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Maritime Security In South East Asia: Indonesian Perspective[1]

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Maritime security is an important issue particularly for the archipelagic state. As the largest archipelagic state in the world, Indonesia has its own responsibility to guard its waters from any threat. Indonesian waters have been used for centuries to accelerate international trade. In addition, Indonesia needs to address its boundary problems, handling of piracy, combating Transnational Organized Crime, such as, human trafficking, drugs trafficking, and human smuggling. This article explains on Indonesian perspective of the maritime security in South East Asia.

Keywords : *Maritime Security, Transnational Organized Crime, Boundaries.*

Indonesia, being the largest archipelagic state in the world, holds a certain responsibility towards its own waters. The routes used for international navigation are located within Indonesian waters and have been used for centuries in accelerating international trade. The Strait of Malacca is just one example, which always has been referred to as a "piracy area", as well as a fragile area for marine environment pollution. The archipelagic sea lanes, which include the Strait of Makassar, the Strait of Lombok and other strategic areas, must also be guarded from any severe transnational organized crimes (TOCs) such as human trafficking, drug trafficking and of course human smuggling. Not to mention other territories in Indonesian waters, which are secluded enough to be used as transit areas for those who are about to carry out TOCs or piracy.

There are many maritime problems that need to be seriously addressed by Indonesia, including boundary problems and the handling of piracy and TOCs, not to mention the issue of internal security and counter-insurgency.

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I. Indonesian Problems in Maritime Boundaries

Indonesia has been acknowledged as an archipelagic state by the international community through the 1982 United Nations Convention on the Law of the Sea (1982 UNCLOS). As the biggest archipelagic state in the world, Indonesia owns more than 17.000 islands, most of which are inhabited and located within Indonesian waters. Indonesia has ratified 1982 UNCLOS by Law No.17 Year 1985 and had implemented it through national regulations such as Law No.6 Year 1996 regarding Indonesian Waters (*Perairan Indonesia)*. There are, however, many provisions under 1982 UNCLOS that still need further implementation by the Indonesian government in order to comply with its rights and obligations as set out in 1982 UNCLOS.

Among the 1982 UNCLOS provisions requiring further implementation is the provision requiring States to define their baselines and publish them in a map showing State boundaries at sea, which is kept in a depository at the UN Secretary General. Indonesia has issued Government Regulation No. 38 Year 2002 regarding coordinates listing Indonesia's outermost points (*titik-titik terluar kepulauan Indonesia)*. Nonetheless, such provisions need to be revised as a result of the decision of the International Court of Justice which recognized Malaysia's sovereignty over Sipadan Island and Ligitan Island (2002). In addition, the independence of Timor Leste also has impacts on Indonesian baselines. This regulation needs to be amended and the process is still ongoing in the related Ministries in Indonesia. Indonesia needs to speed up this process in order to resubmit the Indonesian baselines to the Secretary General of the United Nations, as required.

Indonesia has negotiated and reached agreements on land and maritime borders with its neighbor States. Indonesia has its own land borders with Malaysia and Papua New Guinea and is currently negotiating boundaries with Timor Leste. Maritime borders, including those in the territorial sea, contiguous zone, continental shelf and economic exclusive zone between Indonesia and its neighboring States have been established, although some parts still remain to be negotiated.

Several problems regarding the establishment of maritime borders with neighbor States need immediate attention. The absence of maritime borders with Malaysia in the Sulawesi Sea, for instance, has caused a serious problem regarding the so-called "Ambalat Incidents". This arose as a result of a unilateral claim by Malaysia, through the issuance of a controversial 1979 Map,

