

WTO Subsidies Agreement on Fisheries (2022-2024): Agreed Terms and Implications for Indonesia

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Abstract

Indonesia has issued a fisheries subsidy policy to encourage the development of the fishing industry because this sector contributes to national development, but the subsidies applied must be in accordance with the provisions stipulated in the WTO. Indonesia is a member of the WTO and in the last few meetings held by the WTO in which the WTO prohibits subsidies, besides that fisheries subsidies can cause depletion of fish stocks and damage to marine biota. This is not in line with the UN program, namely Sustainable Development related to sustainable fisheries, so the implementation of fisheries subsidy policies can cause problems. the 12th WTO ministerial conference, a draft was drafted, but until now the draft has not been ratified, the draft fisheries subsidies at the WTO specifically regulate fisheries subsidies that are prohibited and exceptions in general. the 13th Ministerial Conference 2024 has not yet concluded negotiations on agricultural and fisheries subsidy issues, which remain key concerns for the conference organizers. Trade or Economic Ministers of the WTO engaged in negotiations are aware of the significant differences in positions among member states, necessitating further time for additional negotiations to be continued by permanent delegations in Geneva. The impact of the draft WTO fisheries subsidy, if successfully ratified, will have a negative impact on Indonesia in terms of the fishery market, fishery resources and employment.

Keywords: World Trade Organization; Fisheries Subsidies; Fisheries Subsidies Agreement; Sustainable Development; Fisheries Subsidies Agreement Implication.

1. INTRODUCTION

The World Trade Organization (WTO) broadly functions as an organization that oversees, operates, and facilitates international trade. Consequently, it plays a role in contributing to economic growth in developing countries and Least Developed Countries (LDCs)¹, The WTO has regulated the implementation of subsidies across various economic sectors, particularly in the fisheries sector.

¹ United nations, Department of Economic and Social Affairs, There are currently 45 countries on the list of LDCs which is reviewed every three years by the Committee for Development (CDP), 2024, <https://www.un.org/development/desa/dpad/least-developed-country-category.html>

This aims to enhance the income of small-scale fishermen and alleviate export-import costs. Discussions on fisheries subsidies within the WTO have been ongoing since 1996 and have evolved significantly up to the present day.²

However, over time, policies regarding fisheries subsidies have been viewed by countries as an unfair trade practice. Subsidies are also recognized in the context of international trade as unfair because they can have detrimental effects on those impacted by such practices. In addition to being an unfair trade practice, fisheries subsidies can deplete fish stocks due to overfishing, rendering fishery resources unsustainable, which contradicts the United Nations Sustainable Development Goals concerning sustainable fisheries.³ Subsidies in the fisheries sector are increasingly viewed as detrimental in terms of their future implications, particularly the depletion of fish stocks across marine areas due to overfishing and the resulting ecological damage. Such practices are inconsistent with sustainable economics.

Consequently, the WTO, along with its member countries, has engaged in negotiations to limit fisheries subsidies. At the 12th WTO Ministerial Conference held in Geneva on June 17, 2022, significant progress was made in advancing marine conservation. This agreement is the result of long-standing negotiations conducted by the Government of Indonesia with WTO member countries since 2001. The negotiations ultimately produced a new Agreement on Fisheries Subsidies, resulting in 12 new articles on the Fisheries Subsidies Agreement.⁴ The latest developments regarding the continuation of discussions on the fisheries subsidy Agreement from the 12th Ministerial Conference, WTO members have agreed on subsidy policies contributing to overcapacity and overfishing, forming the basis for negotiations at the 13th Ministerial Conference (MC13) in 2024, held in Abu Dhabi from February 26-29, 2024.⁵

Although the Agreement on Fisheries Subsidies aims to prevent overfishing and degradation of marine ecosystems that are inconsistent with sustainable economics, it is important to consider the impact of removing fisheries subsidies on developing countries and Least Developed Countries (LDCs). As we know, the subsidies implemented by the Government of Indonesia are of the type prohibited under the WTO Fisheries Subsidies Agreement. If this provision is successfully agreed upon by WTO members, Indonesia's fisheries management will face adverse effects, particularly concerning fish market management, fish stocks, and employment. In the fish market sector, the implementation of WTO fisheries subsidies will reduce fish catch outcomes.⁶ Moreover, from the perspective of small-scale fishermen, these regulations prove detrimental as they impose restrictions that hinder their ability to expand fishing operations, particularly due to overfishing by large vessels.

Therefore, these regulations also have adverse effects on small-scale fishermen. To date, Indonesia has not ratified or approved the Agreement. Considering that the WTO-prohibited subsidies will impact small-scale fishermen, millions of fishermen

² United Nations Environment Programme, "Analyzing of the Resources Impact of Fisheries Subsidies: A Matrix Approach," unep.org, 2004.

³ Preamble, "The Agreement Establishing the World Trade Organization," wto.org, 1994, https://www.wto.org/english/docs_e/legal_e/04-wto.pdf.

⁴ Wulan Suci Putri Yanti Ismail, "Penerapan Kebijakan Subsidi Perikanan Indonesia Berdasarkan Pengaturan Subsidi Perikanan WTO," *Jurnal Bina Mulia Hukum* 5, no. 2 (2021): 328–46, <https://doi.org/10.23920/jbmh.v5i2.10>.

