

# Inhibiting Factors Implementation of Tripartite Agreement in Indonesia

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## Abstract

The environment of the world is a gift from Allah SWT without a healthy environment, the survival of the future is a necessity. The most important and urgent problem now is pollution, especially contamination of the marine environment. One of the most vulnerable places in the world today is the Malacca Strait, as many accidents vessel leading to high levels of pollution in this strait. One solution to this problem is the publication of The Agreement on Navigation Safety in The Straits of Malacca and Singapore in 1977 or commonly known as the Tripartite Agreement. However, instead of diminishing the problem of marine pollution due to accidents, especially ship in Indonesian waters in the Malacca Strait was even more severe. As for the problem of this research is the lack of clarity of legislation as one of the barriers faced by Indonesia in the implementation of the tripartite agreement. This method using a right socio-historical approach and conceptual approach used in the legal approach and the sociological approach is used to support the legal approach. The legal material used is material in International Law and National, also conducted interviews to those who have relevance to this study. The data collection process will be done in the literature and the field. The results based on the theory of joint Edy Pratomo, Indonesia should made the Tripartite Agreement is added to the basis of the formation of the implementing regulations in terms of environmental pollution control marine in the waterway since the tripartite agreement does not require ratification in implementation and problems control was important and urgent for the survival of many citizens Indonesia. Later this regulation will also serve as an effort to harmonize and synchronize the many regulations in Indonesia regarding the control of pollution of the marine environment.

**Keywords:** Regulation, The Tripartite Agreement, Malacca Strait

## 1. Introduction

### 1.1 Background

The environment is a gift of Allah shall be preserved and developed abilities, in the absence of a healthy environment, the survival of the future is a necessity. The most important and urgent problem now is pollution, especially contamination of the marine environment for many living things that depend on it. One of the most vulnerable places in the world today is the Malacca Strait because its geographical causes of this straight into the most populous and busiest straits so many accidents vessel leading to high levels of pollution in this strait.

This problem is already often discussed either by the coastal State and between the coastal State with the User State Strait through conventions and international agreements. One of them is the Agreement on Navigation Safety in The Straits Of Malacca and Singapore in 1977 or commonly known as the Tripartite Agreement. An international agreement is a continuation of international agreements that have been there before, namely: Joint Statement on the Straits of Malacca and Singapore Straits 16 November 1971 Joint Statement and February 15, 1975. This agreement is expected to be a legal basis for third-country participants to make pollution control policies (anti -pollution) in their respective countries. Especially for Indonesia through an international agreement is expected to issue a legal and political Strait of Malacca to Indonesia can be missed. So expect to control pollution in the waterway may occur.

However, until now it can not happen because one of the barriers is the problem of unclear legislation in Indonesia on pollution control the marine environment in the Straits. Laws in the field of marine and contamination of the marine environment today are many and scattered, but not in sync and harmony with each other. This case further compounded because there is inconsistency in Indonesia regarding implementing or applying monomer stream flow dualism in international law, in particular, to enter into the agreement tripartite Indonesian national law. Though based on the principles of international law, namely *Pacta Sunt Servanda* Indonesian automatically obliged to implement the agreement. One way is to regulate the treaty into national law Indonesia through government policy

### 1.2 Formulation of the problem

As for the problem of this research is the lack of clarity of legislation as one of the barriers faced by Indonesia regarding the implementation of the tripartite agreement.

## 2. Research Methods

The research method used normative juridical. In this paper, historical and conceptual approach were to support the legal approach. The legal material used is material to study Law International Law and National Law, namely: Legal Primer material in the form of international treaties, national legislation. As well as secondary legal materials such as books, research, and legal dictionary. It also conducted interviews to those who have relevance to this study. The data collection process will be done in the literature and the field. As for the processing and analysis of data through the stages of editing, coding and constructing / systematic which is then analyzed using qualitative analytical, descriptive method.

