

Law No. 32 of 2014 on Ocean Affairs

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I. INTRODUCTION

As the largest archipelagic state in the world, the sea has always played a prominent role in Indonesia's economy, politics, national security, environment, sustainability, society, cultural, defence, and security, and as the basis for national development. Thus, after the international community's recognition of Indonesia as an archipelagic state through the United Nations Convention on the Law of the Sea (UNCLOS), Indonesia is required to enact domestic laws to implement its obligations based on international law and ratified treaties. Therefore in 2014, Indonesia enacted the Law No. 32 of 2014 on Ocean Affairs (Law 32/2014).¹

Law 32/2014 is not the only national legislation that regulates activities at sea. There are several other existing Indonesian laws that regulate the implementation of UNCLOS. For instance, Law No. 31 of 2004 on Fisheries specifically regulates fishing activities in Indonesian waters and the protection of fisherman and fisheries workers. Additionally, Law No. 17 of 2008 on Shipping, regulates shipping activities in Indonesian waters. However, the Indonesian Law of the Sea is not superfluous and crucial as it specifically regulates Indonesian maritime jurisdiction.

The law reiterates certain terms defined under the UNCLOS. For instance, it defines archipelago as a group of islands, including parts of an island and the waters between the islands and so close by that the islands, waters, and other natural forms that it is a unity of geography, economic, defence, and security and political intrinsic or that has historically been regarded as such.² Furthermore, an archipelagic state

¹ Indonesia, Law No. 32 of 2014 on Ocean Affairs, Article 1.

² Article 1(4).

is a country that is entirely made up of one or more islands.³ The law also defines Marine Environmental Protection as integrated and systematic effort to conserve marine resources and prevent pollution and damage to the Sea. The law also covers conservation, pollution control, marine disaster management, prevention, and control of pollution, as well as mitigation of damage and disaster.⁴

II. GENERAL REGULATION

This law is comprised of thirteen chapters. Chapter one consists of general provisions defines terms adopted from the UNCLOS, which indicates that the law is consistent with and the implementation of the UNCLOS. Chapter two states the principles and objectives of the law. Some principles include the implementation of Marine life protections based on principles such as sustainability, consistency, integration, legal certainty, partnerships, equity, community participation, openness, decentralization, accountability, and justice.⁵

Chapter three provides the scope of the law. Article 4 states that the scope of this law includes the implementation of Indonesia Maritime law for the integrated and sustainable prosperity for developing countries.⁶

Chapter four regulates the Indonesian maritime territory. It is stipulated that the Indonesian sovereignty consists of internal waters, archipelagic waters, and territorial seas, including the air space above them and the seabed and the subsoil beneath, including natural resources contained therein.⁷ It is also stated that the sovereignty of Indonesia, is defined in paragraph (2) subject to the provisions of the legislation, the UNCLOS, and relevant international law.⁸

Under Article 6, the law categorizes three categories namely under full Indonesian sovereignty, under limited and special jurisdiction and Indonesian sovereign rights. Under full Indonesian sovereignty are internal waters, archipelagic waters, and territorial seas. Certain and limited jurisdiction governs the Contiguous Zone. Moreover, the terminology of sovereign rights includes the Exclusive Economic Zone and Continental Shelf. Under this chapter, Indonesia also regulates the distance limit for each jurisdiction according to UNCLOS namely 12 nautical miles for Territorial Sea, 14 nautical miles from baseline for Contiguous Zone, and 200 nautical miles for the Exclusive Economic Zone.⁹

³ Article 1(5).

⁴ Article 1 (10).

⁵ Article 2.

⁶ Article 4.

⁷ Article 7.

⁸ Article 7(4).

⁹ Article 6.

On the high seas beyond and national jurisdiction, Indonesia has international obligations, such as combating international crime (piracy), eradicating illicit broadcasts, protecting national vessels, conducting hot pursuits, preventing, and alleviating marine pollution by cooperating with other concerned countries or international organizations, and participating in fisheries management through regional forums and international organizations.¹⁰

III. MARINE RESOURCES

Chapter five regulates Maritime development of marine resources, human resource development, defence, law enforcement, governance and institutions, sea space management, environmental protection and the marine economy.¹¹ To optimize the maritime development program, Article 13 (3) highlights the preparation that shall be carried out by the central government, including the establishment of an integrated long-term policy for maritime development in accordance with the provisions of integrated short-term and mid-term legislation and policies on marine development.

