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Perspectives on Enhancing Safety and Security in Indonesian Waters

Kresno Buntoro¹

The Indonesian waters are for world seaborne trade, naval movement, and other maritime interests. So it has a strategic value for maintaining economic security, peace, and stability in the region. Indonesia has the responsibility to address the challenges presented by activities conducted in its waters, such as marine pollution, depletion of marine resources and criminal activities at sea. These challenges also arise out of the fact that there are only a few provisions in the United Nations Law of the Sea Convention which regulate the obligations of ships or user states to share the burden faced by states which possess sea lanes of communication. The purpose of this paper is to provide an overview of maritime security challenges within Indonesia in light of its obligations to ensure safety of navigation and security. A number of recommendations are brought up to show efforts have been made by Indonesia in maintaining the safety and security in its waters.

Keywords: *indonesian waters, maritime security, UNCLOS*

I. Introduction

Indonesia is a "bridge State" connecting States in the Asia and Australia which occupies the largest territory (land and waters areas) in Southeast Asia. It is placed strategically at the center of important world seaborne trade routes. This unique position dynamically increases the intensity and volume of sea trade flows and significantly increases trading volumes through Indonesian waters. As a consequence, it also exposes Indonesia to a number of issues such as shipping safety and security, increase in illegal activities at sea and transnational crime, availability of infrastructure facilities and navigational aids, and maritime security. Seaborne trade potentially causes a variety of illegal activities which may be attributed to several factors such as ineffective law enforcement, and reasons of personal economic gain by those involved who seek a better life even through illegal means. Indonesia being bordered by 10 countries potentially creates

¹ Commander in the Indonesian Navy, this is personal opinion. Bachelor degree in the University of Diponegoro (Semarang, Indonesia), Master Degrees in the University of Nottingham (UK), PhD in the University of Wollongong (Australia).

maritime issues in disputed areas, as well. These issues always relate to maritime security, in particular, in securing Indonesian maritime territory and how to develop its maritime sector.

In order to manage the issues along with securing the national interest, the Government of Indonesia has taken decisive steps in defense policy,² in particular, international cooperation within a framework of mutual respect, benefit, and trust. The Indonesian Navy has taken steps in order to enhance maritime security such as maritime security patrol, either individually, or through coordinated patrol with neighboring countries. Having considered the complexities of these maritime issues, it is argued that maritime issues cannot be solved by simply using a security perspective, but using a more comprehensive approach including political, economic, socio-cultural and security approaches within national and international law.

Maritime safety in Indonesian waters which are used for international seaborne trade is the responsibility of Indonesia. However, it seems only fair that user States and ships which use choke points within Indonesian waters and derive significant benefits from their use of the straits or choke points, should share in the costs in enhancing the safety and security of these straits or choke points. However, there is no mechanism in international law which obliges user States to contribute and share in the burden of developing maritime security. Furthermore, user States and ships owners believe that freedom of passage should be guaranteed in all straits to maintain growing international economic activities. For this reason, it would be good if there is a form of a new mechanism to improve maritime security and safety in the straits or waters used for international navigation. This new mechanism will cover all aspects of security in straits used for seaborne trade.

This paper provides an overview of the vulnerable condition of Indonesia, particularly with respect to some of the negative effects of seaborne trade within its waters. It also examines the responsibilities and financial burdens Indonesia faces with respect to maintaining safety and security of navigation and protecting the marine environment and what might be contributed by the international community, particularly user states, in order to share this considerable burden. The user-pays principle has been widely proposed as mechanism of burden sharing in ensuring safety of navigation in straits used for international navigation.³ This proposed mechanism can

2 . Indonesian Defence White Paper, 2008.

3 There are many proposals on burden sharing mentioned in meetings on the Straits of Malacca and Singapore such as the Jakarta Meeting 7-8 September 2005, the Kuala Lumpur Meeting 18-20

be implemented, as well, to straits within archipelagic waters. This paper will argue that even though LOSC has provided extended areas of sovereignty and sovereign rights to archipelagic states, they face significant challenges in its implementation and, it is argued, the international community, especially states using the straits concerned, should contribute/share some of the costs involved.

