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Abstract

Indonesia is geographically very strategically located between two oceans and two continents, so that the Indonesian maritime region is a very important sea route for global trade highways and national and international sea traffic. Indonesia with this position and potential has a considerable opportunity to become a maritime country based on natural resources. This potential can be a strength as well as a challenge with a high level of vulnerability and can disrupt security stability which can threaten the integrity of the Unitary State of the Republic of Indonesia (NKRI). The research method used is a normative research method which will later bring up new arguments, the results of the study found that the conditions in which Indonesia became a maritime country made it a lot of crime threats to Indonesia's maritime sovereignty. This position must be supported by a strong defense and security system and changing the pattern of national development which is not only oriented towards the land dimension but also oriented towards the sea dimension. To that end, several policies and regulations have been established, but until now these regulations are still sectoral, resulting in disharmony and overlapping regulations and authorities in marine security. This also applies to the law enforcement system and state sovereignty at sea, which is influenced by these laws and regulations.

Keywords: maritime border security, defense strategy, legal review

INTRODUCTION

Indonesia has been a famous maritime country since the days of Majapahit and Sriwijaya Kingdoms. In addition to these two great kingdoms, it is said that Indonesia also has a maritime history on Koninklijke Paketvaart Maatschappij (KPM, 1888-1960), The world's largest cobatage fleet, Jakarta Lloyd's Samudra fleet is present at many global portal sites. Indonesia's sea is a geostrategic center with unifying potential and also a potential source of conflict between regions/countries. Indonesia has 80% of its territory is sea, a vast area of 5,800,000 km² with a coastline of 80,791 km in length and has 17,504 islands in one island Moreover, both are connected by sea. (Magindam, 2019)

Indonesia is geographically strategically located between two oceans and two continents, so Indonesia's maritime territory is a very important sea lane for global trade highways and national and international maritime traffic. That means Indonesia plays a role in the global supply chain system given this geographical location. This lesson also puts Indonesia in that position and plays an important role in the relationship making the international world as its center for the Asia-Pacific region. The critical position borders 10 neighboring countries namely India, Thailand, Malaysia, Singapore, Vietnam, Philippines, Palau, Papua New Guinea, Timor Leste and Australia, with 11 provinces located in the sea border area, specifically Nanggroe Aceh Darussalam Province, North Sumatra Province, Riau Province, Riau Islands Province, North Kalimantan Province, North Sulawesi Province, Maluku Province, North Maluku Province, East Nusa Tenggara Province, Papua Province. (Ministry Of Planning, 2019)

In addition, although Indonesia is strategically located between the continents of Asia and Australia and borders the Indian and Pacific Oceans, this position also contains vulnerabilities or threats. In this case, threats to Indonesia's maritime security are closely related to the issues of territorial claims, illegal fishing, and unreported and unregulated fishing (IUU), piracy, violence and crime at sea.

Indonesia also has extraordinary marine resources, both from the marine aspect, fisheries aspect, and marine-based technological innovation. This oceanic natural background makes the Indonesian nation and state maritime in character. All of these
potentials are recognized by the government as not yet contributing maximally to the economy, because the state is careless in monitoring the wealth of the sea and weak maritime knowledge in the field of marine spatial planning so that it is exploited by neighboring countries.

According to UU No. 17/2007 on the National Long-Term Development Plan 2005-2025 (UU RPJPN), marine resources have not been optimally utilized for several reasons, including:

a. the absence of maritime boundary arrangement
b. conflicts in the utilization of space at sea
c. the absence of security and safety guarantees at sea
d. the existence of regional autonomy has caused there to be no common understanding of marine resource management
e. the limited ability of human resources in managing marine resources
f. lack of support for marine research, science and technology.

