

UNDERSTANDING THE UNCLOS ARTICLES ON PIRACY TO DEVELOP INDONESIAN PIRACY ACT

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ABSTRACT

The UNCLOS articles on and related to piracy are organized under General Provisions in Session I of Part VII on High Seas. Such an organization of the articles shows that the articles apply only on the high seas. As a matter of fact, a large number piracy attacks has happened in the Malacca, Singapore, and Karimata Straits, and only a few number take place in the high seas of South China Sea.¹ With respect to Indonesia, piracy attacks occur in the exclusive economic zone, in the territorial sea, in the archipelagic waters, and even in the internal waters (in port area).² In this respect, Indonesia unfortunately does not have a piracy act which can be used by government law enforcement agencies to combat piracy. For this reason, Indonesia should develop piracy act by making the best use of all UNCLOS articles on and related to piracy.

Keywords: UNCLOS articles on piracy, Indonesian piracy act development.

INTRODUCTION

1. Background

Understanding of the UNCLOS articles on and related to piracy, as a matter of fact, is very important for Indonesia since many piracy attacks occurred in Indonesian and surrounding waters, especially in the Malacca and Singapore Straits, and in the surrounding waters of Riau Islands and West Kalimantan, a southern part of the South China Sea. IMO reported in 2012 that only 13% piracy's attacks took place in the high

seas of the southern part of the South China and 87% happened in the waters under jurisdiction of Indonesia, Vietnam, the Philippines, and Malaysia. In Indonesia, Vietnam, and the Philippines, most attacks occur at ports, whereas none happened in the Singaporean port. According to the IMO report 2012, piracy worldwide has risen substantially since 1994 with incident peaks of about 470 and 550 in 2000 and 2011, respectively.³

¹ Jonathan De Hart, *Pirates of the South China Sea*, www.thediplomat.com/2013. Sarah Schoenberger, *Piracy in the South China Sea: Petty Theft in Indonesia, Kidnapped Ship in Malaysia*, www.recaap.org/2013. Martin Sief, *The Threat of Piracy in the South China Sea and the Strait of Malacca Increase*, www.cnbc.com/2015.

² Titus Zeng, *Indonesia, Malaysia, Singapore Discuss Joint Patrols*, www.iksmaritime360.com/2015.

³ IMO data cited by Sarah Schoenberger, *Piracy in the South China Sea: Petty Theft in Indonesia, Kidnapped Ship in Malaysia*, www.recaap.org/2013. See also maritime crime data documented by ReCAAP, a multinational body that combats piracy, and the International Chamber of Commerce's International Maritime Bureau (IMB); information gathered from *Sea Piracy on the Rise*, www.forbes.com/2015/pirates-

Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP) recorded a total of 23 piracy-related incidents on vessels anchored in the port areas of the Malacca and Singapore Straits and Riau Islands waters for 2014, compared with only one incident reported in 2013. Prior to 2013, no piracy-related incidents were reported in South China Sea between 2010 and 2012, according to ReCAAP's data. For this reason, the navies of littoral states Indonesia, Malaysia, and Singapore are in talks to extend joint patrols to the lower reaches of South China Sea in a bid to curb piracy.⁴

Singapore has had a piracy act, while Indonesia and Malaysia do not yet.⁵ In this respect, Indonesia should as soon as possible to formulate a piracy act so that related government law enforcement agencies will have a legal basis to take necessary actions in curbing piracy in Indonesian waters.

2. Problem Statement

Indonesia has eight agencies to enforce laws at sea, i.e. navy, police, coast guard, custom, immigration, fisheries surveillance, forestry police, and maritime security agency. Each agency is now carrying out its tasks based on sectoral law and regulations. No single agency has been given legal mandate from the respected law and regulations to combat sea piracy. This is why Indonesia should have an act on piracy which give specific legal mandate to a specific agency to deal

with piracy. In this context, two research questions can be raised: firstly, how can Indonesia make the best use of the UNCLOS articles on and related to piracy as legal substance of the expected piracy act by considering legal structure and legal culture of the enforcement agencies and secondly, how is the development process of the piracy act conducted?

3. Research Method

This legal research is considered as juridical normative research. Data needed in a such research primarily consists of secondary data, i.e. law and non-law materials, such as UNCLOS articles and Indonesian laws for law materials, and information and news from web for non-law materials. Data analysis was carried out by the use of descriptive analytical method involving legal interpretation, legal reasoning and rational argumentation. Results of data analysis are discussed by implementing legal and institutional approach.

4. Research Report Organization

After the first chapter on Introduction, the research report presents the second chapter on Research Finding focusing on understanding of the UNCLOS articles on and related to piracy, and Indonesian legal policy on combating piracy. The research finding will indicate the existence of legal substance, legal structure and legal culture which can be used as legal materials to formulate content of the piracy act. These will be discussed in

⁴ Titus Zeng, *Indonesia, Malaysia, Singapore Discuss Joint Patrols*, www.iksmaritime360.com/2015.

