

LOCAL WISDOM FUNCTIONALIZATION FOR REGIONAL LAW ENFORCEMENT OF FISHERIES MANAGEMENT^Ω

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Abstract

Law enforcement for fisheries management violations in East Flores, East Nusa Tenggara province has not been effectively implemented. It is proven in recent years, violation's cases of fisheries management is significantly high. This study examines how local wisdom values of indigenous society overcome the ineffective law enforcement for fisheries management violations. This paper employs juridical normative approach and was carried out by identifying and collecting customary law principles which govern fishermen's attitude. The results show that law enforcement has not been effectively implemented to solve fisheries management violations in terms of the structure, substance and culture of law. To overcome this, it requires functionalization of local wisdom values that have been proven to alleviate marine resources damage by fishermen. Functionalization of local wisdom values is conducted by establishing a partnership between law enforcement and traditional authorities to institutionalize and integrate values system, cultural traditions, and customary penalty to have formal mechanisms of law enforcement.

Keywords: local wisdom, fisheries, law enforcement

Abstrak

Penegakan hukum dalam mengatasi pelanggaran pengelolaan perikanan di Kabupaten Flores Timur Provinsi Nusa Tenggara Timur belum efektif. Terbukti beberapa tahun terakhir jumlah kasus pelanggaran pengelolaan perikanan masih tinggi. Penelitian ini mengkaji nilai kearifan lokal masyarakat adat guna membantu mengatasi belum efektifnya penegakan hukum atas pelanggaran pengelolaan perikanan. Kajiannya bersifat yuridis normatif dan dilakukan dengan inventarisasi asas hukum adat sebagai kaidah atau norma dalam mengatur perilaku masyarakat nelayan. Hasil penelitian menunjukkan penegakan hukum atas pelanggaran pengelolaan perikanan belum efektif baik dari struktur, substansi, dan budaya hukum. Untuk mengatasinya perlu fungsionalisasi nilai kearifan lokal yang selama ini terbukti dapat mengurangi pengrusakan sumber daya laut oleh nelayan. Fungsionalisasi nilai kearifan lokal dilakukan dengan cara aparat penegak hukum menjalin kemitraan dengan pemangku adat untuk melembagakan sistem nilai, tradisi budaya, dan sanksi adat menjadi kesatuan yang berfungsi dan mempunyai mekanisme formal penegakan hukum.

Kata kunci: kearifan lokal, perikanan, penegakan hukum

Introduction

Fisheries resource is considered as significant resources to people livelihood as well as a prime mover of national economy. This is based on the reality:¹ *first*, Indonesia has enormous fisheries resources in terms of quantity and diversity; *second*, industrial fisheries sector

is closely related to other sectors; *third*, national resources based industries are being promoted; and *fourth*, Indonesia has high comparative advantage in fisheries sector, as reflected on the potential resources.

In fact, the law enforcement in fishery management areas of East Flores, East Nusa Tenggara province is still perceived ineffective to support fish production improvement. As evidences, the number of fishing by damaging marine resources such as fish bombing, dope fish, and trawling is still high. Undoubtedly, it decre-

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¹ Ramlan, 2015, *Konsep Hukum Tata Kelola Perikanan*, Malang: CV. Setara Press, page 5.

ases fish stocks. For comparison, data of Catch Per Unit Effort (CPUE) and fisheries statistics of East Nusa Tenggara in 2006 to 2014 in East Flores showed a significant decrease of fish stocks production.

Basically, some human activities cause coral ecosystem damage including mining, fish catching by explosive instruments, poison, a plaited rattan fish trap, dragnet, fishing rod, and pollution (oil, industry and household waste, tourist destination development, and sedimentation).² Regarding to this, so, fish catching by destroying the fish resource has become a threat to the preservation of coastal ecosystem and marine waters in East Flores Re-gency, especially the coral ecosystem.