Chapter six on Marine Management regulates the exploitation of marine resources include fisheries resources as well as energy and mineral resources, coastal resources and small islands, as well as other unconventional resources. Additionally, exploitation of marine resources may include marine industry, marine tourism, marine transportation, and marine construction.¹² The law also underscores the importance of the fisheries industries, so under Article 17, there are several obligations of the government in coordinating the management of fish resources and facilitating the optimization of the fishing industry¹³ through the preservation of fisheries resources, ensuring a convenient business environment for the development of fisheries, and expanding job opportunities in order to improve well-being of fishermen and fish farmers.¹⁴

The seas also contain huge energy and mineral resource reserves. Thus, the government of Indonesia shall develop and utilize renewable energy from the sea and incorporate it into the national energy policy. Therefore, the Government must facilitate the development and utilization of renewable energy from the sea.¹⁵

As an archipelagic country with more than 17,000 islands, coastal resources and small islands are significant for marine development in Indonesia. Therefore, coordination between the central government and local governments is essential.

¹⁰ Article 11(2).

¹¹ Article 13.

¹² Article 14.

¹³ Article 17.

¹⁴ Article 17(2).

¹⁵ Article 20(1) and (2).

Both the central government and local governments are responsible for managing and utilizing the resources of shorelines, coastal waters, and small islands.¹⁶ Management and utilization of these precious resources includes protecting, conserving, rehabilitating, utilizing, and enriching the resources of coastline, coastal waters, and small islands as well as the interrelated ecological systems in a sustainable manner. Such a scheme should create harmony and synergy between the central government and local governments for coastal resources and small islands management, strengthening the role of the community and government agencies, and encouraging communities for coastal resources and the small islands management in order to achieve fairness, balance, and sustainable and increasing the social, economic, and cultural community values through community participation in resource utilization of coastlines, coastal waters, and small islands.¹⁷

Another aspect of this resource management that is pivotal for Indonesia's economic development is marine industries. The law regulates the exploitation of marine resources through the management and development of the marine industries, and is an integral part of the policy for national industry management and development.¹⁸ Marine industries include specific, important industrial activities relating to waterways, such as infrastructure and facilities, research and technology, innovation, human resources, and creative industries as well as financial aspects.¹⁹ To maximize the Indonesian marine industry, the central government and local governments, pursuant to their respective authority, are obligated to manage the optimization of quality and quantity for marine industries through the support of small and medium-scale micro-enterprises that contribute to the economy.²⁰

IV. MARINE TOURISM AND INFRASTRUCTURE

Another important aspect of the Indonesian economy is marine tourism. With its enormous potential for marine tourism, Indonesia needs to regulate and maximize the potential economic development that can be generated from marine tourism. Therefore, the central government and local governments shall facilitate the development of marine tourism as part of the national tourism development policy and pursuant to their respective authority.²¹

Due to its geographical nature consisting of thousands of islands, marine connectivity is a crucial element for the sustainability of the Indonesian economy and for mitigating a development gap among islands of Indonesia. To increase

16 Article 22(1).

17 Article 22(2).

18 Article 25(1).

19 Article 25(3).

20 Article 25(4).

21 Article 28.

connectivity among all Indonesian islands, it is critical for the central government and local governments to develop and optimize the use of water transport within a framework of inter-regional connectivity within Indonesia.²²

To improve the quality of the marine development, planning, research and technology should play significant roles. The law recognizes that the central government should facilitate the funding, procurement, refinement, addition of facilities and infrastructure, as well as obtaining licenses for research and development of marine science and technology, both independently and through cooperation across sectors and among countries.²³ Additionally, with Indonesia's archipelagic geographical nature, the central government would be solely able to ensure research and technology development in all areas. Therefore, the central government should collaborate with local governments to establish marine facilities installed with educational facilities, training, and research training ships equipped with infrastructure and research vessels and functional staff researchers.²⁴

V. MARINE SPATIAL AREA

Pursuant to Chapter 8, the Law regulates marine area management, including national marine spatial planning, zone planning of coastal areas and small islands, and zone planning for marine regions.²⁵ Moreover, the law also specifically regulates the protection of the marine environment, which shall mainly be conducted by the central government through marine conservation, marine pollution control, marine disaster management and prevention as well as control of pollution, destruction, and disaster management. Additionally, the central government must also determine a marine conservation policy as an integral part of the protection of the marine environment. The law specifically separates marine pollution into three source categories, pollution from land, pollution from activities at sea, and pollution from air activity.²⁶ All these marine pollutions may occur in the territorial waters or jurisdiction, or from outside of the territorial waters or the territorial jurisdiction or outside the territorial jurisdiction of Indonesia.

