

## Formulation of Maritime Security's Terminology Viewed from Side of People Participation

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ARTICLE INFO	ABSTRACT
<p><b>Keywords:</b> Maritime security; terminology; people participation</p> <p><b>How to cite:</b> Sudiro, P.A.S. &amp; Elsa, A.R. (2024). Formulation of Maritime Security's Terminology Viewed from Side of People Participation. <i>Veteran Law Review</i>. 7(1). 111-119.</p> <p><b>Received: 2023-08-14</b> <b>Revised: 2024-01-04</b> <b>Accepted: 2024-05-13</b></p>	<p><i>There has not been a single concept about maritime security that caused plurality in giving the multi-aspect meaning of maritime security, meanwhile the necessary of maritime security law demands the necessary of a single concept about maritime security. Terminology of maritime security is necessary to arrange master plan in reaching national objective in maritime sector that decided by President Joko Widodo as maritime global fulcrum vision. This research aims to formulate terminology of maritime security by using people participation's point of view or with the other word to formulate meaning of maritime security participatory. The methods used in this research are qualitative method, normative law method, and legal system method with the result is terminology of maritime security formulated as "realization of people participation by checks and balances principle to uphold law state supremacy in sea region to reach global maritime fulcrum".</i></p>

### 1. Introduction

There hasn't been single concept about maritime security until present that cause plurality in giving multi-aspect terminology about maritime security (Reformasi Tata Kelola Keamanan Maritim Indonesia di Era Presiden Joko Widodo (Dinarto, 2016). In another side, there is requirement in maritime security law that implicate requirement in terminology or single concept about maritime security because during the legislative drafting at the national legislative program (Prolegnas) the core subject (including terminology) of the law must be explained (Faktor-Faktor yang Menyebabkan Materi Muatan Undang-Undang Bertentangan Dengan UUD 1945 (Samosir, 2015). Terminology is a Latin word *terminus* that means knowledge about terms and its utilizations (Penyerapan Istilah Asing pada Terminologi Hukum di Indonesia (Rasjidi & others, 2015).

Maritime security could be considered as a part of national security (Kamnas) that means freedom from any internal and external threats. There hasn't been national security law in Indonesia, meanwhile most countries in the world have national security act to realize its own national security (Kardi, 2018). As like as national security is needed to realize the national goals that mentioned in the opening of the constitution of 1945 "to protect the whole nation and country and to increase the national prosperity, to educate the people, and to establish the world order based on independence, eternal peace, and social justice" (Utami, KY, & Pedrason, 2019), so that means maritime security is needed to reach national goals at maritime sector ratified by President Joko Widodo as Global Maritime Fulcrum.

The table below mentioned some opinions about terminology of maritime security:

**Table 1.** Terminologies of Maritime Security by Expert's Opinion

No	Source	Terminology of Maritime Security
1	Kusumaatmadja (1977)	Protection from internal threats (in national sea region) (Kusumaatmadja, 1977).
2	Soelaksono (1979)	Security enforcement at sea (include policing and rescuing) (Soelaksono, 1979).
3	TNI AL (2004)	Freedom of sea from: a. Violation Threat (Weaponize Threat; b. Navigation Threat; c. Pollution Threat; d. Lawbreaking Threat. (TNI AL, 2004).
4	Anwar (2016)	Maintained of: a. National Sovereignty (National Unity); b. National Maritime from any threats; c. Security and safety of domestic or international sailing; d. Security and sustainability of whole national resources. (Anwar, 2016).
5	Kurnia (2022)	Freedom of sea from violation, lawbreaking, and sovereignty threats and environment protection and guarantee of shipping safety for the government and the people (Kurnia, 2022).

*Source: arranged by the researchers*

The 5<sup>th</sup> terminology by Kurnia (2022) is 'a bridge' to the research object. Participation of the people is very important to realize national security implemented by maritime security (Yuliarta & Rahmat, 2021). Besides that, participation of the people is needed to realize democratic government (Riskiyono, 2015) as a mandate of the constitution.

