

## **Legal Analysis of Investigation of Fishery Criminal Acts Without a Business License (Police Report Study No: Lp/A/398/Ix/2021/Spkt.Ditpolairud/Polda Jawa Tengah)**

**Ahmad Silahuddin <sup>1)</sup> & Andri Winjaya Laksana <sup>2)</sup>**

<sup>1)</sup>Faculty of Law, Universitas Islam Sultan Agung (UNISSULA), Semarang, Indonesia, E-mail: [ahmadsilahuddin.std@unissula.ac.id](mailto:ahmadsilahuddin.std@unissula.ac.id)

<sup>2)</sup>Faculty of Law, Universitas Islam Sultan Agung (UNISSULA), Semarang, Indonesia, E-mail: [andri.w@unissula.ac.id](mailto:andri.w@unissula.ac.id)

***Abstract.*** Despite its enormous potential, Indonesia's fisheries sector, particularly its marine resources, still faces serious challenges. One such challenge is illegal, unreported, and unregulated fishing practices, including fishing businesses operating without valid permits. This research aims to analyze the legal construction, implementation of investigations, and challenges and solutions to the fisheries crime case in Police Report No. LP/A/398/IX/2021/SPKT.Ditpolairud/Polda Central Java. A normative legal research method was used to identify the problematic issues in the a quo case. The analysis utilized a statute approach (statutory regulations) related to the legal issues. The research results and discussion indicate that the construction of the fisheries crime without a business permit in Police Report No. LP/A/398/IX/ 2021/SPKT.Ditpolairud/Polda Jawa Tengah is based on the legal norm of Article 26 paragraph (1), which is systematically constructed with Article 92 of Law No. 11 of 2020 concerning Job Creation. The legal formulation of these two legal norms contains the principles of Legality (Criminal Act) and Culpability (Fault). The implementation of the investigation into the crime of fishing without a business permit in Police Report No: LP/A/398/IX/2021/SPKT.Ditpolairud/Polda Jawa Tengah, meets the criteria of the provisions in the Republic of Indonesia Police Regulation No. 6 of 2019 concerning the investigation of criminal acts. Obstacles in implementing the investigation of the a quo case stem from the legal substance of the article violated by the perpetrator, which is interpreted towards administrative crimes, so that the punishment tends to be a fine. In other words, imprisonment is the ultimum remedy. Legal structural obstacles include difficulties in securing evidence of Clear Lobster Seeds (BBL). Legal cultural obstacles stem from the legal culture

*of the community that prefers economic incentives over concern for the diversity of fisheries blessings. The solution to implementing the investigation of illegal fishing crimes, as outlined in Police Report No. LP/A/398/IX/2021/SPKT.Ditpolairud/Polda Central Java, requires joint guidance among law enforcement agencies to achieve a shared understanding of risk-based business licensing under the Job Creation Law. The legal structure requires professional investigators to interpret the legal norms of risk-based licensing, due to the gray area between administrative crimes and the doctrine of ultimum remedy in criminal policy. Systematic and ongoing education is needed to ensure the legal culture of the community understands that the blessings of fisheries are part of the future generation.*

**Keywords:** *Fisheries Crimes; Investigation; Legal Analysis.*

## 1. Introduction

In essence, the affirmation of the State of Indonesia is a state based on law, with legal sources and order formulated since the State of Indonesia was proclaimed in 1945. The State of Indonesia is a democratic state based on law. The implication is that all aspects of the implementation and administration of the State are regulated by a legal system. The choice of this state system necessitates state regulation based on the State Constitution, the division of power among high state institutions, the rights and obligations of citizens, social justice, and other matters.<sup>1</sup>

Pancasila, as the philosophical basis of the Indonesian state and the Indonesian legal system, is the source of all legal sources because it serves as the fundamental norm of the state (staatsfundamentalnorm). The next in line are the verfassungnorm, namely the 1945 Constitution, the Grundgesetznorm (MPR Decrees), and the Gesetznorm (Laws).<sup>2</sup> This order of things necessitates Pancasila as the highest source of law in the Unitary State of the Republic of Indonesia (NKRI).

The Preamble to the 1945 Constitution, formulated in the Republic of Indonesia News Year II No. 7, states that: "...The Preamble to the 1945 Constitution contains the main ideas that cover the spiritual atmosphere of the Constitution of the Republic of Indonesia and realizes a legal ideal, which controls the written basic law (the Constitution) and the unwritten basic law (convention). The main ideas are embodied (concretized) in the articles of the 1945 Constitution." Thus, it can be said that the Preamble to the 1945 Constitution is a source of positive

---

<sup>1</sup>Kaelan, 2016, Pancasila Education, Paradigma, Yogyakarta, p. 180

<sup>2</sup>Ibid, p. 181

law in Indonesia.<sup>3</sup> The law currently in force or positive law is law that originates from or originates from the Preamble to the 1945 Constitution.

The fact that the Republic of Indonesia is the world's largest archipelagic nation, boasting abundant and strategic marine and fishery resources, is a blessing mandated to be utilized to the fullest extent for the welfare of the people, while taking into account their carrying capacity and sustainability.<sup>4</sup> Effective and sustainable management of these resources is crucial, not only for supporting the national economy but also for maintaining the balance of marine ecosystems. Therefore, the philosophical foundation of fisheries law in the Republic of Indonesia is formulated as the principle that natural resources are a gift from God for the welfare of the Indonesian people.

