

# ***Problems and Solutions of Effective Maritime Law Enforcement from National and Individual Perspective***

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**Abstract:** This essay will focus on “why has the regulation of the ocean not been successful” using the case of Indonesia and China. This essay will also prove that numerous new international legal regulations to protect the marine environment are failing because they lack adequate enforcement mechanisms to change state and individual behaviour.

**Keywords:** International relations, maritime law, marine environment protection, transgovernmental network

## **1. Introduction**

The ocean covers a large part of the Earth's surface and is an essential source of minerals, food, etc. In order to protect the oceans on which we depend, a series of treaties have been made between different countries since very early times. During the 1950s-1970s, the United States and other countries were aware of the negative impacts of human activities on the marine environment. They signed the London Convention to generally prohibit the dumping of hazardous wastes. Then more specific treaties emerged, like the International Convention for the Prevention of Pollution from Ships, the Cartagena Convention, etc. However, despite so many efforts, illegal behaviours against maritime laws still exist. According to World Economic Forum, about 30% of global fish is illegally harvested, which seriously damages the marine ecosystem and hinders fisheries management [1].

Moreover, 839,961,218,924 pounds of plastic waste are produced annually [2]. These data made the public, scholars, and scientists question why the previous ocean regulations were unsuccessful. This essay will discuss why maritime law fails to enforce from national and individual levels using cases of China and Indonesia.

## **2. Literature Review**

Although the study of sea law continues unabated, there is little research into why it is not as effectively regulated as people would like. A few representative papers on inefficient maritime regulation are listed: Maritime Law Enforcement and Compliance in Indonesia: Problems and recommendations. *Maritime Studies* [3], Implementing marine environmental protection law in China: progress, problems and prospects. *Marine Policy* [5] Dirhamsyah analyzes six reasons why maritime regulation in Indonesia has not been successful, and this passage mainly focuses on the following three reasons: lack of funds and personnel; lack of communications among the various domestic enforcement agencies; lack of knowledge of the judges. Keyuan explains the progress of Chinese

maritime law enforcement at first. Then he goes on to talk about some potential obstacles to effective enforcement of the law of the sea, including ineffective communication among different organizations. Therefore, it is clear that the two articles have something in common -- both describe the disadvantages of unclear division of labour among domestic organizations to enforce the law of the sea. Lastly, by adding an individual perspective, this passage can illustrate ineffective maritime law regulation more comprehensively.

### 3. Problems

There are usually two reasons why countries do not comply with maritime laws. The first is the lack of hardware, such as insufficient funds for enforcement and the training of professionals for assistance. For example, after experiencing the Asian economic crisis in the late 1990s, the government of Indonesia had to invest the most money in alleviating poverty rather than enforcement programs, thus producing "difficulties on financing sea operations, including equipment, maintenance and personnel costs" [3]. As a result, the MOMAF only have nine patrol vessels right now, while it is estimated that it needs at least 90 vessels to cover the vast marine areas of Indonesia [4]. A lack of funds can leave institutions with no money to train professionals. Even with a certain amount of capital, weak salaries do not attract professional candidates.. China is facing the same problem: most of its coastal areas are occupied by heavy agriculture or industry, while China's low level of economic development has made it impossible for China to effectively control these sources of pollution [5].

Another reason for states' non-compliance behaviour is that the regulation of enforcement agencies within a country is so ineffective. Usually, to supervise maritime activities in different regions, countries will set up different organizations. If there is no proper communication, this will trigger duplication of work, communication errors and other problems between different organizations. Let us look back to the Indonesia case: Indonesia has numerous maritime agencies, such as the National Coordinating Body for Ocean Safety which coordinates maritime law enforcement activities; the Ministry of Forestry, which conserve marine ecosystem and biodiversity; and the Ministry of National Education which preserve cultural material on marine areas. However, there is not a clear distinction between different duties. For example, after five oil spills occurred in the Seribu Islands in 2003, several enforcement agencies, including the MOMAF, the State Ministry of Environment, the Marine National Park of Environment and so on, sent their officials to investigate the problem [6]. However, the investigation was fragmented, with "each agency working along based on their sectoral mandates", and none of these offenders was successfully prosecuted because of the gap between their investigations [7]. The lack of coordination among different enforcement agencies is also responsible for the failure of law enforcement in China. According to Marine Environment Protection Law (MEPL), each agency should organize relevant monitoring activities. At the same time, the repetition of work and waste of funds occurred when there was no communication among different agencies. For example, "the State Ocean Administration established in the 1980s a national monitoring network of marine environment involving various departments of environmental protection, transportation, aquatic production, petroleum, but after ten years the NEPA established a same network" [8]. According to Gan, a Chinese economist, 30—50% of marine pollution could be prevented by increasing the efficiency of management processes [9].

Most people think that international law is only used to constrain state behaviour, but they ignore that the successful implementation of international law depends mainly on the cooperation of citizens. However, in pursuing personal gain, many citizens are reluctant to abide by a law that may harm their interests. For example, most fishermen in Indonesia do not know how to rationally use resources to improve their lives and long-term economic development. They focus only on immediate profits, so they use fish frying, trawling and other destructive means of fish development [10]. On the other side, judges without enough knowledge of marine science will also lead to unpunished violations. The current judicial system of Indonesia has four types of courts: general courts, religious courts, military courts and state administrative courts; environmental cases are processed by the judges in general courts who have background knowledge about the relevant laws and the negative impacts brought by illegal maritime behaviours. For example, when trying to punish the seven illegal dredging vessels under the District Court of Tanjung Pinang, the court punished the offenders with a fine of Rp 30 million for each vessel based only on illegal mining without any consideration of the destruction of the marine environment caused by these activities [10].