Hence, this research aims to formulate the terminology of maritime security viewed from side of people participation.

## 2. Method

This research uses three methods; qualitative method, normative law method, and legal system theory (Friedman theory).

Qualitative method is used to research in natural object condition by the researcher as research instrument (Sugiyono, 2018). In this research, qualitative method is used at literature study by collecting information from former researches descriptively.

The main focus of normative law method is the emptiness that implicate law uncertainty (Christiawan, 2023). In this research, the emptiness means there hasn't been terminology of maritime security, both in the national law even in the international convention (United Nation Convention on the Law of the Sea/UNCLOS). It gives recommendation about the existing of norms or regulations (Christiawan, 2023), in this case the terminology of maritime security.

Legal system theory by Friedman (1975) viewed law as a system, means limited operating unit (Friedman, 2019). Senge (1990) emphasized some points of system (known as 'system thinking'):

- a. Views the interrelations;
- b. Views the transformations;
- c. Views the causalities (Hardjosoekarto, 2012).

The points were defined by Friedman as three legal subsystems. There are Legal Substance, Legal Structure, and Legal Culture. Legal Substance is law subject stated as regulation, Legal Structure relates to law enforcement include the law enforcer, and Legal Culture is about people obedience to the regulation. The subsystems influence law enforcement in every country by synergizing each other to reach the justice as main objective of law enforcement (Ansori, 2017).

## 3. Results

### 3.1. Maritime Security in Latest Regulation

According to the principle *lex posterior derogat legi priori* that means newer regulations abolish the older, primary resource of this research is the newest (latest) regulation that contains maritime security subject, it's the Law No. 32 of 2014. In that law, there is Chapter IX titled 'Defense, Security, Law Enforcement, and Safety at Sea' but it hasn't explained about terminology of maritime security. For example, 3<sup>rd</sup> section of article no. 59 mentioned that: "To enforce law in sea and jurisdiction region, especially to realize security and safety patrol in Indonesian sea and jurisdiction region, the Indonesian Coast Guard (Bakamla) is established."

This article also the previous articles hasn't explained about terminology of maritime security even it hasn't explained whether maritime security only interpreted as security and safety patrol is.

Then in article no. 21 of UNCLOS, its first section mentioned that:

"The coastal State may adopt laws and regulations, in conformity with the provisions of this Convention and other rules of international law, relating to innocent passage through the territorial sea, in respect of all or any of the following:

- a. the safety of navigation and the regulation of maritime traffic;
- b. the protection of navigational aids and facilities and other facilities or installations;
- c. the protection of cables and pipelines;
- d. the conservation of the living resources of the sea;
- e. the prevention of infringement of the fisheries laws and regulations of the coastal State;
- f. the preservation of the environment of the coastal State and the prevention, reduction and control of pollution thereof;
- g. marine scientific research and hydrographic surveys;
- h. the prevention of infringement of the customs, fiscal, immigration or sanitary laws and regulations of the coastal state." (UNCLOS, n.d.).

This article also the previous articles hasn't explained about terminology of maritime security, on the contrary it just gives to the coastal state (UNCLOS, n.d.) authority to arrange its own maritime security regulation.

The nothingness of the terminology of maritime security in national or international regulation implicates the formulation of the terminology include people participation whose interest to the sea region.

### **3.2. Legal System of Maritime Security**

Friedman defined three subsystems in his legal system theory, there are Legal Substance as legal subject that stated as regulation, Legal Structure as law enforcer institution, and Legal Culture as people obedience to the regulation. People in this research is defined as personal or group of humans that have interest to the Legal Substance (Riskiyono, 2015), meanwhile Participation is defined as involvement of people to reach the goals (Amallia, 2019), so that People Participation could be defined as involvement of whole people elements whose interest of maritime security without exception. It could be defined as three groups:

a. Government

Government, contained of Central Government and Local Government, is holder of government power to realize people supremacy (Republik Indonesia, 1945) and law supremacy (Republik Indonesia, 1945).

b. Law Enforcer

Law Enforcer is an institution established by the Government with special task to enforce the law. It's dualism, as law enforcer but also as law subject that obligated to obey the law (Sudiro & Rizqoh, 2022).

c. Sea User

Sea User is the people that exception of both, contain of fisherman, seafarer, researcher, and the other people whose dominant activities at sea.

