

Disparities in Jurisdictional Locus Between the Enforcement of Maritime Immigration and Customs Laws Based on the Provisions of UNCLOS 1982 Through an Analysis of Lawrence M. Friedman's Legal System Theory

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Submission

2025-Aug-31

Review

2026-Apr-20

Accepted

2026-Apr-21

Published

2026-Apr-30

Abstract

Indonesia's geographical location at the intersection of two continents and oceans makes it a strategic consideration in assessing maritime development potential. To achieve maritime security resilience oriented toward the management and efficiency of maritime resources, the existence of law enforcement and legal substance in maritime zones is necessary to formulate legal certainty. The parent legal provisions governing maritime zone provisions and management rests on Law Number 17 of 1985, which ratified UNCLOS 1982, with its 320 articles and 9 annex. Among the various maritime zone provisions, there is the term "contiguous zone," which is a special jurisdiction extending 24 miles from the regulated sea baseline and serves as the basis for Immigration, Customs, Fiscal, and Sanitary Affairs to conduct supervision related to its legal provisions. However, the regulation of contiguous zones or maritime area specifications has not been accommodated in Law Number 6 of 2011 concerning Immigration as a form of active supervisory function, while Law Number 17 of 2006 concerning Customs has long accommodated provisions providing concrete supervision. This paper aims to analyze the harmonization of legislation, historical, and empirical aspects related to legal considerations regarding the formulation of articles regulating the locus of jurisdiction for maritime immigration supervision, thereby providing an ideal legal formulation within the framework of academic studies. The research method used in this paper is a normative-empirical one. The theory in this study applies Lawrence Friedman's legal system theory as an analytical tools. The results also indicate the legal impacts that lead to downstream problems related to immigration violations in maritime zones due to the lack of zoning regulations. Therefore, constructive legal and policy formulations are needed to serve as a fundamental foundation for projecting a comprehensive immigration oversight mechanism in Indonesia's maritime zones.

Keywords: Immigration Controlling; Customs Controlling, Locus of Jurisdiction; Maritime Zone

How to Cite: Adhi Putra Satria. "Pedoman Penulisan Jurnal Ilmiah Dunia Hukum Terbaru" *Jurnal Ilmiah Dunia Hukum*, 7 no. 2 (2023): 1-12. DOI : 10.35973/jidh.xxxxxx

1. Introduction

Understanding of Immigration and Customs can be viewed as multidisciplinary in scope, carrying a dual perspective in the areas of service and law enforcement at the same time. Through its approach, immigration

applies a security approach and a prosperity approach.¹The realization of these two aspects gives immigration agencies the authority to filter the movement of foreigners, as long as it is beneficial and does not disrupt national security stability due to their presence and activities. Meanwhile, in terms of customs, there is the responsibility of the institution as a fiscal authority, which is an authority that has a role in collecting taxes on export and import commodities, as well as its role as a law enforcement agency, as a border protection agency.² In fact, the benchmark of a country's sovereignty does not only rely on the dominance of law enforcement at terrestrial borders, but also includes jurisdiction over waters, with zones that are not yet fully reached by the state. As stated by John Selden regarding *mare clausum*, in countering Hugo Grotius' idea of *mare liberum*, the principle of modern maritime law should accommodate the limitation of maritime zone ownership as part of a country's administrative entity.³

Reviewing the United Nations Convention on the Law of the Sea (UNCLOS) 1982, which has substantive provisions on the regulation of water regimes with 320 articles and 9 annexes. Indonesia is one of the countries that ratified the convention through the enactment of Law No. 17 of 1985.⁴ The development of national law in Indonesia is inseparable from two other conventions related to the water regime that have been regulated by the International Maritime Organization (IMO).⁵

¹ Junior Perdana Sande, "Selective Policy Imigrasi Indonesia Terhadap Orang Asing Dari Negara Calling Visa," *Indonesian Perspective* 5, no. 1 (2020): 92–111, doi:<https://doi.org/10.14710/ip.v5i1.30196>.

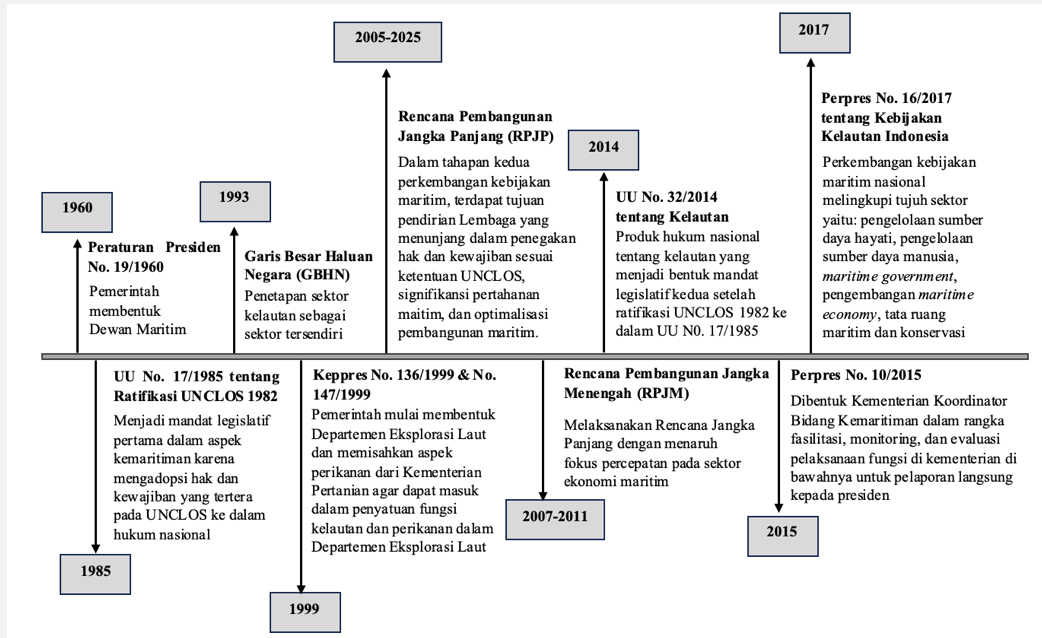
² Nadya Fairuz Ghassani, Budi Santoso, and Adya Paramita Prabandari, "Kewenangan Direktorat Jenderal Bea Dan Cukai Kantor Pengawasan Dan Pelayanan Bea Dan Cukai Tipe Madya Pabean Tanjung Emas Dalam Pelayanan Pengembalian Barang Tegahan," *Notarius* 14, no. 2 (2021): 916–29, doi:<https://doi.org/10.14710/nts.v14i2.43783>.

³ Hartana and Putu Agus Rio Krisnawa, "Kebijakan Menurut Hukum Internasional Mengenai Penyangkalan Dan Pembatasan Pelabuhan Selama COVID-19," *Jurnal Pendidikan Kewarganegaraan Undiksha* 8, no. 2 (May 2020), <https://www.un.org/en/chronicle/article/national-security-and-pandemics>.

⁴ Autin Christani Suitela, Lucia Charlota Octovina Tahamata, and Wilshen Leatemala, "Pengawasan Pada Wilayah Perbatasan Negara Menurut Hukum Internasional," *TATOHI: Jurnal Ilmu Hukum* 4, no. 2 (April 30, 2024): 92, doi:[10.47268/tatohi.v4i2.2125](https://doi.org/10.47268/tatohi.v4i2.2125).

