

Determination of Indonesian Islands Sea Lane as a Tools of Providing Legal Certainty for Foreign Flag Vessels Through Indonesian Waters

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Article Information

Article History:

Received : 13-02-2025

Revised : 17-05-2025

Accepted : 27-05-2025

Published : 31-05-2025

Keyword:

Archipelagic Sea Lanes;

Legal Certainty;

National Interest

Protection;

Abstract

This research discusses the current determination of Archipelagic Sea Lanes determined by the Indonesian government which is able to provide legal certainty for foreign-flagged ships crossing Indonesian waters. The problem that arises with the determination is whether they do not create vulnerabilities that have the potential to harm the national interests of the Indonesian people. This research is normative legal research with a conceptual and statutory approach. The research results show that the Indonesian government has established archipelagic sea lanes so that it can provide legal certainty for foreign ships crossing Indonesian waters. This determination is a mandate from the ratification of the 1982 international maritime law convention. However, this determination still creates vulnerabilities that have the potential to harm the national interests of the Indonesian people. The cause of this vulnerability is because the norms contained in the regulations regarding archipelagic sea lanes does not contain sanctions norms so that legal violations often occur in the archipelagic sea lanes area. The need for more significant sanctions is due to the fact that archipelagic sea lanes have specificities compared to other maritime zones.

Abstrak

Penelitian ini membahas tentang penetapan Alur Laut Kepulauan yang ditetapkan oleh pemerintah Indonesia saat ini yang mampu memberikan kepastian hukum bagi kapal berbendera asing yang melintasi perairan Indonesia. Permasalahan yang timbul dengan penetapan tersebut adalah apakah tidak menimbulkan kerentanan yang berpotensi merugikan kepentingan nasional bangsa Indonesia. Penelitian ini merupakan penelitian hukum normatif dengan pendekatan konseptual dan perundang-undangan. Hasil penelitian menunjukkan bahwa pemerintah Indonesia telah menetapkan alur laut kepulauan sehingga dapat memberikan kepastian hukum bagi kapal asing yang melintasi perairan Indonesia. Penetapan ini merupakan amanat dari ratifikasi konvensi hukum laut internasional tahun 1982. Namun, penetapan ini masih menimbulkan kerentanan yang berpotensi merugikan kepentingan nasional bangsa Indonesia. Penyebab terjadinya kerentanan ini adalah karena norma yang terdapat dalam pengaturan mengenai alur laut kepulauan belum memuat norma sanksi sehingga sering terjadi pelanggaran hukum di wilayah alur laut kepulauan. Perlunya sanksi yang lebih tegas dikarenakan alur laut kepulauan memiliki kekhususan dibandingkan dengan wilayah maritim lainnya.

INTRODUCTION

Indonesia is an archipelagic country in the form of a maritime archipelago.¹ When reviewed from a political, legal, economic, socio-cultural and defense and security perspective, the Indonesian maritime region has strategic value so that conditions are needed that are safe, peaceful, controlled, and sustainable. Conditions like this are beneficial for the international community of sea users and the Indonesian nation itself.² Indonesia, as a large maritime country, uses the sea as a means of supporting the national economy, so an active role in the international community is absolutely necessary. A country that declares itself as a maritime country means that country has a big responsibility to the international community to provide rights to cross archipelagic sea lanes in archipelagic waters and territorial seas.³

In order to implement this participation, the Indonesian Government ratified the 1982 convention on International Sea Law, better known as the United Nations Convention on the Law of the Sea 1982 (UNCLOS 1982). This ratification was carried out by ratifying Law Number 17 of 1985 concerning Ratification of the UNCLOS 1982.⁴ This convention is a new chapter in the development of maritime regulation as a compromise step between large maritime countries and developing and underdeveloped coastal countries. This convention became an international agreement after being ratified by various countries and is the legal umbrella for marine management throughout the world.

