

Law Enforcement on Small Fisheries That Catches Fish by Mini Trawl (Study in North Aceh District and West Aceh District)

Azwardi¹, Teuku Muttaqin Mansur², M. Adli³

¹ Master of Law, Syiah Kuala University, Banda Aceh, Indonesia

² Master of Law, Syiah Kuala University, Banda Aceh, Indonesia

³ Master of Law, Syiah Kuala University, Banda Aceh, Indonesia

Abstract: This article discusses law enforcement for small fishermen who use mini trawl fishing gear. This research is an empirical juridical study. The data used are primary data secondary data collected through library studies, document studies and interviews. The results showed that law enforcement for small fishermen using mini trawl fishing gear was refresive for fishermen in West Aceh District and in a preventive manner in North Aceh District. Government efforts to resolve small fishermen using Mini Trawl fishing gear.

Keywords: Aceh, fishermen, law enforcement, mini trawl, Indonesia

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I. INTRODUCTION

The birth of the Ministry of Maritime Affairs and Fisheries indicates that the government's marine problems are becoming increasingly important now and in the future. The sea has a very strategic function as a cheap source of animal protein food. The population is increasing so that it requires sufficient protein food stocks, including fisheries (Djoko Tribawono, 2013). The majority of coastal areas are inhabited by coastal communities who work as fishermen. Fishermen in coastal communities consist of small fishermen and machine fishermen (high-tech).

Based on Law Number 7 of 2016 concerning Protection and Empowerment of Fishermen, Salt Farmers and Salt Farmers, in article (1) it is stated, small fishermen are fishermen who do fishing to fulfill their daily needs, both those who do not use fishing vessels and those who use fishing vessels measuring a maximum of 10 (ten) gros tons (GT). While machine fishermen are fishermen who use high-tech fishing gear such as trawl trawls, trawl nets, tiger trawlers, and even use two trawling vessels) to catch fish.

In addition to the protection of small fishermen, currently the policy of the Minister of Maritime Affairs and Fisheries emphasizes a coaching approach for handling alleged violations of fisheries criminal provisions. Mainly handling violations of fisheries criminal provisions carried out by small fishermen, for example the use of mini trawl fishing gear. The Minister of Maritime Affairs and Fisheries wants a coaching approach rather than imposing criminal sanctions, because these situations conflict with the sense of justice in society and keep Indonesia away from the goal of achieving sovereignty. Besides that small fishermen have made a real contribution in the development of fisheries and marine and economic development of coastal and rural communities.

The criminal law enforcement approach should be used as ultimum remedium for small fishermen suspected of committing violations. This is in line with Presidential Instruction No. 11 of 2015 concerning the protection of fishermen who instructed the National Police to prioritize preventive and educative efforts in law enforcement in the fisheries sector for small fishermen. This can be done on the basis of legal discretion which in Article 1 Number 9 of Law Number 30 Year 2014 concerning Government Administration, explained that discretion is a decision and / or action determined and / or carried out by government officials to overcome the concrete problems faced in the administration of government in terms of legislation that gives choices, does not regulate, is incomplete or unclear, and / or there is government stagnation (Indonesia, 2004). For this reason, the guidance approach for small fishermen who do fishing using mini trawlers by looking at the size of the GT Ship, as follows:

a. <5 GT (Gros Ton), guidance and recording of violations is carried out, and a Warning Letter up to 3 times is given for violations committed, if it continues to commit violations it will be processed by law.

b. 6-10 GT, guidance is provided by appealing to complete documents and / or using fishing gear in accordance with the provisions and given a warning letter up to 2 times for violations committed, if it continues to commit violations it will be processed by law.

c. 10 GT up to 30 GT, giving a warning letter up to 1 time, if it continues to commit violations it will be processed by law.

Currently there are still fishermen who use to find fish in the sea, this can be proven by the presence of several fishing boats using mini trawlers by the ranks of the National Police Directorate (Polair) even though the use of fishing gear is already prohibited because it can certainly damage the marine environment or resources marine power because fishing is done by not paying attention to environmental aspects. The Minister of Marine Affairs and Fisheries of the Republic of Indonesia issued Minister of Maritime Affairs and Fisheries Regulation Number 2 of 2015 concerning Prohibition on the Use of Trawls and Trawlers (Seine Nets). the carrying capacity and preservation of fishery resources to be utilized to the greatest possible extent for the welfare and prosperity of the people of Indonesia.