II. Geographical Position of Indonesia

Indonesia, which lies between two oceans (the Pacific and Indian Oceans) and two continents (Asia and Australia) is simultaneously in an advantageous yet vulnerable situation. Indonesia can harness the potential advantages of this geographical setting, if Indonesia can set up major ports close to the shipping routes in the area. Doing this will enable Indonesia to easily distribute its products⁴ utilising these trading routes. On the other hand, Indonesia is in vulnerable situation because the increase in the number of ships passing through Indonesian waters pose a maritime security threat, and will have an effect on its environment and natural resources.⁵

Indonesian waters are considered sea lanes of communication for sea-borne trade, naval movement, and other maritime interests. There are at least seven choke points which are important for international navigation in Indonesian waters: the Malacca Strait, Singapore Strait, Sunda Strait, Lombok Strait, Makassar Strait, and Ombai-Wetar Straits.⁶ These straits and their prominent role in global trade render the geographical position

September 2006, the Singapore Meeting 2-4 September 2007, and several meetings on cooperative mechanism such as Meeting in Penang Malaysia 16-17 April 2008 discussed on navigation's fund. See, Arief Havas Oegroseno, 'Threat to maritime Security and Responses thereto: A Focus on Armed Robbery against Ships at Sea in the Strait of Malacca and Singapore: The Indonesian Experience', (2008) Ninth Meeting United Nations Informal Consultative Process on Oceans and the Law of the Sea <http://www.un.org/Depts/los/consultative_process/documents/9_oegroseno_presentation.pdf> at 1 October 2009; P B Marlow, 'Financing Straits Management' (Paper presented at the Workshop on the Strait of Malacca, Kuala Lumpur, 1995).

⁴ Indonesian's products include manufacture products, goods, and raw materials.

⁵ See, Kazumine Akimoto, 'The Current State of Maritime Security - Structural Weaknesses and Threats in the Sea Lanes' (Paper presented at the Maritime Security in Southeast Asia and Southwest Asia, Tokyo, 2001), pp. 4-6; Joshua Ho, 'The Importance and Security of Regional Sea Lanes' in Kwa Chong Guan and John K. Skogan (eds), *Maritime Security in Southeast Asia* (2007) 21.

⁶ Lewis M Alexander, *Navigational Restrictions within the new LOS context: Geographical Implications for the United States* (1986), 289-298; Michael Leifer, *International Straits of the World: Malacca, Singapore and Indonesia* (1978), pp. 76-85.

of Indonesia strategic for maintaining the economic security, peace, and stability of the region.⁷

Seaborne trade is an important component of world trade, as it represents a far more cost-effective mode of transport than transporting goods by land, especially over long distances. Most of world trade by sea uses Indonesian waters as a trading route. Therefore, Indonesian waters are very important and vital to the world economy.

Based on the Law of the Sea Convention (LOSC), the Straits of Malacca and Singapore are considered as straits used for international navigation, while other straits or choke points within Indonesian waters are not under this categorization.⁸ Accordingly, the Straits of Malacca and Singapore can invite the participation of user States to share the burden and costs of establishing and maintaining the necessary navigational and safety aids and in the prevention, reduction and control of pollution from ships.⁹ However, straits or choke points within Indonesian waters which are also for seaborne trade could not be used as basis for inviting the international community to share the burden of enhancing maritime security and safety.

Considering that those choke points or straits are used for international trade, the mechanism stipulated under Article 43 of the LOSC may also be employed. This cooperation mechanism could include procurement and maintenance of navigation aids and also the prevention, reduction and control of pollution in these areas. Further, the focus of cooperation should be the importance of the straits for international trade and not the question of the legal status of the choke points or straits.

Indonesia has made substantial and sustained efforts to maintain the safety and security of its sea lanes of communication by updating paper and electronic charts,¹⁰ installing navigational aids, broadcasting maritime hazards and weather forecasts,¹¹ and patrolling certain areas.¹² These ef-

7 Indonesia Naval Headquarters, *Eka Sasana Jaya* (1st ed, 2004), p. 4.

8 Elucidation of Article 20 of Indonesia Act Number 6 of 1996 on Indonesian Waters.

9 Introduction to IMO, available at IMO website at <<http://www.imo.org/>> at 15 April 2009. There are many meetings have been done in order to set up cooperative mechanism in the Straits of Malacca and Singapore, such as Meeting in Penang, Malaysia on 16-17 April 2008, and Meeting in Kuching, Malaysia on 28-29 October 2008. One of issues in the meetings is aid navigation fund program, and it should be noted that in this context Japan has been one of those who has supported the program and the efforts within at least the last 30 years.

