

Law Enforcement Against Smuggling During the Exercise of the Right of Innocent Passage

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ABSTRACT: the implementation of the right of innocent passage under the perspective of international law and law enforcement efforts against foreign vessels suspected of committing smuggling crimes in a country's waters. According to the provisions of the 1982 United Nations Convention on the Law of the Sea (UNCLOS 1982), the right of innocent passage guarantees vessels of all states to navigate through the territorial sea as long as it is not prejudicial to the peace, good order, or security of the coastal or archipelagic state. In practice, however, Indonesia's maritime sovereignty is often threatened by foreign vessels abusing this navigation right as a cover to conduct smuggling activities, which might involve supervision gaps. Under international law, coastal and archipelagic states are endowed with clear authorities to protect their sovereignty, including the right to designate sea lanes, enforce laws, initiate legal proceedings against offending vessels, and temporarily suspend innocent passage for security reasons. As an implementation and enforcement measure, Indonesia ratified UNCLOS 1982 and enacted national regulations such as Law No. 6 of 1996 on Indonesian Waters and Government Regulation No. 36 of 2002. In conclusion, to preserve its sovereignty, Indonesia holds full jurisdiction and rights to monitor, suspect, and investigate foreign vessels passing through its jurisdiction if suspected of engaging in activities that threaten peace, particularly smuggling practices conducted for personal gain.

KEYWORDS: Right of Innocent Passage; Law Enforcement; Smuggling; International Law of the Sea; State Sovereignty; UNCLOS 1982.

I. INTRODUCTION

Indonesia is a constitutional state (*rechstaat*), as explicitly stipulated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which states: "*Indonesia is a state based on the rule of law.*" Consequently, all activities fall under legal oversight, encompassing economic, socio-political, and export-import domains. This is particularly relevant within the maritime sector, where foreign vessel traffic frequently traverses national waters under the right of innocent passage. In this context, the right of innocent passage aims to serve the common interests of various nations and states. Furthermore, referencing Article 17 of UNCLOS 1982, the provision grants all states, whether coastal or land-locked, the right to enjoy innocent passage through the territorial sea. Subsequently, Article 18 paragraph (1) of the 1982 United Nations Convention on the Law of the Sea (UNCLOS) defines passage as navigation through the territorial sea for the purpose of: a) traversing that sea without entering internal waters or calling at a roadstead or port facility outside internal waters; or b) proceeding to or from internal waters or a call at such roadstead or port facility. In principle, UNCLOS 1982 also provides provisions regarding the granting of rights to other states to exercise freedom of navigation.

However, within this framework, the State of Indonesia retains sovereignty over its internal waters, archipelagic waters, and a territorial sea extending up to 12 nautical miles, as well as sovereign rights over the Exclusive Economic Zone (EEZ) extending up to 200 nautical miles and the continental shelf. On the other hand, alongside Indonesia's sovereignty over these maritime zones, national sovereignty remains vulnerable to disruption due to smuggling practices committed by foreign vessels under the guise of innocent passage. Such actions are carried out primarily to secure berth at national ports to execute illicit operations. To deceive authorities, foreign vessels typically claim that their cargo pertains to export-import cooperation. Factually, while the vessel may indeed carry imported commodities destined for Indonesia, discrepancies often arise where the actual cargo weight does not correspond with the agreed import volume. For instance, out of a total foreign vessel cargo weight of 10 tons docked in Indonesia, 7 tons consist of imported goods ordered by Indonesian state institutions, and 2 tons belong to a private Indonesian company. The critical questions arise: where is the remaining 1 ton allocated, and does this 1 ton of goods possess the necessary licenses and import entry permits into Indonesia? This raises persistent questions regarding whether rogue individuals are involved or whether weak oversight persists in legal enforcement, particularly within the maritime sector.

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Conflicting reports and public debate have frequently emerged, accompanied by diverse pros and cons. Some opinions contend that oversight in the maritime sector remains insufficiently strict, whereas others argue that the Indonesian government adopts a harsh stance toward foreign vessels. In responding to these issues, Indonesia is obligated to implement and harmonize the right of innocent passage within its national legislative framework, as evidenced by the revision of Government Regulation No. 8 of 1962 into Government Regulation No. 36 of 2002 concerning the Rights and Obligations of Foreign Ships in Exercising Innocent Passage through Indonesian Waters.

