

# Criminal Responsibilities of Corporation in Criminal Law System of Illegal Fishing in Indonesia

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## ABSTRACT

The Fisheries Law has provided a new understanding of the law enforcement process in the field of illegal fishing. How the criminal law policy in overcoming the crime of illegal fishing and how the law enforcement processes in the case of illegal fishing are the research objectives of this study. The method of this study is a normative juridical method. Provisions of Law No. 31 of 2004, Law No. 45 of 2009 about fisheries do not impose criminal liability on corporations nor do they distinguish criminal sanctions between "individuals" and "corporations". If illegal fishing is carried out by a corporation, the criminal sanctions will be imposed on the management and the penalty only will be added to one third of the sentence imposed. Indonesia adheres to a common law system, namely the Anglo-Saxon legal system, which is a legal system based on jurisprudence. In the case of corporate criminal liability as administrator, the punishment is not comparable to the effects of the committed crimes. Therefore, government must pay attention to the law enforcement and development of infrastructure to support the safety of economic development in the fisheries and marine sector.

**Keywords:** *common law, criminal responsibilities of corporation, illegal fishing*

## 1. INTRODUCTION

Indonesia is the largest archipelago country in the world with about 5.8 million km<sup>2</sup> marine area which has a very large diversity of marine and fisheries resources. The Maximum Sustainable Yield (MSY) in Indonesian marine areas is 6.5 million tons per year, with the amount of allowable catch of 5.2 million tons / year (80% of MSY). Then, the large potential fishing area around 54 million Ha, which includes lakes, reservoirs, rivers, swamps, and other standing water, estimated at 0.9 million tons of fish / year. Meanwhile, in aquaculture, the potential is a. marine aquaculture which is around 8.3 million Ha (consisting of 20% fish farming, 10% seashell farming, 60% seaweed farming, and 10% others), b. brackish water aquaculture or ponds of 1.3 million Ha, and c. 2.2 million Ha of freshwater aquaculture consisting of 526.40 thousand Ha of ponds, 158.2 thousand Ha of public waters (lakes, reservoirs, rivers and swamps) and 1.55 million Ha rice fields for intercropping rice and fish. Based on FAO data (2014), in 2012 Indonesia ranked 2<sup>th</sup> for capture fisheries production and ranked 4<sup>th</sup> for aquaculture production in the world. This fact can provide an illustration that Indonesian fisheries potential is very large, so if it is managed properly and responsibly, it can be sustainable and it can be one of the main sources of capital development [1].

One of the activities causing a huge loss for Indonesia today is illegal fishing. Beside it is against the law, fishing activities in this way also affect fish stocks and cause habitat damage. Illegal fishing are carried out

with technologies that are not environmentally friendly. In fact, it is not a small financial loss for the country. According to the Minister of Marine Affairs and Fisheries, Susi Pujiastuti, the value of losses due to illegal fishing reached up to 2.000 trillion rupiahs [2].

Illegal fishing activities show the lack of supervision and law enforcement. The existing legal process has only touched the crew members without trying to uncover the true mastermind or the organization of the activity. There have been many legislative products issued by the government to regulate fisheries issues from act and regulation to ministerial instructions. it is expected that all those will minimize crime in the fisheries sector and maximize the use and protection of marine resources. However, the resulting legislative products have not been able to minimize illegal fishing because the legal product have not yet put the corporation as the real culprit. The problem of this research is how to overcome illegal fishing committed by corporations through the legal system approach?

## 2. Methods

The method used in this research is normative juridical by analyzing legal materials through literature study [3]. The analysis is intended based on the description; the facts obtained will be conducted carefully to answer the problem. This research analyzes the factors that lead to the development of the law on illegal fishing by corporations through considering the existing legal

in Indonesia with the advancement of era and human civilization.

### 3. DISCUSSION AND RESULT

Several types of crimes in fisheries (IUU Fishing: Illegal, Unregulated, Unreported Fishing) can be divided into:<sup>[4]</sup>

- 1) Illegal Fishing, it is illegal fishing activities in the territorial waters or in ZEE (Exclusive Economic Zone) of a country with no permit from the state;
- 2) Unregulated Fishing, it is a fishing activity in the territorial waters or in ZEE (Exclusive Economic Zone) of a country that does not comply with applicable regulations in the country;
- 3) Unreported Fishing, it is a fishing activity in the territorial waters or ZEE (Exclusive Economic Zone) of a country that is not reported both in terms of its operations and ship data and catches.

