

The Dilemma of State Air Sovereignty: Reconstructing International Air Law in the Implementation of the ASEAN Open Skies Policy

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Abstract. *The ASEAN Open Skies Policy aims to create a single aviation market, yet it presents a dilemma for Indonesia regarding the protection of absolute airspace sovereignty. This study aims to analyze the normative conflict arising from aviation liberalization and to formulate an adaptive legal reconstruction for Indonesia. A normative-juridical research method was employed, utilizing statutory, conceptual, and comparative approaches specifically comparing the models of Singapore and Malaysia. The findings indicate that the implementation of this regional policy reinforced by Presidential Regulation Number 100 of 2025 threatens to erode domestic economic jurisdiction due to market reciprocity imbalances. A normative conflict exists between the protectionist 1944 Chicago Convention and ASEAN instruments that mandate openness regarding fifth-freedom rights. As a solution, this study proposes a novel "Targeted Functional Sovereignty" model. This model reconstructs the legal framework through three pillars: the establishment of an Independent Aviation Economic Authority (IAEC), the implementation of strategic airspace zoning, and the codification of an automatic safeguard mechanism triggered by a critical market threshold of 55%. In conclusion, through this reconstruction, Indonesia can fulfill its regional commitments in an offensive-adaptive manner without compromising its national aerospace jurisdiction.*

Keywords: *Automatic Safeguard; ASEAN Open Skies; Functional Sovereignty; Legal Reconstruction.*

1. Introduction

Airspace sovereignty is a fundamental manifestation of the existence and supreme jurisdiction of a sovereign state. Historically, this principle was crystallized in Article 1 of the 1944 Chicago Convention, which affirms that every state possesses complete and exclusive sovereignty over the airspace above its land territory and territorial waters (Barus et al., 2014). Airspace serves not only

as a geographic boundary for defense and security but also as a high-value strategic economic asset. For Indonesia the world's largest archipelagic state, situated at a highly strategic crossroads the management and protection of domestic airspace are absolute, non-negotiable imperatives for maintaining territorial integrity and ensuring national aviation safety (Risdiarto, 2019).

However, the landscape of international air law has undergone a significant paradigm shift driven by globalization and regional economic integration, specifically through the ASEAN Open Skies Policy. Initiated under the ASEAN Single Aviation Market (ASEAN-SAM) framework, this policy aims to create a unified aviation market in Southeast Asia by liberalizing "freedoms of the air" (Forsyth, 2006). It requires ASEAN member states, including Indonesia, to open their airspace to foreign airlines to enhance connectivity, reduce logistics costs, and spur regional economic growth. Inherently, this integration necessitates the erosion of traditional jurisdictional barriers in the interest of a common market (Permana et al., 2020).

In practice, the policy's effectiveness reveals massive disparities among member states; city-states like Singapore and nations with strong low-cost carriers, such as Malaysia, have proven highly successful in leveraging the ASEAN Open Skies framework. Singapore, through Singapore Airlines and Changi Airport, successfully transformed its limited domestic territory into an extraordinary economic advantage by dominating "fifth freedom rights" and securing its status as a global aviation hub in Southeast Asia (Tham, 2008). Similarly, Malaysia leveraged AirAsia's aggressive expansion to dominate secondary routes across the region. The success of both nations hinged on infrastructure readiness, competitive fleet structures, and flexible, aggressive aviation diplomacy attributes that, in contrast, the Indonesian aviation industry has yet to fully possess (Tan, 2010).

This situation presents a complex legal and sovereignty dilemma for Indonesia. On one hand, Indonesia is committed to market openness, a stance reinforced by recent legal instruments such as Presidential Regulation (Perpres) No. 100 of 2025 regarding the ratification of mutual recognition arrangements for aviation certifications and licenses within ASEAN (Wahyudi et al., 2025). On the other hand, Articles 4 and 90 of Law No. 1 of 2009 on Aviation mandate that the opening of airspace must be conducted gradually, prioritizing national interests based on the principle of strict reciprocity. To curb the penetration of foreign carriers, the government has even restricted regional flight access and imposed strict regulations on the management of international airports through Ministry of Transportation implementing regulations. This regulatory clash reflects an inconsistency between regional legal compliance and the protection of domestic airspace jurisdiction (Sangkay, 2021).

Beyond these normative conflicts, the implementation of these policies has triggered economic disparities that threaten to disadvantage the domestic aviation industry. Indonesia possessing a massive domestic market driven by its large population and vast geographical area has become a prime target market for foreign airlines from Singapore and Malaysia (Lestari, 2015). Conversely, the national airline continues to face challenges such as high operating costs, a limited post-pandemic fleet, and information asymmetry regarding regulations for optimally utilizing the airspace of other ASEAN nations. Market openness lacking balanced reciprocity risks relegating Indonesia to the status of a mere consumer of airspace. This indicates that air liberalization without adaptive legal safeguards could lead to the commercialization of airspace in a manner detrimental to the nation's economic sovereignty (Arsetyo, 2021).

