

# **URGENT NEED FOR NATIONAL MARITIME SECURITY ARRANGEMENT IN INDONESIA: TOWARDS GLOBAL MARITIME FULCRUM**

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## **Abstract**

*Under President Joko Widodo's administration, Indonesia's archipelagic outlook has been re-asserted as the basis of Indonesia's foreign policy, by introducing the concept of Global Maritime Fulcrum (GMF). GMF is aimed put Indonesia as a single maritime power with considerable diplomatic influence in becoming a central role in two vast maritime regions. While the scope of maritime threats has been broaden, the establishment of maritime security should encompasses at least three key areas, namely settling unresolved maritime border with neighboring countries; combating illegal, unreported and unregulated fishing as well as other illegal exploitation of ocean resources; and combating maritime piracy and armed robbery at sea. Such problems are mainly due to the lack of national maritime security arrangement. The existing national legal frameworks in maritime security issues are still very sectoral in nature. This paper analyses Indonesia's current sectoral legal framework on maritime security towards the achievement of GMF. It is argued that in maintaining national sovereignty, maritime security and regional stability, single national maritime security arrangement is needed.*

**Keywords:** *global maritime fulcrum, maritime security, maritime delimitation, piracy, illegal fishing*

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## **I. INTRODUCTION**

Indonesia lie astride a very strategic location that is between two large continents, Asia and Australia; and between two mass oceans, Pacific and Indian Ocean, which brings economic advantages for Indonesia. Indonesia's struggles during the series of negotiation<sup>1</sup> on the law of

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<sup>1</sup> Series negotiations on the development of the law of the sea was started in 1958 when the first united nations conference on the law of the sea (UNCLOS I) took place. This first conference recognized firstly the concept of territorial sea but did not determine how far a state can claim territorial sea. The second conference (UNCLOS II) was held in 1960 but unfortunately nothing on archipelagic state came up during the meeting. The third conference, on the other hand was successful in recognizing the

the sea has made Indonesia as the largest archipelagic state in the world having certain rights and obligations under international law, which resulted in the international recognition of the concept of an archipelagic state as envisaged within Part IV of the 1982 Law of the Sea Convention (LOSC).<sup>2</sup> This Convention has made Indonesia's sovereignty and sov-

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concept of an archipelagic state.

<sup>2</sup> Indonesia was a leading proponent in advocating the recognition of an archipelagic state concept, within which state constitutes group of islands sees the islands and the surrounding ocean as a unity. Thus, the application of this concept would enclosed massive areas of waters in a state having groups of islands. For further discussion on the concept of an archipelagic state see further Read further Djalal, Hasjim, *Perjuangan Indonesia di bidang Hukum Laut* (1979); Nordquist H, *United Nations Convention on the Law of the Sea 1982, a Commentary* (1982); Wisnumoerti, Nugroho, "Archipelagic Waters and Archipelagic Sea Lanes" in Van Dyke, John M, Alexander, Lewis M, Morgan, Joseph R (eds), *International Navigation: Rocks and Shoals Ahead?* (1986) 198; Muchjiddin, Atje Misbach, "Some Aspects that Should be Considered in Designating Indonesia's Sea Lanes" in Van Dyke, Jon M, Alexander, Lewis M and Morgan, Joseph R (eds), *International Navigation: Rocks and Shoals Ahead?* (1986) 212; Wisnumoerti, Nugroho, "Indonesia and the Law of the Sea" in Park, Choon-ho & Park, Jae Kyu (eds) *the Law of the Sea: Problems from the East Asian Perspective* (1987) 392; Jayawardene, Hiran W, *The Regime of Islands in International Law* (1990); Kwiatkowska, Barbara and Agoes, Etty R, "Archipelagic Waters: An Assessment of National Legislation" in Wolfrum, Rudiger (ed), *Law of the Sea at the Crossroads: The Continuing Search for a Universally Accepted Regim* (1990) 107; Agoes, Etty, R, *Konvensi Hukum Laut 1982: Masalah Pengaturan Hak Lintas Kapal Asing* (1991); Muchjiddin, Atje Misbach, *Status Hukum Perairan Kepulauan Indonesia dan Hak Lintas Kapal Asing* (1993); Djalal, Hasjim, *Indonesia and the Law of the Sea* (1995); Munavvar, Mohamed, *Ocean States: archipelagic Regimes in the Law of the Sea* (1995); Rothwell, Donald R, "Navigational Rights and Freedoms in the Asia Pacific Following Entry into Force of the Law of the Sea Convention" (1995) 35 *Virginia Journal of International Law* 587; Bernhardt, JPA, "The Right of ASLP: A premier" (1995) 35 *Virginia Journal of International Law* 719; Djalal, Dino Patti, *The Geopolitics of Indonesia's Maritime Territory Policy* (1996); Djalal, Hasjim, "Perkembangan Penanganan Masalah Tiga ALKI melalui Perairan Indonesia" (Paper presented at the Rapim TNI-AL, Cilangkap, Jakarta, 15 April 1997); Priestnall, Graham, "The Regimes of ASLP and Straits Transit Passage" (1997) 96 *Maritime Studies* 1; Churchill, R.R. and Lowe, A.V, *Law of the Sea* (3<sup>rd</sup> ed, 1999), 118-130; Djalal, Hasjim, "The Law of the Sea Convention and Navigational Freedoms" in Rothwell, Donald R and Bateman, Sam (eds), *Navigational Rights and Freedoms and the New Law of the Sea* (2000) 1; Johnson, Constance, "A Rite of Passage: The IMO Consideration of the Indonesian ASLPs Submission" (2000) 15 *The International Journal of Marine and Coastal Law* 317; Rajan, HP, "The Legal Regime of Archipelagos" in Caminos, Hugo (ed), *Law of the Sea: The Library of Essays in International Law* (2001) 135;

ereign rights enclose more than 5.8 million square kilometres, which is even larger than Djuanda's assertion, which did not include the exclusive economic zone (EEZ).<sup>3</sup> However, such location and massive areas of waters fall within Indonesia's jurisdiction has exposed the nation to various maritime threats, such as illegal logging and fishing, smuggling, human trafficking, drug trafficking, and territorial breaches that affect its security policies. At this point, maritime security emerged. While the scope of maritime threats has been broaden from time to time, it is argued that the establishment of maritime security should encompasses at least three key areas, namely settling unresolved maritime border with neighboring countries; combating illegal, unreported and unregulated fishing as well as other illegal exploitation of ocean resources; and combating maritime piracy and armed robbery at sea. Unfortunately those three areas are the biggest problems Indonesia has over the security and stability of Indonesia's maritime domain. Such problems were mainly due to the lack of national maritime security arrangement. While in addressing maritime threats, which mostly transnational crime, international and regional arrangements are crucial, national arrangement in addressing the threats is also important. Although Indonesia has existing legal frameworks for several maritime threats, yet that frameworks do not encompass all maritime threats in one single arrangement. The existing national legal frameworks in maritime security issues are still very sectoral in nature. Some legal frameworks are also inconsistent

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Batongbacal, Jay L, "A Philippine Perspective on Archipelagic State Issues" (2002) 122 *Maritime Studies* 18; Djalal, Hasjim, "Alur Laut dan Insiden 3 Juli, *Tempo* (Jakarta), 20 July 2003; Brownlie, Ian, *Principles of Public International Law*( 6<sup>th</sup> Ed, 2003), 163-241; Batongbacal, J, "Barely Skimming the Surface"ASLs navigation and the IMO" in Elferink, A.G. Oude and Rothwell, D.R (eds), *Ocean Managements in the 21<sup>st</sup> Century: Institutional Frameworks and Responses* (2004) 49, Puspitawati, Dhiana, *The concept of an Archipeagic State and its Implementation in Indonesia*, PhD Dissertation, Law School, University of Queensland, 2008.

