

Law Enforcement Of The Crime Of Illegal Fishing In The Waters Area Of Pangkajene Regency And The Islands

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ABSTRACT

Law enforcement of illegal fishing in the waters of Pangkajene and the islands has not been effective. This research is an empirical normative research, combining the normative legal approach to legislation with empirical elements in the form of interviews. The results of the study show that law enforcement of criminal acts in the field of fisheries in the Pangkajene and archipelagic waters has not been effective, this is due to a conflict of norms between one regulation and another related to the marine and fisheries sector, which causes law enforcement officers to find it difficult to implement which rules to enforce. In addition, the existence of an ego-sectoral relationship between law enforcement officers causes law enforcement to still not go hand in hand with each other and the ability of prosecutors and judges to complete the mighty crime of illegal fishing in the Pangkajene and Kepulauan districts.

ABSTRAK

Penegakan hukum illegal fishing di perairan Pangkajene dan kepulauan belum efektif. Penelitian ini merupakan penelitian normatif empiris, memadukan pendekatan hukum normatif peraturan perundang-undangan dengan unsur empiris berupa wawancara. Hasil penelitian menunjukkan bahwa penegakan hukum terhadap tindak pidana di bidang perikanan di Perairan Pangkajene dan Kepulauan belum efektif, hal ini disebabkan adanya konflik norma antara peraturan yang satu dengan peraturan lainnya yang terkait dengan sektor kelautan dan perikanan, yang menyebabkan aparat penegak hukum kesulitan untuk menerapkan aturan mana yang harus ditegakkan. Selain itu, adanya hubungan ego-sektoral antar aparat penegak hukum menyebabkan penegakan hukum masih belum berjalan beriringan dan kemampuan jaksa dan hakim untuk menuntaskan kejahatan besar illegal fishing di kabupaten Pangkajene dan Kepulauan.

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I. INTRODUCTION

Article 33 of the 1945 Constitution of the Republic of Indonesia (UUD NRI) states that the earth, water and natural resources contained therein are controlled by the state and used as much as possible for the prosperity of the people. This provision is a constitutional basis and at the same time a direction for the regulation of various matters relating to fish resources (Marlang & Masyana, 2011).

Makassar Strait is one of WPPNRI with numbering 713 which is stipulated through KEPMEN No. 995/Kpts/IK 210/9/99 concerning Potential Fish Resources and Allowable Catch Amounts

amendments to PERMEN KKP No 18/PERMEN-KP/2014 concerning Fisheries Management Areas of the Republic of Indonesia. WPPNRI 713 is one of WPPNRI which covers the waters of Pangkajene Regency and Islands. Pangkajene and archipelago districts consist of 13 sub-districts, 38 urban villages, and 65 villages with an area of 1,132.08 km², and a population of 361 people with a population distribution of 319 people/km². Pangkajene Regency and the islands have an administrative area that is dominated by the sea area compared to the plains area, with a wealth of marine resources from Pangkajene Regency and the archipelago which includes the wealth of marine resources, such as shrimp, tuna, skipjack tuna, squid, demersal fish and coral, and an abundance of balls or sea cucumbers. It becomes an unequal thing with the results of the abundance of marine resources above, but has not been able to prosper the residents of Pangkajene Regency and the islands. This then becomes one of the interesting things to study, why the area with most of its territory is waters rich in marine resources, has not been able to improve the welfare of residents, fishermen, and cultivators of marine products.

ways *illegal* and is carried out by foreign nationals or Indonesian citizens themselves. From the beginning of 2015 to the end of 2021, there were around 116 cases of *illegal fishing* in the waters of Pangkajene and the islands (Syawaluddin, 2021), which were recorded and processed by law enforcement officials. This is one of the reasons the Ministry of Maritime Affairs and Fisheries has made the waters of Pangkajene Regency and the islands a red zone prone to *illegal fishing* (Nursam, 2020).

The exploitation of fish resources by illegal means as referred to above is regulated in UUNRI No. 45 of 2009 concerning Fisheries. pa UUNRI No. 31 of 2004 concerning Fisheries, in Article 84, Article 85, Article 88, Article 91, Article 92, Article 93, and Article 94. Meanwhile, what is included in the violation is regulated in Article 87, Article 89, Article 90, Article 95, Article 96, Article 97, Article 98, Article 99, and Article 100. The fisheries crimes can be classified into: (1). Criminal acts involving materials that can endanger the sustainability of fish resources and the environment; (2). The crime of intentionally using fishing gear that disturbs and damages fish resources on fishing vessels; (3). Criminal acts related to pollution/damage to fish resources (Amin Hanafi, 2015). The number of phenomena of fishing theft or other criminal acts committed in the waters of Pangkajene and the islands raises the question of how law enforcement in the waters of Pangkajene and islands is. The implementation of law enforcement in the field of fisheries is very important and strategic in order to support fisheries development in a controlled and appropriate manner with the principles of fisheries management, so that fisheries development can run in a sustainable manner. Therefore, the existence of legal certainty is an absolute condition to be held. The fisheries law should provide clarity and legal certainty to law enforcement officers who are mandated by law to enforce the law on criminal acts in the field of fisheries, starting from the authority of investigators, public prosecutors, and judges. The role of law enforcement officers in the process certainly greatly influences the direction and goals and results of what is to be achieved from the legislation itself.

