

## FACTORS AFFECTING LAW ENFORCEMENT IN ILLEGAL FISHING CASES IN INDONESIA

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### ABSTRACT

*Illegal Fishing is catching fish in Indonesian seas on a large scale and has the potential to damage fish habitats in the sea. Illegal fishing is all fishing activities carried out in violation of laws that have been set in the waters of a sovereign country. Law Number 45 of 2009 concerning Fisheries, has regulated that illegal fishing activities are prohibited acts. The purpose of this study is to analyze the factors that influence the implementation of law enforcement on illegal fishing in Indonesia. The research method used is empirical juridical. This research is a qualitative research, the type of data used is primary and secondary data. Data collection techniques through literature and field studies (focus group discussions, interviews and questionnaires). The data collected were analyzed through descriptive analysis. The results of the study found that the factors that influence the implementation of law enforcement on illegal fishing in Indonesia, namely the legal system which consists of three sub-systems including the legal substance, legal structure and legal culture. In substance, the law states that criminal acts in the field of fisheries committed by corporations whose criminal targets are only directed at the management, while against corporations cannot be punished. Such an arrangement would lead to many drawbacks. Logically, for certain cases where the profits obtained by the company are so large and/or the losses borne by the community are so large, the imposition of imprisonment/fines only on the management of the corporation will be disproportionate. In addition, the imposition of a crime on the management of a corporation is also not sufficient to guarantee that the corporation will not take similar actions in the future. In addition to the legal substance factor, there are also structural factors, legal culture, and infrastructure.*

**Keywords:** law; Fish; Illegal; Justice

### INTRODUCTION

In the Natuna sea area, it shows that after collecting radar data in the EEZ, it was found that the total suspected illegal fishing vessels detected during the monitoring period in May-December 2016 amounted to 280 vessels. 20 Cases of illegal fishing in Indonesia are not only carried out by perpetrators with foreign flags, but also the modus operandi of using the Indonesian flag by the perpetrators so that they can freely carry out fishing theft in Indonesian waters, as well as by collaborating with Indonesian ship entrepreneurs or converting foreign ships into ex-foreign ships.<sup>1</sup>

As a result, Indonesia has experienced disruptions in the management of sustainable fisheries utilization as well as economic losses due to decreased catches, fish scarcity, and from a social perspective detrimental to Indonesia's fishermen that operates legally. They loss of social and economic opportunities for fishermen who operate legally. Research in the Natuna area states that illegal fishing that occurs in the Natuna waters alone causes Indonesia to lose 19,162 tons of fish or the total value of economic losses reaches Rp 2,989,296,154,794 (2.98 trillion rupiah). On a national scale, FAO noted that the annual loss experienced by Indonesia is estimated at USD 3.125 million or Rp. 30 trillion.<sup>2</sup>

In addition to economic losses, the activities of foreign fishermen who carry out Illegal. This fishing catches fish in Indonesian seas on a large scale and has the potential to damage fish habitats in the sea such as catching fish using fishing gear that violates the provisions of the legislation in Indonesia.

The legal basis for law enforcement in cases of illegal fishing itself is rooted in fishing regulations that are made possible by laws and regulations, where in Article 1 number 5 of the Law of the Republic of Indonesia No. 45 of 2009 in conjunction with Law no. 31 of 2004 concerning Fisheries (Fisheries Law) it is stated that:

*"Fishing is an activity to obtain fish in waters that are not in a state of being cultivated by any means, including activities using ships to load, transport, store, cool, handle, process and/or preserve".*

The Fisheries Law regulates preventive measures to prevent illegal fishing through the obligation to have a fishing license (SIPI) in Article 27 of the Fisheries Law, which must have SIPI. In SIPI mentions that any person who owns and/or operates an Indonesian-flagged fishing vessel used to catch fish in the fishery management area of the Republic of Indonesia and/or the high seas. Anyone who owns and/or operates a fishing vessel with a foreign flag used to catch fish in the ZEEI, Everyone who operates a fishing vessel with a foreign flag in the ZEEI. Actions that damage marine ecosystems by not complying with the provisions of this law are a crime and are prohibited according to legal provisions whose legal sanctions are contained in Article 93 and Article 97 of the Fisheries Law. In addition to containing sanctions for illegal fishing, the Fisheries Law also regulates the authority possessed by supervisory vessels, namely in Article 69 of the Fisheries Law.

