

## Law Enforcement Efforts Against Fisheries Crime Under Specialist Lex Provisions in Indonesia

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### Abstract

The 1945 Constitution (UUD) Article 33 paragraph (3) states, "The land and water and natural resources contained therein are controlled by the State and used for the greatest prosperity of the people. This writing uses normative juridical legal research methods (normative research). with a descriptive analytical research specification using secondary data. The data collection procedure is in the form of documentation of notes or quotations, tracing legal literature, books and others related to problem identification. The focus of the problem is how the provisions of Lex Fisheries Crime Handling Specialist in Indonesia? And how is the implementation of fisheries criminal law enforcement based on lex specialist provisions in Indonesia? Whereas the legal arrangements regarding evidence in criminal fisheries are regulated in Part Two A in Article 76 A, Article 76 B and Article 76 C of Law Number 45 of 2009 Tanteng Amendment to Law Number 31 of 2004 concerning Fisheries. Based on the sound of Article 76 A of Law Number 45 of 2009 Tanteng Amendment to Law Number 31 of 2004 concerning Fisheries, there are only two options for the choice of provisions regarding evidence in fisheries crime, the first is confiscated for the State or destroyed, based on this. , there is no provision for the return of evidence in a fishery crime against the perpetrator or his family. The system of criminal law enforcement in fisheries crime is included in specific provisions with provisions in specific laws. Not only on the provision that Fisheries Crime is regulated in a special law, because of the vast area of the Indonesian Sea, the government has given authority to various state institutions that oversee Indonesia's maritime sovereignty ranging from domestic threats to threats that come from within the country in particular. in fisheries crime, among others Polair, TNI-AL dan PPNS.

### Keywords:

*Fisheries Crime, Lex Specialis.*

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### A. Introduction

As a maritime country with abundant marine resources, especially the wealth of other marine biological resources, Indonesia's marine territorial waters are very vulnerable to illegal activities and threats to other maritime security, thus it is necessary to carry out concrete law enforcement efforts against every criminal act that occurs in the region. Indonesian marine waters. Law enforcement of fisheries crime is an act that will impose sanctions on any person or legal entity that violates the provisions contained in the statutory regulations in the fisheries sector.

Fishery in Indonesia is one of the natural resources which is a gift from God Almighty which must be managed in such a way so as to improve people's welfare in accordance with the provisions of the 1945 Constitution (UUD) Article 33 paragraph (3) stated, "Earth and water and the natural resources contained therein shall be controlled by the State and used for the greatest prosperity of the people.

Based on Law Number 45 of 2009 concerning Fisheries, it is emphasized that in the context of implementing national development with an archipelago perspective, fishery resources must be managed properly based on justice. In order to create a fishery natural resource management system aimed at the greatest possible prosperity of the people, provisions are stipulated, among others:

- a. Fishing gear;
- b. The amount that can be caught as well as the size and type of fish that cannot be caught;

- c. The technical requirements of the fishery must be met by all fishing vessels with due regard to the provisions of applicable laws and regulations on sailing safety;
- d. Season, area and fishing route;
- e. Prevention of damage and pollution;
- f. Improvement and rehabilitation of fish resources and the environment;
- g. Prevention and eradication of pests and fish diseases (Article 4 of the Fisheries Law);
- h. The spread of new types of fish.

Any action that violates criminal provisions, whether committed by permit holders, the public, or government officials, if it meets the classification of criminal provisions, of course, must be prosecuted. Prevention of violations and crimes in the field of licensing should still be carried out in a systemic and integrated manner with the hope that the system is designed to prevent crimes or violations from occurring. Based on the provisions of Article 56 of the 1982 Law of the Sea Convention, it is stipulated that in the Exclusive Economic Zone (EEZ), coastal states have sovereign rights for the purposes of exploration, exploitation, conservation and management of natural resources, both living and non-living from waters above the seabed and from the seabed, as well as land under it and with respect to other activities for the purposes of exploration and exploitation of the said economic zone, furthermore in Article 57 of the 1982 Law of the Sea Convention it is stipulated that each coastal state has the right to establish its exclusive economic zone whose distance cannot exceed 200 nautical miles measured from the sea baseline the same used to measure the width of the territorial sea.