Based on the aforementioned context, this study will examine the implementation of the right of innocent passage for foreign vessels within national waters from the perspective of the international law of the sea (UNCLOS 1982), as well as the law enforcement efforts and mechanisms employed by the state against foreign vessels suspected of committing smuggling offenses while navigating its waters. This research primarily focuses on the scope of sovereignty and jurisdictional authority of both coastal and archipelagic states, the juridical limitations concerning the exercise of the right of innocent passage, and the effectiveness of national maritime surveillance and law enforcement in addressing the abuse of innocent passage as a *modus operandi* for smuggling activities. The findings of this study are expected to provide an academic contribution to the development of the international law of the sea, and serve as a fundamental reference for formulating and strengthening more effective maritime law enforcement policies to safeguard Indonesia's maritime sovereignty.

II. METHODS

This research uses a normative juridical research method with a legislation approach (*statute approach*) and a conceptual approach (*conceptual approach*). The legislation approach is used to analyze various international and national legal instruments related to the right of innocent passage, maritime sovereignty, and law enforcement against smuggling, such as the United Nations Convention on the Law of the Sea (UNCLOS 1982), the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone, Law No. 17 of 1985, Law No. 6 of 1996 on Indonesian Waters, and Government Regulation No. 36 of 2002. Meanwhile, the conceptual approach is used to analyze the concepts of the right of innocent passage, state sovereignty, coastal and archipelagic state jurisdiction, and law enforcement mechanisms against maritime smuggling crimes under international law. This research uses a normative juridical research method with a legislation approach (*statute approach*) and a conceptual approach (*conceptual approach*). The legislation approach is used to analyze various international and national legal instruments related to the right of innocent passage, maritime sovereignty, and law enforcement against smuggling, such as the United Nations Convention on the Law of the Sea (UNCLOS 1982), the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone, Law No. 17 of 1985, Law No. 6 of 1996 on Indonesian Waters, and Government Regulation No. 36 of 2002. Meanwhile, the conceptual approach is used to analyze the concepts of the right of innocent passage, state sovereignty, coastal and archipelagic state jurisdiction, and law enforcement mechanisms against maritime smuggling crimes under international law.

III. RESULT AND DISCUSSION 1. The Right of Innocent Passage From an International Law Perspective

The right of innocent passage pertains to the right of every foreign vessel navigating through the territorial sea of another state, provided that such passage is not prejudicial to the peace, good order, or security of the coastal state. Under this principle, the right of innocent passage is enjoyed by coastal states, landlocked states, and archipelagic states alike. In the international arena, the right of innocent passage guarantees the entitlement of all nations worldwide to enjoy the sea as the common heritage of mankind. Furthermore, during the Conference of the *Institut de Droit International*, the right of innocent passage was recognized for foreign ships within the territorial sea, stating in its formulation that: "*foreign ships have the right of innocent passage through the territorial sea of a state, including the right to stop and anchor, if incidental to ordinary navigation or rendered necessary by force majeure or distress.*" Subsequently, this formulation was adopted under Article 14(1) of the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone, which reads: "*Subject to the provisions of these articles, ships of all States, whether coastal or not, shall enjoy the right of innocent passage through the territorial sea.*" The history of regulations concerning the right of innocent passage is quite extensive, tracing back to earlier frameworks during the 1930 Hague Codification Conference.

However, a more comprehensive framework for the right of innocent passage was formulated in the 1958 Geneva Convention on the Law of the Sea and further expanded in the 1982 United Nations Convention on the Law of the Sea (UNCLOS 1982), which remains applicable to date. Article 19 of UNCLOS 1982 provides the definition and legal meaning of innocent passage. Furthermore, under Article 52(2) of UNCLOS 1982, the exercise of the right of innocent passage in archipelagic waters must comply with Article 53 regarding the right of archipelagic sea lanes passage. In addition, pursuant to Article 25(3) read in conjunction with Article 52(2) of UNCLOS 1982, an archipelagic state is granted the protective right to temporarily suspend the innocent passage of foreign ships in specified areas of its archipelagic waters under certain strictly defined conditions. First, such suspension must not discriminate among foreign ships. Second, the suspension must be limited in scope, both in terms of duration (temporary) and specified geographical location.