UNCLOS 1982 was the result of various UN conferences discussing the law of the sea, which took place from 1973-1982.⁵ This convention contains provisions that coastal states do not have sovereignty and absolute sovereign rights in maritime

¹ Juan Matheus, Natashya, Ariawan Gunadi, Steven Nigel Bunalven, Ratifikasi Konvensi Sua 1988: Optimalisasi Pengaturan Hukum dalam Memberantas Perompakan Bersenjata di Wilayah Perairan Indonesia, *Jurnal Rechtvinding*, Vol. 12 No. 3, 2023, p. 526.

² Budi Pramono, *Penegakan Hukum di Perairan Indonesia*, Surabaya, Scopindo, 2021, p. 3.

³ Victor Prescott & Clive Schofield, *The Maritime Political Boundaries of The World*, Boston, Martinus Nijhoff Publishers, 2005, p. 45.

⁴ Melly Aida, Penanggulangan Penangkapan Ikan Secara Tidak Sah (Illegal Fishing) Oleh Kapal Ikan Asing di Zona Ekonomi Eksklusif Indonesia, *Jurnal Fiat Justitia*, Vol. 5, No. 2, 2012, p. 2.

⁵ Patrisius Bagus Alvito Baylon (et all), Kajian Validitas Klaim China Atas Wilayah Laut Cina Selatan Indonesia, *Jurnal Kewarganegaraan*, Vol. 5, No. 2, 2021, p. 692.

areas. Coastal countries must pay attention to the interests of international shipping by providing peaceful passage, archipelagic passage, transit and communication access to the international community of sea users. The coastal state must provide access to foreign ships that will pass through its territory according to the regulations in the country's national law.⁶

In providing seaborne access, coastal countries are given the authority to regulate certain sea lanes commonly used by international shipping.⁷ The conception of Indonesian Archipelagic Sea Lanes is outlined in Government Regulation Number 37 of 2002 concerning the Rights and Obligations of Foreign Ships and Aircraft in Exercising Archipelagic Sea Lane Passage Rights Through Determined Archipelagic Sea Lanes. The problem that arises is whether the determination made by the Indonesian government is in accordance with international regulations and does not create vulnerabilities that have the potential to harm the interests of the Indonesian nation. This question arises because of the view of several coastal countries that this international convention benefits large maritime countries more than coastal countries that are still underdeveloped and developing. Determination of Indonesian Archipelagic Sea Lanes as mandated by the convention needs to be carried out using the principles of caution and accuracy. If the Archipelagic Sea Route is not managed properly, it has the potential to create vulnerabilities for coastal countries.

Some examples of crime cases that occurred around the Indonesian Archipelagic Sea Lane area include the presence of the United States, China, Russia and Australia's sea forces in Indonesian waters passing through the Indonesian Archipelagic Sea Lane. The entry of foreign powers is carried out legally or illegally under the pretext of social missions such as Search and Rescue, intelligence interests and military cooperation.⁸ Apart from this, the large number of foreign ships passing through the Archipelagic Sea Channel directly or indirectly can cause

⁶ Monica Carolina Ingke Tampi, Pengaturan Hukum Hak Lintas Damai Menurut Konvensi Hukum Laut 1982 dan Implementasinya Di Indonesia, *Lex et Societatis*, Vol. V, No. 5, Juli 2017, p. 55.

⁷ Budi Pramono, *Penegakan Hukum di Perairan Indonesia*, Surabaya, Scopindo, 2021, p. 63.

⁸ Poltak Partogi Nainggolan, Indonesia dan Ancaman Keamanan di Alur Laut Kepulauan Indonesia (Security Threats to Indonesia's Sea Lanes), *Kajian*, Vol. 20 No. 3, 2015, p. 195.

various vulnerabilities that have the potential to cause disruption and loss of the country's economic resources. Violations that often occur in the Indonesian Archipelagic Sea Lanes include international terrorism, territorial violations, piracy and piracy, illegal immigrants, human trafficking, weapons smuggling, narcotics, marine pollution, fish theft, mining, and so on.

