

Application of Customary Law as One of the Strategies to Protect and Save Marine Life

Ferawati Ferawati*, Davit Rahmadan

Faculty of Law

University of Riau

Pekanbaru, Indonesia

*ferawati@lecturer.unri.ac.id

Abstract—Efforts to protect the sustainability and sustainability of marine biota are not enough just to imposing criminal sanctions in prison on perpetrators who violate the rules, because the application of imprisonment as a crime prevention policy still has several weaknesses, besides that imprisonment does not contribute to efforts to repair the damage or impacts caused. One strategy that can be done in the context of protecting and saving marine biota is to collaborate with the legal rules made by the State with the rule of law that lives in the community (living law) or known as customary law. One of the areas that still maintains customary law and the values of local wisdom in managing and utilizing marine life is the Riau Coastal fishing community. The type of research conducted is normative-empirical legal research (applied law research). The results of this study conclude that, (1) the existence of habits that have become the legal culture of the community can be adopted as a source of law which is expected to support efforts to preserve marine life. (2) In an effort to develop the value of local wisdom, it is necessary to involve the community in the hope that it will have a positive impact on reducing the level of ecological damage, the loss of biodiversity and the disappearance of local wisdom values prevailing in the community.

Keywords—marine biota, customary law, malay, coastal

I. INTRODUCTION

Indonesia is an archipelagic country consisting of 13,466 islands with a land area of 1,922,570 km² and a water area of 3,257,483 km² [1]. Indonesia has a very large potential of marine biota resources with a diversity level of about 3000 species of marine or freshwater fish. Coastal and marine areas are Indonesia's economic potentials that need to be developed. This is because coastal and marine areas constitute 63% of Indonesia's territorial area. It contains a wealth of diverse natural resources, such as fisheries, coral reefs, mangrove forests, oil and gas, mining and mineral materials, and tourism areas [2].

With the diversity of marine life that is owned, if used in the right way, it will certainly have a positive impact on improving the economy of people who work as fishermen. In reality, there are 4 types of fishermen [3] in carrying out its activities at sea, namely:

- The first type continuously exploits fishery resources and marine biota without understanding their boundaries;
- The second type exploits fishery resources and marine biota, accompanied by damaging coastal and marine ecosystems, such as clearing mangrove forests and taking coral reefs and sea sand;
- The third type exploits fishery resources and marine biota in destructive ways, such as fishing groups that carry out fish bombing, dissolving potassium cyanide, and operating nets that damage the environment, such as trawling or mini-trawl;
- The fourth type is exploiting fishery resources and marine biota combined with conservation actions, such as fishermen who make arrests accompanied by policies for conserving coral reefs, mangroves, and operating environmentally friendly nets.

The actions taken by fishermen of the first, second, and third types, include types of violations that can damage the balance of the ecosystem. Various efforts have been made by the State of Indonesia to protect fish resources and marine biota, for example by including criminal sanctions in the legislation in the field of fisheries, but they still do not cause a deterrent effect. There is sufficient evidence, so it is very difficult to catch the perpetrators. In addition, the current fisheries management regulations have not been fully able to prevent the motivation and actions of fishermen from competing in catching fish (race for fishing) [4]. For this reason, a comprehensive approach is needed to solve this problem. One of them is to apply customary law [5].

Some areas in the coastal areas of Riau Province in the activities of utilizing marine biota are still able to maintain a balance between ecological sustainability and economic goals, efforts to protect and save these marine biota in these coastal areas are carried out by applying customary law and community participation. Based on these circumstances, the researchers are interested in conducting research related to customary law governing the management and utilization of fish resources and marine biota, the purpose of this research is

to obtain information on ways that can be taken as an effort to protect and save marine biota. So that the results of this study contribute to overcoming the weakness of the legislation and law enforcement through the imposition of imprisonment and fines. The results of this study can also be used as a model of legal policy that is able to provide protection for the sustainability of fish resources in the future.

II. RESEARCH METHODS

This type of research is normative-empirical law research (applied law research). The data is obtained by conducting library research to obtain theoretical conceptions or doctrines and laws and regulations as well as scientific works related to the problem under study. And carried out field research to get an explanation of the form of protection and rescue of marine biota through the mechanism of Malay customary law which is still applied by the coastal community of Riau.

Sources of data in conducting library research are:

- Primary Legal Materials: "The 1945 Constitution of the Unitary State of the Republic of Indonesia", Law on Fisheries
- Secondary Legal Materials: Journals and scientific works from legal experts related to the research theme.
- Tertiary Law Materials: legal dictionary

The technique of collecting field research is carried out by observing several coastal areas in the province of Riau, which are still able to preserve the ecosystem and marine life. Data collection was also carried out by conducting interviews with Regional Commands, customary leaders, communities and fishermen living in coastal areas. The purpose of the observations and interviews was to obtain information about the ways and efforts being made to protect and save marine life in their area.

The analysis used in this study is content analysis, which is an analysis carried out by making an objective, systematic study and carrying out a special identification of the contents of documents or legal materials and the results of observations and interviews obtained from sources, while the analytical thinking technique uses deductive thinking techniques, inductive and comparative.

III. RESULTS AND DISCUSSION

Various efforts have been made by the State of Indonesia to protect fish resources and marine biota, for example making laws and regulations in the field of fisheries and including imprisonment for perpetrators. Based on the provisions of Law Number 45 of 2009 concerning Fisheries, there are several acts that are categorized as offenses or criminal acts as regulated in Articles 84 to 101 [6]. The offenses are pollution offenses, destruction of fish resources and fishing using explosives, offenses for managing fish resources and offenses for fishing business without a permit. The threat of punishment for

perpetrators of criminal acts in the field of fisheries according to the legislation is imprisonment and a fine.

