

Maritime Security from the Perspective of International Regulation and Enforcement in Indonesia



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ABSTRACT: Indonesia is a country that has its geographical location and abundant natural resources, earning it the title of an archipelagic and maritime nation. This has advantages for Indonesia as it can boost its economy, especially through exports. However, it also has negative consequences due to Indonesia's numerous maritime borders with other countries, affecting national maritime security. This position must be strongly addressed through strong security and defense mechanisms, where Indonesia's national law should not solely focus on land security but also maritime security. Moreover, there's a need for consistent regulations regarding authority in the maritime security sector. From this perspective, in terms of law enforcement for maritime security, it is important to establish a shared understanding of the legal system.

KEYWORDS: Maritime security, International law, Enforcement.

INTRODUCTION

Indonesia has been recognized as a maritime nation, and this recognition is not without reason. Indonesia boasts an extensive maritime territory, covering a staggering 80% (5,800,000 KM²) of its territory, consisting of 17,504 islands. Moreover, Indonesia enjoys a strategically advantageous geographical position at the crossroads of two oceans and two continents. This strategic location has elevated Indonesia to a pivotal role in global trade and international shipping routes, making it an indispensable part of the global supply chain system. Consequently, Indonesia's strategic positioning remains of paramount importance.

To safeguard this vast maritime territory, Indonesia has seven law enforcement agencies responsible for sea patrols. These law enforcement agencies include the Indonesian Navy (TNI- Angkatan Laut), the National Police - Maritime Directorate (POLRI-Direktorat Kepolisian Perairan), the Ministry of Transportation - Directorate General of Customs and Excise (Kementrian Perhubungan-Dirjen Bea Cukai), the Indonesian Maritime Security Agency (Bakamla), and the Task Force for Combating Illegal Fishing (Satuan Tugas Pemberantasan Penangkapan Ikan Secara Illegal or Satgas 115). Each of these seven law enforcement agencies conducts patrols related to maritime security within their respective areas of jurisdiction in accordance with their respective laws and regulations. The enforcement of Indonesia's maritime sovereignty, the revitalization of maritime economic sectors, the strengthening and development of maritime connectivity, environmental rehabilitation, biodiversity conservation, and the enhancement of the quality and quantity of maritime human resources are the primary programs in President Jokowi's administration aimed at realizing Indonesia as a global maritime axis.

Indonesia's advantageous geographical location positions it as a vital player in international cooperation, serving as a center of gravity for the Asia-Pacific region (National Development Planning Ministry, 2021). Indonesia's favorable geographic position shares its borders with neighboring countries, including Malaysia, India, Singapore, the Philippines, Papua New Guinea, Timor-Leste, Australia, Thailand, Vietnam, and Palau. Furthermore, several Indonesian provinces have maritime border regions, such as Nanggroe Aceh Darussalam (NAD), North Sumatra, the Riau Islands, Riau, North Sulawesi, North Kalimantan, North Maluku, Maluku, East Nusa Tenggara (NTT), Papua, and West Papua (Etty R. Agus and Didik Mohamad Sodik, 2011).

Indonesia's authority, due to its strategic location, gives it control over four out of the nine world sea lines of communication. This significant responsibility is to ensure the security of international maritime transportation along three key Indonesian archipelagic routes: the Malacca Strait and the South China Sea. This strategic positioning holds two important meanings for Indonesia:

1. It lies at the crossroads of two cultural directions, supported by market forces and fundamental identity.
2. It places Indonesia's defense interests within the maritime defense mechanism to the south and the continental defense mechanism to the north.

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Indonesia's extraordinary wealth of natural resources, especially its maritime resources like fisheries and technology development based on the marine sector, is the foundation for its status as a maritime nation (Didik Mohamad Sodik, 2014). From these marine resources, Indonesia could potentially generate a revenue of \$1.2 trillion if managed to its fullest potential. However, despite the government's recognition of this vast potential, it hasn't played a maximally significant role in economic development (Rokhmin Dahuri, 2014). This is due to several factors, including the government's insufficient attention to marine resources and a lack of maritime knowledge in management and spatial planning, which has led to opportunities being seized by other nations. Several reasons contribute to the suboptimal management of marine resources:

1. Undefined maritime boundaries.
2. Issues surrounding the use of marine territories.
3. Insufficient security and safety supervision in maritime areas.
4. Lack of consensus on the use of maritime resources due to regional autonomy.
5. A relatively low level of maritime knowledge among Indonesia's human resources, leading to a limited understanding of marine resource management.
6. Limited support in the field of maritime technology.

