Formosa Journal of Science and Technology (FJST)
Vol.3, No.6, 2024: 1079-1088

The Fundamental of Law Enforcement Authority in Marince Accidents with the Police in Indonesian Waters

Ni Made Rai Sukardi[1*], I Wayan Parsa[2], Ni Nengah Adiyaryani[3], Sagung Putri M.E.Purwani[4]
Udayana University
Corresponding Author: Ni Made Rai Sukardi sukardirai@yahoo.com

A R T I C L E I N F O

Keywords: Authority, Maritime Law Enforcement, Waters, Maritime Jurisdiction

Received : 5, April
Revised : 14, May
Accepted: 28, June

A B S T R A C T

The sea is the boundary between a country and another country which is determined through extradition. On December 13, 1957 the government issued a statement known as the Djuanda Declaration with the intention of uniting the fragmented land areas so that the declaration would close the existence of the open sea between mainland islands by covering the problem of the ideal concept of regulating the authority to enforce maritime accident laws in indonesian territorial waters. The approach method in this research is normative juridical based on an analysis of the law. Then it is described in a descriptive-analytical description. The problem is investigated by describing/describing the condition of the subject/object of research, finding facts thoroughly, and systematically reviewing national regulations. Conclusion maritime law enforcement can cause potential friction between one institution and another. For this reason, this research provides a concept that maritime security and law enforcement institutions will be productive and effective-efficient if they are in accordance with Pancasila.

ISSN-E: 2964-6804
DOI: https://doi.org/10.55927/fjst.v3i6.9689
https://journal.formosapublisher.org/index.php/fjst

INTRODUCTION

The sea is the boundary that limits a State with other States, which is determined through Bilateral or Multilateral extradition, and it is also the limitation of a state's authority. Indonesia's territorial waters have been regulated since the Dutch colonial era through the Territorial Zee En Mari-etieme Kringen Ordonantie (TZMKO)/Maritime Environment Ordinance that issued by the Dutch East Indies Government in 1939, which declared that the territorial sea limit of 3 nautical miles. After Indonesia's independence, some of the provisions of the TZMKO, that related to territorial waters, were not in accordance with the Republic of Indonesia's islands' importance and safety. Therefore, Indonesia declared that the width of the Indonesian Territorial Sea is 12 nautical miles.

On December 13th, 1957, Indonesian Government published a statement that known as Djuanda Declaration that stated: That all Waters around, between, connecting islands included in the mainland of the Republic of Indonesia, by not viewing the outside or width are a natural part of the land area of the Republic of Indonesia and are also part of the National Waters which are under the absolute sovereignty of the Republic of Indonesia.

This declaration was issued in order to unite the fragmented land area. It will close the free sea area that exist between islands. Other considerations that prompted the government of the Republic of Indonesia to publish a declaration about Indonesia's territorial waters were: 1) The geography form of Indonesia as archipelagic state which consists of thousand islands that has its own characteristics and need its own rules; 2) The provision of territorial sea's limitations that was inherited by Dutch colonial in TZMKO in 1939 is no longer appropriate with Indonesia's importance and safety; 3) Every sovereign state has right and obligation to decide actions that considered needed to protect Republic of Indonesia's need and safety.

In its development, Djuanda declaration was expressed in the form of a government regulation in Government Regulation in Lieu of Law or *Peraturan pemerintah Pengganti Undang-undang*, so it has a certain law authority or has equal position with the Laws or *Undang-undang*. Then, in 1960, it was improved in the form of Laws Number 4 of 1960 or UU Nomor 4/Prp/1960 about Indonesia's waters which explicitly stated that the Indonesian Sea Territory boundary was 12 miles, measured from the outermost islands of Indonesian territory. The regulation was associated with the provisions of international law as established in Geneva Convention about Law of the Sea in 1958. This action that conducted to shape provisions that can be implemented internationally in determining the limitations of the territorial sea of each coastal state, namely:

1). In 1936 a Codification Conference was held in Den Haag.

2). In 1939 an Ordinance that regulated the territorial sea boundary of 3 nautical miles was issued.

In 1936 a Codification conference was held in The Hague.

