



State Responsibility for the Waters of the Malacca Strait in Relation to the Prevention of Transnational Crime

Dahlan Ali; Mustakim; Mahfud; Suhaimi

Faculty of Law, Syiah Kuala University, Banda Aceh, Indonesia

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Abstract

Indonesia, Malaysia and Singapore are in an area, namely ASEAN and have territorial waters that are between the three countries, known as the waters of the Malacca Strait. Meanwhile, the waters of the Malacca Strait are the densest waters in the world, where approximately 50,000 cargo ships cross the Malacca Strait every year.¹ Therefore it is interesting to study how the state's responsibility for the waters of the Malacca Strait in relation to the prevention of transnational crime. The results of the study show that transnational crimes that occur in border areas, it is clear that crimes that occur in these areas will lead to state responsibility (ie coastal countries). This is in accordance with the 1982 United Nations Convention on the Law of the Sea (UNCLOS), which stipulates that maritime security is the responsibility of the coastal state that owns the area. Thus Indonesia, Malaysia and Singapore are countries that are equally responsible for transnational crimes that occurred in the waters of the Malacca Strait.

Keywords: *State Responsibility; Malacca Strait; Transnational Crime*

Introduction

The State of the Republic of Indonesia which was proclaimed on August 17, 1945 has goals or ideals, among others:

- Provide protection for the entire Indonesian nation and people who are the blood of the Indonesian nation.
- Organizing activities towards the welfare of the Indonesian people.
- Making a smart Indonesian Nation.
- Participate actively in creating world order based on the principle of independence, the principle of eternal peace and the principle of social justice.²

For the sake of implementing world order, no country in the world can live alone without dealing with other countries. Especially for developing countries (such as Indonesia), cooperation between countries is needed to accelerate development. Realizing this, on September 28, 1950 Indonesia joined the

¹ Patroli Bersama Di Selat Malaka, <https://www.dw.com/id/patroli-bersama-di-selat-malaka/a-2952792>, accessed 5 Desember 2022.

² Look at Alenia IV Pembukaan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.

United Nations (UN), although on January 7, 1962 Indonesia left the UN, but on September 18, 1966 Indonesia re-entered as a member of the UN.³

Indonesia's participation in the United Nations as a world peace mission is to participate in sending peacekeeping troops to various countries under the name Garuda Troops (such as Garuda I Troops to the Middle East Gaza Strip, Garuda II Troops to the African Congo and so on). peacekeepers to Lebanon where one of them is the biological son of President Susilo Bambang Yudhoyono himself. Apart from being a member of the United Nations, Indonesia also actively participates in collaborating with other countries or international organizations, in fact Indonesia was one of the countries that initiated the Asian-African Conference in 1955.⁴ Then Indonesia was also one of the countries that initiated the Summit. First Non-Aligned in Belgrade Yugoslavia from 1 to 6 September 1961, which was attended by 23 countries. Even in 1992 at the X Non-Aligned Summit in Jakarta, the President of Indonesia (Soeharto) was appointed as Chair of the Non-Aligned. Particularly in Southeast Asia, Indonesia and four other countries succeeded in establishing ASEAN on 5 to 8 August 1967 in Bangkok.⁵

Thus it is clear that Indonesia's activeness and participation in cooperating with other countries is none other than to realize the goals or ideals of the Indonesian nation as mandated in the Preamble of the 1945 Constitution, including promoting public welfare⁶ and actively participating in creating world order and peace, which is based on the principle of everlasting and everlasting peace and the principle of social justice. If this is related to the issue of state responsibility,⁷ creating world order is one of the responsibilities of the state. Therefore, if transnational crimes such as terrorism occur, it is the responsibility of the state to deal with them. In other words, the state must be held accountable for transnational crimes. Likewise with other transnational crimes such as narcotics, where narcotics are organized crimes, highly confidential and transnational in nature because they are carried out using sophisticated technology and operating modes.⁸

In addition, the crime of money laundering can also be categorized as a transnational crime, in which the criminal act has strong economic or political power. In this crime, the perpetrators are not only individuals as human beings, but also a criminal organization in the form of a crime corporation that crosses the borders of a country.⁹ So that the crime of money laundering can also be regarded as a transnational crime. The issue of transnational crimes such as terrorism has become the main agenda or topic of discussion in almost all meetings, whether bilateral, regional or international. According to Romli Atmasasmita,¹⁰ this is because terrorist activities have touched the circle of human civilization which is very immoral and has destroyed human civilization.

