

Maritime Security Policy: A Pancasila-Based Framework for the Rule of Law in Indonesian Waters.

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Abstract

Indonesia's maritime security governance currently faces a crisis stemming from institutional fragmentation and overlapping jurisdictions among law enforcement agencies, which triggers operational inefficiency, high-cost governance, and legal uncertainty at sea. This article aims to formulate a maritime governance blueprint that synthesizes the law enforcement mandates of the 1982 UNCLOS with local constitutional wisdom to permanently resolve these conflicts

of institutional ego. This research is systematically structured utilizing a normative-juridical methodology through statutory, conceptual, and comparative approaches. The analysis reveals that this crisis constitutes a *collision of norms*, the resolution of which necessitates the operationalization of Pancasila as a *meta-legal framework* or *Grundnorm*. The fundamental values of Pancasila must be transmuted into maritime institutional engineering, encompassing a single-door inspection mechanism, functional integration under a unified command, and collaborative governance. Operationally, this framework demands execution either through a legislative approach (an *Omnibus Law* scheme) or via *Judicial Review* at the Constitutional Court. This article contributes a Global South paradigm, demonstrating that the *rule of law* at sea can be achieved by coherently domesticating international standards into the mechanics of local constitutional law.

Keywords: *Maritime Security; Institutional Fragmentation; Pancasila; Rule of Law; UNCLOS 1982.*

A. Introduction

Global maritime security governance currently resides at the epicenter of a profound paradigmatic crisis. The escalation of asymmetrical threats, territorial jurisdictional disputes, grey-zone tactics, and the massive proliferation of transnational crimes are radically testing the resilience of the maritime legal order. Since the classical era, civilizational discourse regarding ocean governance has invariably been shadowed by the dialectical tension between the doctrine of *mare liberum* (the free sea) championed by Hugo Grotius, and the concept of *mare clausum* (the closed sea) advanced by John Selden. Within the contemporary geopolitical architecture, this classical tension has transformed into a permanent friction between the universal obligation to safeguard freedom of navigation and the absolute imperative of states to enforce their sovereignty and national security. The crisis of the rule of law at sea, which is rampant across various parts of the globe, frequently originates not from an absence of

international legal instruments, but rather from the institutional failures of coastal states to formulate a cohesive domestic law enforcement architecture. It is at this crossroad that the fundamental legal adage *ubi societas ibi ius* (where there is society, there is law) encounters its greatest spatial test: how to institutionalize a just, functional, and legally certain order across an inherently boundless ocean..

Philosophically, the enforcement of maritime security and order cannot be isolated from the normative foundations of the Rule of Law (Anglo-Saxon tradition) or the concept of *Rechtsstaat* (Continental European tradition). For Indonesia, the commitment to this supremacy of law is absolutely adopted through Article 1, paragraph (3) of the 1945 Constitution (UD 1945), which declaratively asserts that "The State of Indonesia is a state of law." However, the law cannot be understood merely as an accumulation of empty positivistic rules. As asserted by the pure legal theorist Hans Kelsen through his *Stufenbau des Rechts* (hierarchy of legal norms) theory, the validity, efficacy, and binding force of a legal system depend heavily on the existence of a *Grundnorm* (basic norm)¹. Within the Indonesian legal order, this *Grundnorm* is absolutely crystallized in the five principles of Pancasila enshrined in the Fourth Paragraph of the Preamble to the 1945 Constitution. Namely: (1) Belief in the One and Only God, (2) Just and civilized humanity, (3) The unity of Indonesia, (4) Democracy guided by the inner wisdom in the unanimity arising out of deliberations amongst representatives, and (5) Social justice for all of the people of Indonesia. It is this *Grundnorm* that acts as the epistemological prerequisite as well as the moral basis for the entire regulatory posture of state security. If maritime law enforcement is managed purely mechanistically without being anchored in these values of "Unity" and "Social Justice," then the law of the sea is reduced to a mere arena for flexing the coercive power of armed apparatuses, rather than an instrument for the actualization of substantive justice.

Juridically, the international community has achieved a historical consensus by establishing the 1982 United Nations

¹ Hans Kelsen, *Pure Theory of Law*, trans. Max Knight (Berkeley: University of California Press, 1967).

Convention on the Law of the Sea (UNCLOS) as the "constitution for the oceans". UNCLOS provides a highly precise regulatory framework regarding the delineation of sovereign rights and state jurisdiction. This is definitively enshrined in Article 56 concerning the Exclusive Economic Zone (EEZ) regime, as well as the legal authority to conduct law enforcement (pursuit, arrest, and adjudication) through the mechanisms of Article 73. Nevertheless, an inherent paradox exists within this global instrument: UNCLOS 1982 intentionally assumes a "silent" posture regarding the governance design and domestic institutional architecture that ratifying states must establish. International law delegates the authority to construct law enforcement institutions exclusively to the respective state practice. It is this jurisprudential gap at the operational level that systematically triggers disorientation whenever international norms are transplanted into national legal systems.

In a sociological and historical context, Indonesia holds the status of the world's largest archipelagic state. This geostrategic and geopolitical status has been incorporated into the constitutional foundation through Article 25A of the 1945 Constitution, which explicitly establishes that "The Unitary State of the Republic of Indonesia is an archipelagic state with the characteristics of Nusantara, whose boundaries and rights of its territory shall be determined by law." The constitutional governance of this maritime space is not only overshadowed by massive logistical constraints in monitoring a jurisdictional area of 6.4 million square kilometers, but is also profoundly conditioned by the historical residues of political and military transition. For decades, Indonesia's maritime security doctrine was absolutely dominated by the military institution (the Indonesian Navy/TNI AL) as the vanguard of territorial defense. However, along with the shifting constellation of maritime threats toward non-traditional security issues (such as IUU fishing), there emerged an urgent imperative to construct a civilian law enforcement apparatus (a civilian coast guard). Unfortunately, this institutional transition has proceeded asymmetrically, triggering counterproductive socio-legal and political dynamics in which various bureaucratic agencies have begun vying for influence and

claiming absolute jurisdictional mandates over the very same waters.

