



Padjadjaran Journal of International Law
International Law Department Universitas Padjadjaran
ISSN:2549-2152, EISSN:2549-1296
Volume 7, Number 2, June 2023
DOI: <https://doi.org/10.23920/pjil.v7i2.1406>

**The Use of Private Contracted Armed Security Personnel (PCASP)
As An Anti-Piracy Measure and Solution**

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Abstract

The sea route is one of the best options chosen by national and international traders because of its lower cost when compared to air freight. Unfortunately, the increasing use of merchant ships for international trade increases the rate of sea piracy and armed robbery. To protect against these things, commercial vessels use the services of the Private Contracted Armed Security Personnel (PCASP) and the Private Maritime Security Company (PMSC). The absence of international regulations regarding the use of these services raises pros and cons between coastal states and particular policies, particularly regarding the territorial sea of a coastal state. Thus, there is a big question of whether the use of PCASP and PMSC is in accordance with international law and existing regulations and how Indonesia, as a coastal state, sees such services as a solution to avoid piracy. The formation of soft laws and agreements is a way out at this time to maintain maritime security from the dangers of sea piracy and armed robberies.

Keywords: PCASP, PMSC, Maritime Security, Armed Robberies, Piracy

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A. INTRODUCTION

The sea has become a route for various uses, ranging from exploration to trade. Since ancient times, marketing by sea has become common because it was the only route that could be used before the existence of airplanes. Merchants by sea carry various kinds of goods from the country where they live to other countries far away by ship.³ This can be exemplified a few hundred years ago when European traders from Indonesia (Nusantara) brought spices to sell in Europe at very high prices because there were many spice enthusiasts in Europe to warm their bodies when winter arrived.⁴ Merchandise via sea also becomes a crucial and essential medium with its ability to explore more efficiently and quickly when compared to travel by land, which also has to use sea intermediaries to move from island to island or continent to continent. According to Hasim Purba in his book "*Hukum Pengangkutan di Laut*", *pengangkutan* or transportation is "the activity of moving people and or goods from one place to another either through land transportation, water transportation or air transportation using means of transportation. So transportation is a form of activity to move goods or passengers (people) from the place of origin to a particular destination."⁵

Decades have passed, and the sea has increasingly become the best option chosen and used for trade. Cargo ships began to appear to carry out work between countries and even between continents. Seeing this growth, threats to security and

peace at sea emerged and became a severe matter for protecting vessels passing in certain areas. International peace and security in the oceans are currently faced with various threats. For example, piracy and armed robbery against ships are beginning to be serious problems that endanger seafarers' welfare, the safety of the crew at sea, and the goods they carry.⁶

Maritime piracy is considered to be the most ancient international crime. Modern-day piracy at sea is connected in a multitude of ways both to the organized crime and black market/underground economy of these developing countries, as well as the general state of lawlessness, lack of government, and corruption. Modern piracy is a severe threat to shipping, especially on the trade routes between Europe, Africa, and Asia. Crewmembers and passengers have been and continue to be injured, abducted, or even killed in pirate attacks. There are various options to fight piracy: Ship owners should observe the latest warning notices and safety levels when operating ships in areas threatened by piracy. Crews should be prepared by training and their ships fitted with appropriate defense technology. Lastly, privately contracted armed security personnel provide additional protection against piracy.⁷

According to the UNCLOS 1982 Article 101 states that *Piracy* in point (a) is any illegal act of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed: (i) 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 of

³ Lincoln Paine, *The Sea and Civilization: A Maritime History of the World* (City: Atlantic Books Ltd, 2014) at 3-10.

⁴ Susanto Zuhdi, "Shipping Routes and Spice Trade in Southeast Sulawesi in the 17th and 18th Century," *Journal of Maritime Studies and National Integration*, vol. 2, no. 1, pp. 31-44, (2018) at 31. <https://doi.org/10.14710/jmsni.v2i1.3100>.

⁵ Lukas Yance Putra Posende, "*Tanggung Jawab Pengangkut pada Perjanjian Pengangkutan Barang Melalui Laut Ditinjau dari Pasal 468 KUHD tentang Pengangkutan Barang. (Analisa Putusan Mahkamah Agung Nomor 2316 K/ Pdt/2015)*", *Rechtsregel Jurnal Ilmu Hukum* Vol. 2, No. 2, December 2019, pp.. 695.

⁶ Yoshifumi Tanaka, *The International Law of the Sea*, Cambridge: Cambridge University Press, 2012, at. 353.

⁷ Nilasari and Lorna Steele, "*UNCLOS Definition of Piracy: Is it still Relevant for Modern Piracy?*", *Mulawarman Law Review*, Vol. 7, No. 2, December 2022, pp. 89.

an aircraft with knowledge of facts making it a pirate ship or aircraft; (c) any of inciting or of intentionally facilitating an act described in subparagraph (a) or (b). Piracy is not a new issue and has been around for decades and has caused loss of life and property for the shipping industry.

As a result of the seriousness of this maritime security issue, piracy is mentioned in the 1982 United Nations Convention on the Law of the Sea (UNCLOS), where all member countries are required to cooperate and work together as much as possible to suppress piracy and robbery on the high seas or other places outside the jurisdiction of any State.⁸ This is also mentioned in the UNCLOS Article 100, which states that all States shall cooperate to the fullest possible extent in the repression of piracy on the high seas or any other place outside the jurisdiction of any State. *The International Maritime Organization (IMO) Maritime Safety Committee (MSC)* has been discussing the issue of piracy since 1984. Since that year, it has passed many resolutions and circulars related to piracy and armed robbery.⁹

With the increasing prevalence of piracy and armed robbery in the middle of the sea, private ship companies have begun to switch and use armed guards on their ships for reasons such as to maintain the safety of these ships. Armed Guards are usually formed by crew members who carry weapons on board. As a result of the enormous enthusiasm for armed guards, protecting these ships has become a service business. It is increasingly widespread because private or commercial vessels need to protect their boats from attempted piracy or armed robbery. This business is usually known as the Private Maritime Security Company (PMSC). PMSC

is a private company specializing in maritime security.¹⁰

Nowadays, PMSCs vary from boutique companies that are par single client or small consortium of clientship operators to significant security.

Conglomerates which may incorporate hundreds of land-based and maritime clients, and over 30 PCASPs protecting client vessels at any given moment. PMSC engages in protection services for merchant ships passing through vulnerable areas.¹¹ Initially, the idea of combating piracy with armed escorts on board was not recommended by IMO because it could increase violence and cause harm to crews, ships, and coastal states, as stated in Annex IMO MSC Circular MSC.1/Circa—1333 which was legalized in June 2009.

However, the threat of piracy particularly in the Gulf of Aden and the Arabian Sea increased in 2010 and 2011, forcing many owners to seek solutions to protect their valuable cargo while in transit in the region. So far, the most popular solution chosen by ship owners is to employ a private maritime security company to ensure the safety and security of crews, ships, and cargo. This PMSC protects merchant ships that pass around the Malacca Strait, the Indian Ocean, and the Gulf of Aden. This area is referred to as the HRA or High-Risk Area. The use of PMSC services has pros and cons. However, international law itself does not explicitly state that there is a prohibition against using this service. The MSC IMO Annex only says that they do not recommend using fire weapons on commercial ships, which means using this PMSC.

