

## ANALYSIS OF LAW ENFORCEMENT AGAINST CRIMINAL ACTION ON ILLEGAL FISHING (Case Study of MV Hai Fa)

**Yusuf Nur Arifin\***

### Abstract

The MV Hai Fa case has taken the public's attention for almost the last 5 years after the court ruling was issued by the Ambon Court. MV Hai Fa was declared proven to have captured 15 tons of spike shark (*Carcharhinus spp*) and hammerhead shark (*Sphyrna lewini*) which are some of the protected species of marine animals as stated in the Minister of Maritime Affairs and Fisheries Regulation Number 59 of 2014 concerning Prohibition of Fish Expenditures Cowboy sharks (*Carcharhinus spp*) and hammerhead sharks (*Sphyrna lewini*) outside the territory of the Republic of Indonesia and violating Article 100 in conjunction with Article 7 paragraph (2) letter m law No. 45 of 2009 concerning amendments to Law No. 31 of 2004. This study uses normative legal research methods with a case, concept, law and comparison approach with the aim of knowing and analyzing the law enforcement process against illegal fishing cases by MV Hai Fa in Indonesian waters as well as analyzing comparative reviews of national law and international law in MV Hai Fa case and the government system owned by Vietnam and Australia. The results of the study concluded that the need for a government institution which is appointed by the President could carry out full coordination and supervision until the judicial process and that the revision of fisheries law which has more severe sanctions was adjusted to international law and the material and immaterial losses caused by the crime.

### Keywords

Law enforcement, illegal fishing, MV Hai Fa cases

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\* Faculty of Law, Hang Tuah Univesity

**Correspondence:** Yusuf Nur Arifin, Faculty of Law, Hang Tuah Univesity, Surabaya, Indonesia, Email: yusuf.alvinnur@gmail.com

## Introduction

Action fishing illegal, unreported and unregulated very detrimental to Indonesia, both in the field of economic, ecological and social. Data from the world food and Agriculture Organization (FAO) noted that the annual loss to Indonesia due to the illegal fishing and unreported, unregulated reached Rp 30 million. The practice of catching fish is illegal, unreported and unregulated also resulted in a decline in the stock of fish resources and the loss of social and economic opportunities for fishermen operating legally, and could lead to reduced food security. MV Hai Fa Ship does not carry a letter of Permission to sail (SPB) and be eligible to operation (SLO). MV Haifa arrested for illegal fishing and shipping. MV Hai Fa doing shipping and carriage of the goods to be brought to China.

For this reason, there must be a strict law enforcement in the form of foreign fishermen and captures their ship to be processed legally. The Act of catching a foreign fishing vessel can be justified if the evidence had been fulfilled that fishing vessel conducting illegal fishing. Fishing boats were manned by 23 of her crew (ABK) which were all Chinese nationals. When captured, the ship weighing 4,306 Gross tons (GT) found sailing without a letter be eligible operations (SLO). In bilge found heaps of different types of fish and shrimp with a payload of more than 900 tons. The alleged illegal catch was more than 800 tons of frozen fish and 100 tons of frozen shrimp. However, it turns out that in a pile of fish there are hammerhead sharks and cowboy, who is legally banned by the Government of Indonesia were arrested nationwide. The charges were then known belonged to PT Avona Mina Lestari, and the production will be exported to China.

The High Court Court decision strengthen fishery Maluku in Ambon No. 01/PID. SUS/PRK/2015/PN. AMB 25 March 2015 which punish the captain of the Panama-flagged MV. Haifa, Zhu Nien Le with a fine of Rp. 200 million because the defendant has breached the 100 article 7 in conjunction with paragraph (2) Letter m Act No. 31 of the year 2004 regarding Fisheries jo law No. 45-year 2009 about the change of Act No. 31 of the year 2004. With evidence of 4,306 Barak GT and frozen mixed fish weighing 800,658 kg and 100,044 kg of frozen shrimp also 15,000 kg of shark hammerhead and lonjor. A different decision against the relatively same 2 cases from one court gave multitaafsir against the certainty of national law applied in Indonesia.

