

The Authority of The Indonesian Navy In Conducting Investigations of Criminal Acts of Narcotics Through The Indonesian Sea

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ABSTRACT

In its main task, the Indonesian Navy has duties, one which is to carry out law enforcement at sea. Indonesia's position is in the cross position of the world and is used as the Sea Lines of Communication (SLOC) and Sea Lines of Oil Trade (SLOT), as well as being one of the most strategic regions in the Asia Pacific region as the center of economic growth (Center for Economic Growth). The vast area of the Indonesian sea makes it vulnerable to criminal acts in the Indonesian sea area. On this basis, the authors conducted a study with the aim of analyzing the investigative authority of the Indonesian Navy against narcotics crimes based on legal principles in and through the Indonesian sea. The results showed that the Navy has the authority to investigate at sea, but for narcotics cases it has not been given the authority. The right form of law as the basis for the use of a forum for regulating the authority of the Indonesian Navy in the matter of narcotics smuggling by foreign-flagged ships in Indonesian seas, namely the Government immediately amending Law Number 5 of 1983 concerning Indonesia's EEZ by adding the authority of the Indonesian Navy as investigators without reducing its authority owned by the National Police or the National Narcotics Agency in the investigation of narcotics smuggling

Keywords: The authority of the Navy, Investigation, Narcotics TP, at & through the sea

1. INTRODUCTION

Drug crime in Indonesia needs a big concern since currently Indonesia has shifted its position from merely consumer and target of marketing for drugs into Production County for illegal drugs. For this reason, in 2015, Indonesia stated drug emergency status. The United Nation (UN) Convention and the World Drugs Report (WDR) provide an opportunity for the Indonesian government to cooperate bilaterally and multilaterally to eradicate illegal drug trafficking. In fact, show force, cooperation and maritime guarding strategies have not maximally eradicated drugs dealer as there are still many drug smugglers used their tricks with technological advances and enter into the territory of the Republic of Indonesia.

Ineffective law enforcement against drug smuggling by sea has made drug smugglers more flexible in their actions and away from the reach of security forces. In addition, there are also many small islands, mouse routes and ports, as well as small fishing boats in Indonesian territory that facilitate the smuggling of drugs from neighbouring countries such as Malaysia, Thailand and China. The legality of the authority of TNI AL Officers to carry out investigations against certain crimes at sea from time to time as investigators is clearly stated in various articles of law which are

still valid as positive law and their implementation is accepted in the practice of judicial processes in Indonesia (Sianturi, 2015).

In its main task, one of the duties of the Navy is to carry out law enforcement at sea. Indonesia's position is in the cross position of the world so that it is used as the Sea Lines of Communication (SLOC) and Sea Lines of Oil Trade (SLOT), as well as being one of the most strategic regions in the Asia Pacific region as the Centre for Economic Growth (Rahmad, 2016). The vast area of the Indonesian sea makes it vulnerable for a criminal offense in the sea area.

Conducive maritime security will not only enhance the country's image at the international level but can also strengthen national resilience in various fields. Therefore, the development of a consistent Indonesian Navy force has multiple effects ranging from politics, economy to the preservation of marine resources, so it must be fully supported by all components of the Indonesian nation. It is not limited to commitment or discourse, but must touch on the aspect of implementation in the form of a sustainable national policy (Sianturi, 2015).

The results of a survey by the National Narcotics Agency (BNN) in 2019/2020 found that the total number of drug cases in Indonesia was more than 2,642 and 70% hit productive age group and adolescents and the total number of suspects in drug cases was 3,958. The abuse of narcotics is a crime that takes many victims and a prolonged disaster to all mankind in the world. The problem of narcotics abuse and illicit trafficking is increasing day by day and the resulting negative impact is also expanding. The abuse of narcotics is not only carried out by the common society but also among law enforcement officers who are members of the Indonesian Navy. With the case of narcotics abuse by the members of the Indonesian Navy, they are expected to be able to prevent and overcome these crimes in order to improve the morality of the Indonesian National Army.

The effectiveness of law enforcement highly depends on the legal awareness of all levels of the Indonesian Navy to uphold the authority of the law and in particular to Law Number 35 of 2009 concerning Narcotics. The role of Navy Military Police investigators together with other military law enforcers is very important in assisting the process of resolving criminal cases of narcotics abuse within the Indonesian Navy.

Currently, Indonesia is experiencing low synergy established by maritime agencies on the coast, limited number of supporting facilities and budget support as well as human resources (HR) such as port facilities, communication facilities, security facilities, budget support and fleet guard personnel to support cooperation, title strength and strategy to guard the coastal area. This resulted in poor performance of the tasks of maritime agencies in the region.

