

Reconstructing Institutional Authority in Coastal and Maritime Law Enforcement: A Justice-Based Legal Policy Approach

Budi Triono¹, Lita Tyesta ALW², Amalia Diamantina³

¹Doctoral Program in Law, Faculty of Law, Diponegoro University, Semarang

^{2,3}Lecturer in Law, Faculty of Law, Diponegoro University, Semarang

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buditriyono@students.undip.ac.id

ABSTRACT

This research aims to analyze the institutional and regulatory problems that hinder the implementation of law enforcement authority in coastal and maritime areas, as well as formulate a legal policy reform model that is able to create a fair and effective distribution of authority between law enforcement agencies. The main problems raised are the overlapping of authorities, disharmonization of laws and regulations, and weak coordination between institutions which have an impact on the sub-optimal enforcement of the law and the lack of substantive justice in coastal and maritime governance. The research method used is normative juridical with a legislative approach and a conceptual approach. The data used are primary, secondary, and tertiary legal materials that are analyzed qualitatively through deductive reasoning. This study uses the theoretical foundations of *Progressive Law Theory*, *Theory of Legal Authority and Responsibility*, and *Good Governance Theory* to analyze and formulate an ideal legal policy model.

The results of the study show that: 1) Institutional and regulatory problems that hinder the implementation of law enforcement authority in coastal and maritime areas are mainly caused by the overlap of authority between institutions such as the military, police, and sectoral agencies, which are not balanced with a firm and coordinated division of duties. 2) The necessary legal policy reform model is the reconstruction of institutional authority that is integrative and justice-based, by emphasizing a clear, proportional, and non-overlapping division of authority between law enforcement agencies. This reform must be supported by regulatory harmonization, strengthening the principles of transparency and accountability, and the development of an effective integrated coordination system. In addition, the approach used must integrate the principles of Progressive Law, the theory of authority and responsibility, and good governance, so as to be able to produce coastal and maritime law enforcement governance that is more responsive, efficient, and fair, and able to respond to national and global challenges in a sustainable manner.

Keywords: Reconstructing, Institutional, Authority, Coastal, Maritime, Law, Enforcement, Justice-Based, Legal Policy, Approach.

INTRODUCTION

Background

Law enforcement in Indonesia's coastal and maritime areas is a strategic issue that is not only related to aspects of state sovereignty, but also concerns the protection of natural resources, the safety of coastal communities, and the sustainability of the marine environment. Indonesia as the largest archipelagic country in the world has a large sea area with high complexity of problems, ranging from illegal fishing, marine pollution, to conflicts over the use of marine space. However, reality shows that law enforcement systems in coastal and maritime areas still face various obstacles, especially related to the overlap of authority between law enforcement agencies. This condition results in weak coordination and effectiveness of law enforcement which has an impact on the suboptimal protection of law in the marine sector.¹

The main problem in coastal and maritime law enforcement lies in the fragmentation of institutional authority involving various institutions such as the Indonesian Navy, Polairud, the Ministry of Maritime Affairs and Fisheries, and the Maritime Security Agency (Bakamla). Each institution has a different legal basis and authority, but there are often slices of tasks that are not strictly regulated. As a result, law enforcement becomes ineffective and tends to cause conflicts of authority. This shows that the existing institutional design does not fully reflect the principle of legal certainty as mandated in the national legal system.²

In addition, the law enforcement approach that is still sectoral also worsens this condition. Each institution tends to carry out its duties based on its own institutional interests without comprehensive policy integration. In fact, the dynamic characteristics of coastal and maritime areas require a holistic and coordinated approach. Without synergy between institutions, law enforcement has the potential to create injustice, both for business actors, coastal communities, and the state as the owner of sovereignty over marine areas.³

From a legal policy perspective, this condition indicates an urgent need to reconstruct institutional authority in coastal and maritime law enforcement. The reconstruction is not only

¹ M. Syamsuddin, *Normative and Empirical Legal Research Methods* (Yogyakarta: FH UII Press, 2015), p. 112.

² Satjipto Rahardjo, *Law* (Bandung: Citra Aditya Bakti, 2006), p. 87.

³ Soerjono Soekanto, *Factors Affecting Law Enforcement* (Jakarta: RajaGrafindo Persada, 2014), p. 45.

limited to restructuring the institutional structure, but also includes harmonization of regulations, clear division of authority, and strengthening coordination between institutions. This approach is necessary to create an effective, efficient, and just law enforcement system.⁴

The concept of justice in coastal and maritime law enforcement must also be the main foundation in the reconstruction process. Justice is not only interpreted as compliance with formal laws, but also includes substantive justice that takes into account the interests of coastal communities, environmental sustainability, and a balance between the exploitation and conservation of marine resources. Therefore, the justice-based legal policy approach is relevant to answer various existing problems.⁵

