

## **UNCLOS 1982 Analysis Regarding Problems of State Jurisdiction and Law Enforcement on Foreign Flag Ships**

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### **Abstract**

International Law of the Sea are legal principles governing the rights and authorities of a country over sea areas under its national jurisdiction (national jurisdiction). International Law has reign most interactions between States in the sea. The practice of illegal transshipment is a serious issue as it falls within both theft mode and smuggling through the transfer of cargo from one ship to another that occurs at sea. Including a crime which committed in the territory of one state but involving parties from another state or more. Law enforcement is a major concern when an offence of some kind of illegal transshipment occurs. The study aims to determine the jurisdiction of states in enforcing laws including in criminal matters that occurred over its sea where the country has sovereign rights, especially when the involvement of 3rd states party in the law enforcement on a ship which not entered into its territory, yet indicately committed a violation of the law in some states water area, this paper also study how the responsibility of 3rd states party towards of flag states of ships who feel harmed. This article was written using normative research methods with a statutory. Historical and conceptual approach explaining efforts from international organizations in resolving the issues of accountability of countries involved in the problem of Illegal Transshipment at sea in the 1982 UNCLOS perspective especially the process of law enforcement and dispute resolution by the International Tribunal for the Law of The Sea (ITLOS).

**Keywords:** International Law, UNCLOS 1982, State Jurisdiction.



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### **INTRODUCTION**

International law of the sea is based on the concept of freedom of the seas. In the mid-20th century, as each country increased its ability to engage in long-distance and commercial fishing, concerns arose about pollution and damage to marine resources and asserted rights to continental shelf resources. There is, of course, an urgent need to develop a treaty-based regime for ocean governance. The United Nations (UN) Conference on the law of the sea in 1958, 1960 and 1973-1982, produced a number of agreements and adopted UNCLOS 1982 as a convention on international law of the sea.

UNCLOS 1982 ensures a legal framework to regulate all uses of the oceans and the entire international sea which also regulates overlapping claims in both the territorial sea, ZEE and continental shelf. However, this is not always free from various problems. As with the concept of freedom on the high seas, it has become an issue for various international conflicts, especially between the Netherlands and England regarding interpretation freedom at sea.

The high seas are all parts of the sea that are not included in the ZEE, territorial sea or internal waters of a country. The implication of this definition has caused the high seas to become a free territory for all states and no state can claim the area as part of its jurisdiction provided it complies with the conditions set out in Article 87 UNCLOS 1982. This freedom must be exercised by every country by taking into account the rights of other countries to exercise their right to freedom on the high seas based on the provisions in UNCLOS 1982. Of the six

principles of freedom on the high seas, one of them is the principle freedom to fish. Freedom does not give power to any party, but freedom is given with the concept of protection, up to the activities that are carried out carried out in the high seas area so as not to damage the waters and their biological natural resources.

The principle of freedom at sea is inseparable from various crimes and violations of international law. One of them is the case of illegal transshipment which is one of the crimes in stealing fish. Illegal transshipment, or the exchange of goods carried out between alternative modes of transport, has become an essential component of any fishery supply that occurs either in ports or in international seas. The development of the 1982 UNCLOS has specifically divided arrangements regarding the rights of passage of foreign ships in international seas such as the right of innocent passage, the right of transit passage and the right of passage through archipelagic sea lanes passage, each of which has its own nature and character. The application of these shipping regimes depends on the legal regime of the territorial waters under the sovereignty of the coastal state through which these foreign ships pass.

Article 111 of UNCLOS 1982 concerning the Right of Hot Pursuit states that the instantaneous pursuit of a foreign ship can be carried out if the authorities from the coastal state have sufficient reasons to think that the ship has violated the laws and regulations of that country. Prompt pursuit by the coastal state can ensure it maintains the credibility of enforcement necessary to minimize violations of the law. One important thing is that UNCLOS 1982 gives rights to coastal States to regulate and supervise innocent traffic in the territorial sea. First, the right to determine the criteria for innocent passage. Second, the authority to issue laws and regulations related to innocent crossings as stated in Article 21 UNCLOS 1982.

Article 73 UNCLOS 1982 explains that the coastal state in exercising its sovereign rights can board ships, examine, arrest and carry out court proceedings, as necessary to ensure compliance with statutory regulations stipulated in accordance with the provisions of the convention. Arrested vessels and their crews must be released immediately after being given an appropriate bail. However, there has been a legal issue called illegal transshipment involving the case of the arrest and detention of MV Norstar and the case of the Juno trader who violated the provisions of Article 73 UNCLOS 1982 above to bring this case to court.

