

Implementation of Criminal Aspects by the Water Police in Law Enforcement in the Waters of Central Java (Research Study at the Directorate of Water and Air Police, Central Java Regional Police)

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Abstract. Law enforcement efforts against perpetrators of maritime crimes are basically the function and duty of the Police as regulated in Law Number 2 of 2002 concerning the Indonesian National Police. All crimes, both general crimes and special crimes, where the crime scene or which falls within the jurisdiction of the Indonesian territorial waters and airspace will be the authority of the Directorate of the Marine and Air Police. The purpose of this research is toknow and analyze (1) criminal codification in the scope of waters in national legal construction, (2) the water police system in enforcing criminal law, (3) obstacles faced by the maritime police in enforcing maritime crime law. The approach method used in this study is sociological juridical. The specifications of this study are descriptive analytical. The data sources used are primary data and secondary data. Primary data is data obtained directly from the field or from the first source and has not been processed by other parties. Secondary data is data obtained from library research consisting of primary legal materials, secondary legal materials and tertiary legal materials. The results of the research and discussion can be concluded: (1) Types of maritime crimes or certain criminal acts at sea can be grouped as follows: Armed Piracy or Piracy at Sea; Smuggling Crimes Through Sea Lanes (Smuggling); Criminal Acts in the Field of Shipping; Criminal Acts of Marine Pollution; Criminal Acts of Cultural Heritage Objects Under the Sea Surface; Criminal Acts Against the Management of Coastal Areas and Small Islands; Criminal Acts of Conservation of Biological Resources and their Ecosystems; Criminal Acts in the Exclusive Economic Zone of Indonesia; Criminal Immigration in Waters; and Criminal Acts of Fisheries. (2) The main duties of the Central Java Regional Police Polairud include a number of very important activities to maintain security, safety, and order in water and air areas. Several laws and technical regulations as legal legitimacy in providing reinforcement to the Water and Air Police in carrying out their authority as law enforcement institutions in water areas as investigators. (3) With such a wide territorial area, technically the Polairud problem in enforcing criminal law in Indonesian waters lies in the specifications of ships for water areas which are generally seas with large waves, accompanied by coral reefs, and ocean meeting routes.

Keywords: Criminal Aspects; Law Enforcement; Water Police.



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1. Introduction

Based on Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, the 4th amendment determines that the Republic of Indonesia is a state of law based on Pancasila and the 1945 Constitution of the Republic of Indonesia which upholds human rights and guarantees every citizen with their position in law and government without exception. This means that all actions of law enforcers in carrying out their duties must be based on law and statutes and place the interests of law and regulations above personal and/or group interests so that a community life is realized that lives and is subject to the supremacy of law that is in harmony with the provisions of laws and the supremacy of law is subject to the provisions of the constitution, laws and a sense of justice that lives and develops in society.¹

¹ Sulistiyawan Doni Ardiyanto, Eko Soponyono and Achmad Sulchan, Judgment Considerations Policy in Decree of the Court Criminal Statement Based On Criminal Destination, *Jurnal Daulat Hukum*, Volume 3 Issue 1, March 2020, p.179

