



OVERVIEW OF SABANG CLASS II CHECKPOINT IMMIGRATION OFFICE AUTHORITY OF FOREIGN SHIP AND SOLUTION EFFORT

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Received: 15-04-2022; Revised: 15-06-2022; Approved to be Published: 04-07-2022

DOI: <http://dx.doi.org/10.30641/kebijakan.2022.V16.253-266>

ABSTRACT

This study aims to examine the Immigration authority of a foreign ship which was delegated by the Police who were arrested on suspicion of narcotics crimes committed by its crews. The ship entered Indonesian territory with an emergency status in November 2019. The crews and the ship were handed over to Sabang Immigration Office. The crews of the ship were subject to Immigration Administrative Action by being placed in the Medan Immigration Detention Center. Meanwhile, the ship became the responsibility of the Sabang Immigration Office. What is the authority of the Immigration Office against foreign ships for alleged narcotics crimes and what are the efforts made by Sabang Immigration? The qualitative research methodology in this research used data collected from various sources. The results of this study are based on the laws and regulations in force in Indonesia. They include the Immigration regulations which explain that the Immigration Office does not have authority over the ship since it is not in the realm of Immigration investigation. The Immigration Office sought to resolve the ship's problem by actively working with relevant agencies and coordinating with the leadership for instructions and directions.

Keywords: immigration; police; foreign ship; narcotics

INTRODUCTION

Background

Along with the rising flow of globalization, the increasing traffic of conveyances across national borders is becoming commonplace. This has an impact on the position of the Unitary State of the Republic of Indonesia as an archipelago state which is located in a strategic position, namely being on the international trade route. The territory of Indonesia which is on the international trade route makes many foreign ships pass by. Those ships aim both to go to one of the areas in Indonesia or just pass to other countries around the territory of Indonesia. Among the

means of transportation that pass through Indonesian waters, there are those who use it for positive things such as trade in goods and logistics between countries. On the other hand, there are those who take advantage of this momentum for negative things such as human trafficking, drug trafficking and so on.¹

The occurrence of international trade is caused by advances in science and technology. National boundaries are now increasingly blurred and are no longer an obstacle to conduct cross-border transactions. Even with these technological advances, trade actors

¹ Thomas Sunaryo, "Indonesia Sebagai Negara Kepulauan," *Jurnal Kajian Strategik Ketahanan Nasional*, Vol. 2 No. 2 (2019): 98

do not need to know and understand who their trading partners are. The development of technological advances not only creates convenience in conducting trade between countries, but also causes problems along with changes in the system and the order of people's lives. One of the problems posed is the growing number of transnational organized crimes (TOC). Organized international crime is a transnational crime which becomes the international community's concern and has become a worldwide problem.² The rise of international crimes involving cross-border actors will increase the level of violations of both immigration violations and other criminal acts committed by foreign nationals in the territory of Indonesian Law.³ The condition of Indonesia's territory, which consists of an archipelago with an open sea that is in a cross position as well as an international trade route, has the potential to be used by international criminals in carrying out their activities. Even Indonesia's strategic position is often also used by human smugglers.⁴

International criminals are taking advantage of today's technological advances to increase the frequency of their crimes. Even with these technological advances, especially in the fields of transportation, telecommunications, and computerization, every activity carried out is increasingly neatly closed so that it is very difficult for law enforcement officials in each country to identify and dismantle.⁵

Therefore, to maintain and prevent the occurrence of crimes involving cross-border actors in Indonesian territory, it is necessary to carry out supervision and law enforcement at the border and sea waters by relevant agencies. One form of law enforcement carried out is immigration inspection. Immigration Inspection aims at the enforcement of border laws, the absolute sovereignty of a country, security stability, and political, economic, and socio-cultural.⁶ In the Immigration Inspection, the supervisory function is attached as a form of enforcing the sovereignty of the Unitary State of the Republic of Indonesia.⁷ Regarding the implementation of the main duties and functions, Indonesian Immigration applies the principle of Selective Policy. Selective Policy is a fundamental principle that applies universally to all countries of the world. This principle is the embodiment of state sovereignty that must be respected.⁸

The Selective Policy is adopted to protect the national interests of the Unitary State of the Republic of Indonesia, therefore, only foreigners who provide benefits and do not endanger public security and order are allowed to enter and be in the territory of Indonesia.⁹ Then, those who are allowed to enter and leave the territory of Indonesia

