

ELUCIDATION OF  
LAW OF THE REPUBLIC OF INDONESIA  
NUMBER 45 OF 2009  
ON  
AMENDMENT TO LAW NUMBER 31 OF 2004  
ON FISHERIES

I. GENERAL

Indonesia as an archipelagic country, which most of its area consists of sea, has considerable and diverse potency of fisheries. The fisheries potency is economic potency which is able to be utilized for state future, as backbone of national development. Optimum utilization is directed to exploit fish resources by taking into account existing supporting capacity and its preservation to improve people's prosperity, improve standard of living of small-fisher and small-fish farmer, increase state revenue from foreign exchange, provide work opportunity, improve productivity, value added and competitiveness of fisheries products as well as secure fish resources sustainability, fish cultivation area and spatial plan. It means that utilization of fisheries resources should be proportionate to its supporting capacity, so that expectedly, it could give sustainable benefit. One of them is by the way of controlling over fisheries business through fisheries management arrangement.

United Nations Convention on the Law of the Sea 1982 already ratified by Law Number 17 of 1985 on Ratification of United Nations Convention on the Law of the Sea 1982, provides Indonesia with sovereign rights to do utilization, conservation and fish resources management in Exclusive Economic Zone (EEZ) Indonesia, and High Seas performed based on the prevailing international requirements and standard.

Therefore, it is necessary establish legal basis of fish resources management which is able to accommodate all aspects of fish resources

management and anticipate the development of the need for law and technology. Enactment of Law Number 31 of 2004 on Fisheries can expectedly anticipate and simultaneously serve as solution to significant change in the field of fisheries, either those relating to availability of fish resources, preservation of fish resources environment, or development of fisheries management method which is getting more effective, efficient, and modern.

On the other side, there are some issues in the fisheries development which needs all party's attention, either the government, public or other party relating to fisheries development. The issues are among others existence of excessive fishing, fish theft, and other illegal fishing which is not only inflicting a loss to the country, but also threatening the interest of fisher and fish farmer, industrial climate, and national fisheries business. The issue should be resolved seriously, so that law enforcement in the field of fisheries would become very important and strategic in the framework of supporting controllable and sustainable fisheries development. Legal certainty would be an absolute condition which is necessary in handling criminal act in fisheries sector.

However, in its reality, Law Number 31 of 2004 on Fisheries has not yet been able to anticipate the development of technology as well as development of legal need in the framework of management and utilization of fish resources potency and has not yet been able to overcome the issue. Therefore, it is necessary to make a change to some substances, either those relating to management, bureaucracy, or legal aspect.

Weaknesses to fisheries management aspect are among others non-available of inter-agency coordination mechanism relating to fisheries management. While in bureaucracy aspect, there is a conflict of interest in fisheries management. Weakness in legal aspect is among others law enforcement, sanction formulation, and jurisdiction or relative competence of the court of first instance against criminal act on fisheries occurring beyond authority of the court of first instance.

In consideration of some weaknesses as contained in Law Number 31 of 2004 on Fisheries, it is necessary to make amendment to the Law, consisting of:

First, regarding supervision and law enforcement relating to inter-investigating institutions coordination mechanism in handling the

criminal act investigation on fisheries, application of sanction (criminal or fine), law of procedure, particularly those relating to determination of period of case examination, and facility in law enforcement on fisheries, including possibility of applying legal act in terms of sinking of foreign vessel operating in the fisheries management area of the Republic of Indonesia.

Second is fisheries management issue of among others fishing port, conservation, permit, and office of the harbormaster.

Third, it is necessary to expand jurisdiction of fisheries tribunal so as to cover the entire territory of fisheries management area of the Republic of Indonesia.

Besides, the amendment to Law Number 31 of 2004 on Fisheries is also favorable to small fisher and small-fish farmer, among others: in permit aspect, obligation to apply provision on utilization fishery vessel monitoring system, fisheries levy, and criminal sanction imposition.

## II. ARTICLE BY ARTICLE

### Article I

#### Point 1

##### Article 1

Sufficiently clear.

#### Point 2

##### Article 2

###### Point a

The term “principle of benefit” means principle indicating that fisheries management must be able to give profit and benefit to the most extent possible for prosperity and wealth of people.

###### Point b

The term “principle of justice” means fisheries management must be able to give same opportunity and chance proportionally to all citizens, nothing excepted.

Point c

The term “principle of cooperation” means fisheries management must be able to engage all stakeholders in order to attain prosperity for fisheries society.

Point d

The term “principle of partnership” means fisheries management is made by approach of businessperson network strength and resources considering equality aspect in doing business proportionally.