It is therefore based on the background of authors interested in making a scientific paper in the form of a thesis with the title "Analysis of Law Enforcement Against Illegal Fishing (A Case Study Of MV Hai Fa)".

## Research Method

This study begins by making research flow scheme in advance against a case MV Hai Fa by dividing some of the stage as a prefix see illegal fishing incidents of such

positions, as well as the perpetrators of the ship data used and Legal considerations against the Court ruling is given. The next review of aspects of national laws, the law enforcement process and aspects of international law. The research method used was the normative legal research methods see the principles, norms, rules of the legislation, court rulings, treaties and doctrine.

## Discussion

### 1. State Authority Theory Implemented by Indonesia in Law Enforcement of Illegal Crime Fishing.

Conceptually, the term authority or authority is often equated with the Dutch term "bevoegdheid" (which means authority or authority). Authority is a very important part of Governance Law (Administrative Law), because the new government can carry out its functions on the basis of the authority it obtains. The validity of government actions is measured based on the authority regulated in the legislation. The issue of authority can be seen from the State Constitution which gives legitimacy to Public Agencies and State Institutions in carrying out their functions. Authority is the ability to act given by the applicable law to conduct relationships and legal actions. Therefore, in order to secure marine fishery resources from illegal fishing, the government as an institutional authority has to carry out lawful enforcement.

Therefore, if we analyze the authority theory, the problem of fisheries crime is not only borne by the fisheries ministry, the maritime ministry, or the military and police. However, it is the entire burden of the Indonesian people and especially the President as the head and symbol of the State. So a President has great influence and authority to channel his aspirations and orders through attributive Presidential or Government Regulations to enforce the law and optimize all of its implementation in fighting against illegal fishing in Indonesia.

### 2. The Law Enforcement Mechanism of Illegal Fishing

The history of Illegal fishing Indonesia for the world of law and law enforcement is still a new concept in the concept of National legislation as well as in the application or practice of solving legal problems in the judiciary. At present the utilization of fish resources has not yet provided an increase in the standard of living that is sustainable and equitable through optimal fisheries management, supervision and law enforcement systems. Existing regulations have become the basis for carrying out supervisory duties in an effort to control and enforce the law in the field of fisheries.

Law enforcement in the field of fisheries in order to tackle illegal fishing aims to reduce the smallest possible occurrence of illegal fishing activities so that fish management is realized in an orderly and responsible manner, as well as increasing structuring and law enforcement in a systematic, consistent and strict manner. In the effort to uphold the law in ZEEI specifically to deal with illegal fishing, an appropriate strategy is

needed. The guarantee of law enforcement at sea is an absolute requirement for the realization of optimal sea management that can prevent and combat illegal fishing. In the operational process, KM Hai Fa transports fishery products in the form of 800,685 kg of mixed frozen fish, 100,044 kg of frozen shrimp, and 15,000 kg of spike type fish (*Carcharhinus* spp) and hammerhead sharks (*Sphyrna lewini*).

Upon arriving at the port of Wanam, Merauke Regency, Papua Province, KM Hai Fa was examined and captured by the Maritime and Fishery Resources Supervisor (PSDKP) on suspicion of the loading of shark fishing, and on the allegation, a further inspection was conducted together with the Indonesian National Army The Navy (TNI AL) and the Kesyahbandaran Authority, and the results it was determined that KM Hai Fa, allegedly had violated Article 7 paragraph (2) of Law no. 34 of 2004 as amended by Law No. 45 of 2009 concerning Fisheries.

