



Recommendations and proposals aimed at perfecting the legal system on marine fishery exploitation in Vietnam

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Abstract

Vietnam is one of the countries in the Asia-Pacific region has the potential to exploit fisheries at sea. Vietnam's fishery industry is a key economic sector, playing an important role in the country's economic development with an ever-expanding scale, achieving a high growth rate, creating great production value, with many export products reaching a turnover of over one billion USD. With outstanding efforts of the industry, Vietnam has become the world's third largest seafood exporter, playing a leading role in the global seafood supply chain. The article pointed out the challenges facing Vietnam's fishery industry as well as the shortcomings and inadequacies in the system of policies and laws regulating this issue, from which it recommended, proposed solutions aimed at perfecting the system of policy, legislation on fishery exploitation at sea.

Keywords: Policies and laws, fisheries, fishing, Vietnam

Introduction

With a coastline stretching 3260 km from Mong Cai (Quang Ninh) to Ha Tien (Kien Giang), there are 28 out of 64 provinces and cities of the country bordering the sea, stretching many longitudes and latitudes, so the vast sea of Vietnam contains diverse and rich marine ecosystems, is a prominent place and an important goal in the protection of biodiversity in the world ^[7]. Issues relating to the sea in general and the exploitation of marine fisheries in particular have a direct and profound impact on the stability and development of Vietnam's economy, politics and society. Recognizing the importance of the sea, Vietnam has actively studied, enacted, updated, supplemented and amended the system of legal regulations regulating issues relating to the sea and fisheries relatively regularly, fully, basically catching up with the development of international law as well as adjusting the current urgent issues, especially the IUU issue is having a negative impact on sustainable and responsible fishery exploitation. Vietnam's fishery industry in recent years has had many successes, becoming a key economic sector, contributing greatly to the export value of Vietnam ^[2]. However, the fisheries sector still faces many challenges, requiring the strengthening of state management, synchronous and strong mechanisms and legal policies to solve the following issues:

First, Aquatic resources are tending to decline seriously on inland waterbodies and coastal waters. The reason is that the exploitation of fisheries exceeds the permissible limits, the decline of ecosystems in water bodies leads to the gradual loss of aquatic resources capable of self-regeneration and recovery.

Second, Habitat of aquatic species, farmed and cultivated aquatic products ^[4] are increasingly seriously polluted by the impact of global climate change and the influence of other sectors, activities such as tourism, industry, oil and gas, marine power, agriculture, etc. Especially in 2016, the impact of environmental incidents in four central provinces showed that the habitats of aquatic species were seriously threatened.

Third, the imbalance between the raw material production sector and the export processing sector, more specifically the raw materials production sector, has not met the demand of the export manufacturing sector in terms of both quantity and quality of the product.

Fourthly, Management of exploitation of aquatic resources, management of vessels at sea, fisheries statistics are still outdated, inadequate and unresponsive be required by the state management of fisheries and international requirements.

Fifth, Limited capacity, management experience and equipment for inspection and control of aquatic activities - a great challenge to the protection of aquatic resources, the protection of consumers' health as well as the health and habitat of aquatic species.

Sixth, trade protection trends, technical barriers, rigorous checks and the regular adoption of new, stricter standards on antibiotic residues and food hygiene are major challenges for Vietnamese seafood ^[3]. The management of inputs in aquaculture (fish, feed, environmental treatment agents, fishery medicines) has led to abuse in use and affects the quality of products.

Completing the policy system, the law will contribute to solving the challenges posed and sustainable results achieved, contributing to the successful realization of the goal of sustainable development of the Vietnamese maritime economy in the future.

Methodology

In the implementation process, the article uses the following main research methods:

Dialectical and historical materialism methods: This method is used to clarify basic theoretical and practical issues on the research topic.

Analysis and synthesis method: The article is made based on collecting and analyzing available documents related to: Legal regulations of Vietnam and several typical countries, international organizations in Asia, Europe, and America related to marine fishery exploitation; the researchers' point

of view on the solution to improve the Vietnamese law related to this issue.

