

Legal Problems Regarding Notaries Who Make Sale-Purchase Agreement Deeds Regarding Illegal Fishing

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Abstract. *Law enforcement in the fisheries sector faces significant challenges with the rampant illegal fishing practices that harm the marine ecosystem and the country's economy. In this context, the role of notaries as public officials authorized to make authentic deeds becomes crucial, especially when they are involved in making deeds of sale and purchase agreements related to these illegal activities. Legal problems arise when notaries, either intentionally or through negligence, make deeds that facilitate illegal fishing transactions, which indirectly provide legal legitimacy to these unlawful activities. The notary's obligation to verify documents and ensure the legality of the activities that are the object of the deed is a crucial point in preventing violations of the law. However, if the notary fails to carry out his obligations, this can lead to legal consequences for the notary, either in the form of administrative sanctions or criminal charges. This study aims to analyze the legal responsibility of notaries in making deeds of sale and purchase agreements related to illegal fishing, as well as explore the legal implications and preventive measures that can be taken to prevent notaries from being involved in supporting illegal practices. Through normative analysis, this study found that there is a need for increased supervision of notarial practices and strict enforcement of sanctions to prevent abuse of notarial authority in the context of illegal transactions.*

Keywords: *Deed; Fishing; Illegal; Notary.*

1. INTRODUCTION

Illegal fishing is a serious problem that threatens the sustainability of marine resources and has the potential to damage aquatic ecosystems. This activity not only has a negative impact on the environment, but also results in significant economic losses, both for the state and coastal communities that depend on the fisheries sector for their livelihoods. Therefore, various regulations have been implemented to eradicate this practice, with the aim of protecting natural resources and enforcing the law in the fisheries sector. In the context of law enforcement, notaries play an important role as public officials who are authorized to make authentic deeds that have full evidentiary power.

Notaries are tasked with ensuring that all documents and agreements made are in accordance with applicable law, including in the case of agreements for the sale and purchase of marine catches. However, legal problems can arise when a notary, either

intentionally or through negligence, makes a deed that supports or facilitates illegal fishing practices. When a notary is involved in making a deed of sale and purchase agreement related to catches from illegal fishing activities, he not only violates his professional code of ethics, but also risks facing serious legal consequences. The presence of a notary involved in making such a deed can provide legal legitimacy to transactions that are actually illegal. This has the potential to cause serious legal implications, both for the parties involved in the transaction and for the notary himself.

The obligation of a notary to verify the validity of documents and the legality of activities that are the object of the deed is something that cannot be ignored. If this obligation is violated, the notary can be subject to administrative sanctions by the Notary Supervisory Board, and even criminal charges if proven to have knowingly or negligently facilitated illegal practices. The background of this study is based on the urgency to examine the role and responsibilities of notaries in the context of illegal fishing, as well as to explore the legal problems that arise from the involvement of notaries in transactions involving proceeds from illegal activities. This study also aims to identify preventive measures that can be taken by notaries to prevent their involvement in supporting illegal activities, as well as highlight the importance of increasing supervision and law enforcement in this sector. Thus, this study is expected to contribute to efforts to strengthen the integrity of the notary profession and support more effective law enforcement against illegal fishing in Indonesia.

2. RESEARCH METHODS

The method used is the normative legal research method, namely examining the legal gap between practice and legislation. This study uses the normative legal research method (normative legal) to examine the legal problems of notaries who make deeds of sale and purchase agreements related to the results of illegal fishing activities. This method was chosen because the focus of the research lies in the analysis of applicable legal norms, both in the form of laws and regulations, legal doctrines, and legal principles related to the responsibility of notaries in making authentic deeds.¹

3. RESULTS AND DISCUSSION

3.1. About Illegal Fishing

In 1995, the problem of Illegal Fishing was made a major issue at the global level by the FAO, on the grounds that the world's fish stocks were declining and one of the contributing factors was Illegal Fishing.²

Indonesia has more than 2.6 million fishermen, and 140 million people who depend on marine and coastal ecosystems for their livelihoods. Illegal Fishing practices result in economic losses of Indonesia reaching ±20 billion dollars per year,³ threatens 65% of

¹ Eka NAM Sihombing, (2022). *Cynthia Hadita, Penelitian Hukum*, Malang: Setara Press

² FAO, Fisheries Technical Papers 350/2, Rome, 1996, see www.fao.org/docrep, accessed October 16, 2023. Quoted in: Chomariyah, *Hukum Pengelolaan ...*, op.cit, p. 10.