By referring to the background of the problems that have been explained, the problem in this paper is determining whether the Indonesian Archipelagic Sea Lanes can provide legal certainty for foreign-flagged ships crossing Indonesian waters and not create vulnerabilities for the integrity of the Indonesian nation and state.

RESEARCH METHODS

The type of research used in this writing is normative legal research. Normative legal research is a type of research used in the development of legal science. The approach used in this research is a statutory and conceptual approach. These two approaches are used together, this is because normative legal research can use two or more approaches.⁹ The legislative approach is carried out by examining laws and regulations related to the legal issue being studied. The statutory approach opens up opportunities for researchers to study the consistency and suitability of one law to another. The conceptual approach is carried out by referring to the views and doctrines that have developed in legal science. Concepts in legal science can be used as a starting point or approach for legal analysis. Legal concepts will emerge based on or sourced from legal facts.¹⁰

RESULT AND DISCUSSION

A. Concept of Indonesian Archipelagic Sea Lanes

The meaning of Indonesian Archipelagic Sea Lanes has been defined in Article 1 point 8 of Law Number 6 of 1996 concerning Indonesian Waters, which states as follows: "Archipelagic sea lanes are traversed by foreign ships or aircraft

⁹ Peter Mahmud Marzuki, *Penelitian Hukum*, Jakarta, Prenada, 2008, p. 93.

¹⁰ Mukti Fajar ND dan Yulianto Achmad, *Dualisme Penelitian Hukum Normatif & Empiris*, Yogyakarta, Pustaka Pelajar, 2010, p. 186.

over these sea lanes, to carry out navigation and flights in a normal manner solely for continuous, direct and as fast as possible and unimpeded transit through or over archipelagic waters. and adjacent territorial seas between one part of the high seas or the Indonesian Exclusive Economic Zone and another part of the high seas or the Indonesian Exclusive Economic Zone.”

The Indonesian Archipelagic Sea Lanes were established as a consequence of the ratification of the UNCLOS 1982, with Indonesia's obligations as an archipelagic country, which are regulated by Articles 47-53 of the Law of the Sea Convention. Article 47 of the UNCLOS 1982 states that island countries can draw straight archipelagic baselines. In order to follow up on these international norms, the Indonesian nation subsequently issued the Indonesian Waters Law, which was further elaborated in Government Regulation Number 37 of 2002 concerning the Rights and Obligations of Foreign Ships and Aircraft in Exercising Rights of Archipelagic Sea Lane Passage Through Established Sea Lanes.¹¹ Referring to this determination, Indonesia can be categorized as a country that has implemented and guaranteed the implementation of archipelagic passage rights for foreign ships. In reality, the determination of the Indonesian Archipelagic Sea Lanes brings vulnerability to the Unitary State of the Republic of Indonesia, this is because the Indonesian Archipelagic Sea Lanes passage is a passage that contains certain freedoms.

There are two options for regulating maritime law, namely based on the principle of nationality of the ship or based on the law of the ship's flag without considering the location of the ship and regulations based on the existing authority of a country's national law in certain parts without taking into account the nationality of the ship.¹² In maritime regulation, the UNCLOS 1982 recognizes three types of passage rights for foreign ships, namely the right of innocent passage, the right of transit passage and the right of archipelagic sea lane passage. The right of innocent passage can be exercised through territorial seas, straits used by international shipping and archipelagic waters. The right of transit passage can only

¹¹ Nuryanto, *Memahami Laut Indonesia*, Jakarta, Mitra Wacana, 2014, p. 10.

