

Law Enforcement Of Fishery Crimes By Corporations In Indonesia

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Abstract

This article aims to enforce the law on criminal acts of fisheries by corporations in Indonesia. Fisheries is a leading sector for the Indonesian economy, but there are often violations of the law committed by corporations in their fisheries activities, so that law enforcement against criminal acts of fisheries by corporations in Indonesia has complex challenges. This study uses normative legal research, which refers to applicable legal regulations and binds the surrounding community. This study formulates critical questions about the legal regulation of criminal acts of fisheries by corporations in Indonesia and also the implementation of law enforcement of criminal acts of fisheries by corporations in Indonesia. Increasing cooperation between government law enforcement agencies and civil society is important to overcome existing challenges and ensure the sustainability of fisheries resources in Indonesia.

I. Introduction

Indonesia is an archipelagic country with most of its territory consisting of seas rich in biological resources. These islands provide productive natural resources, including fisheries potential. Today, many local and foreign fishermen fish illegally in Indonesian waters, and many "rogue" fishermen from abroad deliberately enter Indonesian waters to take fish and other marine treasures. The fisheries and marine sector is very important for increasing state revenues, but if not properly maintained and managed, this potential income will be lost and will even harm the country.

The recovery of fish resources is unlimited. As a result, if its utilization is carried out in conflict with the principles of fish resource management, such as excessive exploration, fishing outside the designated zones, and the use of tools that can damage fish resources and/or the environment. All of these fall into the category of illegal fishing, which will certainly damage the ecosystem and marine environment. Criminalizing ABK and seizing their ships will not deter the main perpetrators of fisheries crimes, corporations.

An important effort to maintain fishery resources, maintain marine ecosystems, and protect fishermen and coastal communities is the application of laws against fisheries crimes by corporations in Indonesia. Government Regulation Number 45 of 2014 concerning the Implementation of Supervision, Control, and Preservation of Fish Resources and Law Number 31 of 2004 concerning Fisheries, Law Number 45 of 2009 concerning Amendments to Law Number 31 of 2004 concerning Fisheries are some of the many laws and regulations in Indonesia that regulate crimes related to fisheries. In Indonesia, government institutions such as the Ministry of Marine Affairs and Fisheries, the Police, and the Prosecutor's Office handle fisheries crimes committed by corporations.

These institutions are responsible for investigating, prosecuting, and prosecuting violations of fisheries law committed by corporations. Corporations in Indonesia often commit fisheries crimes such as illegal fishing, the use of prohibited fishing gear, fishing in protected areas, and violations of the minimum size of fish that can be caught. Corporations can also damage the marine environment as a result of their operational activities.

Corporations that commit crimes in the fisheries sector will easily buy new crew and ships to continue their criminal business. Corporations are often formed and driven intentionally to commit crimes in organized crime. This also includes hiding and disguising the proceeds of crime from their subordinate companies.

Thus, corporations must be considered legal subjects in cases of fisheries crimes and must be held criminally accountable. Law enforcement against corporate fisheries crimes often experiences problems and obstacles. Some of these problems include the regulation of fisheries crime law by corporations in Indonesia and the implementation of fisheries crime law enforcement by corporations in Indonesia. This is the basis for the author to conduct this research.

2. Research Method

This study uses normative legal research, which refers to the applicable legal regulations that bind society. Data collection techniques used in this study are sourced from library materials, such as laws and regulations, books, related articles, and also doctrines that develop in legal science.

3. Results and Discussion

A. Legal Regulation of Fisheries Crimes by Corporations in Indonesia

The term "illegal fishing" refers to criminal acts in the fisheries sector. Given that this term is not found in the Fisheries Law, the forms categorized as illegal fishing crimes require additional investigation. Literally, illegal fishing means catching fish or fishing activities carried out illegally. This is because the words "illegal" and "fishing" come from English and mean "unlawful, prohibited, or contrary to law", and "fish" means fish.

After the concept of illegal fishing made by the authorized institution is adjusted to the concept of "fisheries" in the Fisheries Law, all activities that are contrary to the Law are referred to as illegal fishing. Regulations regarding criminal acts in the fisheries sector are regulated in Law Number 31 of 2004 in conjunction with Law Number 45 of 2009 concerning Fisheries (Fisheries Law). In short, the regulation of criminal acts in the fisheries sector has various types, including forms, sanctions, and criminal liability.

1. Forms of fisheries crimes in Indonesia

Law No. 31 of 2004 in conjunction with Law No. 45 of 2009 concerning Fisheries was created to control and reduce deviant behavior in the fisheries industry. Chapter XV Criminal Provisions of Law No. 31 of 2004 in conjunction with Law No. 45 of 2009 concerning Fisheries regulates criminal law enforcement in Indonesia. Activities in the fisheries sector can be subject to criminal sanctions. These activities can be divided into 5 categories of criminal acts, as shown in the table below:

Table 1
Categories of Fisheries Crimes in Indonesia

Fisheries Crime Category	Criminal Sanctions
Damaging fishery resources	1. Article 84, using chemical, biological, explosive or similar materials. 2. Article 86, pollution, damage, endangering fishery resources. 3. Article 87, damaging or causing damage to germplasm. 4. Article 88, maintaining or cultivating fish that endanger fishery resources. 5. Article 91, using raw materials or similar materials that are dangerous.
Illegal fishing	1. Article 85, using fishing gear that disturbs and damages fishery resources. 2. Article 95, building, importing, or modifying fishing vessels without approval. 3. Article 96, operating unregistered fishing vessels.
Violations of fishery resource production and marketing	1. Article 89, handling and processing fish without meeting and implementing the requirements for fish processing eligibility, quality assurance systems, and fishery product safety. 2. Article 90, importing or exporting fish or fishery products without a health certificate for human consumption.
Administration violations	1. Article 92, conducting a fishery business without a SIUP (Fishery Business License). 2. Article 93, owning or operating a fishing vessel to catch fish without having a SIPI (Fishing Permit) in the Republic of Indonesia's WPP, high seas, ZEEL. 3. Article 94, owning or operating a fishing vessel to transport fish without having a SIKPI (Fish Transport Vessel License). 4. Article 94A, falsifying and/or using fake SIUP/SIPI/SIKPI.

Fisheries Crime Category	Criminal Sanctions
	5. Article 97, operating a fishing vessel without/having a permit but the fishing gear does not comply with the provisions. 6. Article 98, the captain does not have an SPB (Sailing Approval Letter). 7. Article 99, foreigners conducting fisheries research without a permit. 8. Article 100A, falsifying approvals and falsifying registrations involving officials.
Violations by small fishermen	1. Article 100B, carrying out various provisions of the regulations in the Fisheries Law. 2. Article 100C, committing a crime as referred to in Article 7 paragraph (2)

2. Sanctions for fisheries crimes in Indonesia

In the Fisheries Law, there are two types of criminal sanctions: fines and imprisonment. Fines range from IDR 100,000,000.00 (one hundred million rupiah) to IDR 3,000,000,000.00 (three billion rupiah). Imprisonment also varies, from 1 year to 10 years. In the Fisheries Law, criminal sanctions are usually formulated cumulatively. Unlike the others, the formulation of criminal sanctions for small fishermen is single and alternative.

3. Accountability for fisheries crimes in Indonesia

Law No. 31 of 2004 in conjunction with Law No. 45 of 2009 concerning Fisheries emphasizes that perpetrators of fisheries crimes must be criminally responsible. In the formulation of general crimes, such as the use of chemicals or explosives, there is an element of criminal responsibility for deliberate error, negligence, or mental attitude, which must be proven by the public prosecutor in court.

Law No. 31 of 2004 in conjunction with Law No. 45 of 2009 also accommodates criminal liability for corporations or legal entities. Article 101, which regulates this provision, states:

“In the case of a criminal act as referred to in Article 84 paragraph (1), Article 85, Article 86, Article 87, Article 88, Article 89, Article 90, Article 91, Article 92, Article 93, Article 94, Article 95, and Article 96 committed by a corporation, the criminal

charges and sanctions shall be imposed on its management and the fine shall be increased by 1/3 (one third) of the sentence imposed.'

Based on the provisions above, if a legal entity or corporation commits a fisheries crime, its management will be charged and its management will be punished. Please be aware that Law No. 31 of 2004 in conjunction with Law No. 45 of 2009 concerning Fisheries still applies the traditional concept of corporate criminal liability as regulated in Article 59 of the Criminal Code.

B. Implementation of PERMA Number 13 of 2016 Concerning Law Enforcement of Fisheries Crimes by Corporations in Indonesia

A corporation is a business entity whose existence and legal status are the same as humans (people). Corporations have assets and debts, obligations and rights, and can act according to law, file lawsuits, and be sued in court. Corporations can be caught in criminal acts (corporate crimes) that have a detrimental impact on society and the state.

Every individual defined as an "individual" or "corporation" is generally a perpetrator of illegal fishing crimes in Indonesia. The corporate criminal liability system is imposed on the creator or manager of the company according to the formulation of applicable laws. Corporations cannot be held criminally responsible even though they are recognized as committing illegal fishing crimes. This kind of regulation can have many weaknesses, if the profits obtained by the company are large or the losses borne by the community are very large, then the imposition of imprisonment or fines "only" on the company's managers will be disproportionate.

The amount of losses caused by illegal, unreported, and unregulated fishing. This problem makes Indonesia appear not serious about handling illegal fishing violations. This is due to the legal vacuum and normative legal aspects, which are an important part of law enforcement.

Corporate crimes are very complex and are carried out by people in power, so law enforcers must have additional mental strength and additional skills. Corporate crimes carried out by people in power result in law enforcers still hesitant to examine companies as defendants or suspects. It is very difficult to resolve fisheries crime cases, especially those involving corporations.

PERMA Number 13 of 2016 can be enforced to complement the Fisheries Law in prosecuting corporations that commit fisheries crimes and increase the effectiveness and optimization of handling criminal cases with corporate actors. This is intended to fill the legal vacuum, especially in terms of corporate crimes. In this situation, the Supreme Court is given attributive authority to establish rules to fill the gaps or legal vacuum. Article 79 of Law Number 14 of 1985 concerning the Supreme Court explains that the Supreme Court may further regulate matters necessary for the smooth

running of the judiciary if there are matters that are not sufficiently regulated in the law.

