

IMPLEMENTATION OF INTERNATIONAL INSTRUMENTS IN INDONESIAN LEGISLATION IN THE FIELD OF CONSERVATION OF FISH RESOURCES

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ABSTRACT

The intention contained in laws and regulations concerning the conservation of fish resources is so that there are activities that lead to protection of fish resources as a whole. During this time the utilization of fish resources more dominant done compared to the protection and preservation, so the impact on the aquatic ecosystem. The purpose of this research is to examine international agreements regarding the conservation of fish resources which have been ratified and implemented into other policies and legislation in order to become a guideline in behavior so bring a change in society. This research is a descriptive qualitative using a data source from an earlier study results and document the latest libraries. Results of the study that the conditions of the CCRF (Code of Conduct for Responsible Fisheries) became a legal basis in the formulation of the provisions concerning the management of fish resources responsibly. Sustainable fisheries zone were never regulated in the regulation of the management of conservation areas. The Fisheries Act has yet to implement the provisions of the UN fish stocks agreement of 1995 relating to the conservation and management of fish resources in the ZEE and Indonesia on the high seas. Therefore the Fisheries Act require refinement, considering Indonesia has been a member of two regional fisheries management organization and ratify the UNITED NATIONS Agreement on fish stocks of 1995.

Key words: fish, conservation, protection.

INTRODUCTION

Unitary State of the Republic of Indonesia is the largest archipelago in the world with as many as number of 17,508 Islands, along the coastline, and extensive 81.000 km Lake of 58 million km (75% of the total area of Indonesia).

So that the potential of the coast, Islands, and oceans is enormous, consisting of Bio resource and non biodiversity.

Reviewing the function of the sea, Indonesia has long been utilized by people of Indonesia hereditary for sustaining life, where the sea is very strategic and Indonesia is rich in natural resources, which constitute the basic capital all national development field. The basic capital of natural resources must be protected, nurtured, preserved, and benefits is optimal for the welfare of society Indonesia, the main fish resources are extremely high for its potential as a source of food ingredients that are useful and full of protein. Although he acknowledged that the potential is very promising if fisheries are managed in a professional manner. But sometimes the potential of less note. But hale personal or business interests.

Setting the national aspect of the law in protecting the fisheries resources include Law – Law No. 31 of 2004, jo. Act 45 of 2009 about the changes to the Act No. 31 of 2004 regarding fisheries. But this legislation possible Act – foreign fishermen have broad opportunity to exploit fisheries resources in Indonesia, particularly in the exclusive economic zone. To implement the provisions of article 13 of law No. 31 of 2004 regarding fisheries, established Government regulations No. 60 in 2007 about the conservation of Fish Resources. Setting the terms of the Convention-International Convention governing the protection of fisheries. Mean annual fish resource conservation in this form of protection, preservation, and utilization of fish resources, including ecosystems, species, and genetic to guarantee the existence, availability, and continuity and maintains and improves the quality of the value and diversity of fish resources.

According to the report, Indonesia is expected to suffer losses up to USD 2 billion or equivalent to nineteen trillion Rupiah per year. 22% the production of illegal fishing around the world comes from Indonesia. According to sources mentioning the losses far greater Indonesia which between 30 – 40 Trillion Dollars every year due to the illegal fishing.

As an archipelago, an area of the sea waters Indonesia reached more than 2/3 of the total area of Indonesia. Indonesia's sea wealth, among others, in the form of coral reefs (coral reef) represent the diversity reached 17, 59% of the diversity of the world's coral reefs. Indonesia also has 37% of world seas species and 30% of the world's mangrove area. Pay attention to an area of the waters, and wealth for the future economic growth and welfare of society Indonesia will be determined how big our performance in marine resource managers, coastal and small islands.

Based on the data of potential marine fisheries Indonesia expected to reach an annual tons of 6.167.940. Due to the layout position of Indonesia that cross is

located between two continents, Asia and Australia and two oceans (Pacific and Indian oceans), causing the occurrence of Illegal Fishing-prone Indonesia (theft of fish). As for areas that are prone to the point of being located in the Natuna Sea, Arafuru Sea, North of North Sulawesi (Pacific Ocean), the Makassar Strait, and West Sumatra (Indian Ocean).