3). In 1958, the First Law of the Sea Conference was held in Geneva, which was unable to produce an international agreement within 12 nautical miles yet.

4). In 1960, the Second Law of the Sea Conference was held in Geneva, and still unable to produce an agreement yet.

5). In 1974, the Law of the Sea Conference was held in Caracas, Venezuela, which determined the distance of the territorial sea as far as 12 nautical miles.

6). In 1982, the Third Sea Conference was held in Montego Bay, Jamaica and was signed by 119 states of UN members who agreed on a new agreement that arrange various activities in the form of a comprehensive international treaty known as the United Nations Convention on The Law of The Sea (UNCLOS).

In December 31st, 1985, Indonesia already ratified UNCLOS 1982 through Laws Number 17 of 1985 or *UU Nomor 17 Tahun 1985*. As further implementation of this

ratification, in 1996, government revoked Government Regulation in Lieu of Law Number 4 of 1960 or *Perpu Nomor 4 Tahun 1960* and replaced it with Laws Number 6 of 1996 or *UU Nomor 6 Tahun 1996* Indonesian's water that already associated with UNCLOS 1982.

THEORETICAL REVIEW

Maxwell (2005) asserts that theoretical foundation is an effort to identify law principles, doctrine, law basis, and jurisprudence. In this research, the researcher utilizes law principles and law basis as the theoretical foundation. "Law principles are broadly formulated ideas that underly the existence of legal or law norms." The principles of law are very important as they become the foundation and guideline that spirited Laws and Regulations. In law research, there are several general components, as stated by Mark Van Hoecke, "*theory building aims at bombing speicfie interpretation, principles, rules and concept in a (newly) systemized whole.*" (The theoretical foundation is formed/consists of several components and it is a combination of interpretations of law principles, rules, law concepts, doctrines/legal teachings, law theories). The theoretical foundation contains a systematic description of the results of previous research previous researchers, that related to current research or from several books that contains perspectives from several experts. (Moeljatno, 1985).

Based on those opinions, there are several studies that are explained in this study, as references for the research problem. The theories are presented follows:

Law State Theory

In Article 1 paragraph (3) in Laws of Constitution of the Republic of Indonesia of 1945 or *Pasal 1 ayat (3) Undang-Undang Dasar Negara Kesatuan Republik Indonesia Tahun 1945* declared, "Indonesia is a law state". The law state is a state that upholds the supremacy of law to uphold truth and justice and there is no authority that is unaccountable. According to Aristotle, the one who rules the state is not an actual human being, instead it is just a mind, while the actual ruler is only the holder of law and balance. The morality that will determine whether Laws are good or bad and making Laws is part of the ability to run the government.

Therefore, the important thing is to educate people into a good citizens, because their justice behaviours will ensure the happiness of their lives. The concept of procedural due process of law is basically based on the law concept of "fundamental fairness". The development of this procedural is a formal process fair, logical and feasible, that must be carried out by the authorities, for example with the obligation carry a valid warrant, provide proper announcement, a proper opportunity to defend themselves, including using experts such as lawyers if needed, present sufficient witnesses, provide appropriate compensation with a proper negotiation or deliberation process, which must be conducted when dealing with things that can violate basic human rights, such as the right to life, the right of independence or freedom (liberty), the right to owner a property, the right to express opinions, the right to have religion, the right to work and seek an appropriate livelihood, the right to vote, the right to travel wherever, the right to have privacy, the right to equal protection and other fundamental rights. Whereas, the substantive due process of law is a juridical requirement that declares the making of a law regulation must not contain things that can result in the unfair, unlogic, and arbitrary treatment of human beings. (Sanyoto : 2008 : 199).

Hypothesis

Normatively, the authority of law enforcement of marine accidents in Indonesian

waters already reagulated in laws and Regulastion Number 17 of 2008 or *Undang-Undang Republik Indonesia Nomor 17 tahun 2008* about sailing, there are numerous rules that arrange marine accidents' law enforcement and they are interrelated to each other, which makes law enforcement difficult.

