

## LAW ENFORCEMENT AGAINST THE CRIME OF ILLEGAL FISHING IN INDONESIAN SEAS

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### Abstract

*Indonesia as an archipelagic country surrounded vast seas bring no problem can anticipated, one of which is illegal fishing carried out by fishermen from neighboring countries and other countries. Study This analyze enforcement laws and factors inhibitor enforcement law to follow illegal fishing crime that occurred. In enforce law against illegal fishing, used approach law preventive and repressive. Temporary factor inhibitor enforcement law Because limited source power, as well lack of integrity enforcer law.*

**Keywords:** Law Enforcement, Illegal Fishing, Indonesian Seas.

### Intisari

*Indonesia sebagai negara kepulauan yang dikelilingin perairan yang sangat luas mendatangkan permasalahan yang tidak bisa diantisipasi, salah satunya illegal fishing yang dilakukan oleh nelayan negara tetangga dan negara lainnya. Penelitian ini menganalisis penegakan hukum dan faktor penghambat penegakan hukum terhadap tindak pidana illegal fishing yang terjadi. Dalam menegakkan hukum terhadap illegal fishing, digunakan pendekatan hukum preventif dan represif. Sementara faktor penghambat penegakan hukum karena terbatasnya sumber daya, serta kurangnya integritas penegak hukum.*

**Kata Kunci:** Penegakan Hukum, Illegal Fishing, Perairan Indonesia.

## 1. Introduction

Indonesia is an archipelagic country surrounded by waters and has 17,504 islands which are included in the sovereign territory of the Unitary State of the Republic of Indonesia according to the Deputy for Maritime Sovereignty of the Coordinating Ministry for Maritime Affairs, wherein 16,056 islands have had their names frozen at the United Nations.<sup>1</sup>

<sup>1</sup> [https://id.wikipedia.org/wiki/Daftar\\_pulau\\_di\\_Indonesia](https://id.wikipedia.org/wiki/Daftar_pulau_di_Indonesia) accessed on the 3rd December 20 22 At 09.20 WIB

In terms of determining territorial sea boundaries, it is regulated in the United Nations Convention on the Law of the Sea which was signed in Montego Bay, Jamaica on December 10, 1982 which came into effect on November 16, 1994. Based on Article 3 of the United Nations Convention on the Law of the Sea "Every country has the right to establish the breadth of its territorial sea to a limit not exceeding 12 nautical miles, measured from baselines determined by convention."

Article 33 paragraph (3) of the 1945 Constitution states that "earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people." According to Law Number 43 of 2008 concerning sea areas, it is stated that the territory of the Unitary State of the Republic of Indonesia, hereinafter referred to as the State Territory, is one of the elements of the state which is a unitary land area, inland waters, archipelagic waters and territorial sea along with the seabed and the land beneath it, as well as the air space above it, including the natural resources contained therein.<sup>2</sup>

As an archipelagic country, Indonesia has vast waters, namely around 5.8 million km<sup>2</sup> consisting of 0.3 million km<sup>2</sup> of territorial sea waters; 2.8 million km<sup>2</sup> of Indonesian marine waters and 2.7 million km<sup>2</sup> of the Indonesian Exclusive Zone. there are natural resources contained in it, such as coral reefs, seaweed, fish and other marine biota. Indonesia's marine natural wealth is very useful as a source of income for the state and people of Indonesia for economic development. Protecting the natural wealth contained in the Indonesian seas is not easy, with these natural resources in Indonesian territory, *illegal fishing practices often occur*.

*Illegal fishing* in terms is a foreign term popularized by legal experts in Indonesia which later became a popular term in the mass media and is used as an interesting legal study for environmental activists. In terms of *illegal fishing* from a literal sense, which comes from English, which consists of two words, *illegal* and *fishing*. "*Illegal*" means illegal, prohibited or against the law. "*Fish*" means fish or meat and "*fishing*" means fishing as a livelihood or a place to catch fish.<sup>3</sup>

In Indonesian waters, there are at least three areas that are very vulnerable to *illegal fishing activities*. The three waters are Natuna waters, Arafuru waters and North

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<sup>2</sup>Law No. 43 of 2008 concerning State Territories Article 1 point 1.

<sup>3</sup> John M. Echols and Hassan Shadily, *Indonesian English Dictionary*, Main Library, Jakarta, 2002, p. 311

Sulawesi waters.<sup>4</sup> The frequent occurrence of *illegal fishing* is very detrimental to Indonesia.

