

Problematics Of The Establishment Of Indonesian Fisheries Specific Court

By Maya Shafira, Muhammad Akib, Eddy Rifai, Mashuril Anwar

Research Article

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Problematics Of The Establishment Of Indonesian Fisheries Specific Court

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Abstract

Special Fisheries Court Has A Strategic Role In Law Enforcement Fisheries Crime In Indonesia. But In Its Development, The Establishment Of A Special Fisheries Court Has Not Been Able To Protect Indonesia's Fisheries Resources From Harmful Practices. Therefore, To Optimize The Role Of The Special Fisheries Court In The Enforcement Of Fisheries Criminal Offenses, Many Records Need Attention. This Study Aims To Examine And Analyze The Problems In The Formation Of The Special Court Of Fisheries. This Study Uses A Normative Legal Approach That Is Carried Out By Examining Library Materials Or Secondary Data. The Results Showed That The Formation Of The Special Fisheries Court Raises Various Problems, Namely The Dualism Of Law Enforcement In Criminal Fisheries, The Inconsistency Of The Legal Basis For Its Formation, As Well As The Limitations Of Absolute Competence And Relative Competence Of The Special Court Of Fisheries.

Keywords: Special Fisheries Court, Law Enforcement, Fisheries Criminal Acts

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Introductuon

Law Enforcement In The Field Of Fisheries Plays A Strategic Role In Realizing Sustainable Fisheries Development. The Indonesian Government's Efforts To Tackle Criminal Acts In The Fisheries Sector Are Manifested By Criminalizing Acts That Cause Damage To Fishery Resources. The Criminalization Policy Is Outlined Through The Formation Of Law Number 31 Of 2004 As Amended By Law Number 45 Of 2009 Concerning Fisheries (Hereinafter Referred To As The Fisheries Law). To Provide Legal Certainty In Enforcing Criminal Law In The Field Of Fisheries, The Fisheries Law Specifically Regulates The Special Fisheries Court, Whose Jurisdiction Covers All Fishery Crimes That Occur In All Fisheries Management Areas Of The Republic Of Indonesia (Wppri).

The Establishment Of A Special Fisheries Court Is A Response To The Powerlessness Of Existing Judicial Institutions In Resolving Cases In The Fisheries Sector. The Formation Of A Special Fisheries Court Is More Prospective To Safeguard Indonesia's Fishery Potential, Which Is A Source Of Income For The Community And The State. Furthermore, The Establishment Of The Special Fisheries Court Aims To Increase The Efficiency And Effectiveness Of Criminal Law Enforcement In The Fisheries Sector. Until Now, Indonesia Has Ten Special Fisheries Courts, Namely The North Jakarta District Courts, Medan, Pontianak, Bitung, Tual, Tanjung Pinang, Ranai, Ambon, Sorong, And Merauke District Court. The Existence Of A Special Fisheries Court Is One Of The Cornerstones Of Fundamental Changes In The Enforcement Of Criminal Law In The Fisheries Sector. The Role Of The Special Fisheries Court Is Very Much Needed In Upholding Justice And Maintaining The Potential Of Indonesia's Fisheries. However, Along The Way, Fisheries Crime Is Still An Unsolved Problem Due To The Complexity Of The Fisheries Crime Problem. So There Are Notes That Need Attention To Optimize The Role Of The Special Fisheries Court.

To Answer Problems Related To The Problems In Establishing A Special Fisheries Court, This Study Uses A Normative Legal Approach, By Examining Library Materials Or Secondary Data. Furthermore, The Secondary Data Obtained Is Compiled Systematically, To Obtain A Comprehensive Picture Of Legal Principles, Legal Principles, And Legal Provisions. Then The Data Were Analyzed Qualitatively And Logically And Studied Comprehensively And Presented With Descriptive Analysis.

Discussion

A. Dualism Of Law Enforcement Of Fisheries Crime

The Process In Court Aims To Obtain A Decision On A Case Being Tried. Court Decisions Are A Matter Of Great Anticipation For The Litigant To Resolve Disputes Between Those Who Are Just And Legally Certain. As A Judicial Institution, The Special Fisheries Court Of Course Puts Its Decision As A Crown And A Symbol Of Its Dignity. To Achieve The Objectives Of Punishment In This Case Overcoming Criminal Acts In The Fisheries Sector, Law Enforcement Is Required Following The Provisions Of The Fisheries Law.

