

The Role of Marine Security Agency (BAKAMLA) As Sea and Coast Guards in Indonesian Water Jurisdiction

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| Article Info | Abstract |
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| <p>Keywords: Indonesian marine security agency (BAKAMLA), Indonesian water jurisdiction, National security, sea and coast guard.</p> <p>DOI: 10.25041/fiatjustisia.v15no3.2017</p> | <p>The Indonesian geographical condition as an archipelagic state with abundant natural resources has put maritime security into its central issue. Several challenges are facing Indonesia's maritime coordination. National maritime agencies are still overlapping and duplicating based on various laws and regulations. As part of the Indonesian vision to be a 'global maritime fulcrum,' Indonesia's government established the Marine Security Agency (BAKAMLA). BAKAMLA aims to shift the law enforcement paradigm from a multi-agency multi-task to a single-agency multi-task. The establishment of BAKAMLA is expected to create law enforcement's effectiveness and efficiency in Indonesia's water jurisdiction. This study is a type of normative juridical research using a statute approach and case study approach. This study reveals that the emerging of BAKAMLA, based on Law Number 32 of 2014 concerning Marine, grants broad authority to the maritime security agency. BAKAMLA has the power to direct instant pursue, dismiss, inspect, arrest, carry, and deliver the ship to the related authorized agency for further legal proceedings. BAKAMLA also has the authority to integrated security and safety information systems. The presence of BAKAMLA does not necessarily disregard or eliminate other institutions in the same task, but as a guard to stimulate to synergize further the security and safety of Indonesia's territorial waters under a single command unit.</p> |

A. Introduction

As an archipelagic country with one of the world's longest coastlines, Indonesia benefits from its presence in a cross-world position; between the two continents (Asian-Australian continent) and the two oceans (the Indonesian-Pacific Ocean).¹ Indonesia is very rich in the potential of marine resources. However, according to data reported by food and agricultural organizations (FAO), losses due to illegal fishing in Indonesia reached thirty trillion rupiahs per year, taking into account the loss rate of up to 25 per cent of the total fishery potential of Indonesia. This amount is still less than the government's estimated loss, which reached the number up to IDR. 300 trillion per year.² Besides, Indonesia is still facing several problems in safeguarding the sea and its water sovereignty. The most prominent problem is the incomplete and overlapping laws, pollution and damage at sea, weak supervision and law enforcement at sea, also data and information systems that are incomplete and not integrated.³

Those conditions happen because, until now, law enforcement in Indonesian territorial waters is still unclear. Law enforcement at sea is still overlapping and duplication based on various laws and regulations.⁴ Indonesia has 26 laws related to maritime and 13 (thirteen) marine enforcement affairs. There are 6 (six) institutions with sea patrol and 7 (seven) other law enforcement agencies that do not have marine patrol units. Law enforcement agencies with sea patrol task force at sea are Navy; POLRI/Directorate of Water Police; Ministry of Transport - DIRJEN HUBLA; Ministry of Marine Affairs and Fisheries-DIRJEN PSDKP; Ministry of Finance-Custom; and BAKORKAMLA.⁵ So far, in terms of marine protection, Indonesia already has a Marine and Coast Guard Unit (*Kesatuan Penjaga Laut dan Pantai, KPLP*).

The high quantity of marine institutions leads to differences in authority perceptions that tend to bring the organization's ego sectoral. Each institution

¹ Desi Albert Mamahit, "Tata Kelola Keamanan Laut Indonesia Dalam Mendukung Program Pengembangan Poros Maritim Dunia", *Paper presented at the Indonesian Rector Forum. Medan*, Universitas Sumatera Utara, (2015).

² <http://www.p2sdpkkendari.com/index.php?pilih=newes&aksi=lihat&id=176>, accessed August 2, 2020.

³ Kurniaty and A.Kurniawan, "Another Threat to the Sovereignty of Indonesia's Territorial Waters: Human Trafficking in the Fisheries Industry", *IOP Conference Series: Earth and Environmental Science* 493, no. 1 (2020): 1-6, 2, DOI: 10.1088/1755-1315/493/1/012044.

