Realignment of Flight Information Region Agreement Between Indonesia and Singapore 2022: Unraveling Sovereignty and Ratification Issues for Indonesia

Naufal Faiz Muhammad[*], Atip Latipulhayat[**], Garry Gumelar Pratama[***]

DOI: https://doi.org/10.22304/pjih.v11n1.a1

Submitted: August 9, 2023 | Accepted: November 22, 2023

Abstract

Flight Information Region (FIR) is an essential part of the aviation sector, providing air navigation and alerting services crucial for ensuring flight safety. States may delegate the management of FIR services to other nations for various reasons, primarily centered on aviation safety. However, such delegation requires careful consideration due to its potential impact on a state's airspace sovereignty. This study focuses on the most recent FIR delegation involving the realignment of FIR over the Riau and Natuna Islands between Indonesia and Singapore in 2022. According to the signed agreement, Indonesia is obligated to delegate the management of specific areas of the Natuna FIR above its territory to Singapore. While this delegation poses potential challenges related to Indonesia's national security and economic interests, additional issues arise from the legal instrument chosen by the Indonesian government to ratify the agreement. The objective of this research is to analyze the sovereignty and ratification issues for Indonesia arising from the signing of the Indonesia-Singapore FIR Agreement 2022. The study utilizes normative legal analysis with a juridical approach. The findings indicate that the delegation of the Natuna FIR to Singapore has restricted Indonesia's right to exercise sovereignty over its airspace. Furthermore, the study concludes that Indonesia's instrument of ratification for the Indonesia-Singapore FIR Agreement 2022 is inconsistent with Indonesian law and practice. This research contributes to understanding the legal implications of FIR management delegation, emphasizing the importance of aligning such agreements with domestic legal frameworks.

Keywords: flight information region, ratification, sovereignty.

A. Introduction

Flight Information Region (FIR) is a designated airspace providing flight information and alerting services,[1] crucial for facilitating international air navigation and flight safety. Pilots heavily rely on these air navigation facilities to ensure the safety of their

[*] Bachelor of Law, Padjadjaran University, Jalan Raya Bandung-Sumedang KM. 21, S.H. (Padjadjaran University), naufal19011@mail.unpad.ac.id.

[**] Professor of International Law and Director of the Indonesian Centre for Air and Space Law (ICASL), Faculty of Law, Padjadjaran University, Jalan Raya Bandung-Sumedang KM. 21, Ph.D. (Monash University), LL.M. (Monash University), S.H. (Padjadjaran University), atiphayat@gmail.com.

[***] Executive Secretary and Researcher at the Indonesian Center for Air and Space Law (ICASL), Faculty of Law, Padjadjaran University, Jalan Raya Bandung-Sumedang KM. 21, M.H. (Padjadjaran University), S.H. (Padjadjaran University), garry.gumelar@unpad.ac.id.

[1] International Civil Aviation Organization, *Annex 11 to the Convention on International Civil Aviation Air Traffic* (Canada: ICAO, 2016), 1-1 (Chapter 1).

flights.[2] FIRs also benefit States by generating revenue from aircraft traversing their designated FIR areas.[3]

The establishment of FIRs is regulated by the Convention on International Civil Aviation 1944 (Chicago Convention 1944), which mandates states to provide air navigation facilities within their territory to support international air navigation.[4] Although FIRs typically cover the entire airspace over a state's territory, the International Civil Aviation Organization (ICAO) considers operational aspects inherent in air navigation, leading to FIR areas being determined by factors beyond a state's territorial boundaries.[5] Operational factors influencing FIR boundaries include air route structure, topography extending over the state, the availability of air transportation facilities, aviation technology, cost-effectiveness, human resources, and, notably, flight safety in the area.[6] According to Annex 11 of the Convention on International Civil Aviation concerning Air Traffic Services, the Flight Information Region (FIR) may extend beyond a state's territories.

Although a state's authorities are generally confined to the national airspace above its territories, states may be responsible for providing air traffic services in the airspace above the high seas or in areas of undetermined sovereignty through regional navigation agreements.[7] Additionally, the management of FIR over a state's territory can be entrusted to other states.[8] Neighboring States can establish mutual agreements allowing for the delegation of responsibility to provide air traffic services in specific FIR areas from one state to another. This study explores the regulatory framework provided by Annex 11, examining the extension of FIRs, delegation of responsibilities, and the role of regional agreements in managing airspace for enhanced air traffic safety and efficiency.[9]

One instance of Flight Information Region (FIR) management delegation is evident in the airspace over Indonesia's Riau and Natuna Islands, known as the Natuna FIR, involving negotiations with Singapore. The origin of this delegation dates to Indonesia's early post-independence years. In 1946, during the Regional Air Navigation (RAN) meeting in Dublin, ICAO granted Singapore, then under British

---

2 Ridha Aditya Nugraha, "Flight Information Region above Riau and Natuna Islands: The Indonesian Efforts to Regain Control from Singapore," *Zeitschrift für Luft- und Weltraumrecht (German Journal of Air and Space Law)* 67, no. 2 (2018): 236.

3 Ridha Aditya Nugraha, 236.

4 Article 28 (a) Convention on International Civil Aviation, 1944.

5 Part 1, Section 2, Chapter 1, 1.3.1, ICAO Doc 9426-AN/924, "Air Traffic Services Planning Manual," First (Provisional) Edition, 1984.

6 Part 1, Section 2, Chapter 3, 3.2.2, ICAO Doc 9426-AN/924, "Air Traffic Services Planning Manual"; Sefriani, *Hukum Internasional: Suatu Pengantar* (Jakarta: Rajawali Pers, 2021), 215.

7 International Civil Aviation Organization, *Annex 11 to the Convention on International Civil Aviation Air Traffic*, 2.1.2. (Chapter 2); Pete Pedrozo, "Maintaining Freedom of Navigation and Overflight in the Exclusive Economic Zone and on the High Seas," *Indonesian Journal of International Law* 17, no. 4 (2020): 484, https://doi.org/10.17304/ijil.vol17.4.796.

8 International Civil Aviation Organization, 2.1.1. (Chapter 2).

9 International Civil Aviation Organization, 2.1.1. (Chapter 2).

control, the management of Natuna FIR.[10] Several factors informed this decision: Indonesia faced economic and political challenges as a newly independent state had not yet joined ICAO, lacked sovereignty over the Natuna waters due to its recent recognition as an archipelagic state under the United Nations Convention on the Law of the Sea 1982 (UNCLOS 1982), and had insufficient technology and human resources for aviation services management.[11]

Over subsequent years, Indonesia made concerted efforts to regain control of Natuna FIR from Singapore. During RAN meetings in Honolulu (1973), Singapore (1983), and Bangkok (1993), Indonesia consistently negotiated and proposed taking over Natuna FIR, yet found no satisfactory resolution.[12] Failing to achieve consensus at RAN meetings, ICAO advised Indonesia to pursue a different approach and resolve the matter through bilateral discussions with Singapore.[13] In 1995, Indonesia and Singapore reached a consensus and signed the "Agreement Between the Government of the Republic of Indonesia and the Government of the Republic of Singapore on the Realignment of the Boundary between the Singapore Flight Information Region and the Jakarta Flight Information Region" (the Indonesia-Singapore FIR Agreement 1995). This agreement was subsequently ratified in Indonesia through Presidential Decree Number 7 of 1996. The Indonesia-Singapore FIR Agreement 1995 facilitated the realignment of the boundary between the Singapore FIR and Jakarta FIR in accordance with the new sea boundaries established under the United Nations Convention on the Law of the Sea 1982 (UNCLOS 1982).[14] Additionally, the agreement delineated the Natuna FIR area into three sectors: Sector A, Sector B, and Sector C. Pursuant to this agreement, Indonesia delegated the management of two sectors to Singapore: Sector A, spanning an altitude of 0-37.000 feet, and the entirety of Sector B.[15]

The implementation of the Indonesia-Singapore FIR Agreement 1995 has been scrutinized in various research studies, revealing several drawbacks for Indonesia, particularly in the realms of national security and economics. On security matters, the Indonesian Air Force faces limitations in freely navigating Indonesian airspace above the Riau and Natuna Islands for patrols or missions. This constraint arises from

---

10 Sinatriagung Mintojati, "Effect of the Re-alignment Flight Information Region Above Natuna and Riau Islands to Indonesia's Sovereignty," *International Journal of Law Tourism and Culture* 1, no. 1 (2022): 8.

11 Ridha Aditya Nugraha, "Flight Information Region above Riau and Natuna Islands: The Indonesian Efforts to Regain Control from Singapore," 238-239.

12 Nandang Sutrisno and Rafi Nasrulloh Muhammad Romdoni, "Ratifikasi Perjanjian Penyesuaian Wilayah Informasi Penerbangan antara Indonesia dan Singapura: Pilihan Rasional atau Status Quo?" *Undang: Jurnal Hukum* 5, no. 2 (2022): 399, https://doi.org/10.22437/ujh.5.2.393-417.

