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Effectiveness of Ship Sinking of Illegal Fishing in Term of the Improvement of Local Fishermen Income

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ABSTRACT

Illegal fishing in Indonesia is at an alarming point, that the Ministry of Maritime Affairs and Fisheries made a policy of ship sinking. There are pros and cons related to these sanctions, not even a little resistance from both the internal government itself and the mafia who have been enjoying the results of Illegal Fishing. The sustainability of this policy has been almost 4 years. Data represents that through this policy, illegal fishing has dropped dramatically, so that when viewed in terms of criminal penalties for deterrence (absolute theory), the policy is very effective. However, whether the policy has an impact on the income of local fishermen, logically, when there is illegal fishing of small fish, the income of local fishermen increases. In order to figure out the effectiveness of illegal fishing sanctions in relation to increasing local fishermen's

income, the researchers determined the location of the study in the Tambak Lorok Fishing Village in Semarang.

KEYWORDS

Ship Sinking, Illegal Fishing, Fishermen

1 INTRODUCTION

Criminal sanctions to this date are still excellent and are considered to be very effective in cracking down on a crime. Although there are actually penal and non-penal criminal policies, penal approach to punishment is the main choice (Supusepa, 2011). The selection of the means of penal certainly has the consequence that up to now the criminal countermeasure policy is still focused on deterring the perpetrators of criminal acts. It is in line with the objective of retributive punishment, which is retaliation. Basically, purpose of punishment is in addition to making the perpetrators of criminal acts deterrent, also in order for the socialization of perpetrators of criminal acts. The purpose of this punishment is explained in the theory of punishment that is retributive theory, deterrence theory (prevention), rehabilitation theory, incapacitation (weakening), restoration (Mubarok, 2015).

Crime management policies focused on deterrent sanctions are still considered effective by policy makers and law enforcement officials. It is proven by the existence of government policies and law enforcement officials in tackling the crime of fish theft (Illegal Fishing). When Susi Pudjiastuti was appointed as the Minister of Maritime Affairs and Fisheries, the idea of ship sinking was taken as a deterrent effect on those who continue to do illegal fishing. This policy was taken because in addition to being regulated in Law Number 45 of 2009 on Fisheries, it is also feared that undestroyed ships will be bought back by the Illegal Fishing mafia.

As of November 2017, data from the Chairman of the Illegal Fishing Task Force Mas Achmad Santosa, the ships sunk by the ministry of the KKP reached

363 ships. From the 363 ships, Vietnam was ranked first with a total of 190 sunk ships. The second rank is the Philippines with 76 ships. Furthermore, Malaysia has 50 ships. Other ships belong to Thailand 21 ships, Indonesia 21 ships, Papua New Guinea 2 ships, PRC 1 ship, Belize 1 ship and 1 non-flag ships (Anggraeni, 2018).

Early in 2018 there was a dissenting opinion between the Coordinating Minister for Maritime Affairs Luhut B. Panjaitan and Susi Pudjiastuti about ship sinking. Luhut requested that ship sinking shall be discontinued, and offender ships of illegal fishing should be given to local fishermen, while Susi Pudjiastuti remained in its stance, which is exercising the law namely the annihilation of fishing ships by sinking them. It is because that it is a concern when the ship is undestroyed and given back to local fishermen, it will be bought back by the Illegal Fishing mafia.

There are many questions about the effectiveness of ship sinking. The data represents that since this policy was implemented, there is a deterrent effect on the part of fish thieves, but the effectiveness is that whether it increases the welfare of local fishermen. Therefore, this study was conducted to determine the effectiveness of ship sinking in terms of the welfare of local fishermen. The problems in this research article are:

- 1) how can the ship sinking sanction be reviewed from Indonesian Criminal Law and International Law?
- 2) how effective is the ship sinking sanction in terms of the income of local fishermen in the fishing village of Tambak Lorok Semarang?

