Global Maritime Fulcrum Optimization In Maintaining Indonesian Maritime Sovereignty

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In Maintaining Indonesian Maritime Sovereignty

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Abstract

The regulation of International maritime law has become a long-standing discussion in International life. It is not surprising if many international conventions were born as a result of agreements between countries. The main trigger for the occurrence of sea conflicts is the potential for extraordinary marine wealth that can be exploited by the International community. Therefore, the regulation of sea law is vital in order to maintain discipline and world peace and in addition to protecting the sovereignty of each country. This research uses a qualitative research method with a descriptive analysis approach.
***Keywords**: Global Maritime Fulcrum, Maritime Sovereignty, Indonesia*

Abstrak

Pengaturan tentang hukum laut internasional sudah menjadi pembahasan lama dalam kehidupan dunia internasional. Tak Heran bila kemudian banyak konvensi internasional yang lahir sebagai hasil kesepakatan antar negara. Pemicu utama terjadinya konflik laut tidak lain disebabkan potensi kekayaan laut luar biasa yang dapat dieksploitasi masyarakat internasional. Oleh karenanya pengaturan tentang hukum laut ini sangat penting guna menjaga ketertiban dan perdamaian dunia, selain menjaga kedaulatan negara masing-masing. Penelitian ini menggunakan metode penelitian kualitatif dengan pendekatan deskriptif analisis.
Kata Kunci: Global Maritim Fulctrum, Kedaulatan laut, Indonesia

Introduction

International law as the legal standard of relations between nations constantly changes to adjust the development of international issues. The law of the sea is becoming one of the law focuses that receives serious attention from the United Nations since the sea issue has always been a central issue of relations between countries long before century until the current era of globalization. It is in contrast with the new air law which has been discussed during World War I in 1919 through the Paris Convention and has regulated air navigation regarding a country's full and exclusive sovereignty throughout airspace over the country's land and sea territories (Shawn, 2003, p. 464). International maritime law has experienced several changes in the concept of the sea area and there have been many developments regarding the maritime territory of the coastline state in the last four decades.

The improvement of International Maritime Law had begun before the century, Athens with its ruler Pericles at that time has succeeded in inviting its people to build a strong maritime nation in the time of 436 BC (Soebjijanto, 2004). In the archipelago, it was mentioned that the kingdom of Sriwijaya from the 7th to the 8th centuries succeeded in achieving the glory of being the largest maritime kingdom in Southeast Asia through strengthening maritime strategies that focused on mastery of sea lanes in trade, national resilience, as well as religious centers (Burhanuddin, 2003, p. 67-68). In addition to Sriwijaya, the Majapahit kingdom (1293-1500 AD) was also able to achieve the glory of the sovereignty of the archipelago through planting maritime character towards the inhabitants of Majapahit (See: maritimnews.com). The glory of Islamic civilization is also inseparable from the role of sovereignty over the sea. Along with the emergence of the Sriwijaya kingdom, in the 7th and 8th centuries AD (1st and 2nd century H) Muslims from Persia and Arabia expanded their trade and brought Islamic teachings to China during the Tsung Dynasty (627-650 AD). Islam came in the Asian region for the first time in China and was brought directly by the companions of the Prophet Muhammad, Sa'd bin Abi Waqash through the trade route (Saifullah, 2010, p. 7). In the 15th and 16th centuries, several powerful countries in Europe made claims to sea territories to show their sovereignty as a state, including Portugal which made claims over the entire Indian Ocean and most of the Atlantic Ocean, then Spain

claims the Pacific Ocean and the Gulf of Mexico, and Britain claims the Narrow Sea and North Sea (Strake, 2016, p. 323). This shows that the sea area has strategic power for a maritime country in achieving economic power and sovereignty and resilience, consequently, the sea area is never free from conflicts between countries in an effort to demonstrate the maritime strength of each country.

