Harmonization of International and National Law in Managing the Marine and Fisheries Resources to Promote Sustainable Development

by Dr. Atik Krustiyati,S.H., M.S.

Email: atik.krustiyati@yahoo.com

Law Faculty, Surabaya University

Address: Jl. Raya Kalirungkut, Surabaya

Mobile +628165423825

Abstract

The theme of the international seminar is *Sustainable Development and International Law*. From this theme, the writer derived the specific topic regarding the management of marine and fisheries resources in its connection with the international law of the sea. Environmental management is undoubtedly an inseparable concept to be considered when discussing about the marine and fisheries resources. Managing environment must be done by giving an exact amount of attention to the environmental development. Moreover it also needed to seek dynamic balance between human, as individual and part of society, with its environment. Regarding this, global development should not only consider the cost and benefit ratio concept or market mechanism, but also the social cost in order to ensure the progress of sustainable development. Ecological sustainable development is one of the efforts to construct a safe, fair, peace and prosper Indonesia. This could be achieved if the government deigns to respond the strategic environmental management in global, regional as well as national framework. It means that the environmental management must be laid on the principal of sustainable use and conservation of resources to prevent ecological, economical and cultural loss. To meet this end, it needed a harmonization between national and international law instrument; and in this case is the National Law No. 45/2009 about fisheries which is the completion of Law No. 31/2004 and the UNCLOS 1982. The Law No. 45/2009 has both local and global dimension, since it accommodates the aspect of local autonomy, along with the provision stated in UNCLOS 1982. However, the implementation of this said Law could also generate problems, i.e. in substantial aspects, infrastructural and local culture which in one point might affect relation with another country. In this regards, the harmonization between international and national law is one possible solution.

Key words : Harmonisasi Sumber Daya Kelautan dan Perikanan, Sustainable Development

1. Introduction

Environmental issue is a problem for all countries in the world; therefore development should be beneficial to the welfare of human beings and should not caused environmental damage that could threaten future generations. In this regard, the ability of natural resources and environment to sustain the future must be preserved. In line with this, the World Commission on Environment and Development has formulated and issued a concept of "*Sustainable Development*". This concept means that development must meet the needs of the present without compromising the needs of future generations (World Commission on Environment and Development, 1988:59).

Furthermore in 1972, the Stockholm Declaration has also outlined the relationship between development and environment. Development without damaging the environment is commonly known as the environmental friendly development (eco development). Development with this approach does not turn down the exploitation of natural resources for benefit and welfare for human, which includes material and non-physical for present and future generation, as long as it is maintaining the quality of the environment.

To meet the purpose as mentioned above, the actions that could damage or destroy the environment should be prevented. In this approach applies the argument "*what is taken from the wild must be returned to nature, or at least replaced with something similar to nature*". This sustainable development approach requires that natural resource management can be run in a rational way (Didik Widitrismiharto, 2011:87).

At this time in Indonesia, protection of the rights of good and healthy environment is regulated in Law No. 32 of 2009 about the Protection and Environmental Management. In Article 65 it is regulated as follows:

a. Every person has the right of good and healthy environment as part of human rights;

b. Everyone is entitled to get environmental education, access to information, access to participation, and access to justice in fulfilling the right of good and healthy environment;
c. Everyone has the right to propose motion and/or objections to the business proposals and/or activities that are thought to have an impact on environment;
d. Every person is entitled to remedy a role in the protection and management of live in accordance to laws and regulations;
e. Every person is entitled to make a complaint due to alleged contamination and/or destruction of the environment;
f. Further provisions on procedures for complaint as referred to in paragraph 5 is regulated by the Minister.

When examined the provisions stipulated in article 65 of Law No. 32 of 2009, it is emphasized the position of every person, either individual or legal body, to maintain their rights of good environment and healthy living, to the possibility of interference from other parties. The next article is also an elaboration of Article 28 H Act of 1945 which entitles any person to file a claim or demand against the possibility of violating the right to a good and healthy environment.

