



JURIDICAL ANALYSIS OF DECISION NUMBER 27/PDT. G/2019/PN. TBK AGAINST LAWSUITS FOR UNLAWFUL ACTS ON MEANS OF TRANSPORT CONFISCATED BY THE STATE

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Abstract

Article 109 paragraph (2) of Law Number 17 of 2006 concerning Amendments to Law Number 10 of 1995 concerning Customs regulates that means of transport that are solely used to commit criminal acts can be confiscated for the state. Decision Number 102/Pid.Sus/2019/PN.Tbk stated that the means of transporting the MT Yosoa ship were confiscated for the state and in Decision Number 27/Pdt.G/2019/PN.Tbk, the judge ruled that the Tanjung Balai Karimun District Prosecutor's Office Cq. Public Prosecutor had committed an unlawful act. The purpose of the research is to analyze the judge's consideration of the lawsuit for unlawful acts, and the extent of Decision Number 27/PDT. G/2019/PN. Tbk influences the legal interpretation of unlawful acts, as well as the ownership status of MT YOSOA ships that have been decided to be confiscated by the state. This research is a normative juridical research. Data is collected and then analyzed qualitatively. The results of the research show that the judge's decision has weaknesses in legal considerations which results in legal uncertainty and injustice for the parties. In addition, there are inconsistencies in assessing the evidence of ship ownership and elements of unlawful acts, this decision also shows weaknesses in determining liability, due to the lack of parties involved in the lawsuit. It is recommended that the judge be more careful in considering all aspects of the law and exploring the material truth thoroughly. All interested parties must be involved in the lawsuit so that accountability can be clearly established.

Keywords: Analysis, Lawsuit, Unlawful Acts, Means of Transport.

1. INTRODUCTION

In Article 1 number 1 of Law Number 17 of 2006 concerning Amendments to Law Number 10 of 1995 concerning Customs, Customs is all activities related to the supervision of the traffic of goods entering or leaving the customs area as well as the collection of import duties and export duties. In the Law on Customs, there are 2 (two) activities that are regulated to be implemented, namely Import and Export which are identical to international trade activities. International trade has become an important aspect in the economy of countries in



the world, including Indonesia, this is because no country is truly independent because one country needs each other and complements each other.

Each country has different characteristics in terms of natural resources, climate, geography, demographics, economic structure, and social structure. This condition makes countries practice international trade to meet the needs of the market at home or abroad. The Directorate General of Customs and Excise has the task of formulating and implementing policies in the fields of supervision, law enforcement, services and facilitation, as well as optimizing state revenue in the field of customs and excise in accordance with the provisions of laws and regulations. In preventing, prosecuting, and investigating smuggling crimes, there is a separate Directorate called the Directorate of Enforcement and Investigation (P2) (Glaidy Angelina, 2023).

In addition to carrying out some of the main duties of the Ministry of Finance in the field of Customs and Excise, based on the policy set by the Minister and securing government policy related to the traffic of goods entering or leaving the Customs Area and the collection of Import and Excise Duties and other state levies based on applicable laws and regulations. Customs and Excise has the function of *Trade Fasilitator, industrial assistance, community protector, revenue collector*. In international trade practices, violations that are not in accordance with the provisions stipulated in Customs laws are often found. As happened in the supervision area of the Regional Office of the Directorate General of Customs and Excise (DJBC) specifically for the Riau Islands through the BC 30005 Patrol Ship Task Force which carried out stops and inspections of transportation facilities (ships) that sailed in the waters of Penghibu with a direction towards OPL Timur, Malaysia.

From the results of the examination, it was found that The ship is named MT. Yosoa EKS. WI No. I was manned by 10 people and contained $\pm 1,500$ KL of Sloop Oil that had not yet been enumerated. The ship is not equipped with an outward manifest document or an export notification document. From the results of the examination conducted by the BC 30005 patrol ship unit, and based on the results of interviews with all MT crews. Yosoa EKS. WI No. I, sufficient preliminary evidence was obtained and it should be suspected that there had been a Customs crime in the Export Sector as referred to in Article 102A letter a and Article 102A letter e of Law Number 17 of 2006 concerning Amendments to Law Number 10 of 1995 concerning Customs, and based on this the Riau Islands Special DJBC Regional Office conducted an investigation process on the transportation of Crude Petroleum Oil from the Outer Buoy Balik Papan to the East OPL (East OPL) Malaysia.

