Harmonization of laws related to the protection of artisanal fishermen fishing grounds in Aceh Province

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Abstract. This paper aims to examine how to protect of artisanal fishermen fishing ground and the policies that protect them. Small-scale fisher fishing grounds has to have a special attention due to their limitation. They are using very simple fishing gear, so they can’t sail far away from the coastal waters. The Fishing law give a specific attention for this matter, by limiting fishermen with 5 gross tonnage (GT) are only able to conduct their activities within the coastal waters. This study combines legal documents and the results of interviews with fishermen on 5 GT vessel. this study of find, then the Law Number 27/2016 changed this regulation by increasing gross tonnage for small-scale fishermen from 5 became 10 GT, and it attract more serious problems for these small-scale fishermen since they have no exclusive fishing ground anymore. It will also affect to changes of fishing lane; fishing ground and vessels authorization procedure. By increasing GT, the 10 GT vessels also have rights to sail in the same fishing ground with 5 GT vessels and it’s created a potential conflict between the fishermen. So, harmonization of law is important task for the government in avoiding the overlapping rules on vessels criteria, by choosing law that prioritize on small-scale GT vessels.

1. Introduction

The current condition of artisanal fisheries is problematic because they have to deal with many problems that cannot be resolved. For the State, this problem is a challenge in itself, with various reasons and causes. The biggest challenge faced is the struggle for access at sea. There are certain waters for small scale fishermens \cite{1}. Apart from regional issues, some other problems faced by artisanal fisheries include the unavailability of sufficient fuel and climate change, and erratic weather, directly impacting their activities. Several problems faced by fishermen have taken place globally. For example, the condition of climate change has been experienced by artisanal fisheries in all countries \cite{2}. The ability to adapt to a changing climatic environment is also a severe problem \cite{3,4}.

This article wants to reveal the territory of the artisanal fisheries, which are essential to get the attention of policymakers. The problem of access to artisanal fisheries is a severe problem in many countries, not only in Indonesia \cite{5}. Including the life above water \cite{6}. The leading cause is believed to be a very drastic change in fish resources. In the last 40 years, the marine population in Indonesia has been depleted \cite{7,8}. This condition has implications for territorial struggles between industrial fisheries and artisanal fisheries. Places that are believed to have enough fish still will attract many fishermen from various regions. The number of foreign fishing boats caught shows that fishermen from multiple countries also operate in Indonesian seas.
Another implication of the above situation is conflict. In addition to disputes between foreign fishermen and Indonesian fishermen, conflicts also occur between fishermen from one area to another. The most frequent conflicts are between fishermen who use modern and traditional fishing gear [9]. This conflict is exacerbated by the fact that artisanal fisheries lack access to essential facilities on land such as health and education [10].

Artisanal fisheries are the most vulnerable group in facing the above conditions. Globally, artisanal fisheries are classified as small-scale fisheries that contribute a lot to the community's economy [11]. There is an assumption that the success of fisheries management is highly dependent on the success of artisanal fisheries management [12]. In this context, the State plays a vital role in managing small-scale fisheries by using the right concept so that there are no problems in the lives of artisanal fisheries [13]. The state is the dominant party in sharing the roles and responsibilities of fisheries management [14].

A number of the above conditions also became a consideration for the birth of Law no. 7 of 2016 on the Protection and Empowerment of Fishermen, Fish Farmers, and Salt Farmers (hereafter the Fisherman Protection Law). The law wants to emphasize that the State is responsible for fishermen. As outlined in the Constitution, the responsibility of the State is to protect the entire Indonesian nation and homeland, promote public welfare, educate the nation's life, and realize social justice for all Indonesian people. It is following the mandate of Pancasila and the 1945 Constitution of the Republic of Indonesia. One of the fundamental philosophies of Indonesia's development is to realize social justice for all Indonesian people. Therefore, every Indonesian citizen has the right and obligation, according to their ability, to participate in the development and improvement of social welfare, especially of fisheries and salt business.

2. Research Approach
The presence of the State is the essence of the existence of the law on the protection of fishermen. However, the problem is that the law often contradicts other laws. For example, the regulation of ship sizes that are different from those stipulated in the fisheries law. This article would like to reveal that the difference in vessel size has implications for many things, such as fishing lanes and licensing, and will also show a policy that favors artisanal fisheries. This study does not rely solely on legislation [15]. Interviews were used with fishermen with 5 GT vessels. Interviews are important to understand the problems small-scale fishermen. Interviews were conducted with open-ended questions and conducted in a public place. By using qualitative analysis, this study hopes to map various problems to the implications of protecting fishermen.

