

ASEAN Open Sky Policy and Air Freedom Rights from the Perspective of Defense Strategy and the Airspace Sovereignty

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Abstract: The Association of Southeast Asian Nations (ASEAN) has signed the Multilateral Agreement on Air Services (MAAS) on May 20, 2009 in Manila, Philippines, intended to liberalize market access and ownership and control requirements for air carriers in the region. This ASEAN MAAS regional policy, or so called an open-air space or open sky policy, shall be implemented in stages that are determined in the protocols contained in the ASEAN MAAS and came into effect on January 1st, 2015. The realization of ASEAN Open Sky in Indonesia is stipulated in Law Number 1 Year 2009 on Aviation, and the realization of MAAS stipulated in President Regulation Number 74 Year 2011 on Verification of MAAS. From the perspective of the Chicago Convention from 1944 that stated that every country has complete and exclusive sovereignty over the airspace above its territory, and there is no recognition of the right of peaceful passage, a set of regulation of commercial aviation rights granting a country's airlines the privilege to enter and land in another country's airspace has been introduced called the Freedoms of the Air. The freedoms of the air are the fundamental building blocks of the international commercial aviation route network. From the perspective of States Sovereignty that states are in complete and exclusive control of all the people and property within its territory, the freedoms of the air have a potential threat especially in the defense sector and requires a proper strategy for maintaining the unity and integrity and sovereignty of the Republic of Indonesia..

Keywords: Defense Strategy, ICAO Regulation, Airspace, Sovereignty, Freedom of the Air, Covid-19.

1. Introduction

The International Civil Aviation Organization (ICAO) as a special United Nation Agency was founded on April 4, 1947 based on the Chicago Convention, or in other term "Convention on International Civil Aviation" held in 1944 and served as the underlying framework for the regulation of international aviation. Today ICAO consists of 193 Member States dealing with diplomacy and cooperation in air transportation. As stated in its official website [1] ICAO mission is to serve as the global forum of States for international civil aviation. ICAO develops policies and Standards, undertakes compliance audits, performs studies and analyses, provides assistance and builds aviation capacity through many other activities and the cooperation of its Member States and stakeholders.

The Chicago Convention stated that every country has complete and exclusive sovereignty over the airspace above its territory, and there is no recognition of the right of peaceful passage, a set of regulation of commercial aviation rights granting a country's airlines the privilege to enter and land in another country's airspace has been introduced called the Freedoms of the Air.

The Freedoms of the air are a set of commercial aviation rights granting a country's airlines the privilege to enter and land in another country's airspace. They were formulated because of disagreements over the extent of aviation liberalization in the Chicago Convention, triggered by the US proposal of standardized set of separate air rights to be negotiated between states. Most other countries were concerned that the size of the U.S. airlines would dominate air travel if there were not strict rules. The freedoms of the air are the fundamental building blocks of the international commercial aviation route network. The use of the terms "freedom" and "right" confers entitlement to operate international air services only within the scope of the multilateral and bilateral treaties (air services agreements) that allow them

Regulations and definition regarding the Freedoms of the Air as stated in the ICAO Manual on the Regulation of International Air Transport (Doc 9626, Part 4) [2] containing nine (9) Freedoms definitions, as follow:

- First Freedom of the Air - the right or privilege, in respect of scheduled international air services, granted by one State to another State or States to fly across its territory without landing (known as a First Freedom Right).
- Second Freedom of the Air - the right or privilege, in respect of scheduled international air services, granted by one State to another State or States to land in its territory for non-traffic purposes (known as a Second Freedom Right).

- Third Freedom of The Air - the right or privilege, in respect of scheduled international air services, granted by one State to another State to put down, in the territory of the first State, traffic coming from the home State of the carrier (known as a Third Freedom Right).
- Fourth Freedom of The Air - the right or privilege, in respect of scheduled international air services, granted by one State to another State to take on, in the territory of the first State, traffic destined for the home State of the carrier (known as a Fourth Freedom Right).
- Fifth Freedom of The Air - the right or privilege, in respect of scheduled international air services, granted by one State to another State to put down and to take on, in the territory of the first State, traffic coming from or destined to a third State (known as a Fifth Freedom Right).

ICAO characterizes all "freedoms" beyond the Fifth as "so-called" because only the first five "freedoms" have been officially recognized as such by international treaty.