After the investigation process by DJBC was completed, the case was transferred to the Prosecutor's Office, based on Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia. The prosecutor's office that acts as a public prosecutor aims to carry out the task of prosecution by delegating criminal cases to the district court to be examined and decided by the judge at the court hearing (Agung Irawan, 2019). That the violation of the provisions of the Customs Law as mentioned above, has been tried at the Tanjung Balai Karimun District Court and has received a verdict as stated in Decision Number: 102/Pid.Sus/2019/PN. Tbk which states that it has been legally and convincingly proven guilty of committing a criminal act of jointly transporting export goods without being protected by valid documents in accordance with the customs notification. Stipulate evidence of 1 (one) unit of MT transportation facilities. YOSOA Ex. WI was confiscated for the state.



The Decision Number: 102/Pid.Sus/2019/PN.Tbk as mentioned above, which stipulates that the MT YOSOA ship was confiscated for the state, received legal remedies from PT. Two Oil Partners who claim to be the owners of the MT YOSA ship, and based on the evidence of ownership owned, PT. Two Oil Partners filed a lawsuit in the Civil Court. In its lawsuit, PT. Dua Mitra Oil explained that the company is a company engaged in public transportation and as the owner of a ship named MT YOSOA whose ownership status has been confiscated by the state based on the Decision of the Tanjung Balai Karimun District Court in a criminal case Number: 102/Pid.Sus/2019/PN Tbk. In the civil lawsuit, PT. Two Oil Partners also explained that the MT YOSOA ship was collateral for the plaintiff's loan to BANK MUAMALAT and because the ownership of the MT YOSOA ship had been confiscated by the state, PT. Dutra Mitra Oil suffered a loss of Rp. 4,500,000,000. (four billion five hundred million rupiah).

That based on the lawsuit of PT. The Dutra Mitra Oil, The panel of judges granted part of the plaintiff's lawsuit and stated that the defendant had committed an unlawful act. The verdict also stipulates that the MT YOSOA ship, based on Deed Grosse Number 6703 dated March 7, 2011, legally belongs to the plaintiff. In addition, the plaintiff was declared to be the legal and good-faith owner of the MT YOSOA ship ex-Indonesian citizen No. 1 with the technical specifications mentioned. The plaintiff's lawsuit was rejected and the rest were rejected, and the defendant was sentenced to pay the case fee of Rp3,132,000.00 (three million one hundred and thirty-two rupiah). In the subject matter, the judge considered that there was causality between the Defendant's actions of ignoring the facts related to the ownership of the MT Yosoa ship and the Plaintiff's losses, so that the Defendant's actions were considered an unlawful act. The judge then granted part of the Plaintiff's lawsuit and determined that the Defendant must be liable for the costs incurred in this case.

Unlawful acts in criminal law are regulated in the Criminal Code (KUHP), while acts against the law (*wrong*) in civil law is further regulated in Article 1365 of the Civil Code or *Burgerlijk Wetboek* (BW). Where the article reads: "Every unlawful act that brings harm to another person, obliges the person who, by mistake, publishes the loss, to compensate for the loss". From this description, the elements of unlawful acts include unlawful acts, mistakes, causes and effects between losses and deeds and the existence of losses (Indah Sari, 2020).

