

Law Enforcement in Indonesian Territorial of the Sea

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Received: August 25, 2014 Accepted: September 26, 2014 Published: September 30, 2014

doi:10.5296/ijssr.v2i2.6390

URL: <http://dx.doi.org/10.5296/ijssr.v2i2.6390>

Abstract

Various problems on marine field are very complex and they are relating to multiple sectors. Aside from adjusting new matters in the need of arrangement for marine development in Indonesia, the Draft Bill is closely related to various existing sectorial legislative regulations. Harmonization by means of legislative regulations is urgent and significant to prevent overlapping and to combine law enforcement in Indonesian waters into one comprehensive regulation. This synergy shall be performed toward institutional aspect of law enforcement officials in the waters where the existing officials have not been integrated due to authority and various legislative regulations authorized to them.

Keywords: sea, draft marine bill, law enforcement

1. Introduction

As an archipelagic state, Indonesia is encircled by ocean and sea boundary with the neighboring countries, so it gives us formidable task to be responsible for marine territorial sovereignty. For instance, the case of Ligitan and Sipadan islands loss and Ambalat case which become tense. When officials of Indonesian Maritime Affairs and Fisheries Ministry arrested by Malaysian Marine Police, it indicates that marine law enforcement in our nation is too weak.

In essence, it is not only a problem of sovereignty, but it also relates to various issues such as: economy, social and politics. For archipelagic state like Indonesia, marine resources either biological or non biological are invaluable asset, and they have economic potential which is significant for social prosperity if people are able to maintain, manage and utilize them well and accountable.

Other problems which become prior responsibility for Indonesian nation in effort of marine law enforcement are overlapping of main duties and functions given to every law

enforcement official in the sea. It is seen by many legislative regulations which give authorities to different law enforcement officials to enforce the law in Indonesian territorial waters, such as Law on Customs, Law on Fisheries, Law on Indonesian National Army (TNI) and Law on Indonesian National Police (POLRI). Such disharmony emerges solitary problem, specifically for to what extend every law enforcement official performs his duty and responsibility.

Concerning with the problem, Indonesia National Maritime Council (2009) carries out analysis on this problem, they are by: (1) Performing synchronization and harmonization to the applicable legislative regulations which is, up to now, still overlapping. (2) Making compilation of the existing legislative regulations. (3) Making database of the applicable legislative regulations (Jimly, 2008).

Draft Marine Bill formulation aims to combine policies regarding marine sector and cross-sectorial coordination to handle marine affairs.

This paper is attempting to analyze to what extend prospect of law enforcement in Indonesian ocean through Draft Marine Bill formulation. It is known that aspect of regulation or source of law is one of important factor for law enforcement which is stated entirely in the National Legislation Program of 2010-2014 with an expectation to meet challenge of multiple problems in marine sector, such as problems relating to fisheries, mining, sailing, marine industry, tourism, law enforcement and sea protection.

2. Law Enforcement in Indonesia

Article 1 paragraph (3) in the 1945 Constitution asserts that "the State of Indonesia shall be a state based on the rule of law". Law as a unitary system contains some elements as follows: (1) institutional element, (2) regulatory norms element (instrumental element), and (3) element of legal subject behavior who bear the rights and duties determined by legal norms (Lawrence, 1984). The three legal systems consist of (a) law making process, (b) law implementation or law enforcement activity, and (c) adjudicative process on violation of law (Jimly, 2008).

Law enforcement is a process to enforce the legal norms in reality as code of conduct in legal connection to the life of people and of the nation. Based on the subject, law enforcement may be performed by wide subject and it may be meant as an effort of law enforcement involving all legal subjects in every legal connection. Law enforcement in a specific sense, concerning on the subject, means the effort of law enforcement officials to guarantee and to ensure enforcement of the law, if it is needed, law enforcement officials are allowed to use coercive power (Jimly, 2008).

