

## Ideal Concept of Legal Policy in Dealing with Illegal Fishing

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### Abstract

Illegal, Unregulated, and, and Unreported Fishing (IUU-Fishing) crime activities are defined as illegal, unreported and unlawful fishing practices. In practice, Indonesia is one of the most disadvantaged countries from the illegal fishing activities occurring in many Indonesian waters. Formulating an ideal legal policy in the handling of illegal fishing is a way out that can be used as a patron for Indonesia to deal with fishery crime. The law policy can be analyzed in Administration Law and Criminal Law approaches.

**Keywords:** Concept of Legal Policy; Illegal Fishing

### 1. Introduction

The Unitary State of the Republic of Indonesia lies on 6<sup>0</sup> North Latitude - 11<sup>0</sup> South Latitude and 95<sup>0</sup> East Longitude - 141<sup>0</sup> East Longitude. Located in Southeast Asia, Indonesia is an across the equator between Asia and Australia and between the Pacific and Indian Oceans. It is because it lies between two continents and two oceans, Indonesia is also called the archipelago, which means the Between Islands. Indonesia is bordered by Malaysia on the island of Borneo, bordering Singapore and Malaysia in the northeast bordering the Strait of Malacca, bordering the Philippines bounded by the sea of Sulawesi, bordering on Papua New Guinea on the island of Papua, bordering on Timor Island Timor, and is bordered by Australia to the south bounded by the Indian Ocean or the Indonesian Ocean.<sup>1</sup>

Indonesia is listed as the largest archipelagic state in the world. The numbers of large and small islands in the territory of the Republic of Indonesia are around 17,508 islands. The main islands of Indonesia are the islands of Kalimantan (539,460 km<sup>2</sup>), Irian or Papua (421,981 km<sup>2</sup>), Sulawesi (189,216 km<sup>2</sup>), Sumatra (473,606 km<sup>2</sup>), and Java (132,107 km<sup>2</sup>). The total area of the entire state of Indonesia is about 1,904,443 km<sup>2</sup> inhabited by the Indonesian population. According to the 2005 census, it is about 241,973,900 inhabitants with a population density of 127 people/ km<sup>2</sup>. With such a large area and population, Indonesia is the 15th largest country in the world and the 4th largest country in the world after the People's Republic of China, India and the United States. In addition, Indonesia is also listed as the country with the longest coastline Number Two in the world after Canada.<sup>2</sup>

Indonesia is a country with coastal area, sea, and islands.<sup>3</sup> As the archipelago state, it has 17,508 islands and around 6,000 of which are uninhabited. It spreads around the equator and provides tropical weather. Indonesia has more than 400 active volcanoes. Some of the volcanoes are located on the ocean floor and are not visible from the sea surface. Indonesia is the meeting place of two series of active volcanoes (Ring of Fire) and there are dozens of active fault in the territory of Indonesia.

Indonesia as referred to in the 1945 Constitution of the Republic of Indonesia (UUD 1945) has sovereignty and jurisdiction over the territorial waters of Indonesia. Indonesia also has the authority to establish provisions either on the utilization of fish resources both for fishing, cultivation of fish, or increasing prosperity and justice. The utilization of the archipelagos is used to the utmost utilization for the interest of the nation and state by taking into account the principles of the preservation of fish resources and its environment as well as the sustainability of national fisheries development.<sup>4</sup>

Fisheries both small and global are very important in their existence.<sup>5</sup> It is almost 50 million fishermen, both large and small fisherman, rely on fishery area including in Indonesia. Fishery is one of the great potentials of natural resources and income in Indonesia. Indonesia's marine potentials include large pelagic fish resources, small pelagic, shrimp, *demersal* fish resources, Moluccas, sea cucumber resources, and squid resources. Other major resources include ornamental fish resources, sea turtles, marine mammals and seaweed.<sup>6</sup> Demand for

<sup>1</sup>Gamal Komandoko, 2007, *Ensiklopedi Pelajar dan Umum Satu Buku Sejuta Ilmu*, Jakarta: Pustaka Widyatama, p. 7.

