

Law Enforcement Against Illegal Vessels Sailing In Indonesia Waters To Prevent State Losses

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Abstract. The Batam Special KSOP Office and the PLP Base and Tanjung Uban Customs February 2022 have secured 4 ships, of which 3 are foreign-flagged. To eradicate illegal acts committed by foreign vessels, it must immediately form a sea and coast guard to prevent unlawful alien ships from entering Batam waters to avoid state losses. This research uses a qualitative analysis method by interviewing informants who can answer current problems. The result of this study is that KSOP has the task of carrying out supervision and law enforcement in the field of shipping safety and security, government activities at ports, as well as regulating the control and management of port activities that are commercially cultivated. Therefore, KSOP carries out law enforcement against vessels that carry out illegal activities without a permit that can endanger the safety of shipping and marine protection.

Keywords: Illegal Ships, Foreign Ships, State Losses

1. Introduction

Based on UNCLOS 1982, Indonesia's total sea area is 5.9 million km², consisting of 3.2 million km² of territorial waters and 2.7 km² of waters of Indonesia's Exclusive Economic Zone (EEZ). (1) The Indonesian state is included in the category of the largest water area, so the most frequent problems in Batam waters are the entry of local and foreign ships without permission and the carrying out of illegal activities. The waters and resources owned by Batam can attract attention so that illegal vessels that enter without permission can carry out activities that harm the economy of the government and society. Because Indonesia has a lot of natural wealth and biodiversity, be it renewable or non-renewable resources. (2)

Foreign ships sailing without permission can result in things not desired by the State other than natural resources. Several things can be caused by the entry of illegal alien ships into Batam waters, namely, shipwrecks, ships carrying B3 waste, and foreign ships stealing fish in Batam waters. As a result of the entry of alien ships into Batam waters, it is very detrimental to the State's finances because if the incoming ship has an official permit and the goods carried by nahkoda are documents and are not dangerous, then the income of the Indonesian State can reach 1 billion per shipment for Non-Tax State Revenue (PNBP). But the fact is that ships entering Batam waters without official permission can cause considerable losses to the Indonesian State.

In February 2022, the Ministry of Transportation cq Directorate General of Sea Transportation through the Batam Office, the PLP Base, and Tanjungban Customs secured 4 ships, of which 3 foreign-flagged. The vessel's arrest began when law enforcement Special KSOP officers patrolled and secured vessels conducting Ship to Ship activities illegally or without a permit, in Batam waters, and without complete licensing documents. Because of this, local ships and foreign ships have violated Indonesian laws and regulations. (3) As a result of the actions of ships entering Batam waters without permission and carrying out illegal activities, the boat violates the provisions of Law Number 17 of 2008 concerning Sailing, Article 219 Paragraph (1), which reads: Every ship sailing must have a Sailing Approval Letter issued by Syahbandar. (4)

Thus, ships that carry out activities without permission may be subject to criminal sanctions that have been regulated in the provisions of Article 323, which reads: A skipper who sails without having a Sailing Approval Letter issued by Syahbandar as referred to in Article 219 paragraph (1) shall be punished with a maximum imprisonment of 5 (five) years and a maximum fine of Rp600,000,000.00 (six hundred million rupiahs). (4)

Several previous studies discussed the "application of criminal sanctions against the skipper of a fishing vessel that does not have a sailing approval letter," which examines the factors that cause the skipper of a ship to sail without using a sailing approval letter, obstacles and efforts made to prevent criminal acts against ship skippers who do not have a sailing approval letter. Zulfahmi and Mukhlis wrote the study. (5) In addition, the research entitled "Duties and responsibilities of syahbandar in sea transportation activities in Indonesia," written by Viana I R br Barus, Paramita Prananingtyas, and Siti Malikhatun discuss the duties and responsibilities of syahbandar in sea transportation activities in Indonesia. (6)

Based on some of the studies above, there are some differences where the research does not focus on law enforcement of foreign or local vessels that carry out activities without permission to cause harm to the State. Previous research also uses fisheries regulations, namely Law on Fisheries, and only focuses on duties and authorities rather than syahbandar. Therefore, this research aims to see the form of law enforcement given to foreign ships entering Indonesian waters, especially Batam waters, to prevent state losses.

2. Research Objectives and Methodology

The objectives of this study can be achieved by using normative research methods based on the legal approach and case approach. I am researching Legal documents to achieve two goals, namely.

