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The role of government in post-legislative scrutiny: case study of revision to the Indonesian Fisheries Law

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Abstract: This paper discusses the post-legislative scrutiny (PLS) of Indonesia's Fisheries Law. This law was issued in 2009 but was not implemented until 2014, when Joko Widodo was elected president. In the context of PLS, the role of the legislature is essential to enforce a system of checks and balances in a democratic government. But in the case discussed, it is the executive who was active in the implementation and supervision of this law. Why such things happen is the main question of this paper. We argue that in the case of Indonesia, PLS depends on whether the law has a significant political magnetism. Unlike the system in established democracies where the PLS mechanism is crucial and efficient, in the case of Indonesia, PLS is primarily determined by the political will of the government. In other words, PLS cannot be applied directly in contexts different from its origin but must look at the political context that developed at one time.

Keywords: post-legislative scrutiny; PLS; Indonesia; Joko Widodo; Indonesia Fisheries Law; democracy.

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1 Introduction

This paper discusses post-legislative scrutiny (PLS) in Indonesia regarding the implementation and evaluation of Law No. 45/2009 on Fisheries (Fisheries Law). PLS is relatively new in the context of Indonesia, which entered a democratic system in 1998. As a newly democratic country, the more common issues discussed include general elections, voting behaviour and the role of political parties. However, PLS is conceptually essential to consider because it involves how the political system and government can run well by maximising functions of the parliament – known in Indonesia as the House of Representative or *Dewan Perwakilan Rakyat* (DPR). In some cases of PLS, the role of the DPR is essential. Especially in cases involving the political interests of political parties and the public in general, such as PLS on laws related to terrorism, eradication of corruption and general elections, the role of the DPR is dominant. Outside of these cases, PLS receives little attention from DPR.

This paper discusses PLS with regard to the Fisheries Law, which has received little attention from the DPR. This law concerns various aspects, including safeguarding the marine environment and marine resources (e.g., fish) from destruction and theft by foreign vessels in Indonesian waters. However, this law was not fully implemented (JPPN, 2014) until the administration of President Joko Widodo in 2014, mainly through the Ministry of Maritime Affairs and Fisheries (MMAF) under Minister Susi Pudjiastuti.

In the context of the PLS analysis, Indonesia's Fisheries Law attracted attention for several reasons. First, Indonesia is a new democracy that continues to improve its democratic institutions. Whether PLS can be applied as in its original place in established democracies in the West is interesting to study. PLS departs from the experiences of the parliamentary democratic system in the West. Second, in the context of presidential systems like Indonesia, the role of executives is dominant or executive-heavy. The roles and positions of an executive in PLS are crucial issues that have not yet emerged in PLS studies.

Third, PLS theoretically aims to improve the mechanism of checks and balances in a democratic political system (De Vrieze and Hasson, 2017). Therefore, whether the mechanism runs according to its ideal objectives must be seen from the practice in the field. This paper attempts to trace how the objective of PLS has been implemented. Last, the case of the Fisheries Law is unique because the DPR was not interested in monitoring it while the government was keen to implement it.

This paper uses the process-tracing method by looking for temporal sequences of events or phenomena (Collier, 2011). The research was carried out to see the history and chronology of the application of the Fisheries Law. Through this process, this paper attempts to understand the interactions, actions and reactions that occur in implementing the law (Balzacq et al., 2016). The sources of research data were library materials such as

documents and media reports. We also included several comments in the media from DPR members.

This paper is organised as follows. Section 2 elaborates on the introduction by discussing the meaning of PLS and the role of executives in this process. Section 3 explores the implementation of the Fisheries Law and the need to revise the law. Section 4 looks at the executive role and proposal in amending the Fisheries Law. Section 5 concludes the paper.

2 PLS and the role of executives

Parliament carries out PLS after passing a law. In the Westminster democratic system, the role of the parliament needs to be maximised and equipped with various tools and knowledge to carry out the task properly. We fully agree with the theory that parliamentary members must run PLS as part of a system of checks and balances in government and for accountability to the public who elect them.

