

The Nature of Law Enforcement on Fishery Crimes in the Legal Territory of the South Sulawesi Regional Police

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ABSTRACT

This research was conducted to analyze the nature of law enforcement on fisheries crime by law enforcement officers of the Indonesian National Police. This study uses a normative and empirical approach. This research was conducted at the Directorate of Marine Police of the South Sulawesi Regional Police regarding the handling of fisheries crimes that occurred in the South Sulawesi Regional Police's waters. The results of the study indicate that the essence of law enforcement on fisheries crime by law enforcers of the Indonesian National Police is that fisheries crime is a genus of illegal activities that occur in fisheries management.

KEYWORDS: Law Enforcement; Fishery; Investigation

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I. INTRODUCTION

Indonesia is a legal and maritime state consisting of an ocean that is wider than the land. Geographically, spacious Negara Indonesia reached 7.7 million km² comprising a land area of 1.9 million km² and the sea area of 5.8 million km² where the ocean is divided into the broad territorial sea which has reached 3.1 million km² and The Indonesian Exclusive Economic Zone has an area of 2.7 km² and has a coastline of 95,181 km².^[1]

Indonesia is known as the largest archipelagic country in the world because it has 17,499 islands, of which 13,466 named islands and 4,033 unnamed islands. Indonesia, which is an archipelagic country, is known as the Archipelago State. Archipelagic State (English: "archipelagic State) is the result of the decision of the United Nations Convention on the Law of the Sea which means a State consisting entirely of one large group or more islands and may include other islands, in Chapter IV of this Convention also determines that a group of islands means a group of islands including parts of the island, the waters between the group of islands and other natural features that are so closely related to each other that the group of islands, waters and other natural features constitute a geographical unit. and essential politics, or historically have been considered as a single unit, thus the territory of an archipelagic State can draw a straight archipelagic baseline/base connecting the outermost points of the islands and the outermost dry coral reefs of this archipelago^[2]. Indonesia itself is a country consisting of many islands where the sea, air, and land are one archipelago as an ideological insight into the Unitary State of the Republic of Indonesia (NKRI) which is the will of history and is guaranteed by the International Law of the Sea. Two-thirds of Indonesia's area is ocean and water as a source of life fortifies thousands of islands from Sabang to Merauke.

The potential of fish resources in Indonesia can be utilized by all citizens. However, its utilization and management must always be rational to maintain sustainability, and for that, it is regulated through fishery business licensing. Licensing is intended to control as well as foster fishery business which in turn will create a conducive and sustainable business climate^[3]. Because Indonesia has a large ocean area, it requires great supervision and protection to maintain the sustainability and sustainability of the ecosystems in the waters. This includes guarding against illegal actions carried out by a group of people who are not responsible for stealing and destroying the entire ecosystem under the sea. Be it fish, coral reefs, and various other types of creatures in it. Therefore, legal regulation is needed to protect these marine natural resources.

The state does not prohibit people from taking and utilizing any resources in the sea as long as they are not protected animals and biota and do not damage their ecosystems because the state is here to realize social welfare and peace, but there must be controls and rules made so that these community activities do not harm other people or the State itself.

In the context of fisheries law, utilizing fish resources is the right of every citizen, as regulated in the 1945 Constitution Article 27 paragraph (2) which states that every citizen has the right to work and a decent living for humanity. and based on Article 33 paragraph 3 of the 1945 Constitution that the Earth, water and natural resources are used as much as possible for the prosperity of the people.^[4] So the people have the right to use and utilize existing resources. But in its use and utilization, it must be following existing procedures and procedures. Indonesia is a state of law, so if someone commits a crime and violates the existing legal order, the State will punish and punish according to the applicable rules.

In this case, law enforcement officers, namely the TNI/POLRI and all related communities and stakeholders support to help maintain the security of the waters/marine areas so that the ecosystem survives and remains sustainable. As for examples of *illegal fishing* or fisheries crime that often occurs in the territorial waters of the Republic of Indonesia, namely theft of fish by foreign nationals, the use of fishing gear that can damage the underwater ecosystem such as the use of centring nets, tiger trawls, fish bombs and fish anaesthetics (*potassium cyanide*) and even in the form of complete fishing documents or fishing permits.

Illegal fishing or fisheries crime is a classic problem that is often faced by countries that have many beaches because this problem has existed for a long time. However, until now the problem of illegal fishing still cannot be eradicated.^[5] This is because it is difficult to monitor a large sea area and many islands at the same time.