The Large Potential Of Indonesian Fisheries Has Resulted In Many Illegal Actions Related To Illegal Fishing, One Of Which Is At The Special Fisheries Court At The Tanjung Pinang District Court. Throughout 2019, 14 Fisheries Criminal Cases Were Tried By The Special Fisheries Court At The Tanjung Pinang District Court As Shown In The Table Below:

Table 1: Fisheries Criminal Cases At The Tanjung Pinang District Court 2019

Number	Decision Number	Decision
1	3/Pid.Sus-Prk/2019/Pn Tpg	Idr 400,000,000 Fine, Subsidiary 2 Months In Prison
2	23/Pid.Sus-Prk/2019/Pn Tpg	Idr 300,000,000 Fine
3	25/Pid.Sus-Prk/2019/Pn Tpg	Idr 50,000,000 Fine
4	26/Pid.Sus-Prk/2019/Pn Tpg	Idr 150,000,000 Fine
8	27/Pid.Sus-Prk/2019/Pn Tpg	Idr 150,000,000 Fine
9	28/Pid.Sus-Prk/2019/Pn Tpg	Idr 150,000,000 Fine
10	29/ Pid.Sus-Prk/2019/Pn Tpg	Idr 150,000,000 Fine
11	30/ Pid.Sus-Prk/2019/Pn Tpg	Idr 150,000,000 Fine
12	31/ Pid.Sus-Prk/2019/Pn Tpg	Idr 150,000,000 Fine
13	32/ Pid.Sus-Prk/2019/Pn Tpg	Idr 150,000,000 Fine
14	33/ Pid.Sus-Prk/2019/Pn Tpg	Idr 50,000,000 Fine

Table 1 Above At Least Provides An Illustration That The Establishment Of The Special Fisheries Court Has Not Been Able To Protect Indonesia's Fishery Resources From Criminal Acts. The Indonesian Government Has Made Various Efforts To Tackle Crimes In The Fisheries Sector, Manifested By Criminalizing Acts That Disturb And Cause Damage To Fishery

Resources And Its Ecosystem. In Its Development, Two Legal Instruments Are Regulating The Establishment Of A Special Fisheries Court, Namely Law Number 31 Of 2004 Concerning Fisheries And Law Number 45 Of 2009 Concerning Amendments To Law Number 31 Of 2004 Concerning Fisheries. Law Number 31 The Year 2004 Previously Regulated The Establishment Of A Special Fisheries Court Which Has The Authority To Examine, Adjudicate, And Decide Criminal Acts In The Fishery Sector. Based On Law Number 31 Of 2004, The Legal Politics Of The Establishment Of The Special Fisheries Court Is To Increase The Efficiency And Effectiveness Of Law Enforcement On Fisheries Crimes. However, The Existence Of Law Number 31 Of 2004 Is Deemed Incapable Of Overcoming Technological Developments And Criminal Acts In The Fisheries Sector. So That In 2009 The Government Enacted Law Number 45 Of 2009 Concerning Amendments To Law Number 31 Of 2004 Concerning Fisheries. Implicitly, The Legal Politics Of The Establishment Of The Special Fisheries Court In Law Number 45 Of 2009 Is To Optimize Law Enforcement In The Fisheries Sector. Therefore, A Fundamental Change From Law Number 45 Of 2009 Is The Expansion Of The Jurisdiction Of The Special Fisheries Court Which Covers The Entire Fisheries Management Area Of The Republic Of Indonesia (Wppri), As Stipulated In Article 71 A Of Law Number 45 Of 2009.

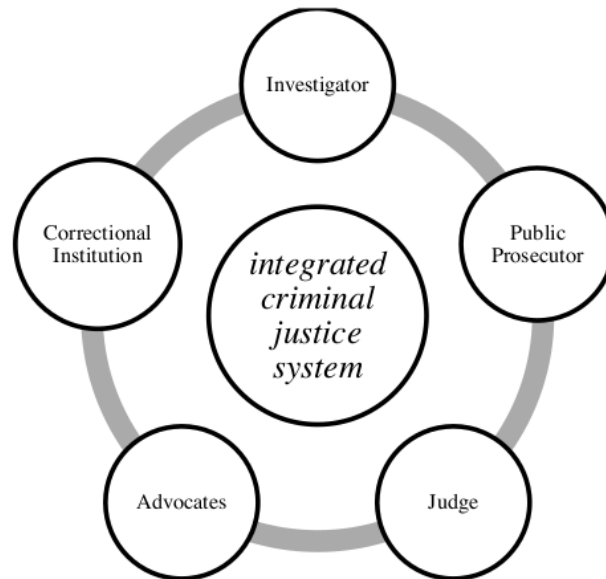
In Terms Of Statutory Aspects, Law No. 45/2009 On Fisheries Is Better Than Law No. 31/2004 On Fisheries. From The Aspect Of The Legal Area, Law Number 31 Of 2004 Determines The Relative Competence Of The Special Fisheries Court To Cover The District Court, While According To Law Number 45 Of 2009 Fisheries, The Relative Competence Of The Special Fisheries Court Covers The Fisheries Management Area Of The Republic Of Indonesia. Law Number 31 Of 2004 Does Not Contain An Explanation Of The Position Of The Special Fisheries Court But Based On Law Number 45 Of 2005 The Special Fisheries Court Is Located In A District Court.

