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Juridical Analysis of the Regulation of Fishery Resources in the Indonesian Exclusive Economic Zone

Sri Asih Roza Nova

Universitas Andalas, Padang, Indonesia

Saldi Isra

Universitas Andalas, Padang, Indonesia

Ferdi

Universitas Andalas, Padang, Indonesia

Sukanda Husin

Universitas Andalas, Padang, Indonesia

Abstract--As an archipelagic country, Indonesia has a wealth of living and non-biological natural resources, especially in its exclusive economic zone, specifically in this zone, there are an abundant wealth of fishery resources, but the economy and welfare level of traditional Indonesian fishers are still below the poverty line, in addition to the management of exploration and exploitation of fishery resources, Indonesia faces various problems, one of which is a problem with legal provisions. Therefore, researchers will analyze legal problems in managing fishery resources in this study's exclusive Indonesian economic zone. To answer the questions in this study, the authors used normative juridical research methods, and the results of the analysis were described using qualitative methods. After reviewing the literature, the study results indicate that legal problems in the fisheries sector are due to overlapping regulations and conflicting regulations. For this reason, in this study, the authors suggest the need to revitalize the law in the fisheries sector by harmonizing the law.

Keywords--exclusive economic zone, fisheries resources, juridical analysis, regulation.

Introduction

The exclusive economic zone/EEZ is one part of the sea under the coastal State's jurisdiction/legal authority (Srinivasan et al., 2012; Soliman et al., 2014). This zone contains biological natural resources (biological fishery resources are predominant and more abundant in wealth) and non-biological resources (mining materials, minerals, and renewable energy resources in the form of waves, ocean currents, and differences in seawater temperature). Apart from all the natural resources contained in the EEZ, fishery resources are the main focus of this research because the authors see the current phenomenon, where Indonesia, as an archipelagic country, has a large ocean area and, of course, contains rich fishery resources has the potential to improve the country's economy and can also improve the welfare of its people, especially the welfare of fishermen and coastal communities. However, these expectations have not been realized until this research was done. The economy of coastal communities and traditional fishermen/small-scale fishermen is still below the poverty line (Goso & Anwar, 2017) although various welfare and economic improvement programs have been carried out by the government, such as motorization of small fishing fleets, application of the *cold chain system*, development of fishery infrastructure, programs to increase fishery exports, conservation and rehabilitation of fishery resources, development of fishery cooperatives, the formation of joint business groups (KUB), and the development of business partnerships (Junaidi, 2021).

However, all of these efforts have not been able to overcome the problems faced by traditional fishermen and have not been able to eradicate fishermen's poverty other than that the assistance provided by the government to fishers is often ineffective and does not follow the needs of fishers (Widana et al., 2020). Even the fisheries development program with an emphasis on economic growth through the capture fisheries industrialization program does not have a positive impact on the economic growth of traditional fishers; large-scale capture fisheries companies only enjoy this program, so that the gap in social status is widening between groups of large-scale fisheries entrepreneurs and fishermen traditional (Stobutzki et al., 2006; Cooke & Cowx, 2006).

The Indonesian government in this regard has attempted to resolve these problems, either through various policies or by issuing various legal provisions, such as the 1957 Djuanda Declaration, Law No. 4 Prp/1960 on Indonesian Waters, Law No. 1/1973 on the Continental Shelf, Law No. Number 17 of 1985 concerning Ratification of UNCLOS 1982, law no. Law No. 5 of 1983 concerning the Indonesian Exclusive Economic Zone, Law No. 31 of 2004, revised by Law no. 45 of 2009 concerning Fisheries, Law no. 32 of 2014 concerning Marine Affairs, and several other related regulations.

Let us look back at how Indonesia struggles to overcome its marine management problems, specifically regarding fisheries resource management and IUU fishing in the Indonesian exclusive economic zone/ZEEI (Rowlands et al., 2019; Claudet et al., 2021). The struggle begins by declaring its national marine area as an inseparable unit from land areas in the form of islands. Through the Juanda Declaration in December of the year 1957. the area northwest is composed of sea territory as wide as 12 miles northwest were measured from archipelagic

baselines around the Indonesian archipelago, the waters of the archipelago which lies between the islands, along the seafloor beneath it. The Djuanda Declaration still recognizes international rights such as the right of peaceful passage of foreign ships sailing through Indonesian waters and the existing pipes and cables on the seabed. The material for the declaration was then used as material for Law Number 4 Prp of 1960 concerning Indonesian Waters (Purwaka, 2015).

