



Legal Politics of Protecting Traditional Fishermen from Illegal Fishing

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Abstract— Fishing is extraordinarily abundant due to the expansive nature of Indonesia's oceanic region, which comprises two-thirds of the nation's total land area. This wealth will be rendered irrelevant when illicit fishing agents, whether employed by domestic firms or foreign nationals, can easily acquire it. Traditional fishermen endure a perpetual disadvantage from various factors, including inadequate infrastructure and managerial positions. It is paramount to ensure that legislative policies are enacted to support traditional fisheries and prioritize their involvement in managing Indonesia's marine resources. This research was formulated employing a normative juridical approach. Three distinct data types are utilized: primary, secondary, and tertiary. Nonetheless, the data were gathered through the utilization of library investigation. By establishing rules and regulations at a lower level, the government has implemented legal policies and politics to protect traditional fishermen, according to the findings of the study. In addition, several direct regulations are enforced to defend indigenous fishermen from illegal fishing.

Keywords-Traditional Fishermen, Illegal Fishing, and Legal Politics

I. INTRODUCTION

Indonesia harbors the most extensive marine mega-biodiversity globally, owing to its land area being smaller than its sea area. The ocean territory comprises 72.5% of Indonesia's total landmass. This demonstrates that our nation possesses abundant wealth in the ocean; consequently, we can conclude that our country is wealthy. According to a scientist from the Oceanographic Research Center of the Indonesian Institute of Sciences (P2O LIPI), Indonesia's marine wealth is worth 1,772 trillion Rp.[1]

The marine fishery resources comprise the majority of this marine abundance. According to information from the Ministry of Fisheries and Marine of Indonesia, the annual marine fish resource riches in the country's exclusive economic zone and territorial waters (EEZ) is estimated to be 13 million tons. The mapped coral reefs of Indonesia encompass a landmass of 25,000 square kilometers. Nevertheless, the overall condition of coral reefs is only 5.3% excellent; the remaining percentages are 27.18 percent good, 37.25 percent quite good, and 30.4 percent less good. The marine area of the archipelago is home to a diverse assemblage of organisms, including 950 coral reef biota and over 8,500 fish species. 37% of the world's fish species may inhabit the oceans of Indonesia. Numerous fish species in Indonesia hold substantial commercial importance. These include reef fish, shrimp, lobster, tuna, and various appealing marine life and algae types.[2]

Ideally, this vast fishery resource could serve as a promising economic asset for the Indonesian nation and benefit the Indonesian people, particularly those who reside in coastal regions and are engaged in fishing

activities, mainly traditional fishing. Local customs and knowledge define traditional fishermen as individuals who engage in fishing activities in waters that have been theirs for generations. Around 2.2 million traditional fishermen were in the field in 2019. Compared to the preceding year, this figure experienced a decline, totaling 2.7 million. This declining trend can be attributed to the increasing difficulty of fishing as a traditional fisherman, which makes it challenging to make a living. More than adequate boats and equipment further complicate the task for conventional fishermen, and illegal fishing methods employed by foreign fishermen and corporate fishermen who already possess sophisticated vessels and equipment have the most significant impact.[3]

Illicit fishing is the most detrimental activity to traditional fishermen. "Illegal fishing" is the English translation of the phrase "fishing that is not permitted." Engaging in any fishing activity that violates relevant rules or regulations is deemed unlawful. "In the Republic of Indonesia's fisheries management region, it is forbidden for anybody to engage in fishing or fish farming using anything that could damage or jeopardize the sustainability of fish resources or the environment, including chemicals, biological materials, explosives, tools, and/or buildings." Generally, foreign fishing vessels that enter Indonesian waters participate in illicit fishing. Vietnam, Malaysia, the Philippines, Thailand, and China are among the foreign nations whose vessels frequently enter Indonesian territorial waters to engage in illegal fishing.[4] Consequences or Dangers of Illicit Fishing Illicit fishing exerts numerous detrimental effects on the fisheries industry and the waters of Indonesia. According to a 2014 Ministry statement, the estimated yearly financial losses incurred by the state due to illegal fisheries amount to 101 trillion rupiah. Susi Pudjiastuti, the former Minister of Fisheries and Maritime Affairs, estimated that illicit fishing could cost the Indonesian government as much as Rp 240 trillion annually.[5]

