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Vita Cita Emia Tarigan

Universitas Sumatera Utara, vcet@usu.ac.id

Akmal Handi Ansari Nasution

O.P. Jindal Global University, ahansari@jgu.edu.in

Mohammad Ekaputra

Universitas Sumatera Utara, moh.ekaputra@gmail.com

Rizki Nanda Saputri

Universitas Sumatera Utara, rizkinandasaputri1@gmail.com

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INDONESIA'S COMPLIANCE WITH THE TRIPARTITE AGREEMENT IN CONTROLLING MARINE ENVIRONMENTAL POLLUTION IN THE MALACCA STRAIT

Vita Cita Emia Tarigan*, Akmal Handi Ansari Nasution**,
Mohammad Ekaputra*, and Rizki Nanda Saputri***

*Faculty of Law, Universitas Sumatera Utara, Indonesia

** Jindal Global Law School, O.P Jindal Global University, India

*** Faculty of Social Science and Political Science, Universitas Sumatera Utara, Indonesia

Correspondence: vcet@usu.ac.id

Abstract

Indonesia bears interest in the Malacca strait as one of its stakeholders in its effort on maritime navigational safety and environment in navigational safety and environment. Its efforts are fundamental in controlling, preventing, and recovering pollution from vessels. Referring to the United Nations Convention on Law of the Sea (UNCLOS) 1982, Indonesian contribution to controlling marine life pollution is vital. Therefore, Indonesia signed a tripartite agreement with Malaysia and Singapore (Agreement on Safety of Navigation in the Straits of Malacca and Singapore 1977). The Tripartite Agreement needs to be used as a reference in making regulations in Indonesia and implemented as a proof of Indonesia's compliance with the Tripartite Agreement. Therefore, the purpose of this research is to understand Indonesia's conformity to the mentioned agreement in controlling marine environment pollution in the Strait of Malacca. It utilizes literature and case studies such as books, notes, and previous research. The theory that we use is the compliance theory and combined theory for elaborating the obedience of Indonesia to the agreement itself. It can be concluded that Indonesia has complied with the Tripartite Agreement by putting together various laws and regulations and other regulations and forming a structure to protect the sea. However, in practice, it still requires some improvement.

Keywords: Environmental Pollution, Marine Environment, Tripartite Agreement..

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I. INTRODUCTION

The survival of humans will be threatened without a healthy environment, this is because the environment is a space occupied by living things together with other non-living entities. The environment is defined as a place for living things and non-living entities to interact harmoniously with each other.¹ One of the environmental ecosystems

¹ Proceedings of the National Seminar, *Pembangunan Hijau dan Perizinan: Diplomasi*,

that needs to be protected so as not to disturb the balance of human life is the sea. The benefits of the sea for human life are that it provides a nutritious food supply such as fish, seaweed and other seafood, has fossil resources that can be used to meet human energy needs, as well as benefits for inter-regional transportation.² However, it is very unfortunate that the marine environment in Indonesia is threatened by pollution resulting from factory activities, domestic activities, sea transportation activities such as oil spills, and other activities.³

Environmental pollution is a problem that cannot be ignored today. So that serious attention and proper handling must be done immediately considering that environmental pollution means a threat to human survival itself. One of the common assets of humanity that is seriously under threat is the seas and oceans. The high level of pollution in the seas and oceans causes other consequences, namely the idea that the government, especially in developing countries, need to cooperate to control threats and environmental damage caused by pollution. This effort is in conformity with article 194 UNCLOS 1982 paragraphs 1-5. The article elucidated the obligations of the member states by way of imposing measures either individually or jointly in preventing, reducing or controlling marine environment. In this article it is explained that the state must take action in accordance with the convention both individually and collectively in order to prevent reducing and controlling pollution of the marine environment.

Furthermore, in the second article it is explained that the actions taken are actions that need to be taken to ensure that activities under jurisdiction or supervision are carried out and do not result in damage by pollution to other countries and their environment and so that they do not spread beyond the areas under the exercise of sovereign rights. according to convention.⁴

kesiapan perangkat dan pola standarisasi [Green Development and Licensing: Diplomacy, tool readiness and standardization patterns] (Semarang: Sekolah Pascasarjana Universitas Diponegoro, 2020).

² Michael Allaby, *Oceans: A Scientific History of Oceans and Marine Life* (New York: Facts on File, 2007), 54.

³ Direktorat Jenderal Pengelolaan Ruang dan Laut (Directorate General of Space and Sea Management), "Pencemaran Laut [Sea Pollution]," accessed 2 October 2020, <https://kkp.go.id/djprl/artikel/23631-pencemaran-laut>

⁴ United Nation Convention of Law of the Sea, opened for signature 10 December 1982,

Part of the sea that is also experiencing pollution is the Malacca Strait. The Malacca Strait has a length of 520 miles in which Indonesia, Singapore and Malaysia are littoral states.⁵ The Malacca Strait is a sea lane that connects the South China Sea with the Indian Ocean. Therefore, this strait became the busiest strait because it was passed by around 90.000 ships in 2021.⁶ Furthermore, the Energy Information Administration (EIA) estimates in 2013 that 15,2 million barrels of oil per day passed through the Malacca Strait from the Middle East mainly to Korea, Bangkok, China and Japan.⁷ Even one third of trade goods and half of the world's oil post passes through the strait that we often hear as *Choke Points*.⁸

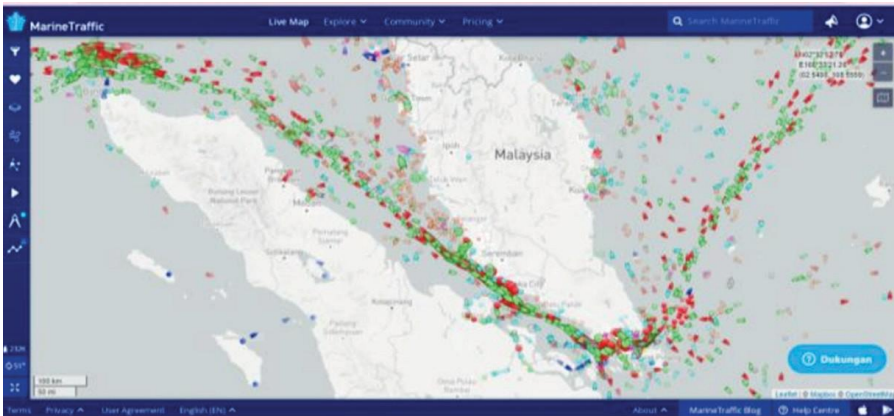


Figure 1. Malacca Strait Traffic⁹

1833 UNTS 3 (entered into force 16 November 1994), Art.194 (2).

⁵ Yuli Ari Sulistyani, "Littoral States' Defense Diplomacy in Malacca Strait Through the Malacca Strait Patrol Framework," *Journal Pertahanan dan Bela Negara* 9, no. 2 (2019): 47, DOI: <http://dx.doi.org/10.33172/jpbh.v9i2.573>.

⁶ Departemen Kajian Strategis Keluarga Mahasiswa Ilmu Perikanan Universitas Gadjah Mada (Strategic Studies Department of Fisheries Science Student Family University Gadjah Mada). "Kapal Asing Bebas Melintasi Laut Indonesia [Foreign ships are free to cross the Indonesian sea]." July (2020). <https://kmip.faperta.ugm.ac.id/kapal-asing-bebas-melintas-laut-indonesia-indonesia-dapat-apa/>

⁷ Amirudin Zuhri, "8 Jalur Minyak Penting di Dunia [8 Important Oil Lines in the World]." *Trenasia*, accessed 7 March 2020, <https://www.trenasia.com/13735-2>.

