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### RULES OF AUTHORITY OF HOT PURSUIT AND ITS IMPLEMENTATION IN INDONESIAN MARINE REGIONS

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**Keywords: The Indonesian Maritime Security Board (BAKAMLA), hot pursuit, Indonesia, 1982 UNCLOS.**

#### **ABSTRACT:**

**Purpose:** To discern and analyze hot pursuit regulations under the International Admiralty Law against foreign vessels that commit violations in the marine regions of coastal countries. Furthermore, this study aims explicitly to scrutinize hot pursuit implementation against foreign vessels committing abuses in the Indonesian maritime areas.

**Methodology:** This study is normative legal research that applies the statute approach, case approach, historical approach, comparative approach, and conceptual approach.

**Main Findings:** Besides in 1982 UNCLOS, the hot pursuit is also stipulated in the 1958 Geneva Convention. In its implementation, the hot pursuit can be carried out by warships, military aircraft, or other aircraft that have been given a clear mark and are recognizable as the Government's ships or aircraft and are given authority to perform hot pursuit. Both the procedures and mechanisms of hot pursuit in Indonesia are not stipulated in the Indonesian laws and regulations; nonetheless, both are internally specified by the Indonesian Navy and the Ministry of Maritime Affairs and Fisheries of the Republic of Indonesia, which include the permission for shooting during the hot pursuit.

**Applications:** The change of Law Number 32 of 2014 on Marine Affairs comprises the authority of the Indonesian Maritime Security Board to prevent the overlapping jurisdiction with the Indonesian Navy or the Indonesian Sea and Coast Guard. Moreover, Indonesia should make the mechanisms of hot pursuit implementation in its regions clearer through the national laws and regulations.

**Novelty/Originality:** Hot pursuit is stipulated in Article 111 of 1982 UNCLOS. However, the Law does not thoroughly specify the mechanism of hot pursuit implementation. Indonesia,

through the Indonesian Navy, the Indonesian Sea and Coast Guard (*KPLP*), and the Indonesian Maritime Security Board (*BAKAMLA*) has been given authority to carry out hot pursuit. Nonetheless, the Indonesian Maritime Security Board does not have specific tasks under its jurisdiction.

**Keywords:** The Indonesian Maritime Security Board (*BAKAMLA*), hot pursuit, Indonesia, 1982 UNCLOS.

## INTRODUCTION

Coastal countries are given a right to perform hot pursuit against foreign vessels that intentionally avoid law enforcement actions. The power is stipulated in Article 111 of the 1982 United Nation Convention on the Law of the Sea (hereafter, 1982 UNCLOS), which provides authority for coastal countries to chase foreign ships or boats that violate the laws and regulations of the country when “the ships or boats are within the internal waters, the archipelagic waters, the territorial sea or the contiguous zone of the pursuing State, and may only be continued outside the territorial sea or the contiguous zone if the pursuit has not been interrupted.” The provision, furthermore, is believed as an indispensable way to protect the interests of coastal countries (Sodik, 2011).

The right to carry out hot pursuit is merely to maintain the sovereignty of sovereign rights. Sovereign rights, moreover, according to Article 56 number 1 of 1982 UNCLOS is the rights "for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from water, currents, and winds." The coastal state (sovereign rights) is an area where the sovereign rights are known as a jurisdiction that is not part of the territory of the coastal state, for example, the Exclusive Economic Zone (hereafter, EEZ) and contiguous zones (Sinulingga, 1982).

To carry out sovereignty, the presence of jurisdiction is fundamental. Jurisdiction is the authority of a state to make laws and regulations that stipulate the legal relationships of an individual (citizens or foreign citizens) and the property in his territory (Sodik, 2011). Besides, jurisdiction also comprises the authority to compel the citizens or legal subjects to comply with the law. Other than that, jurisdiction can also be defined as the court authorship to judge law violators (Sodik, 2011). Jurisdiction, furthermore, is the reflection of a state's sovereignty that is related to the state territory, including the national waters of the coastal countries (Sodik, 2011).