METHODOLOGY

Soerjono Soekanto in 1981 argued: "Methods are processes, principles and procedures for solving a problem". Moreover, he also added that the method is a way of working or a procedure for understanding the object of research. The approach method used in this research is normative juridical, which means that this research is based on an analysis of the Law. Then, described in a descriptive-analytical description. Descriptive-analytical can be defined as a problem-solving procedure that investigated by depicting or portraying the subject/object of research's condition, finding facts thoroughly, and systematically examining national regulations.

Through this descriptive-analytical specification, this research intends to depict or portray Presidential Regulation Number 178 of 2014 or *Peraturan Presiden Nomor 178 Tahun 2014* about the Marine Security Agency, which becomes the basis of marine law in Indonesian waters and depict/portray Laws Number 17 of 2008 or *Undang-undang Nomor 17 Tahun 2008* about shipping, which is the basis for law enforcement. This descriptive-analytical specification is supported by secondary data.

RESULTS

As an archipelago state, Indonesia also has unique sea characteristics that are used as international transportation routes that supported by its geostrategic position as well. These advantages then make Indonesia deserves to become the world's maritime axis. Those advantages it will certainly be accompanied by many problems. It is proven by the large number of islands in the territory of Indonesia, which reaches 17,499 islands. This number consists of 13,446 islands that have names and only 6,000 islands that have residents.

Although for now it is still necessary to re-collect data because of the reduction in the number of islands caused by tides. In implementing authority in law enforcement in territorial waters, refer to Law Number 17 of 2008 or *Undang- Undang Nomor 17 tahun 2008* about sailing toward stakeholder agencies in integrated way, have authority to stop, inspect, arrest, bring, and deliver ships to authorized agencies to be prosecuted in further legal proceedings; and integrate security and safety information systems in Indonesian waters and Indonesian jurisdictional areas. Regarding this matter, the problems that arise are: the ideal concept of regulating the law enforcement's authority upon marine accidents in Indonesian waters and the implementation of law enforcement in the jurisdiction of Indonesia.

DISCUSSION

The ideal concept of regulating law enforcement's authority of marine accidents in Indonesian waters area. Article 25A of the 1945 Constitution of the Republic of Indonesia (UUD 1945) states that, "The Republic of Indonesia is an archipelago that characterized by an archipelago with an area whose boundaries and rights are determined by law." The formers UUD 1945 gave a special characteristic upon the concept of islands state, namely the archipelago. The addition of that clause can be interpreted that the concept of Indonesian archipelago is not only limited as in the Convention of the Law of Sea in 1982, but there is a derivation in the form of the distinctiveness of the archipelago.

The definition of islands comes from the Italian *archi-pelagus*, *archi* means important, and *pelagus* means sea. Therefore, it means an important sea in literal way. The constitutional foundation, that defined as the norm that tops the hierarchy of laws and regulations by Hans Kelsen. The arrangement of national policy, especially Indonesia's marine policy, in marine sector's development must depict partiality to the society. In addition, the more important thing is the realization of the national importance of Indonesia.

The public needs to understand the geopolitics, geostrategy, and geo-economics from leaders in managing and embodying national importance through government policies related to the development of the maritime sector since the reign of President Soekarno, to the current reign of President Joko Widodo (Jokowi). The idea of a world maritime axis was coined by Presidential candidate Jokowi in the third Presidential Candidate debate, on June 22nd, 2014. The maritime axis strengthens the fact that Indonesia is an archipelagic country where two-thirds of its territory is water, maritime "awareness" in the Indonesian is still very weak and marginalized.

It happened even though efforts to the development of the maritime sector have been initiated from the election time of President Jokowi. Therefore, a paradigm emerged that the national development carried out so far was still land-oriented and far from marine orientation. It has made some Indonesians feel new to maritime issues. Actually, the empowerment of the maritime sector from time to time has existed, even though the portion is very small and not comparable to the development on land. Recently, President Jokowi's administration has revived maritime-based national development.

It can be an instrument for Indonesia to have a more influential position and increase the role of the Indonesian Government in international relations. Becoming a world maritime axis can assist Indonesia becomes as a large, strong and prosperous maritime country, through Indonesia's identity as a maritime nation, security maritime, empowerment all maritime potential used for the gain nation's prosperity, Indonesia's economic equalisation through sea tolls, returning and implementing maritime diplomacy in Indonesia's foreign policy for the next five years.

