

Maritime Law Security and Enforcement Institution Based on the Ideals of Pancasila Law

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The purpose of this study is to analyze Realizing a Maritime Law Security and Enforcement Institution Based on the Ideals of Pancasila Law. This research method uses normative law with data collection techniques through *library research*, and the data source is primary data consisting of primary legal material, secondary legal material and tertiary legal material.

The results showed that: The results showed that; 1) Realizing an Institution for the Security and Enforcement of the Law of the Sea Based on the Ideals of Pancasila Law can be carried out with the following things; a) increase understanding and application of Indonesia's maritime geopolitics to all maritime law enforcement and security institutions; b) empowering Bakamla as a non-military civilian institution; c) revising the multi-agency single function policy to a single agency multi-function which has the authority to enforce law at sea; d) the implementation of Pancasila to be carried out in every marine field; e) Strengthening the coordination of all marine law enforcement officials. 2) The ideal construction in Law Enforcement in the Indonesian Sea Territory in the future is carried out through the following things; a) Increasing Awareness and Understanding of Nusantara Insight to All Maritime Law Security and Enforcement Institutions; b) Structuring of a comprehensive, integral, and holistic national maritime policy; c) Structuring National Maritime Security Stability to Support National Development; d) Structuring Non-Military Civil Institutions and Revising the Multy Agency Single Function Policy to a Single Agency with Multy Function That Has Law Enforcement Authority at Sea; e) Optimization of Bakamla as a National Maritime Security Information Center for Security Stability.

Keywords: Realize, Security Institutions, Law Enforcement, Law of the Sea, Ideals of Law, Pancasila

INTRODUCTION

Background

Indonesia is a state of law, normatively the wealth of these resources is controlled by the State to be managed in such a way as to realize public welfare (Article 33 paragraph 3 of the 1945 Indonesian State Constitution¹). The coastal *zone* is a transitional area between land and sea ecosystems that interact with each other, where towards the sea 12 miles from the coastline for the province and one-third of the sea area for the district / city, and towards land the administrative boundary of the district / city.²

Problems in marine management in Indonesia are basically management problems and technical problems that come from land and sea. Management has not been implemented in an integrated manner, but it is still sectoral. In the implementation of the program, it is not based on the strategic plan for coastal management that is prepared by involving all stakeholders or there is already a strategic plan, but the implementation of the program or project is not based on the strategic plan that has been made. Poor coordination is also one of the obstacles, some regions have not formed an Integrated Management Technical Team, so the coordinator or leading sector who handles coastal and marine management is unclear. The understanding by the management officials is not even or does not understand.³

Other management problems are the lack of valid data and information or the absence of data base management for management, the existence of sectoral ego, weak law enforcement, low commitment, lack of sustainable funds, frequent staff transfers, lack of togetherness and integration between sectors, lack of coastal and marine spatial planning, legal framework for coastal management in the region is still weak, The involvement of scientists or experts has not been optimal so that the results of scientific studies have not been used as one of the basis for decision-making, as well as other problems that are different in each region.⁴

Problems in management include not based on the principles of *good environmental governance*, namely: (1) participation, (2) law enforcement, (3) transparency, (4) equality, (5) responsiveness, (6) foresight, (7) accountability, (8) supervision, (9) efficient and effective, (10) professionalism. On the other hand, regional regulations should aim to realize integration in the regulation of reclamation, especially in the regions, especially when implementing authority in the regions based on Law 23 of 2014 concerning Regional Government, which does not strictly regulate

¹ Endang Sutrisno, "Implementation of Integrated Coastal Resources Management Based on Coastal Area Management for Fishermen's Welfare," *Journal of Legal Dynamics* 14, no. 1 (2014): 1–12.

² Bambang Pramudyanto, "Control of Pollution and Damage in Coastal Areas," *Journal of Lingkar Widyaiswara*, No. 4 (2014): 21–40, www.juliwi.com.

³ *Ibid.*

⁴ *Ibid.*

regional authority in managing marine areas, in addition to regulating the number of technical institutions involved so that their authority and coordination function are clearer and firmer.⁵

Conflicts in the management of aquatic and marine areas are caused by unequal geographical conditions and the availability of facilities and infrastructure between one region and another in Indonesia have caused an imbalance in the use of marine resources. This is certainly not in line with the norms that underlie the origination of the archipelagic state principle, which emphasizes the function of the sea as a means of unifying the nation and the importance of the unity of land and waters for Indonesia in order to utilize natural resources equally for the common interests of the Indonesian nation.⁶

The number of law enforcement agencies that are equally authorized in law enforcement in the waters and marine areas causes overlapping policies and conflicts of authority, one of which is the authority of the POLRI, in this case the Water Police and Bakamla. Therefore, it is necessary to conduct an in-depth study related to these legal problems and the ideal concept in overcoming the problems that occur in order to create maximum law enforcement in Indonesian maritime areas and do not have conflicts of authority.

Problem Statement

1. What is the Concept for Realizing an Institution for the Security and Enforcement of the Law of the Sea Based on the Ideals of Pancasila Law?
2. What is the ideal construction of Law Enforcement in the Indonesian Sea Territory in the future?

⁵ Rina Yulianti, Mufarrijul Ikhwan, and Nurus Zaman, "The Urgency of Regulating Coastal Reclamation in the Southern Coastal Region of Madura," *Journal of Jurisprudence* 4, no. 1 (2015): 103–21.

