



## Reconstruction of State Territorial Management to Optimize National Resilience in Indonesia

Dhiana Puspitawati<sup>1\*</sup>, Lukman Yudho Prakoso<sup>2</sup>, Adi Kusumaningrum<sup>3</sup>, Nuddin Harahab<sup>4</sup>

<sup>1,3</sup> Faculty of Law, Brawijaya University, Malang, East Java, 65141, Indonesia

<sup>2</sup> Faculty of Defense Management, Indonesia Defense University, Bogor, West Java, 16810. Indonesia

<sup>4</sup> Faculty of Fisheries and Marine Sciences, Brawijaya University, Malang, East Java, 65141, Indonesia

\* Corresponding author: [dhiana@ub.ac.id](mailto:dhiana@ub.ac.id)

Article	Abstract
<p><b>Keywords:</b> State's Territory; National Resilience; Policy; Indonesia</p> <p><b>Article History</b> Received: Dec 6, 2022; Reviewed: Jan 3, 2023; Accepted: Mar 8, 2023; Published: Mar 23, 2023;</p>	<p><i>The status of Indonesia as an archipelago state is stated clearly in the Indonesian Constitution. Indonesia's territory consists of three dimensions, land, sea, and air. To maintain the order of the State, the State's security is crucial. It is further argued that State's security in all territorial dimensions can be established through a comprehensive inward-looking approach. With this approach, national security can be achieved while holding on to the principles of national resilience. In order to maintain a stable national resilience, sustainable policies are needed to govern the land, air as well as ocean territory. This research aims to analyze whether existing policies in a state's territorial governance are sufficient to maintain national resilience. Using a multi-disciplinary approach that combines descriptive-qualitative and normative-juridical methods, this research recommends a policy model for governing the State's territory towards the maintenance of national resilience in Indonesia. While the inward approach is preferable, contemporary threats to national resilience need to be taken into account by also considering an outward-looking approach.</i></p>



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### INTRODUCTION

As a sovereign state, Indonesia has its state objectives set forth in the Preamble of the 1945 Constitution of the Republic of Indonesia to set Indonesian government that safeguards the archipelago and its peoples as a whole, to improve the prosperity of the people, to improve the intellectual life of the people, and to support world order

under the principle of independence, peace, and social justice, all of which are impossible to achieve without setting national security of the state a priority. Comprehensive and inward-looking approaches were employed to analyze the 'security', where the former is based on the preposition implying that national 'security' is marked by the absence of foreign military invasion against a state and socio-economic development in a state. On the other hand, an inward-looking approach implies that national 'security' is achieved through the principles of national and regional security (Mardhani, Runturambi, & Hanita, 2020). These principles were first introduced by Soeharto, the former president of Indonesia, suggesting that national security should not only be focused on the foreign military threats from the outside, but aspects such as the reinforcement of all the components in the state development that embrace ideological, political, economic, social, cultural, and military security should also be considered.

This reinforcement of all aspects should be performed within the territory of the state, including land, sea, and air, as outlined in Law Number 3 of 2002 concerning State Security. As a sovereign state, Indonesia is responsible to safeguard the sovereignty of the state, the unity of the state, and the safety of its people against any threats. Ideological, political, economic, social, cultural, and military resilience can be realized with appropriate territorial management (Tim Pokja Geostrategis Indonesia dan Ketahanan Nasional, 2020). Article 3 of Law Number 3 of 2002 further states that the geographical conditions of Indonesia as the state of the archipelago should also be considered to maintain the unity of the territory of Indonesia. The essence of the archipelagic state is characterized by the unity of lands and waters and the airspace above them, including the natural resources contained therein (Aditya & Al-Fatih, 2017).

Furthermore, territorial management is done in accord with prosperity, security, and sustainability approaches performed in unison (Susetyorini, 2019). The prosperity approach implies that the management of the state should be for the prosperity of the people residing at borders. The security approach guarantees the unity of the territory and the sovereignty of the state and the protection of the state as a whole, while the sustainability approach represents sustainable development (Tim Pokja Geostrategis Indonesia dan Ketahanan Nasional, 2020). All these approaches are inextricable from one another, where both prosperity and environment sustainability approaches are more focused on lands, waters, and airspace.

There are several problems with the territory that have threatened the nation's resilience, one of which is related to border problems. The border area has become a "Crucial" area, both in the internal and external contexts external (international). Some issues in the discourse regarding border regions are (a) the potential for invasion of foreign ideologies and cultures; (b) the potential for transnational crimes (transnational crimes); (c) illegal logging; (d) illegal fishing; (e) illegal exploitation of natural resources;

(f) human trafficking (human trafficking), especially involving women and children; (g) illegal immigrants; (h) people smuggling (people smuggling); (i) narcotics trafficking; (j) entrance of para terrorists and pirates; and (k) socio-cultural conflicts. While most border issues happen regarding maritime delimitation, however, border issues in the land territory are also important. Indonesia has come up with several policies, such as the legislation regarding the three territorial aspects consisting of lands, waters, and airspace. Specifically, state territory is envisaged in Law Number 43 of 2008 concerning State Territory. Article 1 Paragraph (1) of this law states: The territory of the Republic of Indonesia, henceforth referred to as State Territory, serves as one of the state elements as part of the unity of lands, internal waters, archipelagic waters, and territorial sea along with the seabed and lands under them, and along with the airspace above them, including all the natural resources contained therein.

