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The Urgency of Regulating the Investigative Authority of the Indonesian Air Force in the Enforcement of Law within the Indonesian Airspace Jurisdiction

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Abstract. This study aims to analyze the urgency of granting investigative authority to the Indonesian Military National Air Force (Tentara Nasional Indonesia Angkatan Udara TNI AU) in the enforcement of law within the national airspace, as well as to propose a legal framework that integrates the functions of national defense and criminal justice. The research employs a normative juridical method, utilizing statutory, conceptual, and comparative approaches. The legal materials used comprise both primary and secondary sources, collected through inventory, categorization, and doctrinal legal research. All legal materials were analyzed deductively through legal reasoning to address the research issues. The findings reveal the existence of a legal vacuum (absence of governing norms) regarding the investigative authority of the Air Force, which has consequently weakened law enforcement against airspace violations. This study proposes the establishment of a National Joint Air Investigation Unit (UGP) that integrates the Indonesian Military Air Force (TNI AU), the Indonesian National Police (Polri), and Civil Servant Investigators (PPNS) of the Ministry of Transportation. The study further asserts the necessity of granting limited investigative powers to the Air Force under civilian oversight, in order to reinforce national sovereignty and enhance the effectiveness of law enforcement within the Indonesian airspace jurisdiction

Keywords. Law Enforcemet, Airspace, Investigation Authority, Indonesian Military Airforce

1. Introduction

In its essence, the State constitutes an entity comprising four fundamental elements, namely the population, the territory, the government, and the capacity to enter into relations with other States.¹ The four elements are not hierarchical in nature, but rather complementary in establishing the existence of statehood. Among these elements, the territory holds a distinctive ontological position, as it constitutes the physical locus in which the State operates,

¹ Article 1 Montevideo Convention on the Rights and Duties of States, 1933

law is applied, and governmental authority is exercised. As Oppenheim in a state without a territory is not possible, who affirms that state sovereignty can only be exercised within certain geographical boundaries.²

In the modern context, airspace occupies an exceptionally strategic position. Apart from serving as a medium of transportation, it also constitutes the first layer of national defense against transboundary threats, such as the use of unmanned aerial vehicles (drones), incursions by foreign aircraft, as well as acts of espionage and aerial terrorism.³

Constitutionally, the regulation of Indonesia's airspace is provided under Article 25A of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945), which affirms that Indonesia is an archipelagic state whose boundaries and rights are determined by law. This provision is further elaborated in Government Regulation No. 4 of 2018 concerning the Security of the Airspace of the Republic of Indonesia, which defines airspace as an integral part of the territory under Indonesia's sovereignty.

The State possesses full authority to establish prohibited areas, restricted areas, and Air Defense Identification Zones (ADIZ) within its jurisdiction. Indonesia encompasses an extensive and strategically significant airspace, covering more than two-thirds of maritime territory and one-third of land area, with a total area of approximately 8.3 million square kilometers.⁴ Its location between two continents and two oceans makes Indonesia's airspace extremely busy and vulnerable to various forms of violations. This condition gives rise to serious challenges, including smuggling, espionage, human trafficking, and even threats of aerial terrorism.⁵

In reality, a portion of Indonesia's airspace has not yet been placed under the State's full and effective control. Parts of the Flight Information Region (FIR) over the Riau and Natuna Islands remain managed by Singapore, creating complex issues concerning sovereignty and legal jurisdiction. In addition, airspace violations by foreign aircraft frequently occur, compelling the Indonesian Air Force (TNI AU) to undertake interception, expulsion, and even forced landing (force down) operations to safeguard national sovereignty.

Although the TNI AU serves as the front line in defending the nation's airspace, problems arise due to the limited scope of its investigative authority. In practice, violations of Indonesia's airspace continue to occur. Foreign state aircraft have on several occasions entered national airspace without authorization and disregarded aviation regulations. In such circumstances, the TNI AU acts as the first line of national defense by conducting interception, expulsion, and forced-landing measures.

Pursuant to Article 399 of Law No. 1 of 2009 concerning Aviation and the provisions of the Indonesian Code of Criminal Procedure (KUHAP), the authority to conduct criminal investigations rests exclusively with the Indonesian National Police (Polri) and certain designated civil-service investigators. Meanwhile, the TNI AU despite possessing operational and technical capability to detect and respond to airspace violations lacks a clear legal basis to carry out investigative procedures. Consequently, many cases of airspace violations, such as the forced landing of a Saudi Arabian Airlines aircraft in 2014, have raised legal uncertainties

² Oppenheim, *International Law*, 8th ed., 1955, p. 551

³ Shodiq, D. A. F., Asmarudin, I., & Widyastuti, T. V. (2023). *Pelanggaran Kedaulatan Ruang Udara Indonesia Menurut Hukum Internasional*. Penerbit NEM.

⁴ Badan Nasional Pengelola Perbatasan Republik Indonesia (BNPP RI). <https://bnpp.go.id/> Diakses pada Kamis, 07/08/2025, Pukul 12.20 WIB

⁵ Maulana, R. (2021). *Pelanggaran Udara di Indonesia Sering Terjadi dari Penerbangan Sipil hingga Militer Asing*. <https://Nasional.Okezone.Com/>. <https://nasional.okezone.com/read/2021/06/02/337/2418765/pelanggaran-udara-di-indonesia-sering-terjadi-dari-penerbangan-sipil-hingga-militer-asing?page=1>

regarding enforcement and jurisdiction⁶ and the Ethiopian Airlines incident in 2019 ended.⁷ merely with a diplomatic protest and without any further legal proceedings. This situation has created a legal vacuum (*vacuum juris*) and weakened the effectiveness of national air law enforcement.