⁶ *Ibid.*

THEORETICAL FRAMEWORK

To maintain and secure the maritime area of the Unitary State of the Republic of Indonesia, it is necessary to have strong law enforcement apparatus in the process of enforcing the law of certain criminal acts at sea.⁷ As law enforcement officers at sea, in the aspect of legality of law enforcement at sea who have the authority to investigate certain criminal acts at sea, including the Indonesian Navy, National Police, Ministry of Transportation, Ministry of Maritime Affairs and Fisheries, Ministry of Finance, Ministry of Law and Human Rights Justice, Ministry of Energy and Mineral Resources (ESDM), Ministry of Environment and Forestry and other stakeholders who have the authority to carry out law enforcement against criminal acts that occur at sea.⁸

In accordance with the basis stated above, the Indonesian Navy, the National Police, the Ministry of Transportation, the Ministry of Maritime Affairs and Fisheries, the Ministry of Finance, the Ministry of Law and Human Rights and the Judiciary, the Ministry of Energy and Mineral Resources (ESDM), the Ministry of Environment and Forestry and other stakeholders as investigators in law enforcement at sea are attributive authorities, namely the authority inherent in a position.⁹

In the review of constitutional law, this attribute is shown in the granting of authority to Government bodies and/or officials by the Constitution of the Republic of Indonesia of 1945 or the Law. This attribution refers to the authority on the basis of the constitution or laws and regulations applicable to officials of the Unitary State of the Republic of Indonesia. overlapping authority in law enforcement, but to protect the interests of sovereignty and law enforcement of the Republic of Indonesia, which is an archipelagic state, does require law enforcement apparatus to minimize the occurrence of criminal acts at sea.¹⁰ Therefore, it is important to carry out coordination of investigation issues related to authority in the law enforcement process, so that economic and trade activities and other activities that pass through the sea can run safely, smoothly and sustainably to form good governance and to realize the State of Indonesia as the world's maritime axis.¹¹

In addition to being in accordance with the duties and authorities of the law enforcement position mentioned above, then the issuance of Law No. 32 of 2014 concerning Maritime Affairs which was then followed up with Presidential Regulation / Presidential Decree number 178 of 2014 concerning the Maritime Security Agency

⁷ Kusuma, "Overlapping Law Enforcement in the Indonesian Sea," 2021.

⁸ Dimas Bayu Rakhmatullah, "The Position of the Maritime Security Agency (Bakamla) in Law Enforcement at Sea (Study Based on Law Number 17 of 2008 concerning Shipping)," *Badamai Law Journal* 2, no. 1 (2022): 39–58.

⁹ Kapahese, "A Review of the Settlement of Territorial Boundary Disputes between States from the Perspective of International Law."

¹⁰ Sodik, *International Law of the Sea and Its Regulation in Indonesia (Revised Edition)*.

¹¹ Sunyowati and Narwati, *Textbook of the Law of the Sea*.

(BAKAMLA), this authority is mainly related to security and law enforcement being one of the duties and functions of the establishment of the Maritime Security Agency (BAKAMLA). so that clear legal rules are needed regarding law enforcement at sea, especially with the formation of a new BAKAMLA organization regarding the duties, functions and authorities as law enforcement apparatus at sea so as not to cause confusion, hesitation and legal uncertainty.¹²

The Maritime Security Agency (Bakamla) which plays the role of *Single Agency Multy Tasks* is a command unit with various kinds of tasks. This marine security agency is expected to function well in law enforcement, security and safety at sea, whose duties consist of aspects of early warning information system services, law enforcement at sea, customs, shipping security and safety, control of biological and non-biological natural resources in the marine environment, search and rescue at sea and national defense in a state of war.¹³

So far, the existing institutions carrying out these functions have not been integrated into an institution, so they have not been able to run optimally. Practice so far shows that law enforcement, security and safety at sea carried out by patrol units from various agencies/ministries has not been able to create maritime security in Indonesian waters, this will be difficult to achieve because each relevant agency/ministry has different strategies/policies, equipment (infrastructure), human resources, not in one integrated system, and in a unified command and control unit. So it can be understood that in its implementation there is often overlapping authority and friction between agencies and even sectoral egos between agencies or institutions.¹⁴

By uniting/integrating these authorities in one body, it will be easier to coordinate and control because command and control are in one hand (not sectoral). This marine security agency was formed as a forum for integrating all or part of the functions or authorities to carry out law enforcement, security and safety at sea which has been carried out sectorally in stakeholders (relevant ministries/agencies).¹⁵ However, Law number 32 of 2014 on marine affairs does not explicitly explain who has the right to integrate and control in a single command unit. Therefore, there needs to be firmness in the form of government regulations that affirm and designate that Bakamla is given the authority to synergize and become a command in law enforcement at sea.¹⁶

¹² Darusman, "The Influence of the 1982 International Convention on the Law of the Sea on the Territorial Waters of Indonesia."

¹³ Sembiring, *Laws of Sea Transportation*.

¹⁴ Wibawanto, Mulyono, and Arundhati, "Renewal of Sovereignty Enforcement and Law Enforcement in Indonesian Waters," 2021.

¹⁵ Tahar, "Division of Authority in Law Enforcement Against Violations of Laws and Regulations in Indonesian Waters," 2012.

¹⁶ Tirtamulia, "The Importance of Territorial Sovereignty and Law."

Meanwhile, in the authority of the National Police, based on Law number 2 of 2002 concerning the National Police, it is one of the functions of the state government in the field of maintaining public security and order, law enforcement, community protection, and protection of the community. Where the main duties of the police of the Republic of Indonesia are a. Maintaining public security and order. b. Law Enforcement. c. Providing protection, protection and services to the community.

The National Police of the Republic of Indonesia is tasked with carrying out investigations and investigations of all criminal acts in accordance with criminal procedure law and laws and regulations.¹⁷ Based on the Criminal Procedure Code, the authority of the National Police of the Republic of Indonesia as investigators and investigators has been regulated in the Criminal Procedure Code (KUHAP), namely the investigator is every official of the National Police of the Republic of Indonesia. In another article, it is also emphasized that investigators are officials of the Indonesian National Police and civil servants (PPNS) officials who are given special authority by law.¹⁸

Based on Law 31 of 2004 concerning fisheries, Investigators in cases of criminal acts in the fisheries sector are carried out based on the applicable procedural law, unless otherwise specified in this law, what is meant by the applicable procedural law is the criminal procedural law (KUHAP). Investigations in fisheries crimes were carried out by investigators from the Civil Fisheries Officers, Indonesian Navy Officers, and officials of the National Police of the Republic of Indonesia.¹⁹ In this case, coordination is needed so that there is no conflict of authority between water and marine law enforcement agencies.