2 Zainab Ompu Jainah, "Kejahatan Narkoba Sebagai Fenomena Dari *Transnational Organized Crime*," *Jurnal Pranata Hukum*, Vol. 8 No. 2 (2013): 95.
3 Trisapto Wahyudi Agung Nugroho, "Optimalisasi Peran Timpora Pasca Berlakunya Peraturan Presiden Nomor 21 Tahun 2016 Tentang Bebas Visa Kunjungan," *Jurnal Ilmiah Kebijakan Hukum*, Vol. 11 No. 3 (2017): 266.
4 Muhar Junef, "Kajian Praktik Penyelundupan Manusia di Indonesia," *Jurnal Penelitian Hukum De Jure*, Volume 20 Nomor 1 (2020) : 89, <http://dx.doi.org/10.30641/dejure.2020.V20.85-102>
5 Fadil Muhammad, Luh Putu Sudini, dan I Nyoman Sujana, "Penegakan Hukum Pidana

Internasional Dalam Kejahatan Perang Terhadap Kemanusiaan," *Jurnal Preferensi Hukum*, Vol. 1 No. 2 (2020): 88, <http://doi.org/10.22225/jph.v1i2.2381.88-92>
6 Ridwan Arifin dan Intan Nurkumalawati, "Kebijakan Pemeriksaan Keimigrasian di Indonesia: Bentuk Pelayanan Publik dan Profesionalisme Petugas Imigrasi," *Jurnal Ilmiah Kebijakan Hukum*, Volume 14 No. 2 (2020): 249, <http://dx.doi.org/10.30641/kebijakan.2020.V14.243-262>
7 Wilonotomo dan Firma Wahyu Fachreza, "Implementation of the Clearance Settlement System For International Arrival And Departure of Immigration Juanda Surabaya," *Jurnal Ilmiah Kebijakan Hukum*, Vol. 16 No. 1 (2022): 71, <http://dx.doi.org/10.30641/kebijakan.2022.V16.061-078>
8 M. Imam Santoso, *Perspektif Imgrasi Dalam United Nation Convention Against Transnational Organized Crime*, Cet. I (Jakarta: Perum Percetakan Negara RI, 2017), 37.
9 Penjelasan Atas Undang-Undang Nomor 6 Tahun 2011 tentang Keimigrasian.

are foreigners who provide benefits for the welfare of the people of the nation, and the state, and are not hostile to the Indonesian people.¹⁰ It can even be interpreted that the movement of foreigners in Indonesia must conform to the ideology of the state and not threaten the integrity of the nation.¹¹

Weh Island is one of the islands located at the western end of Indonesia. It is in the area of international trade routes, namely in the waters of the Malacca Strait which borders with neighboring countries such as India, Thailand, and Malaysia. Due to its position in the international trade route, the water area around Sabang City, which is located on Weh Island, has become a route for international criminals to carry out illegal trade and transactions. One of which is drug trafficking. As the outermost region of the Republic of Indonesia, the implementation of immigration duties and functions by the Class II Immigration Office of TPI Sabang has its challenges. Because, on the one hand, it must pay attention to the public welfare approach. Meanwhile on the other hand, the government must pay attention to the regional security approach as a result of the existence of foreigners. It is hoped that the presence of foreigners in the territory must be able to provide benefits and not interfere the with stability of regional security. The welfare approach in the sense that all efforts made should provide the greatest benefit for the improvement of the welfare of the people living in the region. Meanwhile, the security approach is in the sense of ensuring the integrity of the territory and sovereignty of the state as well as the protection of the entire nation.¹²

On November 17, 2019, an alien ship with emergency status entered Sabang City. The foreign vessels were inspected by several relevant agencies regarding the ship's documents and the travel documents of the crew and their luggage. The agencies that carried out the inspection were the Sabang Customs Office, the Sabang TPI Class II Immigration Office, the Sabang Port Health Quarantine Office, and the Sabang Port Authority and Port Authority (KSOP) Office. In addition to these agencies, several other agencies participated in the ship inspection process as a form of supervision of foreign transportation equipment that was not yet identified. Some of these agencies are Water and Air Police, Military District Command Sabang, Naval Base Sabang, and several other agencies.¹³

After inspection of the foreign ship and its crew, the results were obtained that there were no clear ship documents, no travel documents/passports of all crew members, no documents related to the ship's goods/cargo, and indications of a malaria transmission suffered by one of the ship's crews. The documents presented by the ship's crews at the time of inspection by customs, immigration, port health quarantine, and port authority officers showed that the ship was named 18066 Iranian-flagged. At the time of the inspection, it was found that the ship was carrying eight crews of suspected Foreign Nationals. Communication between the officers and the crews of the ship was not effective because the crews could not speak Indonesian, English or Arabic language. Following up on the absence of completeness of the ship's documents, all parties agreed to

10 Muhammad Indra, *Perspektif Penegakan Hukum dama Hukum Keimigrasian Indonesia*, (Jakarta: Direktorat Jenderal Imigrasi, 2015), 2.

