

## **Law Enforcement on Conservation of Fish Resources in Indonesia**

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**Abstract :** The provision of law enforcement in Indonesia for violation of the conservation of fish resources are subject to the provisions of national law is not an implementation of the international treaties that have been ratified by the Government of Indonesia. International agreement merely provides signs that necessary to law enforcement for violation of conservation of fish resources, while the authority of the regulation is mandated to participating countries. Law enforcement on conservation of fish resources that damage the sustainability of fish resources is not solely given criminal sanctions or fines, because these sanctions have been ineffective and should require civil law enforcement instrument. The limited number of Civil Servant Investigators in conducting surveillance in Indonesia waters of is also one of the constraints of law enforcement on conservation of fish resources. In reality the society participation on conservation of fish resources is not in accordance with expectations.

**Keywords :** *conservation, fish resources, law enforcement.*

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### **I. INTRODUCTION**

Protection of fish resources internationally cannot be separated from the various international instruments that are used by Indonesia in formulating the rules on the management of fishery resources such as UNCLOS 1982, UNFSA 1995, and others. Numerous illegal fishing that occurred in Indonesia using a variety of fishing gear, considering the fish resources in the past decade shows that the exploration and exploitation of fisheries in Indonesia, has increased very detrimentally to Indonesia. According to the Food and Agriculture Organization (FAO), activities of fishery criminal offenses referred to as Illegal, Unregulated, and Unreported Fishing (IUU Fishing), which indicates that fishing is conducted illegally, unreported and according to predefined rules 9. FAO data addressed that the loss due to IUU fishing in Indonesia is estimated to reach Rp 30 trillion per year. FAO stated that the current stock of fish resources in the world that is still possible to improve its capture only 20 percent, while 55 percent are in full utilization and the remaining 25 percent endangered. This is ensured by the statement of the Ministry of Maritime Affairs and Fisheries that the loss rate about 25 percent of the total potential of the fishery owned by Indonesia as much as 1.6 million tons per year. Fishery condition in Indonesia apparently contributes to the condition of the world's fisheries (M. Natsir Jamil, 2015)[1].

Fish is one of the natural resources given by God Almighty for humans, and has economic value that can be relied upon for national development and the countries in the world. Fish resources must be protected, preserved, conserved and utilized optimally for the welfare of the society. Noting the nature of which cannot be replaced and carrying foothold as well vital part of life, hence the preservation efforts through the conservation of fish resources and ecosystem is becoming the absolute duty of each generation. It is required conservation effort of fish resources through protection, utilization and preservation. Safeguard the conservation of fish resources is conducted by applying international agreements on the code of conduct in terms of fishing in their national law in the context of law enforcement related to the conservation of fish resources. This should be implemented considering fish resources are something that is vital for the survival of the nation. Because the fish resources and the environment has a high sensitivity to the effects of global climate and seasonal climate and aspects of interconnection (connectivity) ecosystem between the territorial waters, whether local, regional or global, the possibility of passing the limits of the sovereignty of a country, then in the development conservation and management of fish resources should be based on the precautionary principle with the support of the scientific evidence. Based on the explanation above, the issues to be discussed in this paper are: (1) How is the implementation of international arrangements on the conservation of fish resources into national law?, (2) How is the effectiveness of the legal protection of the conservation of fish resources?, and (3) How is the society participation in fish resources conservation for the realization of preservation of fish resources?

## **II. RESEARCH METHODS**

### **II.1. Type of Research**

This research type uses the type of normative-empirical research, normative aspects of using secondary data that is descriptive / descriptive-explorative (Salim HS, 2016:14)[2] and the data analysis is qualitative. For empirical research is using primary data which more emphasis on ensuring interview aspect.

### **II.2. Research Location**

This research was conducted in Jakarta specialized in Marine and Fisheries Ministry and in South Sulawesi Province in the district that owns sea such as Pangkep, Bulukumba and Bone regency. As considerations for the site selected hence the region may represent Indonesia as country that has sea and utilize by its society to catch fish.

### **II.3. Types and Sources Data**

The type of data collected and analyzed in this study are primary data and secondary data. Primary data is empirical data obtained directly from study sites in the form of interviews. While secondary data is data acquired from the study of literature, review documents especially research reports from various parties, journals, papers, legislation, and other sources that are relevant to the research topic.

### **II.4. Data Collection Technique**

The technique was used in data collection from the sites was interview

### **II.5. Data Analysis**

This study uses qualitative analysis, namely data analysis that does not use numbers, but describing discoveries in words (Peter Mahmud Marzuki, 2009:93)[3].