³ Sri Mulyani Indrawati, *The Case for Inclusive Green Growth*, 9 June 2015, dalam <http://www.worldbank.org/en/news/speech/2015/06/09/the-case-for-inclusive-green-growth>

Indonesia's coral reefs from overfishing⁴ and kills the opportunity for Indonesian fishermen to catch 1 million tons of fish every year.⁵ Seeing violations and crimes in the fisheries sector, especially illegal, unreported, and unregulated (IUU) fishing activities in Indonesian waters, is very concerning, therefore it is necessary for all relevant government agencies to immediately take firm and integrated steps to eradicate it.⁶

In this case, to eradicate the practice of Illegal Fishing, President Joko Widodo issued an Instruction and ordered that supervisory officers in the field can act firmly, one of which is the possibility of implementing legal action in the form of sinking foreign vessels operating in the fisheries management area of the Republic of Indonesia. In accordance with the mandate of Law No. 45 of 2009 concerning Fisheries, it is explained in the provisions of Article 69 which reads as follows:⁷

"Fishery surveillance vessels function to carry out supervision and law enforcement in the fisheries sector within the fisheries management area of the Republic of Indonesia."

Indonesia as an archipelagic state is obliged to implement the sovereignty of the Republic of Indonesia in the archipelagic waters, namely the obligation to utilize natural resources both biological and non-biological in the archipelagic waters and to enforce the law. The territorial waters of Indonesia in Article 3 paragraph (1) of Law Number 6 of 1996 concerning Indonesian Waters state that "The territorial waters of Indonesia include the territorial sea of Indonesia, archipelagic waters, and inland waters."

In addition to the birth of Law of the Republic of Indonesia No. 45 of 2009 was due to Law No. 31 of 2004 concerning fisheries and the previous law (Law No. 9 of 1985 concerning fisheries) being felt to still be unable to anticipate the development of legal needs in the context of managing and utilizing the potential of fish resources and have not been able to answer various problems faced by the development of the fisheries sector. Therefore, Law No. 45 contains substantive changes concerning aspects of management, bureaucracy, and legal aspects. However, of course there are several articles in it that are not yet relevant to its application, especially in terms of the destruction of confiscated vessels in illegal fishing

Law serves as a guideline for how to behave behavior, as a tool to maintain the integrity of society and as a system of social control. Similarly, International Law has the same function as other laws. The essential function of International Law is to organize a network of legal frameworks, in which international relations can be done carefully. Dalam State practice regarding the making of bilateral and multilateral agreements and/or agreements.⁸ We can examine all legal aspects related to Illegal Fishing, because there are several international regulations enforced by countries, especially coastal countries, in implementing the law enforcement of Illegal Fishing.

⁴ *Ibid.*

⁵ *Ibid.*

⁶ Presidential Decree Number 115 of 2015 concerning the Task Force for Eradicating Illegal Fishing (Illegal Fishing)

⁷ Law No. 45 of 2009 concerning Fisheries.

⁸ Sam Suhaedi Admawiria, (1968). *Pengantar Hukum Internasional*, Bandung: Alumni, p. 26-27.

Formation of the Court Institution Especially for Fisheries, which until now has not reached all of Indonesia's territorial areas, it is worth understanding because in addition to requiring preparation and readiness. But on the other hand it is very necessary as one of the factors that provides guarantees for legal certainty and justice in law enforcement in the field *Illegal Fishing*.⁹ To deal with the urgent problem of Illegal, Unreported, and Unregulated Fishing (IUU Fishing), several fisheries courts were added, including the Fisheries Court at the Tanjung Pinang District Court and the Ranai District Court,⁹³ and the Fisheries Court at the Ambon District Court, Sorong District Court and Marauke District Court.⁹