This disparity becomes even more apparent when compared with the Indonesian Navy (TNI AL), which, under Article 9(b) of Law No. 34 of 2004, is vested with the authority to pursue, arrest, investigate, and conduct inquiries into violations committed within the maritime domain. The absence of a similar mandate for the Indonesian Air Force (TNI AU) has resulted in a disparity in law enforcement across different sectors of national sovereignty. In fact, aerial threats may be faster, less predictable, and more strategic in their impact on national defense. Therefore, the absence of a legal foundation for investigative authority within the TNI AU is not merely an administrative issue but also poses a significant risk to the integrity of national sovereignty in the airspace.

From the perspective of national law and security, strengthening the investigative authority of the TNI AU has become an urgent necessity. Investigation in this context is not merely a technical aspect of law enforcement but a manifestation of state sovereignty in the air domain. Several countries, such as the United States through the North American Aerospace Defense Command (NORAD), have integrated defense and investigative functions within a clear legal framework. Hence, Indonesia must undertake legal reform to fill this normative gap, so that defense and air law enforcement functions can operate in tandem to uphold the rule of law, preserve territorial integrity, and protect the nation's sovereignty in its entirety.

2. Method

The research method employed by the author to address the issues raised in this study is a legal research approach utilizing statutory, conceptual, and comparative approaches. The legal materials used in this research consist of primary and secondary legal sources. Primary legal materials were collected through inventory and categorization methods, whereas secondary legal materials were obtained through literature review and doctrinal analysis. After both primary and secondary legal materials were gathered, the next steps involved identifying, classifying, and systematically organizing them according to their sources and hierarchy. Subsequently, all legal materials were examined and analyzed using legal reasoning through a deductive method.⁸

3. The Urgency of Regulating the Investigative Authority of the Indonesian Air Force in the Enforcement of Law within Indonesian Airspace

The fourth paragraph of the Preamble of the 1945 Constitution of the Republic of Indonesia affirms the national objective to protect the entire nation and the whole territory of Indonesia. This mandate applies not only to land and sea but also to the airspace, which constitutes an integral part of the State's sovereignty. Since the Proclamation of Independence, sovereignty has been both a right and an obligation of the State to manage its entire territory, including the airspace. Airspace possesses strategic significance as it pertains

⁶ SindoNews, *Ini Kronologi Penurunan Paksa Pesawat Asing di Kupang*, 2014, <https://nasional.sindonews.com/berita/919665/14/ini-kronologi-penurunan-paksa-pesawat-asing-di-kupang>. Accessed, 07/08/2025, 12.00 WIB

⁷ Kompas.com, *Kronologi Pesawat Asing Dipaksa Turun TNI AU di Batam*, 15 Januari 2019, <https://regional.kompas.com/read/2019/01/15/05563781/kronologi-pesawat-asing-dipaksa-turun-tni-au-di-batam-dalam-20-menit>. Accessed, 07/08/2025, 12.40 WIB

⁸ Thilakarathna, A. N., & Kamani P Mathotaarachchi. (2025). Doctrinal Legal Research in Common Law: The Good, the Bad, and the Ugly. *Technium Social Sciences Journal*, 75(1), 118–131. <https://doi.org/10.47577/tssj.v75i1.13153>

to aviation, defense, the economy, and national security. Management and law enforcement within the airspace must be conducted professionally and in an integrated manner to align with the State's objectives as enshrined in the 1945 Constitution.

In the context of defense and security, violations of airspace, such as unauthorized flights, aerial reconnaissance, or cross-border smuggling, constitute serious threats to the State's sovereignty.⁹ These threats necessitate that the State possesses legal instruments and institutions capable not only of conducting interception and operational security but also of investigating violations of air law to ensure juridical enforceability. Philosophically, the investigative authority granted to the Indonesian Air Force (TNI AU) constitutes a concrete implementation of the mandate set forth in the fourth paragraph of the Preamble of the 1945 Constitution. This authority serves as an instrument to protect the nation, safeguard public welfare through aviation security, and contribute to international order by ensuring compliance with international air law. Without such investigative authority, airspace violations remain confined to the diplomatic level without tangible legal effect.

State sovereignty requires comprehensive legal authority over land, sea, and air territories.¹⁰ The Indonesian National Police (POLRI) already possesses investigative authority on land, while the Indonesian Navy (TNI AL) holds such authority over maritime domains pursuant to the Indonesian Military Law (UU TNI). On the other hand, according to Phillipus M. Hadjon and Indroharto, authority constitutes a legal power derived from statutory attribution.¹¹ In this regard, the Indonesian Air Force (TNI AU) should be granted similar authority in the air domain to ensure balance across the military branches. From the perspective of legal philosophy, justice and legal certainty can only be realized if every violation of sovereignty is addressed through legal mechanisms. Without investigative authority, the TNI AU is limited to tactical measures, such as a force down, while violations of air law cannot be prosecuted judicially. This situation contradicts the principle of equality before the law and undermines substantive justice.

Jean Bodin asserted that sovereignty is the supreme power which is indivisible.¹² In this context, air sovereignty cannot be separated from its accompanying legal functions. If the Indonesian Navy (TNI AL) is granted investigative authority over maritime domains, then, in theory, the Indonesian Air Force (TNI AU) is likewise entitled to similar attribution in the air domain, given that airspace is even more strategic and vulnerable to violations. Without a clear statutory attribution, the position of TNI AU becomes paradoxical: it has an operational role in safeguarding the airspace but lacks a legal basis to take judicial action.