On the other hand, the right to control the state in relation to environmental management specified in section 8 of Act No. 32 of 2009 as follows :: "Inventory of the environment at the regional level ecoregions as defined in Article 6, paragraph (1) letter c, shall determine the carrying capacity and reserves of natural resources. "From the provisions of this article appears that states have right to control natural resources, and to provide further authority to regulate them. Authority owned by the government to control environmental management policy should pay attention to the protection of the natural resources sustainability as well as artificial resources, together with genetic resources.

However, in the field of best practice, government often ignores its responsibility in maintain the sustainability of natural resources, by granting permits certain activities that may damage the environment, including marine resources and fisheries. Thus the existence of Law No. 32 of 2009, and Act No. 45 of 2009 do not guarantee the proper management of natural resources including marine resources and fisheries. According to

Lawrence Friedman's, Issues of substance is one important aspect of the rule of law, so its implementation should be followed by a legal structure and legal culture (Lawrence M Friedman: 1975, 14-15).

In addition to the provisions of article 28 H Act of 1945, whicah already mentioned above, in section 33 of Act of 1945, it is also stated that the earth, water and natural resources contained in are controlled by the state. This provision is a consequence of state authority, as organization whose power to regulate the usage and management of natural resources. This means that the control of natural resources by state is intended to be used for greater prosperity of the people. This also means that it must be able to provide benefits for the whole community, not only for specific group of people.

Basically natural resources could be defined as natural capital (natural resources stock), such as the watershed, lakes, protected areas, coastal and others. Moreover it is categorized into renewable non renewable resources (Nurjaya, 2005: 1). This big difference is intended to indicate its potential in bearing capacity and utilization.

It must be acknowledged that the damage of natural resources in Indonesia in general, and marine resources and fisheries in particular, in the last three decades is relatively serious. It is now not only a national problem but also an international Issue. From the perspective of law and policy, this problem is caused by the political paradigm of law adopted by the government. This paradigm can be seen from the legal instrument used by governments to regulate natural resources. Examined critically, it appears that the substance of these products tend to be repressive, sectoral, and focus on centralized security approach.

Given the broad dimensions of environmental aspects in development, this paper is limited to one aspect, the development of marine and fisheries resources as stipulated in Law No. 45 of 2009, which essentially adopted the provisions of UNCLOS 1982, especially on the Exclusive Economic Zone (EEZ). In addition, this paper aims to find harmony between the provisions of international law with national law, in its connection with the development of marine resources and fisheries to support the sustainable development.

Having experienced the ups and downs period for more than two decades, the international community finally signed the Convention on the Law of the Sea, known as UNCLOS 1982, as already mentioned above. The important recognition of it is the recognition of archipelagic country, so that the entire Indonesia is considered as a coherent homeland without being torn apart by high seas pockets.

If we see further back then, the international maritime law has had two updates since it regime first formed in Geneva, 1958. The first amendment, which made in 1960, was failed because there was no agreement of the parties to negotiate, especially in matters of territorial sea limit of a country. At the end of the conference, a joint proposal between Canada and the United States to find a suitable compromise for the 6 mile territorial sea and 6 miles more to fishing activities (GJ Mangone, 1981: 33). Because of failure to reach the desired agreement, the Conference I and II has left some problems that have had not resolved, such as (Starke, 1989: 254):

a. Limit of the territorial sea;
b. Right of innocent passage of ships run through international maritime straits that covers all parts of the territorial waters;
c. Right to cross the sea, the air in the islands waters;
d. Protection issues and conservation of the species for scientific reasons and tourism functions.

The Indonesia government has ratified UNCLOS in 1982 through Act No. 17 of 1985. Ratification of this step indicates the government's efforts to bring international law instruments into national law. Furthermore, the next step is the ratification of UNCLOS in 1982 to become part of positive law in Indonesia. It seems that current efforts to bring international legal instruments to the national law of a country, is not symbiotic but closely related.

However, it is inevitable that that a country is now being part of international relations network. If a country has ratified international legal instruments into its national law (e.g. ratification of UNCLOS 1982 to the Act No. 17 of 1985), then there is an obligation for countries to report what it has done in implementing the said of international instruments.