¹² Bernard H. Oxman, Environment Protection in Archipelagic Waters and International Strait- The Role of the International Maritime Organization, *The International Journal of Marine and Coastal Law*, Vol. 10, No. 4, 1995, p. 467.

be exercised through straits used for international shipping, while the right of transit passage can only be enjoyed through archipelagic waters, especially through archipelagic sea lanes.¹³

The Indonesian Archipelagic Sea Route is a transaction of recognition by the international community for the concept of the Archipelago Insight and the Djuanda Declaration. If the Indonesian nation does not grant the right of peaceful passage in the Archipelagic Sea Lanes, it will be difficult to obtain international recognition of full sovereignty in its territorial waters as conceptualized in the Indonesian Insight and the Djuanda Declaration.¹⁴ The benefits that the Indonesian people get from the Indonesian Archipelagic Sea Route include: (a) Indonesia is a vital part as a connector for the Eurasian Blue Belt; (b) Indonesia can play a role in the Global Logistic Support System, especially in relation to Sea Lanes of Communication and Consolidated Ocean Web of Communication; (c) The seas and sea lanes of the Indonesian archipelago are vital means of connecting Highly Accessed Sea Areas because the three seas (Indian, South and South Pacific) meet; and (d) Relating to world shipping that crosses the Indonesian Archipelagic Sea Lane with dry cargo and liquid cargo Declaration.¹⁵

The Indonesian Archipelagic Sea Route is related to Indonesia's existence as an archipelagic country. With the existence of archipelagic sea lanes, in one aspect its sovereignty is recognized by international law, while in other aspects it also recognizes and respects the international right to peaceful passage for foreign ships. This conception went through a difficult, long and continuous struggle and was finally accepted by the international community as part of the principles of international law regarding maritime affairs. The three sea lanes contained in the Government Regulation concerning Indonesian Archipelagic Sea Lanes are as follows:

- 1) The Indonesian Archipelagic Sea Route I is used for shipping from the South China Sea to the Indian Ocean or vice versa from the

¹³ Etty R. Agoes, *Upaya Diplomasi Indonesia Dalam Menentukan Alur Laut Kepulauan, Indonesia Journal of International Law*, Vol. 6, No. 3, 2009, p. 356.

¹⁴ Richard M. Waas, *Penegakan Hukum Di Kawasan Alur Laut Kepulauan Indonesia Menurut Konsepsi Hukum Internasional dan Hukum Nasional Indonesia*, Jurnal Sasi, Vol. 22, No. 1, 2016, p. 24.

¹⁵ *Ibid.*

Indian Ocean to the South China Sea by crossing the waters of Natuna Sea, Karimata Strait, Java Sea and Sunda Strait. Apart from that, it is also used as a means of shipping from the Singapore Strait through the Natuna Sea, Karimata Strait, Java Sea and Sunda Strait to the Indian Ocean and vice versa.

- 2) The Indonesian Archipelagic Sea Route II is used as a means of shipping from the Sulawesi Sea to the Indian Ocean or vice versa from the Indian Ocean to the Sulawesi Sea by crossing the Sulawesi Sea, Makasar Strait, Flores Sea and Lombok Strait.
- 3) The Indonesian Archipelagic Sea Route III A is used as a means of carrying out shipping from the Pacific Ocean to the Indian Ocean and vice versa from the Indian Ocean to the Pacific Ocean by crossing the waters of the Maluku, Seram Sea, Banda Sea, Ombai Strait and Savu Sea.
- 4) The Indonesian Archipelagic Sea Route III B is used as a means of carrying out shipping from the Pacific Ocean to the Timor Sea by crossing the Maluku Sea, Seram Sea, Banda Sea, Leti Strait to the Timor Sea, and vice versa.
- 5) The Indonesian Archipelagic Sea Lane III-C is used as a means of carrying out shipping from the Pacific Ocean to the Arafura Sea or vice versa from the Arafura Sea to the Pacific Ocean by crossing the Maluku Sea, Seram Sea, Banda Sea and Arafura Sea.
- 6) The Indonesian Archipelagic Sea Route III-D is used as a means of shipping from the Pacific Ocean to the Indian Ocean or vice versa from the Indian Ocean to the Pacific Ocean by crossing the Maluku Sea, Seram Sea, Banda Sea, Ombai Strait and Savu Sea.
- 7) Indonesian Archipelagic Sea Lane III-E which is one with Archipelagic Sea Lane IIIA at point IIIA-2, which is used for shipping from the Pacific Ocean to the Indian Ocean by crossing the Sulawesi Sea, Maluku Sea, Seram Sea, Banda Sea, Ombai Strait and Savu Sea or vice versa, or passing through the Maluku Sea, Seram

Sea, Banda Sea, Leti Strait and East Sea or vice versa, or Seram Sea and Banda Sea to the Arafura Sea or vice versa.