The issuance of the regulation experienced rejection by fishermen so that the government re-issued the Minister of Maritime Affairs and Fisheries Regulation Number 71 of 2016 concerning the Line of Catching and Placement of Fishing Equipment in the Fisheries Management Areas of the Republic of Indonesia. Although the regulation has been implemented, in fact the rejection of the ministerial regulation continues to occur so that the government gives a tolerance deadline until December 31, 2016. However, at the urging of various parties, the Ministry of Maritime Affairs and Fisheries finally allowed the use of cantrang fishing equipment until June 2017. This is stated in Circular (SE) Number B.1 / SJ / PL.610 / 1/2017 concerning Fishing Instrument Assistance operating in the Territory of the Republic of Indonesia Fisheries Management.

Regulation of the Ministry of Maritime Affairs and Fisheries is in line with Law Number 31 Year 2004 juncto Law Number 45 Year 2009 concerning Fisheries. Article 9 Paragraph (1) states: "Every person is prohibited from possessing, controlling, carrying and / or using fishing gear and / or fishing aids that disrupt and damage the sustainability of fish resources in fishing vessels in the Republic of Indonesia fisheries management area. Indonesia.

In the law, fishing equipment and / or fishing aids that disrupt and damage the sustainability of fish resources including mini trawlers and trawlers, and / or compressors are clearly forbidden

In terms of handling illegal, unreported, unregulated fishing (IUUF), it requires fair law enforcement, prioritizing the protection of small fishermen with a coaching approach. In order to achieve this, the government has established several legislation instruments for fishermen protection, including the Fisheries Law. Number 7 of 2016 and KP Candy No. 1 of 2017. Protection of regulated fishermen includes the release of small fishermen from the obligation to install fishing vessel monitoring systems (VMS), the release of small fishermen from the obligation to have SIUP / SIPI / SIKPI, exemption from obligation to pay levies fisheries, free to carry out fishing in all WPP (areas of management) and elimination of high-cost economic practices, by freeing up the costs of issuing licenses related to fishing.

Fishing activities carried out by fishermen such as using explosives, toxic materials and using fishing gear from Minitrawl, are contrary to the arrest code of ethics. This activity is generally detrimental to small fishermen. Fishing activities using explosives are a method that is often used by small fishermen in utilizing fisheries resources, especially when fishing. Catching fish using mini trawling nets can have adverse consequences. The use of this tool can have a very large side effect, which is to cause the death of other biota that are not the target of arrest.

In connection with the prohibition on using a mini trawl, the Aceh Panglima Laot has expressed an attitude of "war" against this tool. There are several reasons for the Panglima Laot Aceh to reject Minitrawl, namely:

1. Mini trawlers damage the marine ecosystem.
2. Mini trawl activities violate the law in Indonesia, namely Keppres No. 39 of 1980, which "forbids" mini trawling in Indonesian waters.
3. Minitrawl activities also damage traditional Aceh fishermen FADs installed in the sea.
4. Supervision of Minitrawl as it does not work as it should, even though this is important in terms of avoiding disputes (Sulaiman, 2013).

This is in accordance with the sanctions for fisheries crime related to the use of trapping minitrawl devices regulated in article 100 points (b) Law Number 31 Year 2004 juncto Act Number 45 of 2009 concerning Fisheries stated: "In the case of criminal offenses as referred to in Article 9 carried out by small fishermen and / or small fish cultivators shall be punished with a maximum of 1 (one) year imprisonment or a maximum fine of Rp. 250,000,000 (two hundred fifty million rupiah) ".

Based on the background of the problem, the main problem is how is law enforcement for small fishermen who use mini trawl fishing gear?

