

Criminology Perspective on Criminal Acts in Malacca Strait

Ediwarman¹, Wessy Trisna²

^{1,2}*Department of Criminal Law, Faculty of Law, University of Sumatera Utara,*

Abstract

The study aims to discuss Acts No. 17 on Law on the Sea in 1985 in the combat against and detect the caused factors of criminal acts in Malacca Strait. BAKAMLA (Marine Security Agency) revealed that 3,519 cargo ships, 1877 tankers and 4,000 other kinds of vessels passed along the Malacca Strait during March 2016. It often causes transnational crime such as maritime piracy, illegal siphoning of oil, violation of the acts of the outer continental shelf lands, ball-pressed smuggling of used clothes, illegal fishing, marine pollution, drug trafficking, timber smuggling, terrorism, etc. The findings show that it is essential to create the Authority Body of Indonesian Malacca Strait after having ratified the UNCLOS Convention in 1982 and to renew the laws on the continental borderline at Malacca Strait with the Seashore States in the framework of crime prevention.

Keywords: Criminal acts, Malacca Strait, Regulations

JEL Classification: K420, F510

I. INTRODUCTION

The Malacca Strait is a long and narrow waterway and shared border of four littoral states namely: Indonesia, Malaysia, Singapore, and Thailand. The strait is positioned as "Life Line" between the West and East, North and South, so the Malacca Strait is one of the busiest in the world after the "Hormuz" Strait which is an international trade route and tanker traffic in the world.

The Malacca Strait is an important shipping lane in the world because it connects Asian and European economic activities. Based on the monitoring of BAKAMLA (Marine Security Agency) radar in March 2016, the number of ships passing along the Malacca Strait was 3519 cargo ships, 1877 tankers, and 4000 other vessels. This illustrates the flow of ship traffic in the Strait of Malacca. As for the geographical situation with a width of 1.5 km (the narrowest point in the Strait of Malacca) and a shallowness of 1.8 km, it is not supported for such traffic.

This condition often causes problems from various aspects that threaten the security/safety of passing vessels, so that it has the potential for transnational crime, maritime piracy, illegal fuel siphoning, in addition to crimes that violating the outer continental shelf lands act, ball pressed used clothes smuggling,

illegal fishing, marine pollution, drug trafficking, timber smuggling, terrorism and so on. Because of the large number of crimes and the location of the shared border of the Malacca Strait, then who is responsible for security issues? Indonesia as a legal state certainly has a very important role in law enforcement in the Strait of Malacca and this is also the responsibility of the littoral states as the owner of the sea boundary as stipulated in Article 3 of UNCLOS (United Nations Commission on the Law of the Sea).

II. THEORETICAL REVIEW

Each country has the right to set its outer continental shelf lands to a limit not exceeding 12 nautical miles from the baseline by the provisions of this convention but based on the *universaliteit* principle (each country with its country's law is obliged to maintain world order) [7].

For every Indonesian citizen based on the principles of criminal law, namely the principle of *legaliteit* (a person can be convicted if there is a law that applies before), *teritorialiteit* principles (every Indonesian and foreigner who has committed a crime within the territory of the Republic of Indonesia applies Indonesian law) and the *nationaliteit pasif* principles (according to this principle criminal law applies everywhere and to anyone if certain national interests are violated, for example, the security of the state and islands of the country that must be protected). Then the crime in the Strait of Malacca outside the 12-mile boundary line must still be legally accounted for.

Criminal acts in jurisprudence is awareness in giving certain characteristics of criminal law events which, according to Simouns in his book *Strafbaarfeit* cited by Lamintang (1997) [5] states that: "an act that against the law intentionally by someone can be held accountable for its acts and by Law -An act that can be punished".

According to E. Y. Konter and S. R. Sianturi (2002) [4, 12] stated that criminal acts have 5 (five) elements, namely: 1). the subject/ criminal offender, 2). Violation, 3). an illegal act, 4). an act that is prohibited by law and sanctioned by criminal law, 5). Time, place and circumstances.

