

# Indonesian Sovereignty Rights in the Case of Entry of Malaysian DA62 Aircraft G-DVOR into Indonesian Territory

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## Abstract

The entry of a DA62 aircraft into Indonesian territory from Malaysia has sparked a debate regarding Indonesia's air sovereignty. Indonesia's action to intercept the aircraft before releasing it back has become an interesting subject of research in air law as issues of air sovereignty have not often been the focus of study. Through an understanding of the Chicago Convention on International Civil Aviation and the United Nations Convention on the Law of the Sea (UNCLOS) 1982, it is hoped that an understanding of this issue can guide Indonesia's actions and policies. The research findings using a normative juridical method suggest that Indonesia has legally justifiable grounds to intercept the Malaysian aircraft, and Indonesia's action in releasing the aircraft is in accordance with Indonesia's principles of international politics. However, in the future, challenges regarding historical territory and other issues related to controversies over peaceful routes and outer limits of maritime boundaries have yet to find a middle ground acceptable to all parties.

**Keywords:** *Indonesia, UNCLOS 1982, International Air Law, DA 62.*

## 1. Introduction

The concept of sovereignty stands as a fundamental principle within the realms of political science and international law, exerting profound ramifications on interstate relations and the structuring of governance within a nation. Broadly speaking, sovereignty refers to the highest authority vested in a political entity, which in modern contexts primarily pertains to nation-states. Sovereignty affords nation-states the prerogative to govern affairs within their territories without external interference. This concept has undergone evolution throughout history and carries intricate implications within the current era of globalization.

Within the realm of sovereignty, several concepts are recognized, with the first being full authority. Full authority constitutes a pivotal element within the sovereignty paradigm, signifying that a political entity possesses unrestricted rights to self-governance devoid of external interference. This encompasses complete control over territory, population, and policies across various societal domains. Full authority epitomizes the supreme power held by a state to make decisions and act in accordance with its own interests.(Riyanto, n.d.)

The second concept is Absolute Right, which is a crucial point within the sovereignty framework, indicating that a political entity possesses unlimited or unrestricted power to govern itself. This means that the state has the highest authority in making decisions and implementing policies without any interference from other parties (Zikri & Zuhri, 2018). This absolute right reflects the exclusive and unlimited power held by the state over its territory, populace, and policies across various aspects of life.

In tandem with the passage of time, a gradual evolution of the concept has ensued. The evolution of sovereignty involves shifts in the comprehension and application of state sovereignty over the course of history. Initially, sovereignty was perceived as the absolute authority vested in monarchial rulers. However, with transformations in governance frameworks, the concept of sovereignty has undergone a more inclusive transformation, incorporating the notion of popular sovereignty, which underscores that authority emanates from the populace and is wielded for their welfare. This transition is evident in

the progression from monarchical sovereignty to constitutional sovereignty, wherein state authority is circumscribed by legal statutes and constitutional provisions. Moreover, this evolution underscores the acknowledgment of the paramountcy of human rights and the legal safeguards afforded to individuals in determining their own destinies (Christmas & Purwanti, 2020).

Transformations from a territorial standpoint have likewise transpired. The most conspicuous manifestation of change pertains to the interpretation of territorial sovereignty. An easily discernible facet of this transformation lies in the evolving comprehension of airspace security and sovereignty entitlements within the aerial domain. This evolution is reflected in the adoption of various airspace rights, hitherto overlooked. Notable among these include:

- a. **The entitlement to govern airspace** entails that nations retain the authority to oversee and manage the aerial domain above their territories in accordance with prevailing policies and regulations. This prerogative encompasses both civilian and military aviation, along with various facets such as flight clearances, air navigation, and security protocols. Nations exercise complete jurisdiction over their airspace, signifying exclusive control over aerial traffic within their territorial bounds. The governance of airspace also encompasses diplomatic relations between nations. Sovereignty over airspace is duly acknowledged and upheld in international law, which dictates the utilization and administration of international aerial space. International agreements and conventions, notably the 1944 Chicago Convention and the 1982 United Nations Convention on the Law of the Sea, furnish a structured framework for the global management of airspace.
- b. **Security and Safety**, Air sovereignty also encompasses a nation's responsibility to maintain the security and safety of flight within its national airspace. The concept of air sovereignty is crucial for ensuring the safety and security of aviation. Firstly, with air sovereignty, a nation exercises full control over air traffic within its territory. This enables the imposition of stringent aviation safety rules and standards, including air traffic monitoring and control, as well as enforcement of flight regulations tailored to local conditions and needs. Secondly, the concept of air sovereignty allows a nation to protect its territory from external threats and disturbances. A nation has the right to monitor and supervise the activities of foreign aircraft entering its airspace, as well as to prevent the entry of aircraft deemed suspicious or posing a threat to national security. This is vital in safeguarding national sovereignty and preventing potential security threats. Furthermore, the concept of air sovereignty enables a nation to play an active role in international efforts to enhance aviation safety. Nations can participate in international agreements and cooperation to strengthen surveillance and law enforcement systems in airspace, as well as to promote high global aviation safety standards. The concept of air sovereignty is not just about controlling a nation's airspace but also about ensuring aviation security and safety both nationally and internationally. (Prabandari, 2019; Simatupang, 2016)
- c. **Air environment**, including efforts to prevent air pollution, falls within the scope of air sovereignty. The concept of air sovereignty has a significant impact on environmental protection. Nations have the authority to regulate and enforce rules regarding airspace usage, including regulations concerning greenhouse gas emissions and air pollution. Nations can implement stringent standards to mitigate the adverse effects of the aviation industry on the environment, such as the combustion of aircraft fuels resulting in CO<sub>2</sub> emissions and other pollutant particles. Furthermore, the concept of air sovereignty enables nations to participate in international initiatives to reduce the environmental impact of the aviation sector. Nations can engage in international agreements on emission reduction and environmental protection, as well as collaborate with other countries in the development of technology and best practices to enhance aviation efficiency and sustainability. Thus, the concept of air sovereignty encompasses not only control over a nation's airspace but also the responsibility to protect the natural environment and promote sustainability in the aviation sector.

The objective of this research is to undertake a comprehensive examination of airspace rights in Indonesia within the framework of positive law. Specifically, the study centers on the incident involving the intrusion of a DA62 aircraft bearing the flight designation G-DVOR from Malaysia into Indonesian airspace. In this instance, Indonesia's response entailed the interception of the aircraft and subsequent verification of its registration, culminating in its release by the Indonesian authorities. Central to this investigation is the meticulous scrutiny of both international regulations and Indonesian legal statutes

governing such circumstances. Additionally, the research endeavors to conduct a rigorous legal analysis, considering external factors influencing the decision to release the aircraft. Was the release of the aircraft compliant with prevailing regulations? Was Indonesia disadvantaged as a result of this release? These pivotal inquiries constitute the crux of this study, offering valuable insights, particularly concerning Indonesia's fundamental principles of sovereignty and national interests.

## **2. Methodology**

This research adopts a normative judicial analysis approach, grounded in the examination of legal documents and conventions elucidating Indonesia's air sovereignty rights. Furthermore, it aims to assess whether Indonesia's decision to intercept the DA62 aircraft bearing the designation G-DVOR aligns with both legal principles and established practices in civil aviation, as well as widely recognized international air sovereignty laws.

## **3. Discussion**

In seeking to arrive at precise conclusions regarding the incursion of the DA62 aircraft into Indonesian airspace, it is essential to scrutinize the fundamental principles and rationale governing air sovereignty regulations in this matter (Nugraha et al., 2021). For this purpose, the analysis must be systematically structured, beginning with an exploration of international air sovereignty regulations from historical and positive legal standpoints, as well as the application of international legal norms. This entails comprehending how these regulations are incorporated into Indonesia's legal framework alongside other pertinent laws and norms within the nation.

### **3.1 Air Sovereignty**

The concept of air sovereignty has been widely acknowledged by various parties. The first notion of air sovereignty emerged with the Chicago Convention of 1944. Prior to this, debates regarding the significance of air sovereignty had already commenced with the advent of powered flight. At that time, commercial aviation became increasingly common, leading to differing perspectives due to airspace possessing dual implications: economic potential and potential hazards (Sangkay., 2021). In response to both business and security concerns, the Chicago Convention of 1944 was convened as a pivotal framework for conflict resolution. Notably, the Chicago Convention holds paramount significance as a cornerstone international treaty in the annals of civil aviation. This seminal agreement provided the foundation for the comprehensive regulation of international civil aviation, encompassing diverse facets, notably including air sovereignty. Within the purview of the Chicago Convention, the principles governing a nation's air sovereignty are delineated in Article 1, stipulating unequivocally that each sovereign state possesses absolute authority over its respective airspace. Nonetheless, while sovereign nations maintain unmitigated control over their airspace, this prerogative is circumscribed by the stipulations enshrined within the convention and supplementary international agreements. Thus, the sovereignty exercised by states must align with the regulatory framework and standards promulgated by international bodies such as the International Civil Aviation Organization (ICAO), an institution instated subsequent to the Chicago Convention. Moreover, the Chicago Convention serves as the cornerstone for establishing principles governing international aviation, encompassing the formulation of regulations pertaining to air navigation, aircraft registration, crew accreditation, and flight safety.

