

## Juridical Review Of Authority Overlapping Issues In Law Enforcement In Marine And Coastal Area

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### Abstract

*Indonesia is an archipelagic country. It has the consequence that there is a need for a security system for marine and coastal areas through law enforcement policies in marine and coastal areas that are truly balanced and evenly distributed. However, in its development, law enforcement in marine and coastal areas often has problems, one of which is each related agency's overlapping authority. This writing aims to analyze the juridical review of overlapping authority in law enforcement in marine and coastal areas. The method used in this paper is sociological juridical. From the research results, it was found that the implementation of law enforcement in marine and coastal areas is marked by the overlapping authority between 14 (fourteen) ministries / state institutions mandated by 18 (eighteen) laws as law enforcement officers in marine areas. And the beach. This overlap of authority is indicated by the existence of equal powers to carry out surveillance, chasing, and investigations in the marine area and Indonesia's jurisdiction. Based on the description above, the description of the fragmentation dimension is sufficient to represent a substantial reason for law enforcement authorities' miscoordination in marine and coastal areas. The real form due to the fragmentation dimension can be seen in the failure of communication established by law enforcers in marine and coastal areas. As a result of mentioned problems above, the budget is a waste that results in losses to state finances.*

**Keywords:** *Authority, Marine, Overlapping, Beach, Law Enforcement*

### A. Introduction

As an archipelagic country, the sea in Indonesia has a vital function for the Republic of Indonesia, namely the sea as a medium for unifying the nation, media for transportation, media for resources, media for defense and security, and media for diplomacy. So, the nation's life and the state of the sea also have an important meaning, namely as a sovereign territory. Countries, the maritime industry space, Sea Lane on Communication (SLOC), and as an ecosystem.<sup>1</sup>

Based on the understanding of the sea's function and the importance of the Indonesian sea, it can be understood that various interests may synergize with each other or attract mutual interests in the sea. This condition will directly or indirectly affect law enforcement and security efforts at sea. Many sea interests create problems in handling crimes at sea, such as smuggling, transnational crime, piracy, foreign

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1. [media.neliti.com](http://media.neliti.com), *Pengelolaan Wilayah Pesisir dan Lautan*, Retrieved on 23 January 2020.

armedfishers, destruction of natural resources, natural resources theft, and shipping safety.<sup>2</sup> So it is crucial for law enforcement efforts against crimes in coastal and marine areas. In the effort of law enforcement and security at sea, if it is viewed from the statutory regulations, 17 (seventeen) national laws and regulations have been regulated. Likewise, if it is viewed from the institution, the number of maritime institutions or agencies has 13 (thirteen) law enforcement agencies at sea. Of these, 6 (six) agencies have a sea patrol task force, and 7 (seven) other law enforcement agencies do not have a marine patrol task force. Law enforcement agencies with a marine patrol task force are: TNI-AL, POLRI / Directorate of Water Police, Ministry of Transportation-Director General of Sea Transportation, Ministry of Marine Affairs and Fisheries – Director General PSDKP, Ministry of Finance-Director General Customs and Excise, and BAKAMLA. The six law enforcement agencies carry out patrols related to security at sea in a sectoral manner following the authorities they have under their respective laws and regulations.

Meanwhile, law enforcement agencies that do not have a sea patrol task force are: the Ministry of Tourism, the Ministry of Health, the Ministry of Environment, the Ministry of Forestry, the Ministry of Energy and Mineral Resources, the National Narcotics Agency, and the Regional Government. In many laws that regulate law enforcement at sea for many institutions, it has the potential to create overlapping powers and different perceptions of authority that tend to lead to institutional egos. This difference is very likely to occur in synchronization in terms of coordination of performance and authority, which ultimately becomes inefficient and effective in guarding and enforcing laws at sea and coast.<sup>3</sup>

