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ASEAN Open Sky Agreement and The Challenges to Indonesia's Airspace Sovereignty: An Analysis of Legal Harmonization and Protection of National Interests

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Abstract: The ASEAN Open Sky Agreement is a regional integration instrument aimed at liberalizing air transportation services between ASEAN member states. For Indonesia, the implementation of this agreement has legal and economic consequences, particularly regarding airspace sovereignty, the application of the Cabotage principle, and the protection of national interests. This study aims to analyze the implementation of the ASEAN Open Sky Agreement in Indonesia, its impact on the national economy, and its harmonization with the national legal system. The study employs a normative juridical method, drawing on legislative, conceptual, and international approaches. The legal materials used include the 1944 Chicago Convention, ASEAN agreements in the field of aviation, Law Number 1 of 2009 concerning Aviation, and other related regulations. The results show that the implementation of the ASEAN Open Sky Agreement does not eliminate state sovereignty over airspace, but rather constitutes a form of exercising sovereignty through a valid international agreement. The Cabotage principle remains an important legal instrument in protecting the national aviation industry from the pressures of regional market liberalization. On the other hand, this policy provides economic benefits through increased connectivity, tourism, trade, and investment. Therefore, this study offers a legal harmonization model as an integrative approach in balancing aviation liberalization with the protection of national interests.

Keywords: ASEAN Open Sky Agreement, Airspace Sovereignty, Cabotage, Regional Integration, Aviation Law.

INTRODUCTION

ASEAN's regional economic integration is advancing through various liberalization policies in the services sector, including air transportation. One strategic instrument in this process is the ASEAN Open Skies Agreement, which was later developed through the ASEAN Single Aviation Market (ASAM) scheme. This policy aims to improve connectivity between member states, expand aviation market access, reduce operational barriers, and encourage the growth of trade, investment, and tourism in the ASEAN region (Heriyanto & Putro, 2019; Ardhika Putri, Prabandari, & Farida, 2024). In practice, the liberalization of air transport is widely regarded as an important step toward accelerating regional economic integration and enhancing ASEAN’s competitiveness in the global market (Permana, Hoen, & Holzhacker, 2020).

For Indonesia, the ASEAN Open Skies Agreement is both strategic and complex. As the largest archipelagic nation in Southeast Asia with a crucial geographical position, the aviation sector serves not only as an economic instrument but also as a means of national connectivity, equitable development, defense, and a manifestation of state sovereignty over airspace (Senoaji & Setiyawan, 2021). On the other hand, the openness of the regional aviation market poses challenges in the form of increased business competition, potential domination by foreign airlines, pressure on the national aviation industry, and the need to harmonize domestic regulations with international and regional commitments (Anugrah, Ruhaeni, Imaniyati, & Suparman, 2025).

From an international legal perspective, every country has full and exclusive sovereignty over the airspace above its territory, as affirmed in Article 1 of the Chicago Convention. Therefore, the implementation of the Open Skies policy does not diminish state sovereignty. Instead, it reflects the exercise of sovereignty through the granting of air traffic rights in accordance with international agreements. However, in the Indonesian context, granting access to the aviation market must still consider national interests, security, aviation safety, and the sustainability of the domestic industry (Kusumaningrum, 2017; Agustini, Kareng, & Victoria, 2021).

One important instrument in protecting national interests is the Cabotage principle, which restricts domestic transportation to national businesses or airlines that comply with national law. This principle is crucial for Indonesia because the domestic aviation network is the backbone of connectivity between the archipelagic regions. Therefore, regional aviation market liberalization must be clearly distinguished from domestic market control, which remains within the framework of state sovereignty (Nugroho, 2025).

Several previous studies have examined the ASEAN Open Sky Agreement from various perspectives. Heriyanto and Putro (2019) highlighted the challenges and opportunities in developing an ASEAN Open Sky policy. Permana, Hoen, and Holzhacker (2020) analyzed the policy's political economy from the perspective of business preferences and regional economic integration. Law and Katekaew (2022) examined the significance of intra-regional connectivity following the COVID-19 pandemic. Meanwhile, Kusumaningrum (2017) discussed the concept of Indonesian airspace sovereignty, and Anugrah et al. (2025) highlighted the harmonization of Indonesian aviation regulations in facing the ASEAN single aviation market. However, these studies are generally partial, separating the economic dimension, state sovereignty, and cabotage regulations.