This reflects disharmony and normative gaps within the national legal system, where airspace violations cannot be further prosecuted by the institution most competent to act. Legally, Article 30 paragraph (3) of the 1945 Constitution and Law No. 34 of 2004 on the Indonesian National Armed Forces (TNI) affirm the TNI's duty to uphold state sovereignty. Article 25A of the 1945 Constitution also recognizes airspace as part of national territorial sovereignty. Government Regulation No. 4 of 2018 on the Security of the Indonesian Airspace regulates operational actions such as interception and force down, but does not provide a legal basis for investigative authority to TNI AU. Conversely, Article 9 letter b of the TNI Law grants investigative authority to the TNI AL in the maritime domain. The absence of a corresponding provision for TNI AU creates normative imbalance across the

⁹ Delbrueck, Jost. 1982. "International Protection of Human Rights and State Sovereignty." *Indiana Law Journal* 57(4): 569

¹⁰ Baiq Setiani. 2017. "Konsep Kedaulatan Negara di Ruang Udara dan Upaya Penegakan Pelanggaran Kedaulatan oleh Pesawat Udara Asing." *Jurnal Konstitusi* 14(3): 489-510.

¹¹ Hadjon, Phillipus M. *Pengantar Hukum Administrasi Indonesia*. Yogyakarta: Gajah Mada University Press, 2011

¹² Jean Bodin, dalam Isro & Dhia Al Uyun, *Ilmu Negara (Berjalan dalam Dunia Abstrak)*, UB Press, Malang, 2016, hlm. 103 - 105

military branches. This legal vacuum results in many airspace violations being resolved solely through diplomatic reprimands, without judicial enforcement.

The dynamics of threats in airspace have become increasingly complex. The emergence of drone technology, aerial espionage, cross-border smuggling, and potential terrorism necessitates a rapid, integrated, and effective system of air law enforcement. As the first entity to interact with airspace violations in practice, TNI AU holds sociological legitimacy to be granted investigative authority.¹³

TNI AU's exclusion from the investigative process also weakens evidence collection, as POLRI is not present during interception or force down operations. Consequently, primary evidence that should be obtained directly by TNI AU cannot be incorporated into legal proceedings. This issue is exemplified by the forced landing cases of the Gulfstream IV of Saudi Arabian Airlines (HZ-103) at Lanud Eltari, Kupang in 2014, and the Boeing 777 of Ethiopian Airlines in Batam in 2019.¹⁴ Both aircraft violated Indonesian airspace without authorization. However, after administrative examination, no further legal proceedings were undertaken. This situation demonstrates the weakness of Indonesia's air law supremacy and undermines the State's position in upholding sovereignty before the international community.

In international practice, countries such as the United States, through NORAD, have granted limited legal authority to their air forces to address airspace violations. This illustrates that granting investigative authority to the air force does not contravene democratic principles but constitutes a pragmatic measure to safeguard sovereignty. The involvement of the Indonesian Air Force (TNI AU) in enforcing sovereignty over Indonesian airspace is inseparable from its duties under Article 10 of Law No. 34 of 2004 on the Indonesian National Armed Forces (TNI), which stipulates, among others, that the TNI AU is tasked to:

- a) To perform the duties of the Air Force branch in the field of national defense;
- b) To enforce law and maintain security within the airspace under national jurisdiction, in accordance with applicable national law and ratified international law;
- c) To execute the TNI's responsibilities in the development and enhancement of air force capabilities; and
- d) To implement the empowerment of air defense regions.

Based on this mandate, the Indonesian Air Force (TNI AU) holds a central responsibility in safeguarding sovereignty and enforcing legal measures against airspace violations, particularly in prohibited areas, restricted areas, and danger areas. The implementation of this authority is carried out through the National Air Defense Command (Kohanudnas), which functions to detect, identify, and take action against any aerial vehicle that violates the airspace of the Republic of Indonesia.¹⁵ Air defense operations conducted by the National Air Defense Command (Kohanudnas) are categorized into two types. First, Active Air Defense Operations, which include: (a) detection of aerial targets through electronic or visual means; (b) identification to classify the aerial target as friendly, unknown, or hostile; and (c) engagement, ranging from intervention and forced landing (force down) to destruction, if the target is proven to threaten national defense. Second, Passive Air Defense Operations, which focus on alerting to aerial threats and mitigating the effects of air attacks, including the rescue of personnel and strategic assets.

¹³ Ardita, I. G. N., Ibrahim, R., & Kasih, D. P. D. (2022). Hoax bomb threats as the acts of unlawful interference that endanger aviation safety and air transportation. *Technium: Romanian Journal of Applied Sciences and Technology*, 4(1), 56–67. <https://doi.org/10.47577/technium.v4i1.5834>

¹⁴ SindoNews, *Ini Kronologi Penurunan Paksa Pesawat Asing di Kupang*, 2014, <https://nasional.sindonews.com/berita/919665/14/ini-kronologi-penurunan-paksa-pesawat-asing-di-kupang>. Diakses pada Kamis, 07/08/2025, Pukul 12.00 WIB

¹⁵ Markas Besar TNI-AU, *Buku Petunjuk Pelaksanaan OPSGAB tentang Operasi Hanud Nasional*, Jakarta: tanpa penerbit, 2003, h. 19

However, the execution of air defense operations alone is insufficient. The nature of airspace violations is often closely linked to defense and security offenses, such as violations of flight rights over the Indonesian Archipelagic Sea Lanes (ALKI), unauthorized overflight, aerial surveillance, and potential smuggling using aerial vehicles. All these violations have implications not only in the military domain but also under criminal law.

