# From Undang-Undang Melaka to UNCLOS: Ethical Governance and Geopolitical Peace in the Maritime Malay-Indo Archipelago
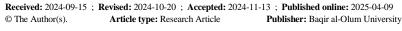
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## Abstract

Despite UNCLOS serving as the primary legal framework governing maritime conduct, challenges remain in effectively embedding human rights principles, ethical governance and inclusivity within its implementation, especially in geopolitically sensitive regions such as Malay Indo Archipelago. This raises the question of how fundamental legal traditions, such as those found in 15th century Undang-Undang Melaka, a customary maritime code emphasizing human dignity, ethical conducts, and inclusive community governance- can highly inform and enrich contemporary international maritime law. The problem lies in the apparent disconnect between modern state centered ethical governance regimes and the human centered ethical governance principles that underpin long lasting peace. This study critically examines how the human right norms embedded in the Undang- Undang Melaka align with or differ from those in UNCLOS, arguing that the incorporation of these ethical and inclusive governance principle is crucial for fostering maritime cooperation, trust, and ultimately geopolitical peace. By exploring these normative intersections through a qualitative legal analysis, the research aims to demonstrate that the revitalization of customary law's humanistic maritime governance, promoting more equitable and peaceful relations among maritime states.

**Keywords:** Customary law, UNCLOS, Ethical Governance, Geopolitical Peace, Maritime.

## 1. Introduction

The maritime domain of Southeast Asia, particularly around Malaysia and Indonesia has historically been plagued by multitude of security challenges. In recent decade; however, the nature of these challenges has shifted from traditional state-based threats to non-traditional maritime security issues such as piracy, human trafficking, illegal fishing, and environmental crimes (Balakrishnan & Varkkey, 2017). As these threats intensify, the role and efficiency of human rights institutions and regulatory frameworks in addressing them have come under scrutiny. There is a growing concern that the weakening of these institutions has inadvertently exacerbated maritime insecurity and undermined regional geopolitical peace. In the Straits of Malacca and South China Sea, which are vital maritime corridors, the increase on non-traditional maritime security threats is particularly evident. Piracy and armed robbery at sea have resurged, often linked to organized trans-national crime networks. Illegal, unreported, and unregulated (IUU) Fishing, especially by foreign fleets, has depleted marine biodiversity and led to conflicts with local fishing communities. Additionally, Malaysia and Indonesia serve as key transit points for human trafficking and smuggling of migrants, with thousands attempting dangerous sea crossings annually (Xu, 2017).

This development stems from complex socio-political issues, including weak governance, poverty, and limited maritime law enforcement capabilities. However, one of the less examined factors is the declining influence and effectiveness of national and regional human rights institutions in curbing these issues (UNODC, 2021). Human rights institutions in Southeast Asia have traditionally lacked binding authority and enforcement power. In Malaysia and Indonesia, despite constitutional commitment and ratification of key international treaties, the practical enforcement of human rights-especially for vulnerable groups such as migrants, women, and coastal communities has been inconsistent. Regulatory bodies often lack the independence, resources, or political will to act against state or corporate actors implicated in maritime abuses (Amalia, 2019; Schlieman, 2023). National security narratives often overshadow human right concerns. In combating maritime crimes, authorities frequently resort to heavy handed policies that violate the rights of suspects and civilian alike. Migrants and asylum seekers, especially Rohingya refugees, are often detained indefinitely or turned away at sea without due process, highlighting the erosion of humanitarian forms (Al Imran, 2022).

Human rights institutional frameworks have played a pivotal role in fostering geopolitical peace. Post WWII institutions like the United Nations

and its universal declaration of Human Rights provided a moral and legal foundation that discouraged aggressive nationalism and promoted cooperation. The Helsinki Accords (1975), for instance, demonstrated how human rights commitments can facilitate détente and reduce tensions among rival blocs. In Southeast Asia, the failure to build strong, enforceable maritime human right regimes has had the opposite effect. Without accountability, maritime abuses go unchecked, fueling grievances, eroding public trust and institutions, and creating fertile ground for insurgency, piracy, and trans-national crime. This failure contributes to maritime environment that threaten both regional peace and international shipping lanes. Question whether the law and legal institutions allow the weakening of human right advocacy and facilitation remains legitimate. Reflecting to the human right foundations historically, the sea in these regions witnessed the crisis towards refugees for many centuries due to domestic war and international disputes which was often a third-party exercising power contest between the major hegemon. It was never been a result of wars among the local Sovereigns. This phenomenon_ what triggered scholars to believe in the presentative influence of the inherited geopolitical peace_ constructed through the fabrics structure and hierarchy of maritime human right foundations.