This arrangement is actually a manifestation of the state's right to protect its sovereignty in the management and utilization of marine natural resources whose rights are recognized in Article 73 of UNCLOS 1982.

One of the steps to combat illegal fishing carried out by Indonesia is through the sinking of foreign ships. Data from the CTF shows that since October 2014 there were 317 ships, with details of Vietnam 142 ships, Philippines 76 ships, Thailand 21

<sup>1</sup> <https://www.rappler.com/environment/fishers-natuna-islands-indonesia-fending-off-domestic-international-threats/>

<sup>2</sup> Mahabrur, Dendy. Jejen Jenhar Hidayat. 2018. Prosiding Seminar Nasional Kelautan dan Perikanan IV 2018 Tunjungan-Surabaya 05 September 2018: Analisis Kerugian Ekonomi akibat Illegal Fishing di Zona Ekonomi Eksklusif Perairan Natuna.

ships, Malaysia 49 ships, Indonesia 21 ships, Papua New Guinea 2 ships, China 1 ship, Belize 1 ship and no country 4 The sinking of the ship, when referring to the provisions of Article 69 of the Fisheries Law, is an action that is categorized as a special action based on sufficient preliminary evidence. This then becomes a question, whether this repressive measure in addition to realizing legal certainty, has also realized the value of justice by considering the impact caused by this illegal fishing act. Therefore, it is necessary to conduct a more in-depth discussion regarding the factors that affect Law Enforcement in Illegal Fishing Cases in Indonesia.

## RESEARCH METHOD

The research method used is juridical empirical.<sup>3</sup>This research is qualitative research, the type of data used is primary and secondary data.<sup>4</sup>Data collection techniques through literature and field studies<sup>5</sup> (focus group discussions, interviews and questionnaires).<sup>6</sup> The data collected were analyzed through descriptive analysis.<sup>7</sup>

## RESEARCH RESULTS AND DISCUSSION

The process to achieve a sense of justice is a link that cannot be separated at least since the making of laws and regulations, the occurrence of a legal case or event, until it is verbally processed in the police and prosecutor's prosecution, or a lawsuit in a civil case, and then ends with a judge's verdict. obtain permanent legal force (*inkracht van gewijsde*) so that the quality of the process is actually a guarantee of the quality of the culmination point of the results or benefits of a set of laws and regulations made. Thus, it is very possible to uphold the rule of law in our country. Harold J. Laksi quoted by Sabian<sup>8</sup> said "that citizens are obliged to obey certain laws only if the law satisfies their sense of justice."<sup>9</sup>

Broadly speaking, the factors causing illegal fishing can be categorized into 7 (seven) factors, namely:

- a. The world's fish demand is increasing but on the other hand the world's fish supply is decreasing. As a result, there is an overdemand that encourages the world's fishing fleet to hunt fish anywhere, legally or illegally.
- b. The disparity in the price of whole fresh fish in other countries compared to Indonesia is quite high, so there is still a surplus of income.
- c. Fishing ground in other countries has started to run out, while in Indonesia it is still promising, even though they have to maintain a supply of fish for their consumption and must maintain processing production in that country.
- d. Indonesia's seas are very wide and open, on the other hand, the surveillance capabilities, especially the national surveillance fleet (supervisory vessels) are still very limited compared to the need to monitor vulnerable areas.
- e. The current fisheries management system in the form of a licensing system is open (open access), the limitation is only limited to fishing gear (input restriction).
- f. There are still limited facilities and infrastructure for supervision as well as human resources for supervision, especially in terms of quantity which is not yet comparable to the wide coverage of the sea area that must be monitored.
- g. The perception and cooperation steps of law enforcement officers are still not solid in handling fisheries crime cases, especially in terms of understanding legal actions, and the commitment to operating supervisory vessels in the EEZ.<sup>10</sup> Soerjono Soekanto stated that law enforcement is influenced by several things, namely:<sup>11</sup>

- a. Legal Weaknesses

The law functions for justice, certainty and expediency. In the practice of administering law in the field, there are times when there is a conflict between legal certainty and justice. Legal certainty is concrete and tangible, while justice is abstract so that when a judge decides a case by applying the law alone, there are times when the value of justice is not achieved. As we look at a problem regarding the law, at least justice is a top priority. Because the law is not only seen from the point of written law.