In this context, the urgency of granting special investigative authority to the Indonesian Air Force (TNI AU) becomes highly relevant. To date, TNI AU has been limited to operational enforcement actions (e.g., forcing foreign aircraft to land) and must defer subsequent legal proceedings to civilian law enforcement agencies, such as POLRI or other relevant institutions. Consequently, a legal gap arises when airspace violations have a defense-oriented character that cannot be fully addressed by the general criminal law regime.

Through Kohanudnas, the TNI AU should be granted investigative authority over specific offenses that substantively constitute crimes against national defense and security within the airspace. Such authority could be conferred through amendments to existing legislation or the establishment of new regulations that explicitly recognize TNI AU jurisdiction in limited investigations, particularly concerning airspace sovereignty violations, military offenses in the air domain, and violations of overflight rights.¹⁶

4. International Comparative Study

The United States serves as a paradigmatic example of successful military civilian collaboration in the supervision and enforcement of air law.¹⁷ The involvement of the military does not contravene the principles of the rule of law, provided that such involvement operates under civilian control and within a transparent legal framework. The United States, as a nation possessing both robust military capability and a well established legal system, grants comprehensive authority to the United States Air Force (USAF) and the North American Aerospace Defense Command (NORAD) for the surveillance and enforcement of airspace violations. All operations are conducted in an integrated manner between military institutions and civilian agencies such as the Federal Aviation Administration (FAA) and the Central Intelligence Agency (CIA), particularly in matters concerning national airspace security.¹⁸ In the United States, this role is predominantly carried out by the United States Air Force (USAF). America in the U.S. Armed Forces Code This law regulates the role of the United States military in relation to airspace violations. The role of the United States Armed Forces in handling violations of airspace jurisdiction, based on legal provisions stipulated in the United States Code (U.S.C.), specifically Title 10 Chapter 807 Article 8062. The Role of the United States Armed Forces in Handling Violations of Airspace Jurisdiction: An Overview Based on the United States Code Title 10 Chapter 807 Surveillance and control of national airspace is an integral part of a country's defense system.

In the United States, this role is predominantly carried out by the United States Air Force (USAF) under the umbrella of the Department of Defense (DoD). Normatively, the military's role in maintaining air sovereignty is regulated by various provisions in the United States Code (U.S.C.), particularly Title 10 Chapter 807, which contains laws regarding the armed forces. Through several key articles in Title 10 Chapter 807, the United States provides

¹⁶ Puspen TNI, 2006, Penegakan Kedaulatan dan Hukum di Ruang Udara Nasional (online), <http://www.tni.mil.id/view-3001-penegakan-kedaulatan-dan-hukum-di-ruang-udara-nasional.html>, pada 7 September 2014

¹⁷ Baya'Sut, M. F. J., & Mardijono, A. (2024). Pengaturan Hukum Tentang Kedaulatan Di Wilayah Udara Indonesia. *Hukum Dinamika Ekselensia*, 6(4).

¹⁸ Triadi, I., Rahman, N. K., Amanda, N. S., Elvira, O., Oktaviani, E. P., Julius, T., & Faidzuddin, A. (2025). Pengawasan Lalu Lintas Udara di Wilayah Perbatasan Negara. *Media Hukum Indonesia (MHI)*, 3(1).

legal legitimacy for military involvement in air defense operations, including in addressing airspace violations by foreign and domestic entities.

Title 10 Chapter 807 U.S. Code Section 8062 United States Air Force: Policy; composition; aircraft authorization. In This article establishes the primary duties and functions (tupoksi), such as policy, composition, and aircraft authorization, of the United States Air Force (USAF), one of the primary branches of the US military. This section of the article states that:

“Section 8062. Policy; composition; aircraft authorization

(a) It is the intent of Congress to provide an Air Force that is capable, in conjunction with the other armed forces, of

- 1) preserving the peace and security, and providing for the defense, of the United States, the Commonwealths and possessions, and any areas occupied by the United States;*
- 2) supporting the national policies;*
- 3) implementing the national objectives; and*
- 4) overcoming any nations responsible for aggressive acts that imperil the peace and security of the United States.*

(b) There is a United States Air Force within the Department of the Air Force.

(c) In general, the Air Force includes aviation forces both combat and service not otherwise assigned. It shall be organized, trained, and equipped primarily for prompt and sustained offensive and defensive air operations. It is responsible for the preparation of the air forces necessary for the effective prosecution of war except as otherwise assigned and, in accordance with integrated joint mobilization plans, for the expansion of the peacetime components of the Air Force to meet the needs of war.

(d) The Air Force consists of

- 1) the Regular Air Force, the Air National Guard of the United States, the Air National Guard while in the service of the United States, and the Air Force Reserve;*
- 2) all persons appointed or enlisted in, or conscripted into, the Air Force without component; and*
- 3) all Air Force units and other Air Force organizations, with their installations and supporting and auxiliary combat, training, administrative, and logistic elements; and all members of the Air Force, including those not assigned to units; necessary to form the basis for a complete and immediate mobilization for the national defense in the event of a national emergency.”*

The Air Force shall be organized, trained, and equipped primarily for prompt and sustained offensive and defensive air operations. It shall be responsible for the preparation of air forces necessary for the effective prosecution of war.”

