

New Model of Maritime Law Enforcement For The Empowerment of Indonesian Marine Agent Security

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Abstract

Law enforcement is very crucial for Indonesian safety in sea maritime. In many countries, the agency enforces maritime law. Mostly of legal international trade moves by seas and is illegally used by smugglers transporting prohibited substances or illegal migrant workers. Ships are also vulnerable to violence. Ships are robbed or hijacked, raising concerns that such attacks could finance terrorism or result in seized vessels being used as floating bombs to attack essential ports. The Indonesian Government may also have a strategic policy to prevent such illegal carriage by sea. It must have harmonies of the regulations state competing interest in exploiting and regulating maritime activities. This article will seek agencies to implement law, security, and safety at sea and review marine agencies. The agents are expected to avoid law enforcement in the sea, which is currently ineffective, causing competition between authority institutions or interests, all of which are detrimental to implementing the rule of law itself. In Indonesian shipping law, law enforcement of marine law is not only be handled by one department. Some regulations give different authority to any department to force the direction. So, there is no integration system to move the marine law if the law separates the sectoral approach that caused many law problems; one of them is an overlap in authority which tends to be a conflict of interest among them. Law enforcement at sea has particular characteristics and extraordinary scopes under the applicable legal regime in the sea area.

I. Introduction

Indonesia is the largest archipelagic country globally, with a population of more than 250 million and abundant natural resources spread over more than 17,000 islands. Transportation services, mostly by sea, are needed to serve the mobility of both passengers and goods. Sea transport is critical based on its functions and is an artery for the Indonesian economy, society, politics, culture, defense, and security. Moreover, considering that Indonesia lies between two continents and two oceans and has critical sea lanes in the Indian and Pacific Oceans, sea transportation plays an essential role in international relationships and keeping the nation's stability and harmony. Geographically, Indonesia is spread over vast expanses of ocean, which makes sea transport service necessary for reaching all its islands. Therefore, sea transportation functions to transport passengers and goods from one place to another and keep all areas together as a nation. For these reasons, sea transportation service is vital for open access to connect both developed areas and isolated areas. Because transportation is critical for Indonesia, the country has a great interest in keeping the sea as a medium of transportation. The Sea of Indonesia consists of many straits and strategic and vital areas for connections between the Indian Ocean and the Pacific Ocean. It means that the Indonesian Sea plays a significant role not only for commercial vessels but also for warships, including submarines.

Ships in the Indonesian Ocean are also vulnerable to violence. Ships are robbed or hijacked, or in some cases are suspected of dealing in human trafficking, which is what happened in Malacca Straits. In those cases, the sea law must have harmonies of the regulations state competing interest in exploiting and regulating maritime activities. As a part of the shipping industry, it should provide the regulation to prevent unlawful or interdiction shipping activities. In contrast, The UNTOC Human Trafficking Protocol does not provide for high seas interdiction.

The interdictions may be conducted by coastal states, flag states, or third states. A coastal state may be able to interdict vessels in various regulations. That is the reason that a coastal state may be able to interdict ships in multiple statutes. A flag state has jurisdiction to interdict vessels granted its nationality on the high seas and is not subject to coastal state jurisdiction. On the contrary, the other countries may only conduct an interdiction under a permissive rule of international law or with permission from the flag state or the coastal state whose regulatory zone in the ship is present.

The question of general international law is how the police procedure and substantive criminal law apply aboard a ship and, later on, how to give the authority to every department. In the case of juridical facts, a lack of coordination and integration between law enforcement at sea inspires an idea to submit law enforcement conduct to the marine police institution as a gesture of unity of command. One command under marine police means not merely coordination but also one command and decision-making body that each law enforcement officer follows. Law enforcement at sea has unique characteristics and extraordinary scope under the applicable legal regime in the sea area. Therefore, it is necessary to have one specialized, integrative institution expected to have law enforcement powers and fully operational integration into one unit. Its existence does not remove the main functions performed by the other institution. Marine police are given the authority under the legislation, while law enforcement in marine law becomes more practical and synergistic. Hence, the other problem is that marine police are not well known by people, service providers, and end-users. The other problem until now is that Indonesia still has no regulation concerning one institution as one command.

The legal issues are the determination of boundaries of sovereignty, immigration procedures, and smuggling goods. People steal natural resources to maintain the security of the sea. Supposed to law enforcement in the sea ocean integrated by various institutions and subject to its laws. Enforcement is impossible because of the lack of synchronization harmonization in national legislation.

