

Legal Aspect of Fishing Vessels as Object of Guarantee for Fisheries Business Capital

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ABSTRACT. Capture fisheries are a business sector that has a vital role in the development of the Indonesian economy. One of its business fields is raising fish in the sea. Sea fishing activities carried out by fishers are capital intensive activities. Therefore, fishers need funds from other parties in the procurement of capital, such as fishing vessel, fishing equipment, and so on. Funding that channel funds to fishers generally requires a guarantee for the security of their receivables. Fishing vessels can become objects of collateral for the repayment of creditors' receivables. On the other hand, financial institutions are reluctant to accept fishing vessel as collateral objects because they assume the risk is too high. This study aims to determine and analyze the constraints and prospects of fishing vessels as collateral objects in capture fisheries. This research uses the socio-legal research method. The results of the study indicate that fishers have difficulty accessing funding from formal financial institutions because they generally ask for material guarantees. On the other hand, if the vessel owned is used as a collateral object, it is generally not accepted because it is considered having a high risk such as.

KEY WORDS: Fishing Vessel, Fishermen, Guarantees, Capital, Fishing industry

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I. INTRODUCTION

Vessels are very important objects in the development of the fishing industry in various countries (Ahn 2017) including Indonesia. Fishing vessel is the main capital for fisherman. The vessel can be a guarantee for fishermen in obtaining financing for capital (Badriyah et al 2019). Capital is one of the key factors for business success. Capital is needed in various business activities, including fishing in the sea. Fishing is an activity to obtain fish in waters that are not being cultivated by any means or means, including activities that use ships to load, transport, store, cool, handle, process, and / or preserve them (Article 1 Number 5 of the Republic of Indonesia Act Number 45 of 2009 concerning Amendments to Act Number 31 of 2004 concerning Fisheries).

Sea fishing business is a capital intensive business, both ships, fishing equipment, fish coolers and others. Therefore fishermen often need funding from other parties. In channeling financing to other parties, creditors need confidence that the debtor will carry out his achievements. Therefore, collateral becomes an alternative in securing creditors' receivables. Guarantees can facilitate the evaluation of consumer quality, so that it can affect service to consumers (Ostrom et al 2006). In this case the evaluation of the debtor. Collateral is a determining factor in the analysis conducted by banks on debtors (Schich & Schich 2013).

Collateral can be made on both movable and immovable objects. The fishing vessel can be the object of collateral in the agreement made by the parties. There are various kinds of fishing vessels used by fishermen including a small vessel which is the focus of this research. Small vessels are widely used by traditional fishers. As one of the movable objects, the fishing vessel can be guaranteed by using a pawn guarantee institution or fiduciary guarantee.

The small vessel should be able to become objects of collateral, apparently in practice there is still a reluctance of the formal financing sector such as banks to channel funds for small fishers with vessel guarantees. This results in difficulties for fishermen in accessing formal financing. The bank's reluctance to provide funding for these small fishers is due to various external and internal factors. Fishermen are people whose livelihood is fishing. Small fishermen are people whose livelihoods engage in fishing to meet the daily necessities of life using fishing vessels with the largest size of 5 (five) gross tons (GT) (Wiendargo et al 2015). These small fishermen are traditional fishermen whose orientation of fishing is for their daily needs. In contrast to modern fishers who are generally oriented to export needs.

Traditional fishing fishers need large funds to have vessels, vessel engines, nets, and operational fishing costs. Meanwhile, fishers find it challenging to obtain funding. Formal financial institutions are not interested in extending credit to the capture fisheries sector. This is because formal financial institutions consider the risk of capture fisheries to be very large because in general, fishers have a low economic level and

do not have adequate guarantees. Fishing vessels can be an alternative guarantee but are considered a considerable risk of natural disasters. Therefore, in practice, banks prefer collateral for motor vehicles or land.

This study aims to determine and analyze the difficulties of fishers in accessing financing from formal financial institutions because, in general, they ask for collateral. On the other hand, if a vessel used as a collateral object, it is generally not accepted because it is considered to have high risks such as the loss of the ship due to natural disasters. This research also tries to provide the right solution so that in the future, the ship can be a guarantee for fishers in accessing financing from formal financing institutions to further improve the welfare of fishers.