Considering the significant financial detriment inflicted by illicit fishing methods, particularly upon traditional fishermen, it is within the government's jurisdiction to formulate legal and political policies that safeguard Indonesian fishermen, mainly traditional fishermen, against illicit fishing activities conducted by foreign vessels. The significance of this legal policy lies in the fact that it establishes the framework and trajectory of law enforcement efforts about illicit fishing activities. Whether this law enforcement pattern is profitable and favors traditional fishermen or vice versa can be determined later. Furthermore, if it has taken a stance in favor of conventional fishermen, it is critical to assess the extent to which this legal policy can be advantageous to this group.[6]

This research focuses on how the government employs legal politics to safeguard traditional fishermen from the widespread illegal fishing operations conducted by foreign fishermen, as suggested in the background above information. This may involve implementing policies through regulations and laws or taking direct measures to prevent or suppress illegal fishing activities. This essay examines how the government's legal politics safeguard indigenous fishermen from foreign-led illicit fishing operations.[7]

Academics should be able to contribute to the corpus of knowledge concerning government law and politics to safeguard traditional fishermen against the illicit fishing activities of foreign fishermen. The intended utility of the research findings is among community practitioners, with a specific focus on fishermen, particularly those who adhere to traditional fishing practices.[8]

II. LITERATURE REVIEW

As a result of concerns regarding industrial fishing vessels operating in the high seas, specifically the longline toothfish fishery in the Antarctic Ocean, within the CCAMLR framework (the Commission for the Conservation of Antarctic Marine Living Resources), the term "IUU fishing" came into existence. Regardless of the social or ecological context in which these fisheries are conducted, the terms "illegal," "unreported," and "unregulated" fishing have come to be widely applied to describe the primary factors contributing to the decline of global fisheries, beginning with this particular context of the high seas. The failure to distinguish illegal, unreported, and unregulated substances under the umbrella term "IUU" obfuscates the necessary policy responses by considering as a single issue a collection of distinct problems that require an equal number of distinct solutions. In light of this observation, we contend that the non-differentiated use of "IUU" fishing has adversely affected and even delegitimized small-scale fisheries in at least three ways.

Illicit, unreported, and unregulated (IUU) fishing has caused substantial environmental harm and economic losses and is one of Indonesia's most significant obstacles confronting the tuna fisheries sector. Significant effects of IUU fishing have been observed on tuna fisheries, as overfishing has resulted in the depletion of these resources and the forfeiture of potential national revenue.[1] IUU fishing has also been linked to additional criminal activities, including drug trafficking, forced labor, and human trafficking. Greater international cooperation and coordinated efforts are required to combat IUU fishing and other associated offenses in the region.[2] Formal institutions engaged in fisheries management within our context include the Directorate of Fisheries, while informal networks of collaboration among mariners at sea constitute the majority. Scientific organizations contributing to resource management, such as the Institute of Marine Research (IMR) and the International Council for the Exploration of the Seas (ICES), are also considered institutions in fisheries

management. Fish sales organizations, which handle the ex-vessel (first-hand) sales of catch, are another type of institution.

By convention, regulatory management bodies oversee fisheries management institutions and impose restrictions, incentives, and regulations to accomplish policy objectives. Also interpreted as rule-enforcing mechanisms are institutions. To enhance resource control and as it pertains to fisheries management, institutions establish regulations that direct actors toward predetermined goals. Moreover, rules structure individuals about an operational, institutional entity. The connections between rights and regulations and organizations as operational agencies are widely acknowledged in fisheries management. Therefore, institutions serve as reflections of the rules governing the inclusion and exclusion of elements in the decision-making process, the actions executed within the regime's framework, and how individual actions are consolidated into collective decisions. An alternative to the conventional regulatory approach posits that management institutions are intricately intertwined with broader social structures. Scott notes, about this strategy, that institutions operate at various levels of societal jurisdiction. This definition aligns with Elon Musk's conceptualization of institutions as "nested systems," which posits that institutions operate as interconnected networks. Scott posits that institutions should be conceptualized as open systems, given their reciprocal influence and interdependence. Therefore, institutions cannot survive or exist in a social vacuum. This viewpoint applies to fisheries because the management system comprises an interconnected network of institutional subsystems that address ecological, social, and economic sustainability.[3]

III. METHOD

By employing a case study methodology and performing a deliberative governance analysis, this paper investigates the viability of implementing labeling and traceability regulations as a policy option to prevent IUU fishing. Deliberative governance analyzes policy processes through the lens of discourse, with a particular focus on the processes through which social practices construct meaning, which serves as the bedrock for specific policy dilemmas. These analyses illustrate the close relationship between policy, rhetoric, and representation, and how policy decisions are formed based on the underlying assumptions of actors rather than the empirical evidence that is presented.