Being connected by a tremendous geography of oceans, the populations had historically encountered diverse belief systems and shared civilization that preserve the universality of human rights. The civilization was represented by the non-hegemonic racial and religion-based order, as witnessed through the periods of global international relations for many centuries. Nevertheless, it was gradually reduced by the rise of European hegemony in the 18th century that created massive economic and religious-political deconstructions which embraced selective power of human rights as exercised in the maritime world of India and across the Indian Oceans, including the Indo Malay world.The sea blockade and restriction of immigration at the maritime level has displayed in the last decades the transformation from being the object of the realist gambit of maritime security during the nationalism era to the balancing alliance during the liberal democratic order. Despite the changing periods and rule of order, it continued to be perceived as a threat to the state security and sovereignty. This paper reconsiders the historical legal foundations of maritime human rights in Southeast Asia, especially the Malay-Indo Archipelago. It examines traditional maritime customary law and UNCLOS in their scope of ethical governance as the precursor to the epistemology of geopolitical peace. It is expected that the study would provide additional

insight into the human right policy making in the subject of non-traditional maritime security.

## 2. Ethical Governance Theory and Geopolitical Peace

The historical context of maritime human rights in Southeast Asia, particularly within the Malay-Indo Archipelago, has been significantly shaped by the indigenous and international legal traditions and frameworks. A foundational piece of literature in this domain is the Undang-Undang Melaka (Malacca Laws), a 15th century maritime code that exemplifies early condition of maritime governance and right (Andaya & Andaya, 2017). Scholars such as Winstedt (1945) argue that these laws emphasized communal rights to navigation, fishing, and safe passage, laying an early foundation for what might be recognized today as maritime human rights. The role of the United Nations Convention on the Law of the Sea, balancing state sovereignty with individual and community rights (Kraska, 2011). Particularly, UNCLOS'srecognition of territorial waters, Exclusive Economic Zones (EEZs), and the rights of passage has been instrumental in shaping state practices in Southeast Asia (Thao, 2019). However, as Zhou & Ye (2023) highlights tension arise when these international laws interact with traditional customary maritime practices, which still hold normative power among coastal communities in the Malay Archipelago.

The geopolitics of maritime security in Southeast Asia is complex, reflecting competing claims over maritime boundaries and resources. A substantial body of research discusses how states prioritize sovereignty and security over individual or community maritime rights, often framing the sea primarily as a domain of state control (Bateman & Hanich, 2013; Emmers, 2009). The mentioned concern is particularly acute in the South China Sea, where overlapping territorial claims and militarization have heightened regional instability (Kaplan, 2015).Within this geopolitical context, several scholars such as Paul D & Singh (2021) emphasize the marginalization of small-scale fishing communities and indigenous groups, whose traditional rights to maritime resources are frequently overlooked or undermined by national security imperatives. Inclusive governance models that integrate local voices into maritime policy-making have been advocated as a pathway towards more equitable outcomes (Mansfield, 2007). For instance, studies on community-based resource management in Indonesia and the Phillipines illustrate how participatory governance can mitigate conflicts and promote sustainable maritime human rights.

Furthermore, peacebuilding literature links the recognition and protection of maritime human right to broader geopolitical peace and stability (Krause & Jutersonke, 2005). The inclusion of coastal communities in security dialogue fosters trust and reduces the likelihood of conflict escalation (Schofield, 2018). The literature suggests that an inclusive governance approach not only does advance human rights but also strengthens regional cooperation mechanism, which are essential for managing shared maritime spaces (Bateman, 2007; Ho, 2007). Departed from the elaboration above, I argue that ethics governance as the principal value of maritime human rights enforces geopolitical peace within states across Southeast Asia. Ethics governance in the context of maritime human right and geopolitical peace, refers to the principled approach that integrates moral values, human rights norms, and inclusive decision making within governance and inclusive decision making withing the governance structure (Bevir, 2013; Rosenblum, 2020). This framework emphasizes accountability, transparency, and the protection of vulnerable communities, particularly those whose livelihoods depend on the sea (Mansfield & et al., 2019). Within Southeast Asia's maritime domain, Ethics Governance intersects with customary maritime laws such as Undang-Undang Melaka, which historically codified communal responsibilities and rights, reflecting an ethical order embedded in social relations (Winstedt, 1945). Modern frameworks such as UNCLOS also embed normative principles intended to balance state sovereignty with the protection of individual and community rights at sea (Kraska, 2011). Ethics Governance thus acts as a normative bridge linking international law, promoting a governance paradigm that respect both legal rights and ethical imperatives.

