

# The Role of the Customary Criminal Law of Panglima Laot against Illegal Fishing Countermeasures in Indonesia

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Customary / local legal communities have a strategic role in managing coastal and marine resources. Customary / local legal communities are identical with high dependence on natural resources in their areas so that they tend to endeavor to manage natural resources sustainably and sustainably. Sustainable management of natural resources is reflected in the philosophy of their lives that always maintains a balance of human relations with nature. The practice of customary community-based coastal resource management or local wisdom has grown from generation to generation, including the commander in chief of Aceh Province. This research is a study using the socio legal research approach. Socio legal research approach means that there are two aspects of research. First, legal research aspects, and second, socio research. The results of this study indicate that the role of Panglima Laot customary criminal law against illegal fishing is the first to be resolved in the village by giving a warning to the perpetrators of Illegal Fishing. Furthermore, if the same thing happens again, the Panglima Laot institution will hold a discussion between the Panglima Laot institution and the village officials in setting sanctions for the perpetrators. However, from the results of deliberations in resolving the Illegal Fishing case, the perpetrators were imposed sanctions in the form of confiscation of fishing equipment, catches, and pay fines to the gampog according to the catch.

**Key words:** *Customary Criminal Law, Laot Commander, Illegal Fishing.*

## Introduction

Indonesia is often called a maritime country, this is because most of its territory consists of the sea. According to WALHI's records Indonesia is the largest archipelago country in the world, which has 17,480 islands with a coastline of 95,181 km. Under the 1982 Sea Law Convention (UNCLOS), Indonesia has sovereignty over a waters area of 3.2 million km<sup>2</sup> consisting of 2.9 million km<sup>2</sup> of archipelago waters and territorial sea of 0.3 million km<sup>2</sup> (Nunung Mahmudah, 2015). As an archipelagic country where 70 percent of its territory is ocean, it certainly has enormous marine and fisheries resource potential. Their potential should be relied upon to sustain the nation's economy (Mina Bahari, 2015).

Ironically, so far this potential has not been properly and maximally utilized and does not contribute significantly to the nation's development. In fact, countries tend to suffer losses due to various irresponsible practices of exploitation of marine and fisheries resources or the rise of Illegal Unreported Unregulated (IUU) Fishing. Another threat is mining in coastal areas and small islands. Mining activities from quarrying to processing result in damage and pollution to the surrounding coastal ecosystem and biological resources. For this reason, the need for the use and management of natural resources in the national interest is expected to provide opportunities for customary law communities to implement the rights of indigenous peoples, which are regulated in legal recognition, showing positive things in improving community welfare and ecological sustainability (Riska Andi Fitriano, Barda Nawawi Arief & Adji Samekto, 2019).

Customary / local legal communities have a strategic role in managing coastal and marine resources. Customary / local legal communities are identical with high dependence on natural resources in their areas so that they tend to endeavor to manage natural resources sustainably and sustainably. Sustainable management of natural resources is reflected in the philosophy of their lives that always maintains a balance of human relations with nature. The practice of customary community-based coastal resource management or local wisdom has grown from generation to generation, including commander in chief in Aceh Province (Ministry of Maritime Affairs and Fisheries, 2017).

As a preliminary explanation, the commander of the laot and customary law of laot in Aceh, in addition to regulating fishing, also regulates the prohibition of destruction of the marine environment, and the abstinence of laot on certain days has implications for the operation of the ecosystem.

Seeing the vast area and potential of the sea in Aceh province, it is no wonder Illegal Fishing tactics in Aceh often occur, as was the case in East Aceh on March 23, 2015 when five fishing boats using trawls from Thailand were captured by a TNI force officer deep sea patrol

in the Malacca Strait waters, Aceh. As for the cases that occurred in Aceh, namely in 2011 with 6 cases in Singkil, in 2012 with 15 cases in the Aceh waters, in 2013 there were 4 cases in the Aceh waters, in 2014 with 6 cases, and in 2015 3 cases (Wahyuddin, Muksal, Nirzalin & Zulfikar, 2017).

