

LEGALIZATION ANALYSIS OF BAKAMLA RI AS CIVILIAN MARITIME LAW ENFORCER BY MEANS OF FRIEDMAN THEORY

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ABSTRACT

Bakamla RI is non-ministry government agency whose duty is to arrange patrol operation of security and safety in Indonesian territory and jurisdiction sea region. Bakamla RI should be the only one maritime security agency as single agency multitasks. The formulation of the problem raised in this research is focused on Bakamla RI as maritime security agency. This research found two main problems: First is overlapping authority, second is military culture in Bakamla RI. This research is Normative Law Research by using Friedman Theory (Legal System). Findings of this research are Bakamla is the legalized civilian maritime law enforcer. It is proved by Law No. 32 of 2014 and the principle of *lex posterior derogate legi priori*. Then, as civilian maritime law enforcer, Bakamla RI is different with the navy because the maritime security duties are totally different with the maritime defense duties. So, it will need a different kind of training. At last, according to Friedman Theory (Legal System), Bakamla RI has two sides: as law enforcer and also as law implementer. As law enforcer, Bakamla RI is the Legal Structure that uses Law No. 32 of 2014 as Legal Substance to realize maritime security into the sea users. As law enforcer, Bakamla RI must also implement maritime law. So, the Commission 1 of the House of Representatives is the Legal Structure that uses Law No. 32 of 2014 to keep Bakamla RI as civilian maritime security enforcer by using three rights: interpellation right, inquiry right, and opinion right.

Keywords: Bakamla Civilian Maritime Law Enforcer.

ABSTRAK

Bakamla RI adalah lembaga pemerintah nonkementerian yang bertugas melakukan operasi patroli keamanan dan keselamatan di wilayah laut territorial dan yurisdiksi Indonesia. Bakamla RI seharusnya merupakan satu-satunya lembaga keamanan maritim dengan berbagai kemampuan. Rumusan masalah yang diangkat pada penelitian ini berfokus pada Bakamla RI sebagai lembaga keamanan laut. Penelitian ini menemukan dua masalah utama: pertama adalah tumpang tindih kewenangan, kedua adalah kultur militer pada Bakamla RI. Penelitian ini merupakan penelitian hukum normatif yang menggunakan Teori Friedman (Sistem Hukum). Penemuan dalam penelitian ini adalah Bakamla RI merupakan lembaga sipil penegak hukum maritim yang sah, dibuktikan dengan Undang-Undang Nomor 32 Tahun 2014 dan Asas *Lex Posterior Derogat Legi Priori*. Kemudian sebagai lembaga sipil penegak hukum maritim, Bakamla RI berbeda dengan TNI AL karena tugas menjaga keamanan maritim sepenuhnya berbeda dengan tugas pertahanan maritim sehingga keduanya memerlukan pelatihan yang berbeda. Pada akhirnya, berdasarkan Teori Friedman (Sistem Hukum), Bakamla RI mempunyai dua sisi: sebagai penegak hukum dan juga sebagai pelaksana hukum. Sebagai penegak hukum, Bakamla RI merupakan Struktur Hukum yang menggunakan Undang-Undang Nomor 32 Tahun 2014 sebagai Substansi Hukum untuk mewujudkan keamanan maritim pada seluruh pengguna laut. Juga sebagai penegak hukum, Bakamla RI harus melaksanakan hukum maritim. Maka Komisi I DPR RI merupakan Substansi Hukum yang menggunakan Undang-Undang Nomor 32 Tahun 2014 untuk memantau Bakamla RI sebagai lembaga sipil penegak hukum maritim dengan tiga hak: Hak Interpelasi, Hak Angket, dan Hak Opsi.