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The measures contemplated under these provisions constitute a temporary suspension of foreign vessels' right of innocent passage by the archipelagic state in specific areas of its archipelagic waters. Third, such suspension must be essential for the protection of its security interests. Fourth, the suspension shall take effect only after having been duly published. Subsequently, the incorporation of UNCLOS 1982 into Indonesian positive law regulates the maritime sector, including provisions establishing that any fishing activities conducted by foreign vessels constitute a violation of the right of innocent passage. This prohibition is explicitly stipulated in Article 19(2)(i) of UNCLOS 1982."

a. The Right of Innocent Passage in Coastal States

Regarding the right of innocent passage in coastal states, it is crucial to emphasize that coastal states hold sovereign rights and jurisdictional authority, empowering them to enforce domestic laws, intercept non-compliant foreign vessels, and initiate legal proceedings against statutory violations.

Furthermore, Article 22 of the United Nations Convention on the Law of the Sea (UNCLOS 1982) stipulates that a coastal state, with due regard to navigational safety, may require foreign ships exercising innocent passage through its territorial sea to utilize designated sea lanes and traffic separation schemes. In granting innocent passage, the coastal state must simultaneously accommodate international navigational interests. To maintain maritime order, coastal states may designate specific sea lanes to regulate foreign vessels within their territorial waters, adhering to established traffic separation rules. Under Article 21(1) of UNCLOS 1982, coastal states are authorized to enact laws and regulations in conformity with the Convention and other rules of international law relating to innocent passage, particularly regarding safety of navigation and the regulation of maritime traffic.

In exercising their jurisdictional prerogatives, coastal states may implement measures to construct and maintain offshore installations, provided such actions do not impair the following legal conditions: a) The legitimate extent of the high seas, ensuring that coastal state rights over the continental shelf do not alter the legal status of the superjacent high seas or the airspace above them. b) The territorial extent of the state; installations and devices under coastal state jurisdiction do not possess the status of islands, lack their own territorial sea, and consequently do not modify the breadth of the coastal state's territorial sea. c) The laying and maintenance of submarine pipelines, cables, or other equipment intended for continental shelf exploration and natural resource exploitation, ensuring that maintenance operations remain unhindered. d) Scientific research activities on the continental shelf, provided that institutional applications satisfy statutory requirements and that research is conducted purely for scientific purposes under coastal state oversight.

b. The Right of Innocent Passage in Archipelagic States: An International Law Perspective

The right of innocent passage extends beyond coastal states, applying equally to foreign vessels navigating designated traffic routes within archipelagic waters. An archipelagic state is defined as a nation constituted entirely by one or more archipelagos, including other islands and natural features so closely interrelated that they form an intrinsic geographical unit. Such states exercise full sovereignty over their archipelagic waters, which comprise all waters enclosed on the landward side of straight archipelagic baselines. These baselines join the outermost points of the outermost islands and drying reefs of the archipelago.

From a historical standpoint, the guarantee of navigational freedom through archipelagic waters and the corresponding obligation of archipelagic states not to obstruct transit was a principle advocated by the Bulgarian delegation during international codification negotiations. Consequently, legal recognition of archipelagic state status required a reciprocal balance, namely assurances of freedom of navigation along continuous, expeditious routes customarily used for international maritime transit. Regarding innocent passage in archipelagic waters, the transition of former high seas areas into archipelagic waters inevitably impacted resource exploitation rights. States like Thailand, for instance, advocated for neighboring states' interests, particularly concerning access to natural resources in maritime areas previously designated as high seas, alongside innocent passage rights outside designated archipelagic sea lanes. Nevertheless, archipelagic states retain robust sovereign prerogatives to safeguard their maritime territory, taking firm enforcement measures against unauthorized foreign activities such as maritime smuggling, unlawful resource exploitation, and illegal, unreported, and unregulated (IUU) fishing.

In exercising such law enforcement authority, archipelagic states do not act arbitrarily; rather, their sovereign powers are derived from and codified under international law of the sea. Foreign vessels entering or transiting national archipelagic waters must strictly adhere to the conditions of innocent passage. Regardless of the historic legal status of these waters as former high seas, they now fall squarely within the sovereign jurisdiction of the archipelagic state, whose national policies strictly prohibit all forms of maritime smuggling.

2. State Law Enforcement Against Foreign Vessels Suspected of Smuggling in National Waters

Law enforcement within the maritime sector presents significant challenges, primarily due to Indonesia's vast aquatic territory relative to its land area. This geographical reality underpins Indonesia's status as an archipelagic state, characterized by extensive maritime domain over which it exercises sovereign jurisdiction. Social and political dynamics within coastal communities remain open to diverse professions, social strata, religious backgrounds, and ethnicities, creating a fluid social ecosystem that requires adaptive governance to maintain effective legal order.