- Sixth Freedom of The Air - the right or privilege, in respect of scheduled international air services, of transporting, via the home State of the carrier, traffic moving between two other States (also known as a Sixth Freedom Right). The so-called Sixth Freedom of the Air, unlike the first five freedoms, is not incorporated as such into any widely recognized air service agreements such as the "Five Freedoms Agreement".
- Seventh Freedom of The Air - the right or privilege, in respect of scheduled international air services, granted by one State to another State, of transporting traffic between the territory of the granting State and any third State with no requirement to include on such operation any point in the territory of the recipient State, i.e., the service need not connect to or be an extension of any service to/from the home State of the carrier.
- Eighth Freedom of The Air - the right or privilege, in respect of scheduled international air services, of transporting cabotage traffic between two points in the territory of the granting State on a service which originates or terminates in the home country of the foreign carrier or (in connection with the so-called Seventh Freedom of the Air) outside the territory of the granting State (known as an Eighth Freedom Right or "consecutive cabotage").
- Ninth Freedom of The Air - the right or privilege of transporting cabotage traffic of the granting State on a service performed entirely within the territory of the granting State (known as a Ninth Freedom Right or "stand alone" cabotage).

If taken into groups, the nine Freedoms of The Air can be grouped into three (3) groups, as follow [3]:

1. Transit Right: Grant rights to pass through a country without carrying traffic that originates or terminates there and are known as 'transit rights', as stated in the first and second freedoms. This is in line with the Chicago Convention multilateral agreement, known as the International Air Services Transit Agreement (IASTA) or "Two Freedoms Agreement".
2. Traffic Right: To allow commercial international services between, through and in some cases within the countries that are parties to air services agreements or other treaties. In this pattern are the third to fifth freedoms that would be negotiated between states. However, the International Air Transport Agreement (or "Five Freedoms Agreement") was also opened for signatures, encompassing the first five freedoms.
3. Cabotage: The transport of goods or passengers between two points in the same country by a vessel or an aircraft registered in another country. The term cabotage was originally used as the shipping term, but cabotage now covers aviation, railways, and road transport. It is "trade or navigation in coastal waters or the exclusive right of a country to operate the air traffic within its territory". This is covered under the modified sixth freedom (indirect cabotage), seventh and ninth freedoms (standalone cabotage) and eighth freedom (consecutive cabotage).

An Open Skies policy in civil aviation means liberalization and ease of access and rules of use of national airports for foreign airlines. It is joined to increase the tourist flow and to develop the potential as a regional air hub. An open skies agreement is an agreement between two countries (bilateral agreement) which basically permits unrestricted air travel between them, with the negotiated rights for airlines to offer international passenger and cargo services/flights. The ASEAN Open Sky Policy was signed under the Multilateral Agreement on Air Services (MAAS) on May 20, 2009 in Manila, Philippines, with the intention to liberalize market access and ownership and control requirements for air carriers in the region. This ASEAN MAAS regional open-air space or open sky policy shall be implemented in stages that are determined in the protocols contained in the ASEAN MAAS and came into effect on January 1st, 2015. ASEAN MAAS has been ratified by the Indonesian government through Presidential Regulation Number 74 of 2011 concerning Ratification of the ASEAN Multilateral Agreement on Air Transportation Services along with Protocol 1 regarding Unlimited Third and Fourth Freedom of Transportation Rights in the ASEAN Subregions and Protocol 2 concerning the Fifth Unlimited Freedom of the Right to Transport in the ASEAN Subregion.

The Association of Southeast Asian Nations (ASEAN) is a regional organization that facilitates the cooperation of 10 member countries. This organization was formed on August 8, 1967 in Bangkok, Thailand through the signing of the Bangkok Declaration. Indonesia is one of the founders of this Southeast Asian state organization along with Malaysia, the Philippines, Singapore, and Thailand. If compared to European Union, where many decisions are imposed on countries by supranational bodies like the European Commission, the Council of Ministers and Courts, ASEAN countries implements reforms based on consensus by all members.