The suboptimal management of Indonesia's maritime sector, largely due to the country's focus on land-based development, has resulted in regional development imbalances. Additionally, Indonesia faces potential threats from both domestic and foreign sources due to the lack of security certainty in its maritime domain.

Indonesia's legal framework comprises three main components: the people, territory, and government authority (Didik Mohamad Sodik, 2014). Among these components, which encompass land, air, and sea, the sea is referred to as the territorial component. All aspects related to marine spatial planning are referred to as maritime. Maritime affairs encompass not only shipping and its supporting industries but also relate to three key points: relating adjacent to the sea, relating to marine shipping or navigation, and resembling a mariner. All these supporting points are directly related to the principles of maritime law, namely *res nullius* and *res communis*. According to Hasyim Djalal, there are differences between these two principles of maritime law:

1. *Res nullius* maintains that no one has ownership rights over any element of the sea, and any nation can claim ownership if they desire.
2. *Res communis* asserts that all world citizens own all sea elements collectively, which means no single nation can claim ownership.

From these two principles of maritime law, a country's geography can be determined (National Law Development Agency, 2006). The geography of a country, once established as its jurisdiction, carries the full responsibility for managing and occupying that territory. Sovereignty or the authority of a country is a crucial aspect of the United Nations Convention on the Law of the Sea (UNCLOS) in 1982. This UN Convention aids in defining the concept of an archipelagic state.

An archipelagic state is a country that consists of a series of islands, including the waters around those islands (Makmur Keliat, 2009). A cluster or series of islands is a grouping that is considered part of a larger island or a natural formation closely related to each other. These clusters of islands, their surrounding waters, and their natural features form a fundamental political and territorial unity.

According to the provisions of UNCLOS 1982, maritime nations have sovereignty or authority over internal waters, archipelagic waters, territorial seas, straits, areas above them, below them, and all the resources they possess (Regional Maritime Security Issues, 2010). Although maritime nations possess this sovereignty or authority, two neighboring countries must abide by certain obligations, such as adhering to peaceful transit and the authority of marine traffic through territorial seas and archipelagic waters by foreign vessels. The Convention on the Law of the Sea governs marine areas with different legal statuses. Marine areas encompass regions under and beyond national jurisdiction (National Development Planning Ministry, 2021). The areas under national jurisdiction are divided into maritime zones fully controlled by maritime nations and maritime zones where maritime nations have rights and responsibilities as outlined in the convention. Based on the explanation above, there are several definitions of maritime zones:

1. Maritime areas under complete national jurisdiction, including internal waters, archipelagic waters for maritime nations, and territorial seas.
2. Maritime areas under additional rights and responsibilities, such as exclusive economic zones, additional continental shelf areas, and transit passages.
3. Maritime areas beyond national jurisdiction, comprising international waters and the seabed area of the international seabed.

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The definition of state sovereignty is the highest and most comprehensive authority possessed by a country, encompassing territorial boundaries according to national law and considerations of international regulations. The power of a state is delineated by the types of rights and responsibilities it holds, including its authority to create and establish legal rules. According to Ivan Shearer, the importance of authority, known as legal sovereignty, lies in a state's ability to create laws governing legal cooperation carried out by its own citizens and citizens of other nations, as well as their property within its territory, including the obligation of legal subjects to comply with these rules and laws.

From the above explanation, it can be concluded that the concept of a state cannot be separated from its fundamental structure, including its territory, power, and authority. In Indonesia, the 1945 Constitution serves as a guide for governing the nation. It emphasizes that Indonesia is a maritime state characterized by its archipelagic geography, with defined boundaries, rights, and responsibilities regulated by specific laws, particularly Law No. 43 of 2008.

PROBLEM STATEMENT

What is Indonesia's maritime security situation regarding international regulations and law enforcement?

RESEARCH METHODOLOGY

Research is a process, a series of planned and systematic steps undertaken to obtain solutions to problems or answers to specific statements. Research is essentially an effort to search for the truth systematically, methodologically, and consistently. Through this research process, analysis and construction are carried out on the collected and processed data. To achieve optimal results, the method used in this research is a normative juridical approach, consisting of:

1. Primary legal materials in this research are the Regulations-Laws Number 17 of 2006 concerning customs, Law Number 22 of 2001 concerning the oil and gas sector regarding illegal oil transfers, and Law Number 17 of 2008 concerning shipping regarding intentional acts to conceal national flags and ship identities.
2. Secondary legal materials are materials that provide explanations about primary legal materials. Secondary legal materials include everything about the law that is not official documents. Legal publications include books related to the issues under study, research results, and works from the legal community.
3. Tertiary legal materials are legal materials that provide guidance or explanations for primary and secondary legal materials, such as Legal Dictionaries or the Big Indonesian Language Dictionary, to explain the meanings of difficult terms. In this research, a normative juridical research method is used, and the research nature is descriptive, using secondary data sources. Data collection is carried out through a literature review summarized in qualitative analysis.

