

## Law Enforcement on Fishery: Prohibition of Trawl Nets as an Effort to Protect Small Fisherman Fairly

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### ABSTRACT

The sea and its resources, especially fishery resources, are a gift from God Almighty for the welfare of all Indonesian people. Based on the state's right to control the earth and the natural resources contained therein, which originates from Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, the government must regulate fishery resources for the greatest prosperity of all people. The use of fishery resources is carried out with various legal products ranging from laws, government regulations, and presidential decrees to ministerial rules. Regulations on using fishery resources include prohibiting using trawl nets to catch fish in certain waters. This prohibition aims to prevent damage to the marine environment, ensure the sustainability of fishery resources, and protect small fishermen. However, in its implementation, it is still hampered by the problem of law enforcement, which is hindered by disharmony of regulations, the availability of professional law enforcement officers, and the lack of support for facilities and infrastructure considering the vast area of law enforcement. One thing that is no less important in enforcing the law on the prohibition of the use of trawl nets is the low legal awareness of fishing communities, especially industrial fishermen who only care about themselves without paying attention to the preservation of marine ecosystems, the sustainability of fishery resources, and the protection of small fishermen or traditional fishermen.

### Keywords:

Prohibition; Trawl Nets; Law Enforcement, Protection of Small Fishermen

### INTRODUCTION

Indonesia consists of thousands of islands, and 2/3 of its territory is in the ocean, so Indonesia is called an archipelagic state. Indonesia's geographical location is very strategic, as it is at the crossroads of two continents, the Asian continent and the Australian continent, flanked by the Indian Ocean and the Pacific Ocean (Zhu *et al.*, 2024). Indonesia is one of the countries with the largest territory in the world, consisting of airspace, land area, and sea area. The total sea area is 5,193,250 km<sup>2</sup>, composed of 2,027,170 km<sup>2</sup> of land and 3,166,080 km<sup>2</sup> of water" (Suhaidi, Alhayyan and Tarigan, 2018). The comparison between the sea area and the land area of Indonesia reaches 2/3 of the land area of Indonesia. The area of Indonesia since the enactment of the 1982 United Nations Convention on the Law of the Sea on November 16, 1994 ( enter into force ) has increased "to 8,193,163 km<sup>2</sup>, consisting of 2,027,087 km<sup>2</sup> of land and 6,166,163 km<sup>2</sup> of ocean. Indonesia's sea area can be detailed into 0.3 million km<sup>2</sup> of territorial sea, 2.8 million km<sup>2</sup> of archipelagic waters, and 2.7 million km<sup>2</sup> of the Indonesian Exclusive Economic Zone" (Suhaidi, Alhayyan and Tarigan, 2018).

This strategic position is very beneficial for Indonesia in various aspects, such as world trade and shipping, and has the potential to become a world maritime axis country (Sanusi *et al.*, 2024). Indonesia also has the potential and ability to influence the maritime security situation in Indonesian waters. Indonesia is also a benchmark for the maritime security situation in Southeast Asia (Marsetio, 2017). With this

strategic position, it is hoped to realize itself as a strong country and stabilize Southeast Asia (Prabakaran *et al.*, 2024).

The sea owned by Indonesia provides enormous benefits for the community, nation, and state. The vast sea has four strategic meanings, namely: 1) as a warehouse of natural resources and a medium for earning a living; 2) as a unifier of the nation; 3) as a medium of defence; and 4) as a medium of transportation. Two-thirds of international trade traffic is known to pass through the sea area (Marsetio, 2017). With this strategic position, Indonesia can play a role in global trade (López Perdomo and Guzmán Alvis, 2024). Therefore, Indonesia must be able to utilize the sea for the welfare of its people. In addition, Indonesia must also be able to realize maritime security because if maritime security is disturbed, the smooth running of the economy of countries using the sea will be disturbed (Suhaidi, Alhayyan and Tarigan, 2018).

