Law enforcement for fisheries crime (illegal fishing) through a transcendental approach

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Abstract. The sea of North Maluku province geographically faced to the Philippine sea and it is a potential zone with the availability of export-grade fisheries resources. Criminal penalties in the fisheries sector are mostly cumulative, both aimed at offenses of crimes and offenses. Law Number 45 of 2009 concerning Amendments to Law Number 31 Year 2004 concerning Fisheries, states that what is called the practice of illegal fishing can be classified as: Article 84 paragraph (1), paragraph (2), paragraph (3), Article 85, Article 92, Article 93, and Article 94. In the case of being caught red-handed, by the authorities over which Fisheries Law No. 45 of 2009. The next problem in law enforcement is the issue of legal norms where the Act that is implemented still gives a gap for the occurrence of abuse of authority. Also, the next problem is culture in law enforcement and in society. The transcendental approach emphasizes the importance of this morality problem; Second, in terms of legal norms, it is necessary to formulate legal norms that are more deterrent to perpetrators of crimes and law enforcement officers who violate; and, third, in the matter of legal culture, it is necessary to change the legal culture which originally emphasized rational values into legal behavior based on transcendental values in Segulaha adat.

1. Introduction
Indonesia consists of 6,315,222 kilometers square of sea and 99,093 kilometers of coastline, with 13,466 islands that recently standardized by the National Rupture Standardization Team. Indonesia has a very potential economic in fisheries for about US$ 31,935,651,400 each year. The existence of such large natural resources significantly contributes to the existence and position of Indonesia as a strategic country. This condition is beneficial for capital strength. However, it may bring opportunities as well as threats for the potential resilience of Indonesian fishery products. Particularly, with the extent of sea waters through various economic potentials, it may be the source of rebellious actions or act that against the law. It may consider rebelling civil law, criminal law and other legal aspects and international regulation related to illegal fishing actions [1].

One of the topics discussed in this article is the emergence of legal aspects resulted by non-procedural practices of utilizing Indonesian fishery products. It can be ascertained as illegal acts whether it is conducted by domestic or foreign fishermen. Illegal fishing is one of the massive actions...
occurred in coastal and marine areas of Indonesia, especially those with ecological cycle that is potential and well-known for its high economic fish, such as tuna, cob, lobster, grouper and etc. Those areas are the intended target for illegal fishing even though various consequences are applied for foreign fishermen if they do any practice of illegal fishing. The risk is even higher in the areas that are directly adjacent to the sea waters of neighborhood countries. One example of such area with sea that is located on the border of nearest countries in North Maluku Province.

The sea in North Maluku province is geographically located near the Philippine sea. What challenges faced by this area related to its marine environment is the use of explosives and cyanide. Such actions are certainly against the principle of responsible fisheries management (Code of Conduct for Responsible Fisheries (CCRF). The illegal, unregulated and unreported fishing (IUU) phenomenon causes losses of US $ 25 billion per year.

Based on the description above, the author is interested to discuss “Law Enforcement of Indonesian Fisheries Criminal that covers the idea of the modification of Contemporary Law Implementation System” that focuses on the observation of North Maluku Province. Therefore, the article entitled “Law Enforcement of Illegal Fishing through a Transcendental Approach” is significant.

By considering the explanation given in the previously, this study focuses on:
1. How is law enforcement of fisheries is implemented in North Maluku according to Positive Law?
2. How is law enforcement of fisheries crimes is implemented in the North Maluku region according to Customary Law?
3. How is the concept of Fisheries Law Enforcement through a Transcendental Approach that is applicable in the North Maluku region?

2. Material and method
In this study, several dependent variables are involved in order to examine the data. Such dependent variables, along with their definitions are listed as follows:

2.1. Law enforcement
Law enforcement is an act that actualizes the ideas of justice, legal certainty, and expediency. Thus, the essential purpose of law enforcement is to provide a direct and consistent process to realize the ideas of justice.

2.2. Criminal law
Criminal Law is a part of Public Law which for Locke, it is a part of a Reim. It aims to protect the interests of Private Space. Criminal Law is a part of Public Law as it contains provisions regulating prohibited, threatening behavior conducted by violators.

