

# CHAPTER I

## PREAMBLE

### 1.1 Background

Throughout the century, fishery is a big part of mankind, whether it's for survival or for trading. Now in the 21<sup>st</sup> century the fishery sector is once again something that a lot of countries are aiming for. Marine resource in a narrow sense usually refers to resources that could be utilized from the sea, although this statement is true, but the concept of marine resources has evolved throughout the years. When it comes to marine resources the first thing that came out is fish, as stipulated under Article 1 (4) of Law Number 45 Year 2009 Regarding Fisheries:

“Fish are all kinds of organisms that lived throughout their lives or most of their lives”.

According to socialization by Indonesia's Ministry of Fisheries [MMAF] the type of fish can further be categorized to economically important and economically not important in large quantities.<sup>1</sup> As the name suggests the categorization is based on the value of the perceived product, economically important fish can fetch high price, have high production power and are beneficial for the welfare of people. Recently on 4<sup>th</sup> of November 2020 MMAF through Research and Human Development Body of Maritime and Fishery or also known

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<sup>1</sup> “Sosialisasi Peningkatan Kesadaran Masyarakat Akan Pentingnya Menjaga Kelestarian Sumber Daya Laut”, <<https://kkp.go.id/djprl/bkkpnkupang/artikel/11353-sosialisasi-peningkatan-kesadaran-masyarakat-akan-pentingnya-menjaga-kelestarian-sumber-daya-laut>>, accessed on 27 of April 2020

as “Badan Riset dan Sumber Daya Manusa Kelautan dan Perikanan [BRSDM], held a workshop to further enhance capacity and data of fish stock in Indonesia. According to the Food and Agriculture organization [FAO], Indonesia ranked number 3 behind People Republic China and Peru for production of caught marine resources in 2020. Data suggested that Indonesia contributed 8% of the world's production of caught marine resources. In addition according to Ministerial ruling by MMAF no 50 year 2017, there are 12,54 million tons of fish resources with 80% usage. Through time moving forward the fisheries industries are expected to grow while maintaining the principal within the Law no 31 Year 2004 Chapter 6 Subsection 1, which is further enhanced through changes with Law no 45 Year 2009.

As a living resource, fish is part of the marine resource however marine resource as stipulated by Indonesia MMAF, consist of all living things on the ocean whether its flora, fauna, microscopic organism or microorganism. “Marine resources also consist of mangrove, coral reef, seagrass, seaweed and other fisheries”. The development of marine resource management of Indonesia has been increasing rapidly since recent years. As mentioned by President Joko Widodo in the 2014 third presidential debate he has the vision of making Indonesia a South East Asian “Maritime Axis”.<sup>2</sup>

President Joko Widodo further elaborated Indonesia as a maritime axis in the ASEAN summit with five pillars doctrine which are:

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<sup>2</sup> Anak Agung Banyu Perwita, Dharma Agastia, Jokowi's Maritime Axis : Change and Continuity of Indonesia's Role in Indo Pacific, President University, July 2015, <https://journal.binus.ac.id/index.php/jas/article/view/751/728>, Accessed on 27 of April 2020

1. As one of the largest archipelagic nations with 17 thousand islands it all falls on how Indonesia manages their ocean.
2. Indonesia should maintain and manage its maritime natural resource while establishing sovereignty.
3. To prioritize infrastructure and development of maritime interest while improving shipping industry, logistic and maritime tourism.
4. Indonesia must put an end on ongoing issues at the sea, such as illegal fishing, breach of sovereignty, territorial disputes, piracy, and pollution.
5. Indonesia is obliged to improve its naval defense power.<sup>3</sup>

Although the change sounds more geo-political and dominantly based on defense matter this also affected foreign policy matter and most importantly marine resource management. Continuing from the marine resource, as mentioned by Dahuri other main resource “other fisheries” as well. The “other fisheries” practice done in Indonesia is aquaculture. Aquaculture done in Indonesia are: “fresh, brackish and marine water using a variety of species, production facilities and methods”.<sup>4</sup> Although aquaculture pales in comparison to marine captured fisheries 1 to 4 by FAO 2006 report. The aquaculture still produces an impressive amount of product yield and even opened employment for people to work.