Point e

The term “principle of independence” means fisheries management is made by optimizing existing fisheries potency.

Point f

The term “principle of distribution” means fisheries management is made proportionally and equally, by taking into account small fisher and small-fish farmer.

Point g

The term “principle of integrity” means fisheries management performed integrated from upstream to downstream in the framework of improving efficiency and productivity.

Point h

The term “principle of openness” means fisheries management is made by taking into account people’s aspiration and supported by availability of information that can be accessed by public.

Point i

The term “principle of efficiency” means fisheries management is made appropriately, properly and efficiently to obtain maximum results.

Point j

The term “principle of sustainability” means fisheries management is made optimally by keeping taking into account fish resources sustainability aspect.

Point k

The term “principle of sustainable development” means fisheries management is made by good planning and

able to improve prosperity as well as wealth of people by prioritizing preservation of environmental function at present and in the future.

Point 3

Article 7

Section (1)

Point a

Sufficiently clear.

Point b

Sufficiently clear.

Point c

Sufficiently clear.

Point d

Sufficiently clear.

Point e

Sufficiently clear.

Point f

Sufficiently clear.

Point g

Sufficiently clear.

Point h

Sufficiently clear.

Point i

Sufficiently clear.

Point j

Sufficiently clear.

Point k

The term “fishery vessel monitoring system” means one of forms of monitoring system in the field of fishing by using fishing vessel monitoring equipment as already determined, such as fishery vessel monitoring system/VMS.

Point l

In the framework of improving productivity of a certain waters, spreading of new species of fish could be made, which is possible to result in

negative impact to local fish resources sustainability so that it is necessary to consider that spreading of new species of fish could adapt to local fish resources environment and/or not harming the genuine of the fish resources.

Point m

The term “aquaculture-based fish capture” means catching of fish resources proliferating from re-spreading.

Point n

Following the development of technology, aquaculture is no longer limited to pond or aquaculture pond, but also in river, lake and sea. Since these waters relate to public interest, it is necessary to designate location and extent of area as well as procedure in use in order not to disturb public interest.

Besides, it is necessary to stipulate provisions aiming at protecting the aquaculture, for example, pollution of fish resources environment.

Point o

Sufficiently clear.

Point p

There are some ways to try in performing rehabilitation and improving fish resources and its environment, among others, by planting or reforestation of mangrove, placement of artificial reef, and construction of place for vessel to shelter or proliferate, improvement of waters fertility by the way of fertilizing or addition of type of food, construction of fish migration line, or waters base dredging.

Point q

Sufficiently clear.

Point r

The term “marine conservation area” means protected marine area, managed by zoning

system, to materialize sustainable fish resources management and its environment.

Point s

Stipulation of epidemic and area of epidemic of fish disease is aimed at making people know that there is an epidemic in the area, and stipulating prevention steps from spreading of fish epidemic from one area to another area.

Point t

Sufficiently clear.

Point u

Sufficiently clear.

Section (2)

Sufficiently clear.

Section (3)

Sufficiently clear.

Section (4)

Sufficiently clear.

Section (5)

The term “experts” consists of expert, academician, and official of relevant government institution having competence in fish resources sector.

Section (6)

The term “fish species” means:

- a. fin fish (*pisces*);
- b. shrimps, small crabs, crabs and other similar animal (*crustacea*);
- c. mussels, oysters, squids, octopus, snails and other similar animals (*mollusca*);
- d. jelly fish and other similar animals (*coelenterata*);
- e. sea cucumbers, sea urchin and other similar animals (*echinodermata*);
- f. frogs and other similar animals (*amphibia*);
- g. crocodiles, turtles, tortoises, monitor lizards, snakes, and other similar animals (*reptilia*);
- h. whales, dolphins, porpoises, dugongs and other similar animals (*mammalia*);

- i. seaweeds and other plants living in water (*algae*);  
and
- j. other water biota relating to the foregoing species;  
all include the parts thereof and protected fish.

Point 4

Article 9

Fishing gear and/or fishing accessories hampering and damaging the fish resources sustainability are among others include trawl net or large trawling net, and/or compressor.

Point 5

Article 14

Section (1)

The term “genetic resources” means substance existing in group of living creatures and means a resource or generative characteristics which may be utilized and developed or assembled into new leading species, to protect the existing genetic resources so that it will not be lost, extinct or damaged, other than to protect the ecosystem.

Section (2)

Sufficiently clear.

Section (3)

The term “new species of fish” means non-original fish and/or fish not originating from nature (land and sea territory of Indonesia) familiar and/or known to be introduced into the Indonesian Fisheries management area or fish as a result of purification, either locally or abroad.

Section (4)

Sufficiently clear.