This study uses the socio-legal method by integrating normative legal research (state law) and reality in the community (the existing law). This study uses the concept of collateral, fiduciary guarantee, and fishing vessels to analyze ships as an alternative guarantee for small fishers.

II. MATERIAL AND METHOD

Indonesia is the largest archipelago in the world that lies between two continents, Asia and Australia, that has millions of people living in coastal areas and utilizing coastal resources as a source of livelihood (Paulus et al 2019). Indonesia has extraordinary natural wealth. The potential of marine fisheries cannot be utilized and managed optimally. The utilization of fish resources has not yet provided an increase in the standard of living that is sustainable and equitable. Fisheries are all activities related to the management and utilization of fish resources and the environment starting from preproduction, production, processing to marketing carried out in a fisheries business system (Article 1 number 1 of Act Number 45 of 2009 Concerning Amendments to Law Number 31 of 2004 Concerning Fisheries / Fisheries Act).

Some aspects that affect fisheries production, among others: the ability to manage existing natural resources, both in terms of capital, technology, and the number of workers in this sector.

In fishing at sea, the role of fishers is vital. This is not directly proportional to the welfare of fishers. The life of fishers is often considered synonymous with sub-standard economic life, living in slums on the coast. According to Pomeroy (2016) and Vatria et al (2019), one of the problems faced by small-scale fishermen is low income.

As a catcher, fishers need capital for their fishing business. It can even say that fishing is a capital intensive business. The capital is in the form of ships, fishing gear, fish preservatives, coolers. Therefore, fishers often need funding from other parties. However, there are often obstacles in obtaining capital from formal financing due to the reluctance of formal financial institutions such as banks. Banks generally ask for a reliable guarantee to provide confidence that the debtor will carry out its obligations.

Fishing Vessels are ships, vessels, or other floating equipment used for fishing, supporting fishing operations, fish cultivation, fish transportation, fish processing, fishery training, and fisheries research/exploration (Article 1 Number 9 of the Fisheries Act). Fishing vessels can be guaranteed for financing. However, it is generally tricky for finance institutions to accept fishing vessels as collateral because they are considered to be at high risk, for example, a natural disaster, considered to be easily damaged. In the case of being a guaranteed object, it is distinguished between ships which have a size of 20 m³ or more and those that are less than 20 m³. For ships smaller than 20 m³, the collateral that can be used is a pawn or fiduciary guarantee.

This study uses the socio-legal method by integrating normative legal research (state law) and reality in the community (the existing law). The data used in this study are primary data and secondary data. Secondary data were obtained by reviewing legal materials with document studies by examining various laws and regulations and other legal materials to obtain regulations and theories and concepts regarding the guarantee of fishing vessels. Primary data obtained by field research with interview techniques to obtain facts about the use of fishing vessels as collateral in obtaining business capital.

III. RESULT

Fisheries production in Indonesia which is always experiencing an increase. The development of fisheries production in Indonesia can be seen from table 1.

Table 1
Indonesian Fisheries Production (Tons)

Commodity	2015	2016	2017	2018
Indonesian fisheries	22,311,895	22,582,926	23,006,926	24,496,681
Capture fisheries	6,667,802	6,580,191	6,891,935	7,248,297
Sea-fishing	6,204,668	6,115,469	6,424,114	6,716,050
General capture	473,134	464,722	467,821	532,247

fisheries				
Aquaculture	15,634,093	16,002,319	16,114,991	17,248,384

Source: One data application of the Ministry of Maritime Affairs and Fisheries

Table 1 shows that Indonesia's fishery production in 2018 experienced a growth of 1.55 percent compared to 2017. Capture fisheries experienced growth of 1.64 percent, while aquaculture fisheries experienced growth of 1.53 percent. The growth of capture fisheries in 2018 of 1.64 percent came from the growth of capture fisheries in the sea by 1.80 percent and the growth of capture fisheries in public waters, which slowed by 0.56 percent.

