

## Research Article

# Strengthening Indonesia's Position as an Archipelagic States through Coordinative Law Enforcement the Archipelagic Sealanes Passage on the Alki

Irawati\*, Dedy Effendi, Nurul Chotidjah

Universitas Islam Bandung, Bandung, Indonesia

**ORCID**Irawati: <https://orcid.org/0000-0002-0736-315X>Dedy Effendi: <https://orcid.org/0009-0007-7616-6254>Nurul Chotidjah: <https://orcid.org/0000-0001-7499-0332>**Abstract.**

This paper examines law enforcement in an effort to maintain security and order in Indonesian archipelagic waters. Indonesia has accommodated the right of archipelagic sea lanes passage by establishing three archipelagic sea lanes. In implementing the right of Indonesian archipelagic sea lanes passage, many violations have occurred both by ships and foreign aircraft, there are still many criminal acts and violations of sovereignty both at sea and in the air. The research aims to find the concept of coordinating law enforcement for the right to sea lanes passage in ALKI. The method to be used in this research is normative juridical. The specification of the research used is analytical prescriptive. Based on the results of the study it is known that law enforcement agencies have overlapping powers. BAKAMLA has very broad powers including authority as the TNI and authority as the Police. Coordinative law enforcement can be realized through the distribution of authority among law enforcers in a proportional and coordinated manner under one command. Criminal acts at sea will be the domain of all law enforcers but in coordination of the Water Police. While acts of violation of sovereignty committed by foreign ships or aircraft will fall under the authority of the Indonesian Navy and Indonesian Air Force as Coordinators.

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## 1. INTRODUCTION

Accommodating the legal regime of archipelagic states in UNCLOS 1982, it provides great benefits, because their sovereign territory is increasingly expanding, accompanied by an increase in natural resources, both living and non-living resources. However, with the expansion of state sovereignty, greater efforts are needed to safeguard and maintain its sovereign territory. In addition to rights, the accommodation of the legal regime of archipelagic countries is accompanied by the obligation to accommodate the rights of

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passage of foreign vessels in archipelagic waters, both rights of innocent passage and rights an Archipelagic sealanes passage in archipelagic water.

[1]Referring to the 1982 UNCLOS Provisions, the right of archipelagic sea lanes passage applies to all types of foreign ships and all types of foreign aircraft. [2]But in this paper the authors only limit the passage of foreign ships in archipelagic waters. All types of foreign ships including warships also has the right of passage, while this type of ship is not regulated in the 1982 Law of the Sea Convention.[3]

As a member of the international community, in the marine sector, Indonesia has accommodated the right of archipelagic sea lanes passage by establishing ALKI. ALKI is very useful for the smooth running of international shipping, but of course in accommodating the rights of other countries, Indonesia also needs to pay attention to its interests at sea. Indonesia's interests in the sea that need to be protected include security and order in the sea, protection of the marine environment, protection of biological resources. This is important to mention because there have been many actions that have harmed Indonesia. The opening of the right of passage for foreign ships and aircraft open up various problems of threats to the security and order of Indonesian waters. The form of this threat is in the form of threats of violence such as robbery, in which Indonesian waters are sea transportation lines consisting of Sea Lines of Communication (SLOC) and Sea Lines of Trade (SLOT). Threats to marine resources include, among other things, destruction of marine ecosystems, illegal fishing, environmental pollution, and even threats of law violations at sea which can endanger the integrity of state sovereignty. [4]Based on official data from Indonesian Customs and Excise in 2017 there were 279 cases of smuggling in Indonesian seas. The smuggling includes smuggling of wood, fuel, drugs, alcohol, animals and goods with a value of nearly IDR 551.4 billion.[5]

From these various events, it shows that security efforts at sea must continue to be improved. Meanwhile, there are quite a number of agencies that have authority in enforcing law in the Indonesian seas, namely; (1) Indonesian Navy. (2) Indonesian National Police (3) Bakamla (4) Ministry of Law, Legislation and Human Rights. (5) Ministry of Finance (6) Ministry of Transportation / KPLP (Sea and Coast Guard Unit. (7) Ministry of Maritime Affairs and Fisheries, (8) Ministry of Forestry. Of the many violations that occurred in Indonesian waters carried out by various types of ships foreign countries, it seems that law enforcement in Indonesian waters has not been effective. Law enforcement is very important which externally, law enforcement is an act of a sovereign state. Given the vastness of Indonesian waters, both waters that are subject to Indonesian sovereignty, as well as waters that are subject to Indonesia's

sovereign rights, supervision and law enforcement must be carried out in an integrated and coordinated manner.

