Indonesian Journal of International Law (2017), Vol. 14 No. 4, pp. 497-513
doi: 10.17304/ijil.vol14.4.704

STUDY OF THE RIGHT OF FOREIGN SHIP AGAINST STATE SOVEREIGNTY (CASE STUDY INDONESIA)

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Abstract

Recognition of the archipelagic concept accommodated in chapter IV United Nations Conventions Law of The Sea (LOSC) 1982. The implication of this recognition is archipelagic states have sovereignty for their marine space. There are 3 zonation in sea sovereignty, that are inland water, territorial water and archipelagic water. However, only in inland water that archipelagic states has full sovereignty while for the other zones, it has followed by other states rights, One of which is right of passage. Right of another state passage is consists by right of innocent passage, right of archipelagic sealine passage and there is also right of transit passage. Indonesia has determined three archipelagic sea lines passage, in this paper will discuss about Indonesian sea sovereignty zone and right another state inside, along implications for Indonesia after determination of archipelagic sealine passage.

***Keywords**: sovereignty of state, passage right, archipelagic sea-lines*

Submitted: 20 July 2016 | Revised: 20 October 2016 | Accepted: 14 June 2017

I. INTRODUCTION

The concept of archipelagic state is a new concept of form state based on geographic conditions archipelago consisting of post set out in Chapter IV, the United Nations Law of the Sea Convention (LOSC) 1982. Indonesia and Philippine were the first state that claimed and made regulation about sovereignty sea, and declare all the waters for their archipelagic sea,[1] on the basis interest of economic, politic, history and geography.[2] Eventually, this concept has supported by another archipelagoes states.[3] Finally, in 1982, result of United Nation Confer-

[1] C. F. Amerasinghe. "The Problem of Archipelagoes in the International Law of the Sea", *The International and Comparative Law Quarterly*, Vol. 23, No. 3, July 1974), p. 556

[2] *Ibid*, C. F. Amerasinghe, p. 557-558, see to Jack A. Draper, The Indonesia Archipelagic State Doctrine and Law of the Sea: Territorial Grab" or Justifiable Necessity?, The International Lawyer, (Vol. 11, No. 1, 1977), p.144.

[3] John R. Brock, Archipelago Concept of Limits of Territorial Seas, *International Law Studies*, Role of International Law and an Evolving Ocean Law, edited by Richard B.

ence Law of the Sea (UNCLOS) has recognized this concept. Referred by the archipelagic state under section 46 (a) is "*state constituted wholly by one or more archipelagos and may include other islands"*; and the meaning of archipelagic is section 46 (b):

> *"a group of islands, including parts of islands, interconnecting waters and other natural features which are so closely interrelated that such islands, waters and other natural features form an intrinsic geographical, economic and political entity, or which historically have been regarded as such."*

Based on these conventions, the archipelagic state has sovereignty over the whole territory of the sea and all regimes inside of archipelagic baseline. Sea sovereignty of the archipelagic state sea, can be divided (based on archipelagic base-line) into several zones, comprise the sovereignty in regime inland waters, regime archipelagic waters and regime territorial waters.[4] Each zone has a different regime, even with this zoning concept will make a difference between the concepts of sovereignty in the sea with sovereignty on land, and will impact on the difference of navigation regime in each zone of the waters of an archipelagic state.[5]

Recognition of the archipelagic sovereignty caused a consequence on international interest had already existed.[6] The Archipelagic state is obliged to ensure the rights of users state to passing the sea zone of an archipelagic state. That zone includes the right of innocent passage in the territorial sea, archipelagic sea line passage (ASLP) in archipelagic waters and the rights of transit passage in the strait has been established

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Law Studies, Role of International Law and an Evolving Ocean Law, editor oleh Richard B. Lilich & Norton Moore, (Vol. 61, no years). Available on-line at https://www.usnwc.edu /getattachment/d9146704-028a-483e-8b64-44dd47f747d5/Archipelago-Concept-of-Limits-of-Territorial-Seas.aspx, on 13/12/2015, at 10.52 pm, p. 339.

[4] Kresno Buntoro, *Konsep Bagi Beban dalam Kamanan Maritim di Nusantara Indonesia*, available on-line at http://pusjianmar-seskoal.tnial.mil.id/Portals/0/Konsep%20"Bagi Beban "%20dalam%20 Keamanan%20 Maritim%20di%20Nusantara%20Indonesia%20.pdf, p. 3-4.