1. Knowing what losses Indonesia, especially Batam, has received due to the entry of foreign ships carrying illegal or unlicensed activities.
2. Knowing the form of law enforcement given to foreign ships sailing into the waters of Batam, Indonesia, without having complete papers and carrying out illegal or unlicensed activities.

3. Literature Review

3.1 Sailing Approval Letter by Syahbandar

The definition of a letter of approval is any State document issued by the kesyahbandaran to each ship that will sail away from the port after the vessel meets the administrative requirements and technical eligibility as well as the Nautilus. In issuing SPB, several procedures

must be adhered to and carried out until the ship meets the completeness of administrative requirements and technical eligibility. Administrative requirements are evidenced by the totality of ship licensing documents, while technical eligibility is evidenced by the ship's seaworthiness, fishing gear, and shelf life. (7)

Law No. 17 of 2008 concerning Sailing has expressly stated the importance of a sailing approval letter. A sailing approval letter can anticipate the occurrence of things that are not wanted, such as ships sailing to carry out activities without a permit, fishing illegally, and transportation accidents at sea. The port has a tremendous responsibility to boats that want to sail or are sailing. Thus, in carrying out its duties, the syahbandar must provide a ship seaworthiness letter, sailing approval letter, and shipping safety, security, and transportation activities carried out in Indonesian waters. (8) So, suppose a ship that wants to sail enters Indonesian waters, especially Batam. In that case, it must first go through an inspection from Syahbandar to ensure that the boat can sail, does not carry dangerous goods, and does not carry out activities without permission.

3.2 State losses

In 2021, the Indonesian state almost suffered losses from illegal vessel activities that fish in Indonesian waters, reaching Rp. 1.1 trillion. The losses were obtained from 166 illegal ships secured, of which 144 illegal ships came from Indonesia and 52 foreign ships. (9)

Illegal vessels that enter Indonesian waters without a sailing approval letter are very vulnerable to carrying out harmful activities. In addition to 2021, there was recent security securing 4 ships and 3 foreign-flagged. This happens when carrying out joint patrols with law enforcement against vessels that violate the rules, carrying out activities without permission from Syahbandar, and the potential loss of Non-Tax State Revenue (PNBP) due to illegal activities (without permission). (10)

3.3 Law Enforcement

Black's Law Dictionary says the notion of law is "the whole range of rules that act or a behavior governed by the control of the ruler. In addition, it also has legal and binding power. Law can also be interpreted as something that must be obeyed and followed by every society in a country. Of course it is accompanied by a legitimate effect or consequence". (11)

In addition, Black's Law Dictionary also defines "enforcement" as "an act or process of coercive compliance with a statute, mandate, order, decision, or agreement. Enforcement Power is the authority by which Congress may enforce certain constitutional provisions of amendment by the appropriate Act." (12) Law enforcement is a preventive measure carried out by every level of law enforcement. (13) The purpose of preventive action in law enforcement is to obtain legal certainty. It is the same with maintaining maritime sovereignty owned by the Indonesian State. Then law enforcement is also one of the efforts to realize the values of justice, legal certainty, and social benefits to be accurate. It can be said that the imposition of law is the essence of presenting ideas in the process of. (14)

So, law enforcement can be defined as preventive measures that can be taken by law enforcement. Which action is carried out to obtain legal certainty? Thus, the same thing is also done in terms of maintaining maritime sovereignty. Law enforcement itself is carried out to be

an effort to actualize justice and legal certainty and have social benefits become a reality. In terms of law enforcement against local ships and foreign vessels entering Batam waters without permission, it has been regulated in the Shipping Law. The shipping law has firmly said that every ship sailing in and out of Indonesian waters must have a sailing approval letter issued by the syahbandar. So, if there is a ship that enters Batam waters without having a sailing permit, it has violated the shipping law. With the prohibition that has been regulated in the law, many ships still enter Batam waters without having a sailing approval letter and carry out activities without permission. The rules that the Indonesian government has made are also accompanied by criminal sanctions contained in the shipping law, where the sanction is if the skipper of a ship that sails without having a sailing approval letter where the Syahbandar issues the letter can be sentenced to a maximum of 5 years imprisonment then in addition to imprisonment there is also a fine with the maximum amount of fine Rp. 600,000,000.