11 M. Alvi Syahrin, "Menakar Kedaulatan Negara Dalam Perspektif Keimigrasian," *Jurnal Penelitian Hukum De Jure*, Vol. 18 No. 1 (2018): 46, <http://dx.doi.org/10.30641/dejure.2018.V18.43-57>

12 Insan Firdaus, "Optimalisasi Pos Lintas Batas

Tradisional Dalam Pelaksanaan Tugas Dan Fungsi Keimigrasian Studi Kasus Imigrasi Entikong," *Jurnal Ilmiah Kebijakan Hukum*, Vol. 12 No. 1 (2018): 58, <http://dx.doi.org/10.30641/kebijakan.2018.V12.57-71>

13 Laporan Kejadian Kepala Kantor Imigrasi Kelas II TPI Sabang tanggal 17 November 2019.

refuse and not land the ship. On the other hand, the Sabang Resort Police obtained information from the Police Headquarters that the ship was the target of the Police Headquarters' operation for suspected narcotics crimes. This was conveyed by the Sabang Resort Police.¹⁴

According to the Immigration regulations in Indonesia, these 8 (eight) foreigners are not allowed to enter the territory of the Unitary State of the Republic of Indonesia because they do not have valid and legal travel documents. It is stated in Article 8 verse 1 of Law Number 6 of 2011 concerning Immigration which reads:

"Everyone who enters and leaves the territory of Indonesia is required to have a valid and legal Travel Document."¹⁵

Apart from not having valid and legal Travel documents, the eight crew members did not have a visa. Based on the Immigration regulations in Indonesia, a visa for foreigners is a certificate of approval for foreigners to enter the territory of Indonesia given by an authorized official at the Representative of the Republic of Indonesia.¹⁶

Then in Article 13 verse 1 letter b of Law Number 6 of 2011 concerning Immigration which reads:

The Immigration Officer refuses entry to Foreigners who enter the Indonesian Territory if the foreigners:

b. do not have a valid and legal Travel Document.¹⁷

In the case of 18066 Iranian-flagged ships, there are 2 (two) rules from 2

(two) agencies, namely the Immigration rules as mentioned above and the Police rules as stated in Article 13 letter b of Law Number 2 of 2002 concerning the Indonesian National Police regarding Duties and the Authority of the State Police of the Republic of Indonesia which reads:

The main duties of the Indonesian National Police are:

b. to enforce the law.¹⁸

Based on Article 13 letter b of Law Number 2 of 2002 concerning the State Police of the Republic of Indonesia mentioned above, one of the main tasks of the State Police of the Republic of Indonesia is to enforce the law in the territory of the Unitary State of the Republic of Indonesia. Consequently, the Immigration Office, as an authorized agency in licensing the entry and exit of people to and from the Indonesian territory, cannot hinder the law enforcement process by the Police in this case, there is an alleged narcotics crime against the 18066 Iranian-flagged ship. Thus, the 8 (eight) foreigners are allowed to step down based on the results of the agreement with the other inspection team based on a request from the Sabang Police Headquarters. Then, considering that the criminal justice related to drug smuggling is handed over to the Police as the authorized party.¹⁹

Eight crew members of the 18066 ship were taken to the Sabang Police Headquarters for examination in the context of an investigation into alleged narcotics crimes by the Criminal Investigation Agency

14 *Ibid.*

15 Indonesia. "Undang-undang Nomor 6 tahun 2011 tentang Keimigrasian" (2011).

16 M. Alvi Syahrin, "Tindakan Hukum Terhadap Orang Asing Mantan Narapidana Yang Memiliki Kartu Pengungsi UNHCR Dalam Perspektif Keimigrasian," *Jurnal Ilmiah Kebijakan Hukum*, Vol. 13 No. 2 (2019): 141, <http://dx.doi.org/10.30641/kebijakan.2019.V13.139-164>

17 *Ibid.*

18 Indonesia. "Undang-undang Nomor 2 tahun 2002 tentang Kepolisian Negara Republik Indonesia" (2002).

19 Okky Chahyo Nugroho. "Penegakan Hukum Terhadap Orang Asing Di Kantor Imigrasi Kelas I Denpasar dan Kelas I Khusus Bandara I Gusti Ngurah Rai," *Jurnal Penelitian Hukum De Jure*, Volume 17, Nomor 2 (2017): 241.

of the Republic of Indonesia. After being investigated by the Criminal Investigation Agency at the National Police Headquarters, the Sabang Police Chief wrote to the Class II TPI Sabang Immigration Office to hand over the 8 (eight) people suspected of being illegal foreigners and their means of transportation.

After the handover of the 8 (eight) crew members, the Class II Immigration Office of TPI Sabang imposed an Immigration Administrative Action by sending them to the Medan Immigration Detention Center because they did not have valid and legal travel documents or passports. Meanwhile, the 18066 Iranian-flagged ship was still in the Sabang Gulf water area then it became the responsibility of the Class II Immigration Office of Immigration Checkpoint (TPI) Sabang after being handed over by the Sabang Resort Police to the Class II Immigration Office of Immigration Checkpoint Sabang.

