

## Special and Differential Treatment Concept After Buenos Aires Conference and Its Impact for Small Scale Fisheries in Indonesia

Muhammad Nur\*, M. Hajir Susanto  
Universitas Ahmad Dahlan, Yogyakarta, Indonesia  
\*email: muhammad.nur@law.uad.ac.id

*Date received: May 2019, Revised: August 2019, Accepted: September 2019*

### ABSTRACT

*The WTO Conference held in Hong Kong in 2005 agreed that subsidies must be immediately abolished by each WTO member country. But the decision was not approved by many countries, especially developing countries and less developed countries, so the concept of Special and Differential Treatment appears. The purpose of this paper is to analyze the extent of this idea's impact on the small-scale fisheries in Indonesia after the Buenos Aires Conference. a normative juridical research method is used by authors that examining library materials and other secondary materials. The author uses the data collection method by the literature study. Documents in the form of primary legal materials, secondary legal materials, and non-legal materials are used in this paper. At the Ministerial Meeting in Buenos Aires in 2017 Special and Differential Treatment Concept was discussed. The result of this study found that regarding of conclusion in the 11th Ministerial Conference in Buenos Aires, Indonesia has a chance to protect their small-scale fisheries interest to continue to provide subsidies in the field of fisheries. However, Indonesia still has a lot of work to be done to develop disciplines of fisheries subsidies within the framework of cooperation at the WTO and prevent the misuse of subsidies provided.*

**Keywords:** *Buenos Aires Conference, Subsidies, Small Scale Fisheries, Special and Differential Treatment*

**DOI:** <https://doi.org/10.31603/variajusticia.v15i2.3083>

### 1. INTRODUCTION

The World Trade Organization (WTO) as a world trade organization that has 154 members has become one of the organizations that have considerable influence in the world in terms of regulating the economy, especially the world trade system. The World Trade Organization was born in April 1994 in Marrakech, Morocco, through the Agreement Establishing the World Trade Organization. This agreement then came into force on 1 January 1995 ago. In the opening part of this agreement it was stated that the WTO establishment aims to; (1) improve living standards; (2) full employment opportunities; (3) growth of revenue and effective demand; and (4) expansion of production and trade in goods and services. To realize these goals, it is necessary to make mutually beneficial rules by reducing trade barriers such as tariffs and others as well as eliminating discrimination treatment in international trade. At this point, the WTO was identified as an international trade organization that advocated the liberalization of trade in goods and services. However, what needs to be noted, according to Bossche, is that the WTO also considers sustainable economic development and pay attention to the specific needs of each country, especially developing countries (Bossche, 2005). In general, a set of rules made in the WTO includes five main things, namely: 1) regulations concerning non-discrimination treatment; 2) regulations regarding access of market; 3) regulation regarding unfair of trade; 4)

regulations concerning the relationship between liberalization of trade and other values such as social interests; (5) regulations concerning harmonization of national legal instruments in special fields (Bossche, 2010).

One thing that is trying to be regulated in the WTO provisions is regarding unfair trade. One of the state policies considered as the practice of unfair trade is subsidies. Subsidies are one of the actions known in the context of an unfair act in international trade because it can harm the parties affected by the practice of subsidies (Barutu, 2007). Because of the impact of subsidies that can cause damage to the market balance, the WTO regulates, both in general and specifically, regarding the practice of these subsidies. In general, the provisions concerning subsidies have been regulated in the 1994 General Agreement on Tariffs and Trade (GATT) namely in Article VI and XVI of that agreement. But in both of these articles, the issue of subsidies has not been discussed specifically. Based on that reason, a special provision on subsidies was made, namely the 1994 Agreement on Subsidies and Countervailing Measures (SCM Agreement). This SCM Agreement of 1994 covered agreement in the formation of the WTO. With the existence of the SCM, the arrangement of subsidies becomes very strict and the details are not like the provisions of GATT.