In the ASEAN official website [4], it is stated that ASEAN member countries, based on the date they became members, are Indonesia (8 August 1967), Malaysia (8 August 1967), Singapore (8 August 1967), Thailand (8 August 1967), the Philippines (8 August 1967), Brunei Darussalam (8 January 1984), Vietnam (28 July 1995), Laos (23 July 1997), Myanmar (23 July 1997), and Cambodia (30 April 1999). Some indicators and data from various sources about ASEAN countries is compiled in the below table.

	1. Indonesia	2. Malaysia	3. Singapura	4. Thailand	5. Filipina	6. Brunei Darussalam	7. Laos	8. Myanmar	9. Vietnam	10. Kamboja
Head of state	President	Kingdom	President	Kingdom	President	Sultan	President	President	President	Kingdom
Head of Government	President	Prime Minister	Prime Minister	Prime Minister	President	Prime Minister	Prime Minister	President	Prime Minister	Prime Minister
Capital city	Jakarta	Kuala Lumpur	Singapura	Bangkok	Manila	Bandar Seri Begawan	Vientiane	Nay Pyi Taw	Hanoi	Phnom Penh
Independence Day	17 Agustus 1945	31-Aug-57	9 Agustus 1965	5 Desember 1238	12 Juni 1898	23 Februari 1984	2 Desember 1975	4 Januari 1948	September 2, 1945	November 9, 1953
Language	Bahasa Indonesia	Malay, English, Chinese, Tamil	English, Chinese Mandarin, Malay, Tamil	Thai	Filipino/Tagalog, English	Malay, English, Mandarin	Lao, Prancis, English	Burma	Vietnam	Khmer, French, English
Currency	Rupiah (IDR)	Ringggit (MYR)	Singapore Dollar (SGD)	Bath (THB)	Peso (PHP)	Brunei Dollar (BND)	Kip (LAK)	Kyat (MMK)	Dong (VND)	Riel (KHR)
Population [mill] (2016)	261.1	31.19	5.61	68.86	103.3	423.196 ppl	6.76	52.89	92,7	15.76
GDP	USD 1.015 billion (est. 2017)	USD 336.3 billion (est. 2017)	USD 311,3 billion (est. 2017)	USD 403.6 billion (est. 2017)	USD 348.6 billion (est. 2017)	USD 11,8 billion (est. 2017)	USD 14,8 billion (est. 2017)	USD 75,7 billion (est. 2017)	USD 215,9 billion (est. 2017)	USD 20,9 billion (est. 2017)
GDP / Capita	USD 3.871 (est. 2017)	USD 10.426 (est. 2017)	USD 55,252 (est. 2017)	USD 5.842 (est. 2017)	USD 3.280 (est. 2017)	USD 27.561 (est. 2017)	USD 2.029 (est. 2017)	USD 1.438,8 (est. 2017)	USD 2.307 (est. 2017)	USD 1.308 (est. 2017)
Country Area	1.904.569 km ²	329.847 km ²	721.5 km ²	513.120 km ²	343.448 km ²	5.765 km ²	237.955 km ²	676.578 km ²	331.230,8 km ²	181.035 km ²

Table 1: Data and Indicators of ASEAN Countries

Among the ASEAN countries, only Indonesia and the Philippines are the original sovereign states that obtained approval in the UN Convention on the Law of the Sea (UNCLOS) signed in Montego Bay, Jamaica on 10 December 1982 and qualified as the archipelagic states.

The national airspace for the Indonesian nation is one unified whole and is one with land and water areas, constituting the living space for the Indonesian nation to maintain its existence. The understanding of airspace is a space in the closest space to our earth where there are gaseous elements called air. And this air is in the atmosphere [5]. As stipulated in the Law No. 1 of 2009 on Aviation [6], Article 1 paragraph 1 "Aviation is an integrated system consisting of the use of airspace, aircraft, airports, air transport, aviation navigation, safety and security, the environment, as well as supporting facilities and services. other public facilities": in paragraph 2 "Airspace is the area of air sovereignty over Indonesian land and territorial waters", and Article 5 "The Unitary State of the Republic of Indonesia has full and exclusive sovereignty over the airspace of the Republic of Indonesia". And hereto the Article 6 mentioned that "In the context of exercising state sovereignty over the airspace of the Unitary State of the Republic of Indonesia, the Government exercises the authority and responsibility for regulating air space for the interests of aviation, national economy, state defense and security, socio-culture, and the air environment". With this, the Government of the Republic of Indonesia has the authority to implement airspace arrangements for the interests of national defense and security, national aviation, and economy as well as national aviation safety. At the other hand Indonesian is obliged to maintain the preservation of its air space and make maximum use of it for the interests and welfare of the Indonesian people.