This research will seek marine police as specialized agencies that implement laws and maintain security and safety at sea. Law enforcement in the ocean, and the air above it, aims to maintain and protect the sea's territorial integrity and national interests. This research will also review marine police who are expected to enforce the law of the sea, which is currently ineffective, causing competition between institutions of authority or interest; this is detrimental to implementing the rule of law itself.

II. Research Method

This research will be implemented using the analytical descriptive and the comparative law method. The study will be done with an illustrative analysis method because the investigations are conducted on the substance of the secondary data provisions. As an interdisciplinary study, this research will use

community-based development to seek the empowerment effectiveness of interdiction shipping.

This study uses secondary data as primary data, and the selected material is a matter of law. This research method used juridical legal materials, including primary, secondary, and tertiary legal materials. Primary legal materials are a binding legal force, while secondary legal materials are legal materials related to primary legal materials. The research used a descriptive method to prove the marine agency's handling of shipping interdiction in Southeast Asia. Show the regional regulation conducted by ASEAN countries and how the English Legal System influences the Singapore. However, exploratory methods used to understand and look for shipping interdiction have been regulated by sea law. The regulation has been used in various regional treaties in other areas and in ASEAN member countries' national laws, which may be applied at the local level in Southeast Asia, mainly in the Malacca Straits (between Malaysia, Singapore, and Indonesia).

III. Results and Discussion

SHIPPING INTERDICTION IN INDONESIAN LAW

In Indonesian shipping law, law enforcement of marine law is not only to be handled by one department. Some regulations gave different authority to any department to enforce the law, such as Exclusive Economic Zone 1983, Military Act 2004, Customs Act 2006, Fishing Act 2009, Forestry Act 2013, and Shipping Act 2013. The authorities are tax, immigration, the safety of ships, and navigations. So there is no integration system to force marine law to separate the power. The sectoral approach caused many law problems; one of them overlaps with authority, which tends to conflict with them.

Many departments have the law's authority, such as the navy, marine Police, Government Officer of the Investigation of the Transportation Department, Government Officer of the Investigation of the custom and Tax Department, Government Officer of the Investigation of Immigration, and Government Officer of Investigation of Forestry Department. Otherwise, in the Shipping Act 2013, all departments have the authority to enforce maritime law. In the Act of Zone Economic Exclusive of Indonesia, the authority is under the navy, marine police, and Government Officer of Investigation of Forestry Department. According to the Shipping Act 2013, the authority is under the navy and marine police. Based on the Fishing Act 2009, the

Government Officer of Investigation of Fishing Department and within Tax Act 2006 are under the marine police, army, and Government Officer of Custom Investigation. Under the Management of Small Island Act 2007, appoint marine police and navy to enforce marine law. Moreover, in the latest Shipping Act 2008, the marine army, marine police, and Government Officer of Investigation of Transportation Department have the authority to enforce marine law.

The existence of marine police is expected to avoid the lack of law enforcement in the sea. That situation caused competition between institutions of authority or interest, all of which are detrimental to implementing the rule of law. The condition ensures territorial integrity to guarantee national interests. Sea security needs an effort to hold old the sovereignty, and law enforcement is necessary. The issue of law enforcement at sea becomes an important national issue, bearing in mind the enormous losses suffered by the state due to various law violations that occur at sea. Violations of the law include armed robbery, piracy, people smuggling (illegal immigrants), smuggling of goods (such as wood, sugar, rice, fuel, firearms, narcotics, psychotropic), illegal fishing, sea pollution, explore, action, and illegal exploitation of natural resources, as well as other violations in Indonesia's marine territories.

Factually, security enforcement at sea has two dimensions: enforcement of sovereignty and law enforcement. Therefore, we need a new perspective that the two measurements are interrelated. If viewed as a system, then sea security is a series starting from the perception or the understanding of all components of the organization, structure, procedures, and mechanisms for the implementation of safety at sea involving various agencies that have authority in the enforcement of sovereignty and law enforcement at sea.

Marine security systems must be built on the principle of synergizing the power possessed by various security enforcement agencies at sea. These two aspects' synergy is realized with the unity reflected in the organizational structure, mechanisms, and procedures of the sea's security forces. The enforcement of sovereignty at sea has two dimensions of understanding: sovereignty and sovereign right in the sea of a country that has been universally regulated in UNCLOS 1982.

The management of marine resources requires a government policy that is macro and integrated and is supported by reliable legal instruments. The law functions as a protection of human interests. The object of jurisprudence is a collection of legal regulations that do not stand alone. The importance of a legal rule is due to

its systematic relationship with other legal regulations.