⁵ Ridwan Arifin and Intan Nurkumalawati, "Maritime Bordering Practices in Indonesia: Immigration Border Clearance Challenges" (European Alliance for Innovation n.o., 2022), doi:[10.4108/eai.18-9-2022.2326035](https://doi.org/10.4108/eai.18-9-2022.2326035).

Chart 1
Periodization of Indonesian Maritime Policy and Legal Formulation



Source: Author's own work, 2025, adapted from (Legal Information and Analysis on Indonesian Fisheries, 2021).

The Convention on Facilitation of International Maritime Traffic (FAL) relates to administrative maritime traffic procedures that connect the government with stakeholders, and the Convention for the Safety of Life at Sea (SOLAS) relates to international shipping safety.⁶ Although there are various institutions that handle law enforcement in waters, the 1982 UNCLOS provisions grant special authority to four areas, namely immigration, customs, fiscal, and quarantine.⁷ The immigration and customs agencies that are the focus of this study play a role in supervision through prevention and enforcement of alleged violations and criminal acts against regulations in the water zone. The mandate of the convention provides locus jurisdiction to enforce the law in an contiguous zone of 24 nautical miles measured from the baseline of the coast. The two agencies have different legal objects to deal with: immigration handles the movement of people, while customs filters commodities.

⁶ Ridwan Arifin, Margaretha Hanita, and Arthur Josias Simon Runturambi, "Maritime Border Formalities, Facilitation and Security Nexus: Reconstructing Immigration Clearance in Indonesia," *Marine Policy* 163 (May 1, 2024), doi:10.1016/j.marpol.2024.106101.

⁷ Hasjim Djalal, "Menentukan Batas Negara Guna Meningkatkan Pengawasan, Penegakan Hukum Dan Kedaulatan NKRI," *Jurnal Pertahanan* 3, no. 2 (August 2013): 15–39, <https://jurnal.idu.ac.id/index.php/JPBH/article/view/383/257>.

Long before the international maritime law convention currently applied in various countries came into force. Based on data compiled by Curtis, Mallet-Prevost, Colt & Mosle LLP, the convention has currently been ratified by 164 member states of the United Nations, one observer state of the United Nations (Palestine), the European Union, the Cook Islands, and Niue.⁸ The trend of mapping the maritime regime was initiated through the Hovering Acts that were in force in England in the 18th century.⁹ Broadly speaking, these rules applied formal standards to customs aspects in the form of jurisdictional limitations of up to 900 nautical miles when measured from the baseline of the coast. The concept of the maritime legal regime as outlined in the Hovering Acts had legal implications for the dynamics of extending state sovereignty beyond territorial waters, leading to the Hague Conference in 1930 with the aim of strengthening the enforcement of maritime law.¹⁰

The concept of the Contiguous Zone was newly established as an international legal norm in the 1958 Geneva Convention through the provisions of Article 24 paragraph (1), which reads:¹¹

"In a zone of the high seas contiguous to its territorial sea, the coastal state may exercise the control necessary to

- (a) prevent infringement of its customs, fiscal, immigration or sanitary regulations within its territory or territorial sea;*
- (b) punish infringement of the above regulations committed within its territory or territorial sea."*

The provisions of the Geneva Convention establish the positioning of the Contiguous Zone in the High Seas in the prevention and enforcement of immigration, customs, fiscal, and quarantine matters. However, this differs from the idea presented by an International Court of Justice judge, Sir Gerald Fitzmaurice, regarding the legal interpretation of the content of the article:

"What is being implemented is...control, not jurisdiction. Power lies primarily in the hands of the police, not administrators or judges. Although the two subheadings (a)

⁸ "Konvensi Perserikatan Bangsa-Bangsa Tentang Hukum Laut (UNCLOS)," accessed August 30, 2025, <https://www.curtis.com/glossary/public-international-law/unclos>.

⁹ The Hovering Acts of 1736 formed the basis of the law established by Great Britain regarding the criminal jurisdiction of coastal states over ships and the people on board those ships when the ships were outside the territory of those states.

¹⁰ The Hague Conference on Private International Law (Conférence de La Haye de droit international privé) began in 1893 on the initiative of Tobias Michael Carel Asser (Nobel Peace Prize 1911) as a conference to discuss civil procedure and jurisdiction in the context of private international law and to negotiate and produce various conventions.

¹¹ Perserikatan Bangsa-Bangsa, "Konvensi Jenewa Tentang Hukum Laut" (1958).

and (b) of the following paragraph describe enforcement and prevention, when viewed as a whole, this power is essentially one of supervision and prevention. The basic objective is anticipation. No violation of the coastal state's laws has actually been committed at that point. The aim is to prevent such violations from occurring, so that when the vessel enters the territorial sea, it is within the jurisdiction of the coastal state; or to punish violations committed while the vessel is within that jurisdiction."

Regarding the absence of delimitation of the extent of territorial waters and the Contiguous Zone, Fitzmaurice emphasized that the clause of “prevention and enforcement” is limited to control measures and applies rigidly to actual sovereignty, namely territorial waters. Meanwhile, in practice, countries such as the United States use Article 24 paragraph (1) of the Geneva Convention as a shield to expand the meaning of jurisdiction beyond sovereignty. This is because if Fitzmaurice's interpretation is agreed upon, the authority in question will conflict with another authority in the form of hot pursuit that can be carried out in the Contiguous Zone. The pros and cons of the mechanisms, rights, and obligations in the territorial sea and the Contiguous Zone gave rise to a reformulation of the law accommodated in UNCLOS 1982. The convention stipulates the delimitation of the territorial sea to 12 nautical miles and the extension of the Contiguous Zone to a maximum of 24 nautical miles from the baseline with limited jurisdiction.¹² Thus, if two countries face each other with a territorial zone width of less than 12 nautical miles, the determination is made by a bilateral agreement using the equidistant principle with a boundary line in the form of a median line measured from the baseline of each country. This study contains a legal analysis of the legal disparities or inequalities that occur between immigration and customs in terms of jurisdiction over cases in the water regime based on the provisions of sectoral laws, which can be explained through Lawrence M. Friedman's legal system theory relating to considerations of legal substance, legal structure, and the legal culture of an institution.

2. Research Method

This study applies a normative empirical study that is bound by legal implications in the social order as the main modality in legal research methods.¹³ The researchers used a statute approach, a theoretical approach,

¹² Wilshen Leatemia et al., “Urgensi Pengaturan Zona Tambahan Dan Implikasinya Kepada Indonesia Sebagai Negara Kepulauan,” *Syntax Literate: Jurnal Ilmiah Indonesia* 7, no. 9 (September 2022): 13318–28, <https://jurnal.syntaxliterate.co.id/index.php/syntax-literate>.

¹³ Jonaedi Efendi and Johnny Ibrahim, *Metode Penelitian Hukum Normatif Dan Empiris Edisi Pertama*, Cetakan Kedua, vol. 1 (Depok: Prenadamedia Group, 2018).

and comparative approach to determine the legal implications of differences in the adoption of legal substance between two government agencies that actually have the same scope of law enforcement, particularly in terms of differences in the regulation of maritime jurisdiction between immigration and customs. The methodology applied is qualitative as a step to elaborate on the interdependence of legal substance, legal structure, and legal culture of immigration agencies related to the orientation of law enforcement in maritime zones. The primary data collection technique used by the author relies on interviews with informants to obtain direct data that supports the research objectives. In addition to conducting interviews, the author also gathered field facts by identifying problems that occur in various technical implementation units that are directly related to waters as immigration control zones. Meanwhile, the secondary data used included analysis of international conventions, sectoral laws of an institution, technical regulations at the ministerial level as primary legal materials, and a review of relevant literature as secondary legal materials.¹⁴ The data obtained in this study was processed through the stages of data examination, data classification, data systematization, data validation, and data analysis.¹⁵ Thus, researchers can assess the urgency of the research substance that has been carried out, considering the legal implications that occur so that it can become a constructive recommendation for the government, especially the Directorate General of Immigration, which has operational responsibility for immigration duties and functions.