2. RESEARCH METHODS

This is a normative legal research. Peter Mahmud Marzuki said that legal research is a process to find legal rules, legal principles, and legal doctrines in order to answer legal issues at hand (Sena & Wisanjaya, 2019).

Normative legal research or library research was used in this research. In contrast to research carried out in descriptive science which tests the truth of whether a fact exists or not due to certain factors, legal research is carried out to produce arguments, theories or social facts, because in normative legal research that is studied is legal material that contains normative rules (Marzuki, 2005).

There are several approaches to legal research. With this approach, a research will be able to provide information from various aspects of the issue being tried to find answers. The approaches used in legal research are statute approach, case approach, historical approach, comparative approach and conceptual approach .

From some of the research approaches above, this study uses a statute approach and a conceptual approach.

In order to collect some primary and secondary data systematically, intact and in-depth, this study uses the library and documentation data collection method to collect, identify and analyse various secondary data sources related to the problems to be discussed in this study.

The analysis used in this research is prescriptive analysis which describes what should be related to this research issue; descriptive, which describes the issue or meaning of positive legal rules (provisions of laws and regulations); and comparative, comparison with other legal systems, while against the empty legal norms legal discovery is used by means of legal construction. Legal construction occurs when no statutory provisions are found that can be directly applied to the legal problem at hand.

3. RESULTS AND DISCUSSION

Sea is the entire set of salty water that inundates the earth's surface, but this definition is purely physical. The sea according to the legal definition is the entire sea water that is freely related to the entire surface of the earth. So the Dead Sea, Caspian Sea and the Great Salt Lake in the United States from a legal perspective cannot be called a sea because these seas are closed and have no relationship with other parts of the sea in the world, even though the water is salty and inundates more than one coastal countries as is the case with the Caspian Sea (Sunnyowati & Narwati, 2013).

Since the sea was used for the purposes of shipping, trade and sources of life such as fishing, since then legal experts began to devote their attention to the law of the sea and a maritime law collection emerged, which is perhaps the earliest collection, as a compilation of judges, ship captains and well-known traders.

Law enforcement is very basic in a rule of law. According to Rahardjo, "law enforcement is a process to bring legal desires into reality." Desire is the mind of the legislature formulated in these legal regulations (Suharyo, 2016).

The application of law enforcement theory departs from a deepening of the substance that maritime security enforcement is part of law enforcement. The Unitary State of the Republic of Indonesia (NKRI) is an archipelagic country; territorial water is a part of the waters which is the territory of a country which is subject to the country's sovereignty. Besides that, there are also parts of the waters that are outside the territory that are not subject to state sovereignty, for example, are high seas.

The term Indonesian law is often used in everyday life to refer to the system of norms that apply and or apply in Indonesia. Indonesian law is the law, norm system or regulatory system that applies in Indonesia. In other words, Indonesian law is positive Indonesian law, all laws that are positive or that are currently in effect in Indonesia, discussing the Indonesian legal system means discussing the systemic law that applies in Indonesia. Systemically, it means that law is seen as a unity whose elements, sub-systems or elements are interrelated, influence each other, and strengthen or weaken one another which cannot be separated (Bisri, 2007).

The importance of the sea in relations between nations rises the importance of the meaning of international maritime law. The purpose of this law is to regulate multiple uses at sea, namely as a highway and as a source of wealth and as a source of energy. Therefore, the sea can only be used by special vehicles, namely ships, the law of the sea must also determine the status of the ship. In addition, the law of the sea must also regulate competition between countries in seeking and utilizing the wealth provided by the sea, especially between developed countries and developing countries (Bisri, 2007).

With regard to marine areas as the implementation of UNCLOS 1982, article 5 of Law Number 32 of 2014 concerning Marine is as follows:

- 1) Indonesia is an archipelagic country consisting entirely of islands and includes large and small islands which constitute a single territorial, political, economic, socio-cultural and historical unit whose territorial boundaries are drawn from the archipelagic baselines.

- 2) The sovereignty of Indonesia as an archipelagic state includes land areas, inland waters, archipelagic waters, and territorial seas, including airspace above it and the seabed and land beneath it, including the natural resources contained therein.
- 3) The sovereignty of Indonesia as referred to in paragraph (2) is subject to the provisions of laws and regulations, the United Nations Convention on the Law of the Sea, 1982, and related international laws.

A country that has declared agreement to be bound by an international treaty in general then enforces it into and makes it part of its national law. This will have implications for the national laws or regulations of the country concerned. This implication is for the laws and regulations which have a relationship with the substance of the international agreement itself. The size of the implications depends on the substance of the international treaty itself.

