

PREVENTION OF FISH SMUGGLING IN THE PROVINCE OF MALUKU: STUDY OF TRANSCENDENTAL SOCIOLOGICAL LAW

Muhammad Amin Hanafi^{1*}, Absori², Khudzaifah Dimiyati³, Natangsa Surbakti⁴, Arief Budiono⁵, Achmadi⁶

¹Faculty of Law, University of Khairun Ternate (email: aminhanafi76@gmail.com)

² Faculty of Law, Universitas Muhammadiyah Surakarta (email: absorisaroni@gmail.com)

³ Faculty of Law, Universitas Muhammadiyah Surakarta (email: kd255@ums.ac.id)

⁴ Faculty of Law, Universitas Muhammadiyah Surakarta (email: natangsa.surbakti@ums.ac.id)

⁵Faculty of Law, Universitas Muhammadiyah Ponorogo

⁶Faculty of Islamic Science, Universitas Muhammadiyah Palangka Raya (email: achmadiump@gmail.com)

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Abstract: Science and technology development has gradually grown destructive and exploitative towards natural resources. The principle of efficiency widens the gap between production and profit as applied in the crime of theft and fish smuggling. The state still suffers a massive amount of loss due to the ineffective law enforcement. A law without enforcement, is nothing but mere law on the table with zero power. Law enforcement within the sociological field proves that fish smuggling regulations are indeed effective to be applied as a law.

Keyword: prevention, fish smuggling, transcendental.

I. INTRODUCTION

The fishery crime committed by foreign fishermen in Maluku waters seems to be a considerable threat in law enforcement. Factually, the crime continues to increase, in the Maluku Province, specifically in areas which are directly adjacent to the territorial waters of neighboring countries such as the one in North Maluku Province which directly borders the Philippines. By exploiting fish, the foreign fishermen also conduct another threat to the marine environment by using explosives and cyanide. This form of practice is certainly against the principle of responsible fisheries governance or the Code of Conduct for Responsible Fisheries (CCRP). This phenomenon of Illegal, Unregulated and Unreported Fishing (IUU) has caused losses up to US\$25 billion per year, as stated by Kardono [1].

Essentially, the fishery crime differs from the other crimes. The difference lies in *Locus Delicti*—an area which has its own classification. The sea area of a country is classified into two parts, namely the sea or waters that become the territory of a country (inland waters), archipelagic waters and territorial sea, where the coastal/island state has sovereignty, as regulated in the Constitution No. 6 of 1996 regarding the Indonesian Maritime. Meanwhile, those which are not the territory of a country are the Additional Zone, Exclusive Economic Zone (EEZ), Continental Platform, free sea and deep seabed/area), as stated by Buntoro [2].

The two types of sea have different legal regimes, even with the enforcement and the current applied legal material. Preferably, in the Exclusive Economic Zone sea area, Indonesian law experiences restrictions or limitations. The enforcement is only limited to the marine resources in it as stated by Buntoro [3].

Law number 5 of 1983 concerning Indonesia's Exclusive Economic Zone (hereinafter referred to as the IEEZ Act) states that IEEZ act is an outer line which is bordering the seas throughout Indonesia, as stipulated under applicable laws concerning Indonesian waters which include the seabed, land and under, and water and above with an outer limit of 200 (two hundred) marine millers measured from the sea baseline of Indonesian territory. Sovereign rights, other rights, jurisdiction, and obligations as stated in Article 4 of the IEEZ Act. EEZ often

provokes controversy as it lies between the open sea and the territorial sea. Classification of the sea area will affect the regulation of state authority and institutions in carrying out law enforcement. Even with the authority to conduct an investigation of the Criminal Act as stated by Buntoro [4].

Conventionally, the Navy is the leading force in protecting the Indonesian seas. However, the navy is an armed force which will act strictly upon threat or attack to Indonesian Maritime Sovereignty albeit being granted the opposite in some other regulations. Nonetheless, due to the formulation of a criminal offense which is not listed in the KUHP (Criminal Code/*Kitab Undang-Undang Hukum Pidana*), criminal acts committed by foreigners such as not providing immigration documents would be treated differently as it's under the authority of the National Police and the Immigration Agency while fishery crimes are handled by the Navy. A problem may arise when one instance claims a case in which they are unauthorized as theirs. In investigating such cases, the selective policy immigration agency will carry out a deportation. If this kind of act is carried out, then the criminal act committed by foreigners would be invalid and no action may take place, occurring legal issues, as well in other similar cases.