Based on this background, the problem can be identified, namely first, how are the rights and authorities of the coastal state when there is a violation of the right of archipelagic sea lanes passage by foreign ships according to international law provisions. Second, how is coordinative law enforcement for violations of the right of archipelagic sea lanes passage by foreign ships.

## 2. METHODS RESULTS

The research method used in this research was normative juridical method. The research specifications used are analytical prescriptive by using secondary data and primary legal materials in the form of provisions of international law and national law. The secondary legal materials are in the form of various research results with tertiary legal materials being in the forms that support primary and secondary legal materials.

This study uses a normative juridical and philosophical approach. The normative juridical approach is intended to study the principles of international law, and in particular regarding justice, sovereignty, jurisdiction of the coastal state and the rights and obligations of other states in the waters of the coastal state.[6] Philosophical approach related to the study of sovereignty.

## 3. DISCUSSION

### 3.1. Jurisdiction of the Coastal State for Violations of the Right of Archipelago sealanes passage According to International Law

Talking about law enforcement means related to issues of sovereignty and territorial jurisdiction. Sovereignty and jurisdictional issues cannot be separated from territorial issues, because sovereignty is limited to territory.[7]Sovereignty is closely related to territoriality in the form of a country's independence to conduct international relations and the right to self-determination to regulate various state life. [8] A state with sovereignty within its territory has the right to regulate various matters that occur within its territory, which is known as territorial jurisdiction.[9]Territorial jurisdiction is excluded for some subjects who have immunity, so that courts such as British courts are not authorized to try a case including against diplomatic officials.

[10]The notion of territorial jurisdiction was put forward by Lord macmillan: *"It is an essential attribute of the sovereignty of this realm, as of all sovereignty independent status that is should process jurisdiction over all person and things within its territorial limits and in all causes civil and criminal arising within these limits"*.<sup>[11]</sup>

From several opinion of these legal experts, it can be argued that base on territorial sovereignty the state has jurisdiction over people, objects and events of civil and criminal law that occur within its territorial boundary. [12]With regard to criminal jurisdiction, several principles apply, namely: [13]Territoriality principle, Nationality principle, protective Universality principle, passive personality principle. Territorial criminal jurisdiction is based on the notion that crimes must be tried by a state whose social order is disturbed, namely the state where the crime was committed.

Based on its sovereignty, the state has jurisdiction over its territory, including its airspace. State sovereignty over its territory both on land, at sea and in the air has been guaranteed by international law. The exercise of sovereignty in each of these areas is subject to a different legal regime. The exercise of sovereignty on land, at sea and in the air constitutes different legal regimes. Based on UNCLOS 1982, sovereignty at sea must be implemented in accordance with UNCLOS provisions, including limitations on sovereignty with the obligation to accommodate the right of passage of foreign ships. State sovereignty in the air is exclusive so that the implementation of sovereignty will be different from the implementation of sovereignty at sea.

Base on its sovereignty, the state has jurisdiction criminal and civil jurisdiction over legal events that occur within its territory. However, in implementing this jurisdiction, the state must respect the provisions of applicable international law. A well-known case related to the implementation of objective territorial jurisdiction is in The Lotus Case of 1927. In this regard, Prof. Jennings stated: *"The jurisdiction extraterritorial principle may not be exercised in such a way as to contradict the local law at the place where the alleged offence was committed"*<sup>[14]</sup>