Illegal fishing cases that occur in Indonesia jurisdiction generally involve perpetrators who have more than one nationality. In fact, in the 70<sup>th</sup> General Court of the United Nations discussed about the connection of illegal fishing with Trans Organize Crime (TOC) or organized transnational crime <sup>[5]</sup>. In TOC, illegal fishing can be positioned as a post of the organization that has planned and arranged the steps to commit a crime which is covered by conducting fishing in the sea. Until now, Indonesian legal instruments only encompass the crews and shipmen personally. The punishment for illegal fishing has not touched the real culprit the organization or corporation.

One form of prevention and law enforcement efforts undertaken by the government against illegal fishing perpetrators is the enactment of Regulation No. 31 of 2004 which was later amended by regulation No. 45 of 2009 concerning fisheries and the latest legal regulation presidential regulation No. 115 of 2015 concerning illegal fishing eradication task force. Both of these legal instruments have important meaning in law enforcement efforts and safeguarding the sea from foreign parties. This government policy also has a positive strategic value and this becomes the basis for law enforcement and fisheries judges in deciding legal issues related to the illegal fishing crime that has large impact on the country finances and economy <sup>[6]</sup>.

Article 101 of Regulation No. 31 of 2004 and its amendments states that: *"In the case of a fishery crime committed by a corporation, criminal charges and sanctions are imposed on its management and the fine is added to one-third of the criminal provided."* Therefore, even though corporations are recognized as perpetrators of crime, they cannot be held liable for criminal liability. Such an arrangement will cause many weaknesses that is to be not comparable between the penalty and the impact or the loss. In addition, criminal imprisonments to corporate management are also not sufficient to provide guarantees that the corporation will not take similar actions in the future. In reality, many corporations also take cover

behind the dummy companies they deliberately build to protect their central corporation <sup>[7]</sup>. This shows that the normative aspect of law enforcement is still fragile. Criminal imprisonment will be more effective if the corporation and its management as a container and tool are frozen, therefore, the people in the company will automatically disband.

National government policies must also synergize with internationally agreed provisions. Indonesia as a country that has ratified UNCLOS (United Nations Convention in the Law of the Sea) has the authority and sovereignty to enforce laws relating to domestic interests in territorial waters bordering other countries. In the effort to enforce the law, Indonesia must harmonize national legal provisions with international legal provisions. Based on article 73 paragraph (4) of UNCLOS 1982, when a foreign ship is arrested or detained, the coast state must immediately notify the flag state, through the appropriate route, about the actions that should be taken and regarding any punishment <sup>[8]</sup>.

In terms of investigating corporations as the main perpetrators of illegal fishing, it is not an easy thing. The corporate state government involved will surely protect it. The problem of illegal fishing, specifically related to law enforcement and normatively juridical, must be resolved immediately. As a serious crime, illegal fishing is clearly detrimental to Indonesia in various ways. In this case, the Government needs to protect fishermen against the perpetrators of illegal fishing so that export and import activities will continue to increase in Indonesia. A system approach is needed to changes regulations, so the results can benefit the community, especially fishermen in Indonesia.

The system is an organized and complex entity. A set or combination of things or parts that make up a complex entity. There are connected components and have their e functions connected to a system according to a pattern. In a good system, there cannot be a conflict between parts. In addition, duplications or overlaps between these parts may not occur. A system contains several principles that guide the formation.

Law is a system which means a regular arrangement or order of the rules of life, the whole consists of parts related to one another. It can be concluded that the legal system is a unified whole of orders consisting of parts or elements which are interrelated and closely related. To achieve a unitary goal, collaboration between parts or elements according to certain plans and patterns is needed. The Indonesian legal system has its own characteristics based on Pancasila. Pancasila is a reflection of Indonesian people's culture. Pancasila is the soul of the Indonesian people. For this reason, Indonesia has its own system of law, namely Pancasila legal system. Related to this, according to Moh. Mahfud MD the Pancasila legal system is a prismatic legal system. It is a combination concept of good things from all existing systems <sup>[9]</sup>.