Based on the description above, it is related to the theory of criminal law proposed by D. Schaffmeister and N. Keijzer, a Dutch scholar, stating that the element of criminal acts is as illustrated in the scheme below:

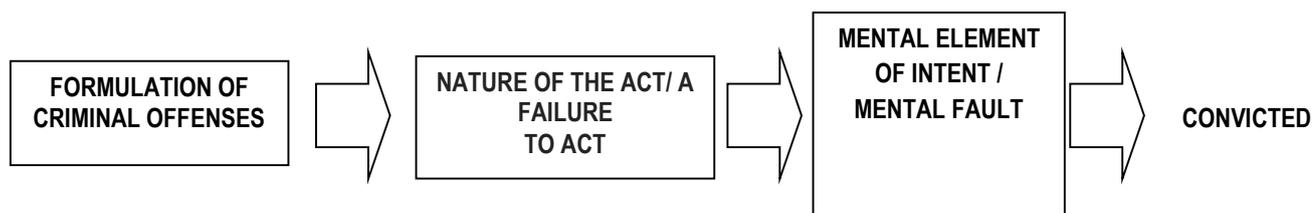


Figure 1. Element of criminal acts [1]

PROVEN GUILTY

A person can be convicted if it is determined to violate the formulation of offenses both formally (crimes that focus on acts) or materially (crimes that focus on consequences). And the second is the unlawful nature fulfilled both formally and materially and the third element is a mental fault. Mental failure according to Hooze Raad, the act was carried out: 1). a failure to act, 2). causes or threatens harm to those individual or public interests; if these three elements are proven then it can be convicted.

A criminal act is the basis of criminal offenses, so the nature of the act (Dolus) carried out to constitute an attempt (Culpa) and the circumstances of that act are taken into account, which is occasionally even decisive. A criminal attempt is a failure to act and the attempt itself is a failure to act, while the mental element of intents (Schuld) cause the criminal offenses because the person has committed unlawful nature so that the perpetrator must take responsibility for all forms of criminal offenses and the case would come to the court, then if it is proven, it will be sentenced according to the Article violated

On the contrary, the study in the perspective of criminology is a science that discusses facts, causal factors and efforts that must be made in overcoming them [8].

III. RESULTS AND DISCUSSIONS

III.I Legal rules governing criminal acts in the strait of malacca

After the UNCLOS Convention was ratified, the Law No. 17 of 1985 concerning Ratification of the United Nations Convention on the Law of the Sea was signed on April 30, 1982 by 118 countries in Montego Bay, and Jamaica participated on December 10, 1982. Since then, criminal acts in the Strait of Malacca region can be subject to the provisions stipulated in UNCLOS, where in Article 3, it emphasizes the right to safeguard peace between countries and this provision is binding on the state has ratified it in this convention. The Convention on the law of the sea above applies to every state-owned ship that crosses the free sea, while each country has the right to determine the territorial sea width to a limit not exceeding 12 nautical miles measured from the baseline specified in Article 3 UNCLOS.

An Indonesian citizen who commits a crime outside the area specified in Article 3 of UNCLOS above, then the applicable law is Indonesian criminal law in accordance with the criminal provisions in Indonesian legislation that has been

established for every person who commits a crime outside Indonesia [9].

Types of crimes that often occur in the Strait of Malacca, include:

III.I.I Violating the outer continental shelf lands acts

Crime violates the outer continental shelf lands in the UNCLOS Convention has been agreed by coastal countries such as Indonesia, Malaysia, Thailand, Singapore, but ships passing through the Malacca Strait should maintain security such as notifying ships going through the Strait Malacca and should not violate the clean water act in the waters of the Malacca Strait. The condition of Indonesia which does not have a continental shelf lands for 73 years of independent Indonesia will continue to backfire for Indonesia, Malaysia, Thailand and Singapore. This can certainly be a big problem for the relationship between Indonesia, Malaysia, Thailand and Singapore if it is not resolved in some crucial areas, because the four littoral states are not only related to maritime issues but also economic values such as fisheries and Natural Resources.

In 2011 Indonesia and Malaysia again engaged in an outer continental shelf lands conflict, the Sea Security Agency Team (BAKAMLA) arrested 2 (two) Malaysian-flagged ships (Thursday, April 7, 2011), for entering Indonesian waters. Then the Malaysian Foreign Ministry sent a protest note to the Indonesian government, they considered that Indonesian security forces had entered Malaysian waters [6, 10].