The wealth of abundant marine resources makes some fishermen want to catch fish in large quantities through *destructive fishing*.^[6] Several destructive fishing practices include the use of trawls, the use of fish bombs (*dynamite fishing*) and the use of chemicals (anaesthesia). The use of fish bombs and chemicals can deplete fish populations and can damage the surrounding ecosystem (coral reefs) and can also endanger the safety of fishermen. This destructive fishing activity threatens 88% of Southeast Asia's coral reefs, especially in Indonesian waters.

The occurrence of damage to nature or the environment is the result of human actions, even though humans are given the responsibility or mandate by Allah as caliph on this earth. Humans have creative power and initiative, while other creatures do not have it. Human culture is increasingly advancing following the development and progress of science and technology. In line with these advances, the development of weapons and tools for environmental destruction is advancing and growing, environmental damage is exacerbated by the number of tankers carrying oil often leaking so that seawater (even up to rivers) becomes toxic and polluted as a result, interfering with human activities. also causes the contamination or death of fish or another marine biota, more powerful than those above the bombing of fish and other chemical weapons. prolonged.^[7]

Indonesia's coral reefs are the basis for the economic and social structure of the region but are in critical condition. To manage coral reefs requires the implementation of a management plan that combines the collection of basic data on coral reef status, results of continuous monitoring, implementation strategies, and adaptive management. As each location is different, a broad-scale strategy may be needed to better manage resources. Effective management will require quality human resources and financial support.

Since much of the pressure on coral reefs stems from social and economic problems, management must also look at other aspects. Efforts that need to be emphasized are poverty alleviation, alternative livelihoods, improved governance, and increased public awareness of the value of coral reefs and fisheries and the threats they face. If well informed and appropriately funded, local governments, NGOs, village elders, and key segments of the tourism industry, can become successful custodians of coastal resources.

In South Sulawesi, damage to coral reefs due to fish bombs also occurred. Currently, coral reefs in South Sulawesi have been damaged by fish bombs and fish and nets. This way of fishing has damaged the ecosystems below the sea surface, including coral reefs. Not only the coral reefs are damaged, but millions of unique marine biota species can be threatened due to the bombing of the fish and the anaesthesia of these fish. Fish bombs are usually made of Ammonium nitrate, and kerosene fused with a fire wick as well as a detonator that is put in bottles ranging from supplement drink bottles, and liquor bottles and even in cans of one to five litres. Each bottle and jerry can weigh approximately half to five kilograms. Each bottle of this bomb has different specifications. Bomb bottles made from supplement drinks are generally used to bomb fish in small quantities ranging from 1–5 quintals of fish. Meanwhile, bomb bottles made from used glass bottles were used to bomb fish in large quantities up to tons. One bomb the size of a supplement drink bottle is capable of killing fish up to a radius of 15 meters from the bombing point, while one the size of a drink bottle has a radius of 50 meters from the bombing point.

With more and more destructive fishing, coral reefs that are in a declining condition will lose value as they become less productive. A healthy coral reef can produce an average of 20 tons of fish per year. The yield of a coral reef damaged by destructive fishing is only 5 tons per year. Although only partially damaged, coral reefs were not able to recover to productivity levels. Not only fish bombing can damage coral reefs, but the use of chemicals can also cause corals to die and the massive and immeasurable use of nets has resulted in the living creatures under the sea being threatened with extinction and destroyed. Fishermen carry out bombing activities

at sea that cause damage to coral reefs just because they want to get as many fish catches as possible without thinking about the consequences of their actions.

II. RESEARCH METHODS

In conducting this research, the author uses normative legal research methods and empirical legal research methods. This research was conducted at the Directorate of Marine Police of the South Sulawesi Regional Police regarding the handling of fisheries crimes that occurred in the South Sulawesi Regional Police's waters. The reason the author chose the research location is that in the waters of South Sulawesi in the last 3 (three) years the number of cases of fisheries crime has increased.

III. RESEARCH RESULTS & DISCUSSION

The nature of law enforcement on fisheries crime by law enforcers of the Indonesian National Police

The ocean is the largest body of water that covers the earth's surface. Even the oceans occupy 70% of the earth's surface. These water bodies store most of the needs of living things, especially humans. Starting from the need for food which is a basic need for humans and other living things, energy needs such as oil and waves, jewellery and various other basic materials. Therefore the sea becomes an important part in supporting human survival. The Qur'an which is a guide for human life has given its message to use the sea for the needs of human life.