2 METHOD

The study was conducted with a qualitative approach. Bogdan and Taylor (Moleong, 2002) provided a definition of qualitative research which is a research that produces descriptive data in the form of written words or spoken from several people and behaviors that can be observed as objects of research. W. Lawrence Neuman (Soemantri, 2005) had identified that qualitative methods have 4 orientations. First, related to the approach used for the data. Qualitative research treats data as intrinsically meaningful. Second, the use of

a non-positivistic perspective. Third, research logic that is logic in practice. Fourth, qualitative methods that often take non-linear steps. Research in the law has a special type. There are two types of research in the law, namely normative doctrinal or non-doctrinal or sociological juridical (Achmad & Fajar, 2010). In this research, it uses sociological juridical.

3. RESULT AND DISCUSSION

A. Review of Indonesian Criminal Law and International Law against Ship Sinking Sanction

Crime management policies that focus on deterrent sanctions are still considered effective by policy makers and law enforcement officials. It is proven by the existence of government policies and law enforcement officials in tackling the crime of fish theft (Illegal Fishing). When Susi Pudjiastuti was appointed as the Minister of Maritime Affairs and Fisheries, the idea of ship sinking was taken as a deterrent effect on those who continue to do fish theft. This policy was taken because in addition to being regulated in Law Number 45 of 2009 on Fisheries, it is also a concern that undestroyed ships will be bought back by illegal fishing mafias.

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Juridically, the fishery justice process is regulated in the Criminal

Procedure Code and the Law No. 31 of 2004 on Fisheries as amended by Law Number 45 of 2009 on Fisheries. The rules in the Criminal Procedure Code remain valid as long as they are not regulated by fisheries laws themselves. The fisheries justice process is carried out as a criminal procedure in general, only there are specificities. The criminal justice process begins with reports, public complaints, caught red-handed or discovered by the investigators. Then it enters into enquiry, investigation, prosecution and examination at a court hearing (Article 72 of Law Number 31 of 2004 on Fisheries).

The specificity of the court in the case of fish theft (Illegal Fishing), as stipulated in Law 31 of 2004 on Fisheries as amended by Law Number 45 of 2009 on Fisheries, among others (1) The existence of a special court for fisheries; (2) The fisheries court has the authority to investigate, administer, and decide cases of criminal acts in fisheries occurring in the territory of the Republic of Indonesia fisheries management, whether committed by Indonesian citizens or foreign citizens; (3) Fisheries Civil Servants Investigators, Navy Officers Investigators, and/or Investigators of the Indonesian National Police; (4) Court judges in Fisheries consist of career and ad hoc judges; (5) The trial can be held in absentia.

Criminal acts in the fishery sector are regulated in Article 84 to Article 105 of Law 31 of 2004 on Fisheries as amended by Law Number 45 of 2009 on Fisheries. Specifically for criminal offense of illegal fishing can at least be subject to the following articles:

Article 85

Every person who, intentionally, within the Indonesian Fish Cultivation Territory, owns, controls, brings and/or uses fishing gears (fish catching tools) and/or fish catching means (fish catching instruments) on a fishing boat which measures are not in accordance with standards, fishing gears not in accordance with standards, or standards determined for certain prohibited tools and/or fishing gears, as set forth in Article 9, will be penalized with imprisonment of maximum 5 (five) years and monetary charge of maximum Rp. 2.000.000.000,00 (two billion Rupiah).

