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Pancasila Legal Theory and Indonesia's Marine Economic Rights Management in International Law

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Abstract
As long as the government is unable to properly manage natural resources, the maritime economic rights of Indonesia will continue to be poorly managed, resulting in a significant loss of the country's marine wealth to other countries. Protecting Indonesia's marine resources requires an applicable legal theory. Pancasila's legal theory can provide answers since the principles it upholds have always been at the heart of Indonesian society. This justice and civilization need the state to correctly use its rights and obligations and not take away the maritime resources of other countries; therefore, these principles should be adopted by the entire country. By assembling information on Indonesia's marine riches and legal theory resources such as the Pancasila legal theory, this study aims to establish norms in the field.

Keywords: Marine Economic Rights; Pancasila Legal Theory

Abstract
Selama pemerintah tidak mampu mengelola sumber daya alam dengan baik, hak ekonomi maritim Indonesia akan terus tidak terkelola dengan baik, sehingga kekayaan laut negara hilang secara signifikan ke negara lain. Melindungi sumber daya laut Indonesia membutuhkan teori hukum yang aplikatif. Dalam hal ini, teori hukum Pancasila dapat memberikan jawaban karena prinsip-prinsip yang dijunjungnya selalu ada di dalam jiwa masyarakat Indonesia. Keadilan dan peradaban ini membutuhkan negara untuk menggunakan hak dan kewajibannya dengan benar dan tidak merampas sumber daya maritim negara lain. Oleh karena itu, prinsip-prinsip ini harus diadopsi oleh seluruh negara. Dengan menghimpun informasi kekayaan laut Indonesia dan sumber teori hukum seperti teori hukum Pancasila, kajian ini bertujuan untuk menetapkan norma-norma pada tataran praktis.

Keywords: *Hak Ekonomi Kelautan; Teori Hukum Pancasila.*

INTRODUCTION

Indonesia , a country rich in natural resources, particularly its abundant marine wealth, is widely recognized on the international stage. The prevailing circumstances arise due to Indonesia's geographical status as the world's largest archipelagic nation. The expanse of Indonesia's ocean is greater than its land area, ranging from 3 (three) to 1 (one). This system should be used to the greatest extent for the prosperity of the people. The value of Indonesia's marine wealth reaches US$1.33 billion or approximately IDR 19.986 trillion. The wealth value consists of 11 marine sectors in Indonesia, namely: capture fisheries with a potential of US$20 billion, aquaculture with US$210 billion, processing industry with US$100 billion, biotechnology industry with US$180 billion, energy and mineral resources including salt and BMKT with US$210 billion. In addition, the maritime tourism industry is valued at US$60 billion, while the maritime transportation sector amounts to US$30 billion. The maritime industry, including both manufacturing and services, contributes a significant 2 US$200 billion. The coastal forestry sector generates US$8 billion, while the territorial resources of small islands contribute US$120 billion. Lastly, the unconventional resources sector is valued at a substantial US$200 billion (Ronal, 2022).

The wealth value mentioned above cannot be fully enjoyed by the Indonesian nation. According to Article 33, paragraph (3) of the 1945 Constitution, it states that the Earth, water, and natural resources contained therein are controlled by the state and shall be used for the greatest prosperity of the people (UUD, 2016). The failure of our nation to fully enjoy its natural wealth is attributed, in part, to our country's inability to effectively manage its natural resources. In addition to the genuine lack of will from stakeholders in the country, it is also suspected that other factors have contributed to the emergence of this situation. The vast marine wealth of Indonesia is often enjoyed by foreign nations or other parties who intentionally or unintentionally exploit the resources of this nation.

With its vast marine territory, numerous efforts need to be undertaken to monitor all forms of activities in the said marine domain. Surveillance is the key to securing the existing marine wealth. The number of state officials tasked with overseeing the seas remains insufficient, as do other facilities such as surveillance ships and technological systems that are still not highly advanced. The lag in sophistication compared to other countries poses a major obstacle in securing marine wealth. Moreover, the existing issue of weak control mechanisms among officials exacerbates the problem, leading to a prevalence of "cheating" on the field. This indicates that the marine surveillance system in Indonesia remains weak. (Asrori et al., 2021).