Concept of law enforcement may be observed by subject point of view, i.e. law point of view; where this concept also covers general and specific meanings. Law enforcement in general meaning covers justice values containing in formal rule and justice values living in the life of people. Law enforcement, in specific meaning, only concerns on formal and written law enforcement. Differences between formal regulation of written law and coverage of justice values containing on it also have English terminology, i.e. terminology development from

"the rule of law" or "the rule of law and not of a man" versus terminology of "the rule by law", where the latter means "the rule of man by law". Terminology of "the rule of law" implies that the government is ruled by law; it is not in the formal meaning, but it covers justice values contained thereof. Terminology of "the rule of law and not of a man" is intended to assert that in essential, the government of modern constitutional state is ruled by law, and not by a man. Reverse terminology of "the rule by law" is intended as a government which is led by man who employs the law only for power (Jimly, 2008).

Some important factors in law enforcement are factor of law enforcement officials, factor of law as the rule, factor of supporting facilities consisting of educated and skilled human resources, well-managed organization, sufficient equipments, adequate finance, and factor of society as the most important element because source and goal of law enforcement is comfort and peace in society. Therefore, law enforcement is an effort performed to make the law—either in specific formal meaning or general material meaning—code of conduct in every legal action, no matter who is the doer either the legal subject concerned or the law enforcement official who had been given duties and authorities by the law to guarantee the functions of applicable legal norms in the life of people and of the nation (Jimly, 2008).

In relation with scope and focus of the study, it is going to analyze to what extend prospect of law enforcement in Indonesian territorial waters in the Draft marine Bill. One of important aspects for the process of law enforcement implementation is the presence of adequate and clear legal framework for law enforcement officials and legal subjects to make the intended law implement. At least, there are 3 (three) important elements which affect working mechanism of law enforcement officials as follows:

- a. Law enforcement institution along with various supporting means and infrastructure, and working mechanism of the institution;
- b. Working culture which relates to the official, it also covers prosperity of the official, and
- c. Supporting sets of rule either institutional performance or institution which arranges legal norm material used as work standard, for both material law and law of procedure.

Law enforcement effort shall systemically consider the three aspects simultaneously, where in such way process of law and justice enforcement may be internally realized in reality (Jimly, 2008).

3. The Draft Marine Bill in Indonesia

The Unitary State of the Republic of Indonesia is archipelagic state in form of Indonesian archipelago. It has abundant natural resources to be maintained, to be utilized and to be managed continuously and in integrated way in purpose to make Indonesian people prosperous in conformity with national development as mentioned in the Preamble to the 1945 Constitution. Article 25 A to the 1945 Constitution declares "The Unitary State of the

Republic of Indonesia is an archipelagic state, the boundaries and rights of whose territory shall be established by law".

Indonesian territorial water is the largest Indonesian territory having strategic position and value in politics, law, economics, social, culture, security and defense. It also has ecological value which has not been utilized and managed well, then Indonesia shall have marine development mission for the national development purpose aimed at:

- a. Bringing about The Unitary State of the Republic of Indonesia as archipelagic state in form of Indonesian archipelago;
- b. Making territorial waters sustainable and in peace, and also identifying marine resources either within and beyond the territory and national jurisdiction;
- c. Utilizing marine resources and marine assets in the jurisdiction areas of The Unitary State of the Republic of Indonesia, in the high seas and bottom of the ocean, continuously for the public welfare of the present and future generations;
- d. Creating human resources who are capable of managing the sea and are professional, ethics, dedication and who are able to back up marine development optimally;
- e. Establishing marine development based government for national development purpose (oceans governance);
- f. Developing maritime culture and or knowledge for the people in order to establish marine oriented development.

The Unitary State of the Republic of Indonesia is build up upon three main pillars.

- First pillar is the Youth Pledge Day on October 28th, 1928 proclaiming Unitary Spiritual of being the nation of Indonesia.
- Second pillar is Proclamation of Indonesian Independence on August 17th, 1945 to become one nation and to live in one Unitary State.
- And the third pillar is Unity for Territory through Djuanda Declaration in 1957 based on geographic, economic, defense, security, politics and social consideration.

Concept of archipelagic state used as baselines designation was enforced and had been ratified in the United Nations Convention on the Law of the Sea (the Draft Marine Bill Academic Documentary Studies, 2010).

