

Research Article

The Effectiveness of the Regional Governance of the EU through EASA in its Grounding Boeing 737 MAX Decision on Member Countries

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Abstract

This paper will discuss the effectiveness of the European Union (EU) within the framework of regional governance to recommend a grounding policy for Boeing 737 MAX 8 to countries that are members of the European Aviation Safety Agency (EASA). Through the EU's regional governance approach, this paper will fully elaborate on the domino effect of the recommendations on member countries. Previously, we will discuss the background, the regional governance currently underway in the EU, the chronology of the incident of the accident of two airlines B737-8 aircraft that are outside of EASA and the EASA response in the form of US product grounding recommendations, and then the state response member countries against EASA recommendations. So, in the end, it can be concluded that EASA gets 50 percent effectiveness because the distance between the event and the recommendations issued is considered too hasty so the joining of member countries with EU attitudes generally does not run simultaneously. The importance of this research is to try to test the effectiveness of regional organizations in administering governance through agencies that stand under it.

Keywords: EASA, European Union, regional governance, grounding, Boeing 737 MAX 8

I. Introduction

This paper will discuss the effectiveness of the European Union (EU) within the framework of regional governance to recommend a grounding policy for Boeing 737 MAX 8 to countries that are members of the European Aviation Safety Agency (EASA). Boeing's production aircraft, in the United States (US) which has adopted the latest aviation technology, has experienced problems in navigation systems and engine failure, causing accidents in Indonesia in 2018 and Ethiopia in 2019. After the fall of aircraft owned by Lion Air and Ethiopian Airlines, countries in the world which started including China and Indonesia decided to do a grounding for mass transit aircraft which can also be called B737-8, followed by EU countries too. The importance of this issue is that with the rampant cases of Boeing 737-8 MAX falling in two countries, it can be used to measure the extent of regional governance in this case the EU takes a central role to ensure aviation safety in the world, considering the impact of this grounding policy to other countries that follow the high standards in the world of aviation made by the EU.

As a regulatory body under the EU, EASA took the position of a regulatory body to regulate aviation. The tasks of EASA include 5 fields: (1) compiling EU flight rules; (2) certifying products and flight organizations in the European Union such as airworthiness; (3) providing supervision to member countries on several flight competencies such as Air Operations and Air Traffic Management; (4) promoting EU standards to the world; and (5) cooperating with countries outside the European Union to achieve the highest level of security in the European Union such as making an EU safety list and authorizing a third country

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operator. (EASA, 2019) The authority of EASA is to certify products, issue regulations, make standards, and conduct investigations and monitoring. Collect and analyze security data, drafts, and recommendations in security legislation, and coordinate with similar organizations in other parts of the world.

Of the five tasks above, EASA has high authority including in considering the airworthiness of an aircraft product. What is done by EASA by the procedures that apply to subordinates of supranational organizations that are regional? So that the authors propose the formulation of the problem, how is the effectiveness of the EU EASA in issuing Boeing 737-8 MAX grounding recommendations in implementing regional governance towards its member countries?

In this regard, the author is in a position to support the argument that EASA carries out its duty to ensure flight safety as a form of EU regional governance. EASA will immediately provide recommendations to both the national aviation authorities of the EU countries and their airlines effectively by at least obtaining 50 percent of member countries following the recommendations of their regional regulatory bodies. So, flight security and safety in the EU can be guaranteed because EASA has a formal legal set to regulate aviation activities within the European region. So, harmony and order are expected between the European Union countries in creating regulations that guarantee flights.

II. Global and Regional Governance

This is in line with Keohane and Nye global governance compiles a set of norms to be adhered to by its member countries. (Keohane & Nye, 1999) In it, the state can also discuss leading international issues regionally. Although there are many theories about the

new world order or the new world order with the formation of a world government, the European Union and the United Nations as an example of international government organizations are forms of global governance. In the context of global governance, which is then derived into regional governance, the success of a governance can be measured based on existing indicators. Suppose in the concept of the effectiveness of a regime that works on the basis of measurements of geographical proximity and dependence between one country and another. Solutions taken regionally are usually the solutions in the middle to effectively address the challenges that exist within the region based on initiatives. (Conca, 2012) Nevertheless, it can be underlined that the EU as a regional organization can have globalized bargaining power. (Delreux, 2020)