As mentioned earlier, the Fisheries Law does not explicitly explain what corporate administrators who are responsible for corporate crimes can do. It is important for fisheries law enforcers to refer to the definition of corporate administrators in PERMA Number 13 of 2016, which is intended to establish the structure of technical instructions and representatives to carry out management, in accordance with Article 1 number 10 which states that administrators are corporate organs that carry out corporate management in accordance with the articles of association or laws that are authorized to represent the corporation, including those who do not have the authority to make decisions, but in reality can control or influence corporate policies or participate in deciding policies in the corporation that can be qualified as criminal acts.

Basically, a corporation has committed a crime if the crime is committed by the company's management or employees who are still within the company's authority and for the benefit of the company (Sjafie, 2015). PERMA defines corporate crime as a crime committed by individuals based on employment relationships, or other relationships, either alone or together acting for and on behalf of the corporation, both inside and outside the corporate environment. An employment relationship is a relationship between a corporation and its employees based on an agreement containing elements of work, wages, and/or orders. Additional relationships are relationships between management and the corporation, including the corporate environment, namely the scope of the corporation's business or business, which includes and supports the corporation's business activities both directly and indirectly. This relationship is based on written or unwritten agreements. However, there is no relationship between mismanagement and criminal liability of a corporation suspected of committing a fisheries crime before the criminal liability can be imposed.

Determining "mens rea", the requirement for criminalizing a subject who commits a crime, will be a problem in corporate criminal liability. not only because they have committed outward conduct that must be proven by the Public Prosecutor, but also because the legal subject must have a certain state of mind that is directly related to the act. The court can acquit the defendant if the Public Prosecutor incorrectly shows that the act was an individual error (*natuurlijk persoon*) in a corporate crime. The people responsible for the company will also be "subject" to criminal liability if the company is convicted carelessly. This can include imposing fines on the company, which can have a negative impact on its workforce.

PERMA helps judges impose criminal penalties on companies when assessing their guilt. In cases where companies profit from fisheries crimes. Law enforcers must prove that the actions and behavior of managers or employees in the field who have an employment relationship with the company are for and on behalf of the company, and that these actions provide benefits or advantages to the company. In addition to

proving that the allocation and proceeds of fisheries crimes are solely for the benefit of the corporation, further investigation by law enforcers must lead to the transfer of criminal proceeds which are corporate assets. Thus, the path to restitution of state losses due to fisheries crimes becomes clear. Corporations that commit fisheries crimes can hide or disguise the proceeds of the crime as if they were obtained legally.

In this case, the corporation is involved in fisheries crimes and money laundering. Therefore, law enforcers must use a multi-door strategy, namely connecting and applying various laws at once in the indictment. The main consequence of being charged with money laundering is enjoying or using the proceeds of the first crime, so that someone who commits the first crime and then commits money laundering should be punished simultaneously for both crimes.

It should be anticipated that perpetrators of fisheries crimes will collaborate with various subsidiaries to hide profits obtained from fisheries crimes in assets that are spread out and divided. Because the Fisheries Law does not regulate or anticipate such things, law enforcers must pay attention to PERMA. PERMA regulates in detail that if a corporation is separated, criminal liability is imposed on the separated corporation, the corporation that carries out the separation, or both in accordance with the roles played. If a corporation is separated, the management of the corporation is the party representing the corporation in the examination of the case. If the pursuit efforts in accordance with PERMA are implemented, there will be an opportunity to optimize the return of state losses caused by fisheries crimes. Furthermore, the profits from the return of state losses can be used to build national fishermen and fisheries businesses, which in turn will generate public welfare.

In terms of criminalizing corporations committing fisheries crimes by PERMA Number 13 of 2016, another legal gap that can be filled by the Fisheries Law is related to procedural law. As previously mentioned, the Fisheries Law does not provide instructions on how corporate criminal procedures are carried out. The results are regulated by the Criminal Procedure Code, but the Criminal Procedure Code does not regulate corporate criminal procedure either. Therefore, PERMA is very important as a guideline for handling corporate crime cases. For example, in the case of a company examination, PERMA stipulates that the summons is addressed and sent to the company at the address where the company is domiciled or the address where the company operates; if the address is unknown, the summons is addressed to the company and sent via the residential address of one of the administrators. The summons letter is sent via print or electronic media and posted on the announcement place in the court building that has the authority to try the case if the residence or place of residence of the Administrator is unknown (Article 9).

4. Conclusion

Many cases of fisheries crimes are only stopped by criminalizing the Captain or ABK; however, the corporation and its management remain safe from law enforcement action. However, if we trace the interests of the operationalization of fisheries crimes

committed by the ABK, it will lead to corporate profits. The state and society that have been harmed by fisheries crimes are unfair if the results obtained, stored, and managed by the corporation are not pursued or requested back through corporate criminalization. The legal gaps in the Fisheries Law can be overcome through guidelines for corporate criminalization, which are technically regulated in detail by PERMA Number 13 of 2016.

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