Thus, maintaining national security in Indonesia requires harmonious policies governing the management of lands, waters, and airspace. This study aims to analyze whether the policies concerning state territorial management that involves lands, waters, and airspace have supported the establishment of national resilience of Indonesia. Threats to national resilience have increased recently. Such threats include political crises, social conflict as well as any other non-military threats. Thus, it is important to analyze whether current policies in managing State's territory are sufficient to address such threats. This study offers a model of the policy required in the territorial management that maintains the national resilience of Indonesia and analyzes whether the policies regarding the current state territorial management are in accord with the realization of the national security in Indonesia and offers the reconstruction of the policies regarding the state territorial management that contributes to the realization of the national resilience of Indonesia.

## **METHOD**

This study is categorized as a multi-disciplinary approach that combines descriptive-qualitative and normative-juridical methods (Kirshchina et al., 2022; Zhang, Wei, & Zhang, 2022), aiming to seek the truth according to the logic of legal knowledge from a normative perspective that is focused on analyzing the implementation of norms in positive law, whereas descriptive-qualitative is to reveal events or facts, circumstances, phenomena, variables and circumstances that occurred during the research by presenting what actually happened. Qualitative research is a type of research that explores and understands the meaning in a number of individuals or groups of people originating from social problems

The approaches employed in this research involved statutory and comparative approaches that deal with the substance of the rules of law used to investigate the problems. The analysis of the implementation of the policy was also performed to

investigate whether the existing policies of the state territorial management are congruent with the existing concept of existing national resilience.

## RESULTS AND DISCUSSION

### **The Policies of State Territorial Management: The Realization of National Resilience in Indonesia**

National resilience is a broad concept (Kimhi, Eshel, Lahad, & Leykin, 2019). From the various understanding of the concept, basically, the concept of national resilience includes 2 (two) major issues, namely: the ability of the community/ state to deal with changes in values and the ability of the community/ state to be able to adapt to change and the ability to adjust innovatively. This also applies to the process of achieving the state's goal (Maharani, Surono, Sutarmanto, & Zubaidi, 2019).

In its progress of reaching its objectives, the state must ensure that national security is guaranteed either comprehensively or based on an inward-looking approach (Tim Pokja Geostrategis Indonesia dan Ketahanan Nasional, 2020). An inward-looking approach implies that national 'security' could be achieved through national and regional resilience principles. (Tim Pokja Geostrategis Indonesia dan Ketahanan Nasional, 2020). Such national resilience should be performed within the territory of the state, which includes lands, waters, and airspace. The provisions concerning the territory of the state are governed in Law Number 43 of 2008 concerning State Territory (henceforth referred to as Law of State Territory). As envisaged in Article 1 paragraph (1) of the Law, Indonesia is a state which comprises land and waters, in which the land and waters should be considered as a unity. Thus, it is clear that the territory of Indonesia refers to three territorial dimensions consisting of lands, waters, and airspace. This law also sets the difference between the territories of the state and jurisdictions. However, the jurisdictions only apply to ocean space (Churchill, Lowe, & Sander, 2002) as provided by the maritime zone arrangement stipulated in The Convention on the Law of the Sea, 1982 (UNCLOS 1982). Therefore, the law concerning state territory differentiates the state territory from jurisdictions, while further details on the territorial seas will be discussed in due course. Article 1 Paragraph (4) further regulates that "State territory boundary refers to a boundary line that separates the sovereignty between countries based on international law." Furthermore, Article 1 Paragraph (5) states that "Jurisdiction territorial boundary constitutes borderlines that separate sovereign rights and particular authority that belongs to a state according to the rules in the legislation and international law."

It follows from the above that jurisdiction is different from a territorial state, over which a state holds absolute sovereignty (Crawford, 2019). Whereas in a state's jurisdiction, a state is only entitled to a sovereign right, over which other states' rights are recognized. Therefore, these jurisdiction-related regulations must abide by

international law. On the other hand, national resilience can also be defined as follows (Tim Pokja Geostrategis Indonesia dan Ketahanan Nasional, 2020) “The dynamic condition of Indonesia that embraces all aspects of integrated national life laden with tenacity and resilience that bring national power to face and overcome challenges, threats, hindrance, interruption coming from the outside or as internal factors to assure identity, integrity, the national sustainability, and the endeavor to achieve national objectives.”

The conception of National Resilience (Indonesia) is a conception of the development of national power through the regulation and implementation of balanced, and harmonious welfare and security in all aspects of the life of the state in a complete and integrated manner based on Pancasila, the 1945 Constitution and the Archipelago Insight (Hutabarat, Maarif, Zulfainarni, & Yusgiantoro, 2020). Guidelines or means to increase the tenacity and resilience of the nation that contains the ability to develop national strength, with a welfare and security approach.

In achieving national resilience, a policy in territorial management is required. This territorial management is inextricable from the geostrategic aspect. The “*Geostrategi Indonesia dan Ketahanan Nasional*” issued by the National Resilience Agency of the Republic of Indonesia (Lemhanas RI states that the Indonesian geostrategy serves as the basis of the formulation of the national resilience of Indonesia, especially regarding the conception of national resilience. As the world’s largest archipelagic state, Indonesia consists of three dimensions of a geographical constellation, consisting of lands, waters, and airspace (National Security Agency of the Republic of Indonesia, 2012).

