

Searching For Justice in The Policy for Combating Illegal Fishing in Indonesia: The Dignified Justice Perspective

Maya Shafira, Muhammad Akib, Eddy Rifai, Deni Achmad, Mashuril Anwar,

Universitas Lampung,

E-mail: mayashafira2@gmail.com, muhammad.akib@fh.unila.ac.id, eddyrifai63@gmail.com, deni.achmad.da@gmail.com, mashurilanwar97@gmail.com

Abstract

Dignified justice is a grand legal theory with justifications on grounds which are different from colonial legal theories referred to in Indonesia thus far. The theory of dignified justice is based on Pancasila values as the 'volksgeist' or the national spirit of the Indonesian nation laid down by its founding fathers. As a country with its own identity, Indonesia should duly have its own conception of justice rooted in and constructed based on the national spirit, namely Pancasila. In the context of illegal fishing practices, the policy for combating illegal fishing in Indonesia should be based on Pancasila values, namely the belief in One God, humanity, unity, democracy and social justice. However, Indonesia's policy on illegal fishing countermeasures is yet to fully accommodate Pancasila values. Up to the present time, among the Pancasila values, only belief in One God and democracy have been accommodated in the policy on combating illegal fishing. At the same time, the values of humanity, unity and justice do not transpire in Indonesia's current policy on illegal fishing countermeasures. In order to materialize fisheries management for the people's prosperity to the greatest possible extent, the theory of dignified justice based on Pancasila values need to be used as reference in policy formulation as well as in the stage of implementation (application) of the policy for combating illegal fishing in Indonesia.

Keywords: Pancasila, Dignified Justice, Illegal Fishing

INTRODUCTION

Justice is an idea which is both factual as well as relevant to the dynamics of human civilization; it is always related to the human nature as *animal sociale* and *animal politicum* (Arum, 2019). However, justice continues to be an issue in law enforcement in Indonesia. In fact, it can be stated that at the present time, the Indonesian nation is experiencing a crisis of justice in its law enforcement. The main orientation of law enforcement in Indonesia today is limited to legal certainty, disregarding the aspects of justice and utility to society (Rahardjo, 2006). Law enforcement in Indonesia as we know it now is yet to provide full justice to the community. Justice appears to have become a high-cost commodity difficult to be attained by members of society. Numerous legal cases emerge and become subject of public discourse for disregarding justice which should be readily available to society (Sutiyoso, 2010). Law enforcement which does not go hand in hand with justice in society is a symptom of concern, as it is bound to cause the loss of public confidence in the state (Wantu, 2013). The absence of public confidence in law enforcement can lead to street justice, contempt of law enforcers and judicial institutions, and even violence against law enforcers (Pakendek, 2017).

Several legal scholars have proposed their theory of justice in philosophical studies. Some examples include the concept of justice as proposed by Aristotle, Thomas Aquinas and John Rawls. All of these three philosophers base their concept of justice on the equity principle. According to Aristotle, justice must be based on equal status, and proportionate distribution of rights and obligations. Thomas Aquinas defines justice as “*Iustitia est habitus secundum quem aliquis constanti et perpetua voluntate ius suum unicuique tribuit*” (justice is a virtue whereby a person, out of his/her own firm and constant will, provides to everyone they are entitled to) (Arum, 2019). At the same time, according to John Rawls justice must place every person in an equal position (Adlhiyati and Achmad, 2019). Indeed, the application of the concept of justice based on the above described classical thought remains relevant in Indonesia today. However, as a nation which has its own identity, it would be timely for Indonesia to possess its own conception of justice rooted in and constructed based on its own national spirit, namely Pancasila.

A relatively recent new legal theory teaches that law exists and grows within the national spirit or *volksgeist* (Prasetyo, 2016). Such legal theory is known as the dignified justice theory. Dignified justice theory is a grand legal theory which lays on different grounds of justification than Western legal theory which has been serving as a point of reference thus far. Dignified justice theory offers a new outlook on the concept of justice based on the Indonesian national spirit or *volksgeist*, namely Pancasila (Prasetyo, 2017). Pancasila has been regarded as the ultimate or principal source of all the sources of laws, which has its legal force to govern the legal system of the Republic of Indonesia (Prasetyo, 2016). to guarantee more the conducive atmosphere of the administration of the court to enforce law and justice under Pancasila, it is necessary to promulgate legislation stipulating the enforcement against any action, behavior, attitude and or utterance that can demean the dignity, respect and nobility of the court of justice that is contempt of court (Subarsyah, 2020). Pancasila as the national spirit which consists of five *Sila* (basic principles) is the source of all legal sources in Indonesia laid down by the nation’s founding fathers (Prasetyo & Barkatullah, 2012). The philosophy of sentencing based on dignified justice, refer to the nation’s philosophy, Pancasila (Susilowati, 2020). In such context, an essential postulate of dignified justice is that the law must be viewed as a system (Prasetyo, 2016). In the perspective of dignified justice theory, a just law always contains certainty and utility (Prasetyo, 2015). Law that is just, utilitarian and brings certainty is a law which treats people with humanity, as the expression goes *nguwongke uwong*, or it is a dignified law. According to the dignified justice theory there is no justice in the law if there is any doubt, hesitation or uncertainty (Prasetyo, 2016).