In this writing, there are two formulations of the problem, namely: (1) How does the 1982 UNCLOS regulate violations of Illegal Transshipment in the ZEE of coastal states? (2) What is the jurisdiction for enforcing illegal transshipment laws involving third countries? As for this writing, it uses normative juridical law research methods with research from secondary data and is explained descriptively.

## **RESEARCH METHOD**

This study will examine the focus of the problem normatively. Normative legal research is legal research conducted by examining literature or secondary data. Normative legal research is carried out because it wants to find legal rules and principles to resolve the focus of the problem studied by the author, in normative legal research, secondary data includes primary legal material which includes basic norms or rules, basic regulations, statutory regulations and legal materials secondary such as the results of research, and the work of the legal community.

## **RESULT AND DISCUSSION**

### **UNCLOS 1982 Regulations on Illegal Transshipment Violations in the ZEE of Coastal States**

UNCLOS 1982 has regulated that every country with due regard to the rights of other countries in carrying out all activities and freedom of rights in the international sea based on

the conditions determined by the convention and other provisions in the international law. Based on article 87 of UNCLOS 1982, one of the six principles is freedom to fish. Freedom does not mean giving power to any country, but this freedom is done for the concept of protection and does not harm waters and living natural resources. By regulation, UNCLOS 1982 only regulates the freedom of each country to cross the international seas of other countries based on article 87 of UNCLOS 1982. However, this freedom itself often involves violations and crimes, such as illegal transshipment cases in the Juno trader and MV Norstar cases.

The first case is that the Juno trader is a refrigerated cargo ship called the "Reefer Vessel" that flies the flag of Saint Vincent and the Grenadines. The owner is Juno Reefers, a company incorporated in the British Virgin Islands and a subsidiary of the South African seafood company and authorized to transport refrigerated dry products. Certificate validity is permanent. Juno trader accepts shipping at Mauritanian waters from 1,183.8 tonnes of packaged frozen fish and 112 tonnes of fish meal, from its sister ship, the Juno Trader operating under the Ouguiya license in the Mauritanian exclusive economic zone. Each package was marked "JW N8607268" as the number from a Juno Warrior. The Juno trader then crossed into the Guinea-Bissau ZEE at a distance of about 40 nautical miles from the coast. And then caught by the authorized ship.

The arrest of the Juno trader ship on September 23, 2004 was based on the fact that Juno trader received ship transportation in Mauritius waters (ZEE) from the other ship, Juno Warrior. On 26 September 2004, the Guinea-Bissau naval vessel Cacine conducted a routine control and surveillance operation in the ZEE. Inspector Guinea Bissau has observed the ship, whose presence in the ZEE is unknown and not declared and finally was arrested unilaterally using firearms which left one crew member injured. The reason for the arrest was that the patrol officers considered the ship to be a pirate ship, so repressive measures were taken. 24 In this case, the committee proposed:

1. Juno Ship Merchant has found laws and regulations Fisheries of Guinea-Bissau, regarding operations related to fishing fish;
2. Fine in CFA Francs in accordance with the amount of 175,398 (175,000,398) Euros imposed on the merchant ship Juno, for what is stated in paragraphs beforehand and in accordance with Article 56 of the common law on fisheries;
3. Fine in CFA Francs corresponding to the amount of 8,770 (8,000, 770) Euros prosecuted, pursuant to article 58 of the common law of fisheries, at captain of the ship Juno trader for lack of cooperation with the Inspectors as evidenced by the flight of the ship;
4. All products on board (approximately 1,183.8 tons) are declared to be returned to the country Guinea-Bissau has allegedly been transcribed in Guinea-Bissau waters without authority.

Second, the illegal transshipment case, namely the arrest of the motor ship MV Norstar Panama from 1994 to 1998. The MV Norstar was involved in supplying gasoil (diesel engine fuel) for mega yachts (large cruise ships) in international waters of the Spanish territorial sea. This petition further states that MV Norstar was arrested in the Gulf of Palma de Mallorca on September 24, 1998 by Spanish officials, at the request of Italy, allegedly because the supply of oil to mega yachts was contrary to Italian law, related to Such violations can be categorized as violation of transshipment, namely the process of transferring cargo from one ship to another that occurred in the ZEE of Spain which triggered Italy's response to take diplomatic steps with Spain to arrest the ship:

1. The detention of goods ready to be unloaded from the ship with the intention of being lowered ashore, the confiscation of the ship carrying such goods has become an international custom.

