

# **RIGHTS AND DUTIES OF FOREIGN SHIPS TO INDONESIAN ARCHIPELAGIC SEA LANES PASSAGE**

<sup>1</sup> St Fatmawati L, <sup>1\*</sup>Rifkah Anniza Rahman, <sup>2</sup>Nadya Khaeriyah Yusran

<sup>1</sup> Faculty of Law, Universitas Sulawesi Tenggara, Kendari, Indonesia

<sup>2</sup> Faculty of Law, Universitas Hasanuddin, Makassar, Indonesia  
rifkahanniza94@gmail.com

## ***Abstract***

*Every country has the right to sail in its territorial sea, exclusive economic zone, high seas, and other countries' territorial seas. However, when crossing the territorial areas of other countries, foreign ships must obey and follow all regulations in that area to go through. This research uses a normative legal research typology method which includes field research focusing on positive legal norms in the form of laws and regulations and literature research to determine the regulation of the rights and obligations of foreign ships to cross the Indonesian archipelagic sea lanes. The results of this study indicate that the rights and obligations of foreign ships to cross the Indonesian archipelagic sea lanes have been regulated in several regulations, both national regulations and international regulations, but in practice, the high intensity of foreign ships passing through ALKI causes many problems. The problems that arise because of these passages have not all been resolved by existing laws and regulations, so these regulations are considered ineffective and insufficient in overcoming the problems of the Indonesian archipelagic sea lanes.*

**Keywords:** *Rights; Duties; Foreign Ship; Indonesian Archipelagic Sea Lanes (ALKI)*

## **1. Introduction**

The territory of a country is interconnected and connected by three parts, the land, the air, and the sea. The existence of the sea for a country means valuable assets in the form of visual beauty and wealth supplied by the nation's nature.<sup>1</sup> The concept of territory is not limited by the land and airspace area. The territorial sea or territorial waters of a country is an area that the country is concerned with and has charged in terms of the application of laws in force in its territory, called the country's national law. Notwithstanding the principle of freedom of the seas, certain portions of the sea adjacent to the coasts of a state are universally recognized as a prolongation of its territory, described as the territorial sea. Sea area regulation could refer to the laws and regulations that govern activities in the ocean, including shipping, fishing, oil and gas exploration, and other activities.

Areas of regulation related to the ocean: international maritime law. This includes the United Nations Convention on the Law of the Sea (UNCLOS), which sets out rules for maritime

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<sup>1</sup> A. H. Setiadi, L. Dwi Wulandari, and D. Asikin, "The Existence of Foundation Typology on the Coastal Settlement Bajo Tribe in Bajoe Village, Soropia Regency, Southeast Sulawesi," *Jurnal Revolusi Indonesia* 2, no. 1 (2021).

boundaries, navigation, and resource exploitation in the ocean, such as<sup>2</sup>: 1) Environmental regulation: Many countries have regulations to protect marine ecosystems and prevent ocean pollution. These include rules for waste disposal, restrictions on fishing practices, and regulations on discharging pollutants from ships and other vessels; 2) Shipping regulations: The International Maritime Organization (IMO) sets out regulations governing the safety and security of ships, as well as rules for preventing pollution from ships; 3) Resource exploitation regulations: The regulation of activities like offshore oil and gas exploration and seabed mining can be complex, with multiple international and national regulations governing these activities; and, 4) Coastal zone management: This involves land use and development along coastlines, including regulations related to building structures like seawalls, piers, and marinas.

In Indonesia, to regulate the boundaries of the government is according to the UN Convention on the Law of the Sea (UNCLOS) 1982.<sup>3</sup> UN Convention on the Law of the Sea (UNCLOS) 1982 is a convention that has been ratified by Indonesia through the Law Number 17 of 1985 on the Ratification of the United Nations Convention on the Law of the Sea.

UN Convention on the Law of the Sea (UNCLOS) 1982 recognizes the rights of nations to claim various kinds of maritime zones, which are under different statuses, starting from the full sovereignty of a state, including internal waters, territorial seas, and straits, which are used for international shipping including Exclusive Economic Zone (EEZ).<sup>4</sup> The EEZ is a zone extending 200 nautical miles (370.4 km) from a coastal state's baseline, within which the state has exclusive rights to explore, exploit, and manage natural resources, such as fish and oil. These maritime zones are defined by the United Nations Convention on the Law of the Sea (UNCLOS), the primary international legal framework governing the use and management of the world's oceans.

