

Patrol Role of the Directorate of Water Police in Prevention of Illegal Fishing by Foreign Ship

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Abstract.

The purpose of this paper is to examine and analyze the role of the Indonesian Water Police in preventing illegal fishing in the Natuna waters. In this paper, the author uses a normative juridical method. In the conclusion of the discussion, in addition to international law which regulates law enforcement against IUU Fishing in the Exclusive Economic Zone, in Indonesia itself it is also regulated regarding law enforcement against IUU Fishing. In relation to national law enforcement regarding IUU Fishing, it has been contained in Act No. 5 of 1983 concerning the Indonesian Exclusive Economic Zone in Article 13. The stop and inspection of foreign vessels caught by the Water Police will be processed to obtain sufficient evidence. The process is in the form of checking permit documents from the Indonesian government, fishing gear used, fish caught, and communication tools. After being processed by the arresting agency, foreign ships will be ad hoc and escorted to the base for inspection and investigation. The investigation process is carried out by Civil Servant Investigators or Polda Water Police to the captain and crew (ABK) for questioning.

Keywords: Fishing; Illegal; Waters.

1. Introduction

Indonesia is often called a maritime country, this is because part of its territory consists of the sea. According to the records of the Indonesian Forum for the Environment (WALHI), Indonesia is the largest archipelagic country in the world, where the distance from one island to another is separated by waters, especially the ocean. Indonesia has a very wide sea area, two-thirds of Indonesia's territory is territorial waters. With the wide coverage of Indonesia's sea area, Indonesia is also recognized internationally as a maritime country as stipulated in the 1982 United Nations Convention On the Law of the Sea (UNCLOS) which authorizes and expands Indonesia's marine area with all the provisions that follow it.¹

Indonesia is the largest archipelagic country in the world², has an area of marine waters that reaches approximately 5.8 million square kilometers consisting of 3.1 million kilometers in the form of territorial waters and 2.7 million kilometers in the form of ZEEI seas. 6° North Latitude and 11° South Latitude. The archipelago series consists of more than 17,506 islands and 92 islands, and some of them are located in border areas with several neighboring countries. From the area and potential contained therein, of course, this strategic condition needs serious attention from all components of the nation in managing and utilizing it for the prosperity and welfare of the entire community.

¹Nunung Mahmudah, (2015), *Illegal Fishing: Pertanggungjawaban Pidana Korporasi di Wilayah Perairan Indonesia*, Jakarta, Sinar Grafika, p.1.

²Jeffrey Rewis, (2004), *Menjahit Laut yang Robek Paradigma Archipelago State Indonesia*, Yayasan Malesung, Jakarta, p.Xii.

In addition to Indonesia as an archipelagic state, the Unitary State of the Republic of Indonesia is also one of the big countries that prioritizes applicable legal provisions. The positive rule of law that applies in Indonesia is clearly an important component in building a safe, peaceful and peaceful life.³As in the Constitution of the Republic of Indonesia, namely the 1945 Constitution of the Republic of Indonesia, which has confirmed that Indonesia is a state of law, this phrase is contained in Article 1 paragraph 3 of the 1945 Constitution of the Republic of Indonesia.⁴This confirms that the implementation of the Indonesian state government must always be based on and in accordance with the will of the law. The fourth paragraph of the Preamble to the 1945 Constitution, which is the constitutional basis of this country, states that one of the goals of the state is to create general welfare and educate the nation's life.⁵This has the implication that public welfare is a constitutional ideal, accompanied by the growth of an intelligent Indonesian people who are able to lead the Indonesian nation as a sovereign and prosperous country.⁶

As for law enforcement efforts in Indonesian marine waters through a mechanism stage including a routine patrol action related to fisheries crime prevention, there are three institutions authorized as investigators for certain crimes at sea, each of which is based on a separate law. The three institutions are as follows:

- Articles 13 and 14 letter g of Act No. 2 of 2002 (LN RI of 2002 Number 2) concerning the State Police of the Republic of Indonesia;
- Article 9 of Act No. 34 of 2004 (LN RI of 2004 Number 127) concerning the Indonesian National Army;
- Article 6 paragraph (1) letter b of Act No. 8 of 1981 (LN RI of 1981 Number 76) concerning the Criminal Procedure Code concerning Civil Servant Investigators (PPNS);
- Article 73 paragraphs (1 to 5) of Act No. 45 of 2009 concerning Amendments to Act No. 31 of 2004 concerning Fisheries.