Previous scholarship has categorized research on the impact of the ASEAN Open Skies Policy on state sovereignty into several key clusters. The first cluster, led by economic studies such as those by Raguraman (1997) and *Bunyavejchewin* (2024), intensively analyzes airspace liberalization in terms of passenger volume growth and regional logistics efficiency, demonstrating the success of Singapore and Malaysia in dominating the Southeast Asian aviation market. Meanwhile, the second cluster represented by Kuswardani et al. (2025) and Budiarto et al. (2024) focuses on public policy and the unpreparedness of Indonesia's domestic airport infrastructure to cope with the asymmetry of foreign market penetration. Conversely, traditional air law studies by Prayogi (2017) and Yustitiantingtyas (2019) tend to rigidly uphold the doctrine of absolute sovereignty (complete and exclusive sovereignty) based on Article 1 of the 1944 Chicago Convention and Law Number 1 of 2009. However, this body of literature leaves a significant research gap, as no study has specifically formulated a legal harmonization framework to bridge the normative conflict between absolute state sovereignty and the demands of market liberalization following the enactment of recent regulations, such as Presidential Regulation Number 100 of 2025.

To address this gap, this research offers scientific novelty by introducing the concept of "Functional Sovereignty" into Indonesian national air law. Unlike previous studies that view sovereignty through a dichotomous lens either outright rejection or full acceptance of liberalization this concept reconstructs the legal framework by distinguishing between territorial sovereignty for security purposes (security sovereignty), which remains absolute, and economic sovereignty, which allows for flexible negotiation. This innovation is realized through the formulation of a safeguard clause model grounded in the principle of strict reciprocity within derivative bilateral agreements. Drawing on a comparative analysis of the successes achieved by Singapore and Malaysia, this legal reconstruction offers an adaptive legal resolution that enables Indonesia to mitigate the risk of eroding its domestic airspace jurisdiction while

simultaneously optimizing the protection of its national economic interests within the region.

This study aims to conduct an in-depth analysis of the normative conflicts regarding state sovereignty arising from aviation liberalization and to formulate an adaptive model of international aviation law reconstruction for Indonesia within the framework of the ASEAN Open Skies Policy. Its practical significance lies in providing an academic foundation for the Ministry of Transportation and policymakers to make informed decisions regarding aviation diplomacy aimed at safeguarding national interests in the regional arena.

2. Research Methods

This study is a doctrinal or normative-juridical legal research project focusing on the analysis of legal principles, the vertical and horizontal synchronization of legislation, and the reconstruction of written legal norms (Soekanto, 2007). The research employs a statute approach to examine domestic and international regulations, a conceptual approach to dissect the doctrines of state sovereignty and functional sovereignty, and a comparative approach to analyze successful aviation regulatory models in Singapore and Malaysia. The study utilizes secondary data comprising three categories of legal materials. Primary legal materials include the 1944 Chicago Convention, the ASEAN Open Skies agreements, Law Number 1 of 2009 concerning Aviation, and Presidential Regulation Number 100 of 2025. Secondary legal materials encompass air law textbooks, reputable scholarly journals, conference proceedings, and relevant prior research reports. Meanwhile, tertiary legal materials such as legal dictionaries and encyclopedias are used to provide guidance and explanations regarding the primary and secondary materials (Rosidi et al., 2024).

Legal materials were gathered through structured and systematic library research. The search and inventory process involved both digital and conventional methods, utilizing national and international scholarly journal databases, government legal repositories, and official documents from the ASEAN Secretariat and the Ministry of Transportation of the Republic of Indonesia. The collected materials underwent rigorous selection using documentation methods to ensure their relevance, validity, and currency regarding the issues of air sovereignty reconstruction and the implementation of ASEAN Open Skies policies. Through this technique, all secondary data is categorized into clusters of legal issues specifically, the conflict between international and national norms, regional comparative studies, and the formulation of safeguard clauses thereby preparing the material for the classification and in-depth analysis stages.

The classified legal materials are subsequently analyzed qualitatively using descriptive-analytical methods and legal interpretation. The legal reasoning

process in this study employs a syllogistic method based on deductive logic, drawing conclusions from general premises (such as the principle of sovereignty in international air law) to specific premises (such as the implementation of open-skies policies in Indonesia). The analysis involves examining normative consistency and harmonization across regulations, identifying legal voids (*rechtsvacuum*) or conflicts of norms, and comparing regulatory effectiveness among Indonesia, Singapore, and Malaysia. The findings are then used prescriptively to formulate a legal reconstruction concept specifically, a model of functional sovereignty that is both adaptive and solution-oriented aimed at strengthening Indonesia's national aerospace jurisdiction within the regional arena.

3. Results and Discussion

3.1 Sovereignty Dilemma and Normative Conflict between the 1944 Chicago Convention, the Aviation Law, and Presidential Regulation No. 100/2025

The existence of state sovereignty over airspace constitutes one of the most fundamental pillars of modern international law governing territorial jurisdiction. Historically, recognition of this exclusive right emerged in response to the escalating use of aerospace technology for military and commercial purposes during the early 20th century. The primary legal foundation crystallizing this principle is Article 1 of the 1944 Chicago Convention (Chicago Convention on International Civil Aviation). This article explicitly states that every state possesses complete and exclusive sovereignty over the airspace situated above its land territory and territorial waters (De Leon & Buissing, 2019). This norm affirms that no foreign power or foreign aircraft may enter, traverse, or utilize a state's airspace without prior authorization or a bilateral or multilateral agreement.

