



PEMBAGIAN KEWENANGAN TERHADAP PENEGAKAN HUKUM KAPAL ASING YANG MELAKUKAN IUU FISHING DI WPPNRI

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Abstrak

Dalam praktik operasional di lapangan, kerap kali timbul permasalahan tumpang tindih kewenangan dan pengawasan bersifat sectoral dalam penegakan hukum terhadap kapal asing yang melakukan IUU Fishing di WPPNRI. Oleh karena itu, Tujuan dari penelitian ini adalah bagaimana pembagian kewenangan penegakan hukum terhadap IUU Fishing di WPPNRI dan Bagaimana Komunikasi Serta Koordinasi Antar Aparat Penegak Hukum IUU Fishing. Metode penelitian yang digunakan dalam penelitian ini adalah metode yuridis normatif. Hasil penelitian menunjukkan bahwa Terdapat beberapa lembaga dalam penegakan hukum perikanan di WPPNRI, yaitu: Badan Keamanan Laut (Bakamla); Angkatan Laut Indonesia; Satuan Polisi Air, Pegawai Negeri Sipil di Bidang Perikanan; Satuan Tugas Pemberantasan Penangkapan Ikan Secara Ilegal (illegal Fishing); Unit Kapal Direktorat Jenderal Bea dan Cukai; Jaksa Penuntut Umum; dan Hakim. Agar penegakan hukum berjalan dengan baik, dan lebih efektif, Kementerian Kelautan dan Perikanan dengan instansi lainnya dapat melakukan koordinasi satu sama lain dengan membentuk forum koordinasi.

Kata Kunci: Pembagian Kewenangan, Instansi Penegak Hukum, Penegakan Hukum IUU Fishing, IUU Fishing; Wilayah Pengelolaan Perikanan Negara Republik Indonesia.

INTRODUCTION

The Republic of Indonesia is an Archipelagic State as regulated in Article 2 of Law Number 6 of 1996 concerning Indonesian Waters. Archipelagic state

means that all waters around, between and connecting the islands. or parts of islands which are part of the mainland of the Republic of Indonesia, without taking into account their area or width, are an

integral part of the territory of the Republic of Indonesia so that they are part of Indonesian waters which are under the sovereignty of the Republic of Indonesia. (Primananda et al, 2020 as quoted by Fasyehhudin dkk, 2023).

This is recognized and also regulated in *United Nations Convention on the Law of the Sea 1982* (UNCLOS 1982). According to UNCLOS 1982, "Archipelagic State" means a State constituted wholly by one or more archipelagos and may include other islands, Archipelago" means a group of islands, including parts of islands, interconnecting waters and other natural features which are so closely interrelated that such islands, waters and other natural features form an intrinsic geographical, economic and political entity, or which historically have been regarded as such (46 UNCLOS 1982). Archipelagic State may draw straight archipelagic baselines joining the outermost points of the outermost islands and drying reefs of the archipelago provided that within such baselines are included the main islands and an area. (47 UNCLOS 1982). The sovereignty of an archipelagic State extends to the waters enclosed by the archipelagic baselines drawn in accordance with article 47, described as archipelagic waters, regardless of their depth or distance from the coast. (49 UNCLOS 1982 as quoted by Farhana, 2014 and Lamandasa, 2023)

That concept was an extraordinary concept that has an impact on various fields including the potential of natural resources in waters and the seabed and subsoil of the submarine areas (Mahsun, 2021 as quoted by Asnawi et al, 2023). This concept made Indonesia's territory become wider, namely 8,193,250 km² consist of 2,027,087 km² of land and 6,166,165 km² of Indonesian waters (Mega Jaya dkk, 2020).

Indonesian waters and the Indonesian Exclusive Economic Zone (IEEZ) are 95,181 km² long, 5.8 million km² wide. Divided into territorial sea 0.3 million km², archipelagic waters 2.8 million km², and Exclusive Economic Zone (EEZ) 2.7 million km². (Jumena and Mega Jaya, 2019).

Indonesia is the largest archipelagic country in the world located between two oceans and two continents and has a unique and strategic geographical position. This position places Indonesia on direct sea and land borders with ten countries in the region (Ministry of Defense of the Republic of Indonesia, 2015).

On the other hand, Indonesia's geographical condition, which is an archipelago and has direct borders with a number of countries, has resulted in various threats and challenges. (Aan Kurnia, 2023). One of these threats is Illegal, Unreported and Unregulated Fishing (IUU Fishing) which is carried out by foreign vessels and is very detrimental to Indonesia, both in the economic, ecological and social fields (Jaya, et al, 2021). Therefore, good enforcement is needed in carrying out law enforcement against IUU fishing carried out by foreign vessels.

