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# Harmonization of Regulation on Exploration of Valuable Object from the Load of Sinking Ship in Preparation for the Ratification of the UNESCO Convention 2001

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## Abstract

### Key words:

Protection,  
underwater  
cultural heritage,  
illegal excavation.

*Regulations on the protection of underwater archaeology include prohibitions on the unlawful trafficking of cultural property and underwater archaeology training. Transfer of technologies and information sharing is also encouraged, as is public understanding of the value and relevance of the underwater cultural heritage. The Convention contains the “Rules for activities directed at undersea cultural heritage,” i.e., operation schemes for underwater interventions, and is widely acknowledged as the reference document in the underwater discipline. States Parties should prioritize preserving undersea cultural assets and take appropriate action. The Convention’s objectives are to (1) secure universal protection for underwater cultural treasures, (2) promote international collaboration, and (3) develop professional standards. In Indonesia’s national law, there are no special rules governing the protection of underwater cultural assets; rather, the provisions are generally limited to cultural heritage protection regulations.*

## Introduction

Bureaucracy is frequently used in government organizations (Bueno et al., 2021; Yesilkagit et al.). Even though Max Weber invented bureaucracy, it can exist in government and non-governmental organizations. Similarly, bureaucracy will develop in a large organization. Bureaucracy regulates huge organizations to ensure their management is efficient, reasonable, and effective. If there is a discussion regarding the bureaucracy in Indonesia, the public perception is of the government bureaucracy. The government owns the bureaucracy in all its flaws. What Dowding (1995) stated appears to be true in Indonesia. Do not simply theorize; Sarason et al. (1978) said that doing so is comparable to engaging in terrible deeds-theorizing as they do is poorly done.

Government bureaucracy (Lopdrup-Hjorth et al., 2019; Ragani et al., 2021; Zahrotunnimah, 2021) is frequently defined as a kingdom of officials (Lopdrup-Hjorth et al., 2019) Ragani, S., Rompis, A. E., & A monarchy whose kings are officials in a modern organizational structure. There are indications that someone has clear and specific jurisdiction and is in an official juridical domain. Within the jurisdiction, an individual is bound by official duties and responsibilities that define the scope of work authorization. They operate hierarchically to reflect the level of authority and power. They are compensated according to their level of skill and competence. Additionally, communication in the official realm is based on written documents (“the files”). That is a bureaucratic country, with the bureaucrats as its monarch.

Indonesia is the world’s biggest archipelago, with 17,499 islands spanning 3,977 nautical miles between the Indian and Pacific Oceans. As the world’s largest archipelagic country (Agustan et al., 2018; Pratama et al., 2017; Yeremia et al., 2020), Agustan et al. (2018), Indonesia has a 5.8 million-kilometre-long coastline and a 2.7 million-kilometre-long exclusive

economic zone (EEZ), which contains cultural heritages of high economic value.

The sea is Indonesia's most important resource. This submerged cultural history becomes proof of our vast marine country and eventually dominates the archipelago. As a result, it is critical to recognize that discovering a submerged cultural legacy can lift the veil of history. According to the discoveries of the underwater cultural heritage of sunken ships, it appears to have something to do with land culture.

Indonesian waterways are well-known for their tremendous traffic, with numerous commercial shipping routes and ports extending from Aceh to Maluku. The Sea Network, or marine traffic network, existed to meet the demand for the most desirable commodities, especially spices, gold, and distinctive and rare Southeast Asian Forest products. Trade is the trade of various things between nations with disparate civilizations. The archipelago is a sanctuary for highly sought-after forest products and spices such as camphor, frankincense, nutmeg, and cloves. On the other hand, European, African, Indian, and East Asian nations manufacture high-cultured artefacts such as Chinese porcelain, weapons, and glass. If we examine the Hindu-Buddhist period, we will discover the Srivijaya monarchy, flourishing in the seventh century.

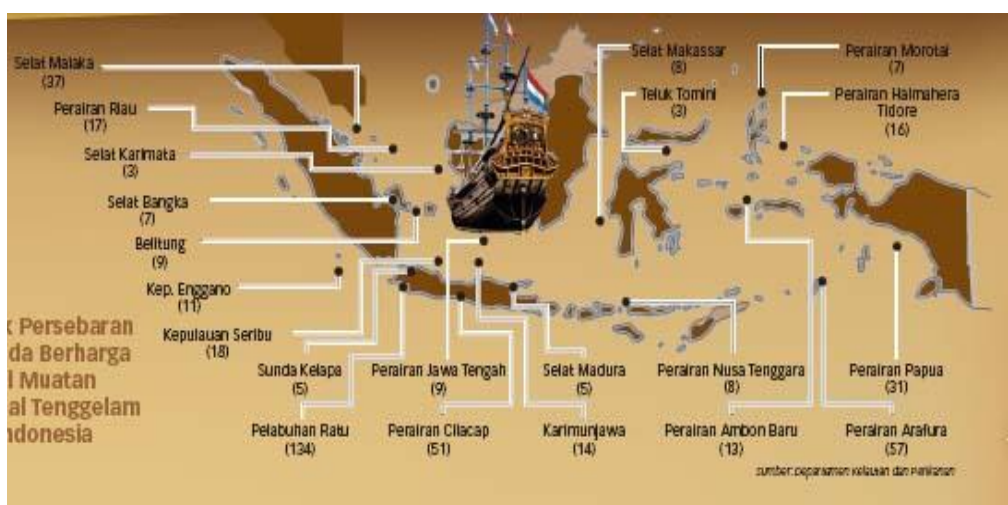
Underwater cultural legacy is a significant historical resource. It is a big resource to develop shipping and trade routes, history and notions of mind and conduct. Thus, undersea cultural artefacts have significant worth and are cultural jewels for humans, particularly in terms of a societies or nation's history, and even more specifically in terms of interest in values associated with "shared heritage."

There is a growing public interest in undersea cultural heritage because of its association with treasures. The reality on the ground demonstrates that underwater cultural items face various challenges, including survey activities, unmonitored or uncontrolled lifting/taking of cultural objects, and most notably, a disregard for certain very basic principles, namely their preservation. Additionally, commercialization efforts to get undersea cultural property, which involve local fishers, result in the degradation of cultural objects and the loss of the content of cultural values that can shed light on former civilizations. Activities involving the utilization of undersea cultural assets must adhere to protection and preservation guidelines. As a result, undersea remains must be handled following existing laws and regulations. The view that underwater archaeological remains in the form of ships and their cargo are a source of wealth with a market value leads to the view that they are treasures that are sought and hunted via diving, lifting, and other means without regard for the layout (environment) or appointment technique following applicable academic rules. This growth and progress encourage unrestrained searching, which results in the destruction and erasure of cultural assets. As a result, it must be protected, rescued, and maintained.

