

Research Article

SHIP FLAGS IN THE PERSPECTIVE OF INTERNATIONAL LAW OF THE SEA

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ABSTRACT

The flying of a ship's flag is of great importance in international maritime law as it signifies the ship's identity, nationality, and jurisdiction applicable to the vessel. UNCLOS 1982 mandates the flying of a ship's flag, as stipulated in Article 90. Practices that raise numerous questions have been observed, particularly in the case of the Pertamina Prime vessel, owned by PT. Pertamina International Shipping, which flies the flag of Singapore. Therefore, the normative research poses the question of whether the hoisting of the Singaporean flag by the Pertamina Prime tanker complies with international maritime law. The research findings indicate that the hoisting of the Singaporean flag by the Pertamina Prime vessel is not in violation of international maritime law. This conclusion is based on the fact that UNCLOS 1982 does not mandate ships to fly their own nation's flag, and ultimately, the benefits derived from leasing the Pertamina Prime vessel will still be enjoyed by PT. Pertamina, which holds the majority of shares in PT. Pertamina International Shipping, the operational company of the Pertamina Prime vessel.

Keywords: Flag Ship, Pertamina Prime, International Law of the Sea, Maritime Law.

INTRODUCTION

At the end of March 2022, there was widespread coverage in various national and international mass media outlets regarding the interception of a Pertamina oil tanker by Greenpeace Denmark in the waters off Frederikshavn, Denmark (Hardiantoro and Kurniawan, 2022). Greenpeace's action constituted a protest against the ongoing conflict in Ukraine. The Pertamina vessel was believed to be carrying 100,000 tons of Russian oil and intended to transfer its cargo to another supertanker, the Sea oath. Furthermore, this interception was also a demand to cease the use of fossil fuels, which is exacerbating the global climate crisis (Fahmi, 2022).

The vessel intercepted by Greenpeace was the Pertamina Prime, which is owned by pt. Pertamina International Shipping (PIS) has been under construction in Japan since December 2019. Another notable aspect of this interception incident is that the Pertamina prime was found to be registered in Singapore, hence flying the flag of Singapore. A ship's flag is the national flag of a particular state, typically flown on a vessel to indicate its nationality or the ship's national affiliation. Within the United Nations Convention on the Law of the Sea 1982 (hereafter referred to as UNCLOS 1982), an international legal instrument governing maritime law, there is no provision mandating ships to hoist the flag of a specific state on their vessels. Nevertheless, it has become an international customary practice that ships navigating international waters display a flag to signify their identity. In the period before the introduction of the Automatic Identification System (AIS), flags played a crucial role in establishing a ship's identity (Jurnal Maritim, 2022). Every ship must be registered and have a distinct identity that is not shared with other vessels. Furthermore, drawing an analogy to human identification, ship registration is akin to an individual registering their identity and citizenship. The ship's name serves as its identity, and the ship's flag denotes its nationality. Article 91 of UNCLOS 1982 stipulates that every ship must establish the conditions for conferring its nationality

on the vessel, for registering the ship within a specific jurisdiction, and for the right to hoist its flag. A ship's entitlement to fly its flag is legitimate if there is a genuine connection between the ship and its flag. This provision indicates that the hoisting of the Singaporean flag by a Pertamina-owned vessel signifies that the ship is of Singaporean nationality.

The hoisting of the Singaporean flag by a Pertamina vessel, a state-owned enterprise of Indonesia, naturally raises questions among the Indonesian public. Therefore, the author intends to delve further into the subject of state-owned Indonesian enterprises' ships flying foreign flags in an article entitled "The Pertamina tanker flying the Singaporean flag in the Context of international maritime law. This research aims to assess whether the hoisting of the Singaporean flag by the Pertamina tanker complies with international maritime law.