Kata Kunci: Bakamla, Lembaga Sipil Penegak Hukum Maritim

A. INTRODUCTION

Bakamla RI is the acronym of Badan Keamanan Laut Republic Indonesia. According to the Law No. 32 of 2014, Bakamla RI is non-ministry government agency¹ whose duty is to arrange patrol operation of security and safety in Indonesian territory and jurisdiction sea region². Moreover, Bakamla RI has to arrange some functions e.g. to formulate the national policy in maritime security, to arrange early warning detection, and to arrange protection, surveillance, prevention, and prosecution to the maritime lawbreaker³. In implementing of the duty and functions, Bakamla RI has also some authorities e.g. to pursue directly (hot pursuit), to stop, to inspect, and to arrest the lawbreaker vessel before submitting into the court for legal proceedings⁴.

Bakamla RI's establishment had been a long way. Before the independence, there was Government Marine whose duty similar with US Coast Guard. But this agency was demolished during Japan occupation. After the independence, there was so many maritime security agencies established that cause obstruction of national development especially in maritime sector⁵. In 19th December 1972, the joint decree (Surat Keputusan Bersama/SKB) among Ministry of Defense, Ministry of Law, Ministry of Transportation, Ministry of Treasury, and Attorney General was published. It was established the Bakorkamla or Badan Koordinasi Keamanan Laut to coordinate all of maritime security agencies at the time⁶. By the Presidential Decree No. 81 of 2005, Bakorkamla was appointed as independence agency below Coordinating Ministry for Political, Legal, and Security Affairs. This appointment should direct maritime security enforcement into single agency multitasks. On the contrary, obstruction of national development especially in maritime sector had been still happened. As the solution, by the Presidential Decree N. 178 of 2014 that strengthened by Law No. 32 of 2014, Bakorkamla was changed into

¹ Article No. 60

² Article No. 61

³ Article No. 62

⁴ Article No. 63

⁵ Soelaksono, *Dasar-Dasar Pemikiran Penegakan Kedaulatan dan Hukum di Laut Di Dalam Menegakkan Pembangunan Kemampuan Matra Laut Nasional: Dalam Rangka Implementasi Wawasan Nusantara*, (Jakarta: PT Surya Indah, 1980), p. 141

⁶ *Ibid.*, p. 131

Bakamla RI, no longer as coordinator agency but as pure independence agency that equivalent by the ministry.

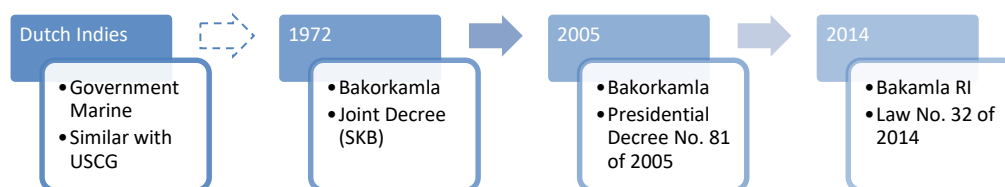


Figure 1. Roadmap of Bakamla RI's Establishment

Bakamla RI should be the only one maritime security agency as single agency multitasks. The maritime security duties (or constabulary function at sea) must be held only by the one agency. Another point is the maritime security duties are totally different with the maritime defense duties. The maritime defense duties are held by the navy to counter the direct military invasion, then the maritime security duties are only maritime security enforcement as a part of homeland security and public order except military invasion⁷. Maritime Security is defined as the secure and under control sea that free from crime, pollution/ecosystem damage, and lawbreaking threats⁸. Main indicator of maritime security is absolutely not about the number of arrested lawbreaker vessel but how safe every vessel sails through Indonesian sea region⁹.