- b. Weaknesses of Law Enforcement

In the functioning of the law, the mentality or personality of law enforcement officers plays an important role, if the regulations are good, but the quality of the officers is not good, there is a problem. So far, there is a strong tendency among the public to interpret the law as an officer or law enforcer, meaning that the law is identified with the real behavior of officers or law enforcers. Unfortunately, in carrying out its authority, problems often arise because of attitudes or treatments that are seen as exceeding authority or other actions that are considered to undermine the image and authority of law enforcement. This is due to the low quality of the law enforcement officers.

<sup>3</sup> Anis Mashdurohatun, Gunarto & Adhi Budi Susilo, The Transfer Of Intellectual Property Rights As Object Of Fiduciary Guarantee, Jurnal Akta. Volume 9 No. 3, September 2022.

<sup>4</sup> Sunaryati Hartono. . Legal Research in Indonesia at the End of the 20th Century, Bandung: Alumni.1994

<sup>5</sup> Anis Mashdurohatun, Gunarto & Oktavianto Setyo Nugroho Concept Of Appraisal Institutions In Assessing The Valuation Of Intangible Assets On Small Medium Enterprises Intellectual Property As Object Of Credit Guarantee To Improve Community's Creative Economy, JPH: Jurnal Pembaharuan Hukum, Volume 8, Number 3, December 2021.

<sup>6</sup> Mukti Fajar. Dualism of Normative and Empirical Legal Research. Yogyakarta: Student Library. 2010

<sup>7</sup> Anis Mashdurohatun, Eysra Setya Kurnia The Settlement Model Against Credit Agreements Between Creditors And Debtors, IJLR: International Journal of Law Reconstruction, Volume 4, Number 2, September 2020

<sup>8</sup> Sabian Utsman, Anatomy of Conflict and Solidarity of Fishermen Communities, Yogyakarta: Pustaka Pelajar, 2007, page. 262

<sup>9</sup> Sabian Ustman, Responsive Law Enforcement, Student Libraries, Yokyakarta, 2010, page 11-12

<sup>10</sup> Ayi Ardisastra, Comparison Of Illegal-Unreported-Unregulated Fishing Practices Based On Port Type In Jakarta Bay, Journal of Science Innovare Volume 05, Number 01, February 2022, Page 23-28

<sup>11</sup> Soerjono Soekanto, Weaknesses Affecting Law Enforcement, PT. Raja Grafindo Persada, Jakarta, 2007,page. 5

c. Weakness of Supporting Facilities or Facilities

Weaknesses in supporting facilities or facilities include software and hardware. According to Soerjono Soekanto, law enforcers cannot work properly if they are not equipped with proportional vehicles and communication tools. Therefore, facilities or facilities have a very important role in law enforcement. Without these facilities or facilities, it will not be possible for law enforcers to harmonize their supposed roles with their actual roles.

d. Community Weaknesses

Law enforcement comes from the community and aims to achieve peace in society. Every citizen or group has more or less legal awareness. The problem that arises is the level of legal compliance, namely high, moderate or less legal compliance. The degree of community legal compliance with the law is one indicator of the functioning of the law concerned.

e. Cultural Weaknesses

Culture basically includes the values that underlie applicable laws, which values are abstract conceptions of what is considered good (so that it is obeyed) and what is considered bad (so that it is avoided). Thus, Indonesian culture is the basis or the basis for applicable customary law. Besides that, there is also written law (legislation), which is formed by certain groups in society who have the power and authority to do so. The statutory law must be able to reflect the values that form the basis of customary law, so that the statutory law can apply actively.

The five weaknesses above are closely related, because they are the main things in law enforcement, as well as a benchmark for the effectiveness of law enforcement. Of the five weaknesses of law enforcement, the weakness of law enforcement itself is the central point. This is due to whether the law is drafted by law enforcers, its implementation is also carried out by law enforcement and law enforcement itself is also a role model by the wider community.