10 Statement by the Indonesia Chief Hydrographer, World Ocean Symposium, Manado, 15 May 2009.

11 Department of Transportation of Indonesia, Roadmap of Enhancing Safety of Transportation, <http://www.dephub.go.id/admin/modules/Upload_File/images/roadmap_to_zero.pdf> at 20 July 2009.

12 *Ibid.*, p. 13.

ports show that Indonesia, to some extent, has undertaken its obligations in accommodating the interests of the international community. This is illustrated by the decline in the incidence of piracy and attacks against shipping in the vicinity of Indonesian waters in recent times. For example, the International Maritime Bureau (IMB) reported in 2008 that there were only two incidents which occurred in the Straits of Malacca and Singapore.¹³ In 2008, there were only four incidents reported which occurred in Indonesian waters compared with nine incidents in 2007 and 19 incidents in 2006.¹⁴

With respect to economic and security matters, the needs and interests of Indonesia are analogous to those of user states or ships. These include the consideration that the sea lanes of communication should be safe and secure and should not create potential damage to the environment. However, on the part of Indonesia, the interest is more serious since it will assume responsibility in the event that an incident occurs in the choke points or straits. Further, considering the proximity of the choke points to Java Island, the most populous island of Indonesia and considered the centre of country's economic, political and government activities, Indonesia's interest in these choke points can be considered to be fundamental to its national interests.

III. Perceptions of Maritime Security

The Law of the Sea Convention was ratified by Indonesia through the enactment of Act Number 17 of 1985 and the status of Indonesia as an archipelagic State is recognized by the international community. Recognition in international law is passed over "a defined territory" of Indonesia. Hence, Indonesia has a legal right over its national territory, which covers land, sea and the air thereabove. Indonesia¹⁵ has sovereignty over archipe-

¹³ Pottengal Mukundan, 'IMB reports unprecedented rise in maritime hijackings' (International Maritime Bureau, 2009), <http://www.icc-ccs.org/index.php?option=com_content&view=article&id=332:imb-reports-unprecedented-rise-in-maritime-hijackings&catid=60:news&Itemid=51> at 20 July 2009.

¹⁴ Press release of Indonesian Embassy in Ottawa available at <http://www.indonesia-ottawa.org/information/details.php?type=news_copy&id=5285> at 29 September 2009. See, Djoko Sumaryono, 'The Indonesian Maritime Security Coordinating Board' in Robert B Cribb and Michelle Ford (eds), *Indonesia beyond the Water's Edge: Managing an Archipelagic State* (2009), p. 139.

¹⁵ LOSC art 46(a) provides that a state could be considered to be an archipelagic state if it is constituted wholly by one or more archipelagos. It may include other islands which historically have been regarded as a single geographical, economic, and political entity.

lagic waters,¹⁶ enclosed by archipelagic baselines¹⁷ and up to the 12 nautical miles of territorial sea measured from the baselines.¹⁸ Indonesia also has sovereign rights over the natural resources of the EEZ¹⁹ and the continental shelf.²⁰ Moreover, Indonesia is obliged to accommodate the rights of user states and ships, for example, by ensuring safe passage through and over its archipelagic waters, notably through innocent passage and archipelagic sea lane passage and to allow transit passage for ships and aircraft passing through straits used for international navigation.

