Law Enforcement of Illegal Lobster Clear Seed Distribution Crime

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ABSTRACT

Indonesia is an archipelago that is rich in flora and fauna both on land and sea. It causes some people to commit criminal acts, especially criminal acts in distributing lobster clear seeds illegally and not fulfilling fisheries licenses in Indonesia. Therefore, serious efforts are needed to tackle these fisheries crimes. The objective of this research is to find out the effectiveness of law enforcement regarding illegal distribution of lobster clear seed; and to observe the law enforcement attempts against its case. The approach method used in this research is juridical normative approach. The juridical normative approach is an approach that uses legislation by examining all laws and regulations related to the legal issues being addressed and conceptual approaches derived from views and doctrines that develop in legal science. The regulation on the prohibition of marketing clear lobster seeds is regulated in the Minister of Marine Affairs and Fisheries Regulation No. 12/PERMEN-KP/2020 concerning the Management of Lobsters, Crabs and Rajungan in the Republic of Indonesia and amended to the Minister of Marine Affairs and Fisheries Regulation No. 17/2021 concerning the Management of Lobsters, Crabs and Rajungan in Indonesian territorial waters.

Keywords: Illegal Distribution, Law Enforcement, Lobster Clear Seed
INTRODUCTION

Law is an integral human part. If humans are isolated from other humans, there will be no direct contact, whether it is pleasure or conflict. If an act violates a principle of positive law in the sense of community law, it is called a legal crime, whether or not the principle is included in criminal law. On the other hand, legal crime refers to crimes that are less threatening than crimes that are not easily understood and are prohibited.\(^1\) According to Article 1 point 1 of Law No. 45/2009 on fisheries, fisheries are all activities related to the management and utilization of fish resources and the environment, from pre-production, production, processing to marketing implemented in a fisheries business system.\(^2\) In addition, Article 88 states that any person who intentionally imports, exports, procures, distributes, and/or maintains fish that are detrimental to the community, fish farming, fish resources, and/or the fish resource environment into and/or out of the fisheries management area of the Republic of Indonesia as referred to in Article 16 Paragraph (1), shall be punished with a maximum imprisonment of 6 (six) years and a maximum fine of IDR 1,500,000,000 (one billion five hundred million rupiah).

One of the government's authorities is to regulate and supervise community life. Supervision of the community is conducted through regulation by imposing certain restrictions on community activities. This task is intended so that the community can be controlled and directed in conducting its activities, especially natural resource management activities in the marine area. According to the Indonesian Dictionary, a lobster is a type of marine shrimp whose Latin name is Genus Homarus, bluish-black colored, has eight legs, and a pair of very large sepites.\(^3\) Consumption-sized lobster seed is an economically valuable fishery commodity. Therefore, overfishing of lobster has caused the productivity of renewable resources in the sea to decline. In addition, the decline in productivity is also due to the lack of monitoring of lobster development and growth.

Minister of Marine Affairs and Fisheries Regulation No. 56/2016 states the prohibition of catching and/or exporting lobsters, crabs, and rajungan from the Republic of Indonesia. This regulation aims to conserve sustainable fisheries. This aim can be achieved by reducing over-exploitation, increasing the selling price of fish, and maintaining the environment.\(^4\) The ministerial regulation requires that

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\(^2\) Indonesian President Susilo Bambang Yudhoyono, *Undang-Undang Republik Indonesia Nomor 45 Tahun 2009 Tentang Perubahan Atas Undang-Undang Nomor 31 Tahun 2004 Tentang Perikanan* (Jakarta, 2009).


lobsters can be traded if the weight is above 200 grams, have spawned once and are not in a non-spawning state when traded. Minister of Maritime Affairs and Fisheries Regulation No. 56/2016 was later revised with Minister of Maritime Affairs and Fisheries Regulation No. 12/2020 stating the management of lobsters, crabs, and crabs in the Republic of Indonesia. This regulation aims to improve the economy of fishermen, fish farmers, and other fisheries entrepreneurs. The regulation has more flexible provisions compared to the previous regulation. This is intended to expand the employment of fishermen in managing fish.5

