

Comparison Efforts to Settlement Crime of Illegal Fishing Through Litigation and Non-Litigation in the Karimunjawa Conservation Area

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Abstract: Settlement of criminal acts can be done through litigation (court) and non-litigation (outside court). This research aims to compare the settlement of illegal fishing through litigation and non-litigation in the Karimunjawa conservation area. The method used in this research is empirical juridical, with the data source coming from primary data and supported by secondary data. Data collection was carried out using directed interviews. A literature study was also carried out, including collecting and analyzing court decisions regarding illegal fishing crimes in the Karimunjawa conservation area. The data analysis technique was carried out qualitatively in an inductive manner to answer the problems in this research. The results of research regarding the comparison of the resolution of illegal fishing crimes through litigation and non-litigation in the Karimunjawa conservation area show that the settlement process through litigation goes through various procedures that have been regulated in Law no. 45 of 2009 concerning Fisheries in conjunction with Law Number 6 of 2023 concerning the Stipulation of Government Regulations instead of Law Number 2 of 2022 concerning Job Creation into Law and the Criminal Procedure Code. Non-litigation efforts that have been taken against perpetrators of illegal fishing in the Karimunjawa conservation area are realized by means of restorative justice and also through making a statement letter that the perpetrator will not repeat his actions; if they are violated, they will be processed through litigation. The perpetrator must also make a mandatory report to the Karimunjawa Regional National Park Management Section Office (SPTN).

Keywords: Litigation, non-litigation, illegal fishing

1. Introduction

Indonesia is a maritime country with two-thirds of its territory consisting of waters consisting of 17.508 islands. Water areas are one of the potential sectors because of the diversity of natural resources, so Indonesia has the right to control fisheries and utilization and conservation management in water areas as regulated in Law Number 5 of 1983 concerning the State Revenue and Expenditure Budget (Aprizal & Muslimah, 2019). Based on Government Regulation Number 60 of 2007 concerning Fish Resource Conservation explains that marine conservation areas are protected areas managed using a zoning system to realize sustainable management of fish resources and ecosystems. The monitoring efforts of the Ministry of Environment and Forestry (KLHK) in maintaining the sustainability and balance of marine resources have designated several areas of Indonesian waters as conservation areas, including Cendrawasih National Park, Wakatobi National Park, Seribu Islands National Park, Togean National Park, Taka Bone National Park, and Karimunjawa National Park (UNDP, 2017). Karimunjawa National Park is located in Jepara Regency, Central Java and is a type B national park managed by the Karimunjawa National Park Office (BTNKJ) as an implementation of Minister of Forestry Decree No. 185/Kpts-II/199 (Widyastuti, 2023).

Indonesia's diversity of marine resources, especially the Karimunjawa National Park conservation area, in protecting and preserving them does not rule out the possibility of various problems. One of the problems that occur is the existence of illegal fishing activities, which threaten the sustainability of the marine ecosystem by using prohibited fishing gear, such as the use of centring nets and potassium cyanide poison. Several illegal fishing cases in the Karimunjawa conservation area resulted in a mismatch between Das Sollen and Das Sein. Das Sollen, which hopes that conservation areas will be a way to preserve natural resources in the marine sector, and Das Sein, where, in reality, there are still cases

of illegal fishing in the Karimunjawa conservation area (Dewi et al., 2021). Several cases of illegal fishing that have occurred in the Karimunjawa conservation area can be seen in Table 1.

Table 1: Cases of illegal fishing crimes in the Karimunjawa conservation area, 2010-2022

No.	Case	Violation	Penalty
1	Catching fish with cantrang nets in the Karimunjawa National Park area	Article 33 paragraph 3 Jo Article 40 paragraph 2 Law No.5 of 1990	Suspect Jarum bin Kasmoyo was sentenced to 4 months and a fine of IDR 2,500,000.00. Processed by PPNS BTNKJ in 2010
2	Catching fish with cantrang nets in the Karimunjawa National Park area	Law No.5 of 1990 concerning KSDAH and E	The suspect Sunari bin Sarwi was sentenced to 4 months and a fine of IDR 2,500,000.00. Processed by PPNS BTNKJ in 2010
3	Fishing using cantrang nets in the Traditional Fisheries Utilization Zone	Violates article 33 paragraph 3 Junto article 0 paragraph 2 Law No.5 of 1990 concerning KSDAH and E	The suspect Dwi Adi Susanto received a 6-month suspended sentence in 2016
4	Fishing using Purses seine nets in the TNKJ Marine Protection Zone	Article 33 paragraph (3) Junto Article 40 paragraph (2) Law Number 5 of 1990 concerning KSDAH and E	The suspect, Usri bin Mundri, was sentenced to 2 months and 15 days in prison and a fine of IDR 1,200,000.00. Processed by PPNS BTNKJ in 2017