<sup>3</sup> In 1958 Indonesia declared Djuanda Declaration which declared unilaterally Indonesia as an archipelagic state. The concept of an archipelagic state enclosed waters surrounding the group of islands into single archipelagic baselines system, over which the sovereignty of archipelagic state is extended. While such concept was finally recognized and envisages within the LOSC, however, the concept was recognized with some modification, especially the recognition of other states in regard to the rights of passage through such waters.

with international legal framework on the same subject matter. In addition to this, a non-updated existing legal framework raised problems with regard to the law enforcement at sea.

On the other hand, under the new Indonesian President, Joko Widodo, the concept of Global Maritime Fulcrum (GMF) was introduced. This shows the willingness of Indonesia to re-function the surrounded ocean as the unifying factors of Indonesian people. The current government is re-adopting the 'three principles' known as *trisakti*, which is a normative guideline that envisions Indonesia to be a sovereign power with a resilient economy and multi-cultural society. Widodo underlined the need to develop a maritime strategy to gain optimum benefit as an archipelagic state in politically, economically, socially, and culturally. This paper analyses Indonesia's current sectoral legal framework on maritime security towards the achievement of GMF. It is argued that in maintaining national sovereignty, maritime security and regional stability, single national maritime security arrangement is needed.

## II. INDONESIA GLOBAL MARITIME FULCRUM

Indonesia's strategic location has made Indonesian waters very crucial to international shipping. Indonesian waters consist of various depth of the ocean. The Java Sea is very important for international navigation as it connects the continents of Asia and Australia.<sup>4</sup> The eastern and western of Indonesia, which consist of deep seas, are very important for military activities. The Timor Sea and Sawu Sea as well as the Java Sea provide an ideal route for submarines to navigate from the Pacific Ocean to the Indian Ocean and *vice-versa*,<sup>5</sup> which is important to the interests of the USA. Prior to the adoption of the LOSC, there are at least five major routes traversing Indonesian waters.<sup>6</sup> Beside

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<sup>4</sup> Hasjim Djalal, *Perjuangan Indonesia di Bidang Hukum Laut*, Binacipta, Jakarta 1979, p.6.

<sup>5</sup> *Ibid.*

<sup>6</sup> The routes include: (i) through the Malacca Strait, providing access from the South-China Sea into the Indian Ocean, (ii) from the South-China Sea going through the Natuna Sea to the Indian Ocean via the KARimata and Sunda Straits, (iii) across the centre of Indonesia through the Makassar and Lombok Straits, connecting the Pacific and Indian Oceans, (iv) From the Indian Ocean, goig through the Ombai and Wetar

its importance to navigational routes, Indonesian waters also crucial for other commercial activities, such as fishing, laying of submarine cables and pipelines, oil and gas exploitation and carrying out scientific research. Thus, it was not surprising that there were objections when the concept of an archipelagic state was firstly introduced. However, the LOSC, through its 'package deals nature'<sup>7</sup> manage to provides provisions which accommodate conflicting interests, that is interests of archipelagic state and user maritime states, that is states having main interests of as much access as possible to the ocean, both for passage and the utility of ocean resources, in a balancing arrangement.

As the leading proponent of the concept of an archipelagic state, Indonesia was very keen to implement all provisions of LOSC, especially those relating to the archipelagic states. However, prior to the adoption of archipelagic state concept within the LOSC, priority seems to change in Indonesia. Puspitawati<sup>8</sup> argued before the adoption of LOSC Indonesia's approach to ocean management was still to some extent a more territorial approach. She further argued that this approach was taken during those years because Indonesia wanted to show its strong policy commitment to the concept of an archipelagic state. However, in parallel with the emerging ocean governance framework based on the sustainable development of the law of the sea, Indonesia's approach to ocean governance in 1990s has changed. It is submitted that in the

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Straits, passing through the Banda Sea before proceeding north, with one branch going to the Pacific Ocean while the other branch going to the Sulu Sea and (v) from the Pacific Ocean of the Sulu Sea through the Sulawesi Sea, passing through the Halmahera Sea, the Buru Strait and the Banda Sea to the Arafura Sea, then proceeding to the Torres Strait.

<sup>7</sup> The package deals nature of the LOSC involves the reciprocal deals which adopted 'quid pro quo'. It is argued that since the international arrangement on the ocean usage involve conflicting interests between states, it is considered fair if the given rights are return by certain obligations. As Agoes stated: "An example of the package nature of LOSC can be seen through the notion that the enjoyment of the rights and benefits involve, the concomitant undertaking duties and obligations." See further Agoes, ETTY R, "The Law of the Sea and Navigation: The Indonesian Archipelagic State's Perspective" in Rothwell, Donald R and Bateman, Sam (eds), *Navigational Rights and Freedoms and the New Law of the Sea* (2000) 144, 146.

<sup>8</sup> See further Puspitawati, Dhiana, *The Concept of an Archipelagic State and its Implementation in Indonesia*, Ph.D Dissertation, Law School, Bussiness, Economic and Law Faculty, The University of Queensland, 2008

1990s Indonesia seemed to have taken a somewhat more conservative approach to the development of its national ocean policies. The ocean related legislation enacted after the entry into force of LOSC showed less commitment to the concept of an archipelagic state. From the above observation, a pattern can be identified. Strong commitment to the concept of an archipelagic state before the adoption of LOSC can be seen as a strategy designed to gain international recognition of the concept. However, once the LOSC come into force, unfortunately, the priority seemed to change. Strong attention of Indonesian government in ocean affairs has begun to rise again prior to Indonesia's reformation era. During the President Abdul Rahman Wahid Administration, the Department of Ocean exploration, later changed to the Ministry of Fisheries and Ocean Affairs, was established. Government attention on ocean affairs continues to grow; and ocean and maritime affairs were put in top national priority under President Joko Widodo Administration.<sup>9</sup> The government seems to realize that the concept of an archipelagic state should be the geopolitical consideration as well as basic philosophy of Indonesian ocean related policies.

