

Conceptual Article

Securitization of the Merchant Vessels by the Private Contracted Armed Security Personnel: A Legal Perspective

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ABSTRACT

Shipping trade commodities using commercial ships through the sea that are safe and free from security disturbances is a prerequisite for spinning a country's economy. However, not all seas in this world are safe. There are many areas of waters categorized as high-risk areas. UNCLOS regulates that a safe sea implies that the sea is free from threats or disruptions to the activities of peaceful sea use or utilization, among others, free from threats of violence in the form of piracy, sabotage, and armed terrorism at sea. Conditions gave rise to private security services on board called PCASP (Private Contracted Armed Security Personnel). This article aims to find out how to set up PCASP internationally and according to Indonesian law. This research uses secondary data materials, namely books, journal articles, and papers relevant to this research obtained from print and internet media. The use of PCASP supports the safety and security clause in UNCLOS 1982. IMO as an instrument of the United Nations in charge of maintaining and controlling international regulations on the safety and security of ships and ports. The maritime transportation authority in Indonesia does not require PCASP service nor approves commercial shipping companies to present PCASP on board.

Keyword: IMO; Highrisk Area; Private Contracted Armed Security Personnel; UNCLOS, Maritime Security

A. INTRODUCTION

The condition of maritime security is a problem that ships must face when sailing in the ocean. Maintaining maritime security to a level that is entirely free from security disturbances is something difficult. Many parties use the sea as their livelihood, both legally and illegally. This condition of security uncertainty has triggered the growth of companies engaged in security to provide security services on ships, especially when ships are navigating the sea, which has a high risk of ship security (high-risk area).

Areas in the world that are categorized as high-risk areas are: the Malacca Strait between Indonesia, Malaysia and Singapore, the South China

Sea between the waters of Indonesia and Malaysia, the Gulf of Aden in the Red Sea, the Gulf of Guinea between North – West and South Africa (Angola), Nigerian waters, Somalia, Indonesia (Anambas Islands, Natuna and Merundung Islands), and the Gulf of Oman in the Arabian Sea area (Marine Insight, 2021).

Global piracy attack data from 2010 to 2019 (Statista, 2021) shows that the average number of events in the last five years is 196 events per year. The risk of confiscating the ship and its cargo, hostage-taking, terrorism, piracy and other crimes committed using armed violence on board.

Internationally, namely IMO (International Maritime Organization), every ship, especially commercial ships, has been regulated regarding ship safety and security standards that shipowners can carry out. However, the problem is, does the shipowner company have the expertise and ability to provide its security personnel? Considering that the shipping business is not a business in ship security, its primary business activity is not there, so shipowners should shift the responsibility for securing ships to those who have competent expertise and work in that field.

For this reason, the so-called Private Contracted Armed Security Personnel (PCASP) arises (Liss, & Schneider, 2015). PCASP is security personnel managed by the private sector using military equipment and not like the usual security forces that work at sea. PCASP must protect the ships they crew from becoming the object of armed crime. In a state of danger, they are given authority based on the principle of self-protection from IMO (IMO Guidance, 2021) to fight pirate attacks to protect the company's assets.

The IMO Maritime Safety Committee (MSC) Guidelines highlight adequate personal protection as the most appropriate deterrent to attempted piracy and armed robbery. To that end, in May 2011, the MSC adopted Resolution MSC.324(89) on the Implementation of Best Management Practice Guidelines, which recognizes the urgent need for shipping merchants to take every possible step to protect themselves from pirate attacks and that practical self-defence is a defence best.

They are equipped with the latest weapons and are usually former soldiers or marines of western countries. The use of PCASP itself is a concept that has only recently been implemented by many shipping companies who do not want their ships to be disturbed and lose material due to being forced to pay ransoms of up to millions of dollars (Hamza, & Priotti, 2020).

Although at first the basis for using PCASP services was still a tug of war between international law and national law, now, the concept of using armed security by private parties on ships has been accepted by international organizations with the rise of cases of crimes against merchant ships carried out by armed criminals.

IMO as an organization under the United Nations (UN), the maritime safety and security policies (IMO Guidance, 2021) has changed its attitude on maritime security operations. The IMO initially stated that "carrying and using firearms for personal protection or ship protection is strongly discouraged" (Maritime Safety Committee, 1993). Then in 2009, they changed their position, "flag states must strictly prevent the carrying and use of firearms by seafarers for personal protection or the protection of ships" (Maritime Safety Committee, 2009) and a final decision (Maritime Safety Committee, 2015) implying neutrality IMO's position on the use of firearms on board ships.

This is, of course, influenced by the cases of piracy that occurred in the South China Sea and the Horn of Africa (a peninsula in East Africa that protrudes into the Arabian Sea and is located along the southern part of the Gulf of Aden, referring to an

area that includes Somalia, Djibouti, Ethiopia, Somaliland, and Eritrea). In addition, the global business sector sees growing business opportunities due to the increasing need for ship owners to protect the safety and security of their ships from armed crime. IMO asks its member states to analyze and discuss the PCASP's handling and use of firearms under their respective national laws regarding piracy and armed robbery of merchant ships.