leading to strong protests by Indonesia and the Philippines. Therefore, Indonesia and Malaysia have initiated negotiations, which were delayed and long neglected, due to the differing claims and points of view expressed by both States. This problem may also be impacted by the ICJ decision that recognized Malaysia's sovereignty over the Islands of Sipadan and Ligitan based on effective occupation. However, it must be realized that the Sipadan–Ligitan case concerns only sovereignty over both islands, and not the continental shelf beyond those islands. Hence, Indonesia and Malaysia need to re-negotiate and establish the maritime boundaries in the Sulawesi Sea to avoid an endless conflict between both States. Indonesia has a strong legal basis in the Ambalat block because its position as an Archipelagic State entitles it to draw a straight archipelagic baseline from its outermost point. The strong image of Indonesia as a sovereign State, which has the ability to maintain the unity of its territory, must be increased, so that neighboring States will respect the unity of Indonesian territory and refrain from posing acts that may cause Indonesia to lose part of its territory.

As Timor Leste has become a sovereign State, thus Indonesia needs to revise the "Indonesian sea lanes" that pass through the territorial sea at Timor Leste. Currently, negotiations regarding the establishment of land borders are proceeding and need to be followed up by the establishment of maritime borders.

In practice, boundary problems have strategic implications both politically and economically, arising not only from the territorial claim itself, but also because of the natural resources within the disputed territory. Maritime boundaries are a priority for Indonesia, considering that 2/3 (two third) of Indonesian territory consists of water. Every dispute arising in a boundary area must be solved effectively and efficiently in order to avoid foreign influence negatively affecting that area.

The current problem that has to be solved concerns Indonesia's outer islands. Government Regulation No. 78 Year 2005 regarding management of Indonesian outer islands was issued with the spirit to properly manage Indonesia's outer islands so they are no longer neglected. It is not uncommon, in the management of such small islands, for economic interests to conflict with various other concerns, such as ecosystem considerations and State security. Investment to develop the small islands must consider local society as well as national security.

Government Regulation No. 78 Year 2005 conferred a mandate to manage small outer islands to several central Government institutions, working together on the "Coordinating Teams on Small and Outer Islands Management", which is chaired by the Coordinating Minister for Politics, Law and Security and co-chaired by the Ministry of Marine Affairs and Fisheries (MMAF) and Minister for Internal Affairs. For the daily technical matters, two working teams were established, under the supervision of MMAF. Working team I relates to natural resources, environment, infrastructure and transportation, economy, social and cultural matters. Working team II relates to territorial management, defense and security. In practice, these two teams must coordinate with each other, due to their related mandates, in order to manage outer small islands effectively.

In 2007, the Indonesian Government enacted Law No. 27 Year 2007 on the Management of Coastal Area and Small Islands, which gave greater authority to the Ministry of Marine Affairs and Fisheries (MMAF) to make appropriate policy and action to manage the coastal area and small islands, including those located in Indonesia's outer territory. There are at least 12 (twelve) islands in need of immediate attention from the Government: Rondo, Sekatung, Nipa, Berhala, Miangar, Marangit, Brass, Fani, Maorpi, Fanildo, Balfik and Dana. These islands are spread out in the territories of Sumatera, Sulawesi, North Maluku and East Nusa Tenggara.

Law No. 43 Year 2008 on State Territory has mandated the Government to establish the "Boundary Management Agency". This body is expected to be a key institution for the issuance of policies and strategies to develop, secure and protect the outer territory of Indonesia. Thus, the institutions that have mandates from both Government Regulation No. 78 Year 2005 and Law No. 27 Year 2007 must now bear another mandate created by Law No. 43 Year 2008. The Agency is expected to be established soon, and as a result the 22 (twenty-two) different institutions which are now handling at least 35 (thirty-five) different programs concerning boundary territories will be united in a single body which will be more focused, effective and efficient.