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The territorial sea area with geographical conditions of almost 70% of Indonesia's territory consisting of oceans requires hard work among law enforcers. Law Enforcement in Indonesia is based on the theory of jurisdiction, where in Article 24 paragraph 2 of Law No. 6 of 1996 regulates the jurisdiction in enforcing sovereignty and law enforcement against foreign vessels crossing the territorial sea and archipelagic waters of Indonesia is carried out according to the provisions of the Convention and other international laws as well as national regulations or applicable laws. In its explanation, it states that the jurisdiction for enforcing sovereignty and law enforcement is criminal jurisdiction, civil jurisdiction and other jurisdictions.² In its efforts to enforce the law at sea, Indonesia has 13 law enforcement agencies at sea. Six of these agencies have sea patrol task forces consisting of Law enforcement agencies that have sea patrol task forces are: Indonesian National Army (TNI) through the Indonesian Navy (TNI AL), Indonesian National Police, Water and Air Police Corps, Indonesian National Police Security Maintenance Agency (Korpolairud Baharkam Polri) over the Directorate of Water Police (Ditpolair), Ministry of Transportation (Kemenhub) over the Directorate General of Sea Transportation (Ditjen Hubla), Ministry of Finance (Kemenkeu) over the Directorate General of Customs and Excise (Ditjen Bea Cukai), Ministry of Marine Affairs and Fisheries (KKP) over the Directorate General of Marine and Fisheries Resources Supervision (Ditjen PSDKP) and the Maritime Security Agency (Bakamla). Seven other agencies that do not have sea patrol task forces are: National Narcotics Agency, Ministry of Environment, Ministry of Health, Ministry of Energy and Mineral Resources, Ministry of Forestry, Ministry of Tourism, and Regional Governments. Based on the authority of several law enforcement officers who have legal authority in the sea and water areas are in several institutions, one of which is the Water Police or known as Polair. The Main Unit of the Water Police was merged into the Subditpol Air and the Main Unit of the Air Police became the Sub Directorate of the Air Police, both Sub Directorates operate under the auspices of the Directorate of Samapta Polri. With consideration of the development of the situation and based on the Decree (SK) of the Chief of Police Number Pol: Skep/9/V/2001, dated May 25, 2001, it was explained that the Polairud structure is under the Peops Kapolri with the name Dit Polairud Deops Polri. In October 2002, there was an organizational validation with the Decree of the Chief of Police No. Pol: Kep/53/X/2002, dated October 17, 2002 with the name Dit Polair Babinkam Polri. Furthermore, in October 2010, there was an organizational restructuring within the Indonesian National Police with the issuance of the Organizational Structure and Work Procedures of the Indonesian National Police, which was then explained in the Regulation of the Chief of Police Number 21 of 2010 concerning the Organizational Structure and Work Procedures of the Organizational Units at the National Police Headquarters Level and Regulation of the Chief of Police No. 22 of 2010 concerning the Organizational Structure and Work Procedures of the Organizational Units at the Regional Police Level.³

² Jurian Runtukahu, Tanggung Jawab Polisi Perairan dalam Penegakan Hukum di Wilayah Laut Teritorial Republik Indonesia, *Lex et Societatis*, Vol IV No 1, Januari 2016, p.47

³ Momo Kelana, Hukum Kepolisian, Jakarta: PTIK, 1984, p.19

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Seven other agencies that do not have sea patrol task forces are: National Narcotics Agency, Ministry of Environment, Ministry of Health, Ministry of Energy and Mineral Resources, Ministry of Forestry, Ministry of Tourism, and Regional Governments. Based on the authority of several law enforcement officers who have legal authority in the sea and water areas are in several institutions, one of which is the Water Police or known as Polair. The Main Unit of the Water Police was merged into the Subditpol Air and the Main Unit of the Air Police became the Sub Directorate of the Air Police, both Sub Directorates operate under the auspices of the Directorate of Samapta Polri. With consideration of the development of the situation and based on the Decree (SK) of the Chief of Police Number Pol: Skep/9/V/2001, dated May 25, 2001, it was explained that the Polairud structure is under the Peops Kapolri with the name Dit Polairud Deops Polri. In October 2002, there was an organizational validation with the Decree of the Chief of Police No. Pol: Kep/53/X/2002, dated October 17, 2002 with the name Dit Polair Babinkam Polri. Furthermore, in October 2010, there was an organizational restructuring within the Indonesian National Police with the issuance of the Organizational Structure and Work Procedures of the Indonesian National Police, which was then explained in the Regulation of the Chief of Police Number 21 of 2010 concerning the Organizational Structure and Work Procedures of the Organizational Units at the National Police Headquarters Level and Regulation of the Chief of Police No. 22 of 2010 concerning the Organizational Structure and Work Procedures of the Organizational Units at the Regional Police Level.⁴