13 Nandang Sutrisno and Rafi Nasrulloh Romdoni, 399.

14 Nandang Sutrisno and Rafi Nasrulloh Romdoni, 400.

15 Article 2 of the Agreement Between the Government of the Republic of Indonesia and the Government of the Republic of Singapore on the Realignment of the Boundary between the Singapore Flight Information Region and the Jakarta Flight Information Region, 1995.

the necessity to seek permission from Singapore's authority, which manages the Natuna FIR area.[16] Additionally, Singapore's control over the Natuna FIR enables the use of certain areas as its designated military training zones, providing the Singapore Air Force with a heightened understanding of Indonesia's air borders—a matter of considerable concern for Indonesia's national security.[17]

Simultaneously, the delegation of the Natuna FIR poses economic challenges for Indonesia. Singapore stands to gain air navigation charges from every flight within the delegated area. This delegation implies a substantial loss of state revenue for Indonesia, considering that the Jakarta-Singapore route and its extensions through both transit points rank among the busiest flight routes globally.[18] The delegation of the Natuna FIR appears detrimental to Indonesia's economy as it results in Singapore earning air navigation charges for every flight within the delegated area. This delegation signifies a significant loss of state revenue for Indonesia, particularly given that the Jakarta-Singapore route, extending beyond both transit points, ranks among the world's busiest flight routes.

In response to these disadvantages, Indonesia endeavored to establish a new agreement with Singapore, resulting in the "Agreement Between the Government of the Republic of Indonesia and the Government of the Republic of Singapore on the Realignment of the Boundary between the Jakarta Flight Information Region and the Singapore Flight Information Region" (the Indonesia-Singapore FIR Agreement 2022) signed in Bintan on January 25, 2022.[19] Compared to the preceding agreement, the Indonesia-Singapore FIR Agreement 2022 appears more advantageous for Indonesia. It integrates a portion of the Singapore FIR area, covering 249.575 km² and encompassing all airspace over the Riau and Natuna Islands, into the Jakarta FIR.[20]

However, Singapore retains control over the management of the Natuna FIR at altitudes of 0-37.000 feet, while Indonesia assumes control at altitudes above 37.000 feet.[21] Despite the partial integration, delegating specific sections of the Natuna FIR still carries the potential to impede Indonesia's exercise of sovereignty over its airspace, a right acknowledged by both international and national laws of Indonesia.[22]

The ratification process of the new agreement may pose challenges for the Indonesian government. According to the Law Number 24 of 2000 on Treaties

---

16 Ridha Aditya Nugraha, "Flight Information Region above the Indonesian Natuna and Riau Islands: Deadlock in the Realignment Efforts from Singapore," *The Aviation & Space Journal* 20, no. 3 (2021): 25.

17 Ridha Aditya Nugraha, 25.

18 Ridha Aditya Nugraha, 24.

19 Cabinet Secretariat of the Republic of Indonesia, "Indonesia, Singapore Ink FIR Realignment Agreement," accessed on May 10, 2023, https://setkab.go.id/en/indonesia-singapore-ink-fir-realignment-agreement/.

20 Sinatriagung Mintojati, "Effect of the Re-alignment Flight Information Region Above Natuna and Riau Islands to Indonesia's Sovereignty," 10.

21 Article 2 of the Agreement Between the Government of the Republic of Indonesia and the Government of the Republic of Singapore on the Realignment of the Boundary between the Jakarta Flight Information Region and the Singapore Flight Information Region, 2022.

22 Article 1 of the Convention on International Civil Aviation, 1944; Article 5 Law Number 1 of 2009 regarding Aviation.

(Treaties Law), the ratification of international treaties on the sovereignty and sovereign rights of the state should be conducted through legislation.[23] The subject matter of the Indonesia-Singapore FIR Agreement 2022 pertains more to Indonesia's sovereignty in airspace than the technical aspects of flight safety, necessitating its ratification through a law. However, the Indonesian government ratified this agreement through Presidential Regulation Number 109 of 2022, signed by President Joko Widodo on September 5, 2022, which is inconsistent with the Treaties Law.[24]

Prior studies have addressed the FIR issues between Indonesia and Singapore, primarily focusing on Indonesia's restricted sovereignty in its airspace.[25] However, there is a gap in the existing literature concerning this matter based on the recently established Indonesia-Singapore FIR Agreement 2022, made public. In contributing to the body of knowledge, this study examines the legal challenges in Indonesia's ratification process of this agreement. The paper is organized into two analytical sections. Firstly, it explores the sovereignty implications of delegating the management of Natuna FIR to Singapore. Secondly, it investigates the inconsistency in the treaty ratification process under Indonesian law and practice.

B. Sovereignty Issues in the Delegation of the Management of the Natuna FIR

The Natuna FIR situation highlights the interconnection between a state's sovereignty and the global aviation industry's requirement for secure and dependable air navigation services.[26] The examination of sovereignty issues arising from the delegation of Natuna FIR management can be assessed through the lens of international law, specifically the Chicago Convention 1944 and its annexes, as well as the national law of Indonesia, represented by Law Number 1 of 2009 on Aviation.

1. Chicago Convention 1944

The principle of sovereignty over airspace traces its origins to the adage in Roman law, *"cujus est solum, ejus est usque ad coelum"* (whoever owns the land, owns everything in the sky above the surface of that land to an indefinite height).[27] This perspective considered both the air and space, defining the air as common to all for sustaining life (*res communes*) and regarding the space above lands as having the

---

23 Article 10 of the Law Number 24 of 2000 regarding Treaties.

24 Cabinet Secretariat of the Republic of Indonesia, "President Jokowi Signs Regulation on Indonesia, Singapore FIR Adjustment", accessed on May 10, 2023, https://setkab.go.id/en/president-jokowi-signs-regulation-on-indonesia-singapore-fir-adjustment/.

25 Ridha Aditya Nugraha (2018); Ridha Aditya Nugraha (2021); Sutrisno and Romdoni (2022).

26 Ridha Aditya Nugraha, "Flight Information Region above Riau and Natuna Islands: The Indonesian Efforts to Regain Control from Singapore," 241.

27 Canris Bahri P.S., "Politik Hukum Pengambilalihan Flight Information Region (FIR) dari Singapura," *Dharmasisya Jurnal Program Magister Hukum FHUI* 2, no. 1 (2022): 87.

same legal status as the surface, whether publicly or privately owned.[28] Consequently, the state maintains control over the airspace above public lands.

This adage later evolved into the legal principle of airspace sovereignty over a state's territories, gaining international acceptance with the development of the aviation industry in the early 20th Century.[29] The principle was formally recognized for the first time in the Convention Relating to the Regulation of Aerial Navigation (the Paris Convention 1919), the inaugural multilateral convention related to air navigation. This concept persisted as a fundamental principle of international air law and was codified in the Chicago Convention 1944, which replaced the Paris Convention 1919. The Chicago Convention 1944 holds a pivotal role as the *magna carta* of international air law.[30] This convention serves as the principal legal framework governing the rights and obligations of states in international civil aviation, establishing fundamental principles in air law. It also acts as the foundational constitution for the International Civil Aviation Organization (ICAO), the international body responsible for overseeing various technical aspects of aviation.[31] To facilitate the enforcement of the Chicago Convention 1944, ICAO has advocated the adoption of Standards and Recommended Practices (SARPs) outlined in the 19 annexes associated with this convention. These SARPs are expected to be uniformly applied by its 193 member states, unless practical implementation is deemed unfeasible.[32]

> Article 1 of the Chicago Convention 1944 states as follows.
> *"The Contracting States recognize that every State has complete and exclusive sovereignty over the airspace above its territory."*
>
> Article 2 of the Chicago Convention 1944 regulates the territory of the State.
> *"For the purposes of this Convention the territory of a State shall be deemed to be the land areas and territorial waters adjacent thereto under the sovereignty, suzerainty, protection, or mandate of such State."*

Abeyratne asserts that the state holds the highest authority to establish and enforce laws within its airspace, in accordance with the principles of "complete" and "exclusive" sovereignty.[33] It is important to highlight that the acknowledgment of

---

28 Adi Kusumaningrum, "The Legal Analysis of 'Teori Kedaulatan Nusantara' Towards the New Conception of Indonesia Airspace Sovereignty," *Indonesian Journal of International Law* 14, no. 4 (2017): 521, https://doi.org/10.17304/ijil.vol14.4.705.

29 Adi Kusumaningrum, 519.

30 Paul Stephen Dempsey and Ram S. Jakhu, *Routledge Handbook of Public Aviation Law* (New York: Routledge, 2017), 1.

31 Paul Stephen Dempsey and Ram S. Jakhu, 2.

32 Article 38 of the Convention on International Civil Aviation, 1944.

33 Ruwantissa Abeyratne, *Air Navigation Law* (Berlin: Springer Heidelberg, 2012), 28.

sovereignty outlined in Article 1 of the Chicago Convention 1944 extends to every state, not solely the contracting states.[34] This sovereignty concept generally necessitates the explicit agreement of states overflown in international civil aviation.[35] Even in cases of delegated functional responsibilities between neighboring states, such delegation must not violate the sovereignty of either state, as each state retains authority over its national airspace, encompassing the airspace above the territorial sea and archipelagic waters.