However, in this paper, we show a phenomenon where the parliament cannot carry out the job properly by looking at the surrounding situation and conditions. In implementing the Fisheries Law, DPR did not carry out the PLS function properly at various levels. Its role was taken over by the executive body, particularly by the MMAF. The government took the initiative starting from the stages of implementation until the evaluation of the programme. Such action has consequences for parliamentary and government relations. Before discussing this phenomenon further, we first explain the concept of PLS.

Parliament carries out PLS. After it makes legislation, it also has the responsibility to monitor the implementation of the law and evaluate whether the law achieves its initial intended purpose. Parliament looks at whether the impact of the legislation has followed the initial objectives of its formation, what could be improved and what lessons could be taken, and how the best practices could be identified (WFDorg, 2019). This process aims for the government to be accountable or responsible for implementing the law. It also seeks to improve the legislation. The PLS process plays a vital role in the political system because it can make executives accountable (WFDorg, 2019).

PLS has three advantages for a democratic system. First, according to Norton (2019), PLS strengthens democratic governance because the law must be implemented based on definitive legal regulations. Second, people can identify the negative consequences of the new law so that actions can be taken to prevent the incident from recurring. Third, PLS allows legislators to learn from experience which articles of the laws are or are not implementable. By following this process, better legislation can be made in the future, reducing the need for corrective action (WFDorg, 2019).

The main criteria for PLS evaluation relate to progress in achieving goals, side effects of laws or regulations (negative or positive influences; expected or unexpected effects), implementation of laws or regulations, practical uses of laws and regulations, consideration of whether the costs are proportional to the results and other criteria. Evaluation of the effect of activities is usually carried out within 3–4 years of enacting the law.

In PLS, the government is only considered an executor. Yet, in the case of the Fisheries Law in Indonesia, the government carried out most of the PLS tasks, giving rise

to two important questions. First, is the PLS still effective and useful if the executive carries out its activities? The government, for example, took the initiative to implement a law ignored by the previous government and never evaluated by the DPR. The government also learns from best practices in dealing with fisheries issues so that they can assess and take the initiative to amend the Law.

Second, in the third world context such as Indonesia, the role of parliament is still limited in implementing PLS in full; thus, the role of the executive needs to be included in PLS discussions. In the Indonesian presidential system, the executive, similar to the DPR members, is directly elected by the people, so the executive needs to be responsible and show performance to the people. In other words, the government and the DPR do not carry out their activities in empty spaces. They have political interests in implementing and evaluating laws. These political aspects are important to discuss because PLS is more likely to work if political interests have been involved.

3 Implementation of the Fisheries Law

The Fisheries Law was issued in 2009 during the administration of President Susilo Bambang Yudhoyono (SBY) as an amendment to Law No 31/2004. However, the Fisheries Law, especially the article on safeguarding the Indonesian sea and other fishing arrangements, was not fully implemented during the SBY administration even though there was an intention to do so (JPPN, 2014). This problem was handled without sinking illegal unregulated and unreported (IUU) fishing (IUUF) ships. At that time, the DPR neither gave much attention nor commented on the rampant fish theft. During the SBY administration, the government initiated and drafted a revised Fisheries Law; the DPR only gave its approval. The government strengthened several articles concerning illegal fishing in Indonesian territory (Amalia et al., 2014).

3.1 Urgency of the Implementation

The Fisheries Law was drafted in response to the worrying condition of Indonesian fisheries. The theft of fish in Indonesian waters by IUU Fishing ships is significant. Illegal fishing costs Indonesia a minimum of USD 20 billion per year (Fitra, 2016). It causes overfishing of almost half of fish stocks (The World Bank, 2019). Moreover, illegal fishing damages the marine ecosystem.

The initiative to implement the law occurred only during President Widodo administration in line with the launch of the president's Global Maritime Fulcrum (GMF) programme. The GMF programme was designed by several of the president's advisors from academia, such as Rizal Sukma and Eddy Prasentyono. The GMF programme consists of seven pillars:

- 1 management of marine resources and development of human resources
- 2 defence, security, law enforcement and sea safety
- 3 marine governance and institutions
- 4 marine economy and infrastructure and improved welfare
- 5 management of marine space and protection of the marine environment

- 6 maritime culture
- 7 maritime diplomacy (Humas Setkab, 2017).

