

Reposition Of Authority Between State Institutions in Arrangements Relating to National Maritime Security Defense

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Abstract. This study examines the across governmental institutions in terms of power in the regulation associated to national maritime security and security and how the repositioning of power between state institutions in the rule of national maritime safety and protection. The position and the authorities have been repositioned between Agencies of the state that deal with national regional security, and protection are very influential with relation to Indonesian naval power as the world's Spine of the sea. Indonesia is an archipelago, it's not yet a maritime country since the authorities in charge of naval security and defense are currently overlapped. As a result, in the legislation related to public marine safeguarding, it is required to locate the origin amongst state entities. The study technique is norm legal in nature. According to the report, the Navy, the Ocean Security Firm, the Army, the Naval and Navy Service, and also the Agency for Management of Maritime Fisheries And aquaculture seas are all involved in coastal defense policy in Indonesian seas. These two rules and regulations emphasize the need of establishing a marine security defense system as well as the necessity of maintaining shipping safety. Judicial Components Of the system, Independence Theory, and Power Theory are used in the philosophical model.

Keywords: enforcement; law; maritime; security

1 Introduction

The coastal region of Indonesia is deliberately positioned at the crossroads of the key SLOC and SLOT lines here between Pacific Ocean and the Indian Ocean, as well as the Asian Circuit and the Australian Mainland, which are the primary economic and commercial routes among regions of the world.[1] As a result of its geopolitics location, Indonesia serves as the worldwide logistics system. So that Indonesia is now a hub for world economy and marine pathways, governmental agencies that specialize in maritime security and protection must be enhanced through law.[2]

This location of vital importance is bordered by ten neighboring countries and 11 provinces in the sea border area. Indonesia's strategic work with its geopolitics⁶, which is between two continents and two oceans traversed by thousands of foreign ships crossing ALKI (Indonesian Archipelago Sea Lanes) and important straits, on the one hand, shows its strategic geographical position. Still, on the other hand, it can create vulnerabilities for sovereignty. maritime aspects of defense and security.[3] If clear regulations and relevant state institutions do not support it.

The perception of maritime security and defense covers a complex and integrated scope. Except for the respectively, there are two types of marine interests that are mutually bound, either international and domestic concerns.[4] First, the ocean is devoid of the threat of force, especially the danger of employing a planned and deemed capable army to tamper with and damage the agency's integrity, whether by military aggression, pirate, destruction of essential assets, or terror attacks.

Second, related to geological and bathymetric factors, the seas is navigable.[5] Third, the sea is free of pollutants and ecological degradation, which pose a danger to water ecosystems. Fourth, the sea is free of hazards such as illicit timber, overfishing, and other forms of unlawful activity. With Indonesia's ongoing development programs emphasizing the importance of maritime in stimulating the economy, particularly in the market activity, the time has come for the Indonesian people to shift their worldview from "Ground Socio-Economic" to "Maritime Cultural."

This research is associated to the investigation of safety in the seas entitled "The Urgency of Regulating National Maritime Security in Indonesia." The study analyzes the urgency of establishing a national legal framework in safety in the seas, and the method used is normative with a statutory approach and comparative studies. The results of the studies that have been carried out are: although international and regional cooperation is critical in maritime security, the availability of national legal instruments for marine protection is necessary.[6]

In her research entitled "Governance and Police Departments Elements of Intelligence Sharing" Kartika raises the issue of how to regulate the The state's marine boundary is managed and secured. How is criminal justice system in the maritime environment in Indonesian ocean environment connected to the nation's maritime security, in terms with in and restrictions? This study concludes that the condition of Indonesian waters is very vulnerable to various threats of crime, especially transnational crimes. Indonesian waters, which are the most dangerous waters where various maritime threats most often occur, have led to the emergence of the urgency of regulating national naval security.

Although international and regional cooperation is vital in dealing with maritime threats, good national legal instruments will support the implementation of existing international and regional cooperation. Indonesian federal law is still not under international provisions, and existing national law is also outdated. Thus, national regulation on maritime security is essential; a comprehensive national legal framework is needed to overcome naval threats.

Meanwhile, Syaiful Anwar's research on building Indonesia's maritime security in the analysis of interests, threats, and sea power examine threats to national interests in the marine sector and the efforts needed to build Indonesia's naval muscle. The results of this study are threats in Indonesian waters, Pirates at ocean, illicit mining, international border conflicts, drug smuggling, and illegal migration are just a few examples.[7] State power and sovereign rights, unregulated seas, commercial health and protection, and the security and preservation of marine resources are all facets of Indonesia's maritime security.[8] Seven essential factors need to be considered or addressed: government policies, naval strength, the strength of elements of marine protection, the strength of the merchant ship fleet, human resources, trade at and by sea, and seaports.