It is clear that the exercise of extraterritorial jurisdiction must not conflict with the law of the country where the violation has been committed. Based on customary international law, the exercise of territorial jurisdiction is exempted from: Foreign Countries and Heads of Foreign States; Diplomatic Representatives and Consuls of Foreign Countries; Foreign Public Vessels; Foreign Armed Forces; and International Organizations. [15]According to international law, foreign warships and foreign public/government ships and warships while in the territorial sea of a coastal state are exempted from the application of the territorial jurisdiction of a coastal state. This type of ship has immunity to the sovereignty of the coastal state. Apart from that, in principle, all ships with the flag of a country are

associated as the territory of the flag state, so that the law of the flag state applies on board the ship. This is based on 2 theories, namely (floating island theory), objective theory.[16]

Paying attention to the regulations regarding types of ships as stipulated in the 1982 UNCLOS, there are various types of ships including government ships operated for commercial purposes and government ships operated for non-commercial purposes and warships. Each type of ship has a different legal status, meaning that coastal states will treat this type of ship differently.

In relation to the jurisdiction of the coastal state over law violations in its waters, that national law can be applied to all types of ships and exceptions are made for public ships and warships of foreign countries. However, it is necessary to pay attention to what can be done by the coastal state when the exempted ships violate sovereignty and even pose a threat to the integrity of the sovereignty of the coastal state. This, as has happened several times, Malaysian royal ships carried out provocative actions in Indonesian waters. For this incident, what is the authority of the coastal state according to international law. The non-regulation of warships and military aircraft is a problem for archipelagic countries for security in their territorial waters and is considered a deficiency in the 1982 Law of the Sea Convention. Even though there have been rules regarding the passage of ships and aircraft not to deviate more than 25 miles from both sides axis line, archipelagic nations feel that their interests have not been protected to maintain security in their waters. Based on territorial jurisdiction, the state has the authority to regulate, enforce and enforce rules within its territory. Regarding the passage of foreign warships which are not regulated by the 1982 UNCLOS, the coastal state has the authority to at least require foreign warships entering its territory to provide notification. Based on this notification, foreign warships can enjoy immunity from the laws of the coastal state.

To maintain its territorial integrity, the state must exercise its sovereignty effectively. This is similar to the decision of the International Court of Justice in the Sipadan Ligitan case. In one of its considerations, the Court emphasized the importance of effective implementation of sovereignty, by implementing the principle of effective occupation. [17]The meaning of effective Occupation is that the state must always be present to guard and defend its sovereign territory. One of the characteristics of a strong state is being able to maintain and maintain its territorial integrity. In order to maintain and maintain its integrity, international law recognizes the principle of "right to self-defense". [18]The principle of the right to self-defense has been protected by international law as emphasized in Article 51 of the UN Charter. In international law the use of force must

be distinguished in 2 forms, namely legitimate use of force and illegitimate use of force. Article 2 paragraph 4 of the UN Charter stipulates the prohibition of the use of force, therefore the use of force must be careful. [19]The right to self-defense is included in the legitimate use of force, which can be exercised if there is an attack or threat to sovereignty.[20]

Provisions related to law enforcement in the 1982 Law of the Sea Convention include Articles 25 paragraphs 1 and 2, 27, 28, 30, 31 and 52 paragraph 1. The coastal state according to Article 25 paragraph 1 can take the necessary steps in its territorial sea to prevent non-peaceful passage. What is meant by non-peaceful traffic is traffic as referred to in Article 19 UNCLOS including taking the following actions: any threat or use of force against the sovereignty, territorial integrity or political independence of the coastal State, or any other manner in violation of the principles of international law embodied in the charter of the United Nations. any exercise or practice with weapons of any kind; c. any act aimed at collecting information to the prejudice of the defense or security of the coastal state. any act of propaganda aimed at affecting the defense or security of the coastal state, etc. As definition of non-peaceful passage as emphasized in Article 19 also applies to archipelagic sea lanes passage. Article 19 paragraph 2 states that the coastal state has the right to take the necessary steps to prevent any violation of the conditions set for the entry of said ship into internal waters or a stopover. O. Connel stated that the meaning of crossing apart from its "peaceful" itself is to give power to the coastal state to expel ships that are not in a state of innocent passage, for example carrying out actions that are contrary to normal navigatio. [21]In order to prevent non-peaceful passage, the coastal state may refuse the entry of foreign vessels. Cases that have occurred in Indonesian waters, the Government of Indonesia banned the entry of the Portuguese-flagged ship Lusitania Expretio which entered Indonesian waters which then wanted to stop in East Timor (Timor Leste, before separating from Indonesia was the 27th province). This action is an act of a sovereign government that aims to uphold law and sovereignty within its sovereign territory. Based on the doctrine of state action which is rooted in the principle of territorial sovereignty that within its territory the state can exercise its jurisdiction and the legitimacy of its actions cannot be tested by other sovereign governme.[22]

