

AUTHORITY OF THE GENERAL COURT IN DETENTION OF THE SHIP**Juridical Analysis of Surabaya District Court Decision No.140 K/Pid.Sus/2012**Kania Ankaa Prasetya¹, Aidul Fitriadi Azhari², Anugrah Nur Prasetyo³¹ Fakultas Hukum, Universitas Muhammadiyah Surakarta (tataprasetya@gmail.com)² Fakultas Hukum, Universitas Muhammadiyah Surakarta (afa132@ums.ac.id)³ Fakultas Hukum, PIP Semarang (Anugrah@pip-semarang.ac.id)**ABSTRACT**

Indonesian courts play an important role in determining the legality of detaining vessels as evidence and ensuring the rights of the parties are protected. The court has the authority to determine the legality of the detention and release the ship if there is insufficient evidence to prosecute or if it turns out that the detention is illegal. This research uses descriptive analytical research methods and a normative legal approach. This research uses the 1982 UNLCOS theory and expert opinions from Cornelis von Bynkershoek, Galliani and Azumi. This research focuses more on discussing ship detention procedures in general justice and ship detention as a form of collateral confiscation. Meanwhile, previous studies focused more on implementing regulations, conformity with civil regulations, the readiness of the courts to implement them, the benefits of implementing P and I in transportation contracts in Indonesian maritime areas and what forms of responsibility apply to carriers in Indonesian Sea Transportation. This research found that every ship will be detained if it does not have a Fishing Permit (SIPI) as intended in Article 27 paragraph (1) to catch fish in Indonesia. Ships that do not have SIPI will be subject to Articles of Law no. 31 of 2004 and Law no. 45 of 2009 so that the ship will be detained by the authorities. The anchoring of the ship is in accordance with Article 93 paragraph (3) of Law No. 45 of 2009 and has a legal basis in Article 1134 of the Civil Code, Article 1878 of the Civil Code, and Article 214 of the HIR/RBG. Based on these results, it can be explained that the process of detaining ships in Indonesia is handled through the courts, and the courts have the authority to issue orders for detaining ships in civil cases involving maritime lawsuits.

Keywords: International Maritime Law, 1982 Law of the Sea Convention, Indonesian Sea, Illegal Fishing, General Justice

INTRODUCTION

This research work will examine the international law on the arrest of ships provided for and regulated by two international conventions on the arrest of ships, in doing so, special attention is paid to maritime law no. 17 of 2008 which applies in Indonesia is seen from a general law perspective. We can look at issues regarding ship arrests in Indonesia, the existence of implementing regulations, compliance with current civil procedural rules, the readiness of the courts to implement them. Responding to developments in the shipping industry, Indonesia must be confident in moving forward by demonstrating its readiness to follow international practices regarding shipping law. This readiness is also an indicator of seriousness in realizing the idea of becoming Indonesia as the world's maritime axis.

Based on the background explained above, the problem formulation can be formulated as follows:

1. What is the procedure for detaining a ship in a general court environment?
2. Is the detention of a ship related to a civil case a form of collateral confiscation?

The aims of this research are as follows:

1. To know the procedure for detaining a ship in a general court environment
2. To find out that the detention of a ship related to a civil case is a form of collateral confiscation

Through this research, it is hoped that it can provide theoretical and practical benefits:

1. Theoretical benefits

It is hoped that this research will help writers and readers understand the authority of the general judiciary in arresting ships

2. Practical benefits

It is hoped that the results of this research can be used as consideration for the Indonesian government to issue policies to strengthen the role of the judiciary in handling ship detention cases.