The reality on the ground is that despite its enormous potential, Indonesia's fisheries sector, in particular, still faces serious challenges. One of these is illegal, unreported, and unregulated fishing (IUU fishing), including fishing businesses operating without proper permits.<sup>5</sup> Such violations not only result in the depletion of fish stocks and damage to marine ecosystems, but also cause significant economic losses to the country and negatively impact the livelihoods of traditional fishermen.

The legal regulations governing the fisheries sector in Indonesia have undergone dynamic evolution. Initially regulated by Law Number 31 of 2004 concerning Fisheries, this regulation was later amended by Law Number 45 of 2009. Fundamental changes occurred with the enactment of Law Number 11 of 2020 concerning Job Creation (the Job Creation Law), which was repealed by Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law. This omnibus law was designed with the primary objective of improving the investment ecosystem, simplifying and accelerating business licensing, and promoting national strategic projects.<sup>6</sup>

The Job Creation Law's ideal goal is to facilitate economic activity. However, its implications for criminal law enforcement in the fisheries sector, particularly regarding the reorientation from criminal sanctions to administrative sanctions for certain violations, require more in-depth analysis and study.<sup>7</sup> The date of the incident mentioned in the legal facts (August 31, 2021) indicates that the provisions of the Job Creation Law, which came into effect on November 2, 2020,

---

<sup>3</sup>Ibid, p. 182

<sup>4</sup> Considerations of Law Number 45 of 2009 concerning Amendments to Law Number 31 of 2004 concerning Fisheries

<sup>5</sup>Oktaryal, A., 2020, Policy Advocacy Paper on Law No. 11 of 2020 concerning Job Creation in the Maritime Affairs and Fisheries Sector. Indonesian Center for Law and Policy Studies, 11, pp. 1–26.

<sup>6</sup>General Provisions of Law Number 11 of 2020 concerning Job Creation

<sup>7</sup>Op.cit., Oktaryal, A. , 2020

are directly relevant and applicable to the case in Police Report No: LP/A/398/IX/2021/SPKT. Ditpolairud/Polda Jawa Tengah.

This research specifically examines the criminal liability of fisheries businesses operating without the required permits. The primary focus is on the interpretation of the "intentional" element and the implications of the "risk-based business licensing" concept introduced by the Job Creation Law. This analysis will be conducted within the context of the legal facts in Police Report No. LP/A/398/IX/2021/SPKT. Ditpolairud/Polda Jawa Tengah, which involves alleged criminal acts in the Cilacap area, Central Java.

The authority of the Indonesian National Police to respond to the development of the legal needs of the community is an implication of Article 16 and Article 18 of Law Number 2 of 2002 concerning the Indonesian National Police. Article 16 of Law Number 2 of 2002 formulates the following provisions:

"(1) In order to carry out the duties as referred to in Articles 13 and 14 in the field of criminal proceedings, the Republic of Indonesia National Police has the authority to:

- a. carry out arrests, detentions, searches and confiscations;
- b. prohibit any person from leaving or entering the scene of the crime for the purposes of investigation;
- c. bringing and bringing people before investigators for the purpose of investigation;
- d. ordering a suspicious person to stop and asking for and checking their identification;
- e. conducting inspections and confiscating letters;
- f. summoning people to be heard and examined as suspects or witnesses;
- g. bringing in experts needed in connection with the case examination;
- h. to terminate the investigation;
- i. submit case files to the public prosecutor;
- j. submit a direct request to the authorized immigration officer at the immigration checkpoint in urgent or sudden circumstances to prevent or deter a person suspected of committing a crime;
- k. provide guidance and investigative assistance to civil servant investigators and receive the results of civil servant investigator investigations to be submitted to the public prosecutor; and

I. carry out other actions according to the law that are responsible.

(2) Other actions as intended in paragraph (1) letter I are investigation and investigative actions which are carried out if they meet the following requirements:

- a. does not conflict with any legal regulations;
- b. in accordance with the legal obligations that require such action to be taken;
- c. must be appropriate, reasonable, and within the scope of his/her position;
- d. reasonable consideration based on compelling circumstances;

And

- e. respect human rights."

Article 18 of Law No. 2 of 2002 regulates:

"(1) In the public interest, officials of the Republic of Indonesia National Police in carrying out their duties and authorities may act according to their own judgment.

(2) Implementation of the provisions as referred to in paragraph (1) may only be carried out in circumstances that are absolutely necessary, taking into account statutory regulations and the Code of Professional Ethics of the Republic of Indonesia National Police."

The two legal substances above emphasize that the Police need to formulate a new concept in enforcing criminal law that accommodates the norms and values that apply in society as a solution while providing legal certainty, especially for the benefit and sense of justice of the community.

Authority is power that lies in the public sphere.<sup>8</sup>Power is the right granted to a person to, through legal means, exercise their will. Its purpose is to change rights, obligations, responsibilities, or other legal relationships.<sup>9</sup>This explanation emphasizes that authority is inherent in power. The police possess both authority and power, as previously outlined in the law.

The legal norms for criminal acts in the fisheries sector are regulated in each article of the Republic of Indonesia Law No. 45 of 2009 concerning Amendments to Law No. 31 of 2004 concerning Fisheries. The definition of fisheries in this law states that:

---

<sup>8</sup>Satjipto Rahardjo, 1982, Legal Studies, Alumni, Bandung, p. 99

<sup>9</sup>Ibid, p. 98

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

The legal subject in the Fisheries Law is "every person" with the legal definition being "individuals or corporations." The definition of a corporation according to the Fisheries Law is stated in Article 1, number 15, as follows:

"A corporation is a group of people and/or assets that are organized, whether they are legal entities or not legal entities."