The plight of local fishermen living below the poverty line (Goso & Anwar, 2017) further exacerbates the challenges in managing Indonesia's seas. Indonesia, with its extensive coastline, should consider its role as a major salt-producing nation. However, the sad reality is that Indonesia is one of the countries that imports salt. (Safrida et al., 2021). The aforementioned issues should inspire us to evaluate the legal aspects of managing Indonesia's

marine economic rights using the Pancasila legal theory. The Theory of Pancasila Law is a legal theory that is based on the values of Pancasila as its ontological, epistemological, and even axiological foundation. The Theory of Pancasila Law is also a manifestation of the Theory of Transcendental Law, which is a legal theory based on divine values (Alvi Syahrin, 2022). It is time for us to utilize the Pancasila legal theory to address existing issues and provide guidelines that can indicate the right direction for managing Indonesia's marine economic potential. The issue addressed in this paper revolves 1) What role does Pancasila play as a philosophical underpinning in the governance of Indonesia's maritime economic rights? 2) What are the existing legal aspects of economic management in Indonesia? 3) What is the urgency of implementing the Pancasila legal theory in the management of Indonesia's marine economic rights?

DISCUSSION

The Position of Pancasila as the Philosophical Foundation for the Management of Indonesia's Marine Economic Rights on the International Arena

Pancasila serves as the foundation of the Republic of Indonesia and simultaneously serves as the ideological basis of the Indonesian nation, providing a philosophical framework for governing the affairs of the state and the nation. Pancasila originates from the brilliant ideas of the fighters and founders of the Indonesian nation (Syamsudin &; Dkk, 2009). Containing the values that are inherent in the nation's life and at the same time representing the outcome of compromise among all elements of Indonesian society (Azra, 2006). As the foundational philosophy of the nation, Pancasila serves as the philosophical basis for all aspects of state life, including the legal aspect. This means that in the future development of Indonesian law, it must be utilized as the theoretical foundation, henceforth referred to as the Pancasila legal theory (Farida, 2016).

The precept that serves as the theoretical foundation for the utilization of natural resources, including marine economic rights in the international arena, is the second precept, namely "Just and Civilized Humanity". The explanation follows that in harnessing the vast ocean resources that significantly impact the livelihoods of nation; a complex dynamic arises between coastal states, as rightful custodians of these riches, and maritime nations seeking to assert their claims over the seas for the benefit of their own countries. The principle of justice is clearly evident when it comes to the utilization of the seas. Countries that are not connected are allowed to catch fish in the high sea areas and in the Exclusive Economic Zone (EEZ) with certain limitations, such as the requirement to obtain permission from coastal states.

The values of justice and civility have indeed become universal values. There is no class of people on earth who do not appreciate these values. Nevertheless, when put into practice, it is frequently impacted by the influence of diverse interests. In the case

of Illegal, Unreported, and Unregulated (IUU) Fishing, for instance, there are flag states intentionally supporting these practices, thereby causing harm to the interests of coastal nations. Despite it being clear that IUU Fishing action is contrary to just and civilized values. In a recent incident involving a Chinese-flagged vessel, the Kway Fey, China deliberately positioned its large ship to escort its fishing vessel into the Indonesian Exclusive Economic Zone (EEZ), where it engaged in Illegal, Unreported, and Unregulated (IUU) fishing activities. When the Kway Fey was apprehended by an Indonesian surveillance ship, the Chinese large ship issued an ultimatum to the Indonesian vessel, demanding the release of the Chinese crew members (Noor &; Putri, 2018). China's actions have been deemed to have undermined just and civilized values within the international community.

In developing countries, including Indonesia, development is considered fundamental and not carried out through patchwork methods. Indonesia is a country where its people are truly building themselves as a whole *(masyarakat dalam pembuatan)*, thus requiring supervision and reorganization of all the institutions they have been using, while adhering firmly to the new norms of their nation such as the concept of Pancasila, Total Human Development, Archipelagic Outlook, and so on. This perspective is in line with the development of legal science in a country that cannot be separated from its context, thus requiring some kind of pioneering step in the form of development in the field of basic legal science in Indonesia that addresses fundamental questions in legal life. It is life that talks about the intricacies of societal norms.