RESEARCH METHOD

The research method employed in this study is normative research. Normative legal research is a scientific research procedure used to uncover the truth based on the logical reasoning of legal scholarship from a normative perspective. The rigorous scholarly logic in normative legal research is built on the discipline and working methods of normative legal science, which focuses on the law itself (Ibrahim, 2006). According to Soerjono Soekanto, legal research conducted solely by examining literature or secondary data can be referred to as normative legal research or library-based legal research (Soekanto, 2006). The research materials used in this study consist of literary sources, commonly referred to as secondary data (Soekanto, 2006). Secondary data is obtained from legal sources, including international conventions or agreements, books, journals, academic works, articles, manuscripts, and online articles.

RESULTS AND DISCUSSION

Categorization Of Ships In International Maritime Law

International law distinguishes between public and private ships. The fundamental difference between public and private ships lies in their

purpose and not in the quantity of ships. In the study of the legal status of ships navigating the seas, it is advisable to initially distinguish between public and private ships. On the high seas, this status is grounded in the principle of subordination of ships to the exclusive authority of the flag State. This implies that each ship must be affiliated with the nationality of a State, which is a prerequisite for these vessels to fly the flag of that State. The authority of the flag State can be elucidated by drawing a parallel to a State's territorial jurisdiction within its territory. A ship flying the flag of a specific State can be likened to that State's territory. The ship is the floating extension of the flag state, making the vessel considered a floating extension of the State's territory. Since a State possesses absolute authority over its territory, it also holds jurisdiction over its ships navigating international waters, as these vessels are regarded as an integral part of the State's territory (Mauna, 2005).

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a. Warship

In UNCLOS 1982, it is defined that a warship refers to a ship belonging to the armed forces of a State bearing the external marks distinguishing such ships of its nationality, under the command of an officer duly commissioned by the government of the State and whose name appears in the appropriate service list or its equivalent, and manned by a crew which is under regular armed forces discipline (United Nation Convention on the Law of the Sea, Article 29). From this definition, it can be ascertained that the Convention's reference to warships is not limited solely to surface combatants but also includes submarines and various other naval vessels such as minesweepers, tugs, and military transport ships, among others, that serve within the Navy's fleet.

b. Non-Military Public Vessel

In addition to warships, there are government vessels engaged in non-military activities. For instance, government logistic ships, scientific research vessels, meteorological vessels, coast guard ships, and the like. In determining whether a vessel qualifies as public or private, it is crucial to consider the purpose for which the ship is employed. For instance, in the case of a privately owned vessel that the government leases for non-commercial or non-profit purposes, its status during the lease period is considered public. Conversely, if a private company leases a public vessel for commercial purposes, its status during the lease period is considered private.

c. International Organization Vessel

International organization vessels used for the benefit of the international community may also be classified as public ships. For instance, the United Nations (UN) and its specialized agencies are permitted to use vessels for their official functions, flying the flag of the respective organization, as outlined in Article 93 of UNCLOS 1982. Article 93 states, "The preceding articles do not prejudice the question of ships employed on the official service of the United Nations, its specialized agencies or the International Atomic Energy Agency, flying the flag of the organization." This means that UN vessels or specialized UN agencies' vessels can hoist the flag of the organization itself.

d. Merchant Vessel

As mentioned earlier, a ship's status is determined by its purpose rather than the quality of its owner. This means that commercial ships can be categorized as private vessels. Similarly, public ships that are leased or used for commercial purposes can be regarded as private vessels.

Legal Status of Ships

The legal status of a ship is closely associated with its registration, encompassing aspects related to ship ownership, nationality, and the imposition of security interests on the vessel. From a civil law perspective, ship registration essentially entails the registration of ownership rights over the ship (Fanus, 2019).

The international community has been continually endeavoring to establish a comprehensive set of international laws governing Ship Registration, one of which is the United Nations Convention on Conditions for Registration of Ships, which was concluded in 1986. However, it has not met the minimum requirement for the number of ratifying states to enter into force to date (United Nations, 2023). Indonesia itself signed the convention on January 26, 1987, but has yet to ratify it as of the present time (United Nations, 2023). In the realm of international law, ship registration is closely related to a vessel's nationality. This relationship is evident in Article 90 of UNCLOS 1982, which states that Every State shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag. Ships have the nationality of the State whose flag they are entitled to fly. There must exist a genuine link between the State and the ship. From this provision, it is evident that when a ship flies the flag of a particular State, the vessel assumes the nationality of the State whose flag it hoists. Another critical aspect of Article 90 pertains to the requirement of a "genuine link" that must exist between the ship and the State whose flag is being flown by the ship in question.