## **The Management of Land Territory**

### **1. Territorial Management and Utilization for National Resilience**

Indonesia has a territory larger than its population, thereby giving the potential for national development (Ministry of Finance of the Republic of Indonesia, 2020) and encouraging the migration of people from densely populated areas to less populated ones for even distribution of the development. The lands alone can provide the population with huge natural resources that help people improve their quality of life, coupled with the seas contributing natural resources to the life and prosperity of Indonesia. However, while ocean natural resources gave huge opportunities in fulfilling necessity and prosperity, less exploration and exploitation have been done (Marín-Idárraga, Hurtado González, & Cabello Medina, 2022). Recently, exploration and exploitation have not been optimally performed. (Puspitawati, 2020). The astronomic location of Indonesia sitting at 95° of east longitude and 141° east longitude and between 6° of north latitude and 11° of south latitude shows that Indonesia lies far from the superpower United States in terms of military power, but close to China and Japan as the superpower countries in economics. The location of Indonesia certainly

brings both positive and negative effects on the national development program in all aspects.

The geographical characteristics of Indonesia have great influences on the policies and strategies in both the provision of prosperity for the state and national security (Natherell & Welsh, 2021). Therefore, each decision made by this state regarding national development must be correlated to the geographical characteristics of Indonesia that are prosperity- and security-oriented, embracing either static or dynamic aspects. This national development considers the targets achieved, including all aspects of life such as ideological, political, economic, social, and cultural aspects, and the security of the state, in addition to other aspects such as geography, demography, and natural resources that embrace management, utilization, and security. Therefore, it is essential that we pay attention to regional and global strategies as the fundamentals of thoughts to help lead to the targets of achievement in each development stage (Manopo & Robert Merkin, 2021).

As mentioned earlier, national security with an inward-looking approach also takes into account dimensional borders of lands, waters, and airspace. These geographical conditions of Indonesia could affect the demographic characteristics. For example, people living on high lands will show characteristics different from those living in lowlands or coastal areas. Furthermore, the impacts of the geographical conditions on defense and security involve (i) the influences of territorial size and (ii) location, where the former needs a particular concept to help create an effective security system to maintain the integrity and sovereignty of Indonesia. It is important for a State to have a sufficient security strategy to formulate or ensure that every inch of the jurisdiction of Indonesia, either seas, lands, or airspace, is watched and maintained effectively.

Moreover, the geographical conditions of the territory also affect the progress of defense and security development. The archipelagic features that Indonesia has allow the development of a system to take place, incorporating big islands and islets according to the universal defense and security system (locally referred to as *sistem pertahanan semesta* or *sisbanta*). The position amidst Southeast Asia, ASEAN, has influences on the defense and security system in particular and national resilience in general.

Thus, formulating policies on territorial management should not overlook geographical conditions. Despite one dimensional factor, the lands, the policies of this territorial management consist of demography, the availability of natural resources and climate, economy, ideology, and the politics of a territory. As mentioned, highlands, lowlands, and coastal areas show different characteristics in terms of policy management due to differing spatial planning and zonation among lands and seas. Therefore, the harmonization of the policy formulation to manage territories is required (Puspitawati, 2020).

## **2. Geostrategy and Geopolitics for Territorial Development**

Regarding all the definitions of strategy, principally, a strategy represents knowledge and the art of utilizing all resources as the power adjusted to the objectives planned, either for the sake of peace-making or war or for the sake of security and prosperity. The significant utilization of natural resources is mainly intended to maintain the independence brought by former heroes to back up the continuing existence of the nation in terms of its space, instrument, and conditions of the battle. Thus, setting the strategies to achieve national objectives and resilience of the geographical constellation or geopolitical condition should be considered.

The utilization of geographical constellation is strongly important with geopolitical aspects in formulating the public policy of a state. Geopolitics serves as the guidelines to formulate the political policy implemented in strategic measures known as geostrategy that consists of (Tim Pokja Geostrategis Indonesia dan Ketahanan Nasional, 2020):

1. Spatial conception, suggesting that space is a dynamic political and military space. This leads to the theory of the combination between space and power.
2. Frontier conception (imaginary borderline of two states, especially regarding territorial sea).
3. The conception of power politics which is related to national interests.
4. National security conception that spurs the creation of national resilience.

That is, geopolitics and geostrategy are related in terms of their definition (Fitriani, Tjilen, & Lekatompessy, 2021). The higher the culture of a state is, the higher the need for natural resources will be. When territories are not in line, a nation will expand further for natural resources beyond its territories, and this definition is related to the law of expansion suggesting that the cultural development or dynamic in the form of ideas and activities (commerce, industries/productions) balanced with the territorial expansion of a state is principally non-permanent. Geostrategy is needed to come to a desire to maintain and continue existence. Both geopolitics and geostrategy, in their progress of development in Indonesia, are different, depending on the strategic environment under different ruling governments.

### **3. Challenge, Resistance, Threats, Disturbance approach in Territorial Management**

In territorial management analyses, the approaches usually used include Challenge, Resistance, Threats, and Disturbance. For example, the diversity in Indonesia has presented a challenge in land territorial management, which could lead to the disintegration of a state when it does not come with the relevant policy of territorial management. Moreover, external threats and challenges in territorial management may affect borders. Indonesia borders Malaysia, Papua New Guinea, and Timor Leste on land, and such a geographical location at borders may present threats of lacking access to natural resources and the effectiveness of the state's exploitation of the natural resources, especially Indonesia's exploitation at borders. According to the theory of

international law concerning territorial control, a theory of effectiveness highlights the control over a territory according to the extent of effectiveness of the management of borders performed by a state (Widagdo et al., 2019). Thus, the policy regarding territorial management should guarantee prosperity for the whole people residing at borders to help raise their sense of belonging to Indonesia, not to other countries. Disintegration may be present as an interruption in territorial management on lands due to the huge diversity of the people living on extensive lands of Indonesia. Diverse cultures and different political perspectives often hit issues on race, religion, and tribe, existing as the biggest threat to the integration of a state (Hia, Tobing, Nofiandari, Mustaqim, & Pandin, 2021).