⁴ T. E. Purdijatno, *Mengawal Perbatasan Negara Naritim* (Jakarta: Gramedia Widiasarana Indonesia, 2010), 11.

⁵ Nurdin, Ikaningtyas, and Kurniaty, "The Implementation of Vessel-Sinking Policy As An Effort to Protect Indonesian Fishery Resources and Territorial Waters", *IOP Conference Series: Earth and Environmental Science* 137, (2018): 1-10, 012038, 012038, DOI: 10.1088/1755-1315/137/1/012038.

often operates independently and arbitrarily. Compared to other countries, Indonesia does not yet have a reliable law enforcement agency in the sea, as in Japan, China, Australia, and the United States, as a one-stop institution, namely Coast Guard or Maritime guard.⁶ Nevertheless, recognizing the importance of national maritime sectors as the economic potential of developing the government set up Indonesian vision as global maritime fulcrum.⁷

One significant step taken by the Indonesian government to enforce the law at sea was establishing a Marine Security Agency (BAKAMLA) in December 2014. Previously, the role of BAKAMLA was managed by Marine Coordinating Agency (BAKORKAMLA). BAKAMLA is established through Presidential Regulation Number 81 of 2005. BAKAMLA's main task is to coordinate all marine security operations, solve all sea problems, and organize cooperation with neighbouring countries to ensure that security operations at sea are always guaranteed and useful optimally.⁸ The completion changes of BAKORKAMLA to BAKAMLA as an entirely new organization have a multi-functional command of maritime security, law enforcement, marine resources and fisheries, shipping, customs, construction, SAR so forth. The working area encompasses all territorial waters, including both islands and inland waters. Nevertheless, it worth noting that the presence of BAKAMLA is considered to have some weaknesses. BAKORKAMLA is cogitated ineffective because the basic formation only for coordination (means less power and no official supporting budget).

Furthermore, following the enactment of Law Number 32 of the year 2014 concerning Marine, BAKAMLA has the authority to undertake an immediate pursuit. BAKAMLA also stop, examine, arrest, carry, and deliver vessels to the relevant authorities authorized to carry out legal proceedings. As section 63 of Law Number 32 of 2014, BAKAMLA has broad authority in law enforcement at sea and has a powerful body. However, the amount of interest in the sea caused problems in the handling of crime at seas. These problems include smuggling, transnational crime, piracy, armed foreign fishing, destruction of natural resources, IUU fishing, and safety cruise. The core of these problems lies in authority based on legislation owned by authorized national Marine's affairs. The role of BAKAMLA is overlapping with other boards (i.e., KPLP, the Navy, National Police, and Transportation Ministry)

⁶ John F Bradford, "The Growing Prospects for Maritime Security Cooperation in Southeast Asia", *Naval War College Review* 58, no. 3 (2005): 63-86, see also B. Christian, *What Is Maritime Security?* (Wales UK: Cardiff University Press, 2015) p. 3.

⁷ Makmur Keliat, "Keamanan Maritim Dan Implikasi Kebijakannya Bagi Indonesia", *Jurnal JSP: Jurnal Ilmu Sosial dan Ilmu Politik* 13, no. 1 (2009): 111-129, DOI: 10.22146/jsp.10970.

⁸ D. R. Munaf, *Komando dan Pengendalian Keamanan dan Keselamatan Laut Berbasis Peringatan Dini* (Jakarta: Gamedia Pustaka Utama, 2015).

that have coast-guard-like tasks and have already existed before BAKAMLA establishment.

Based on the discussion above, this study aims to answer the following questions: how is the authority of BAKAMLA in the implementation of law enforcement within the territorial waters of Indonesia? And how does the existence of BAKAMLA affects marine security bodies presented before the establishment of Law Number 32 of 2014 concerning Marine?

