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LEGAL ANALYSIS OF THE IMPACT OF LAW NUMBER 45 OF 2009 ON UNLAWFUL FISHING ACTIVITIES IN THE NATUNA REGION

Emirza Henderlan Harahap

Universitas Graha Nusantara

Email: emhenhar@gmail.com

Abstract

The aim of this research is to analyze the law regarding the impact of law number 45 of 2009 on unlawful fishing activities in the Natuna region. Researchers use normative law as their research methodology. Normative law is a type of research that uses law as a system of norms. This norm system involves norms, rules, principles and legal regulations. Normative research is a process of finding legal rules, principles, or theories to solve legal problems. Normative research, also known as doctrinal law, is a type of research that aims to develop new theories, concepts or arguments to help solve problems. The results of this research are that many illegal fishing activities occur in the Natuna sea. Apart from that, the lack of supervision has resulted in a large number of individuals from foreign countries. So the elements resulting in illegal fishing (*fishing*) in Natuna waters are as follows: very limited skills for investigators in the field of fisheries as well as TNI-AL officers and law enforcement officers in the field of maritime affairs and fisheries, as well as prosecutors and judges; lack of coordination and equality between law enforcers; lack of plans to implement law enforcement systematically and over a long period of time; lack of integrity of law enforcement, which is capable of having an impact on the process and law enforcement.

Keywords : Illegal fishing , fisheries , Indonesia .

Abstrak

Tujuan dari penelitian ini yaitu untuk menganalisis hukum mengenai dampak undang-undang nomor 45 tahun 2009 terhadap aktivitas penangkapan ikan yang melanggar hukum di wilayah Natuna. Adapun metode penelitian yang digunakan oleh peneliti yakni hukum normatif. Hukum normatif yaitu suatu macam penelitian yang menggunakan hukum menjadi salah satu sistem norma. Sistem norma ini melibatkan suatu norma, kaidah, asas-asas dan peraturan undang-undang. Penelitian normatif merupakan proses untuk menemukan aturan, prinsip, atau teori hukum untuk menyelesaikan masalah hukum. Penelitian normatif bisa disebut juga sebagai hukum doktrinal, adalah suatu jenis penelitian yang bertujuan untuk mengembangkan teori, konsep, atau argumen yang baru untuk membantu menyelesaikan masalah. Hasil penelitian ini yaitu menjadikan banyak aktivitas nelayan ilegal yang terjadi di laut Natuna. Disamping itu, kurangnya dari segi pengawasan yang mampu menyebabkan para oknum dari negara asing sangat banyak. Maka unsur – unsur berakibat terjadinya

suatu penangkapan ikan ilegal (Illegal Fishing) di perairan Natuna yaitu sebagai berikut, keterampilan sangat terbatas bagi penyidik dibidang perikanan juga Perwira TNI-AL, dan aparat penegakan hukum di bidang keluatan dan perikanan, serta jaksa dan hakim, kurangnya koordinasi dan sama diantara penegak hukum, kurangnya rencana pelaksanaan penegakan hukum secara sistematis dan dalam jangka waktu yang panjang, minimnya integritas suatu penegakan hukum yang mampu berdampak pada proses, dan penegakan hukum.

Kata kunci: *Illegal fishing, perikanan, Indonesia*

INTRODUCTION

As a maritime country that surrounds the ocean, Indonesia has an amazing wealth of marine resources. The country of Indonesia has extraordinary fisheries potential in coastal areas, which is very high regardless of its geographical location and the geophysical conditions of the waters. As is known, the sustainable potential has fishery resources of around 6.3 million tons per year, with sources in several regions of this country of 4 million tons per year and the ZEEI area of 1.8 million tons per year. Various types of fish consist of 4.29 million tons, up to 0.03 million tons (Damastuti et al., 2018). According to Prayoga (2021), the length of the coast in Indonesia is around 81.7 km, making it one of the second-longest beaches in the world after Canada. Various types of organisms grow well and tall in shallow waters. These organisms are spread across various regions of tropical marine ecosystems and are known to have great potential to increase fisheries production.

