

The Regional Authority in Managing Marine Resources of Small Islands in North Maluku

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ABSTRACT

Indonesia's area mainly comprises of seas. The implication of the Law Number 23 of 2014 enactment concerning Regional Government is that in the marine economic resource management authority of the Regency/City is reduced. This paper uses the normative juridical research method with a qualitative descriptive approach. The purpose is to provide an overview regarding the regulation of fishery resources in Indonesia as stated in Law No. 31 of 2004 concerning Fisheries as amended by Law No. 45 of 2009 and Law No. 23 of 2014 concerning Regional Government. The results show that there are differences between the two laws regarding the authority to manage fishing areas and the authority to issue fishing vessels and fish transporter procurement permits. These differences may make the issued laws and regulations become effectively implemented, which have the potential to disrupt the management of marine economic resources in North Maluku.

Keywords: Authority, Economic, Maritime, Region, Resources.

Introduction

The collapse of the New Order regime on May 21, 1998 resulted to political changes in the government. The marine sector changed its management policy from centralized to decentralize. Through the Autonomy Law, district governments are given the authority to manage water territories in their administrative areas (Antariksa and Imron, 2003). After 10 years, district governments have the opportunity to manage their own territorial waters through the Law Number 23 of 2014 concerning Regional Government.

The management area which was previously under the authority of the regent / mayor was then handed over to the governor. This policy is interpreted as an effort to centralize policies in the maritime sector, considering that the governor's position

is as a representative of the central government, of course these alternating policies have resulted in the emergence of dynamics of marine resource management with all the problems that accompany it.

Law Number 23 of 2014 concerning Regional Government, which regulates the expansion of provincial authority in the marine sector, came into effect in 2017. If previously the provincial authority from 4-12 miles has now been expanded to 0-12 miles. This implies to the increasingly difficult supervision of the marine area. In the old regulation, the distance of 0-4 miles was the district/city's authority, while for 4-12 km it was managed by the province, and 12 miles above the authority was in the central government (Sumardjono *et al.*, 2014).

This policy also automatically removes the authority of districts/cities. Most regions have changed their nomenclature. The Marine Service

was removed, leaving the Fisheries Service Office. This policy is considered to have many weaknesses, especially not supported by an adequate budget and does not involve the local community (Theodora, 2013).

Many fishery industry players are forced to go out of business (Maarif, 2007) as many national policies are actually detrimental to local fishermen. For example, restrictions on space and fishing gear and the limitation of crab fishing through PermenKP No.1/PermenKP/2015 concerning the size limit for catching lobsters, crabs and small crabs. Although he agrees with the arrangement, it does not have to go through space closure or prohibition (Firdaus, 2016).

Article 9 paragraph (1) of Law Number 23 Year 2014 classifies government affairs consisting of absolute government affairs, concurrent government affairs, and general government affairs. Article 9 paragraph (3) states that concurrent government affairs are Government Affairs which are divided between the Central Government and Provincial Governments and Regency / City Regions (Lekipiouw, 2014). Article 9 paragraph (4) states that concurrent government affairs transferred to the regions are the basis for the implementation of Regional Autonomy. Based on Article 11 paragraph (1) Concurrent government affairs are then divided into Regional authorities consisting of Compulsory Government Affairs and Optional Government Affairs. One of the selected governmental affairs includes maritime affairs and fisheries. Article 14 paragraph (1) of Law Number. 23/2014 states that the Implementation of Government Affairs in the fields of forestry, maritime affairs, and energy and mineral resources is shared between the Central Government and Provincial Governments (Hataul, 2014).

Article 14 paragraph (5) states that the producing and non-producing regencies/cities receive profit sharing from the administration of government affairs and in paragraph (6) thereafter stipulates the determination of producing regencies/cities. The calculation for marine revenue sharing is marine products that are within the boundaries of an area of 4 (four) miles measured from the coastline towards the high seas and / or to archipelagic waters. 147 Further, Article 7 explains that in the case of regency/municipal boundaries less than 4 (four) miles, the boundaries of the territory are divided equally by the distance or measured in accordance with the principle of the diameter of the border

Area. Law Number 23 of 2014 only regulates management areas that fall under the authority of the province as stated in Article 27 paragraphs (3 and 4) in essence states that the Regional Government is given the authority of the Provincial Region to manage natural resources in the sea at most 12 (twelve) nautical miles are measured from the coastline towards the open seas and/or to archipelagic waters (Salmon, 2013).