### **3. The Case of the Law Enforcement of MV Hai Fa by Indonesian Navy**

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As a follow-up to the inspection process, MV Hai Fa was then escorted by the Indonesian Navy warship from the Koarmada II work unit which was carrying out operations there, KRI John Lie - 358 headed to Ambon IX Navy Base Base (Lantamal). Interpretation of handling the investigation of the KM Hai Fa case by the Navy of IX region in Ambon, essentially based on several considerations, namely the position of the KM Hai Fa ship, is a large ship that is 4306 GT, Panama-flagged and manned national ship of the People's Republic of China (PRC). So that the status of the ship is seen as a legal subject having legal complexity in maritime administration in national and international contexts, such as seaworthiness, legal status and nationality of ships, maritime validity, operational permits, and shipping routes, plus ship operational permits and vessel operating conditions in the territorial waters of Indonesia, issues in the field of immigration, maritime and shipping documents, ship cargo transported by KM Hai Fa.

Therefore, the handling was handed over to the Navy, taking into account the security aspects of the maritime national jurisdiction in accordance with the provisions of national law and international law which had been ratified, as well as Navy diplomacy in the framework of supporting foreign policy set by the government.

### **4. Analysis of Illegal Fishing Criminal Enforcement Process by MV Hai Fa.**

Analyze the effectiveness of Article 7-38 is an Article that is applied in all Fisheries Management Areas (WPP) and or in Indonesian waters, and it is known that Indonesian waters according to Article 3 of Law No. 6 of 1996 concerning Indonesian Waters, states that Indonesian Waters are waters consisting of Indonesian territorial sea, archipelago waters, and inland waters. Theoretically, the territorial sea is a 12 (twelve) nautical mile wide sea lane measured from the base line of the Indonesian archipelago, so juridically, the territorial sea belongs to the element of territorial sovereignty of a coastal country and thus automatically the sea area.

When it was analyzed by referring to the National Laws and International Laws, Ministerial Regulations, Permanent Law Enforcement Procedures by the Navy, and Indonesian government policies related to the formulation of the first problem "How is the Illegal Fishing Law Enforcement Process in Indonesian Waters" analyzed that the law enforcement process is carried out properly and in accordance with the rules and procedures stipulated by the Unitary State of the Republic of Indonesia in National Law.

The concept of territorial sovereignty means that in this territorial area jurisdiction is exercised by the state over people and property, so that Indonesia through its national law and its instruments in the field has sovereignty in regulating, managing and punishing violators of territorial sea areas in accordance with the Law which exists. By maximizing the authority given by the Act to investigators at sea in carrying out law enforcement and coordinated in a directed direction in the field of operations, planning, gathering information integrated by the State institution appointed by the President, certainly can provide optimal results in terms of benefits and deterrence effect for the perpetrators.

## **5. Illegal Fishing Case Analysis MV Hai Fa is Reviewed from National Law**

The decision of the court has given a different interpretation space if it is based on the principle of justice according to John Rawls and Aristotle, who uses an equality approach between actions and results. This shows that 15 tons of the shark (*Carcharhinus spp*) and the hammerhead shark (*Sphyrna lewini*), and if auctioned on the international fish market, the price sold is around Rp. 100,000,000 (one hundred million) -Rp. 200,000,000 (two hundred million) for the price of fish meat, and Rp. 7,000,000,000 (seven billion) -Rp. 10,000,000,000 (ten billion) for the price of fish fins on the international market, this value is not proportional to the value of a fine of Rp. 200,000,000 (two hundred million) stipulated by the Ambon Fisheries Court.

This shows that the formal material of the procedural criminal procedure law, theoretically has not been able to contribute justice to violations that occur at sea, because justice should provide a balanced treatment between rights and obligations. Justice lies in harmony between claiming rights and carrying out obligations.

## **6. Approach to Law Enforcement in the Case of MV Hai Fa by International Law**

In the context of oversight and investigation, the essence is based on national legal entities, with an emphasis on international regulations that have been codified. These regulations, which can be correlated in an integrated manner in the context of fisheries management, are Safety of Law at the Sea (SOLAS) deigned with the United Nation Convention of Law at The Sea (UNCLOS) shipping safety regulations, regulations on sea law governing boundaries - a country's sea boundary, the policies of the Food Agricultur Organization (FAO) are pleased with regulations in the field of fisheries management.