As a result of illegal fishing is destroying the habitat of the biological resources of the sea. Damaging the coral reefs, sea grass meadows, and numerous ecosystems in the sea. All small fish up. Damaged breeding grounds. If this is left to the future of the fishery can no longer be expected. The Government still turn a blind eye to the impact caused. This not only implies a lack of economic income (foreign exchange) State of the results of the fishery reach trillions of Rupiah, but also can damage marine ecosystems, including coral reefs, according to the Ministry of State of Environment, extensive coral reefs of Indonesia which has suffered damage to reach 61% and 15% categorized already critical. To the need for the Political Will of the Government in handling and managing the wealth of the sea wisely remained in favor of the environment and society in Indonesia widely.

In principle the aim of promoting the normative basis is contained in Government Regulation No. 60 in 2007 about the Fish resource conservation is so that there are activities that lead to protection of fish resources as a whole. During this time the utilization of fish resources more dominant done compared to the protection and preservation, so the impact on the aquatic ecosystem. Therefore, based on the principles contained in the Declaration of Stockholm 1972, that countries are free to manage environment however should pay attention to the preservation of the environment. It is also a paradigm of modern environmental law-oriented environment (environment oriented) that changes the paradigm of classical environmental law, which merely describes the utilization environment only (use oriented).

Based on the above fish resource management has yet to provide a sustainable livelihood enhancement and fair management of the fishery, through supervision and law enforcement that is optimal. Thus there is a tendency of Government Regulation No. 60 in 2007 about the conservation of Fish resources and other regulations have not been implemented optimally. As a result the impact on marine ecosystems and affect the economy of the country. This is particularly of concern because if not done wisely, then ecosystems aquatic biota's life as a buffer at a time now and to come will be damaged. Therefore the authors restrict the problem how can the protection of the law of conservation of fish resources in Indonesia.

The importance of research on protection of fish resources, conservation is to avoid excessive the utilization of without paying attention to the protection and preservation of which may affect the welfare of the people. For that, through a series of studies/further research with in earnest to find answers that by applying the legal protection on conservation of fish resources is something that cannot override primary consideration to ensure the welfare of the community in the future. For it takes a change in attitude in the community give the fish resource conservation.

DISCUSSION

International Fisheries Law Setting

1. Convention on the law of the Sea 1982

In relation to the utilization and management of the fish resources, the law of the Sea 1982 Convention contains provisions relating to fisheries laws that apply in the various kinds of maritime zones under and outside the limits of the national jurisdiction. Provisions related to the conservation of fish resources are regulated by article 61 of the Convention law of the sea of 1982.

Based on the foregoing, coastal States are required to take measures of conservation by setting the number of permitted catches of fish resources within the economic zone of eksklusifnya. Coastal States are required to maintain, based on scientific evidence that exists, so that fish resources are not subjected to over-exploited (symptomatic capture more in order to guarantee the maximum sustainable yield of article 4 paragraph (1) of law No. 24 of 2000 concerning international treaty stated that the Government of Indonesia to make international agreements (with one or more Countries , international organizations or other international law subjects) based on the agreement and the parties are obliged to execute the agreement in good faith.¹

2. The Convention on Biological Diversity 2010

One of the results of the Rio Conference on sustainable development is the + 20 years stressed the need for the conservation and utilization of marine resources on an ongoing basis for tackling poverty, food security and livelihoods and to improve economic growth. From 283 points agreement 19 points related to marine and fisheries and the three points is very important, namely conservation, fisheries management and subsidies. The importance of marine conservation include the protection of the Sea (above sea level) and the sustainable utilization

¹ Muhammad Ashri. *Hukum Perjanjian Internasional Dari Pembentukan Hingga Akhir Berlakunya*. Arus Timur. Makassar. 2012. hal 82.