*Hitherto* The United Nation Convention on the Law of the Sea [UNCLOS] prevails as the legally binding multilateral convention for activities concerning

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<sup>3</sup> Dewi Santoso & Fadhillah Nafisah, Indonesia’s Global Maritime Axis Doctrine: Security Concerns and Recommendations, Airlangga University, December 2017

<sup>4</sup> National Aquaculture Sector Overview, [http://www.fao.org/fishery/countrysector/naso\\_indonesia/en](http://www.fao.org/fishery/countrysector/naso_indonesia/en), Accessed on 27 of April 2020

maritime and fisheries. UNCLOS are “prompted by the desire to settle, in a spirit of mutual understanding and cooperation, all issues relating to the law of the sea and aware of historic significance of this convention as an important contribution to the maintenance of peace, justice and progress for all peoples of the world”.<sup>5</sup> Within its inception even Indonesia has their own contribution within UNCLOS regarding the conception of archipelagic state with , Djuanda declaration that was made in 1957 by Professor Djuanda Kartawidjaja. In addition to UNCLOS functions to promote cooperation and for the common good of mankind. UNCLOS also “promote the peaceful uses of the seas and oceans, the *equitable and efficient utilization of their resources, the conservation of their living resources*, and the study, protection and preservation of the marine environment”. UNCLOS consistently addresses the use of natural maritime resources through sustainability and conservation.

This a “homework” for Indonesia both in the fiend implementation and legal implementation. Indonesia ratified the UNCLOS provision through: Law Number 17 Year 1985 Regarding **Ratification of UNITED NATIONS CONVENTION ON THE LAW OF THE SEA (KONVENSI PERSERIKATAN BANGSA-BANGSA TENTANG HUKUM LAUT)**. Which will be addressed once again in Law no. 32 2014 regarding Sea. In addition to contain provision in accordance with UNCLOS, Law Number. 32 Year 2014 is one of the three pillars that established Indonesian as an independent archipelagic country.

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<sup>5</sup> UNCLOS Preamble

Subsequently Indonesia promulgated the national law of fisheries in 2004 in the form of Law Number 31 Year 2004 some changes were made in law no 45 year 2009. Law on fisheries considered the territory of sea, national construction, fisheries and other biodiversity management.<sup>6</sup>

Although, Indonesia is determined to be a maritime axis of the south-eastern Asia region. Indonesia's influence in maritime matters goes way back to the 13<sup>th</sup> of December 1957 in the form of the Djuanda Declaration made by Indonesian prime minister Djuanda Kartawidjaja. This declaration is made based on the law inherited by the Dutch which is Ordonantie 1939. The inherited law by Dutch only gives Indonesia 3 miles of territorial sea of each island, thus causing "open space" in Indonesian territory thus for the security and sovereignty purpose the Djuanda Declaration is made. Although this provision was opposed by many parties in the end this provision's notion of "archipelagic state" is accepted and even included in UNCLOS.

Japan never claimed as one of the biggest archipelagic states from the geographical position without reasonable doubt Japan is one of the biggest archipelagic states. Although Indonesia is almost 1,5 times bigger and Japan. Japan has spent hundreds of years utilizing marine resources to the fullest even when Japanese settlers set foot in Batavia they displayed their efficiency and even caused frustration to the Indies.<sup>7</sup> Japan's biggest commodities are Tuna, especially Bluefin

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<sup>6</sup> Indonesian Law No. 31 Year 2004 Regarding Fisheries

<sup>7</sup> John G Butcher and R.E Elson, *Sovereignty and the Sea: How Indonesia Became an Archipelagic State*, National University of Singapore, 2017

