

THESIS

THE IMPLEMENTATION OF ARCHIPELAGO PASSAGE RIGHT
AFTER THE ENACTMENT OF GOVERNMENTAL RULE 37/2002 IN
INTERNATIONAL LAW POINT OF VIEW

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ABSTRACT

Archipelagic Sea Lanes Passage is officially declared in June 28th 2002. It is done by the enactment of Governmental Rule 37 /2002 and recalling Governmental Rule 8/1962 about the innocent passage of foreign ships in Indonesia waters. In accordance to article 18 and 19 Act 6/1996 about Indonesian Waters, Governmental Rule 37/2002 regulates the rights and duties of foreign ships and aircrafts in enjoying the Archipelagic Sea Lanes Passage right.

The Governmental Rule 37/2002 designates three north-south archipelagic sea lanes and its branches in Indonesia internal waters. But in the implementation of the Archipelagic Sea Lanes Passage there are problems occur. The problems come along with the effect of sea lanes provided by Governmental rule 37/2002 to the airspace above it. Some states have asked Indonesia to designate more Archipelagic Sea Lane Passage, especially east-west Sea Lanes.

Post the disintegration of Timor Leste out of Indonesia jurisdiction Indonesia have no choice than redesignate Archipelagic Sea Lanes IIIA and IIB. Since both of the sea lanes are lying upon the border of Indonesia and Timor Leste as the adjacent states.

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CHAPTER I: INTRODUCTION

A. BACKGROUND

Indonesia consists of five main and thousand of small islands ¹⁾ that makes Indonesia as an archipelago state. Its position that is laying on the primary ways causes Indonesia passed through by international navigations. Indonesian law of the sea shows that the waters system in Indonesia has a significant change that changes the International Law of the Sea itself. The change mentioned is the declaration of Nusantara conception, that also known as Deklarasi Djuanda. Later that time it is established in Perpu no. 4 /1960 about Indonesian waters.

The main goal of the establishment of this regulation is to make thousands of Indonesia Islands united as one geographical unity. And Indonesia guarantees to provide the innocent passage rights for foreign ship as long as it is literally innocent ²⁾. It shows that Indonesia cares about

¹⁾ Based on 1975 data, consist of more less 13.667, while according to 1987 data, the amount of Indonesia large and small islands is 17.508.

²⁾ As mentioned in United Nation Convention on Law of the Sea 1982 article 19 point 1

the international concerns and it can be seen through the willingness of Indonesia in providing innocent passage rights through its waters. But any decision has always followed by some critics and rejection, and no exception for Indonesia government that time. The rejection came from other big maritime countries that feel threaten by the conception, besides some neighbor states feel their traditional interests threaten also. Based on this issue Indonesia government did the struggling to get international confession and agreement on the conception.

The effort formed in the establishment the regulation about law of the sea, one of them is Governmental Rule No. 8/1962 about the innocent passage rights of which based on Perpu no. 4/1960. This effort reaches the peak in United Nation conference that ended in 1982. The conference itself results the new law of the sea that known as United Nation Convention on Law of the Sea 1982, (UNCLOS 1982) which signed by 119 states in December 10th 1982 in Montego Bay, Jamaica.

The enactment of UNCLOS 1982 as the International law has an important meaning to Indonesia, because through this convention the archipelago conception that has been fought for years finally become a written international law and admitted by others along with Indonesia national law. Considering the irrelevances of the Perpu No. 4/1960 to this convention, Indonesia government composes a new regulation called Act No. 6/1996 about Indonesia Waters.

¹"1. Passage is innocent as long as it is not prejudicial to the peace, good order or security of the coastal state. Such passage shall take place in conformity with this Convention and with other rules of international law."

The further appliances of article 53 point 1 UNCLOS 1982 can be found in article 18 point 3 Act no. 6/1996. As the ultimate effort to protect the sovereignty and national jurisdiction and also honoring international interests, Indonesia has planned to provide the archipelagic sea lanes in its internal waters regarding to Act on Indonesia Waters article 19 point 1. The designation of sea lanes itself purposed fulfilling Indonesia's concerns for security and sovereignty of its waters and, besides giving opportunities to foreign ship to pass through its internal waters.

Archipelagic Sea-Lanes Passage (ASLP) is officially declared in June 28th 2002, as mentioned in Governmental Rule No. 37 / 2002 it regulates the rights and obligations of the ships and aircrafts, which passes through the Indonesian waters that it is provided. By establishing Governmental Rule No. 37 / 2002 Indonesia government recall the Perpu No. 8 / 1962 about the innocent passage³⁾ of the sea vessels in Indonesian waters.