The other problem in Indonesia is the issue of autonomy law, which has given much greater authority to the regional governments in managing their territory. Law No. 32 Year 2004 on Regional Government authorizes the regional governments to explore and exploit maritime territories. Thus, the central government and regional governments need to cooperate in solving any problems arising in the outer territories of Indonesia. The regional governments them-

selves are responsible for:

1. actively involving and giving precise input to the negotiating team of Indonesia in negotiating maritime boundaries with neighboring countries;
2. formulating, planning and implementing appropriate management of outer small islands adjacent to other countries;
3. establishing a special agency to handle the management of boundaries at the local level;
4. adopting both economic and non-economic approaches to managing outer areas. An economic approach cannot be adopted to handle certain matters where non-profit oriented investment is needed;
5. ensuring security in cooperation with the central government, so that any potential threat can be handled more precisely and efficiently; and
6. cooperating with other regional governments to manage "shared resources" which need co-management by adopting "national/ regional spatial plan".

Currently the MMAF and Ministry of Internal Affairs are the two major institutions obligated to manage boundary areas in Indonesia. Thus, good coordination among them is required and they will need the support of the Indonesian Navy as the most responsible agency in Indonesia to guard national sea security. The role of the Indonesian Navy must be strengthened. This responsibility can only be achieved if Indonesian Navy military facilities are provided with modern and sophisticated Navy vessels and aircrafts. Each State has responsibility to carefully guard its own territory so as not to be disturbed or taken over by other countries.

The boundary issue cannot be ignored in discussing maritime security in Indonesia, as Indonesia's territory consists mostly of water. The threat could appear from the outermost islands such as Sumatra, Sulawesi and East Nusa Tenggara, which are adjacent to other countries. The management and supervision of the outer territories in Indonesia will be the key point in safeguarding national security. This means that maritime security within Indonesia needs to be maintained before Indonesia can be actively involved in managing maritime security in regional territories.

II. Maritime Security

A. Piracy and Maritime Armed Robbery

Indonesian archipelagic waters and the Strait of Malacca have become hot

spots for acts of piracy and maritime armed robbery[3]. This Strait, which has been an international passage for centuries, is crossed by more or less 50.000 vessels per year. Meanwhile, sovereignty over the Strait of Malacca lies in three States: Indonesia, Malaysia and Singapore. The question is, why are Indonesia's archipelagic waters singled out as the world's top piracy hot spot, followed by the Strait of Malacca in second place? In addition, many other areas are known for piracy, such as Nigeria, Somalia, Arabian Gulf, Red Sea and the Gulf of Guinea, South China Sea, Sulu islands, and Mindanao,. In other words, only Northern Europe and North America are free from piracy, whereas other places are still threatened, requiring vessels to prepare for every single possibility.

The International Chamber of Commerce established the ICC International Maritime Bureau (IMB) in 1981[4] as a focal point to combat all forms of criminals at sea that can threaten international trade, recalling that the majority of world trade is conducted through sea transportation. With the number of sea pirates increasing since the 1980s (after the golden era in the middle centuries), the IMB Piracy Reporting Centre was established in 1982, domiciled in Kuala Lumpur, Malaysia. This purpose of the Piracy Reporting Centre was to report every single piracy incident in the world, to locate which areas were considered as hot spots for piracy, and to build cooperation with coastal States where piracy occurred in order to reduce the number of incidents.

Nevertheless, the IMB report was not favorable to Indonesia, categorizing the Strait of Malacca as a dangerous area. Due to this report, the cost of shipping in this area became high because of increased insurance costs, particularly for shipping companies loading from and to Indonesia[5]. However, according to the Coordinating Agency on Maritime Security (Bakorkamla), there had been a reduction in the number of crimes at sea, particularly piracy, because of greater cooperation among Indonesia, Malaysia and Singapore. Indonesia has attempted to cooperate with both States to overcome smuggling problems at sea.

After increasing from time to time, acts of piracy and maritime armed robbery in the Strait of Malacca virtually stopped after the international tragedy of

[3] See IMB Report on piracy (http://www.icc-ccs.org/prc/piracyreport.php).