Baseline width of Indonesian Waters in early Independence Day was only 3 miles limit of the coastal baseline of every island, i.e. the waters surrounding Indonesian archipelago that was colonized by the Dutch East Indies (Soewito et al., 2000). However, the baseline ratification which was inherited from the Dutch colonialism is not applicable to fulfill security and safety interest of the Republic of Indonesia. On the basis of that consideration, Archipelagic Concept was declared and embodied in the Djuanda Declaration on December 13th, 1957 (Dahuri, 2003). Djuanda Declaration states that all the waters surrounding, between and interconnecting the islands, and also the lands of the Republic of Indonesia regardless of

width or areas came within fair parts of the Republic of Indonesia's land area; hence, the waters is the part of national waters within absolute sovereignty of the Republic of Indonesia (Djuanda Declaratation, 1957).

Ratification of the Republic of Indonesia's territory, which formerly is about 2 million km² (the land), is expanded up to 5.1 million km² (it includes the land and waters). In this case, there is area expansion for about 3.1 million km², where territorial waters is about 0.3 million km² and archipelagic waters is about 2.8 million km². Archipelagic Concept is embodied in the National Outlook as the basis of implementation for the Broad Outlines of the Course of the Nation to the decision of MPRS No. IV of 1973.

Based on the conference on the Law of the Sea in the seventh meeting in Geneva, 1978, concept of the National Outlook is ratified in the worldwide. Outcome of hard struggle for about 21 years suggests Indonesian nation that maritime vision shall be the exact choice to realize the Unitary State of the Republic of Indonesia (Djuanda Declaration, 1960).

According to the United Nation Convention on the Law of the Sea (UNCLOS) in 1982, archipelagic states reserve the right to manage the Exclusive Economic Zone up to 200 miles seaward. As an archipelagic state, Indonesia reserves to manage (jurisdiction) over the Exclusive Economic Zone, even it has just been ratified. It is embodied in the Act No. 17 of 1985 on the ratification of UNCLOS (United Nations Convention on the Law of the Sea) (UNCLOS, 1982).

Arrangement of marine affairs is regulated in some separate, sectoral, unclear and overlapping acts, so law enforcement implementation in the practice does not run well. Therefore, it is expected that the Draft Marine Bill will have role to affix and to make the existing acts conformity, and to fill the gaps among some previous acts in order to make all of marine aspects organized comprehensively.

There are 5 (five) acts relating to territorial borders stretching that shall be synchronized with the Draft Marine Bill as follows:

- Act No. 1 of 1973 on Indonesian Continental Shelf,
- Act No. 5 of 1983 on Indonesian Exclusive Economic Zone,
- Act No. 17 of 1985 on Ratification of the United Nation Convention on the Law of the Sea (UNCLOS),
- Act No. 6 of 1996 on Indonesian Waters, and
- Act No. 43 of 2008 on Indonesian Territory.

Any acts relating to resources and environment management in the sea are:

Act No. 17 of 2007 on Coastal and Small Islands Management,

- Act No. 17 of 2008 on Sailing,
- Act No. 5 of 1990 on Conservation on Living Resources and Their Ecosystems,

- Act No. 5 of 1995 on Ratification of the United Nations Convention on Biodiversity,
- Act No. 32 of 2009 on Environmental Protection and Management, and
- Act No. 45 of 2009 on Fisheries.

These acts also set law enforcement officials for every relating sector. Besides, law enforcement officials in the waters are also stated in these acts:

- Act No. 17 of 2006 on Customs
- Act No. 9 of 1992 on Immigration, Act No. 34 of 2004 on Indonesian National Army.

Certainty about law enforcement in the waters is an absolute for realization of sovereignty, safety and comfort for all society. This condition is sociologically important because marine safety may be realized by sovereignty upholding and law enforcement in the waters. Besides, marine safety also means that the waters is controllable, and it is safe for crossing vessel and free of threat or disturbance to marine utilization activities. It is also important for business development and marine based- and associated- economy. Disharmony between law enforcement officials and law in the waters will harm marine business actors and increase business expense.

