

The Role of Polairud in Enforcing Illegal Fishing Laws in Indonesian Waters

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Abstract. *The purpose of this research is to know and analyze Polairud's capacity in implementing illegal fishing law enforcement in Indonesian waters. In this writing, the author uses a normative legal method with research specifications in the form of descriptive analysis. From the national legal aspect, the laws and regulations governing the eradication of illegal fishing are actually very adequate. The set of rules used in the eradication and handling of illegal fishing, among others, are based on Law Number 45 of 2009 concerning Fisheries. Decree of the Chief of Police No. Pol: Skep / 79 / II / 2001 dated February 5, 2001 concerning the appointment of Pol Airud as Investigators in the waters and aviation sector of the Indonesian National Jurisdiction and the delegation of authority to the Dit Pol Airud where the procedure for handling criminal acts at sea or waters can be carried out with the first stage of detecting ships by carrying out surveillance activities in waters that are prone to criminal acts based on the information obtained, identifying targets using existing facilities and the second is ship investigations carrying out ship stopping actions, and ship inspections.*

Keywords: Enforcement; Illegal; Polairud;

1. Introduction

The Indonesia sea consists of 2.7 km² of Exclusive Economic Zone or EEZ and 3.2 million km² of territorial sea, so that according to UNCLOS 1982 the total area of the Indonesian sea is 5.9 million km². This fact shows that Indonesia has quite large marine potential, even to the point of being able to become one of the supporting aspects of the Indonesian economy.¹This can be seen in the economic

¹Ridwan Lasabuda, (2013), Theoretical Review of Coastal and Deep Sea Development from the Perspective of the Archipelagic State of the Republic of Indonesia, *Platax Scientific Journal*, 1 (2), p 92.

potential of the fisheries sector reaching US\$ 82 billion per year.² So it can be said that the marine and fisheries sector can be used as a mainstay sector for the economy in Indonesia. However, in reality the development of the fisheries sector for the Indonesian economy must be delayed due to the rampant practice of Illegal Fishing that occurs in Indonesia.

Based on the provisions of Article 73 of UNLOS 1982, the coastal State in exercising sovereign rights can board ships, inspect, arrest and conduct court proceedings, as necessary to ensure compliance with the laws and regulations it has established in accordance with the provisions of this Convention. Captured ships and their crews must be immediately released after being given a reasonable guarantee. However, at this time there are legal problems in the Indonesian Exclusive Economic Zone outside the exploration, exploitation and processing of biological resources. Especially illegal fishing that is organized and international.

The issue of illegal fishing is no longer a new topic to discuss, the cases are increasing day by day both qualitatively and quantitatively with increasingly organized and systematic forms of committing these violations. Violations committed by irresponsible parties such as fishermen and foreign vessels that carry out illegal fishing activities by bombing fish using explosives (fish bombs), anesthesia, toxic materials, the use of fishing gear known as trawls, duplication or falsification of fishing permits and other methods that fall into the category of fish theft crimes especially in Indonesian waters/seas.³

The practice of illegal fishing is a criminal act that can be carried out across countries, is organized and can cause serious damage to Indonesia and other countries.⁴ In addition to being detrimental both economically, socially, and ecologically, this practice is also an act that weakens the sovereignty of a country's territory. The most frequent illegal fishing activity in Indonesian waters/seas is fish theft carried out by foreign fishing vessels (KIA) originating from several neighboring countries. The actions of foreign vessels entering Indonesian waters without permission and exploiting its natural resources are one form of violation of state sovereignty. Based on the results of the monitoring

²Zebua & Ramli, (2014), Analysis of the Influence of Number of Fleets, Number of Fishermen, GDP, and Investment on Fisheries Production in the Nias Region (Panel Data Analysis), *Journal of Economics and Finance*, 2 (8), p 465.

³Siti Munawaroh, (2019), Implementation of Sanctions for Sinking Foreign Vessels Engaged in Illegal Fishing by the Indonesian Government (International Law Perspective), *Mimbar Yustitia*, 3 (1), p 20.