[4] This Bureau responsible to report every piracy incident, to rescue ships being pirated, and to assist states in arresting pirates. (http://www.icc-ccs.org/imb/overview.php)

the December 2004 Tsunami. In the past eleven months, only a few acts of piracy occurred in the Strait of Malacca, drastically down from 38 (thirty-eight) cases reported in 2004, or even 75 (seventy-five) cases reported in 2000[6]. The main reason for this decrease is greater cooperation among the three littoral States to combat piracy in such areas.

In modern piracy, economic gain from the taking of hostages is the preferred modus operandi. Generally, the focal point is not on the vessel itself but on the hostages (such as captain and chief engineer), the safe release of which is contingent on payment of a large ransom from the vessel owner/operator. This modus operandi is entirely different from previous piracy incidents, where vessels were captured, re-painted/modified, their names changed and their cargo sold on the free market, while their crews were killed or set adrift at sea. This is called the "phantom ship phenomenon" in the shipping world, because the pirates commonly are equipped with global positioning devices, forged registration documents and bills of lading to facilitate their operation[7].

Historically, incidents of piracy have involved not only huge commercial vessels but also private vessels and fishing vessels. Two kinds of piracy may be observed:

1. economically motivated acts of piracy (i.e. stealing)
2. well planned acts of piracy that have other motives, e.g. politics[8] (in Somalia and Srilanka) and terrorism (in Philipinnes)

The problem of piracy is compounded by the reluctance of vessel owners to report incidents, commonly to maintain their business reputations. This situation must be properly handled because immediate reporting and response is the only effective way to combat piracy[9].

[5] See http://en.wikipedia.org/wiki/Piracy_in_the_Strait_of_Malacca

[6] Based on the IMB's report on http://balita.ph/2008/ 11/24/southeast-asia-succeeds-in-fighting-piracy-in-malacca-straits/

[7] The role of port state is very crucial here to be very careful in allowing any foreign vessel to transit in its port. There should be close investigation upon the documents of foreign vessels.

[8] Some observers assumed that Gerakan Aceh Merdeka (Aceh Liberation Movement) had also been involved in piracy around the Strait of Malacca, for both economic and political motives, yet proof of this was scarcely given.

[9] IMO has taken steps to combat piracy, such as issuing some resolutions and circulars to give initial warning ship owners or operators on how to avoid sea piracy, and by sponsoring the " the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, 1988".

Then, what is the difference between Piracy and armed robbery at sea? International law differentiates those two terms according to their legal consequences. In general, piracy is defined as :

1. robbery committed at sea (the American Heritage Dictionary of the English Language, 2000)
2. an act of robbery especially on the high seas, specifically: an illegal act of violence, detention or plunder committed for private ends by crew or passengers of a private ship or aircraft on the high seas or in place outside the jurisdiction of any state (Merriam-Webster Dictionary of Law, 1996) and
3. Robbery on the high seas; taking a ship away from the control of those who are legally entitled to it (Wordnet 2.0. Princeton University, 2003)

The United Nations Convention on the Law of the Sea (1982 UNCLOS) defines piracy in article 101, as :

1. any illegal acts of violence or detention or any act of depredation, committed for private ends by the crew or the passengers of a private ship or aircraft and directed: (i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft; (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any state,
2. any act of voluntary participation in the operation of a ship or of an aircraft with the knowledge of facts making it a pirate ship or aircraft; and
3. amy act inciting or of intentionally facilitating an act described in sub paragraph (a) or (b).

The above definitions clearly categorize piracy as occurring on the high seas or beyond State jurisdiction, that is, beyond the harbor and territorial sea of a State. However, what if such act occurs in the contiguous zone or Economic Exclusive Zone of a State, will it be counted as piracy under the 1982 UNCLOS definition, or will it be categorized as maritime armed robbery, as it would be if it occurred in internal waters, archipelagic waters, or the territorial sea of a State? The Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP Agreement) has clearly distinguished those two terms.