Provisions related to the prohibition of subsidies do not simply prohibit all forms of subsidies carried out by the government. In the provisions of the WTO it is still possible to provide certain types of subsidies, but on condition that the provision of subsidies does not result in disadvantage to the state or other parties (Bossche, 2005). The reason for granting this exception is given because so far, the practice of subsidies has long been used by various countries to provide protection to their citizens who are not yet prosperous and still need assistance, as well as to protect domestic interests in these countries. One of the recent forms of subsidy that is often debated among WTO member countries is subsidies related to fisheries, both subsidies for capture and aquaculture and subsidies for processing fishery products (Chakraborty, 2011). The debate related to the pros and cons of providing fisheries subsidies began to become a hot topic after the emergence of various research results which stated that fishery subsidies have a negative impact on the sustainability of fisheries resources. Several studies have found that fishery subsidies contribute to destructive fishing. This has an impact in a long period because it has the potential to decrease the potential of global fisheries (UNEP and WWF, 2009).

As one of the developing countries, Indonesia has a large potential for fisheries and fishery products because it has a very wide sea area. Therefore, because of its vast sea area, Indonesia has a very large number of fishermen. But unfortunately, most of the fishermen are still in the poverty line, so the Government of Indonesia is still interested in providing subsidies to these fishermen to help them be on the prosperous line. So far, Indonesia continues to provide subsidies in the form of both direct and indirect subsidies. The provision of this subsidy should be managed by the Government of Indonesia with a sustainable system so that its implementation does not have a negative impact.

The great importance of Indonesia to maintain fishery subsidies is the reason for the Government of Indonesia to reject the rules of the abolition of the full subsidy proposed at the VI Ministerial Conference which took place in Hong Kong in 2005. However, Indonesia must also understand that although it does not agree with the rules for abolishing subsidies, as a member of the WTO, Indonesia has an obligation to comply with decisions taken at WTO forums and adapt the results of these decisions to Indonesian national regulations. Therefore, the Government of Indonesia through the Ministry of Maritime Affairs and Fisheries continues to make efforts so that the interests of the Indonesian people can be accommodated in the WTO decision related to the fishery subsidy. One of the proposals submitted by Indonesia together with several other countries is the idea of Special and Differential Treatment for developing countries and less developed countries (LDCs). After persistent efforts, Indonesia finally managed to maintain its internal interests after the XI Ministerial Conference held in Buenos Aires, Argentina on December 10-13, 2017 decided to agree on the interests of Indonesia and

other countries to review the rules prohibiting the provision of fisheries subsidies and increase efforts to prevent illegal, unregulated and unreported (IUU) fishing.

## **2. RESEARCH METHODS**

This research will focus on examining the Special and Differential Treatment concept in the fisheries subsidy's rules of the World Trade Organization after the Buenos Aires Conference and the impact on small-scale fisheries in Indonesia. As well as reviewing the basis of national and international law as the basis for its application. This study uses normative juridical research methods that use secondary data types derived from primary legal materials, secondary legal materials and supplemented with non-legal materials in the form of international legal instruments and national law as well as secondary legal material. Legal and non-legal materials are obtained from journals, books, research results, scientific magazines, and credible online pages. The data collection technique used by the writer is the literature study. The data is collected and filtered according to the needs of the authors according to the research topic. After that, the data were analyzed qualitatively and then elaborated in a coherent and descriptive manner.

## **3. RESULTS AND DISCUSSION**

### **3.1. Fisherman Conditions in Indonesia**

Indonesia has 2.755.794 fishermen, both fishermen operating in the open sea and fishermen operating in public waters (Sulaiman, et al, 2014). There are around 543.845 ships operating units and 95.6 percent of those ships are small scale ships which are operating a few miles from the coast or around the coast. Around 190,923 units of this number are specifications of motorized boats, 181,178 outboard motorboats, 171,744 units of motorboats (BPS, 2017).

