

Limitation of Air Conditioning That Became a Sovereignty of Indonesia's State

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ABSTRACT--*The country of Indonesia is an archipelago and is located at a crossroads between the continents of Asia and the continents of Australia and the Indian Ocean and the Pacific Ocean, and this situation makes the sea in Indonesia become Indonesia's busiest sea and airspace in the world, and this makes the country of Indonesia obliged to regulate traffic sea and air space for the safety of ships and aircraft passing. Not regulated by Chicago Convention 1944 about the height of airspace that can be owned by a country, so many law scholars (Beaumont and Showcross, JC Cooper, Holzendorf, Lee, Myres S. McDougal, Priyatna Abdurrasyid, Von Bar) make theories or concepts all of which are opposed by international community. For the time being it was agreed to use FIR (Flight Information Region), namely the provision of services for flights that only fly as high as 20,000 feet and UIR (Upper Flight Information Region), namely the provision of services for flights above 20,000 feet (feet) as the airspace height limit which can be owned by a country which is finally agreed with the distance regulated by FIR (Flight Information Region) as the height limit of airspace that can be owned by the country (Indonesia).*

Keywords: *height limit, sovereignty, Indonesia*

I. INTRODUCTION

The country of Indonesia is an archipelago and is located at a crossroads between Asia and Australia and the Indian Ocean and the Pacific Ocean, and this situation makes the sea in Indonesia become the busiest sea in the world, because so many ships that sailed in the sea of Indonesia past, and this makes the country of Indonesia obliged to regulate its sea traffic by creating a National-International Shipping Line for the safety of ships who sailed the Indonesian sea.[1]

Likewise, in the case of airspace above the country, Indonesia is also the busiest airspace in the world after the United States airspace, and this makes the Indonesian state also obliged to regulate air traffic, and this is in accordance with the mention of Article 1 Chicago Convention 1944 and Article 5 Undang-Undang Republik Indonesia Nomor 1 Tahun 2009 about Flights which all mention : Article 1 Chicago Convention 1944 mention

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

Article 5 Undang-Undang Republik Indonesia Nomor 1 Tahun 2009 about Flights mention :

“The Unitary State of the Republic of Indonesia is fully and exclusively sovereign of the airspace of the Republic of Indonesia”.

The articles provide the view that the embodiment of full and exclusive sovereignty over airspace over territorial territories is:

1. Every country has the right to fully and fully manage and control its national air space.
2. None of the activities or businesses in the national airspace without obtaining prior permission or as stipulated in an air agreement between the country and other countries both bilaterally and multilaterally.

Thus the Indonesian state is fully obliged to regulate its airspace by creating a National-International Flight Path for the safety of aircraft that fly in Indonesian airspace.

II. PROBLEMS

From the description as mentioned above, a problem can be drawn, namely how far is the height of the airspace which is the sovereignty of the Indonesian state?

III. DISCUSSION

As stated in Article 1 Chicago Convention 1944 who mentioned that The contracting States recognize that every State has complete and exclusive sovereignty over the airspace above its territory.

After examination of all the articles in Chicago Convention 1944 there is not a single article that regulates airspace boundaries that can be owned by a country.

Not regulated on airspace boundaries by Chicago Convention 1944 making the existence of a legal vacuum, and has become a habit in the world of science, especially legal science, to find solutions to resolve the existence of a legal vacuum.

To fill the legal vacuum about airspace boundaries that can be owned by a lower country, then it can use international law sources in the form of the teachings or

opinions of prominent scholars from various countries, and therefore there are some prominent scholars who explore and search and make concepts. the concept of law that can be used as a basis for thinking in establishing legal norms regarding national borders in air space both horizontally and vertically.

Before setting horizontal airspace boundaries, it is first necessary to know the land boundaries of a country, as stipulated in international law which states that the land boundaries of a country can be done through an agreement with a neighboring country or through international legal provisions such as treaty or convention or can be through a decision of International Court of Justice.

If the country has a beach or faces the sea, the borders of that country will increase, namely by the existence of legal provisions stipulated in Article 3 United Nations Convention on the Law Of the Sea that mentions [2]:

“Every state has the right to establish the breadth of its territorial sea up to limit not exceeding 12 nautical miles, measured from baselines determined in accordance with this Convention”.

Thus, each coastal country can determine the width of its territorial sea to a maximum of 12 nautical miles measured from the baselines, and so in the case of territorial seas adjacent to or facing the sea of territories belonging to neighboring countries that are less than 2 x 12 nautical miles , then the determination of airspace boundary determination is determined through an airspace boundary agreement as in the case of international sea law.

So thus each coastal state has a boundary in space horizontal air is the same as the area of the country that is owned.[3]

After knowing a country's airspace boundaries horizontally as mentioned above, then the problem of knowing the airspace boundaries that can be owned by a country still remains a problem in terms of vertical airspace boundaries or altitude, because it has not been regulated in the 1944 Chicago Convention , so to fill this legal vacuum many leading scholars, especially air law experts, have tried to make several concepts (theories, teachings or opinions) that might be used as a basis for making regulations about the height limit of the country's sovereignty rights in air space, such as :

1. According with Beaumont dan Showcross with his theory(Unlimited Theory)which states that the height of the airspace which can become the sovereign right of the state below is unlimited.
2. According with J.C.Cooper with his theory (Defence Theory) that states that the height of the airspace which can be the sovereign right of the lower state is as high as that country can control it.
3. According with Holzendorf which states that the height of the airspace which can become the sovereign right of

the state below is as high as 1,000 meters drawn from the highest surface of the earth.

