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## Analysis of violations of Iran and Panama Tanker crossing rights in Indonesia reviewed from International law

Antoni Yudha Timor<sup>1</sup>, Joko Setiyono<sup>2</sup>

<sup>1</sup> Master of Law, Diponegoro University, Tembalang, Kota Semarang, Jawa Tengah, Indonesia

<sup>2</sup> Lecturer, Diponegoro University, Tembalang, Kota Semarang, Jawa Tengah, Indonesia

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### Abstract

The State of Indonesia as the largest archipelagic country has a quite high risk of violations and crimes in its marine territory. As a member of the United Nations that has ratified UNCLOS 1982, Indonesia is subject to and guided by the convention in resolving various maritime disputes involving other countries. This article discusses the enforcement of international law of the sea for foreign ships that violate the right of passage based on the 1982 International Law of the Sea Convention and a juridical analysis of the settlement of disputes over the berth of the MT ship. Iranian Horse with MT. Freya Panama *outside* the Indonesian Archipelagic Sea Lane (ALKI) according to international maritime law. The results of the study indicate that the ship to ship act committed by the two foreign tankers is an act that violates international maritime law and Indonesian national law.

**Keywords:** rights of passage, maritime disputes, international and national law of the sea

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### Introduction

The concept of the sea is interpreted in two senses, namely the sea as *res nullius* and *res communis*. *Res nullius* means the sea is defined as a place that is not owned by anyone while *res communis* means the sea belongs to everyone (Djalal, 1979) <sup>[2]</sup>. The development of the two conceptions originated from events that occurred in the past related to control of the sea carried out by the Roman Empire until various conferences were held by countries to reach an agreement that could be complied with concerning the international law of the sea.

Awareness of the international community to achieve world peace does not stop only on the security of the land route but also reaches the sea route. It is necessary to regulate the sea route because the sea is an international trade route, has abundant potential resources, transportation routes, etc. Therefore, it needs to make arrangements to regulate the rights and obligations of state ships crossing the sea based on the jurisdiction and sovereignty of a country so that there are no violations or crimes in the sea area. These efforts have resulted in the inception of several conventions and agreements. The convention that is a pillar for all countries that are members of the United Nations (PBB) regarding the rights and obligations of coastal and trans-border states is the International Law of the Sea Convention (UNCLOS 1982) which was signed by 150 countries (Piseth, 2020) <sup>[9]</sup>. The convention applies to countries that have signed and ratified the convention.

The State of Indonesia is one of the countries that are members of the United Nations and ratified the 1982 International Law of the Sea Convention with the ratification of Law Number 17 of 1985 concerning Ratification of the United Nations Convention On The Law of the Sea.

The territory of the Indonesian state has wide waters with two-thirds of its territory covering the sea. In addition to having a large sea area, Indonesia also has abundant islands. According to the 1982 International Law of the Sea Conference, Indonesia's sea area has an area of 5.9 million km<sup>2</sup> and consists of territorial waters of 3.2 million km<sup>2</sup> and the waters of the Exclusive Economic Zone (ZEE) covering an area of 2.7 km<sup>2</sup>, not including the continental shelf. There are 17,000 islands in Indonesia with the sea that unites them, making Indonesia the largest archipelagic country in the world (the biggest Archipelago in the World) (Lasabud, 2013) <sup>[5]</sup>.

The vastness of Indonesia's sea area also poses considerable risks, considering that the 1982 International Law of the Sea Convention provides 6 (six) freedoms for countries to sail, fly, install underwater cables and pipelines, scientific research, build artificial islands and catch fish. The freedom given is of course accompanied by the concept of protection (Puspa Ayu, 2019).

Freedom for the international community is one of the principles that apply in the international sea. This can result in the emergence of crimes and violations of international law in the sea area. The breadth of Indonesia's territorial sea also has considerable risks, such as rampant illegal fishing by foreign ships, claims to marine areas such as the Natuna Sea by China, drug smuggling, and foreign ships violating the boundaries of Indonesia's territorial sea (Tsamenyi, 2010).