With the emergence of a marine development paradigm and the implementation of regional autonomy, several serious problems become strategic issues, among which have been regulated in Law Number 31 of 2004 concerning Fisheries, as amended by Law Number 45 of 2009. However, since 2014, Law Number 23 of 2014 concerning Local Government has been issued, in which there are also regulations on fisheries (Prihatiningtyas, 2019).

With regard to fishing management, there are differences between those contained in Law Number 23 of 2014 concerning Regional Government and Law Number 31 of 2004 concerning Fisheries and Regulation of the Minister of Marine Affairs and Fisheries Number Per.14/MEN/2011 concerning Capture Fisheries Business According to researchers, the management of marine resources in the area is not optimal in its management, as the two laws overlap (Sunyowati, 2014).

The regions have the authority to determine fishing routes and monitoring. There is no authority to prohibit fishermen from other areas from fishing in certain areas. Thus, conflicts between fishermen are not uncommon (Lampe, 2001).

Law Number 31 of 2004 concerning Fisheries and Regulation of the Minister of Marine Affairs and Fisheries Number Per.14/MEN/2011 concerning Capture Fisheries Business has a vision and mission related to the management and utilization of fish resources for the benefit of the state which still tends to be pro-capital despite attention to traditional fishermen. Law Number 31 of 2004, in its orientation, pays the same attention to increasing production and efforts to maintain the sustainability of fish resources.

Examples of cases where this discrepancy occurs is the authority to issue a license to procure fishing vessels and carriers. The Regulation of the Minister of Marine Affairs and Fisheries regulates that the authority to issue licenses for the procurement of fishing vessels and transporters measuring 5-10 GT lies with the regency/city government, while in Law

Number 23 of 2014 concerning Government the authority lies with the provincial government. It shows the differences between the two laws (Rahmawati, 2016).

These differences cause the implementation of laws to become ineffective. Law Number 23 of 2014 concerning Regional Government contains regulations regarding the authority between the central government, provincial regions and regency/municipal regions related to fishing management. There are differences with the Law Number 23 of 2014 concerning Regional Government and Regulation of the Minister of Marine Affairs and Fisheries Number Per.14/MEN/2011 concerning Capture Fisheries Business. The difference is in the authority to issue fishing and carrier vessel procurement permits (Wahyono, 2000). There are problems of statutory regulation disharmony in the marine management due to the conflict of norms, especially those related to the authorities of the Governments. There must be harmonization to avoid of authority and institutions that lead to undeveloped coastal communities in Maluku.

Materials and Methods

This study uses a normative juridical research method with a qualitative descriptive approach, which describes the management of marine economic resources in the Maluku region as well as how the authority of the local government in management is. A descriptive approach is used to describe and explain the conditions when the research is reviewed in terms of existing laws and side effects.

Results and Discussion

Indonesia has coastal, marine and small island ecosystems with economic potential. Several international NGOs support marine biodiversity conservation programs in coastal areas and small islands (Imron, 2004).

The basis for the management of marine economic resources is Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia which states that “the land and water and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people”.

Small islands are very vulnerable to economic

activity, almost all forms of development activities will have a negative impact on environmental quality (Tamin, 1996). Lack of Government Support for the Management of the Outermost Small Islands Development orientation in the past has been more focused on the mainland area and has not been directed to the sea and outer islands (Karwur, 2010).

The geographical location and position of small islands cause disparities in socio-economic development. Limited facilities and infrastructure such as roads, ports, schools, hospitals, markets, electricity, information and communication media have resulted in low levels of education (quality of human resources), health levels, levels of welfare and income of small island communities (Madjid, 2011).

Conflict of Interest Management of small islands will have an impact on the environment, both positive and negative, so efforts must be made so that negative impacts can be minimized by following established guidelines and regulations. In addition, the management of small islands can lead to cultural conflicts through the tourism industry which tends to conflict with local culture; and causing limited or no public access, especially small islands that have been managed by investors.