DISCUSSION

In a country like Indonesia, where nearly 80% of its territory is covered by water, the maritime sector holds significant importance (Jimly Asshiddiqe, 2013). The role of the sea extends beyond being a transportation facility; it also serves as a source of income for economic development. What's even more crucial is its role in Indonesia's security and national defense. Therefore, Indonesia needs to enhance maritime security to safeguard its waters from threats such as border violations, navigation issues, illegal activities that endanger Indonesia's marine resources, environmental pollution, and criminal activities, whether committed by Indonesian citizens or foreign nations (Bambang Sutiyoso, 2004). In International Law, several critical issues frequently arise concerning the maritime domain, including illegal fishing, Exclusive Economic Zones (EEZ) violations, marine pollution, and other legal breaches.

The Republic of Indonesia declared its Exclusive Economic Zone (EEZ) on March 21, 1980, through a Government Announcement, without waiting to formalize a convention. This action had legal consequences, namely the need for regulations to protect Indonesia's national interests. Subsequently, this Government Announcement was followed by the enactment of a law that regulates Indonesia's Exclusive Economic Zone, namely Law Number 5 of 1983 regarding Indonesia's Exclusive Economic Zone. Law Number 5 of 1983 regarding Indonesia's Exclusive Economic Zone was enacted based on the following considerations:

- a) In line with Indonesia's national goals to improve the welfare of its people, the utilization of all resources within the Exclusive Economic Zone of Indonesia is maximized.
- b) To further protect these national interests, the need for national legal instruments as a constitutional basis is required. Hence, this law was enacted (LN. Number 76, T.L.N. Number 3318, dated December 31, 1985).

In several cases of alleged violations of international law in Indonesia's maritime territory, such as those involving Iranian-flagged oil tankers, the vessels MT Horse and Panama, actions were taken by the Indonesian Maritime Security Agency (BAKAMLA) due to suspected breaches of international laws and regulations. The incidents occurred when the Indonesian Coast Guard (KN Marore) was conducting security operations off the coast of Pontianak. During these operations, radar contact

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was detected without an active AIS signal at 05:30 AM local time. As a result of these suspicions, KN Marore seized the vessels. The reason for the seizure was the belief that Iran was engaging in illegal oil sales in international waters by disabling the radar and tracking systems on their tankers. Iran had previously committed violations in international waters by selling oil illegally through the MT Horse tanker in 2020, which was carrying 2.1 million barrels destined for Venezuela. The violations allegedly committed by the MT Horse and MT Panama tankers include:

1. Violations of Indonesian laws, specifically Law Number 17 of 2006 concerning customs and Law Number 22 of 2001 concerning oil and gas, due to their suspected involvement in the illegal oil transfer.
2. Violations of Indonesian Law Number 17 of 2008 concerning shipping, specifically intentional attempts to conceal their national flags and vessel identities.
3. Under international law, MT Horse and MT Panama allegedly violated UNCLOS (United Nations Convention on the Law of the Sea), specifically Marpol 73 and 78, due to their actions resulting in oil spills and marine pollution.

To resolve this international law violation, Indonesia, represented by its Ministry of Foreign Affairs, and Iran will await the administrative processing of allegations regarding the illegal oil transfer in Indonesian waters. Following the seizure of the MT Horse and MT Panama tankers, Iran's Minister of Foreign Affairs has requested that Indonesia provide an explanation regarding the seizure of these vessels. According to Iran's Foreign Minister, Mr. Khatib Zadeh, he views this as a routine matter in the oil shipment process. However, Wisnu, the spokesperson for the Indonesian Coast Guard, contradicts this view. He explained that the Iranian-flagged tanker was caught illegally transferring oil from MT Horse to MT Panama by intentionally disabling its identification system, ignoring radio calls, and not displaying its flag. This resulted in an oil spill that led to environmental contamination in Indonesia. As a consequence of this violation, 61 crewmembers from Iran and China have been arrested.