### 3. Discussion

The Agreement on Safety Navigation in the Straits Of Malacca and Singapore in 1977 or commonly known as the Tripartite Agreement against the background of technological development and densities shipping in the waterway; increase the width of the territorial sea of Indonesia, Malaysia and Singapore in the Malacca Strait; Japanese interests and their hydrographic survey in the waterway; geopolitical position of Indonesia, Malaysia and Singapore in the Malacca Strait and Showu Maru incident in the Strait of Malacca in 1975. The development of the Tripartite Agreement then continues from several meetings that occur both meetings between Foreign Ministers Turkish Straits of Malacca; Meeting of Turkish Straits of Malacca and the Straits User State; and the Meeting of Turkish and IMCO (IMO). Also in the future will also be working together to improve control of pollution of the marine environment in the Straits are sourced from the ship. Tripartite Agreement itself has a critical role for the State and the Turkish Straits of Malacca Indonesia, namely (1) Indonesia can maintain the sovereignty and laws (12 miles); (2) Indonesia can defend the agreement that has been made by Malaysia and Singapore; (3) Indonesia can maintain The provisions of international law that ensures a balance between the interests of those countries straits and maritime nations (the channel); (4) Indonesia can maintain the unity of views and positions between the three littoral states as friends and neighboring countries both within ASEAN in the face of maritime nations (the strait); and (5) Indonesia can defend shipping safety, security, and sustainability shores of a variety of marine pollution are becoming increasingly large, mainly from the giant tanker ships passing in the strait can be overcome.

Marine environmental pollution control problems in the Malacca Strait, itself have discussed since 1970 by Indonesia, but this issue instead of declining even more severe every year even though the existing Tripartite Agreement. It is due to several factors inhibiting. That is:

- 1). The lack of clarity of legislation in the field of pollution of the marine environment in the Straits of Malacca
- 2). The problem of overlapping authority of the government in controlling issues of contamination in the waterway; and
- 3). The lack of facilities and infrastructure, pollution control marine environment in the Straits of Malacca

#### *3.1 Regulation in Indonesia on the Marine Environment Pollution Control*

Indonesian marine settings began before independence era began. Ruler premises at the time was very aware of the importance of this can be seen from the unification territorial waters of the archipelago under the Majapahit empire, and the issuance of regulations called the Territorial Sea, as well as Indonesian Maritime Environment. (Territorial Zee en Maritime Kringen Ordinance or TZKMO) in the Dutch colonial era.

Regulation on marine policy and then experienced rapid development in the period after independence began with the publication of the abolition TZMKO Juanda Declaration of 1957; Issuance of Government Regulation in Lieu of Law (Decree) 4 / Prp.1960 promulgated on February 18, 1960 which was later repealed by Act No. 6 of 1996 Indonesia; The issuance of Government Regulation of the Republic of Indonesia Number. 8 of 1962 on Traffic Peace Foreign Vehicles in Indonesian waters; Publishing Law No. 1 of 1973 on Indonesian

Continental Shelf in order to accommodate the Convention on Law of the Sea; Publishing announcement regarding the Government of the Republic of Indonesia Indonesian Exclusive Economic Zone on March 20, 1980; Publishing Law of the Republic of Indonesia Number 5 About the Indonesian Exclusive Economic Zone; Publishing Law No. 9 of 1985 on fisheries which was later replaced by Act No. 31 of 2004 on Fisheries; Ratification of the Convention on Law of the Sea to enact the Law of the Republic of Indonesia Number 17 Year 1985; The issuance of Government Regulation No. 61 of 1998 on the Geographic Coordinates Dots Base The base of Straight Line Islands in the Natuna Sea and Government Regulation No. 38 of 2002 on List Baselines of Indonesia; Publishing Indonesian Presidential Regulation No. 78 Year 2005 on the Management of Minor Outlying Islands on December 29, 2005; Publishing Law Number 22 Year 1999 on Regional Government which has been repealed by Act No. 32 of 2004. In addition in the form of regulation are also several Indonesian Government's policy in the field of marine after Juanda Declaration such as: publishing the guidelines in 1993; Publishing Guidelines 1998; Implementation Interdep Workshop on Implementation of the Archipelago in 1980; Implementation Workshop 1996 Maritime Continent; Preparation of Agenda 21, Indonesia; Issuance of Long Term Development Plan and Medium Term Indonesia (RPJN and RPJMN); Marine Policy Publishing Indonesia (KKI); Formation of Indonesian Maritime Council; and Publishing Vision, Mission and Action Programme Jokowi and Jusuf Kalla 2014 (Nawa Cita).

