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POLICY EVALUATION OF MARITIME SECURITY ISSUES IN INDONESIA

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Abstract: This paper aims to evaluate the implementation of Maritime Security Policy in Indonesia. While the issues of maritime security are varied, this paper focuses only on three issues in maritime security, which include maritime delimitation, Illegal Unreported and Unregulated (IUU Fishing) and Piracy. It is argued that IUU Fishing as well as piracy and any other maritime security threats emerged due to unclear maritime delimitation. Indonesia is the biggest archipelagic state in the world neighboring with ten coastal states, which each of them needs clear maritime delimitation. While Indonesia has done much in fixing its maritime delimitation, yet much remain to be done. Furthermore, while various international legal framework has been established relating to IUU Fishing, unfortunately, national laws concerning IUU Fishing still recall for never ending debates. Similar to this, national laws in piracy is still out of date since such laws still regulated under Criminal Laws Code/ *Kitab Undang-Undang Hukum Pidana (KUHP)*, which was adopted from Dutch laws many decades ago. Such conditions leads to insufficient policy implementation. This paper adopts a qualitative research method. Data collected from relevant informant and analysed using policy implementation theory. It is submitted that in ensuring policy implementation, existing policies relating to maritime security, especially IUU Fishing as well as piracy needs to be revisited and revised to be in accordance with international policies and legal framework.

Keywords: IUU fishing, piracy, maritime security, Indonesia, policy

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Introduction

Lie astride a very strategic location that is between two masses of waters, Pacific and Indian Oceans, between two continents, Asia and Australia, Indonesia holds many advantages from international navigation and trade. In addition to this, Indonesia's status as the biggest archipelagic state in the world has made Indonesia as the glorious state in Asia. However, despite of many advantages, such strategic location also has made Indonesian waters a very vulnerable routes relating to maritime security and safety.

While there is no universal definition of maritime security, it is argued that maritime security should be distinguished from maritime safety. Pozo et al. (2020) says that maritime security is "the combination of preventive and responsive measures to protect the maritime domain against threats and intentional unlawful acts." Whereas maritime safety" is "the combination of preventive and responsive measures intended to protect the maritime domain against, and limit the effect of, accidental or natural danger, harm, and damage to environment, risks or loss." It is therefore submitted that the keywords for maritime security are: preventive and responsive measures, aiming at both law enforcement as a civilian and military requirement and defence operations as a military, in this case naval requirement. Meanwhile, the International Maritime Organization (IMO) draws a distinction between maritime safety and maritime security. The previous refers to preventing or minimizing the occurrences of accidents at sea that may be caused by sub-standard ships, unqualified crew or other operator's error. Whereas the later refers to the protection against unlawful and deliberate acts conducted at the ocean (Mukherjee and Mejia, 2003).

The crucial distinction is between man-made and unintentional risks and dangers. Although maritime security encompasses broader aspects as explained previously, Wibawa (2016) argued that the main maritime security issue focus on the maritime delimitation, IUU Fishing as well as piracy and armed robbery at sea. Thus, this paper limits its study only on those three main issues. This way, only legal framework and policy relevant to these three main issues will be discussed. The agreement on maritime delimitation is crucial in order to address other maritime threats. This is because the authority of state in enforcing its law depends on the *locus delicti* of such illegal and unlawful activities. Unclear maritime delimitation further leads to unclear policy implementation as well. With regard to IUU Fishing, unclear maritime delimitation caused different perspectives in whether deciding certain areas of seas were fall under Indonesia's territory or other state. In addition to this relating to piracy, unclear maritime delimitation leads to uncertainty of law enforcement in the act of piracy. This paper aims to evaluate the implementation of Maritime Security Policy in Indonesia, especially in the areas of maritime delimitation, IUU Fishing and Piracy. It determines whether Indonesia's policy in those three areas has been in accordance with international policy in the same areas.

