

THE INFLUENCE OF THE CULTURE OF LAW IN LAW ENFORCEMENT CRIMINAL ACTS IN THE FIELD OF FISHERIES

Abd. Asis, Andi Sofyan, Aswanto, Slamet Sampurno S.
Hasanuddin University Graduate
Email: asisfhuh@yahoo.co.id.

ABSTRACT

Indonesia has the potential of marine and fisheries and a good variety of renewable or not renewable, but in the field fishery optimally still hampered with the rampant practice of catching fish illegally or criminal acts in the field of fisheries. The purpose of this writing is to know the influence of the culture of law in law enforcement criminal acts in the field of fisheries. Writing this type of normative research using secondary data, then the data were analyzed qualitatively-normative, examine the way interpret and construct the statement contained in document per-Act. The results showed that the law is strongly influenced by factors such as, among others: values, attitudes, and the community's view of called with cultures of law. Based on legal cultures which may give rise to differences in law enforcement between the communities that one with other communities. The legal culture is linked to the professionalism of law enforcers in the exercise of his duties, and public awareness in adhering to the law itself. Overall attitudes and values and behavior that determine the applicable law on society. Thus, the construction of the legal awareness should be oriented in an effort to promote the values underlying the legislation in question as well as paying attention to the communication of the ruling factor in order for the contents of such laws can be known by the public at large as the target of the rule of law itself. So the culture of the law contains the meaning of the process of internalization of values that are alive and thriving in the community who can serve as a cornerstone in understanding and law enforcement especially in the field of fisheries. Therefore, the fundamental issues should be against the law as already described above should be addressed properly.

Keywords: the influence of culture, law, law enforcement, criminal act, fisheries.

INTRODUCTION

Indonesia has the potential of marine and fisheries and a good variety of renewable or not renewable that is territory potential, natural resources, and marine services. Renewable resources such as capture fisheries resources and cultivation, potential biota none fish as well as sources of energy for non-conventional, while the resources that cannot be renewed either in the form of potential oil and gas or mineral potential as well as a treasure. Likewise, Indonesia as a country that is rich in maritime resources biological and non-biological. Location of Indonesia is flanked by 2 (two) sea i.e. the Pacific Ocean and the Indian Ocean which is the international shipping lanes of traffic. Biological resources of the sea is contained in it is very potential, both for the raw materials industry, the need for food and other necessities.

Some of the factors that caused the fishery has a very important role in supporting national development, Indonesia is¹:

1. The number of fishermen gave up his life and business activities of capture fisheries;
2. The existence of foreign exchange donations totaling quite significantly and are likely to increase from year to year;
3. To fulfill the needs of source of animal protein for most community;
4. Open employment for new labor force, so it is expected to reduce unemployment; and
5. The existence of potential fisheries owned by Indonesia.

Based on the fisheries resource potential abounds as the above description, but in optimum utilization of fishery is still hampered by the rampant practice of catching fish illegally or criminal acts in the field of fisheries or in an internationally known the term "Illegal", "Unreported", and "Unregulated", among other things, for example: theft of fish by the ships of foreign flag, the use of fish capture tool that is not allowed, rapporteur contents-an catches does not correspond to the real data and fishing that is not responsible, etc.

The mode of activity of IUU Fishing in Indonesia conducted by the ships to operate a fish that has not been equipped with Fishing Business License (SIUP) and Fishing License (SIPI). These ships have certainly did not report the results of his the catch to the Government including paying cost. There are also ships that have PROVIDED, and the SIPI but do not comply with the provisions as being written in it that is the type of capture tool, the arrests, the size of the Gross tonnage (GT) and engine of the ship. Activities including IUU fishing that over-fishing is the use of the materials or the use of dangerous equipment capture tool which is forbidden to operate in Indonesia or operate on the region which is not in accordance with the permit issued.²

Based on the above description, then the result of the mode of practice of IUU-Fishing is not only materially harm the value of billions of dollars to the State, but also the raises the threats to the sustainability of fish resources, the fishing economy is destroying traditional, as well as violating State sovereignty at sea. So then the problem of IUU Fishing must be done both law enforcement prevention/ or are both comprehensive integrated by law enforcement agencies, to enforce the sovereignty, security, the economy and the image of the nation of Indonesia as a nation of great marine and sovereign. Based on the above mentioned phenomenon then this research issue is there is a trend of weak enforcement of the law against criminal acts in the field of fisheries. Therefore need to be studied more about the influence of the culture of law in law enforcement criminal acts in the field of fisheries.