In carrying out its sovereignty, coastal states have authority over the sea of its territory, namely the authority against foreign vessels, the authority to carry out supervision activities (supervision and the capture of the ships violating the provisions of coastal states), control in the custom field, the right to catch

fish, and the power to perform hot pursuit. From another source, the right to establish each of the state's EEZ to determine the environmental monitoring parameters in the development and operation of coastal protection structures is also included (Vetrova, 2019). This study aims to discern and analyze hot pursuit regulations under the International Admiralty Law against foreign vessels that commit violations in the marine regions of coastal countries. Furthermore, this study aims explicitly to scrutinize hot pursuit implementation against foreign vessels committing abuses in the Indonesian maritime areas.

## **LITERATURE REVIEW**

### ***The Concept of Hot Pursuit***

Hot pursuit is a right of a country to perform an immediate and uninterrupted pursuit against foreign vessels that are strongly suspected or have violated the laws and regulations of the jurisdiction area of a coastal country (Setyawanta, 2005). According to the hot pursuit rights, a state is authorized to pursue, capture, and take foreign vessels to the port if the ship is proven or suspected to violate the law in the territorial sea, internal waters, or archipelagic waters for the coastal states (Narwati, 2013).

### ***Hot Pursuit Regulations in Indonesia***

The regulations of hot pursuit in Indonesia can be related to Law Number 45 of 2009 on the Amendment to Law Number 31 of 2004 on Fishery, namely Article 66 C letter K. The utterance "special actions" can also be translated as the right to carry out hot pursuit as a form of self-defense, under the circumstance that the foreign vessels violate the regulations in the way of escaping and endangering control ships and its crew (Maronie, 2016).

### ***The Handling Procedures of Hot Pursuit in Indonesia***

The procedures of hot pursuit in Indonesia are started by the ship's commander or the captain who gives the signal to carry out the examination. The message can be provided by raising the "K" flag (at visible weather limits), the optical "KKK" lights (at visible weather limits), the Semaphore letter "K" (at visible weather limits), and radio communication channel 16. If the communication is failed, the stop sign is given by raising the "L" flag (at visible weather limits), by using a megaphone (at audible limits), and the cue or flute cue. If the request to communicate and the order to stop are not heeded, then a warning shot is given, starting from small caliber to a large caliber by using empty bullets or ammunitions shot upwards. Furthermore, if the warning is still not heeded, the final notice can be done by firing a shot into the sea around the bow of the ship, where the water splash can be seen by the suspected ship.

After the final warning, if the vessel is still not stopping, actions can be taken by following Article 5 paragraph (1) letter a number 4 and Article 7 paragraph (1) letter j, which stipulated that "to take other responsible acts in accordance with law" of Law Number 8 of 1981 on Code of Criminal Procedure. In carrying out responsible legal-based actions by shooting to the hull where

there is no crew and carrying out the help needed, and on the matter of the vessel does dangerous maneuver or fights against the control ship, proportionally self-defense actions can be taken to avoid a high number of victims.

## **METHODOLOGY**

This study is normative legal research that applied the statute approach, case approach, historical approach, comparative approach, and conceptual approach. The legal materials used consisted of primary legal materials, secondary legal materials, and non-legal materials. After the documents were all collected, they were then analyzed to conclude in the form of a description of the current issue.

## **RESULTS**

### ***Development of Hot Pursuit Regulations According to International Admiralty Law***

#### ***Hot Pursuit Regulations before 1958***

The right of a state to pursue foreign vessels that violate the law in the national jurisdiction of a country to the open sea has been done since the 18<sup>th</sup> or 19<sup>th</sup> century, even though the origin of the right remains unclear (Pratiwi, 2017). A pursuit is a form of self-defense right. Self-defense is a projection of international customary law and action taken by a state for the security of the international community in protecting their sea area. Hot pursuit, moreover, belongs to the judicial jurisdiction, which is a jurisdiction to enforce the legal provisions. The jurisdiction, however, is only limited to the state where the violation takes place; thus, the competence issue related to the arrest of the offender who was caught in another zone outside the location of the violation occurs. As a result, the caught performed during the pursuit is considered a part of the jurisdiction of a coastal state where the infringement takes place and where the pursuit starts (Connel, 1984).