in point 177 expressly referring to the Convention on Biological Diversity 2010 target of 10 percent of the coastal area and the sea by 2020. When sea area of Indonesia reached 3.1 million km² (310 million acres), then we must conserve 31 million hectares. Up to this point our marine conservation area about 15, of 1.4 million hectares (5 per cent) and ditargetkan 20 million hectares by 2020 (compass, 12 Juli 2012).²

3. The 1993 FAO Agreement to Promote Compliance with international Conservations and Management Measures by fishing Vessels on the High Seas

The 1993 FAO Compliance Agreement is an integral part of the FAO Code of Conduct for Responsible Fisheries. This agreement specifically tried to address the issue of reflagging and Flag of convenience (mock flag) associated with ships that fish do IUU fishing. This agreement was then developed into an instrument that regulates the provisions related to the flag State of the ship all the obligations.

4. The approval of the United Nations for 1995 on the implementation of the provisions of the United Nations Convention on the law of the sea on 10 December relating to the Conservation and management of fish stocks are Limited and Preparations Beruaya fish Beruaya Far.

The United Nations agreement on fish stocks of 1995 it consists of 50 chapters and two Annex (annex), which contains the basic materials include:

Under article 2 of this agreement aims to ensure the long term conservation and sustainable utilization of fish stocks are limited and beruaya the remote beruaya fish stocks through effective implementation of the related provisions of the Convention.

According to article 6 paragraph (1) the approval of the United Nations, States should apply the precautionary approach widely to conservation, management and exploitation of fish stocks are limited and beruaya a beruaya fish stocks further. Whereas paragraph (2) of this Agreement States that countries are required to be more careful at the moment information is uncertain or unreliable and inadequate. Based on the principle of prudence, the lack of evidence of adequate scientific evidence should not be used as an excuse to delay or frustrate the measures of conservation and management of fish resources. The implementation of the principle of the precautionary approach at the regional level contained in the Convention on the Conservation of Antarctic Marine Living

²Yusmanto, dkk. *Pengelolaan Kawasan Konservasi Laut Daerah Ujungnegoro–Roban Kabupaten Batang Jurnal EKOSAINS | Vol. IV | No. 3 | November 2012, Hal 49.*

Resources (CCAMLR). CCAMLR is the first international treaty that contains the precautionary approach and the ecosystem as a basic principle for the conservation and management of the biological resources of the sea.

5. The 1995 FAO Code of Conduct for Responsible Fisheries

The food and Agriculture Organization of the UNITED NATIONS in 1995 issued the CCRF (rules of conduct of the management of fisheries is responsible). CCRF contains the guidelines, principles and international standards that apply to the activities of responsible fisheries. The main purpose of this is to ensure the CCRF measures of conservation and management of fisheries effective having regard to the environmental aspects, biological, technical, economical, social and commercial. This international legal instrument is voluntary (voluntary).

6. International Plan of Action to Deter, Prevent and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA-IUU),2001

IPOA-IUU was formed as a non-binding international instrument in the framework of the CCRF, to respond to the concerns of the Fisheries Commission of the Council of the food and Agriculture Organization of the UNITED NATIONS that the 23rd in February 1999. The purpose of the IPOA-IUU is to prevent, reduce and remove activities IUU fishing by providing guidelines to all countries in drawing up the measures that are comprehensive, effective and transparent cooperation with regional fisheries management organizations that are competent. The international treaties mentioned above which is done in writing, in which participating countries bind themselves legally to act in a certain way.³

1. Principles and Objectives the conservation of Fish resources

For Indonesia, the fishery had an important role in national development. This is due to several factors, including the many fishermen who depend their lives from capture fisheries business activities and the presence of potential fisheries owned by Indonesia. As an island nation that has vast waters and in it there is also a wide range of resources. In General, natural resources can be grouped on natural resources renewable (renewable resources) or flow and natural resources that cannot be renewed (unrenewable resources) or stock. Natural resources are renewable resources related to natural resources biodiversity, whereas unrenewable natural resources relates resources with non-biological natural resources. The number of natural resources that are contained in the waters of Indonesia can be managed and utilized for the community and for the benefit of the nation and the State.