The liberalization through ASEAN Open Sky Policy mostly triggered by the fast-growing market for air transportation, despite the market competition between the Low Coat Carrier (LCCs) and the Full-Service Carrier (FSCs). However, the COVID-19 pandemic that has last for almost one year, has had a catastrophic impact on Southeast Asian airlines. ICAO has released a report [7] "Effects of Novel Coronavirus (COVID-19) on Civil Aviation: Economic Impact Analysis" on December 17th, 2020 stating that globally an overall reduction of 51% of seats offered by airlines and 2,891 to 2,894 million passengers with approximately USD 391 billion potential loss of gross passenger operating revenues of airlines.

From the defense point of view COVID-19 pandemic is considered as a non-military threat for a country that has an immense impact on safety and security, especially in public health and economic well-being. Many countries world-wide have applied the close-border policies, shutdown of air traffic and travel restriction to secure their people and avoiding greater loss. This leads to a strong indication that the COVID-19 pandemic is a game changer in many ways. Therefore, there is a need for further thinking of defense strategy and the airspace sovereignty including the airspace liberalization that shall bring prosperity but at the other hand could endanger the defense sector for maintaining the unity, integrity, and sovereignty of the Republic of Indonesia. This leads the author to choose the study under the title "ASEAN Open Sky Policy and Air Freedom Rights from the Perspective of Defense Strategy and the Airspace Sovereignty".

1.1. Formulation of the Problem. The above introduction leads to the formulation of problems concerning:

1. The potential threat(s) applying the freedoms of the air from the state defense point of view.
2. The strategy for maintaining the unity and integrity and airspace sovereignty of the Republic of Indonesia in regard to the ASEAN Open Sky Policy.

1.2. Research Objectives.

1. To figure out the potential threat(s) applying the freedoms of the air from the defense point of view.
2. To identify the strategy for maintaining the unity and integrity and the airspace sovereignty of the Republic of Indonesia facing the Open Sky Policy.

2. Research Method.

The research method used is empirical research that examines the provisions of the applicable law and regulations, collecting related historical data and conducting assessment and analysis of the condition as well as conducting literature studies that study the theories and expert opinions contained in books, journals, and other sources; as well as the results of the implementation of focus group discussions involving experts in the field of regulation and policies.

3. The Results Of The Research

3.1. Theory Of Sovereignty

The definition of sovereignty cannot be separated from the definition of a state because the state is an organization that has power. Sovereignty means supreme power or power that is not lies under another power. This supreme power has its limits. The space in which this supreme power applies is limited by the boundaries of the state's territory. According to international law, national borders consist of 3 dimensions, namely land, sea, and air. If the sea area is an extension of the land area, the airspace of a country follows the state boundaries on land and sea [8]. This is reflected in Article 1 of the 1919 Paris Convention, which reads: "the bearers of the convention recognize that every country has full and complete sovereignty over the air space above it". Article 1 of the 1919 Paris Convention which is strengthened by the 1944 Chicago Convention affirms that the state has full and exclusive sovereignty over its air space. State sovereignty in the air space is much larger when compared to the country's sovereignty in the territorial sea which is reduced by the right of peaceful passage for foreign ships. In the air space there is no right of peaceful passage for foreign aircraft [9].

The Government of Indonesia determine its sovereignty by defining airspace limitation as stipulated in the Law No. 1 of 2009 on Aviation [10], Article 7 paragraph 1 that: "In order to carry out its responsibilities as referred to in Article 6, the government determines prohibited and limited airspace". In the explanation of Article 7 paragraph (1) above, it is explained that the authority to determine prohibited and limited airspace is the authority of each sovereign state to regulate the use of its airspace, in the framework of safety, the wider community, aviation safety, the national economy, environment, as well as defense and security.