Furthermore, under President Joko Widodo's administration, Indonesia's archipelagic outlook has been re-asserted as the basis of Indonesia's foreign policy, by introducing the concept of Global Maritime Fulcrum (GMF). GMF is aimed put Indonesia as a single maritime power with considerable diplomatic influence, especially in becoming a central role in two vast maritime regions – the Indian and Pacific Oceans. The concept of GMF was underpinned by government's willingness to reassert the long-standing archipelagic outlook and saw the waters surrounding the islands as the potential factor in economic development and serves as national strength. The GMF focuses on five key pillars, which include maritime culture, maritime resources, archipelagic connectivity, maritime diplomacy and naval development. Following to this, in President Joko Widodo's document outlining his five-years policy agenda, the archipelagic-oriented foreign policy was re-introduced. Such archipelagic-oriented foreign policy will be pursued through further five key areas, namely: (i) promoting the resolution of Indonesia's maritime delimitation disputes through maritime diplomacy, (ii) main-

<sup>9</sup> Beside the Ministry of Fisheries and Ocean Affairs under President Joko Widodo Administration Ministry Coordinator of Maritime Affairs was also established.

taining Indonesia's territorial integrity, maritime sovereignty, safety and social welfare in its outer islands, (iii) safeguarding the national resources and the Exclusive Economic Zone (EEZ), (iv) intensifying defense diplomacy and (v) diminishing maritime rivalries among major powers and promoting peaceful resolution of territorial disputes in the region.<sup>10</sup>

Furthermore Gindarsah and Priamarizki argued that the implementation of such concept requires the maintenance of at least three key areas, namely national sovereignty, maritime security as well as regional stability.<sup>11</sup> It is argued that from these three key areas, maritime security plays important role in achieving national sovereignty and regional stability. It is argued that the establishment of maritime security should encompasses at least three key areas, namely settling unresolved maritime border with neighboring countries; combating illegal, unreported and unregulated fishing as well as other illegal exploitation of ocean resources; and combating maritime piracy and armed robbery at sea. The following section will discuss those three key areas, which unfortunately remains as Indonesia's biggest problems at sea.

### **III.MARITIME THREATS**

As stated earlier, that the massive waters areas falling under Indonesia's jurisdiction, while brings economic benefits, also exposes the nation to various maritime threats, which mostly involve transnational crimes. At this point, maritime security emerged. Maritime security has many faces ranging from piracy and armed robbery, illicit trafficking by sea (narcotics trafficking, small arms and light weapons trafficking and human trafficking), global climate change, cargo theft to newly developed maritime terrorism. Maritime security sometimes appears to be a large and imprecise concept. In fact, in its development, maritime security involves many entities, from international, national, public as well as to private sector at establishing good governance at sea, fa-

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<sup>10</sup> See Joko Widodo and Jusuf Kalla, "Jalan Perubahan Untuk Indonesia Yang Berdaulat, Mandiri dan Berkepribadian: Visi, Misi, dan Program Aksi," (May 2014), p. 12. Accessible at [kpu.go.id](http://kpu.go.id).

<sup>11</sup> Gindarsah, Iis and Primarizki, Adhi, "Indonesia's Maritime Doctrine and Security Concerns", RSIS Policy Reports, 2014.

cilitating and defending commerce as well as naval mobility in term of navigational rights and preserving the freedom of the sea. It follows from the above that the meaning of maritime security can be seen from various perspectives. From a military point of view, maritime security has traditionally been focused on national security concerns in terms of protecting territorial integrity of any particular state from armed attack or other uses of force against other state's interests. From a defense perspective maritime security has been broadened to include a greater range of threats. This, for example will include ensuring the freedom of navigation, the flow of commerce and the protection of ocean resources, as well as securing maritime domain from terrorism, drug trafficking and other form of transnational crime, piracy, environmental destruction and illegal seaborne migration. From shipping industry perspective, maritime security particularly refers on the safe arrival of cargo at its destination without interference to criminal activities.

While there is no universal definition of maritime security, it is argued that maritime security should be distinguished from maritime safety. Maritime Security is "the combination of preventive and responsive measures to protect the maritime domain against threats and intentional unlawful acts."<sup>12</sup> Whereas maritime safety" is "the combination of preventive and responsive measures intended to protect the maritime domain against, and limit the effect of, accidental or natural danger, harm, and damage to environment, risks or loss."<sup>13</sup> It is therefore submitted that the keywords for maritime security are: preventive and responsive measures, aiming at both law enforcement as a civilian and military requirement and defense operations as a military, in this case naval requirement. Meanwhile, the International Maritime Organization (IMO) draws a distinction between maritime safety and maritime security. The previous refers to preventing or minimizing the occurrence of accidents at sea that maybe caused by sub-standard ships, unqualified crew or other operator's error. Whereas the later refers to the protection

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<sup>12</sup> "Maritime Surveillance in Support of the CSDP: The Wise Pen team Final Report to EDA Steering Board", available at: [http://www.realinstitutoelcano.org/wps/wcm/connect/44d0718042982ce1bb66bb24ab1546e8/The\\_wise\\_pen\\_team\\_final\\_report\\_april\\_2010.pdf?MOD=AJPERES&CACHEID=44d0718042982ce1bb66bb24ab1546e8](http://www.realinstitutoelcano.org/wps/wcm/connect/44d0718042982ce1bb66bb24ab1546e8/The_wise_pen_team_final_report_april_2010.pdf?MOD=AJPERES&CACHEID=44d0718042982ce1bb66bb24ab1546e8).

<sup>13</sup> *Ibid.*

against unlawful and deliberate acts conducted at the ocean.<sup>14</sup> In sum, the crucial distinction is between man-made and unintentional risks and dangers.

While the scope of maritime threats has been broaden from time to time, the establishment of maritime security should encompasses at least three key areas, namely settling unresolved maritime border with neighboring countries; combating illegal, unreported and unregulated fishing as well as other illegal exploitation of ocean resources; and combating maritime piracy and armed robbery at sea. Unfortunately those three areas are the biggest problems Indonesia has over the security and stability of Indonesia's maritime domain. The extended sovereignty over the massive waters area requires an archipelagic state to settle its maritime delimitation with neighboring states. The agreed maritime delimitation is needed toward the establishment of maritime security, since agreed maritime delimitation lead to easy law enforcement at sea. As the biggest archipelagic state, Indonesia neighbor with ten states, namely Malaysia, Singapore, Thailand, Vietnam, the Philippines, Timor Leste, Australia, India, Palau and PNG. It is argued that agreed maritime delimitation with neighboring states serves as the baselines of all maritime threats occurring on the ocean. It is submitted that unresolved maritime delimitation will consequently resulted in the occurrence of various maritime threats. In addition to this, it also triggered continuous conflict between littoral states. Thus, unresolved maritime delimitation in fact can also be seen as maritime threats itself. Figure below illustrates Indonesia's maritime borders with 10 states. While some of the borders have been resolved, yet many more borders await for amicable solutions.

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<sup>14</sup> P.K. Mukherjee and M.Q. Mejia, jr, "The ISPS Code: Legal and Ergonomic Considerations" in M.Q. Mejia, jr (eds), *Contemporary Issues in Maritime Security*, 2003, 33-34.