The literature of inclusive governance stresses the importance of participatory processes where multiple stakeholders-states, local communities, and international bodies collaborate to manage maritime spaces. Ethic Governance underpins such models by ensuring that governance practices do not merely impose state centric security interest but also incorporate human right and community voices, thereby preventing marginalization and conflict. By foregrounding ethical principles such as fairness, justice, and respect for indigenous knowledge, Ethics Governance promotes trust building among maritime actors. This trust is a critical prerequisite for effective cooperation and conflict resolution in geopolitically sensitive regions like the South China Sea, where competing claims often result in tension and instability (Kaplan, 2015). Furthermore, peacebuilding and security studies emphasizing the role of ethical norms in stabilizing contested spaces. When governance frameworks

uphold ethical standards-respecting human rights, promoting inclusivity, and ensuring equitable resource distribution, they reduce sources of grievances that often fuel maritime disputes. Moreover, Ethic Governance aligns with the concept of cooperative security, which reframes maritime security not as zero-sum competition but as a collective enterprise involving mutual benefits and shared responsibilities (Emmers, 2009). This approach counters unilateral assertions of sovereignty that exacerbate geopolitical rivalries and undermines militarization that threatens peace. By embedding ethical accountability and community participation into maritime governance, Ethic governance helps to institutionalize peaceful conflict management mechanism. It fosters regional cooperation framework-such as ASEAN-led-initiatives-that rely on dialogue, respect for international law, and shared stewardship of maritime resources and human rights.

## 3. Methods

This study adopts a qualitative research design to explore the historical foundations of maritime human rights and the geopolitical dynamics surrounding maritime security in Southeast Asia with particular focus on the Malay-Indo Archipelago. A qualitative approach is appropriate given the exploratory nature of the study which seeks to understand complex legal and political phenomena through rich, contextualized data (Creswell & Poth, 2018). The data sources for this study are gathered as legal and policy documents relevant to maritime governance and human rights, including: historical legal texts such as Undang_ Undang Melaka (Malacca Laws) in the collection of Farquhar 1 (Indonesian Manuscript in Great Britain, 1816). Which provide insights into traditional maritime legal principle and communal rights in the Malay Archipelago. Secondly, international legal frameworks. This document is principally the United Nations Convention on the Law of the sea (UNCLOS), which codifies modern maritime rights and state responsibilities. Thirdly, supplementary materials including regional agreements, policy statements, and scholarly interpretation related to maritime human rights and geopolitical peace in Southeast Asia.The data analysis has hired qualitative content analysis as the main analytical mechanism (Schreier, 2012). Content analysis enables systematic examination of legal texts to identify themes, patterns, and narratives related to ethics governance, human rights and geopolitical security.The process involved firstly a thematic analysis which rely on selective sentence that signifies the relevance to the research scope such as historical communal maritime rights, state

centric maritime security, or inclusive governance mechanism. Secondly, Comparative analysis which relys on comparing historical legal provisions with modern international law, highlighting continuities, tensions and adaptations over time. This comparison aims to reveal how ethic governance is reflected or contested in legal and political practices. Finally, Interpretative analysis. Beyond descriptive categorization, interpretative analysis asses the implication of these legal and policy texts for enforcing geopolitical peace and promoting inclusive governance.To ensure validity and reliability, the study incorporates triangulation by analysing multiple legal sources and cross-referencing interpretations from secondary scholarly literature (Patton, 2015).