Problem Formulation

The existence of the 18066 Iranian-flagged ship at Pasiran Pier in Sabang City became a problem at the Class II Immigration Office of Sabang Immigration Checkpoint (TPI). It is because after the ship was handed over by the Sabang Resort Police to the Class II TPI Sabang Immigration Office, the ship became the responsibility of the Class II Immigration Office of TPI Sabang. In addition, the existence of the 18066 ship also interfered with fishing activities around the Pasiran Pier area of Sabang City, where this ship docked.

This research analyzes the authority of the Immigration Office in handling the case of the 18066 Iranian-flagged ships that have now become the responsibility of the Class II Immigration Office of TPI Sabang. This case was handed over from the Police detained on suspicion of a narcotics crime. Thus, the formulation of the problem in this paper is as follows:

1. How is the authority of the Immigration Office against foreign ships arrested on suspicion of narcotics crime and its settlement?
2. How is the Immigration Office Class II TPI Sabang handling the case of foreign ships?

Purpose

Based on the Problem Formulation above, the objectives of this paper are to:

1. To review the authority of the Immigration Office against foreign ships arrested on allegations of narcotics crime in terms of the laws and regulations.
2. Explain the handling carried out by the Class II Immigration Office of TPI Sabang on the case of the foreign ship.

Research Methods

1. Approach

A method is a process, principle, and procedure used to approach problems and find answers. In other words, a methodology is a general approach that examines research topics.²⁰ In this study, the author uses qualitative methods using data collected from various sources. Qualitative research seeks to build and understand a reality that this research focused on processes, events, and authenticity.

2. Data Collection Method

The data collection methods in this research are literary research, Immigration regulations in Indonesia, and observations of what happens in the field regarding ships.

3. Data Analysis

Data Analysis Techniques is a process of evaluating, interpreting, analyzing, and reviewing the results of observations and literature studies.²¹

20 Deddy Mulyana. *Metodologi Penelitian Kualitatif*, (Bandung: PT Remaja Rosdakarya, 2001), 145.

21 Gede Maha Aditya Pramana, Intan Nurkumalawati, Ridwan Arifin, "Policy Evaluation on Immigration Electronic Stamp, Biometric Data, and Autogate

Data analysis was carried out by examining the case of foreign ships based on theories, concepts, and regulations related to the implementation of Immigration duties and functions that apply in the jurisdiction of the Unitary State of the Republic of Indonesia.

4. Data Source

The data sources were taken from events in the field and the laws in force and regulations in the territory of Indonesia.

DISCUSSION

The Authority of Immigration Office Towards Arrested Foreign Ships on Allegation of Narcotics Crime in Terms of Laws and Regulations

On Sunday, November 17, 2019 about 19:30 Western Indonesian Time (WIB), Immigration Office Class II TPI Sabang obtained a piece of information by phone from Harbormaster's Office and Port Authority (KSOP) Sabang. The information was about 1 (one) unit of an unknown foreign ship with emergency status found in Sabang Bay's sea waters. Following up the information related to the arrival of this emergency ship, the Immigration Office Class II TPI Sabang immediately moved forward to Sabang Bay Marina.

Upon arrival in Sabang Bay Marina, the Immigration Office directly work together with the Customs officers, Health Quarantine, and KSOP that had been assembled in the location. Further, the representatives of each agency got on board on KPLP Ship and aimed to the foreign ship in the Sabang Bay's sea waters that was under the supervision of KPLP Ship at that moment.

KSOP conducted investigation on the ship's documents which further was discovered that the ship was known as 18066 under Iran's flag. The ship carried 8 crews who were suspected to be foreigners. There was language barrier problem due to the crews' inability to speak Indonesian, English, nor Arabic, neither did they have travel documents.

After managing coordination and investigation on the ship and ship crew document's completeness, CIQP team (Customs, Immigration, Health Quarantine, and Port Authority) acquired these results:

- a. No clear ship documents found;
- b. No ship crew travel documents in the form of Passport found;
- c. No documents related goods/ship cargo found; and
- d. There was an indication of malaria transmission on one of the ship crews after running an examination by the Health Quarantine.