⁸ "Top 10 Container Port around the world," *Cargofive*, accessed 7 March 2020, <https://cargofive.com/top-10-container-ports-around-the-world>.

⁹ "Map of maritime traffic in Malacca Strait," *Alamy*, accessed 7 March 2020, <https://www.alamy.com/map-of-maritime-traffic-in-malacca-strait-image418302114.html>

Currently, the traffic in the strait is three times busier than The Suez Canal and five times busier than The Panama Canal. The data shows from 2006 the amount of oil transported was around 15 million tons per day. In 2020 Japan international transport institute research found that ships passing through the Malacca Strait will increase by 50%.¹⁰ Those facts made this strait bear higher risk of accidents. From 1978 to 2003, there were 888 reported accidents and in the 2001-2007 period itself there were 73 vessel collisions. In 2017, there was an accident on Wan Hai tanker 301 with APL Denver that caused a huge oil spill in the strait.¹¹ Meanwhile the most recent one was the container ship accident 26 May 2022.¹²

The density that occurs in this strait causes many ship accidents to occur, especially tanker accidents. From the data it was found that from 1971-2020 there were several major accidents including the Showu Maru ship accident in 1975 which spilled 730.000 tons of oil, in 1978 the US Tanker accident which spilled 1 million gallon of oil, in 1993 the Maersk Navigator and Sanko Honour Ship accident spilled 250.000 tons of oil, in 2000 the M.T. Natuna Sea which spilled 4.000 tons of oil, in 2017 the accident of Tanker Wan Hai 201 (Singapore) and APL Denver (Gibraltar) which spilled 300 tons of oil.

With this fact, cooperation between the countries of the Straits and the countries of the Straits User in accordance with article 194 UNCLOS 1982 is required to be realized immediately. This cooperation is also further explained in article 211 UNCLOS 1982 on Pollution originating from water vehicles which requires cooperation through competent international organizations or general diplomatic conferences.

¹⁰ F. Nofandi, U. Widyaningsih, et al, "Case Study of Ship Traffic Crowds in The Malacca Strait Singapore by Using Vessel Traffic System," The Third Maritime Safety International Conference (MASTIC) 2022, IOP Conf. Series: Earth and Environmental Science, (2022), 2, doi:10.1088/1755-1315/1081/1/012009.

¹¹ Vita Cita Emia Tarigan, "Kebijakan Pengendalian Pencemaran di Selat Malaka yang Bersumber dari Kecelakaan Kapal [Policies to Control Pollution in the Malacca Strait from Shipwrecks]." *Jurnal Penelitian Hukum De Jure* 19, no. 4 (2019): 480.

¹² Yudi Rahmat. "TNI AL evakuasi kecelakaan kapal peti kemas di Selat Malaka [Indonesian Navy evacuates container ship accident in Malacca Strait]," Info Publik, 27 Juni 2022, accessed <https://infopublik.id/kategori/nasional-sosial-budaya/635374/tni-al-evakuasi-kecelakaan-kapal-angkut-peti-kemas-di-selat-malaka#>.

Therefore, Indonesia-Malaysia-Singapore is compelled to create a specific agreement on this matter.

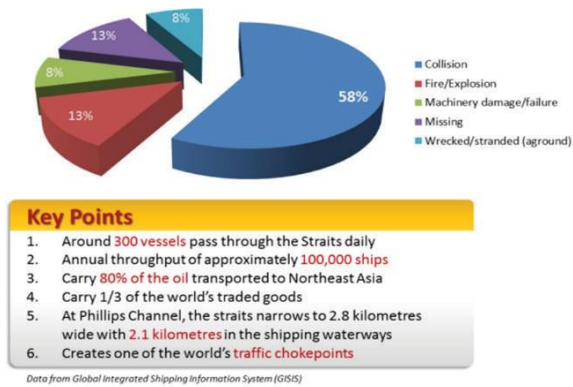


Figure 2. Statistics of accidents in the Malacca / Singapore Straits¹³

II. 'INDONESIA'S COMPLIANCE WITH THE TRIPARTITE AGREEMENT

The large number of ship accidents resulted in a large amount of oil spill. Oil spilled in the ocean can cause water pollution which endangers the survival of animate and inanimate under the sea and around the sea. As an effort to protect The Strait from the damage of marine pollution, the stakeholders signed The Agreement on Safety Navigation in The Straits of Malacca and Singapore in 1977 (Tripartite Agreement).

This agreement is a continuance from the previous agreements which are: Joint Statement on Straits of Malacca and Straits of Singapore in 1971 and 1975. This agreement answers the questions on legal and political questions for Indonesia: (1) Indonesia can safeguard its territorial sovereignty within 12 nautical mile (2) Indonesia can defend its agreement that has been concluded with Malaysia and Singapore (3) Indonesia can defend any international legal norms that guaranteed the fairness of the interests of the stakeholders of the straits as well as the

¹³ Fadzlon, "Collision Safety in the Malacca Straits and Singapore Waters," accessed from <https://www.skuld.com/contentassets/d0459c5f5be24a1a938a9eece0ebcb15/collisions-in-the-malacca-and-singapore-straits.pdf>, 15 September 2022.

users (4) Indonesia can maintain its unity in its viewpoint and attitude with the other two coastal states in friendly neighborhood manner in ASEAN environment in encountering the maritime states (straits user) (5) Indonesia can defend the safety of the sail, security, and the sustainability of its shores from any type of pollution that keep on growing these days. This agreement also being expected to be the legal principles for the member states to underlie their policies in controlling the pollution in their respecting territories in particular pursuant to Article 211 section 3 of UNCLOS 1982¹⁴ Tripartite agreement is an accommodation for cooperation between countries that are owners of the strait, in this case Malaysia, Singapore and Indonesia. In this paper, the authors apply the theory of compliance and the theory of the Transnational Legal Process in order to shed light on how the Tripartite Agreement is implemented in the Straits countries, especially in Indonesia.

A. COMPLIANCE THEORY AND COMBINED THEORY IN TRANSNATIONAL LEGAL PROCESS

Theory that is being employed in this research is the Compliance Theory and Combined Theory that merged monism and dualism in which monism (incorporation) is used for international agreements that related to the bound with international law subject externally. Meanwhile dualism (transformation) is being used for agreements that create rights and obligation for the whole citizens. These theories are relevant because Indonesia as one of the members of the tripartite agreement with Singapore and Malaysia regarding pollution controlling in The Strait of Malacca should have obeyed it by way of *Pacta Sunt Servanda* principle.¹⁵ This principle provided that every agreement should become law that binds every party and performed in good faith. *Pacta Sunt Servanda* principle was introduced by Grotius and subsequently became basic elements in contract law by way of engaging natural law principles (*promissorum implendorum obligati*).

¹⁴ United Nation Convention of Law of the Sea, opened for signature 10 December 1982, 1833 UNTS 3 (entered into force 16 November 1994), Art. 211.

¹⁵ J.G. Starke, *Pengantar Hukum Internasional [Introduction to International Law]* (Jakarta: Sinar Grafika, 2010), 72.

Compliance theory has long been studied in relation to international agreements, starting at the ancient and primitive stages of international law.¹⁶ Namely the Ancient Roman Ages to the Middle Ages where Natural Law dominated the thinking of scholars at that time. During that period, religion was the main source of law. Gaius, an ancient Roman legal expert, opined that International Law (*Ius Gentium*) is seen as part of the Natural Law that comes from God so that it applies to all humans. Meanwhile, in the Middle Ages many international treaties began to be held. The most prominent difference between the ancient period and the primitive period of international law lies in its source and substance. In the ancient era, disobedience to international law did not have any effect on the state because of the rules that governed it, whereas in the primitive international law period there were rules regarding this matter due to the large number of scholars born at this time.

