



Authority of state agencies in the investigation stage of illegal fishing crimes in Indonesian waters

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Abstract

Indonesia is one of the countries with the largest marine wealth in the world. Indonesia's marine fisheries resources have enormous economic potential that can be utilized for the welfare of society. However, Indonesia's location between two continents and two oceans makes the territory of Indonesia prone to criminal acts in the field of fisheries. To handle these criminal offenses, the politics of criminal law in the formulation of Law No. 31 of 2004 concerning Fisheries determines that Fisheries Civil Servant Investigators, Navy Investigating Officers, and the National Police carry out fisheries criminal investigations. The law does not provide strict limitations on the investigative authority of the three institutions, even with the existence of Law No. 45 of 2009 as an amendment to Law No. 31 of 2004, it is also not clear that there are strict limitations on the investigative authority of the three institutions. Therefore, in implementing its duties there is no overlap of authority. This article suggests revising Law No. 45 of 2009 as an amendment to Law No. 31 of 2004.

Keywords: investigation, criminal law, illegal fishing crime

1. Introduction

Indonesia has become one of the countries with the most marine wealth in the world. 75% of Indonesia's territory is in the form of marine waters with a sea coast length of 81.000 kilometers and an Exclusive Economic Zone (EEZ) of 5,800,000 km². Indonesia's marine fisheries resources are estimated at 6,167,940 tons per year. ^[1] These marine resources have enormous economic capabilities that can be utilized for the welfare of residents. Throughout Indonesia's development, the fisheries sector has been counted as an economic commodity that can contribute to the country's foreign exchange generated ranging from capture fisheries, aquaculture, and fish processing products, both domestic and foreign markets. Activities in the fisheries sector link many parties, both government, entrepreneurs (private) or small fishermen (traditional), but due to Indonesia's cross position which is located between 2 lands (Asia and Australia) and two Oceans (Pacific and India) resulting in Indonesian regions prone to illegal fishing (fish theft). The utilization of marine resources has not been maximized, hampered by the rampant criminal acts in the field of fisheries. The state loses up to Rp. 50 trillion / year as a result of the criminal act of fish theft in Indonesian waters. Based on information from the Food and Agriculture Organization of the United Nations, FAO, the number of fish disappearing due to fish theft in Indonesia reaches approximately 2 tons per year. ^[2] Efforts to overcome illegal fishing have been tried by giving birth to Law Number. 31 of 2004 concerning Fisheries (Fisheries Law) as amended by Law Number. 45 of 2009. Act Number. 31 Year 2004 basically controls fisheries management in order to increase prosperity and justice for the maximum use for the benefit of the nation and state by always observing the principles of sustainability of fish energy sources and their environment and the sustainability of national fisheries development. ^[3]

¹“Revitalisasi Perikanan dan Pemberantasan Perikanan Illegal”, http://jurnaldfp.blogspot.com/2007_12_01_archive.html, diakses tanggal 20 Desember 2022.

² <https://kkp.go.id/djpsdkp/artikel/334111-kkptangkap-kapal-illegal-fishing-asalmalaysia-di-selatmalaka>, diakses pada sabtu, 02 oktober 2022

³ Elvinda Rima Harliza dan Tomy Michael, ” Penegakan Hukum Illegal Fishing” dalam Jurnal Mimbar Keadilan, Volume 13, Nomor 1, Februari-Juli 2020