As a maritime country with abundant marine resources, especially the wealth of other marine biological resources, Indonesia's marine territorial waters are very vulnerable to illegal activities and threats to other maritime security, thus it is necessary to carry out concrete law enforcement efforts against every criminal act that occurs in the region. Indonesian marine waters. With regard to fisheries problems, the efforts of a country that is experiencing losses are also things that should be taken into account. The efforts taken by a country in dealing with fisheries cases must be regulated in a clear regulation.

Law No. 45 of 2009 concerning Amendments to Law No. 31 of 2004 concerning Fisheries (Fisheries Law) which replaced Law no. 9 of 1985 concerning Fisheries aims to tackle criminal acts in the field of fisheries, namely by determining actions that qualify as criminal acts in the field of fisheries; determine criminal threats against criminal acts in the fisheries sector; determine the confiscation of all evidence of criminal acts in the field of fisheries for the state or to be destroyed; corporate liability in criminal acts in the field of fisheries; and regulating a better criminal law enforcement system by establishing a fisheries justice system. The provisions of Article 194 paragraph (1) of the Criminal Procedure Code above require provisions regarding the return of evidence in a criminal act, therefore whether an evidence can be returned to the person most entitled to such evidence is based on proper legal considerations and fulfills the element of justice for reasons that are objective.

Based on the description above, the focus of the problem to be discussed in this study is what is the provisions of Lex Fisheries Crime Handling Specialist in Indonesia? And how is the implementation of fisheries criminal law enforcement based on lex specialist provisions in Indonesia? This writing uses normative juridical legal research methods (normative research), namely legal research conducted by examining library materials or secondary data.<sup>1</sup> The research specification in this paper is descriptive analytical research. Descriptive is to show the comparison or relationship of a set of data with another set of data, and its purpose is to provide an overview, study, explain and analyze.<sup>2</sup> According to the type and nature of the research, the data source used in this paper is secondary data consisting of primary legal materials. The procedure used to collect data in this study is in the form of documentation, namely the guidelines used in the form of notes or quotations, search for legal literature, books and others related to the identification of problems in this research by offline or online. Analysis of legal materials is carried out using the content analysis method (content analysis

<sup>1</sup> Soekanto dan Sri Muji, *Penelitian Hukum Normatif Suatu Tinjauan Singkat*, Jakarta: Rajawali Pers, (2003), p. 15.

<sup>2</sup> Soekanto, *Pengantar Penelitian Hukum*, Jakarta: UI Press, (1996), p. 63.

method) which is carried out by describing the material of legal events or legal products in detail in order to facilitate interpretation in the discussion.<sup>3</sup>

## B. Discussion

### 1. Lex provisions for Fisheries Crime Handling Specialist in Indonesia

The state of Indonesia is a state based on law, the definition of a rule of law in simple terms is a state that exercises its governmental power based on the law, in Article 3 Paragraph (1) of the 1945 Constitution states that "Indonesia is a state based on law", furthermore in the explanation of the Constitution In 1945 it was stated that "the Indonesian state is based on law (*rechtstaat*) not based on mere power (*machstaat*), therefore the state may not carry out its activities on the basis of mere power, but must be based on law."<sup>4</sup>

When observed, Law No. 31 of 2004 concerning Fisheries which has been amended by Law No. 45 of 2009 concerning Amendments to Law No. 31 Concerning fisheries, the fisheries law falls within the scope of administrative law, this can be seen among other things that are administrative in nature. Article 26 paragraph (1) of Law No. 31 of 2004 concerning Fisheries states: "Every person conducting fishery business in the field of catching, cultivating, transporting, processing, and marketing fish in the Indonesian Fish Cultivation Territory is required to have a SIUP (Fishery Business License)". Article 26 paragraph (2) states: "The obligation to have SIUP as referred to in paragraph (1), does not apply to small fishermen and / or small fish cultivators". Article 27 paragraph (1) of Law No.31 of 2004 states: "Every person who owns and / or operates fishing vessels with Indonesian flags used for fishing in the Indonesian Fish Cultivation Territory and / or the high seas is required to have SIPI. (Fishing Permit)". Article 27 paragraph (2) states: "Every person owning and / or operating a fishing vessel with a foreign flag used to catch fish in the Indonesian Fish Cultivation Territory is required to have SIPI (Fishing Permit)". Article 28 paragraph (1) states: "Every person who owns and / or operates a fish carrier vessel in the Indonesian Fish Cultivation Territory is obliged to have SIKPI (Fish Transport Ship Permit)".