¹⁷ Suka and Gunarto, "The Role and Responsibility of the National Police as Law Enforcers in Implementing Restorative Justice for Justice and Community Benefits."

¹⁸ Like and Gunarto.

¹⁹ Alfath, Chobibah, and Puspitosari, "Police Legal Conformity in the Law Enforcement System in the Indonesian Sea," 2021.

RESEARCH METHODOLOGY

This research is included in the type of collaborative research, where the approach method used is normative as well as empirical, namely normative juridical and empirical juridical collaboration. Normative legal research method, which is a study conducted by reviewing laws and regulations that apply or are applied to a particular legal problem. Normative research is often referred to as doctrinal research, which is research whose object of study is statutory documents and library materials.

This research uses various approaches, with the aim of obtaining information from various aspects of the issue under study. Therefore, to solve the problems that are the subject of discussion in this study²⁰

The data source of a study is primary data and secondary data.²¹ Because this research is empirical and normative legal research, the sources studied are primary data sources, secondary data, and tertiary data.²²

The studies conducted are field studies (*field research*) and literature studies (*library research*) which use primary data and secondary data. Perimer data through field studies, secondary data in this study were obtained through literature studies, by finding information as complete and as much as possible with journal literature, newspapers, articles, scientific papers and laws and regulations related to the research theme.²³

The research technique in this study is descriptive analytical, where the analysis is carried out critically. The data collected in this study will be analyzed descriptively with a *qualitative approach*, namely by providing a thorough and in-depth explanation and explanation (*holistic / verstelen*).²⁴

²⁰ Mahmud Marzuki and Peter Mahmud, "Legal Research," *Journal of Legal Research* (Jakarta: Kencana Prenada Media Group, 2011), p. 25.

²¹ Satjipto Rahardjo, *The Science of Law: The Search, Liberation and Enlightenment*. (Semarang: Diponegoro University, 2003).

²² Soekanto and Mamudji, *Normative Legal Research, A Brief Review*.

²³ Marzuki, *Legal Research*.

²⁴ Sugiyono, "Quantitative, Qualitative and R&D Research Methods," *26th* (Bandung: Cv. Alfabeta, 2018), p. 34.

RESEARCH RESULTS

REALIZING AN INSTITUTION FOR THE SECURITY AND ENFORCEMENT OF THE LAW OF THE SEA BASED ON THE IDEALS OF PANCASILA LAW

Maritime policy is not specifically regulated in the Law, but is enshrined in various other laws and regulations, for example regarding shipping, fisheries, state territories, mining, tourism, seafaring, ports, and various other laws and regulations related to maritime law. These various laws and regulations have become the basis of maritime development policies, but they are partial and sectoral. The expected maritime policy is to answer several problems related to the economic interests of the maritime sector, the integrity and sovereignty of the country's territory, the preservation of resources and the environment, and the resolution of social conflicts due to the use of the same marine space with different interests. Handling these various problems requires a clear and appropriate territorial policy.

Likewise, Indonesia's maritime security involves at least six institutions, including: 1) the Indonesian Navy, 2) the Maritime Police Corps (Polair), 3) the Directorate General of Sea Transportation (Ditjen Hubla), 4) the Directorate General of Customs and Excise (Ditjen Customs), 5) the Directorate General of Marine Resources and Fisheries Supervision (Ditjen PSDKP) of the Ministry of Maritime Affairs and Fisheries (KKP), and 6) the Maritime Security Agency (Bakamla). The number of institutions that are authorized in the field of marine security has an impact on the problem of institutional authority. Differences in interpretation of the substance of regulations like this, especially regarding authority and institutions, should not be allowed to drag on, because their impact can hinder the process of planning and implementation of development policies, and this impact has the potential to affect the achievement of community welfare.

The number of institutions involved in the law enforcement process turns out to be a problem in itself. This problem arises because each institution has a different interpretation by claiming that it has the same responsibility in terms of security at sea. So in practice, there are often frictions between law enforcement agencies at sea.

Considering that each institution is equally given authority, namely the legal and inherent power of the institution or official to take the necessary actions so that the duties of the work can be carried out properly, competence, jurisdiction and authority in accordance with the law obtained from Attribution, Delegation or Mandate. With a vision to make Indonesia the world's maritime axis, the placement of the marine sector as the main backbone of national development is a must.

Indonesia, as an archipelagic country with the largest potential for marine resources in the world, needs a maritime policy whose management dimensions are comprehensive, holistic, and integral. Policies are implemented in national development programs supported by a strong vision that is adapted to the geographical constellation as an archipelagic country. In order for national

development in the maritime sector to run effectively, comprehensively, and improve the welfare of the nation, it is necessary to formulate a policy formulation of synergy of the security paradigm and enforcement of the law of the sea based on Pancasila as the ideal of Indonesian law. For this reason, a synergy of the maritime security and safety paradigm is needed by all stakeholders, especially institutions that are authorized in the security and enforcement of maritime law.

In the context of the state of law, Pancasila has a position as a legal ideal which, according to Bernard Arif Shidarta, is an idea, karsa, creation and thoughts regarding the law or perception of the meaning of the law which contains three basic foundations, namely justice, usefulness and legal certainty. Bernard Arif Shidarta explained that the core of the legal ideal of Pancasila as the legal ideal of the Indonesian nation has core values, namely the one Godhead, respect for human dignity, national insight and archipelago insight, equality and feasibility, social justice, moral ethics and noble ethics and participation and transparency in public decision-making. The placement of Pancasila as *a staatsfun damentalnorm* was first conveyed by Notonagoro.