The potential to capture fisheries resources in Indonesia throughout the marine waters of this region is very small, approximately 6.4 million metric tons per year, and it can also produce up to 82 billion dollars per year; however, the utilization in question is still below the existing potential. (Prayoga, 2021) In other words, if the number of fish caught annually is more than 6.4 million tons, fishing will not hamper the marine ecosystem because this fishing is permitted by law. Likewise, if the fisheries ecosystem in the waters of this country, especially in the Natuna region, is not only carried out by Indonesian fishermen but is also carried out by Indonesian fish transport vessels, or vessels with permits granted by the Government of the Republic of Indonesia, most of it is carried out illegally. Arrest illegal fish, which, in other words, is a problem with fish-catching and poaching activities, can be found at several points in the fishing area where the fish biota lives. (Puspoayu et al., 2021)

Indonesia is a country that has islands almost entirely located in the ocean, natural wealth, and fish that are abundant and diverse. This economic capability has a function as a pillar of state development. Optimal utilization of fisheries potential is based on conserving resources and with existing support. This sustainability can improve community welfare, raise the standard of living of small-scale fishermen, increase state financial intake, provide additional employment opportunities, and increase the competitiveness, productivity, and added value of fishery products. Fishing guidelines must be designed in sync with advances in science and technology. By referring to the Law on Fisheries, namely Number 45 of 2009, it is hoped that there will be progress in effective, efficient, and modern fish management, as well as environmental sustainability (Sihombing, 2016).

Lufhie (2013) explained that both the community, government, and parties directly involved in developing fisheries are obliged to pay attention to issues in developing a fishery. The problem is regarding the implementation of illegal fishing, which can be detrimental to the Indonesian state as well as threatening fishermen, those who cultivate fish, and the national fisheries sector. Implementation of regulations on fisheries is fundamentally crucial to overcoming this problem and ensuring sustainable fisheries development. So legal certainty is an absolute condition that must be met when handling fisheries crimes.

The problem of theft and illegal *fishing* still exists in Indonesia, especially in Natuna. The ability to follow up on control and supervision is evaluated as being really lacking because the capabilities of the facilities and tools for monitoring that are owned do not fully meet and fulfill the duties of supervision. (Sakhya, 2022) At this time, according to Sukardi and Suryana (2022), illegal fishing *means* the country is experiencing losses. The losses ranged from approximately 1.9 billion dollars, or equivalent to 19 trillion rupiah, which really hit Indonesia's self-esteem and sovereignty.

One component that really determines the law in Indonesia is law enforcement. The government enacted Fisheries Law Number 31 of 2004, which was later changed to Law Number 45 of 2009. In the process of enforcing the rules, investigators play a very important role because punishment is the responsibility of the criminal justice system, namely from discovery to the process of investigation, prosecution, and examination, an incident that should constitute a fisheries crime (Mulya, 2023).

As a policy strategy, the rules stated in this law are stipulated. This will provide a basis for the competent authorities to determine cases regarding theft or illegal fishing, which will have a negative impact on state finances and even the Indonesian economy. Catching fish illegally (illegal *fishing*) is very destructive for both conventional fishermen and even the country. In the same way, fish in this country is taken and then processed using modern and sophisticated equipment so that it can produce something that will have high selling power, thereby causing the Indonesian people as consumers to suffer losses. (Surmita et al., 2023).

Often, according to Prayoga (2021), large-scale utilization of fisheries resources does not consider environmental sustainability, as is done by fishermen. There are many problems with wild fishing (*illegal fishing*), which can cause damage to the marine system, thus having a direct impact on the potential of fish in our country. Even today, catching fish wildly (illegal fishing) can also cause national losses, both material and immaterial.