[5] Hasjim Djalal, The law of the Sea Convention and Navigational Freedom, in Donald R. Rothwell and Sam Bateman (edited), *Navigational Rights and Freedoms and the New Law of the Sea*, (Haque: Martinus Nijhoff Publishers, 2000), p. 1-2.

[6] *Ibid*. Kresno Buntoro

 DOI : *10.17304/ijil.vol14.4.703*

as an international strait.[7]

Especially on the concept of archipelagic sea line passage (ASLP), this navigation just is imposed only at archipelagic state which has archipelagic waters zone. All user state can enjoy this passage. When archipelagic state does not assign archipelagic sea line passage then all the normal routes that have long existed in the region will remain in force.[8] Article 53 (3) LOSC mentions:

> *"Archipelagic sea lanes passage means the exercise in accordance with this Convention of the rights of navigation and over flight in the normal mode solely for the purpose of continuous, expeditious and unobstructed transit between one part of the high seas or an exclusive economic zone and another part of the high seas or an exclusive economic zone."*

Even when using archipelagic sea line passage, then any passing ships can use *normal mode* in the meaning of sailing normally, should not be restricted and *unobstructed passage* [9] *for* example submarine could cross an archipelagic sea line without being disturbed and with a fixed position dive in the water just as sailing on the high seas. This is certainly different from the right of innocent passage in the territorial sea, where at the time of sailing ships then the subs are required to navigate on the surface of the water and show the flag.[10]

Indonesia is the one and (only) archipelagic state in the world, which has been, assigns archipelagic sea-lanes (ASL). Although Indonesia has set three (3) archipelagic sea lanes known as archipelagic sea lanes passage (ASLP) which connects the north and south however concern and debate about sovereignty nonetheless appear. Use of the concept *routes normally* and *normal mode* in archipelagic sea-lanes currently remains a dilemma for archipelagic state. This occurs because an archipelagic state cannot prohibit, interfere and even close the sea-lanes Foreign cruise ships that crossed its territory, so the concept "regarded" could interfere implementation an archipelagic state sovereignty. *Normal mode* applicable in ASLP make archipelagic sea-lanes in Indonesia as

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[7] *Ibid*. Kresno Buntoro, p. 6-7.

[8] *United Nations Conventionn on the Law of the Sea*, opened for signature 10 December 1982, UNTS 1833 (entered into force 16 November 1994) Art. 53 (12).

[9] Art. 53 (3) LOSC 1982.

[10] Art. 20 LOSC 1982

if the regime of high seas. Even if there is no determination ASL, every state has right to sail in ASLP on the grounds usage normal shipping route */ routes normally*.

At the level of practical implementation of archipelagic sea lanes regime seemed to make the archipelagic sea be open and free navigability, "seemed to" there are still regime of the high seas in Indonesian archipelagic sea lanes passage, especially with ASLP archipelagic state is not allowed to interfere and banned navigation. Thus, in this paper will focus on the discussion about how real archipelagic sovereignty water after determination Indonesian ASL in terms of international law of the sea.

II. ARCHIPELAGIC STATE AS A RESULTS OF CONSENSUS

The Third United Nations Conference on the Law of the Sea (UNCLOS III) is an important conference in the history of international law because of the scope, substance of the issues with which it is concerned, and represents a major international experiment in decision making by consensus. So this conference regarded as a unique event, due to Most of the attention it has attracted so far has been focused on the problems, progress, and prospects of the conference[11] without formal votes.[12] Result of this conference is The United Nations Convention on the Law of the Sea (LOSC) 1982.

This convention has a new special regime laid down in Part IV, archipelagic state, consist of 9 article (Article 46-54). With this part, concept of archipelagic state accepted by International. Article 46 defines an archipelagic State as "a State constituted wholly by one or more archipelagos and may include other islands". An archipelago is defined as:[13]

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[11] Barry Buzan, "Negotiating by Consensus: Developments in Technique at the United Nations Conference on the Law of the Sea", *The American Journal of International Law.*

[12] R.R. Churchill and A.V. Lowe, *The Law of The Sea 2nd Edition*, (Manchester: Manchester Univ. Press, 1985), p. 15.