Concerning on this, it is necessarily believed to functionalize local wisdom as a principle of customary law by stipulating the unwritten law such a value system, customary tradition, and punishment to uphold the law enforcement for the violation of fisheries management. Although the law principle is not a concrete norm yet considered as a general basis or an instructions for the valid law.³ In fact, the value of local wisdom is effective because it is embodied in fisherman behavior and it proved effectively to decrease the damage of ocean resource by the fisherman. This is because the fisherman realize the risk if a fisheries management damage the ocean resource, they will get a customary punishment including prohibition of catching fish.

Problem

Based on those background, the problem is then formulated: how is the effectiveness of regional law enforcement in fisheries management?

² Haruddin A, Edi Purwanto, Sri Budiastuti, "Dampak Kerusakan Ekosistem Terumbu Karang Terhadap Hasil Penangkapan Ikan oleh Nelayan secara Tradisional di Pulau Siompu Kabupaten Buton Provinsi Sulawesi Tenggara", *Jurnal Ekosains Jurnal Ilmiah Lingkungan Hidup* Vol. III No. 3, November 2011, Surakarta: Post Graduate Program of Environmental Science Universitas Sebelas Maret, page 33.

³ Ma'arif, "Sanksi Terhadap Tindak Pidana Illegal Logging", *Jurnal Yustitiabelen*, Vol. 1 No. 1, 2015, Tulungagung: Faculty of Law Universitas Tulungagung, page 35.

Research Method

This research is a normative juridical research. It is qualitative by collecting primary and secondary law material sources. Both materials were collected through inventory of customary law principle as a norm to set the behavior of fisherman society in East Flores Re-gency. The analysis was conducted through interactive and flow analysis.

Discussion

The Effectiveness of Regional Law Enforcement of Fisheries Management

Essentially, law enforcement means an activity to synchronize the values of established and manifested norms as well as an act as a final step to create, preserve, and maintain the life peacefulness.⁴ Regarding to this, Lawrence M. Friedman proposed three models considered in the law enforcement, namely structure, substance, and culture of law. The three models are considerably applied to achieve an effective law enforcement. Meanwhile, a structural element is stated by Lawrence M. Friedman that the structure of a system is its skeletal framework; it is the permanent shape, the institutional body of the system. Whereas, substance is composed substantive rules and rules about how institution should behave.⁵ Then, culture means society awareness to avoid the forbidden action, implement the duty and obligation as a society, and know the consequence if they violate the law.⁶

The same approach model was also delivered by Robert B. Seidman⁷ that the work of

⁴ Dadin E. Saputra, "Hubungan Antara Equality Before the Law dalam Penegakan Hukum di Indonesia dengan Harmonisasi Konflik Antar Lembaga Penegak Hukum", *Syariah Jurnal Ilmu Hukum*, Vol. 15 No. 1, June 2015, Banjarmasin: Institut Agama Islam Negeri Antasari Banjarmasin, page 6.

⁵ Edi Warman, "Paradoks Penegakan Hukum Pidana dalam Perspektif Kriminologi di Indonesia", *Jurnal Kriminologi Indonesia*, Vol. 8, No. 1, May 2012, Depok: Department of Criminology, Universitas Indonesia, page 47.

⁶ Didiek Sukriono, "Penguatan Budaya Hukum dalam Penyelenggaraan Pelayanan Publik sebagai Upaya Penegakan Hak Asasi Manusia (HAM) di Indonesia", *Jurnal Ilmu Hukum Padjajaran*, Vol. 1 No. 2, 2014, Bandung: Faculty of Law Universitas Padjadjaran, page 234.

⁷ Gunarto, "Optimalisasi Kepemilikan Saham Perusahaan oleh Serikat Pekerja untuk Meningkatkan Kesejahteraan Pekerja di PT. Fisco South Pacific", *Jurnal Ilmiah Sul-*

law in society involves some elements or aspects which are interconnected as a system. Some of those aspects are law maker institution; sanction activity institution; role occupant; societal personal force; legal cultural; and on going law elements.