Article 93

- (1) Any person possessing and/or operating a fish catching ship flying Indonesian flag catching fish in the fishery management zone of the State of the Republic of Indonesia and/or in the open seas, not possessing the SIPI referred to in Article 27 paragraph (1), shall be sentenced with imprisonment for a maximum of six (6) years and a fine of a maximum of Rp2,000,000,000.00 (two billion rupiahs).
- (2) Any person possessing and/or operating a fish catching ship flying a foreign flag catching fish in ZEEI not possessing the SIPI as meant in Article 27 paragraph (2), shall be sentenced with imprisonment for a maximum of six (6) years and a fine of a maximum of Rp20,000,000,000.00 (twenty billion rupiahs).
- (3) Any person operating a fish catching ship flying Indonesian flag in the fishery management zone of the State of the Republic of Indonesia, not carrying the original SIPI referred to in Article 27 paragraph (3) shall be sentenced with imprisonment for a maximum of six (6) years and a fine of a maximum of Rp 2.000,000,000.00 (two billion rupiahs).
- (4) Any person operating a fish catching ship flying a foreign flag in the ZEEI, not carrying the original SIPI referred to in Article 27 paragraph (3) shall be sentenced with imprisonment for a maximum of six (6) years and a fine of a maximum of Rp 20,000,000,000.00 (twenty billion rupiahs).

Article 94A

Any person falsifying and/or using false SIUP, SIPI, and SIKPI as meant in Article 28A shall be sentenced with imprisonment for a maximum of seven (7) years and a fine of a maximum of Rp3,000,000,000.00 (three billion rupiah).

Article 98

A shipmaster who does not have a license to sail fishing boat issued by the port authority, as set forth in Article 42 paragraph (2), will be penalized with imprisonment of maximum 1 (one) year and monetary

charge of maximum Rp. 200.000.000,00 (two hundred million Rupiah).

The criminal action regulation policy in the Illegal Fishing Articles is cumulative. Thus, in addition to criminal sanction, criminal fines between 200 million and 20 billion are sentenced.

The action in the form of ship sinking can be carried out by authorized officials in accordance with the status of the action. There are two (2) types of actions, which are first, actions that are part of a court decision in the form of ships annihilation. It was regulated in article 76 A of Law 31 of 2004 on Fisheries as amended by Law Number 45 of 2009 on Fisheries, it is stated that objects and/or tools used in and/or resulting from fishery crime can be confiscated for the state or destroyed after obtaining the approval of the head of the district court. Second, it is the action taken by the fishery supervisor in carrying out the functions of the fishery supervisor. This was stated in 69 paragraph (4) of Law 31 of 2004 on Fisheries as amended by Law Number 45 of 2009 on Fisheries, which is in exercising the functions as referred to in paragraph (1) fisheries investigators and/or supervisors can take special actions in the form of burning and/or sinking of foreign-flagged fishing vessels based on sufficient preliminary evidence.

B. Effectiveness of Ship Sinking Sanctions in Increasing Local Fishermen's Income in Tambak Lorok Fishing Village in Semarang

There are many questions about the effectiveness of ship sinking. Data indicates that since the sinking policy was implemented, the deterrent effect of the fish thieves has been implemented, however, it is questioned whether its effectiveness has reached the welfare of local fishermen. Soerjono Soekanto used a benchmark of effectiveness in law enforcement on five things, namely: (1) Legal Factors. The law functions for justice, certainty and usefulness. In the practice of law enforcement in the field, there are times when there is a conflict between legal certainty and justice.

Legal certainty and its concrete nature are tangible, whereas justice is abstract so that when a judge decides on a case by merely applying the law, there are times when the value of justice is not achieved. Therefore, when considering a problem about the law at least justice shall be a top priority. As

the law is not merely viewed from the perspective of written law; (2) Law Enforcement Factors. In the functioning of the law, the mentality or personality of law enforcement officers plays an important role, if the regulations are superior, but the quality of officers is inferior, there should be a problem.

During this time there is a strong tendency among the people to interpret the law as an officer or law enforcer, meaning that the law is identified with the real behavior of the officer or law enforcer. Unfortunately, in carrying out their authority, problems often arise because attitudes or treatments that are regarded as exceeding the authority or other actions that are considered to fade the image and authority of law enforcement. This is due to the inferior quality of the law enforcement officers; (3) Supporting Facilities or Facilities Factors. Supporting facilities or facilities factors include software and hardware.