This research focuses more on licensing law in the fisheries sector. Article 1, number 16 of the Fisheries Law defines the following legal definition of a fisheries business permit:

"A Fisheries Business License, hereinafter referred to as SIUP, is a written permit that must be held by a fishing company to carry out a fishing business using the production facilities listed in the permit."

Police Report No: LP/A/398/IX/2021/SPKT.Ditpolairud/Polda Jawa Tengah in essence explains that the reporting party reported to the Police because of the criminal case of "Any person who intentionally in the fisheries management area of the Republic of Indonesia carries out a fisheries business that does not comply with Business Licensing". The legal norms violated by the reported party are the provisions in Article 27 number 5 Jo number 26 of the Republic of Indonesia Law Number 11 of 2020 concerning Job Creation regarding amendments to Article 92 Jo Article 26 paragraph (1), (2) of the Republic of Indonesia Law No. 45 of 2009 concerning amendments to the Republic of Indonesia Law No. 31 of 2004 concerning fisheries. The case of this case position occurred on Tuesday, August 31, 2021 at 18.45 WIB on Jalan Jeruk Legi Number 72 Cilacap, Central Java, which was allegedly carried out by the suspect.

The reporter received information from a fisherman who stated that the search for lobster larvae was rampant in Cilacap waters. The reporter and his team conducted an investigation in Cilacap waters, specifically at the Karangkandri PLTU, the Buton PLTU, the Rawajari TPI, and the Cilacap fishing port. After a two-week investigation, the reporter discovered that the Reported Person was collecting lobster larvae, which are prohibited for trade, without a business permit.

The issue of investigating criminal acts that qualify as illegal fishing is a crime that has implications for fisheries cultivation in Indonesia. The economic motives accompanying these crimes, compared to the urgency of sustainable fisheries, are interesting to study. Therefore, the researcher submitted a thesis proposal entitled "Juridical Analysis of Illegal Fishing Crimes (Police Report Study No: LP/A/398/IX/2021/SPKT.Ditpolairud/Polda Jawa Tengah)"

## 2. Research Methods

Method is the process, principles and procedures for solving a problem, while research is a careful, diligent and thorough examination of a phenomenon to increase human knowledge. Therefore, research methods can be interpreted as the process of principles and procedures for solving problems faced in carrying out research.<sup>10</sup> The aim of legal research is to broaden insight and increase the depth of the substance of legal science.<sup>11</sup>

## 3. Results and Discussion

### 3.1. Construction of Fisheries Crimes Without a Business License

The criminal incident case, based on Police Report No. LP/A/398/IX/2021/SPKT.Ditpolairud/Polda Jawa Tengah, began with the arrest of a perpetrator carrying BBL (Clear Lobster Seed) in the Cilacap Waters jurisdiction. The locus delicti of the a quo case was on Tuesday, August 31, 2021, at approximately 6:45 PM WIB on Jalan Jeruk Legi Number 72, South Cilacap.

The coercive efforts of the Police (Polairud Polda Jateng) in the form of arrest and examination of the alleged perpetrator who brought BBL (Clear Lobster Seeds) is Mr. YP with the address Jalan Swadaya Rt.03 Rw.04 Kel Tambakreja Kec Kab Cilacap Central Java.

The perpetrator's modus operandi was to transport the BBL (Benih Bening Lobster) using a red Avanza car with the registration number R.9474 PK. Meanwhile, the BBL (Benih Bening Lobster) had been packed in a large brown box placed in the rear trunk. When the incident occurred, the witness asked Mr. YP where the BBL (Benih Bening Lobster) was to be sent? The perpetrator's answer was that it would be sent to Sukabumi.

Prior to the arrest, the Central Java Regional Police's Water Police (Polairud) team conducted patrols and received information from the police that many fishermen were searching for lobster larvae in the Cilacap waters. The next step was to investigate the Cilacap waters, specifically the Karangkandri PLTU (power plant), the Buton PLTU (power plant), the Rawajarit Fish Farm (TPI), and the Cilacap fishing port.

During approximately two weeks of monitoring and observation, both by land and sea, we discovered that it is currently the season for Rebon and Benur. It appears that local fishermen are seeking out Benur, as the price of Benur is higher than that of Rebon.

---

<sup>10</sup>Soerjono Soekanto, 1985, Introduction to Legal Research, UI-Press, Jakarta, p. 6

<sup>11</sup>Artidjo Alkostar, 2018, Prophetic Legal Research Methods, UII Press, Yogyakarta, p. 21

Over two weeks of observation, the Water Police team discovered that the fishermen's systems and methods for collecting lobster larvae varied. Initially, the fishermen would hand over the larvae to someone on the beach. Others would take them home first and then hand them over. Some would even collect them in the middle of the ocean, then pick them up and hand them over to the collector.

During the investigation, the Water Police Team successfully obtained evidence and information (Baket). The team then focused on the collectors who received the lobster larvae from the fishermen. Further monitoring on Tuesday, August 31, 2021, at approximately 6:30 PM WIB, a red Avanza car entered and stopped at a location we suspected was the location where the lobster larvae were being stored/collected.

After the car started moving again, the team followed it for several kilometers. At approximately 6:45 PM WIB, the team stopped the car and conducted an inspection. The findings confirmed that the Avanza was carrying lobster larvae. According to Mr. YP (the driver), the cargo was to be delivered to Sukabumi on Mr. D's orders.