Furthermore, at seas, the biggest threat comes from the fact that not all maritime delimitation is agreed upon among neighboring states. Indonesia borders ten other states such as Malaysia, Singapore, the Philippines, India, Thailand, Vietnam, the Republic of Palau, Australia, Timor Leste, and Papua New Guinea. Not all maritime delimitation is agreed upon by Indonesia and other states (Hutabarat et al., 2020). It is important to highlight that according to the United Nations Convention on the Law of the Sea 1982 (UNCLOS 1982), a coastal state has the right to draw a maritime zone consisting of the territorial sea, contiguous zone, exclusive economic zone, and continental shelf. That is, when a state is located opposite or adjacent to another state separated by the sea, negotiation and agreement over the maritime delimitation need to take place. While Indonesia has agreed to maritime delimitation with particular neighboring countries, not all maritime delimitation is agreed upon (Puspitawati, 2017). The details on the territorial sea and other ocean spaces will be discussed further in the next discussion.

Regarding airspace, there are also numerous problems relating to sovereignty and the commercialization of airspace. While in air law, the sovereignty of a State over its airspace is absolute, there are economic aspects that should be considered related to air traffic for commercial airplanes.

#### **4. Ocean Space Management**

In discussing Ocean Space Management, the legal framework underlying this matter can be found in the United Nations Convention on the Law of the Sea 1982 (hereinafter UNCLOS 1982). Indonesia ratified UNCLOS 1982 through law Number 17 of 1985 concerning the Ratification of UNCLOS 1982 and submitted this ratification document on 3 February 1986. Since then, all the national provisions concerning maritime management have referred to the provisions set forth in UNCLOS 1982. Relating to ocean management, UNCLOS 1982 sets up provisions on a maritime zone, asserting that the farther the sea from the coasts is, the lesser the coastal State's authority will be. On the other hand, the authority of user maritime States is greater.



As the leading proponent of the archipelagic state principle, Indonesia consistently has adjusted the existing legislation to the provision of UNCLOS 1982. While coastal States are given sovereignty over a certain limit of the ocean, such sovereignty is limited by the rights to the passage of foreign ships. The sea in Indonesia is principally divided into two regions of sovereignty or commonly known as Indonesian waters and the jurisdictions of Indonesia. Article 1 Paragraph (2) of the law concerning State Territory states that “Indonesian waters comprise of internal water, archipelagic water, and territorial sea”, while Paragraph (3) governs that the jurisdiction as “The areas outside the state’s territory which consist of exclusive economic zone, continental shelf, and contiguous zone, over which the state has its sovereign rights and other particular authority as governed in the legislation and international law.”

However, in both Indonesian waters and Indonesian jurisdiction, Indonesia as an archipelagic State is given the authority to formulate national laws according to UNCLOS 1982. About Indonesian waters, the management of such waters is also divided into regional government, as envisaged in Law of the Republic of Indonesia Number 23 the Year 2014 on Regional Government. This Act gives the provincial government the authority to manage the ocean space for a maximum of 12 (twelve) nautical miles from the baseline. While this arrangement seems to support the regional government, the implementation of such a policy is not easy. Puspitawati argued that such ocean decentralization had triggered social conflict, especially related to fishing.

### **5. Challenge, Resistance, Threats in Ocean Space**

Although unresolved maritime delimitation is not the only issue related to ocean management, this issue remains prominent. Other issues such as social conflict related to decentralization in ocean management between regional governments pertain to ocean management (Puspitawati, 2018). In ocean space, the greatest challenge is that not all maritime boundaries bordering neighboring states are agreed upon. Indonesia borders ten other states such as Malaysia, Singapore, the Philippines, India, Thailand, Vietnam, the Republic of Palau, Australia, Timor Leste, and Papua New Guinea. Not all those maritime delimitations are agreed upon by Indonesia (Hutabarat et al., 2020). The provision of UNCLOS 1982 asserts that a coastal state has the right to draw maritime zones consisting of the territorial sea, contiguous zone, and exclusive economic zone and the continental shelf thereunder. Thus, when a state lies adjacent to another state separated by the sea, negotiation and agreement are required to designate the maritime delimitations (Elfrink, Henriksen, & Busch., 2018). Indonesia has made agreements on several maritime delimitations with neighboring states although not all the delimitations were agreed upon. The following is the list of the progress of the agreement between Indonesia and neighboring states in terms of maritime delimitation:

**Table 1.** Sea Territories bordering Neighboring States (Processed Data)

State	Maritime Zone		
	Territorial Sea	EEZ	Continental Shelf
India	X	X	Andaman Sea/ Indian Ocean
Thailand	X	X	Andaman Sea
Malaysia	Malacca Strait	X	Malacca Strait and the South China Sea
Singapore	Singapore Strait	X	X
Vietnam	X	X	The North Sea of Natuna Sea
The Philippines	X	Sulawesi Sea	X
Palau	X	X	X
Papua New Guinea	Pacific Ocean (North) Arafura Sea (south)	Pacific Ocean (north) Arafura Sea (south)	Pacific Ocean (north) Arafura Sea (south)
Timor-Leste	X	X	X
Australia	X	Arafura Sea	The Arafura Sea and the Indian Ocean