Within the regionalism that has been developed in the European Union, all principles are based on a constitution that is voluntarily agreed upon and agreed by the members so that within certain limits the European Union adheres to constitutionalism originating from institutional reforms based on the EU Charter of Fundamental Rights. (Craig, 2001, pp. 125-128) Even so, the concept of inter-regionalism can unite countries within the European Union to agree on provisions that apply in the context of regional stability in the context of economics and social welfare. (Börzel & Risse, 2009, pp. 5-23) In this context, the authors associate the existence of regional organizations such as the EU with the ability to narrow the scope of global governance to become regional governance with the existence of supranational institutions capable of oversight the member countries under it.

This paper uses a qualitative-descriptive approach, which tries to examine the phenomenon and its characteristics. (Nassaji, 2015) (Neuman, 2002) To complement the qualitative-descriptive, the

authors also take a case study approach derived from the necessary libraries as a way to observe phenomena derived from data while providing context to the information obtained. (Yin, 2014) The data that has been collected is in the form of journal articles, book chapters, news articles, and official documents issued by governments and regional organizations such as the EU. The data analysis technique uses ongoing case studies to test how effective regional governance is on handling grounded issues of the Boeing 737-8 MAX put forward in this paper.

III. Regional Governance in the European Union

Regional governance can be defined as the collective management of general problems at the regional level. Regional governance itself as a small part of global governance can be in the form of institutions, regimes, processes, cooperation, and networks. (EUISS, 2010, p. 17) In addition, regional governance must stimulate the process of mutual learning between national regulatory authorities. Of course, this formulation is used as a tool to deal with regional dynamics whose challenges are increasingly diverse. For example, a weak and failed country, resource issues that are interlocked, and issues that challenge regional governance itself, namely multilateralism, climate change, biotechnology, and migration. (EUISS, 2010, pp. 49-54) These contemporary issues can be resolved if countries gather in multilateral institutions, one of which is regional organizations that are supranational like the EU.

In a discussion on regional governance, the European Union has a unique example of the order of regionalism in various other regions of the world. When compared to ASEAN, which began its regionalism through traditional political and security issues and was

part of the traditional approach, the EU surpassed it all. Political integration in Europe with the formation of supranational institutions in the form of the EU itself stems from economic integration. The reliability of cooperating as a "cartel" in the field of coal mining and steel production has increased the integration of the economy, single market, and single currency. This approach is proven by research from Falkner & Mueller who see that the EU's role in regional governance is increasing at the policy level. (Falkner & Müller, 2014, p. 3)

This means that as actors in relations between countries, the EU contributes to determining the direction and results of regional policies made collectively with other actors. In normative tools such as legal products, the EU seeks to export this value to other regions through bilateral relations with third-party countries and is a model in the world as a model of regional governance. (Manners, 2002, pp. 235-258) There are several advantages that the EU has in each of its policies that can be exported to other countries in the world. First, the procedures adopted by the EU in other international organizations are heavily influenced by the consensus established among member countries as a sign of solidarity in establishing cooperation and realizing shared interests such as in the World Trade Organization (WTO). Second, EU policy is always considered when it comes to dealing with big powers such as the US, as well as Brazil, Russia, India, China, and South Africa or BRICs. On the other hand, there are two weaknesses of the EU in determining regional policies including a lack of solidity and solidarity from member countries internally so that dynamics and friction often occur in the policy-making process, as well as a lack of appetite for EU standards that are considered too high to be

achieved in part large developing countries. (Falkner & Müller, 2014, p. 5)

With the separation of powers between the executive, legislative and judicial powers as well as the state, the EU can make legal products, implement them in concrete policies, and adjudicate if violations occur in the implementation of these laws. (Christiansen, 2017, p. 211) This means more than economic and political integration in the European region; the EU accommodates the integration of law by the formation of a set of constitutions that were drawn up in the European Council and the European Parliament which is a bicameral legislative power. The presence of this law governing EU values and norms is due to the two pillars of political culture, namely the independent power of a supranational institution and the "compromise culture" that is developed in directing bargaining among its member states (Christiansen, 2017, p. 211).

