

STUDY ON COLLECTION AND ANALYZING FISHERIES CONFLICTS CASE IN INDONESIA



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1. INTRODUCTION

1.1. Background

Fisheries has been known as the important activity throughout the world, produces more than 100 million tones of fish and fishery products and contributes to human welfare by providing a livelihood for about 200 million people, as well as providing protein supply for billion people. However, with the line of declining stocks as well as several evidences related to fisheries, sustainability issue became very important and has been discussed as the central topic in fishery sciences and industries. This condition is mainly encouraged by the unfortunate reality that many fisheries are in a state of crisis, and the some of them considered urgent attention (Cochrane, 2000) In global level, fishing industry is a highly adaptive, market-driven and dynamic internationalized sector within world economy.

Its pressure on resources is still increasing, owing to a persistent worldwide upward trend in fish consumption, in concert with human population growth, especially in coastal zone. Global efforts are increasing and limited the capacity of individual government to control over fishing pressure. This problem was associated with a variety of environmental and ecosystem problems including wastage through discards, loss of critical habitats, impact on endangered species, etc [Cochrane, 2000]. Furthermore, problems of fisheries is then not only dominated by natural uncertainties but also driven by the anthropogenic uncertainties such as conflicts between fishers. From this point, fishery management itself are progressively switching their attention from single species to ecosystem approach, from micro to macro perspectives, increasing the need for measuring the impact of fishing on natural and human systems (Charles, 1998). Consequently, as Cochrane (2000) argued that the problems currently experienced in fisheries management throughout the world occur in four realms, namely biological, ecological, economic and social crises.

In the context of Indonesia, national government has enacted the new national act on fisheries by the Act No. 31/2004. By this act, the national fisheries policy has shifted from fisheries production-oriented policy to fisheries management-oriented policy. In this case, a set of strategic management measures to cope these problems of fisheries described above (biological, ecological, economic and social crises) is therefore needed. One of the important

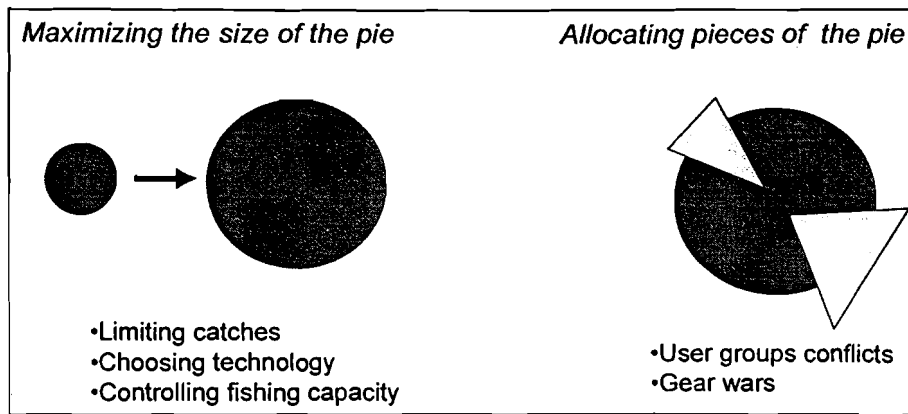


Figure 1. General Understanding of Fisheries Conflicts (after Charles, 2000)

From Figure 1, it can be revealed that at least there are two sights of fisheries conflicts. First, maximizing the size of the pie. This sight deals with the conflicts of limited catches, choosing technological conflicts and fishing capacity conflicts. The conflict is raised from the intention to maximize the fish harvest. Meanwhile, the second sight, allocation pieces of the pie, deals with the user group of conflict and gear wears due to its root of intention to catch fish in a limited resources.

Charles (2000) furthermore distinguished the fisheries conflicts into 4 (four) types i.e. (1) jurisdiction conflicts; (2) management mechanism conflicts; (3) internal allocation conflicts; and external allocation conflicts. Table 1 below describe the types of fisheries conflicts.

Table 1. Fisheries Conflicts Typology

No	Type of Conflict	Decription
1.	Jurisdiction	Conflict related to issues of resources ownership and access to respective resources
2.	Management mechanism	Conflict related to confusion of management measures on resources utilization such as conflicts on fish quota
3.	Internal Allocation	Conflict related to interaction among fishers such as industrial versus traditional fishers, etc
4.	External Allocation	Conflict related to interaction between fishers and other parties such as tourism, mining, mariculture, etc

Source : Charles (2000)

From the conflict reasons point of view, Buckles and Rusnak (1999) in Pameroy and Rivera-Guieb (2006) report that the use of natural resources (including fisheries resources) is susceptible to conflict for a number of reasons. First, fisheries resources are embedded in an environment or interconnected space where actions by one individual or group may generate effects far off-site. Second, natural resource (fisheries resources) are embedded in a shared social space where complex and unequal relations are established among a wide range of social actors including fishers, fish traders, boat owners, government agencies, etc. These actors with greatest access to power are also best able to control and influence natural resources decisions in their favour. Third, fisheries resources are subject to increasing scarcity due to rapid environmental changes, increasing demand, and their unequal distribution. Fourth, fisheries resources are used by people in ways that are defined symbolically. Aquatic resources are not just material resources people compete over, but are also part of a particular way of life, an ethnic identity and a set of gender and age roles.

3. SOCIAL CONFLICTS AMONG FISHERS IN INDONESIA (A CASE STUDY IN BALIKPAPAN, EAST KALIMANTAN)

3.1. Introduction

Social conflicts among fishers in Indonesia have been taking place since decades ago. In seventies and early eighties, for example, "traditional fishers" often engage in severe and violent conflicts with the modern fishers using trawl (Bailey 1988, Betke, 1988). Often violent conflicts between these two classes of fishers eventually forced the government to take a strong measure by issuing Presidential Decree No. 39 year 1980 which banned the operation of trawl in most of Indonesian waters.

Nowadays, conflicts among fishers often happen in many parts of Indonesia (see Adhuri, 2002; Adhuri dan Wahyono (eds), 2004; Adhuri (ed), 2005; Hidayat, 2006; Kinseng, 2007; Kusnadi, 2002; Shaliza, 2004; Yamin dan Dhe, 2004). It seems that social conflicts among fishers in Indonesia even more often in the future due to the diminishing of the fishery resources. Actually, this phenomenon is in line with the tendency in the world as stated by MacNeill et al who contended that: "Conflict based on climate change, environmental disruption,

and water and other resource scarcities could well become endemic in the world of the future" (MacNeill et al., 1991).

Based on these facts, it is very important to manage social conflicts among fishers in order to avoid destructive conflicts, which eventually will impoverish and even destroy fishers' life. The need to manage conflicts among fishers is even greater because conflicts in fishery may increase not only quantitatively (frequency) but also "qualitatively" (intensity and violence) due to the fishery resource scarcity in the future. This is in line with Homer-Dixon's prediction that *"...in coming decades the world will probably see a steady increase in the incidence of violent conflict that is caused, at least in part, by environmental scarcity"* (Homer-Dixon, 1999).

To be able to manage social conflicts among fishers, it is very important to understand as many aspects as possible of the fishers' conflicts themselves. Without proper understanding about the "nature" of the conflicts, it is very unlikely that we could manage them "properly". In this paper I will describe and analyze fishers' conflict in one place in Indonesia, namely in Balikpapan, East Kalimantan. It is hoped that this information and analysis will enhance our understanding about social conflicts among fishers in Indonesia.

3.2. Types of Fishers Conflicts

First of all, there are two general types of fishers' conflicts; first internal and second external conflicts. Internal conflicts refer to the conflicts that take place among fishers themselves, while external conflicts mean conflicts between fishers and non-fishers such as mining industry, transportation, tourism, developer, government, etc. In this paper I will describe the internal conflicts first, and then the external conflicts.

A. Internal Conflicts

A.1. Conflict between gill-netters and mini trawlers

Mini trawl was known by few fishers in Manggar, Balikpapan, started in around late seventies. At that time, several trawlers operated near traditional fishers' fishing ground in Balikpapan waters, especially near Manggar. In around 1978, one trawl ship was captured by traditional fishers in Manggar. The local fishers got a small trawl from that captured trawl ship and then tried to use it in the nearby waters in Manggar. This "trial" was successful, that is, they caught a

lot of shrimps within a short time. From that on, mini trawls were quickly adopted by several fishers in Manggar. However, as mentioned earlier, in 1980 the Suharto's government issued Presidential Decree No. 39 that banned the operation of trawl in most of Indonesian waters, including in Balikpapan.