Essentially, the legal framework that operates within a society is a manifestation of the Legal Thought embraced by the respective community towards various positive legal rules, institutions, and legal processes (government bureaucracy and citizen behavior). The concept of Legal Thought: exploring ideas, characteristics, creation, and perceptions of the law. In essence, it consists of three elements, namely: justice, utility, and legal certainty. The human mind and heart shape the Law Mind as a product of a combination of worldviews, religious beliefs, and social realities aimed at disciplining the behavior of citizens to realize the three elements of the Law Mind mentioned above. The concept of legal thought will influence and serve as a guiding principle, critical norms (evaluation rules), and driving factors in legal administration (formation, discovery, and application of law) and legal behavior in the dynamics of social life. The formulation and understanding of Legal Mind will facilitate its translation into various sets of rules of authority and rules of conduct, as well as ensuring the maintenance of consistency in the implementation of the law. Thus, the legal system must become a reflection of the branches of Legal Thought into various principles and rules of law that are regulated within a system. As the world progresses, the study of Law, which examines legal systems as an intellectual tool to comprehend and regulate societal order, must also rely on and refer to Legal Thought in its implementation (Alvi Syahrin, 2022).

Justice and Civilization in Pancasila Legal Theory

The theory of justice is one of the theories that have been extensively discussed by experts. Aristotle, Plato, John Rawls, Thomas Hobbes, Roscoe Pound, Hans Kelsen, Gustav Radbruch, and Jeremy Bentham have all put forth theories of justice. Interestingly, from the theories they put forward, there are different interpretations despite the presence of similarities. The difference in understanding highlights that, according to the theories they propose, it is difficult to explain the true meaning of justice. This theory exists solely as an approach to understanding the nature of justice. In addition, the differences in *volksgeist* among these individuals influence their perspectives on justice. The theory of justice, according to Gustaf for example, is based on Aristotle's theory of justice, which focuses on the aspect of similarity in interpreting justice. This is certainly different from the concept of justice embraced by the Indonesian people, with Pancasila as the nation's soul (*volksgeist*).

In the second precept of just and civilized humanity, the term "just" is juxtaposed with the term "civilized," wherein the meaning is that the justice embraced by the Indonesian nation is a justice that is rooted in high civilizational values. Civilization *(peradaban)* is derived from the word *"Adab"* which, according to the Indonesian dictionary, means: refinement and goodness of ethics; politeness; and morality. The understanding contained in the second precept is that all human beings in this world have an equal status, and therefore, no one should treat them unfairly. Their rights and obligations are protected, and no one should interfere with the exercise of their rights and obligations. The implied meaning of this second precept also serves to regulate the relationships between nations worldwide. No country should have a higher or lower position than other relevant countries in fulfilling their rights and obligations as a nation. All countries are considered equal in their capacity to uphold high values of humanity, chivalry, and honor as fellow subjects of international law. Numerous examples can be cited as manifestations of justice and civilization, such as the prohibition imposed on foreign nations to enter the territorial seas of a coastal state without the coastal state's permission. Nation-flagged vessels are prohibited from engaging in IUU fishing activities within the EEZ of coastal states. The Flag State conducts surveillance and inspections on its vessels to ensure that those flying its flag do not engage in IUU Fishing activities. The provision constitutes a violation of fair and civilized human values.

As a country that places belief in Almighty God as its first precept, the existing values and norms must not contradict this precept. The country protects and guarantees every citizen's right to practice their religion and worship according to their own beliefs (UUD, 2016). In this context, it is quite reasonable for religious norms to thrive and evolve within society as a living law. (Hadi, 2018). In interpreting the concept of justice itself, it is easily understood in Islam that justice means placing things in their rightful

places. Opposing the concept of oppression *(zalim)* (Harun, 2013). The Concept of Justice offered by Islamic law is easily comprehensible and not difficult to implement in resolving existing issues. This differs from the concept of justice constructed by the aforementioned philosophical figures. In the Islamic concept, there is no separation between justice, utility, and legal certainty. In the realm of justice, there undoubtedly exist elements of utility and legal certainty. In this refinement, the discussion on justice does not revolve in an endless circle, seemingly viewing justice, utility, and legal certainty as standing alone. In the context of the utilization of Indonesia's marine economic rights, the concept of justice according to Islam is considered the most appropriate in order to maximize the utilization of marine economic rights for the prosperity of the people. The concept of justice, as such, is highly sought after in addressing issues related to the utilization of marine economic rights, where conflicts often arise between justice and legal certainty, or between justice and utility.

