

JURIDICAL ANALYSIS OF AUTHORITY OF SEA AND COASTAL GUARDIANS

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**JURIDICAL ANALYSIS OF AUTHORITY OF SEA AND COASTAL GUARDIANS TO
REALIZE THE SOVEREIGNTY OF NATIONS AND STATES**

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Abstract

Ensuring the safety and security of shipping in Indonesian waters certainly cannot be separated from the role of the Marine and Coastal Guard Unit in carrying out its functions as a guard and enforcer of laws and regulations at sea and coast, which is the oldest organization in Indonesia that carries out guarding and law enforcement at sea. The history of the Marine and Coastal Guard Unit which began before Indonesia's independence. The problem in this research is how to regulate the legal authority of the Marine and Coast Guard to realize sovereignty, how to implement the authority and what factors are obstacles in exercising the authority to realize the sovereignty of the nation and state. This study uses a descriptive method with the type of normative and sociological research using a normative approach (legal research) to obtain primary data through field research. Shipping in Indonesia refers to Law No. 17 of 2008 and Decree of the Minister of Transportation No. 65 of 2002 concerning the Organization and Work Procedures of Marine and Coast Guard Buses, the authority of the marine and deep coast guarding unit to realize the sovereignty of the nation and state. The conclusion of this study is that the Government as the maker and implementer of laws is expected to make special legislation that discusses the authority of law enforcement agencies at sea to become one door in the prosecution of violations at sea.

Keywords: Law, Marine Protection Units, Beaches, Sovereignty

1. INTRODUCTION

The name of the Marine and Coast Guard Unit is often heard in the ears of the Indonesian people when an accident occurs or is related to law enforcement at sea. This is because the agency with the motto "Dharma Jala Praja Tama" has the task of protecting Indonesian seas from all forms of disturbance and threats as well as preventing and dealing with damage to the marine environment. The existence of the Marine and Coast Guard Unit is certainly very important in maintaining the integrity of the Unitary State of the Republic of Indonesia, which is one of the largest maritime countries in the world.

The Marine and Coast Guard Unit is the oldest organization in Indonesia that carries out safeguards and law enforcement at sea. The history of the Marine and Coastal Guard Units has begun before Indonesia's independence, to be precise since the days of the Dutch East Indies government, the existence of the Marine and Coastal Guard Units in Persada Mother Earth is in accordance with the legal basis, namely the Shipping Regulation (Scheepvaart Reglement) LN.1882 No.115 junto LN. 1911 No. 390 (police at sea), Shipping Law (Scheepvaart Ordonantie) 1936 (5th/1936 No. 700), Shipping Regulations 1936 Article 4, and the Territorial Sea Ordinance and Maritime Environment 1939 Article 13.

Indonesia ratified UNCLOS 1982 through Law No. 17 of 1985. Since then, Indonesia has become a leading country that practices the concept of an archipelagic state. Indonesia's marine area is formally regulated by Law Number 6 of 1996 concerning Indonesian Waters. Indonesia is also the only archipelagic country in the world that has regulated the archipelagic sea lanes mandated by UNCLOS 1982 through Government Regulation No. 37 of 2002. The stipulation of the archipelagic sea lanes guarantees the right of foreign countries to traverse the Indonesian archipelagic sea territory. Indonesia is also a large market, located across the globe, and up to now, has a fairly stable political situation.

With this fact, Indonesia has strategic values for investors to make foreign direct investment, although several things, especially infrastructure, need to be considered. Because,

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despite Indonesia's characteristics as an archipelagic country with the second longest coastline in the world, Indonesia's maritime infrastructure, industry and services have not been fully utilized. In fact, these three things are the main operational components towards a strong maritime nation and a catalyst for Indonesia's economic growth as an archipelagic country.

It must be admitted that the power as a maritime country has long been denied by the government. The policy-making approach in the past did not optimize Indonesia's marine area much as a nation's strength both in terms of economy and defense. As a result, many marine natural resources are taken by foreign parties due to the weak mechanisms for monitoring and monitoring Indonesian marine areas.