4. Case Studies

4.1 *Shahbandar's Position in Law Enforcement of Illegal Vessels*

Syahbandar is an agency established by the government to supervise all ships which is enter to the port. The vessel must comply with regulations to maintain order and smooth ship traffic at the port while at harbor. For the sailing ship to meet the ship's seaworthiness requirements, all ships must have a sailing permit (SIB) where *Syahbandar* issues the letter. (15) The Kesyahbandaran Office and the Port Authority (from now on referred to as KSOP) is a Technical Implementation by the Unit of Ministry of Transportation which is under responsible from General Director of Indonesia Sea Transportation. All duties carried out by the supervision of law enforcement, ports activities, and arrangements for supervised and controled all of port activities. (16)

Based on Indonesian Law Number 17 year 2008 concerning about Shipping, Article 207 Paragraph (1), Syahbandar has the task of "Syahbandar carries out the functions of shipping safety and security, which includes the implementation, supervision, and enforcement of laws in the field of transportation in the waters, ports, and protection of the maritime environment at the port." Based on Article 207 Paragraph (1) in carrying out security and safety functions as referring in Syahbandar duties, state that:

- a) Ships supervising that marineworthiness, safety, security, and meet requirement to order at port;
- b) Supervise the ships traffic order in the sea port and ship line;
- c) Supervise loading and unloading activities at sea port;
- d) Supervise salvage all activities under sea;
- e) Supervise delaying ships activity;
- f) Supervise the guidance;
- g) Supervise the loading and unloading dangerous goods, hazardous, and toxic waste materials;
- h) Oversees refuel;
- i) Supervise order of passengers embarkation and debarkation;
- j) Oversees dredging and reclamating;

- k) Supervise the construction facilities for port activities;
- l) Carry out search and rescue assistance;
- m) Lead pollution mitigation and fire suppression at the port; and
- n) Oversees implementing the marine environmental protection.

In addition to having the duties above, Syahbandar is also a Civil Service Investigating Officer (PPNS), which is by the provisions of the Legislation. In carrying out the functions and duties as referred to, Syahbandar also has the authority.

- a. Coordinate all government activities at the port;
- b. Checking and storing letters, documents, and shipping news;
- c. Issuing approvals for ship activities at the port;
- d. Conducting ship inspections;
- e. Issuing a sailing consent letter;
- f. Conducting shipwreck checks;
- g. Detaining the ship by order of the court; and
- h. Carry out the sigil of the crew.

Based on the Shipping Law, in addition to the duties and functions of the syahbandar, the syahbandar has the highest authority to coordinate customs activities, immigration, quarantine, and other activities of government institutions. Therefore, with the functions and commands possessed by syahbandar, the syahbandar has the authority to investigate and investigate illegal vessels entering Batam waters.

4.2 Law Enforcement of Illegal Vessels to Prevent State Losses

In law enforcement, there are three elements that must be considered, namely:

1. Legal Certainty (Rechtssicherheit);

For the case of ships sailing, entering Indonesian waters has long had legal certainty, namely rules made to prevent the entry of foreign and local vessels without permission from the KSOP. The Shipping Law has described the Syahbandar Office and the Batam Special Port Authority (KSOP) in conducting Law Enforcement against illegal ships activities and unlicensed activities that can endanger for shipping activity and also for the protecting sea environmental. From this enforcement, in the last three years, there have been 6 (six) fishing vessels or cases against ships that carry out illegal activities in Batam waters. Against these vessels, legal proceedings have been carried out up to the trial stage in court.

2. Justice (Gerechtigkeit);

Every law enforcement process carried out by the KSOP is significant for the people of Batam, especially because every ship entering without permission and carrying out activities without a permit can result in the loss of Batam's income. By following up, these ships can make Batam waters protected. However, even so, the implementation of law enforcement on ships that enter without permission in Batam waters does not have significant obstacles in law enforcement against boats that carry out illegal activities. A small block common in Law Enforcement is the presence of witnesses or suspects who are uncooperative in providing information, then making Pretrial efforts on the case, but all of that is commonplace in Law Enforcement.

Over the past three years, the Batam Special KSOP has arrested many illegal vessels carrying out activities without a permit. The modus operandi that usually occurs in this Shipping crime is:

1. The ship sails without permission (Sailing Approval Letter);
 2. The ship sails with illegal/unlicensed cargo;
 3. Foreign vessels dock illegally without permission.
3. Expediency (Zweckmassigkeit);

With the entry of illegal ships into Batam waters, it can be ascertained that it can harm the State both in the form of Non-Tax State Revenue (PNBP) that is not paid, including in this case related to Port

Services, Shipping Services, and Kenavigasian Services, as well as PNBP from related Institutions / Ministries, so that if there are ships that commit Shipping Crimes, there is undoubtedly a State loss in protecting of sea management. Law enforcement concerning about illegal vessels, KSOP itself has collaborated with several other agencies. The form of cooperation is as follows:

1. Batam Special KSOP carries out patrol operations with other agencies, including Customs and Excise and KPLP. Cape Uban, Bakamla, and Polair.
2. The Batam Special KSOP conducts a joint investigation of ships that violate criminal acts. The Batam Special KSOP, in this case, handles shipping crimes, while the Ministry of Environment and Forestry handles cargo carried by ships.

