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OVERLAPPING MARITIME SECURITY: CHALLENGES AND OPPORTUNITIES FOR INVESTMENT IN INDONESIA'S EXCLUSIVE ECONOMIC ZONE

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Abstract

This study examines the state's responsibility in ensuring investment security within Indonesia's Exclusive Economic Zone (EEZ), analyzing the roles of law enforcement officials and security institutions. The research highlights the importance of a stable regulatory framework and effective maritime security measures to foster a conducive environment for both domestic and foreign investors. It identifies the challenges posed by overlapping authorities among various agencies, which can lead to inconsistent law enforcement and uncertainties that discourage investment. By reviewing relevant laws, regulations, and institutional frameworks, the study emphasizes the need for improved coordination among maritime security agencies, enhanced surveillance technologies, and a comprehensive legal framework. The findings suggest that addressing these challenges will not only protect national interests but also promote investor confidence, unlocking the economic potential of Indonesia's EEZ in sectors such as fisheries, energy, and maritime transportation. Ultimately, this research contributes to a deeper understanding of the intersection between maritime security and investment opportunities, providing valuable insights for policymakers and stakeholders involved in Indonesia's maritime governance.

Keywords**: Investment Security, Exclusive Economic Zone, Maritime Security, Law Enforcement, Indonesia**

1. INTRODUCTION

Indonesia’s waters present significant economic potential for business development, leveraging the country’s unique status as an archipelago comprising thousands of islands rich in diverse natural resources (Dahliah, 2020; Hailuddin et al., 2022). The 1945 Constitution of Indonesia underlines this potential, emphasizing the exploitation of natural resources as outlined in Article 25A and Article 27 paragraph (2). The Exclusive Economic Zone (EEZ) of Indonesia, governed by international law and specifically the 1982 United Nations Convention on the Law of the Sea (UNCLOS), further establishes Indonesia's sovereign rights to manage natural resources in this maritime territory, encompassing both surface and seabed resources. Given its vast oceanic territory, Indonesia bears significant responsibilities to ensure that the EEZ is managed optimally, not just for national interests but also to create a secure and inviting environment for investors. This is crucial for sectors such as maritime, energy, fisheries, and related industries, where investment can drive economic growth. Moreover, effective management of the EEZ can enhance Indonesia’s position in the global market while safeguarding the interests of local communities that depend on these resources. Balancing the need for sustainable resource utilization with the challenges of security and governance in the EEZ will be essential for attracting and retaining investment in these critical sectors. As such, addressing the complexities of overlapping maritime security, ensuring regulatory clarity, and implementing robust protective measures will be vital steps in fostering a stable investment climate within Indonesia's Exclusive Economic Zone. By strategically managing these waters, Indonesia can capitalize on its rich marine resources while promoting sustainable economic development and enhancing its global maritime presence.

State responsibility theory outlines the principles that determine when a state is held accountable for violating its international obligations (Klabbers, 2020; Sunga, 2021). Key conditions for establishing state responsibility include: first, the existence of a legal obligation prohibiting the state from committing the specific act (Wacks, 2020; Bueno & Bright, 2020); second, the state must engage in an action that violates international obligations (Randelzhofer & Tomuschat, 2023; Khan et al., 2023; Dunoff et al., 2023); and third, the act must result in injury or damage to another party (Goldberg et al., 2021). Violations of international obligations can lead to liability enforced through various mechanisms, including countermeasures taken by other states (Bills, 2020; Banks, 2021; Longobardo, 2021; Miron, 2022). The International Law Commission's (ILC) Articles on the Responsibility of States for Acts in Violation of International Law provide a detailed framework for addressing these consequences, outlining which states may hold the offending state accountable and the methods for exercising that responsibility. This theory is crucial in international law, ensuring that states are accountable for their actions while providing a structure for dispute resolution and compliance with international obligations (Orakhelashvili, 2022; Dunoff et al., 2023). The complexity of state responsibility encompasses various dimensions, including attribution (Garland & Travis, 2020; Usman et al., 2021; Snel et al., 2022), defenses (Chandrasekar et al., 2021), and the consequences of such responsibility (Besson, 2022). Importantly, this theory underscores a state's obligation to adhere to international and national laws and its liability for actions or inactions that harm other parties, including investors. In terms of investment security, state responsibility theory elucidates the state’s duty to create a secure investment environment and outlines the legal liabilities arising from violations of investor rights.