⁴ Proyek Penelitian dan Pencatatan Kebudayaan Daerah, *Geografi Budaya Daerah Jawa Tengah*, Jakarta : Direktorat Tradisi Ditjen NBSF Depbudpar, 1978, p. 52

The Indonesian National Police in the context of a state of law is one of the government institutions that has an important role. Law is influenced by several factors as stated by Lawrence Friedman, such as the structure or legal institution factor, in addition to other factors such as the legal substance factor and legal culture. Therefore, the position of the Indonesian National Police institution in a country is very important, because it affects the implementation of the duties and responsibilities as well as the performance of the Indonesian National Police. The Water and Air Police, as the front guard in maintaining security and order at sea, have a very crucial role. Article 4 of Law Number 2 of 2002 concerning the Indonesian National Police states that the Indonesian National Police aims to guarantee domestic security. Namely: Protecting, caring for and serving the community, and promoting public peace through respect for human rights.

2. Research Methods

To conduct a study in this research, the author uses a sociological legal method (social legal research) to study and discuss the problems raised. Juridical is an approach that uses legal principles and principles derived from written regulations, sociological is an approach that aims to clarify the actual conditions that exist and arise in society regarding the problems studied or to give importance to the steps of observation.⁵

3. Results and Discussion

3.1. Criminal Codification in the Scope of Waters in National Legal Construction

Codification is the process of compiling, organizing and systematizing the law of a particular jurisdiction, or from a separate branch of law into a regular code. When we talk about criminal law, codification becomes an integral part of criminal law itself. As a basic codification of Indonesia's current material criminal law, the Criminal Code has developed or been amended. This change or progress was once proposed by Barda Nawawi Arief, including:⁶

1) Law No. 1 of 1946 concerning Regulations on Criminal Law in Article VIII: removing Article 94 Chapter IX Book I of the Criminal Code concerning the definition of the term "Dutch Ship" (Nederlandsche schepen);

2) Law No. 20 of 1946 concerning the Covered Sentence in Article 1: adding a new principal crime in Article 10 sub a of the Criminal Code with the covered sentence;

3) Law No. 73 of 1958 concerning Declaring the Applicability of Law Number 1 of 1946 of the Republic of Indonesia concerning Criminal Law Regulations for the Entire Territory of Indonesia and Amending the Criminal Code Article II: adding Article 52a (concerning increased criminal penalties for committing crimes using the national flag);

 ⁵ Rony Hanitijo Soemitro, *Metodologi Penelitian Hukum dan Jurimetri*, Jakarta : Ghalia Indonesia, 1990, p. 34
⁶ Law Number 32 of 2009 concerning Protection and Management of the Environment

4) Law No. 4 of 1976 concerning Amendments and Additions to Several Articles in the Criminal Code Relating to the Expansion of the Applicability of Criminal Legislation, Aviation Crimes, and Crimes against Aviation Facilities/Infrastructure: amending and adding the expansion of the territorial principle in Article 3 of the Criminal Code (extended to aircraft) and the universal principle in Article 4 of the Criminal Code (extended to several aviation crimes); and adding Article 95a (concerning the definition of "Indonesian aircraft"), Article 95b (concerning the definition of 'in flight'), and Article 95c (concerning the definition of 'in service');

5) Law Number 3 of 1997 concerning Juvenile Courts (Article 67): declares Articles 45, 46, and 47 of the Criminal Code no longer valid;

6) Law Number 27 of 1999 concerning Amendments to Criminal Codes Relating to Crimes against State Security adds Articles 107a to f of the Criminal Code concerning crimes against state security;

7) Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption (Article 43B); declares Articles 209, 210, 387, 388, 415, 416, 417, 418, 419, 420, 423, 425, 435 of the Criminal Code no longer valid;

8) Law Number 21 of 2007 concerning the Eradication of Criminal Acts of Human Trafficking (Article 65 revokes and declares Articles 297 and 324 of the Criminal Code no longer valid).⁷