With the establishment of three archipelagic sea lanes with their branches as shown above, this does not mean that the three archipelagic sea lanes with their branches can only be used for the implementation of the right of archipelagic sea lanes passage by foreign ships wishing to sail from one part of the sea, free or exclusive economic zone across Indonesian waters to other parts of the free sea or exclusive economic zone. Foreign ships wishing to sail from one part of the free sea or exclusive economic zone to one of the ports in Indonesia or to another part of the free sea or exclusive economic zone can carry out their voyage based on the Right of Peaceful Passage in Indonesian Waters, both in archipelagic sea lanes and outside archipelagic sea lanes. Conditions like this allow the emergence of vulnerabilities for the Indonesian people so that a patrol concept is needed to prevent violations of Indonesian law and territory.

B. Establishment of Indonesian Archipelagic Sea Lanes as a means of providing legal certainty for foreign-flagged vessels passing through Indonesian waters

Modern thought relating to the monumental aims of law is the thought of Gustav Radbruch, who explains that the aims of law are in the form of 3 (three) basic values including justice (philosophical aspect), legal certainty (juridical aspect) and benefit to society (sociological aspect). Radbruch's thought is a combination of classical philosophical, normative and empirical views into one approach with each approach used as a main element and the basis for Radbruch's legal approach.¹⁶ Gustav Radbruch's thinking departs from the view that there is a close relationship between society and order, the relationship between the two is like two sides of a coin that cannot be separated. Every community in a region

¹⁶ M. Muslih, Negara Hukum Indonesia Dalam Perspektif Teori Hukum Gustav Radbruch (Tiga Nilai Dasar Hukum), Jurnal Legalitas, Vol. IV, No. 1, 2013, p. 143-144.

certainly needs order and in order to realize order there are several norms that must be guided by, such as morality, customs and laws.¹⁷

The difference between the three legal norms (justice, certainty and expediency) found in society can be explained by the fact that habits are more oriented towards actions that are commonly carried out by society on a daily basis. Custom is not identical with law and morality but rather describe the opposite of morality. Habits must be based on human behavior, while morality adheres to ideal behavior that must be realized in society. The parameters used for behavior that can be accepted or rejected by society in the idealism of humans themselves, namely perfect humans. Legal norms are more oriented to the ideal world (morality) and reality or reality (customs) so that ideal law must accommodate philosophical values and if it wants to meet the demands of reality it must prioritize sociological elements.¹⁸

The reality in society between the three basic values has the potential to cause tension. Justice is in conflict with expediency and on other occasions justice is in conflict with legal certainty, and it is also possible that there is tension between expediency and justice. In order to resolve the tension, Gustav Radbruch provides a solution through the teaching of standard priorities, namely by providing a benchmark in deciding a case, the main priority is justice, the second is expediency and the last is legal certainty. This priority conception is wiser when compared with ethical legal teachings which focus on justice, the utilitarian school which focuses on utility and the dogmatic (positivism/legalistic) school of law which focuses on legal certainty.

The increasingly complex development of society's interests in daily life means that standard priority teachings no longer meet the ideals expected by society. In order to improve the conception of standard reality, the teaching of casuistry priorities developed. This conception allows the prioritization of the three

¹⁷ Satjipto Rahardjo, *Ilmu Hukum*, Alumni, Bandung, 1996, p.13 –17.