With the establishment of Pancasila as a *staatsfundamentalnorm*, the formation, application, and implementation of the law cannot be separated from the values of Pancasila. The ideal of Indonesian law is the ideal of law that is formally formulated in the Precepts of Pancasila, which is called by Moh. Mahfud MD, as a guiding rule of law that aims to: (a) maintain the integrity of the nation both from ideological and territorial aspects; (b) based on efforts to build democracy and nomocracy at the same time; (c) based on efforts to build social justice for all Indonesian people; (d) is based on the principle of civilized religious tolerance.

Indonesia as a developing country, geopolitically, will face the interests of the closest countries in its concentric circle, such as Southeast Asian (ASEAN) and Asia Pacific member countries. In addition, countries interested in natural resources (SDA) and natural resources (SKA) including fisheries, oil, and natural gas owned by Indonesia will also exert all their resources and efforts to achieve their respective interests. Therefore, concrete steps are needed from stakeholders (ministries/institutions), both central and regional governments, to synergize cross-sectoral understanding to realize national maritime security in the context of national development. To realize this, a common paradigm of managing Indonesia's maritime capabilities and strengths is needed in the form of comprehensive, integral, and holistic control and control of the sea through a credible national maritime policy with the achievement of national maritime security stability.

Currently, law enforcement that occurs in the sea area is carried out by various security institutions, such as the Indonesian Navy, Polair, the Directorate General of Hubla, the Directorate General of Customs, the Directorate General of PSDKP and Bakamla. Agencies carry out tasks related to safety at sea in a sectoral manner in

accordance with their authority based on their respective laws and regulations. For this reason, the synergy of understanding and cross-sectoral cooperation in the field of marine security and safety is still a joint homework. In the implementation of their respective roles, duties, and functions, this marine security institution is still running sectorally.

As a result, Indonesia is far behind compared to several other countries, including countries that are much smaller in geographical dimensions. This condition has caused Indonesia to not be able to do much in order to secure national interests, including efforts to enforce sovereignty and maritime law. In addition, Indonesia is also difficult to compete and become a major player in facing the development of the maritime world at the regional and global levels. Seeing this, the government is expected to make a comprehensive, integrative, and holistic national policy. The formulation of the national policy is expected to be formulated in various policies that are oriented to national and internal maritime historical experience and guided by several existing maritime theories. Therefore, in this sub-chapter, we will discuss what steps can be taken to strengthen and support the development of Indonesia's maritime world.

The problem that must be addressed by lawmakers and policy makers in anticipating various problems that arise in the maritime domain today is the absence of a comprehensive and integrative strategy to realize the synergy of the cross-sector paradigm in the field of maritime security and safety.

The conception of an absolute strategy is realized in an effort to synergize the cross-sector paradigm in the field of maritime security and safety as an anticipatory step to implement the government's vision and mission in national development in the maritime sector, namely through coordination, cooperation, and synergy in the implementation of the enforcement of sovereignty and maritime law in Indonesia's waters and jurisdictions. The steps that must be taken in the context of this synergy are as follows:

First, increasing the understanding and application of Indonesia's maritime geopolitics to all maritime law enforcement and security institutions. The purpose of this strategy is to provide awareness about Indonesia's maritime geopolitics and geostrategy so that it can be used to strengthen the synergy of cross-sectoral paradigms. This concerns the national maritime policy that has been outlined in the 2005-2025 RPJPN and described in the National Medium-Term Development Plan (RPJMN) (a plan prepared every five years) in 2015-2019, but has not been optimally implemented with various anticipations of problems in the maritime sector, strengthening commitment, and understanding of the archipelago's insights, as well as national resilience.

The non-optimal occurs because based on Law No. 17 of 2007 concerning the RPJPN for 2005-2025, the enforcement and security of maritime law has not been

optimal due to several things, including: (1) there is no maritime boundary arrangement; (2) there is a conflict in the use of space in the sea; (3) there is no guarantee of security and safety at sea; (4) the existence of regional autonomy causes that there is no common understanding of marine resource management; (5) the limited ability of human resources to manage marine resources; and (6) there is no support for marine research, science and technology. The non-optimal enforcement and security of maritime law in Indonesia is caused by the paradigm of law enforcement and security that is still based on the land so that Indonesia's maritime territory is threatened, both from within and from outside due to the lack of protection and security in the country's maritime area.

Second, empowering Bakamla as a non-military civilian institution and revising the *multi-agency single function* policy to a *single agency multi-function* that has the authority to enforce law at sea. The purpose of this strategy is to empower non-military civil institutions, Bakamla, as mandated by Law No. 32 of 2014 concerning Marine Affairs (Marine Law), especially in Article 59 paragraph (3), Article 60 to Article 63 and followed up with Presidential Regulation No. 178 of 2014 concerning Bakamla (Bakamla Presidential Regulation),³⁵ as well as the implementation of Article 7 paragraph (2) of Law No. 3 of 2002 concerning State Defense (State Defense Law).