Djuanda's declaration was inspired by the Palapa Oath of Maha Patih Gajah Mada at the time of Mojopahit, who vowed to unite the various regions under Majapahit rule, which would be named Nuswantara or Nusantara. Mochtar Kusumaatmadja developed it into Archipelago Insight, later declared the Djuanda Declaration. This concept is a way of viewing the cantonal to the territory of the Republic of Indonesia as an archipelago, which is the unity of land areas (islands), sea, and air in it. Moreover, the withdrawal of archipelagic baselines consisting of straight baselines around the Indonesian archipelago was inspired by the decision of the *International Court of Justice* in the year 1951 in the case of the fisheries settlement between Britain and Norway (*Anglo-Norwegian Fisheries Case*).

The concept of the territorial waters of the islands are set out in the Declaration Juanda was later championed by Indonesian diplomats to the world through forums on the outside of the UN, as to make approaches to neighboring countries which borders directly with Indonesia in order for them to accept Indonesian archipelago and conduct cooperation between archipelagic countries, as well as to conduct diplomacy against large companies such as oil and gas mining companies from *maritime* power countries with the aim that these companies recognize the principles of the Indonesian archipelagic State as a prerequisite for granting mining investment permits oil and gas.

Then, Indonesia fought for its maritime territory in the United Nations, such as the United Nations Conference on the Law of the Sea (finally at the 1982 Law of the Sea Convention III/UNCLOS, the concept of an archipelagic state was approved by countries in the world which Indonesia then ratified through Law Number 17 of 1985 concerning the Ratification of 1982 UNCLOS). In 1973, Indonesia enacted Law No. 1 of 1973 concerning Kontinen. Landing is an area of the seabed as a natural continuation of the mainland which is measured from the line of the base of the island up to the limit of the outermost, which is characterized by a *continental rise* or *continental slope*. In the year 1985 enacted Law number 5 the Year 1983 on Zone Economic Exclusive Indonesia, a region of the ocean with a width of 200 miles marine measured from the line of the base of the islands or 188 miles marine measured from the boundary beyond sea territories.

As explained in the previous paragraph, that Indonesia issued Law Number 5 of 1983 concerning the Indonesian Exclusive Economic Zone / ZEEI as a provision that regulates the management of natural resources in the ZEEI, especially fishery resources, and as an implementing regulation, Government Regulation No. 15 of 1984 was issued concerning Management of Natural Resources. Power Nature Conservation at Indonesia's EEZ. However, because marine and fisheries issues in Indonesia are so complex and require a more

comprehensive regulation, Indonesia then issued several other provisions, namely Law no. 9 of 1985 concerning Fisheries which has been revoked and replaced by Law no. 31 of 2004, which was later amended by Law no. 45 of 2009, and Law no. 32 of 2014 concerning the ocean (Hossain et al., 2006; Stephenson, 1999).

In support of the above provisions, Law no. 22 of 1999 concerning Regional Government as amended by Law Number 23 of 2014 concerning Regional Government. This is due to the Indonesian government's division of authority to regions to regulate and manage the sea and marine resources within their jurisdiction.

As stated above, Indonesia is still experiencing various problems managing the exploration and exploitation of fishery resources in its exclusive economic zone, even though various regulations have regulated the management (Wiener, 2004). So in the early stages of this research, the researcher assumes that the management of fishery resources in the exclusive economic zone in Indonesia has not been able to bring benefits to the State and people of Indonesia, especially for traditional fishers, due to several legal issues.

Some of these legal issues, such as regulations in the fisheries and marine sector as well as regulations in other fields that are related to the maritime and fishery sector, are all still sectoral and are regulated in different laws so that their management is often not synergistic with other agencies even though natural resources are not available (Pranajaya et al., 2020). Those regulated are located in one area (ecosystem) or close to one sector. There are no laws and regulations that regulate explicit coordination between agencies that can be used as a standard reference so that each agency operates independently with different legal references. There is also a discrepancy between higher and lower regulations in this context (Joskow & Rose, 1989).