However, the state's sovereignty over its airspace is not absolute. Abdurrasyid contends that the concept of airspace sovereignty outlined in Article 1 of the Chicago Convention 1944 is ambiguous.[36] This ambiguity arises because the article conveys a political idea with significant economic implications, asserting that every state possesses the right to prohibit any foreign commercial activity in the airspace above its territory.[37] Consequently, the remaining provisions and annexes of the Chicago Convention 1944 function as constraints on this complete and exclusive sovereignty, providing directives and prohibitions for the state to exercise its sovereignty.[38] For instance, Articles 5 and 6 of the Chicago Convention 1944 exemplify the notion that airspace sovereignty is neither complete nor exclusive but must adapt to external factors, such as the international community's economic and political considerations.[39]

In aviation, sovereignty refers to the ownership of airspace.[40] Even though national sovereignty cannot be delegated, a state may delegate the functional responsibilities to provide air navigation services over its territory to other states.[41] The Chicago Convention of 1944 has regulated specific provisions on the delegation of FIR management. Chapter 2.1.1 of Annex 11 of the convention stipulated that

> *"...by mutual agreement, a State may delegate to another State the responsibility for establishing and providing air traffic services in flight information regions, control areas or control zones extending over the territories of the former."*

---

34 Gbenga Oduntan, *Sovereignty and Jurisdiction in the Airspace and Outer Space: Legal Criteria for Spatial Delimitation* (New York: Routledge, 2012), 63.

35 Bin Cheng, *The Law of International Air Transport* (London: The London Institute of the World Affairs, 1962), 3.

36 Priyatna Abdurrasyid, *Kedaulatan Negara di Ruang Udara* (Jakarta: Pusat Penelitian Hukum Angkasa, 1972), 97.

37 Adi Kusumaningrum, "The Legal Analysis of 'Teori Kedaulatan Nusantara'," 515.

38 Paul Stephen Dempsey and Ram S. Jakhu, *Routledge Handbook of Public Aviation Law*, 6.

39 Nandang Sutrisno and Rafi Nasrulloh Muhammad Romdoni, "Ratifikasi Perjanjian Penyesuaian Wilayah Informasi Penerbangan antara Indonesia dan Singapura: Pilihan Rasional atau Status Quo?" 407.

40 Point 1.1, Civil Air Navigation Services Organisation, "Airspace Sovereignty," (Working Paper in Worldwide Air Transport Conference (ATCONF), ATConf/6-WP/80, 2013).

41 Point 2.3., Civil Air Navigation Services Organisation, "Airspace Sovereignty."

It is further clarified that when managing a Flight Information Region (FIR) outside its territory, the responsibilities of the providing state are confined to technical and operational matters essential for supporting aviation safety in the pertinent airspace.[42] Moreover, the providing state must adhere to specific conditions established through a bilateral agreement with the delegating state.[43] Resolution A37-15 reinforces the stipulations outlined in Annex 11 to the Chicago Convention 1944 on the "Consolidated statement of continuing ICAO policies and associated practices related specifically to air navigation," adopted by the ICAO Assembly in 2010. This resolution asserts that the delegation of FIR management to another state should occur without undermining the sovereignty of the delegating state.[44] Such a provision underscores the management of FIR as a matter of aviation safety, a principal and essential element within the Chicago Convention of 1944.[45]

However, FIR delegations, while generally legal, must be executed with care and prohibited if there is potential for derogation of the state's sovereignty. It is crucial to note that the FIR delegation remains inseparable from sovereignty issues, notwithstanding its close connection to flight safety and technical concerns.[46] The delegation of FIR management is intricately linked to airspace sovereignty for two reasons. Firstly, it must be comprehended as a state's action in exercising its airspace sovereignty.[47] Hathaway identifies sovereignty with four characteristics: the authority to govern, the supremacy of the governing authority, independence, and power over its territory.[48] In light of these characteristics, delegating FIR management through a treaty compromises a state's authority and control over its airspace to other states, constituting an act of sovereignty.[49] Secondly, the sovereignty of a state will inevitably be impacted when delegating its authority and interest.[50] Latipulhayat emphasizes that despite FIR's functional focus on technical aviation safety matters, the management of FIR intersects with sovereignty if a state decides to delegate it to others.[51] In the context of Natuna FIR, delegation became a sovereignty issue when it significantly affected national interests, specifically

---

42 Chapter 2, 2.1.1., Annex 11 to the Convention on International Civil Aviation.

43 Chapter 2, 2.1.1., Annex 11 to the Convention on International Civil Aviation.

44 International Civil Aviation Organization, Assembly. Resolution A37-15 [Consolidated statement of continuing ICAO policies and associated practices related specifically to air navigation], Appendix M, September 28 – October 8, 2010.

45 I.H.Ph. Diederiks-Verschoor, *An Introduction to Air Law* (The Netherlands: Kluwer Law International, 2012), 253.

46 Ridha Aditya Nugraha, "Flight Information Region Above the Indonesian Natuna and Riau Islands: Deadlock in the Realignment Efforts from Singapore," 24.

47 Endang Puji Lestari, "The Delegation of State Sovereignty Over Air Space in the Implementation of Air Navigation: The Analysis of the Agreement between Indonesia and Singapore on Management of the Batam and Natuna Flight Information Region," *Fiat Justisia* 11, no. 2 (2017): 179, https://doi.org/10.25041/fiatjustisia.v11no2.813.

48 Oona A. Hathaway, "International Delegation and State Sovereignty," *Law and Contemporary Problems* 71, no. 1 (2008): 120-121, https://doi.org/10.2307/27592224.

49 Point 2.4, Civil Air Navigation Services Organisation, "Airspace Sovereignty."

50 Oona A. Hathaway, 115.

51 Atip Latipulhayat, "Flight Information Region (FIR) Kepulauan Riau dan Natuna," (Webinar by Indonesia Center for Air and Space Law (ICASL) Faculty of Law Universitas Padjadjaran, September 13, 2022).

national security and economic concerns.[52] Therefore, FIR issues should not be generically identified solely as matters of aviation safety but assessed through a case-by-case approach, as they can involve questions of sovereignty.[53]

As a comparison, recent FIR realignments with sovereignty implications have been observed in both Europe and Asia. One notable instance occurred in the Balkans, where Bosnia and Herzegovina successfully asserted control over its airspace management from neighboring countries, Serbia and Croatia. Since gaining independence in 1992, the Belgrade FIR and Zagreb FIR had jointly overseen the airspace above Bosnia and Herzegovina.[54] In November 2014, Bosnia and Herzegovina extended its control to skies up to 32.500 feet, establishing the Sarajevo FIR.[55] However, Serbia and Croatia continued to manage the FIR above this altitude, where over 80 percent of air traffic occurred, resulting in all income from air navigation services in that area going to Serbia and Croatia rather than Bosnia and Herzegovina.[56] It was only in December 2019 that Bosnia and Herzegovina assumed complete control over the airspace above its territory, managing the airspace above 32.500 feet through the Sarajevo FIR.[57]

The second example of FIR realignment occurred in the Middle East, involving Qatar and Bahrain. Bahrain FIR had been managing Qatar's airspace since its independence from the United Kingdom in 1971.[58] In 2017, the Qatar diplomatic crisis led to the Arab quartet (Saudi Arabia, Egypt, UAE, and Bahrain) boycotting Qatar-registered aircraft, preventing overflights of their airspace.[59] This airspace closure significantly affected Qatar, causing flight delays and lengthy detours for Qatar Airways flights.[60] Moreover, the closure violated Qatar's sovereignty, as Bahrain prohibited Qatari flights from entering Bahrain FIR area above Qatar's territory, which does not belong to Bahrain's airspace.[61] Recognizing the risk of

---

52 Ridha Aditya Nugraha, "Flight Information Region Above Riau and Natuna Islands: The Indonesian Efforts to Regain Control from Singapore," 242.

53 Amad Sudiro and Jeannette Natawidjaja, "State Sovereignty Over the Airspace on the Perspective of International Air Law: A Study of the Delegation of Airspace Management of Batam and Natuna Island to Singapore," *Advances in Social Science, Education and Humanities Research* 478 (2020): 728, https://doi.org/10.2991/assehr.k.201209.114.

54 Ridha Aditya Nugraha, "Flight Information Region above Riau and Natuna Islands: The Indonesian Efforts to Regain Control from Singapore," 245.

55 Danijel Kovacevic, "Bosnia Takes Control of Its Entire Airspace," accessed on May 16, 2023, https://balkaninsight.com/2019/12/02/bosnia-takes-control-of-entire-airspace/.

56 Danijel Kovacevic.

57 Danijel Kovacevic.

58 Alan Dron, "Qatar's New FIR Set to Fly," accessed on June 15, 2023, https://www.timesaerospace.aero/features/atm-and-regulatory/qatars-new-fir-set-to-fly.

59 Fatemeh Salari, "Qatar's First-Ever Airspace is Now Fully Established," accessed on June 15, 2023, https://dohanews.co/qatars-first-ever-airspace-is-now-fully-established/.

60 S. G. Sreejith, "Legality of the Gulf Ban on Qatari Flights: State Sovereignty at Crossroads," *Air & Space Law* 43, no. 2 (2018): 192, https://doi.org/10.54648/AILA2018013.

61 S. G. Sreejith, 197.

having its skies controlled by another nation, Qatar formally requested ICAO to manage its airspace, leading to the establishment of the Doha FIR in 2018.[62] ICAO agreed to create Doha FIR in September 2022, following a phased approach granting Qatar full authority to control the airspace above its territory to an unlimited altitude, including international waters around it by 2024.[63] Apart from the financial benefits from overflight fees paid by other airlines entering Qatar's airspace, establishing Doha FIR could also enhance Qatar's sovereignty by assuming full control of its airspace.[64] Both the Bosnia and Herzegovina and Qatar cases demonstrate the crucial role of airspace sovereignty in FIR delegation issues, emphasizing a state's expectation to control and exercise sovereignty in its airspace.