The territory of Indonesia consists of 80% of waters which contain many potential fish resources. These fish resources should be utilized as much as possible for the welfare and prosperity of the Indonesian people. The fact that fish resources have not been able to increase the standard of living in a sustainable and just manner. There is a growing issue of overfishing, fish theft and *illegal fishing* and the use of fishing gear that is not environmentally friendly. This means that the utilization of fish resources exceeds the regeneration of the fish itself. This situation will cause losses to the state and the interests of fishermen themselves and society in general.<sup>5</sup>

During October 2014-August 2018, there were 488 ships that were burned and sunk by the Ministry of Maritime Affairs and Fisheries, 488 with details namely Vietnam 276 ships, Philippines 90 ships, Thailand 50 ships, Malaysia 41 ships, Indonesia 26 ships, Papua New Guinea 2 ships, China 1 ship, Belize 1 ship and No Country 1 ship.<sup>6</sup> State losses due to illegal fishing reach Rp. 600 trillion per year, based on FAO data, *lost of illegal fishing* that occurs in Indonesian waters reaches US \$ 50 billion.<sup>7</sup>

The amount of loss is not small, apart from that *illegal fishing* also has an impact on decreasing stocks of fish resources and the income of fishers operating legally decreased. Based on the background above, the formulation of the problem in this study is: How is law enforcement against criminal acts of *illegal fishing* in Indonesian waters? What are the inhibiting factors for law enforcement against *illegal fishing* in Indonesian waters?

## 2. Discussion and Analysis

The rules for *illegal fishing* are regulated in Law Number 45 of 2009 concerning Amendments to Law Number 31 of 2004 concerning Fisheries, in Law Number 45 of

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<sup>4</sup> Bob Ivan, "Illegal Fishing in the Waters of the Bangka Belitung Islands (Case Study of Fishing Without Appropriate Documents)", <https://media.neliti.com/media/publications/109653-ID-illegal-fishing-di-kawasan-waters-kepu.pdf>.

<sup>5</sup> Rochmani, *Law Enforcement Oriented to Sustainability of Fish Resources*, Journal of Media Hukum, Faculty of Law Unisbank, Semarang, Vol. 21 No.1 June 2014, p. 125

<sup>6</sup><https://databoks.katadata.co.id/datapublish/2019/02/18/cek-data-488-kapal-illegal-> already-ditenggelamkan accessed December 4, 2022 at 14.56

<sup>7</sup> <https://beritagar.id/artikel/berita/anak-fruit-susi-pudjiastuti-tak-berhenti-beraksi> accessed on 5 December 2022 at 15.05

2009 concerning Amendments to Law Number 31 of 2004 concerning Fisheries there are sanctions crime, even though these rules already exist it does not make people obey them, violations of these provisions often occur.

The criminal provisions in the Fisheries Law are regulated in Articles 85 to 100D in the form of imprisonment and/or fines. Based on Article 69, investigators and/or fishery supervisors can take special action in the form of burning and/or sinking fishing boats with foreign flags based on sufficient preliminary evidence.

Based on the Regulation of the Minister of Maritime Affairs and Fisheries of the Republic of Indonesia Number 37/Permen-Kp/2017 concerning Standard Operational Procedures for Law Enforcement of the Task Force for the Eradication of Illegal Fishing (Illegal Fishing) law enforcement procedures against *illegal fishing* are as follows:

#### Article 1

1. The Task Force for the Eradication of Illegal Fishing, hereinafter referred to as Task Force 115, is the Task Force for the Eradication of Illegal *Fishing* as referred to in Presidential Regulation Number 115 of 2015 concerning the Task Force for the Eradication of *Illegal Fishing*.
2. Criminal acts in the field of fisheries are illegal fishing *and* unreported *fishing*.
3. *Illegal fishing* is illegal fishing activity or fishing activity carried out contrary to the provisions of laws and regulations in the field of fisheries.
4. Unreported fishing *is* the activity of not reporting catches or reporting catches that do not match the actual catch as stipulated in the provisions of laws and regulations in the field of fisheries.
5. Law Enforcement Operations are a series of investigations, investigations, prosecutions, and/or if necessary up to legal remedies.
6. Investigation, Investigation, Prosecution and Legal Action are referred to in Law Number 8 of 1981 concerning the Criminal Procedure Code.
7. The Minister is the Minister of Maritime Affairs and Fisheries as the Commander of the Task Force for the Eradication of Illegal *Fishing*.