IV. RESULT AND DISCUSSION

Illegal fishing is one of the greatest threats to the sustainability of natural resources in the fisheries and waterways sector. The fisheries sector is devastated due to the unauthorized harvesting of marine resources (without proper authorization). Explosives and toxic substances are two types of illicit fishing methods that have the potential to cause environmental harm. Marine ecosystems, particularly coral reefs, and specific fish species, sustain damage.[9]

Regarding Legal Analysis and Evaluation within the Context of Eliminating Illicit Unregulated Fishing (IUU Fishing), a report from bphn. Go.id Minister of Marine Affairs Susi Pudjiastuti once estimated that illegal fishing could cause Indonesia to lose up to Rp240 trillion annually. Additionally, illegal trawling is highly detrimental to marine ecosystems. The Oceanographic Research Center (LIPI) of the Indonesian Institute of Sciences once published information regarding coral reef devastation in Indonesia. According to these findings, most damage to coral reefs was attributed to illicit fishing practices.[10] Illicit fishing causes various adverse consequences, including detrimental effects on the survival of fish populations in the Indonesian sea, economic repercussions for the nation, and financial implications for Indonesian jurisdiction. The instances of unlawful fishing and violations of legally binding regulations in the territorial waters of Indonesia are as follows: Enforcement of the law against illicit fishermen. The oversight of foreign fishing vessels that enter Indonesian waters is the responsibility of Fisheries Supervisory Vessels. In this circumstance, law enforcement will classify ABK into two categories: suspect status and non-suspicious status. Suspicious crew members will be subject to investigation in adherence to relevant legal regulations. Meanwhile, representative immigrants will facilitate the repatriation of non-suspicious crew members to their respective countries. These regulations are being enforced by Law No. 45, Article 84 A, Paragraph 1 of 2009, which amends Law No. 31 of 2004. 2. Sinking vessels engaged in unauthorized trawling Regarding the grounding of fishing vessels, Law No. 45, Article 76 A, Addressing Updates to Law No. 31 of 2004 Addressing Fisheries, serves as the citation. The article specifies that the state may seize items or instruments used in unlawful activity. The destruction will then occur after the chief justice's authorization and the publication of the relevant court ruling.[11]

Geographically, seventy-five percent of Indonesia consists of water rather than land. Indonesia's substantial maritime expanse presents a tremendous opportunity to utilize marine resources for economic development. One significant issue is that despite the considerable potential of marine resources, they still need to ensure the well-being of Indonesian fishermen. According to data published by BPS between 2000 and 2016, the quantity of fishing households experienced a decline from 2,144,959 in 2003 to 965,756 in 2016. Furthermore, a significant number of national fish processing enterprises—up to 115—resorted to insolvency due to their inability to

obtain fish supplies, given that illicit fishing vessels transported the pilfered fish directly overseas. Prominent Authors and Affiliations

Legislation No. 7 of 2016 serves as the principal framework for the implementation of the welfare of fisheries. Regulation No. 7 of 2016 governs the protection and empowerment of fishermen. It specifies criminal penalties and oversees the planning, execution, funding and finance, supervision, and funding and finance phases. Security aims to aid fishermen in surmounting challenges inherent to the fishing industry. In contrast, empowerment seeks to enhance the capacity of fishermen to engage in commercial fishing activities. The community is afforded unrestricted engagement in the various execution stages, financing, oversight, and planning.

The concern regarding seafarers and the state of fisheries are inextricably linked. Sustainable fisheries management will result in the prosperity of mariners. The marine and fisheries laws provide legal protection for seafarers in the context of fishing. To improve the welfare of fishermen, the Marine Law stipulates that employment opportunities in the fishery industry must be expanded immediately. Small and traditional fishermen, the most vulnerable groups, require additional legal protection and special attention. By the Fisheries Law, small fishermen are exempt from the requirements of possessing a license for fishing businesses (SIUP), Fishing License (SIP), and Fish Carrier Permit (SIKPI). Moreover, they are not liable to pay fisheries levies, and the government must provide them with credit schemes, education, training, counseling, and growth opportunities. On the other hand, the Fisheries Law does not regulate traditional fishermen; therefore, they are not entitled to the three forms of legal protection.

The aforementioned legal safeguard is stipulated in Law No. 1 of 2014. Article 60 of Law No. 1 of 2014 grants the community (including traditional fishermen) the liberty to suggest areas for traditional fishing within RZWP-3-K. As an implementing regulation of Law No. 27 of 2007 and Law No. 1 of 2014, MMAF Regulation No. 23/PERMEN-KP/2016 on Planning for Coastal and Small Island Management also emphasizes the significance of designating a space of 0-2 nautical miles for the access and maintenance of livelihoods by small and traditional fishermen.

