

## Legal Responsibility For Corporations Regarding The Crime Of Illegal Fishing In Indonesia

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**Abstract.** *Indonesia is known as the largest archipelagic country in the world and is recognized as having a maritime territorial area that is almost equal to its land area. Indonesia's territorial waters contain abundant potential fishery resources and marine diversity, making it known as a maritime country. Illegal fishing is an activity or fishing activity that is contrary to a country's laws or international regulations, where the majority of perpetrators are corporations. Illegal fishing practices have a tremendous impact on marine sustainability, causing huge losses to the country. The occurrence of illegal fishing is caused by weak law enforcement and supervision in Indonesian waters and the authorities' indecisiveness in handling illegal fishing perpetrators. Understanding illegal fishing and crimes committed by corporations should be a strong basis for every legal practitioner to process and impose appropriate and correct sanctions on every perpetrator of illegal fishing or corporate crime perpetrators. The method used in this research is a normative legal research method sourced from primary data, namely the Criminal Code (KUHP), Law Number 45 of 2009 in conjunction with Law Number 31 of 2004 concerning Fisheries, Law of the Republic of Indonesia Number 32 of 2009 concerning Environmental Protection and Management (UUPPLH), secondary data and tertiary data based on regulations relating to fisheries and corporate crimes. The data collection method is qualitative descriptive analysis with literature study using a statute approach. This research aims to determine the factors that cause the crime of illegal fishing in Indonesia, the legal responsibility of corporations related to the crime of illegal fishing in Indonesia and the efforts made to prevent or eradicate the occurrence of criminal acts. illegal fishing in Indonesia.*

**Keywords:** *Liability, Corporations, Crime, Illegal Fishing.*

## INTRODUCTION

### 1) Background

Indonesia is a country with extensive beaches which are beneficial for the progress of the national economic development. Indonesia has a stretch of coastline with a length of 81,000 square km which contains very abundant marine life and natural resources. About  $\frac{2}{3}$  of Indonesia's territory from Sabang to Merauke is sea, so Indonesia has received international recognition as an archipelagic country, which is stipulated in the 1982 UNCLOS (United Nations Convention on the Law of the Sea) with the authority to expand Indonesia's maritime territory with all regulations, agreements and provisions. who follows him.

The Djoeanda Declaration in 1957 confirmed the concept of Indonesia as a large, sovereign and prosperous maritime country. It is hoped that the sea as a medium for the country's struggle can become a source of livelihood for the Indonesian people. But in fact it is nil and very far from the expectations of people who depend on natural marine resources for

their lives, such as traditional fishermen and coastal communities. One of the causes is the lack of supervision and protection of Indonesia's territorial waters which triggers illegal fishing. Fish theft by large vessels equipped with more sophisticated equipment makes them increasingly rampant in carrying out their actions.

In fact, cases of illegal fishing often occur but the government is not very serious about uncovering them. Weak supervision and law enforcement against perpetrators of illegal fishing means that the perpetrators never deter. The legal process only touches the ship's crew without trying to reveal who the mastermind or perpetrator was. Maintaining fish resources in Indonesian waters must be based on the Fisheries Management Plan (RPP). This is contained in Article 33 of the 1945 Constitution and Article 1 numbers (1) and (7) of Law Number 45 of 2009 in conjunction with Law Number 31 of 2004 concerning Fisheries which includes the management and utilization of fish resources and their environment. starting from before production, production, management to marketing which is carried out in a fisheries business system.

Criminologically, crime is defined as an evil act committed by a human being that violates the norms in society, which if the perpetrator is proven guilty will be subject to sanctions or punishment, for example the crime of fish theft. According to the International Plan of Action (IPOA), fish theft activities include 3 (three) categories, namely illegal fishing activities, unreported fishing activities and fishing activities that do not comply with existing regulations. (Unregulated fishing).

Within Indonesia's national jurisdiction, the types of Illegal Fishing are:

- a) Fishing without a permit;
- b) Fishing using fake permits;
- c) Fishing using prohibited fishing gear; And
- d) Catching fish with a type that does not comply with the permit.