In the Natuna FIR situation, Indonesia is obligated to delegate the management of FIR services in specific parts of the area to Singapore. Article 2 of the Indonesia-Singapore FIR Agreement 2022 specifies that Singapore is responsible for managing the Natuna FIR from 0-37.000 feet, while Indonesia retains control over the region above that elevation. It is crucial to note that both states have mutually agreed that Singapore maintains authority over the airspace above the Riau and Natuna Islands, even though this airspace, encompassing Sector A and Sector B has become an integral part of the Jakarta FIR under the Indonesia-Singapore FIR Agreement 2022.[65]

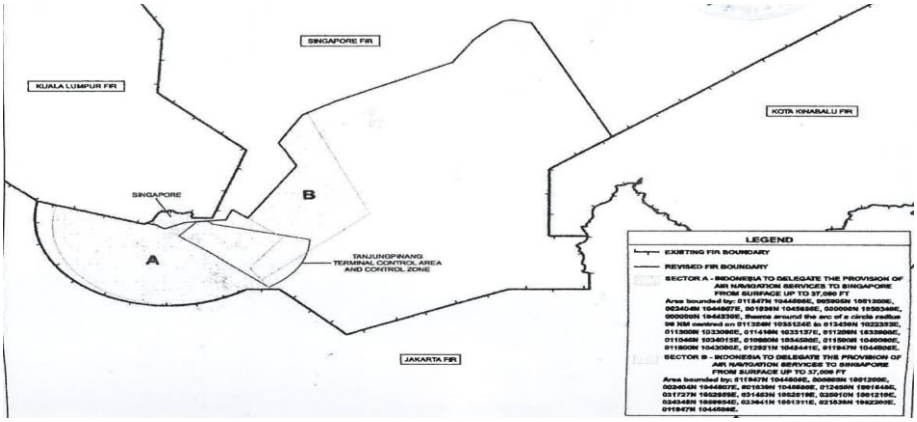

Figure 1. The Boundary between the Jakarta FIR and the Singapore FIR in the Aftermath of the Indonesia-Singapore FIR Agreement 2022

62 Fatemeh Salari, "Qatar's First-Ever Airspace is Now Fully Established."

63 Qatar Ministry of Transport, "ICAO Council Agrees on Establishment of Doha FIR in New Civil Aviation Achievement," accessed on June 15, 2023, https://www.mot.gov.qa/en/news-events/news/icao-council-agrees-establishment-doha-fir-new-civil-aviation-achievement-3.

64 Economist Intelligence Unit, "Sovereign Airspace Will Boost Qatar's Aviation Ambitions," accessed on June 15, 2023, https://country.eiu.com/article.aspx?articleid=141991197&Country=Qatar&topic=Economy&subtopic=Forecast&subsubtopic=Policy+trends.

65 Article 1 of the Agreement Between the Government of the Republic of Indonesia and the Government of the Republic of Singapore on the Realignment of the Boundary between the Jakarta Flight Information Region and the Singapore Flight Information Region, 2022.

The Indonesia-Singapore FIR Agreement 2022 does not appear to give rise to legal issues or violate the sovereignty of both states. Indonesia and Singapore have reached an agreement on the terms of the Natuna FIR delegation, and this agreement aligns with international law. However, this delegation has diminished elements of Indonesia's 'complete' and 'exclusive' sovereignty over the airspace, as recognized by Article 1 of the Chicago Convention 1944. Air sovereignty encompasses more than mere recognition and spatial location; it includes the authority to make and implement decisions about airspace.[66] Nevertheless, legal authority alone is insufficient, as complete sovereignty requires the state's ability to enforce it.[67] In this case, the delegation of Natuna FIR has constrained Indonesia's complete sovereignty because there are still areas with a specific altitude managed by Singapore's authorities. Furthermore, Indonesia cannot exercise exclusive sovereignty, as its authorities are not the sole power controlling Indonesian airspace in the Natuna FIR area.

The government of Indonesia has failed to assess the impact of not attaining complete and exclusive sovereignty over the national interests in Natuna's airspace, particularly concerning national security and economic interests. Despite several realignments, the existence of a delegation based on the new agreement indicates potential threats to national security, reminiscent of those arising from the Indonesia-Singapore FIR Agreement 1995. The delegation of Natuna FIR to Singapore has also led to a delay in establishing the new Indonesian Air Defense Identification Zone (ADIZ).[68] The determination of Indonesia's new ADIZ is crucial for early identification of any aircraft entering Indonesia's airspace, contributing to national security and the air defense system.[69] However, ADIZ cannot be enacted within a part of the airspace still managed by another state.[70] Moreover, Indonesia will face economic repercussions due to the delegation of Natuna FIR. Indonesia delegates the Natuna FIR area up to 37.000 feet, which constitutes less than one-third or approximately 29% of the airspace around Singapore's territory, to Singapore's authorities on a limited basis.[71] Despite the limited size of this area compared to what Indonesia manages, it is frequently overflown by civil aviation, resulting in all

---

66 Florence Gaub, and Lotje Boswinkel, "How the Gulf States are Using Their Air Space to Assert Their Sovereignty," *International Affairs* 97, no. 4 (2021): 989, https://doi.org/10.1093/ia/iiab075.

67 Florence Gaub and Lotje Boswinkel, 990.

68 Ridha Aditya Nugraha, "Flight Information Region above the Indonesian Natuna and Riau Islands: Deadlock in the Realignment Efforts from Singapore," 25.

69 Yuwono Agung Nugroho (et.al.), "Urgency of Air Defense Identification Zone (ADIZ) to Support Indonesia Air Defense System," *Baltic Journal of Law & Politics* 16, no. 3 (2023): 282-83, https://doi.org/10.2478/bjlp-2023-0000021.

70 Stefan A. Kaiser, "The Legal Status of Air Defense Identification Zones: Tensions over the East China Sea," *Zeitschrift für Luft-und Weltraumrecht (German Journal of Air and Space Law)* 63, no. 4 (2014): 539.

71 Nanda Indrawati, "Peluang dan Tantangan Penandatanganan Perjanjian Penyesuaian Flight Information Region (FIR) Antara Indonesia dan Singapura," *Jurnal Paradigma Hukum Pembangunan* 7, no. 2 (2022): 32.

revenue in this area being received by Singapore.[72] Consequently, Indonesia cannot fully exercise its rights and enjoy the benefits expected from the airspace that is part of its sovereignty.

2. The Law Number 1 of 2009 on Aviation

The legal issues within the Natuna FIR delegation can be addressed not only according to the Chicago Convention 1944 and its annexes but also by Indonesia's national law relevant to civil aviation. National law and international law are two inseparable legal systems, even though the relationship between these laws is often debatable as every state has different state practices. Similarly, with Indonesia, the 1945 Constitution of the Republic of Indonesia (1945 Constitution) does not explicitly regulate the relation between national law and international law, including international treaties.[73] The Constitutional Court, as part of Indonesia's national judiciary, has handled several cases related to the interaction between national law and international law and decided those cases, for instance, the Constitutional Court's Decision Number 013/PUU-I/2003 and Number 2-3/PUU-V/2007.[74] In accordance with those two decisions, the Constitutional Court has interpreted that Indonesia adheres to primate monism of national law in terms of the relationship between national law and international treaties.[75]

Kusumaatmadja asserts that monism is based on the view that international law and national law are two parts of a more extensive legal system that governs human life.[76] This doctrine resulted in a hierarchical relationship between international law and national law, resulting in two possibilities: primate monism of international law and primate monism of national law.[77] The doctrine of monism under the primate of national law sees that international law is a continuation of national law.[78] National law is essentially the basis of international law, so national law prevails over international law if there is a contradiction between them.[79] Based on the idea, Indonesia must prioritize its national law if there is an inconsistency with the Indonesia-Singapore FIR Agreement 2022, specifically concerning matters of Indonesia's sovereignty over its airspace.

Law Number 1 of 2009 on Aviation (Aviation Law) is Indonesia's primary legal framework regulating civil aviation at this moment. Given the significance of revising

---

72 Nanda Indrawati, 32.

73 Gede Marhaendra Wija Atmaja (et.al.), "Sikap Mahkamah Konstitusi Mengenai Keberlakuan Perjanjian Internasional Dalam Hubungannya Dengan Hukum Nasional," *Udayana Magister Law Journal* 7, no. 3 (2018): 331, https://doi.org/ 10.24843/JMHU.2018.v07.i03.p05.

74 Gede Marhaendra Wija Atmaja (et.al.), 337.

75 Gede Marhaendra Wija Atmaja (et.al.), 339.

76 Mochtar Kusumaatmadja and Etty R. Agoes, *Pengantar Hukum Internasional* (Bandung: Alumni, 2003), 60.

77 Mochtar Kusumaatmadja and Etty R. Agoes.

78 M. Yakub Aiyub Kadir (et.al.), "Whether Sovereignty? The Failure of Indonesia in Taking Over Flight Information Region from Singapore 2015-2019," *Udayana Journal of Law and Culture* 5, no. 2 (2021): 195, https://doi.org/10.24843/UJLC.2021.v05.i02.p06.

