

Destructive Fishing Criminal Policy in Fisheries Management Area (WPP) 715 Seram Sea

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Destructive Fishing Criminal Policy in Fisheries Management Area (WPP) 715 Seram Sea

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Abstract: Destructive fishing activities are still a habit of the community around the Seram Sea fisheries management area (WPP). This study aims to analyze the policy of overcoming the crime of destructive fishing in the Seram Sea WPP. Data were collected employing in-depth interviews, literacy studies, and document reviews and then analyzed qualitatively. The results show that destructive fishing activities such as bombs, potassium, and other destructive activities by the community around the Seram Sea WPP can damage the marine ecosystem. So that a destructive fishing prevention policy is needed. This policy can be pursued in two approaches, namely the means of criminal law (penal) and means of non-criminal law (non-penal). Crime prevention policy using a disciplinary approach is a repressive effort that can be taken through legislation or several legal rules in fisheries that contain criminal sanctions. However, the penal policy still creates weaknesses, so it needs to be balanced with a non-penal policy. The non-penal approach is a preventive effort that can be taken through various socialization to the community, increasing community participation, and various other approaches to minimize destructive fishing activities.

Keywords: Criminal Policy, Destructive Fishing, Seram Sea.

A. INTRODUCTION

Indonesia, being an archipelagic country with the majority of its land covered by sea (Ferse et al., 2012; Nurdin & Grydehj, 2014), has enormous and diversified fisheries potential. The economic potential of fisheries may be used for the nation's future growth and one of the backbones of national development. The term "optimum use" refers, while taking account of the available carrying capacity and sustainability, to the maximum utilization of fish resources to improve the well-being of people, the living standards of fish farmers and smallholder farmers, foreign exchange incomes, expansion and employment opportunities, and the productivity, added value, and competitiveness (Agriculture, 1995; Tacon et al., 2009). This indicates that usage of fisheries resources must be balanced against their carrying capacity in order for them to continue to offer benefits. One is accomplished by exerting control over fishing companies via fisheries management agreements (Acheson, 1975; Muawanah et al., 2018).

Indonesia has the sovereign right of exploitation, conserving and handling of fish resources in the Exclusive Economic Zone (EEZ) and in the High Seas, and is carried out in accordance with applicable in the United Nations Convention on the Law of the Sea in 82 and ratified by the Law No. 17 of 1985 concerning ratification of the 1982 United Nations Convention on the Law of the Seas (Susetyorini, 2019; Kumala & Sunyowati, 2016). As a result, a legislative framework for fisheries management is required to address all elements of the management of fisheries and to anticipate future legal and technical requirements. The existence of Law No. 31 of 2004 on Fisheries is expected to enable both anticipation and resolution of significant changes in the field of fisheries, both in terms of fish resource

availability, environmental sustainability, and the development of more effective and efficient fisheries management methods (Manik, 2019; Pesak, 2020).

The recent increase in criminal actions has generated alarm in the community. One of the unlawful acts under examination is a fishing offense. Fisheries activities relate to fisheries resource management and use (Satria & Matsuda, 2004; Hannesson, 1991). Fisheries cover all activities related to fish resources management and utilization. There are different fish species, as well as other aquatic biota, which make up the fish resources themselves. Fish (finned fish) 2. Invertebrate products (shrimp, crab, crab, etc.) Sheepskin Sheet (clams, oysters, squid, octopus, and snails, among others) 4. The Holocalypse Coelenterata Coelenterata Coelent Coelent (jellyfish and so on) No. 5 Echinoderms (sea cucumbers, sea urchins, and the like) Antimhibians (toads and so on) Seventh. Reptiles (crocodiles, turtles, monitor lizards, and water snakes, for example) (8) Sweets (8) (whales, dolphins, dolphins, dugongs, etc.) Seaweed (seaweeds, etc.) 10. Further water biota for the nine species (Hilborn et al., 2001; Cochcrane, 1999).