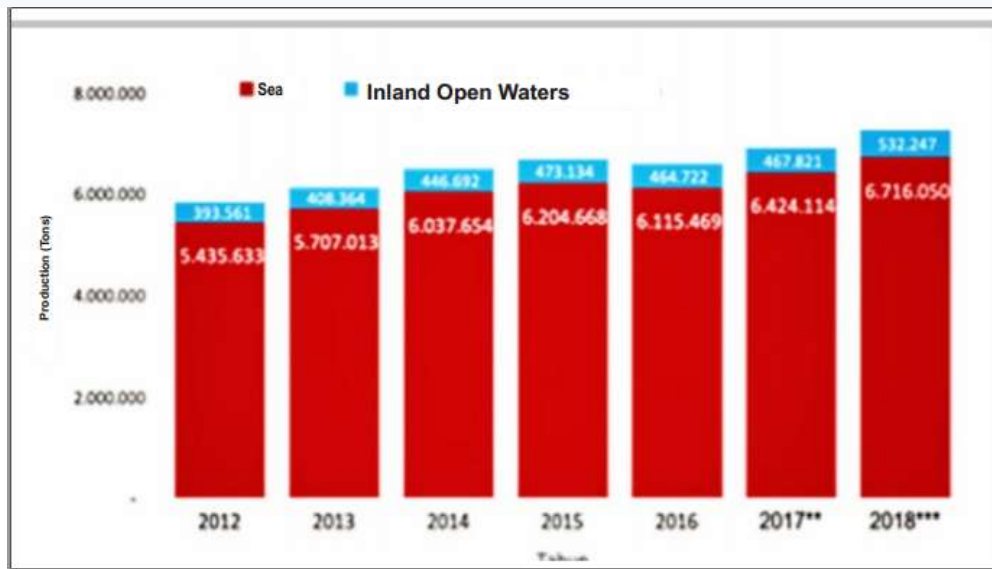


Figure 1. Capture Fisheries Production Volume 2012-2018

Source: Ministry of Maritime Affairs and Fisheries Data

Capture fisheries production volume in 2018 was 7.25 million tons or reached 76.64% of the 2018 target of 9.46 million tons (Figure 1).

In the capture fisheries industry, fishermen have an important role. Fishing activities require large funding to get capital. The capital used in fishing includes ships, fishing equipment, refrigeration, supplies. These capital requirements can come from internal and external.

The critical role of fishers in the development of the fishing industry is often inversely proportional to the economic conditions of fishers who generally reside on the coast. There is even a stereotype that fishers are identical with life with low economic levels (on the poverty line). The welfare level of the fishing community is still far from expectations, this is often one of the causes of the lack of interest in formal financial institutions to channel funds to fishermen. Difficulty in accessing funding from the formal sector results in fishers often entangled in financing to moneylenders or informal financing that even charges interest too high.

Financing is a determining factor in providing capital for fishers. The main activity of fishers is fishing. The capital needed to capture fish is relatively large, both for the needs of ships, engines, fuel, fishing equipment, and supplies. Traditional fishers who have small-sized vessels generally have difficulty accessing financing from the formal sector, such as banks and other financial institutions, because they require material security. On the other hand, the reason does not have an object which is considered sufficiently adequate as collateral.

In financing the fisheries sector, it is very much needed the role of various parties in order to improve the welfare of fishers. The enormous potential of fisheries in Indonesia is often inversely proportional to the welfare conditions of fishers who are relatively below standard or are often identified with a miserable life and in a shabby coastal environment. The role of the government, the community, large business financing, and the fishing industry, as well as traditional, fishers, are the deciding factors in the success of fishing efforts to further improve the welfare of fishers at all levels.

Utilization of fishery resources is one of the efforts to utilize and exploit marine management for the greatest prosperity of the people. This is in line with the provisions of Article 14 of Law Number 32 the Year 2014 Concerning Maritime Affairs (Maritime Law). Furthermore, the Fisheries Act also regulates the development of the fisheries sector. In Article 7 paragraph (5) of the Fisheries Law, it is stated that a national committee will be formed consisting of experts in their fields who come from related institutions. These experts consist of experts; academics; and government agency officials who have expertise in the field of fish resources.