#### Section 2

Standard Operational Procedures for Law Enforcement of the Task Force for the Eradication of Illegal Fishing *is* a reference for members of the Task Force for the

Eradication of Illegal *Fishing* in carrying out operations and law enforcement against crimes in the fisheries sector in accordance with provisions of national law and international law.

### Article 3

Standard Operational Procedures for Law Enforcement of the Task Force for the Eradication of Illegal Fishing *are* listed in the Appendix which is an integral part of this Ministerial Regulation.

According to Lawrence M. Friedman, whether or not a law is effective or not is greatly influenced by three factors, namely legal substance, law enforcement and legal culture.

Law enforcement against illegal *fishing in Indonesian waters is carried out in two ways, namely preventive* law enforcement and *repressive* law enforcement. *Preventive* law enforcement is the initial action taken by the authorized apparatus in preventing the occurrence of *illegal fishing crimes*. *Repressive* law enforcement is an act of law enforcement that is actually given to perpetrators of *illegal fishing*.

#### a. Preventive

Prevention is an effort to prevent before the occurrence of a crime. According to William J Chambliss and Robert B Seidmen that the formation of law and its enforcement will not be separated from influences outside the law, such as economic, political, cultural, educational and societal factors that are outside the process. Then, as the response of law enforcement officials to legal regulations is a function of the regulations addressed to them, they are as follows:

#### 1) Carry out Polair Patrol

Conducting patrols is one of the effective efforts to prevent *illegal fishing practices*. By conducting patrols, officers can find out directly according to the mandate that has been given to these agencies. Polair also conducts patrols in areas prone to *illegal fishing*. Types of patrols are carried out according to the situation and conditions of the sea area, including:

- I. Routine Patrols, namely patrols that are carried out continuously, according to a predetermined schedule.
- II. Selective Patrols, namely patrols conducted in certain areas or areas that are suspected of frequent Illegal Fishing practices.
- III. Incidental Patrols, namely Patrols carried out at the places where incidents

occurred (TKP).<sup>8</sup>

## 2) Supervision of Fisheries Supervisors and TNI - Navy

In implementing the Maritime Security Patrol Activities carried out by Supervisory Vessels belonging to the Ministry of Maritime Affairs and Fisheries of the Republic of Indonesia as well as belonging to the TNI-Navy where the Maritime Security Patrol Activities involve elements of TNI-Navy investigators and Civil Servant Investigators from the Ministry of Maritime Affairs and Fisheries- Republic of Indonesia which is carried out in an integrated manner. The target area of operation includes the Arafura Sea and Aru Sea fisheries management areas which are fishing areas where criminal acts of fish theft are frequent by foreign vessels.<sup>9</sup>

Supervision as a process to ensure that organizational and management goals are achieved. This relates to ways of making activities according to plan. There are three types of supervision, namely:<sup>10</sup>

### I. Preliminary Supervision (*feed forward control*).

Preliminary supervision or often called steering control is designed to anticipate problems or deviations from standards or goals and allow corrections to be made before a certain activity stage is completed.

### II. Supervision is carried out simultaneously with the implementation of activities (*concurrent control*).

This supervision is often called "Yes-No" supervision, screening control or "stop-hold", carried out during an activity.

### III. Feedback control (*Feedback control*).

Feedback controls, also known as past-action controls, measure the results of an activity that has been completed.

## 3) Increasing Fishermen's Legal Awareness

Law enforcement comes from society, and the goal is to achieve peace in society. Therefore, from a certain point of view, society can influence law enforcement. Indonesian people in particular, have certain opinions about law. Therefore, the legal

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<sup>8</sup> Franchiska Agustina, *The Role of the Directorate of Water Police in Enforcing the Law of Illegal Fishing Crimes* Cepalo Journal Volume 2, Number 2, July-December 2018.

<sup>9</sup> Susanto Masita, *Law Enforcement Against Criminal Acts of Arrest Illegal Fishing in Arafura Waters*, <https://mail.google.com/mail/u/0/#inbox/KtbxLwgdhFNvTntzHKKcWQghcnVXtbTGkL?projector=1&messagePartId=0.1>

<sup>10</sup> Hani T. Handoko, *Human Resource Management*, BPFE, Yogyakarta, 2003, p. 359.

awareness of fishermen needs to be increased.

