THE STRATEGIC IMPACT OF PIRACY TO INDONESIA’S NATIONAL INTERESTS

By Lieutenant Commander Aminuddin Albek*

Introduction

Sea or maritime piracy is an ancient crime and still exist this modern day. It has occurred since seaborne trade and transportation established. In the context of Western literal definition, according to Adam J. Young, piracy is derived from ancient Roman and Greek concepts, from the word *pirata* describe “people who pursued a way of life outside of … Roman hegemony.” In other words, they were criminals or unlawful belligerents. The term then evolved during Medieval and the early Renaissance from belligerent to un-authorized privateer, and it negatively designated people who captured ships and goods, but the act was considered acceptable. Along with the growth of sea trading, Hugo Grotius gave a legal definition of piracy as “a criminal disturbance of lawful commerce and state’s sovereignty.” Therefore, it was justified to encounter such criminal act with the use of force.

Although it is old, piracy has become a prominent unlawful act and affected international trade and national interests of countries particularly those that rely on seaborne commerce. In 2014, the United Nations Conference on Trade and Development (UNCTAD) published an overview on the economic impact of maritime piracy. Statistically, it summarized several reports conducted by agencies such as the RAND Institute, the International Maritime Bureau (IMB), the One Earth Future (OEF) Foundation, and the World Bank. The RAND Institute and the IMB estimated piracy costs to range between US$1 and US$16 billion per year. The One Earth Future (OEF) Foundation as part of its Oceans Beyond Piracy (OBP) project estimated the total cost of piracy off the coast of Somalia at US$7–US$12 billion in 2010; US$6.6–US$6.9 billion in 2011, and US$5.7–US$6.1 billion in 2012. In 2013, the World Bank has estimated the global economic cost of piracy off the coast of

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2 Ibid., 4.
Somalia at US$18 billion, with a margin of error of roughly US$6 billion. According to a preliminary assessment by the OEF, published in 2013, the direct economic impacts on West Africa of piracy in the Gulf of Guinea region are estimated to range between US$740 million and US$950 million in 2012. Furthermore, the economic impacts that UNCTAD reviewed were not merely from the ransoms but also from various related elements such as ship operational costs and law enforcement efforts. It also examined other elements such as fisheries, tourism, and so on. In addition, after the September 11 tragedy, there has been a serious concern that the act of piracy may turn to terrorist act. Those economic figures and the possibility of maritime terrorism provide a valid argument why governments around the world, including Indonesia, should take any possible, available measures to address maritime piracy.

Maritime issues have always been Indonesia’s concern. Being an archipelagic country, Indonesia has responsibility to ensure its maritime security and national sovereignty from any possible threats within and without its jurisdiction. In addition, its geographical position and feature has put Indonesia as one of important hubs and access for international trade (shown in Map 1). It has four choke points of the world’s nine-strategic choke points and three Archipelagic Sea Lanes (ASLs) to access Indian Ocean-Pacific Ocean and East Asia-Australia (shown in the map 2). Having those important features, any disturbances happen in Indonesia’s waters arguably have also significant impacts not only towards Indonesia national interests but also regional and international scopes. Thus, piracy as one of those disturbances has become Indonesia’s concern to be addressed. Departure from that consideration, this essay will further examine the strategic impact of piracy towards Indonesia’s national interests. It also will describe the role of Indonesian Navy in anti-piracy measures.

Map 2. Main shipping routes and strategic passages

4 Ibid., 15.
5 Dr. Marsetio’s presentation on “Indonesian Sea Power” at Naval Postgraduate School, 9 February 2015.
The Definition of Maritime Piracy

The definition of piracy is essential to law enforcement efforts. It defines circumstances of where and when the law applies and who has the responsibility to act. There are two dominant definitions currently used by governments, scholars, and research institutions to justify their respective cause in explaining maritime piracy. Although both definitions employ an attack on a ship, they are significantly different. The first definition is given by the United Nations Convention on the Law of the Sea 1982 (UNCLOS 82) and adopted by the International Maritime Organization (IMO), stated in Article 101: 

piracy consists of any of the following acts:

(a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of private ship or a private aircraft, and directed:

(l) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;

(ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;

(b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;

© any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).