Law enforcement at sea as regulated in the legal provisions above regulates 3 (three) government institutions, namely: the Indonesian Navy (TNI AL), the Indonesian National Police (Polri) and Fisheries Civil Service Officers (PPNS) in accordance with their respective authorities. The respective agencies and based on the provisions of national laws and regulations as well as international law. To maintain and secure the waters of national jurisdiction, it is necessary to have the authority of government institutions based on the legal aspects of the law in

³Sumaryono and Sri Kusriyah, *The Criminal Enforcement of the Fraud Mode of Multiple Money (Case study Decision No.61 / Pid.B / 2019 / PN.Blora)*, Jurnal Daulat Hukum: Volume 3 Issue 1, March 2020, url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/8811/4075>

⁴Andi Pradikta Alvat, *Politics Of Law Human Rights Protection In Indonesia*, Jurnal Daulat Hukum, Volume 2 Issue 4, December 2019, url:<http://jurnal.unissula.ac.id/index.php/RH/article/view/8354/3873>

⁵Sulistiyawan Doni Ardiyanto, Eko Soponyono, and Achmad Sulchan, *Judgment Considerations Policy in Decree of the Court Criminal Statement Based On Criminal Destination*, Jurnal Daulat Hukum: Volume 3 Issue 1, March 2020, url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/8409/4067>

⁶Abdul Kholiq Nur and Gunarto, *Concept of Criminal Law on Corruption of Corporate Criminal Liability System Based on Justice Value*, Jurnal Daulat Hukum, Volume 4 Issue 1, March 2021, url:<http://jurnal.unissula.ac.id/index.php/RH/article/view/14205/5388>

accordance with statutory regulations. In terms of eradicating criminal acts of fisheries.

Based on the background described above, the problem that arises is what is the role of the Indonesian Water Police in preventing illegal fishing in the Natuna waters?

2. Research Methods

To conduct a study in this paper, the author uses the normative juridical method, namely the type of approach using the provisions of the legislation in force in a country or the doctrinal legal approach method, namely legal theories and opinions of legal scientists, especially those relating to the issues discussed.⁷The approach to the problem will then be sharpened with a conceptual approach, namely an approach that is carried out using concepts that are understood from the thoughts of experts or experts in fields related to the problems discussed.

3. Result and Discussion

3.1. The Role of the Indonesian Water Police in Implementing Illegal Fishing Prevention in the Natuna Waters

The maritime security of national jurisdictions and international waters as shipping lanes has long been a serious concern of the world, especially for coastal countries (Coastal States) and archipelagic countries (Archipelagic States) which have a direct interest in them. One of the functions of the sea is as a transportation route that connects one country to another for the benefit of various activities. Considering that this function has a high value for archipelagic countries, crimes often occur at sea that threaten shipping security, trade which results in fatalities for ship crews, physical damage to ships, loss of goods transported and losses for ship owners. Jurisdictional and international sea waters whose safety is not guaranteed, then bring logical consequences on the impact of global economic losses. Therefore, maritime security does not only represent the interests of a country but also the interests of the region.

The freedom to sail for foreign ships guaranteed by the right of innocent passage is inseparable from Indonesia's efforts to maintain resilience and defense from threats and disturbances at sea. Guarantees in respecting the freedom of navigation internationally are not always felt by Indonesia. Some shipping practices and sea flights that use the airspace above are often abused by foreign ships and aircraft. The use of the right of innocent passage for foreign ships has the potential to be violated to carry out certain criminal acts at sea such as customs, transporting illegal immigrants, smuggling, pollution, illegal fishing, surveys, and so on.

In the declaration, it is stated that: "all waters between and around islands that are part of the territorial territory of the archipelago have an important legal impact on international shipping activities, this is because of the high seas which was previously free. The Government of Indonesia took action, namely to make it part of the national territory. This is because, that the State of Indonesia cannot simply abolish freedom in sailing activities in Indonesian waters as it has existed since

⁷Soemitro, (1998), *Metodologi Penelitian Hukum dan Jurimetri*, Jakarta, Ghalia Indonesia, p. 24

ancient times, the Declaration of December 13, 1957 expressly stated that "...the traffic of foreign ships through Indonesian waters is guaranteed as long as it does not harm the security and safety of the Indonesian State."⁸