Pancasila for the nation, and the state of Indonesia, apart from being an ideology, philosophy of life, and crystallization of noble views, is very loaded with noble ethical and moral values and in accordance with the personality of the Indonesian nation. Therefore, it is a certainty that the implementation of Pancasila is purely urgent to be carried out in every field of the life of the nation and the state of Indonesia by forming a concept of state administration based on Pancasila.³⁸ The second precept of Pancasila, namely: "Just and Civilized Humanity", contains the meaning that a person must be treated fairly. Humanity is a manifestation of various reactions between people who respect each other. For example, the crimes that occurred against Indonesian Citizen (WNI) crew members on the Long Xing 629 and Benjina ships have met the characteristics of human trafficking. Both crimes are also included in the term *modern slavery*, which is a form of *modern slavery* which is one type of crime against humanity which is a core crime, because it is considered to endanger human values and justice.²⁵

Considering Article 4 of Law No. 39 of 1999 concerning Human Rights (HAM), it is expressly stated that everyone has freedom and the right not to be enslaved. Meanwhile, based on existing data, the fishermen who worked in Benjina and the Long Xing 629 ship had been enslaved. Therefore, the acts committed by the perpetrators of slavery have violated the human rights of the victims (fishermen), so that this act

²⁵ Fikri Zulfikar Athiansyah and Mohammad Husni Syam, "Indonesian Jurisdiction Against the Perpetrators of Crimes of the Crew of the Long Xing 629 Ship on the High Seas Based on International Law," Journal of Legal Research (JRIH) 1, no. 2 (2021): 130.

violates article 4 of the Human Rights Law which is imbued with the second precept of Pancasila. For this reason, the strengthening of security institutions and enforcement of maritime law must be imbued with the Second Precept of Pancasila.

The fifth precept of Pancasila, reads: "Social Justice for All Indonesian People". Social justice is justice together, meaning justice that applies in society and contains in all fields. Meanwhile, social justice for all Indonesian people means that everyone has the right to fair treatment, both in the political, legal, economic, social and cultural fields. The case that occurred to the crew of the foreign fishing boat Benjina is a form of slavery, human trafficking, and human smuggling caused by illegal fishing.²⁶ 43 The application of the fifth precept of Pancasila can also strengthen national resilience in terms of securing and enforcing the laws of the sea, considering narcotics, trafficking in persons, arms smuggling, slavery and other crimes committed through the sea.²⁷ For this reason, the paradigm of the fifth precept of Pancasila related to the security and enforcement of the law of the sea based on the ideals of Pancasila law is used to create social justice for all Indonesian people.

The third precept of Pancasila, namely "Indonesian Unity" reflects the nature of mutual cooperation is a social activity that has been a characteristic of the Indonesian nation from ancient times to the present. Gotong royong is the personality of the nation and is a culture that has been firmly rooted in the life of the community, the nation and the state. Gotong royong can be interpreted as a mutually agreed cooperation model. The concept of mutual cooperation can also be interpreted in the context of community empowerment, because it can be social capital to form institutional strength at the community level, state society as well as people across nations and countries in Indonesia in realizing welfare. For this reason, in terms of security and enforcement of maritime law, it should be carried out in a cooperative manner by the authorized institutions, without having to prioritize institutional sectoral egos.

According to Hans Kelsen, the competence of institutions and administrative authorities has the capacity to act according to the rule of law. If the author relates to this author's research, where in the security and enforcement of the law of the sea there are many authorized institutions, which of course because of that authority has the potential for friction between one institution and another institution can have implications for the counter-productive and ineffective security and enforcement of the law of the sea. If the author refers to the opinion of Hans Kelsen, when there is a contradiction between one norm and another, then the lower norm must be subject to the higher norm. Higher norms become the basis for the validity of lower norms.

²⁶ Muhammad Dwibagus Lisandro and Mohammad Irvan Olii, "Slavery to the Crew of Foreign Fishing Vessels in Indonesia," Indonesian Journal of Criminology Special Is, no. Mardjono Awards 2017 (2017): 48

²⁷ Jawahir Thontowi, "South China Sea Territorial Conflict and Transnational Crime and Its Implications for National Resilience," Journal of Legal Media 25, no. 2 (2018): 133–134

The basic norms applied by Hans Kelsen here further gave birth to the theory of the Hierarchy of Legal Norms (*Stufentbau theorie*). This means that institutions with a high legal basis are considered the main institutions in the efficient security and enforcement of maritime law.

For this reason, the author states that institutions for securing and enforcing the law of the sea will be productive and effective if they are in accordance with the principles of Pancasila as the ideology and philosophy of the Indonesian nation and state. In addition, Article 2 of Law No. 12 of 2011 concerning the Establishment of Laws and Regulations (Law P3), Pancasila is considered a *staatsfundamentalnorn* and a source of all sources of state law.

CONSTRUCTION OF LAW ENFORCEMENT IN INDONESIA'S MARITIME AREA IN THE FUTURE

Increasing Awareness and Understanding of Nusantara Insight to All Marine Law Security and Law Enforcement Institutions

Increasing Awareness and Understanding of Nusantara Insights to All Marine Law Security and Enforcement Institutions with arrangements that can be carried out include:

First, the government through relevant ministries/institutions together with the House of Representatives (DPR) must have awareness and understanding that very complex maritime problems must be overcome through joint commitment as the greater national interest and not just sectoral interests. Thus, every element that has a connection with the Indonesian maritime sector must have an understanding of the archipelago's insights, understand the problems faced in the maritime sector, both potential and factual threats, the principle of cooperation and synergy so that these various problems can be overcome together.

Second, the Government through the Coordinating Ministry for Political, Legal and Security Affairs (Kemenkopolhukam); the Coordinating Ministry for Maritime Affairs and Investment (Kemenkomarves); the Coordinating Ministry for Economic Affairs (Coordinating Ministry for the Economy); The Ministry of Defense (Kemenhan), as well as related ministries/institutions, central and regional governments can synergize in the implementation of defense and security to unite mindsets and actions in order to increase understanding of Indonesia's maritime geopolitics which has been determined as the vision and mission of national development. Thus, each of these elements does not have its own vision and mission, but refers to the elaboration of the national vision and mission. This is done so that the planned national development can be carried out in a directed and sustainable manner.