B. FOCUS OF PROBLEM

The formulation of the problem raised in this research is focused on Bakamla RI as maritime security agency. This research found two main problems:

First is overlapping authority. Since the establishment of Bakorkamla there has been at least six agencies in maritime security. All of the agencies in

⁷ Kusumaatmadja, *Pengaturan Hukum Penjagaan Keamanan di Laut dan Pantai Di Dalam Bunga Rampai Hukum Laut*, (Binacipta, 1978), p. 165-166

⁸ Kurnia, *Between Threats and Opportunities: Di Antara Ancaman dan Peluang*, (Jakarta: PetroEnergy, 2017), p. 118

⁹ Basori, *Menunggu Kapal Selam, Bukan Dari Palembang*, Di Dalam *Tahun 1511 Lima Ratus Tahun Kemudian*, (Jakarta: PT Gramedia Pustaka Utama, 2012), p. 188

fact have similar duty and function. So, the establishment of Bakorkamla was expected to unite those agencies into single agency (but) multitasks. Unfortunately, until Bakorkamla is changed into Bakamla RI, the single agency multitasks is still never happened. Every agency is still working by their legal foundation and Bakamla RI is rather impressed as one more additional agency (in maritime security). The table below shown all of the maritime security agencies that still established today with their own legal foundation¹⁰:

Table 1. The Maritime Security Agencies with The Legal Foundation and The Tasks

No	Agencies	Legal Foundation	Task(s)
1	Police (Polair)	Law No. 2 of 2002	Illegal Fishing, Terrorism, Enviroment Destruction, Smuggling (Drugs)
2	Navy	Law No. 34 of 2004	Illegal Fishing, Terrorism, Territory Violation, Piracy, Accident (Safety), Invation
3	Custom	Law No. 17 of 2006	Smuggling
4	Ministry of Transportation	Law No. 17 of 2008	Enviroment Destruction (Polluting), Accident (Safety)

¹⁰ Presented *via* online by RADM (ret) Soleman B. Ponto in 26th March 2022

5	Ministry of Fishery	Law No. 45 of 2009	Illegal Fishing
6	Bakamla RI	Law No. 32 of 2014	to arrange patrol operation of security and safety in Indonesian territory and jurisdiction sea region

Second is military culture in Bakamla RI. TZMKO (former applicable maritime law ratified in 1939) defined the authority of marine security held by head of the navy¹¹. After the establishment of Bakorkamla in 1972, international security condition was colored by cold war that raised global military conflict. That was the reason why the navy placed as head of Bakorkamla¹². But until Bakorkamla is changed into Bakamla RI, the military has still dominated. A census held in 2019 shows that at least 19% of Bakamla RI's personnel are the active navy personnel¹³ who bring their rank and also their military culture. It makes obscurity in Bakamla RI as civilian (maritime) law enforcement but in fact conducted by the active navy personnel. So, the overlapping authority is not only happened between Bakamla RI and other agencies but also in Bakamla RI itself.

¹¹ Soelaksono, *Dasar-Dasar Pemikiran Penegakan Kedaulatan dan Hukum di Laut Di Dalam Menegakkan Pembangunan Kemampuan Matra Laut Nasional: Dalam Rangka Implementasi Wawasan Nusantara*, (Jakarta: PT Surya Indah, 1980), p. 130

¹² Sutrisno, *Penataan Sistem Keamanan Laut Indonesia dalam Perspektif Ketahanan Nasional*, (Jakarta: Tesis S-2 UI Tidak Diterbitkan, 2006), p. 117

¹³ Bakamla RI, *Rencana Strategis Badan Keamanan Laut Republik Indonesia Tahun 2020-2024*, (Jakarta: Dokumen Internal Tidak Diterbitkan, 2020), p. 89

C. RESEARCH METHODOLOGY

Research in Legalization of Bakamla RI as Civilian Maritime Law Enforcer by Means of Friedman Theory is Normative Legal Research. Normative Legal Research is a kind of legal research whose object is about rules or norms of law. The rules or norms can be principle, doctrine, or legislations¹⁴. The principle, doctrine, and mainly legislations then be analyzed to produce formulation of application or how to operate the rules in maritime security context.

