Legal politics of fulfillment of sustainable fisheries resources after the enactment of the omnibus law 2020

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Abstract. The enactment of the Omnibus Law at the end of 2020 has a significant influence in the regulation of national law in Indonesia. This is no exception to the marine and fisheries sectors. In the same year, 14 state leaders who were members of The Ocean Panel, including Indonesia, agreed to encourage transformation towards sustainable ocean economic development. This step was made concrete with the launch of the document “Transformations for a Sustainable Ocean Economy: A Vision for Protection, Production and Prosperity”. This article aims to normatively analyze the politics of law in the enactment of the Omnibus Law, and its impact on the fulfillment of sustainable fisheries resources in Indonesia. The findings indicate a massive threat of exploitation in the marine and fisheries sector after the enactment of this Law. It is counterproductive to the government's commitment to encouraging the transformation towards sustainable ocean economic development. The government must evaluate various norms in the Omnibus Law related to the marine and fisheries sectors which are then adjusted to the commitment to sustainable ocean economic development.

1. Introduction

The ocean plays a strategic role in supporting human life activities. Various human needs ranging from food, energy, transportation to recreation can be met by utilizing ocean services. This strategic role has led to the continued increase in the economic value of the ocean. A report released by the World Wildlife Fund (WWF) in 2015 estimated the economic value of all major ocean assets to be at least US $ 24 Trillion [1]. With such a large value, interest in expanding ocean management in order to obtain more economic benefits will certainly grow.

One of the key sectors in exploiting the economic value of the ocean is fisheries. According to a report by the Food and Agriculture Organization (FAO), global fishery production reached its peak in 2016 with a total production of around 171 million tons and the total value of the first sales was estimated at US $ 362 billion [2]. Likewise in Indonesia, with a proportion of two-thirds of the country's total area is in the form of waters, Indonesia is predicted to have a large potential for fishery resources [3].

Normatively, fisheries in Indonesia are defined as all activities related to the management and utilization of fish resources and their environment, from pre-production, production, processing to
marketing, which are carried out in a fisheries business system [4]. In 2019, according to data from the Ministry of Maritime Affairs and Fisheries of the Republic of Indonesia (KKP RI), the total Indonesian fishery production reached around 23,678,573.15 tons obtained from the production of marine capture fisheries, mainland public water capture fisheries (PUD) and aquaculture [5]. With enormous resources, sustainable ocean management is very important in Indonesia.

As a form of commitment to sustainable ocean governance, in September 2018, the Government of Indonesia through President Joko Widodo along with 13 other heads of state formed an ocean policy agency initiative called the High Level Panel for a Sustainable Ocean Economy (the Ocean Panel) with the aim of building a sustainable ocean economy [6]. Two years later, in December 2020, the Ocean Panel launched an agenda for ocean action as outlined in a document entitled "Transformations for a Sustainable Ocean Economy: A Vision of Protection, Production and Prosperity". Through this agenda, panel members are committed to managing 100% of the ocean area sustainably under national jurisdiction by 2025. The implementation of the commitments will be guided by the Sustainable Ocean Plan which contains policies and mechanisms for the sustainable use of the ocean as well as maximizing benefits and increasing value for present and future generations [7]. The participation of Indonesia to the Ocean Panel shows the commitment of the Government of Indonesia in realizing the utilization of the ocean economy potential by prioritizing the principle of sustainability in which effective protection, sustainable production and equitable prosperity go hand in hand, in accordance with the values that the Panel intends to carry.

However, the direction of Indonesia's maritime and fisheries policy tends to show regressive steps towards the principle of sustainability. In the same year as the launching of the transformation agenda, to be precise on November 2, 2020, President Joko Widodo signed Law (Omnibus Law) No. 11 of 2020 concerning Job Creation (the Job Creation Law/UU Cipta Kerja) mark the entry into force of the Omnibus Law which has invited a lot of controversy [8]. The Job Creation Law repealed 2 regulations and revised 82 multisectoral regulations, including the marine and fisheries sector, namely Law No. 32 of 2014 concerning Maritime and Law No. 45 of 2009 on Amendments to Law No. 31 of 2004 concerning Fisheries [9].