Third, the implementation of sovereignty and law enforcement in Indonesian waters to be more effective and efficient. There must be an equalization of vision and

mission that the authority to secure, supervise, enforce and manage Indonesian waters is solely aimed at protecting national interests, namely the political aspect. economic, social, cultural, and defense security. The paradigm that emerged is that all security problems at sea are the affairs of the Indonesian Navy, maritime law enforcement is the business of the Police and fisheries affairs are the business of the KKP. In fact, various aspects of problems that occur in the sea are of various types, both in shape and dimension. Thus, all maritime stakeholders are expected to have the same understanding that the sea must be free from the threat of violence, the sea must be free from navigational threats, the sea must be free from threats to marine resources, and the sea must be free from the threat of lawlessness. Therefore, a cross-sectoral paradigm synergy is needed in the field of marine security and safety in order to realize national maritime security stability in the national development figures.

Fourth, Coordination with local governments related to the security and enforcement of maritime law. The authority of provincial areas at sea and provincial areas characterized by islands in Part One of the provincial authority at sea is mentioned in Article 27 paragraph (1) Letter d of Law No. 23 of 2014 concerning Regional Government (Pemda) where the province is given the authority to participate in maintaining security at sea. With the enactment of the Local Government Law, there has been a change in the authority of provincial marine management which was originally 4-12 miles, now it is 0-12 miles, the management of waters previously carried out by the Regency/City Government was taken over by the Provincial Government, one of which is the authority of marine zoning which used to be 4-12 miles, now it is 0-12 miles. Previously, the sea zonazi 0-4 miles, became the authority of the Regency/City Government.⁵⁷ For this reason, marine law security and enforcement institutions need to coordinate with the Regional Government as the owner of the territory so that the purpose of writing this paper is to realize the security and enforcement of the law of the sea based on the ideals of Pancasila law.

A comprehensive, integrated, and holistic national maritime policy formulation

A comprehensive, integral, and holistic national maritime policy arrangement that can be carried out includes:

First, the House of Representatives and the Government drafted and harmonized the Marine and Fisheries Law that is more comprehensive and integral. This law harmonizes the Fisheries Law, the Marine Law, and at the same time answers the challenges and obstacles that exist in the RPJPN Law and the RPJMN Law. This law contains a national maritime policy, namely an integral maritime policy The policy is to utilize all potential national resources in the marine sector in an effort to accelerate national development can be used based on the foundation of maritime cultural policy, marine governance policy, maritime security policy, marine economic policy, and marine environmental policy. These policies are useful for realizing

Indonesia as a maritime country as a priority agenda based on national interests. In addition, this is also useful for building strong national maritime capabilities and strengths, from political aspects, both economic, social, cultural, and defense and security.

Second, all security and law enforcement institutions in the maritime sector should work together to describe and implement national maritime policies integrally. Similarly, other policies related to the maritime sector are implemented based on the basis of national interests.

Third, all security and law enforcement agencies must cooperate and synergize in the implementation of marine security patrols in Indonesian waters. This is important in the context of law enforcement at sea, to overcome the limitations of the main tools of the security system (early detection tools, communication tools, and patrol boats) as well as the constraints of laws and regulations that apply sectorally.

The coordination conditions between the Indonesian Navy, Ditpolair, and PSDKP did not run as expected. The coordination contained in the guidelines of each sectoral agency cannot be carried out properly. One of the coordination orders in the implementation of duties at sea of the Ditpolair, for example, has guidelines in accordance with the Regulation of the Chief of the National Police of the Republic of Indonesia Number 22 of 2010 concerning the Organizational Structure of Work Procedures at the Regional Police Level. The Regional Patrol Unit must always cooperate with relevant sectoral agencies in handling SAR and carrying out community development functions in waters and beaches.

Coordination is one of the cooperation efforts between sectoral agencies in order to understand each other, complement each other, help each other and complement each other. Reality shows inconsistencies in the provisions and guidelines owned by their respective sectoral agencies so that coordination turns into conflict, for example weak coordination of agencies in the marine waters of Morotai Island. Sectoral egos between agencies occur because certain sectoral agencies consider themselves to have more power than other sectoral agencies.

The sectoral ego of the TNI Navy is getting stronger when dealing with three other sectoral agencies, namely the Directorate of Police, PSDKP and the Marine and Fisheries Service. It seems that coordination is not going at all so that it can be used by illegal fishing perpetrators of Filipino, Thai, Taiwanese and Chinese fishermen to dredge fish in the sea waters of Morotai Island as they please, without obstacles. As a result of the sectoral ego of the TNI Navy, which then occurred inconsistencies in the Charter of Mutual Agreement (PKB) on Standard Operating Procedures for Handling Fisheries Crimes (SOP) at the Investigation Level, Number. 121/DJPSDKP/AVIII/2012, B32AVII2012 and PKB/I4VIII2012 which have been signed by representatives of the four agencies at the central level on August 7, 2012 in Jakarta. In fact, according to Article 5, it is stated that if there are differences in the

interpretation and/or implementation of the Collective Agreement Charter, it will be resolved in the Coordination Forum for Handling Crimes in the Fisheries Sector: Even though PKB is a form of consensus carried out by the three sectoral agencies mentioned above. Therefore, there is a need for cross-sectoral paradigm synergy in the implementation of law enforcement and sovereignty in Indonesian waters.

Structuring National Maritime Security Stability to Support National Development

Structuring National Maritime Security Stability to Support National Development that can be done to achieve this strategy includes:

First, the House of Representatives and the President are obliged to improve the facilities and infrastructure of the main tools of the defense system in the military and non-military civilian aspects in order to meet the capabilities and strength of Indonesia's national maritime through budget policies prepared jointly with the House of Representatives and the President every year.

Second, the Government can organize mutually beneficial cooperation in both military and civilian aspects nationally and bilaterally/internationally to share information related to cases of violations and crimes at sea in realizing national maritime security stability and maritime security in the region in order to realize national security stability in the context of national development.