The classification or categories of fish theft in the form of Unreported fishing are:

- a) Fishing that does not report its actual catch or falsifies catch data; And
- b) Catching fish that is directly taken to other countries (transshipment) in the middle of the sea.

Meanwhile, the categories of fish theft in the form of Unregulated Fishing are:

- a) Foreign fishing vessels carry out fishing activities in Indonesian waters without being equipped with documents and have never landed or anchored at a fishing port in Indonesia;

- b) Ex-foreign owned Indonesian fishing vessels with original but fake documents (asphalt) or no permit documents;
- c) The existence of Indonesian fishing vessels with asphalt documents (the official who issued the documents turned out to be not an official, aka the documents were fake);
- d) Indonesian fishing vessels without any documents catch fish without a permit; And
- e) Indonesian fishing vessels or foreign fishing vessels carry out fishing activities in Indonesian waters that violate fishing gear provisions and manipulate the catch or fish transported

According to Moeljatno, a criminal act is an act that is prohibited by a legal rule that is accompanied by threats or sanctions in the form of certain penalties. Criminal acts can be divided into two, namely crimes and violations. Meanwhile, fisheries crimes are included in the crime category which includes all activities in the fisheries sector and in maritime areas. A corporation is a legal entity created by the law itself, and which has rights and obligations. So corporate crime is a crime committed by a legal entity (corporate) which can be subject to punishment. So far, the handling of cases in the field of illegal fishing in Indonesian courts has been considered very poor. If the perpetrator is a corporation, it will be difficult to enforce the law.

In Article 101 of Law Number 45 of 2009 in conjunction with Law Number 31 of 2004 concerning Fisheries, "a corporation as a perpetrator of a criminal act cannot be held criminally responsible because criminal sanctions are imposed on its management". In reality, when applying criminal sanctions, corporate administrators are not touched by the law, which creates new problems. The impact of weak regulations in Indonesia means that corporations make extraordinary profits but incur large losses to the state. It seems unfair if a corporation that is proven to have committed a criminal act is not given firm action, so that the corporation as a legal subject feels deterred and thinks twice about doing it.

In connection with the legal issues described above, the author is interested in discussing it further in a scientific work entitled "Legal Accountability for Corporations Related to the Crime of Illegal Fishing in Indonesia".

## **2) Formulation of the problem**

Based on the description of the background above, the author will discuss further legal issues as follows:

1. What are the factors that cause the crime of illegal fishing in Indonesia?
2. What is the legal responsibility for corporations regarding the criminal act of illegal fishing in Indonesia?
3. What efforts are being made to prevent or eradicate the crime of illegal fishing in Indonesia?

## **RESEARCH METHODS**

The method used in this research is normative legal research which refers to legal norms, such as applicable laws and regulations that bind society. This research was carried out by collecting data sourced from legal materials and literature studies to examine the status of a group of people with a system of thinking about events in the present. To support normative juridical research methods, the author uses a data collection method with an approach to statutory regulations, legal principles and other legal materials related to the research topic in the hope of answering the problems in this research.

## **DISCUSSION**

### **1. Factors Causing the Crime of Illegal Fishing in Indonesia**

Illegal fishing is categorized as a form of transnational crime where the perpetrator is a foreigner or Indonesian involving foreign parties. These illegal fishing activities usually operate in border areas and international waters. In terms of terminology, illegal fishing comes from English, namely "illegal" and "fishing". Illegal means invalid, prohibited or contrary to the law. Meanwhile, "fishing" means catching fish as a livelihood or place catching fish.

Based on Law Number 45 of 2009 concerning Amendments to Law Number 31 of 2009 2004 concerning Fisheries, Fishing is the activity of obtaining fish in waters that are not in a cultivated state with any tool or method, including activities that use ships for loading, transporting, storing, cooling, handling, processing and/or preserving it. Meanwhile, Article 9 paragraph (1) regulates the prohibition on fishing, which states "Every person is prohibited from owning, controlling, carrying and using fishing equipment and fishing aids that disturb and damage the sustainability of fish resources on fishing vessels in fisheries management area of the Republic of Indonesia". This means that illegal fishing is all forms of fishing activities which violates the provisions of Law Number 45 of 2009 and other existing laws and regulations applies.