79 M. Yakub Aiyub Kadir (et.al.), 195.

the laws to reflect contemporary aviation dynamics and the expansion of Indonesian air transportation in the modern era, Indonesia enacted this law, which entered into force on 12 January 2009. The new Aviation Law replaces two previous acts, namely Indonesian Law Number 83 of 1958 and Indonesian Law Number 15 of 1992. Aviation Law aims to present a narrative focusing on how aviation was developed as a component of the national transportation system to support territorial development, international relations, economic progress, and national sovereignty.[80] Aviation Law also incorporates nearly all the provisions under the Chicago Convention 1944 to enforce the SARPs provided by the ICAO, including sovereignty over the airspace.[81]

In relation to the Natuna FIR, Aviation Law was actually created to provide a legal basis for Indonesia's takeover process of the Natuna FIR management.[82] Nonetheless, the signing of the Indonesia-Singapore FIR Agreement 2022 has not followed the Aviation Law's mandate under Article 5, which addresses Indonesia's sovereignty over its airspace, and Article 458, which pertains to the takeover of navigational control of Indonesian airspace.

First, Aviation Law explicitly regulates the principle of sovereignty over the airspace, adopted from Article 1 of the Chicago Convention 1944.[83] Article 5 of the Aviation Law stipulates that the Republic of Indonesia has complete and exclusive sovereignty over the airspace of the Republic of Indonesia. This article can be deemed both as national and international legitimacy of the total and exclusive nature of Indonesia's airspace sovereignty.[84] By this rule, Indonesia shall fully control the airspace above its territory, including the Natuna Region. Unfortunately, the fact that the Indonesian government decided to once again hand Singapore control of the Natuna FIR through the Indonesia-Singapore FIR Agreement 2022 has limited Indonesia's sovereign rights in its airspace in the area. This means that the delegation of the Natuna FIR management is clearly inconsistent with Article 5 of the Aviation Law.

Second, Aviation Law also specifically instructs the takeover of the airspace management given to other states' air navigation services. This is mandated under

---

80 Adi Kusumaningrum, "Indonesian Theoretical and Practical Approaches to the Development of International Air Law," *Indonesia Yearbook of International Law* 1 (2020): 15.

81 Adi Kusumaningrum, 12-13.

82 Ridha Aditya Nugraha and Yaries Mahardika Putro, "Quo Vadis, FIR Above Riau and Natuna Islands?" accessed on June 7, 2023, https://www.thejakartapost.com/paper/2022/08/18/quo-vadis-fir-above-riau-and-natuna-islands.html.

83 Baiq Setiani, "Konsep Kedaulatan Negara di Ruang Udara dan Upaya Penegakan Pelanggaran Kedaulatan Oleh Pesawat Udara Asing," *Jurnal Konstitusi* 14, no. 3 (2017): 499, https://doi.org/10.31078/jk1432; Canris Bahri P.S., "Politik Hukum Pengambilalihan Flight Information Region (FIR) dari Singapura," 94.

84 Endang Puji Lestari, "The Delegation of State Sovereignty Over Air Space in the Implementation of Air Navigation: The Analysis of the Agreement between Indonesia and Singapore on Management of the Batam and Natuna Flight Information Region," 174.

Article 458 of the Aviation Law, which stipulates that air navigation services of Indonesia's airspace delegated to other states under the agreement had to be evaluated and served by Indonesia's authorities no later than fifteen years after the enactment of this law. This article clearly refers to the takeover of the Natuna FIR, as Indonesia has only delegated air navigation services to Singapore in the airspace above Riau and Natuna Islands. The reality, however, shows that the provisions agreed on in the Indonesia-Singapore FIR Agreement 2022 still grant the authority to manage a particular part of the Natuna FIR to Singapore, making Indonesia unable to fully control the area's management.[85] This indicates that this agreement is not a form of a complete takeover of the control of Indonesian airspace from Singapore, as urged by Article 458 of the Aviation Law.[86]

Since the enactment of Aviation Law in 2009, Article 458 stipulates that the delegation of navigation services must cease by 2024 at the latest. Subsequently, Indonesia is obliged to independently manage these services.[87] Specifically, this entails the takeover of flight navigation services in the Natuna region, currently facilitated by Singapore, as mandated by the Aviation Law. However, a potential conflict arises as Article 7(1) of the Indonesia-Singapore FIR Agreement 2022 states that the agreement will be effective for twenty-five years from its entry into force. This implies a continuation of the delegation of Natuna FIR, preventing the Indonesian government from fulfilling the mandate outlined in Article 458 of the Aviation Law. The agreement does incorporate provisions for periodic operational reviews every five years at the request of either party.[88] Despite this, the evaluations do not impact the agreement's duration, rendering Indonesia unable to leverage them for renegotiation.[89]

In theory, Indonesia holds the right to withdraw or terminate the Indonesia-Singapore FIR Agreement 2022 based on international law. However, this prospect is practically implausible due to potential international complications. Such a move could prompt Singapore to question Indonesia for not fulfilling its obligations under the recently signed agreement, thereby straining relations between the two States. Additionally, invoking provisions of national law to evade treaty obligations would breach the Vienna Convention on the Law of Treaties (VCLT 1969), possibly resulting in an internationally wrongful act.[90] Consequently, the outcome of the agreement

---

85 Article 2 of the Agreement Between the Government of the Republic of Indonesia and the Government of the Republic of Singapore on the Realignment of the Boundary between the Jakarta Flight Information Region and the Singapore Flight Information Region, 2022.

86 Atip Latipulhayat, "Flight Information Region (FIR) Kepulauan Riau dan Natuna."

87 Nandang Sutrisno and Rafi Nasrulloh Muhammad Romdoni, "Ratifikasi Perjanjian Penyesuaian Wilayah Informasi Penerbangan antara Indonesia dan Singapura: Pilihan Rasional atau Status Quo?" 408.

88 Article 7 (2) of the Agreement Between the Government of the Republic of Indonesia and the Government of the Republic of Singapore on the Realignment of the Boundary between the Jakarta Flight Information Region and the Singapore Flight Information Region, 2022.

89 Article 7 (3) of the Agreement Between the Government of the Republic of Indonesia and the Government of the Republic of Singapore on the Realignment of the Boundary between the Jakarta Flight Information Region and the Singapore Flight Information Region, 2022.

90 Article 27 of the Vienna Convention on the Law of Treaties, 1969.

contradicts the mandate outlined in the Aviation Law and impedes Indonesia's endeavor to assume control of Natuna FIR.

C. Legality of Indonesia's Instrument of Ratification of the FIR Agreement 2022

The Treaties Law defines ratification as a legal action through which a nation commits to being bound by an international treaty. This commitment can take the form of ratification, accession, acceptance, or approval.[91] The Law specifies that the government of the Republic of Indonesia expresses its consent to be bound by international treaties through various means, including signature, ratification, exchange of instruments constituting the treaty, diplomatic notes, or any other methods agreed upon by the parties involved.[92] These provisions align with the ratification rules outlined in the Vienna Convention on the Law of Treaties (VCLT) of 1969.[93] In Indonesia, the prevailing practice involves either ratification or accession. Ratification pertains to treaties that the Indonesian government has signed, while accession applies to those not signed.[94]

Ratification, as a form of a state's declaration to be bound by an international treaty, encompasses two aspects: internal and external.[95] The external aspect involves a state's commitment to treaties in its interactions with other states, while the internal aspect pertains to domestic considerations within the concerned state. The VCLT of 1969 provides substantial regulation on the process of ratification, while the specific provisions regarding the internal aspect are determined by national law, considering each state's legal system, political landscape, and constitution.[96]

The constitutional foundation for international treaties in Indonesia is established in Article 11 of the 1945 Constitution. However, the provision in this article is concise, necessitating the formulation of derivative regulations to provide clearer guidance on international treaty matters. Initially, Article 11 of the 1945 Constitution was detailed in a Presidential Letter Number 2826/HK/1960, dated 22 August 1960, addressed to the Speaker of the House of Representatives. This letter specifically addresses the ratification of two types of agreements: important treaties requiring ratification by law and ordinary agreements ratified by presidential

---

91 Article 1 (2) of the Law Number 24 of 2000 regarding Treaties.

92 Article 3 of the Law Number 24 of 2000 regarding Treaties.

93 Article 11 of the Vienna Convention on the Law of Treaties, 1969.

94 Umi Chalsum Fareza (et.al.), "Pengesahan Perjanjian Internasional Pasca Putusan Mahkamah Konstitusi Nomor 13/PUU-XVI/2018 Terhadap Undang-Undang Nomor 24 Tahun 2000 tentang Perjanjian Internasional," *Lex Administratum* 9, no. 2 (2021): 51.

95 Article 14 of the Vienna Convention on the Law of Treaties, 1969.

96 Nanda Indrawati, "Praktik Ratifikasi Perjanjian Internasional Pasca Putusan Mahkamah Konstitusi Nomor 13/PUU-XVI/2018," *Law, Development & Justice Review* 3, no. 1 (2020): 106, https://doi.org/10.14710/ldjr.v3i1.7890.

decree.[97] Despite not being formally included in the hierarchy of Indonesian legislation, this letter has been consistently utilized over the years and has become an accepted constitutional custom in Indonesia.[98] Over time, Presidential Letter Number 2826/HK/1960 has become less clear and no longer aligns with the spirit of Indonesia's reform era.[99] Consequently, recognizing the need for a more modern and comprehensive legal framework, the new Treaties Law was promulgated and became effective on 23 October 2000.