The doctrine of "complete and exclusive sovereignty" within the 1944 Chicago Convention was formulated based on a rigid philosophy of national defense and security. At the time the convention was drafted, airspace was viewed as the outermost defensive bulwark, highly vulnerable to foreign penetration. Consequently, international law grants the underlying state absolute authority to regulate, restrict, or even prohibit foreign civil aviation activities in the interest of maintaining national stability. This exclusive nature affords the state full jurisdictional rights to enforce its domestic laws within said airspace, free from interference by other subjects of international law, thereby establishing an inviolable boundary of sovereignty. At the domestic level in Indonesia, the mandate of the 1944 Chicago Convention has been rigidly and consistently adopted into the national legal system through Law Number 1 of 2009 concerning Aviation (Kusumaningrum & Putra, 2019). Article 4 of the Law reiterates verbatim that the Republic of Indonesia possesses complete and exclusive sovereignty over the airspace above its territory. The paradigm

embedded in Law No. 1/2009 positions airspace management not merely as an instrument of political sovereignty, but also as a tool for protecting the national economy. The Law is designed to ensure that the utilization of national airspace prioritizes to the greatest extent possible the prosperity of the people and the sustainability of the domestic aviation industry by restricting access for foreign airlines.

However, the rigidity of this absolute sovereignty doctrine began to undergo normative decentralization as the tide of globalization demanded closer economic integration at the regional level, notably through the ASEAN Open Skies Policy. Operating under the umbrella of the ASEAN Single Aviation Market (ASEAN-SAM), this policy introduces a civil aviation liberalization paradigm that stands in stark contrast to the spirit of exclusivity found in the 1944 Chicago Convention. ASEAN Open Skies calls for the removal of restrictions on capacity, frequency, and flight routes between member states to foster market efficiency, reduce logistics costs, and accelerate interconnection across Southeast Asia. Consequently, a shift has occurred from a traditional, protectionist paradigm of air sovereignty toward a fluid and open paradigm of commercial sovereignty (Heriyanto & Putro, 2019).

Indonesia's commitment to this regional aviation liberalization has been further reinforced by the enactment of a new legal instrument: Presidential Regulation (Perpres) Number 100 of 2025 concerning Mutual Recognition Arrangements in the ASEAN Aviation Sector. This Presidential Regulation serves as a regulatory bridge, compelling national aviation authorities to recognize certifications, personnel licenses, and airline operational standards from other ASEAN member states without the need for lengthy bureaucratic processes. On one hand, this move reflects Indonesia's good faith in complying with regional international law. On the other hand, however, the regulation facilitates a normative encroachment that significantly diminishes Indonesia's unilateral control over its domestic airspace.

From a legal theory perspective, the clash between Law No. 1/2009 and Presidential Regulation No. 100/2025 creates a genuine conflict of norms within Indonesia's legislative hierarchy. Law No. 1/2009 represents a national legal stance prioritizing the protection of absolute sovereignty, whereas Presidential Regulation No. 100/2025 serves as an instrument to implement a regional treaty demanding jurisdictional openness. This conflict is not merely technical or operational; it touches upon the philosophical level of how the state defines the boundaries of its jurisdiction in the modern era. The misalignment between the principle of full sovereignty enshrined in the law and the principle of free interconnection found in the presidential regulation creates legal uncertainty for domestic aviation industry players.

The crux of this normative clash lies in the implementation of air traffic rights, specifically "fifth freedom rights." Under ASEAN Open Skies rules, foreign airlines have the right to transport passengers from their home country, land at an Indonesian airport, and continue the flight to a third country while picking up new passengers in Indonesia. Implementing this right inherently erodes national economic sovereignty, as Indonesia's lucrative domestic market is forced to be shared directly with foreign airlines. Meanwhile, Article 90 of Law No. 1/2009 mandates that the granting of traffic rights to foreign parties must be done selectively, prioritizing national air transport interests through the principle of balanced reciprocity.

This clash is further exacerbated by geographic market asymmetry within the ASEAN region. As an archipelagic nation with the largest airspace in Southeast Asia, Indonesia accounts for nearly half of the total regional aviation market. When Indonesia opens its airspace under the regime of Presidential Regulation No. 100/2025, foreign airlines gain access to a vast market. Conversely, when Indonesian airlines exercise the same rights in countries like Singapore or Brunei Darussalam where airspace is extremely limited the resulting economic value of this reciprocity is disproportionate. Normatively, the "equal rights" offered by the ASEAN-SAM framework lead to "unequal outcomes" regarding Indonesia's economic sovereignty.

This legal conflict also creates a dilemma regarding the enforcement of aviation safety and security jurisdiction. Under Law No. 1/2009, the Indonesian government holds full authority to conduct oversight, perform audits, and impose sanctions on any aircraft within its airspace. However, the harmonization and mutual recognition mandated by Presidential Regulation No. 100/2025 require that airworthiness standards and licenses from other ASEAN nations be treated as equivalent. A legal dilemma arises when there are conflicting interpretations of safety standards between Indonesian aviation authorities and the airline's home country. This limitation on domestic oversight authority reflects a relaxation of legal jurisdiction in the interest of upholding regional integration commitments.

In response to these liberalization pressures, the Indonesian government through the Ministry of Transportation has attempted a regulatory maneuver by limiting the number of international airports open to ASEAN routes. This measure serves as a legal counter-measure designed to shield the domestic market from being rapidly eroded by foreign airlines leveraging "beyond rights" (rights to carry traffic beyond the initial destination). However, this policy of restricting and restructuring international airports is frequently viewed by other ASEAN transport ministers as a "disguised restriction" that runs counter to the spirit of the ratified regional aviation liberalization framework.

The dynamics described above reveal that Indonesia is caught in a legal compliance dilemma. If Indonesia rigidly enforces Law No. 1/2009 and restricts airspace access, it risks being accused of violating the "*pacta sunt servanda*" principle of international law, given its ratification of the ASEAN Open Skies agreement. Conversely, if Indonesia fully yields to the tide of liberalization without clear legal boundaries, it would neglect the constitutional mandate enshrined in aviation law to safeguard territorial sovereignty and national economic resilience. This dilemma necessitates a middle ground: a reconstruction of the concept of air law into a more adaptive framework.

