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Legal enforcement for chemicals uses for fishing in Wakatobi District

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Abstract. The chemicals using in fishing is very disturbing to the sustainability of the sea ecosystem. The primary objective of this research is to investigate the reasons behind the ineffectiveness of criminal law applied by the Wakatobi National Park Office for illegal fishing criminals who use chemicals to catch fish. The initial investigation revealed the law was not yet practical because there are individuals who were carrying out illegal fishing as a result of several factors which become the barrier. The results of research on law enforcement have found obstacles and support as follows: Inhibiting factors, namely: law factor, limitations of human resources, limitations of facilities and infrastructure, high costs, lack of expert witnesses, the absence of fisheries courts and lack of community awareness. Then supporting factors are law, government, police, and support from local, national and international governments.

1. Introduction

Indonesia is the largest archipelagic country in the world consisting of 17,508 islands, with a coastline of 81,000 km and an area of about 3.1 million km² (0.3 million km² of territorial waters, 2.8 million km² of archipelago waters) or 62% of its territorial area [1] [12]. The territorial waters are vast apart from providing great hopes and benefits, but they also bring consequences and several problems, including non-compliant activities with national and international laws that apply in waters such as Illegal Fishing [2]. The problem is the fishing methods often contrary to the principles of responsible fisheries management, such as traditional fishermen have caught fish in ways that are prohibited by the law.

Provisions concerning Criminal Acts are regulated in articles 84 and 87. In Article 84 paragraph 1 of Law Number 45 of 2009 concerning amendments to Law Number 31 of 2004 concerning Fisheries the formulation is as follows:



“Every person who intentionally in the territory of the Republic of Indonesia fisheries management conducts fishing and/or fish cultivation using chemicals, biological materials, explosives, tools/and or ways, and/or buildings that can harm and/or endanger the sustainability of fish resources and/or the environment as intended in Article 8 paragraph (1), shall be punished with a maximum imprisonment of 6 (six) years and a maximum fine of IDR 1,200,000,000.00 (one billion two hundred million rupiah)”.

The formulation of problems are: How is the application of criminal law to the perpetrators of chemicals used in fishing in Tomia sub-district, Wakatobi district? And what is the inhibiting and supporting factors of law enforcement (Wakatobi National Park Hall) to follow up on criminal acts of using chemicals in fishing in Tomia Subdistrict, Wakatobi District?

2. Methods

The location of the study was at the Wakatobi Regency National Park Office located on Jln. Sultan Udayana Iksanuddin, No 71, in the city of Baubau. Types and sources of data used in this study are primary data, namely data obtained directly from research fields sourced from respondents relating to research through interviews. And secondary data, namely data obtained and sourced from a review of literature studies in the form of literature, scientific work (research results), legislation, magazines, documentation newspapers from various agencies related to other written materials related with this study [10]. In order to collect primary data and secondary data, the authors use two types of data collection as the research literature namely this research is done by reviewing library materials relevant to research in the form of literature, scientific work (research results) [4].

The research method used in this study is normative legal research that is qualitative which is more concerned with understanding existing legal material than the quantity or amount of data [3]. In a normative legal analysis, researchers collect secondary legal materials and construct in a series of research results. The nature of the research that will be carried out is analytical descriptive because from this research it is expected to obtain a comprehensive and systematic description of the problem under study, namely regarding the Defense and the Equity of the Sea, based on Maritime Law.

3. Results and Discussion

3.1. Application of Criminal Law by Law Enforcement Officials

3.1.1. Case Position. Nurdin Alias Aco on Sunday, December 18, 2013, As a Skipper/Ship Master "KM. KARYA MANDIRI" has been fishing in the Indonesian Fisheries Waters Area, precisely around Tomia Island, Tomia Subdistrict, Wakatobi Regency Southeast Sulawesi Province with coordinates 02 18 ' 970 "South - 117 14 '020" West. He used handmade chemicals in the form of potassium cyanide by mixing ingredients of potassium cyanide with seawater in a clear plastic bag with the composition of 1 potassium cyanide Seed for 1 Liter Seawater. The plastic bag containing potassium cyanide then was taken into the seabed by the perpetrator and looking for fish on the sidelines of the reef hole. When the perpetrator sees the fish in between the coral holes, then he sprayed potassium cyanide to the fish, causing the fish to come out of the reef half conscious making it easy to catch [3].

Wakatobi National Park in the application of the law refers to Law No. 5 of 1990 concerning the Conservation of Biological Natural Resources and their Ecosystems. Regarding the authority to investigate or process perpetrators of Criminal, Wakatobi National Park impose article 39, which states:

- In addition to officials investigating the Indonesian National Police, as well as certain Civil Servants within the department, the scope of duties and responsibilities includes fostering the conservation of living natural resources and their ecosystems, given special authority as investigators as stipulated in Law Number 8 of 1985 concerning Procedural Law Criminal, to investigate criminal acts in the field of conservation of living natural resources and their ecosystems.

- The authority of the investigator as enforced in paragraph (1) does not reduce the investigator's authority as stipulated in Law Number 5 of 1983 concerning Indonesia's Exclusive Economic Zone and Law number 9 of 1985 concerning Fisheries [9].
- Investigators as referred to in paragraph (1), are authorized to several actions: Firstly, examine reports or information relating to criminal acts in the field of conservation of living natural resources and their ecosystems. Secondly, examine people suspected of committing criminal acts in the field of conservation of living natural resources and their ecosystems. Thirdly, Check the identification of someone in a nature reservation and conservation area. Fourthly, Undermine and confiscate evidence of criminal acts in the field of conservation of living natural resources and their ecosystems. Fifthly, request information and evidence from people or entities in connection with criminal acts in the field of conservation of living natural resources and their ecosystems. Sixthly, create and sign reports. And lastly, stop investigation if there is not enough evidence of a criminal act in the field of conservation of living natural resources and its ecosystem.
- The investigator, as referred to in paragraph (1), informs the commencement of the investigation and reports the results of the investigation to the public prosecutor through the Indonesian republican police investigating officer in line with the provisions of article 107 law number 8 of 1981 concerning criminal procedural law.