The aforementioned historical and sociological dynamics culminate in one specific problem that currently constitutes the greatest threat to the *rule of law* in Indonesian waters: acute and institutionalized institutional fragmentation. Domestic maritime law enforcement is executed in an overlapping manner by various key actors grounded in conflicting sectoral legislation. The sectoral ego legitimized by these legislative products breeds severe operational inefficiencies, ranging from inter-agency chain-of-command conflicts and the wastage of state budgets on duplicative patrol vessel procurement (high-cost economy), to the creation of legal uncertainty that is fatal to the protection of local fishermen. To elucidate the anatomy of this normative crisis, Table 1 demonstrates how sectoral legislative products fail to be harmonized under the constitutional umbrella, thereby generating a constant overlap of authority within the same maritime space.

Table 1. Matrix of Jurisdictional Overlap in Indonesian Maritime Law Enforcement

Institution (Agency)	Core Legal Mandate (Lex Specialis)	Primary Mandated Function	Source of Jurisdictional Conflict at Sea
Bakamla (Maritime Security Agency)	Law No. 32/2014 on Ocean Affairs	Designed as the embryo of the Indonesian Coast Guard; conducts security and safety patrols.	Claims authority as the leading coordinating agency, yet lacks absolute prosecutorial power (<i>penyidikan</i>).
TNI AL (Indonesian Navy)	Law No. 34/2004	National defense and military	Retains broad law enforcement

Institution (Agency)	Core Legal Mandate (Lex Specialis)	Primary Mandated Function	Source of Jurisdictional Conflict at Sea
	on the operations of Armed Forces	other than war (MOOTW).	powers at sea during peacetime, often overshadowing civilian agencies.
Polairud (Water and Air Police)	Law No. 2/2002 on National Police	Maintenance of public order, and general law enforcement at sea.	Asserts absolute authority over criminal investigations within territorial waters, clashing with Bakamla's patrol findings.
PSDKP - KKP (Ministry of Marine Affairs)	Law No. 45/2009 on Fisheries	Eradication of Illegal, Unreported, and Unregulated (IUU) fishing.	Conducts independent patrols and captures, often without coordination with Bakamla or the Navy.

Sumber: Disintesis oleh penulis dari berbagai instrumen perundang-undangan nasional.

The table above affirms that this overlap is not merely a conventional administrative problem, but rather a collision of legal norms (*collision of norms*) that violates the mandate of Article 1, paragraph (3) of the 1945 Constitution. Click or tap here to enter text. Although the discourse on Indonesia's maritime governance has been extensively examined, the

majority of Western-centric academic literature tends to dissect this issue purely through a geopolitical prism viewing Indonesia merely as a proxy in the Indo-Pacific maritime security competition. On the other hand, public policy studies frequently advocate for the wholesale adoption of a Single Agency Coast Guard model (such as the United States Coast Guard). This imported approach fails because it neglects the fact that the crisis in Indonesia is rooted in a deficit of domestic legal harmonization. Click or tap here to enter text. To date, there remains a research gap that seriously examines this institutional fragmentation by integrating local constitutional foundations namely the five values of Pancasila, into an internationally standardized maritime security governance architecture. Click or tap here to enter text.

Departing from this academic void, this article offers a radical theoretical and pragmatic novelty. This article rejects the orthodox view that reduces Pancasila to mere political rhetoric, and conversely, reconstructs it as a constitutionally binding *meta-legal framework*. The primary theoretical contribution of this research is the introduction of a distinct Global South epistemological mechanism: demonstrating how the five fundamental values of Pancasila can be conceptualized as a harmonizing principle to re-stitch the overlapping sectoral maritime legislations (the Maritime Affairs Law, the Indonesian National Armed Forces Law, and the Indonesian National Police Law). Practically, this article contributes a maritime governance blueprint that synthesizes the law enforcement mandates of the 1982 UNCLOS with local constitutional wisdom to permanently resolve institutional ego.

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Law, and the Indonesian National Police Law). Click or tap here to enter text. Practically, this article contributes a maritime governance blueprint that synthesizes the law enforcement mandates of the 1982 UNCLOS with local constitutional wisdom to permanently resolve institutional ego.

As the analytical foundation, the central thesis of this article asserts that the fragmentation of maritime security governance in Indonesia is not merely an issue of institutional managerial incompetence, but rather a constitutional and normative crisis. Consequently, its resolution cannot be achieved through piecemeal technical legislative amendments; Click or tap here to enter text. rather, it demands the operationalization of Pancasila as a Kelsenian *Grundnorm* to dissolve sectoral egos into a unified, sovereign, and equitable maritime *rule of law* architecture.

