

THE OVERPLAY FUNCTIONS AND AUTHORITY OF THE SEA SECURITY BOARD (BAKAMLA) AND THE SEA AND COAST GUARD IN KEEPING MARINE SECURITY IN INDONESIA

Suparto¹, Admiral²

¹Universitas Islam Riau, Pekanbaru, Indonesia, Eemail : suparto@law.uir.ac.id

²Universitas Islam Riau, Pekanbaru, Indonesia, Email : admiral@law.uir.ac.id

Received: 2021-12-05; Reviewed: 2022-08-20; Accepted: 2022-08-29; Published: 2022-08-29

Abstract

Indonesia is a maritime country with a wide ocean. Geopolitically, Indonesia's position is an international shipping lane. Therefore, it is necessary to have an institution that has the duty and authority to maintain sea and coastal security and shipping safety. The formulation of the problem is how the functions and authorities of the Sea and Coast Guard (SCG) and the Maritime Security Agency (Bakamla) are in guarding Indonesian seas. The research method used a normative juridical approach with secondary data and analyzed descriptively qualitatively. There are two overlapping institutions in carrying out their duties and functions, namely SCG which is regulated in Law No. Year 2008 concerning Shipping and Bakamla which is regulated under the Law No. 32 Year 2014 concerning Marine Affairs. The government intends that maritime security in Indonesia to be handled by the military, not civilians. This can be seen that the chairman of Bakamla is held by a general from the Indonesian Navy and is responsible to the President through the Coordinating Minister for Political, Legal and Security Affairs. While in Law No. 17 Year 2008 stipulates that SCG is under the Ministry of Transportation and is responsible to the President. Bakamla is more appropriate to be used as SCG, this is based on the consideration that Indonesia is a maritime country with wide seas with all its problems such as narcotics trafficking, human trafficking, terrorism, theft of marine resources, etc., so it would be more appropriate to submit it to Bakamla as a semi-official institution. military. As a consequence of this choice, it is necessary to revise Law No. 17 Year 2008 and Law No. 32 Year 2014.

Keywords: *Authority; Bakamla; Function; Sea and Coast Guard; Sea security.*

1. INTRODUCTION

Indonesia is the largest archipelago in the world consisting of 17,499 islands from Sabang to Merauke. The total area of Indonesia is 7.81 million km² consisting of 2.01 million km² of land, 3.25 million km² of sea, and 2.55 million km² of the Exclusive Economic Zone (EEZ). Ownership of this vast sea area makes Indonesia plays an important role in the development of international maritime law. Even Indonesia has to provide the Indonesian Archipelago Sea Channel (ALKI) as the opening of international shipping routes. Apart from providing ALKI, Indonesia is also obliged to secure these international routes from crimes and problems at sea, one of which is piracy. For this reason, a Sea and Coast Guard is required.

The existence of Sea and Coast Guard is very important, because it sees the huge potential for crime from the sea route. If there is no sea escort and guard such as a goal

or a yard without a fence, smuggling of firearms, drugs, and human trafficking can easily enter by sea.¹

In Indonesia, an institution that is in charge of maritime security has been formed, the Maritime Security Agency (Bakamla) which was formed based on Law No. 32 Year 2014 concerning Maritime Affairs, the duties and authorities are regulated in Articles 59 - 68 of the Law No. 32 Year 2014. Besides Bakamla, there is also an agency that serves as the Indonesian Sea and Coast Guard which was formed based on Law No. 17 Year 2008 concerning Shipping. The duties, functions and authorities of the Indonesian Sea and Coast Guard are listed in Articles 276 - 283 of Law No. 17 Year 2008. Apart from these two agencies there are other agencies that also have tasks and functions at sea and coast, including Indonesian Navy, KKP, Customs and Excise and Water & Air Police. There are many officers who have authority at sea, because the Indonesian sea is very large, so that no institution is able to protect the sea alone. Ironically, these various institutions do not strengthen the guardian of national marine resources, instead it makes coordination unclear or overlaps in the field.²

Among these several institutions, the most potential for overlapping is between Bakamla and Sea Coast Guard. In Law No.17 Year 2008, the Indonesian Sea and Coast Guard has been regulated. Indonesia really needs the Indonesian Sea and Coast Guard because Indonesia has a very wide ocean. Similar to other countries in the world, Indonesia must have an Indonesia Sea and Coast Guard. Initially, in other countries there were also many institutions that had the authority to protect at sea, so the Sea and Coast Guard was presented to be more orderly at sea so that if there was an accident at sea it was clear who had to handle it because there was only *a single agency*, namely the Sea and Coast Guard as the executor.