The government and municipal governments must develop strategies for safeguarding and empowering fishers, fish farmers, and salt farmers at the national, provincial, and district/city levels by Law No. 7 of 2016. To ensure targeted, coordinated, and integrated empowerment and protection initiatives. Prepared protection and empowerment strategies are essential components of state budget plans, regional budget plans, and national development strategies. On this basis, protection and empowerment initiatives are implemented. At the federal, provincial, and district/city levels, however, strategies still need to be implemented to safeguard and promote the interests of traditional fishermen, fish farmers, and salt farmers.

In addition, four implementing regulations must be established by Law No. 7 of 2016. These regulations include a presidential decree concerning the provision of subsidies, a government regulation overseeing the planning and implementation of protection and empowerment, and two ministerial regulations addressing protection mechanisms against adverse effects and community participation in safety and empowerment. Implementing rules is limited to ministerial decree; presidential and government regulations have yet to be implemented. Law No. 7 of 2016 has yet to be optimally implemented, as evidenced by the absence of implementing rules and plans for the empowerment and protection of salt producers, fish farmers, and fishermen, who are the primary actors in bringing empowerment and protection into practice.

A ministerial regulation promulgated is MMAF Regulation No. 3/PERMEN-KP/2019, which pertains to the community's involvement in the execution of measures to safeguard and empower fishermen, fish farmers, and salt mining operations. It oversees and regulates those endeavors in which communities may participate by contributing to empowerment and protection during the planning, implementation, funding, and finance phases. The MMAF Minister needs to emphasize the significance of peanuts and fishermen in developing safety and empowerment strategies for salt farmers, fish farmers, and fishermen at the provincial, municipal, and national levels. Article 5 of KKP Regulation No. 3 of 2019 exclusively mandates that community members may engage in deliberations and offer suggestions and inputs to contribute to the planning process. The government should be obligated to include fishermen in the drafting process of the protection and empowerment plan with them as the intended subject.

Prescribed by Law No. 45 of 2009, access to Indonesian territory for fishing purposes is exclusively granted to Indonesian nationals. Foreigners are prohibited from purchasing fish caught by Indonesian fishermen. Inequity manifests itself in the fishing industry; Indonesian fishermen employ traditional vessels that are tiny in size and technologically advanced, whereas foreign ships in Indonesian waters are large and equipped with advanced technology. In turn, this diminishes the competitiveness of Indonesian fishermen.[12]

Foreign ships are those under the ownership of nations other than the current one. Additionally, the term "ex-foreign ships" refers to vessels of foreign origin that Indonesian merchants acquire despite their management and ownership of remaining joint ventures. Foreign vessels are readily identifiable due to their display of the flag of the respective nation. However, ex-foreign vessels that fly the Indonesian flag but fail to adhere to ship operational regulations or accomplish the duty of contributing revenue to the state treasury make them

challenging to identify. Southeast Korea, Thailand, China, the Philippines, and Taiwan supplied most foreign vessels.[13]

The policy of foreign and ex-foreign ships sunk by the Ministry of Maritime Affairs and Fisheries reflects an endeavor to preserve state sovereignty in the marine and fisheries sector. "Constructing sovereignty that can support economic independence in managing marine and fisheries resources" is the MMAF's conception of sovereignty. Subsequently, the vision is translated into a policy directive known as "Building Sovereignty," which aims to facilitate economic autonomy by governance of marine and fisheries resources.[11] One of the numerous strategies that have been implemented is the elimination of Illegal, Unreported, and Unregulated Fishing (IUU). KP: <http://www.go.id>. MMAF employs shipwrecking as an operational measure to eliminate IUUF (PER.15/MEN/2012, 2018).[14] Specific characteristics of the MMAF's implementation of the policy of submerging foreign and ex-foreign ships are as follows:

First, they are implementing instructional strategies and coordinating the sinking of foreign vessels and former foreign illicit fishermen. The policy of submerging ships is implemented by directives from the President to the MMAF Ministry and the Judiciary to the MMAF Ministry. Other pertinent governmental entities, including the Ministry of Foreign Affairs, Ministry of Politics, Law and Security, embassies of foreign countries in Indonesia, TNI Navy, and others, collaborate in executing the ship grounding policy. Multiple instances of shipwrecks serve as instances that demonstrate the presence of instructional and coordination patterns.