Law enforcement against violations of IUU fishing in the EEZ has its own efforts, this is because in addition to the interests of the coastal state, there are also the interests of the ship's flag state. Therefore, if viewed from international law regarding law enforcement against IUU fishing in the EEZ, then in accordance with Article 73 paragraph (1) of UNCLOS 1982 it is explained that if a foreign ship does not comply with the fisheries laws and regulations of the coastal state in the EEZ, the coastal state can board, inspect, catch and carry out judicial proceedings against the foreign ship, as necessary to ensure compliance with the laws and regulations stipulated in accordance with the provisions of UNCLOS 1982. Therefore, the coastal state can impose its national laws and regulations on violations committed by foreign fishing vessels that engage in IUU fishing in their Exclusive Economic Zone. Meanwhile, in carrying out its authority in accordance with Article 73 paragraph (1) of UNCLOS 1982, the coastal state is equipped with provisions in Article 111 UNCLOS 1982 which authorizes the coastal state to conduct hot pursuit of foreign fishing vessels based on sufficient preliminary evidence that the vessel has violated the laws and regulations of the coastal state. As explained in Article 73 paragraph (3) of UNCLOS 1982 that the punishment given to foreign fishing vessels may not include imprisonment, if there is no agreement between the countries concerned. Then the captured ship and crew must be released immediately (prompt release) after providing a reasonable bond or other form of guarantee to the coastal state in accordance with Article 73 paragraph (2) of UNCLOS 1982. In the case of arrest or detention of fishing vessels foreign coastal States must immediately notify the flag state of the vessel, through appropriate channels, of the actions taken and of any penalties subsequently imposed by the coastal state on the foreign fishing vessel (Article 73 paragraph (4) UNCLOS 1982).⁹

Regarding the immediate release (prompt release) after the proper security deposit is given to the ship and its crew, this has been regulated in Article 292 of UNCLOS 1982. In that article it is stated that the coastal state that catches a foreign fishing vessel must immediately release the ship or its crew after being given the money/proper guarantee. However, in practice, the amount of the security deposit has not yet been regulated by either UNCLOS 1982 itself or national legislation. The determination of the security deposit is based on the agreement of the parties only, this is explicitly stated in Article 292 of the 1982 UNCLOS. Therefore, discrepancies often occur because the amount of the security deposit set by the coastal state is too large, while other countries feel that the security deposit is too large so that the country refuses to pay the security deposit. This is what causes the length of detention carried out by the coastal state against the vessel and the crew of the foreign fishing vessel, it is due to the failure to reach an agreement regarding the security deposit imposed by the national court of the coastal state. This happens because there is no stipulation of the amount of the security deposit in the national

⁸T.S.Pandoyo, (1999), *Wawasan Nusantara*, Rineka Cipta, Jakarta. p. 26

⁹Fernando Aprizal, Siti Muslimah, *Penegakan Hukum Terhadap Kasus Illegal, Unreported, dan Unregulated Fishing yang Dilakukan Terhadap Kapal KM BD 95599 TS di Laut Natuna Sesuai Dengan Hukum Internasional*, FH UNS, Belli Ac Pacis, Vol. 5 No. 2, December 2019, p. 89

legislation of the coastal state. To anticipate this from happening, Article 292 of UNCLOS 1982 recommends that it be submitted to The International Tribunal for the Law of the Sea (ITLOS) or the International Court of Law of the Sea. To further determine the amount of the security deposit, so that the detaining coastal state must release it immediately after the deposit of the security deposit is deposited. As for setting a proper security deposit, it is implied through the ITLOS decision in the case of the Volga ship (between Russia and Australia) that the amount of the eligibility deposit is the same as the value of the ship, fuel, lubricants and fishing equipment.¹⁰

According to Soerjono Soekanto, in his book, factors that influence law enforcement, it is stated that the main problem of law enforcement actually lies in the factors that may influence it, one of which is law enforcement factors, namely the parties who form and apply the law.¹¹

UNCLOS 1982 grants the coastal state the right to enforce the law and enforce its national laws concerning fishing in its Exclusive Economic Zone. If there is an indication of a violation, the coastal state can detain the foreign ship by first informing the ship's flag state and then setting a security deposit. UNCLOS 1982 prohibits imprisonment for violations of fishing regulations.¹²

The issuance of Presidential Regulation Number 115 of 2015 concerning the Task Force for the Eradication of Illegal Fishing (illegal fishing) is a new breakthrough. Jokowi-JK government in law enforcement in the field of Maritime Affairs and Fisheries. In this presidential regulation it appears clear legal politics that the problem of illegal fishing is one of the acute problems so that it requires cooperation and coordination between ministries, state institutions and other agencies. Legal Politics in Presidential Regulation 115 of 2015 can be seen in the considerations considering letters b and c as follows:

"That violations and crimes in the field of fisheries, especially the crime of illegal fishing (illegal fishing) is very concerning, because it is necessary to immediately take firm and integrated steps by all relevant government agencies for eradication. That eradicating illegal fishing requires extraordinary law enforcement efforts that integrate forces between government agencies related to the right strategy, utilize the latest technology so that it can run effectively and efficiently, be able to cause a deterrent effect, and be able to restore state losses".

