



## LEGAL ANALYSIS OF FOREIGN SHIPS SUPERVISION THAT SAIL IN INDONESIAN WATERS

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### ARTICLE INFO

**History of the article:**

Received: 05/10/2025

Corrected: 10/10/2025

Accepted : 30/10/2025

Published: 30/10/2025

**Keywords:**

Surveillance, Foreign Vessels, Indonesian Waters

### ABSTRACT

Supervision of foreign vessels sailing in Indonesian waters is a shared responsibility of various government agencies, primarily under the coordination of the Ministry of Transportation (through the Directorate General of Sea Transportation and related units) and also involving the Indonesian Navy and the Maritime Security Agency (Bakamla).sailing in Indonesian waters This is carried out through the Port State Control (PSC) mechanism by the Foreign Ship Inspector (PSCO) to ensure the seaworthiness and safety of ships in accordance with international standards. In addition, the Indonesian Navy conducts surveillance to prevent illegal activities such as fishing by foreign vessels

### 1. Introduction

Indonesia is an archipelagic country (*Archipelagic State*) with a water area of 2/3 compared to the land area, consisting of 17,508 islands. The area of Indonesia reaches 7.9 million km<sup>2</sup> of which 1.8 million km<sup>2</sup> is land area, thus the area of Indonesia's territorial sea reaches 3.2 million km<sup>2</sup> and the area of the Exclusive Economic Zone (EEZ) waters reaches 2.9 million km<sup>2</sup>.

When viewed from a regulatory perspective, to protect national interests in the sea, the Republic of Indonesia has strengthened the legal basis that regulates its territorial waters. One of the actions taken by the Indonesian government to protect national interests is issuing Law Number 6 of 1996 concerning Indonesian Waters as a replacement for Law Number 4 Prp of 1960.

To uphold a maritime security system, it must be built on the principle of synergizing the strengths of all maritime security enforcement agencies. This synergy can be realized through unity reflected in the organizational structure,





mechanisms, and procedures of maritime security enforcers carried out by their officers, with the ultimate goal of upholding sovereignty (*Sovereignty*) and sovereign rights (*Sovereign Rights*) as regulated in UNCLOS 1982.

In accordance with Article 2, Article 34, Article 47 and Article 49 of UNCLOS 1982, it is stated that an independent country with a coastline must have authority over its land territory and the waters and airspace above it. Of the many many provisions are given UNCLOS 1982 is a regulation regarding straits within an independent country, however on the other hand UNCLOS 1982 also provides limitations in determining water boundaries calculated from where and to what extent so as not to harm neighboring countries and landlocked countries, therefore the country has rights/authority.

To ensure the safety and security of foreign vessels operating in Indonesian waters and ports, intensive oversight by Port State Control Officers (PSCOs) is essential, particularly in implementing the principles of maritime safety, security, and environmental protection. This is due to Indonesia's geographical position as the largest archipelagic nation, which makes maritime transportation strategic for international shipping, impacting the large number of foreign vessels calling or operating at Indonesian ports.

The inspection of the seaworthiness and security of foreign vessels by Port State Control Officers (PSCOs) also serves to demonstrate the Indonesian government's existence as a country with jurisdiction over ports/port states. "Foreign Ship Inspection Officers or Port State Control Officers (PSCOs) in Indonesia must play an active and more intensive role in conducting inspections of the seaworthiness and security of foreign vessels sailing in Indonesian waters to better guarantee the safety and security of these foreign vessels.

The authority to inspect foreign vessels has been regulated based on Law 17 of 2008 concerning Shipping, which mandates that Harbor Masters have the authority to conduct inspections of the seaworthiness and security of foreign vessels at ports, while in carrying out the intended duties, it has also been regulated through Regulation of the Minister of Transportation of the Republic of Indonesia No. 119/2017 concerning the Officer for Inspection of the Seaworthiness and Security of Foreign Vessels and Regulation of the Director General of Sea Transportation No. HK.183/1/9/DJPL-18 concerning the Implementation of Inspections of Seaworthiness and Security of Foreign Vessels. The authority to inspect foreign vessels is also mandated by the International Maritime Organization (IMO) resolution A.1052 (27) concerning Procedures for Port State Control and the joint agreement on Port State Control in the Asia Pacific (Tokyo MoU) which was signed by the Indonesian government in 1993





## 2. Research Method

This research is descriptive analysis, that is, research that describes, examines, explains, and analyzes laws and regulations related to the objectives of this research. The purpose of descriptive research is to accurately describe the characteristics of individuals, conditions, symptoms, or certain groups, or to determine the frequency or distribution of a symptom or the frequency of certain relationships between symptoms and other symptoms in society. The main purpose of analyzing legal materials is to understand the meaning contained in the terms used in the statutory regulations conceptually, as well as to understand their application in practice and legal decisions.