The emergence of tense conflicts with neighboring countries regarding territorial sea boundaries often occurs, making Indonesia unable to compete with the Port of Singapore due to the arrangement of the Indonesian legal framework that does not benefit ship owners to dock their ships at ports in Indonesia. Law exists because of legitimate power. On the other hand, legitimate power creates law. Law is power, which seeks order created by legitimate power.

2. IMPLEMENTATION METHOD

This research is descriptive analysis, namely research that seeks to describe real facts and situations relating to legal arrangements, this type of research uses normative legal research in the form of legislation supported by empirical/sociological legal research, namely data obtained in the field, based on the results of a survey at the marine and coastal guard unit base, Tanjung Uban.

3. RESULTS AND DISCUSSION

Shipping safety and security is very important and occupies a central position in all aspects of the shipping world. Aspects attached to shipping safety include the characteristics of attitudes, values, and activities regarding the importance of fulfilling safety and security requirements concerning transportation in waters and ports. Neglect of shipping safety tends to increase economic and environmental costs such as decreased production, medical costs, pollution and inefficient use of energy.

This low shipping safety can be caused by weak human resource management (education, competence, working conditions, working hours) and process management. Safety is an integral part of the management of shipping companies in general to support better working conditions on board. Management does not associate ships with many technical fields, in Indonesian territorial waters regulated in Law no. 17 of 2008 concerning Shipping which specifically regulates the implementation of shipping activities in Indonesian waters.

The enactment of Law No. 17 of 2008, concerning shipping has undergone many improvements and the problem of safety and security in shipping is a big responsibility in the port because the biggest problem in ship accidents in shipping is a matter of one's ability and expertise in carrying out tasks, marine and coastal protection. #Based on Law No.17 of 2008 article 277 paragraph 1, marine and coastal protection has the following duties:

1. to supervise the safety and security of shipping.
2. carry out supervision, prevention, and control of pollution in the sea.
3. supervision and control of ship traffic and activities.
4. supervision and control of salvage activities, underwater work, as well as exploration and exploitation of marine resources.
5. security of shipping navigation aids; support the implementation of life search and rescue activities at sea.

The role of marine and coastal guard institutions is specifically regulated in Law Number 17 of 2008 concerning Shipping. In carrying out its duties, the Marine and Coastal Guard Unit is supported by infrastructure in the form of state ships as regulated by article 279 paragraph 1 of Law no. 17 of 2008 concerning Shipping. The Marine and Coastal Guard Unit has the task of formulating and implementing policies, standards, norms, guidelines, criteria and procedures, as



well as technical guidance, evaluation and reporting in the field of patrols and security, safety supervision and Civil Servant Investigators (PPNS), orderly shipping, disaster management and underwater work, marine and coastal protection facilities and infrastructure.

In addition to the above, what is also explicitly and clearly regulated in this Law is the establishment of an institution in the field of Sea and Coast Guard which is formed and is responsible to the President and technically operationally carried out by the Minister. The sea and coast guard has a command function in enforcing rules in the field of shipping safety and security, and a coordinating function in law enforcement outside shipping safety. The marine and coastal safeguards are the empowerment of the Maritime Security Coordinating Board and the strengthening of the Marine and Coastal Guard Units.

In addition, Indonesia has long had a Marine and Coast Guard Unit, which is a directorate-level organization under the Director General of Sea Transportation (KPLP), which from the beginning of its formation was directed as the embryo of Indonesia's Sea and Coast Guard. And in 1981/1982 the Marine and Coastal Guard Unit was further developed with the establishment of the Central Fleet of the Marine and Coast Guard which has the main task of carrying out patrols for shipping safety, environmental sustainability (eg preventing and overcoming oil pollution), and Search & Rescue at Sea. At the request of the Directorate General of Sea Transportation at that time, the Indonesian Navy assigned 8 officers to assist in the formation of the Central Fleet of the Marine and Coast Guard. At first,

The Central Fleet of the Marine and Coast Guard was formed in 1983, and has 5 Marine and Coastal Guard Fleet Bases, in Jakarta, Surabaya, Bitung, Ambon, and Tanjung Ubin. KN class II ships are based in Jakarta and are operated/alerted in areas based on the situation. Meanwhile, KN class III and IV ships are operated by each base commander, and according to the PO (Operation Order) from the Directorate General of Sea Transportation.