Meanwhile, Law Number 8 of 1981 concerning the Criminal Procedure Code, or KUHAP, stipulates the codification of criminal procedure law in the Indonesian criminal law system. Thus, there are 2 (two) codifications, namely the Criminal Code and the Criminal Procedure Code. This codification is a common thing to do to obtain unity or legal certainty, if we look at comparative studies, many countries have also carried out legal codification in order to achieve the goal of unity of legal rules that give rise to legal certainty. For example, several countries that have implemented criminal law codification are the Federation of Bosnia and Herzegovina, Croatia, Iceland, Kosovo, Norway, Estonia, Serbia, the Republic of Macedonia, Georgia, Turkey, Tajikistan, Sarajevo and others.

The emergence of various countries that have criminal law codification has indicated the urgency or need to support a more comprehensive and systematic criminal law enforcement system. Therefore, codification in each country's criminal law is very important for achieving legal objectives.⁸

Codification can also be considered a popular criminal law policy (penal policy). Political actors who take action regarding the selection of goals and ways to achieve those goals are known as criminal law policies. Criminal law policies are also related to social policies, the purpose of which is usually the fulfillment of welfare, namely goods and services.

⁷ Law Number 2 of 2002 concerning the Indonesian National Police

⁸ Law Number 32 of 2009 concerning Protection and Management of the Environment

A. Mulder calls "Strafrechtspolitiek" as a policy line, as quoted by Barda Nawawi Arief:

a) How far the applicable criminal provisions need to be changed or updated.

b) What can be done to prevent criminal acts from occurring.

c) How investigations, prosecutions, trials, and criminal executions should be carried out.

During the implementation of the Criminal Code in Indonesia around 1915, the maritime principle adopted by the Kingdom of the Netherlands was Mare Liberum which stated that the sea area was a free sea that could be accessed by anyone without exception. This concept was in conflict with the doctrine of mare clausum adopted by some large maritime countries which stated that the sea was closed and could not be easily accessed by other parties. The mare liberum principle was used by the Netherlands to break into the Indian Ocean in an effort to expand trade to the archipelago. This context shows that the legal regulations and maritime concepts at that time became a tool to protect Dutch trade interests in the archipelago. In the Criminal Code, the term Indonesian sea territory still refers to colonial regulations, namely "Territorial zee en maritieme kringen ordonantie (TZMKO), S. 1939 442" or called the Territorial Sea and Maritime Environment Ordinance of 1939. This provision has been considered invalid because TZMKO has been revoked by Law No. 4 / Prp / 1960 which was then also revoked by Law No. 6 of 1996 concerning Indonesian Waters.

No	Substance	Criminal Code
1	Seizure of goods Book I General Provisions	Article 40
2	Crimes against Shipping Signs/Marks	Book II Crimes, Articles 196 and Article 197
3	Crimes of Piracy at sea, on the coast, on the beach and on rivers.	Maritime Crimes, ChapterXXIX Articles 438-Article 451
4	False information on the contents of a sailing permit	Articles 451 bis-452
5	Violation of Agreements	Articles 453 - 458
6	Passengers attacking the Captain/insubordination	Articles 459, 460
7	Rebellion on an Indonesian ship	Article 459 Article 461
8	Evil Conspiracy Not doing work	Articles 462, 463
9	Criminal penalties for passengers who do not obey the captain's orders, do not provide assistance and insubordination	Article 464
10	Indonesian ship captains who intend to benefit themselves or others other unlawfully or to cover up acts	Article 466, 467
11	Indonesian ship captains who are not forced or in conflict with the law abandon the ship	Article 468
12	carry out or allow their ship or cargo to be possibly arrested, detained or obstructed	Article 469

13	An Indonesian ship captain who is not forced intentionally does not give his ship's passengers what they are required to give	Article 470
14	Discarding cargo not because of force and in conflict with the law	Article 471
15	Destruction of cargo and ship's needs	Article 472
16	stowaway	Article 472 bis
17	Misusing the Indonesian flag	Article 473
18	Resembling a Warship	Article 474
19	Carrying out a profession as a ship's crew member that is not their job	Article 475
20	Transportation or Goods for Justice	Article 476, Article 477
21	The captain does not provide assistance if the ship collides	Article 478

