

LAW ENFORCEMENT AGAINST *ILLEGAL FISHING* AS A TRANSNATIONAL CRIME

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Abstract

This study aims to analyze the law enforcement against illegal fishing as a transnational crime. The research method used is normative juridical. The results showed that illegal fishing as a type of transnational crime is due to its elements involving more than one country, namely planning, preparation and the consequences of this crime, which involved more than one country. Transnational crime is a crime that crosses the boundaries of a country. The scene of the incident, the purpose of the crime and the consequences that arise from the crime are some aspects of transnational crime that do not have a specific territorial boundary. Illegal fishing has been regulated in Indonesian regulations, namely in Law no. 45 of 2009 concerning Fisheries. In addition, this regulation on Illegal Fishing has also become an old issue in the scope of international law which later formed an international legal framework that prohibits illegal fishing practices, this arrangement is contained in the United Nations Convention on the Law of the Sea or UNCLOS which was ratified in 10 December 1982, and later ratified by Indonesia in Law no. 17 of 1985 on Ratification of the United Nations Convention on The Law of The Sea

Keywords: *Law Enforcement, Illegal Fishing, Transnational Crime, Fisheries, Marine*

A. INTRODUCTION

Indonesia is one of the countries that has the largest sea area in the world, consisting of thousands of islands, both large and small islands. There are approximately 13,500 large and small islands whose scope reaches 3,000 nautical miles stretching from Sabang in the western region to Merauke in eastern Indonesia. However, the existence of abundant marine resources still cannot be maintained and utilized as optimally as possible for the welfare of the Indonesian people. Apart from the abundance of marine resources, the increase in activities to utilize water areas in Indonesian territory which are utilized by exploration and exploitation of marine economic potential and marine transportation activities that occur today, has an impact on the increasing violations in Indonesian waters.

Indonesia's geographical location between the Asian and Australian continents and between the Indian Ocean and the Pacific Ocean has placed Indonesia in a strategic position in terms of economy, politics, socio-culture and security defense. In addition, the position and marine resources also place Indonesia as very important for countries from various regions. However, this strategic position is not only an opportunity as well as an obstacle for the Indonesian nation in realizing the nation's ideals,

because in addition to providing a beneficial impact, it can also threaten Indonesia's interests, causing complex problems, both problems related to the fields of security, law, economy and state defense.¹

Obstacles, threats or problems can arise because as a country that has very rich and diverse marine resources, it is very open to the possibility of being provoked by certain parties to illegally use these marine resources. Moreover, considering that not all countries have sufficient seas for their economic interests, so they seek to obtain natural resources from sea areas illegally. This possibility can not only disrupt security stability at sea, but may also cause conflicts with other countries, not even impossible to become an open war between countries.

This situation has the potential to threaten and harm Indonesia's interests, especially Indonesia's interest in its sea area. Even though the sea has a very significant role and meaning for the Indonesian nation, especially for its national development considering that the sea has functions, including;

- 1) As a unifying media,
- 2) As a medium of transportation both between islands and between countries,
- 3) **As a medium for resources** both biological, non-biological and artificial,
- 4) **As a medium** for security defense, and
- 5) As a medium and means to build influence on other countries in the context of deterrence.²

To protect national interests at sea, a strengthening of the legal basis governing Indonesian waters has been carried out, among others, by repealing Law Number 4 of the Prp of 1960 and replacing it with Law Number 6 of 1996 concerning Indonesian Waters. According to Article 3 of the Law, Indonesia's territorial waters include Indonesia's territorial sea, archipelagic waters and inland waters, as well as air space above the territorial sea and inland waters as well as the seabed and land below, including the natural resources contained therein. Article 24 of this law provides for law enforcement in Indonesian waters. Indonesia has also issued Law Number 17 of 1985 concerning *ratification of the United Nations Convention on the Law of the Sea (Unclos)* 1982 which in Article 33 contains arrangements on Additional Zones.

The passing of a new law, namely Law No. 32 of 2014 on Marine Affairs, is part of an effort to provide legal certainty in law enforcement in the sea. The existence of Law Number 32 of 2014 concerning Marine Affairs when promulgated is expected not to cause a new problem, but it is hoped that it will actually help simplify the problems faced in the context of law enforcement in the sea area. Thus, it is hoped that it will be better in providing legal clarity for institutions that have authority in the sea area and can provide legal certainty.