Furthermore, CIQP team managed to conduct a meeting with several related agencies who participated in the investigation such as POLAROID, Sabang Regional Military Command, Sabang Naval Base, BPBD Sabang, and Resort Police Officers. The meeting was conducted in the Harbormaster's Office and Port Authority (KSOP) Sabang's meeting room. These parties had to decide the mutual agreement which would be taken related to the existence of 18066 ship. All parties present in the meeting decided to not land the ship on the basis of decision of CIQP team's inspection result. At the time of the meeting, a representative from Sabang Resort Police Department entered the room and submitted orally to the meeting's members, that Ship 18066 along with crew were operation targets by the Police Headquarters on the allegation of narcotics crime. They were asked to be unloaded from the ship and secured by the Police in order to undergo further investigation. Further,

Machines in the Context of Geopolitics," *Jurnal Ilmiah Kebijakan Hukum*, Vol. 16, no. 1 (2020): 45, <http://dx.doi.org/10.30641/kebijakan.2022.V16.041-060>

Sabang Resort Police Officers escorted the 8 foreigners alleged from the ship and took them to Sabang Resort Police Office. This was conducted as a form of law enforcement towards the ship crews by the police on the allegation of a narcotics crime. It was also a form of anticipation against drug trafficking in Sabang City. An international network of drug trafficking is a serious threat to Indonesia due to the severe damage it causes particularly to the young generation.²²

On Tuesday, November 19, 2019, as a follow-up from the arrival case of ship 18066 and in order to perform supervision, Immigration Office Class II TPI Sabang conducted coordination with Resort Police Department Sabang City. According to the information obtained by the Deputy Police Chief of Sabang City, the 8 (eight) alleged foreigners of 18066 ship crews were undergoing an investigation by Criminal Investigation Agency. Meanwhile, the Deputy Police Chief stated Sabang Resort Police's authority was limited in securing.

After running the investigation to the 8 (eight) ex-ship crews of ship 18066 by the Criminal Investigation Agency, there were not any narcotics crimes conducted as alleged prior. Further, Sabang Resort Police wrote a letter to the Head of Immigration Office Class II TPI Sabang regarding the Delegation of Foreign Nationals.

The 8 (eight) ex-ship crews of ship 18066 were following the process of Immigration Action. After the process of Immigration Action was implemented, an Immigration Administrative Action was charged in a form of obligation to reside in a certain location in Indonesia (Article 75 paragraph 2 letter d of Law Number 6 of 2011 concerning

Immigration). The location was Medan Immigration Detention Center. All the eight people then were submitted to Medan Immigration Detention Center.

Meanwhile, the status of the ship and the goods remained to be the responsibility of Immigration Office Class II TPI Sabang in accordance with the handover conducted by Immigration Office Class II TPI Sabang and Sabang Resort Police Department.

To put ease in supervising the ship, Immigration Office Class II TPI Sabang wrote a letter to the agencies involved regarding the placement of ship 18066 under Iran's flag in Pasiran Dock Sabang City.

Definition of Confiscated Object and the Legal Status of the Ship 18066 under Iran's Flag

Confiscated goods which in the provisions of criminal procedure are also referred to as confiscated objects are regulated in Article 1 Number 4 of PP No.27 of 1983 concerning the Implementation of the Criminal Procedure Code, namely "objects confiscated by the State for the purposes of the judicial process".²³

An item stated as confiscated object if confiscation has been conducted by related agency. Confiscation is a process, method, action of confiscating or taking private property by the government without compensation. The process of law enforcement validates confiscation action. Therefore, confiscation is a legal action in the form of temporary taking over from possession of goods from the hands of a person or group for the purposes of investigation, prosecution and trial.²⁴

The definition of confiscation is explained in Article 1 number 16 of the Criminal Procedure Code (KUHAP) which reads: Confiscation

22 Trisapto Wahyudi Agung Nugroho, "Peran Intelijen Keimigrasian Dalam Rangka Antisipasi Terhadap Potensi Kerawanan Yang Ditimbulkan Oleh Orang Asing di Wilayah Indonesia," *Jurnal Penelitian Ilmiah Hukum*, Vol. 11, Nomor 3 (2017): 288 <http://dx.doi.org/10.30641/kebijakan.2018.V12.275-293>

23 Indonesia. "Peraturan Pemerintah Nomor 27 tahun 1983 tentang Pelaksanaan Kitab Undang Undang Hukum Acara Pidana." (1983).

24 Pengelolaan Barang Sitaan, Temuan dan Rampasan, Sie Infokum – Ditama Binbangkum

is a series of actions by an investigator to take over or keep under his control movable or immovable objects, tangible or intangible for the benefit of evidence in investigation, appointment and trial.

Furthermore, there are several sources that explain the definition of confiscated objects stated as follows:

1. According to Indonesian Dictionary (KBBI)

There is clearly no phrase of confiscated objects in the Indonesian Dictionary (KBBI). However, if the words are taken out per each, a conclusion will be retracted regarding the definition. Objects mean any goods or items in general, any form of tangible ones.²⁵ Confiscate means the action of taking over and holding goods or items under the court's decision by country's instruments (police and so on).²⁶

2. According to Common Law Dictionary

Confiscated Object (*in beslag genomen voorwerpen*) is an item which the authorization is temporarily taken over and/or saved under the authority of the investigator for evidence purpose in the inspection, prosecution, and investigation in the court.²⁷

In general, the goods that can be confiscated are as follows:²⁸

1. Objects used as a tool to commit a crime (*instumenta delicti*);
2. Objects obtained or the result of a criminal act (*corpus delicti*);
3. Other objects that do not directly have a relationship with the crime, but have strong reasons for evidence;

4. Substitute evidence, for example, if the stolen object is money, then with that money the suspect buys a radio. In this case, the radio was confiscated to be used as substitute evidence.

