

Authority of Military Police of the Indonesian Air Force in Handling National Airspace Boundaries

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Abstract

This research aims to describe and analyze the authority of the Military Police of the Indonesian Air Force in handling national airspace boundaries.

The method applied in this research is a qualitative method. The data used in this research are primary and secondary data. The data collection techniques are carried out by in-depth interviews, literature studies and documentation studies. The data analysis used the interactive data analysis techniques of Miles and Huberman which consist of data reduction, data presentation, and ended with conclusion drawing/ verification.

The findings show that in dealing with national airspace boundaries, the Military Police of the Indonesian Air Force only has the authority to carry out preliminary investigations against parties who violate national airspace boundaries. Furthermore, after carrying out the initial investigation, the Military Police of the Indonesian Air Force hand over the cases to the Civil Servant Investigators which are legally given the authority to carry out investigations against parties who committed violations of national airspace. The limited authority of the Military Police of the Indonesian Air Force, in dealing with national airspace violations, is because up to now, Indonesia has not had laws that regulate the management of airspace and regulate those who have the authority to investigate any violations in national airspace boundaries.

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Introduction

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Indonesia is the largest archipelagic state in the world. Regionally, Indonesia has an area of national jurisdiction of ± 7.8 million km² in which two thirds of its territory is the sea of ± 5.9 million km², which covers the Indonesian Exclusive Economic Zone (ZEEI) covering ± 2.7 million km² and territorial sea, archipelagic waters, as well as inland waters covering ± 3.2 million km². In addition, Indonesia has a coastline length of $\pm 81,000$ km² and has 17,499 islands consisting of 5,698 named islands and 11,801 unnamed islands. The status of Indonesia as an archipelago is obtained through a long struggle for diplomacy, and this status has been recognized worldwide since the International Sea Law or the United Nations Convention on the Law of the Sea 1982 (UNCLOS 1982). Indonesia has ratified the convention by issuing Republic of Indonesia Law number 17 of 1985. As a consequence of these rules, the territory of Indonesian national jurisdiction must be seen as a unified territory (space) of round and intact land, sea and air space¹.

By the existence of this law, the Indonesian state has the authority to control the airspace above its territory. Foreign aircraft, civilian or military aircrafts, do not have the right to enter the airspace or land without Indonesian approval. Therefore, if there are foreign aircraft passing without permission, this is a violation, and Indonesia has the right to take action. Based on data held by the National Air Defense Command of Intelligence Staff, from 2014 to 2018, there have been 322 violations of national airspace; both carried out by civil aircraft and military aircraft in various regions in Indonesia.

The Indonesian Air Force, as one of the components of the Indonesian National Armed Forces, has the main task of maintaining air security including the enforcement of laws in accordance with the applicable international law and national law. The Air Force Unit which has duties and responsibilities in enforcing the law is the Military Police. The Military Police Unit is the executor of military air-based operations in carrying out physical investigations and security activities, investigations, maintaining the order of the military airbase and areas used by the Air Force; including handling investigations against parties who violate national airspace boundaries.

The authority currently possessed by the Military Police of the Indonesian Air Force in enforcing the law against violators of airspace is only limited to carrying out preliminary investigations against parties who violate national airspace boundaries. After conducting preliminary investigations, all data resulting from the investigation carried out by the Military Police of the Indonesian Air Force are subsequently submitted to the Ministry of Transportation based on the Government Regulation of the Republic of Indonesia number 4 of 2018 concerning Safeguarding the Air Territory of the Republic of Indonesia in giving the authority to handle violations of national airspace boundaries.

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Furthermore, the Ministry of Transportation will order the Civil Servant Investigators to follow up by carrying out investigations against perpetrators of violations of the airspace. Based on the Government Regulation of the Republic of Indonesia number 43 of 2012 concerning Procedures for Implementation of Coordination, Supervision, and Technical Guidance on Special Police, Civil Servant Investigators, and Forms of Personal Security, Civil Servant Investigators are investigators from Civil Servant that investigate certain crimes. The criminal act is generally not a common crime that is usually handled by police investigators. One of them is investigating violations of national airspace.

