

Judicial bureaucratic reform in the Indonesian Fisheries Court

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Abstract. The fisheries court in Indonesia is still relatively new, established in 2004 as mandated by the Fisheries Act. In examining cases, fisheries crime is carried out by a judge. The current state of human resources in terms of competence and composition is still lacking, so bureaucratic reform for the judiciary is needed. This paper discusses procedural law practice which is held in the fisheries court as well as making judicial bureaucratic reforms in the fisheries court. This paper will use a normative juridical research method, with a statute approach and a case approach. The conclusion of this paper is the procedural law that applies to the fisheries court is regulated in Act No. 31 of 2004 jo. Act no. 45 of 2009, which can be started from the preliminary examination process to the litigation process. Whereas the bureaucratic reforms carried out can be seen from the aspect of the legal structure, including the addition of the number of ad-hoc judges in each fishery court and the competence of the judge in handling cases of fisheries crimes.

Key Words: judicial bureaucratic reform, judges, fisheries crime, Fisheries Court.

Introduction. Indonesia has potential fisheries resources that are often targeted by foreign and local fishing vessels in illegal fishing. Based on geographical location, Indonesia is an archipelago that has extensive Exclusive Economic Zone of 2.7 million km and has a very strategic geographical position which is between two oceans, thus making Indonesia rich in fish resources (Kurnia 2014). Indonesian waters have 27.2 percent of all flora and fauna species found in the world, including 12 percent of mammals, 23.8 percent of amphibians, 31.8 percent of reptiles, 44.7 percent of fish, 40 percent of mollusks and 8.6 percent of seaweed. Potential fishing resources include: large and small pelagic fish, penaeid shrimp and other crustaceans, demersal fish, molluscs and sea cucumbers, squid, corals, ornamental fish, sea turtles, sea mammals, and seaweed (Adam & Surya 2013).

The natural wealth of fisheries resources in Indonesian waters can be illustrated that fish resource was estimated for 9,931 million tons/year comprising 1,992 million ton/year (20%) in Fisheries Management Area (FMA) 718 (Arafura sea), 1,228 million/year (12%) in FMA 572 (western of Sumatera of Indian Ocean and Sunda Strait) and 1,143 million tons/year (12%) in FMA 711 (Karimata Strait, Natuna Sea, and South China Sea). Most of fish resources (49%) were in the status of overfishing with red indicator, followed by fully-exploited state(37%) in yellow indicator and only 14% in the moderate state (green indicator) (Suman et al 2016).

The availability of natural resources in the form of abundant fishery resources allows for exploitation. This is detrimental to Indonesia so there needs to be preventive and law enforcement measures in protecting fisheries resources. Therefore, a Fisheries Court was formed to address the inability of the existing judiciary to handle fisheries criminal law enforcement. Article 71 of the Fisheries Law regulates the establishment of a Fisheries Court that has the competence as a special court authorized to examine, hear, and decide on criminal actions in the field of fisheries, which are in the general court environment. For the first time, a Fisheries Court was established in the North Jakarta District Courts, Medan, Pontianak, Bitung, and Tual (Darilaut.id 2019).

The increasing number of fisheries criminal acts in the territory of Indonesia has resulted in the government issuing Presidential Decree Number 15 of 2010 dated June 17, 2010, concerning the Establishment of the Fisheries Court at the Tanjung Pinang District Court and Ranai District Court, and Presidential Decree Number 6 of 2014 dated February 6, 2014, concerning the Establishment of the Fisheries Court at the Ambon District Court, Sorong District Court (<https://www.bbc.com> 2014) and Merauke District Court.

Regarding the law enforcement process, the Fisheries Court must be in accordance with applicable procedural law and must be able to meet the principle of simple, fast, and low cost. Besides, the existence of a Fisheries Court must be supported by human resources who master the problems in the field of fisheries.