The rise of cases of transnational and international violations and crimes that occur in Indonesian waters must be equal to increased security as a preventive measure and law enforcement to provide strict sanctions to perpetrators as a repressive effort to prevent repeated violations and crimes. Maritime cases on an international

scale that often occur apart from illegal fishing are the rise of foreign ships committing violations in the territorial area or violating the right of passage in the sea areas of other countries. It also happens in Indonesia as it had been reported that the Maritime Security Agency (Bakamla) and the Indonesian Navy (AL) had arrested two motor tankers MT Horse with an Iranian flag and MT Freya with a Panama flag. The two ships were suspected of carrying out illegal acts. From these observations it appears that *ship to ship* by both ships is in progress and it is suspected that the two of them carried out illegal fuel exchanges due to the act of the names on the ship's hull covering by using cloth. In addition, both of them who are outside the reach of the Indonesian Archipelagic Sea Route (ALKI) are considered to have violated the right of transit passage because they deviated from the 25 NM ALKI limit and stopped outside the ALKI lane (Arifin, 2021) <sup>[1]</sup>.

There were suspicions by Bakamla and the Indonesian Navy, then the two ships were examined and firearms were found. There was an act of lowering the flag by the two ships, then both of them were secured for further examination until the court heard.

Every foreign ship that will transit through the territory of the coastal state is obliged to show its flag and comply with the regulations in force in the coastal state. However, this was not done by the two ships, even though they did not have permission to transit or have the purpose of legally anchoring in Indonesian waters. Therefore, in this article, we will discuss 2 things, namely how to enforce international maritime law for foreign ships that violate the right of passage based on the 1982 International Law of the Sea Convention and how to analyze the juridical dispute resolution of Iranian tanker ships outside the Indonesian archipelagic sea lanes according to the international maritime law.

### Research Method

This research is a legal study which is category as normative or doctrinal legal study: Peter (Mahmud Marzuki, 2014) Conducted with a review of the literature "Research Library" is a process for discovering the rules of law, principles of law, and legal doctrine to solve the legal issues faced by examining the literature materials that focus on conducting analysis and studying primary and secondary legal materials so that legal research will be able to produce theoretical arguments or new concepts as an attempt at resolving legal issues. This legal research uses both primary and secondary legal materials regarding the case of Analysis of Violations of Iran And Panama Tanker Crossing Rights In Indonesia Reviewed From International Law.

### Research Result

#### 1. Enforcement of the International Law of the Sea for Foreign Ships Violating the Right of Passage Based on the 1982 Convention on the International Law of the Sea

The 1982 International Law of the Sea Convention provides certainty in the legal framework in which it is regulated regarding all uses of the ocean and the entire international reach of the sea and contains matters related to claims of marine areas in the EEZ, territorial sea, and continental shelf (Wartini, 2017).

The 1982 International Law of the Sea Convention provides 3 passage rights for ships with foreign flags which are described as follows, the Right of Archipelagic Sea Lane Passage, the Right of Transit Passage, and the Right of Peaceful Passage. Article 53 of the 1982 International Law of the Sea Convention regulates the right of archipelagic sea lanes passage which gives the archipelagic state the rights to determine sea lanes and flight routes above them. It aims to be able to be crossed by "foreign ships and aircraft directly, continuously, and as quickly as possible through or over the archipelagic waters and the territorial sea".

The word "continuously" means that ships or aircraft are prohibited from entering ports or airports without permission from the Papuan state. Direct means the archipelagic sea lane crossing to the free sea or EEZ of another country starting from the EEZ or the free sea of a country.

As soon as possible means that ships that are passing are prohibited from stopping or docking or delaying their voyages or flights. In addition to the provisions regarding conditions that must be obeyed by the foreign ships or aircraft, it also gives archipelagic countries the obligation not to interfere with the rights ships of other countries. The intended disturbance is related to physical disturbances that are felt to be possible due to disrupting the direction of shipping ships or aircraft (Narwati, 2018) <sup>[7]</sup>.