However, current law enforcement against violations of national airspace boundaries is considered not optimal. It can be seen from the administrative sanctions imposed on the perpetrators of airspace violations which are considered to be out of balance with the expenses that must be incurred by the Indonesian Air Force to carry out the force-down action. For example, it takes 400 million funds for Sukhoi fighter to fly for an hour to carry out the force-down action. Then, after successfully being forced to land, foreign aircraft that violated airspace limits are only required to pay a fine of IDR 60 million².

Many factors can be the cause of weak law enforcement or sanctions against perpetrators of violations of national airspace boundaries. One of them could be due to the very limited authority possessed by the Indonesian Air Force, especially the Military Police of the Indonesian Air Force, in conducting investigations into perpetrators of national airspace boundary violations.

Literature Review

National Security

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According to Darmono et al.³, national security is generally defined as a basic need to protect and safeguard the national interests of a nation that is a state by using political, economic and military power to deal with various threats coming from outside and within the country. National interests then become the dominant factor in the concept of national security of a nation. National security can also be interpreted as the need to maintain and preserve the existence of the state through economic, military and political forces and the development of diplomacy. This concept emphasizes the government's ability to protect the country's territorial integrity from threats coming from outside and within the country.

Airspace Security

Risdiarto⁴ explains the definition of airspace security as the ability to protect what is determined as a core value, whose achievement is a process that continues to take place using various elements and available resources. The potential of national airspace security is the aerospace power which is basically used for defense purposes in the airspace area. For Indonesia, airspace is an integral part and one of the dimensions of the area and interests of the Indonesian nation and state's life that can be utilized to realize national goals that do not ignore its conservation efforts.

Furthermore, Hambali⁵ explains that the national airspace boundaries of a country including Indonesian airspace are completely closed to foreign aircraft; civilian and military. This characteristic can be understood considering that airspace as a space for movement is very vulnerable in terms of a country's defense and security. It is because of the attacks using aircraft have more advantages and convenience, such as being faster, having a wider range, being able to attack suddenly, and being able to infiltrate optimally.

Airspace Law

Airspace Law is a law that regulates the use of airspace, especially regarding aviation and the use of airplanes whose role is a necessary element for aviation⁶.

At the end of World War I, in safeguarding the framework of international interests and order, international agreements regarding

aviation were made at the Paris Convention of 1919. The conference specifically regulated the procedure, status, world airspace using the Paris protocol wherein then on 1 May 1920 and on 15 June 1929, it was renewed. In the Paris Convention 1919 article 1, it affirmed the sovereignty of airspace over the countries participating in the convention. This convention gave rise to the principle that airspace follows the legal status of a country where airspace is in charge of land and sea in its territory^{7,8}.

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In the 1944 Chicago Convention, it was explained that state aircraft and also the military did not have the right to fly over other countries without granting special rights from the concerned country. The convention also explains the obligations of the state which must provide equal and non-discriminatory treatment with respect to other countries using their airspace⁷.

In international flights, violations often occur either by civilian or military aircraft. The country that experienced the violation has the right to take action by arresting the aircraft that committed the violation. However, when it comes to civil aircraft, countries that are violated by their territorial boundaries must take action that does not endanger the lives of the passengers on the plane^{7,9}.

Authority

Authority is called formal power, i.e., the power that comes from the power granted by the law. Meanwhile, the authority is only about the authority of "Onderdeel" (rechtsbevoegdheden). Authority is the scope of public legal action and the scope of governmental authority which does not only include the authority to make government decisions (bestuur), but includes authority in carrying out tasks, and authorizes and distributes the main authority stipulated in the Law¹⁰.

Philipus M. Hadjon states that the authority is obtained through three sources, i.e., attribution, delegation, and mandate. Attribution authority is usually outlined through the distribution of state power by the constitution, while the authority of delegation and mandate is the authority that comes from the delegation. In addition, Philipus M. Hadjon makes a difference between delegation and mandate. In the case of delegation, the procedure of delegation comes from a governmental organ to other governmental organs with legislation, responsibility and accountability transferred to the recipient of the delegation. The delegate cannot use that authority anymore, except after

revocation by holding the “*contrarius actus*” principle. It means that every change and revocation of regulation on the implementation of legislation is carried out by officials who set the rules in question and is carried out with equal or higher rules. In the case of mandate, the procedure of delegation is in the context of routine subordinate-supervisor relationships. The responsibility and accountability remain with the mandate provider. At any time, the creditor can use the delegated authority¹¹.

