

MASALAH PENGUATKUASAAN PENAHANAN KAPAL BAGI TUNTUTAN SIVIL MARITIM DI MALAYSIA

Asmar Abdul Rahim
asmar@uum.edu.my

Abstrak

Penahanan kapal bagi tuntutan sivil maritim merupakan satu bentuk mod pelaksanaan khas di bawah peruntukan bidang kuasa admiralti. Masalah pelaksanaan penahanan kapal bagi tuntutan sivil maritim di peringkat antarabangsa ini telah mendapat perhatian khusus daripada organisasi-organisasi antarabangsa seperti *Comite Maritime International* (CMI), *International Maritime Organization* (IMO) dan *United Nations Trade and Commercial Development* (UNTACD) yang membawa kepada pengenalan dua konvensyen khas iaitu *International Convention for the Unification of Certain Rules Relating to Arrest of Sea-going Ships 1952* (Konvensyen Antarabangsa Penahanan Kapal 1952) dan *International Convention on Arrest of Ship 1999* (Konvensyen Antarabangsa Penahanan Kapal 1999). Meskipun usaha-usaha telah dilakukan di peringkat antarabangsa, namun tindakan penahanan kapal di Malaysia masih kurang mendapat sambutan daripada pihak-pihak luar untuk menahan kapal lantaran masalah penguatkuasaannya yang lemah. Sehubungan dengan itu kajian ini mengkaji secara kritikal dengan menganalisa peruntukan undang-undang penahanan kapal di Malaysia bagi mendalami permasalahan peruntukan sedia ada serta amalan-amalan pelaksanaan yang menghalang kelancaran proses penahanan kapal ini. Tidak ketinggalan juga aspek teknikal dan praktikal proses penahanan kapal turut dianalisa. Bagi merealisasikan objektif di atas maka kajian ini telah menggunakan pendekatan kualitatif secara deskriptif. Perbincangan dan analisa penuh merangkumi analisa peruntukan Seksyen 24(b) Akta Mahkamah Kehakiman 1964 (AMK 1964) [Akta 91], Aturan 70 Kaedah-Kaedah Mahkamah 2012 (KKM 2012), Arahan Amalan No. 2/2007 Tindakan-tindakan Admiralti (Arahan Amalan No. 2/2007 TTA) dan Arahan Amalan No. 1/2012 Admiralti dan Tuntutan-tuntutan Maritim (Arahan Amalan No. 1/2012 ATTM). Kajian turut meliputi kajian lapangan di lima buah Mahkamah Tinggi serta temubual dengan pegawai-pegawai dari Mahkamah-mahkamah Tinggi, Jabatan Laut Malaysia, pihak Pelabuhan, pihak Kastam Diraja Malaysia dan juga pengamal undang-undang yang pakar dalam bidang admiralti. Perbincangan distrukturkan kepada tujuh bab merangkumi perkembangan sejarah di Bab II, konsep dan prinsip penahanan di Bab III, bidang kuasa dan kuasa penahanan kapal di Bab IV, prosedur penahanan kapal di Bab V, pelaksanaan penahanan kapal di Bab VI dan diikuti dengan penemuan dan cadangan di Bab VII. Kajian mendapati bahawa masalah penguatkuasaan penahanan kapal di Malaysia adalah berpunca daripada konflik peruntukan bidang kuasa dan kuasa Mahkamah Tinggi, kelompangan peruntukan prosedur serta kelemahan pada pemantauan dan mekanisma kawalan. Bagi mengatasi masalah-masalah ini kajian ini telah mencadangkan penggubalan satu Akta Admiralti yang khusus, Arahan Amalan Admiralti baru yang lebih komprehensif serta satu garis panduan pelaksanaan dalam usaha memantapkan proses tindakan penahanan kapal di Malaysia.

THE PROBLEM OF ENFORCEMENT ON ARREST OF SHIP FOR CIVIL MARITIME CLAIMS IN MALAYSIA

Asmar Abdul Rahim
asmar@uum.edu.my

Abstract

The arrest of ship for the purpose of civil maritime claims is a special mode of execution under the admiralty jurisdiction. In order to address problems relating to enforcement of arrest of ship, international organisations such as the Committee Maritime International (CMI), the International Maritime Organization (IMO) and the United Nations Trade and Commercial Development (UNTACD) introduced two special arrest conventions; the International Convention for the Unification of Certain Rules Relating to Arrest of Sea-going Ships 1952 and International Convention on Arrest of Ships 1999. However, despite the effort by the international community, the enforcement problems cause arrest of ship is unenthusiastically utilised by foreign parties in Malaysia. The research seeks to critically study and analyse the laws on arrest of ship in Malaysia in order to understand the problems with current provisions and practices which prevent arrest of ship from being effectively enforced. The analysis takes into consideration both technical and practical aspects of the process. To do so, this research applies a qualitative method using a descriptive approach. It covers a thorough discussion of section 24 (b) of the Court of Judicature Act 1964 [Act 91], Rules of Court 2012, Practice Direction No. 2/2007 Admiralty Actions, and Practice Direction No. 1/2012 Admiralty and Maritime Claims. The research also conducted field work at five High Courts of Malaysia and interviews with relevant officers ranging from the High Courts, the Malaysian Marine Department, the Port Authority, the Royal Malaysian Customs as well as practitioners specialising in admiralty. The discussion is structured into seven chapters, i.e historical development in Chapter II, concepts and principles in Chapter III, jurisdiction and power of arrest in Chapter IV, procedures in Chapter V, execution in Chapter VI and finally findings and suggestions in Chapter VIII. The research comes to the conclusion that the problems with enforcement on arrest of ship in Malaysia are caused by conflicting provisions regarding jurisdiction and powers of the High Court, ambiguity of some procedural provisions and weakness in monitoring and control mechanism. To solve these problems, the research proposes the enactment of a specific Admiralty Act, provision a comprehensive Practice Direction as well as devising an enforcement manual in order to improve the process of ship arrest in Malaysia.