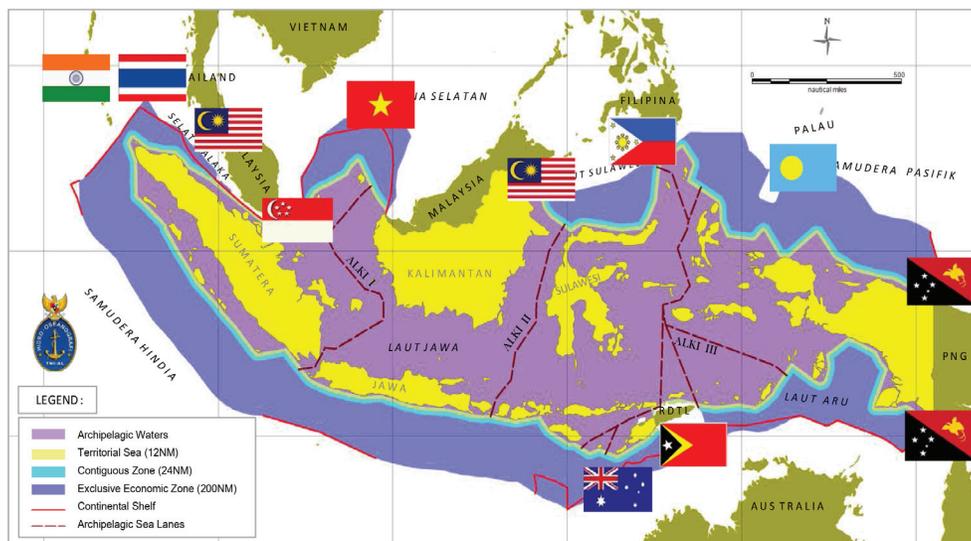


Figure 1: Indonesia’s 10 Neighboring Countries<sup>15</sup>

In assuring maritime security over its waters, Indonesia has to discuss and make an agreement for maritime delimitation with these states. While discussions and meeting as well as agreements have been made, however, much remains to be done, especially maritime delimitation between Indonesia and Malaysia which poses continuing problems on the exploration and exploitation of natural resources. It is argued that the overlapping maritime space usually occurs over the EEZ and continental shelf, although there is in some cases the overlapping ocean space is territorial sea. The complete and agreed maritime delimitation, which has been settled, is maritime delimitation between Indonesia and Singapore,<sup>16</sup> as well as between Indonesia and New Guinea.<sup>17</sup> Whereas maritime delimitation, in this case delimitation of EEZ and continen-

<sup>15</sup> Indonesian Navy, Hydrographic Department, 2011.

<sup>16</sup> Maritime delimitation agreement was done in 2014 dan waiting for ratification process.

<sup>17</sup> Maritime delimitation agreement was conducted in 1973

tal shelf between Indonesia and Malaysia,<sup>18</sup> the Philippines,<sup>19</sup> India,<sup>20</sup> Thailand,<sup>21</sup> Vietnam<sup>22</sup> and Palau<sup>23</sup> have not been resolved in some areas, although series of discussions as well as some agreements have been made. Meanwhile with Australia<sup>24</sup> agreements have been made in maritime delimitation as well as further cooperation arrangements both on the sovereignty issue and management of natural resources. However, maritime delimitation between Indonesia and East-Timor<sup>25</sup> has not been conducted yet since both states still focusing on land delimitation.<sup>26</sup>

Furthermore, this research finds that unresolved maritime delimitation consequently leads to the increasing rate of Illegal, Unreported and Unregulated Fishing (IUU Fishing), especially over the unsettled areas. It was recorded that in 2014 there were more than a hundred vessels conducting IUU Fishing, mostly over the unsettled areas, which cause Indonesia to lose about 24 billion dollars.<sup>27</sup> The table below shows the increasing rate of IUU Fishing:

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<sup>18</sup> Agreement on territorial sea took place in 1971, on continental shelf took place in 1969, while agreement on EEZ has not been resolved and currently holding on unilateral claim by each state.

<sup>19</sup> Agreement on EEZ has been conducted since 2014 but has not been resolved yet.

<sup>20</sup> While agreement on EEZ has not been discussed, agreement on continental shelf has been conducted in 1974, 1977 and 1978.

<sup>21</sup> While agreement on EEZ has not been discussed, agreement on continental shelf has been conducted in 1974, 1975 and 1978.

<sup>22</sup> Agreement on continental shelf has been conducted in 2003 while agreement on EEZ has not been done yet and meanwhile using unilateral claim by each state.

<sup>23</sup> Only in informal meeting stage.

<sup>24</sup> Maritime delimitation was conducted in 1971, 1972 and 1977.

<sup>25</sup> Planning to conduct maritime delimitation agreement during 2013 meeting in discussing land delimitation.

<sup>26</sup> For the detail and chronological discussion on the series agreements which has been made with the ten neighboring states see further Daryanto, “*Perkembangan Batas Maritim Republik Indonesia dengan Negara Tetangga dan Permasalahannya*”, presented in Focus Group Discussion *Pengelolaan Batas Wilayah Maritim Indonesia*, Jakarta, 3 March 2016.

<sup>27</sup> Steve Herman, Indonesia Declares War on Illegal Foreign Fishing Vessels, *Voice of America*, 23 December 2014, available at: <http://www.voanews.com/content/indonesia-declares-war-on-illegal-foreign-fishing-vessels/2570346.html>, accessed on 14 July 2016.

Table 1: IUU Fishing rate in Indonesian waters up to 2011<sup>□</sup>

<b>No.</b>	<b>Year</b>	<b>IUU Fishing</b>
1	2005	216 cases
2	2006	170 cases
3	2007	198 cases
4	2008	130 cases
5	2009	180 cases
6	2010	195 cases
7	2011	230 cases

As discussed previously, the ‘package delas’ natur of the LOSC involves the fulfilment of obligations upon rights given by the Convention. While passage of foreign ships through Indonesian waters is allowed, however, under the LOSC, an archipelagic state may designate Archipelagic Sea Lanes (ASLs) in accommodating the passage of foreign ships.<sup>28</sup> Being a major navigational route, Indonesia is also predominantly dependent on international shipping in term of international trade establishment. Thus, Indonesia cannot rigidly close its entire waters. As also provided within the LOSC that under archipelagic state concept, while Indonesia as an archipelagic state is given sovereignty and sovereign rights over massive areas of waters enclosed by archipelagic baselines, Indonesia is also obligated to allow the passage of foreign ships through its waters. While ships’ traffic through Indonesian waters brings economic advantages for Indonesia, yet this condition also exposed the nations to various maritime threats which mostly transnational crime. This condition demands complicated arrangement in term of law enforcement. A more traditional maritime threats underpinned by unresolved maritime delimitation is piracy and armed robbery at sea. In discussing piracy and armed robbery at sea, it is imperative firstly to present data on ships traversing Indonesian waters. However, since the number are numerous, for examples only data on certain ships, in this

