HARMONIZATION OF FISHERIES LAW FOR FISHERMEN EMPOWERMENT IN INDONESIA

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ABSTRACT

Harmonization of law is aimed to create conformity, harmony, and balance of law condition based on Pancasila as Indonesian law's grundnorm. Without putting the spirit of Pancasila the law will be meaningless. Harmonization of fisheries law in Indonesia is regulated by Act Number 45 of 2009 about the amendment of Act number 31 of 2004 about Fisheries. These Act has some norms which is contrary to fisheries facts, for example the norm in Paragraph 46A of Act Number 45 of 2009 bares a limitation of public involvement in overseeing the activities of industrial-scale fishing. Then, in Paragraph 25 of Act Number 45 of 2009 allows the degradation of environmental quality due to coastal or marine fisheries industry activity. On the other hand the government shuts down the access to public social control to monitor the activities of industrial-scale fishing industry due to the existence of Paragraph 46A of Act 45 of 2009. This setting has ignored the arrangement of Paragraph 14 section (1) and section (2) of Act Number 39 of 1999 on Human Rights, and the public's right to get information. This unharmonization of law cause problems for the fishermen to earn their good living through fisheries sector. This study uses normative research method that studies the principles of law, the legal basis of positive, systematic study of law and the research on law synchronization stage and law discovery efforts in concrete which is appropriate to apply in order to resolve certain legal issues. The study's finding indicates the role of law in development thinking is closely related to the characteristics of the legal ability to handle problems in the community. The absence of normative regulation which expressly protects fishermen, small fishing industry workers through the Fisheries Act is the phase of a disregard for the basic principles in the management of coastal zones and oceans in an integrated manner so that the existence of the Fisheries Act no longer harmony, conformity, balance according to Act 27 of 2007 on Management of Coastal Areas and Small Islands. So, the stakeholders have to concern on fishermen's fisheries culture to solve the unharmonization problems of fisheries acts in Indonesia.

Keywords: Fishery Regulations; inability of law.

A. Introduction

The longer coast means the greater number of poor people in Indonesia. This is because of the coastal areas in Indonesia are places or pockets to fishermen poverty. Poverty that occurs in fishing communities is not independent, but due to past policy that is too concentrated on the development of land areas (continental orientation) and forget about the development of marine areas (maritime orientation), making the marine and fishery sector periphery. Policy makers should consider seriously the importance of socio-cultural approach as a base or an instrument of empowerment of fishing communities. Based on sociological characteristics, coastal communities (fishermen) are different from rural communities (farmers) in mainland. In addition, resources and geographical characteristics among the regions are very diverse. So, as a result of coercion, ignorance approach and homogenization development programs for fishing communities will certainly produce failure.

The failure is caused by the application of empowerment that is not often framed by the social structure of the local culture, whether related to institutional issues or the prevailing system of division of labour in fishing communities. Consequently empowerment programs are extraneous to the local fishing community, and ironically, the institution of the new empowerment formation is often antagonistically confronted with local institutions. Thus, the public apathy towards the implementation of empowerment strategies such growing social resistance causes an impact on the creation of barriers to successful empowerment strategy.

The government should be duly filled-oriented to development based on local resources such as agriculture, forestry, marine and fisheries. Many countries that have the resources are now trying to rebuild the development paradigm by giving more attention to marine sectors, fisheries and agriculture. Indonesia should review this sector-based natural resource. This serious attempt of the government in reviewing the policy development based on local resources is expected to bring prosperity to the community as a target community of policy objectives, which in turn is the parameter of the successful development of the sector.

Development of the fisheries sector as a focus of study is quite interesting considering many observers in the media show "rosy picture" (beautiful picture) fisheries in Indonesia with "if-then" rule. For example, "if" this ocean is able to be benefitted by thousands of ships, and each ship produces many tons of fish so our economic will gain extraordinary benefits. The concept of a linear pattern of thinking will eventually greatly simplifies such a complex problems of fisheries development which requires a comprehensive-integral approach with other fields.