To sharpen the analysis, Friedman Theory is used too. According to Friedman Theory, law is divided into three subsystems:

1. Legal Substance

Legal Substance is whole of legislations or also mentioned as contains (points) of law rule¹⁵.

2. Legal Structure

Legal Structure is the enforcer of law rule. It can be also mentioned as how to apply Legal Structure or how to keep the enforcement of Legal Structure.

3. Legal Culture

Legal Culture relates to how far Legal Substance be enforced or how far Legal Structure enforces Legal Substance. It is product of the ratified law rule that enforced by the agency.

In maritime law application, Legal Substance is Law No. 32 of 2014 and Legal Culture is how far implementation of the Legal Substance to realize maritime security in Indonesian sea region. About Legal Structure, there is the main purpose of this research to make legalization analysis of Bakamla RI as Civilian Maritime Security Enforcer. The Legal Structure must be highlighted more¹⁶ because it is 'a bridge' between Legal Substance on the side and Legal Culture

¹⁴ Sihombing & Hadita, *Penelitian Hukum*, (Malang: Setara Press, 2022), p. 43-44

¹⁵ Mahanani *et al.*, *Kausalitas Kesadaran dan Budaya Hukum dalam Membentuk Kepatuhan Hukum Kebijakan Penanggulangan Covid-19*, (Widya Pranata Hukum, Vol. 3, No.2, 2021), p. 67

¹⁶ Ansori, *Reformasi Penegakan Hukum Perspektif Hukum Progresif*, (Jurnal Yuridis, Vol. 4, No. 2, 2017), p. 150

on the other side.

A derivative problem is to define Legal Structure for Bakamla RI internally. In scope of Bakamla RI as one of government agency, the Legal Substance is (mainly) Law No. 32 of 2014 and the Legal Culture is how far Bakamla RI implements the Legal Substance to do the duties as Civilian Maritime Security Enforcer. It surely needs a Legal Structure to make sure Bakamla RI implements the Legal Substance. The Law No. 32 of 2014 is not only as Legal Substance for Bakamla RI to realize maritime security in Indonesian sea region but also as Legal Substance for Bakamla RI itself to do their duties. This statement must be underlined.

D. FINDING AND DISCUSSION

Firstly, this research will discuss about the overlapping authorities in maritime security enforcement. Mentioned again that there are five maritime security agencies and establishment of Bakamla RI has added it into six. Every agency has own legal foundation that mentioned in Table 1 above. There is an implementation law principle named *lex posterior derogat legi priori*. It means that newer legislations replace older legislations or by ratification of newer legislations, older legislations have no longer applied. The principle has purpose to prevent dualism in law. It contains two rules¹⁷:

1. The newer legislations must equal with the older legislations.
2. Both the newer and the older legislations have same object.

All of legislations mentioned in Table 1 are equal because there are laws and all have same object about maritime security. So, according to the principle, the applied law in maritime security is Law No. 32 of 2014. It means that the duty to arrange patrol operation of security and safety in Indonesian territory and jurisdiction sea region and some functions mentioned in Article No. 62 e.g. to formulate the national policy in maritime security, to arrange early warning detection, and to arrange protection, surveillance, prevention, and prosecution to the maritime lawbreaker are fully Bakamla RI's authority. It means also that

¹⁷ Manan, *Hukum Positif Indonesia: Satu Kajian Teoritik*, (Yogyakarta, FH UII Press, 2004), p. 58-59

Bakamla RI has been single agency multitasks in maritime security as Civilian Maritime Law Enforcer.

The second discussion is about military culture in Bakamla RI. The military culture could have two meanings:

1. The Head, the Deputy, and some of the other personnel are active military personnel (in this case are navy personnel).
2. Education and training for the personnel are held by military institution (in this case is navy command for education and training/Kodiklatal).