In this case, the fisheries committee provides recommendations to the Minister regarding the potential and allocation of fish resources in the fisheries management area as well as the amount of catch allowed in the country's fisheries management area. In addition to the formation of the Fisheries Committee, the Government of the Republic of Indonesia also has other policies, one of which is in financing fishers. Judging from the source, there are several types of financing or credit sources from formal financial institutions that can be accessed by capture fisheries businesses. These financings are: 1) Financing through cooperative institutions, and 2). Funding from the banking sector.

IV. DISCUSSION

The ship is a movable object that can be the object of collateral. With reference to the opinion of the Triwulan (2008). The objects that can be used as guarantees are qualified objects that have economic value and are transferable (Kamsilaniahet al 2018) argue. This material guarantee provides creditors with the benefit of securing their receivables. Many properties and assets can be used as guarantees for observing obligations (Bidabad 2017). With material security the creditor has greater confidence in the performance of the debtor's performance. The creditor's confidence is the main factor in providing financing facilities to the debtor. One of the efforts to generate this confidence is that in general creditors want material security.

Material security often creates difficulties for fishers because they do not have enough objects to obtain financing as desired by the creditor. Therefore vessels owned by fishermen can be an alternative guarantee for the procurement of capital for fishing business. For ships weighing 20 m³ or more, you can use a mortgage collateral agency. Different if the object of collateral is a small ship. The small vessel used by fishermen if it becomes a possible collateral object is a pawnshop and fiduciary institution.

Pawn is a guarantee by the surrender of movable objects to the pawn holder. In a pawning there is an '*inbezitstelling*', i.e. requirement that requires the object to come out of the pawnbroker's authority (Badriyah 2015). Fiduciary Collateral is a guarantee by not sending objects to the collateral receiver. This provides benefits for both parties both creditors and debtors. Benefits for creditors have material rights that are guaranteed. Therefore, it can guarantee the safety of its receivables, give preference and separatist position (Badriyah et al 2017). The advantage for the debtor or guarantor is that the guarantor can still use the object for business purposes.

Fiduciary or '*Fiducia Eigendom Overdracht*' (FEO) is one of the most well-known forms of material security in business life. Basically fiduciary is the transfer of ownership rights of an object based on trust, provided that the object whose ownership rights are transferred, remains in the control of the owner of the object (fiduciary giver). The '*constitutum possessorium*' legal construction makes the fiduciary creditor the recipient of ownership rights to the material guaranteed on the basis of trust. This means that the fiduciary security object remains in the hands of the fiduciary giver (Sugianto 2014).

The legal construction of the transfer of property rights to objects is a characteristic of fiduciary guarantee agreements. The essence of the fiduciary guarantee agreement is an agreement on an object (material). The transfer of rights is an absolute requirement for the clarification of the agreement while also clarifying the existence of guarantee law. In the fiduciary agreement, the authority to control objects, what meant is the delegation of authority to control collateral objects. The authority to control must not be the same as the will to control, because the will to control is a prohibited part of the fiduciary agreement, delegation of authority is more a part of the responsibility given by the fiduciary party to the fiduciary recipient to settle his loan by selling collateral, the surrender in question is more symbolic. such as submitting '*constitum possessorium*' for tangible movable objects, or by way of *cessie* for accounts receivable debt (Winarno 1999).

Ships are the principal capital in the fishing business at sea. Therefore it is not possible to use a ship with a mortgage guarantee. This is because statutory construction is in the pawn; objects must come out of the power of the guarantor. This will cause difficulties for fishers who will use the vessel to catch fish. *Inbezitstelling* requirements cause fishers not to be able to use vessels for fishing. The most possible is the fiduciary guarantee institution. With fiduciary guarantees, fishers can still use the vessels used as collateral for fishing at sea.