Legally, illegal fishing alongside with other similar cases as mentioned above, may be classified as fishery crime as contained in Chapter XV Criminal Provisions Law Number 31 Year 2004 concerning fisheries under criminal qualification in few Articles and as a violation in some others. But if assessed based on the level and the amount of loss suffered by the state annually, thus as an illegal act, this crime may be classified as an economic crime), as stated by Lewerissa [5].

Law enforcement is a series of processes of seeking justice through law enforcement officials who work based on authority, in the name of noble values. Law enforcement is also an effort to preserve the legal justice values emitted to those who seek justice.

Hikmawanto stated that, traditionally, the legal institutions which carry out law enforcement are the police, prosecutors, judicial bodies and advocates. Apart from the mentioned above, there are also Customs and Excise Directorate General, Tax Directorate General, and Immigration Directorate General, said Juwono [6]. Fish theft is only a small part of Indonesian maritime issues, as being a major part of Indonesia by covering most of its areas, it should have been treasured more. Unfortunately, the fact states otherwise with the increasing number of fish theft cases, said Lewerissa [7].

Legislation will be effective upon a concrete and sociological realization in its application. Laws which are not implemented will only be law on the table, rules with no power. Thus, implementation is a key to an effective law. Legal acts important. Any decision by a legal authority, any implementation of the rule, or affirmation of law by the apparatus. A legal act has impact, when it is causally related to somebody's conduct. The legal act is said to be "effective" when behavior moves in the desired direction, when the subjects comply or obey. Many legal acts are not "effective" in this way. People ignore them or violate the command. Deliberate disobedience may be part of a system of behavior which does, however, take a legal act into account, because without any implementation law is just a book," said Friedman [8].

Satjipto Raharjo stated that the law has no power in a void, a supposedly liberated space which is free from the influence of non-legal factors. Thus, we need to be convergent towards science to allow legal scientists to exchange ideas, and to be open towards the change which occur each second. The world is *panta rhei*, moving non-stop, as Heraclitos said. We realize that law is not merely rule and logic, but also behavior. Therefore we should not only read and study texts and apply regulatory logic, but also need to explore the legal meaning, such as social meaning. Based on the background above, this study aims to figure out the sociological prevention of fish smuggling in the Province of Maluku.

II. RESEARCH METHODS

This study is based on legal research conducted with a qualitative non-doctrinal approach, as stated by Wignjosoebroto [9]. Because in this study, law is not only conceptualized as a whole principle and rule which governs human life in society, but also involves the institutions and processes which embody the validity of those rules in society. This research is conducted in the waters of Maluku Province, North Halmahera Regency, Central Halmahera Regency and South Halmahera Regency. Qualitative non-doctrinal methods are implemented to determine the nature of the laws and regulations relating to illegal fishing and fish smuggling in the Maluku province in a sociological manner.

Also, to find out how the law and provisions are implemented by law officers and how the community prevents the act of fish smuggling. The required data in this research will be collected in three ways, namely: through

interviews, observations, and literature studies, which are then processed to draw conclusions and provide suggestions or solutions for preventing fish smuggling in Maluku province.

III. DISCUSSION

Illegal Fishing practices which are internationally acknowledged as Illegal, Unreported and Unregulated, are among the phenomena which threaten marine fish resources and its environments. Therefore, FAO (Food and Agriculture Organization) formulates a program which may be applied by countries throughout the world regarding the management and development of fisheries which are orderly, responsible, and sustainable.

Through the International Plan of Action to Prevent, Deter, and Eliminate IUU or IPOA-IUU Fishing in 2011 which renewed The Code of Conduct for Responsible Fisheries in 1995, was considered less responsive. Indonesia is included within IPOA-IUU, which is a global action plan which seeks to prevent damages which endanger marine environment and resources, as stated by Sunyowati [10].

