There are differences in perception of the direction of aviation law politics between the government and the Law, especially those related to the delegation of airspace. The author hopes that later there will be a common principle in viewing this delegation so that renegotiation of the FIR agreement can be carried out with Singapore and the principle of sovereignty in the spirit of Law no. 1 of 2009 can be realized.

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