Subjects of fiduciary guarantees are fiduciary givers and fiduciary holders. Fiduciary givers are individuals or Legal Entities who surrender legal ownership to objects based on trust to fiduciary holders. The fiduciary holders are the creditor who has the collateral rights, which is the party receiving the transfer of ownership in a trustworthy manner from the fiduciary holder. If the fiduciary guarantee object is a vessel, then the absolute condition of the fiduciary giver is the vessel owner because the legal ownership is transferred to the fiduciary holder (financial institution) (Azhar et al. 2019). This makes it difficult for small fishermen because, in general, they do not have their vessels because they cannot afford to buy a vessel.

The process of establishing fiduciary guarantees is by making a Fiduciary Guarantee Deed with a notarial deed and in Indonesian. Then the registration is done at the Fiduciary Registration Office. At the moment, fiduciary guarantee registration is done online. The Fiduciary Registration determines when the

fiduciary guarantee takes place. With the occurrence of fiduciary guarantees, the property rights over fiduciary collateral objects have shifted from fiduciary givers to fiduciary holders.

Transfer of ownership rights to fiduciary collateral is not the same as a transfer in buying and selling. In the sale and purchase agreement, the transfer of legal ownership provides material rights that give pleasure to the buyer. Instead, the transfer of legal ownership to a fiduciary guarantee is to provide collateral that is guaranteed. Thus does not give the right to fiduciary holders to use the goods. In this case, the objects remain in the control of the fiduciary giver. Thus there is a separation of ownership economically and legally. Ownership is in the hands of the fiduciary giver, while legal ownership is in the hands of the fiduciary holders.

As collateral, the fiduciary guarantee is a strong guarantee and easy to implement. If the debtor defaults, then the fiduciary creditor does not need to file a lawsuit to the court, but can directly execute as the method of execution specified in the Fiduciary Guarantee Act. Article 29 of Act Number 42 of 1999 concerning Fiduciary Guarantees stipulates that if the debtor or Fiduciary Giver fails, the execution of the object which is the object of Fiduciary Guarantee can be carried out by:

1. the execution of an executorial title by Fiduciary holders
2. sale of objects which become the object of Fiduciary Guarantee under the authority of the Fiduciary Holders through public auctions and to collect their receivables from the proceeds of the sale;
3. underhand sales conducted based on the agreement of the Fiduciary Giver and Holders if in such a way the highest price can be obtained which benefits the parties. The sale as intended is done after 1 (one) month after the written notification by the Fiduciary Giver and Holder to the parties interest holders and announced in at least 2 (two) newspapers circulating in the area concerned.

Fishers have great potential in the development of the fishing industry at large, but in fact, there are various obstacles in meeting the capital requirements for fishing efforts at sea. Although this ship has economic value and can be transferred, so that it can be the object of collateral, but the use of small vessels that are generally used by traditional fishermen is not in demand by formal financial institutions, both banks and non-banks. This is due to several things, namely:

1. Employment as a fisherman is considered to be a high-risk occupation, and also seasonal work.
2. The ship is considered an object that is easily damaged because of its presence in the ocean.
3. Ships are considered objects that have a high risk due to natural disasters
4. The ship is considered as an object that is very easy to decrease its economic value.

Based on these facts, intervening from various parties is needed to provide broader opportunities for fishermen to obtain funding with guarantees for ships, both the government, business actors, and the community, in this case fishermen. Efforts that can be made are:

1. Formed a Fishermen Business Group to conduct a joint business as an alternative income when the season is not possible to go to sea,
2. Purchasing ships together to get a better ship
3. Providing alternative financing that is easily accessed by fishermen by the ship's guard
4. Establish a Special Financing Agency for Fishermen with Human Resources from the fishermen group
5. Conducting outreach and training to fishermen and fishing families.
6. Optimization of the guarantor institution for loans from the government in addition to the existence of alternative ships as collateral items.

V. CONCLUSION

Fishing vessels are the main capital in the fishing business. In addition to fishing vessels, this fishing activity also requires fishing equipment, supplies, a place for preserving fish. Procurement of these items requires a large fee. Therefore, fishermen often need funding from other parties. On the other hand, fishermen, especially small fishermen, have difficulty in obtaining formal financing because they do not have collateral. Ships can be a fiduciary guarantee object, but until now financial institutions have been less interested in accepting small vessels as collateral, because they are considered to have high risks.

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