<sup>2</sup> *Ibid.*

<sup>3</sup> Agus Romadhon, "Strategi Konservasi Pulau Kecil Melalui Pengelolaan Perikanan Berkelanjutan (Studi Kasus Pulau Gili Labak, Sumenep)", *Jurnal Kelautan*, Vol. 7, No. 2 Oktober 2014., p. 86.

<sup>4</sup> The explanatory the Law No. 31 year 2004 concerning Fishery.

<sup>5</sup> Agus Romadhon, *op.cit.* p. 87.

<sup>6</sup> Edy H.P. Melmambessy, "Pendugaan Stok Ikan Tongkol Di Selat Makassar Sulawesi Selatan", *Jurnal Ilmiah Agribisnis dan dan Perikanan* (Agrikan UMMU-Ternate), Volume 3 Edisi 1, Mei 2010), p. 53.

fishery resources is able to increase the income level of fishermen.<sup>1</sup>

The fishery sector has an important and strategic role in the development of the national economy, especially in increasing the expansion of employment opportunities, incoming distribution, and improving the living standards of the nation in general. It is also improving small fishermen, small fish farmers, and business actors in the field of fishery by maintaining environment, sustainability, and availability of fish resources.

The potential of Indonesian fishery resources in the last 10 years shows the exploitation and exploration of fishery products are very significant. However, the activities of sea exploration can be classified as a fishery criminal activity that is very detrimental to Indonesia.<sup>2</sup> The Food and Agriculture Organization (FAO) reported that fishery crime activities are called Illegal, Unregulated, and Unreported Fishing (IUU-Fishing), which means illegal fishing, unreported and unsuitable with predefined rules.<sup>3</sup> The focus on this paper is to examine the ideal concept of legal policy in handling Illegal fishing within the scope of administrative law and criminal law.

## 2. Formulation Policy of Administration Law in the Handling of Illegal Fishing

The current and future fish resources management is based on the Law No. 31 year 2004 concerning Fishery, as followings:<sup>4</sup>

- 1) Management of fisheries based on the principle of benefit, justice, togetherness, partnership, independence, equity, integration, openness, efficiency, sustainability and sustainable development;
- 2) The management of fisheries shall be based on the principles of planning and integration of its control;
- 3) Fisheries management shall be conducted by taking into account the division of authority between the Central Government and the Regional Government;
- 4) Management of fisheries is fulfilled the elements of sustainable development and supported by research and development of fisheries, as well as integrated controls;
- 5) Management of fisheries is conducted by improving education and training and extension in the field of fisheries;
- 6) Fisheries management is supported by fishery facilities and infrastructure and fishery information system and statistical data;
- 7) Institutional strengthening in the field of fishery port, fishery management, and fishing vessel;
- 8) Management of fisheries are encouraged to contribute to marine and fisheries development;
- 9) Management of fisheries is paying attention and empowering small fishermen or small fish farmers;
- 10) Management of fisheries conducted in Indonesian waters, ZEEI, and high seas established in the form of legislation with regarding to applicable international requirements or standards;
- 11) Management and utilization of fish resources, both in the waters of Indonesia, ZEEI and the high seas.

The current fishery licensing system still has weaknesses and needs to be evaluated in order to become an optimal controller in managing fishing capacity in order to not to threaten the sustainability of resources. Therefore, the licensing system must be re-reviewed based on quasi-open access, which puts fish resources as common property. In terms of it, everyone has similarity access to preserve it without getting the incentive from it.

Completion of fishing licensing and licensing mechanisms is needed. The number of fishing vessels permitted to operate in a fishing area does not exceed the allowable catch amount (80%) in order to the capture fishing business can be profitable and sustainable. In addition gradually, there will no longer be any fishing licenses for foreign fishing vessels (KIA) in Indonesian waters, and the most important is the transparent and quick licensing procedures.

The business licensing system of fishery and fishing vessels has been legally regulated in the Minister of Marine and Fisheries Affairs Decree No. 12 year 2010, which is in the case of fishing vessels of 10 - 30 GT, the permits are issued by the Regency Marine and Fishery Service, while the fishing vessels > 30 GT, Fishing Permit License (SIPI) are issued by the Ministry of Marine Affairs and Fisheries. Ships over 30 GT are generally the fishing boats of domestic companies or foreign ships capable of operating in a sea of prisons above 12 nautical miles.