VI. MARITIME SECURITY AND LAW ENFORCEMENT

Chapter nine mainly discusses defence, security, law enforcement, and safety at sea.²⁷ It states that enforcement of the rule of law and in Indonesian waters, seabed, and the ground beneath them, including natural resources contained therein and

²² Article 30.

²³ Article 37(2).

²⁴ Article 38(1).

²⁵ Article 42.

²⁶ Article 53.

²⁷ Article 58.

sanctions for the offence carried out by legislation and international law provisions. This is vital as there are some law enforcement limitations in different maritime zones under international law. Therefore, this chapter assures that the Indonesian law enforcement at sea shall comply with any limitations under international law.

Furthermore, the Law specifically establishes the Indonesian Maritime Security Agency as the leading agency for law enforcement at sea. Maritime law enforcement in Indonesia has always been a challenging task. With its huge maritime area, Indonesia has numerous laws regulating law enforcement at sea and more than five independent agencies that conduct marine patrols and law enforcement at sea, including the Coast Guard, Navy, Customs, the Ministry of Marine Affairs and Fisheries. These circumstances have often caused overlapping law enforcement in Indonesian waters, resulting in actions unfriendly to shipping and fisheries industries. Moreover, this condition has also created the absence of unified maritime security database as each institution maintains its own system. Therefore, Indonesia needs to have a leading institution that can coordinate all law enforcement authorities at Sea.

To overcome these challenges in maritime law enforcement, the Law has been amended to form an Indonesian Maritime Security Agency or also known as the Indonesian Coast Guard. The Maritime Security Agency is expected to become the leading institution for maritime law enforcement at sea. Under Article 62, the Maritime Security Agency has seven duties which include formulating national policies in the field of security and safety in the territorial waters of Indonesia and the Indonesian jurisdiction, arranging early warning system security and safety in the territorial waters of Indonesia and the Indonesian jurisdictions, carrying out maintenance, surveillance, prevention, and enforcement of law violations in the territorial waters of Indonesia and the Indonesian jurisdiction, synergizing patrol and monitoring the implementation on the open waters by the relevant agencies, providing technical and operational support to relevant agencies, assisting in search and rescue missions in the territorial waters of Indonesia and the Indonesian jurisdiction, and performing other tasks in the system of national defence.²⁸

In Chapter 10, the law also allows for the possibility of community participation. Public participation can be carried out by individuals, groups, professional organizations, enterprises, or other community organizations through the principles of openness and partnership.²⁹ The participation may welcome the involvement in marine development policymaking, marine management, marine development, and providing input to the evaluation and monitoring activities. The establishment of the Maritime Security Agency, as a mandate pursuant to Article 62, has been realized through the establishment of the Indonesian Coast Guard or know as *Badan Keamanan Laut* (BAKAMLA).

²⁸ Article 59.

²⁹ Article 70.

VII. CONCLUSION

Based on the foregoing review, Law No. 31 of 2014 on the Law of the Sea is prominent in implementing of Indonesia's rights and obligations under UNCLOS 1982. The Law regulates several aspects of the Indonesian maritime areas ranging from the Indonesian sovereignty in the international waters, territorial sea, Indonesian special jurisdiction in the contiguous zone, and sovereign rights in the exclusive economic zone to continental shelf. Moreover, the law also regulates many aspects of Indonesia's marine development including marine research and technologies, marine industries, marine tourism, and maritime connectivity and infrastructure.

Additionally, the law also recognizes the importance of marine environmental protection through the regulation of the government's obligation to prevent and deal with any marine environmental issues. Law enforcement at sea has also become one of the most important aspects of the Law. Firstly, it is carried out through the recognition of the importance of integrated maritime law enforcement at Sea by establishing the Indonesian Maritime Security Agency as the leading institution that has the main function of coordinating other maritime law enforcement institutions. Finally, an important feature that has been introduced by the law is the public participation in marine development.

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