International maritime organizations require ships to use transponders to enhance transparency and safety. However, ship crews have the discretion to disable the system in the event of piracy threats or similar dangers. Unfortunately, transponder deactivation is more often associated with illegal activities. The collective violations committed by the MT Horse and MT Panama tankers have raised suspicions of Iran's involvement in illegal oil sales, potentially to conceal the value of Tehran's crude oil exports. This may be in response to the sanctions imposed by the United States in 2018 when the U.S. withdrew from the Iran nuclear deal of 2015, which aimed to limit and restrict Iran's exports to zero. Various authorities play crucial roles in maintaining legal security along the coast, in the sea, and at national ports, including:

1. The Indonesian Navy (TNI Angkatan Laut) is responsible for maintaining territorial order and national sovereignty in maritime areas, guarding against threats from other nations and Indonesian citizens.
2. The Indonesian National Police, particularly the Maritime Police, is responsible for investigating legal violations in Indonesian waters.
3. Customs and Excise, responsible for overseeing criminal activities related to imports and exports.
4. The Directorate General of Maritime Transportation, coastal and maritime law enforcement units within the Ministry of Transportation, responsible for upholding maritime laws.
5. The Directorate General for Marine and Fisheries Resources Supervision is responsible for preserving marine and fisheries resources.
6. The Ministry of Energy and Mineral Resources is responsible for supervising mining activities as part of maritime resources.
7. Institutions in the field of tourism and creative economy responsible for environmental conservation.
8. Immigration authorities responsible for overseeing immigration violations.
9. Provincial transportation agencies in regions with maritime areas and maritime borders with neighboring countries.

Law enforcement in Indonesia, particularly in its maritime sector, continues to face various challenges that have not been fully addressed despite the existence of regulations and legal structures for maritime law enforcement (as outlined in the Maritime Law Enforcement System in the Maritime Law Bill of 2014). This is primarily due to non-compliance with legislation. One of the reasons for this non-compliance is the lack of coordination among the relevant stakeholders responsible for maritime law enforcement, leading to confusion among the public and business entities (National Law Development Agency, 2015).

Policy in Indonesia's maritime domain remains largely sectoral because some institutions responsible for enforcing rules in the marine sector do not yet have a legal basis (leading section). This leads to imbalances in responsibilities among law enforcement units and internal issues among them. Additionally, the structure of law enforcement, including investigation, prosecution, and adjudication, concerning law enforcement, is not thoroughly explained in separate legislation. The multitude of stakeholders responsible for maritime issues and safety at sea results in confusion for service users in Indonesia's maritime waters.

Indonesia holds a strong legal foundation in international law to defend its sovereignty and authority in its maritime territories, known as the Exclusive Economic Zone of Indonesia (ZEEI). The United Nations Convention on the Law of the Sea (UNCLOS) of 1982 is of significant importance to Indonesia because the country spent nearly 25 years advocating for official recognition from the international community, culminating in Indonesia's designation as an Archipelagic State. The Declaration

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of Djuanda on December 13, 1957, affirmed Indonesia as an archipelagic state with economic, social, cultural, political, defense, and security unity, extending beyond self-recognition. According to UNCLOS 1982, an Archipelagic State is a nation that entirely comprises more than one island group and additional islands. Such a state has the right to draw straight baselines connecting the outermost points of its islands and drying reefs, thus encompassing the entirety of these island territories.

CONCLUSION

Indonesia's national laws and regulations must be adhered to by the global community. Considering the increasing importance of humanity, the sea is one of the primary places where human needs are met. Consequently, maritime law, which governs maritime affairs, has undergone significant changes, both in terms of knowledge and regulation, to meet the needs of humanity. Additionally, recognizing human tendencies in meeting their livelihood needs, the sea is one of the most potential sources of wealth.

In safeguarding maritime security in Indonesia, significant efforts are required from the Indonesian people and the responsible maritime institutions. It is crucial to understand the difference between territorial waters as Indonesia's jurisdictional coverage and Indonesia's rights and responsibilities within its Exclusive Economic Zone (ZEE). Therefore, any violations by foreign countries will be dealt with through international courts and diplomatic channels for resolution. With Indonesia's ratification of UNCLOS 1982 in 1985 it strengthens Indonesia's ability to uphold its sovereignty in its maritime waters and not be subject to violations by other countries. Based on these conclusions, the author hopes that maritime security, in terms of regulation and law enforcement, can harmonize legal systems and regulations, create a Grand Maritime Indonesia strategy, conduct assessments for BAKAMLA (the Indonesian Maritime Security Agency), and promptly determine the boundaries of the country, both on the land, sea and in the air. Furthermore, based on international and national laws in effect, a government should appoint its Navy (TNI AL) as the leading sector responsible for maritime security without necessarily creating a new institution.