Boundaries, territory, and power are all related concepts that are often intertwined in politics, international relations, and social sciences. Boundaries are lines or borders that demarcate a specific geographic area or jurisdiction. These lines can be physical, such as natural features like

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<sup>2</sup> Yulianto Yulianto, "Pelaksanaan United Nation Convention On The Law Of The Sea (UNCLOS) 1982 Di Perairan Natuna," *Jurnal Sains dan Teknologi Maritim (JSTM)* 20, no. 2 (2020): 103–109, <https://jurnal.unimar-amni.ac.id/index.php/JSTM/article/view/230>.

<sup>3</sup> Chris Forward, "Archipelagic Sea-Lanes in Indonesia – Their Legality in International Law," *Australian and New Zealand Maritime Law Journal* 23, no. 2 (2009): 143–156, <https://maritime.law.uq.edu.au/index.php/anzmlj/article/view/1560>.

<sup>4</sup> Belardo Prasetya Mega Jaya et al., "Method And Principle Of Maritime Boundary Delimitation Between States With Opposite Or Adjacent Coasts (Case Of Indonesia And Timor-Leste)," *Diponegoro Law Review* 7, no. 1 (2022): 150–172, <https://ejournal.undip.ac.id/index.php/dlr/article/view/40495>.

mountains or rivers, or artificial, such as manufactured fences or walls. Boundaries can also be cultural or social, representing a community's or society's limits.<sup>5</sup>

Foreign ships carrying out archipelagic sea lanes passage in a country's territorial waters may not carry out threats or use force against the country's sovereignty, territorial integrity, or political independence. They may not conduct surveys or research activities, interfere with the communication system, pollute, and carry out other activities that do not directly connect with archipelagic sea lanes passage. Sailing across the archipelagic sea lanes must be carried out continuously, directly, and quickly while stopping and dumping anchors can only be carried out for regular navigation purposes or due to compulsive circumstances or in a state of danger or to aid persons, ships or aircraft located in danger (Article 53 UNCLOS 1982).

To cross another country's territorial area, foreign ships must comply with and follow all regulations regarding the maritime territory of the country concerned. Making regulations on a territory is the absolute right of that country. The archipelagic state has the authority to determine conditions other countries must meet to use the right of passage in their archipelagic sea lanes. The right of archipelagic sea lane passage must be made a rule to confirm that nothing can harm the archipelagic state or user of the right of archipelagic sea lane passage occurs. As an archipelagic state, Indonesia has an enormous area of marine waters; for the continental shelf, Indonesia has natural resources 12 nautical miles outside of the area with a depth of up to 200 meters or more, and exploration and exploitation of natural resources is still possible.<sup>6</sup> As an archipelagic country, Indonesia has a wider sea area than the land. Indonesia has 17,504 islands with a coastline of more than 95,161 km, and its waters consist of territorial seas, archipelagic waters, and inland waters, covering an area of 5.9 million km or 70% of the total area of Indonesia.<sup>7</sup>

By 1982 UNCLOS, each country can determine the width of its territorial sea to a limit that does not exceed 12 nautical miles, measured from its baseline.<sup>8</sup> Furthermore, the outer boundary of the exclusive economic zone must not exceed 200 nautical miles, measured from the same baseline used to measure the width territorial sea.<sup>9</sup> Indonesia, as an archipelagic country, has a

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<sup>5</sup> Aflah Aflah and Hasim Purba, "Enforcement Of Cabotage Principle On Territorial Sea Within The Indonesian Sovereignty Perspective," *PalArch's Journal of Archaeology of Egypt / Egyptology* 18, no. 1 (2021): 466–475, <https://archives.palarch.nl/index.php/jae/article/view/2059>.

<sup>6</sup> Joko Subagyo, *Hukum Laut Indonesia* (Jakarta: Rineka Cipta, 2018).

<sup>7</sup> Taufiqurrahman Syahuri and Euodia Octavia Sitompul, "Analisis Yuridis Pengelolaan Batas Wilayah Laut Dan Pesisir Berdasarkan Undang-Undang Nomor 23 Tahun 2014 Tentang Pemerintahan Daerah," *Jurnal Esensi Hukum* 2, no. 2 (2020): 13–22, <https://journal.upnvj.ac.id/index.php/esensihukum/article/view/25>.

<sup>8</sup> Mochtar Kusumaatmadja and Ety R. Agoes, *Pengantar Hukum Internasional* (Bandung: Alumni, 2013), 173.