⁵ CNBC, *Crime on the High Seas: the Most World's Pirates Waters*, www.cnbc.com/2014/09/15/worlds-most-pirated-waters.

the third chapter on Discussion on the Development of National Piracy Act which will deal with framework to formulate content of the piracy act and its development process. The fourth chapter as the final chapter will entitle Conclusion and Recommendation.

RESEARCH FINDING

1. UNCLOS Articles on and Related to Piracy

Sea piracy consists of any illegal acts of violence or detention or any act of depredation conducted by ship and or aircraft supported by crew members, equipments, and facilities, including data and information, against another ship or aircraft, including person and or property on board of such ship or aircraft in a place on the high seas or outside of the jurisdiction of any state [Art. 101].

Any act of supporting and or facilitating of piracy are considered as act of piracy [Art. 101 sub-paragraph (b) and (c)]. Combined application of all illegal acts described in Art. 101 sub-paragraph (a), (b), and (c) give us an understanding that piracy is an organized maritime crime conducted on the high seas. Piracy as an organized crime may be directed or controlled by the persons guilty of that act (intellectual actors of piracy) from shore.

Piracy as described above may be committed by a warship, or government ship, or government aircraft. If it is happened, it will be assimilated to illegal acts done by private ship or aircraft [Art. 102]. This means that the respective state will not be liable but the crew for such illegal acts conducted by the crew who control the ship or aircraft.

The ship or aircraft, either a warship, government ship,

government aircraft, private ship, private aircraft, used for conducting act of piracy or as long as still under the control of the persons guilty of that act are called pirate ship or pirate aircraft [Art.103]. In this respect, the flag state of such private ship or aircraft may take off nationality of the ship or aircraft [Art. 104]. If the ship or aircraft still retain its nationality, the flag state may be liable or can be involved as having liability for the act committed by the pirate ship or aircraft.

A pirate ship or aircraft and its properties on board can be seized and the crew can be arrested by any state on the high seas and brought to court of the state [Art. 105]. The seizure of the pirate ship or aircraft only can be done by warships, military aircraft, government ships, or government aircraft which has clear legal mandate to do so [Art. 107]. Whereas the state does not have adequate grounds in seizing the ship or aircraft, the state should be liable for seizing the ship or aircraft to the flag state of the ship or aircraft [Art.106]. In this respect, the state may conduct diplomacy through its embassy or respective channels to avoid dispute or reduce conflict with the flag state. The state is therefore advised to cooperate with other states to the fullest possible extent to repress piracy on the high seas or in other place outside the jurisdiction of any state [Art. 100].

2. Indonesian Legal Policy on Combating Sea Piracy

Recognizing Indonesia as the largest archipelagic state in the world, Joko Widodo in the first year of his tenure as President of the Republic of Indonesia promised that he with the support of all Indonesian people will

do his best to develop Indonesia as the maritime's axis of the world (*poros maritim dunia*). One of the ways to realize his promise is through development of sea toll (*tol laut*) connecting all major ports of Indonesia. This means that shipping, ports, and navigation will become the prime mover of all efforts in positioning Indonesia as the maritime's axis of the world.

As a consequence of the aim mentioned above, shipping, ports, and navigation must be freed from piracy. Each of the eight law enforcement agencies is given task based on its own laws and regulations. Those Acts and the eight agencies are as follows:

- a. Act Number 17 Year 2008 on Navigation gives legal mandate to Coast Guard to curb piracy in all activities of navigation;
- b. Act Number 31 Year 2004 and Act Number 45 Year 2009 on Fisheries combined with Act Number 27 Year 2007 and Act Number 1 Year 2014 on Coastal Management give authority to fisheries surveillance agency to combat piracy in all activities dealing with fisheries and coastal resources;
- c. Act Number 17 Year 2006 on Custom authorizes Custom Agency to freed custom activities from piracy;
- d. Act Number 6 Year 2011 on Immigration gives legal mandate to Immigration Agency to make sure that human flows in and out of Indonesia are freed from piracy;
- e. Act Number 41 Year 1999, Act Number 19 Year 2004 and Act Number 18 Year 2013 on Forestry give power to Forestry Police to protect costal forestry and coral reef activities from piracy;

- f. Act Number 2 Year 2002 on Police of the Republic of Indonesia give Indonesian Police authority within the framework of constabulary function (security) to combat sea piracy;
- g. Act Number 34 Year 2004 on National Arm Forces of Indonesia give authority to Navy as one of the Indonesian Arm Forces within the framework of defense function to defend, protect, and enforce national sovereignty of Indonesia at sea. In this context, combating piracy is included as long as piracy threaten the sovereignty of Indonesia and or naval support is needed.
- h. Act Number 32 Year 2014 on Marine Affairs give legal basis in the formation of Maritime Security Agency (BAKAMLA/the Agency). The Agency was formerly named Coordinating Agency for Maritime Security (BAKORKAMLA) which had tasks to coordinate law enforcement activities carried out by the above government agencies. Replacement of BAKORKAMLA with BAKAMLA is intended to substitute coordinative function with institutional leadership function to lead all law enforcement at sea done by all law enforcement agencies mentioned above.