[13] Art. 46 LOSC

> *"A group of islands, including parts of islands, interconnecting waters and other natural features which are so closely interrelated that such islands, waters and other natural features form an intrinsic geographical, economic and political entity, or which historically have been regarded as such."*

So by that definition Churchill states that there are two conditions regarded as archipelagic state that:[14]

1. archipelagic states do not include mainland states which possess non-coastal archipelagoes e.g. Denmark with the faroes, Ecaudor with the Galapagos island, etc.
2. the definition of an archipelagic state would appear to embrace a number of states which do not normally consider themselves to be archipelagic states, eg. Japan, New Zealand, United Kingdom.

This archipelagic state concept was pioneered by Indonesia and the Philippines where at that time still unknown in international law and international law of the sea. An archipelagic state concept is a geographical concept of state which consists of islands and oceans so that archipelagic state will use the straight archipelagic baselines of all the outer islands thus making all the waters inside the base line into inland water. This is certainly got disagreement-overdeveloped states and another state who want the freedom of navigation in the sea with no one can obstruct.[15]

Result of the seriousness of the negotiation process that long and drawn, one of Accepted consensus are the principle archipelagic state as a new legal regime at sea. Recognition of this archipelagic state regime spawned a new concept regarding archipelagic state sovereignty

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[14] *Ibid*, Churchil, p. 100.

[15] *Ibid*, Churchil, p. 98-100., C.F. Amerasinghe, The Problem of Archipelagoes in the International Law of the Sea, *The International and Comparative law Quarterly*, Vol. 23, No. 3, Jul, 1974, p. 543-544., John R. Brock, Archipelago Concept of Limits of Territorial Seas, *International Law Studies*, Role of International Law and an Evolving Ocean Law, eds. Richard B. Lilich & Norton Moore, (Vol. 61, no years). available on-line at https://www.usnwc.edu /getattachment/d9146704-028a-483e-8b64-44dd47f747d5/Archipelago-Concept-of-Limits-of-Territorial-Seas.aspx, on 13/12/2015, at 10.52 pm, p. 330.

territorial waters,[16]archipelagic base lines,[17] archipelagic sea-lanes passage[18] and other arrangements relating to archipelagic state.

A. ARCHIPELAGIC STATE AND SEA SOVEREIGNTY

Article 49 LOSC, is a form of political recognition and unity on the territory of archipelagic state by the international under the LOSC.[19] An archipelagic state has sovereignty over the air space above the waters, seabed and subsoil thereof, and all natural resources contained therein.[20] An archipelagic state Delimitation of sovereignty must be based on the baselines called archipelagic baselines. Told as archipelagic baselines :[21]

> *"straight archipelagic baselines joining the outermost points of the outermost islands and drying reefs of the archipelago provided that within such baselines are included the main islands and an area in which the ratio of the area of the water to the area of the land, including atolls, is between 1 to 1 and 9 to 1.[22]"*

Based on Archipelagic baselines, then archipelagic state territorial water sat sea, can be divided based on zoning by looking at the position of the. zoning on the territorial sovereignty of the sea includes all internal waters and archipelagic waters, and the 12 miles outward baselines territorial waters.[23] As for the territorial sovereignty of the sea in every zone of the archipelagic state applies its own regime. Each zone of the territory would have its own navigation regime that are : Innocent passage, transit passage and archipelagic sea line passage (ASLP)[24] that

[16] *Ibid*, LOSC, art. 49.
[17] *Ibid*, LOSC, art. 47.
[18] *Ibid*, LOSC, art. 53.
[19] Hasjim Djalal, Indonesia's Archipelagic Sea Lanes, in Robert Cribb and Michele Ford, *Indonesia the water's Edge Managing an Archipelagic State*, (Canberra: Research school of Pacific and Asian Studies the Australian National University, 2009). p. 60.
[20] *Ibid*, Hasjim Djalal, *Indonesia's Archipelagic Lanes*, see LOSC art. 49 (2).
[21] LOSC art. 47
[22] *Ibid*, 47 (1)
[23] *Ibid*, LOSC, p 49
[24] Chris Forward, Archipelagic Sea-Lines in Indonesia – Their Legality in International Law, *Australian & New Zealand Maritime Law Journal*, (Vol. 23, no. 2, 2009). p. 147, available on-line at https://ssl.law.uq.edu.au/journals/index.php/maritimejour-

enforcement based on regime territorial waters zone passed by.