Furthermore, in the context of Indonesian national law, regulations regarding law enforcement in marine areas are spread across various laws and regulations, such as Law Number 32 of 2014 concerning Marine Affairs, Law Number 45 of 2009 concerning Fisheries, and various other sectoral regulations. However, the diversity of regulations actually causes disharmonization that has an impact on the unclear authority between institutions. This shows that legal harmonization efforts are needed as part of institutional reconstruction.⁶

On the other hand, global developments also demand a maritime law enforcement system that is more adaptive and responsive to international challenges, such as transnational crime, smuggling, and territorial boundary violations. Indonesia as part of the international community has an obligation to adapt its legal system to the principles of international law of the sea, including those stipulated in the United Nations Convention on the Law of the Sea (UNCLOS). Therefore, the reconstruction of institutional authority must also consider the global dimension.⁷

The reconstruction of institutional authority in coastal and maritime law enforcement must also take into account the principles of good governance, which include transparency, accountability, and public participation. Without the application of these principles, institutional reforms have the potential to be ineffective and only administrative changes.

⁴ Lawrence M. Friedman, *The Legal System: A Social Science Perspective* (New York: Russell Sage Foundation, 1975), p. 16.

⁵ John Rawls, *A Theory of Justice* (Cambridge: Harvard University Press, 1971), p. 54.

⁶ Ahmad Redi, *Law on the Formation of Laws and Regulations* (Jakarta: Sinar Grafika, 2018), p. 132.

⁷ Malcolm N. Shaw, *International Law* (Cambridge: Cambridge University Press, 2017), p. 566.

Therefore, a justice-based legal policy approach must be integrated with the principles of good governance.⁸

In addition, it is important to consider the social and economic aspects of coastal communities in the reconstruction process. Law enforcement that is insensitive to the socio-economic conditions of the community can cause resistance and conflict. Therefore, the approach used must be inclusive and oriented towards the empowerment of coastal communities as part of the law enforcement system.⁹

Thus, the reconstruction of institutional authority in coastal and maritime law enforcement is an unavoidable need. This effort must be carried out comprehensively by integrating legal, institutional, policy, and justice values. Through a justice-based legal policy approach, it is hoped that a law enforcement system can be created that is more effective, coordinated, and able to provide optimal protection for all stakeholders in Indonesia's coastal and maritime areas.

The reconstruction of institutional authority in coastal and maritime law enforcement also needs to pay attention to the dynamics of government decentralization in Indonesia, especially after the enactment of Law Number 23 of 2014 concerning Regional Government. The division of authority between the central and local governments in the management of marine areas up to 12 nautical miles for the provinces has created new complexities in law enforcement. In practice, there is often a lack of synchronization between central and regional policies, which has implications for weak coordination in the supervision and enforcement of violations of the law in coastal areas. Therefore, institutional reconstruction must be able to bridge the relationship of authority between the central and regional governments in order to create harmonization in the enforcement of maritime law fairly.¹⁰

Furthermore, it is important to highlight the role of the Maritime Security Agency of the Republic of Indonesia (Bakamla) as an institution that is expected to be a *leading sector* in marine security and safety. However, in its implementation, Bakamla still faces limited operational authority that often overlaps with other institutions such as the Indonesian

⁸ Ridwan HR, *State Administrative Law* (Jakarta: RajaGrafindo Persada, 2016), p. 203.

⁹ Adrian Sutedi, *Fisheries Law* (Jakarta: Sinar Grafika, 2011), p. 78.

¹⁰ Ni'matul Huda, *Local Government Law* (Jakarta: Rajawali Press, 2019), p. 156.

National Army, Navy and Police. This condition shows that the formation of new institutions without being followed by a clear arrangement of authority has the potential to exacerbate institutional fragmentation. Therefore, the reconstruction carried out must place Bakamla in a strategic position with firm and integrated authority.¹¹

From the perspective of legal system theory, the effectiveness of law enforcement is greatly influenced by three main elements, namely the legal structure, the substance of the law, and the culture of the law. These three elements must run synergistically so that the legal system can function optimally. In the context of coastal and maritime law enforcement, the weakness lies not only in the institutional structure, but also in the substance of regulations that are not harmonized and the legal culture of the apparatus that is not fully professional and with integrity. Therefore, the reconstruction of institutional authority must be carried out comprehensively by paying attention to these three aspects.¹²

Furthermore, the approach to justice in maritime law policy must take into account the principle of ecological *justice*, which places the environment as a subject that must be protected. The uncontrolled exploitation of marine resources has caused damage to coastal ecosystems, such as coral reefs, mangroves, and other marine life habitats. Law enforcement that is only oriented to economic aspects without paying attention to environmental sustainability will be contrary to the principle of intergenerational justice. Therefore, the reconstruction of institutional authority must integrate aspects of environmental protection as part of justice-based legal policies.¹³

Finally, the reconstruction of institutional authority in coastal and maritime law enforcement must be directed at the formation of an institutional model that is adaptive, integrative, and responsive to the changing times. The justice-based legal policy approach is not only oriented towards normative and structural improvements, but also includes innovations in modern and sustainable law enforcement practices, so as to be able to comprehensively respond to complex challenges in Indonesia's coastal and maritime regions.