The journey to achieve a world maritime axis country includes maritime development process and practice in various aspects of human life (both static and dynamic aspects), such as geography, demography and natural resources, law, ideology, politics, economy, social, culture, defence, and security. The international society already recognized Indonesia as an archipelagic state by signing of the United Nations Convention on the Law of the Sea (UNCLOS) in Montego Bay Jamaica on December 10th, 1982. As a continuation of UNCLOS, Indonesia ratified the convention with Law Number 17 of 1985 or *Undang-Undang (UU) Nomor 17 tahun 1985*. This convention was signed by 117 countries and applied effectively on November 16th, 1994. Consequently, the geographical area of the Unitary State of the Republic of Indonesia (NKRI) has increased.

The problem that must be addressed by Laws formers and stakeholders in anticipating various problems that might arise in the maritime domain currently is the absence of a comprehensive and integrative strategy to embody the synergy of cross-sector paradigms, especially in marine's security and safety sector. The conception of strategy must be actualized in order to synergize the cross-sector paradigm in marine's security and safety sector, as an anticipatory step to conduct the government's vision and mission in national maritime development, namely through coordination, cooperation and synergy in the implementation of sovereignty and marine law's enforcement in Indonesian waters and jurisdiction.

The steps that must be taken in order to synergize are as follows: First, improve the understanding and awareness of Indonesia's maritime geopolitics to all maritime law enforcer and security agencies. This strategy is purposed to provide awareness of Indonesia's maritime geopolitics and geostrategy, so that it can be used to strengthen the synergy of cross-sectoral paradigms. It is related to the national maritime policy that has been outlined in the 2005-2025 RPJPN and that elaborated in the National Medium-Term Development Plan or *Rencana Pembangunan Jangka Menengah Nasional* (RPJMN) (a plan prepared every five years) in 2015-2019, but has not been implemented optimally with various anticipations of problems in the maritime sector, strengthening commitment and understanding of the archipelago's insight, and national resilience.

According to Laws Number 17 of 2007 or *UU No.17 Tahun 2007* about RPJPN in 2005-2025, marine law's enforcement and security has not been implemented optimally because of several things, namely: (1) the absence of maritime boundary arrangement; (2) the existence of conflicts in the utilization of sea's space; (3) the absence of security and safety guarantees at sea; (4) the existence of regional autonomy causes absence understanding of marine resource management; (5) the limited ability of human resources in managing marine resources; and (6) the absence of support for marine research, science and technology.

The non-optimality of marine law's enforcement and security in Indonesia is caused by the paradigm of law enforcement and security that is still land-based, so that Indonesia's maritime territory is threatened, both from inside and outside due to the lack of protection and security in the country's maritime territory. Empowering *Bakamla* as a non-military civilian institution and revise policy for the multi-agency single function into a single agency multifunction that has law enforcement authority at sea, with the aim is to empower non-military civilian institutions.

2). Universal Implementation of Law Enforcement in Indonesia's Jurisdiction

The main basis for a state to claim jurisdiction is based on territorial and nationality ground. There are several jurisdiction principle in international law, namely the territorial jurisdiction principle, subjective territorial principle, objective territorial principle, active nationality principle, passive nationality principle, universal principle and protection principle. Imre Anthony Csabafi in his book entitled, "The Concept of State Jurisdiction in International Space Law" suggests an understanding of state jurisdiction, namely: "State jurisdiction in public international law means the right of a state to regulate or influence by legislative, executive or judicial measures upon human's rights, property or assets, behaviours or events that are not solely include in domestic problems".

There are three types of jurisdictions owned by a sovereign state according to O'Brien, first, the state's authority to make legal provisions against persons, objects, events and actions in its territorial area (Legislative jurisdiction or prescriptive jurisdiction). Second, the state's authority to enforce the enactment of its national low provisions (executive jurisdiction or enforcement juris-diction) and third, the state courts' authority to hear and give legal decisions (judicial jurisdiction). Hence, the state can make legal provisions or norms in its territory, to be obeyed and carried out by the society in its territory.

