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Sasi laut as a non penal effort treatment of illegal fishing for sustainable utilization of fishery resources

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Abstract. Sasi Laut as a tradition of the people of Maluku Islands in the utilization of natural resources (fisheries) can be used as a non-penal (non-legal) effort to tackle illegal fishing. The purpose of this research is to analyze how sasi laut can be used as a non-penal effort by the community in tackling illegal fishing. The research method used is normative legal research equipped with a socio-legal approach. The approach used in this research is a statutory approach and a conceptual approach. The data sources needed in this study are primary legal materials, secondary legal materials and tertiary legal materials. Furthermore, the data will be analyzed qualitatively. The results showed that, sea sasi as local wisdom of the Maluku Islands community in the use of natural resources, especially fisheries resources. Sasi laut contains prohibitions on fishing for certain types of fish, prohibitions on using certain fishing gear and prohibitions on damaging other marine biota and marine ecosystems, so that it can be used as a non-penal effort (not using criminal law) in tackling illegal fishing crimes, so that the quality and quantity of fish species remains sustain and can be enjoyed by the next generation.

1. Introduction

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The geographic location of Indonesia, which is flanked by two continents (Asia and Australia) and between two oceans (Indian Ocean and Pacific Ocean) has a major impact on the natural conditions and life of the population. This position is also known as the cross position [1]. At the 11th United Nations Conference session of the United Nations Conference on the Standardization of Geographical Names (hereinafter abbreviated as UNCISGN) which took place in August 2017 in New York, United States, the Indonesian Delegation was represented by the Ministry of Maritime Affairs and Fisheries of the Republic of Indonesia (hereinafter abbreviated as KKP RI) reports that Indonesia has 16,56 named and verified islands [2], while the most recent length of the Indonesian coastline is 99,093 km [3]. With such a geographic location, Indonesia is blessed with the Almighty God the potential of abundant natural resources, which need to be managed in an integrated manner so that they can be utilized in a sustainable manner.

The total area of Indonesia's oceans is 3.25 million km² and 2.55 million km² is the Exclusive Economic Zone (hereinafter abbreviated as EEZ). Only about 2.01 million km² is land [4]. With the vast area of the existing sea, Indonesia has enormous marine and fisheries potential. The strategic role of the Indonesia sea as one of the world's largest suppliers of fishery products is increasingly threatened due to rampant illegal, unreported and unregulated fishing (hereinafter abbreviated as IUU Fishing) as well as fishing activities that damage the environment, causing a reduction in the number of fish populations in Indonesian waters, including in the region. Maluku islands.

Regarding the utilization of fishery resources, for the people of Maluku islands there is a local wisdom that is still ongoing, namely the Sasi Laut ceremony. Sasi laut is an effort to conserve the marine environment [5]. Sasi Laut aims to contain a number of prohibitions within a certain period of time (some are closed for 3 months or 6 months) which must be obeyed by the community. The purpose of sasi laut is so that the management of fishery resources can be enjoyed by the next generation.



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This is of course in contrast to the practice of IUU fishing that is rife around Maluku waters. With the fishery potential spread over three (3) fisheries management areas (hereinafter abbreviated to WPP) namely WPP 714, WPP 715 and WPP 718, Maluku waters are the destination for foreign fishing vessels to carry out IUU fishing so that IUU fishing is an economic crime that causes losses state billions of rupiah [6]. Based on this, the authors try to analyze the efforts to tackle the crime of IUU Fishing by using a non-penal (not criminal law) approach, namely Sasi Laut as the local wisdom of the Maluku islands community. So that the utilization of fishery resources can be managed in a sustainable manner and can increase economic resilience for the people of the Maluku islands.

2. Method

The research method used in this paper is a normative legal research method, which sees the law as a norm system [7]. Furthermore, which will be complemented by socio-legal studies or studies of the law using the approach of law and other social sciences [8] to discuss the factors that influence law enforcement against criminal acts in fisheries. Furthermore, the approach used in this research is a statutory approach and a conceptual approach. The legal materials used in this research are primary, secondary and tertiary legal materials [9]. The technique of collecting data is through literature study and conducting in-depth interviews with stakeholders regarding the issues raised. Furthermore, the data were analyzed qualitatively, namely by describing the data in the form of words and used to interpret and interpret the oral or written results of the observed people or behavior [10].