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In these maritime areas, communities are inherently dynamic and bound to the sea as their primary source of livelihood, as exemplified by traditional fishermen. Furthermore, illicit practices such as maritime smuggling within Indonesian waters have long posed a persistent security concern. These criminal activities extend beyond inter-regional trade, operating on a sophisticated transnational scale. Smuggling operations frequently manifest when foreign-flagged vessels enter national waters under the guise of exercising the right of innocent passage. Transnational smuggling schemes encountered in Indonesian waters involve various contraband, including illicit drugs, livestock, protected wildlife, essential commodities, and construction materials. In response to these maritime threats, the Indonesian government moved swiftly by ratifying the 1982 United Nations Convention on the Law of the Sea through Law No. 17 of 1985. As an implementation measure, Indonesia enacted Law No. 6 of 1996 on Indonesian Waters, which replaced Law No. 4/Prp of 1960. In alignment with UNCLOS 1982, Article 4 of Law No. 6 of 1996 explicitly affirms that Indonesian sovereignty encompasses its territorial sea, archipelagic waters, and internal waters, as well as the superjacent airspace, the seabed, the subsoil, and all natural resources contained therein.

Regarding the enforcement of laws against foreign-flagged vessels, national statutory provisions govern the exercise of passage rights. For instance, Article 11(1) guarantees "the right of innocent passage through the territorial sea and archipelagic waters of Indonesia." Article 18(2) regulates "the right of archipelagic sea lanes passage through Indonesian archipelagic waters," while Article 20(1) addresses "the right of transit passage through straits used for international navigation located between one part of the high seas or EEZ and another part of the high seas or EEZ of Indonesia." To remain innocent, passage must not prejudice the peace, good order, or security of the coastal state. Foreign passage is deemed prejudicial to coastal state peace, good order, and sovereignty if a vessel engages in acts such as the threat or use of force against the sovereignty, territorial integrity, or political independence of the state, or acts in any other manner violating the principles of international law embodied in the Charter of the United Nations.

To safeguard its territorial sovereignty and national jurisdiction, Indonesia holds the rightful authority to monitor and inspect foreign vessels entering or transiting its waters whenever reasonable suspicion of criminal activity such as illicit smuggling arises. Consequently, competent national authorities possess full legal authority to conduct preliminary investigations and enforcement procedures against foreign-flagged vessels suspected of committing maritime offenses within its sovereign domain.

CONCLUSIONS

Indonesia operates under the rule of law, under which all activities both domestic and international remain subject to legal oversight. The right of innocent passage is guaranteed to all states, whether coastal, land-locked, or archipelagic. Under Article 52(2) of the 1982 United Nations Convention on the Law of the Sea (UNCLOS), the exercise of innocent passage within archipelagic waters must read in conjunction with Article 53 concerning the right of archipelagic sea lanes passage. Furthermore, pursuant to Article 25(3) as cross-referenced in Article 52(2), an archipelagic state is empowered to temporarily suspend the innocent passage of foreign vessels within specified areas of its archipelagic waters under strict legal conditions.

First, such suspension must not discriminate in form or in fact among foreign ships. Second, the suspension must be strictly limited in scope, both in terms of geographical area and duration. Third, the measure must be essential for the protection of state security. Fourth, the suspension takes effect only after being duly published.

Coastal and archipelagic states possess full sovereign authority to execute law enforcement actions, including the interception, arrest, and judicial prosecution of foreign vessels violating national laws within their jurisdiction. Consequently, archipelagic states retain robust sovereign prerogatives to safeguard their territorial integrity and enforce national regulations against unauthorized foreign activities, including maritime smuggling, unlawful resource extraction, and illegal, unreported, and unregulated (IUU) fishing. In exercising these enforcement powers, archipelagic states do not act arbitrarily or despotically toward foreign vessels; rather, their jurisdiction is explicitly conferred and delineated by the international legal framework governing the law of the sea. Ultimately, transnational offenses such as maritime smuggling represent deliberate statutory violations driven by private commercial gain, justifying decisive state enforcement within national waters.