The Global Security Organization defines piracy as an international crime consisting of illegal acts of violence, detention, or depredation committed for private ends by the crew or passengers of a private ship or aircraft in or over international waters against another ship or aircraft or person and property on

board. "International waters" consists of the high seas, economic exclusive zones and contiguous zone[10]. Meanwhile, IMB defined piracy as "an act of boarding or attempting to board any ship with the intent to commit theft or any other crime and with the intent or capability to use force in the furtherance of that act".

Several of the definitions above clearly illustrate that there are really two developing ideas on piracy. The general idea of piracy: every attack on a vessel at sea, regardless of whether it occurs on the high seas or in a certain state jurisdiction (as provided in the American Heritage Dictionary of the English Language, 2000). This general term is known publicly in society. Another term is the legal concept followed in 1982 UNCLOS. Actually, the differences relate to the authority to take action against the criminals, i.e.,, who is responsible, who has the right to punish the pirates, who has jurisdiction over the crime, and which law will be applied.

Piracy, as defined by 1982 UNCLOS, is a crime of universal jurisdiction, meaning that any warship or Government ship of any State has the right to capture and to arrest pirate vessels, crews and cargos or vessels controlled by the pirates. State courts also have the right to investigate and to decide piracy cases by imposing sentences, includes with respect to measures taken against pirated vessels, bearing in mind the interests of innocent third parties (art. 105-107 1982 UNCLOS)[11]. By contrast, in the event of maritime armed robbery, only the coastal State where the incident occurred has the right to take action.

Therefore, as regards piracy occurring in the Strait of Malacca, we must distinguish between acts occurring in the internal waters, archipelagic waters or territorial sea of a State and acts occurring beyond those areas. Nonetheless, wherever the piracy occurs, action shall be taken and the perpetrator sentenced accordingly. Most acts of piracy / maritime robbery occur in States with general political instability, compromised law enforcement and a high volume of unprotected shipping. Indonesia has been placed within this category, although the Indonesian Government denies it. However, denial is never enough, and Indonesia must show strong political will to secure its jurisdiction, particularly at

[10] See <http://www.globalsecurity.org/,ilitary/world/para/pirates.htm>.

[11] The Alondra Rainbow, which was pirated in October 1999 after leaving Kuala Tanjung, Sumatra, was later arrested by the Indian Navy and then was brought before the Court in Mumbai, India. The pirates have been sentenced for 6 to 7 months in prison.

sea because, as an archipelagic State, Indonesia has more sea territory than land.

Several years ago the United States stirred controversy by offering assistance to secure the Strait of Malacca through a plan called the Regional Maritime Security Initiative (RMSI), which was presented by Admiral Thomas B Fargo, Commander in chief in the US Pacific Command, before the US House of Representatives in March 2004[12]. This proposal reflected the opinion that Pirates in the Strait of Malacca were controlled by Transnational Organized Crime, likely the Al-Qaeda Terrorism network, while others opined that the pirates were controlled by the Aceh Liberation Movement. Singapore, as a State that is hugely dependent on the international shipping trade, strongly supported this idea, but Indonesia and Malaysia did not. Indonesia and Malaysia were totally against the idea, and refused to tolerate any foreign army presence in the Strait of Malaccat. As strait-bordering States, both States have the right to be fully responsible for the safety of shipping within the Strait, as regulated under 1982 UNCLOS. This is a form of State Jurisdiction and State sovereignty, therefore no single State can enter by force to safeguard the Strait of Malacca without the consent from the three strait-bordering States.

However, how long can this position be maintained if piracy continues to occur? In particular, what should happen in part of the Strait of Malacca beyond the territorial sea of the littoral State? The strength of this position depends on the acts of three littoral States, either individually or working together to maintain their jurisdiction to secure their sea territory as addressed by 1982 UNCLOS[13].