Compliance with international agreements then develops in the Traditional International Law stage. At this time the principle of territoriality and state autonomy began to occur. Sovereignty is the main actor that plays the most role in a country. An agreement born between sovereign or state holders creates a legal obligation called *Opinio Juris* and Necessity. Obedience to an international treaty must be seen from an ethical and philosophical point of view, not from a scientific and empirical point of view. The next stage is the Dualistic Era, during which the influence of positive law is so prominent that the influence of the church and natural law begins to diminish. In this school, the boundaries between international law and national law are divided so that dualism and monism schools are born in the implementation of international law. There are three aspects contained in law including international law according to the positivist school, namely morals, God and nature. Laws are not born or found in nature but are made by humans (man-made law). So that there are differences of opinion regarding the position of international law against national law (monism and dualism).¹⁷

¹⁶ Liaquat A. Siddiqui, "Compliance with International Law: Theoretical Perspectives," *Dhaka University Law Journal* 31, no. 1 (2020):15, doi: <https://doi.org/10.3329/dulj.v31i1.57007>.

¹⁷ Sefriani, "Ketaatan Masyarakat Internasional terhadap Hukum Internasional dalam Perspektif Filsafat Hukum [The International Society's obedience to international law

Chayes stated that non-compliance with international agreements was caused by the ambiguity of the provisions in the agreement which gave rise to multiple interpretations (ambiguity), uncertainty (indeterminacy) as well as various restrictions made by agreements which made it difficult for participating countries to carry out their obligations.¹⁸ This is in line with what Martin Dixon stated that disobedience that occurs in the practice of international relations itself gives rise to multiple interpretations rather than the intention of the state to violate international law.¹⁹

In regulating international agreements into the international law regime, Chayes requires the need for seven stages, namely; developing data about situations and parties to a particular international agreement, identifying behavioral habits that have the potential to cause problems of disobedience, diagnosing sources of causes of behavior that differ beyond the normal norm, test the ability of parties who do not comply with the agreement to fulfill their obligations, offer technical assistance to parties who are unable to carry out their obligations, threaten or use dispute resolution mechanisms and conclude and suggest modifications to the agreement to accommodate the aspirations and interests of parties that do not comply with the agreement.²⁰

Harold Hongju Koh in his Transnational Legal Process responded to Chayes' work. According to Harold, the ideal way to internalize obedience is through internalizing new interpretation from international norms into the concerned state's legal system. The aim is to bind the other party to obey international law through their internal norms. Adaptation or juridical internalization that is conducted by states toward global norms or regulations is a consequence of the dynamic changes of social political norms in the world. This internalization process is influenced by various factors such as moral, normative and legal. Therefore, the key to attain a better obedience is to internalize it. In its development, the state obedience theory can be related to two

in the perspective of Legal Philosophy],” *Jurnal Hukum* 8, no. 3 (2011): 405.

¹⁸ *Ibid.*

¹⁹ Martin Dixon, *Textbook on International Law* (Oxford: Oxford University Press, 2013), 202.

²⁰ *Ibid*

aspects such as implementation and effectiveness. Implementation can be observed from the government's steps that commenced from laying down the commitment's foundations in the international regime at the domestic level, institution establishment and enforcement of norms and regime rules. Meanwhile effectivity is more prone to objectivity improvisation of a state policy in obtaining their goal that harmonized towards the international agreement. The highest level of obedience of a state is not on the implementation phase, but on its effectiveness.²¹

All of these scholars' opinions cannot be separated from the influence of the sociological school. According to this flow, people of nations as social beings always need interaction with one another to fulfill their needs. No matter how advanced a country is, they will not be able to live alone. In this interaction, the international community needs the rule of law to provide legal certainty for what they do. In the end, from these rules the international community will perceive order, regularity, justice and peace. The factor of need is more important and primary than the factor of whether there are law enforcement officers, whether there are formal institutions or sanctions.

Countries still believe that International Law exists. States respect and comply with international law, because such compliance is necessary to regulate their relations with one another and to protect their own interests. The existence of international law is actually more determined by attitudes and views as well as awareness of law and the international community itself. If the community feels, accepts, and obeys a rule of law because it is in accordance with legal awareness and a sense of justice and society, regardless of whether or not there is an institution or law enforcement apparatus, then that rule can already be seen as a rule of law. International Environmental Law and International Treaty Law have become one of the international laws that have raised the legal awareness of the world community at this time. Because the two laws are closely related to the behavior of the international community in their daily lives. Another theory used in this paper is "Combined Theory" by Edy Pratomo.²² This theory is used to observe Indonesia's policy

²¹ Siddiqui, "Compliance with International Law," 21-22.

²² Vita Cita Emia Tarigan, "Inhabiting Factors Implementation of Tripartite Agreement in Indonesia," *Journal of Social Science Studies* 5, no. 1 (2018): 100.

development regarding the control of marine environmental pollution originating from ships in the Malacca Strait, this is because the Malacca Strait is a strait used for international shipping owned by three coastal countries. According to this theory, there are two schools of thought in the pattern of state practice in viewing the relationship between International Law and National Law, namely Monism (incorporation) and Dualism (transformation). These two streams began to develop in line with the development of state obedience to international law.²³

So far, the Indonesian Legal System has not indicated whether it adheres to monism, dualism or a combination of both. However, in Indonesian literature, Mochtar Kusumaatmadja clearly portrays that Indonesia is towards the monism of the primacy of international law and suggests that in the future legal politics be adopted from this school. The Combined Theory is a theory that combines monism and dualism theories, where monism (incorporation) is used for international agreements concerning attachment to international legal subjects externally. Meanwhile, dualism (transformation) is used for agreements that create rights and obligations for all citizens. This applies to the international Tripartite Agreement between Indonesia, Malaysia and Singapore. In this agreement, the ratification process is not required in terms of its implementation, however, because this form of international agreement involves more than one country, it requires strict regulations in each country, both those concerning coastal countries and countries using the Malacca Strait. This regulation further regulates the technical implementation of the international agreement so that the rights and obligations in the regulatory process are unambiguous.

Meanwhile, in terms of its implementation in Indonesia, the control of marine environment pollution regulated in this agreement is paramount because environmental issues and pollution control are crucial issues that demand awareness of Indonesian citizens at this time without the need for any prior approval process in order to save future generations. Implementation of compliance is defined as a concrete

²³ Eddy Pratomo, *Hukum Perjanjian Internasional, Pengertian, Status Hukum dan Ratifikasi (Praktik Indonesia dan Beberapa Negara Lain) [International Treaty Law, Definition, Legal Status and Ratification (Indonesian Practice and Some Other Countries)]*, (Bandung: Alumni, 2011), 268

action by Indonesia as a participant in an international agreement between Indonesia, Malaysia and Singapore. This action is manifested in the form of policies in terms of controlling marine pollution originating from ships in the Malacca Strait as a way to implement safety envoys in the area.