In reality, Indonesia's fishery resources are currently being exploited by fishery entrepreneurs, who are generally controlled from other countries, in a manner that violates the law and operates without regard to the principles of sustainability.¹⁰ Fisheries management is one of the national developments so that it is carried out in a planned manner and is able to increase the prosperity and welfare of the people with environmental sustainability for the present and the future.¹¹

Illegal fishing, or illegal fishing, refers to fishing practices that violate applicable laws or regulations. It includes various forms of violations of the law in the fisheries sector that can damage the environment, economy, and public welfare. Here are some of the main aspects related to illegal fishing, Forms of Illegal Fishing Illegal fishing includes several categories of violations, Fishing Without a Permit, Fishing in waters that require a special permit without having a valid permit. Violating Quota, Catching the number of fish exceeding the established quota limit. Using Prohibited Fishing Gear, Using fishing gear that is prohibited because of its impact on the environment or certain species. Fishing in Prohibited Areas, Fishing in protected areas or in maritime zones that are not permitted. Ignoring Species Protection Regulations, Catching protected or endangered species.

Impacts of Illegal Fishing Illegal fishing has wide and significant impacts, Marine Ecosystem Damage. This practice can damage marine habitats and reduce biodiversity. Resource Loss, Reduces the number of fish available for legal fishing, threatens the survival of fish species and disrupts the balance of the ecosystem. Economic Loss, resulting in losses for fishermen who follow the rules and can disrupt legal fish markets. Social Impact, affects communities that depend on fisheries for their livelihoods, and increases social inequity.

Regulation and Law Enforcement To combat illegal fishing, many countries implement various regulations and law enforcement measures, Legislation, Laws and regulations

⁹Moch Iqbal, (2012). *Penegakan Hukum Pidana "Illegal Fishing" Penelitian Asas, Teori, Norma dan Praktek Penerapannya*, Laporan Penelitian, Jakarta: Puslitbang Hukum dan Peradilan Badan Litbang Diklat Kumdil Mahkamah Agung RI, p. 28.

¹⁰ Unsustainable exploitation of fishery resources is contrary to the FAO Code of Conduct for Responsible Fisheries, which in Article 6.1 states, "States and users of living aquatic should conserve aquatic ecosystems. The right to fish carries with it the obligation to do so in a responsible manner so as to ensure effective conservation and management of living aquatic resources." Quoted from: Ahmad Santoso, (2016), *Alam pun Butuh Hukum dan Keadilan*, Jakarta Timur: as@-Prima Pustaka, p. 30.

¹¹ Gatot Supramono, (2011). *Hukum Acara Pidana dan Hukum Pudana di Bidang Perikanan*, Jakarta: Rineka Cipta, p. 20.

governing permits, quotas, and the use of fishing gear. Monitoring and Enforcement, Inspections by authorities, use of technology such as satellites to monitor fishing activity, and sea patrols. International Cooperation, Cooperation between countries to combat illegal fishing in international waters and share information about illegal practices.

Community Engagement and Education Community Engagement, Coastal communities are often involved in efforts to prevent illegal fishing through training and awareness campaigns. Education and Awareness, Educational programs for fishermen on regulations and sustainable practices. Challenges and Opportunities Challenges, Corruption, lack of resources for law enforcement, and difficulty in monitoring large areas of water. Opportunities, Development of more effective policies, improved monitoring technology, and stricter law enforcement. Illegal fishing is a global issue that requires a multidimensional approach, including strong law enforcement, international cooperation, and active community involvement in marine resource conservation.

3.2. Notary's Responsibility for Authentic Deeds and Not Contrary to Law

According to Information in Gatra Magazine, the Regulation outlined by Susi Pudjiastuti successfully drove away foreign ships. Her opponents continue to build high-level lobbying to break the rules that have been set in Indonesia. Both regulations are considered effective in destroying the Illegal Fishing network in Indonesia.¹²

The combination of moratorium policies, transshipment bans, and unsustainable fishing gear bans¹³ is a combination of policies to prevent and overcome the exploitation of Indonesian fishery resources considering that transshipment is one of the modes for bringing the country's fish catch outside Indonesia without procedures.¹⁴

The notary's responsibility in making authentic deeds covers various important aspects to ensure that the deeds he makes are valid and do not conflict with the law. This includes the responsibility not to be involved in making deeds of sale and purchase related to illegal fishing. The following is an in-depth explanation of the notary's responsibility in this context.