The International Maritime Organization is an organization that

⁸ Zarina binti Abd Razak, Wan Siti Adibah binti Wan Dahalan, dan Nur Syakirah binti Maimun Aqsha Lubis, "Privately Contracted Armed Security Personnel (PCASP) and States Domestic Regulation", Legal Network Series. No. 1 LNS(A) 143, 2018, pp. 2.

⁹ IMO, "Maritime Security and Piracy", <https://www.imo.org/en/ourwork/security/pages/maritimesecurity.aspx>.

¹⁰ Jan Stockbrugger, "US Strategy and the Rise of Private Maritime Security", *Security Studies*, 30:4, 2021, pp. 578-602, DOI: 10.1080/09636412.2021.1976821.

¹¹ Ilja van Hespén, "Protecting Merchant Ships from Maritime Piracy by Privately Contracted Armed Security Personnel: A Comparative Analysis of Flag State Legislation and Port and Coastal State Requirements", *Journal of Maritime Law & Commerce* Vol. 45 No.3, 2014, pp. 361-383.

regulates maritime affairs, it also does not explicitly prohibit the use of PMCS, but IMO in 2011 issued a guideline called Best Management Practice 4 (BMP4) for commercial companies on the dangers of piracy when crossing waters prone to piracy and armed robbery. This action taken by IMO is considered a good step. It is appreciated because it benefits the marine or maritime industry by preventing things that can harm commercial ship companies.

¹²

However, this guideline born from the IMO MSC is not a clear complex law nor a legal product where ships, according to Article 92 UNCLOS 1982, are subject to the jurisdiction of the flag state on the boat in the high seas. In September 2011, IMO produced Best Management Practice 4 for Protection Against Somalia-Based Piracy (BMP4) which aims to help ships avoid, prevent or delay piracy attacks in High-Risk Areas. BMP4 further defines the existing HRA on the BMP as "the area bounded by the Suez and the Strait of Hormuz to the North, 10° South Latitude and 78° East Longitude".¹³

The increased threat to commercial shipping transiting East African coastal waters by Somali-based pirates has led to extensive use of armed guards and a corresponding expansion in the number of companies offering specialist armed maritime security services. Attacks have occurred at most extremities of the HRA, including at 78 degrees East. The possibility remains that they could take place further out. It should be noted that attacks have extended as far south as into the Mozambique Channel and below 10 degrees South; therefore, a high state of

vigilance should be maintained even south of the southerly limit of the HRA.¹⁴

While Somalia is a severe example, identical risks of political unsustainability exist worldwide, whether in civil conflict, regime change, or authorities' incompetence and corruption. Simply put, the improvement answers are handiest as robust because of the respective governments of the coastal states; as an international approach, counter-piracy improvement is handiest as robust as its politically weakest link.¹⁵ Looking at the growth of using private armed guards by the shipping industry, MSC IMO during its 90th Session at IMO headquarters from 16th to 25th of May 2012 approved several circulars and provided interim guidance to all parties relevant and concerned with the matter. MSC. 1/Circ. 1405/ Rev.2 deals with *Revised Interim Guidance* for ship owners, ship operators, and shipbuilders regarding the use of PCASP on board ships in high-risk areas. MSC. 1/Circ. 1406/ Rev.2 provides provisional recommendations for provisional Flag States MSC.1/Circ. 1443 is an interim guideline for private maritime security companies (PMSCs) providing Private Contracted Armed Security Personnel or PCASPs.¹⁶

With the enactment of all these circulars, IMO knows that the use of PCASP by ship owners has become a necessity and is a relatively effective way of ensuring the safety and security of ships. Thus, this is the right time to disseminate all circulars as a guide to ship owners, ship operators, shipbuilders, flag states, and PMSCs. The ever-increasing demand for PMSC and PCASP is a reason that shows that the presence of PCASP on board can contribute in many aspects. The company PCASP can increase security and motivate crew members to sail from one country to

¹² International Maritime Organization. *Private Armed Security – IMO Approves Further Interim Guidance on PCASP*.

<https://www.imo.org/en/OurWork/Security/Pages/Private-Armed-Security.aspx>

¹³ BMP4, *Best Management Practicessss for Protection againts Somalia Based Policy: Suggested Planning and Operational Practices for Ship Operators, and Masters of Ships Transiting the High Risk Area*, Scotland: Witherby Publishing Group Ltd, 2011, at 4.

¹⁴ *Ibid* at 4.

¹⁵ Paul R. Williams and Lowry Pressly, "Maritime Piracy: A Sustainable Global Solution", case Western Reserve Journal of International Law. Vol. 46, No. 1, 2014, pp. 187.

¹⁶ Zarina binti Abd Razak, *supra* note 8 at. 3.

another. It is also a guarantee for tenants to protect their valuable cargo.

When no ships with PCASP have been hijacked, PMSC can be considered a growing industry and a country may want to think about ways of maintaining their PCASP that can benefit society and industry. Nevertheless, IMO also emphasizes that ships should implement all necessary precautions as recommended by BMP4 before using PCASP. Employing a PCASP should only be a complementary measure after all other precautions have been taken.¹⁷ Even though PCASP and PMSC are said to be one of the existing solutions and perhaps the best to guard against piracy and armed robbery on commercial ships, Indonesia still does not regulate them. It will continue to insist on and oppose any proposal regarding PMSC licensing. The main argument related to this lies in the need for national and international instruments that regulate PMSC. Seeing this, Indonesia is not a country that has a few commercial ships; Indonesia itself has around 447 oil tankers and about 1,750 large cargo ships (containers) with Indonesian flags on their boats.¹⁸

Based on the above information, a couple of questions arise as to how the regulation of the Private Maritime Security Company (PMSC), which provides Private Contracted Armed Security Personnel (PCASP) services to maintain the security of commercial ships according to the current International Organization and how does the Republic of Indonesia see this perspective on the use of PMSC and PCASP and also the implementation of it?

B. DISCUSSION

1. Overview and the Emergences of Private Contracted Armed Security Personnel (PCASP) and Private Maritime Security Company (PMSC)

The sea according to Law of The Republic of Indonesia Number 32 of 2014 about Maritime Affairs is regulated in Article 1 Paragraph 1 which states that the sea is the water space on the face of the earth that connects land with land and other natural forms, which are geographical and ecological units and all related elements, and whose boundaries and systems are determined by statutory regulations and international law.¹⁹ The sea is an area that surrounds a country or land which is a place for land living things.

Crimes within the jurisdiction of a particular region or country can cause conflicts of authority between governments, coasts, citizens, and resources within the country.²⁰ The sea is one of the options chosen by national and international traders because the costs are lower when we compare it to air or an airplane. The increasingly widespread use of commercial ships for global trade has made many individuals take advantage of this, such as piracy, piracy, and armed robbery. To protect against these things, commercial ships use the services of Private Contracted Armed Security Personnel (PCASP) and Private Maritime Security Company (PMSC).