3. Literature Review

3.1. *Sasi laut as local wisdom of the Maluku Islands community*

For the people of Maluku islands, the archipelagic sea is interpreted as an essential and fundamental value of existence that has potential, strategic roles and functions for major interests as a zone of existence for archipelagic communities. Archipelagic sea has become a historical stage for the culture of archipelagic people, both in the context of economic and socio-cultural activities with other island or archipelago groups (sisters and brothers). This is what distinguishes the perspective of the island community from the perspective of the continental community. If the continental community views the sea as a dividing barrier, then the archipelagic community views the archipelagic sea as a social stage and a means of unification, so that there is no manless free sea in archipelagic sea areas [11].

Sasi, according to Cooley, is the season when it is prohibited to pick certain fruits on land and take certain products from the sea for a certain period determined by the state (village) government. These types include fruits, nuts and fish and other seafood which are used as food ingredients [12]. In general, people in Maluku interpret sasi as a sign of prohibition in the form of coconut leaves (which are still young) and / or other signs (can be replaced by putting other signs) which can be found in countries in the Maluku region. With the presence of coconut leaves on trees or by implanting "belo" coconut leaves in the Petuanan sea by saying certain words (mantras) to give strength to the signs, that is the sign of sasi being closed (Tutup Sasi). On the other hand, when the traditional opening of the sasi ritual is held, the signs are either when the land sasi or when the sea sasi is opened or released, then that is the time or opportunity for the community (the children of the country) to enjoy the harvest and seafood, which was forbidden to take.

Sasi can guarantee public order in terms of not stealing one's property or the country, guaranteeing the survival of all natural resources that have been taken by the community, reducing disputes between communities and / or countries over land boundaries and so on. [13] studied in depth, the meaning of sasi can be said to be the substantive legal values of the sasi institution. These values are: the proper use of a person's rights according to the time determined to reap the results from his hamlet; prevent disputes (land and water) between fellow residents of the country and between residents of bordering countries; maintenance and preservation of natural environment (sea and land) for the sake of increasing mutual welfare; the obligation to indulge the plants; avoiding accidents for women and reducing the likelihood of crime in the form of theft [14]. Sasi is the local wisdom of the Maluku people, the purpose of which

is to control the level of production of natural resources, both natural resources at sea and on land. Through this policy or local wisdom, it is hoped that it can improve people's behavior to treat natural resources in a way that does not damage its sustainability and its ecosystem [15]. Thus, with the Sasi Laut ceremony as part of the local wisdom of the Maluku islands community, it is hoped that sustainable fisheries resource management will be managed.

7 2. *Crime in the capture fisheries sector*

Law Number 31 of 2004 concerning Fisheries in conjunction with Law Number 45 of 2009 concerning Amendments to Law Number 31 of 2004 concerning Fisheries does not clearly and clearly define fisheries crime or fisheries crime. Article 103 only qualifies offenses for crimes and offenses. Whereas the criminal acts referred to in Article 84, Article 85, Article 86, Article 88, Article 91, Article 92, Article 93, Article 94 and Article 94A are crimes. Meanwhile, the criminal acts referred to in Article 87, Article 89, Article 90, Article 95, Article 97, Article 98, Article 99, and Article 100D are violations.

According to Tribawono, fisheries crime is an act which by law threatens them or whoever commits an act prohibited by the Fisheries Law [16]. In this regard, three (3) actions that are often carried out or become identical to fishery crimes or criminal acts in the fisheries sector are illegal fishing, unreported fishing and unsuitable fishing. procedure (unregulated) or commonly abbreviated as IUU Fishing.

