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Integration of Fisheries Law Enforcement Regulations in the Indonesian Maritime Zone

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***Abstract*—This research is important to integrate the regulation of fisheries law enforcement in the Indonesian maritime zone, taking into account the existing condition is still not integrated. This condition is the result of the objective conditions of fisheries law enforcement institutions that are still carried out by many institutions that were formed and given the task and authority to implement fisheries law enforcement in the Indonesian maritime zone based on the legal basis for the establishment of each of these institutions. The regulation of fisheries law enforcement that has not been integrated has the impact not only of being ineffective in achieving the goals and objectives of law enforcement but also becoming inefficient in the use of its operational budget originating from one budget source. This research was carried out using a normative juridical approach oriented to a holistic study in which the legal disciplines received assistance from related disciplines. Analysis of the object of research is carried out through legal analysis. Data collection techniques, apart from the literature study, also conducted field visits to obtain secondary data. The results of this study are the formulation of an Integrated Model of Fisheries Law Enforcement Regulations in the Indonesian Maritime Zone.**

Keywords—enforcement, environmental, fisheries, law, maritime, regulation, sustainability

I. INTRODUCTION

In the Unitary Republic of Indonesia, the geographical condition is archipelagic States, which consists of a territory of land, and air, most of the water area. Sovereignty of the Republic of Indonesia in Indonesian Waters, as well as Sovereign Right in other maritime zones such as the Exclusive Economic Zone of course not only must be maintained but also must be able to provide benefits for the greatest prosperity of the Indonesian people. The focus of this research is on aspects of law enforcement regulation in the Indonesian maritime zone to protect, save, preserve, and utilize it to realize environmental sustainability in Indonesia.

The researcher thinks that the substance of Article 73A of the Fisheries Law which gives the same authority to three agencies (KKP, TNI-AL, and Polri) is not appropriate, because it holds the potential for conflict, especially if it is not accompanied by the regulation of the implementation mechanism as described above. still happens in practice to this day. In practice, there are even several other institutions or bodies that have overlapping authority in law enforcement in the Indonesian maritime zone, namely: the Directorate General of Sea Transportation, the Directorate General of Customs and Excise, the Maritime Security Agency, and the Arrest Eradication Task Force Illegal Fishing.

The Ministry of Maritime Affairs and Fisheries (KKP), the Indonesian Armed Forces, Naval Forces (TNI AL), and the Indonesian National Police (Polri) in carrying out these authorities are required to apply the principles of fisheries management as regulated in Article 2 of the Fisheries Law, including a) the principle of cohesiveness; b) the principle of efficiency.

Importance (urgency) this study done consideration of the facts (das sein) aspects of the institutions involved in the enforcement of fisheries which still involves many agencies with the same authority in the absence of integration of the system in its implementation, and considering also the facts (das sein) the vulnerability to violations of Indonesian Marine Fisheries Resources, whether in the form of destructive fishing, illegal fishing, or violations of protected fish species whose numbers are still high, of course, requires a concept of solutions to overcome them, especially in the aspect of law enforcement arrangements.

II. METHODS

This research was carried out using a juridical-normative approach oriented to a holistic study, namely that the science of law received assistance from related disciplines. Analysis of the object of research is carried out through legal analysis.

III. RESULTS AND DISCUSSION

Law enforcement must be done comprehensively, the enforcement of the legal system in all over, which according to Lawrence M. Friedman [1] includes components as follows: 1) legal structure (institutional arrangements and institutional performance); 2) legal substance (legal material); and 3) legal culture. Thus, the regulation of law enforcement against violations in the supervision of the conservation of marine fishery resources associated with the principle of

environmental sustainability must necessarily include the regulation of the three components:

A. Regulation of the Institutional Aspects

The institutional aspects involved in law enforcement efforts adjust to the law enforcement path, according to GP Hoefnagels [1], broadly it is divided into two parts, namely: 1) the penal route (crime prevention using criminal law), which focuses more on nature repressive or prosecution after the crime has occurred; and 2) the non-penal route (crime prevention efforts by using means outside the criminal law), which focuses more on the nature preventive or prevention before the crime occurs.