Finally, the Minister of Marine Affairs and Fisheries (KKP), Sakti Wahyu Trenggono officially prohibited the export of lobster seeds. This has been regulated in the Minister of Marine Affairs and Fisheries Regulation No. 17/2021 concerning the Management of Lobsters, Crabs, and Rajungan in Indonesian Territory. In its life cycle, lobster through 4 phases, such as (1) the reproduction/breeding phase, larval phyllosoma phase, young lobster (puerulus) phase, and adult lobster phase. In the breeding phase, female lobsters can produce up to 460,000 eggs with an incubation period of 3-4 weeks. During the phyllosoma phase, the lobster can grow to a size of 36.5 - 37.2 mm. After that, the size of the lobster will grow to 5-10 cm in the young lobster phase. Furthermore, in the adult lobster phase, female adults are 16 cm in total length, while male lobsters are approximately 20 cm in total length.6

Lobster or commonly known as crayfish or barong shrimp has a high economic and consumption value due to its savory, delicate, delicious and protein-rich meat. Lobster is not only a commercial commodity in Indonesia but also almost all over the world. Lobsters are commercialized along the northern and southern coasts of the Americas, African Mediterranean, India, Australia, New Zealand, and Indo-Pacific coast, including Indonesian territories. Indonesia currently has seven lobster species, such as (1) Sand Lobster (Panulirus homarus), (2) Black Rock Lobster (Panulirus longipes), (3) Rock Lobster (Panulirus penicillatus), (4) Pakistani Lobster (Panulirus polyphagus), (5) Pearl Lobster (Panulirus ornatus), (6) Bamboo Lobster (Panulirus versicolor), and Red Batik Lobster (Panulirus longipes femoristriga). Pearl lobster and sand lobster are the most potential lobsters to be cultivated through the existing aquaculture system in Indonesia.7

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Lobster of seed size or consumption size is an economically valuable fishery commodity derived from capture fisheries. Lack of lobster control or over-fishing has led to a decline in aquatic resource productivity and renewable resources. Management that follows the principles of sustainability can increase broodstock breeding opportunities, maintain the minimum number of broodstock in each area and improve their habitat thereby increasing sustainability and yield. In reality, it is difficult to attain due to time constraints to control the relatively slow development and growth of lobsters and conflicts with regulations such as licensing and law enforcement.

Alleged fisheries crime committed by any person who intentionally conducts fisheries business that does not fulfill business licenses in the fisheries management area of Indonesia, then every person is prohibited from importing, exporting, distributing, and/or maintaining fish that is detrimental to the community, fish farming, fish resources, and/or the environment of fish resources into and/or out of the fisheries management area of the Republic of Indonesia, as referred to in Article 92 Jo Article 26 Paragraph (1) and/or Article 88 Jo Article 16 Paragraph (1) of Law No. 11/2020 on work copyright of amendment to Law No. 45/2009 on amendment to Law No. 31/2004 on fisheries Jo Article 55 Paragraph (1) to 1 Criminal Code.

Based on Police Report Number: LP/A/34/VI/2021/SPKT. DITKRIMSUS/POLDA JAWA TIMUR on June 12, 2021, there was a criminal offense allegedly committed by Suspects Winarto and Ryan Aldo where they allegedly carried out a series of fishery business activities in the fish marketing sector including planning, searching for lobster clear seeds and receiving lobster clear seeds obtained by purchasing lobster clear seeds from lobster clear seed collectors in Jember, East Java by not fulfilling business licenses and/or they are suspected of releasing and/or distributing lobster clear seeds obtained from the catch of small fishermen and/or collectors from around the State Fisheries Management Area of the Republic of Indonesia (WPPN-RI) 573, especially around Jember waters into and/or out of the State Fisheries Management Area of the Republic of Indonesia.

According to Elvany research, law enforcement regarding the smuggling of lobster seeds in Indonesia is ineffective due to the nonexistence of corporate criminal liability in the fishery law and its sentencing system is lack of both the specific minimum penalty regulation and the penal measures as criminal punishment. However, the draft of the fishery law has already set corporate criminal liability; hence it also regulates the penal measures, in the form of secondary sanctions. Nevertheless, instead of enacting the specific minimum penalty, the draft only determined the maximum penalty as well.8

Meanwhile, according to Rizky et al stated that analysis of the complexity of the three main regimes in IUU complemented by a discussion of these regimes'
agendas and similarity policies (overlapping regimes). In dealing with this, countries in the Southeast Asian region are implementing a strategy to keep up with agreed international norms. It has found that 60% of ASEAN member countries adopt the Regional Plan of Action (RPOA). They were shifting the existence of profit-oriented thinking into sustainability-oriented. The regime's complexity illustrates the tumult of an international issue and the whip to increase the country's contribution to the sustainability of a more balanced life by internalizing the international regime's norms. 9