Fishery sector development issues cannot be separated from the problem found in most of the communities in the coastal areas of Indonesia, namely the problem of poverty fishermen (Especially the traditional fishermen and fishing workers) because the two types of groups is majority in number, the image of poverty inherent in the lives of fishermen. There are many factors which cause poverty so that rural community development approach should be applied in the development of coastal communities with the development strategy to help people to be able to build and develop on their own abilities and strengths, based on the development potential of the natural environment in the village.

This condition affects the level of participation of fishing communities and reduces the independence and initiative to self-help. If the regulations set-oriented for development purposes in favor of the individual capitalist philosophy, it will remain difficult for fishermen to break away from the cycle of poverty. There are many examples of it that fishermen are difficult to access to coastal areas. Meanwhile, the owners of capital are given the power to more freely use resources in the region though the region is closely related coastal ecosystems, especially marine fisheries.

The other side that reflects the lack of effectiveness of government policies to address the issue of poverty is fundamentally fishing port infrastructure which include fishery and Fish Auction Place (TPI) in various regions that do not contribute to satisfy the fishermen welfare, inequality and strong patron-client relations in fishing communities. With such a condition is very broad impact in the socio-economic life of the fishermen that requires a legal structure that contains alignments on fishing communities. Realizing such a reality today in the era of President Susilo Bambang Yudhoyono, there are a number of breakthroughs in the field of maritime policy and fisheries that can be taken and can be priorities after 100 days, among which can be called is a three-step or a concrete policy breakthroughs: *first* , developing non-bank Fisheries Financing Institutions (LPP) as an alternative source of financing micro-scale fisheries. It is important to remember that the sources of financing based upon conventional banks have been less supportive of small fish. *Second*, increasing the income of fishermen and fish farmers through fish price guarantee, diversifying technology and business, as well as infrastructure improvements. *Third*, enhancing the protection of fishermen and fish farmers with open access resource use and management, and trading. Many of the challenges that have a potential to limit access, such as industrial activities that pollute the waters so that the area is not feasible for fishing activities. The policy is attempt by the government to address the poverty crisis that occur in the fishing communities and also to support the small business community-based on fisheries management.

The involvement of the State through the construction regulations in the management and utilization of fish resources has been firmly stated in Act Number 9 of 1985 on Fisheries, as amended by Act Number 31 of 2004 and have been revised back through Act Number 45 Year 2009 regarding changes to RI Act Number 31 of 2004 on Fisheries, but has not been fully able to optimally empower fishermen to overcome the problems of poverty. Many legal loopholes that can cause blurring of meaning becomes increasingly urgent issue given the other provisions that can support these fisheries regulations namely Act 27 of 2007 on Management of Coastal Areas and Small Islands show impartiality of government in responding to the needs of small fishing industry, which is majority controlled by traditional fishing communities and fishing workers.

B. Discussion

1. Legal Rules and Values

The law does not only regulate human relationships, but also human behavior in using of natural resources. Government, undertaking of UUD NRI 1945, implements law in accordance with the respective sectors. Currently, the management of fish resources by Act Number 45 of 2009 on the Amendment Act Number 31 of 2004 on Fisheries, previously applicable Act Number 31 of 2004 on Fisheries as a reference for technical regulations fishery.

Basic considerations in the management of fisheries resources that are in the waters sovereignty of the Unitary Republic of Indonesia and the Indonesian Exclusive Economic Zone contains potential sea fish resources as a commercial fish breeding. It is a blessing from God Almighty that is mandated on Pancasila and the Constitution of Republic of Indonesia Year 1945 with respect to bring capacity and sustainability for the greater well-being and prosperity of the people of Indonesia. The benefits of fish resources yet provide improved living standards through sustainable and equitable fisheries management, optimal surveillance and enforcement systems. The law serves to integrate the interests that exist in society.