⁵ WTO, "Fisheries Subsidies Chair Circulates New Text in 'Final Push' to Reach Agreement at MC13," wto.org, 2023.

⁶ Direktorat Jenderal Perikanan Tangkap, *Statistik Perikanan Tangkap 2011*, Kementerian Kelautan Dan Perikanan (Jakarta: Direktorat Jenderal Perikanan Tangkap, 2012).

and the fisheries sector in Indonesia could be threatened by this Agreement.⁷ Based on the aforementioned background, this research aims to analyze the development of the regulation of the WTO Fisheries Subsidies Agreement from 2022 to 2024 and the implications for the Indonesian fisheries sector. This research is a legal study, which falls within the nature and scope of the legal discipline. Discipline here is defined as a doctrine concerning reality, typically encompassing analytical and prescriptive disciplines. Legal discipline commonly falls within the prescriptive discipline when law is perceived to encompass only normative aspects.⁸

This study used normative legal research. It used normative juridical approach. This study was conducted by doing literature study in order to find the philosophy to observe way of thinking, official standard and structures which will then regulate certain issues.⁹ The main characteristics of normative legal research in conducting legal studies lie in the data source, namely secondary data sources.¹⁰ Secondary data sources supporting this research include textbooks, journals, magazines, or research findings from various relevant parties.¹¹ It consisted of primary legal materials, secondary legal materials, and tertiary legal materials.¹² Primary legal materials are various international provisions or regulations, and statutory regulations. Secondary legal materials are literature in the form of books and articles, journals, papers, and related data, while tertiary legal materials are accessing the internet related to research.¹³ To conclude, qualitative analysis is employed to discern the interrelationships among the data.

2. ANALYSIS AND DISCUSSION

1.1. Fisheries Subsidies Regulation at the World Trade Organization 2022 – 2024

Over two decades, the World Trade Organization (WTO) has deliberated and negotiated with countries worldwide on addressing the excessive use of subsidies deemed harmful to the fisheries sector and marine ecosystems. Consequently, WTO members formulated a mandate to negotiate regulations governing fisheries subsidies as part of the Doha Round in 2001. This mandate was elaborated upon in 2005, leading to negotiations wherein the WTO and other nations endeavoured to steer towards banning specific subsidies contributing to overcapacity and overfishing, acknowledged for their adverse impacts on global fish stocks. These negotiations aimed to enhance transparency and incorporate rules concerning appropriate and effective Special and

7 R.M Sidik, "Negosiasi Subsidi Perikanan Menuju MC13: Beberapa Permasalahan Utama," *Indonesia for Global Justice*.or.id, 2024, <https://igj.or.id/2024/02/21/negosiasi-subsidi-perikanan-menuju-mc13-beberapa-permasalahan-utama/>.

8 Abdulkadir Muhammad, "Hukum Dan Penelitian Hukum" (Bandung: Citra. Aditya Bakti, 2004) : 134.

9 Ridwan, Belardo Prasetya Mega Jaya, and Sarah Haderizqi Imani, "The Implementation of General Principles of Convention on The Rights of The Child During Covid-19 Pandemic in The City of Serang," *Law Reform*, 18, no. 1, (2022): 16-27. <https://doi.org/10.14710/lr.v18i1.44643>.

10 Belardo Prasetya Mega Jaya, Ridwan, Rully Syahrul Mucharom, Dwi Edi Wibowo, Siti Nur Aisah, Sulastrri Sulastrri, Novia Bella Alifvia, "Criticising The Implementation Of The Actip In Southeast Asia," *Sriwijaya Law Review* 7, no. 2 (2023): 350-367, <http://dx.doi.org/10.28946/slrev.Vol7.Iss2.2542.350-367>.

11 Ranila Suciati, Kery Utami, and Belardo Prasetya Mega Jaya, "Analisa SWOT Strategi Digitalisasi Pada Era New Normal Untuk Pertumbuhan Ekonomi Di Sumatera, Indonesia," *Jurnal Ilmiah Aset* 23, no. 1 (2021): 63-83. <https://doi.org/10.37470/1.23.1.178>.

12 Belardo Prasetya Mega Jaya et al., "Republic of Indonesia Sovereign Right in North Natuna Sea According to United Nations Convention on the Law of the Sea 1982," *Australian Journal of Maritime and Ocean Affairs* 16, no. 1 (2024): 127-40, <https://doi.org/10.1080/18366503.2023.2206261>.

13 Benny Irawan et al., "State Responsibility and Strategy in Preventing and Protecting Indonesian Fisheries Crews Working on Foreign Fishing Vessels from Modern Slavery," *Australian Journal of Maritime and Ocean Affairs*, 2024, <https://doi.org/10.1080/18366503.2024.2333107>.