Taking into account the opinion of GP Hoefnagels, specifically for the Indonesian national scope, regulating the institutional aspects involved in enforcing fisheries law in the Indonesian maritime zone, it is clear that there are many institutions that have been formed and given the task and authority to implement fisheries law enforcement in the Indonesian maritime zone, namely: 1) Polri, through the Ditpolair (Law Number 2 of 2002 concerning the National Police of the Republic of Indonesia, Article 3 Paragraph (1), Article 5 Paragraph (1), Article 14 Paragraph (1) letter g, Article 16; Perkapolri Number 22 Year 2010 concerning Organizational Structure and Work Procedures at the Regional Police Level Article 6 letter f; Article 73A of the Fisheries Law; 2) Directorate General of PSDKP (including PPNS), Fisheries Law Article 1 point 24, Article 7 Paragraph (1), Article 9, Article 66 , Article 66C, Article 73A, Article 73B, Article 73 Paragraphs (1) and (2); 3) TNI AL, Law Number 34 of 2004 concerning the Indonesian National Armed Forces Article 9; Article 73 of the Fisheries Law; Article 73A of the Fisheries Law; Article 73B of the Fisheries Law; 4) Directorate General of Sea Transportation (including PPNS), Law Number 17 of 2008 concerning Shipping Article 1 point 1, Article 276, Article 277, Article 278; Article 226 Paragraph (1) Regulation of the Minister of Transportation (Permenhub) Number KM60 of 2010 concerning Organization and Work Procedure of the Ministry of Transportation; Articles 227 and 228 of Permenhub Number KM60 of 2010; 5) Directorate General of Customs and Excise, Law Number 17 of 2006 concerning Amendments to Law Number 10 of 1995 concerning Customs Article 1 point 1, Article 1 number 2, Article 75, Article 76; 6) Prosecutor's Office, Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia Article 2, Article 30; Article 76 of the Fisheries Law; 7) Fisheries Court, Law Number 48 Year 2009 concerning Judicial Power Article 1 point 1, Article 1 point 8; Article 71 of the Fisheries Law, Article 71A of the Fisheries Law, Article 78 Paragraph (1) of the Fisheries Law; 8) Correctional Institutions, Law Number 12 of 1995 concerning Corrections Article 1 point 3, Article 2, Article 3; 9) Maritime Security Agency (Bakamla), Law Number 32 of 2014 concerning Marine Article 59 Paragraph (3), Article 63, Article 67; Presidential Regulation Number 178 of 2014 concerning Maritime Security Agency Article 1, Article 2, Article 3; 10) Task Force 115, Presidential Regulation of the Republic of Indonesia Number 115 of 2015 concerning the Task Force for the Eradication of Illegal Fishing, Considering Perpres 115, Article 1, Article 2, Article 3, Article 4.

B. Regulation of the Legal Material Aspects

Regulation of the legal material aspects of the supervision of the conservation of Marine Fisheries Resources in Indonesia refers to the written legal substance (Legislation) that regulates the supervision of the conservation of Marine Fisheries Resources in Indonesia, under the hierarchy of the laws and regulations in force in Indonesia, including various related international agreements, both those that have been ratified by Indonesia (hard law) and those in the form of state commitments that are adhered to and implemented by countries (soft law).

If attention to the authentic meaning of the Legislation contained in Article 1 point 2 of Law Number 12 of 2011 concerning the Establishment of Legislations, then when talking about the substance (material) of the Legislation, it will be related or closely related to the process system and procedures the establishment of Legislation.

Indicators for assessing a Legislation (in this case specifically those that regulate the supervision of marine fisheries resources conservation in Indonesia) can be called good or not good, as can be seen from several indicators, as follows: 1) the process of its formation; 2) the norming; 3) the preparation technique; 4) implementation; and 5) its enforcement.

The results of the study indicate that the discrepancy (gap) between the requirements (das solen) contained in the laws and regulations, especially in the field of supervision of the conservation of Marine Fisheries Resources and the facts (das sein), occurs mainly due to the lack of good implementation and not good in enforcement.

Harmonization of laws and regulations is important to achieve orderly implementation of laws and regulations in the field of supervision of the conservation of marine fisheries resources, both vertically and horizontally. The harmonization of laws and regulations in the field of supervision of the conservation of marine fisheries resources has an urgency about the principle of lower laws and regulations that may not conflict with higher level laws and regulations. The reality in practice, when forming a statutory regulation, often forgets not to harmonize both vertically and horizontally, so that the resulting legal products often have inconsistencies with other related laws and regulations.