B. TRIPARTITE AGREEMENT

The increasing awareness of the coastal states in the Malacca Strait due to the frequent occurrence of environmental pollution in the Strait has encouraged the stakeholder countries like Indonesia, Malaysia and Singapore to hold talks for the implementation of shipping safety in the Malacca Strait. As a result, a joint statement was made in *Agreement on Safety of Navigation in The Straits of Malacca and Singapore 1977* or commonly known as *Tripartite Agreement* conducted by Indonesia, Malaysia and Singapore. Apart from the high level of pollution in this Strait, there are aspects that lie behind the agreement *Tripartite Agreement inter alia*:

1. Developments in shipping technology and density in the Malacca Strait; The problem with the Malacca Straits began due to the rapid developments in the shipping sector since 1967, especially since the outbreak of the Arab-Israeli war.²⁴ Giant ships have started crossing the Malacca Strait this year. The geographical condition of the narrow and winding Malacca-Singapore Strait has gradually been unable to accommodate the hectic pace of ships passing through it. Thus many ship accidents, especially giant ships cause many other problems, one of which is sea pollution. In addition to trade, developments in shipping technology also occur in the military sector. Many nuclear ships and giant warships produced at this time were placed in the Malacca Straits to support the military strategies of each country, especially superpowers such as the Soviet Union and the United States. Bearing this in mind, the developing countries in the Malacca Strait's coast feel unable to cope with the dangers that

²⁴ Muhammad Isya, "Novel dan Kritik Politik Luar Negeri (Studi Sastra realis historis Al-Zayni Barakat Karya Al-Ghitani) [Novels and Foreign Political Criticism (A Study of Al-Ghitani's Historical Realist Literature Al-Zaynī Barakāt)]," *Al-Turas* 19, no. 2 (2013): 371.

will be caused by the large number of giant ships, nuclear ships and warships crossing the Strait.²⁵

2. Increase in the width of the territorial seas of Indonesia, Malaysia and Singapore in the Malacca Straits; One out of many aspects that influenced the birth of the Tripartite Agreement was due to the expanded width of the territorial seas of the coastal states of the Malacca Straits from 3 miles to 12 miles, mainly by Indonesia and Malaysia. However, because the width of the Malacca Strait area was less than twice 12 miles, Indonesia and Malaysia²⁶ held negotiations regarding the determination of the territorial boundaries in 1970 in Jakarta where the contents of the negotiations are that the part of the Malacca Strait which has a width of no more than 24 miles will be taken by the median line from the outermost points of each country, so that the Malacca Strait which has a width of less than 24 miles remains subject to the sovereignty of Indonesia and Malaysia. The agreement between Indonesia and Malaysia is not in line with other Malacca Strait user countries where they adhere to the territorial sea width of 3 miles, not 12 miles. Finally, these 12 miles agreement was included and accepted as one of the Articles in the 1982 III international law of the sea convention. The change in the international law of the sea regime from 3 miles to 12 miles made the Malacca Strait which was once a Free Sea turn into an internationally navigable Strait.²⁷ Therefore, Indonesia-Malaysia-Singapore felt the need to sit together and negotiate to find a solution to what happened in the Malacca Strait.
3. Japan's interests and the existence of a hydrographic survey in the Malacca Strait; Since the 1960s, Japan has realized the importance of the Malacca Strait as its shipping lane, where the safety of shipping in this strait is very important to achieve. Therefore, since that year, Japan has offered the three coastal countries to conduct a joint

²⁵ Vita Cita Emia Tarigan, "Kebijakan Pengendalian Pencemaran di Selat Malaka yang Bersumber dari Kecelakaan Kapal," *Jurnal Penelitian De Jure* 19, no.4 (2019): 124.

²⁶ Djalal Hasjim, "Persoalan Selat Malaka-Singapura," Kementerian Sekretaris Negara Republik

Indonesia, accessed 10 March 2020, http://www.setneg.go.id/index.php?option=com_content&task=view&id=22.

²⁷ *Ibid.*

survey in order to obtain the necessary hydrographic data. Based on the MoU signed on 21 January 1969, a “preliminary survey” was held from 28 January to 14 March 1969. At that time, it was found that there were 20 shallow areas in several sea areas which were very dangerous, so it required a follow-up survey (detailed hydrographic survey). Therefore, the Coastal State and Japan then made a second MoU which was signed in July 1970. However, as a result of Japan’s actions in leaking survey documents to other countries, the announcement of the first part of the detailed survey and the implementation of the second part of the detailed survey were delayed for more than a year.²⁸ Indonesia-Malaysia feel that it is the three coastal countries that have the most right to deal with the Malacca Straits issue. Meanwhile, other activities that will take place should first obtain agreement from the three coastal countries. Therefore, on 14-15 June 1971 a meeting was held in Kuala Lumpur. The results of the meeting stated that the survey must continue and the results of the first survey must be announced immediately. However, Indonesia and Malaysia strongly reject efforts to internationalize the Malacca Strait. Meanwhile, Singapore cannot accept the opinion of Indonesia and Malaysia.²⁹

4. The geopolitical position of Indonesia, Malaysia and Singapore in the Malacca Strait; For Indonesia, the Malacca Strait is an important point not only at present but since hundreds of years ago. This strait has played a role in the formation of a number of coastal areas in Indonesia such as Aceh and Sriwijaya. Since then, this strait has contributed greatly to the formation of the economic and social development of the region. This position is also supported by Indonesia’s geographical conditions, making this strait a trade route for oil and commodities to and from Indonesia and other countries. Therefore, Indonesia views this part of the Malacca Strait as the ZEE of the Archipelago.³⁰ So that the internationalization of the Malacca Strait

²⁸ *Ibid.*

²⁹ *Ibid.*

³⁰ Ahmad Iffan Raihana and Asrizal, “Analisis Yuridis Pengaturan Pembagian Wilayah ZEE dan Landas Kontinen di Selat Malaka menurut United Nation Convention on the Law of (UNCLOS) 1982 dan Hukum Nasional [Juridical Analysis of EEZ and Continental Shelf Sharing Arrangements in the Malacca Strait according to the 1982

is considered to endanger the integrity of Indonesian sovereignty. Malaysia also considers the Malacca Strait to be the most important part of its country. Nearly half of the ships belonging to the Royal Malaysian Navy are stationed in this Strait and it claims that part of the Malacca Strait is part of its territory. The large potential of marine resources in the Malacca Strait has also made this Strait one of the favorite locations for Malaysian fishermen to catch fish. Apart from being used as a shipping and trade route for Malaysia. As a small country that doesn't have many natural resources, Singapore was then known as Port City makes the Malacca Strait one of the most important ports in the country. This is supported by the large demand for rubber and tin for nearly twenty years. Thus, making the port in the Malacca Strait the second busiest centre in the world after the port of Rotterdam in the Netherlands. Moreover, Singapore's policies and bureaucracy were made simple and integrated with the needs of traders to carry out financial, business and trade transactions, especially foreign traders.³¹

5. The Showu incident occurred in the Malacca Strait in 1975: On 6 January 1975 the Japanese-flagged Showu Maru ship belonging to the Taiheiyo Kaiun Co. Ltd., Tokyo company, weighing 273.698 metric tons, was stranded on a reef (Buffalo Rock). With a position of 01°09'24" N/103°48'06" E. This ship departed from Ras Tanura (Parsi Gulf) carrying a cargo of 232.339 metric tons of Murben, Berri and Arabian Light Crude crude oil bound for Japan.³² In the Oil and Gas Institute (LEMIGAS) report cited by the Shipping Court in its decision No. 020/M.P/VIII/75 found that in connection with the Showu Maru ship aground, an estimated 54.000 barrels of crude oil had been spilled and carried away by currents and waves to the southwest for 9 days by reaching the location.³³ Meanwhile, the range of pollution was recorded as:

United Nations Convention on the Law of (UNCLOS) and National Law]" *Jurnal Cahaya Keadilan* 7, no. 2 (2019): 310.

³¹ Tarigan, "Kebijakan Pengendalian Pencemaran," 134.

³² *Ibid.*, 135.

³³ *Ibid.*, 137.