As the fundamental basis of protection of human rights has been established in the second precept; kemanusiaan yang adil dan beradab dengan memanusiakan manusia secara beradab tanpa mengurangi hak-haknya sedikit pun. The protection of human rights is enshrined in the second principle; just and civilized humanity that dignifies individuals without diminishing their rights in any way. Social justice is a principle that is employed to distinguish between two distinct concepts, namely the concept of social justice and the concept of justice within the legal framework. The principle of social justice is also formulated in the fourth paragraph of the Preamble of the 1945 Constitution. In the second and fifth precepts, there are values that reflect the nation's goals, particularly the realization of justice in the context of communal living. The second and fifth precepts embody the concept of justice in the form of values that must be realized in the life of a nation. Justice is the essence of the relationship between individuals as citizens and the relationship between individuals and their Creator. Despite some opinions sharing similarities between social justice and Marxism, this concept can no longer be applied in the present time due to the differing philosophical aspects of social justice in Pancasila compared to Marxism (Febriansyah, 2017).

Legal Aspects of Indonesian Marine Economic Rights Management in the Context of International Law

Indonesia has issued several legislative regulations governing the rights of marine economic management, including Law No. 5 of 1983 concerning the Indonesian Exclusive Economic Zone, Law No. 6 of 1996 concerning Indonesian Waters, Law No. 27 of 2007 concerning the Management of Coastal Areas and Small Islands, which was amended through Law No. 1 of 2014, and Law No. 32 of 2014 concerning Maritime Affairs. The laws that are still relevant to the management of economic rights but with a greater focus on fisheries are; Law No. 31 of 2004 concerning Fisheries, which was amended through Law No. 45 of 2009, and Law No. 32 of 2009 concerning

Environmental Management and Protection. Based on existing regulations, it is evident that the country has shown a significant commitment to managing Indonesia's marine economic rights. The focus now lies on maximizing the implementation of these regulations in practice. The weak law enforcement in the field of marine economic rights is the main cause of the loss of national wealth.

The existing legislation is closely tied to international regulations. At the international level, numerous conventions have been produced by countries worldwide in the form of international agreements, which bind all participating nations to the conventions. Several international provisions governing marine economic rights are:

1. The United Nations Convention on the Law of the Sea (UNCLOS) of 1982;

   The United Nations Convention on the Law of the Sea (UNCLOS) of 1982 serves as a primary source in international marine law, encompassing various aspects including the regulation of the management of each country's marine economic rights, whether they are coastal states or flag states of vessels. The rights to catch fish on the high seas, the rights of coastal states to manage their Exclusive Economic Zones (EEZs), and the rights of land-locked states within the EEZ of coastal states are all regulated by the UNCLOS of 1982 (UNCLOS, 1982). The convention also regulates the rights of states in the development of scientific knowledge in the field of marine affairs and the cultivation of underwater pipelines.
2. The FAO Code of Conduct for Responsible Fisheries 1995;

   The FAO Code of Conduct is a voluntary legal instrument equipped with principles and international standards of behavior to ensure the sustainability of natural resources for livelihoods. This is intended for members and non-members of FAO, with participation from over 170 countries as State Parties. The initiative has been adopted by the FAO to ensure the supply of fish for future generations by assisting Member States, particularly developing countries, in preserving and enhancing their fisheries resources. This code provides a framework for managing and enhancing the fisheries industry in member countries. This also requires flag states to take responsibility for any fishing vessels operating outside their maritime zones. The responsibility is established by issuing licenses or certificates to enable vessels to fly their flags for fishing purposes (Noor &; Putri, 2018).
3. The 2009 Port State Agreement on Combating, Preventing, and Eliminating IUU Fishing;

   In this agreement, it is emphasized that flag states bear the primary responsibility to combat IUU Fishing, to take necessary measures within their jurisdiction in accordance with international law. Port States implement jurisdiction, including implementing measures at Port States, which have been confirmed as the most effective way to combat IUU fishing. Every country's port has the right to conduct inspections on vessels intending to enter its port area, in

accordance with the minimum standards provided by the Port State Treaty. Inspections must be applied to ships that do not fly their flags, with exceptions. The examination results are sent to the flag State of the vessel, as well as other relevant parties, such as the States within their national jurisdiction where IUU fishing activities are conducted, the States where the vessel's owner is a citizen, relevant regional fisheries management organizations, FAO, and other relevant international organizations. If the Flag State finds clear evidence that a vessel has engaged in IUU fishing, it shall send a notification to the Port State and other relevant parties and refuse the vessel to use its ports for landing, transshipping, packaging, and processing of fish, and other related activities that are inconsistent with the Port State Agreement (The Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, 2009).