The Indonesian sea contains abundant natural resources, especially fishery and other marine water resources, which are opportunities for various maritime activities, such as sea transportation, exploitation of marine resources, and many other marine services that can be exploited and utilized for the progress and prosperity of the nation. According to Suhaidi, there are at least 11 (eleven) potential marine economic sector resources that can be explored and utilized, namely: a) Capture fisheries; b) Aquaculture; c) Fishery product management industry; d) Marine biotechnology industry; e) Mining and energy; f) Marine tourism; g) Mangrove forests; h) Sea transportation; i) Small island resources; j) Maritime industry and services; and k) non-conventional natural resources (Suhaidi, Alhayyan and Tarigan, 2018).

Fishery marine resources are essential for the community, tiny fishermen, traditional fishermen, and the nation and state. If appropriately managed, fishery resources have immense potential and can benefit the community's welfare (Matsa *et al.*, 2024). However, lately, the availability of fishery resources has decreased due to the use of trawl nets in fishing. Therefore, early prevention efforts must be carried out to maintain the sustainability of marine resources, especially fishery resources (Methratta, 2024).

The government is present with regulations to regulate fishing activities to maintain the sustainability of fishery resources and provide legal protection for small or traditional fishermen. With these regulations, it is hoped that fishing can be controlled, the sustainability of fishery resources is maintained, and damage to the marine environment can be prevented as early as possible. Regulations related to fishing have been issued in various legal products, ranging from laws, government regulations, and presidential decrees to ministerial rules (Ramadhan *et al.*, 2024). One of the objectives of regulation is related to restrictions on the use of trawl nets. These regulations are expected to provide legal protection for marine resources, especially fishery resources, one of the goals of which is to improve the welfare of small fishermen or traditional fishermen with justice. The problem in this study is how to enforce the law prohibiting the use of trawl nets in fishing to protect small fishermen with justice.

## METHOD

This research used a normative juridical approach, focusing on the rules or norms in Indonesian positive law (laws and regulations) (Budianto, 2020). The stages of research used in the preparation of this journal are literature studies with qualitative analysis, meaning that they are sourced from rules and regulations and library sources (Cudney *et al.*, 2020). The method used in this writing is normative legal research based on literature research, namely assessing the level of data. The second level of data includes legal files, libraries, and research products. Furthermore, the primary material in conducting this research study comes from primary legal materials and secondary (Benuf and Azhar, 2020). The literature studied is used to answer the questions about the research problems posed. The data that has been collected is then carried out in a simple but in-depth analysis with several stages. The analysis process starts with collecting data and then identifying it according to the desired categorization to produce a comprehensive analysis (Irianto, 2017).

## RESULTS AND DISCUSSION

### 1. Ratio Legis Banning the Use of Trawl Nets

Fishery resources, as a national wealth, seem never to run out. Even fishery resources are a source of livelihood for coastal communities, tiny fishermen, or traditional fishermen. Historically, the interaction of coastal communities with the sea is very intensive, considering that most coastal communities depend on the sea for their livelihood, and not many are in the non-fishing sector (Gindarsah and Priamarizki, 2022). The availability of fishery resources should meet the needs of small fishing communities to improve their welfare. However, the availability of fish resources is decreasing due to fishing gear, which is caused by fishing technology used by large tonnage vessels and modern fishing gear, such as trawl nets. The use of trawl nets can damage coral reefs and mangrove forests, which are places where marine biota breed. Both types of marine biota significantly affect the availability of aquatic resources (Aida, 2011).

As a national wealth, fish resources are the main commodity for coastal communities, especially fishermen whose livelihoods are from fishing, which makes the interaction of coastal communities with the sea very intensive. The availability of fishery resources that should help meet the community's needs is decreasing due to damage to the marine environment, which is increasingly exacerbated by modern fishing technology. In addition, damage to marine biota is caused by various factors, such as the use of fishing gear, factory waste, and other marine pollution that causes damage to mangrove plants and coral reefs. Mangrove forests and coral reefs are places where marine biota reproduce, and both types of marine biota significantly affect the availability of marine resources (Aida, 2011).