HARMONIZATION IN THE ENFORCEMENT OF MARITIME LAW

Law enforcement at sea, especially international sea law, will only be effective if it is universally applied and has a force that holds up the law. As a result of the difficulty of drafting the law of the sea and the lack of strength needed to enforce it, opportunities arise for actions such as piracy, smuggling of all kinds of goods, sea pollution, fish theft, and others. These basic legal facts have consequences for the emergence of new factors. The first factor is that because the sea law is inherently weak, the size and relative relationship between the sea forces continuously play an important role. The best way to overcome the law's weaknesses is to maintain the ocean's presence and create regular use of the sea as a valid legal precedent.

Indonesia has a great interest in the sea, namely creating a safe and controlled sea condition. A safe sea is vital to guarantee territorial integrity to guarantee national interests. Security at sea is needed to enforce sovereignty and enforce the law. Law enforcement at sea becomes an important national issue because the State's losses are substantial due to various law violations at sea. These law violations include armed robbery, piracy, human smuggling (illegal immigrants), smuggling of goods (such as wood, sugar, rice, fuel, firearms, narcotics, and psychotropic substances), illegal fishing, marine pollution, exploration, and illegal exploitation of natural resources, as well as other violations in the Indonesian sea area.

Enforcement of security at sea has two dimensions, namely enforcement of sovereignty and enforcement of the law. A new perspective is needed; the two measurements are related to one another. If viewed as a system, maritime security is a series starting from perceptions, organizational structure, procedures, and mechanisms for implementing security at sea that involves various agencies. All these agencies have the authority to enforce sovereignty and the law at sea.

The maritime security system must be built on the principle of synergizing the various agencies' strengths. The enforcement of sovereignty in the ocean has two dimensions of understanding: sovereignty and sovereign right in the sea of a country that has been universally regulated in UNCLOS 1982.

Management of marine resources requires a government policy that is integrated and supported by vital legal instruments. Law enforcement at sea will only be effective if applied internationally and if there is a force to enforce the law.

As a result of the difficulty in compiling the sea laws and the lack of integration of these laws, opportunities for piracy, smuggling of all kinds of goods, marine pollution, theft of fish, and others arise. The insecurity is due to several factors. The first factor is that because sea law is inherently weak, the sea forces' relative relations sustainably play an essential role. The second factor is that the state of peace, the state of crisis, and the state of war at sea are not very clear and is more of a continuum of what happens on land. The coastal states tend to formulate a national sea law that is adequate. Ensuring its people's security and welfare can create opportunities and risks of conflict with other countries if it is not implemented according to international maritime law conventions in the spirit of friendship and mutual respect.

The enforcement realized sovereignty and upheld the law at sea. Still, apart from these two aspects, maritime security also implies that the sea can be controlled, is safe to use, and is free from threats or disturbances to maritime exploitation activities, namely: 1) The sea is free from threats of violence, namely threats from organized armed forces that can endanger the state. These threats can be in the form of piracy, sabotage, or armed terror acts; 2) The sea is free from navigation threats, namely threats posed by geographic and hydrographic conditions as well as inadequate navigation aids, thus endangering shipping safety; 3) The sea is free from threats to marine resources in the form of pollution and destruction of marine ecosystems as well as conflicts in managing marine resources; and 4) The sea is free from the threat of law violations, namely non-compliance with national and international laws such as illegal fishing, illegal logging, illicit migrants, smuggling, and others. Law enforcement at sea in Indonesia is currently still sectoral. Several agents are law enforcers at sea, namely the Indonesian Navy (TNI AL), the Indonesian National Police, the Directorate General of Immigration, and the Directorate General of Customs. Law enforcement officers at sea are fragmented in a not-well-integrated system because it is sectoral. The sectoral nature raises several legal problems, including overlapping powers that lead to conflicts between law enforcers. There has been no attempt by the Government or the agency authorized to make laws to overcome law enforcement's overlapping authority at sea. Law enforcement at sea is generally defined as the State's activity based on state sovereignty and international law provisions. The enforcement applies at sea, both national and international laws, regulated every person or legal entity, including the State as a regular subject to create order and legal certainty in the sea area. Law enforcement in the sea area by the State or its apparatus is essentially the enforcement of the State's

sovereignty because the authority and ability to administer law originates from the sovereignty of the State and is the manifestation of sovereignty.

Ownership of a vast and rich sea area will invite foreigners to try to take the wealth contained therein. The authority to enforce Indonesian law in its maritime territory from international law, the principle of territorial jurisdiction, and expanded territorial jurisdiction is used. UNCLOS 1982, which has been ratified by Indonesia in Law Number 17 of 1985, gives authority to enforce its laws in the Indonesian marine regime both in the territorial waters and any various sea zones with different legal statuses. So far, the juridical definition of the territory is limited to issues of sovereignty.