3. Protection of Artisanal Fisheries Area

3.1. Protection of Artisanal Fisheries Area
The presence of the Fisherman Protection Law cannot be separated from the State's responsibility towards fishermen. Lawmakers want to push the State to protect and empower fishermen, fish farmers, and salt farmers. One of the fundamental philosophies of Indonesia's development is to realize social justice for all Indonesian people. Philosophically, the concept of justice can be different. However, the conditions of justice, especially for artisanal fisheries, must not change [16]. This philosophical reason should further strengthen the protection of small fishing areas [17]. Therefore, every Indonesian citizen has the right and obligation, according to their ability, to participate in the development and improvement of fishermen's welfare.

The State wants to protect fishermen. They are departing from one vital issue to be resolved, namely the position of the coast, fisheries, and marine affairs, which still do not provide guarantees of legal certainty and justice [18]. The issuance of the Fisherman Protection Law above is the embodiment of that purpose. Then, in line with the mandate of Pancasila and the 1945 Constitution of the Republic of Indonesia, one of the goals of fisheries and marine development is directed, among others, to increase the welfare of fishermen, fish farmers, and salt farmers as much as possible [19]. So far, these fishermen, fish farmers, and salt farmers have made a real contribution to the development of fisheries and marine
affairs and the economic development of coastal and rural communities. Special treatment becomes very important when dealing with local wisdom and other similar habits in society [20]. This affirmation follows the restrictions on who can be referred to as artisanal fishermen in the Fisherman Protection Act. According to Fisherman Protection Law, artisanal fishermen catch fish to fulfill their daily needs, both those who do not use fishing vessels and those who use fishing vessels at the largest size of 10 gross tons (GT).

The concept of the maximum limit for artisanal fisheries in this law is different from the concept in the Fisheries Law, which is 5 GT. Also, the context of the protection of fishermen is meant to provide infrastructure and facilities; provide certainty of sustainable business; increase capability and capacity; strengthening institutions in managing fish resources, provide security and safety guarantees, and legal assistance (Article 3). The purpose of protection, if we think about it with the planning concept, seems out of sync. A planning concept is always expected to be based on the carrying capacity of natural resources and the environment; potential fish resources; spatial plans; coastal zone zoning plan; and the number of fishermen. Such planning should place the area for artisanal fisheries as an area that must be given specialization. A policy that favors the territorial position for artisanal fisheries should return the concept of vessels to a limit of no more than 5 GT.

3.2. Profitable Policy and the Challenge of Protection

Four integral parts cannot be separated from the planning context, namely: (a) national development plans; (b) regional development plans; (c) state budgeting plan; and (d) regional budgeting plan (Article 9 paragraph (4) Law No. 7/2016). The planning context should at least contain strategies and policies. The design is carried out through (a) provision of infrastructure for fishery business and salt business; (b) ease of obtaining fishery business facilities and salt business; (c) guarantee of business certainty; (d) risk assurance of fishing, fish farming, and salt cultivation; (e) elimination of high-cost economic practices; (f) controlling imports of fishery and salt commodities; (g) security and safety assurance; and (h) facilitating legal assistance. Meanwhile, the empowerment strategy is carried out through (a) education and training; (b) counseling and assistance; (c) business partnerships; (d) easy access to science, technology, and information; and (e) Institutional strengthening (Article 10-12 Law No. 7/2016).

The Central Government prepares the planning itself at the national level, the Provincial Government at the provincial level, and then at the district/city level. This preparation is carried out by the Central Government, regional governments, and district/city governments to produce short-term, medium-term, and long-term plans (Article 13). The plan consists of a national plan, a provincial plan, and a district/city plan (Article 14). National plans serve as guidelines for regional plans, and regional plans serve as district/city plans (Article 15 of Law No. 7/2016). Through Law no. 7/2016, some authorities can be exercised, especially by the Provincial Government and Regency/City Governments. These powers include establishing policies and making fishing protection strategies. Local governments are prohibited from making policies that are contrary to efforts to protect fishermen.