Dictum Law Number 31 of 2004 confirmed that the waters which were under the sovereignty and jurisdiction of the Republic of Indonesia and the

³ Malcom N Shaw QC. *Hukum Internasional*. Nusamedia.Bandung.2013.Hal 83.

Indonesia Exclusive economic zones and the high seas based on national provisions, contains fish resources and fish cultivation potential of land, is the blessing of God Almighty who entrusted the Nation Indonesia which has the philosophy of life Pancasila and the 1945 Constitution, for utilization folk Indonesia prosperity. In the framework of the implementation of national development based on insight into the archipelago, fish resource management need to be done as well as possible based on justice and equity in the utilization with emphasis on the expansion of employment opportunities and improving the standard of living for fishermen, fish farms, as well as security for future sustainability of fish resources and the environment.⁴

Setting the management efforts of fisheries in Indonesia refers to the Code of Conduct for Responsible Fisheries (CCFRF), which is determined by World Food Agency (FAO). This imposes an international opinion that the whole marine and fisheries products are safe and consumed concerned with aspects of sustainability.⁵

The backup or the establishment of an area to be aquatic conservation area aims to harmonize the economic needs of society with the desire to preserve its natural resources, resulting in the development of conservation area waterways has been put to many purposes such as research, nature protection, preservation of species and genetic diversity, tourism activities, environmental education activities and the protection of natural or cultural elements that are specific.

Based on article 2 (paragraph 1) Government Regulation No. 60 in 2007 about the Fish resource conservation stated that resource conservation fish done based on the basis of: (a) benefits, (b), (c) justice partnership, (d) equalization, (e), (f) alignment of openness, efficiency, (g) and (h) an ongoing sustainability.

As for the principle of conservation of Fish Resources based on article 2 (paragraph 2) as follows: (a) the precautionary approach, (b) consideration of the scientific evidence, (c) consideration of local wisdom, (d) community-based management, (e) Alignment of development of the coastal area, (f) the prevention of catching more, (g) development of environmentally friendly fishing, (h) consideration of socio-economic conditions of communities, (i) the sustainable utilization of biological diversity, (j) protection of natural ecosystem structure and function of dynamic waters , (k) protection of genetic types and quality fish, and (l) Adaptive management.

⁴ H.Supriadi, *Hukum Perikanan Di Indonesia*, Sinar Grafika, Jakarta, 2011, Hal 22.

⁵ H.Djoko Tribawono. *Hukum Perikanan Indonesia*. PT.Citra Aditya Bakti. Bandung. 2013. Hal 11.

As for the person in charge of conservation of fish resources activities implementation based on the provisions set forth in article 3 Government regulations No. 60 in 2007 to become the responsibility of the Government, local governments, and communities. Government regulations are made and issued by the President to carry out the Act. Government regulation contains rules which are based on article 4 public. Government Regulation Number 60 in 2007 stated that fish resource conservation includes:

- (a) Conservation of ecosystems
- (b) Fish conservation
- (c) The genetic conservation of fish

Conservation of ecosystems conservation is the urgently needs to be done, since the disruption of the ecosystem of the coastal area and the water will interfere with all suitable habitat is found around coastal areas and small islands. The core problem of the environment is reciprocal relations between living things and their environment. In a reciprocal relations between living beings and their environment running on a regular basis and is a single entity that it formed a mutual affect the ecological system commonly known ecosystems. Because of the environment itself over the component life and no life, then any ecosystem formed by the components of life and no life who interact on a regular basis as a unified and mutually influence each other. (Interdependence).

Refer to the provisions listed in article 2 and article 3 of the above government regulations, then in principle in normative goals of promoting contained therein are there activities that lead to in order for protection fish resources as a whole, especially restrictions on catching up with the scale better. For if not done wisely, the population of diverse kinds of fish will be endangered, this is the goal and purpose of this provision is made.