Based on the 2001 International Plan of Action Prevent, Deter and Eliminate IUU Fishing (IPOA-IUU Fishing), what is meant by fishing activities that are considered to be illegal fishing are:

- a. Fishery activities by foreign persons or vessels in waters which are the jurisdiction of a country, without permission from that country, or contrary to laws and regulations;
- b. Fishery activities carried out by vessels flying the flag of a country that are members of a regional fisheries management organization, but carried out in a manner contrary to the management and conservation of resources adopted by that organization, where these provisions are binding on the state. -states that are members of, or in conflict with other relevant international laws;
- c. Fishery activities that are contrary to national law or international obligations, including the obligations of member countries of regional fisheries management organizations to these organizations;
- d. The fishing activity which violates the law, which most commonly occurs in the Indonesian Fishing Catching Area, is illegal fishing by fishing vessels with foreign flags, especially from several neighboring countries.

Meanwhile, what is meant by fishing activities that are considered to be carrying out unreported fishing are:

- a. Fishery activities not reported or reported incorrectly, to the national competent authority, in contravention of laws and regulations;
- b. Fisheries activities carried out in the competency area of the Regional Fisheries Management Organization (RFMO) that have not been reported incorrectly, which is contrary to the reporting procedures of that organization.

Meanwhile, what is meant by fishing activities that are considered to be carrying out unregulated fishing are:

- a. Fishery activities carried out in the relevant RFMO competency area carried out by vessels without a nationality, or by vessels flying the flag of a country that is already a member of the organization, or by fishing companies, which are conducted in ways that are contrary to conservation arrangements and management of the organization;
- b. Fishery activities carried out in water areas or for fish stocks where there are no applicable conservation and management arrangements, which are carried out in ways that are contrary to the state's responsibility to conserve and manage living natural resources in accordance with the provisions of international law. 1

Based on several previous studies, it shows that criminal acts in the fisheries sector that often occur in the Arafura Sea fisheries management area (WPP) are illegal, unreported and unregulated (IUU)

fishing activities in the form of falsifying permits and writing fake boat numbers on the hull of the ship. This method is most commonly found in the Arafura Sea. Apart from being able to steal fish, this ship benefits from refilling subsidized fuel oil (BBM) from the Government and other supplies at the local fishing port. In addition, many fishing vessels with foreign flags catch fish using prohibited fishing gear. Like catching fish or shrimp trawlers that are pulled by two boats. This kind of capture technique is prohibited from being used in Indonesian waters. This method, if done, shows that the ship does not belong to the Indonesian fishing fleet and certainly does not have a fishing license in Indonesia. This kind of catching technique is prohibited because although it can increase the maximum catch yield, it can damage the water bed significantly. In carrying out fishing in the Arafura Sea, fishing vessels with foreign flags generally do it in pairs or groups. So that when there are patrol boats from the Indonesian government, they will run scattered out of the territorial sea of Indonesia. This method made it very difficult for Indonesian patrol boats to catch up with them [17].

As previously explained, Maluku ranks first in vessel compliance violations and most of these problematic vessels operate in the vicinity of the Arafura sea fisheries management area (WPP). These problem ships employ foreign captains and crew (ABK) without complete documents, have many flags, the Vessel Monitoring System (VMS) is not activated so the ship's position cannot be properly monitored, carries out illegal transshipment and carries fuel. illegal [18]. Such are the forms of criminal acts in the fisheries sector (in this case including Illegal, Unreported and Unregulated Fishing) which often occur in the fisheries management area (WPP) of the Arafura Sea.

4. Discussion

4.1. Policy on crime combating illegal fishing

Arief [19] suggests three meanings of criminal policy, namely: in the narrow sense, the overall principles and methods that form the basis of reactions to violations of the law in the form of crimes. In a broad sense, the overall function of the law enforcement apparatus, including the workings of the courts and the police. In its broadest sense, the entire policy taken through legislation and official bodies which aims to uphold central norms in society. On another occasion, Arief argued that criminal policy is a rational attempt by society to tackle crime. This is in accordance with Ancel's statement that criminal policy is the rational organization of the control of crime by society [20]. The same thing is also expressed by Hoefnagels, that criminal policy is the rational organization of the social reaction to crime [21]. Various other definitions were also put forward by Hoefnagels, namely; criminal policy is the science of the responses, criminal policy is the science of crime prevention, criminal policy is a policy of designating human behavior as crime, and criminal policy is a rational total of responses to crime.