As a maritime country, Indonesia does not yet have an integrated maritime law enforcement agency capable of enforcing good laws, such as in Japan, China, Australia and the United States which already have one-stop agency, namely the Coast Guard or the Maritime Coast. As a result, if there is a violation of the law in our sea, the handling is often not complete. Recognizing the importance of the sea as a basic capital for development that must be maintained and protected, security at sea will be an integral part of efforts to defend its sovereignty at sea. It is the government's right as the personification of the state to exercise control and management of Indonesian waters (a right to the government) to realize efforts to enforce sovereignty and law at sea involving all components of the nation, several leaders of institutions and ministries who have the authority to carry out law enforcement functions at sea, namely the Minister of Defense / Commander, Minister of Transportation, Minister of Finance, Minister of Justice and the Attorney General to form an agency named Maritime Security Coordination Board (BAKORKAMLA). The law enforcement institution at sea owned by Indonesia is only limited to a coordinating body, namely BAKORKAMLA (Maritime Security Coordinating Board). BAKORKAMLA was formed through Presidential Regulation No. 81/2005, which is a derivative of Law No. 6/1996 concerning Indonesian Waters, although the law does not clearly specify BAKORKAMLA. This agency is chaired by the Minister of Defense / Commander of the Armed Forces with a membership composition consisting of: Minister of Transportation, Minister of Finance, Minister of Justice, Attorney General, Chief of Police, and Chief of Staff of the Indonesian Navy. The main task of BAKORKAMLA is to coordinate all operational security activities at sea, solve all problems of lawlessness at sea, carry out cooperation with neighboring countries with the aim that the implementation of security operations at sea is always guaranteed optimal power and results.<sup>4</sup>

The presence of BAKORKAMLA is considered to have several weaknesses, due to the fact that each institution in it, among others; TNI (Navy), Police (Water Police), Customs and Excise, Marine and Coast Guard Unit (Directorate General of Marine Transportation), Ministry of Marine Affairs and Fisheries and

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2. Budi Winarno, *Op. Cit.*

3. law.ui.ac.id, *Penegakan Hukum di Wilayah Laut Indonesia*, Retrieved on 14 February 2020.

4. dephub.go.id, *Organisasi Indonesian Sea and Coast Guard Siap Dibentuk*, Retrieved on 11 March 2020.

Immigration often go their separate ways according to their authority, confusing ship crews and shipping companies who are active at sea. In addition, BAKORKAMLA is ineffective because the basis for its formation is less strong, there is no official budget support, is militaristic in nature, there is MPR Decree No. VI / MPR / 2000 concerning the Separation of the Indonesian National Army and the Indonesian National Police, which implies that POLRI does not send its elements to BAKORKAMLA.

Furthermore, with the enactment of Law No. 17 of 2008 concerning Shipping, the government is mandated to form the Indonesia Sea and Coast Guard Article 281 of Law No. 17 of 2008 concerning Shipping, stipulates that: "Further provisions regarding the formation and organization and work procedures sea and coast guard as referred to in Article 276 is regulated by a Government Regulation ". and Article 352 which states that: "Sea and Coast Guard must have been established no later than 3 (three) years since this law comes into force. However, until now, the Draft Government Regulation on Guard and Law Enforcement at Sea and Coast has not been authorized.<sup>5</sup>

In subsequent developments, the government tried to optimize law enforcement at sea by perfecting BAKORKAMLA to become BAKAMLA. The replacement was carried out because BAKORKAMLA was deemed no longer able to adjust environmental needs over time. The legal basis for the formation of BAKAMLA is Law No. 32 of 2014 concerning Maritime Affairs and Presidential Regulation No. 178 of 2014 concerning BAKAMLA. BAKAMLA is an agency that has the duty to guard security and safety in Indonesian territorial waters, then to create a separate existence in international relations, BAKAMLA uses the name Indonesia Coast Guard (ICG), so BAKAMLA is mandated as a Coast Guard. Whereas the Coast Guard was previously carried by the Sea and Coast Guard Unit (KPLP).<sup>6</sup>

The refinement of BAKORKAMLA to become BAKAMLA is a completely new organization; according to the needs of the Indonesian archipelago; has one command with multiple functions of maritime security, law enforcement of marine and fishery resources, shipping, customs, construction, SAR, and so on; and the working area covers all territorial waters, islands, and inland waters. The organizational structure of BAKAMLA is an agency or institution that is domiciled and directly responsible to the President and finances BAKAMLA operations through ABPN funding. In Article 4 of Presidential Regulation No. 178/2014 concerning BAKAMLA, it is determined that the authority of BAKAMLA includes conducting hot pursuit; stop, inspect, arrest, carry, and hand over the ship to the relevant authorities for the implementation of further legal proceedings; and integrating security and safety information systems in Indonesian territorial waters and Indonesian jurisdiction. This authority is exercised commando by BAKAMLA.<sup>7</sup>