The current situation is the lack of fulfillment of human resources and the uneven distribution of fisheries ad hoc judges. In order to achieve an ideal Fisheries Court, renewal must be carried out in the context of conducting bureaucratic reform, especially in the justice structure sector, so that the existence of structures that have expertise can provide clarity and legal certainty towards law enforcement in fisheries criminal offenses. Based on what has been stated in this paper, the first problem that needs to adhere is how the procedural law practice applies to the Fisheries Court today, and the second one is how we establish the bureaucratic reform of the judge in the Fisheries Court.

The previous paper examining the impact of the courts is determined by the respective legal structures of the US and EU, and the regulatory environment is more object-oriented (Shelley & van Rijn 2014). Other papers discuss about the shift from regarding illegal fishing as fisheries management that introduces the new fisheries crime paradigm in South Africa (de Coning & Witbooi 2015); in other paper there has been an analysis about the major features of two important acts and the implementation of regulations in Bangladesh (Islam et al 2017); in other paper there are analyzed case studies of Canada Department of Fisheries and Oceans, Northwest Atlantic Fisheries Organization which is there a highlighted factor influencing scientific communication that is contingent on the characteristics of the many dynamic and science policies among decision-makers (Soomai 2017). This paper analysis the efforts to reform the bureaucracy of judges so that they can support the law enforcement process in Fisheries Court in Indonesia.

Material and Method. This paper uses normative juridical research methods (Ibrahim 2006), namely research that is focused on examining the application of rules or norms in positive law. This paper uses the right approach and a case approach (Soekanto & Mamudji 2011). The law approach is used to analyze the rules relating to Fisheries Courts, namely Law Number 31 of 2004 in conjunction with Law Number 45 of 2009 concerning Fisheries and Perma Number 1 of 2007 concerning Fisheries Courts, and case approaches are used to review the application of norms existing law in law practice especially fishery crime cases.

Results and Discussion

Practice in Indonesian Fisheries Court. The history of the establishment of the Fisheries Court is the issuance of a Joint Decree of the Minister of Maritime Affairs and Fisheries with the Deputy Chief of the Supreme Court of the Republic of Indonesia Judicial Number: SKB.04 / MEN / 2005 and WKMA / Yud / 01 / SKB / XII / 2005 dated 5 December 2005 concerning the Establishment of a Working Group Preparation for the Establishment of a Fisheries Court. The provisions of the procedural law at the Fisheries Court are necessarily the same as the provisions in the criminal procedural law as regulated in Act Number 8 of 1981 concerning Criminal Procedure Law. The process starts from the preliminary examination that begins with the investigation, and prosecution and ends in the examination of court hearings, which are tried by career and non-career judges or ad hoc judges (Khairi 2016).

Law Number 31 of 2004, in conjunction with Law Number 45 of 2009 concerning Fisheries provides a reasonably short period for cases where the evidence is complicated,

namely a 30-day investigation, 20-day prosecution, and 30-day first-degree case examination process, 30-level appeal examination day, the 30-day cassation examination rate. According to this paper, the condition of time limitation is very inconsistent with the conditions that occur in practice where the provisions for the period of examination of cases in general are very long. Besides, according to this paper, due to the large number of cases handled by the Fisheries Court at the first level, it will have an impact on the number of cases being filed to an appeal or cassation level, which will lead to an overload situation in the handling of fisheries criminal cases at the appeal or cassation level. If tested with the principle of justice that is fast, simple, and low cost (Spigelman 2004) there should be a convenience for law enforcement officials, especially prosecutors in revealing fisheries criminal cases that are being handled.

Another problem that must be resolved is the provision on time management, whereby the limited number of Fisheries Courts in Indonesia does not match the number of criminal cases that are entered and can be resolved. It has an impact on fisheries crime that must be resolved by Fisheries Court so that the fisheries crime increases.

The establishment of an existing Fisheries Court in 2010 brought enthusiasm to resolve cases regarding fisheries crime. Based on criminal statistics explained in Figure 1, there is a fairly high increase in cases. In 2016 there were 507 fisheries criminal cases resolved by the Fisheries Court; in 2017, fisheries criminal cases handled by the Fisheries Court increased to 633 cases; in 2018, the number of fisheries criminal cases handled by the Fisheries Court was 540 cases.