2. Confiscation of goods originating from foreign countries that are transferred from one ship to another in the middle of the sea to be lowered ashore or put on another ship at the port.

Ships in carrying out any transaction that violates legal provisions international or related to illegal transshipment in the sea area of a country must comply with all provisions in force in the territory of the country. However, that happened to the ship Juno trader and ship MV Norstar in this case have taken action illegal transshipment which has been regulated in Article 21 UNCLOS 1982. Article 21 of the 1982 UNCLOS relates to Article 19 Paragraph 2 of the 1982 UNCLOS which underlies that every foreign-flagged ship must be deemed to have harmed and endanger the peace and order of the coastal state if in the territorial sea there are several or one of the types of violations related to the activities regulated in Articles 19 and 21 UNCLOS 1982.

From the provisions of Article 19 point G and I it can be stated that: First, the trajectory peaceful as long as it does not prejudice the peace, good order or security of the coastal State. Second, article 19 point b mentions a list of activities that cause traffic jams foreign ships are considered non-peaceful. From the provisions it is clear that Juno Trader ships and ships MV Norstar is deemed to have violated Article 19 Paragraph 2 because it is deemed detrimental to the state coast by carrying out illegal transshipment in the ZEE of the coastal state by means of action in the form of transferring cargo from one ship to another which of course is violation of the national law of the country concerned and in violation of several article of UNCLOS 1982.

Article 58 paragraph 1 UNCLOS 1982 regulates the jurisdiction of the coastal state on certain sovereignty such as sovereign rights for exploration purposes, and exploitation, conservation, and managing living natural resources in the ZEE. This sovereign right must be distinguished from full sovereignty of the coastal state over the territorial sea, because it is a material rationale limited to ZEE resources. That is, the ZEE replaces the previous concept of preferential fishing rights in areas outside the territorial sea, related to implementation of sovereign rights. Thus, coastal States can regulate fisheries in the ZEE accordingly articles 61, 62 UNCLOS 1982 and enforce its national law in accordance with Article 73 UNCLOS 1982.

In this case, the author also views before the entry into force of UNCLOS 1982, on in essence, arrangements regarding illegal transshipment have been regulated in several countries since mid-17th and 18th centuries between England and the United States as it has been explained that in several countries illegal transshipment is more about loading and unloading ships who carry out smuggling of alcoholic beverages but in practice the unilateral arrangement between the 2 countries in fact creates conflict because the unilateral regulation of illegal transshipment must be viewed from an urgency perspective international legal arrangements when there is a claim on 2 countries that feel aggrieved then UNCLOS 1982 became one of the main principles in regulating illegal transshipment. Arrangement of illegal transshipment is not a violation regulated in UNCLOS 1982. However, if a ship violates the law in the territorial waters of a country, then that country has the sovereign right to enforce the laws and regulations of its country under article 73 UNCLOS 1982.

### **Illegal Transshipment Enforcement Jurisdiction Involving Third Countries**

Based on the provisions of Article 56 UNCLOS 1982 it is determined that in an economic zone exclusive zone (ZEE) of a coastal state has sovereign rights for the purposes of exploration, exploitation, conservation, and management of natural resources, both living and non-biological, from the waters in on the seabed and from the seabed and subsoil and in connection with other activities for the purposes of exploration and exploitation of the economic zone, in article 57 UNCLOS 1982 that every coastal state has the right to establish its own Exclusive

Economic Zone the distance shall not exceed 200 nautical miles measured from the same baseline used to measure the breadth of its territorial sea. The positive aspect of the state territory is in the form of the highest power or authority exclusive of the state in its territory. On the other hand, outside of its territory a state no longer exists have such power because that power ends and the power of another state begins. The negative aspect of the country's territory is indicated by the state's obligation to protect the rights of other countries in its territory. Thus, in a dispute between the two countries relating to ownership of a territory, which will taken into consideration by the court is the legal argumentation of one of the parties which is considered the strongest.

The two cases of the arrest of the MV Norstar and Juno trader vessels were as before described above, proves that there were repressive actions that clearly violated the provisions Article 27 paragraph (1) UNCLOS 1982 explains that: The criminal jurisdiction of the coastal State is not can be carried out on board a foreign ship that is crossing the territorial sea to catch anyone or to conduct investigations related to any crime carried out on board during such passage, except in the following cases: (a) if the consequences of the crime are felt in the coastal State; (b) if the crime is of the type disturbing the peace of the State or the order of the territorial sea; (c) when requested the assistance of local authorities by the captain of the ship by diplomatic representatives or consular officers flag state; or (d) when such action is necessary to suppress trade illicit narcotics or psychotropic substances.

