

## HANDLING AND ENFORCEMENT OF ILLEGAL FISHING LAWS IN INDONESIA BASED ON LAW NUMBER 45 OF 2009 CONCERNING AMENDMENTS TO LAW NUMBER 31 OF 2004 CONCERNING FISHERIES

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### ABSTRACT

*Illegal fishing* practices are national in nature which are still difficult to prevent in Indonesian waters and international glass and have not been able to be eradicated without international cooperation. A number of international agreements and cooperation in the field of international law of the sea and fisheries as well as international criminal have not been able to categorize *illegal fishing* as an international crime. This article discusses related regulations on illegal fishing according to Indonesian national law and examines the urgency of tackling illegal fishing as a crime that is still always discussed nationally and internationally.

This article is a normative legal research with a statutory approach that traces relevant national legal instruments until they are analyzed by descriptive methods. The results of the study show that illegal fishing has been regulated firmly and well in Indonesian laws and regulations. *Illegal fishing* is a crime that has characteristics across national borders. In terms of the implementation of Indonesia's national law, until now there seems to be no coordination between the central government and local governments in establishing a mechanism related to prevention efforts.

**Keywords:** *illegal, fishing, legal*

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### INTRODUCTION

As mentioned in article 25A of the Constitution of the Republic of Indonesia Year 1945 that Indonesia is an archipelagic State, determine Indonesia confirms that Indonesia has a large sea area and is divided into islands. Indonesia's sea area consists of 2.7 million km<sup>2</sup> of Exclusive Economic Zone area or called EEZ and 3.2 million km<sup>2</sup> of territorial sea area. So according to the international organization, UNCLOS 1982 the total sea area of Indonesia is 5.9 million km<sup>2</sup>. This fact shows that Indonesia has considerable marine potential even to become one of the supporting aspects of the Indonesian economy, this can be seen from the economic potential of the fisheries sector to touch 82 billion per year. So it can be said that the marine and fisheries sector can be used as one of the main sectors of economic development in Indonesia, but in fact, the development of the fisheries sector for the Indonesian economy but all must be delayed due to the rampant practice of illegal fishing crimes are also often found in the State of Indonesia (Indra, 2013).

Sanctions against illegal fishing are regulated in the Fisheries Law contained in several articles including Article 84 to Article 104. Various efforts have been made by the government in the context of preventing and enforcing illegal fishing, further cooperation and coordination among all relevant elements are needed so as to secure and protect natural resources for the national interest (Fernandes, 2017).

As a developing country with a large population coupled with geographical structures surrounded by the sea, the sea becomes the fulcrum of a large part of the Indonesian population

to meet the needs of life, especially in coastal areas, such as fishermen. Fishermen are groups of people who live on the coast generally benefit from the source of life and the marine and fisheries sector. In addition, for archipelagic countries such as Indonesia, the sea has a strategic position and extraordinary potential, where Indonesian waters are territorial seas both archipelagic waters and Fishing. Then the Indonesian sea is also the sea waters of the Exclusive Economic Zone (EEZ), following the announcement of the Government of the Republic of Indonesia on March 31, 1980, which is a guarantee of the nation's future.

One of the definitions of illegal fishing put forward by the Indonesian Ministry of Marine Affairs and Fisheries is illegal fishing or illegal unreported and unregulated (UUI) literally means fishery activities that are prohibited and regulated in legal legislation of Indonesia, as well as fishery activities that are not registered and reported to fisheries institutions recognized by the government. The practice of illegal fishing in Indonesia is regulated in laws and regulations, namely Law No. 45 of 2009 concerning fisheries. Illegal fishing in Indonesia is not new, this practice often occurs in Indonesian sea areas with foreign vessels found carrying out fishing activities in Indonesian seas, even resulting in losses for Indonesia, namely by a very large amount (Taufik, 2015).

Many illegal fishing activities are carried out in Indonesia, many of which are fishermen from neighboring countries such as Malaysia, Singapore and Thailand (Muhamad, 2016) . Illegal fishing that occurs in Indonesia's ocean areas is carried out and operates systematically and sustainably, besides that this illegal activity has become an international crime and transnational crime, this crime can be said to date to date is a serious problem faced by the State of Indonesia.

According to Banjarani (2020a), illegal fishing can be categorized as a type of transnational crime because its elements involve more than one country, namely planning, preparation and the consequences of the crime have involved more than one country. If this problem is not immediately addressed, it will result in the preservation of marine ecosystems and fishery resources because illegal fishing itself has occurred in various parts of the world.