The concept of "Genuine Link" represents a principle of direct relevance that signifies a profound connection between the flag State and the vessel flying its flag (Umar, 2001). Essentially, the genuine link denotes an unequivocal relationship between the flag State, which provides legal certainty for the ship using its flag. A ship flying the flag of a specific State is subject to the exclusive jurisdiction of that State on the high seas, as outlined by Article 92 of UNCLOS 1982. This provision becomes particularly valuable when a ship is on the high seas, where no single State has jurisdiction. The aforementioned provision serves the purpose of establishing legal coherence to ensure order and discipline on board the ship. The laws of the flag State apply to all individuals on the vessel, regardless of whether they are citizens of the flag State or foreigners. These laws apply to all legal actions taking place on the ship, including criminal offenses (Mauna, 2005).

However, when a ship enters the territorial sea or the territorial waters of a coastal State, there are exceptions to Article 92 of UNCLOS 1982, as detailed in Article 27 of the same convention. It is stated that the coastal State's criminal jurisdiction cannot be applied to a vessel flying the flag of another specific State, except in cases where: (1) the consequences of the criminal act extend to the coastal State; (2) the offense is committed to disrupt the peace and security of the coastal State; (3) there is a request from the ship's captain or the Consulate General and Diplomatic Representatives of the flag State of the vessel to the coastal State; (4) there is strong suspicion that the ship and its crew are engaged in the trafficking of illicit drugs.

The nationality of ships, whether they are public or private vessels, is indicated by the flag they fly. For warships, which are public vessels,

this is not an issue, as their nationality is adequately demonstrated by their flag. However, for public or private ships, merely displaying a flag is insufficient. There must be other evidence, as stipulated in UNCLOS 1982, particularly in Article 91(2), which states that every state shall issue to ships to which it has granted the right to fly its flag documents to that effect. Under the provisions of Article 91(2) of UNCLOS 1982, Indonesian-flagged ships will fly the Indonesian flag and possess documentary evidence of the ship's nationality, as detailed in the "Tanda Kebangsaan Kapal Indonesia" (Indonesian Ship's Nationality Certificate).

Flag of Convenience

The concept of the "Flag of Convenience," commonly abbreviated as FOC, essentially involves the practice of registering a ship in a country other than its actual country of origin. Ship registration policies demonstrated by countries like Panama, Liberia, and the Marshall Islands indicate that these nations implement FOC practices. The adoption of FOC policies began when countries like the United States tightened various regulations concerning ship ownership around the 1920s. Ship owners found that these regulations increased operational costs, particularly in terms of paying crew wages, and made it difficult for them to compete in the international shipping market. Motivated by these challenges, ship owners then sought out countries that allowed ships from other nations to operate under their flags without having to invest their capital in that country. This enabled them to employ crews of any nationality and implement lower tax rates (Hub, 2023). Such conveniences were found in countries like Panama and Liberia, which had implemented Open Registries.

It is undeniable that the practice of Flag of Convenience (FOC) can give rise to serious issues in international shipping. Typically, when a country adopts FOC, it is motivated by the economic interests of ship companies to enhance their competitiveness on the international stage. By implementing FOC, ship companies or owners can bypass regulations that are typically imposed on their nationals, such as tax obligations, minimum wages for crew members, ship maintenance standard operating procedures, and environmental legal obligations (Seftiariski, 2022). This, in turn, results in poor working conditions for the crew members. According to the International Transport Workers' Federation (ITF), crew members working on ships flying FOC are vulnerable to adverse working conditions, including inadequate wages, subpar ship conditions, insufficient food and drinking water, and extended working hours without adequate rest, leading to stress and fatigue (International Transport Workers Federation, 2023). As of today, ITF records around 40 countries registered as FOC flags (International Transport Workers Federation, 2023). Most recently, Cook Islands, Palau, St. Kitts and Nevis, Togo, Cameroon, Sierra Leone, and Tanzania have joined the list of FOC flag states (Nautilus International, 2021). This situation is particularly concerning when it is discovered that Cook Islands, Palau, St. Kitts and Nevis, and Togo are among the signatories to the Maritime Labour Convention.