¹⁸ *Ibid*, p. 14-16.

basic values above alternately according to the context of the problem being faced so that each basic value can take turns becoming the dominant element in a case. In contemporary legal practice, this casuistry priority teaching is considered the most relevant teaching to answer legal problems that develop in society.¹⁹

If these three basic values from Gustaf Radbruch are applied to the stipulation of the Indonesian Archipelagic Sea Routes Government Regulation, this stipulation can provide legal certainty for foreign ships passing through Indonesian waters. The reason for consideration in the UNCLOS 1982 there is a provision that coastal states do not have sovereignty and absolute sovereign rights in maritime areas. Coastal countries must pay attention to the interests of international shipping and aviation, namely by providing peaceful passage, archipelagic passage, transit and communication access to the international community of sea users. The coastal state must provide access to foreign ships and aircraft that will pass through its territory as regulated in national law. Article 53 Paragraph (2) UNCLOS 1982 mandates that all ships and aircraft enjoy the right to cross archipelagic sea lanes in sea lanes and flight routes. The norms of this article mean that ships and aircraft can enjoy the right to cross archipelagic sea lanes through territorial seas and archipelagic waters from one part of the free sea or Exclusive Economic Zone to another part of the free sea or Exclusive Economic Zone.²⁰

In providing sea crossing access, coastal countries are given the authority to regulate certain sea lanes commonly used by international shipping. The implementation of archipelagic sea lane passage rights is carried out via routes commonly used by international shipping. This norm is mandated in Article 53 Paragraph (1) UNCLOS 1982, the formulation of which is as follows: "An archipelagic State may determine sea lanes and flight routes over them, which are suitable for continuous and direct and expeditious passage of foreign ships and aircraft through or over its archipelagic waters and the territorial sea adjoining them."

¹⁹ M. Muslih, *Op.cit*, p. 150.

²⁰ Eriece Firman, Sri Lestari Rahayu, Anugrah Adistuti, Wacana Pembentukan Alur Laut Kepulauan Indonesia (ALKI) Rute Timur-Barat ditinjau dari Hukum Internasional, *Jurnal Belli ac Pacis*. Vol. 2. No. 2, 2016, p. 42.

Following up on the mandate of Article 53 Paragraph (1) UNCLOS, on August 30 1996 the Indonesian government submitted a proposal for the Indonesian Archipelago Sea Route to the International Maritime Organizations. On 2-6 December 1996 (67th session) the Indonesian Archipelagic Sea Routes proposal was discussed by the Maritime Safety Committee which is an organization under the auspices of the International Maritime Organizations. At the end of the 69th session of the Maritime Safety Committee on May 19 1998, it accepted the Indonesian government's proposal and adopted the General Provisions for the Adoption, Designations and Substitution of Archipelagic Sea Lanes and recognized the Indonesian Archipelagic Sea Lane proposed by the Indonesian government as a partial Indonesian Archipelagic Sea Lane. This partial Indonesian Archipelagic Sea Lane is a new term that is only listed in The General Provisions for the Adoption, Designations and Substitution of Archipelagic Sea Lanes. UNCLOS 1982 itself does not regulate the existence of partial Indonesian Archipelagic Sea Lanes as regulated in The General Provisions for the Adoption, Designations and Substitution of Archipelagic Sea Lanes.²¹

This conception of Indonesian Archipelagic Sea Lanes is further outlined in Government Regulation Number 37 of 2002 concerning the Rights and Obligations of Foreign Ships and Aircraft in Exercising Archipelagic Sea Lane Passage Rights Through Determined Archipelagic Sea Lanes.²² With this determination, Indonesia can be categorized as a country that has implemented and guaranteed the implementation of archipelagic passage rights for foreign ships. However, this determination gave rise to various kinds of problems in the field. In reality, the determination of the Indonesian Archipelagic Sea Lanes brings vulnerability, this is because the Indonesian Archipelagic Sea Lanes passage is a passage that contains certain freedoms. This provision was made as a form of obligation to the international community carried out by archipelagic countries, although determining the route and crossing of islands will cause many difficulties because it intersects with the interests of many countries.

²¹ Dhiana Puspitawati, *Hukum Laut Internasional*, Jakarta, Prenada, 2019, p. 123-124.

