

# Corporate Crime in Illegal Fishing Practices and Its Enforcement in Indonesia

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## Corporate Crime in Illegal Fishing Practices and Its Enforcement in Indonesia

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**Abstract.** Indonesia is one of the largest archipelagic countries in the world which has a strategic location and has a very large diversity of biological resources. With the potential of marine resources that are owned, they are not immune from the problems they face, such as being a place for illegal fishing practices, especially in sea areas that are directly adjacent to other countries. This study aims to find out how corporate responsibility is as perpetrators of Illegal Fishing in Indonesia and how law enforcement efforts prevent illegal fishing. This study uses normative juridical research methods, namely research that focuses on studying the application of the principles of criminal law in Indonesia regarding the crime of fish theft. The results of the study show that legal protection and prevention of illegal fishing crimes are still not optimal. This can be seen from the lack of public legal awareness of illegal fishing practices and weak law enforcement against illegal fishing crimes. In addition, it is difficult to prove illegal fishing practices carried out by large corporations. Based on this, the authors are of the view that for the sake of realizing legal certainty it is necessary to optimize efforts to prevent and combat illegal fishing practices by involving the community and increasing supervision of illegal fishing practices in Indonesia and the importance of legal unification. provisions on illegal fishing among ASEAN countries. against setting Illegal Fishing practices. The conclusion that can be drawn is that in this case this can be seen from the lack of public legal awareness of illegal fishing practices and the weakness of law enforcement against illegal fishing crimes. In addition, it is difficult to prove illegal fishing practices carried out by large corporations.

**Keywords:** Illegal Fishing, Corporate Criminal Responsibility, In Indonesia

### 1. Introduction

Indonesia is one of the countries that has a strategic location and is surrounded by a vast ocean with a rich and diverse diversity of biological wealth, one of which is fish in Indonesian waters. With a strategic location and diversity, it turns out that it not only has positive impacts and benefits, such as providing many benefits to coastal communities whose livelihoods are traditional fishermen and farmers, but also has negative impacts, namely the potential for illegal fishing to occur, sometimes even for the community. giving birth

to the most fragile communities economically, education and health for life in the future.<sup>1</sup>This is exacerbated by the weak marine security system, which causes the utilization of biological resources to be less than

<sup>1</sup>Hans, "Year of SBY-JK Government Performance in Maritime Affairs and Fisheries Sector, Shared Views of NGOs and Fishermen Organizations", 25 June 2009, <http://nttonlinenews.com>

optimal. This can be seen where fishing theft by other countries uses more sophisticated equipment, large ships escape law enforcement and perpetrators are increasingly rampant, meaning that there is no deterrent effect so law enforcement in Indonesia is not running optimally. Illegal fishing is fishing activity or fish theft in one country by another country. This is one of the criminal acts that violates the law contrary to the laws in force in a country or the provisions of international law.

Seeing the many cases that have caused enormous losses to the state, which were incurred by corporations, it is necessary to review how corporate criminal responsibility for illegal fishing crimes and law enforcement. In general, the perpetrators of illegal fishing that occur in Indonesian waters are corporations.

The biological resources of fish in Indonesian waters have long been exploited by humans, even with the current developments, more and more people are taking advantage of the Indonesian seas. In fact, many neighboring countries also take advantage of technological advances to take actions that are contrary to legislation, which only benefit some parties without seeing the negative impact on other communities around them.<sup>2</sup>

Fishing business is an economic activity carried out by most people in coastal areas by placing economic motivation at the forefront. This can lead to symptoms of over fishing, which is a fundamental problem related to the sustainability of fish resources as a common property. With the condition of over fishing, this will not be able to improve the damaged condition of sustainability. So that it really needs enforcement from the government because this will continue to be repeated if there is no special and serious handling because otherwise the sources of biological wealth in Indonesia will decrease and the number of poor people will increase.