From year to year fishing is carried out by foreign fishing vessels Entering Indonesian waters illegally (illegal fishing) continues to increase. However, the government does not seem to care about this very detrimental problem. Eradicating the perpetrators is not very strict so that these crimes continue without thinking about the impact of their actions.

Indonesia's Exclusive Economic Zone (EEZ) is a route outside and bordering the Indonesian sea. This exclusive economic zone includes the seabed, the land below it and the water above it with the outer boundary reaching 200 nautical miles measured from the sea base of Indonesian territory. With the provisions of the exclusive economic zone (EEZ), the government of the Republic of Indonesia has the sovereign right to regulate and determine policies regarding waters, especially in the fisheries sector, namely illegal fishing.

The rise of illegal fishing is of course caused by several factors, namely:

- a) High demand for fish stocks or increasing need for sources of certain fish raw materials that have high economic value, especially fish consumed by visitors to expensive restaurants abroad;
- b) Lack of facilities and infrastructure for monitoring Indonesian territorial waters;
- c) Lack of legal awareness and knowledge of the use and importance of preserving fisheries resources;
- d) The existence of conflicts between countries that claim to have the same territory and thus have rights to marine resources in that territorial waters;
- e) The vast area and distance between the location of the crime and the location of the fisheries court means that it requires quite a long time and a large budget;
- f) Limited budget funds for operational costs for monitoring marine waters;
- g) Lack of manpower and coordination between agencies related to Indonesian waters. For example: Water Police and (Civil Servant Investigators).

As a country whose territory consists mostly of the sea, of course it is always being watched by the threat of illegal fishing. This could be done by local fishermen or foreign ships. Stolen marine wealth also causes huge losses and impacts on fishermen and the country. Some of the impacts resulting from illegal fishing activities include:

- a) Decreasing fish population;
- b) Reduced non-tax state revenue (PNBP);
- c) Loss of foreign exchange or state income;
- d) Triggering conflict or tension in diplomatic relations between countries which has an impact on the sovereignty of the Unitary State of the Republic of

Indonesia (NKRI) as well as getting a negative image because Indonesia is considered incapable of managing marine resources;

- e) Reduced value added opportunities from domestic processing industries;
- f) Reduced job opportunities for local fishermen;
- g) Causing local fishermen to lose competition so that their livelihoods are reduced;
- h) Threats to the sustainability of fish resources due to undetected catches, whether in type, size or quantity; And
- i) Damage to ecosystems and marine biological resources due to the use of fishing gear and materials that are dangerous and not environmentally friendly.

## **2. Legal Responsibility for Corporations Related to the Crime of Illegal Fishing in Indonesia**

Indonesia is a maritime country which is always the target area for illegal fishing. This crime occurred because the wealth of fisheries resources in Indonesia has its own attraction for business entities or corporations so that in various ways they compete to carry out illegal exploration and exploitation. Criminal law regulates the behavior that must be obeyed by every legal subject. Behavior that is not in accordance with norms or rules that causes legal problems and harms society is called a violation or crime. That is why perpetrators who commit illegal fish theft must be given strict sanctions so that the perpetrators feel deterred. One way to ask for accountability for what the perpetrator or corporation has done is in accordance with applicable laws and regulations. There is great hope that the implementation of this policy can provide a deterrent effect on perpetrators to avoid greater losses to society and the state.

As a subject of criminal law, a corporation is defined as a group of people and/or assets organized either as a legal entity or not a legal entity. The concept of responsibility in criminal law has developed since the recognition of corporations as subjects of criminal law. According to Sutan Remy Sjahdeni, the imposition of corporate criminal liability consists of 4 (four) categories, including:

- a) Corporate managers as perpetrators of criminal acts must bear criminal responsibility;
- b) Corporations are perpetrators of criminal acts but the management must bear criminal responsibility;
- c) Corporations as perpetrators of criminal acts and the corporations themselves must bear criminal responsibility; And

- d) Both the management and the corporation are perpetrators of criminal acts and both must bear criminal responsibility.

