

The Efforts to Resolve the Case of Illegal Fishing Conducted by Foreign Fishing Vessels in the Territorial Waters of Aceh

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ABSTRACT

Illegal fishing financially detrimental to Indonesia. This issue has an impact on the amount of fish that can be caught by local fishermen to meet national needs. So far, the action taken by the Indonesian government is only to sink the ship and decide the case through the court. Meanwhile, there are still challenges in how to resolve the case quickly and cheaply. This study aims to find out how the efforts to resolve the cases of illegal fishing conducted by the foreign vessels in Aceh waters, given that so far, the cases are always settled through litigation, which takes a long time and costs a lot. Meanwhile, there are still ways of settlement that can be taken besides the litigation, such as mediation and negotiation. This study is a qualitative study with an empirical juridical approach. Data were obtained through a structured interview to find out the mechanism of case resolution as well as to find out what factors cause foreign fishing vessels to conduct illegal fishing in Aceh waters.

Keywords: *illegal fishing, foreign fishing vessel, Aceh waters*

1. BACKGROUND

Indonesia is an archipelagic country that has a total sea area of approximately 5.8 million km², with a coastline of around 81,900 km. The territory of Indonesia is bordered by many countries, both land (continents) and sea borders (maritime)[1], so that it has abundant natural resources and marine biological resources such as fish, shellfish, coral reefs, and so on [2]. Having a wide beach and sea is an advantage for Indonesia. However, Indonesia is also dealing with losses caused by illegal fishing in Indonesian waters. Illegal fishing can threaten the sustainable management of marine and fisheries resources in Indonesia. Illegal fishing and destructive fishing must be seen as extraordinary crimes because they have caused damage to marine and fisheries resources [3]. Illegal fishing can financially harm the country and damage fishery resources. However, the party most affected in this case is local fishermen.

Illegal fishing conducted by foreign fishers from neighboring countries, such as Thailand, India, Malaysia, and others, often occurs in Aceh territory. This problem happens because Aceh has potential natural and non-biological resources. The total area of Aceh waters is 295,370 square kilometers, consisting of territorial waters and islands of 56,563 square kilometers, as well as the Exclusive Economic Zone (EEZ) of 238,807 square kilometers [4]. The potential maritime resources of Aceh have made Aceh a target area for illegal fishing. Based on the record from 2011 until now, there are many illegal fishing cases in Aceh waters.

The latest case that occurred was the confiscation of the TOGO flagged STV-FV vessel in January 2018 [5], and Sabang district court panel of judges decided to impose a fine

of 200 million rupiahs with subsidiary imprisonment of 6 months in August 2018 [6]. Earlier in July 2018, the Banda Aceh District Court also handed down a 200 million rupiah fine to the captain of the SLFA motor vessel, which was captured in January 2018 for illegal fishing in the Exclusive Economic Zone, the Straits of Malacca [7]. In the two cases above, it can be seen that there is a time in processing the case to court, so it takes a long time.

Based on the explanation, this study aims to find out how the efforts made by the government in resolving the cases of illegal fishing in Aceh waters. Besides, this study also tries to find out the motivation of foreign fishing vessels in conducting illegal fishing in Aceh waters, although they know that the vessels only have the right to explore the open ocean.

2. RESEARCH METHOD

This study is a qualitative study with an empirical juridical approach. Field research was conducted to obtain supporting data from respondents and research informants. It was conducted by interviewing the parties related to the settlement of this case, and the information collected was from the point of view of the foreign fishermen. For this reason, an interview guide was prepared.

3. RESULT AND DISCUSSION

a. *Factors that cause foreign fishers to conduct illegal fishing in the territorial waters of Aceh*

Illegal Fishing is defined as fishing activities carried out in violation of legal provisions in the territorial waters of a country. Illegal fishing is included in the category of IUU (illegal, unreported, and unregulated) fishing. According to the regulation of the Minister of Maritime Affairs and

Fisheries number 37/PERMEN-KP/2017, article 1 number 3 states that illegal fishing is illegal fishing activities or fisheries activities carried out contrary to the provisions of the legislation in the field of fisheries. Fishing activities that are not reported to an authorized institution are also part of illegal fishing. The illegal fishing can occur in all capture fisheries activities regardless of the equipment used, location, target species, and exploitation and it can occur in all types of fisheries, both small and large scale [8].