The change from BAKORKAMLA to BAKAMLA is a form of Indonesia's seriousness in realizing a world maritime axis and guaranteed marine safety and security. The existence of BAKAMLA is in command, which can direct the 12 stakeholder agencies to achieve common goals. Besides, BAKAMLA acts as a budget regulator for the 12 stakeholder agencies, so it can be ensured that the existence of BAKAMLA can save the state budget up to 50%. Not only that, but BAKAMLA has also implemented an Early Warning System (SPD), which is urgently needed by the Indonesian State, which geographically and climatologically has the potential to cause (natural) disasters. The Early Warning System (SPD) application resulted in BAKAMLA being named the Coast Guard.

One of the agencies that has the same duties as BAKAMLA is the KPLP. KPLP is internationally known as the only law enforcer in terms of maintaining security and safety in Indonesian waters, especially

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5. *Loc.Cit.*

6. *Loc.Cit.*

7. *Loc.Cit.*

in international shipping. The legal basis for this KPLP is Law No. 17 of 2008 concerning Shipping. Before establishing Law No. 17 of 2008 concerning Shipping, KPLP had existed since 1942 and was internationally recognized as the only institution in Indonesia that served as law enforcers to maintain security and safety in Indonesian waters, especially in the cruise field. KPLP is internationally known as the Indonesia Sea and Coast Guard (ISCG).<sup>8</sup>

The most prominent thing between BAKAMLA and KPLP is that BAKAMLA is not a law enforcer because BAKAMLA is not mandated as an investigator by Law No. 32 of 2014 concerning Maritime Affairs. It is different from the KPLP, which is mandated by Law No. 17 of 2008 concerning sailing as an investigator. The formation of the BAKAMLA has resulted in Indonesia having two agencies that are tasked with guarding security and safety in Indonesian waters. With the presence of these two agencies that have the same task, it does not rule out the possibility of overlapping authority, which will also result in less than optimal benefits resulting from the formation of the two agencies. Until now, Indonesia does not yet have an institution that has a dimensional or comprehensive function covering law enforcement, security and safety functions at sea, whose duties consist of aspects of early warning information system services, law enforcement at sea, customs, shipping security and safety, control of living and non-living natural resources in the marine environment, search and rescue at sea and state defense in a state of war.<sup>9</sup>

So far, the existing institutions carry out these functions, but they cannot run optimally because they are not integrated in an institution. Practice so far shows that law enforcement, security, and safety at sea carried out by patrol units from various agencies / ministries have not been able to create maritime security in Indonesian waters, it will be difficult to achieve because each related agency / ministry has a strategy / different policies, equipment (infrastructure), human resources, not in one integrated system, and in a unit of command and control. Therefore, there is often overlapping authority and friction between agencies and even sectoral egos among these agencies or institutions in its implementation. So it is clear that according to the author, there are various problems in the law enforcement system in marine and coastal areas, which include:

1. There are many institutions authorized to maintain and enforce laws on the sea and coast. At least 13 institutions / agencies are authorized to guard and enforce laws on the sea and coast. This condition certainly creates confusion for shipping companies whose ships are frequently inspected by many agencies.
2. Epistemologically, there are overlapping regulations that give many institutions / agencies' authority to maintain and enforce laws on the sea and coast.
3. Axiologically, a single institution / agency or at least one command recognized and capable of coordinating guarding and law enforcement at sea and coast is needed not to confuse shipping companies.
4. Theoretically, there has been a shift in the institutional format for guarding and enforcing the law at sea and coast, after enacting Law No. 32 of 2014 concerning Marine, from a single agency concept to a multiagency. Besides, theoretically, the authority of investigators, including civil servant investigators, is given the authority related to law enforcement in the environment, which is their duties and functions. However, civil servant investigators within the ministry of transportation, in this case, the Sea and Coast Guard Unit (KPLP) are still given

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8. Eko Ismadi, *Bakamla Dalam Catatan Sejarah dan Nasionalisme Indonesia*, Retrieved from [jurnalpatrolinews.com](http://jurnalpatrolinews.com), on 12 January 2020.