²² Nuryanto, *Memahami Hukum Laut Indonesia*, Jakarta, Mitra Wacana Media, 2014, p. 10

The problem that arises is whether the determination made by the Indonesian government is in accordance with the provisions of the UNCLOS 1982 and does not create vulnerabilities that have the potential to harm the Indonesian nation. This question arises because of the view of several coastal countries that the UNCLOS 1982 is more beneficial to large maritime countries than coastal countries that are still underdeveloped and developing. The determination of the Indonesian Archipelagic Sea Lanes by the Indonesian people as mandated by UNCLOS 1982 needs to be carried out with the principle of caution and accuracy. If not managed properly, the Indonesian archipelagic sea lanes have the potential to cause vulnerability.

Some examples of crime cases that occurred around the Indonesian Archipelagic Sea Lane area include the presence of the United States, China, Russia and Australia's sea forces in Indonesian waters passing through the Indonesian Archipelagic Sea Lane. The entry of foreign powers is carried out legally or illegally under the pretext of social missions such as Search and Rescue, intelligence interests and military cooperation.²³ Apart from this, the large number of foreign ships passing through the Indonesian Archipelagic Sea Lanes directly or indirectly can cause various vulnerabilities that have the potential to cause disruption and loss of the country's economic resources. Violations that often occur in the Indonesian Archipelagic Sea Lanes include international terrorism, territorial violations, piracy and piracy, illegal immigrants, human trafficking, weapons smuggling, narcotics, marine pollution, fish theft, mining, and so on.²⁴ The regulation of Archipelagic Sea Lanes as a means of ship and aircraft traffic passing through a country is contained in Article 53 UNCLOS 1982.

Determining archipelagic sea lanes actually not required because archipelagic countries may not determine their archipelagic sea lanes, but if archipelagic sea lanes are not determined, then all ships are allowed to pass through normal navigation routes which are usually used for international shipping. This norm is contained in the formulation of Article 53 paragraph 12 UNCLOS 1982, which

²³ Poltak Partogi Nainggolan, Indonesia dan Ancaman Keamanan di Alur Laut Kepulauan Indonesia (Security Threats to Indonesia's Sea Lanes), *Kajian*, Vol. 20 No. 3, 2015, p. 195.

²⁴ *Ibid.*

states that if an archipelagic country does not determine sea lanes and archipelagic flight routes, it can be carried out via routes usually used for international shipping.

The establishment of archipelagic sea lanes is considered to be more beneficial in providing recognition of Indonesia's existence with its maritime civilization, as an important connecting part of the Eurasian Blue Belt, Global Logistic Support System, Sea Lanes of Communication, Consolidated Ocean Web of Communication and Highly Accessed Sea Areas. Archipelagic sea lanes can unite three seas, namely the Indian Ocean, Southeast Asia and the South Pacific. Apart from this, what is no less important is that the implementation of the Indonesian Archipelagic Sea Lane makes Indonesia a shipping area for world ships, with dry cargo and liquid cargo.

The making of Indonesian Archipelagic Sea Route Government Regulations which are an elaboration of the UNCLOS 1982 as ratified by Law Number 17 of 1985, if analyzed from legal primacy theory, falls into the category of monism, namely the making of national regulations as an elaboration of the International Agreement. Such legal politics in state practice is commonplace and there is no need to debate whether these regulations are implementing regulations for International Agreements that are already binding at the domestic level (implementing legislation) or transformational regulations (dualism). This practice is carried out to carry out the country's international responsibilities, namely harmonization and ensuring that International Agreements (especially non-self-executing treaties) can be implemented at the domestic level. These reasons are very realistic and essential in both dualist and monist country.²⁵

Referring to this explanation, it can be seen that Indonesia is inconsistent in applying the primacy of law theory (dualism or monism), depending on which is beneficial for the interests of the Indonesian nation and state. This practice is carried out to carry out the country's international responsibilities, namely harmonization and ensuring that International Agreements can be implemented at the national