Sovereignty of the State is the highest power within the borders of the state in the state government, both in terms of territorial and personal.[11]

3.2. The Cabotage Principle

In the law of air, the cabotage principle is mentioned in Article 7 of the 1944 Chicago Convention which reads [12]: "Each contracting State shall have the right to refuse permission to the aircraft of other contracting States to take on in its territory passengers, mail and cargo carried for remuneration or hire and destined for another point within its territory. Each contracting State undertakes not to enter into any arrangements which specifically grant any such privilege on an exclusive basis to any other State or an airline of any other State, and not to obtain any such exclusive privilege from any other State".

Article 84 of Law Number 1 Year 2009 concerning Aviation, the cabotage principle stipulates that: "Domestic commercial air transportation can only be carried out by national air transport business entities that have obtained a commercial air transportation business license". Furthermore, this principle is emphasized in Article 85 which regulates that domestic scheduled commercial air transportation can only be carried out by national commercial air transportation business entities belonging to BUMN, BUMD or BUMS in the form of Limited Liability Companies (PT) which have obtained a scheduled commercial air transportation business license.

By adhering to the 1994 Chicago Convention which must apply effectively to Indonesia, Indonesia must maintain the cabotage principle in the ASEAN open skies policy. Since this concept is a form of manifestation of state sovereignty in the air in full and completely and its use for the greatest interest of the people, nation, and state. In addition to maintaining the cabotage principle as a manifestation concept of full and complete sovereignty, the Indonesian government in terms of utilizing its airspace must maximize the potential obtained from the implementation of the ASEAN open skies policy as mandated by Law number 1 of 2009 article 6. The optimal use of airspace is also an implementation of the complete and exclusive sovereignty of the Republic of Indonesia over its air space.

Beside the potential benefit of ASEAN Open Sky Policy, the government must be aware of the threat of potential competition for aviation market share in the ASEAN region as well as the domestic aviation market share. One of the threats to the struggle for market share in Indonesian airlines is deregulation of the application of the cabotage principle. Weak supervision in (direct or indirect) air transportation investment, carries the opportunities for smuggling of investment law, which could eventually lead to foreign domination of the national market through the Indonesian legal entity formed (hidden cabotage).

3.3.The Implementation of ASEAN Open Sky Policy

The ASEAN MAAS Open Sky Policy is planned to be implemented in stages that are determined in the protocols contained in the ASEAN MAAS. The implementation Protocols [13] for the following market access rights:

Protocol 1 - Third and Fourth Unrestricted Traffic Rights in the ASEAN Sub-Region.

Protocol 2 - The Fifth Unlimited Right to Traffic Freedom in the ASEAN Sub-Region.

Protocol 3 - Third and Fourth Unrestricted Traffic Rights Between ASEAN Sub-Regions.

Protocol 4 - The Fifth Unrestricted Right to Traffic Freedom Between ASEAN Sub-Regions?

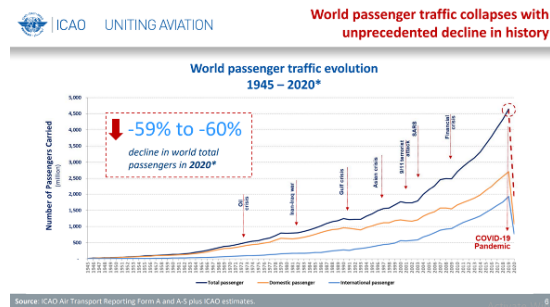
Protocol 5 - Third and Fourth Unrestricted Traffic Right Between ASEAN Major Cities

Protocol 6 - The Fifth Unrestricted Right to Traffic Freedom Between ASEAN Cities.

In connection with the growth and development of ASEAN as a regional region, ASEAN member countries want to create a single aviation market ASEAN at the end of 2015. The regional policy has been agreed upon by all ASEAN member countries as stated in the ASEAN MAAS (ASEAN Multilateral Agreement on Air Services) signed on May 20, 2009 in Manila, Philippines. ASEAN MAAS has been ratified by the Indonesian government through a Regulation President of the Republic of Indonesia (Perpres RI) Number 74 of 2011 concerning Ratification ASEAN Multilateral Agreement on Air Transport Services. Within the ASEAN Economic Community, one of the goals is deep integration air transportation sector.