According to Derek Johson, Erika Pladdet, and Mark J. Valencia, that definition contains five elements:

“First, piracy must involve a criminal act of violence, detention, or depredation. Second, piracy must be committed on the high seas or in a place outside the jurisdiction of any state. … The third element … is the two-ship requirement. … Fourth, piracy needs to be committed for private ends, which excludes the acts of terrorists or environmental activities from being piracy. Fifth, attacks by naval craft fall outside the bounds of piracy...”

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7 Dr. Marsetio, Sea Power Indonesia (Jakarta: Universitas Pertahanan, 2014), 93; additional remarks by the Author of this essay.
8 The IMO is a specialized organization within the United Nations that has the mandate to develop international standards for promoting safe and environmentally sound shipping activities.
because pirate attacks have to be committed by the crew or passengers of privately owned vessels.  

The most important element of the definition is the location where the act takes place. It clearly states that it must be outside of a state’s jurisdiction. Therefore, Johnson, Pladdet, and Valencia suggest that there should be another definition to categorize crimes against ships within territorial waters. The IMO defines armed crimes committed within territorial of a state as armed robbery, not as piracy.  

On the other hand, IMB defines piracy differently. It articulates that piracy is: “An act of boarding or attempting to board any ship with the intent to commit theft or any other crime and with the intent or capability to use force in the furtherance of that act.”  This definition brings a liberty from the jurisdiction boundary; all crimes occur at sea are categorized as piracy. It removes the context of ship-to-ship conduct; an attack may be launched from raft, quay against ship underway or berthing or anchoring. It also includes political and environmental reasons. In other words, the scope of piracy becomes broader and attributes to every action related to crime. Not like UNCLOS description, IMB definition emphasizes the term of “the use of force”. It reflects the danger that the victims may face on a pirate attack.

In relation to this definition Adam J. Young provides a working definition by saying that piracy is “An act of boarding or attempting to board any ship with the intent to commit theft or any other crime and with the intent or capability to use force in the furtherance of that act, excepting those crimes that are shown or strongly suspected to be politically motivated.” He adds the IMB definition by stressing on the jurisdiction which is a critical consideration to address piracy. He takes out the political motivated to differentiate piracy from terrorism because piracy acts may turned into terrorism attacks.  

To address the piracy threat, Indonesia only adopted the definition of piracy articulated in the UNLOS 1982. It officially ratified the Convention in its National Act No. 17/1985. Employing the UNCLOS definition, Indonesia has merely accepted violent acts at sea as piracy that occur on the high seas; others happen inside the territorial waters are categorized as armed robbery. Thus, those crimes in the Malacca Straits fall in armed robbery classification. Based on this reason, Indonesia too has rejected any attempt by any state to involve in anti-piracy measures that happen in waters that are still inside its territory. Nevertheless, whatever the definition applied in Indonesia’s regulations, the impact of piracy or piracy-related crimes is always significant.

The Characteristics of Piracy in Indonesia

The characteristics of piracy in Indonesia are generally similar with those in Southeast Asia since most of them are traditional actors, and they
inherit such activities from generation to generation. Scholars have tried to characterize them based on how they conduct their maneuvers. Carolin Liss, among others, has labeled pirates in Southeast Asia as “contemporary pirates” and categorized them as “Common Sea-Robbers” and “Social Pirates.” Common Sea-Robbers mostly conduct simple hit-and-run attacks and collect anything valuable from the ships and the crews such as electronic equipment, which they can sell, and money. Sometimes they violently intimidate the crews to push their demand and to protect or defense themselves while escaping from the ships. Social pirates refers to adventurers or social bandits who attacks the rich to help the poor.17

Peter Chalk has identified three types of piracy in Southeast Asia waters including Indonesia based on their methods and places.