In 2016, fisheries production of Indonesia reached about 23.51 million tons, the amount consists of capture fisheries production of 6.580 million tons while aquaculture production is as much as 16.002 million tons. Fisheries Production is a combination of Aquaculture Production and Capture Fisheries Production, which is the amount of aquaculture production produced by all regencies/cities including fresh, brackish, and sea fisheries (including seaweed). While the production of Capture Fisheries the amount of production that comes from capture fisheries production (sea and public waters) in all provinces in Indonesia. The number of fisheries productions in 2016 reached 23.51 million tons from the target of 23.43 million tons or reached 100.33%, but if compared with the realization in 2015 of 23.99 million tons, this figure has decreased 2.00%. The composition of fisheries production in 2016 was contributed from capture fisheries production which was 6.83 million tons or 29.06%, compared to contributions from aquaculture production of 16.67 million tons or 70.94% (KKP, 2016).

Indonesian fisheries production at the current level of consumption continues to compete with a variety of imported fishery products. Based on data collected from the Ministry of Maritime Affairs and Fisheries, from January to November 2012-2017, the volume of Indonesia's fish imports has increased by 1.61% (KKP, 2018). The existence of imported fishery products has an impact on the fate of small fishermen. Because, with the simple equipment they have and their limited capital, small fishermen will, of course, have difficulty competing with large companies with modern and sophisticated equipment. Thus, the Government is obliged to provide protection to these fishermen through assistance programs, so that they do not despair and change professions.

Based on data from the Indonesian Central Statistics Agency (BPS), it was found that there was around 63.47 percent of the total number of fishermen throughout Indonesia who were classified as poor and lived in coastal and rural areas (BPS, 2018). Poor standards for fishermen according to BPS are those who have a maximum income of Rp1.2 million per month. Various problems commonly faced by

fishermen include fishing equipment and vessels, operational costs that are too expensive such as fuel, insurance for fishermen, capital credit schemes for business improvement, taxes, fees, fishing facilities and supporting facilities that are lacking, weather information, fishing area information to facilitate fishermen in carrying out more effective and efficient fishing operations, as well as training, education, and fisheries extension assistance.

Based on these facts, currently, most of the small fishermen in Indonesia still need subsidies from the government to sustain their lives and their families, therefore the government is expected to be able to establish fisheries subsidy policies more targeted and effective. The mandate of providing fishery subsidies to people in need is regulated by the Indonesian Constitution. Therefore, until now the government cannot immediately stop subsidies for fishermen, especially small fishermen in Indonesia.

The legal policy requires the State to be present to ensure that the basic needs of traditional fishermen and small-scale fishermen are met. The regulation is in line with the commitment of the Government of Indonesia to provide protection measures for small-scale fisheries in accordance with the FAO Guidelines in 2014 on the Protection of Small-Scale Fisheries in the Context of Poverty Reduction and Food Security. Three related national policies are the Fisheries Law, the Maritime Law, Cultivators Fish and Salt Farmers, and the Fisheries Protection and Empowerment Act, which at least regulates 24 forms of mandated subsidy policy actions.

Although small fishermen still need subsidies from the government, the facts on the ground become a polemic and a dilemma because only about 16 percent of the total fishery subsidies from the Government of Indonesia reach traditional and small-scale fishermen. Meanwhile, about 90 percent of fishery subsidies that have been provided exclusively enjoyed by large-scale fishing industries which are then indicated to contribute to destructive fishing (KIARA: 2013).

### **3.2. Special and Differential Treatment Concept**

The general concept of Justice as Fairness raised by John Rawls is that all primary social goods - such as freedom and opportunity, income and welfare, and the basics of self-respect - must be distributed evenly unless the distribution of inequality is given to the benefit of the most disadvantaged. Then, two principles can be drawn from this concept, namely: the principle of freedom based on equality and the principle of difference (Neufeld, 2017).

The theory of justice promoted by John Rawls, as he admitted, was limited to the domestic community. John Rawls said "I shall be satisfied if it is possible to formulate a reasonable conception of justice for the basic structure of society conceived for the time being as a closed system isolated from other societies" (Ruitinga, 2011).