Since its formation, the Central Fleet of the Marine and Coast Guard has carried out law enforcement functions at sea according to the functions carried out by the Coast Guard in other countries. And the Directorate General of Sea Transportation, Marine and Coastal Guard Units also cooperates with the Coast Guards of other countries, especially with neighboring countries: Malaysia, Singapore, the Philippines, Japan, and Australia. Japan is one of the countries that has helped a lot in the development of the Central Fleet of the Marine and Coast Guard, both in the form of equipment and in training.

Law Number 17 of 2008 concerning Shipping mandates the establishment of the Indonesian Coast Guard. This is faced with the existence of the Marine and Coastal Guard Unit which implies an expectation that the organization of the Directorate of Marine and Coastal Guard Units will be developed, at least to the level of the Directorate General. However, the issue of the formation of this new body of the Indonesian Coast Guard needs to be addressed carefully, so as not to just form a new organization, without considering other important things, especially regarding the readiness of hardware in the form of ships and all supporting facilities, software and brainware including the readiness of the personnel who crew it, given that Indonesia does not yet have a professional special educational institution for Indonesian Coast Guard candidates.

So far, the embodiment of the Marine and Coastal Guard function is manifested in the Marine and Coastal Guard organization under the auspices of the Directorate General of Sea Transportation, Ministry of Transportation. This is as regulated in the Decree of the Minister of Transportation Number 65 of 2002 concerning the Organization and Work Procedure of Marine and Coast Guard Bases. Its function is to carry out operations and enforcement of regulations in the field of shipping, investigation and investigation of shipping crimes, supervision of salvage activities and underwater work, exploration and exploitation and SAR assistance, fire prevention, supervision of shipping navigational aids (SBNP) and pollution prevention.

Article 3 of the Decree of the Minister of Transportation Number 65 of 2002 states that in carrying out the duties of the marine and coastal guarding base, it carries out the following functions, namely the preparation of programs and evaluations, as the executor of operations and

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enforcement of laws and regulations in the field of shipping in sea and coastal waters, as the implementation of the investigation function, and investigation of shipping crimes, as the executor of supervision and control of salvage activities and underwater work. The Marine and Coastal Guard Bases as referred to in this regulation are intended to carry out functions in the form of planning, program and evaluation; Implementation of operations and enforcement of laws and regulations in the field of shipping in sea and coastal waters; Carrying out investigations and investigations of shipping crimes; Implementation of supervision and control of salvage activities and underwater work, diving, installation/exploration and exploitation, buildings above and below water; Providing search and rescue assistance for disasters at sea and fire prevention; Implementation of security and supervision of shipping navigational aids as well as prevention of pollution in the waters; g. Implementation of ship crew training and installation, Implementation of procurement, maintenance, repair and logistical support; Implementation of administrative and household affairs; Providing search and rescue assistance for disasters at sea and fire prevention; Implementation of security and supervision of shipping navigational aids as well as prevention of pollution in the waters; g. Implementation of ship crew training and installation, Implementation of procurement, maintenance, repair and logistical support; Implementation of administrative and household affairs; Providing search and rescue assistance for disasters at sea and fire prevention; Implementation of security and supervision of shipping navigational aids as well as prevention of pollution in the waters; g. Implementation of ship crew training and installation, Implementation of procurement, maintenance, repair and logistical support; Implementation of administrative and household affairs.

