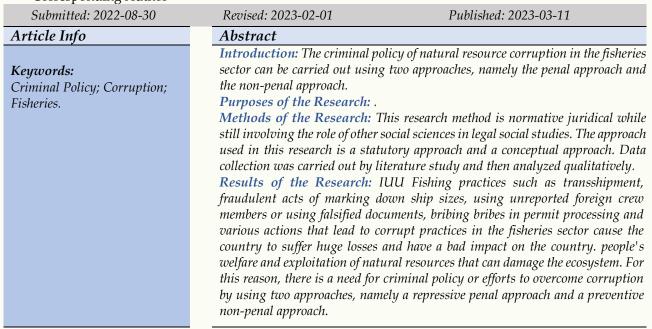


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Criminal Policy Corruption Natural Resources In The Fisheries Sector

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1. INTRODUCTION

In August 2017 the Ministry of Maritime Affairs and Fisheries of the Republic of Indonesia (hereinafter abbreviated as KKP RI) reported that Indonesia has 16, 056 islands¹ that have been named and verified, while the length of Indonesia's most recent coastline is 99,093 km²². With such a geographical location, making Indonesia rich in biological natural resources, artificial resources and environmental services that are important for people's lives.

Natural wealth needs to be managed in an integrated manner so that it can be utilized sustainably because the natural resources sector (hereinafter abbreviated as SDA) can make an important contribution to the national economy. The four types of natural resources (forest, oil palm plantations, mining, and fisheries), in the coordination and supervision of

¹ M Ambari, 2017, Dikukuhkan di New York Jumlah pulau Indonesia kini sebanyak 16.056 buah pulau, 18 Agustus 2017, <u>www.mongabay.co.id</u>

² Palupi Annisa Auliani (Editor), 2013, *Panjang Garis Pantai Indonesia Capai 99.000 kilometer*, 21 Oktober 2013, <u>www.nationalgeographic.grid.id</u>

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the Corruption Eradication Commission (hereinafter abbreviated as KPK), played a major role in the acquisition of Gross Domestic Product (hereinafter abbreviated as GDP) 2017 of Rp. 1,480.04 trillion or 10.89% of Indonesia's total GDP. The composition of the contribution of each SDA sector is as follows: Forestry (6.19%), Minerba Mining (43.13%), Plantation/Palm (23.62%) and Fisheries (27.07%). The natural resource sector in 2017 absorbed a workforce of 37.31 million people. Tax revenue and non-tax state revenue (PNBP) obtained is Rp. 99.91 trillion with a fairly low tax ratio of 3.87%³.

Especially for the potential of marine resources (fishery sector), the potential GDP of the marine sector is Rp. 70 trillion/year is not comparable to PNBP of Rp. 230 billion/year. One of the factors causing the non-optimal PNBP is the many practices of reducing or marking down the size or GT of ships, so that large ships actually fall into the GT < 30 category. The policy to overcome this is that as many as 15,800 vessels (> 7 GT) must be re-measured⁴.

It is not only the markdown on the size of the ship that makes the state's income from the fishery sector less than optimal, even though the potential of natural resources in the fisheries sector is very supportive. Former commissioner of the KPK La Ode M Syarief said that transshipment of fish caused state losses of around 100 trillion⁵. In line with the opinion of La Ode M Syarief, 10 years ago in his writing Y. A. Lewerissa⁶ explained that the practice of illegal fishing can be classified as a crime in the field of fisheries, but judging from the consequences, the state suffers losses and results in the inhibition of national development, therefore it can be classified as an economic crime.

Illegal Unreported and Unregulated (IUU) Fishing practices in the form of catching fish without having a Fishery Business License (SIUP) document, a Fishing Permit (SIPI); The act of transporting fish without having a Fish Carrier Ship Permit (SIKPI); The act of catching fish that violates statutory regulations in the field of fisheries, including not reporting, catching not at the fishing ground (fishing ground), using foreign crew members (ABK), and others; The act of catching fish by having fake SIUP, SIPI, and SIKPI documents, and original but fake; The act of transshipment at sea by foreign fishing vessels that are not in the same company; and catching fish using materials/tools that can damage the marine environment, are a number of issues related to licensing and supervision in the fishery sector that can open a blemish for the occurrence of criminal acts of natural resource corruption in the fishery sector. So that there is a need for criminal politics as an effort to overcome it.