Even though there are rules, not everyone will obey them, there are often violations of these provisions. For strengthening and obeying the enactment of these administrative provisions, in Law No.45 of 2009 concerning Amendments to Law No. 31 of 2004 concerning Fisheries contains criminal threats which are a policy in criminal law (penal policy). Sudarto stated that the "Penal Policy" is an effort to realize good criminal regulations, which are in accordance with the circumstances at a certain time and for the future.<sup>5</sup>

Fishery crime is regulated in Law Number 45 of 2009 concerning Fisheries and its law enforcement, including coordination between agencies in the eradication of fisheries crime. This is in accordance with Article 35 of Law Number 27 of 2007 concerning Management of Coastal Areas and Small Islands, which states that using explosives, poisonous materials, and / or other materials that damage the coral reef ecosystem. The system of criminal law enforcement in fisheries crime is included in specific provisions with provisions in specific laws. Not only the provision that Fisheries Crime is regulated in a special law, because of the vast area of the Indonesian Sea, the government has given authority to various state institutions that oversee Indonesia's maritime sovereignty ranging from domestic threats to threats that come from within the country in particular. in fisheries crime, among others Polair, TNI-AL dan PPNS.

Fisheries have long been detrimental to our country. Several types of fishery crimes are known internationally as "illegal, unregulated, and unreported fishing" (IUU fishing) which means fishing that is illegal, unreported and not in accordance with the applicable regulations.<sup>6</sup> Eradicating illegal fishing crimes that occur in Indonesia is often found that one of the obstacles in the eradication of illegal fishing is due to the lack of effective and efficient coordination between various relevant agencies, which is in accordance with the Regulation of the Minister of Marine Affairs and Fisheries

<sup>3</sup> Marzuki, *Penelitian Hukum*, Jakarta: Kencana Prenada Media Group, (2011), p. 171.

<sup>4</sup> C.S.T Kansil dan Christine S.T. Kansil, *Hukum dan Tata Negara Republik Indonesia*, Jakarta: Rineka Cipta, (2002), p. 90.

<sup>5</sup> Sudarto, *Hukum Dan Hukum Pidana*, Bandung: Penerbit Alumni, (2010), p. 159.

<sup>6</sup> Sihotang, "Masalah *illegal, unregulated, unreported fishing* dan penanggulangan" *Pengadilan Perikanan-Jurnal Keadilan* 4, No.2 (2005/2006): p.58.

Number PER / 11 / MEN / 2006 concerning Amendments to Ministerial Regulation Number PER / 13 / MEN / 2005 concerning the Coordination Forum for Handling Crime in the Fisheries Sector, namely in this case there are 10 (ten) related agencies that are in one chain of eradicating illegal fishing which greatly determines the law enforcement process fisheries crimes, namely: Ministry of Marine Affairs and Fisheries, Police of the Republic of Indonesia. Coordination between these various agencies is crucial for the success of criminal law enforcement against the crime of Illegal Fishing, which is an organized crime that has a very wide network ranging from illegal fishing, fishing transshipment in the middle of the sea to illegal export of fish.

The Criminal Procedure Code does not clearly state what is meant by evidence. However, Article 39 paragraph (1) of the Criminal Procedure Code states what can be confiscated, namely:

- 1) Objects or claims of a suspect or defendant which are wholly or partly alleged to have been obtained from a criminal act or as the result of a criminal act;
- 2) Objects that have been used directly to commit a criminal act or to prepare it;
- 3) Objects used to obstruct criminal investigation;
- 4) Objects specially made or intended to commit a criminal act;
- 5) Other things that have a direct relationship with the crime committed.

Evidence means the tools used to use arguments in court, where the evidence can confirm the truth of an argument. Evidence is a process of how the evidence is used, filed or defended by a valid procedural law.<sup>7</sup> In the Criminal Procedure Code, apart from the term evidence, there is also the term evidence. Evidence is goods or objects related to crime. These items can be categorized as goods that are the object of the offense and goods used to commit crimes. Also included in the category of evidence, namely goods resulting from crimes and goods directly related to a criminal act. Evidence in the process of evidence since the examination at the investigator is obtained through confiscation and with that evidence, the investigator will try to find a relationship / correlation between the evidence and the criminal act that has occurred which is being handled by the investigator.<sup>8</sup>

Based on Law Number 45 of 2009 Tanteng Amendment to Law Number 31 of 2004 concerning Fisheries, the special criminal law (special criminal law) can be interpreted as legislation in certain fields that have criminal sanctions, or criminal acts. which are regulated in special criminal acts, outside the Criminal Code, both criminal and non-criminal legislation but have criminal sanctions (provisions that deviate from the Criminal Code).