⁴Ioannis Chapsos and Steve Hamilton, (2019), Illegal Fishing and Fisheries Crime as a Transnational Organized Crime in Indonesia, *Trends in Organized Crime*, 22 (3), p. 160.

carried out, it can be concluded that illegal fishing by KIA mostly occurs in the EEZ and is quite common in several archipelagic states.⁵

Illegal fishing is one form of crime that is prohibited by law. Those who commit or violate the provisions can be subject to sanctions. At this stage, the function of law is needed as a medium of control and prevention against actions that can disrupt the stability of management and sustainability of fish resources and their environment. The function of law, apart from being part of the management of fisheries resources, also has the advantage of the binding or coercive nature of the law itself. This is in accordance with what is mandated in Article 33 of the 1945 Constitution of the Republic of Indonesia which is then further regulated in the Fisheries Law. Criminal jurisdiction is closely related to how the implementation of the 1982 International Maritime Law Convention (UNCLOS) in the crime of illegal fishing in the Indonesian exclusive economic zone (ZEEI). This study focuses more on the application of state criminal jurisdiction in the crime of illegal fishing in Indonesia.

Institutional authority in the effort to enforce the law on illegal fishing through the National Police is emphasized in Law Number 2 of 2002 concerning the National Police of the Republic of Indonesia (UU Polri). Based on the structural function in the Regulation of the National Police of the Republic of Indonesia Number 14 of 2018 concerning the Organizational Structure and Work Procedures of the Regional Police, it is carried out by the Directorate of Water and Air Police (Directorate of Water and Air Police).

In connection with this topic, to research it further and include it in legal research with research objectives for knowing and analyzing Polairud's capacity in implementing illegal fishing law enforcement in Indonesian waters.

2. Research Methods

The approach used in this study is normative juridical or written legal approach (statute approach). The normative juridical approach is an approach carried out based on the main legal material by examining theories, concepts, legal principles and laws and regulations related to this study. This approach is also known as the literature approach, namely by studying books, laws and regulations and other documents related to this study.

3. Results and Discussion

3.1. Water and Air Police

In carrying out its duties, the Police Organization is structured in a hierarchical manner from the central level to the Regional level. The Police Organization at the central level is called the Headquarters of the National Police of the Republic of Indonesia (Mabes Polri) which is led by the Chief of the National Police of the

⁵Haryanto and Joko Setiyono, (2017), The Policy of Sinking Foreign Vessels Engaged in Illegal Fishing by the Indonesian Government from the Perspective of International Criminal Law, LAW REFORM, 13 (1), p. 75.

Republic of Indonesia (Kapolri), while the Police Organization at the Regional level is called the Regional Police (Polda) which is led by the Chief of Regional Police (Kapolda). In the Regulation of the Chief of National Police No. 22 of 2010 Article 1 number 3 it is explained that the Regional Police is the executor of the duties and authorities of the Police in the Provincial Region which is under the Chief of Police. The Regional Police in carrying out its main duties, especially in terms of implementing water policing, is assisted by a subsection for implementing the main duties, namely the Directorate of Water Police (DitPolair).

The Water and Air Police or commonly abbreviated as Polairud is a unit within the Indonesian National Police that supports police duties via water (river/sea) and air. Polairud was born when the Minister of Home Affairs issued a decree dated March 14, 1951 regarding the determination of the Water Police as part of the State Police office starting December 1, 1950. This decree was further refined with the issuance of the Decree of the Prime Minister of the Republic of Indonesia dated December 5, 1956 regarding the establishment of the Air Section in the State Police office. Since then, the Water Police section has become part of the Water and Air Police. At the beginning of its establishment, the Water Police had a ship "Angkloeng". Only in the late 50s, the number of ships increased to 35. Meanwhile, the Air Police only had one Cessna-180 aircraft.

2.2. Illegal Fishing

Illegal fishing in terms of terminology is a foreign term popularized by legal experts in Indonesia which then became a popular term in the mass media and used as an interesting legal study for environmental activists. In terms of terminology, illegal fishing from the literal meaning comes from English which consists of two words illegal and fishing. "Illegal" means illegal, prohibited or contrary to the law "Fish" means fish or meat and "fishing" means fishing as a livelihood or a place to catch fish. Based on the literal meaning, it can be said that illegal fishing according to language means catching fish or fishing activities that are carried out illegally.