Because the mini trawl was banned, a new fishing gear, namely "*dogol*" (Danish seine) was introduced by the local Fishery Office in Balikpapan in 1981. However, the appearance and operation of the *dogol* was very similar with the mini trawl, and in fact, for some fishers it was just different name for the same gear. The operation of *dogol* or mini trawl in Balikpapan forged severe and violent conflicts among fishers there around early up to mid-eighties. The conflicts mainly took place between fishers using *dogol*/mini trawl and fishers using gill net. Since mini trawl was banned, official (police personnel) often conducted operations (*razia*) to catch the mini trawlers. Many mini trawls and *dogols* were burnt down at that time.

One of the fishers' leaders who used mini trawl/*dogol* was arrested in around 1983/84, and since then, several other fishers were also arrested. At that time, the most respected and feared fishers' leader, namely Daeng Polo, stepped forward to take the responsibility of the use of mini trawl/*dogol* by fishers in Manggar. He was arrested and detained several days by police but then released. The conflicts lasted up to 1990s. During that time, some fishers using *dogol* started to operate in the night, a strategy to avoid conflict with gill netters and arrested by police. That was how the night operation of *dogol* gears started in Balikpapan, which is still in practice until now. In the 1990s, many fishers using gill net thought that it would be better if they also used *dogol*. Since then, serious conflicts between the two groups basically never happened again.

However, latent conflict between these two fisher groups actually still exists. Conflict potency is especially great during what they call the "South Season" (*Musim Selatan*), where the weather is usually not good. At this season, the *dogol* fishers are operating closer to the beach, which means entering the gill-netters' fishing ground. Fortunately, until now they still can manage their relationship in such a way to avoid conflicts.

A.2. Conflict between *pejala* and *pebagan* (boat lift net fishers)

Jala-rumpon, that is the use of net to catch fish around fish aggregating device (FAD) called *rumpon*, has been known for long time among the Bugisnese

fishers, including in Balikpapan. Until now quite many fishers in Balikpapan using the *jala-rumpon*; these fishers are called *pejala*.

Starting in 1998, a new fishing gear, namely *bagan perahu* (boat lift net), was brought to Balikpapan by a successful fisherman there. The adoption of this new technology is quite slow, and now there are just about 16 or 17 units. The boat lift net is also equipped with lights, which range from 40 to 70 lights, each 400 watt.

Relationship between the *pejala* and *pebagan* has not always been harmony. There is latent conflict between these two groups of fishers. Some times the conflicts are quite open, even though not violent. Conflicts usually take place when the boat lift net fishers operating close to the *rumpon*. According to the *pejala*, if a boat lift net is operated near a *rumpon*, fish would be attracted by the lights from the boat lift net, so it is difficult for the *pejala* to get fish. The *pejala* often complain and express their anger in words if they found or suspicious that a *pebagan* has operated near their *rumpon*. They would threaten to take a strong measure, for example, physical contact or destroy the boat lift net if *pebagan* operating near their *rumpon*. So far, violent conflicts have not taken place because the *pebagan* then would operate quite far from *rumpons*. In October 2006, for example, a violent conflict or physical contact almost burst between the *pejala* and *pebagan*. Fortunately, with the involvement of fisher leaders and Fisheries Official, this conflict could be resolved. However, latent conflict between these two groups remains great.

A.3. Conflict between *pejala* and purse seine fishers

The most recent conflict among fishers that taken place in Balikpapan was conflict between *pejala* and purse seine fishers. In this case the *pejala* were local fishers in Balikpapan and purse seine fishers were from Central Java. However, although the main local fishers in conflict here were the *pejala*, but a broad alliance was developed among almost all local fishers in Balikpapan and even the local merchant class was also joined them in opposing the purse seine fishers from Java. This conflict is called as conflict between the traditional fishers in Balikpapan with modern fishers or purse seine fishers from Java. The conflict will be described more detail below.

On January 13, 2006, 19 purse seine fishing boats from Juwana, Central Java, were coming to Kampung Baru, West Balikpapan, while another four

fishing boats from Juwana have already anchored there. Thus, altogether there were 23 fishing boats from Juwana, Central Java on that day. According to these fishers, they came to Kampung Baru, Balikpapan mainly for two reasons; first, they need to get more provisions for their operation (including food, fuel, etc), and secondly, the weather was bad so they can not operating.

On the other hand, local fishers, especially the *pejala* and their "patrons" (merchants), have resented for long time toward purse seine fishers from Central Java. According to them, since around 2003, every time purse seine fishers from Central Java operating near Balikpapan water, local fishers production drop drastically. This is happen, according to them, because purse seine fishers use very strong lights in their operation. The lights are put above as well as in the sea water to attract fish. Therefore, all fish are "pulled" by the purse seine fishers. Even if there are fish near their *rumpon* (FAD), they are difficult to catch because the fish are affected by the light. They become "wild" and sort of "drunken".

The *pejala* and their patrons have already brought the case several time to local governments (Fishery Office, Municipality Office as well as the local Parliament/DPRD). They asked the local government to prohibit purse seine fishers from Java to operate near their fishing ground in Makassar Strait. For example, in 5 January 2004, several *pejala* and merchants in Balikpapan made a written statement which demanded that purse seine fishers from outside Balikpapan were prohibited to operate around Balikpapan water and Makassar Strait forever. This statement was made in the Fishery Office and signed by The Head of the Fishery Office. Moreover, in December 15, 2005, a small number of purse seine fishers from Pekalongan, Central Java, were more or less forced by the local fishers in a meeting in DPRD Office, to sign an agreement that stated that they (the purse seine fishers) will not operate in Makassar Strait anymore, and were willing to be brought to the court if breaking the agreement. Thus, the coming of 23 purse seine boats to Balikpapan in January 2006 was felt as an agitation by the local fishers. Therefore, the anger of the local fishers toward the purse seine fishers from Central Java (even though this time not from Pekalongan, but from Juwana) was mountainous.

In the night of 15 January 2006, local fishers gathered in the fish landing port (TPI) in Manggar, East Balikpapan, to plan action to be taken to the purse seine fishers. Rumors about plan to attack purse seine fishers spread quickly,

reaching the local police as well as the purse seine fishers themselves. The police informed purse seine fishers about the attack plan, and asked the purse seine fishers to leave Balikpapan immediately. However, due to the low tide, purse seine fishers could not leave Balikpapan immediately. Therefore, several local policemen were assigned to guard the purse seine fishers that night. Early in the morning the next day, namely 16 January 2006, several purse seine boats could leave Balikpapan, but several others still struggling to leave. Early morning January 16, 2006 the Local Chief Police and his staff came to fish landing port in Manggar to talk with local fishers there, persuading them not to attack the purse seine fishers. However, unexpectedly, while the talk was going on, about 10 local fishing boat contained around 10 to 15 fishers each from another location in Balikpapan, namely Markoni, went to attack the purse seine fishers in West Balikpapan.

Even though the police warned local fishers by shutting the gun, they did not afraid. They still came closer and closer to the purse seine boats, and finally "succeed" attacking one purse seine boat by the name Mutiara Sakti. They thrown the Mutiara Sakti with stones etc, and finally climbed into the Mutiara Sakti. They ordered all Mutiara Sakti's crew to get out to their (local fishers) boats. In the mean time, they started to pour out fuel and burnt the Mutiara Sakti from its back parts. In this attack, the Vice-Skipper of the Mutiara Sakti boat was hit near his right eye cause a minor injury. While burning, the Mutiara Sakti was pulled by the local fishers to the Markoni area, and finally sank there at about 8 o'clock in the morning of the 16 January 2006.

A.4. Conflict Resolution

Resolution process of the conflict between the local fishers and purse seine fishers from Central Java in this case take quite long time and involved many parties. Soon after the burning of the Mutiara Sakti boat, on January 17, its owner representative from Central Java came to Balikpapan and appointed a well known local lawyer to defend the case.