A state can also impose or apply its national law outside its territory, this usually applies to an international crime where the crime has been recognized as an international crime and every state is required to exterminate the crime. Last, the state has an authority to prosecute and provide law decisions, this is to ensure state's security and order from unlawful acts done by foreigner. (Anthony Csabafi, 1971).

There are several principles of jurisdiction that recognized in international law that can be utilized by states to claim that they have judicial jurisdiction, as far as criminal matters are concerned.

1) Territorial Jurisdiction Principle. According to this principle, every state has jurisdiction towards crimes that done within its territory. This principle is one of sovereignty forms owned by the state, with this principle a state has the authority to punish its citizens and also foreigner who commit crimes or violations within its territory, this principle is the main reason that is used as a basis for a state to take criminal law. This territorial principle has been modified into two models, namely the subjective territorial principle, where a state has legal authority on a person who does a crime that begins in its territory, even though the criminal act does not end in its country or the damage is not in its country or territory. The other model is the objective territorial principle, based on this principle a state has jurisdiction over a person who commits a crime, where the damage caused is in its territory, even though the criminal act is committed in another country.
2) Active Nationality Principle. According to this principle, a state has jurisdiction toward its people or citizens who done crimes abroad, because the perpetrators have nationality relationship with the concerned state.
3) Passive Nationality Principle. Based on this principle, a state gas jurisdiction toward its people who become victims of crime that done by foreigner in abroad.
4) Universal Principle. Based on this principle, every state has jurisdiction to prosecute perpetrators of international crimes that done anywhere regardless the nationality of the perpetrator or victim (Sefriani, 2014). The emergence rational of this principle is the assumption that the crimes committed are crimes for all mankind, and it is a common to erase these crimes, so that cooperation is needed from all countries. Hence, the demands made by a country against the perpetrator are on behalf of the entire international community.
5) Protection Principle. According to this principle, a state has jurisdiction over foreigner that committed a really serious crime which can threatened state's vital importance, secure, integrity, and sovereignty, and a state's economical importance. Crimes that include in protection are *spying, plots to overthrow the government, forging currency, immigration and economic violation*.

The characteristics of universal jurisdiction include: 1. Every has right to implement universal jurisdiction. The phrase "every state" refers only to states that feel responsible to actively participate in saving the international society from the dangers caused by serious crime, so they feel obliged to punish the perpetrators. This sense of responsibility must be proven by the absence of an intention to protect the perpetrator by providing a safe palce in its territory. 2. Every state that wants to implement universal jurisdiction does not need to consider who and what nationality the perpetrators and victims are and where the serious crime was committed (J.G Starke, 2014). In other words, it can be said that there is no need for connection point between the state, the perpetrators, victims and the place where the crime committed. The only consideration that required is whether the perpetrator is on its territory or not, because a state cannot implement universal jurisdiction if the perpetrator is not on its territory. It would be a violation of international law if a state forces the arrest a person who is on another state's territory. 3. Each state can only run its universal jurisdiction over perpetrators of serious crime or called as international crime.

CONCLUSIONS

Institutions that have authority to secure and enforce the marine law can cause potential friction between one institution to another institution. The concept of marine security and law enforcement institutions will be productive and effective-efficient if associated with Pancasila. First, the steps to embody the marine's security and law enforcement institution based on the Pancasila law ideals are to increase the understanding and the implementation of Indonesia's maritime geopolitics to all institutions of marine's security and law enforcement; and establish non-military civilian institutions that have the authority on marine's law enforcement. Second, the establishment of marine's security and law enforcement institutions based on the ideals of Pancasila law is carried out to realize the paradigm of marine's security and law enforcement, it is necessary to: 1). structuring awareness and understanding of the archipelago's insight policies to all marine's security and law enforcement institutions; 2). structuring a comprehensive, integral and holistic national maritime policy; 3). structuring national maritime security stability to support national development; 4). establishing non-military civilian institutions and revising the multi-agency single function policy into a single agency with multiple functions that have the authority to marine law enforcement; 5). optimizing *Bakamla* as a national maritime security information center for security stability.

Indonesia has a law foundation to utilize its universal jurisdiction, but Indonesian warships cannot always patrol in vulnerable areas by coordinating with other countries to provide maritime protection and security in each territory, synergizing related agencies in maintaining maritime security. Additionally, Indonesia's foreign territorial waters already cooperated with the Philippines and Malaysia in coordinated patrols in their territories or jurisdictions.