To reconcile this normative conflict, the conventional doctrine of international air law which views sovereignty in binary, black-and-white terms must be deconstructed. Rigid approaches positing that sovereignty is either one hundred percent absolute or entirely unrestricted are no longer relevant in today's global economic landscape. Indonesia requires a new legal construct capable of harmonizing regional international commitments without compromising its national jurisdiction. This is where incorporating a new dimension into the interpretation of Article 1 of the 1944 Chicago Convention and Article 4 of Law No. 1/2009 becomes crucial: specifically, by adopting the concept of "functional sovereignty."

The concept of functional sovereignty offers a clear distinction between sovereignty regarding defense and security ("security sovereignty") and sovereignty regarding commercial economics ("economic sovereignty"). Regarding defense and security, Indonesia's sovereignty over its airspace must remain absolute, exclusive, and non-negotiable; the state must retain full control over air traffic management, the enforcement of laws against territorial violations, and the protection of vital installations. However, regarding commercial economics, air sovereignty can be viewed more flexibly as a strategic asset subject to cooperation, exchange, or restriction based on a rational assessment of national interests. Through the lens of functional sovereignty, Indonesia's participation under Presidential Regulation No. 100/2025 is no longer viewed as a surrender or erosion of sovereignty, but rather as an exercise of that very sovereignty to achieve economic objectives. The state does not lose its jurisdiction; instead, it voluntarily chooses to limit the application of that jurisdiction based on international agreements, contingent upon the existence of equivalent reciprocal benefits. Should such reciprocal benefits fail to materialize, or if the domestic industry faces the threat of collapse due to market distortions, the state by virtue of its functional sovereignty retains the authority to revoke or restrict the commercial concessions previously granted.

From a regulatory standpoint, implementing this concept of functional sovereignty requires progressive vertical harmonization between Law No. 1/2009 and Presidential Regulation No. 100/2025. National aviation regulations must be

revised or supplemented with explanatory clauses to clarify that the opening of Indonesian airspace within a regional framework is predicated on the principles of mutual benefit and national economic balance. The Presidential Regulation must not serve as an instrument that undermines the statute; rather, it should be interpreted as a tactical instrument whose implementation remains bound by the framework for protecting national interests as outlined in the law.

Furthermore, Indonesia can strengthen its legal position at the regional level by leveraging normative loopholes found within ASEAN's own legal instruments. ASEAN multilateral agreements generally provide scope for emergency protective measures in the event of severe market imbalances. Indonesia should actively propose and formulate legitimate legal intervention mechanisms within subsidiary agreements; this would ensure that, should foreign airlines from more advanced nations (such as Singapore or Malaysia) engage in market-distorting penetration, Indonesia possesses the international legal legitimacy to impose route quota restrictions in order to safeguard its domestic aviation industry.

3.2 A Comparative Analysis of Aviation Regulation: The Success Models of Singapore and Malaysia as a Basis for Indonesia's Adaptive Regulatory Framework

A comparative study of regulatory models and aviation legal frameworks within ASEAN member states serves as a crucial methodological tool for shaping the direction of aviation law reform in Indonesia. Within the landscape of the ASEAN Open Skies Policy, Singapore and Malaysia have emerged as the two regional powers most successful in transforming market liberalization policies into instruments of national competitive advantage. Their success was not accidental; rather, it was driven by domestic regulatory designs that were highly adaptive, progressive, and harmoniously aligned with regional liberalization agendas. Analyzing how these two neighbors navigated the dichotomy between state sovereignty and free-market principles offers a valuable theoretical and practical roadmap for the modernization of aviation law in Indonesia.

As a city-state lacking a domestic hinterland, Singapore historically occupied a geographically vulnerable position under conventional aviation law. Had Singapore rigidly applied the doctrine of absolute sovereignty as mandated by the 1944 Chicago Convention its aviation industry would have faced total stagnation due to the limited airspace available for exploitation. Recognizing this critical limitation, Singapore's legal and transport authorities revolutionized their paradigm by adopting an aggressive concept of "commercial sovereignty." Singapore viewed airspace not as a physical defensive barrier necessitating isolation, but as a global network node that required maximum opening through international legal instruments to attract the flow of capital, goods, and people (Lestari, 2017).

The juridical manifestation of this strategy is evident in the Air Services Agreements (ASA) pioneered by Singapore. The Civil Aviation Authority of Singapore (CAAS) actively concluded liberal air service agreements with hundreds of nations initiatives undertaken long before the formal inauguration of the ASEAN Open Skies scheme. In terms of regulation, Singapore relaxed restrictions regarding Third, Fourth, and Fifth Freedom traffic rights for foreign airlines wishing to land at Changi Airport. This regulatory easing was not granted without a quid pro quo; Singapore leveraged the principle of global reciprocity to secure flight rights for Singapore Airlines (SIA) to major global economic hubs, enabling SIA to operate as a global carrier dominating long-haul international routes (Chin, 2001).

Beyond the liberalization of traffic rights, the strength of Singapore's legal model lies in the synchronization of commercial law, corporate law, and aviation safety regulations. Through transparent and accountable corporate governance, the Singaporean government separated the role of the Civil Aviation Authority of Singapore (CAAS) acting solely as a regulator from the commercial operations of Changi Airport Group (CAG) and Singapore Airlines. This clear separation of jurisdictions prevented the regulatory conflicts of interest that often hinder bureaucratic efficiency in developing nations. This stable legal framework fostered a high degree of legal certainty, which in turn attracted global airlines to establish Changi as their primary operational hub in Southeast Asia.