The theory of legal certainty is essential for achieving legal objectives and fostering justice within a society (Arzy & Sumiyati, 2021; Aviva, 2023; Kharisma, 2021; Binns, 2022). Legal certainty allows individuals to anticipate the consequences of their legal actions, thereby promoting predictability in the legal system. German legal philosopher Gustav Radbruch significantly contributed to this concept in the 20th century, emphasizing the interplay between certainty, justice, and moral values within the law (Leks, 2022; Ali, 2023; Nasihuddin et al., 2024). Radbruch argued that legal certainty is a foundational principle of any legal system, asserting that laws must provide clarity regarding the rights and obligations of individuals (Wacks, 2020; McLeod, 2020; Alexy, 2021; Ali, 2023). This clarity enables society to function in an orderly manner, thereby maintaining social stability. Furthermore, Radbruch contended that legal certainty must align with the principles of justice and morality; laws that fail to meet these standards can be deemed invalid, regardless of their formal recognition (Ficsor, 2021; Romdoni et al., 2023; Lyons, 2023; Bäcker, 2023; Reidy, 2023; Borowski, 2024). Consequently, legal certainty should not merely serve as an enforcement tool but also as a means of achieving social justice. In the context of investment in Indonesia's EEZ, legal certainty becomes paramount for investors, as it enables them to make informed and strategic decisions. A clear understanding of their rights, obligations, and associated risks is essential for fostering confidence in investments. Conversely, ambiguous or frequently changing regulations can deter investors, creating uncertainties that undermine the security and viability of their investments in these crucial maritime areas.

One of the significant challenges businesses face in Indonesia is the inconsistency in law enforcement, particularly within the maritime sector. Although regulations may appear clear on paper, their implementation often falls short, leading to uncertainty for investors who fear that these regulations may not be enforced fairly or consistently. Maritime policies are not encapsulated in a single comprehensive law but are instead scattered across various regulations, such as Law Number 17 of 2008 concerning Shipping (Thahira, Ferdi & Syofyan, 2023). This fragmentation complicates the legal landscape, making it difficult for businesses to navigate compliance requirements. Additionally, the current business climate in the maritime sector is characterized by ambiguity due to the overlapping roles of multiple agencies conducting inspections. While it is essential to ensure compliance with maritime laws, the proliferation of agencies authorized to enforce the law at sea can lead to conflicts among them, further exacerbating the uncertainty faced by businesses (Saifulloh & Simabura, 2023). The lack of a unified legal framework and the resultant competition among agencies not only undermine investor confidence but also hinder the smooth operation of businesses in the maritime industry. Investors require a stable and predictable regulatory environment to make informed decisions; thus, addressing these enforcement inconsistencies and clarifying the roles of various regulatory bodies are crucial steps toward fostering a more conducive environment for investment and growth in Indonesia's maritime sector. By improving the consistency and clarity of law enforcement, the Indonesian government can enhance investor trust and facilitate the sustainable development of its maritime resources.

The state's responsibility in ensuring investment security within Indonesia's EEZ can be analyzed from both international and national legal perspectives (Fadhiil & Afriansyah, 2022; Nugraha & Chen, 2023; Mery et al., 2024). Under international law, the UNCLOS grants Indonesia exclusive rights to exploit and manage natural resources within the EEZ while simultaneously imposing the obligation to maintain security and order in these waters, including the protection of investors operating there. This dual responsibility highlights the critical role maritime security plays in sustaining economic stability, particularly in the maritime and energy sectors. On the national level, this obligation is reinforced through various legislations, such as Law No. 32/2014 on Maritime Affairs and Law No. 5/1983 on Indonesia's Exclusive Economic Zone. These laws mandate the Indonesian government to ensure the sustainable management and protection of economic activities within the EEZ, encompassing both foreign and domestic investments in strategic sectors. However, despite these established frameworks, there exists a significant gap in the effective enforcement and coherence of policies governing investment security. The lack of a unified approach to maritime security and inconsistent law enforcement contribute to uncertainties for investors, raising questions about the actual implementation of these legal provisions. Thus, addressing this gap in research is vital to understanding how Indonesia can enhance its legal frameworks and enforcement mechanisms to foster a more stable and secure investment environment within its Exclusive Economic Zone. By exploring this gap, future research can provide insights into improving policy coherence and effectiveness, ultimately benefiting both the state and investors engaged in maritime economic activities.