II. RESEARCH METHODS

Research methods are procedures or ways to obtain correct knowledge or truth through systematic steps (Soerjonop Soekanto, Sri Mamuji, 1995). In this research method will contain clearly what research methods will be used. The use of the method has implications for data collection and analysis techniques and research conclusions describe the factors studied associated with legislation, theories and opinions of legal experts (Ronny Soemitro, 1982). The approach method used in this article is Juridical Empirical. Empirical Juridical Research is legal research concerning the implementation or implementation of normative legal provisions in action on any particular legal event that occurs in society (Abdulkadir Muhammad, 2004). The problems that have been formulated above will be answered or solved using the juridical Empirical approach. Juridical approach (law is seen as norm or *das sollen*), because in discussing the problem of this research using legal materials (both written law and unwritten law or both primary legal material and secondary legal material). Empirical approach (law as a social, cultural or *ds sain fact*), because in this study used primary data obtained from the field.

The type of data used in this study is primary data generated from field research obtained directly from respondents of research related to the problem of this research. By conducting a study / library research, initial data will be obtained to be used in field research and secondary data obtained from library research consisting of (a) Primary Law Materials are legal materials that are authoritative, meaning having authority, even primary law consists of laws and regulations that are sorted by hierarchy. Even the primary law in the form of legislation relating to legislation in the field of fisheries; (b) Secondary Legal Materials are legal materials consisting of textbooks written by influential legal experts, legal journals, opinions of scholars, legal cases, jurisprudence and the latest symposium results relating to the topic of research; (c) Tertiary legal materials are legal materials that provide guidance on the explanation of primary legal material and secondary legal material in the form of general dictionaries, language dictionaries, newspapers, articles, internet (Ronny Hanitijo Soemitro, 1988). The technique used in data collection is done through 2 (two) ways, namely (a) Library research, which is the collection of secondary data in the form of applicable legislation and documents relating to the object under study as well as theories and legal principles relating to research material and (b) Field research, namely collecting data directly from parties related to research, in order to obtain and collect primary data or data that is relevant to the object to be studied.

After all the data needed is collected, then an examination of the data is done through interviews and inventory of existing written data, then the data is processed and arranged systematically, if the nature of the data collected is only a few, monographic or tangible cases, so it cannot be compiled into a classification structure, the analysis used is qualitative (Amiruddin, *et.al.*, 2006). Decipher the data in the form of sentences that are good and correct, so that they are easy to read and given meaning (interpreted) if the data is qualitative. So the data analyst in this study was analyzed qualitatively. The reason for using qualitative analysis is because: (a) The collected data is in the form of question sentences; (b) The data collected is generally in the form of information; (c) Relations between variables cannot be measured by numbers; (d) Samples are more non-probability or determined purposively; (e) Data collection uses interview and observation guidelines; (f) Researchers do not always use relevant theories (Burhan Bungin, 2011).

III. DISCUSSION

The use of trawl fisheries is the most practical weapon for a small number of fishermen in the waters of the West Aceh Regency of Aceh Province. Whereas from January 1, 2017 the use of official trawl is prohibited based on Minister of Maritime Affairs and Fisheries Regulation (KP Regulation) Number 2 of 2015. The ban concerning the use of fishing gear (API) types of trawls and seinen net.

On March 23, 2017 at around 12:00 a.m. the Water Police District of West Aceh Police together with the Directorate of Water Police of the Aceh Regional Police arrested 6 (six) fishermen who made arrests of fishing, namely Yulian Saputra bin Hasyim Jauhari, Bahtiar bin Abdullah Sani, Erfin bin Erfan, M. Din bin Muhammad Amin, and M. Mizar bin Sarifuddin along with evidence in the form of Motor Ships (KM) and equipment in the form of fishing equipment in the form of trawls and caught fish.

Law enforcement in the sea has an understanding of all efforts made by the government in ensuring safety and security in the Indonesian national sea jurisdiction, both human safety and security, the natural environment, and shipping safety and security. Law enforcement in the waters is different from law enforcement on land, especially because in the waters / sea meet two legal interests, namely the interests of national law and international law, while on land only accommodates the interests of national law

In other words, law enforcement in the waters also means enforcing laws, conventions or all rules that have been agreed upon internationally, where the Indonesian government has joined in signing the conventions / rules, or has ratified them by issuing laws related to this matter.