At that moment, the team immediately went to D's house located on Bakung Street. However, Mr. D was no longer at home. The team then agreed to take the driver (Mr. YP) along with the Benur evidence and the red Avanza car with the number plate R.9474 PK to the Central Java Regional Police's Water and Air Traffic Directorate office. The purpose was to ask for further information. Because the evidence in the form of the Benur could not last long if the oxygen in the plastic bag had run out, at around 05.30 WIB we immediately counted the Bening Lofster Seeds.

The counting process was witnessed by Mr. YP. The facts found were as follows:

First, there are 53 plastic bags with a total of 9,320 Benur, with details of 41 plastic bags with the code written with the letter P as many as: 8,120 tails and with the code written with the letter M as many as 12 plastic bags as many as 1,200 tails.

Second, regarding the price of the fry per fish, the witness stated that he didn't know the exact price per fish. According to field information, the price for the sand type is Rp. 12,000 per fish, while the pearl type is Rp. 15,000 per fish.

The position of the case a quo can be summarized in the following table:

Table 3.1 Case Position Police Report No:  
LP/A/398/IX/2021/SPKT.Ditpolairud/Polda Jawa Tengah

No	Investigation Findings	Information
1	<i>Locus delicti</i>	Jalan Jeruk Legi Number 72 South Cilacap.
2	Suspected perpetrator of a crime	Mr. YP
3	Modus operandi	Carrying BBL (Clear Lobster Seeds) using a red Avanza car with No. POL R.9474 PK.
4	Evidence	53 plastic bags with a total of 9,320 Benur, with details of 41 plastic bags with the letter code P containing 8,120 tails and 12 plastic bags with the letter code M containing 1,200 tails
5	BBL price per head	The price of the sand type is IDR 12,000 per tail, while the price of the pearl type is IDR 15,000 per tail.

Source: processed research data, 2025.

Regarding the criminal act of fishing without a business permit, from the author's research the following information was obtained:

*"The crime of "Any person who intentionally in the fisheries management area of the Republic of Indonesia carries out a fisheries business that does not comply with the Business License" as referred to in Paragraph 2 of Maritime Affairs and Fisheries Article 27 number 5 Jo number 26 of the Republic of Indonesia Law Number 11 of 2020 concerning Job Creation regarding amendments to Article 92 Jo Article 26 paragraph (1), (2) of the Republic of Indonesia Law Number 45 of 2009 concerning amendments to the Republic of Indonesia Law Number 31 of 2004 concerning fisheries, which occurred on Tuesday, August 31, 2021 at 18.45 WIB on Jalan Jeruk Legi Number 72 Cilacap, Central Java, which is suspected to have been carried out by the suspect YPD Bin MD"*

Based on these legal facts, the legal construction of the criminal case of fishing without a business permit based on Police Report No: LP/A/398/IX/2021/SPKT.Ditpolairud/Polda Jawa Tengah, can be explained as follows:

First, the legal norms violated by the perpetrator of the crime. Police investigators base the incident on legal grounds and determine it as a crime by determining the suspected perpetrator of the crime based on:

1. Article 27, number 5 of Law No. 11 of 2020 concerning Job Creation states:

"Fishing is an activity to obtain fish in waters that are not being cultivated using any tools or methods, including activities that use ships to load, transport, store, cool, handle, process and/or preserve them."

2. Article 27, number 26 of Law No. 11 of 2020 concerning Job Creation. This article states that:

"Regional Government is the regional head as an element of the Regional Government administration that leads the implementation of government affairs that are the authority of the autonomous region."

3. Article 92 of Law of the Republic of Indonesia No. 45 of 2009 concerning amendments to Law of the Republic of Indonesia No. 31 of 2004 concerning fisheries. The legal formulation of this article is:

"Any person who intentionally carries out a fisheries business in the fisheries management area of the Republic of Indonesia in the fields of catching, cultivating, transporting, processing and marketing fish, who does not have a SIUP as referred to in Article 26 paragraph (1), shall be punished with a maximum prison sentence of 8 (eight) years and a maximum fine of IDR 1,500,000,000.00 (one billion five hundred million rupiah)."

"Business Licensing consists of the following sectors:

- a. maritime affairs and fisheries;
- b. agriculture;
- c. forestry;

Thus, the legal norms violated by the perpetrators of alleged criminal acts of fishing without a business permit can be summarized in the following table:

Table Legal Norms Violated by Criminal Act Perpetrators Based on Police Report No: LP/A/398/IX/2021/SPKT.Ditpolairud/Polda Jawa Tengah

No	Statutory Regulations	Provision
1	Article 27 number 5 of the Republic of Indonesia Law Number 11 of 2020 concerning Job Creation	Legal qualifications or understanding of "fishing"
2	Article 27 number 26 of the Republic of Indonesia Law Number 11 of 2020 concerning Job Creation	Legal boundaries of local government which has legal authority in fisheries governance
3	Article 92 of Law of the Republic of Indonesia No. 45 of 2009 concerning amendments to Law of the Republic of Indonesia No. 31 of 2004 concerning Fisheries	Material provisions fisheries crime of "transporting" certain types of fish
4	Article 26 paragraphs (1) and (2) RI Law No. 45 of 2009 concerning amendments to RI Law No. 31 of 2004 concerning Fisheries	The main article is systematically constructed with Article 92 of the Fisheries Law, specifically the criminal act of "transporting certain types of fish" without a Fisheries Business License (SIUP).
5	Article 26 of the Republic of Indonesia Law Number 11 of 2020 concerning Job Creation	Business Licensing consists of sectors including: <b>maritime affairs and fisheries</b>

Source: processed research data, 2025

Based on table, it can be understood that the perpetrator of the crime of fishing without a business permit is suspected of violating Article 26 paragraph (1) and (2) of Law of the Republic of Indonesia No. 45 of 2009 concerning amendments to Law of the Republic of Indonesia No. 31 of 2004 concerning Fisheries. This article is systematically constructed with Article 92 of the Fisheries Law.