Act Number. 31 of 2004 already contains regulations or formulations regarding criminal acts in the field of fisheries and criminal procedural law. Criminal acts in the field of fisheries are regulated in Chapter XV, Articles 84 to Article 104. Meanwhile, regarding procedural law in investigation, prosecution, or examination at fisheries court hearings is carried out according to Law Number. 8 the Year 1981 concerning the Code of Criminal Procedure (KUHP) unless specifically stipulated in the Fisheries Law. Special requirements in the investigation stage of criminal acts in the fisheries sector are investigations that link 3 (three) authorized institutions. Based on the requirements of Article 73 paragraph (1) of the Fisheries Law, criminal investigations in the field of fisheries in fisheries management areas of the Republic of Indonesia are carried out by Fisheries Civil Servant Investigators (PPNS), Indonesian Navy (TNI AL) Officer Investigators, and/or Indonesian National Police (Polri) Investigators. In Law Number. 45 of 2009 concerning Amendments to Law Number. 31 Year 2004 concerning Fisheries, Article 73 has been amended, by adding two paragraphs, namely paragraph (2) and paragraph (3). Paragraph (2) of Article 73 says "Not only Indonesian Navy investigators, Fisheries Civil Servant Investigators are authorized to carry out investigations into criminal acts in the fisheries sector that occur in the Indonesian Exclusive Economic Zone (EEZ). On the contrary, paragraph (3) "Investigations into criminal acts in the field of fisheries that occur at fishing ports, preferably carried out by Investigators of Fisheries Civil Servants. Criminal investigations in the field of fisheries can be carried out individually or jointly by PPNS Fisheries, Investigators of Indonesian Navy Officers, and Police Investigators. This requirement is intended as legitimacy for PPNS, Indonesian Navy Officer Investigators or Police Investigators to carry out criminal investigations in the field of fisheries that are intertwined in all Fisheries Management Areas of the Republic of Indonesia. Cases that arise in the process of investigating illegal fishing crimes include the formation of mutual attraction of interest because each authorized law enforcement agency feels it has the authority to do so. Coordination among institutions is very weak, so the process of investigating criminal acts in the fisheries sector is less than optimal. In Law Number. 45 In 2009 there was nothing new that was expected to overcome the lack of coordination.

The position of PPNS in line with the Indonesian National Army, Navy, and Police as investigators, and the granting of authority to the Minister to establish a coordination forum for the purposes of investigations at the regional level, has not shared a real solution to the case and will also emerge with the existence of three institutions that carry out criminal investigations in the field of fisheries, potentially causing conflicts of authority in carrying out their duties. In order to secure marine fisheries energy sources from illegal fishing, The government as an attributive authorized institution is obliged to carry out law enforcement. Government agencies that enforce fisheries law at sea must put aside their sectoral egos after that in an integrated manner in building synergy of law enforcement institutions at sea in the field of fisheries. Harmonization of fisheries laws and regulations needs to be tried to be more conducive to reorganizing capture fisheries

management in Indonesian seas so that it is useful in improving welfare for the community universally. Therefore, the case in this research is how legal problems in investigating criminal acts in the field of fisheries. In response to the complex problems described, on this occasion, the author would like to explore the issue of investigation in illegal fishing crimes in the form of writing this journal entitled "AUTHORITY OF STATE AGENCIES IN THE INVESTIGATION STAGE OF ILLEGAL FISHING CRIMES IN INDONESIAN WATERS".

2. Method

In accordance with the characteristics of problem formulation directed to analyze legal certainty guidelines for investigations in illegal fishing crimes, therefore this journal is a descriptive analysis. Research in this journal is through a normative juridical approach or the study of literature and documents aimed at written regulations or other legal materials related to the guarantee of legal certainty for the investigation of illegal fishing crimes in Indonesia. The characteristic of normative juridical research is by reviewing all written information related to law raised from various sources and then published publicly. Various sources referred to here are laws and regulations, books related to law in theory, as well as legal journals or various legal reports, general legal reviews through print media and information, and other sources.