Private Contracted Armed Security Personnel (PCASP) and Private Maritime Security Companies (PMSC) are private companies that guard commercial ships using firearms to prevent piracy and armed robbery in waters or sea areas. These

¹⁷ *Ibid.* at. 3-4.

¹⁸ Ilja Van Hespen, *supra* note 11 at 389.

¹⁹ Indonesia, Law No. 32 of 2014 on the Oceans, Article 1(1): "The sea is the water space on the surface of the earth that connects the land with the land and other natural forms, which constitutes a geographical and ecological unity with all related elements, and whose boundaries and systems are determined by the rules of international law and law."

²⁰ Yordan Gunawan, "Penegakan Hukum Terhadap Pembajakan di Laut melalui Yurisdiksi Mahkamah Pidana Internasional", *Jurnal Media Hukum*. Vol. 19, No. 1, 2012, pp. 74.

companies are increasingly in demand by commercial ship companies to protect the goods they carry from piracy. PCASP and PMSC currently have no concrete regulations regarding the two services, but several international organizations have started discussing the existence of this private security. Despite these criticisms, due to the lack of law enforcement capabilities of littoral developing countries and the increasing number of armed robberies against ships, the use of PCASP to defend against piracy and armed robbery threats has been considered a valuable and popular practice within the shipping industry.²¹ In this section, there will be a discussion of international organizations and their regulations that can be tied to PCASP and PMSC services.

The PCASP is usually composed of former military or law enforcement personnel. Still, those from other relevant backgrounds may be equally suitable for the task, so no general background conditions are required. Most PMSCs have conducted background checks to remove unqualified recruits, as stipulated in IMO and ISO standards, and industry self-regulation. No one with a history of alcohol or drug abuse should be selected and there is usually an age limit of above 18. A standard contract that stands out, GUARDCON²² sets a limit for a security team of at least four members, although the normal is usually 2-3. They should have a team leader (TL) who is more experienced and competent in ship vulnerability and risk assessment. One of the PCASPs should be qualified as a medical team.

The PCASP also needs to be trained for its mission. However, most states have assigned responsibility to the shipping industry and PMSCs to control the use of PCASP at sea.²³ Maritime security is an essential requirement for merchant vessels. Maritime criminals and pirates continue to target ships for the value of their cargo or crew for the subsequent ransom payouts. As a result of swift international action the maritime industry witnessed a decline in piratical activity off the coast of Somalia; however, new threats are on the rise. Recent reports suggest a steady uptick in incidents of piracy in regions such as the Gulf of Guinea.

Maritime piracy or sea piracy is defined in Article 101 of UNCLOS 1982 as an act of violence detention, or deprivation, carried out for personal purposes by the crew or passengers of private ships directed against other ships on the high seas or outside the jurisdiction of any state. All states can claim this is an *erga omnes* crime as their jurisdiction. The crime of sea piracy committed in inland waters is referred to as "armed robbery at sea", a crime whose jurisdiction will become the authority of the coastal state.²⁴

Maritime piracy and armed robbery at sea in modern times is an organized crime and is a profitable business that piracy groups and networks carry out. Global damage caused by piracy is estimated at 6.6 to 6.0 billion USD through commercial fraud, lost cargo, and delays. Pirates can drive political instability through the corruption of state officials or as a source of income for insurgents and terrorists. Pirates often come from poor backgrounds or are fishermen governed by criminal networks. It is estimated that only around 30% of the loot or ransom was paid to the individual

²¹ Masamichi Hasebe, "The use of Privately Contracted Armed Security Personnel (PCASP) to defend against the threat of Piracy Differences between Japan and the UK", Journal of Maritime Researches Vol. 4, 2014, pp. 45.

²² GUARDCON is an agreement for the hire of the services of private maritime security guards on ships – either armed or unarmed. The latest edition of this contract is GUARDCON, issued in 2012., <https://www.bimco.org/contracts-and-clauses/bimco-contracts/guardcon>

²³ Katinka Svanberg, "The Use of Private Maritime Guards as an Innovative Means to Fulfil states duty to cooperate in the repression of maritime piracy", International Journal of Maritime Crime & Security (IJMCS). Vol. 1, No. 2, September, 2020, pp. 36.

²⁴ *Ibid.* at 32.

pirates, while pirate groups or networks took the central part. In cases of armed conflicts such as in Somalia when terrorists or insurgents engage in piracy, or the Philippines, it can be a source of income to support their cause. Most UN Security Council resolutions on Somalia stress the relationship between a peaceful, functioning state with law and order as a precondition for eliminating piracy.²⁵

a. United Nations Convention on the Law of the Sea 1982 Regarding the Use of PCASP and PMSCs

The United Nations Convention on the Law of the Sea 1982, better known as UNCLOS 1982, results from codifying existing international legal norms, both customary law and existing norms. UNCLOS 1982's convention does not explicitly regulate Private Maritime Security Company (PMSC) or Private Contracted Armed Security Personnel (PCASP). One of the things that makes the presence of PMSC and PCASP a concern is whether they are trying to replace the role or function of the government and take over responsibility for maritime security and security in general. A sovereign maritime country will refuse the permit of ships with PCASP on it to transit in the territorial waters of their land because the duty to ensure the safety and security of the maritime area is within the power and prerogative of the public authority of said naval country.²⁶

Under this convention, all governments are pushed and required to work together to fight piracy on the high seas.²⁷ The use of PCASP also raises several pros and cons, such as whether a sailing ship that uses PCASP services on it as a security guard can be categorized as an innocent passage or not. What can be seen in the UNCLOS 1982 regulations that we can associate with commercial ships using PCASP services is the regulation regarding the principle of the right of innocent passage. Meanwhile, the

principle of peaceful uses of the sea is a situation where this applies in the high seas so that no country has any rights to its sovereignty.

The principle of innocent passage is regulated in Article 17 of UNCLOS 1982 which states that ships from all countries, whether coastal or landlocked, have the right of innocent passage through the territorial sea. Freedom of navigation is one of the principles in UNCLOS 1982, which was then applied to become the 'right of passage' in all maritime regimes stipulated in UNCLOS 1982. Article 18 UNCLOS explains the meaning of passage that must be carried out continuously, directly, and as quickly as possible. This right of passage is divided into 3, namely the right of innocent passage (used in the territorial sea regime), the right of transit passage (used in the sea regime for international shipping between one part of the open sea or EEZ) under Article 37-44 UNCLOS 1982 and the right of archipelagic sea lanes passage (the right to sail from one part of the high seas/EEZ across the archipelagic waters of a country). So it can be concluded that there is no clause on the right of innocent passage in the EEZ and archipelagic waters, but what there is is the right to transit passage and the right to cross archipelagic sea lanes.

Concurrently, in other maritime areas such as the EEZ and archipelagic waters, it is the sovereign right of the coastal state, where in this area other countries can use its biodiversity in the water of the EEZ area of the coastal state and obtain rights over archipelagic sea lanes from a country that recognizes its country as an archipelagic country.