The existence of the Job Creation Law has triggered various polemics related to the regulation of the marine and fisheries sectors. First, there are various provisions that are considered detrimental and counterproductive with sustainable principles which are Indonesia's commitment in The Ocean Panel, such as the weakening of the National Commission for the Study of Fish Resources (Kajiskan) which is the authority to measure the condition and availability of fishery resources as an instrument for Scientific Based Policy. Second, there is a change in the norm of environmental permits into a form of approval, which from administrative law perspective, will reduce the effectiveness of the control function and supervision by the government. In addition, the centralization of policies can also make it difficult for business actors to access permits for utilization of fishery resources. Other than that, various other problems also arise from the presence of new provisions related to fisheries in the Job Creation Law.

This article aims to analyze the impact of the authorization of the Omnibus Law on Job Creation to the Indonesian fisheries sector. It will consist of three main parts, the first part will describe the principles of a sustainable ocean economy initiated by the Ocean Panel. In the second part, the legal politics and the impact of the omnibus law ratification on the fisheries sector will be explained. Lastly, the third part will describe the normative analysis of the influence of the omnibus law on Indonesia's commitments related to a sustainable ocean economy in the Ocean Panel.

2. Principles of Sustainable Ocean Economy - The Ocean Panel

Following the rapid growth of ocean economic activities, a sustainable concept in which socio-economic development is carried out without causing environmental degradation and injustice is urgently needed [10]. The application of this concept is then increasingly important considering the challenges that will come in the future, where the widespread exploitation and the emergence of
various new industries are feared to increase the burden of damage to the marine environment, for example deep sea mining activities with various impacts that are not fully understood [11].

In December 2020, the Ocean Panel launched an agenda for ocean action as stated in a document of the joint agreement entitled "Transformations for a Sustainable Ocean Economy: A Vision of Protection, Production and Prosperity". This document contains the various commitments of the panel member countries towards sustainable ocean management in national waters. There are 74 priority actions that integrate the protection and sustainable use of the ocean which were agreed upon by the 14 heads of state [6]. With the idea of transformation, the Ocean Panel aims to realize a sustainable ocean economy where environmental protection and preservation go hand in hand with production and economic prosperity. This will is carried out based on 9 principles, namely: (a) Alignment; (b) Inclusiveness; (c) Knowledge; (d) Legality; (e) Precaution; (f) Protection; (g) Resilience; (h) Solidarity; (i) Sustainability [7].

Through a transformation agenda based on the 9 principles above, the Ocean Panel presents a framework with various outcomes to be achieved, covering 5 areas along with a series of actions to achieve them. This framework is designed to be consistent with the targets with respective deadlines that have been set through the sustainable development goals (SDGs) contained in the 2030 Agenda for Sustainable Development [6]. The 2030 Agenda is considered the most comprehensive, wide reaching and demanding international agreement ever made to date [12]. This agenda consists of 17 goals, 169 targets and 230 indicators with the principle of "no one will be left behind" [13].

The sustainable development of the marine sector in the 2030 Agenda is specifically formulated in Goal 14, that is conserve and sustainably use the oceans, seas and marine resources. One of the important targets related to the ocean economy set by this goal is the increase in economic benefits for developing countries in the form of small islands and underdeveloped countries in the sustainable use of ocean resources, among others through sustainable management of the fisheries sector, aquaculture and tourism. Another important target that is in line with the transformation agenda is to increase the conservation and sustainable use of the ocean and its resources by applying international law as reflected in UNCLOS 1982 as the main legal framework in the management and use of the ocean ant sea as well as its resources in a sustainable manner [13].

As already mentioned, a vision to harmonize protection, production and prosperity, the Ocean Panel drives transformation in 5 critical areas, namely: ocean wealth, ocean health, ocean equity, ocean knowledge and ocean finance. The transformation in each of these areas has various targets with a deadline in 2030 and is carried out with a series of priority actions needed to achieve a sustainable ocean economy and casts a vital foundation for ocean recovery and resilience. The table below will describe the target of each transformation area [6].