(Source: Widyastuti, (2023))

Based on the data above, it can be seen that all processes for resolving illegal fishing crimes in the Karimunjawa conservation area are carried out through litigation (court). The lightest penalty for illegal fishing is 6 months suspended imprisonment. Meanwhile, the most serious punishment is 4 months imprisonment and a fine of IDR 2.500.000.00. Efforts to resolve crimes are broadly divided into 2 (two), namely litigation (court) and non-litigation (outside court) (Hapsari et al., 2022). Efforts to use litigation to resolve criminal acts take a long time due to the legal procedures that must be followed as regulated in Law number 45 of 2009 concerning Fisheries in conjunction with Law Number 6 of 2023 concerning Stipulation of Government Regulations instead of Law Number 2 of 2022 concerning Job Creation into Law and Law Number 8 of 1981 concerning Criminal Procedure Law or better known as the Book Criminal Procedure Law (KUHAP). Meanwhile, efforts to resolve the crime of illegal fishing through non-litigation channels are relatively faster because there is no need to go through the criminal procedural legal process as has been determined (Chandra, 2019). One form of non-litigation effort can be done through restorative justice. Restorative justice is a model for resolving criminal cases that focuses on the direct participation of perpetrators, victims and the community in the resolution process (Harwanto, 2021).

In connection with the theme of illegal fishing, research was previously carried out by Fernandes in 2017 regarding the juridical review of illegal fishing in Indonesia based on the Fisheries Law (Fernandes, 2017). In 2020, with the same theme, Fadillah and Aspary (2020) comparing criminal law in optimizing law enforcement against fisheries crimes. Research on Criminal Law Policy as Primum Remedium in the Crime of Illegal Fishing in View of the Theory of Justice was conducted by Riangdi (2023). Research by Tuanger (2023) raised issues related to legal settlement mechanisms for illegal fishing on the borders of Indonesia and Australia.

Based on previous research, even though it has the same theme, namely illegal fishing, this research has a novel element: comparing the resolution of illegal fishing through litigation and non-litigation, especially in the Kaimunjawa conservation area. The majority of previous research only discussed resolving illegal fishing through litigation. There is an opinion that justice to seek justice is very difficult to obtain because society is influenced by the slogan that the law is blunt upwards but sharp downwards. This means that criminal law is applied very harshly to small people, but for those with access to power and wealth, it is as if the law cannot touch them. Thus, the problem in this research is a comparison of efforts to resolve illegal fishing crimes through litigation and non-litigation in the Karimunjawa conservation area. This research aims to analyze litigation and non-litigation efforts that can be used to resolve illegal fishing cases in the Karimunjawa conservation area.

2. Methodology

The method used in this research is empirical juridical, with the data source coming from primary data and supported by secondary data. Data was collected by directed interviews with sources related to the research. A literature study was also carried out, including collecting and analyzing court decisions regarding illegal fishing crimes in the Karimunjawa conservation area. The data analysis technique was carried out qualitatively in an inductive manner to answer the problems in this research.

3. Results and Discussion

Illegal fishing has become a serious problem in Indonesian waters. Foreign nationals and Indonesian citizens often engage in illegal fishing, violating applicable regulations. Illegal fishing carried out by local fishermen does not only occur in the exclusive economic zone and Indonesian territorial sea, illegal fishing also occurs in conservation areas. One of the illegal fishing activities carried out by local fishermen occurred in the Karimunjawa conservation area (Wibowo et al., 2012). The rise of illegal fishing in the Karimunjawa conservation area is motivated by the abundance of marine resources and the economic conditions of the perpetrators. The consequences of illegal fishing activities by local fishermen impact ecosystem damage and marine sustainability.

According to Ramadani et al. (2021), criminal law politics is a policy line for deciding which criminal provisions need to be changed or updated, how to prevent criminal acts from occurring, and how investigations, prosecutions, trials and criminal implementation are carried out (Marbun, 2014). According to Aini (2018); Lewis and Salem (2017); and Arief (2011), crime prevention can be achieved through penal and non-penal efforts. Penal efforts are efforts to overcome crime using criminal law, which focuses on repressive actions after a criminal act has occurred. This is different from non-penal efforts, which are crime prevention efforts that focus on preventive measures before a crime occurs (Welsh & Farrington, 2012; Bottoms & Von Hirsch, 2010). The litigation route is part of the penal effort. The non-litigation route as a form of settlement outside of court can be taken with certain conditions.