3. Research Results and Discussion

3.1 Comparison of Laws Regarding the Substantive Content of Maritime Zone Jurisdiction Provisions Between Immigration and Customs According to Sectoral Laws

Based on historical aspects, immigration legislation has undergone various changes, starting with Emergency Law No. 8 of 1955 concerning Immigration Crimes, Law No. 9 of 1992 concerning Immigration, to the enactment of Law No. 6 of 2011 concerning Immigration. The rules in the immigration sectoral law don't really cover legal norms in the form of articles that specify law enforcement in certain maritime jurisdictions, particularly the Contiguous Zone as *sui generis* as mandated in UNCLOS

¹⁴ Sectoral laws are legislative products that are codified under a specific theme, such as the Immigration Law, which regulates the authority of government agencies in carrying out immigration duties and functions, along with all the binding legal provisions contained therein.

¹⁵ Dyah Ochterina Susanti and A'an Efendi, *Penelitian Hukum (Legal Research)* (Jakarta: Sinar Grafika, 2022).

1982, which states that immigration is part of the institutions of an archipelagic state that has the authority to monitor violations of its laws in that zone.¹⁶

Although immigration maintains a balance between law enforcement and service, the function of national security is the main focus in the implementation of its duties. Regardless of the disharmony between the sectoral laws of an agency and international convention rules, immigration plays a crucial role in filtering the movement of people. Therefore, the focus of law enforcement must be comprehensive, not merely based on handling cases at terrestrial borders or violations by foreigners on land, because the waters cover a wide area along the geographical gaps of archipelagic countries with limited monitoring of every activity within them. In this case, the researcher presents comparative data between immigration and customs agencies, which have the same basis of authority regarding maritime jurisdiction, even though they have different legal objects between goods commodities and human crossings.

Table 1
Comparison Matrix of Immigration and Customs Regulations Based on International Convention Rules

Law No. 17 of 1985 concerning the Ratification of the United Nations Convention on the Law of the Sea	
<p>The 1982 United Nations Convention on the Law of the Sea now stipulates that the maximum width of the Territorial Sea is 12 nautical miles and the maximum width of the Contiguous Zone is 24 nautical miles measured from the baseline of the Territorial Sea. In the Contiguous Zone, coastal states may exercise the necessary surveillance and control in relation to:¹⁷</p> <ol style="list-style-type: none"> 1) The prevention of infringements of customs, fiscal, immigration, and quarantine laws. 2) The repression of infringements of customs, fiscal, immigration, and quarantine laws. 	
Substantive Comparison	
Indonesian Immigration Regulation	Indonesian Customs Regulation

¹⁶ Yoyon Mulyana Darusman, “Pengaruh Konvensi Hukum Laut Internasional Tahun 1982 Terhadap Wilayah Laut Indonesia,” *Jurnal Cita Hukum* 6, no. 2 (November 2018).

¹⁷ “Indonesia, Undang-Undang Nomor 7 Tahun 1985 Tentang Pengesahan Konvensi Perserikatan Bangsa-Bangsa Tentang Hukum Laut” (1985).

<p>1) Article 1 point 12 of Law Number 6 of 2011 concerning Immigration: Immigration Jurisdiction Locus in the form of an “Immigration Checkpoint” which functions as a checkpoint at seaports, airports, border crossings, or other places.¹⁸</p> <p>2) Article 22 paragraph (2) of Law Number 6 of 2011 concerning Immigration: The description of the locus is in the form of an “Immigration Area” as a restricted area that can only be passed through by passengers or crew of a means of transport who are leaving or entering Indonesian territory.¹⁹</p>	<p>1) Article 1 paragraph 2 of Law Number 17 of 2006 concerning Customs: The locus jurisdiction of Customs and Excise in the form of a “customs area” covers land, airspace, and water zones up to the Exclusive Economic Zone and continental shelf.²⁰</p> <p>2) Article 6 paragraph (1) of the Director General of Customs and Excise Regulation Number-14/BC/2020 concerning Implementation Guidelines for Sea Patrols by the Directorate General of Customs and Excise: The locus jurisdiction of sea patrols is in the Contiguous Zone up to 24 nautical miles.²¹</p>
<p>Results of the Comparison Analysis of Locus Jurisdiction</p>	
<p>The definitive definition of the locations listed in the Immigration Law does not imply the jurisdiction of a maritime zone. The existence of extensive authority in the form of zones seems to be diminished by the existence of Immigration Checkpoints, Immigration Counters, and Immigration Areas, which are in fact only certain types of infrastructure.</p>	<p>The scope of maritime jurisdiction as stipulated in the Customs Law, Customs agencies actually have extended supervision beyond the Contiguous zone to the Exclusive Economic Zone. However, in the derivative regulations contained in the Director General's Regulation, it is still emphasized that there is maritime patrol jurisdiction in the Contiguous zone in accordance with the UNCLOS regulations..</p>

¹⁸ “Indonesia, Undang-Undang Nomor 6 Tahun 2011 Tentang Keimigrasian” (2011).

¹⁹ *Ibid.*, Article 22 paragraph (2).

²⁰ “Indonesia, Undang-Undang Nomor 17 Tahun 2006 Tentang Kepabeanan” (2006).

²¹ Indonesia, “Peraturan Direktur Jenderal Bea Dan Cukai Nomor Per-14/BC/2020 Tentang Petunjuk Pelaksanaan Patroli Laut Direktorat Jenderal Bea Dan Cukai” (2020).

Source: Author's own work, 2025.

The results of the matriculation data analysis presented by the researcher show that in the formulation of the water regime in the sectoral law, the two agencies have different orientations in adopting the mandate of UNCLOS 1982. The legal impact of this leads to inequality in terms of institutional authority. The provisions contained in Article 1 point 12 of Law Number 6 of 2011 concerning Immigration shows a narrowing of the locus jurisdiction of immigration, which should be able to extend in the form of zone coverage, as stipulated in Article 1 point 2 of Law Number 17 of 2006 concerning Customs, which maps the Exclusive Economic Zone therein. Basically, the locus in the form of Immigration Checkpoints, Immigration Counters, and Immigration Areas is limited to infrastructure that presents a narrowing of authority if it is not clarified by legal norms in the form of maritime zone specifications. The researcher examines the fundamental problem that indicates that the formulators of immigration regulations or policies have not given concern to the concept of Contiguous Zone authority or the mapping of law enforcement jurisdiction in the water regime in legislation.