### 3.2. Coordinative Law Enforcement Over the Right of Archipelagic Sealanes Passage In ALKI

Accommodating the interests of other countries regarding the right to archipelagic sealanes passage, archipelagic countries as holders of sovereignty still have the authority to regulate and supervise the implementation of these rights and as countries holders of sovereignty have the authority to enforce the law so that the law functions well. Law enforcement is a process in which the state through its apparatus seeks to uphold national law. According to Jimly Asshiddiqie law enforcement, namely, "the process of making efforts to uphold or function legal norms in a real way as a guideline for behavior in traffic or legal relations in the life of society and the state". [23] Definition of Law Enforcement according to Satjipto Raharjo That law enforcement is the concrete implementation of law in people's lives. The purpose of concrete implementation can be interpreted as law enforcement by law enforcers in people's lives. Law enforcement does not only enforce the rules but also upholds the value of justice. [24] It can be understood that with good law enforcement, order will be created and in the end it is hoped that justice will be created.

The definition of coordinative law enforcement, can be seen grammatically the meaning of coordinating is equivalent, then the meaning of coordinating means that among law enforcers have legal status as law enforcers which among them are equal in position. Because the position among law enforcers is equal, the authority among law enforcers must be firm and clear and implemented in a coordinated manner. Therefore it is very important to determine authority strictly and proportionately. Coordination law enforcement, namely law enforcement by law enforcers in a coordinated system. With a coordinative law enforcement system, law enforcement does not work alone.

The agencies authorized to supervise and enforce law at sea are Indonesian Navy/ALRI, BAKAMLA, KPLP, Water Police, and KKPRI. The agencies authorized to supervise and enforce law at sea are Indonesian Navy/ALRI, BAKAMLA, KPLP, water police, KKPRI. Three authorized agencies, each supported by separate laws, these three agencies are:

The National Police of the Republic of Indonesia, based on articles 13 and 14 letter g of Law no. 2 of 2002 concerning the National Police of the Republic of Indonesia, that the police have the authority to carry out investigations into all criminal acts in accordance with the criminal procedural law and other statutory regulations.

The Indonesian Navy (TNI ALRI), based on Article 9 of Law Number 34 of 2004 concerning the TNI, emphasizes that apart from carrying out duties in the defense sector,

the Indonesian Navy is also tasked with upholding the law and maintaining security in maritime areas of national jurisdiction. Apart from that, in Article 17 of Government Regulation Number 27 of 1983 concerning the Implementation of the Criminal Procedure Code and its explanation, it is emphasized that investigations in Indonesian waters, contiguous zones, continental shelf and the exclusive economic zone of Indonesia, are carried out by Indonesian Navy officers and other investigators as determined by law. arrange it.

Civil Servants (PPNS), based on article 6 paragraph (1) letter b of the Criminal Procedure Code, what is meant by investigators are police officials and civil servant investigators who are given special authority by law.