| Area              | 2030 Target(s)                                                                 |
|-------------------|-------------------------------------------------------------------------------|
| Ocean Wealth      | • Wild fish stocks are restored and harvested at sustainable levels           |
|                   | • Aquaculture is sustainably grown to meet global needs                      |
|                   | • waste is minimised and managed throughout the value chain                  |
| Sustainable       | Shipping investments have effectively accelerated the shift                  |
| ocean food        | towards zero-emission and low-impact marine vessels.                        |
| Sustainable       | • Ocean-based renewable energy is fast-growing and on the path               |
| ocean transport   | to becoming a leading source of energy for the world.                       |
| Sustainable       |                                                                              |
| ocean energy      |                                                                              |
| Sustainable ocean-based tourism | Coastal and ocean-based tourism is:
• Sustainable
• Resilient
• Addressing climate change
• Reducing pollution
• Supporting ecosystem regeneration and biodiversity conservation
• Investing in local jibs and communities |
| Sustainable new ocean industries | Innovation and investments in new ocean industries have boosted environmentally responsible and inclusive economic growth. |
| A precautionary approach to seabed mining | Sufficient knowledge and regulations are in place to ensure that any activity related to seabed mining is informed by science and ecologically sustainable. |
| Ocean Health | Reduce greenhouse gas emissions
• Marine and coastal ecosystems are healthy, resilient and productive
• Nature-based solutions are key elements in developing coastal infrastructure |
| Protect and restore marine and coastal ecosystems | Reduce Ocean Pollution
• The ocean is no longer a sink for pollution
• Dead zones are minimised (The term "dead zone" is used to describe waters with very low dissolved oxygen concentrations [14]). |
| Ocean Equity | Promote equal opportunity for people to benefit from the ocean
• People have equitable access to ocean resources
• Benefits are fairly distributed
• The most vulnerable are protected from the risk of harm |
| Ocean Knowledge | Build ocean literacy and skills
• Through the UN Decade of Ocean Science ocean literacy has been enhanced worldwide
• People understand the value of the ocean and have acquired the skills and knowledge to participate in the sustainable ocean economy |
| Account for the value of the ocean | Harness ocean science, technology and data
• Decision-making affecting the ocean reflects the value of and impacts on the ocean’s natural capital. |
| A globally shared data revolution has contributed to sustainable ocean management worldwide. |
3. Legal Politics on the Impact of the Omnibus Law Ratification in the Fisheries Sector

The choice of government policy to facilitate investment by cutting various regulations that are considered to be obstacles has a negative effect on the sustainability of the Indonesian marine and fisheries sector. The following will describe some important points to become a shared discourse after the ratification of the Omnibus Law in the marine and fisheries sector. These points will be elaborated in general into 3 aspects in ocean governance based on their functions, namely planning, utilization and supervision.

From the planning function, the first point is strengthening the role of the National Commission for the Study of Fish Resources (Kajiskan). The existence of this commission is very important to be able to measure the amount and size of fish resources that can be caught and in order to maintain its preservation and sustainability. Initially, the provisions related to Kajiskan in the Fisheries Law were specifically explained, but in the Job Creation Law, the provisions related to Kajiskan were no longer explicitly regulated [15]. The provisions related to Kajiskan are only regulated in the derivative regulations of the Job Creation Law in the marine and fisheries sector, namely Government Regulation (PP) No. 27 of 2021 concerning the Implementation of the Marine and Fisheries Sector. It is important to look at the results of the Kajiskan study because in the period 2013 to 2016, in the Fisheries Management Area (FMAs/WPP) 715 which includes the waters of Tomini Bay, Maluku Sea, Halmahera Sea, Seram Sea and Berau Bay, there has been a decline and no increase in fishery resources. Meanwhile, in other FMAs/WPP, it is quite dynamic, with a decrease in certain fish resources offset by an increase in resources for other types [16] It is important to know the renewal of this Kajiskan considering that until now in 2021, the last estimated data on fishery resources was in 2016 which was approved by the Minister of Marine Affairs and Fisheries Regulation Number 50 / PERMEN-KP / 2017 concerning Estimated Potential, Permitted Catches, and the Level of Utilization of Fish Resources in the Fisheries Management Area of the Republic of Indonesia.