The Efforts on Constructing Maritime Law

After the Second World War and the establishment of the World Organization United Nations, international law on sea areas was formulated as an effort to control sea territories, especially for coastal states. Modern international maritime law outline has only begun in conjunction with the holding of UNCLOS I in Geneva in 1958, which discussed territorial seas, open seas (freedom of shipping, aviation, fishing, pipes/submarine cables/cables), fisheries & protection of fundamental marine biological resources and continental shelf (High Seas Convention). UNCLOS I have reviewed again in 1960 with the holding of UNCLOS II regarding the continuation of the territorial sea convention. Finally, the finalization at UNCLOS III held on December 10, 1982 in Montego Bay-Jamaica or what is now often called The International Law of the Sea. The convention agreed on the rights and responsibilities of the state in the use of sea in the world, as well as establishing business guidelines, environment, and management of marine natural resources. Everything is arranged in 320 articles and 9 attachments ((Strake, 2016, p. 492). UNCLOS III only came into force in 1994, precisely on November 16, 1994 after 68 countries ratified the results of the convention in Jamaica, even though the convention's contents had already been formulated in 1973 until 1982. Until now, there have been 160 countries that have ratified the convention's contents. However, it is unfortunate that the United States as one of the permanent members of the UN Security Council has only signed the contents of the sea law convention and has not yet participated in ratifying this convention (see: liputan6.com). This was stated by Deputy I of Maritime Sovereignty of the Indonesian Coordinating Ministry for Maritime Affairs *(Kemenko Maritim)*, Arif Havas Oegroseno who asked the US to immediately ratify the UNCLOS III International Sea Law Convention, as a manifestation of US responsibility for

maintaining the world's sea territorial peace.

According to the Part IV of International Sea Convention article 48, the Archipelagic State region is divided into four, those are the territorial sea, the contiguous zone, the exclusive economic zone, and the continental shelf. Specifically, the territorial boundaries are described in Article IV of International Sea Convention Article 47. Meanwhile, after being ratified and enacted in Indonesia, these territories are described as follows: (Kaelan & Zubaidi, 2010, p. 127-128)

a) Territorial sea about 12 miles from the baseline, this region is the official boundary of Indonesia's sea.

b) Exclusive Economic Zone along the 200 miles from the baseline, this region of Indonesia has full rights to the marine resources in it.

c) The high seas beyond 200 miles from the baseline, this is a free sea area that can be crossed by any country, and

d) Continent Runway along the 200 miles from the baseline or can be a maximum of 350 miles from the baseline and from the depth of the sea as deep as 2500 meters, in this region, Indonesia has full rights to the natural resources contained therein.

Aside from being a major trade transportation route, the richness of the content in the sea is also one of the biggest reasons for inter-sea territorial conflicts. The content of wealth in and under the sea is discussed in the International Sea Convention. In Part V (Exclusive Economic Zone) Article 56 of UNCLOS states about Rights, jurisdiction and duties of the coastal State in the exclusive economic zone as follows: (Secretary General of United Nations, 1994, p. 418)

"1. In the exclusive economic zone, the coastal State has:

(a) Sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resource, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds;

(b) Jurisdiction as provided for in the relevant provisions of this Convention with regard to: (i). The establishment and use of artificial islands, installations, and

structures; (ii). Marine scientific research; (iii). The protection and preservation of the marine environment;

(c) Other rights and duties provided for in this Convention

2. In exercising its rights and performing its duties under this Conventions in the exclusive economic zone, the coastal State shall have due regard to the rights and duties of other States and shall act in a manner compatible with the provisions of this Convention.

3. The rights set out in this article with respect to the seabed and subsoil shall be exercised in accordance with Part VI."

While the issue of wealth under the sea or continental shelf, is mentioned in Part VI (Continental Shelf) Article 77 on the Rights of the Coastal State over the continental shelf as follows: (Secretary General of United Nations, 1994, p. 429-430)

1. The coastal State exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources.

2. The rights referred to in paragraph 1 are exclusive in the sense that if the coastal State does not explore the continental shelf or exploit its natural resources, no one may undertake these activities without the express consent of the coastal State.

3. The rights of the coastal State over the continental shelf do not depend on occupation, effective or notional, or on any express proclamation.

4. The natural resources referred to in this Part consist of the mineral and other non-living resources of the seabed and subsoil together with living organisms belonging to sedentary species, that is to say, organisms which, at the harvestable stage, either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or the subsoil."

In this case, the Exclusive Economic Zone and the Continental Shelf are the main concern of maritime countries because they concern the biological and non-biological natural resources in their territorial waters. As a result, it often triggers problems of the sea area and natural resources in it.

The development of the sea area concept, the role of the sea as the main transportation route of international trade, as well as the content of wealth in the sea, reveals how great the role of the sea in a country's defense system and becomes one of the determinants of a country's sovereignty when it is able to control the sea lane. Hence, it is not surprising, if there are many conflicts between nations arising in the struggle for the territorial sea. This is the fundamental reason for discussion of the urgency of the sea area on economic security and sovereignty of a country by using a critical study method of

maritime cases between countries in examining the issue of maritime sovereignty over the sovereignty of maritime nations.