Indonesia is a country with vast sea territory and great fishery potentials which can serve as a basis for creating social welfare. Indonesia possesses the largest fishery potentials in the world, namely about 65 million tons/year (Yulianingsih, 2017). However, in practice, such enormous fishery potentials create pressure for the exploitation of the fisheries sector. (Chapsos & Hamilton, 2018) Therefore, in order to avoid illegal fishing practices, the fishery sector needs to receive special attention from the government. Indonesia cannot but fight IUU fishing and many of their policies and measures are much welcomed by the international community, notwithstanding the controversial nature of occasionally publicly sinking fishing vessels (Chapsos, Koning, & Noortman, 2019).

Based on the experience of several developing countries in the world, illegal fishing is one of the causes for the failure of the management of fishery resources, leading to corruption and social conflict resulting in injustice to members of society (Tjitrawati, 2012). In the context of dignified justice theory, justice and illegal fishing are an interesting topic for discussion. Based on the provisions of Article 2 sub-

article b of Law Number 45 Year 2005 *juncto* Law Number 32 Year 2004 concerning Fisheries (the Fisheries Law), the management of fisheries is conducted based on the principle of justice. The management of fisheries must be capable of providing an equal and proportional opportunity to all citizens without exception (Tjitrawati, 2012). However, justice is still an ongoing discourse in illegal fishing cases. The negative impact of illegal fishing practices is not limited to the environment; rather, their social impact is also evident when they negatively affect the feeling of justice, particularly among small fishermen. Accordingly, guided by the dignified justice theory, this article will explore or examine the policy on combating illegal fishing in Indonesia. It is significant in the context of ensuring that the exploitation of fishery resources is conducted in the most optimal, efficient, transparent, sustainable and environment-oriented manner possible, creating justice, certainty and utility for the prosperity of the people to the greatest possible extent.

The issue discussed in this article is the state of policy on combating illegal fishing in Indonesia, and the extent to which it accommodates the dignified justice theory. In the context of the above defined issue, the purpose of this research is to explore the extent to which policy on combating *illegal fishing in* Indonesia accommodates the dignified justice theory based on Pancasila values.

METHODOLOGY

For the purpose of exploring, identifying and analyzing the issue under research, certain methodology is used in line with the nature of the research. In accordance with the issue and the objective of this research, the juridical-normative approach is used. Juridical-normative research positions law as a structure of system of norms (Fajar ND & Achmad, 2010). Such system of norms consists of principles, norms and conventions in laws and regulations, judicial decisions, and the teaching of scholars (doctrine). Accordingly, the juridical-normative approach in this research is implemented by analyzing theories, concepts, as well as laws and regulations which are relevant to the issue discussed.

The data used in this research is derived from secondary data, namely data obtained through library research. Collected data is subject to processing including activities involving the description, prescription and systematic organization of data. Furthermore, data analysis in this research is conducted in a qualitative-descriptive manner, by elaborating on such data in accordance with the topic of research. Finally, conclusion is made by induction, namely based on specific data and specific conclusions.

DISCUSSION

The policy on combating *illegal fishing in* Indonesia is represented in Law Number 45 Year 2009 *juncto* Law Number 31 Year 2004 concerning Fisheries (the Fisheries Law). The Fisheries Law provides for several types of criminal acts of illegal fishing, namely fishing without permit, fishing with fraudulent permit, fishing using prohibited fishing tools, and fishing of species which are not covered in the fishing permit (Iqbal, 2012). There are stringent criminal sanctions for perpetrators of *illegal fishing* in Article 84 up to and including Article 101 of the Fisheries Law, with maximum 10 years of imprisonment and the criminal fine of up to IDR20,000,000,000 (twenty billion Rupiah).

There is an expectation in society to have justice in law enforcement (Maroni, Ariani, & Sitepu, 2019). Justice is the essential spiritual need of every person (Pakendek, 2017). Dignified justice theory is about justice with spiritual and material dimensions (Handayani, 2015). Dignified justice theory is a

theory based on Pancasila values as a concrete materialization of the spirit of the Indonesia nation or the Indonesian *volksgeist* (Kameo, 2016). Therefore, Indonesian law should be ideally constructed based on the values of Belief in One God, Humanity, Unity and Integrity, Democracy, and Social Justice (Kaelan, 2002).