General Responsibilities of Notaries Notaries have the primary responsibility to ensure that every authentic deed they make complies with applicable laws and regulations. These responsibilities include, Ensuring Legal Compliance, Notaries must ensure that all documents submitted and agreements made in the deed comply with applicable laws and regulations. Identity and Legality Verification, Notaries are responsible for verifying the identities of the parties involved and ensuring that the documents submitted are valid and do not violate the law.

Making Authentic Deeds That Do Not Conflict with the Law To ensure that authentic deeds made do not conflict with the law, notaries must, Check the Legality of

¹² Rosyid, dkk., "Aturan Tanpa Kompromi", Edisi 41, GATRA, August 2016, p. 14

¹³ Regulation of the Minister of Maritime Affairs and Fisheries Number 2/PERMEN-KP/2015 concerning the Prohibition of the Use of Trawls and Seine Nets as Fishing Gear.

¹⁴ Ahmad Santosa, Loc. Cit, p. 35

Transactions, Notaries must ensure that transactions or agreements recorded in the deed do not violate the law. This includes checking whether the object of the transaction is legal and in accordance with existing regulations. Avoiding Illegal Activities, Notaries must not make deeds related to illegal activities, such as illegal fishing. This activity violates fisheries laws and environmental regulations, and the involvement of notaries in such transactions can be considered a serious violation.

Special Responsibilities for Illegal Fishing In the context of illegal fishing, the notary's responsibilities include, Refusing to Make Deeds for Illegal Transactions, Notaries must refuse to make deeds of sale and purchase agreements involving catches from illegal fishing activities. Involvement in making such deeds can provide legitimacy to illegal practices and potentially result in legal sanctions for notaries. Verification of the Legality of the Catch, before making a deed, the notary must check the validity of the catch of fish that is the object of the transaction. Notaries must ensure that the catch was obtained legally and in accordance with laws and regulations.

Legal and Ethical Responsibilities Legal Obligations, if a notary is involved in making a deed related to illegal fishing, they may be subject to administrative sanctions from the Notary Supervisory Board or criminal charges if proven to be involved in a violation of the law. Ethical Obligations, Notaries must comply with their professional code of ethics, which requires them to act with integrity and not engage in activities that are detrimental to the public interest or violate the law.

Preventive Measures Education and Training, Notaries must receive ongoing training on fisheries laws and regulations related to illegal fishing. Supervision and Audit, Regular supervision and audit of notary practices can help ensure that they are not involved in the preparation of deeds for illegal transactions.

Implications of Violation of Administrative Sanctions, Notaries involved in making deeds related to illegal fishing can be subject to administrative sanctions by the Notary Supervisory Board, including warnings or revocation of practice permits. Criminal Prosecution, Notaries can also be subject to criminal charges if their involvement in illegal fishing transactions is proven to be a serious violation of the law. With this responsibility, notaries play an important role in ensuring that the authentic deeds they make are not only valid in the eyes of the law, but also support law enforcement and environmental protection, and prevent detrimental illegal fishing practices.

4. CONCLUSION

The notaries have significant legal responsibility in making deeds of sale and purchase agreements related to illegal fishing results. The involvement of notaries in this kind of activity, either due to negligence or intent, not only violates the code of ethics of the profession but also has the potential to cause serious legal consequences, including administrative and criminal sanctions. Therefore, it is important for notaries to always conduct thorough document verification and ensure that all facilitated transactions are in accordance with applicable laws. To minimize the risk of notary involvement in illegal fishing practices, it is recommended that supervision be increased by the Notary Supervisory Board, as well as ongoing training for notaries regarding the importance of compliance with existing regulations. In addition, it is also necessary to consider strengthening regulations that provide strict sanctions for notaries who are proven to

have violated, in order to maintain the integrity of the profession and support effective law enforcement in the fisheries sector.

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