Historical Perspective on the Urgency of Sea Areas

Discussing the area of the sea will not be separated from the development of the conception of the sea which began to emerge in the 6th century in ancient Rome with the concept of *res nullius* and *res communis* used at that time. Furthermore, in the 16th century, the sea concept was being re-developed with the emergence of the concepts of *mare liberum* and *mare clausum* over the seizure of sea areas by European countries at that time. The formation of the sea was re-discussed in the 19th century shortly after the end of the second world war. The conception of *mare clausum* which is considered dangerous for the security of the archipelagic countries, gave birth to the concept of the Archipelagic State Principle as a solution agreed upon by most archipelagic countries including Indonesia.

The concept of *res nullius* emerged in the 6th century when the Ancient Romans ruled world civilization. *Res Nullius* is not only used in the concept of the sea area but is also used to explain the concept of air and natural resource ownership. In Roman law, this concept was used to declare ownership rights both private and public. In the case of the sea area, *res nullius* states that the sea has no owner. Therefore, whoever is able to master it the first time, is the owner of the sea (Reddy, 2015). This concept depicts that the ownership is based on an occupation so that the power is in the hands of who is strong then he will control.

Like *res nullius*, the concept of *res communis* is also used in terms of airspace and natural resources, but this construct states the opposite of the *res nullius* concept. *Res communis* in the concept of the sea area argued that the sea and all that is contained in it, both biological and non-biological, belong to all nations so that the sea cannot be owned by certain nations (Reddy, 2015). The draft of *res communis* is still used in the context of international law today, namely in the concept of the law of the high seas / free sea, space law, and the law of the Antarctic region, in which these territories no one may claim ownership, because the territories of the region is an area that belongs to all countries that may be used by any country, as long as it does not endanger other countries. The concepts of *res nullius* and

res communis are both based the law on Civil (Roman) law.

In the 16th century, political upheaval could not be avoided in European countries, which had been occurred between Italy, Spain, England, Portugal, and Denmark in the struggle for their colonies, including the sea. The concept of *mare liberum* emerged from a political conflict between the Netherlands and Spain due to a dispute over trade law in the Malacca Strait in 1602. The concept was initiated by Grotius with the aim of maintaining the Dutch East India Company's trade rights in an 11-year ceasefire negotiation effort between the Netherlands and Spain due to the conflict trade in the Malacca Straits region in 1609 (Latipulhayat, 2017, p. 210-211). Hence, this concept is more likely to be born based on economic motivation in the Netherlands. This is in line with what Christopher Michael Clum stated, that Grotius had the economic motivation in creating the concept of *mare liberum* due to the Portuguese trade monopoly in South India which made the envy of many other European countries (Crum, 2017, p. 19). The concept of *mare liberum* states that the sea area is free for all nations, so that all countries may pass through peacefully. This is in tune with the current international law on sea rights in section 3. Innocent Passage In The Territorial Sea, in article 17 on the Right to Peace in Peace, whose contents (Secretary General of United Nations, 1994, p. 404):

"Subject to this Convention, ships of all states whether coastal or land-locked, enjoy the right of innocent passage through the territorial sea."

The construct of *mare liberum* bases its concept on natural law, allowing each country to utilize marine resources because the sea is actually a common property. However, the concept got a reaction from Shelden, so that the concept of *Mare Clausum* was brought up by Grotious to reject the concept of *Mare Liberum*. Grotious states that the state can only have seas along the coast as far as can be controlled from land, which is about 3 miles from the coastline (Kaelan & Zubaidi, 2010, p. 127). The concept of *mare clausum* is based on the concept of common law (Anglo-Saxon) which is based on jurisprudence, so that it is directly binding on the subject of law. According to Atip Latipulhayat, the conception of mare clausum emerged as a rebuttal to the conception of *Mare Liberum* which was conceived by British scientist John Selden. The debate between Grotius "*Mare Liberum*" and Shelden "*Mare Clausum*" is known as the "Battle of the

Book" ((Latipulhayat, 2017, p. 211). In contrast to Christopher Michael Crum, his thesis said that the debate between the two is due to the inability of the two to take the midpoint of the difference in the realm of the concept that is carried. *Mare Liberum* carries the concept of the open seas which bases on the common law, while *Mare Clausum* carries the concept of close seas which bases on natural law, so the two cannot be united (Crum, 2017, p. 19).