<sup>9</sup> Yefta Tauran, *Makalah Hukum Laut* (Manado, 2014), 1.

coastline of 95,181 km and 17,508 islands,<sup>10</sup> with a total land area of 1,826,440 km<sup>2</sup> and sea area of 5.8 million km<sup>2</sup> which includes 0.3 million km<sup>2</sup> of territorial sea, 2.8 million km of archipelago seas and extended to 2.7 million km<sup>2</sup> of exclusive economic zone as the territory of sovereign rights, which means that 2/3 of the total area or national jurisdiction of Indonesia is a seas area.<sup>11</sup>

In practice, there have been several cases of violations of the right of archipelagic sea lane passage in Indonesian waters, one of which occurred was the case of foreign military aircraft over Indonesia's Archipelagic Sea Lanes (ASLs)<sup>12</sup> area flown from an aircraft carrier happened on July 3, 2003, caused five F-18 Hornet fighter jets belonging to The United States Air Force to maneuver over the waters of Bawean Island, East Java, and two F-16 aircraft belonging to the Indonesian Air Force were then deployed from Iswahyudi Air Base, Madiun, to identify the whereabouts of the five US aircraft. The five F-18 Hornets were spotted at the time by the cockpit crew of the Boeing 737-200 Bouraq aircraft when they were passing over Bawean and then reported them to towers in Surabaya and Jakarta.

The following day, the Indonesian Air Force continued monitoring the convoy of the US fleet by sending B737 reconnaissance aircraft. The reconnaissance and photo shoots showed that the US fleet consisting of the aircraft carrier USS Carl Vinson, two Freegates and one Destroyer was sailing between Madura and Kangean Islands towards the Lombok Strait. During that reconnaissance operation, the B737 surveillance aircraft was shadowed by two US Navy F / A 18 Hornets. The government then used the materials obtained from the mission to launch a diplomatic "objection" to the US government. In Indonesian territorial waters, there are also several cases of cross-border violations by foreign ships, where the ships were stopped for too long while traveling and resulted in expulsion by Indonesia.

## **2. Method**

The type of legal research used was normative legal research typology, including field research to focus on positive legal norms in the form of legislation and Library Research. Analytical descriptive is the nature of the research specifications used by the author because the

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<sup>10</sup> Muhammad Fajrin, "Tinjauan Hukum Terhadap Hak Lintas Damai Di Perairan Nusantara" (Universitas Hasanuddin, 2012), 1.

<sup>11</sup> Irawati Irawati, "Pengaturan Tentang Hak Lintas Kapal Asing Di Perairan Negara Kepulauan Menurut Konvensi Hukum Laut 1982 Dan Implementasinya Di Indonesia," *Syiar Hukum : Jurnal Ilmu Hukum* 11, no. 3 (2009), [https://ejournal.unisba.ac.id/index.php/syiar\\_hukum/article/view/545](https://ejournal.unisba.ac.id/index.php/syiar_hukum/article/view/545).

<sup>12</sup> Hasjim Djalal, *Indonesia and the Law of the Sea* (Jakarta: Centre for Strategic and International Studies, 1995).

specifications of this study were described and the problem of the object being studied.<sup>13</sup> This research was conducted in Makassar City, at Indonesian Navy Base (Lantamal) VI. The data were collected using an interview method with a relevant institution interviewee, the Lantamal VI Makassar. The authors also used secondary data such as books and journals. The diversity of knowledge from legislation, book, and journals has helped authors achieve reliable conclusions and recommendations.

### **3. Results and Discussion**

#### **3.1. Right of Archipelagic Sea Lane Passage**

Archipelagic Sea Lane Passage applies within archipelagic water and the adjacent territorial sea whether or not the archipelagic state has designated ASLs, and is virtually identical to transit passage.<sup>14</sup> Archipelagic Sea Lane Passage is the exercise of navigation rights and overflight in the normal mode of operation solely for continuous, expeditious, and unobstructed transit through archipelagic waters.<sup>15</sup> Archipelagic sea lanes are sea lanes that are traversed by foreign ships or aircraft over said sea lanes to carry out shipping and flights in a usual manner solely for continuous, direct, and fast transit and are not obstructed through or over waters.<sup>16</sup> Based on Article 1 (8) Law of the Republic of Indonesia Number 6 of 1996 concerning Indonesian Waters, The islands and territorial seas are adjoining one part of the high seas or Indonesia's exclusive economic zone and other parts of the high seas.

Thus, the definition of the right of archipelagic sea lanes passage according to UNCLOS 1982 means the exercise of the right of navigation and flight following the provisions of the Convention in a usual manner solely to carry out continuous, direct, and fast and unobstructed transit between one part of the high seas or exclusive economic zone and parts of the high seas or other exclusive economic zones.

Article 53 paragraph (3) provides the meaning of the right of archipelagic sea lane passage as follows:

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<sup>13</sup> Suteki Suteki and Galang Taufani, *Metodologi Penelitian Hukum: Filsafat, Teori Dan Praktik* (Depok: Rajawali Pers, 2018), 148.