The definition of unlawful acts in judicial practice in Indonesia can be found in the Jurisprudence of the Supreme Court of the Republic of Indonesia Number: 3191/K/Pdt/1984 dated February 8, 1986. This jurisprudence outlines the norm that an act is qualified as an unlawful act if it has met 4 (four) criteria, namely: Unlawful Acts must be interpreted as doing or not doing something that is contrary to the subjective rights of others, the legal obligations of the perpetrator, the method of decency, and the propriety of thoroughness and prudence in society (Markus Suryoutomo, 2022). Article 1365 of the Civil Code states that every unlawful act, which brings harm to another person, obliges the person who, by mistake, publishes the loss, to compensate for the loss. The losses referred to in Article 1365 of the Civil Code must be caused by the Unlawful Act. In other words, between loss and deed, there must be a causal relationship (*Little guys*) direct. Article 1365 of the Civil Code is very important, because through this Article unwritten laws are considered by the Law (I Putu Eka Juliawan, 2020).

In terms of the suitability of authority carried out by the Defendant and Defendant I as the authorized party in carrying out the seizure is regulated in Article 1 number 16 of the Criminal Code explains: "Confiscation is a series of actions by the investigator to take over and or keep under his control movable or immovable, tangible or intangible objects for the purpose of proving in investigation, prosecution and trial".



Judges in resolving conflicts faced to them must be able to resolve objectively based on applicable laws, so in the decision-making process, judges must be independent and free from the influence of any party, including the executive (Busyairi Ahmad, 2020). In decision-making, judges are only bound by the relevant facts and legal principles that become or are used as the legal basis for their decisions. However, the determination of the facts that include the relevant facts and the choice of legal principles on which to be used as a basis for resolving the case he is facing is decided by the judge concerned himself. Thus, it is clear that the judge or judges have great power over the parties to the dispute with respect to the masala or conflict faced by the judge or judges.

2. RESEARCH METHOD

In this study, the type of research used is a normative legal research method that focuses on the study of applicable legal norms or rules, or commonly known as library research (Mardalis, 2019). And using the case approach method and the legislative approach (Mukti Fakar, 2010). The sources of legal materials consist of primary and secondary legal materials, as well as legal material collection techniques through library studies and field studies. Data analysis uses qualitative methods, namely data processing through the stages of data collection, classifying, connecting with existing theories and problems (Busyairi Ahmad, 2020).

3. RESULTS AND DISCUSSION

3.1 Judge's Considerations in Determining the Verdict on Unlawful Acts Lawsuit

A judge's decision or commonly called a court decision is something that is very desired or expected by the parties to resolve disputes between them as well as possible. Because with the judge's decision, the parties to the dispute expect legal certainty and justice in the case before them.⁶³ In order to be able to make a decision that truly creates legal certainty and reflects justice, the judge as a state apparatus must really know the nature of the case and the applicable provisions, as well as written and unwritten laws such as customary law (Moh. Taufik Makarao, 2018).

From this, it can be concluded that a verdict is a statement made in written form by the judge authorized as a state official, which is announced in front of the general assembly after passing the procedural law. In general, it aims to solve a problem.

1. The judge's consideration in Decision No. 27/PDT. G/2019/PN. Tbk

The judge's consideration is a stage where the panel of judges considers the facts revealed during the trial process. The judge's consideration is one of the most important aspects in determining the realization of the value of a judge's decision that contains justice and contains legal certainty, besides that it also contains benefits for the parties concerned so that this judge's consideration must be addressed carefully, well, and carefully. If the judge's consideration is not thorough, good, and meticulous, then the judge's decision derived from the judge's consideration will be canceled by the High Court/Supreme Court (Mukti Arto, 2018).

a. Position Case

In international trade practices, violations that are not in accordance with the provisions stipulated in Customs laws are often found. As happened in the supervision area of the Regional Office of the Directorate General of Customs and Excise (DJBC) specifically for the Riau Islands through the BC 30005 Patrol Ship Task Force which stopped and inspected the shipping facilities (Ships) that sailed in the waters of Penghibu with a direction towards OPL Timur, Malaysia. From the results of the examination, it was found that Kapal MT. Yosoa EKS. WI



No. I has a crew of 10 people and carries a cargo in the form of Sloop Oil weighing 1,500 KI, although the enumeration of the cargo has not been carried out. This ship is not equipped with an outward manifest document or an export notification document.