High number of *illegal fishing* in Pangkeje and archipelagic waters raises the question of how the legal products and the role of law enforcement officers are in law enforcement in the Pangkajene and archipelagic waters, while if you look closely, there are many international and national legal products that regulate law enforcement in the area. waters, as well as the number of law enforcement officers who are given authority in terms of law enforcement, have not been able to be *effective* in law enforcement in the waters of Pangkajene and the islands. factors of law enforcement officers, to see whether law enforcement of the crime of *illegal fishing* in the waters of Pangkajene Regency and the islands has been effective, so the authors conducted research on how legal factors affect. law enforcement crime *Illegal fishing* in the territorial waters of Pangkajene Regency and the islands?, and how are the factors of law enforcement officials influencing law enforcement of the crime of *illegal fishing* in the waters of Pangkajene Regency and the islands?

II. RESEARCH METHODS

This research is an empirical normative legal research, legal research equipped with empirical data, is a type of research that uses secondary data from the literature and is supported by primary data based on field research, such as observations, interviews, and surveys.

(Irwansyah & Yunus, 2020). In this study the authors use normative research in this case literature or rules that discuss fisheries or *illegal fishing*, while in empirical research the authors take research based on field research such as observations and interviews from law enforcement officers who enforce criminal law in the field of fisheries or *illegal fishing* in the territorial waters of Pangkajene and Kepulauan regencies.

III. RESULTS AND DISCUSSION

Crimes *Illegal Fishing* in the Waters of Pangkajene and Kepulauan Regencies

1. Principles of enactment of laws

a) Principles of Conflict of Norms

Conflict of norms in a positive legal system has always been an interesting issue to be discussed, especially in countries where legislation is the main source of formal law. The principle of conflict of norms is also known as *the conflict rules* (Jaap C, 2000), *the rules of collision* (ndzej Malec, 2001), or *the principle of derogation*. international law.

This principle is used as the basis for prioritizing a rule of law over another rule of law, of course by looking at several criteria, namely: hierarchy, chronology, and *specialization* (François, 2002). Based on these three criteria, there are known principles, or legal maxims (*legal maxim*): “*lex superior derogat legi inferiori*” (*the higher rule prevails over the lower*), “*lex posterior derogat legi priori*” (*the later rule prevails over the earlier*), and “*lex specialis derogat legi generali*” (*the more specific rule prevails over the less specific*) (Jerzy Stelmach & Bartosz Brożek, 2006) contradict each other (Nurfaqih, 2020).

The fisheries and waters sector is a potential asset of our country which, if managed properly and wisely, is an investment for the future of the nation's economy. Maximum management while still paying attention to the aspect of sustainability will increase the country's foreign exchange earnings, create employment opportunities, as well as increase income, and the welfare of the community, as well as the dominant function of the sea as a unifying medium and glue the nation's unity. In the context of utilizing marine and fishery potential, the need for a legal basis for the management of fish resources is very important.

The presence of this Law is expected to anticipate the occurrence of very large changes in the field of fisheries, both related to the availability of fish resources, environmental sustainability of fish resources, as well as the development of more effective, efficient, modern methods of fisheries management. This law is also expected to be able to increase the utilization of marine potential. With the potential of the sea owned by the Indonesian state, various problems also exist in the marine sector. Issues in marine and fisheries development include marine pollution, symptoms of overfishing, physical degradation of coastal habitats, illegal fishing, and illegal waste disposal. With the basic spirit of establishing this regulation on fisheries and the sea, it is solely to create a state of harmony between Indonesian nature conservation and the welfare of its people.

In line with the above spirit, the government has again made laws and regulations, namely Law Number 11 of 2020 concerning Marine and Fisheries CiptaKer (hereinafter referred to as UUNRI Number 11 of 2020 concerning Marine and Fisheries CiptaKer), which is considered capable of boosting development. the fisheries and marine sector while still prioritizing the sustainability *factor*.