RECOMMENDATION

The implementation of universal jurisdiction principle regarding marine's law enforcement in Indonesia is contained in Article 4 of the Criminal Code or *Pasal 4 KUHP*. In order to be able to implement universal jurisdiction, the crime happens outside the jurisdiction of any country, the authority to arrest only given to warships or public vessels. Hence, the warship or public ship must have the authority to prosecute which is regulated in its national law.

FURTHER STUDY

While writing this essay, the researcher realized there are still many shortcomings in language, writing, and presentation style, which is not surprising given their own limited experience and expertise. To guarantee the work is perfect, the researcher therefore expects insightful criticism and suggestions from a variety of sources.

REFERENCES

Pustaka berupa buku:

Bagir Manan dan Susi Dwi Harijanti, 2015. Memahami Konstitusi: Makna Dan Aktualisasi (Jakarta: PT. Rajagrafindo Persada,

Dhiana Puspitawati, 2023. Hukum Laut Internasional (Jakarta: Kencana Prenada Media Group,

Hans Kelsen,2006. General Theory of Law and State (New Jersey: Transaction Publishers, 2006),

Harun Umar, 2020. Politik Kebijakan Poros Maritim (Jakarta: Lembaga Penerbitan Universitas Nasional (LPU-UNAS).

Indien Winarwati, 2016. Konsep Negara Kepulauan: Prespektif Hukum Laut Dan Penetapan Garis Batas Negara (Malang: Setara Press,

Nawawi, Hadari, 2012. Metode Penelitian Bidang Sosial. Gadjah Mada University Press, Yogyakarta,

Sefriani,2010. Hukum Internasional, Jakarta: Rajawali Pers.

Soekamto, Soerjono. 1984 Pengantar Penelitian Hukum, UI Press, Jakarta,

Wayan Parthiana, 1990. Pengantar Hukum Internasional, (Bandung: Mandar Maju,)

Pustaka berupa jurnal ilmiah dengan DOI:

Ida Kurnia, "Peraturan Perundang-Undangan Nasional Terkait Dengan Penetapan Indonesia Sebagai Negara Kepulauan," Jurnal Hukum Prioris 2, no. 4 (2010): 256–262

Mexsasai Indra, "Urgensi Pengelolaan Wilayah Perbatasan Dalam Kaitannya Dengan Kedaulatan Negara Kesatuan Republik Indonesia," Jurnal Selat 1, no. 1 (2013):

Muhar Junef, "Implementasi Poros Maritim Dalam Prespektif Kebijakan," Jurnal Penelitian Hukum De Jure 19, no. 3 (2019): 303–304

Muhar Junef, "Penegakan Hukum Dalam Rangka Penataan Ruang Guna Mewujudkan Pembangunan Berkelanjutan," Jurnal Penelitian Hukum De Jure 17, no. 4 (2017): 379–391.

Puteri Puslatpur et.al, "Kedudukan Dan Fungsi Komponen Cadangan Dalam Memperkuat Sistem Pertahanan Negara Ditinjau Dari Uu Nomor 3 Tahun 2002 Tentang Pertahanan Negara," Jurnal Lex Privatum XI, no. 5 (2023): 1

Safril Hidayat dan Ridwan, "Kebijakan Poros Maritim Dan Keamanan Nasional Indonesia: Tantangan Dan Harapan," Jurnal Pertahanan dan Bela Negara 7, no. 3 (2017): 108–121.

Tahegga Primananda Alfath et.al, "Derivasi Konsep Negara Kepulauan Dalam Undang-Undang Dasar NegaraRepublik Indonesia Tahun 1945," Jurnal Bina Hukum Lingkungan 4, no. 2 (2020): 218.

Yanyan M Yani dan Ian Montratama, "Indonesia Sebagai Poros Maritim Dunia:

Suatu Tinjauan Geopolitik," Jurnal Pertahanan 5, no. 2 (2015):

Pustaka berupa kamus/ensiklopedia – online :

https://eilmu.com/Sejarah dan Perkembangan Hukum Laut Indonesia - eILMU