The existence of customary law as a living law (Mason C Hoadley, 2006) the Indonesian nation is increasingly marginalized. Customary law which was originally a living law and is able to provide solutions in various social problems in Indonesian society, is increasingly fading. At present, in its empirical reality, there are sometimes many problems that arise by the Indonesian indigenous community when customary law confronts positive law (Lastuti Abubakar, 2013)

Several studies conducted by the Center for Social Sciences Research (PPIIS) at Syiah Kuala University, Banda Aceh, 1980 to 1990 in several coastal areas of Aceh, showed that Panglima Laot's role as a fishing organization was very diverse, according to their respective regions, In the coastal area of Telaga Tujoh Aceh Timor, for example, the Panglima Laot is very influential and authoritative. Its influence and authority in regulating the patterns of cultural interaction of the fishing communities in their area even exceeds the influence of government officials such as the Village Head or Camat (Nab Bahany AS, 2014).

In carrying out the management of the coastal and marine environment, Panglima Laot adheres strictly to the customary law of the sea. Customary sea law are customary rules that are maintained and maintained by fishing communities to maintain order in fishing and the life of fishing communities on the coast. Customary sea law can also function as a filler of positive national law, if there is no regulation in that national law. The substance of the marine customary method is the fishermen together with their abilities in the form of fishing gear knowledge, management of marine biological resources and the ability to maintain the preservation of potential sources available in the wild (Maya Puspita, 2008).

## **Method**

In accordance with the objectives of this legal research, that this research is a study using the socio legal research approach (Zamroni, 1992), the socio legal research approach means that there are two aspects of research. First, legal research aspects, namely the object of research remains in the form of law in the sense of norms (legislation) and second, socio research, namely the use of methods and theories of social science about law to assist researchers in conducting analysis.

This approach is used to understand the law in the context of society. By Brian Z. Tamanaha said that law and society have a frame called The Law Society Framework which has certain

relationship characteristics. This relationship is indicated by two basic components. The first component consists of two main themes namely the idea that states that law is the cerium of society and the idea that the function of law is to maintain social orders. The second component consists of three elements, namely customs / consent; morality / reason; and positive law (Tamanaha, Brian Z, 2006).

## **Results and Discussion**

### ***Customary Criminal Law***

In principle, the terminology of customary law comes from the word *adatrecht* used by Snouck Hurgronje and used as a juridical technical terminology by van Vollenhoven. Then, the terminology of customary law known in the days of the Dutch East Indies governed the provisions of Article 11 *Algemene Bepalingen van Wetgeving voor Indonesia* (AB) with the terminology *godsdiertige wetten, volksinstellingen en gebruiken*, the provisions of Article 75 paragraph 3 of the *Regulations op het Beleid der Regeling van Nederlands Indie* (RR) with terminology *Instellingen en gebruiken des volks*, then according to the provisions of Article 128 *Wet op de Staatsinrichting van Nederlandsch Indie* or *Indische Saatsregeling* (IS) used the terminology *godsdiertige wetten en oude herkomsten* and based on the provisions of *Stb. 1929 Number 221* jo *Number 487* was last used *adatrecht* terminology.

Recognizing the existence of customary law can be seen in Article 18 B paragraph 2 of the 1945 Constitution of Indonesia, namely: The state recognizes and respects the customary law community units along with their traditional rights as long as they are still alive and in accordance with the development of the community and the principles of the unitary state of the Republic of Indonesia regulated in the law -invite.

This means mandating all Indonesians to realize state / community / free national life in a legal order that is in accordance with the soul of the noble values of the Indonesian nation. Law Number 14 Year 1970 jo Law Number 35 Year 1999 jo Law Number 4 Year 2004 jo. Law Number 48 of 2009 concerning Judicial Power which states:

- a. Article 5 (1): Judges and constitutional justices are obliged to explore, follow and understand the legal values and sense of justice that lives in the community.
- b. Article 50 (1): The court's decision must not only contain the reasons and grounds for the decision, it also contains certain articles of the relevant statutory regulations or unwritten legal sources which are used as the basis for hearing.

The style in Indonesian customary law can be relevant with a number of things inherent in the imposition of customary criminal sanctions as follows (BPHN Customary Law Monograph Team, 1992):

1. Everyone Has Human Rights and Dignity

Namely that everyone has self-esteem as a human being must be treated well including in the process of imposing customary reactions.