Second, an analysis of the legal norms regarding the articles violated by the perpetrators of the crime in the a quo case. Police investigators, in enforcing the legal process, have turned the incident into a fisheries crime through the following series of analyses:

1) Analysis of the legal norms of Article 26 paragraphs (1) and (2) of Law of the Republic of Indonesia No. 45 of 2009 concerning amendments to Law of the Republic of Indonesia No. 31 of 2004 concerning Fisheries. This article consists of two paragraphs with the description that paragraph (1) is a fisheries offense regulated by law. Meanwhile, paragraph (2) contains regulations regarding exceptions to legal subjects who can be subject to the offense in paragraph (1). The analysis of the norms of this article can be described as follows:

- a. Subject of norms: everyone
- b. Norm operator: command due to the presence of the phrase "must"
- c. Object of norms: conducting fishing business, having
- d. Normal conditions: capture, cultivation, transportation, processing, marketing

The description of the norm in Article 26 paragraph (1) of the Fisheries Law is directed at "every person". If elaborated further, "every person" in the Fisheries Law is limited to the meaning of "Every person is an individual or corporation", as formulated in Article 1 number 14 of the Fisheries Law. This statement shows that the legal subjects in Article 26 paragraph (1) of the Fisheries Law can consist of individuals or corporations.

The element of dolus is the core of wrongdoing in criminal law. With the Job Creation Law's philosophy focused on business facilitation and risk-based licensing, the interpretation of "intentionally," or dolus, can no longer refer solely to the intention to commit an act, but also to the intention to cause legal consequences, namely, failure to fulfill a permit.

If the government wants to make it easier to obtain permits, then the intention to not have a permit must be truly deliberate (for example, the perpetrator knows that they must have a permit but deliberately does not take care of it) in order to be punished, not just administrative negligence.

Criminal and sentencing regulations can be interpreted as rules and guidelines for imposing punishment on perpetrators of criminal acts.<sup>12</sup> Article 92 of the Fisheries Law formulates criminal sanctions (criminal sentences) as formulated in the phrase "shall be punished with imprisonment for a maximum of 8 (eight) years and a maximum fine of IDR 1,500,000,000.00 (one billion five hundred million rupiah)"

Upon closer examination, the formulation reveals that the severity of the criminal sanctions is formulated with a maximum sentence of eight years' imprisonment. Furthermore, the formulation is cumulative due to the use of the phrase "and." The maximum fine imposed under this article is IDR 1,500,000,000.00 (one billion five hundred million rupiah).

With the fact that the text of the legal norms applied by investigators in the *casea quo* then it can be said that the perpetrator of the crime of fishing without a business permit as in the *casea quo* case, is suspected of violating Article 92 which is systematically constructed with Article 26 paragraph (1) of the Fisheries Law.

The legal consequences or implications within the Indonesian criminal justice system, particularly with reference to Law No. 6 of 2023 concerning Job Creation, require strong evidence to establish the perpetrator's fault (criminal responsibility). The alignment of the criminal system between the Fisheries Law and the philosophy of the Job Creation Law occurs when proving the perpetrator's fault extends beyond simply neglecting business licensing. Furthermore, it must be proven that the perpetrator intentionally failed to obtain the permit.

If the perpetrator turns out to have only been negligent in the licensing administration, then the Panel of Judges' considerations can be said to be not yet convinced of the existence of mens rea (malicious intent) on the part of the perpetrator. This is because the argument regarding the nature of the formulation of the elements of fault or responsibility in Article 92 of the Fisheries Law is desired by the legislators, not only negligence in licensing administration.

Thus, the legal construction applied by police investigators to perpetrators of fishing crimes without a business permit still contains weaknesses in the evidence if the Public Prosecutor has not fulfilled the criteria for an accurate indictment, namely collecting evidence and information that proves that the perpetrator in the *casea quo*, truly unwilling to obtain a Fisheries Business License (SIUP). This means it must be proven that the perpetrators were not simply engaging in licensing maladministration.

---

<sup>12</sup>Op.cit., Arief BN, page 16

### **3.2. Implementation of Investigations into Criminal Acts of Fisheries Without a Business License**

Internal regulations within the Indonesian National Police regarding criminal investigations are stipulated in Regulation of the Chief of the Indonesian National Police Number 6 of 2019 concerning Criminal Investigations. This regulation serves as a guideline for police investigators in translating legal incidents into criminal acts.

This internal procedure in the Police, in its considerations, states (1) that the authority to enforce the law for the Police is interpreted as a transparent, professional and accountable law enforcement process. The goal is to realize the supremacy of law that is certain, full of justice and beneficial to the community. (2) The need for guidelines for carrying out criminal investigations in accordance with applicable laws and regulations.

Several terms related to the study in this sub-chapter can be formulated in accordance with Police Regulation No. 6 of 2019 concerning Criminal Investigations. The terms used in the police investigation process can be described as follows:

1. The definition of an investigation is a series of actions by investigators in the manner and according to the methods regulated by law to seek and collect evidence that can shed light on the crime that occurred and to find the suspect. (Article 1 number 2 of Police Regulation No. 6 of 2019).
2. The definition of an investigator is a police officer who is authorized by law to conduct investigations (Article 1 number 3 of Police Regulation No. 6 of 2019).
3. The norm for the definition of a Criminal Act is an unlawful act in the form of a crime or violation that is punishable by imprisonment, detention or a fine (Article 1 number 6 of Police Regulation No. 6 of 2019).