<sup>28</sup> Indonesia has designated three north-south ASLs through Indonesian waters. Despite of the controversies, such ASLs would limit foreign ships passage to those ASLs to ease the monitoring of the passage. For further discussion on the designation of Indonesian ASLs, read further Puspitawati, Dhiana, “The East/ West Archipelagic Sea Lanes Passage through the Indonesian Archipelago,” *Maritime Studies* 2005 (140), 1-13, 2005.

case Australian ships, traversing through Indonesian ASLs is presented as follows:

Table 2: Estimate ship’s movements passing through Indonesia’s SLOCs relating to Australia’s trade<sup>29</sup>

Indonesian sea lanes	Tanker	Gas	Passenger	Livestock	Dry bulk	Liner	General	DBO	Other
ASL I	168	14	7	46	329	159	64	7	20
ASL II	56	15	6	40	749	np	40	18	7
ASL III A & D	9	73	np	np	377	0	15	np	3
ASL IIIB	0	5	np	10	3	np	4	0	0
Indonesia (east-west)	128	4	np	4	197	162	110	7	15

*np: Refers to a cell with a count of less than 3 ships which are not published for confidentiality reasons*

*note: Routes determined on direct route between first/ last port in Australia and last/ first port of call overseas. It does not take into account ships draught limitations of some channels*

While such particular sea lanes have not been include in scenarios where possible maritime threats take place, however, their susceptibility to maritime threats cannot be ignored. Among existing sea lanes, Malacca Straits is the most dangerous sea lanes, over which very high maritime threats rate recorded. Malacca Straits lies between three littoral states, namely Malaysia, Singapore and Indonesia. For Singapore, since it is heavily dependent on international trade, especially as a hub for transshipment trade and oil refining, the security over Malacca Straits is crucial. Similarly, eighty percent of Malaysia’s trade passed through Malacca Straits due to the location of its major ports, which lie astride Malacca Straits itself. In addition to this, Malaysia is also

<sup>29</sup> Bureau of Trade and Maritime Economics, *Working Paper 69*, Australian Maritime Trade 2000-02 2004-05, p 13, available at: [https://bitre.gov.au/publications/2007/files/wp\\_069.pdf](https://bitre.gov.au/publications/2007/files/wp_069.pdf), accessed on 14 July 2016.

concerned with protecting its resource-rich EEZ, which contribute to the fishing industry. Thus, for Malaysia, sovereign control over the Strait and its resources are similarly important. While in fact the security of Malacca Straits is also crucial for Indonesia, however, from its actions, Indonesia tend to give more attention to the importance of guarding its maritime border over the Malacca Straits in term of illegal fishing activities, especially with Malaysia. As stated by Dela Pena<sup>30</sup> ‘[u]nlike its regional neighbors, Indonesia is not as dependent on trade and thus does not share their concerns regarding maritime security.’<sup>31</sup> She further argued that security issues for Indonesia on Malacca Straits are focused more internally, such as economic development, political reform, territorial integrity and militant Islam, rather than externally like piracy and terrorism.<sup>32</sup> She further envisaged that since Indonesia is particularly sensitive to threats to its sovereignty, Indonesian navy saw preventing piracy is less important than patrolling its extensive maritime borders and dealing with smuggling, illegal fishing, and environmental degradation.<sup>33</sup> On the other hand, based on ReCAAP and IMB

<sup>30</sup> Joyce Dela Pena, ‘Maritime Crime in the Strait of Malacca: Balancing Regional and Extra-Regional Concerns’, *Stanford Journal of International Relations*, 2009, available at: <https://www.google.com.au/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=0ahUKEwif2qzEivLNAhUFupQKHeGfDM0QFggnMAE&url=http%3A%2F%2Fweb.stanford.edu%2Fgroup%2Fsjir%2Fpdf%2FPirates.pdf&usg=AFQjCNECHfd4bqBoDTQpgpli66PddKcbRO&cad=rja>, accessed on 14 July 2016.

<sup>31</sup> Joyce Dela Pena, ‘Maritime Crime in the Strait of Malacca: Balancing Regional and Extra-Regional Concerns’, *Stanford Journal of International Relations*, 2009, available at: <https://www.google.com.au/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=0ahUKEwif2qzEivLNAhUFupQKHeGfDM0QFggnMAE&url=http%3A%2F%2Fweb.stanford.edu%2Fgroup%2Fsjir%2Fpdf%2FPirates.pdf&usg=AFQjCNECHfd4bqBoDTQpgpli66PddKcbRO&cad=rja>, accessed on 14 July 2016.

<sup>32</sup> Joyce Dela Pena, ‘Maritime Crime in the Strait of Malacca: Balancing Regional and Extra-Regional Concerns’, *Stanford Journal of International Relations*, 2009, available at: <https://www.google.com.au/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=0ahUKEwif2qzEivLNAhUFupQKHeGfDM0QFggnMAE&url=http%3A%2F%2Fweb.stanford.edu%2Fgroup%2Fsjir%2Fpdf%2FPirates.pdf&usg=AFQjCNECHfd4bqBoDTQpgpli66PddKcbRO&cad=rja>, accessed on 14 July 2016.

<sup>33</sup> Incident around Sebatik Islands, where Malaysian Fishermen caught by Indonesian authority in doing illegal fishing. The territorial as well as resources concerns which outweigh piracy issues can also be noticed in the action of President Joko Widodo in Natuna Island concerning possible disputes on South-China Sea. See Joyce Dela Pena, ‘Maritime Crime in the Strait of Malacca: Balancing Regional and Extra-Regional Concerns’, *Stanford Journal of International Relations*, 2009, available at:

reports, piracy and armed robbery exist in Natuna waters where Indonesian ASL I traverses. In addition to this, Indonesia remains on IMB top list of piracy prone areas in Southeast Asia. From 2005 to March 2010, IMB recorded a total of 57 piratical and armed robbery attacks in the waters of Indonesia compared to 7 attacks in the Malacca Straits in the same period. Although the number of attacks is decreasing since 2005, however, it remains to be the IMB list of piracy prone area according to ICC-IMB Report during the first quarter of 2010. The figure below illustrate the number of piracy and armed robbery attack at sea, in which Indonesia remains the most dangerous piracy prone area:

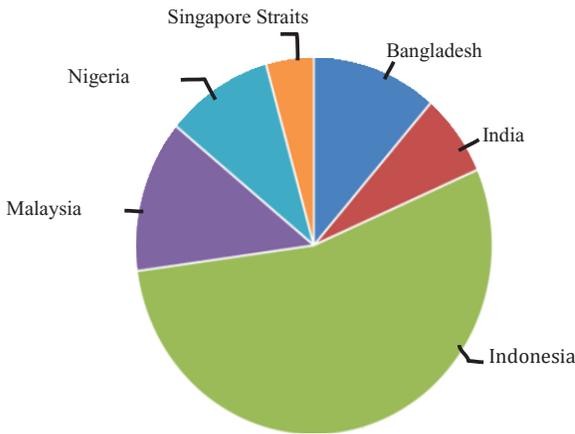


Figure 2: Six location of piracy and armed robbery attacks recorded during 2010-2014<sup>34</sup>

In addition to this, maritime terrorism also affects the waters of the Sulu Sea where ASLs II traverse. Beside over the designated ASLs, maritime threats also occur over the other part of Indonesian waters, especially Indonesian EEZ, ranging from illegal fishing to people smuggling. The existence of refugee through sea also added new dimension on the development of maritime threats.