The development of the conception of the sea area since the 6th century until the 19th century and even into the 20th century now provides the urgency of the sea area from the past until now. Maritime law develops as a form of expanding the power of a country so that many countries pay full attention to maritime power because it is very beneficial in terms of trade and can improve a country's economy. This can be seen from the Greek, Roman, Portuguese, Spanish, Dutch, and British powers that are able to control various regions through the control of water areas. Starting with the concept of *res nullius* and *res communis* during Roman rule, which was later developed into the concept of *mare liberum* and *mare clausum* during the regime of European imperialism in the 16th century.

Economic and security reasons form the basis of the imperialist countries debating sea areas. This is also shown by the difference in natural wealth between the Archipelagic State and Land-Lock State. The island nation has a relatively more economical economy compared to the mainland. One of them is caused by the potential of the extraordinary natural wealth of the sea of the island nation compared to the mainland. This is as stated by Lea Brilmayer (2001, p. 732), that the sea area becomes the major source of the natural wealth of a maritime country, both wealth in the biological and non-biological seas (Exclusive Economic Zone area) as well as natural resources contained in continental shelf and deep-sea waters. Therefore, from an economic perspective, the sea area is very valuable to the potential of adding a country's natural wealth.

In addition, access to trade in archipelagic countries is more strategic, compared to that of mainland countries, adding benefits to the archipelago. Most trade is carried out by the sea. Countries that controlled the civilization in his time, were never separated from the power in controlling trade in the sea, including the kingdom of Sriwijaya when reached its heyday. This is based on the geographical

location of the archipelago in the silk lane, which is between China and India (Burhanuddin, 2003, p. 120). As European countries claiming mutual sea territory in order to expand the expansion of their colonies, as well as an effort to expand their trade routes. Likewise with China and other countries.

Strengthening Maritime Affairs in Indonesia through Global Maritime Fulcrum

Considering the importance of territorial waters for maritime countries, Indonesia needs to reorganize and rebuild maritime power in order to strengthen the country's economy and resilience, as the heyday of the Kutai kingdom (4th century), Sriwijaya (6th to 10th centuries), Majapahit and Pasai Ocean (12th to 15th century), and Demak (14th to 15th century) through maritime strengthening. Starting from this, Indonesia wants to rebuild economic strength and resilience through maritime power.

In this era, there are many strategic moments that can be utilized by Indonesia in the context of strengthening maritime affairs, such as the ASEAN Economic Society in Southeast Asia, the Indian Ocean Rim Association for Regional Cooperation (IORARC) for countries in the Dutch East Indies, and others.

President Habibie began to focus on policies that were based on maritime power, which was followed by two subsequent presidents, Abdurrahman Wahid, and Megawati Soekarno Putri. Moreover it was resumed by President Jokowi on the declaration of Indonesia as the Global Maritime Fulcrum in 2014, meaning that Indonesia would focus on development in the sea area. While Caroline Paskarina mentions in terms of land nationalism towards maritime nationalism, because as an island nation, the sea is a very strategic source of strength (Paskarina, 2016, p. 3), or in the author opinion of the maritime nationalism it goes to land nationalism and returns to maritime nationalism.

In this case, Indonesia has a great chance to become the world's maritime axis due to several supporting potentials, as discussed in the seminar and working luncheon organized by the Ministry of Foreign Affairs Training and Education Center, including; (See: www.kemlu.go.id)

1. 70% of Indonesia's territory is the ocean and Indonesia's geographical location is strategic because it lies

between two oceans and two continents.

2. The total maritime economic potential of Indonesia is huge, and the condition will be more strategic along with the shifting of the center of the world economy from the Atlantic to the Asia-Pacific region because currently world trade in the Asia-Pacific region has reached 70%, and

3. Around 40% -50% of total world trade crosses Indonesian waters.

During the agreement, some issues of maritime borders also being discussed such as; illegal fishing, transnational crime, supporting infrastructure for the marine and fisheries industry, and military defense at sea as challenges that must be faced by Indonesia in its efforts to realize Indonesia as a global maritime fulcrum, which requires hard work from various government agencies, the private sector, as well as all levels of society. Including in facing threats in the Indian Ocean region, such as conflicts between countries, maritime terrorism, piracy, illegal fishing, smuggling, global warming, and energy and food security which also present as the main issues of the maritime region. However, according to Satya Wira Wicaksana (Wicaksana, 2015, p. 4), it can be overcome through the active participation of Indonesia in creating security mechanisms in the Indian Ocean through the multilateral Treaty Amity and Cooperation (TAC) agreement that supports the principle of peace.