As a supranational institution, the EU should have bodies whose legality is the same as those at the level of European countries, but the authority is higher than these national bodies. This is where the importance of legitimacy in placing countries in an equal position, giving space to freedom from state maneuvers while controlling through a formal legal framework (Christiansen, 2017, pp. 211-212). In the second pillar, it is explained that even though supranational institutions have authority that is even far beyond the state, the state remains an important factor in relations between countries in the European region. The proof is that inter-government relations within the country occur mutually influence the determination of policies that impact the region (Christiansen, 2017, p. 212).

Likewise with the presence of bodies that stand under the EU institution itself, for example, EASA. EASA's involvement in determining global aviation safety policies and

regulations also signifies increasing the EU's regional role. As mentioned by Christiansen the EU has invited post-colonial countries of Western Europe such as in Africa, the Caribbean, and the Pacific to be involved in conducting development, trade, and binding regulations in the transportation sector (Christiansen, 2017, p. 216). In this case, the foreign policy coordination carried out is carried out outside the institutional foundation, in building institutional infrastructure for the coordination. And within certain limits, it will form a European Union-style regional governance framework. There are five approaches put forward: multilateralism, non-violent conflict resolution, promotion of international law, and development of regional institutions (Christiansen, 2017, pp. 218-220).

It becomes a challenge for the EU in facing an increasingly multipolar world, by taking part as a multipolar player (EUISS, 2010, p. 26). With the increase in the activities of countries with great powers such as in informal G2, G7, and G20 meetings at least the EU can enter and participate in being a counterweight (Christiansen, 2017, p. 220) But at the same time, the authors see a gap that should be able to be closed by the EU through the regional policy that was made, namely the formation of a new multipolar pattern that allows countries to form regionalism in the size of the country's economy. This is what the EU then tries to answer by forming as much as possible strategic cooperation with these new regionalisms to adjust to the challenges it faces (Christiansen, 2017, p. 220). This can be seen from the EASA policy, by placing membership through cooperation in a memorandum of understanding, bilateral and technical support through agreement on regional rules.

IV. MAX 8 Accident Events and EASA Grounding Response

The Boeing 737-8 MAX is an aircraft produced by the multinational aviation company Boeing, United States. The aircraft, which flew on January 29, 2016, was first introduced on May 22, 2017, by Malindo Air (FlightGlobal, 2017). This aircraft is a development of Boeing NextGen (NG) which has been developed since 1997 and refers to the types 737-600, 737-700, 737-800, and 737-900. As of this writing, 376 aircraft have been produced and used by world airlines, some of which are Garuda Indonesia, Lion Air, Ethiopian Airlines, etc. Of course, the number of these aircraft is still far from the total orders from all over the world, where in 2019 there were 5,111 aircraft ordered (The Boeing Company, 2019).

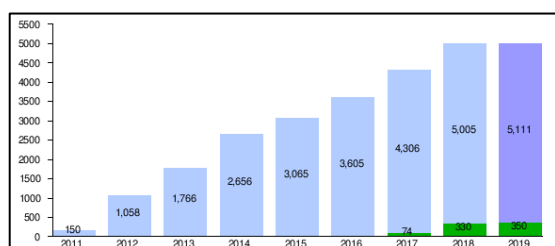


Fig. 1. Number of orders (blue) and total aircraft that have been shipped (green) from 2011 to 2019

Source: (The Boeing Company 2019).

In the majority of shipping destinations, Boeing 737 MAX 8 operations run smoothly. Before the accident finally occurred in Bekasi Bay, Karawang, West Java on October 29, 2018. At that time, Lion Air with flight number JT-610 and registration of the PK-LQP plane crashed in these waters which killed 189 people with details of 181 passengers and 8 crew on the flight. As many as 20 people working in ministries/institutions became passengers, while 1 baby and 2 children also participated (Bloomberg, 2018). This made the

public at that time wonder because the pilot and copilot had pocketed 6,000 and 5,000 flight hours, respectively. After thirteen minutes of taking off from Soekarno Hatta Cengkareng, the plane, which had pocketed 800 hours of flight, lost contact (The Sydney Morning Herald, 2018). Finally, local fishermen found a floating plane wreck in Karawang waters (Bloomberg, 2018)

After getting an in-depth analysis of aircraft investigations, it was found that the aircraft's angle of attack sensor was damaged causing the nose of the plane to point too high, and the plane could crash (The New York Times, 2019). This caused all aircraft stabilizer systems to be inactive and caused the aircraft to fall at a depth of 5,000 feet below sea level at a speed of 450 miles per hour. This was also experienced by an accident in Tulu, Bishofta, Ethiopia in 2019, with Ethiopian Airlines with flight number ET302 and ET-AVJ flight registration flying from Addis Ababa to Nairobi. The plane, which carried 149 passengers and 8 flight crews, crashed, killing a total of 157 fatalities, consisting of 32 Kenyans, 18 Canadians, 9 Ethiopians, and others (BBC, 2019).