Similarly in the case of law enforcement, in line with the opinion of Lawrence M. Friedman, law enforcement supervision of marine fisheries resources conservation should be done in an integrated manner covering the entire legal system, which includes the legal structure, legal substance, and the legal culture. In practice, integrating the three elements of the legal system is not easy or still difficult to realize.

C. Regulation of Legal Culture Aspects

According to Hadikusuma [2], legal culture is the same general response of certain people to legal phenomena. The response is a unified view of legal values and behavior. So, a legal culture shows the pattern of individual behavior as members of the community that describes the same response (orientation) to the legal life that is lived by the community concerned.

Another opinion was expressed by Soerjono Soekanto [2], that what is meant by legal culture is the totality of factors that determine how the legal system acquires its logical place within the cultural framework of the general public. Legal culture is not what anthropologists call public opinion, culture does not simply mean a collection of independent fragments of behavior (thoughts), the term culture is defined as the whole of social values related to law.

MS Lubis [2] found in the practice of a life of the state, nation, and society, fundamentally, the dimensions of culture should precede the other dimensions, because the cultural dimension was stored set of values system. Furthermore, the value system is the basis for policy formulation and then followed by the manufacture of the law making as signs of juridical and code of conduct in public life every day, which is expected to reflect the great value that is owned by the nation concerned. If attention to the three elements that make up the legal system according to LM Friedman, the legal culture precedes the other two elements.

Types of legal culture can be grouped into three forms of human behavior in people's lives, namely [3]: a) Parochial culture, in parochial society (short-sighted), the way of thinking of community members is still limited, his response to the law is only limited in his environment, persists in his legal tradition, and the legal rules that have been outlined by his ancestors are talismans that cannot be changed; b) Subject culture, in the subject culture community, the way of thinking of community members already has attention, there has been a general legal awareness of the output of higher authorities; and c) Participant culture, in this type people already feel they have the same position, rights, and obligations in law and government.

Considering the views of mentioned above which states that in the practice of a life of the state, nation, and society, fundamentally, the dimensions of culture should precede the other dimensions since the cultural dimension is stored a set value system, then in the context of Fishery Supervision, it is necessary to involve the community.

The substance of the regulation of community involvement in Fisheries Supervision is contained in the Decree of the Minister of Marine Affairs and Fisheries No. KEP.58/MEN/2001 concerning Procedures for Implementing Community Supervision Systems in the Management and Utilization of Marine and Fishery Resources. This arrangement is motivated by the fact that limited facilities and infrastructure and the number of Fishery Supervision personnel are the main obstacles in achieving optimal monitoring performance, so it is deemed necessary to involve the community in Fishery Supervision activities.

The Community Based Supervision System (SISWASMAS) is a monitoring system that involves the active role of the community in supervising and controlling the responsible management and utilization of marine and fishery resources, to obtain sustainable benefits. The scope of SISWASMAS activities includes: a) Establishment of the SISWASMAS Network, and b) Empowerment of POKMASWAS and Capacity Building of Supervisory Groups.

The cultural approach to law enforcement in marine areas is in line with the principles of Environmental Sustainability. The principle of Environmental Sustainability has long been known in International Environmental Law, which in the national scope is better known as Local Wisdom contained in Article 1 number 30 of Law no. 32 of 2009 concerning the Protection and Management of the Environment, that: "Local wisdom is the noble values that apply in the life of the community to, among other things, protect and manage the environment in a sustainable manner". For the community group, it is better known as Indigenous People. The principle of Environmental Sustainability is morality approach for certain community groups in certain areas in viewing and treating the surrounding environment. Local Wisdom is in line with or under global regulations in International Environmental Law, because the spirit and values contained in Local Wisdom are universal, even though they come from local but have a global perspective.

Juliani [4] explains that local wisdom (indigenous knowledge) is related to the customs and intellectual property of local communities. Local wisdom is generally owned by people living in rural areas, including coastal communities based on fishery resources that are vulnerable to risk and uncertainty. Examples of local wisdom of fishing communities in the coastal area of East Kutai [4] in carrying out fishing activities are studied based on the beliefs and taboos of fishing communities, either before, during, or after fishing activities. Likewise, local knowledge and techniques of fishing communities related to fishing gear, boats/ships, and fishing patterns. Apart from that, ethics and rules related to the profit-sharing system and marketing of the catch are also studied, as well as various forms of natural resource management (forest and waters), local institutions, and so on related to the local wisdom of the community.