B. SEA SOVEREIGNTY ZONE AND RIGHT OF PASSAGE (CASE ARCHIPELAGIC STATE)

1. Internal waters and no right of navigation

Internal Waters is a zone sovereignty states, which lie on the land side of normal baseline from, then each islands will have its own baseline, drawn according to the normal principles.[25] Internal water is a measured, including lakes, rivers, canals, ports, bays, and historic bay. A coastal state has complete authority to control access of vessels, both private and governmental over its internal waters. International law authorizes states because internal waters adjoin the land territory of state of a state. This authority is nearly as comprehensive as sovereignty over the landmasses[26] in other words coastal state enjoys full territorial sovereignty over them.[27]

Effect determination of internal waters is the closing of the entire sea area previously not considered so, so that no right of innocent passage for foreign vessels as through the territorial sea.[28] However, when the foreign ship enters the port or other internal waters, ships put themselves to the territorial sovereignty of the coastal state.[29] Additionally, specialized in this zone, An archipelagic state able to close and prohibit or allow Navigation to stopover on the port or entering inland waters when An archipelagic state wants,[30]in this zone absolute territorial waters of owned by coastal state then the setting is subject to under its national law.

2. The Territorial Sea and Innocent Passage

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nal/article/view/113/152, on 05/09/2016.

[25] *Ibid*, see Churchill, p. 51, see Hasjim Djalal, The law of the Sea Convention and Navigational Freedoms, p. 1, see LOSC. Art. 5, art.8 and art. 50

[26] Lung Chu Chen, *An Introduction To Contemporary International Law A Policy Oriented Perspective 2nd Edition,* (New York: Yale Univ. Press, 2000). p. 133.

[27] *Ibid*, Churchill.

[28] *Ibid*, LOSC, art. 8.

[29] *Ibid*. Churchill, p. 54, Lung Chu Cen, p. 134.

[30] *Ibid*, Churchill, p. 52-55

The Territorial sea is a zone of sovereignty that lies outside the baselines up to a limit not exceeding 12 nautical miles toward high sea.[31]Whereas purposing for archipelagic state territorial zone is the entire sovereignty zone that is 12 nautical miles towards the high seas drawn from archipelagic straight baseline of archipelagic states outer islands.[32]Although the territorial sea is the realm of coastal state sovereignty, but sovereignty is relatively because of other states rights namely "innocent passage rights" which are subject based on international law of innocent passage.[33] Based on art. 19 of LOSC provides in this regard that:

> *"Passage is innocent so long as it is not prejudicial to the peace, good order or security of the coastal state. Such passage shall take place in conformity with this convention and with other rules of international law".*

Navigation carried out in the territorial waters must necessarily just traversing that sea without entering internal waters or calling at a roadstead or port facility outside internal waters; or proceeding to or from internal waters or a call at such roadstead or port facility.[34] Another requirement when ships through innocent passage that the cruise must necessarily done continuously, submarines and other underwater vehicles are required to navigate on the surface and to show their flag.[35]other than that, every passing ship must be subject to coastal state laws and regulations and also international law for the security and safety of navigation.[36]

Even though other states has rights of innocent passage, Due to territorial sea regime is still in a coastal state sovereignty zone so coastal state still be able to take procrastination or even ban or restrict for passing ships in the territorial waters. Procrastination can be applied when coastal state concerned to conduct combat training or to a cause that definite and clear such as for the protection of safety.[37]

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[31] *Ibid*, LOSC, art.3 and art. 47
[32] *Ibid*, LOSC art. 48
[33] *Ibid*, LOSC, art.17, see Churchill, p. 68-75, see Lung Chu Chen, p. 134-135.
[34] *Ibid*, LOSC, art. 18.
[35] *Ibid*, LOSC, art. 20.
[36] *Ibid*, LOSC, art. 21.
[37] *Ibid*, LOSC, art. 25.