This study is a type of normative juridical research using a statute approach and case study approach. This study uses these approaches to examine the various legal rules that become the focus and the central theme of this analysis. The approach undertakes reviews of legislation relating to law enforcement at sea and national maritime security boards and related international agreement rules. The primary legal materials in this normative legal research are:

1. Law Number 17 of 1985 concerning the Indonesian Ratification Act on UNCLOS III/1982.
2. Law Number 6 of 1996 concerning Indonesian waters;
3. Law Number 31 of 2004 Jo Act Number 45 of 2009 concerning Fisheries.
4. Law Number 32 of 2014 concerning Maritime Affairs.
5. Law Number 5 of 1983 concerning ZEEI.
6. Law Number 17 of 2008 concerning Shipping.
7. Law Number 1 of 2014 concerning Management of Coastal Areas and Small Islands.
8. Government Regulations Number 81 of 2005 concerning the Establishment of Maritime Security Coordination Agency (BAKORKAMLA).
9. Presidential Regulation Number 178 of 2014 concerning the Indonesian Maritime Security Agency (BAKAMLA).
10. Criminal Code (KUHP) and Criminal Procedure Code (KUHAP).

For the secondary data, this study employs official documents, books, and journals for references.

B. Discussion

1. The Authority of BAKAMLA Within Indonesian Waters

Indonesia's sea is a potential geostrategic centre that unites and can become a source of conflict between regions/countries. Indonesia has 80% of the sea, covering 5,800,000 km² with 80.791 km of coastline and 17,504 islands of one ocean to each other.⁹ It becomes national and international shipping traffic. This setting means that Indonesia functions as the global

⁹ D. R. Munaf, "Kajian Sistem Operasi Tersinergi Bakamla sesuai Undang-Undang Nomor 32 Tahun 2014 Tentang Kelautan," *Jurnal Sositelknologi* 14, no. 3 (2015): 273-288, DOI: 10.5614%2Fsostek.itbj.2015.14.3.6.

supply chain system with its critical point. This position also places Indonesia in an important position and role in relations with the international community as a center of gravity for the Asia Pacific region.¹⁰ Indonesia's position has four lines of the nine sea lines of communication in the world. As a result, Indonesia has a huge obligation to guarantee international shipping safety and security in the Malacca Strait, South China Sea, and three sea lanes of the Indonesian archipelago. This potential geographical condition puts territorial sovereignty protection as one of the top priorities in Indonesian policy.¹¹

Nevertheless, illegal, unregulated, and unreported fishing still challenges Indonesian marine Jurisdiction and national sovereignty. There are many disputes on Indonesian territorial water. Indonesian jurisdiction water's current issue is Indonesia and China's different perceptions of claiming traditional fishing rights in Indonesian Natuna Island. China's argument is based on the nine-dash line that has become a problem in Southeast Asian countries.

In Indonesia, the enforcement of sovereignty and law enforcement in the sea cannot be separated from the Indonesian marine policy based on the 2005-2025 RPJPN Law. Indonesia's maritime policy aims to realize Indonesia as an independent, advanced, strong, and nation-based island nation of interests through ocean culture policy, ocean governance policy, ocean economic policy, maritime security policy, and marine environmental policy.¹² Maritime security policy is carried out by safeguarding, securing, maintaining, supervising, and protecting Indonesia's territory and the Jurisdiction of Indonesia's ZEEI and continental shelf, including natural resources and marine environment. Maritime security policy uses two strategies: forming a strong Indonesian Coast Guard and improving defence and security at sea.¹³

BAKAMLA's role was further strengthened by Presidential Regulation Number 178 of 2014 on the Marine Security Agency. One of the primary issuances of this presidential regulation is a section on the Marine Law. The Article mandates the establishment of the Marine Security Agency (BAKAMLA). BAKAMLA's status is a non-ministerial governmental institution under the President. BAKAMLA has the primary duty of conducting security and safety patrols in Indonesia's territorial waters and

¹⁰ Ian Storey, "Japan's Maritime Security Interests in Southeast Asia and the South China Sea Dispute," *Political Science* 65, no. 2 (2013): 135–56, DOI: 10.1177/0032318713508482.

¹¹ Dirhamsyah, "Maritime Law Enforcement and Compliance in Indonesia: Problems and Recommendations," *Maritime Studies* 144, (2005): 1-16, DOI: 10.1080/07266472.2005.10878790.

¹² Katinawati, "Peran ASEAN Maritime Forum (AMF) Dalam Keamanan Di Asia Tenggara". *eJournal Hubungan Internasional* 1, no. 3 (2013).