The emergence of the PCASP business shows the growing demand in the security industry in recent times. The existence of PCASP shows the privatization of the armed forces/military that is happening together with mercenaries that is increasingly widespread and is often disguised as private military contractors, who mainly work in conflict areas such as Iraq, Afghanistan and Syria, which state governments hire. It can be seen that some governments and businesses, commercial ship owners, especially commercial ship owner companies, currently prefer to rely on private institutions. They are no longer the national armed forces to protect their interests, and not without good reason. An excellent example is PMC (Private Military Company) Executive Outcomes which carried out military operations in the 90s in Sierra Leone, effectively ending the war in the country compared to UN intervention (Akcinaroglu, & Radziszewski, 2012). The emergence of the PMC/PCASP trend is that the government or state law enforcement has not resolved specific security problems in high-risk areas where the sea is far from the country of origin of a merchant ship.

Understanding the concept of international security has a broad scope that includes defence, prevention, arms race, arms control, security dilemmas and the balance of power between countries, both on land and at sea. At first, the concept of international security was traditionally implemented by focusing on state actors as the primary responsibility for providing military security for its citizens.

However, in its development, conditions have shifted in line with the development of the global security situation where military forces are not always able to secure assets or property, namely in the form of flagged commercial ships sailing across the ocean that exceeds the boundaries of a country's sovereignty. Security threats that arise against ships sailing internationally then raise the need for maritime security.

Maritime security is the terminology used in the protection of ships, both internally and externally. According to the UN report on the Law of the Sea 2008, the areas from which ships and maritime operations need to be protected from seven types of maritime threats are: piracy and armed robbery, terrorism, drug smuggling, illegal trafficking of people and goods, pollution and damage to the marine environment, capture fish illegally. Maritime security is no longer seen as a domestic task but has become a transnational task. The United Nations, through the IMO, reminded that the threat to maritime security is complex transnational in nature regarding shipping across the sea area of countries that have their legal sovereignty.

Departing from the maritime security theory above, maritime security is included in the scope of international security. The shipping companies use international shipping lanes in carrying out their operational activities. Many of these international shipping lanes are free seas that are not jurisdictional areas of a country's territorial sea and are not territorial waters within a particular country. Based on UNCLOS 1982, the high seas can be used by any party with the principle that the high seas are a common heritage for humankind with a note that its use must be intended for the purposes of peace and not for purposes and purposes that can be dangerous for other parties and do not damage the preservation of nature sea.

As a result of the absence of jurisdiction in the high-risk area, which was later defined as a high-risk area, private companies engaged in security have emerged. It is especially at sea with the task of escorting commercial civilian ships in navigating the high-risk seas, which are full of risks to the ship. Regulations on the use of private armed security companies need to be strictly regulated both internationally when these commercial ships are navigating the high seas and when these ships stop or pass through sea lanes which are the territorial jurisdiction of the waters of a particular country.

There is a gap between the general practice of using PCASP internationally and those regulated under Indonesian national law. This study describes that although Indonesia has ratified UNCLOS and is also a member of the IMO regarding national interests and security, Indonesian national law has sovereignty in its implementation. The Indonesian

port authorities cannot deny the development of onboard security methods for commercial vessels that consider it necessary to present PCSAP. However, PCSAP cannot be authorized for use in Indonesia.

Thus, this study tries to describe how the legal arrangements for private security personnel on board ships according to international law and Indonesian national law.

This study concludes that even though Indonesia has ratified UNCLOS and is a member of the IMO, Indonesia still holds fast to sovereignty over its national interests. This is seen when it comes to national interests and security. The Indonesian port authorities do not deny the development of onboard security methods for commercial vessels that present PCASP. However, in reality, PCASP has not been allowed and legalized for its use in Indonesia.

Although there are several publications on the issue of the use of PCASP by countries in the world (Van Hespén, 2014), none have specifically discussed it internationally and according to Indonesian national law. Unlike private military companies, which mainly operate in situations of armed conflict, where international humanitarian law applies, this may not apply to private security companies, which may operate in such situations (Sefriani, 2016). This chapter focuses only on PCASPs that do not operate in armed conflict. "Private security company (PSC)" is a general term that includes private maritime security companies using PCASP. It provides many services and guards on ships, including security intelligence, security

services (other), crisis response, and interventions (Van Hespén, 2014).

Several differences emerge between the PCASP phenomenon in the context of piracy at sea and the classic situation in which PSCs operate on land (whether in armed conflict settings or not). More actors (both state and non-state actors), nationalities and jurisdictions are involved when private security personnel operate on the high seas. The states involved include flag states; coastal states; the state of nationality of each employee; and the state under whose law the company employing the PCASP operates. Non-state actors include PCASP; companies that employ PCASPs; shipowner; and master of the ship. All of these actors have relevant rights and obligations (Schechinger, 2014).