Indonesia believes that maritime security and safety are not only law enforcement at sea but it is more complex and need to be addressed together with other States. Maritime security implies that the sea is safe to be used by users, and free from the threat or disturbance from maritime activities. Consequently, the Indonesian Navy's perceptions²¹ on maritime security are as follows:

- a. free from violent threats, either by organized armed group or having the ability to endanger nation or the state. These threats can be in the form of piracy, sea robbery, sabotage of vital objects and maritime terrorism.
- b. free from navigational threats, generated by geographic and hydrographic conditions along with inadequate support of navigation facilities, such as lighthouses, buoys and others, that may endanger safety of shipping and navigation.
- c. free from threats against environmental and sea resources in the form of contamination of the seas' ecosystem and over-exploitation.
- d. free from law transgression threat, not abiding national and international laws, such as illegal fishing, illegal logging, illegal migrant, smuggling, etc.

16 LOSC art 49.

17 LOSC art 47 mentions that an archipelagic state may draw archipelagic baselines to join the outermost points of the outermost islands and drying reefs of the archipelago. The length of such baselines shall not exceed 100 nautical miles, although up to three per cent of the total number of such baselines may be up to 125 nautical miles. The archipelagic baselines may not draw to and from low tide elevations, unless lighthouses or similar installations, which are permanently above water, have been built on them. The archipelagic baselines do not depart to any appreciable extent from the general configuration of the archipelago and the system of archipelagic baselines should not cut off the territorial sea of another state from the high seas or its exclusive economic zone.

18 LOSC arts 3 and 48.

19 LOSC art 56.

20 LOSC art 77.

21 Indonesia Naval Headquarters, *Eka Sasana Jaya* (1st ed, 2004), p. 8.

Based on this perception, it is clear that maritime security has a fairly broad scope, requiring organization, management, and adequate facilities and infrastructure. Issues of maritime security tend to be difficult to deal with because of the interplay of national and international issues on the sea. Therefore, to handle maritime security issues, cooperation between countries is necessary.

IV. LOSC Framework on Maritime Cooperation

LOSC provides a delicate balance between the rights and duties of coastal States and foreign ships with respect to navigation through the waters of the coastal States.²² This balance of interest is achieved through the implementation of sovereignty and sovereign rights of coastal States and navigational rights of maritime States.²³ Maritime States always focus on the freedom of navigation in order to guarantee the movement of goods, peoples, and naval auxiliaries.²⁴ In contrast to the concern of the maritime States, coastal States are concerned with the proximity and density of vessel traffic and the possible negative impacts of shipping in their waters such as pollution and maritime accidents which endanger the lives of their citizens and damage property and resources.²⁵ Moreover, dense traffic in certain straits may make it difficult or impossible for coastal States to utilize fully their fisheries and seabed resources. Coastal States bordering the straits are also concerned that traffic would jeopardize their security interests.

The navigational regimes under LOSC such as innocent passage, transit passage and archipelagic sea lane passage provide for different rights of coastal States to regulate passage into their waters; rights of user States to regulate the activities of vessels flying their flag in the waters of the coastal States; and rights of ships to navigate international waters. Although prescribed in the same Convention, those rights and obligations are usually not the same. It depends on what kind of navigation right the ship exercises,

²² Jon M Van Dyke, 'Balancing Navigational Freedom with Environmental and Security Concerns' (2004) 15 *Colorado Journal of International Environmental Law and Policy*, p. 27.

²³ Karin M Burke and Deborah A DeLeo, 'Innocent Passage and Transit Passage in the United Nations Convention on the Law of the Sea' (1982-1983) 9 *Yale Journal of World Public Order*, p. 390.

²⁴ W Michael Reisman, 'The Regimes of Straits and National Security: An Appraisal of International Lawmaking' (1980) 74(48) *American Journal of International Law* 30, p. 67.

²⁵ Karin M Burke and Deborah A DeLeo, 'Innocent Passage and Transit Passage in the United Nations Convention on the Law of the Sea' (1982-1983) 9 *Yale Journal of World Public Order*, p. 401.

for example ship exercising innocent passage right has different rights and obligations from a ship exercising transit passage right.

Over past years the significant increase in the amount of energy (oil, gas, and coal) and goods being transported through straits or choke points has brought greater pressure on the coastal States to invest in sophisticated and expensive navigation aids in order to ensure the safety and security of passing ships. The dangers of such passage are associated with high volume of maritime traffic and in particular the transport of dangerous and hazardous cargoes. The problem is whether or not coastal States or archipelagic States like Indonesia have to face this problem alone or if there is equity and economics as to how to recover the cost incurred when other States are deriving significant benefit from their use of the straits or choke points.