Illegal fishing comes from the word illegal which means unauthorized or unofficial. Fishing is a noun that means fishery; from the word fish in English which means fish; taking, digging; fishing, or fishing.⁶This refers to the definition issued by the international plan of action (IPOA) - illegal, unreported, unregulated (IUU) fishing initiated by FAO in the context of implementing the Code of Conduct for Responsible Fisheries (CCRF).

3.3. Polairud Capacity in Implementing Illegal Fishing Law Enforcement in Indonesian Waters

⁶Nunung Mahmudah, (2015), *Illegal Fishing*, Jakarta: Sinar Grafika, 1st ed., p. 80

The factors that cause fisheries crimes in Indonesian waters are inseparable from the global strategic environment, especially the condition of fisheries in other countries that have maritime borders, and the fisheries management system in Indonesia itself. In general, these causal factors can be categorized into 7 (seven) factors, as described below:

- 1) The world's fish needs (demand) are increasing, on the other hand the world's fish supply is decreasing, there is an overdemand especially for types of fish from the sea such as Tuna. This encourages the world's fishing fleet to hunt fish anywhere legally or illegally.
- 2) The price disparity of whole fresh fish in other countries compared to Indonesia is quite high, thus creating a surplus of income.
- 3) Fishing grounds in other countries are starting to run out, while in Indonesia it is still promising, even though they have to maintain the supply of fish for their consumption and have to keep processing production in the country going.
- 4) The Indonesian sea is very wide and open, on the other hand the surveillance capability, especially the national surveillance fleet (surveillance ships) is still very limited compared to the need to monitor vulnerable areas. The vastness of the sea area that is under Indonesia's jurisdiction and the fact that the Indonesian EEZ is still very open, which borders the high seas, has become a magnet for attracting foreign and local fishing vessels to commit fisheries crimes.
- 5) The fisheries management system in the form of a licensing system is currently open (open access), its restrictions are limited to fishing gear (input restrictions). This is less suitable when faced with the factual conditions of the geography of the Indonesian EEZ which borders the open sea.
- 6) The limited facilities and infrastructure for supervision and Human Resources for supervision, especially in terms of quantity compared to the area of waters that must be supervised. This is further compounded by the limited facilities and infrastructure for supervision.
- 7) The perception and cooperation steps of law enforcement officers in handling fisheries crime cases are still not optimally organized, especially in terms of understanding legal actions and commitment to operating surveillance vessels in the EEZ.⁷

Law enforcement is one of the requirements to make Indonesia the world's maritime axis. Law enforcement is still a tough homework for the government. Indonesia's waters, which reach 72.5%, present a big challenge for the Water and Air Police to ensure security and protection of Indonesia's jurisdiction. Illegal

⁷Muhammad Gibran, (2017). Criminal Law Enforcement Against the Use of Illegal Fishing Gear, University of Lampung, p 41

fishing practices are one of the most massive violations committed in Indonesian waters. Illegal fishing is carried out by foreign fishing vessels that illegally enter Indonesian waters and fish without obtaining permission from the government. This practice has clearly been very detrimental to the country every year, even according to former Minister of Maritime Affairs and Fisheries Susi Pudjiastuti reaching IDR 240 trillion. Not only that, illegal fishing practices also cause other losses, namely damage to the marine ecosystem. Oceanography Research Center, Institute of Science

Indonesian Knowledge (LIPI) revealed data, where only 5.3% of Indonesia's coral reefs are classified as very good, while 27.18% are classified as good, 37.25% are in fair condition, and 30.45% are in poor condition. The damage to coral reefs is mostly caused by illegal fishing practices using toxic materials and prohibited fishing gear. This causes serious problems, because coral reefs are home to fish, and if we think logically, damage to coral reefs means damage to the lives of the fish themselves. Of course, this has an impact on around 2.2 million fishermen throughout Indonesia who are certain to lose their livelihoods. It can be seen that illegal fishing practices, which have been classified by the international community as transnational and organized crime, will certainly create a series of problems if this poor condition is not resolved immediately.⁸

After going through several restructurings, the organization was perfected in 1985. The Main Unit of the Water Police was merged into the Subditpol Air and the Main Unit of the Air Police became the Subditpol Udara. Both subdirectorates operate under the control of the Directorate of Samapta Polri. Until finally, based on the history of its birth, December 1 was decided as the sacred day of Polairud.