DISCUSSION ON THE DEVELOPMENT OF NATIONAL PIRACY ACT

1. Formulation Framework of Content of the Piracy Act

Content development of national piracy act of Indonesia should appropriate the research finding and convert it into legal substance, legal structure, and legal culture. In other words, legal substance, legal structure, and legal culture are the

framework in formulating content of the expected piracy act. All legal materials described in each UNCLOS articles on and related to piracy and in each articles of national Acts mentioned above which give mandate to government law enforcement agencies to combat piracy can be considered as legal substance of the expected piracy act.

The eight government law enforcement agencies which implicitly but not explicitly obtain legal mandate from several national acts mentioned earlier to combat piracy can be considered as legal structure of the expected piracy act. As legal structure, the eight agencies are expected to be able to guarantee that the expected piracy act can be enforced.

Interaction and communication among the law enforcement agencies involve institutional character and attitude which will show the level of professional capability, professional responsibility, the compliance with professional ethics, and professional liability of each agency. The institutional character and attitude are legal culture which will make the expected piracy act works.

2. Development Process of Piracy Act (harmonization and unification)

Legal substance shows that content of the expected piracy act will consists of legal materials come from UNCLOS and national acts articles. Formulation of the content should, therefore, be carried out through legal interpretation, legal reasoning, and rational argumentation.⁶ These tasks should be done by legal experts of government, if the initiative to

formulate the piracy act come from government, or by legal experts of parliament, if the initiative come from parliament. Accomplishment of these tasks is expected to produce harmonization and unification of laws within an academic draft of piracy act.

Legal structure indicates that objectives of the piracy act, legal mandate to achieve the objective, software and hardware to carry out the mandate, and human resources and their institution that will carry out the mandate by using software and hardware to achieve the objectives have to be clearly described in each articles of the piracy act. In this respect, BAKAMLA can be given authority to lead the seven agencies in enforcing the piracy act at sea. Step by step process which consists of cooperation at low level, coordination at mid level, and integration at high level may be able to be taken by BAKAMLA to lead the seven agencies in meetings as well as in operation at sea.

Legal culture brings us to an understanding that each law enforcement agency should be eager to or having willingness to change towards positive institutional character and attitude of smoothing cooperation, coordination, and integration. Eventually, willingness to change should be converted into ability to change. Positive change of the character and attitude will give assurance that the piracy act will work well.

CONCLUSION & RECOMMENDATION

1. Conclusion

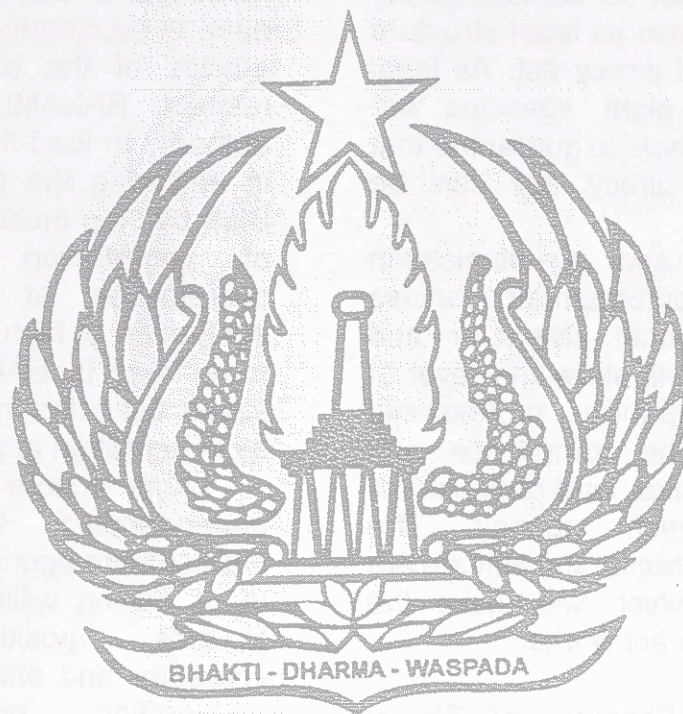
Malacca and Singapore straits and southern part of the South China

⁶ Tommy Hendra Purwaka, "Penafsiran, Penalaran, dan Argumerntasi Hukum yang Rasional", Jurnal Masalah-Masalah Hukum, Vol.40, No.2. Semarang: Fakultas Hukum UNDIP, 2011.

Sea, of which a large is in the Indonesian waters, are recognized by international shipping community as the most pirated waters in the world. This should alarm the government to empower the eight law enforcement agencies by formulating and issuing piracy act as soon as possible.

2. Recommendation

The government or the parliament is advised to take initiative in developing piracy act. A legal task force may be formed to conduct study by making the best use of materials of legal substance, legal structure, and rational argumentation available. To shorten time of legal development process, it is recommended that the parliament should take the initiative.



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