In Indonesia, it is a commitment that all activities carried out in the realm of state sovereignty should refer to the law. State law is a state system that is governed by the law with justice that are arranged in a constitution, in which all people in the country, both the governed and the governing, subjected to the same laws, so that everyone is treated equally and each different person is treated differently on the basis of a rational distinction, regardless of colour, race, gender, religion, region and trust. Authority of the government is limited by a principle power distribution, so the government does not act arbitrarily and violate people's rights. Hence the people are given roles in a democratically. So, all of the government regulation must based on Pancasila and the 1945 Constitution to reach the goals.

The principle of balance and harmony as part of efforts towards the harmonization of law so as to minimize the incidence of overlap legal norms setting, be able to overcome the limitations that can lead to differences in the formation of the order to the contrary and the discrepancy in the law. This kind of effort is caused by the meaning of law as a conceptual system of rule of law and legal rulings. Commitment to promote the rule of law should be able to describe the harmonization of the legal regulations in force, the notion of harmonization. As proposed by LM Gandhi, the harmonization of law is included adjustments to the legislation, the government's decision, the judge's decision, the legal system and general principles of law with the goal of increasing the legal entity, legal certainty, fairness and proportionality, purpose and legal clarity without sacrificing blurring and legal pluralism.

Furthermore, reaffirmed by Mohammad Hasan Wargakusumah pointed out that the National Law Development Agency Department of Justice, giving the sense of harmonization of law, as a scientific activity towards harmonizing the written law refers to both the philosophical, sociological, economical and legal values. Assessment of the draft legislation, the various aspects of what has been reflecting alignment and compliance with laws and regulations that other, unwritten laws that exist in the community, conventions and international agreements, both bilateral and multilateral agreements that have been ratified by Indonesia.

Law can be understood as the system to measure of the various elements and the common thread that connects the various elements and the network among these elements build the structure of the system. Thus law as the system connects good, primary and secondary or intrinsic and instrumental value in establishing a legal structure. This is the meaning of the law as a system of values. So behind the law there is value-laden meaning. The meaning is a characteristic of all the sentences are not unreasonable, and not only from the words in the form of an indicative but also from other forms such as interrogative, imperative or operative, then the meaning is a description of the facts.

The legal system has been divided into sub-elements of the law include the substance of the external legal order legislation, unwritten law, including customary law and jurisprudence, as well as the internal legal order of the underlying legal principles. Structure of the law regarding institutional agencies or public institutions, as well as Culture Law is included attitudes and behaviour of public officials and citizens with regard to the other elements in the process of life. As told by Lawrence M. Friedman that legal structure is an institution or law enforcement such as the police, prosecutors, judges and lawyers. Legal culture or the culture of the law includes the ideas, attitudes, beliefs, expectations and views about law. And Friedman see that the law is not worth only discussed in terms of structure and substance, but also in terms of culture. Legal culture is one component of the legal system. Just like what Lawrence has said:

For want of a better term, we can call some of these forces the legal culture. It is the element of social attitude and value. The phrase ”social forces” is itself an abstraction; in any event, such forces do not work directly on the legal system . People in society have needs and make demands; these sometimes do and sometimes do not invoke legal process-depending on the culture.

A legal system is basically trying to bring the content of the values contained in the rule of law as a goal that must be reached, and the value is the subject of one of the branches of philosophy that is axiology (philosophical value). Value is usually used to refer to an abstract noun that can be interpreted as worth or goodness. Human use values as a foundation, the reason or motivation in

Value is essentially concerned with the interests of the ideals, desires and expectations that exist in humans, and therefore are relative and subjective or abstract. Subjective value as nature intended values are the reactions given by the men as perpetrators and existence, depending on their experiences. So thus, the value is the nature or quality of something useful for human life, both physically and spiritually, and used as a primary reason or motivation to act and behave in society.

These values are then in a way to make it more understandable and useful to the public interest, the value defined in the normative size or concreted in the form of norms. In the context of the law, the law contains values, both primary and secondary values and or the basic values of the law intended as instrumental value, the law was valuable as a means to achieve happiness and justice in society, in addition to objective certainty itself.