Indonesia, in cooperation with two other littoral States, has issued a program called "Latma Malsindo" (Latihan Bersama Malaysia-Singapura-Indonesia), a joint training program between Malaysia, Indonesia and Singapore to

[12] See Piracy and Maritime Terror in Southeast Asia, <http://www.iiss.org/stratcom> . The United States has a major interest in cutting off the Jemaah Islamiyah and Al Qaeda networks in Asia. Yet the littoral states have the right to combat terrorism within their territory, as maritime terrorism is a threat for any state. RMSI is not the just about "closer intelligence-sharing" with Southeast Asian Countries, but also involves US naval deployment in the region, which is strongly opposed by Indonesia and Malaysia.

[13] Article 43 of 1982 UNCLOS states that the littoral states have to cooperate in securing international straits for international navigation. Thus, the three states bordering the Strait of Malacca are obligated to cooperate in establishing maritime security in that area.

secure the Strait of Malacca against Piracy and Terrorism. This program has then successfully decreased the frequency of threats on shipping security in the Strait of Malacca. However, the question is, How long can this program be maintained, and how often can it be conducted? Malaysia then agreed to increase cooperation with the United States through the exchange of intelligence and joint training exercises. However, Malaysia still rejects to the idea of a joint patrol, except with Indonesia or Singapore. Indonesia has built a center to control piracy in the Navy pier at Batam, complete with vessel monitoring system facility, in cooperation with MMAF. However, that is not sufficient. There must also be clear and well-planned acts to combat piracy if the three littoral States still intend to maintain their sovereignty and exclusive jurisdiction in such areas for dealing with shipping security problems.

B. Internal Security (IS) and Counter Insurgency (COIN)

IS and COIN problems have become hot topics over the last couple of years. Indonesia had always had a problem with the Aceh Territory, where the Aceh Liberation Movement can be deemed to engage in COIN. Yet, the two Indonesian neighbor States, Malaysia and Singapore, are much more strict with IS issues by enacting Internal Security Act. As States have become more borderless, problems caused by IS and COIN are no longer exclusive to a single State, as Internal Security problems in one State are much more likely to influence security in neighboring States. As regards Internal Security within maritime territories, bilateral and multilateral cooperation are certainly necessary. Therefore, Indonesia gains from cooperation with Singapore, Malaysia and Thailand to secure the Strait of Malacca as one of the busiest international seaways in South East Asia and the world[14].

It must be acknowledged that, until now, maritime security in Asia Pacific is still held by the United States, and the hope that US will keep optimizing security on investment and trade in Asia Pacific without involving military force is expected by every party in Indonesia. At least four of the world's economical powers, i.e., US, Japan, South Korea and China, are using maritime territory in

[14] On November 25-27, 2008, there was a Regional Workshop in Jakarta, Indonesia, on the Guidelines to use military force in internal security and counter insurgency operations. This workshop was held in cooperation between the Indonesian Navy and ICRC, with the participation of Brunei, Philippines, Indonesia, Malaysia, Singapore, Thailand and Japan.

Asia Pacific for their investment and trade and, therefore, have a strong interest in maintaining the security of Asia Pacific's shipping lanes.

Indonesia is expecting assistance form those four States, particularly IS in the form of infrastructure to increase State's capability, which became part of the world trade, including Indonesia, which means this maritime security is delegated to the related States. Certainly, Indonesia does not want foreign parties to secure Indonesia's maritime territory, for instance, in the Strait of Malacca, either on behalf of other foreign Governments or foreign private parties (such as armed security escorts, which are currently offered by many foreign private parties[15].

The major problem with Indonesia is there no clear institutional division among law enforcement agencies, such as Indonesian Navy and Indonesian Police. Not to mention that those two institutions are poorly equipped by maritime military facilities. Indonesia needs to really re-define its maritime strategy, including how to develop its territory and guard it within the scope of national sovereignty. Intelligence is the key word in managing these IS and COIN issues, thus imposing a clear mandate upon certain institutions is required, and otherwise there will be chaos.