While for to ban or restriction foreign ships navigation can be applied by coastal state when is not prejudicial to the peace, good order or security of the coastal states, or restrictions because of ships carrying nuclear material[38]. Prejudicial to the peace, good order or security of the coastal state if in the territorial sea it engages in any of the following activities:[39]

1. any threat or use of force against the sovereignty, territorial integrity or political independence of the coastal state, or in any other manner in violation of the principles of international law embodied in the Charter of the United Nations;
2. any exercise or practice with weapons of any kind;
3. any act aimed at collecting information to the prejudice of the defense or security of the coastal state;
4. any act of propaganda aimed at affecting the defense or security of the coastal state;
5. the launching, landing or taking on board of any aircraft;
6. the launching, landing or taking on board of any military device;
7. the loading or unloading of any commodity, currency or person contrary to the customs, fiscal, immigration or sanitary laws and regulations of the coastal state;
8. any act of willful and serious pollution contrary to this Convention;
9. any fishing activities;
10. the carrying out of research or survey activities;
11. any act aimed at interfering with any systems of communication or any other facilities or installations of the coastal state;
12. any other activity not having a direct bearing on passage.

Innocent passage shall be applied in straits used for international navigation between a part of the high seas or an exclusive economic zone and the territorial sea of a foreign state.[40] Coastal state may be levied upon a foreign ship passing through the territorial sea as payment only for specific services to passing ships.[41]

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[38] *Ibid*, LOSC, art.22 (2).
[39] *Ibid*, art. 19 (2).
[40] *Ibid*, LOSC, art.45 (b).
[41] *Ibid*, LOSC, art. 26.

3. Archipelagic Waters as a Sui Generis and ASLP

Archipelagic water is a zone of sovereignty that solely owned by Archipelagic State enclosed by archipelagic baselines drawn.[42]Of this zone is a new concept in international law. Called by sui generis where the waters are neither like inland water regime nor the regime of territorial waters.[43] However, this zone is a special zone contained in the sovereign territory of the sea in Archipelagic State only.

Sovereignty in this zone is relative, because sovereignty in the archipelagic waters subject to some of the third nations rights. According to Churchill, there are four of third nations rights over archipelagic waters that must be respected by the archipelagic State[44] which is the result of a consensus between the archipelagic State with the user state, among other things:

1. an archipelagic must respect right enjoyed by third states deriving from existing agreements (LOSC, art. 51 (1).
2. An archipelagic state must:
   recognize traditional fishing rights and other legitimate activities of the immediately adjacent neighboring States in certain areas falling within archipelagic waters. The terms and conditions for the exercise of such rights and activities, including the nature, the extent and the areas to which they apply, shall, at the request of any of the States concerned, be regulated by bilateral agreements between them. Such rights shall not be transferred to or shared with third States or their nationals. (LOSC, art. 51 (1)).
3. Obligation on archipelagic state is to:
   expect existing submarine cables laid by other States and passing through its waters without making a landfall. An archipelagic State shall permit the maintenance and replacement of such cables upon receiving due notice of their location and the intention to repair or replace them. (LOSC, art 51(2))
4. Most Important, there are the navigational rights of other states. (LOSC, art. 53)

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[42] *Ibid*, LOSC, art. 49

[43] *Ibid*, Hasjim Djalal, *Navigational Rights and Freedoms and the New of the Sea*, p. 2, see Churchil, p. 103, see Lung Chu Chen, p. 136.

[44] *Ibid*, Churchill, p. 103-104.

About right of passage, in archipelagic water referred to Archipelagic Sea lines Passage (ASLP). Every state enjoyed ASLP in archipelagic sea line (ASL). The excess of ASLP is that the ship can use normal mode when crossing ASL. Basically, archipelagic sea-lanes passage is equal to transit passage in the straits regime, where the rights and obligations of users State and archipelagic State are the same "mutatis mutandis" with rights and obligations of users State and archipelagic State in the straits regime. Moreover same as straits regime, ASLP could not be deferred by the Archipelagic State (*un-obstructive passage*). Another specialty of this regime are when archipelagic State not specify ASL, it will apply normal routes[45]for any sea lanes which is considered normally each of the user States.

C. INTERNATIONAL STRAITS FOR INTERNATIONAL NAVIGATION AND TRANSIT PASSAGE

Strait regime is not included into the distribution zone in the territorial sea. Strait regime closely related to passage regime / international navigation which passes through sea area called the strait. Strait for International navigation could have been among the two territorial state or in exclusive economic zone. Navigation through straits used for international passage called the transit passage. According to art 38 (2) LOSC, which is called transit passage, is:

> *the exercise in accordance with this Part of the freedom of navigation and overflight solely for the purpose of continuous and expeditious transit of the strait between one part of the high seas or an exclusive economic zone and another part of the high seas or an exclusive economic zone. However, the requirement of continuous and expeditious transit does not preclude passage through the strait for the purpose of entering, leaving or returning from a State bordering the strait, subject to the conditions of entry to that State.*

When Ships used right of transit passage, there shall be no suspension by coastal states.[46]despite the fact that strait is in its territory (such

[45] *Ibid*, Churchill, p. 105. See Lung Chu Chen, p. 136 and see LOSC, art. 53 and art. 54.