Law enforcement against marine and fisheries crimes, namely sanctioning any person or legal entity that commits violations, against the provisions in the legislation in the field of fisheries. Obstacles for law enforcement officials both in a preventive and repressive sense in handling cases of '*illegal fishing*', besides being very limited in number, their abilities are also still limited. In addition, recently there have been more rampant crimes in and by sea, such as **drug trafficking, smuggling, people smuggling, woman and children trafficking, illegal migrants, armed robbery, sea piracy (maritime piracy)**, arms *smuggling* and terrorism make efforts to ensure security at sea even more complicated.³

Therefore, law enforcement in Indonesian waters plays a very important role and function as part of law enforcement efforts throughout Indonesia's sea areas, especially to prevent and crack down on all criminal acts and violations of the law that occur in and through Indonesian sea areas, or at least reduce the occurrence of criminal acts and violations.

The activities and problems faced in law enforcement at sea have a broad scope, are cross-sectoral, multi-disciplinary and also international in nature, therefore in its implementation various government agencies and related law enforcement officials are involved. The involvement of various agencies and law enforcement officials requires clarity and firmness about the duties and roles of each agency so that there is no confusion that can result in uninterrupted law enforcement efforts in the waters.

In the activities of marine or maritime security actions, it is not only related to law enforcement in the sea area, but includes a large area that is safe for use for users and must be free from forms of threats or disturbances to various activities of use and utilization of marine resources, including:⁴

- a. Seas that are free from threats of violence, including threats of the use of armed force that are considered to have the ability to interfere with and endanger state sovereignty.
- b. A sea free from threats to navigation, that is, a threat posed by geographical and hydrographic conditions, which endangers the safety of shipping.
- c. The sea is free from pollution and destruction of ecosystems, namely threats to environmental sustainability whose impacts are detrimental to the surrounding community and also the next generation.
- d. The sea is free from the threat of lawlessness, namely violations of applicable national and international legal provisions such as illegal logging, illegal fishing and others

The implementation of sovereignty enforcement on land is not as difficult and complicated as enforcing sovereignty at sea because the boundaries of the country's territory on land can actually be created and seen, in contrast to the enforcement of sovereignty at sea, it is very difficult to determine the real boundaries of the sea due to the nature of the sea / water that is different from land. Law enforcement at sea cannot be carried out without understanding the territorial boundaries / territorial areas and laws and regulations underlying the enforcement of sovereignty which as a whole is essentially and aims for order, security (*security*) for prosperity by taking into account international relations (international *relations*).⁵

B. DISCUSSION

1. *Illegal Fishing* as a Transnational Crime

One of the definitions of *Illegal Fishing* proposed by the Indonesian Ministry of Marine Affairs and Fisheries, namely *Illegal Fishing* or **illegal**, *Unreported* and *Unregulated* (IUU) is literally a fishery activity that is prohibited and not regulated in valid legal regulations, as well as fishery activities that are not registered and reported on fisheries institutions recognized by the government. This illegal fishing practice has been regulated in ⁶Indonesian regulations, namely in Law No. 45 of 2009 concerning Fisheries. In addition, **this regulation on** ⁷*Illegal Fishing* has also become an old issue within the scope of international law which later formed an international legal framework that prohibits the practice of illegal fishing, **the arrangement was contained in** *the United Nations Convention on the Law of the Sea* or UNCLOS which was ratified on December 10, 1982, and then ratified by Indonesia in Law No. 17 of 1985.⁸

On a global scale, *Illegal Fishing* is such a big problem that it is very difficult to calculate how many practices there are. *Illegal Fishing* has become a particular problem in developing countries, where fisheries management strategies are not well developed, or the enforcement of limited fisheries laws and regulations. In fact, the global loss due to *Illegal Fishing* is estimated to be between US \$ 10 billion and US \$ 23.5 billion every year. This is because, overall, the total illegal fishing that is not registered

worldwide reaches 26 million metric tons of fish per year, worth up to \$ 23.5 billion. This equates to more than 1,800 pounds of fish caught wild or stolen from the sea every second. So that almost 90 percent of the world's fish have been fully exploited or overexploited.^{9 10}

Illegal Fishing in Indonesia is not new. This practice often occurs in Indonesian sea areas with the discovery of foreign vessels carrying out fishery activities in the Indonesian seas, even resulting in losses for Indonesia, which is around Rp.300 trillion per year. Illegal ¹¹*fishing* activities in sea areas in Indonesia are carried out by fishermen from various neighboring countries around the Indonesian sea. This illegal activity is carried out in various modes in order to get double the profit from the proceeds of selling fish illegally.¹²