1. The value of Divinity implies that our life as society, nation and state must be based on, and should take into account the guidance and law of God The Almighty.
2. The value of Humanity implies that Indonesia is not a materialistic country which justifies all means to achieve its purposes. Rather, Indonesia is a civilized nation which recognizes and upholds mental and spiritual values of human beings as creations of God The Almighty.
3. The value of Unity and Integrity implies that the nature and conditions of Indonesia must be in line with the essence of the Indonesian nation which is diverse yet it constitutes a unity. It implies that the Indonesian nation inhabits a certain independent territory and it has a certain specific nature and characteristic distinct from other nations, whereby such conditions are indivisible and are inseparable.
4. The value of Democracy implies that Indonesia's economic and political system must be based on the people's sovereignty, which concurrently serves as the philosophical ground of the state in formulating Indonesian democracy.
5. The value of Social Justice implies that all aspects of human life must be fulfilled. In other words, life as a nation has the purpose of fulfilling all needs of the people universally.

Based on the above meaning of Pancasila values, the policy for combating illegal fishing in Indonesia should be ideally based on Pancasila values, namely as follows:

1. The value of Belief in One God in the Policy for Combating Illegal Fishing

Thus far it can be stated that the policy for combating *illegal fishing* in Indonesia represented in the Fisheries Law corresponds to the value of Belief in One God as articulated in the first Basic Principle (*Sila*) of Pancasila. In the considerations of the Fisheries Law, it is consistently declared that the waters within the sovereign territory of the Unitary State of the Republic of Indonesia and the Indonesian Exclusive Economic Zone as well as the open sea which contains fishery resource potentials and which serves as a place for fish cultivation are blessings from The Almighty God entrusted to the Indonesian nation which lives based on Pancasila as the philosophical outlook on life and the 1945 Constitution of the State of the Republic of Indonesia, with due consideration of its existing supporting elements and conservation to be used for the welfare and prosperity of the Indonesian people to the greatest extent. However, in the future, this value of Belief in One God spelled out in the Fisheries Law needs to be implemented consequently in combating illegal fishing in Indonesia.

2. The value of Humanity in the Policy on Combating Illegal Fishing

In the context of the humanity value, illegal fishing practices are certainly inhumane, greedy and uncivilized. Perpetrators of illegal fishing take the fruits of the sea by justifying all means to that end without considering their sustainability. However, as a state based on Pancasila, the policy on combatting illegal fishing in Indonesia must be based on the value of humanity. To date, the policy on combatting illegal fishing in Indonesia is yet to reflect the value of humanity. Article 69 paragraph [*sic*] of the Fisheries Law fisheries investigators and/or controllers are granted authority to undertake special measures against perpetrators of illegal fishing in the form of burning and/or sinking vessels. Such policy for burning and sinking vessels is considered to be inhumane because it seizes tools used for making a

living (Munawaroh, 2019). In addition to the above, there has been concern that the policy of burning and sinking foreign flag carriers will cause turmoil and will bring negative impact on relations between countries (Afandi, 2017).

3. The Value of Unity and Integrity in the Policy on Combatting Illegal Fishing

The basic principle (*Sila*) Unity of Indonesia is one of the integral ideals of Pancasila (Siregar, 2014). This third basic principle (*Sila*) of Pancasila implies placing priority on harmony and unity of the entire diverse Indonesian nation. In the perspective of dignified justice, the policy on combatting illegal fishing must be applied evenly in the entire territory of Indonesia, without discrimination among social classes. Article 2 sub-article f of the Fisheries Law accommodates the principle of equivalent distribution in fisheries management by observing the needs of small fishermen. However, the provisions of Article 84 paragraph (3) and paragraph (4) of the Fisheries Law are inconsistent with the concept of unity and integrity providing that fishery business actors engaging in the fishery business by using chemicals and explosives which jeopardize the conservation of the environment shall be subject to the criminal punishment of imprisonment for 1-5 years and a fine of IDR2,000,000,000 (two billion Rupiah). When applied to small fishermen, the said sanctions are disproportionate considering the fact that most of them are still using traditional fishing tools which are often not up to standard. At the same time, the same sanctions are imposed on small fishermen as on fishery business actors, resulting in disproportionately heavy criminal punishment compared to the income of traditional fishermen. Furthermore, the application of criminal sanctions under the Fisheries Law negatively affects the sense of justice of local fishermen. Based on the provisions of Article 102, the criminal sanction of deprivation of liberty (imprisonment and confinement) cannot be imposed on foreign fishermen.