The Maritime Labour Convention, also known as the Maritime Labor Convention, is an international labor convention that comprehensively and extensively regulates the rights and standards of seafarers, with international standards. This convention was adopted during the 94th session of the International Labour Organization (ILO) in February 2006 and became effective in all ILO member states on August 20, 2013 (Ministry of Labour, 2016).

Provisions for the Hoisting of a Ship's Flag based on Maritime Legislation

Article 91(1) of UNCLOS 1982 states that "Every state shall fix the condition for the grant of its nationality to ships, for registration of

ships in its territory, and for the right to fly its flag...". Consequently, to fulfill its obligations as a UNCLOS 1982 ratifying state and as a flag state, Indonesia has established national regulations regarding ship registration and the granting of ship nationality. Furthermore, it carries out jurisdiction and supervision over ships flying its flag. These regulations are encompassed in the Indonesian Criminal Code (KUHD), Law No. 17 of 2008 on Shipping, specifically in the sixth section dealing with the Legal Status of Ships, covering articles 158 through 161. Additionally, these regulations are also addressed in implementing regulations such as Government Regulation No. 51 of 2002 on Shipping and Minister of Transportation Regulation No—PM 13 of 2012 on Ship Registration and Nationality.

In the maritime legislation, it is stipulated that the scope of the law encompasses all activities related to transportation in Indonesian waters, port operations, maritime safety and security, and the protection of the maritime environment in Indonesian waters. This includes all foreign vessels sailing in Indonesian waters and all Indonesian-flagged vessels outside Indonesian waters (Law Number 17 of 2008 on Shipping, Article 4). In general terms, ship registration is intended to ensure that the vessel can always be identified throughout its operational lifetime. Therefore, any changes in the vessel's name, ownership, size, specifications, or other relevant details must be accurately reported to the ship registration authorities at the place where the ship is registered (Law Number 17 of 2008 on Shipping). The registration of ownership rights for ships encompasses three categories: sea vessels (including navy vessels, ferry transport, and other sea vessels), fishing vessels (used for capturing fish and other marine animals), and inland vessels (used on rivers and lakes) (Minister of Transportation Regulation No—PM 13 of 2012 on Ship Registration and Nationality, Article 6). Among these three categories, there is no fundamental difference in the registration process, except for fishing vessels, which require the relevant minister's recommendation.

The Shipping Law does not impose limitations or obligations that every vessel owned by an Indonesian citizen must be registered or must fly the Indonesian flag. Instead, the Shipping Law merely states that ship owners are free to choose any registration location for their vessels (Law Number 17 of 2008 on Shipping, Article 159). However, vessels eligible for registration in Indonesia should be owned by Indonesian citizens or legal entities established under Indonesian law with a registered address in Indonesia (Law Number 17 of 2008 on Shipping, Article 158(2)). In the maritime world, three prevalent streams of ship registration are practiced by countries, namely

a. The National School

This stream adheres to strict registration regulations. Portugal is one of the countries that implements this system, whereby the registered vessel must be built in the registering country, owned by citizens of the registering country, and both the ship's captain and crew members must be citizens of the registering country. The close relationship between the vessel owner and the vessel itself within this stream has led to it being referred to as a rigid closed registry.

b. The School of Relaxed Law

Countries following this approach include Panama, Liberia, Honduras, and Costa Rica, and are often associated with the Flag of Convenience due to their practice of allowing the registration of vessels owned by foreign entities without any conditions and frequently on the same terms as for vessels owned by their nationals. This stream is often seen as blurring the principle of the genuine link outlined in Article 91(1) of UNCLOS 1982 (United Nations Convention on the Law of the Sea, Article 91(2)).

c. The Balanced School

This stream relies more on vessel ownership to establish a genuine link between the flag state and the vessel flying its flag as a mark of nationality. Countries following this approach include India and the United Kingdom. Adherents of this stream require vessel registration to be tied to ownership by their citizens, legal entities established under their national laws, and located within the jurisdiction of the registering country, or where a portion of the shares is owned by their citizens. This stream is also known as a flexible closed registry system.

