



Freedom in the High Seas

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Abstract

This study is to determine how the implementation of the use of forms of freedom in the high seas according to the 1982 Convention on the Law of the Sea (UNCLOS 1982) and how the exceptions to freedom in the high seas according to the 1982 Convention on the Law of the Sea (UNCLOS 1982) The research method used in this research is to use normative legal research methods and it can be concluded that: 1. Regulations regarding the high seas are contained in Part VII Article 86 to Article 120 of the 1982 Convention on the Law of the Sea. Each country is granted both a coastal country and a non-coastal state given the right and freedom to utilize the high seas. The freedom of the state on the high seas is freedom in accordance with Article 87, namely freedom of navigation, flight, installing submarine cables and pipes, freedom to build artificial islands and other installations, freedom to catch fish, and freedom to carry out scientific research. Every country can take advantage of every given freedom, but every country is obliged to protect and utilize the high seas for peaceful purposes for the survival of humans. 2. In addition to providing freedom to use the high seas, the 1982 Law of the Sea Convention provides exceptions to these freedoms. Where every country is free to take advantage of the high seas but is not allowed to commit illegal acts or violate laws, both national and international laws, which in its application are often violated by countries in the world. There are several exceptions to the freedom of the high seas, such as the prohibition on slavery, piracy, trafficking of narcotic drugs and psychotropic substances, instant chase, illegal broadcasting, and pollution of the marine environment. Therefore, every country, both coastal and non-coastal countries, is obliged to cooperate in eradicating all forms of abuse of freedom on the high seas.

Keywords: Convention; Law of the Sea.

1. Introduction

The large number of sea areas that become the borders of countries with other countries, then the regulation of the width of the sea area is important and efforts to determine the width of a country's sea area have been started since the 19th century. This shows that the dynamics of the countries' desire for sovereignty in the sea area have been going on for a long time and

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that is what followed the development of the United Nations Convention On The Law of The Sea from UNCLOS I in 1958, UNCLOS II in 1960 to UNCLOS III 1982 .⁴

Based on the 1982 United Nations Convention on the Law of the Sea (UNCLOS), there are eight regulations regarding the law of the sea, namely:⁵

- a. inland waters;
- b. archiplegic waters;
- c. territorial waters;
- d. contingous waters;
- e. exclusive economic zone;
- f. the continental shelf;
- g. high seas; and
- h. International sea-bed area.

One of the issues discussed in the 1982 Convention on the Law of the Sea is the high seas. The high seas are parts of the sea which are not included in the exclusive economic zone, territorial seas or inland waters of archipelagic states.⁶

It is very clear that the high seas are sea areas that are not territorial of a country. The sea is not a territorial area of any country, so the high seas are free seas or known as *res nullius* where the sea is a water area that is not owned by anyone, which means that the high seas can be used by every country, both coastal and non-coastal countries.⁷ But the use of the high seas is only for peaceful purposes and no country can claim that part of the high seas belongs to it under its sovereignty. Law on the high seas is regulated in the 1982 Convention on the Law of the Sea, part VII articles 86 to 120.

According to the 1982 Convention on the Law of the Sea part VII article 87, freedom on the high seas includes:

- a. Freedom to sail;
- b. Freedom of flight;
- c. Freedom to lay submarine cables and pipes;
- d. Freedom to construct artificial islands and other installations permitted under international law;
- e. Freedom to fish;
- f. Freedom of scientific research. Indonesia itself has ratified it.

The Law of the Sea Convention 1982 with Act No. 17 of 1985 about. The ratification of the 1982 Convention on the Law of the Sea, there are also several laws that specifically regulate

⁴ Siombo, Marhaeni Ria. (2010). *Hukum Perikanan Nasional dan Internasional*. Jakarta: Gramedia Pustaka Utama. p. 93

⁵ Adolf, Huala. (2002). *Aspek Negara Dalam Hukum Internasional*. Jakarta: PT Raja Grafindo Persada. p.21

⁶ Rudy, T. May.(2002). *Hukum Internasional*. Bandung: Refika Aditama. p. 19

⁷ [Http://File.Upi.Edu/Dirirect/Fpips/Jur. Pend. Geografi / 194902051978031- Djakaria_M_Nur / Dasar Pembagian Laut.pdf](http://File.Upi.Edu/Dirirect/Fpips/Jur. Pend. Geografi / 194902051978031- Djakaria_M_Nur / Dasar Pembagian Laut.pdf) accessed on August, 2020.