Provisions regarding the investigation of shipping crimes by the Tanjung Uban Class II PLP Office Based on Article 7 Paragraph (2) of the Decree of the Minister of Transportation Number 65 of 2002 concerning the Organization and Work Procedures of Marine and Coastal Guard Bases that have clearly stated that the implementation of criminal investigations in the field of shipping in accordance with criminal offenses regulated in Law 17 of 2008 concerning shipping is carried out by the Operations Subsection which consists of Civil Servant Investigators. As we know, there are two authorized investigative institutions in accordance with various work procedures, namely, there are those who coordinate with Polri investigators and there are direct public prosecutors without coordination with Polri investigators. Then there are different authorities in the investigation stage, namely the authority to carry out investigative duties in accordance with the scope of their respective duties, this does not describe the existence of an independent and integral investigative body or institution.

Basically, every investigation must refer to the provisions of Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHAP). And then to regulate the management of the authority of Civil Servant Investigators (PPNS), the Regulation of the Chief of the Indonesian National Police (Perkapolri) Number 6 of 2010 was issued, concerning Management of Civil Servant Investigators.

The scope of the enactment of Law 17 of 2008 concerning Shipping applies to all transportation activities in waters, ports, shipping safety and security, as well as protection of the maritime environment in Indonesian waters. And also, to all foreign ships sailing in Indonesian waters and then also for all Indonesian flagged vessels that are outside Indonesian waters.

In carrying out the investigation tasks carried out by Civil Servant Investigators from the Tanjung Uban Class II PLP office, they must continue to coordinate with the PPNS supervisory coordinator (Korwas) function, namely the criminal investigation unit (Satrekrim) at the city resort police (Polresta) level. The coordination as referred to in Article 6 Paragraph (3) of the Regulation of the Head of the State Police of the Republic of Indonesia Number 20 of 2010 concerning Coordination, Supervision and Guidance of Investigations for Civil Servant Investigators is carried out in the form of activities:

1. Receive notification letter of commencement of investigation (SPDP) by PPNS.



2. Provide technical assistance, tactical, coercive measures and investigative consultations to PPNS to improve and accelerate the settlement of case files.
3. Receive case files from PPNS and forward them to the Public Prosecutor.
4. termination of investigation by PPNS.
5. Exchanging information regarding the alleged existence of a criminal act whose investigation is carried out by the PPNS.
6. Meetings regularly and
7. Joint investigation.

In the event that investigation assistance is required, the Civil Servant Investigator submits a written request to the Head of the City Resort Police (Kapolresta) through the Head of the Criminal Investigation Unit (Kasat Reskrim). Investigation assistance is carried out from the notification of the start of the investigation until the completion and submission of case files, suspects and evidence to the Public Prosecutor. Requests for assistance are submitted in writing to the local PPNS Korwas function bearer by explaining:

1. Reason for request for assistance.
2. Cases handled.
3. Assignment time; and
4. Number of investigators.

The implementation of a policy is limited in reaching the actions taken by government individuals and private individuals (groups) that are directed to achieve the goals that have been set in previous policy decisions. Implementation is understanding what actually happens after a program is declared effective or formulated is the focus of attention on policy implementation, namely the events and activities that arise after the ratification of state policy guidelines which include both efforts to administer them and to have real consequences/impacts on the government, society or events.

There are 2 laws that simultaneously regulate the coast guard, namely Law Number 17 of 2008 concerning Shipping and Law Number 32 of 2014 concerning Marine Affairs. The Shipping Law presents the Indonesian Marine and Coastal Guard Unit under the coordination of the Ministry of Transportation. The agency is tasked with regulating maritime security, but has not yet been coordinated. In terms of infrastructure, the Maritime and Coast Guard Unit has a larger number of ships and logistics bases, and its main authority is law enforcement. The obstacles faced by the Government in its efforts to maintain the integrity of the territorial waters of Indonesia are:

1. There is no legal basis for determining or measuring the outer limits of the territory and jurisdiction of the state at sea. The list of geographical coordinates of the coordinates of the starting points has not yet been registered with the Secretary General of the United Nations.
2. Problems with neighboring countries still exist/Lack of awareness of the territorial integrity of Indonesia as an archipelagic country.