2.3. Fishing crime
The policy of fisheries in Indonesia is regulated in Law No. 45 of 2009 on fisheries (hereafter is referred to as Fisheries Law). Regarding this regulation, the criminal provisions and/ or criminal formulation are stated in Article 84 until Article 104.

2.4. Customary law
Customary law is another name of the common law. It refers to certain habitual actions accompanied by particular sanctions. Concerning this issue, habits with certain sanctions are called Customary Law while those that have no sanctions are called common law.

2.5. Transcendental
Transcendental is a way by which the advocates easily direct their reasonings to meet the source of thought. The activity of finding the source of thought or the transcendental aspect of the law is characterized by accommodating revelation as one of the sources.
Furthermore, this present study employs the sociological method. The sociological study is a research method to analyze the application of law in the society as well as how certain law is implemented.

3. Results and Discussion

Fish theft is a big concern in the Indonesian maritime. Since the Indonesian ocean is wider than the mainland, the attention should be focused more on the oceans. In fact, such illegal action of stealing fish becomes a mere, common issue. The practice of illegal fishing or fishery crime can also be categorized as a form of economic crime.

The results of the research presented by Yanti revealed that the form of violations mostly occur in Maluku waters is transferring fish illegally, administering fake documents, fishing by using prohibited nets (trawlers), transporting prohibited nets, and violating shipping rules. The violations are in term of missing ship flag dispensation, providing invalid mail of the ship, employing unauthorized crew members or foreign workers and violating particular immigration facilities. As part of Economic Crimes, fish theft causes considerable losses. Solikhin in Simela stated that the economic loss resulted from illegal fishing is not only the loss of state revenues around IDR 30 trillion per year but also the opportunity of Indonesian fishermen to catch 1 million tons of fish each year [2].

From an interview with Mr. Ade, a 59-year-old villager in Posi Posi, it can be inferred that the activities of illegal fishing by Filipino fishermen have repeatedly occurred since 2001. However, until 2018, significant prosecution by law enforcement officials has never been applied. This statement is in line with the report stated by the Commission for Conservation of Marine Living Resources (RFMO). In this report, it stated that in the Antarctic region, 3 transnational companies are conducting illegal fishing in Indonesian seawater. They are HaiFa, Pusaka Punjana, and FV Viking. The crew members of these three companies are from China, even the crew members of Pusaka Punjana are from Panama. Regarding this issue, Armain Naim examined the results of the surveillance operations in North Maluku waters from 2012 until 2016. During this period, 282 units of Indonesian fishing vessels and 5 foreign fishing vessels were inspected in their status. The result is presented in Table 2 as follows:

| Year | Processed | Ad hoc | Sank | Returned |
|------|-----------|--------|------|----------|
|      | KII | KIA | KII | KIA | KII | KIA | KII | KIA |
| 2012 | 63 | - | 11 | - | - | - | 52 | - |
| 2013 | 66 | - | 4 | - | - | - | 62 | - |
| 2014 | 49 | 3 | 3 | 1 | - | - | 46 | - |
| 2015 | 45 | - | 10 | - | - | - | 35 | - |
| 2016 | 59 | 4 | 25 | 4 | - | 4 | 34 | - |
|      | 282 | 7 | 53 | 5 | - | 4 | 226 | - |

Note. KII (Indonesian fishing boat) KIA (Foreign fishing boat)
Source: KKP-Satuan SDKP Ternate Privinsi Maluku Utara

3.1. The aspect of Law Enforcement

3.1.1. Regulation on Illegal Fishing. Criminal law in the field of fisheries only recognizes basic crimes, namely capital punishment, imprisonment, imprisonment, and criminal penalties. Additional crimes are yet regulated in the Fisheries Act. Criminal penalties in fisheries sector are mostly cumulative, both aimed at offenses of crimes and offenses. Law Number 45 of 2009 on Amendments of Law Number 31 of 2004 on Fisheries states the classification of the practice of illegal fishing. They are:
1) Fishing that is conducted by using materials, tools or methods that endanger the sustainability of fish resources and marine environment (Criminal Acts according to Article 84 paragraph (1), paragraph (2), paragraph (3));
2) Catching fish that violates fisheries law provisions (Criminal Actions according to Article 85); the provisions of Article 85 have been amended in Law Number 45 of 2009 on Amendments of Law Number 31 of 2004.
3) Fishing and processing fish resources without considering SIUP, SIPI, and SIKPI (Crime according to Article 92, Article 93, and Article 94); the provisions of Article 93 and Article 94 undergo changes based on Law Number 45 of 2009 on Amendments to Law Number 31 of 2004.
4) Carrying out transshipment at sea (Crime according to Article 94).