This research will use the 1982 UNCLOS theory and several expert opinions. On December 10, 1982 adopted and ratified the International Maritime Convention called the United Nations Convention on the Law of the Sea 1982 (UNCLOS 1982).¹ UNCLOS 1982 contains an international agreement that explains and divides the world's maritime areas into eight sea zones.² In 1985 and then implemented it in Indonesian law by creating Law No. 17 of 1985 concerning ratification of the United Nations Convention on the Law of the Sea (United Nations Convention on the Law of the Sea).³ Meanwhile, the expert opinion that the author uses is the opinion of Cornelis von Bynkershoek, Galliani and Azumi. These experts' opinions contribute to helping countries measure maritime areas which will later be developed and adopted by UNCLOS 1982.⁴ UNCLOS 1982 and Law no. 17 of 1985 became the legal basis for the Indonesian government in protecting, utilizing, limiting and following up on parties who harm the Indonesian government. This is also the legal basis for Indonesian law enforcers in arresting illegal fishermen in Indonesia.

RESEARCH METHODS

This research uses a normative legal research approach which consists of 5 approaches, namely the statutory approach (*statue approach*), historical (historical approach), case (case approach), comparison (comparative approach).¹³ The target of this research is the Surabaya District Court Decision No. 140 K/Pid.Sus/2012. This research will use primary, secondary and tertiary data. Primary data consists of the Criminal Code, Criminal Procedure Code, Law no. 48 of 2009 concerning judicial power, Law no. 17 of 2008 concerning Shipping and Article 48 of UNCLOS. Secondary data and tertiary data consist of previous research journal publications, court decisions and scientific works of scholars as well as legal dictionaries and internet media that are relevant to this research. Secondary data collection will be carried out through literature and documentation studies, library research using primary, secondary and tertiary legal sources. In validating the data, this research uses the Data Triangulation method where the author will combine information obtained from different sources, methods or theories. After that, the author will analyze the data using a descriptive-analytical method where the author will explain a general description of the research material which is specifically oriented to natural and social events in society.

RESULTS AND DISCUSSION

1. Analysis Ship Detention Procedures in the General Court Environment

1.1 Role of the Courts Against Ship Holding

In this research, the author found that the defendant Yaskan was charged with fishing without an original Fishing Permit (SIPI), which is a violation of Article 93 paragraph (1) of Law no. 45 of 2009 concerning Amendments to Law Number 31 of 2004 concerning Fisheries. In its decision, the Supreme Court of the Republic of Indonesia declared Defendant Yaskan guilty of committing a crime

¹ Amritha, Shenoy V. (2020), Freedom of the Seas, International Law and the South China Sea Dispute, Centre for International Legal Studies, School of International Studies, Jawaharlal Nehru University, New Delhi, h. 1

² United Nation Convention on The Law of The Sea, 1982

³ 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).

⁴ Erlc, Wilson. (2002), Mare Liberum And Oplnlo Juris: A Grotian Reading Of The North Sea Continental Shelf Cases. Monash University Law Review, 28 (2), 299-326.

and handed down a guilty verdict against Defendant Yaskan.

The role of the courts in relation to vessel detention is important as it ensures that the detention is lawful and the rights of the parties involved are protected. The court has the authority to determine the legality of the detention and release the ship if there is insufficient evidence to prosecute or if it turns out that the detention is illegal⁵. In Indonesia, the detention of ships is handled through the courts, and the courts have the authority to issue orders for the detention of ships in civil cases involving maritime lawsuits. The court also has the authority to extend the vessel's detention if necessary, depending on the stage of the trial.⁶The importance of the role of the courts in relation to the detention of a ship is highlighted by the fact that ship owners have made payments to freed ships held by the Indonesian navy while a case was heard in an Indonesian court.⁷

Detention of a ship is a legal issue that concerns the role of the court in determining whether the detention is legal or not. If a foreign ship is detained by a coastal or port state, the flag state can challenge the legality of the detention and refer the case to a court or tribunal. Indonesia's criminal law system allows for the detention of suspects, which can be extended by the prosecutor's office, district court, high court, or Supreme Court, depending on the stage of the investigation.⁸In terms of ship detention, the Indonesian Navy has stated that detention is handled through the courts, and ships are released if there is insufficient evidence to prosecute.⁹Additionally, ship owners have reported making payments to free ships held by the Indonesian Navy, and maritime lawyers have advised owners whose ships have been detained in Indonesia