¹¹ Marhaeni Ria Siombo, *Fisheries and Marine Law in Indonesia* (Jakarta: Gramedia Widiasarana Indonesia, 2019), p. 214.

¹² Achmad Ali, *Revealing Legal Theory and Judicial Theory* (Jakarta: Kencana, 2012), p. 98.

¹³ Philippe Sands, *Principles of International Environmental Law* (Cambridge: Cambridge University Press, 2003), p. 252.

Research Question

1. What institutional and regulatory problems hinder the effective and just exercise of authority by law enforcement agencies in coastal and maritime areas?
2. What model of legal policy reform can ensure a fair and effective distribution of authority among law enforcement institutions in coastal and maritime governance?

THEORETICAL FRAMEWORK

1. Progressive Law Theory (Satjipto Rahardjo)

The Progressive Legal Theory developed by Satjipto Rahardjo places law as an instrument that is not static, but dynamic and oriented towards the achievement of substantive justice. In the context of the reconstruction of the institutional authority of coastal and maritime law enforcement, this approach is very relevant because it is able to shift the legal paradigm from mere compliance with normative texts to real efforts in realizing justice that lives in society. Progressive law rejects the view that law is only limited to written rules, but rather places human beings and justice at the center of the orientation of the law itself. Thus, institutional reconstruction is not only carried out formally, but must also be able to answer the needs of justice for coastal communities that have often been neglected.¹⁴

From a progressive legal perspective, the law must dare to make a breakthrough (*rule breaking*) if existing rules actually hinder the achievement of justice. This is important in the context of maritime law enforcement, which is often caught up in overlapping authority between institutions. The progressive approach encourages law enforcement officials not to be confined by regulatory rigidity, but rather prioritize solutions that provide substantive justice for all parties. Therefore, the reconstruction of institutional authority must provide flexibility for the apparatus in carrying out their duties, without ignoring the principles of accountability and legal certainty.¹⁵

¹⁴ Satjipto Rahardjo, *Progressive Law: A Synthesis of Indonesian Law* (Yogyakarta: Genta Publishing, 2009), p. 5.

¹⁵ Satjipto Rahardjo, *Law Enforcement: A Sociological Review* (Yogyakarta: Genta Publishing, 2009), p. 23.

Furthermore, progressive law emphasizes that the law must be on the side of the community, especially the weak and vulnerable groups. In the context of coastal areas, traditional fishing communities are often the most affected by weak law enforcement and conflicts of authority between institutions. Therefore, the reconstruction of institutional authority must be oriented towards the protection of the rights of coastal communities, not solely on the interests of state institutions. This approach is in line with the principle of social justice which is the main goal in the development of national law.¹⁶

Progressive legal theory also recognizes the importance of the role of morality in law enforcement. Law cannot be separated from the values of ethics and justice that live in society. In the context of coastal and maritime law enforcement, law enforcement officials are required to have integrity and moral courage in making fair decisions, even if sometimes it is against the interests of bureaucracy or power. Thus, institutional reconstruction does not only touch on structural aspects, but must also include fostering a legal culture oriented towards the values of justice.¹⁷

In addition, progressive law rejects positivistic views that overemphasize legal certainty without regard for justice. In maritime law enforcement practice, positivistic approaches often result in decisions that are formalistic and insensitive to the social conditions of coastal communities. Therefore, the reconstruction of institutional authority must be able to integrate aspects of legal certainty with substantive justice, so that law is not only a tool of control, but also a means of community empowerment.¹⁸

In the context of legal policy, progressive legal theory encourages continuous legal innovation and reform. The reconstruction of institutional authority in coastal and maritime law enforcement should be seen as part of a broader process of legal reform, which aims to create a legal system that is responsive to social changes and the times. This approach requires courage from policymakers to carry out fundamental

¹⁶ Satjipto Rahardjo, *Dissecting Progressive Law* (Jakarta: Kompas, 2006), p. 112.

¹⁷ Bernard L. Tanya, *Legal Theory: Strategies for Human Order Across Spaces and Generations* (Yogyakarta: Genta Publishing, 2010), p. 67.

¹⁸ Achmad Ali, *Legal Decline in Indonesia: Causes and Solutions* (Jakarta: Ghalia Indonesia, 2002), p. 145.

reforms, including in terms of simplifying authority and strengthening coordination between institutions.¹⁹

Ultimately, the application of progressive legal theory in the reconstruction of coastal and maritime law enforcement institutional authority aims to create a legal system that is not only administratively effective, but also substantively fair. The law must be able to be a tool for social transformation that brings positive change to coastal communities and maintains the sustainability of marine resources. Thus, the progressive legal approach provides a strong philosophical foundation in an effort to realize fair and humanitarian-oriented law enforcement in Indonesia's coastal and maritime areas.