REFERENCES

- 1) Andrizal, A., Pasalbessy, J. D., & Anwar, A. (2021). Aspek Interoperabilitas Antara Lantamal IX Dengan Kamla Zona Bahari Timur Dalam Penegakan Hukum Di Laut Maluku Ditinjau Dari Perspektif Harmonisasi Hukum. *PAMALI: Pattimura Magister Law Review*, 1(2), 121-146.
- 2) Bormasa, A., Pasalbessy, J. D., & Ubwarin, E. (2022). Penegakan Hukum Di Wilayah Laut Pada Wilayah Perbatasan Negara. *PATTIMURA Legal Journal*, 1 (1), 30-43.
- 3) Budiono, 2014, *Pembatasan Kedaulatan Negara Kepulauan Atas Wilayah Laut*, Bandar Lampung: Justice Publisher, hlm. 43.
- 4) Gerungan, L. K. (2016). Penegakan Hukum Di Wilayah Perairan Indonesia. *Lex et Societatis*, 4(5). Indra, Mexsasai. (2013). Urgensi Pengelolaan Wilayah Perbatasan Dalam Kaitannya dengan Kedaulatan Negara Kesatuan Republik Indonesia. *Jurnal Selat*, 1 (1), 13-18.
- 5) Indriati, Noer. (2009). *Mutual Legal Assistance Treaties (Mlats) Sebagai Instrumen Pemberantasan Kejahatan Internasional*. *Jurnal Dinamika Hukum*, 9 (2), 125-134. <http://dx.doi.org/10.20884/1.jdh.2009.9.2.218>.
- 6) Indonesia Government In International Law Perspective', *Legal Standing: Jurnal Ilmu Hukum*, 3(2), 32-50 <<https://doi.org/10.24269/ls.v3i2.1918>>, hlm. 41.
- 7) Kurnia, Ida. (2008). Penerapan Unclos 1982 Dalam Ketentuan Perundang—Undang Nasional, Khususnya Zona Ekonomi Eksklusif Indonesia. *Jurnal Hukum Prioris*, 2 (1), 42-49.
- 8) Kartika, S. D. (2016). Keamanan Maritim Dari Aspek Regulasi Dan Penegakan Hukum (Maritime Security From The Aspects Of Regulation And Law Enforcement). *Negara Hukum: Membangun Hukum untuk Keadilan dan Kesejahteraan*, 5(2), 143-167.
- 9) Lasabuda, Ridwan. (2013). Tinjauan Teoritis pembangunan Wilayah Pesisir Dan Lautan Dalam Perspektif Negarakepuluanrepublik Indonesia. *Jurnal Ilmiah Platax*, 1 (2), 92-101, <https://doi.org/10.35800/jip.1.2.2013.1251>.
- 10) Muhamad, Simela Victor. 2012. 'Illegal Fishing Di Perairan Indonesia: Permasalahan Dan Upaya Penanganannya Secara Bilateral Di Kawasan', *Jurnal Politika Dinamika Masalah Politik Dalam Negeri Dan Hubungan Internasional*, 3, 59-85 <https://doi.org/doi.org/10.22212/jp.v3i1.305>
- 11) Nurcahyawan, Teddy, and Leonardo Saputra. 2017. 'Penegakan Hukum Dan Peneggelaman Kapal Asing (Studi Kasus Tindak Pidana Pelaku Illegal Fishing)', *Era Hukum-Jurnal Ilmiah Ilmu Hukum*, <https://doi.org/doi.org/10.24912/era%20hukum.v15i2.1074>
- 12) Retno Ningsih, Sri Dwi, S. Supanto, and Emmy Latifah. 2018. 'Corporation As The Actors Of Fisheries Crime In Indonesia,' *Jurnal Dinamika Hukum*, 18, 208-214 <https://doi.org/10.20884/1.jdh.2018.18.2.2067>
- 13) Wulansari, E. M. (2014). Penegakan Hukum Di Laut Dengan Sistem Single Agency Multy Tasks. *Media Pembinaan Hukum Nasional*, 1-6.

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- 14) Wasisto, G. (2015). *Kewenangan Bakamla Dalam Penegakan Hukum Tindak Pidana Tertentu Dilaut Berdasarkan UU No. 32 Tahun 2014 Tentang Kelautan* (Doctoral dissertation, Brawijaya University).



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