From the brief overview of the three ship registration streams mentioned above and a comparison with the provisions of the Indonesian Shipping Law and Ministerial Regulation No. PM.13 of 2012 on ship registration, it can be inferred that Indonesia follows the Balance School or closed registry system. This is implied by Article 5(2) of Ministerial Regulation No. PM.13 of 2012, states that vessels eligible for registration are those owned by Indonesian legal entities, which are joint ventures where the majority of shares are held by Indonesian citizens. This provision also allows foreign parties to have vessels in Indonesia, but the ownership must be shared with Indonesian citizens.

However, the wording of Article 159(2) of the Shipping Law and Article 5(2) of Ministerial Regulation No. 13 does not in any way obligate vessels owned by Indonesian citizens to be registered in Indonesia and fly the Indonesian flag.

Hoisting of the Singaporean Flag by the Pertamina Tanker Ship

The vessel intercepted by Greenpeace in March 2022 was the Pertamina Prime, owned by PT. Pertamina International Shipping (PIS). This vessel's construction began in Japan in December 2019. PT. Pertamina International Shipping (PIS) is a subsidiary of Pertamina, established on December 23, 2016, under Notary Act No. 37 of December 2016, before Notary Lenny Janis Ishak, SH (Pertamina, 2022). As an international shipping practice company, PIS capitalized on opportunities by providing benefits such as professional maritime business management, adhering to Indonesian maritime practices, and enjoying financial advantages through tax incentives (Pertamina, 2022). To date, PIS continues its business expansion, including the establishment of Pertamina International Shipping Pte Ltd in Singapore, along with its subsidiaries, PIS Polaris Pte Ltd and PIS Paragon Pte Ltd, also headquartered in Singapore.

Presently, PIS possesses 2 VLCC (Very Large Crude Carrier) vessels, namely Pertamina Pride and Pertamina Prime. VLCCs are specialized tanker ships designed for the transportation of crude oil, meeting the requirements for FOB crude oil transportation as a refinery feedstock (Bumn, 2022). In other words, besides distributing crude oil, both VLCC vessels can also be chartered by various parties looking to transport crude oil to different parts of the world. The Pertamina Pride and Pertamina Prime vessels were constructed at the Japan Marine United (JMU) shipyard starting in 2018 and commenced their operations in 2021.

The use of foreign flags by Indonesian ships is not a recent occurrence. In 2013 and 2014, Pertamina ships transporting LPG, namely VLGC (Very Large Gas Carrier), which were ordered from Hyundai Heavy Industries in South Korea, underwent the process of reflagging before entering Indonesian waters. This was necessary because these ships were previously flagged under Panama (Bumn Info, 2021). Currently, the Pertamina Prime vessel is flying the flag of Panama (Pertamina, 2022), which is one of the countries practicing Open Registry and is a member of the Flag of Convenience (FoC). The Flag of Convenience (FoC) represents flags from specific

countries that have been listed by the International Transport Workers Federation (ITF) as nations that provide legal ease for ships to sail under the FoC banner (International Transport Workers Federation, 2023). Approximately 73% of ships worldwide sail under FoC flags. However, FoC countries offer these privileges by imposing lower taxes, fees, and less stringent regulations on ship owners. This results in the easy practice of flag hopping, where ships change their FoC flags to avoid taxes and reduce costs, including the Pertamina Prime vessel (Wikipedia, 2023).