The law. No. 5 of 1983 concerning the Indonesian Exclusive Economic Zone is a juridical realization of the expansion of the sea area, primarily concerning economic conditions in its management, supervision and preservation. Thus, efforts to improve the welfare of the nation can be performed by making the best use of marine natural resources.

In terms of law enforcement in ZEEI, the Indonesian Navy acts as an investigator and is stated in Article 14 paragraph (1) of Law Number 5 of 1983 concerning the Indonesian Exclusive Economic Zone as follows:

a. Law enforcement officers in the field of investigation in the Indonesian Exclusive Economic Zone are Indonesian National Armed Forces Officers appointed by the Commander of the Armed Forces of the Republic of Indonesia.

Responding to the article's content, the Commander of the Armed Forces of the Republic of Indonesia has issued a Decree of the Commander of the Armed Forces of the Republic of Indonesia Number 907 of 1987 (commonly known as Skep Pangab 1987), which appoints Indonesian Navy Officers who have been sworn in as investigators of certain crimes at sea. The types of criminal acts referred to in the ZEEI Law are related to criminal acts of exploration, exploitation and management of living natural resources and do not include the crime of narcotics smuggling. Events or criminal acts of narcotics smuggling by foreign ships not fishing vessels are very likely to occur in the EEZ. These obligations are closely related to state jurisdiction which is also expressly regulated in the 1982 UNCLOS.

Regarding the issue of law enforcement in the jurisdiction of Indonesia at sea, the government has reaffirmed the duties of the Indonesian Navy in Article 9 of Law Number 34 of 2004 concerning the Indonesian National Army as follows:

The Navy is in charge of:

1. Carry out TNI duties in the marine sector in the defense sector;
2. Uphold the law and maintaining security in the marine area of national jurisdiction in accordance with the provisions of national law and international law that have been ratified;
3. Carry out naval diplomacy in the context of supporting foreign policy stipulated by the government;
4. Carry out TNI duties in the development and development of the strength of the marine dimension; and
5. Implement the empowerment of marine defense areas (Indonesia, 2004);

Article 9 letter b states that enforcing the law and maintaining security is all forms of activities related to law enforcement at sea in accordance with the authority of the Indonesian Navy (constabulary function) which applies universally and is in accordance with applicable statutory provisions to overcome threats of violence, threats of navigation, and violations of law in the marine area of national jurisdiction. Law enforcement carried out by the Indonesian Navy at sea is limited to the scope of pursuing, arresting, investigating and investigating cases which are subsequently submitted to the prosecutor's office, the Indonesian Navy does not hold a trial.

From the explanation of article 9 letter b above, it is clear that the Indonesian Navy has the authority to carry out investigations in the marine jurisdiction of Indonesia, especially to deal with problems of threats of violence, threats of navigation and law enforcement. However, the law enforcement sentence must refer to the law that mentions the Indonesian Navy as the investigator.

To realize and maintain the Republic of Indonesia as a maritime country, President Joko Widodo at the beginning of his 2014 administration put forward the following missions, including those related to maritime security:

- a. Realizing national security that is able to maintain territorial sovereignty, sustain economic independence by securing maritime resources, and reflects Indonesia's personality as an archipelago nation;
- b. Realizing a free and active foreign policy and strengthening its identity as a maritime country;
- c. Realizing Indonesia to become a maritime country that is independent, advanced, strong, and based on national interests.

In several references, it is stated that the classification of types of crimes at sea is based on various criminal laws on the smuggling of narcotics at sea which are identical to maritime

crimes. In the book Koarmabar Officers, it is stated that there are two types of criminal acts related to narcotics at sea:

- a. Psychotropic Crime (Law Number 5 Year 1997)
 - 1) Carry out the export or import of psychotropic substances without being equipped with an export or import approval letter (Article 61 paragraph (1) letter c);
 - 2) Without the right to own, keep and / or carry psychotropic substances (Article 62);
 - 3) Carrying out the transportation of psychotropic substances without being equipped with valid documents (Article 63 paragraph (1) letter a).
- b. Narcotics Crime (Law Number 35 Year 2009)
 - 1) Any person without rights or against the law plants, maintains, owns, keeps, controls or provides Narcotics Category I or Group II or Group III (Article 111 in conjunction with Article 112, Article 117, Article 122);
 - 2) Every person without rights or against the law produces, imports, exports, or distributes Narcotics Category I or Group II or Group III (Article 113, Article 118, Article 123);
 - 3) Any person without the right to violate the law offers to sell, sell, buy, receive, become an intermediary in the sale and purchase, exchange or deliver Narcotics Category I or Group II or Group III (Article 114, Article 119, Article 124);
 - 4) Any person without the right to violate the law carries, sends, transports, or transits Narcotics Category I or Group II or Group III (Article 115, Article 120, Article 125);
 - 5) Every person without the right to violate the law uses Narcotics Category I or Group II or Group III against other people or gives Narcotics Category I or Group II or Group III (Article 116, Article 121, article 126);
 - 6) The captain who violates the law does not implement the provisions of Article 27. The provisions of Article 27 determine as follows:
 - a. The transported narcotics must be stored in special packaging or in a safe place on the ship sealed by the captain witnessed by the sender;
 - b. The captain makes an official report on the Narcotics cargo being transported;
 - c. The captain, within 1 x 24 (one time twenty four) hours after arriving at the port of destination, is obliged to report the Narcotics loaded on his ship to the head of the local customs office;

- d. The unloading of Narcotics cargo is carried out at the first opportunity by the Captain and witnessed by Customs and Excise officials;
- e. The captain who is aware of the Narcotics without documents or Export Approval Letter or Import Approval on board the ship is obliged to make an Import Approval on the ship, must make an official report, take security measures, and at the first port stop immediately report and submit the Narcotics to the authorized.

Legally, Indonesia is bound by the provisions of UNCLOS 1982, including its obligation to guarantee security in the sea area, especially in the Sea Lane of Communication (SLOC), including national jurisdictions of EEZ, Continental Shelf and Additional Zones. This obligation to maintain the security and safety of international shipping cannot be ignored. If ships from other countries feel that their safety is threatened while crossing or carrying out legal activities around Indonesian waters, then this can be an excuse to present their country's maritime power.

Related to aforementioned matters, it is necessary to have a common perception regarding the dimensions of marine security, especially for all components of the nation who have duties, functions and authorities at sea, so that the "action plan" can be implemented on target, directed and integrated. It should also be understood that maritime security is not only about the aspect of law enforcement, because maritime security is not the same as law enforcement at sea. Security at sea has a much broader dimension than that of law enforcement. The marine security dimension implies that the sea is safe to use and free from threats and disturbances to marine use or utilization activities which include the following:

1. Free from violence threat

This includes threats using force of arms that are organized and have the ability to harass and endanger personnel or the state. These threats can be in the form of piracy, sabotage of vital objects, and armed terror acts;

2. Free from navigation threat

This includes threats posed by geographic and hydrographic conditions as well as inadequate means of navigation aids and shipping information that can endanger shipping safety.

3. Free from natural resources tribulation

This includes pollution and destruction of marine ecosystems, overexploitation and conflict over management of marine resources. The facts show that conflicts over the management of marine resources have a tendency to be easily politicized, and furthermore with the deployment of foreign military forces.

4. Free from law transgression threat (PERUNDANG-UNDANGAN et al., n.d.)

This includes non-compliance with national and international laws that apply at sea, such as: illegal fishing, illegal logging, illegal immigrants, smuggling, and so on.

Thus, as a form of regulating the authority of the Indonesian Navy in dealing with the problem of smuggling of Narcotics by foreign-flagged vessels in the EEZ, the government will immediately issue strict regulations. The affirmation of Indonesia as the world's maritime axis can be realized by eradicating drug smuggling and affirming the authority for Indonesian Navy Officers to carry out investigations at ZEEI.

Based on the explanation above, the Indonesian Navy has the authority to investigate at sea, but does not have the authority to handle narcotics cases at sea..

4. CONCLUSION

Based on the descriptions that have been previously described, the following conclusions are proposed: The Indonesian Navy has the authority to investigate at sea, but for narcotics cases the authority has not been given. The right form of law as the basis for the use of a forum for regulating the authority of the Indonesian Navy in the matter of narcotics smuggling by foreign-flagged ships in Indonesian seas, namely the Government immediately amending Law Number 5 of 1983 concerning Indonesia's EEZ by adding the authority of the Indonesian Navy as investigators without reducing authority owned by the National Police or the National Narcotics Agency in the investigation of narcotics smuggling;

To increase the effectiveness of handling Narcotics crimes in marine waters, it is necessary to increase the role of the Navy by giving investigative authority to the handling of Narcotics Crime Cases in and through the Indonesian sea. This is in line with the Universal Role of the Navy including the role of the military, the role of the Police (Law enforcement) and the role of diplomacy that has been implemented in various laws and regulations concerning the duties of the Indonesian Navy.

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