Structuring Non-Military Civil Institutions and Revising the *Multy Agency Single Function Policy to a Single Agency with Multy Function That Has Law Enforcement Authority at Sea*

Structuring Non-Military Civil Institutions and Revising the Multy Agency Single Function Policy to a Single Agency with Multy Function That Has Law Enforcement Authority at Sea that can be done to support this strategy includes:

First, the government through related ministries, both the TNI and non-military civilian institutions that are multi-agency single functions such as Polair, the Directorate General of Hubla, the Directorate General of Customs, the Directorate General of PSDKP and Bakamla can cooperate and synergize with the House of Representatives to form, revise and evaluate existing laws and regulations in the maritime sector, related to the security of Indonesian waters. These laws and regulations, both national regulations and international laws/conventions must be implemented. This is important to be implemented because there are still substances that need to be regulated and improved, such as aspects of authority that still need to be comprehensively translated, aspects of policy, law enforcement. institutional aspects, as well as human resources.

The current condition of non-military civilian institutions which are still multi-agency with single function, such as: Polair, Directorate General of Hubla, Directorate General of Customs, Directorate General of PSDKP and Bakamla are still not in accordance with the expectations to grow into law enforcement agencies at sea like

other countries. The successful implementation of coordination depends on the linkage between one organization and the other organizations involved because cooperation, coordination and control play a very important role. If the actions depend on the linkage in the implementation chain, then the level of inter-agency cooperation required in that area should be close to one hundred percent. Because there is a cooperative relationship in the series of chains that is in deficit. then it will cause implementation failure.

However, coordination difficulties are caused by the sectoral ego of the agency which then faces conflicts with the Indonesian Navy, Ditpolair, PSDKP and others. The overlap of authority strengthens the theory of political conflict from Maswadi Rauf, because the conflict between these sectoral agencies has a political connotation, namely having a relationship with policy. However, the existence of conflict due to sectoral ego is caused by viewing itself as a superior agency while other agencies are considered as inferior agencies. Sectoral egos also cause difficulties in the PKB that has been signed at the central level. Because other institutions also have the same rights, namely as implementers of the same policies in terms of handling and enforcing maritime law in Indonesia.

For this reason, the author will provide a conception of the job desk of each institution that has authority in terms of securing and enforcing the law of the sea in Indonesia so that the purpose of writing this research is the creation of Coordination between Institutions for Security and Enforcement of the Law of the Sea that reflects the values of Pancasila can be realized with the following steps:

- 1) The enforcement of sovereignty and law enforcement must be carried out in accordance with the applicable national legal instruments and international legal instruments. The authority to enforce sovereignty and law comes from the sovereignty and jurisdiction of the state and requires considerable security from the Indonesian Navy and other law enforcement officials at sea. The Indonesian Navy as the main component of state defense at sea is tasked with maintaining the territorial integrity of the Republic of Indonesia and maintaining security stability at sea, as well as protecting natural resources at sea from various forms of security disturbances and violations of the law in Indonesia's national jurisdiction.
- 2) Polair, Polair in dealing with the occurrence of criminal acts using preventive and repressive efforts. The intended preventive efforts are to increase the intensity of socialization of laws and regulations to the public, and increase patrols in waters in accordance with the scope of Polair duties. Repressive efforts, namely providing firm action against the perpetrators of criminal acts so as to provide a deterrent effect and subsequently provide direction so that in the future they are free not to repeat the same thing. For this reason, the author considers that Polair is better functioned in increasing

routine patrols in carrying out the task of supervision, protection and protection of the community, especially fishermen in the waters.

- 3) Since the enactment of Law No. 17 of 2008 concerning Shipping, the mandate to establish Government Regulations on Marine and Coastal Guard has not been implemented. In the context of international shipping, the one recognized as the representative of Indonesia by the International Maritime Organization (IMO) is the Ministry of Transportation (Kemenhub) c.q Directorate General of Hubla. So in this context, the institutional strengthening of the Maritime and Coast Guard Unit of the Republic of Indonesia (KPLP) in the future must lead to the integration of all forces in the field of national patrol to meet international needs and provisions in the field of law enforcement and regulations in the field of international shipping.
- 4) The Directorate General of Customs, can prevent means of transportation and/or goods suspected of being related to violations. Prevention of sea transportation facilities, which is carried out by preventing the departure or preventing the continuation of the journey of transportation facilities that contain imported or illegal export goods.
- 5) Director General of PSDKP. The Directorate General of PSDKP KKP is a new hope in terms of security and enforcement of maritime law in Indonesia, one of the most admirable things for the public is that the policy of sinking illegal fishing vessels that is optimized in the Joko Widodo administration needs to be appreciated. This step was carried out with the intention of saving the wealth of the nation and state contained in the sea which must be done carefully, especially not violating international regulations and bilateral agreements with neighboring countries.
- 6) Bakamla, based on Presidential Regulation (Perpres) No. 178 of 2014 to meet the demands of Law No. 32 of 2014 concerning Marine Affairs. Bakamla that replaces Bakorkamla must really have adequate facilities and infrastructure as per the position, duties and functions that have been regulated in the Presidential Regulation. The function of creating security and coordination is important to minimize sectoral egos and conflicts between sectoral agencies in the marine sector that have occurred so far.

Second, the government through relevant ministries/institutions in the maritime sector together with the House of Representatives reviews and/or revises and harmonizes the House of Representatives and the Government to draft and harmonize the Marine and Fisheries Law that is more comprehensive and integral. This law harmonizes the Fisheries Law, the Marine Law, and at the same time answers the challenges and obstacles that exist in the RPJPN Law and the RPJMN Law whose content strengthens the roles, duties and functions, as well as the authority of non-

military civil institutions that are currently *still multi-agency with single function* (Polair, Directorate General of Hubla, Directorate General of Customs, Directorate General of PSDKP and Bakamla), to become a *single agency with multy function*, namely Bakamla.