Otherwise, these values which are spreading among fishermen actually can be categorized into three main types where this condition happened because of the gap between stake holder and the fishermen itself. *First,* fishermen can make a group of local fisheries management to local fishing in small communities based on their togetherness way to fishing. *Second,* those who are focus on credit to gain more of benefit specially for gaining business initiatives that may come from the higher state of fishermen or part of stakeholder. *Third,* those who are concentrate on political negotiation or lobbying to deliver policy changes to fisheries acts. Those values could be one of the most reason for the un-harmonization of fisheries act just because of different interest which is putted in form of values.

In the other side, both stake holder and fishermen must understand on policy implications that may come. It means, while making fisheries act legislation they have to control and manage the different values and interest between stake holder, fishermen, and businessman. While, fishermen have to brave to advocate their voice to gain sovereignty and fight against poverty for their life.

2. Harmonization of Fisheries Law to Social Values

The role of law in development is very closely related to the characteristics of the legal ability to handle problems in the community, it is a reflection of the characteristics of the type of the Civil Law System, the model used in Indonesia based on a formal setting. Thus the statutory sector becomes more prominent specifically in terms of fisheries regulation. In this case the statutory sector should be able to anticipate the needs in a changing society, so there must be legislation planning that can reach the future (legislative forward planning).

The concept of law harmonization of legislation with the perspective is an important factor to develop law in the field of fisheries that the coastal and marine areas and their natural resources is one of Indonesia's most important development assets because this region is supported by the three main components and the backbone of development. *First*, the biophysical components; coastal

and marine that extends along approximately 81,000 km of coastline and spread to more than 17,000 islands with approximately 5.8 million km including ZEEI territorial waters, has the potential biological resources or abundant and begaram type, and each resource has significant value both in the domestic market especially the international market.

Second, the socio-economic component, most of Indonesia's population (approximately 60%) live in coastal areas. This is due to the administrative, most districts / cities located in coastal areas. Third, the components of the socio-political changes in Indonesia political policy (democratization) that directly provides opportunities conducive to the development of marine Indonesia. This opportunities is the birth of Act Number 32 of 2004 on Regional Government, which further enhanced through Act Number 12 of 2008 concerning the Second Amendment Act Number 32 of 2004 on Regional Governance and Act Number 33 of 2004 on Financial Balance and the Central Region, and on the other hand with the establishment of institutional and Fisheries Department expected to be the driving forces of development and national fisheries. With the implementation of the Regional Administration Act, the coastal area of capital can exploit the potential natural resources. But unfortunately, it sometimes less attention to the exploitation of ecological limits and their impact on the surrounding environment.

Given the dynamic coastal areas is a strategic region, not only as a market but also the social market economy as the cultural dynamic strategic areas. Coastal areas have the potential for very large land resources for housing, land, production facilities and transportation services. As a consequence of the dynamics of the coastal areas that could damage the ecosystem, it needs a system of coastal zone management and coastal integrated to be able to accommodate all the interests of human and environmental sustainability.

Indonesia's marine wealth was abundant apparently not able to create welfare of coastal communities. The condition is indeed very ironic for it as a maritime nation with all variety of potential. In fact, the utilization and management of coastal areas in Indonesia will include a range of activities including the most crucial areas of fisheries regulations set out in the legislation sector with each vision and mission. According to a study from the Bill Drafting Team Academic Management of Coastal Areas and Small Islands there are 14 (fourteen) areas of development that directly or indirectly make use of coastal resources. To 14 (fourteen) field is the area of land, mining, industry, transportation, fisheries and conservation of natural resources and the ecosystem, tourism, agriculture, forestry, conservation, zoning, public works, defence, finance and regions.