2. METHOD

This research is normative juridical, namely legal research that puts the law as a system of norms. The system of norms in question is about principles, norms, rules, from statutory

³ Tim GP-SDA Direktorat Penelitian dan Pengembangan KPK, 2018, Nota Sistesis, Evaluasi Gerakan Nasinal Penyelamatan Sumber Daya Alam (GP-SDA) KPK, Jakarta, p. 4

⁴ Rimawan Pradiptyo dalam Tim GP-SDA Direktorat Penelitian dan Pengembangan KPK, 2018, Nota Sistesis Evaluasi Gerakan Nasional Penyelamatan Sumber Daya Alam (GP-SDA) KPK, Jakarta, p. 5

⁵ Rizky Alika, "Ex-KPK Commissioner: Transfer of Fish in the Sea Loses Rp. 100 T to the State", https://katadata.co.id/berita/2020/02/21/eks-komisioner-kpk-alih-muatan -fish-in-sea-loss-country-rp-100-t, accessed March 1, 2022

⁶ Y.A. Lewerissa, 2010, Praktek Illegal Fishing di Kepulauan Maluku Sebagai Bentuk Kejahatan Ekonomi, Sasi Journal, Vol 16 No 3 July – September 2010, p. 67

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regulations, court decisions, agreements and doctrines (teachings)⁷. Normative juridical research can also be interpreted as legal research carried out by researching library materials⁸. This research is also equipped with a socio-legal study which is an alternative approach that examines doctrinal studies of law⁹. The approaches in this research are the statutory approach and the conceptual approach. The statutory approach is used to research and criticize laws and regulations which in their normalization there are still shortcomings¹⁰ while the conceptual approach (conceptual approach) is used to understand concepts and theories¹¹ related to crime prevention policies. Natural resource corruption in the fisheries sector.

3. RESULTS AND DISCUSSION

3.1 Criminal Policy

Sudarto in Barda Nawawi Arief, suggests three meanings of criminal policy, namely: in a narrow sense, the overall principles and methods that form the basis of reactions to violations of the law in the form of crimes. In a broad sense, the overall function of the law enforcement apparatus, including the workings of the courts and the police. In the broadest sense, the overall policy taken through legislation and official bodies aimed at enforcing central norms in society. Sudarto also argues that criminal policy is a rational effort from the community in tackling crime¹². In line with what was formulated by Marc Ancel that criminal policy is the rational organization of the control of crime by society. Likewise, what was conveyed by G. Peter Hoefnagels that criminal policy is the rational organization of the social reaction to crime¹³.

According to G. Peter Hoefnagels, crime prevention efforts can be pursued by: a) The application of criminal law (criminal law application) b) Prevention without punishment (preventiona without punishment) and c) influencing the public's view of crime and prosecution through mass media (influencing views of society on crime and punishment/mass media. Crime can be divided into two, namely through the "penal" (criminal law) and through the "non-penal" (not/outside criminal law). The penal route is more repressive while the non-penal route is preventive¹⁴.

Efforts to overcome crime through non-penal means are more of a preventive measure, so the main goal is to deal with factors conducive to the occurrence of crime. These conducive factors, among others, are centered on social problems or social conditions that can directly or indirectly lead to crime. According to Barda Nawawi Arief in Lewerissa¹⁵,

⁷ Mukti Fajar ND dan Yulianto Achmad, 2010, *Dualisme Penelitian Hukum Normatif dan Hukum Empiris*, Pustaka Pelajar, Yogjakarta, p. 34

⁸ Soerjono Soekanto dan Sri Mamuji, 2010, Penelitian Hukum Normatif Suatu Tinjauan Singkat, Raja Grafindo Persada, Jakarta, p. 13-14

⁹ Sulistyowati Iriani, dkk, 2012, Kajian Sosio-Legal, Jakarta : Pustaka Larasan, p. 2-3

¹⁰ Munir Fuady, 2005, Filsafat dan Teori Hukum Postmodern, PT Citra Aditya Bakti, Bandung, Hal 103

¹¹ H.R.Otje Salman dan Anton F Susanto, 2005, *Teori Hukum, Mengingat, Mengumpulkan dan Membuka Kembali*, Refika Aditama, Bandung, p. 45