Construction on marine law does not only relate to regulation and management of Indonesian boundaries (sea), but it also emphasizes on resources and natural management and also on management of law enforcement institution (Agency for National Legal Development, Department of Law and Human Rights of the Republic of Indonesia, 2008). Some substances which become principal regulation in the Draft Bill are: regulation on waters territory, development and aims of marine management, human resources for marine and culture of maritime, data and information system for marine, marine space management, environment and marine conservation, upholding of sovereignty, law, safety and security in the waters, marine research and development, and also governance and institution.

Based on the description above, philosophically, historically, sociologically and juridically, marine legal arrangement is required in one national legal system by considering the existing law and legislative regulations and the applicable international law.

4. Law Enforcement Institutions in the Indonesian Waters

Law enforcement in the waters covers activities in customs, immigration, sailing, quarantine, fisheries, environment, police and defense. Reality occurs up to now be that the marine law enforcement is not handled by one institution only. Various acts assign authority to some government institutions under a mandate to enforce the law. The acts delegates the government and law enforcement officials some certain authorities, such as customs, immigration, vessel safety and navigation. Law enforcement officials in the sea are classified into system which is not well integrated due to sectorial nature. This sectorial nature causes particular legal problem, for example authority overlapping which may arise inter-law enforcement officials conflict.

At least, there are 8 (eight) government institutions which are given to enforce the law in waters territory by each of these legislative regulations as follows:

- Indonesian National Army
- the Indonesian Navy,
- the Indonesian National Police,
- Civil Servant Investigator for the Ministry of Marine and Fisheries,
- Civil Servant Investigator for the Ministry of Transportation,
- Civil Servant Investigator for Customs and Excises,
- Civil Servant Investigator for Immigration,
- Civil Servant Investigator for the Ministry of Environment, and
- Civil Servant Investigator for the Ministry of Forestry Affairs (Agency for National Legal Development, Department of Law and Human Rights of the Republic of Indonesia, 2008).
- Even, if it refers to the Act No. 6 of 1996 on Indonesian Waters, the eight institutions have law enforcement authority in the waters.
- Act No. 5 of 1983 on Indonesian Exclusive Economic Zone, law enforcement authority is given to the Indonesian Navy.
- Act No. 5 of 1990 on Conservation on Living Resources and Their Ecosystems states that law enforcement officials in the waters territory are the Indonesian Navy, the Indonesian National Police and the Civil Servant Investigator for the Ministry of Forestry.
- Law enforcement authority based on the Act No. 9 of 1992 on Immigration is given to the Indonesian National Police and the Civil Servant Investigator for Immigration.
- Act No. 6 of 1996 on Indonesian Waters authorizes the Civil Servant Investigator for the Ministry of Environment, and also the Indonesian Navy and Indonesian National Police to enforce the law.
- Law enforcement authority, based on the Act No. 45 of 2009 on Fisheries, is given to the Civil Servant Investigator for the Ministry of Marine and Fisheries, the Indonesian Navy and the Indonesian National Police. Civil Servant Investigator for Customs and Excises and the Indonesian National Police are authorized for law enforcement in waters territory based on Act No. 17 of 2006 on Customs.
- Act No. 17 of 2007 on Coastal and Small Islands Management designates the Indonesian National Police and the Civil Servant Investigator for the Ministry of Marine and Fisheries as law enforcement officials in waters territory.

- Act No. 17 of 2008 on Sailing states that the Indonesian Navy, Indonesian National Police and Civil Servant Investigator for the Ministry of Transportation as law enforcement officials in waters territory. The Indonesian Navy, based on
- Act No. 34 of 2004 on the Indonesian National Army, is responsible for the security and law enforcement in the national waters territory in conformity with national and international legal provisions which have been ratified by Act No. 9 letter (b) or Act No. 34 of 2004). In dealing with nonmilitary threat and type, handling management is coordinated by heads of institution based on the relied sector (Article 19 in Act No.3 of 2002 on the State Defense).

The existing legal problems are problems in determining sovereignty and territorial borders, procedures of immigration (illegally border-crosser), goods or people smuggling, robbery of natural resources and also in protecting the vast expanse of waters; we all know that the resolution of the problems is hard and it has not been best performed. The problems emerge since lack of synchronization and harmony in nation legislative regulations (the Draft Marine Bill, 2007). Law enforcement in the waters shall be performed fully integrated by multiple institutions and it shall subject to the act itself.