3.1 Efforts to Resolve the Crime of Illegal Fishing Through Litigation in the Karimunjawa Conservation Area

Resolving criminal acts through litigation is a way to provide a deterrent effect against criminals. Efforts to resolve through litigation only sometimes provide justice to the parties concerned because they emphasize aspects of legal certainty more (Senina, 2022). The litigation process is based on the provisions of criminal procedural law contained in the Criminal Procedure Code and existing special laws. Because you have to go through various procedures that are regulated by law, settlement through litigation often takes a long time. The provisions of criminal sanctions are an important instrument in enforcing criminal law as a representation of values and normality in social life (Ball & Friedman, 2017; Anindyajati et al., 2016; McGuire, 2002). Efforts to control and minimize illegal fishing activities are carried out with the enactment of Law no. 31 of 2004 jo. Law no. 45 of 2009 concerning Fisheries 17 forms of fisheries activities can be subject to criminal sanctions and are divided into 4 (four) categories of fisheries crimes, as seen in Table 2.

Table 2: Classes of fisheries crimes based on law no. 45 of 2009 concerning fisheries

No.	Class of crime	Chapter
1	Destruction of fisheries resources	- Use of chemicals or similar (Article 84) - Cultivation of certain fish species that endanger fisheries resources (Article 88)
2	Licensing violations	- Use of dangerous raw materials (Article 91) - Fishing business without SIUP ownership (Article 92) - Operation of fishing vessels without SIPI ownership in the high seas or ZEEI (Article 93 paragraphs 1, 2, 3 and 4) - Falsification of SIUP, SIPI and SIKPI (Article 94A) - Operation of foreign ships without permission (Article 97 paragraphs 1, 2 and 3) - Captain who does not obtain a sailing permit (Article 98) - Fishing research without a permit (Article 99)
3	Illegal fishing	- Falsification of SIUP, SIPI and SIKPI by relevant officials (Article 100A) - Use of fishing tools/methods that do not comply with established sizes or standards (Article 85) - Building, importing or modifying fishing vessels that do not receive approval (Article 95) - Not registering fishing vessels (Article 96)
4	Violations of production and marketing of fishery resources	- Does not meet the requirements for appropriateness of fish management, quality assurance system and safety of fishery products (Article 89) - Importation or export of fishery products without a health certificate suitable for human consumption must also be fulfilled (Article 90)
5	Violations committed by small fishermen	- Violation of prohibitions as regulated in the Fisheries Law (Article 100B) - Violation of Article 7 paragraph (2)13 (Article 100C)

Source: Law Number 45 of 2009 concerning fisheries

The legal process and prosecution of illegal fishing cases in the Karimunjawa conservation area are by the resolution mechanism through Law No. 45 of 2009 concerning Fisheries, which involves law enforcement agencies, namely the Ministry of Maritime Affairs and Fisheries (KKP), in collaboration with the Indonesian Navy, Bakamla, Polri and Civil Investigators. The resolution of illegal fishing crimes in the Karimunjawa conservation area is covered in Law number 45 of 2009 concerning special fisheries (*lex specialis*) from the Criminal Procedure Code as a general regulation (*lex generalis*) (Asshiddiqie, 2013). In this case, the principle of *lex specialist derogate lex generalis* will apply, which means that if there is a conflict between laws, the specific law will trump the general law. If the special law has not been regulated, then the regulation will return to general law. The process of enforcing illegal fishing laws in the Karimunjawa conservation area includes (Kuemlangan et al., 2023).

3.1.1 Report/complain (Article 1 Number 24 and 25 KUHAP)

The report is the stage where there are indications that illegal fishing crimes have occurred in the Karimunjawa conservation area, which is known to the local community. This report can be carried out by local communities and Karimunjawa forest police (polhut) partner communities. Apart from reports made by the public, indications of illegal fishing crimes can be identified when carrying out routine patrols.

3.1.2 Investigation (Article 1 Number 5 KUHAP)

The investigation collects information and secures evidence from the Karimunjawa police or forest police (polhut). During the investigation, whether a criminal offence occurred or not will be determined. If a criminal act is found, the process continues at the investigation stage.