According to Law No. 45 of 2009, there are 21 points that are considered illegal fishing [9]:

- Exceeding the number of catches allowed;
- Violating the permissible fishing gear size;
- Violating the fishing season
- Violating the provisions concerning pollution of fisheries areas;
- Violating the size and minimum weight of fish that can be caught;
- Catching "protected" fish;
- Foreign fishing vessels that catch fish in Indonesia EEZ that do not have Fishing Permit;
- Indonesian-flagged fishing vessels operating in EEZ in other countries without obtaining approval/ permission from the Indonesian government;
- Owning/ operating a fish-carrying vessel that does not have a Fish Freighter Permit;
- Indonesian-flagged vessels are obliged to employ captain and crew of Indonesian citizenship, and foreign fishing vessels operating in Indonesian waters are required to employ at least 70% of the crew of Indonesian citizens;
- Indonesian vessels operating in the open sea must first be registered as Indonesian fishing vessels;
- Catch fish must be landed at a fishing port to prevent transshipment at sea (This provision, then becomes a problem in Indonesia, which also seems to have allowed transshipment at sea to save costs);
- Foreign fishing vessels passing through the Indonesian Archipelago Sea Channel are prohibited from catching fish when passing by and must store their fishing gear in the hatch;
- Public prosecutors in the field of fisheries must have knowledge in the field of fisheries.

In the implementation of laws and regulations as enacted by the Indonesian government, many foreign fishermen, both small and large scale, do fishing in Indonesian waters, especially in the territorial waters of Aceh and meet one of the 21 points mentioned as illegal fishing in the law number 45 of 2009. The capture of the Togo-flagged (African) STS 50 vessel in the Malacca Strait waters and the Thailand-flagged NV Silver Sea 2 are examples of successful fishing law enforcement in Aceh [10]. The two fishing vessels are large and made of iron, so they are categorized as large scale and modern fishers. The NV SS 2 is a vessel that collects fish from small fishing vessels, so that the capacity or the weight of the

cargo is also significant, namely 200 GT. The value of the fish auction from The NV SS 2 is 21 billion. Meanwhile, for the STS 50, no fish were found. When captured, the ship was still trying to spread nets to catch fish.

From the results of the study, it can be seen that there are several factors causing foreign fishers to catch fish in Indonesian waters, especially Aceh:

- Moratorium on fishing bans in the territory of the country of origin

Some countries have now issued a moratorium on the prohibition of fishing in their territory. This moratorium does not only apply to foreign fishers but also applies to local fishers, resulting in a letter issued by the local port for fishing only in the open sea. On the way to find fish in the open sea, the fishermen may enter the territorial waters of other countries. Therefore when they are pursued by fishery patrol ships, the fishermen usually run away. Besides, there is also resistance. However, it is also possible that some fishing vessels will deliberately enter the territorial waters and enter the port to obtain a travel permit to another place so that the modern fishermen have a new permit to go fishing to other countries.

- Fishers assume that the area is still their catchment area

In the practice of fishing, which is mostly done by foreign fishermen, generally, the fishermen still assume that the area where the fishermen are fishing is still their catchment area. In this case, it is still possible to have intentional elements, considering that the territorial waters of Indonesia in general and Aceh, in particular, have abundant natural resources in the form of fish, so that the fishermen enter the territorial waters of Aceh both in the territorial zone and the exclusive economic zone. For this reason, patrol or supervision is needed continuously to secure the area, especially the exclusive economic zone.

