

**“LEGAL AND REGULATORY FRAMEWORK TO SUPPORT INDONESIA AS A
WORLD MARITIME FULCRUM: THE 1982 UNCLOS PROVISIONS TO SUPPORT
THE PILLAR OF MARITIME DIPLOMACY”**

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ABSTRACT

Recently President Joko Widodo presented his new doctrine of Indonesia as a global maritime fulcrum both to the national audience and also to his counterpart at the East Asian Summit in 2014. The maritime fulcrum that he introduced to the international audience is considered to also be his foreign policy.

Along with this doctrine he also elaborated the key areas or pillars: (1) rebuild Indonesia's maritime culture; (2) maintain and manage sea resources with a focus on establishing sovereignty over sea-based food products (3) prioritize infrastructure and maritime connectivity development; (4) maritime diplomacy to promote cooperation with other country and end the sources of conflict at sea; (5) build its maritime defense power.

This article tries to indicate that provisions of the 1982 UNCLOS can be used for legal and regulatory framework to support the fourth pillar of maritime diplomacy, especially through international cooperation.

Keywords: *Indonesia's Global Maritime Fulcrum; Maritime Diplomacy; 1982 UNCLOS.*

Introduction

President Joko Widodo (popularly known as "Jokowi") presented to the leaders of East Asia and several powerhouse nations his maritime fulcrum doctrine that will define his administration's policies for the next five years. In his speech during the East Asia Summit (EAS) on November 13, 2014, held in Myanmar's new capital, Nay Pyi Daw, Joko Widodo presented his audience with a complete exposition of his foreign policy doctrine: Indonesia as a global maritime fulcrum, a picture of the power of a nation that lies between two oceans.

Realizing that a major transition is taking place in the 21st century from the

West to East Asia, Joko Widodo underscored Indonesia's growing importance as a nation that lies at the center of the geographic, economic and political changes that are sweeping across the globe, as he indicated:

"Thus, as a maritime country, Indonesia should assert itself as the World Maritime Fulcrum. This position opens opportunities for Indonesia to develop regional and international cooperation for the prosperity of the people,"²

His vision of Indonesia as global maritime fulcrum that lies between the Indian and Pacific Oceans aims to consolidate vital national security

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² <http://www.thejakartapost.com/news/2014/11/14/presenting-maritime-doctrine.html#sthash.mrouTF0p.dpuf>

priorities and facilitate defence reforms and procurements. Alongside his new concept of Indonesia as a global maritime fulcrum, his government has pledged to raise defence spending and sought assistance for military modernization from a range of international partners. It has boosted economic and defence cooperation with the United States, China, Japan and India.

The 'global maritime fulcrum' idea advanced some vital domestic goals through building connectivity among the strategic islands of the Indonesian archipelago, especially by developing port infrastructure. Connecting these islands will increase their integration into the national economy, particularly for remote areas. Overall, improving maritime infrastructure within the archipelago will enhance Indonesia's ability to harness international trade, reduce currently prohibitive costs of domestic commerce, tackle piracy and increase control over maritime resources in particular fisheries.

Indonesia as an archipelagic State has a strategic position not only because it lies between two oceans of the Pacific and Indian oceans, but as well as between the two continents of Asia and Australia. The Strait of Malacca and several international navigational routes through the Indonesian waters can be considered as sea lanes of communication (SLOC), as well as the sea lanes of trade (SLOT) that are important to the industrial countries in the Asia Pacific region such as China, Japan and Korea, and to the other countries in the region interested in it.

In addition, the Indonesian waters is rich in natural resources both living and non-living resources. According to the data of the Food and Agriculture Organization (FAO) in 2012, Indonesia is

ranked as the third largest fishery producer in the world after China and India. The Indonesian waters also has approximately 40 percent of oil basins that hold 70 percent of the Indonesian potential oil, from that number currently only about 10 percent that has been utilized.³

How is the program going to be carried out? It is clear that the implementation of the global maritime fulcrum doctrine requires the maintenance of national sovereignty, maritime safety and regional security. In his vision and mission, Joko Widodo underscored the realization of the *Trisakti*, or the Three Power Principles: to make Indonesia sovereign in its politics, independent in its economy, and distinct in its cultural character. Combined with his global maritime fulcrum doctrine, the realization of these principles shall be carried out through the five pillars of his global maritime fulcrum.