However, in its development, Frank J. Garcia criticized and developed the theory, so it was relevant to be applied at the international level (Garcia, et al, 2015). What is a requirement for justice, based on the opinion of John Rawls, is that there is a mechanism to allocate benefits arising from social cooperation, which can be seen in the existence of the WTO? WTO institutions, by their rules, have increased profits from social cooperation (Nicita, 2018). Therefore, the theory of justice also applies there.

Inequality at the international level in the social and economic fields can be considered fair only if it can generate benefits for all countries, especially disadvantaged countries, in this case developing countries (Garcia, 2000). Therefore, there needs to be a normative framework based on moral obligations that underlie the relations between developed and developing countries that are not equal.

The principles application of Special and Differential Treatment (SDT) is a way out to bridge the inequalities that exist between developed and developing countries. This principle is not merely political

accommodation but reflects a moral obligation due to inequality. With this principle, it is expected that developing countries can get benefits so that they can play their role maximally. The SDT principle is a universal principle that has been adopted by the WTO. SDT provisions are spread in various WTO agreements. In addition to animating existing agreements, this principle also animates negotiations conducted in the WTO forum. The effectiveness of SDT provisions is crucial for developing countries to bridge the gaps that exist because of inequality. With the provision of effective SDT, one of them, it can be said that the interests of developing countries have been accommodated.

### **3.3. Form of Fisheries Subsidies**

In terms of international trade, the WTO makes a definition of subsidies. Subsidies and Countervailing Measures (SCM) Agreement is one of the results of the Uruguay Round. A clear definition regarding the new subsidy was agreed upon in the SCM Agreement. Subsidy arrangements previously contained in the General Agreement on Tariffs and Trade (GATT) and in the Tokyo Round have not been able to agree on a specific definition of subsidies. The definition of subsidies is formulated in Article 1.1 points a and b of the SCM Agreement, namely "if there is financial assistance from the government or public institutions in the territory of the member country". There are four types of financial assistance referred to in this article, namely; (1) direct cash assistance; (2) fiscal incentives such as tax reduction; (3) assistance in providing goods; or services other than infrastructure or the purchase of goods and (4) pay expenses to be paid by private institutions. Some cases that have occurred and brought to the WTO show that to decide on a country to subsidize or not have to meet two elements, namely (Ali, 2017: 646): the first because of financial contributions and the second because of the benefits (profits). The emergence of the provisions regarding financial assistance if traced to the history of the formation of SCM is because there is a common understanding that not all financial aid distributed by the government can produce profits or benefit. Therefore, the SCM Agreement provides a limitation that the first element of the subsidy that must be met is the existence of financial assistance from the government or public bodies.

The definition of fishery subsidies when referring to the SCM Agreement is financial transfers provided either directly or indirectly, provided by public institutions aimed at the fisheries sector, with the aim of providing more benefits for this sector. Meanwhile, the FAO or the United Nations Food and Agriculture Organization provides a definition of fisheries subsidies as "government actions outside normal practice - to the fishing industry in the short, medium or long term" (Westlund, 2004).

Based on the definition made by FAO above, it can be understood that a fisheries subsidy occurs when the government decides to do something or does not do something that is generally done with the aim of modifying the potential benefits that can be obtained by the fishing industry. Government in this definition is broadly interpreted, that is not only the actions or omissions of government institutions or public institutions in the fisheries sector. With a note that these actions or omissions provide significant benefits to the fishing industry in an area in the country (Westlund, 2004).

Referring to the definition of the fishing industry created by FAO, the definition can be interpreted broadly. All forms of the fishing industry, from the downstream, fall into this definition. The definition also explains that the regulation of the fishing industry is not only limited to the capture fisheries industry, but also includes the aquaculture industry, the large and small fishing industry, and the fishing industry that is commercial or recreational (Westlund, 2004). Thus, the scope of the fisheries industry definition set by FAO is still too wide.