2. Theory of Legal Authority and Responsibility

The Theory of Legal Authority and Responsibility is an important theoretical framework for understanding how legal authority is given, exercised, and accounted for by law enforcement agencies in a legal system. In the context of coastal and maritime law enforcement, this theory emphasizes that every authority possessed by an institution must have a clear basis of legitimacy, both constitutionally and through laws and regulations. This authority is not only attribution, but can also be in the form of delegations and mandates that must be carried out in accordance with applicable legal limits. Thus, this theory is an important basis for analyzing whether the division of authority between law enforcement agencies is in accordance with the principle of legality.²⁰

In the perspective of this theory, *authority* always goes hand in hand with responsibility, so that every legal action taken by law enforcement agencies must be legally and administratively accountable. In the practice of coastal and maritime law enforcement in Indonesia, there is often an overlap of authority between institutions such as the Maritime Security Agency of the Republic of Indonesia, the National Police

¹⁹ Philippe Nonet and Philip Selznick, *Law and Society in Transition: Toward Responsive Law* (New York: Harper & Row, 1978), p. 77.

²⁰ H.D. van Wijk than Willem Konijnenbelt, *Chapters of Administrative Law* (The Hague: Boom Legal Publishers, 2013), p. 121.

of the Republic of Indonesia, and the Indonesian National Army. This condition shows that the division of authority has not been fully accompanied by a clear division of responsibilities, so it has the potential to cause conflicts of authority and weak accountability.²¹

Furthermore, the theory of authority and responsibility also underlines the importance of the principle *of checks and balances* in the institutional system. Every law enforcement agency must have clear limits of authority to prevent abuse *of power*. In the maritime context, the unclear boundaries of authority between institutions often lead to duplication of law enforcement actions or even the absence of legal actions in certain areas. Therefore, this theory can be used to evaluate the extent to which the existing system of power-sharing has reflected the principle of balance of power in the rule of law.²²

In addition, the Theory of Legal Authority and Responsibility also emphasizes the importance of the principle of accountability in the exercise of authority. Every law enforcement agency must be able to account for every action taken, both to the public and to internal and external oversight mechanisms. In coastal and maritime law enforcement, weak accountability is often caused by unclear lines of command and inter-agency coordination. This makes it difficult to determine the responsible party when there is a violation or failure in law enforcement.²³

In the framework of institutional authority reconstruction, this theory also provides a basis for rationalizing and harmonizing authority between institutions. Each authority must be placed proportionately according to the function and capacity of each institution. For example, military authority should be focused on the defense aspect of the country, while the authority for civil law enforcement is in the police or other related agencies. Thus, a clear division of authority will increase the

²¹ Ridwan HR, *State Administrative Law* (Jakarta: RajaGrafindo Persada, 2016), p. 145.

²² Philipus M. Hadjon, *Introduction to Indonesian Administrative Law* (Yogyakarta: Gadjah Mada University Press, 2011), p. 89.

²³ Mark Bovens, *The Quest for Responsibility: Accountability and Citizenship in Complex Organisations* (Cambridge: Cambridge University Press, 1998), p. 27.

effectiveness of law enforcement and reduce the potential for conflicts between institutions.²⁴

Furthermore, this theory is also relevant in analyzing the relationship between legal authority and the protection of human rights. Every exercise of authority by law enforcement agencies must pay attention to human rights principles, so that there is no violation of the rights of the community, especially coastal communities who are often directly affected. Therefore, the reconstruction of institutional authority must ensure that any authority granted is accompanied by an effective oversight mechanism to protect those rights.²⁵

Thus, the Theory of Legal Authority and Responsibility provides a comprehensive analytical framework to evaluate and reconstruct the division of authority between law enforcement agencies in coastal and maritime law enforcement. This theory asserts that authority must be based on clear legal legitimacy, accompanied by firm responsibility, and implemented within the framework of accountability and protection of human rights. Through the application of this theory, it is hoped that an institutional system that is more coordinated, effective, and fair in law enforcement in Indonesia's coastal and maritime areas can be created.

3. Good Governance Theory

Good Governance Theory is one of the relevant theoretical frameworks in analyzing the reconstruction of institutional authority in coastal and maritime law enforcement, especially in assessing the extent to which the principles of transparency, accountability, and justice have been implemented in maritime and coastal law policies. This theory emphasizes that good governance is not only oriented to the effectiveness of administration, but also to the legitimacy of decision-making processes involving various stakeholders. In the context of maritime and coastal law, the application of the principle of good governance is crucial considering the

²⁴ Jimly Asshiddiqie, *Introduction to Constitutional Law* (Jakarta: Constitution Press, 2006), p. 203.