Law No. 32 of 2014 mentioned that Head of Bakamla RI held by personnel of law enforcer agency whose patrol armada¹⁸. Implicitly the rule mentioned that Head of Bakamla RI held by personnel of Bakamla RI itself. The reasons are Bakamla RI is law enforcer or established in order to law enforcement¹⁹ and Bakamla RI has also patrol armada already. Meanwhile, the navy is established not in order to law enforcement but to do some defense duties (sea defense). Although Law No. 34 of 2004 mentioned navy duty to enforce law (maritime law)²⁰, it's absolutely not the main duty or main function. Moreover, Law No. 34 of 2004 mentioned that military personnel could hold civilian position only if they have been retired or resigned from military duty²¹. Some of maritime experts had said their opinions about this²²:

1. Admiral Bertholf (1919) said that the prime function of the Navy is to prepare for war and the prime functions of the Coast Guard are the activities of peace.
2. Dr. Paleri (2003) emphasized that the Navy can't and shouldn't attempt to be a Coast Guard. Furthermore, he said that it will need a different kind of training.

President, reported by Ministry of State Secretary's Public Relations, said that

¹⁸ 2nd Section of Article No. 65

¹⁹ 3rd Section of Article No. 59

²⁰ Article No. 9 point b

²¹ 1st Section of Article No. 47

²² Indonesia Ocean Justice Initiative, *Penguatan Sistem Keamanan Laut*, (Policy Brief No. 2, 2020), p. 3-4

Bakamla RI will be a legalized Coast Guard²³. Then ‘the Coast Guard’ mentioned by Admiral Bertholf and Dr. Paleri above could refer to Bakamla RI.

Friedman viewed law as common system: it contains Input, Process, and Output. Process will make Input into Output and Output will return to be Input as Feedback. But in law context, Input is mentioned Substance, Process is Structure, and Output is Culture. That is named Law System²⁴. Substance is contained of legislations. Structure is framework of law enforcer and Culture is effect of legislations implementation by role of law enforcer. Then Culture gives Feedback into Substance as legal compliance. But Culture maybe give Feedback as lawbreaking because of negligence of law enforcer.

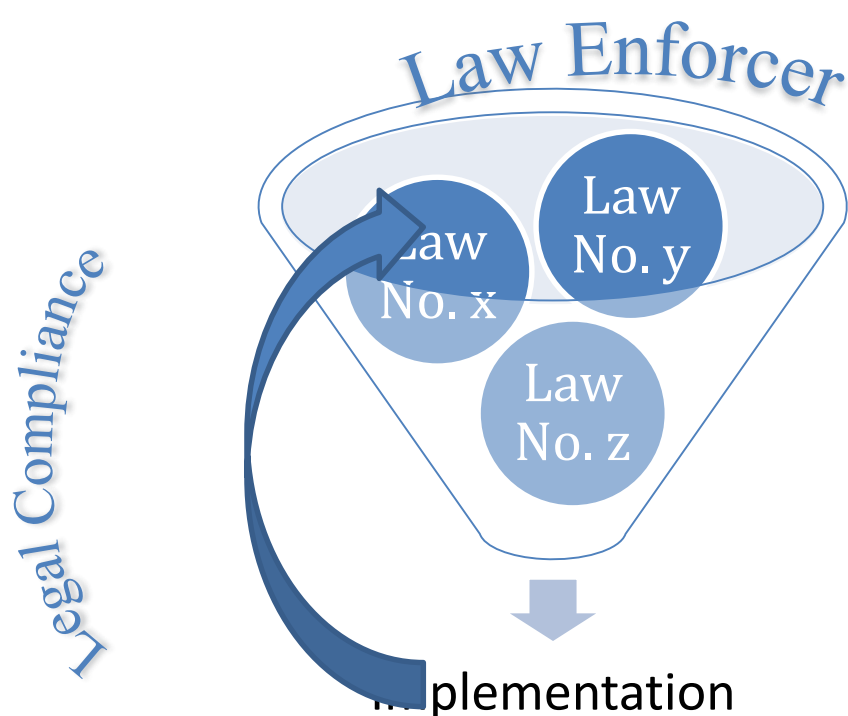


Figure 2. Illustration of Legal System

In maritime security context, the main Legal Substance is Law No. 32 of 2014. It had been ratified to realize the secure and under control sea that free from crime, pollution/ecosystem damage, and lawbreaking threats with main

