

Indonesian Traffic Separation Schemes (TSS): A Legal Discourse Analysis about Sailing Permits

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Abstract— Official adoption of TSS in the Sunda Strait and Lombok Strait proposals was carried out at the 101st session of MSC on June 2019 and became effective from June 2020. For the record, UNCLOS 1982 does not require ships to ask for permission or prior notice when they cross the Archipelagic Sea Lanes (ASLs). On the other side, Indonesia has a regulation that requires foreign vessels to ask permission first. This paper discussed prior authorization or prior notification when crossing through ASLs and TSS in the Sunda Strait and Lombok Strait. The research concluded that in ensuring safety and security of the shipping, Indonesia may apply prior authorization or prior notification to foreign vessels that would cross ASLs and TSS in the Sunda Strait and Lombok Strait.

Keywords—Indonesian Traffic Separation Schemes (TSS), Archipelagic Sea Lanes (ASLs), Sailing Permits, UNCLOS 1982, Shipping Safety and Security

I. INTRODUCTION

Indonesia as an archipelagic state has the rights and obligations contained in the United Nations Convention on the Law of the Sea 1982 (UNCLOS 1982). On 19 May 1998, the International Maritime Organization (IMO) partially regulated the Indonesian Archipelagic Sea Lanes (ASLs) in the 67th session of Maritime Safety Committee (MSC).

Based on MSC Resolution 72 (69), it is known that 3 sea lanes are approved by IMO. ALKI I connects the South China Sea with the Indian Ocean through the Karimata Strait, the Java Sea and the Sunda Strait. ALKI II connects the Sulawesi Sea (towards Philippines Water and the Pacific Ocean) with the Indian Ocean through Makassar Strait and Lombok Strait. ALKI III is a route that connects the Pacific Ocean with the Indian Ocean through the Maluku Sea, Seram Sea, the Banda Sea, which then branches into the Sawu Sea, Timor Sea and the Arafura Sea.

Indonesia as a country that has established ASL may prescribe Traffic Separation Schemes (TSS). This is inherent in the provisions of Article 53 paragraph (10) UNCLOS 1982 which reads, "*The archipelagic State shall be clearly indicated the axis of sea lanes and the traffic separation charts to which due publicity shall be given.*"

Basically, TSS aims to maintain cruise safety and navigation, control ship traffic on marine areas that have heavy traffic frequencies, and

environment. According to Kresno Buntoro, consideration of determination of TSS needs to fulfill the criteria: narrow strait, high vessel frequency, fragile sea area, and frequent ship collision incidents. [1] Article 23 paragraph (1) of the Ministerial Regulation of Transportation No. PM 129 of 2016 about Sea Sailing and Construction/Installation in Water mentions the determination of TSS based on consideration:

- a. Width of shipping channel;
- b. Ship dimensions;
- c. The density of traffic;
- d. Shipping hazard;
- e. Special characteristics of the ship;
- f. Particular channels;
- g. Any channels customarily used for international navigation;

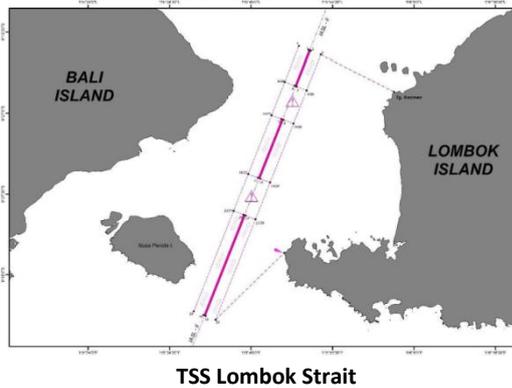
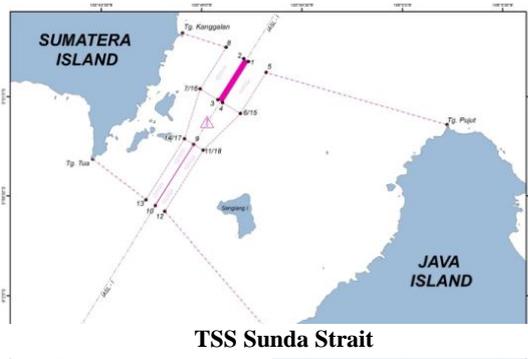
The Indonesian seas on the ASLs route that fulfill the criteria to be appointed as TSS are the Sunda Strait, the Central and South Makassar Strait, and Lombok Strait. When compared to the Malacca Strait, they have advantages in terms of depth and width. Moreover, ships that weigh more than 230,000 deadweight tonnage (dwt) cannot pass through Malacca Strait so they must pass through the Strait of Sunda, Lombok and Makassar.[2]

The urgency of TSS makes Indonesia need to designate it. Indonesia needs to submit the TSS proposal to the Sub-Committee on Navigation, Communication, Search & Rescue (NCSR), which will evaluate the proposal and make recommendations regarding its implementation. The recommendations are then forwarded to MSC for adoption.[3]