Underwater archaeological heritage exploration operations that result in the usage of these artefacts must be guided by preservation standards and not by purely economic considerations. Thus, underwater archaeological remains must be exploited using methods and approaches that are academically sound and mutually agreed upon following established norms. It should be recognized that underwater archaeological activities are unique and involve a significant level of danger, and as such, they must be closely monitored and regulated. According to the Ministry of Maritime Affairs and Fisheries, around 493 shipwreck places with precious sunken goods (BMKT). These spots are strewn around Indonesian territorial waters. According to UNESCO, about 500,000 sunken ships in Indonesian waters contain BMKT. It states, based on available data:

*“Data from Underwater Heritage Director-General of History and Antiquities Ministry of Culture and Tourism, there are about 500,000 shipwrecks located in a sea area of Indonesia. Meanwhile, around the world, there are about 5 million shipwrecks. According to UNESCO, there are at least five million shipwrecks worldwide and 10 per cent in Indonesia. The economic potential of Origin Valuable Artifacts Cargo ship sinks (BMKT) is worth USD 1.1 billion. It is estimated there are 700 to 800 potential points BMKT, but only 463 points identified. Indonesia can develop cultural parks underwater because there are many valuable archaeological objects in the ocean. For example, in the Pacific Islands, two very valuable shipwreck but lamentable archaeological objects already plundered the ship of the Tang Dynasty and the vessel Tek Sing.”*

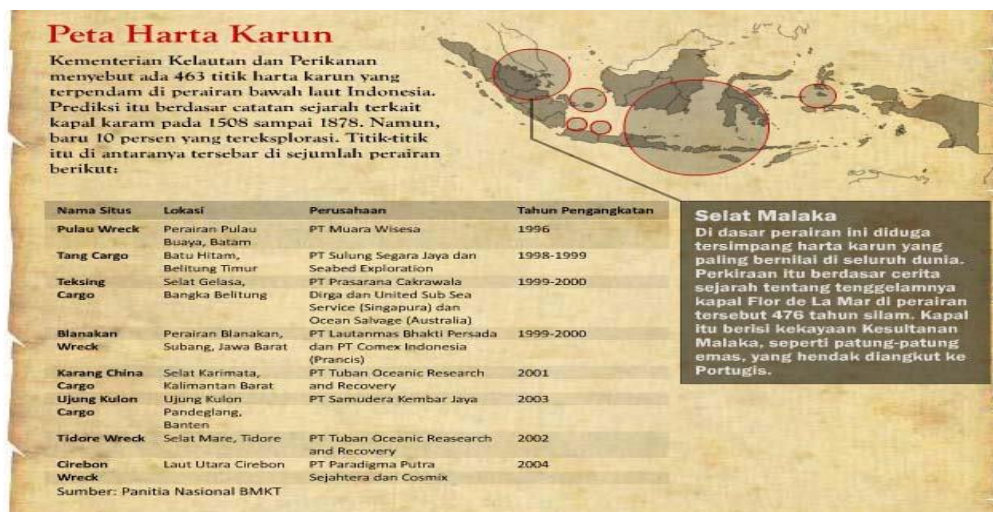
Naturally, given the number of shipwrecks suspected of having BMKT, this will create a slew of complications, including theft and destruction. A recent example is the May 5, 2010, lifting of a shipwreck in the waters of Cirebon. As a result of the BMKT’s lifting in Cirebon waters in partnership with a foreign collector named Michael Hetcher, 271,381 valuable artefacts from the ship’s cargo were auctioned off.



**Figure 1.** BMKT Location Distribution Map

Source: <http://batamtoday.com/berita44983-...Perairan-Indonesia.html>

The distribution of the BMKT above demonstrates that Indonesian waters are teeming with underwater cultural heritage, the majority of which are archaeological and historical artefacts.



**Figure 2.** Map of the distribution of archaeological objects

**Source:** <http://batamtoday.com/berita44983-...Perairan-Indonesia.html>

It illustrates the Hatcher case, which was atrocious and generated a protracted debate in Jakarta. His illicit lifting of antique and historic artefacts is deemed detrimental to the government and the Indonesian nation. However, the Dutch Ministry of Foreign Affairs contradicted this, stating that Hatcher's finds occurred in international waters and that his party was the legal heir to the sunken ship. In 1985, Michael Hatcher (an Australian citizen of British ancestry) illegally retrieved archaeological and historical artefacts from the De Geldermalsen. This Dutch VOC merchant ship sank 2.5 centuries ago in the waters between Mapur Island and Merapas, approximately 75 miles southeast of Tanjungpinang. A total of 150 000 antiques were created in China, and 225 gold ingots were later picked up and successfully sold at Christie's Auction Hall in Amsterdam for a total of US\$ 15 million.

For 15 months, Michael Hatcher may freely dredge treasure in land under national sovereignty. However, Dutch Foreign Ministry spokesman Te B. Oekhorst confirmed that De Geldermalsen was discovered in international seas. Thus, if someone claims that De Geldermalsen was found in Indonesian waters, Oekhorst asserts that this is inaccurate. Because, previous to the auction, the Dutch government informed the Indonesian government that De Geldermalsen had been discovered in international waters.

Apart from the controversy surrounding the location of de Geldermalsen's finding, this case served as a lesson. The Indonesian government has begun to pay attention to concerns concerning the supervision, exploitation, and utilization of archaeological and historic objects since then. The government then established the National Committee for Precious Objects

from Shipwrecked Ships in response to the disaster and ensured that a similar occurrence did not occur again. Indeed, Michael Hatcher continues to move freely around Indonesia in search of wealth, both officially and illegally.

According to Joe Marbun, Coordinator of the Cultural Heritage Advocacy Society, Michael Hatcher started operations in the Tidore-Ternate waters in early January 2001, in partnership with PT Tuban Oceanic Research and Recovery (TORR). This activity is beyond the National Committee's supervision, as when the TORR party applied for a security clearance, Hatcher's name was omitted, leaving the party to discover when the archaeological and historical artefacts were removed.