Research Method

The research method is a qualitative method. Creswell¹² explains that qualitative research is a method for exploring and understanding meanings which—by a number of individuals or groups of people—are thought to originate from social or humanitarian problems. This qualitative research process involves important efforts, such as asking questions and procedures, collecting specific data from participants, analyzing data inductively from themes that are specific to general themes, and interpreting the meaning of data. The final reports for this research have a flexible structure or framework. Anyone involved in this form of research must apply a research perspective that is inductive in style, focus on individual meaning, and translate the complexity of a problem.

By using qualitative methods, the author tries to analyze in depth the authority of the Military Police of the Indonesian Air Force in handling national airspace boundaries by using various data sources and data collection techniques.

The data used in this research are primary and secondary data. The data collection technique used in this research is in-depth interviews, literature studies, and document studies. Determination of resource persons is carried out by using purposive sampling technique in which researchers choose research resource persons with considerations that are adjusted to the research objectives. These considerations include:

1. Current duties and positions best understand and are related to the research topics.
2. Having an assignment experience related to an investigation carried out by the Military Police of the Indonesian Air Force against national airspace boundaries.
3. Understanding the problems in handling violations of national airspace boundaries.

The data analysis technique used by researchers in this research is an interactive data analysis technique in which the analysis consists of three activities that occur simultaneously namely data reduction, data presentation, and conclusion drawing/ verification. For the validity of the data in this research, the researcher uses a triangulation technique to the source and theory.

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Findings and Discussion

Research Findings

Violations of airspace boundaries in Indonesia have often occurred, and it continues to occur until now. Based on data held by the National Air Defense Command of Intelligence Staff, there have been quite a number of airspace boundary violations from 2015 to 2018; done by civil aircraft or military aircraft. For more information, the number of violations can be seen in the following table.

No.	States	Military	Civil	Total
1.	USA	50	30	80
2.	Malaysia	29	11	40
3.	Australia	1	1	2
4.	Singapore	11	0	11
5.	Brunei	0	5	5
6.	Canada	0	1	1
7.	China	0	1	1
8.	Indonesia	0	2	2
1	2	3	4	5
9.	United Kingdom	0	1	1
10.	Japan	1	1	2
11.	Papua New Guinea	1	0	1
12.	Oman	1	0	1
13.	Germany	0	2	2
14.	France	0	2	2
15.	Lasa X	0	42	42
Total				193

Table 1 – Number of State Violations in 2015

No.	States	Military	Civil	Total
1.	USA	5	2	7
2.	Malaysia	2	3	5
3.	Australia	-	4	4
4.	China	-	2	2
5.	Indonesia	-	21	21
6.	The United Kingdom	-	1	1
7.	Qatar	-	2	2
8.	San Marino	-	1	1
9.	Arab	-	1	1
10.	Ireland	-	1	1
11.	The Cayman Islands	-	1	1
12.	Lasa X	-	-	3
Total				49

Table 2 – Number of State Violations in 2016

No.	States	Military	Civil	Total
1.	USA	4	2	6
2.	Germany	-	2	2
3.	South Korea	10	-	1
4.	Lasa X	-	-	
Total				49

Table 3 – Number of State Violations in 2017

No.	States	Military	Civil	Total
1.	Nil	Nil	Nil	1
2.	USA	3	-	3
3.	Australia	-	1	1
4.	China	-	1	1
5.	Rep. of Azerbaijan	-	1	1
Total				7

Table 4 – Number of State Violations in 2018

The Indonesian Air Force as the state's sovereignty of the airspace and an integral part of the Indonesian National Armed Force has the duty and responsibility to maintain air sovereignty by maintaining the integrity of the Unitary Republic of Indonesia in accordance with ratified international and national law. The Indonesian Air Force Unit which has the task of carrying out law enforcement against every territorial violation is the Military Police Unit. The Military Police Unit of the Indonesian Air Force is the implementing element of the military airbase commander in securing military air equipment, order, and investigation. The law enforcement carried out by the Military Police of the Indonesian Air Force is a process that is carried out in an effort to enforce the law, including in violations of airspace boundaries.

