The Application of Fine Penalty Against the perpetrators of The Crime of Illegal Fishing

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Abstract

This research goal is to understand about the application of fine penalty against perpetrators of the crime of illegal fishing at Surabaya District Court. Which is discussing about the implementation of fine penalty against the perpetrators of the crime of illegal fishing and also what is the obstacles in the implementation of fine penalty in illegal fishing against the perpetrators of the crime of illegal fishing. This research using sociological juridical method also known as juridical empirical, in the form of reviewing law clause that applicable and what actually happen in society. The source of the data come from in literature, applicable law rules, and then interview with judge in Surabaya District Court, also with prosecutor in Tanjung Perak Domestic Prosecutor’s office. At the research final result there is found about the application of fine penalty not fully working as it should be because convict prefer to serve the alternative of fine penalty which is in confinement. Subsequently in the implementa
tion itself there is found obstacles in the application of fine penalty which is the perpetrator tend to choose the alternative punishment, having economy difficulty, and the alternative punishment that given is quite easier to do rather than pay the fine. with there is obstacle in it, there is needed some effort so that the fine penalty can be applicated as it should be.

Keywords: Illegal fishing, Fine Penalty, Criminal Sanction

I. Introduction

Indonesia is nation with the wealthiness of natural resources. From what we know Indonesia categorized into one of the largest nation in the world with total of 5,193,250 km² country wide (contain the land and the island). The wide of the island is larger than the land area, which is one-third of Indonesia is land area and two-third is the island, because of indonesia often called as maritime country, according to Wahana Lingkungan Hidup Indonesia (WALHI) note. Indonesia is the world’s largest island country, having 17,480 island with the coastline as long as 95,181 km. With that large of ocean size, in Indonesia there are more or less 6.4 ton fish resources that the whole of it spread into 9 Indonesia fish territory management. But, with that all potential owned, until now Indonesia still struggling to maximise the utilization ocean resources they owned. Because alot of fish resources are robbed and utilized not following the rules that already regulated by the law rules.

With the availability of facilities and infrastructure control in Indonesia ocean to eradicate illegal fishing is something important, considering how big Indonesia ocean territory is. To control directly in the field there are ships that are doing commercial fishing activities using patrol boat, either owned by Maritime Affairs and Fisheries
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Minister as well cooperating with Indonesian Navy, Maritime Police, and Indonesian Air Force. Besides that there is neediness a rules that regulating about illegal fishing as be found in the legislation of fisheries law No. 31/2004 about fishery Jo. Legislation fisheries law No. 45/2009 about the changes of legislation No. 31/2004 about fishery but that rules need to be uphold as it should be so that the criminal perpetrator in illegal fishing not repeating their deed and also felt the pain of the criminal sentences.

Related about illegal fishing criminal cases, the author previously already did some research towards cases that trialed in Surabaya District Court, there is atleast 4 cases already decided the sentence by Surabaya District Court from year 2017-now. In 2019 there is no cases about illegal fishing, in 2018 there is 1 illegal fishing case that already sentenced by Surabaya District Court with the case number is 1538/Pid.B/LH/2018/PN.SBY, which is in that case there is 4 people that do illegal fishing activities in group, that their deed is fish catching using explosives because of their deed the perpetrator penalized with 6 months imprisonment, and monetary charge in the amount of Rp. 1,500,000,- with the alternative is 1 month imprisonment. Meanwhile in 2017 Surabaya District Court trialing 3 illegal fishing cases with the case number 1201/Pid.B/LH/2017/PN.SBY with the deed is fish catching using explosive and conducted by 3 people with the sentence is 4 months imprisonment, monetary charge in the amount of Rp. 5,000,000,- with the alternative is 1 month imprisonment. And then there is another case with the case number 3311/Pid.B/LH/2017/PN.SBY that conducted by 2 people with their deed is doing fish carriage and marketing but they dont have SIUP because of that they penalized with 1 month imprisonment, and monetary charge in the amount of Rp. 100,000,000,- with the alternative 2 months imprisonment. And then the third case with number 3767/Pid.B/LH/2017/PN.SBY in that verdict 4 people with the deed is having explosive materials and sentence with 1 year and 2 months imprisonment, and with no monetary charge or alternative imprisonment. From 4 of them cases, the three cases there is monetary charge but during the author doing the research in Surabaya District Court explained that in the application of fine penalty not fully working as it should be and it contains some obstacle that causing the application of the fine penalty not working well. Because of that the author interested to do research with the goal is to understand the implementation of fine penalty against illegal fishing perpetrator in
Surabaya District Court, also to find out about the obstacle in the application of fine penalty against illegal fishing perpetrator in Surabaya District Court.