One of the definitions of Illegal Fishing put forward by the Indonesian Ministry of Marine Affairs and Fisheries, namely Illegal Fishing 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 to fisheries institutions recognized by the government.<sup>4</sup> Illegal fishing practices This has been regulated in Indonesian regulations, namely in Law No. 45 of 2009 concerning Fisheries.

Thus, it can be seen that illegal fishing has a transnational nature, it will be difficult to prevent or eradicate it without international cooperation between countries in this part of the world (Telesetsky, 2014). This is based on the fact that until now illegal fishing has not been included in one of the transnational crimes based on UNTOC 2000. The problem that will be discussed in writing this article is how to handle illegal fishing according to Indonesian national law?

## **METHOD**

The research method used in this study is a normative legal research method, with a statutory approach (Disemadi & Shaleh, 2020). This study uses secondary data, namely laws related to problems, namely the criminal code abbreviated as the Criminal Code and Law No.

45 of 2009 Amendments to Law No. 31 of 2004 concerning Fisheries. In addition, the analytical method used in this study is a descriptive analysis method.

## **RESULTS AND DISCUSSION**

### ***Regulation of illegal fishing according to national law or Indonesian law***

Illegal fishing is two words in English, namely illegal and fishing (Hasibuan, 2021). The word "illegal" is terminologically defined as something that is forbidden, opposed and unlawful, while the word for "fish" means fish and "fishing" means catching or fishing fish as a livelihood (Banjarani, 2020). So that illegal fishing has the meaning of fishing activities by fishermen that are carried out irresponsibly by violating applicable laws and regulations. As for one example of fishermen's activities that violate legal regulations in catching fish, such as fishing using fishing gear that has the potential to damage the marine ecosystem. Illegal, unreported and unlawful fishing is known as illegal, unreported and unregulated. This term refers to fish policy and management in every fish-taking activity at sea and is stiffened by contradicting or circumventing laws related to the conservation and management of domestic fisheries (Siombo, 2013). The causes of illegal fishing are caused by several things, namely the increase in demand for fish products in the local and global markets, subsidies in the fisheries sector that are over capacity, reduced ability of the State to control fishing vessels, and ineffective control, monitoring of crimes that are still found fisheries activities.

Patrol boats of foreign countries began to enter Indonesian waters which they should not have the right to (Fauzan et al., 2019). Fish resources do have the power to recover although this does not mean they are not limited. Therefore, if the utilization is carried out contrary to the rules of fish resource management, excessive exploration, fishing outside the predetermined zoning and the use of tools can damage fish resources and/or the environment. All of these things can be categorized as illegal fishing which will certainly result in extinction and damage to the sustainability of the environment and ecosystem around Iaut. For this reason, good cooperation between law enforcement agencies in the field of fisheries is needed, coordinates and is sustainable by prioritizing the interests of the nation and country.

According to national law or law in Indonesia, regulations related to illegal fishing include:

- a) Law of the Republic of Indonesia No. 45 of 2009 concerning Fisheries
- b) Law of the Republic of Indonesia No. 5 of 1983 concerning Indonesia's Exclusive Economic Zone
- c) Law of the Republic of Indonesia No. 21 of 1992 concerning Shipping
- d) Law of the Republic of Indonesia No. 6 of 1996 concerning Indonesian Waters
- e) Law of the Republic of Indonesia No. 31 of 2004 concerning Fisheries

The sinking of foreign vessels is one form of the Indonesian government's efforts to suspend and eradicate illegal fishing. The Indonesian government mandates officers who supervise Indonesian seas to be able to take firm action, one of which is by sinking foreign vessels that carry out illegal fishing practices in Indonesian territory. This is done based on the Law of the Republic of Indonesia No. 31 of 2004 concerning fisheries and is also regulated in article 45 of the Law of the Republic of Indonesia No. 8 of 1981 concerning the Code of Criminal Procedure. The policy of sinking foreign vessels that carry out illegal fishing is a special measure of destroying evidence. This destruction can be done by being carried, burned, drowned, and, exploded.