These principles enable international civil aviation to operate in a more organized and predictable manner, facilitating the growth of the aviation industry on a global scale (Dirwan, 2021; Setiani, 2017). Therefore, the Chicago Convention of 1944 provides a legal framework for the regulation of international civil aviation, including the principles of air sovereignty that grant nations the right to regulate their own airspace. However, it also establishes boundaries and requirements to be followed in the context of safe and efficient international aviation (Sangkay, 2021).

The initial strides made by the Chicago Convention of 1944 later laid the groundwork for the establishment of maritime law, known alternatively as the United Nations Convention on the Law of the Sea (UNCLOS). While debates surrounding air sovereignty over territories possess discernible limitations, the regulation of airspace above maritime territories presents distinct complexities. Consequently, despite its primary focus on

maritime legal matters, UNCLOS serves as a pivotal historical landmark in the discourse on airspace law (Mitchell & Owsiaik, 2021).

Interpretation and conflicts of interest inevitably arise. Hence, not all parties have ratified the final UNCLOS convention in 1982. The cessation of the ratification process has hindered the resolution of airspace sovereignty issues, leading to various conflicts (Jensen & Bankes, 2017). This was the case in Indonesia regarding the entry of the G-DVOR Type-62 aircraft purportedly originating from Malaysia. In practice, Indonesia's action involved requesting the G-DVOR registered Type-DA62 aircraft to cease its flight and land. After issuing a warning, the Indonesian Armed Forces allowed the aircraft to continue its journey.

The DA62 aircraft type is recognized as a Twin Engine Light Aircraft, developed by Diamond Aircraft Industries. It serves as a commercial aircraft with a seating capacity of five. Upon its entry into Indonesian airspace, there are suspicions that the aircraft may not have meticulously adhered to the delineations of Indonesia's territorial boundaries. According to UNCLOS 1982, various air sovereignty boundaries necessitate careful consideration (TNI AU Perintahkan Pesawat Malaysia Mendarat Akibat Masuk Wilayah Indonesia Tanpa Izin, n.d.)

Articles 7 and 8 of UNCLOS stipulate that the method of drawing boundaries by states must take into account the lowest point of land, including the presence of deltas or other unstable landforms (Barrie, 2021; Sedyantoputro, 2020). This is to ensure fairness for countries with specific land contours. Furthermore, UNCLOS introduces the concept of internal waters based on the reality that archipelagic states have their own unique conditions, as stipulated in Article 53. Unavoidably, debates will arise as archipelagic states will impact international flights. This matter has already been taken into consideration, where for the sake of expeditions or continuous journeys, other countries may utilize the air and sea boundary lines established by the sovereign state in that region.

### **3.2 Ratified Indonesia**

Indonesia stands as one of the nations that have ratified UNCLOS 1982. The ratification process undertaken by Indonesia encompasses several modalities. Primarily, it was formalized through Law No. 17 of 1985. This legislation delineates key aspects concerning air sovereignty. Firstly, Indonesia accedes to the establishment of peaceful passages. These passages entail access granted through pre-established territorial routes, facilitating maritime transportation between nations. Additionally, the law addresses the delineation of territorial sea boundaries, a matter that has engendered debates due to diverse interpretations among states. Moreover, it encompasses provisions regarding the freedom of transit for vessels of all nations through straits and other coastal access rights (Lourdiananda, 2019).

During the ratification process, Indonesia openly asserts and acknowledges its freedom to explore its exclusive economic zone, including its utilization for projects such as artificial island development. While Indonesia advocates for maximal utilization of the exclusive economic zone, it nonetheless permits peaceful navigation as long as it aligns with Indonesian regulations and national interests.

As outlined in Article 10 of Law No. 34 of 2004, the execution of airspace defense falls under the purview of the Indonesian Air Force (TNI AU). Serving as the implementing authority, the Indonesian Air Force possesses several prerogatives, including the interception and prevention of interventions in the airspace of the Republic of Indonesia. However, any endeavors aimed at safeguarding this territory must be conducted with measured deliberation.