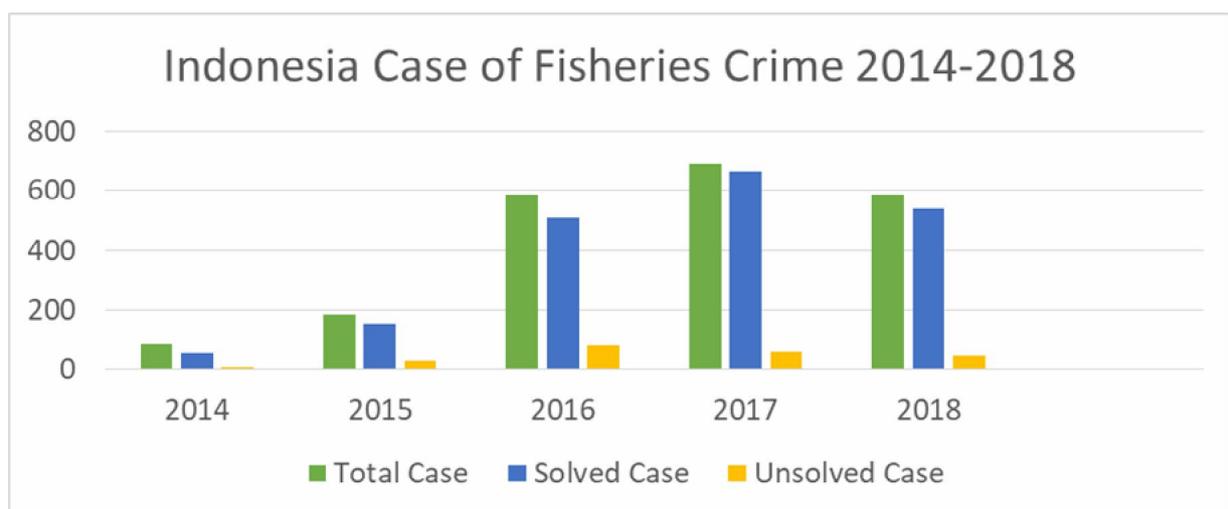


Figure 1. Fisheries crime statistics at the Fisheries Court in 2014-2018.

According to this paper, one way that can be done to avoid overloading unfinished cases is to impose a number of categories of fisheries actions that are mild enough to be eliminated using a short inspection. The process of examining short events according to Article 203 of Law Number 8 of 1981 is a case which, according to the public prosecutor, has easy proof and easy application of the law.

Judicial bureaucracy reform. The settlement of fisheries criminal cases is carried out through the Fisheries Court. Based on data from a review of the Fisheries Court by the Ministry of Maritime Affairs and Fisheries in 2019, the availability of ad hoc judges in ten courts in Indonesia is sufficient, but there is a weakness in the Fisheries Court in Sorong. In the Fisheries Court in Sorong, there is only one active ad hoc judge in existence. From the same data, it can be seen that only 30% of the ten fisheries courts in Indonesia have the number of ad-hoc judges, which in number can be formed into more than one assembly. Whereas 70% of existing courts in terms of quantity are insufficient to form more than one assembly. This will be difficult in practice. Fisheries criminal act is an extraordinary crime and therefore there must be an availability of ad hoc judges in the Fisheries Court.

In order to build a competent and authoritative Fisheries Court, it is necessary to carry out bureaucratic reform, especially in the field of justice. Bureaucratic reform is related to human resources, both in quality and quantity. Friedman (2005) pointed out the components contained in the law, which are called a legal system as described as follows:

1. the substance component is in the form of legal norms, be it regulations, decisions, and so on, all of which are used by law enforcers and those who are regulated;
2. components called structures. It is an institution created by the legal system such as a district court, an administrative court that has the function to support the operation of the legal system itself. This structural component allows the provision of services and legal expectations regularly. The substance component is in the form of legal norms, be it regulations, decisions and so on all of which are used by law enforcers and those who are regulated;
3. legal components called culture. It consists of ideas, attitudes, hopes, and opinions about the law. This legal culture is distinguished between internal legal culture, namely lawyers and judged's legal culture, and external legal culture, which is the legal culture of a society in general.