Then, according to Tayibnapis et al stated that the new policy to provide broad flexibility to capture lobster seeds is the same as opening up massive exploitation and welcoming the extinction of lobster seeds in Indonesia. The commitment of lobster seed exporters to develop cultivation is very doubtful and is suspected of using partnerships with lobster cultivators as an effort to obtain a lobster seed export license only. After obtaining the license, the exporters are predicted to break the partnership agreement. Therefore, there needs to be an evaluation, given that business actors are not ready with supporting facilities and infrastructure to carry out the cultivation. 10

Therefore, serious efforts are needed to tackle fisheries crime as a protective measure against marine wealth in Indonesian territorial waters. It can be done if the countermeasures are not only conducted at the symptom level until there are serious problems. In the context of fisheries crime, the research on causative factors and effective ways to overcome them is a solution option that is able to answer the problem completely. In addition, the objective of this research is to find out the effectiveness of law enforcement regarding illegal distribution of lobster clear seed; and to observe the law enforcement attempts against its case.

RESEARCH METHODOLOGY

In order to find out the solutions to the problems that have been formulated in this research, a normative legal research method is used, which refers to legal norms to understand their application to existing facts that aim to change the situation and offer potential solutions in solving each concrete problem. According to Nurhayati et al, normative research also known as doctrinal research, is research on laws that are conceptualized and developed on the basis of doctrine. This method is interpreted as legal research at the level of norms, rules, principles, theories, philosophies, and legal rules in order to find solutions or answers to problems in the

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form of legal void, norm conflict, or norm obscurity. In this normative juridical research, researchers use a statutory approach. The statutory approach is conducted by examining the relevant laws and regulations in order to obtain information on the issues discussed. This statement was also as stated by Marzuki, the statutory approach provides researchers with the opportunity to examine the consistency and compatibility between one law and another, especially regarding the role of guidance and supervision of an agency. The result of the review is an argument to solve the issue being discussed in the research.

RESULT AND DISCUSSION

Indonesia is a state of law which is stated explicitly in the explanation of the 1945 Constitution of the Republic of Indonesia which states that "The Republic of Indonesia is based on law (rechstaat), not based on mere power (machstaat), the ideals of philosophy that have been formulated by the state founders in the concept of Indonesia as a State of Law" which means there is a relationship between law and authority. The authority is subject to the law as the key to political stability in society. Indonesia as a state of law, it will implement the law as a main pillar in moving the joints of the life of society, nation and state. Law enforcement is an effort to harmonize the relationship of values described in appropriate rules and attitudes of action as a series of final stage value elaboration to create, maintain and sustain peaceful living relationships.

Law enforcement is a process of elaborating legal concepts and principles that contain moral values such as justice and truth into concrete forms. In accomplishing this goal, it requires several organizations that have an important role in this matter, such as the police, prosecutors, courts and correctional institutions. In conceptual terms, the core of law enforcement is in harmonizing the relationship between values and rules. Therefore, law enforcement is not only for the implementation of legislation. The effectiveness of law enforcement is determined by 5 factors such as following below:

1. Legal Materials

The law in this context is the legislation. Laws are written regulations that apply generally and are issued by the government. Law enforcement on problems derived from the law is caused by not including the principles that implement in the law; there are no implementing regulations that are needed in implementing the law; and the ambiguity

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12 Peter Mahmud Marzuki, Penelitian Hukum Edisi Revisi (Jakarta: Kencana, 2016).
13 Satjipto Raharjo, Ilmu Hukum (Bandung: Citra Aditya Bakti, 2014).
of the meaning in the law's content which causes difficulties in interpretation and implementation.

2. Law Enforcers

Law enforcers are people who are directly or indirectly involved in the law enforcement process, such as police, prosecutors, judges, legal counsel and correctional officers. Each law enforcement profession has its own authority. There are several constraints in the implementation of law enforcement, such as (1) limited capabilities to position themselves in the roles of other parties with whom they interact; (2) low aspiration levels; (3) low commitment to law enforcement; (4) absence of integrated, good and modern law enforcement mechanisms; and (5) strong influence and intervention of politics and authority in the Caturwangsa, especially the police, prosecutor's office and judiciary.¹⁵

3. Infrastructure and Facilities

The infrastructure and facilities factor in law enforcement is the availability of supporting resources in the law enforcement process. This factor must be further reviewed, especially regarding its quality and quantity, such as highly educated and skilled human resources, good organizational management, adequate equipment, and sufficient financial resources.