The conception of maritime security refers to the United Nations, including:

a. Piracy and hijacking
b. Maritime terrorism
c. Illegal arms trafficking
d. Human trafficking
e. Illegal immigrants
f. Fish theft
g. Marine environmental pollution

Indonesia with this position and potential has a considerable opportunity to become a maritime country based on natural resources. This potential can be a strength as well as a challenge with a high level of vulnerability and can disrupt security stability that can threaten the integrity of the Negara Kesatuan Republik Indonesia (NKRI). This is because Indonesia's position is very open for other countries to enter Indonesian territory by sea and carry out activities in Indonesian territory with various impacts, so the country needs to pay attention to its maritime security conditions. The country's maritime security is also influenced by Indonesia's geopolitics. Indonesia's position is not free from the influence of interactions and interrelations with the external environment, both the national environment, the regional environment, and the global environment with all forms of challenges in it. (Dahuri, 2019)

This cannot be separated from the global geopolitical constellation, regional geopolitical environment, and national strategic environment. These geopolitical conditions can pose a threat to state security. Common problems related to maritime security that must be addressed through effective Association of South East Asian Nation (ASEAN) maritime security cooperation are sea robbery, pirate attacks, maritime terrorism, environmental degradation, maritime kidnapping, illegal trafficking of weapons and humans, drug smuggling by sea (cargo/container ships), maritime environmental security, resource competition and strategic access, cargo theft, and others.

The threats faced by Indonesia as a Southeast Asian country and ASEAN member are threats of lawlessness, threats of violence, and threats to marine resources in the form of piracy, piracy, pollution and destruction of marine ecosystems, conflicts over marine resource management, illegal fishing, and smuggling. These threats have an impact on the country's economy where every year at least IDR 300 trillion of national wealth evaporates through illegal fishing, illegal logging, illegal mining, fuel oil smuggling, and various other illegal economic activities. (Dahuri, 2019)

The threat is also influenced by Indonesia's national environment, which still has a number of boundary issues, both land and sea borders, which have not yet been resolved. This has affected Indonesia's economic downturn. This is because national development is still land-oriented (land-based development) and the sea is only treated as a place for
exploitation and exploration of natural resources, waste disposal, and illegal activities. This is supported by the fact that marine development policies are still being carried out partially, with each ministry/agency running its own development program, not yet comprehensive, and not yet integrated with ministries/agencies that have a concentration on marine development. Nevertheless, the Government has set quantitative targets for marine security and lawlessness at sea.

Indonesia faces many factual and potential threats, both from within and outside. These conditions are poorly supported by facilities and infrastructure, making Indonesia's jurisdiction vulnerable to various violations and crimes at sea. This illustrates that the country's marine sector is geopolitically and geographically an important element in the field of defense and security, but still faces many problems. The government has created legal instruments to maintain state sovereignty and maritime security in the national jurisdiction, but until now Indonesia still faces threats to maritime security in its territory. On that basis, the legal issues that will be examined in this paper are “A Legal Review of the Strategy for Handling Maritime Security of the Marine Territorial Border and its Impact on Defense and Security Aspects”

METHOD

The author in determining the discussion or in exploring a law in this research uses normative legal methods and these methods will later lead to new arguments. Finding new arguments requires legal sources (legal documents), legal documents such as regulations and statutory decisions. In this research, as usual, it is distinguished between data obtained directly in the field and data from library documents obtained directly in the field which are primary legal documents, while materials obtained from library materials can be called secondary legal documents. (Soekanto & Mamuji, 2004).

RESULTS AND DISCUSSION

Arrangements Regarding the Management and Strategy of Securing the Country’s Maritime Territory in Laws and Regulations

When discussing strategies, of course, it is also necessary to look at the conditions of threats to marine security itself which can then be made efforts to prevent and handle them. As it is known that Indonesia has a large sea area in a strategic location with borders with various countries, which results in great risks and threats. Moreover, Indonesia's condition as a developing country has limited facilities and infrastructure for marine security guards. This causes many parties to deliberately take advantage of opportunities to commit crimes and violations of the law. Referring to Law Number 32 of 2014, there are various kinds and forms of threats to Indonesian seas, some of these threats include threats of violence using weapons, threats to shipping, threats to damage to marine resources, violations of the law. (Sugianto, 2021)

By looking at these various threats, it is necessary to have a real strategy to realize marine security. Therefore, the Indonesian government needs to formulate the right marine
governance policy to make the sea the front porch and strategic area of Indonesia so that the sea is able to support the progress and welfare of the nation.