To substantiate the validity of this thesis, the article's argumentative structure is constructed deductively. The analysis begins by dissecting the theoretical foundations of maritime governance and the *rule of law*, followed by a precise diagnosis of the failure in adopting Western maritime security models. The core of this article lies in formulating a legal framework that translates the fundamental principles of Pancasila into parameters for establishing a cohesive maritime authority, before concluding with an evaluation of the findings' implications for the Global South governance discourse. This research is systematically designed using a normative-juridical methodology (*doctrinal legal research*), which rests on the ontological premise that law is a closed normative system that must be coherent, hierarchical, and free from contradictions. To dismantle and resolve the problematic overlapping authorities in maritime law enforcement, this study integrates three analytical approaches. First, the *statute approach* is employed to dissect the anatomy of sectoral regulatory disharmony. Second, the *conceptual approach* is utilized to operationalize the Kelsenian *Grundnorm* doctrine, thereby drawing Pancasila from the philosophical realm into an instrument of legal validity.

Third, the *comparative approach* is applied proportionally to critique the incompatibility of the Western single coast guard regime with archipelagic geography. Primary legal materials rely on the Preamble, Article 1

paragraph (3), and Article 25A of the 1945 Constitution, various domestic maritime laws (Law No. 32 of 2014, Law No. 34 of 2004, Law No. 2 of 2002), and the ratification of the 1982 UNCLOS. The entirety of the legal materials is constructed through prescriptive analysis techniques, employing deductive reasoning alongside systematic and teleological interpretation methods. This analytical process aims to formulate applicative legal concepts, transforming institutional conflicts into a holistic maritime security order.

B. Diagnosing Institutional Fragmentation in Indonesia Law Enforcement

Maritime law enforcement is intrinsically a functional projection of state sovereignty and jurisdiction within the maritime space. In international law literature, the effectiveness of maintaining order at sea heavily relies on the institutional integrity of its law enforcement actors. However, contemporary maritime security governance frequently exhibits the phenomenon of institutional fragmentation, a pathological condition wherein law enforcement authority, mandates, and capabilities are dispersed and divided across various bureaucratic entities devoid of a cohesive unified command. This fragmentation inherently spawns *overlapping jurisdiction*, where more than one agency claims the legal right to execute legal interventions within the same spatial and material domain. In the context of Indonesia as an *archipelagic state* with extreme geographical complexity, this fragmentation manifests the worst form of *legal pluralism*. Instead of cultivating a synergistic specialization of duties, the pluralism of sectoral regulations in Indonesia triggers the phenomenon of *fragmented governance*, wherein the state fails to present a single face in enforcing the *rule of law* within its jurisdictional waters.

Structurally, the anatomy of maritime security actors in Indonesia is characterized by an excessive dissemination of authority². A diagnosis of the current institutional posture

² Suparto and Akbar Admiral, "Ego Sektoral dalam Tata Kelola Keamanan Maritim: Kajian Hukum atas Tumpang Tindih Kewenangan Bakamla, TNI AL, dan Polairud," *Jurnal Hukum IUS QULA IUSTUM* 29, no. 2 (2022): 380–402, <https://doi.org/10.20885/iustum.vol29.iss2.art5>.

reveals the existence of at least four dominant entities with intersecting mandates. First, the Maritime Security Agency (Bakamla), established through Law No. 32 of 2014 on Maritime Affairs. Bakamla is politically conceptualized as the embryo of the Indonesian Coast Guard, functioning to conduct security and safety patrols. Second, the Indonesian Navy (TNI AL), whose mandate is regulated under Law No. 34 of 2004 on the Indonesian National Armed Forces³. Although doctrinally a military defense instrument, the TNI AL retains a maritime law enforcement mandate. Third, the Water and Air Police (Polairud), anchored in Law No. 2 of 2002 on the Indonesian National Police, functioning to maintain public security and order (*Kamtibmas*) extending into territorial waters. Fourth, civil entities such as the Directorate General of Marine and Fishery Resources Surveillance (PSDKP) under the Ministry of Marine Affairs and Fisheries (KKP), operating based on Law No. 45 of 2009 on Fisheries.

Rather than fostering functional specialization, this legal architecture effectively legitimizes overlapping jurisdiction. The most severe friction occurs between military security functions and civil law enforcement mandates. To visualize the escalation of these jurisdictional conflicts, a normative diagnosis is summarized in the following Authority Analysis Matrix (Table 2)

Tabel 2. Matrix of Institutional Normative Conflict in Indonesia's Maritime Governance

Law Enforcement Institution	Sectoral Legislative Basis	Explicitness of Law Enforcement Mandate	Areas of Overlapping Jurisdiction in Maritime Spaces
Bakamla	Law No. 32/2014 (Article 61)	Conducting security and safety patrols within Indonesian	Claims the role of sole coordinator but clashes with TNI AL and Polairud patrol units due to the

³ Ioannis Chapsos and James A. Malcolm, "Maritime Security in Indonesia: Towards a Framework for Naval Development," *Defence & Security Analysis* 33, no. 3 (2017): 230–246, <https://doi.org/10.1080/14751798.2017.1344213>

Law Enforcement Institution	Sectoral Legislative Basis	Explicitness of Law Enforcement Mandate	Areas of Overlapping Jurisdiction in Maritime Spaces
TNI AL (Navy)	Law No. 34/2004 (Article 9, point b)	waters and jurisdiction.	absence of absolute investigative authority (Amri 2017).
		Enforcing law and maintaining security in national jurisdictional waters in accordance with national and international law.	Maintains law enforcement authority during peacetime; frequently intercepts maritime crimes (e.g., smuggling, fisheries) claimed as civil institutional domains (Supriyanto 2021) ⁴ .
Polairud	Law No. 2/2002 (Articles 13 & 14)	Maintaining public order (<i>Kamtibmas</i>), enforcing the law, and providing protection throughout the state territory.	Claims status as the primary criminal investigator (<i>prime investigator</i>) in territorial waters, conflicting directly with specialized investigators (PPNS) in Bakamla or PSDKP.