From the utilization aspect, the important thing to be analyzed in depth is the centralization of policies for granting permits for the utilization of fishery resources. This policy injures the spirit of reform and democratic principles that promote regional autonomy and the broadest possible involvement of the community in policy making. This is in line with the early impact that will be felt by the surrounding community. In the analysis of the Indonesia Ocean Justice Initiative (IOJI), the centralization of granting these permits to the government can reduce the accessibility of business actors who previously were able to administer permits in their respective regions.

One of the principles of good governance is that the government must be able to ensure fairness/equality of opportunity for the community to gain access to utilization permits. The implication of this condition can make it difficult for business actors in various regions to be able to access permits. This can also reduce regional income in the licensing sector [15]. Even if the government argues that the licensing mechanism is made easier by being electronic based, of course, field verification is still needed regarding the ability and readiness of business actors to ensure implementation is in accordance with what is required, and is not merely technical administrative. The government must realize that regions know the real conditions of their ground the best which make them able to create a more controlled governance system, and this will only be achieved if the authority of granting the utilization permits is given to the regions.

In supervision aspect, there are at least 3 problems that need to be the main concern. First, the change of regime from the environmental permit norms into environmental approval in regulating the use of the operational area of marine buildings and installations that exceed the safety area. According to the assessment of IOJI, this provision reduces the function, effectiveness and control of an activity that aims to ensure that the activity does not interfere with the safety of shipping lanes and prevent damage to the marine ecosystem. Normatively, a license has legal force to become an instrument of control, prevention of violations and supervision by the community. Meanwhile, the legal position of
the agreement is more flexible than the norms contained in the permit, it is considered that there is still debate as to whether the approval is included in state administrative decisions that can be put on trial in the State Administrative Court or not [15].

Second, the risk-based licensing system. How can the government know the risk of a type of business if it does not have the results of studies related to the condition of Indonesian marine and fisheries resources that are updated regularly? The results of the last study from Kajiskan related to approximate estimation of fishery resource were published in 2017. Before opening the investment tap, the government must certainly have a comprehensive study of its resources, and the results of this study must be open to the public, so that it can increase community participation in overseeing government policy, this is not present in the regulations on the Job Creation Law. The government should not risk the carrying capacity of the marine environment for future generations by taking policies that are economically beneficial for a few people in the short term but detrimental in the long term in the future.

The last one is the aspect of supervision and law enforcement against business actors who are illegal and violate the law. The implication of the centralization of authority described earlier could weaken the supervisory function of the utilization by business actors. Regulations that incorporate various permits such as Fishery Business Permit (SIUP), Fishing Permit (SIPI) and Fishing Vessel Permit (SIKPI) into the Business Licensing instrument are considered to cause problems in the field of monitoring the implementation of compliance by the government. It is difficult to portray the monitoring compliance by business actors who own dozens of fishing vessels and fish carriers. According to IOJI, there is legal uncertainty against perpetrators of violations which makes it difficult for administrative law enforcers to carry out inspections of fishing vessels without fishing permits and transport permits which granted to individual ships [15]. Law enforcement is very important to ensure that there is government control over business actors, either preventively to avoid business actors from committing violations or as a repressive measure to impose sanctions on businesses that commit violations. This is very important to be able to measure the use of fixed fishery resources in an amount that is in accordance with the environmental carrying capacity of the marine environment to be able to regenerate and be sustainable.

4. Normative Analysis of the Influence of Omnibus Law on Indonesia's Commitment in The Ocean Panel

Indonesia, as one of the initiators in the Ocean Panel, is committed to managing the seas in its jurisdiction in a 100% sustainable manner. Of the 5 critical areas that become the focus of transformation, we specifically examine 3 areas that can face the challenges in fulfilling Indonesia's commitment to realizing sustainable ocean management after the endorsement of the Job Creation Law, namely the ocean wealth; the ocean health and the ocean equity.