This policy was well accepted by many countries. For example by the Americans and Europeans who are working together to eradicate illegal fishing where economic factors play a role in their cooperation. They are supported by satellite-based vessel monitoring systems. This satellite may track ships which are suspected to commit illegal fishing, as stated by Polsenberg [11]. Indonesia has yet to have the latest marine law enforcement tools with such specifications which might be considered an obstacle in eradicating fish smuggling or illegal fishing. Meanwhile, sociologically, the legal personnel with overlapping authority and are not supported by adequate equipment, adds to the difficulty in implementing such acts, and how the community acknowledges the existing water resources utilization.

Prevention of smuggling works well in achieving its goals if all elements support and complement each other. This implementation is carried out by the criminal justice system consisting of police (investigators), prosecutors, judges (courts) as a legal structure, and involves legal culture and legal substance (legislation). As a system, between sub-systems in the legal system, each of them is considered as an adjacent vessel tube. Should one of the vessels be dirty, it will affect the others.

Thus in this dissertation, the author uses Lawrence Friedman theory as a general or grand theory which is expected to provide direction to improve the existing legal system. Also, there has been a substantial loss for the fishermen, indicating that there has to be any systematic prevention effort in improving regulations. First, reforming in the field of legal devices (Legal Substance). Second, revamping legal institutions (Legal Structure) whose elements include increasing the capacity of law enforcement. Third, the improvement of work ethic and patterns, attitudes, orientation and perception (Legal Culture) of the legal apparatus and community. Handling the fisheries criminal acts, as a part of the law enforcement system, may only be conducted accordingly should the three components above be supporting each other.

By investigating the indicators which cause an overlapping authority in prosecuting the perpetrators of fish theft. Generally, as it is committed by foreign fishermen (foreigners), should they have neither passport nor a permit, it will then be considered as a violation of trespassing the state territorial—which is under the authority of the Navy. Secondly, an overlapping authority upon a fish theft committed by a foreigner with permit or passport should be taken care by the Immigration department as it is considered as an Immigration Law violation; and third, an overlapping authority in prosecuting the fish theft perpetrators which is generally committed by foreign fishermen (foreigners). Because the perpetrators are foreigners, should they have permit and passport, it will then be considered as a Fisheries Act violation if the load exceeds the maximum limit specified within the Law for foreign fishermen, of which should be taken care by the police and the ministry of fisheries.

In addition, actions taken by the ministry with the support of both the Navy and the police by sinking foreign fishing vessels, are inefficient and tend to be unfavorable to the country's economy related to the availability of the fish resources. Where factually, there are some omissions of ships with large cargo, and only relatively small foreign fishing vessels are sunk instead. As a result, fish theft still occurs under the same procedures or even attracts relatively larger ships. Fish theft carried out by using nets, ships and other equipment whose quantity of catches exceeding the local fishermen, will be inefficient as those fishes are supposed to be confiscated and inspected. Should they still be in good condition and/or edible, it could be sold both through factory packaging and such, with an average rate to avoid bringing down the market share of local fishermen, as mentioned by Freire [12].

Through the results of the analysis and evaluation of the Navy's Fisheries and Navy Service on all fishing vessels which violates the Fisheries Law No. 31 of 2004, there are 13 modes of IUU Fishing in the waters of Maluku province including:

- 1) Falsification of vessel registration documents.
- 2) Double flagging and double register.
- 3) Catching fish without a permit/service documents (SLO (Commissioning Certificate/*Surat Laik Operasi*) and SPB (Payment Agreement/*Surat Perjanjian Bayar*)).
- 4) Illegal ship modification (mark down, changing call sign and machine).
- 5) Using foreign captain and crew.
- 6) Not activating vessel monitoring transmitters (VMS (Vessel Monitoring System) and AIS (Automatic Identification System)).
- 7) Illegal transshipment.
- 8) Logbook data falsification.
- 9) Breach of fishing lanes.
- 10) The use of fishing gear which is prohibited internationally.
- 11) Does not own or partnering with a fish processing unit.
- 12) Does not unload the fish catch in the port specified in the permit.
- 13) Bribing a law personnel who is dishonest in carrying out their duties as law enforcers.