In practice, Bakamla is considered as a *Coast Guard* because the Sea and Coast Guard as *Indonesia's Coast Guard* has not been formed until now. These two institutions have the potential for clashes due to overlapping duties and authorities based on each law.

2. DISCUSSION

Duties and Authorities of the Maritime Security Agency (Bakamla) Based on Law No. 32 Year 2014 and Presidential Decree No. 178 Year 2014

In the midst of busy dissolving non-structural institutions, the president actually created a new non-structural institution called the Maritime Security Agency, which was shortened to Bakamla. This new agency adds to the length of the agencies serving at sea. Bakamla was formed through Presidential Decree No. 178 Year 2014 based on the order of Law No. 32 Year 2014. In Article 2 of Presidential Decree No. 178/2014 reads, Bakamla is responsible to the President through the Coordinating Minister for Political, Legal and Security Affairs (Menkopolhukam).³ Whereas in Article 60 of Law No. 32 Year 2014, states that Bakamla is under and is directly responsible to the

¹ R.J.Lino, 2014. *Sea and Coast Guard*, GEM Indonesia, Jakarta, pg. 17

² Nina Firda Amalia. "Analysis of the Authority of the Maritime Security Agency based on Presidential Regulation No. 178 Year 2014 on the Maritime Security Agency", Universitas Maritim Raja Ali Haji, *E-Journal*, 2015, pg.3

³ Presidential Regulation Number 178 Year 2014 concerning the Maritime Security Agency.

President through the minister who coordinates it. As is known, Law No. 32 Year 2014 was made to be a guideline for ministers who hold government affairs in the maritime sector in developing Maritime Affairs. The minister who holds government affairs in the maritime sector is the Minister of Marine Affairs and Fisheries who is under the coordination of the Coordinating Minister for Maritime Affairs and Investment.

Presidential Decree No. 178 Year 2014 is an order of the Law No. 32 Year 2014, so that the Presidential Decree must not contradict the Law that orders it. Thus, Bakamla was formed based on Law No. 32 Year 2014, responsible to the president can only be through the Minister of Marine Affairs and Fisheries. Considering that the Minister of Marine Affairs and Fisheries is under the Coordinating Minister for Maritime Affairs, the Coordinating Minister for Maritime Affairs can become the Coordinator of Bakamla. Because the Minister of Marine Affairs and Fisheries is not under the coordination of the Coordinating Ministry for Political, Legal and Security Affairs. The Law No.32 Year 2014 did not find any provisions regulating the relationship between Bakamla and Menkopolhukam. Thus, Article 2 of Presidential Decree No. 178 Year 2014 has the potential to contradict Law No. 32 Year 2014 which became the basic foundation for the formation of Bakamla.

Bakamla is not a law enforcer, its members are not investigators, so law enforcement for violations of Law No. 32 Year 2014 does not absolutely have to be carried out by Bakamla, but can be carried out by other units as long as they are given tasks and authority by law. This can be seen in the provisions contained in Article 59 of Law No. 32 Year 2014 which reads: (1). Enforcement of sovereignty and law in Indonesian waters, the seabed and the land under it, including the natural resources contained therein and sanctions for violations are carried out in accordance with the provisions of laws and regulations and international law. (2). Jurisdiction in enforcing sovereignty and law against foreign ships crossing the territorial sea and Indonesian archipelagic waters is exercised in accordance with the provisions of laws and regulations and international law.⁴

In Article 59 paragraph (1) and (2) the sentence “in accordance with the provisions of statutory regulations and international law” confirms that the enforcement of sovereignty and law for violations of this law can be carried out by other units as long as they are given authority by law, for example. Indonesian Navy. Based on statutory regulations, there are no rules stating that Bakamla has a function as a Coast Guard, in Law No. 32 Year 2014 nothing is regulated at all regarding the function of the Coast Guard. Therefore, based on statutory regulations, it is not regulated that Bakamla is the executor of the Coast Guard function.

The Law No. 32 Year 2014 does not regulate at all the definition of shipping safety and security. The establishment of Bakamla adds to the overlap of law enforcement at sea. According to paragraph 1 article 24 of Law No. 6 Year 1996 concerning Waters, that in Indonesian waters there are activities of Sovereignty Enforcement and Law Enforcement. The enforcement of sovereignty at sea is carried out by the Indonesian Navy as regulated by the the Law No. 34 Year 2004 concerning the TNI. Law enforcement, in the form of

⁴ Law of the Republic of Indonesia Number 32 Year 2014 concerning Maritime Affairs

law enforcement at sea and coast, is carried out by the Sea and Coast Guard as regulated by Law No. 17 Year 2008.