#### ***Hot Pursuit Regulations after 1958***

The International Admiralty Law was based on the division of two sea zones, namely territorial sea under the sovereignty of a coastal state and high sea that remained without much change until the end of World War II (Sunnyowati, 2013). Stipulated in 1930 codification conference in Den Haag were seen as benchmarks of International Admiralty Law during that era (Kusumaatmadja, 1986).

#### ***Hot Pursuit Regulations According to the 1982 UNCLOS***

In 1982 UNCLOS, it is stipulated that hot pursuit with warships or military aircraft or other ships and aircrafts given clear marks and are recognizable as the government's property and are authorized to carry out hot pursuit. According to Article 29 of 1982 UNCLOS, a warship means "a ship belonging to the armed forces of a State bearing the external marks distinguishing such ships of its nationality, under the command of an officer duly commissioned by the government of the State and whose name appears in the appropriate

service list or its equivalent, and manned by a crew which is under regular armed forces discipline." In other words, the Article regulates that the authority to enforce the law given to a warship or a military aircraft is automatic. On the other hand, ships or planes that are the government's property are not automatically given the authority to carry out hot pursuit. In essence, there must be legal provisions or national laws governing it so that it can be recognized as the government's property (Zainuddin, 2008).

## **DISCUSSION**

### ***The Implementation of Hot Pursuit in Indonesia***

#### ***Law Enforcement of Hot Pursuit in Indonesian Territorial Waters***

Strict law enforcement must be carried out against law violators within Indonesian territorial waters. However, in the attempt, the implementation usually intersects with the authority of other officials on the matter of Indonesian admiralty law enforcement. According to Article 14 paragraph (14) of Law Number 5 of 1983 on Indonesian Exclusive Economic Zone. Nonetheless, Indonesian territorial waters, territorial archipelagic waters, and internal waters Indonesian EEZ, according to Article 73 paragraph (1) of Law Number 31 of 2004 on Fishery, generally, "investigation of criminal acts in the field of fishery in the fishery management zone of the State of the Republic of Indonesia shall be performed by Government Civil Employee Fishery Investigators, Indonesian Naval Officer Investigator, and/or Indonesian Police Investigators" (Maronie, 2016).

#### ***Law Enforcement in the Indonesian Territorial Sea and Archipelagic Waters***

Indonesian territorial sea, Indonesian archipelagic waters, and air space above the territorial sea, and the land beneath it are subjects to the sovereignty of the Indonesian state (Maronie, 2016). In both archipelagic waters and Indonesian territorial sea, there are peaceful crossing rights for foreign vessels, as stipulated in Article 11 paragraph (1) of Law Number 6 of 1996 on Indonesian Waters, which stated that "vessels of all countries, coastal as well as non-coastal countries, enjoy peaceful crossing rights through the territorial sea and waters of the Indonesian Archipelago."

Law enforcement officers who have the authority to carry out hot pursuit in Indonesian territorial sea and archipelagic waters are the Navy, which is authorized by Article 9 letter b of Law Number 34 of 2004 on Indonesian National Armed Forces, that the Navy must uphold the law and maintain security in the national jurisdiction's sea areas under the provisions of federal law and international law that have been ratified. Moreover, the Indonesian Sea and Coast Guard (*KPLP*), by Article 278 paragraph (1) of Law Number 17 of 2008 on Shipping, is authorized to carry out hot pursuit in Indonesian waters. Furthermore, the Indonesian Maritime Security Board (*BAKAMLA*) also has the authority to carry out hot pursuit, under the provisions of Article 63 paragraph (1) of Law Number 32 of 2014 on Marine Affairs. In performing their duty, as stipulated in Article 61 of Law Number 32 of 2014 on Marine

Affairs, *BAKAMLA* is “to conduct security and safety patrol in Indonesia waters area and Indonesia jurisdiction area.” Additionally, Article 7 paragraph (1) of the referred Law mentioned that the waters area internal, the archipelagic, and the territorial sea. Meanwhile, Article 7 paragraph (2) of the same Law stipulated that the jurisdiction area includes the Contiguous Zone, the Indonesia Exclusive Economic Zone, and the Continental Shelf.