parts of the sea and the use of the sea, such as Act No.31 of 2004 concerning Fisheries, Government Regulation No. 60 of 2007 concerning Conservation of Fish Resources, Government Regulation no. 17 of 1974 concerning Supervision of the Exploration and Exploitation of Oil and Gas in offshore areas, Act No. 4 Prp 1960 which has been replaced by Act No. 6 of 1996 on Indonesian Waters, Act No. 1 of 1973 concerning the Continental Shelf, Act No. 5 of 1983 concerning the Exclusive Economic Zone, as well as other related laws.⁸ With the freedom given by the 1982 Convention on the Law of the Sea to every country, both coastal and non-coastal countries, automatically the state has the rights and obligations to be able to make the most of the high seas for peaceful purposes.⁹

Freedom on the high seas can be exercised by complying with the conditions provided by the 1982 Convention on the Law of the Sea and those provided by International Law. With this freedom given, the state gets the advantage of being able to take advantage of the high seas in the interests of the country without harming other countries or other parties.

However, apart from having the right to exploit the high seas territory, the state is also bound by its obligation not to take actions that can harm other parties or actions that can damage the high seas area itself. Every country is indeed given the freedom to take advantage of the high seas but the freedom given is not freedom without limits and without rules. The freedom to use the high seas is regulated in the 1982 Law of the Sea Convention and has terms and conditions that must be done, so that there are some exceptions to freedom in the high seas that are absolutely prohibited on the high seas. The exceptions to freedom on the high seas include piracy, hot pursuit, fishing and pollution on the high seas.

2. Research Methods

The research method used in the context of collecting data and materials for writing this thesis is the normative legal research method. Normative legal research is literature law research.¹⁰ This research method is used in accordance with the subject matter to be discussed, namely the implementation of the utilization of the high seas according to the 1982 Sea Law Convention.

3. Results and Discussion

3.1 Implementation of Utilization of Freedom on the High Seas

The freedom given to countries is the freedom to take advantage of the high seas with the aim of common interests to support the survival of mankind. This section discusses the regulation of the utilization of the high seas itself. Regulations regarding the high seas are contained in Part VII Article 86 to Article 120 of the 1982 Convention on the Law of the Sea. In article 87 of the 1982 Convention on the Law of the Sea there are seven forms of freedom in the high seas and will be discussed one by one in this section. First, every State, whether coastal or land-

⁸ Subagyo, P. (2009). *Hukum Laut Indonesia*. Jakarta: Rineka Cipta. p.22

⁹ <http://id.wikipedia.org/wiki/Laut> accessed on August, 2020.

¹⁰ Soekanto, Soerjono. (2012) *Penelitian Hukum Normatif Suatu Tinjauan Singkat*. Jakarta: PT Raja Grafindo Perkasa. p.23



locked, has the right to sail ships flying its flag on the high seas. So the first freedom that countries can take advantage of is the freedom to sail.

Considering that this part of the earth consists of land separated by a stretch of sea, shipping in the sea part is very necessary to meet the needs of life, especially as a means of transportation and with the freedom to use the high seas to sail, the state is given the convenience and advantage mark of the jurisdiction that is subject to the ship.¹¹

The flag state of the ship must observe the provisions of article 91 regarding the conditions for sailing on the high seas regarding the nationality of the ship, registration or registration and the flag of the ship.¹² The provisions of Article 91 of the 1982 Law of the Sea Convention require states to establish requirements for registering their ships, which means giving nationality to the ship, provided there is a genuine link between the ship and the country concerned.¹³

The second freedom is freedom of overflight or freedom of flight. All countries, both coastal and non-coastal countries, have the freedom to fly in the air space above the high seas, of course by taking into account the interests of other countries. This freedom is not discussed in more detail in the articles in the 1982 Law of the Sea Convention.

But based on article 87 paragraphs 1 and 2 of the 1982 Law of the Sea Convention, every country, both coastal and non-coastal countries, can take advantage of the high seas for flight, meaning that aircraft from each country can fly and cross freely over the high seas.

In essence, like other forms of freedom granted by the 1982 Convention on the Law of the Sea, flights over the high seas must be carried out with due observance of the terms and conditions both in the 1982 Convention on the Law of the Sea and other provisions of international law. Also, flights over the high seas are only carried out for peaceful purposes by taking into account the interests of other countries without harming them.

The third freedom is that all States are entitled to lay submarine cables and pipelines on the bed of the high seas beyond the continental shelf, namely the freedom of the state to utilize the high seas by installing pipes and submarine cables. Regarding this freedom is regulated in articles 87, 112 to 115 of the 1982 Convention on the Law of the Sea. Every country has the right to install submarine cables or pipes by taking into account the provisions of the 1982 maritime law convention relating to the continental shelf, namely article 79 paragraph 5.