II. Method

The research method that used by the author are Sociological or Empirical legal research, in line with the Sociological or Empirical legal research type of research it consist of the study of legal identification (unwritten) and the study of the effectiveness of the law. This empirical research data primary sourced from some interviews with the judges in Surabaya District Court and also prosecutor from Tanjung Perak Domestic Prosecutor’s office and the secondary data is from journal, legislation and other research report. Empirical legal research is maining to examines the law as an object of study. Also this research is something that based on what actually happen in society and to found about some facts and some data that needed and then the data that already collected will be analyzed the problem and finding the solution in that problem.

III. Main Heading of the Analysis or Results

Table 1. Criminal Case of Illegal Fishing in Surabaya District Court

<table>
<thead>
<tr>
<th>No</th>
<th>Case Number</th>
<th>Registration Date</th>
<th>Cases</th>
<th>The Parties</th>
<th>Case Status</th>
</tr>
</thead>
</table>
From that picture there is 4 cases about illegal fishing the author found on SIPP. But at the process of research the author only got 3 file cases, but one of them not containing about fine penalty in it. So the author only doing deep research on 2 cases only that is in 2018 with case number 1538/Pid.B/LH/2018/PN.SBY, and then 2017 with case number 1201/Pid.B/LH/2017/PN.SBY. At the case number 1538/Pid.B/LH/2018/PN.Sby. there is 4 perpetrator that got caught conducting illegal fishing using explosive at giliraja, kabupaten sumenep. Because of that the judges sentence them with 6 months imprisonment and monetary charge in the amount of Rp. 1.500.000.- if they not pay the fine penalty then there is alternative with 1 month additional imprisonment.

And then for case number 1201/Pid.B/LH/2017/PN.SBY there is 3 perpetrator that got caught conducting illegal fishing using explosive. From that the judges sentence them with 4 months imprisonment and monetary charge in the amount of Rp. 5.000.000,- with alternative if they not pay it, they have to do 1 month additional imprisonment.

From two cases that the author do research, which is case number 1538/Pid.B/LH/2018/PN.Sby and case number 1201/Pid.B/LH/2017/PN.SBY. there is found that both of the cases the perpetrator not serve out the fine penalty that the judges sentence to them, so that the meaning of it the perpetrator rather serve out in jail rather than paying the fine penalty. The reason usually because the fine penalty that sentence to them is beyond from their economy ability.

And the implementation of fine penalty in illegal fishing when the author do research in Surabaya District Court, the author collecting it the data from interview with the judges in Surabaya District Court that the process is, the first part is from judges sentence to the perpetrator, they have 7 days to decide whether accept the sentence or against it with
do legal action on it. From both cases there is no legal action from both perpetrator because of that the sentence can be executed immediately. Public attorney is the one who have responsibility to be the executor of the sentence. As it says on article 270 KUHAP “The execution of a judgment that has become final and binding shall be carried out by the public attorney, for which purpose a copy of the judgment shall be sent to him/her by the clerk” but for time of the execution itself is when the public attorney received the copy of judgment that has become final and binding from the clerk, if the public attorney not yet have it so the sentence cannot be executed to the prisoners. If the public attorney already got the copy of it then the sentence can be executed. On the legislation of fisheries law No. 31/2004 about fishery Jo. Legislation fisheries law No. 45/2009 about the changes of legislation No. 31/2004 about fishery that the regulation about the sentence containing imprisonment and monetary charge to perpetrator, but if they couldn't pay the monetary charge then they should serve out additional imprisonment as the alternative option. After that, The public attorney make the execution reports (BA-8) to prison officer and attach the copy of the judgment that has become final and binding, and execution warrant (P-48), execution report (BA-8), and arrest warrant also the arrest report if the prisoner already be arrested in jail before.