The function of implementing maritime defense and security must be focused synergistically and integrative between related agencies or institutions. The consideration is that there should be an integrated, synergistic mechanism between the supervision of sea traffic, people, and goods at several seaport entrances. However, sectoral ego is often an obstacle to developing synergy, as mentioned above, so the agencies authorized to carry out the coordinating function run according to their respective perceptions.

The Indonesian government formed the Marine Spy Agency, formerly as the Security Operations Advisory Committee, under President Joko Widodo's Executive Order No. 178 of 2014. Bakorkamla, that had previously solely served as a supervisory, was renamed the Indonesian Maritime Safety Bureau (Bakamla) on December 8, 2014, with broad control up to the capacity to capture act against every type of marine criminality. Since the major issue is a poor coordination across organizations, rather than the development of new organizations, this generates positives and downsides.

The novelty of the research in this article is the placement of the agency has been repositioned of institutions related to national maritime defense and security based on (1) Marine Containing Geometric Patterns in Law Number 17 of 1985 concerning the 1982 UNCLOS approval, If authority relocation is selected depending on maritime spatial analysis beginning with water transport, Archipelagic Ocean, Territorial Sea, Further Area, Have An exclusive Trade Zone and the Contiguous Zone (CS) are two terms that are used interchangeably; (2) Built on army and civil organizations, with armed agencies reporting to the Naval and public establishments reporting to Bakamla as an One Agencies Mixed/ Sole Coordination; (3) Establishment of a new law to emphasize the authority, function, and role of Bakamla as the Sole Coordinator in civil institutions concerning national maritime security and defense. At the same time as harmonization of Law No. 32 of 2014 concerning Marine Affairs and Law No. 17 of 2008 concerning Shipping. This study looks about how to establish power among state organs in the nationwide marine defence and security law, as well as how to position control across public bodies in the nation marine military and defense code.

2 Research Methods

The writing method uses a normative juridical approach by using related laws such as the Maritime Law, the Shipping Law, the TNI Law, the Fisheries Law, and the Police Law associated with UNCLOS 1982 and its ratification. The research specification used is descriptive analysis, a fact-finding method with the correct interpretation. So that it describes the situation or event in a more general way from relevant materials, and analyzing data refers to juridical knowledge.

3 Results and Discussion

3.1 Positions of Responsibility in National Security Rules amongst State Bodies

It has not been able to completely harness and control its nautical assets, Indonesia never becomes a fully country in southeast asia. The naval industry, on the other hand, is a bright spot for the country's future growth. The biggest impediment is that marine growth has yet to become a national priority. Ground construction is being more mainstreamed by the state (land-based oriented). According to the author, this is the basis for preparing the reposition of authority in national maritime defense and security.[9]

Until now, Indonesia's maritime defense and security is still sectoral because the related institutions are still sectoral. The marine defense and security authority exercised by government institutions results in diverse opinions in its application. This interpretation encourages the ruler or government to translate according to their interests.

Based on the analysis, five state institutions are closely connected to marine protection in Indonesian seas, which consist of (1) the Navy (Law Number 4 of 2004 concerning the TNI); (2) the Maritime Security Agency (Law Number 32 of 2014 concerning Marine Affairs); (3) Police (Law Number 2 of 2004 concerning the Indonesian National Police); (4) KPLP (Law Number 17 of 2008 concerning Shipping); (5) Supervision of Fishery Marine Resources (Law Number 31 of 2004 concerning Fisheries).[9]

The findings of the investigation demonstrate that the Military and Bakamla are in the Indonesian Extra Sovereign Territory, depending on the mandates of Law No. 5 of 1983 about ZEEI and Law No. 6 of 1996 addressing Indonesian Waters, Law No. 32 of 2014 concerned Naval Relations, and Rule No. 17 of 2008. The Indonesian fishing trade region, which comprises the maritime boundaries, coastal seas, Indonesian inland waterways, and the ZEEI, is included in this.

The formation of a marine and coastal guard unit in this function (in UNCLOS 1982 called "coast guards"), which is mandated in the Shipping Law, is the Indonesian Sea and Coastal Guard Unit (KPLP) which is under the Ministry of Transportation. The Shipping Law summarizes all regulations in shipping activities in Indonesian waters. Especially in terms of shipping security and safety, other laws are required to comply (section on Explanation of the Shipping Law). Article 276 of the Shipping Law mandates the formation of sea and coast guards. Responsible to the President and technically carried out by the Minister. Furthermore, Article 278 states that the sea and coast guards have the authority to carry out marine patrols, hot pursuits, and stop and carry out inspections of ships in the sea area.