Based on the Treaties Law, the Indonesian government ratifies international treaties when such ratification is required.[100] This can be accomplished through two types of legal instruments: either a law or a presidential regulation.[101] The determination of whether a ratification is based on the law or a presidential regulation is outlined in the Treaties Law and Constitutional Court's Decision Number 13/PUU-XVI/2018.

Article 10 of the Treaties Law specifies that the law executes the ratification of international treaties if they pertain to:

(1) political, peace, defense, and national security issues;
(2) changes in territory or the delimitation of the boundaries of the territory of the republic of Indonesia;
(3) sovereignty or sovereign rights of the state;
(4) human rights and the environment;
(5) establishment of a new rule of law; and
(6) foreign loans and/or grants.

For international treaties unrelated to the specific material outlined above, ratification is conducted through a presidential regulation.[102] Common instances of international treaties ratified by presidential regulation include those related to cooperation in science and technology, economy, trade, shipping, avoidance of double taxation, investment, education, culture, and other technical agreements.[103] Given that the criteria specified in Articles 10 and 11 of the Treaties Law remain relatively general, variations may exist in stakeholders' assessments regarding whether a treaty necessitates ratification through a law or a presidential regulation.[104]

---

97 Delfina Gusman and Zimtya Zora, "Amandemen Terhadap Pasal 11 Undang – Undang Dasar 1945 Berkaitan Dengan Ratifikasi Perjanjian Internasional (Perspektif Hukum Internasional Dan Hukum Tata Negara)," *UIR Law Review* 5, no. 1 (2021): 83.

98 Nanda Indrawati, "Praktik Ratifikasi Perjanjian Internasional Pasca Putusan Mahkamah Konstitusi Nomor 13/PUU-XVI/2018," 107.

99 Nanda Indrawati.

100 Article 9 (1) of the Law Number 24 of 2000 regarding Treaties.

101 Article 9 (2) of the Law Number 24 of 2000 regarding Treaties.

102 Article 11 (1) of the Law Number 24 of 2000 regarding Treaties.

103 Damos Dumoli Agusman, *Hukum Perjanjian Internasional: Kajian Teori dan Praktik Indonesia* (Bandung: PT Refika Aditama, 2017), 86.

104 Umi Chalsum Fareza (et.al.), "Pengesahan Perjanjian Internasional Pasca Putusan Mahkamah Konstitusi Nomor 13/PUU-XVI/2018 Terhadap Undang-Undang Nomor 24 Tahun 2000 tentang Perjanjian Internasional," 48.

In a recent development, Constitutional Court Decision Number 13/PUU-XVI/2018 has expanded the range of international treaties requiring ratification by law. This includes matters that "give rise to extensive and fundamental consequences to the life of the people related to the State's financial burden, and/or compelling amendment or enactment of laws," as stipulated in Article 11(2) of the 1945 Constitution.[105] The court's decision underscores that determining whether an international treaty meets these criteria must be done comprehensively, relying on legal considerations and needs both nationally and internationally.[106] With this interpretation, international treaties mandating ratification by law are no longer confined to the six types specified in Article 10 of the Treaties Law but can extend to any treaty meeting the criteria outlined in Article 11(2) of the 1945 Constitution.[107] Conversely, the automatic ratification by law of those six types of treaties is no longer assured; each must undergo assessment to ascertain compliance with the new criteria established by the 1945 Constitution.

Even though it has been stipulated in both the Treaties Law and Constitutional Court Decision Number 13/PUU-XVI/2018, the government's decision on whether to ratify an international treaty through a law, requiring approval from the House of Representatives, or through a presidential regulation, is ultimately determined by the government.[108] The government must carefully consider the appropriate instrument for the ratification of each international treaty, recognizing that the chosen instrument may be subjected to judicial review. According to the 1945 Constitution, the Supreme Court has the authority to review statutory rules and regulations below the law against the law.[109] Meanwhile, the Constitutional Court has the power to review the law against the constitution.[110]

As the instruments of ratification can take the form of a law or a presidential regulation, both the Constitutional Court and the Supreme Court are empowered to scrutinize the legality of these instruments based on Indonesian national law. However, if either court declares the instrument of ratification inconsistent with national legislation, it only impacts the legality of the instrument under national law. It is important to note that the legality of the instrument of ratification under national law does not affect the validity of a treaty or Indonesia's status as a state party in the treaty. This review process exclusively addresses the internal aspect of ratification.

---

105 Hikmahanto Juwana, "Kewajiban Negara Dalam Proses Ratifikasi Perjanjian Internasional: Memastikan Keselarasan Dengan Konstitusi dan Mentransformasikan ke Hukum Nasional," *Undang: Jurnal Hukum* 2, no. 1 (2019): 6, https://doi.org/10.22437/ujh.2.1.1-32.

106 Paragraph 3.11 of the Constitutional Court's Decision Number 13/PUU-XVI/2018.

107 Umi Chalsum Fareza (et.al.), "Pengesahan Perjanjian Internasional Pasca Putusan Mahkamah Konstitusi Nomor 13/PUU-XVI/2018 Terhadap Undang-Undang Nomor 24 Tahun 2000 tentang Perjanjian Internasional," 54.

108 Hikmahanto Juwana, 9.

109 Article 24 A (1) of the 1945 Constitution of the Republic of Indonesia.

110 Article 24 C (1) of the 1945 Constitution of the Republic of Indonesia.

The Indonesia-Singapore FIR Agreement 2022 was ratified by the Indonesian government through Presidential Regulation No. 109 of 2022. According to Article 10(c) of the Treaties Law, the ratification of international treaties concerning the sovereignty and sovereign rights of the state should be carried out through a law. In the case of the Indonesia-Singapore FIR Agreement 2022, the ratification should have been done through a law, as it is closely connected to Indonesia's sovereignty. The government's deviation from the Treaties Law prompted a judicial review of this presidential regulation. On November 23, 2022, Supri Abu, along with eight pilots, one Jakarta resident, and two Riau Islands residents,[111] submitted a request for the judicial review of Presidential Regulation Number 109 of 2022 regarding the Ratification of the Indonesia-Singapore FIR Agreement 2022 to the Supreme Court.

The applicants sought a declaration from the Supreme Court that Presidential Regulation Number 109 of 2022 is inconsistent with Article 10(c) of the Treaties Law and lacks binding power.[112] In response, the government, as the respondent, argued that the ratification aligns with the Treaties Law. They contended that the substance of the Indonesia-Singapore FIR Agreement 2022 is unrelated to Indonesia's sovereignty and was enacted for operational and technical reasons.[113] The government also asserted that the agreement does not meet the newest criteria set out by Constitutional Court Decision Number 13/PUU-XVI/2018, justifying the lawfulness of the ratification done through a presidential regulation.[114]

Ultimately, the Supreme Court issued Decision Number 71/P/HUM/2022, rejecting the applicants' request. The Court asserted that the Indonesia-Singapore FIR Agreement 2022 primarily regulates the delegation of flight navigation services and does not involve airspace delegation.[115] The decision affirmed that the appropriate instrument of ratification for this agreement remains a presidential regulation since it does not pertain to the State's sovereignty.

Upon closer examination, Supreme Court Decision Number 71/P/HUM/2022 has given rise to several misconceptions regarding sovereignty and ratification concerning the Indonesia-Singapore FIR Agreement 2022. As previously established in this writing, complete and exclusive sovereignty extends beyond territorial control of airspace to the exercise of rights as a sovereign state within that airspace. It is undeniable that the Indonesia-Singapore FIR Agreement 2022 maintains the agreed-upon boundaries between Indonesia and Singapore, as outlined in Article 1 of the agreement.[116] However, Indonesia's sovereignty is still impacted by the delegation of authority to manage the airspace within the Natuna FIR area, as specified in Article 2 of the agreement. The issues surrounding sovereignty cannot be disregarded in the

---

111 Marlinda Oktavia Erwanti, "9 Pilot Ini Gugat Perjanjian FIR Indonesia-Singapura ke MA," accessed on May 24, 2023, https://news.detik.com/berita/d-6446047/9-pilot-ini-gugat-perjanjian-fir-indonesia-singapura-ke-ma.

112 Page 29 and 41 of the Supreme Court's Decision Number 71/P/HUM/2022.

113 Page 88 of the Supreme Court's Decision Number 71/P/HUM/2022.

114 Page 87 and 92 of the Supreme Court's Decision Number 71/P/HUM/2022.

115 Page 122-123 of the Supreme Court's Decision Number 71/P/HUM/2022.

116 Page 124 of the Supreme Court's Decision Number 71/P/HUM/2022.

delegation of FIR management, as it curtails Indonesia's right to exercise sovereignty over its own airspace.

The government should exhibit greater awareness of national law requirements when determining the instrument of ratification for international treaties. According to the Treaties Law, the choice of the instrument for ratifying an international treaty is not contingent on its form and nomenclature but on its substantive content.[117] Despite the Indonesia-Singapore FIR Agreement 2022 employing the technical phrase "realignment of the boundary," the essence of this agreement primarily revolves around the delegation of authority in the Natuna FIR area, intricately linked with the sovereignty and sovereign rights of Indonesia.