According to Jurian Runtukahu, there are at least 8 (eight) government agencies which are granted the authority in the sea territory according to each legislation as the following: TNI AL (the Indonesian National Navy/*Tentara Nasional Indonesia Angkatan Laut*), POLRI (the Indonesian National Police/*Kepolisian Negara Republik Indonesia*), PPNS KKP (Ministry of Maritime Affairs and Fisheries Civil Servant Investigators/*Penyidik Pegawai Negeri Sipil Kementerian Kelautan dan Perikanan*), PPNS Kemenhub (Ministry of Transportations Civil Servant Investigators/*Penyidik Pegawai Negeri Sipil Kementerian Perhubungan*), PPNS Bea Cukai (Customs Civil Servant Investigators/*Penyidik Pegawai Negeri Sipil Bea Cukai*), PPNS Imigrasi (Immigration Civil Servant Investigator/*Penyidik Pegawai Negeri Sipil Imigrasi*), PPNS LH (Ministry of Environment Civil Servant Investigators/*Penyidik Pegawai Negeri Sipil Kementerian Lingkungan Hidup*) and PPNS Kemenhut (Ministry of Forestry Civil Servant Investigators/*Penyidik Pegawai Negeri Sipil Kementerian Kehutanan*).

Out of the above mentioned eight law enforcers, Illegal Fishing Crimes tends to be handled by three agencies: the TNI, specifically the Navy, the Police, specifically the Water Police, and PPNS which includes police officers and civil servant investigators who are granted special authority by law. Law Enforcement Elements involved in Fish Justice Law which have the authority to investigate and prosecute fisheries crime in Indonesia.

The existence of the three institutions in handling Illegal Fishing, does not only cause overlapping policies but also the implementation of *selective cutting* in law enforcement. In the context of Illegal Fishing, a provocation roots from the capitalism and greed which triggered Illegal Fishing is visible. Based on a preliminary study on the effectiveness of the law in prosecuting Illegal Fishing perpetrators, rather crucial problem occurred, as a result from the action of the authorities who tend to release large fishing vessels and submerge the smaller vessels instead. Legal behavior is only responsive to demands from an upper-middle social class rather than lower-middle social class. Downward law is greater than upward, meaning that groups with higher social stratification will be more likely to win the lawsuit, while the poor will experience various obstacles arising from the law itself, said Black [13].

Arman Naim, head of fisheries supervision in North Maluku Province, said that the biggest problem in the enforcement of Illegal Fishing is a monitoring act which is prone to *cook the books* or *wet one's beak* (personal communication, April 1st, 2019). Naim did not hesitate to say that supervision was difficult as they were opposing the Fishery Mafia.

The weaknesses of law enforcements in monitoring, complemented by the existence of a command system that makes law enforcement centralized. Law enforcement in command mode allows law enforcers who are in lower ranks to obey law enforcement officers with higher ranks, regardless of the order. If the Mafia has 'controlled' a law enforcer with the highest rank, it would be easier for them to control the other law enforcers with lower ranks.

Another systemic problem is the limited authority of the Fisheries Service Employees to take action. Jainuddin (personal communication, May 16th, 2019) stated that the limited authority was caused by Law No. 23 of 2014 concerning Regional Government which made the authority move to the province. The authority referred to is the enforcement authority based on reports from the district.

The Mafia which has been told by Arman Naim would be tough to eradicate as they use Ali Baba Model. Ali Baba model is an economic program initiated by Ali Sastroamidjoyo during the Guided Democracy era which allowed foreign companies to own companies in Indonesia by owning shares in these companies. The ‘Ali’ in question is a local company, while the ‘Baba’ is a foreign company which was once majorly owned by China. According to Arman, the company ‘Ali’ is in the Philippines, and ‘Baba’ is in Bitung. After catching fish and gathering in Bitung, the fish are then brought to the company in the Philippines (personal communication, April 1st, 2019).