Although the Law on fisheries has included imprisonment and fines for perpetrators of criminal acts in the field of fisheries, criminal acts in the field of fisheries continue to occur so that damage to ecosystems and marine biota cannot be avoided. The use of criminal law with criminal sanctions often raises several problems, [7]. According to Inkeri Anttila, this has been going on for years (8) and according to Herbert L. Packer, the effort to control anti-social acts by imposing criminal penalties on perpetrators is a social problem [9] this is due to:

- If the perpetrator is criminally processed, the process is very long and there must also be sufficient evidence, so that it is very difficult to ensnare the perpetrator;
- Imprisonment sanctions will cause new problems, namely the problem of overcapacity of Correctional Institutions [10];
- The imposition of prison sanctions is not able to touch the feelings of the perpetrators, so they are still not aware of the negative impact of what they have done;
- Imprisonment sanctions do not have a deterrent effect, because after serving a period of imprisonment the offender repeats his actions;
- The imposition of imprisonment and fines only on perpetrators cannot repair the damage to ecosystems and marine biota that has occurred.

By paying attention to the lack of criminal penalties in providing protection and rescue of marine biota, a comprehensive approach is needed in solving these problems, one way is by applying customary law that involves community participation in an effort to provide protection and sustainable management of marine resources and biota. Prijono [11] states that in Indonesia there are still various forms of local wisdom from indigenous groups who practice traditional ways to manage coastal resources. The existence of customary law relating to the utilization and management of fish and marine biota resources is a normative plurality that actually lives, is embraced, and is still operated by local communities [12].

In some areas in the coastal areas of Riau Province to protect and save marine life by implementing Malay customary law and increasing community participation. The Malay community regulates their lives with customs in order to obtain order, harmony, and mutual prosperity in society [13].

Efforts to protect and save marine life through the mechanism of Malay customary law are carried out in two ways, namely non-penal efforts and penal efforts.

A. *Non-Penal Efforts are as Follows:*

- Carry out community activities aimed at increasing human and community awareness to utilize and manage

marine resources properly, one of which is the “Bele kampung” program.

- Community empowerment, such as providing access to the use of natural resources (forests and marine life) so that people can participate in protecting forests and the sea and feel they own the forest and sea [14].
- Conduct socialization related to the benefits of mangroves because mangrove ecosystems play an important role in the development of coastal fisheries [15]. Mangrove roots are a breeding ground and a place to raise children for several types of fish, shellfish, crabs and shrimp [16].
- Forming Environmental Care Community Groups, one of whose duties is to supervise community activities in utilizing marine biota. Then report to local community leaders or local government if they find perpetrators of violations or destruction of marine ecosystems.
- Giving rewards or incentives to community members who can provide information regarding the existence of illegal fishing actors.

B. Penal Efforts Are As Follows:

TABLE I. RULES AND SANCTIONS ACCORDING TO MALAY CUSTOMARY LAW RELATED TO THE PROTECTION OF MARINE LIFE

Rules in Malay customary law	Sanctions for violations
1. Rules regarding Mangrove logging: a) Mangroves that can be cut are mangroves measuring 6 inches b) Not cutting down mangroves around residential areas c) Cutting only to meet daily needs (not for sale)	1. The imposition and form of sanctions are based on the impact of the damage/loss caused 2. The sanctions imposed are in the form of payment of “DAM” (fines) for the loss / damage caused 3. Fines (“DAM”) are used by the community to improve facilities and infrastructure in the area
2. Rules related to the capture of marine life: d) Prohibition of catching news crabs that are laying eggs e) b. Crab that can be caught weighing 150 grams f) Prohibition of catching baby fish g) Ban on catching turtles and “Blangkas”	4. There is an obligation for the perpetrator to take corrective action or return the damage 5. For perpetrators who violate the rules repeatedly, social sanctions will be imposed in the form of exclusion from social activities and the heaviest social sanction is expulsion/prohibition from domiciled in the area.
3. Prohibition of Disposal of waste and garbage into seas and rivers	
4. Prohibition of using dangerous fishing gear	

The implementation of the imposition of customary sanctions for perpetrators is carried out by the community, led by traditional leaders, the main focus in implementing punishment through this customary law mechanism is to hold the perpetrators accountable for the return of the damage that has been caused, this is very important because marine biota is a regional (state) asset. And if it is damaged it takes a very long time to recover and restore the damage. The responsibility for returning ecosystem damage by these actors has not been clearly regulated in state laws and regulations. So far, the state has only focused on retaliating against the perpetrator's actions by imposing a prison sentence, so that the effect of imposing imprisonment on the perpetrator does not contribute anything to the improvement of ecosystems and marine biota that have been damaged. Although customary law is often considered primitive and outdated, it has value. Positive in the context of community development in an effort to preserve the environment and protect fish resources and marine biota.

IV. CONCLUSION

To protect the sustainability and sustainability of fish resources and marine biota, it is not enough to rely solely on penal efforts (imposing criminal sanctions on perpetrators who violate the rules), but also needs to be collaborated with non-penal efforts (to prevent violations from occurring). Non-penal efforts can be carried out by maintaining customary law that supports efforts to conserve fish resources and marine biota, as well as maximizing community participation in efforts to monitor the utilization and management of fish and marine biota resources.

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