

CHAPTER I

INTRODUCTION

A. Background

Indonesia has very large area of sea with two-third of its territory in the ocean form. Its sea area is 5.8 million km², consists of 17.502 islands and a coastline of 81.000 km which makes it as the second longest coastline in the world after Canada. The fact that Indonesia known as the island nation and the maritime world, has very bright prospects in strategic economic activities.¹

Marine resources in Indonesia with all of their potential, such as fisheries, mining, minerals and energy, marine transportation and marine tourism,² are worthwhile gifts that already given by Allah to all of us³ and must be maintained, secured, managed, used and conserved with zero tolerance for activity resulting in damage.⁴ Prosperity for all Indonesian people should be the main priority of this nation in the management and utilization of marine resources in Indonesia intelligently and sustainably.⁵

Unfortunately, Indonesia's natural resources both on the coast and at sea are faced with the fact of degradation and destruction due to irresponsible human activities.⁶ Over-exploitation, illegal fishing as well as coastal and marine pollution that occurred in

¹ Bambang Utoyo, 2007. "Geografi: Membuka Cakrawala Dunia". Kalimantan Borneo PT Setia Purna Inves, p. 80.

² *Ibid*, p. 130.

³ QS. Al-Baqarah, 2: 29 ("It is He who created for you all of that which is on the earth. Then He directed Himself to the heaven, [His being above all creation], and made them seven heavens, and He is Knowing of all things...")

⁴ QS Al-A'raf,7:56 ("And do not do mischief on the earth, after it has been set in order, and invoke Him with fear and hope; Surely, Allah's Mercy is (ever) near unto the good-doers..")

⁵ Vide Paragraph 33 Article (3) UUD 1945.

⁶ QS.Ar-Ruum, 30 : 41 ("Evil/ (sins and disobedience of Allah, etc.) has appeared on land and sea because of what the hands of men have earned (by oppression and evil deeds, etc.), that Allah may make them taste a part of that which they have done, in order that they may return (by repenting to Allah, and begging His Pardon").

Indonesian waters have caused damage to its marine resources, such as the destruction of mangrove forests, coral reefs, coastal habitats and marine ecosystems as well as the degradation of the quantity of fish from the waters of Indonesia. As an illustration, the data from the Ministry of Environment revealed the damage of the coral reef ecosystem which mainly caused by coral mining, blasting and the use of toxic substances in catching the fish, pollution and sedimentation originating from soil erosion, and others can be found in almost all the islands. Among 85.707 km² of coral reefs scattered throughout the archipelago, 39% are in disrepair, 34% somewhat damaged, 22% in good condition, and only 5% were very good.⁷ The substances that damage and pollute the ocean are chemical particles, industrial waste, mining, agriculture and housing, noise, or the spread of invasive organisms (foreigners) in the sea.⁸ As a result, Indonesia has experienced abundant losses.⁹

By having good legal framework, strict law enforcement and non-discriminatory one, and supported community legal awareness, those all legal problems of the protection and community management of marine natural resources in Indonesia will be resolved. This is because the law serves as an instrument of social control and social engineering.¹⁰ So far there have been many laws and regulations related to the protection and management of marine resources in Indonesia, but they have not been proven effective in halting the illegal activity and degradation of the quality and quantity of marine potential of Indonesia.

⁷ Pusat Kajian Sumber Daya Pesisir dan Lautan, IPB dan Kementerian Lingkungan Hidup, 2003. “*Potret Kondisi dan Permasalahan Pengelolaan Sumberdaya di Wilayah Pesisir dan Laut*”, Kementerian Lingkungan Hidup RI. <http://www.menlh.go.id/potret-kondisi-dan-permasalahan-pengelolaan-sumberdaya-di-wilayah-pesisir-dan-laut> accessed 12-10-2015.

⁸ Marine pollution according to Government Regulation No. 19 of 1999 on pollution control and / or destruction against marine

⁹ Rizky, “*Illegal Fishing Rugikan Indonesia Rp. 300 Triliun per Tahun*”, <http://economy.okezone.com/read/2015/03/02/320/1112504/illegal-fishing-rugikan-indonesia-rp300-triliun-per-tahun>; <http://www.kaltimpost.co.id/berita/detail/115462-nelayan-asing-diusir-dari-derawan.html>; <http://birokrasi.kompasiana.com/2014/12/06/lemahnya-data-perikanan-690635.html>; <http://www.tempo.co/read/news/2014/12/19/173629609/Susi-Kesal-Jutaan-Ton-Ikan-Dirampok-Tiap-Tahun>. accessed 12-10-2015