Based on the provisions outlined above and the explanation of Section 8062 Policy; Composition; Aircraft Authorization, this section of the United States Code regulates the fundamental policy concerning the existence, structure, and functions of the United States Air Force (USAF) within the national defense system of the United States.

Paragraph (a) of this section stipulates four principal functions that must be carried out by the Air Force, namely: to preserve peace and security, to provide for the defense of the United States, its Commonwealths, and possessions, to support the national policy, and to implement the national objectives. This provision demonstrates that the existence of the Air Force is not solely intended for purely military defense purposes, but also serves as an instrument of foreign policy integrated into the broader framework of national strategic policy.

Paragraph (b) establishes the United States Air Force as an integral component of the Department of the Air Force, which constitutes an administrative entity within the Department of Defense. This affirmation constitutionally strengthens the organizational legitimacy of the Air Force as a coequal branch of the armed forces, standing alongside the United States Army and the United States Navy within the national defense structure.

Furthermore, paragraph (c) operationally elaborates on the structure and primary responsibilities of the Air Force, namely to be organized, trained, and equipped primarily for prompt and sustained offensive and defensive air operations, as well as to perform such other duties as may be assigned that are not allocated to other branches of the armed forces. The principal focus of this provision lies in the capability to conduct air operations both swiftly and continuously, whether in offensive or defensive form, and in maintaining readiness to expand peacetime capacity into full wartime mobilization, within the framework of integrated joint mobilization plans.

Subsequently, paragraph (d) sets forth the composition of the personnel and units comprising the Air Force. This composition consists of four main elements: the Regular Air Force, the Air National Guard of the United States (both in its federal and state capacities), the Air Force Reserve, and individuals assigned to the Air Force without specific component affiliation. This structure reflects both flexibility and integration, enabling the combination of regular and reserve forces within a single unified defense system. In addition, paragraph (d) also specifies that all organizations, installations, and supporting elements whether logistical, training, administrative, or combat-related constitute integral parts of the Air Force system.

These elements are prepared as the foundation for full and immediate mobilization in the event of a national emergency. The emphasis on total readiness aligns with the principle of air supremacy, which serves as the cornerstone of the United States' air defense doctrine.

The phrase "defensive air operations" explicitly indicates that the United States Air Force bears legal and operational responsibility for the national air defense, including the authority to carry out air interception against aircraft deemed to have violated the sovereignty of the United States airspace. However, such authority constitutes a legal-operational basis for military response to airspace violations, and does not extend to investigation or law enforcement functions.

5. Implementation Challenges

In emergencies, fighter jets can be immediately deployed to intercept foreign aircraft or civilian aircraft posing a threat. This authority is supported by a firm legal framework through national defense regulations and policies. Detailed enforcement protocols are defined, including the use of weapons if the situation warrants. This mechanism demonstrates legal recognition of the military's role in air law enforcement. This model can serve as an example for Indonesia in building a coordinated and responsive system.

In comparison, Indonesia still faces challenges in the division of authority between civilian and military authorities. Although a Memorandum of Understanding (MoU) exists between the Indonesian Air Force (TNI AU) and the Ministry of Transportation, it lacks the legally binding force of a law. Investigations into violations of foreign airspace are not explicitly regulated in the Criminal Procedure Code (KUHAP) or other sectoral laws.

This creates legal uncertainty for the TNI AU's role as the frontline in airspace security. The lack of a standard operational mechanism for military investigations contributes to weak law enforcement. The absence of regulations governing procedures for interception, detention, and investigation of air violations presents a gap that must be addressed immediately. In this regard, learning from other countries' systems is crucial.

With this in mind, several key challenges include the need to revise Law No. 1 of 2009 and align it with Law No. 34 of 2004. The establishment of an inter-agency coordination protocol between the Indonesian Air Force, the Indonesian National Police, and Civil Servant Officers (PPNS). Civilian oversight and compliance with human rights in the conduct of military investigations.

6. The Concept of Arranging Investigative Authority by the Indonesian Air Force in Law Enforcement in Indonesian Airspace

Indonesia, as a nation with full sovereignty over its airspace, adheres to the principle of "complete and exclusive sovereignty" as stipulated in the 1944 Chicago Convention and adopted in Law No. 1 of 2009 concerning Aviation. This sovereignty provides the legal basis for requiring all civil and military aircraft to obtain permission to enter national airspace. However, law enforcement for violations such as unauthorized crossings currently faces limitations in criminal regulations and unclear institutional arrangements. The Indonesian Air Force (TNI AU) is functionally at the forefront of detecting and handling air violations through operations such as shadowing, interception, force-down, and so on. However, to date, the TNI AU's role has been limited to the initial investigation or arrest phase, not yet reaching the level of formal investigation.

Article 10, letter b, of Law No. 34 of 2004 concerning the Indonesian National Armed Forces (TNI AU), states that one of the TNI AU's duties is to enforce the law and maintain security within national jurisdiction. However, Law No. 1 of 2009 concerning Aviation does not yet mandate investigations in the form of evidence or criminal proceedings to the Indonesian Air Force. As a result, in practice, the Indonesian Air Force's function is limited to administrative enforcement or warnings, while formal investigations are handled by the Civil Servant Officers (PPNS) under the Ministry of Transportation. This creates overlapping authority and the possibility of incomplete enforcement. This additional authority is expected to not only enrich the legal framework but also increase responsiveness to air violations, which often occur suddenly. Supported by the Indonesian Air Force's capabilities, such as advanced radar and real-time interception capabilities, the delegation of investigative authority is considered strategically sound.