4. Society

Society has a strong impact on the implementation of law enforcement because law enforcement comes from society and for society. The most important thing in determining law enforcement is public legal awareness. The higher the legal awareness of the community, the more possible it will be to have good law enforcement. Low public awareness can be an impediment to the law enforcement process. It can be seen from the reluctance of the community to submit reports or become witnesses to the occurrence of a law enforcement process. It is recognized that it does not simply illustrate the low level of public legal awareness because there are still other factors.

5. Social Culture

According to Soerjono Soekanto, culture has an important role in regulating the attitude of human beings and the way they act when interacting with others.¹⁶ Pre-emptive law enforcement is the beginning of prevention by socializing to the community. Meanwhile, preventive law enforcement is a continuation of pre-emptive which is still in the

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level of prevention to prevent violations of the law by the community. Repressive law enforcement is conducted if pre-emptive and preventive law enforcement efforts have been made but there are still violations of the law in which law enforcement is implemented in a countermeasure by law enforcement agencies that are separate from each other but still within one law enforcement framework, then it can cause disruption in the legal system itself.

The five factors are highly related to each other in the context of the law enforcement process to lead to better public legal awareness. If there is a lack of efficiency in one of the factors, then the other factors will also be affected. Among the five factors, the way of implementation in law enforcement is an important factor because the legislation itself is compiled by law enforcers as well as its implementation in order to become a legal foundation for the community. In addition, in systematically establishing the effectiveness of law enforcement, it must consider the legal system, the law enforcers, the infrastructure to support it, the people's response and their culture regarding the law. Meanwhile, the problems in law enforcement are very complicated and complex. Therefore, it requires a joint effort in an organized, structured, and implemented basis to enforce justice and prioritize community groups.

The police have a role in the judicial process, which begins from the investigation process to the detention process. The police have the authority to determine who should be investigated, arrested and detained. The public prosecutor can also only perform his duties when the investigation from the investigator has been completed. The public prosecutor can make an indictment from the results of the investigator's examination based on the minutes of the investigation. The charges can also be adjusted to the minutes of the police investigator. The police are one of the law enforcers who implement the orders of the law as stated in Article 2 of Law No. 2/2002 concerning the Indonesian National Police which states that the police function is one of the state government functions in the field of maintaining security and public order, law enforcement, protection and community service.

The form of penal (repressive) and non-penal (preventive) efforts that can be conducted by the police to overcome the criminal act of smuggling lobster seeds, and perform their duties as state apparatus that maintain security and public order; enforce the law; and protect, serve and care for the community as stipulated in Article 14 Paragraph (1) of the Law on the Indonesian National Police are as follows:

1. Regulate, guard, supervise, and patrol community and government activities as needed;
2. Organizing all activities in ensuring the security, order, and smoothness of the road traffic;
3. Fostering the community in increasing community participation, legal awareness, and public obedience to laws and regulations;
4. Engage in national legal development;
5. Maintaining order and ensuring public safety;
6. Coordinating, supervising, and providing technical guidance to special police, civil servant investigators, and forms of self-initiated security;
7. Conducting investigations and inquiries into all criminal offenses in accordance with the criminal procedure law and other laws and regulations;
8. Organizing police identification for the benefit of their duties;
9. Providing public services in accordance with their interests within the scope of police duties and other duties in accordance with laws and regulations.

There are several attempts that can be conducted by law enforcers in conducting law enforcement as follows:

1. Pre-emptive Enforcement

Pre-emptive (moral) enforcement is the initial effort taken by the police to prevent criminal acts from being committed. This effort emphasizes the values or norms within a person. Therefore, the police try to prevent the occurrence of a criminal offense by instilling good values and norms thus if there is an opportunity to commit a crime, the crime does not occur. Other parties that should also be involved in pre-emptive efforts are community figures and educators. A community figure can help the surrounding community in spiritual activities, while an educator can revitalize and re-actualize character education to their students. There are several limitations on the capabilities in handling a crime as stated by Barda Nawawi Arief as follows below:

a. Crimes that are complex and outreach of the criminal law;
b. Not all problems such as socio-psychological, socio-political, socio-economic, and socio-cultural problems can be solved by criminal law;
c. The application of criminal law in overcoming crime is only as a *kurieren am symptom*, therefore, criminal law is only a symptomatic solution, not a causative one;
d. Sanctions in criminal law in the form of remedium which contains contradictory/paradoxical elements and other elements that have a negative impact;
e. The punishment system is fragmentary and individualized, not structural;
f. Limited types of criminal sanctions and a rigid and imperative criminal sanction formulation system; and
g. Criminal law requires more varied and high-cost supporting facilities.\textsuperscript{17}