Regulations at the national level regarding the management of marine economic rights are always based on international provisions. The statement emphasizes the theory of monism in the application of international law into national law.

One of the most detrimental violations of international law to Indonesia's marine economic rights is IUU Fishing. According to a statement by the Ministry of Marine Affairs and Fisheries (MMAF) in 2014, it was noted that the state incurred losses of approximately IDR 101 trillion per year due to illegal fishing. Former Minister of Marine Affairs and Fisheries, Susi Pudjiastuti, even stated that Indonesia's losses due to illegal fishing could reach up to IDR 240 trillion per year (Putra Sitorus, 2018) . In this position, Indonesia appears to be powerless in the face of the loss of Indonesia's marine economic potential, which has been seized by other countries. The shortcomings of surveillance, the lack of facilities such as surveillance ships, and the large number of naval officers assigned to monitor Indonesian waters have contributed to these losses. The certainty of the law in the enforcement of IUU fishing in the field of international law is also a major obstacle. International law must provide clear channels and enforceable provisions for resolving the issue of IUU fishing. Countries whose vessels engage in IUU fishing must be held directly accountable.

Indonesia has mapped coral reefs. The area spans 25,000 square kilometers. However, only 5.3 percent of the coral reefs have excellent quality, while 27.18 percent are in good condition, 37.25 percent are considered to be in fair condition, and 30.45 percent are classified as poor quality. (Rosana, 2020). The wealth of coral reefs reflects the richness of marine fisheries resources, as the better the quality of coral reefs, the more fish species can thrive in the area. The Indonesian government must take serious measures to preserve coral reefs since they are to prevent the loss of this incredibly valuable asset. Numerous international aids have been provided to safeguard the coral reefs of Indonesia in order to prevent the extinction of certain fish species. This archipelagic ocean is home to approximately 8,500 species of fish, 555 species of

seaweed, and 950 coral reefs biota. Indonesia's abundant marine fisheries contribute to 37 percent of the world's fish species. Indonesia is home to several types of fish that hold high economic value, including lobster, coral fish, tuna, various species of ornamental fish, seaweed, and clams (Magdalena, 2018).

With its geographical condition where its marine territory reaches 82% with a coastline of 95,181 km, Indonesia should be a salt exporter, not even a salt importer. The fact that Indonesia is a maritime country does not change the fact that it imports salt. In 2010, it cannot be denied that Indonesia's salt imports, mainly dominated by industrial salt, reached a value of US$100 million (approximately IDR 900 billion). In 2012, data from the Central Statistics Agency (BPS) showed that during the period of January to October, Indonesia still imported 1.97 million tons of salt, spending US$96 million (approximately IDR 870 billion) in foreign exchange (Ministry of Trade of the Republic of Indonesia, 2017). The above data shows us that there is something wrong in managing marine economic rights, which needs to be addressed.

The Urgency of Implementing Pancasila Legal Theory to Resolve Indonesia's Marine Economic Rights Management Issues

The issues raised above are of utmost importance and need to be resolved as soon as possible. Especially amidst Indonesia's economic downturn which requires financial support to recover. When we look at the issue, we can conclude that it all boils down to the laws enforcement regarding the implementation of existing norms. The existing norms currently in place are still necessary to utilize the approach of Pancasila legal theory, in order to complement existing theories. The existence of the Pancasila legal theory will provide the best solution, as the values within it are values that have been ingrained in society.

In a theoretical framework, the Pancasila legal theory is already equipped with ontological, epistemological, and even axiological foundations based on the living laws within society and whose primordial values serve as the basis for the Indonesian nation itself. Pancasila has been regarded as the sacred principles that govern social existence and is also considered a *volkgeist*. The axiomatic values inherent in Pancasila possess a scientific nature as pertain to their quantification of consensus within the Indonesian populace. The five Pancasila precepts constitute a cohesive and scientifically rational ideological and philosophical framework. Serving as the fundamental legal basis, are positioned as the *grundnorm*, and function as the basis of all legal sources. The values of Pancasila serve as the foundational principles of law that underpin a legal structure. The fundamental principles of Pancasila law encompass the subsequent principles: Firstly, the principle of divinity mandates that no legal product may contradict, reject, or antagonize any religion or belief in the Almighty God. Secondly, the principle of humanity implies that the law should safeguard citizens and uphold human dignity.