Also, Indonesia also has settings to control pollution damage to the sea in Indonesia in the form of legislation; Environmental Pollution Control Strategy of the National Marine both regarding prevention, prevention of marine pollution, marine quality recovery; handling emergency oil spills at sea, and control.

But unfortunately, much Indonesian policies on Marine Pollution in the form of legislation and lead to new problems besides wisdom does not always repeat of the completion and marine pollution in the Straits of Malacca, also gave the overlap between law enforcement authorities. There should be a legislation particular course that discussed the control of contamination of the marine environment originating from ships in the waterway, this is due to issues regarding the control of pollution from ships not only contain national law alone but must also include an element of international law for Strait Malacca is the ownership of the three Turkish state. This case consistent with the narrative rather than Heni Agustina, the Deputy Head of Combating Environmental Degradation Control of Coastal and Marine, Ministry of Environment and Forestry, dated August 21, 2015, in the Office of the Ministry of Environment and Forestry, D.I Jalan Panjaitan Kav. 24 Kebon Nanas, East Jakarta, which states the need for special rules for the control of pollution of the marine environment as a result of the accident the ship in the Malacca Strait. Marine environmental pollution control that is now only based scheme conducted nationally only. Not based on the circumstances that exist in the navigation now. Also, tripartite agreements which are the basis of protection of the marine environment is still not a legal foundation for the establishment of marine environmental protection regulations in the waterway. If there is any discourse made, then it will be handed over to the area to create a legal umbrella in the form of rules. Giving rise to the ineffectiveness of the tripartite agreement to control pollution

### *3.2 Combined Theory and Control of Marine Pollution in the Straits of Malacca*

There are two streams in the pattern of state practice in looking at the relationship International Law and National Law that flow Monism (incorporation) and Flow Dualism (transformation). According to Flow Monism, international law (particularly international agreements) will immediately become part of the national legislation of a country after all terms of entry into force are met, without the need for the establishment of state law. Monism flow consists of monism primacy of national law adopted by J. J. Moser, C. Bergbohm, A. Zorn, M. Wensel. And monism primacy of international law adopted by W. Kaufmann, Hans Kelsen, A. Verdoss, G. Scelle. The Monism primacy of national law putting federal law precedence over international law because international law is not a form of individual behavior guidelines. The top priority is the interests of the countries concerned, in which it ruled out the existence of international law as an independent and separate entity. While the primacy of international law Monism found, there is a unity of the legal system in which international law was on the top level as a result of national law must always follow international law.