3.3.The Covid-19 Pandemic

With the Covid-19 pandemic condition that has last for almost one year, has had a catastrophic impact on Southeast Asian airlines. ICAO has released a report [7] "Effects of Novel Coronavirus (COVID-19) on Civil Aviation: Economic Impact Analysis" on December 17th, 2020 stating that globally an overall reduction of 51% of seats offered by airlines and 2,891 to 2,894 million passengers with approximately USD 391 billion potential loss of gross passenger operating revenues of airlines.



Picture 1: ICAO Report on World Passenger Traffic Evolution due to COVID-19 Pandemic [7]

As illustrated in Picture 1 from the ICAO Report [7] the total number of passenger world-wide has declined to -59% to -60% in 2020*. This situation is the worse if compared to any recession that has happened in this century like the oil crisis in 1972 and the SARS outbreak in 2002-2004. For the Asia Pacific Region, the estimated impact on international passenger traffic and revenues compared to the original ‘business as usual’ plan is as follow: reduction in terms of Capacity -74%, reduction of Number of Passengers - 429 million and Revenue Loss of -89 billion USD.

The summary of the global impact of COVID-19 Pandemic on aviation, tourism, trade, and economy in 2020:

- Air passenger traffic: An overall reduction of air passengers (both international and domestic) ranging from 59% to 60% in 2020 compared to 2019 (by ICAO).
- Airports: An estimated loss of approximately 64.2% of passenger traffic and 65% or over USD 111.8 billion airport revenues in 2020 compared to business as usual (by ACI)
- Airlines: A 66.3% decline of revenue passenger kilometers (RPKs, both international and domestic) in 2020 compared to 2019 (by IATA)
- Tourism: A decline in international tourism receipts of between USD 910 to 1,170 billion in 2020, compared to the USD 1.5 trillion generated in 2019, with 100% of worldwide destinations having travel restrictions (by UNWTO)
- Trade: A fall of global merchandise trade volume by 9.2% in 2020 compared to 2019 (by WTO)
- Global economy: A projected -4.4% to -5.2% contraction in world GDP in 2020, far worse than during the 2008–09 financial crisis (by IMF and World Bank)

Looking back to the reason of having an open sky policy in ASEAN that was triggered by two major points:

1. Significant increase in the number of air carriers, including Indonesia, Malaysia, and Vietnam. This happened because of the policy of easiness in obtaining permits to establish and operate airlines due to the increasing demand and need for air transportation in the three countries.
2. Observing the success of the practice of open sky in several countries in the world.

However, at the same time the market competition between the Low Coat Carrier (LCCs) and the Full-Service Carrier (FSCs) in the region is very tight and may lead to unfairness in business practices.

With the COVID-19 Pandemic impact in the region, it is no longer an issue of the increase of the air carrier numbers nor the competition among the air carriers. The COVID-19 pandemic as a game changer has shown the world how that every country and nation are focusing on their own national safety and security for their people by applying the close-border policies and travel restriction many times as a consequence of the spread of the pandemic. This shows that national security, and hereto also the sovereignty, supersedes any issue and points of liberalization.

So far, the Government of Indonesia has been dealing with the impact of the COVID-19 pandemic on the aviation sector has implemented several policies, both in the form of economic policies as well as policies related to protocols and risk management. Several airlines have taken anticipatory steps and implemented operational policies in providing safety and comfort for passengers and supporting the Indonesian government's policies in dealing with the COVID-19 pandemic related to flight document requirements, flight reschedule/reroute policies and adjustments to operating flight route schedules.

3.4. The Defense Strategy

The Republic of Indonesia Law number 3 of 2002 concerning State Defense stated that Indonesia's national defense system is structured based on the geostrategic concept of being an archipelagic country. As shown in Picture 2 the Indonesia territory overlayed with the map of Europe (covers more than 10 European Countries) give the indication how big the area for Indonesian to consider when defining the defense strategy.



Picture 2: The Map of Indonesia overlayed with Europe Map

The concept of state defense itself is prepared by prioritizing the concept of multi-layered defense [15], namely the concept of defense which rests on the integration of the military and non-military defense layers. The concept of state defense which is multi-layered defense has the objective of deterring and overcoming military or non-military threats and for the purpose of facing protracted war [16]. Threats are the main factors that form the basis of the national defense system design, both actual and potential.