The Fisheries Law has attracted much attention now, with a focus on implementing the article to sink foreign vessels involved in IUUF that enter Indonesian territory. Another significant step was the policies to prohibit fishing using tools that can damage the marine ecosystem. Minister Pudjiastuti uses article 69 (4) of the Fisheries Law to sink ships stealing fish. Article 60, paragraph 4 reads, “In carrying out the functions as referred to in paragraph (1) investigators and/or fisheries supervisors can take special measures in the form of burning and/or sinking foreign-flagged fishing vessels based on sufficient initial evidence” (Lembaran Negara No 5073, 2009).

Since her appointment to the MMAF in October 2014, Minister Pudjiastuti has issued several ministerial regulations. For example, Ministerial Regulation (*Peraturan Menteri or Permen*) No 56/2014 concerning the moratorium on licensing of ex-foreign vessels and *Permen* 57/2014 on the prohibition of transshipment to overcome fishing conducted by the IUUF. These rules aimed to protect Indonesian waters from fish theft. These two regulations, coupled with strict law enforcement in the form of sinking illegal foreign vessels, have drastically reduced illegal fishing in Indonesia.

The government carefully carried out this action after going through the existing legal procedures. Sanctions for criminal acts in the fisheries sector consist of imprisonment and/or fines. In addition, the Fisheries Law confirms the permitted action of sinking foreign vessels operating in Indonesian territories that do not have a fishing license (Pramesti, 2015). From November 2014 to May 2019, the MMAF task force sank 539 illegal fishing vessels (Wismabrata, 2019).

The purpose of the sinking, as often expressed by President Widodo, is to create a deterrent effect (Fauzi, 2019). The ship is the primary means of committing theft; if the ship and its high-priced equipment are sunk, the thief will think twice about trying again because profit is the underlying motive (RO/Micom, 2018).

DPR members were not directly involved in monitoring the implementation of the Fisheries Law. Unlike other laws, the DPR did not use its committee to monitor the implementation of the Fisheries Law. Several DPR members only proffered comments when asked by reporters so that they were more personal opinions than official DPR views.

Of those few comments that we could gather, some criticise government policies, and others support them. For example, a member of the House of Representatives Commission IV Hermanto criticised Minister Pudjiastuti for sinking the IUUF vessels regardless of the need to increase the productivity of Indonesian fishers (Zuhri, 2014). A member of the House of Representatives Commission III, Dasco Ahmad, supported the government’s actions to sink IUUF vessels, stating it was a common practice carried out by many other countries (Pramesti, 2015). The illegal fishing by foreign vessels not only caused a loss of fishery resources but also violated state sovereignty. According to Ahmad, Indonesia might show its seriousness in terms of law enforcement and sovereignty (Pramesti, 2015). Chairperson of the DPR Commission IV, Edhy Prabowo, stated that his Gerindra party supported the sinking policy of IUUF vessels, which carried out their actions in national waters and harmed the sovereignty of Indonesia. All of these comments were given in defence of the ship sinking policies, which were widely protested, including from within the government (Newswire, 2018).

Without control from the DPR, the initiative to implement the Fisheries Law is much based on the government's motives and interests. The Widodo administration has political and economic interests. Politically, President Widodo received credit for upholding the sovereignty of Indonesia. Moreover, Indonesia is not indifferent to capturing and sinking IUUF ships that enter its waters, including Chinese boats. Widodo's actions to visit and hold cabinet meetings on Indonesian warships that clashed with Chinese ships on the Natuna Islands received wide appreciation, including from opposition groups in the DPR. He succeeded in erasing his previous image as a civilian who doubted his determination to uphold Indonesia's sovereignty.

Economically, Minister Pudjiastuti always revealed Indonesia's advantages if it managed to protect the sea from illegal fishing, such as increased fish stock (Pregiwati, 2017). Minister Pudjiastuti pointed out that the policy of the war against illegal fishing was successful in increasing fish stocks from 6.52 million tons (2011) to 7.31 million tons (2013), 9.93 million tons (2015), and 12.5 million tons (2017). Indonesia's fisheries trade balance was number one in ASEAN in 2016 (Nugroho, 2018). The government also reported increased fish consumption rates, from 36 kg to 43.34 kg in 2017 (Bayu, 2019) and 50 kg in 2019, depending on the region.