The fourth freedom according to article 87 of the 1982 sea law convention is freedom to construct artificial islands and other installations permitted under international law, subject to Part VI. Every country, both landlocked and non-coastal states, has the freedom to construct artificial islands or other installations on the high seas subject to part VI of the 1982 sea law

¹¹ Sodik, Dikdik Mohamad. (2011). *Hukum Laut Internasional dan Pengaturannya di Indonesia*. Bandung: Refika Aditama. p.52

¹² See Article 91 of the 1982 Law of the Sea Convention.

¹³ Ariadno, Melda Kamil. (2004). *Praktik Pembendaraan Kembali (Reflagging) pada Kapal Penangkap Ikan*, International Law Journal, Volume 1 No. 3. Institute for the Study of International Law. p. 484



convention. Part VI of the 1982 Convention on the Law of the Sea is part of the continental shelf and according to article 80: "Article 60 applies mutatis mutandis to artificial islands, installations and structures on the continental shelf. "

Then the provisions regarding artificial islands and other installations apply mutatis mutandis with the provisions contained in article 60, namely: Artificial islands, installations and structures do not possess the status of islands. They have no territorial sea of their own, and their presence does not affect the delimitation of the territorial sea, the exclusive economic zone or the continental shelf. This means that artificial islands, installations and buildings do not have island status. Artificial islands, installations and structures do not have their own territorial seas, and their presence does not affect the delimitation of the territorial sea, the exclusive economic zone or the continental shelf. The provisions in this article are very clear regarding the status of artificial islands and other installations. The fifth freedom is freedom of fishing.¹⁴

Based on the convention, every country, both coastal and non-coastal, can take advantage of freedom on the high seas in the form of freedom to catch fish by taking into account the existing terms and conditions while maintaining the high seas environment itself. Article 116 of the 1982 Convention on the Law of the Sea gives a country the right to send its national fishing fleet to the high seas.¹⁵In that article it is stated: "All States have the right for their nationals to engage in fishing on the high seas subject to:

- a. their treaty obligations;
- b. the rights and duties as well as the interests of coastal States provided for, inter alia, in article 63, paragraph 2, and articles 64 to 67; and
- c. the provisions of this section.

All countries have the right for their citizens to catch fish in the high seas subject to:

- a. its obligations under international treaties;¹⁶
- b. the rights and duties and interests of the coastal State, determined, inter alia, in articles 63, paragraph 2, and articles 64 to 67; and
- c. the provisions of this section.¹⁷

3.2 Exceptions to the principle of freedom on the high seas

However, there are exceptions to these forms of freedom on the high seas, namely there are things that cannot be done on the high seas even though the high seas are open seas and the state has the freedom to take advantage of the high seas. The exception to the principle of freedom on the high seas is the exclusion of action. The actions that are against the law and

¹⁴Rusmana, Muliadi. State's Jurisdiction and high Seas, <http://muliadirusmana.blogspot.com/2010/12/jurisdiction-state-statpes-jurisdiction.html> accessed August, 2020

¹⁵Ariadno, Melda Kamil. (2005). *Kepentingan Indonesia dalam pengelolaan Perikanan Laut Bebas*. International Law Journal, Volume 1 No. 2, op.cit. p.504

¹⁶ Agusman, Damos Dumoli. (2010). *Hukum Perjanjian Internasional Kajian Teori dan Praktik Indonesia*. Bandung: PT Refika Aditama. p.12

¹⁷ See Article 116 of the 1982 Law of the Sea Convention



are not peaceful purposes for the benefit of mankind.¹⁸ There are several things that are not allowed to be done on the high seas, namely:

- a. Slavery
- b. Piracy
- c. Trafficking of narcotic drugs or psychotropic substances
- d. Dark broadcast
- e. Instant chase
- f. Environmental pollution

Every human being has the right to be free from slavery, this is regulated in national and international law. The right to be free from slavery is contained in the Universal Declaration of Human Rights 1948 and in Indonesia itself, the right of every person not to be enslaved is contained in the state constitution, namely Article 28 I paragraph 1 of the 1945 Constitution. With the existence of national and international regulations that prohibit slavery. This proves that the act of slavery is prohibited and opposed by all countries. After slavery the second exception is piracy. The prohibition of piracy on the high seas is regulated in Article 100 to Article 107 of the 1982 Law of the Sea Convention.¹⁹