In carrying out prevention or handling of fisheries crimes that occur in Indonesian waters carried out by Polairud investigators, it is a series of law enforcement systems in Indonesia in general. The law enforcement system in handling fisheries crimes cannot be separated from the theory of the legal system put forward by Lawrence Meir Friedmen, which states that handling criminal acts must include the main elements of the Legal System. Elements in the Legal System are:⁹

- a. Legal Structure;
- b. Legal Substance;
- c. Legal Culture;
- d. Legal Impact.

⁸Mahdin Marbun and Elawijaya Alsa, (2022), The Role of the Water and Air Police in Handling Fisheries Crimes in the Belawan Jurisdiction (Study at the Belawan Police and Air and Water Directorate). Jurnal Law of Deli Sumatera, II (1), p 2

⁹Sunaryati Hartono, (1996). What is the Rule of Law, Alumni, Bandung, p 91

Based on the elements in the Legal System, the success or failure of law enforcement as an effort to overcome fisheries crimes in Indonesian waters carried out by investigators from the Indonesian National Police's Polairud must depend on the Legal Structure, Legal Substance and Legal Culture.

Efforts to combat fisheries crimes in Indonesian waters by Polairud based on the enforcement of the Legal Substance law are that in determining whether or not the law can be implemented. Substance also means products produced by people or institutions that are in the legal system that includes the decisions they issue, the legal rules they compile in this case are all provisions or laws and regulations that regulate the types and actions that are prohibited in Law Number 45 of 2009 concerning Fisheries and Law Enforcement as a basis for efforts to combat fisheries crimes in Indonesian waters. The law enforcement system based on this theory is influenced by the legal system in Indonesia. Article 1 of the Criminal Code states that "no criminal act can be punished if there is no regulation that regulates it" so that whether or not a fisheries crime can be subject to sanctions if the act has been regulated in Law Number 45 of 2009.

Efforts to combat fisheries crimes in Indonesian waters by Polairud based on the enforcement of the Legal Structure law are that to determine whether or not the law can be implemented properly must depend on the law enforcement in this case Polairud. The duties and authorities of Polairud Polri in efforts to combat fisheries crimes in Indonesian waters are guaranteed by law so that in carrying out the duties and authorities of Polairud, they are free from the influence of government power, both central and regional governments and also other influences. As stated in the adage that states "fiat justitia et pereat mundus" meaning that even if the world collapses, the law must be enforced. The law cannot run or stand if there are no credible, competent and independent law enforcement officers. No matter how good a statutory regulation is, if it is not supported by good law enforcement officers, then justice is just a dream and the weak mentality of law enforcement officers results in law enforcement not running as it should.

Law enforcement at sea has different aspects than on land, namely law enforcement at sea can be the enforcement of Sovereignty at sea, namely when the enforcement is carried out against foreign Ships which means the ship has the status of a foreign country in the territory of the Republic of Indonesia that commits a crime at sea, while if the enforcement is carried out against ships flying the Indonesian flag, it means that it is law enforcement, both enforcements also have different aspects if enforcement of sovereignty has aspects of territorial integrity, International Integrity and the law enforced is International Law, International Conventions, Agreements between Countries and customs at sea, including National law and all of that is for the benefit of the State. But if law enforcement against Indonesian Ships has aspects of personal law enforcement, public service, public order, public interests or their interests,

the law enforced is only the State (National Law) and has a Juridical aspect of security and order at sea.

Chief of Police Decree No. Pol: Skep/ 79 / II / 2001 dated February 5, 2001 concerning the appointment of Pol Airud as Investigators in the waters and aviation sector of the Indonesian National Jurisdiction and the delegation of authority to the Dit Pol Airud provides reinforcement to the Water Police in carrying out its authority as a law enforcement institution in the waters as investigators. The procedure for handling criminal acts at sea or in waters can be carried out in the following stages:

1) Ship Detection

- a. Carrying out surveillance activities in water areas prone to criminal acts based on the information obtained.
- b. Target recognition using existing means (radar, sonar, binoculars, radio communication, or signals).
- c. Target assessment is intended to assess and determine the target of the suspected object.