Based on the documentation studies, in carrying out law enforcement against violations of the National Airspace, the Military Police Unit of the Indonesian Air Force refers to the system that has been stipulated in the Government Regulation of the Republic of Indonesia number 4 of 2018 concerning Safeguarding the Air Territory of the Republic of Indonesia. In Government Regulation no. 4 of 2018, article 2 states that securing airspace is realized through:

- a. Determination of the status of airspace.
- b. Arrangement regarding the form of violation in the sovereignty territory.
- c. Implementation of actions against aircraft and aircraft personnel.
- d. Instructions and procedures for the implementation of coercion by state aircraft.

Furthermore, Article 10 describes the violation of sovereignty territory which consists of:

1. Foreign national aircrafts flying to and from or through the airspace must have diplomatic clearance and security clearance.
2. Foreign non-scheduled civil aircrafts flying to and from or through the airspace must have diplomatic clearance, security clearance, and flight approval.
3. Aircraft as referred to in paragraph (1) and paragraph (2) that fly without a license are considered as violations.

Those who commit violations—in article 13—are explained to get the following sanctions:

1. Administrative sanctions as referred to in paragraph (1) in the form of:

- a. Written warning;
 - b. Certificate freezing; and
 - c. Certificate revocation.
2. The imposition of administrative sanctions as referred to in paragraph (2) shall be carried out by the minister who organizes government affairs in the transportation sector in accordance with the authority.
 3. Further provisions regarding the procedure for imposing administrative sanctions as referred to in paragraph (1) and paragraph (2) shall be regulated by the regulation of the minister who organizes governmental affairs in transportation.

For foreign aircraft that have committed a violation, enforcement is carried out as described in article 11 as follows:

1. An aircraft that commits a violation as referred to in article 10 paragraph (3), article 12 paragraph (4), article 18, article 23, article 24, article 25, and article 26 paragraph (3) is carried out by visual recognition, visualization, cancellation, and/or coercion landing by the aircraft of Indonesian National Armed Force.
2. Indonesian civil aircraft and foreign civil aircraft controlled under the law and controlled by terrorists that threaten the central government, economic center, vital national objects, and state safety are carried out in accordance with the provisions of the legislation.
3. Foreign aircraft that are armed and reconnaissance aircraft from foreign countries that threaten the center of government, economic centers, vital national objects, and state safety are carried out by the use of weapons.
4. Unmanned aircraft that violate the provisions of prohibited areas and restricted areas as referred to in Article 6 paragraph (1) letter a and letter b shall take the final action in accordance with the provisions of the legislation.

The enforcement of foreign aircraft carrying out violations is explained in article 28 as follows:

1. Foreign aircrafts flying on the air defense identification zone (ADIZ) in the airspace by not having diplomatic clearance and security clearance as referred to in article 10 shall be carried out obstruction and coercion to land by the aircraft of Indonesian National Armed Force.

2. Non-scheduled foreign civil aircraft flying in the air defense identification zone (ADIZ) in the airspace by not having diplomatic clearance, security clearance, and flight approval as referred to in article 10, an act of obstruction and coercion is carried out by the aircraft of the Indonesian National Armed Force.

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Furthermore, an explanation of the investigation of an aircraft that commits the violations is described in article 30 as follows.

1. The aircrafts forced to land by the aircraft of the Indonesian National Armed Force are subject to preliminary investigations by the Indonesian National Armed Force in the form of:
 - a. Document checking.
 - b. Aircraft Inspection.
 - c. Inspection of flight and passenger crew.
2. If there is a violation of the law and an indication of a crime in the initial investigation as referred to in paragraph (1), aircraft personnel are processed in accordance with the provisions of the law.

By referring to these regulations, the Military Police of the Indonesian Air Force has the authority to carry out investigations into violations of national airspace boundaries. However, until now the authority possessed by the Military Police of the Indonesian Air Force is only to conduct initial investigations on parties who violate national airspace boundaries.