<https://www.google.com.au/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=0ahUKEwif2qzEivLNAhUFupQKHeGfDM0QFggnMAE&url=http%3A%2F%2Fweb.stanford.edu%2Fgroup%2Fsjir%2Fpdf%2FPirates.pdf&usq=AFQjCNECHfd4bqBoDTQpgplI66PddKcbRQ&cad=rja>, accessed on 14 July 2016.

<sup>34</sup> ICC IMB, Reports on Piracy and Armed Robbery at Sea against Ships 2014 Annual Reports, 2015

## **IV. MARITIME SECURITY ARRANGEMENT: INTERNATIONAL AND REGIONAL LEGAL FRAMEWORK**

### **A. INTERNATIONAL FRAMEWORK**

As it is already known that LOSC is the only comprehensive convention that provides almost all-legal aspect governing the ocean. While the LOSC does not expressly mention the term maritime security, however, LOSC does provide several provisions relating to state response to the act of piracy within Article 100-107 and 110. In fact, there is no one single international convention, which regulates specifically on maritime security law. LOSC provides scope of conduct, which can be classified as piracy.<sup>35</sup> It further envisages that piracy under the LOSC is limited to the act of piracy conducted on the high seas.<sup>36</sup> LOSC is silent on the act of piracy, which is conducted within national jurisdiction, while it puts piracy on universal jurisdiction.<sup>37</sup> Williams further argued that while LOSC provide guidance for state response to piracy, however, it does not provide rules on the effort of private sector in combatting piracy.<sup>38</sup>

Since it was recognized that there is still matters which does not included by the LOSC relating to maritime security and relating to piracy itself, international responses to the need of other legal arrangement beyond the LOSC by adopting the Suppressions of Unlawful Acts Against the Safety of Maritime Navigation (SUA) Convention and its Protocol in 1988. Unlike LOSC, under SUA Convention, the scope of piracy was included piracy conducted within national jurisdiction of state. However, unfortunately, in such case, only flag state is capable in mitigating, investigating as well as response to the offence vessel that fly its flag.

Further development on maritime security framework was pro-

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<sup>35</sup> Article 101 of the LOSC

<sup>36</sup> Article 101 (a) of LOSC

<sup>37</sup> Article 100 of LOSC. It also encourages states to collaborate in certain measures in suppressing the act of piracy on the areas beyond state's national jurisdiction.

<sup>38</sup> Williams, Simon O, "International Legal Framework Governing Maritime Security: Beyond UNCLOS", The Corbett Centre for Maritime Studies, January 2015, available at: <https://www.kcl.ac.uk/sspp/departments/dsd/research/researchgroups/corbett/Tactique-Briefing---International-Legal-Framework-Governing-Maritime-Security---Beyond-UNCLOS.pdf>.

duced by the Informal Consultative Process (ICP), established under the auspice of United Nations based on General Assembly Resolution No. 54/33 1999. The ICP itself has conducted at least three meetings in 2001, 2002 and 2006. During 2001 meeting, it was proposed that the discussion of piracy should be seen from the various illegal activities at sea, such as illicit traffic in drugs, illegal migrant and other transnational crimes.<sup>39</sup> Till further argued that maritime security does not only focusing on sea control but rather to the achievement of maintaining good order at sea.<sup>40</sup> The second meeting of ICP in 2002 proposed the unification of maritime security and safety into single set and encouraged states to act consistently with the provisions of LOSC. In parallel with this, IMO also adopted International Ship and Port Facility Security Code (ISPS Code). The 2006 ICP meeting produced the Present Addendum to the Report of the Secretary-General on Oceans and the Law of the Sea (A/63/63), which stated that response to maritime security was focusing on three key areas, which include: terrorist acts against shipping and offshore installations, piracy and armed robbery against ships and illicit traffic in narcotic drugs and psychotropic substances. While none of those initiative initiate the formulation of one international convention which encompasses various maritime threats into certain measures, yet international cooperation between states were encouraged in addressing maritime threats.

Meanwhile, in 2005, the 1988 SUA Convention and Protocols were amended. This Convention broaden state's jurisdiction too not only flag state but also third state. It further envisages three new categories of offenses, namely: (i) using a ship as a means for committing terrorist act, (ii) proliferation of weapons of mass destruction on the high seas and (iii) transporting a person alleged to have committed an offense under other UN anti-terrorism convention. Further development on the legal framework of maritime security was also established by states in regional scheme.

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<sup>39</sup> Makmur Keliat, "*Keamanan Maritim Dan Implikasi Kebijakannya Bagi Indonesia*", *Jurnal Ilmu Sosial dan Ilmu Politik*, 2009, Volume 12 No. 1.

<sup>40</sup> Geoffrey Till, *Seapower : A guide fot the Twenty-First Century*, London, Frank cass, 2004, 79.

## B. REGIONAL LEGAL FRAMEWORK

Since Indonesia is located in Southeast Asia, only regional framework establishes in response to regional offences will be discussed. Since the southeast waters is considered as the most dangerous areas in term of maritime security, especially piracy, ASEAN has taken some measures in addressing such threats. Such measures include the establishment of ASEAN Regional Forum (ARF) and ASEAN Maritime Forum (AMF).

While the ARF was established under the auspice of the IMO, the member of ARF not only comes from ASEAN's member states. It consists of 27 member states, which include 10 ASEAN's states member, 10 ASEAN dialogues partners, which include Australia, Canada, China, the EU, India, Japan, New Zealand, South Korea, Russia and the United States, one ASEAN observer, Papua New Guinea, and also North Korea, Mongolia Pakistan, East Timor, Bangladesh and Sri Lanka. The ARF was established to encourage a consensus decision towards minimum institutionalism. It focuses on harmonization of measures in reaching regional stability. This instrument, however, only a declaration that ARF states are willing to make further cooperation to address piracy and armed robbery at sea, with no detail mechanism on how the cooperation will run. It also did not specify about any obligations and thus although it was agreed to cooperate but such cooperation was still in voluntary based cooperation.