Problems are often complicated by possible overlapping jurisdictions for prescription and/or enforcement of rules (e.g. if a merchant's vessel enters the territorial sea of a coastal state). Another speciality relates to PCASP operating on ships at sea concerns the role of the ship's captain (who is responsible for the safety of the ship and the safety of life at sea) and its relationship with PCASP. In contrast to the situation of having Vessel Protection Detachments (VPD) onboard a ship (Cusumano, & Stefano, 2015), a skipper may be held liable under domestic criminal and civil law for the PCASP's use of force. Despite having no control over the PCASP, being trained for this task, or carrying a firearm if the state does not allow it (Preetha, 2016). The factual scenarios, applicable laws, and resulting accountability issues arising from operations on the high seas may also differ from those on land.

This study sees that the countries that allow the use of PCASP on merchant ships allow armed private security within the territory of their country's land sovereignty so that it also applies to security in marine waters (Nevers, 2015). Meanwhile, PCASP does not apply in Indonesia because Indonesian national law does not allow the implementation of armed private security other than security by official state institutions, namely the TNI and the Indonesian Police.

Furthermore, this study will explain the positive and negative sides of using the PCASP scheme on merchant ships in Indonesia. At the outset, it should be noted that while there are some similarities in the legal issues surrounding the PCASP and those that have emerged regarding private military and security companies, the question of PCASP's international accountability is of a different and often more complex nature. PCASPs (and private security companies in general) differ in several ways from private military companies (Lehnardt, 2008).

B. DISCUSSION

1. Development on the Use of PCASP

The international law that seeks to regulate the certification, deployment, use of force, accountability, and oversight of PCASPs on ships (and the companies that employ them) is currently under development. Therefore, it can be said that international law is less developed and adapted to deal with the problems at hand. Accountability issues that arise over the implementation of PCASPs operating at sea have received little attention in the literature, nor are they addressed in the international

regulatory framework, which may conclude that applicable international law in this regard is flawed.

Nonetheless, some soft law regulations, voluntary principles, and codes of conduct for the umbrella category of private security service providers do exist (Andreone, 2017). However, since these are not legally binding, they “cannot be considered a complete solution to problems related to PMSC (Private Military Company and Security Company). The lack of specific rules applicable to the PCASP means that the general norms of international law will govern this scenario, particularly the legitimate use of force in self-defence. The issue of accountability of private security companies is generally timely, and the need to specifically regulate PCASP operations at sea is more widely recognized.

Against the backdrop of the increasing threat of crime at sea in piracy and terrorist activities, this rule was developed in response to the perceived threat that could occur to ships and port facilities. The ISPS Code (International Ship and Port Facility Security Code), or what is known as the international security code against ships and port facilities issued by the IMO, is a comprehensive set of international rules regarding measures to improve maritime security of ships and other port facilities. The implementation of the ISPS can be carried out by the shipowner company itself or by involving the use of PCASP on commercial vessels. So, if it is concluded, the ISPS can be the basis for ship owner companies that will improve the security of ships and port facilities. Furthermore, questions arise that will be discussed in this study, namely regarding the regulation of private security personnel on

commercial vessels using the services of PCASP companies (Malisan, 2013).

PCASP is a phenomenon that cannot be ignored internationally, especially in piracy and robbery on board ships. Private security services have a potential world market value of around 200 billion USD a year. The use of private security at sea is a viable option and a necessity for safe maritime trade and maritime governance. There is a suitable long-term role for private companies to provide port security, high-value transit protection, training of VPDs and security forces, and protection of marine resources. PCSAP can also be used to combat transnational maritime terrorism (Beckman, 2009)

Modern maritime piracy and other security threats are not confined to the Indian Ocean and Red Sea zones. PCASP also offers services in other regions due to data from the International Maritime Bureau, showing that sea raids are now more common in oil-rich West Africa than off the coast of Somalia. That piracy of ships to siphon fuel cargo is on the rise. However, the use of PCASP was complicated in these areas, in part because trade routes passed closer to land, giving littoral states more territorial jurisdiction.

PCASP is obliged to follow three principles, self-defence, compliance with maritime order, and respect for human rights, namely by avoiding the use of lethal weapons, using armed forces in line with the principle of proportionality, respecting the laws of port states and coastal states, by respecting the supreme leadership of the captain of the ship, and carrying out rescues at sea, among others. PCASP's nature dictates that they have no right to criminal immunity

and should therefore assume appropriate criminal or civil liability if any of their actions exceed the limits of self-defence or emergency risk aversion limits.

Rights involving the PCASP include the right to make decisions and recommendations regarding the extent and necessity of the use of firearms, and the right of privately contracted security guards for medical treatment in the event of injury or illness, and to be returned if necessary, as well as their rights to accident insurance, third-party liability insurance, or other insurance, as provided by PMSC (Priddy, & Casey-Maslen, 2012).

The use of PCASP can raise the issue of whether States should bear international responsibility for the private actions of their citizens. Suppose the state permits the use of such personnel. In that case, consideration should be given to whether the private ship safety industry is appropriate for domestic law and international practice in this regard. Today, pirates exist not only on the high seas but also in ports, which means they are no longer pirates in the traditional sense. Thus, the state will exercise its policing powers when dealing with them so that a ship must stop using its PCASP upon entering the state's territorial sea.