In the concept of national legislation, the criminal act of Illegal Fishing as well as in law enforcement is resolved through the criminal justice system.<sup>3</sup> In a system of criminal liability for corporations where corporations as policy makers and administrators who should be responsible are not touched by law, therefore it does not provide a deterrent effect for corporations because those who are always the victims and those who are held accountable are not the people who are responsible for the corporation. This also shows injustice, and the sanctions imposed are also disproportionate to the impact of the crimes committed by the corporation. Based on the description of the background above, the focus of the problem is first, how is corporate criminal responsibility for Illegal Fishing in Indonesia and second, what are the efforts of law enforcement in preventing illegal fishing crimes.

## 2. Research methods

The research method used in this study is normative juridical, namely studies that are focused on examining the application of positive law principles or standards. In addition, this study uses a statutory approach (statute approach). With the help of existing laws and regulations, it is used to examine the application of the norms of legal principles applied in the practice of tackling the crime of illegal fishing in Indonesia. of library materials related to the above problems.

## 3. Results and Discussion

### 1. Corporate Criminal Responsibility for Illegal Fishing in Indonesia

Indonesia with a strategic location and has a variety of marine biological resources in the form of fish that are in Indonesian waters and with the passage of time and very rapid technological advances

<sup>2</sup>Fishermen's Organization", 25 June 2009, <http://nttonlinenews.com>. Djoko Tribawono, Indonesian Fisheries Law, Bandung

<sup>3</sup>Ruth Shella Widyatmodjo, Pujiyono, Purwoto, Law Enforcement Against Illegal Fishing Crimes in the Economic Zone, (2016), Diponegoro, Vol.5, Pg.2.

can provide enormous opportunities for crime, one of which is the growth of large corporations, where growth Corporations are not spared from the negative impacts they cause. Developing countries have now begun to look for ways to overcome this negative impact, one of which is by increasing the criminal law security system in their respective countries.

Law enforcement seems unable to anticipate the negative impacts of technological developments, especially in the context of processing and utilizing fish resources in Indonesian waters, as stipulated in Law Number 31 of 2004 concerning Fisheries. Although the process of enforcement and mechanisms for enforcing the criminal law on illegal fishing are not yet optimal, the government's efforts to protect the unity of the Republic of Indonesia, especially in protecting natural resources, are very serious.

In terms of law enforcement in the field of destroying fish potential and existing ecological conditions, it must comply with the provisions of the applicable laws and regulations such as Law Number 45 of 2009 concerning Fisheries.<sup>4</sup>In connection with corporate responsibility in Illegal Fishing, it is first important to understand how the criminal act (strafbaarfeit) can occur and what causes it. Because it's not fair, if suddenly someone has to be responsible for an act, while he himself didn't do it, he didn't even know about the case.<sup>5</sup>

A criminal act is defined as the reproach that exists for a criminal act and fulfills the requirements to be criminalized because of that action. Basically the principle of legality, as a principle that determines that no action or action is prohibited and punishable by crime, if the said action has not been regulated in advance in law. Meanwhile, the basis for the punishment of the maker is the principle of error. The Principle of Guilt is the principle of no crime without fault, which means that there is someone who has committed an act that is contrary to the applicable laws or criminal law regulations but cannot be punished because of the absence of guilt in his actions.

In the Fisheries Law there is an article which mentions or recognizes that in the legal subject of a fisheries crime there is a legal entity, so that the legal subject is not just an individual. However, in practice law enforcement against illegal fishing that occurs in Indonesia is still difficult to complete, especially those involving business entities such as corporations which are barely touched. Not a few of these things are not thoroughly investigated especially for law enforcement only up to the subordinates or members, not to the brains of the crime itself so that in the end the corporation remains standing. With this example in the Illegal

Fishing Case, most of the cases that were brought to court were only the perpetrators who were in the field, such as ship captains, ship crews, In general, in this Illegal Fishing case, the profits obtained by the corporation are very large and the consequences for the losses borne by the community are also very large. such action. In imposing sanctions as a form of law enforcement in a case that occurs to corporate management alone, it will not provide a deterrent effect or provide a guarantee that the corporation will not repeat similar actions in the future if there are no appropriate sanctions against those responsible for the corporation. Illegal fishing which has now become a big problem in Indonesia, so that for now it is very difficult to calculate how many practice counts. Illegal fishing is currently a special problem in Indonesia developing countries, where fisheries management strategies are not properly developed, or enforcement of fisheries laws limited.<sup>6</sup>