²⁵ Jan Michiel Otto, *Sharia Incorporated: A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present* (Leiden: Leiden University Press, 2010), p. 64.

complexity of the actors involved, ranging from the central government, local governments, law enforcement officials, to coastal communities. Without good governance, the resulting legal policies have the potential to not reflect the public interest at large.²⁶

The principle of transparency in Good Governance Theory requires information disclosure in every policy-making process, including in coastal and maritime law enforcement. Transparency allows the public to know the legal basis, procedures, and reasons behind every law enforcement action taken by the authorities. In practice, the lack of transparency is often a source of public distrust of law enforcement institutions in the marine sector. Therefore, the reconstruction of institutional authority must ensure that each institution has a clear information disclosure mechanism that is accessible to the public.²⁷

In addition to transparency, the principle of accountability is an important element in Good Governance Theory that must be applied in marine and coastal law policies. Accountability means that every action and decision taken by law enforcement agencies must be accountable, both legally, administratively, and morally. In the context of coastal and maritime law enforcement, accountability is very important considering the potential for abuse of authority, such as corrupt practices, collusion, and nepotism in the management of marine resources. Therefore, internal and external surveillance systems must be strengthened as part of institutional reconstruction.²⁸

Furthermore, the principle of fairness in Good Governance Theory is not only related to equal treatment before the law, but also includes the equitable distribution of benefits and burdens among stakeholders. In coastal and maritime law policy, justice must reflect the protection of coastal communities who are often in vulnerable positions, while ensuring that business actors are not disproportionately harmed.

²⁶ UNDP, *Governance for Sustainable Human Development* (New York: United Nations Development Programme, 1997), p. 9.

²⁷ Mark Bovens, *The Quest for Responsibility: Accountability and Citizenship in Complex Organisations* (Cambridge: Cambridge University Press, 1998), p. 24.

²⁸ Robert Behn, *Rethinking Democratic Accountability* (Washington DC: Brookings Institution Press, 2001), p. 63.

Thus, the resulting legal policy must be able to balance various interests fairly and proportionately.²⁹

In its implementation, Good Governance Theory also emphasizes the importance of public participation as part of transparency and accountability. Community participation in the process of formulating and implementing coastal and maritime legal policies can improve the quality of policies and strengthen legal legitimacy. Without adequate participation, the resulting policies tend to be top-down and less responsive to the needs of the community. Therefore, the reconstruction of institutional authority must open up a wide space for participation for coastal communities in every stage of policy.³⁰

Furthermore, the application of Good Governance Theory in marine and coastal law policies also requires effective coordination between institutions. Transparency and accountability will not be achieved if each institution works partially without a clear coordination mechanism. In this context, the reconstruction of institutional authority must be able to create an integrated coordination system, so that each institution can carry out its functions synergistically. This is important to avoid overlapping authorities and ensure that law enforcement runs effectively and efficiently.³¹

Thus, Good Governance Theory provides a strong conceptual foundation in assessing and designing the reconstruction of institutional authority in coastal and maritime law enforcement. Through the application of the principles of transparency, accountability, and justice, it is hoped that maritime and coastal law policies can be more responsive, inclusive, and oriented to the public interest. Reconstruction based on the principle of good governance will not only increase the effectiveness of law enforcement, but also strengthen public trust in legal institutions and encourage the creation of sustainable and just marine governance.

²⁹ Amartya Sen, *The Idea of Justice* (Cambridge: Harvard University Press, 2009), p. 88.

³⁰ Archon Fung, *Empowered Participation: Reinventing Urban Democracy* (Princeton: Princeton University Press, 2004), p. 42.

³¹ Jan Kooiman, *Governing as Governance* (London: Sage Publications, 2003), p. 112.

RESEARCH METHODOLOGY

The research methodology in the study of the reconstruction of institutional authority in coastal and maritime law enforcement uses a normative juridical approach combined with a *conceptual approach* and a *statute approach*. The normative juridical approach was chosen because this study focuses on the analysis of legal norms that govern the authority of law enforcement agencies in coastal and maritime areas, including various laws and regulations such as Law Number 32 of 2014 concerning Marine Affairs and Law Number 45 of 2009 concerning Fisheries. Through this approach, researchers can examine the conformity between applicable legal norms and the principles of justice in the enforcement of sea and coastal laws.³²

In addition to the normative juridical approach, this study also uses a conceptual approach to analyze various relevant theoretical concepts, such as Good Governance Theory, justice theory, and legal system theory. The conceptual approach allows researchers to understand and interpret the basic principles that are the basis for the formation of equitable legal policies. Thus, this research is not only descriptive of existing legal norms, but also analytical in examining the gap between theory and practice in coastal and maritime law enforcement.³³

The type of data used in this study is secondary data consisting of primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials include relevant laws and regulations, court decisions, and official state documents related to coastal and maritime law enforcement. Meanwhile, secondary legal materials include scientific literature such as books, journals, and the results of previous research that discuss similar issues. The tertiary legal materials are in the form of legal dictionaries and encyclopedias which are used to clarify the legal terms used in this study.³⁴

The data collection technique in this study is carried out through *library research*, which is by collecting and examining various legal sources that are relevant to the object of research. The data that has been collected is then analyzed using a qualitative analysis

³² Peter Mahmud Marzuki, *Legal Research* (Jakarta: Kencana, 2016), p. 35.