RESEARCH METHODS

¹ Melda Kamil Ariadno, *Kepentingan Indonesia dalam Pengelolaan Perikanan Laut Bebas*, Jurnal Hukum Internasional, vol. 2 Nomor: 3, April 2003, hal. 507.

² Darmawan, *Analisis Kebijakan Penanggulangan IUU-Fishing dalam Pngelolaan Perikanan Tangkap Indonesia*, Tesis, 2006, Program Pascasarjana IPB Bogor.
<http://dx.doi.org/10.14724/jh.v3i2.33>

Type of Research

This research is the normative legal research especially with regard to law enforcement efforts in the eradication of criminal acts in the field of fisheries, which includes data collection, data processing and data analysis.

Types of Data

The data used in this research is secondary data, namely data obtained from references in the form of information which indirectly acquired through the study of librarianship, related legislation, and jurisprudence, archives that relate to issues that are examined, such as the verdict, and scientific writings and other written sources

Data Analysis

The data were analyzed qualitatively-normative, examine the way interpret and construct the statement contained in document per-Act.

THE RESEARCH RESULTS

The relationship between the Cultures with awareness of law

The law does not merely articles written on paper only in the form of per-rule of law, but the law can be seen as a system or symptoms in public life with the pattern of behavior of its citizens. The law was strongly influenced by factors such as the non law among others: values, attitudes, and the community's view of called with cultures of law. Based on legal cultures which may give rise to differences in law enforcement between the communities that one with other communities.

Legal culture, according to Lawrence Meir Friedman is a human attitude toward the law and the legal system--the beliefs, values, thoughts, as well as his expectations. The legal culture is the atmosphere of social thought and social forces that determine the legal use, avoided, or abused. Legal culture intimately connected with the legal consciousness of the public. The higher awareness of Community law then it will be created a culture of good laws and can change the mindset of the public about the law during this time. Simply put, the level of compliance of the law society is one of the indicators of the functioning of the law.

The legal culture is linked to the professionalism of law enforcers in the exercise of his duties, and public awareness in adhering to the law itself. Overall attitudes and values and behavior that determine the applicable law on society.

Thus, the construction of the legal awareness should be oriented in an effort to promote the values underlying the legislation in question as well as paying attention to the communication of the ruling factor in order for the contents of such laws can be known by the public at large as the target of the rule of law itself. So the culture of the law contains the meaning of the process of internalization of values that are alive and thriving in the community who can serve as a cornerstone in understanding and law enforcement. Law/culture is inseparable from the discussion of indigenous customary laws or community related customary rights as juridical technical terms is a right inherent distinctive competence on the community as customary law, in the form of authority/power manage and regulate soil with successful inward or outward.

As examples of the customary law or Customary Institutions Laot is the customary laws which required fishing communities in maintaining public order which includes the fisheries

resource, the maintenance of fish and other marine life, and keep the life of fishing communities who live in the coastal areas. By law, customary law are closed, meaning Laot cannot be eliminated in the structure of Government in Aceh so that it has the power and authority in a particular implementation. However, in practice, customary law Laot in Aceh can be open, meaning that, in applying customary law the Laot constantly adjusting to the times. The customary law of Indigenous Laot Maintenance Environment includes:

- a) Do not use any kind of tool that bias is destructive to the environment, such as: bombing, poisoning and for anesthesia, with power tools, retrieval of coral reefs, and other materials that may damage the environment and other biota.
- b) Prohibited cutting down/damaging the trees on the shore and beach wood such as pine tree, during, the Ordinance, mangrove and other trees.
- c) Banned catching fish/plants and other biota that are protected or included in the oversight of the research environment, such as dolphins and turtles and so on.
- d) About the end stuff drifting at sea, fishermen who me must submit to local Commander Laot to attend or give up right to the authorized institution.