Some fishermen in the area of West Aceh Regency still use the same fishing gear as the type of fishing gear used by Yulian Saputra bin Hasyim Jauhari, et al who have dealt with the law. Law enforcement is carried

out thoroughly, because there are still many other fishermen who use fishing gear as done by Yulian Saputra bin Hasyim Jauhari. Furthermore, based on the Police Report in March 2017 the Aceh Police Directorate of Investigation investigated cases of fisheries crime violating Article 85 of Republic of Indonesia Law Number 45 of 2009 concerning amendments to Republic of Indonesia Law Number 31 of 2004 concerning Fisheries. The investigation of the fisheries crime case was carried out based on the Police Report and subsequently was issued a Notice of the Commencement of Investigation (SPDP) of case files on behalf of each suspect and sent to the Aceh High Prosecutor's Office by the Aceh Police Polair Directorate.

Law enforcement for small fishermen using fishing equipment was lifted onto the boat that had been used by the suspects, found that trawl nets with features have an opening board, ris rope, weathering, ballast tin and the size of net mesh in the bag the small one, where previously the previous warning had been carried out by the Sat West Aceh District Police and the Aceh Police Regional Police Headquarters.

After the reading of the criminal charges, the pledoi by the defendant's legal counsel and the prosecutor's response to the defendant's legal advisor's pledoi, the panel of judges who examined and tried the case, passed a law against the defendant Yulian Saputra bin Hasyim Jauhari, et al. with the decision as follows:

1. Yulian Saputra bin Hasyim Jauhari, Decision Number: 73 / Pid.Sus / 2017 / PN-Mbo May 1, 2017, applying for a Prison Criminal verdict for 2 months and paying a fine of Rp. 500,000 (five hundred thousand rupiah) subsidies for 1 month in short.
2. Erfan Erfan, Decision Number: 76 / Pid.Sus / 2017 / PN-Mbo May 1, 2017, applying for a Prison Criminal verdict for 2 months and paying a fine of Rp. 500,000 (five hundred thousand rupiah) subsidies for 1 month in short
3. Aliman bin (late) Leman, Decision Number: 77 / Pid.Sus / 2017 / PN-Mbo May 19, 2017, applying for a Prison Criminal verdict for 2 months and paying a fine of Rp. 500,000 (five hundred thousand rupiah) subsidies for 1 month in short.
4. M. Din bin Muhammad Amin, Decision Number: 74 / Pid.Sus / 2017 / PN-Mbo May 19, 2017, imprisonment of a Prison Criminal Decision for 2 months and pay a fine of Rp. 500,000 (five hundred thousand rupiah) subsidies for 1 month in short
5. M. Mizar bin Syarifuddin, Decision Number: 75 / Pid.Sus / 2017 / PN-Mbo May 19, 2017, imprisonment of a Prison Criminal Decision for 2 months and pay a fine of Rp. 500,000 (five hundred thousand rupiah) subsidies for 1 month in short
6. Bakhtiar bin Abdullah Sani, Decision Number: 72 / Pid.Sus / 2017 / PN-Mbo May 1, 2017, applying for a Prison Criminal verdict for 2 months and paying a fine of Rp. 500,000 (five hundred thousand rupiah) subsidies for 1 month in short.

The case that befell fishermen in West Aceh Regency is inversely proportional to the settlement with fishermen in North Aceh Regency. Where the settlement of fisheries fisheries in West Aceh Regency is carried out by law enforcement by conducting investigations, as well as prosecution by delegating cases to the Meulaboh District Court. Whereas the fisheries settlement for fishermen in North Aceh Regency is done by completing customary law

Aceh Province as an autonomous region has a customary marine law that strictly prohibits activities that can damage marine biota in any way, so that it has been synergized with the Fisheries Law. This was stated by the Secretary General of Panglima Laot, West Aceh Regency who said that institutionally the use of illegal fishing gear had been reprimanded several times and fishermen who violated the rules also received traditional sanctions. We have already made a joint signing of the prohibition issue, an agreement not to use puka or other tools that can damage marine biota, but like drug users, the more prohibited it becomes.