In October 2004, PT Marindo Alam Internusa (MAI), a newly formed recruiting business, applied to the National Committee for a survey permit. Michael Hatcher's name is attached as the survey leader and several work documents in the request for survey permission. After getting approval from the then-Minister of Maritime Affairs, the company's Board of Commissioners presented Michael Hatcher's name to the Pannas for archaeological and historical artefacts. The final is the nomination of a treasurer in Cirebon by PT. Paradigma Putra Sejahtera in 2004 and completion in 2005 resulted in a disagreement between the Indonesian National Police and the Ministry of Maritime Affairs and Fisheries (DKP). The police determined that the appointment was illegal because no appointment permit was obtained from the appropriate Minister, the Minister of Culture and Tourism, as required by Law No. 5 of 1992 on Cultural Conservation Objects (now Law No. 11 of 2010 concerning Cultural Conservation Objects).

Meanwhile, DKP operates under the authority of Presidential Decree (Keppres) Number 107 of 2000, establishing the National Committee for the Appointment and Utilization of Valuable Objects from Sinking Ships (now Presidential Decree (Keppres) Number 19 of 2007 establishing the National Committee for the Lifting and Utilization of Valuable Objects from the Load of Sinking Ships). The police seized the MV Sirren, which was chartered by PT Paradigma Putera Sejahtera and was docked at Marunda. As previously stated, archaeological and historic items were established according to Presidential Decree No. 43/1998. The coordinating minister for Political and Security Affairs serves as its chairman (Menkopolkam). The Presidential Decree, issued during the administration of President Soeharto, was later revoked during the administration of President Abdurahman Wahid, with the issuance of Presidential Decree No. 107 of 2000 concerning the National Committee for the Appointment and Utilization of Valuable Objects from the Load of Sinking Ships, chaired by the Minister of Marine Exploration and Fisheries (now Minister of Marine Affairs and Fisheries).

In 2007, the President issued Presidential Decree No. 19 of 2007, establishing the National Committee for the Lifting and Utilization of Valuable Objects from the Load of a Sinking Ship, succeeding the 2000 Presidential Decree. Then, in 2009, President Obama issued Presidential Decree No. 12 of 2009, amending Presidential Decree No. 19 of 2007 establishing the National Committee for the Lifting and Utilization of Valuable Objects from the Load of a Sinking Ship. This update is intended to expedite utilizing the Shipwrecked's Precious Object.

Based on the description above, the difficulty that arises is as follows:  
What is the concept of institutional governance (*good governance*) related to exploring a valuable object from a sunken ship (BMKT)?

## Discussion

### Weberian Bureaucracy

Max Weber, a well-known German sociologist in the early nineteenth century, authored numerous works that significantly impacted English-speaking countries and continental Europe. Until now, this work has been recognized for its conceptualization of this ideal type. It is not well-known for its critique of the bureaucracy's role in political life or its role in politics. Weberian bureaucracy only emphasizes the importance of running the bureaucratic machine professionally and rationally. To comprehend Max Weber's efforts to build a model of the ideal sort of bureaucracy, we must first appreciate the logic of his approach and the novel concepts he advanced in response to the conditions of his day (Dowding, 1995). The ideal type is an abstract concept that aids our social life comprehension. According to Weber, every symptom of life cannot exist entirely. As for what we can do, we can only attempt to comprehend a subset of these symptoms. It is critical to understand why bureaucracy can be employed in some organizational contexts and what distinguishes these contexts from others.

Thus, the ideal type explains that we are abstracting extremely significant and critical characteristics that separate certain corporate settings from others. This is how we develop the optimum kind. According to Weber, this type of method does not demonstrate the objectivity of bureaucracy's essence and is incapable of generating an accurate explanation of the notion of bureaucracy in its entirety. However, an ideal type is simply a structure that can solve a certain problem at a specific time and location. Weber says that the perfect type can be used to compare the bureaucracy of one organization to another in this reality. The distinction between the real occurrence and the ideal type is critical to study and inquiry. If a bureaucracy cannot function in a perfect organization, we can deduce why this is and what criteria separate it. According to Weber, the ideal type of bureaucracy seeks to demonstrate that a bureaucracy or administration has a defined structure in which all activities are performed rationally. The term rational, in its entirety, is critical to comprehending the concept of the

ideal sort of Weberian bureaucracy. According to Weber, the perfect kind of rational bureaucracy operates as follows:

- (1) While individual officials are free in their personal lives, they are constrained by their positions when carrying out their duties or pursuing their interests in their posts. Officials are not permitted to utilize their positions for personal gain or benefit, including their families.
- (2) The positions are hierarchical, from top to bottom and side to side. As a result, there are positions of superiors and subordinates, with some possessing greater authority than others.
- (3) Each position in the hierarchy has distinct duties and functions.
- (4) Each official is bound by an office contract that must be followed. Each official's job description specifies the scope of authority and responsibilities that must be fulfilled according to the agreement.
- (5) Each official is chosen based on their professional qualifications, preferably through a competitive examination.
- (6) Each official receives a salary and pension commensurate with the level of the hierarchy of posts held. Each official has the right to leave their work and position at any time, and their contract may be cancelled in specific situations.
- (7) There is a well-defined professional development structure in place, with promotions based on seniority and objective merit.
- (8) No official is justified in using their position and the resources of their agency to advance personal or family interests.
- (9) Each official is subject to the control and monitoring of a disciplined system.

A certain sort of government can implement not all ideal elements under certain circumstances. Such requirements for the appointment of officials to specific positions based on professional qualifications may be appropriate in some bureaucratic contexts, but many are no longer applicable. Because many countries also pick officials using objective criteria, some also rely on the political intervention of certain political parties.

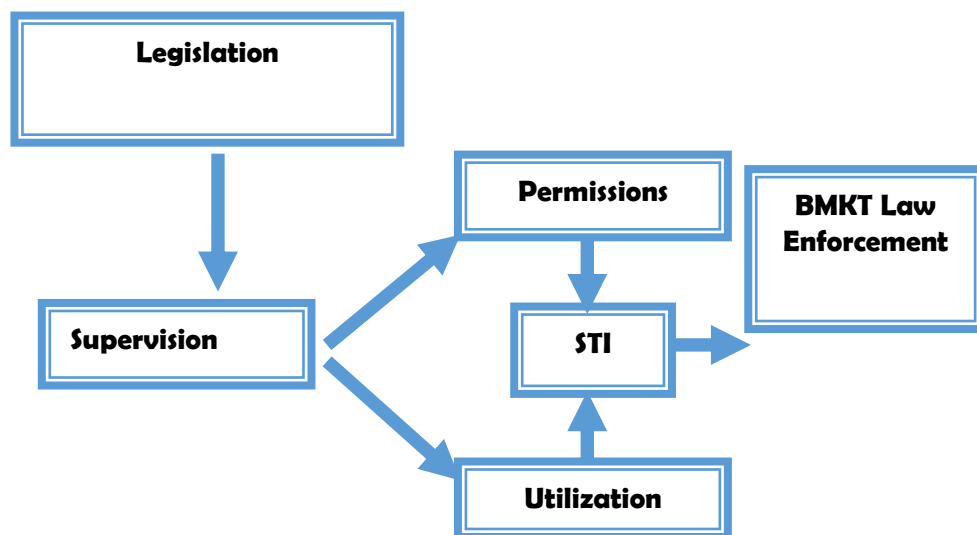
Weber's emphasis on reason and efficiency stems directly from the socio-cultural context in which he lived at the time. At the time, rationality and efficiency, as expressed in the hierarchical structure, were a particularly pressing requirement. Thus, rationality and efficiency metrics should be updated following contemporary requirements. According to Karl Marx, bureaucracy is a phenomenon that can be applied to state administration in a restricted fashion. His perspective on bureaucracy can only be appreciated in broad strokes. Karl Marx combined bureaucracy and a method for studying and criticizing Hegel's State philosophy. According to Hegel, state administration (bureaucracy) links the state (government) and its citizens. The community is comprised of professional associations, entrepreneurs, and other organizations representing a variety of distinct (special) interests. Between the two, the government bureaucracy serves as a link between specific and broad interests. The conceptual framework