Licensing based on right-based access is a viable alternative. Arrangement of the licensing system should also be followed by improving fisheries data systems. In the meantime, the fisheries data systems are a weak point in fisheries management, whereas accurate fisheries data are required in management policy decisions,

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<sup>1</sup> *Ibid*, p. 54.

<sup>2</sup> Dina Sunyowati, "Dampak Kegiatan IUU-Fishing Di Indonesia", Disampaikan padaa seminar Nasional "Peran dan Upaya Penegak Hukum dan Pemangku Kepentingan Dalam Penanganan dan Pemberantasan IUU-Fishing di Wilayah Perbatasan Indonesia" Kerjasama Kementerian Luar Negeri Republik Indonesia dengan Universitas Airlangga Surabaya, 22 September 2014., p. 2.

<sup>3</sup> *Ibid*.

<sup>4</sup> Rusdi Syukur, 2008, "Tumpang Tindih Penyidikan Pada Tindak Pidana Perikanan di Indonesia", *Jurnal Ilmu Hukum Amanna Gappa*, Vol 16, pp. 96 -97.

including licensing. By taking the steps as mentioned above, it is expected that the vision of fisheries management in the future is more long-term oriented and no longer short-term oriented which prioritizes the achievement of production level without being balanced with the conservation efforts.

To overcome the problem of foreign fishing boats (KIA) whose practice illegal fishing, a strategy can be done is the deregulation of foreign ship permits through the Ministerial Regulation of the Minister of Marine and Fisheries Affairs No. 10 year 2010. This strategy succeeded in reducing the number of foreign vessels operating without permits in Indonesian waters. The granting of licenses to foreign vessels to operate in Indonesia's territorial waters is not an illegal foreign ship's "legalization" strategy, but it is one of the exit strategies of the problem of illegal fishing. Due to the granting of the permit, it is not unconditional. One of its strategies is the foreign vessel is required to land its fish in the territorial waters of Indonesia and the country owner of the foreign vessel must be willing to contribute in the development of fishery facilities at fish landing centers in the territory of Indonesia.

In fisheries development in the future, the role of the fishermen community should be put forward and not be the only complement. Indigenous institutions living in communities such as Sasi in Maluku, Panglima Laot in Aceh or Awig-Awig in Bali and West Nusa Tenggara, have been reduced by some governance regimes. Therefore, the indigenous institutions should be reinvigorated. Communities should be positioned as subjects in fisheries development. Some facts shows that the reduction of the role of the community makes fisheries management inefficient. The conflict between fishermen and degradation of fishery resources are one derivative of the centralization problem of fisheries management denying the role of fishing communities as the main stakeholders.

This community based surveillance system is undertaken in developed countries. Japan, for example, has long been implementing this system specifically related to the implementation of "gyogyo ken" (fishing rights) for certain fishing communities. With the spearhead of "gyogyo kumiai" (fisheries cooperative), the local fishery community controls the fishing grounds of illegal fishing.

### **3. Formulation Policy of Criminal Law in the Handling of Illegal Fishing**

Crime prevention through criminal law is essentially an integral part of social welfare. It is common to be said that criminal law policy or politics is an integral part of social policy or politics. Criminal policies in crime prevention are one of policies beside other development policy (social politics). Barda Nawawi Arief<sup>1</sup> states "countermeasures crime should be pursued by policy approaches in the sense of whether there is cohesion between criminal politics and social politics. There is integral between criminal and non criminal countermeasure. Social policy efforts can be interpreted as any rational effort to achieve the welfare of society and also includes the protection of society. Thus, in the sense of "the social policy", it must be included in "social welfare policy" and "social defense policy".

The policy of eradicating illegal fishing involves drowning vessels that engage in illegal fishing, administrative sanctions, criminal prosecution, and confiscation of illegal fishing, as well as drowning and destruction of vessels. The already designed policy is expected to prevent, crack-down and eradicate illegal fishing.