It is believed that illegal fishing by fishermen from countries other than Indonesia is a part of a well-organized global network. Catching fish wildly (*illegal fishing*) produces economic benefits, and in Indonesian waters with extensive fisheries ecosystems, the fish that are caught have a very good chance of making a profit. This means that illegal fishing activities *experienced* by our nation, carried out by foreign fishermen, may be considered a transnational crime *because* the action and its network are international, so

that the perpetrators and their activities can exceed the borders of a country (Nasihah, 2017).

Therefore, I wrote the title Juridical Review of the Influence of Regulations or Law Number 45 of 2009 on Wild Fishing in Natuna, with a problem formulation regarding what factors contribute to fisheries crimes that also occur in the Natuna Sea and what the sanctions? are applied to perpetrators of illegal arrests in Natuna, and what the government's efforts are in enforcing the law to handle cases of illegal arrests.

METHOD

The research method used is normative law. Normative law is a type of research that uses law as a system of norms. This norm system involves norms, rules, principles, and legal regulations. Normative research is the process of finding legal rules, principles, or theories to solve legal problems. Normative research, also known as doctrinal law, is a type of research that aims to develop new theories, concepts, or arguments to help solve problems.

RESULTS AND DISCUSSION

1. Factors in the occurrence of *Illegal Fishing*

The third United Nations Conference on the Law of the Sea (UNCLOS III), from 1973 to 1982 created the United Nations Agreement on the Law of the Sea (UNCLOS), also known as the Convention on the Law of the Sea. Convention on the Law of the Sea, is an international agreement resulting from the third United Nations Conference on the Law of the Sea (UNCLOS III) which took place from 1973 to 1982. UNCLOS 1982 is intended as an international maritime law system that regulates the duties and obligations of an area where natural resources are located. The sea is used globally and ensures rules for the operation and management of existing sea potential. Provides important and sensitive aspects such as sovereignty, sovereign rights and jurisdiction. International law classifies wild fishing (*fishing*)(*illegal*) into three groups:

- a. Illegal fishing *is the act* of catching fish wildly in an area or EEZ without permission from the country concerned.
- b. Non-regulation of waters is the act of catching fish in a nation's EEZ area. In areas that have lots of fish that do not meet management and conservation requirements, this is a fishing activity carried out, meaning that it does not fulfill a nation's obligation to manage and preserve fisheries potential, depending on HI (International Law). In this region, the task and authority of coordinating national fisheries supervision are carried out from vessels without citizen status by carrying national flags without being members of a group. This is achieved through an effort that is not compatible with the requirements for maintaining and managing a group.
- c. Unreported fisheries are fishing activities in EEZ areas, nations whose operations, data, and results of fishing have never been notified (Romulus, 2015).

The area of criminal law is divided into two: general criminal law and local criminal law. General criminal law, namely criminal law established by a nation that applies to legal matters contrary to criminal law I in the legal area of a country, Local criminal law, namely an offense drawn up by a regional government, applies to the subject of laws that violate the area of that regional government. The principles that apply and are stated as a unit of criminal law (which can also be categorized as general principles) exist so that the integrity of criminal law exists except for matters specifically regulated in certain laws (specialist *law*), as stated in Article 103 of the Criminal Code (KUHP). Ambanaga & Burhanuddin, 2023).

Factors that contribute to the increase in illegal fishing activities in Natuna waters are:

- a. Skills are very limited for investigators in the fisheries sector, as well as TNI-AL and police officers, law enforcement officers in the maritime and fisheries sectors, prosecutors, and judges.
- b. Lack of coordination and cooperation among legal authorities has not been encouraged.
- c. Lack of plans to implement law enforcement systematically and in the long term
- d. Lack of integrity in law enforcement, which has an impact on the process;
- e. Law enforcement (Maulana, 2020).