2. Merchant Ship & Security

According to the Decree of the Minister of Transportation Number KM 14 of 2002 concerning the Organization and Operation of Unloading and Loading of Goods from and to Ships (Suranto, 2004), the definition of a ship is a water vehicle of any shape and type, which mechanics drives, engine power or delayed, including dynamically carrying vehicles,

underwater vehicles, as well as floating equipment and floating buildings that do not move.

According to Law Number 17 of 2008 concerning Shipping, the definition of a ship is a water vehicle in certain forms and types that are driven by wind power, mechanical power, other energy, pulled or delayed, including vehicles that have dynamic support, underwater vehicles and floating devices and floating buildings that do not move."

Meanwhile, the definition of a commercial ship is a non-military ship used to transport goods by a country or a shipowner company to move or transport people and or goods from one place to another by sea. Commercial ships can be container ships, oil tankers (tankers), LNG ships, ro-ro ships, and general cargo ships. These merchant ships can have a fixed shipping lane (liner), or they can also have a non-fixed shipping lane (tramper).

In their voyages across the oceans, these merchant ships must meet international shipping security and safety standards in line with the ISPS Code adopted by the International Maritime Organization (IMO) on 12 December 2002.

IMO as the United Nations special agency responsible for maritime security threats including piracy, armed robbery, marine environment, illegal fishing, smuggling of goods, people, weapons and drug trafficking for the safety and security of shipping activities (Keliat, 2009). Technically, IMO has a duty to update existing legislation or to develop and adopt new regulations, through meetings attended by maritime experts from member countries, as well as other inter-governmental and non-governmental

organizations such as BIMCO, CMI, Greenpeace, and IALA. The outcome of the meetings of the IMO committees and sub-committees is a comprehensive international convention supported by hundreds of recommendations that regulate various phases in the field of international shipping.

Indonesia's success in occupying the position as a member of the IMO board of category C at this time (2019) is the success of diplomacy carried out collaboratively between the Embassy of the Republic of Indonesia in London, the Directorate General of Law and International Agreements and the Directorate General of Multilateral, Ministry of Foreign Affairs and the Directorate General of Sea Transportation, Ministry of Transportation. The domestic approach is carried out by asking for support from diplomatic representatives from IMO countries in Indonesia and through a bilateral approach by Indonesian representatives to relevant agencies in IMO member countries. The seat of Indonesia as the IMO Council brings quite heavy consequences for Indonesia in terms of supporting the legal aspects of law enforcement at sea for Indonesia and countries that are members of the IMO.

3. UNCLOS and Piracy as a Serious Threat to the Navigation Security

The application of jurisdiction over high-risk areas according to international law and national laws is law enforcement of the Convention on the High Seas 1958 (CHS 1958), United Nations Convention on the Law of the Sea 1982 (UNCLOS 1982), Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation 1988 (SUA

1988), and several guidelines and rules issued by international organizations for the enforcement of piracy.

One of the functions of the sea is a transportation route that connects a nation with other nations for all kinds of activities (Mauna, 2005). Because of this function, crimes often occur at sea, one of which is piracy. Piracy threatens maritime security for trade shipping, resulting in casualties of crew members, physical damage to ships, loss of cargo/cargo, financial losses for ship owners, and damage to the marine environment. Articles 100-107 of UNCLOS provide the framework for suppressing piracy under international law.

According to Article 101 of UNCLOS 1982, piracy at sea is one act that constitutes an act of violence or unlawful detention, or any act of destruction, which is carried out for personal purposes by the crew or passengers of a private ship or aircraft. The crime is aimed at on the high seas, against another ship or aircraft or people or goods on board a ship or aircraft and or against a ship, aircraft, people or goods in a place outside the jurisdiction of any country. Also, the crime includes any act of participating voluntarily in the operation of a ship or aircraft by knowing that the ship or aircraft is used for piracy.

UNCLOS 1982 article 100 stipulates the obligation of states to cooperate in enforcing and tackling piracy: "all States shall cooperate to the fullest possible extent in the repression of piracy on the high seas or in any other place outside the jurisdiction of any State." The article provides a basis for legitimacy for each country to apply its law to

prosecute pirates. Even though a third party state does this based on the universal principle that it is attached to the perpetrator, every country can try him even though it is not related to the crime. UNCLOS 1982 also regulates the definition and qualification of acts categorized as piracy, namely in Article 101. An event is said to be piracy if it meets the following elements (Wibawa, Sularto, & Astuti, 2016):

- a. any act of violence or unlawful detention, or any act of destruction, committed for personal purposes by the crew or passengers of a private ship or aircraft, and committed:
 - i) on the high seas, against another ship or aircraft or people or goods on board a ship or aircraft;
 - ii) against a ship, aircraft, person or property in a place outside the jurisdiction of any country
- b. every action voluntarily participates in the operation of a ship or aircraft with the knowledge that made it a ship or aircraft robbed.
- c. action inviting or intentionally aiding the actions mentioned above.