Indonesia as an archipelagic country certainly has the right to determine ALKI. Based on Article 11 of Government Regulation No. 37 of 2002 concerning the Rights and Obligations of Foreign Ships and Aircraft in Implementing Sea Lane Passage Rights Islands Through the Archipelagic Sea Route, there are 3 (three) ALKI and their parts. "First, ALKI I is intend for sailing activities from the South China Sea across the Natuna Sea, Karimata Strait, Java Sea, and Sunda Strait to the Indian Ocean, and vice versa; and for shipping from the Singapore Strait via the Natuna Sea and vice versa (Sea Channel Branch I A). Second, ALKI II for shipping from the Sulawesi Sea across the Makassar Strait, Flores Sea, and Lombok Strait to the Indian Ocean, and vice versa. Third, ALKI III which functions for shipping from the Pacific Ocean across the Maluku Sea, Seram Sea, Banda Sea, Ombai Strait, and Sawu Sea".

The provisions of the right of transit passage in Article 38 Unclos 1982 can be implemented by foreign ships or aircraft in the strait. However, if a route that crosses the high seas or passes through the EEZ with the same function intersects with the navigational and hydrographic characteristics on the seaward side of an island, foreign ships or aircraft cannot exercise the right of transit passage. The sea route is a strategic route used for trade both on a national and international scale, so it is inevitable if a ship sails across the sea area of another country. Therefore, the 1982 International Law of the Sea Convention accommodates the right of innocent

passage contained in Article 17 that all countries without exception have the right of innocent passage through the territorial sea both for coastal and non-coastal countries.

Article 52 in relation to archipelagic waters also grants the right of innocent passage to foreign ships by all countries. Every foreign ship or aircraft that is enjoying the right of transit passage in a strait of a coastal state must continue to comply with international legal regulations. The right of passage owned by foreign ships contained in Article 18 of UNCLOS 1982 which reads (1) "Passing through inland waters or stopping at a berth with anchors in the middle of the sea or leaning on a port"; (2) "Departing from inland waters or stopping in the middle of the sea (roadstead) by means of the said berth or port facility."

The guarantee of freedom of navigation in international seas in its implementation is not always orderly in line with international law of the sea. Some of them were misused by foreign ships. The application of the right of innocent passage by foreign ships allows the violation of criminal acts such as the transportation of illegal immigrants, smuggling of prohibited goods, customs, environmental pollution, illegal fishing, etc.

The enforcement of the right of innocent passage to foreign ships and aircraft in the territorial sea with a record that it is not allowed to carry out an action that is considered dangerous and even includes a crime that can result in potential disruption of the territorial integrity of a country's waters (Suhendang, 2015) <sup>[12]</sup>. When committing a violation or crime that endangers the coastal state, the coastal state can exercise its jurisdiction.

## **2. Juridical Analysis of Dispute Settlement of Iranian Tanker Ships Leaning Outside Indonesian Archipelagic Sea Lanes according to International Law of the Sea**

The existence of the right of archipelagic sea lanes passage granted by the archipelagic state is a manifestation of international shipping rights for foreign ships. Foreign ships and aircraft wishing to traverse the archipelagic sea lanes are strictly prohibited from deviating more than 25 nautical miles to both sides of the axis line. Foreign aircraft and ships are also prohibited from approaching the coast with a range of less than 10% of the distance between the points closest to the islands located on the border with the sea lane.

On January 24, 2021, Mehdi Monghasejahrom, an Iranian citizen riding the MT Horse, was detained by the Indonesian Maritime Security Agency (Bakamla). The ship consists of Crude Oil (amounting to 282,849.66 MT (two hundred eighty two thousand eight hundred forty-nine point sixty-six Matrix Tons).

The incident began before moving into Indonesian waters, the MT tanker. Horse with the Iranian flag sailed to Larak Island to pick up 3 (three) armed security guard personnel, who were accoutring with 3 (three) crates of firearms.

The weapons carried were found in a specific place. MT ship. Horse and MT ship. The Panamanian-flagged Freya established leaning together along with side-by-side detected on Marore Island. The position of the flag of the ship was decreased and the hull was closed when it was found by Bakamla in the marine waters of South Natuna Indonesian waters with the AIS (Automatic Identification System) turned off.