Of the five factors or obstacles to law enforcement in the fisheries sector, the coordination factor between law enforcers plays the most important role, bearing in mind that the investigation process begins with a notification letter of the start of the investigation process (SPDP) from the Fisheries Supervisor, or TNI-AL, and the police to the local state prosecutor, or better known by the designation P-18, which really requires coordination, both formal and informal, between law enforcement agencies in order to obtain acceptance of the process of handing over criminal case files from investigative agencies to prosecution agencies or prosecutors. Cooperation and coordination between the departments in charge and collaborating through the TNI-AL and competent authorities are needed in law enforcement efforts, and it must be realized that without coordination, it can become an obstacle if the intended action is not carried out in efforts to enforce the law, especially in the field of fisheries crimes. (Damastuti et al., 2018).

Illegal fishing, also known as illegal fishing, has fulfilled the elements of a crime because it is a crime committed by several individuals from other countries, so its prevalence in the waters of this country results in a lot of loss. Illegal fishing without using complete documents and in accordance with the regulations imposed by the authority or government and also not fulfilling appropriate standard procedures is a legal loss. There are two types of interactions between parties from other countries that influence illegal fishing, namely:

- a. The arrest, which is claimed to be almost legal, occurred when a foreign vessel used a SIPI (fishing permit), which was obtained from regional fishermen and had the flag of another country. Illegal fishing *occurs* not only in addition to catching fish in waters that are not within their rights; this fishing also often sends the fish they catch exclusively from the sea and does not go through a fish landing process in a legal area according to applicable rules.
- b. Genuine illegal fishing, namely the activity of taking fish carried out by foreign fishermen and foreign vessels using the flag of another country in fishing areas in Indonesian waters (Surmita et al., 2023).

However, illegal fishing is not only carried out by fishermen and ships from other countries but is also carried out by local businesses and fishermen. Both local businesspeople and the fishermen in our own country—two groups—engage in illegal fishing.

- a. Fishing vessels carrying Indonesian flags, namely fishing vessels that have previously operated in other countries and have fake documentation with an Indonesian flag, are former foreign fishing vessels whose documents are not genuine and have not obtained permits;
- b. KII stands for Indonesian fishing vessel, with permission to manipulate a permit, and is designed to be the same as the version of the permit. For example, the authorized authority to grant permits is not the only authorized authority, and the permits are not genuine (Mahfud et al., 2021).

Illegal fishing is divided into four categories, namely:

- a. Fishing without a permit
- b. Fishing through non-genuine permits;
- c. using fishing equipment that the government does not permit;
- d. Fishing that carries out fishing is not the same type (species).
- e. Permission is not desired (Aldisa, 2019).

2. Sanctions Applied to Perpetrators of Illegal Fishing in Natuna

Despite the fact that the Republic of Indonesia's sea area has a law that stipulates a penalty for sinking foreign vessels, the penalty is not dependent on one. International legal conventions do not recognize the concept of fishing or the punishment of burning and sinking other countries' ships. The coastal state only has one article to check whether a regional policy does not violate international law. However, if a foreign vessel tries to fish in an area that is included in one nation's EEZ, UNCLOS 1982 Article 111 applies. A nation that has the authority to establish and enforce its national laws regarding events, property, and actions. This is how states exercise sovereignty (Ambanaga & Burhanuddin, 2023).

There are three limitations to power in terms of international rules that differentiate them, including:

- a. Sovereignty is defined as a method of authority that designs appropriate rules or laws as ingredients in action, relating to individuals or an interest in that object, with government institutions that administratively regulate legal regulations or court decisions.
- b. The authority (jurisdiction to adjudicate) to supervise matters related to legal objects and legal subjects is carried out through a court, whether an administrative court, namely a civil action or a criminal action, and constitutes a state or not in this process.
- c. The authority to ensure the law (jurisdiction *to enforce*) is the authority to ensure the law, confirm an indictment, and take comparable action through a law by passing a court indictment, namely utilizing the power of the prosecutor's office, the police, and ensuring other violating actions (Aprizal & Muslimah, 2020).

Based on the Law on Fisheries, namely Number 45 of 2009, which is contained in Articles 84–101, fisheries cases are determined. These cases include pollution, damage to marine ecosystems, illegal business, and pollution, as well as catching fish using sources that can be polluted. In paragraph (1) of Article 84, perpetrators of fishing who deliberately use fishery management areas in the Republic of Indonesia using materials that are easy to catch are subject to a maximum sentence of six years and a fine of 1,200,000,000 rupiah.