Table 2
Matriculation of Research Framework

<i>Das Sollen</i>	<i>Das Sein</i>
1. Regulation of the Water Zone Regime in Law Number 6 of 2011 concerning Immigration as a new legal norm to strengthen the jurisdiction of immigration.	1. The regulation of maritime zones is not accommodated in Law Number 6 of 2011 concerning Immigration.
2. Regulation of immigration control mechanisms in waters, particularly Contiguous Zones, as well as immigration control procedures applicable to administrative checks and monitoring of activities of foreign nationals and Indonesian citizens within the jurisdiction.	2. Regarding supervisory authority, Regulations of the Minister of Immigration and Corrections Number 2 of 2025 concerning Immigration Supervision and Administrative Immigration Actions does not yet regulate the mechanism for immigration supervision in waters, one of which is to address the worst

	cases such as people smuggling, which is prone to occur in the geographical gaps of Indonesian waters.
Anomalous Facts	
<ol style="list-style-type: none"> 1. The Indonesian immigration agency has not yet included Contiguous Zones or specific water locations as part of its immigration supervision authority in its sectoral legislation since the enactment of the Immigration Law in 2011. 2. The third amendment to the Immigration Law, namely Law No. 63 of 2024, has not highlighted certain maritime jurisdiction authorities as additional articles. 3. There is a disparity in the adoption of the 1982 UNCLOS rules between immigration and customs regarding Contiguous Zone authorities, even though both have the same legal basis in the convention. 	
Legal Implications	
<ol style="list-style-type: none"> 1. The emergence of a tendency to limit immigration authority, which should be expanded through the formulation of an Contiguous Zone regime as immigration jurisdiction at sea, but so far its jurisdiction has been limited to provisions related to Immigration Checkpoints and certain places that function as TPI, which are in fact only infrastructure locations. 2. The absence of Contiguous Zone regime regulations for immigration affects immigration control mechanisms at sea, which are only focused on administrative checks on sea vessels. 3. Disharmony between convention provisions and sectoral laws in terms of adopting mandated authorities. 4. The position of immigration as a substitute agency in handling cases within its own jurisdiction, as well as the emergence of a sense of dependence on other law enforcement agencies. 	

Source: Author's own work, 2025.

In fact, legal violations and immigration crimes in maritime zones often become loopholes that are not fully addressed due to the lack of intensive maritime patrols, which are influenced by the weak legal basis and the lack

of supporting infrastructure.²² The existence of legal norms that regulate the specifics of the water regime in national law is not merely a definitive content contained in the general provisions of the law, but also represents the extent of the authority of institutions in enforcing the law in accordance with the legislation. Differences in orientation between institutions can be analyzed through comparative law. According to Konrad Zweigert and Heinz Kotz, differences in legal systems and institutions can be compared through different systems to obtain legal resolutions. Legislative products reflect the state of society and institutions bound by the prevailing legal culture. Thus, comparative law is not merely a process of differential identification, but rather a means of understanding the legal reasoning underlying the differences in perspective applied to legal systems between institutions.

3.2 Analysis of Disparities in Maritime Law Enforcement Authority Between Immigration and Customs Agencies Through Lawrence M. Friedman's Legal System Theory

The realization of social development and legal construction is the responsibility of the government regime because it has a coherent interconnection with the social structure of society. As the legal adage says, “*ibi socius, ibi ius,*” the law is always attached to the social atmosphere of a social order. The ideal relationship between the state as an institution with legitimate authority and society as its constituent component depends on how effectively the legal system is enforced.

Without an ideal legal system, the only variable that can exist is the natural state illustrated by Thomas Hobbes in his work “*Leviathan.*” Hobbes expressed the analogy of a state without fundamental rules as “*Homo homini lupus, bellum omnium contra omnes,*” which means that man is a wolf to other men and man is against everything, a form of supreme individuality without a sense of security.²³ This is a natural condition where society is formed without legal order, safety guarantees, mutual trust, and, of course, the worst implication is being trapped in crime without consequences.²⁴

²² Fahrul Resa Taekedangan, Josina A Yvone Wattimena, and Reimon Supusepa, “Analisis Yuridis Penegakan Hukum Terhadap Warga Negara Asing Sebagai Pelaku Tindak Pidana Keimigrasian,” *Sanisa: Jurnal Kreativitas Mahasiswa Hukum* 3, no. 2 (October 2023): 96, <https://www.satupaluku.id/2021/04/warga-belanda-di-ambon-ditangkap-polisi.html>.

²³ Franz Magnis-Suseno, *Etika Politik: Prinsip-Prinsip Moral Dasar Kenegaraan Modern*, 8th ed. (Jakarta: Gramedia Pustaka Utama, 2016): 252-255.

²⁴ *Ibid.*, page 256.

The state is personified as a wild entity without control and prone to falling into authoritarianism. The legal legitimacy accorded to statesmen is also inseparable from political design. If policy standards are based on moral modalities, the resulting legal formulations can avoid collegial interests that undermine the system.²⁵ Essentially, the social contract aims to provide a state with guarantees in the form of legal norms that act as a restraint for state administrators in the event of violations of private rights, as well as a means of minimizing social conflict.²⁶ Thus, the law not only exists in society but also guarantees legal certainty, justice, and its usefulness.

The ideas developed by Lawrence M. Friedman become a legal modality for examining the cruciality of a country's government. The legal system conceptualized by Friedman holds the benchmark for how the law works and the analytical tools in each derivative indicator of his theory. In his work entitled *American Law An Introduction*, Friedman states the basis of his Legal System theory:²⁷

"A legal system in actual operation is a complex organism in which structure, substance, and culture interact. A legal system is the union of "primary rules" and "secondary rules." Primary rules are norms of behavior, secondary rules are norms about those norms – how to decide whether they are valid, how to enforce them, etc."

The vital indicators that support Friedman's legal system theory consist of legal substance, legal structure, and legal culture.²⁸ The following is an analysis that underlies the understanding of indicators that play a role in the legal system:

a. Legal Substance

Legal substance in the legal system dimension proposed by Friedman refers to the formulation of legal norms and decision products with binding consequences in their application. A

²⁵ Hadi Karyono and K Krismiyarsi, "Mencari Pemimpin Negarawan Membangun Demokrasi Berkeadaban Dan Dinamika Pemilihan Umum Presiden 2024 Menuju Indonesia Emas," *KERTHA WICAKSANA* 17, no. 1 (January 31, 2023): 42–49, doi:<https://doi.org/10.22225/kw.17.1.2023.42-49>.

²⁶ Bambang Joyo Supeno and Krismiyarsi Krismiyarsi, "Criminal Politics Criminal Actions of Information and Electronic Transactions (Within the Framework of Criminal Law Reform)," in *Proceedings of the International Conference On Law, Economics, and Health (ICLEH 2022)* (Atlantis Press, 2023), 321–40, doi:10.2991/978-2-38476-024-4_34.

²⁷ Lawrence M. Friedman, *American Law An Introduction*, 2nd ed. (Jakarta: PT Tatanusa, 2001).

²⁸ Farida Sekti Pahlevi, "Pemberantasan Korupsi Di Indonesia: Perspektif Legal System Lawrence M. Freidman," *Jurnal El-Dusturie* 1, no. 1 (June 2022): 23–42, <https://antikorupsi.org/sites/default/files/dokumen/Tren%20Penindakan%20Korupsi%20Tahun>.

definitive interpretation of legal substance can be understood as part of the determining factors that accommodate written provisions and state administration policies as positive law to be obeyed by all.²⁹ Legal substance acts as the fundamental design of the applicable system, so that institutional elements can perform their functions.

