

The Use Of Mediation In Maritime And Fisheries Dispute Resolution

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Abstract

The sea is one of the boundaries between countries and is one of the sources of income and life of a nation, Marine Management provides benefits that are so great that all parties or countries want to explore and exploit these resources, including the high seas, so that sometimes it causes disputes between parties including between countries in carrying out its management. Disputes that occur can be resolved nationally or internationally, depending on the parties to the dispute in it. Internationally, the settlement of fisheries disputes that occur at sea can be resolved peacefully between the two parties, but if a peaceful agreement between the parties cannot be reached , then the procedure for resolving fisheries disputes at sea can be done by mediation methods, namely cooperative maritime diplomacy, persuasive maritime diplomacy and coercive maritime diplomacy.

Keywords: Alternative Dispute Resolution, Marine, Fisheries

1. INTRODUCTION

One form of legal reform and legislation carried out by the government is the promulgation of Law No. 31 of 2004 which was later amended with Law No. 45 of 2009 on fisheries. For Indonesia changes over The law on fisheries is very important with the area of our waters that is almost close to 6 million square kilometers that covers the waters of national sovereignty and jurisdiction requires attention and concern primarily concerning the enforcement of marine efforts from interference and efforts of foreign parties.

The existence of Law No. 45 of 2009 is a strategic policy and a positive step and is the basis for law enforcement and Fisheries judges in deciding legal issues related to illegal fishing, whose impact is very damaging the country's finances has even damaged the economy for the Indonesian nation. Illegal fishing, or so-called theft of fish (illegal fishing) is very detrimental Any traditional fishing country. Traditional fishermen who are the people of indonesia, coastal communities are also affected by the theft of this fish. In addition, other people who become consumers are also disadvantaged because they can not enjoy the sea in Own country. Macro

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Indonesian fish stolen and then processed with equipment much more modern so as to increase the selling price abroad.

Law of the Republic of Indonesia No. 45 of 2009 on the amendment of Law No. 31 of 2004 on fisheries has contained regulations or formulations both on Criminal Procedure Law and Fisheries criminal acts. State institutions authorized to investigate, prosecute, and prosecute illegal fishing crimes include the Department of Maritime Affairs and Fisheries, the Navy, the National Police, the prosecutor's office and the Fisheries Court or the District Court.

The problem of illegal fishing occurs due to at least two things, namely overlapping suppression of legislation that led to the vagueness of state institutions in taking care of the plots of each such vagueness creates legal loopholes for the parties perpetrators of illegal fishing crimes. The problem is to violate the Economic Zone Exclusive waters, in addition to several times caught illegal fishing conducted by the community / fishermen who enter the territorial waters of a country and without the permission of certain countries such as Indonesia and this action clearly violates the EEZ Law No. 5 of 1983, especially in Article 7. In this article it is explained that anyone who carries out activities in Indonesian territorial waters must obtain approval from the government of Indonesia. For example, an incident of illegal fishing by a Chinese ship, for example, led to an official process from the Indonesian government because the enforcement efforts to be carried out by the CTF team were blocked by a patrol ship belonging to the Chinese maritime security agency. A Chinese Navy Coast Guard ship has broken through the border. Not only that, they also hit and forcibly pulled the ship that had just been captured by a joint operation of the Ministry of maritime affairs and fisheries with the Navy. As a result of the actions of the Chinese coast guard ship that crossed the Natuna territorial waters, this makes the Indonesian government now plans to increase the security of the sea border area. From the description stated above, the problems formulated in this paper is how the alternative resolution of international disputes on Maritime Affairs and Fisheries.

2. RESEARCH METHOD

The type of research chosen is normative legal research that is research to establish the law as a system of norms. The system of norms in question is about the principles, norms, rules and regulations. Peter Mahmud Marzuki states: 'normative legal research is a process of finding a rule of law, principles of law, as well as legal doctrines to answer legal problems faced. Normative legal research conducted to produce argumentation, theory or a new concept as a prescription in solving the problem at hand. research normative law is also called doctrinal legal research, namely research aimed at to provide a detailed systematic explanation of the rule of law governing the field of

specific legal rules, analyze the relationship between the rules of law one denhan the other, explaining the elusive parts of a rule of law and it also includes predictions of the future development of a particular rule of law. Doctrinal legal research is library-based research whose focus is analysis of primary legal materials. This type of research is based on the thought that this study to analyze a system of norms or rules.