Meanwhile, Malaysia offers a different yet equally impressive model of success, particularly through the expansion of the low-cost carrier (LCC) industry. Malaysia's success hinged on the bold decision to overhaul domestic aviation regulations to facilitate the new business model pioneered by AirAsia in the early 2000s. The Malaysian Ministry of Transport and the Malaysian Aviation Commission (MAVCOM) progressively deregulated minimum fare limits, flight frequencies, and the allocation of both domestic and international routes. These regulatory reforms granted private airlines exceptional operational flexibility to grow alongside and challenge the dominance of the state-owned carrier, Malaysia Airlines (Lawton & Solomko, 2005).

At a tactical regional level, Malaysia leveraged the ASEAN Open Skies legal framework to overcome the constraints of its limited domestic market. Malaysian legal authorities facilitated the creation of cross-border corporate structures through joint ventures and brand franchising. This legal model enabled AirAsia to establish subsidiaries across ASEAN nations such as Thai AirAsia, Philippines AirAsia, and Indonesia AirAsia while remaining compliant with the foreign ownership and cabotage restrictions in force in each host country. Through this corporate legal strategy, Malaysia successfully bypassed the domestic aviation protectionism of other nations without violating applicable laws.

Malaysia's success was further bolstered by astute infrastructure regulation, specifically the development of Kuala Lumpur International Airport 2 (klia2) as the world's first and largest terminal dedicated to low-cost carriers (LCCs). The Malaysian government devised a differentiated airport tariff scheme (passenger service charge) distinguishing between the main terminal (KLIA) and the LCC terminal (klia2). This legal-economic approach ensured low operational costs for LCCs, which translated into highly affordable ticket prices for consumers. It was this regulatory flexibility regarding tariffs and infrastructure differentiation that enabled Malaysia to successfully capture the spillover from the regional aviation market in Southeast Asia (Shuk-Ching Poon & Waring, 2010).

A stark contrast exists when comparing this to the situation in Indonesia, where there is a significant regulatory gap. Through Law No. 1 of 2009, Indonesia maintains an approach to aviation law that is highly protectionist and emphasizes regulatory uniformity. Indonesian regulations tend to apply the same legal treatment and airport service tariffs to state-owned full-service carriers and private LCCs, failing to provide the specific regulatory incentives needed for the growth of regional LCC operations. Consequently, Indonesia's national airlines often struggle to compete on price and operational efficiency against foreign carriers from Singapore and Malaysia, which benefit from far more market-friendly domestic regulations.

Policy inconsistencies and overlapping authorities remain major obstacles within Indonesia's aviation legal system. Unlike Singapore which strictly separates functions or Malaysia which utilizes an independent commission (MAVCOM) to handle aviation economics Indonesia centralizes the roles of economic regulator, safety overseer, and even the management of certain pioneer airports under the Directorate General of Civil Aviation within the Ministry of Transportation. This bloated regulatory burden often results in sluggish responses to international legal dynamics, including the implementation of commitments regarding the mutual recognition of regional aviation safety standards.

Although Indonesia has enacted recent instruments such as Presidential Regulation (Perpres) No. 100 of 2025, which aims to harmonize aviation licensing and certification at the ASEAN level implementation on the ground frequently encounters resistance from domestic sectoral regulations. There is a prevailing concern that the automatic recognition of foreign aviation personnel licenses could threaten job opportunities for local pilots and technicians. While this concern is valid, the legal response has tended to be defensive and restrictive rather than proactive and adaptive contrasting with Malaysia's approach of strengthening domestic professional standardization and certification to enable equal competition in the regional market.

Therefore, to strengthen the legal bargaining position and highlight the novelty of this research, a reconstruction of national aviation law is required. This

process should adopt the best elements from the Singaporean and Malaysian models while aligning them with Indonesia's unique geographical characteristics as an archipelagic nation. Such reconstruction would be realized through the formulation of regulations that strike a balance between regional market openness and the rigorous protection of domestic jurisdiction. This concept reformulates the doctrine of functional sovereignty into an operational legal matrix applicable to policymakers.

Cross Country Regulatory Comparison Matrix

Regulatory / Legal Dimension	Singapore Model	Malaysian Model	Existing Conditions of Indonesia (Law No. 1/2009)	Adaptive Reconstruction Model (The Novelty of This Research)	Legal
Air Sovereignty Paradigm	Open Commercial Sovereignty (<i>Global Hub Orientation</i>)	Liberal Market Sovereignty (<i>LCC Expansion</i>)	Absolute Sovereignty and Rigid Protectionism	Targeted Functional Sovereignty	Functional
Implementation of the Fifth Right of Conveyance	Opened freely to attract world airlines to Changi	Opened selectively to support the AirAsia network	Strictly restricted for fear of eroding the domestic market	Opened based on the Principle of Real Economic Reciprocity & Market Volume Equality	Volume
Separation of Authority Functions	Absolute (Separation of CAAS Regulator and CAG Operator)	Clear (The existence of MAVCOM as an independent aviation economic commission)	Centralized under the Directorate General of Civil Aviation (Kemenhub)	Restructuring of Aviation Authority with the Establishment of an Independent Air Commission	Authority
Safeguard Clauses	Minimal (Relying on the competitive advantages of the free market)	Moderate (Through domestic capital ownership rules)	Not yet clearly formulated in regional derivative agreements	<i>Safeguard Clause</i> Codification Based on Market Distortion Indicators	Distortion
Latest Regulatory Response	Instant harmonization of global instruments	Adaptation of corporate regulations across regional borders	The issuance of Presidential Decree No. 100/2025 which still conflicts with Sectoral Laws	Vertical Harmonization: Presidential Decree No. 100/2025 as a Tactical Law under the Umbrella of the Protection Law	Protection