According to Soerjono Soekanto that law enforcers are able to work properly if they are not equipped with proportional vehicles and communication equipment. Therefore, means or facilities have very important role in law enforcement. Without these means or facilities, it is not possible for law enforcement to harmonize their proper roles with their actual ones. (4) Community Factors. Law enforcement comes from the community and aims to achieve peace in the community. Every citizen or group more or less has legal awareness.

The arising problem is the level of legal compliance, namely high, moderate, or poor legal compliance. The degree of community legal compliance with the law is one indicator of the functioning of the law in question; (5) Cultural Factors. Culture basically includes the values underlying applicable law of which values constitute abstract conceptions of what is considered good (thus obeyed) and what is considered bad (thus avoided). Therefore, Indonesian culture is the basis or underlying customary law (Soekanto, 2002). Besides, written law (legislation) also applies, which is formed by certain groups in society who have the power and authority for it. The law must be able to reflect the values that form the basis of customary law, so that the law can be actively applied.

An interview with one of fishermen of Tambak Lorok Semarang who is the head of KUB Chandra RT 03 RW 15 Mr Shodiqin, who oversees fishermen of

more than 15 people stated that the ship sinking is a good and decisive program for those who steal fish in Indonesia and pond fishermen in Lorok Semarang learned about the ship sinking program from news on TV and was given a socialization in the office. In terms of income, the income of fishermen in the last 3 years has increased, but the factor causing income increases is the season or sea conditions, thus according to his opinion, the effects of ship sinking are experienced by large fishermen, while small fishermen like Mr. Sodikin do not find it enjoyable. From the results of the interview, it can be concluded that the increase in fishermen's income has nothing to do with the ship sinking sanction, but more influenced by weather factors.

The interview with Nasihin from the Tani Maju Jaya group stated that the sanction of ship sinking did not increase the income of fishermen, but he agreed with the sanction and also agreed with sanctions of limiting trawlers for disturbing small fishermen.

The effectiveness of law enforcement can be viewed from the effective word derived from English, 'effective,' which means successful, or something done successfully. Popular scientific dictionaries define 'effectiveness' as the accuracy of use, usefulness or supporting goals. According to the The Great Dictionary of Indonesian Language, effective is something that has an effect (effects, influences, impressions) since the entry into force of a law or regulation.

Basically, effectiveness is the level of success in achieving goals. Effectiveness is a measurement in the sense of achieving a predetermined goal or purpose. In legal sociology, law has a function as a tool of social control, which is an effort to create a balanced condition in society that aims to create a state of harmony between stability and change in society. In addition, the law also has another function, namely as a tool of social engineering of which purpose is as a means of renewal in society. The law can play a role in changing people's paradigms from traditional into rational or modern paradigm (Arif, 2018).

According to the results of interviews with Mr Shodiqin and Mr Nasihin, the ship sinking in Tambak Lorok Semarang was not considered having an effect on increasing the income of fishermen. Fishermen's income is determined

from the season of catching fish, there are certain seasons where there are many fish and little fish.

The source said that this possibility had no effect as they were small fishermen, thus it was suggested by the resource persons, to try a research in large fishing areas such as Pekalongan and Juwono Pati.

4 CONCLUSION

From the results of the research and discussion, it can be concluded that the sanction of ship sinking for the crime of illegal fishing has been regulated and in accordance with Indonesian Criminal Law and International Law. Regarding the effectiveness of the sanction of sinking of ships, if we look at the increase in the income of local fishermen in the fishing village of Tambak Lorok, Semarang, the impact cannot be felt. This is because local fishermen are fishermen with medium boats and only look for fish around the coast, not off the sea.

5 DECLARATION OF CONFLICTION INTERESTS

Authors declare that there is no conflicting interest in this research and publication.

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Insistence on truth can come into play when one party practices untruth or injustice. Only then can love be tested. True friendship is put to the test only when one party disregards the obligation of friendship.

Mahatma Gandhi