However, designating maritime delimitations is not as easy as designating the territories on the land since a lengthy and costly sea mapping process is required. The existing issue related to the management of the ocean space is that the agreement on some maritime delimitations has not been made, potentially leading to further problems such as illegal, unregulated, and unreported (IUU) fishing (Puspitawati, 2018). The interrupting issue in ocean space management regarding the designation of the territories comes from the will of the state concerned. Sometimes, designating maritime delimitation is not the main priority of a state. The management of ocean space according to UNCLOS will be further discussed, as Indonesia, the state that ratified this convention, has to comply with this convention.

Still referring to the management of ocean space, the management of airspace is closely related to ocean space management. However, whether the regimes of maritime zone applying to ocean space as governed in UNCLOS 1982 also apply to airspace is still under debate. The problem is that there is only absolute sovereignty in the airspace. In this scope of territory, no rights of other states are recognized within the airspace of Indonesia. This airspace management and the economic interest of other states often conflicted, like in the designation of the routes for foreign civil aircraft. On the other hand, UNCLOS 1982 allows the passage for foreign aircraft above the ocean space within Indonesia's jurisdiction, where only the sovereign right is allowed.

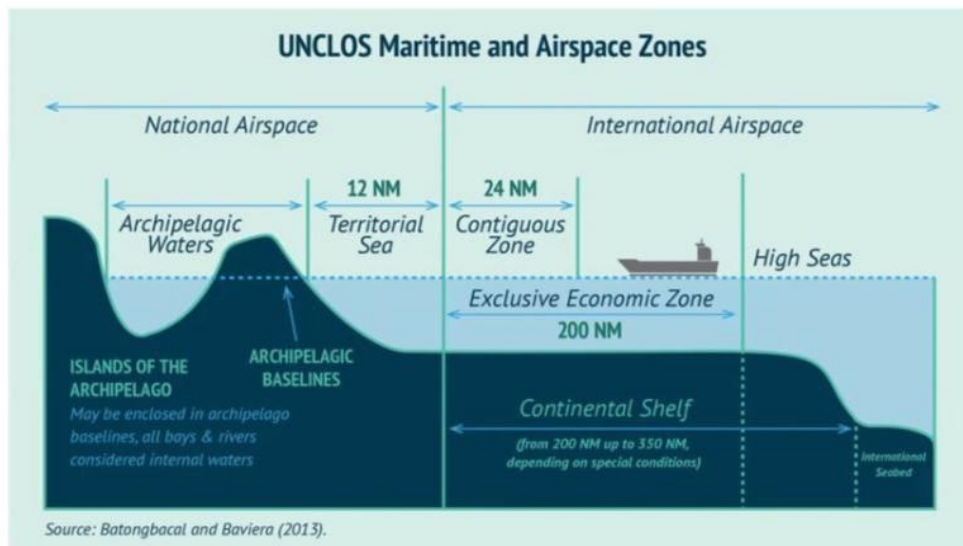
### Airspace Management

## 1. The History of Airspace Management

As mentioned earlier, national resilience follows the geographical conditions of a state, and the sovereignty of a state can be enforced within the territorial borders of the state. By and large, territorial dimensions involve lands, waters, and airspace, while not all states have all these three dimensions; some states do not have seas, but Indonesia has all three. The management of lands and waters was elaborated on earlier, while this part will discuss airspace management.

Airspace management is also known as the adage “*Cujus est solum, ejus est usque ad coelum*”, meaning that land constitutes what exists on and above it and what exists therein. This adage sparks several problems since this definition means that technology is required to acquire what exists in the air above the land, while every state has a different capability to acquire such a technology, and these differing capabilities indicate different controls over lands, seas, and airspace. It is true that control over lands and seas will not require sophisticated technology, but not for control over airspace, where only certain states with cutting-edge technologies will unfairly have a chance to take control of the airspace. Departing from this consideration, the Convention relating to the Regulation of Aerial Navigation was made in Paris on 13 October 1919, following World War I (*Paris Convention, 1919*). This convention specifically regulates procedures, status, and global airspace under Paris Protocol on 1 May 1920. On 15 June 1929, the Paris Protocol was revised. Paris Convention 1919 implies that it accepts the national sovereignty of a state. Article 1 of this convention mentions the absolute and exclusive sovereignty of the member states to the airspace there above. Therefore, the main principle of the Paris Convention 1919 refers to the airspace that follows the juridical status of a state in which the airspace constitutes the lands and the seas under it.