¹⁰ Satjipto Rahardjo, 1986, *Hukum dan Masyarakat*, Bandung: Penerbit Angkasa, pp. 117-120; Donald Black, 1976, *The Behavior of Law*, New York; Academic Press, p. 55

It is interesting to observe the preamble of Law No. 32 of 2014 which states clearly that the Republic of Indonesia is an archipelagic country that has abundant natural resources as the mercy and grace of God Almighty for the entire nation of Indonesia. Those resources should be managed properly and sustainably to promote the general welfare, as mandated in the Constitution of the Republic of Indonesia Year 1945. That phrase suggests religious spirit which should manifest into understanding, awareness and attitude of the whole society to maintain, manage, utilize and conserve marine resources in Indonesia as basis capital of national development.

The preamble of Law No. 32 of 2014 affirms that the abundance of natural resources is a gift and creation of God Almighty. It thus shows the similarities and compatibility the Law No. 32 of 2014 with the principles of Islam over the provision of marine, especially in terms of management and protection of marine resources, because Islam also teaches that all things in this universe, both throughout the heavens and the earth are creation of God Almighty, Allah SWT.¹¹

Islam considers that the implementation of governance and the optimal protection upon marine resources are very important and should become the outmost priority that must be executed as marine natural resources are one of the main bases for the progress of mankind, and as a basis for the realization of prosperity and universal benefit for all mankind, both for the present generation and the generations to come.

Islam strictly prohibits all acts or activities that can pollute and destroy the natural resources of the sea since these activities are considered as betrayal of Allah's command, which prohibits the people to damage on land and at sea.¹² Islam teaches about

¹¹ Vide QS. Al-Ankabut, 29: 59

¹² Vide QS Al-A'raf, 7:56. *Loc.cit*

the principle of government authority to regulate and enforce the law on marine management and protection.

Islam contributes to advancing the nation and the country, in terms of economic, political and cultural development. In the marine context, Indonesia has the concept of marine resources management and protection. Islam considers that the Sea is an important basis for the progress of a nation, especially in providing benefit and welfare for all mankind.

Therefore, it is very interesting to find out and examine how the conformity of the Law No. 32 of 2014 with the Islamic principles on marine natural resources management and protection in Indonesia. The conformity can be regarded as a form of Islamic contributions to the progress of this nation through the maritime sector.

This study aims at clarifying how the suitability and or confirmity of the Law No. 32 of 2014 with the Islamic principles on marine natural resources management and protection such as: 1. The principle of divinity, which shows that the abundance of natural resources and creation are the gift of god almighty; 2. Marine resources management and protection as well as their prevention from pollution and destruction are humankinds duties and responsibilities; 3. The protection and management of marine natural resources aims at providing benefit and welfare (*istislah*) for all creatures; 4. The principle of sustainability: the sea is a natural resource for the benefit of the present and future generations. 5. The principle of government is authorized to regulate and enforce the law.

B. Statement of Problem

What are the confirmities of the Law No. 32 of 2014 with the Islamic Principles on the marine natural resources management anf=d protection?

C. Objectives of Research

The objective of the research is to explain whether the Law No. 32 of 2014 in line with the Islamic principles on marine natural resources management and protection or not.

D. Benefits of Research

The advantages which could be taken from this research are;

1. Theoretical Benefits

This research gives benefits to the theoretical testing on the conformity of the Law No. 32 of 2014 with Islamic Principle related to marine natural management and protection.

2. Practical Benefits

This research develops the understanding on how the contribution of Islamic Law in order to protect and manage the marine natural resources in Indonesia. This research also shares and adds the knowledge regarding the principles of management and protection upon marine natural resources in Indonesia based on the Islamic principles.

E. Outline of Writing

In this undergraduate thesis, the researcher elaborates the topic systematically in five chapters. Chapter one; Introduction. It provides the general matter such as background, problem formulation, research benefits, and systematic and accountability of writing.

Chapter two is literature review. Here, the author mentions the definition of marine and marine natural resources, the definition of Islam, the basic of Islam and the characteristics of Islamic Law. The next chapter is chapter three. In this chapter the researcher explains the research method used in this undergraduate thesis including the type of research, legal material, method of collecting data, and method of data analysis.

Chapter four is the result and discussion. Here, the author highlights the result and analysis of the conformity of Law No. 32 of 2014 with the Islamic principles on the marine natural resources management and protection with the normative approach. The last chapter is chapter five which contains the conclusion and suggestion derived from the results of the research.