## **III. RESULT AND DISCUSSION**

### **III.1. Implementation of the International Regulation on the Conservation of Fish Resources in National Law**

Globally, law enforcement concerning the conservation of fish resources is basically mandated at the discretion of each country to regulate the management, supervision and enforcement. Every country has the right and responsibility for the activities of utilization of marine resources, especially fisheries, including the protection and preservation of the environment. In accordance with the principle of sovereignty and jurisdiction owned and granted in the law of treaties. Article 193 of United Nations Convention on the Law of the Sea (UNCLOS) 1982 asserts right to countries to explore the natural resources contained in its territorial waters. This right shall preserve marine environment. Similarly, Article 19 UNFSA 1995 provides authority to the flag state to take steps in the compliance and enforcement mandated by United Nations Fish Stocks Agreement (UNFSA) 1995, while the Code of Conduct for Responsible Fisheries (CCRF) 1995 provides guidance for countries to formulate preventive measures and law enforcement against irresponsible fishing, although not legally binding. As in the case with the International Plan of Action to Deter, Prevent and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA-IUU) 2001, although only with suggestions for the country, the IPOA-IUU 2001 provides guidance to countries in drafting legislation to national legislation concerning the prevention, reduction and elimination of IUU fishing (Chomariyah, 2014:69)[4].

At the level of implementation of law enforcement arrangements conservation of fish resources as outlined in the Indonesian national law broadly used 2 (two) sanction on instrument of law enforcement, namely: administrative law and criminal law (Gatot Supramono, 2011:153)[5].

In administration to engage in fishing in Indonesia shall have a fishing permit (SIPI), to obtain fishing permit in Indonesia is required to have an environmental permit, thus obtain Fishery Business License (SIUP), SIPI, and Permit fishing ship (SIKPI) (Supriadi, et.al., 2011:337)[6]. These three licenses were issued based on the environmental permit. This is intended to prevent the impact of fishing activities on environmental destruction. If government issued administrative sanctions through the revocation of the environment, it would affect other fishing licenses that have been granted. SIPI revocation action/SIKPI besides aim to conduct monitoring of fish resources in Indonesian waters, also to bring order of fishing ships in Indonesian waters.

Noting the various types of fish in Regional Fisheries Management Indonesia (WPP-I) are already in apprehensive condition (1) the time at sea longer, (2) the location of the fishing becomes more distant, (3) The catch is declining, (4) the size of the target fish is getting smaller, and (5) the cost of arrest (Operations) is increasing. therefore it necessary to be careful in the conduct of fishing, as well as the awareness of all parties to do the role and functions in the fisheries management in Indonesia. Therefore, for those who commit

violations of fishing in WPP-I may be subject to administrative and criminal sanctions (Yohanes Widodo and Suadi, 2014:49)[7].

The administrative sanction under Article 81 paragraph (4) of the Regulation of the Minister of Marine and Fisheries Number PER.30/MEN/2012 on Fisheries Business in Regional Fisheries Management of the Republic of Indonesia in the form of:

- a. Warning / written reprimand
- b. Coagulating SIUP, SIPI and / or SIKPI
- c. Revocation of SIUP, SIPI, and / or SIKPI

Whereas under Article 84 Regulation of the Minister of Marine and Fisheries are arranged: Each holder of SIUP, SIPI and SIKPI must play a role in prevention and control measures / practices of IUU fishing through the submission of reports of such measures to the fisheries supervisor. According to the author there should be additional sentence which confirms the existence of a threat to the permit holder if it turns out they do not support or do not report on acts of IUU fishing neither. IUU fishing action has occurred, yet the witnesses are unwilling to report because it does not affect them. Pursuant to author, there should be sanctions for those who found to witness, but did not report any of the IUU fishing, and these sanctions could be acquired by the form of administrative and criminal sanctions, as well as other sanctions, such as compensation for losses acquired. Such sanction implementation is very essential in order to realize the principle of expediency and justice for all Indonesian people as mandated in Article 33 of the 1945 Constitution. In Minister Regulation above only regulate administrative sanctions only.