From the description above, the writer would like to once again emphasize that the ratification of international legal instruments into national law is an attempt to put closer international interests with national interests of a country. Since interdependence among countries is a necessity in globalization, it is very urgent for Indonesia to harmonize the law, both in planning and implementation. Of course the steps in doing so should be considered the national and international interest, sociological, philosophical and legal aspects, as well as practical adaptive (Muladi, 2000: 57-58).

In international law, the ratification of international treaty theoretically should be based on the approval of the head of state or government. In current practice, ratification has further meaning than just the act of confirmation. Ratification is now considered as the delivery of a formal statement by a state of consent to be bound by a treaty.

The importance of ratification is now increasing due to the development of government constitutional system that gives power to make treaty towards various organs (Atik Krustiyati, 2011: 5). Any international agreement made by a country must be ratified by each participating country. The endorsement or ratification usually set out in the constitution of each country concerned.

The ratification of the treaty is formulated in article 2 (1.b) Vienna Convention on the Law of Treaties 1969 as follows: "Ratification .... mean in each case the international act so named whereby a State establishes in the international plane its consent to be bound by a treaty. Thus implies that ratification is not legal issues only, in particular international treaty law, but also a matter of constitutional law, because the procedure of ratification is regulated in the regulation of country concerned.

Each country has different approach in ratification procedure. For example in the UK, ratification is based on the act or acts committed by the king's endorsement. (Ian Brownlie, 1979: 609). In Indonesia, as regulated in Law No. 24/2000, ratification takes form of Law and Presidential Decree (Article 9 of Law No. 24/2000). Furthermore, in Article 10 of Law No. 24/2000 ratification/approval will be done in the form of an Act include the following:

a. Politics, peace, defense, and security;
b. Changes in the region, or the demarcation of the territory of the Republic of Indonesia;
c. Sovereignty or sovereign rights;
d. Human Rights and Environment;
e. Establishment of new legal rules;
f. Foreign debt and loans

Thus the measure of ratification is really an outline of harmonization of international law on the one hand and national law on the other side.

Harmonization is generally related with conformity. In Blacks Law Dictionary it states that: the phrase in harmony with is synonymous with in agreement, conformity, or accordance with, which means there is compliance or alignment (Henry Campbell, 1990: 718). In relation to international law, the harmonization efforts can be seen from the interaction between international law with national law, or in other words how the relationship between national law with international law.

Theoretically international law and national laws may constitute a single entity or a separate system. In this regards, Martin Dixon stated that the Interaction between international law and national law or is often called municipal law demonstrated the struggle Between State Sovereignty and the international legal order. The international legal order seeks to organize international society in accordance with the general interest of the international community, while state Sovereignty can be used to protect a state aginst intervention of international law into its national system. (Martin Dixon, 1991: 106}

There are two approaches that discussed the status of international law to national law, known as the theory of monism and dualism. The theory of monism views international law and national law as an integral part of the same system, so it does not need a special adoption or transformation. Meanwhile duality theory is based on the assumption that international law and national laws is a two different system and necessary for the transformation or the specific adoption (M.M. Rebecca Wallace, 1993: 3).

In line with that, Sugeng Istanto stated that the difference between the theory of monism to dualism is situated on the strength of binding. It means that national law binding to individuals, whereas international law binding to individual collectively (Sugeng Istanto, 1991: 5).

Up to now, there is still debate in Indonesia over the theory of monism or dualism, where each group has argued in accordance with their respective viewpoints. According to Mochtar Kusumaatmadja, Indonesia, as a sovereign state, does not embrace the theory of monism and dualism, but immediately consider binding in duty to implement and comply with the provisions of treaties or conventions that have been passed without the need to reconvene the implementation of legislation (Mochtar Kusumaatmadja, 1982: 87). In fact any of the provisions of international treaties must be ratified by the legislative (Parliament), before it becomes binding law in the country.

. **Improvement and Utilization Potential for Sustainable Development in order to Sea.**
As already described above, discussion about marine resources and fisheries, can not be separated from environmental issues. It is based on the consideration that the marine resources and fisheries is one part of the environment problems. Various normative rules used for foundation of this paper are Act No. 32 of 2009, Act No. 45 of 2009 and Act No. 6 of 1996. In addition to state approach, this paper is also based on a conceptual approach with reference to the opinion of the scholars.