The fundamental question about the legal Culture

With regard to the above, there are three fundamental issues of legal cultures, such as the following³:

1. Law As A System

Law as a system, it can be judged from 2 sides that are different are as follows:

- 1) The law was seen as a value system, where the entire law-enforcement in order based on the grundnorm which later became the source of the values at the same time guidelines for law enforcement itself;
- 2) The law is seen as part of the Community (social reality), in which the law cannot be separated from the environmental community because, in this case, the law is one of the subsystems of the subsystem-other social subsystem.

Lawrence Meir Friedman explained that law as a system has the following components:

1. The structure that is created by the institutional form of the legal system to support the works of the legal system itself, such as: District Court, court administration, and so on;
2. The substance in the form of legal norms used by law enforcers as well as those who are governed;
3. Legal culture in the form of ideas, attitudes, expectations, and legal opinions about overall influence someone to obedient or disobedient of the law.

So in principle a law has a reciprocal relationship with the community, where the law is the means/tools for organizing communities and work within the community itself, while the public can be a barrier or a/social tools that let the law be applied carefully, as according to Emile Durkheim, the relationship between the law societies can be seen from two different types of society among others:

³ Sumber: file:///I:/0%20junaidi_maulana/Budaya%20Hukum/budaya-hukum-dan-penegakan-hukum_23.html, diakses pada tanggal 18 Juni 2013.
<http://dx.doi.org/10.14724/jh.v3i2.33>

1. Society with mechanical solidarity is based on the nature of community among its members so that the repressive nature of the legal function of maintaining such togetherness;
2. Society with organic solidarity that is based on the nature of individualism and freedom of its members, thus causing the restitutive nature of the law only serves to keep the continuity of the life of the community.

Similarly as H.L.A Hart also suggests there are 2 type of society that is:

1. A society that is based on the primary rules of obligation, whereby the society consists only of a small community so that her life is just based upon kinship only. This type of society do not require official regulation and detailed so that there is no differentiation as well as specialization also law enforcement agencies;
2. A society that is based on the secondary rules of obligation, to which the community is already a modern tagalong so that required the presence of institutional differentiation and in law enforcement patterns that cause the ruling covered with elements of bureaucracy.

In the development of laws in Indonesia are not followed with the development of the society. This is due to the occurrence of disharmony between the values of law made by the Government with a modern legal system with the values that have been inherited, adhered to by the people who are still traditional in nature so that people are less ready to accept the modern legal system and result in the ruling made by the Government to be not meaningful for society.

2. The function of Legal relation to the cultural influence of the law

This law, it is not enough simply to function as a social control, but rather the law able to move people to behave in accordance with ways and new patterns in order to achieve the aspired goals. It is necessary the presence of the legal awareness of society as a connecting bridge between the rules of law is written with the behavior of community members. Due to the between the law that has been made in writing cannot be applied and implemented well in the society caused by the existence of a value, the views, and attitudes that have been lived by the community. Developments in Indonesia can be seen that the social structure of the nation was not in accordance with modern laws chosen by the ruler so that it leads to a lot of modern law enforcement lameness occurs itself.

As according to Lon Fuller, there's 8 principles of legality to be followed in making the law include:

1. There should be a rule in advance;
2. The regulations were to be announced;
3. The regulations should not be retroactive;
4. The formulation of the rules must be understood by the people;
5. Law shall not run things that are not possible;
6. Among fellow regulations should not be any conflict with each other;
7. Regulation should remain and should not often way;
8. Must be conformity between legal officials act with regulations that have been made.