of this study is employed to address the two legal issues mentioned previously. Integrated laws and regulations are required, beginning with licencing. The use of BMKT is supervised and enforced through traffic control operations. The National Committee for the Appointment and Utilization of Valuable Objects from the Loaded Shipwreck can issue BMKT (PANNAS BMKT) appointment utilization licences. PANNAS BMKT is responsible for the following:

- a. Coordination of the department's (now ministry's) and agency's BMKT use activities;
- b. Develop laws and institutional strengthening in the area of BMKT management;
- c. Make recommendations to the responsible authority for survey permits, appointment, and utilization of BMKT in compliance with applicable laws and regulations;
- d. Organizing and coordinating activities related to the survey process, appointment, and use of BMKT;

a. Submit a written report to the President on the performance of duties at least once a year.

The agencies involved in the integrated utilization of BMKT include supervisory aspects of the BMKT, including the Directorate General of PSDKP, TNI AL, POLRI, and Kemenbudpar, all of which are coordinated by PANNAS BMKT.



**Figure 3.** Research Conceptual Framework

The laws and regulations governing the monitoring of each institution's authority in the sphere of licencing and exploitation of BMKT must be optimally integrated via the IMS to ensure that law enforcement is robust. Coordination of operations between ministries and relevant agencies in BMKT use must be optimized through the use of IMS.

## Integrated Management System Concept

*Definition of Integrated Management Systems is<sup>10</sup>*

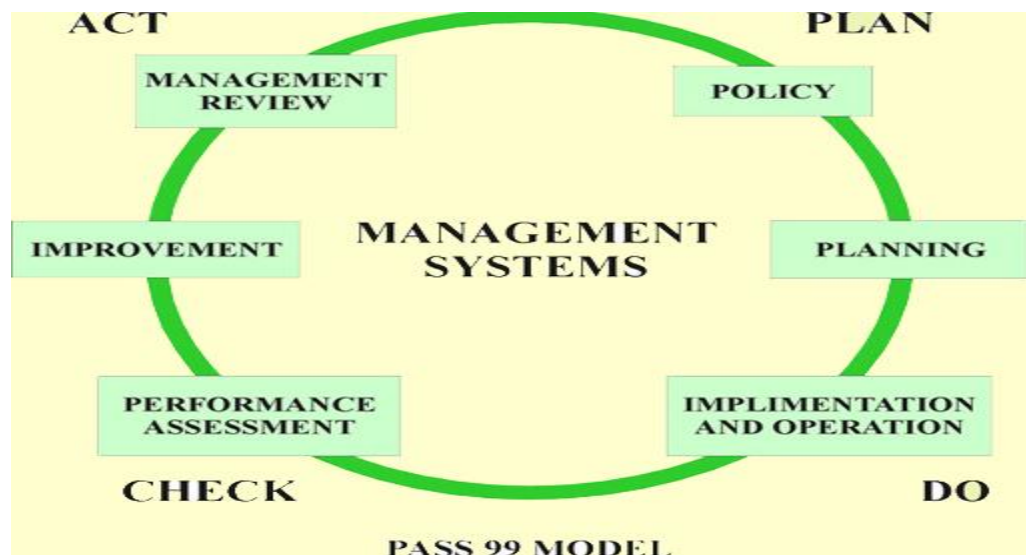
*“Is a single integrated system used by an organization to manage the totality of its processes to meet the organization’s objectives and equitably satisfy the stakeholders”.*

*It is further stated that the scope of the integrated management system (IMS) is:*

*“Combines all related business components into one system for easier management and operations. Quality (QMS), Environmental (EMS), and Safety (OHS) management systems are often combined and managed as an IMS. These are not separate systems joined together. Rather, they are integrated with linkages to manage and execute similar processes without duplication seamlessly. IMS components common to all the systems include the resources (people, facilities & equipment) and processes (documented in the QMS/EMS/OHS and applied throughout the organization”.*

IMS is a synthesis of all linked components into a unified management system intended to be simpler to deploy. IMS combines and manages quality (QMS), environmental (EMS), and occupational health and safety (OHS) management systems. These are not standalone systems but rather a collection of them, each linked and networked so that they can be managed and operated without incident. All systems share IMS components, including resources (people, buildings, and equipment, for example) and procedures (recorded in QMS/EMS/OHS and executed throughout the company).

The IMS process is as follows:



**Figure 4.** *Integrated Management System Schematic*

**Source:** CQI IMSIG-IMS Definition and Structuring Guidance, Issue 1-12 June 2007

<http://emptycache.com/photography/xft/integrated-management-system>

The advantages of IMS include the following: “All three Standards contain elements that are similar or identical:

- i. Each of the three Standards include a need for document control.
- ii. All three documents specify how records are to be controlled.
- iii. All three-exhibit training, competence, and awareness.
- iv. All three require internal auditing.
- v. Management review is an important component of all three
- vi. Standards Each section refers to monitoring and measuring equipment.
- vii. All three require continuous progress.
- viii. Corrective and preventative actions are critical.

Thus, an IMS can help reduce auditing time-on-site by verifying certain aspects once rather than for each distinct management system. Avoiding system duplication should also result in a more efficient management procedure.

STIs exhibit the following characteristics:

When an organization employs a single management system to handle many areas of its performance, this is referred to as an integrated management system.