Governmental Rule No. 37 / 2002 provides three main archipelagic sea lanes and its branches that internationally used in archipelagic passage issue. In the supremacies of ASLP of course there are some flaws are found. One of them is Indonesian space area. And recently some other

³⁾ About the meaning of "innocent passage", the United Nation Convention on Law Of the Sea 1982 regulates this in two articles, article 18 for the passage itself, and article 19 for the innocent passage. Chapter 18 UNCLOS 1982 says :

1. Passage means navigation through the territorial sea for the purpose of :
 - (a). Traversing that sea without entering internal waters or calling at roadstead or port facility outside internal waters; or
 - (b). Proceeding to or from internal waters or a call at such roadstead or port facility
2. Passage shall be continuous and expeditious. However, passage includes stopping and anchoring, but only in so far as the same are rendered necessary by force majeure or distress or for the purpose by rendering assistance to person, ships or aircraft in danger or distress.

states have asked Indonesia to provide other lanes that have not customized yet.

Post the disintegration of Timor Leste that used to be Indonesian jurisdiction, Indonesia has no choice than changing the sea lanes. It's caused by the old sea lanes were on the Ombai and Leti Island water, where both of those lanes were in Indonesia – Timor Leste border.

As we know, that recently the vestment of archipelagic sea lanes passage done by designating some axis points Indonesian waters. In these sea lanes, vessels and aircrafts are not allowed to sail or over flight more than 25 miles on both side of the axis, and also not allowed to sail or fly close to the shoreline. Indonesia has done a great number of efforts in establishing archipelagic sea lanes through some national activities that finally resulting three suggestions ASLP north-south in National meeting in Cisarua on January 17th -19th 1995. The proposal of ASLP is given to International Maritime Organization (IMO) and approved partially in Maritime Safety Committee 69 (MSC 69) court in May 19th 1998.

Indonesian foreign issue ministry has announced ASLP north-south throughout press broadcasting on June 15th 1998 in Jakarta. By the approval of three archipelagic sea lanes of Indonesia done by IMO, Indonesia became the first archipelago state that establishes archipelagic sea lanes referring to chapter 53 UNCLOS 1982 in its archipelago water. By the June 28th 2002 Indonesia establishes three Governmental Rules number 36, 37, 38 2002. The regulations purposes are due to the right of passage of foreign ships and aircrafts in and above Indonesia Sea and

recalling the previous governmental regulation about the rights of innocent passage of foreign sea vessels in and above Indonesian water.

Governmental Rule 37/2002 divides Indonesia into three vertical ways. One of them is in Karimata strait that separates Sumatra and Java, the other one is between Borneo and Sulawesi and straight ahead between Bali and Lombok. And the last one is between Sulawesi and Maluku. All of them are agreed as the archipelagic sea lanes that come along with the coordinate points.

Despite all of the sea lanes have been designated but there is always a problem. By the time the proposal of archipelagic sea lanes (ALKI north-south) is given, IMO as the body of maritime issue in UNO that authorized to establish the sea lanes, is not having the procedure of establishing yet. Besides, Indonesia have not designates the east-west sea lanes yet. As written above, Indonesia is the first state that raises the proposal of archipelagic sea lanes establishment.

By seeing the issue, obviously there is a need for further study about **"THE IMPLEMENTATION OF ARCHIPELAGO PASSAGE RIGHTS AFTER THE ENACTMENT OF GOVERNMENTAL RULE NO. 37 /2002 IN INTERNATIONAL LAW POINT OF VIEW"**

CHAPTER IV

CLOSING REMARKS

A. SUMMARY

1. That United Nation Convention on the Law of the Sea regulates the passage rights in archipelagic states in article 53 point 1-12. Herein the article described the authority of archipelagic states in designating their Sea-Lanes and Air Route, and also the meaning of archipelagic sea lanes itself. And for several issues ruled by other articles such 39, 40, 42, and 44, those articles apply *mutatis mutandis* to archipelagic sea passage.
2. That the implementation of Archipelagic Sea-Lanes Passage Rights posts the establishment of Governmental Rule, No. 37/2002 is running unwell, related to the air routes that have been designated by International Civil Aviation Organization. The air route designated is crossing over the Indonesian ASLP, so in other words the unsynchronized of sea lanes and air routes causes the problem in implementation of ASLP, because ASLP is including air routes above.

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3. Nordquist, et al., United Nation Convention on Law Of The Sea 1982, vol 1, (Boston : Martinus nijhoff Publisher, 1985) page 203.
4. Luh Putu Sudini, "Penetapan Alur-Alur Laut Kepulauan Menurut Konvensi Hukum Laut 1982,
5. Indonesia, Undang –Undang tentang Perairan Indonesia, UU no. 4, LN no. 22 tahun 1960 no. 142, Penjelasan.
6. Deklarasi Djuanda 1957 jo. UU no. 4/Prp/1960, pasal 1 ayat (2), cara penarikan " Straight Baseline From Point to Point" mendapat pengakuan pertama dalam hukum Internasional melalui keputusan mahkamah (ICJ) tahun 1951, pada kasus perikanan Inggris Norwegia ("Anglo-Norwegian Fisheries Case"), Mochtar Kusumaatmadja, Hukum laut Internasional, (Bandung : Bina Cipta, 1978), hal 98.