The West Aceh district government along with law enforcers who found violations had handled it and how many were resolved by customary law, namely customary law as a form of guidance. The West Aceh District Government did not want fishermen to be arrested or punished because fishermen were part of the Indonesian people must be empowered. The pros and cons regarding the use of tools that are considered to be environmentally unfriendly, triggered resistance from fishermen who referred to the issuance of Circular Number: B.1 / SJ / PL.610 / I / 2017 concerning assistance in replacing Fishing Devices which are prohibited in the Management area Fisheries of the Republic of Indonesia (WPP-NRI).

According to fishermen, law enforcement is not yet time to be done because the Circular (SE) states that the Governor / Regent, as well as the regional technical institutions, must provide guidance for 6 (six) months since the circular letter was issued. Where enforcement must indeed, but there are orders that are ignored by the organizers in the Region, fishermen have not been fostered, have not been replaced by fishing gear, instead they are directly punished and convicted.

In the case that occurred in West Aceh, Panglima laot as a customary institution offered a solution for peace but based on the results of an interview with the provincial government commander, the disagreement occurred because the suspects felt that there were individuals who accompanied their activities, so there was no

need to adapt. The results of the interview also showed that there was distrust of the provincial leading institutions, this was evidenced by the absence of information conveyed from West Aceh fishermen regarding this case, even the Provincial Military Commander also said that threats were made to provincial commanders from fishermen who from West Aceh and Nagan Raya because they tried to provide understanding to stop using minitrawl.

Doing a customary approach or often called local wisdom in solving cases for saving the environment, sometimes often gets constraints. This obstacle does not only occur in the salvation of the sea environment, even the rescue of the land environment that can be seen in plain view also experiences such enormous obstacles. The pattern of local wisdom generally places cultural capacity, systems of knowledge and technology, religion, tradition, and social capital (ethics and environmental wisdom, norms and legal institutions) as something important in order to use resources.

These cultural capacities are used to balance between utilization and capture and estimated potential. The concept is actually the goal of sustainability and sustainability as an important consideration for local communities in utilizing resources.

Law enforcement remains to be done because not all fishermen commit violations, but it is feared that action can be taken from some other fishermen who have been opposed to the use of trawlers. The government does not want that to happen. In this case the use of fishing gear such as trawls and trawl nets, there will be turmoil from other traditional fishing communities. The solution that can be taken is just to try to confine the punishment. While law enforcement against government policy is still carried out for the sake of the sovereignty of the State of Indonesia. There are still many other parties involved in violating the law, but not yet reached the law, especially those who are selling unsafe fish catchers (API) in the environment, as well as fishermen fleet owners.

Before violations were only given legal sanctions and guidance, awareness raising efforts through prevention socialization, but fishermen still went to sea using fishing gear in the form of trawlers. Based on the research that has been done, it was found that fishermen who carried out activities in North Aceh District were still minimal in terms of prohibition use of fishing gear. This fisherman's ignorance is caused by the lack of socialization carried out by the government, but the author sees that the level of understanding of the use of fishing gear is very high, except that the omission carried out by the government and law enforcement officials is one of the strong reasons for fishermen who still use this prohibited fishing gear.

The Department of Marine Affairs and Fisheries said that in terms of providing information to the service community various types of efforts had been made, both from providing information to the community and installing several information boards in public places. In the case of settlement of violation cases carried out by fishermen, the Marine and Fisheries Service always approaches adat settlement by adat laot institutions as is the case in North Aceh. The settlement carried out in West Aceh could not adopt the resolution of cases in North Aceh, the agreement made by North Aceh fishermen with Panglima laot and the government became one indicator that enforcement of customary law could still be implemented by fishermen in North Aceh, while for West Aceh fishermen adat institutions have tried to peacefully use customary processes but cannot be accepted by fishermen.

The approach built by the Aceh Barat commander and North Aceh commander in resolving disputes on the use of illegal fishing gear for traditional fishermen is actually the same, where Panglima laot uses the adat approach in the legal process. In the concept, local wisdom is all forms of knowledge, belief, understanding or insight and customs or ethics that guide human behavior in life within its ecological community.