### Substance Weakness

Fishery crimes based on Article 103 of the Fisheries Law are divided into two categories, namely crimes and violations. The crime as referred to in Article 84, Article 85, Article 86, Article 88, Article 91, Article 92, Article 93, Article 94 and Article 94A is a crime while the crime as referred to in Article 87, Article 89, Article 90, Article 95, Article 96, Article 97, Article 98, Article 99, Article 100A, Article 100B, Article 100B and Article 100D are violations. The two formulations of fisheries crime can be described as follows:

1. Classification of Crimes

Article 92

Any person who intentionally in the fishery management area of the Republic of Indonesia conducts a fishery business in the fields of catching, cultivating, transporting, processing and marketing fish, who does not have a SIUP as referred to in Article 26 Paragraph (1), shall be punished with imprisonment for a maximum of 8 (8) eight) years and a maximum fine of Rp. 1,500,000,000.00 (one billion five hundred million rupiah).

Article 92 is a criminal act related to conducting a fishery business without a fishery business license (SIUP). The criminal provisions above are aimed at ensuring order and regularity in carrying out fishery business. There is no struggle in catching, cultivating, transporting, managing and marketing fish. It is hoped that all fishing companies will become official companies that have SIUP. In addition, to prevent the management of wild fisheries by irresponsible people and harm the community and the state.

Article 93

- 1) Any person who owns and/or operates a fishing vessel with an Indonesian flag to catch fish in the fishery management area of the Republic of Indonesia and/or on the high seas, which does not have SIPI as referred to in Article 27 Paragraph (1), shall be sentenced to a maximum imprisonment of 6 (six) years and a maximum fine of Rp. 2,000,000,000.00 (two billion rupiah).
- 2) Any person who owns and/or operates a fishing vessel with a foreign flag to catch fish in ZEEI that does not have SIPI as referred to in Article 27 Paragraph (2), shall be subject to a maximum imprisonment of 6 (six) years and a maximum fine of Rp. 20,000,000,000.00 (twenty billion rupiah).
- 3) Everyone who operates a fishing vessel with an Indonesian flag in the fishery management area of the Republic of Indonesia, which does not carry the original SIPI as referred to in Article 27 Paragraph (3), shall be subject to a maximum imprisonment of 6 (six) years and a maximum fine of Rp. 2,000,000,000.00 (two billion rupiah).
- 4) Everyone who operates a fishing vessel with a foreign flag in ZEEI, which does not carry the original SIPI as referred to in Article 27 Paragraph (3), shall be sentenced to a maximum imprisonment of 6 (six) years and a maximum fine of Rp. 20,000,000,000.00 (twenty billion rupiah).

Article 94

Any person who owns and/or operates a fish transporting vessel in the Indonesian fishery management area that carries out fish transportation or related activities that do not have SIKPI as referred to in Article 28 Paragraph (1), shall be sentenced to a maximum imprisonment of 5 (five) years. and a maximum fine of Rp. 1,500,000,000.00 (one billion five hundred million rupiah).

Article 94 is a criminal act of transporting fish without having SIKPI. The provisions of Article 94 related to the ownership of SIKPI, it is known that SIPI is a permit granted to people who do fishing, while SIKPI is a permit that must be owned by fishing vessels in the form of fish transporting vessels. Those who violate Article 94 are subject to 5 (five) years in prison and a fine of Rp. 1,500,000,000 (one billion five hundred million rupiah).

Article 94A

Anyone who falsifies and/or uses fake SIUP, SIPI, and SIKPI as referred to in Article 28A shall be sentenced to a maximum imprisonment of 7 (seven) years and a maximum fine of Rp. 3,000,000,000.00 (three billion rupiah).