Article 19 Paragraph 1 explains that a passage can be considered innocent if it does not harm the peace, coastal State's peace, order, or security. Article 19 Paragraph 2 further explains what matters will influence the consideration of whether

²⁵ *Ibid.* at. 33.

²⁶ Ilja Van Hespen, *supra* note 11 at 362.

²⁷ Nilasari and Lorna Steele, *supra* note 7 at. 97.

or not the passage of foreign ships will be detrimental to the coastal state's peace, order, or security. The most relevant part that can be linked to PCASP is in letter (b) where it is written that "any exercise or practice with weapons of any kind" However, this article is irrelevant for merchant ships using PCASP or PMSC services. When referring to Article 19 Paragraph 2, the words "exercise" and "practice" involve using the weapons; meanwhile it does not state anything about having the weapons for self-defense of the vessels from piracy.²⁸ Even though merchant ships using PMSC services are regulated in these provisions, it can be said that they are not a threat when compared to warships. PMSC services are only limited to self-defense from pirates or armed robberies.

The provisions in UNCLOS 1982, like the article we have discussed, are not aimed at commercial ships. The existing articles are aimed at warships and government ships in non-trade interests, not for commercial vessels that use PMSC and PCASP services. Therefore, a ship's flag state has an obligation under these regulations to ensure that its ship will refrain from the threat or use of any weapon.²⁹ We have seen that the coastal state can exercise its criminal jurisdiction over vessels flying the flag of foreign ships under certain circumstances and only when the alien ships are about to enter or leave deep waters. This action cannot be taken on foreign ships that only wish to cross the territorial sea of a coastal state.³⁰ Coastal states may enact laws and regulations about innocent passage through their territorial sea. According to Article 21 of UNCLOS 1982, foreign ships exercising the right of innocent passage must comply with

all laws and regulations imposed by the coastal state. In this case, ships with PCASP on board before transit in the coastal state's territorial sea need to know all relevant domestic regulations and procedures of the coastal state or port state relating to PCASP. Ships must comply with and take all the necessary measures by the domestic rules of the relevant coastal state.³¹ Therefore, it will be difficult for a coastal state with legal regulations prohibiting using weapons on board a ship to exercise its jurisdiction if it crosses the coastal state's territorial sea.

Another matter being debated on the international scene is regarding the legality of PCASP activities, the application of rules on using force against them, and whether their presence on board can cause harm or distress to innocent seafarers. PCASPs on commercial vessels may violate the right to life of others by injuring or killing a person on the same boat, an individual on the high seas as a pirate or hostage, or perhaps an innocent fisherman. A person may be injured or killed by PCASP in an attack, in an accident, or by misjudging a situation.³² In Indonesia alone, there have been 18 ship accidents from 2011 to 2013,³³ and the number of ship accidents in Indonesia from 2016 to 2021 reached 89 points.³⁴ In situations like this, the questions of armed guards as civilians and civilians carrying weapons arise, and who will bear the responsibility in case of incidents or unwanted things.

Until now, UNCLOS 1982 still regulates only the state's responsibility in carrying out its jurisdiction when merchant ships sail

²⁸ Anna Petrig, "The Use of Force and Firearms by Private Maritime Security Against Suspected Pirates", *International & Comparative Law Quarterly* Vol. 62, No. 3, 2013, pp. 681.

²⁹ *Ibid.*, at 680.

³⁰ Eloi Bosse, *Prediction and Recognition of Piracy Efforts Using Collaborative Human-Centric Information System*, Amsterdam: IOS Press, 2013, at. 30.

³¹ Zarina binti Abd Razak. *supra* note 8 at. 4-5.

³² Jessica N. M. Schechinger, "Responsibility for Human Rights Violations Arising from the use of PCASP against Piracy. Re-emphasizing the Primary Role and Obligations of Flag States", *Amsterdam Center for International Law* No. 58, 2014, at. 5.

³³ HM. Thamrin A.R., "Manajemen Keselamatan Maritim dan Upaya Pencegahan Kecelakaan Kapal ke Titik Nol", *Jurnal Ilmiah WIDYA* Vol. 3, No. 2, 2015, pp. 116.

³⁴ Statista Research Department, "Number of Ship Accident in Indonesia from 2016 to 2021", <https://www.statista.com/statistics/1277145/indonesia-number-ship-accidents/>

in the territorial sea, deep sea, and ports. Even so, as long as merchant ships that use PCASP and PMSC are on the high seas, their jurisdictions lie with the ship's flag state. This is regulated in Article 97 Paragraph 1 of UNCLOS 1982.

All states must act together to combat or fight piracy, as stated in Article 100 of UNCLOS 1982 in a restatement of customary international law: "All States shall cooperate to the maximum extent possible in the suppression of piracy on the high seas or any other place outside the jurisdiction of any state." This shows that there is considerable scope for cooperation in counter-offensives. Generally, it obliges states to cooperate in suppressing piracy and gives them the right to seize pirate ships, arrest pirates, and confiscate property on board.

UNCLOS 1982 Article 105 states that the usurping nation may impose appropriate penalties in national courts. UNCLOS 1982 permits any nation's warships to approach commercial vessels to determine their nationality and board commercial ships on the high seas, regardless of their national flag, to prevent or reverse crimes under international law, including piracy. The state must fight piracy using its navy and law enforcement.³⁵ Maritime piracy is generally understood to be acts of violence, detention, or depredation committed for private ends by the crew or passengers of a private ship against another ship, including its persons or property on the high seas. As such, maritime piracy is now a significant concern of the international community as a whole, as acts of piracy are committed in all naval zones and affect to various degrees the interests of all states, whether coastal or landlocked.

Even though it is clear that the regulations in Article 100 call for all countries to work together to maintain security and fight piracy and armed

robbery if governments fail to do so then private companies can play their role in keeping ships passing by to avoid piracy and to fill in the blanks of the ambiguity of Article 100 as mentioned. Therefore, PCASP is needed to guard ship security from piracy on the high seas. This lack of specific international legal regulations regarding PCASP is unsurprising since international law does not attribute the wrongful acts of private actors with good intentions to the state or the organizations that employ them.³⁶

The United Nations 2008 acknowledged a lack of oversight noting that PCASPs are accountable only to their employers. However, an extensive framework of specific and detailed PCASP regulations is carried out in guidelines from the IMO and self-regulation from the shipping industry and PMSCs. This regulation should be considered a soft law. Soft law is an instrument that is not legally binding and is often used when there is uncertainty or ineffectiveness of the hard law in force and often the soft law predates the development of the hard law itself.

b. How The International Committee of the Red Cross (ICRC) and the International Community Responses to the Use of PCASP and PMSCs

One example of the soft law regarding PCASP services is The Montreux Document. It is an intergovernmental document intended to promote respect for international humanitarian law and human rights law whenever private military and security companies are in armed conflicts. The Montreux Document may be recognized as customary international law if the world's countries recognize this. 58 countries and 3 International Organizations including the European Union, the Organization for

³⁵ Katinka Svanberg, *supra* note 23 at .36.