Based on Article 58 of Law No. 34 of 2004, the Main Authority of the Indonesian Navy is to manage state sovereignty, maintain the territorial integrity of the Unitary State of the Republic of Indonesia, and protect the whole nation and all of Indonesia's bloodshed from threats and disturbances to the integrity of the nation and state in the sea area. Next we look at Bakamla's authority, Bakamla's position under the coordination of the Coordinating Minister for Politics, Law and Security, the Coordinating Minister for Politics, Security and Law coordinating with the Coordinating Minister for Maritime Affairs. Bakamla is responsible to the President through the Coordinating Minister for Political, Legal and Security Affairs. Bakamla also has the authority to carry out instant pursuit; stopping, inspecting, arresting, bringing and handing over the ship to the relevant authorized agency for further legal proceedings; and integrate security and safety information systems in Indonesian waters and Indonesian jurisdiction. As a law enforcer, security and safety at sea, whose duties consist of service aspects of early warning information systems, law enforcement at sea, customs, shipping security and safety, control of living and non-living natural resources in the marine environment, search and aid at sea and national defense in a state of war. Bakamla's duties and powers are very broad and disproportionate.

Next, we see that the main task of KPLP is to realize shipping safety and security. KPLP under the Ministry of Sea Transportation, its duties and authorities are to maintain the safety and security of shipping and SAR. If we pay attention, Bakamla's task is to provide search and rescue assistance in Indonesian waters and Indonesian jurisdiction, this task is a SAR task. Paying attention to Bakamla's duties, it is clear that these tasks overlap with the duties and authorities of KPLP.

Based on the Regulation of the Head of State Police No. 22 of 2010 concerning Organizational Structure and Work Procedures at the Regional Police Level Article 1 point 1 stipulates that: "The National Police of the Republic of Indonesia is a state



instrument that plays a role in maintaining public security and order, upholding the law, and providing protection, protection and services to the public in order to maintain domestic security.” Based on the provisions governing POLRI and Water Police, the Duties of the Water Police, as referred to in the Police Act, are primarily tasked with enforcing the law at sea. We discuss the authority of the KKPRI, the authority of the KKPRI within the framework of enforcing fisheries law. The position and authority of the KKP RI overlaps with that of the Indonesian Navy. The KKPRI’s authority to enforce fisheries law is only in territorial waters, while the Indonesian Navy’s authority is not only in territorial waters but also in Indonesia’s EEZ.

If we pay attention to the duties and powers of law enforcers discussed above, it seems that the main duties as law enforcers at sea who play a very important role in maintaining the sovereignty of order and security at sea is on the Indonesian Navy and the Water Police. That’s why all law enforcers such as Bakamla, KKPRI, KPLP in carrying out their duties cannot operate separately, while currently their authorities overlap with each other, and even have their own facilities or equipment. Noting that the main task of maintaining sovereignty, security and order at sea rests with the Indonesian Navy and the Water Police, law enforcement at sea lies within the coordination of the Indonesian Navy and the Water Police. The Indonesian Navy and also the Water Police, both from their personnel and from their facilities, have been prepared as the holders of authority to maintain security, order and sovereignty at sea. Various incidents show that Bakamla, KKPRI and KPLP do not have the ability to deal with an emergency action, such as facing a provocation by the Royal Malaysian Police. Therefore, it is necessary to reconstruct authority among law enforcers. Noting that the main duties and authorities in maintaining sovereignty, security and order at sea are with the Indonesian Navy and Water Police, it is very important to improve the facilities and capabilities of these law enforcers, and these tasks are supported by other law enforcers, namely Bakamla, KPLP and KKPRI.

#### 4. CONCLUSION

Archipelagic States have the right and authority to take legal action when foreign ships violate the provisions of international waters passage by imposing their national laws, but for warships based on the 1982 Law of the Sea Convention, because of the immunity they have, archipelagic states can only expel the warships and hold the flag state accountable. for the losses suffered. However, if a foreign warship is deemed to have made a violent threat to the sovereignty of an archipelagic state based on the principle of the archipelagic state’s right to self-defense, it can shoot at the warship.Coordinative

law enforcement in Indonesian waters, namely a law enforcement system in which the relationship between law enforcers is equivalent to their proportional and coordinated duties and authorities within a single law enforcement framework, namely within the coordination framework of the Indonesian Navy and the Water Police. Coordinative law enforcement can be realized if law enforcement authorities do not overlap. Therefore it is suggested to reconstruct the authority of law enforcement at sea and in the air to increase the capabilities and facilities of the Indonesian Navy Indonesian Air Force and Water Police.

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