The use of trawl nets also triggers conflicts between large fishermen and small fishermen or traditional fishermen because the use of trawl nets causes small fishermen to lose their livelihoods. From the perspective of legal objectives, the use of trawl nets is considered unfair. According to Frans Magnis Suseno, conflicts are not resolved according to who is strong; they are based on rules oriented towards interests and objective values without distinguishing between the strong and the weak (Nugraha and Bagiastra, 2024). Therefore, Law Number 31 of 2004 concerning Fisheries, as amended by Law Number 45 of 2009, and its implementing regulations must be enforced to protect the marine environment, especially fishery resources, and resolve

conflicts between modern fishermen and traditional fishermen to realize justice because justice is a means of unifying the order of civilized social life. Justice must be upheld to discover an orderly social life because the essence of law is justice (Koeswahyono, Maharani and Liemanto, 2022).

The amendment to Law Number 31 of 2004 is based on the fact that fishing in Indonesian waters is increasingly challenging to control, especially that carried out by large vessels with modern equipment, both domestic and foreign fishing vessels, which cannot be anticipated by the Fisheries Law (Rosari and Yasniwati, 2023). Suppose these violations are carried out continuously without strict law enforcement from the government. In that case, it will harm the country's economy and give rise to the assumption that other countries weaken its sovereignty. Realizing the consequences of using trawl nets, the state must have regulations to prohibit trawl nets and enforce the law. Because the uncontrolled use of trawl nets in fishing will result in a decline in fishery resources and threaten the sustainability of the environment of other marine resources, it is necessary to prohibit the use of trawl nets in fishing.

The prohibition of trawl nets is based on several reasons, including a) the use of trawl nets has the potential to cause ecological damage. This is because trawl nets have a construction design that, if used in inappropriate fishing areas, has the potential to cause damage to the marine environment; b) the use of trawl nets can kill the regeneration process of fishery resources because it can kill fish seeds so that the process of fishery resources will become extinct; c) damage marine biota and coral reefs; d) kill the source of livelihood of small fishermen or traditional fishermen who use conventional and straightforward fishing gear, and so on. Considering the negative impacts of trawl nets, the use of trawl nets indirectly harms small fishermen or traditional fishermen whose livelihoods depend on fishery resources.

## **2. Development of the Regulation on the Prohibition of the Use of Trawl Nets**

The prohibition of trawl nets in Indonesia has historically been carried out since 1980, with Presidential Decree Number 39 of 1980 issuance concerning the Elimination of Trawl Nets. Violating the Presidential Decree is considered an act of violating fishing permits and can be processed in Court. The threat is emphasized in Article 8, which is formulated as follows: "Fishing vessels that violate the provisions of this Presidential Decree and its implementing regulations are considered to be carrying out fishing activities without a permit so that they can be prosecuted in Court following Article 35 of the Staatbald Coastal Fisheries Ordinance of 1927.

Furthermore, in 2004, the regulation prohibiting the use of trawl nets was strengthened by the issuance and implementation of Law Number 31 of 2004 concerning Fisheries. The law firmly stipulates that fishing activities must be equipped with a Fishing Permit (SIPI). The obligation to have a SIPI for fishing vessels is regulated in Article 31 paragraph (1), which is formulated: "Every fishing vessel used to catch fish in the fisheries management area of the Republic of Indonesia must be equipped with a Fishing Permit (SIPI)." This Fishing Permit aims to select the equipment used to catch fish. With a permit, the government can control fishing activities, including the equipment used, fishing areas, weight or tonnage of the vessel used, and so on. In connection with the problem's development, 2009 Law Number 45 of 2009 concerning Amendments to Law Number 31 of 2004 concerning Fisheries was enacted (Sitanggang, 2023).



The amendment to Law Number 31 of 2004 concerning Fisheries is based on several issues in fisheries development in Indonesia, and these issues need to immediately receive serious attention from the government, the community, and parties related to fisheries development (Rafi and Pandamdari, 2023). These issues include the phenomenon of excessive fishing, acts of fish theft, the use of fishing gear that damages the ecology of the sea and fish resources, and other illegal fishing actions that cause state losses, threaten the interests of fishermen and fish farmers, the climate of the fisheries industry, and national fisheries efforts in general. These problems must be resolved seriously, quickly, and precisely. This handling is not only done by creating new legal norms but must also be followed by severe law enforcement efforts in the fisheries sector to support sustainable development. Seriousness and legal certainty are necessary in handling criminal acts in the fisheries sector, which are in synergy with efforts to protect small fishermen reasonably.