³⁶ Nigel D. White, "Due Diligence Obligations of Conduct: Developing a Responsibility Regime for PMSCs" *Crim. Just. Ethics.*, Vol. 31, 2012. pp.234.

Security and Co-operation in Europe (OSCE), and the North Atlantic Treaty Organization (NATO) have signed this Document.

The Montreux Document results from an international process launched by the Government of Switzerland and the ICRC. It is an intergovernmental document intended to promote respect for international humanitarian law and human rights law whenever private military and security companies are in armed conflicts. It is not legally binding as such but, instead, contains a compilation of relevant international legal obligations and good practices. The Montreux Document on pertinent international legal obligations and good practices for States related to operations of private military and security companies during armed conflict made in 2008 is an essential soft law document that applies to PMSC, as it is a statement of the existing international interpretation.

Regulations in the field of PMSC are focused on humanitarian law and human rights and their operations during armed conflicts. The Montreux Document tries to regulate PMSC but this "Document" does not cover a wide area, it only covers while in a state of war which does not allow the Montreux Document to be applied to PMSC. This Montreux Document can be described as an "intergovernmental statement" in which Switzerland aims to regulate existing PMSCs by making Montreux Document so that there are no misunderstandings that occur with the existence of a "legal vacuum" from the use of PMSCs where there are no clear rules.³⁷ It is a non-binding instrument directed at states and limited to armed conflict, but the restatement of international humanitarian law reflects *lege lata*.³⁸

After the Montreux Document, there is The International Code of Conduct for Private Security Providers (ICoC), a set of principles for PSC, created through multi-stakeholder initiatives organized, such as the Montreux Document, by the Swiss government. This code will then create a governance and oversight mechanism. But does the ICoC apply to private maritime security services? This is beyond doubt from the ICoC and indicates that this area is intended to develop additional principles and standards. IMO has stated that ICoC cannot be applied directly to PCASP on merchant ships to protect against piracy and armed robbery at sea.³⁹ This is indicated in IMO Maritime Security Committee (MSC) Circular 1443 when the MSC agreed that the ICoC was written in the context of "self-regulation for companies deploying armed guards on land only". However, the Safety Association for the Maritime Industry, SAMI, in a statement following the adoption of the ICoC found: "...there is an increased scope for its provisions to be applied in a maritime context." Thus, voluntarily, ICoC can be applied to PCASP on board.

After the existence of the Montreux Document which tried to regulate the use of PMSC and PCASP but was less successful due to certain conditions that made it not cover the existing needs the Maritime Safety Committee (MSC) formed by the International Maritime Organization now trying to make a regulation for the use of these services. On 25 May 2012, the MSC held negotiations and made specific regulations for the benefit of PMSC and PCASP on ships, issues of concern to coastal states, and regulations regarding the use of firearms.⁴⁰ Essential ant point for a coastal

³⁷ Gilles Wauters, Thesis: "Private Military Companies: An Era of Regulation?", Louvain-la-Neuve: Université Catholique de Louvain, 2018, at. 40.

³⁸ The Montreux Document, 2009. Preface Paragraf 2: "That this document recalls existing legal obligations of States and PMSCs and their personnel (Part One), and provides States with good practices to promote

compliance with international humanitarian law and human rights law during armed conflict (Part Two)"

³⁹ Anna Petrig, *Supra* note 28. at. 667.

⁴⁰ MSC 90th Session, 2012, Article 20 Para 4: "(i) guidance and standards for private maritime security companies (PMSC) providing privately contracted armed security personnel (PCASP), to include consideration of documents MSC 90/20/15 (Republic of Korea) and MSC

country is to strengthen the safety and security of its waters in the future because the privatization of maritime surveillance and enforcement to private security companies is not a solution to maritime and port lack of security. Still, the government needs to expand and modernize its maritime agencies.⁴¹ This committee advises that sailors may not carry weapons on board, but flag states may use Vessel Protection Detachment (VPD) or PMSC to secure and protect merchant ships.⁴² The increasing use of PCASP is causing concern because there are no clear rules in international law that can determine the definition of PMSC and PCASP itself. It is estimated that since 2011, around 30% to 40% of ships crossing the High-Risk Area (HRA) have used PMSC and PCASP on their ships.⁴³

Maritime security is a small part of national security, which makes a country's national security practices determine how maritime security practices are in national policy.⁴⁴ Maritime security is an essential factor in the shipping industry. Natalie Klein classifies maritime security into two dimensions (i) traditional security which refers to border protection and (ii) maritime security threats which refers to efforts made by coastal States to reduce the number of crimes or activities that may cause harm to other countries.⁴⁵ With the hard law vacancy to regulate PMSC and PCASP, various soft law products have been formed to try to regulate them.

90/20/16 (India); (ii) issues related to PCASP of concern to littoral States; and (iii) guidelines on the use of firearms.”

⁴¹ Sharifah Zubaidah dan Abdulkadir, “Privatization of Maritime Security Surveillance and Enforcement: A Compromise of State Sovereignty”, *Journal of Law, Policy and Globalization* Vol. 9, 2013, at. 22.

⁴² MSC 90th Session, Article 20 Para 2

⁴³ James Kraska, *Modern Piracy: Legal Challenges and Responses*. (Cheltenham: Edward Elgar Publishing Limited, 2013). at. 241.

⁴⁴ Tiara Mawahdah Juliawati, “Upaya Indonesia dalam Mewujudkan Keamanan Maritim Pada Masa Pemerintahan Joko Widodo”, *eJournal Ilmu Hubungan Internasional* Vol. 6, No. 3, (2018), at. 1391.

⁴⁵ Siti Noor Malia Putri, “Archipelagic State Responsibility on Armed Robbery at Sea”, *Indonesian Journal of International Law* Vol. 14, No. 4, 2017, at. 488.

Previously, it was explained about the Montreux Document submitted by ICRC to try to regulate PMC and PSC.⁴⁶ However, although the Montreux Document includes a pretty good "framework" for PMSCs, this document is irrelevant for PMSCs because it is only limited to its use, namely during a state of war or in a zone where a conflict is ongoing.

Regulation, negligence, code of conduct, and accountability for this business industry are still under the control of the PMSC and PCASP. This benefits the PMSC and PCASP because they can do what they want, from saving costs to the procedures they want, and less complicated bureaucracy. So far, although the Montreux Document is non-binding, it can serve as a reminder for the government to take responsibility for possible negligence by the PMSC and PCASP they employ and also serve as a reminder if the PMSC is not operating due to a legal vacuum.⁴⁷

c. The International Maritime Organization (IMO) Regulation on PCASP and PMSCs

Making maritime trade and travel safely and securely is part of the International Maritime Organization's (IMO) mandate. Through the Maritime Safety Committee (MSC) and input from the organization's Facilitation Committee (FAL) and Legal Committee, this organization established appropriate regulations and recommendations to manage and mitigate any dangers that have lodged maritime security.⁴⁸

The IMO has also issued a guideline for ship owners, countries, and PMSCs in dealing with piracy issues in high-risk areas (HRA). The guideline is called Procurement Practice 4 or BMP4. To issue these

⁴⁶ Bibi van Ginkel, Frans-Paul van der Putten, Willem Molenaar, *State of Private Protection against Maritime Piracy? A Dutch Perspective*, The Hague: Clingendael Institute, 2013, at. 27.

