

CRIMINAL LAW POLICY IN THE PROTECTION OF WHALE MAMMALS IN LEMBATA DISTRICT

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ABSTRACT

The Pope's arrest ceremony by the Lamalera indigenous people in Lembata Regency was preceded by a number of traditional rituals of the Lamalera area carried out by traditional leaders called Lamafa. This is caused by the number of whale mammals in sea waters that have begun to diminish and approach extinction. This is the reason behind the author's writing about "Criminal Law Policy in Whale Mammal Protection in Lembata District", which is a normative juridical text to answer 1) what is the policy of Pope Mammal arrest according to the Lamalera indigenous people; and 2) whether the Whale Mammal arrests carried out by the Lamalera indigenous people in Lembata District do not conflict with Indonesia's national legal policies. Based on research in the field, it was found that *first*, the capture of whale mammals by the indigenous people of Lamalera in Lembata Regency was designated as an intangible cultural heritage (WBTB), with criterion 1) Pope Mammal capture should not violate existing legal provisions, namely Whale Mammals females may not be stabbed, nor do they catch the Whale Mammals in protected zonansai sea (prohibited); 2) if there are found to be people who violate the regulations as mentioned in the first point, then law enforcement officials must carry out criminal prosecution for the intended violation. *Second*, the capture of whale mammals carried out by indigenous people in Lamalera in Lembata Regency is contrary to the provisions of Indonesian criminal law, but is permissible as an intangible cultural heritage (WBTB), as long as it adheres to the two criteria above.

Keywords: *criminal policy; protection; mammals.*

INTRODUCTION

Second Amendment to the 1945 Constitution of the Republic of Indonesia (URI NRI) Article 18 (b) paragraph (2) states that: Unity of the Republic of Indonesia, regulated in law ". This traditional right includes the right to manage natural resources (SDA).

Excessive exploitation of natural resources can cause losses or damage to natural resources that lead to extinction if not controlled. Overexploitation of natural resources can also break the food chain in these natural habitats. It also has negative impacts on humans, such as sickness and declining economic income due to loss of community livelihoods. One of the problems is the exploitation of natural resources, namely exploitation of natural resources in the marine sector.

There are many cases where communities through authorized institutions, community groups and individuals exploit marine natural resources. Exploitation of natural resources,

which in general have a negative impact on the community's environment, besides the exploitation in question always ignores the environment so that it threatens the sustainability and availability of these natural resources.

There are several marine mammal management policies as a source of income, including management policies aimed at carrying out traditional ceremonies in areas throughout Indonesia, especially the people of Lamalera, Lembata Regency, East Nusa Tenggara Province, namely the traditional ceremony of catching whale mammals known as the Baleo catching tradition. This has been done by the customary law community in that place for generations from their ancestors.

The ceremony of catching the Pope by the Lamalera indigenous people in Lembata Regency was preceded by a number of traditional Lamalera rituals performed by an adat leader called Lamafa. However, there is an obstacle in carrying out the adat ritual of catching the Pope's mammal, namely the Pope's mammal has been designated as a marine mammal that is prohibited from being captured by Indonesian national law. This is caused by the number of whale mammals in sea waters that have begun to decrease and approaching extinction. This is the background of the author's writing about "Criminal Law Policy in the Protection of Whale Mammals in Lembata District".

MATERIALS AND METHODS

1. Materials

a. Criminal Law Protection Policy

Radbruch described his opinion based on the basic thesis of the Baden school, namely culture. E. Lask was the one who declared that law is a culture of the Wissen Schaft¹². The essence of law as wissen schaf culture, aims to realize values. So, culture

¹²H. Dey Ravena, "*Kebijakan Kriminal*", Jakarta, Kencana, 2017:118.

is not a realm of reason, but a realm of practical reason. Culture is human values. Both knowledge, art, morality, and law are part of culture. Each carries human values. The law itself carries the value of justice for human concrete life¹³.

According to Sudarto¹⁴, the use of criminal law is only a response to a symptom (careeren am symptom) and not a solution by eliminating the causes. Nevertheless criminal law as one of the legal systems is still needed to cope with criminal acts that occur in society. Furthermore, the penal policy is an effort to realize criminal legislation in accordance with the circumstances and situation at that time and for the future.

To be consistent with the policy approach used, policy makers must pay attention to:

1. Preference of policy values and trends;
2. Available policy options or alternatives;
3. Ratios achieved for each social value sacrificed in each alternative policy;
4. Choose the most efficient policy alternative.