On the other hand, the long tension and conflicts between purse seine fishers from Java and local fishers around the Makassar Strait, especially in Balikpapan (East Kalimantan), Kota Baru (South Kalimantan) and in Sulawesi, force the Department of Marine and Fishery (DKP) to take several actions. One of that actions was to organize a meeting among all parties in 17 January 2006 in

Semarang, Central Java. Although initially the meeting was planned before the 16 January incident, but the 16 January incident was one of the main topic addressed in the meeting.

First point of the "Semarang agreement" stated that the burning of the Mutiara Sakti boat by local fishers in Balikpapan should be investigated and resolved according to the law. The representative of the Mutiara Sakti owner and their lawyer also continuously urge responsible officials to solve the case according to the law. On the other hand, the local fishers strongly against the idea to bring the case to the court. They want the case just be closed. They also strongly opposed the idea of transferring technology from the purse seine fishers to the local fishers, and prohibition for the purse seine fishers to operate in 5-mile distance from their *rumpon*. In their opinion, their existing technology is better environmentally, and 5-mile distance is still too close.

Since the "Semarang meeting" was not succeed in resolving the conflicts among fishers in the Makassar Strait, another meeting was hold in Surabaya, East Java, in 24-25 January 2006. Furthermore, another big meeting was also hold in Makassar, South Sulawesi, in 15-16 March 2006. The participants of this meeting still could not resolve the conflicts. It was "deadlock", according to participants from Balikpapan.

On the other hand, in February 2006, the local police determined four (4) local fishers as suspected burning the Mutiara Sakti boat. After a long process, finally in 27 February 2007 the court verdicts guilty and sentenced to 6 months house arrest only for one person. This verdict accepted by local fishers, because in reality the guilty person is not put to jail, so he still can work as a fisher.

B. External Conflicts

Fishers in Balikpapan also involve in conflicts with several non-fisher forces such as mining industry, transportation, state-owned oil company (PERTAMINA), etc. These conflicts will be described more detail below.

B.1. Collision with ships

Balikpapan water is very busy pass through by many ships, including tugboats. This situation has brought some negative consequences to the local fishers in Balikpapan. One of them is collision between the ships and fishing boats and/or fishing gears. Data shown that from 2002 to 2003, for example,

there were 13 cases (incidents) of collision, while Riva's (2006) noted there were 24 incidents from 2000 to 2004. In these collisions, usually fishing boats or fishing gears are damaged by the ships.

Actually, collisions between ships and fishing boats/gears have triggered the emergence of fisher organization in Balikpapan called *Aliansi Masyarakat Nelayan* (Fishers Society Alliance) in 1999. In that year, several fishers worked together to fight for their rights. They brought several collision cases to DPRD, and even hijacked three ships passing through Balikpapan water for three days in order to force them to pay compensation. Until now, collisions between ships and fishing boats/gears still happen in Balikpapan. Recently (January 2007), one fisherman even died and two others seriously injured in a collision between a ship and a local fishing boat in Balikpapan water.

B.2. Conflict with Thiess company

Thiess is one of the multinational mining companies that have its office in Balikpapan. In building its own port behind its office in Balikpapan, Thiess has to dredge the sea bottom toward and near the port. This was carried out since June 2004 until April 2005. Small-scale fishers, especially those who use the mini trawl-like fishing gear called *dogol*, claim that the project activity causes serious problems for them. According to them, the development of the port ruins their fishing ground. Moreover, they also said that they often found stones in their fishing ground, which causes damage to their nets.

With that claim, they have been fighting to get compensation from the Thiess company. They form a "joint forum of fishers victim of Thiess" as a vehicle to organize their collective action. In their struggle against the Thiess company, they conducted a huge demonstration in front of the company office in Balikpapan in June 26, 2005. They asked the company to pay one billion rupiahs as compensation of income loss due to the company activities.

Conflict resolution took very long and complicated processes. It involved high ranking local government, especially the Vice-Mayor at that time, as well as policemen, member of local parliament, official from Office of Marine and Fishery, local NGO, etc. Meetings have been done many times. Unfortunately, until recently, the fishers still have not gotten any compensation from Thiess. Even worse, this case has caused violent conflict between fishers themselves on January 2007. Fishers became divided and disagreed over the way taken by

another group in the struggle against the Thiess. Thus, basically the case is still unresolved.

B.3. Conflict with Unocal Company

Another multinational mining company in Balikpapan is Unocal. In July 2004, Unocal company conducted a survey (called seismic) to find out oil potency under Balikpapan water. In this survey, several fish aggregating device called *rumpon* were cut by the surveyors. This aroused anger among fishers who own the *rumpon*.

Fishers, especially the victims, fight to get compensation for their cut *rumpon*. They conducted demonstration to the Unocal office, they also come to local parliament office as well as Mayor office to bring the case. A group of fishers in Manggar even blockage a ship belong to Unocal contractor that conduct the survey. They forced the ship to go back to a place near a bridge in Manggar.

From a long process of negotiation and struggle, finally in January 2005 the Unocal agreed to pay compensation 12 million rupiahs for each 41 fishers, while another 14 fishers had already got 14 million rupiahs each. So, the case was resolved satisfactorily.

B.4. Conflict with PERTAMINA

Indonesian government increased the price of fuel such as gasoline and diesel fuel in October 2005. Because of this price increase, many fishers in Indonesia faced great difficulty. The price is too high so that the margin between operational costs and the income is very small. Sometimes the operational costs even higher than the income, which mean that the fishers do not get any profit at all. To overcome this problem, many fishers in Balikpapan, especially the small-scale fishers such as gill-netters and pedogol, switch their fuel to kerosene. Instead of using diesel fuel, they use kerosene to operate their boat engine. As a comparison, the price of diesel fuel was Rp 4.300/litre, while kerosene was Rp 2.600/litre.

Unfortunately, since about April 2006, kerosene was scarce in Balikpapan. Because of this kerosene scarcity, fishers could not operate normally; some time they got a little kerosene just enough to fish, another day they could not get any kerosene. This situation threatened their very livelihood.

Scarcity of the kerosene in Balikpapan forced small-scale fishers to fight. One of the most responsible agencies to provide kerosene in Indonesia is the state-owned oil company, PERTAMINA. Therefore, PERTAMINA was become an important target of fishers protest. In struggling to get kerosene supply, small-scale fisher leaders came to local parliament as well as Mayor office several times. However, their long struggle did not give satisfactorily results until September 2006. Frustrated with the situation, they organized a demonstration to the PERTAMINA office in Balikpapan as well as the Mayor office in September 13, 2006. Unfortunately, their demand to get a special allocation of the subsidized kerosene could not granted by the PERTAMINA as well as local government. According to the Presidential Letter of Rule (Peraturan Presiden) No 9 year 2006, the subsidized kerosene can not be used for non-home activities, including for fishing operation. Thus, the problem remains unresolved.

3.3. Discussions

Based on the description above, several brief comments are presented in this section. First, regarding internal conflicts (conflicts among fishers themselves). The internal conflict cases found in Balikpapan as described here lead me to argue that whenever fishers with different level of "technological capacity" or "advancement" operating in the same fishing ground or close one another, social conflicts will take place. Even if open conflict does not take place, latent conflict remains present and could break into open conflict at any time. The gap or discrepancy of the technological advancement that tend to trigger conflict does not have to be "big" such as between purse seine and the "*jala-rumpon*". Small gap such as between mini trawl-like (*dogol*) and gill net or between boat lift net and "*jala-rumpon*" is already enough to cause conflict. The reason behind this fact is that more advance fishing technology tends to produce more catch. Sociologically speaking, there is a domination of fishers using less advance fishing technology by fishers using more advance technology.

In this regard, the concept I call "domination distance" (Kinseng, 2006, 2007a, and 2007b) become very important. By domination distance I mean the distance where the domination of a more advance technology is still felt by the less advance technology. The length of the domination distance is determined by the advance level of the more advance technology involve. In Balikpapan, For

instance, domination distance of a purse seine from Java is longer the domination distance of a boat lift net.

In term of violence of conflict, I would argue that when the issue of conflicts is about livelihood, the conflict tends to be violent. Thus, if Coser argue that the violence of conflict is determined by whether the issue is realistic or nonrealistic (See Coser, 1956 and Turner, 1998), I contend that it is also determined by whether the issue is related directly to core livelihood or not.