¹³ Ansori Ansori, Agus Haryanto Ikhsanudin, Edy Suhardono, "Sinergi BAKAMLA dengan TNI AL Guna Penanggulangan Tindak Pidana di Laut dalam rangka Penegakan Hukum", *Strategi Pertahanan Laut* 3, no. 3 (2017): 47-68.

Indonesia's Jurisdiction. BAKAMLA is a revitalization of BAKORKAMLA, strengthening its authority and becoming the central command of law enforcement in Indonesia's territorial waters.

The existence of BAKAMLA shifts the law enforcement paradigm at sea from multi-agency multi-task to a single-agency multi-task, which in practice is expected to create effectiveness and efficiency, as well as real law enforcement. Several countries have practised centralization like BAKAMLA itself, such as Malaysia Maritime Enforcement Agency/MMEA, Japan Coast Guard/JCG, United States Coast Guard/USCG, and Indian Coast Guard/ICG. BAKAMLA will serve as an "umbrella" for each related agency, so it is expected to overcome the enforcement law body's overlapping authority and confusion.

The existence of BAKAMLA is one of the embodiment to make Indonesia a maritime axis of the world. In response to the international community regarding the Djuanda Declaration¹⁴, Mochtar Kusumaatmadja stated that *"Every sovereign state has full sovereignty to carry out actions considered necessary to safeguard its marine jurisdiction."* As the largest archipelagic country globally, Indonesia must be able to answer the significant challenges in securing its maritime territory, including the potential and natural resources for its people's sovereignty and prosperity. BAKAMLA is ultimately the front guard that plays to keep all this potential, ultimately making Indonesia a step ahead into the world's maritime axis.

Marine management related to government policy to make Indonesia as the axis of the world maritime is known from the analysis of Article 61 of Law Number 32 the Year 2014 on Marine. Article 61 expresses that BAKAMLA has to conduct security and safety patrols in Indonesia's territorial waters and the territory of Indonesian Jurisdiction. The BAKAMLA's task is extensive (i.e., to conduct security patrols and safety in Indonesia's sovereignty).

Furthermore, Article 63 Paragraph (2) expresses that the authority, as referred to in paragraph (1), shall be implemented in an integrated manner within a single Command. Under the previous institution, BAKORKAMLA, there are multi-agency-single task systems, or there are many law enforcement agencies that enforce the law in the Jurisdiction of the Indonesian waters. In the law enforcement practice, security and marine safety carried out by patrol units from various Institutions/Ministries have not been able to create maritime security in Indonesian waters because each agency/ministry has a strategy/Policies, tools (infrastructure), different human resources, not in an integrated system, as well as in command and control units. Hence, with the

¹⁴ The Djuanda Declaration is the Indonesian people's struggle to fight for the boundaries of the sea area. The Indonesian territory becomes a complete unity seen from various aspects: political, socio-cultural, and defense and security. Ir. Djuanda Kartawidjaja first pronounced the Djuanda Declaration on December 13, 1957; hence it was named Djuanda Declaration.

turn into the Marine Security Agency (BAKAMLA) unite command with various tasks. This marine security agency is expected to function well in law enforcement, security, and safety at sea, comprise aspects of the service of early warning information systems, law enforcement at sea, customs, security and safety of shipping, control of biological natural resources, and non-biological in the marine environment, Search and Rescue (SAR). It is also expected to develop state defence at sea.

2. The Effects of BAKAMLA on the Existence of Other Marine Security Boards

Law enforcement is still a daunting task for the Indonesian government. Indonesia's territorial waters, which reach 72.5%, poses significant challenges to BAKAMLA, Navy, Water Police, and related agencies to ensure security and protection of Indonesian Jurisdiction. Illegal, unregulated, and reported fishing practices are among the most massive violations committed in Indonesia's territorial waters and directly affect Indonesian economic potential.