3.1.3 Investigation (Article 72 – Article 73B Law No. 45 of 2009 Concerning Fisheries)

Investigations into illegal fishing criminal cases are based on the Criminal Procedure Code unless otherwise stipulated in Law number 45 of 2009 concerning Fisheries. Investigators notify the public prosecutor by seven (7) days after the crime of illegal fishing is discovered to begin the investigation process. The investigation process was carried out by Civil Servant Investigators (PPNS) to collect more in-depth evidence regarding illegal fishing crimes in the Karimunjawa conservation area (Sjafii & Pratiwi, 2019). According to Taufiqurrahman et al. (2022), evidence found in illegal fishing cases is caught fish, GPS photo evidence on the ship, as well as the fishing gear used and marine biota still attached to the fishing gear. Evidence can be confiscated for the state or destroyed after obtaining approval from the Chairman of the District Court (Article 76A). Evidence can also be auctioned by the state auction body as regulated in legislation with the approval of the Chairman of the District Court. Evidence from seized fishing vessels can be given to fishermen, joint business groups, and fisheries cooperatives. If all the documents are complete, the civil servant investigator will submit the files to the court for the next processing stage.

Based on Article 73A of Law no. 45 of 2009 concerning Fisheries, Civil Servant Investigators (PPNS) have the authority to: a) receive reports or complaints from someone regarding criminal acts in the fisheries sector; b) summon and examine suspects or witnesses to hear their statements; c) bring and confront someone as a suspect or witness to hear their statement; d) search fisheries facilities and infrastructure that are suspected of being used in or being a place to commit criminal acts in the fisheries sector; e) stop, inspect, arrest, take and detain vessels or persons suspected of committing fisheries crimes; f) check the equipment and validity of fishing business documents; g) photograph suspects or evidence of criminal acts in the fisheries sector; h) bring in the necessary experts in relation to criminal acts in the fisheries sector; i) prepare and sign inspection minutes; j) confiscate evidence used in fisheries crimes; k) terminate the investigation; and l) carry out other actions that are legally accountable (Santoso et al., 2023).

3.1.4 Prosecution (Article 74 – Article 76C of Law No. 45 of 2009 Concerning Fisheries)

Prosecution in illegal fishing criminal cases in the Karimunjawa conservation area uses the Criminal Procedure Code as the basis for the prosecution process, except as specified in Article 74 of Law number 45 of 2009 concerning Fisheries. The prosecution is carried out by a public prosecutor whom the Attorney General has determined with criteria, namely having experience as a public prosecutor for at least 2 (two) years, having attended technical education and training in the field of fisheries, and being competent and having high moral integrity while carrying out his duties.

3.1.5 Examination in Court (Article 77 – Article 83A Law No. 45 of 2009 Concerning Fisheries)

The examination process at the fisheries court hearing is the same as the general criminal court hearing process. There is a difference stated in Article 77 of Law Number 45 of 2009 concerning Fisheries: fisheries crimes are examined, tried and decided by a panel of three (3) judges, two (2) of them are *ad hoc* judges and one (1) is a career judge. Career judges are appointed based on the decision of the Chairman of the Supreme Court. In contrast, *ad hoc* judges are appointed and dismissed by the president or on the recommendation of the Chairman of the Supreme Court. The fishery court's decision is in the form of acquittal, acquittal or sentence. So far, illegal fishing cases in the Karimunjawa conservation area have been resolved with criminal decisions. The court examination was conducted at the Jepara District Court, Central Java.

Based on Article 106 of Law Number 45 of 2009 concerning Fisheries, it is stated that as long as a fisheries court has not been established other than the one at the North Jakarta, Medan, Pontianak, Bitung and Tual District Courts, then the examination process outside the court area will still be examined, tried and decided in the competent District Court (Lestari, 2014).

3.1.6 Legal Remedies (Article 1 Number 12 KUHAP)

Legal action is a step the defendant or public prosecutor takes to obtain the right not to accept the court's decision. The legal remedies that can be taken are ordinary legal remedies and extraordinary legal remedies. Ordinary legal remedies include appeals and cassation, while extraordinary legal remedies consist of examination at the cassation level for legal purposes and judicial review (Lamsu, 2014).