Section (5)

Sufficiently clear.

Point 6

Article 15A

Sufficiently clear.



Point 7

Article 18

Section (1)

Management of water and area of aquaculture is aimed at optimizing distribution and water utilization, according to technical need of fish cultivation and avoiding any use of land which may harm aquaculture, including availability of greenbelt.

Section (2)

Sufficiently clear.

Section (3)

Sufficiently clear.

Section (4)

Sufficiently clear.

Point 8

Article 23

Section (1)

Sufficiently clear.

Section (2)

Sufficiently clear.

Section (3)

Obligation to disseminate raw materials, food supplements materials, auxiliary materials, and/or jeopardized devices, including allowable materials or devices.

Point 9

Article 25

Sufficiently clear.

Point 10

Article 25A

Sufficiently clear.

Article 25B

Sufficiently clear.

Article 25C

Section (1)

Fisheries industry is among others include industry operating in provision of facility and means of fish capture and fisheries processing industry.

Section (2)

Sufficiently clear.

Section (3)

Sufficiently clear.

Point 11

Article 27

Section (1)

Sufficiently clear.

Section (2)

Sufficiently clear.

Section (3)

The term “original SIPI” means SIPI which is not photocopy and/or copy which is identical to the original one, or as drawn up by incompetent official.

The term “bringing original SIPI” means obligation of every person to put and/or maintain original SIPI on fishing vessel which is under operation.

Section (4)

Sufficiently clear.

Section (5)

Sufficiently clear.

Point 12

Article 28

Section (1)

Sufficiently clear.

Section (2)

Sufficiently clear.

Section (3)

The term “original SIKPI” means SIKPI which is not photocopy and/or copy which is identical to the

original one, or as drawn up by incompetent official.

The term “bringing original SIKPI” we mean obligation of every person to put and/or maintain original SIKPI on fishing vessel which is under operation.

Section (4)

Sufficiently clear.

Point 13

Article 28A

Sufficiently clear.

Point 14

Article 32

Sufficiently clear.

Point 15

Article 35A

Sufficiently clear.

Point 16

Article 36

Section (1)

Registration of fishery vessel is contained in book in use to fulfill requirement of issuance of SIPI or SIKPI. The said ship book does not serve as deed of vessel registration being requirement to issue Certificate of nationality of Indonesian Vessel for any vessel flying Indonesian flag as its national flag.

Section (2)

Registration of fishery vessel is equipped with documents, among others indicating Name of Vessel, Register Number, Radio connecting sign, place of vessel building, type of vessel, Method and type of fishing gear, Tonnage, Length, Depth, engine power, Vessel drawing, Name and address of owner, Name of Company using the vessel, an History of ownership as contained in ship book.

Section (3)

Sufficiently clear.

Section (4)

Fishery vessel which certificate of nationality is going to be processed is first be registered in ship book.

Section (5)

Sufficiently clear.

Point 17

Article 41

Section (1)

Sufficiently clear.

Section (2)

Point a

Sufficiently clear.

Point b

Classification of fishing ports includes among others ocean fishing ports, national fishing ports and coastal fishing ports.

Point c

Sufficiently clear.

Point d

Sufficiently clear.

Point e

For support and smooth operation of fishing ports, working area and operation area borders are stipulated in geographic coordinate.

If the working and operation area of fishing ports are bordering to and/or have similar interest with the other agency, stipulation of the borders is made through coordination with the relevant institution.

Point f

Sufficiently clear.

Section (3)

Sufficiently clear.

Section (4)

The term “load and unload the captured fish” also means including putting a shore of fish.

Section (5)

Sufficiently clear.

Point 18

Article 41A

Sufficiently clear.

Point 19

Article 42

Section (1)

The term “harbormaster in the fishing port” means harbormaster as placed specially in fishing ports for administrative arrangement and to perform function of maintaining shipping safety.

Section (2)

Point a

Sufficiently clear.

Point b

Sufficiently clear.

Point c

Sufficiently clear.

Point d

Sufficiently clear.

Point e

Sufficiently clear.

Point f

The term “log book” means written daily report of master regarding fishing or fish carrying activity.

Point g

Sufficiently clear.

Point h

Sufficiently clear.

Point i

Sufficiently clear.

Point j

Sufficiently clear.

Point k

Sufficiently clear.

Point l

Sufficiently clear.

Point m

Sufficiently clear.

Point n

Sufficiently clear.

Point o

Sufficiently clear.

Point p

Sufficiently clear.

Section (3)

Sufficiently clear.

Section (4)

Proposal to appoint harbormaster is first coordinated with the Minister.

Section (5)

Sufficiently clear.

Section (6)

Sufficiently clear.

