

Analisis kebijakan hukum Indonesia dalam tanggung jawab perlindungan terhadap nelayan skala kecil = Analyzes on Indonesia legal policy in duty to protect small scale fisher

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Abstrak

[Penelitian ini bertujuan untuk mengetahui dan memahami mengenai situasi umum nelayan skala kecil di dunia dan Indonesia, ketentuan hukum internasional mengenai tanggung jawab negara dalam perlindungan terhadap nelayan skala kecil serta kebijakan dan praktek Indonesia dalam perlindungan terhadap nelayan skala kecil. Penelitian dilakukan dengan menggunakan metode penelitian hukum normatif atau doktrinal dengan tiga pendekatan penelitian hukum yaitu pendekatan undang-undang (statute approach), pendekatan perbandingan (comparative approach) dan pendekatan konseptual (conceptual approach). Berdasarkan hasil penelitian Nelayan Skala Kecil berada di dalam situasi yang sulit dengan tidak dianggap sebagai bagian penting dari sektor perikanan. Padahal nelayan skala kecil memiliki berbagai keunggulan yang dimiliki seperti lapangan kerja, penyedia pangan murah dan ketahanan pangan, ramah lingkungan, hingga pemberantasan kemiskinan. Di sisi lain, ada situasi buruk yang dihadapi oleh nelayan skala kecil dari masalah kemiskinan, tata kelola tenurial, masalah akses terhadap jaminan sosial hingga ancaman perubahan iklim. Hukum internasional telah memberikan tanggung jawab kepada negara untuk melindungi nelayan skala kecil mulai dari hukum keras seperti UNCLOS 1982, UNFSA 1995, Konvensi ILO 188 Tahun 2007 hingga hukum lunak seperti Agenda 21 Tahun 1992, CCRF Tahun 1995, Pedoman Teknis FAO No. 10 serta Voluntary Guideline Securing Sustainable Small Scale Fisheries (VGSSF) Tahun 2014. VGSSF yang terbit pada Juni 2014 menggunakan pendekatan hak asasi manusia terhadap perikanan dapat menjadi pedoman negara-negara dalam melindungi perikanan skala kecil mulai dari aspek tata kelola tenurial dan pengelolaan sumber daya alam, peningkatan kapasitas hingga jaminan sosial. Dalam konteks Indonesia, dengan telah menjadi anggota pihak dari UNCLOS 1982, UNFSA 1995 serta telah meratifikasi berbagai konvensi seperti Konvensi Hak Ekosob, Hak Sipol dapat menerapkan pendekatan HAM terhadap perikanan dan bertanggungjawab untuk melindungi nelayan skala kecil. Tanggung jawab tersebut dapat dilaksanakan dengan menerapkan VGSSF 2014 di konteks nasional. Penerapan VGSSF dapat dilakukan dengan merevisi berbagai kebijakan yang dapat melanggar hak-hak nelayan skala kecil serta melalui rencana aksi nasional dan RUU Perlindungan Nelayan Skala Kecil; This study aims to identify and understand the general situation of small scale fisher in the world and Indonesia, the provisions of international law concerning the responsibility of the state in the protection of small-scale fisher as well as the policies and practices of Indonesia in the protection of small-scale fisher. The study was conducted by using the normative or doctrinal legal research method with three legal research approach such as the statute approach, the comparative approach and conceptual approach.

Based on the research, small-scale fisher are in a difficult situation for being undervalued as important sector of the fisheries sector. Though small-scale fisher have various advantages such as employment, providing inexpensive food and food security, environment-friendly, also poverty eradication. On the other hand, there is a bad situation faced by small-scale fisher i.e the poverty, governance of tenure, problems of access to

resources, social security and the threat of climate change. International law has given the responsibility to the state to protect smallscale fisher from the hard laws such as The 1982 UNCLOS, The 1995 UNFSA, The 2007 ILO Convention 188 to soft law such as The 1992 Agenda 21, The 1995 CCRF, The 2005 FAO Technical Guidelines No. 10 and the 2014 FAO Voluntary Guidelines Securing Sustainable Small Scale Fisheries (VGSSF). FAO VGSSF published in June 2014 using Human Rights approach in fisheries to guide States

in protecting small-scale fisheries ranging from Governance tenure and natural resource management, capacity building to social security. In the context of Indonesia, as being party member of the 1982 UNCLOS, The 1995 UNFSA as well as parties to ICCPR and ICESCR can implement human rights approach in fisheries has a duty to protect small-scale fisher. These duty can be implemented by applying The 2014 VGSSF in the national context. VGSSF implementation can be done through revising existing policies which may violate the small-scale

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