Before enacting the Indonesian Marine Law, to create harmonization in coordination between agencies in maritime security, the government launched Presidential Regulation number 81 the year 2005. Based on this policy, there are 3 (three) institutions appointed to have the authority to investigate criminal acts at sea. Those three bodies are the Police of the Republic of Indonesia (*Polisi Republik Indonesia*, POLRI), Indonesian National Army Navy (*Tentara Nasional Indonesia Angkatan Laut*, TNI AL), and Fisheries Civil Servant Investigator (*Penyidik Pegawai Negeri Sipil Perikanan*, PPNS). Their authorities could be described as follow:

- a. The authority of POLRI is one of the functions of government in maintaining security and public order, law enforcement, and community protection. The main task of POLRI is a) maintaining security and public order; b) enforcing the law; c) they are providing protection, shelter, and service to the community. The Republic of Indonesia's police shall perform the investigation duty and investigate all crimes following criminal procedural law and legislation.
- b. The authority of the TNI AL is more general than POLRI. The roles are including the role of Military, Police Role, and the role of diplomacy. The police role is implemented to enforce the law at sea, protect the sea's resources and wealth, and maintain security and order in the sea. The Navy's legal basis as investigators of individual criminal acts at sea, among others: a). Law Number 34 of 2004 on the Indonesian Navy. The Navy has to enforce the law and maintain security in the territorial sea of national Jurisdiction under national law provisions and ratified international law. What is meant by law enforcement and safeguarding security are all forms of activities related to the Navy's authority, including pursuit,

arrest/investigation, investigation, prosecution, and trial carried out by other institutions in this case, the court, and the high court/state.

- c. PPNS's authority is on the legal basis of Law Number 17 of 2008 on The Voyage. PPNS is authorized to carry out criminal acts in the field of shipping. It is also stipulated in the Natural Resources Conservation Act, Environmental Law. Article 4 mentions that the law is applicable internationally because it also binds foreign ships sailing in Indonesian waters.

Furthermore, Article 276 of Law Number 17 of 2008 describes the functions of the Coast Guard. Article 276 paragraph 3 is the legal basis for establishing Marine and Coast Guard Unity (*Kesatuan Penjagaan Laut dan Pantai*, KPLP). KPLP is the only agency known as law enforcement in the field of shipping. And chapter 277 describes the duties of the sea and coast guard as regulated in the law. Moreover, concerning the waters, Indonesian waters are regulated and managed by Law Number 6 of 1996, which states in Article 1. This Article affirmed that what is stipulated in this law are matters related to Indonesian marine territory.

Additionally, according to the Indonesian Maritime Council, based on the existence of the marine patrol task force, there are two categories of related agencies in law enforcement, security and safety at sea, namely: agencies having sea patrol task force and agencies with no patrol task force at sea, as presented in table 1.

Table 1. Sea Patrol Task Force

| Related Agency with Sea Patrol Task Force | Agencies without Sea Patrol Task Force |
|--|--|
| Ministry of Finance (Customs) | Ministry of Environment |
| Ministry of Transportation | Ministry of Agriculture |
| Ministry of Justice: Directorate General of Immigration | Ministry of Forestry |
| TNI Navy | Ministry of Health Directorate General of Immigration of Mineral Resources |
| Marine and Fisheries Ministry | Attorney General's Office |
| Police | Supreme Court |
| BAKORKAMLA | Ministry of Energy and Resources |

Source: Indonesian Marine Council

The agency with the sea patrol task force means that the agency has a ship or aircraft to patrol the sea. Water police, for example, as reported in 2011 it has a total of 160 ships. The Navy has 147 ships and 19 maritime patrol aircraft. Health and the Ministry of Agriculture have a security function against the entry of diseases from outside Indonesia.¹⁵ Officers from the ministry are in the office at every international port. The existence of various institutions it makes chaos in maritime security. It is unclear how the coordination and distribution of authority and responsibility among the Indonesian sea guard authorities. The regulation is not adequately regulated and may lead to ambiguity, overlapping Jurisdiction, and perhaps conflicting Jurisdiction. The complexity of security issues in the sea increases as the sea meets two mutually binding interests (i.e., national and international).