Several definition norms related to the criminal investigation process based on Police Report No: LP/A/398/IX/2 021/SPKT.Ditpolairud/Polda Jawa Tengah will be adjusted to the following explanation of the stages of the investigation process:

First, Police Reports and Investigations. The definition of a Police Report is an Information Report in the form of information about an event from the public or known to a member of the Indonesian National Police (Polri) for investigation to determine whether the event is a crime or not. The case a quo is based on the following information report:<sup>13</sup>

---

<sup>13</sup>Summary of Police Report No: LP/A/398/IX/2021/SPKT.Ditpolairud/Polda Jawa Tengah

*"Initially, we received information from the caraka that in the Cilacap waters there were many fishermen looking for Benur, then we and the team conducted an investigation in the Cilacap waters, specifically at the Karangkandri PLTU, Buton PLTU, Rawajarit TPI and the Cilacap fishing port."*

The initial stage of the legal investigation by the Central Java Regional Police's Water Police investigation team began with a tip-off from Caraka (an informant). Essentially, the police team received information at the crime scene that fishermen were searching for lobster larvae around the coast of Cilacap, Central Java.

The police investigation efforts lasted approximately two weeks, as stated by the witness in the a quo case:<sup>14</sup>"After we carried out monitoring and observations for approximately two weeks, both monitoring by land and by sea, it turned out to be true that currently it is only the season for Rebon and Benur, however, on average, the local fishermen are looking for Benur because the price of Benur is more expensive than Rebon."

The facts of this investigation can be understood as investigators in the case a quo obtained a search pattern of fishermen at the crime scene. Information at the scene indicated that the fishermen were predominantly searching for lobster larvae (benur) because they are more expensive than rebon.

Police investigations aim to gather evidence and information about legal events, with the goal of classifying whether the incident can be categorized as proceeding to the investigation stage. Some of the evidence and information in the investigation by the Central Java Regional Police's Water Police Directorate Team can be described below:

*"On Tuesday, August 31, 2021, at around 18.30 WIB, a red Avanza car entered and stopped at a location that we suspected was the place where the Benur was kept/collected, after the car started moving again, we followed it for several kilometers at around 18.45 WIB, we stopped it and then we conducted an inspection. It turned out that the Avanza car was carrying Benur which, according to information from Mr. YAN PERKASA as the driver, the goods would be sent to Sukabumi on the orders of Mr. DIMAS, at that time we and the team immediately went to Dimas's house located on Bakung Street, but Mr. Dimas was no longer at home, then we and the team agreed to bring the driver (Yan Perkasa) along with the Benur evidence and the red Avanza car with No. Pol. R.9474 PK to be taken to the Central Java Regional Police's Water Police Directorate office for further questioning and considering that the evidence in the form of the Benur cannot last long if the oxygen in the plastic bag has run out."*

---

<sup>14</sup>Ibid.,

The data indicates that witnesses at the scene obtained evidence and information about the legal incident worthy of further investigation. This evidence was a bag of lobster larvae transported by the perpetrator in a car. Considering the integrity of the evidence, the Water Police investigation team took the car and lobster larvae to the Central Java Regional Police's Water Police Directorate office.

This is in accordance with Police Regulation No. 6 of 2019, with the following explanation:

- a. Article 3 of Police Regulation No. 6 of 2019 contains guidelines that investigators are authorized to receive police reports (Article 3 paragraph (1)).
- b. Article 3 paragraph (4) of Police Regulation No. 6 of 2019, regulates the provisions that the a quo case is worthy of being reported to the Police. This can be seen from the evidence whose integrity will be maintained (live lobster larvae) by the Central Java Regional Police's Water Police Directorate Team.
- c. Article 3 paragraph (5) of Police Regulation No. 6 of 2019, regulates the model of police reports. Because the reporter is witness 1 and 2 as a member of the Police, according to the provisions, a model A police report is made, namely a police report made by a member of the Police who experienced, knew or directly discovered the incident that occurred. This can be seen from the letter A in the Police Report Number in the a quo case, Police Report No: LP/A/398/IX/2021/SPKT. Ditpolairud/Polda Central Java. The letter A indicates that the model report was made by the reporter as a member of the Police.

Based on the police report, the case proceeded to the investigation stage. Several investigative activities are regulated in Article 6 of Police Regulation No. 6 of 2019 as follows:

“(1) Investigative activities are carried out in the following ways:

- a. crime scene processing;
- b. observation;
- c. interview;

(2) The targets of the investigation include:

- a. people;
- b. objects or goods;
- c. place;

The table explains the investigation process for the a quo case, with the following objectives:

- a. Person. In the incident a quo, the person being questioned is Yan Perkasa, who is suspected of being the perpetrator of the fisheries crime. Also questioned is Dimas, who was not located during the crime scene investigation.
- b. Objects or goods. The lobster larvae found in a plastic bag in the trunk of the perpetrator's car represent the objects or goods investigators are targeting.
- c. Location. The location in the a quo case is at Jalan Jeruk Legi No. 72, Cilacap, Central Java.