#### ***Law Enforcement in the Contiguous Zone***

Indonesia also has sovereign rights over a part of waters that are known as contiguous zones, which ranges for 24 miles measured from the baseline of the water. Indonesia, however, have a restricted authority in this zone, which comprises preventing the occurrence of law violations related to customs, fiscal, immigration, and sanitation. The law enforcement officers that are authorized to carry out hot pursuit against foreign vessels violating the law in the contiguous zone are the Indonesian Navy, as stipulated in Article 9 letter b of Law Number 34 of 2004 on Indonesian National Armed Forces, and the Indonesian Maritime Security Board, as specified in Article 63 paragraph (1) letter a of Law Number 32 of 2014 on Marine Affairs.

#### ***Law Enforcement in the Indonesian Exclusive Economic Zone***

Exploitation, particularly on the investigation aspects, of biological resources in the Indonesian EEZ, is stipulated in Law Number 31 of 2004 on Fishery. In essence, investigation of criminal acts in the field of fishery in the fishery management zone of the State of the Republic of Indonesia shall be performed by Government Civil Employee Fishery Investigators, Indonesian Naval Officer Investigator, and/or Indonesian Police Investigators. Among them can coordinate, and to coordinate in handling criminal acts, the Minister of Maritime Affairs and Fisheries can form a coordination forum (Krulinasari, 2012).

However, the law-enforcement agencies that can carry out hot pursuit in the Indonesian EEZ, as mentioned above, are the Indonesian Navy and the Indonesian Maritime Security Board, which have all authorities on the entire Indonesian sea zone, including the EEZ. Concerning the law-enforcement agencies, authorities to enforce the maritime law do not automatically come together with the power to carry out hot pursuit. In essence, it depends on the provision of the law. One of the rules that give authority for hot pursuit is Article 61 of Law Number 32 of 2014 on Marine Affairs, which offers the power to the Indonesian Maritime Security Board to patrol within the Indonesian sea zone and jurisdiction areas.

Furthermore, in Articles 61 and 62 of Law Number 32 of 2014 on Marine Affairs, the Board has the duty “to conduct security and safety patrol in Indonesia waters area and Indonesia jurisdiction area” in the form of dismissing, inspecting, capturing, carrying, and delivering the ship to the law-enforcement agencies for further legal proceedings, and integrating the

information and safety systems in Indonesian waters area and Indonesia jurisdiction area.

Compared to the duty of the Indonesian Sea and Coast Guard (*KPLP*) stipulated in Article 277 paragraph (1) of Law Number 17 of 2008 on Shipping, which stated that "in the performance of the functions meant in Article 276 sub-article (1), the Sea and Coast Guard shall perform the following duties: a) control shipping safety and security; b) observe, prevent, and tackle pollution at sea; c) control and putting in order ship activities and traffic; d) observe and putting in order activities on salvage, under-water works, exploration, and exploitation of sea resources; e) secure Shipping Navigational Aid Means; and f) support the performance of search and rescue of life at sea." Moreover, Article 278 paragraph (1) of Law Number 17 of 2008 on Shipping further stipulated the authority of the Sea and Coast Guard to "perform sea patrols, make hot pursuits, stop and check ships at sea, and perform investigation."