Based on these considerations, it appears that the government views the criminal act of illegal fishing as requiring extraordinary law enforcement because in addition to harming the country's economy from the fisheries sector, it is also a form of protecting the country's sovereign territory at sea. The following government institutions are involved in eradicating illegal fishing based on article 3 concerning the authority of task force point b, namely: Ministry of Maritime Affairs and Fisheries, Ministry of Finance, Ministry of Foreign Affairs, Ministry of

¹⁰Kevin Vilio Parasian, *Pembayaran Uang Jaminan Dalam Upaya Penegakan Hukum Terhadap IUU Fishing Dalam Perspektif Hukum Internasional (Studi Terhadap Kasus Volga, Prompt Release)*, Diponegoro Law Journal, Vol. 6 No. 1, 2017, p.1

¹¹Soerjono Soekanto, (1983), *Faktor-Faktor Yang Mempengaruhi Penegakan Hukum*, Rajawali Press, Jakarta, p. 49

¹²Marhaeni Ria Siombo, (2010), *Hukum Perikanan Nasional dan Internasional*, Jakarta: Gramedia Pustaka Utama, p.112

Transportation, Indonesian Navy, Police of the Republic of Indonesia, Indonesian Attorney General's Office, Bankamal, PPATK and SON.¹³

In carrying out its duties, the Police Organization is arranged in stages from the central level to the regional level. The National Police Organization at the central level is called the Indonesian National Police Headquarters (Mabes Polri) which is led by the Head of the Indonesian National Police (Kapolri) while the National Police organization at the regional level is called the Regional Police (Polda) led by the Chief of Police. Region (Kapolda).¹⁴In the Regulation of the Head of the State Police No. 22 of 2010 Article 1 point 3 explains that the Regional Police is the executor of the duties and authorities of the National Police in the Provinces which are under the Head of the National Police. The Regional Police in carrying out their main tasks, especially in the implementation of the water police are assisted by the sub-division of implementing the main tasks, namely the Directorate of Water Police (DitPolair).

As stipulated in Act No. 2 of 2002 concerning the Indonesian National Police, Article 9 paragraph 1 states that the Chief of the National Police shall establish, implement, and control the technical policies of the police. And in Article 15 letter e it states that in the context of carrying out the tasks as referred to in Articles 13 and 14, the Indonesian National Police are generally authorized to: e. issue police regulations within the scope of police administrative authority; Thus, the Chief of the Indonesian National Police (Kapolri) issued two regulations of the National Police Chief which regulates the legality and execution of the duties of the water police.

The Directorate of Water Police (Ditpolair) is an integral part of the National Police which carries out duties in the territorial waters in order to maintain Kamtibmas, enforce the law, provide protection, shelter and public services, as an effort to create domestic security.¹⁵

According to the Regulation of the Head of the State Police No. 22 of 2010 concerning Organizational Structure and Work Procedures at the Regional Police Level Article 1 number 26 which is meant by the Directorate of Water Police, hereinafter abbreviated as Ditpolair, is the element implementing the main tasks at the Regional Police level under the Head of the Regional Police. Based on the Regulation of the Head of the State Police No.22 of 2010 Article 6 letter f it is determined that the Regional Police (Polda) carries out the function of implementing the water police, which includes patrol activities including the first handling of criminal acts, search and rescue accidents / Search and Rescue (SAR) in the area waters, fostering coastal or water communities in the context of preventing crime and maintaining security in water areas.

Ditpolair, which is the implementing element of the main task of the Regional Police Chief (Kapolda), has the task of carrying out duties in the water sector organized by the Regional Police, as regulated in the Regulation of the Head of the State Police No. 22 of 2010 Article 6 letter (f). The Director of the Water Police (Ditpolair) is led by the Directorate of Water Police (Dirpolair) who is responsible to the Kapolda, and in day-to-day operations, Ditpolair is under the control of the

¹³Mawardi Khairi, *Politik Hukum Pemerintah Dalam Penanganan Tindak Pidana Perikanan (Illegal Fishing) di Indonesia*, Fiat Justitia, Vol.10 Issue 2, April-June 2016, p.255

¹⁴Erma Yulihastin, (2008), *Bekerja Sebagai Polisi*, Erlangga Grup, Jakarta

¹⁵Sadjijono, (2008), *Hukum Kepolisian (Polri dan Good Governance)*, Laksbang Mediatama, Surabaya,

Deputy Chief of the Regional Police (Wakapolda). In carrying out its duties, the Dirpolair is assisted by the Deputy Director of the Water Police (Wadirpolair) who is responsible to the Dirpolair.

4. Conclusion

The stop and inspection of foreign vessels caught by the Water Police will be processed to obtain sufficient evidence. The process is in the form of checking permit documents from the Indonesian government, fishing gear used, fish caught, and communication tools. After being processed by the arresting agency, foreign ships will be ad hoc and escorted to the base for inspection and investigation. The investigation process is carried out by Civil Servant Investigators or Polda Water Police to the captain and crew (ABK) for questioning.

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