In this regard, specifically regarding border issues between countries, it is noted, among others:

1. Juridically there is no clear and comprehensive grip and regulation. The resolution of problems that arise depends on the pattern of profit and loss and depends on the ability of the appointed negotiator.
2. The condition of the border area community which is still very marginal, opens up opportunities for other interested parties to take advantage of.
3. Technical references for surveys and mapping of national borders are still partial, thus requiring long and complicated coordination.
4. Problem solving is still incidental and situational.
5. There are many agencies whose field of work is closely related to national border issues and makes their integration difficult.

The importance of maintaining sovereignty over Indonesia's marine territory, because the Indonesian people have made the sea as one of the drivers of the economy to achieve mutual

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prosperity. However, efforts to maximize marine protection often encounter obstacles, both internal and external factors. On the other hand, foreign countries are trying to control Indonesia's marine territory. This intervention can be seen from several recent cases, such as the release of Sipadan and Ligitan Islands. In addition, there are several cases that are likely to trigger tensions in Indonesian territorial waters, such as the Ambalat block, disputes in the Aor Sea, to China's unilateral claim to the widening of the South China Sea area for historical reasons. If this continues,

Seeing these conditions, ideas related to reactualization and revitalization as a strategy for securing Indonesia's maritime territory. Re-actualization is carried out through a strategy for securing marine areas in a synergistic, effective and efficient manner between relevant agencies, which is in line with the principles of good governance and clean government. Meanwhile, the revitalization efforts are more focused on the implementation of the development and capacity building of the security apparatus stakeholders in the water sector. These two strategic steps can be realized if they are supported by the political will from the government and full support from the community to participate in protecting Indonesia's maritime sovereignty.

The enforcement of maritime security within the territory of the Republic of Indonesia is a manifestation of law enforcement and the sovereignty of the territorial sea of the Republic of Indonesia. The existence of the Republic of Indonesia which has 17,499 islands, with a sea area of 5.8 million km² is still constrained in realizing maritime security and law enforcement at sea. As a problem, first, why is maritime security law enforcement in the territory of the Republic of Indonesia not optimal, second, what efforts should be made so that law enforcement on maritime security can be optimal. Crimes at sea are very diverse, what always happens is theft of fish and various other crimes. The unfinished maritime boundaries between Indonesia and neighboring countries have made it difficult to enforce the law for illegal fishing and other crimes. In the era of globalization as it is now and, in the future, will colored by various crimes at sea, not including maritime boundary disputes with neighboring countries, as well as sea reclamation from Singapore which has the potential to change maritime boundaries with Indonesia and Malaysia. The Unitary State of the Republic of Indonesia as the largest unitary state in the world, must be able to maintain and enforce maritime security within the Unitary State of the Republic of Indonesia. Sea boundary line agreements with neighboring countries should not be allowed to drag on. Relevant agencies starting from the Ministry of Foreign Affairs and other agencies must quickly respond to maritime border agreements with neighboring countries. Strengthening facilities and infrastructure, human resources, budgeting, and consistency as well as state policies, and sea reclamation from Singapore which has the potential to change maritime boundaries with Indonesia and Malaysia. The Unitary State of the Republic of Indonesia as the largest unitary state in the world, must be able to maintain and enforce maritime security within the Unitary State of the Republic of Indonesia. Sea boundary line agreements with neighboring countries should not be allowed to drag on. Relevant agencies starting from the Ministry of Foreign Affairs and other agencies must quickly respond to maritime border agreements with neighboring countries. Strengthening facilities and infrastructure, human resources, budgeting, and consistency as well as state policies. Relevant agencies starting from the Ministry of Foreign Affairs and other agencies must quickly respond to maritime border



agreements with neighboring countries. Strengthening facilities and infrastructure, human resources, budgeting, and consistency as well as state policies.

4. CONCLUSION

The conclusion of this study is that the Government as the maker and implementer of laws is expected to make special laws and regulations that discuss the authority of law enforcement agencies at sea to become one door in the prosecution of violations at sea, shipping, optimizing the synergy between existing institutions in terms of supervision and protection of both the nation and the state.

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