Minister Pudjiastuti often received praise from inside and outside the country. She became one of the most popular ministers in public. Her actions also received high approval. She was considered one of the most prominent ministers, which enhanced the image of the Widodo administration. In an August 2017 survey, 501 respondents aged over 17 years with proportional samples in 14 major Indonesian cities (Jakarta, Bandung, Surabaya, Semarang, Yogyakarta, Padang, Medan, Palembang, Samarinda, Pontianak, Denpasar, Ambon, Manado and Makassar) expressed satisfaction with the government's policies related to maritime affairs. Around 65.3% expressed satisfaction with the government's maritime politics and maritime affairs. The majority of the public also agreed and stated that the illegal ship sinking policy had a positive impact on strengthening the national sovereignty of our sea (Yuniarto, 2017).

To strengthen the implementation of the Fisheries Law, the government issued Ministerial Regulation No 2/2015 on the Prohibition of the Use of Fishing Equipment (*Alat Penangkapan Ikan* or API) Trawl Hela (Trawls) and Trawlers (Seine Nets) in the fisheries management areas of Indonesia. One of the APIs prohibited is *cantrang*, a tool used by fishers and boat owners operating in the coastal areas of North Java. *Cantrang* was banned because it is considered both environmentally unfriendly and contrary to the Indonesian Government's mission to restore the sustainability of the marine ecosystem (Ambari, 2018).

3.2 Evaluation of the law

Given the absence of the DPR, the government took over most of the PLS functions, including evaluating the programme and finding the best practices acceptable to the community. In terms of sinking foreign ships, protests come from inside and outside the country. Even though Minister Pudjiastuti had approached the ambassadors of neighbouring countries affected by this policy, these countries were disadvantaged by the sinking of their fishing ships. Protests were carried out by Malaysia, Thailand, Vietnam and others through their respective ambassadors (Juned et al., 2019). The most forceful pressure came from China, which threatened to stop its investment in Indonesia if the sinking continued [Nainggolan, (2015), p.181].

Regarding the sinking of IUUF ships, the government learns the best practice that it can take. The destruction of the IUUF vessels, carried out by burning, was seen as damaging to the environment. In response, the MMAF changed the policy from burning to sinking IUUF ships, so the wreck on the seabed could become a place to breed fish and other marine animals.

Coordinating Minister for Maritime Affairs Luhut Binsar Panjaitan at that time ordered the sinking of ships to stop and the arrested ships to be auctioned. In response, Minister Pudjiastuti stated that the sinking was in accordance with the rule of law and the best course of action for Indonesia. Regarding the auction, she said it was not a solution because the ships would be bought back by the original owners, undermining the deterrent effect (Ambari, 2018).

Regarding domestic policies to ban fishing using *cantrang*, the government tried to overcome the objections of fishers who had used *cantrang* for years. President Widodo and Minister Pudjiastuti, for example, gave the owners of *cantrang* a year to switch to other fishing gear. The government also provided better and more environmentally friendly boats and trained them to use the boats (Rahadian, 2018).

Given these two cases and the PLS evaluation criteria discussed above, the government runs the PLS on its own, without any monitoring and other involvement from the DPR. The government implemented and evaluated the progress and various consequences of the Fisheries Law. The government also issued ministerial regulations to protect the marine ecosystem and the fish stocks in the sea (Kementerian KKP, 2016). As discussed later, the government also proposed a revision to the Fisheries Law to protect the sovereignty of Indonesia.

4 Executive role in amending the Fisheries Law

In Indonesia, PLS is not absent. The DPR established a Standing Committee on Legislation called the legislation body (*Badan Legislatif* or *Baleg*). This committee should play a vital role in law-making and PLS. It must monitor whether the government imposes implementing regulations and evaluates the government's application of the law and the legal impact. Referring to the results of its supervision, Baleg then takes further action to the ministries, government agencies or judicial institutions. The DPR also established a supervision post-legislative centre, consisting of 17 legal analysts to assist with Baleg duties (De Vrieze and Hasson, 2017).

However, in the case of the Fisheries Law, the legislation body did not play many roles. The government took over many functions of PLS. From this experience, the government is the party that knows best about the Fisheries Law and, as a result, has proposed several revisions to it. The revisions aim to make the enforcement of the law more effective and give the safeguarding of the marine environment from foreign vessels more legal force.