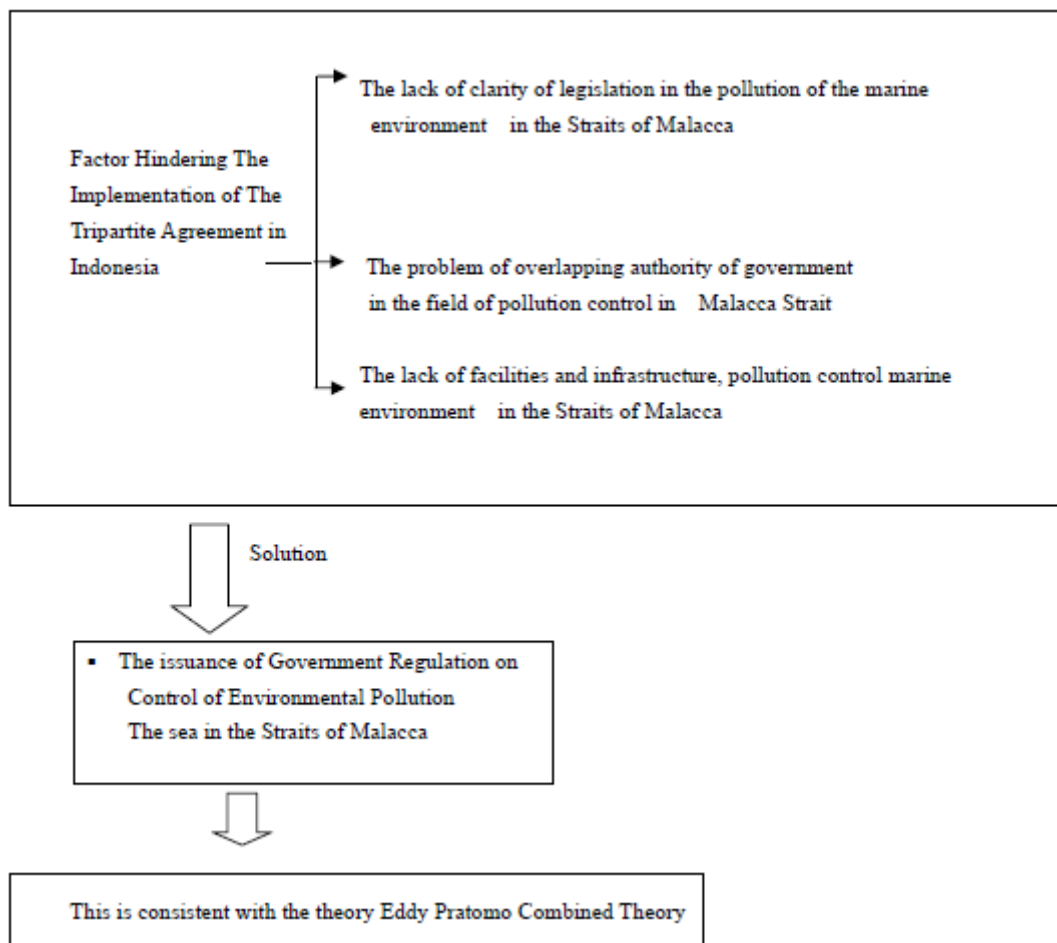
While that is a dualism stream, is a stream which states that international law will become part of state law if there has been a national legislation that accommodates the application of international law it beforehand. Some scholars Triepel are H. and D. Anzilotti.

So far the Indonesian Legal System (SHI) has not indicated whether embraced monism, dualism, or a combination of both. However, in the literature of Indonesia, Mochtar Kusumaatmadja clearly photograph that Indonesia led to monism primacy of international law and suggested that the future political law is taken from this stream. However, in line with the times, or a combination merger theory is the safest alternative for Indonesia. Seen from some experts who suggest that such is Hickman to Juwana, Mieke Komar Kantaatmadja, and Endang Syaefullah.

Combined theory is a theory that combines theory and dualism monism, where monoisme (incorporation) is used for international agreements concerning the attachment to the subject of international law externally. While dualism (transformation) used for agreements creating rights and obligations for all citizens. This applies to international agreements Tripartite Agreement between Indonesia-Malaysia-Singapore. In this treaty ratification process is not necessary for terms of enforcement, but because of the shape of this international agreement involving more than one country requires strict regulations in each country, whether relating to coastal states and states of the Malacca Strait users.

These rules set out more about the technical implementation of the treaty so that the rights and obligations in the regulatory process more visible (flow dualism). Whereas in the case of application in Indonesia to control pollution of the marine environment are regulated under this agreement is a necessity due to environmental concerns and pollution control is a matter of importance and urgency that demands an awareness of Indonesian citizens at the present time also without requiring a process of ratification in advance, in order to save future generations (flow monism)

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### References

- Agusman, D. D. (2010). *Hukum perjanjian internasional: kajian teori dan praktik Indonesia*. Refika Aditama.
- Agusman, D. D., & SH, M. (2008). Status Hukum Perjanjian Internasional dalam Hukum Nasional RI Tinjauan dari Perspektif Praktek Indonesia. *Indonesian Journal of International Law*, 5(3).
- Arif Havas Oegroseno dalam presentasinya berjudul *Kebijakan Indonesia dalam Keamanan Laut di Selat Malaka* pada pelatihan Hukum Laut di Bandung 27-29 Juli 2010.
- Arifin, S. (2012). *Hukum perlindungan dan pengelolaan lingkungan hidup di Indonesia*. Sofmedia.
- Bambang, S. (2009). *Metodologi Penelitian Hukum*, Rajagrafindo, Jakarta
- Beeb, A. K. Djundjuran pada pelatihan Hukum Laut di Bandung 27-29 Juli 2010