In the spirit of the birth of this regulation, to be able to boost marine and fishery development, it is

hoped that this regulation can go hand in hand with UUNRI No. 31 of 2004 concerning Fisheries under UUNRI No. 45 of 2009 concerning Fisheries, and UU RI 32 of 2014 concerning Marine Affairs, or other regulations that are in line with it. But if we look at the substance of the UUNRI No. 11 of 2020 concerning the creation of work in the maritime and fisheries sector, there are at least 10 substances that conflict with other laws and regulations so that they have the potential to create conflicting norms.

There are laws and regulations that have conflicting norms, namely, UURI No. 11 of 2020 concerning CiptaKer in the Maritime Affairs and Fisheries Sector, with the Indonesia Law No. 31 of 2004 concerning Fisheries under UUNRI No. 45 of 2009 concerning Fisheries. The conflicting norms of the two laws and regulations mentioned above lies in the articles that regulate the same thing but have a different form of sanctions, while the formulation of the contradicting articles are: 1) Article 11 of 2020 concerning CiptaKer in the Maritime Affairs and Fisheries Sector, which have the potential to experience conflicting norms, namely: *Article 82 number 2 letter a, Article 27A number 1, 2, and 3, Article 36 number 3, Article 41 number 4.* 2) Articles in UNRI No. 45 of 2009 concerning the Law of the Republic of Indonesia No. 31 of 2004 concerning Fisheries, which have the potential to experience conflicting norms, namely: *Article 86 number 1, Article 94 points 1 and 2, Article 96, Article 98*

Factors of Law Enforcement Officials Affecting Law Enforcement of the Crime of *Illegal Fishing* in the Waters of Pangkajene Regency and islands.

1. The Real Role

Based on the author's interviews from three law enforcement agencies, namely the Police (Polairud sulse), Fisheries PPNS (DKP Pangkep), TNI AL (Lantamal VI Makassar), it was obtained data or information that the problems faced by the Investigator of the Sub-Directorate General of the Ditpolairud Polda Sulsel in law enforcement of fisheries crime in the district area Pangkajene and the islands, especially the crime of *illegal fishing* in the region Pangkajene Regency and the Archipelago, is still not running optimally. it's in cause there is an overlap between one regulation and another others, causing ambiguity in applying sanctions. No.problem of applying criminal sanctions and administrative sanctions in 2 different laws, namely, UUNRI11 of 2020 concerning Job Creation in the Marine and Fisheries Sector, and the Indonesian Law No. 31 of 2004 concerning Fisheries under UUNRI No. 45 Q 2009 Regarding fisheries.

As for the problems or obstacles faced by the Pangkep District Prosecutor's Office. 11 of 2020 concerning Job Creation in the Marine and Fisheries Sector. Given the unpreparedness of the law enforcement officers in the form of implications, where the application of sanctions that the Public Prosecutor wants to use is still using criminal sanctions in accordance with UUNRI No. 31 of 2004 concerning Fisheries under UUNRI No. 45 Q 2009 Regarding fisheries. This is done because the government has not determined and socialized which rules should be prioritized in determining the form of sanctions.

The problems that occurred in the Court Institution based on the results of an interview with Ima Fatimah Djufri as the Judge of the Pangkajene and Islands District Court stated that, law enforcement against criminal acts fisheries in the waters of the Pangkajene Regency and the Archipelago, in the proceedings in court are still having problems with the the technicalities of the trial process, including the difficulty of presenting witnesses from the fishery supervisor who makes the catch. Because of action Fisheries crime is a special crime, so its handling must be carried out specifically and needed by presenting expert witnesses who know the ins and outs in the field of fisheries. difficulty presenting experts according to the field of competence required in the trial process fisheries crime. This difficulty in addition to affecting the effectiveness The judicial process also affects the length of time a case can be decided. Meanwhile, the investigator who caught the arrest was often unable to attend because of various classic problems according to him. This is made worse with the rules in the Fisheries Act also states: that the examination of the defendant in the

fishery case can be carried out without the presence of the accused (*in absentia*). In implementation, the court does have to follow these provisions but without the presence of the defendant, the court will face obstacles such as may not be able to get things done faster.

Based on the interview above, the author sees that the enforcement by the Fisheries Court Judge in the criminal act of *illegal fishing* in the Pangkajene Regency and the islands still needs improvement in carrying out the authority to examine, try, and decide on criminal cases in the fisheries sector that occurred in WPPNRI. The fisheries court still finds various obstacles, one of which stems from the norms in the fisheries law, as well as the latest regulation that was passed, namely the creation of work in the marine and fisheries sector. These problems can at least be grouped into several aspects, namely institutional aspects including human resources, material and formal legal aspects, and jurisdictional aspects. Various issues become important in the context of the second amendment to the fishery law which will be carried out by the legislators.