In the Academic Manuscript of the R-KUHP version of June 2015, there are intention to codify the provisions of sectoral laws that are outside the Criminal Code that is currently in effect. Criminal law that is largely regulated outside the Criminal Code and is sectoral in nature is considered to have abandoned the principles or principles of criminal law contained in Book I of the Criminal Code and leads to the criminalization of norms. In addition, it is considered that there is a dualism in the current criminal law system between the criminal law system built on the basis of the Criminal Code, and the criminal law system built on laws that are spread outside the Criminal Code.⁹

However, similar to the Criminal Code, there is only one part of the regulation in the R-KUHP that is specifically related to Shipping Crimes. Shipping activities are one part of the maritime activity aspect and are part of the law related to the sea in general. In a broad sense, maritime law covers all aspects of the use and utilization of the sea and resources found in the ocean. The new Criminal Code should be able to progress further by regulating other fields, considering that in addition to shipping, the use of the sea and maritime affairs has a wider sector coverage, including fisheries activities. Legal policies related to the utilization. These developments can be marked by the enactment of various laws regulating maritime affairs and the ratification of various provisions related to maritime. Added to this are various commitments of the Indonesian Government in international law that are soft law.¹⁰

The source of law against maritime crimes can be seen from positive law in Indonesia, both regulated materially and formal law. Material Law in the form of (1) Law Number 17 of 2006 concerning Amendments to Law of the Republic of Indonesia Number 10 of 1995 concerning Customs; (2) Law Number 6 of 2011 concerning Immigration; (3) Law Number 17 of 2008 concerning Shipping; (4) Law Number 32 of 2009 concerning Environmental Protection and

⁹ Law Number 5 of 1990 concerning Conservation of Natural Resources and Ecosystems

¹⁰ M. Rafly Qalandy & M. Alvi Syahrin, Instrumen Penegakan Hukum bagi Tenaga Kerja Asing yang Menyalahgunakan Izin Tinggal Keimigrasian, *Jurnal Legal Reasoning*, Vol. 4 No. 1, December 2021

Management; (5) Law Number 11 of 2010 concerning Cultural Heritage; (6) Law Number 5 of 1990 concerning Conservation of Natural Resources and Ecosystems; (7) Law of the Republic of Indonesia Number 5 of 1983 concerning the Indonesian Exclusive Economic Zone; (8) Law of the Republic of Indonesia Number 1 of 2014 concerning Amendments to Law Number 27 of 2007 concerning Management of Coastal Areas and Small Islands; (9) Law Number 45 of 2009 concerning Amendments to Law Number 31 of 2004 concerning Fisheries; (10) Can be combined with the Criminal Code; (11) Government Regulations; Regional Regulations.

While formal law is in the form of the Criminal Procedure Code and other regulations related to Maritime Crimes.¹¹

3.2. Marine Police System in Enforcing Criminal Law

Territorial sea areas with geographical conditions of almost 70% of Indonesia's territory consisting of oceans require hard work among law enforcers. Law Enforcement in Indonesia is based on the theory of jurisdiction, where Article 24 paragraph 2 of Law No. 6 of 1996 regulates jurisdiction in enforcing sovereignty and law enforcement against foreign vessels crossing the territorial sea and Indonesian archipelagic waters carried out according to the provisions of the Convention and other international laws as well as national regulations or applicable laws. In its explanation, it states that the jurisdiction of enforcing sovereignty and law enforcement is criminal jurisdiction, civil jurisdiction and other jurisdictions.