Other applicable sanctions are also explicitly stated in Law No. 45 of 2009 on the Amendment of the Republic of Indonesia Law No. 31 of 2004 on Fisheries. In this case, there are two ways of sinking foreign fishing vessels conducted by the authorized Indonesian government, namely [3]:

1) Court Decision, that includes a) Authorities that catch foreign fishing vessels take the ships and the crew to land. b) A legal process will be carried out in a fishery court. c) After the verdict is tried, convicted and has permanent legal force, the vessels will be seized. d) If the ship is confiscated, the decision to do the boat will depend on the executor. e) The ship may be auctioned or destroyed. f) If the boat is to be destroyed, it will be detonated and sunk;
2) Captured by the Authority. In the case of being caught red-handed by the authority, Fisheries Law No. 45 of 2009 Article 69 paragraphs, (1), (2), and (3) is applicable.

3.1.2. Illegal fishing law enforcement. Currently, there are eight government institutions that have authority in the maritime area. They are Indonesian National Armed Forces, Police of the Republic of Indonesia, Civil Servant Investigators Ministry of Maritime Affairs and Fisheries, Civil Servants Investigators of the Ministry of Transportation, Customs Civil Servants Investigators, Immigration Civil Servant Investigators, Ministry of Environment Civil Servants Investigators and Civil Servant Investigators Civil Ministry of Forestry.

Regarding those institutions’ tasks and stages of authority, it can be described as follows:
1) Conducting surveillance activities in waters that are prone to criminal acts based on the obtained information.
2) Detecting and identifying the targets using existing facilities (radar, sonar, binoculars, radio communication, and signals).
3) Focusing the intended assessment to analyze and determine the suspected object or target.

Thus, the number of Illegal Fishing cases carried out in Ternate District Court from 2013 until 2017 is presented in Table 2:

| Year | Total cases | Information | Crimes |
|------|-------------|-------------|--------|
| 2013 | 15          | Foreign fishermen (Philippines) | The types of violations committed to general are as follows: |
| 2014 | 5           | Local mixed fishermen | Catching fish in Indonesian waters without permission |
| 2015 | 5           | Filipino foreign shipowners | Catching fish by using anesthesia. |
| 2016 | 5           | Filipino Fishermen | Catching fish by using trolls |
| 2017 | 5           | Local fishermen | Using the assembled Kratingdaeng bottle bomb. |
| Total | 35         |             |        |

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3.2. Culture of Law Enforcement on Illegal Fishing in North Maluku

Unlike people who expect laws to be based only from justice, law enforcers generally justify the decision based on the values of legal certainty. Based on Table 2, there are 51 respondents who witnessed the prosecution conducted by the authorities regarding the perpetrators of fisheries crime. In regard to the actions of the officials to sink the foreign ship was approved by 38 respondents. 6 respondents are disagreed while 7 respondents prefer to let the ship confiscated and managed by other people.

3.3. Enforcement of customary law in North Maluku

3.3.1. Ternate Indigenous People's Society Agency. According to Hi Ridwan Dero, an advisor of Ternate Sultan, there is an indigenous community board that is formed based on the decree of Jo'ou Kolano (His Majesty), the Sultan. Ternate indigenous community board is an institution that is respected by the local community. Therefore, indigenous community board supposed to be in line with other law enforcement agencies such as the police. In this case, customary decisions are considered valid as they do not against the 1945 Constitution. Furthermore, in the Local Sphere Ternate City Regulation Number 13 of 2009 on the Protection of Indigenous Rights and Culture of the Indigenous Peoples of the Ternate Sultanate Article 7, it is stated that:
1) The Regional Government recognizes and protects the Customary Institutions of the Sultanate of Ternate.
2) Customary institutions as referred to paragraph (1) are regulated specifically by the Sultanate of Ternate.