From the results of the examination carried out by the BC 30005 patrol boat unit, sufficient preliminary evidence was obtained and it should be suspected that there had been a criminal act of Customs in the Export Sector as referred to in Article 102A letter a and Article 102A letter e of Law Number 17 of 2006 concerning amendments to Law Number 10 of 1995 concerning Customs, and based on this the Riau Islands DJBC Regional Office carried out an investigation process against the ship. After the investigation process by the DJBC was completed, the case was transferred to the Prosecutor's Office, based on Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia. The prosecutor's office that acts as a public prosecutor aims to carry out the task of prosecution by delegating criminal cases to the district court to be examined and decided by the judge at the court hearing.

That the violation of the provisions of the customs law as mentioned above, has been tried at the Tanjung Balai Karimun District Court and has received a verdict as stated in Decision Number: 102/Pid.Sus/2019/PN.Tbk, and reads The defendant was proven guilty of committing the crime of transporting export goods without valid documents according to the customs notice. He was sentenced to 1 year and 6 months in prison and a fine of IDR 1,000,000,000.00, with the provision that if the fine is not paid, it will be replaced with a prison sentence of 3 months. The period of arrest and detention was deducted from the sentence imposed, and the defendant remained in custody. Evidence in the form of means of transporting MT. YOSOA Ex. WI was confiscated for the State, while other evidence was returned to the rightful owners.

In Decision Number 102/Pid.Sus/2019/PN.Tbk, the judge considered several relevant legal aspects:

- 1) The confiscation of evidence is legal according to Article 181 paragraph (1) of the Criminal Code.
- 2) Proven to have violated Article 102A letter e of the Customs Law.
- 3) The criminal elements of Article 55 paragraph (1) 1 of the Criminal Code are met.
- 4) The defendant is considered capable of criminal responsibility.
- 5) The second alternative charge was chosen because it was supported by legal facts.
- 6) Aggravating circumstances: potential losses of the state; alleviating: the backbone of the family and regret.
- 7) Sentenced to imprisonment and a fine, with additional sanctions if the fine is not paid.
- 8) Ship evidence was confiscated for the state in accordance with Article 109 paragraph (2).

The Decision Decision Number: 102/Pid.Sus/2019/PN.Tbk as mentioned above, which stipulates that the MT YOSOA ship is confiscated for the state, received legal remedies from PT. Two Oil Partners who claim to be the owners of the MT YOSA ship, and based on the evidence of ownership owned, PT. Two Oil Partners filed a lawsuit in the Civil Court. PT. Two Oil Partners filed a lawsuit against the Tanjung Balai Karimun District Attorney's Office, Cq. Public Prosecutor as the Defendant, and the Government of the Republic of Indonesia, Cq. Ministry of Finance of the Republic of Indonesia Directorate General of Customs and Excise. Cq. Head of the Regional Office of the Directorate General of Customs and Excise of the Riau



Islands. Cq. KPPBC Customs Intermediate Type B Tanjung Balai Karimun as Co-Defendant I, PT. Trans Marine Sejati as Co-Defendant II.

PT. Two Oil Partners in their lawsuit stated that they were the owners of the MT YOSOA ship, which was confiscated by the state based on the Decision of the Tanjung Balai Karimun District Court No. 102/Pid.Sus/2019/PN Tbk with the defendant Yusri bin Saulu (the lessee of the ship). The ship was used as collateral for a loan to Bank Muamalat, and as a result of the seizure, PT. Two Oil Partners suffered losses of IDR 4.5 billion.

That based on the lawsuit of PT, Dutra Mitra Oil, the judge ruled in the subject matter stating that granted the plaintiff's lawsuit in part and ruled that the defendant had committed an unlawful act. The court stated that the MT YOSOA ship, based on Deed Grosse No. 6703 dated March 7, 2011, was legally the property of the plaintiff. In addition, the plaintiff was declared the legal and good-faith owner of one unit of transportation facilities of MT YOSOA ex-Indonesian Citizen No. 1, measuring 70.00 x 11.70 x 5.25 meters, with a Hanshin engine with a capacity of 1800 PS and a parallel mark of 5285/Bc.