<sup>14</sup> Office of the Staff Judge Advocate, "General Principles of the Law of the Sea," *International Law Studies* 97 (2021): 33, <https://digital-commons.usnwc.edu/cgi/viewcontent.cgi?article=2942&context=ils>.

<sup>15</sup> Ibid.

<sup>16</sup> Anshory Ilyas, Mustafa Bola, and Judhariksawan Judhariksawan, "Measurement of the Territorial Sea of the Kingdom of Gowa, Indonesia: Comparative Study in International Maritime Law," in *IOP Conference Series: Earth and Environmental Science, Volume 860, 4th International Symposium on Marine Science and Fisheries 5-6 June 2021, Makassar, Indonesia (Virtual)* (IOP Publishing Ltd, 2021), <https://iopscience.iop.org/article/10.1088/1755-1315/860/1/012094/pdf>.

“Archipelagic sea lanes passage means the exercise of the right of navigation and flight under the provisions of this Convention in a usual manner solely for continuous, direct and prompt and unobstructed transit between one part of the high seas or the exclusive economic zone and parts of the high seas or other exclusive economic zones.”

Apart from the existence of the form of shipping the passage, the main point of the regulation regarding the right of archipelagic sea lane passage about route apart also includes flight passage, which is carried out in a normal manner. Secondly, this article states that there is a requirement that such shipping or flight passage is only meant for a continuous, direct, fast, and unobstructed route. The third point stipulates that the passage must be carried out between one part of the high seas or the exclusive economic zone and another part of the high seas or the exclusive economic zone. Passages under international law are specified in Article 18 UNCLOS 1982, as follows:

- a. “Passage means navigation through the territorial sea for:
  1. Crossing the sea without entering inland waters or making a stop at a berth in the middle of the sea or at port facilities outside the inland waters;
  2. Passes to or from inland waters or a stopover at a berth in the middle of the sea or port facilities.
- b. The passage must be continuous, direct, and fast as possible. However, passage includes stopping and anchoring, but only to the extent that this relates to ordinary or necessary navigation due to force majeure or difficulty or to assist a person, ship or aircraft in danger of difficulty.”

Meanwhile, archipelagic sea lanes are traversed by foreign ships or aircraft over said sea lanes to carry out shipping and flights, usually solely for continuous, direct, and fast transit, and are not obstructed through or across. Over archipelagic waters and adjacent territorial seas between one part of the high seas or Indonesia's exclusive economic zone and other parts of the high seas or Indonesia's exclusive economic zone (Article 1 (8) Law of the Republic of Indonesia Number 6 of 1996 concerning Indonesian Waters).

The definition of the rights of archipelagic sea lane passage according to UNCLOS 1982 is the implementation of the rights of shipping and aviation based on the provisions of the convention in a regular way, solely to carry out continuous, direct, fast, and unobstructed transit between one part of the high seas or the exclusive economic zone and parts of the high seas or other exclusive economic zones.

Apart from the form of shipping passage, the main point of the regulation regarding the right of archipelagic sea lane passage about route apart also includes flight passage, which is carried out normally. Secondly, this article states that there is a requirement that such shipping or flight passage is only meant for a continuous, direct, fast, and unobstructed route. The third point

stipulates that the passage must be carried out between one part of the high seas or the exclusive economic zone and another part of the high seas or the exclusive economic zone.<sup>17</sup>

### **3.2. Rights and Duties of Foreign Ships to Archipelagic Sea Lanes Passage**

Before discussing the rights and duties of foreign ships to archipelagic sea lanes, there are a few things need to be discussed regarding the rights and duties of the archipelagic state itself. Here are the rights of archipelagic states according to UNCLOS 1982: Archipelagic states have the right to determine their archipelagic sea lanes to be used as shipping routes, they have the right to determine traffic separation schemes for shipping safety, and they have rights to adopt statutory regulations related to archipelagic sea lanes.

As for the duties of archipelagic states, as follows: Archipelagic states are obliged to provide shipping lanes as a consequence of making regulations regarding the right of archipelagic sea lanes passage, archipelagic States are obliged not to obstruct the passage of archipelagic sea lanes, archipelagic states are obliged to publish every danger of shipping and aviation to all ships and aircraft experiencing archipelagic sea lanes passage and archipelagic States are obliged not to suspend archipelagic sea lanes passage.