Second case, external conflict or conflict between fishers with non-fishers. The main issue triggers conflict between fishers and non-fishers is also about livelihood. Activities of non-fishers that disturb or ruin or threaten fishers' livelihood will produce conflict. In Balikpapan case, mining activities conducted by Thiess and Unocal companies, for example, disturb and destroy fishers' livelihood directly, while PERTAMINA (and government) disturb their livelihood indirectly through the increase of diesel fuel price and scarcity of the kerosene. Sociologically speaking, basically this is also about domination of fishers by external forces.

3.4. Conclusion and Recommendation

A. Conclusion

From the description above, it can be concluded that:

- 1) Fishers using more advance fishing technology tend to dominate fishers using less advance technology, when they operating in the same fishing ground or close one another. The domination, in turn, tends to trigger conflict between the two camps. In a more practical words, usage of different level of technology advancement by fishers in the same fishing ground or close one another tends to trigger social conflict between fishers from the two kind of technologies.
- 2) The level of conflict violent is determined by whether the issue is about livelihood or not. When the issue is about core livelihood, the conflict tends to be violent.
- 3) Conflict between fishers and non-fishers tends to take place whenever the non-fishers disturb, threaten or destroy fishers livelihood, directly or indirectly.

B. Recommendation

- 1) Arrangement of fishing zone between fishers with different level of technology advancement is needed in order to avoid domination which tends to trigger conflict. In determining the zones, it is very important to take into account the domination distance of the more advance fishing technology involve.
- 2) Whenever non-fishers have programs or activities that may disturb, threaten or destroy fishers livelihood, it is very important to settle the issue with fishers beforehand. Fishers' rights need to be respected and protected.

4. LEGAL BACKBONES IN FISHERIES RESOURCES MANAGEMENT

4.1. International Law

A. UNCLOS 1982

United Nations Convention on the Law of the Sea (UNCLOS) is considered as the codified set of existing international regulations. This is given that the Convention has comprehensively comprised and managed almost every activity at sea. Therefore, UNCLOS 1982 is considered as a *constitution for the ocean* (Agoes, 2004).

This Convention was signed in Montego Bay, Jamaica by 119 countries in December 10th, 1982. However, this Convention was generally effective in November 16th, 1994 following the ratification by Guyana in November 16th, 1993 (Brown, 1994). This was based on the Article 308 paragraph (1) UNCLOS 1982 which stated that the Convention would be effective 12 (twelve) months after the date of the 60th accession or ratification certificate deposit. Indonesian government ratified UNCLOS in December 31st, 1985 through the Act No. 17, 1985, and considered as the 26th ratifying country in February 26th, 1986. Until February 8th, 2007, UNCLOS 1982 has been ratified by 153 countries (www.untreaty.un.org).

As a *constitution for the ocean*, UNCLOS manages the fishery activities comprehensively. The aim is to have a sustainable fishery management, within or beyond the coastal state jurisdictions. The regulations concerning that matter are stated in Chapter V on Exclusive Economic Zone (EEZ) and Chapter VI on High seas.

There are 21 articles in Chapter V. Among them are 15 articles concerning on fisheries issue in EEZ. In EEZ, a coastal state has the sovereign right upon the natural or non-natural resources. This Convention has stated the set of rules for both utilization and conservation of fisheries resources in EEZ. Also, this Convention has mentioned the rights and obligations of coastal state. Article 61 UNCLOS 1982 mentions that every coastal state should determine the total allowable catch in EEZ by showing the best scientific evidence. This aimed to preserve or restore the fisheries resources population according to the *maximum sustainable yield (MSY)*.

The utilization activities of EEZ natural resources are managed in Article 62. It is mentioned that the coastal state should optimize the natural resources utilization in EEZ. If the coastal state cannot optimize the resources to meet the total allowable catch, the coastal state can give the opportunity to other countries to utilize the remaining total allowable catch (surplus). This can be implemented with high consideration of Article 69 on non-coastal state and Article 70 on the geographically unfortunate countries, especially those related to developing countries. Also, the access grant to utilize the fisheries surplus given to foreign party, e.g. another country, should be conveyed after an agreement is set or set of coordination is agreed.

Diantha (2002) mentioned that the access grant to other countries should consider several factors, such as:

- a. The importance in the natural resources for the state's national economy.
- b. Other non-economy importance.
- c. Articles 69 and 70.
- d. The need of certain developing countries to utilize the surplus, as stated in Articles 69 and 70.
- e. The needs of certain countries to reduce the dislocation indication since their citizens have done traditional fishing activities in the EEZ of the coastal state.
- f. The need of certain countries that have clearly conducted research activities and fish stock identification in the EEZ of the coastal state.

Based on the above explanation, it is clear that the foreign access to utilize the resources in a coastal state is not given automatically, but on the basis of agreement and regulations between the coastal state and the third party state

(Anwar, 1995). In other words, the coastal state has the right to determine whether or not the foreign state can utilize the resources in EEZ. The reason is that the access upon fisheries surplus for foreign state is highly determined by the coastal state policy. The coastal state can highly consider the importance of the natural resources for its state economy. Furthermore, several law experts such as Garcia and Douglas M Jhonson urge that the access grant to foreign party to utilize the resources surplus is not a "right", but more of a "good faith" from the coastal state (Diantha, 2002).

In achieving the sustainable fisheries resources, UNCLOS 1982 also mentioned about the fish stock in EEZ in Article 63. Several key rules in Article 63 UNCLOS 1982 are:

- a. Regional or sub regional coordination on conservation and the development on several species that is growing in the EEZ of two or more coastal states are required.
- b. Regional or sub regional coordination concerning conservation on certain fish species located within the EEZ of the coastal state and beyond but still in a short distance is required. The coordination is settled between the coastal state and other countries that catch the similar species beyond the EEZ of coastal state.

Also Articles 64 to 68 mention the types of fisheries resources, which are:

- a. Highly Migratory Species (Article 64)

The coastal state and other countries, whose citizens are conducting fishing activities on highly migratory species, should cooperate directly or through related organization. The aim is to assure the conservation and optimize the utilization purposes within or beyond the EEZ. In the regions where there are no related international organizations, the coastal state and other countries whose citizens is conducting fishing activities on highly migratory species, should cooperate in forming the conservation organization and take active part in every conservation activities.

- b. Ocean Mammals (Article 65)

Regarding the ocean mammals, UNCLOS 1982 provide full authority to the coastal state or certain international organizations to conduct the conservation under strict requirements.

c. Anadromous Species (Article 66)

Anadromous fish species is the type of fishes that spawn in the river and grow in the high seas, e.g. salmon. In general, Article 66 mentions several statements below:

- (1) The coastal state whose river becomes the spawning ground for anadromous species has the most significant importance upon the species and be responsible upon the stock of the mentioned species.
- (2) The coastal state (origin state) should conduct the conservation by stating certain regulations upon the fish capture in its sea or EEZ after consulting with other countries that also utilize the species. The origin state can determine the total allowable catch for the other countries.
- (3) The coastal state can only conduct the capture activities of the anadromous species at the inland side of its EEZ outer border, without causing economic dislocation for other countries. The capture activities outside the outer border of its EEZ should be consulted with other benefiting countries, also with high consideration for the origin state.
- (4) If the anadromous species migrate through the inland side of other countries' outer side of EEZ, then these countries should cooperate with the origin state for conservation.
- (5) The origin state and other countries that utilize the species should issue a set of regulations to conduct Article 66 UNCLOS 1982, or through a regional organization if necessary.

d. Catadromous Species (Article 67)

Catadromous fish species are the type of fishes that spawn in the ocean and grow in the river, e.g. eels. In general, Article 67 mentions several statements below:

- (1) The coastal state where the species spend most of their life cycles should be responsible for the utilization. Also, the coastal state should ensure the migration flow of these fishes.
- (2) The utilization of the fishes can only be conducted in the inland side of the EEZ outer border. The utilization in the other part of the inland side must be conducted according to Article 67 and other regulations in UNCLOS 1982.