9. *Loc.Cit.*

authority by Law No. 17 of 2008 concerning Shipping that is not related to law enforcement.

5. Juridically, there are overlapping regulations that authorize many institutions / agencies to guard and enforce laws at sea and coast. Even between Law No. 17 of 2008 concerning Shipping and Law No. 32 of 2014 concerning Marine, there is a horizontal conflict of norms related to the institution that can maintain and enforce the law in the ocean area. Sociologically, shipping companies have become restless and confused due to the large number of institutions authorized to guard and enforce laws on the sea and coast.

Based on the various kinds of problems that have been briefly described above, it is necessary to discuss the related “Judicial Review of the Issue of Overlapping Authority in Law Enforcement in Marine and Coastal Areas.”

## **B. Research Problem**

The issues that will be discussed in this dissertation are related to the Overlapping Issue of Authority in Law Enforcement in Marine and Coastal Areas.

## **C. Research Methods**

The type of research in this journal is sociological juridical. Sociology Juridical Research is a research method that seeks to describe and interpret objects following what they are to systematically describe the facts and characteristics of the research object under study accurately so that it can be further analyzed based on the data or material obtained.<sup>10</sup>

## **D. Implementation of Law Enforcement in Sea and Coast Areas at this time**

What is interesting here is that the fourteen institutions regulated in at least 18 (eighteen) laws above have the potential to generate legal problems, especially overlapping powers. It is because several institutions have the same authority in the field, for example, a sudden chase by BAKAMLA, TNI-AL, and the Coastal Guard. In ideal conditions, the three institutions should be able to jointly carry out patrols so that it is possible to conduct joint chases. Or in another condition BAKAMLA as the coordinator of all of the above institutions can arrange patrol schedules so that all institutions can carry out their duties according to their authority.

However, the expected ideal coordination has not yet been appropriately realized because managing and coordinating various institutions under the auspices of instructions is not an easy matter. This condition is the result of the shift in the concept of multi-agency single task to single agency multi task. The authority for law enforcement owned by the 14 institutions above is being transferred / streamlined to be managed by one agency or institution that oversees the overall monitoring, control, surveillance, and enforcement.

This agency is a single agency with a comprehensive dimensional function covering law enforcement, security, and safety functions at sea, whose duties consist of aspects of early warning information system services, law enforcement at sea, customs, security, and shipping safety, control of living and non-living natural resources in the marine environment, search and rescue at sea, and national defense in a state of war.<sup>11</sup> In other words, this institution will be the only agency authorized for law enforcement in the sea and coastal areas.

The implementation of a single agency multi task is believed to be able to overcome the problem

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10. Bambang Sunggono, 2006. *Metodologi Penelitian Hukum*, Jakarta: PT Grafindo Persada, p. 116.

11. Eka Martiana Wulansari, *Op.Cit*, p.4.

of overlapping authority by several related institutions. It is evidenced by the rampant cases of overlapping law enforcement authority at sea and coast, which cause physical and non-physical losses to other parties, for example, entrepreneurs. Reporting from Carmelita Hartono as the Indonesia National Shipowners Association (INSA), sailing time is unclear because different agencies stop ships to inspect ships. Such conditions delay the delivery of trading commodities, considering that it will increase transportation costs. This condition was also conveyed by Deputy Chairman III of INSA Darmansyah Tanamas, who gave a real picture of coal transportation. A coal barge with a carrying capacity of 300,000 tons with a cargo value of Rp. 1 billion - Rp. 1.5 billion requires transportation costs of Rp. 20,000,000 per day. It can be imagined that if each ship was stopped for inspection, it would add to the operational costs.<sup>12</sup> This condition also hampers the delivery and processing of commodities. Indirectly, it can be said that overlapping rules of law enforcement at sea and coast hamper the economy.