In accordance with the research problems and objectives, the type of research used is normative legal research. The type of research used in this study is normative legal research by examining library materials or secondary data materials which include books and legal norms contained in laws and regulations, legal principles, legal rules and legal systematics as well as reviewing statutory provisions, court decisions and other legal materials relevant to the formulation of the research

## 3. Results And Discussion

As an archipelagic nation with a strategic position in global shipping, Indonesia is frequently visited by foreign vessels, necessitating intensive supervision by authorized port officials. Article 14, letter f of Minister of Transportation Regulation No. PM 34 of 2012 concerning the Organization and Work Procedures of Harbormasters mandates that harbormasters have the authority to carry out port state control over foreign vessels.

Indonesia is an archipelagic state with 2/3 of its water area compared to its land area, consisting of 17,508 islands. Indonesia's territorial area reaches 7.9 million km<sup>2</sup>, of which 1.8 million km<sup>2</sup> is land, thus the area of Indonesia's territorial sea reaches 3.2 million km<sup>2</sup> and the area of the Exclusive Economic Zone (EEZ) waters reaches 2.9 million km<sup>2</sup>.

The legal concept of an archipelagic state or the Indonesian Archipelago Outlook, which Indonesia fought for through the Djuanda Declaration on December 13, 1957, finally bore fruit with the acceptance of the United Nations Convention on the Law of the Sea (UNCLOS) which was signed in Montego Bay, Jamaica, on December 10, 1982.

Indonesia then ratified the 1982 Law of the Sea Convention with Law Number 17 of 1985. This means that the concept of the Archipelagic Outlook has become one

of the principles accepted and recognized in international maritime law. Recognition of the principle of the Indonesian archipelagic state in the 1982 Law of the Sea Convention must continue to respect and honor the interests and rights of other countries as users of the archipelagic state's waters, such as the right of passage for foreign ships and aircraft passing through the Indonesian archipelagic sea lanes (The Right of Archipelagic Sea Lanes Passage). The established Indonesian Archipelagic Sea Lanes (ALKI) not only have a positive impact on national development aimed at the welfare of the people, but also have the potential to create threats to Indonesia's national interests.

These threats can take the form of territorial/sovereignty violations or legal violations. The research question is whether the sanctions for violations committed by foreign vessels crossing the Indonesian Archipelagic Sea Lanes (ALKI) are adequate and firm, and whether the law enforcement mechanism for violations of the right of passage through the Archipelagic Sea Lanes (ALKI) by foreign vessels is adequate and firm.

Article 53 Paragraph (1) of UNCLOS 1982 states "An archipelagic State may determine sea lanes and air routes thereon, which are suitable for the continuous, direct and expeditious passage of foreign ships and aircraft through or over its archipelagic waters and adjacent territorial seas."

When viewed from a regulatory perspective, to protect national interests in the sea, the Republic of Indonesia has strengthened the legal basis that regulates its territorial waters. One of the actions taken by the Indonesian government to protect national interests is issuing Law Number 6 of 1996 concerning Indonesian Waters as a replacement for Law Number 4 Prp of 1960.

To enforce a maritime security system, it must be built using the principle of synergizing the strengths of all maritime security enforcement agencies. This synergy can be realized through unity reflected in the organizational structure, mechanisms, and procedures of maritime security enforcers carried out by their officers, with the ultimate goal of upholding sovereignty and sovereign rights as stipulated in UNCLOS 1982.