Indonesian Government's Policy in Global Maritime Fulcrum

Strengthening maritime affairs in Indonesia has begun since the leadership of President Sukarno, which was marked by the Juanda Declaration and Indonesia's participation in ratifying UNCLOS III. Nonetheless, it had not yet been implemented further through maritime policy because of the political conflict at the time. While the Soeharto era focused more on an agrarian concept with a focus on food self-sufficiency policies, the focus on strengthening the military focused on strengthening the Army. Therefore, the Indonesian National Armed Forces in Army (TNI-AD) was appointed as the TNI commander to support the concept that was built. It was only during Habibie's time that reinforcement in the maritime sector was rebuilt by appointing TNI commanders from the Navy (TNI-AL) as an effort to support maritime strengthening policies. This was continued by Abdurrahman Wachid who appointed the

special ministry in the maritime sector. This was also the case with Megawati's time by strengthening the fleet and strength of the marines. While the period of Susilo Bambang Yudhoyono returned to strengthening the land territory as focused on the Soeharto era (Nainggolan, 2015, p. 168-169). While the administration of President Joko Widodo, the concept of strengthening the sea was re-lifted by the declaration of "Indonesia as a global maritime fulcrum," which means that the development and strengthening of the country are focused on the sea and coastal areas. This was as he said in his speech at the 9th East Asia Summit Summit on November 13, 2014 in Nay Pyi Taw, Myanmar, which will emphasize the country's development agenda on the 5 (five) main pillars, namely: (Yani & Montratama, 2015, p. 25-51)

a. Maritime Culture: rebuilding Indonesia's maritime culture through the redefinition of Indonesia's national identity as a maritime nation;

b. Maritime Economy: managing and preserving the nation's maritime resources, Safeguarding marine resources and creating seafood sovereignty by placing fishermen on the main pillar;

c. Maritime Connectivity: prioritizing maritime infrastructure development, building transportation infrastructure and facilities, building sea tolls, logistics, deep seaport, logistics, shipping industry, and maritime tourism,

d. Maritime Diplomacy: optimizing soft power in handling threats and increasing bilateral and multilateral cooperation in the maritime sector, as well as efforts to deal with sources of conflict, such as fish theft, sovereignty violations, territorial disputes, piracy, and sea pollution with an emphasis that the sea must unite various nations and country and not separation; and

e. Maritime Security: prepare hard power to strengthen Indonesia's maritime defense forces in the effort to secure Indonesian territory.

As the government's geopolitics, the five points above are used as a reference in evaluating the effectiveness of the government's geo-strategy in the

concept of "Indonesia as a Global Maritime Fulcrum" carried by President Joko Widodo. The legal standard in marine governance is also made to harmonize sea and land spatial planning as one of the government's efforts to realize Indonesia as the world's maritime axis, namely by the enactment of Law Number 26 of 2007 concerning spatial planning, Law Number 27 of 2007 as well as Law Law Number 1 Year 2014 about Management of Coastal Areas and Small Islands, and Law Number 32 Year 2014 on Maritime Affairs. However, the management and implementation of this law have not been implemented properly due to several obstacles both from internal government, local government, limited funds, and the awareness of the people themselves. This was stated by Subandono Diposaptono (2017, p. 200-201) in his book Building the World Maritime Axis in the Sea Spatial Perspective. In addition, the appointment of TNI commander from the Air Force is also not appropriate, given the government's main agenda is strengthening maritime sovereignty in the agenda "Indonesia as a Global Maritime Fulcrum." It will be more synchronous if the TNI commander is commanded from the Navy as the previous government's steps when taking steps to strengthen the maritime sovereignty of the Republic of Indonesia.

Conclusion

The history of the development of the sea conception and maritime conflicts can be used as a reason that from the time of the Ancient Greeks to the present, the sea is still a sexy problem that results in disputes and even armed conflicts between countries. This is reinforced by the history of the kingdoms or countries that controlled the civilization in his time, never separated from their ability to control the sea. As demonstrated by Greece, Rome, Daulah Islam, Sriwijaya, Majapahit, China, and Europe in the history of its glory.

Conflicts over the sea will never occur if the sea does not have the potential to be contested. The importance of the sea is based on its potential, both from marine and underwater natural resources, and strategic areas in terms of trade and shipping. As the conflict in the South China Sea today, it is also inseparable from the natural wealth of the sea as well as the strategic area owned by the region. Ergo, it cannot be denied that sea sovereignty is a vital element especially for maritime countries including Indonesia. The United Nations as an

international organization between countries seeks to minimize conflicts that occur between countries through conventions as a legal standard for international maritime issues. However, the agreement will not be effective without the awareness of each country in implementing every decision made.

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