## 4. The Political Landscape of Maritime Governance

Many scholars believed that the universalism of human right in the Indo Malay-Archipelago might have been originated from the hybrid unity between Buddhism and Islamism. Before the arrival of Islam in presumably $8^{th}$ century, majority of the population were Buddhists and Hindus. Taufik Abdullah (1969) wrote that the influence of Buddhism in the region shaped the stability and harmony, at least until Hinduism and Buddhism were embraced in hybrid. The mighty Srivijaya kingdom that embraced Hindu-Buddhism hybridity waged war against the neighbouring sovereigns such as the ports in Malacca and Sumatra. In 1025 Ce Srivijaya was under the aggression of a Hindu Chola Empire from the South India which resulted in the former collapse. By this time, Islamization had dwelled in numerous cosmopolitan coastal areas such as in Sumatra, Java, Sulawesi and Malacca which all of them connected by maritime arena. Acharya (2023) and Obervoll (1993) are among the scholars that showcases Islamic civilization to be the element that allow universalism of human rights to take place and created geopolitical peace in maritime engagement. The nature of the civilization for being insignificant towards differences of race and religions allowed a wider economic and politic exchanges without the necessity of hegemonizing or monopolizing by partnering sovereigns. This means that all races and religion were subjected to the same privilege, law and sanction.

Beside the diverse locals of the Malay-Indo archipelagic population, the Arabs, the Indians, the Chinese were among those who thrived in generational sustainable cycle of trades. They were both independent or autonomous and imperial/dynastic affiliated such as Cheng Ho of the Ming Dynasty. Most of the Indians and Arabs were affiliated to communal paternalistic dynastic from the Southern Arabia, Coromandel ports, and Indo Malay Peninsula. Due to the

political blindness towards race and religion, it was not a surprise that the richness of diversity was so contrast compared to the sovereign with the land mass centered development. The Malay-Indo Archipelago fell into the colonial rule as early as 18th century, in the case of Java and Sulawesi Islands. Sumatra and Malaya were mostly subjugated in the 19th century by the Dutch and the British. As early as the 19th century, the British established legal maritime law where sovereigns were restricted by maritime boundaries in which they could exercise their economic and political rights. This sea boundaries increase the violation of human rights as it produces a new order and punishment such as the ability to use/hire blockade, embargo, piracy accusation and smuggling indictment which all of these offenses were subjected to court trial and jail time. As a result, the Indo-Malay's maritime legal tradition was degraded in function and violence at sea increases significantly. Similar process has reflected on the Dutch governance in Indonesia. Colonial maritime law emerged to be expanding and revising for many decades that monopoly and hegemony over the lands and sea was reached. Despite the process of the liberal order and enlightenment behaviour where colonialism met 'a white men burden' significantly displaying evolution of colonial human right from hegemony to equality, the sea remains prone to conflict and warring arena. Even after colonialism was ended and replaced with the regime of nationalism where birth right, language, customs, and documentation determined privileges of human rights, the maritime human rights remain prone to conflict escalation, especially when naval technology reached a new level. World War I and II, might have followed with World III had involved fierce volatile engagement at sea.

## 5. Comparative Ethics: Inclusivity and Governance

The universalism of human right foundations could be laid bare through the work of Raffles (1879), a British higher administrator in Java and Singapore serving at the beginning of 19th century. Based on numerous Indigenous Malay legal texts, he found that Malay Maritime code of conduct regulated maritime trade, piracy, slavery and the rights of the seafarers. The text elaborated on the recognition of customary law that must have been abided by foreign and local seafarers in relation to the notion of justice, duty and the protection of human rights while being in their settlement at the coastal areas upon arrival. The code also regulated on slavery and bonded labor which were common in maritime economies where justice, duty and responsibility were instructed and implemented. Besides, the code penned down the law on piracy and security

and fair treatment of mercantilism process. The latter one has included protection of traders through a just commerce, mutual taxation, and contracts which all of them ensured security of maritime human right laborers. By studying all these legal indigenous texts, Raffles drawn upon the changes and transformation of the malay maritime rule of law driven by the influence of colonial rule and legal changes.