About this verse, Indonesia as an archipelagic country most of which is in the form of waters has a very large and diverse fishery potential. The potential for fisheries is an economic potential that can be utilized for the future of the nation, as the backbone of national development. Optimal utilization is directed at the utilization of fish resources by taking into account the existing carrying capacity and its sustainability to improve people's welfare, improve the standard of living of small fishermen and small fish cultivators, increase state foreign exchange earnings, provide expansion and employment opportunities, increase productivity, added value and competitiveness of fishery products and ensure the sustainability of fish resources, fish cultivation land and spatial planning. In other words, the utilization of marine and fishery resources must be able to realize justice and equity.

The fisheries business is very diverse, starting from the business of catching fish, cultivating fish, including various activities, such as storing, refrigerating or preserving it, for commercial purposes that generate income and profit for humans. The fishing business is carried out in free waters, in the sense that it is not currently being cultivated, namely in the sea and public waters (rivers, lakes, reservoirs, swamps and the like), by using fishing gear. Fish farming is an activity to maintain/raise fish, including hatching or breeding fish to produce seeds and harvest the results.

From the fishery business, one of the things that are expected is to obtain very high business profits, this can have an unfavourable impact on the sustainability of fish resources and business sustainability. Fish resources with biological properties and a favourable environment do have "*renewable resources*", although this does not mean that they are unlimited. If humans exploit fish resources arbitrarily and contrary to the principles of rational resource management, a fishery business can't run sustainably, it may even stop halfway because the source is damaged or depleted. In this connection, it is necessary to think about how to anticipate so that the fishery business can run sustainably and become a profitable business, namely by making arrangements so that it becomes more useful for mankind.

The Unitary State of the Republic of Indonesia as referred to in the 1945 Constitution of the Republic of Indonesia has sovereignty and jurisdiction over Indonesian territorial waters, as well as the authority to establish provisions regarding the use of fish resources, both for fishing and fish farming activities while at the same time increasing prosperity and justice to maximum utilization for the interest of the nation and the state while still taking into account the principle of preservation of fish resources and the environment as well as the sustainability of national fishery development. Indonesia most of the territory consists of water and contains fish resources are very high levels of fertility and is a gift of God Almighty that since the first used by the people of Indonesia are from generation to generation.

In addition, the wealth of fish resources are natural resources including In the provisions of Article 33 of the 1945 Constitution, it is stated that the earth and water and the wealth 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 natural resources, particularly fisheries. Controlling the use of fish resources needs to be done so that there is no competition of interests that will negatively affect the damage to fish resources, even more broadly, it will likely cause social vulnerability and in the end, it could lead to socio-cultural vulnerability in the area.^[8]

Indonesia is located at a position of 40⁰ East Longitude-141⁰ East Longitude and 6⁰ North Latitude-11⁰ South Latitude, located between the Pacific Ocean and the Indian Ocean, and between the Asian Continent and the Australian Continent, and is located on three active plates, namely the Indo Australia, Eurasia and Pacific. As

the largest archipelagic country in the world, Indonesia has about 5.8 million km², with a land area of 1,860,359.67 km². Indonesia's sea area can be broken down as follows:^[9]

Table 1^[10]
Indonesian Sea Area

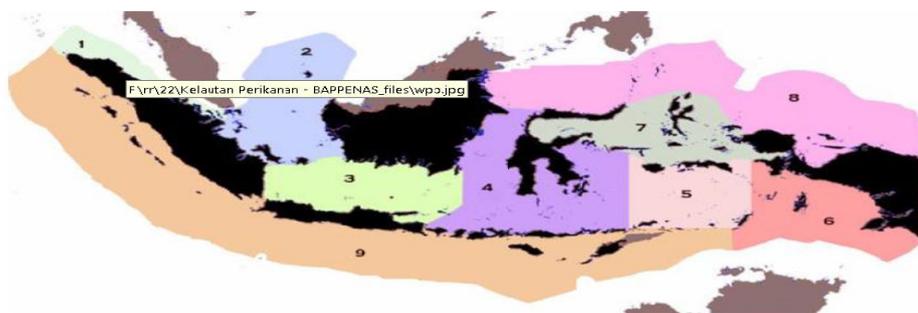
No	Water	Area (km ²)
1	Archipelagic Waters/Archipelagic Sea	104,000 km ²
2	Territorial Sea	284,210.9 km ²
3	12 Mile Sea (Supplementary Zone)	279,322 km ²
4	Indonesian Exclusive Economic Zone	2,981,211 km ²
	Total	3,648,743.9 km ²

Source: Ministry of Maritime Affairs and Fisheries of the Republic of Indonesia, the Year 2014

From the table of Indonesian sea area above, the area of Indonesia's EEZ waters is the largest water area of archipelagic waters and territorial waters. As an archipelagic country, Indonesia has very large fishery resources. The utilization of fishery resources can be used as a support in improving the national economy. In addition, Indonesia has the right to exclusive use and is obliged to provide opportunities for other countries to conserve fishery surpluses.