Besides, the issue of overlapping authority also occurs in the Exclusive Economic Zone. The EEZ is regulated in Article 14 paragraph (1) of Law No. 5 of 1983 concerning the Exclusive Economic Zone. The EEZ area is the responsibility of the Indonesian National Navy (TNI-AL). In addition, Article 224 UNCLOS 1982 indirectly stipulates that the most competent authority at sea is the armed forces. On that basis, the Indonesian Navy is responsible for all criminal acts and violations of law in Indonesia's territorial waters. However, at the implementation level, there was a conflict of authority in the EEZ region between the TNI-AL and the Directorate General of Customs and Excise when exercising the authority to carry out legal proceedings against ships suspected of smuggling. Conflict also occurred between the Indonesian Navy and the Ministry of Maritime Affairs and Fisheries, which patrolled the sea for inspection and investigation in Indonesia's EEZ when handling fishing boats' legal processes that commit violations at sea. Conflicts occur due to unclear arrangements for the assignment area of the Directorate General of Customs and Excise and the Ministry of Maritime Affairs and Fisheries, so it is not uncommon for the TNI-AL to contact other agencies in handling cases of violations in Indonesian waters, especially in the EEZ.<sup>13</sup> This example is one of the regulatory constraints for maritime security development because the existing regulations provide several strengths from authorized and responsible stakeholders in marine waters.

Basically, EEZ based on the above case example, EEZ is under the Indonesian Navy's auspices because the TNI has the authority to protect and secure the waters of the Indonesian National jurisdiction as regulated in Article 7 paragraph (1) of Law no. 34 of 2004 concerning the Indonesian National Army (Law No.34 of 2004) which reads: "The main task of the TNI is to uphold state sovereignty, maintain the territorial integrity of the Unitary State of the Republic of Indonesia based on Pancasila and the 1945 Constitution of the Republic of Indonesia, and protect the whole nation and the whole blood of Indonesia from threats and disturbances to the integrity of the nation and state. "

In order to protect sovereignty over jurisdiction of the Republic of Indonesia, the military shall guard border areas (Article 7 paragraph (2) number 4 of Law Number 34 of 2004) as well as assist the government in securing aviation and shipping against hijacking, piracy and smuggling (Article 7 paragraph (2) number 14 Law Number 34 of 2004). It is the duty of Indonesian Navy to uphold the law and maintain security over marine jurisdiction in accordance with provisions of national law and ratified international law (Article 9 letter b of Law Number 34 of 2004).

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12. Sri Mas Sari, *Pelayaran Klaim Merugi Akibat Tumpang Tindih Hukum di Laut*, 13 May 2019, retrieved from <https://ekonomi.bisnis.com/read/20190513/98/921770/pelayaran-klaim-merugi-akibat-tumpang-tindih-hukum-di-laut> on 22 June 2020 at 13.00 GMT+8.

13. Sistem Penegakan Hukum dalam RUU Kelautan, <http://jurnalmaritim.com/2014/16/2091/sistem-penegakanhukum-dalam-ruu-kelautan>, Retrieved on tanggal 23 June 2020.

Elucidation in Article 9 letter (b) mentions as follow: to enforce the law and to maintain security imply that all forms of activity related to law enforcement at the sea is in accordance with the authority of Indonesian Navy (constabulary function), which applies universally, and is in accordance with provision of applicable laws to address threat of violence, threat of navigation, and violation of the law within maritime jurisdiction. The scope of law enforcement performed by the Indonesian Navy is limited only to pursue, arrest, inquire and investigate cases which then subsequently submitted to the Prosecutor's Office; thus the Indonesian Navy does not hold trial.<sup>14</sup>

In addition, based on Article 14 paragraph (1) of Law Number 5 of 1983, the Indonesian Navy has the authority to investigate violation of marine rules within Exclusive Economic Zone (EEZ). Article 14 paragraph (1) states that, "Law enforcement apparatus in the field of investigation on Indonesian Exclusive Economic Zone (EEZ) is Navy officer appointed by the Commander of the Armed Forces of the Republic of Indonesia".

The concept of EEZ represents maritime jurisdiction, i.e. area beyond and adjacent to the territorial sea of Indonesia as stipulated by law. It includes the seabed, the land below and the water above it with an outer limit of 200 nautical miles territorial sea measured from the baseline of Indonesian territory (Article 2 of Law Number 5 of 1983). Within the sea of EEZ, it applies:<sup>15</sup>

- a. Sovereign rights to explore, exploit, manage and conserve living and non-living natural resources from the seabed, the land beneath and the water above it as well as other activities for economic purpose through exploration and exploitation of the zone, such as building hydro, current, and wind power plants;
- b. Jurisdiction related to the creation and utilization of artificial island, installation of marine facilities and structures, marine scientific research, as well as nature protection and preservation; and
- c. Other rights and obligations under Convention on the Law of the Sea.