Unlike ARF which not specifically refers to the issue of maritime security, the AMF was aimed as a forum to discuss responses to address maritime threat.<sup>41</sup> While there is no agreed definition as well as scope for maritime threats toward the establishment of maritime security, the AMF envisages maritime threats to include piracy and armed robbery at sea, marine pollution and people smuggling as well as drug trafficking. Although similar to ARF that AMF dis not established as an institution, AMF's contribution in addressing maritime threats was conducted through the auspice of ASEAN and its organs. Since the focus of AMF was on the security and safety of ports, it obligates states in the region to develop the following points: (i) safety of navigation, (ii) search and

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<sup>41</sup> Makmur Keliat, *Keamanan Maritim Dan Implikasi Kebijakannya Bagi Indonesia*, Jurnal Ilmu Sosial Dan Ilmu Politik, 2009, Voulme 12 No. 1.

rescue, (iii) information sharing and (iv) exchange of visit authorities.<sup>42</sup> In addition to this, in fact, the AMF also wishes to address any threats involving transnational nature. Unfortunately, it is argued that what has been done by AMF is not optimal since the rate of piracy is still high. While AMF was aimed to provide a forum to discuss conflict over maritime for a, unfortunately, it operates only through discussions and does not produce international agreement or resolutions to address piracy or any other maritime threats. Compared to ARF, AMF is only operates in policy level with no work plan or any mechanism of implementation of what has been agreed to be done. It only listed the areas of commitment of participated states towards maritime security issues. This way, the legal binding of any resolution reached during the meeting of the forum can be doubted. In addition to this, since none of ARF and AMF sets up certain agreement on law enforcement mechanism, it is argued that the difference between state's national arrangements in addressing maritime threats would lead to insufficient law enforcement in practice. While international and regional measures is crucial in addressing maritime threats that is transnational in nature, it is argued that national measures may be more fruitful in supporting the existing international and regional cooperation. The following will discuss Indonesia's legal framework in maritime security.

## **V. INDONESIA'S LEGAL FRAMEWORK ON MARITIME SECURITY: TOWARDS GMF DOCTRINE**

As stated in SUA Convention 2005, that this Convention broaden state's jurisdiction to also criminalizing certain maritime threats, the analyses on national legal framework is crucial. Although Indonesia does not have single national law encompassing all maritime threats, in fact it has several laws in addressing some maritime threats such as illegal fishing and piracy as well as armed robbery at sea. In previous discussion of this research, it is argued that in order to achieved national sovereignty and regional stability towards GMF, maritime security plays a vital role. Furthermore, the establishment of maritime security

<sup>42</sup> Robert Mangindaan, "*Indonesia Dan Kemanan Maritim : Apa Arti Pentingnya?*", available at: <http://www.fkpmaritim.org/Indonesia-Dan-Keamanan-Maritim-Apa-Arti-Pentingnya/>.

should encompass at least three key areas, namely settling unresolved maritime border with neighboring countries; combating illegal, unreported and unregulated fishing as well as other illegal exploitation of ocean resources; and combating maritime piracy and armed robbery at sea. While resolving maritime delimitation involve international agreement with interested states, this section will analyses national law relating to IUU Fishing and Piracy as well as armed robbery at sea.

Similar to international legal framework that does not have specific international convention relating to maritime security, Indonesia also does not have national legal instruments specifically regulates maritime security. However, it does not mean Indonesia does not take any measures in addressing maritime threats. While Indonesia is actively involving in both international and regional cooperation in addressing maritime threats, unfortunately, some national law addressing maritime threats are somehow poses problems. This section will analyses Indonesian Law relating to Fishery and Piracy as well as Armed Robbery at Sea.

As discussed previously in this paper, Indonesia continues to loose its potential income from ocean resources, especially fish. It even announced that Indonesia lose about 24 billion dollars from ocean resources sector. Underpinned by this situation, President Joko Widodo administration has declared policy on ‘sinking foreign fishing vessel that unlawfully enter Indonesian waters.’<sup>43</sup> Such ‘sinking vessel’ policy is actually provided within Indonesian Act Number 45/2009 on Fishery (Act 45/ 2009), which legalizes the sinking of foreign fishing vessels upon court decision. However, this policy raises problem as to its consistency with the provision of LOSC. Especially, Illegal fishing conducted over the EEZ. Article 69 (4) of Act 45/ 2009 gives Indonesian authorities to sink foreign fishing vessels conducting IUU Fishing in the areas under Indonesian jurisdiction, subject to sufficient preliminary evidence.<sup>44</sup> While the ‘sinking vessel’ policy is in accordance with Indonesian Law, in this case Act 45/ 2009, however, it is questionable

<sup>43</sup> Jokowi: Tenggelamkan Kapal Pencuri Ikan!, *Kompas.com*, 18 November 2014, available at: <http://nasional.kompas.com/read/2014/11/18/13004411/Jokowi.Tenggelamkan.Kapal.Pencuri.Ikan>, accessed on 14 July 2016.

<sup>44</sup> Article 69 of Act 45/ 2009. This Act further envisages that the sinking of the vessel can be conducted after there is court decision on the case.

whether such provision is in accordance with the LOSC. While the LOSC is silent on whether sinking the vessel who conducted IUU Fishing is legal or not, it provides general measures that coastal states may take in addressing the IUU Fishing. Since the LOSC provides coastal state's jurisdiction over the sea into various maritime zones, consequently, measures allowed depends upon the zone over which IUU Fishing was conducted. Article 21 (1) (e) of LOSC clearly stated that "the coastal State may adopt laws and regulations, in conformity with the provisions of this Convention and other rules of international law, relating to innocent passage through the territorial sea, in respect of... the prevention of infringement of the fisheries laws and regulations of the coastal State." Thus, if the act of IUU Fishing occurs on the territorial sea, the 'sinking vessel' policy might be relevant since the LOSC gives coastal states in adopting its own national law. However, if the act of IUU Fishing occurs on the EEZ, Article 73 of LOSC should be taken into consideration. Article 73 of LOSC provides that upon the violation of coastal state's fisheries law, coastal states may take measures "including boarding, inspection, arrest and judicial proceedings",<sup>45</sup> but that "penalties for violations...may not include imprisonment...or any other form of corporal punishment."<sup>46</sup> As that article reads, it is submitted that international law does not seem to support Indonesia's 'sink the vessels policy' if it is conducted within Indonesia's EEZ. While the 'sinking vessel' policy may be relevant upon IUU Fishing conducted on the territorial sea, Amri argued that "Given that UNCLOS was conceptualized in order to maintain peace and justice – as stipulated in its preamble – it is advisable for Indonesia to conduct judicial proceedings before sinking vessels which are allegedly involved in illegal fishing."<sup>47</sup> In sum, while the 'sinking vessel' policy might be seen as a way to create a deterrent effect, legal procedures at international level should also be respected and implemented accordingly. It follows from the above that the implementation of GMF also needs legal certainty especially in law enforcement mechanism. In implementing GMF, national law should be formulated in accordance with international law on related

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<sup>45</sup> Article 74 (1) of LOSC

<sup>46</sup> Article 73 (3) of LOSC

<sup>47</sup> Amri, Ahmad Almaududy, "Is Indonesia's 'Sinking the Vessel' Policy Legal?", *The Diplomat*, 17 January 2015.

subject matters.