Another problem in the laws and regulations is the lack of balance in regulating economic values and ensuring the sustainability of resources (Manan, 1992). Several natural resource management policies provide opportunities for entrepreneurs to exploit resources, and the State will receive *rent* from taxes and levies imposed. Meanwhile, the obligation to carry out conservation and efforts to maintain the balance of the ecosystem has been regulated but not given much attention. In addition, in the absence of recognition of the rights of local communities in the management of coastal and marine resources, existing laws and regulations have impoverished local communities (Davydova et al., 2021). This situation is exacerbated by the behavior of unscrupulous state officials who practice corruption, collusion, and nepotism, thereby accelerating damage and unfair use of resources.

Method

Looking at the problems formulated in this study and the methods used to answer the abovementioned problems, the researcher states that this research is *normative juridical* research, research that *uses available data* or library research (Pangaribuan et al., 2009). The research process will explore data in the form of

legal provisions that have been written and are still in effect, and forms of information that have been published, such as international conventions, articles of law, various legal theories, and the results of scholarly works related to Exclusive Economic Zone management issues. Because the purpose of this study is to conduct a critical analysis of positive legal norms regarding EEZ in Indonesia, prescriptive research was conducted (Soekanto, 2007). The consideration is to conduct a critical and practical analysis of the implementation of the EEZ legal system in Indonesia.

After the legal materials have been collected, an *exploratory-prescriptive-qualitative* analysis is carried out because the data collected both from literature studies and field studies are not data in the form of numbers but are concrete and clear data so that researchers will analyze the quality level of aspects- legal aspects in social interaction in society. The results of the analysis are then described using qualitative methods, namely methods for obtaining data, organizing data, sorting it into manageable units, synthesizing it, looking for and finding patterns, finding out what is essential and what is learned, and deciding what can be used to answer the problem (Burhan, 2003). Then prescriptive analysis becomes the next step by grouping the data to be interpreted inductively analysis of the content (*content analysis*) (Gupta, 1982).

Discussion

Exclusive economic zone is a marine area of a coastal State which has a complex nature due to several circumstances, such as in this area the coastal State only has sovereign rights, not sovereignty, then, the coastal State that owns the EEZ must give the right to other countries to exploit and explore fishery resources and other natural resources contained in their EEZ area if there is a surplus, Apart from that, the EEZ area also contains fish species that have unique and complex characteristics, namely *highly migratory fish and straddling fish stock*. Type of fish is of high quality and has an export quality with high economic value. This EEZ area is also in a sensitive zone and is essential for the safety of the national interests of the coastal State because it is directly adjacent to the EEZ of neighboring countries or the high seas.

Internationally, it has no arrangement with the EEZ. The provisions on the EEZ are an outgrowth of the law of the sea, which was initially set up. The ocean is divided into two. First, the sea, which is under the sovereignty of a country called the territorial sea. Second, the high seas are free, where every country has the freedom to take the natural resources contained therein GCC, including fishery resources. However, the actions taking off the fish in the sea are not controlled, the case retrieval fishery resources excessively and continuously without regard to sustainability factors. This condition is aware of coastal states' claim regarding securing and structuring the sea outside the territorial sea that is continuous with the territorial sea. This claim was pioneered by America, followed by other coastal states, including Indonesia. Desire coastal states are then scheduled in the conference of the United Nations (UN) on the Law of the Sea, starting from the United Nations Conference on the Law of Sea 1958, which resulted in the United Nations Convention on the Law of Sea in 1958 or *the United Nations Convention On The Law Of The Sea I / UNCLOS I* which resulted in four (4) of the Convention

(Kurnia, 2014), namely: (1) the Convention on the Territorial Sea and the Additional Paths / *Convention on the Territorial Sea and Contiguous Zone* ; (2) Convention on the high seas / *Convention on the High Sea* ; (3) the Convention on Fishing and Conservation Property Protection seas / *Convention on Fishing and Conservation of the Living Resources of the High Seas*; and all four (4) Convention on the Continental Shelf / *Convention On The Continental Shelf*.

