

The Concept of Economic and Social Justice in the Management of Fisheries on the High Seas

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Abstract—This research aims to find the concept of socio-economic justice in the management of fish resources on the high seas. All countries shall have the right to exercise the freedom of fishing on the high seas. So far, countries are not in liberty to compete to be able taking advantage of these rights. This causes fish resources on the high seas to become increasingly critical, causing harm to the environment and to countries holistically. Fish resources on the high seas have exorbitant economic value, while many developing countries, both coastal and landlocked state, have not been able to relish their rights. A fair arrangement is needed so that all countries have the opportunity to enjoy their rights and be responsible to their obligations. The research method used in this research was normative juridical method with the approach employed being philosophical approach. The research conclude that the aspect of economic and social justice is critical in the management of natural resources. Base theory of economic and social justice argues that in the regulation of natural resource management fairness is a rule that can accommodate and protect various differences and provide close attention to the weak. As a result of not fulfilling these principles, the management of fish resources on the high seas is unfair.

Keywords—high seas, economic justice, social justice, fishery

I. INTRODUCTION

Based on the researcher's conducted study, there was little to no research that examines this particular issue, either in Indonesia or at other universities abroad. The result of previous studies that examined fisheries on the high seas was brought by namely Rachel J Baird, with the title being Aspect of Illegal, Unreported, Unregulated Fishing in the Southern Ocean, at Monash University in 2007. This author examines aspects of IUU fishing in territorial waters from the high seas to the south. Shlomi Dinar, Beyond Resorts Wars: Scarcity, Environmental and International Cooperation, examines international cooperation in dealing with the scarcity of natural resources and environmental conservation. Furthermore, Dikdik M. Sodik from Wollongong University in 2008 with the title Combating IUU Fishing in Indonesia: The Need for Regulation Reform, discussed the renewal of national fisheries law regulations in order to prevent and eliminate IUU fishing in

Indonesia. On the other hand, Takey Y.: Filling Regulatory in the High Seas Fisheries: Discrete High Seas Fish Stocks Deep Sea Fisheries and Vulnerable Marine Ecosystems, examines the regulation of fish species that live in the deep ocean, i.e. fish that migrate far out of an ecosystem. Melda Kamil Ariadno in 2011 at Washington University with the title What is The Indonesian Responsibility for High Seas Fisheries? is assessing Indonesia's interests and obligations for fisheries on the high seas.

The right to fisheries on the high seas for all countries is protected by international laws. However, in practice not all countries have the ability to utilize fishery resources on the high seas to the fullest. Countries are competing in utilizing these rights, causing injustice both to the environment, and to the international community alike, this impacts especially for developing countries. During the Roman era, the use of fish resources on the high seas was carried out freely to fulfill a sense of justice, since the technological and economic capabilities of the international community were relatively evenly distributed, but now it has created a sense of injustice. The relationship between law and societal change is how law as a system can maintain its survival or be able to adapt to these changes.

Considering the high economic value of fish resources in the high seas, fish resources have drawn the worldwide interest, therefore a fair level playing field must be developed and be well-managed. Apart from the regulation that must be perfected, the regulation of fisheries management has not been properly enforced, especially against the state of developed countries [1].

Based on the latest developments, environmental ethics apply eco-centrism is developed in the theory of ecological justice. Theory of ecological justice suggests that natural resource management is linked to the aspects of environmental, economic and social justice, however, in this paper the author limits the problem of fisheries management on the high seas exclusively from the aspect of socio-economic justice.

II. RESEARCH METHODS

The research method used in this research was normative juridical method. The research specifications used are analytical prescriptive by using secondary data and primary legal materials in the form of provisions of international law. The secondary legal materials are in the form of various research results with tertiary legal materials being in the forms that support primary and secondary legal materials.

Based on socio legal studies, in this research the problem, it is not only studied from the legal aspect, but also carried out with a philosophical, economic approach, so that this research will not only touch on legal issues, but also economics and philosophy, making this study an interdisciplinary research.

III. DISCUSSION

A. *The Interests of Landlocked State and Developing Countries in the Utilization of Fish Resources on the High Seas*

The definitive depiction of landlocked state, according to Article 124 of the 1982 Law of the Sea Convention is as follows: "Landlocked State means a State, which has no sea coast". In the present times, there are 48 countries that are characterized as landlocked states, with the distribution as follows; 16 countries are located in Africa, 15 countries are in Europe, 15 countries in Asia and 2 other being in Latin America [2]. These countries, due to their geographical locations bordered by their neighboring countries, render them the absence of beaches, often times these are referred to mainland countries as well. Until now there has been no adequate international legal arrangement that closely pay attention to these countries in terms of access to the sea, especially in accessing the natural resources in the sea themselves. The majority of landlocked countries are those with the lowest economic development in the world. It can also be noted that based on the 2003 United Nations Economic Development Report that 9 out of 12 landlocked countries have the lowest human development index scores, while 25 out of 48 landlocked countries are classified with low economic development index scores [3].