Article 94A is a criminal act of falsifying SIUP, SIPI and SIKPI. The provisions of Article 94A are aimed at people who falsify or use fake SIUP, SIPI and SIKPI because these actions are prohibited by the provisions of Article 28A of the Fisheries Law. In the Fisheries Law, corporations have been recognized as legal subjects who can commit criminal acts. However, it is not determined that the corporation can be subject to criminal sanctions, because only the management is responsible. Sentencing only to the management is not enough to reduce the occurrence of criminal acts committed by corporations. The corporation should also be determined to be criminally liable as in Article 15

Paragraph (1) Law no. 7 Drt 1955 Concerning Economic Crimes, namely those that can be criminally accounted for are:

- a. Legal entity, company, association or foundation; or
- b. Those who give orders or who act as leaders/responsible for the acts or omissions; or
- c. Both (a and b).

Based on this description, it can be seen that criminal acts in the field of fisheries committed by corporations whose criminal targets are only directed at the management, while against corporations cannot be sentenced. Such an arrangement would lead to many drawbacks. Logically, for certain cases where the profits obtained by the company are so large and/or the losses borne by the community are so large, the imposition of imprisonment/fines only on the management of the corporation will be disproportionate. In addition, the imposition of punishment on corporate management is also not sufficient to provide assurance that the corporation will not take similar actions in the future.

In addition to containing sanctions for illegal fishing, the Fisheries Law also regulates the authority possessed by supervisory vessels, namely in Article 69 of the Fisheries Law which states:

- (1) The fishery supervisory vessel has the function of carrying out supervision and law enforcement in the field of fishery within the fishery management area of the Republic of Indonesia.
- (2) Fishery supervisory ships as referred to in paragraph (1) may be equipped with firearms.
- (3) Fishery supervisory vessels may stop, inspect, carry, and detain vessels suspected of or reasonably suspected of committing violations in the fishery management area of the Republic of Indonesia to the nearest port for further processing.
- (4) In carrying out the functions as referred to in paragraph (1), fishery investigators and/or supervisors may take special actions in the form of burning and/or sinking of fishing vessels which foreign flags based on sufficient preliminary evidence."

This arrangement is actually a manifestation of the state's right to protect its sovereignty in the management and utilization of marine natural resources whose rights are recognized in Article 73 of UNCLOS 1982, namely:

1. The coastal State may, in the exercise of its sovereign rights to explore, exploit, conserve and manage the living resources in the exclusive economic zone, take such measures, including boarding, inspection, arrest and judicial proceedings, as may be necessary to ensure compliance with the laws and regulations adopted by it in conformity with this Convention.
2. Arrested vessels and their crews shall be promptly released upon the posting of reasonable bond or other security.
3. Coastal State penalties for violations of fisheries laws and regulations in the exclusive economic zone may not include imprisonment, in the absence of agreements to the Contrary by the States concerned, or any other form of corporal punishment.
4. In cases of arrest or detention of foreign vessels the coastal State shall promptly notify the flag State, through appropriate channels, of the action taken and of any penalties subsequently imposed."

One of the steps to combat illegal fishing carried out by Indonesia is through the sinking of foreign ships. Data from the CTF shows that since October 2014 there were 317 ships, with details of Vietnam 142 ships, Philippines 76 ships, Thailand 21 ships, Malaysia 49 ships, Indonesia 21 ships, Papua New Guinea 2 ships, China 1 ship, Belize 1 ship and no country 4 ship.<sup>12</sup>

Basically, the law enforcement mechanism in the case of illegal fishing has not been able to bring about justice for the community, this is because the value of the loss is very large which has not been able to be replaced through any existing law enforcement. In its development, ships which are evidence in cases of illegal fishing should be able to be allocated for the losses that have been caused, but in reality most of the ships which are evidence in cases of illegal fishing were sunk, this is in accordance with the provisions as regulated in Article 69 of the Fisheries Law. This is clearly an action that is also unable to compensate for the loss of illegal fishing.