4. The Value of Democracy in the Policy on Combatting Illegal Fishing

The value of Democracy implies that Indonesia's economic and political system must be based on the sovereignty of the people. Such economic concept is also known under the term people oriented economy (*ekonomi kerakyatan*). According to Revisond Baswir, people oriented economy is a democratic economy because it prioritizes people's prosperity over individual prosperity (Baswir, 1997). The concept of people oriented economy has been adopted in the policy on combatting illegal fishing in Indonesia. Several provisions of the Fisheries Law reflect the concept of people oriented or democratic economy. Article 2 of the Fisheries Law provides that the management of fishery resources is to be conducted based on the utility principle. Referred to as the utility principle is the principle that fisheries management must be capable of generating the greatest profit and benefit for enhancing the people's prosperity and welfare. Furthermore, fisheries management is conducted based on the principle of sustainable development, namely managing fisheries in a planned manner and enhancing the people's prosperity and welfare by prioritizing the preservation of the environmental function at the present time and in the years to come. The Fisheries Law provides that the Government shall provide guidance for implementing healthy cooperation and partnership between the fisheries industry, fishermen and/or fishery cooperatives. At the same time, the Government is to empower small fishermen and small fish cultivators through small fishermen's groups, small fish cultivator groups, and fishery cooperatives. In addition to the foregoing, research and development is to be conducted by Government-owned research and development research institutions, including research and development conducted by non-departmental institutions, state-owned enterprises (BUMN), and/or regional owned enterprises (BUMD).

5. The Value of Social Justice in the Policy on Combatting Illegal Fishing

The indicator for the achievement of the people's welfare is spelled out in the Decision of the Constitutional Court Number 3/PUU-VIII/2010. Based on said decision, the state's authority in the management of natural resources must always be related to the people's prosperity. In such context, the Constitutional Court has determined four benchmarks for fulfillment of the people's prosperity, namely natural resources being beneficial to the people, equal distribution of the benefits of natural resources to the people, public participation in determining the benefits of natural resources, and respect for the people's right in the management of natural resources (Alan, 2017).

Based on the people's prosperity indicators in the above mentioned Constitutional Court decision, the management of fishery resources is yet to reflect the value of social justice. According to the data of Statistics Indonesia (BPS), the total number of people living in poverty in Indonesia in September 2019 reached 9.22%, or about 24.79 million people. The Poverty Line recorded in September 2019 was IDR440,538./capita/month consisting of Food Poverty Line in the amount of IDR324,911.- (73.75%) and Non-Food Poverty Line in the amount of IDR115,627.- (26.25%). Furthermore, in September 2019, on an average poor households in Indonesia consisted of 4.58 persons/members of the household. Accordingly, the average Poverty Line per poor household was IDR2,017,664./poor household/month (Statistics Indonesia, 2019). Such conditions have resulted from the approach taken in the management of fishery resources thus far, tending to prioritize the economic aspect only. Consequently, it has lead to the exploitation of fishery resources, imbalance in welfare, injustice caused to the environment, and even social conflict (Nurjaya, 2013).

CONCLUSION

The dignified justice theory offers a new perspective to the concept of justice based on the national spirit of Indonesia or the Indonesian *volksgeist*, namely Pancasila. Viewed from the perspective of dignified justice theory, a just law always contains certainty and utility. The law which contains justice, utility and certainty is a law which treats people as human beings, also referred to under the expression *nguwongke uwong*, or it can be said that it is a dignified law. In Indonesia, as a country with vast maritime territory, existing fishery potentials are highly prospective in becoming a base for creating welfare for the people. In practice, however, such great potential is attracting the attention of perpetrators of illegal fishing who regard it as an opportunity to exploit fishery resources. In the context of the dignified justice theory, the policy on combatting illegal fishing in Indonesia represented in the Fisheries Law is yet to be fully aligned with the dignified justice theory inspired by Pancasila values as the *volksgeist* or the spirit of the Indonesian nation. Up to the present time, the policy on combatting illegal fishing in Indonesia accommodates only the values of the Belief in One God, and Democracy. On the other hand, the values of Humanity, Unity and Integrity, and Social Justice are yet to be accommodated in the policy on combatting illegal fishing in Indonesia. It is therefore recommended that the dignified justice theory inspired by Pancasila values be introduced as a guiding principle in the process of policy formulation as well as in the application stage of illegal fishing counter-measures in Indonesia. It has the purpose of ensuring that the state achieves its objective in materializing fishery resources management which brings evenly-distributed and sustainable welfare to the people.

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