Marine and coastal safeguards play an essential role in national maritime defense and security, and this can be seen in the mandate of the Shipping Law to support bases throughout the region, the use of state ships/aircraft statuses (Article 279), the unique authority to investigate the shipping sector by civil servant investigators. (PPNS) in all its references (Articles 282-283).

The establishment of Bakamla in Article 59 of Law No. 32/2014 creates an overlap with the Shipping Law because The development of a nationwide naval and border patrol is not required under the Law Of the sea. Bakamla's authority in terms of establishing bases, using ships/aircraft with state status, and as an element of the Ministry/(KKP) in maritime matters is not mandated in the Maritime Law.

In several cases of intrusion into the North Natuna Sea, the Indonesian government has experienced the impact of the overlapping of the two laws and regulations. KPLP has the authority, institutional format, and operating procedures mandated in the law, but on the ground, it is fragile in dealing with intrusions into the national maritime territory. Bakamla also only got the authority to take action to approach foreign ships in the hope that they would leave Indonesian territory. Article 65 of the Maritime Law regarding Bakamla contradicts the TNI Law.

Article 65 of the Maritime Law states that a person holds the head of Bakamla from a law enforcement agency that has the power of a patrol fleet. The TNI Law in Article 47 explains the limitation that active soldiers may only serve in 10 agencies (Coordinating Ministry of Political, Legal and Security Affairs, Ministry of Defense, Setmipres, BIN, BSN, Lemhanas, DPN, SAR, BNN, and MA). The reality on the ground is that high-ranking Bakamla officials are formed by active high-ranking officers of the Indonesian Navy.

The sovereignty of the sea would be under Bakamla's direction and control, according to Articles 62-63 of the Maritime Law. However, since 24 policies and guidelines are around the same level, they cannot be executed under one line of knowledge in marine defense policy.

Separate laws should be enacted if the government pushes Bakamla to become a single task multi-agency.

Indonesia has not yet prioritized the urgent need for marine security and military governance. This difficulty, according to the author, may be traced back to the application of Friedman's theory, which includes the legal content, organisational framework, and society. The legal system establishes a set of marine national defence requirements. The assets contain region unit skills and technologies, unified staff, and education. Meanwhile, Synchronization and cooperation across state entities relevant to marine protection, as well as the engagement of information security, are among the previous projects. In nation naval national defense architecture, focusing on the state to create a proper military character that is subservient, loyal, and constrained by legal standards is extremely suitable.[10]

The validity of regional marine national defence organizations is largely determined by the lawful content structure. Indonesia currently only has two laws and regulations related to maritime. Specifically, Law No. 32 of 2014 on Ocean Administration and Regulation No. 17 of 2008 on Freight. Both two policies and guidelines emphasize the need of establishing a marine defense shield as well as the responsibilities of actions related to marine protection. They do not, therefore, officially acknowledge the existence of a national navigable area security system that unites associated organizations and clearly defines job roles. This paper frames the importance of making a grand design or blueprint as a legal basis to clarify concrete steps in managing maritime security and defense in Indonesia so that it can create synergy between institutions instead of causing overlapping authorities in the implementation of marine security defense.

The maritime area, As a result of being officially binding as the Indonesian country's sovereign territory, the Indonesian state has complete sovereign power to occupy and control the area. State power arises concurrently with the establishment of a state, according to Jean Bodin's assertion in the theory of sovereignty. State power refers to authority derived from the state itself. Sovereignty is a country's supreme power, which extends to all areas and people. State sovereignty, whether organically, de jure, or de facto, becomes a basic right and the ultimate right. In the Preamble of the basic Law, the aim and foundation for realizing national aspirations is stated as "sovereign rights for Indonesia."

The main focus of this paper is for the government to develop institutional postures related to national maritime defense and security to anticipate threats and challenges to marine protection and security. However, the government has not been able to make it happen because of ambiguity and confusion in applying maritime defense and security, the civil-military dichotomy. As well as institutional, sectoral ego towards the Navy, Bakamla, Police, KPLP, Customs, Immigration, and PSDKP. It gave birth to overlapping policies on safeguarding the national maritime area.

3.2 Repositioning Authority in Maritime Security Defense

In this article, this geographical condition becomes the starting point for thinking in formulating the repositioning of state institutions related to national maritime defense and security. Simultaneously, it is intended that these entities would have a clear knowledge of their respective roles in the execution of Indonesian naval defense policy.