1.2. Vessel Arrest Procedures

Legal documents from the Indonesian Supreme Court regarding the case of a defendant who was caught fishing without a permit in the waters of Surabaya, Indonesia in February 2011. The defendant was arrested by the police while fishing on his boat. boat named Adam Hawa, and was found to have caught around 1.5 tonnes of fish using fishing nets. The defendant did not have the necessary permits to fish in Indonesian waters, nor did he have documentation for his vessel. The defendant and evidence were taken to the local police station for further investigation and legal proceedings.

It is important to implement vessel detention procedures to ensure that the detention is legal and the rights of the parties involved are protected. Implementing good safety procedures and high safety standards can create a safe and secure work environment, which can increase crew productivity and efficiency and reduce the risk of accidents and injuries.¹⁰The implementation of safety procedures is also important in minimizing the risk of accidents and injuries caused by the crew's lack of understanding and knowledge about the dangers of their work environment and the importance of implementing safety procedures.¹¹In addition, implementing safety procedures is

⁵ Erc, Wilson. (2002), *Mare Liberum And Oplno Juris: A Grotian Reading Of The North Sea Continental Shelf Cases*. Monash University Law Review, 28 (2), 299-326.

⁶ Kadek Radhitya Vidianditha, Dewa Gede Sudika Mangku, and Ni Putu Rai Yuliantini, "Perlindungan Hukum Yang Diberikan Oleh Indonesia Kepada WNI Sebagai Pelaku Perompakan Kapal (Studi Kasus: Perompakan Kapal Orkim Harmony Milik Malaysia)," *Jurnal Komunitas Yustisia* 3, no. 1 (2020): 59–68.

⁷ Ayu Efridadewi and Wan Jefrizal, "Penenggelaman Kapal Illegal Fishing Di Wilayah Indonesia Dalam Perspektif Hukum Internasional," *Jurnal Selat* 4, no. 2 (2017): 260–272.

⁸ Melly Aida, "Penanggulangan Penangkapan Ikan Secara Tidak Sah (Illegal Fishing) Oleh Kapal Ikan Asing Di Zona Ekonomi Eksklusif Indonesia," *Fiat Justisia: Jurnal Ilmu Hukum* 5, no. 2 (2011).

⁹ Asmar Abdul Rahim and Ahmad Nasyran Azrae, "Penahanan Kapal Equanimity: Tercabarkah Undang-Undang Admiralti Malaysia?" (2020).

¹⁰ Wahyuni Boeng, Arman Anwar, and Richard Marsilio Waas, "Perlindungan ABK Indonesia Yang Bekerja Di Kapal Asing Berdasarkan Unclos 1982," *TATOHI: Jurnal Ilmu Hukum* 1, no. 8 (2022): 760–771.

¹¹ Firmansyah Abdul, "Pencurian Ikan Oleh Kapal Asing Di Wilayah Teritorial Indonesia Dalam Perspektif Hukum Positif Di Indonesia," *Lex et Societatis* 4, no. 1 (2016).

very important in the maritime industry, where the safety of crew and vessels is of paramount importance. Detention of a ship can have serious consequences for the ship owner, and uncertainty about when the detained ship can be released can harm the ship owner's business.¹² Therefore, it is important to have clear and well-defined vessel detention procedures to ensure that the detention is legal and the rights of the parties involved are protected.

1.3. Ship Restraining Factors

The factor in detaining the ship was because the defendant Yaskan was fishing in the fisheries management area of the Republic of Indonesia and/or on the high seas, which did not have a Fishing Permit (SIPI) as intended in Article 27 paragraph (1). Because he did not have a SIPI, the defendant Yaskan violated Law Number 31 of 2004 concerning Fisheries and Law Number 45 of 2009 concerning Amendments to Law Number 31 of 2004 concerning Fisheries, so that the ship used to commit the violation could be detained by the party. authorities. Apart from that, the anchoring factor for the ship was also caused by the presence of fishing nets and the catch of ± 1.5 tons of fish that was found on board the ship.