- Bandy, W. Jr. (1997). *Malaysia, Singapore and Indonesia Controlling The Malacca Straits*, Monterey: Naval Postgraduate School, [www.dtic.mil/dtic/fulltext/u2/a342286.pdf](http://www.dtic.mil/dtic/fulltext/u2/a342286.pdf). akses 27 November 2013
- Bateman, S., Raymond, C. Z., & Ho, J. (2006). *Safety and Security in the Malacca and Singapore Straits: An Agenda for Action*. Institute of Defence and Strategic Studies, Nanyang Technological University.
- Brownlie, I. (2003). *Principle of Public International Law*, Edisi ke-6, Oxford
- Brown, E. D. (1994). *The international law of the sea* (Vol. 1). Dartmouth Pub Co.
- Boukhari, S. (1998). *Marine Blues, 20.000 World Under The Sea*, Ocean pollution, UNESCO Courier.
- Capon, C. J. (1998). The Threat of Oil Pollution in the Malacca Strait: Arguing for a Broad Interpretation of the United Nations Convention on the Law of the Sea. *Pac. Rim. L. & Pol'y J.*, 7, 117.
- Churchill, R. R., & Lowe, A. V. (1999). *The law of the sea*. Manchester University Press.
- Cicin-Sain, B., Knecht, R. W., Jang, D., & Fisk, G. W. (1998). *Integrated coastal and ocean management: concepts and practices*. Island Press.
- Dadang, S. (2015). Saatnya Negara Berdaulat di Laut, Koordinasi Lintas Sektor dalam Mendukung Pembangunan Kemaritiman, PPRA LIII Lemhanas-RI, Ged. Panca Gatra Lemhanas-Jakarta, 4 Mei
- Damian, E. (2003). Beberapa Pokok Materi Konvensi Wina Tahun 1969 tentang Hukum Perjanjian Internasional. *Jurnal Hukum Internasional*, 2(3).
- Gerke, S., & Evers, H. D. (2011). Selat Melaka: Jalur Sempit Perdagangan Dunia. *Akademika*, 81(1), 5-14.
- Ibrahim, H. M., & Hairil, A. H. (1974). *Maritime Institute of Malaysia, Executive Summary: Profile of the Straits of Mallacca: Malaysia's Perspective*, Maritime Studies and Management.
- Ian, B. (2003). *Principle of Public International Law*, Edisi ke-6, Oxford.
- Kebijakan, K. I. (2012). Buku II, Dewan Kelautan Indonesia, Kementerian Kelautan Dan Perikanan Republik Indonesia, Jakarta
- Lina, M. R. (2010). *Pengaturan, Kerja Sama dan Tantangan bagi Diplomasi Indonesia di Selat Malaka*, Jurnal Diplomasi, Diplomasi Perbatasan dan Pembangunan Wilayah Terluar Indonesia, 2(4).
- Masuda, T. (2005). The Straits of Malacca: Critical Sea-Lane Chokepoint. *Emerging Threats to Energy Security and Stability*, 183-193.
- Modul, D. (2009). *Pengelolaan dan Pengendalian Pencemaran Air Laut*, Pusat Pendidikan dan Pelatihan Kementerian Lingkungan Hidup.
- Pratomo, E. (2011). Hukum Perjanjian Internasional: Pengertian, Status Hukum dan Ratifikasi.
- Samekto, A. (2009). *Negara Dalam Dimensi Hukum Internasional*. Bandung: PT Citra Aditya Bakti.

Sien, C. L. (1998). Alternative routes for oil tankers: A financial, technical and economic analysis. *The Straits of Malacca: International Co-operation in Trade, Funding & Navigational Safety, Petaling Jaya: Pelanduk Publications*, 103-104.

Zainal, A. D. A. (2004). Pengantar Metode Penelitian Hukum.

Prosiding, R. K. T. (2016). Direktorat Jendral Pengendalian Pencemaran dan Kerusakan Lingkungan Kementerian Lingkungan Hidup dan Kehutanan Republik Indonesia, Hotel Bidakara Jalan Gatot Subroto Jakarta, 21-23 Maret.

Rencana, K. T. (2016). Direktorat Jendral Pengendalian Pencemaran dan Kerusakan Lingkungan Laut Kementerian Lingkungan Hidup dan Kehutanan Republik Indonesia.

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