³ https://kemlu.go.id/portal/id/read/134/halaman_list_lainnya/perserikatan-bangsa-bangsa-, accessed 12 Desember 2022.

⁴ Putu Bagoes, Daftar Singkat dan Daftar Negara Peserta Konferensi Asia Afrika Tahun 1955, <https://kids.grid.id/read/473255791/sejarah-singkat-dan-daftar-negara-peserta-konferensi-asia-afrika-tahun-1955?page=all>, accessed 10 Desember 2022.

⁵ Peran Indonesia dalam Gerakan Non-Blok, <https://bpkpenabur.or.id/bekasi/smak-penabur-harapan-indah/berita/berita-lainnya/peran-indonesia-dalam-gerakan-non-blok>, accessed 12 Desember 2022.

⁶ Suhaimi, M. Gaussyah, Chadijah Rizki Lestari, Juridical Analysis of the Amendment to the Qanun of Bireuen Regency Number 31 of 2004 concerning the Establishment of the Krueng Peusangan Regional Drinking Water Company (PDAM), *International Journal of Advanced Multidisciplinary Research and Studies*, Vol. 2(6), 2022, pp. 101-105.

⁷ Tinjauan Tentang Tanggungjawab Negara Terhadap Korban Pelanggaran Hak Asasi Manusia Di Bidang Agama, <http://e-journal.uajy.ac.id/190/3/2HK09841.pdf>, accessed 10 Desember 2022.

⁸ Suhaimi, Perlindungan Saksi Dalam Beberapa Tindak Pidana dan Pengadilan Hak Asasi Manusia, *Jurnal Hukum Samudra Keadilan*, Vol. 15, No. 2, Juli-Desember 2020, pp. 264-276.

⁹ Andriyansyah, Dahlan, Suhaimi, Money Laundering Crimes Using a Letter Of Credit in a Cross-Country, *IOSR Journal Of Humanities And Social Science (IOSR-JHSS)*, Volume 25, Issue 3, Series 5 (March 2020), pp. 36-40.

¹⁰ Romli Atmasasmita, *Aspek Nasional dan Global Pemberantasan Terorisme*, *Jurnal Hukum Internasional Unpad*, Vol. 2 No. 3 Desember 2003, Bagian Hukum Internasional Fakultas Hukum Universitas Padjadjaran, Bandung, 2003, hal. 228.

Given how important the Malacca Strait is, its position is referred to as the "Bottle Neck Corridor". Its strategic significance as a bottle neck is emphasized by Groove (1990). About 80% of trade and energy pass through it. The Malacca Strait is a very narrow passageway which holds many international trade quotas. Japan and China have a high dependence on the Malacca Strait, because almost 80% of energy and trade is channeled through various trading activities that they carry out. As a result, these checkpoints connect the world via sea communication lines (SLOC) - making them important security points for trade routes. Beyond that, the Malacca Strait also has a high potential threat due to its proximity to the country's SLOC. Because of this, many of the country's trade restrictions exist on this body of water.

Because transnational crime is very broad in nature, this paper only discusses the problem of transnational crime within the scope of ASEAN, and the state's responsibility in the event of the crime occurring. This is very important, because within the scope of ASEAN itself the problem of transnational crime is an issue that can threaten the integrity of the region.

Research Methods

This study is a normative legal study using a case approach, conceptual approach and statutory approach. The sources of legal materials reviewed include primary legal materials, secondary legal materials and tertiary legal materials. Furthermore, the results of the review of the legal materials were analyzed qualitatively and presented prescriptively.

Result and Discussion

1. The Principle of State Responsibility

State responsibility is a fundamental principle of international law, as a result of which it is based on the international legal system, and the doctrine of state sovereignty and equality of states. Besides that, the State has the responsibility to make amends in fulfilling international legal obligations. This means that the state must come up with a solution that takes into account all past events and seeks redress for any losses.¹¹ So that the state is required to be held accountable internationally, if the country commits an international activity/action that is wrong according to the provisions of international law. by a country then requires international responsibility by that country.¹²

There are three principles in international law that underlie responsibility (responsibility), namely:

1. There must be an international legal obligation that arises between only two countries or an obligation that may be from general provisions, and this obligation originates from an agreement or customary law.
2. Violation of obligations by the state due to a positive action or non-fulfillment of an obligation.
3. When there has been a violation of an international obligation, international law determines the violating country to make repairs (liability) for the occurrence of the violation of the international obligation.¹³

¹¹[https://www.google.com/search?q=gung+jawab+negara+\(State+Responsibility\)+merupakan+suatu+prinsip+pokok+hukum+internasional%2C&oq=gung+jawab+negara+\(State+Responsibility\)+merupakan+suatu+prinsip+pokok+hukum+internasional%2C&aqs=chrome..69i57j0j15&sourceid=chrome&ie=UTF-8](https://www.google.com/search?q=gung+jawab+negara+(State+Responsibility)+merupakan+suatu+prinsip+pokok+hukum+internasional%2C&oq=gung+jawab+negara+(State+Responsibility)+merupakan+suatu+prinsip+pokok+hukum+internasional%2C&aqs=chrome..69i57j0j15&sourceid=chrome&ie=UTF-8), accessed 11 November 2022.

¹² http://repository.um-surabaya.ac.id/3704/3/BAB_II.pdf, accessed 11 November 2022.

¹³ Neni Ruhaeni, Perkembangan Prinsip Tanggung Jawab (*Bases of Liability*) dalam Hukum Internasional dan Implikasinya terhadap Kegiatan Keruang-angkasaan, *Jurnal Hukum IUS QUIA IUSTUM*, Vol. 21 No. 3, 2014, pp. 335-355.

Thus the nature of state responsibility is not based on a national understanding of wrongdoing, but international responsibility is linked to violations of agreements and other violations of international legal obligations.

If the description above is related to transnational crimes that occurred in the border areas of Indonesia, Malaysia and Singapore (the waters of the Malacca Straits), it is clear that crimes that occurred in these areas would incur state responsibility (ie coastal states). This is in accordance with the 1982 United Nations Convention on the Law of the Sea (UNCLOS), which stipulates that maritime security is the responsibility of the coastal state that owns the area. In fact, a maritime security case had previously occurred, the party who received security disturbances in national waters filed a lawsuit against the coastal state with locus delicti from the crime, because it is the sovereign territory of the coastal state concerned.

The 1982 United Nations Convention on the Law of the Sea (known as UNCLOS 1982) provides additional rights to coastal states, to always maintain an unhindered shipping zone. As a first step is to determine the basic rights for each classification. The Peace Crossing criterion requires a dedication to peace and security. In addition, the government can make separate laws and regulations as stated in Article 21 of the 1982 UNCLOS Law.

Thus if a crime or violation occurs, the authorities of the coastal state can board the ship and examine it; they can also arrest and initiate court proceedings. the authorities can board the ship and investigate, punish and prosecute the demands of the court. to follow the regulations and laws required Confirming compliance with the conventions, these ships were caught which were then seized and their crews could be imprisoned. It can be released after posting a guarantee that meets the required standards, referring to legal issues known as illegal transshipment. Under what circumstances were both the marine incident Norstar and merchant Juno prosecuted for their respective wrongdoings. Article 73 UNCLOS 1982 refers to cases that need to be tried or tried by a court (ITLOS).

2. State Responsibility for the Waters of the Malacca Strait

The security issue of the Malacca Strait is one of the many security responsibilities that must be carried out, which also includes all transnational crimes. This new type of threat will bring about a national disaster if it is not immediately anticipated. It is necessary to improve the quality of the Navy which includes facilities and welfare for TNI AL soldiers to uphold security at sea which is one of the entry routes to this country.¹⁴

Terrorism and crimes in international waters are a threat to the international community. In this case, countries cannot solve the problem individually. Therefore it needs a multinational or multilateral effort to deal with it.¹⁵

In International Law, piracy and terrorism are classified as international crimes. In the sense that the jurisdiction that applies to the crime is universal jurisdiction or the authority of each concerned country. Thus the United States also has authority over these crimes. However, it should be noted that the Malacca Strait cannot be classified as universal jurisdiction, because universal jurisdiction over piracy or terrorism in the maritime area only applies in international waters, namely on the high seas. Meanwhile, the status of the Malacca Strait is a strait used for international waters (strait used for international navigation), not international waters (high seas). Therefore it is very appropriate if Indonesia and Malaysia expressly state that the Malacca Strait is under the responsibility of Indonesia and Malaysia as coastal countries.