The elements in Article 101 of UNCLOS 1982 are the starting point for calling a ship or aircraft declared a pirate. Therefore, when the elements of Article 101 have been fulfilled, the ship or aircraft can be subject to sanctions, and an investigation can be carried out on its actions. Besides being regulated in Article 100 of UNCLOS 1982, the obligation of the state to cooperate with other countries or international organizations is also regulated in Article 105, which regulates the seizure of pirate ships, and the responsibility of the confiscation state is regulated in Article 106. Article 107 of UNCLOS 1982 regulates

the qualifications of ships that are allowed to confiscate, namely warships or military aircraft, or other ships or aircraft that are marked and can be recognized as government services and those who are authorized.

Article 111 of UNCLOS 1982 regulates the right of Hot Pursuit. The right to hot pursuit can only be exercised by certain ships such as warships or military aircraft or other ships or aircraft that are identified and can be identified as ships or aircraft belonging to the competent government authorities. Hot pursuit can be started when a party from a country has sufficient reason to suspect that the ship has violated the rules for abusing the country's territory when a foreign ship is in inland waters, archipelagic waters, territorial sea or the country's contiguous zone area. The pursuit can be continued to the high seas.

4. Relationship between UNCLOS and IMO

The 1982 United Nations Convention on the Law of the Sea (UNCLOS) is widely seen as the principal instrument that provides a legal framework complemented by existing international treaties and subsequently adopted as customary international law. Meanwhile, IMO is a leading international organization with the competence to set international rules and standards for international shipping safety, security, and environmental performance.

In other words, regarding matters relating to international shipping, UNCLOS outlines the rights and obligations of states parties in various maritime zones that must be implemented and fulfilled through implementation instruments under the auspices of IMO. The relationship between UNCLOS and IMO

instruments, particularly the role of IMO and its instruments in assisting states to exercise their rights and fulfil their obligations under UNCLOS (Beckman, & Sun, 2017).

IMO (formerly known as the Inter-Governmental Maritime Consultative Organization or IMCO) was established in 1948 through the United Nations to coordinate international maritime safety and security and its implementation. The IMO became fully operational in 1958, initially promoting inter-governmental and inter-shipping industry cooperation to improve maritime safety and security and prevent seawater pollution. IMO is the United Nations specialized agency that deals with maritime issues, especially international shipping. IMO sets international standards for safety, security and environmental protection for the international shipping industry.

Regarding maritime security, this document further states that "maritime safety and security must be given high priority and that various types of crimes that occur at sea such as terrorist attacks, piracy, migrant smuggling, illegal traffic in narcotic drugs can be a threat. serious about the peaceful use of the sea" (Keliat, 2009).

The documents began to urge countries to implement maritime security legislation consistent with UNCLOS and other agreements to benefit trade by sea. When viewed from the referent object, the discussion on maritime security also includes states and non-state actors, especially those related to shipping.

IMO is required by UNCLOS to develop or revise existing rules concerning applying international

shipping rules and standards related to safety and security at sea. Many maritime nations, including India, have drawn up rules to place private security guards on board their ships. Inadequate and inaccurate data on piracy attacks negate effective and consistent procedures as underreporting of pirate attacks and crimes at sea remains a significant and persistent problem.

Currently, ship operators and owners are only required, but not required, to report all incidents involving suspected piracy or pirates or the use of force by private guards to the International Maritime Bureau. Furthermore, there are reports of serious injuries or deaths at sea that were not reported due to PCASP counter-piracy actions. A fully independent and effective investigation by law enforcement personnel needs to be carried out to ensure that national and international laws were followed during the incident (Lombardo, 2014).

Although PCASPs operate in a semi-military capacity, they are civilians working under a civilian mandate. The rights to pre-emptive powers, aircraft operations, and detention of suspects belong exclusively to military forces (Schechinger, 2015).

IMO can take the initiative to establish a clear and concise set of rules for the use of force. States could take the initiative to establish more stringent methods for inspecting, employing, operating, and reporting on PCASP use, as well as arms transport, than those mandated by the IMO. A better option is for flag states to license private security under a uniform international licensing regime that regulates and standardizes weapons use, engagement, personnel training and qualification, and penalties.

Alternatively, an international non-governmental organization could monitor and regulate PCASP activities closely until UNCLOS adopts a comprehensive convention governing it.

From the explanation above, the articles in UNCLOS related to maritime security are then linked to the role of IMO as a UN instrument in setting international standard documents for safety, security and environmental protection for the international shipping industry. This document states that IMO is making serious efforts to address maritime security by adopting the so-called New International Ship and Port Facility Security Code (ISPS Code) (Keliat, 2009).

ISPS Code is an IMO (International Maritime Organization) regulation that specifically regulates activities and steps that each country must take in tackling crimes at sea that threaten security at sea and ship safety, both to the crew and the ship itself.