Qualitative Research method: The goal of applying qualitative research is to detect and identify some issues that have not been mentioned in previous studies.

Document Review

As a country that benefits directly from the sea, Vietnam has been interested in building and implementing legislation in this area from a very early age. At the highest level, the issue of fishery exploitation has been defined in the Constitution of the Socialist Republic of Vietnam. Many important laws and regulations regulating the issue of the sea and fishery exploitation at sea can be mentioned as: Fisheries Law (in 2003, in 2017); National Border Law in 2003; Biodiversity Law in 2008; Vietnam Sea Law in 2012; Customs Law in 2014; Vietnam Maritime Code in 2015; Criminal Code of 2015 (Article 242 – Crime of Destruction of Fisheries Resources); Defence Law of 2018; Vietnam Marine Police Law in 2018; Resource, Marine Environment and Islands Law of 2015, Environmental Protection Law 2020.

Since the Fisheries Act was approved by the Assembly in 2003, in order to establish a legal corridor for the overall and comprehensive management of fisheries issues, the Government and the ministries have developed and issued a number of legislative instruments guiding the enforcement of Fisheries and other laws relating to marine fisheries, including the Regulations, Decrees, Regulations and Directives of the Head of Government; the Circular, the Joint Circular of the Ministries, etc. However, the texts have many cross-cutting regulations, not the least relevant to the management and exploitation of fisheries, from the Regulations guiding the implementation of these laws to the legislative instruments issued in accordance with them, leading to difficulties in implementing fisheries policy, especially in local areas. The inconsistency in the legislative text on marine and fisheries regulations in both the Resources and Environment and Agriculture and Rural Development sectors has led to overlapping of fisheries management and exploitation in central and local fields, making it difficult to enforce and enforce the law. This has been evident in reports by the Ministry of Agriculture and Rural Development, especially coastal provinces and cities. Although many policies and laws on the sea and fisheries have been promulgated, however, the quality of some policies and laws is not high. Some regulations are inconsistent or contradict reality because they are not built based on scientific, policy and practical interaction, leading to difficulties in implementation. Moreover, the percentage of policies and laws on marine fisheries exploitation at sea is still limited, accounting for a very small proportion of the total number of policy documents and laws on environmental resources, while fishery resources play a very important role in the socio-economy in Vietnam.

Analysis and Discussion

After studying the current system of Vietnamese policies and laws and the challenges that need to be addressed, the authors discussed and agreed on the contents of the petitions and proposals aimed at implementation of laws on marine fishery exploitation, namely:

Directions for management, exploitation and sustainable development of aquatic resources

Vietnam needs to clearly define the objective of the plan to combat illegal, unreported and unregulated fishing, which is the synchronous, effective and effective implementation of fisheries laws; overcoming shortcomings and limitations as recommended by the European Commission – EC ^[14]. Unification of awareness, action and involvement of the political system in the prevention and combating of illegal, unreported and unregulated seafood exploitation (IUU). Heads of committees, party organizations, government at all levels of departments, ministries, local sectors directly lead, direct and bear responsibility in the prevention, anti-IUU exploitation work, consider this a political task, priority, urgent, concentrate resources to implement, determined to remove the yellow card warning. Manage the exploitation and sustainable development of the fisheries sector for the benefit of the people and the nation; enhance Vietnam's position, image, responsibility and international prestige in implementing commitments and treaties on the protection of marine environment and sustainable ecosystems, contributing to ensuring national defense and security, sovereignty, sovereign rights and jurisdiction over the seas and islands of the Fatherland.