The second UN Conference on the Sea Law has held in 1960/ *United Nations Convention On The Law Of The Sea I (UNCLOS II)*, which discussed the breadth of the territorial sea and fishery resources. In 1982, the Third United Nations Conference on the Law of the Sea was held again, resulting in a determination of the breadth of the territorial sea of 12 miles measured from the baseline as determined by the Law of the Sea Convention II. Apart from that, the 1982 Law of the Sea Convention III also stipulates the EEZ area, which covers 200 miles from the baseline on each island. For the EEZ area, the authority is only limited to managing and maintaining natural wealth, while in the 12-mile area, the coastal State has complete sovereignty over land, territorial waters, and even overland below the water surface and the air space above it (*sovereign rights*) (Yudanto, 2010). The EEZ concept was initiated from 1973 to 1982 by the United Nations and was discussed in-depth and intensively as one of the agenda for the conference and was agreed upon and outlined in Chapter V Articles 55-75 of the 1982 International Law of the Sea Convention.

As a member of the United Nations and the largest archipelagic and maritime country globally (Ishak & Negara, 2015). Indonesia owns and makes national arrangements regarding the Indonesian Exclusive Economic Zone/EEZ with the Djuanda Declaration, which was then strengthened by the issuance of Law No. 5 of 1985, which was a manifestation of Indonesia's ratification of the EEZ provisions in the 1982 Law of the Sea Convention. Then other provisions were issued. Whether it be in the form of laws and regulations, ministerial decisions, and other supporting provisions, as stated in the previous paragraph, namely Law no. 9 of 1985 concerning Fisheries which has been revoked and replaced by Law no. 31 of 2004, which was later amended by Law no. 45 of 2009, and Law no. 32 of 2014 concerning the ocean, in its implementation, all these regulations are supported by Law no. 22 of 1999 concerning Regional Government as amended by Law Number 23 of 2014 concerning Regional Government. However, in its implementation, there are overlapping authorities and differences between one regulation and another, such as those contained in Law Number 23 of 2014 concerning Regional Government and Minister of Maritime Affairs and Fisheries Regulation Number Per. 14/MEN/2011 concerning Business. Capture Fisheries is one of the derivatives or implementing regulations of the Law on Fisheries. The difference lies in authority to issue fishing and transport vessel procurement permits. The Regulation of the Minister of Maritime Affairs and Fisheries stipulates that the authority to issue permits for the procurement of fishing and transport vessels measuring 5-10 GT is within the authority of the district/city government. In contrast, in Law Number 23 of 2014, the authority lies with the provincial government. The existence of this difference can make laws and regulations that have been issued ineffective in their implementation (Firdaus, 2017).

Another fact is that there are overlapping arrangements, which we can see between the Law on Fisheries and the Law on Regional Government. Management of fishery resources in Indonesia has been regulated by Law Number 31 of 2004 concerning Fisheries which was later amended by Law Number 45 of 2009, but since 2014 Law Number 23 of 2014 concerning Regional Government has been issued, which includes regulations about fisheries. So, when the management of natural resources is regulated in various laws, there will be mutual inconsistency, even overlap, and conflict with all its implications. Then Law no. 31 of 2004 concerning Fisheries does not explicitly explain the decentralization of fisheries management authority. The Fisheries Law mandates a Government Regulation/PP, which regulates the handover of some fisheries affairs from the central government to local governments, but the PP has not been issued until now.

Apart from that, legal issues in fisheries management in the Indonesian economic zone are also colored by not considering customary law and local wisdom that lives in coastal communities. There are no further provisions related to customary law and local wisdom, and the role of the community in fisheries management. Although there are provisions for community involvement in the supervision and empowerment of fishers, the Fisheries Law mandates further regulation in a Government Regulation which has not yet been issued.

Local government also has not explicitly set the obligation of local governments to facilitate local communities. Traditional in the management of coastal zones, yet states clearly on the rights of the people of the region traditional fishing and the right of people to obtain training in order to increase the participation and empowerment of communities in the management area coastal areas and also does not include community participation in every development activity in coastal areas, both regarding the preparation of spatial plans, supervision of space use, and tourism activities in coastal areas.

Conclusion

Based on the description of the discussion and the results of this dissertation research, it can be concluded that the wealth of Indonesian fishery biological resources is still not able to improve the welfare of traditional fishers, this is due to several things: *first*, fisheries regulations and policies do not favor the interests of traditional fishers and coastal communities but rather productivity-oriented to support national economic growth; *second*, the existence of disharmony and synergies between Indonesian fisheries regulations and policies; *third*, the limited quality of human resources. Traditional fishers still lack advanced fishing knowledge and technology and limited capital.

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