5. Conclusions

The case of illegal vessels entering the waters of Batam-Indonesia by carrying out this unlicensed activity is not the first time this activity has occurred. It is proven that in the last three years, Batam waters have been entered by various foreign and local ships carrying out activities without permission. Therefore, to be able to eradicate the entry of illegal vessels into Indonesian sea, especially in Batam, Sea Coast Guard should be formed the mandatory from Indonesian Law Number 17 year 2008 concerning about shipping, to handling of shipping crimes prioritizes certainty and legal expediency because ships that enter Batam waters can endanger Batam waters itself.

References

- [1] Penegakan Hukum Terhadap Kasus Illegal, Unreported, Dan Unregulated Fishing Yang Dilakukan Terhadap Kapal Km Bd 95599 Ts Di Laut Natuna Sesuai Dengan Hukum Internasional. Fernando Aprizal, Siti Muslimah. 2019, Jurnal, Fakultas Hukum Universitas Sebelas Maret, p. 87.
- [2] Penegakan Hukum Laut Di Indonesia. Dirmansyah. s.l. : Oseana, 2007, Vol. XXXII.
- [3] Hafil, Muhammad. [Republika.co.id](https://www.republika.co.id). Kemenhub Tangkap Tiga Kapal Asing di Perairan Batam. [Online] Maret 30, 2022. [Cited: 10 2022, 09.] <https://www.republika.co.id/berita/r9j16i430/kemenhub-tangkap-tiga-kapal-asing-di-perairan-batam>.

- [4] Pelayaran., Undang-Undang No. 17 Tahun 2008 Tentang. Undang-Undang No. 17 Tahun 2008 Tentang Pelayaran. 2008.
- [5] Sanksi Pidana Terhadap Nakhoda Kapal Perikanan Yang Tidak Memiliki Surat Persetujuan Berlayar. Mukhlis, Zulfahmi Dan. s.l. : Jurnal Bidang Hukum Pidana, 2018, Vol. 2.
- [6] Tugas dan tanggungjawab syahbandar dalam kegiatan pengangkutan laut di Indonesia. Viana I R br Barus, Paramita Prananingtyas, dan Siti Malikhatus. s.l. : Diponegoro Law Jurnal, 2017, Vol. 6.
- [7] Perikanan, Peraturan Menteri kelautan Dan Perikanan. Kesyahbandaran Di Pelabuhan Perikanan. 2013. 3/PERMEN-kp.
- [8] Pemberian Surat Persetujuan Berlayar (SPB) dalam Upaya Pemenuhan Keselamatan Berlayar, Administrative Law & Governance. Sonhaji. 3, 2018, Vol. 1.
- [9] Syukra, Ridho. KKP Selamatkan Potensi Kerugian Negara Akibat Illegal Fishing Rp 1,1 Triliun. 2021.
- [10]. Badrie, Sofyan. Kapal Asing Diamankan KSOP Batam. 2022.
- [11]. Garner, Bryan A. Black's Law Dictionary. Texas : West Group, 1999. 962.
- [12]. —. Black's Law Dictionary. Texas : West Group, 1999. 608.
- [13]. Khazanah: Hart. hayat., Atip Latipul. 3, s.l. : Padjadjaran Jurnal Ilmu Hukum, 2016, Vol. 3. 658..
- [14]. Dellyana, Shant. Konsep Penegakan Hukum. Yogyakarta : Liberty, 1988. 32.
- [15]. Kajian tugas dan wewenang kesyahbandaran Pelabuhan Perikanan Pantai (PPP) Tumumpa. Turang, Veni S. dkk. 2019, JURNAL ILMU DAN TEKNOLOGI PERIKANAN TANGKAP 4 (1):10, p. 21.
- [16]. Peran Syahbandar Dalam Penegakan Hukum Pencemaran Minyak Di Laut Oleh Kapal Tanker. Elly Kristiani Purwendah, Agoes Djatmiko. 2015, Perspektif, p. 33.