INDONESIA’S MARITIME LAW: NATIONAL ENFORCEMENT & REGIONAL COOPERATION

Hadyu Ikrami (Research Associate, Centre for International Law, National University of Singapore)

&

Leonardo Bernard (Ph.D. Candidate, Australian National Centre for Ocean Resources & Security, University of Wollongong)

5th APOLIA Conference
16 June 2017
Da Nang, Viet Nam
Issues

1. Maritime security & safety of navigation in the Straits of Malacca and Singapore & the Sulu-Sulawesi Seas
2. Destruction of coral reef in Raja Ampat
3. Slavery in the fishing industry
4. IUU fishing

Source: news.navy.gov.au

Source: safety4sea.com
1.1. Competent Authorities

- At least 12 ministries, bodies, & agencies
- Bakamla (Maritime Security Agency) is in charge of synergizing the functions of those bodies
- Bakamla was established in 2014. It was preceded by Bakorkamla (Maritime Security Coordinating Agency) (2005-2014).
- Other functions of Bakamla include:
  - To patrol the waters
  - To enact policies on maritime security & safety
  - To conduct SAR
  - To monitor maritime patrols by other agencies
1.2. National Enforcement

- **Judicial power**
  - General Courts (Supreme Court and the courts under it, i.e. Courts of Appeals and District Courts)
  - Criminal liability, civil liability
  - Maritime security & safety of navigation: hijacking, unseaworthiness, etc.

- **Administrative power**
  - Maritime Court (A quasi-judicial body under the Ministry of Transportation)
  - Enforcement of the code of conducts for shipmasters and seafarers
  - Warning, temporary revocation of license
  - Safety of navigation only: incidents involving vessels
1.3. Straits of Malacca & Singapore (SOMS)

Source: scribblemaps.com

Source: maps.google.com
1.4. Sulu-Sulawesi (Celebes) Seas (SSS)

Source: scribblemaps.com

Source: maps.google.com
1.5. Regional Cooperation

- SOMS
  - Malacca Straits Patrol
  - Cooperative Mechanism

- SSS
  - Sulu Sea Patrol (to be launched)
1.5.1. Regional Cooperation—SOMS

**Regional Cooperation to Protect SOMS**

**MSP** (Indonesia, Malaysia, Singapore, Thailand)

- Maritime security
- Can be inter-related. For example, VTS in MSP for safety of navigation

**Cooperative Mechanism** (Indonesia, Malaysia, Singapore)

- Safety of navigation
- Environmental protection

**Maritime patrols**

**Aerial patrols**

**Intelligence exchange**
1.5.2. Regional Cooperation—SSS

**Sulu Sea Patrol**

- Initiative taken by Indonesia, Malaysia, Philippines after a series of abductions and hostage takings in the Sulu-Sulawesi Seas reportedly committed by Abu Sayyaf
- The three countries planned to model the patrol on the Malacca Straits Patrol
- The three countries planned to regulate the modalities of the patrol in at least 4 SOPs:
  - SOP on Maritime Patrol & Rendering Immediate Assistance
  - SOP on Information & Intelligence Sharing
  - SOP on Combined Communication Plan
  - SOP on Hot Pursuit
- The patrol was scheduled to commence in April 2017, but has been delayed to June at the earliest.
1.5.3. Regional Cooperation—ASEAN
2. Destruction of Coral Reef in Raja Ampat

Source: scribblemaps.com

Source: rajaampatkab.go.id

Source: cntraveller.com
2.1. Overview

- 4 March 2017: MV Caledonian Sky rammed into coral reef in Raja Ampat, a popular diving spot
- The destruction is extensive: 22,060 m²
- The vessel flew the Bahamas’ flag and is owned by a Swedish company. The captain, Keith Michael Taylor is a British national and the passengers bought their tickets from a British tour operator. The vessel and captain are no longer in Indonesia.
- The Ministry of Marine Affairs and Fisheries estimates that it would take at least 40 years to repair the reef.
- The Indonesian government is considering taking legal actions.
2.2. Legal Issues to Consider

- Determining the defendant: Company? Ship’s captain? Flag state?
- Civil liability: Assets in Indonesia?
- Criminal liability: Presence of the defendant? Extradition?
- State liability: Attribution of wrongful conduct to the State?
- Compensation: Assessment of damages?
- Regional cooperation?
3. Slavery in the Fishing Industry

Source: AP, published on dailymail.co.uk, 03/04/2015

Source: nytimes.com, 27/07/2015
3.1. Overview

- **Benjina, Indonesia (April 2015)**: Discovery of a modern slavery in the fishing industry

- **Victims**: At least 1,456 fishermen, comprising 1,205 foreigners and 251 Indonesians. The foreigners are from Myanmar, Cambodia, and Laos.

- **Alleged perpetrator**: PT Pusaka Benjina Resources, an Indonesian-registered fishing company, a joint venture between Indonesian and Thai companies.

- **Victims** were reportedly subjected to forced labour and torture. A mass graveyard was also discovered.

- **Fishery products** allegedly ended up in US restaurants and supermarkets.

*Source: AP, published on dw.com on 11/03/2016*
3.2. National Enforcement

• Eight shipmasters and slave masters, comprising five Thai nationals and three Indonesians were prosecuted and convicted.

• The Court found the Accused guilty of human trafficking and sentenced them to an imprisonment of between 3 and 4.5 years (e.g. the Tual District Court Judgments No. 108/Pid.Sus/2015/PN.TUL. and No. 109/PID.SUS/2015/PN Tul).

• They were convicted based on Law No. 21/2007 on the Eradication of Traffic in Person, a crime which is defined as:

  “The act of recruiting, transporting, hosting, sending, transferring, or receiving someone with the threat of force, use of force, abduction . . . For the purpose of exploitation or which can result in the exploitation of that person” [Art. 1(1)].

• Under Law No. 21/2007, traffic in person, including traffic in children, carries a minimum penalty of 3 years’ imprisonment and maximum 15 years (Arts. 2-6).
3.3. Regional Cooperation

- Indonesia has not ratified. Neither have Brunei and Malaysia.
4. IUU Fishing

Source: kkpnews.kkp.go.id, published on kompasiana.com, 14/02/2016

Source: ditp.go.th
4.1. Overview

- President Joko Widodo’s vision on Indonesia as a “global maritime fulcrum”
- The Ministry of Marine Affairs & Fisheries’ three pillars: Sovereignty, Sustainability, and Welfare.
- Government’s estimate (2015): Indonesia loses IDR 3,000 trillion (±USD 217 billion) every year because of IUU fishing.

Susi Pudjiastuti
Minister of Marine Affairs & Fisheries
Source: nasional.republika.co.id
4.2. National Enforcement

- No fishing by foreign/ex-foreign vessels in capture fisheries (C.F.) sector
- Prohibition on foreign investment in C.F.
- Evaluation of 1,132 ex-foreign vessels: Those in C.F. must de-register from Indonesia
- Prohibition on transhipment at sea
- Prohibitions on employing foreigners as shipmasters or seafarers in C.F.
- Provisions on disciplinary actions against MMAF officials in breach of regulations
- Destruction/burning of vessels committing illegal acts (317 vessels as of April 2017)

Source: cnnindonesia.com, 05/04/2016
4.3. Regional Cooperation

- SEAFDEC

- ASEAN

- FAO

2009 Port State Measures Agreement

(source: seafdec.org)

(asean.org)

(Fao.org)
THANK YOU

Hadyu Ikrami: hadyu.ikrami@nus.edu.sg
Leonardo Bernard: lb987@uowmail.edu.au