(3) If the catadromous fish species migrate through the EEZ of other countries, an agreement must be made by the related countries concerning the management and utilization by considering the responsibility of the origin state regarding the stock sustainability.

e. Sedentary Species (Article 68)

Sedentary fish species are type of fisher that in still condition, are always on or below the sea bottom, and if moving, are always require physical direct contact with the sea bottom or the ground below. Article 68 mentions that, "this part is not applicable for sedentary species as defined in Article 77 paragraph (4)". This means that all regulations in Chapter V on ZEE are not applicable for sedentary species because this species is further discussed in Chapter VI about Continental Shelf. The regulation directly related to this species is Article 77 paragraph (2) and paragraph (4). Article 77 paragraph (2) mentions that, if the coastal state do not conduct the exploitation upon the natural resources in the continental shelf, then other countries do not have the right to conduct the exploitation without permission from the coastal state. This implies that the coastal state has exclusive sovereign right upon the natural resources in its continental shelf. Article 77 paragraph (4) stated that sedentary species are the natural resources in the continental shelf. Therefore, the sedentary species are different from other types of resources and cannot be exploited by other countries that exploit the other fish surplus as mentioned in Articles 69 and 70.

As mentioned before, UNCLOS stated the rights of non-coastal states and the geographically unfortunate countries in relation to the fair participation of those countries in managing parts of the fish surplus of the coastal state. The rights of those countries is conducted in consideration of the economic and geographical conditions of the related countries, also should be conducted according to the regulations stated in UNCLOS 1982 Articles 61 and 62. The arrangements for the participation of those countries are stated in Articles 69 and 70.

Several regulations mentioned in Article 69 are:

- a. The non-coastal states, which located in similar region or sub region, have the right to participate based on equality for the exploitation of

- considerable portion of the coastal states' natural resources in EEZ by considering the economic and geographic conditions of related countries.
- b. In relation of this matter, the participation of coastal state can be conducted upon the basis of bilateral, sub regional, or regional agreements.
 - c. The mentioned agreement must consider several factors, namely:
 - (1) Must not reduce the benefits of the fisheries community or fisheries industry of the coastal state.
 - (2) A possible participation of the coastal state in fisheries resources utilization in its own EEZ.
 - (3) The fact that other coastal state or the geographically unfortunate countries have participated in utilizing the fisheries resources in the EEZ of the coastal state is considered as avoiding to lay the burden only to the coastal state.
 - (4) The need for nutrition for the community in the related countries.
 - d. The regulations are applied without conflicting the existing regional or sub regional regulations, in which the coastal state is given the equal or preferential rights upon the fisheries resources exploitation of the EEZ.

Article 70 UNCLOS 1982 defines two types of the geographically unfortunate countries, namely (Anwar, 1995):

- a. Countries which fulfill their nutrition needs from fisheries resources exploitation in the EEZ of other countries within the region or sub region, including countries facing closed or semi-closed sea.
- b. Coastal state that cannot claim the EEZ.

Upon the access given from the coastal state, the foreign countries are obliged to comply with the marine environmental conservation efforts based on the rules and regulations of the coastal state. The regulations may take form of license, fee payment, other remunerations and regulations which can be conducted based on appropriate compensation, and the possibility of transfer of technology and equipment for fisheries industry in the coastal state (Anwar, 1995).

Furthermore, Anwar (1995) reveals that this regulation is also related to the regulations upon the species allowed to be captured, catch quota, fishing

season, type and size of fishing equipment, and types and amount of fishing boats. Also, the determination of allowed fish size and growing stage, information provided by the fishing boat, regulations on the fishery research programs, and involvement of coastal state citizen in fisheries boats for training purposes.

However, the coastal state and the countries with access rights cannot transfer the right to the third party through license or rent, joint venture, or other methods without the agreement of coastal state (Article 72). Furthermore, Article 71 declares that the regulations in Articles 69 and 70 are not applicable in a coastal state is highly dependent on the natural resources exploitation in its EEZ.

In addition to Chapter V on EEZ, the regulations concerning fisheries are also mentioned in Chapter VI on High Seas, especially in Part 2 about natural resources conservation and management in the high seas. The freedom to fish in the high seas is stated in Article 116. It is mentioned that, all countries has the equal right to capture fishes in the high seas, with respect to the obligations based on international agreements, and the rights and obligations of the coastal state according to Article 63 paragraph (2), and Articles 64 to 67. Also, the state obligations in capture fisheries is mentioned in Article 118, namely that all state have the obligation to act or cooperate with other countries in natural resources conservation and management in the high seas.

B. UN Compliance Agreement 1993

The regime applied in the high seas is freedom as stated in Article 87 UNCLOS 1982, since this area is not under any nations jurisdictions. Therefore, all countries have equal rights to utilize the fisheries resources in the high seas. However, UNCLOS 1982 requires all countries to cooperate for sustainable fisheries resources in high seas.

In order to achieve the sustainable fisheries resources in the high seas, a particular regulation is required. Therefore, *Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessel on the High seas* or known as *UN Compliance Agreement 1993* is agreed in November 24th, 1993. This agreement serves as basis for fishing practice in the high seas and to start on the marine resources conservation effort by promoting the role of multilateral fisheries organizations.

Since its birth in 1993 until 2005, *UN Compliance Agreement 1993* has not reach the *entry into force* stage. This is due to the fact that only 16 countries

have ratified this agreement while 25 countries are required, based on Article 11 *UN Compliance Agreement 1993* (Kania, 2005a). Until present, Indonesia has not yet ratified this *UN Compliance Agreement 1993*. This Agreement consists of 16 articles concerning several key factors, namely:

1. Entry into force or application (Article 2);
2. Responsibility of the flag state (Article 3);
3. Documentation of fishermen's boats (Article 4);
4. International cooperation (Article 5);
5. Information exchange (Article 6);
6. Cooperation with developing countries (Article 7);
7. Agreement relations with non-member countries (Article 8);
8. Dispute resolution (Article 9).

C. UN Fish Stock Agreement 1995

Management of highly migratory species has been organized in Article 64 UNCLOS 1982. However, the management only applies in EEZ. The nonexistence of regulations concerning the stock of highly migratory species and straddling fish stock in the high seas has resulted on a significant depletion for both types of species. Therefore, regional, sub regional, or global fisheries management cooperation is expected to be a solution for this issue.

In order to achieve the above purpose, in 1995, a new agreement is formed as an application for UNCLOS 1982, namely *Agreement for the Implementation of the Provision of the UNCLOS of 19 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks*, known as *UN Fish Stock Agreement 1995*. This agreement has been effectively entered into force in December 11th, 2001, after being ratified by 30 countries, a requirement in Article 40. The 30th ratifying country is Malta, in November 11th, 2001. Until February 2007, there are 64 countries that have ratified this *UN Fish Stock Agreement 1995* (www.untreaty.un.org). Until present, Indonesia has not ratified this *UN Fish Stock Agreement 1995*.

The general principles of *UN Fish Stock Agreement 1995* are mentioned in Article 5, namely:

1. To take actions to guarantee the sustainability of highly migratory species and straddling fish stocks and support the fishes optimal utilization purposes;
2. To ensure that the above actions are based on best scientific evidence and designed to preserve or restore the stock to a level that can ensure the maximum sustainable yield;
3. To apply careful principles as mentioned in Article 6;
4. To measure the impact of fishing, other human activities, and other environmental factors to the target stocks and species in similar ecosystem or related to target stocks;
5. If necessary, to take conservation and management actions for species found in the similar ecosystem or related to target stocks in order to preserve or restore the species' population from highly endangered levels of reproduction;
6. To minimize pollution, waste, useless catch, abandoned fishing gear, by-catch (fish species or non-fish species), and the impact to fish, through common actions, effective use and management, environmentally safe and inexpensive fishing gear and technology;
7. To protect marine biodiversity;
8. To take actions in order to prevent or reduce the over-capacity fishing and to ensure that the fishing effort do not exceed the equal level of maximum sustainable yield;
9. To take high considerations for coastal and artisanal fishermen;
10. To gather and provide, at appropriate period, complete and accurate data concerning fisheries activities such as boat position, target and non-target species, and fishing effort as mentioned in Appendix I, also informations from national and international research programs;
11. To conduct and support scientific researches and to develop accurate technology that encourage fisheries management and conservation;
12. To conduct conservation and management effort through monitoring, surveillance and observation.