Efforts to strengthen the provisions prohibiting the use of trawl nets in fishing waters in Indonesia, then in January 2015, the Minister of Marine Affairs and Fisheries of the Republic of Indonesia issued Ministerial Regulation Number 2 of 2015 concerning the Prohibition of the Use of Trawl Fishing Gear and Seine Nets in the Fisheries Management Area of the Republic of Indonesia. The Ministerial Regulation emphasizes prohibiting the use of environmentally unfriendly fishing gear, such as trawl nets and the like, in Indonesian waters. As Subagyo said, damage to the marine environment due to actions taken without regard to the environment has not been felt and will be felt after regeneration. (Subagyo 1993). In addition, to provide legal protection for fishery resources and also small fishermen or traditional fishermen, several regulations of the Minister of Maritime Affairs and Fisheries have been issued, including Regulation of the Minister of Maritime Affairs and Fisheries Number 58/Permen-KP/2020 concerning Capture Fisheries Businesses, and Regulation of the Government of the Republic of Indonesia Number 11 of 2023 concerning Measured Fishing.

### **3. Enforcement of the Law Prohibiting the Use of Trawl Nets**

The definition of law enforcement for prohibiting the use of trawl nets is an effort to ensure that laws and regulations on fisheries are complied with. As is known, the philosophy of banning the use of trawl nets in fishing is solely aimed at protecting small fishermen and the marine environment and preventing the extinction of fishery resources in fishing areas. However, the regulation of the use of fishing gear, as well as the type and weight of the ship used, is inconsistency the interim regulations contained in Law Number 45 of 2009 concerning Amendments to Law Number 31 of 2004 concerning Fisheries, with the Regulation of the Minister of Marine Affairs and Fisheries Number 52/Men-KP/2015 concerning the Prohibition of the Use of Trawl Fishing Gear and Seine Nets in the Fisheries Management Area of the Republic of Indonesia, as well as with the Regulation of the Minister of Marine Affairs and Fisheries Number 58/Permen-KP/2020 concerning Capture Fisheries Business (Barthos and Datumbanua, 2024).

The discrepancy lies in the provisions of Article 1 number 10 of Law Number 45 of 2009, which is formulated: "Small Fishermen are people whose livelihood is fishing to meet their daily needs using fishing vessels with a maximum cumulative size of 5 (five) gross tons. Meanwhile, Article 1 number 10 of Permen-KP No.58/Permen-KP/2020 states that: "Small Fishermen are fishermen who catch fish to meet their daily needs, both those who do not use fishing vessels and those who use fishing vessels

with a maximum cumulative size of 10 gross tonnage". Meanwhile, the Minister of Maritime Affairs and Fisheries Number 52/Men-KP/2015 is regulated regarding the prohibition of trawl fishing gear types used in fishing waters (Ramadhan *et al.*, 2024).

The inconsistency of the regulation lies in the difference in the tonnage of the vessels used to catch fish in Indonesian waters. The difference in the regulation causes large-scale fishing vessels with a tonnage above 5 grams of rock stone or below 10 grams of rock stone, both domestic and foreign vessels, to be able to catch fish in Indonesian waters. The presence of these vessels has caused a lot of harm to the marine environment, such as coral reefs or coral flowers, small fish, and other aquatic biota. In addition, it also harms small-scale fishermen or traditional fishermen who live on the coast, depend on fish catches, and only use simple fishing gear, such as nets, traps, fishing rods, and the like.

The inconsistency between Law Number 45 of 2009 and Regulation of the Minister of Marine Affairs and Fisheries Number 52/Men-KP/2015 theoretically creates a conflict of norms. If tested using the principle of preference, the Minister of Marine Affairs and Fisheries Number 52/Men-KP/2015 Regulation should not have binding force (Harahap, 2024). This means that ships weighing 10 tons and using trawl nets are not allowed to fish in the fishing waters of Law Number 45 of 2009, which only allows ships weighing a maximum of 5 tons and not using trawl nets. Furthermore, the Regulation of the Minister of Marine Affairs and Fisheries Number 58/Permen-KP/2020 emphasizes the prohibition of using trawl nets.