In contrast, in regulations based on international maritime law, state jurisdiction in parts of the sea is not state territory, so the discussion is on sovereignty and areas where Indonesia has jurisdiction. The coastal State's power in ports and inland waters is vast, but practical considerations have led most countries to use their power wisely against foreign ships passing through their ports, which is a tribute to the exercise of jurisdiction that occurs onboard foreign ships while docking at their port. Indonesia has authority as a coastal state in enforcing its laws in the sea area under its sovereignty; it is essential to know about the jurisdiction that represents the State's rights and authorities on the application of its national law. Law enforcement in Indonesia's marine areas uses jurisdiction based on territoriality. The territoriality principle stipulates that state jurisdiction applies to people, actions, and objects in its territory. The enactment of territorial jurisdiction is based on the sovereignty of the country concerned with its environment. Territorial jurisdiction is also defined as the State's power geographically, which describes the part of the earth's surface and the space above it and the land under it, sovereignty over its territory, including both people and objects.

The territorial jurisdiction principle is used to determine the coastal State's authority as existing powers to tackle criminal acts in its marine area. The application of territorial jurisdiction in law enforcement efforts against crimes in Indonesia provides an understanding that this principle considers that Indonesian criminal law applies within the Republic of Indonesia territory for anyone who commits a criminal act.

Apart from land, the country's territory also includes sea and air areas regulated by international law. The regulation does not reduce the possibility that in a foreign country, according to that foreign country's laws, a person who commits a criminal act can also be convicted by the court of that country.

Sovereign rights and Indonesia's jurisdiction over the sea area under jurisdiction means that Indonesia has the right to regulate everything without prejudice to international law, especially navigation.

SPECIAL AGENCIES IN MARITIME LAW ENFORCEMENT

The division of the sea regime based on the sea area which is under the sovereignty and jurisdiction of the Republic of Indonesia, then below can be matrixed the role of law enforcement officials, especially in the field of investigation, namely as follows:

Each law enforcement officer's investigative authority at sea is regulated in-laws, which each gives legitimacy to act in their respective fields. All types of criminal acts at sea are categorized as particular crimes, so in this case, the *lex specialis* derogate *lex general* legal principle applies, or a special legal rule overriding general legal regulations. Even so, the Criminal Procedure Code remains the guideline in the proceeding mechanism of every criminal act.

Criminal acts at sea where the National Police carry out the investigating apparatus. After carrying out the investigation, the investigation files are directly submitted to the Public Prosecutor. Under Article 8 paragraph (2) of the Criminal Procedure Code, the procedure states that investigators submit case files to the public prosecutor. Meanwhile, criminal acts at sea where the Civil Servant Investigator carries out the investigating apparatus. The authority is generally regulated in Article 6 paragraph 1 letter b of the Criminal Procedure Code, stating that investigators are certain civil servant officials special jurisdiction law. The authority of the Civil Servant Investigator comes from the provisions of the special criminal law. So, apart from the police investigators, the special criminal law also gives Civil Servant Investigators the authority to carry out investigations.

Civil Servant Investigator authority is limited to the extent that it relates to criminal acts in their respective fields. The procedure is under the provisions of Article 7 Paragraph (2) of the Criminal Procedure Code, which states that civil servant investigators as referred to in Article 6 Paragraph 1 Letter B have the authority under the law which becomes their respective legal basis and in carrying out their duties is under coordination. So, the Civil Servant Investigator authority is only under the scope given by law, which is the basis for implementing the concerning responsibilities. Beyond that, they are not authorized to carry out investigations.

If they have finished conducting an investigation, the investigation results must be submitted to the public prosecutor. The Civil Servant Investigator carries out the method of submitting the study results to the public prosecutor through the Police investigator. The investigation is under the provisions of Article 107 paragraph (3) of the Criminal Procedure Code, which states that if the Civil Servant Investigator has investigated a criminal act, he will immediately submit the results of his investigation to the public prosecutor through the Police investigator.

Police investigators are authorized to examine any deficiencies made by the Civil Servant Investigator before forwarding the investigation results to the public prosecutor. The authority of the National Police investigator in reviewing the results of the Civil Servant Investigator investigation is intended to avoid returning case files by the public prosecutor based on the provisions of Article 110 par (2) The Criminal Procedure Code, namely that the public prosecutor can immediately return the investigation results to the investigator if he thinks that the investigation results are considered incomplete.