In context of maritime security, Legal Substance is maritime security law itself. It will have two basic norm (*grundnorm*), there are the Constitution of 1945 and UNCLOS. Both mentioned about People Participation clearly:

a. In the Constitution of 1945

Every citizen has right and obligation to participate in every effort of national defense and security (Republik Indonesia, 1945).

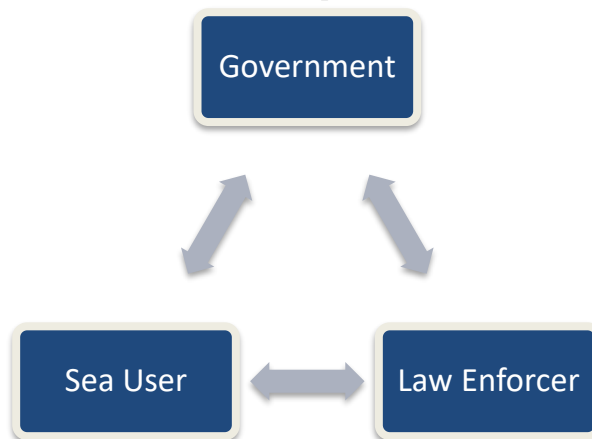
b. In UNCLOS

The coastal State shall give due publicity to all such laws and regulations (Hornby, 2000).

There will be main difference between real version of Friedman theory and the application in Indonesia, because Friedman was American citizen that adhere Common Law, meanwhile Indonesia is country that adheres Civil Law by the statement 'State Law' in the Constitution (Republik Indonesia, 1945). According to the Common Law, Legal Structure is foundation of legal system that produces Legal Substance (Friedman, 2019). Meanwhile in Civil Law, Legal Structure is established by Legal Substance. In another word, everything must be according to Legal Substance (regulations).

According to the definition of People Participation, the Legal Structure will be contained of three groups of people: Government, Law Enforcer, and Sea User. Those aren't hierarchical but based on checks and balances principal to maximize each function and to limit each authority (Lailam, 2021). It also aims to hold resilience of the legal system if maybe there is lawbreaking done by a group. The checks and balances principle of each group is shown by diagram below:

Figure 1. Scheme of Checks and Balances Principle



Source: made by the researchers

The checks and balances principle further implicate to the third subsystem, Legal Culture. According to the Figure 1, each group will be controlled by two others. For example, Government will be controlled by Law Enforcer and Sea User, Law Enforcer will be controlled by Government and Sea User,

and also Sea User will be controlled by Government and Law Enforcer. This mechanism will grow Legal Culture at each group to reach the justice as main objective of law enforcement that will implicate to national goals at maritime sector (ratified as Global Maritime Fulcrum) (Global Maritime Fulcrum, 2014).

If the legal system is conceived as a process from the terminology of maritime security to the Global Maritime Fulcrum, its diagram is shown below:

**Figure 2.** Diagram of Legal System Process

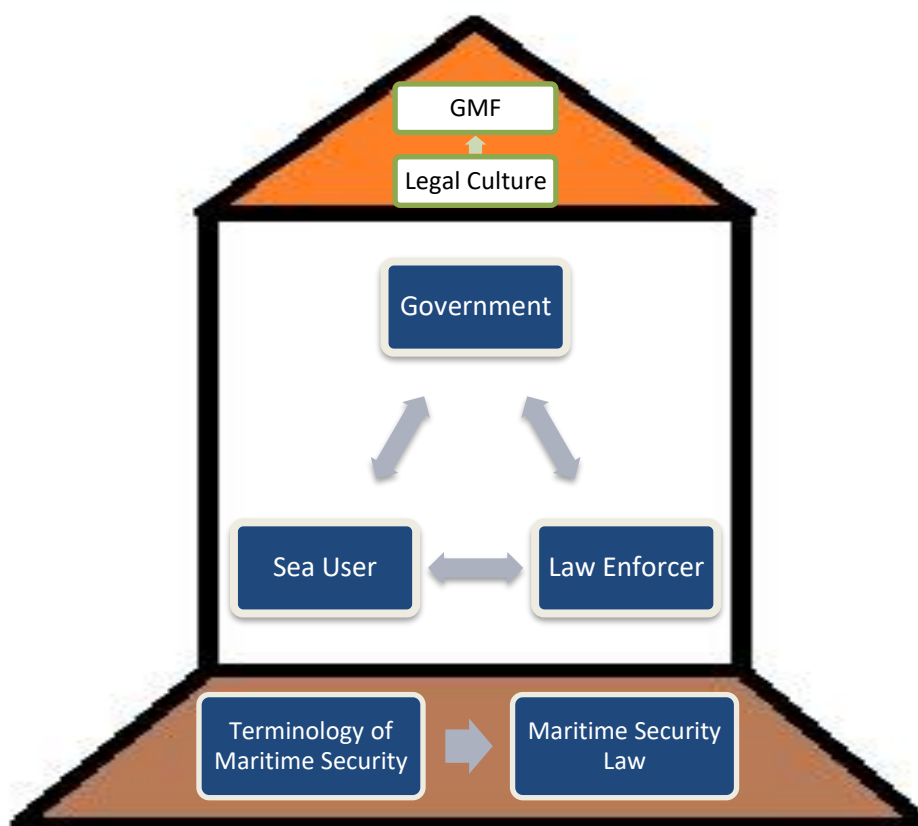


*Source: made by the researchers*

### 3.3. Terminology of Maritime Security

According to the legal system that contain Legal Substance, Legal Structure, and Legal Culture, the terminology of maritime security could be conceived by figure below:

**Figure 3.** Legal System Building



*Source: made by the researchers*

The building shows whole legal system that contain Legal Substance as its foundation, Legal Structure as its wall (or its pillars), and Legal Culture as its roof. Therefore, the terminology of maritime security is formulated as:

“Realization of People Participation (that contained of Government, Law Enforcer, and Sea User) according to the checks and balances principle in enforcing state law supremacy in the sea region to reach Global Maritime Fulcrum (GMF).”

#### **4. Conclusion**

The output of the research is terminology of maritime security formulated by the legal system theory that involve people participation to reach Global Maritime Fulcrum (GMF). The terminology will be a core subject in legal drafting of maritime security law.

This research is still opening the further research, especially to explain mechanism of the checks and balances principle focus on relation between each group. The legislative drafting of maritime security law will need some subject beside the terminology of maritime security itself. So that study about another necessary subjects in legislative drafting of maritime security could be topics of further researches.

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#### **References**

##### **Books**

- Friedman, L. (2009). *Sistem Hukum: Perspektif Ilmu Sosial*. Bandung: Penerbit Nusa Media.
- Hardjosoekarto, S. (2012). *Soft System Methodology: Metode Serba Sistem Lunak*. Jakarta: Penerbit Universitas Indonesia.
- Hornby, A. (2000). *Oxford Advanced Learner's Dictionary: Sixth edition*. Oxford University Press.
- Kurnia, A. (2022). *Guarding the Sea for Our Future: Menjaga Laut untuk Masa Depan Kita*. Jakarta: Petroenergy.
- Kusumaatmadja, M. (1978). *Bunga Rampai Hukum Laut*. Binacipta.
- Loy, N. dkk. (2019). *Mengamankan Laut: Tata Ruang dan Keamanan Maritim*. Jakarta: PT Elex Media Komputindo

- Manan, B. (2004). *Hukum Postif Indonesia: Satu Kajian Teoritik*. Yogyakarta: FH UII Press.
- Sugiyono. (2018). *Metode Penelitian Kualitatif: Edisi ketiga*. Bandung: Penerbit Alfabeta.
- Surjadi, A. dkk. (1980). *Menggerakkan Pembangunan Kemampuan Matra Laut Nasional: Dalam Rangka Implementasi Wawasan Nusantara*. Jakarta: Surya Indah.
- TNI AL. (2004). *Proses Penyelenggaraan Keamanan Laut oleh TNI AL*. Jakarta: Markas Besar Angkatan Laut.