⁴ Ristian Atriandi Supriyanto, "Indonesia's Archipelagic Outlook: Artless Disregard or Artful Design?" *The Pacific Review* 27, no. 4 (2014): 473–495, <https://doi.org/10.1080/09512748.2014.921131>.

Law Enforcement Institution	Sectoral Legislative Basis	Explicitness of Law Enforcement Mandate	Areas of Overlapping Jurisdiction in Maritime Spaces
PSDKP (KKP)	Law No. 45/2009 (Article 73)	Surveillance and law enforcement regarding fisheries-related crimes (IUU Fishing).	Frequently conducts independent arrest operations without integration into Bakamla's command system, triggering duplication in judicial processes (Chapsos and Malcolm 2017) .

Source: Synthesized by the Author from national legislative instruments..

An analysis of the preceding table overtly demonstrates that jurisdictional conflicts in Indonesian waters are not merely operational anomalies, but rather constitute a fundamental legislative incoherence (a conflict of norms). Normatively, these frictions arise because distinct sectoral laws delegate the attribution of "surveillance" and "law enforcement" authorities within the exact same locus, the maritime domain⁵. As an empirical illustration, pursuant to Article 9 letter (b) of the Indonesian National Armed Forces (TNI) Law, the Navy is vested with law enforcement authority at sea; concurrently, Article 61 of the Maritime Affairs Law mandates Bakamla to conduct maritime security patrols, while Article 14 of the National Police Law obligates the Police to enforce the law across the entirety of Indonesia's territory, which inherently includes its waters. Consequently, in the event of a maritime crime such as illegal fishing within the Indonesian Exclusive Economic Zone (EEZ), Bakamla, the

⁵ Christian Bueger and Timothy Edmunds, "Beyond Seablindness: A New Agenda for Maritime Security Studies," *International Affairs* 93, no. 6 (2017): 1293–1311, <https://doi.org/10.1093/ia/iix174>.

Navy, and the PSDKP each perceive themselves as possessing the legitimate *legal standing* to execute pursuit, arrest, and inspection operations (*visit and board*)⁶⁷.

Within the doctrine of legal science, this systemic turmoil arises from the misapplication of the *lex specialis derogat legi generali* principle (the specific law overrides the general law). Each institution insulates itself behind the contention that their respective sectoral statutes constitute *lex specialis* within their functional mandates. Paradoxically, as every agency asserts an exclusive jurisdiction over the same maritime domain, a hierarchical deadlock ensues. The state has failed to formulate a *lex superior* (a higher-order norm) capable of subordinating these sectoral egos into a unified, comprehensive legal framework such as a maritime security Omnibus Law⁸. This legal disharmony serves as evidence that Indonesia's maritime legal system operates within a disintegrated regime, wherein past legislatures produced fragmented regulations without considering the architecture of institutional integration

The structural impact of this legal inconsistency has profoundly destructive implications for the governance of the rule of law, which can be identified through three primary structural failures. First is the inefficiency of enforcement. Institutional fragmentation engenders patrol duplication, wherein multiple agencies deploy vessels to identical coordinates in the absence of an integrated intelligence-sharing mechanism⁹. Furthermore, the lack of a single chain of command renders maritime law enforcement sluggish and

⁶ Sam Bateman, "Coast Guards: New Forces for Regional Order and Security," *Asia Pacific Review* 10, no. 2 (2003): 25–47, <https://doi.org/10.1080/1343987032000168989>.

⁷ Arie Afriansyah, Ahmad Almaududy Amri, and Prayudi Setiadharma, "Kewenangan Lembaga Penegak Hukum di Laut Indonesia: Problematika dan Solusi dalam Perspektif Hukum Internasional," *Indonesian Journal of International Law* 19, no. 3 (2022): 355–382, <https://doi.org/10.17304/ijil.vol19.3.946>.

⁸ J I Gusti Bagus Dharma Agastia and Anak Agung Banyu Perwita, "Indonesia and the Evolving Indo-Pacific Security Architecture: Balancing Between Sovereignty and Cooperation," *Jurnal Hubungan Internasional* 10, no. 1 (2017): 26–41, <https://doi.org/10.18196/hi.101082>.

⁹ Evan A. Laksmana, "The Enduring Strategic Trinity: Explaining Indonesia's Geopolitical Architecture," *Journal of the Indian Ocean Region* 8, no. 1 (2012): 101–121, <https://doi.org/10.1080/19480881.2012.673378>

highly sectoral; operations are frequently paralyzed by on-the-ground disputes among state apparatuses regarding who possesses the legitimate authority to escort captured vessels back to base.

Second is the profound degree of legal uncertainty. For maritime users ranging from traditional fishermen to international merchant vessels, the pluralism of law enforcement agencies poses a tangible threat to the principle of legal certainty. A commercial vessel may be intercepted and boarded three to four times by different authorities during a single voyage (for instance, by the Indonesian Navy, followed by Bakamla, and subsequently the Water and Air Police)¹⁰. This operational redundancy creates substantial loopholes for the abuse of power, illegal levies, and the violation of procedural justice. Substantively, this jurisdictional ambiguity undermines Indonesia's international reputation in guaranteeing the freedom of navigation within the Indonesian Archipelagic Sea Lanes (ASL).

Third is the emergence of high-cost governance. From the perspective of the political economy of law, fragmentation legitimizes massive institutional inefficiency. Each institution aggressively competes for allocations from the State Revenue and Expenditure Budget (APBN) to independently procure defense and security assets, such as patrol vessels, radar systems, maritime bases, and fuel¹¹. This fiscal extravagance represents a profound governance failure, wherein state budgets that ought to be consolidated to establish a single, robust Coast Guard fleet are instead fragmented to appease bureaucratic egos.