The Draft Marine Bill regulates enforcement of sovereignty, law, security and safety in waters territory. Law enforcement in the waters territory, along with the air above, is based on the principle of one unified territory within the Unitary State of the Republic of Indonesia in purpose of maintenance, guard and protection to the unity of waters territory and of national interest Any enforcement functions to the law, security and safety in waters cover many activities such as sailing, customs, vessel safety, port and harbor, navigation, immigration, health, quarantine, marine environment, marine resources and fisheries, searching and saving, and also criminal act in the waters. These activities are held by the government coordinately and in integrated way in one unified command and control.

Because of present juridical fact on the absence of coordination and integrity among law enforcement officials in the waters, an idea on law enforcement implementation emerges that this duty shall be authorized to one institution as one unified command. One command means that it is not just coordination, but there shall be any one command and one decision maker who place every law enforcement official under one existing institution. It reminds us that law enforcement in the waters has specific characteristic and also specific scope in conformity with the applicable law in the intended waters territory. Therefore, a sole, integrated and special agency/institution becomes urgent to which law enforcement authority is given, and also in purpose to make law enforcement process comprehensive and integrated in one unit. The presence of this institution does not eliminate main functions given to institution. The existing institution shall comply with legislative regulations in which authority is carried out, however law enforcement implementation in the waters shall be performed in integrative, effective, synergistic and collective manner (the Draft Marine Bill Academic Documentary Studies).

It is expected by the presence of special agency will prevent ineffective law enforcement implementation such today and prevent institutional rivalry on the authority and interest.

Institutional rivalry will bother the law enforcement implementation and harm vessel which transits within the waters territory. Concern on the presence of law enforcement agency in waters which will eliminate main functions of the existing institution/agency is not totally right since the new formed agency will not perform such suspicion, or revoke legislative regulations by which the authority to the existing institution or agency is given (Draft Marine Bill Academic Documentary Studies).

Such idea to form new agency is not a moment ago since Article 24 Act No. 6 of 1996 regarding Indonesian Waters states that if required, for the implementation of the upholding of the law, a coordination agency can be established, stipulated by Presidential Decree. Up to now, coordinating agency has been operated for more than 35 years, but it has not worked well as expected. Institutional concept difference between what is stated in the Draft Bill and the coordinating agency is that there is no confirmation for one command, where coordinative command is unable to cover sectorial egoism of every institution.

In addition to the establishment of one special integrated agency, other idea also emerges on establishment of agency like "cost guard". Such institutional establishment, in fact, has been discussed based on Act No. 17 of 2008 on Sailing. Based on this act, the government has three years since the legitimation to establish an agency called Sea and Coast Guard, i.e. an agency which performs functions as the guardian and law enforcement officials in the sea and coast. It is established and is liable for the President, and technically, its operation is performed by the Minister of Transportation. However, some experts argue that agency establishment which is almost the equal of coast guard in the US or Japan will be complicated to be applied in Indonesia in the short-term. Considering that law enforcement effort has been determined for every sector which complies with particular acts, official merger will take a long time and difficult,

<http://www.dekin.dkp.go.id/yopi/index.php?p=3&id=18092013735691>, as embodied on August 18th, 2013.

Even if there are two ideas regarding institution of law enforcement official in the waters, there is still an underlying cause that law enforcement authority in waters shall be under one collective policy and command; it means that if law enforcement official stays in every sector, scope and responsibility are still exist to make sure that everything will run well complying with the direction of same policy, command and order. In practice, it needs one institution only which stands as law enforcement institution in the waters, although there are many. Simply, there will be one vessel only the waters which guard Indonesian territorial waters, even if the crews consist of various law enforcement officials in accordance with the duties and authorities of every sector.

5. Conclusion

- 1) It is expected that the Draft Marine Bill is capable of being regulation to combine asynchronous and overlapping rule in marine sector.
- 2) Such disharmony also occurs in marine law enforcement officials due to the presence of various legislative regulations in which law enforcement authority is given to every

sector. This law enforcement dilemma in the waters territory may be solved by combining all law enforcement officials in one unified goals and policy.

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