¹⁴ Alamsah Putra Tanjung, Mangisi Simajuntak, Tasdik Mestika Alam, Pengaruh Kemampuan Operasi Keamanan Laut Pangkalan TNI AL Terhadap Penegakan Hukum Laut, *Jurnal Maritim Indonesia*, Vol 8 No. 1, 2020, pp. 78-97.

¹⁵ Yasniar Rahmawati Majid, Konstruksi Pengaturan Kejahatan Terorisme Internasional Dalam Perjanjian Internasional Dengan Tanggung Jawab Integral, *Jurnal ARENA HUKUM*, Vol. 11 No. 2, 2018, pp. 290-316.

The consequence of the description above, according to international law, will be the responsibility of the coastal states (Indonesia, Malaysia and Singapore) for the safety and security of shipping in the waters of the Malacca Strait. State responsibility according to international law is very important, because every state that has responsibility certainly has an obligation to carry out this responsibility. In the sense that negligence or failure in carrying out responsibilities will give rise to international responsibilities.

In the event of a failure to maintain security and safety in the waters of the Malacca Strait, Indonesia, Malaysia and Singapore as coastal states must be responsible for the security and safety of these international waters. For the case of a state's international responsibility for the security and safety of the waters in its territory, there is already jurisprudence that can be used as a reference or guide, namely the case that occurred in 1946. In this case two British warships (Saumarez and Volage) had collided with mines sea mines laid by the Government of Albania while passing through the Corfu Canal. Based on the decision of the International Court of Justice, the Albanian Government was declared to be responsible for the incident, where the Albanian Government had failed to take the necessary steps to warn British ships while passing through the dangerous Corfu Canal.

Based on the Corfu Canal case mentioned above, and related to the Malacca Strait as an international shipping lane, it is clear that Indonesia, Malaysia and Singapore have an obligation to maintain the security and safety of international shipping. Negligence and failure in maintaining the security and safety of international shipping along the Malacca Strait will result in international responsibility towards Indonesia, Malaysia and Singapore.

The controversy between Indonesia and Malaysia and the United States regarding the Malacca Strait has recently continued. The controversy relates to the initiative or idea of the Commander of the United States Fleet in the Pacific, Admiral Thomas Fargo, in April 2004 proposing the placement of the United States fleet of ships in securing the Malacca Strait. The reason for the United States sending its fleet of ships to the waters of the Malacca Strait is intended to fight terrorism in these waters. In this case the United States calls this initiative the Regional Security Initiative (RMSI).

The Indonesian side firmly rejected the initiative of the United States Fleet Commander and stated that securing the waters of the Malacca Strait was the responsibility of the coastal countries bordering these waters, in this case Indonesia and Malaysia. The United States cannot force its will to send its sea transport fleet to the Malacca Straits. This is also the case with Malaysia, which also expressly rejected the United States' wishes for the same reasons as stated by Indonesia. However, Singapore seems to welcome the wishes of the United States.

The background of the United States' thoughts on sending troops to the waters of the Malacca Strait, among others:

1. The Malacca Strait is one of the most strategic straits. This strait is a driving factor for world economic growth. About a quarter of world trade (including oil), passes through this Malacca Strait.
2. The Malacca Strait has long been known as a dangerous strait. Every year no less than 200 cases of piracy and other criminal acts befall merchant ships passing through the Malacca Strait, especially relatively small ships.¹⁶

Actually the United States' initiative to maintain and maintain the security of the Malacca Strait from the threat of terrorism is positive, but it seems that the initiative is very one-sided. The United States' determination to fight terrorism, including in the waters of the Malacca Strait, is also based on psychological factors. Still remember in our minds how the act of terrorism in the World Trade Center

¹⁶ Huala Adolf, *Tanggung Jawab RI atas Selat Malaka*, Harian Kompas, tanggal 26 April 2004.