C. Transnational Organized Crime

Transnational Organized Crime (TOC) is no longer tolerated. The United Nations Convention on Transnational Organized Crime (PALERMO Convention), issued by the United Nations in 2000, is designed to combat TOC, including illegal trafficking and smuggling. ASEAN, as a regional organization, attempted to combat TOC by agreeing on ASEAN Plan of Action to Combat Transnational Crime and then by creating ASEAN Ministerial Meeting on Transnational Crime (AMMTC), which discussed 8 types of TOC, such as: Illicit Drug Trafficking, Trafficking in Person, Sea Piracy, Arms Smuggling, Money Laundering, Terrorism, International Economic Crime and Cyber Crime. An Ad Hoc Experts Group on the Work Program to Implement the ASEAN Plan of Action to Combat Transnational Crime was established. The scope of ASEAN's work, reaches other forms of TOC and is therefore broader than the scope of the Palermo Convention[16]. The existence of the ASEAN Security

[15] See <http://www.piracysuppression.com/?gclid=CMjuzK3KtJcCFQ7jTAodOjXKjw>

[16] See <http://www.aseansec.org/16133.htm>

Community (ASC), which started in Indonesia in 2003 as part of the ASEAN forum, has paved the way toward greater cooperation among ASEAN countries, and Indonesia, as the biggest ASEAN States, can take on a greater role in the regional cooperation to secure ASEAN territories.

Indonesia eventually ratified the PALERMO Convention on December 17, 2008. This action was then followed by the ratification of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, on February 3, 2009. This political step will give more protection to Indonesian women and children, who are scarcely protected due to the economic problems among the population. The crime of trafficking has been a threat to national security, as there are many reported incidents of human trafficking, mostly from Indonesia to other Asian countries such as Malaysia.

D. Law Enforcement

In Indonesia, there are at least three different institutions that have authority to patrol maritime territory: the Indonesian navy, the water and air police, and the civil servant investigator (PPNS) from various ministries (depending on their individual mandates). Thus, coordination among them is another problem to be handled carefully by the Indonesian government. The coordinating agency has been established, yet much work remains to be done before this agency can carry out its obligations smoothly. Now the choice for Indonesia is whether to prepare itself to be ready to handle maritime security in its own waters, as well as in regional waters, or to content itself with staying put and ignoring threats under its own nose.

There should be a clear mandate given to each institution, otherwise loose law enforcement will prevail. The illegal fishing in Indonesian Exclusive Economic Zone (EEZ), for instance, will involve the Indonesian Navy, Indonesian Police and PPNS, which eventually only makes ineffective handling of legal enforcement in this issue. The same situation occurs in other areas, which have three or more different institutions tasked to enforce the laws.

E. Several Inputs

Coordinating Teams on Small and Outer Islands Management must be strengthened by the Role of Regional Government to manage and maintain territorial unity, particularly by coordinating definite and controlling boundary ar-

eas. The Regional Governments must be sensitive to issues arising within their boundary areas with other States, whether it is to prevent the illegal entry of persons or take action against illegal logging, illegal fishing, or any other illegal use of the Indonesian natural resources.

In addition, action must be taken against TOC involving Indonesia and its neighbor States. Thus, boundaries must be guarded carefully by establishing border posts, and the guards must be supported by sufficient facilities and funds. Boundary agreements between Indonesia and its neighboring States must be re-evaluated in order to accommodate Indonesian national interests, in line with International Law. Indonesia needs to strengthen its preparation to use International Law in its national interest and to prevent a loss to Indonesia, now or in the future.

Bakorkamla need to complete standard operations on Indonesian maritime security that are needed in order to address maritime security problems and ensure the safety of Indonesian navigation. Bakorkamla's intention to establish a Maritime Security Academy to increase human resources for maritime security, which may receive grants from Japan, also needs to be supported[17].

The challenges that arise in fostering cooperation on matters of maritime security, particularly in South East Asia, are : (1) the lack of funds for maritime activities in several Asian Countries, including Indonesia; (2) still lack of policy synchronization among States; (3) gap of maritime technology; (4) suspicions or tensions among States; and (5) insufficient extradition agreements among South East Asian Countries. This result will become an obstacle for cooperation to sea security in South East Asia.