2. Balance and Recovery in Customary Crimes

Namely in giving sanctions or customary reactions must be proportional to the mistakes made and the imposition of sanctions or traditional reactions are intended to be able to restore the original condition that is disturbed balance in society.

3. Protection of Community Members

Namely the ruler (customary head) is obliged to provide protection to community members from threats of crime or arbitrary acts from other parties. In customary law, the customary head has the authority to determine the form and imposition of sanctions to be given to the offender. Determination of the form of sanctions and their implementation is done through customary deliberations. This is done as a form of protection for the customary head of the community.

4. Virtuous Morals

That contains the values or legal norms in the form of a noble moral attitude in prosecuting and imposing sanctions on customary offenses that occur.

5. Communal / Collectivity / Society / solidarity

is a characteristic style of our society that still lives very remote or in daily life is still very dependent on land or nature in general. In such a society there is always the nature of giving more importance to the whole, giving priority to the public interest rather than individual interests.

Communal / Collective / Community / solidarity is related to the collective responsibility system. Village communities, hamlets, always play a decisive role, consider and give decisions that should not be wasted. The village's decision is hard to hold and under all circumstances also must be obeyed with respect and wisdom. The collectivity in customary law has an impact on the customary reaction or criminal sanction exists

The existence of the enactment of customary law besides being known in national legal instruments is also regulated by international instruments. The provisions of Article 15 paragraph (2) of the International Covenant on Civil and Political Rights (ICCPR) state that, "Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations ". Then the recommendation from

the United Nations Congress on "The Prevention of Crime and the Treatment of Offenders" stated that the criminal law system that had existed in several countries (especially those originating / imported from foreign law during colonial times), in generally are "obsolete and unjust" (outdated and unjust) and "outmoded and unreal" (outdated and not in accordance with reality). The reason is because the legal system in some countries is not rooted in cultural values and there is even a "discrepancy" with the aspirations of the people, and is not responsive to today's social needs. This condition was stated by the UN Congress as a contributing factor for crime (Lilik Mulyadi, 2013).

### ***The Role of Commander Laot Against Illegal Fishing Countermeasures***

Illegal fishing is a popular term used to refer to criminal offenses in the field of fisheries. Regarding which forms can be categorized as illegal fishing is something that needs further study, considering that this term is not explicit in the Fisheries Act. However, the terminology of illegal fishing can be seen from the literal understanding of English. Illegal fishing comes from the word illegal which means illegal or unofficial. Fishing is a noun which means fishery. So that illegal fishing is an act of taking, reaching, fishing, fishing illegally (Yuniarti Dwi Pratiwi, 2016)

Ubi Societas Ibi lus, where there is a community there is a law. In any society, there must be a law with patterns and forms that are in accordance with the level of civilization, including primitive societies. Thus, in indigenous peoples who are spread throughout the archipelago must have their respective laws.

Aceh Province is very vulnerable and many cases of Illegal Fising occur. the existence of the province of Aceh is located at the western tip of Indonesia which is geographically surrounded by the sea namely the Malacca Strait, the Indian Ocean and its northern coast bordering the Strait of Bengal. This condition is very strategic for the fisheries business, especially fishing at sea and aquaculture ponds. So that makes this province as one of the regions that has great potential around marine and fisheries and has a great opportunity to become a dominant and reliable sector that can raise and increase the income and welfare of the people of Aceh. The community realizes that the Illegal Fising case that occurred in Aceh greatly affects the results of their ranks, this is added to the attitude of thuggery of foreign vessels entering Indonesia, so that fishermen cannot drive them away and they can freely steal fish in Indonesian areas.

Panglima Laot is a traditional institution located in the province of Aceh which regulates the procedures for fishing or fishing at sea. the commander of laot other than as an institution is also the head of the institution so that people refer to them as commander of laot. According to its history the institutional commander of laot has existed since 400 years ago, namely

during the reign of Sultan Iskandar Muda (1607-1636) who ruled the Islamic kingdom of Aceh (Nodi Marefanda and Afrizal Tjoetra, 2019).