Fig. 1. Freshly-caught fish: An illustration of fish-catching activities in shores

The condition of coastal and marine resources which are common property with quasi open access. The term common property refers more to ownership that is under government control or more to the nature of the resource which is the public domain, so that the nature of the resource is not ownerless. This means that these resources are not defined in terms of ownership, causing a symptom called dissipated resource rent, namely the loss of resource rents that

should be obtained from optimal management, with the quasi open access nature of the resource, then the actions of one party are detrimental to the other party. cannot be corrected by the market (market failure) (Ciptabudi, 2010).

This causes economic inefficiency because all parties will try to exploit the resources as much as possible, otherwise the other party will benefit. With the support of technology, parties who are stronger and able to exploit resources excessively so that the law of the jungle occurs and the natural production power becomes disrupted.

This condition is the excess of Law Number 31 Year 2004 concerning Fisheries which has a vision and mission: Exploitation, Pro-Capital, although there is concern for small fishermen. Regulated natural resources are all types of organisms that partially or all of their life cycles are in the aquatic environment. In analyzing the contents of the law on fisheries, it is divided into several aspects, including orientation, partisanship, management and management implementation, protection of human rights, good governance arrangements, human relations and fish resources and the relationship of the state with fish resources (Imron, 2012).

The orientation of Law No. 31 of 2004, in its orientation gives the same attention to increasing production and efforts to maintain the sustainability of fish resources (conservation), this can be seen in Article 2 and Article 3, where the two Articles clearly state that there are the principles of efficiency and sustainability of sustainability.

Efficiency provides direction so that the management of fish resources can produce maximum fish production in both marine and land fisheries with the least risk. The management of fishery resources is also required to be based on the principle of preserving fish resources. The resources must not be exploited without paying attention to the sustainability aspects of their resources (McCay and Jenftotf, 1996).

Analytically, the regulation of the marine area in the regional context is based on the regulation of the National Waters which consists of internal waters, archipelagic waters and territorial waters, in this case the government follows up by issuing Regulation of the Ministry of National Affairs No. 76 of 2012 concerning Guidelines for Confirmation of Regional Boundaries. The method of regional marine area delimitation in the Indonesian territory will certainly differ from one region to another (McCay and

Jenftotf, 1996).

The comparative distribution of authority in Law no. 23/2014 concerning Regional Government shows that the central government has authority over all sectors in all Indonesian marine areas, while the provincial government has the authority to manage activities in the marine area limited to a distance of 0-12 miles, with limited sub-sectors (Manik & Djelantik, 2014).

The Regency/City government have limited authority over the sea in the implementation of shipping businesses within the district/city scope, the implementation of shipping business as well as dredging and reclamation in the local feeder port area. The existence of statutory regulations on the regulation of marine resources as described above, hierarchically rooted from above (superior) and leading to the lower level (inferior), and sectoral based on the areas of marine area regulation have two implications, namely:

- (i) Positive implications, namely there is a division of roles and tasks based on the main tasks and functions of each sector;
- (ii) The negative implications that are understood are based on two assumptions, namely the first that there is institutional disharmony and harmonization of regulations related to marine resource management arrangements between the central and regional level regulations or one regulation with the other related to the regulatory authority of marine resources.

One serious problem related to Regional Autonomy is that it does not explicitly include community participation in marine management and its resources. In fact, as is known, one of the factors for the failure of the New Order government in managing marine resources was the too dominant role of the government and the neglect of the role of the community (Manik and Djelantik, 2014).

Decentralization will lose meaning if it ignores democratization. Therefore, with the enactment of the Regional Government Law, not only the expected strengthening of the bargaining position between the regional government and the central government, but also the strengthening of the bargaining position between the community and the government. Until now, such hopes are far from being realized. The theft of fish by foreign fishermen, for example, cannot be handled properly, apart from inadequate equipment owned by the Navy / Water Police, also because the community is not involved

in protecting the marine environment. The results of research in the Maluku Islands region show that not only are the community not involved in safeguarding the marine environment, community participation in securing the marine area from theft by foreign fishermen has actually been responded negatively by the authorities (The Indonesian Ministry of Fisheries and Marine Affairs, 2005).