Methodology

This research uses qualitative methodology, which means describing the fact from what really happen in the field. In other words making the fact within the author partisipatif framework by inductive method in descibing existing phenomenon (Goman & Clyton, 2010). It uses primary data, which includes interview with relevant governmental actors, especially law enforcers in maritime security. In addition to this, secondary data, which includes legal and policy documents, books and journal articles. Thus, secondary data in this research is obtained through library reseach as well as related government available information. Furthermore this research is focused specifically in available data in the implementation of maritime security policy and

legal instruments and also data on maritime security threats before and after the policy is implemented. In addition to this, data on preventive actions taken by Indonesia in assuring the establishment of maritime security is also analysed.

Indonesia's Maritime Delimitation

While Indonesia has several laws and policies concerning maritime security measures, implementation of such policies raised problems. With regard to maritime delimitation, although Indonesia has continuously conducted agreement with neighbouring states and recently came up with new map, yet much remains to be done. These include maritime delimitation with Palau and Timor Leste. Maritime delimitation with Timor Leste is crucial, since maritime delimitation with Timor Leste requires more efforts with regard to the revision of Indonesia's archipelagic sea lanes through the Timor Sea. In addition to this, due to natural disaster, Indonesia's continental shelf in West Sumatra extends more than 350 nautical miles, which requires further negotiations with India. These should be done in a short time in assuring Indonesia's ocean resources over those areas. It is submitted that an agreed maritime delimitation will assure law enforcement concerning the reservation of ocean resources.

Indonesia is bordered at ocean with at least 10 neighbouring states, namely Malaysia, Singapore, Vietnam, Philippines, Palau, Papua New Guinea, Australia, Timor-Leste, India and Thailand as showed in the figure below:

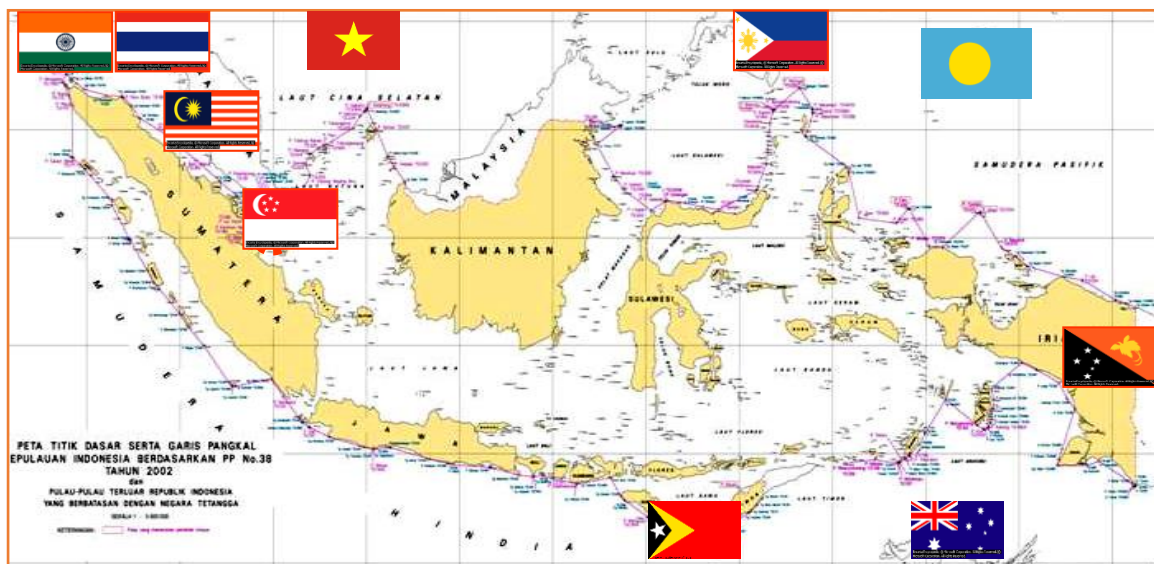


Figure 1. Indonesia Country Map

While much has been done with those 10 neighbouring states, yet much remains to be done. Several points has not come to an agreement. Complicated maritime boundaries arise due to the differences in the adoption of baseline method between Indonesia as an archipelagic state and other states, which are coastal states.