According to Hoefnagels [21] efforts to combat crime can be achieved by:

- a. Application of criminal law (criminal law application)
- b. Prevention without punishment (prevention without punishment)
- c. Influencing people's views on crime and punishment through mass media (influencing views of society on crime and punishment / mass media)

Thus, efforts to combat crime can be divided into two, namely through the "penal" route (criminal law) and through the "non penal" route (not / outside the criminal law). If you look at the division of crime prevention efforts put forward by Hoefnagels [21] then point a is the "penal" pathway, while points b and c are "non penal" pathways. The penal line is more focused on repressive efforts (action / eradication / crackdown) after the crime occurs. Meanwhile, the non-penal route focuses on preventive measures (prevention / deterrence / control) before a crime occurs.

The following will explain the two means used in the crime prevention policy, namely:

1) Penal law facilities (penal policy)

Two central problems in criminal policy using penal (criminal law) means are problems of determination:

- a. What actions should be a criminal act
- b. What sanctions should be used or imposed on the offender

The solution to the two central problems above must be directed to achieve certain goals of the established socio-political policies. Thus, criminal law policy, including policies in dealing with the two central problems mentioned above, must also be carried out with a policy oriented approach.

Sudarto said that in dealing with the first central problem, which is often called the problem of criminalization, one should pay attention to the following matters:

- a. Development of criminal law must take into account the objectives of national development, namely realizing a just and prosperous society with material spiritual equality based on Pancasila;
- b. An act which is attempted to be prevented or to be overcome by criminal law must be an act that is unwanted, that is, an act that causes harm to the community;
- c. The use of criminal law must also take into account the cost benefit principle
- d. The use of criminal law must also take into account the capacity or capacity of the work capacity of law enforcement agencies, so that there is no excess workload.

The problem with a policy-oriented approach is the tendency to be pragmatic and quantitative and does not allow the inclusion of subjective factors, such as values, into the decision-making process. Criminal policy cannot be separated from the problem of values because as stated by Christiansen, that "the conception of the problem of crime and punishment is an essential part of the culture of any society". That is the principle stated by Clifford, that "the very foundation of any criminal justice system consists of the philosophy behind a given country". Moreover, Indonesia, which is based on Pancasila and its national development policy lines, is aimed at shaping the whole Indonesian human being, if punishment is to be used as a means for this purpose, the humanistic approach must also be considered. This is because crime is not only a matter of humanity but in essence the crime itself contains suffering or sorrow that can attack the most valuable value for human life.

2) Means outside of criminal law (non penal policy) 6

Efforts to control crime through non-penal means are more of a preventive measure, so the main objective is to address the factors conducive to crime. These conducive factors, among others, focus on social problems or social conditions which directly or indirectly lead to crime. Non-penal efforts are strategic in the overall criminal policy. This was also confirmed in the United Nations congress regarding the "Prevention of Crime and The treatment of Offenders" in Caracas in 1980, which among other things stated that :

- a. Whereas the problem of crime hinders progress towards achieving an environmental quality that is appropriate for all people (The crime problem impedes progress towards the attainment of an acceptable quality of life for all people);
- b. Whereas the crime prevention strategy must be based on the elimination of the causes and conditions that give rise to crime (Crime prevention strategies should be based upon the elimination of causes and conditions giving rise to crime);
- c. Whereas the main causes of crime in many countries are social inequality, racial discrimination and national discrimination, low living standards, unemployment and illiteracy among large groups of the population (The main causes of crime in many countries are social inequality, racial and national discrimination, low standards of living, unemployment and illiteracy among broad sections of the population).