The discussion regarding piracy in the high seas is a discussion that has received great attention in the 1982 Convention on the Law of the Sea, because piracy is regulated in several articles, namely from Article 100 to Article 107 while other acts are only regulated in one Article. In addition, the procedures for enforcing the law of the sea against the crime of piracy as stipulated in Article 105 of the Convention are very clear and firm compared to the crime of slavery and narcotics.²⁰

The third exception to freedom on the high seas is the exception to the trade in narcotic drugs and psychotropic substances. The trafficking of narcotic drugs and psychotropic substances is an illegal trade which is an illegal act not only in Indonesia but throughout the world. Because of this, every country is invited to cooperate in ending the trafficking of narcotic drugs and psychotropic substances on the high seas. Regarding the prohibition of trafficking in narcotic drugs and psychotropic substances, it is not discussed in detail and firmly like the discussion on piracy in the 1982 Law of the Sea Convention.

However, although it is not discussed at length the prohibition against the trade in narcotic drugs and psychotropic substances is clearly opposed. Article 108 states that "All States shall cooperate in the suppression of illicit traffic in narcotic drugs and psychotropic substances engaged in by ships on the high seas contrary to international conventions." According to this article, the state is given the obligation to eradicate and arrest the perpetrators who carry out the illicit trafficking of narcotic drugs and psychotropic substances that are opposed by international conventions. Furthermore, in verse 2 it says Any State which has reasonable

¹⁸ Sumbu, Telly, et. all. (2010). *Kamus Umum Politik & Hukum*. Jakarta: Jala Permata Aksara. p.22

¹⁹ Djalal, Hasyim. (1979). *Perjuangan Indonesia di Bidang Hukum Laut, National Law Development Agency of the Ministry of Justice*. Jakarta: Binacipta Publisher. p.32

²⁰ Atmasasmita, Romli. (2010). *Hukum Pidana Internasional dalam Kerangka Perdamaian dan Keamanan Internasional*. Jakarta: Fikahati Aneska. p.7



grounds for believing that a ship flying its flag is engaged in illicit traffic in narcotic drugs or psychotropic substances may request the cooperation of other States to suppress such traffic.

So every country that has suspicion that a ship sailing on the high seas is trafficking narcotic drugs and psychotropic substances can request assistance from other countries to quell the trade, other countries are also obliged to cooperate.²¹ Article 109 regulates the prohibition of illegal broadcasting from the high seas. Similar to slavery and piracy in the case of illegal broadcasting on the high seas, countries are asked to cooperate in eliminating such illegal broadcasting. Article 109 paragraph 2 explains the definition of illegal broadcasting, namely the transmission of sound radio or television broadcasts from a ship or installation on the high seas intended for reception by the general public contrasts to international regulations, but excluding the transmission of distress calls.

So what is meant by illegal broadcasting is any transmission or broadcast broadcast from the ship or other installation on the high seas that is broadcast for the purpose of being heard or watched by the general public which is contrary to international regulations. Article 111 regulates the instant chase (hot pursuit) which is an exception to freedom on the fourth high seas. This instant chase is regulated in one chapter but it is a long chapter with 8 verses in it. The pursuit of a foreign ship that is suspected of committing a violation in the territory of the coastal state must begin immediately when the ship is in inland waters or archipelagic waters. It can only be continued into the auxiliary zone and the territorial sea if the pursuit is not broken.

- a. The instant chase of a foreign ship may be undertaken if the competent authority of the coastal State has sufficient reason to think that the ship has violated the laws of that State. Such pursuit must begin when a foreign ship is in inland waters, archipelagic waters, territorial seas or the additional zone of the pursuing country, and may only be continued outside the territorial sea or additional zone if the pursuit is not interrupted. It is not necessary that when a foreign ship that is in the territorial sea or the additional zone receives an order to stop, the ship giving the order is also in the territorial sea or the additional zone. If the foreign ship is in the additional zone, as defined in article 33.
- b. The right of instantaneous pursuit shall apply, mutatis mutandis to violations in the exclusive economic zone or on the continental shelf, including safety zones around installations on the continental shelf, to the laws and regulations of the coastal State applicable in accordance with this Convention for the exclusive economic zone or the continental shelf, including such safety zones.
- c. The right of pursuit ceases immediately after the ship being chased enters the territorial sea of its own country or of a third State.
- d. The instant chase is not deemed to have started unless the ship chasing has convinced itself in such practical ways which may be available, that the ship being chased or one of its securities or another ship is cooperating as a team and using the ship being chased as a ship. The parent is within the boundaries of the territorial sea or according to its circumstances in the additional zone or exclusive economic zone or on the continental shelf. The pursuit may only begin after a visual or audible signal to stop at a distance which allows the foreign vessel to see or hear the signal.