This study aims to explore the state's responsibility in ensuring investment security in Indonesia's EEZ and analyze the role of law enforcement and security institutions in this area. Overlapping maritime security is a key issue, as multiple agencies hold authority over maritime threats such as piracy, illegal fishing, and resource theft, often resulting in unclear responsibilities and ineffective enforcement (Suparto & Admiral, 2022; Suharni & Arman, 2023; Saifulloh & Simabura, 2023). This overlap negatively impacts the investment climate, as investors require legal certainty and stable security to make long-term commitments, particularly in sectors such as energy, fisheries, and marine transportation (Sumarlan & Dohamid, 2021; Butun et al., 2021; Yang & Zou, 2024). Maritime security plays a crucial role in protecting Indonesia’s territorial waters and supporting economic activities, but the current fragmentation in security responsibilities creates challenges for ensuring state sovereignty and maintaining investor confidence (Zulkifli et al., 2020; Menzel & Otto, 2020; Broohm, 2021; Jubae et al., 2022; Pandoe et al., 2024). By addressing these issues, this research seeks to contribute to a more comprehensive legal framework for security management and identify untapped investment opportunities in Indonesia's EEZ.

2. IMPLEMENTATION METHOD

This research employs a normative juridical method, focusing on legal research through the examination of library materials and secondary data to investigate regulations and literature relevant to the study's problem (Soekanto & Mamudji, 2001). The primary data utilized consists of secondary sources, including books, scientific journals, research findings, and legal regulations. An analytical approach is adopted to achieve a comprehensive understanding of the concepts, principles, legal norms, and cases systematically (Ibrahim, 2008). Additionally, a statutory approach is employed, which emphasizes the analysis and interpretation of written legal texts, particularly laws and regulations, to grasp their language, context, and practical application (Ibrahim, 2008). Data collection involves scrutinizing available documents, particularly in the form of laws and regulations governing Indonesia's EEZ and maritime security. The data analysis process is descriptive, aiming to provide a detailed explanation of the research subject and object based on the findings (Fajar & Achmad, 2010). This approach facilitates a thorough understanding of the state's responsibilities in ensuring investment security and the roles of law enforcement and security institutions in the EEZ. By systematically analyzing the legal frameworks and practices, this research aims to identify gaps and inconsistencies that hinder effective investment security, thereby contributing to the development of more coherent legal frameworks and enhancing investment opportunities in Indonesia's maritime sectors. Ultimately, this methodology not only serves to clarify the legal landscape but also aims to inform policymakers and stakeholders about the necessary steps to improve maritime security and foster a stable investment climate in the EEZ.

3. RESULTS AND DISCUSSION

3.1 State Responsibility in Ensuring Investment Security

The state holds a critical responsibility in creating a conducive environment for investment security, which encompasses various aspects, including the physical protection of maritime assets and infrastructure and maintaining regulatory stability that supports long-term investment initiatives. It is imperative for the state to prevent and tackle threats that may jeopardize investors, such as piracy, armed robbery at sea, illegal fishing, and other criminal activities frequently encountered in Indonesian waters.

This responsibility is particularly significant given that Indonesia's EEZ is strategically located in one of the world's busiest maritime regions, including key international trade routes like the Strait of Malacca and the Natuna Sea. Ensuring security in this region is vital not only for domestic investors but also for foreign investors involved in sectors like oil and gas, fisheries, and maritime logistics. Consequently, the government must establish a regulatory framework that safeguards investors' rights and fosters a secure and stable business environment.

The Indonesian government demonstrates its commitment to providing legal and business security for foreign investors, as outlined in Article 4 Paragraph (2) Letter a of Law

Number 25 of 2007 concerning Capital Investment. This article asserts that the government will treat domestic and foreign investors equally. Furthermore, the government guarantees legal and business certainty throughout the licensing process and investment.

Law No. 25 of 2007 on Capital Investment specifies various provisions aimed at protecting foreign investors, including equal treatment for all investors (Article 6), regulations concerning nationalization and compensation (Article 7), and stipulations for asset transfers as well as the transfer and repatriation of funds in foreign currency (Articles 8 and 9).

Legal certainty regarding maritime security is a fundamental aspect of the state's duty to safeguard investments in Indonesia's EEZ. Threats such as piracy and the illegal appropriation of marine resources can undermine the investment climate and diminish investor confidence. In this context, the state is responsible for ensuring effective surveillance and law enforcement in its waters and engaging capable law enforcement bodies, including the Indonesian Navy, the Marine Security Agency (Bakamla), and the police.

3.2 Role of Law Enforcement Officials and Security Institutions

In Indonesia, maritime security involves the coordination of at least six institutions, including the Indonesian Navy, Marine Police Corps (Polair), Directorate General of Sea Transportation (DG Hubla), Directorate General of Customs and Excise (DG Customs), Directorate General of Marine Resources and Fisheries Supervision (DG PSDKP) from the Ministry of Maritime Affairs and Fisheries (KKP), and the Marine Security Agency (Bakamla). The presence of multiple agencies tasked with maritime security creates challenges concerning institutional authority. Differing interpretations of regulations regarding authority can lead to complications that hinder the planning and execution of development policies, ultimately affecting community welfare. This fragmentation in law enforcement often results in conflicting views and responsibilities among the agencies, leading to friction in practice (Suharni & Arman, 2023).