Numerous people abuse fishing operations for personal gain without regard for marine ecosystems; for example, employing illegal fishing gear degrades marine ecosystems (Walters & Martell, 2020; White, 2013). Fisheries crime is now in the public eye as a result of the increase in criminal actions involving fisheries. Fishing using banned instruments, fish bombing, and illicit fishing enterprise are all examples of fisheries crime.

Maluku is an archipelagic province with about 712,480 Km², of which most (92%) of the area is ocean and only 7.6% island. Based on the observation of satellite imagery, Maluku Province has a thousand islands with a land area of 54,185 Km². The length of the coastline is around 11,000 km. The sea area reaches 658,295 Km² (Andibya et al., 2008; Widoyoko, 2008). The seas and waters of Maluku have such great potential for fish. The potential of fish resources in the Maluku Sea reaches 1.64 million tons/year or 26.3% of the national potential of 6.26 million tons/year (Lewerissa, 2018). The potential of fish resources is in 3 (three) Fisheries Management Areas (starting now abbreviated as WPP), namely WPP Banda Sea, WPP Seram Sea, and WPP Arafura Sea.

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Illegal fishing activities such as destructive fishing are also rife around WPPNRI 715, especially around the Seram Sea, so that the consequences can damage the marine ecosystem itself. Many studies discuss destructive fishing, but no one has studied the criminal policy of destructive fishing in one of the WPPNRI, namely the Seram Sea. Some studies examine destructive fishing from socio-economic and environmentally friendly aspects, such as that conducted by Gazali Salim et al., that sero fishing gear is a type of fishing gear used in carrying out environmentally friendly fishing activities. Socio-economically sero fishing gear is also very profitable for fishers (Salim et al., 2019).

Furthermore, research on the impact of threats and disturbances from capture fisheries that are not environmentally friendly was conducted by Zahri Nasution and Armen Zulham, that the use of fishing gear that damages the environment is one of the threats and potential conflicts in capture fisheries activities (Nasution & Zulham, 2013). Meanwhile, from the legal aspect, Ayu Izza Elvany's research on the formulation policy for the prevention of destructive fishing in Indonesia explains that Article 85 still has several weaknesses, namely that corporations cannot be held criminally liable, there are no sanctions for action, and there is no specific minimum criminal threat. So Ayu Izza Elvany explained destructive fishing in terms of its formulation policy (Elvany, 2019).

The authors also analyze how crime prevention (criminal policy) in the area of Seram Sea Fisheries Management takes place in this research (WPP). Through these two methods, penal (criminal) and non-penal, the authors investigate unlawful damaging fishing in the Seram Sea WPP (not using criminal law).

B. LITERATURE REVIEW

1. Crime Prevention Policy

Crime is a form of deviant behavior that always exists in society. According to Saporinah Sadli, this deviant behavior is a real threat and can create tension in society to disrupt social order (Muladi & Arief, 2005). One type of

crime that causes substantial economic losses and can damage marine resource ecosystems is destructive fishing around the Seram Sea fisheries management area (WPP).

Capture fisheries activities that damage the environment, especially those carried out in natural resource conservation areas (marine), need to be overcome with various approaches or policies. The term "crime prevention policy" or "criminal policy" refers to a reasonable effort made by society to combat crime (Sudarto, 1981). Criminal policy is, as Marc Ancel pointed out, the appropriate structure to regulate crime (Arief, 2002). G. Peter Hoefnagels, in accord with Marc Ancel, argued the reasonable organization of the society's response to crime is criminal policy (Kenedi, 2017).

Crime prevention policies (criminal policies) can be applied using a disciplinary approach, a non-penal approach, and an integral approach (a combination of penal and non-penal approaches) (Arief, 2002). The disciplinary approach is more repressive by applying criminal sanctions to trap criminals. While the non-penal approach is more preventive, it focuses more on the factors behind/causing the crime. To provide maximum results in crime prevention, it is necessary to integrate the two approaches above. So that in addition to finding and correcting the factors that cause crime, it also provides criminal sanctions so that it has a deterrent effect on the perpetrators (Lewerissa et al., 2021).