Harbor and anchorage thefts/attacks—a form of piracy that has been encouraged by the relatively relaxed security procedures of many small and not so small ports in the region... Ransacking and robbery of vessels on the high seas or in territorial waters. This is a more common form of piracy and one that, if carried out in narrow sea-lanes, has the potential to seriously disrupt maritime navigation. This is especially true in cases in which vessels are out of control because the crew has been detained or locked up... Hijacking of vessels to convert them for the purposes of illegal trading—the so-called phantom ship phenomenon. This type of piracy follows a typical pattern. Vessels are first seized and their cargoes are off-loaded into lighters at sea (such merchandise either being kept by the pirates themselves or sold off to private bidders). The ships are then fraudulently reregistered and issued with false documents to enable them to take on board a fresh payload. The new cargo is never delivered to its intended destination but transferred to another vessel and taken to an alternate port where it is sold to a prearranged buyer who more often than not is a willing participant in the whole venture.18

The Impact of Piracy to Indonesia

As mentioned in the introduction section, Indonesia has a strategic position and a geographical feature that make it an important country in the world in terms of economy. Geographically it is located between the Indian Ocean on the west and south and the Pacific Ocean on the east and north; this position makes it as a hub for international sea commerce, and it is the largest archipelagic state in the world with 17,504-scattered islands, 5.8 million square kilometres, and 81,000 kilometres coastline.19 This blessing makes Indonesia rich with huge natural marine resources. The blessing, however, also presents challenges to Indonesia, according to Hasjim Djalal.20 It has to ensure maintain law and order throughout its jurisdiction and the national unity of the archipelago.21 He suggested several major

20 Hasjim Djalalis internationally known as an expert in the law of the sea — and as one of the Indonesian most respected diplomats. He is also one of the architects of the UN Convention on the Law of the Sea (UNCLOS), which was ratified by the UN on Dec. 10, 1982.
problems that Indonesia faced, when he wrote the chapter, were:

to prevent armed robberies at sea and to promote co-operation with neighboring countries to combat armed robbery and piracy, to prevent illegal fishing by foreign vessels which were depleting Indonesian resources and depriving the Indonesian government of its legitimate income, to protect and patrol Indonesian archipelagic sea-lanes which were so important for regional and global maritime trade and military strategy, especially in a time of regional and global crisis, and to prevent the use of Indonesian maritime zones for illegal acts at sea, including illicit traffic in drugs and arms, maritime terrorism, and illegal refugees transiting to third countries.\(^{22}\)

Among those maritime security challenges, piracy has more prominent influence towards Indonesia's goal to protect its territory since the impact not merely economic but also political and environmental. The number of pirate attacks in Southeast Asia has increased significantly during 1990s and decreased in 2000s, as shown in Table 1 and 2. Most of the attacks occurred in Indonesia waters. Based on those figures, Indonesia was branded as the most “pirate prone” in Southeast Asia.\(^{23}\) Although it had rejected that label based on the definition of piracy, Indonesia could not provide sufficient evidences to support its argument. Most attacks happened in Indonesia's territory in Malacca Straits and Singapore.\(^{24}\) A reputation as the region vulnerable to piracy will combine additional impacts such as a boycott of a state's port facilities. Hongkong, for example, had experienced this sanction between 1992 and 1995.\(^{25}\)

Piracy also poses dangers to the safe of navigation and the marine environment. A seized ship by pirate frequently left unmanned become a navigational hazards posing collision threat to other ships since most attacks happen after dark, or,

Table 1. Location of Actual and Attempted Attacks in South China Sea and Southeast Asia.\(^{26}\)

\(^{22}\) Ibid., 145.
\(^{23}\) Chalk, “Contemporary Maritime Piracy in Southeast Asia.” 93.
\(^{25}\) Ibid., 90.
\(^{26}\) Location of Actual and Attempted Attacks in South China Sea and Southeast Asia,” accessed 1 June 2015, http://japanfocus.org/data/tables.jpg
even though, the target ship is manned by the pirates, pirate's lack of navigational skills will still pose danger to navigation particularly in narrow channel with high ship traffic like Malacca Straits and Singapore Straits. In turn, the collision between ships will cause damage and sink them, and it produces oil spill that pollutes respective waters if a tanker involves in the collision.  