In paragraphs (2) to (4) of the same article, it is also regulated in Article 84, paragraphs (2) to (4), which states that the criminal regulations for people who catch fish using materials that are easy to catch, whether by the crew, ship, or narcotics owners, can be punished with different sentences. If it is carried out by a company and/or cultivates a much greater criminal order, it can be punished with a fine of \$2,000,000,000 and imprisonment for ten (10) years. Paragraph (2) of Article 93 states that those who own or drive a fishing vessel with the flag of another country and then fish in the EEZ area and do not have a SIPI, as in Paragraph (2) of Article 27, can be imprisoned for 6 years and sanctioned by Dengue in the amount of 20,000,000,000 rupiah. In paragraph (3), anyone who drives a fishing vessel using the flag of another country in the ZEEI area and does not have a SIPI will be sentenced to imprisonment for 6 years and receive a sanction of 20,000,000,000 rupiah.

In accordance with article 94A, if the documents relating to the Fishing Business License, Fishing License, and Fish Transporting Vessel License are not genuine, in accordance with article 28A, there can be sanctions, namely imprisonment for 7 (seven) years and a sanction of 3,000,000,000 rupiah. Driving a fishing and transport vessel without a sailing license is punishable by imprisonment for one year and a sanction of 200,000,000 rupiah. Certain behaviors carry out surveillance of ships by burning and/or

closing the ship. If there is sufficient evidence, the competent authorities in their field can burn and sink ships flying the flag of another country.

3. Deterrent law enforcement efforts

In its preamble, the 1945 Constitution is a legal guideline that becomes a legal achievement in Indonesia in the form of protecting the entire Indonesian nation and all of Indonesia's bloodshed. Therefore, the competent authority here must take steps to protect the Indonesian people, starting with a step that results in huge losses. The judicial aspect is very important in developing plans to prevent legal violations. Because to determine the elements that are capable of producing a criminal act, a criminal action prevention plan is needed that focuses on the creation of these elements. One of them is based on the regulations regarding fisheries in accordance with Law No. 45 of 2009, which stipulates that vessels belonging to other countries taking fishing that violate legal regulations in the ZEEI area must be sealed. Two techniques for sinking fishing vessels from other countries implemented by the competent authorities are:

1. Court decision to detain the ship:
 - a. The officers on duty arrested ships flying the flag of another country and took them to be handed over to the court.
 - b. Then the next step is to be processed at the fisheries court on land.
 - c. The ship will be confiscated after being found guilty, and the verdict remains.
 - d. What the executing prosecutor will do after the ship is confiscated depends on the executing prosecutor.
 - e. Depending on the court's decision, the ship will be auctioned or burned.
 - f. If burned, one option is to explode or sink.
 - g. Arrested by officers on duty
2. In Law No. 45 of 2009, Article 69 states that there are two ways, namely:
 - a. The authorized officer is none other than the Fisheries Supervisor, who is responsible for controlling and enforcing regulations in the marine and fisheries sectors under his authority.
 - b. Officers who have no other authority than in accordance with paragraph (1) can also have a gun to scare off criminals.
 - c. Authorized officers can decide, confirm, and confiscate something that is moving at sea and is suspected of making a mistake in the arrest area and take it to a nearby area for follow-up.
 - d. When carrying out their duties in accordance with paragraph (1), the competent authority may commit an act, namely burning and/or drowning, which is based on sufficient initial truth (Anas & Budianto, 2023; Sakhya, 2022).

With a very large fishing potential area, enforcement of illegal fishing criminal law is a component of Indonesian fisheries management. The reason is that the government must implement policies and actions accompanied by sanctions to prevent illegal fishing activities. Regulations regarding fisheries: citizens or citizens of other countries who catch illegal fish will be subject to sanctions in the form of imprisonment for up to eight years and must pay a penalty of \$2 billion. However, the two regulations, which both explain fisheries, state that they do not impose criminal responsibility in relation to a company and do not make a difference in punishment for individuals and companies.