²¹ See Article 108 of the 1982 Law of the Sea Convention.



- e. The right of real-time pursuit may be exercised only by warships or military aircraft or other ships or aircraft which are clearly marked and identifiable as a ship or aircraft in government service and authorized to perform the task.
- f. In the case of an instantaneous pursuit by an aircraft:
 - 1) the provisions in paragraphs 1 and 4 must apply *mutatis mutandis*;
 - 2) the aircraft giving the order to stop must actively pursue the ship until the ship or aircraft. The coastal State summoned by the chase aircraft arrives to take over the pursuit, unless the aircraft itself is able to catch the ship. It is not sufficient to justify an arrest outside the territorial sea that the ship is only seen by the aircraft as a suspected violator or offender, if the ship is not ordered to stop and is pursued by the aircraft itself or by other aircraft or ships continuing the pursuit was uninterrupted.
- g. The discharge of a ship which is held within the jurisdiction of a State and escorted to the ports of that State for the purpose of examining the presence of competent authorities shall not be prosecuted solely on the grounds that the ship, in its journey, is escorted through part of the exclusive economic zone or the high seas if circumstances so desire.
- h. In the event that a ship has been stopped or detained outside the territorial sea in a condition which does not justify the exercise of the right to instantaneous pursuit, then the ship must be compensated for any loss and damage suffered because of it. The exception of pollution of the marine environment. Marine pollution is a change in the marine environment that occurs as a result of the direct or indirect inclusion of materials or energy into the marine environment (including river estuaries) which results in such bad consequences that it is a loss to biological wealth, a danger to human health, a disturbance. Activities at sea including fisheries and other fair use of the sea.²² The high seas have become open seas and every country has the right to be able to take advantage of the high seas. Apart from being a means of transportation and a place for research, the high seas can also be used as a place to catch fish for food. So as human beings we are obliged to protect and preserve the marine environment.²³

4. Conclusion

Regulations regarding the high seas are contained in Part VII Article 86 to Article 120 of the 1982 Convention on the Law of the Sea. Each country is granted both a coastal country and a non-coastal state given the right and freedom to utilize the high seas. The freedom of the state on the high seas is freedom in accordance with Article 87, namely freedom of navigation, flight, installing submarine cables and pipelines, freedom to build artificial islands and other installations, freedom to fish, and freedom to carry out scientific research which is given can be utilized by every country but every country is obliged to protect and utilize the high seas for peaceful purposes for human survival. In addition to providing freedom to use the high seas, the 1982 Law of the Sea Convention provides exceptions to these freedoms. Where every country is free to take advantage of the high seas but may not take illegal actions or violate laws, both national and international law, which in its application are often violated by countries on the world.²⁴ There are several exceptions to the freedom of the high seas, such as

²² Kusumaatmadja, Mochtar. (1978). *Bunga Rampai Hukum Laut*. Jakarta: Binacipta. p.13

²³ Anwar, Chairul. (1989). *Hukum Internasional Horizon Baru Hukum Laut Internasional Konvensi Hukum Laut 1982*. Jakarta: Publisher Djambat. p.18

²⁴ Starke, JG. (2003). *Pengantar Hukum Internasional 1*. Jakarta: Sinar Grafika. p.21



the prohibition on slavery, piracy, trafficking of narcotic drugs and psychotropic substances, instant chase, illegal broadcasting, and pollution of the marine environment. Therefore, every country, both coastal and non-coastal countries, is obliged to cooperate in eradicating all forms of abuse of freedom on the high seas.

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- 16) Sumbu, Telly, et. all. (2010). *Kamus Umum Politik & Hukum*. Jakarta: Jala Permata Aksara
- 17) See Article 91 of the 1982 Law of the Sea Convention.
- 18) See Article 116 of the 1982 Law of the Sea Convention
- 19) See Article 108 of the 1982 Law of the Sea Convention
- 20) [Http://File.Upi.Edu/Dirirect/Fpips/Jur. Pend. Geografi/194902051978031-Djakaria M Nur / Dasar Pembagian Laut.pdf](http://File.Upi.Edu/Dirirect/Fpips/Jur. Pend. Geografi/194902051978031-Djakaria M Nur / Dasar Pembagian Laut.pdf)
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