The use of foreign flags by Pertamina's vessels is not a new occurrence. In 2010, it was recorded that 12 ships carrying fuel and liquefied petroleum gas for PT Pertamina (Persero) were still using the Indonesian flag. This was due to the limited number of very large vessels owned by national entrepreneurs and crewed by Indonesian citizens at that time. Consequently, Pertamina requested special dispensation from the Ministry of Transportation to temporarily use its foreign-flagged vessels while waiting for the process of changing the flags of these 12 vessels (Kompas, 2010). This raises its own set of issues. Considering the Cabotage principle that has been implemented in Indonesia, there are certain concerns. The Cabotage principle is governed by Article 8 of Law No. 17 of 2008 on Shipping, which stipulates that domestic maritime transport activities must be carried out by national shipping companies using Indonesian-flagged vessels crewed by Indonesian nationals. This means that foreign-flagged vessels are prohibited from transporting people and/or goods between islands or between ports in Indonesian waters. The only exception to this principle is when there are no available or sufficiently available Indonesian-flagged vessels to transport people and/or goods, and approval from the Minister is obtained, as was the case with the 12 foreign-flagged Pertamina vessels.

The implementation of the Cabotage principle as described above can provide assurance for the development of national companies or those owned by Indonesian citizens. However, on the flip side, it can also pose challenges for State-Owned Enterprises (BUMN) like PT Pertamina in terms of maximizing profits and maintaining competitiveness at the international level. To stimulate economic growth, a startup company can expand its business by establishing subsidiary companies. As these subsidiary companies grow, they naturally contribute to the profits of the parent or startup company. The benefit that the parent company gains from investing in subsidiary shares is that it receives a share of the profits generated by the subsidiary proportional to its ownership stake. PT Pertamina (Persero) is a parent company with 22 subsidiary companies operating in various sectors such as oil, hospitality, healthcare, insurance, and shipping, including PT PIS (Pertamina International Shipping) (Pertamina 2023). Since 2018, it has been recorded that PT Pertamina (Persero) owns 99.95% of PT PIS's shares, with the remaining 0.05% held by PT Pertamina Pedeve Indonesia (Pertamina, 2023). This means that the majority of the profits generated by PT PIS in its shipping business will accrue to PT Pertamina (Persero).

The use of the Indonesian flag by PT. Pertamina's ships indeed demonstrate a Genuine Link and legal unity between the ships and their owner. However, this practice may hinder the global competitiveness of PT. PIS. Before 2018, Indonesian-flagged ships were included in the Black List Flag Performance Tokyo MoU. Tokyo MoU is a regional organization formed through an agreement among Port State Control (PSC) authorities in the Asia-Pacific region on December 1, 1993. PSC is a regime of inspections conducted by a State to examine foreign ships or ships not flying its flag. PSC inspections evaluate a ship's compliance with the requirements and standards outlined in various conventions, including the Marine Pollution Convention (MARPOL), Safety of Life at Sea (SOLAS),

Standard of Training Certification and Watch keeping (STCW), and the Maritime Labour Convention (MLC). A State's authority to inspect foreign ships entering its territorial waters and EEZ is outlined in Articles 218(1) and 219 of UNCLOS 1982.

There are 3 categories of Flag Performance: Black List, Grey List, and White List. Each list is determined based on a ship's compliance with the international legal instruments mentioned above. Before 2018, Indonesian-flagged ships were categorized as Black List, meaning that during those years, the ratio of Indonesian-flagged ships experiencing detentions was relatively high, with 17 out of 267 ships being detained. In 2019, the ratio of Indonesian-flagged ships experiencing detentions by PSC decreased to 11 out of 298 ships, moving up one level to the Grey List category. The detention ratio decreased drastically in 2020, with only 6 out of 151 Indonesian-flagged ships being detained, resulting in Indonesia entering the White List category for the first time, which was maintained until June 2022, with 3 out of 98 ships being detained. The White List category signifies the highest level of compliance among ships with international regulations (Jurnal Maritim, 2022).