The process entails detection, identification, and interception (DIP), concepts frequently employed across various security domains such as maritime, border, and aviation security. DIP refers to a series of methodical steps or processes undertaken to address potential threats or incidents that may arise. Below is an elucidation of each step within the DIP framework (Fatimah et al., 2021):

1. Detection serves as the initial step in the DIP process and entails observation or the utilization of technology to ascertain the presence of potential threats or incidents.
2. Upon the detection of potential threats or incidents, the subsequent step is identification, a process aimed at determining the nature or identity of the detected entities. Identification may involve the utilization of advanced technologies such as facial recognition or pattern analysis to ascertain individuals' identities, or the

deployment of aircraft identification systems to discern the type of aircraft or vehicle detected.

3. Following the detection and identification of potential threats or incidents, the ultimate stage in DII is enforcement. This entails the implementation of necessary measures to address the identified threat or incident. Enforcement may encompass direct responses by security personnel, deployment of law enforcement units, or utilization of automated systems to counter threats, such as the use of bulletproof vehicle systems or early warning mechanisms.

### **3.3 Debate surrounding UNCLOS 1982**

Debate surrounding UNCLOS 1982 encompasses various dimensions, one of which revolves around maritime boundaries. Several countries utilize the low-water line as a reference point, enabling the drawing of national borders up to 200 nautical miles. However, this doesn't imply absence of issues; the lack of a clear definition for islands or outermost islands presents a challenge. This ambiguity prompts disputes over the delineation of territorial points and the classification of submerged landmasses as islands. Such interpretations engender conflicts, as regulations regarding land and islands seemingly transform into rules governing internal waters, akin to the situation in Indonesia. Consequently, the likelihood of nations conflicting over maritime boundaries increases significantly (United Nations Convention on the Law of the Sea, n.d.).

The next issue concerns historical boundaries. Determining these boundaries often relies on the historical claims of a particular country. One example of the current conflict arising from this debate is the South China Sea (Kusumawardana & Djatmiko, 2023). China asserts ownership over certain portions of the South China Sea, citing historical claims that designate the Paracel Islands group as its territory. This claim extends to areas bordering Brunei Darussalam and Indonesia. While such claims lack specific regulation under UNCLOS, China grounds its assertions in historical possession of the islands (Hanifah turahmi, 2020). Furthermore, China has been implicated in the construction of artificial islands in these contentious areas (Roza et al., 2013). From a realist perspective, China's actions can be understood as an effort to safeguard the natural resources within the South China Sea (WAKINO & Siregar, 2021). The extensive reserves of natural gas and fisheries in the region carry considerable economic significance, capable of shaping the economic trajectory and prosperity of a nation. China, along with other nations, is entangled in this matter due to the shared interest in these resources. This susceptibility to conflict arises from competing claims, exacerbated by assertive tactics employed by some countries, such as the deployment of military aircraft through the area. These actions signal both a commitment to safeguard territorial boundaries and provoke potential deterrent responses from other nations embroiled in the South China Sea dispute. Such maneuvers inevitably escalate tensions in the region, undermining the objectives of maritime constitutional laws, which seek to prevent conflicts and solidify the maritime boundaries of nations.

The third issue pertains to the definition of peaceful passage, which encompasses the right of innocent passage (Yulianto, 2022). Within the realms of internal and territorial waters, there exists a notion of peaceful passage, allowing aircraft and vessels to traverse for expeditionary and transportation purposes. However, a pertinent issue arises when certain nations deviate from maritime conventions, interpreting peaceful passage to encompass the transit of warships and military aircraft. This inevitably leads to heightened tensions. Proponents of such actions argue against the necessity for debate, asserting that their military fleets are merely passing through in a peaceful manner. Conversely, from the perspective of the territorial state, this could be perceived as a direct challenge to their sovereignty, as the proximity of foreign military fleets to their territory raises concerns. This scenario harks back to historical incidents like the Cuban Missile Crisis, where the deployment of nuclear missiles by the Soviet Union in Cuba led to international tensions. Furthermore, the presence of foreign military fleets also raises concerns about potential espionage activities, posing a significant threat to national sovereignty. Given these intricate considerations, conflict becomes an unavoidable consequence.

Indonesia's stance within the international regime has generally exhibited a positive inclination. With the exception of its withdrawal from the UN, Indonesia has adhered to a diplomatic-centric policy. This approach is evident even since the tenure of Muhammad Hatta as Vice President, epitomized by his famous "rowing between two reefs" doctrine.

This understanding underscores Indonesia's early inclination towards cooperation rather than engaging in controversial actions. It is based on this rationale that Indonesia has been proactive in ratifying UNCLOS 1982, subsequently enshrined in Law No. 17 of 1985. For Indonesia, UNCLOS 1982 is one of the most crucial international legal frameworks as it addresses the needs of the Indonesian state. One of the most significant aspects is the recognition of internal waters (Darusman et al., 2020). Before the establishment of regulations concerning internal waters, numerous border gaps among the islands could be exploited by other nations to deploy military fleets or exploit marine resources adjacent to Indonesia. The resulting risks included illegal fishing and various other maritime transgressions. The presence of UNCLOS 1982 has effectively addressed Indonesia's concerns, particularly those pertaining to air sovereignty.