The first is the area of ocean wealth, in this area there are several issues that will be the main concern, namely sustainable ocean food, sustainable ocean transport, sustainable ocean energy, sustainable ocean-based tourism, sustainable new ocean industry, and the issue of a precautionary approach to seabed mining against seabed mining. To measure the achievement of the issues above, there are several indicators of achievement targets that must be met in 2030, such as the issue of sustainable ocean food availability, one of the targets that must be met is that capture fisheries stocks are restored to a sustainable level, sustainable aquaculture development to meet the global needs and minimization of the generated waste and manage it throughout the value chain. After the ratification of the Job Creation Law, one of the challenges that must be considered is the condition of the estimated fish resources in the archipelago fisheries management area which is in a ‘fully exploited’ and ‘over exploited’ condition. The availability of updated data from the Kajiskan study is of course very important to determine the condition of fishery resources. The last Kajiskan data was updated in 2016 through the ratification of the 2017 KP Ministerial Decree. The availability of Kajiskan data is very important as a form of a ‘scientific based policy’, so that later utilization policies can be adjusted to the conditions of the real resource availability. Meanwhile, in the Job Creation Law, the role of
Kajiskan appears to be weakened by not being explicitly stated in the Law, but only included in the implementing regulations for the Job Creation Law in the marine and fisheries sector. This is a big question of the government's commitment to encourage transformation on the issue of ocean wealth in accordance with the commitment in the Ocean Panel.

The second is in critical areas of ocean health. In this area, there are several issues such as reducing greenhouse gas emissions, protecting and restoring marine and coastal ecosystems, and reducing ocean pollution. In this area, there are several indicators of targets, for example reducing greenhouse gas emissions by ensuring the implementation of climate actions that ensure the achievement of the goals in the Paris Agreement and restoring ocean health. Meanwhile, on the issue of protection and restoration of marine and coastal ecosystems, indicators can be achieved by building a healthy, resilient and productive marine and coastal ecosystems, as well as developing coastal infrastructure with nature-based solutions as the main element. In this regard, after the ratification of the Job Creation Law, there are challenges that threaten the fulfillment of indicators with changes in various norms, such as simplification of permits that weaken environmental standards, especially in changing environmental permit norms to a form of approval, which from the perspective of administrative law can weaken the control function and supervision over a business activity, including the management of the use of the operational area of marine buildings and installations that exceed the safety area. The supervision and control function here is very important to ensure that these activities do not interfere with the safety of shipping lanes and also to prevent damage to marine ecosystems.

The third is an issue in the critical area of ocean equity. In this area, the main concern is the issue of encouraging equal opportunities for communities to get benefit from ocean life. This issue can be realized with the indication that everyone has fair access to ocean resources, the benefits are distributed fairly and the most vulnerable groups are protected from the risk of harm. In this regard, after the ratification of the Job Creation Law, it is important to look at the centralized policy for granting permits to use fisheries resources that were taken over by the central government. Normatively, this provision may have an impact on the difficulty of business actors in the regions to be able to obtain permits for utilization of fishery resources. Even though the business licensing mechanism is carried out with electronically based mechanism, this still requires verification of the capabilities and conditions of business actors in the regions. This is clearly a regressive action towards the spirit of reform to encourage the decentralization of authority to local government. The right transformation step in the issue of ocean equity is to bring access to fisheries resource utilization closer to business actors in the regions. This is important because the one who best understands the conditions and needs of the region is of course the regional government itself. The more parties involved in determining policies, the more opportunities there will be for more effective policies made to encourage more sustainable fisheries and maritime affairs.

5. Conclusion
The Indonesian government, which is one of the initiators in the High Level Panel for a Sustainable Ocean Economy (the Ocean Panel), is committed to promoting sustainable ocean economic transformation. However, the commitment to promoting sustainable fisheries and maritime affairs in Indonesia is doubted after the ratification of the Job Creation Law which aims to facilitate investment by cutting various regulations that are considered to be obstacles, including several environmental protection norms in the marine and fisheries sectors. Several things that need to be reviewed due to the emerging contradiction towards principles of sustainable marine and fisheries as agreed in the Ocean Panel, namely the weakening of the Kajiskan institution which is the authority institution to determine the condition of fisheries that will be a key element to create ‘scientific based policy’. Attention should also be paid to the weakening of the environmental permit norm to an approval which reduces the effectiveness of the permit as a supervision and control instrument in protecting sustainable ocean ecosystems. Lastly, the centralization of policies for granting permits for utilization of fishery resources which can have an impact on the difficulty of business actors in the regions to obtain permits for utilization of fishery resources. These three things are important to be studied further in order to
ensure that the Indonesian government's policies remain in line with the commitment of the Ocean Panel to promote sustainable ocean economic transformation.

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