¹² Lucy. K. F. R. Gerungan et al, 2022, Criminal Law Policy in Combating Land Use Changes That Cause Environmental Problems, Proceedings LePALISSHE EAI, DOI 10.4108/eai.3-8-2021.2315062

¹³ Barda Nawawi Arief, 2000, *Kebijakan Legislatif dalam Penanggulangan kejahatan dengan Pidana penjara*, Penerbit Universitas Diponegoro, Semarang, p. 46

¹⁴ Abd Asis and Y. A. Lewerissa, 2021, Destructive Fishing Criminal Policy in Fisheries Management Area (WPP) 715 Seram Sea, Dialogos Journal Vol 25 No 2, p. 130

¹⁵ Y.A. Lewerissa, 2021, Kebijakan Kriminal perburuan Burung Wallacea di Kepulauan Aru, Jurnal Sasi, Vol 27 No 3, p. 303-313

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social conditions or the causes that are the factors causing the crime cannot be overcome only by using the means of penalizing because of the limitations of the means of punishment. For this reason, it needs to be integrated with non-penal means. Thus, it can be concluded that the penal effort is the use of criminal law (criminal sanctions) while the nonpenal effort in overcoming crime or criminal acts is a business or policy using means outside the use of criminal law (penal).

3.2 Corruption

Corruption in Indonesia today is systematic and endemic so that it is not only detrimental to state finances and the state economy, but has also violated the economic and social rights of the community at large. Corruption as an extraordinary crime requires extraordinary efforts (extra ordinary measure) to prevent and overcome it¹⁶. Corrupted state assets not only harm the state in a narrow sense but also have an impact on the lives of its people.¹⁷

The government's efforts to eradicate corruption in the reform era were marked by the issuance of various laws aimed at updating both the substance and institutional aspects. These laws include: Decree of the MPR RI Number XI/MPR/1998 concerning the Implementation of a State that is Clean and Free from Corruption, Collusion and Nepotism; Law Number 28 of 1999 concerning the Implementation of a Clean and Free State of Corruption, Collusion and Nepotism which created two new offenses, namely the collusion offense in Article 21 and the nepotism offense in Article 22; Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption crime; Law Number 30 of 2002 concerning the Corruption Eradication Commission (KPK); Decree of the President of the Republic of Indonesia Number 11 of 2005 concerning the Coordination Team for the Eradication of Criminal Acts of Corruption.

The definition of corruption has been clearly explained in 13 (thirteen) articles in Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 concerning the Eradication of Criminal Acts of Corruption. Based on these articles, corruption is formulated into 30 (thirty) forms/types of corruption crimes. The details of the thirty forms/types of corruption are as follows: Article 2; Article 3 ; Article 5 paragraph (1) letter a; Article 5 paragraph (1) letter b; Article 5 paragraph (2); Article 6 paragraph (1) letter a; Article 7 paragraph (1) letter b; Article 7 paragraph (2); Article 7 paragraph (1) letter d; Article 7 paragraph (1) letter b; Article 7 paragraph (1) letter c; Article 7 paragraph (1) letter d; Article 7 paragraph (2); Article 8 ; Article 9 ; Article 10 letter a ; Article 10 letter c; Article 10 letter c; Article 12 letter d; Article 12 letter d; Article 12 letter d; Article 12 letter f; Article 12 letter g; Article 12 letter h; Article 12 letter i; Article 13.

The thirty forms/types of criminal acts of corruption can basically be grouped as follows: 1). State financial losses (Article 2 and Article 3); 2). Bribery (Article 5 paragraph (1) letter a; Article 5 paragraph (1) letter b; Article 13; Article 5 paragraph (2); Article 12 letter

¹⁶ Hariman Satria, 2020, Kebijakan Kriminal Pencegahan Korupsi Pelayanan Publik, Jurnal Integritas (Komisi Pemberantasan Korupsi), Vol 6 No 2, p. 170

¹⁷ Aliyh Prakarsa dan Rena Yulia. " Model Pengembalian Aset (Asset Recovery) sebagai Alternatif Memulihkan Keuangan Negara dalam Perkara Tindak Pidana Korupsi, *Jurnal Hukum Prioris, Vol 6 No 1* (2017), https://doi.org/10.25105/prio.v6i1.1834