From the explanation of article 27 above, Spain has jurisdiction over the ship MV Norstar in the Spanish ZEE. However, when the violation is committed by a foreign ship that related to article 27 above, instructions from Italy cannot be used as the basis for Spain in MV Norstar's arrest and MV Norstar did not violate it the provisions of Article 27 which have a major impact on the country concerned. Italy made a request to Spain to arrest MV Norstar which can be said to have violated several Articles 33 UNCLOS 1982 related to the Zone Addition.

Article 33 UNCLOS 1982 can be seen that Italy should not have sovereignty to arrest or even detain MV Norstar and supported by Article 33 Paragraph 1 (b) UNCLOS 1982. Italy has no authority or jurisdiction to punish the violation of the MV Norstar because this ship is in the zone area Spain's exclusive economy. Article 73 UNCLOS 1982 concerning Enforcement of Legislation of the Coastal State explains that "Penalties of the coastal state imposed on Violation of fisheries laws and regulations in the exclusive economic zone is prohibited includes confinement, in the absence of an agreement otherwise between the States concerned, or any other form of corporal punishment." In this verse very clearly written that there can be no imprisonment for the ship MV.Norstar in the ZEE area of a country, unless there has been an agreement between the two countries between Panama and Italy.

Whereas in the case of Juno Trader and related to the above considerations. So, the actions taken by Guinea-Bissau itself do not have a solid basis because the ship is only an ordinary fishing vessel that is considered a ship pirates crossing the Guinea-Bissau ZEE. If you look at article 27 above, the arrest is clear and the actions taken by the 2 countries violated Article 27. This also applies to ships Juno trader detained under the supervision of armed personnel in the country of Guinea-Bissau.

Italy and Guinea-Bissau basically do not have the authority to do so the subsequent pursuit and arrest of the MV Norstars and Juno Trader has taken detention action which is very contrary to Article 27 paragraph (3) which also explains that in the case of arrest or detention of foreign vessels, the coastal State must immediately notify the flag State, through appropriate channels, of the action taken and regarding any penalties subsequently imposed. Italy has too violates Article 87 UNCLOS 1982 explains that, that "The high seas are open to all States, whether coastal or non-coastal. Freedom of the high seas, exercised on the basis of the

conditions laid down in this Convention and other provisions of law international. The MV Norstar ship supplying gasoline should not violates any provisions based on the elaboration of Article 87 UNCLOS 1982. If Italy argues that the supply of gasoline to these mega yachts is against the rules Italian law, the transaction for the supply of gasoline has nothing to do with it directly with the Italian state, in practice instructing Spain to seize the ship it is clear that this matter really lacks clarity, basis and jurisdiction over the intrusion.

Related to the pursuit of the two ships above. So, referring to Article 111 UNCLOS 1982 on the Right of Hot Pursuit which explains that pursuit is instantaneous is the right of each coastal state to carry out immediate pursuit of ships Foreigners suspected of violating coastal state laws and regulations starting from Inland Waters, Archipelagic Waters, Territorial Sea or Additional Routes, as well applies to violations in the Exclusive Economic Zone (ZEE) and The Continental Shelf from the coastal state to the territorial sea of the foreign ship state or country third.

Pursuit and arrest should be carried out if the party that the authorities of the coastal State have sufficient reason to think that the ship violated the laws and regulations of Spain, but in this case, Italy did not have any authority over MV Norstar and instead asked Spanish officials who had the authority to pursue, arrest and detain MV Norstar. The implementation of the Right of Hot Pursuit must start from inland waters, the sea the additional territory or zone of the coastal state after the stop order is ignored; must continuous and uninterrupted; Hot Pursuit is halted after the alien ship being chased enters the territorial sea of the country or a third country; and the chase that starts from the extra zone only applies to violations regarding customs, financial, immigration and issues quarantine. Meanwhile, in the case of the Juno trader, the chase was immediately carried out as it was the indications made by the Juno trader ship which in its development have been proven in trial on the basis of evidence of samples of fish living in the waters of the Guinea-Bissau ZEE deemed to have violated the laws and regulations of that country.