The ministerial regulation and violation of using trawl nets is considered a fisheries crime or illegal fishing. Because the use of trawl nets is regarded as a violation of the provisions prohibiting the use of fishing equipment regulated in the legislation, each violation will be subject to sanctions according to the level of the violation itself (Fitriyono, Arief and Samekto, 2023). Theoretically, the issuance of several laws and regulations should provide a strong legal basis for the legality of the prohibition of the use of fishing gear in Indonesian waters and a basis for law enforcement.

According to the positivistic school, the law must be obeyed to realize certainty (Klare, 2017). In addition, it is also expected to provide legal certainty and protection for small fishermen or traditional fishermen to earn a living from marine resources fairly. However, with the inconsistency between these laws and regulations, the goal of protecting the marine environment, the sustainability of fishery resources, and the protection of small and traditional fishermen cannot be realized effectively. As Gustav Radbruch said, the law's achievement must not be separated from justice, certainty, and benefits (Sagama, 2016).

Efforts to realize the goal of banning the use of trawl nets to protect the marine environment, the sustainability of fishery resources, and the protection of small fishermen or traditional fishermen can be made through law enforcement efforts. Law enforcement officers have carried out these efforts following their main tasks and functions, such as Polair, Bakamla, the Indonesian Navy (TNI-AL), and the Fisheries Service. However, these efforts are considered ineffective and have not had a deterrent effect on the perpetrators. The ineffectiveness of law enforcement can be caused by various factors requiring severe attention from the government, fishing communities, and the Indonesian maritime community.

Apart from the disharmony in the regulations prohibiting the use of trawl nets and the like, as well as the weight vessels used for fishing, in addition to being caused

by the limited number of law enforcement officers, which is not comparable to the area of the fishing area. Such conditions are also followed by limited law enforcement facilities and infrastructure, such as patrol boats and violation detection tools, that still need to be added. An equally important factor that causes weak law enforcement at sea is also the low legal awareness of the fishing community, especially large fishermen who only care about themselves, without paying attention to the sustainability of the marine environment, the sustainability of fish resources in the future, and justice for small fishermen or traditional fishermen.

If the legal awareness of the fishing community is high enough, especially large fishermen, to obey the norms prohibiting the use of trawl nets, then the limitations of law enforcement officers, limitations of law enforcement facilities and infrastructure, provisions banning the use of trawl nets and the weight of ships used to catch fish, will be able to apply effectively, at least can be minimized. So that the purpose of regulating the prohibition of the use of trawl nets and the like can be minimized, the sustainability of the marine environment and the sustainability of fish resources in the future can be maintained, and justice for small fishermen or traditional fishermen can be achieved relatively (Pribadi and Syafiq, 2022).

Another weakness that causes weak law enforcement related to the prohibition of using trawl nets and other fishing gear is the existence of different perceptions related to the category of violations of the ban on fishing as violations or criminal acts (Kamal, 2018). In addition, there is also a difference between which acts are handled with guidance by the Fisheries Service and which acts are categorized as fisheries crimes, which are managed through legal processes in the Court.

#### **4. Use of Administrative Sanctions**

Law Number 31 of 2004, concerning Fisheries, has regulated various requirements related to fishing in Indonesian waters. One of them is licensing requirements that must be met by fishermen who use specific fishing equipment in the designated fishing waters. These requirements include licensing requirements, such as Fisheries Business License (SIUP), Fishing License (SIPI), Fishing Vessel License (SIKPI), and so on, which must be owned by fishing vessels (Nofendi and Artati, 2023)v.

The use of administrative sanctions in violations of the use of trawl nets is related to the licensing of the use of trawl nets and the like, as well as the weight of the vessels used in fishing. Given the importance of administrative sanctions as an instrument of law enforcement in the legislation prohibiting the use of trawl nets and the like, the legislation regulates administrative sanctions and procedures for their enforcement (Pradnya, Arthana and Pratiwi, 2020). However, it should be remembered that related to the use of administrative sanctions in regulating the prohibition of the use of trawl nets and the like, fishing vessels as the object of licensing are movable objects, and to carry out the capture of these vessels also experiences difficulties. Administrative sanctions need to be enforced through warnings, cessation of fishing activities, and revocation of permits held by fishing companies (Bima, 2022). In addition, it is also necessary to impose administrative fines for violations committed by perpetrators of violations of licensing requirements. With the imposition of these sanctions, it is hoped that it can have a deterrent effect on the violators so that the purpose of regulating the prohibition of the use of trawl nets and the like can be realized to protect and improve the welfare of small fishermen or traditional fishermen.