To address piracy and other maritime challenges it self, according to Djalal, Indonesia has limited financial resources to perform law enforcement operations to cover all zones in its jurisdiction particularly after being hampered by the monetary crisis in 1998. In addition, until mid-2000s, Indonesia had to confronted some insurgencies and social unrests, and one of them—Aceh Freedom Movement—was believed contribute to piracy activities. Therefore, Indonesia certainly needs assistance from other countries to overcome the maritime challenges and fill the capability gaps; however, it has declined maritime countries effort to escort their ships and a proposal to involve in the counter-measure efforts as the United States offered in its Regional Maritime Security Initiative in March 2004. The presence of foreign naval forces, in particular the U.S. Navy, conducting operation in its territory is perceived as an infringement of its sovereignty. It also refused proposal to allow armed guard on board because it might worsen the security condition. Furthermore, the intention of external powers such as China, Japan, India, and the United States to involve as security provision for littoral states in Malacca Straits, according to Caroline Vavro, is not only due to their concerns over their interests to protect their vessels but also regarding their efforts to expand or enhance their influence in the region. In other words, those countries use piracy issue to maintain their influence, “to ensure that they are not left out in the fast-changing power dynamics of the region.” Therefore, Vavro suggests that “keeping [them] out is much more important in the long term than effective counter-piracy measures are in the short term.”

Indonesia's Combatting Piracy Efforts

Since piracy has become a strategic problem for Indonesia's national interest, Indonesia has performed many efforts to mitigate the impact of piracy as well armed sea robbery through unilateral, bilateral, and multilateral approach. In unilateral level, Indonesia has increased its law

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Tabel 2. Piracy Incidents in Indonesia by Location and Year

29 Liss, “Maritime Piracy in Southeast Asia,” 64.
32 Ibid., 15.
enforcement patrols in the vital area especially in the western region that includes the Malacca Straits. Indonesia has increased its surveillance and monitoring surveillance and response capabilities since 2000s. In July 1992, for example, Indonesian naval personnel had raided several places that were used by the local pirates as safe-haven and made thirty arrests. As Djalal articulated that, although it has had limited capability to address piracy and armed sea robbery and needed help, Indonesia would prefer to accept any assistance from the user states. It has rejected the involvement of external naval force in its territorial water; however, Indonesia has asked the United States for military assistance in the form of training.

In bilateral level, Indonesia has established and maintained several cooperation with its neighboring countries. Since 1992, Indonesia and Singapore has conducted coordinated patrol named INDOSIN (Indonesia-Singapore) in their surrounding waters and information exchange. In the same year, Indonesia and Malaysia also has committed to execute coordinated patrol named MALINDO (Malaysia-Indonesia). With Philippines, Indonesia has signed Memorandum of Understanding to perform coordinated antipiracy patrols and to exchange information.

These efforts have had significant result in reducing the number of piracy attacks in respective region and motivated the countries in the region to enhance and expand the scope of the existing cooperation to multilateral level.

In 2004, the navies of Indonesia, Malaysia, and Singapore agreed to conduct trilateral coordinated patrol in Malacca Straits called Malacca Straits Sea Patrol (MSSP). This was the first multilateral initiative. In 2005, integrated within the MSSP, the “Eyes In the Sky” has been launched to support the operation conducted by naval ships to include Thailand as the fourth party. This operation was designed to provide air surveillance. A foreign liaison is on board to ensure that no activities conducted will breach sovereignty and for other purposes. In this scope, ASEAN has promoted several initiatives to the issues on piracy and armed robbery in the region. It has endorsed the ASEAN work program to implement the ASEAN Plan of Action to Combat Transnational Crimes in 2002. In addition, Singapore’s effort to provide information—the Information Fusion Center (IFC)—to the sea users in Malacca Straits and Singapore Straits has been adopted by the ASEAN Navies. Promoted by Indonesia and Singapore, they officially launched the ASEAN Information-Sharing Portal (AIP) in 2012 at the opening ceremony of the inaugural ASEAN Maritime Information-Sharing Exercise.

A New Challenge: Distant Piracy Attack

Even though it has successfully performed significant antipiracy in within its territorial waters and surrounding region, Indonesia has to encounter a new challenge from the piracy threat. On 16 March 2010 Indonesia public ear was shocked by the news of the piracy attack that

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successfully capture one of Indonesia flagged ship with 20 crews as hostages. This ship was attacked at 320Nm Northeast of Socotra Island in Indian Ocean. This was the first Indonesia ship attacked by Somalia Piracy.40 This situation has brought new dimension to Indonesia perspective of its National Interests. One of the national obligations is to protect all Indonesian people as mentioned in the preamble of Indonesia National constitution, Undang-UndangDasar 1945 (UUD 1945).41 Protecting Indonesia citizens inside its territory may be relatively easy to do. In piracy situation in Somalia which is far from the mother land, saving them was not a simple effort like just turn hand's palm upside down. There are many matters that must be taken into consideration before launching any actions to solve this challenging situation.