Before discussing further the legal status of the 18066 Iranian-flagged ship, we must first understand the meaning of confiscated goods as described above. Based on the aforementioned understanding, confiscated goods are "objects confiscated by the state for the purposes of the judicial process".²⁹ Then, it is further explained in article 38 section 1 of the Criminal Code (KUHP) which reads:

Confiscation can only be carried out by investigators with a permit from the head of the local court."³⁰

Based on the laws and regulations mentioned above, there are 3 (three) conditions that can be explained to the 18066 Iranian-flagged ship, namely:

1. There was an absence of an Investigation Commencement Order (SPDP) by the Sabang Resort Police and the Criminal Investigation Unit of the National Police Headquarters who handled this case directly. As it is known, the National Police Headquarters was still under preliminary investigation stage, it did not yet reached full investigation because there was no evidence related to the alleged crime of Narcotics against the conveyance and its crews;
2. There is no permit letter from the head of the local court to the investigator, in this case the investigator from the Police; and
3. Class II Immigration Office of TPI Sabang has never confiscated the means of transportation in the form of the ship nor included it in immigration investigation.

25 Pengertian Barang, <https://kbbi.kemdikbud.go.id/entri/barang>, diakses pada tanggal 06 April 2022.

26 Pengertian Sita, <https://kbbi.kemdikbud.go.id/entri/sita>, Diakses pada tanggal 06 April 2022.

27 Badan Pembinaan Hukum Nasional. Kamus Hukum Umum. (Jakarta: Badan Pembinaan Hukum Nasional, 2004). Halaman 115

28 Indonesia. "Peraturan Pemerintah Nomor 27 tahun 1983 tentang Pelaksanaan Kitab Undang Undang Hukum Acara Pidana." (1983).

29 Indonesia. "Peraturan Pemerintah Nomor 27 tahun 1983 tentang Pelaksanaan Kitab Undang Undang Hukum Acara Pidana." (1983).

30 Indonesia. Kitab Undang-undang Hukum Pidana (KUHP)

Based on the facts above, it can be concluded that the 18066 Iranian-flagged ship was not confiscated because there was no Investigation Commencement Order (SPDP). Therefore, the 18066 ship have not yet owned a clear legal status.

Based on article 1 point 1 of Law Number 6 of 2011 concerning Immigration, it is explained that Immigration is a matter of traffic of people entering or leaving the Indonesian territory and its supervision in order to maintain the state sovereignty.³¹ Based on the definition of Immigration as referred to in Law Number 6 of 2011 concerning Immigration, it can be concluded that Immigration only relates to people entering and leaving the Indonesian territory, not related to transportation means and their luggage. It is further explained that the authority of Immigration is in the context of carrying out tasks related to Immigration such as visas and residence permits as well as their supervision.

Furthermore, this matter is explained in Article 1 point 3 of Law Number 6 of 2011 concerning Immigration regarding the Immigration function which reads as follows:

The function of Immigration is part of state government affairs in providing immigration services, law enforcement, state security and facilitating community welfare development.³²

Referring to the Immigration function written in Law Number 6 of 2011 concerning Immigration, it is also explained that there is no Immigration function regarding transportation means, this is in line with article 1 point 1 of Law Number 6 of 2011 regarding the meaning of Immigration is a matter of the entry and exit of people from the territory of Indonesia. The implementation of services and immigration law enforcement is not aimed at the means

of transportation but at the means of person in charge, crew and passengers of the transportation.

When talking about Immigration investigations, it is also explained about the authority of the PPNS Immigration as stated in Article 105 of Law Number 6 of 2011 concerning Immigration which reads as follows:

PPNS Immigration is authorized to conduct investigations related to immigration crimes.³³

In relation to the case of 18066 ship, the Class II Immigration Office of TPI Sabang gave Immigration Action in the form of Immigration Administrative Actions against 8 (eight) people suspected of being foreigners who were former crew members of the 18066 Iranian-flagged ship. The Immigration Administrative Action is not an act of *projustitia* in which there is an Immigration investigation process. So, 18066 ship does not have the status as evidence and confiscated goods at the Class II TPI Sabang Immigration Office, because an Immigration investigation is not carried out.

If viewed from the discussion above, the presence of evidence, in this case a ship with Iranian flag, should not be the responsibility of the Class II Immigration Office of TPI Sabang.