## 5. Use of Criminal Sanctions

So far, the legal process for resolving fisheries crimes in Indonesian waters has not been able to deter fishermen from repeating the violation of trawl net use. In the Ministry of Maritime Affairs and Fisheries's era, held by Susi Pudjiastuti, firm action was taken by seizing and sinking fishing vessels. This firm action is effective in deterring at least to minimize fish theft. However, this firm action has received criticism from various parties because it does not follow the legal process, especially the lack of a trial process as a basis for the legality of the seizure and sinking of these vessels (Fitriyono, Arief and Samekto, 2023).

In Law Number 45 of 2009 concerning Fisheries, the prohibition on the use of trawl nets is regulated in Article 9, which is formulated as follows:

- a. Every person is prohibited from owning, controlling, carrying, and using fishing gear and fishing aids that disrupt and damage the sustainability of fish resources on fishing vessels in the fisheries management area of the Republic of Indonesia.
- b. Provisions regarding fishing gear and fishing aids that disrupt and damage the sustainability of fish resources, as referred to in paragraph (1), are regulated by Ministerial Regulation.

The enactment of the provisions of Article 9 of the law further emphasizes and strengthens the legal basis for prohibiting the use of trawl nets in the Indonesian Fisheries Management Area. Prohibiting trawl nets aims to protect the marine environment and fishery resources, indirectly affecting small or traditional fishermen's welfare. The prohibition of using trawl nets in fishing waters can protect fishery resources and provide opportunities for small fishermen to catch fish using simple fishing gear (Ramadhan *et al.*, 2024).

The failure to conduct a judicial process in the sinking of ships that violate the Fisheries Law is partly due to the lengthy judicial process, the results of which do not necessarily follow expectations. In addition, the judicial process does not guarantee that the Court will find the perpetrators guilty and declare to have violated the provisions of the article on criminal sanctions regulated in Article 85 of Law Number 45 of 2009 concerning Amendments to Law Number 31 of 2004 concerning Fisheries (Barthos and Datumbanua, 2024).

The complete provisions of the article are as follows:

Any person who intentionally owns, controls, carries, and uses fishing gear and fishing aids that disrupt and damage the sustainability of fish resources on fishing vessels in the fisheries management area of the Republic of Indonesia, as referred to in Article 9, shall be punished with imprisonment for a maximum of 5 (five) years and a maximum fine of IDR 2,000,000,000.00 (two billion rupiah).

The provisions of the article determine the types of prohibited acts and the types of sanctions imposed on the perpetrators. Criminal sanctions are a form of accountability for a person for a criminal act committed. According to Choirul Huda, criminal responsibility is carried out by considering the interests of the community and the interests of the perpetrator or the act itself so that it is legitimate to be sentenced (Candra, 2013). Meanwhile, according to Choirul Huda, criminal responsibility is the responsibility of a person for the crime committed. However, in the trial process, the provisions of Article 85 are not immediately used by the judge to sentence the defendant. This is certainly understandable because, in cases of fisheries crimes, there are many difficulties faced in the process of proof, such as the location of the violation being challenging to ascertain, that it is also caused by differences in



perception between prosecutors, judges, and witnesses in cases of violations of the use of trawl nets.

### CONCLUSION

The prohibition of using trawl nets in fishing aims to protect the marine environment, preserve fisheries, and protect small fishermen reasonably. Law enforcement against the ban on the use of trawl nets is hampered by disharmony between one regulation and another; in addition to the limited facilities and infrastructure for law enforcement, the number of law enforcement officers is not comparable to the area of law enforcement, and the low legal awareness of fishermen, especially industrial fishermen who have not fully complied with existing regulations. These weaknesses can affect the realization of welfare and the statement of small fishermen who are just.

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