19-23 February 2018 Indonesia submits TSS proposals for the Sunda Strait and Lombok Strait at the 5th session of Sub-Committee NSCR in London.[4] At the IMO session, 25 January 2019, the 6th sub-committee NSCR approved and ratified TSS in the Sunda Strait and Lombok Strait.[5] Officially, the adoption of TSS in the Sunda Strait and Lombok Strait proposals was conducted at the 101st session of MSC in June 2019 and became effective on June 2020.[6]

Before the TSS in the Sunda Strait and Lombok Strait became effective, the Indonesian government needed to prepare various supporting rules. One of the things that will be discussed in this paper is about prior authorization or prior notification when going through Indonesian ASLs and TSS in the Sunda Strait and Lombok Strait. The reason, UNCLOS

1982 does not require ships to ask for permission or prior notification when it will cross ASLs. On the other side, Indonesia has a regulation requiring foreign vessels to seek permission in advance, such as the Republic of Indonesia Presidential Decree Number 16 Year 1971 concerning Authority to Issue "Sailing Permits" for All Foreign Vessels Activities in Indonesian Water (Keppres No. 16 of 1971).



II. RESEARCH METHOD

This is a juridical normative research. The prescriptive character of legal science causes the legal research process to find legal rules, legal principles, and legal doctrines to answer the legal issues.[7] Therefore, this research seeks to explore primary, secondary, and tertiary legal materials in the hope of providing a comprehensive description and analysis.

The primary legal material used is the provisions of International Law, such as UNCLOS 1982 and conventions relating to the legal issue under review. Secondary legal material that is closely related to primary legal materials and can help analyze and understand primary legal material in the form of texts, results of related research, papers, books of works from legal experts, legal journals, newspapers and other written material. While, tertiary legal materials provide guidance on information/explanation of primary and secondary legal materials, such as legal dictionaries, encyclopedias, index and others.

III. RESULT AND DISCUSSION

A. TSS dan Archipelagic Sea Lanes

The definition of TSS is not very clear in UNCLOS 1982. In *General Provisions On Ships' Routing*, TSS is

defined as *a routing measure aimed at the separation of opposing streams of traffic by appropriate means and by the establishment of traffic lanes.*[8][9] The provision shows that TSS is designed to regulate traffic flow in the opposite direction for shipping safety and damage to the marine environment due to marine accidents.

The TSS regime in UNCLOS can be seen in Articles 22, 41 and 53. In Article 22 paragraph (1) UNCLOS 1982, TSS is used for the right of innocent passage of foreign ships through the territorial sea. The TSS is designated based on the provisions of Article 41 UNCLOS 1982 for shipping right of transit passage by foreign ship in the strait. While in Article 53 of UNCLOS 1982, TSS is attached to the ASLs so that foreign vessels use the rights of archipelagic sea lanes passage.

An interesting discourse examined is the concept of "normal mode" of a ship, especially submarines, airplanes, and warships when crossing the TSS, which is also an ASLs. Technically, normal mode is the operational activity of ships or planes when sailing or carrying out flights, such as flight operations, replacement of parts, maneuvering, stopping and slowing down the speed of ships, loading and unloading, submerge for submarines, damage control, continuity of shipping.

Article 39 paragraph (1) and Article 53 paragraph (3) UNCLOS 1982 does not define normal mode. In UNCLOS 1982, a normal mode was interpreted, "solely for the purpose of continuous, expeditious and unobstructed transit." Likewise, the Rule 10 of the Convention on the International Regulations for Preventing Collisions at Sea, 1972 (COLREGs) regulates the conduct of vessels when operating in or near TSS does not explain the concept of normal mode.

The first problem is the normal mode concept of the submarine. Submarines in innocent passage territory are required to appear on the surface. Meanwhile in transit passage territory even though it is not explicitly regulated, generally submarines are allowed to submerge.[10] The ASLs is not different too much from transit passage, there are no specific rules in UNCLOS 1982 regarding normal modes for submarines. This lack of clarity can lead to a debate between the user countries of ASLs and Archipelagic State. The interpretation of submarines allowed to submerge will reduce the density of ship traffic on the surface, but in ASLs that has a strategic aspect is considered less profitable, especially nuclear-powered submarines.

The second problem is related to normal mode on foreign warships. Warship normal mode in practice is a necessary activity for security, including launching and restoring aircraft, formation steaming and other power protection measures. This interpretation if implemented in archipelagic water as the full sovereignty of the archipelagic state is a form of confrontation and disrupts shipping. Especially if the activity is implemented on TSS which has a heavy traffic frequency.