Table 3
Indicators of Legal Substance in Lawrence M. Friedman's Theory of the Legal System

Legal Substance		
No.	Indicators	Relevance
1.	<i>Memorie Van Toelichting</i>	When discussing the formulation of articles in legislation, legal documents that serve as references for interpreting legal rules are required. In terms of the substantive content of the Immigration Law, the legal notes submitted may refer to UNCLOS 1982 and a comparison of the authority granted to the Customs Law in accommodating law enforcement jurisdiction in the maritime zone.
2.	Legisprudence	The understanding of jurisprudence emphasizes procedural analysis, transparency, and participation in the drafting of legal substance. Efforts to construct the law proposed in the additional articles of the Immigration Law can be pursued through executive review and legislative review.
3.	Principles of Effectiveness	Every legal product, namely legislation, is formed based on the urgency of the need and its perceived benefits for the public interest as stated in Article 5 letter e of Law No. 13 of 2022. ³⁰ The legal formulation in the Immigration Law regarding the specification of water zones as a locus of jurisdiction is not merely a step towards

²⁹ Askari Razak, "Pemilu Adil Dan Bermartabat: Suatu Tinjauan Sistem Hukum Lawrence M. Friedman," *Legal Spirit* 7, no. 2 (2023): 369–82.

³⁰ Indonesia, "Undang-Undang Nomor 13 Tahun 2022 Tentang Perubahan Kedua Atas Undang-Undang Nomor 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan" (2022).

		harmonization with international conventions, but also a form of alignment of authority with other institutions that have the same mandate under UNCLOS 1982, ³¹ as well as opening up the potential for measurable handling of immigration crimes based on legislation.
5.	Academic Paper Writing	Based on the provisions of Law No. 13 of 2022, the drafting of academic papers is based on the Regulatory Impact Analysis (RIA) method and the Rule, Opportunity, Capacity, Communication, Interest, Process, and Ideology (ROCCIPI) method. ³² The methodically compiled academic paper serves as a scientific reference for the urgency of adding articles to the Immigration Law in the future, considering that the third amendment to the Immigration Law has not yet accommodated provisions on maritime zones for immigration law enforcement.

Source: Author's own work, 2025.

b. Legal Structure

Substantive elements in the legal system are viewed as a blueprint that provides a formula, thus requiring a legal structure in the form of institutions, bureaucracy, facilitative support, and the performance of relevant law enforcement officials in enforcing legal norms.³³ The legal structure is a determining factor in the effectiveness of the legal order (Recht orde) to ensure that the quality of the legal formula is accommodated in its implementation. Therefore, Friedman argues that:³⁴

“The structure of a system body of the system, the tough, rigid bones that keep the process flowing within bounds. We describe the structure of judicial system when we talk about the number of judges,

³¹ Linda Lidia Imon, “Penyelesaian Sengketa Kelautan Menurut Konvensi Hukum Laut Tahun 1982,” *Scientia De Lex* 6, no. 3 (2018).

³² *Indonesia, Undang-Undang Nomor 13 Tahun 2022 tentang Perubahan Kedua atas Undang-Undang Nomor 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-Undangan.*

³³ Fahrizal S.Siagian, “Optimizing Lawrence Meir Friedman’s Legal System Theory in the Authority to Investigate Corruption Crimes in Indonesia,” *JUSTICES: Journal of Law* 2, no. 4 (October 15, 2023): 185–201, doi:10.58355/justices.v2i4.93.

³⁴ Lawrence M. Friedman., *Op.Cit.*, page 16.

the jurisdiction of courts, how higher court are stacked on top of lower courts, what persons are attached to various courts, and what their roles consist of."

The legal system conceptualized by Friedman provides a measure of how important the variables of institutional governance are. Referring to the proportion of a court institution, it certainly has its own role segmentation.³⁵ Therefore, law enforcement practices in waters must understand jurisdictional demarcations to avoid overlapping roles and duties. The current state of law enforcement in Indonesia's maritime zone is based on the concept of "multiagency single task." There are vulnerabilities in its practice, with the potential for task implementation to appear easier due to the ability to coordinate between institutions, or conversely, for the sectoral ego of an institution to lead to hegemony in case handling. The failure of institutions to fulfill their roles, which is the benchmark for the implementation of legal rules, triggers organic non-compliance with the law itself.³⁶

Table 4
Indicators of Legal Structure in Lawrence M. Friedman's Theory of the Legal System

Legal Structure		
No.	Indicators	Relevance
1.	Law Enforcement Human Resources	Law enforcement personnel are legal subjects who drive the system by applying established legal principles and ensuring the value of an agency's legal formulations that impact society. The legal formulation of maritime zone mapping in the Immigration Law certainly includes the extension of supervisory functions in the form of maritime patrols, which requires adjustments to immigration law enforcement personnel to suit operational needs.

³⁵ Mustafa 'Afifi Ab. Halim and Shabrina Zata Amni, "Legal System in the Perspectives of H.L.A Hart and Lawrence M. Friedman," *Peradaban Journal of Law and Society* 2, no. 1 (June 16, 2023): 51–61, doi:10.59001/pjls.v2i1.83.

³⁶ Farida Sekti Pahlevi., *Op.Cit.*, page 32.

2.	Law Enforcement Authority	The authority possessed by law enforcement officials carries legal implications and regulatory foundations in each of its implementations. The existence of regulations governing the locus jurisdiction of maritime zones has a direct impact on the expansion of the authority of immigration law enforcement officials. Although immigration does not operate as a leading sector, its support system function in the context of law enforcement at sea can be carried out optimally.
3.	Supporting Facilities	In the legal system, law enforcement officials have a need for facilities and infrastructure that support law enforcement itself. Currently, immigration does not have adequate patrol boats based on the needs of the working area and the specifications of the boats. The formulation of Article 3 paragraph (4) of Law No. 63 of 2024 provides a modality that supports immigration in terms of facilitating the accommodation of maritime zone jurisdiction. Thus, the actualization of immigration authority can be supported by adequate patrol boats and firearms that are in line with operational needs.

Source: Author's own work, 2025.

As stated by Prof. Arie Afriansyah, S.H., MIL., Ph.D., Permanent Professor at the Faculty of Law, University of Indonesia, specializing in International Maritime Law:³⁷

"The current situation in Indonesia makes it impossible to have a single concept for law enforcement at sea, due to the less than ideal conditions of law enforcement officials and legal infrastructure. If the concept were changed to a single multitasking agency, the resistance would be so strong that what is needed now is better coordination and synergy."

³⁷ Interview with Arie Afriansyah, Permanent Professor of International Maritime Law at the Faculty of Law, University of Indonesia, on Friday (May 16, 2025), at 10:15 a.m., via Zoom meeting.

There are fundamental doubts about implementing significant changes regarding the unification of maritime law enforcement agencies at this time, so that the available options seem to be limited to institutional coordination and incremental improvements in maritime policy. In his view, an alternative concept that could be pursued is “Synergize Patrol with Multi-door Legal System”.

c. Legal Culture

The dynamics within a legal system are determined by external factors, such as social dimensions that provide evaluative input. Conceptualization and interconnection will be realized to the extent that the law coexists with society in the idea of a constitutional state. The restructuring and continuity of the legal system depend on the cultural conditions of society, which are interpreted as legal culture in Friedman's theory. Friedman's version of legal culture can be a means of filtering the formulation of legal substance, such as what should be postponed or actualized. In his work, Friedman states that:³⁸

“The phrase ‘social forces’ is itself an abstraction; in any event, they have needs and make demands; these sometimes do and sometimes do not invoke legal process, depending on the culture.”