Five pillars of the Maritime Fulcrum doctrine

At the meeting of the ASEAN Summit in Nay Pyi Taw, Joko Widodo elaborated the five pillars of his maritime fulcrum doctrine, as follows:⁴

1. Rebuild Indonesia's maritime culture. As a country that is made up of 17,000 islands, the nation must realize that its future is largely determined by how it manages the oceans.
2. Indonesia will maintain and manage sea resources with a focus on establishing sovereignty over sea-based food products.
3. The country will prioritize infrastructure and maritime connectivity development by building sea tolls and deep sea ports while also improving the shipping industry, logistics and maritime tourism.

³ Evelyn Goh, "Indonesia's New Strategic Policy Under Jokowi: change, continuity and challenges," *Centre of Gravity Series paper #20, ANU Strategic and Defence Studies Centre, 2015.*

⁴ <http://www.thejakartapost.com/news/2014/11/14/presenting-maritime-doctrine.html#sthash.mrOuTF0p.dpuf>

4. Through maritime diplomacy, Indonesia must end the sources of conflict at sea, such as fish thefts, violation of sovereignty, territorial disputes, piracy and pollution.
5. As a country that is the bridge between two oceans, Indonesia is obligated to build its maritime defense power.

At a public forum, organized by the secretariat of the vice president in collaboration with the Ministry of Foreign Affairs and the Center for Strategic and International Studies (CSIS), Rizal Sukma, Chairman of CSIS, elaborated that the first pillar highlights that the Indonesian government "will strengthen and revisit and also bring back [the nation's] awareness as a maritime country and culture."⁵ In the second pillar, he said that the president emphasized the need to prioritize maritime infrastructure and maritime connectivity by building sea tolls and deep-sea ports while also improving the shipping industry, logistics and maritime tourism. Maritime resources was the focus of the third pillar where Jokowi "put the fishermen as at the center of full supremacy."⁶

With the fourth pillar of maritime diplomacy, Indonesia has to put Indonesia's diplomatic instruments to force cooperation around the globe by promoting regional cooperation to prevent maritime conflicts, such as illegal fishing, violations of sovereignty, piracy and marine pollution. The last pillar, shows that Indonesia wants to oversee and maintain its sovereignty and safety in the seas by developing Indonesia's maritime defense.⁷

This paper will focus its analysis on the fourth pillar of maritime diplomacy, seen as a tool for international maritime cooperation. In Le Miere's opinion, maritime diplomacy encompasses a spectrum of activities, from co-operative measures such as port visits, exercises and humanitarian assistance to persuasive deployment and coercion. It is an activity no longer confined to just navies, but in the modern era is pursued by coastguards, civilian vessels and non-state groups. Further, maritime diplomacy can act as a valve through which any tension can be released without resort to conflict.⁸

According to the cabinet secretary at that time, Andi Widjayanto, Joko Widodo will push the 1982 UNCLOS to be used for settlement of any of the world's maritime disputes, such as the South China Sea.⁹

The 1982 UNCLOS provisions on international cooperation

To find legal and regulatory framework to support the pillar of maritime diplomacy, one can turn to the provisions of the 1982 United Nations Convention on the Law of the Sea (UNCLOS), especially those that provides for international maritime cooperation. Regional and international cooperation are part of the obligations under the 1982 UNCLOS, which requires, among others, cooperation in its implementation.

International cooperation in maritime activities can be carried out either directly by the states concerned, or through international organizations. Four such international organizations, for instance, are the Food and Agricultural Organization (FAO), United Nations

⁵ Basten Gokkon, "Jokowi's Case for Indonesia's Ocean Future," *The Jakarta Globe*, December 3, 2014 available at: cempaka-marine.blogspot.co.id, downloaded on November 26, 2015.

⁶ *Ibid.*

⁷ *Ibid.*

⁸ Christian Le Miere, *Maritime Diplomacy in the 21st Century*, Routledge, London, 2014.