4. The Discussion.

4.1. Based on the explanation above can be conveyed the discussion as follows:

The Sovereignty

Sovereignty means supreme power that is not lies under another power and limited by the boundaries of the state's territory. Based on international law, in Article 1 of the 1919 Paris Convention that every country has full and complete sovereignty over the air space above it. Strengthened by the 1944 Chicago Convention affirms that the state has full and exclusive sovereignty over its air space. Reference to these two conventions, the state sovereignty in the air space is much larger than sea territory. There is no right of peaceful passage for foreign aircraft in the air space.

The Government of Indonesia determine its sovereignty by defining airspace limitation as stipulated in the Law No. 1 of 2009 on Aviation [10], Article 7 paragraph 1 that: "In order to carry out its responsibilities as referred to in Article 6, the government determines prohibited and limited airspace". In the explanation of Article 7 paragraph (1) above, it is explained that the authority to determine prohibited and limited airspace is the authority of each sovereign state to regulate the use of its airspace, in the framework of safety, the wider community, aviation safety, the national economy, environment, as well as defense and security.

Therefore, it can be conveyed that sovereignty of the State is the highest power within the borders of the state in the state government, both in terms of territorial and personal.[11]

4.2. The Cabotage Principle

The cabotage principle in Article 7 of the 1944 Chicago Convention state that each contracting State shall have the right to refuse permission to the aircraft of other contracting States to take on in its territory passengers, mail and cargo carried for remuneration or hire and destined for another point within its territory.

Based on Article 84 of Law Number 1 Year 2009 that cabotage principle stipulates that domestic commercial air transportation can only be carried out by national air transport business entities that have obtained a commercial air transportation business license. By adhering to the 1994 Chicago Convention which must apply effectively to Indonesia, Indonesia must maintain the cabotage principle in the ASEAN open skies policy. Since this concept is a form of manifestation of state sovereignty in the air in full and completely and its use for the greatest interest of the people, nation, and state.

In addition to maintaining the cabotage principle as a manifestation concept of full and complete sovereignty, the Indonesian government in terms of utilizing its airspace must maximize the potential obtained from the implementation of the ASEAN open skies policy as mandated by Law number 1 of 2009 article 6. The optimal use of airspace is also an implementation of the complete and exclusive sovereignty of the Republic of Indonesia over its air space. Beside the potential benefit of ASEAN Open Sky Policy, the government must be aware of the

threat of potential competition for aviation market share in the ASEAN region as well as the domestic aviation market share.

One of the threats to the struggle for market share in Indonesian airlines is deregulation of the application of the cabotage principle. Weak supervision in (direct or indirect) air transportation investment, carries the opportunities for smuggling of investment law, which could eventually lead to foreign domination of the national market through the Indonesian legal entity formed (hidden cabotage).

4.3 The Implementation of ASEAN Open Sky Policy

ASEAN MAAS has been ratified by the Indonesian government through Presidential Regulation Number 74 of 2011 concerning Ratification of the ASEAN Multilateral Agreement on Air Transportation Services along with Protocol 1 regarding Unlimited Third and Fourth Freedom of Transportation Rights in the ASEAN Subregions and Protocol 2 concerning the Fifth Unlimited Freedom of the Right to Transport in the ASEAN Subregion. And the Indonesian government has included its five international airports in five cities in this program, namely Jakarta, Surabaya, Medan, Bali, and Makassar which are connected with around 45 other cities in the ASEAN Region.

For the remaining protocols, it must be considered that Indonesia covers an area of 1.904.569 km² (Table 1) and the total number of airports by Airport Usage (Airports) in 2014-2016 [14] of 27 International Airports and 264 Domestic Airports. This is not to compare with any other ASEAN countries and the multiple entries with increasing flight traffic according to the protocols will have an impact to the national security due to the high traffic in the national airspace by foreign aircraft could lead to a potential for even greater violations of the airspace.

ASEAN MAAS in general regulates liberalization in the service sector air transportation, especially passenger air transport services which are embodied in form ASEAN open air space in 2015. This open air is carried out in stages whose stages are determined in protocols contained in the ASEAN MAAS.

4.4. The COVID-19 Pandemic

The COVID-19 pandemic as a game changer has shown the world how that every country and nation are focusing on their own national safety and security for their people by is applying the close-border policies and travel restriction many times as a consequence of the spread of the pandemic. This shows that national security, and hereto also the sovereignty, supersedes any issue and points of liberalization.