Following the development of the alleged abuse of Narcotics by 8 (eight) foreigners from the 18066 Iranian-flagged ship, the Sabang City Police stated that the case was stopped and not continued by the Criminal Investigation Unit of the National Police Headquarters. In connection with the termination of the investigation case, in the Criminal Code article 46 paragraph 1 letter b, it is explained that:

Objects subject to confiscation are returned to the person or to them and to whom the object is confiscated,

31 Indonesia. "Undang-undang Nomor 6 tahun 2011 tentang Keimigrasian." (2011). Pasal 1 angka 1.

32 *Ibid.* Pasal 1 angka 3.

33 *Ibid.* Pasal 105

or to the person or to those who are most entitled if:

b. the case is not prosecuted because there is insufficient evidence or it turns out not to be a criminal act.⁷

Article 46 section 2 of the Criminal Code reads as follows:

“If the case is decided, then the confiscated object is returned to the person or those named in the decision unless according to the judge’s decision the object is confiscated for the state, to be destroyed or to be damaged until it can no longer be used or if the object is still needed as evidence in another case.⁸

Based on article 46 section 1 letter b and article 46 section 2 of the Criminal Code (KUHP) above, it means that Immigration is not authorized to accept the surrender of the 18066 ship.

The handling carried out by the Class II Immigration Office of TPI Sabang on the case of a foreign ship 18066 with an Iranian flag

To follow up on problems related to the presence of the 18066 Iranian-flagged ship which is under the responsibility of the Class II Immigration Office of TPI Sabang, strategic steps were taken as an effort to resolve the issue, namely:

1. The Class II Immigration Office of TPI Sabang coordinated with the Sabang Resort Police (Kapolres). On that occasion, the Sabang Resort Police said that the alleged narcotics crime case against the crew of the 18066 ship was not handled by the National Police Headquarters anymore and the process had been stopped. Then the Sabang Police expressed their view that the 18066 ship was handed over to the Sabang City Government. According to the Sabang Resort Police, the ship

should be handed over to authorized institution related to the ship and so that the ship can be utilized and used by the Sabang City Government. Following up on the suggestion submitted by the Sabang Police, the Class II TPI Sabang Immigration Office then wrote to the Sabang City Government regarding the application for 18066 ship handovers. Furthermore, the Sabang City Government said that they could not accept the ship because there was no budget for ship maintenance.

2. Class II Immigration Office of TPI Sabang coordinated with the Sabang District Attorney’s Office. On that occasion, the Sabang District Attorney said that they could not handle or process it because the case did not reach the Sabang District Attorney. This was because it was not categorized as a crime and there was no Investigation Commencement Order (SPDP) from the relevant institutions, both from the Immigration and Police. According to him, in the settlement of the ship case, it principally can be resolved between the Sabang Resort Police and the Class II of TPI Sabang Immigration Office, by attaching all the case files that have been handled related to the ship so that the ship’s legal status is determined through a court decision and proposed in the auction list of State Assets and Auction Service Office (KPKNL).

3. The Class II Immigration Office of TPI Sabang coordinated with the Sabang Class II District Court and sent a letter from the Head of the Class II Immigration Office of TPI Sabang regarding the Request for Input on the Settlement of the Presence of the 18066 Iranian flagged Ship. Following up on the letter from the Head of the Class II Immigration Office of TPI Sabang, the Sabang Class II District Court conveyed input on the settlement of the presence of the Iranian-flagged ship 18066 at Pasiran Pier,

Sabang City. Based on a reply letter from the Sabang Class II District Court, it was explained that the 18066 ship with the Iranian flag was not under investigation/legal proceedings either by the PPNS of the Class II Immigration Office of TPI Sabang and the Sabang City Police Investigator. Therefore, based on the provisions of article 52 section (1) Law Number 2 of 1986 concerning General Courts, which reads: "The Court may provide legal considerations and advice to government agencies in their regions if requested". Based on this, the Class II Sabang District Court submits the following inputs:

- a. To hold a coordination meeting with the CIQP team, Police of Water and Air, Sabang Military District Commando, Sabang Naval Base, Regional Disaster Management Agency and the Sabang Resort Police regarding problems caused by the presence of the ship at Pasiran Pier in Sabang City;
 - b. Requesting assistance through the Embassy of the Islamic Republic of Iran to inform about the presence of the 18066 Iranian-flagged ship at Pasiran Pier, Sabang City and request that it be announced to citizens who feel that they own the ship to immediately take the ship out of Indonesian waters / Pasiran Pier by specifying a time limit.
4. The Immigration Office Class II of TPI Sabang coordinated with the Embassy of the Islamic Republic of Iran for Indonesia in Jakarta. Previously, the Class II Immigration Office of TPI Sabang had sent a letter to the Embassy regarding the Application for Confirmation of Ship Ownership Status. Based on the carried out coordination, the Embassy had coordinated with relevant agencies in their country. From the coordination that has been carried out, there are 3 (three) parties who claim ownership of 18066

ship. Then it was conveyed that the Embassy would conduct a survey to the City of Sabang to be able to determine who the owner of the ship was and, in principle, the Embassy would cooperate fully to resolve the issue.