The development and change of society along with the rapid development of science and information technology also coincides with the negative aspects caused by advances in various fields, namely the emergence of new crimes that are very complex and accompanied by a modus operandi that has not been touched and reached in the Criminal Code. .

Law Number 45 of 2009 Tanteng Amendments to Law Number 31 of 2004 concerning Fisheries is a specialist lex of the Criminal Code which is generalist. Based on this, all legal issues related to fisheries will take precedence over the regulations contained in Law Number 45 of 2009 Tanteng Amendment to Law Number 31 of 2004 concerning Fisheries as the implementation of lex specialists.

Law Number 45 of 2009 concerning Amendments to Law Number 31 of 2004 concerning Fisheries regulates certain things which are expected as a repressive effort by the government to prevent or suppress illegal fishing, including accommodating all aspects of fish resource management and being able to anticipate development of legal needs as well as technological developments in the management of fish resources. Legal arrangements regarding evidence in criminal fisheries are regulated in Part Two A in Article 76 A, Article 76 B and Article 76 C of Law Number 45 of 2009 Tanteng Amendment to Law Number 31 of 2004 concerning Fisheries.

Article 76A of Law Number 45 of 2009 concerning Amendments to Law Number 31 of 2004 concerning Fisheries states:

Article 76A Objects and / or tools used in and / or resulting from a fishery crime may be confiscated for the state or destroyed after obtaining the approval of the head of the district court. Based on the sound of Article 76 A of Law Number 45 of 2009 Tanteng Amendment to Law Number 31 of 2004 concerning Fisheries, there are only two options for the choice of provisions regarding evidence in

<sup>7</sup> Lilik Mulyadi, *Hukum Acara Pidana*, Bandung: PT Citra Aditya Bakti, (2007), p. 152.

<sup>8</sup> AR. Sujono, Bony Daniel, *Komentar dan Pembahasan Undang-Undang No. 35 Tahun 2009*, Jakarta: Penerbit Sinar Grafika, (2011), p. 175.

fisheries crime, the first is confiscated for the State or destroyed, based on this. , there is no provision for the return of evidence in a fishery crime against the perpetrator or his family.

## **2. Fisheries Crime Law Enforcement Based on Lex Specialist provisions in Indonesia**

### **a. Preventive Efforts**

Preventive law enforcement, namely preventing the occurrence of crimes or violations by eliminating the opportunity factor, in connection with this there is an assumption that crime meets the opportunity factor. The implementation of preventive law enforcement is divided into 2 (two) major groups, namely physical prevention which is carried out by regulating, guarding, escorting and patrolling, then prevention which is coaching which is carried out through counseling, guidance, and direction to create a conscious and obedient society law and has deterrence and crime. As in Article 9 paragraph (1) Decree of the Director General of Supervision of Marine and Fisheries Resources Number: KEP.143 / DJ-PSDKP / 2012 concerning Technical Operational Instructions for Supervision of Fishery Vessels, that every fishing boat departing from the port to carry out fishing or transportation operations fish are required to first report their planned departure to the local fisheries supervisor, by submitting a fishing boat permit document. Paragraph (2), for fishing boats as meant in paragraph (1), it is obligatory to check the administrative requirements and technical feasibility. This can minimize fishery criminal acts.

In the field of fisheries, supervision includes the activities (i) monitoring the number of fishing vessels and tools used according to their type and size, fish caught by type and days of catching by type of activity, as well as on fishing areas and seasons, (ii) controlling on the number of fishing boats and fishing gears licensed according to their type and size, and (iii) supervision of the implementation of fishing licensing provisions

### **b. Repressive Efforts**

Repressive action is an act to take action against a crime or violation which is a disturbance to public security and order. The action in question is an action taken by the officer if he finds a criminal act which is a disturbance to public security and order as regulated in the Criminal Procedure Code (KUHAP).