⁹ *Tempo*, 13 November 2014.

responding to pollution incidents in the marine environment.³²

States shall cooperate for the purpose of promoting studies, undertaking programs of scientific research,³³ and shall cooperate in establishing appropriate scientific criteria for the formulation and elaboration of rules, standards and recommended practices and procedures for the prevention, reduction and control of pollution of the marine environment.³⁴

As has been already indicated above, in addition to that, States have to cooperate in the harmonization of national policies at the regional level; and to coordinate the implementation of their rights and duties with respect to the protection and preservation of the marine environment in the enclosed or semi enclosed seas.³⁵

Marine Scientific Research

In exercising their right to carry out marine scientific research, in the implementation of the 1982 UNCLOS provisions, States have the duty to promote international cooperation in marine scientific research for peaceful purposes, in accordance with the principle of respect for sovereignty and jurisdiction and on the basis of mutual benefit,³⁶ and to create favourable conditions for the conduct of marine scientific research in the marine environment.³⁷

As is also applicable to other forms of international cooperation, this duty to cooperate can be carried out directly between States concerned, or through international organizations. To benefit from such cooperation, States should

investigate to indicate the scope of scientific research that can be used as object for cooperation.

Transfer and development of technology

According to the 1982 UNCLOS, States shall promote actively the development and transfer of marine science and marine technology, in accordance with their capabilities and on fair and reasonable terms and conditions. In promoting such cooperation States shall have due regard for all legitimate interests including, *inter alia*, the rights and duties of holders, suppliers and recipients of marine technology.³⁸

Such cooperation can be carried out directly between the States concerned or through international organization, through existing or new programs at the bilateral, regional or multilateral level, to facilitate marine scientific research, transfer of technology and appropriate international funding for ocean research and development.³⁹

States shall also cooperate in promoting the establishment of generally accepted guidelines, criteria and standards for the transfer of marine technology on a bilateral basis or within the framework of international organizations and other fora, taking into account, in particular, the interests and needs of developing States.⁴⁰

Relevant laws and regulations

Maritime activities in Indonesia is regulated by about twenty or more national laws and regulations, as is indicated by a report of the "*Tim Penyusun Rancangan Kebijakan*

³² Article 199.

³³ Article 200.

³⁴ Article 201.

³⁵ Article 123.

³⁶ Article 242.

³⁷ Article 243.

³⁸ Articles 266 and 267.

³⁹ Article 270.

⁴⁰ Article 272.

Kelautan Indonesia" (The Team for the Formulation of a Draft on the Indonesian Maritime Policy) of the Indonesian Maritime Council (*DEKIN*) in 2013-2014. Some of the laws and regulations that are listed in the report, are :

1. Law No. 17 of 1985 on the Ratification of the 1982 UNCLOS;
2. Law No. 5 of 1983 on the Indonesian Exclusive Economic Zone;
3. Law No.1 of 1973 on the Indonesian Continental Shelf;
4. Law No. 5 of 1984 on Industry;
5. Law No. 5 of 1990 on the Conservation of Living Resources and its Ecosystem;
6. Law No. 10 of 2009 on Tourism;
7. Law No. 5 of 1992 on Cultural Heritage;
8. Law No. 17 of 2008 on Navigation;
9. Law No. 26 of 2007 on Spatial Regulation;
10. Law No. 10 of 1995 on Custom;
11. Law No. 6 of 1996 on Indonesian Territorial Waters;
12. Law No. 32 of 2009 on the Management of the Living Environment;
13. Law No. 41 of 1999 on Forestry;
14. Law No. 22 of 2001 on Oil and Gas;
15. Law No. 3 of 2002 on State's Defence;
16. Law No. 18 of 2002 on the National System of Research, Development, and Application of Science and Technology;
17. Law No. 31 of 2004 as has been revised by Law No. 45 of 2009 on Fishery;
18. Law No. 27 of 2007 on Coastal Zone and Small Islands Management;
19. Law No. 30 of 2007 on Energy;
20. Law No. 43 of 2008 on State's Territory;
21. Law No. 4 of 2009 on the Mining of Minerals and Coal, and
22. Law No. 21 of 2009 on the Ratification of Agreement for the

Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks 1995.