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a; Article 12 letter b; Article 11; Article 6 paragraph (1) letter a; Article 6 paragraph (1) letter b; Article 6 paragraph (2); Article 12 letter c and Article 12 letter d). 3). Embezzlement in office (Article 8; Article 9; Article 10 letter a; Article 10 letter b and Article 10 letter c); 4). Extortion (Article 12 letter e; Article 12 letter g and Article 12 letter h); 5). Cheating (Article 7 paragraph (1) letter a; Article 7 paragraph (1) letter c; Article 7 paragraph (1) letter d; Article 7 paragraph (2) and Article 12 letter h). 6). Conflict of interest in procurement (Article 12 letter i); 7). Gratification (Article 12 B in conjunction with Article 12 C).

In addition to the definition of a criminal act of corruption as described above, there are other types of crime related to corruption. Other types of criminal acts are contained in Articles 21, 22, 23 and 24 of Chapter III of Law no. 31 of 1999 in conjunction with Law No. 20 of 2001 concerning the Eradication of Criminal Acts of Corruption. Other types of criminal acts related to corruption, namely: Obstructing the process of examining corruption cases (Article 21); Do not give information or provide information that is not true (Article 22 in conjunction with Article 28); Banks that do not provide information on the suspect's account (Article 22 in conjunction with Article 29); Witnesses or experts who do not want to give information or give false information (Article 22 in conjunction with Article 35); A person who holds a secret position, does not provide information or give false information (Article 22 in conjunction with Article 36; Witness who discloses the identity of the reporter (Article 24 in conjunction with Article 31).

3.3 Natural Resources in Fisheries

Indonesia's marine area reaches 5.8 million km² with the sustainable potential of existing fisheries resources reaching 53.9 million tons/year consisting of capture fisheries at 6.4 million tons/year, marine aquaculture 46.7 million tons/year, brackish fisheries and fresh water 55.7 million tons/year and aquaculture 1 million tons/year. Indonesia has 11 fisheries management areas (hereinafter abbreviated as WPP) which are very wide with different ecosystem characteristics and fishery potentials. WPP-NRI 571 covers the Malacca Strait and Andaman Sea with a fishery potential of 414,385 million tons/year; WPP-NRI 572 covers the Indian Ocean west of Sumatra and the Sunda Strait with a fishery potential of 863,771 million tons/year; WPP-NRI 573 covers the Indian Ocean south of Java to the western part of the Timor Sea with a fishery potential of 929,330 million tons/year; WPP-NRI 711 covers the Karimata Strait, Natuna Sea and South China Sea with a fishery potential of 1,119,040 million tons/year; WPP-NRI 712 covers the Java Sea with a fishery potential of 923,289 million tons/year; WPP-NRI 713 covers the Makassar Strait, Bone Bay, Flores Sea and Bali Sea with a fishery potential of 643,410 million tons/year; WPP-NRI 714 covers Tolo Bay and Banda Sea with fishery potential of 329,089 million tons/year; WPP-NRI 715 covers Tomini Bay, Maluku Sea, Halmahera Sea, Seram Sea and Berau Bay with fishery potential of 631,704 million tons/year; WPP-NRI 716 covers the Sulawesi Sea and the northern part of Halmahera Island with a fishery potential of 445,115 million tons/year; WPP-NRI 717 covers Cenderawasi Bay and the Pacific Ocean with a fishery potential of 603,888 million tons/year. WPP-NRI 718 covers the Aru Sea, Arafura Sea and the East Timor Sea with a fishery potential of 1,987,261 million tons/year.

Utilization and management of existing fishery resources has not been able to provide welfare for all Indonesian people, especially those living in coastal areas close to these resources. There are still various inequalities in the management of natural resources in the fishery sector that cause state losses of billions of rupiah. Bribery and extortion occur in all lines of administration, from the planning, utilization to monitoring stages. Although the Employment Creation Law provides ease of licensing that allows for the growth of largescale industries in coastal and marine areas¹⁸, or policies made by local governments to preserve the environment in the area¹⁹ including in the marine area, it can provide reproach for unscrupulous officials who commit corruption with their authority. There is a conflict of interest between its existence as a state apparatus in charge of granting permits and supervising the process of managing fishery resources so that it can run well, but on the one hand, there is an interest in enriching oneself and others so that it seems that there is omission and turns a blind eye to various fraudulent practices. so that the potential for corruption is very likely to occur in the licensing and supervision of natural resources in the fisheries sector.