The legal construction of criminal policy in the a quo case can be structured into three large parts:

1. The legal formulation of legal norms violated by perpetrators of criminal acts is based on the principle of legality (the perpetrator can be punished if there is an act/crime written in the law).
2. Criminal responsibility of perpetrators of criminal acts is based on the legal principle of culpability (there is no crime without fault).
3. Imposition of criminal penalties or punishment.

These three components of criminal law policy are interrelated and influence one another. The balance between legal origin, the principle of culpability, and the formulation of punishment forms a coherent whole in the construction of criminal law.

### **3.3. Obstacles and Solutions to the Implementation of Investigations into Criminal Acts of Fisheries Without a Business License**

The author's analysis in identifying obstacles to the implementation of the Investigation of Fisheries Crimes Without a Business License in Police Report No: LP/A/398/IX/2021/SPKT.Ditpolairud/Polda Jawa Tengah based on the legal system theorized by Lawrence M. Friedman as follows:

1. Legal Substance Perspective (legal substance).

The challenge from this perspective, according to the author, lies in the continuity of the legal norms of Law No. 31 of 2004, which was amended by Law No. 45 of 2009. Both laws were in effect when the National Legal Policy had not yet adapted to the ease of investment that requires an ecosystem: certainty, transparency, and low cost. The philosophical perspective of both resultant laws is more dominant towards the issue of natural environmental sustainability. As a result, for some entrepreneurs or investors, there is a calculation of uncertainty regarding the estimated environmental costs. In other words, from an

investment perspective, it is seen as not yet attractive enough for some entrepreneurs and investors due to the uncertainty of the quantifiable environmental costs.

Law Number 11 of 2020 concerning Job Creation (the Job Creation Law) was enacted in an effort to create a better investment climate. Therefore, the law's philosophy focuses on attracting investors through Indonesia's maritime and fisheries sector. In this context, the Job Creation Law adheres to a risk-based fisheries governance approach. This simplifies regulations and legal norms with the aim of attracting investors to the fisheries sector.

The above description of legal substance implies that there is a discontinuity/paradigm shift in the philosophical realm in both legal regimes. Meanwhile, in legal doctrine, it can be formulated that "the policy of formulating criminal provisions that is legally problematic (containing legal weaknesses) can be a factor inhibiting efforts to enforce criminal law at the application stage (judicial policy) and the execution stage (executive/administrative policy)."<sup>15</sup>

Thus, the obstacle or challenge in the legal substance of the a quo case is that, although the Job Creation Law aims to facilitate economic activity, its implications for criminal law enforcement in the fisheries sector, particularly regarding the reorientation from criminal sanctions to administrative sanctions for certain violations, require in-depth analysis. This is because risk assessment provisions in the fisheries sector require non-negotiable competence, as the domain being analyzed is living organisms.

#### **4. Conclusion**

1. The construction of the crime of fishing without a business permit in Police Report No: LP/A/398/IX/2021/SPKT.Ditpolairud/Polda Jawa Tengah, is based on the legal norm of Article 26 paragraph (1) which is systematically constructed with Article 92 of Law No. 11 of 2020 concerning Job Creation. The legal formulation of these two legal norms contains the principle of Legality (Criminal Act) and the principle of Culpability (Fault). The criminal policy in these norms emphasizes imprisonment and fines which are formulated cumulatively. 2. The implementation of the investigation into the crime of fishing without a business permit in Police Report No: LP/A/398/IX/2021/SPKT.Ditpolairud/Polda Jawa Tengah, meets the criteria of the provisions in the Republic of Indonesia Police Regulation No. 6 of 2019 concerning the investigation of criminal acts. 3. Obstacles in implementing the investigation of the a quo case stem from the legal substance of the article violated, which is interpreted towards administrative criminal penalties, resulting in penalties tending towards fines. In other words, imprisonment is an ultimum remedium. Legal structural constraints

---

<sup>15</sup>Arief, BN, 2012, Policy on Formulating Criminal Provisions in Legislation (First). Semarang Magister Library. p. 1

include difficulties in securing evidence of Clear Lobster Seeds (BBL). Legal cultural constraints stem from a community legal culture that prioritizes economic incentives over concern for the diversity of fisheries' blessings. The solution to implementing the investigation of fisheries crimes without a business permit, as outlined in Police Report No. LP/A/398/IX/2021/SPKT.Ditpolairud/Polda Jawa Tengah, requires joint guidance among law enforcement agencies to foster a shared understanding of risk-based business licensing under the Job Creation Law. The legal structure requires professional investigators to interpret legal norms for risk-based licensing, due to the gray area between administrative criminal penalties and the ultimum remedium doctrine of criminal policy. Systematic and continuous education is needed to ensure the community's legal culture recognizes that fisheries blessings are part of the future generation.

## 5. References

### Journals:

A. Ridwan Hakim, Panca Sendi Fundamental Universal dalam Etika Penelitian Hukum, *Jurnal Hukum Gloria Juris*, Vol. 7, No. 3 September – Desember 2007

Ade Sapitomo, Budaya Hukum dalam Masyarakat Plural dan Problem Implementasinya, *Bunga Rampai Problematika Hukum dan Peradilan*, Jenderal Komisi Yudisial Republik Indonesia, Jakarta, 2014

Andri Winjaya Laksana, Manifestation Of Pancasila Values In The Omnibus Law For Justice, The 6th Proceeding International Conference And Call Paper Sultan Agung Islamic University, Unissula Press, 2020

Brian Amy Prastyo, Prinsip Keadilan Sosial Sebagai Hukum. *Jurnal IUS Kajian Hukum dan Keadilan*. Vol 1 Nomor 3, Tahun 2013