- a. Pulau Pemping (near Helen Mars reef), Pulau Pelampong and Pulau Takong (Near Philipps Chanel) show signs of being contaminated by crude oil;
- b. Further inspection showed that the pillars of the houses above the water were greasy;
- c. The fishermen's nets are exposed to oil; Mangrove forests which are spawning grounds and fish breeding grounds (*spawning ground*) were very badly polluted. Mangrove trees are coated with oil, although the water below is relatively clear.³⁴

However, due to limited data owned by Indonesia, especially data on beaches affected by oil spills, plants and coastal organisms and the marine environment concerned before and after the incident, the losses suffered by Indonesia cannot be fully claimed. In order to avoid similar losses like Indonesia in the future, a meeting between the States of the Malacca Strait Coast was held in 1975. One part of the tripartite agreement used to regulate pollution in the Malacca Strait is by implementing sea lanes in the Malacca Strait which began on 24 February 1977 through a tripartite ministerial meeting (TTM).³⁵ The sea routes include:

1. Internal water: these waters are located on the sides of the baselines of the territorial sea in each country's straits. The rights and obligations that apply to this zone are subject to the laws of the coastal state;³⁶
2. Territorial Sea: the coastal state has the right to determine the width of its territorial sea so that it may not exceed 12 nautical miles, measured from the specified baseline.³⁷
3. Contiguous zone: the contiguous zone shall not exceed 24 miles from the designated baselines. This additional zone is intended

³⁴ *Ibid.*

³⁵ Syamsumar Dam, "Masalah Selat-Selat Strategis di Asia Tenggara [The Problem of Strategic Straits in Southeast Asia]," *LRKN (Lembaga Riset Kebudayaan Nasional) LIPI* 11 (1984): 49.

³⁶ United Nation Convention of Law of the Sea, opened for signature 10 December 1982, 1833 UNTS 3 (entered into force 16 November 1994), Art. 8.

³⁷ *Ibid.*, Art. 3.

so that the coastal state can carry out the necessary controls in terms of preventing violations of customs, fiscal and immigration regulations within the territorial sea area and punishing such violations.³⁸

4. Exclusive Economic Zone (EEZ): EEZ cannot exceed 200 miles from the baseline. In this area, freedom of navigation and flight can be enjoyed by other countries while still paying attention to the rights and obligations of the coastal state as well as the regulations that have been set.³⁹

To support the tripartite agreement, a forum named the Tripartite Technical Expert Group (TTEG) was formed. TTEG on safety of navigation was established with the aim of facilitating cooperation among littoral states to develop steps that can be taken to manage safer services in the Malacca Straits.⁴⁰ The littoral countries namely Indonesia, Malaysia and Singapore are aware of the importance of the Malacca and Singapore Straits for international navigation. They are committed to ensuring safe navigation in the Straits as well as indirectly protecting the marine environment and facilitating the safe transit of ships through the Straits.

Evidence of this commitment is that the governments of Indonesia, Malaysia and Singapore have held various trilateral consultations since 1971. The culmination was the formation of the Tripartite Technical Expert Group (TTEG) represented by the Ministers of Foreign Affairs of the three countries in 1977. This was done with the awareness that the three countries namely Indonesia, Malaysia and Singapore are responsible for the safety of navigation in the Strait. The three foreign ministers agreed on guidelines for senior officials and technical experts to carry out their work in the Straits.⁴¹

³⁸ *Ibid.*, Art. 33.

³⁹ *Ibid.*, Art. 57.

⁴⁰ Nadia Nuraini Isfarin and Marsudi Triatmodjo, "International Cooperation on Marine Environment Protection of Oil Pollution from Vessel (A Study of Straits Malacca and Singapore)," *Indonesian Journal of International Law* 12, no. 4 (2015): 512.

⁴¹ "Tripartite Technical Experts Group," Cooperative Mechanism, accessed 9 March 2020, <http://www.cm-soms.com/?p=component-info&id=1>.

The guidelines that later became the framework for TTEG, among others:

- Working to enhance safety of navigation; and
- Promote the cooperation and coordination on anti-pollution policy and measures in the Straits;
- Initiate consultation with IMCO, (the then IMO) on the Traffic Separation Scheme, and with users of the Straits.⁴²

The TTEG has achieved several significant milestones. These include:

- The IMO-adopted Ronteing System in the Malacca and Singapore Straits, implemented in 1981;
- The IMO-adopted mandatory ship reporting system, STRAITREP, implemented in 1998;
- A Four Nation Joint Re-Survey of Critical Areas and Investigation of Dangerous or Unconfirmed Shoals and Wrecks in the Malacca and Singapore Straits, carried out from September 1996 to June 1998;
- Cooperation with User States.
 - Japan has assisted in conducting hydrographic survey of the Straits, installing and maintaining aids to navigation;
 - Malacca Strait Council's contribution of 400 million Yen to a "Revolving Fund" from which the three littoral States can draw an advance for combating accidental oil spills from ships in the Straits.⁴³

The TTEG proved to be a fairly effective framework with workable coordination measures between the three littoral states. In addition, TTEG believes that all stakeholders have roles and international cooperation is needed in maintaining safe navigation and environmental protection in the straits.⁴⁴

⁴² *Ibid.*

⁴³ *Ibid.*

⁴⁴ *Ibid.*

To implement article 43 of the UNCLOS 1982, a Cooperative Mechanism was created as an effort to be made. The Co-operative Mechanism provides a simple model with a wider scope as an option for cooperation between coastal states and other stakeholders who are users of the Straits. Cooperative mechanisms offer more flexible options and ways to keep the Straits safe and open for navigation, where this is focused on navigational safety and environmental protection.⁴⁵

The Cooperation Mechanism includes three components, such as:

- Co-operation Forum for dialogue and discussion;
- Project Coordination Committee (PCC) on the implementation of projects in co- operation with sponsoring users/stakeholders; and
- Aids to Navigation Fund (the Fund) to receive direct financial contributions for renewal and maintenance of aids to navigation.⁴⁶

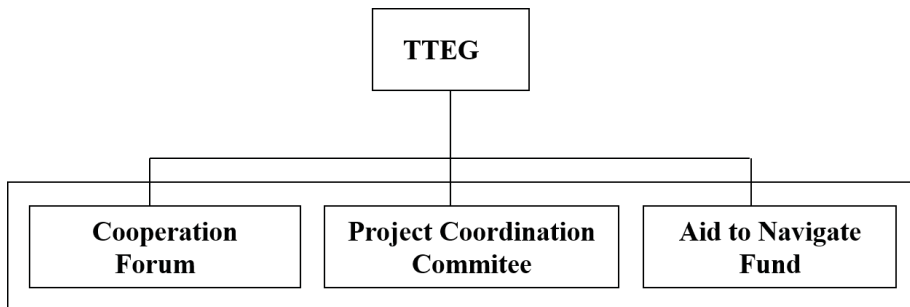


Figure 3. TTEG

Source: Cooperative Mechanism Portal, 2020

These three components are interrelated with each other, where the Cooperative Forum conducts dialogue between coastal countries and Malacca Strait user stakeholders and discusses views on issues of common interest in the Malacca Strait, then identifies and prioritizes projects for navigational safety and environmental protection in the

⁴⁵ Mohd Hazmi Mohd Rusli, “Navigational Hazards in International Maritime Chokepoints: a study of the straits of Malacca and Singapore,” *Journal of International Studies* 8, (2012): 60-62.

⁴⁶ *Ibid.*

Strait. Furthermore, based on the results obtained from the Cooperative Forum, the Project coordination committee is in charge of overseeing the coordination of the implementation of the project. Aid to Navigate Fund is a party that regulates finance where Aid to Navigate Fund receives finance as a contribution from Straits users and other stakeholders for the maintenance of the Malacca Straits.