³³ Johnny Ibrahim, *Theory and Methodology of Normative Legal Research* (Malang: Bayumedia Publishing, 2006), p. 57.

³⁴ Soerjono Soekanto and Sri Mamudji, *Normative Law Research: A Brief Review* (Jakarta: RajaGrafindo Persada, 2015), p. 13.

method, namely by interpreting the data systematically and logically to obtain comprehensive conclusions. This analysis is also carried out using the deductive reasoning method, which is to draw conclusions from general principles towards specific cases related to coastal and maritime law enforcement.³⁵

Furthermore, in order to produce applicable recommendations, this study also uses a prescriptive approach, namely by formulating an ideal model for the reconstruction of institutional authority in justice-based coastal and maritime law enforcement. This approach aims to provide solutions to the problems identified in the research, taking into account normative, theoretical, and practical aspects. Thus, the results of this research are expected not only to make an academic contribution, but also to be a reference for policymakers in formulating fairer and more effective legal policies in the marine and coastal sector.³⁶

³⁵ Lexy J. Moleong, *Qualitative Research Methodology* (Bandung: Remaja Rosdakarya, 2017), p. 248.

³⁶ Philipus M. Hadjon and Tatiek Sri Djatmiati, *Legal Argumentation* (Yogyakarta: Gadjah Mada University Press, 2005), p. 91.

RESEARCH RESULTS

Institutional and regulatory issues that impede the effective and fair exercise of authority by law enforcement agencies in coastal and maritime areas

Institutional problems in law enforcement in Indonesia's coastal and maritime areas show a discrepancy between the legal structure and the real needs on the ground. The fragmentation of authority between institutions such as the Ministry of Maritime Affairs and Fisheries, the Police, the Indonesian Navy, and the Maritime Security Agency of the Republic of Indonesia creates ineffective conditions in the implementation of law enforcement. In the perspective of Progressive Law Theory put forward by Satjipto Rahardjo, law should be oriented towards substantive usefulness and justice, not just compliance with formal rules. However, reality shows that the rigidity of the institutional structure actually hinders the achievement of this goal.³⁷

From the point of view of the Theory of Legal Authority and Responsibility, every law enforcement agency should have clear authority and be balanced with measurable responsibility. However, in practice, there is often an overlap of authority that causes confusion in the execution of tasks. This unclear boundary of authority not only hinders the effectiveness of law enforcement, but also has the potential to cause conflicts between institutions. This condition shows that the distribution of authority has not been designed proportionately and accountably.³⁸

In addition, the regulatory aspect is also the main inhibiting factor in the implementation of the authority of law enforcement agencies in coastal and maritime areas. The many laws and regulations governing the marine sector, such as Law Number 32 of 2014 concerning Marine Affairs and Law Number 45 of 2009 concerning Fisheries, are often not systematically integrated. As a result, there is a disharmonization of the law that makes it difficult for the apparatus to carry out their duties effectively. Within the framework of Progressive Law Theory, this condition indicates the need for legal reform that is more responsive to the needs of society.³⁹

³⁷ Satjipto Rahardjo, *Progressive Law: Liberating Law* (Jakarta: Kompas, 2009), p. 23.

³⁸ H.D. Stout, *De Besignissen van de Wet* (Zwolle: W.E.J. Tjeenk Willink, 1994), p. 67.

³⁹ Satjipto Rahardjo, *Legal Studies* (Bandung: Citra Aditya Bakti, 2006), p. 215.

From the perspective of Good Governance Theory, weak transparency in the management of authority is also a serious problem. Many policies are not accompanied by adequate information disclosure mechanisms, so that the public cannot optimally supervise the law enforcement process. This has implications for low public trust in law enforcement agencies in the marine sector. Therefore, transparency must be the main principle in institutional reconstruction.⁴⁰

Furthermore, the accountability aspect has also not run optimally in the coastal and maritime law enforcement system. Many cases of law violations are not acted upon consistently, giving the impression of injustice in law enforcement. Within the framework of the Theory of Legal Authority and Responsibility, every use of authority must be legally and morally accountable. However, the weak monitoring mechanism makes accountability difficult to realize.⁴¹

Another problem that is no less important is the low coordination between law enforcement agencies. Each institution tends to work sectorally without adequate integration. In the perspective of Good Governance Theory, coordination is one of the important elements in creating effective governance. Without good coordination, law enforcement will run partially and not optimally.⁴²