Illegal fishing can be categorized as a type of transnational crime or *transnational crime* because its elements involve more than one country, namely the planning, preparation and consequences of the crime have involved more than one country. This is as contained in Article 3 of the UNTOC Convention which affirms the elements of transnational crime. Due to its nature that goes beyond state borders, the international community has begun to pay more attention to the issue of¹³ *illegal fishing*. This is because if this illegal activity is not seriously handled by the international community, it will threaten the sustainability of marine ecosystems and fishery resources because *Illegal fishing* itself has occurred in various countries.¹⁴

Thus, it can be seen that *illegal fishing* has a transnational nature, it will be difficult to prevent and eradicate it without international cooperation between countries in the world. It is based on the fact that until now Illegal Fishing has not been included in one of the categories of transnational crimes under UNTOC 2000. In addition, until now various international conventions in the field of law of the sea, fisheries, and various international criminal conventions have not classified illegal fishing as transnational crimes.¹⁵

Including *illegal fishing* as a transnational crime is important because it will facilitate the process of international cooperation between countries and regions in the context of eradicating transnational crimes. Transnational crime is a crime that crosses the territorial boundaries of a country. The scene, the purpose of the crime and the consequences that arise from crime are some aspects of transnational crime that do not have specific territorial boundaries.¹⁶

Transnational is a special term that refers to an individual who commits a crime, so that the individual can be held accountable for the crime he committed based on international law and the national law of a country. The characteristics of "transnational crimes" are regulated by the Convention *against Transnational Organized Crimes*, otherwise known as the Palermo Convention (2000).

The practice of *illegal fishing* is a criminal act that can be carried out across countries, organized and can cause serious damage to Indonesia and other countries. In addition to harming both economically, socially, and ecologically, this practice also includes actions that weaken a country's territorial sovereignty. The most frequent illegal fishing activity in Indonesia's waters/seas is fish theft carried out by foreign fishing vessels (KIA) originating from several neighboring countries.¹⁷

The act of foreign vessels entering Indonesian waters without permission and exploiting their natural wealth is a form of violation of the sovereignty of the State. Based on the results of the surveillance carried out, it can be concluded that illegal fishing by MCH mostly occurs in the EEZ and occurs quite a lot in several *archipelagic states*.¹⁸

2. Law Enforcement against *Illegal Fishing* as a Transnational Crime in Indonesia

Illegal fishing simply means that fishing is carried out in violation of existing rules, or fishing activities can be said to be illegal if there are rules but it turns out that in practice these rules are not effectively

enforced in the field. In article 9 of Law Number 31 of 2004 jo. Law Number 45 of 2009 concerning Fisheries (Fisheries Law) explains the prohibited things, namely:

- "Everyone is prohibited from owning, controlling, carrying, and/or using on fishing vessels in the management area of the Republic of Indonesia:
- a. Fishing gear and/or fishing equipment that does not match the established size;
 - b. Fishing gear that does not comply with the requirements or standards set for certain types of tools;
 - c. Prohibited fish fishing tools. "

Illegal fishing is a form of crime that is prohibited under the provisions of the law. Those who commit or violate the provisions may be subject to sanctions. At this stage, the function of the law is needed as a medium of control and prevention of actions that can interfere with the stability of management and sustainability of fish resources and the environment. The function of law apart from being part of the management of fishery resources also has the advantage that it is binding or coercive of the law itself.¹⁹

This is in accordance with what is mandated in Article 33 of the 1945 NRI Constitution which is then further regulated in the Fisheries Law. Policy can be interpreted as an ordinance to achieve goals by considering the best things.¹³ Criminal jurisdiction is closely related to the implementation of the 1982 international convention on the law of the sea (UNCLOS) in the criminal act of *illegal fishing* in the territory of Indonesia's exclusive economic zone (EEZ).

In 2009 the government issued a law on fisheries which is explained in Article 45 that all fisheries and their management will be explained in the preparation of all types of efforts which means that all information about fish resources, making plans, taking pusuancy, implementing plans, and consultation can be carried out by the government whose task is to ensure that resources in the waters are still well protected. This has been agreed upon by the government and will be carried out over time.