Differential Treatment (S&DT) for developing and Least Developed Countries (LDCs) members.¹⁴

In the WTO regime, the provision of subsidies is governed by Article XVI of the World Trade Organization Agreement and further elaborated in the Agreement on Subsidies and Countervailing Measures (SCM), as well as the Chairman's Draft of the AD and Subsidies and Countervailing Measures, which is still being advocated by developing countries including Indonesia.¹⁵ Article XVI of the WTO asserts any contracting party grants or maintains any subsidy, including any form of income or price support, which operates directly or indirectly to increase exports of any product from, or to reduce imports of any product into, its territory, it shall notify the contracting parties in writing of the extent and nature of the subsidization, of the estimated effect of the subsidization on the quantity of the affected product or products imported into or exported from its territory and of the circumstances making the subsidization necessary. In any case, in which it is determined that serious prejudice to the interests of any other contracting party is caused or threatened by any such subsidization, the contracting party granting the subsidy shall, upon request, discuss with the other contracting party or parties concerned, or with the contracting parties, the possibility of limiting the subsidization.¹⁶

Until 2007, the Chairman's draft document was issued, which considered more aspects and environmental conditions, especially in maritime areas. This draft regulates various types of subsidies that are prohibited, particularly subsidies for fishing vessels, port infrastructure, ship transfer subsidies, catch operation subsidies, income subsidies, price support subsidies, subsidies for access to other countries. Article 1 of the Chairman's Draft contains the following prohibited subsidies:¹⁷

- 1) Subsidies the benefits of which are conferred on the acquisition, construction, repair, renewal, renovation, modernization, or any other modification of fishing vessels or service vessels, including subsidies to boat building or shipbuilding facilities for these purposes.
- 2) Subsidies the benefits of which are conferred on transfer of fishing or service vessels to third countries, including through the creation of joint enterprises with third country partners.
- 3) Subsidies the benefits of which are conferred on operating costs of fishing or service vessels (including licence fees or similar charges, fuel, ice, bait, personnel, social charges, insurance, gear, and at-sea support); or of landing, handling or in- or near-port processing activities for products of marine wild capture fishing; or subsidies to cover operating losses of such vessels or activities.
- 4) Subsidies in respect of, or in the form of, port infrastructure or other physical port facilities exclusively or predominantly for activities related to marine wild capture fishing (for example, fish landing facilities, fish storage facilities, and in- or near-port fish processing facilities).¹⁸
 - 5) Income support for natural or legal persons engaged in marine wild capture fishing.

¹⁴ Ismail, "Penerapan Kebijakan Subsidi Perikanan Indonesia Berdasarkan Pengaturan Subsidi Perikanan Wto."

¹⁵ United Nations Environment Programme, "Analyzing of the Resources Impact of Fisheries Subsidies: A Matrix Approach."

¹⁶ GATT-1994, "*Pasal XVI- Bab Subsidi, Bagian A tentang Subsidi Secara Umum (Subsidies in General)*". https://www.wto.org/.../gatt1994_art16_gatt47.pdf

¹⁷ Article I. WTO, "Draft Consolidate Chair Texts of the Adand SCM Agreements TN/RL/W/213," wto.org, 2007, [https://www.wto.org/.../rules_chair_text_%0Anov07_e.htm %0A](https://www.wto.org/.../rules_chair_text_%0Anov07_e.htm%0A).

¹⁸ Article I. WTO.

- 6) Price support for products of marine wild capture fishing.
- 7) Subsidies arising from the further transfer, by a payer Member government, of access rights that it has acquired from another Member government to fisheries within the jurisdiction of such other Member.
- 8) Subsidies the benefits of which are conferred on any vessel engaged in illegal, unreported or unregulated fishing.

The discussion on the Chairman's Draft continued until 2020, aiming to perfect its articles as the draft only regulated the fishing sector caught at sea, while inland fishing and aquaculture were not included. However, ultimately, on June 12-15, 2022, the WTO held its 12th Ministerial Conference in Geneva. Considering the mandate given to Members at the 11th WTO Ministerial Conference in 2017 in Buenos Aires, the next Ministerial Conference must adopt a comprehensive and effective Agreement and disciplines that prohibit certain forms of fisheries subsidies contributing to overcapacity and overfishing, and eliminate subsidies contributing to the recognition of IUU-fishing, special and differentiated treatment suitable and effective for developing and least developed country Members should be an integral part of these negotiations.¹⁹

The WTO Agreement on Fisheries Subsidies of 2022 Decides as follows:

- 1) The Protocol amending the WTO Agreement attached to this Decision is hereby adopted and submitted to the Members for acceptance.
- 2) The Protocol shall hereby be open for acceptance by Members.
- 3) The Protocol shall enter into force in accordance with the provisions of paragraph 3 of Article X of the WTO Agreement.
- 4) Notwithstanding Article 9.4 of the Agreement on Fisheries Subsidies, the Negotiating Group on Rules shall continue negotiations based on the outstanding issues in documents WT/MIN(21)/W/5 and WT/MIN(22)/W/20 with a view to making recommendations to the Thirteenth WTO Ministerial Conference for additional provisions that would achieve a comprehensive Agreement on fisheries subsidies, including through further disciplines on certain forms of fisheries subsidies that contribute to overcapacity and overfishing, recognizing that appropriate and effective special and differential treatment for developing country Members and least developed country Members should be an integral part of these negotiations.²⁰

In the negotiations conducted by the WTO over the past two decades, it can be concluded that there are three new disciplines which gives positive effects on the sustainability of marine fish stocks and fisheries. These three new disciplines as follows:

- 1) By curbing subsidies to illegal, unreported and unregulated fishing, the Agreement creates a powerful new weapon in the global fight against such fishing.
- 2) By prohibiting subsidies to fishing on overfished stocks, the Agreement puts important protections in place where management measures are ineffective.
- 3) By prohibiting subsidies to fishing on the unregulated high seas, the Agreement also puts important protections in place where management measures do not exist.²¹

In the latest developments concerning the continuation of discussions on fisheries subsidy Agreements from the 12th Ministerial Conference, WTO members have agreed to commence the "Fish Month" on January 15, 2024, to utilize the latest draft text on subsidy policies contributing to overcapacity and overfishing as the basis for negotiations

¹⁹ WTO., "Agreement On Fisheries Subsidies WT/L/144," wto.org, 2022, <https://docs.wto.org/.../WT/MIN22/33.pdf&Open= True>.