The Law of the Sea Convention (LOSC) provides various maritime zones for coastal and archipelagic states over which various degree of sovereignty as well as right and obligation of user maritime atets are provided. It is argued that since every coastal state has the rights of extended ocean space as far as 200 nautical miles up to EEZ, if the distance of two states separated by the ocean is at least 400 nautical miles, there would be no conflict whatsoever over the use of the ocean. However, unfortunately that situation is unlikely to happen. For Southeast Asia countries, which lies astride a semi-closed sea, the overlapping maritime space usually over the EEZ and continental shelf, although there is in some cases the overlapping

ocean space is territorial sea. The complete and agreed maritime delimitation is between Indonesia and Singapore, as well as between Indonesia and New Guinea. Whereas maritime delimitation, in this case delimitation of EEZ and continental shelf between Indonesia and Malaysia, the Philippines, India, Thailand, Vietnam and Palau have not been resolved in some areas, although series of discussions as well as some agreements have been made. Meanwhile with Australia agreements have been made in maritime delimitation as well as further cooperation arrangements both on the sovereignty issue and management of natural resources. However, maritime delimitation between Indonesia and East-Timor has not been conducted yet since both states still focusing on land delimitation (Daryanto, 2016). While maritime delimitation is crucial, it is argued that maritime delimitation can only be proceed after the sovereignty issues are resolved. These disputes must, therefore, be addressed first. However, states can set aside the issue of sovereignty and consider joint development of various ocean related issues. Furthermore, Table 1 shows the status of Indonesia's maritime boundaries agreement with neighbouring states.

Table 1: Statues of Indonesia's maritime boundaries agreements with neighboring states

Neighbouring State	Status of maritime boundaries agreement			
	Territorial Sea	Contiguous Zone	Exclusive Economic Zone	Continental Shelf
1. India	x	x	-	v
2. Thailand	x	x	-	v
3. Malaysia	v	-	-	v
4. Singapore	v	x	x	x
5. Vietnam	x	x	-	v
6. The Philippines	x	-	-	-
7. Palau	x	x	-	-
8. Papua New Guinea	v	x	v	v
9. Australia	x	x	v	v
10. Timor Leste	-	-	-	-

Source: Indonesian Maritime Council. (2007)

Notes:

- v : indicates that maritime boundaries agreements between the two countries have been signed and ratified
- x : indicates that maritime boundaries agreements between two countries are not required
- : indicates that maritime boundaries agreements have not been discussed

It can be seen from Table 1 that with Timor Leste, Indonesia has not done any maritime delimitation, whilst near to Timor Leste, Indonesia's Archipelagic Sea Lanes Passage III lie astride. This condition might cause further problems in the future. The most important thing to be settled, in fact regarding to EEZ delimitation, since in this maritime zone other states; rights in relation to exploration and exploitation of natural resources exists. It is submitted that unsettled maritime boundary as shown in the table is actually the main problem in assuring maritime security and safety in Indonesian waters.

It is further argued that although there has been no open border conflict, it is Indonesia's first priority to work on unsettled maritime boundaries. However, due to the bilateral nature of the issue, Indonesia tends to carry out bilateral negotiations in seeking an amicable solution over potential maritime boundaries disputes. In addition to this, since maritime border is one of the vulnerable issue, Indonesia should also aware of the management of its outermost islands bordering the neighbouring countries. Learning from the lost of Sipadan-Ligitan, Indonesia is

strengthening its outermost islands ensuring the possession of such islands. The following shows list of Indonesia's outermost islands with their bordering States:

Table 2: List of Indonesia's outermost islands

No	Name of the Island	Location	Bordering State
1.	Rondo	Indian Ocean (NAD)	India
2.	Berhala	Strait of Malacca	Malaysia
3.	Nipa	Strait of Singapore (Riau Islands)	Singapore
4.	Sekatung	South China Sea (Riau Islands)	Vietnam
5.	Marore	Sulawesi Sea (North Sulawesi)	The Philippines
6.	Marampit	Sulawesi Sea (North Sulawesi)	The Philippines
7.	Miangas	Sulawesi Sea (North Sulawesi)	The Philippines
8.	Fani	Pacific (West Papua)	Palau
9.	Fanildo	Pacific (Papua)	Palau
10.	Bras	Pacific (Papua)	Palau
11.	Batek	Sawu Sea (East Nusa Tenggara)	Timor Leste
12.	Sebatik Island	East Kalimantan	Malaysia

Source: Indonesian Maritime Council. (2007)

From the above discussion, it can be argued that relating to maritime delimitation, beside clear maritime delimitation which should be settled, Indonesia also has to manage its outermost islands. While maintaining Indonesia's sovereignty was done by putting security posts, however, the effort in maintaining the outermost islands should be conducted in more accurate as to assuring local people's prosperity.

Indonesia's policy in IUU Fishing

Underpinned by the unresolved maritime delimitation in some areas, IUU Fishing emerged, especially during the unsettled areas. Unsettled maritime delimitation raised uncertainty in the law enforcement processes. The research shows increasing IUU Fishing over the unsettled areas and in 2014 it was recorded that there were more than a hundred vessels conducting IUU Fishing which cause Indonesia to lose about 24 billion dollars per year due to illegal fishing (Herman, 2014). The table below shows the increasing rate of IUU Fishing:

Table 3: IUU Fishing rate in Indonesian waters up to 2018

No.	Year	IUU Fishing
1	2012	216 cases
2	2013	170 cases
3	2014	198 cases
4	2015	130 cases
5	2016	180 cases
6	2017	195 cases
7	2018	230 cases

Source: Indonesian Navy (2019)

While Indonesia is a member of one of Regional Fisheries Management Organizations (RFMOs), however, such measures in within international scope and over the Indian Ocean. Meanwhile there is no certain cooperation ever conducted between ASEAN member states in addressing IUU Fishing as well as management and conservation of living resources of the Southeast waters. However, as mentioned earlier, issues on the management of resources, in the absence of a fix maritime delimitation, in fact can be addressed by establishing joint development of the resources as an option, without prejudice to their respective claims. The

table below further illustrate the potential of fish and aquatic production in Indonesia compared with other Southeast and East Asia States:

Table 4: Southeast and East Asia Fisheries and Aquatic Plants Production

No	Countries	Fisheries (tons)			Aquatic Plants (tons)		
		Capture	Aquatic Plans	Total	Capture	Aquatic Plans	Total
1.	China	17,591,299	47,610,040	65,201,339	261,770	13,924,535	14,186,305
2.	Japan	3,460,168	703,915	4,164,083	93,300	300,300	393,600
3.	South Korea	1,648,993	479,360	2,128,353	7,826	1,197,129	1,204,955
4.	North Korea	220,000	64,150	284,150	-	489,000	489,000
5.	Indonesia	6,485,320	4,342,465	10,827,785	78,230	11,269,341	11,347,571
6.	Malaysia	1,491,974	246,205	1,738,179	-	260,760	260,760
7.	Philippines	2,151,502	781,798	2,933,300	367	1,566,361	1,566,728
8.	Vietnam	2,757,314	3,438,378	6,195,692	-	11,822	11,822
9.	Thailand	1,693,050	897,096	2,590,346	-	934,800	934,800
10.	Singapore	1,645	4,971	6,616	-	-	-
11.	Brunei	4,000	711	4,711	-	-	-
12.	Myanmar	1,953,510	997,306	2,950,816	-	2,324	2,324
13.	Cambodia	639,468	120,055	759,523	-	-	-

Source: Indonesian Navy (2019)

It can be seen from the table 4 that Indonesia is the fifth country with regard to fisheries product, while Indonesia is the largest country with the largest ocean areas among those countries.