Two important things that are the domain of local governments are protecting fishermen and establishing a zoning plan and detailed zoning of coastal areas for fishing. Concerning the concept of artisanal fisheries that have changed, the implication is that changes in the zoning plan must be prepared differently. The zoning for 5 GT fishermen, whose distance is limited, is competed with fishermen with 10 GT in the same fishing space. In the Fisherman Protection Act, zoning does not seem to be taken seriously. This law is more likely to be dominated by the economic interests of fishermen [21]. In addition to business certainty and infrastructure, several provisions also require the central government and provincial governments to grant freedom to fishermen, fish farmers, and salt farmers. Such conditions are essential amid the incessant local government in issuing various concessions and permits to entrepreneurs, including water and coastal reclamation, which has implications for fishermen [22].

Some critical notes conveyed concerning this analysis are: First, this law is fundamental to strengthen the responsibility of the State in protecting the entire Indonesian nation and homeland of Indonesia. It also promotes public welfare, educates the nation's life, and realizes social justice for all people of
Indonesia. This responsibility is following the goal of establishing a state, namely the welfare of the people, including fishermen, fish farmers, and salt farmers. The State shall protect and empower fishermen, fish farmers, and salt farmers in a planned, directed, and sustainable manner. These workers are very dependent on fish resources, environmental conditions, facilities and infrastructure, business certainty, access to capital, science, technology, and information; therefore, they need protection and empowerment from the State.

Such a situation implies the necessity of harmonization of existing laws and regulations as something that is interrelated. It should not be forgotten that there are many interlinked laws and regulations in the marine and coastal sectors. In terms of the concept of protection and empowerment through the Fisherman Protection Act, three main critical domains must be integrated, namely: Firstly, the competent authority such as the Regional Government regime, the Special Region, and the Special Autonomy Region. Second, there are the Coastal Law, the Maritime Law, the Regional Government Law, and the Special Autonomy Law at land. Third, the dominant community or community related to traditional fishermen's existence makes it necessary to look at the laws and regulations on indigenous communities.

Second, the consideration of the philosophical direction that turned out to be incorrectly set. One of the most crucial arrangements is regarding who exactly is considered a small fisherman. According to Article 1 of the Fisherman Protection Act, artisanal fisheries are fishermen who catch fish to fulfill their daily needs, both those who do not use fishing vessels and those who use fishing vessels with a maximum size of 10 (ten) gross tons (GT). The size of 10 GT is not tiny, and such an arrangement has implications for several things.

The first implication is regarding ship permits that do not distinguish between 5 GT and 10 GT. Supposedly, when referring to the laws and regulations, for 5 GT, there should be the special treatment were only reporting, not having to apply for a permit. With the arrangement of this law, the size of 10 GT will follow the 5 GT. It is impossible to avoid the existence of different authorities, methods, and processes in licensing these ships related to such a problem. The second implication is related to cruising range. Why should a 5 GT ship be given a particular area? Because of its limited cruising range, a 10 GT ship that explores a 5 GT ship site is a problem. In the political economy of fisheries, GT size is crucial because from the licensing process to the operational capital requirements of the vessel, it is impossible to ignore. The third implication is regarding the contradiction of the legislation. With this change, there will be a dissonance with some other laws that regulate artisanal fisheries with a size of 5 GT. For example, Law no. 45/2009 on Amendments to Law No. 31/2004 on Fisheries.

The above implication becomes a challenge in positioning this law as an essential starting point in protecting the territory for artisanal fisheries. The law should provide ample space for artisanal fisheries to defend themselves instead of providing an opportunity for large fishermen to dwarf them. By increasing the GT of artisanal fisheries, those who will become victims in fishery operations are fishermen with a size of 5 GT and below. Furthermore, the division of space and sea lanes cannot possibly be referred to in this way. From the hierarchy of laws and regulations, sea lanes are regulated at a lower and more general level than the interests of this law.

4. Conclusion

It can be concluded that the context of legal protection related to fishermen is very complex. Its scope is not limited to certain aspects only but covers all related fields. This coverage is not only in the sea but also on land. Matters related to the sea include territorial access, fuel facilities, and the safety of fishermen at sea. While on the ground related to various life facilities that support the activities of fishermen. The enactment of a law on the protection of fishermen should be viewed in a broad perspective, not limited to the economy alone. The concept of artisanal fisheries that increase the boat's size becomes very important related to the irregularity of the legislation. This concept poses a challenge in protecting the area for artisanal fisheries. Another challenge is the difficulty of harmonizing laws and regulations on the artisanal fisheries.
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