This means that from the perspective of Asia-Pacific countries, Indonesian-flagged ships are performing at their best. Indonesia's inclusion in the White List category can enhance trust from customers (ship owners who charter ships) and insurance companies in Indonesian Shipping Companies due to their adherence to international law. Indirectly, Indonesian ports are also considered disciplined because their PSC functions effectively. This stands in contrast to the Paris MoU. In the 2022 report by the International Chamber of Shipping, Indonesian-flagged ships were categorized under the Grey List based on the Paris MoU (International Chamber of Shipping, 2022). This indicates that the performance of Indonesian-flagged ships in the eyes of European countries is not yet perfect. The differing categories between the two MoUs mentioned above suggest that Indonesian-flagged ships have not gained universal acceptance in all regions. Therefore, to penetrate the European market and other regions, the use of a different flag is one of the options that needs to be considered. UNCLOS 1982, as previously explained in Articles 91 and 92, does not obligate a ship to use the flag of its owner's home country. UNCLOS 1982 only states that a ship must have nationality indicated by its flag. Genuine Link is not further elaborated upon in UNCLOS 1982. Still, Shaw argues that Genuine Link exists to ensure the effective implementation of the obligations of the flag State and is not a criterion that refers to the validity of ship registration in a flag State, which may differ from one state to another. Ships are required to sail under the flag of one state only and are subject only to the exclusive jurisdiction of the flag state. In the case of using the Singaporean (and later Panamanian) flag by PT. PIS's vessel Pertamina Prime, a subsidiary of PT. Pertamina (Persero), complete blame cannot be assigned. They are taking into consideration the provisions of UNCLOS 1982, which only require the flying of a specific flag without necessitating that it must be the flag of the vessel's home country, and Indonesia's positive legal provisions, which mandate that ships operating within Indonesian waters must carry the Indonesian flag and be manned by Indonesian nationals, while not obligating ships owned by Indonesian nationals or domestic companies to fly the Indonesian flag.

CONCLUSION

From the discussions and analyses above, it can be concluded that the flying of the Singaporean flag by the Pertamina prime vessel complies with international law. However, to prevent oversights in control and supervision and consider the obligation to provide conducive and humane working conditions for the ship's crew, it is highly recommended that vessels owned by pt. Pertamina (persero)

or other national individuals or companies refrain from flying flags of countries that implement foc for vessels registered in their jurisdiction.