The judge's considerations in the above decision are as follows:

- 1) The plaintiff is the owner of the ship YOSOA, deed No. 6703 (March 7, 2011).
- 2) The plaintiff leased the MT YOSOA ship to PT. Trans Marine Sejati (deed No. 01, June 8, 2018).
- 3) The Defendant did not know the MT YOSOA ship charter agreement used by the Defendant in the CUSTOMS crime.
- 4) The plaintiff sent two summonses to PT. Trans Marine Sejati (December 28, 2018 & January 7, 2019).
- 5) The plaintiff applied for an evidence loan on January 10, 2019 & May 16, 2019.
- 6) The MT YOSOA ship was seized for the state based on a court ruling.
- 7) The Defendant's witness, HARI KUSUMA SETIA NEGARA, SH, stated that the MT YOSOA ship had been auctioned, but it was not submitted in the auction.

Analysis of judges' errors in deciding cases of unlawful acts:

1. Not Digging Up Material Truths Deeply
The judge ruled the Defendant unlawful, but did not analyze the other party's role or the Plaintiff's negligence, which is essential for a fair verdict.
2. Inconsistencies in Assessing Evidence of Possession and Unlawful Acts
The judge stated that the Plaintiff's MT Yosoa ship, even though it had been confiscated by the state, without considering the legal implications of the seizure that transferred the ownership rights.
3. Inconsistency in Refusing and Accepting Petitem
The judge granted petitem 3 and 4, rejected petitem 1, and granted petitem 2, but without proof of damages, the claim of unlawful acts should have been dismissed.
4. Ignoring the Principle of Ultimum Remedium in Civil and Criminal Law Relations
The judge emphasized that changes to criminal judgments must go through the PK, but should be more decisive in assessing whether this civil lawsuit is valid or just to avoid criminal law. If the goal is to overturn a criminal conviction, this lawsuit should have been dismissed in the first place, as it would have allowed it to create legal uncertainty.
5. Lack of Parties in Considering Civil Judgments
The plaintiff can be criticized for not making PT. Trans Marine (the lessee of the ship) as a defendant in the lawsuit filed. This mistake makes the lawsuit not aimed at the



party who should be responsible in accordance with the District Court Decision Number 102/Pid.Sus/2019/PN.Tbk. Supposedly, the ship's lessee who uses the MT Yosoa ship for unlawful activities is the main defendant, not the Prosecutor's Office and KPPBC Customs who only carry out the state seizure decision.

In the civil procedure law, the lawsuit must be filed against the party who has an interest in the dispute. The lessee of the ship, in accordance with Article 1576 of the Civil Code, is responsible for all legal consequences during the rental period. Therefore, suing the Prosecutor's Office and KPPBC Customs is not appropriate, because they are acting based on legitimate legal authority. In addition, according to the Supreme Court Decision No. 3685 K/Pdt/1985, the lawsuit must be addressed to a party that has a direct legal relationship with the object of the dispute.

The main fault is that the plaintiff did not direct the lawsuit to the ship's lessee. This causes the lawsuit to be vague and at risk of being rejected because there is no proper legal subject. In addition, the judge should consider the importance of the ship's charterer's involvement in the dispute, not just the execution of the judgment. Not including the lessee as a defendant may result in an unclear boundary of legal liability between the owner and the lessee of the ship.

Thus, criticism of the judge's decision should be more focused on the negligence in including the legally responsible party, which should have led to the ship's lessee as the main defendant.

3.2 Decision No. 27/PDT. G/2019/PN. Tbk Influences Legal Interpretation of Unlawful Acts

1. Interpretation of the Law by the Panel of Judges

A state of law that adheres to the legal system *civil law* In general, it gives place to positive law in the implementation and application of its laws which are contained in the form of laws and regulations. Therefore, written norms occupy an important role in state law enforcement, one example is law enforcement in Indonesia. Therefore, the Law is important for its existence and it is also important to be prepared in detail and carefully in order to be able to accommodate and anticipate and provide legal protection against every criminal behavior and violation of the law. However, in reality, in society, the law always falters in dealing with legal events that also continue to develop. So it will appear that laws that should be able to answer every legal problem are sooner or later left behind by legal phenomena that continue to develop (Arif Hidayat, 2013).