If pursuant to Article 93 paragraph (1) of Law Number 31 Year 2004 on Fisheries, that people whom do not have the SIPI and conduct fishing using Indonesian flag, criminal sanctions subjected to them is 6 (six) years and a fine of a maximum up to two billion rupiah (Nunung Mahmudah, 2015:84)[8]. Also in the Government Regulation No. 60 Year 2007 on the Conservation of Fish Resources (The implementing regulations of Law Number 31 Year 2004 on Fisheries), that the usage of marine protected areas is conducted through fishing activities (Article 30, paragraph 1), and utilization of marine protected areas to fishing carried out in a fishing zone (Article 31 paragraph 1). Violation of the article is subject to administrative sanctions. While the violation of Article 31 paragraph (2) which regulates the obligation to have licenses for people who conduct fishing, were subject to sanctions in accordance with legislation, as stipulated in Article 52.

Whereas the provision of law enforcement in Indonesia for violation of conservation of fish resources are subject to the provisions of national law is not an implementation of international treaties that have been ratified by the Government of Indonesia hence international agreement does not specify clearly the substance of what was necessary to enforce such a rule in national law. The only international agreement establishes the necessity for law enforcement for violation of conservation of fish resources, the regulation of which was mandated to each participating country to arrange it or in accordance with the constitutional provisions or national legislation that contains the status of international law in national law. If taking into account, law enforcement provisions on the conservation of fish resources sanctions is in the form of administrative sanctions and criminal sanctions. The setting of these sanctions is the public domain of national law, that international agreement that entitles the participant countries to regulate law enforcement in the field of conservation of fish resources. As an illustration of the Regulation of the Minister of Marine and Fisheries Number PER.16/MEN/2010 and Number PER.30/MEN/2012 on Fisheries Business in Regional Fisheries Management of the Republic of Indonesia on the section refers to the Agreement for the Implementation of the Provisions of the UNCLOS of 10 December 1982 Relating to the Conservation and Management of straddling Fish Stocks and Highly Migratory Fish Stocks (United Nations Implementing Agreement / UNIA) in 1995 and in observation section refer to the code of conduct for Responsible Fisheries, Food and Agriculture Organization of the United Nations, 1995. Indonesia as a participating country to the agreements entitle obligation to regulate matters into national law related to law enforcement in the field of conservation of fish resources in accordance with the intent and purpose of the establishment of the agreement. Enforcement of the law of conservation of fish resources in Indonesia refers to Law Number 31 Year 2004 on Fisheries jo. Law Number 45 Year 2009 on the Amendment on Law Number 31 Year 2004 on Fisheries.

Law enforcement against violations of conservation of fish resources in Indonesia is not referring to treaties that have been ratified by Indonesia, because firstly, international agreements do not regulate in detail the sanctions that should be enforced in violation of the conservation of fish resources, second, law enforcement officers cannot be enforcing the law on the basis of legal provisions contained in international treaties ratified by Indonesia. Because the hierarchy of legislation in force in Indonesia based on Article 7 paragraph (2) of Law Number 12 Year 2011 on the Establishment of Legislation, international agreements does not exist as a source of national law, such agreement will be transformed in advance into national law. Therefore law enforcement officers can utilize in the retrieval process of decision.

Law enforcement in the conservation of fish resources in Fisheries Management Indonesia Region (WPP-I) which covers internal waters, the archipelagic waters, territorial sea, contiguous zone and EEZ. Based

on the Regulation of the Minister of Marine and Fisheries Number 18/PERMEN-KP/2014 on Regional Fisheries Management Division of the Republic of Indonesia has set the division WWP to be 11 WPP-I. To maintain the existence, availability and sustainability of fish resources in the WPP-I, for foreign-flagged fishing vessel based on sufficient preliminary evidence, the investigator or fisheries supervisor can perform specific actions such as burning or create a sinking ship. It is stipulated in Article 69 paragraph (4) of Law Number 45 Year 2009 on the amendment of Law Number 31 Year 2004 on Fisheries.

It is just, imposition of sanctions for violation of the conservation of fish resources in Indonesia tend to sanctions in the field of merely administrative, therefore such violations can recur in the future, because the parties affected by the sanctions tend to let their license revoked, and then they create a new permissions that will be utilized in other place.