Related to law enforcement in terms of fisheries management, it can be explained by both approaches: *first*, from the aspect of law structure, it is the institution that has an authority to perform the law enforcement. There are still found that law enforcement apparatus have not effectively eradicated violation of fisheries management, particularly the operation of marine security which partially enforce law in dealing with fishermen catching fish destructively. There are 20 operation targets of ocean area security in each year, however, 5 out of 20 operations are only achieved.⁸ It causes the violation of fisheries management case is still in high. Since 1996 until 2014 there are approximately 12 cases in each year handled by Laran-tuka District Court.⁹

On the other hand, the ineffective coordination between Fisheries and Marine Department (DKP) and marine police in security operation for fishermen catching fish illegally. Similarly, independent institutions and supervisory groups formed by DKP to supervise the fishermen law violation in coastal area is not effective yet because of lack coordination. Whereas, the establishment of the supervisory groups is based on the stipulation in Article 20 East Flores Regional Regulation Number 7 Year 2014 on The Sustainable Fisheries Management in East Flores Regency Waters, stating "Fishermen, indigenous people, and/or supervisory groups can be actively involved in supervising".

Second, aspect of law substance, that is law regulation that influences the real human behavior. Based on the research, some weaknesses of fisheries management regulation are found, one of which is East Flores Regional Reg-

ulation Number 7 Year 2011 on Fisheries Trade which excludes any penalty of power abuse for fisheries trade agent. Paragraph 16 article (1) sets Hinder Ordinance (HO) for human behavior activity in the fisheries management. The HO is license given to individual or institution to have activities which potentially endanger or threaten surroundings, as well as the supervision and control of trade activity sustainably to prevent order disturbances, promote welfare, or health public, maintain environment and fill the welfare norm and healthy work. Nevertheless, the absence of penalty will cause high hindrance around the sea and threaten fish ecosystem including ocean dumping, fish catching by explosion, and others. Consequently, the apparatus cannot enforce law effectively.

Third, aspect of law culture as a social behavior to obey the law to influence their behavior. Nowadays fishermen tend to neglect the regulation of prohibiting catching fish by explosive substance. It is proven that there is a few of them who obey it. In the meantime, law culture is an essential element to change the static structure and a series of static norm to be a *living law*.

Nevertheless, it is interesting that they prefer obeying principles of customary law. If it is closely observed, the principle of customary law was upheld by fishermen since it is fully loaded by value, cultural traditions in the form of traditional ceremonies and taboos, and customary sanctions. Therefore, fishermen obey the rules of customary law more than the rule of regional which results in the ineffective regional law system.

Local Wisdom Functionalization of Regional Law Enforcement in Fisheries Management

Essentially, local wisdom also known as local genius is crucial for human dignity in society.¹⁰ Local wisdom consists of values of intelligence, creativity, and local knowledge of the elites and the public in order to be interpreted

tan Agung, Vol. 49 No. 125, November 2011, Semarang: Universitas Islam Sultan Agung, page 8.

⁸ Interview with Marine Police East Flores Regency, June 12nd, 2016.

⁹ Interview with Secretary of Larantuka Court, June 14th 2016.

¹⁰ H.Ilin Wariin Basyari, "Nilai-Nilai Kearifan Lokal (Local Wisdom) Tradisi Memitu pada Masyarakat Cirebon", *Jurnal Edunomic Pendidikan Ekonomi*, Vol. 2 No. 1, March 2014, Cirebon: Universitas Swadaya Gunungjati, page 48.

as a determinant of the development of civilization today.¹¹ Substantially, the main contents of local wisdom values include traditional ceremony, various restrictions, encouragement, and sanctions as a system of behavior and habits of indigenous people. Regarding to the functionalization of local wisdom values, it is necessary to understand first about the definition of functional theory. H.Salim HS and Erlies S. Nurbani express functional theory as a theory that emphasizes on the elements in a society or culture that are interdependent and become a functioning unity; or doctrines or teachings which point out the benefits of practicality or functional relationship.¹²

Therefore, the focus study of functional theory is the elements in the society or culture viewed from the aspect of function or usage. In this regard, the functionalization of local wisdom value in this study is defined as function and institutionalize the principles of customary law as rules or norms of indigenous people in terms of value system, cultural traditions including traditional ceremonies and taboos in maintaining the balance of life. Besides, if human behavior becomes greedy to disrupt the balance of nature, or is not in harmony with nature, sanctions of customs apply namely prohibition of catching fish.