Furthermore, the criteria outlined by the Constitutional Court's decision, specifying that international treaties necessitating ratification by law should "give rise to extensive and fundamental consequences to the life of the people related to the state's financial burden, and/or compelling amendment or enactment of laws," are inherently biased. This bias stems from the absence of rules prescribing limitations on the interpretation of these criteria.[118] The lack of a clear interpretation for these criteria can result in divergent perspectives between the government and the House of Representatives.

The government's unilateral interpretation and ratification of the Indonesia-Singapore FIR Agreement 2022 without involving the House of Representatives is flawed. This is particularly significant as the agreement pertains to Indonesia's sovereignty, a matter that necessitates ratification by law.

It is essential to note that Indonesia has also entered into two additional agreements with Singapore in conjunction with the FIR Agreement: the defense cooperation agreement and the extradition agreement.[119] Both states signed these agreements simultaneously in Bintan on January 25, 2022.[120] Since ratification is required by both states for these two agreements, Indonesia proceeded to ratify the defense cooperation agreement with Indonesian Law Number 3 of 2023 and the extradition agreement with Indonesian Law Number 5 of 2023. The ratification was conducted through law, as both agreements address matters related to defense and national security issues, necessitating ratification by law according to the Treaties Law. [121] It contrasts with the Indonesia-Singapore FIR Agreement 2022, which was

---

117 Damos Dumoli Agusman, *Hukum Perjanjian Internasional: Kajian Teori dan Praktik Indonesia*, 87.

118 Nanda Indrawati, "Peluang dan Tantangan Penandatanganan Perjanjian Penyesuaian Flight Information Region (FIR) Antara Indonesia dan Singapura," 115.

119 Aqil Haziq Mahmud, "Singapore and Indonesia Have Signed a 'Balanced' Set of Agreements That Addresses 3 Longstanding Issues: PM Lee," accessed on May 24, 2023, https://www.channelnewsasia.com/singapore/indonesia-singapore-leaders-retreat-agreements-fir-travel-bintan-batam-2457861.

120 Aqil Haziq Mahmud, "Singapore and Indonesia Have Signed a 'Balanced' Set of Agreements That Addresses 3 Longstanding Issues: PM Lee."

121 Article 10 (a) of the Law Number 24 of 2000 regarding Treaties.

ratified solely by presidential regulation. This highlights inconsistencies in the government's approach to ratifying international treaties, even though the content of all three agreements equally requires ratification by law, as stipulated in Article 10 of the Treaties Law.

D. Conclusion

The signing of the Indonesia-Singapore FIR Agreement 2022 has raised several issues for Indonesia, particularly concerning its sovereignty over the airspace and the ratification process of the agreement. Analyzing sovereignty matters in the delegation of Natuna FIR involves applying relevant provisions under international and Indonesian national laws. An assessment of the 1944 Chicago Convention leads to the conclusion that the delegation of Natuna FIR management to Singapore has impeded Indonesia's full and exclusive control over its airspace. Moreover, this delegation contravenes Indonesia's Aviation Law, recognizing the country's complete rights to exercise airspace sovereignty above the Riau and Natuna Islands. Indonesia has also failed to fulfill the Aviation Law's mandate to take over Natuna FIR management from Singapore, instead extending the delegation for the next twenty-five years. In summary, the delegation stipulated in the Indonesia-Singapore FIR Agreement 2022 has restricted Indonesia's sovereignty over its airspace.

While an agreement constituting the delegation of FIR management is formed based on the consent of concerned states and can be terminated at any time, the process of termination or withdrawal from an international treaty is not straightforward, even if the treaty includes a withdrawal clause.[122] This highlights the need for careful negotiation on the FIR delegation issue, ensuring that the agreement's outcomes not only enhance international aviation safety in the region but also safeguard Indonesia's sovereignty. Drawing lessons from the Indonesia-Singapore FIR Agreement 2022, the Indonesian government should prioritize national interests in negotiating future FIR agreements to secure the highest degree of sovereignty over its airspace. This approach will enable Indonesia to exert full control and reap the rights and benefits rightfully associated with its airspace above the Riau and Natuna Islands in the future.

The Treaties Law stipulates that the ratification of international treaties must be assessed based on the subject matter regulated in the treaty. Following these regulations, the Indonesia-Singapore FIR Agreement 2022, primarily governing the delegation of authority to manage the Natuna FIR, falls under the airspace of Indonesia and is intricately connected with the sovereign rights of the country. Accordingly, it should be ratified by law. Unfortunately, the government's decision to ratify the agreement with Presidential Regulation Number 109 of 2022 appears to deviate from the national law governing the instrument of ratification for international treaties. This discrepancy also reveals inconsistencies in the ratification

[122] Hikmahanto Juwana, "Kewajiban Negara Dalam Proses Ratifikasi Perjanjian Internasional: Memastikan Keselarasan Dengan Konstitusi dan Mentransformasikan ke Hukum Nasional," 14.

process conducted by the Indonesian government compared to the other two agreements with Singapore associated with the Indonesia-Singapore FIR Agreement 2022. In conclusion, these reasons demonstrate that the instrument of ratification for the Indonesia-Singapore FIR Agreement 2022, chosen by the Indonesian government as a presidential regulation, is inconsistent with the Treaties Law.

Despite the deficiencies in its consideration, the ratification of the Indonesia-Singapore FIR Agreement 2022 with Presidential Regulation Number 109 of 2022 has been justified based on the Supreme Court's decision, which is final and binding after a judicial review process. Practically speaking, this instrument of ratification cannot be changed unless the Indonesian government passes a new ratification law to replace the presidential regulation. However, this case has set a concerning precedent for Indonesian law and practice in ratifying international treaties. The Indonesian government must precisely determine the instrument of ratification for an international treaty since its invalidity will result in national law violations and international complications. Additionally, the government should establish more standardized and clearer provisions on the ratification of treaties by revising the Treaties Law. This step will enable the government to avoid other inconsistencies that might arise in Indonesia's ratification of treaties.

References

Books

Abdurrasyid, Priyatna. *Kedaulatan Negara di Ruang Udara*. Jakarta: Pusat Penelitian Hukum Angkasa, 1972.

Abeyratne, Ruwantissa. *Air Navigation Law*. Berlin: Springer Heidelberg, 2012.

Agusman, Damos Dumoli. *Hukum Perjanjian Internasional: Kajian Teori dan Praktik Indonesia*. Bandung: PT Refika Aditama, 2017.

Cheng, Bin. *The Law of International Air Transport*. London: The London Institute of the World Affairs, 1962.

Dempsey, Paul Stephen and Ram S. Jakhu. *Routledge Handbook of Public Aviation Law*. New York: Routledge, 2017.

Diederiks-Verschoor, I.H. Ph. *An Introduction to Air Law*. The Netherlands: Kluwer Law International, 2012.

International Civil Aviation Organization. *Annex 11 to the Convention on International Civil Aviation Air Traffic Services*. Canada: ICAO, 2016.

Kusumaatmadja, Mochtar and Etty R. Agoes. *Pengantar Hukum Internasional*. Bandung: Alumni, 2003.

Oduntan, Gbenga. *Sovereignty and Jurisdiction in the Airspace and Outer Space: Legal Criteria for Spatial Delimitation*. New York: Routledge, 2012.

Sefriani. *Hukum Internasional: Suatu Pengantar*. Jakarta: Rajawali Pers, 2021.

Other Documents

Atmaja, Gede Marhaendra Wija (et.al.) "Sikap Mahkamah Konstitusi Mengenai Keberlakuan Perjanjian Internasional Dalam Hubungannya Dengan Hukum Nasional." *Udayana Magister Law Journal* 7, no. 3 (2018): 329-442. https://doi.org/ 10.24843/JMHU.2018.v07.i03.p05.

Bahri P.S., Canris. "Politik Hukum Pengambilalihan Flight Information Region (FIR) Dari Singapura." *Dharmasisya Jurnal Program Magister Hukum FHUI* 2, no. 1 (2022): 87-98.

Cabinet Secretariat of the Republic of Indonesia. "Indonesia, Singapore Ink FIR Realignment Agreement." Accessed on May 10, 2023. https://setkab.go.id/en/indonesia-singapore-ink-fir-realignment-agreement/.

_____. "President Jokowi Signs Regulation on Indonesia, Singapore FIR Adjustment." Accessed on May 10, 2023. https://setkab.go.id/en/president-jokowi-signs-regulation-on-indonesia singapore-fir-adjustment/.

Civil Air Navigation Services Organisation. "Airspace Sovereignty." (Working Paper in Worldwide Air Transport Conference (ATCONF), ATConf/6-WP/80 - 2013).

Dron, Alan. "Qatar's New FIR Set to Fly." Accessed on June 15, 2023. https://www.timesaerospace.aero/features/atm-and-regulatory/qatars-new-fir-set-to-fly.

Economist Intelligence Unit. "Sovereign Airspace Will Boost Qatar's Aviation Ambitions." Accessed on June 15, 2023. https://country.eiu.com/article.aspx?articleid=141991197&Country=Qatar&topic=Economy&subtopic=Forecast&subsubtopic=Policy+trends.

Erwanti, Marlinda Oktavia. "9 Pilot Ini Gugat Perjanjian FIR Indonesia-Singapura Ke MA." Accessed on May 24, 2023. https://news.detik.com/berita/d-6446047/9-pilot-ini-gugat-perjanjian-fir-indonesia-singapura-ke-ma.