The Undang-Undang Melaka reflecting a confluence of Islamic Law, customary law and maritime commercial regulations. As stated previously, it governed the Sultanate's diverse population, which included Malays, traders from China, India, Arabia and local indigenous groups. The legal code's inclusivity is evident in its recognition of the rights and duties of various ethnic and religious communities, underscoring social cohesion and fairness in commercial and personal dealings. Inclusivity in the Undang-Undang Melaka can be understood through its provision on maritime law, trade, and social justice. For instance, the code protected merchants and sailors regardless of origin, ensuring safe passage and fair treatment- an early form of maritime human rights. The legal principles emphasized ethical governance, with the Sultan acting as a just ruler who maintained order through consultation (musyawarah) and adherence to Islamic ethical values. This created a legal environment where human dignity and communal harmony were prioritized, contributing to a stable regional order.

In contrast, the UNCLOS adopted in 1982 represents a comprehensive international treaty establishing rights and responsibilities regarding the use of the world's oceans. Within the Malay-Indo Archipelago, UNCLOS sets legal framework for sovereignty over territorial waters, exclusive economic zone (EEZs), and continental shelves, while ensuring freedom of navigation and equitable resource sharing. UNCLOS embodies inclusivity by promoting universal human rights related to maritime activities, including protection of the marine environment, rights of coastal states, and safeguarding the livelihood of fishing communities. Its governance framework enshrines principles of peaceful dispute resolution, cooperation, and sustainable use of the ocean resources, reflecting global ethical norms and commitments to environmental justice. Importantly, UNCLO's inclusivity transcends national boundaries, establishing a shared international order based on respect for sovereignty, but also mutual responsibility, particularly significant in the archipelagic waters of Southeast Asia where multiple states have overlapping claims.

Both the Undang-Undang Melaka and UNCLOS reveal a shared ethical

commitment to governance that balances authority with justice, inclusivity with order. The Melaka code's integration of customs and Islamic ethics offered a culturally grounded system that ensures protection of minority groups and fair economic exchange, fostering stability in a multi ethnic maritime society. Similarly, UNCLOS's emphasis on rule-based order and inclusivity address modern complexities of states sovereignty, environmental sustainability, and human rights in an interconnected yet turbulent world. It promotes cooperative governance among the archipelagic states like Indonesia, Malaysia, Singapore, and the Philippines, thus upholding international order through legal mechanism. Within the Malay-Indo Archipelago, the interplay between traditional international governance as symbolized by Undang-Undang Melaka and modern international governance as exemplified by UNCLOS reflects an evolving understanding of human rights that is both locally grounded and globally informed. This dynamic is crucial for addressing contemporary challenges such as territorial disputes, marine conservation, and equitable economic development.

## 6. Conclusion

The Undang-Undang Melaka and UNCLOS, separated by centuries but linked through geography and governance philosophy, together illustrate a trajectory of human rights inclusivity, ethical governance, and international order in the Malay Indo Archipelago. While the Melaka code embedded inclusivity within a culturally specific ethical and legal framework, UNCLOS institutionalizes inclusivity at the international level through universal norms and cooperative governance. Together combined, it highlights the enduring importance of inclusive human rights and ethical governance in maintaining peace, security, and sustainable development in a complex maritime region that remains a critical nexus of global trade and cultural exchanges. Waltz warns that national interest and security may overestimate the human right justice when the country is /will be in a threatening position. But for the case of Indo Malay Archipelago and based on the behaviour displayed throughout the 20$^{th}$ century, the stand has been non-alignment and non-interference in regards to global politics which were adopted as dominant approach and this displayed throughout the ASEAN norms till today. Although, there was a strike as displayed in the confrontation case happened in 1948 on the border issue between Malaysia and Indonesia, it was purely centered on national sovereignty rhetoric, resulted by the domino effect of the competition between the colonial British and its enemy. It was definitely not a power tried to

subjugate another power, but a remnant dispute left by colonialism. Those wars did not occur by the states that belong to the geography of the Indo Malay World, although the latter remains prone to be the first that would experience crucial bouncing damage and disadvantage as highly realized. This psychology of insecurity dwelled deep within the nation state system and among policy makers that the problems that the boat people face in the last 40 years was the emasculation of security dilemma. Nevertheless, geopolitical peace in the maritime Indo- Malay world could continue to be shaped by the inherited human right foundations, as revealed in the code of conduct of the maritime law in which justice and fair duty and responsibilities to all race and religion was the key ingredients. This was what allow the establishment of balance of power, exercised through a non-hegemonic cooperations, interdependence economic relations and demilitarization which bound to play significant role in preserving future peace in the region.

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