3. RESULT AND ANALYSIS

3.1. Alternative Dispute Resolution on Marine and Fisheries cases conducted by the Government of Indonesia

In addition to government efforts through policies that are guided by the law No.45 of 2009 on fisheries, the Indonesian government has attempted to various dispute resolution Illegal Fishing. These efforts through:

- a. Vessel Monitoring System
- b. Diplomatic channels as an effort to resolve disputes over Marine Fisheries
- c. The Regional Convention
- d. Port State Measures (PSM) as an effort to resolve disputes within the scope of National Maritime and Fisheries cases

The ship's monitoring system is carried out through sophisticated tools that function to determine the movement of ships entering the Exclusive Economic Zone Indonesia based on satellite. The VMS is fitted into ships fisheries so that it is possible to know the existence and identify activities undertaken by the ship. In addition, VMS also serves to ensure compliance of fishing vessels to applicable regulations. The implementation of VMS in Indonesia is carried out in stages, namely the first stage by building an Argos satellite-based system and building a fishery ship monitoring center and installing transmitters on 1500 fishery ship units.

The diplomatic route has been chosen by Indonesia to resolve disputes over negligence and perikaaan cases, for example Illegal fishing cases with China. However, through diplomacy this is done through the provision of a memorandum of protest from Indonesia against the disputants and summoning the Ambassador. As part of the dispute, indonesia issued a memorandum of protest issued by Indonesia because China had resisted and even claimed the Natuna Sea waters as China's sea territory based on the Nine Dash Line, a territorial map that affixes nine dashed lines as markers or imaginary dividing lines used for the Chinese government to claim most of the Natuna Sea area. The diplomacy aims to negotiate maritime boundaries and safeguard the interests of marine resources from IUU Fishing actions, especially between Indonesia and China.

Port State Measures (PSM) conducted by Indonesia on May 10, 2016 which is an international provision that regulates port countries to combat, preventing and combating IUU Fishing signed in the Food and Agriculture Forum Organization (FAO) in 2009. Implementation of the PSM is expected to ensure long-term conservation and utilization of marine resources and ecosystems and sustainable fisheries. PSM can also be useful to reduce the chance of occurrence IUU Fishing practices because PSM regulates port empowerment to supervise ships-vessels suspected of illegal fishing practices will be immediately followed up based on mechanism set forth in the PSM.

The EEZ regime grants coastal states a "sovereign right" over the exploration and exploitation of Natural Resources and other related activities in the EEZ. In its consideration, UNCLOS 1982 also gives the right to maritime user states to continue to be able to exercise freedom of flight and the laying of undersea pipes and cables. This is an effort of UNCLOS 1982 which seeks to accommodate conflicts of interest between two group of countries. The fear of EEZ user maritime states, is compensated by the enactment of a free sea regime on the EEZ with regard to freedom of navigation. The EEZ is recognized as a separate maritime zone that has a general character, which includes 3 principles, namely the regulation of the rights and obligations of coastal states, the regulation of the rights and obligations of other states, and the regulation of other activities in the EEZ that are not included in the categories mentioned in pions 1 and 2.

The 1982 NCLOS broadly distinguishes marine areas into two categories of marine areas over which states can enforce their laws against IUU Fishing, namely marine areas under sovereignty and marine areas over which a state has jurisdiction. Marine areas subject to the sovereignty of a coastal/archipelagic state are inland and marine waters territorial or insular waters and territorial seas. While the sea area where a coastal/island country has sovereign rights and jurisdiction is the EEZ and the Continental Shelf. The EEZ has a sui generis (unique) legal status. The uniqueness lies in the existence of the rights and obligations of coastal states and other countries over the EEZ. In contrast to the territorial sea, where coastal states have sovereignty, in the EEZ coastal states have only sovereign rights. Such sovereign rights are limited to the exploration and exploitation of marine resources, both biological and non-biological. The potential of the Indonesian sea is so beneficial for Indonesian fishermen. However, Indonesia is often made furious by the arrival of foreign ships into the region waters of the archipelago. Foreign ships often assume the position of the ship is still on the continental shelf. In fact, the Natuna water area is included in the Exclusive Economic Zone (EEZ) of Indonesia.

Indonesian maritime diplomacy in efforts to eradicate illegal fishing that occurs in Indonesian waters is not only supported by the object of

international law, but also strengthened through domestic policies and regulations on maritime law and Fisheries. Some of these policies and regulations include the establishment of IUU Fishing Task Force and burning Policy and the sinking of ships that have been seized by the court and the case has been declared inkraht or proven to do IUU Fishing, a moratorium or temporary suspension of permits for ex-foreign ships, and the Prohibition of the use of dangerous fishing gear such as trawls or trawls Tiger. Regarding the eradication of IUU Fishing efforts that can specifically be implemented in Natuna waters can be done through the implementation of several policies, including the relocation of fishermen.

