

The Fulfillment of The Fishermen's Right to Achieve Welfare as a Part of State Responsibilities

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Abstract—This research aims to describe the fishermen's right in Indonesia. The fulfillment of fishermen's rights encourages the achievement of the fishermen's welfare which has not been fulfilled. The state has an obligation to fulfill fishermen's rights. This is juridical empirical research. The first research result is that fishermen's rights as stipulated in Article 28 H paragraph (1) - (3) of the 1945 Constitution of the Republic of Indonesia and Law No. 7 of 2016 has confirmed state responsibilities under Article 71 of Law No. 39 of 1999. The second research result is that an example of the implementation of state responsibilities happens in fishermen in East Java. The Regional Government of East Java Province enacted East Java Provincial Regulation No. 3 of 2016 on the Protection and Empowerment of Fishermen as a follow up of Article 30 of Law No. 7 of 2016 and the Regulation of the Minister of Marine Affairs and Fisheries Number 18 of 2016. The concrete measure is by providing insurance for fishermen.

Keywords: *fishermen rights, state responsibility*

I. INTRODUCTION

The existence of fishermen cannot be separated from Indonesia because most parts of Indonesia's territory are waters surrounded by thousands of islands. Indonesia is known as an archipelagic state and a maritime state. Pursuant to Article 46 of the United Nations Convention on the Law of the Sea (UNCLOS 1982), an archipelagic state means a state constituted wholly by one or more archipelagos and may include other islands. It is reaffirmed in Article 2 paragraph (1) of the Act of the Republic of Indonesia No. 6 of 1996 on Indonesian Waters which asserts that the State of the Republic of Indonesia is an Archipelago. This research focuses on the fulfillment of the fishermen's rights to achieve the fishermen's welfare, especially the fulfillment of basic rights such as the fulfillment of minimum primary needs (adequate food, decent clothes, residence, education assurance for the fishermen's children, insurance coverage in case of accident for fishermen, and other basic rights). The state has responsibilities in providing funds to fulfill these rights as the embodiment of Indonesia's fishermen's welfare.

Sea conditions with abundant marine wealth become a distinct advantage for Indonesia, especially fishermen. Existing fish resources are very likely to be utilized by fishermen to be the main livelihood because Indonesia's

potential fishery resources are estimated to reach around 6.4 million tons per year. But in fact, abundant marine wealth, especially fishery yield, is not directly proportional to the fishermen's welfare in the coastal areas. It can be seen clearly from the small/traditional fishermen's conditions and data on overall poverty rates in Indonesia. In general, employer fishermen are not poor. Poverty tends to be experienced by individual fishermen and employee fishermen. Due to a large number of individual fishermen and employee fishermen, the poverty image is attached to the fishermen's lives.[1]

Many factors cause the fishermen unable to have a prosperous life, one of which is the fishermen's willingness to rely on natural wealth only. It becomes a complicated problem in developing countries, although most of these countries have succeeded in performing economic and political development. However, on a rural economic scale, coastal communities have not experienced significant changes. Signs of poverty exist, i.e. 1) those living below the poverty line have no factors of production, such as sufficient land, capital or skills, 2) they generally have no possibility to acquire production assets with their own power, 3) The level of education is generally low, most of them do not complete elementary school, 4) the fishermen's living habits which do not take into account their future needs, 5) small capital ownership, and 6) the lack of economic institutions' role in distributing results. In addition, technological factors also have an important role.

At present, many fishermen still experience limited fishing technology. Employer fishermen having a fairly sophisticated fishing vessel equipped with fishing technology do not experience much difficulty. However, in terms of catches for small and traditional fishermen, it is quite worrisome. As a result of simple and traditional fishing gears, the operation area has become limited i.e. only around coastal waters. Even more important is that fishing activities are strongly influenced by season changes. Season changes cause fishermen unable to go fishing at any time, especially in the wave season which can last more than one month. As a result, the catch is limited and in certain seasons no catch can be obtained. This condition is detrimental to fishermen because in real terms the average income per month becomes smaller.

According to Statistics Indonesia (BPS) data, the number of poor people (people with per capita expenditure per month below the poverty line) in Indonesia until March 2018 reached 25.95 million people or 9.82 percent, decreased by 633.2

thousand people compared to September 2017 of 26.58 million people or 10.12 percent.[2] Even though that number has decreased, poverty problems experienced by Indonesia's people still need serious handling. Of the total number of poor people in Indonesia, fishermen in the coastal areas (more than 22% of the total population) live below the poverty line. According to Mubyarto, Indonesia's fishing community is the poorest of the poor.[3] In particular, the fulfillment of the fishermen's rights becomes the duties and responsibilities of the state with various types of policies to protect the fishermen's interests, as set out in Article 71 of Law No. 39 of 1999 on Human Rights.