Through the study of some rural fishing villages such as Terong village and Lamahala village on the Adonara Island in East Florest, it reveals that they believe in Nitun, a kind of natural guardian spirit as the highest form both in land and sea. Therefore, in exploiting fish resources in the sea, the fishermen are subject to value system like harmony with nature, and conduct ceremonies as a customary law when they dropped at sea and it considered taboo to pollute the sea and the traditional sanctions will apply for those who proven to catch fish by damaging the marine ecosystem.

To prevent the violations of marine resource management, a traditional ceremony was held which is performed by traditional authorities and formulated in local language which shall not be allowed freely translated into other languages, as follows:¹³

*"lauha"ridepadaialapetanaheka go lodo
go tutu tapanmari go doreoladoreko "ono
to" uTo'umusipihakagetana, go lodolau
kaimobukasi pita balikara, goi no go lolon
mitewainabelauhodeumalamakmo, go kai
ko'oribuko'oratuh, olanoino"oraine, siha
ri here lileno'owaisilewaketekaika'agele
katlewotana. Go menu moene'lka'ame,
raeile di go gelekatlauhari di go gelekat
kodaka'arogohu, kirika'arowahaka"*

By considering those facts, it is necessary to functionalize local wisdom by institutionalizing those system of values, cultural traditions, and customs sanctions in changing the composition of fisherman behavior pattern in order to apply consistently the behavior-regulating norms.

Institutionalization of local wisdom values as part of customary law has its own way compared to other legal systems. The pattern of customary law by Van Dick as quoted by R Otje Salman, has some unique characteristics, some of which contains properties that are very traditional, and changeable.¹⁴ Moreover, the principle of customary law despite its unwritten, institutionalizing it can make it as living law because they can formulate social interests of an indigenous community.

Therefore it is time for East Flores district government to empower the role of indigenous people as an autonomous system in applying local wisdom values. Autonomous systems in this context are that the indigenous people have legal system as well as its own values to apply within the limits of customary territory to be said autonomous.¹⁵ Philosophically (Pancasi-

¹¹ Rudy Gunawan, Eko Didjoyo, Aryo Surbakah, "Budaya Kearifan Lokal Dalam Tata Kelola dalam Pengembangan Lingkungan Kota", *Jurnal Sejarah dan Budaya*, Vol. 8 No. 2, December 2014, Malang: Universitas Negeri Malang, page 207.

¹² H.Salim HS dan Erlies S.Nurbani, 2014, *Buku Kedua: Penerapan Teori Hukum Pada Penelitian Disertasi dan Tesis*, Jakarta: PT. RajaGrafindo Persada, page 76.

¹³ Interview with the customary chief of Terong dan Lamahala Village Adonara District East Flores Regency, June 19th, 2016.

¹⁴ Yanis Maladi, "Eksistensi Hukum Adat dalam Konstitusi Negara Pasca Amandemen", *Jurnal Mimbar Hukum*, Vol. 22 No. 3, October 2010, Yogyakarta: Faculty of Law Universitas Gajah Mada, page 456.