⁴⁷ James Kraska, *supra* note 42. at. 224.

⁴⁸ IMO, “Maritime Security”, <https://www.imo.org/en/OurWork/Security/Pages/Default.aspx>

guidelines, IMO cooperates with the Contact Group on Piracy off the Coast of Somalia (CGPCS) and plays an important role in vital cooperation.⁴⁹

IMO is a special agency under the United Nations (UN) responsible for regulating shipping and maritime issues. Thus, the provisions regarding PCASPs influence the development of international law. It has provided recommendations on action against piracy in three of its Circulars. The first circular was named Guidance to shipowners and ship operators, shipmasters, and crews on preventing and suppressing acts of piracy and armed robbery against ships, MSC.1/Circ.1334(2009). The second circular is the Recommendation for Preventing and Suppressing Piracy and Armed Robbery Against Ships, MSC.1/Circ.1333/Rev.1 Annex, (2015).⁵⁰

The first Circular, MSC.1/Circ.1334, is addressed to shipowners. This emphasizes the urgent need for merchant ships to take every possible measure of self-protection as the most appropriate deterrent to acts of armed robbery. This is relevant for high-risk areas in The Horn of Africa, namely the area around Somalia. Second Circular MSC.1/Circ.1333/Rev.1, addressed to the Government and limited to HRA.

It stresses the shipping industry's overriding responsibility to flag state-wide requirements to take the necessary actions to ensure that owners and masters accept their responsibilities. However, these two circulars mention the use of PCASP in only a few paragraphs. Then, IMO revised the two circulars and named them the Revised Interim Guidance to Shipowners, Ship Operators and Shipmasters on the Use of Privately Contracted Armed Security Personnel on Boards Ships boarding-Risk Area in IMO Circular 1405 (2012).⁵¹ This last circular is a detailed guidance on the use of

PCASP for ship owners, operators, and shipmasters.

This guideline supports its use while at the same time stressing that the use of PCASP is complex because the absence of applicable regulation and self-regulated industry coupled with the complex legal requirements governing the lawful transport and use of firearms raises concerns.⁵² These guidelines have been confirmed as a practice for the shipping industry by approving the IMO Committee of the Revised Industry Counter Piracy Guidance in 2018. The United Nations Security Council has also endorsed the BMP in several of its resolutions on Somali piracy.⁵³ The decision of a merchant ship to use PCASP or not is for the flag state to consult with ship owners, ship operators, and merchant ship companies. Supervision and regulation of PCASP and PMSC and ties in high-risk areas are urgently needed to avoid unwanted incidents, especially related to piracy and armed robbery.

MSC adopted MSC.1/Circ.1408 in September 2011 on interim recommendations to port and coastal States regarding the use of personally contracted armed security personnel on board in HRA. This MSC Circular contains further recommendations to Governments and coastal and port States on aspects related to the embarkation, debarkation, and transport of PCASPs and safety-related firearms and equipment for use by PCASPs. In the same month, the MSC adopted MSC-FAL.1/Circ.2 on a questionnaire on information on port and coastal state requirements relating to PCASP on ships, which was disseminated to IMO Member Governments, in the capacity of port and coastal State, to provide information about their individual needs regarding the use of the PCASP in their territorial waters.

⁴⁹ James Kraska, *supra* note 42 t. at 226.

⁵⁰ Felicity Attard, "IMO's Contribution to International Law Regulating Maritime Security," J. Mar. L. & Com. Vol. 45, 2014. at 479.

⁵¹ Katinka Svanberg, *supra* note 23 at. 44.

⁵² IMO MSC.1/Circ.1405/Rev.2, 25 May 2012, Para 1(2): "...The absence of applicable regulation and industry self-regulation coupled with complex legal requirements governing the legitimate transport, carriage and use of firearms gives cause for concern...."

⁵³ Katinka Svanberg, *supra* note 23 at. 44.

The questionnaire in the annex to the Circular was developed to facilitate Industry compliance with specified requirements when operating in or navigating the ports and territorial waters of coastal States. Through it, IMO Member Governments and coastal states bordering the Indian Ocean, Arabian Sea, Gulf of Aden, and Red Sea, are encouraged to increase awareness of relevant national laws, policies, and procedures relating to the transport, embarkation, and debarkation of firearms and security-related equipment through their territory and the movement of PCASP.⁵⁴

2. The Application of Private Contracted Armed Security Personnel (PCASP) dan Private Maritime Security Company (PMSC) in Indonesia

On January 24, 2021, the Indonesian Maritime Security Agency (BAKAMLA RI) detained 2 (two) tankers, MT Horse with the Iranian flag and MT Frea with the Panama flag, which was suspected of carrying out illegal transfers of fuel oil (BBM) in Pontianak waters. The security process was carried out by KN Marore-322 when carrying out Domestic Sea Security and Safety Operations. The results of the inspection of the Motor Tanker (MT) type ship found that the two tankers committed 5 (five) violations, namely: (1) violated the right of transit passage at ALKI (Indonesian Archipelagic Sea Lanes) I by exiting the 25 Nautical Mile limit ALKI did lego anchors outside ALKI, 2) carried out ship to ship transfers of illegal BBM, (3) did not put out the national flag, (4) turned off AIS (Automatic Identification System), and (5) MT Frea made an oil spill which is the release of oil or petroleum hydrocarbon

into the environment.⁵⁵ When searched further, personnel from BAKAMLA RI found several firearms on the MT Horse Ship belonging to Iran sniper rifles, 3 (three) AK-47 assault rifles, and 2 (two) handguns or pistols.

Even though there were several weapons on the ship, the weapons were not confiscated by BAKAMLA RI because they were not used and they were also found in a box where the weapons did not belong to members of the military but belonged to 3 (three) private security personnel (PCASP) from the ship.⁵⁶ From the existence of these weapons owned by the PCASP on MT Horse Ship, it is still being determined whether the Indonesian Government will prohibit or allow the use of PCASP when it becomes a national regulation that prohibits the presence of firearms on commercial ships in Indonesian waters. However, we cannot process the violation since it is regulated in Indonesia's Government Regulation Number 23/2007 about the Indonesian Police Force's Jurisdiction in Paragraph 5, which says that a foreign-flagged ship is not under its jurisdiction. When reviewed, the possession of the weapon was not included as part of the violations committed by the MT Horse Ship belonging to Iran. So, does Indonesia prohibit the use of PCASP and

PMSC or not?

