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## Legal protection of fishery resources: A study of implementation in Aceh Province, Indonesia

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### Abstract

Protection of fishery resources is strictly stated in the Fisheries Law and other implementing regulations which are derivatives of the law. Based on the provisions of these laws and regulations, it appears that several government institutions have the authority to enforce fisheries regulations at sea. In practice, it appears that the protection provided is still not effective due to the lack of facilities and infrastructure as well as human resources, such as the unavailability of a special place for mooring ships arrested for violating the law, the unavailability of a budget for the living expenses of the crew during detention and the cost of deportation. crew to the country of origin as well as adequate patrol boats.

**Keywords:** legal protection, fishery resource, Aceh Province-Indonesia

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### Introduction

The importance of fisheries as one of the world's food sources is unquestionable. The Food and Agriculture Organization (FAO) in its report "The State of World Fisheries and Aqua-Culture 2012" encourages countries to participate in sustainable world fisheries management to be able to support the fulfillment of the food needs of millions of people in the world. Failure in these efforts will certainly bring enormous environmental and socio-economic impacts <sup>[1]</sup>. In reality, the phenomenon of Illegal, Unreported, and Unregulated (IUU) Fishing practices continues to increase <sup>[2]</sup>.

The Aceh province, which is located at the western tip of Indonesia, is geographically surrounded by the sea, namely, the Malacca Strait and the Indian Ocean, and is directly adjacent to neighboring countries, namely Malaysia, Thailand, and India. The length of the coastline is 1,660 km with an area of 295,370 km<sup>2</sup> of marine waters, which consists of territorial seas (territorial waters and archipelagic waters) 56,563 km<sup>2</sup> and EEZ 238,807 km<sup>2</sup> <sup>[3]</sup>.

With such geographical conditions, the fishery potential possessed by western Indonesia in general and the province of Aceh, in particular, is not only contained in the territorial sea but also includes the exclusive economic zone of Indonesia, so that the potential for biological natural resources in the fisheries sector is very large. This province can make a big contribution to the people who depend on the sea for their livelihood and economy. In addition, there is also the threat of illegal fishing or contrary to applicable law, whether carried out by our fishermen or from fishermen from neighboring countries. This is because the sea in this area is directly adjacent to the sea area of the neighboring country

This is evidenced by the arrest of a foreign fishing boat with a Malaysian flag on the inaugural patrol in 2022 in the Malacca Strait on January 13, 2022 <sup>[4]</sup>. Based on the above background, the problem is how Legal Protection of Fishery Resources in the Aceh Province?

### Research Method

The research method used is normative legal research. In the normative legal research approach, data collection is done by searching for and finding the necessary legal materials. These materials include primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials consist of statutory regulations and conventions that have been ratified by the Indonesian state. Secondary legal materials consist of written works by legal experts and related sciences in the form of books, articles, journals, magazines, newspapers, research reports, and others. Tertiary legal materials consist of dictionaries, encyclopedias, indexes, and other legal and scientific writing tools. Another approach that has limited application, in addition, is empirical legal research. In this case, the data collection is done through field research, by interviewing respondents and informants as needed.

### Results and Discussions

The Exclusive Economic Zone developed from previous claims that were not so clear, especially those related to fishing zones, and as a result of the development of the negotiation process that led to the 1982 convention. The

United Nations Convention on the Law of the Sea was made in 1982 known as the United Nations Convention on the Law of the Sea 1982 (UNCLOS 1982). The convention contains comprehensive provisions on maritime issues. The provisions of Chapter V of the convention concerning exclusive economic zones contain rights and obligations for various countries in the world in the utilization of the exclusive economic zones of certain countries<sup>[5]</sup>.

Regarding fisheries, it is regulated in the chapter on exclusive economic zones, as contained in article 61 of the 1982 UNCLOS...coastal states are required to take conservation measures by setting the allowable catch of fishery resources in their exclusive economic zone. It is therefore required to maintain, based on the available scientific evidence, so that fish resources are not over-exploited in order to ensure maximum sustainable yields<sup>[6]</sup>.

Article 62 paragraph (1) UNCLOS further regulates the utilization of this biological wealth source. It stipulates that, "coastal states should promote the goal of optimal utilization of biological resources in the exclusive economic zone". To promote the goal of optimal utilization, the coastal state must determine its ability to exploit resources in the exclusive economic zone. However, if the coastal state does not have the capacity to manage it, foreign fishing vessels must be given access to its exclusive economic zone in order to exploit the allowed excess catch<sup>[7]</sup>.

In addition to being related to the right to exploit fishery resources, UNLCOS 1982 also regulates actions to prevent, reduce and control pollution of the marine environment from any source, which can be carried out by countries alone or jointly. They must harmonize their policies in this regard by using "the best practical means at their disposal and in accordance with their capability, individuality or jointly appropriate<sup>[8]</sup>. the text of this paragraph is taken almost literally from principle number 21 of the 1972 Stockholm Declaration<sup>[9]</sup>.