As a result of two consecutive cases of Boeing 737-8 accidents, several countries carried out banning and grounding the aircraft made by manufacturers from the United States. Counted the United States, European Union, Nigeria, United Kingdom, China, India, Canada, Singapore, Australia, Turkey, France, Germany, Ireland, South Korea, Mongolia, Indonesia, Malaysia, Oman, United Arab Emirates, and several airlines in the country those countries are taking the same position to conduct a grounding against MAX 8 (Al Jazeera, 2019).

For the two cases of accidents that have occurred above, EASA responded by issuing a recommendation to civil aviation authorities in each EU member state not to

extend the flight permit of the Boeing 737 MAX 8. Even in the list of products issued by EASA, only one Boeing product is permitted to fly and be certified in European Union countries, namely the Boeing 737-9 or Boeing 737 MAX 9. This follows a blacklisted action on the Boeing 737 MAX 8 (EASA, 2019).

In a regional government such as the European Union, it is agreed that the principle of liberal intergovernmentalism requires three aspects, namely (1) rational; (2) liberal; and (3) created through collaboration between member states (Moravcsik, 1993). The EU has implemented all three, as in the first aspect there is a strong desire of each EU member country to implement high safety standards for aviation that are related to the mobility of society at large. The second aspect, liberal, the EU through EASA has opened several representative branches to strengthen cooperation with countries such as the United States, China, Canada, and Singapore in addition to collaborating with ICAO (EASA, 2019). And the third aspect, collaboration is seen when a decision is decided by EASA, so it is a necessity for every EU member country to comply. Including the grounding regulations of the Boeing 737-8.

EASA (2019) established an airworthiness regime in EU Regulation No. 748 of 2012. It regulates what aircraft is suitable to fly and what specifications are more complete, especially when related to the rules of flight feasibility and environmental standards that must be met. In this case, Boeing 737-8 violated article 145 of the regulation, causing EASA to ground the Boeing product.

The European Union's 737-8 grounding decision later made Boeing lose more than 27 billion US dollars as a result of being removed from the company's market value since the close of stock trading (BBC, 2019). Lion Air also decided to move aircraft orders to Airbus (Bloomberg, 2019). This

proves that it should be able to check the motives of the political economy of the EU to protect the European internal market which could endanger many falling passengers. But so far there have been no officials from Airbus who have commented in the media regarding the decision on the grounding of the Boeing 737-8. This means that so far, the EU's good intentions to ensure that the aviation world survives an accident is still a top priority.

Whereas what happened in North America, after the Lion Air accident in Karawang, the use of the B737-8 aircraft continued, considering that the FAA issued a letter of recommendation for the continuity of the use of the MAX aircraft type (DW, 2019). The FAA shows its alignment with national interests by protecting Boeing producers from a significant fall due to this accident. It was only after Donald Trump's government issued a recommendation today March 14, 2019, that the United States banned and grounded the Boeing 737-8 (The New York Times, 2019).

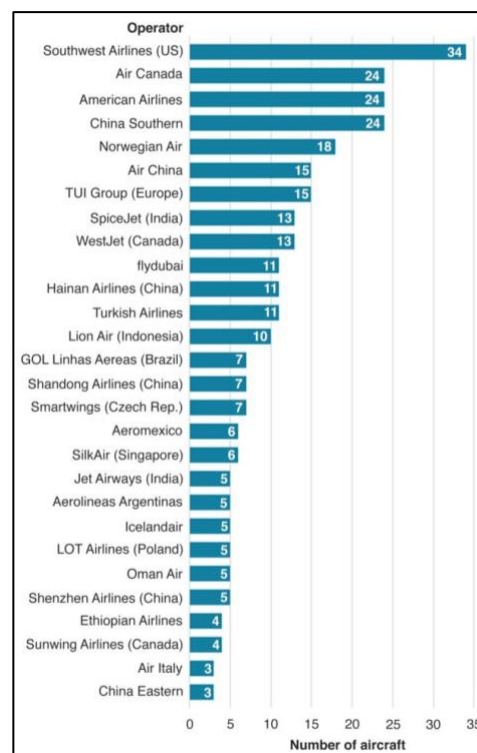


Fig. 2. Airlines using Boeing 737-8 have more than three types of aircraft
Source: (BBC, 2019).