### 3.4. Fisheries Subsidies Regulation in Indonesia

According to the rules in Indonesia, ships with sizes below 10 GT are included in the category of small vessels. This provision is regulated in Act Number 7 of 2016 concerning Protection and Empowerment of Fishermen, Fish Cultivators, and Salt Farmers. This means that all boat owners under 10 GT are provided with facilities and various facilities from the Ministry of Maritime Affairs and Fisheries such as subsidies and other assistance policies. But in order to avoid the practice of IUU Fishing which is being heavily campaigned now, the Indonesian Government must immediately prepare anticipatory steps with the ease of obtaining small vessels under 10 GT. Anticipation must exist, because in addition to the potential of IUUF, there are other negative potentials that can be carried out by the owner of the small ship. The absence of permits for small vessels will have a consequence on the difficulty of carrying out traceability results and the location of catches and potentially contribute to overfishing.

In accordance with Minister of Energy and Mineral Resources Regulation No. 6 of 2014, one form of subsidies that can be provided by the Government of Indonesia for the fisheries and marine sector is subsidies for fuel oil. However, the regulation also states that ships with a size of 30 gross tons (GT) are also permitted to receive diesel subsidies. The policy caused a lot of controversies because it was deemed not on target. Some observers consider that there are still many smaller vessels that are more entitled to receive the aid budget.

Regulations regarding fisheries subsidies are also regulated in Law Number 45 of 2009 concerning Amendments to Law Number 31 of 2004 concerning Fisheries. The law stipulates in Article 48 Paragraph (2) that levies are not permitted for small-scale fishers and small-scale fish farmers. In addition, in Chapter IX precisely in Articles 57-59 in the law also regulates the provision of subsidies in various forms of training, education, and fisheries extension assistance. Then, in Chapter X in Articles 60-64 regulates assistance for empowering small-scale fishermen and small-scale fish farmers. In addition, the government also regulates the provision of fuel subsidies for fishermen in more specific regulations.

Indonesia for Global Justice (IGJ) in a study found that 90 percent of fishing households in Indonesia generally spend an operational cost of sixty percent just to buy fuel (KIARA, 2013). This condition is not comparable with the subsidies that have been received by large vessels measuring 30 Gross Tons. The unfair distribution of fishery subsidies is one of the causes of the economic inequality that is clearly seen between small-scale fishermen and large-scale fishing industries because. Therefore, the idea of removing fisheries subsidies for scale fishing vessels is one of the things that needs to be done by the government. The government needs to improve management and target fisheries subsidies. In addition, extra effort is needed from the government and related parties to collect data on small scale fishermen so that fishery subsidies can be given on target.

The Indonesian government has also provided assistance and various activities to facilitate and strengthen the marketing development of fishery products produced from the domestic fishing industry for export to foreign countries. In addition, the government has carried out various other forms of fishery subsidies such as procurement and modernization of ships and fishing gear, provision of operational costs, provision of access to capital Infrastructure procurement, marketing and promotion assistance, introducing skills in fishing techniques, other social assistance, introducing skills in adding value to products and other additional skills, and introducing skills in fisheries resource management and conservation (Muhammad Nur, 2019). However, some of the fisheries subsidies distributed by the government are at risk of over-fishing. The forms of fishery subsidies and the potential risks to overfishing are presented in the following table (Putra and Aqimuddin, 2014).

**Table 2.** Subsidy Types and Risk Levels in Indonesia

No.	Form of Subsidies	Type of risk	Level of risk
1.	Infrastructure procurement	Negative	Medium
2.	Introducing skills in fishing techniques	Negative	Medium
3.	Provision of access to capital	Negative	High
4.	Procurement and Modernization of ships and fishing gear	Negative	Very high
5.	Marketing and promotion assistance	Negative	Medium
6.	Provision of operational costs	Negative	Very high
7.	Introducing skills in fisheries resource management and conservation	Positive	-
8.	Introducing skills in adding value to products and other additional skills	Negative	Low
9.	Other social assistance	Negative	Medium

**Source:** (Putra and Aqimuddin, 2015)

### 3.5. Fisheries Subsidies After Buenos Aires Conference

The XI Ministerial Conference on the members of the WTO XI countries will take place on December 11, 2017, in Buenos Aires, Argentina. One topic of the meeting's purpose was to discuss controversial topics related to the practice of fisheries subsidies by various countries. This meeting became an opportunity used by the participants to agree on a political consensus on this issue and to deepen some aspects related to trade from the Sustainable Development Goal 14 on underwater life. The meeting scheduled several discussions focuses, namely the issue of regulations, the prohibition of certain fish subsidies, market access, and fish management systems.