The Change In The Legal Politics Of The Formation Of The Special Fisheries Court Has Created New Problems, Namely Relating To Law Enforcement On Criminal Acts In The Fisheries Sector. With The Establishment Of The Special Fisheries Court, It Creates Dualism In Law Enforcement Of Fisheries Crime. It Is Said So Because, For Regions That Do Not Yet Have A Special Fisheries Court, Fisheries Criminal Cases Are Tried By A General Court. Examination Of Fisheries Criminal Cases Conducted By General Courts Creates Legal Uncertainty, Due To Differences In Human Resources, Systems, And Processes For Handling Them. Also, As A Sub-

System Of The Criminal Justice System, The Special Fisheries Court Will Be Linked To Multi-Legal Regimes And Other Sub-Systems Of Criminal Justice Such As Ppns Of The Ministry Of Marine Affairs And Fisheries, Indonesian Navy Investigator Officers, Marine Police, And Marine Security Agency Which Are Authorized In Investigations. Fishery Crime. The Existence Of This Overlapping Authority Will Have An Impact On The Examination At The Court Hearing.

In Connection With The Above Arguments, The Criminal Law Enforcement System In The Fisheries Sector Needs To Pay Attention To The Principles Of Criminal Law Enforcement In Indonesia Which Uses The Concept Of An Integrated Criminal Justice System. This Concept Calls For Cooperation Between The Criminal Justice Sub-System Involved In Enforcing Criminal Law In The Fisheries Sector. The Use Of The Concept Of An Integrated Criminal Justice System In Criminal Law Enforcement In The Fisheries Sector Is Necessary Considering That The Settlement Of Fisheries Criminal Cases Is Very Dependent On The Variety Of Law Enforcers Who Are Given Authority, Which Is Counterproductive To Law Enforcement Efforts Itself.

Figure 1: Integrated Criminal Justice System



Law Enforcement Authority Disputes At Sea Are Closely Related To The Settlement Of Fisheries Criminal Cases. Authority Disputes At The Investigation Stage Will Have An Impact On The Stage Of Examination In Court Proceedings. The Chaos At The Investigative Level Has Indirectly Resulted In The Inclusion Of Various Criminal Cases At The Level Of Examination In Court. Therefore, Coordination Between Law Enforcers In Enforcing Fisheries Criminal Law Is Very Important To Prevent Different Interpretations Of The Law Among Law Enforcers. Integrated Cooperation Between The Criminal Justice Sub-System In Enforcing Criminal Law In The Field Of Fisheries Is A Must Because The Failure Of One Of The Sub-Criminal Justice Systems Will Affect The Work Of Other Components, Especially The Special Fisheries Court.

B. Setting Inconsistencies

The Establishment Of A Special Fisheries Court Is Aimed At Overcoming Increasingly Complex Problems In The Fisheries Sector. So That It Takes A Special Judicial Institution That Has Professional Human Resources And Understands Problems In The Fisheries Sector. Therefore, Based On The Provisions Of Article 71 Paragraph (1) Of The Fisheries Law, A Special Fisheries Court Is Established Which Is Authorized To Adjudicate Criminal Fisheries In The Indonesian Fisheries Management Area.

To Uphold Justice And Protect Indonesia's Marine Wealth, The Role Of The Special Fisheries Court Is Urgently Needed. As An Archipelagic Country, Indonesia Has The Right To Enforce The Law Against Fishery Crimes That Occur In The Indonesian Fisheries Management Area (Wpp Ri). The Establishment Of The Fisheries Court Is Intended To Increase The Effectiveness Of Law Enforcement Against Fisheries Crimes. To Date, There Are 84 Ad Hoc Fisheries Judges Spread Across Ten Fishery Courts In Indonesia As Shown In The Following Table:

Table. 3: Number Of Ad Hoc Fisheries Courts And Judges For The Period 2019-2022

Number	Special Fisheries Court	2019		2020		2021		2022	
		Retired	Active	Retired	Active	Retired	Active	Retired	Active
1.	North Jakarta District Court	-	2	-	2	-	2	2	0
2.	Medan District Court	-	7	4	3	-	3	3	0
3.	Tanjung Pinang District Court	-	7	5	2	-	2	2	0
4.	Ranai District Court	-	2	1	1	-	1	1	0
5.	Pontianak District Court	-	5	4	1	-	1	1	0
6.	Bitung	-	2	1	1	-	1	1	0

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	District Court								
7.	Tual District Court	-	2	-	2	-	2	2	0
8.	Ambon District Court	-	3	-	3	-	3	3	0
9.	Sorong District Court	-	1	-	1	-	1	1	0
10.	Merauke District Court	-	2	-	2	-	2	2	0
Total		-	33	15	18	-	18	18	0

As Explained Above, The Establishment Of A Special Fisheries Court Raises Various Problems. One Of The Fundamental Problems In Establishing The Special Fisheries Court Is The Legal Basis For Its Establishment. The Establishment Of A Special Fisheries Court Was Only Established By Order Of Article 71 Of Law Number 45 Of 2009 Concerning Fisheries. Meanwhile, According To The Provisions Of Article 24a Paragraph (5) Of The 1945 Constitution, The Establishment Of A Judicial Body Under The Supreme Court Is Established By Law. If It Is Related To The Decision Of The Constitutional Court Number: 012-016-019 / Puu-IV / 2006, The Phrase "With" In Article 24a Paragraph (5) Of The 1945 Constitution Means That It Must Be Regulated By A Separate Law. Furthermore, If We Look Closely, All The Special Courts In Indonesia Are Currently Established With A Special Law, Namely: "The Religious Courts Were Formed By Law Number 50 Of 2009 Concerning The Religious Courts; Military Courts Are Regulated By Law No. 31/1997 On Military Courts; The State Administrative Court Is Regulated By Law Number 9 Of 2004 Concerning Amendments To Law Number 5 Of 1986 Concerning State Administrative Courts; The Tax Court Is Regulated By Law Number 14 Of 2002 Concerning The Tax Court; Human Rights Courts Are Regulated By

Law Number 26 Of 2000 Concerning Human Rights Courts; The Commercial Court Was Established By Law Number 37 Of 2004 Concerning Bankruptcy And Postponement Of Debt Payment Obligations, And The Juvenile Court Is Regulated By Law No. 3/1997 On Juvenile Justice, And The Industrial Court Is Regulated By Law No. 2/2004 On The Settlement Of Industrial Relations Disputes ".

Based On The Description Above, The Existence Of A Special Fisheries Court Which Was Established With The Provisions Of One Of The Articles In Law Number 45 Of 2009 Concerning Fisheries Is Unconstitutional (*Ex Falso Quo Libet*), So The Decision Has No Binding Legal Force. Therefore, The Legal Basis For Its Formation Needs To Be Improved Through A Separate Law. Improvements To The Legal Basis For The Establishment Of The Special Fisheries Court Are Important Considering The Adjudication Stage (Court Trial) Must Be More Dominant Than All Criminal Justice Processes Because Any Decision On A Criminal Case Is Based On Facts And Circumstances As Well As Evidence Obtained From Examination In Court Proceedings. Also, The Establishment Of The Judiciary Through Special Regulations Aims To Maintain The Independence Of The Judiciary Itself.

It Is Feared That The Formation Of The Special Fisheries Court Through Law Number 45 Of 2009 Concerning Fisheries Will Cause Many Problems, In Connection With Its Independence In Examining Fishery Criminal Cases. According To The Author, The Regulation Of The Special Fisheries Court In Law Number 45 Of 2009 Concerning Fisheries Seems To Place The Special Fisheries Court As Part Of The Function Of Tackling Fisheries Crime Which Is The Executive Power. The Special Fisheries Court Is The Last Kitchen In The Settlement Of Fisheries Criminal Cases. As A Sub-System Of Criminal Justice, The Special Fisheries Court Will Be Associated With Multi-Legal Regimes And Other Sub-Criminal Justice Systems Such As Ppns Of The Ministry Of Marine Affairs And Fisheries, Indonesian Navy Investigator Officers, Marine Police, And Marine Security Agency Which Is Authorized To Investigate Fisheries Crimes. In Other Words, The Regulation Of The Special Fisheries Court Which Is Incorporated In The Fisheries Law Is Feared To Make The Special Fisheries Court A Punitive Institution. So That Every Person Declared As A Suspect By Investigators In The Field Of Fisheries Will Become A Defendant At The Special Fisheries Court.