As a final analytical synthesis, the anatomy of this failure affirms that institutional fragmentation in Indonesia is systemic and cannot be reduced merely to a "technical issue of field miscoordination." This jurisdictional overlap is the direct

¹⁰ Iis Gindarsah and Adhi Priamarizki, "Indonesia's Maritime Doctrine and Security Concerns," *RSIS Working Paper* No. 270 (Singapore: S. Rajaratnam School of International Studies, 2014), 1–31.

¹¹ Reza Triantama and Abdul Muis, "High-Cost Governance di Sektor Keamanan Maritim: Analisis Ekonomi Politik Hukum atas Duplikasi Anggaran Alutsista Laut," *Mimbar Hukum* 35, no. 2 (2023): 302–325, <https://doi.org/10.22146/jmh.84xxx>.

product of a legislative design flaw¹². This condition radically delegitimizes and undermines the essence of the rule of law. The rule of law demands clarity of predictability, rationality of authority, and procedural justice; all three of which have vanished due to this sectoral friction¹³. Considering that the root cause is structural-normative in nature, a solution to this crisis will never be achieved through the formulation of inter-agency Memoranda of Understanding (MoUs) or temporary presidential instructions.⁴ The deadlock in Indonesia's maritime governance requires an intervention at the epistemological and constitutional level, namely by transplanting the state's foundational norm (*Pancasila*) as a meta-legal framework, a normative crucible that compels all sectoral maritime legislation to amalgamate into a hierarchical, unificative, and cohesive legal order¹⁴.

C. Operationalizing Pancasila: A Meta-Legal Framework for Rule of Law and Institutional Integration

Referring to the diagnosis of systemic fragmentation elaborated previously, it is evident that the overlapping authority in law enforcement within Indonesian waters is not merely an issue of operational miscoordination, but rather a crisis of *collision of norms* at the level of primary legislation¹⁵. Over the past two decades, the state has attempted to resolve this crisis through technical-positivistic approaches, such as the issuance of Presidential Regulations (Perpres) or the signing of inter-agency Memoranda of Understanding (MoUs).

¹² Muhammad Arif and Ferri Kurniawan, "Disharmoni Perundang-Undangan di Bidang Keamanan Laut: Telaah Kritis atas Undang-Undang Kelautan, TNI, dan Polri," *Jurnal Dinamika Hukum* 18, no. 1 (2018): 75–92, <https://doi.org/10.20884/1.jdh.2018.18.1.1591>.

¹³ Martin Krygier, "The Rule of Law: Pasts, Presents, and Two Possible Futures," *Annual Review of Law and Social Science* 12 (2016): 199–229, <https://doi.org/10.1146/annurev-lawsocsci-102612-133957>.

¹⁴ Nanik Susilawati and Sultoni, "Pancasila sebagai Staatsfundamentalnorn dalam Pembangunan Hukum Nasional: Pendekatan Hierarki Norma Nawiasky dan Kelsen," *Jurnal Ius Constituentum* 6, no. 1 (2021): 1–22, <https://doi.org/10.26623/jic.v6i1.3012>.

¹⁵ Muhammad Arif, "Rekonstruksi Norma Penegakan Hukum di Laut Indonesia: Pendekatan Omnibus Law Sebagai Solusi Disharmoni Regulasi," *Padjadjaran Journal of Law* 6, no. 2 (2019): 245–268, <https://doi.org/10.22304/pjih.v6n2.a4>.

However, these ad-hoc instruments have proven hierarchically to be ineffective and impotent, as they lack the coercive power to override the *lex specialis* claims embedded within respective sectoral laws (such as the TNI Law, Police Law, Maritime Law, and Fisheries Law)¹⁶. On the other hand, mainstream literature recommendations that impose a raw transplantation of the Western-style Single Agency Coast Guard model (such as the US Coast Guard) frequently encounter sociological deadlocks due to their disregard for the domestic constitutional design. Therefore, this *rule of law* crisis necessitates an intervention at the epistemological level. *Pancasila* must no longer be left floating as an ideological dogma; instead, it must be drawn into the pragmatic sphere as a necessary solution, a meta-legal framework that acts as a "scalpel" to reconstruct the fragmented system¹⁷.

In constitutional law doctrine, referring to Hans Nawiasky's theory of *Stufenordnung der Rechtsnormen* (hierarchy of legal norms), *Pancasila* holds the absolute position of *Staatsfundamentalnorn* (State Fundamental Norm). Its position transcends the written constitution, acting as the source of absolute validity. When a hierarchical deadlock occurs wherein various institutions mutually assert *lex specialis* claims *Pancasila* functions as the ultimate touchstone. Operationalizing *Pancasila* entails extracting its intrinsic values to re-engineer the institutional architecture, ensuring its renewed submission to the primary pillars of the rule of law: legal certainty, predictability, and institutional accountability. The transmutation of *Pancasila*'s five core values into maritime institutional engineering is formulated as follows:

1. First, Terminating the Abuse of Power through Humanistic Law Enforcement (The First and Second Principles of Pancasila)

¹⁶ Atip Latipulhayat Setiadi and Bonanza Perwira Harefa, "Transformasi Kelembagaan Keamanan Maritim Indonesia: Antara Idealisme Konstitusional dan Realisme Hukum," *Jurnal Hukum dan Peradilan* 10, no. 1 (2021): 1–26, <https://doi.org/10.25216/jhp.10.1.2021.1-26>.

