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The Complexity of Crime in Illegal, Unreported, Unregulated Fishing (IUUF)

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Abstract: Illegal, Unreported, and Unregulated Fishing (IUUF) crimes had long been occurring both in Indonesian and other states. IUUF is the main cause of over-exploitation in several waters, both waters under national jurisdiction and high seas. IUUF is an extraordinary crime because it involves many transnational parties. The research method used is normative research method with statute and conceptual approaches. The problem of this legal research is legal efforts to reduce the IUUF and the complexity of the crime in the IUUF. The aim of this study is to find out what crimes accompanied by IUUF and find legal remedies to reduce IUUF and other crimes that accompany them. The conclusion is that the majority of IUUF are followed by other crimes such as slavery, human trafficking, drug smuggling, and endangered animal smuggling. Efforts that have been made include the ratification of several international agreements, while what has not been done is to increase international cooperation in handling IUUF and the crimes followed.

Keywords : IUUF, transnational crime, extraordinary crime

1. Introduction

The sea is important in human life. The sea is important in various sectors such as economy, health, social and environment. Human life is very dependent on the sea and its natural resources such as fisheries resources. The world fishery business has a very high economic value. Large fishing fleets compete with each other for fishing either in waters that fall under the national jurisdiction of the country or the high seas. The high level of fishing activities with the use of fishing gear that is not environmentally friendly has caused overfishing in several waters.

Overfishing is a situation where fish stocks are below the Maximum Sustainable Yield (MSY) level. Overfishing not only affects biodiversity and ecosystem functions but also reduces fish production which has a negative impact on social and economic aspects. In 2017, 34.2% of all fish stocks in the world were overfished (FAO, 2020)

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It is well known that the biggest cause of the overfishing status of a waters is the many of illegal, unreported, and unregulated fishing (hereinafter referred as IUUF). Waters that have an overfishing status due to the large number of IUUFs in these waters will actually trigger IUUF actions in other waters, such as what happened in Indonesia. Most of the vessels conducting IUUF in Indonesian waters are vessels with Vietnamese flags. It is known that these vessels are conducting IUUF in the waters of other countries because the fish stocks in their waters are overfished as a result of the rampant IUUF carried out by Chinese-flagged vessels in Vietnamese waters.

All states in the world must cooperate with each other in deter and eliminate IUUF because IUUF is an organized crime involving parties from different states. It is very possible that the flagship state is different from the state of origin of the ship crew members and the party that sponsors the fishing activity. IUUF is also not only a crime in terms of illegal fishing but also closely related to other crimes. Such conditions make it difficult for state to work together to completely eliminate the IUUF due to overlapping authority between international organizations related to fishery resources and other international organizations. Based on the above background, there are two things that become a problem in this research. First, what crimes at sea accompany IUUF crimes. Second, what legal efforts should be made by states to eliminate IUUF and other crimes that accompany it.

2. Theoretical Framework and Hypothesis Development

Illegal, Unreported, and Unregulated Fishing (IUUF) is a broad term that includes several activities in fishing. IUUF is found in fishing activities in all types of fish either in waters under the jurisdiction of a country or in the high seas. IUUF involves all stages of fishing activities and is often referred to as organized crime.

FAO, through the International Plan of Action to prevent, Deter and Eliminate Illegal, Unreported, and Unregulated Fishing (IPOA-IUU), has formulated what activities are included in IUUF. Activities that are classified as illegal fishing are catching fish which is carried out either by national fishing fleets or foreign fishing fleets in the waters under state's national jurisdiction without obtaining a permit from

that country or ²contrary to the national laws of that country; activities that are contrary to conservation measures and international legal provisions carried out by flagship state ²of the regional fisheries management organization; or activities that violate applicable national and international laws by flagship state in collaboration with regional fisheries management organizations

Activities that are included in ²¹unreported fishing are ³fishing activities that are not reported or incorrectly reported to the competent state ³or regional fisheries management organization in charge if fishing is carried out in waters which under national jurisdiction of that state. Lastly, activities that include unregulated fishing are fishing activities that violate conservation provisions, both in national and international laws; as well as fishing activities carried out by stateless vessels.

3. Research Method

This is a legal research. ¹¹Legal research is a scientific activity based on methods, systematics, and certain thoughts, in ⁶studying one or several specific legal symptoms (Soekanto, 1986). Legal research is carried out with the aim of finding the truth of coherence, namely ¹⁴are there any legal rules that are in accordance with legal norms; are there norms in accordance with legal principles; and are there any person's actions in accordance with legal norms or legal principles (Marzuki, 2005). ⁷Considering that this research is legal research and not a socio legal research, the research method used is normative research using a statutory approach and a conceptual approach.

4. Results and Discussion

4.1 The Complexity of Crime in Illegal, Unreported, and Unregulated Fishing (IUUF)

³Illegal ²fishing that occurs today has changed the way it operates compared to the way it was operating in the 1990s. Illegal fishing crime has now become a “highly ²sophisticated form of transnational organized crime”, which has one characteristic of modern ship movement control and modern fishing equipment (Fernandes, 2017). IUUF is not just fishing, catching fish that is not in accordance with conservation

regulations or catching fish that are not reported to the authorities. IUUF is an organized and complex crime. IUUF is often followed by other crimes committed at sea.