In order to protect its marine production and perform deterrence from illegal fishing vessels, the current Indonesian Ministry for Maritime Affairs and Fisheries under leadership of Minister Susi Pudjiastuti has firmly arrested more than 35 vessels with Chinese, Vietnamese, and Philippines flags by September 2015 (CNN Indonesia, 2015). However, this robust policy has become a concern for the Chinese, Vietnamese, and the Philippines governments and forced them to settle negotiation with the Indonesian government accordingly. The firm instruction of Minister Susi Pudjiastuti which is to sink the vessels of foreign vessels conducting IUU Fishing is another concern. While Article 73 of the LOSC gives coastal states the rights to regulates IUU Fishing under its national regulation, this provision clearly sets up certain rules regarding the law enforcement. The provisions envisages that such law enforcement should not include imprisonment and other corporal punishment, however, Article 69 of Indonesian Act No. 45 Year 2009 on Fisheries clearly allowed Indonesian Government to sink foreign vessels conducting the act of IUU Fishing, prior to the court decision.

Almadudy argued that Indonesian policy in sinking IUU fishing vessels is in fact in breach of international law of the sea, in this case Article 73 of the LOSC. In addition to this, Indonesian Act No. 45 Year 2009 on Fisheries does not regulates further on the mechanism of sinking the vessels, such as who has the authority to sink the vessels? Is it the Ministry of Fisheries and Ocean Affairs or Indonesian Navy? While the Ministry of Fisheries and Ocean Affairs has their own investigator, however, only Indonesian Navy's vessels are combatant vessels, which are equipped with weaponry to sink the IUU Fishing vessels.

Furthermore, a more traditional maritime threats underpinned by unresolved maritime delimitation is piracy and armed robbery at sea. Following discussion will discuss Indonesian law in providing provisions for piracy and armed robbery at sea. With regard to piracy, as stated earlier, although some argued that in solving piracy and armed robbery at sea

international arrangement should be heavily count on because such violence involves transnational criminal action, however, it is crucial to have national law in place relating to piracy and armed robbery at sea. It is submitted that Indonesian law on the matter is out of dated and thus unsatisfactory. In Indonesia, Piracy and armed robbery at sea is regulated under the Indonesian Criminal Act (*Kitab Undang-undang Hukum Pidana/KUHP*), specifically under Chapter XXIX of *KUHP*. *KUHP* was inheritable from the Netherland since Indonesia was colonized by the Netherland hundred years ago. In fact there are several confusion in discussing provisions on piracy. Under Article 101 of LOSC piracy is defined as:

- “(a) 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 a private 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;
- (b) any act of voluntary participation in the operation of a ship or of aircraft with knowledge of facts making it a pirate ship or aircraft;
- (c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).”

Whereas Article 105 of LOSC gives universal jurisdiction on piracy, in that although piracy is conducted on the high seas, yet every state may establish their jurisdiction. In such, the existing and operational national law is needed. While the scope of piracy was extended not only occur on high seas but territorial sea as well, the provisions of *KUHP* did not include piracy which is conducted on the high seas.

Article 438 of *KUHP* envisages the criteria of piracy to include a person who become a seafarer of a pirate ships and a person (seafarer) who use a ship to conduct the act of piracy and armed robbery. Article 439 and 440 of *KUHP* further provide the same *locus delicti* of both piracy and armed robbery that is violence conducting over inland waters, such as river and Indonesian waters. At this point, important reminder must be noticed that according to *KUHP*, Indonesian waters refers to waters as provided within the *Territorial zee en Maritieme Kringen Ordonantie 1939 (TZMKO 1939)*, which only gave each island of Indonesia 3 nautical miles of territorial sea. Unlike LOSC, TZMKO only recognize territorial sea and did not acknowledge various maritime zones as provided within LOSC. In This way, there is inconsistency between domestic legal framework and international legal framework. Moreover, since the ratification of LOSC by Indonesia, TZMKO 1939 does not applicable anymore and replaced by Indonesian Act Number 6 Year 1996 on Indonesian Waters which acknowledge various maritime zones as provided within the LOSC. This way, it is submitted that *KUHP* cannot be used as legal basis in combating/ punishing the act of piracy and armed robbery at sea. *KUHP* has refer to TZMKO, which has been declared as void and thus *KUHP*'s provisions relating to navigational crimes are no longer applicable. This way, there is vacuum of law relating to piracy and armed robbery at sea in Indonesia. Another specific domestic law which relevant for this discussion is Indonesian Act Number 17/2008 on Navigation. While this act can be said to represent Indonesian Maritime Law, however, this Act is silent on maritime security mechanism and specifically piracy. This way, actually there is a lack of national policy and legal framework on maritime security in Indonesia.