The sea has a strategic position and has the potential for extraordinary wealth in supporting the progress of the nation. On the contrary, globalization and trade liberalization have caused many countries to become expansive and try to control various water areas. To deal with this reality, it is necessary to manage and regulate the marine sector in order to protect and manage biological resources in a sustainable manner (Sunyowati, 2010). The approach used does not only require regulatory authority and law enforcement, but also regulation of the utilization of marine resources and protection of conflicts between countries that arise over these resources. Therefore, in order to accommodate the needs of Indonesia’s marine security protection, it is necessary to have a development management pattern supported by a bureaucratic system and a commitment to protect national marine and fisheries as a form of state favoritism towards national marine protection. The effectiveness of the bureaucracy here is influenced by government policies related to the implementation of maritime security strategy policies (Kusumastanto, 2010).

The maritime security strategy is a tangible form of the Government of Indonesia in protecting national waters in the 2014-2024 period. Several important pillars are contained in the strategy, including:

a. Revitalization of maritime culture.
b. Responsibility to protect maritime resources
c. Supporting the development of sea connectivity
d. Strengthening maritime diplomacy
e. Strengthening sea defense.

The strategy is important for Indonesia to have a strong identity as a maritime nation and to protect maritime sovereignty. Through this strategy, the mindset of the Indonesian Government, which initially considered the land area as the most important area, thus forgetting about sea waters, changed by prioritizing attention to the national sea. This is also an effort to fight for the state in protecting all potential against threats in the sea area and positioning the sea as the future of the glory of the Indonesian nation (Iswardhana, 2020).

Indonesia has an interest in maintaining maritime security to create conditions in Indonesian waters that are safe from the threat of territorial violations, safe from shipping navigation hazards, safe from illegal exploitation and exploration of natural resources that become Indonesia’s marine potential and environmental pollution, as well as safe from crimes and violations of the law, both from within the country and from abroad. This means that Indonesia adheres to the principle of res nullius and the concept of non-traditional maritime security. These goals are directed at achieving the state's objectives as stipulated in the constitution, namely protecting the entire Indonesian nation and the entire Indonesian homeland, advancing general welfare, educating the nation's life, and participating in implementing world order. (Syaiful, 2016)

To realize this, one of the efforts made is through the establishment of legal instruments, both in the form of institutions and legal products. These legal instruments must pay attention to aspects of law and rule making and law enforcement. Regulations on maritime security are closely related to laws and regulations governing the sea and all activities connected to the sea. This is because Indonesia's maritime aspect holds enormous potential, involving many stakeholders who are authorized over the Indonesian sea and the arrangements are scattered in several laws and regulations. The laws enacted in the national marine jurisdiction include:

a. Law Number 1 of 1973 concerning the Indonesian Continental Shelf
b. Law No. 5 of 1983 concerning Indonesia's Exclusive Economic Zone (EEZ Law)

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d. Law No. 6 of 1996 on Indonesian Waters (Waters Law)
e. Law No. 24 of 2000 on International Treaties (International Treaties Law)
f. Law Number 3 of 2002 on National Defense (Defense Law)

The regulation gives institutional authority to enforce the law at sea to several agencies in accordance with the content material regulated in the law. The laws that apply at sea have provided arrangements and legal authority from each agency, but have not been well coordinated, overlapping arrangements, overlapping authority of stakeholders, or overlapping from the institutional aspect, because there are more than 14 ministries / agencies and local governments that are authorized in it.

Marine policies and regulations must be in the form of laws in order to have national binding legal force by containing philosophical, sociological and juridical bases that are adjusted to the geopolitical conception and legal needs of this country. This is intended to integrate sectoral laws and regulations that apply to Indonesian marine waters. Therefore, to provide solutions to the nation's problems in maritime security, it is necessary to formulate regulations in the form of laws that contain aspects of defense and security at sea which include:

a. Integrated defense and security in border areas
b. Development of monitoring, control, and surveillance (MCS) system
c. Security of border areas and small and frontier islands
d. Security coordination and handling of violations at sea. (Priangani, 2014)

In addition to these substances, this regulation also needs to regulate the responsible parties, institutional forms, and the authority of the right to conduct investigations and investigations into violations of the law that occur at sea.