IUUF is a long destiny shipping activity because usually large ships carrying out IUUF flagship state that do not match the ship's nationality so they avoid leaning on a port. Fishing vessels that carry out IUUF transshipment their catch in order to distribute the caught fish to smaller fleets so that they don't have to stop or drop their catch at the port. IUUF is vulnerable to being followed by slavery at sea action because the crew members are forced to work beyond the normal working time limit considering that there is no possible exchange of crew members. This is because the fishing fleets carrying out the IUUF carried out a long destiny shipping so that it was not possible for the crew to exchange or give the crew a day off.

IUUF, which is a long destiny shipping, is vulnerable to being followed by other crimes because of the position of the ship that has been in the middle of the sea for a long time, the existence of transshipment activities with other fleets, and the difficulty of supervising ship activities at sea. Other crimes that frequently follow IUUF are drug smuggling, smuggling of endangered animals, smuggling of weapons, smuggling of immigrants, and human trafficking. the crimes above involve many parties in various countries. This is what is known as a ²⁴transnational organized crime in the fishing industry (UNODC, 2011).

Regarding the smuggling of immigrants, research shows that the smuggling of immigrants is carried out by fishing fleets, but the smuggling itself does not involve the fishing industry. The perpetrators smuggle the immigrants on large fishing fleets in order not to be caught by the officers. Based on the same research, it is known that the drug smuggling that is often carried out is a type of cocaine. Generally, these drugs are transported via fishing fleets (UNODC, 2011).

Indonesia, as the largest archipelagic state in the world, is one of the state where IUUF occurs a lot in its waters. Several IUUFs in Indonesia are also

accompanied by the smuggling of immigrants, who are transported by fishing fleets. After successfully entering Indonesian territory, these illegal migrants are inhumanely employed to catch fish on foreign fishing fleets (Lewerissa, 2018).

The practice of smuggling by sea using fishing vessels is a longstanding practice. In 2007, it was discovered through research that fishing fleets are often an inseparable part of smuggling practices, whether they are smuggling of people, drugs, weapons and other illegal goods (Decker & Townsend Chapman, 2008)

4.2 Legal Efforts in Eliminating Illegal, Unreported, and Unregulated Fishing (IUUF) and Accompanying Crime

There are many parties involved in IUUF crime, such as fishermen, fishing fleet owners, those who collect the fish they catch, those who buy the fish they catch, and those who fund IUUF activities. IUUF is also closely related to other crimes such as slavery, money laundering, human trafficking, smuggling of weapons, smuggling of protected animals, and smuggling drugs.

Another reason why international cooperation is required in eliminating IUUF is because cooperation will facilitate the investigation process. If the collaboration has been formed, It will be easy for the information exchange process. The information in question can be in the form of information about the fishing fleets owner. This is done so that fishing fleets owners, both individuals and legal entities, can be held accountable for the crimes of IUUF, considering that the legal process for IUUF crimes in Indonesia does not touch the boat owners. Other information which is required is about fishing fleets traffic history. This is to find out that the ship has crossed and caught fish in any waters.

International cooperation is also carried out to deter and eliminate crimes that accompany IUUF. Crimes that accompany IUUF are transnational crimes so that handling cannot be carried out by one country alone and requires cooperation from many countries. Considering that each IUUF companion crime falls under the authority of different international organizations, it is necessary to carry out

international cooperation from several international organizations such as the Food and Agriculture Organization (FAO), International Maritime Organization (IMO), United Nations High Commissioner for Refugees (UNHCR), International Organization for Migration (IOM), and United Nations Office on Drugs and Crime (UNDOC).

Regarding IUUF, there has been an agreement made by member countries of the Food and Agriculture Organization (FAO) to eradicate IUUF, namely the Port State Measure Agreement to Prevent, Deter, Eliminate Illegal, Unreported, and Unregulated Fishing (hereinafter abbreviated as PSMA). Indonesia has ratified the PSMA through Presidential Regulation No. 43 of 2016. PSMA contains provisions that oblige port countries to do several things in order to prevent and reduce IUU fishing. Not only that, the contents of the PSMA can also prevent the criminal process of human trafficking and slavery at sea from happening. PSMA is also used as the basis for the exchange of information needed in handling IUUF both among PSMA member countries and with the Food and Agriculture Organization of the United Nations (FAO) or with other international and regional organizations.

Complementary crimes from the IUUF other than human trafficking and slavery at sea are not included in the scope of the PSMA so that it still requires further cooperation from countries so that there is no shifting of duties between international organizations. Such international cooperation is expected to produce international legal rules that completely eradicate IUUF crimes and the other crimes that accompany them.

5. Conclusion, Implication and Limitation

5.1. Conclusion

The conclusion is that the majority of IUUF are followed by other crimes such as slavery at sea, human trafficking, immigrant smuggling, drug smuggling, and endangered animal smuggling. In relation to illegal fishing, PSMA has been ratified by several countries. PSMA requires international cooperation in combating IUUF as

well as trafficking in persons and slavery at sea. Other IUUF companion crimes have not been covered by the agreement so that international cooperation is needed which then results in an international convention in an effort to eradicate IUUF with other accompanying crimes such as the smuggling of drugs, weapons and endangered animals.

5.2. Implication and Limitation

Eliminating the IUUF and other related crimes requires international cooperation which is expected to produce international legal rules. Such international rules are used in the effort to eliminate IUUF and other associated crimes. The thing that needs to be considered is to ensure that states that often become flagship state that commit these crimes and state that are the largest markets for illegally traded commodities must participate in cooperation and become state parties of the convention..

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