The limitations of criminal law suffered by the Indonesian police who use criminal law as the basis for their duties. It is because these complex crimes are anticipated too late by the police and therefore when a new case occurs they are not responsive in handling it. Therefore, crime prevention does not always have to use criminal law. In order to overcome the criminal act of lobster seed smuggling can be implemented thoroughly, not only the juridical or penal approach is implemented, but it can also be implemented with a non-penal approach.

The police conduct pre-emptive efforts by educating the community to create conditions that support the implementation of public security and order; providing counseling on the importance of security to the community; and conducting early prevention of criminal acts.

2. Preventive Enforcement

Preventive enforcement efforts undertaken by marine police officers consist of the following:

a. Patrol

Patrol is an activity conducted by more than one member of the police, which prevents criminal acts of lobster seed trafficking or distribution.

b. Raids

The marine police also cooperate with the Indonesian police, customs and the Fisheries Quarantine, Quality Control and Safety Agency (BKIPM) in preventing and tackling criminal acts in Indonesian territorial waters. Some of the activities of the marine police during raids are described below:

1) Arrest and surrender the perpetrators for further processing, such as data collection and direction.

2) Conduct data collection and screening of the perpetrators who have been arrested to obtain identification if one day there is a connection with criminal acts around the waters.

Preventive efforts are social control measures taken to prevent or reduce the possibility of unwanted things happening in the future. Non-penal efforts are the most strategic crime prevention policies. It is because non penal is more as a preventive effort before the occurrence of

\textsuperscript{17} Barda Nawawi Arief, \textit{Bunga Rampai Kebijakan Hukum Pidana}, Cetakan 6. (Jakarta: Kencana, 2017).

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a criminal offense. The main goal of non-punitive measures is to deal with and eliminate the contributing factors that lead to the occurrence of a criminal act, which is centered on social problems or conditions that can lead to crime. The preventive function concerns police efforts to prevent the meeting of intention and opportunity as a formula for crime. This effort is done by conducting activities in the form of organizing, guarding, escorting, and patrolling to conduct raids.

3. Repressive Enforcement

This effort is conducted when a crime has occurred in which the law enforcement action is in the form of imposing a penalty. Repressive efforts are an effort to overcome crime conceptually taken after the crime. Repressive efforts to take action against the perpetrators in accordance with their actions and correct them in order to make them realize that the actions they have committed are unlawful and detrimental to society, thus not repeating them and others will also not do it considering the sanctions they bear are very heavy.

In discussing the repressive system, it certainly cannot be separated from the criminal system, where in the criminal justice system there are at least 5 (five) sub-systems, including the judicial, prosecution, police, correctional and court systems. It is a whole system that is functionally connected. In repressive prevention, the ways taken are no longer at the stage of how to prevent the crime from occurring but how to overcome or find solutions to crimes that have occurred. Based on this principle, the steps that can be taken tend to take firm action against the perpetrators of crimes or to provide a deterrent effect on the criminals.

CONCLUSION

These efforts are conducted when a criminal offense has occurred in the form of law enforcement by imposing penalties. Repressive efforts are a conceptual crime prevention effort undertaken after a crime has occurred. Criminal management with repressive efforts to take action against the perpetrators in accordance with their actions and correct them so that they realize that the actions they have committed are unlawful and detrimental to society so that they do not repeat them and others will also not commit similar crimes considering the sanctions they bear are very heavy. The regulation on the prohibition of lobster clear seed distribution is regulated by the Minister of Marine Affairs and Fisheries Regulation No. 12/PERMEN-KP/2020 concerning the Management of Lobsters.

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Crabs and Rajungan in Indonesian Territory and amended again with Minister of Marine Affairs and Fisheries Regulation No. 17/2021 concerning the Management of Lobsters, Crabs and Rajungan in Indonesian territorial waters.

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