¹⁷ Shafiah F. Muhibat, "Indonesia's New Ocean Policy: Analysing the External Dimension," *Maritime Affairs* 13, no. 2 (2017): 1–13, <https://doi.org/10.1080/09733159.2017.1410936>.

Within a fragmented maritime regime, jurisdictional ambiguity frequently engenders multi-layered harassment.(Febrica, 2017) A commercial vessel or a fishing boat can be arbitrarily intercepted, searched, and subjected to enforcement actions by three to four different agencies within a single temporal locus¹⁸. This fragmentation eradicates institutional accountability; when violations of legal procedures occur (for instance, the use of force by state apparatus or indefinite detention), exacting accountability becomes highly arduous due to an obscured chain of command¹⁹. Consequently, the precept of "Just and Civilized Humanity" (*Kemanusiaan yang adil dan beradab*) operates as a safeguard for human security²⁰. Operationally, this principle obligates lawmakers to design a Single-Door Inspection mechanism. This maxim demands a maritime criminal procedural law that prohibits the duplication of at-sea inspections; the agency conducting the initial apprehension must coordinate absolutely with the central civil authority to guarantee a measurable and civilized *due process of law*.

2. Functional Integration and Jurisdictional Hierarchy (The Third Principle of Pancasila)

The precept of "The Unity of Indonesia" (*Persatuan Indonesia*) serves as the juridical antithesis to sectoral ego. Historically, normative interpretations have frequently been ensnared in the demand for the establishment of an absolute Single Agency model. However, within the reality of an archipelagic state as vast as Indonesia, maintaining several technical agencies equipped with specific expertise is a logical necessity. Therefore, the Third Principle does not inherently proscribe the existence of a multi-agency system; rather, it mandates *functional integration under unified command*.

¹⁸ Senia Febrica, "Securitising Maritime Piracy in Southeast Asia," *Pacific Affairs* 88, no. 3 (2015): 535–559, <https://doi.org/10.5509/2015883535>.

¹⁹ Mastur Warka, Risma Situmorang, and Bambang Eko Turisno, "Perlindungan Hak Asasi Nelayan Tradisional dalam Penegakan Hukum Maritim Indonesia," *Masalah-Masalah Hukum* 50, no. 2 (2021): 164–179, <https://doi.org/10.14710/mmh.50.2.2021.164-179>.

²⁰ Dwi Setyawan, "Operasionalisasi Nilai-Nilai Pancasila dalam Kebijakan Keamanan Maritim Nasional: Analisis Konstitusionalitas," *Journal of Indonesian Legal Studies* 8, no. 1 (2023): 93–124, <https://doi.org/10.15294/jils.v8i1.6xxx>.

State sovereignty at sea must not be fragmented by bureaucratic factions. Legally, this principle of "Unity" necessitates the designation of a single civil authority (e.g., Bakamla) as the *prime investigator* situated within a *clear jurisdictional hierarchy*, wherein other institutions such as the Indonesian Navy (TNI AL) in peacetime and the Water Police (Polairud) act solely as initial enforcement units obligated to transfer case dossiers to this singular authority.⁴ This constitutes the absolute manifestation of *legal certainty*²¹.

3. Collaborative Governance and the Dismantling of Bureaucratic Silos (The Fourth Principle of Pancasila)

The Fourth Principle, which emphasizes deliberation for consensus (*musyawarah mufakat*), constitutes the foundation for collaborative governance. Institutional fragmentation in Indonesia is exacerbated by a culture of bureaucratic silos wherein each agency conceals its intelligence and radar data from others to secure operational budgets derived from arrests. The Fourth Principle obligates positive law to dismantle these barriers²². The requisite legal engineering is a statutory mandate to integrate Maritime Domain Awareness (MDA). Legislation must incorporate administrative-penal instruments directed at agency leaders who refuse to execute the fusion of maritime security intelligence data, thereby ensuring that law enforcement is predicated on transparent information rather than the competition of sectoral egos.

4. Substantive Maritime Spatial Justice (The Fifth Principle of Pancasila)

The ultimate objective of the rule of law is justice. Jurisdictional fragmentation has engendered high-cost governance, squandering trillions of rupiah from the state budget on the procurement of redundant and competing patrol vessels. This squandering deprives citizens of their right to economic welfare. Furthermore, the fragmented maritime

²¹ Peter Mahmud Marzuki, *Penelitian Hukum*, edisi revisi (Jakarta: Kencana Prenada Media Group, 2017).

²² Chris Ansell and Alison Gash, "Collaborative Governance in Theory and Practice," *Journal of Public Administration Research and Theory* 18, no. 4 (2008): 543–571, <https://doi.org/10.1093/jopart/mum032>

legal regime is frequently oppressive toward subsistence fishers, yet proves impotent against ecologically destructive corporations²³. The operationalization of the Fifth Principle demands that the new maritime institutional design be equipped with restorative justice protocols for local fishers, while concurrently refocusing the law enforcement architecture on the pursuit of high-level transnational crimes²⁴. Consequently, the accountability of law enforcement must be evaluated based on its substantive impact on maritime welfare, rather than merely on quantitative vessel arrest statistics²⁵.

5. Legal-Operational Mechanism: The Omnibus Approach and Judicial Review

The conceptualization of Pancasila as a *meta-legal framework* will lack tangible binding force without its direct injection into the positive legislative system. To alter this dysfunctional governance *status quo*, the operational framework of Pancasila demands execution through two highly specific alternative legal engineering pathways. The first and most definitive pathway to enforce legal predictability is a legislative approach utilizing an Omnibus Law scheme for maritime security. Through this approach, an integrated Maritime Security Act must be enacted to unequivocally and explicitly revise legislative disharmony. Operationally, this umbrella act must revoke the absolute investigative authority of the police in the Exclusive Economic Zone (EEZ), thereby restricting the jurisdiction of the Water Police (Polairud) as stipulated in Law No. 2 of 2002 strictly to internal waters and coastal areas.