Based on the comparative matrix above, it is evident that the adaptive legal reconstruction model proposed in this study addresses gaps left by existing models. Unlike Singapore's model of absolute liberalism or Indonesia's current rigid protectionism, the "Targeted Functional Sovereignty" model offers a rational middle ground. This model recommends that Indonesia divide its airspace into calibrated strategic economic zones. Airspace above less congested secondary hub airports could be opened to ASEAN fifth-freedom traffic rights, whereas airspace above critical primary hubs (such as Jakarta and Bali) would remain strictly protected to ensure the viability of national carriers.

This tactical legal reconstruction must also incorporate a mechanism for codifying automatic emergency safeguard clauses. Drawing inspiration from tariff protections in international trade law (WTO), Indonesian aviation law should mandate that if a foreign carrier from an ASEAN member state exceeds a critical market share threshold (e.g., 60 percent) on a specific route within Indonesia over a one-year period, Indonesian aviation authorities are legally empowered to temporarily freeze any increase in that carrier's flight frequency. This arrangement provides a legitimate legal safety net to prevent market monopolization by Singaporean or Malaysian airlines.

The proposed legal reconstruction also addresses the reform of national aviation institutions. Drawing lessons from the successful functional separation in Singapore and the establishment of MAVCOM in Malaysia, Indonesia needs to create an Independent Aviation Economic Commission, distinct from the technical safety oversight functions of the Ministry of Transportation. This independent commission would be specifically tasked with conducting macroeconomic assessments regarding the granting of air traffic rights to other nations, monitoring unfair competition among regional airlines, and coordinating Indonesia's aviation diplomacy stance within ASEAN negotiation forums. Furthermore, the implementation of Presidential Regulation No. 100 of 2025 must be situated within a tactical legal framework that does not negate the applicability of Law No. 1 of 2009. Vertical harmonization should be achieved by issuing derivative Government Regulations (PP) that affirm the principle of mutual recognition for ASEAN aviation personnel licenses only when the personnel's home country grants equivalent legal documentation and employment access to Indonesian aviation personnel. This approach of conditional reciprocity will mitigate the risk of an influx of foreign labor while simultaneously encouraging national airlines to elevate their competency standards to an international level.

Regarding infrastructure regulation, Indonesia must move away from the mindset of uniform service tariffs. It is necessary to restructure regulations concerning airport classification and airport service charges by creating specific rules that accommodate the Low-Cost Carrier (LCC) business model. The government could designate certain secondary airports in strategic regions as Dedicated LCC Terminals, featuring counter rental rates, landing fees, and passenger service charges that are significantly lower than those at major international airports. Such differentiated regulations would incentivize national airlines to launch new regional routes directly from secondary cities, thereby preventing the concentration of all flights in Jakarta or Bali.

This adaptive model of aviation law restructuring also provides a robust legal foundation for Indonesia's aviation diplomacy at the regional level. Indonesia would no longer be perceived as a "retarding state" in ASEAN aviation

negotiations, but rather as an active proponent of equitable regulatory solutions. By advancing the concept of targeted functional sovereignty and protection clauses based on empirical data, Indonesia could lead the formulation of additional protocols within the ASEAN Open Skies framework protocols that are more accommodating to the interests of archipelagic nations with vast domestic markets.

Theoretically, this legal reconstruction asserts that the enforcement of a nation's airspace sovereignty in the 21st century is no longer measured by how tightly it seals its airspace against external influence, but rather by how astutely it leverages international legal instruments to manage markets for domestic prosperity. Functional sovereignty transforms the nature of sovereignty from a "static shield" into a "dynamic bargaining tool." Integrating this paradigm shift into the academic framework for national air law reform is urgent to ensure that Indonesia's regulations do not become obsolete.

Overall, this comparative analysis demonstrates that the successes achieved by Singapore and Malaysia under the ASEAN Open Skies Policy regime can be legitimately adopted and adapted into Indonesia's legal system. Through the targeted integration of the functional sovereignty concept, the codification of automatic safeguard clauses, the separation of economic authority functions, and the application of conditional reciprocity regarding Presidential Regulation No. 100/2025, Indonesia will establish a robust new air law structure. This normative reconstruction ensures that Indonesia does not merely serve as a spectator or consumer market for Singaporean and Malaysian airlines, but stands tall as a key player politically sovereign and economically resilient within the Southeast Asian airspace.

3.3 Formulating a Functional Sovereignty Model: Reconstructing the Legal Structure and Automatic Safeguard Clauses for Indonesia

The theoretical conceptualization of functional sovereignty and the regional comparative data discussed in the preceding section require concrete manifestation within Indonesia's positive legal architecture. The primary novelty of this research lies not merely in identifying normative weaknesses but in proposing a prescriptive and applicable model for legal reconstruction. The national aviation legal structure must be redesigned to accommodate the liberalization flows of the ASEAN Open Skies Policy without undermining either defense jurisdiction or domestic economic jurisdiction. This model rests on three main pillars: reconstructing the national-regional norm hierarchy, restructuring the institutions governing aviation economics, and codifying automatic safeguard clauses.