2. Destructive Fishing

The term destructive fishing refers to the use of fishing gear in such a way and place that it can eliminate, destroy and even make one or more components of the existing marine ecosystem no longer able to function correctly. The term destructive fishing refers to catching fish using fishing gear and practices that have a high risk of damaging local and global ecosystems. These certain species depend on their habitat to eliminate their existence and take a long time to restore the damaged ecosystem. It is hoped that the ecosystem can be enjoyed by the current generation and even future generations (Satria, 2017).

According to Djoko Tribawono, a fishery crime is an act that by law threatens to punish them or anyone who commits an act prohibited by the Fisheries Act. Destructive fishing is an act that is prohibited in the fisheries law and is subject to criminal sanctions for those who violate it. So that the criminal act of destructive fishing as part of illegal fishing, namely fishing activities that are illegal in territorial waters or the EEZ of a country or do not have a permit from that country (Rifai & Anwar, 2014), require policies to overcome them.

More than two-thirds of the fish commodities manufactured in Indonesia account for capture fisheries. Roughly 97% of the fishing fleet in Indonesia is made up of small-scale fishing operators that operate small motorized and non-motorized vessels of up to 10 gross tonnes (GT). As of 2015, approximately 540,000 ships in Indonesian Seas have been scheduled to operate (Carter, 2018). Traditional (small) fishing, explosion fishing, its beach nets, and poison harms ecosystems of coral reef and related coastal biota. While large-scale fishing equipment, such as baggage bags, trawls and gill nets, may be detrimental and unsustainably damaging and unsustainable. The use of ghost networks (nets abandoned at sea) also poses severe risks for marine life and environment alike.

The impact of blast fishing will cause the coral reef ecosystem to be destroyed and kill fish and even fish seeds. Meanwhile, cyanide fishing results in the bleaching of corals, and eventually, they die. In healthy coral conditions, it will be marked by an abundance of organisms that live in the vicinity, including fish species. On the other hand, when the coral is destroyed, there will inevitably be no more living organisms, including fish species (Indonesia, 2017).

The rise of fishing using fishing gear that is not environmentally friendly damages the ecosystem, putting most of Indonesia's waters in critical condition. Several Indonesian Fisheries Management Areas (WPPs) are categorized as red for several fish and another marine biota. That is, there is overfishing in these areas. Based on a study by UCSB and the Research and Development of Maritime Affairs and Fisheries, if overexploitation continues, fish biomass in the archipelago waters will decrease by up to 81 percent by 2035 later (Indonesia, 2018).

C. METHOD

This research uses normative juridical research methods. According to Noor Muhammad Aziz, normative legal research analyzes the reciprocal relationship between legal facts and social facts. Law as a tool of social order (Aziz, 2012). The approach used in this research is the conceptual approach and the statutory approach. The conceptual approach is to give birth to legal understanding and legal principles relevant to the problems faced (Ibrahim, 2007). So that the concept of Sasi Laut and local community participation can be a non-penal suggestion to tackle destructive fishing crimes in the Seram Sea WPP. The following approach to legislation is research on legal products (Nasution, 2008). The Fisheries Law and the Law on the Conservation of Natural Resources and Ecosystems serve as a reference for legislation analyzed to capture fisheries that damage the environment.

Furthermore, the data collection technique uses a literature study. It is complemented by the results of in-depth interviews with one of the non-governmental organizations that are engaged explicitly in protecting marine conservation areas around the Seram Sea WPP. The data analysis technique was carried out qualitatively.

D. RESULT AND DISCUSSION

1. Destructive Fishing in Seram Sea WPP

The presence of the Seram Sea WPPNRI is governed by Article 1 of the Regulation No 18/PERMEN-KP/2014 of the Minister for Maritime Affairs and Fisheries, which says that from now on it is a fisheries management area for the Indonesia State Fisheries Area, abbreviated as WPPNRI. Furthermore, as indicated in Article 2 paragraph (1) number 8, WPPNRI 715 also comprises Tomini Bay, Maluku Sea, Halmahera Sea, Seram Sea and Berau Bay.