In practice in the world of justice, the gap (*gap*) that occurs must still be filled in by the Judge as a law enforcer who has the knowledge and authority to interpret the law. The interpretation of the law by judges can be based on Article 5 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power which states that judges and constitutional judges are obliged to explore, follow, and understand the legal values and sense of justice that live in society as well as the power of other judges contained in Articles 24 and 25 related to independent and independent judicial power in carrying out their duties. Legal interpretation by judges or also known as interpretation is a method of legal discovery of existing regulations but sometimes not entirely appropriate when applied to certain legal problems. Judges are also required to face and fill any gaps or incompleteness in regulations in upholding fair laws.

Jurisprudence in Indonesian civil law is a source of law formed from judges' decisions that have consistency in the application of the law and serve as a guideline for subsequent



decisions (Sudikno, 2010). Therefore, it is important to assess whether Decision No. 27/PDT. G/2019/PN. TBK has an impact on the legal interpretation of unlawful acts in the decisions of other judges.

2. Decision Criteria for Jurisprudence

In order for a decision to be considered as jurisprudence that can serve as a guideline in similar cases in the future, it must meet several criteria (Bismar Nasution, 2011)

- a. Consistency with other judges' decisions
- b. Decided by the Court of Appeal or Cassation
- c. Contains Legal Principles That Can Be Applied in Similar Cases

3. The Effect of the Decision on the Legal Interpretation of Unlawful Acts

Decision Number 27/PDT. G/2019/PN. Tbk can influence the interpretation of the law on unlawful acts in two possibilities. If this decision is confirmed by the High Court or the Supreme Court and used as a reference by judges in other cases, there will be a change in the meaning of unlawful acts. This ruling can confirm that a defendant who does not dig up the material truth can be considered to have committed an unlawful act (*tort*) as stipulated in Article 1365 of the Civil Code. In addition, in the case of ownership of goods that have been confiscated by the state, it is still possible to have a civil lawsuit to determine ownership before the confiscation occurs. This decision also emphasizes that civil lawsuits can run even if there is a connection with a criminal case, as long as it does not aim to change a criminal verdict that has permanent legal force. However, if this decision is not made into jurisprudence because it is considered to have no strong legal principles or is not confirmed by a higher court, its impact on the legal interpretation of unlawful acts will be limited. In this case, the judgment is only valid in the case in question and has no binding force on other decisions (Yahya Harahap, 2017).

Although this ruling provides consideration of unlawful acts, there are several weaknesses that can be the reason why this decision is not used as jurisprudence. One of the main drawbacks is the lack of consistency in legal considerations. The judge stated that the defendant had committed an unlawful act, but on the other hand did not grant the petitum for damages due to lack of evidence of loss. This could set a confusing precedent in similar cases in the future. In addition, there is a contradiction in the determination of MT Yoso's ownership of the ship, where the judgment states that the plaintiff is the owner of the ship, but does not consider the implications of the criminal judgment that has seized the ship. If this principle is followed by other judges, it can cause legal uncertainty in cases involving goods that have been confiscated by the state (Maria Farida Indrati, 2018).

Based on this analysis, Decision Number 27/PDT. G/2019/PN. The TBK does not necessarily affect the legal interpretation of unlawful acts in the decisions of other judges as jurisprudence, unless it is confirmed by a higher court and followed in similar cases. If this ruling does not become jurisprudence, its impact is limited to the case in question and does not change the interpretation of the law that has developed in judicial doctrine and practice. However, if this decision is confirmed and used as a reference, it can expand the concept of unlawful acts, especially in the aspect of negligence in exploring the material truth and the relationship between civil and criminal law. However, with the inconsistency in its considerations, it is unlikely that this decision will become a strong jurisprudence and be used as a reference in future cases.