At the end of the meeting it was agreed that the WTO agreed to continue to engage constructively in negotiations, with a view to adopting the decision at the Ministerial Conference in 2019, an agreement on comprehensive and effective disciplines that prohibit certain forms of fishery subsidies that contribute on overcapacity and overfishing, and eliminating subsidies that contribute to illegal, unreported and unregulated (IUU) fishing. The decree basically recognizes that appropriate and effective special and differential treatments can be given to developing countries and less developed countries, so the concept of recognition must be an integral part of negotiations at subsequent meetings that discuss the topic.

Based on this decision, it can be stated that the WTO has made multilateral commitments to meet the achievements of the Sustainable Development Goals 14.6, which is the rule calling for the prohibition and elimination of fishery subsidies that contribute to IUU fishing, overfishing and excessive fishing actions which must be fulfilled by 2020. But then at the meeting in Buenos Aires WTO members realized that it was necessary to give special and differential treatment to developing countries and less developed countries against these provisions.

### 3.6. The Impact of Buenos Aires Conference Result for Small-Scale Fisheries in Indonesia

The 1945 Constitution of Indonesia mandates the state to protect the entire Indonesian people and promote public welfare in the context of realizing social justice for all Indonesian people. Government through the draft state budget for income and expenditure from year to year still prioritizes poverty alleviation as one of the top priorities for the realization of a just and prosperous society. Not a small amount of the budget spent even reaching trillions of rupiah is used to implement poverty alleviation programs.

The problem of poverty until now still occupies a position that needs special attention in Indonesia. One group that can be said to be poor is a family of fishermen, especially traditional fishermen. If we go into the basic problems related to poverty experienced by fishermen, then we can see that fishermen still need government intervention in the form of aid programs, among others: first, meeting the needs of fuel oil for fishermen with emphasis on efforts to maintain fuel oil subsidies, Pertamina regulations that do not make it difficult for fishermen, the construction of a fisherman fueling installation by the government. Second, revitalization of ships and fishing gear with a larger fishing boat assistance program and more modern fishing gear that can be directly operated by poor fishermen. Third, the facilitation of financing of fisheries businesses with an emphasis on efforts to encourage the expansion of people's business loans in the fisheries sector in all banks that channel people's business loans and make special credit schemes for fishermen with ship collateral or no collateral at all. Fourth, optimizing the marketing and processing of fish at fishery centers to increase the price of fish caught by fishermen and to form fish blogs. Fifth, the protection of fishermen in terms of security in the sea by providing buoys and installing radio communications on each fishing boat. So that it can be detected when an accident occurs at sea.

Indonesia's interests in fisheries subsidies can be seen from two sides. First, it is seen from the opportunity of exploiting fisheries resource potential for the benefit of national economic growth. The second is seen from the objective conditions of Indonesian fishermen who are generally classified as traditional fishermen. In the field of fishery markets, the implementation of WTO fisheries subsidies will reduce capture fisheries production. This can happen because fishing boats that operate on average are outboard motorboats. Whereas for ships that have a catch capacity of around 30-50 GT (gross ton) only accounted for 19.01% of the total fishing vessels in Indonesia. If the government does not provide protection (regulation) for fishing vessels with a small catch capacity then it can be ascertained that capture fisheries production in the sea will decline dramatically.

