

10-31-2017

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Recommended Citation

Abraham, Andre (2017) "Indonesian Maritime Law Enforcement: Progress and Problems," *Indonesian Journal of International Law*. Vol. 15 : No. 1 , Article 1.

DOI: 10.17304/ijil.vol15.1.716

Available at: <https://scholarhub.ui.ac.id/ijil/vol15/iss1/1>

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INDONESIAN MARITIME LAW ENFORCEMENT: PROGRESS AND PROBLEMS

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Abstract

Indonesia as maritime country may face difficulties in law enforcement at sea. The broad variety of problems and challenges can be found on Indonesia waters, included coastal area and the sea itself. Indonesia has been involved on making maritime law since UNCLOS 1982, with archipelagic state concept that gave significant implication to the law of the sea. Times change, the problem that occurred at sea could be different. Maritime law enforcement would be challenged to be adaptable for the new problems and how Indonesia develop its maritime law to face new challenges.

Keywords: *law enforcement, law of the sea, maritime security*

Submitted : 24 July 2016 | Revised : 22 Nov 2017 | Accepted : 16 January 2018

I. INTRODUCTION

As an archipelagic state with 17,506 islands, coastlines measuring some 81,000 km, and sea area covering about 7.73 million sq. km,¹ Indonesia is facing a need to protect, conserve, and manage its marine and coastal resources. In doing so, it is imperative for the government to consider several interrelated legal and policy strategies to protect and secure nation's jurisdiction at the sea.² One of the most important things is enforcing law and order in the marine space that include the territorial seas (inland waters, archipelagic waters and territorial waters)

¹ CIA, 'The world fact book: Indonesia,' <https://www.cia.gov/library/publications/the-world-factbook/geos/id.html>

² See Ridwan Lasabuda, "Pembangunan Wilayah Pesisir dan Lautan Dalam Perspektif Negara Kepulauan Republik Indonesia" (*Regional Development in Coastal and Ocean in Archipelago Perspective of The Republic of Indonesia*), *Jurnal Ilmiah Platax*, Vol. 1-2, 2013, pp. 92-101.

and jurisdictional seas (supplementary zone, Indonesian exclusive economic zone and continental shelf). Within those territories and zones, Indonesian maritime law must be upheld.

Law enforcement in Indonesia's coastal and marine territories is jointly the responsibility of several national government institutions depending on which phase the legal process is conducted based on Indonesia's criminal justice's system.³ Briefly, in the phase of investigation, there are some enforcement institutions that played a significant role, namely Indonesian Navy, civil investigation officers (PPNS) from some state ministries such as Ministry of Marine Affairs and Fisheries and Finance Ministry and also The Indonesian Marine Police. In prosecution phase there is Attorney General's Office (AGO) with its High Prosecution Offices in province level and hundreds of district prosecution offices throughout the country in each cities and regencies. And in judicial phase there are district court, high court and Supreme Court. Especially for fishery cases there are some fishery court in coastal cities or regencies.

The aim of this paper is to address problems of maritime law enforcement related to some acts and regulations involved, the role of investigation institutions which containing some agencies, the role of Maritime Security Board (Badan Keamanan Laut) or Bakamla, the role of the sea and coast guard, the role of AGO and discussion about court decision in some cases related to crimes on the sea.

II. LAW AND REGULATIONS IN THE FIELD OF MARITIME LAW ENFORCEMENT AND CRIMES OCCUR.

Located strategically at the global nexus of the Indian and Pacific Oceans, Indonesia is the world's largest archipelagic country. With these vast waters of strategic importance, the questions of risks, threats, and security are at the heart of Indonesian policy.⁴ Indonesian government put a big effort in protecting its sea territory by declaring many laws

³ Eddy Rifai dan Khaidir Anwar, "Politik Hukum Penanggulangan Tindak Pidana Perikanan" (Political Law of Fisheries Crime Management), *Media Hukum*, Vol. 21 No. 2, 2014, p. 291.

⁴ See Cribb, Robert B., and Michele Ford, eds. *Indonesia beyond the water's edge: managing an archipelagic state*. Institute of Southeast Asian Studies, 2009.

and regulations.