The Indonesian Navy is considered capable of performing tasks to prevent marine safety violation and to enforce laws within EEZ as it is well-equipped in terms of ships and military weapons possession. Moreover based on description above, all forms of violation that occur within EEZ jurisdiction is basically under the authority of Indonesian Navy.

Authority overlapping in terms of marine and coastal law enforcement also occurs between Indonesia Coast Guard (Bakamla) and Sea and Coast Guard Unit (KPLP). Indonesia Coast Guard is a body mandated by Law Number 32 of 2014 on Maritime Affairs under the command of the Coordinating Minister for Political, Legal, and Security Affairs. While the Coast Guard Unit, under the command of the Minister of Transportation, is mandated by Law Number 17 of 2008 on Shipping. These two institutions are predicted to be combined into a single agency called the new Indonesia Coastal Guard to realize single multi-tasked agency. This issue is interesting to discuss given pro-contra arguments regarding which institution is deemed worthy of bearing the name coastal guard.

Article 62 of Law Number 32 of 2014 mentions that the functions of Indonesia Coast Guard (Bakamla) are to:

- a) formulate national policy in the field of security and safety within Indonesian territorial waters and maritime jurisdiction;

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14. See Elucidation of Article 9 Laws Number 34/ 2004.

15. See Article 4 paragraph (1) Laws Number 5/ 1983.

- b) implement early warning system for security and safety within Indonesian territorial waters and maritime jurisdiction;
- c) carry out protection, supervision, prevention and prosecution toward legal violations within Indonesian territorial waters and maritime jurisdiction;
- d) synergize and monitor the implementation of marine patrols by related agencies;
- e) provide technical and operational support to related agencies;
- f) provide search and rescue assistance within Indonesian territorial waters and maritime jurisdiction; and
- g) carry out other tasks related to national defence system, which in the Universal Defence System is referred as Reserve Components (Maritime Militia).

More explicitly, Article 63 paragraph (1) regulates that; in carrying out tasks and functions referred to in Article 61 and Article 62, Indonesia Coast Guard (Bakamla) is authorized to conduct instant chasing, stopping, inspection, arrest, carrying, and handing over the ship to relevant authorities for legal proceedings; as well as integrating security and safety information systems within Indonesian territorial waters and maritime jurisdiction. (2) The authority as mentioned in paragraph (1) is implemented in a solid and integrated manner under single command and control unit. Besides, in accordance to Presidential Regulation Number 178 of 2014 Article 28, Indonesia Coast Guard has established Legal Enforcement Unit representing investigator of related agencies to handle ship chasing or on board patrol. However, problem occurs as Bakamla investigators are not allowed to arrest offender even though investigators from each related agency are ready in Bakamla patrol boats.<sup>16</sup>

In accordance to Marine Law Number 32 of 2014 on Maritime Affairs, Indonesia Coast Guard may carry out prosecution and arrest at the sea. Having such authority, this institution is considered multi-functional and multi-tasking, rather than sectorial. Besides, it has vast working area which covers Indonesian territorial waters and maritime jurisdiction (from the inland sea to the continental shelf).

Meanwhile, referring to Article 277 paragraph (1) of Law Number 17 of 2008, the tasks of Sea and Coast Guard Unit (KPLP) are to:

- a) supervise shipping safety and security;
- b) Supervise, prevent and overcome pollution at the sea;
- c) Supervise and control shipping activities and traffic;
- d) Supervise and control salvage activities, underwater work, exploration and exploitation of marine resources;
- e) Guard Sailing-Navigation Supporting Facilities; and
- f) Support the implementation of life search and rescue activities at the sea.

Based on description above, there are limitations to the scope of Sea and Coast Guard Unit (KPLP) security object. It is limited only to shipping traffic, water pollution, salvage activity, underwater works, exploration and exploitation of marine resources, navigation aids, as well as search and rescue. However, in order to carry out its functions, KPLP may:

- a) formulate and stipulate general policies for maritime law enforcement operations;
- b) formulate policies and standard procedures for law enforcement operations at the sea in an

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16. Surya Wiranto, *Siapa yang Lebih Tepat menjadi Coast Guard Indonesia?*, November 19th 2019, <http://samudranesia.id/siapa-yang-lebih-tepat-menjadi-coast-guard-indonesia/> Accessed on June 23rd 2020.