Erni, E., & Jaya, F., Efektifitas Perizinan Berusaha Berbasis Risiko dalam Rangka Kemudahan Berusaha. *Wajah Hukum*, 6(2), 248., 2022 <https://doi.org/10.33087/wjh.v6i2.927>

Feliks Haryanto Telaumbanua, Penerapan Hukum Dalam Pemidanaan Pada Tindak Pidana Perikanan Tanpa Izin Di ZEEI, *Jurnal Panah Hukum*, Vol. 2 No. 2 Edisi Juli 2023

Oktaryal, A. , Kertas Advokasi Kebijakan Atas UU No. 11 Tahun 2020 Tentang Cipta Kerja Bidang Kelautan dan Perikanan. Pusat Studi Hukum Dan Kebijakan Indonesia, 2020

Rohim, A., 2019, Analisis Hukum Pidana Islam Dan Hukum Positif Terhadap Illegal Fishing Dengan Tidak Memiliki Surat Izin Penangkapan Ikan (Studi

Putusan No 05/PEN/PID.SUS/2015/PN.AMB). Skripsi UIN Sunan Ampel Surabaya

Suratman, & Laksana, A. W., 2014, Analisis Yuridis Penyidikan Tindak Pidana Pornografi Berdasarkan Undang-Undang Nomor 44 Tahun 2008 Di Era Digitalisasi. *Jurnal Pembaharuan Hukum*, 1(2), 169–177.  
<http://jurnal.unissula.ac.id/index.php/PH/article/view/1473/1141>

Tutik Rachmawati, Metode Pengumpulan Data dalam Penelitian Kualitatif, Program Studi Ilmu Administrasi Publik – Fakultas Ilmu Sosial dan Ilmu Politik, Universitas Katolik Parahyangan

**Books:**

Asri Muhamad Saleh, 2003, Menegakkan Hukum dan Mendirikan Hukum, Biona Mandiri Press, Pekanbaru

Bambang Poernomo, 1981, Asas-Asas Hukum Pidana, Ghalia Indonesia, Jakarta

Barda Nawawi Arief, 2012, Kebijakan Formulasi Ketentuan Pidana dalam Peraturan Perundang-Undangan (Pertama). Pustaka Magister Semarang.

Dahlan, H. Z. ,1999, Qur'an Karim dan Terjemahan Artinya, UII Press, Yogyakarta

Guba dan Lincoln dalam Lexy J. Moleong, 2004, Metode Penelitian Kualitatif, Remaja Rosdakarya, Bandung

Gurvitch Georges, 1961, Sosiologi Hukum, Bharatara, Jakarta

H.L.A.Hart, 1961, The Concept of Law, Oxford University Press

Hans Kelsen, 2009, General Theory of Law and State, The Lawbook Exchange, Ltd.

Indarti Erlyn, 2002, Diskresi Polisi, UNDIP, Semarang

Ishaq, 2009, Dasar-Dasar Ilmu Hukum, Sinar Grafika, Jakarta

Jimly Asshiddiqie, 2012, Dialektika Pembaharuan Sistem Hukum Indonesia, Jenderal Komisi Yudisial Republik Indonesia, Jakarta

Kaelan, 2016, Pendidikan Pancasila, Paradigma, Yogyakarta

Khuzaifah Dimyati, 2010, Teorisasi Hukum Studi Tentang Perkembangan Peemikiran Hukum di Indoneia 1945-1990, Genta Publising, Yogyakarta

Lexy J. Moleong, 2004, Metode Penelitian Kualitatif, Remaja Rosdakarya, Bandung

Lon L. Fuller, 1969, The Morality of law, Yale University Press

Mardjono Reksodiputro, 1994, Kriminologi dan Sistem Peradilan Pidana, Pusat Pelayanan Keadilan Dan Pengabdian Hukum Universitas Indonesia, Jakarta

Muhaimin, 2020, Metode Penelitian Hukum, Mataram University Press (Vol. 1), Mataram University Press

Padmo Wahjono, 1986, Indonesia Negara Berdasar Atas Hukum, Ghalia Indonesia, Jakarta

PAF Lamintang, 1984, Dasar-Dasar Hukum Pidana Indonesia, Sinar Baru, Bandung

R.M Dworkin, 1977, Is Law a Sistem of Rules?, in R.M Dworkin (ed), The Philosophy of Law, New York: Oxford University

Satjipto Rahardjo, 1982, Ilmu hukum, Alumni, Bandung

Soerjono Soekanto dan Sri Mamudji, 1985, Penelitian Hukum Normatif Suatu Tinjauan Singkat, CV. Rajawali, Jakarta

Wirjono Prodjodikoro, 1986, Asas-Asas Hukum Pidana di Indonesia, Eresco, Bandung

**Regulation:**

Criminal Code

Criminal Procedure Code

Law of the Republic of Indonesia Number 11 of 2020 concerning Job Creation

Law of the Republic of Indonesia Number 2 of 2002 concerning the Republic of Indonesia Police

Law of the Republic of Indonesia Number 31 of 2004 concerning Fisheries, as amended by Law of the Republic of Indonesia Number 45 of 2009 concerning Fisheries.

Republic of Indonesia Police Regulation No. 6 of 2019 concerning Criminal Investigation

The 1945 Constitution of the Republic of Indonesia

**Internet:**

<https://mh.uma.ac.id/apa-itu-dolus-opzet/>

Laporan Polisi No: LP/A/398/IX/2021/SPKT.Ditpolairud/Polda Jawa Tengah .