Based on the data collected by the marine and fisheries resources monitoring agency, the losses incurred by Illegal Fishing in Indonesia have reached very large numbers. Therefore, it can be seen that the law enforcement system in Indonesia in handling this case is not optimal. Thus in handling or

<sup>4</sup>Iqbal, Moch, Enforcement of illegal fishing criminal law (principle research, theory, norms and practice of its application), Jakarta: 2012, Pg.13

<sup>5</sup>Roeslan Saleh, Criminal Acts and Criminal Liability: Two Basic Understandings in Criminal Law, Jakarta, New Script, 1983, P.20-23

<sup>6</sup>Trusts, Pew. (2017). "How to End Illegal Fishing from Coastal Waters to the High Seas, Criminals are Robbing the Oceans and Hurting Economies." A Brief from the PEW Charitable Trusts, h. 1.

enforcing the law carried out directly to business entities, namely corporations, this enforcement will be far more effective because it will also indirectly impact the management. When a business entity, namely a corporation that acts as a forum for a case and a tool to enrich a company, is left alone, Illegal Fishing activities in Indonesia will continue to run rampant and become increasingly unsupervised, and when the business entity or corporation is dealt with decisively, also does not rule out that other people may still be able to run the corporation in a different field. Therefore, it is time for supervision and law enforcement related to Illegal Fishing to be carried out immediately with various efforts.

## 2. Law Enforcement Efforts in Preventing Illegal Fishing Crimes

The corporate crime in Illegal Fishing is detrimental to many parties, especially the state. One of the other parties who are harmed by this corporate crime is the coastal community in Indonesian waters who rely on their family's economy from work such as fishermen, traditional farmers and so on. On the other hand, criminal penalties and fines imposed on entrepreneurs are very disproportionate to the impact and or losses caused by fishing. The losses experienced are:

- 1) There are losses experienced by Indonesian fishermen, due to illegal fishing crimes which reduce the economic value of the surrounding community because the fish they catch are taken by foreign parties. Thus, Indonesian citizens lose out to foreigners who have ships and fishing gear that are more advanced/modern compared to citizens who have their own marine resources.
- 2) The influence of fishery natural resources which should be properly managed by Indonesian citizens and used to advance the welfare of the nation, was even seized by foreign parties, so that the Indonesian state suffered great losses in this regard, as well as unmitigated poverty;
- 3) Indonesia's fishery natural resource wealth is depleted and suffers huge losses because Indonesia does not get any benefits at all including taxes.

In law enforcement in Indonesia, foreign state corporations caught in illegal fishing do not feel deterred because the sanctions given are not proportional to the benefits obtained, where the profits are greater than the penalties imposed by the courts, so that activities to explore Indonesia's marine wealth continue to be sustainable. *Illegal Fishing* interpreted as illegal fishing activities, and are fishing activities that are contrary to fisheries legislation, in which law enforcement is still considered not optimal because one of the factors is the difficulty of proving in involving corporations. Law enforcement to eradicate illegal fishing, especially those carried out by corporations, is not easy. Based on this, it is important to make efforts to unify the law against the regulation of illegal fishing between countries, especially ASEAN countries that are close to the sea or Indonesian waters.

## 4. Conclusion

Legal protection and prevention of illegal fishing crimes are still not optimal, this can be seen from the lack of public legal awareness of illegal fishing practices and the weak law enforcement of illegal fishing crimes. Besides that, it is difficult to prove illegal fishing practices carried out by a large corporation. Based on this, the author is of the view that for the sake of realizing legal certainty it is important to optimize measures to prevent and combat illegal fishing practices by involving the community and increasing supervision of illegal fishing practices in Indonesia and the importance of legal unification of illegal fishing provisions between ASEAN countries. against setting Illegal Fishing practices.

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