There are water conservation areas in the Seram Sea WPP, namely in North and North West Seram, which are commonly abbreviated as SERURBAR conservation areas. The establishment and management of Marine Protected Areas (from now on, abbreviated as KKP) are expected to increase biodiversity in an area. The presence of the Seram Sea WPPNRI is governed by Article 1 of the Regulation No 18/PERMEN-KP/2014 of the Minister for Maritime Affairs and Fisheries, which says that from now on it is a fisheries management area for the Indonesia State Fisheries Area, abbreviated as WPPNRI. Furthermore, as indicated in Article 2 paragraph (1) number 8, WPPNRI 715 also comprises Tomini Bay, Maluku Sea, Halmahera Sea, Seram Sea and Berau Bay.

However, the opposite happened in the SERURBAR conservation area. Many found destructive fishing activities using bombs, potassium, compressor hoses, and other destructive fishing activities. In the report of one of the non-governmental organizations that are specifically engaged in the conservation of natural resources, namely the World Wide Fund for Nature (WWF) in collaboration with the United States Agency for International Development (USAID), throughout 2017-2018 destructive fisheries activities around Sururbar conservation area is the use of compressors for fishing. The following is a table showing destructive fishing activities in 2017-2018 around the Serurbar conservation area.

Table 1. Destructive Fisheries Activities in North and North West Seram Waters in 2017-2018

No	Activities That Destroy	Time	Place
1	Use of compressor aids for lalosi fishing	20/07/2018	Air Island (Island 7)
2	Use of compressor aids for lalosi fishing	29/08/2018	Tengah Island (Island 7)
3	Use of compressor aids for lalosi fishing	29/08/2018	Alei Island (Island 7)
4	Use of compressor aids for lalosi fishing	29/08/2018	Alei Island (Island 7)
5	Use of compressor aids for lalosi fishing	30/10/2018	Tua Island (Pulau 7)
6	Use of compressor aids for lalosi fishing	30/10/2018	Tengah Island (Island 7)
7	Shark Fishing	31/08/2018	Lusahit
8	Napoleon Fish Farming	21/03/2018	Raja Island
9	Use of compressor aids for lalosi fishing	29/11/2018	Search front Galegale
10	Use of compressor aids for lalosi fishing	29/11/2018	Search front Galegale
11	Use of compressor aids for lalosi fishing	29/11/2018	East of Sau Island

Source: Data Resource Use Monitoring USAID-SEA and WWF-Indonesia

The destructive fishing activities that occur in the Seram Sea WPP were also reported by the Water and Air Police of the Maluku Regional Police. The table below shows that destructive fishing activities often occur in the Seram Sea area, which is included in the WPP; there is also a SERURBAR water conservation area.

Table 2 Data on Destructive Fisheries Activities around the Seram Sea WPP 2015-2017

No	Activities That Destroy	Time	Place
1	Doing fishing using explosives	2015	Waters of Kawa Village, West Seram District, West Seram Regency at Coordinates 020 54' 246"S - 1280 07' 145"E
2	Doing fishing using explosives	2016	Tanjung Tihu Waters, Kelang Island, West Seram Regency.
3	Using explosives	2017	Coastal Coast of Kasa Island, West Seram Regency

Source: Maluku Regional Police Polairud DIT 2015-2017

2. Destructive Fishing Criminal Policy in WPP Laut Seram

The eradication of IUU fishing includes the practice of destructive fishing, requiring law enforcement that can integrate forces between government agencies by determining appropriate policy strategies (Lewerissa, 2021). In addition to the use of correctional facilities (criminal sanctions), non-penal policies (such as local wisdom of the local community) can be a strategic choice (Lewerissa et al., 2021), including in the effort to overcome destructive fishing in the Seram Sea WPP. The following will explain the criminal policy of destructive fishing in the Seram Sea WPP, which can be reached by using penal facilities; namely, several regulations govern prohibited acts and the threat of punishment related to destructive fishing activities.

These regulations, among others;

- a. Law No. 45 of 2009 concerning Amendments to Law no. 31 of 2004 concerning Fisheries (from now on, abbreviated as Law on Fisheries).