There are some related with the law of the sea in Indonesia, such as Law No. 6/1996 concerning Indonesian Water, Law No. 5/1983 concerning Exclusive Economic Zone, Law No. 1/1973 concerning Indonesian Continental Shelf, Law No. 17/2008 concerning Shipping, Law No. 45/2009 concerning Fisheries, and Law No. 32/2014 concerning Maritime. Though the number of laws and regulations concerning maritime are not limited to above mentioned but if we extend to any possible crime can be conducted in the sea it can be enlarge to the taxation law, labor law, fishery law, investment law, conservation law, oil and gas law, company law, coastal and remote islands management law, customs law, anti corruption law, anti money laundering law, criminal code, immigration law, environmental law, human rights law, human trafficking law, quarantine law, sea transportation law, etc.

Those laws and regulations is reasonably can be implemented since crimes can be occurred in the sea can be smugglings of drugs, goods, protected species, spare parts, liquor and people, unlawful activities of exports and imports, illegal fish catch, human trafficking, people smuggling, modern slavery, etc.

Though with so many laws and regulations, law enforcement in the sea could not be upheld as it should be. There are many obstacles and weaknesses in implementing such laws and regulations from some perspectives. The first one is the lack of coordination among various agencies responsible for enforcement in Indonesia. For the sake of coordination, the government has established the Maritime Security Board (Badan Keamanan Laut) to replace the Maritime Security Coordination Board (Badan Koordinasi Keamanan Laut/Bakorkamla) as stipulated in the Law No. 32/2014 of Maritime.⁵ Bakorkamla was established in 1972 and membership of this body is comprised of representatives from the Navy, Police, Customs, Ministry of Judicial Affairs, and the Attorney General's Office.⁶ The establishment of

⁵ See, Eka Martiana Wulansari. "Penegakan Hukum Di Laut Dengan Sistem Single Agency Multi Tasks" (*Single Agency Maritime Law Enforcement system with Multi Tasks*) *Media Pembinaan Hukum Nasional* (2014): 1-6.

⁶ This was set up by the Cooperation Decree (*Surat Keputusan Bersama/SKB*) of the Minister of Defence, the Minister of Communication, the Minister of Judicial Affairs, and the General Attorney in 1972. At that time, the Ministry of Marine Affairs and

Bakorkamla is meant to be the mechanism to enhance coordination among various law enforcement agencies although in practice is not an easy thing to do.

In its organizational progress, Bakorkamla was becoming Bakamla as regulated in the Law No. 32/2014 of Maritime, as article 59 of this law stated that *“in order to enforce the law within Indonesian territorial and jurisdictional seas, especially in conduct safety patrol and security inside Indonesian water territorial and jurisdictional seas, Sea Security Agency is established.”* As its function to conduct security and safety patrol, a question arise whether Bakamla can conduct investigation or not since in article 28 of Government Regulation No. 178/2014 concerning Maritime Security Board stipulated that *“in order to conduct duty of legal action, preliminary investigation and initial investigation against law violation on the sea, the legal action unit is established.”* It is not clear what kind of action can be carried out by this legal action unit, and how far is the preliminary investigation or initial investigation can be carried out, but in the next paragraph mentioned that *“legal action unit is consists of personnel that represent ministry / institution with authority in maritime law enforcement”* which create assumption that there are some law enforcement institution representative within this organization for the purpose to continue any legal action to the official investigation apparatus until entering prosecution stage and tribunal.

The unclear duty, task and function of investigation institution in maritime law is obvious in some law which mentioned that mainly three institutions are playing a major role in investigating criminal cases on the sea. The law of shipping no. 17/2008 stated that *“other than the Indonesian police investigators and other investigators, certain civil servant officials within the agencies having the scope of duty and responsibility in the field of shipping may be provided with special authority as the investigators meant in this law.”* In its explanation of the article mentioned that *“what is define as “other investigators” is an investigator as ruled by the law such as Indonesian navy officer.”*

The law of fishery no. 31/2004 and has renewed by the law no. 45/2009 article 73 stipulated that *“investigation in fishery crimes is conducted by fishery civil investigation officer, Indonesian navy officer*

Fisheries had not yet been established by the Indonesian Government.

and national police.” Especially in the law of economic exclusive zone, only Indonesian navy officer⁷ and civil investigation officer⁸ can investigate crimes that happened in economic exclusive zone.