It is defined by the following:

- i. Its scope will encompass all of the organization’s processes and systems, including health, safety, the environment, security, human resources, finance, marketing, and public relations, as applicable to the organization’s values and operations and objectives. Management Reviews will take into account the organization’s overall strategy and plan.
- ii. Internal audits will be undertaken on a comprehensive basis – not on an individual basis for each management standard.
- iii. It is specified explicitly in a unified and consistent style acceptable for its intended use.
- iv. Documentation duplication is eliminated while maintaining the IMS’s effectiveness and efficiency.
- v. It is designed to control and guide the organization’s processes most effectively and efficiently possible, rather than following the requirements of a particular management standard or piece of legislation slavishly.
- vi. As appropriate, each management system component considers the other parts. It satisfies all relevant stakeholder requirements established by standards, regulations, or other contractual obligations.
- vii. An integrated approach to planning, effectively using enterprise-wide risk management strategies.
- viii. Unified support for and duties of management.

When it comes to IMS overseeing the use of BMKT, various institutions must coordinate with that party:

- i. Marine and Fisheries Ministry, in consultation with the Directorate General of KP3K, the Governor/Mayor/Regent, and PANNAS BMKT, on matters about Survey Permits, Appointment Permits, and Utilization;
- ii. Ministry of Culture and Tourism, in connection with the provision and designation of cultural heritage objects (BMKT);
- iii. Ministry of Labor and Transmigration, in connection with IMTA;
- iv. Ministry of Law and Human Rights, in connection with Passports, Dahsuskim, and visas;
- v. Ministry of Defense, in connection with a Security Clearance (SC);
- vi. Ministry of Transportation, related to the Sailing Permit (SIB), Letter of approval for the relaxation of flag requirement (dispensation) for the use of the foreign vessel for domestic sea transportation, Certificate of Seaworthiness and Manning of Ship, Radio Communication Permit, Ship Measurement Certificate (certificate of class), Oil Pollution Prevention Certificate, Crew List, Seaman's Book;
- vii. The Ministry of Marine and Fisheries, in connection with the appointment of the BMKT Appointment Business License;
- viii. PANNAS BMKT, which is concerned with the facility and infrastructure utilized;
- ix. Indonesian National Police, in connection with the investigation of BMKT theft.

To ensure that the management of BMKT is carried out properly and correctly, from surveys to appointment to utilization, and to avoid irregularities that could harm the state and society, the Director-General of Supervision of Marine Resources and Fisheries of the Ministry of Marine Affairs and Fisheries must supervise BMKT management activities. The scope of the BMKT Management Supervision Technical Guidelines includes the following: (1) administrative supervision, which is concerned with the completeness of documents, as well as facilities and infrastructure; (2) technical supervision, which is concerned with the implementation of survey activities, appointment, or utilization of BMKT; and (3) maritime supervision, which is concerned with the degree of operations at sea. Supervision can be carried out individually by each agency that is a component of the BMKT supervisor, namely the PSDKP Directorate General, TNI AL, POLRI, and Kemenbudpar, or it can be carried out in a coordinated manner by all supervisory elements coordinated by PANNAS BMKT.

The following coordination is that BMKT lifted from the seabed (bottom) and has been evaluated and determined by the Ministry of Culture and Tourism as State Property must be owned by the Government (BMN). Meanwhile, additional BMKT are classified as "BMKT other than BMN" and may be sold to boost state revenue. The Ministry of Maritime and Fisheries, as Chair of PANNAS BMKT, must submit to the Minister of Finance a Decree on Determining the Status of Use of BMKT with a status other than BMN, for conducting auctions through the Office of the State Asset and Auction Service (KPKNL). After the auction fee is collected, the proceeds from the sale of BMKT with a status other than BMN will be submitted to the auction

applicant, namely the Ministry of Maritime and Fisheries as Chair of PANNAS BMKT. For the government's share, the proceeds must be deposited to the State Treasury in Non-Tax State Revenue (PNBP).

Apart from the general management and usage of natural resources, marine resource management focuses on the potential of cultural resources, especially maritime cultural resources in the sea. In 2008, the Directorate of Coastal and Marine Affairs under the Directorate General of KP-3-K of the Ministry of Maritime and Fisheries conducted an inventory and study of the potential for sunken ships to be used as marine tourism objects in six regions, namely South Bangka, Biak, Barru, Selayar, Kep. Thousand, and Morotai.

### Definition of Underwater Archeology

Underwater archeology translates the term *underwater archeology*, which has a narrower scope than maritime archeology. In Indonesia, the term "*archeology bawah air*" translates to *underwater archeology*, whose range of understanding is slightly more limited than "*maritime archaeology*." If underwater archeology focuses on submerged past cultural objects, maritime archeology studies human interaction with the sea, according to Keith Muckelroy's opinion:<sup>1</sup>

*"Maritime archaeology is the scientific study through the surviving material evidence of all aspects of seafaring, ships, boats, and their equipment, catches, or passengers carried on them".*

Muckelroy further stated,

*"...systematic research with strong processual and explicit theoretical framework. Include archaeological problems and to understand human past activities rather than simply describing object recovered from shipwrecks or any other ...."*

Maritime archaeology studies human contact with the water through the lens of objects from maritime cultures, such as ship and ship cargo and precious things from sinking ships (BMKT). Thus, BMKT is a subfield of marine archaeology. Additionally, maritime archaeology encompasses Underwater Cultural Heritage, or what is frequently referred to as Underwater Cultural Heritage, refers to all traces of human existence that are cultural, historical, or archaeological in nature and have been partially or completely submerged in water for at least 100 years, either periodically or continuously. Objects with a prehistoric character include (i) Sites, structures, buildings, artefacts, and human remains that are in their archaeological and natural contexts; (ii) Ships, aircraft, and other vehicles, or portions of their cargo or other contents that are in their archaeological and natural contexts; and (iii) Ships, planes, and other vehicles, or parts of their cargo or other contents that are in their archaeological and natural contexts. Archaeologists are responsible for researching, preserving, and

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<sup>1</sup>Keith Muckelroy, *Maritime Archeology*, New Studies in Archeology, Cambridge University Press, 1978 (digital printing, 2004) p. 4.

exploiting ancient artifacts found on the seafloor, lakes, and rivers in a scientific environment.