Based on the background of the problem, legal issues regarding the fishermen's welfare as state responsibilities can be taken. The legal issues are then elaborated in two problem formulations i.e.:

1. How is the scope of state responsibilities in fulfilling fishermen's rights based on the 1945 Constitution of the Republic of Indonesia?
2. How is the implementation of state responsibilities in fulfilling fishermen's rights?

II. RESEARCH METHOD

This research employs a juridical empirical method which will examine the legal basis of state obligations in fulfilling fishermen's rights as an effort to realize the fishermen's welfare, implemented especially for fishermen in East Java.

III. RESULT AND DISCUSSION

1) The Scope of State Responsibilities in Fulfilling the Fishermen's Rights Based on the 1945 Constitution of the Republic of Indonesia

According to A Dictionary of Law, state responsibility means the obligation of a state to make reparation arising from a failure to comply with a legal obligation under international law.[4] In the *Kamus Besar Bahasa Indonesia*, responsibility means a state of being obliged to bear everything.[5] Sugeng Istianto explains that responsibility is an obligation to provide answers which are calculations of claims for rights by other parties. State responsibilities as referred to in this article include state obligations arising as mandated by the Pancasila and the 1945 Constitution of the Republic of Indonesia to protect the whole people of Indonesia and the entire homeland of Indonesia, and in order to advance public welfare, to develop the nation's intellectual life, and to realize social justice for all the people of Indonesia.

The fishermen's right to welfare is stipulated in Article 28 H paragraph (1) - (3) of the 1945 Constitution of the Republic of Indonesia. Article 28 H paragraph (1) of the 1945 Constitution of the Republic of Indonesia states that "each person has a right to a life of well-being in body and mind, to a place to dwell, to enjoy a good and healthy environment, and to receive medical care". As a consequence, the fishermen's right to welfare has been constitutionally guaranteed, thus

implicating the emergence of state responsibilities in trying to provide the fishermen's welfare through the fulfillment of fishermen's rights.

According to Budi Mulianto, social welfare is "a great achievement in the conditions of human life as a whole in each of his joints, including the condition of social, spiritual and material." [6]

The provisions of Article 28 H paragraph (1) - (3) of the 1945 Constitution of the Republic of Indonesia are followed by the enactment of Law No. 7 of 2016 on Protection and Empowerment of Fishermen, Fish Farmers, and Salt Farmers. The existence of this law shows the earnestness of the government to realize social justice for business development to improve welfare, particularly in the fisheries sector.

With the fishermen's condition whose lives depend on climate and weather to obtain fish resources, it can be ascertained that their life cycle is not in the welfare category because of their erratic income. Problems faced by fishermen as outlined in the elucidation of Law No. 7 of 2016 are a threat to the availability of fuel oil, fish theft, and overfishing.

In view of the structural problems faced by fishermen, inevitably the state must be present to reconstruct and rearrange the development of the fisheries and maritime sector for the interests of small and traditional fishermen. Fishermen need the state to protect and conserve fishery resources as their life support as stated in the Preamble of the 1945 Constitution of the Republic of Indonesia and also affirmed in the provisions of Article 27 paragraph (2) of the 1945 Constitution of the Republic of Indonesia, the substance of which is that "each citizen shall be entitled to an occupation and an existence proper for a human being". This is a guarantee of the right to life and management of fishermen that the capital owners or the state cannot take away.

In addition, state responsibilities are also manifested in the form of legal protection for fishermen. Legal protection is provided for economically and juridically weak people. The concept of legal protection is regulated in Law No. 7 of 2016 which outlines that legal protection is any effort made to help fishermen face difficulties in running fishery businesses.

In Article 3 of Law No. 7 of 2016, the protection of fishermen shall be aimed to:

1. Provide infrastructures and facilities needed to develop businesses;
2. Give sustainable business certainty;
3. Improve the capability and capacity of fishermen; strengthen institution in managing fish resources and marine resources as well as in running self-reliant, productive, progressive, modern and sustainable businesses; and develop the principles of environmental conservation;
4. Develop financing system and institution to serve business interests;
5. Protect fishermen against the risks of natural disaster, climate change and contamination; and
6. Provide security and safety guarantee and legal aid.