Thirdly, the principle of unity and national identity mandates that Indonesian law must unify the nation's life and respect the diversity and cultural wealth of the nation. Fourthly, the principle of democracy signifies that the relationship between law and power entails that law must be capable of subduing power, rather than the other way around. The democratic system ought to be founded upon consultative values, wisdom, and prudence. Additionally, the fifth principle, social justice, is predicated on the notion that all citizens possess equal rights and obligations as stipulated under the legal framework. The integration of the twelve values and principles contained in Pancasila constitutes a unified and diverse entity that results in each principle being unable to stand alone, and its interpretation cannot be separated from other principles; moreover, this integration also prohibits any contradictions between them. Pancasila is an integrated philosophical system that possesses its own distinct ontological, epistemological, and axiological foundations, which differentiate it from other philosophical systems such as liberalism, communism, pragmatism, materialism, and other systems worldwide (Alvi Syahrin, 2022).

The resolution of law enforcement in IUU fishing can be resolved through the application of the Pancasila legal theory. With the values in the second principle of Pancasila, Just and civilised humanity, implies that all nations in the world are regarded with equal status and dignity. It is imperative for nations to concurrently uphold the values of justice and decency. Justice is a fundamental principle that demands every country be truly within the corridors of its rights and obligations. In matters of truth, no party can impede, and in matters of obligation, no one is obliged to support it if that obligation is violated. When a country commits an error, it has to endure sanctions and be held accountable for its actions towards the affected country. Sanski must have clarity and firmness in its attempt to create justice. This is what is considered to be lacking in the law enforcement process against IUU Fishing. Flag States frequently attempt to evade obligation when it comes to instances of illegal fishing conducted by their vessels. Curiously, it appears that no entity capable of exerting pressure on these countries, despite the existence of the International Tribunal for the Law of the Sea (ITLOS). The tribunalunder discussion is an international forum that encompasses a tribunal process capable of resolving issues pertaining to international marine law (ITLOS, 2015). However, unfortunately, the aforementioned international organization is devoid of the power to enforce its decisions to be implemented by the disputing parties. It appears that the decision made by ITLOS lacks enforceability.

The prevailing situation has given rise to a legal uncertainty that should not be allowed to persist. Furthermore, there is a phenomenon where maritime nations intentionally support or even dispatch vessels and fishermen to harvest fish in the territorial waters of other countries (Noor & Putri, 2018). This is a reflection of the violation of civilized values. In the theory of Pancasila law, the values of civilization are highly emphasized, particularly when associated with the first precept, belief in the

Almighty God. It is believed that the transgressions committed collectively will eventually be held accountable by the Almighty, even though there may not be earthly consequences for our actions. However, in the afterlife, all will be subject to a reckoning for their deeds. The embodiment of values that involves these is highly evident in Pancasila, where religiosity and sanctity must always be manifested in every action. The aforementioned values should manifest in the actions of nations worldwide, ensuring that no country dares to infringe upon the rights of others and consistently upholds its obligations as a sovereign state.

The principle of Democracy guided by the inner wisdom in the unanimity arising out of deliberations amongst representatives must be reflected in the management of Indonesian traditional fishermen. In 2019, the number of traditional fishermen amounted to 2.2 million. The situation has declined compared to the previous year by approximately 2.7 million. This declining condition is caused by traditional fishermen who are facing difficulties in earning a livelihood. The cause lies in inadequate vessels and equipment, with the most influential factor being the practice of IUU Fishing carried out by foreign fishermen and corporations that possess advanced vessels and equipment. The Central Statistics Agency (BPS) has released data on the period of 2000-2016, indicating a decline in the number of fisherman households. From the year 2003, there has been a significant decrease of 2,144,959 households, reaching a total of 965,756 households in 2016. A total of 115 domestic fish processing companies incurred losses due to the lack of fish supply, as stolen fish were directly sold abroad.

As the main legal cover, Law No. 7 of 2016 serves to guarantee the welfare of fishermen. The legislation elucidates the measures for safeguarding and empowering fishermen throughout every stage, ranging from planning, implementation, funding, and financing, to oversight, which carries criminal penalties. Protection is intended to enable fishermen to face the challenges encompassing their fishing business. Empowerment is carried out to enable fishermen to enhance their capabilities to run the fisheries business. More space is given to the community to participate in planning, implementation, funding, and financing, as well as supervision.