In the preparation of regulations per-Act, then the guidelines which should be held is as good as any law (Act) are made, but in the end very defined by law in the form of cultural values, views and attitude of a society that is relevant-ness ", so if the legal culture is ignored or not considered, then certainly arises from the failure of the modern legal system was marked by the emergence of a variety of symptoms such as: Fallacy of information regarding the content of the legislation want presented to the community , the difference between what is desired by the Act with a practice run by the community, Even the community prefer to stick to behave in accordance with what has been the values and views in their lives, as Daniel s. Lev explains, that about the legal system and legal culture, where he thought the legal system that emphasizes on the procedure, whereas the culture of law itself consists of 2 components i.e. :

1. The values in the form of procedural law means of conflict management and community settings;
2. Substantial legal values in the form of fundamental assumptions about the distribution or use of resources within the community, especially about what is fair and not according to the community.

Thus a system of law is said to be effective in human behavior within the community according to what has been determined in the applicable legislation, in this Paul and Dias suggested 5 terms that must be met in order to streamline the legal system, among others :

1. The meaning of the rule of law is not easy it is to be understood;
2. Whether a broad circle in the community who know the content of the rule of law is concerned;
3. Least efficient and effective mobilization of the rule of law;
4. The existence of the dispute resolution mechanism that is not only easily accessible by the public but also to be quite effective in resolving disputes;
5. The existence of the presumption and the recognition that evenly among the public that the rule of law and institution was indeed truly effective ability power.

In fact, Indonesia society, particularly in rural areas are still clearly visible that the values contained in the law will vary with the values that have been inherent in the life of the villagers. For there are some things to be aware of i.e.:

- The role of the implementing bureaucracy that is the village head is very important to make the law became effective in the community,
- Building a communications law to run properly in order for the community to understand the existing law.
- Facilities and infrastructure in the delivery of an adequate rule of law so that the public can participate in the process of mobilization law.
- Instilling new values through the process of institutionalization to become new behavior patterns in order of formation of legal consciousness of the public, so that the efforts to instill a new legal culture can be achieved if the process of has done well and truly for the creation of awareness of Community law.

3. The Role Of Culture/Cultural Law Against Legal Works

The role of culture/cultural law against this law works means how construction of the awareness of the law. The issue of the construction of the consciousness of law closely related

to various factors, in particular the attitude of the executor of the law means law enforcers have a large role in fostering the growth of community awareness. Legal awareness in this context means consciousness to act in accordance with the provisions of law and serves as a connecting bridge between the rules of law with the behavior of members of the society. Lawrence m. Friedman referred to it as a part of the culture of the law. The facts further indicate that although there are new elements in the rule of law, our society still is actually the role occupants (addressed) patterned behavior in accordance with the law of consciousness itself. This means what the ideals legislature has not materialized.

There are 3 primary variables according to by Seidman can be used to determine whether a person will act in accordance with the rule of law or not, i.e.:

1. Is it strictly has been delivered (dissemination products law);
2. Is it strictly in accord with the purpose of being applied for that position (synchronization product law);
3. What is the role of holder is driven by motivations distorted (motivation factors).

Towards a theory of the above by Seidman, teaches that the role holder can have motivation, either wanted or not wanted to conform to the norm. In the meantime, the role holder can also have behavior that may or may not conform. This theory became known as the theory of aberration. The occurrence of incompatibility between the role expected by the norms with the real behavior of society as described by the theory of the deviations above, because the law no longer functions merely as a social control alone but rather as a means to establish a pattern of behavior that is new so give birth to a new society which aspired to. Based on modern concepts, such as the legal function is used as a means to do social engineering. But unfortunately, the function of law as a social engineering was not always supported by the social life in which the law is applied so that should be supported with the level of legal awareness of high society. The fact that we often encounter is still the number factor inconsistencies in the implementation of the law and reluctance in implementing the provisions of law that have been enacted and customs other less supportive in obeying the law.