Suppose the investigation results are complete and accepted by the public prosecutor. In that case, the public prosecutor, with all his powers, delegates the case file to the District Court, which is authorized to adjudicate violations and crimes against the provisions concerning criminal acts at sea. The court in question is a District Court whose jurisdiction includes the place where the ship and perpetrators are detained. The case is called relative competence. Article 84 of the Criminal Procedure Code regulates this relative competence, stating that district courts are authorized to hear all cases concerning criminal acts committed in their jurisdiction.

From time to time, the legality of Navy officers' authority to carry out investigations of crimes at sea has had significant developments. If ordered according to the times, this authority has never been revoked or removed but has even been strengthened and regulated in various laws, starting from the Dutch administration's legal products and national law products to the latest international maritime law conventions (UNCLOS 1982). The authority, as an investigator, stated this in the articles of law. It is still valid as a positive law that is implemented and accepted in Indonesia's judicial processes.

IV. Conclusion

Law enforcement at sea is generally defined as the state's activity or its apparatus based on state sovereignty and international law provisions. Law enforcement at sea guarantees that legal regulations that apply at sea, both national and international laws, are obeyed by every person and/or original entity, including using the state as an ordinary object to create order and legal certainty in the sea area. Law enforcement in the state's maritime space or its apparatus is essentially the enforcement of the state's sovereignty because the authority and ability to administer law constitutes the embodiment of sovereignty.

In considering Indonesia's authority as a coastal state in enforcing its laws in the marine area under its sovereignty, it is essential to know about the jurisdiction that represents the state's rights and authority on the application of its national law. Law enforcement in the territorial waters of Indonesia uses jurisdiction based on territoriality. The territoriality principle states that state jurisdiction applies to people, actions, and objects in its territory. The enactment of territorial jurisdiction is based on the sovereignty of the country concerning its environment. Environmental jurisdiction is also defined as the state's geographic power, which describes the part of the earth's surface, the space above it, and the land beneath, which constitutes sovereignty over its territory, including both people and objects.

References

- Ahmad Ridwan. T Subarsyah. 2016. *Politik Hukum Tata Kelola Kepelabuhan Nasional*. Jakarta. Warta Bagja.
- Irma Rachmawati. 2020. The legal framework of E- Document in Maritime Business Facing New Normal After COVID-19 Pandemic. *Journal of Advanced Research in Dynamical and Control System*. Volume 12, Issue 6, 2020. <https://www.jardcs.org/abstract.php?id=5897>
- Rusniah Ahmad and Irma Rachmawati, 2016, Implementation of Protection and Indemnity for Indonesian Ship A Compliance to Common Law System as uploaded in http://www.serialsjournals.com/articles.php?volumesno_id=1063&journals_id=22&volumes_id=8 on 8th June 2017
- Irma Rachmawati. 2019.. Marine Pollution as a weakness factor in Indonesian Ship Business Activity. Volume 11, 05 special Issue, 2019. <https://www.jardcs.org>
- Rusniah Ahmad and Irma Rachmawati, 2016, Liability of A Sea Carrier in The Regulation Of Ship

Collision Under Indonesian Maritime Law Vol 8, Issue 09. September 2016. Uploaded in <https://www.journalcra.com/article/liability-sea-carrier-regulation-ship-collision-under-indonesian-maritime-law> dan <https://www.journalcra.com/sites/default/files/issue-pdf/16488.pdf>

Alaska Mandaraka-Sheppard. 2007. *Modern Maritime Law and Risk Management*, Canada. Routledge-Cavendish.

Baatz Yvonne. 2011. *Maritime Law*. London. Sweet & Maxwell.

Carolin Liss, 2011, *Oceans of Crime, Maritime Piracy and Transnational Security in Southeast Asia and Bangladesh*, Singapore, ISEAS Publisher.

Douglass Guilfoyle, 2011, *Shipping Interdiction and The Law of The Sea*, Cambridge, University Press. Ellen and Campbell. 1983. *International Maritime Fraud*. London. Sweet & Maxwell.

Mochtar Kusumaatmadja. 2002. *Right Over Natural Resources: The Indonesian Experience*. Bandung. Alumni.

Norman A. Martinez Gutierrez. 2010. *Limitation Of Liability in International Maritime Conventions, The relationship between global limitation conventions and Particular Liability Regimes*. London. Routledge.

Robert Cribb and Michele Ford. 2009. *Indonesia beyond the water's edge. Managing an Archipelagic state*. Singapore. ISEAS