In carrying out its duties and responsibilities, the Police are subject to state administrative law. The Indonesian National Police is a state apparatus that has a role in maintaining and preserving public security and order, providing protection, enforcing the law, shelter and service to the community aimed at maintaining domestic security in accordance with the mandate of Article 30 paragraph (4) of the 1945 Constitution of the Republic of Indonesia.¹²

In the context of a state of law, the Indonesian National Police is one of the government institutions that has an important role. Law is influenced by several factors as stated by Lawrence Friedman such as the structural factor or legal institution, in addition to other factors such as the legal substance factor and legal culture. Therefore, the position of the National Police institution in a country is very important, because it affects the implementation of the duties and responsibilities and performance of the National Police.

Therefore, the inaccuracy of positioning the National Police institution in the state system will certainly create problems for the National Police institution in carrying out its duties and authorities. The position of the National Police in the Indonesian state system is under the President, meaning that the National Police is subject to the President as the holder of executive power. The duties and authorities of the President are delegated to the National

¹¹ Mahdin Marbun & Elawijaya Alsa, Peran Kepolisian Peran dan Udara dalam Penanganan Tindak Pidana Perikanan di Wilayah Hukum Belawan (Studi Pada Direktorat Kepolisian dan Perairan Udara Belawan), Jurnal Law of Deli Sumatera, Volume II Number 1, December 2022

¹² Lucia Charlota Octovina Tahamata, Penegakan Hukum Diwilayah Laut Maluku oleh Lantamal IX Ambon, *Balobe Law Journal*, Vol 1 No 1, April 2021

Police so that the National Police's accountability is automatically to the President. On the other hand, the National Police is considered a superpower institution by defending the interests of the government so that it seems to be a tool of the ruler's power and does not have a sense of crisis towards problems in society. Thus, the executive power only has the responsibility to maintain security and order in society and not as the executor of the Polri function as explained in Van Vollenhoven's catur praja theory that the function of the police is in politie (maintaining order in society/social order) and implementing preventive supervision as a coercive effort carried out on society to obey public order.¹³

The main duties of the Polri as referred to in Article 13 of Law Number 2 of 2002 concerning the Indonesian National Police are:

- a. Maintaining security and public order;
- b. Enforcing the law;
- c. Providing protection, patronage and service to the community.

In the Regulation of the Chief of National Police No. 22 of 2010 Article 1 number 3 explains that the Regional Police are the executors of the duties and authorities of the National Police .

4. Conclusion

The legal sources for maritime crimes can be seen from positive law in Indonesia, both regulated materially and formally. Material law consists of (1) Law Number 17 of 2006 concerning Amendments to Law of the Republic of Indonesia Number 10 of 1995 concerning Customs; (2) Law Number 6 of 2011 concerning Immigration; (3) Law Number 17 of 2008 concerning Shipping; (4) Law Number 32 of 2009 concerning Environmental Protection and Management; (5) Law Number 11 of 2010 concerning Cultural Heritage; (6) Law Number 5 of 1990 concerning Conservation of Natural Resources and Ecosystems; (7) Law of the Republic of Indonesia Number 5 of 1983 concerning the Indonesian Exclusive Economic Zone; (8) Law of the Republic of Indonesia Number 1 of 2014 concerning Amendments to Law Number 27 of 2007 concerning Management of Coastal Areas and Small Islands; (9) Law Number 45 of 2009 concerning Amendments to Law Number 31 of 2004 concerning Fisheries; (10) Can be combined with the Criminal Code; (11) Government Regulations; Regional Regulations. While formal law in the form of the Criminal Procedure Code and other regulations related to Maritime Crimes.

¹³ Ade Nur Anugrah dan Arindra Alfarizi. Literature Review Potensi Dan Pengelolaan Sumber Daya Perikanan Laut di Indonesia. *Jurnal Sains Edukatika Indonesia (JSEI),* Vol. 3, No. 2, October 2021

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Regulation:

Law Number 2 of 2002 concerning the Indonesian National Police

- Law Number 5 of 1990 concerning Conservation of Natural Resources and Ecosystems
- Law Number 17 of 1985 concerning Ratification of the United Nations Convention on The Law of The Sea
- Law Number 32 of 2009 concerning Protection and Management of the Environment
- Law Number 32 of 2009 concerning Protection and Management of the Environment