(WTC), New York on September 11, 2001 and caused thousands of casualties. Likewise with the bomb explosions in Bali on October 12, 2002 (at Cafe Sari Club and Paddy's Club Kuta to be precise) which resulted in approximately 183 deaths and 328 injuries. Apart from that, it also included the destruction of several buildings and motorized vehicles, both four-wheeled and two-wheeled.¹⁷

3. Threats to Indonesia as a Country Responsible for the Waters of the Malacca Strait

In fact, since 1971, Indonesia and Malaysia and Singapore have made efforts towards the security and safety of international shipping in the Malacca Strait. At that time the three countries had signed a joint statement affirming their responsibility for the safety and security of international shipping in the Malacca Strait. This agreement was followed by other follow-up agreements, such as determining the type of vessel (maximum) that can pass through the strait, vessel requirements and navigational equipment.

The international community (particularly users of the Malacca Straits) think that the coastal states bordering these waters have not taken sufficient concrete steps to ensure their safety in crossing these waters. Due to this dissatisfaction, it is only natural that suggestions emerged from certain parties to invite foreign powers to secure these waters. Therefore, Indonesia optimally continues to strive to ensure security in the Malacca Strait, one of which is the use of the "Marine Electric Highway (MEH)", especially in the framework of providing safety for shipping and protection of maritime areas in the Singapore Strait and especially the Malacca Strait.¹⁸

It is true to say that these waters are the sovereign territory of Indonesia and Malaysia and this status has the consequence that security issues in these waters are a national jurisdiction. However, it cannot be denied that security disturbances in these waters can have a broad impact, given the function and strategic position of these shipping lanes.

We (Indonesia) need to introspect ourselves to see the elements that are the problem on the Indonesian side. Limited resources which include facilities and finances are one of the causes of security enforcement problems. In view of this, it is time to increase the proportion of more attention to security management issues in general and maritime security in particular.

For Indonesia, the Navy (AL) as the executor of sovereignty enforcement at sea deserves more attention than before. Apart from that, we also need to feel sympathy as well as concern for the existence of our Navy. With all its limitations, expectations for AL are very high beyond its capacity. One of them is the limitation of the current fleet of warships. The number is still very less when compared to the vast territory of Indonesia.¹⁹ With the limited number of fleets, the Navy is required to provide good quality in sea security, in fact, it is said that only about 30% of the total Navy fleet still meet airworthiness standards. Not to mention the addition of the emergence of various points of vertical and horizontal conflict areas that require the role of the Navy, which of course will break the concentration of the Navy fleet.

It is true to say that they are soldiers and as soldiers are required to devote their lives to the country. However, it cannot be denied that a soldier has a human side which is also faced with the problems of various demands of life.

¹⁷ Harian Kompas, 14 Oktober 2002.

¹⁸ Admin Portal, Direktorat Jenderal Perhubungan Laut, Tingkatkan Keselamatan Pelayaran Selat Malaka dan Singapura, Indonesia Optimalkan Pemanfaatan Marine Ele, <https://hubla.dephub.go.id/home/post/read/5309/tingkatkan-keselamatan-pelayaran-selat-malaka-dan-singapura-indonesia-optimalkan-pemanfaatan-marine-ele>, accessed 2 Desember 2022.

¹⁹ TNI AL Baru Punya 151 Kapal Perang, Idealnya 400 KRI Siap Tempur, TNI AL baru punya 151 kapal perang, idealnya 400 KRI siap tempur | merdeka.com, accessed 2 Desember 2022.

As an archipelagic country that has open borders, the demand for a strong Navy to secure all waters is a must. Especially now and in the future, various types of threats that appear are no longer of a traditional nature. The types of threats that arise are non-traditional threats in the form of transnational crimes and these threats are in a maritime-based environment which includes piracy, smuggling and human trafficking.

Conclusion

One of the goals or ideals of the Indonesian people is to participate in carrying out world order based on freedom, eternal peace and social justice. For this reason, Indonesia is always active in collaborating with other countries in the world, this is especially important for developing countries (such as Indonesia), cooperation between countries is needed to accelerate development.

One of the responsibilities of the state is to carry out world order, especially against transnational crimes, including order in the ASEAN region, especially in the maritime area of the Malacca Strait. This is very important, because within the scope of ASEAN itself the problem of transnational crime is an issue that can threaten the integrity of the region.

One of the threats to Indonesia as a country responsible for the security of the waters of the Malacca Strait is the lack of trust in the international community in Indonesia's capabilities. The international community believes that the coastal states bordering these waters have not taken sufficient concrete steps to ensure their safety in crossing these waters. Due to this dissatisfaction, it is only natural that proposals arise from certain parties to invite foreign powers to secure these waters, such as the United States.

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