From the above analysis, it can be concluded that Indonesian Law related to piracy and armed robbery at sea are already out of-dated and thus it can be said that there is no national law in place relating to piracy and armed robbery at sea. It is further argued that the lack of national law on the matter will lead to the uselessness of any regional and international arrangement

participated by Indonesia. While as described above that legal framework in maritime security, especially over the three focused areas (maritime delimitation, IUU Fishing as well as piracy and armed robbery at sea) are actually exist, however, the progress seems too slow. It is acknowledged that Indonesia has been working hard and continuously in settling existing uncertainty in maritime delimitation and also sets up numerous legal framework in addressing IUU Fishing, yet there is no progress in formulating sufficient legal framework with regard to piracy and armed robbery at sea. However, this does not mean that Indonesia is absence from existing regional as well as international initiatives with regard to piracy and armed robbery at sea. Although Senia argued that Indonesia's willingness in joining various regional and international initiatives in addressing piracy and armed robbery at sea, were heavily depends on the interests of Indonesia's Ministry of Foreign Affairs, yet several joint patrols are conducted jointly between Indonesia and several neighbouring states.

Indonesia's policy in Piracy

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Policy Implementation in Maritime Delimitation, IUU Fishing and Piracy

From the above discussion, it can be submitted that while there are international policies as well as legal frameworks in maritime security, especially relating to maritime delimitation, IUU Fishing and piracy, however, national policies and laws still inconsistent with international laws and policies. It is further argued that the empirical conditions showed above made policy implementation difficult and thus failed to take necessary measures against maritime threats. However, in fact there are supporting factors in establishing maritime security. These include government commitment in ocean affairs.

Indonesian President Joko Widodo recently announced an overarching concept of a "Global Maritime Fulcrum" (GMF) as the centrepiece of his administration. It fundamentally represents a national vision and development agenda to rebuild the country's maritime culture towards economic expansion of the country. The concept also signifies a new strategic doctrine that projects Indonesia to become a maritime power with considerable diplomatic influence. Specifically, the Jokowi administration seeks to play a central role in two vast maritime regions — the Indian and Pacific oceans. It is hope with this President's concept, sufficient measures in dealing with maritime threats will be taken. Another supporting factor is human resources. As a state with huge number of populations, Indonesia has potency in establishing the GMF and thus assuring maritime security over Indonesian waters.

Furthermore, as can be seen from the previous discussions, obstacles in establishing sufficient policies in measuring maritime threats, include insufficient legal and policies framework. The insufficient legal framework which do not in accordance with international policies and legal framework can be stated as the main obstacles. Other obstacles include, national priority has not been put in ocean affairs. In addition to this, political situation in Indonesia gives less support to the development of ocean affairs in Indonesia.

Conclusion

As the biggest archipelagic state in the world, which is located in a very strategic location, Indonesia should assure security over its waters. This is because Indonesian waters is one of vital international navigational routes in the world. Main maritime threats faced by Indonesia include IUU Fishing and piracy. It is argued that those threats were triggered by unclear and unsettled maritime delimitation. While LOSC provides various maritime zones, states should also draw their maritime delimitation with their neighboring states. Indonesia has done much in fixing its maritime delimitation, yet much remains to be done.

As for IUU Fishing and piracy, Indonesian national policies and laws still do not in line with international policies and legal frameworks. The consistency between international and national policies in this field is important since at the ocean there are also other states' right which should be considered. Such inconsistency has made policy implementation insufficient. This article proposes that Indonesia should re-visit and revised relevant policies and laws in accordance with international laws and policies.

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