There is a proposal to upgrade Bakorkamla's status to that of a National Agency on Maritime Security, so that it might be able to undertake its obligations more optimally. This idea certainly comes from other States, where maritime safety agencies, function not only as coordinators to mobilize each department's units relating to maritime security[18], but also as a leading agency with a strong, sharp and clear mandate, in avoiding overlapping mandates as currently exist in Indonesia.

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[17] See Antara News 13 February 2007

[18] The Coordinating Agency on Maritime Security (Bakorkamla) involves 12 different Ministries, including Ministries of Defense, Law and Human Rights, Internal Affairs, Foreign Affairs, MMAF, and the Indonesian Navy. This agency was founded in 1972 and, based on a Joint Decision of December 29, 2005, was restated by Presidential Regulation Nr. 81 Year 2005.

The 1982 UNCLOS, as a comprehensive regulation of the sea, provides in article 25 that a Coastal State has the right to perform any certain act to prevent non-innocent passage. Therefore, it is clear that the task of maintaining internal security is being assigned to each Coastal State. Meanwhile, in article 100, 1982 UNCLOS provides that States must cooperate to take action against piracy on the high seas, and article 108 is designed to combat drug trafficking. This means that, in order to maintain security over maritime territories bordering on the territory of other States, a State can enter into a regional cooperation agreement to be more effective and efficient.

Indonesia needs to enhance its understanding of its status as an Archipelagic States and what that entails. This Status brings responsibility to Indonesia in the form of rights and obligations. Therefore, Indonesian people need to be educated about Indonesia's status as a maritime State, so that a strong and proper maritime defense can result. The ratification of the PALERMO Convention brings about great responsibility to the Indonesian Government to cooperate with other States in combating TOC, as well as, of course, to maintain maritime security at the regional level, especially in Southeast Asia.

Arising from that issue, the Indonesian Government has to reflect that Indonesia needs a strong Naval force. It is true that Indonesia is not in good economic condition. However, a State consists of people, territory and Government. If the territory is disrupted, then the people and the government will not be able to function properly. Thus, careful steps should be taken to complete Indonesia's Naval forces, including a comprehensive maritime territory patrol program, so that Indonesia's territory and international stripe can be safe and free from Terrorism and Piracy. Then, the intervention of foreign parties can be avoided and the State's sovereignty maintained. A respectful and beneficial cooperation among States in Southeast Asia must be fostered by harmonizing perceptions, policies and strengths, and by establishing a workable extradition agreement.

Can the Requirements of Shariah Law Regarding Criminal Punishments be interpreted in a way that is Compatible with the ICCPR and CAT?

Alfitri[1]

Criminal law deals with the protection of public interests and values deemed to be crucial for a particular society. In Islam, these values are ascribed to the divine commands. Thus, there will be calls from some Muslims for the implementation of Islamic criminal law by the state for they believe that this is required by Islam. Can therefore the death penalty or corporal punishments required by the Shariah law be imposed by a state while they are in conflict with the state's obligation to comply with international human rights instruments? This paper will analyze this uneasy situation faced by some Muslim countries implementing Islamic criminal law but party to the ICCPR and CAT. It aims at verifying that an extreme universalism or cultural relativism approach regarding the validity of international human rights norms on this matter is insufficient. This is because Islamic doctrines strongly influence Muslims on this matter and failure to seriously engage them will lead to rejection of international human rights instruments which are important for protecting individual rights. This paper argues that an approach that is able to reconcile the requirements of Shariah law regarding criminal punishments and those of international human rights norms is necessary.

Keywords: *Shariah Law, Criminal Punishment, ICCPR, CAT*

I. Introduction

Criminal law is a collection of laws regulating the power of the state to impose punishments on a person in order to enforce compliance with certain

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