With the increase in the number of local fishermen operating to Zeei Natuna Islands waters can suppress illegal fishing practices because the community group consisting of fishermen also serves as a supervisory community group (Pokmaswas). Nevertheless, what should be an important note is that this effort must be strengthened through diplomacy flag, which means that all fishing vessels that conduct fisheries operations are required to install the Indonesian flag as a symbol of the existence of the state. Domestic policies that are also considered to affect the strengthening of Indonesia's maritime diplomacy in combating illegal fishing are also shown through government initiatives to make Natuna a Fish Auction Center regional. The fishery sector in Natuna wants to be developed through infrastructure development and cold storage as a storage space for fish that have been caught. Thus the program can support and open opportunities for local fisheries entrepreneurs and fishermen to increase their fishery production capacity, and reduce the number of fishing by the foreign side.

According to Article 3 Paragraph 1, if the ZEEI overlaps with the exclusive economic zone of countries whose coasts face each other or adjoin Indonesia, the delimitation is resolved by agreement. In Paragraph 2 it is stated that if such agreement has not been reached and there are no special circumstances to be considered, then the exclusive economic zone boundary line is the middle line or equidistant line between the territorial sea baselines or outermost points of Indonesia and the territorial sea baselines or outermost points of the country. The provisions of Article 3 are in accordance with Article 74 concerning the delimitation of the exclusive zone between two countries whose coasts are opposite or adjacent to each other through agreement on the basis of international law.

In general, diplomacy is the management of relations between countries carried out by a country to achieve national interests as the implementation of its foreign policy. The concept of diplomacy then expanded, both in terms of issues and actors, which subsequently gave birth to various forms and types of diplomacy, one of which is maritime diplomacy (maritime diplomacy). In simple terms, maritime diplomacy is the management of

relations between countries through the maritime domain. According to Miere, maritime diplomacy does not only mean the use of diplomacy to manage conflicts and tensions between countries related to maritime issues through the preparation of international legal instruments. But maritime diplomacy is also the use of assets or resources in the maritime domain to regulate relations between countries. If diplomacy generally involves diplomats as representatives of the state, maritime diplomacy does not only involve policy makers (state actors). Maritime diplomacy can involve analysts and academics to study trends and developments in international relations and global security.

Maritime diplomacy is categorized into three typologies, namely cooperative maritime diplomacy, persuasive maritime diplomacy, and coercive maritime diplomacy, where the main actors are maritime forces and governments. Based on the Indonesian perspective, maritime diplomacy by maritime forces that can operate in ZEEI is played by the Navy assisted by the Air Force, and Bakamla. Maritime diplomacy of the Navy and Bakamla in the form of cooperative maritime diplomacy such as joint patrol cooperation. However, these efforts have not been implemented in Zeei Natuna Islands waters because the political interests of the two countries are different.

Cooperative maritime diplomacy Indonesia's maritime diplomacy in an effort to realize its vision as PMD is carried out through cooperative efforts to resolve various issues related to maritime relations with neighboring countries, such as maritime boundary issues and EEZ boundaries. This cooperative maritime diplomacy effort can be seen from Indonesia's efforts to encourage the establishment of various cooperation forums and bilateral and trilateral agreements with other countries in the region. According to the Ministry of Foreign Affairs, "the Maritime Cooperation forum is an institution, agency, or container between countries formed to promote cooperation in the field of maritime security and safety, Marine Resources Management and Border Management, among others."

Persuasive maritime diplomacy in addition to cooperative efforts, Indonesian maritime diplomacy is also implemented through persuasive efforts. This persuasive effort is interpreted as an Indonesian action that seeks to encourage recognition of other countries for Indonesia's contribution and leadership in maritime affairs. Persuasive efforts in Indonesian maritime diplomacy are also carried out

Indonesia by taking an important role in leadership in ASEAN. Such efforts can be seen as an attempt by the government to show Authority, which in turn can be a means of persuasion to other countries in achieving national interests in the maritime sector.

Coercive maritime diplomacy in addition to the two forms of maritime diplomacy described above, Indonesia's maritime diplomacy efforts are also

shown through coercive means. The coercive method is shown through strong enforcement actions through a policy of burning and sinking foreign ships that conduct illegal fishing activities in Indonesian waters. Based on the report of the Ministry of Maritime Affairs and Fisheries (MMAF), throughout 2015 the legal action taken by the MMAF in the form of ship sinking, inspection, repatriation of ship crew (ABK), and the arrest of illegal vessels. The government has sunk as many as 113 illegal ships of various countries such as Malaysia, the Philippines, Vietnam, Thailand, Papua New Guinea, China, Panama, and others.

