The impact of globalization on corporations conducting illegal fishing in North Sumatera

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Abstract. Indonesia is a maritime country with 17,508 islands endowed with great fisheries resource. Fishery resource makes Indonesia in a strategic position. Belawan is a port area in Medan. Geographically, the Port of Belawan is the biggest resource for fishing. So Belawan becomes the busiest port in Medan for fish commodity trading and supports the economy of the region. However, illegal fishing in Indonesian waters has a direct impact on the economy, especially fisherman and fish traders in Belawan. This study uses a normative juridical approach. The results show that several issues in handling illegal fishing crime still occur even though Law No. 31 of 2004 already existed and was strengthened by Law No. 45 of 2009 concerning Illegal Fishing Crime. This study revealed that there is no difference toward the imposition of penalties against the perpetrators of illegal fishing between “individual” and “corporations”. Indonesia still adheres to the system of liability in which corporations act as responsible makers and administrators. The condition does not seem comparable to the effects of crime committed. This illegal fishing crime also has an economic impact on the income of fisherman and local governments, especially Medan, which comes from the fisheries and marine sector.

1. Introduction

The activity of a port indicates the growth of a city. Belawan is one of the port areas that has long been the gateway for the entry and exit of goods to and from the city center of Medan and surrounds. Port of Belawan is the main gateway for the flow of goods, both exports and imports, and the transfer of cargo through various modes of transportation. The port serves the economic activities of the city. Due to its existence, cities that have ports produce plenty of service activities in their economies [1].

Port of Belawan is in the Sub-District of Medan Belawan, administratively as the part of 21 sub-districts in Medan. It becomes a very strategic location for only 13.5 km from the international shipping lane of the Strait of Malacca, about 27 km in the north of the city center [2]. This port located on a peninsula which is the confluence of two rivers, Belawan and Deli. Port of Belawan is on one side of the Strait of Malacca that has for a long time been one of the busiest commercial shipping lanes in the world since it connects economic activities of Asia and Europe.

Nevertheless, the crime of illegal fishing at present threatens the local revenue, especially the Port of Belawan, which eventually impacts on the economy of Medan and Indonesia. The development of internally generated revenue (IGR) from the fisheries and marine sectors is still not optimal because there are still destructive fishing practices (DFPs) violating the laws and regulations. Individuals and corporations has made considerable loss of resources due to illegal fishing.
Illegal fishing refers to fishing activities that are not regulated by applicable regulations and authorized institutions do not get the information. It can occur in all fishing activities regardless of location, target species, fishing gear, and exploitation. Moreover, it can appear in all types of fisheries: from small-scale to industrial fisheries; and from national to international jurisdiction zones. Heretofore, fishing activities in the Strait of Malacca have been quite alarming. The factors causing illegal fishing in the Strait of Malacca are inseparable from the global strategic environment, especially the condition of fisheries in other countries that have sea boundaries and fisheries systems in the Strait of Malacca itself. According to Supreme Court Judge Surya Jaya, the perpetrators of crimes in the illegal fishing were not only individuals but also legal entities or corporations. “Eradicating illegal fishing is not an easy job because it involves countries. Crimes of fisheries have broad, national, and transnational dimensions” [3].

The poor control and law enforcement to the perpetrators of illegal fishing have caused them never to be deterred. The legal process that has existed so far only engages with the ship’s crew without trying to uncover the real perpetrator (the corporation) that backs up these activities. Such process has caused a big loss to the country, especially losses to the local revenue, the traditional fisherman, and the coastal community.

There have been numerous legislations issued by the government to regulate fishery activities, from laws to ministerial decrees. These are to minimize the crime in the fishery sector, maximize the benefit, and protect the marine resources. However, the rules and regulations have not been able to reduce illegal fishing because they have not engaged with the corporation as the real perpetrator. Although the government has made a policy of sinking the ships caught fishing illegally, it still raises ‘a controversy,’ whether this policy will effectively eradicate illegal fishing in Indonesia. Based on the explanation, a problem arises, namely, “What are the impact of development and economic growth factors in the fisheries and marine sectors in the Sub-District of Medan Belawan?”

2. Method
The research employs a normative juridical method by analyzing legal materials through a literature study [4]. The analysis is based the description and the facts obtained to precise answers the formulated problem. This study analyzed the factors encouraging the development of economic growth in the fisheries and marine sectors in the Sub-District of Medan Belawan and the penalties to the perpetrators of illegal fishing corporate crime.

3. Results and discussion
In 1978, the government of Indonesia inaugurated the Port of Belawan as Nusantara Domestic Fishery Port. In 2000, the management of the Nusantara Domestic Fishery Port of Belawan was handed over from the Department of Agriculture to the Department of Fisheries and Maritime Affairs. Furthermore, on May 1, 2001, based on the Decree of the Ministry of Fisheries and Maritime Affairs No. KEP. 26.1/MEN/2001, the Nusantara Domestic Fishery Port of Belawan has expanded its institutional status to Samudera Fishery Port of Belawan. Geographically, the Samudera Fishery Port of Belawan located between the waters of the East Coast of Sumatra (Strait of Malacca), the South China Sea and the waters of the Exclusive Economic Zone (EEZ) with relatively huge potential of fish resources located at the Indonesian Fisheries Management Area (WPP-RI) 571[5].

Port of Belawan is one of the major fishery ports in the East Coast of Sumatra, that is the Samudera Fishery Port of Belawan (SFPB). To increase the local revenue, in addition to acting firmly against the perpetrators of illegal fishing, the industrialization of the fishing sector should be considered as the concept to create an added value to fish products. It will accelerate the welfare of fisherman and other fishery entrepreneurs.