Following articles 53 and 54 of UNCLOS 1982, the rights and duties of ships conducting the trajectory are subject to the regulations stipulated by the country concerned. The main point of this arrangement is that all ships and aircraft can exercise the right to cross the sea channel of the archipelago through established sea routes and flight routes. Thus, this right can also be enjoyed by warships and military aircraft. Regarding this, the provisions that can be used are Articles 39 and 40. Regarding the duties of ships contained in Article 54, referring to Articles 39, 40, 42, and 44 provide details of the series of duties that must be fulfilled by ships and aircraft, which are distinguished among others: 1) Duties that apply generally to both ships and aircraft; 2) The duties that apply to ships; and, 3) Duties that the aircraft must comply with.<sup>18</sup>

When conducting the right of archipelagic sea lane passage, every ship or aircraft is obliged to: 1) Passing quickly through or over the strait; 2) Refraining from threats or any use of violence against the sovereignty, territorial integrity or political independence of countries bordering the straits or in any other way that violates the principles of international law as stated in the UN Charter; 3) Refraining from any activity other than transit continuously, directly and as quickly as

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<sup>17</sup> Anita Musliana, "Pengawasan Kedaulatan Wilayah Laut Alur Laut Kepulauan Indonesia II" (Universitas Hasanuddin, 2017), 40.

<sup>18</sup> Ibid., 143.

possible in the usual way, except because of force majeure or due to difficulties; and, 4) To meet other relevant provisions of this section.<sup>19</sup> Particularly for ships, when exercising the right of archipelagic sea lane passage, the following conditions must be obeyed, such as: 1) Fulfilling the generally accepted rules of international law, procedures and practices regarding safety at sea, including international regulations concerning the prevention of collisions at sea; 2) We are fulfilling the generally accepted international regulations, procedures and practices regarding preventing, reducing, and controlling ship pollution.<sup>20</sup>

For ships used for scientific research and hydrographic surveys to be able to carry out research and survey activities, Article 40 requires a prior permit from an archipelagic state. Other duties that must be obeyed by ships and aircraft are that in exercising this right, the ships and aircraft can only sail on the sea lanes and flight routes determined by the archipelagic state. During the trajectory, it is not permitted to deviate more than 25 nautical miles to either side of the lines of the axis of the routes mentioned. In addition, ships are not allowed to sail near the coast at a distance of less than 10% of the distance between the closest points on the islands bordering the sea channels.<sup>21</sup>

### **3.3. Regulation of Rights and Duties of Foreign Ships to Indonesia Archipelago Sea Lanes Passage**

Every sovereign state must have territory, either on land, sea, and air. Likewise, Indonesia consists of 2/3 parts of its territory, the ocean. With the sovereign rights in the maritime area, Indonesia has the right to its jurisdiction in the maritime area by continuing to approve international maritime law or territories known as the United Nations Convention on the Law of the Sea (UNCLOS) 1982.<sup>22</sup>

The regulation regarding archipelagic sea lanes has been regulated in UNCLOS 1982, in Article 53 paragraph 1, which states that an archipelagic country can determine sea lanes and flight routes thereon, which are suitable for the continuous and direct and fast passage of foreign ships and aircraft, possibly through or over the waters of its archipelago and adjacent territorial seas.

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<sup>19</sup> Etty R. Agoes, *Konvensi Hukum Laut 1982: Masalah Pengaturan Hak Lintas Kapal Asing* (Bandung: Abardin, 2003), 143.

<sup>20</sup> *Ibid.*, 144.

<sup>21</sup> *Ibid.*, 145.

<sup>22</sup> Yoyon Mulyana Darusman, Anisa Fauziah, and Boru Dwi Sumarna, "The Study of Natuna Island Dispute Between Indonesia and China, Based on UNCLOS 1982," in *Proceedings of the 2nd International Conference of Law, Government and Social Justice (ICOLGAS 2020)* (Atlantis Press, 2020), <https://www.atlantispress.com/proceedings/icolgas-20/125948252>.



Then it is added to Article 53 paragraph 3, which states that archipelagic sea lane passage means the exercise of the right of navigation and flight by the provisions of the convention in a usual manner solely to carry out a continuous, direct, and fast and unobstructed transit between one part of the convention.

The 1982 ratification of UNCLOS benefits Indonesia because Indonesia was recognized internationally as an archipelagic country with a complete and unified unity, as well as recognition of the sovereignty and law of the Republic of Indonesia in its territorial and territorial waters. However, with regulations regarding archipelagic states, Indonesia must consider and recognize the rights of other countries, especially the right to cross the waters of the Indonesian archipelago.

Based on article 53 paragraph 1, it is denoted that an archipelagic state can determine sea lanes and flight routes on it, which are suitable for continuous and direct passage of foreign ships and aircraft and as quickly as possible through or over its archipelagic waters and adjacent territorial seas. Therefore, the archipelagic state can determine for itself the portion that can be traversed by ships and aircraft carrying out shipping and flight routes, which this determination is essential because it is related to security interests and natural resources, including the protection of the marine environment.