Continuing to promote methods, the model of support for fishermen fishing offshore

One is to boost the extraction of fisheries offshores, the exploitation of fishery objects of high economic value and exports ^[12]. First of all, reorganize seafood production in coastal, plain and open waters, review the number of vessels, the extraction structure suitable for the fishing field, the season. The second is to encourage and multiply the model of marine production unity in the early stages, towards collective economic development according to the cooperative model, fishing cooperation is absolutely necessary, supporting fishermen to develop parallel forms of association in the model, nests, fisheries teams, cooperatives, trade unions and fisheries enterprises to acquire, process, export. Thirdly, good implementation of support policies, promotion of offshore seafood extraction, popularization, support of advanced extraction techniques, conservation techniques, effective transport methods to improve the quality of fisheries after extraction.

Two is to encourage the establishment of fishery cooperatives. At that time, the fishing vessels conducted organized fishery exploitation with the nests, teams formed according to the model of self-managed fisheries, each grouped into a nest, teamed with the criteria to enhance the role of community management in the exploitation and protection of fishery resources, while helping each other in the process of exploitation at sea, searching for fishing fields and minimizing the risks in the event of natural disasters and floods.

Enhance fisheries management solutions with the following groups of solutions

One is, the group of solutions on fishing fleet management

First, implement an appropriate fisheries policy, in which fisheries subsidies do not focus too much on fleet development, but rather on increasing incentives for the construction of fisheries logistics facilities, developing processing industries, supporting fishermen to transition from fishing to aquaculture and fisheries control activities.

This not only ensures livelihoods for fishermen but also reduces the burden on natural fisheries resources and effectively implements IUU containment measures^[10].

Secondly, local authorities accelerate the completion of the installation of navigation surveillance equipment for fishing vessels of 15 metres or longer; there are decisive, feasible measures to ensure implementation.

Third, overcoming the difficulties, exists to complete synchronization of fishing database VN-FISHBASE connects, operates smoothly between the Central with 28 coastal provinces and with designated fishing ports. It is worth noting that when building the positioning system of 28 provinces, coastal cities, the Department of Fisheries must pay attention to the monitoring system for each province and integrate the information on fishing vessel registration, exploitation license, mining log and output on board to manage and trace the origin of the products of mining.

Secondly, the solution team improved the fishing licensing system

First, decentralization and licensing of fisheries to the People's Committee of the provinces.

Secondly, strict regulation of non-renewal conditions for fishing vessels listed. IUU: Resolved not to grant a license for fishery exploitation to the owner of the fishing vessel; captured, ransomed, released or escaped back to the country; suspended transfer of ownership and deprivation of the right to fisheries exploitation license within six months; vessel in violation does not enjoy State support policies^[14].

Third, permanent withdrawal of mining licences for mining vessels in violation of foreign waters.

Thirdly, measures for inspection, monitoring and management of fisheries

In order to implement regulations relating to monitoring, control and surveillance of fishing vessels, the implementation of the following solutions should be promoted:

The first is to synchronize and strengthen inspection, patrols, inspections, surveillance of fishing vessels in the waters, focus on sharing and coordination between local authorities and law enforcement forces at sea to provide timely information, capture the situation and quickly address events.

Secondly, to develop a recovery plan for controlling fishing vessels entering ports, ensuring 100% control of landing outputs at designated fishing ports; to withdraw 100% of the logs of fishing boats arriving at ports to bring fish to shore; to retrieve the origin of aquaculture to the European market, with clear assignment of responsibility and completion time of recovery exists and with weekly evaluation checks.

Thirdly, the Ministry of Defence, in coordination with the relevant forces, strengthened patrols, inspections and controls in the waters, prevented Vietnamese fishing vessels from violating foreign waters and provided timely assistance to our fishing boats and fishermen in the event of incidents, being illegally arrested by foreigners.

Fourthly, modern fishing infrastructure investments aimed at better management of mining. Besides, the port infrastructure must be synchronized and clean. When the EU goes to check, it finds that the seaports do not meet the requirements, environmental hygiene is not guaranteed will be difficult to accept removing the "yellow card" for

Vietnam. Public-private partnership (PPP) model should be encouraged in investment in the construction of fisheries logistics facilities. This model will reduce the burden on the State budget and accelerate the completion of infrastructure for fishing operations performing IUU control functions.