²⁵ Pierre-Hugues Verdier and Mila Versteeg, International Law in National Legal Systems: An Empirical Investigation, *The American Journal of International Law*, 109, No. 3, 2015, p. 209-230.

level. This reason is very realistic and essential in both dualist and monist countries.²⁶

The establishment of archipelagic sea lanes as a new regime for shipping must be carried out as regulated in the UNCLOS 1982. An archipelagic country can determine sea lanes that are suitable for the continuous and fastest possible passage of ships through or over its waters and territorial seas. side by side with him. The basis used by island countries in formulating cross-archipelagic routes is Article 53 Paragraph (1) UNCLOS 1982. In addition to archipelagic sea lanes, archipelagic countries can establish traffic separation schemes for the purposes of safe passage of ships through narrow channels in archipelagic sea lanes. From the provisions of article 53 paragraph (1) UNCLOS 1982, it can be explained that archipelagic sea lanes are intended for various types of foreign ships. In addition, archipelagic sea lanes also include nearby territorial waters and must be suitable for direct and uninterrupted passage. By referring to the formulation of the norm in Article 53 Paragraph (1), it can be seen that there is no obligation for the Indonesian government to create archipelagic sea lanes and it is permissible for Indonesia not to determine it. However, as a consequence, if the Indonesian Archipelagic Sea Lanes are not established then all international ships are allowed to pass through navigation routes which are normally used in world shipping as formulated in Article 53 Paragraph (12) UNCLOS 1982, routes normally used for international navigation.

The criteria for archipelagic sea lanes must be continuous, suitable and not discontinuous or suitable, safe for ships from navigational interference. Kresno Buntoro said that continuous passage means that island countries in determining archipelagic sea lanes must consider the Exclusive Economic Zone and continental shelf.²⁷ Foreign ships passing through continuously can enter or depart from island nation ports without prior notification. In determining archipelagic sea lanes there are factors that must be considered, including: (a) The provisions of the UNCLOS

²⁶ Ary Aprianto, Relevansi Monisme dan Dualisme Bagi Pemberlakuan Perjanjian Internasional di Indonesia, *Jurnal Konstitusi*, Vol. 19, No. 3, 2022, p. 598.

²⁷ Kresno Buntoro, *Alur Laut Kepulauan Indonesia (ALKI), Prospek dan Kendala*, Jakarta, Sekolah Staf dan Komando TNI AL, 2012, p. 51.

1982 and other international law provisions; (b). Marine engineering which includes, among other things, hydrography, marine environmental protection, mining areas, pipelines and undersea pipes, dumping and mine disposal areas, fisheries areas; (c) Location of archipelagic sea lanes; and (d). How many archipelagic sea lanes and archipelagic sea lanes have been established by Indonesia?²⁸

CONCLUSION

Determination of the Indonesian Archipelagic Sea Lanes as regulated in Government Regulation Number 37 of 2002, if viewed from the aspect of legal objectives as conceptualized by Gustaf Radbruch, can provide legal certainty for foreign-flagged ships passing through Indonesian waters. The 1982 international law of the sea convention mandates the obligation to provide passage for foreign-flagged vessels and coastal states have the authority to regulate such passage in accordance with the laws and regulations in their country. However, the current determination of the archipelagic channel still has the potential to create vulnerabilities in the security of the Indonesian state.

SUGGESTION

In determining the Indonesian Archipelagic Sea Lanes, it is necessary to use the principle of precision and caution, this is because in the Indonesian Archipelagic Sea Lanes there are international norms which state that coastal countries must provide access to foreign ships and aircraft that will pass through their country's territory with the regulations in national law. If these two principles are not implemented, it could result in violations of law and territorial sovereignty, thereby potentially harming the national interests of the Indonesian nation.

²⁸ Ary Aprianto, Relevansi Monisme dan Dualisme Bagi Pemberlakuan Perjanjian Internasional di Indonesia, *Jurnal Konstitusi*, Vol. 19, No. 3, 2022, p. 599.

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