Indonesia has the advantage of being highly respected by UNCLOS 1982, which Indonesia later ratified to become Law No. 17 of 1985 concerning Ratification of the United Nations Convention on the Law of

⁵⁴ International Maritime Organization, "Private Armed Security – IMO Approves Further Interim Guidance on PCASP", <https://www.imo.org/en/OurWork/Security/Pages/Private-Armed-Security.aspx>

⁵⁵ Badan Keamanan Laut RI, "Bakamla RI Amankan Dua Kapal Tanker Diduga Lakukan Transfer BBM Illegal", 24 Januari 2021, <https://bakamla.go.id/berita/read/bakamla-ri-amankan-dua-kapal-tanker-diduga-lakukan-transfer-bbm-illegal.html>

⁵⁶ Albalad.Co, "Bakamla Temukan Enam Senjata dalam Kapal Tanker Iran", 2 Februari 2021, <https://albalad.co/kabar/2021A10708/bakamla-temukan-enam-senjata-dalam-kapal-tanker-iran/>

the Sea.⁵⁷ The coastal state, or Indonesia in this case, is given the right to regulate and supervise innocent traffic within its territorial sea area, namely the right to determine innocent passage criteria for ships wishing to pass in its territorial sea area as well as the authority to issue relevant laws and regulations regarding innocent passage.⁵⁸

After the ratification of the UN Convention, in which one of the substances regulates the new regime regarding the law of the sea, namely regarding the Archipelagic State, the Convention has been ratified by Law no. 17 of 1985, the State of Indonesia changed its status to become an Archipelagic State.⁵⁹ Indonesia is the largest archipelagic country in the world, located between the Indian and Pacific Oceans in a strategic position. The two oceans form a global trade crossroads that are the life force of the global economy. Indonesia's geographical location between the two oceans is very beneficial for the geoeconomics and geostrategic interests of the Indonesian state. Furthermore, Indonesia's territory includes the Malacca Strait, one of Asia's most crucial commodity trade routes. In 2011, an estimated 15.2 million barrels of oil were traded in the Malacca Straits, out of a daily production of 87 million barrels. Meanwhile, the United Nations Conference on Trade and Development (UNCTAD) Review of Maritime Transport 2011 reported that the Malacca Straits, Sunda Straits, and Lombok Straits carry around half of all sea trade annually. The strategic importance of the Malacca Strait and the surrounding sea area, including Indonesia,

will increase along with the region's economic growth.⁶⁰

One of the most common threats in Indonesian waters is piracy. Piracy is now increasingly becoming a serious threat to world business and trade. The attacks carried out by these pirates are now carried out with great care and precision, carried out by trained pirates, and supported by detailed strategies and attack plans. Piracy brings huge losses to companies and countries. Apart from threatening the lives and jobs of seafarers, piracy also has an impact on economic conditions. Cargoes or hijacked containers, delayed trips, and the ransom that must be paid to escape piracy can cost shipping companies and countries. This piracy also impacts the safety of navigation, which in the end, cannot be controlled. Then it can affect the flow and course of global trade.⁶¹ Recalling the idea of the World Maritime Axis (*Poros Maritim Dunia*) which President Joko Widodo says is a vision for the country to build maritime wealth in the archipelago (Indonesia) through national defense in the maritime sector to achieve prosperity, authority, and unity.⁶² Through this idea, President Joko Widodo believes that Indonesia can take advantage of its great power and become a world power in the maritime sector, making it the geopolitical vision of the current President of Indonesia.⁶³

Seeing the complete and clear rules of positive criminal law in Indonesia in its codification still makes merchant ship sailors feel uneasy.⁶⁴ Attacks on commercial or trading ships often occur in Indonesian

⁵⁷ Duwi Aryadi, Jhuanda F. Kharismunandar dan Joko Setiyono, "Implementasi Penerapan Yurisdiksi Negara dalam Pembajakan Kapal di Perairan Laut Indonesia (Sea Piracy)", *Halu Oleo Law Review* Vol 4, No 2, September, 2020, pp. 192.

⁵⁸ Dikdik M Sodhik, *Hukum Laut Internasional & Pengaturannya di Indonesia*, Bandung: Refika Aditama, 2011, at 30.

⁵⁹ Khaidir Anwar, *Hukum Laut Internasional dalam Perkembangan*, Bandar Lampung: Justice Publisher, 2015), at. 1.

⁶⁰ Kementerian Luar Negeri RI, *Diplomasi Poros Maritim: Keamanan Maritim dalam Perspektif Politik Luar Negeri*, Jakarta: Badan Pengkajian dan Pengembangan Kebijakan KEMLU RI, 2016, at 2.

⁶¹ *Ibid.* at 25.

⁶² Dickry Rizanny Nurdiansyah, *Strategi dan Pertahanan Maritim Nusantara*, Makassar: CV. Nas Media Pustaka, 2020, at 11.

⁶³ Mohammad Rosyidin, *Indonesia: Menuju Kekuatan Global Abad 21*, Jakarta: PT. Elex Media Komputindo, 2019, at 3.

⁶⁴ D. K. Pratiwi, "Implementasi Prinsip Yurisdiksi Universal mengenai Pemberantasan Kejahatan Perompakan Laut di Indonesia", *Supremasi Jurnal Hukum* Vol. 1, No. 2, 2018, pp. 58.

waters and maritime border areas, generally in the Malacca Strait and the South China Sea. The Malacca Strait is geographically bordered by three coastal countries: Malaysia, Indonesia, and Singapore. In managing the Malacca Strait, Malaysia unilaterally takes two steps, which are: first, the safety of navigation of ships sailing along the Strait and at the same time to protect the marine environment and second, efforts to maintain a high level of security for risk mitigation of armed robbery, theft, piracy and terrorism in the straits.⁶⁵ From 2001 to 2010, around 20% of piracy cases worldwide occurred in Indonesian waters.⁶⁶ Indonesia, Somalia, Nigeria, Bangladesh, and India are countries that frequently experience piracy in their seas. According to the IMB Piracy & Armed Robbery Map 2016, the sea in the Southeast Asia Region is the sea with the highest piracy intensity in the world; around 55% of all piracy attacks occur in the seas of the Southeast Asia Region. This percentage has increased from 2014, when piracy that occurred in the seas of the Southeast Asian Region reached 37% of the total piracy attacks in the world. Indonesia has the highest number of piracy attacks in the Southeast Asia Region.⁶⁷ The 2022 Annual IMB Piracy & Armed Robbery Against Ships Report states that 56 attacks have been made in the Southeast Asia region and 2 attempted attacks from 1 January 2022 until 31 December 2022.