Moreover, in performing its security patrol and salvation from the Territorial Sea to Exclusive Economic Zone, BAKAMLA bases its role on Article 63 paragraph (1) letter b. Article 63 states that BAKAMLA has the authority to dismiss, examine, arrest, carry ships, and deliver vessels to the relevant authorities authorized to carry out further legal proceedings. The investigation is the first stage of the investigation. It is not a self-contained act apart from the investigation but an inseparable part of the investigation function. One of the functions of BAKAMLA under Article 62 letter (d) is to synergize and monitor the implementation of the distribution patrol by the relevant agencies. Letter (f) of the Article states that BAKAMLA provides technical and operational support to the relevant agencies. The authority of BAKAMLA is implemented in an integrated manner in one unity of command and control. In Chapter X on governance and marine institutions, Article 69 paragraph (1) of Law Number 32 the Year 2014 on maritime states that the government establishes governance and marine institutional policies, then paragraph (4) stipulates that further provisions concerning the governance and marine institutional policies referred to in paragraph (1) above shall be regulated in government regulation.

The establishment of BAKAMLA is intended to establish a forum for integrating all or part of government agencies' functions and authorities to implement law enforcement, security, and safety at sea, which is sectorally located under ministries or related agencies. This purpose is following Article 62 paragraph (2) of Law 32 of 2014 that the authority referred to in paragraph (1) shall be implemented in an integrated manner in the unity of command and control. Furthermore, Article 4 of Presidential Decree No. 178/2014 regulates the authority of BAKAMLA; make an instant chase; stop, inspect, arrest, bring and hand over the ship to the relevant authorities for further legal proceedings.

¹⁵ Desi Albert Mamahit, "Tata Kelola Keamanan Laut Indonesia Dalam Mendukung Program Pengembangan Poros Maritim Dunia", *Paper presented at Indonesian Rector Forum*, Medan, 24 Januari 2015, Universitas Sumatera Utara.

This Article integrates security and safety information systems in Indonesian territorial waters and Indonesian Jurisdiction. From Article 4, it is known that the authority of BAKAMLA in enforcing the law at sea is up to the handover of the captured ship to the relevant agencies for further legal proceedings. The establishment of BAKAMLA is intended to establish a forum for integrating all or part of government agencies' functions and authorities to implement law enforcement, security, and safety at sea, which is sectorally located under ministries or related agencies. This purpose is following Article 62 paragraph (2) of Law 32 of 2014 that the authority referred to in paragraph (1) shall be implemented in an integrated manner in the unity of command and control.

Furthermore, Article 4 of Presidential Decree No. 178/2014 regulates the authority of BAKAMLA; make an instant chase; stop, inspect, arrest, bring and hand over the ship to the relevant authorities for further legal proceedings. This Article integrates security and safety information systems in Indonesian territorial waters and Indonesian Jurisdiction. From Article 4, it is known that the authority of BAKAMLA in enforcing the law at sea is up to the handover of the captured ship to the relevant agencies for further legal proceedings.

The synergy of authority, strength, and ability must be reflected in the organizational structure, mechanisms, procedures, and other provisions that support law enforcement, security, and safety at sea. Incorporating/integrating such authority into one agency will be easier to coordinate and control because the command and control are on the one agency.

C. Conclusion

To sum up, this study shows that the Marine Security Agency's establishment based on Law Number 32 of 2014 on Marine and Presidential Regulation Number 178 of 2014 marks a new era of maritime security operation synergy supported by an integrated system of early warning and law enforcement units. BAKAMLA is expected to function well in law enforcement and maintaining sovereignty and safety at sea. The tasks comprise aspects of the service of early warning information systems, law enforcement at sea, customs, security and safety of shipping, control of biological natural resources and Non-biological in the marine environment, SAR at sea, and state defence in the case of war. Regarding the marine security bodies, the enactment of Marine Law Number 32 of 2014, which gives extensive authority to BAKAMLA, does not erase the authority possessed by other law enforcement agencies at sea, regulated in the previous law. The presence of BAKAMLA does not necessarily exclude or eliminate other institutions in the same task at sea. BAKAMLA's role is as a guard to further synergize the security and safety of the territorial waters of Indonesia to support government programs that focus on maritime development to improve the prosperity and to realize the ideals of Indonesia as a maritime axis of the world.

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