Sudarto stated that criminal politics is classified into 3 (three) types, namely: the whole of the principles and methods that form the basis of the reaction to violations of the law in the form of crime; the overall function of the law enforcement apparatus including the workings of the court & police; and overall policies carried out through legislation and official bodies aimed at enforcing the central norms of society.

According to Wisnubroto, criminal policy is an action that relates to matters: how the government's efforts to tackle crime with criminal law; how to formulate criminal law so that it is in accordance with the conditions of the community (policies regarding the determination of criminal acts; policies on establishing criminal liability; & policies on the determination of crimes and criminal acts).

¹³ *Ibid*, hlm: 106-107.

¹⁴ Kif Aminanto, “*Politik... Lock Cit*”, hlm. 47.

b. Position of Customary Law in National Law

Abu Daud Busroh¹⁵ stated that the de Jure (juridical) treatment of customary law community unity occurs if the existence of customary law community unit is still maintained by its traditional values and is kept and fostered by its supporting community, so the State recognizes it and regulates it in the provisions of the legislation. invitation that is valid or regulated and guaranteed in positive law. This acknowledgment is the broadest and permanent recognition of the emergence or emergence or formation of a State, because the formation of a new State is based on law. Therefore, customary law has the same position as the source of law in Indonesia.

2. Method

This type of research is empirical juridical research, with the consideration that the starting point of the study is an analysis of criminal law policies in the protection of Pope's mammals in Lembata Regency.

RESULT AND DISCUSSION

1. Policy on catching Pope Mammals according to the Lamalera Indigenous Peoples in Lembata Regency

1.1 Local wisdom of the Lamalera community is related to the Capture of Whale Mammals (*Baleo*)

Whale hunting conducted by the people of Lamalera is a sacred activity that must be carried out because the people of Lamalera cannot be separated from the sea and the Pope. The closeness of the ancestors of the people of Lamalera to the sea makes the sea have a special role. For the people of Lamalera, the sea is not only a collection of saltwater that floods the earth and divides it into continents, the sea is also not a separator of one island from another. the sea for the people of Lamalera is a means of

¹⁵ <http://kamusbahasaIndonesia.org/pengakuan>.

human communication with their Lord. Together with the sea they live, and from the sea they make a living. All activities of the Lamalera community are closely related to the sea, ranging from livelihoods, trade and economy, as well as in day-to-day activities. Baleo is a symbol of the close relationship between humans and their Lord.

1.2 Community Participation in Relation to Law Number 35 Year 2009, concerning Narcotics Crimes

The Local Government of Lembata rejects Conservation of the Pope, because:

- 1) The Lamalera community in the culture section of catching whales already has a conservation value, because female fish that breed in their stomachs should not be stabbed.
- 2) Zonanisi sea for conservation purposes is not in accordance with the Pope in Lamalera. Zonalization of the waters of the Lamalera to conserve whale mammals is not right, because the Lamalera Whales also only visit the area in certain seasons. In terms of the intensity of catching the pope, the people of Lamalera do not always catch the pope, but in season. Even during that season, there is not necessarily a whale that can be captured.

2. The application of Indonesian criminal law policy towards the act of catching Pope Mammals conducted by the indigenous people of Lamalera, Lembata Regency

2.1 Protection of Pope Mammals in the Indonesian Criminal Law System

Protection of the Pope's Mammals in the Indonesian Criminal Law policy when associated with Sudarto's opinion on criminal politics, the Researcher concludes 3 (three) matters, as follows: 1) the capture of the Pope's Mammals must be further studied whether included in violations of the law (criminal); 2) how is the response from law enforcement apparatus to the capture of Pope Mammals that occur in the community; and 3) whether the capture of the Pope Mammals by the indigenous people of Lamalera violates the basic norms that are the basis for the birth of legal policy in Indonesia.

Guided by Wisnubroto and Widiyada Gunakaya's opinion on the protection of criminal law, it was concluded that in relation to protection of the Pope's Mammals, the

criminal policy used was criminal policy to formulate criminal law to suit the conditions of the community, specifically relating to determining whether the capture tradition of the Pope Mammals (Baleo tradition) by the indigenous community Lamalera is a criminal offense or not a criminal offense, if the act is determined as a criminal offense and how criminal liability is. Legal reference: Law Number 45 Year 2009 junto Law Number 31 Year 2004 concerning Fisheries. In Law Number 31 of 2004 concerning Fisheries, several articles that regulate criminal acts (delik) in the fishery sector have been included. There are 2 (two) categories regarding fisheries crime, namely the violation category and the crime category.