The level of legal awareness of fishermen is one of their roles in suppressing *illegal fishing practices*. With high legal awareness, fishermen will not commit fisheries crimes in any case, besides that, fishermen's education level is still low, so knowledge of fisheries law is still minimal. This is evidenced by the lack of socialization of the Fisheries Law Number 31 of 2004 which has been replaced by Law Number 45 of 2009 concerning Fisheries.<sup>11</sup>

b. Repressive

According to William J Chambliss and Robert B Seidmen. According to William J Chambliss and Robert B Seidmen that the formation of law and its enforcement will not be separated from influences outside the law, such as economic, political, cultural, educational and societal factors that are outside the process, in other words about what actions will be taken by implementing agencies as response to legal regulations, is highly dependent on and controlled by applicable legal regulations, from sanctions, the whole complex of social, political and other forces concerning themselves as well as feedback coming from role holders.

Law enforcement efforts in the form of taking action against perpetrators of fishing crimes with activities to improve the quality of investigations and settlement of cases up to the Public Prosecutor and be tried in a transparent manner, carry out and improve coordination between investigators and the Public Prosecutor in handling the case, of course good coordination will also provide good results, especially in this case so that the case of the crime of fishing can be resolved and for the perpetrators to receive punishment or sanctions that are judged according to the losses incurred and provide a deterrent effect for perpetrators and examples for other communities and provide and take strict action against perpetrators of criminal acts of fishing in order to provide a deterrent effect and set an example for other people or parties.<sup>12</sup>

Law enforcement efforts against *illegal fishing* are in the form of sinking vessels used to commit criminal acts if they are caught red-handed in stealing fish, vessels that resist or try to escape are also carried out by drowning without having to wait for a court decision.

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<sup>11</sup> *Ibid*

<sup>12</sup>Tri Yulian Dano, Fitriati, Yetisma Saini, *Efforts to Overcome the Crime of Fishing in West Sumatra Waters by West Sumatra Regional Police Waters Police*, Law Study Program, Faculty of Law, Bung Hatta University and Law Study Program, Faculty of Law, Taman Siswa University



Law is a tool that contains values or concepts about justice, truth and social benefit and so on. The content of the law is abstract. According to Satjipto Rahardjo as quoted by Ridwan HR, law enforcement is essentially an enforcement of abstract ideas or concepts. Law enforcement is an attempt to make these ideas a reality.<sup>13</sup>

By making laws in written form, it is hoped that they will be able to create a safe, orderly, peaceful and cultured society. However, in reality the regulations that are made are often not heeded by the public or the law enforcers themselves so that the purpose of making the regulations is not realized.

Law enforcement is the process of making efforts to uphold or actually function legal norms as a guideline for behavior in traffic or legal relations in the life of society and the state.<sup>14</sup> The problem of law enforcement is a universal problem. Each country has its own experience, with its own philosophy and method, trying to realize the rule of law in society. Firm action with violence, tight guard, severe punishment, do not always guarantee the rule of law. If the people concerned do not understand the nature of the legal guidelines, this will hinder law and legal discipline.<sup>15</sup>

According to Soejono Soekanto, the factors that can influence law enforcement are the law itself, law enforcement, facilities and facilities, community, cultural, in other words, law enforcement is not working as it should be because the law is vague or not clearly, the apparatus is inconsistent, the facilities are inadequate and or the people do not support the implementation of the law. The following are the inhibiting factors for law enforcement against *illegal fishing* crimes:

- a. Law enforcement objects are difficult to penetrate by law

The object referred to here is the perpetrator involved in the crime of *illegal fishing*, namely the perpetrator who is the mastermind of the activity. Particularly in this case are state administrators, law enforcement officers or civil servants who are not specifically regulated in the Law on Fisheries. The application of Article 56 paragraph (1) of the Criminal Code which qualifies perpetrators of criminal acts as people who commit, order to commit and those who participate in committing criminal acts can also be applied to *illegal fishing crimes* involving many parties. However, the criminal burden that must be borne jointly in the occurrence of *illegal fishing* crimes can also reduce the

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<sup>13</sup>Ridwan HR, *State Administrative Law*, Rajawali Press, Jakarta, 2013, p. 229.