Archaeological study on land is fundamentally similar to that conducted on the seabed in theory and methods. Similarly, the overarching objective of his research. The distinction is only in the research procedures and equipment used, as the findings are in an aquatic setting, which requires researchers to employ specialized equipment and physical ability. However, this specificity and degree of complexity may prevent Indonesian archaeology from catching up with other countries, including some in Southeast Asia. Cooperation between countries is required for its progress. Cooperation among nations is the most effective means of ensuring the protection of undersea cultural treasures in their entirety. Southeast Asian countries agreed to prohibit their residents and ships from stealing submerged cultural assets, regardless of their location, and to require them to report findings and activities and inform other countries. This method will make it easier to take coordinated and effective action against treasure hunting and theft in places outside the national jurisdiction of a state's coastline without expanding or contracting a state's sovereignty. The regulation governing the salvage of valuable items from the cargo of a wrecked ship is as follows:

**Table 1.** Legal Basis for BMKT

| No. | National  | International  |
|-----|---|--|
| 1.  | Law No. 11 of 2010 concerning Cultural Conservation   | United Nations Convention on the Law of the Sea 1982 (UNCLOS 1982) Article 303 (1) and Article 149   |
| 2.  | Law No. 6 of 1996 concerning Indonesian Waters  | Convention concerning the Protection of the World Cultural and Natural Heritage (1972)   |
| 3.  | Presidential Decree No. 12 of 2009 concerning Amendments to Presidential Decree Number 19 of 2007 concerning the National Committee for the Lifting and Utilization of Valuable Objects from the Load of a Sinking Ship | UNESCO Convention on the Protection of the Underwater Cultural Heritage (2001)   |
| 4   | Decree of the Director-General of Marine and Fishery Resources Supervision No. KEP.56/DJ-PSDKP/011 concerning Supervision of Management of Valuable Objects from the Load of Sinking Ships                              | Guidelines for the Implementation of the 1999 Second Protocol to the Hague Convention-1954 for the Protection of Cultural Property in the Event of Armed Conflict. |

As seen in the table above, UNCLOS 1982 Article 149 governs archaeological and historic objects, while UNCLOS 1982 Article 303 regulates archaeological and historical objects found in the sea.

In the national legal framework, regulatory efforts have been made in the following ways:

- a. Cultural Conservation Law No. 11 of 2010;
- b. Indonesian Law No. 6 of 1996 on Waters;
- c. The following statutes and regulations served as the legal foundation for the appointment and utilization of BMKT (DKP website, March 2006):
- d. Shipping Law No. 21 of 1992.
- e. Regional Government UU No. 32 of 2004.
- f. Presidential Decree No. 25/1992 on BMKT Utilization Results Distribution.
- g. Presidential Decree No. 107 of 2000 establishing the National Committee for Appointing and Utilizing BMKT.
- h. KepMen-KP in his capacity as Chair of the BMKT National Committee Number 03 of 2000, dated September 11, 2000, regarding the composition of the national committee for the appointment and utilization of precious objects from sunken ships.
- i. KepMen-KP in the capacity of Chair of the BMKT National Committee No. 39 of 2000 on Technical Provisions for Survey Licensing and Appointment of the BMKT.
- k. Presidential Decree No. 19 of 2007 establishing the National Committee for the Recovery and Utilization of Valuable Shipwreck Objects;
- l. Presidential Decree No. 12 of 2009 amending Presidential Decree No. 19 of 2007 establishing the National Committee for the Lifting and Utilization of Valuable Shipwreck Objects;
- m. Decree No. 39 of 2000 of the Ministry of Maritime and Fisheries about Technical Provisions for Survey Licensing and Licensing for the Lifting of Valuable Objects from a Sinking Ship's Load;
- n. Decree No. KEP.56/DJ-PSDKP/2011 of the Director-General of Marine and Fishery Resources about Technical Instructions for Supervision of Management of Valuable Objects from the Load of Sinking Ship.

BMKT has the potential to be developed in the future as a source of state money that can be used to improve people's welfare. To ensure that BMKT management operations are carried out effectively and correctly, from surveys to appointments to utilization, and to avoid the occurrence of deviations that could affect the state and society, it is required to supervise BMKT management activities. Given the previous, and in light of the need for supervisors to have a consistent attitude and pattern of behaviour while overseeing the management of BMKT, supervisors need to employ an integrated management concept in their supervision.

### **Definition of BMKT**

The Presidential Decree defines BMKT as a valuable object of historical, cultural, scientific, or economic significance submerged in Indonesian waters, the Indonesian exclusive economic zone, or the Indonesian continental shelf and has a minimum age of 50 (fifty) years.



**Picture 5:** BMKT Conservation Activity

**Source:** The National Committee for Salvage and utilization of Valuable Objects from Sunken Ships (PANNAS BMKT) The Republic of Indonesia, Jakarta 2010

As one of the richness of marine resources, the Valuable Object from the Load of a Sinking Ship (BMKT) is a state-owned asset that must be handled effectively and efficiently, beginning with surveys, appointments, and use. BMKT has the potential to be developed in the future as a source of state money that can be used to improve people's welfare. To ensure that BMKT management operations are carried out effectively and correctly, from surveys to appointments to utilization, as well as to avoid the occurrence of irregularities that could affect the state and society, it is required to supervise BMKT management activities.

Permits for surveys, appointments, and utilization are all supervised. Licensing may take the form of surveys, research permits, appointment permits, or utilization permits. A significant historical and archaeological legacy is dispersed, preventing scientists and the general public from accessing this extraordinary collection. Exploiting archaeological sites and actions resulting in artefact dispersal are irreversible processes. The cargo recovered from the shipwreck in Cirebon's seas has a wealth of information about the area's thriving cultural and commercial exchanges at the time. States must safeguard sinking heritage and make it accessible for inquiry and enjoyment to the public. As such, we urge the Indonesian government to make every effort to ensure that extensive scientific research is conducted on places and items to be shown in museums.

### **Implementation of the Integrated Management System in Monitoring the utilization of BMKT**

*Integrated management system* under BMKT supervision includes:

- a) **BMKT survey activity;**

Survey activities conducted by the BMKT If the location is inside the regional authority's marine area, supervision is driven by the Supervisory Team, which consists of supervisors from the Regional Marine and Fisheries Service, an underwater archaeologist or other specialists; the Indonesian Navy and the Indonesian National Police. If the survey takes place in a marine area that is not under the jurisdiction of the regional authority, supervision is carried out by the Supervisory Team, which consists of the Supervisor from the Directorate General of PSDKP; an underwater archaeologist or other experts; the Indonesian Navy or the Indonesian National Police. If the Regional Government does not yet have supervisory employees and cannot supervise surveys, the Supervisor can provide supervision from the PSDKP's Directorate-General.