Based on the conditions, it indicates the need for further analysis of the implementation of the ASEAN Open Sky Agreement in Indonesia, especially concerning the relationship between airspace sovereignty, the cabotage principle, and national economic interests within a single legal framework. The analysis is important because Indonesia requires a policy model that can balance regional integration commitments with the protection of national interests proportionally. This study aims to analyze the implementation of the ASEAN Open Sky Agreement in Indonesia, examine its position on the principles of airspace sovereignty and Cabotage, and formulate a legal harmonization model that can strengthen national economic interests without neglecting ASEAN's regional commitments.

METHOD

This research is a normative juridical study that analyzes legal norms pertinent to the implementation of the ASEAN Open Sky Agreement within the Indonesian legal framework. It specifically addresses issues related to airspace sovereignty, the principle of cabotage, and aviation liberalization policies in the context of ASEAN regional integration. The research approach includes a legislative approach by examining national laws and international legal instruments in the field of aviation, a conceptual approach to examine the concepts of airspace sovereignty, cabotage, and regional economic integration, an international legal approach by referring to the Chicago Convention and policies developed by the International Civil Aviation Organization, and a limited comparative approach to the implementation of aviation policies in several ASEAN countries. The legal materials used consist of primary, secondary, and tertiary legal materials collected through literature studies, then analyzed qualitatively with prescriptive methods to interpret applicable legal norms and formulate an ideal legal construction in harmonizing airspace sovereignty, the principle of cabotage, and national economic interests.

RESULTS AND DISCUSSION

The Implementation of ASEAN Open Sky Agreement in Indonesia

The implementation of the ASEAN Open Skies Agreement in Indonesia is part of thecountry's commitment to supporting regional economic integration through liberalization of the air transportation sector. This policy is realized through the ASEAN Single Aviation Market (ASAM) framework, which provides broader access for airlines in member countries to operate intra-ASEAN international routes with reduced restrictions on capacity, frequency, and airline designation (Heriyanto & Putro, 2019; Ardhika Putri, Prabandari, & Farida, 2024). In this context, Indonesia has ratified several ASEAN agreements on air transport services to support a more open and competitive regional aviation market.

Normatively, the implementation of this policy cannot be separated from the international legal regime governing civil aviation, particularly the principle of state sovereignty over airspace as affirmed in the Chicago Convention. Within this framework, granting freedom of the air to other states is essentially the result of a voluntary bilateral or multilateral agreement. Therefore, Indonesia's participation in the ASEAN Open Skies Agreement must be understood as a form of exercising state sovereignty through an international agreement, not as a reduction of sovereignty itself (Kusumaningrum, 2017).

In practice, the implementation of the Open Skies policy in Indonesia is gradual and selective. The Indonesian government does not immediately open all airports to foreign airlines, but rather designates certain airports as designated airports within the ASEAN aviation liberalization scheme. This policy reflects a cautious liberalization approach, namely an effort to open markets on a limited basis while maintaining national interests, particularly in protecting the domestic aviation industry and maintaining market stability (Senoaji & Setiyawan, 2021).

From an economic perspective, the implementation of the ASEAN Open Skies Agreement provides several strategic benefits for Indonesia. Improved air connectivity between ASEAN countries contributes to the growth of the tourism, trade, and investment sectors. Studies show that air transport liberalization in the ASEAN region can significantly increase the mobility of people and goods, ultimately driving regional economic growth (Permana, Hoen, & Holzhacker, 2020; Law & Katekaew, 2022). Furthermore, increased connectivity also has the potential to strengthen Indonesia's position as an air transport hub in Southeast Asia.

The implementation of this policy also presents various challenges. One of the main challenges is the growing competition between national and foreign airlines, particularly as foreign airlines often have stronger financial resources, more advanced technology, and better management systems. This situation has the potential to weaken the competitiveness of the national aviation industry if not balanced with adequate protection and strengthening policies (Wahjoe, Heniarti, & Puspawati, 2019). In addition, liberalizing the aviation market may lead to unequal access across regions, as commercially profitable routes become more appealing than pioneering routes that hold social significance despite their lower economic value.

On the other hand, the implementation of Open Skies also requires national regulatory readiness to address the dynamics of the regional aviation market. Harmonizing national regulations with international commitments is crucial to avoid normative conflicts and ensure legal certainty. Research shows that challenges remain in aligning Indonesian aviation regulations with the ASEAN policy framework, both in terms of substance and implementation (Anugrah, Ruhaeni, Imaniyati, & Suparman, 2025). Therefore, a reformulation of legal policies that is adaptive and responsive to developments in regional integration is needed.