Indonesia Government established the Republic of Indonesia Fisheries Management Area in optimizing law enforcement in Indonesia. Indonesia Fisheries Management Area is a fisheries management area for fishing, conservation, research and development of fisheries which includes internal waters, archipelagic waters, territorial seas, contiguous zones and the Indonesian Exclusive Economic Zone (Krisnafi et al, 2017).

In field operational practice, problems often arise overlapping authority and sectoral supervision in law enforcement against foreign vessels

carrying out IUU fishing in Indonesia Fisheries Management Areas. As stated by Mahfud MD as Coordinating Minister for Political, Legal and Security Affairs, in a coordination meeting discussing the main tasks, functions and authority for handling maritime security at the Office of the Coordinating Ministry for Political, Legal and Security Affairs, he stated that there was overlapping authority between law enforcement agencies at sea (Nugraheny et al, 2020). Sectoral egos between related agencies and limited facilities and infrastructure owned by law enforcement officials are the main causes (Danial et al, 2020).

Therefore, it is necessary to split the authority between law enforcers in enforcing IUU fishing laws carried out by foreign vessels in Indonesia Fisheries Management Areas. This division of authority must also be accompanied by good and clear communication and coordination so that there is no authority overlapping authority and law enforcement against IUU fishing can implemented effectively.

This research will discuss about: 1) how to distribute law enforcement authority regarding IUU Fishing at Indonesia Fisheries Management Areas; and 2) how to communicate and coordinate between IUU Fishing Law Enforcement Officers

RESEARCH METHOD

This research used normative legal research methods. The main characteristic of normative legal research in conducting legal studies lies in the data source, namely secondary data sources are consist of primary, secondary, and tertiary legal materials. (Jaya el all, 2023).

RESULTS AND DISCUSSION AUTHORITY DISTRIBUTION REGARDING LAW ENFORCEMENT OF IUU FISHING

Law enforcement is something that must be carried out by the state in the context of protecting its citizens. All of these are based on criminal acts which are very important problems to be overcome in order to create a harmonious, orderly, peaceful, and calm life (Aritanti 2019, as quoted by Rofingi dkk, 2022). Law enforcement describes the agencies and employees responsible for enforcing laws, maintaining public order, and managing public safety. (Bureau of Justice Statistics, 2021).

There are several institutions or agencies in enforcing fisheries law in Indonesian FMA, namely: The Marine Security Agency (Bakamla); The Navy Army of Indonesia; Water Police Unit (WPU); Duties of Civil Servant Officers in the Fisheries Sector; Coast Guard Unit; Directorate General of Customs and Excise Ship Unit; Public Prosecutor; and Judge.

1. Marine Security Agency

The Marine Security Agency (Bakamla) is regulated by Presidential Regulation Number 178 of 2014 concerning the Marine Security Agency. Bakamla is a non-ministerial government agency responsible to the President through the Coordinating Minister for Political, Legal and Security Affairs.

The duties of Bakamla are stipulated in Law No. 32 of 2014 concering sea, such as (Susanto and Munaf, 2015):

1) Article 62 Paragraph, in carrying out its duties, the Marine Security Agency carries out the following functions:

- a. formulating national policies in the field of security and safety in Indonesian waters and Indonesian jurisdictional areas
- b. organizing security and safety early warning systems in Indonesian waters and Indonesian jurisdictional areas

- c. carry out guarding, supervision, prevention, and prosecution of violations of the law in Indonesian waters and Indonesian jurisdictional areas
- d. synergizing and monitoring the implementation of water patrols by related agencies
- e. providing technical and operational support to related agencies
- f. provide search and rescue assistance in Indonesian waters and Indonesian jurisdiction, and
- g. carrying out other tasks in the national defense system.

2) According to Article 63 Paragraph (1) of Law Number 32/2014 concerning Maritime Affairs, Bakamla in order to carry out its duties and functions also has the authority which is carried out in a single command and control unit in Indonesian waters and Indonesian jurisdiction, namely:

- a. conduct an immediate pursuit
- b. stop, inspect, arrest, bring, and hand over the vessel to the authorized agency for further legal proceedings, and
- c. integrating security and safety information systems in Indonesian waters and Indonesian jurisdiction.

Based on Article 2 of Presidential Regulation Number 178 of 2014 concerning the Marine Security Agency, Bakamla has the task of conducting security and safety patrols in Indonesian waters and Indonesian jurisdictional areas. Bakamla in carrying out its duties also has a function that is regulated more specifically in Article 3 of Presidential Regulation No. 178 / 2014 concerning the Marine Security Agency, namely to carry out guarding, supervision,

prevention, and prosecution of violations of the law in the territorial waters of Indonesia and the Indonesian Jurisdiction.