The lack of coordination issue is still continue with some example of cases handling by navy, marine police and civil investigation officer based on “first come first served” principal in the context who do the first surveillance or receive data of crime, they act first in handling the case. One example is a case in North Sumatra where a Thailand-flag vessel is arrested by marine police in Malacca strait for unauthorized fishing. As the dossier was brought to Belawan District Prosecution Office, prosecutor released a guidance letter (P-18; P-19) to the police to request expert opinion regarding what argumentation can be made to justify marine police to investigate illegal fishing case in the area of Economic Exclusive Zone. Whereas expert opinion conclude that marine police has no authority to investigate within EEZ area⁹, the case should be handled by Indonesian navy officer. As a result, Indonesia marine police deliver the case to Lantamal I Belawan. From the example case above, we learned that lack of coordination should become a priority and should be solved not to be repeated any longer in the future.

As mentioned above, so many law enforcers involved in investigation phase of maritime law violation. There is Indonesian navy, Indonesian marine police, civil investigation officer, and the law also regulates the existence of the sea and coast guard. As mandated within Law of the Shipping No. 17/2008, the Indonesian Sea and Coast Guard (ISCG) should be established as a single institution responsible for maritime law enforcement in Indonesian waters. Moreover, this institution has the authority to investigate criminal cases on the sea.¹⁰ So far the ISCG is yet to be established, but if it’s already been established, it will add one more institution dealing with investigation in the maritime law enforcement. Another question is how to distinguish this future investigation agency with previous institution (navy, marine police and

⁷ Indonesia, *Law of Economic Exclusive Zone*, Law No. 5/1983, Article 14.

⁸ Indonesia, *Law of Fishery*, Law No. 45/2009, Article 73 para 2.

⁹ Evan A. Laksmana, “Rebalancing Indonesia’s Naval Force: Trends, Natures, and Drivers”, in *Naval Modernization in Southeast Asia: Nature, Causes and Consequences*, ed. Geoffrey Till and Jane Chan (London: Routledge, 2014), pp. 175-203.

¹⁰ Indonesia, *Law of Shipping*, Law No. 17/2008, Article 278.

civil investigator officer).

Another weakness in maritime law enforcement is the lack of integrated laws and regulations.¹¹ Indonesia is reputed to be a country that has good laws, but unfortunately, they are not implemented effectively. On the surface most of the laws look good, but in reality they are often useless, cannot be enforced, and make a mockery of the coastal and fisheries authorities, the lawyers and lawmakers. Many loopholes in the laws allow people to commit violations without being prosecuted. One reason of argumentation above is sometimes it is easier to secure a conviction under the Criminal Code¹², prosecutors prefer to prosecute offenders under the Criminal Code instead of the Fisheries Act which has heavier punishment compared with Criminal Code. For instance under the Fisheries Act the penalty for using explosives is six years in prison and a penalty of fine up to Rp. 1.2 billions (US\$133,000).¹³ For a similar violation under the Criminal Code, the penalty is ten days in jail or a fine of up to Rp. 750 (US\$0.10).¹⁴ It also can be indicted under Emergency Act No. 12/1951 concerning possession of explosives without permit, but this act only punishing the perpetrator with imprisonment without fine.

When in the stage of investigation there is overlap institution involved, in prosecution phase public prosecutor play its prime role in indicting and prosecute criminals of maritime law violation. The problem with prosecutor's role in enforcing the law of maritime is widening their knowledge in maritime law area. Especially prosecutors who are placed in coastal region, they must be prepared with offshore crimes and apply relevant articles considering an offence occur in the sea.

The Hai Fa case can be considered as an example of previous paragraph argumentation. The Panamanian-flag Chinese vessel MV Hai Fa acknowledged as the biggest ship has ever captured for illegal fishing in Indonesia. It illegally caught 900 tons of fish and prawns as

¹¹ Jason M. Platis, etc., "Integrated Coastal Management in a Decentralized Indonesia: How It Can Work", *Indonesian Journal of International Law, Volume 1, No.4, 2001*.

¹² Dirhamsyah, "Maritime Law Enforcement and Compliance in Indonesia: Problems and Recommendations", *Maritime Studies*, Routledge Taylor & Francis Group, 2005.

¹³ Indonesia, Fishery Act, Law No. 31 Year 2004, Article 84.