The MMAF has submitted to the DPR 16 proposed amendments to the Fisheries Law (Sari, 2018):

- 1 fishing businesses are completely closed to foreign capital
- 2 fishing vessels, transport vessels and other supporting vessels must be built domestically

- 3 prohibition of transhipment of Indonesian fishing vessels to foreign vessels
- 4 prohibition of transhipment in the sea for Indonesian fishing vessels to other Indonesian ships that directly export outside the official port
- 5 expand criminal liability to corporations
- 6 protect human rights for workers in the fisheries
- 7 recognise maritime rights and strengthen the role of the community in protecting marine rights
- 8 maintain articles that give authority to the government to sink fishing vessels proven to have committed violations
- 9 prohibit the formation and implementation of fisheries business cartel practices
- 10 fishing vessels measuring less than 10 GT are permitted to use more than one fishing gear.
- 11 international cooperation in the field of fisheries must refer to the rules that apply in Indonesia and not only regional and international standards
- 12 prohibit the use, exploitation and trade of germplasm of fish resources
- 13 the government is not obliged to report the arrest or detention of foreign fishing vessels in the country of origin of the flag of the ship
- 14 the imposition of legal responsibility for each violation is imposed on the owner or business entity with a higher sentence of imprisonment and fines compared to the captain or ABK
- 15 if a criminal claim is made against a corporation, the person in charge of the corporation is the owner of the corporation and the management
- 16 the government is obliged to take part in traditional fishermen, small fishermen with vessels under 10 GT. Law enforcement on fishermen groups is given the fairest policy.

The MMAF emphasises the importance of domestically building fishing vessels, fish transporters, and other supporting vessels. It wants a clause that prohibits using fishing vessels built overseas. The aim is to provide opportunities for the domestic shipyard industry and community shipyards to produce fishing vessels. This proposal provides a legal umbrella for the ban on fishing licences that already existed in the MMAF's moratorium on foreign vessel permits at the end of 2014.

In the Indonesian constitution, the DPR and the government are partners in proposing laws to improve community development. In this context, the government submitted a revision of the Fisheries Law in 2017, and the discussion process began in early 2018 in the DPR. The government has a clear position about the purpose of the revision. The government stated that the revision must continue to refer to Presidential Regulation No. 44/2016 about List of Closed Business and Open Business Fields. The government is founded on utilising fisheries resources, which are closed to foreign investment. In a meeting between the government and the DPR Commission IV, the MMAF wanted to ensure its proposals received serious attention and threatened to withdraw if they were not included in the law (Reily, 2018).

In response to pressure from the government, the DPR stated that the revision of the law must go through many processes. The MMAF's threat of withdrawing was considered a form of impoliteness. The discussion will continue with the forum group discussion (FGD) and harmonisation in the Legislative Body.

It is clear how the government, on its own initiative, carried out activities to improve the fisheries system in Indonesia, where the previous system was heavily corrupted and manipulated by foreign vessels. In the context of this study, this is interesting because the government has carried out all these activities without any control, initiative or protest from the DPR, as generally occurs in the PLS in a democratic system. In the first term of President Widodo administration (2014–2019), the implementation of the Fisheries Law could be said to be successful. The government could find the best practice, even proposing amendments to the law for better implementation in the future.

5 Conclusions

Unlike PLS analysis generally, where the legislature plays a significant role, the government plays an important role in the implementation and evaluation of the Fisheries Law in Indonesia. The executive implements the law on its initiative with specific political and economic motivations. PLS tasks that are generally carried out by the legislature, such as reminding and monitoring the implementation, do not work. The government took the initiative and, from its experiences, has proposed revisions to the law.

This study shows that PLS is not carried out in a vacuum. Political interests play roles – if not the main determinant – in the effectiveness of PLS. The Indonesian political system, with the executive's strong role and the DPR's need to show its performance to the public – has also influenced the activeness of these actors in PLS. Thus, the concept of PLS originating from established parliamentary systems in the West cannot be fully implemented in newly democratic countries in the Third World, such as Indonesia, without looking at the context and political dynamics. Finally, our discussion raises the question of whether the checks and balances outlined by PLS have been fully applied. The actors may have their own interpretation of the checks and balances system, but a full review of these issues is beyond the scope of this paper.

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