### **b). BMKT Transportation Activity**

BMKT removed from the seabed (bottom), transported, and evaluated according to specific standards established by the Ministry of Culture and Tourism must be owned by the government as State Property (BMN). Meanwhile, additional BMKT are classified as "BMKT other than BMN" and may be sold to boost state revenue. The Minister of Maritime Affairs and Fisheries, as Chair of PANNAS BMKT, must submit to the Minister of Finance a Decree on Determining the Status of Use of BMKT with a status other than BMN for conducting auctions through the Office of the State Asset and Auction Service (KPKNL). After collecting the auction fee, the proceeds from the sale of BMKT with a status other than BMN will be submitted to the successful bidder, namely the Ministry of Maritime and Fisheries as Chair of PANNAS BMKT. For the government's share, the proceeds must be deposited into the State Treasury in Non-Tax State Revenue (PNBP).

### **c). activity at the BMKT storage area;**

The following activity is to prepare administrative equipment in the storage area:

- (i) Assignment Letter;
- ii) ID card.
- iii) Travel Documents (Officially Issued Travel Permits);
- iv) Form that is required;
- v) Minutes required for Supervision implementation.
- vi). Become acquainted with the pertinent Rules/Documents/References. Before conducting supervision at the activity location, one of the Supervisor's responsibilities is to review the documents about the activity to be observed.

### **d). BMKT Conservation Activity;**

The following activity is to supervise BMKT conservation efforts in recognition that Indonesian maritime waters were previously an area of

international commerce routes dating back to the Bronze Age. Numerous commerce ships and warships have sunk in Indonesian waters, including significant historical, scientific, cultural, and economic artifacts.

The BMKT conservation activities were initiated in response to the massive looting and theft of BMKT in the past, most notably Michael Hatcher's theft of BMKT from the Geldermalsen ship, which was then auctioned off for 17 million US dollars at the Christie's auction hall in the Netherlands, with Indonesia receiving nothing. BMKT conservation actions are designed to maximize state advantage while adhering to the premise of safeguarding cultural assets beneath the water's surface. Conservation of BMKTs requires community involvement in their management.

Recently, we were delighted to tales of a treasure search in Palembang's Musi River area. Local traditional divers hunt with compressors and dive to 15 metres. The answer is straightforward: economic considerations. This myth began when word spread about one of the divers obtaining a gold statue and selling it for 3 (three) billion rupiahs. A significant number of courses are done for the people living on the Musi River's edges, who are often subpar. Residents became even more enthused about their hunt after learning from one of the Balar Palembang workers that a VOC ship sank in the 18th century. This is not the first time BCB has been discovered in the Musi River's waters.

Michael Hatcher's illegal treasure search (stealing) in 1985 in Indonesian waters, more precisely in Karang Heloputan, Riau Archipelago, is motivated by this economic purpose. Nonetheless, Michael Hatcher is free to wander Indonesia, both legally and illegally, searching for wealth. Even as early as early January 2001, it was discovered that Michael Hatcher had begun activities in the Tidore-Ternate waters in partnership with PT Tuban Oceanic Research and Recovery. The National Committee had no control over this operation, as when the TORR party applied for a security clearance, Hatcher's name was not available. It was discovered only after the BMKT was appointed. This situation occurred again in October 2004, when PT Marindo Alam Internusa (MAI), a new employment company, applied to the National Committee for a survey authorization. Michael Hatcher's name is attached as the survey leader and several work documents in the request for survey permission. Behind MAI are several retired admirals' names, including a former Navy chief of staff. Michael Hatcher's nomination was recommended to the BMKT National Committee by the company's Board of Commissioners after approval by Minister of Maritime Affairs Rokhim Dahuri (at that time). However, upon further examination by the BMKT Pannas team, it was discovered that Hatcher's work documents were forged. The permit issued in Hatcher's name was found to be someone else's upon scrutiny by the Department of Labor. Additionally, the MAI address is bogus. In Hatcher's document, the company's address was Jalan Tulodong Atas Senayan's address. Marindo's native address, however, is in Kelapa Gading.

The most recent was PT Paradigma Putera Sejahtera's appointment of the Cirebon BMKT in 2004, which was finalized in 2005, generating dispute

between the Indonesian National Police and the Ministry of Maritime Affairs and Fisheries (DKP). The police determined that the appointment was illegal since no appointment authorization had been obtained from the appropriate government. The police seized the MV Sirren, which was chartered by PT Paradigma Putera Sejahtera and was docked at Marunda.

The examples above are merely a sampling of the numerous instances in which undersea cultural treasure is managed. The advancement of technology and diving abilities, the growth of the art market, and the collaboration of collectors and treasure hunters all have implications for efforts to conserve the nation's cultural legacy. Of course, BMKT theft and looting incidents disregard archaeological principles and the preservation of cultural assets. It is vehemently condemned and should be avoided at all costs. The 2001 UNESCO International Convention on the Protection of the Underwater Cultural Heritage, which Indonesia has not yet ratified, also emphasizes the importance of preserving and preserving cultural heritage for the benefit of humanity; protecting underwater cultural heritage from commercial exploitation for purely commercial purposes, while not negating operational needs resulting from the resulting activities; and prioritizing the preservation of cultural heritage.

According to the study above, various trends and issues merit additional scrutiny, including the following: Economic considerations continue to dominate every procedure of elevating BMKT, ignoring the primary purpose of the appointment, which is to safeguard cultural heritage objects beneath the water's surface. The operational costs associated with survey activities, appointments, and the sale of BMKT, all of which involve a significant financial investment, can be evaluated without jeopardizing research efforts and thorough documentation of all processes.

Public awareness of the critical nature of conserving the nation's cultural legacy remains low. However, it can be used to build a sense of national pride, improve understanding of national identity, and advance national interests such as history, science, and culture. The government has not viewed diving activities conducted by traditional communities or fishers searching for treasures as a chance to regulate BMKT by incorporating all stakeholders, including the community. This contradicts the existing government strategy, which views the community as the subject of development rather than the object. As a result, community involvement is critical for future education and understanding the need to preserve the nation's cultural legacy.

Today, thousands of illegal artifacts thought to be Ming Dynasty antiques were handed up to the National Committee for Shipwrecked Goods (BMKT) at the Cirebon Navy Base. The stolen Chinese ceramics totalled 2,378 pieces and were promptly sent to the BMKT warehouse in Cileungsi, Bogor. The antiquities, which are believed to be tenth-century remnants of porcelain bowls and plates, will be preserved in a special BMKT facility.