Repressive law enforcement is law enforcement that is carried out to prosecute perpetrators of criminal acts in the fisheries sector through legal channels based on the Fisheries Law Number 45 of 2009 and other laws such as the Shipping Law, namely Law Number 17 of 2008 and other legislation. Law Number 45 of 2009 in Handling Crime of Fisheries in Indonesian Waters. The process of handling cases in fisheries crime by the Indonesian Government through the Ministry of Fisheries and Marine Affairs in coordination with the Indonesian Navy, Civil Investigators, National Bakamla, Police and the prosecutor's office are as follows:

- a. Investigative Action; Investigation is an event to obtain definite and clear information which is the beginning of a criminal act. Investigation can be carried out in an open manner as long as it can produce the information needed. Investigation Actions are activities to collect accurate data so that it becomes clear that an happened to find the suspect (article 1 point 2 of the Criminal Procedure Code).
- b. Action; Enforcement activities can be carried out in areas where breaches occur and fish storage and processing occurs. The steps taken are as follows: Preparation and Implementation of Enforcement.
- c. Evidence Handling; Confiscation is carried out by means of a Confiscation Order in a very urgent and necessary situation because it requires immediate action, confiscation can be carried out without the permission of the Head of the District Court but is limited to movable objects and must be notified to the authorized apparatus ("Head of the local PN"). Summons are imposed on suspects and people who are at the scene of the crime by notifying them through a notification sent in a letter to the suspect or witnesses stating the reason for the summons and a brief description of the crime that occurred.
- d. Arrest; Arrests are made to the suspect and can also be carried out on the ship owner's company.
- e. Detention; The suspect is placed under the supervision of investigators to be continued at a further processing level.

- f. Search; A search is a law enforcer who carries out an overall examination of a person or place where a criminal act has occurred which has been regulated according to the provisions of the applicable law. in this law (article 32 KUHAP).
- g. Examination; Examination is an activity to obtain information, assertiveness and common perceptions regarding the evidence and suspects relating to the elements of the offending act so that the evidence in the crime becomes clear. Examination of Suspects and examination of Witnesses / and Expert Witnesses.
- h. Completion of file inspection results; Is the last stage procedure of a criminal offense, this activity consists of: Making a Resume is a series of procedures for examining the suspect and concluding a problem as well. a criminal act that occurred. Compilation of Case File Contents, namely the preparation of the contents of the case file in accordance with the sequence of actions and the grouping of letters / Minutes that have been made and attached according to evidence documents as well as other documents that need to be attached as contained in the Technical Instructions for Investigation, Filing , which is an activity to file the contents of the Case File with the arrangement and conditions for certain sealing binding, submission of the Case File, namely; which will be delegated to the prosecutor.

### C. Conclusion

Legal arrangements regarding evidence in criminal fisheries are regulated in Part Two A in Article 76 A, Article 76 B and Article 76 C of Law Number 45 of 2009 Tanteng Amendments to Law Number 31 of 2004 concerning Fisheries. Based on the sound of Article 76 A of Law Number 45 of 2009 Tanteng Amendment to Law Number 31 of 2004 concerning Fisheries, there are only two options for the choice of provisions regarding evidence in fisheries crime, the first is confiscated for the State or destroyed, based on this. , there is no provision for the return of evidence in a fishery crime against the perpetrator or his family. The system of criminal law enforcement in fisheries crime is included in specific provisions with provisions in specific laws. Not only on the provision that Fisheries Crime is regulated in a special law, because of the vast area of the Indonesian Sea, the government has given authority to various state institutions that oversee Indonesia's maritime sovereignty ranging from domestic threats to threats that come from within the country in particular. in fisheries crime, among others Polair, TNI-AL dan PPNS.

The current system in principle is able to provide good handling in law enforcement efforts against fisheries crime. The most important thing is the spirit to uphold justice in the Indonesian sea, love so that the preservation of nature is maintained. With a strict punishment and can have a deterrence effect, it is hoped that the efforts to eradicate fisheries crime will be maximized. The regulation of evidence appears to be important in enforcing fisheries crime laws. The hope of the author, through the government and the House of Representatives, is to be more firm in formulating laws on fisheries crime, especially on evidence in fisheries crime. The peculiarities of the criminal system make it easier to determine which arrangements for evidence to take.

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