Various laws and regulations confer authority to these institutions for conducting law enforcement in Indonesian waters. For instance, the Presidential Regulation Number 10 of 2010 outlines the Indonesian Navy’s duty to enforce laws and maintain security in national jurisdictional waters as per national and international law. Similarly, an instruction from the Directorate General of Sea Transportation mandates the Sea and Coast Guard Base to guard, rescue, secure, and enforce shipping regulations in coastal and sea waters. The Ministry of Maritime Affairs and Fisheries also oversees fishing supervision and law enforcement in the marine sector through its regulations.

The Minister of Finance’s decree on customs law enforcement provides customs officials with the authority to stop, inspect, and detain vehicles and goods suspected of customs violations. Bakamla's Presidential Regulation assigns it the task of conducting security patrols and monitoring violations within Indonesian waters. The National Police's regulations also specify the responsibilities of the Water Police in patrolling and safeguarding aquatic communities. Furthermore, the Illegal Fishing Eradication Task Force aims to integrate law enforcement against fisheries crimes, particularly illegal fishing.

The overlap in authority among these agencies can create significant problems. Each institution may interpret regulations differently, often claiming overlapping responsibilities in marine security, leading to operational friction. Such disagreements regarding authority must be resolved promptly, as they can hinder the development and implementation of policies necessary for community welfare (Suharni & Arman, 2023).

Complicating matters further, overlapping authority extends to Indonesia's maritime border areas, where conflicting territorial claims exist between Indonesia and neighboring countries (Suparto & Admiral, 2022). This situation can lead to political tensions, which may adversely affect bilateral relations and complicate inter-state cooperation. The uncertainty surrounding jurisdiction in these areas can deter potential investors from committing resources due to perceived legal and political risks. Additionally, such uncertainty can stifle long-term investment decisions, adversely impacting economic activity.

This overlapping authority can also impede the economic potential of Indonesia's maritime borders, leading to delays in crucial activities like fishing, oil and gas exploration, and maritime tourism, which could result in significant economic losses. Limited surveillance capacity in these waters may allow for increased illegal activities, including drug trafficking and resource theft, posing a substantial threat to state interests.

To mitigate these issues, it is essential to enhance coordination among the various agencies responsible for maritime security and surveillance. The Indonesian government should establish efficient mechanisms for cooperation between agencies like the Indonesian Navy, Bakamla, the Ministry of Maritime Affairs and Fisheries, and Customs. Strengthening these partnerships can reduce friction and improve the effectiveness of surveillance operations. Furthermore, enhancing maritime infrastructure with advanced surveillance technologies, such as satellite systems and drones, is vital for deterring illegal activities and fostering a safer investment environment.

Despite the challenges posed by limited resources for protecting Indonesia's extensive territorial waters, international collaboration and advancements in marine security technology are crucial. The Indonesian government’s commitment to increasing the maritime defense budget and fostering regional cooperation through forums like the ASEAN Maritime Forum and the Indian Ocean Rim Association supports this endeavor. Currently, civilian non-military institutions in Indonesia operate with a fragmented approach, functioning under multiple agencies rather than as a unified coast guard, which can streamline law enforcement. A necessary revision of relevant laws by the DPR and the President is required to establish a single agency capable of multi-functional enforcement. The Indonesian government is also working toward establishing a cohesive Indonesian Coast Guard by merging Bakamla and KPLP into a single law enforcement agency under the Directorate General of Sea Transportation, thereby enhancing the effectiveness of maritime security operations.

4. CONCLUSION

In conclusion, this research underscores the critical role of the Indonesian state in ensuring investment security within its Exclusive Economic Zone (EEZ) by providing a stable regulatory framework and effective maritime security measures. The involvement of multiple agencies in enforcing maritime laws creates challenges related to overlapping authorities and inconsistent interpretations of regulations, which can hinder effective law enforcement and adversely affect the investment climate. By fostering better coordination among these agencies and implementing advanced surveillance technologies, Indonesia can enhance security in its maritime borders, ultimately promoting investor confidence and unlocking the economic potential of its EEZ. Furthermore, addressing these challenges through comprehensive legal frameworks and inter-agency collaboration will not only protect national interests but also create a conducive environment for sustainable economic growth in key sectors such as fisheries, energy, and maritime transportation.

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