Talking about judges at the Fisheries Court is included in the aspect of legal structure. The procurement of judges (recruitment of judges) is the first step in determining whether a candidate is accepted to have sufficient integrity or not. Competence is important in accepting a judge because, after all, the court's decision is binding public and is a representation of state power (not the government) for violations of legal norms by the public. Specifically, in the field of fisheries, it is not only related to law enforcement, but also as an effort to protect claims for state sovereignty in certain sea areas. The problem is that the increase of fisheries crime is not followed by the number of judges in Fisheries Court (Harijanti 2014). It is a serious obstacle when talking about law enforcement.

Table 1 explains the number of ad hoc judges in the Fisheries Court. In 2020 and 2021, it can be seen from the data that there are Fisheries Courts that do not meet the availability of judges, namely the Fisheries Courts in Ranai, Pontianak, Bitung, and Sorong. Therefore the recruitment of ad hoc judges is needed. The way to do this is first, by selecting the ad hoc judges conducted by the Supreme Court and Ministry of Maritime Affairs and Fisheries. Second, by using detasering judges so that the number of ad hoc judges can be distributed evenly in Fisheries Courts in Indonesia.

Table 1

The number of judges in the Fisheries Court in Indonesia for the next two years

<i>Fisheries Court</i>	<i>2019</i>	<i>2020</i>	<i>2021</i>
Jakarta Utara	2	2	2
Medan	7	3	3
Tanjung Pinang	7	2	2
Ranai	2	1	1
Pontianak	5	1	1
Bitung	2	1	1
Tual	2	2	2
Ambon	3	3	3
Sorong	1	1	1
Merauke	2	2	2
Total	33	18	18

The procurement of fisheries judges is conducted through the appointment mechanism of ad-hoc judges, this precisely shows that the Supreme Court does not yet have readiness in terms of human resources, so it must rely on outside human resources. However, in hearing cases, the panel of judges in a Fisheries Court must meet the composition of two ad-hoc judges and one career judge. Career judges in the Fisheries Court are determined

based on the Chief Justice of the Supreme Court, while ad-hoc judges are appointed and dismissed by the President at the suggestion of the Chief Justice of the Supreme Court.

The obligation to compose two ad-hoc judges in the early formation of a Fisheries Court is a necessity, given that there is no adequate infrastructure in the recruitment of judges who specialize in the field of fisheries (Dirks 2017), particularly in understanding what is meant by fisheries crimes and practical knowledge regarding fisheries crimes itself.

To create quality career judges and especially ad hoc judges in Fisheries Courts, they must develop the following:

1. work culture: in addition to legal substance aspects and legal structure aspects, one of the reforms in the law enforcement process is to develop the work culture of judges. The legal culture is in the form of improving the performance of judges in examining, adjudicating, and deciding cases of fisheries criminal offenses. For examples of judges performance, especially ad hoc judges that need to be improved are building a work ethic, avoiding bribery from litigants, deepening understanding of the substance of fisheries crime cases, promoting the principle of judges in prosecuting fisheries criminal cases;

2. case handling: the increasing number of fishery cases handled by career judges and ad hoc judges in Fisheries Courts has made judges not allowed to choose in criminal cases to be examined (Soedarmayanti 2003). Therefore, the handling of criminal fishery cases must be carried out optimally starting from a preliminary process namely investigation, prosecution to a litigation process in the Fisheries Court.

Conclusions. Based on the results in this paper, the following conclusions will be drawn. First, the process of examining fisheries criminal cases is carried out at the Fisheries Court. For the settlement of fisheries crime cases, it should be done through a speedy trial so that the aim is to pay compensation quickly due to fisheries crimes. Second, given the increasing number of criminal cases, it is time to carry out bureaucratic reform in the realm of the legal structure, which is to strengthen the performance of judges through building a work culture of judges in handling fisheries criminal cases and increasing knowledge competence in handling fisheries criminal cases. Therefore judicial bureaucratic reform must be carried out to realize an authoritative Fisheries Court in Indonesia.

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