3.3 Ownership Status of MT YOSOA Ships That Have Been Decided to Be Confiscated by the State

1. Ownership Status of MT Yosoa confiscated by the State

The verdict on the seizure of the MT Yosoa ship by the state is a form of legal implementation based on the Criminal Procedure Code (KUHP) and other laws and regulations, especially those regulating customs. In this case, the decree of confiscation should be seen as a final and binding legal action, aimed at upholding legal certainty, maintaining order, and protecting the interests of the state and society.

- a) Article 273 Paragraph (3) of the Criminal Code
- b) Article 54 Paragraph (1) and Paragraph (3) of Law Number 17 of 2006 concerning Amendments to Law Number 10 of 1995 concerning Customs

2. Limitation of Liability in Chartering MT Yosoa Ship

a. Limitation of Ship Owner's Liability

The owner is responsible for the condition of the ship before it is leased, but cannot be held liable for damages due to the lessee's negligence, unless it is proven that the ship was delivered in a defective state.

b. Limitation of Tenant Liability

The Charterer is responsible for operational, maintenance and risk costs during the lease period, including the legal consequences of the use of the vessel, unless otherwise specified in the contract.

c. Legal Disputes and Ship Seizures

In this case, Bank Muamalat acted as the financier of Al-Murabahah to the shipowner. If the ship is confiscated or becomes the object of a criminal case, then legal liability becomes complex because it must pay attention to the legal status of the ship in a criminal verdict that has permanent force. The lessee may object to the inappropriateness of the use of the vessel due to the seizure, but this must be proven in the civil proceedings.

3. Legal Implications in the Case of MT Joshua

Based on Decision No. 27/PDT. G/2019/PN. Tbk, it was concluded that:

- a) The ship owner still has the right to the ship even though it has been leased.
- b) The lessee is responsible for the operation of the vessel, but not for ownership disputes.
- c) If the vessel is seized by the state, the lessee can claim damages if the seizure is related to the owner's actions prior to the lease, but if the seizure is due to a violation during the lease period, the lessee is fully liable.

4. Principles of Implementation of Law Orders as a Form of Legal Protection for Investigators and Public Prosecutors

The Public Prosecutor (JPU) has the authority to prosecute suspects and implement court decisions, including the seizure of evidence, as stipulated in the Criminal Procedure Code and the Prosecutor's Law. The actions of the prosecutor in carrying out official duties cannot be considered as an unlawful act, unless it violates authority or there is abuse. Legal protection for prosecutors is contained in Article 8 paragraph (3) of the Prosecutor's Law, which exempts prosecutors from civil lawsuits as long as the action is carried out in accordance with applicable law. Therefore, losses arising from the actions of legitimate prosecutors do not necessarily lead to lawsuits for unlawful acts.



In this case, the action of the Public Prosecutor (JPU) from the Tanjung Balai Karimun District Attorney's Office was in accordance with the applicable legal provisions, both formally and materially. The following are the justifiable reasons that justify the prosecutor's legal action:

- a. The implementation of criminal judgments must be respected
- b. Prinsip Res Judicata Pro Veritate Habetur
- c. Legal Protection to Third Parties
- d. Status of Evidence in Accordance with Customs Law
- e. Prosecutor's Actions Are Not Unlawful
- f. The Principle of Legal Certainty and Public Order

In jurisprudence and legal doctrine, there is a principle that the actions of state officials carried out within the scope of their authority and based on the law cannot be considered as unlawful acts. This principle is known as *doctrine of state immunity* in administrative law and criminal law. This aims to ensure that law enforcement officials can carry out their duties without the threat of unfounded civil lawsuits (Satjipto Rahardjo, 2000).

- a. Implications for Civil Lawsuits on the Basis of Unlawful Acts

- 1) Actions Taken Under the Law Cannot Be Challenged

If the public prosecutor or Customs investigator performs an act in accordance with legal procedures, then the action cannot be categorized as an unlawful act. For example, the case in the Decision on the confiscation of Transport Facilities by MT YOSOA by Customs investigators carried out based on Article 109 paragraph (2a) of Law of the Republic of Indonesia Number 17 of 2006 concerning Amendments to Law Number 10 of 1995 concerning Customs cannot be used as the basis for a civil lawsuit by the owner of the goods who feel aggrieved.