D. Code of Conduct for Responsible Fisheries

Both *UN Compliance Agreement 1993* and *UN Fish Stock Agreement 1995* are binding to all countries ratifying them, consisting of requirements related to regulation, law enforcement, and responsibilities of the flag State (Schmidt, 2005). However, many coastal state and countries with highly expanding fishing fleet have not ratified those agreements, including Indonesia. Therefore, responsible and sustainable fisheries activities are still confronted with boundaries.

In order to solve the above issue, in the late 1995, FAO had issued a guidance under the name of *Code of Conduct for Responsible Fisheries (CCRF) 1995*. CCRF 1995 was stated in a conference held in October 31st, 1995. CCRF 1995 is considered to be very helpful for international fisheries community that every nation is urged to form sustainable fisheries policies.

Article 1 paragraph (2), mentions that CCRF 1995 can be a guidance for fisheries stakeholders to compose policies and actions concerning fisheries exploitation, conservation, fisheries processing and marketing. This is because CCRF 1995 is based on relevant international rules and regulations, such UNCLoS 1982, Agenda 21 and Principles of Rio Declaration 1992, also other forms of regulations.

In general, CCRF 1995 manages six main themes of fisheries issues, namely fisheries management, fisheries operation, aquaculture development, integration of fisheries into coastal area management, post-harvesting practices and trade, and fisheries research.

The general principles of CCRF that must be taken into account in all fisheries activities are mentioned in Article 6, namely:

1. The state and users of the natural resources must preserve the aquatic ecosystem;
2. Fisheries management must encourage the sustainable and appropriate quality, diversity, and quantity of resources for present and future generations, in terms of food security, poverty alleviation, and sustainable development.
3. The state must prevent over fishing activities;
4. The decision upon fisheries resources management and conservation must be based upon the best scientific evidence;

5. The state and organization that conduct fisheries management activities in regional or sub regional level must conduct the precautionary approach;
6. Selections on fishing gears must be encouraged;
7. Harvesting, handling, processing and distribution of fish and fisheries products should be conducted in such a way that will preserve the nutrition value, product quality and safety, reduce waste, and minimize the negative effect towards the environment;
8. All habitats of fisheries species in the sea and freshwater ecosystem such as rainforest, mangrove, coral reef, lake, swamp, spawning and nursery ground should be protected and restored;
9. The state must guarantee that the necessities of fisheries resources including the need for sustainability should be take into account in terms of coastal areas utilization, and integrate them into the management, planning, and development activities;
10. Based on the international law and each state's ability, the state must ensure the fulfillment and enforcement of management and conservation. Also, the effective mechanism to observe and control the fishing vessel activities, including the framework of fisheries management and conservation organization in regional or sub regional level;
11. The state that allows fishing vessels operating in its territory must conduct effective surveillance towards those vessels;
12. Based on the international law and each state's ability, the state must conduct cooperation in sub regional, regional, and global levels in fisheries organizations to promote management and conservation, ensure responsible fisheries activities, and to ensure effective protection and conservation of aquatic resources;
13. Limited to each state's national regulations, a state must ensure a transparent and punctual decision making concerning urgent issues;
14. International trade on fish and fisheries products must be conducted according to the regulations and principles mentioned in WTO agreement and other relevant international agreements. The state must ensure that policies, programs, and implementations related to fish and fisheries product trade will not be causing any trade obstacles,

environmental degradations, or any negative social impact, including nutrition issues;

15. The state should cooperate to avoid disputes. All disputes related to fisheries activities should be resolved as soon as possible and in peace, according to international agreements and agreements of all parties. However, if the resolution attempt is delayed, the conflicting states should form a practical temporary agreement without abandoning the final settlement;
16. In recognition upon the importance of fisheries labor and fishermen in understanding the fisheries resources management and sustainability, the state should encourage the awareness for responsible fisheries through education and training. The state must ensure that fisheries labor and fishermen are involved in policy making and implementation, also to facilitate CCRF 1995 implementation;
17. The state must ensure healthy, safe, and open fisheries facility, fair living and work conditions, according to the international standards stated by relevant international organization;
18. Since the significance of fishermen in providing job opportunity, state revenue and food security is acknowledged, the state must protect the rights of fisheries labor and fishermen, especially artisanal fishermen;
19. The state must consider aquaculture as a supporting part of food and revenue diversification. However, the state must ensure the responsible use of resource.

4.2. National and Local Law

The long history of fisheries management in Indonesia is highly related to the development of law of the ocean in Indonesia, which initiated by *Deklarasi Juanda* in December 13th, 1957. This declaration was a statement from Indonesian government concerning territorial issues, which altered the territorial sea border from 3 miles according to TZMKO 1939 into 12 miles. Furthermore, the declaration was enforced by *Peraturan Pemerintah Pengganti Undang-undang* (Government Decree as substitute to Act) or *Perpu* No. 4/1960 on Indonesian Waters. Following UNCLOS 1982, Indonesian government ratified it in form of Act No. 17/1985 and substituted *Perpu* No. 4/1960 with Act No. 6/1996 on Indonesian Waters. For fisheries activities, the principles of international

regulations are mentioned in several *municipal law*, such as *Undang-undang Zona Ekonomi Eksklusif Indonesia* (Act on Indonesian Exclusive Economic Zone) and *Undang-undang Perikanan* (Fisheries Act).

A. Act on Indonesian Exclusive Economic Zone

Fisheries management in Indonesian Exclusive Economic Zone (IEEZ) is regulated by Act No. 5/1983 on Indonesian Exclusive Economic Zone. Before this Act was released, Indonesia had issued *Pengumuman Pemerintah tentang ZEEI* (Government Announcement on IEEZ) in March 21st, 1980. Act No. 5/1983 consists of 9 chapters and 21 articles, namely:

- a. Chapter I on General Requirements (1 Article)
- b. Chapter II on Indonesian Exclusive Economic Zone (2 articles)
- c. Chapter III on Sovereign Rights, Other Jurisdiction Rights and Obligations (1 articles)
- d. Chapter IV on Activities in IEEZ (4 articles)
- e. Chapter V on Reimbursement (4 articles)
- f. Chapter VI on Law Enforcement (3 articles)
- g. Chapter VII on Criminal Matters (2 articles)
- h. Chapter VIII on Reassignment (1 Article)
- i. Chapter IX on Closure (2 articles)

Since Act No. 5/1983 was issued after UNCLOS 1982 had been signed, then contents of Act No. 5/1983 was based on the regulations in UNCLOS 1982. Even though, at that period, Indonesia had not ratified UNCLOS 1982. Several adopted regulations found in Act No. 5/1983 are the statement that the size of IEEZ territory is 200 miles (Article 2), the use of *median line* and *equidistance* principles in the border line statement (Article 3), sovereign rights, other jurisdiction rights and obligations upon resources (Article 4).

The fish surplus utilization by foreign party is heavily stated in Article 5 paragraph (3). It is mentioned that certain resources exploration and exploitation in certain areas within the IEEZ by a person or foreign countries is allowed if the allowable catch of the resources is beyond the Indonesia's ability to utilize. However, Diantha (2002) reminds that Act No. 5/1983 should have an article concerning the management for IEEZ fish surplus utilization for deserving countries based on Article 69 and Article 70 UNCLOS 1982.

Apart from that, Act No. 5/1983 also manages the environmental management in IEEZ. Article 8 paragraph (1) mentioned that all parties who conduct their activities in IEEZ must avoid and prevent the ocean environment from being polluted. Furthermore, Article 8 paragraph (2) mentioned that polluting activities in IEEZ must only be conducted under permission from Indonesian government. The law enforcement authority in charge on IEEZ is *Tentara Nasional Indonesia Angkatan Laut* (Indonesian Marine Army) appointed by *Panglima Angkatan Bersenjata Republik Indonesia* (Chief of Indonesian Arm Forces) (Article 14).