Legal culture is positioned as a landscape of thought on the development of social norms, behavior patterns, and logical responses of society to the provisions of the established legal system.³⁹ Thus, the non-linearity that occurs in the modernization of legal norms and the primordialism of social norms embraced by society gives rise to a tendency of non-compliance with the law. Under certain conditions, it shows that the influence of social power in the culture of society is considered to be more deeply rooted than the enforcement of positive law. Therefore, the legal system that is built should not only rely on written law, but must also consider the influence that can be caused by the existence of living law that is present in society as a binding order. The formulation of a rule must be relevant to the social conditions of a country so that the cultural

³⁸ Lawrence M. Friedman., Op.Cit., page 16.

³⁹ Izzy Al Kautsar and D W Muhammad, “Sistem Hukum Modern Lawrence M. Friedman: Budaya Hukum Dan Perubahan Sosial Masyarakat Dari Industrial Ke Digital,” *Jurnal Sapientia et Virtus* 7, no. 2 (2022): 84–99.

elements that form the foundation of society have the same direction as the consequences of positive legal regulations.

Table 5
Indicators of Legal Culture in Lawrence M. Friedman's Theory of the Legal System

Legal Culture within Law Enforcement Agencies		
No.	Indicators	Relevance
1.	Compliance with legal regulations and institutional codes of ethics	Legal culture consists of social norms and behavioral patterns that lead to compliance with the law. The level of compliance of law enforcement officials with rules and codes of ethics fosters inherited habits and turns them into culture in the future. So far, immigration has not had adequate legal regulations in enforcing the law in certain maritime zones, especially technical regulations such as SOPs for maritime patrols. As a result, the current situation has led to discretion or even uncertainty in activities because they are not set out in writing.
	Independence in case handling and integrity of legal instruments	The construction of legal culture within an agency depends on its internal human resources case handling mechanisms. In some cases involving immigration crimes such as people smuggling using maritime zones as a modus operandi, ⁴⁰ immigration has not been able to play an active supervisory role because not every working area has the necessary infrastructure. Furthermore, in some cases that should fall under the jurisdiction of immigration law, cases have been transferred to other agencies such as the National Police.
Legal Culture in Society		

⁴⁰ Bambang Wahyudi, *Urgensi Penetapan Rezim Hukum Zona Tambahan Dalam Menanggulangi Kejahatan Penyelundupan Manusia* (Jakarta, September 3, 2015), <https://hukum.studentjournal.ub.ac.id/index.php/hukum>.

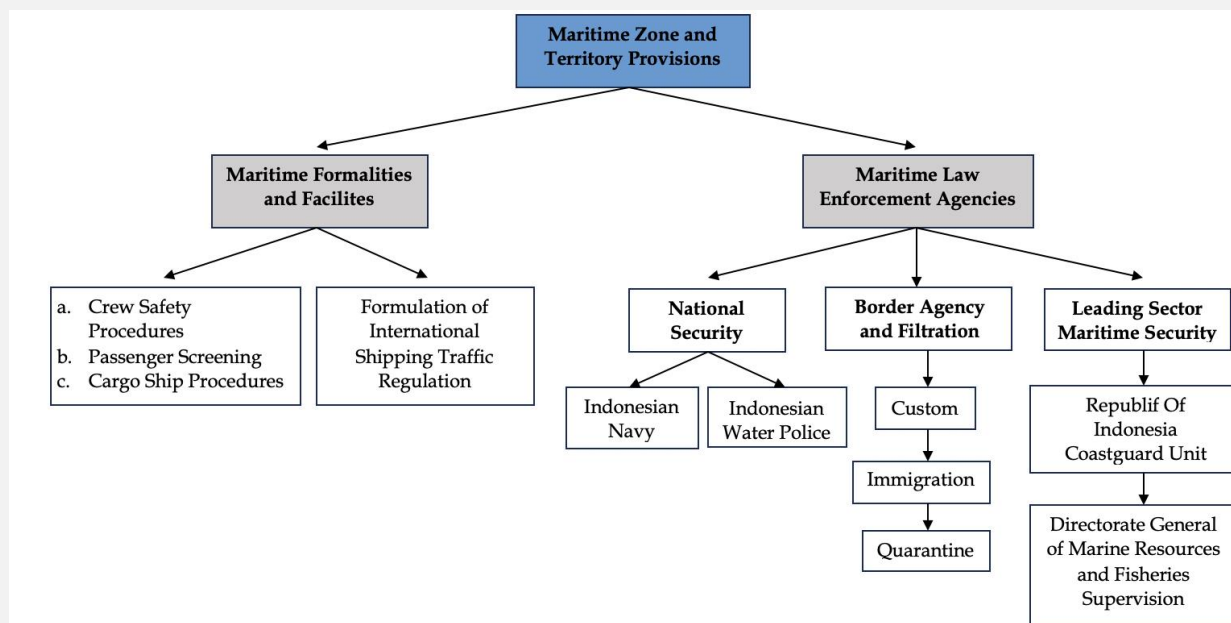
1.	Sense of justice (<i>Rechtsgevoel</i>)	Based on the elements of legal culture conceptualized by Friedman, legal sentiment is an assessment that arises naturally and genuinely within society toward the applicable law. Thus, the existence of legal sentiment is a variable beyond the control of law enforcement agencies. In general, the public is only aware of institutions that are leading sectors, such as the Indonesian National Armed Forces and the Indonesian National Police, in terms of law enforcement and national defense.
2.	Legal Awareness (<i>Rechtsbewustzijn</i>)	Unlike legal awareness, there is at least a tendency for society to accept or acknowledge that laws exist to provide order in public spaces. Thus, awareness can be encouraged through indoctrination by the government. The general policy pursued by bureaucratic institutions is socialization activities. In this case, immigration must educate the public as one of its stakeholders by instilling its presence as a legal structure, its scope of authority based on the law, and the policies offered in the context of the succession of immigration law enforcement.

Source: Author's own work, 2025.

3.3 Analysis of Disparities in Maritime Law Enforcement Authority Between Immigration and Customs Agencies Through Lawrence M. Friedman's Legal System Theory

When discussing maritime law enforcement in Indonesia, there are currently various heterogeneous institutions and ministries. They are oriented towards handling cases within the same scope, but there is no unified institution that oversees them. Basically, cases of violations and crimes in the maritime zone are multidimensional, which certainly have relevance between one case and another handled by a particular agency. Researchers have designed a mapping that supports understanding between the provisions of locus jurisdiction, the need for legal rules and infrastructure, and the involvement of institutional elements in the maritime law enforcement ecosystem.

Chart 2
Maritime Law Enforcement Instruments in Indonesia



Source: Author's own work, 2025.

The existence of provisions regarding the specifications of law enforcement zones in waters is the main foundation that triggers the formulation of legal substance in legislation. Indonesia refers to the provisions of UNCLOS, which have been ratified into national law, namely Law No. 17 of 1985.⁴¹ The basis for this ratification encourages the regulation of the authority of each institution in sectoral laws based on the scope of their jurisdiction. The existence of regulations as an explicit form of legal substance and supporting facilities that represent variables in the legal structure applies causally. Thus, the procurement of supporting facilities and infrastructure is based on how the law is regulated and the suitability of the institution's budget to its needs. The segmentation of law enforcement agencies is divided between the leading sector and the support system.⁴² The Indonesian Navy and Polairud (Indonesian Water Police) are the main layers in their roles as defense and security agencies, with support from Republic of Indonesia Coastguard Unit,

⁴¹ Monica Kristianti Sitompul, Siti Muslimah, and Anugrah Adiastuti, "Penyelundupan Imigran Di Perairan Indonesia Ditinjau Dari Hukum Internasional," *Belli Ac Pacis* 1, no. 2 (December 2015): 50–70, doi:<https://doi.org/10.20961/belli.v1i2.27406>.