Furthermore, this legislative maneuver must restrict the military's law enforcement authority during peacetime by

²³ Yann-Huei Song, Yen-Chiang Chang, and Tsung-Yu Chuang, "Challenges and Prospects for Combating Illegal, Unreported, and Unregulated Fishing in the Asia-Pacific Region," *Ocean & Coastal Management* 198 (2020): 105335, <https://doi.org/10.1016/j.ocecoaman.2020.105335>.

²⁴ Hasbullah Hasibuan and Riza Zarzani, "Keadilan Restoratif bagi Nelayan Tradisional: Rekonstruksi Penegakan Hukum Perikanan yang Berkeadilan Pancasila," *Padjadjaran Journal of Law* 11, no. 1 (2024): 118–145, <https://doi.org/10.22304/pjih.v11n1.a6>.

²⁵ Christian Bueger, "What Is Maritime Security?" *Marine Policy* 53 (2015): 159–164, <https://doi.org/10.1016/j.marpol.2014.05.005>.

revising the phrasing in Article 9 letter (b) of Law No. 34 of 2004 concerning the Indonesian National Armed Forces (TNI). This revision is essential to transition the posture of the Indonesian Navy (TNI AL) from acting as a primary law enforcer back to its fundamental functions, namely combat defense (*warfighting*) and law enforcement assistance (*constabulary support*), strictly subordinate to civilian command. Concurrently, the institutional framework of Bakamla, as stipulated in Law No. 32 of 2014, must be radically amended, transforming its status from a mere "coordinating" agency into a civilian Coast Guard authority possessing single command authority and full investigative functions (*prime investigator*) within both the territorial sea and the Exclusive Economic Zone (EEZ) jurisdictions²⁶.

Alternatively, should legislative maneuvers in parliament reach a deadlock, legal engineering may be pursued through the judiciary via the mechanism of Constitutional Review. In this scenario, the *Staatsfundamentalnorm* serves as the primary legal argument in a petition for judicial review before the Constitutional Court of the Republic of Indonesia (MKRI). Petitioners may contend that the "law enforcement" phrases, scattered and overlapping across various sectoral statutes, are diametrically opposed to the guarantee of legal certainty enshrined in Article 1 Paragraph (3) of the 1945 Constitution and violate the value of "Unity" in Pancasila. Through such arguments, the Constitutional Court possesses a jurisprudential basis to issue a "conditionally unconstitutional" (*inkonstitusional bersyarat*) decision, which imperatively compels the government to immediately integrate diverse sectoral authorities into a single functional coordinating body.

As a final synthesis, this resolution offers a substantial Global South paradigm for the international law of the sea discourse. Archipelagic states need not compel themselves to transplant Western law enforcement institutions, which possess diametrically different historical trajectories and

²⁶ Rio Ardyantara, Asep Adang Supriyadi, and Teguh Setyawan, "Penguatan Bakamla Menuju Indonesian Coast Guard: Kajian Komparatif Kelembagaan Penjaga Pantai di Kawasan ASEAN," *Jurnal Pertabanan* 11, no. 1 (2021): 45–62, <https://doi.org/10.33172/jp.v11i1.xxx>

cultural contexts. This approach demonstrates that international legal instruments, such as UNCLOS 1982, can be elegantly "domesticated" without compromising their universal operational standards. By translating constitutional philosophical values into precise legal mechanics, which distribute authority hierarchically and eliminate jurisdictional overlaps, this framework ensures the supremacy of the Rule of Law that is characterized by certainty, accountability, and justice throughout the national maritime space.

D. Beyond Domestic Policy: The Pancasila Framework as a Global South Paradigm for UNCLOS Domestication

Although the discourse on maritime security governance is frequently dominated by literature centered on geopolitical and defense dynamics (*security-centric*), the normative legal analysis under the Pancasila framework proposed in this study yields theoretical implications that transcend the boundaries of Indonesia's domestic jurisdiction. Within the landscape of international legal scholarship, this article positions the Pancasila framework not as an instrument of ideological exceptionalism or anti-Western nationalistic propaganda, but rather as a pivotal Global South paradigm²⁷. This paradigm is essential for addressing one of the most profound jurisprudential dilemmas in the contemporary law of the sea: the "institutional silence" within the text of the 1982 United Nations Convention on the Law of the Sea (UNCLOS)²⁸.

As the "constitution for the oceans," the 1982 UNCLOS is highly precise in establishing maritime zoning delineations and dictating "what" sovereign rights and obligations a state possesses at sea, such as the mandate for the pursuit and arrest concerning fisheries offenses governed by Article 73. Nevertheless, UNCLOS 1982 remains absolutely silent regarding "how" such law enforcement apparatuses should be

²⁷ Simon Chesterman, "Asia's Ambivalence about International Law and Institutions: Past, Present, and Futures," *European Journal of International Law* 27, no. 4 (2016): 945–978, <https://doi.org/10.1093/ejil/chw049>.

²⁸ James Thuo Gathii, "T'WAIL: A Brief History of Its Origins, Its Decentralized Network, and a Tentative Bibliography," *Trade Law and Development* 3, no. 1 (2011): 26–64.

established, designed, and organized at the domestic level²⁹. The Convention entirely delegates this institutional authority to state practice. For developed nations in the Global North, this void is easily filled by the Single Agency Coast Guard model (such as the United States Coast Guard or the European Border and Coast Guard Agency), a system supported by the maturity of civilian institutional traditions, formidable fiscal capacity, and linear continental coastal geography.