The head of the aeronautical law sub-department, in an interview with researchers, revealed that the Military Police of the Indonesian Air Force has not been able to play an optimal role in conducting investigations into all forms of national airspace boundaries. The Military Police of the Indonesian Air Force only has the authority to conduct preliminary investigations on any air violations. After that, the process is continued in accordance with the applicable rules or laws. The limited authority of the Military Police of the Indonesian Air Force in conducting investigations into violations of airspace boundaries is because there is no law that covers them up to now. Meanwhile, in carrying out an investigation into a violation including violations of national airspace boundaries, it must be protected or based on the law.

Furthermore, the head of the aeronautical law sub-department revealed that the problems in the management of airspace including those which caused the limited authority of the Military Police of the

Indonesian Air Force to carry out investigations into national airspace boundaries are because Indonesia does not yet have laws regulating airspace management. The existing aviation law only regulates flights and does not regulate the use of airspace. Thus, Indonesia needs an airspace management law. It covers the management of airspace so that foreign parties who will enter or pass through Indonesian airspace must have clearance as regulated in the law. The law must be regulated on how to use it. Once the law exists and regulates all clearance in passing the Indonesian airspace boundaries, if a foreign aircraft passes and does not have a clearance, it can be considered that it has committed a violation.

The head of the aeronautical law sub-department also added that law enforcement in the air must be further clarified; starting with investigations because those who carried out the arrests are apparatus, not law enforcement. Meanwhile, talking about the next process, law enforcement after an arrest is an investigation. However, it is very unfortunate that currently in Indonesia airspace violations are not criminal acts, in accordance with the new law that airspace violations are operational problems. Therefore, Indonesia must clarify more about the investigator in which it should be prosecuted. All of this should be regulated in the airspace management law. Since Indonesia only has a Presidential Regulation, the authority of the Indonesian Air Force is very limited.

The same thing was also conveyed by the Commander of the Military Police Center of the Indonesian Air Force that currently what must be clarified is about the category of airspace boundary violations whether it can continue towards criminal or still blurred. If an aircraft enters Indonesian territory without permission, it could be considered to be a violation. To be declared whether or not it is a criminal act, an action including an investigation is necessary. However, entering Indonesian territory is already considered as a violation and a criminal offense.

The same thing was also revealed by the staff of Civil Servant Investigators that national airspace violations in the current law are not criminal acts. Therefore, so far it has only been subjected to administrative sanctions rather than criminal sanctions. To determine the amount of the administrative sanctions, the Civil Servant Investigators continue to conduct investigations but not a real investigation because the real one is usually carried out to determine criminal actions.

Based on the existing law, agencies that have the authority to deal with national airspace boundaries are Civil Servant Investigators. Civil Servant Investigators are investigators who come from civil servants to investigate certain crimes. Commonly, the criminal act is not a common crime that is usually handled by police investigators; one of them is an investigation into violations of national airspace boundaries.

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Procedurally, after the Military Police of the Indonesian Air Force carried out arrests of foreign aircraft that violated national airspace and carried out initial investigations, the next step was to hand over airspace boundary cases to Civil Servant Investigators in accordance with applicable laws.

In an interview with researchers, the Staff of Civil Servant Investigators stated that it would first get a report from the Directorate General of Civil Aviation. After receiving a report from the Directorate General of Civil Aviation, it is immediately responded and identified in accordance with orders from the Directorate General of Civil Aviation and the Directorate General of Aviation Security. After that, the Civil Servants Investigators will observe the field to identify it. After being identified and proven to have violated the next airspace limit, it is subject to administrative sanctions with fines prescribed in the law.

Based on article 11 paragraph 1 of Government Regulation number 4 of 2018, every person who violates the provisions is subject to administrative sanctions in the form of administrative fines of a maximum of IDR 5,000,000,000 (five billion rupiahs).

Coordination between relevant agencies carrying out investigations into national airspace boundaries is very important, especially coordination between the Military Police of Indonesian Air Force and Civil Servant Investigators. However, in fact, at this time, the coordination between the Indonesian Air Force investigators and the Civil Servant Investigators does not exist. According to the staff of Civil Servant Investigators, in an interview with the researchers, the coordination between Civil Servant Investigators and the Military Police of Indonesian Air Force has not been carried out effectively. During this time, the Civil Servant Investigators only receive reports and receive files as the results of an initial investigation conducted by the Military Police of Indonesian Air Force through the Directorate General of Civil Aviation, without direct coordination with the Indonesian Air Force Military Police. Thus, up to this time all the processes, especially the activities of investigation, prosecution, until the determination of sanctions

against those who committed airspace violations have not been carried out optimally.