The consideration is that Bakamla has been formed by the government based on the Maritime Law which is regulated in articles 59 paragraph (3) to 63 and has been followed up with the Bakamla Presidential Regulation.⁶⁹ However, this has not been effective because the concluding part of article 72 only revokes the establishment of the Maritime Security Coordinating Board (Bakorkamla). Thus, the existence of non-military civilian institutions is still multi-agency single function and not yet as *a single agency multi-function*. The legal politics of the Indonesian nation greatly determine the direction of the nation, which is based on the philosophy of Pancasila.

The philosophy of Pancasila as a view of life of the Indonesian nation, is an objective reality that lives and develops in Indonesian society. For this reason, the security and enforcement of the law of the sea based on the principle of mutual cooperation must be cultivated. This is intended for all institutions in maintaining security and enforcement of the law of the sea to apply the values of mutual cooperation, maintain friendship with each other and must have a high awareness that unity and unity are very important in living together.

Sectoral egos and institutional centric egos will not happen again. If all institutions are aware of their functions and roles in the society of the nation and state, and can get rid of selfishness and develop social concern and always prioritize the common interest, then solidity and solidarity between institutions will be created by itself. From the point of view of law as stated by Lawrence M. Friedman, fostering a culture of mutual cooperation in the security and enforcement of maritime law is an effort to create a legal culture.

Optimizing Bakamla as a National Maritime Security Information Center for Security Stability

Law No. 32 of 2014 concerning Marine Affairs and Presidential Regulation No. 178 of 2014 concerning Bakamla clearly state the authority of Bakamla. The authority of Bakamla is contained in Article 4 of Presidential Decree No.178 of 2014 concerning Bakamla states that the authority of Bakamla includes conducting immediate pursuit; dismiss, inspect, arrest, carry, and hand over the ship to the relevant authorized agencies for the implementation of further legal proceedings; and integrating security and safety information systems in Indonesian waters and Indonesian jurisdictions. This authority is carried out by command by Bakamla.

In order to strengthen Bakamla's authority in integrating security and safety information systems in Indonesian waters and Indonesian jurisdictions, several steps need to be taken:

First, strict and binding laws and regulations are needed so that the supporting infrastructure of the Bakamla Command and Control Center (Puskodal) and the Puskodal of related agencies can be integrated into Bakamla as the National Maritime Security Information Center.

Second, in the process of policy formulation, a comprehensive and integral understanding is needed, as a means of supporting the realization of national maritime security stability in particular and comprehensive and integral national security stability related to the maritime sector, so that there is no overlap that has an impact on confusion in the implementation of existing legislation.

Third, there is a strong awareness and commitment from all relevant stakeholders in the maritime sector to empower Bakamla as the National Maritime Security Information Center, in order to realize National Security Stability in the context of National Development.

The existence of Bakamla as a national maritime security information center can make a positive contribution to relevant stakeholders and the marine user community because it gets information related to marine security and shipping safety. Success indicators are characterized by a sense of security or avoidance of danger during shipping activities in Indonesian waters and jurisdictions.

With the existence of Bakamla as a national maritime security information center, information exchanges can be held with partners related to problems or issues/phenomena in the maritime sector in each country, which has an impact on security stability in the region.

Success indicators are marked by the existence of dialogue forums between Maritime Security forces (Military and Civil), such as the ASEAN Regional Forum (ARF), ASEAN Defence Military Meeting (ADMM), ASEAN Navy Interaction (ANI), Head of Asian Coast Guard Agency Meeting (HACGAM) and Maritime Security Desktop Exercise (MSDE) on a scheduled basis.

The existence of non-military civilian government agencies that are *multi-agency with single function*, such as Polair, Directorate General of Hubla, Directorate General of Customs, Directorate General of PSDKP and Bakamla carry out law enforcement duties at sea in accordance with the form and nature of threats faced with the support of other elements of the nation's strength. This has been in line with other mandates from the nation's power. This is in accordance with the mandate of the State Defense Law, in article 7 paragraphs (2 and 3).

Meanwhile, cases of violations and criminal acts/crimes in or through the sea, such as smuggling (weapons and narcotics), transnational crimes, piracy, piracy, fish theft, wood theft, mine theft, environmental pollution, oil theft, disposal of B3 waste (Hazardous and Toxic Materials) at sea, accidents/disasters and natural disasters require serious and effective handling by a non-military civilian institution authorized for it.

Currently, some non-military civilian institutions are still *multi-agency with single function* or *single agency with multi-function* like *the coast guard* in several other countries. *Coast guards* in some countries serve as law enforcers at sea and side by side with military institutions as enforcers of state sovereignty and laws at sea. With such conditions, it is necessary for the House of Representatives and the President to revise Law 78 related to Maritime Affairs in order to create harmonization of maritime law enforcement and security institutions.

CONCLUSION

The results showed that; 1) Realizing an Institution for the Security and Enforcement of the Law of the Sea Based on the Ideals of Pancasila Law can be carried out with the following things; a) increasing the understanding and application of Indonesia's maritime geopolitics to all maritime law enforcement and security institutions; b) empowering Bakamla as a non-military civil institution; c) revising the multi-agency single function policy to a single agency multi-function which has the authority to enforce law at sea; d) the implementation of Pancasila to be carried out in every marine sector; e) strengthening the coordination of all marine law enforcement officials. 2) The ideal construction in Law Enforcement in the Indonesian Sea Territory in the future is carried out through the following things; a) Increasing Awareness and Understanding of Nusantara Insights to All Maritime Law Security and Law Enforcement Institutions; b) Structuring a Comprehensive, Integral, and Holistic National Maritime Policy; c) Structuring National Maritime Security Stability to Support National Development; d) Structuring Non-Military Civil Institutions and Revising the Multy Agency Single Function Policy to a Single Agency with Multy Function That Has Law Enforcement Authority at Sea; e) Optimizing Bakamla as a National Maritime Security Information Center for Security Stability.

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