Marine resources and fisheries is one based resources owned by the government of Indonesia and has a competitive advantage to drive the national economy. In this regard, then it is time 5to further develop the marine and fishery resources. Thus, reorientation of development policy based on the industrial resources to the marine resources and fisheries is now an inevitable demand.

The argument above is triggered by facts such as a moratorium on forestry and increasing amount of conversion of agricultural land into residential and other uses, which narrowing the area of productive land. There has been increasing awareness of the importance of

marine and fisheries sectors due to the successful of some countries in construction sector, such as Norway, Thailand, and South Korea. (Freddy Numberi, 2006: 2).

Related to the previous explanation, by definition, UNCLOS applies internationally since 16 November 1994 after the deposit of ratification instruments of the 60th accession. Under the UNCLOS 1982, Republic of Indonesia has became the country's largest archipelagic state in the world which has more than 17.4999 islands, with extensive sea reached 5.8 million kilometers and a coastline of approximately 81,000 km. Therefore it's not extraordinary to state that UNCLOS 1982 is an adhesive belt of Indonesia (Soenaryo: 2006, 1).

Archipelagic state which was proclaimed by Juanda Declaration in December 13, 1978 has been gone through long struggle to gain international recognition. The struggle finally generated result with the inclusion of the concept of an archipelago in the 1982 UNCLOS, as already described above. Consequence of the ratification of UNCLOS 1982 to the Act No. 17 of 1985 is broader authority to utilize all the potential of marine resources in its territory until it comes out the boundaries of the territory of a country that is d exclusive economic zone and continental shelf. (Sarwono Kusumaatmadja, 2000: 1).

In the implementation, Indonesa is also given the authority to exercise supervision over the sea in the form of sovereignty over its territory, or jurisdiction over marine resources on the continental shelf and exclusive economic zone. Furthermore, according to Sarwono there are three basic things that must be considered in the management of marine areas. First, the sea is an entity that is difficult to split, and therefore need a global setting. Second, cross-border nature of marine resources and fisheries requires setting up a regional basis. Third, activity originating from the ground can cause damage to the marine environment, and therefore requires effective management at the national level, and must be supported by international cooperation.

In accordance with international agreements, rights and obligations of the state in utilizing natural resources in the sea can not be separated from the legal status of different parts of the ocean. Roughly it is divided into several groups:

a. Under the full sovereignty of the state, including inland waters, the archipelagic waters, territorial sea and the seabed and land located in the three maritime zones;
b. Exclusive sovereign rights, including marine resources and fisheries in the EEZ and continental shelf;
c. The principle of freedom on the high seas, the EEZ and high seas;
d. Common heritage of mankind, covering the ground beneath the seabed beyond the continental shelf (international sea-bed or the area)

From the description it can be concluded that the utilization of marine resources and fisheries should pay attention to the jurisdiction or authority of the state of the sea that also taking into account the legal status of the sea which differentiated into various kinds of territorial waters and seabed. Even in some economic considerations are also used in the management of marine areas. However if economic considerations are put forward (grand design that puts the economy as the chief development) then it could provide a threat to environmental damage. The nature of development as a motor of empowerment will lose its meaning because the adverse effects of environmental degradation that brought about (flooding, erosion, degradation of agricultural soil fertility, etc.)

Thus, juridical rights and obligations of state towards natural resources are different in terms of the executions. This is due to the following matters :

a. Various legal regimes both nationally and internationally;
b. The duty to accommodate various interests of the international community, such as the right to cross for foreign vessels, traditional fishing rights in neighboring countries, the right of laying cables and pipelines on the seabed, etc;
c. Jurisdictional differences in different areas, inland waters, territorial sea, archipelagic waters, EEZ and continental shelf;
d. Mandate (the right and obligation) to remedy a variety of agencies utilizing the sea;
e. Concentration of most development activities and development of land resources in style.

Separation of sea into various maritime zones with a set of different rights and obligations as mentioned above might cause conflict with the goal to establish effective marine management in the framework of sustainable development. Regarding to this, it is require

an integrated management of international interest with national interest based on the principles that already agreed. Even at the national level, the problem could increase due to matters relating to the administrative jurisdiction issues between central and local governments and other inter-related sectors.