To realize the principle of Environmental Sustainability, in International Environmental Law there are several principles to ensure its enforcement, as follows [5]: 1) the principle that states have sovereignty over their natural resources and the responsibility not to cause transboundary environmental damage; 2) the principle of preventive action; 3) the principle of co-operation; 4) the principle of sustainable development; 5) the precautionary principle; 6) the polluter pays principle, and 7) the principle of common but differentiated responsibility.

The principle of Environmental Sustainability as a morality approach emphasizes preventive action, as adopted by the

Arbitration Tribunal in the case Iron Rhine, and later confirmed by the International Court of Justice in the case Pulp Mills.

The approach through preventive action has been directly or indirectly accepted through the 1972 Stockholm Declaration, the 1978 UNEP Principles, the 1982 World Charter for Nature, and the 1992 Rio Declaration. In Principle 11 of the 1992 Rio Declaration and in several Other related international agreements emphasize to countries establishing effective environmental arrangements, to prevent [5] the extinction of species of flora and fauna; 2) the spread of occupational disease, including radioactive contamination of workers; 3) the introduction and spread of pests and diseases; 4) pollution of the seas by oil, radioactive waste, hazardous waste and substances, from land-based sources, or from any source; 5) pollution of water resources generally, and of rivers; 6) radioactive pollution of the atmosphere; 7) hostile environmental modification; 8) adverse effects of activities that prevent the migration of species; 8) water pollution; 9) modification of the ozone layer; 10) degradation of the natural environment; 11) all pollution; 12) significant adverse environmental impacts; 13) transboundary impacts generally; 14) loss of fisheries and other biodiversity, including as a result of the release of genetically; 15) modified organisms; 16) damage to health and the environment from chemicals, persistent organic pollutants; 17) production technologies and ship recycling; 18) hazards created by ship wrecks; and 19) the effects of natural hazards, in particular of climate change.

Based on the concept of human ecology, two important things must be balanced, namely: 1) utilization of natural resources; and 2) environmental impact management. In realizing these two things, it must be perceived that both the use of natural resources and the management of environmental impacts are human interests with the same degree of importance. The sea and its contents, including the marine fisheries resources, are elements of natural resources that need to be utilized to increase the degree of human prosperity. However, in its use, it must not sacrifice the environment, because the quality of the environment is very important for humans to carry out their lives. From the concept of human ecology, the principle of is then developed sustainable development which places more emphasis on preventive action, including strengthening cultural approaches.

IV. CONCLUSION

Based on the above exposure, researchers were finally able to formulate a conclusion, that the regulation of law enforcement against violations in the supervision of marine fishery resources conservation associated with the principle of environmental sustainability should include arrangements for the integration of the three components legal system, as follows:

1) Regulation of institutional aspects: Regulation of institutional aspects involved in law enforcement efforts in the Indonesian maritime zone, including institutional arrangements for law enforcement carried out through 2 (two) channels, namely 1) the penal route (crime prevention by using criminal law), which focuses more on nature repressive or prosecution after the crime has occurred; and 2) the non-penal route (crime prevention efforts by using means other than criminal law), which focuses more on the nature preventive or prevention before the crime occurs. Taking into account the institutional arrangements for law enforcement in the Indonesian maritime zone which are carried out through these 2 (two) routes, many institutions were formed and given the task and authority to carry out law enforcement in the Indonesian maritime zone, namely: 1) Polri, through the Ditpolair; 2) Directorate General of PSDKP (including PPNS); 3) Indonesian Army Forces, Naval Forces; 4) Directorate General of Sea Transportation (including PPNS); 5) Directorate General of Customs and Excise; 6) Prosecutor's Office; 7) Fisheries Court; 8) Correctional Institutions; 9) Maritime Security Agency (Bakamla); 10) Task Force 115.

2) Regulation of legal material aspects: The establishment of laws and regulations in the field of law enforcement against violations in the supervision of conservation of marine fishery resources has not been carried out in an integrated manner so that the resulting legal products still have discrepancies between the one statutory regulation and the statutory regulations other related invitations.

3) Regulation of the legal culture aspect: The regulation of the cultural approach in law enforcement in the marine area is in line with the principle of Environmental Sustainability, which as a morality approach emphasizes preventive action.

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