In fact, the presence of foreign fishermen who catch fish in coastal waters is not only a violation of the permit given, but also very detrimental to the community. The problem is that the fishing gear used (trawl type) besides dredging various types of fish of all sizes also damages coral reefs which are fish habitats. Because of their helplessness in dealing with the actions of foreign fishermen, the community has also participated in fishing in environmentally destructive ways, using potassium and bombs. Indeed, the use of these two types of equipment that are not environmentally friendly is not merely a response to their powerlessness in competing with foreign fishermen, but with such conditions resulting in such arrests being used as justification for the community (Pratikto, 2006).

The response taken by the community is understandable, although not justified. For the community, it is meaningless to conserve resources, as they are actually taken by the foreigners. Worse, the community has become fatalists, unwilling to make any effort that can make fishing easier for them. The installation of FADs, for example, although it is recognized that it will increase fishermen's catch, because the main resource in the area is pelagic fish, they do not want to do so, on the grounds that foreign fishermen harvest the FADs they plant first.

The lack of community involvement in the management of marine resources also results in the use of many fishing gear that is not environmentally friendly, which cannot be controlled by the government. Likewise, the capture of protected marine resources. The results of research in several areas in the Northern Java Island show that many environmentally friendly fishing gears has been modified in such a way by fishermen, so that it becomes semi-trawling. It was very difficult for the authorities to detect this, because the modifications were made in the middle of the sea, in a very fast manner (Katili, 1998).

The traditional practices of managing marine resources such as *sasi* in Maluku and the sea in Papua, as well as similar management in other areas, which

have been proven to be able to conserve resources in their regions, are slowly but surely being reduced one by one. This is because the government ignores the existence of management carried out by the community in granting fishery permits (Sumardiono, 1999).

In the marine *petuanan* system in Jayapura, for example, the community only gives permission to other people to catch fish in their area if the fishing gear used is traditional. Therefore, by allowing fishermen from other areas by the government to catch fish in their area without their knowledge, it can weaken their enthusiasm in managing the sea area around them, which gradually results in the loss of the management system. The role of the government in managing marine resources is highly desirable, because the government has sufficient expertise and funds. However, because of the limitations that the government has, it is impossible for the government to do it alone without the participation of the community.

Fisheries in Indonesia involve many stakeholders, the most vital of which is small fishermen, which are the most numerous layers. They live in poverty and socio-economic pressures that are rooted in complex interrelated factors. These factors can be classified as natural and non-natural factors.

Natural factors are related to seasonal fluctuations and the natural structure of village economic resources. Meanwhile, non-natural factors are related to limited technological reach, imbalances in the profit sharing system, the absence of definite social security for workers, weak marketing networks, malfunctioning of existing fishing cooperatives, and the negative impact of existing fisheries modernization policies.

Socio-economic changes in coastal villages or fishing villages have clarified the social stratification lines of the community. Labor fishermen have contributed to the accumulation of economic wealth in the small part of the community who own the means of production and who control capital and the market. Poverty, social inequality, and the pressures of life that afflict labor fishermen households do not allow their family members to be actively involved in social responsibility outside of the substantial life problems for them (Subagyo, 2002).

Such factors are often reasons for other parties to negatively assess the social behavior of the fishing community. This kind of perception only preserves the gap in social relations in political relations be-

tween the government and fishing communities. In the long term, this is not profitable to encourage the realization of community participation in development. For this reason, a reorientation of the leadership model and development planning goals is needed to make it more contextual and participatory.

The management of the sea area as far as four miles by the district/city does not provide much benefit for the district/city to increase revenue from the marine and fisheries sector. Therefore, the management of the sea area by a regency/city that is only a maximum of four miles needs to be reviewed. Referring to the Ministerial Decree No. 392 of 1999 concerning the Division of Fishing Route Areas, it needs to be considered if regencies/cities are given the authority to manage marine water areas in lanes 1a and 1b (sea waters up to 6 miles), while the province is given the authority to manage in lane two (6 miles - 12 miles).