According to the theory of transformation of the enforcement of treaties into national law, it is not a substantive requirement, by itself legitimizing the extension of the application of the rules contained in the treaty to individuals. Specific adoption theory states that "rules of international law cannot be applied directly within the national legal environment by national courts or by anyone else. For this reason, it must go through a special adoption process<sup>[10]</sup>.

Indonesia has ratified UNCLOS 1982 with Law Number 17 of 1985. Thus, it means that the provisions contained in UNCLOS1982 are binding on Indonesia. In order to support the enforcement of regulations on fisheries management, it is necessary to have law enforcement efforts. Law enforcement is essentially a process of adjusting values, rules and real behavior patterns that aim to achieve peace<sup>[11]</sup>. In Indonesia, Law No. 31 of 2004 concerning Fisheries as amended by Law No. 45 of 2009 (hereinafter referred to as the Fisheries Law) has mandated that the objectives of fisheries management are to (1) improve the standard of living of small fishermen and small fish cultivators, (2) increase income and foreign exchange, (3) encouraging the expansion of employment opportunities, (4) increasing the availability and consumption of fish protein sources, (5) optimizing the management of fish resources, (6) increasing productivity, quality, added value, and competitiveness, (7) increasing the availability of raw materials for the fish processing industry, (8) optimizing the utilization of fish resources and, (9) ensuring the sustainability of fish resources, fish farming land, and spatial planning.

To achieve the ideals of this law, the problem of illegal fishing must receive special attention from the government and society in general, so that the vision of Indonesia to become an archipelagic country that is independent, strong developed, and based on national interests as stated in the law can be achieved.

Provisions related to fishery protection in the fisheries law include the following, every person who owns and/or operates an Indonesian-flagged fishing vessel used for catching fish in the Fisheries management area of the Republic of Indonesia and/or the high seas is required to have SIPI (a fishing license). fish), and SIKPI (permit for fishing vessels. The meaning of each type of permit is as follows:

1. Fishery Business License hereinafter referred to as SIUP by the provisions of Law no. 45 of 2009 concerning Fisheries, Article 1 number 16 which reads: "A fishery business license, hereinafter abbreviated as SIUP, is a written permit that must be owned by a fishing company to conduct a fishery business using the production facilities listed in the permit."
2. Fishing Permit, abbreviated as SIPI, in Law no. 45 of 2009 concerning Fisheries, Article 1 number 17 which reads: "A fishing license, hereinafter abbreviated as SIPI, is a written permit that must be owned by every fishing vessel to catch fish which is an integral part of SIUP".
3. Fish Transport Vessel Permit, hereinafter abbreviated as SIKPI, in Law no. 45 of 2009 concerning Fisheries, Article 1 number 18 which reads: "A license for fish transporting vessels, hereinafter referred to as SIKPI, is a written permit that must be owned by every fishing vessel to transport fish".

Fishing activities without having these three permits are considered illegal fishing because they have violated the law. The Indonesian government, especially the Ministry of Maritime Affairs and Fisheries, has regulations relating to the management of resources in Indonesian waters. One of them is the regulation of SIUP, SIPI, and SIKPI in the operation of fishing vessels. For fishing vessels wishing to operate in Indonesian waters, they must carry out a physical inspection of fishing vessels and fishing vessel documents to obtain SIUP, SIPI, and SIKPI. Furthermore, when the ship is about to sail, it must obtain a seaworthy letter and a letter of operational qualification from the harbormaster. This provision protects fisheries because with this permit the government can regulate the fishing gear used for the type of fish caught and how much of the catch can always be monitored if this provision can be implemented optimally.

Besides that, there are also provisions regarding fishing ports where ships that catch fish must land their catch. This provision supervises the number of catches that have been caught by fishermen not to exceed the number of catches allowed and maintains sustainable fishery potential.

The crime of illegal fishing is fishing that is contrary to or not following the formulation of the law. Illegal fishing means all forms of fishing activities that violate the Fisheries Law and other applicable laws and regulations.