It should not only drown foreign ships that steal fish and punish its crew including local small fishermen. This is because theft of fish involves many big players or mafia fish thieves with apparatus. Due to an indication of "game" between the apparatus and the international mafia as the owner of the ship or the owner of the company that is outside the territory of Indonesia, the fish theft should be regarded as an extra ordinary crime. The crime in this area can be classified as Transnational Organized Crimes. In the United Nations of Convention on Transnational Organized Crime, a crime is considered a transnational crime because it is committed in more than one state territory, organized, and threatens the sovereignty of a state. However, in the Convention, there is 5 (five) new forms of crime that are categorized as a transnational crime, namely corruption, money laundering, trafficking of women and children, smuggling of migrant groups, and illegal firearms trade.

The government's commitment in combating fish thefts should be strengthened by placing theft of fish as a serious and transnational organized crime that can touch on the big players or the fish-stealing mafia either in Indonesia or outside Indonesia. Law enforcement must exceed the boundaries of a country's jurisdiction requiring other countries to participate in enforcing the law of theft of fish or called extraterritorial obligations.

Theft of fish should also be categorized as extraordinary crimes. As mentioned in the Rome Statute, theft of fish as an extraordinary crime should be regarded as a crime that violates human rights or crimes against humanity. Therefore, in addition to violation of the fishery law, it has fishery related-crime include: corruption, money laundering, tax violations, customs-related crimes, immigration-related crimes, illicit drug trafficking, and violations of human rights.

According to a report from the Associated Press, the Illegal Fishing Prevention and Eradication Task Force

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<sup>1</sup>Barda Nawawi Arief, 2002, *Bunga Rampai Kebijakan Hukum Pidana*, Bandung: Citra Aditya Bakti, p. 27.

of Illegal Fishing discovered the practice of slavery in Benjina. The findings were followed by the Ambon case as the largest case of slavery in the 21st century. Non-law and law efforts have been committed in order to sanction the offender. The victim then gets the right of remediation, restitution and repatriation to the country of origin. In March 2016, there was 8 (eight) defendants have been found guilty by the Tual District Court and with the assistance of IOM Indonesia, 1500 victims have been returned to the country of origin.<sup>1</sup>

In addition, the government through the Ministry of Maritime and Fisheries Affairs (KKP) also publishes lists of non-blacklisted and blacklisted vessels, foreign ship shipments, foreign vessel supervision in about 29 ports. The eradication of illegal fishing can also increase state revenue. This assessment will be enough to help the tax amnesty program that has been running.

The weakness of law enforcement in the maritime and fisheries sector also is tangled with the slow coordination between agencies. The Marine Security Coordinating Board (BAKORKAMLA) consists of 13 institutions such as the Ministry of Marine and Fisheries Affairs, Navy, and Customs. As a result, those weaknesses inhibit the eradication of crimes in the sea. Therefore, it should be proposed that BAKORKAMLA must be reformed into an institution consisting of one institution to do a lot of things to combat crime at sea, such as fish theft and human trafficking.

The authority of BAKORKAMLA will cut operational costs and encourage effectiveness. Therefore, the government immediately established the Marine Security Agency (BAKAMLA) as mandated by Article 67 of the Law No. 32 of 2014 on Marine (Fishery Law). Article 63 paragraph (2) of the Fishery Law states that the authority of BAKAMLA is integrated in one unity of command and control. Article 59 paragraph (3) Fishery Law stipulates the form of BAKAMLA. It is a non-ministerial government institution under the President, which has the main duty of conducting security and safety patrols in the territorial waters of Indonesia and the territory of Indonesian jurisdiction. Basically, BAKAMLA is a revitalization of BAKORKAMLA that has been strengthened its authority.

#### 4. Conclusion

It can be concluded that the ideal concept of legal policy in the eradication of illegal fishing in terms of licensing is rights-based access (allocation of formal utilization rights) and community-based supervision. In terms of criminal law, it is to make illegal fishing as extra ordinary crime.

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<sup>1</sup> International Organization for Migration (IOM), 2016, *Laporan Mengenai Perdagangan Orang, Pekerja Paksa, Dan Kejahatan Perikanan Dalam Industri Perikanan di Indonesia*, Jakarta: International Organization for Migration (IOM), pp. 9-10.