The following is a table of the amount of Illegal Fishing cases in the Ternate District Court from 2013 - 2017:

Tabel 1. Amount of Illegal Fishing Crimes in Ternate Public Court

Year	Amount of Crimes	Details	Violation
2013	15	Foreign fishermen (Philippines)	The types of violations committed in general are as follows: 1. Catching/fishing in Indonesian waters without permission 2. Catching fish using anesthesia 3. Catching fish using trawlers 4. Using a homemade Kratingdaeng bottle bomb
2014	5	Mixture of local fishermen and Filipino foreign ship owners	
2015	5	Local fishermen	
2016	5	Filipino fishermen	
2017	5	Local Fishermen	
Total	35		

Respondents whom the researchers met, 39 people stated that law enforcement officers--in this case the police, took action. And 12 people said they did nothing to the perpetrators of Illegal Fishing. With the same data, the actions taken by the authorities according to 6 respondents is being fined on the spot, 39 respondents said the perpetrators were arrested, and 5 respondents stated that fish thieves were not captured. The following is a table of the number of actions taken by the authorities:

In other word, the people witness the arrest of 40 cases, but there are 6 cases of fines penalty and 5 cases of release. If this number is compared with the data available from Fisheries PPNS base, it will show big difference. In which, Polairud data only provides around 28 arrest of fisheries criminal cases and 35 Fisheries PPNS cases. Regarding the data released by the District Court of Ternate regarding Illegal Fishing throughout 2013, there are 15 cases and they are committed mostly by foreign fishermen. In 2014, there are 5 cases committed by Local and Foreign Fishermen.

This data difference is a pretty ironic finding to law enforcement. The findings of asynchronous data, the overlapping authority between agencies are major obstacle to law enforcement of fish smuggling. Based on these data, it is evident that there are 5 cases, in which the arrest is issued but these cases do not reach the Fisheries PPNS and the Court. In addition, there are 6 cases of fisheries crime which have been fined on the spot and then released without definite legal basis. This report is certainly a negative value and portrays the poor law enforcement in Indonesia. An interview with Judge Sugianur confirms the suspicion that when a case reaches court, it is rare to acquire Acquittal Decision. If someone receive Acquittal Decision, according to him, it means that the case has not yet reach the court. In other word, there is practice of out of court settlement by irresponsible officials (personal communication with Sugianur S.H., The Judge of the District Court of Ternate. Friday, June 7, 2019).

Law Enforcer is an important factor in law enforcement. The practice of out of court settlement always keeps a dilemma. Even though it is considered faster (due to mediation, for example), it is prone to bribery and Corruption, Collusion, and Nepotism practices due to lack of willingness to enforce law, also due to lack of supervision.

Legal culture is the value and the will of the people at the time the law is enacted. In this study, the scope of legal culture is the people preference in solving illegal fishing. The preference referred includes the actions taken by the people in case there is illegal fishing committed by a foreign party. In general, law enforcement is based on the values of legal certainty and is far different from the people expectation to have justice-based law. Based on the table above, the number of respondents is 51 people who witnessed the authorities' action against the fishery criminal perpetrators. The action taken by the Authorities by sinking the Foreign Ship is approved by 38 respondents who met the researcher and agreed with such actions. The other 6 respondents stated disagree, while 7 respondents have other options, which state that it is better to confiscate the ships and manage them ourselves. A respondent named Iswanto Abuwahid, also stated that it would be better if the foreign ship is donated to fishermen.

IV. CONCLUSION

Illegal fishing is one phenomena showing us that the people is in conditions that make them break the law to support themselves. The people hopes that law enforcement for fish smuggling will be firmly enforced. They agree if the sanctions are more stringent for fish smugglers, especially those with foreign nationalities, while those with Indonesian nationality receive lighter sanction.

Some legal measures are ineffective when the culprit is a fish mafia called Ali Baba. The people hopes that the fish mafia is eradicated because it is corrupting the marine and waters law. Persons who receive bribes or anything from the mafia should be sanctioned, then the law will be upheld. Law enforcement equipment must be updated with sophisticated equipment and vessels, also the latest communication tools and weapons in order to crack down on fish smugglers who also use the latest technology.

The regulation is considered good and it is expected to produce a deterrent effect for Illegal Fishing perpetrators, which are generally committed by foreign fishermen, and at the same time to remove legal sanctions for domestic fishermen in order to facilitate the people welfare. Therefore, the concept of justice that should be carried out by law enforcement officials is the concept of justice needed to prosper the people, not to harm one another, as stated by Syamsuddin [14].

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