The first pillar of this model involves the reconstruction and vertical harmonization of Law Number 1 of 2009 concerning Aviation with Presidential

Regulation (Perpres) Number 100 of 2025. Theoretically, the implementation of Perpres No. 100/2025 regarding the mutual recognition of ASEAN aviation certifications often creates normative fragmentation because its position in the legislative hierarchy is subordinate to sectoral laws. To address this, the proposed reconstruction model calls for the insertion of a "Conditional Reciprocity Clause" into future revisions of the Aviation Law. This clause explicitly stipulates that any relaxation of commercial traffic rights or recognition of foreign licenses stipulated in delegated regulations (such as Presidential Regulations or Ministerial Regulations) must be subject to the principle of balanced, tangible economic benefit for the national industry.

Through this vertical harmonization, Perpres No. 100/2025 will no longer be viewed as an instrument that undermines Article 4 of Law No. ...1/2009 regarding absolute sovereignty; instead, it is interpreted as a tactical instrument for exercising functional sovereignty. The state voluntarily opens its commercial airspace, yet the authority to impose legal restrictions remains unilaterally held by national law as the supreme legal framework. This concept ensures that Indonesia's compliance with ASEAN regional law (the principle of **pacta sunt servanda**) aligns with the state's constitutional obligation to protect the entire nation and its economic resilience against the threats of unfair business competition.

The second pillar of this reconstruction model is institutional reform through the establishment of an Independent Aviation Economic Commission (IAEC). Drawing lessons from the effectiveness of the Malaysian Aviation Commission (MAVCOM), Indonesia must separate the technical safety regulatory function currently held by the Directorate General of Civil Aviation from the aviation economic regulatory function. The centralization of these two vastly different functions within a single bureaucratic agency has historically rendered Indonesia sluggish and defensive in navigating regional aviation diplomacy. The IAEC is designed as an independent body staffed by aviation law experts, economists, and aviation practitioners to dynamically manage the commercial aspects of national airspace.

Jurisdictionally, the IAEC would hold full authority to conduct cost-benefit analyses before the government approves the opening of new regional flight routes or ratifies additional ASEAN protocols. The agency would also serve as a competition watchdog specifically for the aviation sector, empowered to take action against foreign airlines engaging in predatory pricing or illicit airport slot control (slot hoarding) that disadvantages national carriers. With the IAEC in place, decision-making in Indonesia's aviation diplomacy would no longer be driven solely by regional political pressure, but rather by precise economic data calculations aimed at safeguarding national interests.

The third pillar representing the core innovation of this research is the formulation of an "Automatic Trigger Safeguard Mechanism," which is codified into national aviation regulations and proposed as an additional ASEAN protocol. While the ASEAN Open Skies framework currently allows for emergency safeguard measures, the existing mechanisms are highly bureaucratic, slow, and require consensus approval from other member states. The model proposed in this study shifts the nature of such protection from a reactive-negotiation-based approach to an automatic-legal one, grounded in quantitatively measurable indicators of market distortion.

This automatic mechanism operates based on three critical indicators: market share volume, flight frequency, and seat occupancy rates (load factor). Under the reconstructed national aviation legal framework, the Ministry of Transportation and the IAEC would be mandated to implement a real-time digital data monitoring system. If, over two consecutive quarters, the accumulated market share of foreign airlines from a specific ASEAN country on connecting international-domestic routes in Indonesia exceeds the critical threshold of 55 percent, the domestic legal system would automatically trigger the imposition of quota restrictions.

Once this automatic safeguard clause is triggered, Indonesian aviation authorities are legally empowered to take three unilateral legal actions. First, they may temporarily freeze applications for additional flight frequencies (extra flights) from airlines of the country in question. Second, they may reconfigure or reallocate flight time slots to non-peak hours to create competitive space for national airlines. Third, they may temporarily suspend the application of Presidential Regulation No. 100/2025 regarding license recognition for new personnel from that country until market balance is restored.

The legal advantage of this automatic model lies in its strong legitimacy under international law. These restrictive measures cannot be classified as a violation of ASEAN commitments or an act of illegal protectionism, as their implementation is based on meeting objective and transparent indicators of market distortion. This model adopts the principle of Emergency Safeguard Measures (ESM) commonly used in international trade law (GATT/WTO) but specifically modifies it to suit the characteristics of Indonesia's civil aviation industry, which operates within an archipelagic geography.

Beyond the aspect of protection, this reconstruction of functional sovereignty is also realized through a "Targeted Airspace Zoning" policy. Indonesia need not close all its international airports, nor conversely, open them all without control. Under this zoning model, Indonesian airspace is divided into three commercial jurisdiction zones. The First Zone is the National Primary Hub Zone (e.g., Soekarno-Hatta Airport in Jakarta and Ngurah Rai in Bali), which remains strictly

protected; here, Fifth Freedom Rights for foreign airlines are restricted or entirely prohibited to safeguard the domestic airlines' primary markets.

The Second Zone is the Regional Open Secondary Hub Zone (e.g., Kertajati Airport in Majalengka, Kuala Namu in Medan, or Juanda in Surabaya). In this zone, ASEAN-scheme air traffic rights are fully opened to attract foreign airlines, aiming to boost regional economic growth, tourism, and logistics connectivity outside Java. Meanwhile, the Third Zone is the Domestic Pioneer Zone (small airports in remote areas and outermost islands), where commercial jurisdiction is absolutely closed to foreign entities (strict cabotage) and reserved 100 percent for local pioneer airlines to uphold the state's territorial sovereignty.