Thus, when speaking about the improvement utilization of the sea in order to establish sustainable development, it is also implies to the marine environmental protection efforts, as also provided in Article 192 and Article 193 of UNCLOS in 1982. This means that in order to make the exploitation of marine resources as part of a country's sovereign rights which exist under national law of each country, the country also have an obligation to protect the marine environment as provided for in UNCLOS 1982. Even if there is a specific obligations set out in an international convention on the protection of the sea, then each country must keep it (Article 237 of UNCLOS 1982). From this it appears that there is a correlation between international law and national law in relation to the protection of the marine environment.

4. Conclusion and Recommendations

a. The need of regulation improvement (legal means), especially regarding the issue of supervision and management of marine resources and fisheries. This relates to the entry of foreign vessels fishing in deep water without a permit and the EEZ. This issue arose because Indonesia has not been able to manage the maximum due to limited human resources and equipment. If this is not likely to be strictly regulated natural resources we have can only be enjoyed by the foreign ship.
b. Given that marine resources and fisheries have unique characteristics, such as a single entity that are difficult to separate and take the settings that are global, requiring cross-border regional and international cooperation, the harmonization effort between international and national interests is very necessary.
c. Management of natural resources in general and marine resources and fisheries in particular should pay attention to dynamic balance which includes economic, ecological and socio-cultural. The third aspect is important in order to avoid ecological loss, loss of economic resources, as well as social and cultural loss.

d. Development of marine resources and fisheries should be well-planned and conducted systematically through an interdisciplinary and multidisciplinary approach, which also cover cultural, managerial, ethical, moral and legal aspects. Moreover, the efforts shall undertaken by the strong political commitment through proper enforcement that is consistent and direct in national or international level.

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PROCEEDING

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MAHASARASWATI DENPASAR UNIVERSITY
Kamboja Street No.11A Denpasar, Bali, Indonesia
Tlp. (0361) 227019, Fax: (0361) 227019
Http://www.unmas.ac.id, Email: info@unmas.co.id

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OPENING REMARKS

Kopertis Wilayah VIII Bali Nusra

Om Suastiastu, Good Morning, Good prosperity for all of us.

Om Suastiastu , Good morning , Good prosperity for all of us. It is a great honor for being with us , the Rector and Vice Rectors of Mahasaraswati Denpasar university, Perguruan Rakyat Saraswati foundation, the committees, the participants, invitations and all ladies and gentlemen.

In the beginning of this speech, let us praise Ida Hyang Widhi Wasa and rise up our thanks to Him for showering us with His Blessing so that we all can gather here to attend "The International Conference On Sustainable Development"

On behalf of the Coordinator of Private University Region VIII, I would like to congratulate to Mahasaraswati Denpasar university for the sixth Lustrum celebration and I hope that Mahasaraswati Denpasar University increased and become qualified university. Ladies and Gentlemen, globalization is an inevitability of time inevitably encountered by any country in the world. The Era of globalization requires the people to be always ahead in every age, making development for the sake of development is sometimes far from an order. It requires us to continue to grow. Therefore, Education for Sustainable Development (EfSD) become increasingly meaningful role in the world of education.

EfSD is born coinciding with the condition the contemporary world facing increasingly complex issues and leads to chaos. It looks ever increasing world population growth exceeds the capacity of the Earth's natural productivity. The development of rapid communications and transportation, the birth rate which is a huge problem in globalization, trade, environment, poverty. Through EfSD, it is expected to wake up the community or nation which was able to build, develop, implement action plans that lead to sustainable development.

The concept of sustainable development is a pattern of utilization of resources to meet human needs while maintaining the environment, so that not only meet the needs of today but also for future generations. Sustainable development as development that meets

the needs of the present without compromising the ability of future generations to meet their own needs. EfSD is education in support of sustainable development, namely education which gives awareness and ability to everyone especially future generations to contribute better for sustainable development in the present and future.