On 7 December 1944, Chicago Convention concerning International Civil Aviation, International aviation service transit, and international airspace transports (*Chicago Convention on International Civil Aviation, 1944*), was ratified, and this convention made the Paris Convention 1919 no longer valid. Chicago Convention 1944 serves as the main source of International Air Law. Article 1 of the Chicago Convention 1944 states that “the contracting states recognize that every state has complete and exclusive sovereignty over the airspace above its territory.” Furthermore, Article 2 of the Convention is explained further that “For the purposes of this Convention the territory of a State shall be deemed to be the land areas and territorial waters adjacent thereto under the sovereignty, suzerainty, protection or mandate of such State.” Articles 1 and 2 of this Convention emphasize that Chicago Convention 1944 bifurcates the airspace into national and international airspace. The details are presented in the following figure:



**Figure 1.** Current State Territorial Management Model (processed data)

It can be seen from the figure above that the management of airspace according to the Chicago Convention 1944 only recognizes two regimes, namely national air space and international airspace. While this matter does not raise any problem between national airspace and Indonesian waters (national ocean space), the regimes of the ocean below international airspace raised questions. The questions refer to the regime of the contiguous zone and exclusive economic zones (EEZ) as shown in the figure above. Under UNCLOS 1982, the regimes of the contiguous zone and EEZ is sovereign rights (where the sovereignty of the coastal state is limited and the rights of other states started to exist). However, the sovereign rights regime does not exist in international air law as provided within the Chicago Convention 1944. This caused uncertainty during law enforcement between the legal regime of the ocean and airspace. This uncertainty will be elaborated on in due course.

## 2. National Airspace Governance: The Management of Security and Safety

Indonesia already has legal frameworks regulating its sovereignty over the airspace above its territory. Such legal frameworks can be found in Law of the Republic of Indonesia No. 83 of 1958 on Aviation which was later amended by Law No. 15 of 1992 on Aviation. Given the importance of updating the rules in line with the dynamic of aviation, Indonesia then passed Law No. 1 of 2009 on Civil Aviation (Indonesia's Civil Aviation Law 2009). Provisions on Indonesia's sovereignty over its airspace are

found in article 5 of Civil Aviation Law 2009, which reads: “*The Republic of Indonesia has full and exclusive sovereignty over the air/ space territory of the Republic of Indonesia.*”

Indonesia’s Civil Aviation Law aims at improving the prosperity of Indonesian society by providing sufficient national transportation systems. However, importance is placed on protecting the nation’s sovereignty in managing the whole national airspace, especially the authority over the airspace for flight navigation (Kusumaningrum & Putra, 2019). Apart from other complex issues in national air law, a crucial issue relevant to this study refers to the jurisdiction and sovereign rights over the airspace. It is questionable that, in line with ocean space management (that is maritime zones), whether the air jurisdiction area exists, while Chicago Convention 1944 only divides airspace into two categories, which include national and international airspace.

The regulation on national space areas can be found In Law No. 26 of 2007 concerning Spatial Planning. Article 6 paragraph (3) of the Law envisages that the national space area includes the jurisdiction and the national sovereignty that covers overland, territorial waters, and airspace, including the underground as a unity. Furthermore, Article 6 paragraph 5 implies that the management of water space and airspace is regulated with a specific regulation. Nonetheless, until recently, there is no specific regulation that regulates the management of airspace. Regarding the jurisdiction over airspace, Article 10 (b) of Law No. 34 of 2004 on Indonesian Armed Forces (Indonesian Armed Forces Law 2004) states that the national jurisdiction of the airspace is the following “Uphold the law and maintain the security in the national jurisdiction over the airspace according to the ratified national and international legal requirement”

While this law is silent on the definition of “national jurisdiction over the airspace”, Article 9 paragraph 2 of Governmental Regulation No. 4 of 2018 on The Safety of Airspace mentions national jurisdiction of the airspace as follows:

“Air defense identification zone / ADIZ as mentioned in point (1) is on:

- a. Airspace in the Air Area; and
- b. Airspace in Air Jurisdiction Area”

Furthermore, Article 1 paragraph (1) of the regulation states that “[a]ir space is the area of air sovereignty above the land and water area of Indonesia”. Meanwhile, the air jurisdiction area is defined in Article 1 paragraph (2), stating: “The air jurisdiction area is the airspace outside the territory of the state consisting of the Exclusive Economic Zone (EEZ), Continental Shelf and Additional Zone where the state has sovereign rights and certain authority in accordance with the provisions of laws and regulations as well as international law.”

However, the concept of sovereign rights and authority is not defined further. This jurisdictional area of airspace is also defined in Law No. 43 of 2008 concerning the State Territory (State Territory Law) in Article 1 (3), “the area outside the National

Area that consists of the Exclusive Economic Zone, the Continental Shelf, and the Additional Zone where the state has the sovereign right and particular authority in accordance with international law.” This also emphasizes the sovereign rights under Article 7 of State Territory Law, by mentioning that Indonesia has sovereign rights and other rights in Jurisdiction areas in accordance with international law provisions.

### **3. Challenge, Resistance, Threats, Disturbance in Air Space**

The governance of national airspace as discussed above, is not in accordance with international air law as envisaged in Chicago Convention 1944. While International Air Law only divides the airspace into national and international airspace and thus does not recognize the concept of sovereign rights under the jurisdiction area of the airspace, Indonesian national air law provides a different arrangement. It is questionable why Article 6 paragraph (3) of Law No. 26 of 2007 concerning Spatial Planning in Article 10 paragraph (b) of the Law No. 34 of 2004 on the Indonesian Armed Forces and Article 9 paragraph (2) of the Governmental Regulation No. 4 of 2018 regarding the Security of Air Territory recognizes the presence of jurisdictional airspace along with sovereign rights? This situation leads to uncertainty in the implementation, especially in law enforcement. Thus, it can trigger misunderstanding in both regional and global perceptions of Indonesian Air Law. It is possible, that while the international community considers air space beyond national airspace as international airspace, Indonesian law still considers international airspace as its sovereign rights not existing in international air law.