5. Private Contracted Security Armed Personnel / PCSAP.

While 90% of world trade travels by sea and today, more than 200 PMSC companies operate globally, with PCASP teams initiating about 30%-60% of ships transiting the Indian Ocean each year (Huggins, & Walje, 2012). In 2011, IMO changed its stance on shipping companies that use PCASP on merchant ships. The IMO Maritime Safety Committee (MSC) has approved the placement of PCASPs aboard transiting vessels in high-risk piracy areas in the Indian Ocean and reported that it is a matter for a flag.

A 2012 Oxford University survey reported that the percentage of ships employing armed security

rose from 10% to 50% and paid nearly \$5,000 a day for an armed team of four, serving four to 20 days for a voyage through the Gulf of Aden. Shipping companies worldwide in 2011 alone spent more than a billion dollars on security equipment and PCASP (Kent, & Werber, 2015). At the same time, the success rate in deterring acts of piracy is reported to be 100% for shipping companies employing PCASP. Some larger PCASP supply companies have increased their turnover by 350% (Dharmapriya, 2012).

The risk of severe piracy in the Indian Ocean region has also contributed to a tenfold increase in insurance premiums for ships transiting the Gulf of Aden. Maritime insurance companies have started offering to reduce premium costs by 40% for each vessel that hires private security (Seper, 2014). A military analyst from the Lowy Institute, James Brown, said as many as 2,700 armed guards operate on merchant ships on the Indian Ocean trade routes. Several countries have also entered the private security business, recruiting small navies to escort merchant ships along with the most dangerous parts of the trans-Indian Ocean voyage. Thus in 2013, despite the decline in Somali piracy by around 35%-40% of the approximately 65,922 merchant ships transiting the Indian Ocean HRA carried PCASP on board (The State of Maritime Piracy 2013 Report; Oceans Beyond Piracy, 2014)

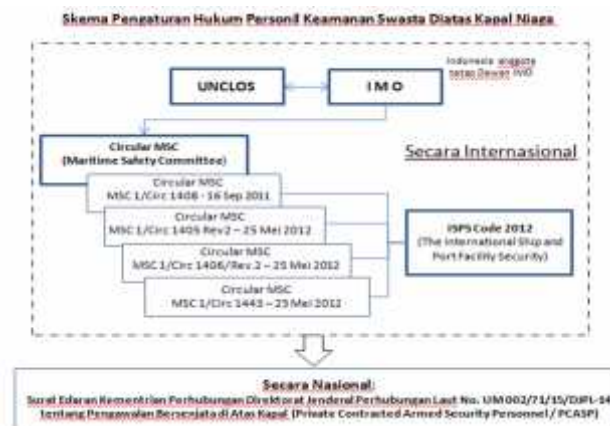
PMSC provides two types of services: armed contractor providers and armed convoy escorts. PCASPs are typically former Navy personnel with shipping industry accredited safety and training

qualifications and work in teams of 3 - 6 members (Brown, 2012).

PMSC in the maritime sector offers a complete range of counter-piracy services, including deployment of ships according to industry standards, counter-piracy training of crews, and preparation of fortifications on board. Contractors started with body armour, medical equipment, satellite communications, night vision equipment and weapons, usually small arms such as the AK47 and the RPK submachine gun.

It is estimated that there are around 220 maritime security companies, most of which have signed on to the International Code of Conduct of Private Security Companies (ICOC), which is administered in Geneva. With as much as 75 per cent of all armed security firms based in the UK or have a UK component, it may come as no surprise that the UK is seeking to take the lead in efforts to regulate maritime security firms. IMO has issued several guidelines through IMO Circular 14051 (a comprehensive guide to the due diligence that shipowners should undertake before selecting a security company) and Circular 1406 (a similar document intended for the Flag States). The third IMO circular, 1408, is expected for the port state (Askins, 2012).

The basic framework for the application of PCSAP on ships starting from UNCLOS, IMO to national regulations is as follows:



The preparation of the ISPS CODE began in November 2001 by two bodies, namely the Maritime Safety Committee (MSC) and the Maritime Security Working Group (MSWG), in a session of the Assembly adopted resolution A.924(22). It contains a review of all actions and procedures to prevent terrorist acts that threaten maritime security, particularly passengers and crew members in particular, and the safety and security of ships in general.

After being officially ratified by IMO member countries, the ISPS Code finally came into effect on 1 July 2004, then through the Conference of Member States in London on 9-13 December 2002, referred to as the Diplomatic Conference Maritime Security Issues). It was unanimously agreed that the ISPS Code was entered into in the 1974 International Convention for Safety at Sea (SOLAS 1974). The Conference also approved amendments to Chapter V and Chapter XI of SOLAS to comply with the adoption of the ISPS Code. Thus, IMO has issued various codes to ensure the safety and security of shipping, namely the ISPS Code. However, its implementation has not been optimal, mainly due to

the unpreparedness of operators and regulators for various reasons that should be overcome (Malisan, 2013).