Detention of ships is regulated in Law Number 17 of 2008 concerning Shipping, which provides the legal basis for detaining ships in Indonesia. The law stipulates that ships can be detained if they violate Indonesian laws and regulations, or if they are involved in maritime claims¹³. Detention of the ship can be carried out by the Indonesian Navy or other authorized agencies, and the ship can be detained until the legal problem is resolved. Factors that can cause the detention of a ship include violations of Indonesian laws and regulations, maritime claims, and other legal issues. Implementation of ship detention regulations and procedures is important to ensure that detention is carried out fairly and transparently, and that the rights of the parties involved are protected¹⁴. Overall, ship detention is regulated by Law Number 17 of 2008 concerning Shipping, and factors that can cause ship detention include violations of Indonesian laws and regulations, maritime claims, and other legal issues.

2. Detention of Ship in Civil Cases

The defendant Yaskan owned a fishing vessel that was not registered as an Indonesian fishing vessel and did not have the necessary documents, but he continued to operate the vessel. The police found the ship on February 6 2011 in the waters of the East Surabaya Shipping Channel and inspected the ship and the fish caught before taking Defendant Yaskan and the evidence to the police station for further legal proceedings. This is done in accordance with Article 93 paragraph (3) of Law No. 45 of 2009 concerning Amendments to Law Number 31 of 2004 concerning Fisheries which regulates actions to confiscate or take over vessels in cases of illegal fishing.

Law no. 45 of 2009 concerning Amendments to Law Number 31 of 2004 concerning Fisheries regulates fisheries in Indonesia. This law underwent changes because Law Number 31 of 2004 was deemed not fully capable of regulating fisheries in Indonesia. This law aims to protect the interests of small fishermen and fish farmers, as well as regulate the use of foreign-flagged fishing vessels in Indonesian waters. This law also regulates fishing in Indonesian waters and provides sanctions for perpetrators who violate the rules. This law also regulates the detention of vessels in the context of fisheries, but there is no specific information regarding this in the search results.

Amendment to Law no. 45 of 2009 concerning Amendments to Law Number 31 of 2004 concerning Fisheries aims to improve fisheries regulations in Indonesia and protect the interests of small fishermen and fish cultivators³¹. This law also regulates the use of foreign-flagged fishing vessels in

¹² Pingkan Jeand'arc Angie Doodoh, "Tinjauan Yuridis Mengenai Penegakan Hukum Atas Hak Lintas Damai Untuk Kapal Asing Di Laut Indonesia," *Lex Et Societatis* 6, no. 9 (2018).

¹³ Hutapea Anggiat, Efridadewi Ayu, and Widiyani Heni, "Penegakan Hukum Pidana Di Bidang Pelayaran Melalui Proses Penyidikan Oleh Tentara Nasional Indonesia Angkatan Laut" (Universitas Maritim Raja Ali Haji, 2021).

¹⁴ Doodoh, "Tinjauan Yuridis Mengenai Penegakan Hukum Atas Hak Lintas Damai Untuk Kapal Asing Di Laut Indonesia."

Indonesian waters and provides sanctions for perpetrators who violate the rules. This law also regulates the detention of vessels in the context of fisheries, but there is no specific information regarding this in the search results. It is important to implement this law so that fisheries in Indonesia can be properly regulated and the interests of small fishermen and fish farmers can be protected.