Duties and Authorities of the Sea Coast Guard Based on Law No. 17 Year 2008

The function of the Coast Guard is to enforce laws and regulations on the sea and coast, as regulated in paragraph 1 article 276 of Law No. 17 Year 2008. This function is carried out by the Sea and Coast Guard institution. The International Maritime Organization (IMO) through the IMO Convention has issued specific tasks that must be carried out by the Coast Guard of each member country, which includes Maritime Safety and Maritime Security. In Indonesia, these two things have been regulated in the Law No. 17 Year 2008. Maritime Safety is regulated in Article 116 and Maritime Security is regulated in paragraph 1 of Article 276. Maritime Safety, includes the area of safety of navigation, seafarers, oil spill response and vessel traffic system. So, Maritime Safety is basically related to shipping safety and security, which is regulated in article 116 of the Law No. 17 Year 2008, and is also an enforcement of the rules of Law No. 17 Year 2008, which is the task and authority of the Sea and Coast Guard (PLP) or Sea and Coast Guard (SCG). Maritime Security is frequently defined as the protection from threats to the freedom or good order at sea. Issues clustered under the notion of maritime security include crimes such as piracy, armed robbery at sea, trafficking of people and illicit goods, illegal fishing or pollution. So, Maritime Security is basically related to the smuggling of illegal drugs, terrorism at sea, armed piracy, marine pollution, illegal fishing, all of which are matters relating to violations of law at sea and coast outside of shipping safety and security or outside the Law. No. 17 Year 2008, as regulated in paragraph 1 article 276 of The Law No. 17 Year 2008 concerning shipping which is the duty and authority of the Sea and Coast Guard.⁵

The law establishing the Sea and Coast Guard is Law No. 17 Year 2008. This can be seen in the explanation which contains: “Apart from the above, what is also regulated explicitly and clearly in this Law is the establishment of an institution in the field of Sea and Coast Guard which is formed and responsible answer to the President and technically the operation is carried out by the Minister “. And, the institution that becomes the Indonesian Coast Guard is the Sea and Coast Guard.

Authority of the Sea and Coast Guard according to Article 278 of Law No. 17 Year 2008. 1). In carrying out the tasks referred to in Article 277, sea and coast guards have the authority to: (a). carry out marine patrols (b). conduct hot pursuit. Sea and Coast Guard may do hot pursuit because the Sea and Coast Guard ship has the status of a State Ship or KN. (c). stop and inspect ships at sea (this can be done by the Sea and Coast Guard, because the Sea and Coast Guard is an investigator). (d). conduct investigations. 2). In exercising the authority as referred to in paragraph (1) point d, the sea and coast guards carry out their duties as Civil Servant Investigating Officer (PPNS) in accordance with the provisions of laws and regulations.⁶

⁵ A. Kadar. “Maritime Management Towards Indonesia as a World Maritime Axis”, *National Security Journal*, Vol.1, No. 3, 2015, pg. 440

⁶ Law of the Republic of Indonesia Number 17 Year 2008 concerning Shipping

Duties and Authorities of the Marine and Coastal Guard Unit (KPLP) Based on Law No. 17 of 2008 and its Comparison with Bakamla

One of the agencies that has the same task as Bakamla is the Sea and Coast Guard Unit (KPLP). KPLP is internationally known as the only law enforcer in terms of maintaining security and safety in Indonesian waters, especially in the field of international shipping. The legal basis for this KPLP is Law no. 17 Year 2008. Internationally, KPLP is known as the Indonesian Sea and Coast Guard (ISCG). The formation of the Bakamla has resulted in Indonesia having two agencies that act as guardians of security and safety in Indonesian waters. With the presence of these two agencies that have the same task, it does not rule out the possibility of overlapping authority which will also result in less than optimal benefits resulting from the formation of the two agencies.⁷

Furthermore, Nazili Abdul Azis explained that after knowing about the position, duties, functions and authority of Bakamla and KPLP, it can be seen about the strengths and weaknesses of the two agencies. The weaknesses of the two agencies are as follows:

1. Maritime Security Agency (Bakamla)

- a. It is not clearly stated the category of safety and security.
- b. Bakamla does not have a role as investigator, so if the suspect conducts a pre-trial, it is very likely that the case handled by Bakamla will be dismissed by the judge.