B. Fisheries Act (No 31/2004)

In the previous national act on fisheries namely National Act No. 9/1985, it consists of 11 chapters and 35 articles, namely:

- a. Chapter I on General Requirements (1 articles);
- b. Chapter II on Fisheries Territory (1 Article);
- c. Chapter III on Fisheries Resources Management (6 articles) ;
- d. Chapter IV on Fisheries Resources Utilization (5 articles);
- e. Chapter V on Training and Development (7 articles);
- f. Chapter VI on Transfer of Matter and Assistance (2 articles);
- g. Chapter VII on Monitoring and Surveillance (1 Article);
- h. Chapter VIII on Criminal Matters (7 articles) ;
- i. Chapter IX on Other Requirements (1 Article);
- j. Chapter X on Reassignment (1 Article);
- k. Chapter XI on Closure (3 articles) ;

In Act No. 9/1985, the Indonesian aquatic territory consists of: (a) Indonesian Waters; (b) river, lake, swamp, and other aquatic pool within Indonesian territory; and (c) Indonesian Exclusive Economic Zone (Article 2). Several regulations concerning fisheries management in Act No. 5/1983 are:

- a. Nobody is allowed to conduct capture fisheries and aquaculture activities using dangerous gears or materials (Article 6 paragraph 1).
- b. Any act that will cause pollution and damage to fisheries resources and the surrounding environment are prohibited (Article 7 paragraph 1).
- c. For the purpose of science, culture, and nature conservation, the government can appoint certain endangered fish species and/or certain

aquatic territory as aquatic conservancy based on the distinctiveness of the appointed region (Article 8 paragraph 1).

Article 9 paragraph (1) Act No. 9/1985 reveals that the fisheries effort in Indonesian aquatic territory can only be conducted by Indonesian citizen or organization. However, the statement in Article 9 paragraph (1) is conflicted by paragraph (2) which mentions that the exception upon the statement in paragraph (1) can only be given in fish capture as Indonesia's obligations according to international agreements and regulations. This article serves as basis for foreign party to utilize the fish surplus in IEEZ as mentioned in UNCLOS 1982.

All parties conducting fisheries effort in Indonesian territory are obliged to have fisheries effort license (Article 10 Paragraph 1) and must pay the retribution (Article 11 paragraph 1). These statements do not apply for small and artisanal fishermen. This statement is aligned with Article 10 paragraph (2) and Article 11 paragraph (2), stating that small and artisanal fishermen are not obliged to have fisheries effort license and pay the retributions.

Furthermore, there are regulations concerning flags that are used in fishing boats. It is mentioned that all fishing boats used by Indonesian citizen or organization in Indonesian territory must use Indonesian flag (Article 12 paragraph 1). This regulation is not applied in IEEZ (Article 12 paragraph 2). This implies that in IEEZ, foreign vessels may use the flag of their origin state. This regulation is based on the fact that at that period, most Indonesian fishing vessels could not afford to operate in IEEZ, due to the lack of financial capital and technological advance, as mentioned in Article 12 paragraph (2). Therefore, foreign parties may cooperate with Indonesian government to optimize the fisheries resources in IEEZ in forms of rent system or leasing of foreign fishing boats. The implication of this statement is that a set of regulation concerning the period of rent or leasing, and the obligation to involve Indonesian labor.

As mentioned in Act No. 5/1983, Act No. 9/1985 states that the law enforcement authority in charge on IEEZ is *Tentara Nasional Indonesia Angkatan Laut* (Indonesian Marine Army) or TNI-AL appointed by *Panglima Angkatan Bersenjata Republik Indonesia* (Chief of Indonesian Arm Forces). Article 31 paragraph (1), also implies that the law enforcement authority in charge of investigation of the act violation in Indonesian waters is the investigating officer

as also mentioned in Article 14 paragraph (1) Act No. 5/1983. Apart from TNI AL, Act No. 9/1985 assigns *pejabat pegawai negeri sipil* (civil government officer) or PPNS in fisheries to conduct the investigation of act violation (Article 31 paragraph 2). Based on Article 31 paragraph (2), the PPNS are in charge of several assignments, namely:

- a. To accept the reports on the Act violation;
- b. To request the presence of suspected violators and conduct the investigation;
- c. To examine the fishing boat, transportation facility, and facilities of storage, cold storage, and fish preservation that are suspected to be the location of the violation;
- d. To take the fishes, gears, and documents resulting from the suspected Act of violation by force.

The rapid development of international law in fisheries management urged the Indonesian government to revise the national fisheries regulations. Therefore, in September 14th, 2004, Act No. 9/1985 was replaced by Act No. 31/2004 on Fisheries.

According to Satria (2004), this revision is a significant momentum for Indonesian fisheries history, because Act No. 31/2004 is a correction for Act No. 5/1985 which considered to be inappropriate for the current development. This is aligned with the letter c considerate. Article No.31/2004 consists of 17 chapters and 110 articles, namely:

- a. Chapter I on General Requirements (3 articles)
- b. Chapter II on Scope of Act (1 Article)
- c. Chapter III on *Wilayah Pengelolaan Perikanan* (Fisheries Management Territory) (1 Article)
- d. Chapter IV on Fisheries Management (19 articles)
- e. Chapter V on Fisheries Effort (21 articles)
- f. Chapter VI on Fisheries Information System and Statistical Data (2 articles)
- g. Chapter VII on Fisheries Retribution (4 articles)
- h. Chapter VIII on Fisheries Research and Development (5 articles)
- i. Chapter IX on Fisheries Education, Training, and Extension (3 articles)
- j. Chapter X on The Empowerment of Small Fishermen (5 articles)

- k. Chapter XI on Transfer of Matter and Assistance (1 Article)
- l. Chapter XII on Fisheries Surveillance (5 articles)
- m. Chapter XIII on Court of Fisheries (1 Article)
- n. Chapter XIV on Investigation, Prosecution, and Examination in Court of Fisheries (12 articles)
- o. Chapter XV on Criminal Matters (22 articles)
- p. Chapter XVI on Reassignment (4 articles)
- q. Chapter XVII on Closure (2 articles)

Based on Article 2 Act No. 31/2004, the fisheries management is conducted based on the principles of utility, fairness, partnership, equality, efficiency, joint forces, and sustainable conservation. The purposes of fisheries management are mentioned in Article 3, namely:

- a. To promote the livelihood development of small fishermen and aquaculture farmers.
- b. To increase the national revenue and income from foreign sources.
- c. To promote the expansion of job opportunities.
- d. To increase the availability and consumption of fish as source of protein.
- e. To optimize the fisheries resources management.
- f. To increase productivity, quality, added value, and competitive power.
- g. To increase the availability of raw materials for fish processing technology.
- h. To optimize the fisheries resources, aquaculture land, and resources environment.
- i. To ensure the sustainability if fisheries resources, aquaculture land, and the territory.

In order to create the responsible fisheries management beyond Indonesian jurisdiction, Article 5 paragraph (2) UU No. 31/2004 suggest the significance of the fisheries management in the high seas. It is also mentioned that the fisheries management beyond Indonesian territory is conducted based on the international rules and regulations. According to the explanatory article, the fisheries management beyond Indonesian territory is considered to be the fisheries management in the high seas. The above statement was not found in Act No. 9/1985. Therefore, the Indonesian government has attempted to adopt the international regulations in fisheries. The Act No. 31/2004 also consists of

regulations concerning international cooperation between Indonesia and other countries. Article 10 paragraph (1) mentioned that for the purpose of international cooperation, the government must conduct the following actions:

- a. To publish several matters concerning fisheries resources management and conservation regularly;
- b. To cooperate with the neighboring countries concerning fisheries resources management and conservation, closed and semi-closed seas, and the bay areas;
- c. To inform and to deliver related evidence to the origin flag states that are suspected to conduct actions that can harm fisheries resources management and conservation.

Furthermore, the involvement of Indonesia in regional and international fisheries organization is ensured in Article 10 paragraph (2). Another current matter in Act No. 31/2004 is the acknowledgement of marine cultural rights (*hak ulayat laut*) and local wisdom in coastal areas. Article 6 paragraph (2) mentions that the fisheries management for fish capture and aquaculture must consider the traditional customs and/or local wisdom, also the involvement of local community. The recognition of local wisdom was a rare matter in the centralistic New Order era.

Article 7 paragraph (3) Act No. 31/2004 mentioned the total allowable catch as suggested by Article 61 UNCLOS 1982, where the potentials and amount of allowable catch are determined by the minister of marine and fisheries affair, by considering the recommendations from the National Commission which studies the fisheries resources.