The purpose of establishing a cooperation forum is to provide a way for coastal countries as well as countries using the Straits and other stakeholders to discuss and exchange views on issues related to navigational safety and environmental protection in the Malacca Straits and the Singapore Straits. The forum is held alternatively by the three coastal countries Indonesia, Malaysia and Singapore, with agreed arrangements. Furthermore, the chairman of the forum is the host country and the other two countries become joint vice chairmen. Participation in the forum consisted of representatives from three countries, user countries, the shipping industry and other parties in the Straits. Nevertheless, the participation of user countries, the shipping industry and other parties in the straits must be by invitation and on a voluntary basis.⁴⁷ Therefore, a forum quorum is formed when representatives from the three countries and one user country or relevant stakeholders are present. Furthermore, the results of the forum will be reported to TTEG for further consideration and approval.⁴⁸

The cooperative forum was held in Kuala Lumpur on 27 and 28 May 2009 which was attended by 90 participants from coastal countries, 17 user countries and 9 organizations.⁴⁹ The forum explored possible areas of cooperation under cooperative mechanisms and responses to the oil spill incident in the Straits as well as the status and conditions of assistance to navigation and traffic. The meeting involved several countries, Indonesia, Malaysia and Singapore. The result of the meeting is an appeal that must be obeyed and becomes the basis for each country to make regulations related to tackling marine pollution. It is hoped that

⁴⁷ Cooperative Mechanism, "Cooperation Procedures."

⁴⁸ *Ibid.*

⁴⁹ Cooperative Mechanism, "Project Coordination Committee."

this will become a common thread for the three countries in dealing with and tackling sea pollution in the Malacca Strait.⁵⁰

C. Implementation of Tripartite Agreement in Indonesia

Indonesian Regulations concerning the control of Marine Pollution from Ships in the Malacca Strait Laws and regulations concerning maritime affairs and pollution control of the marine environment are currently scattered in several laws and regulations. Data showed that in 2020 as many as 333 regulations in 2020 in which 108 are ministerial decisions and 107 are decisions of the Minister of Maritime Affairs and Fisheries.⁵¹ There is a new regulation concerning the protection of the marine environment in the form of a Presidential Regulation called Presidential Regulation No. 76 of 2022 on Ratification International Convention on Oil Pollution Preparedness, Response and Co-operation 1990 (International Convention On Preparedness, Response and Cooperation Regarding Oil Pollution, 1990). Apart from being spread out in the form of laws and regulations at the central level, regulations for the protection of the marine environment also exist in the regions. This happens because the regions also have authority in the waters. Therefore, a problem occurred as to who actually has the authority and responsibility of controlling marine environmental pollution because of its breadth, the Indonesian territorial sea is 3.257.357 km² wide⁵² and the number of related central and regional government agencies, it can be seen from the data that there are 12.879 villages bordering the sea.⁵³

Apart from being in the form of laws and regulations, arrangements regarding the protection of the marine environment are also contained in policies including:

⁵⁰ *Ibid.*

⁵¹ Badan Pusat Statistik (Central Statistics Agency), "Statistik Sumber Daya Laut dan Pesisir 2021 [Marine and Coastal Resources Statistics 2021]," accessed 10 June 2022, <https://www.bps.go.id/publication/2021/11/30/9689f74493b46bfcf97e8c92/statistik-sumber-daya-laut-dan-pesisir-2021.html>.

⁵² Herie Saksono, "Ekonomi Biru: Solusi Pembangunan Daerah Berciri Kepulauan Studi Kasus Kabupaten Kepulauan Anambas [Blue Economy: Local Development Solutions Characterized by Islands Case Study of Anambas Archipelago District]," *Jurnal Bina Praja* 5, no. 1 (2013): 5.

⁵³ Badan Pusat Statistik, "Statistik Sumber Daya Laut dan Pesisir 2021."

- a. Preparation of Indonesia's 21st Agenda: Indonesia's 21st Agenda is a continuation of the Earth Summit organized by the United Nations Conference on Environment and Development (UNCED) held in Rio de Janeiro, Brazil. Indonesia's 21st Agenda consists of 18 Chapters with the aim of integrating environmentally sustainable. One can observe the agenda and targets for the development of coastal and marine areas that have been prepared for 1998-2020. The following is part of the Maintenance of Security for the Exclusive Economic Area (EEZ) for the 1998-2020 Period: Strengthening the monitoring, control and supervision capabilities in an effort to increase efforts to safeguard coastal and marine resources from illegal exploitation, cross-border pollution and illegal trade.⁵⁴
- b. Indonesia's long-term and medium-term development plans (Rencana Pembangunan Jangka Panjang dan Jangka Menengah Indonesia). The National Long-Term Development Plan for 2005 – 2025, hereinafter referred to as the National RPJP, is a national development planning document for a period of twenty years from 2005 to 2025, stipulated with the intention of providing direction as well as being a reference for all components of the nation (government, society and the business world) in achieving national goals and objectives in accordance with the mutually agreed vision, mission and direction of development so that all efforts made by development actors are synergistic, coordinative and complementary to one another in attitudes and action. The contents of the RPJN related to pollution of the Malacca Sea environment are in the section on natural resources and the environment point C named Pollution of water, air and soil has not been handled properly due to the rapid pace of development activities that pay less attention to aspects of environmental sustainability. The existence of indigenous peoples who are

⁵⁴ Etty R. Agoes, "Adakah Suatu Ocean Policy di Indonesia? Suatu Kajian Yuridis Terhadap Kebijaksanaan Pemerintah Indonesia di Bidang Kelautan Selama ini [Is There an Ocean Policy in Indonesia? A Juridical Study of the Indonesian Government's Policy in the Marine Sector So Far]," Badan Pengkajian dan Pengembangan Kebijakan (Policy Research and Development Agency), Departemen Luar Negeri (Ministry of Foreign Affairs), 2007, 2-3.

highly dependent on natural resources and bear local wisdom in managing natural resources has also not been recognized. Local wisdom is very much needed to ensure the availability of natural resources and the preservation of environmental functions.⁵⁵ Where in Appendix IV and VI contains matters relating to environmental pollution control policies and efforts to reduce the number of ship accidents.⁵⁶

- c. Indonesian Maritime Policy to utilize maritime potential in accelerating national development through maritime culture policy, marine governance policy, maritime security policy, marine economic policy, and marine environment policy, in order to achieve an archipelagic nation that is independent, advanced, strong and based on national interests.⁵⁷
- d. Indonesian Maritime Council. The Maritime Council is a consultative forum for establishing general policies in the marine sector. This council has the duty to provide advice to the President in his capacity as Chair of the Indonesian Maritime Council in order to establish general policies in the marine sector.⁵⁸
- e. Minister of Transportation Regulation No. 29 of 2014 on Prevention of Maritime Environmental Pollution. It contains detailed discussions on how to regulate ships carrying hazardous materials to ship pollution by garbage and sewage and ballast water management. This regulation also stipulates the procedure

⁵⁵ Indonesia, *Peraturan Presiden tentang Rencana Pembangunan Jangka Menengah Nasional Tahun 2015-2019*. Peraturan Presiden No. 2 Tahun 2015. (Presidential Regulation on National Medium-Term Development Plan 2015-2019. Presidential Regulation No. 2 Year 2015). Lampiran IV Matrik Rencana Pembangunan Sumber Daya Alam dan Lingkungan Hidup [Appendix IV Natural Resources and Environment Development Plan Matrix] (2015): 92.

⁵⁶ *Ibid.*, 14-17.

⁵⁷ Dewan Kelautan Indonesia, Kementerian Kelautan dan Perikanan (Indonesian Maritime Council, Ministry of Maritime Affairs and Fisheries), *Kebijakan Kelautan Indonesia Buku II [Indonesian Ocean Policy Book II]* (Sekertariat Jendral Satuan Kerja Dewan Kelautan Indonesia, 2012), 3.