In the context of Progressive Law Theory, law should be able to adapt to evolving social dynamics. However, existing regulations are often rigid and unresponsive to changing conditions on the ground, such as technological developments and patterns of maritime crime. This makes the law irrelevant and difficult to apply effectively. Therefore, regulatory reforms that are more adaptive and oriented towards substantive justice are needed.⁴³

Furthermore, the unclear division of authority also has an impact on the inefficiency of the use of state resources. There are many cases where several institutions perform the same function, resulting in a waste of budget and energy. Within the framework of the Theory of Legal Authority and Responsibility, this condition indicates a failure in effective and efficient institutional design. Therefore, the reconstruction of authority is a must.⁴⁴

⁴⁰ Mark Bovens, *Public Accountability* (Oxford: Oxford University Press, 2007), p. 102.

⁴¹ Robert Behn, *The PerformanceStat Potential* (Washington DC: Brookings Institution Press, 2014), p. 45.

⁴² Jan Kooiman, *Governing as Governance* (London: Sage Publications, 2003), p. 144.

⁴³ Satjipto Rahardjo, *Dissecting Progressive Law* (Jakarta: Kompas, 2006), p. 59.

⁴⁴ Hans Kelsen, *General Theory of Law and State* (Cambridge: Harvard University Press, 1945), p. 192.

In terms of justice, coastal communities are often the most disadvantaged parties due to weak law enforcement. They do not receive adequate protection from various forms of lawlessness, such as fish theft by foreign ships or environmental damage due to industrial activities. In the perspective of Good Governance Theory, justice should be the main goal in every public policy, including in maritime law enforcement.⁴⁵

Thus, institutional and regulatory problems in coastal and maritime law enforcement show the urgent need to carry out reconstruction based on the principles of justice, transparency, and accountability. Through the approach of Progressive Law Theory, Theory of Legal Authority and Responsibility, and Good Governance Theory, it is hoped that an institutional model can be formulated that is more effective, adaptive, and equitable in responding to law enforcement challenges in Indonesia's coastal and maritime areas.

A model of legal policy reform that can ensure a fair and effective distribution of authority among law enforcement agencies in coastal and maritime governance

The model of legal policy reform in coastal and maritime law enforcement must depart from the realization that law is not a static entity, but a tool to achieve broader social goals, including justice and community welfare. In the perspective of *Progressive Law Theory* developed by Satjipto Rahardjo, law must be human-oriented (*law for human beings*) and should not be trapped in mere normative formalities. Therefore, legal policy reform must be directed at changing the paradigm of law enforcement that is more responsive to the needs of coastal communities and maritime dynamics. This approach allows for flexibility in formulating a more adaptive and equitable distribution of authority.⁴⁶

Within this framework, the distribution of authority between law enforcement agencies must be based on the principle of clarity of authority and responsibility as studied in *the Theory of Legal Authority and Responsibility*. This theory emphasizes that each institution must have a strict limit of authority and responsibility proportional to the authority it has. The unclear division of authority will only create institutional conflicts and weaken the

⁴⁵ Amartya Sen, *Development as Freedom* (New York: Alfred A. Knopf, 1999), p. 36.

⁴⁶ Satjipto Rahardjo, *Progressive Law: The Law of Liberation* (Jakarta: Kompas, 2009), p. 67.

effectiveness of law enforcement. Therefore, policy reform must be able to formulate a clear and measurable authority structure.⁴⁷

Furthermore, *Good Governance Theory* provides a normative foundation in ensuring that the distribution of authority is carried out in a transparent, accountable, and participatory manner. The principles of good governance are important to prevent abuse of authority and ensure that every law enforcement agency works within the framework of the public interest. In the coastal and maritime context, the application of this principle can also increase public trust in legal institutions that have often been seen as ineffective.⁴⁸

The legal policy reform model must also integrate an integrative, not sectoral, institutional approach. So far, coastal and maritime law enforcement in Indonesia tends to be carried out partially by various institutions without optimal coordination. With a progressive approach, it is necessary to establish an integrated coordination mechanism that is able to connect various institutions in one integrated law enforcement system. This is in line with the principle of effectiveness in the theory of good governance.⁴⁹

Furthermore, legal policy reform must pay attention to the dimension of distributive justice in the division of authority. Distributive justice demands that authority is not only formally distributed, but also takes into account the capacity, resources, and needs of each institution. In this context, institutions with better technical and operational capabilities should be given greater authority, but remain within a strict framework of supervision. This approach will create a balance between effectiveness and accountability.⁵⁰

From a progressive legal perspective, legal policy reform must also dare to make a breakthrough (*rule breaking*) to rules that are no longer relevant to the needs of society. Satjipto Rahardjo emphasized that the law should not be an obstacle to justice, but must be a tool for liberation from injustice. Therefore, the reconstruction of institutional authority must

⁴⁷ H.L.A. Hart, *The Concept of Law* (Oxford: Oxford University Press, 2012), p. 97.