### **III.2. Role and Law Enforcement the Effectiveness Instruments Related Resources Conservation Fish**

Legislation on the conservation of fish resources are basically created to manage the fishery from the negative impact of fishing activities and parties who do not care about the conservation of fish resources. If it seen the substance controlled under the legislation in order to protect fish resources has actually been adequate, it is just that often lead to the pros and cons with the application of these rules. For example, in the Minister of Marine and Fisheries Number 2/PERMEN-KP/2015 on the Prohibition of the Use of Fishing Tools such as Pukat Hela (trawls) and Pukat Tarik (Seine Nets). In the area of Fisheries Management Indonesia, there are several groups of fishermen in Indonesia protesting the enactment of ministerial regulation, as almost 70% of the fishing gear used is trawl, the regulation existence is perceived as misery and impoverish traditional fishing. This is one of the factors that influence the effectiveness of the law is that is conflict between the objectives of the legislators with the will of society as the targeted object. According to Antony Allott (1981:231-232)[9], the reasons or factors that affect law inefficiency, namely: (1) imperfections on the formulation of sentences law legislation (the defects of legal linguistic formulation), (2) the conflict between the objectives of the legislators with the will of society as targeted object, (3) the absence of the implementation norms such as implementing regulations and responsible institutions for ensuring the implementation of the legislation.

Considerations of ministerial regulation created which mentioned above is that the use of trawl fishing called Pukat Hela (trawls) and Pukat Tarik (seine nets) in the area of fisheries management Indonesia has resulted in decreasing fish resources and threatening environmental sustainability of fish resources. Based on the results of the exploitation of marine research Indonesia has entered a critical stage, the upstream level of production is only 50% .If such condition continuous, there will be a natural degradation, which is marked by increasingly small size of the fish, and such not covered fish can trigger to rare and even extinct species (rri.co.id)[10].

In general, the incidence of violation of the conservation of fish resources due to several factors as follows:

1. The existence of human actions that cause negative impacts that could damage the fishery environment.
2. The existence of change in government policy that variably related to the management of the conservation area, which was originally a local government authority, with their new local government legislation, the authority granted to the provincial government. For example, the absence of Regional Regulation on conservation of fish resources because the existence of Law No.23 Year 2014 on Regional Government authorizes the provinces to manage the resources in the sea maximally 12 nautical miles. (Article 27), automatically Province must wait for the draft regulations of other areas.
3. Vulnerability of law enforcement and it is associated with aspects of monitoring, reporting, and judiciary.

According to the authors law enforcement on conservation of fish resources on the damage the sustainability of fish resources is not only given such criminal sanctions or fines, because these sanctions are no longer effective and should be added to the instrument of enforcement of civil law, because if the fisheries environment destroyed, it would be detrimental to fishermen hence they would be unable to catch fish in the region either for a certain period of time or at all because unrepaired damage. Therefore, people who committed the offense are obliged to restore the environment and provide compensation to fishermen whose their fishing territory destroyed. According to Wildes T. Freed (Akhmad Fauzi, 2006:13)[11], that the conservation of natural resources implies that the ultimate contain protection concept (preservation) and development concept of natural resources for necessity of mankind on earth at the present and future. Furthermore, conservation is implicitly contains aspects of moral and human responsibility to maintain, preserve, rescue and conserve natural resources for present and upcoming future generations. If moral and human responsibility is not implemented, then there must be sanctions given to the people according to the accomplished perpetration. Noting the conservation of fish resources is patterned alongside ecological sentries that human with their behavior shall be able to preserve and environmental functions in accordance with the

purpose of protection and fisheries management that is to achieve aptitude, harmony, and environment balance to ensure the fulfillment of justice for present and upcoming generations.

In addition to the ineffectiveness of fisheries law enforcement in terms of the application of legal instruments, tough and brave law enforcement officers are also required. For sea surveillance activities performed by the Fisheries Supervisory consists of Civil Servant Investigators (PPNS) and Non Civil Servant Investigators Fisheries. The limited number of PPNS in a certain fishing area is one of the constraints of law enforcement of fisheries, and assignment derived from the institute of marine and fisheries in order to pay attention to the usefulness of fish resources through the usage of environmentally friendly fishing tool, it is one of the obstacles or constraints due to financial limits in operational activity. PPNS in performing its duties shall have synergism with the Police Fisheries Directorate in monitoring fisheries. Pursuant to Article 47 subsections (2) Government Regulations Number 60 Year 2007 on the Conservation of Fish Resources that surveillance conservation of fish resources can be executed through: (a) guard and patrol marine in protected areas, and (b) monitoring the utilization of genetic varieties of fish and protected fish.