There are two main effects of COVID-19 the whole is first, the impact of disruption international trade due global recession, decline in numbers tourist, containment measure (social restrictions / PSBB) and accompanied by a fiscal stimulus, Second, Impact Decreasing Aviation Sector Demand.

To overcome the impact of COVID-19, there are also many airlines carrying out repatriation flights or cargo services. However, some may take longer to prepare for flights, according to aviation industry players.

Defense strategy

Based on strategic analysis and identification of the nature of a very dynamic threat, it is possible to combine various types of threats. Therefore, current, and future threats can be classified into three types, military threats (both armed and unarmed), non-military threats, and hybrid threats. Pandemic has already been identified as one of the non-military threats. Therefore COVID-19 pandemic must be taken seriously as part of the national threats and the right strategy must be in place.

A Universal Defense Strategy (SISHANTA) that involves all citizens, territories, and all national resources which are prepared early by the government is one of the three basic strategies imposed. As for the strategy and enforcement of national airspace sovereignty is a synergy of the military and civil components and resources, such as the air surveillance capabilities by integrating civilian radars into air defense support forces as well as preparing mobile radars to cover blank spot areas. One of the most important thing after the surveillance is the FCIS (Flight Clearance Information System) to know the flight plan from the start to anticipate airspace violations early.

5. Conclusion.

The conclusion from the above discussions as follows:

=. To the problems raised in this paper:

1. The potential threat(s) for Indonesia applying the freedoms of the air from the state defense point of view will touch the dimension of economic, defense and security implications by implementing the ASEAN open air space policy. Protocols in the implementation phase must be align with Indonesia geographical condition. The increase of flight traffic according to the protocols will have an impact to the national security. The high traffic in

the national airspace by foreign aircraft could lead to violations of the airspace. The other potential threat for market share in Indonesian airlines is deregulation of the application of the cabotage principle.

2. a. The sovereignty of Indonesia's airspace and the implementation of the ASEAN open air space policy are interrelated. The principle of sovereignty over airspace is absolutely and fully recognized in the ASEAN Open Sky Policy that was signed under the Multilateral Agreement on Air Services (MAAS) which supports the ASEAN open air space policy with the provisions of Law No. 1 of 2009 on Aviation Article 1 paragraph 1.

b. One of the strategies for maintaining the unity and integrity and airspace sovereignty of the Republic of Indonesia in regard to the ASEAN Open Sky Policy is by maintaining the cabotage principle. Since this concept is a form of manifestation of state sovereignty in the air in full and completely and its use for the greatest interest of the people, nation, and state. Indonesian government in terms of utilizing its airspace must maximize the potential obtained from the implementation of the ASEAN open skies policy as mandated by Law number 1 of 2009 article 6.

6. Recommendations.

From the results of this research, recommendations can be submitted as follows:

a. Recommendations to the Indonesian government to maintain the cabotage principle as a manifestation concept full and complete sovereignty. At the same time, it is hoped that the Indonesian government can empower and maximize the potential of its airspace by implementing the ASEAN Open Skies Policy. The optimal use of airspace is also an implementation of the complete and exclusive sovereignty of the Republic of Indonesia over its air space.

b. Indonesia as an archipelagic state with the territory of 1.904.569 km² covered approximately 67% by the sea water area and fully by its airspace has a unique characteristic compared to other ASEAN Countries. The dependencies on sea and air transportation for the domestic purposes is already higher compared to its neighbors. With a total number of airports by Airport Usage (Airports) in 2014-2016 of 27 International Airports and 264 Domestic Airports, in total of 291 Airports, it shall be taken into consideration of not ratifying the Protocol 4, Protocol 5 and Protocol 6, to better maintaining the unity and integrity and sovereignty of the Republic of Indonesia

c. With Indonesia's participation in the ASEAN Open Skies, it is necessary to add and improve many sectors in a structured and integrated manner, including the compliance sector with applicable airport regulations, improvement of airport infrastructure and airport services, s, as well as the airport capacity.

d. To follow the guidelines and international regulation by strengthening the improvements of technology that support aviation ecosystem, security system and the most important thing is strengthening policies and regulations, especially in the fields of safety, security and defense, consumer protection, investment, and law enforcement.

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