²⁰ WTO, p. 1.

²¹ WTO, "Implementing The WTO Agreement On Fisheries Subsidies," wto.org, 2022, https://www.wto.org/english/tratop_e/r... %0A.

leading up to the 13th Ministerial Conference (MC13), scheduled to be held in Abu Dhabi on February 26-29, 2024.

According to Ambassador Einar Gunnarsson (Iceland), the chairman of the fisheries subsidy negotiations, the objective of the plan is to assist members in reaching an Agreement on a “clean” text to be submitted to ministers within four weeks, by December 21st. The Chairman transmitted the latest version of the text, crafted based on members’ suggestions and considerations. At the meeting on January 15th, members then had the opportunity to provide their initial feedback on the text. Members will convene in various formats from January 15th to February 9th to discuss the text comprehensively, aiming to deliver a finalized text to ministers by February 14th.²²

During MC12, members also agreed to continue discussions on unresolved issues. The aim is for MC13 to provide additional provisions that will enhance the discipline of the Agreement. The Chairman emphasized in the explanation of the revised text plan that many elements in the text are already familiar to members as they have been included in previous plans and discussions. This includes the “hybrid approach”. This approach combines the use of a list of subsidy indicators contributing to overcapacity or overfishing. It also encompasses the “two-tiered approach”, involving stricter oversight of the largest subsidy providers.²³

The discipline of this field, combined with the stipulation of specific and differing treatments in the design, will divide members into three groups:

- 1) A group comprising the twenty largest subsidy providers selected by their members; these members will be under very strict supervision and will be required to demonstrate compliance with the sustainability-based design requirements immediately upon the enactment of new subsidies.
- 2) Member states not included in other groups - these members must present needs-based plans in their routine notifications regarding fisheries subsidies; and
- 3) Member states not included in the core ban on subsidies, such as developing and least developed countries with a global share of marine catch not greater than 0.8 %.²⁴

The other provision discusses that for developing countries following the mandate of SDG 14.6 and the 11th WTO Ministerial Conference, special and differential treatment has become an integral part of negotiations, and this is reflected in its outcomes. There is a two-year peace clauses for WTO disputes relating to subsidies granted by developing country members and LDC members for IUU fishing and for fishing overfished stocks.²⁵ The voluntary funding mechanism of the WTO is one facet of the technical assistance and capacity-building outlined in Article 7 of the Agreement. Both bilateral and multilateral contributions historically entail providing development finance for the fisheries sectors of developing and least developed countries (LDCs). Consequently, extant and anticipated development financing for fisheries, particularly aid supporting sustainable fisheries, may positively impact the effective implementation of this Agreement.²⁶ Overall, the agreed-upon provisions encapsulated in the 12 articles crafted in the latest negotiations, which include:

- 1) The Prohibition of Subsidies Contributing to Illegal, Unreported and Unregulated Fishing

22 WTO, “Fisheries Subsidies Chair Circulates New Text in ‘Final Push’ to Reach Agreement at MC13.”

23 WTO.

24 WTO.

25 WTO, “Implementing The WTO Agreement On Fisheries Subsidies.”

26 WTO, p. 2.

The first substantive discipline is found in Article 3, which prohibits subsidies for illegal, unreported, and unregulated (IUU) fishing. Briefly put, IUU Fishing is fishing that occurs in violation of-or at least with disregard for – applicable fisheries rules.²⁷ IUU Fishing not only causes economic losses amounting to trillions of rupiah but also devastates Indonesia’s fishing economy. Fisheries crime is developing into a very serious and organized transnational crime.²⁸ Additionally, it impacts political relations between neighboring countries, violates national sovereignty, and threatens the sustainability of marine resources.²⁹ Once again, the definition of IUU Fishing is drawn from other International Agreements, specifically the International Plan of Action to Prevent, Deter, and Eliminate IUU Fishing. After regulations have been enacted against vessels or operators contributing to IUU Fishing or related illegal fishing activities, subject to the body making the determination following specific procedures, including notification of determination to the WTO, subsidizing members are required to cease any subsidies to vessels or operators. Entities authorized to enforce this are coastal members for areas under their jurisdiction (in most cases these will be Exclusive Economic Zone (EEZ) Members), Flag State Members for vessels flying their flag, or Regional Fisheries Management Organizations (RFMOs) for areas and species under their competence.³⁰

2) The Prohibition of Subsidies Regarding Overfished Stocks

Under the Article 4 concerning subsidies for fishing activities or activities related to overfished fishing, Members shall not provide or maintain subsidies for fishing activities or activities related to the overfishing of fish stocks. For this Article, fish stocks are considered overfished if recognized as such by coastal Members within whose jurisdiction the fishing activity is conducted or by relevant RFMOs in the area and for species under their competence, based on the best available scientific evidence. Apart from that, Article 4.1, Members may provide or maintain subsidies as referred to in Article 4.1 if such subsidies or other actions are implemented to rebuild stocks at biologically sustainable levels. For a period of 2 years from the entry into force of this Agreement, subsidies provided or managed by developing country Members, including LDC Members, within and inside the EEZ shall be exempt from action under Articles 4.1 and 10 of this Agreement.³¹