Fishery management outside the fishery management area of the Republic of Indonesia is carried out based on statutory regulations, requirements, and/or generally accepted international standards.^[11] In facilitating the management and utilization of fishery resources, based on the agreement of experts, researchers and fishery practitioners, a division of the area known as WPP (Fisheries Management Area) has been determined by considering the biological and environmental aspects of fish resources.

Figure 1
Distribution of Fishery Management Areas



Source: Ministry of Marine Affairs and Fisheries,

Division of Fisheries Management Areas, where: (1) WPP Malacca Strait, (2) WPP South China Sea, (3) WPP Java Sea, (4) WPP Makassar Strait and the Flores Sea, (5) WPP Banda Sea, (6) WPP Arafura Sea, (7) WPP Seram Sea and Tomini Bay, (8) WPP Sulawesi Sea, (9) Indonesian Ocean WPP.^[12]

The data above describes the level of utilization of fishery resources between regions and between types of resources. In some areas, has occurred, *overfishing* such as in the Java Sea and the Malacca Strait, while in most of the eastern regions the utilization rate is still below the sustainable potential.^[13] In addition to the unequal level of utilization of fishery resources between regions and between types of resources, currently, there are still conflicts in the utilization of fishery resources, cases of border conflicts in the territorial waters of neighbouring countries, and the low level of stakeholder compliance with applicable regulations.

Fisheries in Indonesia are regulated in Law Number 45 of 2009 concerning Amendments to Law Number 31 of 2004 concerning Fisheries (Fisheries Law). The definition of the fishery based on Article 1 point 1 of the Fisheries Law is:

"All activities related to the management and utilization of fish resources and their environment from pre-production, production, processing to marketing are carried out in a fishery business system."

Fishery management according to Article 2 of the Fisheries Law is carried out based on the principles of benefit, justice, togetherness, partnership, independence, equity, integration, openness, efficiency, sustainability, and sustainable development. The main objectives of the regulation of fisheries law are as follows:

"The core aim of fisheries law is to strike an appropriate balance between exploitation and conserving fish. It achieves this by creating decision-making processes and regulations to control access to fisheries resources and the methods by which they can be taken. The development of fisheries law is influenced by various theories and competing objectives about how public resources should be managed and used. These include ensuring the maintenance of fish stocks and ecosystem function, maintaining or enhancing the enjoyment of recreational and traditional fishing activities, and ensuring the supply of fish for consumption. Fisheries resources may cease being exploited for commercial, recreational or cultural purposes if laws are too heavily skewed in favour of conservation. However, the future of the resources, and the industries and livelihoods dependent on them, maybe permanently jeopardised if fisheries laws cannot guard against unsustainable fishing practices.

The Fisheries Law regulates criminal provisions as an instrument of law enforcement for fisheries crimes, considering that in practice the management of fish resources is not always carried out following applicable rules and regulations, known as *Illegal, Unreported and Unregulated (IUU) Fishing*.

Judging from the international legal framework, IUU Fishing is not regulated in UNCLOS 1982. Discourse on *illegal fishing* emerged together within the framework of *IUU Fishing Practices* during the CCAMLR (*Commission for Conservation of Atlantic Marine Living Resources*) forum on 27 October – 7 November 1997.²⁴ Will However, UNCLOS 1982 regulates IUUF law enforcement in general regarding the territorial sea, which is divided into 3 areas, namely:

- 1) *the territory which is the sovereignty of the state, namely the sea area where the state has full authority and can enforce its national law; (Internal Water, Archipelagic Water and Territorial Sea).*
- 2) *the sea area which is the state's jurisdiction, namely the sea area which is only authorized in certain matters; (Contiguous Zone, Economic Exclusive Zone)*
- 3) *sea areas that do not become state jurisdictions; (High Seas).*

IUUF in international regulations has not been officially declared a transnational crime by the United Nations, but de facto it has become a *concern of the world and regional organizations as one of the organized crimes that harm the state and threaten the sustainability of fishery resources*. One of the organizations internationally governing IUUF is the *Food and Agriculture Organization (FAO)* which is contained in the *Code of Conduct for Responsible Fisheries (CCRF)*. The definition of Illegal Fishing is explained as follows:

- a) *Illegal fishing*: activities in territorial waters or the EEZ of a country, or without a permit from that country.
- b) *Unreported*: Fishing activities that are not or intentionally misreported.
- c) *Unregulated*: Fishing activities that are inconsistent with international law.