REFERENCES

- 1982 United Nations Convention on the Law of the Sea
Bumn. (1 April 2022). Tanker Raksasa Pertamina Pride Siap Salurkan Energi Nasional. <https://bumn.go.id/post/tanker-raksasa-pertamina-pride-siap-salurkan-energi-nasional>.
- Bumn Info. (2021). Tanya Bumn: Mengapa Kapal Pertamina Berbendera Panama [Viedo]. <https://www.youtube.com/watch?v=pw3C7f6ZA3w>, Tanya BUMN : Mengapa Kapal Pertamina Berbendera Panama?.
- Fanus, Wilyon. (2019). Tinjauan Yuridis Pembuatan dan Pengukuran Kapal Standar Pelayaran di Kementerian Perhubungan Pelabuhan Kota Batam [unpublished thesis]. International University of Batam.
- Fotaleno, Fahmi. (5 April 2022). Kapal Pertamina Yang Dicegat Aktivis Greenpeace Terdaftar dan Berbendera Singapura. <https://www.indozone.id/news/L9s8P0g/kapal-pertamina-yang-dicegat-aktivis-greenpeace-terdaftar-dan-berbendera-singapura/read-all>
- Hardiantoro, A & Kurniawan, Rendrika F. (5 April 2022). Kronologi dan Penyebab Kapal Pertamina Dicegat Greenpeace di Denmark. <https://www.kompas.com/tren/read/2022/04/05/193000965/kronologi-dan-penyebab-kapal-pertamina-dicegat-greenpeace-di-denmark?page=all>
- Hub. (2023). Flags of Convenience: Why do Shipowners Prefer Them and What Is Charterers Position. <https://www.hub.com.pa/flags-of-convenience-why-do-shipowners-prefer-them-and-what-is-charterers-position/>.
- Ibrahim, Johny. (2006). Teori dan Metodologi Penelitian Hukum Normatif. Sinar Grafika.
- International Chamber of Shipping. (2022). Shipping Industry Flag State Performance. <https://www.ics-shipping.org/current-issue/shipping-industry-flag-state-performance-2021-2022/#:~:text=The%202021%2F2022%20edition%20is,environment%20and%20decent%20working%20conditions>.
- International Transport Workers Federation. (2023). Flags of Convenience <https://www.itfglobal.org/en/sector/seafarers/flags-of-convenience>
- Jurnal Maritim. (30 July 2022). Indonesia Bertekad Pertahankan Status White List Tokyo Mou. <https://jurnalmaritim.com/indonesia-bertekad-pertahankan-status-white-list-tokyo-mou/>.
- Jurnal Maritim. (20 June 2022). Pengaturan Bendera Pada Kapal Dalam Unclos 1982. <https://jurnalmaritim.com/pengaturan-bendera-pada-kapal-dalam-unclos-1982/>.
- Kompas. (12 January 2010). 12 Kapal Pertamina Masih Berbendera Asing. <https://nasional.kompas.com/read/2010/01/12/2113070/artikel-video-kgmedia.html>. Law Number 7 of 2008 on Shipping
- Mauna, Boer. (2005). Hukum Internasional : Pengertian, peranan dan Fungsi Dalam Era Dinamika Global. Penerbit Alumni.
- Ministry of Labour. (19 September 2016). Pemerintah dan Dpr Ri Sepakat Untuk Menyetujui Pengesahan Marime Labour Convention 2006. <https://jdih.kemnaker.go.id/berita-pemerintah-dan-dpr-ri-sepakat-untuk-menyetujui-pengesahan-maritime-labour-convention-2006-konvensi-ketenagakerjaan-maritim-2006.html>.
- Minister of Transportation Regulation No—PM 13 of 2012 on Ship Registration and Nationality
- Nautilus International. (6 August 2021). Itf Names Seven Countries as Flags of Convenience. <https://www.nautilusint.org/en/news-insight/news/itf-names-seven-more-countries-as-flags-of-convenience/>.

- Pertamina. (2023). Anak Perusahaan. <https://pertamina.com/id/anak-perusahaan>.
- Pertamina. (2023). Komposisi Pemegang Saham. <https://pertamina-pis.com/komposisi-pemegang-saham>
- Pertamina. (20 March 2022). Tonggak Sejarah. <https://www.pertamina-pis.com/tonggak-sejarah>.
- Pertamina. (23 May 2022). Tentang Pis. <https://www.pertamina-pis.com/tentang-pis>.
- Pertamina. (20 June 2022). Detail Armada. <https://www.pertamina-pis.com/detail-armada?search=PERTAMINA-PRIME>.
- Soekanto, Soerjono. (2006). Pengantar Penelitian Hukum Cetakan 2006. UI Press.
- Seftiariski, Ratih. (2022). Flags of Convenience: Emerging Forces of Globalization and Problem Creator of the Seas. [https://kkp.go.id/an-component/media/upload-gambar/pendukung/Archivelago/Makalah%20Jabfung/Flags%20Of%20Convenience%20\(FOC\)%20Emerging%20Force%20Of%20Globalization%20And%20Problem%20Creator%20For%20The%20Seas.pdf](https://kkp.go.id/an-component/media/upload-gambar/pendukung/Archivelago/Makalah%20Jabfung/Flags%20Of%20Convenience%20(FOC)%20Emerging%20Force%20Of%20Globalization%20And%20Problem%20Creator%20For%20The%20Seas.pdf).
- United Nations. (2023). Status of the Convention on Conditions for Registration of Ships. https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XII7&chapter=12&clang=_endiakses pada 21 November 2022
- Umar, M. Husseyn. (2001). Hukum Maritim Dan Masalah-Masalah Pelayaran di Indonesia, Buku I. Pustaka Sinar Harapan.
- Wikipedia. (7 January 2023). Bendera Kemudahan. https://id.wikipedia.org/wiki/Bendera_kemudahan.