For this reason, Law Number 45 of 2009 concerning Amendments to Un-dang-Law Number 31 of 2004 concerning Fisheries (hereinafter referred to as the Fisheries Law) was issued. One factor that must be considered is in terms of the ability to conduct investigations, because the number of agencies that have the authority to conduct investigations will cause stimulant for collusion, and nepotism so that the process of solving cases of illegal fishing crimes will not cause a deterrent effect on perpetrators. In the Riau Islands, Kalimantan, Sulawesi, Papua there is often illegal fishing carried out by local fishermen with Indonesian flags by using chemicals in the form of Potta-sodium chloride (a chemical used to kill fish and can harm the surrounding environment) which is contrary to Article 8 paragraph (1) of Law No. 31 of 2004 states: "Everyone is prohibited from fishing and/or fish farming by using chemicals, biological materials, explosives, tools and/or endangering the preservation of resources.

According to **Giani** and **Simpson**, one of the difficulties in finding accurate data and information is the fact that *illegal fishing activities* are managed and run with a high corporate structure of confidentiality and a complex business network that deliberately closes the real realities that occur Fisheries crimes are also regulated in the Criminal Code and the Criminal Code, namely in book II of the Criminal Code concerning Crimes Chapter XXIX On Crimes of Shipping (438-479), as well as in book III On offenses namely in chapter IX On Crimes of Shipping (60-569). The provisions stipulated in the Criminal Code are not specifically illegal fishing but rather regulate the crime of shipping. However, article 103 stipulates that the provisions in chapters I to chapter VIII of the Criminal Code can apply to persons who commit acts as per the Law and other regulations and are threatened with a crime unless contained in other provisions of the Law. Then if an act is included in the general criminal rules, and is also included in the special criminal rules, only special criminal rules can be imposed on the perpetrators of this as stipulated in article 63 paragraph 2 of the Criminal Code. This provision refers to fisheries issues that are regulated outside the Criminal Code, namely Law No. 45 of 2009. The punishment of illegal fishing perpetrators can be done through two ways or stages of punishment of perpetrators, namely:

- A. Penal punishment through penal means is regulated in article 93, article 94, article 94A, article 100A of RI Law No. 45 of 2009 Jo RI Law No. 31 of 2004 concerning fisheries. Based on these provisions, illegal fishing perpetrators are threatened with criminal witnesses such as fines and prison witnesses. This is as stipulated in article 64 and article 85 of Law No. 45 of 2009 Jo Law No. 31 of 2004. As for illegal fishing perpetrators, they are sentenced to imprisonment for at least 5 years and a maximum of 10 years along with a fine with a nominal value of Rp. 10,000,000,000,- Then there are other provisions in article 93, article 94, and article 94A of Law No. 45 of 2009 Jo Law No. 31 of 2004, which states that everyone who carries out transportation or fishing is equipped with a SIUP, SIPI, and SIKPI are then threatened with imprisonment of at least 5 years and a maximum of 7 years with a minimum fine of Rp. 1.500.000.000,- and a maximum of Rp. 20.000.000.000,- As for the provisions for captains who do not have a sailing license but drive a transport and fishing vessel, they are threatened with imprisonment Maximum 1 year with a witness fine of Rp. 200,000,000.
- B. Punishment through non-penal means, namely through the imposition of social policies with integrity in the development of national law by taking special actions by surveillance

vessels of the Republic of Indonesia, with preliminary evidence of burning and/or sinking vessels perpetrating illegal fishing crimes for those in Indonesian seas. Through analysis and evaluation activities, it was found that all Anev object vessels violated laws related to fisheries. There are 12 modes of operation of IUU Fishing in Indonesia including 1. Falsification of ship registration documents; 2. Double flagging & double registered; 3. Fishing without shipping permits/documents (SLO and SPB); 4. Illegal modification of ships (markdown, change call sign, engine); 5. Using foreign skippers and crew; 6. Do not activate vessel monitoring transmitters (VMS and AIS); 7. Illegal Transshipment; 8. Falsification of logbook data; 9. Violation of fishing lines; 10. Use of prohibited fishing gear; 11. Does not own/partner with Fish Processing Unit; 12. Do not land fish at the port stipulated in the permit.