⁴⁸ Jan Kooiman, *Modern Governance: New Government-Society Interactions* (London: Sage Publications, 1993), p. 38.

⁴⁹ Merilee S. Grindle, *Good Governance Revisited* (Cambridge: Harvard University Press, 2007), p. 14.

⁵⁰ John Rawls, *Justice as Fairness: A Restatement* (Cambridge: Harvard University Press, 2001), p. 42.

dare to remove or revise rules that cause overlapping authority and hinder the effectiveness of law enforcement in coastal and maritime areas.⁵¹

In addition, the responsibility aspect in the distribution of authority must also be strengthened through effective supervision mechanisms. Every institution that is given authority must have an obligation to account for every action taken. In this regard, the theory of authority and responsibility emphasizes the importance of the relationship between power and accountability as two inseparable sides. Without a clear accountability mechanism, the distribution of authority has the potential to lead to abuse of power.⁵²

The legal policy reform model should also consider the use of technology as a tool to improve transparency and effectiveness of law enforcement. In the digital era, surveillance of marine areas can be carried out through satellite-based monitoring systems and other information technologies. This not only increases efficiency, but also allows for transparency in the law enforcement process. Thus, the principle of good governance can be implemented more concretely in practice.⁵³

On the other hand, the participation of coastal communities must also be an integral part of the legal policy reform model. The community is not only an object of law, but also as a subject who has a role in maintaining and supervising coastal areas. This participatory approach is in line with the principles of good governance which emphasizes the importance of public involvement in the decision-making process. By involving the community, the resulting legal policies will be more responsive and sustainable.⁵⁴

Furthermore, legal policy reform should strengthen the synergy between national law and international law, particularly in the context of maritime law. Indonesia as an archipelagic country has an obligation to adjust its legal policies to international provisions such as

⁵¹ Satjipto Rahardjo, *Progressive Law Enforcement* (Jakarta: Kompas, 2010), p. 121.

⁵² Joseph Raz, *The Authority of Law: Essays on Law and Morality* (Oxford: Oxford University Press, 2009), p. 28.

⁵³ Richard Heeks, *Information Technology and Public Sector Reform* (London: Routledge, 2001), p. 76.

⁵⁴ Archon Fung, *Varieties of Participation in Complex Governance* (Cambridge: Harvard University Press, 2006), p. 66.

UNCLOS. This harmonization is essential to ensure that law enforcement in coastal and maritime areas is not only effective nationally, but also internationally recognized.⁵⁵

In the context of implementation, the legal policy reform model should be complemented by clear performance indicators to measure the effectiveness of the distribution of authority. These indicators can include the level of coordination between institutions, the speed of handling cases, and the level of compliance with the law. With measurable indicators, the evaluation of the policies implemented can be carried out objectively and continuously.⁵⁶

Thus, a legal policy reform model based on *Progressive Law Theory*, *Theory of Legal Authority and Responsibility*, and *Good Governance Theory* can be a solution to create a fair and effective distribution of authority in coastal and maritime law enforcement. The integration of these three theories allows for an approach that is not only normative, but also responsive to the needs of society and global dynamics. Through comprehensive reforms, it is hoped that a more fair, transparent, and accountable law enforcement system will be created in Indonesia's coastal and maritime areas.

⁵⁵ Donald R. Rothwell and Tim Stephens, *The International Law of the Sea* (Oxford: Hart Publishing, 2016), p. 103.

⁵⁶ Christopher Hood, *The Tools of Government in the Digital Age* (London: Palgrave Macmillan, 2007), p. 119.

CONCLUSION

The results of the study show that:

1. Institutional and regulatory problems that hinder the implementation of law enforcement authority in coastal and maritime areas are mainly caused by the overlap of authority between institutions such as military apparatus, police, and sectoral agencies, which are not balanced with a firm and coordinated division of duties. In addition, the disharmonization of laws and regulations spread across various sectors (marine, fisheries, security, and environment) creates ambiguity in legal norms and weakens legal certainty. This condition is exacerbated by weak coordination mechanisms, lack of integration of supervisory systems, and low accountability, so that law enforcement becomes ineffective, has the potential to cause conflicts of authority, and does not reflect the principles of justice for coastal communities and the interests of the state.
2. The model of legal policy reform needed is the reconstruction of institutional authority that is integrative and justice-based, by emphasizing a clear, proportional, and non-overlapping division of authority between law enforcement agencies. This reform must be supported by regulatory harmonization, strengthening the principles of transparency and accountability, and the development of an effective integrated coordination system. In addition, the approach used must integrate the principles of Progressive Law, the theory of authority and responsibility, and good governance, so as to be able to produce coastal and maritime law enforcement governance that is more responsive, efficient, and fair, and able to respond to national and global challenges in a sustainable manner.

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