Damage to the marine environment as a result of actions carried out without regard to its environment. This has also been regulated in the Basic Law issued in 2009 regarding fishing. This has been revised from the previous Undang_Undang issued in 2004. Things that are regulated in this fishing so as not to damage the marine environment are:²⁰

- a. The use of fishing gear is appropriate and permitted by the state.
- b. The permitted vessel must have completed all its technical requirements.
- c. Notice how much of the maximum limit of fish caught with some instances of small fish that are not yet fit for consumption.
- d. Must understand the ins and outs of the area as well as the exact season before fishing.
- e. Does not make damage to marine ecosystems as a result of its capture
- f. Fish of new species should not be caught. If caught, it must be released back into the marine ecosystem.
- g. Prioritizing marine aquaculture
- h. It is forbidden to throw pests into the sea that have the potential to damage fish

It is said to be *illegal fishing* if:

- 1) Foreign vessels located in one state territory that are engaged in fishing activities without a valid permit from the state and violate state laws.
- 2) It is known that there are foreign vessels that are fishing unlawfully by flying their state flags without the approval of the country.
- 3) The fish is caught without the permission of the state and has crossed the established boundaries of international law to the detriment of the country.

In this field of fisheries itself, the penalties applied are in the form of evidence of violations with the payment of fines. This is often known by the term cumulative. It is said to be cumulative because the two things are run simultaneously for offenders. If this violation occurs, then the judge must impose

the two convictions. The judge cannot impose one, it is because of this that the judge should not sort out the sentence. The judge is expected to give a long prison sentence so as to deter offenders from committing the offense.

The law on fisheries issued in 2009 in Number 45 explains that perpetrators can be given prison sentences if they cause trouble and violate article 16 paragraph 1 which has been explained regarding the boundaries of the exclusive zones in Indonesia. The perpetrators will be subject to sanctions up to imprisonment if they violate the provisions stipulated by the law, and are subject to large payment fines for lying and not complying with the Law. In addition, he will be given a reprimand until the revocation of the permit in the field of fisheries.

Violations of *Illegal Fishing* by a coastal State are subject to penalties applicable in that State. Coastal states can only carry out the processing and utilization of biological natural resources in Indonesia's exclusive waters and can only carry out detention processes up to the court level in accordance with international law of the sea agreements and are not allowed to carry out prison sentences, provided there is cooperation and agreement between these countries. And immediately inform the penalties given to perpetrators of *Illegal Fishing* violations to the State that commits criminal acts.

We need to understand that the problem of fishing in the EEZ is a form of problem carried out by many actors. Which includes foreign States related to disputes over allowed fishing areas, legal provisions that apply, especially those related to the rules, law enforcement so that there can be available places and means of monitoring *illegal fishing* crimes. By paying attention to the problems that arise from fishing in EEZ waters described above, the Coastal State carries out several ways, including *internal strategy* and *external strategy*.

It is proven from the instructions of the Marine and Fisheries Service explaining that before the emergence of the Decree, there were still many foreign ships that committed *illegal fishing* crimes in coastal countries totaling 7,000 units of ships. Meanwhile, the exit strategy, that with the regional / international agreement between the Countries, the benefits obtained by the Indonesian state, namely the coastal state, can apply legal regulations in the field of fisheries, to foreign vessels that fish illegally. So from the commitments listed above, in terms of fishing therun ratis menu. So that it can actually eliminate violations of fisheries crimes (*illegal fishing*) that occur during the pre-tech process in the field of handling cases in fisheries crimes by the Government of Indonesia through the Ministry of Fisheries and Marine Affairs in coordination with the Navy, Civil Investigators, Bakamla, Police and prosecutors are as follows:

- 1) Investigation Action is an event to obtain certain and clear information which is the beginning of a criminal crime, Investigation can be carried out in an open way as long as it can produce the necessary information. Investigation is an activity of collecting accurate data so that it becomes clear that an event of violation occurred in order to find the suspect (article 1 point 2 of the Criminal Procedure Code).
- 2) Enforcement Activities can be carried out in areas where violations occur and fish storage and processing. The steps taken are as follows: Preparation and Implementation of Enforcement.
- 3) Handling of Foreclosure Evidence is carried out with a Foreclosure Warrant in very urgent and necessary circumstances because it requires immediate action, the seizure may be made without the permission of the Chief Justice of the District Court but is limited to movable objects then it is mandatory to notify the competent authorities ("local PN Chairman").
- 4) Summons is imposed on suspects and persons who are at the scene of a criminal offence by notifying by notifying by a notice sent to the suspect or witness stating the reason for the summons as well as a brief description of the crime that occurred.