Before determining the archipelagic sea lanes, archipelagic states must submit proposals for archipelagic sea lanes to the authorized international organization, in which they can only receive sea lanes agreed with the archipelagic state, as stated in Article 53 paragraph 9, which reads:

“In determining or changing sea lanes or establishing or changing traffic separation schemes, an archipelagic state shall submit proposals to the authorized international organization with a view to acceptance. The organization may only accept such sea lanes and traffic separation schemes as agreed with the archipelagic state, after which the archipelagic state may determine, assign, or replace them.”

Thus, we can conclude that without an agreement from an authorized organization, in this case, International Maritime Organization (IMO)<sup>23</sup> and the archipelagic country, the agreement of archipelagic sea lanes that the archipelagic state has determined cannot be carried out. An agreement on archipelagic sea lanes is optional; archipelagic countries may not determine their archipelagic sea lanes. However, archipelagic sea lanes are not defined. In that case, all ships are allowed to pass regular navigation routes which are usually used for international shipping (routes generally used for international navigation) as regulated in Article 53 paragraph 12 UNCLOS

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<sup>23</sup> Bernard H. Oxman, “Environmental Protection in Archipelagic Waters and International Straits-The Role of the International Maritime Organisation,” *The International Journal of Marine and Coastal Law* 10, no. 4 (1995): 468, [https://brill.com/view/journals/estu/10/4/article-p467\\_1.xml](https://brill.com/view/journals/estu/10/4/article-p467_1.xml).

1982, which states that if an archipelagic country does not determine sea lanes and flight routes thereon, the right of archipelagic sea lane passage can be exercised through routes usually used for international shipping.

In implementing the determination of archipelagic sea lanes, in 1996 after consulting with International Maritime Organization (IMO) representatives, Indonesia was advised to hold consultations with IHO regarding hydrographic issues, including shipping safety and the environment. Furthermore, Indonesia was advised by International Maritime Organization (IMO) to send an official letter to the Secretary General of the International Maritime Organization (IMO) regarding the submission of a proposal for determining Indonesia's Archipelagic Sea Lanes (ASLs). Indonesia is the first archipelagic country in the world to propose archipelagic sea lanes to International Maritime Organization (IMO). With the approval of the International Maritime Organization (IMO) and other archipelagic countries, three of Indonesia's Archipelagic Sea Lanes (ASLs) were determined. These three of Indonesia's Archipelagic Sea Lanes (ASLs) can cross Indonesian waters from north to south or south. At the Maritime Safety Committee or MSC-69 1998 meeting in London, to enforce Indonesia's Archipelagic Sea Lanes (ASLs) internationally, the Indonesian government was then obliged to enact it in the form of national legislation which is submitted to the International Maritime Organization (IMO) for publication. Furthermore, Indonesia stipulates the cross Indonesia's Archipelagic Sea Lanes (ASLs), regulated in Indonesian legislation, including Law No. 6 of 1996 on Indonesian waters and Law No. 17 of 2008 concerning Shipping.<sup>24</sup>

After IMO approved Indonesia's proposed ASLs, Indonesia enacted Indonesian Government Regulation No. 37 the Year 2002 (called Regulation 27/ 2002) on the Rights and Obligations of Foreign Ships and Aircraft Exercising the Right of Archipelagic Sea Lanes Passage through Designated Archipelagic Sea Lanes. While it was clearly stated in IMO Document MSC 67/7/2 paragraph 11 and paragraph 6.7 of the GPASL that pending the designation of other sea lanes through other parts of archipelagic waters, in this case, refers to the east/west routes, the ASLP regimes still can be exercised in such routes, Regulation 37/ 2002 suggests different arrangement.<sup>25</sup>

Indonesia uses two methods to publish its archipelagic sea lanes, namely, by including it on a map of Indonesia and making a table that lists the geographic coordinates of connecting points

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<sup>24</sup> Musliana, "Pengawasan Kedaulatan Wilayah Laut Alur Laut Kepulauan Indonesia II," 59–60.

<sup>25</sup> Dhiana Puspitawati, "Indonesia's Archipelagic Sea Lanes (ASLs) Designation: Rights Turning to Obligations?," *Hasanuddin Law Review* 4, no. 3 (2018): 265–280, <http://pasca.unhas.ac.id/ojs/index.php/halrev/article/view/1488>.

or turning points of axes. The two methods used by Indonesia were not regulated in the 1982 UNCLOS. Therefore, the practice used by Indonesia as an implementation of the duties of an archipelagic state to publish its archipelagic sea lanes and as a practice of implementing the 1982 UNCLOS provisions which obliged archipelagic countries to prepare their archipelagic sea lanes so that foreign ships could pass them. Indonesia has published 35 marine map numbers containing the axis lines of archipelagic sea lanes. Indonesia has also published the Indonesian Seafarers News (Notice to Mariners) No. 8 of 2003, which contains the determination of the Indonesian archipelagic sea lanes and an appeal to all ships to follow or sail in the said archipelagic sea lanes.<sup>26</sup>