The international conventions and other legal instruments are generally determined based on a broad pattern because they are generally negotiated and established just to meet the special needs arising at a time. Similarly, general or specific and detailed, they are probably not as something that should and can be accepted at the specified time, so that they do not have the same level in the framework of implementation. Some of these provisions have complete and detailed enough to be implemented immediately, while others require further development by the processes and arrangements nationally.

Various agreements have provided an important role for integrated coastal management through the implementation of agreements on the conversion and sustainable development in coastal areas. In this case the integrated coastal management (integrated coastal zone management) has an important role as it aims at the level to achieve sustainable development by improving social and economic well-being of coastal communities.

In a macro perspective, the management of natural resources is based on the 1945 Constitution Paragraph 33 section (3) extensively under the authority of the central government. In the legal context of the macro explained that the land, water and natural resources contained within it are managed by the state and are intended for the welfare of the people. The implementation of regulations concerning the management of natural resources is indeed for this still vague that almost all natural resource managements tend to be centralized. Consequently, in addition to ignoring the interests of the local community empowerment, it can also have an impact on a variety of natural resource degradation.

Analysis of integrated coastal management related to regional development, use conflicts and the interplay of natural processes with human activities, for the existence of building regulations in the management of coastal areas must be seen in 3 (three) major consideration as its legal basis:

First, Paragraph 33 section (3) of Constitution of Indonesia Year 1945, stated: "The earth, water and the natural riches contained therein shall be controlled by the state and used for the welfare of the people". Based on the mandate of the Constitution State RI In 1945, coastal management aimed to improve people's welfare and other economic activities, which aim to empower local communities and expand employment.

Second, MPR Decree No.. IV / MPR / 1999 on the Broad Outlines of State Policy Guidelines (Guidelines) for the 1999-2004, particularly Chapter IV (Policy Direction) in the H (Natural Resources and Environment) at number 4, stated that: "Utilizing the resources natural for the greatest prosperity of the people with respect to preservation of the function and balance of the environment, sustainable development, economic and cultural interests of local communities, as well as the spatial effort is regulated by law ".

Third, Act 25 Number of 2000 on National Development Program (Propenas) Year 2000-2004, in particular Chapter X (Development of Natural Resources and Environment) in figure 4 (Institutional Setup Program and Law Enforcement Management and Conservation of Natural Resources Environment), that expressed in one sentence, which reads: "The main activity is (1) Development Act Natural Resource Management following the rules".

Fisheries Act does not provide places for fishermen to protect small businesses, fishermen, labour and small fish industries. The government, through its legal products has been providing a wide for large industrial-scale fisheries in order to penetrate the fishery to fishery resources relating potential for all kinds of fish. Government intervention in the form of regulatory management and exploitation of fish resources referred to Act 9 of 1985 on Fisheries, as amended by Act No.31 of 2004, is not able to optimally empower fishermen to tackle the problem of poverty. In fact what happens is that fishermen are marginalized as mere objects settings. This in turn affects the level of participation of fishing communities, and will further reduce the independence and the initiative to self-help. If the regulations are set-oriented for development purposes in favour of the individual capitalist philosophy, it will remain difficult for fishermen to break away from the cycle of poverty. There are many examples of difficulties for fishermen to access the coastal areas. Meanwhile, the owners of capital are given the power to more freely use resources in the region though the region is closely related coastal ecosystems, especially marine fisheries.

Paragraph 6 section 2 of Act No.31 of 2004 on Fisheries states that fisheries management for the purposes of fishing and aquaculture should consider customary law and / or local knowledge as well as considering the role of the community. Paragraph is intended for administrators that in organizing, management and regulation, the existence of local communities with wisdom still get recognition. This paragraph shows that the existence of indigenous / local is not seen in isolation from the natural resources / fish in its territory.