Meanwhile for the fine penalty execution it started after the prisoner serve out the jail imprisonment that reduced with the penalty they already serve in prison. But before that, the prisoner will be asked by the public attorney that after the judgment, are they capable to pay the fine penalty or not. So that the public attorney could make the statement letter (D-2) about the fine penalty. From the amount of the fine nominal that convicted to the perpetrator of illegal fishing that usually they are small fisherman so with their economic ability they couldn’t pay the monetary charge. So they should be serve out the additional imprisonment as it the alternative for them who couldn’t pay the monetary charge. But it’s not closing the possibility that they could pay it in the middle of their imprisonment serve.

Regarding the regulation on the article 273 (1) that says that if the judgment to the prisoner penalized monetary charge, to the prisoner shall be given a period of month to pay. Whilst at the article 273 (2) says that if there strong reason the limit time could be extended for at most one month. From author perspective that this could be problem where is das sollen (what to be desired) in this case about the implementation of fine
penalty article 273 (1) & (2), different with das sein (what the reality) in this cases at the application of fine penalty what actually happen in society that according Mr. Yusuf Akbar Amin, as Public Attorney in Tanjung Perak Domestic Prosecutor’s office. He explained that the payment of fine penalty not actually implemented like the KUHAP regulation. But more based on the how long the prisoner judgment in the jail is.

Based on that explanation the author understand that about the effectiveness in the application of fine penalty against illegal fishing perpetrator not yet maximised because the prisoners that do illegal fishing in author cases found is having economic difficulty and make them couldn’t pay the fine penalty. With the prisoner rather choosing to do the additional imprisonment which is the alternative of the fine penalty. It makes the rule of adding fine penalty in the fishery legislation become not effective. And the goal of adding of fine penalty to the perpetrator that do illegal fishing to feel discouraged to them isn’t achieved. Besides that in the application of fine penalty itself there is no terms that make the defendant have to pay the fine penalty that sentence to them. Which is in the end of it the applicaion of fine penalty in illegal fishing cannot be forced to the perpetrator.

In the implementation of the application fine penalty against perpetrator of the crime of illegal fishing based on the data that author collected from the interview with the judges in the Surabaya District Court there is obstacle in the application of fine penalty which is

1. The Perpetrator prefer to do the alternatives punishment rather than have to pay the fine penalty penalized to them
2. The copy of the written judgment that the clerk write not given on time or late to the Domestic Prosecutor’s office that involved
3. The Perpetrator didn’t have the economic ability to pay the monetary charge that have been penalized to them
4. The alternatives that given to them tend to be easier to do rather than have to pay the fine penalty

To those obstacle there is needed some revision on the implementation of the fine penalty itself, which is could be in the form of regulation that needed to be changed so that the fine penalty could be applicated well, and then from society perspective also could be
impacted on the effectiveness in the fine penalty application, also to anticipate the problematic in the application of fine penalty, at the aspect of society also need to be paid attention with.

IV. Conclusion

According to that research result and explanation as described above we can conclude that:

1. The Implementation of the application of fine penalty against the perpetrator of criminal case of illegal fishing itself in overall almost working as the procedural in “Surat Jaksa Agung Muda Tindak Pidana Umum” number B-235/E/3/1994, 4 may 1994 that explaining about the execution process of sentence implementation, however there is other aspects that affecting the implementation of fine penalty couldn’t be held, which is at the process of fine penalty payment period of time that regulated in KUHAP there is given 1 (one) month time payment in strong reason can be extended 1 (one) more month, but the truth is in the reality that thing is different, to defendant they still have chance to pay the fine penalty as long as they still undergo their jail sentence. And then about the effectiveness of this application of fine penalty still far away from the goal, because of that the defendant that sentence fine penalty is defendant who don’t have the ability to pay the fine penalty that sentence to them, and the goal is to give deterrent effect to the perpetrator is not reached. So can be concluded that if the implementation or the held of fine penalty not go well as it should be because most of the prisoner in illegal fishing case who sentence with fine penalty rather to choose to do alternative sentence which is jail imprisonment additional. And also at the process of the application of fine penalty in the reality in the society not exactly like in the article 273 (1) and (2) KUHAP

2. The obstacles in the implementation of the application of fine penalty itself against the perpetrator of illegal fishing is at the process of execution in the court sentence is delayed because the copy is not yet received by public attorney, and then the other obstacles is the amount of the fine that sentence to the defendant is too high. From that obstacles it make the implementation of fine penalty against the defendant become hard to reached, and make the fine penalty can be avoided by doing the alternative sentence that is jail imprisonment.
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Footnotes:
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