Fifth, the responsibility of the captain of the fishing vessel from the mainland to reach the designated port;

Six, timely detection, detection and serious treatment of shipowners, captains, fishermen, organizations and individuals who are engaged in IUU operations. The ship's owners and captains need to be treated strictly when a violation occurs, especially in the case of repeated violations. In fact, when a violation is committed, all movements are decided by the captain, so the violating captain needs to be severely punished to ensure deterrence. In addition, consider the appropriate treatment for fishermen working on board ships; make lists and strictly manage the number of refugees returned abroad. Once the country of return has been violated, the authorities have to investigate to identify the violation and have more stringent procedures, for example, prohibiting the practice for a certain period of time if it is repeated. If Vietnam does not have strong deterrent measures, until violation, foreign countries will have very strong criminal measures^[11]. In addition, there must be appropriate forms of correction for the authorities of the levels, departments, divisions, sectors concerned when still to take place the situation of fishing vessels and local fishermen violating foreign waters. To clarify the responsibility of the Chairman of the Provincial People's Committee, the city to the Prime Minister if the violations are not stopped locally.

Four, strengthen international cooperation

Vietnam could work with countries in the region to advance the process of building bilateral cooperation mechanisms or establishing a regional cooperation system on fisheries issues in general. Continue to proactively negotiate with countries with overlapping waters to define maritime boundaries between Vietnam and other countries^[7]. As analysed above, the existence of undetermined overlapping waters also contributes to increased IUU activities when the control of the parties concerned remains limited. With these areas, on the one hand, Vietnam needs to proactively continue to propose negotiations with the parties in order to find a reasonable settlement solution, and on the other, while awaiting a settlement, it can propose signing bilateral or multilateral joint agreements to deal with vessels committing IUU behaviour. In such an agreement, the parties should advocate the principle of coordination, flexibility, timeliness, respect for the sovereignty, rights and interests of States at sea. The countries of the Association of Southeast Asian Nations (ASEAN) need to promote the completion of the Agreement on the Separation of Overlapping Waters; implement provisional solutions in the spirit of Article 74 of the 1982 United Nations Convention on the Law of the Sea (UNCLOS) and seek models of cooperative fisheries, especially in overlapped waters. The core issue of ASEAN's anti-IUU cooperation is full compliance with UNCLOS^[13]. In addition, ASEAN needs to develop a "soft law" similar to the ASEAN Rules on Co-operation Against IUU. Countries work closely with each other as well as with stakeholders to establish mechanisms for the exchange of information on IUU fishing, information on surplus fish stocks and for the distribution of surplus

stocks among members; develop fishing information maps; develop and share information on fish species in the region with a view to establishing fish reserves.

For areas that have been clearly demarcated such as the Gulf of Tonkin (Vietnam and China have signed the Agreement on Fisheries Cooperation in the Gulf of Tonkin together with the Gulf of Tonkin Delimitation Agreement since 2000, which expired on June 30, 2020), the parties need to actively manage, control the licensing of fishing vessels entering the area^[8]; in addition, it is advisable to establish a timely bilateral information channel to detect and resolve violations occurring in the common exploitation area while waiting for construction negotiations and the adoption of common fisheries exploitation rules in the congested area to ensure the benefit of the fishermen of the two countries. At the same time, Vietnam also needs to have stronger diplomatic activities against foreign fishing vessels, especially China, illegal exploitation in waters such as Vietnam, publicity, expressing concerns, objections, and proposing measures to control the activities of Chinese fishing boats in Vietnamese waters^[6].

Vietnam also needs to study accession to the Agreement to promote compliance with international conservation and management measures implemented by fishing vessels in international waters in 1993. The accession to this Agreement is essential, for two main purposes: One, to demonstrate the responsibility of Vietnam to cooperate with the international community to effectively implement conservation and management measures for fishing vessels of Vietnamese nationality when engaged in fishing in international waters in accordance with the provisions of the Agreements and regulations of UNCLOS to which Vietnam is a party. Secondly, the accession to this Agreement is the basis for Vietnam to continue to internalize and improve the laws on fisheries in general and laws on Vietnam's fisheries exploitation in particular in accordance with international law and norms^[2]. So far, 45 countries and the EU have joined the Agreement. Southeast Asia has the Philippines and Myanmar.