Vulnerability of law enforcement on conservation of fish resources by Indonesian government is caused by not specifically sanction fisheries, lack of enforcement of fisheries, and limited operational budgets, affect the protection of conservation of fish resources. So the existence, availability of fish species and genetic diversity of fish will become extinct.. Therefore, it requires cooperation of all parties in managing fisheries responsibility based on principle: benefits, justice, solidarity, partnership, independence, equality, cohesion, openness, efficiency, sustainability and sustainable development. Conservation and management of fish resources can be divided into three stages, namely: (1) the stage before catching fish resources, through licensing mechanisms, in order to control the number of fleets within territory waters of Indonesia, (2) the implementation phase of arrest, through the mechanism of steps management and conservation of fish resources and supervision, further fishing does not violate the provisions of laws and regulations, (3) the stage after the arrest, through the mechanism of evaluation in order to improve management measures and conservation that has already started, in order to guide the preparation of the management plan and conservation of fish resources (see Article 2 Law Number 45 Year 2009 on Amendment Law Number 31 Year 2004 on Fishery).

### **III.3. The Realization and the Role of Society in Law Enforcement Related Conservation of Fish Resources**

Enforcement issues related to the conservation of fish resources is a multi-actors issue involving many parties, namely the public, government, fishermen, and others (Marlina, et.al., 2013:65)[12]. Pursuant to Article 47 paragraph (4) Government Regulations Number 60 Year 2007 on the Conservation of Fish Resources which stipulates that: The society may participate in the supervision of the conservation of fish resources, because society are first party to aware and experiencing the events that occurred in the sea, and therefore society is spearhead of fisheries management. Law enforcement against violations of conservation of fish resources is not only the responsibility of government, but also the shared responsibility of society, and therefore it is necessary a cooperation of all parties concerned. Guided by the provisions that regulate action classified as violation of the conservation of fish resources activities stipulated in the Fisheries Law that may be control for society in prosecuting such violations. According the authors investigation on crime report of Directorate Police Fishery in South Sulawesi and West Region as well interview with Investigator Ayub [13], that the criminal offenses of fishery generally was caught by Waters Police Officer. No reports indicate society as a reporter. It shows that the role of the society in contributing the protection of conservation of fish resources are lacking. Besides that, there are still unscrupulous people making fish bombs and sold it to fishermen who needed. Observing these events, the relationship between the society and fishermen in fishing using prohibited fishing tool, indicated that the actions of those people with society surrounding them is commonplace. Based on the interview result from one of informants, stated that there is a relation of mutual protection by society related to illegal fishing, because social and economic limitations justify those actions as a merely justifiable matter. The Constitution of the Republic of Indonesia 1945 guarantees that citizens or society in their positions in the government or in development have the right to actively participate in various forms of rights and ability in government. The role and participation of the public in law enforcement in the field of conservation of fish resources could be:

- (1) Supervision towards management of fish resources
- (2) The preliminary information to interested parties about the existence of violations
- (3) Involve the society to help the process of checking for example documenting test results.

Although there is a guaranteed protection against the role and participation of the society in law enforcement, but apparently do not in accordance to expectations, hence it does not involve society in every stage of the implementing process of law enforcement, such as problem identification, prevention,

implementation and evaluation. Society themselves felt that the role and participation they owned would likely to have an impact on social relations among them.

#### **IV. CONCLUSION**

1. Law enforcement in Indonesia for violation of the conservation of fish resources are subject to the provisions of national law is not an implementation of the international treaties that have been ratified by the Government of Indonesia. Because the treaty does not specify clearly the substance of necessity to enforce such rules in national law. International agreements only provide guidance on necessity for law enforcement for violations of conservation of fish resources, the regulation authority is given to the participating countries. Law enforcement in the conservation of fish resources in Indonesia refer to Law No.31 of 2004 on Fisheries Jo. Law No. 45 of 2009 on the Amendment Law No.31 of 2004 on Fisheries. The role and effectiveness of law enforcement instruments related to the conservation of fish resources indicate and prove that the instrument of law enforcement related to the conservation of fish resources is ineffective not merely by using the administrative law enforcement and criminal law. For the sake of effectiveness of such law enforcement then it necessary to be supplemented with civil law enforcement. It is also required tough and brave officers of law enforcement. The limited number of investigators in a fishing area is one of the constraints of fisheries law enforcement, and limited operational funding scrutiny by investigators also affect law enforcement activities on conservation of fish resources in Indonesia. Realization and society role in law enforcement related to the conservation of fish resources in Indonesia although there is a guarantee of protection for the role and participation of society in law enforcement, but in reality do not in accordance to expectations, because it does not involve society in every stage of the implementation process of law enforcement. Besides law enforcement in society has not been able to provide a sense of justice, one of the causes is apparatus' action who frequently letting the violations to be possible due to limited human resources and infrastructure.

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