3) Other Subsidies

The third substantive provision, as stated in Article 5.1, stipulates that No Member shall grant or maintain subsidies provided to fishing or fishing related activities outside of the jurisdiction of a coastal Member or a coastal non-Member and outside the competence of a relevant RFMO/A.. Article 5.2 also specifies that A Member shall take special care and exercise due restraint when granting subsidies to vessels not flying that

27 Rosemary. Rayfuse, *Regional Fisheries Management Organization*, The Oxford (United Kingdom: Oxford University Press, 2015).

28 Belardo Prasetya Mega Jaya, Mas Nana Jumena, Surya Anom, Hitlton Taranama P.M, *Hukum Laut Internasional : Suatu Pengantar dan Sejarah Perkembangannya* (Depok: Rajawali Press, 2024).

29 Ninin Ernawati et al., “Legal Enforcement for IUU Fishing in Indonesian Sovereignty and Jurisdiction: A Case Analysis of the Capture of Foreign Vessels By the Indonesian Government,” *Jurnal IUS Kajian Hukum Dan Keadilan* 10, no. 3 (2022): 448–61, <https://doi.org/10.29303/ius.v10i3.1078>.

30 WTO, “Implementing The WTO Agreement On Fisheries Subsidies.”

31 WTO., “Agreement On Fisheries Subsidies WT/L/144.”

Member's flag. Furthermore, Article 5.3 stipulates that A Member shall take special care and exercise due restraint when granting subsidies to fishing or fishing related activities regarding stocks the status of which is unknown.³²

Furthermore, Article 11 of the Final Provisions regulates several specific matters, including:

- a) Exceptions to grant subsidy for disaster relief;
- b) Provisions ensuring that the Agreement has no implications on territorial claims or maritime border delimitations and preventing WTO dispute panels from making findings on any claims necessary to base their findings on any explicit territorial claims or maritime boundary delineations;
- c) Clarifying that the Agreement does not prejudice the jurisdiction, rights, and obligations of members existing under international law;
- d) Clarifying that, unless otherwise specified in the Agreement, the Agreement does not imply that you are bound by the actions or decisions of, or recognize, any RFMO/A that is not a party or cooperating non-party;
- e) The Agreement does not modify or nullify any rights and obligations as provided by the SCM Agreement.³³

This marks a major step forward for marine conservation by prohibiting harmful fisheries subsidies, which are a key factor in the widespread depletion of global fish stocks. This new regulation has important positive effects on sustainable economies, particularly in the fisheries sector. In addition to the three main prohibitions under the Agreement, members are committed to exercising caution and fulfilling obligations specifically by refraining from providing subsidies to vessels not flying their flag and also when providing subsidies for fishing or fishing-related activities for stocks of unknown status. Preventive monitoring of fishing activities should aim to identify and observe various secondary impacts, including environmental changes, degradation of fish habitats, and effects on birds, mammals, and other wildlife. This monitoring process can utilize information from fishermen, indigenous communities, and other public groups, with suitable procedures in place to process and analyze this data.³⁴ Strong provisions for notification and transparency are crucial for the effective implementation of the Agreement.

The latest development occurred in 2024. Following the submission of the latest draft text by the Chairman of the fisheries subsidies negotiations, Ambassador Einar Gunnarsson (Iceland), on January 15, 2024, the 13th Ministerial Conference of the World Trade Organization (WTO MC13) successfully agreed on the Abu Dhabi Package after WTO MC13 on February 26, 2024. The Agreement on fisheries subsidies was adopted from the 12th Ministerial Conference (MC12) on June 17, 2022. This Agreement establishes new and binding multilateral rules to curb harmful subsidies, which are a key factor in reducing global fish stocks. The Agreement prohibits support for illegal, unreported, and unregulated (IUU) fishing, prohibits support for overfishing, and terminates subsidies for unregulated fishing on the high seas.³⁵

Furthermore, at the 13th Ministerial Conference in 2024, one of the issues discussed pertained to fisheries subsidies, specifically focusing on three central pillars: Pillar

³² WTO, "Agreement On Fisheries Subsidies.

³³ WTO, "Implementing The WTO Agreement On Fisheries Subsidies."

³⁴ Emmy Latifah and Moch Najib Imanullah, "Applying Precautionary Principle in Fisheries Management," *Jambe Law Journal* 1, no. 1 (2018): 13–34, <https://doi.org/10.22437/jlj.1.1.13-34>.

³⁵ WTO, "Surge of formal acceptances of Agreement on Fisheries Subsidies — entry into force closer," 2023, https://www.wto.org/english/news_e/news23_e/fish_23oct23_e.htm.