2. Indonesian Navy

The Indonesian Navy as the main component of national defense in the water area is obliged to maintain state sovereignty and territorial integrity, maintain security stability in the water area, protect natural resources in the water area from various forms of security disturbances and violations of the law in the territorial waters of Indonesia's national jurisdiction. The basic conception of the realization of security in the territorial waters essentially has two dimensions, namely enforcement of sovereignty and enforcement of security which are interrelated with one another (Sondakh, 2004).

In the implementation of its main tasks, Indonesian navy must refer to the main tasks of the Navy as stipulated in Article 9 of Law Number 34 of 2004 concerning the Indonesian National Army including:

- a. Carrying out the duties of the navy in the field of defense
- b. Enforce the law and maintain security in the sea area of national jurisdiction in accordance with the provisions of national law and ratified international law
- c. Carry out Navy diplomacy tasks in order to support foreign policy set by the government
- d. Carry out tasks and development of sea power
- e. Implementing the empowerment of sea defense areas.

Referring to the task of the Navy Army at point 2 (two), the form of

activities related to law enforcement and maintaining security at sea is in accordance with the authority of the Navy Army (contabulary function) in accordance with applicable laws and regulations to overcome all forms of threats such as threats to navigation, acts of violence, and violations of the law in the sea area of national jurisdiction. The Navy plays a major role in securing and guarding sea waters, where universally the Navy has three roles, namely military roles, police roles, and diplomatic roles (Wiratama. 2015).

3. Water Police Unit (WPU)

Water Police Unit is an implementing element of the main task of the Resort Police. command structure of the Indonesian National Police in the district/city area. Polres is tasked with organizing the main tasks of the Police in maintaining public security and order, enforcing the law, as well as providing protection, protection, and services to the community and carrying out other Police duties in the Polres jurisdiction, in accordance with the provisions of laws and regulations.

Under the auspices of the Head of the Resort Police, WPU has the task of organizing water police functions, which include water patrols, law enforcement in the waters, guidance of coastal communities and other waters, as well as search and rescue. Some of the main tasks and functions of the water police include Law Enforcement Maintenance of public security and order and protecting, nurturing, serving the community (Hutabalian, 2022). In carrying out its main tasks and functions, Satpolair still coordinates with other units such as Bakamla, Navy, and Civil Servant Officials in the Fisheries Sector.

4. Duties of Civil Servant Officers in the Fisheries Sector

Civil Servant Officers contained in the Directorate General of Marine and Fisheries Resources Monitoring of the Ministry of Maritime Affairs and Fisheries, is still lacking in terms of quantity and capability (quality) to conduct investigations. According to the provisions of Article 66A paragraph (2) of Law No. 45 of 2009, the Role of Employee Investigators, not all fisheries supervisors become Fisheries Civil Servant Investigators (Arthiani, 2014).

The authority of fisheries investigators is explained in Article 73 of Law No. 31 of 2004 concerning Fisheries, which is to receive a report or/from someone about a criminal offense in the field of fisheries, summon and examine suspects and/or witnesses to be heard, bring, and present someone as a suspect and/or witness to be heard, search fisheries facilities and infrastructure suspected of being used in or being a place to commit a criminal offense in the field of fisheries, stop, examine, arrest, and/or detain vessels and/or persons suspected of committing criminal offense in fisheries, check the completeness and validity of fisheries business documents, photograph suspects and/or evidence of criminal offense in fisheries, bring in experts needed in relation to criminal offense in fisheries, make and sign minutes of examination, confiscate evidence used and/or proceeds of criminal offense, terminate investigation and conduct other actions that according to law can be accounted for.

The authority of Civil Servant Officers is based on the law of Law Number 17 of 2008 concerning Shipping. Civil Servant Officers is authorized to commit criminal acts in the field of Shipping. This is also regulated in the Law on Conservation of Natural Resources, Environmental Law. Article 4 states that the law applies internationally as it also binds foreign vessels sailing in Indonesian Waters.