Marine Law Enforcement in Indonesian Sea Waters Related to the Country's Maritime Security

Marine law enforcement in Indonesia's territorial sea waters is an important part of efforts to maintain the country's maritime security. Indonesia, as an archipelago with vast territorial waters, faces various challenges in securing its waters from various threats such as illegal fishing, smuggling, piracy and other illegal activities. The following are the steps and mechanisms of marine law enforcement in Indonesia related to the country's maritime security:

a. Legal and Regulatory Framework
   Law:
   1. Law No. 3 of 2002 on National Defense: Regulates the duties and functions of the TNI, including the Navy in maintaining maritime security.
   2. Law No. 34 of 2004 on TNI: Regulates the role of the TNI in maintaining the sovereignty and security of territorial waters.
   3. Law No. 32 of 2014 on Maritime Affairs: Provides a legal framework for marine resource management and law enforcement at sea.
   4. Law No. 17 of 2008 on Shipping: Regulates shipping safety, including law enforcement against violations in the waters.

b. Maritime Law Enforcement Institutions
   Indonesian Navy (TNI AL):
   1. The Indonesian Navy plays a role in maintaining the sovereignty and security of Indonesian waters, as well as enforcing the law at sea in accordance with national and international law.
   2. Marine Security Agency (Bakamla) Bakamla is tasked with conducting security and safety patrols in Indonesian waters and jurisdictions, as well as coordinating with related agencies.
3. Water and Air Police (Polairud) Polairud, part of the Indonesian National Police, is in charge of law enforcement in the waters, including actions against smuggling, illegal fishing, and piracy.

4. Ministry of Maritime Affairs and Fisheries (KKP), KKP through the Marine and Fisheries Resources Monitoring (PSDKP) is tasked with monitoring and enforcing laws related to illegal fishing and other violations in the fisheries sector. (Listiyono, 2021)

c. Law Enforcement Mechanism
   Patrol Operation
   1. Routine and Special Patrols: Conducted by the Indonesian Navy, Bakamla, Polairud, and KKP to monitor and crack down on illegal activities in Indonesian waters.
   2. Joint Operations: Coordination between law enforcement agencies for joint operations in handling major cases or complex threats.
   4. Drones and Reconnaissance Aircraft: Use of drones and surveillance aircraft for more effective monitoring from the air.

Legal Process:
1. Arrest and Detention: Arrest of maritime law violators and temporary detention until further legal proceedings.
2. Trials and Sanctions: Court proceedings for maritime law violators and sanctions in accordance with applicable regulations.

d. International Cooperation
   Bilateral and Multilateral Cooperation
   Indonesia is involved in various international cooperation for maritime security, such as ASEAN, IORA, and cooperation with neighboring countries for joint patrols and information exchange.

e. International Agreements:
   Law enforcement is also supported by international treaties such as UNCLOS (United Nations Convention on the Law of the Sea) which provides a legal framework for management and law enforcement at sea.

To enforce law and sovereignty in Indonesia's jurisdiction, it is necessary to establish complete maritime boundaries based on the provisions of the international law of the sea stipulated in UNCLOS 1982 which has been ratified by the Government of Indonesia through Law 17/1985. The determination of maritime boundaries is needed to obtain legal certainty that can support various activities at sea including for the interests of the nation and state from the aspect of maritime security. (Paonganan, 2012)

This law enforcement and sovereignty cannot be separated from the function of enforcing certain criminal laws at sea and general criminal offenses that occur at sea, with the settlement process through the stages of supervision, investigation, investigation, prosecution, and examination in court. Law enforcement is indispensable for the implementation of state maritime security in inland waters, archipelagic waters, Indonesian territorial sea, sea lanes, straits for international shipping of the Indonesian continental shelf, EEZ, and additional zones due to various forms of threats and disturbances to Indonesian seas which have abundant natural resource potential and strategic geographical and geopolitical positions.