²³ Humas Kemensetneg, “Presiden Jokowi Lantik Aan Kurnia sebagai Kepala Bakamla”, setneg.go.id..., diakses 15 Desember 2022

²⁴ Friedman. *Sistem Hukum: Perspektif Ilmu Sosial*, (Bandung, Nusamedia, 2009), p. 12-18

indicator is how safe every vessel sails through Indonesian sea region. Then the Legal Structure is surely Bakamla RI as civilian maritime security law enforcer. Bakamla RI ensures that Law No. 32 of 2014 is really implemented and maritime security will be really realized. Finally, the Legal Culture is built by every vessel sails safety through Indonesian sea or every sea user feels secure and safe during activities in Indonesian sea region. It will give Feedback as compliance of every sea user to maritime law. But a disruption experienced by Bakamla RI maybe rather cause some lawbreakers e.g. Illegal Fishers, Smugglers, Territory Violators, etc.

The closing discussion is about Bakamla RI not as Legal Structure but as Legal Culture builder, because maritime law or Law No. 32 of 2014 is not only as tool of Bakamla RI to realize maritime security but also as Legal Foundation that Bakamla RI must obey. So, it needs Legal Structure to enforce the law in Bakamla RI's organizational body. According to Law No. 32 of 2014, Bakamla RI is a non-ministry government agency under President²⁵. It means that Bakamla RI is a part of executive agency equal with the ministries. As law enforcer at once as law implementer, Bakamla RI responsible to House of Representatives as law drafter. It is mentioned in the Nasional Constitution²⁶. Moreover, the National Constitution mentioned that House of Representatives have three rights, there are interpellation right, inquiry right, and opinion right²⁷. Interpellation right is right to ask explanation or evidence to the government. Inquiry right is right to investigate law implementer to the government or to investigate how far the government implements law. Opinion right is right to give opinion about government policy and as follow-up of inquiry right. The authority and the rights give House of Representative (in this case the Commission 1 as Bakamla RI's work partner to supervise how far Bakamla RI implements Law No. 32 of 2014 and how far Bakamla RI realize maritime security in Indonesian sea region.

²⁵ Article No. 60

²⁶ 1st Section of Article No. 20

²⁷ 2nd Section of Article No. 20A

Finally, this research shows two implementation models of Friedman Theory (Legal System) by Bakamla RI as law enforcer and as law implementer:

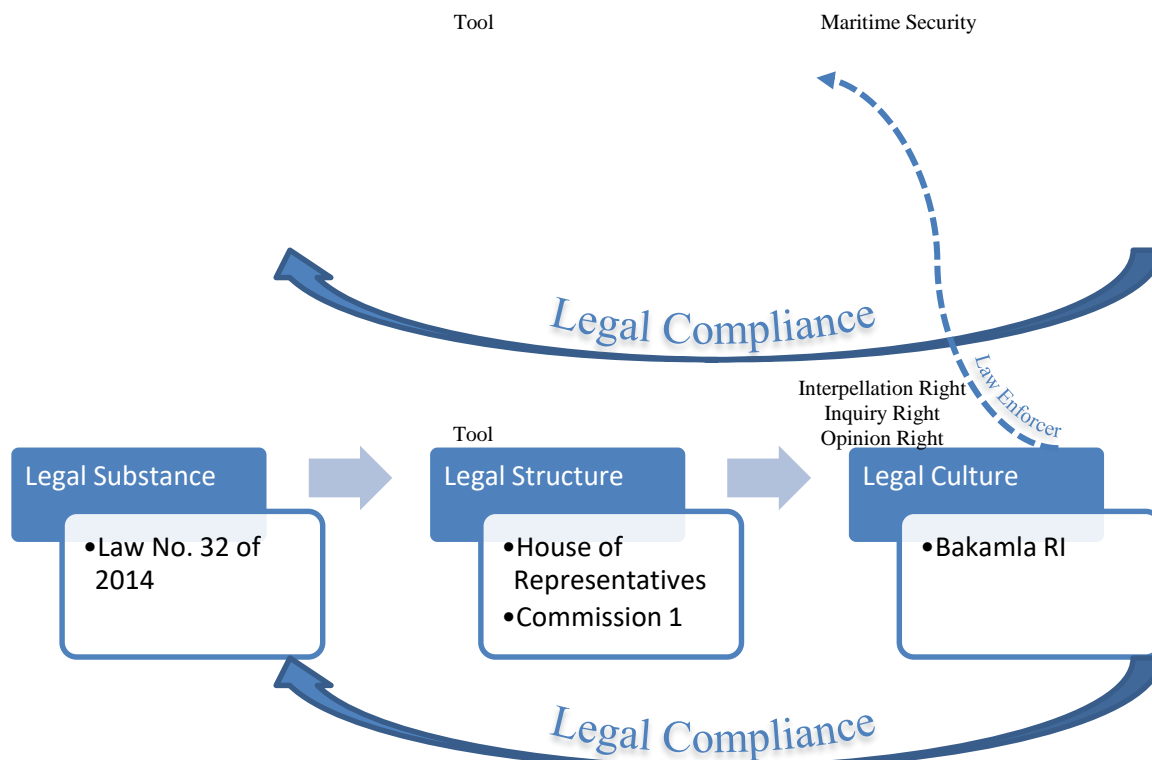


Figure 3. Two Models of Legal System: Bakamla RI as Law Enforcer (above) and Bakamla RI as Law Implementer (below)

E. CONCLUSION

- Bakamla is the legalized civilian maritime law enforcer. It is proved by Law No. 32 of 2014 and the principle of *lex posterior derogate legi priori*. Both directs Bakamla RI into single agency multitasks.
- As civilian maritime law enforcer, Bakamla RI is different with the navy because the maritime security duties are totally different with the maritime defense duties. The maritime defense duties are held by the navy to counter the direct military invasion, then the maritime security duties are only maritime security enforcement as a part of homeland security and public order except military invasion. So, it will need a different kind of training.

- c. According to Friedman Theory (Legal System), Bakamla RI has two sides: as law enforcer and also as law implementer. As law enforcer, Bakamla RI is the Legal Structure that uses Law No. 32 of 2014 as Legal Substance to realize maritime security into the sea users. The sea users then build the Legal Culture in order to realize legal compliance into Law No. 32 of 2014 (the maritime law). As law enforcer, Bakamla RI must also implement maritime law. So, the House of Representatives especially Commission 1 is the Legal Structure that uses Law No. 32 of 2014 to keep Bakamla RI as civilian maritime security enforcer by using three rights: interpellation right, inquiry right, and opinion right. Then Bakamla RI builds the Legal Culture in order to realize maritime security according to the maritime law.

F. RECOMMENDATION

- a. Law No. 32 of 2014 is not enough to arrange maritime security because there have been still many things that should be discussed e.g. to emphasize more Bakamla RI as civilian maritime security enforcer (separate from the navy) and about how should Bakamla RI be obtained as organization (doctrine, policies, strategies, etc.). Maybe the next national legislation program (Prolegnas) could arrange special maritime security law or amend Law No. 32 of 2014 to complete maritime security part.
- b. Bakamla RI must be strengthened as civilian maritime security enforcer as like as some of national coast guards. It must have own doctrine, own strategies, and own policies special to realize maritime security. The no less important thing is it must be provided with some patrol equipment to build strong maritime security patrol armada. All of those should be include in national planning.

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