Fisheries crime is a genus of illegal activities that occur in fisheries management. Fisheries crime also extends beyond the boundaries of the country's territory, both regarding the place where it occurs, the consequences it causes and its purpose. Fisheries crime is a negative impact that arises as a consequence of obtaining fishery resources as much as possible. Fisheries crimes include all actors involved in the fisheries sector, such as fishermen, ship owners, captains, auctioneers, foreigners, government officials, and so on. Fisheries crime can be reduced both in quantity and quality by maximizing law enforcement efforts, especially criminal law.

Fisheries crime is one of the economic crimes, as stated by *The Pew Charitable Trusts that illegal fishing is an economic crime driven by growing world demand for fish and other seafood, and the globalization of the market. Some fishers skirt the law in pursuit of higher catch, taking advantage of patchy regulation of the commercial fishing industry and poor enforcement regimes at sea*. In general, IUUF that occurs in Indonesian waters is:

- 1) *Unlicensed fishing;*
- 2) *Fishing using false permits*
- 3) *Fishing using forbidden fishing gear; and*
- 4) *Fishing with species that are not following the permit.*

IUUF in Indonesia is not only carried out by foreign but also by local *fishing vessels (Indonesian fishing vessels)*, the forms of which include:

- 1) Fishing without permits (*Fisheries Business License (SIUP) and Fishing Permit (SIPI) or Fish Transport Ships Permit (SIKPI)*)
- 2) *Having permits but violating the stipulated provisions (violation of fishing grounds, fishing gear violations, breach of obedience based), falsification/ manipulation of documents (procurement, registration and licensing documents), transshipment at sea, not activating transmitters (specifically for ships who are required to install the transmitter), and*
- 3) *Catching fish that destroys (destructive fishing) by using chemicals, biological materials, explosives, tools and/or ways, and/ or buildings that endanger preserving fish resources.*

IUUF which is the focus of analysis in this research is destructive fishing, namely fishing activities in destructive ways. *Destructive fishing* still occurs in Indonesia due to several factors, including:

- 1) There is still circulation of ammonium nitrate as a raw material for making fish bombs. Handling *destructive fishing* becomes complex and complicated because of the many links that must be unravelled, especially related to the trade in raw materials for making fish bombs;
- 2) Cyanide as a fish poison / anaesthetic can be obtained easily in the market;
- 3) The high demand for live fish for consumption has led to widespread fishing activities using fish anaesthetics/poisons;
- 4) In some areas, fishermen are in debt to their retainers/masters, thus triggering them to get their catch quickly, including by bombing or poisoned fish;
- 5) The court's verdict against the perpetrators of *destructive fishing* and the perpetrators of possession of explosives as fish bombs is considered very low so that it does not cause a deterrent effect;
- 6) The lack of skills of some fishermen in using fishing gear that encourages them to catch fish easily, namely using bombs and fish poison;
- 7) The perpetrators do not understand the negative impact of destructive fishing on human health, as well as the preservation of fish resources and the environment.

The practice of *destructive fishing* is carried out by fishing communities solely to reap large profits in a fast/instant way, without paying attention to the negative impact on aquatic ecosystems, especially coral reefs. Coral reefs, which should be a place for reef fish to live, if damaged, it can be ascertained that no more fish are living in that place and this will result in difficulty in getting fish catches. *The effects of destructive fishing could impact reefs to such a state that recovery from cyanide and explosives does not occur for over 2 decades.* Therefore, it is necessary to tackle destructive fishing which aims to reduce the rate of damage to fish resources and the environment which is getting worse due to destructive fishing activities such as the use of explosives or bombs and anaesthetics/poisons more comprehensively by involving the government, business people, fisheries, and the community, one of which is criminal law as an instrument of law enforcement for *destructive fishing*.

IV. CONCLUSION

The essence of law enforcement on fisheries crime is that fisheries crime is a genus of illegal activities that occur in fisheries management. Fisheries crime also extends beyond the boundaries of the country's territory, both regarding the place where it occurs, the consequences it causes and its purpose. Fisheries crime is a negative impact that arises as a consequence of obtaining fishery resources as much as possible. Fisheries crimes include all actors involved in the fisheries sector, such as fishermen, ship owners, captains, auctioneers, foreigners, government officials, and so on. Fisheries crime can be reduced both in quantity and quality by maximizing law enforcement efforts carried out by the Indonesian National Police.

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- [12]. Mrs Ngurah Adisanjaya, Op. Cit., p. 5
- [13]. Ibid. The sustainable potential (maximum sustainable yield/ MSY) of capture fisheries resources is estimated at 6.4 million tons per year. While the potential that can be utilized (allowable catch) is 80% of MSY, which is 5.12 million per ton.

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