Integrated harmonization of regulations on a national scale applies to all laws and regulations governing activities on the sea. Began to determine the boundaries of the sea area, the use of the sea, facilities and infrastructure on the sea, sea lanes and shipping, activities at sea, permissible and unauthorized objects of the sea and so forth. All of these rules can be accepted internationally, so there is an understanding of the sea internationally.

This, national public legal entities that have the authority to supervise and enforce law in the maritime field will naturally have the same view of law enforcement internationally, and in the national context. In this case the involvement of international justice is very much needed considering that the illegal fishing case does not occur in the national sphere only, but also involves the perpetrators from other countries.

## **7. Comparison of Indonesia and Vietnam Capability in Applying Positive Law in the Country**

Indonesia and Vietnam are one of the countries in Southeast Asia that have become the largest producer of fish. They have different political policies and law enforcement systems tailored to the challenges and culture of each nation. Of concern is the dynamics of fish production competition that has increased significantly so that each country protects each other's natural resources. Judging from the fact that is developing at this time Indonesia has acquired itself into a world maritime axis which is sovereign over its fish production, sovereign over its maritime security, sovereign over the enforcement of its maritime law and sovereign over justice in its fisheries court. However, the illegal fsihing case of MV Haifa and MV Sino is one of the evidences where justice in Indonesia has not yet been realized because the court's decision seems to be unfair when viewed from the point of view of the material losses incurred.

Because it can lead to multiple interpretations and reduce the deterrent effect on lawbreakers. Unlike the Vietnam State which is consistent and consistent with its political policies, the country implements a strict legal system with very high rules and fines to ensnare illegal fishing offenders, especially fishermen who catch fish in the



cultivated category. When judged by the capability of law enforcement elements distributed between the two countries, Indonesia is still superior in terms of its military strength as a means of enforcing its maritime law. However, when viewed from the substance of national legislation, Indonesia is still far below that of Vietnam.

#### **8. Comparison of Indonesia and Australian Capability in Applying the Government System.**

If we compare the functions, duties and authority established by the government between Indonesia and Australia in operational terms it can be concluded that Australia through the AFMA (Australian Fisheries Management Authority) has been able to maximize the role given by the Government in order to maintain the availability, sustainability and security of resources Australia's natural resources especially in the fisheries sector where the institution can use all assets owned and integrated with information systems as well as judicial and government institutions. Whereas in Indonesia in this case the KKP (Ministry of Maritime Affairs and Fisheries) is only tasked with organizing government affairs in the field of maritime affairs and fisheries and functions as a supporter, manager, implementation of technical guidance and supervision of activities related to marine and fisheries without having the authority to move assets and functions supervision in court. Although currently the CTF has been able to operate elements of the Navy through Task Force 115 in coordination with the Navy, but it has not yet gotten optimal and maximum results.

#### **Conclusion**

Based on the discussion in the previous chapters, the results of this study can be concluded as follows, The results of the analysis that the legal investigation process is considered to be in accordance with law enforcement procedures. However, the case handover function, court proceedings that are not guarded and have not been maximized can reduce the optimality of a decision on the case so that it does not get a decision that provides the principle of justice. Therefore, the need for coordination functions carried out between institutions under the umbrella of an authority of the President with the aim of running the bureaucracy in a good manner and optimal results. Results of the analysis of the review of national law and international law on the case of MV Hai Fa based on the case that the sanctions imposed on suspects based on positive Indonesian law are still not optimal so that it is not sufficient to provide a deterrent effect on other suspects in the future. The verdict determined by the Judge does not consider the consequences if we take into account the material and immaterial losses suffered by Indonesia against these illegal fishing actions.

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