2.1 Situation of vessel detention in civil cases

The conditions for detaining a ship in civil cases involving maritime lawsuits are regulated by law. According to Article 223 paragraph (1) of Law Number 8 of 1981 concerning Criminal Procedure Law, the court can issue an order to detain a ship in a civil case involving a maritime lawsuit without going through a lawsuit process.¹⁵ However, in civil cases, confiscation is carried out by the court at the request of the plaintiff as stated in the lawsuit¹⁶. The court can issue an order to detain the ship if there is a maritime claim filed by the plaintiff and there is a reasonable suspicion that the ship will be lost or damaged by goods which are collateral for the debt.¹⁷ The situation of vessel detention in civil cases involving maritime claims is important to ensure that the rights of the parties involved are protected and the detention is carried out fairly and transparently.

Detention of vessels in civil cases involving maritime claims can have significant consequences for shipowners and the maritime industry. Ship owners must be careful when facing civil lawsuits or criminal reports related to ship detention¹⁸. In addition, the Indonesian Navy has the authority to detain ships in Indonesian waters if they are proven to have carried out illegal activities or violated Indonesian law. The uncertainty of releasing a detained ship can harm the ship owner's business, because the ship is the backbone of his business. Therefore, it is important for the government to implement regulations and procedures related to the detention of ships to ensure that detention is carried out fairly and transparently and the rights of the parties involved are protected.

Detention of vessels in civil cases involving maritime claims can have significant consequences for shipowners and the maritime industry. Ship owners must be careful when facing civil lawsuits or criminal reports related to ship detention. In addition, the Indonesian Navy has the authority to detain ships in Indonesian waters if they are proven to have carried out illegal activities or violated Indonesian law. Uncertainty about the release of detained ships can harm the ship owner's business, because the ship is the backbone of his business. Therefore, it is important for the government to implement regulations and procedures relating to the detention of ships to ensure that detention is carried out fairly and transparently and protect the rights of the parties involved.

The fishing industry in Indonesia is regulated by law, and the government has implemented regulations and procedures related to the registration and tagging of fishing vessels¹⁹. The law also regulates the use of foreign-flagged fishing vessels in Indonesian waters and requires them to obtain permission from the Indonesian government⁴. The fishing industry in Indonesia is important for the economy and livelihoods of fishermen and small-scale fish farmers. Therefore, it is important to ensure that the fishing industry is regulated fairly and transparently and protects the interests of fishermen and small-scale fish farmers. Implementing safety procedures is also important in minimizing accidents and ensuring the safety of the crew and vessel²⁰. Overall, the fishing industry

¹⁵ Iwan Setiawan, "Beragam Tindak Pidana Laut Dalam Hukum Pidana Indonesia," *Jurnal Ilmiah Galuh Justisi* 4, no. 1 (2016): 115–126.

¹⁶ Anggiat, Ayu, And Heni, "Penegakan Hukum Pidana Di Bidang Pelayaran Melalui Proses Penyidikan Oleh Tentara Nasional Indonesia Angkatan Laut."

¹⁷ Setiawan, "Beragam Tindak Pidana Laut Dalam Hukum Pidana Indonesia."

¹⁸ Rahalim Raja Muda Harahap, Taufik Siregar, and Rizkan Zulyadi, "Analisis Hukum Terhadap Tanggungjawab Perusahaan Pemberi Izin Kapal Asing Sandar Di Pelabuhan Pada PT. Pelni Cabang Lhokseumawe," *Journal of Education, Humaniora and Social Sciences (JEHSS)* 5, no. 1 (2022): 697–707.

¹⁹ Ibid.

²⁰ Ibid.

in Indonesia is an important sector that requires proper regulation and protection to ensure the sustainability and welfare of those involved in the industry.

2.2 Legal basis for detaining a ship in civil cases

The legal basis for detaining a ship in civil cases can be found in Article 1134 of the Civil Code, Article 1878 of the Civil Code, and Article 214 of the HIR/RBG. These articles allow the detention of ships as a form of collateral confiscation to guarantee payment of civil claims that are being processed. Article 1134 of the Civil Code states that every person who has rights to an object can hold the object as collateral for a civil lawsuit that is being processed. Article 1878 of the Civil Code states that a ship can be used as collateral to guarantee the fulfillment of obligations arising from agreements related to the ship. Meanwhile, Article 214 HIR/RBG states that ships can be detained as a form of collateral for civil claims that are being processed.