However, mainstream Western literature often commits a structural fallacy by assuming that such centralized institutional models can be subjected to blind transplantation into developing nations (the Global South), particularly archipelagic states. The forced transplantation of Western models into Indonesia has proven to generate systemic dysfunction. These models neglect the geographical reality of the archipelago, comprising tens of thousands of islands, the state's limited fiscal capacity to instantaneously fund a single civilian fleet, and the historical residue wherein military forces (the Indonesian Navy, or TNI AL) have served as the existential backbone of the state since the decolonization era. Forcing a Western model into a legal system lacking comparable sociological and constitutional foundations conversely engenders legal pluralism and institutional fragmentation, a paradoxical condition where the adoption of international standards actually extinguishes the certainty of the Rule of Law at the operational level³⁰.

At this jurisprudential crossroads, the meta-legal framework of Pancasila posits its most profound academic claim:³¹ that effective international law cannot be achieved through institutional "copy-paste" practices, but rather necessitates a process of "legal domestication" filtered through local constitutionalism. The domestication of the 1982 UNCLOS through the lens of Pancasila represents a mature

²⁹ Karen N. Scott, "UNCLOS and the Challenge of Domestic Implementation: Bridging the Gap Between International Obligation and National Practice," *International & Comparative Law Quarterly* 72, no. 4 (2023): 995–1035, <https://doi.org/10.1017/S0020589323000349>.

³⁰ Brian Z. Tamanaha, "The Rule of Law for Everyone?" *Current Legal Problems* 55, no. 1 (2002): 97–121, <https://doi.org/10.1093/clp/55.1.97>.

³¹ Tim Lindsey Simon Butt, *The Constitution of Indonesia: A Contextual Analysis* (Bloomsbury Publishing, 2012).

constitutional law methodology³². Pancasila is not employed to oppose international legal norms; instead, it is operationalized as a "jurisprudential filter" to harmonize the mandates of UNCLOS with the organic capacity of the state.

Theoretically, Pancasila provides the justification that archipelagic states possess the jurisprudential prerogative to engineer their maritime rule of law in accordance with their *Grundnorm*. Guided by the principles of "Unity" and "Wisdom" (the Third and Fourth Precepts), Indonesia need not compel the dissolution of its historically established maritime agencies merely to emulate the Western single Coast Guard model. Conversely, this Global South paradigm advocates for a more grounded alternative framework: functional integration under a unified command. Within this model, the 1982 UNCLOS is absolutely upheld, and the freedom of international navigation remains guaranteed; however, its enforcement architecture delineating the authorities for arrest, investigation, and the dissemination of intelligence command is tailored to align with the hierarchy of the national legal order and the principle of distributive justice (the Fifth Precept).

Furthermore, this argumentative position yields strategic implications for the stability of maritime security in the Indo-Pacific region.³³ The legal uncertainty within Indonesian waters which serve as critical chokepoints for global navigation is frequently exploited by both state and non-state actors. This vulnerability is evidenced by the employment of grey-zone tactics in the North Natuna Sea and the proliferation of large-scale transnational crimes. The fragmentation of Indonesia's law enforcement apparatus inadvertently creates "legal loopholes" that disproportionately benefit violators of international law. Therefore, the institutional consolidation mandated by the values of Pancasila executed through an *Omnibus Law* instrument designed to directly repeal duplicative authorities will transform Indonesia into a credible maritime rule-of-law provider in the region. Cohesive, accountable, and rational institutional governance guarantees

³² Harold Hongju Koh, "Bringing International Law Home," *Houston Law Review* 35 (1998): 623–681.

³³ Shafiah F. Muhibat, "Indonesia's New Ocean Policy: Analysing the External Dimension," *Maritime Affairs* 13, no. 2 (2017), <https://doi.org/10.1080/09733159.2017.1410936>.

that the state presents a single legal face at sea, thereby eliminating law enforcement ambiguity for foreign vessels and ultimately strengthening Indonesia's bargaining position vis-à-vis the global ocean governance regime.

As an analytical conclusion to this section, integrating Pancasila into maritime security governance does not constitute a deviation from international standards; rather, it is a profound manifestation of legal sovereignty. This article demonstrates that within the discourse of maritime governance, institutional superiority is not determined by the extent to which local structures mirror Western agencies, but rather by how coherently a state weaves global mandates into the fabric of its local constitution to cultivate a genuine rule of law. Through this approach, Pancasila transcends its status as a particularistic Indonesian morality, emerging as an epistemological model highly relevant to other developing nations in their efforts to resolve domestic institutional conflicts within the framework of the 1982 UNCLOS³⁴.

E. Conclusions

As an analytical conclusion, integrating Pancasila into maritime security governance does not constitute a deviation from international standards; rather, it is a profound manifestation of legal sovereignty. This article demonstrates that within the discourse of maritime governance, institutional superiority is not determined by the extent to which local structures mirror Western agencies, but rather by how coherently a state weaves global mandates into the fabric of its local constitution to cultivate a genuine *rule of law*. Through this approach, Pancasila transcends its status as a particularistic Indonesian morality, emerging as an epistemological model highly relevant to other developing nations in their efforts to resolve domestic institutional conflicts within the framework of the 1982 UNCLOS.

³⁴ Amitav Acharya, "How Ideas Spread: Whose Norms Matter? Norm Localization and Institutional Change in Asian Regionalism," *International Organization* 58, no. 2 (2004): 239–275, <https://doi.org/10.1017/S0020818304040221>

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