REFERENCES

- 1) Prasetyo, E., & Handayani, I. (2021). Juridical Analysis of Law Enforcement Against Smuggling Activities via Foreign Ships in Indonesian Territorial Waters. *Indonesian Journal of International Law*, 18(3), 321–342.
DOI: <https://doi.org/10.17304/ijil.vol18.no3.821>
- 2) Pratama, A. A., & Simamora, H. (2019). Implementation of Innocent Passage Right under UNCLOS 1982 and Its Challenge to Maritime Security. *Ocean and Coastal Management Journal*, 12(1), 55–68.
DOI: <https://doi.org/10.20473/ocmj.v12i1.15420>
- 3) Rebala, L. T. S. (2018). Yurisdiksi Negara Pantai dan Negara Kepulauan dalam Pengawasan Pelayaran Kapal Asing di Laut Teritorial. *Diponegoro Law Journal*, 7(2), 112–128. URL: <https://ejournal3.undip.ac.id/index.php/dlr/article/view/20182>

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- 4) Sulistyawan, A. Y., & Rebala, L. T. S. (2020). Penegakan Hukum Maritim Terhadap Pelanggaran Hak Lintas Damai Kapal Asing di Perairan Indonesia. *Jurnal Masalah-Masalah Hukum*, 49(2), 145–156.
DOI: <https://doi.org/10.14710/mmh.49.2.2020.145-156>
- 5) Wardhana, A., & Kusuma, D. (2022). Penangguhan Hak Lintas Damai di Perairan Kepulauan Menurut Hukum Laut Internasional dan Implikasinya Bagi Kedaulatan Negara. *Jurnal Hukum & Pembangunan*, 52(4), 980–998.
DOI: <https://doi.org/10.21009/JHP.052.4.05>
- 6) League of Nations. (1930). Acts of the Conference for the Codification of International Law (The Hague Codification Conference 1930). The Hague: League of Nations Documents.
- 7) Republik Indonesia. (1945). Undang-Undang Dasar Negara Republik Indonesia Tahun 1945. Jakarta: Sekretariat Negara.
- 8) Republik Indonesia. (1960). Undang-Undang Nomor 4 Prp. Tahun 1960 tentang Perairan Indonesia. Lembaran Negara Republik Indonesia Tahun 1960 Nomor 22. Jakarta.
- 9) Republik Indonesia. (1962). Peraturan Pemerintah Nomor 8 Tahun 1962 tentang Hak dan Kewajiban Kapal Asing dalam Melakukan Lintas Damai Melalui Perairan Indonesia. Lembaran Negara Republik Indonesia Tahun 1962 Nomor 34. Jakarta.
- 10) Republik Indonesia. (1985). Undang-Undang Nomor 17 Tahun 1985 tentang Pengesahan United Nations Convention on the Law of the Sea (Konvensi Perserikatan Bangsa-Bangsa tentang Hukum Laut). Lembaran Negara Republik Indonesia Tahun 1985 Nomor 75. Jakarta.
- 11) Republik Indonesia. (1996). Undang-Undang Nomor 6 Tahun 1996 tentang Perairan Indonesia. Lembaran Negara Republik Indonesia Tahun 1996 Nomor 73. Jakarta.
- 12) Republik Indonesia. (2002). Peraturan Pemerintah Nomor 36 Tahun 2002 tentang Hak dan Kewajiban Kapal Asing dalam Melaksanakan Lintas Damai Melalui Perairan Indonesia. Lembaran Negara Republik Indonesia Tahun 2002 Nomor 70. Jakarta.
- 13) United Nations. (1958). Convention on the Territorial Sea and the Contiguous Zone (Geneva Convention 1958). 516 UNTS 205. Geneva: United Nations. URL: <https://legal.un.org/avl/ha/cl/cl.html>
- 14) United Nations. (1982). United Nations Convention on the Law of the Sea (UNCLOS 1982). 1833 UNTS 396. Montego Bay: United Nations. URL: https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf
- 15) Churchill, R. R., & Lowe, A. V. (1999). The Law of the Sea (3rd ed.). Manchester: Manchester University Press.
- 16) Kusumaatmadja, M. (2003). Hukum Laut Internasional. Bandung: PT Alumni.
- 17) Purwaka, T. H. (2014). Hukum Maritim dan Pembangunan Kelautan Indonesia. Jakarta: Yayasan Pustaka Obor Indonesia.
- 18) Samekto, F. X. A. (2019). Hukum Laut Internasional dalam Perkembangan. Semarang: Badan Penerbit Universitas Diponegoro.



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