1 addressing IUU Fishing (Illegal, Unreported, and Unregulated Fishing), Pillar 2 addressing Overfishing, and Pillar 3 addressing Over Capacity and Over Fishing (OCOF). Pillars 1 and 2 were previously agreed upon during the 12th Ministerial Conference of the World Trade Organization (WTO) held in Geneva, Switzerland in 2022, which subsequently led to discussions on the prohibition of eight types of fisheries subsidies by the WTO.³⁶ However, it was conveyed by Djatmiko that the 13th Ministerial Conference had yet to conclude negotiations on agriculture and fisheries subsidies, which were the primary focal points of the conference. Trade or Economic Ministers of the WTO engaging in negotiations acknowledged the significant disparities in positions among member states, necessitating further time for deliberations, which will be continued by permanent delegations in Geneva.³⁷

Therefore, the Indonesian Traditional Fisherfolks Union (*Kesatuan Nelayan Tradisional Indonesia* or KNTI) demands the Indonesian Government to:

- 1) Abstain from ratifying the two pillars of the WTO fisheries subsidy Agreement.
- 2) Ensure that the draft text under discussion elaborately defines who qualifies as fishermen eligible for fisheries subsidies. This entails the government's meticulous attention to detail in delineating who constitutes fishermen as subjects and those exempted.
- 3) Ensure that the discussed draft text targets large-scale vessels, as they are the ones primarily responsible for substantial subsidy allocation. This includes developed nations providing significant subsidies in the fisheries sector.
- 4) Urge the government to address large-scale vessels and the large-scale fisheries industry, which evade accountability for their actions in illegal, unreported, and unregulated (IUU) fishing, overcapacity, and overfishing (OCOF).
- 5) Highlight that the current fisheries subsidy framework permits prohibited subsidies to persist if there is evidence of sustainably managed fish stocks. This clause is biased and unfair as it favours countries with sophisticated monitoring mechanisms, namely developed nations, to continue subsidizing their fleets.³⁸

This indicates that in the 13th Ministerial Meeting, particularly significant for developing countries and least developed countries, especially for Indonesia, there is a need for greater scrutiny and caution regarding decisions concerning fisheries subsidies. This is because there are still many clauses that are less profitable for developing countries, particularly for Indonesia itself.

2.2. The Implication of WTO Fisheries Subsidies for Fisheries Sector in Indonesia

As one of the developing countries with significant fisheries potential, Indonesia's government has agreed to prioritize the maritime and fisheries sector in the National Medium-Term Development Plan for the 2020-2024 period. Various national meetings have emphasized the importance of the fisheries and maritime sectors.³⁹ Consequently, subsidies are deemed necessary in the fisheries sector to protect national interests. Currently, Indonesia is protesting against WTO policies mandating the elimination

³⁶ KNTI, "Perjanjian WTO Tentang Subsidi Perikanan Merugikan Nelayan Kecil," KNTI.or.id, 2024, <https://knti.or.id/knti-perjanjian-wto-tentang-subsidi-perikanan-merugikan-nelayan-kecil/>.

³⁷ Wijiyanto, "KTM Ke-13 WTO Sepakati Paket Abu Dhabi," Kemendag, 2024, <https://www.kemendag.go.id/berita/siaran-pers/ktm-ke-13-wto-sepakati-paket-abu-dhabiisinya?page=3>.

³⁸ KNTI, "Perjanjian WTO Tentang Subsidi Perikanan Merugikan Nelayan Kecil."

³⁹ Belardo Prasetya Mega Jaya, A. Rohani, M. Fasyehhudin, "Impact of Indonesia Government Policy in PP No. 27 of 2021 Concerning the Implementation of The Marine and Fisheries Sector" Volume 19 Nomor 1, Januari 2023, *Jurnal Supremasi Hukum* 19, no. 27 (2023): 72–79.

of subsidies at the 12nd Ministerial Conference. A. Ghofar has classified Indonesia's fisheries subsidies along with the risks of overfishing, which include:⁴⁰

- 1) Procurement and modernization of vessels and fishing equipment
- 2) Provision of operational costs
- 3) Provision of access to capital
- 4) Infrastructure development
- 5) Marketing and promotion assistance
- 6) Introduction of skills in fishing techniques
- 7) Other social assistance
- 8) Introduction of skills in value-added product enhancement and other additional skills
- 9) Introduction to positive skills in fisheries resource management and conservation

The form of subsidy implemented by the Indonesian Government represents the type of subsidy prohibited by the WTO Fisheries Subsidies Agreement.⁴¹ Moreover, subsidies prohibited by the WTO are clearly in conflict with the Constitution of 1945 and Law No. 7 of 2016 concerning the Protection and Empowerment of Fishermen, Fish Farmers, and Salt Farmers. Article 18 of Law 7/2016 states that Central Government and Regional Governments in accordance with their authority shall provide Fishery Business and Salt Production Business infrastructures. If the WTO Agreement is ratified and/or agreed upon, then the Indonesian government will no longer have the authority to provide support or subsidies in any form to fishermen.⁴²

If the government fails to protect (regulate) fishing vessels with low catch capacity, the quantity of fish caught at sea will drastically decrease. The inclusion of support for modernizing fishing vessels and facilities for building new fishing vessels, as part of the WTO fisheries subsidies, will significantly impact the capacity of capture fisheries production. However, Indonesian fishermen utilize old, outdated vessels with low catch capabilities. Price support schemes for fish production for export are also classified by the WTO as fisheries subsidies. Without such systems, Indonesian fishery products would struggle to compete with those of developed nations. This difficulty arises due to inefficient fisheries management in Indonesia. Efficiency values naturally affect fish production prices. It can be said that the prices of fishery products are higher than those of efficiently managed developed countries in this manner.⁴³