Table 1: Different agencies to protect the marine environment in Indonesia.

Agency	Responsibility	Legislation
1. National Coordinating Body for Ocean Safety	<ul style="list-style-type: none"> <li>● To coordinate maritime law enforcement activities in Indonesia</li> </ul>	<ul style="list-style-type: none"> <li>● Cooperation Decree of 1972</li> </ul>
2. Ministry of Marine Affairs and Fisheries	<ul style="list-style-type: none"> <li>● To undertake fisheries management and ensure compliance by both Indonesian fishermen and foreign fishing vessels;</li> <li>● To control illegal fishing;</li> <li>● To prevent the exotic diseases through importation of infected marine species.</li> </ul>	<ul style="list-style-type: none"> <li>● Act No. 9 of 1985</li> <li>● Act No. 16/1992</li> </ul>
3. Ministry of Forestry	<ul style="list-style-type: none"> <li>● To conserve, preserve and utilise marine biodiversity and its ecosystems;</li> <li>● To establish marine protected areas;</li> <li>● Management authority for CITES.</li> </ul>	<ul style="list-style-type: none"> <li>● Act No. 41 of 1999</li> <li>● Act No. 5 of 1990</li> <li>● Act No. 5 of 1994</li> </ul>
4. Ministry of Energy and Mineral Resources	<ul style="list-style-type: none"> <li>● To prevent negative impact of mining activities on Indonesian marine and coastal areas</li> </ul>	<ul style="list-style-type: none"> <li>● Act No. 22 of 2001</li> <li>● Act No. 11 of 1967</li> </ul>
5. Ministry of National Education	<ul style="list-style-type: none"> <li>● To preserve cultural material on marine and coastal areas.</li> </ul>	<ul style="list-style-type: none"> <li>● Act No. 5 of 1992</li> </ul>

Table 1: (continued).

6. Ministry of Transportation and Communication	<ul style="list-style-type: none"> <li>● To manage shipping activities in Indonesia;</li> <li>● To establish sea-lanes for foreign and domestic ships;</li> <li>● To conduct search and rescue operations;</li> <li>● To prevent marine pollution generated from oil spills.</li> </ul>	<ul style="list-style-type: none"> <li>● Act No. 21 of 1992</li> </ul>
7. State Ministry for Environment	<ul style="list-style-type: none"> <li>● To monitor marine pollution;</li> <li>● To preserve and conserve the marine environment and ecosystems in all Indonesian territorial waters and the zones beyond its territory, the EEZ and Continental Shelf.</li> </ul>	<ul style="list-style-type: none"> <li>● Act No. 23 of 199</li> </ul>
8. Indonesian Navy	<ul style="list-style-type: none"> <li>● To enforce maritime laws only on the areas beyond the territorial sea, including the EEZ, and Continental Shelf.</li> </ul>	<ul style="list-style-type: none"> <li>● Act No. 5 of 1983</li> <li>● Act No. 9 of 1985</li> <li>● Act No. 5 of 1990</li> <li>● Act No. 21 of 1992</li> <li>● Act No. 23 of 1997</li> <li>● Act No. 2 of 2002</li> </ul>

#### 4. Solutions

In both China's and Indonesia's cases, we can see a lack of effective communication among agencies within the country. In formal words, there are gaps within the “transgovernmental networks”, which are “networks of national government officials exchanging information, coordinating national policies, and working together to address common problems” [11]. Therefore, an excellent way to solve the problem is to set up a centralized institution that coordinates all the marine activities in a country. The Ministry of Maritime Affairs and Fisheries, established in South Korea, can be a great example of this: it was set up in 1996 and continued to regulate oceanic activities from 10 government agencies. With this “super agency” and the better-integrated maritime functions and institutions, the protection of the marine environment can be further strengthened [12]. Another similar approach is to let the different agencies develop under “an overall agreement negotiated by the head of state”. However, without legislative input, there is a chance for the heads of state to engage in “transgovernmental collusion”. For example, John Peterson found that when the US-EU tried to implement a New Transatlantic Agenda in the 1990s, the heads of government in the United States and Europe colluded to reward some domestic interest groups over others.”[13]

As previously discussed, whether a country can successfully implement a law depends mainly on the people. The premise of the people's obedience to the law is to realize the importance of marine

protection. As a result, promoting maritime education is the best way to raise people's awareness. Local governments may promote marine protection activities like the SeaYouTomorrowRun held by the Singha Estate Public Company Limited, which contains running races and educational activities on marine debris. According to Naris Cheykin, CEO of Singha Estate PCL, the races received good feedback with more than 2000 participants. They got 1165800 Baht that would be given to Sea Turtle Hospital, the Sea Turtle Conservation Center, Sattahip Navy and other volunteer groups. [14].

## 5. Conclusion

This essay uses the cases of Indonesia and China to prove that states can better enforce maritime laws by raising public awareness of marine protection and forming a “head agency” that can improve the work efficiency of the transgovernmental network within a country. However, the ocean resources are limited, and the destructive behaviour of human beings will cause an indelible blow to the ocean. Therefore, it is essential to rationally distribute the work of domestic Marine protection organizations and actively carry out national maritime education.

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