2. Sea and Coast Guard Unit (KPLP)

- a. The scope of its authority is not clearly stated
- b. Have not implemented an early warning system / early detection system (Early Warning System) in carrying out shipping security and safety

Meanwhile, the advantages of the two agencies are as follows:

1. Maritime Security Agency (Bakamla)

- a. Its authority covers Indonesian territorial waters and Indonesian jurisdiction.
- b. Have implemented an early warning system / early detection system (Early Warning System) in carrying out security and safety in Indonesian territorial waters and Indonesian jurisdiction.

2. Sea and Coast Guard Unit (KPLP)

- a. Safety and security are clearly stated, namely covering the shipping sector.
- b. KPLP has the role of investigator. So that if the suspect does pre-trial, it is unlikely that the case handled by KPLP will be overturned by the judge.⁸

Meanwhile, Eka Martina Wulandari argues that if you look at it there are actually more shortcomings from Bakamla when compared to KPLP which is regulated according to their respective legal bases, including:

1. Mandate of Law No. 32 Year 2014 was not implemented, because Bakamla was responsible to the President through the Menkopolkam. In fact, in Law No. 32 Year 2014 Article 60, Bakamla is located under and is directly responsible to the President through the Minister who coordinates it. Meanwhile, the Minister of Transportation has carried out the mandate of Law No. 17 Year 2008. Because KPLP is responsible to the President and is technically operated by the Minister.

⁷ Nazili Abdul Azis, L. Tri Setyawanto R. & Soekotjo Hardiwinoto. "Authority of the Maritime Security Agency (Bakamla) in the Implementation of Security in Indonesian Waters", *Dipenogero Law Journal*, Vol.5, No. 4, 2016, pg. 8

⁸ *Ibid.* pg. 10

2. The tasks of Bakamla do not extend to exploration and exploitation of marine resources. Meanwhile, in Law No. 17 Year 2008 which regulates the KPLP also has the task of supervising and controlling salvage activities (helping ships), underwater work, as well as exploration and exploitation of marine resources in accordance with Article 276 paragraph (1) letter d.
3. The authority of the Bakamla is not as an investigator, so that it can only hand over the suspect's ship to the relevant agency (Article 63 paragraph (1) letter b). Meanwhile, in Article 278 paragraph 1 letter d of Law No. 17 Year 2008 explains that KPLP can conduct investigations. This authority regarding investigators is what causes KPLP to be favored as a Coast Guard rather than Bakamla.
4. In Law No. 32 Year 2014 and Presidential Regulation No. 178 Year 2014 does not explain the mandate to equip Bakamla with ships, so that if Bakamla owns its own ship it will be considered illegal. In contrast to the KPLP which in Article 279 paragraph (1) of Law No. 17 Year 2008 which contains: "In order to carry out his duties as sea and coast guard as referred to in Article 277, it is supported by infrastructure in the form of a base for marine and coastal guard fleets located throughout Indonesia, and can use ships and aircraft that have the status of State ships. or State aircraft."⁹

Overlapping Duties and Authorities of the Maritime Security Agency (Bakamla) with the Sea Coast Guard (SCG)

Bakamla was formed through Presidential Regulation No. 178 Year 2014, in which the Presidential Decree clearly states that Bakamla has the duty to conduct security and safety patrols in the territorial waters and jurisdiction of Indonesia, where it is stated that in carrying out its duties, Bakamla is responsible to the President through the Coordinating Minister for Political, Legal and Security Affairs. Bakamla is the result of the revitalization of the Maritime Security Coordinating Board (Bakorkamla) which was formed in 1972 through a Joint Decree of the Minister of Defense and Security / Commander of the Armed Forces, Minister of Transportation, Minister of Finance, Minister of Justice and Attorney General.

In carrying out the task of maintaining maritime security, Bakamla is present not only to rely on the Navy or the Police, but also involves other stakeholders who are Bakamla's partners, namely the Coordinating Ministry for Political, Legal and Security Affairs, the Ministry of Foreign Affairs, the Ministry of Home Affairs, the Ministry of Defense, the Ministry Law and Human Rights, Ministry of Finance, Ministry of Transportation, Ministry of Maritime Affairs and Fisheries, Attorney General's Office, TNI Headquarters and the State Intelligence Agency.