⁵⁸ Indonesia, *Keputusan Presiden tentang Dewan Kelautan Indonesia*, Keputusan Presiden No. 21 Tahun 2007. (Presidential Decree on Indonesian Maritime Council, Presidential Decree No. 21 Year 2007).

for inspecting, testing, and issuing certificates of prevention of pollution from the operation of ships and prevention of pollution originating from dangerous goods and materials on board.⁵⁹

- f. Presidential Regulation (Perpres) No. 76 of 2022 on Ratification of the International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990 (International Convention on Preparedness, Mitigation and Cooperation related to Oil Pollution, 1990). As for the contents of this international convention, there are regulations regarding emergency response plans for oil pollution, in which each party is obliged to request that the ships of each flag state have an emergency response plan for handling oil pollution on board. Furthermore, there are rules for reporting oil pollution procedures, actions when receiving reports of oil pollution incidents, national and regional preparedness and response systems, international cooperation in pollution control to reimbursement of repair costs.⁶⁰

Studies on the synchronization and harmonization of laws and regulations in the field of marine environmental protection have begun to be studied by the Indonesian Maritime Council in 2009. The recommendations are: 1. It is necessary to synchronize and harmonize existing laws and regulations; 2. It is necessary to compile existing laws and regulations in order to facilitate law enforcement references; 3. It is necessary to make a database for applicable laws and regulations. In its development, the Indonesian Maritime Council has been disbanded and returned to the Ministry of Maritime Affairs and Fisheries as stated in Presidential Regulation (Perpres) No. 116 of 2016 on Dissolution of the National Seed Agency; the Mass Guidance Control Agency; Council for Consolidating Economic and Financial Resilience; Steering Committee

⁵⁹ Indonesia, *Peraturan Menteri Perhubungan tentang Pencegahan Pencemaran Lingkungan Maritim*. Peraturan Menteri Perhubungan No. 29 Tahun 2014. (Minister of Transportation Regulation on Prevention of Environmental Pollution, Minister of Transportation Regulation No. 29 Year 2014).

⁶⁰ Indonesia, *Peraturan Presiden tentang Pengesahan International Convention on Oil Pollution Preparedness, Response and Co-operation 1990*. Peraturan Presiden No. 76 Tahun 2022. (Presidential Regulation on Ratification International Convention on Oil Pollution Preparedness, Response and Co-operation 1990, Presidential Regulation No. 76 Year 2022).

for the Development of Special Economic Zones on Batam, Bintan and Karimun Islands; National Team for Standardization of Topographical Names; Indonesian Maritime Council; National Council of Free Trade and Free Harbor Zones; National Spatial Planning Coordinating Board; and the National Commission for Zoonoses Control, on 30 December 2016.⁶¹

III. CONTROL OF MARINE POLLUTION IN THE MALACCA STRAIT BY INDONESIA

In its development since President Joko Widodo came into power in 2014, Indonesia has experienced a big leap by changing the direction of looking at the sea, according to the President “The sea is not a divider, the sea is a link between islands, the sea is not the back of the house, but the sea is the yard where we face.” The President also added:

*“The sea is not a place to throw away what we don’t need, but the sea is a place for life to lean on. The sea is a source of livelihood where a lot of sustenance is stored in it, the sea is also a gift from God that must be looked after and cared for.”*⁶²

To support this, the President has issued two Presidential Regulations, namely Presidential Regulation No. 16 of 2017 on Indonesian Maritime Policy.⁶³ and Presidential Regulation No. 34 of 2022 on the Indonesian Maritime Policy Action Plan 2021-2025.⁶⁴ The 2016-2019 Indonesian

⁶¹ Astri Novaria, “Pemerintah bubarkan 9 lembaga nonstruktural [The government dissolved 9 non-structural institutions.]” Media Indonesia, 20 September 2016, <https://mediaindonesia.com/politik-dan-hukum/67895/pemerintah-bubarkan-9-lembaga-nonstruktural>.

⁶² Riani Sanusi Putri, “Hari Maritim Nasional ke 58 Jokowi: Cara kita melihat laut harus berubah [Jokowi’s 58th National Maritime Day: The way we see the sea must change].” Tempo.co, 27 September 2022, <https://bisnis.tempo.co/read/1638782/hari-maritim-nasional-ke-58-jokowi-cara-kita-melihat-laut-harus-berubah>.

⁶³ Sekretariat Kabinet Republik Indonesia (Cabinet Secretariat of the Republic of Indonesia), “Presiden Jokowi Teken Perpres Kebijakan Kelautan Indonesia [President Jokowi Push Presidential Decree on Indonesia’s Ocean Policy],” 1 March 2017, accessed <https://setkab.go.id/presiden-jokowi-teken-perpres-kebijakan-kelautan-indonesia/>.

⁶⁴ Indonesia. *Peraturan Presiden tentang Rencana Aksi Kebijakan Kelautan Indonesia*. Peraturan Presiden No. 34 tahun 2022. (Presidential Regulation on Indonesia Ocean Policy Action Plan. Presidential Regulation No. 34 Year 2022).

Marine Policy Action Plan as part of the Indonesian Maritime Policy as stipulated in Presidential Regulation No. 16 of 2017 on Indonesian Maritime Policy needs to be continued in an integrated and sustainable manner through the implementation of various marine programs and activities in accordance with national development targets at ministries/institutions and local governments in the 2021-2025 Indonesian Marine Policy Action Plan. The Indonesian Maritime Policy is a general guideline for maritime policy and its implementation steps through programs and activities of ministries/agencies in the maritime sector which are structured in the context of accelerating the implementation of the world's maritime axis.

In this policy, it is hoped that Indonesia's vision to become the World Maritime Axis will be swiftly actualised. The World Maritime Axis assumes that Indonesia as a country with a strategic geographical position should be used by Indonesia to dominate the strategic position in the world maritime sector by utilizing diplomatic relations with the great powers in the United States and China. The world maritime axis emphasizes five main pillars, namely:

- a. Maritime culture, namely rebuilding maritime culture in Indonesia through the redefinition of Indonesia's national identity as a maritime country.
- b. The maritime economy is managing and simultaneously preserving the nation's maritime resources.
- c. Maritime connectivity, namely prioritizing the development of maritime infrastructure, development of transportation facilities and infrastructure and marine tourism.
- d. Maritime diplomacy namely optimizing soft power in dealing with regional threats and increasing bilateral and multilateral cooperation in the maritime field.
- e. Maritime security, namely preparing hard power to strengthen Indonesia's maritime defense forces in an effort to secure Indonesia's territory.⁶⁵

⁶⁵ Yanyan M. Yani and Ian Montratama, "Indonesia Sebagai Poros Maritim Dunia: Suatu Tinjauan Geopolitik [Indonesia as Global Maritim Nexus: a Geopolitic Review], *Jurnal*

One of the focuses of the Indonesian Government's policy is regarding pollution control in the marine environment originating from ships, both in terms of prevention, control and recovery, are developed in the form of laws and regulations. However, it is still felt to be inefficient and rudimentary due to there are still many laws and policies that are very numerous and scattered about. Especially if the specific location is in the Malacca Straits, then there are more and more regulations due to the uniqueness of the Malacca Straits itself. As an international strait and part of Indonesian territory, the strait also falls under several existing provinces such as Aceh, North Sumatra, Riau and the Riau Archipelago.⁶⁶ This has resulted in new problems, besides the unresolved and recurring marine pollution, it also results in overlapping authorities among law enforcers.

There should be one specific law and regulation that clearly discusses the control of marine environmental pollution originating from ships in the Malacca Strait both in terms of prevention, control and recovery as well as which agency that has the authority to do so, due to the issue of controlling pollution originating from Ships in the Malacca Strait are not only related to national issues but also international issues. One can see it in line with the compliance theory presented by Harold Hong Ju Koh through the theory of the Transnational Legal Process and the combined theory of Eddy Pratomo.