Furthermore, domestic law of Indonesia relating to piracy and armed robbery at sea poses more complicated issues. In fact, Indonesian law relating to piracy is no longer up to date and thus insufficient. Such insufficiency was underpinned by the inconsistency between domestic legal framework and international legal framework on piracy and armed robbery as well as on their law enforcement. In Indonesia, the act of piracy and armed robbery at sea is regulated under the Indonesian Criminal Act (*Kitab Undang-undang Hukum Pidana/KUHP*), specifically under Chapter XXIX of *KUHP*. *KUHP* was inheritable from the Netherland since the Netherland colonialized Indonesia hundred years ago. While the Netherland has no longer made this *KUHP* come into effect, according to 1945 Indonesian Constitution, all legal product of the Netherland still valid until replaced by new law of Indonesia. In that case, there is no law, yet, which replacing the *KUHP*. Furthermore, there is inconsistency between piracy envisages under *KUHP* and piracy under the *LOSC*. Under Article 101 of *LOSC* piracy is defined as “any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed on the high seas.” Whereas Article 105 of *LOSC* gives universal jurisdiction on piracy, in that although piracy is conducted on the high seas, yet every state may establish their jurisdiction. While as discussed earlier that the scope of piracy was extended not only occur on high seas but territorial sea as well, the provisions of *KUHP* did not include piracy that is conducted on the high seas. Article 438 of *KUHP* envisages the criteria of piracy to include a person who become a seafarer of a pirate ships and a person (seafarer) who use a ship to conduct the act of piracy and armed robbery. Article 439 and 440 of *KUHP* further provide the *locus delicti* of such both piracy and armed robbery. According to these articles piracy and armed robbery are a criminal action conducting over inland waters, such as river and Indonesian waters. At this point, important reminder must be noticed that according to *KUHP*, Indonesian waters refers to waters as provided within the *Territorial zee en Maritieme Kringen Ordonantie 1939 (TZMKO 1939)*, which only gave each island of Indonesia 3 nautical miles of territorial sea. It is submitted that since the ratification of *LOSC* by Indonesia, *TZMKO 1939* does not applicable anymore

and replaced by Indonesian Act Number 6 Year 1996 (Act 6/ 1996) Q on Indonesian Waters which acknowledge various maritime zones as provided within the LOSC. Unlike LOSC, TZMKO only recognize territorial sea and did not acknowledge various maritime zones as provided within LOSC. This way, there is inconsistency between domestic legal framework and international legal framework. Thus, Indonesian waters referred by the KUHP is totally different from Indonesian waters provided by the Act 6 1996. This way, it is submitted that *KUHP* cannot be used as legal basis in combating/ punishing the act of piracy and armed robbery at sea. Another specific domestic law which relevant for this discussion is Indonesian Act Number 17/2008 on Navigation. While this act can be said to represent Indonesian Maritime Law, however, this Act is silent on maritime security mechanism and specifically piracy. This way, actually there is a lack of national policy and legal framework on maritime security in Indonesia. If Indonesia want to implement the GMF doctrine, relevant national law such as fishery law and law on piracy should be made in accordance with international law relating the same subject matters.

Furthermore, since Indonesia does not have national legal instruments specifically regulates maritime security, it is necessary to compare with another state's practice which already have a single legal instrument that comprehensively regulates maritime security. It is submitted that Australia is one of states which already have a single national arrangement on maritime security, known as Guide to Australian Security Arrangement (GAMSA).<sup>48</sup> It serves as a multi-agency documents which provides comprehensively various maritime threats complete with certain mechanism on how to deal with that also points out which institution is responsible in addressing certain threats. This kind of arrangement cannot be found in Indonesia. GAMSA divides between primary institution and secondary institution. While secondary institution responsible to give advice and policy in addressing certain maritime threats, the primary institution responsible for mechanism on facing maritime threats. Every chapter of GAMSA details various maritime threats and which institution is responsible for each maritime threats. This way, there will be no overlap in its arrangement. GAMSA can be used nation wide and not necessarily applicable only to Austr-

<sup>48</sup> Guide to Australian Security Arrangement (GAMSA).

lian Navy. This way, there will be universality jurisdiction in combating various maritime threats nation-wide. GAMSA is not only applicable for public institution but also involving private parties or relevant stakeholder related to measures that should be taken in addressing maritime threats. Both technical and administration mechanism are provided in details by GAMSA. It also listed both international and regional cooperation joined by Australia and this way related institution may adjust its policy with the existing cooperation. GAMSA also define the scope of each maritime threat and in such there is similar perception in its law enforcement. It is argued that similar arrangement should be adopted by Indonesia.

Although Indonesia has no single national arrangement which specifically regulates maritime security, in the law enforcement mechanism, Indonesia has what known as *Peraturan KSAL Nomor PerKSAL/32/V/2009 tanggal 4 Mei 2009 tentang Prosedur Tetap Penegakan Hukum dan Penjagaan Keamanan di Wilayah Laut Yurisdiksi Nasional oleh TNI AL* (Indonesian Chief of Navy Regulation Number 32/2009 about Law Enforcement and National Security within Indonesian Waters by Indonesian Navy), hereinafter called PerKSAL 32/2009.<sup>49</sup> This PerKSAL 32/2009 was formulated based on Article 9 of Indonesian Act Number 34 Year 2004 relating to Indonesian Army. Unfortunately, unlike GAMSA, this PerKSAL serves as guidance for only Indonesian Navy and does not applicable for other law enforcement institution. It cannot be used by other law enforcement institution other than Indonesian Navy.

## **VI. CONCLUSION**

This research finds that in implementing GMF Doctrine, national sovereignty, maritime security and regional stability should be established. It is further argued that the establishment of maritime security should encompasses at least three key areas, namely settling unresolved

<sup>49</sup> Indonesia. Indonesian Chief of Navy Regulation Number 32/2009 about Law Enforcement and National Security within Indonesian Waters by Indonesian Navy (*Peraturan KSAL Nomor 32/2009, tanggal 4 Mei 2009 tentang Prosedur Tetap Penegakan Hukum dan Penjagaan Keamanan di Wilayah Laut Yurisdiksi Nasional oleh TNI-AL (Protap Kamla)*).

maritime border with neighboring countries; combating illegal, unreported and unregulated fishing as well as other illegal exploitation of ocean resources; and combating maritime piracy and armed robbery at sea. Unfortunately these three key areas remain the biggest problems for Indonesia.

Although Indonesia has no single legal arrangement that regulates specifically on maritime security, however, some Indonesian Law relating to certain maritime threats do exists. This includes national law on fisheries and piracy law, which is included within the KUHP. Unfortunately, those laws are inconsistent with international law and for piracy law, envisages within KUHP is no longer up dated and thus cannot be used as legal basis in addressing piracy in Indonesia. This research further argued that while international and regional cooperation is crucial in establishing maritime security, however, the strengthened of national law on maritime security is also important. Thus, it is submitted that in achieving the purpose of GMF Doctrine a single national maritime security arrangement is needed.

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