Consequently, the implementation of the ASEAN Open Skies Agreement in Indonesia can be seen as a process that encompasses not only economic aspects but also legal, political, and sovereignty considerations. This policy presents substantial opportunities for enhanced connectivity and economic growth; however, it also necessitates the development of effective legal and policy strategies to strike a balance between market liberalization and the protection of national interests.

Implications of the ASEAN Open Sky Agreement on National Economic Interests, Airspace Sovereignty, and the Cabotage Principle

The implementation of the ASEAN Open Skies Agreement has multidimensional implications for Indonesia, not only in economic terms but also in terms of state sovereignty and the protection of national interests through the Cabotage principle. Within the framework of ASEAN regional integration, air transport liberalization catalyzes increased connectivity, logistical efficiency, and the mobility of people and goods, which directly impact the growth of the national tourism, trade, and investment sectors (Permana, Hoen, & Holzhacker, 2020; Ardhika Putri, Prabandari, & Farida, 2024).

Enhanced air connectivity within ASEAN has increased international tourist arrivals to Indonesia by providing more direct routes, increasing flight frequency, and fostering more competitive pricing. This situation strengthens the role of air transport as strategic infrastructure in regional economic integration and national development, as emphasized by Law and Katekaew (2022). Furthermore, aviation liberalization has accelerated the flow of goods and services across borders, thereby expanding market access for national businesses and enhancing Indonesia's economic competitiveness regionally.

These economic benefits cannot be separated from the legal consequences related to airspace sovereignty. From an international legal perspective, every country has full and exclusive sovereignty over the airspace above its territory, as affirmed in Article 1 of the Chicago Convention. Therefore, granting freedom of the air to other countries within the framework of the ASEAN Open Skies Agreement must be understood as an exercise of state sovereignty through international agreement, not as a reduction or elimination of that sovereignty itself (Kusumaningrum, 2017).

For Indonesia, as an archipelagic nation, airspace sovereignty has a strategic dimension encompassing aspects of defense, security, regional integration, and control of national airspace. Aviation liberalization increases the intensity of international air traffic and can put pressure on airspace management capacity, particularly when infrastructure, navigation systems, and oversight remain inadequate. Therefore, open access to aviation must be accompanied by strengthened regulations and institutions to ensure that airspace management remains under state control (Agustini, Kareng, & Victoria, 2021).

In this context, the principle of cabotage plays a strategic legal role in balancing international aviation liberalization with the protection of national interests. The Cabotage principle limits domestic transportation activities to national businesses or entities subject to national law, thus ensuring that domestic market control remains within the state's control. The ASEAN Open Skies Policy essentially excludes the granting of cabotage rights, so liberalization applies only to international routes between ASEAN member states.

The Cabotage principle serves as a protective mechanism for the national aviation industry to prevent it from being eroded by the dominance of foreign airlines with superior capital, technology, and global networks. In an increasingly open market, an imbalance in competitive capacity can cause national airlines to lose market share if not protected by adequate policies (Wahjoe, Heniarti, & Puspawati, 2019). Therefore, the implementation of cabotage is crucial for creating a level playing field while safeguarding the country's economic sovereignty.

Aviation liberalization also encourages foreign investment and strategic cooperation in the aviation sector, which has the potential to improve service quality, operational efficiency, and technology and management transfer (Christiawan, Zuan, Jusoh, & Nugraha, 2024). Therefore, the Cabotage principle cannot be understood as an absolute barrier to liberalization, but rather as a safeguard instrument in a selective and measured process of regional economic integration.

Beyond competition issues, the implementation of the ASEAN Open Skies Agreement also poses challenges in the equitable distribution of economic benefits and sustainable development. Airlines tend to prioritize commercially profitable routes, while pioneering routes with high social value are potentially neglected. Yet, for Indonesia, domestic air connectivity plays a vital role in supporting regional integration and equitable national development (Senoaji & Setiyawan, 2021). Furthermore, increased aviation activity also has implications for the environment and sustainability, necessitating a balance between economic growth and environmental protection (Nugraha, 2018; Mahoro, 2019).

The impact of the ASEAN Open Skies Agreement on Indonesia should not be examined in isolation; rather, it should be understood in a broader context that encompasses national economic interests, airspace sovereignty, and the application of the cabotage principle. Aviation liberalization creates opportunities for economic growth and improved connectivity, but it also requires stronger legal instruments and policies to protect national sovereignty and support the sustainability of the domestic aviation industry. Achieving a balance between market openness and national interests is therefore essential in implementing the Open Skies policy in Indonesia.