Alterantif dispute resolution Marine and fisheries is to integrate three forms of maritime diplomacy as proposed by Miere. First, the cooperative way is done through diplomacy to encourage bilateral cooperation with the aim of resolving maritime boundary issues and overlapping EEZs which is realized through through technical meetings and collaborative meetings; Second, maritime diplomacy in the form of persuasiveness is carried out to obtain and increase the recognition of other countries to the authority of Indonesian maritime sovereignty and Third, coercive maritime diplomacy, three forms of maritime diplomacy carried out by Indonesia show that the government integrates soft maritime diplomacy (kooperatif and persuasif) and hard maritime diplomacy (koersif). If hard maritime diplomacy is carried out by Indonesia as an affirmation of the country's independence to maintain its maritime sovereignty from all forms of threats, then soft maritime diplomacy requires Indonesia to actively encourage cooperation and synergistic collaboration with various actors. especially at the level of Southeast Asia and ASEAN regional organizations.

4. CONCLUSION

In managing its diplomatic relations related to marine fisheries issues, especially maritime boundaries and fishing theft, the Indonesian government utilizes maritime diplomacy instruments played by the Indonesian maritime forces and government elements. Indonesia's maritime diplomacy can be implemented through forum mechanisms at the bilateral, regional and global levels. Maritime boundary diplomacy between countries to establish the boundary of ZEEnya with Indonesia is also an important strategy that must be prioritized by the government to strengthen the position and claim of ZEEI in the waters of its islands. Meanwhile, at the domestic level, efforts to eradicate IUU Fishing are carried out by the government through the implementation of a policy of punishment for burning and sinking ships, holding a moratorium, banning the use of dangerous fishing gear, and developing fisheries infrastructure in Natuna.

REFERENCE

- Akhmad Solihin , Politik Hukum Kelautan dan Perikanan, Nuansa Aulia, Bandung, 2010.
- Alamsyah, Bobby Bella. Upaya Pemerintah Indonesia Dalam Menanggulangi Illegal Fishing Di Kepulauan Riau 2010-2015. Universitas Mulawarman : Samarinda.2017.
- Ariman Sitompul . Alternative Dispute Resolution Criminal Acts Of Money Politics In Elections In View Of Normative Law. *International Asia Of Law and Money Laundering (IAML)*, 2(1), 1–9. 2023 <https://doi.org/10.59712/iaml.v2i1.52>
- Ariman Sitompul, Sabela Gayo. The Use of Mediation as an Alternative Health Dispute Resolution. *Hong Kong Journal of Social*,2022.
- Bambang Sutyoso, Hukum Arbitrase dan Alternatif Penyelesaian Sengketa , Yogyakarta: Gama Media, 2008.
- Dikdik Mohamad Sodik, Hukum Laut Internasional dan Pengaturannya di Indonesia, PT Refika Aditama, PT Refika Aditama, Bandung, 2014.
- Djoko Tribawono , Hukum perikanan Indonesia, Citra Aditya Bakri, Jakarta, 2011.
- Ela Riska, Diplomasi Maritim Indonesia terhadap Aktivitas Penangkapan Ikan Ilegal (Illegal Fishing) oleh Nelayan China di ZEEI Perairan Kepulauan Natuna, *Jurnal Prodi Diplomasi Pertahanan* Volume 3 No. 2, 2017.
- Gunawan Widjaja dan Ahmad Yani, Hukum Arbitrase , Jakaarta: PT. RajaGrafindo Persada, 2003.
- Nurnamingsih Amriani, *menyelesaikan masalah perdata melalui pengadilan dengancara mediasi alternatif*, PT. Raja Grafindo Persada,2012.
- Sudargo Gautama, Aneka Hukum Arbitrase, Bandung: PT Citra Aditya Bakti, 1996.
- Takdir Rahmadi, *Mediasi Penyelesaian Sengketa melalui Pendekatan Mufakat*, Rajawali Pers, 2011.
- Takdir Rahmadi, *Meidiation of dispute resolution through a consensus approach*(rajawali book, 2011
- Usmawadi Amir, Penegakan Hukum IUU Fishing Menurut UNCLOS 1982 (Studi Kasus: Volga Case), *Jurnal Opinio*, Vol 12 Januari-April 2013.