5. Indonesian Coast Guard

The Republic of Indonesian Coast Guard is a port security agency under the Directorate General of Sea Transportation, Ministry of Transportation of the Republic of Indonesia. According to Article 276 of Law Number 17/2008 concerning Shipping states that Sea and Coast Guard Unit was formed to ensure the implementation of safety and security at sea and enforce laws and regulations at sea and coast. Sea and Coast Guard Unit has duties including to formulate and implement policies, standards, norms, guidelines, procedure criteria, technical guidance, evaluation and reporting in the fields of patrol and security, safety supervision and Civil Servant Investigators. Article 276 of Law Number 17 of 2008 explains the function of the Coast Guard. Article 276 paragraph 3 is the legal basis for the establishment of the Sea and Coast Guard Unit. Sea and Coast Guard Unit is the only institution recognized as a law enforcer in the shipping sector (Kurniati at All, 2020).

According to Article 345 of the Decree of the Minister of Transportation Number 24 of 2001 concerning the Organization and Work Procedures of the Ministry of Transportation, it is explained that the Directorate of Guarding and Rescue has the following functions (Ni'am, 2019):

- a. Preparation of policy formulation in the field of security, patrols, disaster and pollution prevention, orderly waters and ports, salvage and underwater work, readiness of guarding and rescue facilities.
- b. Preparation of guidelines, norms, criteria and procedures in the field of security, patrols, disaster and pollution prevention, orderly waters and ports, salvage and

underwater work, readiness of guarding and rescue facilities.

- c. Providing technical guidance in the field of security patrols, disaster and pollution prevention, orderly waters and ports, salvage and underwater work, readiness of guarding and rescue facilities.
- d. Preparation of licensing services in the field of orderly waters and ports, disaster and pollution prevention as well as salvage and underwater work and rescue.
- e. Evaluation of the implementation of activities in the field of waters and ports, disaster and pollution prevention as well as salvage and underwater work and rescue.
- f. Implementation of administrative, personnel and household affairs of the Directorate.

6. Directorate General of Customs and Excise Ship

According to the Regulation of the Director General of Customs and Excise Number Per-04 / BC / 2021 concerning Guidelines for the Implementation of Management and Operation of the Marine Patrol Command and Control Center of the Directorate General of Customs and Excise, Article 1 paragraph (3) Sea Patrol of the Directorate General of Customs and Excise, hereinafter referred to as Sea Patrol, is a patrol carried out by the task force of the Directorate General of Customs and Excise at sea and / or on rivers in order to carry out supervision to ensure the fulfillment of state rights and compliance with provisions in the field of customs and / or excise and other

purposes based on the provisions of laws and regulations in the territorial waters within the Customs Area.

Article 1 Paragraph (4), Marine Surveillance Operation Facilities, hereinafter referred to as Operation Facilities, are all facilities and infrastructure to carry out surveillance and Marine Patrols in the form of Patrol Vessels, communication equipment, coastal radar, sensing equipment, firearms, security equipment, and other equipment that support the implementation of surveillance and Marine Patrols. Article 1 Paragraph (5), Patrol Vessels are sea vessels and/or air vessels belonging to the Directorate General of Customs and Excise led by customs and excise officials as patrol commanders, which have the authority to enforce the law in the customs area.

7. Public Prosecutor

According to Law of the Republic of Indonesia Number 8 of 1981 concerning Criminal Procedure Law Article 1 point 6 letter (b), what is meant by Public Prosecutor is a prosecutor who is authorized by this law to conduct prosecutions and execute judges' decisions. The public prosecutor carries out the prosecution by submitting a criminal case to the authorized district court in the case and in the manner provided for in this law with a request that it be examined and decided by a judge at a court hearing.

8. Judge

According to Law of the Republic of Indonesia No. 8 /1981 on Criminal Procedure Law Article 8, Judges are state judicial officials authorized by law to adjudicate. In this case, the judge handling IUU fishing is the Ad Hoc Fisheries Judge, who is a judge at the Supreme Court (at a special court within the judicial environment under the Supreme Court). Based on the provisions

of the Judicial Power Law, Ad Hoc Judges are also "state officials".

The law enforcement apparatus above is a support point for the implementation of law enforcement in the field of fisheries which is very important and strategic in order to support fisheries development in a controlled manner and in accordance with the principles of fisheries management, so that fisheries development can run sustainably. Law enforcement against criminal offenses in the field of fisheries has proven to experience various obstacles. For this reason, a specific law enforcement method is needed, which concerns material law and formal law.

To ensure legal certainty, both at the level of investigation, prosecution, as well as at the level of examination at the court session, a period of time is expressly determined, so that this law formulates procedural law (formal) which is faster in nature.

COMMUNICATION AND COORDINATION BETWEEN LAW ENFORCEMENT OF IUU FISHING

Law enforcement is intended to improve order and legal certainty in society. This is done by disciplining the functions, duties and authority of the institutions tasked with enforcing the law in accordance with the proportions of their respective scopes, and based on a good system of cooperation and supporting the goals to be achieved (Edytya and Perwira, 2019).