The legal system has both positive and negative aspects. The positive aspect is that almost all aspects of community life and disputes that occur have been provided

the regulation / written law; therefore, cases that arise can be resolved easily. In addition, the availability of various types of written law will guarantee legal certainty in the resolution process. While the negative side, there are many cases, which arise as a result of the progress of time and human civilization, are not available in the law. Therefore, this case cannot be resolved in court. The written law will one day be out of date because of its static nature. Therefore, this legal system does not become dynamic and its application tends to be rigid because the judge's duty is only as a legal tool. Judges are like servants of the law who do not have the authority to interpret in order to obtain the true value of justice [10].

Regulation No. 31 of 2004 and its amendments do not seem able to effectively ensnare corporations that conducted illegal fishing. The issuance of Presidential Regulation No. 115 of 2015 concerning the eradication task force of illegal fishing is a new breakthrough. The government is aware that with the damage and losses incurred by illegal fishing, collaboration between many parties is needed which will then become part of a legal system. In this presidential regulation, it appears the legal politics understand illegal fishing is an acute problems which requires cooperation and coordination between ministries, state institutions and other agencies. As stressed in the preamble, letter (d): *"That the eradication of illegal fishing requires extraordinary law enforcement efforts that integrate power between government agencies with appropriate strategies, utilizing the latest technology in order to run effectively and efficiently, capable of producing deterrent effects, and able to recover state losses "*. In this case, the collaboration is among the Ministry of Maritime Affairs and Fisheries, Ministry of Finance, Ministry of Foreign Affairs, Ministry of Transportation, Indonesian Navy (TNI AL), Indonesian National Police (Polri), Attorney General Office of Indonesia (Kejagung RI), Charity Bank, Indonesian Financial Transaction Reports and Analysis Center (PPATK) and National Intelligence Agency (BIN).

In the case handling, the Supreme Court issued PERMA (Supreme Court Regulation) No. 13 of 2016 regulates the procedures for handling corporations' criminal cases. Supreme Court Regulations function is to regulate when a corporation is suspected of committing a crime. Then law enforcement requires legal liability to someone who is recorded on the corporation deed as a corporate administrator [11]. With the issuance of PERMA No. 13 of 2016, it is expected that illegal fishing by corporations can be punished. The sentence is expected to be able to trap illegal fishing criminals, especially corporations because they are subject to significant fines. If law enforcement is carried out, it is expected the fish production to increase and will increase revenue for Indonesia.

In addition to cooperation between institutions and the application of PERMA, a firm legal basis must also be built with a multi-door approach between Laws, such as the Limited Corporation Law, the Exclusive Economic Zone Law, the Taxation Law, the Book of Criminal Law,

UNCLOS and the authorities can help to uncover companies or organizations that can be held liable for crimes so that state losses can be compensated. The government action to sink and or burn foreign ships is currently only a decisive step to eradicate illegal fishing, but the loss cannot be overcome.

#### 4. CONCLUSION

This study concludes the legal system in Indonesia adheres to the Continental European legal system, Customary Law and Islamic Law. Related to the legal system that has positive and negative aspects, cases also arise as a result of the advancement of time and human civilization. Therefore, laws are not available especially in the field of illegal fishing committed by corporations. To increase regional income, the fisheries sector is a significant contributor to regional income. Illegal fishing is a problem that must be faced by the government in the fisheries sector. The government acts decisively against the perpetrators of illegal fishing by ratifying the United Nations Convention on the Law of the Sea (UNCLOS 1982). Followed by issuing and Regulation No. 31 of 2004 and Regulation No. 45 of 2009 concerning Criminal Acts of illegal fishing. The judiciary also supports the issuance of Supreme Court Regulation (PERMA) No. 13 of 2016 for Criminal Corruption, especially for corporations that carry out illegal fishing. With the support of law enforcement, the performance of the fisheries sector will be maximal and be able to provide significant income for Indonesia.. The Indonesian government is also expected to be able to implement law enforcement in the fisheries sector as an effort to carry out UNCLOS 1982 in the international world. As complement, The government must pay attention to the maintenance and development of infrastructure to support the economic development of the fisheries and marine sector

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