As emphasized in this paper, there are no specific provisions in LOSC which specify that the ships or user States have to help coastal States in order to enhance safety and security of sea lanes. Article 43 of LOSC is considered to be the mechanism by which straits used for international navigation are regulated by the transit passage regime. Article 43 clearly prescribes that user States and States bordering a strait should by agreement cooperate in the establishment and maintenance of necessary navigational and safety aids or other improvements in aid of international navigation for the prevention, reduction and control of pollution from ships. So the common areas for cooperation based of this article are navigational safety aspect and marine environments management. Those areas have been continuously articulated in the media and in international for a, especially the International Maritime Organization is one of international organization responsible for this matters²⁶.

Article 43 of LOSC further provides the requirements for user States to contribute to the cost of safety and environmental protection; however there is a problem with respect to developing mechanism for cost recovery. The basic question is whether the contribution should come from governments or ship owners. Moreover, many argue that any burden of a fee for transit, either direct or indirect, would be contrary to the principle of freedom of transit through a strait used for international navigation.²⁷

In archipelagic State such as Indonesia, the issue of burden sharing is also complicated. The only strait used for international navigation rec-

²⁶ Introduction to IMO, available at <http://www.imo.org/> accessed date 15 April 2009.

²⁷ Those issues came up during Jakarta Statement on Enhancement of Safety, Security and Environment Protection in the Straits of Malacca and Singapore, in September 2005.

ognized by Indonesia is the Malacca and Singapore Straits.²⁸ Although Indonesia has many choke points which are also used for international navigation such as Sunda, Lombok, Makasar, and Ombai-Wetar Strait, those straits do not fall within the concept of strait used for international navigation prescribed in Articles 36 and 37 of LOSC. So there is complicated question whether Indonesia could apply Article 43 of LOSC in order to acquire burden sharing in those straits. Moreover, it seems that the issue of burden sharing under Article 43 of LOSC is not well developed having considered until now, no such agreement has been concluded.

In case of the Straits of Malacca and Singapore, littoral States have sought the assistance of the Japanese Government in order to enhance the safety of navigation since early 1970s. Nowadays, a number of international organizations have been involved in improving the safety of navigation and protecting the environment of the Straits, such as World Bank, the International Maritime Organization (IMO), the International Hydrographic Organization (IHO), the International Association of Independent Tanker Owners (INTERTANKO) and the International Chamber of Shipping (ICS) through a project called Marine Electronic Highways in the Strait of Malacca and Singapore.²⁹ The development of safety and security in the Straits of Malacca and Singapore is still on the voluntary bases, and it is not under certain agreement which article 43 of LOSC prescribe.

There is a potential for mechanisms in Article 43 of LOSC and State practice in the Straits of Malacca and Singapore to be applied in choke points within Indonesian waters in order to promote the concept of burden-sharing. Such mechanisms may be established through bilateral or multilateral agreements. Having such kind of mechanism, the safety and security of those choke points could be enhanced.

V. Maritime Security Issues

The issues of maritime security which are prominent and dominant influence national and international interests. Maritime security has become the most dominant regional security issue of the 21st century as the maritime domain becomes even more strategic as it continues to be the main life line of global economic interaction. Since economy has become the most

²⁸ Elucidation of Article 20 (2) of Act number 6 Year 1996 on Indonesian Waters.

²⁹ The Agreement was signed in Jakarta, September 2005 available http://www.imo.org/About/mainframe.asp?topic_id=1472&doc_id=8471, accessed dated 15 April 2009.



influential field in the era of globalization, the security of shipping routes has become a crucial issue for many States. A very good example is the piracy and violence in Somalia waters. The world's main focus in South-east Asia is maritime security in the region because of the proliferation of trans-national crimes, such as armed robbery, piracy, smuggling, illegal migrants, infiltration and terrorism. These criminal activities are caused by many things such as the large number of actors and economic activities in this region compared to the capacity of law enforcers.