- integrated manner;
- c) guard shipping, securing public and government activities in Indonesian waters, as well as prevent and prosecute legal violations; and
- d) Provide integrated administrative technical support in the field of maritime law enforcement.

Furthermore, Regulation of the Minister of Transportation Number KM 60 of 2010 Article 346 mentions that, “The Directorate of Sea and Coast Guard has the task of formulating and implementing policies, standards, norms, guidelines, criteria and procedures, as well as technical guidance and evaluation; besides reporting patrol, supervision on Civil Servant Investigators (PPNS), orderly shipping, disaster mitigation, underwater work, and sea guard infrastructure.”

These tasks are considered to be far different from those regulated in Article 277 of Law Number 17 of 2008 on Shipping. At present, Sea and Coast Guard Unit (KPLP) is a directorate operates under the Ministry of Transportation. Therefore, KPLP cannot be considered as law enforcer as mandated by Law Number 17 of 2008. Besides, it is inappropriate to refer to Law Number 17 of 2008 on Shipping as legal basis for KPLP to operate.<sup>17</sup>

In order to examine authority of the two institutions, it is necessary to settle points of comparison, which include: purpose and intent of formation, legal basis, main duties, authority, ships and infrastructure, as well as number of personnel.

#### **E. Juridical Review on the Issue of Overlapping Authority in Marine and Coastal Law Enforcement**

As it is analysed using Chamblish and Seidman’s Theory, both political and cultural aspects are important to strengthen coordination and create harmonious relationship among government agencies since these institutions are products of law and regulation. In this case, the aspects refer to institutional vertical (internal) and horizontal (external) coordination. As we pay attention to this issue, the main challenge in marine and coastal law enforcement lies in lack of coordination and synchronization of authority among related institutions. Had the authorities and communication been well-synchronized, Bakorkamla would not need to be changed to Bakamla. Bakorkamla should have been designated as the main institution in charge of coordinating other institutions and be given authority to enforce law in marine and coastal areas.

Institutional ego is the main reason of why authority overlaps. Due to Under Operational Coordination (Koordinasi Bawah Kendali Operasi/ BKO), each unit complies only with the direction of its higher institution.<sup>18</sup> In addition, there are also differences in perceptions of authority that lead to lack of coordination and ineffective efforts to maintain sea security.<sup>19</sup> In fact, the former Coordinating Minister for Political, Legal and Security Affairs Luhut Binsar Panjaitan agreed on this issue a year after the formation of Indonesia Coast Guard (Bakamla).

Furthermore, incoordination between these institutions effects on ineffective budget absorption for maritime law enforcement. Such conditions are practically detrimental to state finances considering that every law enforcement agency obtains its budget sources from the State Revenue and Expenditure Budget (Anggaran Pendapatan dan Belanja Negara / APBN). Specifically, these conditions has resulted in:<sup>20</sup>

17. Soleman B. Ponto, *Penjaga Laut dan Pantai (LPL), Kesatuan Penjaga Laut dan Pantai (KPLP) Serta Badan Keamanan Laut (Bakamla)*, [https://www.emaritim.com/2018/01/ketika-indonesia-harus-memilih-antara\\_20.html](https://www.emaritim.com/2018/01/ketika-indonesia-harus-memilih-antara_20.html). Accessed on January 18th

18. Bambang Usadi, *Sistem Penegakan Hukm dalam RUU Kelautan*, *Jurnal Maritim*, Accessed from <http://jurnalmaritim.com/2014/09/sistem-penegakan-hukum-dalam-ruu-kelautan>.

19. Eka Martiana Wulansari, *Op.Cit.*, page 3.

20. *Ibid*, page 4.

- a. Lack of credibility within the international community because many countries have threatened to use national warships to escort their merchant ships due to inability of our coast guard to maintain security and safety within jurisdiction.
- b. Financial losses of around 30 to 40 trillion rupiah per year due to illegal fishing, rampant smuggling, and marine pollution.
- c. Increased marine insurance due to Indonesian waters being declared as unsafe marine area.
- d. Inefficient state budget due to high spending to purchase patrol boats and to establish a “Multi Agency Single Task” law enforcement operating system.
- e. Escalate number of violations and crimes at sea due to overlapping law enforcement efforts.