Point 20

Article 43

Sufficiently clear.

Point 21

Article 44

Sufficiently clear.

Point 22

Article 46

Section (1)

In the framework of arrangement of plan of development of fisheries data and information system and statistics into the progress thereof, data on

techniques, production, processing, marketing of fish, and socio-economic data describing about utilization of the available fish resources is established.

The data and information are among others:

- a. types, quantity, and size of fishery vessel;
- b. types, quantity, and size of fishing gear;
- c. fishing ground and fishing season;
- d. total capture or total output of aquaculture;
- e. size of area and fisheries management area;
- f. total fishers and fish farmers;
- g. species of existing fish;
- h. size of captured fish and spawning season;
- i. data on export and import of fisheries commodities; and
- j. information on certain requirements relating to standards of export.

Section (2)

Sufficiently clear.

Point 23

Article 46A

Sufficiently clear.

Point 24

Article 48

Section (1)

Any persons operating fishing or aquaculture in the seas or other waters in fisheries management area of the Republic of Indonesia will be subject to fisheries levy because they have directly enjoyed the benefit of fish resources and/or the environment thereof.

Section (1a)

Sufficiently clear.

Section (2)

Sufficiently clear.

Point 25

Article 50

Sufficiently clear.

Point 26

Article 65

Sufficiently clear.

Point 27

Article 66

Sufficiently clear.

Point 28

Article 66A

Sufficiently clear.

Article 66B

Sufficiently clear.

Article 66C

Sufficiently clear.

Point 29

Article 69

Section (1)

The term "fisheries surveillance vessel" means a government ship with special signs to conduct surveillance and law enforcement in the field of fisheries.

Section (2)

Sufficiently clear.

Section (3)

Detention of vessel is implemented in the framework of an act of bringing a vessel to the nearest port and/or waiting for the temporary following processes.

Section (4)

The term "adequate preliminary evidence" means preliminary evidence to allege any criminal act on fisheries by fishery vessel flying foreign flag, for



example, the fishery vessel flying foreign flag has no SIPI and SIKPI, and obviously capture and/or transport fish when entering into fisheries management area of the Republic of Indonesia.

This provision indicates that the special act cannot be made inappropriately, but it is only made if the fisheries investigator and/or inspector believe that the fishery vessel flying foreign flag really commits criminal act on fisheries.

Point 30

Article 71

Sufficiently clear.

Point 31

Article 71A

Sufficiently clear.

Point 32

Article 73

Section (1)

Sufficiently clear.

Section (2)

Investigation performed by Fisheries Civil Servant Investigators is coordinative with Navy Investigator for more efficient and effective investigation based on Joint Standing Procedure.

Section (3)

Sufficiently clear.

Section (4)

Coordination is required not only for smooth implementation of task of investigator, but also it is aimed at facilitating communication and data exchange, information, and other things so needed in the framework of effectiveness and efficiency of handling and/or resolution of criminal act on fisheries.

Section (5)

Coordination forum to handle criminal act on fisheries as referred to in this provision is enable any region to establish the same pursuant to need.

Point 33

Article 73A

Sufficiently clear.

Article 73B

Sufficiently clear.

Point 34

Article 75

Section (1)

Principally, appointment of public prosecutor is authority of Attorney General. However, on behalf of Attorney General, it is enable to delegate or assign to official within Attorney General's Office of the Republic of Indonesia according to his/her competence, taking into account total cases that must be handled are quite high and spreading throughout the territory of the Republic of Indonesia and considering business and intensity of Attorney General.

Section (2)

Sufficiently clear.

Point 35

Article 76

Sufficiently clear.

Point 36

Article 76A

Sufficiently clear.

Article 76B

Sufficiently clear.

Article 76C

Section (1)

Sufficiently clear.

Section (2)

Sufficiently clear.

Section (3)

Sufficiently clear.

Section (4)

The term “appreciation” means among others in terms of incentive, certificate and promotion.

Section (5)

Sufficiently clear.

Section (6)

Sufficiently clear.

Point 37

Article 78A

Sufficiently clear.

Point 38

Article 83A

Sufficiently clear.

Point 39

Article 85

Sufficiently clear.

Point 40

Article 93

Sufficiently clear.

Point 41

Article 94A

Sufficiently clear.

Point 42

Article 98

Sufficiently clear.

Point 43

Article 100A

Sufficiently clear.

Article 100B

Sufficiently clear.

Article 100C

Sufficiently clear.

Article 100D

Sufficiently clear.

Point 44

Sufficiently clear.

Point 45

Article 110

Sufficiently clear.

Point 46

Article 110A

Sufficiently clear.

Article II

Sufficiently clear.