3.1.7 Execution (Article 270-276 KUHAP)

Execution is implementing a judge's decision with permanent legal force (*inkracht*). The prosecutor carried out the execution. In the case of illegal fishing, investigators and fisheries supervisors have the authority to directly sink or burn foreign-flagged illegal fishing vessels even though there has been no court decision that has permanent legal force (*incracht*). This can be done based on sufficient preliminary evidence by the provisions of Article 69 paragraph (4) in conjunction with Article 76 A and Article 38 of Law Number 45 of 2009. The above regulations are further regulated in the Regulation of the Minister of Maritime Affairs and Fisheries of the Republic of Indonesia Number 37/PERMEN-Kr/2017 concerning Standard Operational Procedures for Law Enforcement Task Force for the Eradication of Illegal Fishing. In implementing these regulations, subjective and objective requirements must be met. In objective terms, there are provisions for cumulative terms and alternative terms. Apart from that, in the Circular Letter of the Supreme Court of the Republic of Indonesia Number 1 of 2015 concerning Ship Evidence in Fisheries Criminal Cases, it is emphasized that ship evidence can be sunk or destroyed. The execution, as described above, contradicts Article 28 D Paragraph (1) of the 1945 Constitution of the Republic of Indonesia and the Criminal Procedure Code (Saputra, 2020).

3.2 Efforts to Resolve the Crime of Illegal Fishing Through Non-Litigation Channels in the Karimunjawa Conservation Area

Efforts to resolve the crime of illegal fishing through non-litigation are a means used outside of court. Non-litigation efforts to resolve illegal fishing cases in the Karimunjawa conservation area are carried out by the Forest Police (Polhut) of the Karimunjawa National Park Office. Efforts to resolve the crime of illegal fishing through non-litigation channels can take less time than litigation efforts. Non-litigation efforts taken in the Karimunjawa conservation area against illegal fishing perpetrators occurred to meet daily food needs in tight conditions (Chapsos & Hamilton, 2019). This was done by making a statement letter that the perpetrator would not repeat the action, and if it happened again, the perpetrator would process through litigation. Apart from that, perpetrators must carry out mandatory reporting at the Regional National Park Management Section Office (SPNT). This was conveyed by Head of the Karimunjawa National Park Office/BTNKJ Forest Police Unit, PPNS BTNKJ and functional BTNKJ.

Apart from that, Agustian et al. (2021) also said that restorative justice was carried out for perpetrators of illegal fishing in the Karimunjawa conservation area. Restorative justice is an alternative resolution of criminal cases which initially focuses on punishment and is changed through a process of discussion and mediation involving the perpetrator, victim, family of the perpetrator and victim, as well as other related parties to jointly find an agreement as a way out of the problems that occur collectively fair for all parties by prioritizing restoration to its original condition so that harmonization can be realized in society (Ariyani & Mellyana, 2022; Surono, 2017). Restorative justice is applied because the perpetrator is a first-time illegal fishing resident, a resident of Karimunjawa and the losses incurred are not large. The form of restorative justice is an agreement, namely the obligation for illegal fishing perpetrators to build fish FADs and plant coral reefs and mangrove trees (Tara et al., 2024).

Restorative justice is a form of resolution through penal efforts at the investigation stage. Restorative justice is an alternative to resolving criminal cases using non-litigation channels. Settlement through restorative justice can be completed in a shorter time than settlement through litigation, provided that an agreement is immediately reached between the parties as a solution to the problem that occurred (Amaral, 2019). Non-penal efforts as a form of preventive effort in dealing with illegal fishing crimes in the Karimunjawa conservation area are carried out in a preventive and preemptive manner (Lewerissa et al., 2021; Sidi, 2019). Preemptive measures are carried out through education, outreach, community assistance, and development. Meanwhile, it is carried out preventively using routine patrols by forest police from the Karimunjawa National Park Office (Widyastuti, 2023).

4. Conclusion

Based on the discussion, it can be concluded that efforts to resolve the crime of illegal fishing in the Karimunjawa conservation area can be carried out through litigation or non-litigation. The settlement process through litigation goes through various procedures regulated in Law number 45 of 2009 concerning Fisheries in conjunction with Law Number

6 of 2023 concerning the Stipulation of Government Regulations instead of Law Number 2 of 2022 concerning Job Creation into Law and the Criminal Procedure Code, starting from the existence of reports/complaints, inquiries, investigations, prosecutions, examinations trials in court, legal action and implementation of court decisions. Litigation efforts take a long time and only sometimes result in justice felt by the parties. This is because litigation efforts focus more on legal certainty.

Non-litigation efforts focus more on the values of benefit and justice. Non-litigation efforts against perpetrators of illegal fishing in the Karimunjawa conservation area occurred at the investigation stage. This is realized by stating that the perpetrator will not repeat his actions. If he repeats it, he will be processed through litigation and must be reported to the Karimunjawa Regional National Park Management Section Office (SPTN). Apart from that, efforts to resolve the crime of illegal fishing in the Karimunjawa conservation area through non-litigation methods are also taken using restorative justice.

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