Of the two cases above, basically Spain has jurisdiction over MV Norstar. But not to get to the stage of arrest and detention because of the ship it does not violate Spanish and Italian laws nor does it clearly has jurisdiction over the arrest of MV Norstar using diplomatic relations with the Spanish to seize the MV Norstar, pursuit and arrest were not in accordance with the mechanism regulated in UNCLOS 1982, considering MV Norstar is legal watercraft with complete and official certificates, records, and documents from the state Panama. Whereas in the case of Juno Trader, ITLOS was faced with a problem transshipment and transportation that carry out fishing, but expressly discuss regarding the competence of the coastal state. So, it can be said too early to do the arrest of the ship, because it was suspected of having carried out a transshipment. However, this is absolutely not proven and also considers the ship a pirate ship so repressive measures such as arrest and detention were carried out which of course have violated the law some of the provisions of UNCLOS 1982.

## **CONCLUSION**

Based on the results of the discussion in this study, there are more arrangements comprehensive report on illegal transshipment in UNCLOS 1982. Regarding the first case UNCLOS 1982 has not regulated other countries' requests for prosecution of ships in indication of carrying out illegal transshipment in this case the MV.Norstar ship which is indicated committed an offense in Italy's ZEE but was arrested in Spanish waters on request Italy, even though this ship does not violate the provisions of Spanish legislation. Besides therefore, the arrest of illegal transshipment on the basis of indications cannot be carried out because making the arrest of the ship has no basis and evidence and strong. Even dee the Juno Trader case was

proven to have carried out illegal fishing with samples take by the state of Guinea but this became a problem when the arrests were made not proven to have violated the law. This problem becomes crucial because it has to paying attention to material and immaterial losses from the captured ship. The point is you have to there is an explicit mechanism regarding state responsibility when something goes wrong arrests or indications that are not proven. Liability must be paid or reimbursed by a country that captures both materially and immaterially.

## **BIBLIOGRAPHY**

- Craig, Allen (2009), Doctrine of hot pursuit: A functional interpretation adaptable to emerging maritime law enforcement technologies and practices, *Ocean Development & International Law*, (20) 4.
- Dhiana, Puspitawati (2018), Indonesia's Archipelagic Sea Lanes (ASLS) Designation: Rights Turning to Obligations?, *Hasanuddin Law Review*, 4 (3).
- Erlc, Wilson. (2002), Mare Liberum And Oplnlo Juris: A Grotian Reading Of The North Sea Continental Shelf Cases. *Monash University Law Revie*, 28 (2).
- Muhammad, Tarigana I., Tjondro, Tirtamuliab. (2020), Strengthening International Law As A Guarantee For High Seas Fisheries Conservation, *Bina Hukum Lingkungan*, 4 (2).
- Noor, Malia Putri Siti (2018), State Responsibility For Iuu Fishing: A Reflection On The 2015 Itlos Advisory Opinion On Iuu Fishing And Its Relevance To Indonesia, *Indonesia Law Review*, 8 (2).
- Puspoayu, Elisabeth Septin., Sari, Cindy Yunita., Ramadhani, Virania Cahya. (2019), Praktik Illegal Transshipment Di Laut Lepas Berdasarkan Hukum Laut Internasional, *Jurnal Mimbar Hukum*, 31 (1).
- Salsabila, Aldhanalia Pramesti. (2018). Pengoptimalan Satgas 115 dengan Model Koordinasi Satgas Pusat dan Daerah Sebagai Bentuk Pencegahan Illegal Transshipment di Indonesia, 2 (1).
- Satria, Fayakun., Sadiyah, Lilis., Widodo, Agustinus Anung., Wilcox, Chris., Ford, Jessica H., Hardesty, Britta Denise. (2018), Characterizing transshipment at-sea activities by longline and purse seine fisheries in response to recent policy changes in Indonesia, 95, 8-13.
- Sri, Wartini. (2017), The Role Of The Coastal States To The Protection Of Marine Environment In Joint Development Agreement, *Indonesian Journal Of International Law*, 14 (4).
- Tsamenyi, M., Palma, M., Milligan, B. & Mfodwo, K. (2010). The European Council regulation on illegal, unreported and unregulated fishing: an international fisheries law perspective. *International Journal of Marine and Coastal Law*, 25 (1).
- Tuhulele, Popi. (2011), Upaya Hukum Indonesia Mengajukan Landas Kontinen Ekstensi (antara Peluang dan Tantangan), 16 (3).