Law enforcement in Indonesian sea waters is the responsibility of the Indonesian Navy as stipulated in the TNI Law. TNI AL as the main component of national 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

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The jurisdiction. The jurisdictional area based on the State Territory Law consists of the EEZ, continental shelf, and additional zones.

The enforcement of sovereignty and law enforcement at sea cannot be separated from Indonesia's marine policy, which is based on the 2005-2025 RPJPN Law. Indonesia's marine policy aims to realize Indonesia into an archipelago that is independent, advanced, strong, and based on national interests through ocean culture policy, ocean governance policy, ocean economic policy, maritime security policy, and marine environment policy. Maritime security policy is carried out by maintaining, securing, defending, supervising and protecting the unity of the sovereign territory of the Republic of Indonesia and jurisdiction in the EEZ and Indonesian Continental Shelf, including natural resources and the marine environment, in order to realize the welfare of the people. Maritime security policy This uses two strategies, namely forming Indonesian Coast Guard and improving defense and security capabilities at sea. (Bappenas, 2022)

The first strategy is carried out with two efforts, namely:

a. Accelerate the establishment of the Indonesian Coast Guard, which has multi-functional authority in maritime law enforcement, search and rescue at sea, environment protection, shipping safety, fishery protection, dan custom and immigration, with the responsible institutions being the Indonesian Navy, Indonesian National Police, Ministry of Transportation, Ministry of Finance, Ministry of Maritime Affairs and Fisheries, National Search and Rescue Agency, and Ministry of State Apparatus Empowerment.

b. Develop an effective and efficient Indonesian Coast Guard operation management system, with the responsible institutions being the Indonesian Navy, Indonesian National Police, Ministry of Transportation, Ministry of Finance, Ministry of Marine Affairs and Fisheries, National Search and Rescue Agency.

The second strategy is carried out with two efforts, namely:

a. Strengthen and modernize the ALUTSISTA system at sea, with the responsible institutions being the Ministry of Defence, the Indonesian Navy and the Indonesian National Police.

b. Build Main Bases and Service Bases for medium-range maritime reconnaissance aircraft squadrons, with the responsible institutions being the Ministry of Defense and the Indonesian Navy. (Palar, 2021)

This marine policy is carried out by fostering maritime insights for the community and government so that Indonesia's development is marine-oriented, increasing the capacity of marine-oriented human resources through the development of marine science and technology, managing the national sea area to maintain sovereignty and prosperity, and building an integrated marine economy by optimizing the sustainable use of marine resources.

However, law enforcement in marine waters still experiences various unresolved obstacles, despite the existence of development policies in the marine sector and having various legal instruments for the implementation of law enforcement at sea. This is influenced by the existing legal culture in the form of non-compliance with laws and regulations. This is because stakeholders who perform law enforcement functions at sea are not well coordinated, causing legal certainty problems for civil society organization (communities and business actors). Law enforcement at sea is still sectoral because there are several agencies authorized in law enforcement at sea with various legal bases and there is no leading section for it. This has potential juridical implications for state administrators, including overlapping authority between law enforcement agencies and conflicts between law enforcement agencies. In addition, the mechanism of the law enforcement system, which includes investigation, prosecution and trial for law enforcement, has not been clearly defined in separate laws and regulations.
CONCLUSIONS

The Indonesian government has created a marine security institution in the form of a Maritime security Strategy as an institutional form in an effort to strengthen the protection and management of maritime security. This axis is not only a response to the reality of many threats, but also makes the sea a strategic area and the future of the nation. The geographical, geopolitical and geoeconomic position and potential that are oceanic in nature place Indonesia as an archipelago and maritime country and positioned as the centre of gravity and the global supply chain system. This situation causes Indonesia to experience threats and disturbances that have implications for the country's maritime security. The government as a state organizer has tried to overcome it by making legal products for state maritime security. The enforcement of sovereignty and law enforcement at sea must be carried out by various parties involved in it.

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