Subsequently, the TNI Commander issued guidelines for securing archipelagic sea lanes containing the TNI would take several steps to secure Indonesia's Archipelagic Sea Lanes (ASLs).<sup>27</sup> The steps to be carried out include conducting patrols at Indonesia's Archipelagic Sea Lanes (ASLs), deploying TNI-AL bases in several areas along Indonesia's Archipelagic Sea Lanes (ASLs) and building radar stations along Indonesia's Archipelagic Sea Lanes (ASLs).<sup>28</sup> Using maritime patrol aircraft, the Indonesian Air Force will also carry out air patrols along Indonesia's Archipelagic Sea Lanes (ASLs).<sup>29</sup> In Indonesia itself, the regulation regarding the right of archipelagic sea lane passage as regulated in Law No. 6 of 1996 concerning Indonesian Waters and Government Regulation No. 37 of 2002 concerning the Rights and Duties of Foreign Ships and Airplanes in Implementing the Right of Archipelagic Sea Lane Passage through Determined Routes.

Even though they already have laws and regulations regarding this matter, few technical rules can be used as guidance in the implementation of archipelagic sea lanes passage. Most existing regulations regulate matters that have also been regulated in UNCLOS 1982. Therefore, it is crucial to see how Indonesia translates the existing regulations in UNCLOS 1982 into national legislation regarding the right of archipelagic sea lane passage, especially regarding rights and the duties of foreign ships crossing Indonesia's Archipelagic Sea Lanes (ASLs).

Indonesia's rights and duties regarding archipelagic sea lanes are regulated in national legislation, called Government Regulation No. 37 of 2002, concerning the Rights and Duties of foreign ships and aircraft in exercising the right of archipelagic sea lane passage through predetermined routes. To further discuss the rights and duties of foreign ships traveling in the sea

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<sup>26</sup> Kresno Buntoro, *Alur Laut Kepulauan Indonesia (ALKI): Prospek Dan Kendala* (Jakarta: Sekolah Staf dan Komando TNI AL, 2012), 128.

<sup>27</sup> Ibid.

<sup>28</sup> Buntoro, *Alur Laut Kepulauan Indonesia (ALKI): Prospek Dan Kendala*.

<sup>29</sup> Ibid.

lanes of the Indonesian archipelago, we need to look at some of the requirements set out in Government Regulation No 37 of 2002, which must be fulfilled by foreign ships when conducting the route, such as:

1. Foreign ships and aircraft carrying out the route may deviate up to 25 nautical miles to the right or the left of the sea channel axis line. Furthermore, ships and aircraft may not sail or fly near the coast or land area by 10% of the distance between the nearest points. Islands bordering archipelagic sea lanes and airplanes may not land on the Indonesian mainland except in a force majeure or accident (Article 4 (5));
2. Foreign ships and aircraft carrying out the route may not threaten or use violence against the sovereignty, territorial integrity, or political independence of the Indonesian state or in any other way that violates the principles of international law contained in the UN Charter (Article 4 (3));
3. Warships and foreign military aircraft conducting their trajectory are not allowed to carry out military activities, war simulation and training using any weapon with ammunition (Article 4 (4));
4. Foreign ships and aircraft carrying out the route may not be involved in illegal broadcasting or cause disruption to the telecommunication system and do not carry out direct communication with unauthorized persons or groups of persons in Indonesian territory (Article 4 (7));
5. Foreign ships and aircraft carrying out the passage may not carry out marine scientific research or hydrographic surveys using detection tools or other means except with the state permit (Article 5);
6. Foreign ships carrying out the route may not stop, anchor or move back and forth while exercising the right of archipelagic sea lane passage, except in a force majeure state or providing assistance to a person or ship that is in danger (Article 4 (6));
7. Foreign ships, including fishing vessels carrying out a route, are not allowed to carry out fishing activities and must store all their fishing equipment in the hold (Article 6);
8. Foreign ships and aircraft carrying out the passage may not get on or off people, goods and currencies that are contrary to the laws and regulations on tax, immigration, and customs, except in a force majeure situation (Article 6 (3));
9. Foreign ships carrying out routes must follow international regulations, procedures and customary practices related to shipping safety that have been regulated and accepted by the international community, including rules for preventing ship collisions at sea (Article 7 (1)) and must follow a traffic separation scheme for shipping safety (Article 7 (2));
10. Foreign ships carrying out the route may not cause damage and destruction to submarine navigation aids, facilities, and submarine pipelines in Indonesian waters (Article 7 (3));
11. Foreign ships conducting passage in an archipelagic sea lane where installations exist to explore or exploit living or non-living natural resources may only sail up to the prohibited zone of 500 meters wide, determined around the installation (Article 7 (4));
12. Foreign aircraft carrying out the route must follow ICAO rules, continuously monitor the frequency set by the authorized party or the international emergency radio frequency, and respect ICAO aviation safety regulations (Article 8);
13. Foreign ships carrying out the trajectory are not allowed to carry out disposal activities of oil, used oil and other impurities in the marine environment or carry out activities that are against international regulations and standards to prevent, reduce and control

pollution at sea by ships and prohibited from dumping in the water Indonesia (Article 9 (1));