<sup>14</sup> [http://www.jimly.com/makalah/namafile/56/Penegakan\\_Hukum.pdf](http://www.jimly.com/makalah/namafile/56/Penegakan_Hukum.pdf) accessed on 11 December 2022 at 10.47 WIB

<sup>15</sup>Soerjono, *Op. cit.*, p. 1.



sense of justice in society, because with the quality and consequences of actions that are not the same for the perpetrators who participate, they can be sentenced to the same maximum as the perpetrator according to the provisions of Article 56 paragraph (1) of the Criminal Code, while it turns out that the role of the main actors is difficult to find.<sup>16</sup>

b. Weak Coordination Between Law Enforcement

Weak coordination between law enforcement agencies can lead to overlapping authorities and policies for each, making it very prone to conflict of interest. Uncoordinated law enforcement is one of the obstacles in dealing with Illegal Fishing crimes. The judicial process, starting from investigation to trial, requires enormous costs, the legal process is very long, and the facilities/infrastructure are very adequate, requiring special expertise in handling the case. In one agency, of course, it does not have all the components, data/information or facilities and infrastructure needed in the context of law enforcement. Therefore, synergic coordination and cooperation is needed between agencies involved in law enforcement efforts against illegal *fishing*. In accordance with the Regulation of the Minister of Maritime Affairs and Fisheries Number PER/11/MEN/2006 concerning Amendments to the Ministerial Regulation Number PER/13/MEN/2005 concerning the Coordination Forum for Handling Crimes in the Fisheries Sector, namely in this case there are 10 (ten) related Agencies that are in one link in the eradication of *illegal fishing* which largely determines the law enforcement process for fisheries crimes, namely: the Ministry of Maritime Affairs and Fisheries, the Indonesian National Police, the TNI - Navy, the Attorney General's Office, the Ministry of Law and Human Rights, the Directorate General of Immigration, the Ministry of Transportation, the Directorate General of Sea Transportation, the Ministry of Finance, the Directorate General. Customs and Excise, Ministry of Manpower and Transmigration Directorate General of Labor Inspection, Supreme Court and Provincial/Regency/City Regional Governments. Coordination between these various agencies is critical to success in enforcing criminal law against *illegal fishing crimes* which are organized crimes that have very deep networks. ranging from illegal fishing, transshipment of fish in the middle of the sea to illegal export of fish.<sup>17</sup>

c. Lack of Insight and Integrity of Law Enforcers

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<sup>16</sup> Susanto Masita, *Op. cit*

<sup>17</sup> *Ibid*

One of the determining factors in law enforcement against illegal *fishing* is the insight and integrity of law enforcers, especially regarding mastery of material and formal law, this is due to the rapid development of an increasingly modern society, telecommunication and technology so that many new crimes have sprung up. with new and various types and modus operandi, including the crime of *illegal fishing*. The existence of developments in the type and modus operandi of a crime must be accompanied by an increase in insight and integrity of law enforcers so that they are not wrong in applying the law and can enforce the law as well as possible.<sup>18</sup>

#### 4. Conclusion

*Illegal Fishing* Crimes in Indonesian Waters is carried out in two ways, namely *preventive* law enforcement and *repressive* law enforcement. Reviewed with the theory of William J Chambliss and Robert B Seidmen. According to William J Chambliss and Robert B Seidmen that the formation of law and its enforcement will not be separated from influences outside the law, such as economic, political, cultural, educational and societal factors that are outside the process, in other words about what actions will be taken by implementing agencies as a response. to legal regulations and how the legislators will act is a function of the rules governing behavior, sanctions, the whole complex of social, political and other forces concerning them and the feedback that comes from the role holders and the bureaucracy. *Preventive* law enforcement is the initial action taken by authorized officials in preventing *illegal fishing crimes* such as carrying out police patrols, fishery supervisors and the navy, increasing legal awareness of fishermen. *Repressive* law enforcement is an act of law enforcement that is actually given to the perpetrators of the crime of *illegal fishing*, namely by giving punishment or sanctions that are judged according to the losses incurred and providing a deterrent effect for the perpetrators and an example for other communities and providing and taking strict action against the perpetrators of the crime. fishing crime in order to provide a deterrent effect and set an example for other people or parties. Law enforcement efforts against *illegal fishing* are in the form of sinking vessels used to commit criminal acts if they are caught red-handed in stealing fish, vessels that resist or

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<sup>18</sup> *Ibid*

try to escape are also carried out by drowning without having to wait for a court decision.

According to Soejono Soekanto, the factors that can influence law enforcement are the law itself, law enforcement, infrastructure and facilities, community, and culture. In this paper, it is studied with law enforcement theory, the inhibiting factors for law enforcement against illegal *fishing* are: law enforcement objects are difficult to penetrate by law, weak coordination between law enforcers, lack of knowledge and integrity of law enforcers.

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