Then in 2015 a Myanmar citizen committed illegal fishing in the Strait of Malacca in the Indonesian Exclusive Economic Zone (ZEEI) using a Malaysian-flagged vessel, after arresting related documents on board it was found that documents issued by the Malaysian government did not apply to conduct fishing in Indonesian waters. For this reason, the perpetrators are still punished according to the law in force in Indonesia. In addition, there are still many transnational crimes in the Strait of Malacca, because of the geographical majority of the islands are waters. With the high geographical value and economic value in the Strait of Malacca there are always threats to security such as drug trafficking / wood smuggling, Marine pollution, and maritime piracy, illegal fuel siphoning, terrorists and so on. For this matter, it is necessary to have a very significant collaboration of the four littoral states of the Malacca Strait.

III.I.II Ball pressed used clothes smuggling

One of the crimes of ball pressed used clothes smuggling in the Malaka Strait was carried out by Indonesian citizens who smuggled ball pressed used clothes from Malaysia to Tanjung Balai and now the perpetrators were arrested by the Indonesian Navy and handed over to Tanjung Balai Customs for a judicial process in Medan High Court.

III.I.III Illegal fishing

One of the illegal fishing occurred in 2012, a Myanmar citizen was caught fishing in the ZEEI area, using a Malaysian-flagged vessel captured by BAKORKAMLA and now undergoing a judicial process in Medan High Court.

III.I.IV Maritime piracy

Some of the maritime piracy happens on December 26, 2016 which was carried out by 6 perpetrators during heavy weather and irregular/rogue waves aimed at hijacking ships but the perpetrators could be captured by LANTAMAL IV Riau Kepri. In February 2018 piracy also occurred at around 3 miles from South Perasi Island which allegedly using black magic, the perpetrators climbed barges using ropes and hooks, then they took the machinists hostage. 4 (four) perpetrators were arrested with evidence of 2 (two) portable engine boats and portable propellers and 4 machetes.

III.I.V Illegal fuel siphoning

One of Illegal fuel siphoning in the Strait of Malacca have binded the crew of a Singapore-flagged tanker and siphoned 2,900 tons of crude oil. Then they abandoned the ship in the waters north of Rupa Island, Bengkalis Regency.

III.I.VI Drug trafficking

One of the drug trafficking cases in the Strait of Malacca is 2 (two) Indonesian citizens with the initials MI (27) years and AF (28) years who crossed the Malacca Strait to Aceh carrying 7 kg crystal meth and 300 ecstasy pills, then both arrested at a different location in East Aceh.

III.I.VII Marine pollution

This marine pollution crime is caused by the large number of cross-traffic vessels in the Strait of Malacca that are always discharge waste in the sea which is very detrimental to the fishermen in the Strait of Malacca. On Wednesday, February 8, 2017, pollution occurred because of oil spills in the Strait of Malacca which had a long-term impact on the ecosystem.

III.I.VIII Human trafficking and slavery

According to a captain from Myanmar who is proficient in Malay, the victims sold for 150 Ringgit, they work on a ship

for 8 (eight) months as sex workers and then after their contract is completed then they are returned to their home country.

III.I.IX Terrorism

Terrorists are able to move from the Strait of Malacca due to adequate weapons logistics support, especially for smuggling weapons.

III.I Criminology perspective of causes and initiatives to combat criminal acts in the strait of Malacca

III.I.I Causes of criminal acts in the Strait of Malacca

Based on the criminology perspective, there are many factors that cause criminal acts in Indonesian continental shelf lands. BAKAMLA (Marine Security Agency) in eradicating crime in the Strait of Malacca stated that there was still or lack of support from stakeholder agencies. This is because several stakeholders assume that BAKAMLA is only based on presidential regulations, while marine security stakeholders are based on the law. This makes BAKAMLA, which carries out its role and function, not yet effective. Indonesia used to use a multi-agent system, where the institutional systems in which there are institutions that jointly solve the same problem. These institutions have their respective legal basis in their function as law enforcers in the sea [12]. Their activities are not yet integrated; security and law enforcement have not run optimally because each of these ministries has different policies, facilities and human resources resulting in overlapping authority. This has become a trigger for changes in the institutional system from a multi-system to a single system, which is a system that uses one institution to carry out defense and security authorities.