The welfare of fishermen will be realized through the implementation of sustainable management of marine economic rights. The marine and fisheries law is utilized to safeguard fishermen, ensuring their protection and well-being. The Marine Law highlights the importance of expanding job opportunities in the fisheries industry to enhance the welfare of fishermen. Fishermen are one of the most vulnerable groups, thus necessitating the provision of enhanced protection over it. This has been accommodated in the Fisheries Law where small-scale fishermen are granted the freedom to not possess a Fishing Business License (SIUP), a Fishing Catch License (SIPI), and a Fish Transportation Vessel License (SIKPI), exempted from fisheries levies, as well as it is a government obligation to empower small-scale fishermen through credit

schemes, education, training, counseling, and development. However, the Fisheries Law does not regulate traditional fishermen, therefore these three forms of legal protection are not applicable to traditional fishermen (Jamilah &; Disemadi, 2020).

Law No. 1 of 2014. Article 60 of Law No. 1 of 2014 consists of two regulations that govern the legal protection of fishermen. These regulations afford traditional fishermen the freedom to provide input on traditional fishing grounds into RZWP-3-K. The emphasis on the importance of allocating a space of 0-2 nautical miles for livelihoods and access of small-scale and traditional fishermen is evident in Minister of Environment and Forestry Regulation No. 23/PERMEN-KP/2016 concerning Coastal and Small Islands Spatial Management Plan as an implementing regulation of Law No. 27 of 2007 and Law No. 1 of 2014. The Law No. 7 of 2016 stipulates the central and regional governments formulate comprehensive strategies aimed at the protection and empowerment of fishermen, fish farmers, and salt farmers at the national, provincial, and district/city levels. This is intended to provide integrated, coordinated, and targeted protection and empowerment efforts. The management of fishermen must be reflected in both the national and regional budgets (APBN and APBD), from the planning stage to the monitoring stage. It is ironic that until now, the plans for the protection and empowerment of traditional fishermen, fish farmers, and salt farmers have not been publicly disclosed at the national, provincial, and district/city levels.

Law No. 7 of 2016 stipulates the necessity of establishing four implementing regulations. These regulations include a government regulation that focuses on supervising the planning and execution of protection and empowerment measures, a presidential regulation that addresses the provision of subsidies, and two ministerial regulations that outline mechanisms for safeguarding against negative impacts and promoting community participation in protection and empowerment initiatives. In the present circumstances, the focus remains primarily on the involvement of ministers, with the practical implementation of government and presidential regulations yet to materialize on the ground. This indicates that Law No. 7 of 2016 has not yet been fully implemented. Among the ministerial regulations that have been issued is Minister of Environment and Forestry Regulation No. 3/PERMEN-KP/2019 concerning the Role of Society in the Implementation of Protection and Empowerment of Fishermen, Fish Cultivators, and Salt Development, which regulates community activities in contributing to the protection and empowerment at all stages of planning, implementation, funding, and financing, as well as supervision. One aspect that has not been emphasized in the KKP Regulation is the importance of fishermen in designing plans for the protection and empowerment of fishermen, fish cultivators, and salt cultivators at the national, provincial, and district/city levels. In Ministerial Regulation No. 3 of 2019, Article 5 exclusively pertains to the requirement for fishermen to actively seek input and suggestions. However, it is argued that this provision should also place

an onus on the government to actively engage fishermen as key stakeholders in the proposed protection and empowerment scheme during the preparatory stage.

Law No. 45 of 2009 stipulates that the exclusive right to engage in fishing activities within Indonesian waters is granted solely to Indonesian fishermen. Meanwhile, foreign fishermen are only permitted to procure fish catches solely from Indonesian fishermen. In the realm of fishing practices, a notable disparity emerges due to the presence of foreign vessels in Indonesian waters, which boast larger dimensions and cutting-edge technologies, in contrast to Indonesian fishermen, who heavily depend on smaller, less technologically sophisticated traditional boats. Consequently, Indonesian fishermen are faced with a significant disadvantage in terms of their competitiveness. In the following, the term "former foreign vessel" refers to a foreign ship that has been purchased by Indonesian entrepreneurs, while its operation and ownership remain a joint venture. Foreign ships are easily identifiable due to their use of the respective national flags. However, foreign-owned ships are difficult to identify as they use the Indonesian flag but do not comply with ship operational regulations or fulfill their obligation to contribute revenue to the state treasury. The majority of foreign vessels originate from Thailand, China, the Philippines, Taiwan, and South Korea.