The tension had increased highly when the pirate demanded ransom in exchange of crew life. The ship company owner, PT. Samudera Indonesia had to provide $2.6 million.42 Indonesia government ought to conduct immediate respond to free the victims from pirate hand. There were two alternatives. The first option was to pay the ransom ultimatum and the second was to relief the hostage by military operation.43

The news spreading in Indonesia media broadcasting did not apparently make the situation better. This piracy news had become popular since then. Many informal discussions were in the mailing lists and social networks. Besides providing the public transparent news of the hostage situation, it encouraged people, at the same time, to press the government to take an instant action to release the crews. Moreover, as military operation was a choice, the covert principle of military operation might be compromised.44

The MV Sinar Kudus case has shown how problematic the piracy threat beyond Indonesia's border is. Even though on 1 May 2011, 46 days after captured, MV Sinar Kudus was successfully retrieved from the Pirate's hands by the SatgasMerahPutih (the Red and White Maritime Task Force) to rescue the hijacked MV. Sinar Kudus (DWT 2.597 tons) in the Somali waters. This successful stories had involved not only the Indonesian Navy but also other stakeholders.45 A long negotiation and the preparation of military operation in parallel were complicated decision making process for both the company and the government. It was very difficult to decide whether paying the ransom or conducting military assault was the best option. By meeting the pirate demand of ransom would attract other pirates group to repeat the attack to other Indonesia ship. On the other hand, launching armed strike to free the victims would possibly endanger their lives. Fortunately, Indonesia government had made a good decision to prepare those two alternatives. The incident has triggered a new dimension of challenge for Indonesia in safeguarding its National Interest beyond border

41 Indonesia National Secretariat, Undang-UndangDasar 1945 (Indonesian National constitution), Jakarta, 1945.
44 Ibid.
especially the task to protect its people, and the success reflects the Indonesian Navy's commitment to protect Indonesian citizens and ships wherever they may be. This task is in line with the Indonesia's National Interest as mandated in its National Constitution. Dealing with piracy is related to three of the five main tasks of Indonesian Navy: to perform military duties in national defense, to enforce the law and secure the order in the sea area of national jurisdiction in accordance with national laws and ratified international laws, to perform diplomatic duties in support of foreign policy set by the government, according to the National Law No.34/2004 on the Indonesian Armed Forces, Article 9.

Conclusion

For Indonesia, piracy has been the prominent threat to Indonesia since it has a strategic impact to its national interests—its sovereignty and obligation to protect the people. The impact toward sovereignty has arisen since the increased of piracy attacks in its territorial and adjacent waters have attracted world eyes. Indonesia has to clear its label as one of the most dangerous waters in the world. The high potential loses of seaborne trade due to pirates' activities have been the primary reason for maritime countries to propose and urge littoral states to respond to the issue, and they have voluntarily offered their assistance to involve by sending their naval forces to join the antipiracy operation in the respective region and escort their vessels. Although it needs such assistance to mitigate the risk of piracy because its lacks of resources especially financial, Indonesia views the presence of foreign naval vessels inside its jurisdiction as a violation to its sovereignty. Instead, it has welcomed other forms of supports such training and information or intelligence exchange. Furthermore, Indonesia has performed several efforts unilaterally and together with other regional countries to address the piracy threat as well as armed robbery.

Furthermore, piracy attacks outside and on distant places has brought a new dynamic challenge to Indonesia responsibility to protect its people wherever they are. Besides its limited financial resources, the Indonesia Navy as the primary agency requires additional resources to respond to an attack. To plan and execute a naval operation beyond the country's border, the Indonesian Navy needs an adequate operational environment awareness, which is difficult to be obtained without assistance from other countries or maritime agencies. Those factors have made piracy become more prominent to Indonesia.

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*Biography

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