IMO also, in its activities, issued regulations issuing circulars among its members, which were then compiled into a new version of the ISPS code. Usually, this ISPS code is issued every five years. In several circulars concerning armed private guards on board ships, IMO published circulars including:

1. Circular Maritime Safety Committee No. MSC.1/Circ.1408 dated 16 September 2011, contains:

Stating that the Maritime Safety Committee (MSC), which is the working committee of IMO at its eighty-ninth session (from 11 to 20 May 2011), has agreed:

a. MSC.1/Circ.1405 on interim guidance for shipowners, ship operators and shipbuilders on the use of privately contracted armed security personnel on board ships in high-risk areas; and

b. MSC.1/Circ.1406 on provisional recommendations to flag States regarding the use of privately contracted armed security personnel on board ships in high-risk areas has agreed that there is an urgent need to develop further recommendations to Governments. In particular to coastal and port States on aspects related to the embarkation, landing and transport of PCASPs and firearms and security-related equipment for use by PCASPs.

2. Circular Maritime Safety Committee No. MSC.1/Circ.1443 - dated 25 May 2012, contains:

Stating that the Maritime Safety Committee (MSC), at its eighty-ninth session (11 to 20 May 2011), provided interim approved guidance for flying States and to shipowners, ship operators and shipowners on the use of PCASP personnel on board ships in the area high risk. Article 92 of UNCLOS refers to "the exclusive jurisdiction of the Flag State on the high seas", and article 94 of UNCLOS to "duties of the flag state." It is recognized that the decision to allow PCASP on board ships is the prerogative of the flag State, and not all flag States may permit its use.

3. Circular Maritime Safety Committee No. MSC.1/Circ.1405/Rev.2 - dated 25 May 2012, contains:

It was stated that the Maritime Safety Committee (MSC), at its eighty-ninth session (11 to 20 May 2011), provided interim agreed guidance to shipowners, ship operators and shipowners on the use of PCASP on board vessels in High-Risk Areas. The increasing threat to commercial shipments by Somalia-based pirates has led to prolonged use of armed guards and a marked expansion in the number of companies offering armed maritime security services to ships transiting in high-risk areas.

The decision about the use of PCASP on board is a complicated one for ship owners. The absence of applicable regulations and the industry's regulations coupled with the complex legal requirements governing the transport and legal use of firearms cause concern. The situation is further complicated by the rapid growth in the number of PMSC companies and doubts about

the capabilities and maturity of some of these companies. Significant quality competencies and variations are present across the spectrum of contractors offering services. The purpose of this guide is to help shipowners, ship operators, and shipmasters consider using PCASP on board ships to provide additional protection against piracy.

4. Circular Maritime Safety Committee No. MSC.1/Circ.1406/Rev.2: - dated 12 June 2015, contains:

Stated that the Maritime Safety Committee (MSC), at its eighty-ninth session (11 to 20 May 2011), made provisional recommendations to flag States regarding the use of PCASP on board ships in High-Risk Areas. Flag States should have a policy on whether to use PCASP or unofficial and, if so, under what conditions. In developing such a policy, the flag State is encouraged to consider recommendations as to whether PCASP would be permitted under the flag State's national laws and ensure that PMSCs that use PCASP on board apply accredited certification ISO 28007-1:2015 (Ship and marine technology). - Guidelines for PMSC providing Private Contracted Armed Security Personnel (PCASP) on board or meet applicable national requirements; reference to any directly applicable national legislation relating to the carriage and use of firearms by PCASP, the category assigned to the PCASP, and PCASP relationship with the captain while on board.

From Circular No. MSC.1/Circ.1406/Rev.3 states that ship companies, especially commercial vessels that intend to use PCASP services on board,

must apply ISO 28007-1: 2015. A company that applies ISO standards shows that the customer or customer from ship owners want security from a PCASP company that has the standards of a competent company.

In general, ISO 28007 certification also helps shipowners identify appropriate PCASP providers onboard ships, ensuring the safety of their staff, assets, and cargo and protecting against pirate attacks. The increasing threat to commercial shipments through piracy areas in the Indian Ocean and elsewhere has led to the extensive use of PMSCs, which supply PCASPs to provide onboard security vessels voyaging through high-risk areas.

The decision to use armed guards onboard ships is not taken lightly by shipping companies and must follow a thorough risk assessment after ensuring that all other self-protection practices are implemented. ISO 28007 was introduced to address the safety and legal implications of PCASP recruitment through a risk-based approach. This ISO provides sector-specific guidelines and requirements that PMSCs, which comply with ISO 28007, can apply to demonstrate that they provide appropriate PCASP services on board.

ISO 28007 certification is intended to develop the credibility of the shipowner company by showing that appropriate PCASP services are available onboard. This certification guarantees ship owners and other stakeholders that merchant shipowners have taken the best actions to address PCASP's internal and external security issues.

From the description of the MSC circular above, the Circular is circulated to all IMO member

countries to be used as the basis for member flag countries to apply the ISPS code. The Circular MSC itself is concerned with PCASP issues and other broader issues or problems related to shipping security and safety. As a country that is a member of the IMO, it is obligatory to follow the rules that apply in ISPS because ISPS is a guide for merchant ship owners, especially in carrying out their ship operations.