2. Implementation of international instruments in Indonesia in the field of Legislation conservation of Fish Resources

Since 1990 international attention fixed on any changes in the pattern of human life which is not sustainable in the field of production and consumption. This pattern was marked by human lifestyle changes, one of them a fish protein consumption levels higher. The level of global fish consumption was further increased to reach an average of 17 kg per capita, but preparations of fish in the ocean did not experience an increase. The sea as fisheries resources are producing world, play an important role in the fulfillment of the human consumption of protein. Humans depend on the potential of the oceans which is stable to produce 20% of the protein consumed. With the presence of world fish demand continues

to increase, the activity of fishing as a traditional function of the Sea also experienced significant changes. These changes are supported by the development of the technology of fishing that more advanced and update on the activities in the process of catching the fish. Fishing activities can be done in any part of the ocean that correspond to the settings area of any country, especially the coastal States and the island nation bordering the sea.

The characteristics of the privately run conservation areas, among others: good care and watchful eye so that no violation occurs; repair or improvement of conditions occurring from time to time both the environment and the species which are protected; sense of belonging high society means maintaining sustainability of the area.

National development is the mandate of all the people of Indonesia should be implemented together, by the Central Government and local governments as well as all elements of the nation. The construction was carried out by all the Nations of Indonesia, in all aspects of public life during this time, gradually has been able to improve the welfare and improvement of the sense of security the majority of the community. The management should be implemented with the SKA keep paying attention to the sustainability of the environmental functions of life and its sustainability. One thing you have to download so common attention is, that the purpose of the management of SKA may not be contrary to the purpose of the State, as stated in paragraph 4-the preamble to the Constitution of the Republic of Indonesia in 1945 (UUD 1945 NRI) as well as on article 33, paragraph (2) to set up "branches of production which is important for the country and that ruled his life crowd dominated by country" and in paragraph (3) set the "Earth and water and natural resources contained therein are controlled by the State and used for the prosperity of the people ". Only one planet Earth and construction should pay attention to "the rights of future generations", so the management of SKA should be implemented on an ongoing basis and utilized for the construction of the acceleration in order to strengthen national resilience.⁶

The potential utilization of marine resources in Indonesia will not be sustainable if there is no conservation efforts. Marine resource conservation is a series that cannot be separated from the protection, preservation, and utilization. It includes the management of the aquatic conservation area, the type of fish and the fish to assure the availability of genetic and its sustainability. Referring to Act No. 31 of 2004 about his change and Fisheries (Act No. 45/2009) and PP No 60/2007

⁶ *Pemanfaatan Sumber daya Laut Guna meningkatkan perekonomian rakyat dalam rangka Meningkatkan Ketahanan Ekonomi Nasional* . Jurnal Kajian Lemhannas RI Edisi 16 November 2013.Hal.1

concerning the conservation of Fish Resources, at least contains two important things the new paradigm in the context of conservation.

First, the management is controlled by a system of zoning. There are four divisions in the conservation zone waters. That is, the core zone, zone fisheries sustainable utilization zones, as well as other zones. Keep in mind, sustainable fisheries zone were never regulated in the regulation of the management of conservation areas, either according to law No. 5 of 1990 concerning conservation of Biodiversity and natural resources, the ecosystem and Government Regulation No. 68 in 1998 about The nature and The preservation of the Sanctuary of nature. *Second*, in terms of authority, management of conservation areas during the monopoly of the Central Government. However, it has now been devolved to local governments. This based law No. 27 of 2007 about the management the coastal areas and Small Islands, Government Regulation No. 60 in 2007 about the conservation of Fish Resources, as well as the regulation of the Minister of marine and fisheries no. Per. 02/Download/2009 on the establishment of Water conservation area.⁷

Local governments were given the authority to manage conservation areas in its territory. This is aligned with the mandate of the law No. 23 by 2014 about local governance, on article 27 paragraph (1) which States that the provinces were given the authority to manage the natural resources existing in the sea area. The new paradigm, have now been removed fears of reduced access to fishing waters conservation area.

Indonesia's involvement in the management and development of marine fisheries, especially off The India performed through its membership in regional fisheries management organizations are two, namely, the Indian Ocean Tuna Commission (Indian Ocean Tuna Commission) and the Commission for the Conservation of Southern Bluefin Tuna (Convention on the conservation of Southern Bluefin Tuna) and the Act of ratification of the UNITED NATIONS Agreement on fish stocks, 1995.