Based on Article 17 of Law Number 6 of 1996 concerning Indonesian Waters, regarding the rights and obligations of merchant ships, warships and foreign government ships operated for commercial and non-commercial purposes in exercising the right of peaceful passage through Indonesian waters, it is regulated by Government Regulation. The implementation of this Law has been outlined in Government Regulation Number 36 of 2002 concerning the Rights and Obligations of Foreign Ships in Exercising Peaceful Passage Through Indonesian Waters which is regulated in the following articles:

Article 2 states:



- (1) All foreign vessels may exercise the right of innocent passage through the territorial sea and archipelagic waters for the purpose of passing from one part of the high seas or exclusive economic zone to another part of the high seas or exclusive economic zone without entering internal waters or stopping at anchorages in the middle of the sea, or port facilities outside internal waters for the purpose of passing from the high seas or exclusive economic zone to pass to or from internal waters or stopping at anchorages in the middle of the sea, or port facilities outside internal waters.
- (2) The implementation of the Right of Peaceful Passage as referred to in paragraph (1) is carried out by using Sea Lanes which are commonly used for international shipping and by observing Article 11 and paying attention to shipping guidelines issued by the authorized agency in the field of shipping safety.

#### Article 3:

- (1) Every foreign ship that from one part of the high seas or exclusive economic zone carries out peaceful passage across the Territorial Sea and Archipelagic Waters to another part of the high seas or exclusive economic zone is obliged to use the sea lane that corresponds to the origin of its voyage destination.
- (2) Every foreign ship that from one part of the high seas or exclusive economic zone wishes to go to Inland Waters or one of the ports or vice versa, carrying out Peaceful Passage across the Territorial Sea and Archipelagic Waters, is obliged to use the Sea Lane which is the Sea Lane that is appropriate to its origin and destination.
- (3) Every foreign ship carrying out peaceful passage must remain within the limits of a reasonable shipping lane at a speed and direction in accordance with normal navigation in order to reach the shipping destination.
- (4) In carrying out Peaceful Passage as referred to in paragraph (1), paragraph (2) and paragraph (3), foreign ships may not drop anchor, stop, or move back and forth, unless this is necessary due to force majeure, or disaster or to help people, ships or aircraft in distress.

#### Article 4

- (1) In carrying out Peaceful Passage through Territorial Seas and Archipelagic Waters, foreign vessels may not carry out any of the following activities:
  - a. committing acts that constitute a threat or use of force against the sovereignty, territorial integrity, political independence of the coastal state, or in any other manner that constitutes a violation of the principles of international law as stated in the Charter of the United Nations;
  - b. conduct training or practice with any kind of weapon;



- c. carrying out acts aimed at collecting information that is detrimental to national defense and security;
- d. carrying out acts that constitute propaganda aimed at influencing state defense or security;
- e. launching, landing, or lifting an aircraft from or onto a ship;
- f. launching, landing, or lifting military equipment and supplies from or onto a ship;
- g. back and forth in the Territorial Sea and Archipelagic Waters or other activities that are not directly related to crossing.

## Article 5

- (1) In carrying out Peaceful Passage through Territorial Seas and Archipelagic Waters, foreign vessels may not carry out the following activities:
  - a. unloading or loading any commodity, currency or person, in contravention of customs, fiscal, immigration or sanitary laws and regulations;
  - b. fishing activities;
  - c. research or survey activities.
  - d. acts aimed at disrupting any communication system, any facility, or other communication installation;
  - e. acts of pollution that are carried out intentionally and cause serious pollution.
- (2) In carrying out Peaceful Passage through Territorial Seas and Archipelagic Waters, foreign vessels may also not:
  - a. damaging or interfering with navigational tools and facilities, as well as other navigational facilities or installations;
  - b. destroying natural biological resources;
  - c. damage or interfere with submarine cables and pipes.

In accordance with Article 2, Article 34, Article 47 and Article 49 of UNCLOS 1982, it is stated that an independent country with a coastline must have power over its land and water areas and the air above it. Of the many provisions of UNCLOS 1982, there are regulations regarding straits that may exist in an independent country, but on the other hand, UNCLOS 1982 also provides limitations in determining water boundaries calculated from where and to what extent so as not to harm neighboring countries and non-coastal countries, therefore the country has rights/authorities.

Based on the provisions of Article 3 paragraph 3 of the Indonesian Waters Law, therefore the International Convention on the Law of the Sea (UNCLOS III) has recognized the concept of an archipelagic state, therefore the Indonesian archipelagic waters are included in the protection of international maritime law as are other archipelagic states.