Fareza, Umi Chalsum, Hendrik B. Sompotan, and Revy S. M. Korah. "Pengesahan Perjanjian Internasional Pasca Putusan Mahkamah Konstitusi Nomor 13/PUU-XVI/2018 Terhadap Undang-Undang Nomor 24 Tahun 2000 tentang Perjanjian Internasional." *Lex Administratum* 9, no. 2 (2021): 46-57.

Gaub, Florence and Lotje Boswinkel. "How the Gulf States are Using Their Air Space to Assert Their Sovereignty." *International Affairs* 97, no. 4 (2021): 989-1006. https://doi.org/10.1093/ia/iiab075.

Gusman, Delfina and Zimtya Zora. "Amandemen Terhadap Pasal 11 Undang - Undang Dasar 1945 Berkaitan Dengan Ratifikasi Perjanjian Internasional (Perspektif Hukum Internasional Dan Hukum Tata Negara)." *UIR Law Review* 5, no. 1 (2021): 76-88.

Hathaway, Oona A. "International Delegation and State Sovereignty." *Law and Contemporary Problems* 71, no. 1 (2008): 115-149. https://doi.org/10.2307/27592224.

ICAO Doc 9426-AN/924. "Air Traffic Services Planning Manual." (First (Provisional) Edition - 1984).

Indrawati, Nanda. "Peluang dan Tantangan Penandatanganan Perjanjian Penyesuaian Flight Information Region (FIR) Antara Indonesia dan Singapura." *Jurnal Paradigma Hukum Pembangunan* 7, no. 2 (2022): 18-36.

_____. "Praktik Ratifikasi Perjanjian Internasional Pasca Putusan Mahkamah Konstitusi Nomor 13/PUU-XVI/2018." *Law, Development & Justice Review* 3, no. 1 (2020): 99-120. https://doi.org/10.14710/ldjr.v3i1.7890.

Juwana, Hikmahanto. "Kewajiban Negara Dalam Proses Ratifikasi Perjanjian Internasional: Memastikan Keselarasan Dengan Konstitusi dan Mentransformasikan ke Hukum Nasional." *Undang: Jurnal Hukum* 2, no. 1 (2019): 1-32. https://doi.org/10.22437/ujh.2.1.1-32.

Kadir, M. Yakub Aiyub, Nabyla Humaira, and Adwani. "Whether Sovereignty?: The Failure of Indonesia in Taking Over Flight Information Region from Singapore 2015-2019." *Udayana Journal of Law and Culture* 5, no. 2 (2021): 185-200. https://doi.org/10.24843/UJLC.2021.v05.i02.p06.

Kaiser, Stefan A. "The Legal Status of Air Defense Identification Zones: Tensions over the East China Sea." *Zeitschrift für Luft-und Weltraumrecht (German Journal of Air and Space Law)* 63, no. 4 (2014): 527-543.

Kovacevic, Danijel. "Bosnia Takes Control of Its Entire Airspace." Accessed on May 16, 2023. https://balkaninsight.com/2019/12/02/bosnia-takes-control-of-entire-airspace/.

Kusumaningrum, Adi. "Indonesian Theoretical and Practical Approaches to the Development of International Air Law." *Indonesia Yearbook of International Law* 1 (2020): 1-28.

_____. "The Legal Analysis of 'Teori Kedaulatan Nusantara' Towards the New Conception of Indonesia Airspace Sovereignty." *Indonesian Journal of International Law* 14, no. 4 (2017): 514-542. https://doi.org/10.17304/ijil.vol14.4.705.

Latipulhayat, Atip. "Flight Information Region (FIR) Kepulauan Riau dan Natuna." (Webinar by Indonesia Center for Air and Space Law (ICASL) Faculty of Law Universitas Padjadjaran, September 13, 2022).

Lestari, Endang Puji. "The Delegation of State Sovereignty over Air Space in the Implementation of Air Navigation: The Analysis of the Agreement Between Indonesia and Singapore on Management of the Batam and Natuna Flight Information Region." *Fiat Justisia* 11, no. 2 (2017): 173-200. https://doi.org/10.25041/fiatjustisia.v11no2.813.

Mahmud, Aqil Haziq. "Singapore and Indonesia Have Signed a 'Balanced' Set of Agreements That Addresses 3 Longstanding Issues: PM Lee." Accessed on May

24, 2023. https://www.channelnewsasia.com/singapore/indonesia-singapore-leaders-retreat-agreements-fir-travel-bintan-batam-2457861.

Mintojati, Sinatriagung. "Effect of the Re-alignment Flight Information Region Above Natuna and Riau Islands to Indonesia's Sovereignty." *International Journal of Law, Tourism, and Culture* 1, no. 1 (2022): 1-17.

Nugraha, Ridha Aditya, and Yaries Mahardika Putro. "Quo Vadis, FIR Above Riau and Natuna Islands?" Accessed on June 7, 2023. https://www.thejakartapost.com/paper/2022/08/18/quo-vadis-fir-above-riau-and-natuna-islands.html.

Nugraha, Ridha Aditya. "Flight Information Region above Riau and Natuna Islands: The Indonesian Efforts to Regain Control from Singapore." *Zeitschrift für Luft-und Weltraumrecht (German Journal of Air and Space Law)* 67, no. 2 (2018): 236-253.

_____. "Flight Information Region Above the Indonesian Natuna and Riau Islands: Deadlock in the Realignment Efforts from Singapore." *The Aviation & Space Journal* 20, no. 3 (2021): 23-27.

Nugroho, Yuwono Agung (et.al.) "Urgency of Air Defense Identification Zone (Adiz) To Support Indonesia Air Defense System." *Baltic Journal of Law & Politics* 16, no. 3 (2023): 282-283. https://doi.org/10.2478/bjlp-2023-0000021.

Pedrozo, Pete. "Maintaining Freedom of Navigation and Overflight in the Exclusive Economic Zone and on the High Seas." *Indonesian Journal of International Law* 17, no. 4 (2020): 477-494, https://doi.org/10.17304/ijil.vol17.4.796.

Qatar Ministry of Transport. "ICAO Council Agrees on Establishment of Doha FIR in New Civil Aviation Achievement." Accessed on June 15, 2023. https://www.mot.gov.qa/en/news-events/news/icao-council-agrees establishment-doha-fir-new-civil-aviation-achievement-3.

Salari, Fatemeh. "Qatar's First-Ever Airspace is Now Fully Established." Accessed on June 15, 2023. https://dohanews.co/qatars-first-ever-airspace-is-now-fully-established/.

Setiani, Baiq. "Konsep Kedaulatan Negara di Ruang Udara dan Upaya Penegakan Pelanggaran Kedaulatan oleh Pesawat Udara Asing." *Jurnal Konstitusi* 14, no. 3 (2017): 489-510. https://doi.org/10.31078/jk1432.

Sreejith, S.G. "Legality of the Gulf Ban on Qatari Flights: State Sovereignty at Crossroads." *Air & Space Law* 43, no. 2 (2018): 191–203. https://doi.org/10.54648/AILA2018013.

Sudiro, Amad and Jeannette Natawidjaja. "State Sovereignty Over the Airspace on the Perspective of International Air Law: A Study of the Delegation of Airspace Management of Batam and Natuna Island to Singapore." *Advances in Social Science, Education and Humanities Research* 478 (2020): 726-729. https://doi.org/10.2991/assehr.k.201209.114.

Sutrisno, Nandang and Rafi Nasrulloh Muhammad Romdoni. "Ratifikasi Perjanjian Penyesuaian Wilayah Informasi Penerbangan Antara Indonesia dan Singapura:

Pilihan Rasional atau Status Quo?" *Undang: Jurnal Hukum* 5, no. 2 (2022): 393-417. https://doi.org/10.22437/ujh.5.2.393-417.

Legal Documents

1945 Constitution of the Republic of Indonesia [*Undang-Undang Dasar Republik Indonesia 1945*].

Agreement Between the Government of the Republic of Indonesia and the Government of the Republic of Singapore on the Realignment of the Boundary Between the Jakarta Flight Information Region and the Singapore Flight Information Region, 2022.

Agreement Between the Government of the Republic of Indonesia and the Government of the Republic of Singapore on the Realignment of the Boundary Between the Singapore Flight Information Region and the Jakarta Flight Information Region, 1995.

Constitutional Court's Decision Number 13/PUU-XVI/2018 [*Putusan Mahkamah Konstitusi Nomor 13/PUU-XVI/2018*].

Convention on International Civil Aviation, 7 December 1944, 15 UNTS 295.

Law Number 24 of 2000 on International Treaties [*Undang-Undang Nomor 24 Tahun 2000 tentang Perjanjian International*].

Law Number 1 of 2009 on Aviation [*Undang-Undang Nomor 1 Tahun 2009*].

International Civil Aviation Organization. Resolution A37-15, 28th of September - 8th of October 2010. *Consolidated Statement of Continuing ICAO Policies and Associated Practices Related Specifically to Air Navigation*, 37th Session.

Supreme Court's Decision Number 71/P/HUM/2022 [*Putusan Mahkamah Agung Nomor 71/P/HUM/2022*].

Vienna Convention on the Law of Treaties, 23 May 1969, 1155 UNTS 331.