Prohibited actions are regulated in Article 9. At the same time, the criminal threat is regulated in Article 85. However, in the Fisheries Law, there are still various weaknesses, including regulating destructive fishing. The legal subjects of destructive fishing are people and legal entities (corporations). In the Fisheries Law, corporate responsibility is regulated in Article 101. This article has a weakness because there is no firm and clear formulation when a corporation commits a criminal act in the field of fisheries. Thus, the responsibility of the corporation when committing a criminal act of destructive fishing becomes unclear. In reality, criminal responsibility is mainly imposed on those who work directly in the field, such as the captain and crew of the ship (ABK). In the Fisheries Law, no provision regulates if the perpetrator cannot pay the criminal fine. If so, then Article 30 paragraph (2) of the Criminal Code will apply, which will be replaced with a minimum imprisonment of 1 (one) day and a maximum of 6 (six) months. Although in Article 85 of the Fisheries Law, there is a provision for a maximum fine of Rp. 2,000,000,000.00 (two billion rupiahs) certainly does not have a deterrent effect on the perpetrators if it can be replaced with imprisonment, even though the losses or negative impacts caused by destructive fishing activities carried out are substantial. Likewise, the Fisheries Law does not stipulate specific minimum criminal threats. This also applies to the threat of destructive fishing. If so, it will be difficult for law enforcers (judges) to determine the minimum specific criminal limit given to the perpetrator.

- b. Law No. 1 of 2014 concerning Amendments to Law no. 27 of 2007 concerning Management of Coastal Areas and Small Islands.

Article 23 paragraph (2) explains that fishery and marine businesses and the fisheries industry in a sustainable manner are priorities in the utilization of small islands and the waters around them. Furthermore, in paragraph (3), it is explained that except for conservation, education and training, and development, the use of small islands and the surrounding waters must: fulfill environmental management requirements, pay attention to the capability and sustainability of the local water system and use environmentally friendly technology.

- c. ¹⁴ Government Regulation No. 60 the Year 2007 concerning Conservation of Fish Resources
- Article 30 paragraph (1) of PP No 60 Tahun 2007 regulates the utilization of fish resource areas, including water conservation areas and fish species and fish genetics. Furthermore, in paragraph (2), it is explained that one of the activities of utilizing fish resource areas for marine conservation areas is fishing activities. Article 31 paragraph (4) explains that in granting a fishing permit, the Regional Head (Governor, Mayor/Regent) is obliged to consider several things, including fishing methods and types of fishing gear. However, what happened in the SERURBAR waters conservation area, capture fisheries activities that are not environmentally friendly even tend to damage the surrounding marine habitat ecosystem, including fish species. At the same time, the existence of the water conservation area is to maintain and preserve the surrounding marine ecosystem so that it can realize sustainable fishery activities. In addition, the types of sanctions contained in PP No. 60 Tahun 2007 are administrative sanctions that are certainly not felt to have a deterrent effect on the perpetrators. Likewise, supervision in the SERURBAR waters conservation area is fragile, so destructive fishing activities still occur.

Given the various weaknesses in the regulations governing destructive fishing, limited budget, and government facilities, a non-penal policy (not using criminal law) is needed in overcoming the crime of destructive fishing. As previously explained that criminal policy by using non-penal means is more of a preventive approach (finding and resolving the factors behind the emergence of the crime). The approaches that can be used include developing the community's active role by observing, reporting, or direct supervision. When destructive fishing occurs and does not hesitate to report to the authorities. Increase socialization activities on the harmful impacts of destructive fishing and the benefits of sustainable fisheries so that people are aware of the law. Developing the strength of local wisdom of the local community through the *sasi* sea culture can preserve natural resources (marine ecosystems).

E. CONCLUSION

In the Seram Sea fisheries management region, destructive fishing is a crime that needs a criminal policy (policy of countermeasures). There are two possible methods/approaches: correctional institutions and non-penal measures. Penal methods (those that rely on criminal law) are more repressive, whereas non-penal measures (those that do not rely on criminal law) are more preventative. A comprehensive strategy is required to combat destructive fishing in the Seram Sea fisheries management region, ensuring that the use and management of marine resources are conducted in accordance with the principle of sustainable fisheries for future generations.

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