#### **Article 8 of the Fisheries Law states**

1. Everyone is prohibited from catching fish and/or raising fish to the detriment of and/or endangering the preservation of fish resources and/or the environment in the fishery management area of the Republic of Indonesia.
2. The captain or leader of a fishing vessel, fishing expert, and crew members of the ship who are catching fish are prohibited from using chemicals, biological materials, explosives, tools and/or methods, and/or buildings that can harm and/or endanger the sustainability of the source. fish resources and/or the environment in the fishery management area of the Republic of Indonesia.
3. Owners of fishing vessels, owners of fishing companies, persons in charge of fishing companies, there are/or operators of fishing vessels are prohibited from using chemicals, biological materials, explosives, tools and/or methods, and/or buildings that can harm and/or endanger the preservation of natural resources. fish resources and/or environment in the fishery management area of the Republic of Indonesia.
4. Owners of fish farming companies, proxies of owners of fish farming companies, and/or the person in charge of fish farming companies are prohibited from using chemicals, biological materials, explosives, tools and/or methods, and/or buildings that can harm and/or endanger sustainability. fish resources and/or environment in the fishery management area of the Republic of Indonesia.
5. 5)The use of chemicals, biological materials, explosives, and/or methods, and/or buildings for fishing and/or fish cultivation as referred to in paragraph (1) is permitted only for research.
6. Further provisions regarding the use of chemicals, biological materials, explosives, and/or methods, and/or buildings as referred to in paragraph (5), shall be regulated by government regulations.

Indonesian territorial waters which consist of 11 (eleven) zones of fishing waters spread throughout Indonesia, based on the Regulation of the Minister of Marine Affairs and Fisheries Number 1 of 2009 concerning Fisheries Management Areas of the Republic of Indonesia, that:

Fishery management areas for fishing include Inland Waters, Archipelagic Waters, Territorial Zones, Additional Zones, and the Indonesian Exclusive Economic Zone, namely:

1. Straits of Malacca and the Andaman Sea;
2. the Indian Ocean to the West of Sumatra and the Sunda Strait;
3. the Indian Ocean south of Java to the south of Nusa Tenggara, Savu Sea, and West Timor Sea;
4. Karimata Strait, Natuna Sea, and the South China Sea;
5. Java Sea;
6. Makassar Strait, Bone Bay, Flores Sea, and the Bali Sea;
7. Tolo Bay and Banda Sea;
8. Tomini Bay, Maluku Sea, Halmahera Sea, Seram Sea, and Berau Bay;
9. Sulawesi Sea, and the South Halmahera Sea;
10. Cendrawasih Bay and the Pacific Ocean;
11. Aru Sea, Arafura Sea, and East Timor Sea.

With the existence of these areas, fishermen can catch fish in the area under applicable regulations. Many fishing areas in Indonesia cause rampant fishing activities that occur, but the perpetrators pay little attention to the boundaries of the fishing grounds so many fishing vessels violate the fishing ground.

Usually, the fishing ground found in Indonesia has different types of fish and has a very high price, so many fishing vessels only catch in one area and the fish they get are very large, both small to large sizes. They catch large sizes, so as a result, the area becomes fishing.

With the occurrence of overfishing in the area, the government began to regulate fishing areas, but with a large number of fishing vessels, there are still fishing vessels that violate the fishing area. Even though they know that the area they are fishing for has received a warning of overfishing. However, the fishers still carry out their fishing efforts in that place, so they violate the fishing ground. In addition, they also do not want to change fishing areas because certain types of fish are only found in that area and are their catch targets.

Law Number 23 of 2014 concerning Regional Government makes a classification of government affairs which consists of 3 affairs, namely Absolute Government affairs, Concurrent Government Affairs, and General Government affairs. Absolute government affairs are government affairs that are fully under the authority of the central government. Concurrent government affairs are government affairs that are divided between the central government and provincial and district/city areas. General government affairs are government affairs that are under the authority of the president as head of government.

Concurrent affairs are divided into mandatory government affairs and optional government affairs. Mandatory government affairs are government affairs that must be carried out by all regions. While elective government

affairs are government affairs that must be carried out by the region by the potential of the region. One of these optional matters is the administration of government affairs in the fields of forestry, marine affairs, and mineral resources. Based on this, it is clear that Simeulue Regency has the authority to regulate fisheries management issues, coastal areas, and small islands which are included in the concurrent optional authority.

The transfer of authority (authority) in the field of marine and fisheries to the Regional Government of the Province of Nanggroe Aceh Darussalam must be understood not as a transfer of ownership of marine waters, but as the transfer of management authority solely within the framework of regional autonomy. Therefore, the division of the area of authority of the Regional Government of the Province of Nanggroe Aceh Darussalam and the Regional Government of Sagoe/Banda over marine waters within a distance of 12 nautical miles measured from the coast is not understood as the division of ownership over marine waters within the aforementioned distance, but only the division of authority in the management of affairs in the marine and fishery sector.

In the context of regional autonomy in the marine and fisheries sector, the Regional Government entrusted with the authority to manage marine and fishery resources in the marine waters of its jurisdiction place the prosperity of the people as the direction and goal to be achieved, especially the prosperity of the fishing community in their area.