Second, the legitimacy of legislation and regulatory frameworks, executive orders, and law enforcement agency decrees that support the enforcement of ship sinking policies. Since Susi Pudjiastuti assumed command of the MMAF, 151 illicit fishing vessels have been scuttled across multiple regions of the nation. Fifty Vietnamese ships, forty-three Philippine ships, twenty-one Thai ships, twenty Malaysian ships, two Papua New Guinea ships, one Chinese ship, and fourteen Indonesian-flagged ships comprised most of the vessels.

A number of submerged foreign and ex-foreign vessels have legal justifications, including permanent court decisions and presidential directives. The execution of presidential directives to sink ships is exemplified by the immediate lowering of sixteen captured vessels without undergoing the requisite judicial procession.[15]

Historically, the demise of vessels was predicated upon judicial rulings; the case involving the detonation of forty boats on May 20, 2015, which occurred after a court judgment of permanent legal force, serves as an illustration. By article 69 of Law No. 45/2009 concerning amendments to Law 31 of 2004 concerning fisheries, all illegal fishing vessel sinkings occur when investigators and/or fisheries supervisors execute the functions specified in paragraph 1. When confronted with sufficient evidence, they may take particular actions by burning and/or sinking foreign-flagged fishing vessels.[16]

Third, support for eradicating illicit fishing through financial means enables the operation of sinking ships. The State Budget 2016 allocated Rp 1 trillion to the task force commanded directly by Minister Susi as Task Force Commander to apprehend fish thieves in the Indonesian oceans 2016. The budget is partitioned into two six-month operating periods, with an IDR 500 billion budget allocation per operating period.

Fourth, the policy of submerging foreign and ex-foreign vessels is executed with significant dedication from senior management, resulting in a progressive, consistent, persistent, and sustainable implementation process. The commitment of the policy elites in 2014, 2015, and 2016 enabled the implementation of the sinking policy. Effective policy implementation has been propelled by an unwavering dedication, culminating in tangible outcomes. Despite facing domestic and international criticism, the approach of submerging the vessel continues to be executed.[17]

Fifth, with the aid of the bureaucratic complement of Task Force 115, it is also referred to as Task Force 115, which possesses exceptional skill in carrying out ship submerging operations. Presidential Regulation No. 115 of 2015, which pertains to the Task Force for the Eradication of Illegal Fishing, designates Task Force 115 as responsible for executing the Eradication of Illegal Fishing. Since its inception, the Task Force has consistently achieved favorable results and has been commended by the President of the Republic of Indonesia.

Based on the findings above, the efficacy of the policy of sinking foreign and ex-foreign vessels by MMAF to eradicate illegal fishing is contingent on several interrelated variables: the certainty of laws and regulations, the high commitment of the policy elite comprising the President and Ministers, effective instructional and coordination patterns, substantial budgetary support, and high-performing bureaucratic support. The Indonesian economy has benefited from the policy of sinking foreign vessels and former foreign illegal fishing actors; in reality, the national fisheries sector is experiencing positive results. The fisheries sector witnessed a notable improvement in its Gross Domestic Product (GDP) growth rate from 7.35 percent in 2014 to 8.37 percent in 2015. Additionally, the output of the fishing industry rose from 20.40 million tons to 23.99 million tons. The fishermen's exchange rate (NTN) experienced a notable increase, climbing from 102 to 107.[18]

Top-down model policy implementation is exemplified by the MMAF's performance of the ship-sinking policy in the context of eradicating illicit fishing. The essential terms are one command, quantifiable change, control, and compliance. The implementation of the sinking policy followed firm and direct directives from the President, which the MMAF Minister subsequently relaid to Task Force 115, which was tasked with taking

decisive action. Strict control is applied to ensure that operationalization remains by the provided instructions. In addition, the subordinate bureaucracy complied with his directives regarding implementing the ship's sinking. The approach taken to execute the sinking policy is consistent with the thesis of Ripley and Franklin (1986), which posits that three factors contribute to the success of policy implementation: the degree of bureaucratic compliance, the efficiency of routine operations, and the unity between policy implementation and the intended outcome. The performance of top-down public policy models is determined by force and coercion factors emanating from the center, with explicit mandates from laws and regulations, as evidenced by these three facets.[19]

V. CONCLUSION

Legislation and regulation have yielded numerous outcomes aimed at safeguarding traditional fishermen, including preventing illicit fishing operations conducted by foreign nationals. One such legislation is Law No. 7 of 2016, which pertains to preserving and empowering fishermen, fish farmers, and salt farmers. However, despite this legislation being in effect, its execution still needs to be revised. As a form of effective government policy to safeguard traditional fishermen from illegal fishing activities conducted by foreign fishermen, the sinking of their vessels serves as an alternative approach.

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