¹⁴ Indonesia, *Criminal Code*, Staatsblad Year of 1815 No. 732, Article 500.

well as 66 tons of hammerhead sharks and oceanic whitetip sharks, which, according to the Maritime Affairs and Fisheries Ministry, had caused Rp 70 billion in state losses. The Ambon District Court punished MV Hai Fa to pay Rp 200 million (approx. US\$15,300).¹⁵

Minister of Maritime Affairs and Fisheries were upset to lenient punishment by Ambon district court and people blamed all related law enforcement institution, which are navy investigator, prosecution office and the court. In examining one case we can't make instant conclusion who or whom to be blamed, since the mechanism of integrated criminal justice system is running within. We must examine the investigator's dossier for what or which article they had implemented, we must study the prosecutor's indictment, how heavy was punishment proposed by prosecutor, and the sentencing process held by the judge until finally reach to such punishment. The main problem here is all maritime law enforcers involved in enforcing the maritime law must have the same perception and the same goal, to enforce the maritime law whatsoever. Therefore it is needed for investigators to comprehend the law, so is prosecutors and judges.

The disappointment of Maritime Affairs and Fisheries Minister Susi Pudjiastuti is reasonable since the government under President Joko Widodo administration is focused on maritime development, one of its main enhancement program is fishery sector.¹⁶ In order to create a deterrent effect in illegal fishery case, the Ministry of Maritime Affairs and Fisheries have sunk dozens of vessels. Those vessels had received final and binding court decision and stipulated to be destroyed.

Beside sinking criminals' vessels, the government is also established fishery court to try fisheries offences. Five first fisheries courts have been established in Medan (North Sumatra), Jakarta Utara (Jakarta), Pontianak (West Kalimantan), Bitung (North Sulawesi) and Tual (Southeast Maluku) in 2007, then another three was established in Tanjung Pinang and Ranai (both in Riau Islands) and the newest three fisheries court were established in Ambon, Sorong and Merauke (all are in Maluku). Though such breakthrough in exclusive fishery tribunal

¹⁵ Ambon District Court, *No. 01/Pid.Sus/PRK/2015/PN.Amb*, 2015.

¹⁶ See National Development Planning Agency (*Badan Perencanaan Pembangunan Nasional*), National Mid-Term Development Plan (RPJMN 2015-2019), 2014.

is not always achieve a satisfactory result for proved by Minister of Maritime Affairs and Fisheries' statement¹⁷ to close Ambon fishery court due to the disappointment of *Hai Fa* case verdict.¹⁸

As mentioned above some form of crimes often happened in the sea, such as fishery and human trafficking. In fishery crimes there is Illegal Unregulated Unreported Fishing (IUUF). Illegal means fishing in other countries' jurisdiction or in a restricted areas. Unregulated means there is no regulation on that particular area, or using the wrong nets or vessels. Unreported means reporting a false number of fish or not reporting at all. In the course IUUF activity, there are people who are actually organized, in more than one country, and they are violating many different laws. For instance, there is one group of people from different countries that decided to steal fish from Indonesian water. They get people from the black market and enslave these people as their crew. They bring some drugs as well and some weapons to sell. So, they enter Indonesian waters, violating multiple treaties and laws and stealing Indonesian fish, enjoying the profit through money laundering. The Benjina case is the real example. Briefly, Benjina case is about the fishing company Pusaka Benjina Resources (the only official fishing operation on Benjina Island) suspected of using forced labor and physically abusing hundreds of foreign workers, mainly from Myanmar, Laos and Cambodia. Allegedly, these workers (most of whom were underage) were forced to work without pay (sometimes working up to 22 hours per day), were whipped, even held in cages and forbidden to return home or inform anyone about the maltreatment. The Benjina case is an example of human trafficking case in fishery sector.

¹⁷ Yoga Sukmana, "Menteri Susi Instruksikan Penenggelaman 16 Kapal "Illegal Fishing" Tanpa Proses Pengadilan" (Minister Susi Instructed The Sinking of 16 Illegal Fishing Vessels Without Judicial Process), available at <http://bisniskeuangan.kompas.com/read/2015/10/06/211700826/Menteri.Susi.Instruksikan.Penenggelaman.16.Kapal.Illegal.Fishing.Tanpa.Proses.Pengadilan>, accessed on 23 September 2016.

¹⁸ Pengadilan Negeri Ambon, Putusan No. 1/Pid.sus/PRK/2015/Pn.Amb., hlm. 29.

C. CONCLUSION

It is necessary to create better coordination among law enforcement institutions in order to make more effective and more efficient mechanism in sentencing the perpetrators. Laws and regulations related to maritime law enforcement needs to be reviewed so that an overlapping duty and function of law enforcement institutions can be avoided. The joint training among investigators, prosecutors and fishery tribunal judges must be held more often to build synergism and similar perception in the field of maritime law enforcement.

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