The management of remote, small islands should also receive serious attention from the government. In contemplation of the historical context surrounding the Sipadan and Ligitan Islands dispute, the transfer of territorial jurisdiction from Indonesia to Malaysia has dealt a severe blow to Indonesia. Islands that should have been assets of maritime wealth have to be relinquished to Malaysia. This can be considered a resilient state when facing islands like this. The island is left unattended and even uninhabited by Indonesian citizens, instead being inhabited by Malaysian citizens. The dispute between Indonesia and Malaysia over the ownership of Sipadan and Ligitan Islands has resulted in a decision by the International Court of Justice, read by Chief Justice Gilbert Guillaume at the International Court of Justice building in Den Haag, Netherlands on December 17, 2002, which declared Malaysia as the winner of the dispute. Geographically, Pulau Sipadan and Pulau Ligitan are islands located in the Makassar Strait. The island of Sipadan spans approximately 50,000 square meters, while the island of Ligitan covers an area of around 18,000 square meters.

The dispute case emerged in 1969, originating from discussions on the continental shelf boundaries between Indonesia and Malaysia in Kuala Lumpur on September 22, 1969. The ongoing debate surrounding the delimitation of continental shelves has led to each country claiming the islands of Sipadan and Ligitan as their respective territories. In 1979, Malaysia violated the status quo agreement by altering its stance regarding the two islands, which were designated as areas that should not be occupied, seized, or utilized by either country. In the end, Indonesia and Malaysia have

agreed to resolve their dispute through the International Court of Justice. In the course of the dispute proceedings at the International Court of Justice, the Government of Indonesia has enlisted internationally renowned legal representatives. Regrettably, no Indonesian lawyers were afforded the opportunity to participate. The trial process is divided into two main parts, namely the foundation of claims based on Written Defense and Oral Defense. Several claims have been made by Malaysia that Indonesia has abandoned both islands. In international law, there exists a principle known as prescription or lapse, whereby third parties may acquire rights over a territory if it has been left unattended by its original owner for a certain period of time. The final outcome of the International Court's decision is determined by considering effectiveness, whether the colonizers have demonstrated their presence as owners and have taken actual administrative actions. In this matter, Malaysian colonizers are considered more effective than the Dutch who colonized Indonesia at that time. (Fadilah, 2019).

In its ruling, the International Court of Justice declared that Sipadan and Ligitan also belong to Malaysia. The recent ruling by the International Court confirms Malaysia's long-standing claim that Indonesia has been neglecting the proper management of the Sipadan and Ligitan Islands. Meanwhile, Malaysia, with its effective management, has successfully administered both islands, thereby demonstrating de facto signs that Malaysia is the rightful owner of said islands. The occurrence of such an event could have been avoided if Indonesia had taken a serious approach in inventorying its smallest outer islands, subsequently relocating populations to those islands, alerting existing TNI forces, and implementing programs to harness the natural resources of both islands for the benefit of the nation. The Pancasila Legal Theory declares that the state must safeguard the entirety of Indonesia's resources and ensure the well-being of all Indonesian citizens. Protecting the entire territory of Indonesia entails safeguarding all regions of Indonesia from any attempts of territorial annexation by foreign nations.

CONCLUSION

Pancasila, being the fundamental principle of the nation, is required to permeate all aspects of state governance, encompassing the management of Indonesia's marine economic rights. The essence of Pancasila itself is formed by the values that permeate Indonesian society. The results obtained from the management of Indonesia's marine wealth should be enjoyed comprehensively by the Indonesian society. The management of Indonesia's marine economic rights has thus far been suboptimal, characterized by numerous instances of IUU fishing practices conducted by foreign nations, extensive coral reef degradation, salt imports, and the compromised livelihoods of our traditional fishermen.

It is high time for Indonesia to implement the theory of Pancasila law with values of Justice and Civilization that emphasize the equality of nations worldwide. By doing so, all countries can properly exercise their rights and obligations to refrain from appropriating the

marine wealth of other country and consistently apply decorum in international relations. The legal policy concerning this issue should be consistently oriented towards benefiting Indonesian society, with a particular focus on traditional fishermen.

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