In order for good and effective law enforcement, the Ministry of Maritime Affairs and Fisheries and other agencies can coordinate with each other by establishing a coordination forum (Ministry of Maritime Affairs and Fisheries of the Republic of Indonesia, 2013). The forum was formed through Minister of Maritime Affairs and Fisheries Regulation Number Per.18/Men/2011 concerning the

Second Amendment to Regulation of the Minister of Maritime Affairs and Fisheries Number Per.13/Men/2005 concerning Coordination Forum for Handling Crime in the Fisheries Sector.

This regulation is an implementing regulation of Article 73 paragraph (1) of the Fisheries Law. This forum is tasked with coordinating all investigative activities in the fisheries sector. According to Article 4 of the Regulation of the Minister of Maritime Affairs and Fisheries of the Republic of Indonesia Number Per.18/Men/2011 concerning the Second Amendment to the Regulation of the Minister of Maritime Affairs and Fisheries Number Per.13/Men/2005 concerning the Coordination Forum Handling Crime in the Fisheries Sector, The composition of the members of the Coordination Forum for Handling Crime in the Fisheries Sector such as:

1. Chairman: Minister of Maritime Affairs and Fisheries
2. Deputy Chairman I: Head of the National Police of the Republic of Indonesia
3. Deputy Chairman II: Chief of Staff of the Indonesian National Army, Navy
4. Secretary I, concurrently member: Director General of Marine and Fisheries Resources Supervision, Ministry of Maritime Affairs and Fisheries
5. Secretary II, concurrently member: Head of the Criminal Investigation Agency, National Police of the Republic of Indonesia
6. Member :
 - 1) Deputy Attorney General for Special Crimes, Attorney General's Office;
 - 2) Operations Assistant to the Chief of Staff of the

Indonesian National Army Navy;

- 3) Director General of Immigration, Ministry of Law and Human Rights;
- 4) Director General of Sea Transportation, Ministry of Transportation;
- 5) Director General of Customs and Excise, Ministry of Finance;
- 6) Director General of Labor Inspection Development, Ministry of Manpower and Transmigration;
- 7) Director General of Protocol and Consular Affairs, Ministry of Foreign Affairs;
- 8) Director of Institutions and Management of Criminal Cases, Supreme Court;
- 9) Director of Water Police, Security Maintenance Agency, POLRI.

The Coordination Forum for Handling Criminal Acts in the Fisheries Sector has the task of synchronizing and coordinating activities for handling criminal acts in the fisheries sector carried out by each relevant agency so that they are effective, efficient and fulfill a sense of justice. In eradicating illegal fishing crimes that occur in Indonesia, it is often found that one of the obstacles in eradicating illegal fishing is caused by a lack of effective and efficient coordination between various related agencies (Article 2 of the Minister of Maritime Affairs and Fisheries Regulation Number Per.11/Men/2006 concerning Amendment to Minister of Maritime Affairs and Fisheries Regulation Number Per.13/Men/2005 concerning Coordination Forum for Handling Crime in the Fisheries Sector).

Uncoordinated law enforcement is one of the obstacles in overcoming

illegal fishing crimes. The judicial process from investigation to trial requires very large costs, the legal process is very long and very adequate facilities/infrastructure require special expertise in handling the case.

One agency certainly does not have all the components, data/information or facilities and infrastructure needed for law enforcement. Therefore, synergistic coordination and cooperation between relevant agencies is needed in law enforcement efforts against illegal fishing. Having a coordination forum for handling crime in the fisheries sector is very important so that law enforcement runs well and is more effective because it is carried out in coordination between agencies/officials related to illegal fishing cases so that there is no overlap in authority and policy and does not give rise to conflicts of interest.

CONCLUSION

The result shows that There are several institutions or agencies in enforcing fisheries law in Indonesian FMA, namely: The Marine Security Agency (Bakamla); The Navy Army of Indonesia; Water Police Unit (WPU); Duties of Civil Servant Officers in the Fisheries Sector; Coast Guard Unit; Directorate General of Customs and Excise Ship Unit; Public Prosecutor; and Judge. In order for good and effective law enforcement, the Ministry of Maritime Affairs and Fisheries and other agencies can coordinate with each other by establishing a coordination forum. The forum was formed through Minister of Maritime Affairs and Fisheries Regulation Number Per.18/Men/2011 concerning the Second Amendment to Regulation of the Minister of Maritime Affairs and Fisheries Number Per.13/Men/2005 concerning Coordination Forum for Handling Crime in the Fisheries Sector.

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