IV. CONCLUSIONS

The legal factors that influence law enforcement of the crime of *illegal fishing* in the Pangkajene Regency and the islands are the presence of the Republic of Indonesia Law no. 11 of 2020 concerning Job Creation in the Maritime Affairs and Fisheries Sector, which experienced disharmony of norms with previous fisheries laws and regulations.

The supposed role of Polairud, Fisheries PPNS, Navy, Prosecutors, Judges has been confirmed in the legislation and law enforcers should carry it out. Then in its application based on the results of research on the actual role of Polairud, Fisheries PPNS, TNI AL there are still obstacles, namely the application of criminal and administrative sanctions in 2 different laws and regulates the same problem.

Conduct a revision and an in-depth study of UUNRI No. 11 of 2020 concerning the creation of work in the maritime and fisheries sector, especially in the form of sanctions, it can later be used as the constitutional basis for law enforcement officers for *illegal fishing* in the waters of the Pangkajene Regency and the islands.

Improve the quality and quantity of law enforcement officers who handle cases of *illegal fishing*, especially in the waters of the Pangkajene and archipelago districts in the formation of an understanding of national and international marine and fisheries laws and regulations, so that the actual role of law enforcers in law enforcement acts crime of *illegal fishing* in the waters of the Pangkajene Regency and the islands is in line with and in accordance with the role it should play with law enforcers in accordance with the laws and regulations in order to realize the ideal law enforcement for the criminal act of *Illegal fishing* in the waters of the Pangkajene Regency and the islands.

References

- Abdullah Marlang, Rina Masyana, 2011, *Hukum Konservasi Sumber Daya Hayati Dan Ekosistemnya*, Aspublishing, Makassar.
- Achmad Ali, 2009, *Menguak Teori Hukum (Legal Theory) Dan Teori Peradilan (Judicialprudence) Termasuk Interpretasi Undang-Undang (Legisprudence)*, Penerbit Kencana, Jakarta.
- François Ost, *Legal System Between Order and Disorder*, (Translated By Iain Stewart), Clarendon Press Oxford, Oxford, 2002.
- Irwansyah, Ahsan Yunus, 2020, *Penelitian Hukum Pilihan Metode dan Praktik Penulisan Artikel*, Mirra Buana Media, Yogyakarta.
- Jerzy Stelmach & Bartosz Brożek, *Methods Of Legal Reasoning*, Springer, Dordrecht, 2006.

- Jaap C. Hage, *Reasoning With Rules: An Essay On Legal Reasoning And Its Underlying Logic*, Kluwer Academic Publishers, Dordrecht, 2000.
- M. Amin Hanafi, 2015, “Penegakan Hukum Tindak Pidana *Illegal fishing* Pada Zona Ekonomi Eksklusif Perairan Indonesia”, *Jurnal Hukum Ransidental*, Vol.1. No 3, Fakultas Hukum Universitas Muhammadiyah Maluku Utara, Maluku, Indonesia.
- Nurfaqih Irfani, *Jurnal Legislasi Indonesia* Vol 16 No. 3, 2020.
- Nursam, Indonesia, 2021, *Pelaku illegal fishing di sulsei ditangkap*, Medcom.id, 12 April. Makassar.
- Ndrzej Malec, *Legal Reasoning & Logic*, Studies in Logic Grammar & Rhetoric, Vol. 4, No. 17, 2001.
- Permendagri No. 137 Tahun 2017 *Tentang Kode Dan Data Wilayah Administrasi Pemerintah*.
- Permendagri No. 75 tahun 2019 *perubahan atas Permendagri Nomor. 137 Tahun 2017 Tentang Kode Dan Data Wilayah Administrasi Pemerintahan*.
- Soerjono Soekanto, 2007, *Faktor-Faktor Yan Undang-Undang Negara Republik Indonesia Nomor 11 Tahun 2020 Tentang Cipta Kerja Bidang Kelutan dan Perikanan*.
- Syawaluddin, Indonesia, 2022, *sulsei zona merah destructive fishing kementerian kelautan dan perikanan ke tangaya*, Fajar.co.id, 01 November. Makassar.
- Undang-Undang Dasar 1945
- Undang-Undang Negara Republik Indonesia Nomor 7 Tahun 2016 *Tentang Perlindungan dan Pemberdayaan Nelayan, Pembudidaya Ikan, dan Petambak Garam*.
- Undang-Undang Negara Republik Indonesia Nomor 31 Tahun 2004 *Tentang Perikanan perubahan atas Undang-Undang Negara Republik Indonesia Nomor 45 Tahun 2009 Tentang Perikanan*.
- Undang-Undang Negara Republik Indonesia Nomor 11 Tahun 2020 *Tentang Cipta Kerja Bidang Kelutan dan Perikanan*.