⁴² Ridwan Arifin, Margaretha Hanita, and Arthur Josias Simon Runturambi, "Maritime Border Formalities, Facilitation and Security Nexus: Reconstructing Immigration Clearance in Indonesia," *Marine Policy* 163 (May 1, 2024), doi:10.1016/j.marpol.2024.106101.

which is tasked with maritime security and safety, and the Directorate General of Marine Resources and Fisheries Supervision, which focuses on handling illegal fishing issues and protecting biological resources. Meanwhile, as border agencies and border filters, the Immigration and Customs agencies clearly fulfill their roles in accordance with the mandate of UNCLOS 1982 to execute special surveillance in the Contiguous Zone and Territorial Sea.⁴³

Immigration agencies have played a crucial role as the parties that determine human transit procedurally. However, the limitations of the wording of the Immigration Law and its third amendment in Law No. 63 of 2024 have not accommodated the specifications of jurisdiction in the maritime zone to carry out active surveillance, which has resulted in a lack of spotlight on the extension of the role of immigration. As stated by Army Abrianto Siregar, Head of Inspection Section II at the Special Class I Immigration Office in Semarang:⁴⁴

"When it comes to procedural operational standards, immigration has them in the realm of immigration control, but specifically related to immigration control in maritime areas, it is still problematic. Our country is an archipelago. For example, the concept of maritime surveillance in the Tual region may not be the same as that in Batam. Therefore, a formulation is needed. This can be obtained from research, combined with the experience of officers, which can be written down (in a study). The concept is that in carrying out our duties, we should not always rely on habit, and we should not be manipulated in the law enforcement process. Immigration is an important institution in the maritime zone, because many international crimes occur in maritime areas. Moreover, we deal with people. Examples include crew changes that do not follow formal procedures, criminal violations in the Outer Port Limit (OPL), and even people smuggling. We need to improve the law so that it keeps up with the times."

According to Army, the current immigration regulations do not meet the requirements of field activities. Similarly, discretion is often exercised because the activities carried out in the supervision process depend on the routine (customary elements) of the institution. Of course, this is due to differences in legal culture that have developed in each work area.⁴⁵ In fact, there are

⁴³ Okol Sri Suharyo and Avando Bastari, "Review Strategis Upaya Pengamanan Laut Nasional Menuju Keamanan Maritim Dan Pengelolaan Ruang Laut Indonesia," *Rekayasa: Journal of Science and Technology* 14, no. 3 (December 30, 2021): 443–49, doi:10.21107/rekayasa.v14i3.13087.

⁴⁴ Interview with Army Abrianto Siregar, Head of Examination Section II at the Semarang Special Class I Immigration Office, on Wednesday (07/08/2025), at 2:00 p.m., at the Semarang Special Class I Immigration Office. (n.d.).

⁴⁵ *Ibid.*

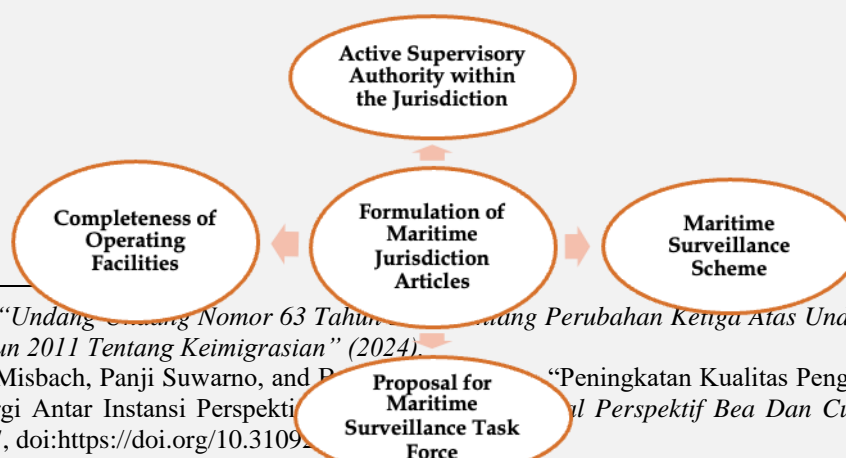
interdependent factors in the formulation of immigration law when reviewing the authority that should be possessed in accordance with the mandate of the convention.

Moreover, in the third amendment to the Immigration Law, there is an addition of authority for immigration regarding firearms permits. Article 3 paragraph (4) of Law Number 63 of 2024 states:⁴⁶

“In carrying out immigration functions in the field of law enforcement and national security, certain immigration officials may be equipped with firearms, the types and conditions of use of which are regulated in accordance with the provisions of laws and regulations.”

Reflecting on how customs agencies have detailed standards for patrol boats in accordance with terms and conditions and safety standards for firearms, the addition of this article certainly opens up opportunities for immigration if there are concerns about extending the role of immigration supervision in maritime zones. Government Regulation No. 13 of 2022 concerning the Implementation of Security, Safety, and Law Enforcement in Indonesian Waters and Indonesian Jurisdiction establishes a dichotomy between technical agencies and related agencies.⁴⁷ Agencies such as the Maritime Security Agency, Customs, and Polairud (Indonesian Water Police) act as related agencies with Leading Sector status, while Immigration is positioned as a technical agency or supporting system because it is considered to lack equipment such as a fleet, maritime patrol personnel, firearms, and operational bases.⁴⁸

Chart 3
Interdependence Between Legal Formulation and Facilitative Needs



⁴⁶ Indonesia, “Undang-Undang Nomor 63 Tahun 2024 tentang Perubahan Ketiga Atas Undang-Undang Nomor 6 Tahun 2011 Tentang Keimigrasian” (2024).

⁴⁷ Almahsun Misbach, Panji Suwarno, and P. “Peningkatan Kualitas Pengawasan Laut Melalui Sinergi Antar Instansi Perspektif Keamanan Maritim Perspektif Bea Dan Cukai 6, no. 1 (2022): 77–97, doi:https://doi.org/10.31092/...

⁴⁸ Indonesia, “Peraturan Pemerintah Nomor 13 Tahun 2022 Tentang Penyelenggaraan Keamanan, Keselamatan, Dan Penegakan Hukum Di Wilayah Perairan Indonesia Dan Wilayah Yurisdiksi Indonesia” (2022).

Source: Author's own work, 2025.

Optional in the application of its duties

As shown in the illustration above, there is an urgent need to add provisions that clarify the specifications of maritime jurisdiction for immigration as a port of entry for derivative regulations to accommodate the needs of patrol vessels and law enforcement personnel who are capable of handling cases. Currently, immigration supervision still contains legal norms that focus on terrestrial borders. Neither the substance of the articles in the Immigration Law nor the Minister of Immigration and Corrections Regulation Number 2 of 2025 concerning Immigration Supervision and Administrative Immigration Actions regulate the mechanism of immigration supervision in waters. The tasks of administrative and field supervision for immigration are carried out by the Immigration Intelligence and Enforcement Section, while the inspection of means of transportation (aircraft and ships) at Immigration Checkpoints, both at airports and seaports, is carried out by the Immigration Inspection Section.⁴⁹