In general, the Panglima Laot has authority, namely in the field of development and enforcement of marine customs, regulations at sea, and utilization of marine resources and customary justice for the sea (M. Jakfar Puteh, 2012).

After the Tsunami of December 24, 2004, the year Panglima Laot received recognition of Law Number 11 of 2006 concerning the Government of Aceh (Articles 98-99 and Article 164 paragraph (2) letter e), then the law was translated into Aceh Qanun No. 9 of 2008 concerning the Development of Traditional and Customary Life and Customs of Aceh and Qanun Aceh No. 10 of 2008 concerning Customary Institutions. In the same year Panglima Laot was accepted as a member of the World Fisher Forum People / WFFP (world fishing community organization) in 2008 (Muhammad Adli Abdullah, et al, 2010).

Panglima Laot also has the authority in regulating the fishermen including the Panglima Laot authority is: a. Determine the rules of fishing or meupayang including determining the quotient and days of abstinence from fishing; b. Settling customary disputes and disputes that occur among fishermen; c. Coordinating the implementation of customary marine law, increasing resources and advocating for marine and fisheries policies to improve the welfare of fishermen These authorities have been embedded in customary provisions that have been in effect for a long time, in the field of developing and enforcing marine customs, Panglima Laot has the authority to make customary adjustments, in accordance with the times and technology without leaving aside adat as a guide (Raihan & Mulyadi A, 2017).

The existence of Panglima Laot here is certainly very important in eradicating Illegal Fishing, because where the Panglima Laot institution has more authority in regulating the customary law of laot and the fishing community in general. Panglima Laot's role in providing awareness to the community that fish and the ocean is a gift of Allah SWT to be enjoyed by humans in a way that is good and does not damage the marine environment. And the community must realize this, so that no more fishing by bombing and sedation, so that children and grandchildren and future generations can enjoy the sea products. Panglima Laot plays the role of someone who solves problems in the event of a fish bombing and fish anesthesia. Panglima Laot also plays the role of the oldest among the fishing community who are more experienced and know about customary law.

Panglima Laot in resolving cases of illegal fishing, if there is a fish bombing and fish anesthesia, the first will be resolved in the village by giving a warning to the perpetrators of Illegal Fishing. Furthermore, if the same thing happens again, the Panglima Laot institution will hold a discussion between the Panglima Laot institution and the village officials in

setting sanctions for the perpetrators. However, from the results of deliberations in resolving the Illegal Fishing case, the perpetrators were imposed sanctions in the form of confiscation of fishing equipment, catches, and pay fines to the gampog according to the catch. One of the sanctions imposed on illegal fishing offenders or on fishermen who violate customary provisions is to be subject to customary legal sanctions in which all catches are confiscated and prohibited from going to sea for three days. However, customary law will certainly not mean anything if it is not accompanied by authorized law enforcement. If the case recurs and in the village is unable to handle the case, the Panglima Laot institution collects all the keuchik in Pulo Aceh District along with the traditional village institutions to talk about the case.

Furthermore, based on this meeting, the Panglima Laot institutions along with the village officials took action, namely by implementing rules so that there would be no more bombing and sedation of fish in Pulo Aceh waters. Therefore, if regulations are in place and illegal fishing is still being carried out, the Panglima Laot institution and village officials will hand it over to the authorities.

Fisheries education must also be raised, so that the people of Pulo Aceh know the importance of preserving the marine environment. Pulo Aceh currently has extraordinary marine resources. The people still underestimate the economic potential of the ocean.

## **Conclusions**

The role of Panglima Laot customary criminal law against illegal fishing is the first to be resolved in the village by giving a warning to the perpetrators of Illegal Fishing. Furthermore, if the same thing happens again, the Panglima Laot institution will hold a meeting between the Panglima Laot institution and the village officials in setting sanctions for the perpetrators. However, from the results of deliberations in resolving the Illegal Fishing case, the perpetrators were imposed sanctions in the form of confiscation of fishing equipment, catches, and pay fines to the gampog according to the catch. One of the sanctions imposed on illegal fishing offenders or on fishermen who violate customary provisions is to be subject to customary legal sanctions in which all catches are confiscated and prohibited from going to sea for three days.

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