Normatively, the Indonesian Air Force's investigative authority is justified by several relevant articles of law, provided they are accompanied by PPNS status. Article 39 of Law No. 1 of 2009 provides the grammatical opportunity for the Indonesian Air Force to become investigators if they meet the PPNS requirements. However, no specific regulations have been issued establishing the Indonesian Air Force as PPNS, so this authority has not yet been formally implemented. This study proposes the formation of a Joint National Air Investigation Unit (UGP) consisting of members from the Indonesian Air Force, the Indonesian National Police, and PPNS from the Ministry of Transportation.

7. The concept of the Joint National Air Investigative Unit (UGP)

Violations of Indonesian airspace are no longer merely a technical aviation issue, but have developed into a serious threat to the country's sovereignty and security. Within the current positive legal framework, law enforcement in airspace is regulated by several instruments, including the 1945 Constitution of the Republic of Indonesia, Law No. 34 of 2004 concerning the Indonesian National Armed Forces (TNI), Law No. 2 of 2002 concerning the Indonesian National Police (Polri), and Law No. 1 of 2009 concerning Aviation. Article 30 paragraph (2) of the 1945 Constitution emphasizes the TNI's duty to defend state sovereignty and territorial integrity. However, in the context of criminal law enforcement in

the aviation sector, the primary role is held by the Indonesian National Police (Polri) and Civil Servant Investigators (PPNS) of the Ministry of Transportation as stipulated in Article 399 of the Aviation Law. According to Article 399 paragraph (2) of the Aviation Law, PPNS officials within agencies whose scope of duties and responsibilities are in the aviation sector are given special authority as investigators of aviation crimes, but in carrying out their duties are under the coordination and supervision of Polri investigators. This means that the investigation mechanism has so far been formally under civilian control. The duties of the PPNS are primarily related to administrative or technical violations, such as diplomatic permits, flight clearances, security clearance violations, and violations of civil aviation operations.

In practice, the Indonesian Air Force only has a tactical mandate to maintain airspace, such as observing, detecting, expelling, intercepting, and forcing violating aircraft to land at specific air bases. Once the violating aircraft or air vehicle lands, further legal handling falls to the PPNS, who work under the coordination of the Indonesian National Police (Polri). This issue has become increasingly pressing amidst contemporary threats, such as air terrorism, arms or narcotics smuggling via air, and intelligence activities using drones. Such threats demand a swift response, often beginning with enforcement and investigation at the incident site, which is controlled by the Indonesian Air Force.

The findings of this study underscore the existence of a gap between the defense mandate constitutionally entrusted to the Indonesian Air Force (TNI AU) and its actual law enforcement capacity. Constitutionally, the TNI AU serves as the principal actor in safeguarding the sovereignty of national airspace. However, from a juridical perspective, its role ceases once an offending aircraft or aerial vehicle lands and enters the jurisdiction of the civil criminal process. Consequently, the interest in maintaining national sovereignty does not always align with the effectiveness of law enforcement. In principle, Article 30, paragraph (2) of the 1945 Constitution of Indonesia establishes the duty of the Indonesian National Armed Forces (TNI) to guard and defend the sovereignty of the state. There is a limitation in the authority of the TNI, despite being at the forefront of national sovereignty protection.

As a finding of this research, the study proposes the establishment of a Joint Investigative Unit (hereinafter referred to as UGP) which is cross-institutional and operates in an integrated manner. The UGP is conceptualized based on the premise that law enforcement in airspace can no longer be approached solely from an administrative perspective, which currently confers investigative authority exclusively to the National Police (Polri) and the Civil Aviation Investigators (PPNS) under the Ministry of Transportation. Rather, it requires a legal mechanism that is effective and responsive to threats against national sovereignty and public security.

Within the proposed framework of the Joint Investigative Unit (UGP), the TNI Air Force is not granted general investigative authority equivalent to that of the Police. Instead, it is assigned special, limited, and proportional authority to address the legal vacuum that has existed. This authority encompasses criminal acts directly related to violations of state sovereignty or serious threats to national safety in airspace, including but not limited to air terrorism, violations of restricted or prohibited airspace established for defense purposes, incursions of foreign combat aircraft into territorial airspace over the sea, breaches of flight safety at military airbases, as well as the entry of unscheduled or unauthorized foreign civil aircraft or aerial vehicles.

The conferral of this authority is founded upon two principal considerations, as follows:

- 1) **Factual Capability:** The Indonesian Air Force (TNI AU) possesses technical capabilities, an air defense system, and direct access to preliminary information

regarding violations through radar, air defense systems, and interception operations. When a threat arises, the TNI AU is the first responder to secure the perpetrator or the violating aircraft. Accordingly, granting investigative authority at the initial stage for certain types of violations that threaten national sovereignty constitutes a logical measure to prevent the loss of critical time, avoid disruption in the chain of handling, and ensure that evidence is neither lost nor compromised.

- 2) Constitutional Legitimacy and Civil Supremacy: The grant of such authority is constitutional and remains consistent with the principle of civilian supremacy. The TNI AU does not replace the function of the National Police (Polri) as the national law enforcement authority; rather, it fills the gaps that arise at critical points in the handling of sovereignty violations. As expressly provided in Law No. 2 of 2002 concerning the Indonesian National Police, the Polri retains a central role as supervisor, coordinator, and technical overseer of investigations, in accordance with Article 13, which sets forth the main duties of the Polri to maintain public order and security, enforce the law, and provide protection, guidance, and services to the public and Article 14(1)(f), which affirms the Polri's authority to supervise coordination, oversight, and technical guidance over special police units, civil servant investigators, or forms of self-security.