Meanwhile, the formation of the Sea and Coast Guard aims to maintain the security and safety of shipping in the Indonesian sea area, as well as in the marine area of the Indonesian Exclusive Economic Zone and the marine area of the Indonesian Contingent Shelf as mandated in the explanation of the Law No. 17 Year 2008. In addition, it is also stated that the Sea and Coast Guard has a command function in enforcing regulations in the field of shipping safety and security, and a coordination function in the field of

⁹ Eka Martiana Wulansari. "Law Enforcement at Sea with a Single Agency Multy Tasks System", *Online Journal of Rechts Vinding*, 2016, pg. 28

law enforcement outside shipping security and safety; the establishment of the Sea and Coast Guard is for the empowerment of the Bakorkamla and the strengthening of the Sea and Coast Guard; provisions relating to shipping safety and security that exist in Law No. 17 Year 2008 concerning Shipping, apart from the Indonesian sea territory, it also applies to the international sea area, namely the Exclusive Economic Zone sea area and the Indonesian Continental Shelf Sea area.

Based on the United State Coast Guard (USCG) which is a branch of the United States Armed Forces which is a maritime, military and multi-mission service among the branches of the United States military to carry out maritime law enforcement (with jurisdiction in domestic and international waters) . USCG operates under the Department of Homeland Security during peacetime and can be transferred under the Department of Navy by the President or Congress during wartime. Of course, the Indonesian Sea and Coast Guard must be formed to enforce maritime law with its operational areas being the jurisdiction and territorial waters of Indonesia. Maritime itself deals with the navy and all activities related to commercial activities (trade and shipping) that are non-military to the sea. Thus, the term of maritime is actually more comprehensive, not only seeing the sea physically, its container and contents, but also seeing the sea in a geopolitical context. The sea as the operational area of the Sea and Coast Guard itself can be interpreted as a container, a very wide expanse of salt water that covers the surface of the earth, with all the natural resources contained in it (seeing the sea physically).¹⁰

If a comparison of the duties and functions of the two agencies is carried out and relates them to their duties as maritime law enforcers, it can be seen that Bakamla is responsible for security and safety in the territorial waters and jurisdiction of Indonesia. It does not specify what marine aspects are its scope, so that it can it is considered that Bakamla has the right to carry out security and safety operations relating to various aspects, ranging from shipping, illegal fishing, marine mining, marine pollution and others. Meanwhile, the Sea and Coast Guard is responsible for shipping security and safety, specifically mentioning that the marine aspect which is the scope of the Sea and Coast Guard is shipping. Therefore it is necessary to have clarity in the division of functions and work between maritime security institutions. Not only that, the government also needs to initiate the management of maritime security institutions, which specifically regulates the duties and functions of the Indonesia Sea and Coast Guard.

One of the reasons for overlapping in the field is the existence of several duties and authorities between the Sea and Coast Guard and the same Bakamla which are as follows:

1. Law No. 17 Year 2008 in Article 277 paragraph (1) point (g) which reads: supporting the implementation of life search and rescue activities at sea.

Law No.32 Year 2014 in Article 62 point (f) which states: providing search and rescue assistance in Indonesian territorial waters and Indonesian jurisdiction.

¹⁰ Luthfi Widagdo Eddyono. "The Constitutionality of Shipping Law", *Journal of RechtsVinding*, Vol. 8, No. 2, 2019, pg. 220

2. Law No.17 Year 2008 in Article 277 paragraph (2) point (c): activities of guarding, supervising, preventing and prosecuting law violations as well as securing shipping and securing community and government activities in Indonesian waters.

UU No. 32 Year 2014 in Article 62 point (c) which states: to carry out guarding, supervision, prevention and prosecution of legal violations in Indonesian territorial waters and Indonesian jurisdiction.

3. Law No.17 Year 2008 in Article 278 paragraph (1) point (b): conducting hot pursuit. UU No. 32 Year 2014 in Article 63 point (a) which contains: conducting a hot pursuit.

4. Law No.17 Year 2008 in Article 278 paragraph (1) point (c): stop and inspect ships at sea,

UU No. 32 Year 2014 in article 63 point (b) which states : to stop, inspect, arrest, carry, and hand over the ship to the relevant agency authorized to carry out further legal proceedings.