In view of the many criminal acts committed by corporations, it is natural that corporations must also be responsible for their actions. So that corporations can be subject to sanctions based on applicable laws and regulations, namely:

- 1) Law Number 31 of 2004 in conjunction with Law Number 45 of 2009 concerning Fisheries;
- 2) Law Number 32 of 2009 concerning Environmental Protection and Management; And
- 3) Supreme Court Regulation Number 13 of 2016 concerning Procedures for Handling Criminal Cases Committed by Corporations.

In Indonesia, regulations regarding corporations being the legal subject of the crime of illegal fishing are regulated in Law Number 31 of 2004 in conjunction with Law Number 45 of 2009 concerning Fisheries. Article 84 - Article 100 of Law Number 31 of 2004 in conjunction with Law Number 45 of 2009 concerning Fisheries regulates "Every person is a perpetrator of the crime of illegal fishing". Article 101 of Law Number 45 of 2009 concerning Fisheries regulates responsibility for criminal acts, which states that "In the event that a fisheries crime is committed by a corporation, criminal charges and sanctions are imposed on its management and the fine is increased by 1/3 (one third) of the sentence imposed". From the formulation of sanctions above, it can be concluded that a corporation is recognized as the perpetrator of a criminal act but the corporation cannot be held criminally responsible.

The formulation of criminal sanctions contained in Law Number 31 of 2004 in conjunction with Law Number 45 of 2009 concerning Fisheries which has very heavy criminal sanctions compared to other criminal provisions. But this also has no effect on the perpetrators of illegal fishing crimes. Perpetrators who catch fish without having or carrying a SIPI (Fishing Permit) are threatened with a maximum prison sentence of 6 (six) years. Perpetrators who forgery and use fake permits in the form of SIUP (Fisheries Business Permit), SIPI, SIKPI (Fish Transporting Vessel Permit) are threatened with a maximum prison sentence of 7 (seven) years. And for criminal penalties the maximum fine is IDR 20,000,000,000 (twenty billion rupiah).

Below are several alternatives for imposing additional sanctions on corporations as perpetrators of illegal fishing so that corporations will be deterred and will not repeat their actions again, including:

- a. Civil Sanctions or Compensation (Article 1365 of the Civil Code) in the form of:
  - a. Replacing any economic benefits obtained as a result of crime;
  - b. Recover (recover) all or part of the investigation or investigation costs and carry out repairs (reparation) for any losses incurred; And
  - c. Imposition of Fines.
- b. Administrative Sanctions (Government Regulation Number 60 of 2007 concerning Supervision of Fisheries and Marine Resources, as well as Minister of Maritime Affairs and Fisheries Regulation Number 56/PERMEN-KP/2016 concerning Procedures for Granting, Revoking and Using Fisheries Business Permits) in the form of:
  - a. Prohibition not to commit or repeat the act again;
  - b. Orders to end or not continue activities (temporarily or permanently) by revoking activity permits and dissolving business ventures;
  - c. Order the convict to carry out service or social work (community service).
  - d. Order the removal of managers and disqualify or cancel officers from office;
  - e. Order the convict to notify the people who have been harmed by his actions;
  - f. Exclude or disqualify convicts or corporations from government contracts, fiscal benefits or subsidies;
  - g. Requires the convict to fulfill the terms or conditions set by the court to prevent the convict from repeating his actions
  - h. Confiscation of property assets from the proceeds of crime by providing protection for the rights of bona fide third parties; and
  - i. Order the publication of facts related to the court decision;

### **3. Efforts Made to Prevent and Eradicate the Crime of Illegal Fishing in Indonesia**

Regulatory provisions created with the aim of managing the country's marine resources are often unbalanced. Unclear and indecisive law enforcement means that many cases of illegal fishing are neglected. So the perpetrators feel that fishing in Indonesian sea areas is not prohibited. Fishing activities are said to be illegal if they are carried out not in accordance with procedures or are proven to have violated the rules applicable in the waters of the Exclusive Economic Zone and the Indonesian Territorial Sea. And as a sovereign state over this region, the state has the right to carry out various efforts to prevent and handle maritime areas in Indonesia. These prevention efforts can be done by:



- a) Enforce administrative requirements. Before carrying out fishing activities, every vessel is required to complete all vessel documents;
- b) Providing strict and correct sanctions to perpetrators who are proven to have carried out illegal fishing;
- c) Maintain marine resources so that their sustainability is maintained;
- d) Strengthening guarding or patrolling waters bordering other countries;
- e) Strengthening fisheries justice so that perpetrators feel deterred because perpetrators feel how the management involved in illegal fishing cases is;
- f) Completing water surveillance infrastructure, such as providing ships and speedboats;
- g) Increasing the capacity of human resources handling Indonesian territorial waters; And
- h) Play an active role in regional and international fisheries organizations.