Solutions to improve the law enforcement capacity of the state management system

In order for aquaculture to be sustainably developed, exploitation must be balanced with regeneration, avoiding depletion of resources. Governments and local authorities must work closely together to control mining outputs. In the past, the government has also had a lot of policies to protect and exploit fisheries resources, but some more specific, more decisive policies are needed to tackle the over-exploitation situation, specifically as follows:

First, within the country, there is a need to strengthen the capacity (personnel, vehicles, equipment, information systems, support tools) to inspect and control the functional forces (fishing guard, Border Guard, Maritime Police, Navy, Specialized Inspectors) in the waters (especially the seas bordering other countries) and in fishing ports, fishing stations, fish markets. To solve this problem, in front of the eyes, local authorities can use border guards, maritime police, etc. We'll take part in controlling fishing at the harbour. Vietnam could consider setting up fishing control units as the outgoing force, controlling fishing activities in ports and logistics areas, thus determining the origin of fish before being placed on the coast, whether or not it is to be legally fished.

Secondly, the local authorities need to have a plan to conduct inspections, review the listing of livestock in general fisheries and households that use prohibited fishing tools for fishery exploitation throughout the province, from which there is a plan for propaganda, education, for signing commitments not to use forbidden fishing gear for fishing or transfer of fishery^[1]. Wherever there is a person who uses prohibited fishing tools for fishery exploitation, discipline will be imposed, at the very least, as a form of reproach to local officials and officials who are engaged in illegal fishing activities.

Thirdly, training, upgrading of the fishing control force, investing a strong fleet to carry out the mission, equipped with support tools, modern equipment and financial policies to ensure the conditions and working modalities of the fisheries control force so that they rest assured of monitoring fishery exploitation at sea. The fisheries control force is also a force with a lot of contacts with fishermen, implementing instructions, raising the fisherman's sense of compliance with State regulations, better understanding of the role of fishery exploitation not only stops at economic value, so training and upgrading of the fisheries management force is a necessary job.

Solutions to amend and supplement Vietnam's legal document system on fishing at sea, specifically amending Decree 42/2019/ND-CP and criminalizing the handling of a number of acts promoting illegal fishing

For Decree 42/2019/ND-CP on sanctioning administrative violations in the fisheries sector, the revocation of fisheries exploitation licences is one of the additional penalties, in addition to the suspension of the right to use a fishery exploitation licence from 03 to 06 months as currently in accordance with the provisions of clause 5 of Article 50 of the Fisheries Law 2017. Article 22 of Decree 42/2019/ND-CP provides for fines ranging from VND 20,000,000 to VND 30,000,000 for acts of fishery exploitation exceeding 10% to less than 20% of the production quota permitted for exploitation. So what is the penalty for mining less than 10% of the wage allowance? Under this regulation, the processing authority has no grounds to punish mining acts that exceed the permissible quota of less than 10%, while in fact there will be individuals who exceed quotas that are not treated. This does not guarantee the fairness and rigour of the law. Therefore, the competent State authorities need to amend this regulation as follows: fines from VND 20,000,000 to VND 30,000,000 for acts of fishery exploitation exceeding less than 20% of the quota allowed for exploitation.