This zoning model provides regulatory certainty for foreign airlines while simultaneously offering breathing room for national carriers. National airlines can concentrate their fleet strength to dominate high-traffic routes in the First Zone and funnel passengers from the Third Zone. On the other hand, foreign airlines from Singapore or Malaysia are welcome to channel capital and passengers directly into the Second Zone. This model demonstrates that, through a functional sovereignty approach, regional market openness does not necessarily result in economic loss, provided it is governed by precise zoning legal instruments.

Implementation Matrix for the Strategic Airspace Zoning Model

Air Zone Level	Airport Coverage Area	Legal Status of Jurisdiction	Air Transport Rights Policy (ASEAN Scheme)	Legal Basis & Control	Main Target of State Protection
ZONE 1: National Main Hub	Jakarta (CGK), Bali (DPS).	Selective Closed (<i>Strict Protectionist</i>)	<i>The Fifth Freedom</i> is prohibited or limited to a maximum of 10%.	UU no. 1/2009 (Exclusive) controlled by IAEC.	Protecting the national airline's main market (<i>main market core</i>).
ZONE 2: Open Secondary Hub	Kertajati (KJT), Medan (KNO), Surabaya (SUB).	Adaptive Openness (<i>Regional Liberalization</i>)	Open 100% for regional flight frequency and capacity.	Presidential Decree No. 100/2025 through the principle of conditional reciprocity.	Encourage regional economic growth and logistics outside Java.
ZONE 3: Domestic Pioneers	Class III airports in the interior & outermost islands (3T).	Strict <i>Cabotage</i>	Strictly prohibited for foreign airlines. 100% local transportation rights.	Constitution & Aviation Law unilaterally.	Maintaining territorial sovereignty, defense, and national integration.

Regarding law enforcement and aviation safety oversight, this reconstruction model mandates the strengthening of cross-border airworthiness audit clauses. The IAEC, alongside the Directorate General of Civil Aviation, is granted the legal authority to conduct random safety audits (ramp inspections) on aircraft from ASEAN airlines landing at Indonesian airports. Should safety standard non-

compliance be detected even if the airline holds valid certification under Presidential Regulation No. 100/2025 Indonesia reserves the right to impose a grounding order within its national airspace jurisdiction in the interest of public aviation safety.

Implementing this targeted functional sovereignty model requires strong political will from the government to undertake comprehensive regulatory reform. The Ministry of Law, the Ministry of Transportation, and the Ministry of Foreign Affairs must collaborate to formulate a roadmap for this adaptive integration of air law. Initial steps could involve including a bill to amend Law No. 1/2009 in the National Legislation Program (Prolegnas) and drafting implementing government regulations that detail the operational aspects of automatic protection clauses and the establishment of the IAEC.

In conclusion, the reconstruction of international air law through the doctrine of functional sovereignty offers a definitive solution to the dilemma Indonesia faces under the ASEAN Open Skies Policy. This model dispels collective fears regarding the loss of state sovereignty due to liberalization by demonstrating that sovereignty can be intelligently rearticulated into an offensive-yet-adaptive legal instrument. By adopting a model of legislative harmonization, establishing an independent aviation commission, designating strategic zones, and codifying automatic safety-net mechanisms, Indonesia will secure a new form of air sovereignty one that is robust enough to safeguard the nation's skies while remaining resilient enough to prevail in economic competition across the Southeast Asian region.

4. Conclusion

The implementation of the ASEAN Open Skies Policy in Indonesia has given rise to profound normative conflicts and jurisdictional dilemmas regarding the tension between regional legal compliance and the protection of domestic sovereignty. On one hand, the 1944 Chicago Convention and Law No. 1 of 2009 on Aviation mandate the doctrine of complete and exclusive air sovereignty to safeguard national security and economic stability. On the other hand, recent legal instruments such as Presidential Regulation No. 100 of 2025 compel Indonesia to pursue harmonization, mutual license recognition, and the liberalization of air traffic rights, measures that threaten to erode the unilateral control exercised by the underlying state. Disparities in infrastructure capacity and domestic fleet structures when contrasted with the aggressive success models of Singapore and Malaysia expose Indonesia to the risk of exploitative, unilateral airspace utilization lacking balanced economic reciprocity. This legal impasse demonstrates that conventional air law approaches, which view sovereignty in rigid, binary terms, are no longer adaptable to the dynamics of aviation single-market integration in Southeast Asia. As a definitive solution, this research formulates a model for reconstructing international air law that is

adaptable to Indonesia's needs, utilizing the doctrine of "Targeted Functional Sovereignty." This model reconfigures sovereignty boundaries by distinguishing between absolute, non-negotiable security jurisdiction and commercial economic jurisdiction the latter allowing for flexible cooperation based on calculations of national interest. The model's scholarly novelty is realized through three tactical pillars: first, strengthening governance by establishing an Independent Aviation Economic Commission (IAEC) to serve as the economic regulator; second, implementing strategic airspace zoning that protects primary domestic hubs while channeling regional connectivity to secondary hubs; And third, the codification of an Automatic Trigger Safeguard Mechanism based on a critical market threshold indicator of 55 percent. Through this comprehensive regulatory restructuring, Indonesia can position itself proactively on the regional stage complying with ASEAN Open Skies commitments without relinquishing legal control, while simultaneously safeguarding its airspace sovereignty and the nation's future economic equity.

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