Although there are many causes of illegal fishing cases in the Natuna area, there are many ways to prevent them. However, these prevention efforts are considered ineffective in stopping the fishing that occurs in Natuna. However, there is a reduction in minimizing this behavior and providing warnings to individuals who deliberately catch fish and to residents so that they are reluctant to do it again.

The government has made the following efforts to combat illegal fishing, including:

1. Tighten security in areas at risk of theft.

In situations like what happened, the competent authority is the government, which is responsible for the fisheries sector, which has a very important role, namely deploying Marine Fisheries Inspectors who try to carry out patrols and improve monitoring in our country's waters. Monitoring is not carried out in the border area, even though the area is very important as a place or location for illegal fishing. By carrying out regular patrols, you can definitely reduce illegal activities. Apart from that, increasing maritime controls reduces activities that are suspected of carrying out activities that are capable of violating the rules, such as using trawls or explosives as a way of catching activities or not following rules set by the government or authorized authorities. This method has been somewhat effective because some boats or ships suspected of carrying out maritime exploitation can be arrested and followed up by competent authorities.

2. Punishments for individuals who carry out illegal fishing are strictly enforced.

In Indonesia, the government itself has followed national and international regulations to prevent the practice of theft or illegal fishing. By adopting a UNCLOS ratification regulation in 1982 using Law No. 17 of 1985. However, UNCLOS 1982 does not explicitly state *illegal fishing*. One of them is being sentenced to a maximum prison sentence of 10 years and a fine of twenty billion rupiah, according to Law Number 45 of 2009. Sinking and burning the ship is also a punishment for perpetrators of illegal fishing using foreign flags. This was already happening in several areas at that time. In this case, the most appropriate and strict punishment would be to burn and sink foreign-flagged vessels that deliberately fish in Natuna without permission or anything else.

3. Use of technological advancements

In Indonesia, an Automatic Identification System is used, which is integrated into a maritime transportation program and uses a transmitter that aims to identify fishing activities carried out by vessels of other countries in the fishing area in Natuna. Through

the use of advances in technology, the names, origins, and locations of foreign vessels can then be traced. This technology can definitely help find the location where the perpetrators of *illegal fishing are*. To make it easier for supervision and guarding in the area, it can be improved. This clearly increases the ability of the competent authorities to carry out patrols in vulnerable areas of *illegal fishing*. If the perpetrators escape pursuit by the authorized authorities, the number and name of the ship can easily be found as evidence by the competent authorities. Apart from the three efforts carried out by the government to enforce illegal fishing, As long as there is initial and sufficient evidence, the competent authority has the authority to carry out special threats, such as sinking and burning fishing vessels using the flag of another country, as stated in paragraph (4) of Article 69 and Article 76A.

CONCLUSION

Based on the findings and discussion above, it can be concluded that due to the vast area of marine waters in Indonesia and the lack of strict sanctions for criminal elements, namely illegal fishing, many illegal fishing activities occur in the Natuna Sea. Apart from that, the lack of supervision has resulted in a large number of individuals coming from foreign countries. So the elements resulting in illegal fishing in Natuna waters are as follows: very limited skills for investigators in the field of fisheries as well as TNI-AL officers and law enforcement officers in the field of maritime affairs and fisheries, as well as prosecutors and judges; a lack of coordination and equality between law enforcers; a lack of plans to implement law enforcement systematically and over a long period of time; and a lack of integrity in law enforcement, which can have an impact on the process and law enforcement. According to the laws governing fisheries, anyone caught catching illegal fish will face penalties, including having their ship sunk and burned by the appropriate authority, using explosives, or doing so on behalf of businesses or captains who lack permits. In this case, the government has made the following efforts to combat illegal fishing: tightening security in areas at risk of theft, taking strict action against individuals who carry out illegal fishing, and using technological advances.

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