Tuna. Bluefin Tuna in Japan is highly prized and Japan consumed 80-90% of global production while 62% came from Japan themselves.<sup>8</sup> Other products that pose significance in Japan are Eel and Whales. Lastly Japan also hold the highest fish consumption per-capita in the world on 56,9 Kg/year in 2007

The Japanese codified their fisheries act in 1949 for the purpose of: “ to establish a basic fisheries production system in which fisheries adjustment organization mainly consisting of fishery managers and fishery employees can be operated for systematic utilization of waters, thereby enhancing fisheries production and also to democratize the fishing industry”.<sup>9</sup> ”In Japan, the marine waters are divided into a number of sea areas as administrative units for fisheries adjustment. With a few exceptions, essentially each sea area corresponds to the maritime zone of a coastal prefecture. The Fisheries Law establishes Sea Area Fisheries Adjustment Commissions and a Central Fisheries Adjustment Council to address matters of policy, implementation and enforcement under the Law in each sea area and to ensure the coordination of prefectural fisheries development within the overall national framework.”<sup>10</sup> Following the basic fisheries act there’s also other law or subsection related to section(s) in the Japanese fishery act that can't be mentioned one by one because there are many of them and specialize in each matter.

The importance of Marine Resource Management (MRM) in this research is because of the very nature of MRM itself. MRM is a matter that is not only focus

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<sup>8</sup> Fisheries in Japan, European Union, 2013, Page. 12

<sup>9</sup> Japanese Fishery Act Law No. 267 Year 1949

<sup>10</sup> FAO National Aquaculture Overview Japan

on the science, socioeconomic, culture but also policy. Therefore, this research aims to contribute on the policy aspect of MRM itself. Through analysis we could find which policy is applicable and for the best of interest in the application of MRM itself.

Lastly this work aims to compare the gap of substance in the Indonesia regulatory framework on marine resource management to Japan regulatory framework on management on marine resource management as a developed nation. In order to recommend a solution toward the legal problem that are present in from the gap of substance which ultimately will improve and useful for the interest of Indonesia as maritime axis.

### 1.2 Formulation of Issue

1. How and to what extent Indonesia and Japan regulate their fisheries operation and marine conservations according to UNCLOS and corresponding international treaty?
2. To what Extent Indonesia could Adopt Best Regulatory Practices regarding Marine Resource Management in Comparison to Japanese Marine Resource Conservation Law?

### 1.3 Research Purpose

The purpose of this paper is to:

1. Build up awareness to Indonesian people regarding maritime resources.
2. Build up understanding to Indonesian regarding fishery law.
3. Build up knowledge of other country laws.

4. Evaluate the current situation of marine resources.
5. Recommendation for Indonesia MRM policy

#### 1.4 Research Benefit

The benefit of the research is to enrich the knowledge of UPH students on maritime law in general and analyze the applicability of both laws for the purpose of improving increasing Indonesian fishery sector and to build up knowledge to learn or to improve Indonesian fisher sector from other archipelagic states.

#### 1.5 Writing Structure

##### 1. CHAPTER I: BACKGROUND

The intro will explain the background of the case, explanation of the case covered on the brief history on fishing and resource management, followed by the development of law from each respective state National Law, international treaties(UNCLOS) and the specialization of each national law.

##### 2. CHAPTER II: LITERATURE REVIEW

Literature and Theory will scrutinize laws, legal theories and ideas of experts through a literature review. This is done so that this section may provide theoretical framework and conceptual framework for this research thesis.

### 3. CHAPTER III: RESEARCH METHOD

The research method of this research is comparative legal research, which compares the law of each respective state.

### 4. CHAPTER IV: ANALYSIS AND DISCUSSION

From the comparative method the analysis will consider which is related to the case and can be used to further improve the solution of the corresponding issue.

### 5. CHAPTER V: CONCLUSION AND RECOMMENDATION

The research paper will conclude with the best solution to the issue, and the recommendation will include commentary for the solution from the easiest one to the one that requires a “perfect world” scenario.