3. Discussion

Limitations on the authority of investigations carried out by PPNS, Navy Officer Investigators, and Police Investigators

Article 72 of the Fisheries Law states that "Investigations in cases of criminal acts in the field of fisheries, shall be carried out based on the applicable procedural law, unless otherwise provided in this Law." Furthermore, Article 73 paragraph (1) states "Investigations of criminal acts in the field of fisheries are carried out by Fisheries Civil Servant Investigators, Navy Officers, and State Police Officials of the Republic of Indonesia".^[4]

Investigators are law enforcement agencies that play an important role in creating an integrated criminal justice system. When related to three sources of authority, namely the Authority of Attribution, Delegation, and Mandate, the authority of fisheries law enforcement by the three fisheries law enforcement agencies based on Law No. 31 of 2004 concerning Fisheries is the Authority of Attribution.^[5] Legally, the three fisheries law enforcement agencies are both authorized to make regulatory laws in exercising their authority to enforce fisheries law.

Law No. 31 of 2004 does not regulate the division of authority clearly and does not regulate a definite working mechanism, so the three agencies state that their agencies are equally authorized in fisheries law enforcement and without system integration in its implementation, and after the existence of Law No. 45 of 2009 concerning Amendments to Law No. 31 of 2004 concerning Fisheries, The determination of the area of investigative authority for PPNS Fisheries was reaffirmed. Article 73 of the Fisheries Law has been amended, by adding two paragraphs, namely paragraph (2)

⁴ Mulawarman Law, penyidikan tindak pidana di bidang perikanan di wilayah pengelolaan perikanan negara republik indonesia dilakukan oleh penyidik pns perikanan dan penyidik kepolisian nkri.

⁵ Yulia A. Hasan, "Hukum Laut KOnservasi Sumber Daya Ikan di Indonesia", (Jakarta:Prenadamedia Group,2020)

and paragraph (3). Paragraph (2) of Article 73 states "In addition to Navy investigators, Fisheries Civil Servant Investigators are authorized to investigate criminal acts in the fisheries sector that occur in the Indonesian Exclusive Economic Zone (EEZ)". While paragraph (3) is "Investigations into criminal acts in the field of fisheries that occur at fishing ports are prioritized by Fisheries Civil Servant Investigators." With the provisions in these two paragraphs, it is emphasized that PPNS Fisheries is authorized to conduct investigations in the ZEEI and Fishing Port.

In terms of handling illegal fishing, there are also regulations made as implementers of laws in an effort to support the eradication of illegal fishing that occurs in Indonesia. The first is Presidential Regulation No. 115 of 2015 concerning the task force to eradicate illegal fishing (Illegal Fishing), the content task force was formed to improve law enforcement, violations, and crimes in the field of fisheries, especially illegal fishing.

In addition to Presidential Regulation No. 115 concerning the Task Force for the Eradication of Illegal Fishing, there is also the Regulation of the Minister of Marine Affairs and Fisheries of the Republic of Indonesia number 24/permen-kgp/2020 concerning the organization and work procedures of the Task Force for the Eradication of Illegal Fishing. Article 4 paragraph (1) explains the scope of duties of the task force including investigation, investigation, prosecution of cases to the execution of court decisions. In handling criminal acts in the field of fisheries, investigators who are members of the task force consist of:

1. Indonesian police investigator
2. Navy officer investigator
3. Civil servant investigators in the field of fisheries

Obstacles Faced by PPNS, Navy Officer Investigators, and Police Investigators in conducting investigations, as well as efforts to overcome them

The existence of three investigating agencies with equal positions and equal authority in investigating criminal acts in the fisheries sector allows for overlapping investigations. PPNS Fisheries which is authorized to conduct investigations in the State Fisheries Management Area of the Republic of Indonesia gets the largest share of the area, including ZEEI and Indonesian Waters, as well as Fishery Ports. Meanwhile, the National Police Investigator got the narrowest part of the area, namely Indonesian waters. Based on the agreement on the division of criminal investigation areas above, in Indonesian territorial waters, the three investigators (PPNS, TNI AL Investigators, and Police Investigators) can investigate criminal acts in the field of fisheries. While in the EEZ, Navy Investigators and Fisheries PPNS can investigate criminal acts in the field of fisheries. This is where there can be a conflict of authority between the three investigating agencies.