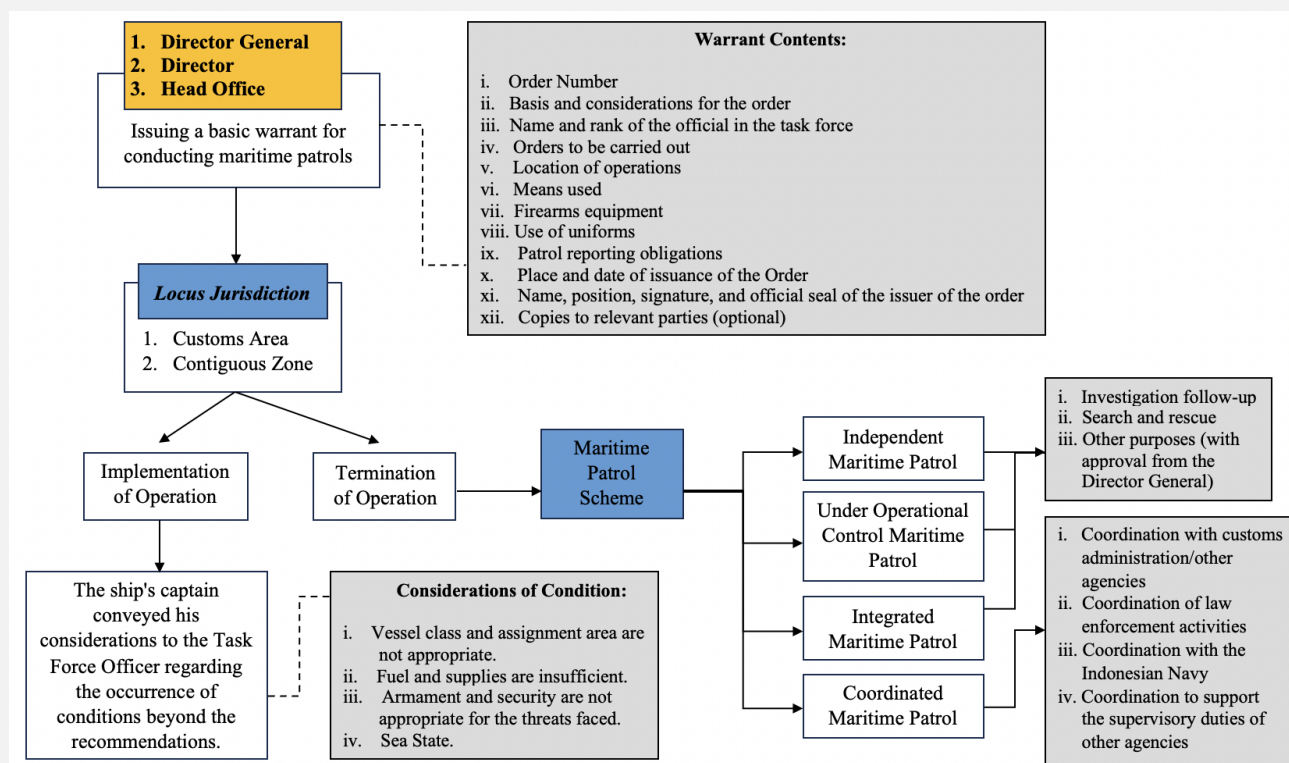
If the proposal regarding the formulation of locus jurisdiction is made by immigration, there must certainly be consideration of the responsibility for maritime patrols. As stated by Riyant Raga, Head of the Immigration Intelligence Subsection of the Class II Immigration Office in Belakang Padang, so far, not all immigration office working areas have patrol boats, so that boat helmsmen still need to be recruited from external elements outside the immigration agency.⁵⁰ Directorate General of Immigration must consider whether this function will be handled by the Inteldakim Section or require the formulation of a new unit that focuses on maritime patrols, considering the impact of the intensification of maritime patrol activities in the future.

Chart 4

⁴⁹ Ridho Sadillah Ahmad and Nabitatus Sa'adah, "Analisis Peranan Dan Strategi Dalam Melaksanakan Pengawasan Dan Penindakan Keimigrasian Terhadap Orang Asing," *Spektrum Hukum* 18, no. 1 (April 20, 2021), doi:10.35973/sh.v18i1.1286.

⁵⁰ Interview Results with Riyant Raga, Head of the Immigration Intelligence Subsection at the Class II Immigration Office in Belakang Padang, on Friday (07/04/2025), at 10:15 a.m., Via Zoom Meeting.

Basic Guidelines for Customs and Excise Sea Patrols



Source: Author's own work, 2025, adopted from Regulation of the Director General of Customs and Excise Number Per-14/BC/2020 concerning Guidelines for Maritime Patrols by the Directorate General of Customs and Excise.

Based on the chart above, researchers developed a standard illustration of maritime patrols conducted by customs agencies based on the rules contained in Regulation of the Director General of Customs and Excise Number Per-14/BC/2020 concerning Guidelines for Maritime Patrols by the Directorate General of Customs and Excise.⁵¹ So far, customs agencies have a standard formulation of locus jurisdiction regarding their law enforcement areas, both in sectoral laws and in the technical regulations under them. Thus, it can be seen that the legal system operating within customs agencies has a top-down regularity that demonstrates the interdependence between the drafting of legal products and the implications of an institutional structure, including law enforcement personnel, facilitative support, and field mechanisms that operate in accordance with the rhythm of substantive legal certainty.

⁵¹ Tobias Kevin Pardede and Satria Adhitama, "Tinjauan Pemeriksaan Sarana Pengangkut Laut (Boatzoeking) Di KPUBC Tanjung Priok," *Jurnal Perspektif Bea Dan Cukai* 2, no. 2 (December 4, 2018): 35–50, doi:<https://doi.org/10.31092/jpbc.v2i2.320>.

4. Closing

4.1 Conclusion

Based on the analysis of the disparity in legal regulations containing the Locus Jurisdiction of maritime areas between immigration and customs agencies, a comparative legal perspective can be provided. Although immigration and customs have the same scope of law enforcement through UNCLOS 1982, which has become positive law in Indonesia with the ratification of Law Number 17 of 1985, these two agencies have different patterns of legal adoption, resulting in less extensive supervisory authority for immigration in the maritime zone. Even in Government Regulation No. 13 of 2022 concerning the Implementation of Security, Safety, and Law Enforcement in Indonesian Waters and Indonesian Jurisdiction, Customs and Immigration have different forms of authority because the immigration agency is considered to lack the support necessary for maritime patrol operations, such as fleet support, maritime operation bases, maritime patrol units, and firearms. This study aims to show that the Directorate General of Immigration has adequate modalities based on the institution's budgetary strength and authority under international conventions regarding law enforcement in maritime zones. Therefore, constructive planning is needed in formulating sectoral regulations that accommodate the rigid regulation of certain maritime zones through the drafting of articles of law, as this has legal implications for the orientation of the duties and functions of agencies at the technical implementation level.

4.2 Suggestions

The comparative law approach using Friedman's legal system theory aims to explore the legal loopholes in immigration, both substantively and institutionally and bureaucratically. Thus, the Directorate General of Immigration can carry out legal reforms regarding the orientation of supervision that focuses on maritime zone provisions through customs agencies as a benchmark in formulating legal regulations in Law Number 6 of 2011 concerning Immigration and the development of maritime patrol mechanisms. The priority that must be put forward by immigration in terms of commitment to sea patrols in the future is the formulation of articles in the sectoral immigration law as a step towards harmonizing the above laws and regulations, facilitative support such as the procurement of maritime patrol vessels, the provision of firearms to officers at maritime

borders, the strengthening of human resources aspects including the recruitment of ship captains for the internal ministry and the formation of immigration patrol task forces that have the ability to conduct operations in the waters.

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