3.3.2. Indigenous Criminal Sanction Formulation. In the context of maritime legal, maritime fishery is applicable in Maluku. According to Ridwan Dero, the sultanate law fishing only prohibit in what places other people are fishing at the same place. According to the Sultanate Law, sanctions are given to perpetrators of fish theft in the territorial waters that have been determined by the local leader. The sanctions are in the form of (1) warning; (2) fines according to the agreement of the local indigenous people, and (3) boats (pajeko in Ternate language) are seized by the sultanate to be used by the community and by means of profit sharing.

3.3.3. The character of Deliberation as basic Mechanism for Decision made by Customary Judges. The customary law of fisheries and maritime of the Sultanate of Ternate is not written but verbally stated. It is called as “Dola Bololo” or messages containing fisheries and maritime laws delivered by Jo'ou Kolano, the Sultan of Ternate. It is held and regulated by Indigenous People Society of the Sultanate Ternate.

3.4. Bid on the Concept of Law Enforcement Based on Transcendental Values

Ternate has embraced Islam for centuries. As the results, the overall practices of spiritual rituals (animism) that may still exist today undergo fundamental changes both from the basis and the purpose. As a sultanate region, the transcendental concept that represents the history of the people of Maluku is the customary culture.

Based on the ideas above, the concept of transcendental law enforcement as stated in the Prophetic Transcendental Law Model has several elements as follows:
1. Integration between Islam and Law;
2. Norms are an aspect that is constituted, inspired and applied by revelation;
3. Revelation is a source of law;
4. Legal interpretation is based on the relationship between revelation and reality;
5. The law is aimed at individual internalization;
6. The purpose of the law is to achieve wisdom and prosperity.
In this case, the element of custom is the people that become the source and benchmark in the implementation of customary law and the formulation of customary norms. More than that, norms become a way to bring people closer to their God.

Customary is obedience or discipline. Thus, obedience to the law that significantly applicable in accordance with the idea of transcendental law which has several characteristics including:

1. Justice that was achieved through the existence of Deliberations is conducted at the time of the determination of Sasi, the customary court that applies custom "ale rasa beta rasa" through the Pela Gandong culture. One element of justice is proportionality wherein the law of settlement of customary, disputes are in accordance with the values of Pela Tampa Sirih which aims to restore peace after the dispute has occurred;

2. Usability is seen in the norms of Sasi, where these rules serve as guidelines for the utilization of fish resources through a clear process and the right duration of time;

3. Legal certainty and sanctions given to perpetrators of fish theft in the authorized territorial waters that have been determined by the customary leader in the village are: (1) warning; (2) fines according to the agreement of the local indigenous people; and (3) fish boats (pajeko) are confiscated on behalf of the sultanate to be used by the community by means of profit sharing.

Law should be enforced based on subjective categories adjusting to the subject, place, and partisanship on welfare orientation. The values of mere subjectivity in pale express in the event where the perpetrator is a foreigner, the considered action conducted by the officials is ship confiscation so that it can be used by local fisheries service to raise local revenue. Besides, custom stakeholders may rent and use the boats themselves under provisions to encourage wealth culture. They also can donate the ships to the community in order to provide employment.

Conclusion

Law enforcement of fisheries crime is based on provisions of Law Number 45 of 2009 on fisheries or Fisheries Law. The provisions of the criminal provisions are regulated in Article 84 until Article 104. One of them states about the ship sinking in applying fisheries law according to Law No. 45 of 2009 on the amendment of the Republic of Indonesia Law No. 31 of 2004 on Fisheries. Fisheries crime is settled through customary judge (Qadhi) or afterlife-related law (bobato). The concept of transcendental law enforcement is substantially in accordance with the values in traditional Segulaha. In Segulaha, customary law is an element that has the same spirit as transcendental values by positioning revelation as a source of law. Likewise, the existence of Bobato (world) and Bobato (afterlife) is a real example of integrated religious and customary law of the sultanate of Ternate.

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