According to the Compliance Theory, these efforts are concrete action in terms of Indonesia's internalization of the Tripartite Agreement. So that Indonesia has fulfilled the *pacta sunt servanda* principle in implementing an international treaty that binds Indonesia. After going through the internalization process, if one refers to joint theory by Eddy Pratomo, the Tripartite Agreement along with the recommendations that occurred afterwards directly created rights and obligations for Indonesian citizens because the Tripartite Agreement required further regulation to regulate its citizens' behavior. This is because environmental issues and pollution control regulated in the Tripartite Agreement are important and urgent issues that demand awareness among Indonesian citizens at

Pertahanan dan Bela Negara 5, no. 2 (2015): 27.

⁶⁶ *Ibid.*

the present time without the need for a prior approval process, to save future generations (monism flow).

However, the above regulations do not solve marine environmental pollution control *inter alia* The Strait of Malacca due to lack of focus. This phenomenon creates a new problem, not only the unresolved current issue but also the overlapping authorities among law enforcement agents over The Strait of Malacca such as Indonesian Navy, Transportation Department, Marine Safety Body, State Attorney, Marine Police Force, and State, Provincial and Regional government. Ideally, the Indonesian Government should appoint one institution (*Coast Guard*) under the President. By the same token on law and regulations, Indonesia should create a technical regulation that is concrete and focuses on the controlling of marine environment pollution in The Strait of Malacca. This law should specifically clarify the technicality on preventing, countermeasures and recovery and which institution that has the authority over it.

The importance of sea tilted the gravity towards maintaining the quality of the sea from pollution. Marine pollution falls under environmental law regime, therefore, regulations and principles in environmental law should also be applicable in answering marine pollution problems. Marine pollution problems are also paramount and urgent to be answered since it is not only causing problems to a coastal state but also to neighboring state/s due to the absence of physical borders that makes it a transnational problem. Therefore, the tripartite implementation in Indonesia should not be through ratification, but it has to be incorporated in domestic law due to its urgency. Besides concerns to other states, this matter is becoming more important because we have to inherit a healthy environment for future generations. This paramount and important nature that begs an expedited procedure in internalizing Tripartite agreement into Indonesian Domestic Law. This internalizing impact also creates the current coast guard will be given technical guidance regarding its responsibilities, authority, limitation so the pollution controlling effort can be conducted. The current problematic database regarding the restitution due to pollution will also be resolved.

In addition, the stages of environmental supervision are also carried out which include planning supervision, implementation of supervision,

and post-supervision in the field.⁶⁷ Furthermore, the stages of overcoming marine pollution are based on the Government Regulation of the Republic of Indonesia No. 19 of 1999 on the control of marine pollution and/or destruction. Article 23 (Government Regulation No. 19 Year 1999) also obliges the person in charge of businesses and or activities that result in pollution, marine destruction to bear the costs of prevention and recovery costs. The last stage is the restoration of sea quality which is carried out by the stages of stopping the source of pollution and cleaning of pollutant elements, remediation, rehabilitation and restoration.⁶⁸

There are several rules or regulations regarding maritime policy in Indonesia, such as the Government Regulation of the Republic of Indonesia No. 8 of 1962 on Traffic Peace of Foreign Vehicles in Indonesian waters, Law no. 1 of 1973 on the Indonesian Continental Shelf to accommodate the convention on the law of the sea, Law No. 9 of 1985 on fisheries which was later replaced by Law No. 31 of 2004 on Fisheries, and Presidential Regulation of the Republic of Indonesia No. 78 of 2005 on Management of Islands Outermost Small.

In an effort to protect the sea from pollution, as previously described, it still cannot run optimally due to several factors.

- Lack of clarity in laws and regulations in the field of marine environmental pollution in the Malacca Straits
- The problem of overlapping government authority in controlling contamination issues in waterways,
- The lack of facilities and infrastructure, controlling marine environmental pollution in the Malacca Strait.

It is said that the laws and regulations in Indonesia are not clear to be one of the factors, there is a culture of throwing responsibilities like hot potato in between the central government and local governments. The central government gives authority to local governments to manage,

⁶⁷ *Ibid.*, 247.

⁶⁸ Indonesia, *Peraturan Pemerintah tentang Pengendalian Pencemaran dan/atau Perusakan Laut*, Peraturan Pemerintah Republik Indonesia No.19 Tahun 1999. (Government Regulation on Control of Marine Pollution and/or Damage. Government Regulation No. 19 Year 1999).

be responsible for, and control environmental pollution in the Malacca Straits area. There has been a division of authority between the central government and regional governments represented by the provincial government such as Law No. 23 of 2014 (about Local Government) on Government Regions making the authority to manage sea waters by the Government Regencies/cities decreasing.

The original 0–4-mile zoning area managed by the District/City Government is now managed by the Provincial Government thus making the provincial authority zoning 0-12 miles. Whereas the authority to manage sea areas of more than 12 miles is carried out by the Government Center.

As supporters of the efforts to comply with the tripartite agreement, it is also important to provide supporting facilities and infrastructure, in which Indonesia is lacking. As stated by the Indonesian Navy, Indonesia is very short on defence equipment to maintain shipping safety throughout Indonesia's vast jurisdiction. The knowledge of the apparatus regarding facilities and infrastructure also needs improvement in the Indonesian security system.⁶⁹ Security officers really need knowledge in the field of modern crime, especially for environmental problems. The crimes committed are related to information technology, communication technology, biology and biochemistry.

One of the efforts that can be made by the parties in a tripartite agreement, especially by Indonesia, is that it might include a dispute resolution clause. If we refer to article 282 UNCLOS 1982, that article recommends resolving disputes regionally. Meanwhile, if we look at the tripartite agreement itself, there is no dispute resolution clause. It is also necessary to mention whether the parties to this tripartite agreement must refer to "The ASEAN Way".⁷⁰

The tripartite agreement has not become one of the regulations used by Indonesia in preventing sea pollution in the Malacca Strait, because Indonesia has its own rules regarding this, namely Law no. 19 of 1999

⁶⁹ Tarigan, "Kebijakan Pengendalian Pencemaran," 375.

⁷⁰ Sungjoon Cho and Jürgen Kurtz, "Legalizing the ASEAN Way: Adapting and Reimagining the ASEAN Investment Regime," *American Journal of Comparative Law* 66, no. 2 (2018): 29, <https://doi.org/10.1093/ajcl/avy026>.

as a result, the problem of sea pollution in the Malacca Strait continues to recur and still absence in solution. In fact, according to these theories, the tripartite agreement should be the source of Indonesian law-making regarding marine pollution as contained in article 282 UNCLOS 1982 which demands regional regulations, in this case a tripartite agreement in resolving disputes.

Therefore, so that there are no continuous deadlocks, the dispute resolution process if this case of marine pollution occurs again, the parties can also use the ASEAN Way. Where the ASEAN Way dispute resolution process will be further elaborated in the authors' future writing.

IV. CONCLUSIONS

The conclusion in this paper is that in practice, the pollution control in the marine environment originating from ships, both in terms of prevention, control and recovery, still requires several improvements. This is caused by several obstacles such as regulations originating from many parties caused by overlapping government authorities. As the overlap causes unclear responsibility for the problems that arise, this is shown by the mutual appointment of authority. Therefore, synchronization and harmonization of existing regulations is needed so that the regulations become clearer, even better if we can create a database of applicable laws and regulations. To support efforts to fulfill tripartite agreements, the provision of supporting facilities and infrastructure is also paramount.

Indonesia should include this tripartite agreement as the basis for making laws and regulations regarding the control of marine environmental pollution, especially in the Malacca Strait. This agreement is under Article 282 UNCLOS 1982 and if there is a dispute, this can be resolved by referring to a tripartite agreement to avoid the shipwreck problem from recurring.

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