In regards of developing countries in the world, they are spread over three continents, namely Asia, Africa and Latin America [4]. Based on the 2003 World Bank report that 80 percent or four fifths of the world's population are coming from developing countries. The gap in economic development between developing countries and developed countries is seemingly large. A large proportion of economy is controlled by 15.6 percent of the world's population. This shows that international law needed to accommodate all interests of the world, especially the interests of developing countries.

Based on the 1982 law of the sea Convention (UNCLOS), access of landlocked States to fish resources is accommodated on the high seas and the Exclusive Economic Zone (EEZ) of coastal countries. On the high seas, all countries, both coastal and landlocked, have the right to exercise freedom of fishing.

Meanwhile, in the EEZ for landlocked and geographically disadvantaged states, the right of access to fishery surplus applies. This right is implemented not only paying attention to economic and social benefits but also the sustainability of fish resources in the EEZ [5].

In practice, the right of access to fishery surplus in the EEZ cannot be implemented in accordance with the purposes and provisions of the UNCLOS 1982. By and by, the right of admittance to fishery surplus is completed by coastal nations in participation with other seaside countries which are long-distance fishing ones like America, South Korea, Japan, Australia and others. This is due to coast-less nations are generally non-industrialized fishing countries and do not have enormous fishing armadas. These rights, both the opportunity to get fish on the high seas and the option to get to fishery surplus in the EEZ, require hefty marine innovation. Along these lines, the entrance of landlocked State to fish resources is relatively very limited in addition to the constrained capacity of the nations concerning in mastering the marine innovation, as well as the arrangements of worldwide law of the ocean that are considered as not adequate to ensure the interests of landlocked State [6].

To accommodate the privileges of landlocked State for their inclinations in the ocean, it is not sufficient to just adopt a legal strategy, it likewise needs an economic approach [7]. This is as expressed by R.J Dupuy that in the guideline of global law of the ocean for reasons of the circumstance and state of the nations on the world cannot be generalized. As an answer for the present circumstances, an economic approach is required. Based on economic and geographical considerations, landlocked States that are categorized as developing nations are granted the status of having the Preferential Right to Access the Sea and the right compensating for geographical inequalities [8]. However, until now there has been no elaboration of the provisions of international law governing this matter. The 1982 Law of the Sea Convention does not accommodate the interests of landlocked and geographically disadvantaged countries, which are developing nations, to fully access and utilize marine natural resources.

B. *Socio-Economic Justice in the Framework of Ecological Justice*

Recent developments related to natural resource management are based on the eco-centrism environmental ethics developed in the theory of ecological justice. Ecological justice explains that in an environment that includes living things including humans and their behaviors, animals, plants and inanimate objects (abiotics), namely power, objects and circumstances, interact with each other to produce a life. Each of these environmental elements has a role in realizing life, so that each has a value. The relationship between living things (biotic) with each other and with abiotic ones, namely between humans and humans and also humans and non-humans including abiotic must be set as fair. The relationship between these environmental elements that must be just is what Briant Baxter put forward as ecological justice [9]. Ecological justice

is built on 2 objectives of justice, namely environmental justice and justice for environmental benefits. Justice for environmental benefits is often referred as socio-economic justice.

Fish resources in the high seas have high economic value intended for all nations in the world. Because it concerns the worldwide interest, its management must be fair. In the framework of ecological justice, economic and social justice is a key aspect that must be considered, because of its involvement in the distribution of environmental benefits. Distributive justice within the framework of ecological justice in addition to natural resources, function as ecological objects, and also as economic and social objects [10]. These functions are also described in the principles of sustainable development [11]. Jenifer Elliott stated that the goal of sustainable development is the harmonization of ecological, economic and social goals [12]. Ecological goals are related to productivity and environmental resilience which translates into intra-generational justice, while economic goals are related to efficiency and poverty reduction, and social goals are commonly referring to social justice, equity and participation. The conceptions of global environmental justice, The argument is that the justice demanded by global environmental justice is really threefold: equity in the distribution of environmental risk, recognition of the diversity of the participants and experiences in affected communities, and participation in the political processes which create and manage environmental policy [13]. This is understandable because even though the world is legally divided, the environment is one unit. So it is not only the risk that is shared, the environmental benefits must also be able to provide benefits equitably.