5. Furthermore, due to the increasing number of cases of the spread of COVID-19 in Indonesia and the implementation of PPKM, the Embassy of the Islamic Republic has not been able to conduct a direct survey to the City of Sabang. However, the Class II Immigration Office of TPI Sabang continue to coordinate with the Embassy, and communicate regarding the condition of the 18066 ship where high rainfall in the Sabang City area affected the condition of the 18066 ship where there is a puddle of water on the ship's engine. Therefore, follow-up is needed so that the ship does not sink.
1. The Embassy of the Islamic Republic of Iran wrote to the Immigration Office Class II Sabang Checkpoint regarding to the settlement of ship 18066 which stated that the owner of the ship 18066 had submitted to the embassy so that the ship could be auctioned in accordance with the law provisions in Indonesia and also the applicable procedures. Following up the letter from the embassy, it was conveyed that the Immigration Office Class II Sabang Checkpoint did not have the competence and function to carry out the auction as intended by the embassy.
 2. Due to the high rainfall in Sabang city and it was also suspected that there was a leakage at the bottom of the ship 18066, it made the hull flooded by the seawater. The Immigration Office Class II Sabang Checkpoint had made efforts to drain the stagnant water in the hull. It needed to be done to make the water that flooded the ship could be removed. However, due to the high volume of rainwater, the hull was flooded again. The efforts to drain

the water was once again carried out by The Immigration Office Class II Sabang Checkpoint. However, the discharge of water into the hull was very large, it made the water inundated the ship higher so that the ship sank and could not be saved, although multiple efforts had been made to prevent the ship sank.

3. Although efforts to solve the matters related to the existence of the Iranian-flagged ship 18006 could not be solved maximally because of the sinking of the ship at the Pasiran dock in Sabang city, the Immigration Office Class II Sabang Checkpoint had tried maximally by coordinating with both internal and external parties.

In coordinating with the external institution, the Immigration Office Class II Sabang Checkpoint always worked together, gave reports, and asked for guidance from the head of the Immigration internal environment. Although the problems related to the existence of ship 18066 in Sabang City had been resolved, it is possible that the same conditions can also occur in the territory of Indonesia. It is hoped that this paper can be a reference in finding the solution and also keep guided by the law in force.

CLOSING

Conclusions

The Iranian-flagged ship 18066 which entered Indonesian territory on 17 November 2019 in emergency status was handed over by Sabang resort police to the Immigration Office Class II Sabang Checkpoint. That ship was previously handled by the Police Headquarters on suspicion of narcotics crimes conducted by its 8 (eight) crew members. After an investigation done by the Police Headquarters, the 8 (eight) crews suspected as foreigners were handed over

to the Immigration Office Class II Sabang Checkpoint along with the ship. Since the handover of the ship on 25 November 2019, the status of the ship had been the responsibility of the Immigration Office Class II Sabang Checkpoint.

Basically, in the implementation of the duties and functions of immigration, it is only related to the matters of people entering or leaving the territory of Indonesia. There are not any regulations regarding transportation matters, as in Article 1 Number (1) of Law No 6 of 2011 concerning immigration.

Then, regarding the legal status of that ship if it refers to the laws and regulations applied in the territory of the Unitary State of Republic of Indonesia, it cannot be categorized as confiscated goods because that ship had not entered the domain of Investigation yet, either from the Immigration Office Class II Sabang Checkpoint or Sabang Police Station.

In an effort to resolve this case, the Immigration Office Class II Sabang Checkpoint had coordinated with several relevant institutions and also with the Embassy of the Islamic Republic of Iran for Indonesia in Jakarta.

Suggestions

According to the writer, it is necessary for the officers to understand about the scope of the main task execution and also the Immigration function as has been regulated in the Act No 6 of 2011 concerning Immigration, Government Regulation No 31 of 2013 concerning Immigration, Government Regulation No 31 of 2013 concerning Act Implementation Regulation, No 6 of 2011 concerning Immigration, Minister of Law and Human Rights Regulation and also its derivative through education and training.

ACKNOWLEDGEMENT

The writer would like to praise Allah All Mighty who has given his Bless and Grace to the writer, so that the writing of this paper can be completed. Furthermore, the process of writing this paper cannot be separated from the contributions of the people around the writer, especially to my beloved wife, the Head of the Office, the structural officials and all employees of the Immigration Office Class II Sabang Checkpoint.

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