State responsibilities are a form of legal protection to realize social welfare goals. Social welfare shall mean a condition fulfills the material, spiritual and social needs of citizens and social welfare as an organized activity in the form of social services that includes rehabilitation, social security, social empowerment, and social protection. [7]

2) *The Implementation of State Responsibilities in Fulfilling the Fishermen's Rights*

Many factors cause the fishermen unable to have a prosperous life, one of which is the fishermen's willingness to rely on natural wealth only. It becomes a complicated problem in developing countries, although most of these countries have succeeded in performing economic and political development. However, on a rural economic scale, coastal communities have not experienced significant changes. Signs of poverty exist, i.e. 1) those living below the poverty line have no factors of production, such as sufficient land, capital or skills, 2) they generally have no possibility to acquire production assets with their own power, 3) The level of education is generally low, most of them do not complete elementary school, 4) the fishermen's living habits which do not take into account their future needs, 5) small capital ownership, and 6) the lack of economic institutions' role in distributing results. In addition, technological factors also have an important role.

At present, many fishermen still experience limited fishing technology. Employer fishermen having a fairly sophisticated fishing vessel equipped with fishing technology do not experience much difficulty. However, in terms of catches for small and traditional fishermen, it is quite worrisome. As a result of simple and traditional fishing gears, the operation area has become limited i.e. only around coastal waters. Even more important is that fishing activities are strongly influenced by season changes. Season changes cause fishermen unable to go fishing at any time, especially in the wave season which can last more than one month. As a result, the catch is limited and in certain seasons no catch can be obtained. This condition is detrimental to fishermen because in real terms the average income per month becomes smaller.

The government has tried to improve the fishermen's welfare through a policy based on Article 30 of the Law of the Republic of Indonesia No. 7 of 2016 on the Protection and Empowerment of Fishermen, Fish Farmers, and Salt Farmers and the Regulation of the Minister of Marine Affairs and Fisheries No. 18 of 2016 on the Protection for Risk Protection to Fishermen, Fish Farmers, and Salt Farmers. In the regions, the Regional Government of East Java Province enacted East Java Provincial Regulation No. 3 of 2016 on the Protection and Empowerment of Fishermen.[8] One of the programs is to provide insurance for fishermen. The fishermen's insurance is a form of government appreciation by providing protection rights for fishermen as part of the fulfillment of human rights as set out in Article 40 of Law No. 39 of 1999 on Human Rights stating that everyone has the right to a place to live and the right to an adequate standard of living. It is supplemented

by Article 41 paragraph 1 stating that everyone has the right to the social security necessary for an adequate existence and for the development of his well-being. The government needs to issues certain policies because the government has the duties and responsibilities under Article 71 of the Law on Human Rights. Associated with the government's responsibilities, the provincial governments' responsibilities for the protection of fishermen include 1) the provision of fishery business infrastructures; 2) access to fishery business facilities; 3) guarantee of business certainty; 4) insurance for the risks of fishing; 5) the abolition of high-cost economic practices and access to obtain fishing vessel documents and fishing license; 6) safety guarantee; and 7) legal facility and aid for fishermen. The provision of insurance is one form of responsibility for the fishermen's protection (vide Article 4 of East Java Provincial Regulation No. 3 of 2016 on the Protection and Empowerment of Fishermen).

The fishermen's insurance is one form of the embodiment of the state responsibilities to improve the welfare of fishermen and their families. The fishermen's insurance as the government program is life insurance in which claims will be given when the insured fishermen loss their lives. The insurance claims will later be given to families left behind. With the fishermen's insurance, families left behind will not experience a more painful life.

IV. CONCLUSION

The fulfillment of citizens' rights, especially fishermen, to realize welfare as stipulated in Article 28 H paragraph (1) - (3) of the 1945 Constitution of the Republic of Indonesia and Law No. 7 of 2016 has confirmed state responsibilities under Article 71 of Law No. 39 of 1999. Second, an example of implementation of state responsibilities happens in fishermen in East Java. The Regional Government of East Java Province enacted East Java Provincial Regulation No. 3 of 2016 on the Protection and Empowerment of Fishermen as a follow up of Article 30 of Law No. 7 of 2016 and the Regulation of the Minister of Marine Affairs and Fisheries Number 18 of 2016. The concrete measure is by providing insurance for fishermen.

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