2) Ship Investigation

a. Ship Determination

If a ship is suspected of committing a violation/criminal act based on sufficient preliminary evidence, it will be stopped on the grounds that the ship has committed a violation/criminal act as regulated by law.

b. Ship inspection

After the ship is stopped, the next action is carried out: inspection on the orders of the Commander, the ship docks with the patrol ship or vice versa. Things to note in the inspection process at sea:

- a) Inspections at sea must use legal/official means with clear identity/characteristics and can be recognized as a patrol/government vessel authorized to carry out such actions.¹⁰
- b) The inspection team must wear complete uniform and be equipped with a warrant.
- c) The inspection must be witnessed by the captain or crew of the ship being inspected.
- d) The inspection must be carried out in an orderly, firm, thorough, fast manner, without loss or damage and without violating inspection procedures.

¹⁰Chief of Police Decree No. Pol: Decree/ 79 / II / 2001 dated 5 February 2001 concerning the appointment of the Air Police as Investigators in the waters and aviation sector of the Indonesian National Jurisdiction and the delegation of authority to the Air Police Directorate.

- e) During the inspection role the inspection team must always communicate with the inspected vessel.

After completing the inspection, things to pay attention to:

- a) Make a written statement and have it signed by the ship's captain, stating that the inspection was carried out in an orderly manner, without any violence, damage or loss.
- b) Make a written statement and have it signed by the ship's captain, which explains the results of the inspection of the ship's letters/documents, stating the place and time.
- c) Record in the ship's journal book that was inspected which contains: the time and position of the inspection, opinion on the inspection results, The inspecting officer signs the inspection results in the ship's journal book and stamps the inspecting ship, in the event that there is no ship's journal book, the captain makes a statement letter regarding the absence of the ship's journal book, for foreign ship captains who cannot speak Indonesian, upon arrival at the nearest base/port, a complete and detailed explanation regarding the case is provided with the assistance of a translator before further investigation is carried out.

The Indonesian National Police upholds the following regulatory principles in carrying out its duties: Professional; Procedural; Accountable; Transparent; and Necessity.¹¹The function of the water police in law enforcement, both in handling and overcoming perpetrators of Illegal Fishing, involves many parties, such as fishing communities, the government, and fisheries actors.

A country is considered to have jurisdictional authority under international law if the country has the competence/capacity to prosecute and punish an act or omission that is qualified as a crime based on the provisions of the national law of the country concerned.¹²The sovereignty of a country is the first step to participating in international community relations, as well as to comply with the form of bonds in these relations.¹³

4. Conclusion

Police Decree No. Pol: Skep/ 79 / II / 2001 dated February 5, 2001 concerning the appointment of Pol Airud as Investigators in the waters and aviation sector of the Indonesian National Jurisdiction and the delegation of authority to the Dit Pol Airud provides reinforcement to the Water Police in carrying out its authority as

¹¹SV Muhamad, (2012). *Illegal Fishing in Indonesian Waters: Problems and Bilateral Handling Efforts in the Region*. Politicia, p 67

¹²Sri Dwi Retno Ningsih, Supanto, and Emmy Latifah, (2018), *Corporations as Actors of Fisheries Crime in Indonesia*, *Journal of Legal Dynamics*, 18 (2), p 210

¹³Joko Susanto and Ali Mashhar, (2019), *Law Enforcement on Fisheries Crime After the Enactment of Law Number 45 of 2009: A Normative Analysis*, *Journal of Law and Legal Reform*, 1 (1), p 112

a law enforcement institution in the waters as investigators. The procedure for handling criminal acts at sea or in waters can be carried out in stages. First, Ship Detection by carrying out surveillance activities in waters that are prone to criminal acts based on information obtained, target identification using existing facilities (Radar, sonar, binoculars, radio communication, or signals, and target assessment is intended to assess and determine the target/target of suspected objects. Second, Ship Investigation which carries out ship stopping actions, and ship inspections.

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