Given that the role of the community is a necessity in realizing sustainable and prosperous fisheries resource management, as a social control, the use of criminal law is subsidiary (Shafira et al., 2021). Criminal law in principle is not the main instrument (*primum remedium*) in regulating society, but as the last instrument (*ultimatum medium*)

Based on previous research, although there are similarities in the theme, namely illegal fishing, this research has novelty because the study focuses on criminal policy to overcome illegal fishing through penal means that have not been studied by previous research. The author is interested in conducting this research because criminal law policy has an important role in the implementation of crime reduction in the field. Thus, the use of criminal law as a *primum remedium* in tackling illegal fishing needs attention. Therefore, the author will examine and analyze the urgency of criminal law enforcement as a *primum remedium* and its implications in efforts to combat illegal fishing in Indonesia. This research needs to be done considering the use of criminal law as a *primum remedium*. Indonesia is not the only country that prioritizes criminal sanctions in tackling illegal fishing. Some countries have firm policies in tackling illegal fishing. In France, illegal fishing offenders face a maximum prison sentence of 2 years in prison and a fine of €375,000. <sup>30</sup> In the Netherlands, illegal fishing offenders face imprisonment of 3 months to 6 years and a fine of up to €82,000.<sup>31</sup> In the UK, there are several regulations governing sanctions for illegal fishing offenders. For example, in The Sea Fish (Conservation) Act 1967, sanctions for illegal fishing perpetrators are in the form of a fine of £5,000 to £50,000. Furthermore, under the financial administrative penalty (FAP), illegal fishing offenders in the UK can be fined up to £10,000 which must be paid within 28 days.

The Indonesian government continues to advocate for illegal unreported and unregulated (IUU) fishing to be categorized as a transnational organized crime at the international level. Analysis and evaluation for 11 months in 2015-2016, there were 1,132 foreign fishing vessels operating in Indonesia with a *modus operandi* of illegal fishing but involving various other types of crimes, including overfishing, tax fraud, shooting of vessel license documents, narcotics, and human trafficking, money laundering, and so on. The seriousness of the State of Indonesia to make illegal fishing a transnational crime is to promote more commitments and concrete actions by other countries by increasing international cooperation related to illegal fishing.

The Government of Indonesia through the Ministry of Marine Affairs and Fisheries continues to make various efforts at the international level in securitizing the issue of illegal fishing. This can be seen when the Minister of Maritime Affairs and Fisheries of Indonesia,

Susi Pudjiastuti, who attended the UN marine conference. Likewise, coordination of prevention and eradication of illegal fishing with local governments. Until now there has been no coordination between the central government and local governments, in establishing a mechanism and efforts to prevent and eradicate illegal fishing. 36 The involvement of the central government, local governments, and communities will greatly determine the aspects of effective enforceability of the law, including in matters related to the prevention and eradication of illegal fishing, all aspects of the State and the community play a role.

The importance of identifying transnational crimes is in addition to the increasing number of illegal fishing cases that occur in Indonesia and involve legal aspects from other countries so it requires proper law enforcement. This is because in this enforcement, appropriate qualifications of the type of crime are needed so that there is no error in the placement of the type of crime, where if something goes wrong it will have an impact on the error in the placement of the principles of the law itself as an ideal of creating justice. If there is an error in qualifying the crime, then the enforcement of the law will deviate from its purpose. As it is known that the purpose of formal law enforcement is the achievement of peace in society and organized law.

When noodles are very rife, illegal fishing in Indonesian waters is carried out by local and foreign fishermen. Not a few cases of catching "rogue" and foreign fishermen who are eager to enter Indonesian waters to take fish and other marine resources.

Thus, it is hoped that the Indonesian government can continue to strive to establish cooperation between countries as a form of effort to prevent illegal fishing because after all Indonesia is an archipelagic country that has fish wealth, it would be unfortunate if the wealth is actually enjoyed by other parties not from Indonesian citizens themselves. In addition, Indonesia should continue to make various efforts at the international level so that illegal fishing can be categorized as a transnational crime by the United Nations.

## **CONCLUSION**

The practice of Illegal Fishing is a transnational crime that has a considerable threat. Illegal fishing does not only involve a single crime but can involve various other fishing crimes such as human trafficking, money laundering, forced labor, and crimes in the field of oil and gas, narcotics, and others. Indonesian national law and international law actually regulate illegal fishing, even containing strict sanctions for the perpetrators. However, the practice of illegal fishing is still ongoing in Indonesia. The existence of transnational nature in the elements of illegal fishing and fishing crime requires international cooperation to overcome it. Until now there has been no international cooperation that Indonesia can use to eradicate illegal fishing. In terms of the implementation of Indonesian national law, until now it seems that the coordination of the central government with local governments has not been carried out properly in establishing a mechanism related to efforts to prevent and eradicate crimes that currently still occur in Indonesia illegal fishing crimes.

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