Several philosophers who discuss justice in a socio-economic context include Aristotle, Adam Smith and John Rawls. According to Rawls, justice is honesty (justice fairness) and the first role of justice is virtue. The role of justice is not only determined by mutually agreed values that are the prerequisites, but also issues of coordination, efficiency and stability that guarantee every individual (cursive writer of legal subjects) can achieve social needs [14]. Still according to John Rawls, to minimize social and economic disparities in society, it is necessary to carry out 2 principles, namely: [15] "(a) to the greatest benefit of the least advantaged, consistent with the just savings principle, and (b) attached to offices and positions open to all under conditions of fair equality of opportunity". Conceptually, justice according to John Rawls is a measure that must be given to achieve a balance between personal and common interests. His argument is based on Equal Rights and Economic Equality, this is established on three principles of justice, namely: [15] "(1) The principle of the same freedom as much as possible, (2) The principle of difference and (3) The principle of fair equality of opportunity. His theory of justice can be drawn within the framework of international relations".

In the context of relationships amongst countries, this principle of difference sees the existence of heterogeneous conditions. He also argues, that justice is not only based on the principle of freedom for homogeneous conditions where the

principle of freedom can be applied, but also in heterogeneous situations where it is necessary to apply the principle of difference with the aim of protecting the weak or disadvantaged ones. Thus Rawls's theory of justice is situated on the basis of morality, namely human consciousness as a reflection of conscience. His notion of justice seems to want to create a change in the socio-economic structure in such a way that provides benefits to the most disadvantaged parties, so that the socio-economic gap becomes narrower. His study also indicates that we can compare how is justice proposed by Aristotle and Adam Smith. In his rhetoric writings, Aristotle distinguishes justice in two types, namely distributive and commutative justice [16]. The basic principle of distributive justice where it is often called as economic justice, it is related to the distribution of economic wealth. A fair distribution according to Aristotle is to use an economic distribution based on merit. Aristotle can accept socio-economic injustice as just, as long as it is in accordance with merit. Likewise, the difference between rich and poor, which is in line with achievement, must be considered as fair. Distributive justice does not justify the principle of equal distribution of economic wealth, those who managed to have achievements must be rewarded. Thus it is safe to say that distributive justice is an economic distribution based on the achievements or roles of each in pursuing its goals [17].

In the context of managing fish resources on the high seas, according to Aristotle's teaching on distributive justice, how much benefit is enjoyed by countries, the country that possesses large achievements or contributions will receive great benefits in accordance to its role or achievements. With this definition by Aristotle, the justice will give birth to free competition (liberal international society) as it is currently happening in the international community. Aristotle's teachings of justice do not see the existence of various things or limitations to each other that can distinguish the legal subjects so that they are heterogeneous. In contrast to the justice proposed by John Rawls, which applies the principle of difference with the aim of providing protection for the weak, justice based on merit cannot provide protection to the weak. As a result of free competition, the gap between the strong or the rich and the weak or the poor will widen.

Commutative justice on the other hand, demands that social interaction between citizens of one another should not be harmed by their rights and interests. This means that the principle of commutative justice requires that each subject (person/state) respects and guarantees what is the right of the other party. This marks that commutative justice in the context of natural resource management is acceptable. Based on the notion of commutative justice, the use of fish resources on the high seas by the state must pay attention to the rights of other countries to enjoy the same rights. Therefore, based on commutative justice, good law is a law that can guarantee the rights of the international community as a whole to be able to enjoy the same rights and carry out the same obligations. Adam Smith's concept of justice has similarities with the concept of justice proposed by Aristotle. But what Adam Smith can accept from Aristotle's theory of justice is the concept of commutative

justice. Adam Smith further stated that commutative justice consists of three principles, namely the principle of no harm (no harm principle), the principle of non-intervention, and the principle of exchange justice [18].

The theory of justice put forward by Adam Smith was criticized by John Rawls, according to John Rawls the free market actually creates injustice [19]. The most obvious injustice of the liberty system as proposed by Adam Smith is that it allows the distribution of wealth to be inappropriately influenced by natural and social conditions which from a moral point of view that is so arbitrary. Both Aristotle's and Adam Smith's theories of justice are essentially based on merit, so that the weak do not get protection in exercising their rights and obligations. John Rawls in his theory of justice emphasizes that all subjects have the same freedom and rights to access economic resources, but at the same time there must be arrangements that provide protection for the weak. John Rawls is very observant of the heterogeneous nature of society, so that it is impossible to generalize. This part is not the concern of the teachings of justice Aristotle and Adam Smith.

In the context of managing fish resources on the high seas, considering developments in the international community is a challenge that must be faced by all nations in the world. It requires progressive laws that can resolve these challenges. This is as Roscoe Pound's teaching on law, which according to him that good law is law that is in accordance with the development of society, which can provide protection for the interests of the community [20].