Bakamla's duties are regulated in the provisions contained in Article 61 of Law No. 32 Year 2014, which contains "Marine Security Agency has the task of conducting security and safety patrols in Indonesian territorial waters and Indonesian jurisdiction".¹¹

It was clear that Bakamla's job was only to patrol. There is no specific task that only Bakamla can do, so it is important that the Sea and Coast Guard be formed immediately. This kind of thing has resulted in overlapping authority between units operating at sea. Compared with the tasks of the Sea and Coast Guard in Chapter XVII Article 277 paragraph (1) of Law No. 17 Year 2008 which contains:

(1). In carrying out the functions referred to in Article 276 paragraph (1) the sea and coast guards carry out the following tasks: (a). supervise the safety and security of shipping; (b). supervise, prevent and control pollution in the sea; (c). supervising and controlling ship activities and traffic; (d). supervision and control of salvage activities, underwater work, as well as exploration and exploitation of marine resources; (e). securing navigation-navigation aids; and (f). support the implementation of search and rescue activities at sea.¹²

It can be seen that the duties of the Sea and Coast Guard are clearer and broader. For example the tasks contained in the letter d. supervision and control of salvage activities, underwater work, as well as exploration and exploitation of marine resources; This task is very broad to include exploration and exploitation of marine resources. Thus, oil drilling and fishing activities are monitored and can be put in order by the Sea and Coast Guard, because these activities can interfere and endanger shipping.

Based on the duties, functions and authorities given to Bakamla in accordance with the Law No. 32 Year 2014 and the duties, functions and authorities of the Sea and Coast Guard in accordance with the Law No. 17 Year 2008, there are several facts that occurred in the field, including:

1. Bakamla in carrying out its duties and functions as mandated by the Law No. 32 Year 2014 Article 63 point (b) to stop, inspect, arrest, carry and hand over the ship to the relevant authorities for the implementation of further legal proceedings. However, Bakamla in this case never carried out the order given by the law.

¹¹ Law of the Republic of Indonesia Number 32 Year 2014 concerning Maritime Affairs

¹² Law of the Republic of Indonesia Number 17 Year 2008 concerning Shipping

2. In law enforcement at sea, Bakamla claims that it is the one who has the authority to enforce law at sea and does not coordinate with related agencies as mandated by law.
3. In carrying out the duties and functions of the Sea and Coast Guard, which is now carried out by the Sea and Coast Guard Unit (KPLP) which is under the supervision of the Ministry of Transportation, it has not been able to carry out its duties optimally as mandated in the Law No. 17 Year 2008.

Several institutions were merged with regard to law enforcement issues. For example, if in Indonesia the authority for law enforcement lies in the KPLP, the Air & Water Police (Polairud), the Navy, Bakamla, KKP, to Customs and Excise (Custom), then in Singapore and Japan it is enough at one door, namely the Sea agency and Coast Guard. So there is only one door for ship-related processing. Even to enter the territory, for example in America, before a ship enters American waters, the ship has been blocked by the Sea and Coast Guard to determine whether it can enter or not, the International Ship and Port Security Code (ISPS Code) is clear or not. If in Indonesia, it has just been carried out for inspection. In the Sea and Coast Guard Government Regulation Plan (RPP) prepared by the Ministry of Transportation, there have been several additional articles that emphasize strengthening, including the authority of institutions currently having authority at sea.¹³

However, in its development it seems that the government will function Bakamla as SCG in Indonesia, this can be seen from the statement of government officials, namely the Coordinating Minister for Maritime Affairs and Investment who will make Bakamla as SCG. Actually, in the shipping law there is a statement stating that the KPLP is authorized as the Indonesian Sea and Coast Guard, but in the Draft Government Regulation (RPP) there must be strengthening. The formation of the Sea and Coast Guard will reduce overlap in law enforcement at sea and cut logistics costs so that sea transportation can be more efficient by reducing cost burdens. Moreover, considering that the establishment of the Sea and Coast Guard Agency has also been mandated by Law No. 17 of 2008 on Shipping.¹⁴

The formation of an agency should first think about whether it is needed or not. As with the formation of Bakamla, we should first think about what the purpose of its formation is, because many agencies have the authority to safeguard security at sea based on their respective laws. The agencies that have the authority over security safeguards at sea include the Indonesian National Army, the Navy (TNI AL), the Water and Air Police (Polairud), Customs and Excise (BC), Supervision of Marine and Fisheries Resources (PSDKP), and the Marine Guard Unit. and Beach (KPLP). However, of the many agencies, only two or three of them are actually “marine agencies”. One of the agencies that has the same duties as Bakamla is the KPLP. KPLP is internationally known as the only law enforcer in terms of maintaining security and safety in Indonesian waters, especially in the field of international shipping. The legal basis for this KPLP is Law Number 17 Year 2008. Internationally, KPLP is known as the Indonesian Sea and Coast