Indonesian legislation has several legal bases which form the basis for preventing and eradicating illegal fishing in Indonesia which can be used as a basis for protecting Indonesian territorial waters, including:

- a) Territorial Sea and Maritime Environment Law of 1939 (Territorial Zee en Maritme Kringen Ordonantie, Stbl. 1939 No. 442);
- b) Law of the Republic of Indonesia Number 32 of 2014 concerning Maritime Affairs;
- c) Law of the Republic of Indonesia Number 45 of 2009 concerning Amendments to Law Number 31 of 2004 concerning Fisheries;
- d) Law of the Republic of Indonesia Number 17 of 1985 concerning Ratification of the United Nations Convention on the Law of the Sea (UNCLOS);
- e) Law of the Republic of Indonesia Number 5 of 1983 concerning the Indonesian Exclusive Economic Zone;
- f) Regulation of the Minister of Maritime Affairs and Fisheries of the Republic of Indonesia Number 2/PERMEN-KP/2015 concerning Prohibition of the Use of Trawls and Seine Nets in the Fisheries Management Area of the Republic of Indonesia; And
- g) Law of the Republic of Indonesia Number 17 of 2008 concerning Shipping.

## CONCLUSION

From the various descriptions above, the author draws the following conclusions:

1. The factors causing the crime of illegal fishing in Indonesia are due to the high demand for fish stocks or the increasing need for sources of certain fish raw materials which have high economic value, especially fish consumed by visitors to expensive restaurants abroad, lack of facilities and infrastructure for monitoring Indonesian territorial waters, lack of legal awareness and knowledge of the use and importance of preserving fisheries resources, aDanya Kconflicts between countries that claim to have the same territory and thus have rights to marine resources in that territorial waters, The vast area and distance between the location of the crime and the location of the fisheries court means that it requires quite a long time and a large budget, limited budget funds for operational costs for monitoring marine waters, lack of manpower and coordination between agencies related to Indonesian waters. For example: Water Police and (Civil Servant Investigators).
2. Legal liability for corporations related to criminal acts of illegal fishing in Indonesia is regulated in Law Number 31 of 2004 in conjunction with Law Number 45 of 2009 concerning Fisheries. Article 84 - Article 100 of Law Number 31 of 2004 in conjunction with Law Number 45 of 2009 concerning Fisheries regulates "Every person is a perpetrator of the crime of illegal fishing". Article 101 of Law Number 45 of 2009 concerning Fisheries regulates responsibility for criminal acts, which states that "In the event that a fisheries crime is committed by a corporation, criminal charges and sanctions are imposed on its management and the fine is increased by 1/3 (one third) of the sentence imposed. Added additional sanctions to deter perpetrators, namely civil sanctions or compensation in accordance with Article 1365 of the Criminal Code and administrative sanctions in accordance with Government Regulation Number 60 of 2007 concerning Supervision of Fisheries and Marine Resources.
3. Efforts are being made to prevent and eradicate the occurrence of criminal acts of illegal fishing in Indonesia, namely by enforcing administrative requirements, meaning that before carrying out fishing activities, each ship is required to complete all ship documents, provide strict and correct sanctions to perpetrators who are proven to have carried out illegal fishing, safeguard marine resources so that their sustainability is maintained, strengthen guarding or patrols in waters bordering other countries, strengthen fisheries justice so that perpetrators feel deterred because

perpetrators feel how those involved in illegal fishing cases are managed, complete water monitoring infrastructure, such as providing ships and speedboats, increasing the capacity of human resources who handle Indonesian territorial waters and playing an active role in regional and international fisheries organizations.

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