The Commander of Military Police of Indonesian Air Force, in an interview with the researchers, also stated that so far the Military Police of Indonesian Air Force has never coordinated the problem of handling airspace boundary violations. We make arrests usually through diplomatic relations, and it is not clear whether the mechanism is in accordance with the applicable law or not. To overcome the issue of regional sovereignty, it should not be sectoral ego; all must join and need to be a special team to deal with the problem of airspace boundary violations. All relevant agencies need a special team so that the handling can be carried out optimally.

Discussion

Airspace violations are a condition in which a country's aircraft, a civilian aircraft or a military aircraft, enter the airspace of another country without having permission from the country whose territory is entered. Airspace violations consist of restricted airspace violations, limited airspace violations, violations of air routes over the Indonesian Archipelago Sea Lines, or other violations that could threaten national defense and flight safety.

The Indonesian Air Force, as the enforcer of air sovereignty, has duties and responsibilities in safeguarding the security and defense of national airspace from various threats including national airspace violations by foreign aircraft; military or civilian aircraft. In carrying out each activity and handling all forms of violation of the national airspace, the Indonesian Air Force always conducts its duties based on the existing regulations. In addition, the base of the Indonesian Air Force in dealing with violations of national airspace is Governmental Regulation of the Republic of Indonesia number 4 of 2018 concerning Safeguarding the Air Territory of the Republic of Indonesia. The regulation regulates all mechanisms in dealing with national airspace violation limits.

However, the current problem is that the Military Police of Indonesian Air Force is considered to have no optimal authority in carrying out investigations on parties that violate national airspace boundaries. In the explanation of article 399 paragraph (1) of Law number 1 of 2009 concerning aviation, it is explained that certain civil servant officials, within the agency whose scope of duties and responsibilities are in the

aviation sector, are given special authority as investigators of criminal acts. Meanwhile, in the article (2), it is explained that in carrying out their duties certain civil servant officials as referred to in paragraph (1) are under the coordination and supervision of the Republic of Indonesia State Police investigators.

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The rule shows that the authority of the Military Police of the Indonesian Air Force in dealing with national airspace boundaries is very limited in which the Indonesian Air Force including the Military Police of the Indonesian Air Force has only carried out activities in the form of security for flight crew and military equipment and interrogation activities and search activities. Meanwhile, the investigation activities are only in the form of preliminary investigations which are then submitted to the Director General of Civil Aviation, which is then forwarded to the Civil Servant Investigators.

Based on the findings of the research, the main problem causing the limited authority of the Military Police of the Indonesian Air Force is because there is no law that regulates this matter so that until now the Indonesian Air Force only has a role as a means of arresting up to conducting initial investigations that further investigation activities are carried out by Civil Servant Investigators.

Therefore, to further enhance the role of the Military Police of the Indonesian Air Force, the Indonesian Government should make laws that regulate the management of airspace boundaries and anyone who has the authority to investigate any violations of national airspace. If it is not possible, the Indonesian government can synergize with the relevant agencies, for example by creating a special team and involving the Military Police of the Indonesian Air Force so that the role of the Military Police of the Indonesian Air Force in conducting investigations on those who violate national airspace can be optimized.

Conclusion

Based on the findings and discussion of the research, it can be concluded that in dealing with national airspace boundaries, the Military Police of the Indonesian Air Force only has the authority to carry out initial investigations on parties that violate national airspace boundaries. Subsequently, after carrying out the initial investigation, the Military Police of the Indonesian Air Force hand over of the case to the Civil Servant Investigators who are legally given the authority to carry out investigations against parties who committed violations of nation-

al airspace. The reason for the limited authority of the Indonesian Air Force Military Police in dealing with national airspace violations is because up to now Indonesia has not had laws that regulate the management of airspace and the authority to investigate any violations of the national airspace boundaries.

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