[46] *Ibid*, LOSC, art. 44

as Malacca Strait), but the regime applicable navigation is transit passage regime. The other hand all ships using the transit passage obliged not to interfere and take action that are considered to affect the coastal state sovereignty.

III. ASLP OF INDONESIA

Indonesia is currently the only state in the world that has implemented ASLP. Indonesia has 3 Indonesian ASLP which connects the north and south. Following the division of ASLP predefined by the Indonesian government and has been approved and reported to IMO:[47]

A. INDONESIA'S ASLP I NAVIGATION FROM :

South China Sea – Natuna Sea – Karimata Strait – Jawa Sea and Sunda Strait to Hindia Ocean or on the contrary. Indonesia's ASLP I:

1. **Indonesia's ASLP I, for navigation from:**

   South China Sea – Natuna Sea – Karimata Strait – Java Sea and Sunda Strait to Hindia Ocean (or on the contrary).

2. **Indonesia's ASLP IA, for Navigation from :**

   a. Singapura Strait – Natuna Sea – Karimata Strait – Jawa Sea and Sunda Strait to Hindia Ocean or on the contrary, or

   b. Natuna Sea through to South China Sea or on the contrary.

B. INDONESIA'S ASLP II, FOR NAVIGATION FROM:

Sulawesi Sea -Makasar Strait - Flores Sea - Lombok Strait to Hindia Ocean (or on the contrary);

C. INDONESIA'S ASLP III, SEA LANE PASSAGE FOR NAVIGATION THAT CONNECTS PASIFIK OCEAN DANHINDIA OCEAN OR ON THE CONTRARY. ASLP III CONSISTS OF :

1. **Indonesia's ASLP IIIA, for navigation from :**

   Pasifik Ocean – Maluku Sea - Seram Sea - Banda Sea - Ombai Sea and Sawu Sea - Hindia Ocean or on the contrary.

[47] Part. III, art. 11, Article 3 paragraph 1 of the *Government Regulation* 37/2002.

2. **Indonesia's ASLP IIIB, for navigation from :**

   Pasifik Ocean - Maluku Sea - Seram Sea - Banda Sea - Leti Strait - Timor Sea or on the contrary.
3. **Indonesia's ASLP IIIC, for navigation from :**

   Pasifik Ocean - Maluku Sea - Seram Sea - Banda Sea - Arafura Sea or on the contrary.
4. **ASLP IIID, for navigation from:**

   Pasifik Ocean - Maluku Sea - Seram Sea - Banda Sea - Ombai Strait - Sawu Sea - TimurSawu Island - Hindia Ocean or on the contrary.
5. **ASLP IIIE, for navigation from :**

   a. Sulawesi Sea - Maluku Sea - Seram Sea - Banda Sea – Ombai Strait
   b. Sawu Sea sebelah eastern Sawu Island – Hindia Ocean
   c. Maluku Sea – Seram Sea - Banda Sea - Leti Strait-Timor Sea - Hindia Ocean or on the contrary.
   d. Seram Sea -Banda Sea - Arafura Sea or on the contrary.

With the determination of Indonesian ASLP then all International navigation either using neither innocent passage nor the archipelagic passage shall pass "only" in Indonesia ASLP not on another sea-lane passage. The problem is Indonesia does not apply for ASLP east to west yet, giving rise varying interpretations of the routes normally who always used as a reason user state when through ASLP from East to West or on the contrary. However, according to the Indonesian version due to Indonesia has provided ASLP then there is no more another ASLP.[48] This caused Bawean dispute between Indonesia and the United States in 2003.

Bawean incident is a case that happened because of differing interpretations between the concept of routes normally with the interpretation of Indonesia that has been providing sea line archipelagic passage. Americans assume that because Indonesia does not provide East – West ASLP, it will applies Article 53 (12) LOSC that states :

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[48] Dhiana Puspitawati, The East/West Archipelagic Sea Lanes Passage Through the Indonesian Archipelago, *Journal Maritime Studies*, (January-February 2005), p. 4-6.