From the Articles mentioned above, it can be seen that the duties of the Sea and Coast Guard are more precise and more varied. One example is the duty to investigate and supervise the activities on salvage, under-water works, and exploration and exploitation of sea resources. In other words, oil drilling at sea and fishing are also monitored and can be controlled by the Guard, since these activities can disrupt and endanger shippings. Nonetheless, Law Number 17 of 2008 on Shipping can only be carried out within the Indonesia waters area, which comprises Indonesia territorial sea, archipelagic waters, and internal waters. Therefore, it can also be affirmed that the law enforcement authority owned by the Indonesian Sea and Coast Guard only covers the Indonesia waters area.

Law enforcement against the violators of Law Number 32 of 2014 on Marine Affairs is not an absolute subject to the Indonesian Maritime Security Board. Still, it can also be done by other law-enforcement agencies included in Article 59 of Law Number 32 of 2014 on Marine Affairs, which stipulated that "(1) the enforcement of sovereignty and law in Indonesian waters, ocean floor and its subsoil thereof, including natural resources therein and sanction for violation are implemented in accordance with the provisions of legislation and international laws; (2) jurisdiction in the enforcement of sovereignty and law to foreign vessel that is crossing the territorial sea and archipelagic waters of Indonesia are implemented in accordance with the provisions of legislation and international laws; (3) in order to enforce the law in waters area and jurisdiction area, especially in implementing security and safety patrol in Indonesia waters area and jurisdiction area, the Maritime Security Board is established."

Additionally, in Article 59 paragraphs (1) and (2), the statement enforcement of sovereignty and law for violations of this law can be carried out by other law enforcement agencies, as long as they are given authority to do so by

legislation. For instance, the power of the Indonesian Navy provided by the Indonesian National Armed Forces Law or the Indonesian Sea and Coast Guard given by Law Number 17 of 2008 on Shipping.

In carrying out its duty regarding hot pursuit, the Indonesian Maritime Security Board is not equipped with ships. In Law Number 32 of 2014 on Marine Affairs, the provision to equip the Board with ships is not stipulated, which is in contrast with the Indonesian Sea and Coast Guard that is supported by the Sea and Coast Guard fleet base located in Indonesia territory and is equipped with state ships and state aircrafts to carry out the duty. Furthermore, the Indonesian Navy is also equipped with warships for their duties, as stipulated in Article 1 number 37 of Law Number 17 of 2008 on Shipping, that "war-ships are ships of the Indonesian National Armed Forces stipulated by provisions of statutory regulations." However, in practice, even though it is not stipulated in the Law, the Indonesian Maritime Security Board has its ships, which proves that there is a mismatch between the law and the practice in the field. Moreover, there is no single article that mentions the Board's authority to own a ship.

### **CONCLUSION**

From the analysis, it can be noticed that besides in the 1982 UNCLOS, the hot pursuit is also stipulated in the 1958 Geneva Convention. In practice, the hot pursuit with warships, military aircraft ships or other aircraft that are given clear marks and are recognizable as the Government's property to perform hot pursuit. The procedures or mechanisms of hot pursuit in Indonesia, however, are not stipulated in Indonesian legislation; instead, both are specified in the Indonesian Navy internal regulations and the Ministry of Maritime Affairs and Fisheries of the Republic of Indonesia, which include the authority to shoot during the hot pursuit. The amendment of Law Number 32 of 2014 on Marine Affairs was made so that there is no intersection between the authorities of the Indonesian Maritime Security Board, the Indonesian Navy, and the Indonesian Sea and Coast Guard. Nonetheless, the Indonesian Government must clarify the mechanism of hot pursuit implementation in its territory through its national legislation.

### ***LIMITATION AND STUDY FORWARD***

This research is limited to the rules of authority of hot pursuit and its implementation in Indonesian marine regions. The further research is needed in order to know hot pursuit implementation against foreign vessels committing abuses in the Indonesian maritime areas.

### ***IMPLICATION***

This research will contribute to the knowledge of International of Law field. This study can be used as a model to understand hot pursuit implementation against foreign vessels committing abuses in the Indonesian maritime areas.

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