b. The mechanism used in resolving fish-theft cases

One way to prevent IUU Fishing for Indonesia is to develop effective coordination between law agencies at seas such as the Association of Prosperous Fishermen, Ministry of Maritime Affairs and Fisheries, Indonesian Maritime Security Agency, Navy, Customs, Immigration, Water Police and other local officials [11]. Also, adequate facilities and infrastructure in pursuing fishing vessels such as weaponry and ships are crucial requirements. The success of the Maritime and Fisheries Resources Supervision (PSDKP) Team incorporated in Task Force 115 is inseparable from the collaboration established with other parties, namely the Navy Base. According to investigators from Sabang and Lhokseumawe Navy Base, foreign fishing vessels captured while operating in the Aceh waters will be examined for completeness of documents, including SIPI (fishing license), SIKPI (fishing vessel permit) and SIUP (fishery business permit). If the officers do not find the completeness of the documents, the law enforcement team will confiscate the ship and the captain and repatriate his crew.

Furthermore, investigators from Navy Base also mentioned, so far, the mechanism for resolving cases of fishing by foreign fishing vessels was carried out by litigation. Non-litigation is only applied if the perpetrators are local fishers, with the consideration that after being examined in

detail, the fishermen will be released later. These considerations are also related to the needs that must be met by fishermen for their families.

Unlike the case with foreign fishers, law enforcement officials generally process it until a court decision is issued. This process is in accordance with the provisions as regulated in the Criminal Code and the Criminal Procedure Code. As explained by the State Prosecutor Office of Sabang and Lhokseumawe, the total time needed to complete a case is 90 days or three months from the moment the ship was confiscated. In the case of NV SS 2, the Sabang District Court ruled that NV SS 2 was guilty of committing an offense by turning off the Automatic Identification System (AIS) and the Vessel Monitoring System (VMS) and it was allegedly carrying out transshipment of illegally captured Indonesian fish in PNG waters.

Therefore, the captain of the NV SS 2 ship was sentenced to a fine of IDR 250,000,000 (two hundred and fifty million rupiahs) and 6-month subsidiary confinement and a vessel with a weight of 2,285 GT was confiscated by the state. Meanwhile, for the STS 50 case the judge ruled that the ship's captain was guilty based on the provisions of article 97 of law number 45 of 2009. The judge handed down a fine of IDR 200,000,000 (two hundred million rupiahs) with a four month-subsidary confinement.

4. CONCLUSION AND SUGGESTION

a. Conclusion

From the results of the above study, it can be concluded that many foreign fishers conduct illegal fishing in the territorial waters of Aceh. The illegal fishing occurs because the fishermen have difficulties finding fish due to the moratorium issued by their country in the form of a ban on fishing even though their job is fishing. Also, the fishermen assume that the territorial waters of Indonesia are also still considered as catchment areas. Therefore, these fishermen entered the territorial waters of Indonesia, where government supervision of territorial waters, especially Aceh, was still lacking. This problem is due to the position of Aceh, which is located at the tip of the island of Sumatra and close to the Indian Ocean and the Malacca Strait, making it easy for foreign fishers to enter the Aceh waters with various reasons such as for emergencies or running out of fuel at sea.

In addition, the lack of facilities and infrastructure provided to law enforcement teams, especially in this case are investigators from the Maritime and Fisheries Resources Control (PSDKP) Unit such as not being armed with adequate weapons, so that fishermen who possess sophisticated weapons will be easier to attack when chased by the investigation team from PSDKP. Besides that, other facilities such as an adequate fleet of ships also became a challenge for the Investigation team, both from PSDKP and Navy Base.

So far, the mechanism used in resolving this case is in accordance with the mechanism as stipulated in the Criminal Code, which requires approximately 3 (three) months from the initial investigation of the case decision.

b. Suggestion

The central and regional governments work together to develop early detection technologies for illegal fishing activities carried out by foreign fishermen, such as utilizing satellite technology to detect these violations early. They also

need to prepare the facilities and infrastructure needed by the investigator in the investigation process. In the effort to resolve disputes over the fishing vessels that catch fish, other techniques or mechanisms are required, remembering that the mechanism that has been carried out requires a long process.

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