C. Limited Competency Of The Special Fisheries Court

The Establishment Of A Special Fisheries Court Is Considered To Be Able To Protect Indonesia's Fishery Potential And Increase The Efficiency And Effectiveness Of Criminal Law Enforcement In The Fisheries Sector. Until Now, Indonesia Has Ten Special Fisheries Courts, Namely The North Jakarta District Courts, Medan, Pontianak, Bitung, Tual, Tanjung Pinang, Ranai, Ambon, Sorong, And Merauke District Court.

Fisheries Crime In Indonesia Is Generally Divided Into Several Groups, Namely Destructive Fishing, Fishing Without A Permit, Fishing Using Illegal Fishing Gear, And Fishing With Species That Do Not Comply With The Permit. However, Fisheries Crime Is Currently Related To Other Crimes. Law Enforcers Found Other Criminal Acts In Fishery Criminal Cases Such As Human Trafficking, Child Exploitation, Narcotics, Labor Exploitation, And So On. Considering That The Authority Of The Special Fisheries Court Only Covers Criminal Acts In The Fishery Sector, When It Is Found That Other Crimes In The Fisheries Sector Are Found, The Special Fisheries Court Does Not Have The Authority To Handle These Cases. The Limitation Of The Absolute Competence Of The Special Fisheries Court Which Only Covers Criminal Acts In The Field Of Fisheries Has Made The Special Fisheries Court Unable To Cope With The Current Development Of Fisheries Criminal Acts. If Other Criminal Acts Are Found In The Field Of Fisheries, They Will Be Delegated To The General Court.

Also, Based On The Provisions Of Article 71a Of Law Number 45 Of 2009, The Jurisdiction Of The Special Fisheries Court Covers The Fisheries Management Area Of The Republic Of Indonesia (Wppri). Thus, The Current Number Of Special Fisheries Courts Is Not Proportional To The Extent Of Their Jurisdiction, Namely The Entire Fisheries Management Area Of The Republic Of Indonesia.

The Existence Of A Problem Related To The Jurisdiction Of The Special Fisheries Court Requires That A Special Fisheries Court Be Established In All Fisheries Management Areas Of The Republic Of Indonesia, In Other Words, A Special Fisheries Court Must Be Established In All Areas Of The District Court. Due To The Limited Number Of Special Fisheries Courts, The Legal Process For Fisheries Crime Requires A Large Amount Of Money And Time.

Furthermore, The Relative Competence Of The Special Fisheries Court Will Highly Depend On Other Sub-Criminal Justice Systems, In This Case, The Dominus Litis Prosecutor Is The Only Institution Authorized To Carry Out Prosecutions. Therefore, It Is Necessary To Coordinate Between Prosecutors And Investigators Of Fisheries Crimes So That The Prosecution

Is In Line With The Results Of The Investigation. The Limited Number Of Special Fisheries Courts Causes Legal Proceedings Against Fisheries Crimes To Require Large Costs And Sometimes Cases Are Not Resolved On Time. Also, The Location Of The Special Fisheries Court Which Is Far From The Locus Delicti Of Fisheries Crimes Is ¹⁵ One Of The Factors Causing The Increase In Illegal Fishing In Indonesian Waters.

Conclusion

The Establishment Of The Special Fisheries Court, Which Was Initially Suspected Of Being Able To Optimize Law Enforcement In The Field Of Fisheries, Still Raises Various Problems. The Establishment Of The Special Fisheries Court Creates A Dualism In Law Enforcement Of Fisheries Crimes. It Is Said So Because, For Regions That Do Not Yet Have A Special Fisheries Court, Fisheries Criminal Cases Are Tried By A General Court. In Addition To Law Enforcement Against Fisheries Crime, The Special Fisheries Court Will Be Related To Multi Legal Regimes And Other Sub-Criminal Justice Systems. Another Problem With The Formation Of The Special Fisheries Court Is The Legal Basis For Its Formation. The Special Fisheries Court Is Only Formed By The Order Of One Of The Articles In The Fisheries Law. According To The Provisions Of Article 24a Paragraph (5) Of The 1945 Constitution, A Judicial Body That Is Under The Supreme Court Must Be Formed Based On A Separate Law. Also, The ¹ Limitations Of The Absolute Competence And Relative Competence Of The Special Fisheries Courts Have Made The Special Fisheries Courts Unable To Cope With The Current Development Of Fisheries Criminal Acts, Coupled With The Limited Number Of Special Fisheries Courts That Are Not Proportional To The Extent Of Their Jurisdiction.

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