Under this construction, any investigative action conducted by the TNI AU will remain within the national legal system and under the supervision of the Polri, thereby preventing overlapping authority or potential breaches of the principle of civilian supremacy. Conversely, the existence of this authority strengthens the rule of law function of the state to respond to threats in airspace swiftly, effectively, and lawfully.

Furthermore, this division of roles optimizes the contribution of civil aviation investigators (PPNS), who remain a crucial element in handling administrative and technical violations, such as breaches of flight clearance, diplomatic clearance, or civil aviation safety standards. Accordingly, the National Airspace Investigative Unit (UGP) functions as a platform for the synergy of three elements: the TNI AU as the operational spearhead with access and technical capacity in the field, the Polri as the legal controller and investigation coordinator, and the PPNS as the manager of aviation administrative aspects, with the purpose of filling the legal vacuum that has hitherto weakened the effectiveness of law enforcement in airspace.

The operational mechanism of the Joint Investigative Unit (UGP) follows the principles of coordination and supervision, as follows:

1. Air Force investigators (TNI AU) are required to notify the commencement of an investigation and submit the results of the investigation to the public prosecutor in accordance with the Indonesian Criminal Procedure Code (KUHAP).
2. Aviation civil servant investigators (PPNS), who handle administrative violations such as diplomatic clearance, security clearance, or unauthorized flights, operate under the coordination and supervision of the National Police (Polri) as affirmed in Article 14(1)(f) of the Police Law.
3. The results of PPNS investigations are submitted to the public prosecutor through the designated police investigator, thereby ensuring a single entry point in the pro-justitia mechanism.
4. Subsequently, prosecution is carried out by the public prosecutor whose jurisdiction covers the location where the aircraft or aerial vehicle is landed, and trial proceedings are conducted by the local district court.

Thus, all stages of the legal process, from initial field actions to court proceedings, remain within the framework of the applicable national criminal justice system. The scope of duties of investigators within the UGP encompasses all actions customarily undertaken in criminal proceedings, including:

1. Examining, searching for, and collecting information related to criminal acts in the management of airspace;
2. Receiving reports and/or statements regarding the existence of criminal acts in the management of airspace;
3. Summoning individuals to be heard and examined as witnesses and/or suspects of criminal acts in the management of airspace;
4. Examining, apprehending, transporting, and/or detaining aircraft, aerial vehicles, and/or individuals suspected of committing criminal acts in the management of airspace;
5. Requesting statements and/or evidence from individuals suspected of committing criminal acts in the management of airspace;
6. Photographing and/or recording through electronic media persons, objects, aircraft, aerial vehicles, and/or items that may serve as evidence of criminal acts in the management of airspace;
7. Examining documents related to criminal acts in the management of airspace;
8. Collecting fingerprints and identifying persons associated with criminal acts in the management of airspace;
9. Conducting searches of aircraft, aerial vehicles, and specific locations suspected of involvement in criminal acts in the management of airspace;
10. Seizing objects used to commit criminal acts and/or resulting from criminal acts in the management of airspace;
11. Isolating and securing objects and/or documents that may serve as evidence in relation to criminal acts in the management of airspace;
12. Engaging experts as required in relation to criminal acts in the management of airspace;
13. Terminating the investigative process; and
14. Performing other lawful and responsible actions.

These duties commence from the initial stage of information and evidence gathering, including examining, searching for, and collecting information regarding potential violations within the airspace, as well as receiving public reports or official information from defense and aviation authorities. At this stage, the primary focus is to ensure that every indication of a potential violation whether in the form of unauthorized flight operations, breaches of prohibited or restricted airspace, or serious threats such as aerial terrorism can be promptly followed up with appropriate legal measures.

Once a presumption of a criminal act (*prima facie* evidence) is established, the investigators' duties proceed to repressive and pro-*justitia* enforcement actions, including summoning and examining witnesses or suspects, conducting arrests and detentions, and securing the aircraft and its crew. This process also includes the collection and preservation of evidentiary material, through document examination, photographic or electronic recording, searches of aircraft or related premises, seizure of objects used to commit or resulting from the criminal act, as well as the taking of fingerprints and identification of involved individuals. All these procedural stages are carried out to ensure the availability of legally admissible evidence, thereby strengthening and legitimizing the subsequent prosecution process.

Furthermore, the scope of the investigators' duties also encompasses ancillary and supportive measures necessary for evidentiary and law enforcement purposes, such as engaging expert witnesses to clarify technical aspects of aviation or air defense, isolating and securing relevant documents or material evidence, and, when warranted, terminating the investigation if insufficient evidence is found. All such functions are performed under the principles of proportionality, accountability, and coordination within the supervisory authority of the National Police (Polri), to prevent any abuse of power and to uphold the principle of civilian supremacy. With such a comprehensive scope of duties, the Joint Investigative Unit (UGP) is expected to close the existing gaps that have long undermined the effectiveness of law enforcement in national airspace, while ensuring that all legal processes proceed within the framework of the national criminal procedure system.

This framework is consistent with the practice of airspace enforcement in the United States, which applies the principle of military participation in law enforcement under the *Posse Comitatus Act* as a general rule, particularly within the framework of coordinated enforcement of airspace violations. In this context, the United States has established a formal coordination mechanism through standardized procedures for interception and the transfer of custody of violators to civilian authorities. This principle may serve as a precedential model for the development of an integrated investigative authority for the Indonesian Air Force (TNI AU) in handling cases involving violations of national air sovereignty.