Currently, the fisheries effort in Indonesia should be integrated, because the fisheries effort system consists of pre-production, production, processing, and marketing (Article 25). All parties conducting capture fisheries activities, aquaculture, transportation, processing, and marketing are obliged to own the Document of Fisheries Effort License (*surat izin usaha perikanan* or SIUP). However, the obligation to possess the SIUP does not apply for small and artisanal fishermen (Article 26).

Meanwhile, detailed regulations for the capture fisheries effort within or beyond Indonesian jurisdiction are mentioned in Chapter V on Fisheries Effort, namely:

- a. Every person who possesses and/or operates fishing boats under Indonesian flag and conducts the capture fisheries activities in Indonesian Fisheries Management Territory (WPP) and/or high seas, is obliged to possess SIPI (Article 27 paragraph 1).
- b. Every person who possesses and/or operates fishing boats under foreign flag and conducts the capture fisheries activities in Indonesian Fisheries Management Territory (WPP) is obliged to possess SIPI (Article 27 paragraph 2).
- c. Fishing boat under Indonesian flag operates within the territory of other countries must be approved by the government (Article 27 paragraph 4).
- d. Every person who possesses and/or operates boats for transporting fishes in Indonesian Fisheries Management Territory (WPP) is obliged to possess SIKPI (Article 28 paragraph 1).
- e. Every fishing boat that operates in Indonesian Fisheries Management Territory (WPP) must be equipped with SIPI (Article 31 paragraph 1).
- f. Every boat for transporting fishes that operates in Indonesian Fisheries Management Territory (WPP) must be equipped with SIKPI (Article 31 paragraph 2).

As mentioned in Act No. 9/1985, the existence of foreign fishing fleet in Indonesian WPP is mentioned in articles 29 and 30 in Act No. 31/2004. It is stated that the fisheries effort in Indonesian WPP is only allowed for Indonesian citizen or organizations (Article 29 paragraph 1). However, this regulation is not applied for foreign parties who conduct capture fisheries effort in IEEZ, as Indonesia's obligations according to international agreements and regulations (Article 29 paragraph 2). Therefore, Act No. 31/2004 still provides legitimation for foreign parties to utilize the fisheries resources in Indonesian WPP.

Access grant to the foreign parties must be under fisheries agreement, access management, and other regulations between Indonesian government and the flag state government. The fisheries agreement must mention the obligation of flag state government to be responsible for the citizen of the state to comply with the agreement (Article 30).

The fisheries retributions for both national and foreign fleet are mentioned in detail in Chapter VII. Article 48 mentions that every party who obtains direct benefits from fisheries resources and the surrounding environments from Indonesian WPP is obliged to pay certain fisheries retributions. However, the regulation is not applied to small and artisanal fishermen and small aquaculture farmers. Also, foreign fleets that conduct the capture fisheries activities in IEEZ are obliged to pay certain fisheries retribution (Article 49). The outcome from this retribution is used for the purpose of fisheries development and conservation activities (Article 50).

Another recent progress in Act No. 31/2004 on Court of Fisheries, as mentioned in Chapter XIII. Several regulations mentioned in Article 71 namely:

- a. Court of Fisheries is in charge of examination, trial, and place a verdict upon criminal action on fisheries.
- b. The Court of Fisheries is within the scope of General Court.
- c. The first Courts of Fisheries are established in the State Court of North Jakarta, Medan, Pontianak, Bitung, and Tual.
- d. The area of work of this Court of Fisheries is similar to the area of work of the related State Court.
- e. The Court of Fisheries will operate at least 2 (two) years following the establishment of this Act.
- f. The establishment of the Court of Fisheries is conducted gradually according to the necessity and be appointed by the Presidential Decree.

Based on the above regulations, the establishment of the Court of Fisheries is expected to become a solution for many fisheries issues, mainly the long period between the trial and the verdict, creating uncertainties in the law sector of marine and fisheries. In detail, the distinctions between Court of Fisheries and the State Court are shown in the **Table 2** below.

Table 2. Distinction between Court of Fisheries and State Court

Process	Act No. 8/1981 (KUHAP)	Act No. 31/2004
Investigation	60 days	30 days
Prosecution	50 days	20 days
Examination in State Court	90 days	30 days
Appeal	90 days	30 days
Legal Review	110 days	30 days

Meanwhile, the legal authorities in charge for crime investigations in fisheries are *Penyidik Pegawai Negeri Sipil Perikanan* (Marine and Fisheries Investigation Officer), Indonesian Marine Forces (Navy), and Indonesian Police Officers (Article 73 paragraph 1). Therefore, Article 14 paragraph (1) Act No. 5/1983 stating that The Indonesian Marine Force as the legal authority in charge in IEEZ does not apply anymore. Besides the above regulations, Article 110 Act No. 31/2004 declares that the fine verdict in Article 16 paragraph (1) Act No. 5/1983 does not apply anymore. Another distinct contrast between Act No. 9/1985 and Act No. 31/2004 is that the maximum fine verdict for Act No. 9/1985 is Rp 100.000.000,00 (one hundred million rupiahs), while Act No. 31/2004 charges Rp 20.000.000.000,00 (twenty billion rupiahs) at most.

C. Act for Local Autonomy (No. 32/2004)

As the governance system transforms from centralized to decentralized, the regional authority for fisheries sector must also be redefined. The present regional authority in ocean territory is mentioned in Article 18, namely:

a. Article 18 paragraph (1)

Region that possesses ocean territory is given the authority to manage the marine resources.

b. Article 18 paragraph (2)

The Region will gain share upon the management of natural resources located on and/or below the sea bottom according to the applied rules and regulations.

c. Article 18 paragraph (3)

The region authority to manage the marine resources stated in paragraph (1) is as follows:

1. exploration, exploitation, conservation, and management of marine resources;
2. administrative management;
3. spatial management;
4. law enforcement of rules and regulations issued by the region itself and/or rules and regulations which the government has shared the authority to the region;
5. involvement in security preservation; and
6. involvement in the defense of national sovereignty.

crises is conflict in fisheries. Despite from the root of conflicts that is mainly traditionally well-known as structural conflicts between for example modern and traditional fishing gears or between industrial and artisanal fisheries, the conflict of resources spatial is recently increasing. This is due to increasing intention on fisheries conflicts especially after the enactment of National Act No 32/2004 on Local Autonomy. Under this law, district/municipal government has right to manage a 4 nautical miles area of ocean waters, and the provincial government has similar right for 12 nautical miles. However, it is flawing perceptions by the local governmental officers where it is then perceived as property right instead of management right. In this case conflicts of area (spatial conflicts) are raised due to this flawing perception. In order to minimize the potential impacts of this perception, a strategic management policy is then needed by increase capacity of the fisheries stakeholders including local government, local fishers, etc. Under this background, this report tries to contribute to increase understanding fisheries conflict in Indonesia and its management measures.

1.2. Objective

The main objective of this report is to give overview of fisheries conflicts in Indonesia especially in case of spatial and traditional conflicts, and describe legal backbone in determining management measures for this problem.

2. THEORETICAL BACKGROUND OF CONFLICTS IN FISHERIES

According to Kriesberg (1998), a social conflict exists when two or more persons or groups manifest the belief that they have incompatible objectives. In world of fisheries, conflicts have many dimensions including but no limited to power, technology, political, gender, age and ethnicity (Pameroy and Rivera-Guieb, 2006). Furthermore, Buckles and Rusnak (1999) identified that conflicts in fisheries take place at variety of levels from community to global levels. The roots of the conflict are also ranging from confusion and frustration over the directions fisheries management is taking to violent clashes between groups over resources ownership rights and responsibilities (Buckles and Rusnak, 1999).

Charles (2000) also identified that fisheries conflicts generally can be also seen as maximize or allocate pieces of the pie as presented in **Figure 1** below.

d. Article 18 paragraph (4)

The authority for marine resources management as mentioned in paragraph (3) is 12 (twelve) sea miles, measured from coastal / shore line to the high seas and/or to the archipelagic waters for province, and 1/3 (one-third) of the provincial territory is given to the city government.

e. Article 18 paragraph (5)

If the sea territory between 2 (two) province is less than 24 (twenty four) miles, the principles of median line or equidistance will be applied to divide the authority for marine resources management, and the city government will be given 1/3 (one-third) of the appointed territory.

f. Article 18 paragraph (6)

The statements in paragraph (4) and paragraph (5) do not apply for small-scale fishing.

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