The practice of criminal acts in the area of fisheries (IUU Fishing) is a very complex problem for the world fisheries catch in Indonesia. Based- empirical data obtained from KKPRI, it has been estimated that every year Indonesia has experienced losses in the field of fisheries up to USD 2 billion or about Rp19 trillion per year due to criminal acts in the field of fisheries, including catching fish without a license. In other words, amounting to + 22% the production of IUU Fishing around the world comes from Indonesia. Indonesia as the world's largest archipelago, has 17,500 Islands. Geographically, almost 70% + (5.8 million square km) area of Indonesia is the waters with the potential riches of the sea's potential. Advanced KKPRI according to data that the source of sea fisheries Indonesia is estimated at + 6.167.940 tons per year. However, due to the layout position of Indonesia as a cross between the two continents (Asia and Australia) and two Oceans (Pacific and Indian oceans) causing Indonesia region occurred in the field of criminal acts of insecurity fisheries. Now, the point of the cartilage, among others, is located in the Natuna Sea, Arafuru Sea, and North Sulawesi North to the Halmahera Sea (Pacific Ocean), the Makassar Strait, and the western coast of Sumatra is performed by the ships of Viet Nam, Thailand and the Philippines in January-April 2009,⁴

⁴ Samudera Hindia, Lihat : <http://www.dkp.go.id> diakses tgl 25 Mei 2013.
<http://dx.doi.org/10.14724/jh.v3i2.33>

The practice of criminal acts in the field of fisheries is a very complex problem for the world fisheries catch Indonesia. Based on empirical data obtained in the REST mentioned that each year, the practice of illegal fishing in the territorial waters of Indonesia is no less than a thousand ships with territorial waters surrounding the target the waters of the Natuna Islands, the Arafura Sea and Celebes Sea area north to the Halmahera Sea. Violation of illegal fishing boats by Viet Nam, Thailand and the Philippines. In the period of January – April 2009. Based on the data above, WPPRI experienced a serious threat so that required the presence of law enforcement efforts in the eradication of criminal acts in the field of fisheries by the Government and in particular the law enforcement authorities in the field of fisheries.

CONCLUSION

Indonesia is one of the countries that have the natural resources of the sea, it became one of the superiority of Indonesia as one of the island nation in the world, but in the utilization of fishery optimally still hampered with the rampant practice of catching fish illegally or criminal acts in the field of fisheries. One of the factors that Doom the rise of criminal acts in the field of fisheries in Indonesia are cultural factors ruling, this legal culture and is closely associated with her awareness of the law. Therefore, the fundamental issues should be against the law as already described above should be handled well.

REFERENCES

- Darmawan, *Analisis Kebijakan Penanggulangan IUU-Fishing dalam Pngelolaan Perikanan Tangkap Indonesia*, Tesis, 2006, Program Pascasarjana IPB Bogor.
- Eko Soponyono, *Kebijakan Formulasi Sistem Pemidanaan yang Berorientasi pada Korban dalam Bidang Hukum Pidana Materil*, Fakultas Hukum Universitas Diponegoro, Semarang, 2011.
- FAO Tecnical Guidelines for Responsible Fisheries. No.9 Rome, 122 dalam In. up: [//www.fao.org.UNFAO/about/mandate_en.html](http://www.fao.org.UNFAO/about/mandate_en.html), diakses, tanggal, 15 Januari 2013
- file:///I:/0%20junaidi_maulana/Budaya%20Hukum/budaya-hukum-dan-penegakan-hukum_23.html, diakses pada tanggal 18 Juni 2013.
- Gany, R. A. 2000. *Pengembangan Sumber daya Manusia dalam Pengelolaan Sumber daya Pesisir dan Lautan*. Makalah Ilmiah. Prosiding Konferensi Nasional II Pengelolaan Sumber daya Pesisir dan Lautan Indonesia. Makassar.
- <http://www.dkp.go.id.php?c-7.366>, Menyimak Kinerja Pengawasan dan Penertiban IUU Fishing, diakses tanggal 15 januari 2013
- Melda Kamil Ariadno, *Kepentingan Indonesia dalam Pengelolaan Perikanan Laut Bebas*, Jurnal Hukum Internasional, vol. 2 Nomor: 3, April 2003.
- Rokhmin Dahuri, *et al.*, 200, *Pengelolaan Sumber daya Wilayah Pesisir dan Lautan Secara Terpadu*. Jakarta: PT Pradnya Paramita.
- Samudera Hindia, Lihat : <http://www.dkp.go.id> diakses tgl 25 Mei 2013.