¹³ Dicky R. Munaf, & Tri Sulistyaningtyas. “Operation System Synergize Bakamla with Law Number 32 Year 2014 concerning Ocean”, *Journal of Sociotechnology*, Vol. 14, No. 3, 2015, pg. 280

¹⁴ Abdul Muthalib Tahar dan Widya Krulinasari. “Sharing of Authority in Law Enforcement Against Violations of Laws and Regulations in Indonesian Waters”, *Journal of Fiat Justitia*, Vol. 6, No. 1, 2012, pg. 48

Guard (ISCG).¹⁵ The formation of the Bakamla has resulted in Indonesia having two agencies that act as guardians of security and safety in Indonesian waters. The presence of these two agencies which have the same task results in overlapping authority which will also result in less than optimal benefits resulting from the formation of the two agencies.¹⁶

In terms of the overlap between marine institutions, the author believes that the overlap continues if there is no reinforcement of who the Sea and Coast Guard is in Indonesia. If the Sea and Coast Guard of Indonesia has not been formed then all institutions will act as if it were the Sea and Coast Guard. From the explanations of several experts, it can be concluded that there is an overlap between SCG and Bakamla, namely because Indonesia does not have a Sea and Coast Guard. Existing agencies only act as if they are the Sea and Coast Guard of Indonesia. The absence of legal firmness on the duties and authorities between Bakamla and SCG causes them to act as Sea and Coast Guard. Overlapping between the two is inevitable. In this case, firm and clear regulations are needed in order to legalize the duties and authorities of each so that there is no continuous overlap between the two. And the government should immediately determine who will become IndonesiaSea and the Coast Guard.¹⁷

As is well known, the Sea and Coast Guard is an agency that has the task of enforcing maritime and maritime law which concerns all aspects or activities that take place over or over the sea, not only focused on shipping. The Sea and Coast Guard is a maritime security institution / institution owned by a country and is responsible for various tasks at sea such as carrying out law enforcement, border surveillance, search and rescue (SAR). This refers to the regulations of international laws for the creation of Safe, Secure, and Efficient Shipping on Clean Ocean.¹⁸

In several countries that have a Coast Guard, such as the United States, United Kingdom, Italy, Canada, Japan, and other countries the Coast Guard has different roles and functions according to the needs of the country, its implementation is under the Department/Civil Service and there is also under the military unit. Indonesia is an archipelago (Archipelagic State) has a sea area of \pm 5.8 million km to 81,000 km long coastline of the 4th largest in the world. Until now, Indonesia has no official and accountable Coast Guard / Sea and Coast Guard institutions. However, it is seen from the role and function of the Coast Guard itself. Indonesia already has several agencies dealing with maritime defense and security, law enforcement at sea, surveillance and security at sea, as well as search and relief for calamities at sea, one of which is Bakamla and KPLP.¹⁹

In this case, the Government needs to carry out maritime security governance, steps that need to be taken directly related to the provision of an adequate legal framework

¹⁵ Andi Widjajanto, *et al.*, 2013. *National Security Policy Arrangement*, Dian Cipta, Jakarta, pg. 54

¹⁶ *Ibid.*, pg. 55

¹⁷ Shanti Dwi Kartika. "Maritime Security From the Aspect of Regulation and Law Enforcement", *State Law Journal*, Vol. 5, No. 2, 2014, pg. 160

¹⁸ Muh. Kadarisman. "Maritime Safety and Security Policies in Support of Marine Transportation Systems", *Journal of Transportation & Logistics Management*, Vol. 4, No. 2, 2019, pg. 188

¹⁹ Muhammad Rafi Darajati & Muhammad Syafei. "Legal Politics of the Establishment of a Maritime Security Agency in Maintaining Maritime Security in Indonesia", *Journal of the Era of Law*, Vol. 16, No. 1, 2018, pg. 120

specifically and re-management of overlapping institutional aspects in maritime security governance. Not only so, the government also needs to initiate the management of maritime security institutions, which specifically dictate the duties and functions of the Indonesia Sea and Coast Guard.

3. CONCLUSION

Indonesia is a maritime country with extensive and long seas and beaches. In addition, geopolitically, Indonesia's position is a crossroads of international shipping. Therefore it is necessary to have an institution or agency that has the duty and authority to protect the sea and coast, especially those related to sea and coastal security and safety in shipping. This is not only the desire of the Indonesian state but also demands from countries in the world that Indonesia guarantees the security and safety of ships crossing Indonesia's seas and coasts. Responding to these conditions, Indonesia issued Law No. 17 Year 2008 concerning Shipping. The law stipulates that Indonesia will form an institution called the Sea and Coast Guard (SCG), as regulated in Articles 276 to 283 of Law No. 17 Year 2008, however the SCG has not been formed until now.