If an archipelagic State does not designate sea lanes or air routes, the right of archipelagic sea lanes passage may be exercised through the routes normally used for international navigation.

Thus making the fleet of ships and American war planes passing and maneuvering over Bawean island because of US assume they are using their freedom of navigation as effects of the implementation of the normal routes as mentioned in LOSC art 53 (12). Whereas in the opinion of Indonesia based on Article 3 paragraph 1 of the *Government Regulation* 37/2002. reads:

> *[t]he rights of Archipelagic Sea Lanes Passage [ASLP] through other Indonesian Waters can be exercised in accordance with this Regulation as soon as archipelagic sea lanes have been designated in those waters.*

Then by the Government Regulation, there is no more routes normally post-determination of 3 ASLP North / South. So the act of American fighter maneuvers over the island Bawean constitute violation of Indonesian territorial sovereignty and can interfere with the safety and security of civil aviation.

IV. DELIMITATION AND REGULATION ON SEA SOVEREIGNTY ZONATION

Privileged of sovereignty at the sea which is different from the concept in land, must be responded by Indonesian government to prevent the occurrence of violation of the sovereignty at the sea. Due to the zone of sovereignty at the territorial sea and archipelagic water extant another states right, and only in inland water zone States have full sovereignty.[49] Therefore Indonesian government should be immediately establish and announce delimitation of in land water zone in each of the islands, territorial zone and territorial water zone. More over any announcements and socialization should be done for Indonesian people or users states. This inland water delimitation is very important to prevent violations of sovereignty at the sea (inland water) from the existence and implementation of foreign states passage right.

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[49] *Ibid*, Lung – Chu Chen, p.133

Strait determination, that to be entrance and exit for archipelagic sea-lanes is indispensable to determine that the passing ship has entered into archipelagic sea regime of the States. So that can be determined whether the user state will use the innocent passage right or apply archipelagic sea-lanes passage right. This is crucial, due to differences right of navigation concept will have different legal liability on it. Even though foreign ships passage right has been awarded by LOSC for all user States, it does not mean they can sail freely. There are liabilities that must be obeyed by passing foreign ship that the passage must necessarily innocent and should not interfere with the sovereignty of the territory and Indonesian legal sovereignty as the archipelagic state.

Law or regulation must be prepared in order to regulate the procedure and terms of ship that when used foreign ships passage right in the archipelagic water zone, territorial water and the strait zone, Even though there are also, Special rules for ship regulating when trying to enter the area of inland water zones as a regime of absolute sovereignty (there is no foreign ships passage right). Other regulations that need to be established are provisions of concerning foreign ships passage when passing through the crowded straits which is not the strait for international navigation. Indonesia has two regime of strait for innocent passage / archipelagic sea lanes such as the Sunda Strait, Karimata Strait, Lombok Strait etc. and strait regime for international navigation like Malacca Strait.

V. CONCLUSION

Above discussion has firmly stated that indeed there is no more problems with the archipelagic State sovereignty. It is obvious and real in the LOSC 1982, Bab IV, art 46-54, recognizes and regulates sovereignty to the rights and obligations of archipelagic State and users States, that archipelagic State sovereignty of sea area consists of 3 zones, that are zone of inland waters, territorial sea and archipelagic sea. The sovereignty of the territorial waters zone has its own regime. Whereas for navigation passage consists of three forms of navigational rights which is innocent passage, transit passage and archipelagic sea lines passage.

That indeed Indonesia has been correctly assigning its ASLP. By assigning ASLP then all of Navigation passing through Indonesian territorial waters required traverse on the line determined by the Indonesian government. Determination ASLP will also be closes any user state reasons for using routes normally in straits and Indonesian sea. So with this designation will make it easier to monitor all of passing ships, because of the user state also has an obligation to comply with rules and agreements ordinances ASLP pass through.

ASLP real problems in Indonesia are not on the problem of territorial sovereignty but the inability to maintain and show sovereignty (exercises sovereignty). With normal mode concept when any ships pass through in ASLP will require equipment and highly advanced technologies. Because when vessels using the right of archipelagic sea lane passage then there would be no liabilities to give a report, so it takes radar with high technology in every ASLP choke point in order to monitor the traffic of passing ships in ASLP.

Indonesian government should hasten the determination of the zoning cover inland water, territorial water and archipelagic water, so that the known boundary region where there are marine navigational rights of other states.

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