Rawls's theory of justice solely focuses on how to distribute rights and obligations equally in society so that each party has the opportunity to take the benefits or bear the same burden. To ensure a fair distribution, the first principle of justice which serves as a guide must be the result of a fair agreement [21]. Rawls's thinking, if we relate it to international law as a political product, is the result of an agreement by the international community. International law will provide guarantees of justice if it is based on the results of a fair agreement. The theory of justice as stated by John Rawls, namely the principle of difference, its application in international society demonstrates that it is necessary to pay attention to heterogeneous conditions. Based on these principles, the law related to the management of fish resources on the high seas must be established in the context of a heterogeneous international community, the law plays a role so that all interests of countries that have differences between each other can be accommodated based on the inherent rights of each country (right-based weight). The role of law provides a guarantee that all members of the heterogeneous international community can carry out their rights and obligations properly.

IV. CONCLUSION

The socio-economic justice is embodied in intra-generational justice which seeks not only to ensure that one generation has guaranteed rights and obligations to fishery

resources on the high seas, but also it must be built to protect the interests of the international community as a whole by taking into account the diversity and participation in setting political policies. In this context the international law function is to protect all interests by accommodating the differences between countries based on the inherent rights of each country. To ensure the interests of the international community, international law must be developed by putting into consideration the heterogeneous conditions of the international community and it must go along with its development that often times also pays attention to aspects outside of the law.

REFERENCES

- [1] N. Lindie, "High Seas Fisheries Governance: A Framework for the Future?" in *Marine Resources Economic* Vol 21, USA, 2007, P. 342.
- [2] Landlocked Countries, Google.com October 12, 2020
- [3] U. Kishor, *The Transit Regime for Landlocked States*, The world Bank, 2006, p. 14.
- [4] S. Sadono, *Ekonomi Pembangunan, Edisi ke-2*, Jakarta, Kencana Prenada Media Group, 2011, p., 14.
- [5] R. G. Pohl, *The Exclusive Economic Zone in the Light of the Negotiations of the Third United Nations Conference On The Law Of The Sea*, in Francisco Orrego Vicuna., (ed), "The exclusive Economic Zone A Latin American Perspective", p., 53.
- [6] Irawati, *Model kebijakan Pemerintah dalam Pengaturan Pemanfaatan Sumber Daya Hayati oleh Negara asing di Wilayah Pengelolaan Perikanan Indonesia*, "Jurnal Ius Quia Iustum", Vol 20 No 1 2013, P., 59-80.
- [7] Kishor Uprety, *Op.Cit* P. 28-35.
- [8] Kishor Uprety, *Op.Cit* P. 37.
- [9] B. Baxter, "A Theory of Ecological Justice", London, Routledge, 2005, P., 8- 10.
- [10] A. Hildering, *International law, Sustainable Development and Water Management*, Eburon Publisher, 2004, p., 73, 95, 123.
- [11] N. Schrijver and F. Weiss, "International Law and Sustainable development principle and Practice", Martinus Nijhoff Publisher, 2004, P. XII
- [12] A. E. Jennifer, "An Introduction to Sustainable Development". London, Routledge, 2006, p., 12
- [13] D. Schlosberg, "Reconceiving Environmental Justice: Global Movements And Political Theories", *Politics and Relations journals*, 2007, P.507.
- [14] J. Rawls, *A theory of Justice*, Oxford University Press, Oxford, 1992, P., 272.
- [15] S. Freeman, Rawls, Routledge publisher, London, 2007, p. 86.
- [16] F. Iswari, *Pengertian Keadilan* posted in April 2013, accessed from google.com, May, 2021
- [17] K. Soetoprawiro, *Keadilan sebagai Keadilan (Justice as Fairness)*, "Jurnal Hukum Pro Justitia", Oktober 2010, vol 28, no 2, p. 235.
- [18] A. S. Keraf, "Keadilan, Pasar Bebas dan Peran Pemerintah", Kanisius publisher, Yogyakarta, 1999, P., 146
- [19] R. Irianti, *Pengaturan dan Implementasi Sistem Pengupahan Bagi Para Pekerja Dalam Hukum Ketenagakerjaan positif Indonesia*, Unpad Disertation, 2009, p. 115.
- [20] L. Rasjidi, I. Thania, "Pengantar Filsafat Hukum", Bandung, publiser Mandar Maju, 2009, P., 80.
- [21] A. A. Ujan, *Keadilan dan demokrasi Telaah Filsafat Politik John Rawls*, Yogyakarta, Kanisius publisher, 2001, p., 40-42.