Along the way, Law No. 32 Year 2014 concerning Maritime Affairs which regulates and mandates the establishment of the Maritime Security Agency (Bakamla) and based on Presidential Decree No. 178 Year 2014 the Bakamla was formed. This condition adds another new institution that has the duty and authority to maintain security in the sea and coastal areas, so that there is a potential for overlapping authority, especially between SCG and Bakamla. If we observe politically, the issuance of Law No. 32 Year 2014, the Government wishes that Bakamla will be the leader in terms of security at sea and at the same time become SCG. The government tend to require that maritime security in Indonesia to be left to the military, not to civilians, this can be seen that based on the existing experience the Chairman of Bakamla is a three-star general from the Indonesian Navy and is responsible to the president through the Menkopolhukam. On the other hand, in the previous Law No. 17 Year 2008 has mandated that the SCG is under the Ministry of Transportation and is responsible to the President.

The government must immediately determine which institution will be designated as the Sea and Coast Guard (SCG) in Indonesia. According to the writers, Bakamla should be the right choice for SCG. This is based on the consideration that Indonesia is a maritime country with vast and long seas and beaches. Problems at sea are not only a matter of shipping safety but there are many others, such as smuggling, narcotics trafficking, human trafficking, terrorism, theft of marine resources, etc. So it would be more appropriate if it was left to Bakamla as a semi-military institution. As a consequence of this choice, we must revise the Law No. 17 Year 2008 and the Law No. 32 Year 2014.

REFERENCES

Books

Andi Widjajanto, *et al.* (2013). *National Security Policy Arrangement*, Dian Cipta,

Jakarta.

R.J.Lino, (2014). *Sea and Coast Guard*, GEM Indonesia, Jakarta.

Journals

- A. Kadar, (2015). "Maritime Management Towards Indonesia as a World Maritime Axis", *National Security Journal*, Vol.1, No. 3, Pp. 427-44
- Abdul Muthalib Tahar dan Widya Krulinasari, (2012). "Sharing of Authority in Law Enforcement Against Violations of Laws and Regulations in Indonesian Waters", *Journal of Fiat Justitia*, Vol. 6, No. 1, Pp. 42-50
- Dicky R. Munaf, & Tri Sulistyanningtyas, (2015). "Operation System Synergize Bakamla with Law Number 32 Year 2014 concerning Ocean", *Journal of Sociotechnology*, Vol.14, No. 3, Pp. 273-288
- Eka Martiana Wulansari, (2016). "Law Enforcement at Sea with a Single Agency Multy Tasks System", *Online Journal of Rechts Vinding*.
- Luthfi Widagdo Eddyono, (2019). "The Constitutionality of Shipping Law", *Journal of RechtsVinding*, Vol. 8, No. 2, Pp. 203-224.
- Muh. Kadarisman (2019). "Maritime Safety and Security Policies in Support of Marine Transportation Systems", *Journal of Transportation & Logistics Management*, Vol. 4, No. 2., Pp. 177-192.
- Muhammad Rafi Darajati & Muhammad Syafei, (2018). "Legal Politics of the Establishment of a Maritime Security Agency in Maintaining Maritime Security in Indonesia", *Journal of the Era of Law*, Vol.16, No. 1, Pp. 107-127.
- Nazili Abdul Azis, L. Tri Setyawanto R. & Soekotjo Hardiwinoto, (2016). "Authority of the Maritime Security Agency (Bakamla) in the Implementation of Security in Indonesian Waters", *Dipenogero Law Journal*, Vol. 5, No. 4, Pp.1-13.
- Nina Firda Amalia, (2015). "Analysis of the Authority of the Maritime Security Agency based on Presidential Regulation No. 178 Year 2014 on the Maritime Security Agency", UniversitasMaritim Raja Ali Haji, *E-Journal*
- Shanti Dwi Kartika, (2014). "Maritime Security From the Aspect of Regulation and Law Enforcement", *State Law Journal*, Vol.5, No. 2, Pp. 143-167

Laws and regulations

Law of the Republic of Indonesia Number 17 Year 2008 concerning Shipping

Law of the Republic of Indonesia Number 32 Year 2014 concerning Maritime Affairs

Presidential Regulation Number 178 Year 2014 concerning the Maritime Security Agency.