The third problem, namely aircraft. Specifically, UNCLOS 1982 did not regulate the type of aircraft that is allowed to cross the archipelago sea lanes. Hasjim Djajal argues that the route above the sea channel is not intended for commercial civil aviation, but only military aircraft.[11] Thus the next question arises, is it permissible for military airplanes to fly in through ASLs or military aircraft that are part of the carrier vessels? This is certainly a debate because it can threaten civil aviation safety. Moreover, the operating limit for military aircraft is not regulated. So rather than that, military aircraft in carrying out its activities in ASLs should consider civil aviation safety.

Basically, ASLs are a compromise between the regime of innocent passage and freedom of navigation.[12] This is what causes the interpretation of the normal mode concept to be so broad because of differences in interests between user countries and archipelagic state.

However, Jay L. Batongbacal argues that the normal mode term needs to be limited, meaning that the qualifications of activities permitted must only be related to continuous, expeditious and unobstructed transit.[13] Batongbacal also added that shipping with normal mode must approach compliance with the right of innocent passage standards because it would be difficult to accept if ship activities were freer than when passing through the territorial sea of a coastal state.[13] An extensive interpretation of normal modes in ASLs is very detrimental to the national interests of the archipelagic state, especially in ASLs and TSS that passes through the population center or national economy.

B. Prior authorization or Prior Notification for TSS in the Sunda Strait and Lombok Strait

TSS is very important for the archipelagic state, such as Indonesia, which have straits that become international trade routes. In 2016 there were 53,068 voyages through the Sunda Strait, which means around 145 ships per day.[14] In 2014-2016 Lombok strait passed 36,773 ships that crossed, this means that there are 101 ships per day.[15]

The adoption of TSS in the Sunda Strait and Lombok Strait TSS facilitate Indonesia in controlling and monitoring ship traffic on both straits. This does not mean that Indonesian work has been completed. Instead, there are many things that need to be done to prepare. Suppose to prepare local and national regulations, such as the rules of local traffic around the Sunda Strait and Lombok straits as well as guidance for ships passing the Sunda strait and Lombok straits. The thing that needs to be remembered and considered in formulating regulations is TSS in the Sunda Strait and Lombok attached to the ASLs (Indonesian ASLs I dan ASLs II).

An extensive interpretation of normal mode should be anticipated in maintaining the safety and security of shipping in both straits. Moreover, TSS in the Sunda Strait and Lombok strait are a busy lane. Therefore, it

should be a rule requiring the ships to ask prior authorization or prior notification before entering the Sunda and Lombok Strait TSS.

Article 54 states that Article 39 UNCLOS 1982 applies *mutatis mutandis* for ASLs that have no obligation for foreign vessels to ask prior authorization or prior notification. Meanwhile, marine scientific research and hydrographic survey ships in Article 40 UNCLOS 1982 which applies *mutatis mutandis* for the passing of ASLs are required to ask prior authorization in research and survey activities. One criticism of the UNCLOS 1982 was that it was not possible to require warships before entering ASLs to give notice or request prior authorization.[16]

The absence of provisions in UNCLOS 1982 regarding the obligation to request prior authorization or prior notification of ASLs is a dilemma for Indonesia. Indonesia as an archipelagic state has an obligation to maintain security and safety for every occurrence in its sea area. Moreover, TSS in the Sunda Strait there is Anak Krakatoa mountain whose activities must immediately get a response and be immediately informed to other ships that will pass. Furthermore, Indonesia through Presidential Decree No. 16 of 1971 obliged all types of foreign vessels to request sailing permits in Indonesian water. Article 1 paragraph (2) Presidential Decree Number 16 Year 1971 sorting permits based on foreign vessel types:

- a. Permission to sail civil ships is a sailing permit;
- b. Sailing permit for warships or military vessels is a security clearance.

When referring to the International Convention for the Safety of Life at Sea, 1974 (SOLAS) Chapter V, Regulation 11-7 requires the master of the ship to comply with reporting requirements and report to the authorities regarding all necessary information. It is on this basis that there are some TSS that require ships to provide certain reports before entering TSS. For example, TSS in Dover Strait requires ships over 300GRT to report or the Malacca Strait that has mandatory reporting requirements.

In order to maintain safety and security of shipping, Indonesia can refer to SOLAS 1974 as the basis for implementing prior authorization or prior notification when ships will enter TSS in the Sunda Strait and Lombok Strait. If Indonesia is to be assertive, prior authorization can be applied. Conversely, if Indonesia wants to be soft, a prior notification can be selected.

Basically, UNCLOS 1982 did not obligate but also did not prohibit so prior authorization or prior notification provisions could be considered not contradictory. Possibly, Presidential Decree No. 16 of 1971 was difficult to implement, especially for warships because of differences in interests between user countries and Indonesia. This problem needs a diplomatic approach between the navies of the parties, such as joint training or passing exercise when entering Indonesian territory.

IV. CONCLUSION

UNCLOS 1982 does not obligate but also does not prohibit archipelagic states from applying prior authorization or prior notification. Indonesia in ensuring shipping safety and security may enforce these rules on foreign vessels that will pass TSS and ALKI in the Sunda Strait and Lombok Strait.

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