- 2) Unless there is an abuse of authority or procedural error

If there is an abuse of power or unlawful acts, such as Customs investigators making seizures without a legal basis or the public prosecutor acts discriminatory, then a civil lawsuit can still be filed.

However, in Decision Number: 102/Pid.Sus/2019/PN.Tbk The Defendant and Co-Defendant I have taken law enforcement actions in accordance with applicable regulations so that they do not fall into the category of abuse of authority that can harm the plaintiff.

- 3) Protection for Law Enforcement Officers

In the Indonesian legal system, officials who act in accordance with the orders of the law cannot be charged with civil lawsuits. This aims to protect them from legal intimidation that can hinder the law enforcement process.

Public prosecutors and Customs investigators who act in accordance with the orders of the law have legal protection and cannot be sued civilly on the basis of unlawful acts. However, if there is an abuse of authority or procedural violation, then they can still be held legally accountable for their individual actions unrelated to what has been decided through a court decision that *incrath*. Therefore, it is important for law enforcement



officials to always act in the legal corridor to avoid potential lawsuits that can arise due to procedural errors or actions beyond their authority (Jimly Asshiddiqie, 2005).

4. CONCLUSION

The judge's decision in this unlawful act case shows weaknesses in legal considerations that can lead to uncertainty and injustice. The judge did not explore the material truth, especially regarding the responsibility of the ship charterer for the disputed object. In addition, there was inconsistency in the assessment of evidence of ownership and unlawful acts, such as the plaintiff's recognition of ownership of the ship even though the ship had been seized by the state. The inconsistency in accepting and rejecting the petitum reflects weak legal logic, especially in proving the element of loss. The judge also ignored the principle of *ultimum remedium*, which can lead to overlap between the civil and criminal realms. In addition, the failure to involve the ship charterer as a defendant contradicts the principle of "*point d'intérêt, point d'action*," which obscures accountability. Therefore, the judge needs to involve all relevant parties and apply consistent legal principles to achieve substantive justice.

Decision Number 27/PDT. G/2019/PN. TBK reflects the judge's efforts to interpret the law in order to fill the gaps in norms and adapt them to the dynamics of society. Although it has the potential to broaden the understanding of *onrechtmatige daad*, especially regarding negligence in exploring material truth, this decision still contains weaknesses in its considerations, such as inconsistency in determining ship ownership and indecisiveness in granting compensation. Without strong jurisprudential support and ratification from a higher court, this decision cannot be used as a solid reference and actually risks creating legal uncertainty. Therefore, its legal impact is highly dependent on the consistency of its application at a higher level of court.

The ownership status of the MT Yosoa ship that has been seized by the state is final and binding according to the provisions of the Criminal Procedure Code and the Customs Law, so that claims of ownership by private parties cannot be filed through civil lawsuits. The only legal remedy available is a Judicial Review to the Supreme Court. In a ship charter agreement, operational and legal responsibility lies with the lessee during the lease period. If the seizure occurs due to the actions of the lessee, then he is responsible. In the case of MT Yosoa, although the plaintiff was declared the owner in the civil decision, this could not cancel the criminal decision that had seized the ship for the state. This creates legal uncertainty, especially in the relationship between civil and criminal law. Therefore, this case confirms that in the seizure of assets by the state, criminal law has a stronger position than civil claims.

It is suggested that judges need to carefully consider all legal aspects, explore material truth, and assess the responsibility of all parties, including the ship's charterer. Consistency in assessing evidence and applying appropriate legal principles will result in a fair and objective decision.

To provide legal certainty, the higher court should review the weak aspects of decision No. 27/PDT. G/2019/PN. TBK and strengthen it with clear jurisprudence. Judges should also be more careful in applying the principle of unlawful acts and ensuring evidence of losses before deciding on compensation, so that the interpretation of the law becomes more systematic and provides legal certainty.

The injured party must file a Judicial Review (PK) for the seizure of the ship, not a civil lawsuit. The ship charter contract must clearly regulate the responsibilities of each party to protect rights and obligations.



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