Officials and businessmen with low moral, ethical, and sense of nationalism emphasize financial gain for individuals or groups at all costs and have not been oriented toward the state's interests. As evidenced by the preceding scenario, the mafia is always used. In plundering BMKT activities in the country, Michael Hatcher, the mafia that plunders the wealth of BMKT but receives an honorable position as a consultant and even as the head of the survey team. A former military officer behind him retains significant ties to the bureaucracy and military, and this is an attempt to terrify. This is also frequently the case in other businesses. Mr Syafri Burhanudin eventually became a victim, as he refused to authorize the appointment due to its mafia connections and fictitious administrative completeness.

Disagreement about the process of granting legality permission for BMKT's appointment; According to Presidential Decree 107 of 2000, Article 3 letter d, "the National Committee is responsible for making recommendations to the competent authorities regarding the appointment and use of important objects in line with existing laws and regulations." Permission is issued by an authorized official in line with the provisions of the legislation. It is stated in the Presidential Decree above. Because the appointment and auction processes for BMKT are closed and do not involve public input, there is a risk of monies being misused. Entrepreneurs and the government are engaged in a tug-of-war over the division of responsibilities in the utilization of BMKT. Entrepreneurs undoubtedly have an interest in maximizing profit on the sale of BMKT.

Meanwhile, the government, particularly the Ministry of Culture and Tourism, is interested in preserving BMKT artefacts of significant historical, scientific, and cultural significance. Additionally, the Regional Government, strengthened by Regional Government Law No. 32 of 2004, requires that any outcomes of appointments made in their regional zones (as was the case in Cirebon from 2004 to 2005) be distributed to the local government. Additionally, community involvement in the survey process, appointment, and utilization of BMKT must be considered. Deliberations between businesspeople and government officials are possible, and any artefact with a great historical value will undoubtedly be pricey. This high price is what businesses anticipate, but it should not be sold, given its historical significance. According to some extant research, there are still discrepancies in how sunken ship data is collected. The absence of intensive data collection on BMKT in Indonesian waters demonstrates that BMKT management in this country has not yet been integrated.

The IMS is being implemented following the principles outlined in Law No. 11 of 2010, namely benefit, sustainability, participation, transparency, and accountability.

#### **Sanction for Illegal Use and Appointment of BMKT**

Article 102 of Law No. 11 of 2010 on Cultural Conservation Objects provides that "Anyone who willfully fails to report a finding as specified in Article 23 paragraph (1) shall be punished with imprisonment for a

maximum of five (five) years and a fine of up to Rp. 500,000,000.00 (five hundred million rupiahs).”

According to Article 23, paragraph (1), “anyone who discovers objects suspected of being Cultural Conservation Objects, buildings suspected of being Cultural Conservation Buildings, structures suspected of being Cultural Conservation Structures, and locations suspected of being Cultural Conservation Sites is obligated to report them to the authorized agency in the field of culture, the State Police of the Republic of Indonesia, and related agencies within the country.” Additionally, “Anyone who searches Cultural Conservation without the consent of the Government or Regional Government shall be penalized with imprisonment for a minimum of three (three) months and a maximum of ten (ten) years, as well as a fine.” Rp.150,000,000.00 (one hundred and fifty million rupiah) as a minimum and Rp.1,000,000,000.00 as a maximum (one billion rupiahs).

Severe criminal penalties for businesses that are not devoted to protecting cultural assets and instead prioritize economic interests would dissuade violators. In 2004, a successful auction was held for the BMKT, specifically the auction of treasure discovered by PT Paradigma Putera Sejahtera (PPS) in the seas of Karangsong, Indramayu.

Additional criminal sanctions include the following:

Article 106 paragraph (1)

“Everyone who steals the Cultural Conservation as referred to in Article 66 paragraph (2), shall be punished with imprisonment for a minimum of 6 (six) months and a maximum of 10 (ten) years and a fine of at least Rp.250.000,000.00 (two hundred and fifty million rupiahs) and a maximum of Rp.2,500,000,000.00 (two billion r five hundred million rupiahs).”

Paragraph (2) “Everyone who collects the stolen Cultural Conservation as referred to in paragraph (1) shall be punished with imprisonment for a minimum of 3 (three) years and a maximum of 15 (fifteen) years and a fine of at least Rp. 1.000.000,000.00 (one billion rupiah) and a maximum of Rp.10,000,000,000.00 (ten billion rupiah).

Article 107

“Everyone who without the permission of the Minister, governor or regent/mayor, transfers the Cultural Conservation as referred to in Article 67 paragraph (1) shall be punished with imprisonment for a minimum of 3 (three) months and a maximum of 2 (two) years and/or or a minimum fine of Rp. 100,000,000.00 (one hundred million rupiahs) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah).

Article 108

“Everyone who without the permission of the Minister, governor or regent/mayor, separates the Cultural Conservation as referred to in Article 67 paragraph (2) shall be punished with imprisonment for a maximum of 10 (ten) years and a fine of at least Rp. 100,000,000.00 ( one hundred million rupiahs) and a maximum of Rp. 2,500,000,000.00 (two billion five hundred million rupiahs).

Several cases of illegal appointment that have been thwarted include:

- a). BMKT in Cirebon Bay,
- b). BMKT in Palembang Waters;
- c). BMKT in the Riau Islands;
- d). BMKT in Tuban waters;
- e) BMKT in Belitung waters;

### **III. CLOSING**

#### **Conclusion**

- a. The involvement of institutions associated with BMKT exploratory activities has been suboptimal, particularly in the licencing sector; there are deficiencies due to a lack of coordination among related organizations, which have overlapping authorities.
- b. The concept of an Integrated Management System has not been developed to coordinate operations between ministries and related entities regarding the use of BMKT. The laws and regulations governing each institution's power in the sphere of BMKT management have not been integrated adequately. Additionally, it is uncertain which BMKT collections are classified as state collections.

#### **Suggestion**

- a. administrative reform is required in the form of explicit administrative technical support for the BMKT utilization process, beginning with technical guidelines for managing survey permits, appointment permits, and utilization permits. The government should provide a Location Map for survey and appointment purposes that has been, is, or will be implemented. The geographic map in question will aid connected parties seeking similar exploitation in the same location. Certain area codes (Red, Green, Yellow, or whatever) represent the state of a business's operations at a certain site over a specified period. This will significantly aid interested parties in utilizing BMKT. Similarly, regional bureaucracies and the imperative to sustain the principle of accountability and transparency in all parts of BMKT management. This enables the implementation of good governance in the field of public services, particularly for the appointment of BMKT, via an integrated management system.
- b. Given the absence of a regulation governing the management and nomination of BMKT in East Java, the time has come to enact one. This relates to activity supervision to minimize the possibility of irresponsible parties gaining control of the BMKT.

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