EfSD emphasizes on three pillars: economic, environmental, and ecological or social. These aspects are mutually. For example, the health and welfare of society depends on a clean environment as a place to meet their needs such as getting food and resources, clean water, and clean air. Sustainable means thinking about the future, where the environment, society and economy into consideration so that it obtained a balance in development and efforts to improve the quality of life.

The function of EfSD as follows : first, the community nation woke up to a capacity that is able to build, develop, and implement a plan of activities that lead to sustainable development, i.e. activities that support economic growth in a sustainable way by considering the ecosystem. Second, to educate in order to be aware of individual responsibility that should be contributed, to respect the rights of others, and natural diversity, can determine the choices/decisions are responsible, and be able to articulate it all in real action. Third, the growing commitment to contribute to the realization of a better life, a world that is more secure and comfortable, either now or in the future. We need to differentiate between education about sustainable development and education for sustainable development. The first had the meaning of learning for the mindfulness or theoretical discussion. While the second , used as an effort, education as a tool or a way to reach sustainability . Of course that is not just theoretical discussion. The community is on target to reach EfSD, elements of society ranging from kids to adults, adolescents, the elderly, men, women, groups and classes of any community is the place to be implanted seeding. EfSD in local communities must be due to the impact of sustainable development and sustainable development is not perceived directly at the local level. Thank you.

Om Santi, Santi, Santi Om

Koordinator Kopertis Wilayah VIII Bali Nusra

Prof. Dr. Ir. I Nyoman Sucipta, MP

CONGRATULATORY REMARKS

Dear Distinguished Participants, Ladies and Gentleman

I am extremely delighted to be here with you this morning, and have a great privilege and honor to deliver congratulatory remarks at the opening ceremony of International Conference on Sustainable Development (or shortly we call ICSD). This event is result of fine collaboration among Mahasaraswati Denpasar University, Ministry of Education and Culture of the Republic of Indonesia, University of Florida, USA and BanSomdejchaophraya Rajabhat University, Thailand.

I would like, first of all, to extend my warmest welcome to all the participants to this conference who came to Sanur Bali not only from various region of Indonesia, but also from USA and Thailand. My sincere thanks also to all those involved in the preparation for this conference for their outstanding efforts and ingenuity they have put into this important event.

The ICSD conference is promote the theme of "Engaging Science, Technology and Culture to Accelerate the Achievement of Sustainable Development". This is realized by providing an inter-disciplinary forum on sustainable development for practitioners and academics at the international as well as domestic levels. This conference will serve as a vehicle to foster dialogue among various stakeholders for exchanging and sharing all of their experiences and research results, about all aspects of sustainable human and social development, and discuss the practical challenges encountered and the solutions adopted.

Furthermore, we welcome critical contributions from experts and stakeholders in all areas sectors, who are working in the area of sustainable development. From this it will emerge a more integrated, reflective, balanced, and applicable series of approaches for international, regional and local development.

I would like to take this opportunity to reiterate Mahasaraswati Denpasar University strong commitment to vigorously contribute to the sustained development and to its achieving the Millennium Development Goals by 2015. This conference is special ways for us for engaging our vision "to be the flagship university of higher education based cultural tourism" Sustainable cultural tourism need to borderless science, technology and culture for achieving sustainable living. We sincerely hope the ICSD will be able to take the first step toward integrating natural science and social science as well as modern (western) science and local (ethno) science.

Distinguished Participants, Ladies and Gentleman

Those are all the major things that I have deliver on this opportunity. Finally, on behalf of Mahasaraswati Denpasar University and partners, I officially saying thank you very much, for Prof Dr I Wayan Sucipta, MS (Coordinator of Indonesia Privete College Region VIII) who has been given opening remark;

Christopher Silver, PhD, FAICP (Dean and Professor College of Design, Construction and Planning University of Florida, USA), Prof Dr Emil Salim (Former Minister of the Environment of the Republic of Indonesia), Professor Dr. Supol Wuthisen (The President of BanSomdejchaophraya Rajabhat University, Bangkok) , Dr Kevin Thompson (Associate Professor and researcher from University of Florida, USA) as speakers on plenary session; more than 70 speakers both for oral and poster presentation, and other participants on this event.

Rector of Mahasaraswati Denpasar University

Tjok Istri Sri Ramaswati, SH., MM

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