1.1.1 Indonesia's Position in the International Convention for the Regulation of Whaling (ICRW)

Indonesia adheres to the ICRW and has ratified the international provisions in the provisions of national law, seen in the determination of the objectives of the national and regional fisheries conservation law. In connection with this, there are several laws and regulations governing the authority of the government and regional governments, namely Law Number 31 of 2004 concerning Fisheries, Law Number 26 of 2007 concerning Spatial Planning, Law Number 27 of 2007 concerning Management Coastal Areas and Small Islands, and Law Number 32 of 2004 concerning Regional Government, all of which contain decentralization principles related to fisheries management.

1.2 Legal Analysis of the Tradition of Baleo in the Legal System in Indonesia

The Government of Indonesia through the Ministry of Tourism of Indonesia has established the Baleo Tradition as an Intangible Cultural Heritage (WTBD). For this determination the Researcher analyzes as follows:

- 1) Preference for policy values and trends. That the Baleo Tradition was born from the culture of the Lamalera community which preserved the traditions of the ancestors,

namely the Mammal of the Pope that was hunted was a shipment of food from the ancestors of the Lamalera community for his children and grandchildren when their grandchildren were in a long famine due to long drought. However, so as not to deviate from the provisions of national law, not all whales can be hunted (captured), only male whales in the waters of Lamalera can be hunted (captured), with traditional fishing gear. Another part of the value preference in this tradition, namely that the distribution of whale meat is carried out fairly and is also a distinct characteristic of the people of Lamalera. The distribution of whale meat is a hereditary habit so it is certain that there is no struggle when the meat is cut. In essence, those who have a connection with the Village of Lamalera, and with the boat that gets the Pope, will get their rights.

- 2) Available policy options or alternatives. Although the Indonesian Government can determine that the Baleo Tradition is contrary to the Indonesian criminal law system, especially in terms of marine conservation protection, but given that this tradition has been carried down through generations and there is a sacred element in every ritual in this tradition, the Government needs to be wiser in responding Baleo tradition. Based on the researcher's interview with Jimmy Pello; Environmental Law expert at the Nusa Cendana University in Kupang, the Baleo Tradition is considered to be in conflict with the Indonesian criminal law system, namely in the matter of arresting the Pope without having official permission from the relevant parties. Another reason, according to Pello, is the capture of the Pope is contrary to the purpose of conservation for the preservation of whales. This is regulated in Law No. 5 of 1990 concerning Conservation of Biological Resources, Article 21, namely that the capture of protected animals in this case Pope Mammals is prohibited, and can

only be carried out for research, scientific development and / or saving the animals concerned, but with Government permission.

- 3) The ratio achieved for each social value sacrificed in each alternative policy. That related to the Baleo Tradition, the neglect of the protection of the Pope Mammals as part of the conservation of biological resources, intended to preserve the culture of Lamalera as intangible cultural heritage (WBTB) established by the Ministry of Tourism of the Republic of Indonesia.
- 4) Choose the most efficient policy alternative. That the most efficient policy alternative has been chosen by the Government of Indonesia in the first place, not establishing Lamalera waters as a conservation area for biological resources, but only permitting hunting of male whale mammals, for the purpose of preserving whale mammals. The fishing gear used is traditional fishing gear and is done in the traditional way. Violations of this policy should be prosecuted according to law about Helathy.

CONCLUSION

Based on research relating to "Criminal Law Policy in the Protection of Whale Mammals in Lembata District", the following conclusions can be concluded:

- 1) The capture of whale mammals by the Lamalera indigenous people in Lembata Regency is determined as intangible cultural heritage (WBTB), with certain criteria.
- 2) The capture of the Mammal of the Pope by the indigenous people of Lamalera, Lembata Regency is contrary to the provisions of Indonesian criminal law, but is allowed as intangible cultural heritage (WBTB).

RECOMMENDATION

Referring to the conclusions above, the researcher can recommend several things, as follows:

1. The government needs to make special regulations relating to the follow-up of establishing the Baleo Tradition as an intangible cultural heritage (WBTB), to ensure the certainty and usefulness of the law in preserving the Pope's Mammals.
2. The government needs to routinely disseminate Law Number 5 of 1990 concerning Conservation of Biological Resources, and other related rules to the people of Lembata especially the indigenous people of Lamalera so as not to wrongly practice the Baleo Tradition.

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