3.1.2. Safeguarding Position. Regarding the safeguarding of Wakatobi Regency National Park, the office has two Investigators, namely the Forestry Police (Polhut) and civil servant investigators (PPNS). (5) The duties of the Forestry Police (Polhut) and civil servant investigators (PPNS) are [13]:

- The task of the Forestry Police (Polhut)
Forestry Police (Polhut) in carrying out pre-eminent functions by conducting local security patrols, guarding the Wakatobi National Park (TNW) area. The task of the police is repressive, that is, if the perpetrator is caught red-handed during a patrol, the police can capture and make an incident report then submit it to the head of the management section of the Wakatobi National Park in the area of the incident. After the head of the area section checks perpetrator along with the evidence, the area chief transferred the case to the police investigator, and during the investigation by the police, the National Park Office oversees it from the start of the investigation to the filing of P.21 [8].
- Duties of Civil Servant Investigators (PPNS)
There is a constraint by essence regarding the Civil Servant Investigators (PPNS) because the National Park area is territorial water. As a consequence, any criminal case that occurs at sea, PPNS can only arrest the perpetrator but has not been able to conduct the investigation properly, due to criminal acts of chemical use is a matter or part of fisheries, so that civil servant investigators (PPNS) do not conduct investigations because they are not the authority of the substance [11].

Polhut Forestry Police and Civil Servants (PPNS) in conducting patrols and red-handedly arresting of perpetrators can then directly handed over to the police, but if there are reports for PPNS and Polhut relating to criminal acts related to only natural resources and ecosystems, they can take action namely giving summons to users of chemicals [6].

3.2. Factors affecting law enforcement.

3.2.1. Obstacle factor. There are inhibiting factors in law enforcement carried out by the Wakatobi National Park Office to follow up on the criminal use of chemicals in fishing in Tomia District, Wakatobi Regency. These factors are [12]:

- Formulation of the Act. Wakatobi National Park Office in following up on the perpetrators of crimes that occur at sea is still referring to Law No. 5 of 1990 concerning Conservation of Biological Natural Resources and their Ecosystems, while the one in authority to investigate or follow up the perpetrators of criminal acts in the territorial waters are investigators from the service fishery.
- Limited human resources; Quantitatively, the obstacles faced are the lack of police and PPNS personnel at the Wakatobi National Park Office as the executors of criminal investigations in the fisheries sector. The number of polhut and PPNS at Wakatobi National Park is currently only seven staff which indeed is very little when compared to the extent of the waters and marine areas of the Wakatobi National Park and the potential of existing fisheries crime.
- Facilities and infrastructure; The role of PPNS in Wakatobi National Park require adequate facilities and infrastructures, especially the availability of patrol boats and sufficient fuel to carry out supervision of the possibility of criminal acts in the fishery sector.
- High cost for the evidentiary factor. In this case, if there is an illegal use of chemicals, then for inspection of the fish evidence, it must be examined in Makassar forensic laboratory and indeed requires a lot of money.
- The absence of expert. Expert witnesses are very much needed by the Wakatobi National Park Hall, to assist police and PPNS in uncovering a criminal case that occurred both at sea and in the forest area.
- The absence of fisheries court. In prosecuting a case of a fishery crime, it is necessary to have a fishery court in the district. However, in Indonesia, there are only three fishery courts. The nearest one is in Bitung, which is very far and requires significant cost to proceed with a case there.
- Community Factors. In this case, there are still many people who depend their lives on the sea as fishermen, so that there are still many people who use all means to catch fish in hopes of getting a lot of catches, one of them is by catching fish using chemicals.

3.2.2. *Supporting factors.* Despite the obstacles, there are some of the supporting factors in law enforcement carried out by the Wakatobi National Park Office to follow up on the criminal use of chemicals in fishing in Tomia District, Wakatobi Regency. They are [11]:

- Constitution. In law enforcement against perpetrators of criminal acts of using chemicals in fishing, Wakatobi National Park Hall impose some laws in preserving the natural resources and ecosystem of Wakatobi Marine, such as the law on fisheries, environment, and the law on coastal area management. [7]
- Police officers. The police have an essential role in resolving criminal cases both on land and at sea. The officers in Wakatobi regency are very supportive and helpful in processing criminal cases that occur in Wakatobi district waters. It is seen from every report by the police and PPNS Wakatobi district national park office to resolve incidents in the waters and forests of Wakatobi district.
- Local Government. The Wakatobi District Government strongly supports the continuation of the Wakatobi National Park by collaborating with Wakatobi Dive resort to preserve the Wakatobi National Park.
- Support from Local, National and International Communities and Governments. Wakatobi District National Park has a variety of species, both from the diversity of fish and the diversity of growing coral which then gained good support from local and national and international communities and governments.

4. Conclusion

Some principal findings are:

- The application of the criminal law applied by the Wakatobi National Park Office in following up on illegal fishing criminals who use chemicals to catch fish, has not been very effective due to the fact individuals are performing illegal fishing due to influences by several factors that become obstacles.
- The obstacle factors are factors that inhibit this law enforcement according to this research are law, limitations of human resources, limitations of facilities and infrastructure, high cost, lack of expert witnesses, the absence of fisheries court and lack of community awareness. And the supporting factors found in this research are law, government, police, and support from local, national and international governments.

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