¹⁵ Besse Sugiswati, "Perlindungan Hukum Terhadap Eksistensi Masyarakat Adat di Indonesia", *Jurnal perspektif Jurnal Sains Sosial dan Kemanusiaan*, Vol. 17 No. 1,

la) speaking, the application of local wisdom values of indigenous people is an integrated system which has characteristics of social structure monodualistic, unity of life, unity between outer world and inner world, between microcosm and macrocosm, between people as community members and leaders of the nation.¹⁶

It is in accordance with the fourth paragraph of the Preamble in 1945 Constitution in which Pancasila as a philosophy (worldview) of Indonesia also contains philosophical recognition and respect for indigenous people. These provisions are summarized in the second, third, fourth, and fifth principle. This means that the state should give philosophical mandate of the existence of customary law which is based on human values (second principle), the value of togetherness (third and fourth principles), and equality (fifth principle).¹⁷

Based on these circumstances, the law enforcement apparatus and traditional authorities in East Flores should establish partnerships in the functionalization of the value of local wisdom in order to enforce the law effectively for the fishermen who violate the rule of law of fishery management. It is intended not only in order to achieve prosperity outward, but also the inner happiness in terms of comfort in social and economic activities.

Thus, based on laws and legislation, the application of local wisdom values in fisheries management is in line with the legislation, namely Article 18B (2) of the 1945 Constitution confirms that the state recognizes and respects units of society customary law and their traditional rights which is still alive and in accordance with the development and principles of the Unitary Republic of Indonesia stipulated in

the legislation. Further provisions are also regulated in Article 61 of Law Number 1 Year 2014 on Management of Coastal Areas and Small Islands which confirms the participation of indigenous peoples, traditional societies, and local wisdom in coastal management. Moreover, under Article 6 of Law Number 45 Year 2009 on Fisheries has stated that the purpose of fisheries management is to achieve optimal and sustainable benefits, and ensuring sustainability of fish resources.

Conclusion

Law enforcement in order to fix the violations of fisheries management has not been effective due to the following aspects: (i) the legal structure of the institution which is authorized to conduct law enforcement such as the marine police was not able to handle law violations by fishermen; inequality of coordination between the Department of Marine and Fisheries with Marine Police in maritime security operations; and lack of coordination between independent agencies and community groups formed by DKP to monitor violations of the law by the fishermen in the coastal areas of maritime areas; (ii) The substance of the law, the rule of law that affects human behavior. However, East Flores district Regional Regulations of fisheries management does not contain sanctions or penalty for fishermen who misuse the fisheries trade. As a result, law enforcement agencies can not provide sanctions for the fishermen who abuse the fishery business license, and (iii) legal culture as attitude and behavior of the people to obey the rule of law. The research reveals that there are many fishermen who are not obey the local regulation which prohibit fishing by explosive substance. This is the evidence of fishermen low awareness to obey the regional law of fishery management.

The value of local wisdom is proven to reduce the damage of marine resource management by fisherman. Thus, the functionalization of local wisdom is an attempt to institutionalize the system of values, cultural traditions, and customs penalties in regulating fisheries management. The success of the functioning of local

January 2012, Perak: Universitas Pendidikan Sultan Idris, page 36.

¹⁶ Ni Made Jaya Senastri, "Fungsionalisasi Kearifan Lokal sebagai Wujud Pluralisme Hukum dalam Pelestarian Lingkungan di Desa Tenganan Pegringsingan", *Jurnal Konstitusi*, Vol. 1 No. 1, November 2012, Kupang: Forum Kajian Konstitusi FH Universitas Nusa Cendana kerjasama dengan Mahkamah Konstitusi RI, page 94.

¹⁷ Sulastriono, "Filosofis Pengakuan dan Penghormatan Negara Terhadap Masyarakat Adat di Indonesia", *Jurnal Hukum Yustisia*, Edition 90, September-December 2014, Surakarta: Faculty of Law Universitas Sebelas Maret, page 100.

wisdom values is determined by how far law enforcement officials and traditional authorities establish partnerships. It is intended not only in order to achieve prosperity outward but also the inner happiness in terms of comfort in conducting social and economic activity in managing the marine resources.

Sugestion

For local government of East Flores Regency and traditional authorities must jointly devise local regulations governing the institutionalization of value systems, cultural traditions, and customs sanctions as formal mechanisms of regional law enforcement of fishery management.

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