Legal Harmonization Model in the Implementation of the ASEAN Open Sky Agreement in Indonesia

The implementation of the ASEAN Open Skies Agreement in Indonesia requires legal harmonization that balances commitments to regional integration and the protection of national interests. Legal harmonization, in this context, refers not only to the adjustment of national laws and regulations to comply with international agreements but also involves systematic efforts to align principles of state sovereignty, economic interests, and international obligations within a coherent policy framework.

Normatively, Indonesia has a strong legal basis for this harmonization. As a sovereign nation, Indonesia adheres to the principle of airspace sovereignty as stipulated in the Chicago Convention and is also bound by international commitments as a consequence of participation in ASEAN regional cooperation. Therefore, legal harmonization must be carried out with an approach that is not only adaptive but also selective and strategic.

In practice, the main challenge to legal harmonization lies in the potential conflict between aviation liberalization norms and protective national policies, such as the cabotage principle. Research shows that the implementation of the Open Skies policy in Indonesia still faces obstacles in aligning national regulations with the ASEAN legal framework, both in terms of substance and implementation (Anugrah, Ruhaeni, Imaniyati, & Suparman, 2025). This indicates that legal harmonization is not yet fully optimal and still requires strengthening in various aspects.

To address this challenge, a comprehensive legal harmonization model is needed. Firstly, vertical harmonization, namely the alignment of national laws and regulations with ratified international agreements. Therefore, Law Number 1 of 2009 on Aviation should be continuously revised to keep pace with developments in ASEAN policies and International Civil Aviation Organization standards, particularly in relation to aviation safety, security, and efficiency (Agustini, Kareng, & Victoria, 2021).

Secondly, horizontal harmonization refers to aligning national regulations in the aviation sector, investment, trade, and business competition. It is crucial to avoid overlapping policies and create legal certainty for businesses in the aviation sector. In this context, liberalization policies must be integrated with national industrial policies to avoid contradictions in their implementation.

Third, substantive harmonization, namely, strengthening legal norms that accommodate national interests without violating international commitments. In this regard, the Cabotage principle must be maintained as an instrument for protecting the domestic market, while international market access can be selectively opened through the freedom of the air mechanism. This approach reflects a selective liberalization strategy, namely, opening markets on a limited basis while maintaining state control over strategic sectors.

Fourth, institutional harmonization, namely, strengthening the capacity of government institutions to manage airspace and oversee the implementation of the Open Skies policy. This includes improving the quality of regulations, oversight of foreign airlines, and strengthening coordination between relevant agencies. Without strong institutional support, legal harmonization will not be effective in practice.

The legal harmonization model must also consider the sustainability and global development of the aviation industry. The increase in air traffic resulting from liberalization must be balanced with policies that address environmental impacts and international safety standards (Mahoro, 2019; Nugraha, 2018). Legal harmonization is oriented not only toward short-term economic interests but also toward long-term sustainability.

The legal harmonization model for implementing the ASEAN Open Skies Agreement in Indonesia must be developed through a multidimensional approach encompassing vertical, horizontal, substantive, and institutional harmonization. This model will enable Indonesia to maintain its sovereignty over airspace and protect its national interests, while fulfilling its commitments as part of ASEAN regional integration. Ultimately, effective legal harmonization will be key to ensuring that aviation liberalization provides optimal benefits for Indonesia without compromising national sovereignty and stability.

CONCLUSION

The implementation of the ASEAN Open Skies Agreement in Indonesia demonstrates the country's active participation in ASEAN regional economic integration, aimed at improving connectivity and national economic growth. Normatively, this policy does not eliminate state sovereignty over airspace, as affirmed in the Chicago Convention, but rather represents the exercise of sovereignty through a legitimate international agreement. Aviation liberalization provides significant economic benefits, particularly in boosting tourism, trade, and investment, but also presents challenges in the form of increased competition with foreign airlines, potential unequal access between regions, and risks to the sustainability of the national aviation industry.

The cabotage principle retains a strategic role as a legal instrument to protect the domestic market and safeguard the country's economic sovereignty, while also establishing a clear boundary between international aviation liberalization and control of domestic air transport. Legal harmonization is key to balancing national economic interests, airspace sovereignty, and ASEAN regional commitments. The government needs to formulate an adaptive and selective aviation policy by strengthening national regulations, protecting the domestic industry, and optimizing its role in ASEAN regional cooperation. This approach will enable Indonesia to optimally benefit from aviation liberalization without compromising national sovereignty and the long-term stability of the national aviation sector.

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