14. The special requirements for nuclear-powered ships, ships carrying nuclear materials and ships carrying hazardous and toxic materials that will carry out archipelagic sea lanes passage are to carry certain documents and comply with specific precautionary procedures stipulated in international agreements for ships (Article 9 (3))

The marine policy is essential because it ensures the sustainable use of ocean resources while protecting marine ecosystems and the livelihoods of those who depend on them. Governments, international organizations, and other stakeholders collaborate to develop and implement policies that balance marine management's economic, social, and environmental aspects. Regarding the magnitude of the risk posed by the passage of warships, it is hoped that there will be more detailed rules regarding state responsibility for losses that can be caused by ships using the right of archipelagic sea lane passage, in Article 42 UNCLOS 1982, which states that the flag state of the ship or the country where the aircraft is registered must bear international responsibility for all loss or damage to an archipelagic country, this needs to be considered given the large number of losses and damage that have occurred in Indonesia due to ship traffic. In Article 10 paragraph (1) and (2) Government Regulation No 37 of 2002 states that everyone is responsible for the operation of commercial ships and aircraft which are likely to result in loss and damage suffered by Indonesia because of not complying with the provisions of Indonesia's Archipelagic Sea Lanes (ASLs).

Furthermore, the flag states of ships and countries registering aircraft must be responsible and bear the losses suffered by Indonesia because of the failure to comply with regulations by ships and aircraft in exercising the right of archipelagic sea lane passage. Apart from this regulation, there are no other national laws and regulations governing the legal sanctions imposed by Indonesia on foreign ships and aircraft that do not comply with the laws and regulations related to this matter. The lack of clarity in this regulation has resulted in legal problems, law enforcement and other problems.

Therefore, it is more important to regulate this issue by making laws and regulations that regulate the problem of possible violations, law enforcement, including the authorities that have the authority. The possibility of violation of the right of archipelagic sea lane passage can occur under various conditions. Apart from violations that are directly related to the implementation of the right of archipelagic sea lane passage, violations can also occur in conditions such as, for example, foreign ships carrying out illegal activities outside the territorial sea or ZEE using the right of archipelagic sea lane passage as a place to escape or escape. However, no provisions or rules can be used as guidelines by Indonesia to deal with these conditions. Does Indonesia have

the right to stop, inspect, and sanction these ships and aircraft. There are no clear rules or guidelines to resolve these cases.

Indonesia itself has described what foreign ships can and cannot do in exercising the right of archipelagic sea lane passage in the form of Government Regulation No. 37 of 2002 concerning Rights and Duties of foreign ships and aircraft in exercising the right of archipelagic sea lane passage through predetermined routes. However, suppose a ship or aircraft does not comply with these provisions in the Indonesian legislation. In that case, no one regulates offenses or elements of violations, including sanctions that can be suspected and who has the authority to enforce law enforcement.

#### **4. Conclusion**

The determination of ALKI by an archipelagic state, in this case Indonesia, brings in rights and obligations that are borne by the archipelagic state itself and foreign ships as owners and users of ALKI. Implementing the determination of ALKI by an archipelagic state, in this case Indonesia, brings in rights and obligations borne by the archipelagic state itself and foreign ships as owners and users of ALKI. In implementing the right of archipelagic sea lanes passage, there are no Indonesian laws or regulations that modulate offenses or elements of violations, including sanctions that can provide a deterrent effect and punish the violating ships and aircraft. However, in the case of American warships entering the territorial waters of Indonesia, which violated the right of passage of Indonesian archipelagic sea lanes, Indonesia applied expulsion as a consequence. It shows that Indonesia has been unequivocal in executing direct sanctions against law violators in its territory. It also shows that Indonesia, as an archipelagic state, has rights and obligations with sovereignty and jurisdiction over its territorial sea and in determining sea lanes passage for foreign ships in Indonesia's territorial sea and archipelagic waters. The government is expected to produce policies to control the exclusive economic zone that is agreed upon by the UN Convention on the Law of the Sea (UNCLOS).

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