If this is allowed to continue without any attempt to find a solution for solving the problem of corruption in natural resources in the fisheries sector, it will certainly cause various other problems such as fuel subsidies enjoyed by ships that are not entitled to it, reduction of Non-Tax State Revenue (PNBP). The job opportunities for Indonesian fishermen are reduced because illegal ships are foreign vessels using foreign crew members, catches brought directly abroad cause a loss of foreign exchange and reduced value added opportunities from the fishing industry and moreover there is a threat to the preservation of fish resources. because the catch is not detected either in type, size or number. For this reason, an integral policy is needed, namely a combination of penal and non-penal policies in tackling corruption in the natural resources sector in the fisheries sector.

3.4 The Criminal Policy of Natural Resources Corruption in the Fisheries Sector

As described in the previous section, Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 contains 7 categories of criminal acts of corruption, namely state financial losses, bribes, embezzlement in office, extortion, fraudulent acts, conflict interest in procurement and gratuities. The fisheries sector, which contributes greatly to state revenues, is highly susceptible to corrupt practices.

The movement of fish in the middle of the sea (transshipment) causes state losses of around 100 trillion. Fraudulent acts that are often carried out in the fisheries sector are actions to reduce or mark down the size or GT of ships, so that large ships actually fall into the GT < 30 category, the act of catching fish by having falsified documents, using crew members (ABK) Foreigners who are not reported or use fake documents, of course, bring losses to the country's economy. The practice of bribery, extortion and gratification between authorized officials and entrepreneurs/business actors is often encountered in terms of licensing and supervision. These corrupt practices affect the integrity of authorized officials, and for fishery business actors, especially capture fisheries entrepreneurs will exploit natural resources illegally (IUU Fishing) and have an impact on damage to the natural resource ecosystem.

One of the commitments of the Ministry of Maritime Affairs and Fisheries in eradicating corrupt practices in the fisheries sector is the presence of the Minister of Marine Affairs and Fisheries of the Republic of Indonesia Regulation No. 12 of 2021 concerning Gratification Control in the Ministry of Marine Affairs and Fisheries. However, often what is targeted is the problem (corruption) not seeing the root cause of why corruption occurs

¹⁸Firman Akbar Anshari dan Arie Afriansyah, Marine and Fisheries Development Policy After The Enactment of The Job Creation Act, Jurnal Sasi, Vol 28 Issue2, Juni 2022, p. 199-2013

¹⁹ H Rhiti, and Y. Sri Pudyantmoko. "Kebijakan Perizinan Lingkungan Hidup di Daerah Istimewa Yogjakarta " *Mimbar Hukum-Fakultas Hukum Universitas Gadjah Mada 28, No 2, June 2016*, p. 265, https://doi.org/10.22146/JMH.16725

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in the fisheries sector. So that regulations are often made, there must be large criminal sanctions in the hope of providing a deterrent effect for criminals, but the root of the problem cannot be solved. Thus, there is a need for an arrangement in the licensing sector which is a major reproach and provides room for corrupt practices. The regulations that are made must meet the principles of good governance and are made by competent people/experts without any conflict of interest between the regulators and the contents of the regulations themselves.

There is a weakness in terms of the penal approach, so the criminal politics of eradicating natural resource corruption in the fisheries sector can be carried out with a nonpenal approach. Corruption practices that are closely related to the occurrence of illegal, unreported, unregulated fishing (IUU Fishing) practices require a multi-sectoral approach so that cooperation and commitment to eradicate corruption are needed from all sectors directly involved in the fisheries sector. In addition, there is socialization and inculcation of anti-corruption values as well as making the work environment of the Ministry of Maritime Affairs and Fisheries at the central level and the Maritime Affairs and Fisheries Service at the regional level an Integrity Zone. Likewise, instilling anti-corruption values for business actors so that they can prevent them from carrying out corrupt practices, especially in terms of licensing.

4. CONCLUSION

Policies for overcoming corruption in natural resources in the fisheries sector can be pursued using two (2) integrated approaches, namely the penal and non-penal approaches. The problem of corruption is loaded with various complexities so that it is necessary to reform the legislation but it is also accompanied by reforms in all aspects related to the problem of corruption itself.

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