Although Indonesia has not ratified the fisheries subsidy Agreement, the country will continue to monitor various fisheries subsidies applied by Indonesia, which must take into account the sustainability of fisheries resources. The government has a key role in fisheries management. The problem of illegal, unreported, and unregulated (IUU) fishing is a serious issue faced by the Indonesian government in the management and utilization of fisheries.⁴⁴ Currently, the management of marine resources has become crucial, as Indonesia has not been able to fully utilize these exclusive rights optimally, leading to the emergence of numerous Illegal, Unreported and Unregulated-Fishing (IUU-

40 A. Ghofar, *Selected Indonesian Fisheries Subsidies: Quantitative and Qualitative Assessment of Policy Coherence and Effectiveness* (Bali: The Nature Conservancy, 2008).

41 Direktorat Jenderal Perikanan Tangkap, *Statistik Perikanan Tangkap 2011*, Kementerian Kelautan Dan Perikanan.

42 KNTI, "Perjanjian WTO Tentang Subsidi Perikanan Merugikan Nelayan Kecil."

43 A. Noegroho, "KKP Siap Laksanakan DIPA 2014," *Antara News*, 2013, <https://www.antaraneews.com/b erita/408858/kkp-siap-laksanakan-dipa-2014>.

44 Yanti Amelia Lewerissa, Deassy Antoneta Hehanussa, and Sherly Adam, "Criminal Policy on Destructive Fishing Activities in Serutbar, Indonesia," *Jambura Law Review* 5, no. 2 (2023): 235–50, <https://doi.org/10.33756/jlr.v5i2.18087>.

Fishing) practices.⁴⁵ Therefore, periodic availability data for specific fish species needs to be collected, and more effective new regulations are necessary to avoid the adverse impacts of fisheries subsidies. This data can be utilized to design fisheries policies aimed at preventing the extinction of certain fish species. In addition to providing fisheries subsidies, the government must also monitor the use of subsidies related to fisheries resources. Fisheries subsidies should not be used to purchase production equipment that threatens the sustainability of fisheries resources. Hence, the government is not only responsible for assisting the community but also obligated to monitor its usage.

In its recent development, during the 13th Ministerial Conference (MC13) held from February 26th to 29th, 2024, the World Trade Organization (WTO) officially accumulated 71 acceptance instruments. Indonesia was not included in this list. WTO requires at least 39 more acceptance instruments for this Agreement to come into effect. Meanwhile, according to the Chairman of the Indonesian Traditional Fisherfolks Union (*Kesatuan Nelayan Tradisional Indonesia* or KNTI), Indonesia should not ratify the Agreement considering the large number of small-scale fishermen in Indonesia who are in extremely poor and underprivileged conditions, especially if these subsidies are prohibited and withdrawn. On the other hand, KNTI highlights the anomalies in the fisheries subsidy text, which still allows prohibited subsidies to continue as long as there is evidence that the captured fish stocks are being sustainably managed. This clause is biased and unfair as it will benefit countries with sophisticated monitoring mechanisms, namely developed countries, to continue subsidizing their fleets.⁴⁶

A researcher from the Institute for Development of Economics and Finance (Indef), Ahmad Heri Firdaus, considers two main aspects in responding to the outcomes of the 13th WTO. Firstly, whether Indonesia is adequately prepared for the new regulations on subsidies in the fisheries sector. Secondly, how the macroeconomic and fisheries sector would be impacted. Hence, it is imperative for the government to strategically navigate this situation, ensuring that subsidies do not appear as such.⁴⁷ Therefore, the Ministry of Marine Affairs and Fisheries has advocated for Indonesia's initiative regarding the provision of subsidies for small-scale fishermen at the 13th World Trade Organization Ministerial Conference (WTO MC13). Indonesia maintains its position that subsidies should be permitted for fishermen operating within jurisdictional waters without temporal or geographical limitations.

Until now, the fisheries subsidy in the meeting has not been agreed upon due to differences in views between developed and developing countries and LDCs regarding the prohibition of subsidies suspected of causing overcapacity and overfishing. However, the Ministry of Marine Affairs and Fisheries ensures that it will oversee these aspirations in the Negotiating Group on Rules (NGR) forum in Geneva, Switzerland. The Ministry of Marine Affairs and Fisheries assesses that the WTO fisheries subsidy Agreement serves as a platform that can be effectively, fairly, and equitably implemented. This aligns with the WTO negotiation mandate for each member country to have roles and responsibilities commensurate with their capacity to provide fisheries subsidies.

45 Belardo Prasetya Mega Jaya, Afandi Sitamala, and Danial, "State Exclusivity of Fisheries Resources on Exclusive Economic Zone in Efforts to Support the Fisheries Availability as a Means of Increasing Food Security for the State," *Joint Proceedings of the 2nd and the 3rd International Conference on Food Security Innovation (ICFSI 2018-2019)* 9 (2021): 213–19, <https://doi.org/10.2991/absr.k.210304.039>.

46 Anggela, "RI Harap Perlakuan Khusus Dalam Perjanjian Subsidi Perikanan WTO."

47 Yosep Suprayogi, "Nelayan Minta Pemerintah Waspada Perjanjian WTO," *Betahi.id*, 2024, <https://betahita.id/news/detail/9984/nelayan-minta-pemerintah-waspada-perjanjian-wto.html?v=1709677900>.