Indonesia has responded resolutely to the issue of air sovereignty. In practice, there can be no room for negligence when military or civilian aircraft enter Indonesian airspace without proper authorization. In accordance with regulations set forth by international aviation associations, any aircraft traversing airspace above Indonesian waters must provide prior notification of their intention to transit Indonesian territory for transportation purposes (Sinaga et al., 2022).

In the context of the DA62 aircraft's entry, it is evident that several regulations were breached, notably the failure to provide prior notification of entry into Indonesian airspace and the absence of clear justification for such intrusion. Consequently, upon detection, appropriate measures were implemented.

This enforcement action aligns seamlessly with both national legislation and the provisions of UNCLOS 1982, given that our sovereignty was indeed jeopardized. While this threat to sovereignty may not have materialized through direct aggression, it symbolizes a blatant disregard for a nation's territorial integrity. Our prerogative to defend sovereignty is firmly grounded in international norms, and the decision to uphold it is a legitimate exercise of state authority. Moreover, such enforcement actions must be underpinned by unequivocal legal foundations.

Regarding matters of espionage, these are expressly addressed within the purview of Law No. 17 of 2011. Pursuant to this legal framework, acts of espionage may warrant punitive measures under Article 44, construed as acts of treachery against the Indonesian state. Even in the instance of the DA62 aircraft's incursion, legal proceedings must ensue, notwithstanding the pilot's culpable negligence constituting the primary issue. In this regard, the principles of regionalism prevailing in Southeast Asia are meticulously applied. The ASEAN Charter underscores the paramount importance of respecting the sovereignty of fellow member states while actively endeavoring to foster peace and stability. Consequently, had the DA62 aircraft not hailed from Malaysia, the modalities of legal redress would have varied significantly. Peaceful negotiation and diplomatic engagement would have been the preferred course of action, guided by the consensual tenets enshrined within the ASEAN Charter. This facilitated the amicable diplomatic resolution of the DA62 aircraft's incursion.

However, notwithstanding the mitigating circumstances, such lapses in protocol cannot be condoned, as airspace sovereignty constitutes a linchpin of national security, particularly for archipelagic nations. Incursions into sovereign airspace may precipitate potentially volatile escalations. Hence, concerted efforts toward resolution must be earnestly pursued, encompassing bilateral or multilateral agreements, without exclusive reliance on international arbiters. Urgent attention must be directed towards resolving territorial disputes, notably those afflicting Indonesia in the South China Sea. Vigilant air patrols and calibrated responses are indispensable in forestalling any escalation of tensions. Furthermore, maintaining disciplined adherence to territorial protocols is pivotal in fortifying stable inter-state relations.

#### **4. Conclusions**

The concept of sovereignty has historically elicited robust discussions and debates, dating back to its establishment through the Westphalia treaties. Over time, advancements in technology have led to a nuanced understanding of sovereignty, particularly concerning airspace boundaries. As airspace increasingly holds economic significance and implications for national security, negotiations and dialogues surrounding airspace sovereignty have evolved into dynamic debates.

UNCLOS 1982, serving as the fundamental constitution of maritime law, stands as a pivotal reference point in discussions regarding maritime sovereignty. Its adoption has attracted the participation of numerous nations, Indonesia among them.

This problem is not a problem that can be easily solved. The understanding of islands and lowest points is still controversial. Apart from that, historical territory has not been resolved in UNCLOS 1982. The result that is felt is airborne intervention which often creates diplomatic tensions.

The problem that can arise is defining different peace paths between countries that have ratified UNCLOS 1982 and those that have not. The incident when the military fleet entered Indonesia's deep sea area has repeatedly been debated. From this incident, Indonesia not only focused on understanding the legal realm but also paid attention to the dynamics of international politics.

Indonesia's approach to the DA62 aircraft incident reflects a blend of sovereignty preservation and a commitment to nurturing amicable relations with neighboring and regional nations, grounded in the principles of regionalism. The decision to release the DA62 aircraft following appropriate warnings signifies a politically astute maneuver, adequately asserting Indonesia's airspace sovereignty. This measured action underscores Indonesia's steadfastness while mitigating unnecessary provocations, highlighting the intricate interplay between international politics and law, pivotal in safeguarding a nation's integrity and interests.

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