The occurrence of international cooperation in tackling the problem of conservation of fish resources in these countries, spurred by any change in local communities and the international community. Changes in society have a valid enactment before legalized by laws. This is implemented by lawmakers in Indonesia to provide legal certainty on the application of conservation of fish resources. As for the form of the implementation of the provisions of international and national legislation poured in Indonesia in order to protect the fish resources management responsibility is as follows:

⁷ *Ibid.* Hal 7

- a. Act No. 31 of 2004 regarding Fisheries and law No. 45 of 2009 about changes in the law No. 31 of 2004 regarding fisheries. According to the Fisheries Act, the management of fisheries of the Republic of Indonesia for the fisheries, including the waters of Indonesia and ZEEI. Waters beyond national jurisdiction is organized based on laws and regulations, requirements, and/or international standards that are generally accepted. The management of fisheries in the area of management of fisheries of the Republic of Indonesia to achieve optimal and sustainable benefits, as well as the sustainability of fish resources guaranteed. Provisions of the CCRF became legal basis in the formulation of the provisions concerning the management of fish resources responsibly. Requirements or international standards in managing fish resources beyond the limits of national jurisdiction are regulated in the law of the Sea Convention of 1982, the UN fish stocks Agreement of 1995, the CCRF and IPOA-IUU. That needs to be questioned is whether the Fisheries Act and regulations implementation can support the activities of the conservation and management of fish stocks that migrate in accordance with international standards that are set in all international instruments. Nevertheless in such Fisheries laws above is yet to implement the provisions of the UN fish stocks agreement of 1995 relating to the conservation and management of fish resources in the ZEE and Indonesia on the high seas. Therefore the Fisheries Act require refinement, considering Indonesia has become a member of two regional fisheries management organization and ratify the UNITED NATIONS Agreement on fish stocks of 1995.⁸

As coastal States, Indonesia need merivisi Fisheries Act by adding chapter on compatible measures in the conservation and management of fish sea resources that are under the jurisdiction of Indonesia and on the high seas that borders Indonesia ZEE.

In the concept of conservation, there is a groove back (renew) renew, utilizing again (reuse), reduce (reduce), recycle back (recycle), and cashing in return (refund).

- b. Government Regulation No. 60 in 2007 about the conservation of Fish Resources, the provisions of Chapter 13 implementation of Act No. 31 of 2004 regarding fisheries. This provision has been adjusted to the applicable international provisions relating to the management of fisheries in charge as set forth in article 6 the CCRF. Lack of government regulation is not set up specifically about the conservation and management of fish stocks are limited and beruaya fish stocks that beruaya far section the sea under the jurisdiction of Indonesia and on the high seas that borders

⁸ Ibid, Hal 173

Indonesia, considering Indonesia ZEE is a Member State of a regional fisheries management organization to two and the participants of the UN fish stocks Agreement of 1995. The UNITED NATIONS agreement on fish stocks of 1995 covering the shortcomings of Article 63, paragraph 2, article 64, paragraph 1 and article 118. Convention on the law of the Sea 1982, Indonesia has ratified this agreement by law No. 21 of 2009 on June 18, 2009 with the consideration that needs to be done on the conservation and management of fish stocks are limited and beruaya a beruaya fish stocks farther to protect biodiversity and maintain the integrity of marine ecosystems in the high seas and Indonesia ZEE, let alone Indonesia had ratified the Convention on the law of the sea of 1982 by law No. 17 of 1985.

Implementation of international treaties which poured in our national laws, expected to bring changes in the conservation of fish resources. Although there are international treaties which have not poured in the legislation, but the rules that are in line to be the guideline in order to make the activities of konnservasi aimed at the sustainability of fish resources for the benefit of generations to come.

CONCLUSION

The concept of the law of conservation of fish resources established by reference to international instruments that are adapted to the local wisdom of society, to ensure the implementation of the rule of law and sustainability management of fish resources for the benefit of generations to come.

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