Article 8 paragraph (1) of the United Nations Conventions on the Law of the Sea (UNCLOS 1982)6. While in Article 3 (4) of Law No. 6 of 1996 concerning Indonesian Waters. Indonesian Inland Waters consist of: inland seas, and inland waters so that according to the author the definition of inland seas when associated with this law is a land on the sea side and is the lowest line of a part of the sea located on the land side of the closing line, while inland waters according to the author are a land on the land side of the closing line of the river mouth located on the land side of the low water line except at the mouth of the inland waters river.

It is natural because of its proximity to the coast such as small seas, river estuaries, bays with mouths less than 24 miles, ports, and others so that it is feared that it will endanger the security and order of the Indonesian state and this is also in agreement with other experts.

In several respects, this Convention has also given rise to several provisions considered new developments in public international maritime law. The most important of these are the provisions in Articles 3, 4, and 5 of the 1957 Geneva Convention concerning the drawing of baselines. Therefore, the territorial sea limit, based on the provisions of UNCLOS 1982, does not exceed 12 nautical miles measured from the normal baseline. Article 5 of Law Number 6 of 1996 stipulates the baseline provisions.

Article 3 paragraph 2 of Law Number 6 of 1996 concerning Indonesian Waters mentions the concept of territorial seas. Article 17 of UNCLOS 1982 explains that in a country's territorial waters, ships from all countries, both coastal and landlocked, can enjoy the right of innocent passage through the territorial sea. The explanation of the meaning of passage within a territorial sea is stated in Article 18 of UNCLOS 1982.

Thus, the meaning of passage as intended in Unclos 1982, according to the author, passage activities for a foreign-flagged ship must be continuous, direct and as fast as possible, and if it takes action other than that which has been determined, the ship must be in a state of force majeure or provide assistance to other people, ships or aircraft in danger.

Looking at Article 19 of this Convention, the activities of foreign-flagged vessels to carry out passage activities are carried out in a peaceful manner and do not harm the peace and order of the coastal State's security apparatus, however, on the other hand, the author is of the opinion that the activities of a foreign-flagged vessel when carrying out peaceful passage in the territorial waters of a country are considered to endanger the peace, order or security of a coastal State.

Based on the provisions of Article 19 of Unclos 1982, it is stated that an activity is considered not in accordance with peaceful passage as stated in the article for



warships or government ships as explained in Article 32 of Unclos 1982, based on the provisions of Article 29 of UNCLOS, it has stated the definition of warships or government ships.

Article 24 (1) UNCLOS 1982 states that a zone in the high seas that is connected to the territorial sea of the coastal state can carry out the necessary supervision. The provision that the maximum width of the additional zone may not exceed 12 nautical miles measured from the baseline is stated in Paragraph (2) of Article 24 UNCLOS 1982

## 4. Conclusion

Surveillance of foreign vesselssailing in Indonesian waters carried out through the Port State Control (PSC) mechanism by the Foreign Ship Inspection Officer (PSCO) to ensure the seaworthiness and safety of ships according to international standards.

The implementation of provisions for foreign-flagged vessels to pass through the Indonesian archipelagic sea lanes is reviewed from the perspective of Indonesian state law and *United Nations Convention On The Law Of The Sea (Unclos)* 1982 is kForeign-flagged vessels have the right of innocent passage and transit in archipelagic sea lanes (ALKI) for continuous, direct, and expeditious transit between two parts of the high seas or EEZ. Indonesia, as an archipelagic state, can establish ALKI to regulate this passage in accordance with its national law, but the rights of foreign vessels must not be hindered. Vessels must comply with the provisions of UNCLOS and Indonesian laws that do not conflict with UNCLOS, and must not engage in activities that disrupt or threaten the peace, order, or security of the state.

Obstaclesurveillance of foreign vesselssailing in Indonesian watersis infrastructure and technology limitations, very large sea areas, lack of competent human resources, as well as overlapping authority between law enforcement agencies and efforts to overcome this areiBetter functional integration and coordination between institutions such as Bakamla (Maritime Security Agency) and KPLP (Sea and Coast Guard Unit) are being sought to create efficiency in maritime law enforcement

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