Conceptually, the Joint Investigative Unit (UGP) is not a form of subordination of the National Police (Polri) to the military, nor vice versa, but rather a coordinated and integrated operational mechanism that harmonizes military operational superiority with civilian legal authority. The Indonesian Air Force (TNI AU) possesses the advantage of detection capability and rapid response within national airspace, while the National Police (Polri) holds the constitutional mandate as the national law enforcement and investigative oversight authority, and the Civil Aviation Investigators (PPNS) contribute technical expertise in aviation administration.

The collaboration among these three entities bridges the institutional gap between defense functions and law enforcement mechanisms, thereby addressing the existing legal vacuum (*lacuna legis*) without creating jurisdictional overlap or infringing upon the principle of civilian supremacy.

The UGP model simultaneously incorporates a theoretical foundation to reinforce the legitimacy of conferring investigative authority upon the Indonesian Air Force (TNI AU).

- 1) Authority Theory posits that investigative authority constitutes an inherent element of governmental function, which must be grounded in a clear legal basis whether by attribution, delegation, or mandate.¹⁹ Accordingly, granting the TNI AU limited investigative authority through a special statute represents a lawful form of attribution of new powers, consistent with the doctrine of legal competence under administrative law.
- 2) Modern Rule of Law Theory emphasizes that a modern constitutional state (*rechtsstaat*) demands synergy between law enforcement and national security mechanisms.²⁰ In this context, civilian supremacy does not entail the total exclusion of military involvement, but rather its proportional regulation within a framework

¹⁹ Manalu, J. T. N. B. (2024). Kewenangan Kepolisian Dalam Pemberlakuan Kebijakan Penghentian Penyidikan Berdasarkan Keadilan Restoratif Ditinjau dari Teori Kewenangan. *Jurnal Kewarganegaraan*, 8(1), 1153-1166.

²⁰ Mardiyati, S. (2024). Implementasi dan Penegakan Hukum Tata Negara dalam Konteks Globalisasi. *Disiplin: Majalah Civitas Akademika Sekolah Tinggi Ilmu Hukum Sumpah Pemuda*, 30(3), 79-90.

of checks and balances, ensuring accountability while maintaining operational effectiveness in safeguarding sovereignty.

- 3) National Legal System Integration Theory asserts that criminal law, administrative law, and defense law must operate in an integrated manner to effectively respond to non-conventional threats, including airspace sovereignty violations and aerial terrorism.²¹

This integrated framework represents an implementation of the rule of law principle that adapts to the dynamics of modern threats. The state thus manifests its presence not only through defense instruments to protect its airspace, but also through definite legal mechanisms to prosecute violations. With a clear statutory foundation, effective interagency coordination, and well-defined limitations of authority, the Joint Investigative Unit (UGP) may serve as a viable institutional solution that bridges the imperatives of national sovereignty and the supremacy of law within Indonesia's airspace domain.

8. Conclusion

The handling of airspace in Indonesia, under existing regulations, grants investigative authority solely to Civil Aviation Investigators (PPNS) under the coordination of the National Police (Polri). Consequently, when the Indonesian Air Force (TNI AU) detects or compels the landing of foreign aircraft that have violated national airspace, there is often no subsequent legal process due to the lack of clarity in investigative jurisdiction. Threats in the airspace are increasingly complex. The emergence of drone technology, aerial espionage, cross-border smuggling, and the potential for terrorism necessitate a rapid, integrated, and effective air law enforcement system. The TNI AU, as the party first interacting with airspace violations on a factual basis, possesses sociological legitimacy to be granted investigative authority. The absence of TNI AU involvement in the investigative process also results in weakened evidentiary strength, as the National Police are not present during interception or forced landing operations. Consequently, primary evidence that should be obtained directly by the TNI AU cannot be accommodated within the legal process.

Based on these considerations, there is a necessity to establish clear provisions regarding the investigation of airspace offenses that involve the TNI AU as the frontline authority, concerning criminal acts in the airspace or other threats to national sovereignty. This is analogous to the United States as a comparative example, where authority is clearly delineated between the Air Force and civilian agencies such as the Federal Bureau of Investigation (FBI) concerning the handling and oversight of airspace-related crimes. The formation of a Joint Investigative Unit consisting of elements from the TNI AU, the National Police, and the Ministry of Transportation (Kemenhub), is proposed as a mechanism for the delegation and division of responsibilities, specifically in addressing incidents occurring within Indonesian airspace

9. Recommendation

1. The Government should urgently formulate a Draft Law on National Airspace Management that explicitly regulates the investigative authority of the Indonesian Air Force (TNI AU). Such legislation would provide a clear statutory basis (legal attribution) for TNI AU's limited investigative powers within the national airspace

²¹ Mardhani, D. (2020). Keamanan dan pertahanan dalam studi ketahanan nasional guna mewujudkan sistem keamanan nasional. *Jurnal Pertahanan dan Bela Negara*, 10(3), 279-298.

domain, thereby eliminating legal uncertainty and ensuring conformity with the principles of legality and due process.

2. A comprehensive Standard Operating Procedure (SOP) must be established among the Indonesian Air Force (TNI AU), the National Police (Polri), and Civil Aviation Investigators (PPNS) to ensure effective interagency coordination. In addition, the legal and investigative capacity of TNI AU personnel must be strengthened to guarantee that all investigative processes are conducted in a professional and accountable manner, consistent with the principles of procedural justice and lawful authority. This should be institutionalized through the establishment of a Joint Investigative Unit (UGP) as a coordinated mechanism that operationalizes the integration between defense, law enforcement, and civil aviation oversight function.

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