Furthermore, regarding national security, especially the management of air security and safety, the ratification of UNCLOS 1982 by Indonesia presents a problem in airspace territorial management. When the principle of air law asserts that the state sovereignty in the airspace above a state’s territory and waters (territorial sea) is absolute, UNCLOS 1982 recognizes the existence of the right of another state regarding the right of the passage of foreign ships on the territorial sea. This provision raises doubt questioning the principle of absolute sovereignty in airspace; is innocent passage recognized in the airspace? Surely this provision contravenes the principle of absolute sovereignty in air territorial management, coupled with an issue regarding the EEZ where the freedom of navigation applies. Does the freedom of aerial navigation also apply to the airspace above EEZ? This problem surely needs a profound study. Another problem may also be related to the freedom of aerial navigation above archipelagic sea lanes designated by archipelagic states in archipelagic waters governed by the UNCLOS 1982. Does this arrangement confirm the principles of air law? Or, in other words, does the air law recognize the archipelagic sea lanes passage regimes for navigation as applied in the law of the sea? Although UNCLOS 1982 implicitly highlights the passage of non-commercial aircraft, issues of airspace territorial management are getting more complicated, coupled with the heavier consideration over the economy and the strategies in air territory, specifically regarding the designation of routes for civil or commercial aircraft (Prabandari, 2019). Such a problem will be worsened in terms of law enforcement both publicly and commercially.

As mentioned earlier in this study, maintaining the national security of a state is inextricable from the realization of national security *per se*. When classic national security refers to an outward-looking approach as an external threat that affects political stability and state security, an inward-looking approach is paramount in maintaining national security. An *outward-looking approach* refers to *soft power* with *high-politics* which not only sees national resilience but also the resilience at both regional and international levels, whereas an inward-looking approach focuses on the national resilience related to national interests. Some argue that an outward-looking approach is used to reach an inward-looking approach for the benefit of Indonesian people. The geographical conditions of Indonesia to realize and maintain national security should also be taken into account as the main fundamental to set a national policy and maintain national security (Sudjana, 2018). The geographical conditions of Indonesia have been dominated by seas, putting this country as a geostrategic state that mostly refers to the provisions in the Convention on the Law of the Sea 1982, but in air territorial management, it is essential to consider the absolute sovereignty principle upheld in the airspace law either nationally or internationally. Indonesia has to take action over whether the freedom of sailing within the jurisdiction of Indonesia similarly applies to air territorial management. If not, the mechanism of law enforcement needs to be considered. Thus, reconstruction is needed in territorial management to help maintain the national security of Indonesia.

### **Reconstruction of the Policy of State Territorial Management for National Security**

National resilience is a concept of the development of national security through the regulation and the administration of just prosperity, balanced, harmonious, and relevant security in all aspects of life in society as a whole and with integrity according to Pancasila, the 1945 Constitution of the Republic of Indonesia, and Archipelagic Outlook. In other words, the concept of national resilience serves as the guideline to improve the vigor, tenacity, and resilience of the state that has the capacity to grow national resilience. This resilience is reflected in the consistency of the achievement of development amidst the rise and fall in achieving prosperity. The prosperity achieved embraces all territories including border areas. Prosperity is depicted as a national condition that develops national values to optimize prosperity justly and evenly. The aspect of security represents the capability of a state to safeguard national values from any internal and external threats and interruptions.

In a global situation these days, the realization of prosperity and security relies on information technology that is globally and increasingly getting more modern and cutting-edge, making borders somewhat borderless and stretching the threats to multidimensional levels touching the aspects of life in society. This shift could also take place in the territories in Indonesia, especially in border areas. Such a condition is highly influential to the existence and the sovereignty of a state, encouraging every

state to survive with its national resilience that is resilient in all aspects of life in society, including geography, demography, natural resources, ideology, politics, economics, socio-culture, security, and safety.

National resilience which represents the visionary way of thinking in Indonesian society is intended to set resilience and tenacity for the state to address the threats and interruptions coming from inside or outside the state. Departing from the experiences of the state open to global situations, national security needs to be gradually developed to help it achieve prosperity for the nation.

National resilience inevitably relies on the advancement of science and technology. Indonesia as an independent state intends to realize the ideology and the national objectives, as outlined in the Preamble of the 1945 Constitution of the Republic of Indonesia. This ideology refers to freedom, unity, sovereignty, justice, and welfare. Therefore, Indonesia regulates the government within the system of national life that reflects the structure of social life of the nation according to Pancasila as the national ideology and the fundamental of the state, while the 1945 Constitution represents the source and the basis of norms for the enforcement of the values of Pancasila. To develop life and realize national interests, Indonesia has its perspective, assessment, and sensory responses all integrated into the Archipelagic Outlook as an international outlook that serves as the guidelines and demand encouraging the realization of national ideology and national objectives.

In terms of the achievement of national objectives, Indonesia often encounters threats, challenges, hindrances, and interruptions directly or indirectly, which could jeopardize the integrity, identity, and survival of the state. In a particular situation, this state needs to think and move to face the threats at both national and global levels.