It is said to be a conflict of authority because the three agencies are both authorized to handle the same case and run independently without any system integration in its implementation, meaning that they are both authorized to conduct investigations and are both authorized to file minutes of examination (BAP) and submit them to the Public Prosecutor without a clear division of authority and without

a definite working mechanism. So if in Suatau the territory of Indonesia there is a criminal act of illegal fishing and there are several agencies that are authorized to investigate here will cause confusion as to which agency will take the task of investigation because the three agencies have the authority, therefore it needs to be clear when one agency has the right to conduct an investigation and when another agency is not entitled to conduct an investigation when the crime occurs in a small area There are several agencies that have the authority to conduct investigations.

Even with the existence of a task force to eradicate illegal fishing where one of its tasks in conducting investigations is also not explained whether when there is a criminal act of illegal fishing whether the agency authorized to conduct investigations works as a group or team, and it is also not explained whether the task of investigation will follow the division of areas according to the law or not.

For legal resolution of conflicts of authority in fisheries law enforcement, it is necessary to take steps to revise the Fisheries Law. The law needs to include a clear division of authority, be equipped with a definite working mechanism, and include an integrated fisheries law enforcement system. The law also needs to regulate supervision in fisheries law enforcement, so that there is no conflict of authority.

A coordination mechanism in carrying out the duties and authorities of each investigator is needed in order to create an accountable investigation mechanism. With the coordination mechanism, the duties and authorities of the three investigating agencies do not overlap and will actually encourage the improvement of the performance of investigators in general. Thus the purpose of Law Number 31 of 2004 to minimize criminal acts in the field of fisheries can be achieved.

If fisheries law enforcement agencies run independently without system integration, it can open up opportunities for collusion, corruption, and nepotism (KKN) and can lead to acts of abuse of authority and arbitrary actions by the three fisheries law enforcement agencies. So that it can reduce cases of illegal fishing crimes that occur in Indonesia. With clarity on fisheries law enforcement, the interests of the people will be protected. ^[6]

4. Conclusion

In law enforcement of criminal acts in the field of fisheries, investigators are law enforcement agencies that play an important role. Article 73 paragraph (1) of Law No. 31 of 2004 concerning Fisheries states, that "Investigations of criminal acts in the field of fisheries are carried out by Fisheries Civil Servant Investigators, Navy Officers, and State Police Officials of the Republic of Indonesia." However, the law does not regulate the clear division of authority and work mechanisms. Based on the law on the division of criminal investigation areas above, in Indonesian territorial waters, the three investigators (PPNS, TNI AL Investigators, and Police Investigators) can investigate criminal acts in the field of fisheries. This is where there can be a conflict of authority from the three investigating agencies. For legal resolution of conflicts of authority in fisheries law enforcement, it is necessary to take steps to revise Law No. 45 of 2009 as an amendment to Law No. 31 of 2004 concerning Fisheries. The law needs to include a

⁶ Abdul Qadir Jaelani, Udiyo Basuki, "Illegal Unreported Fishing And Unregulated (IUU) Fishing : Upaya Mencegah dan Memberantas Illegal

Fishing Dalam Membangun Poros Maritim Indonesia" dalam Jurnal Supremasi Hukum, Vol. 3 No. 1 2014

clear division of authority, such as in one area there are two agencies that have the authority to clarify when the agency has the right to conduct investigations and when other agencies have the right to conduct investigations, equipped with a definite working mechanism and include an integrated fisheries law enforcement system. The law also needs to regulate supervision in fisheries law enforcement, so that there is no conflict of authority. A coordination mechanism in carrying out the duties and authorities of each investigator is needed in order to create an accountable investigation mechanism. With a coordination mechanism, the duties and authorities of the three investigating agencies do not overlap and will instead encourage the improvement of the performance of investigators in general, thus the purpose of Law No. 45 of 2009 as an amendment to Law No. 31 of 2004 to minimize criminal acts in the fisheries sector can be achieved.

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