Meanwhile, implementation of public policy requires not only effective administrative bodies, which are responsible for implementing programs and creating adherence to the target group, but also demands solid networks of all socio-economic and political power to influence the behaviour of all parties directly or indirectly involved.<sup>21</sup>

Implementation stage itself refers to the process of acquiring additional resources to calculate future goals. Policy implementation requires at least two consecutive actions. First is formulating steps to be taken, and second is implementing the plan. The essence of policy implementation is the action, in this case is law enforcement by involving institutions. These actions, at certain point, transform decisions into operational patterns. As it continues, this effort results in changes, whether minor or major toward prior-agreed decisions.<sup>22</sup> Therefore, policy implementation is basically influenced by external factors, such as behaviour of those who runs the policy, as well as other socio-economic and political factors that finally might affect the outcome.<sup>23</sup>

Furthermore, bureaucracy plays an important role in the success of policy implementation. An effective bureaucracy shall meet characteristics as follow: 1) Commit to mutually agreed on socio-political values (public defined societal values) and public purpose; 2) Implement socio-political values based on ethics in public management arrangements (provide an ethical basic for public management); 3) Exercise socio-political values; 4) Put emphasis on public policy in carrying out the mandate of government; 5) Involve in public services; and 6) Operate in public interest.<sup>24</sup>

Another factor which hinders implementation of policy is fractal dimension. Fragmented bureaucratic structure increases the chance of communication failure and disrupted instruction.

Fragmented bureaucracy restricts the ability of officials to enforce jurisdiction, besides it has caused improvidence toward limited resources. Thus, for the implementation of complex policies to be successful, it requires full cooperation. Furthermore, fragmented organizations hinder coordination needed to implement a complex policy. It also creates chaos and confusion which leads to deviation from goal values and original purpose that had been previously set.<sup>25</sup>

## A. Conclusion

1. The implementation of law enforcement in marine and coastal areas is marked by overlapping

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21. Mazmanian and Sabatier in M. Fahturrahman, Faktor Birokrasi dalam Keberhasilan Implementasi Kebijakan Publik, *Jurnal TARBAWI*, Vol.2, Number 2, July-December 2016, page 18.

22. *Ibid.*

23. *Ibid*, page 19.

24. Tasmin in *ibid*, page 20.

25. *Ibid.*, page 21.

authority among 14 (fourteen) ministries / state institutions mandated by 18 (eighteen) laws and regulations as bodies to secure marine and coastal areas. Overlapping is indicated by the existence of multi-management to carry out supervision, chasing and investigation toward lawbreaker within Indonesian territorial waters and maritime jurisdiction. This is especially experienced by the Indonesian Navy based on Article 14 paragraph (1) of Law Number 5 of 1983 on EEZ, Article 9 of Law Number 34 of 2004 on Indonesian Army, and Article 10 of Law Number 3 of 2002 on National Defence. In addition, the establishment of Sea and Coast Guard Unit (KPLP) as regulated in Article 276-Article 278 of Law Number 17 of 2008 on Shipping overlaps the authority of Indonesian Navy.

2. Based on the above description, fractal dimension is sufficient to represent substantial reason behind lack of coordination and failure in communication among law enforcement authorities to secure Indonesian territorial waters and maritime jurisdiction. This has an impact on inefficient budgeting and losses to state finances.

## B. Suggestion

1. Maritime Security Bill drafting by the government must be carried out by involving 14 ministries / state institutions related to maritime and coastal law enforcement. In addition, the government also needs to hear opinion polls from entrepreneurs and communities affected by law enforcement activities in marine and coastal areas.
2. The government shall review main duties and functions of the new Indonesia Coast Guard as the sole institution to guard territorial waters and maritime jurisdiction. In this case, it is necessary to have a comparative study to clarify its authority, so as to minimize dispute over authority between Bakamla and Indonesian Navy.
3. It is necessary to formulate clear standard operational procedure in the implementation of marine law enforcement that involves coordination among ministries/ state agencies.

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