Apart from being consistent with the decree, the 6 miles of management can be more meaningful in providing added value for increasing district / city revenue. Thus, the region will feel more ownership of the sea area around it, and it is hoped that it will be more intensively managed. The increase in regional income will occur because the fishing gear that is allowed to operate in the area is more exploitative. With a management area of six miles, the right to grant fishing gear operating permits granted to the Regency also needs to be considered not only for boats with a maximum of 10 GT but needs to be enlarged (Manik and Djelantik, 2014).

The existence of the Minister of Marine Affairs and Fisheries No. 10 of 2002 which states that management needs to be carried out in an integrated manner, by involving the main stakeholders, especially the community, is actually a step forward that can be used as guidelines by regions in carrying out marine management. However, unfortunately, in this decree, community involvement is only carried out by means of consultation. In fact, what should have been carried out was not only consultation, but together with the community to formulate a program for its management, implementation and supervision. Thus, the community is actively involved in the management process.

The facts show that around 60% (140 million) of the Indonesian people live and depend their livelihoods in coastal areas. In addition, coastal areas support almost all Indonesian fisheries activities that

are scattered in coastal areas. If the community is not involved, horizontal conflicts and poverty can actually occur for people who depend on marine economic resources (Simangunsong *et al.*, 2008).

The facts show that around 60% (140 million) Indonesian depend their livelihoods on coastal areas. In addition, coastal areas support almost all Indonesian fishery activities. Management is instructive, stakeholders are passive and only carry out decisions of the government. In consultative management, the government consults stakeholders in designing programs, but all decisions made by the former. In cooperative management, the government and stakeholders become equal partners. In advisory management, stakeholders advise the government, and the latter implements the decisions. Then, in the informative management, the government fully delegates management authority to stakeholders, and stakeholders inform the government about the decisions. Of these several forms of management, the cooperative form is most ideal, often called co-management. With such management, the government does not dictate the community, but two are involved in the decision-making process. If the community is not involved, horizontal conflicts and poverty can actually occur.

The development of a marine economic resource management system must be in accordance with the norms to ensure legal certainty to manage coastal areas. Then, the Law on the Management of Coastal Zone and Small Islands is the basis for adjustment to the provisions contained in other statutory regulations. It is hoped that this law can serve as the basis for the development of coastal areas and small islands carried out by various related sectors.

The law should aim to provide legal certainty and protection as well as improve the level of prosperity of coastal communities and small islands through the formation of regulations that can guarantee access and rights of coastal communities and other interested communities, including businessmen. Aspects of protection of human rights must also be considered by involving the wider community in making important decisions.

Conclusion

The new Regional Autonomy Law, namely Law Number 23 of 2014 concerning Regional Government, appears a regulation that revokes the authority of district regional governments in managing

marine resources. The management area that was previously under the authority of the regent / mayor is then handed over to the governor. In the meantime, this policy is interpreted as an effort to centralize policies in the maritime sector, considering that the governor's position is as a representative of the central government, of course these alternating policies have resulted in the emergence of dynamics of marine resource management with all the problems that accompany it.

This is a problem in itself for the development of small islands and coasts in Indonesia. If following the existing definition, the choice of activities that can be carried out in small islands is very limited, which of course will result in slow management of small islands in Indonesia. Lack of Government Support for the Management of the Outermost Small Islands Development orientation in the past was more focused on the mainland area (mainland) and has not been directed to the sea and outer islands.

The lack of awareness, commitment and political will from the Government in managing these small islands is the main obstacle in managing the economic potential of marine resources. The absence of involvement from the local community means that the poverty and welfare of fishermen has decreased. Fisheries in Indonesia involve many stakeholders, the most vital of which is small fishermen, which are the most numerous layers. They live in poverty and socio-economic pressures that are rooted in complex interrelated factors. It needs harmonization and involvement of local communities and local governments in the management of marine economic resources so that the community will be more prosperous. The regulation should indeed be aimed at improving the welfare of the community as mandated by Article 33 of the Indonesian Constitution.

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