According to UNCLOS 1982, the definition of piracy itself is aimed at when it is carried out on the high seas. This definition results in acts of violence for personal purposes carried out in a country's territorial sea that cannot be defined as piracy or piracy. According to UNCLOS 1982, the definition of piracy is aimed at when it

is carried out on the high seas. This definition results in acts of violence for personal purposes carried out in a country's territorial sea, which cannot be defined as piracy. IMO then introduced armed robbery against ships (armed robbery against ships, which includes acts of violence against vessels that occur in the territorial sea of a country).⁶⁸

An attack on a ship in a maritime zone under a country's sovereignty is considered not a crime under international law, but a crime under the national law of a coastal state. For this matter, the coastal state can take action against crimes occurring in the maritime zone in its sovereign territory. The distinction between piracy and armed robbery must be understood to place a limit on the cooperative ways that can be taken. Bearing in mind that many piracy conditions in the sea area of Southeast Asia occur in the territorial sea area, Southeast Asian countries tend to maintain their sovereignty and reject international cooperation regimes that can reduce their sovereignty. According to Indonesia, the threat of violence in the territorial sea is a domestic issue that can be resolved through internal measures without any intervention from other countries. Even though Indonesia has conducted coordinated patrols with neighboring countries several times, it seems that Indonesia itself is still hesitant to participate in non-ASEAN multilateral efforts to overcome piracy such as the regional cooperation agreement sponsored by Japan to overcome piracy that occurred in Asia.⁶⁹

However, to safeguard the country's maritime territory, the Indonesian government 2014 established a new Maritime Security Agency named the Indonesian Maritime Security Agency (BAKAMLA) to coordinate joint marine

⁶⁵ K. S. Balakrishnan dan Helena Varkkey, *The Straits of Malacca: Malaysia's Threat Perception and Strategy for Maritime Security*, Singapore: Palgrave, 2017, at 23.

⁶⁶ Anamika Twyman-Goshel dan Glenn Pierce, "The Changing Nature of Contemporary Maritime Piracy" *The British Journal of Criminology*. Vol. 54, No. 4, 2014, pp. 656.

⁶⁷ Kementerian Luar Negeri RI, *supra note 60*. at 25.

⁶⁸ *Ibid.* at. 25-26.

⁶⁹ Iis Gindarsih dan Adhi Priamarizki, "Indonesia's Maritime Doctrine and Security Concerns", Rajaratnam School of International Studies Policy Report, April, 2015, at. 5.

patrols and rescues in Indonesian territorial waters. Its mission is to encourage the realization of national and international maritime security that can maintain security and safety in the marine area and the jurisdiction of Indonesia.⁷⁰ Indonesia as an archipelagic state has several Institutions that jointly implement naval laws and regulations. These entities have almost the same legal basis as one another.⁷¹ Acts of violence that occur at sea are generally in maritime areas where law enforcement is weak. In addition, the lack of resources to carry out surveillance and patrols at sea and the long coastline makes it relatively easy for pirates to move in the ocean. In Indonesia, acts of violence at sea have different modes of operation and are related to other crimes.⁷²

In June 2017, Indonesia, Malaysia, and the Philippines established the Sulu-Sulawesi Seas Patrol (SSSP), a maritime security cooperation framework to protect the Sulu and Sulawesi Seas from naval crimes.⁷³ Maritime security as a prerequisite for the realization of marine order and stability which makes an economic contribution to countries in the region has given rise to cooperation initiatives related to maritime security. Several factors are considered to realize maritime security cooperation, including the increasing prevalence of cooperation norms. The countries' vision in the Southeast Asian region to create peace and stability has encouraged the presence of various Security Building Measures (SBM) and agreements that give rise to multiple

norms of cooperation. Several forums and forms of cooperation such as The Council for Security Cooperation in the Asia Pacific Maritime Cooperation Working Group (CSCAPMCWG), the South China Sea (SCS) Workshop, Western Pacific Naval Symposium (WPNS), The ASEAN Regional Forum (ARF) Maritime Focus Group, The Asia-Pacific Economic Cooperation (APEC) Working Group on Maritime Security, The Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP) reflects the prevalence of regional cooperation norms.⁷⁴

The Prime Minister of Japan first proposed ReCAAP at the ASEAN+3 Summit Meeting in Brunei Darussalam in November 2001. This agreement is one of the first initiatives to provide an intergovernmental platform to promote and strengthen cooperation against piracy and armed robbery in Asia. ReCAAP is considered positive as an initiator from Asia to tackle piracy at sea, one of the main concerns in Southeast Asian waters. ReCAAP performs its function of exchanging information on piracy, armed robbery, and efforts to support capacity building. ReCAAP is an agreement signed by 14 countries from Asia, four countries from Europe, and the United States and Australia. In November 2006, the ReCAAP Information Sharing Center (ISC) was established in Singapore.⁷⁵ This Information Center shares information about incidents of piracy and armed robbery at sea. From sharing this information, the ISC can issue warnings to the shipping industry and facilitate responses from coastal state law enforcement agencies. ISC also provides statistics and analysis through regular reports and deals with piracy on the high seas and armed robbery within a country's jurisdiction.⁷⁶ It can be seen from the

⁷⁰ Dewi Santoso dan Fadhilah Nafisah, "Indonesia's Global Maritime Axis Doctrine: Security Concerns and Recommendations", *Jurnal Hubungan Internasional* Vol. 10, No. 2, 2017, pp. 196.

⁷¹ Nodi Marefand dan Apri Rotin Djusfi, "Penerapan Peraturan Menteri Kelautan dan Perikanan Nomor 12 Tahun 2013 tentang Pengawasan Pengelolaan Wilayah Pesisir di Kabupaten Aceh Jaya", *Ius Civile: Refleksi Penegakan Hukum dan Keadilan* Vol. 2, No. 1, 2018, pp. 127.

⁷² Kementerian Luar Negeri RI, *supra* note 60, at. 27.

⁷³ Hadyu Ikrami, "Sulu-Sulawesi Seas Patrol: Lessons from the Malacca Straits Patrol and other Similar Cooperative Frameworks", *The International Journal of Marine and Coastal Law* Vol. 33, No. 4, (2018), at. 826.

⁷⁴ *Ibid.* at. 49-50.

⁷⁵ *Ibid.* at. 54.

⁷⁶ Report by the RECAAP Information Sharing Centre for the Ninth Meeting of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of

explanation above that Indonesia opposes the use of PMSC which provides PCASPs because of the absence of National and International Instruments on this matter. Instead, Indonesia focuses on cooperation between states and regional organizations to fight piracy. To this day, Indonesia has not accepted the use of PMSC and PCASPs to combat piracy.

C. CONCLUSION

The use of Private Contracted Armed Security Personnel (PCASP) and Private Maritime Security Companies (PMSC) is a phenomenon that cannot be ignored internationally. In addition, using these services is not an option. Still, it has become a necessity or even an obligation by merchant ship companies for safe maritime trade and to reduce piracy and armed robbery in High-Risk Areas (HRA). Even though the fees for these services are not cheap, merchant ship companies do not want to take risks by not using PCASP and PMSC services where there is a possibility of piracy or armed robbery. The increase in these services has made the international community feel the need to regulate them. Still, until now there have been no concrete regulations related to this matter, only soft laws made based on initiatives such as The Montreux Document, IMO MSC, and Best Management Practice. For Indonesia itself, there still needs to be a plan to grant the use of PCASP and PMSC because, according to the Indonesian government this still needs to be regulated in international law which means that national law does not have regulations regarding the use of these services. With the collaboration carried out by Indonesia such as ReCAAP, it is hoped that Indonesia will participate in fighting sea piracy which will allow the use of this much-needed

service. As well as filling out a kind of survey or questionnaire like those issued by IMO by the Republic of Indonesia can also make Indonesia more vigilant about the presence of weapons on board.

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