The discovery of firearms in the ship MT. Horse that has been leaning outside the Indonesian Archipelago Sea lane (ALKI) is a violation. Bakamla made arrests and investigated the captain and crew. From the results of the investigation by Bakamla and the facts at the trial, it discovered 5 (five) violations committed by the two tankers, namely: a. Violation of ALKI I by anchoring (leaning outside of ALKI); b. Exchange of crude oil (crude oil) to ship MT. The Panamanian-flagged Freya. c. Turn off the Automatic Identification System (AIS) while in Indonesian waters; d. Execute a firearm in violation of Article 1 paragraph (1) of the Emergency Law of the Republic of Indonesia No. 12 of 1951.

Spilled oil and didn't show the ship's flag when docked. Not responding to radio calls from coast guard vessels and covering identities on the ship's hull with a cloth in violation of Law No. 17 of 2008 concerning shipping.

Settlement of disputes regarding the entry of MT ships. Horse and MT. Freya to the Indonesian waters ended on May 25, 2021 with the issuance of Decision Number 235/Pid.Sus/2021/PN Btm by the Batam District Court. The panel of judges stated that the defendant considering the captain of the MT Horse had violated Article 317 in conjunction with Article 193 paragraph (1) letter b of Law Number 17 of 2008 concerning Shipping, and he had not complied with international shipping regulations and shipping lane regulations. Based on the provisions in Article 193 paragraph 1 letter b, the a quo law has emphasized that a captain must understand and comply with the applicable provisions in the shipping lane.

During the inspection, in addition to the presence of firearms and crude oil, several documents were also established. One of the consequence documents found was the port clearance. Port clearance or Sailing Approval Letter (SPB) is a state document to be given to every ship for shipping activities leaving the port issued by the harbormaster with a complete record of the ship's eligibility requirements and others. (Kartanegara, 2018) <sup>[4]</sup>.

In the port clearance owned by the ship MT. Horse only found the inclusion of an Iranian port as a ship's departure but not including the destination port. The same thing applies to the MT Freya ship that is known to depart from the port of Singapore but there is no destination port on the ship's port clearance. If you see that both do not meet the requirements that should exist.

The MT Horse and MT Freya are not supposed to dock and ship to ship in Indonesian waters, which are precisely in the South Natuna Sea, entering inland waters (they are not located on the outer islands). The location is precise to the west of Pontianak, which is 7 miles when measured from the Male Island, meaning that it is still part of Indonesian waters. Firstly the location of the ship MT Horse and MT. Freya was established to be outside ALKI I (one) and still included in Indonesian waters in AIS condition.

MT ship. Horse and MT Freya have violated the right of transit passage outside ALKI and are still included in the territory of Indonesia. If guided by the 1982 International Law of the Sea Convention which is specifically regulated in Article 18, what is meant by the right of passage is "to cross the sea but not enter inland waters or stop at an anchorage in the middle of the sea (roadstead) or port facilities outside inland waters and must be carried out continuously and quickly. In fact, the Convention has also emphasized that if a ship is forced to dock on the track regulated in Article 18 paragraph 1, it can only be concluded under certain conditions.

Conditions that are possible for foreign ships to dock in the inland sea of a coastal country are: emergency shipping due to force majeure or other emergency conditions that require assistance to people, ships or aircraft in the sea area. When connecting with the case of MT. Horse and MT Freya, there was no such condition that required them to stop or lean on Indonesian waters.

The jurisdiction of the coastal state applies to inland waters so that all ships entering the territorial waters must comply with the laws in force in the coastal state. The enforcement of this jurisdiction is in line with the law that applies on the mainland, meaning that the national law of the coastal state applies to the national legal jurisdiction of the archipelagic state and ships entering inland waters (RR Churchill, 1988). However, this jurisdiction is limited by the right of passage granted to foreign ships passing from the territorial sea to internal waters such as ports (Lestari, 2017) <sup>[6]</sup>.