Based on the above and related to criminal acts in the Strait of Malacca, there are 3 (three) causes, including:

1. Violation of Indonesia's continental shelf lands.
2. Law or regulation are few and have weak standards
3. Weak law enforcement system

Initiatives to combat criminal acts in the Strait of Malacca.

In the context of law enforcement against crimes in the Strait of Malacca, there needs to be a comprehensive system improvement, especially:

1. Improved legal structure, legal substance and legal culture for the countries of Indonesia, Malaysia, Thailand and Singapore, so that in its implementation it can be coordinated in using marine patrol aircraft defense equipment owned by the four countries (Indonesia, Malaysia, Thailand and Singapore) to conduct crime prevention in the Strait of Malacca.
2. It is necessary to review the four littoral states' continental shelf lands as the first step in resolving conflicts between Indonesia and Malaysia.

3. The revision of IEEZ, Article 74 of UNCLOS must be fair to 4 littoral states so that each country adheres to the mutually agreed rules in supervising cross-traffic vessels in the Strait of Malacca and each ship passing in the Malaka Strait can be subject to payment in order to improve the environment for each coastal country

III.I.II Criminal policy against crimes committed in Malacca strait.

According to Sudarto [11], criminal policy is:

- a.. In briefly, it can be interpreted as a whole principle and method that is the basis of the reaction to violations of criminal law.
- b. In a broader sense, it is the overall function of law enforcement officials, including the workings of the court and the police.
- c. In broadest sense, it is the overall policy, which is implemented based on legislation and official bodies that aim to enforce basic norms of society.

From the definition of criminal policy above, criminal acts in the Strait of Malacca can be overcome, as follows:

III.I.II.I Penal policy

For those criminals who violate the continental shelf lands and those who commit crimes in the Malaka Strait sanctions are given, besides that, fines are also paid to coastal countries.

Example: Case of a crime committed by ZAW in the Strait of Malacca. A person whose Myanmar nationality that owns and operates fishing vessels in the IEEZ (Indonesian Exclusive Economic Zone) without SIPI (Fishing license). He violated Article 93 paragraph (2) of Law No. 45 of 2009 Jo. Law No. 3 of 2004 concerning Fisheries and he was sentenced to 8 (eight) months in prison and fined.

III.I.II.II Non penal policy

This non-penal policy is in addition to the perpetrator sentenced but also pays compensation to the victim (ie, the person who feels aggrieved due to the perpetrator's acts) and fines to the state. Example: the ZAW case above, the perpetrator is subject to a fine of IDR 2,000,000,000.- (two billion rupiah).

IV. CONCLUSIONS

Based on the above description, the criminological perspective on criminal acts in the Strait of Malacca can be concluded as follows:

1. The legal regulations that apply to criminal perpetrator in the Strait of Malacca are referred to in Law No. 17 of 1985 concerning the Ratification of the United Nations Convention on the Law of the Sea (UNCLOS 1982) concerning the Law of the Sea and Law No.1 of 1946 concerning the Criminal Code and Law No. .45 of 2009 Jo.

Law No.31 of 2004 concerning Fisheries and other laws other than the Criminal Code [2].

2. Causes and efforts to combat criminal acts in the Strait of Malacca include:

- a. Cause of criminal acts in the Strait of Malacca
 - a) Violation of Indonesia's continental shelf lands
 - b) Few and weak standard of law
 - c) Law enforcement system are low
- b. Initiatives to combat criminal acts in the Strait of Malacca
 - a) It is necessary to improve the legal system comprehensively by Indonesia and also the legal system of four littoral states (Indonesia, Malaysia, Thailand, Singapore).
 - b) There needs to be a review of four littoral states's continental shelf lands (Indonesia, Malaysia, Thailand, Singapore) post-UNCLOS 1982 conventions)

3. Criminal policies against criminal acts in the Strait of Malacca can be overcome by penal and non penal policy (fines and compensation to victims).

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