For Indigenous people in some places, local knowledge is still preserved at the local community view of the surrounding nature as something sacred, and it must be maintained in order not to cause a disaster. In addition there are also the values that teach how humans should preserve the natural environment such as fishing with a concept that does not damage the ecosystem and take enough for the necessities of life. Such a society does not exploit nature. Carrying capacity levels are still higher than the damage caused by human activities because they see themselves as part of nature. Local wisdom is still alive in some places. For that, the government in the management of fish resources as stipulated in Paragraph 6 of Law No.31 of 2004, shall take into account and consider customary law and / or local knowledge as well as considering the role of the community, for example the Central Maluku impose "Sasi" ie prohibition to take and exploit fish resources in a given period (3-12 months). Local wisdom in the example "Sasi" can be interpreted to give the fish to grow and multiply so that fish populations will not be depleted.

The issue of environmental management ultimately must be considered so that the Fisheries Act should be aligned with the Act No.32 of 2009 because the protection and management of the environment are systematic and integrated efforts that are made to preserve the environment and prevent pollution and / or damage environment including planning, utilization, control, maintenance, monitoring and enforcement. Government Regulation No.60 of 2007 on Conservation of Fish Resources stating the conservation of fish resources is the protection, preservation and utilization of fish resources, including ecosystem types and genetics to ensure the existence, availability and continuity while maintaining and improving quality and diversity of fish resources.

The absence of normative regulation that expressly protect small fishermen, fishing workers and small fish industries through the Fisheries Act is ultimately a phase disregard for the basic principles in the management of coastal areas and seas in an integrated way. One of the principles should exist for the integrated coastal zone management achievement and the principle of management of coastal resources have traditionally cherished so on other aspects of existence Fisheries Act no longer a conformity, harmony, balance by Act 27 of 2007 on the Management of Coastal and Island- ° Based Small island sustainability; consistency; integration; legal certainty; partnerships; equity; public participation; openness; decentralization; accountability and justice.

In the field of environmental management of coastal areas, the development of legislation began to appear after the enactment of Act No.32 of 2009 on the Protection and Management of the Environment, the law has been repealed by Act No.23 of 1997 on the Fundamentals Environmental Management, the utilization of environmental resources in a sustainable, ecosystem maintenance and control of the impact of development on the environment and human life stipulated in this law. Through this law also, has hinted at the need for an Environmental Impact Assessment (EIA), which was developed in 1982 through the Government Regulation No.51 of 1993, environmental impact assessment activities are arranged and given the force of law. Development in coastal areas and oceans requires an environmental impact assessment as part of the planning process before construction activities are carried out.

In addition, the presence of Act No. 5 of 1990 on Conservation of Natural Resources and Ecosystems set in the context of natural resource utilization policies are sustainable in accordance with Act 32 of 2009. Act stipulates the need conservation of all natural resources and related ecosystems and the use of environmentally sound. And one should also note, Act 26 of 2007 on Spatial Planning that govern the management of all living land, sea and running air spaces, including spaces in the earth as a whole region, where humans and other living creatures, engage and maintain survival. This law is very important in the management of coastal and marine areas. Their presence will be associated with Act 27 of 2007 on Management of Coastal Areas and Small Islands and has a variety of natural resource potential is high. It is important for social development, economics, culture, and environment that it is necessary to manage in a sustainable and global perspective to take into account the aspirations and community participation.

C. Conclusions

a. Harmonization of law leads an attempt to achieve harmony, conformity, balance of existing legal norms as the legal system in a single framework of national legal systems. Normative legal provisions in the management have not been fully able to anticipate technological developments and the needs of law in the management and utilization of fish

resources and have not been able to answer these problems. So it needs to be a change of some substance, concerning aspects of management, bureaucracy and legal aspects.

b. Fisheries Acts do not provide places for fishermen to protect small businesses, labour and small fish industries. The government, through its legal products has been providing a wide for large industrial-scale fisheries to penetrate the fishery to fishery resources relating potential for all kinds of fish. State intervention in the form of regulatory management and exploitation of fish resources referred to Act 9 of 1985 on Fisheries, as amended by Act No. 31, 2004, has not been able to optimally empower fishermen to tackle the problem of poverty. In fact, fishermen are still marginalized and are mere objects settings

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