Indonesia hopes for special and differential treatment (S&DT), particularly for artisanal fishermen, in line with the WTO Agreement on fisheries subsidies.⁴⁸

The Indonesian government's argument at the international level that fisheries subsidies target small-scale fishermen needs to be strengthened by improving subsidy schemes to ensure they reach the intended beneficiaries.⁴⁹ Therefore, clear regulations are necessary to address the welfare of small-scale fishermen, especially in developing countries and LDCs. These regulations should prioritize the welfare of fishermen while still aligning with the WTO's primary objective of eliminating fisheries subsidies, which is to preserve marine ecosystems and prevent IUU Fishing.⁵⁰

Law enforcement in Indonesia's maritime sector must also be based on the formulation of international plans against IUU Fishing outlined in the International Plan of Action to Prevent, Deter, and Eliminate IUU Fishing (IPOA-IUU Fishing). According to IPOA-IUU Fishing, countries must adhere to their national regulations, which encompass effective regulations for all aspects. Therefore, law enforcement is the most appropriate means to uphold national sovereignty.⁵¹ That effort can then be followed up with strict and sustainable enforcement of environmental law.⁵² Indonesia, in agricultural negotiations and fisheries subsidies, emphasizes the importance of balanced Agreements that can protect the interests of small-scale and artisanal farmers and fishermen following the mandate of the United Nations Sustainable Development Goals (UN SDGs). However, the evolving text during negotiations at 13th Ministerial Conference has not reflected this. Nevertheless, Indonesia is prepared to continue negotiations while adhering to national interests.⁵³

3. CONCLUSION

The World Trade Organization (WTO) adopted the Agreement on Fisheries Subsidies at its 12th Ministerial Conference on June 17, 2022. This draft regulates the prohibition of certain forms of fisheries subsidies contributing to overcapacity and overfishing and eliminates subsidies contributing to the recognition of IUU (Illegal, Unreported, and Unregulated) fishing. Furthermore, at the 13th Ministerial Conference in 2024, one of the issues discussed pertained to fisheries subsidies, specifically addressing three central pillars: Pillar 1 concerning IUU Fishing, Pillar 2 concerning fishing of overfished stocks, and Pillar 3 concerning Over Capacity and Overfishing (OCOF). Pillars 1 and 2 had already been agreed upon at the 12th WTO Ministerial Conference in Geneva, Switzerland, in 2022, which led to discussions regarding the eight types of fisheries subsidies prohibited by the WTO. However, the 13th Ministerial Conference has not yet concluded negotiations on agricultural and fisheries subsidy issues, which remain key concerns for the conference organizers. Trade or Economic Ministers of the WTO engaged in negotiations are aware of the significant differences in positions among

48 Sinta Ambarwati, "KKP Serukan Pemberian Subsidi Bagi Nelayan Indonesia Dalam Forum WTO," *Antarnews.com*, 2024, <https://www.antarnews.com/%0Aberita/4000050/kkp-serukan-pemberian-subsidi-bagi-nelayan-indonesia-dalam-forum-wto> %0A.

49 B.M.L. Grahadyarini, "Rapor Merah Perikanan, Dari Performa Buruk Hingga Subsidi Salah Sasaran," *Kompas.id*, 2024, <https://www.kompas.id/baca/ekonomi/%0A2024/01/29/subsidi-dan-kejahatan-perikanan> %0A.

50 Freightsight Team, "KKP Optimis Perjanjian Subsidi Perikanan WTO Berpotensi Tingkatkan Produksi Dan Ekspor," *Freightsight Article*, 2022.

51 Belardo Prasetya Mega Jaya and Muhamad Uut Lutfi, "The Law Enforcement Towards Foreign Vessels Which Did Illegal, Unreported and Unregulated Fishing (IUU-Fishing) In Indonesia Fisheries Management Areas," *Jurnal Dinamika Hukum* 20, no. 1 (2021): 245, <https://doi.org/10.20884/1.jdh.2020.20.1.2838>.

52 Dyah Mustika Prasetyaningsih et al., "Effectiveness of Environmental Law Implementation: Compliance and Enforcement," *Volksggeist: Jurnal Ilmu Hukum Dan Konstitusi* 5, no. 2 (2022): 215–25, <https://doi.org/10.24090/volksggeist.v5i2.6826>.

53 Wijiyanto, "KTM Ke-13 WTO Sepakati Paket Abu Dhabi."

member states, necessitating further time for additional negotiations to be continued by permanent delegations in Geneva.

Although this conference has had a positive impact on the sustainability and balance of marine ecosystems, for developing countries like Indonesia, it still requires subsidies in the fisheries sector to protect its national interests. Even though this draft has not yet been ratified, as a developing country, we must still prepare ourselves for the potential consequences if the Agreement is ratified without changes because the form of subsidies implemented by the government is the type prohibited by the WTO fisheries subsidy draft. If this provision is approved by WTO members, Indonesia's fisheries management will be negatively affected, especially concerning fish market management, fish stocks, and employment, and also adversely affecting Indonesian fishermen. However, this does not automatically mean that Indonesia expresses its disagreement with the new regulations. Once again, Indonesia needs to conduct further research so that the decisions made will not only benefit one party but all parties involved. Therefore, Indonesia must be more cautious in addressing this fisheries subsidy issue.

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