### **Journals**

- Amallia, N. (2019). Partisipasi Masyarakat dalam Sistem Keamanan Lingkungan untuk Meningkatkan Keamanan dan Ketertiban Masyarakat. *Jurnal Ilmu Sosial dan Ilmu Politik*. 02(01). 1-9.
- Ansori, L. (2017). Reformasi Penegakan Hukum Perspektif Hukum Progresif. *Jurnal Yuridis*. 4(2). 148-163.
- Anwar, S. (2016). Membangun Keamanan Maritim Indonesia dalam Analisa Kepentingan, Ancaman, dan Kekuatan Laut. *Jurnal Pertahanan*. 6(3). 69-89.
- Kardi, K. (2018). Kajian Strategi dan Global: Strategi Keamanan Nasional. *Jurnal Kajian Strtatejik Ketahanan Nasional*. 1(2). 52-58.
- Lailam, T. (2021). Problem dan Solusi Penataan Checks and Balances System dalam Pembentukan dan Pengujian Undang-Undang di Indonesia. *NEGARA HUKUM*. 12(1). 123-142.
- Rasjidi, I. (2015). Penyerapan Istilah Asing pada Terminologi Hukum di Indonesia. *Litigasi*. 16(2). 2875-2905.
- Riskiono, J. (2015). Partisipasi Masyarakat dalam Pembentukan Perundang-Undangan untuk Mewujudkan Kesejahteraan. *Aspirasi*. 6(2). 159-176.
- Samosir, D. (2015). Faktor-Faktor yang Menyebabkan Materi Muatan Undang-Undang Bertentangan Dengan UUD 1945. *Jurnal Konstitusi*. 12(4). 773-794.
- Sudiro, P. & Rizqoh, E. (2022). Legalization Analysis of Bakamla RI as Civilian Maritime Law Enforcer by Means of Friedman Theory. *The 2<sup>nd</sup> International Conference on State, Law, Politic & Democracy (ICon-SLPD)*. 583-596.
- Utami, S. dkk. (2019). Penyusunan Grand Strategy Keamanan Nasional untuk Optimalisasi Kekuatan Nasional Indonesia. *Jurnal Damai dan Resolusi Konflik*. 5(3). 19-42.



Yuliarta, I. & Rahmat, H. (2021). Peningkatan Kesejahteraan Melalui Pemberdayaan Masyarakat Pesisir Berbasis Teknologi Sebagai Upaya Memperkuat Keamanan Maritim di Indonesia. *Dinamika Sosial Budaya*. 23(1), 180-189.

### **Peraturan Perundang-Undangan**

Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.

Undang-Undang Nomor 32 Tahun 2014 tentang Kelautan (Lembaran Negara Republik Indonesia Tahun 2014 Nomor 294, Tambahan Lembaran Negara Republik Indonesia Nomor 5603).

### **Website Materials**

Christiawan, R. (2023). Implementasi Penelitian Hukum Normatif. Retrieved from <https://www.hukumonline.com/berita/a/implementasi-penelitian-hukum-normatif-lt649255f7edb35?page=1> on 20<sup>th</sup> July 2023 at 7:06 pm.

United Nation Convention on the Law of the Sea (UNCLOS). Retrieved from [https://www.un.org/depts/los/convention\\_agreements/texts/unclos/unclos\\_e.pdf](https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf) on 21<sup>st</sup> July 2023 at 11:24 am.