Furthermore, administrative penalties for illegal fishing violations need to be further strengthened. Currently, Decree 42-2019/ND-CP on the handling of administrative violations in the fisheries sector is the most important legal text regulating illegal fishing. The maximum penalty currently applied in the Vietnamese legal system for illegal fishing activities in Vietnamese waters ranges from VND 800,000,000 to VND 1 billion, as stipulated in Clause 3, Article 20 of Decree 42/2019/ND-CP. Although the Decree has many advanced provisions, adjusting higher levels of deterrent penalties, however, compared to the actual situation of illegal fishing and the level of penalties compared with other countries, Vietnam's level of punishment is relatively low, not sufficient for deterrence. Therefore, in the future, in order to solve the problem of

illegal fishing, Vietnam needs to further strengthen the current level of penalties to ensure that the national legal system is deterrent to illegal fishermen.

Proposing solutions to criminalize the handling of certain acts promoting illegal fishing, specifically: Clause a, Point 1 of Article 242 provides for criminal punishment for violations in the use of toxins, explosives, chemicals, electricity or vehicles, fishing tools prohibited to exploit fisheries or to destroy fisheries resources, however, the current state of depletion of marine biological resources, decline in stocks, yields come not only from use of forbidden means for exploitation but also from illegal exploitation. That is why Vietnam needs to criminalize fishery exploitation to ensure that the species have enough time to recover. Clause d point 1, Article 242 provides for punishment for acts of habitat destruction of fish species, however this provision only applies to species in the category of endangered, rare, priority protected species. In fact, the marine environment is unified, closely interrelated, and populations of marine species have mutual existence, no separation between species. In the long run, in order to preserve marine resources in particular and the marine environment in general, the destruction of marine environments, the natural structures in marine life populations need to be expanded to provide additional penalties for all similar acts rather than just targeting the habitats of endangered, rare species that need priority protection. In fact, the issue of illegal coral mining, limestone mining in coastal areas or seaweed mining every year has left no less consequences for Vietnam's offshore fishing.

Several countries and territories in the region and the world have criminalized individuals and organizations in violation of IUU. Typically, Indonesia will impose the highest sentence of imprisonment for IUU behavior of seven years along with the measure of burning, sinking ships; Thailand the maximum sentence is three years; Malaysia the maximum of two years; the Philippines the maximum penalty is ten years.

Solutions to raise people's awareness

First of all, it is necessary to promote propaganda, educate the law on fishery exploitation; focus on implementing the protection of resources in many rich and diverse forms through the mass media; organize a commitment not to exploit fisheries with prohibited practices, not to violate foreign waters, etc. At the same time, strengthened meetings, dialogue, guidance and orientation of professional transformation suitable for fishermen; planned for the province to build mechanisms and policies to support the people to move hills, fisheries, fishing, the transformation of small-scale coastal fishing into aquaculture; training to move to service business. Particular attention should be paid to fishermen and youth, who are engaged in fishery exploitation, and who are educated at different levels in the coastal areas; and to mobilize social and professional organizations to participate in activities to promote, disseminate, and step by step raise awareness of the fisherman community in the fisheries exploitation of the sea. Next, there are specific options in the use of a variety of forms of propaganda in accordance with the custom, with the conditions and objects of each local such as: Construction of miniatures, publications, radio, television in

the newspapers, local radio, organizing competitions to learn with the participation of large local fishermen.

In addition, it is necessary to organize research and compilation to include the contents of the field of aquaculture in the extracurricular programmes of schools at all levels, in the eyes of the university and university levels.

Conclusion

Over the past time, Vietnam has achieved great achievements, becoming the third largest seafood exporter in the world, from there, the value and important role of aquatic resources for economic and social development has been increasingly affirmed. However, facing the impact of all aspects of the world as well as in the country, the fishing industry at sea is facing many existences and challenges. In order to sustainably maintain the achieved results and contribute to the success of Vietnam's marine economy sustainable development strategy to 2030 with a vision to 2045, the State must have an appropriate and synchronous system of policies and laws, ensuring the feasibility of law enforcement. From studying the provisions of current law, the current situation and challenges facing the fishery industry in general and fishing activities at sea in particular, the recommendations and proposals of the authors will contribute to perfecting policies and laws on fishing at sea. It is hoped that in the coming time, Vietnam will soon complete the goals set out in the fisheries development strategy approved by the state./.

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