Traditional wisdom stems from the values and religious systems adopted in the community. The teachings of religion and the beliefs of local people animate and give color and influence the image of their environment in the form of attitudes and behavior towards their environment. The essence contained in it is to give guidance to humans to behave harmoniously and in harmony with the rhythm of the universe, so as to create a balance of relations between humans and their natural environment.

In the process of resolving disputes on the use of fishing gear, law enforcement officers usually prioritize settlement by custom by adopting customary law. As was the case in the case of 2 fishing boats in Seuneudon, North Aceh Regency on November 14, 2017. Where it was written in the media that joint patrols involved the Water Police and Maritime and Fisheries Service to capture 2 mini-trawlers operating in the waters. North Aceh Seuneudon. This captured ship is then taken to the seuneudon fishery port for safekeeping.

In an effort to resolve the case of the capture of the minitrawl vessel based on the results of research conducted so that the potential can be solved using the customary law approach. Based on the interviews conducted, it was known that the agreement to resolve disputes with customary settlement was based on the process of application by the fishermen concerned to Panglima Laot. In response to this, the North Aceh commander in chief carried out a negotiation process with the police so that the application was granted. According to him, in resolving cases of violations or disputes carried out by fishermen there are stages that need to be passed, namely to settle at the level of the institution of military command and settlement in the police. In

the case of North Aceh, Panglima Laot and the people who carried out the violations agreed to pay customary fines to Panglima Laot and make an agreement not to carry out fishing activities, so that this case could be resolved by custom.

Customary law prohibits all types of equipment that can damage the environment, such as bombing, poisoning, anesthesia, shocking, and so on. In addition, the prohibition also applies to the logging of various trees on the seashore such as arun (cypress), pandanus, ketapang, mangroves, and coral reef extraction. Adat Law also prohibits the taking of various protected or included animals and plants in the supervision of environmental researchers.

Fisheries dispute resolution using a customary approach can be done, because based on applicable rules, the rules of traditional customary law can be recognized in national law. State recognition of customary law in Aceh including customary law therein began when 1959 was issued by Prime Minister Hardi No. . 1 / Missi / 1959 dated May 26, 1959 which made Aceh as the status of the Special District. This privilege is given by the State in the form of the right to determine the form and content of education, religion, and customs. However, the privileges given should not be out of the political framework and legal system in the Republic of Indonesia (NKRI). So that in 1979 the government issued Law No. 5 of 1979 concerning Village Government. This law again limits the legal basis of hard drive mission decisions in the context of implementing customary life.

In 2001, Law No. was born. 18 of 2001 concerning Special Autonomy for the Province of Nanggroe Aceh Darussalam. This law provides the widest possible space for the existence of Panglima Laot in Aceh. But Law No. 18 of 2001 was declared invalid since the enactment of Law No. 11 of 2006 concerning the Government of Aceh (UUPA) on 1 August 2006 after the signing of the Helsinki Memorandum of Understanding (MOU) between the Indonesian government and GAM.

In Article 162 paragraph (2) letter (e) of the Aceh Government Law (LoGA) states that "The Aceh and Regency / City Governments have the authority to manage the living natural resources at sea as referred to in paragraph (1), covering the letter e "Maintenance of marine customary law and assisting with sea security".

Based on the Aceh Government Law (LoGA), in 2008, the Aceh government has outlined the customary law and other customary law in Aceh into the Aceh Qanun Number 9 of 2008 concerning Indigenous and Customary Counseling and Aceh Qanun Number 10 of 2008 concerning Institutions Adat Thus, the issuance of the Aceh Government Law (UUPA) became the basis of a new law that further strengthened the position and authority of customary law laot and panglima laot in Aceh in the National Legal System.

IV. CONCLUSION

Law enforcement for small fishermen who use mini trawl fishing gear, for fishermen in West Aceh Regency carried out in a repressive manner (prosecution) and against fishermen in North Aceh Regency is done preventively (prevention).

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