In the utilization of marine and fishery resources, justice and equity must be realized, including improving the lives of traditional (small) fishermen and small fish farmers as well as the promotion of coastal villages. In terms of regional development, the handover of authority in the marine and fisheries sector is intended so that regional development can be carried out in a relatively fast time. Acceleration of regional development in a relatively fast time means the welfare of the people which is mandated by the government. Article 33 paragraph (3) of the 1945 Constitution also manifests itself in reality. The purpose of managing marine and fishery resources is also in the context of realizing the welfare of the people, especially fishermen and firmament and their families, which is also the goal of regional development. In achieving these objectives, the management of marine resources is carried out by taking into account the following principles:

1. Optimal utilization of marine and fishery environmental resources and services and ensure sustainable ecological development;
2. Conserving marine and fishery environmental resources and services for the benefit of present and future generations;
3. Using a "precautionary approaches" approach in the management and development of marine and fisheries environmental resources and services;
4. It is necessary to maintain the ecosystem as a whole, including fish species that are not targeted for exploitation;
5. It is necessary to preserve the diversity of marine life;
6. It is necessary to use marine and fishery environmental resources and services to achieve economic growth, human resource development, job creation, and a stable ecological balance following regional development objectives;
7. Placing marine customary institutions and the wider community in the management of marine and fishery resources;
8. Give priority to local actors in the utilization of marine and fishery resources. Management of marine and fishery resources in the Province of Nanggroe Aceh Darussalam is carried out by the Regional Government of the Province of Nanggroe Aceh Darussalam and the Government of Sagoe/Banda in collaboration with marine customary institutions and the community. The placement of marine customary institutions and communities in the management of marine and fishery resources emphasizes and clarifies the direction of management to be carried out, namely community-based management of marine and fishery resources as a form of autonomy in the marine and fisheries sector.

The National Police of the Republic of Indonesia (POLRI), especially in the Directorate of water and air Police in Aceh regional police, always strives to realize its vision, which is to prioritize its role as protector, protector, and public servant who prioritizes preventive, persuasive, and repressive approaches. Repressive measures are the last step. The National Police strives to provide protection, protection, service to the community, and professional law enforcement while still upholding human rights, continuing the internal coordination efforts of the National Police, and maintaining public security and order in the jurisdiction of the Unitary State of the Republic of Indonesia. Aceh waters always carry out enforcement efforts in tackling things that have the potential to disrupt security and order.

In Article 29 paragraph (1) of the Fisheries Law, it is stated that fishery business in the fishery management area of the Republic of Indonesia (RI) may only be carried out by Indonesian citizens or Indonesian legal entities. While in paragraph (2) it is stated that exceptions to the provisions as referred to in paragraph (1) are granted to foreign persons or legal entities conducting fishing business in the Indonesian Exclusive Economic Zone, as long as this concerns the obligations of the Republic of Indonesia based on international agreements or provisions of international law that apply.

Article 29 of the Fisheries Law can lead to internal competition (war) between Indonesian fishermen themselves, due to the limited area they have for fishing. In addition to statutory factors, several other factors cause fishing actors who violate applicable laws and regulations to continue to act, including the lack of facilities, infrastructure, and operational costs for fisheries investigators in handling fisheries cases.

The absence of a pier specifically provided for the mooring of captured foreign fishing vessels, so they are placed at the existing PPI (fishing landing) dock, thus affecting the routine activities of the base/pier. The absence of a special place to accommodate non-judicial foreign crew members while waiting for deportation, so they are placed in open locations and this condition may result in their escape due to the difficulty of supervision.

Another problem is that the length of detention of foreign crew members creates social problems among the local community and officials, such as fears of contracting dangerous diseases that can be transmitted by them. The regions also do not have sufficient funds to cover their living allowance during detention and do not have the funds to deport foreigners to their country of origin.

The implementation of the deportation of foreign crew members to date has not been fully carried out by the Immigration Office as the authorized agency, so it is the responsibility of the agency that handles cases (Aceh Province Maritime Affairs and Fisheries Service, Regional Police and Navi military Base in Sabang) So far, the form of facilities owned to support the implementation of supervision and law enforcement in Aceh Waters is still very limited, such limitations as the availability of Patrol Vessels, human resources, especially Civil Service Investigators in the fisheries sector, which have not been adequate both in terms of quality and quantity, places for child detention. Ships before they are deported.

### Conclusion

Regulations related to fishery issues have been regulated firmly in the Fisheries Law and other implementing regulations which are derivatives of the law. Based on the provisions of these laws and regulations, it appears that several government institutions have the authority to enforce fisheries regulations at sea. In practice, it can be seen that law enforcement is still not effective due to the lack of facilities and infrastructure as well as human resources, such as the unavailability of a special place for mooring ships arrested for violating the law, the unavailability of a budget for the living expenses of the crew during detention and the cost of deportation of crew members to the country of origin as well as adequate patrol vessels.

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