V. Member States Response and EASA Regional Governance Effectiveness

From its development, EASA countries are not only limited to EU membership. Rather it opens up the possibility for countries outside the EU to join the regional regime of the aviation authority within the framework of technical cooperation, become an observer country, sign a memorandum of understanding, bilateral cooperation between these countries and EASA, and become a location for EASA's representative offices in each continent. But in principle, there are 29 European Union member countries and 4 European Free Trade Area (EFTA) member countries. Austria, Netherlands, Belgium, Bulgaria, Czech Republic, Denmark, Estonia, Finland, Hungary, Germany, United Kingdom, Ireland, Italy, Croatia, Latvia, Lithuania, Luxembourg, Malta, Poland, Portugal, France, Romania, Cyprus, Slovenia, Slovakia, Spain, Switzerland, and Greece. While the EFTA countries include Iceland, Liechtenstein, Norway, and Sweden (EASA, 2019).

In the EASA grounding policy, it is important to examine the effectiveness of the regional governance of the aviation authority within the European Union if viewed in terms of implementing the rules in its member countries. On March 12, 2019, out of 33 EASA member countries, 12 member countries applied official appeal for grounding including the European Union. These countries include Austria, the Netherlands, Belgium, United Kingdom, Ireland, Italy, Germany, Poland, Portugal, France, Romania, and Greece (ANAC 2019; Civil Aviation Authority 2019; ENAC 2019; Kathimerini 2019; Reuters 2019; RTE 2019; SeeNews.com 2019; Urzad Lotnictwa Cywilnego 2019). Whereas the next day on March 13, 2019, three countries consisting of Bulgaria, Denmark, and Cyprus followed to ground the Boeing 737 Max 8 (Kathimerini 2019; CPH Post Online 2019; SeeNews.com

2019). This means that until now only 15 of 33 EASA member countries have implemented regulations that are in line.

Whereas the only EASA member country that follows airline appeals is only Iceland and Sweden (NBC News, 2019). So that it was found that overall, 17 members applied the EASA recommendations and regulations, of which two were on the airline. This means that it can be said that there is an effectiveness of 45 to 50 percent of the implementation of regulations from EASA. However, as a side note, the countries which are members of EASA are also included in the membership of the International Civil Aviation Organization (ICAO) under the UN body and also the European Civil Aviation Conference (ECAC) or Joint Aviation Authority (JAA) which is within European Union coordination.

VI. Conclusion

So, it can be concluded that EASA has succeeded in reminding at least half of the total membership. Among the other 15 countries are national aviation authorities and 2 countries based on the airline that implements grounding recommendations on the Boeing 737 MAX 8 aircraft products from EASA. It is purely in the interests of EASA to guarantee flight safety in the EU. After the accident with the fall of Lion Air flight number JT-610 in Karawang waters in 2018, followed by Ethiopian Airlines in 2019 in Ethiopia there was a difference of opinion regarding the decision for product grounding. For example, the FAA, the US aviation authority does not immediately take a firm stand against Boeing company to the ground. In issuing its notification, EASA follows the mechanism and procedures of representatives of countries sitting at EASA to negotiate whether grounding measures must be taken for the aircraft products.

This means that with a value of 45 to 50 percent effectiveness, EASA must evaluate its grounding recommendations to find a formulation so that member countries can submit immediately to a flight and grounding ban. The problem that occurs in the case of the Boeing 737 MAX 8 is that there is no simultaneous regulation in EU member countries because in implementing the EASA recommendations it does not coincide. It takes two days, 12 to 13 March 2019 to ensure 50 percent of the countries comply with the EASA grounding decision. However, in the context of regional governance, the EU has implemented the two pillars of regional governance namely a culture of compromise that creates consensus among member states and supranational nature that can bind all member states to submit to and comply with the provisions governed in a set of systems, rules, and regimes in force in a region.

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