- 5) Arrests are made on suspects and can also be made at the shipowner's company.
- 6) Arrestee on the suspect is placed in the custody of the investigator for further processing at the level of further processing.
- 7) A search is a law enforcement that conducts a full examination of a person or place of a criminal event that has been regulated according to applicable legal provisions. In this Law (article 32 of the Criminal Procedure Code).
- 8) Examination is an activity to obtain information, firmness and equality of perception of evidence and suspects related to the elements of the offense committed so that the evidence in the criminal act becomes clear. Examination of Suspects and examination of Witnesses/and Expert Witnesses.
- 9) Completion of the results of the examination / file. Is the procedure of the last stage of a criminal offense, the activity consists of: *Resume Making* is a series of procedures for examining suspects and concluding a problem and a criminal offence that occurred. Preparation of the Contents of the *Case File*, namely the preparation of the contents of the case file in accordance with the sequence of actions and grouping of letters / Minutes that have been made and attached according to evidence documents and other letters that need to be attached as stated in the Technical Guidelines for Investigation and filing.

The application of sanctions against foreign fishing vessels in accordance with Article 10 of the Criminal Code is known to have two types of criminal penalties, namely basic criminal and additional criminal. The main penalty is a sentence that must be imposed by a judge consisting of the death penalty, imprisonment, confinement, and fines. Meanwhile, additional crimes are not mandatory for judges to impose on them, namely in the form of disenfranchisement of certain rights, deprivation of certain goods, and announcement of judges' decisions. This type of criminal punishment in the field of fisheries only recognizes the main criminal, while additional criminal penalties are not regulated in the Fisheries Law. Regarding the main crimes that can be imposed by judges in fisheries criminal cases in the form of imprisonment and fines. Although the Fisheries Law does not specifically provide for additional criminal penalties, fisheries judges can still impose additional sentences under article 10 of the Criminal Code.

The nature of criminal penalties in the field of fisheries is largely cumulative, both aimed at crimes and offenses. In the cumulative law of corporate crime (imprisonment) with a fine is applied at once. In this case there is no reason for the judge not to impose both convictions, nor can the judge choose one of the sentences to be imposed, but rather is obliged to impose both principal sentences. Penalties in the form of high imprisonment and heavy fines against fisheries criminals aim to cause a deterrent effect. Perpetrators who are found guilty, in addition to being obliged to serve years in prison, are also obliged to pay fines to the state whose value is not small.

As for the type of criminal violation of fisheries by not having a SIUP, subject to article 26 paragraph (1) jo article 92 of the Ri Law No. 31 of 2004 concerning Fisheries, sentenced to a maximum imprisonment of 8 (eight) years and a maximum fine of Rp. 1,500,000,000,- (one billion five million rupiah), while fishing gear does not match the size, can be subject to article 85 UUP with a maximum sentence of 5 (five) years and a maximum fine of Rp. 2,000,000,000,- (two billion rupiah) and for fish boat owners who do not have a SIB, subject to article 98 of the UUP with a maximum imprisonment of 1 (one) year and a maximum fine of Rp. 200,000,000,- (two hundred million rupiah). Law enforcement in the field of fisheries through Law No. 34 of 2009 concerning amendments to Law 31 of 2004 concerning fisheries is absolute. Because it is to save the national interest in the form of fish resources from perpetrators of fisheries crimes who catch fish without a permit (*illegal fishing*).

Criminal sanctions according to fisheries law can be in the form of administrative sanctions (revocation of permits), confinement (imprisonment) or fines. And with scattered sanctions can have a deterrent effect on *perpetrators of Illegal Fishing* in the EEZ. Criminal confinement of the body (imprisonment). In accordance with Article 110 letter b of Law No. 45 of 2009 concerning amendments to the Law of the Republic of Indonesia of 2004 concerning fisheries, it is stated: "the provisions on fines in article 16 paragraph (1) of RI Law No. 5 of 1983 concerning Indonesia's Exclusive Economic Zone (Statute Book of the Republic of Indonesia of 1983 Number 44, Supplement to the State Gazette of the Republic of Indonesia No. 3260) especially those related to criminal acts in the field of fisheries, repealed and declared void. This means that specifically in the field of fisheries, the EEZ law has been exclusively regulated in the new Fisheries Law, namely RI Law No. 34 of 2009 concerning amendments to RI Law No. 31 of 2004 concerning Fisheries.

C. CONCLUSION

The activities and problems faced in law enforcement at sea have a broad scope, are cross-sectoral, multi-disciplinary and also international in nature, therefore in its implementation various government agencies and related law enforcement officials are involved. The involvement of various agencies and law enforcement officials requires clarity and firmness about the duties and roles of each agency so that there is no confusion that can result in uninterrupted law enforcement efforts in the waters.

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