The inclusion of modernization of fishing boats and the creation of new fishing vessels as part of fisheries subsidies within the WTO will have a profound influence on the ability of capture fisheries production. Though, the fishing vessels used by Indonesian fishermen include old fishing boats that are technologically outdated and have little capture capability. Regulations concerning price support for fisheries production for export purposes are also categorized as fisheries subsidies by the WTO. In the absence of such a scheme, the price of Indonesian fishery products will be difficult to compete with fishery products from developed countries. These difficulties occur because of inefficient management of Indonesian fishery products. The value of efficiency certainly impacts on the price of fisheries production. Thus, the price of fishery products can be sure to be more expensive compared to fishery products from developed countries which are managed efficiently.

The forms of subsidies made by the government are subsidies that are prohibited in the WTO draft on fisheries subsidies. If these conditions are successfully agreed upon by WTO member countries, Indonesian fisheries management will experience a bad impact, especially related to fisheries market management, fisheries resources, and employment. But, regarding the conclusion in the 11th Ministerial Conference in Buenos Aires, Indonesia has a chance to protect their small-scale fisheries interest. The Eleventh Ministerial Conference (MC11) of the World Trade Organization (WTO) which took place in Buenos Aires in 2017 suspended an agreement on a draft text on the prohibition of subsidies related to illegal, unreported and unregulated (IUU) and excess stock, among other decisions. The Ministerial Conference adopted an important decision to "continue to engage constructively in fisheries subsidy negotiations" with the aim of adopting an agreement in 2019.

However, even though the Ministers of World Trade Organizations agree that fisheries subsidies can still be given to small-scale and artisanal fishermen, Indonesia still has a lot of work to be done to develop disciplines of fisheries subsidies within the framework of cooperation at the WTO. Until now,



several draft improvements to the draft related to the regulation of subsidies are still being submitted for discussion and agreement among member countries. It is not an easy matter to form a technical agreement that regulates the types of subsidies that are permitted. In addition, Indonesia must also improve the management of the provision and management of domestic fisheries subsidies, given that many subsidies so far are not on target.

Various programs, projects, and activities have been carried out by the Government of Indonesia to alleviate fishermen from poverty. But the number of small fishermen is still increasing in magnitude. Coastal villages are increasingly expanding in area and number. Even though the government has endeavored in alleviating poverty but these efforts have not brought satisfactory results. Based on this situation, the authors put forward some suggestions as a solution that might be considered by the Indonesian government, namely: involving fishing organizations and gradually facilitating the formation of fishing cooperatives to improve fuel distribution problems; facilitating the construction of a mini Solar Pack Dealer (SPD) for fishermen with a fleet not greater than or less than 10 GT in fishing villages and fish auction sites. This effort is to address the problem of using subsidized fuel enjoyed by large-scale fishing vessels; Determining the location of SPD development for fishermen must be done in a participatory manner, including the management institutions; and monitor the use of subsidized fuel for large-scale fishing vessels above or less than 10 GT to target according to the scale of the fishing business.

To solve the problem of large-scale vessels using subsidized diesel fuel, the Government must also review the Regulation of the Minister of Energy and Mineral Resources Number 6 of 2014. In this regulation, ships weighing 30 gross tons (GT) are allowed to buy subsidized diesel fuel. The existence of this regulation is often used as a gap for fisheries entrepreneurs to use subsidized diesel fuel. The government is expected to issue regulations on the allocation of diesel fuel for small fishermen or a maximum of 10 GT vessels.

#### **4. CONCLUSION**

Indonesia through the Ministry of Maritime Affairs and Fisheries and the Ministry of Foreign Affairs attempted to roll out an exception to the WTO provisions. At the 11th Ministerial Conference in Buenos Aires, Argentina, the ministers of the member countries of the World Trade Organization (WTO) agreed to accommodate the interests pursued by Indonesia in the form of eradication of illegal, unregulated and unreported (IUU) fishing practices and a review of the application of fisheries subsidies. The Ministerial Conference adopted a decision to “continue to engage constructively in the fisheries subsidies negotiations” with the aim of adopting an agreement in 2019. However, even though the Ministers of World Trade Organizations agree that fisheries subsidies can still be given to small-scale and artisanal fishermen, Indonesia still has a lot of work to be done to develop disciplines of fisheries subsidies within the framework of cooperation at the WTO. Indonesia must also improve the management of the provision and management of domestic fisheries subsidies, given that many subsidies so far are not on target.