Circular itself becomes a construction for renewing the ISPS Code, which is revised on average every five years. The implementation of ISPS is the legal basis for shipowner companies and companies that rent vessels (charter parties) to ensure that the vessels operated have met ship safety and security standards.

Even so, the ISPS code still provides space for ship owners if they have not or do not want to follow what is stated in the Circular MSC or the latest ISPS Code, for example, in using PCASP services. IMO does recommend the use of PCASP services for ships sailing to high-risk areas. However, it is said that it still has to look at the national laws or regulations, whether the country's government allows armed parties, other than state law enforcement officials, to be on board the ship flag trade.

5. The Use of PCASP Service in Indonesia

The attitude of the Indonesian government is reflected in the Circular Letter issued by the Ministry of Transportation of the Directorate General of Sea Transportation through Circular Letter No. UM.002/71/15/DJPL-14 regarding Armed Escort onboard: Private Contracted Armed Security Personnel (PCASP).

In the Circular that refers to the Circular MSC as described above, namely: MSC 1/ Circ 1408, MSC.1 / Circ.1405, MSC.1 / Circ.1406, MSC 1/ Circ 1443, MSC 1/ Circ 1405/ Rev 2 as well as MSC 1/ Circ 1406/ Rev 2, are as follows:

- a. It is now notified that the policy of using armed escort onboard or Private Contracted Armed Security Personnel (PCASP) for ships sailing in high-risk areas, namely areas prone to piracy as referred to in section 2.4 BMP4 and IMO circular letter Number MSC 1/ Circ 1443 and MSC 1/ Circ 1406/ Rev 2 have been agreed to be implemented by IMO member countries as interim recommendations.
- b. With specific considerations, the PCASP use policy referred to above was not adopted in Indonesia as a condition that Indonesian-flagged ships must comply with. Therefore no certificate/permit approval for the use of PCASP has been issued.
- c. Indonesian-flagged vessels are encouraged to continue to prioritize the implementation of the ISPS Code and follow international guidelines Best Management Practice to Deter Piracy off the Coast of Somalia and in the Arabian Sea Area (BMP4)

The government's attitude in this regard seems ambiguous. On the one hand, it does not prohibit armed escorts on merchant ships, but on the other hand, it does not oblige. The decision to use PCASP is left entirely to the merchant shipowner.

In Indonesia, using security measures aboard commercial vessels involving armed TNI personnel is not allowed. As already regulated in the IMO

regulations, there is a clause prohibiting the placement of military soldiers on ships. However, some countries have enforced security policies using weapons on board. The IMO rules state that security onboard merchant ships can only be carried out by armed civilians (Armed Security Personnel). The number of armed security personnel is limited, and their use is also strictly monitored.

C. CONCLUSION

The movement of export/imported commodities using privately owned commercial vessels through the sea between continents, between countries and between islands must be safe and free from maritime security disturbances as a prerequisite for the growth of trade and the economy of a country. However, not all seas in this part of the world are safe. How many marine waters are categorized as high-risk areas.

The use of PCASP supports the security and safety article in UNCLOS 1982. As an instrument of the United Nations in charge of maintaining and overseeing international regulations on the security and safety of ships and ports, IMO itself has provided regulatory tools that recommend and support the use of PCSAP on merchant ships. Various codes to ensure the safety and security of shipping have been issued by IMO, including operational security codes for ships and other port facilities as outlined in the ISPS Code.

Through this ISPS code which is a product of IMO, the ISPS Code itself is based on the Maritime Safety Committee (MSC), which always holds international meetings to discuss the latest issues

and solutions for global shipping companies, where Indonesia sits as a permanent member of IMO. The ISPS is constructed through the PCASP circular created by MSC consisting of IMO members. The Circular becomes the legal basis and guides IMO members in dealing with issues or problems using private armed personnel on merchant ships. The Circular is construction for updating the ISPS Code, which is revised periodically. The implementation of ISPS is the legal basis for shipowner companies and companies that rent vessels (charter parties) to ensure that the vessels operated have met ship safety and security standards.

In Indonesia, the circular MSC and ISPS Code are responded to by the Indonesian government through the relevant ministries, in this case, the Ministry of Transportation, the Directorate General of Sea Transportation, as outlined in Circular Letter No. UM.002/71/15/DJPL-14 concerning Armed Escort on Ships: Private Contracted Armed Security Personnel (PCASP) does not require but does not legalize commercial shipping companies to present PCASP on ships. The Directorate General of Sea Transportation will not issue any permits or certificates related to PCASP onboard ships. Therefore, the decision to use PCASP is left entirely to the company that owns the merchant ship, provided that such use does not conflict with national law.

Finally, the countries that allow the use of PCASP on merchant ships allow the existence of armed private security within the territory of their country's land sovereignty so that it also applies to security in the territorial waters of the sea.

Meanwhile, PCASP has not been and is not applicable in Indonesia because Indonesian national law does not allow the implementation of armed private security other than security by official state institutions, namely the Indonesian Armed Forces and the Indonesian Police.

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