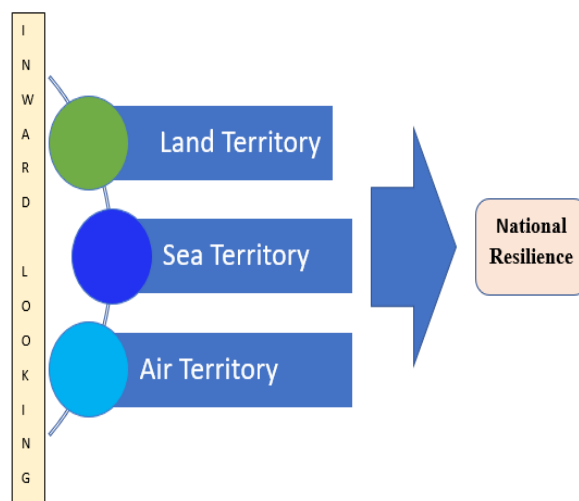
National resilience sets the guidelines to achieve national objectives and a prosperous society; this represents a national outlook that needs to be sustainably nurtured and developed by the state because national resilience is highly important for society and the nation as a whole. National resilience also represents the way of thinking disseminated to the members of the public, especially the young generation that is responsible for what the future holds. With it, it is expected that national security can be understood and developed for its implementation in society and the nation.

### **State Territorial Management Model**

The above explanation indicates that the management of lands and seas has been separately performed, while sea borders are related to the management of the outermost islands as part of the management of land borders. The lack of the grouping of problems arising at borders has made the formulation of strategy broader and rather unfocused. Consequently, violations cannot be optimally controlled. State territorial management, especially in border areas, is still seen as a local problem in a state, while regional and international collaborations are certainly needed.

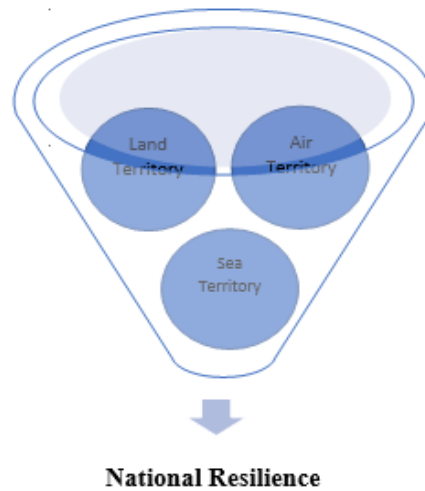


The following diagram is presented to give a clear depiction of the model of territorial management:



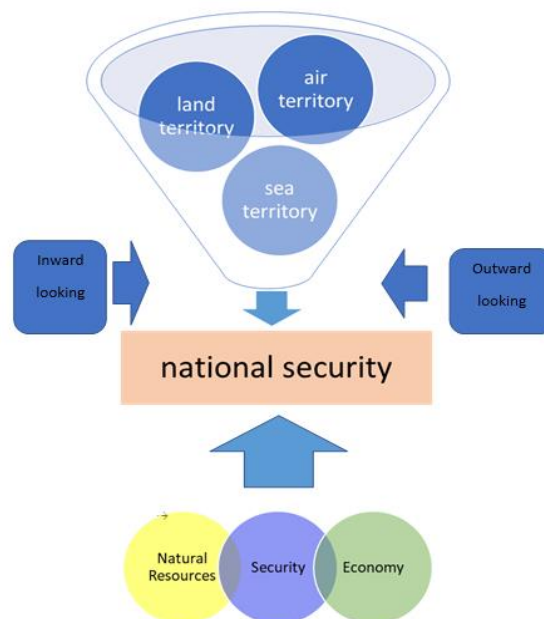
**Figure 2.** Current State Territorial Management Model (processed data)

Meanwhile, in terms of the previous discussion and analysis of the existing conditions at borders, there should be a synergy between policies of land, sea, and airspace territorial management. Formulating the policy of airspace territorial management is inseparable from the management of land and sea territorial management. This is because the airspace of a state is located above the lands and seas of the state's territory. Thus, the formulation of all policies must be integrated and synergic in establishing the national resilience of a state. This means that there should be a synergy between policy formulation regulating airspace management and those relating to ocean management, specifically in territorial sea management. The conceptual model of how the policies of territorial management should be formulated to realize the national security of a state is presented in Figure 3.



**Figure 3.** The conceptual model of state territorial management (processed data)

As stated in National Long-Term Development Plan (RPJPN), outward-looking and inward-looking approaches are equally important in realizing the national security of a state. While an inward-looking approach, to some extent, limits the State in maintaining national resilience, the use of these two approaches, which include the inward and outward-looking to maintain national resilience, is prominent. The existing problems can be grouped to allow the formulation of the strategy and policies to face the threats according to the cluster made. Of the analysis carried out in the previous discussion, the problems can be classified into three clusters: (i) natural resources, (ii) security, and (iii) economy. Thus, this research recommends the reconstruction of the model of state territorial management in establishing national resilience as follows:



**Figure 4.** Reconstruction of State Territorial Management Model (processed data)

From the figure above, it can be stated that there should be an integrated approach through synergy in policy formulation regarding territorial management which includes land, sea, as well as airspace territory. Furthermore, the implementation of such policies should adopt both outward and inward-looking approaches to achieve national security in all aspects (natural resources, security, and economy). The establishment of such security will support better national resilience.

**CONCLUSION**

The existing policies of the state territorial management have not optimally supported the establishment of Indonesia's national resilience because they only involve an inward-looking approach without considering an outward-looking approach for a more ideal formulation. To allow the state territorial management to support the realization of national security, clustering, in addition to both inward- and outward-looking approaches, should be conducted according to the existing threats to natural resources, security, and economy.

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