The legal basis for detaining a ship in civil cases involving maritime lawsuits is regulated by law. According to Article 223 paragraph (1) of Law Number 8 of 1981 concerning Criminal Procedure Law, the court can issue an order to detain a ship in a civil case involving a maritime lawsuit without going through a lawsuit process.²¹ However, in civil cases, confiscation is carried out by the court at the request of the plaintiff as stated in the lawsuit. The court can issue an order to detain the ship if there is a maritime lawsuit filed by the plaintiff and there is a reasonable suspicion that the ship will lose or damage the goods that are collateral for the debt. The legal basis for detaining a ship in civil cases involving maritime lawsuits is important to ensure that the rights of the parties involved are protected and that detention is carried out fairly and transparently.

In addition, the shipping industry in Indonesia is regulated by Law Number 17 of 2008 concerning Shipping which regulates the detention of ships in civil cases involving maritime lawsuits.²² The law regulates the use of foreign-flagged vessels in Indonesian waters and requires them to obtain permission from the Indonesian government. The law also sets out provisions relating to maritime claims and the priority of certain debts in relation to other debts. Overall, the legal basis for detaining a vessel in civil cases involving maritime claims is regulated by law, and it is important to ensure that detention is carried out fairly and transparently to protect the rights of the parties involved.

CONCLUSION AND SUGGESTION

Conclusion

Based on the discussion above, it can be concluded that: The court plays an important role in determining the legality of detaining the ship as evidence and ensuring that the rights of the parties are protected. The process of detaining ships in Indonesia is handled through the courts, and the courts have the authority to issue orders for detaining ships in civil cases involving maritime lawsuits. Good safety procedures and high safety standards must be implemented in the detention of ships to ensure that the detention is legal and does not harm the parties involved. The importance of the role of courts in the detention of a ship is highlighted by the fact that shipowners have made payments to freed vessels held by the Indonesian navy while a case was heard in an Indonesian court.

Suggestion

Based on policy stakeholders, the government needs to strengthen the role of the courts in handling

²¹ Meilinda Imanuela Siahaya, "Penegakan Hukum Terhadap Kapal Asing Yang Melakukan Illegal Fishing Di Wilayah Perairan Indonesia Menurut Unclos 1982 (United Nations Convention On The Law Of The Sea 1982)," *LEX CRIMEN* 10, no. 5 (2021).

²² Marsel Mesak Manoppo, "Penangkapan Ikan Secara Ilegal Oleh Kapal Asing Dizona Ekonomi Eksklusif Indonesia Menurut Konvensi Hukum Laut 1982 Dan Uu No 5 Tahun 1983 Tentang Zona Ekonomi Eksklusif Indonesia," *Lex Et Societatis* 7, no. 12 (2019).

ship detention cases. Courts must have stronger powers in determining the legality of detention and ensuring that the rights of the parties are protected. The government also needs to increase public awareness about the importance of following existing rules and regulations, such as having the necessary permits to fish in Indonesian waters. In addition, the government needs to strengthen supervision of illegal fishing activities and increase sanctions for perpetrators who carry out these illegal activities. This will help reduce the chances of ship detention cases occurring and protect marine resources that are important for the economy and community welfare.

On a conceptual basis, it is important to pay attention to the rights of the parties involved in ship detention cases, including the rights of the ship and its owner. Detaining a ship should not be an arbitrary action without a strong legal basis. This will ensure that detention is carried out fairly and transparently. Therefore, the government must ensure that ship detention procedures are carried out taking into account the rights of the parties involved and still paying attention to safety factors and high safety standards.

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