In 17 Oktober 2014 the Indonesian government has announced the enactment of Law No. 32 of 2014 on Maritime Affairs. This Law was formulated based on a number of conditions, among others, that ⁴¹

"Up to the present time, the developments of maritime affairs were faced with some obstacles. That situation is because of the absence of a comprehensive and integral law that governs various sectoral interests in the sea. Such obstacles can be found in the planning, utilization, supervision and control."

Maritime cooperation can be found in some provisions of this Law, especially in Article 41 whereby maritime cooperation can be conducted on a bilateral, regional and multilateral basis.

Conclusion

Until today, Indonesia does not possess the ability to deal with all of the issues arising out of maritime activities, therefore the provisions of the 1982 UNCLOS on the duty of States to cooperate, maybe used for this. Here, maritime diplomacy may take its place.

Indonesia has a history of maritime cooperation with other States and international organization. One notable experience is cooperation of the safety of navigation in the Straits of Malacca and Singapore, which do not only involve all three riparian States of Indonesia, Malaysia and Singapore but also IMO as an international organization that have the capacity to assist the three riparian

⁴¹ Elucidation to Law No. 32 of 2014.

States on matters dealing with the technical aspects of navigation. Recent development in the Straits of Malacca and Singapore have not only strengthened the existing cooperation, but also gain interests from user States to also cooperate in enhancing the safety of navigation in these straits.

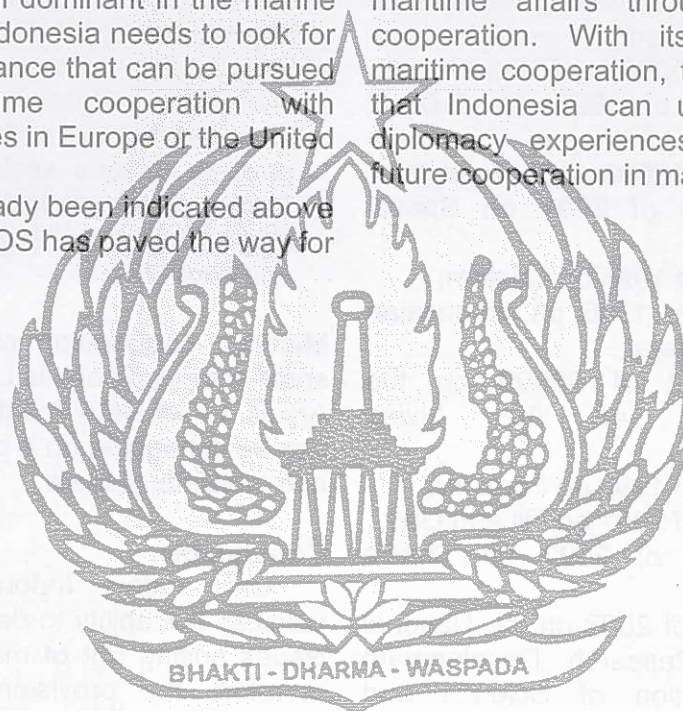
In the field of protection and preservation of the marine environment, in particular with regard to pollution of the sea by oil, efforts to establish a contingency plan should be reinvigorated, taking into account that pollution of the sea by oil is still dominant in the marine environment. Indonesia needs to look for technical assistance that can be pursued through maritime cooperation with developed States in Europe or the United States.

As has already been indicated above the 1982 UNCLOS has paved the way for

international maritime cooperation such as in the conservation and management of marine living resources, in general for straddling and highly migratory fish stocks.

The development of Indonesian maritime affairs is an integral part of sustainable development as a whole, which covers anything related to the waters within the sovereignty and jurisdiction of Indonesia to be revitalized for the prosperity of the nations.

The 1982 UNCLOS has provide for opportunities for Indonesia to develop its maritime affairs through international cooperation. With its experience in maritime cooperation, there is no doubt that Indonesia can use its maritime diplomacy experiences to further any future cooperation in maritime affairs.



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