The repositioning of maritime security and defense authority is marked by the condition of the national naval area that is free from all threats. Initiatives to detect marine security risks in Indonesia are one of the primary aspects, in contrast to territorial boundaries. According to Cribb, marine national defence risks in Indonesia may be divided into two categories: I offenses that use sea as a weapon, and (ii) crimes that utilize the sea as a weapon (such as IUU fishing,

illegal waste dumping, and illegal poaching). And (ii) crimes committed using the water as a means of transportation (such as people smuggling and trafficking in persons and piracy and armed robbery at sea).

Indonesia is not yet worthy of being called a country because it has not been able to utilize and manage its maritime potential optimally. The authority in the navy RPJPN has not yet gone mainstream in nation - building, per the writer, and the state has more popularized ground innovation (land-based oriented). This, according the article, will serve as the foundation for repositioning power in national naval defense policy. This is under the description of the naval defense problem in Indonesia, as disclosed by Laksdya TNI Mamahit; there are four things: the tendency of maritime security, disparities in marine development, regulations, and institutions as defense and security infrastructure. It was related to the problem of marine safety. Until now, there is still widespread Illegal logging and other environmental assets pose a danger to the group's socioeconomic well-being. Apart from the theft of resources, there was some bloodshed at sea in the form of hijacking, counterfeiting, and vandalism.

This article maps out the repositioning of maritime defense and security authorities based on (1) the division of civil and military tasks. The Indonesian Navy gets a total share of marine defense and security following the National Defense Law and UNCLOS 82. Meanwhile, Bakamla is the sole agency that coordinates civilian institutions, including the KKP, Ministry of Transportation, Customs, and the Indonesian National Police. This relocation of power confers ability in the shape of organizational authority to influence maritime safety in accordance with the law's relevant content.

According to Philipus M Hadjon's concept of command, crediting may also be described as a means of gaining power in governance. Thus, so the governance is derived directly from the laws or legislation, it is apparent that the power received via assignment different governmental agencies is the most important control. To divide nautical laws into two categories: first, basic rules like the Military Act; and second, rules that control the sea like the Law Of the sea, the Ships Passing, and the Dat's Rules; and finally, the Fishery Ship Regulation. As a result, categorisation provides the foundation for repositioning the authority of coastal national defence organizations.[11]

This paper places the repositioning of the authority of institutions related to national maritime defense and security based on: 1) The adjustment of courts is multiple uses on maritime spatial analysis, beginning from river systems, island chain seas, oceans Regions, Extra Spaces, Special Economic Areas, and Continental Shelves, as stated in Law Number 17 of 1985 regarding the 1982 UNCLOS enactment, where the maneuvering of officials is differed based on legal entities and civilia organisations, where army power structures are under the authority of the Indonesian Navy and civilia institutions are under the authority of the Bakamla; (3) Establish a new law to emphasize the authority, function, and role of Bakamla as the Sole Coordinator in civil institutions with national maritime security and defense. At the same time, as harmonization of Law No. 32 of 2014 concerning Marine Affairs and Law No. 17 of 2008 concerning Shipping.

4 Conclusion

The current overlapping positions of authority between state institutions related to maritime security and defense cause Indonesia to experience threats and disturbances that have implications for the country's naval security defense. Five institutions are directly related to maritime security and protection, each of which has the authority to apply in the national marine area. However, these authorities are still sectoral now, resulting in disharmony and overlapping

regulations and powers in maritime defense and security. So that the government has not been able to position the authority between institutions related to marine protection and safety due to ambiguity and confusion in the form of a civil-military dichotomy, confusion over the areas of governance in maritime defense and security, and institutional, sectoral egos, which lead to overlapping authority over the sovereignty of the national marine area.

The repositioning of power between state institutions carried out is: placing the Navy within its jurisdiction as a purely military institution in the maritime area as the main component of national maritime defense as mandated in the Sea Spatial Management as stated in Law Number 17 of 1985 concerning the 1982 ratification of UNCLOS, where the repositioning of authority distinguished based on marine spatial planning starting from inland waters, archipelagic waters, territorial seas, additional zones, exclusive economic zones, and continental shelves.

The repositioning of authority over Bakamla as harmonization of Law 17 of 2008 on Shipping and Law 32 of 2014 on Marine Affairs needs to be emphasized by separate legislation so that the optimization of Bakamla as the only coordinating agency in sea and coast guard can be carried out. Both function as coordination between civilian institutions and the TNI. Thus, Bakamla's authority area starts from the inland sea to the ZEEI. Suppose the repositioning of authority among institutions related to maritime defense can be achieved. In that case, the national goals and ideals of the Indonesian nation will be realized as implied in the Preamble to the 1945 Constitution.

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