Social conditions or causes which are the causative factors for the crime cannot be resolved only by using penal means because of the limitations of penal means, as previously described. For that it needs to be integrated with non penal means. One of the non-penal means to overcome these social problems or conditions is through social policy. Social policy is a policy or rational effort to achieve social welfare. So it is synonymous with national development policy or planning which includes quite a wide variety of aspects of development. Development itself can be "criminogenic" if development:

- a. Not planned rationally (It was not rationally plan¹⁹)
 - b. Ignoring cultural and moral values (Disregarded cultural and moral values)
 - c. Does not include a comprehensive / integral community protection strategy (Did not include integrated social defense strategies)
- Thus, criminal policy must be carried out with a policy approach, in a sense; [22]
- a. criminal policy is part of the overall social policy (national development policy)
 - b. There must be an integrated between crime prevention efforts using criminal law facilities (penal policy) and suggestions outside the criminal law (non-penal policy).

4. 2. *Sasi laut as a non penalty effort to combat illegal fishing*

As previously explained, the people of Maluku islands view the sea as a social stage and a means of unifying. This concept is different when it is related to the management of fisheries potential so far, which assumes that marine ecosystems and fishery resources are common property, so that they can be used continuously, without any effort to control and control. As a consequence, the sea and fishery resources are considered as open access, and everyone is free to exploit without limits, resulting in overfishing [23]

According to Kristy in Latuconsina, fisheries policies that are open access will result in four (4) bad impacts, namely: physical waste of fishery resources, economic inefficiency, fishermen poverty and conflicts between resource users [24]. To prevent these adverse impacts, recognition and enforcement of local wisdom and the rights of indigenous peoples in fisheries resource management through community-based fishery resource management is the right choice. Community-based fishery resource management provides space for the community to manage fishery resources by themselves, by first determining their needs, wants, goals and aspirations. Through this system, the community is given the authority, responsibility and opportunity to make decisions that determine and affect their welfare.

Sasi Laut as communal property right is owned by most of the people of the Maluku islands. Sasi Laut is a form of community-based fishery resource management. Sasi laut by Nikijuluw, is defined as an institutional system that regulates state (village) communities not to capture fishery resources for a certain period of time, so that they can reproduce until they reach consumption sizes, and can be used sustainably [25]. Sasi also imposes social sanctions if there is a deviation from the sasi rules. When carrying out sasi, the whole country (village) community jointly determines the type of fishing gear and the method used to catch sasi fishery resources. For example, catching molluscs by hand while diving, fishing using nets or not using dangerous fishing tools such as bombs, drugs and others [26].

Sasi is the law for the indigenous people of the archipelago on how to protect and preserve the surrounding environment. Meant by the Law of Sasi Laut, namely: A set of legal systems that contain legal rules regarding procedures for managing and utilizing the functions of the marine and coastal environment for the benefit of the children of the country or coastal indigenous peoples and legal institutions that support it [27]. This legal system is indeed one of the legal institutions which is still recognized and maintained as part of the customs and traditions of indigenous peoples in Maluku

Sasi Laut as communal property right is related to the rights of indigenous peoples which vary according to their position and role [25]. The practice of sasi laut shows that the indigenous people of Maluku can claim sea waters during a certain period (the period of implementing sasi laut) as exclusive rights by prohibiting outsiders from entering the sasi area. Thus, the outside community must obtain a permit when catching fishery resources in the sasi-sated area. This is different from the management of fishery resources which is open access, where all people, regardless of time and space, can exploit existing fishery resources.

5. Conclusion

Illegal fishing crime prevention policies around Maluku waters can be carried out through penal means (using criminal sanctions) but can also be pursued using non-penal means (without using criminal law), namely, through the Sasi Laut ceremony which is the local wisdom of the Maluku islands community. Sasi Laut, which contains a number of prohibitions, such as a prohibition on fishing for certain types of

fishing, a prohibition on using certain fishing tools and a prohibition on damaging other marine life and marine ecosystems. The ultimate benefit or goal of the Sasi Laut ceremony is that our children and grandchildren enjoy the use of fishery resources in a sustainable manner.

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