Indonesia's strategic position contributes benefits as well as challenges on how to secure Indonesian waters. As stated in LOSC, , as an archipelagic State, Indonesia has the obligation to provide Archipelagic Sea Lanes Passage for international shipping and also ensure the safety and security of these shipping routes. Indonesia has yet to resolve most of its maritime boundaries with neighbouring countries which will lead to border issues at sea. Since these countries respect the sovereignty of one another until the border issues are resolved, surveillance in these disputed waters will be minimal, making them prone to illegal activities. These maritime border negotiations may take years before an agreement is reached, thus we need to pay more effort and attention to these areas.

Maritime security issues include all problems whether caused by natural and human activities as well as those which pose a danger to the safety of the environment. Maritime security is an integral part of the development of national strategic environment and any problems or activities that may create negative implications for national and international interests are considered as threats. Based on their nature and type, we can classify threats into two groups, which are factual and potential threats. The factual threat include Weather conditions which pose a danger to shipping; Natural disasters at sea; Marine pollution; Accident at sea (ship collisions); Any illegal activities at sea; Illegal fishing; Illegal logging; Weapon smuggling; People smuggling and trafficking; Illegal migrants; Piracy; Armed robbery; Illegal explorations and exploitation of natural resources. The potential threats are violence and law infringement at sea; Small-scale armed conflict; Terror and sabotage of national vital objects; Border disputes; Proliferation of Weapons of Mass Destruction (WMD).

VI. Facing the Common Threat

To improve maritime security requires cooperation among countries within the framework of security, especially in border areas. The basic principle of cooperation must be based on mutual trust and benefit. Maritime security cooperation must always adhere to the national interests of all countries and implement a Counter Balancing Interest. Cooperation in securing the sea is a form of cooperation which puts forward constructivism, securitization, and human security.

Cooperation is indeed the result when actual security issues take new forms of non-traditional security issues such as the emergence of threats and attacks which are hard to predict exactly where and when such threat or an attack would take place. Such cooperation may include security cooperation activities in the form of coordinated patrols or joint exercises in dealing with various forms of maritime security threats. Cooperation can also be done in the form of enhancing capabilities such as:

- a. Exchange of information, intelligence exchange, building integrated information systems between countries including surveillance and monitoring systems;
- b. Carry out joint exercises, such as anti-piracy and anti-armed robbery at sea exercises.
- c. Enhancing navigation aids.
- d. Assisting in the development of capabilities on maritime security, in particular providing facilities for training;
- e. Assisting in managing natural resources; and
- f. Assisting in the prevention of marine environmental pollution that endangers the ecosystem.

Cooperation in dealing with maritime security has been undertaken between the Indonesian Navy and its neighboring countries. For example, the Indonesian Navy has cooperation with Australian Agencies dealing with maritime security on the basis of the Lombok Treaty. Moreover, cooperation between the Indonesian Navy and the respective navies of Singapore, India, Malaysia, Thailand and the Philippines. These cooperative arrangements are not only between the two navies, but also in other forums which been held by other institutions both in Indonesia and neighboring countries. These cooperations include, for example:

- a. Coordinated patrols;

- b. Exchange of information;
- c. Joint Exercise; and
- d. Joint forum in the form of workshops/seminars/symposia.

VII. Conclusion

LOSOC has promoted and preserved the unity of Indonesia as archipelagic State. These benefits or rights under LOSOC are paralleled by a number of obligations with respect to navigation of foreign ships in its waters. Indonesia provides sea lanes of communication for the international community in order to guarantee the movement of goods, people, and naval auxiliaries. It also ensures the safety and security of the sea lanes. Such obligations entail financial resources which are not addressed in LOSOC. LOSOC does not even provide enough provisions or mechanisms in order to promote burden-sharing in the regulation of international straits. Article 43 of LOSOC may be used as basis for this mechanism. However, no State practice exists for the implementation of burden-sharing mechanisms using this provision.

In this era of globalization, maritime security is a matter that cannot be avoided, and is in fact, a necessity. The instability of a state's area will influence the interests of other states. The impact of such condition is not only on security aspects, but will also affect the economic, socio-cultural and bilateral relations between countries. On this basis, cooperation which is built on trust and mutual benefit, may be a common solution to enhance maritime security for the national, regional and global interests.