The findings show that there are several important aspects that need to be developed. Accordingly, the Samudera Fishery Port of Belawan (SFPB) can support the fishing industry if several factors such as infrastructure, business, society, resources and spatial planning, technology, and marketing can be optimized. Government policy must be supported to keep imposing a ban on the import of certain
fisheries commodities such as piranha, electric eel, *Tetraodontidae* fish, pike or jackfish, and parasitic catfish. The prohibition of bringing electric eels from abroad is prompted to their danger for the environment in producing electrical power that can injure humans and other animals. Likewise, piranhas, their powerful jaws and sharp teeth make them formidable predators. In this case, the government needs to protect fishermen against perpetrators of illegal fishing. Thus export and import activities will continue to increase in the Port of Belawan. Marine products in North Sumatra as many as 13 million tons of fish per year has resulted in many perpetrators being tempted to do the illegal fishing in the region.

Diverse and abundant sea catches, especially in North Sumatra include squids, shrimps, mackerels, and others reaching 276 thousand tons from the Strait of Malacca region and 565 thousand tons from the Indian Ocean region. That amount of catch has not added to the aquaculture sector on lands such as catfish, carp, king prawn, shrimp, and goldfish. The Ministry of Fisheries and Maritime Affairs noted that the increase in the value of fish production in 2017 contributed to the non-tax state revenue (NTSR). Based on the Indonesian Central Bureau of Statistics (CBS) data (2018), ports and airports participated in exporting activities of fishery commodities in North Sumatra, with most activities of the exports in the Port of Belawan. In 2017 around 91.72 % of the export volume of fishery commodities in North Sumatra were exported reaching 7.87 % contribution to the local revenue of Medan City. This marked as the highest in the last six years in the economic sector [6].

According to the economic development view from the fisheries and marine sectors, optimizing the use of fish resources cannot only be counted on the amount of catch. Other than that, it should also be counted on how it can maintain the fishermen’s catches to make them improve the economy of a region, in this case affecting Medan City economy.

The activity of a developing port has shown the growth of a city. The existence of the Samudera Fishery Port of Belawan (SFPB), which is essential to the commercial shipping lane will disrupt the economy if destructive fishing practices often occur. In addition to the widespread practice of illegal fishing in various countries, this issue has become an international discussion. Indonesia is not the only country complaining of this kind of crime.

The UN responded to this case by issuing the UNCLOS (United Nations Convention on the Law of the Sea) which was signed on April 30, 1982. The Convention was signed by 118 countries in Montego Bay, Jamaica, on December 10, 1982. If a crime emerges in the Strait of Malacca region, the provisions stipulated in UNCLOS can be imposed. The provisions affirm the existence of the transnational right to peace and are binding to all countries that have ratified this convention. The convention on the law of the sea above applies to every overseas territory. Whereas for each country’s sovereignty, the coastal state has the right to set its territorial sea to a limit not exceeding 12 nautical miles measured from the baseline specified in Article 3 of UNCLOS.

If a crime occurs outside the 12 nautical miles boundary conducted by a non-citizen of that country, the provisions stipulated in the UNCLOS shall be applied. Indonesian citizens are regulated in the provisions stipulated in Law No. 1 of 1946 concerning Criminal Code, while crimes of fisheries committed by corporations are regulated in Article 101 of Law No. 31 of 2004 concerning Fisheries. The Law states: “If a crime is committed by corporations as referred to in Article 84 Paragraph (1), Article 85, Article 86, Article 87, Article 88, Article 89, Article 90, Article 91, Article 92, Article 93, Article 94, Article 95, and Article 96, claims and sanctions are imposed on their administrators, and fine penalties are added to 1/3 (one third) of the punishment.”

Implementing Law No. 31 of 2004 has not been able to effectively ensure the illegal fishing by corporations since the penalty is only imposed on the ship’s crew or the captains. Corporations were not subjected to criminal charges for staying behind the crew and the captain. To address this, the Supreme Court has issued the Regulation of Supreme Court (PERMA) No. 13 of 2016, which regulates the case handling the procedure for corporation crimes. The regulation states: if a corporation is suspected of committing a crime, law enforcement officers can ask for the corporate legal liability. Corporate legal liability can be imposed on someone who is attached to the corporate deed as the corporate administrator [7]. The penalties set in PERMA No. 13 of 2016 can hopefully
deter the perpetrators of illegal fishing, especially corporations, because they are subjected to significant fines. Applying law enforcement of this regulation can increase the performance of fishery activities and sea catches, which will increase the local revenue of Medan.

4. Conclusions
Samudera Fishery Port of Belawan (SFPB) is one of the fishery ports in the East Coast of Sumatra. To increase the local revenue, especially Medan, the fishery sector is one of the significant contributors. Illegal fishing is an issue for the government to combat in the fishery sector. The government acted decisively against the perpetrators of illegal fishing by ratifying the United Nations Convention on the Law of the Sea (UNCLOS 1982) concerning Law of the Sea, followed by enacting Law No. 31 of 2004 on Fisheries and Law No. 45 of 2009 concerning Amendment to Law No 31 of 2004 on Fisheries. The judicial institution also supported the enforcement by issuing the Regulation of Supreme Court (PERMA) No. 13 of 2016 on Case Handling Procedures for Corporate Crimes, especially against corporations committing illegal fishing. Along with the support of law enforcement, the fisheries sector’s performance will be maximized and be able to provide significant local revenue from the Samudera Fishery Port of Belawan for North Sumatra, especially Medan.

The government of Medan City must pay attention to the infrastructure maintenance and development of Belawan Port for its important contribution to the economic development factor from the fisheries and marine sectors. The government of the Republic of Indonesia should also be capable of enforcing the law in the fisheries sector as one of the efforts in applying UNCLOS 1982 at the international level.

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