4. According with Lee with his theory (Canon Theory) which states that the height of the airspace which can become the sovereign right of the state below is the same as the distance of the cannon fire.
5. According with Myres S. Mc. Dougal which states that the height of the airspace which can be the sovereign right of the state below is as high as less than 600 miles from the surface of the earth.
6. According with Priyatna Abdurrasyid with his theory (Air Sovereignty of State Theory) which states that the height limit of sovereign rights under the airspace above is as high as where a conventional airplane can no longer float.
7. According with Von Bar which states that the height of the airspace which can become the sovereign right of the state below is as high as 60 meters drawn from the surface of the earth.

Therefore, because there are no legal regulations governing the height of the country's sovereign territory in the airspace above it, there is no such thing yet, and among the leading scholars in charge of air law there is also no agreement or similarity in view of the airspace boundary height. can be owned by a country below, then the opinions of the scholars of air law as mentioned above can be said to still be a concept, and because of the absence of legal rules, many countries in the world unilaterally determine the height of the country's sovereignty in each airspace - example, for example such as that is [4] :

1. The United States of America through the Space Command sets the height of the airspace as high as 100 (one hundred) nautical miles.
2. The Australian State in its draft law sets the height of the airspace as high as 100 (one hundred) kilometers measured from the surface of the earth.
3. The State of Indonesia is based on Article 6 paragraph 1 of the Draft Undang-Undang Republik Indonesia regarding National Airspace Management States : "The vertical limit of national airspace to a height of 110 (one hundred ten) kilometers from the configuration of the earth's surface".
4. The country of South Korea sets the height of the airspace as high as 100 (one hundred) to 110 (one hundred ten) kilometers.

To avoid the problem of airspace boundaries that can be owned by a country, then several countries in the world agree in setting the height of airspace that can be owned by a country, namely by setting for every flight that flies over the airspace of a country, and this as stipulated in Article 6 Undang-Undang Republik Indonesia Nomor 1 Tahun 2009 about Flights mentioned:

"In the context of administering state sovereignty over the airspace of the Unitary State of the Republic of Indonesia, the Government exercises authority and responsibility for airspace regulation for the interests of aviation, national economy, national defense and security, socio-culture, and the air environment".

Clarified again in Article 10 paragraph 1 letters e and h Undang-Undang Republik Indonesia Nomor 43 Tahun 2009 concerning the State Territory which states:

- e. "Give permission to international flights to crossing territorial airspace on the path specified in the legislation.
- h. Establish airspace that is prohibited from being traversed by international flights for defense and security".

Clarified in Article 4 of Government Regulation of Republik Indonesia Nomor 4 Tahun 2018 concerning the Safeguarding of the Republic of Indonesia's Airspace which states:

"In the context of the implementation of state sovereignty over the Airspace of the Unitary State of the Republic of Indonesia, the Government exercises authority and responsibility for the regulation of airspace for the benefit of aviation, national economy, national defense and security, socio-culture, and the air environment".

Thus the state of Indonesia has the authority to regulate the airspace area above it. In the world of aviation, especially on air traffic, there are the terms FIR and UIR, and as for what is meant by FIR (Flight Information Region), namely the provision of services for flights that only fly as high as 20,000 feet, while what is meant by UIR (Upper Flight Information Region) and that providing services for flights over 20,000 feet.[5]

To find out that a flight that gets FIR or UIR services is from the type of aircraft used because there are several types of aircraft that can fly below an altitude of 20,000 feet and some are able to fly above 20,000 feet, and also see the intended distance if the distance for near destinations such as Semarang - Jakarta, the airplane is

enough to fly at the limit of 20,000 feet (feet), but the distance is very far, the aircraft will fly above 20,000 feet (feet), for example, such as flights from Jakarta - Amsterdam or Jakarta - London or Jakarta - Los Angeles.[6] Thus for the time being it was agreed that the height limit of the airspace which became the sovereignty of the state (Indonesia) was 20,000 feet

IV. CONCLUSION

The 1944 Chicago Convention has not yet regulated the height of airspace that can become a sovereignty for the country, so to fill the legal vacuum many air law scholars (Beaumont and Showcross, JC Cooper, Holzendorf, Lee, Myres S. Mc. Dougal, Priyatna Abdurrasyid, Von Bar) is trying to create a concept or theory that is all getting opposition from the international community, and for the time being it is agreed to use FIR (Flight Information Region), which is providing services for flights that only fly as high as 20,000 feet and UIR (Upper Flight Information Region) namely the provision of services for flights above 20,000 feet as the height limit of airspace that can be owned by a country which finally agreed with the distance set by FIR (Flight Information Region) as the height limit of airspace that can be owned by the state (Indonesia).

V. REFERENCES

- [1] Kresno Buntoro., *Lintas Navigasi Di Nusantara Indonesia.*, Jakarta : PT. Raja Grafindo Persada, 2014, pp.103-105.
- [2] Sahono Soebroto, dkk., *Konvensi PBB Tentang Hukum Laut, Sebuah Tinjauan*, Jakarta : Surya Indah, 1983, pp. 9, 101.
- [3] Wirjono Prodjodikoro., *Azas-Azas Hukum Publik Internasional*, Jakarta : PT. Pembimbing Masa, 1967, p. 111., Article 2 Chicago Convention 1944., Article 1 paragraph 2 Undang-Undang Republik Indonesia Nomor 1 Tahun 2009 about Aviation.
- [4] LAPAN (National Aeronautics and Space Agency) in the socialization event of the Draft Law of the Republic of Indonesia concerning Management of National Airspace at the GandCandi Hotel, Semarang, 2006.
- [5] Frans Likadja., *op cit*, p. 31. **Note:** 1 feet is 0,305 meter.
- [6] Interview results with Capten Pilot (Mochammad Ikhsan) Garuda Indonesia on Saturday, 23 March 2019.