#### **5. REFERENCES**

- Ali, J., et al. (2017). The Contribution of Subsidies on the Welfare of Fishing Communities in Malaysia. *International Journal of Economics and Financial Issues*, 7(2), 641-648.
- Barutu, C. (2007). *Ketentuan Anti-Dumping, Subsidi dan Tindakan Pengamanan (Safeguard) dalam GATT dan WTO*. Bandung: Citra Aditya Bakti.
- Bossche, P.V.D. (2005). *The Law and Policy of the World Trade Organization: Text, Cases, and Materials*. United Kingdom: Cambridge University Press.

- Bossche, P.V.D., et al. (2010). *Pengantar Hukum WTO*. Jakarta: Yayasan Obor Indonesia.
- Chakraborty, D., et al. (2011). Doha Round Negotiations on Subsidy and Countervailing Measures: Potential Implications on Trade Flows in the Fishery Sector. *Asian Journal of WTO & International Health Law and Policy*, 6(1), 201-234.
- Garcia, F.J. (2000). Trade and Inequality: Economic Justice and The Developing World. *Michigan Journal of International Law*, 21(4), 975-1049.
- Garcia, F.J., et al. (2016). Reforming the International Investment Regime: Lessons from International Trade Law. *Journal of International Economic Law*, 18(4), December 2015, 861–892. <https://doi.org/10.1093/jiel/jgv042>
- Kementerian Kelautan dan Perikanan Republik Indonesia. (2016). Laporan Kinerja KKP 2016. KKP, 42.
- Kementerian Kelautan dan Perikanan Republik Indonesia. (2018). Refleksi Tahun 2017 & Outlook Tahun 2018. Direktorat Jenderal Penguatan Daya Saing Produk Kelautan dan Perikanan, 7.
- Koalisi Rakyat untuk Keadilan Perikanan (KIARA). (2013). Selamatkan Pesisir Laut Indonesia, Sejahterakan Nelayan. *Buletin Kabar Bahari 4th Edition*, 12-17.
- Neufeld, B. (2017). Freedom, Money and Justice as Fairness. *Politics, Philosophy & Economics Journal*, 16(1), 70-92. <https://doi.org/10.1177/1470594X16651058>
- Nicita, A., Marcelo Olarreaga, Peri Silva. (2018). Cooperation in WTO's Tariff Waters?. *Journal of Political Economy*, 126(3), 1302-1338. <https://doi.org/10.1086/697085>
- Nur, M. (2019). Bridging a new concept of fisheries subsidies policy to support sustainable fisheries in Indonesia. *IOP Conference Series: Earth and Environmental Science*. doi:10.1088/1755-1315/370/1/012056
- Putra, H.T., and Aqimuddin, E.A. (2014). Pengaturan Subsidi Perikanan dalam WTO dan Dampaknya bagi Indonesia. *Mimbar Hukum*. 26(3). 395-408. <https://doi.org/10.22146/jmh.16025>
- Ruitinga, V. (2011). Ideal Theory and Utopia. *Erasmus Student Journal of Philosophy*, 1, 48-54.
- Sulaiman, et al. (2014). Pembangunan Hukum Perlindungan Nelayan Tradisional di Aceh dalam Kaitan Pemanfaatan Sumber Daya Perikanan Secara Berkeadilan. *Jurnal Media Hukum*, 21(2), 309-321.
- UNEP and WWF. (2009). *Summary Report: The WTO Fishery Subsidies Negotiations: Update and Introductory Briefing for New Delegates*. Geneva: WTO.
- Westlund, L. (2004). *Guide for Identifying, Assessing, and Reporting on Subsidies in the Fisheries Sector*. Roma: FAO.