Based on the jurisdiction owned by the coastal state in Article 25, the coastal state can do something if there are foreign ships that stop by or are heading to ports outside inland waters as an effort to prevent violations that may be carried out by foreign ships passing within the waters zone. Based on these provisions, the arrests were made by Bakamla on the MT ship. Horse and MT. Freya in the South Natuna Sea, to be precise, begins to enter inland waters (not on the outer islands). It located in the west of Pontianak, which is 7 miles from the island of the male, that means it has not entered international waters to prevent any possible violations by the captains of the two ships, it was appropriate to do so, for his actions the captain of the ship responsible was sentenced to 1 year in prison during a 2 year probationary period.

### Conclusion

The granting of 3 passage rights to foreign ships towards carry out shipping activities in carrying out trading activities enclosed by the reach of international seas in Unclos 1982 absolutely has rules that must be obeyed by coastal or non-coastal countries and also applies to foreign ships passing through archipelagic countries. The settlement method in the event of a conflict in the three rights of passage is different based on the territorial waters and the rights of passage that are violated.

Based on the juridical analysis carried out on the elements of the violations committed by the MT. Horse Iran and MT Freya Panama, if based on Unclos 1982 and applicable Indonesian national law, have been proven as stated in Decision Number 235/Pid.Sus/2021/PN Btm by the Batam District Court with a prison sentence of 1 year suspended within two years from its issuance decision on the captain of the ship. The initial steps for arrests carried out by Bakamla as an effort to prevent illegal activities in ALKI are appropriate to maintain security in Indonesia.

### References

1. Arifin C. Kronologi Penangkapan 2 Kapal Tanker Berbendera Iran dan Panama Jual Beli Minyak di Pasar Gelap. Batam: Tribun News, 2021.
2. Djalal H. Perjuangan Indonesia di Bidang Hukum laut. Jakarta: Bina Cipta., 1979.
3. Hidayat Sd. Metodologi Penelitian. Bandung: CV. Mandar Maju, 2002.
4. Kartanegara DP. <https://dishub.kukarkab.go.id/detailpost/surat-persetujuan-berlayar-port-clearance>. Retrieved from Dishub. Kukarkab.Go.id: [https://dishub.kukarkab.go.id/detail post/surat-persetujuan-berlayar-port-clearance](https://dishub.kukarkab.go.id/detailpost/surat-persetujuan-berlayar-port-clearance), 2018.
5. Lasabud R. Pembangunan Wilayah Pesisir dan Lautan. Jurnal Ilmiah Platax Universitas Sam Ratulangi, 2013, 93.
6. Lestari MM. Dalam hal kapal menuju perairan pedalaman atau singgah di suatu fasilitas pelabuhan di luar perairan pedalaman, Negara pantai juga mempunyai hak untuk mengambil langkah yang diperlukan untuk mencegah pelanggaran apapun terhadap persyaratan yang ditentukan. *Legality*,2017:25(1):75-76.
7. Narwati E. Pelaksanaan Hak Lintas Alur Laut Kepulauan Pada Saat Konflik Bersenjata Dan Kepentingan Indonesia Sebagai Negara Kepulauan Netral. *Jurnal Majelis*, 2018, 32.
8. Peter Mahmud Marzuki. Penelitian Hukum, Edisi Revisi. Jakarta: Kencana Prenada Media Group., 2014.
9. Piseth C. Peran Konvensi Hukum Laut Internasional PBB 1982 Dan International Maritime Organization (IMO) Bagi Keselamatan Dan Keamanan Anak Buah Kapal (ABK) Selama Berlayar Dalam Pelayaran Internasional. *Jurnal Poros Hukum Padjajaran*, 2020, 164.
10. Puspoayu ES. Praktik Illegal Transshipment Di Laut Lepas Berdasarkan Hukum Laut Internasional. *Jurnal Mimbar Hukum*, 2019, 79.
11. Churchill RR, LA. *The Law of the Sea*. Manchester: Manchester University Press.
12. Suhendang D. Penegakan Hukum Hak Lintas Damai Bagi Kapal- Kapal Asing Di Perairan Indonesia. *Jurnal Universitas Brawijaya*, 2015, 7-8.