According to Satjipto, progressive legal teachings<sup>13</sup> have the character of always moving according to the dynamics of the times and society, placing humans as the optic of law and being part of the process of searching for truth that is continuous,

<sup>12</sup> <http://kkp.go.id/wp-content/uploads/2017/04/sp44-tenggelamkan-kapal-di-ambon-menteri-susi-perairan-ambon-harus-punya-lambang-kedaulatan.pdf>,

<sup>13</sup> Qodri Azizy, A., gave a separate note on the term progressive law initiated by Satjipto Rahardjo. Despite using a different term, namely legal realism plus to address the settlement of various legal issues regarding the condition of Indonesia which naturally has customary law from the start, Azizy in many ways agrees with Satjipto with his progressive legal ideas. For Azizy, in law enforcement, a judge (as well as other law enforcement officers) needs to examine and reflect again on the formulation of Law no. 14 of 1970 jo. Law 35 of 1999 concerning Principles of Judicial Power which explicitly states that judges are "obliged to explore, follow and understand the values that live in society". Furthermore, Azizy explained that every judge has the obligation to perform *ijtihad* (to make decisions on the basis of independent and responsible thinking in order to realize a sense of justice and public benefit). Based on this understanding, legal realism plus initiated by Azizy has the same building as progressive law initiated by Satjipto, namely placing humans, behavior and society as values and goals that must be seen in the operation of law. See Foreword A. Qodri Azizy in Ahmad Gunawan BS, Mu'amar Ramadhan (Ed.), 2006, Initiating Progressive Indonesian Law, Student Library, Yogyakarta, p. x-xi.

never stops and always evolving. Progressive law can be seen as a teaching concept that is looking for identity starting from the empirical reality of the workings of law in society, in the form of dissatisfaction and concern with the performance and quality of law enforcement in the Indonesian setting at the end of the 20th century<sup>14</sup>. Progressive law assumes the basis that: *First*, progressive law uses the human paradigm (people) as the optic of law by placing behavioral factors (behavior, experience) as the focus of the operation of the law<sup>15</sup>. For progressive law, law is for humans. Departing from this basic assumption, the presence of law is not for itself but for something wider and greater. That is why when there is a problem in the law, it is the law that must be reviewed and corrected, not humans who are forced to be included in the legal scheme.

*Second*, progressive law has an ever-changing scientific background, so it is not an absolute and final institution. Due to its changing nature, progressive legal science has the quality as a science that is constantly undergoing formation (legal science is always in the making)<sup>16</sup>. The presence of progressive law departs from the basic assumption that law is for humans and is always in the process of becoming, so in providing an explanation of legal phenomena, other legal theories will be involved. The involvement of other legal theories in progressive law also explains the position of progressive law in the midst of these other legal theories.

In general, the character of progressive law can be identified as follows: (i) progressive legal studies seek to shift the emphasis of legal studies that originally used legal optics to human behavior; (ii) progressive law consciously places its presence in close relations with humans and society (to borrow the term responsive law of Nonet and Selznick); (iii) progressive law shares its understanding with legal realism because law is not seen from the optics of the law itself, but is seen and assessed from the social goals to be achieved and the consequences arising from the operation of the law; (iv) progressive law is closely related to Roscoe Pound's sociological jurisprudence which examines law not only in the study of regulations but goes out and looks at the effects and workings of law; (v) progressive law is close to natural law theory because it cares about meta-judicial matters; and (vi) progressive law is close to critical legal studies (CLS) but has a wider scope<sup>17</sup>.

Progressive legal teachings will force legal professionals to not only work in and for a legal system composed entirely of abstract formal texts, but will instead work with respect to non-judicial contexts that are enforced as sources of law. material for the development of a more real and functional legal system in society<sup>18</sup>. Namely, the law which is subjective in the personality of law enforcers who view humans involved in legal cases in their in concreto forms in all their more real aspects, which therefore puts Article by Article in statutory law not as a statement as a causal relationship that straightforward according to the law of logic but also always contains moral substance that is rooted in the professional ethics of law enforcement.

In line with the professionalism of law enforcement, Anis Mashdurohatun<sup>19</sup> firmly stated that: The destruction of the legal system is increasingly mushrooming with corruption, collusion and nepotism (Indonesian abbreviation KKN) related to the temporary interests of law enforcement officers (even bureaucratic officials) at all levels of the judiciary, starting from the police, prosecutors, to judges. Therefore, it is clear that the policy of tackling illegal fishing should also look at the losses incurred. Not limited to actions and actors only.

### Structural Weaknesses

At the same time, Chambliss and Seidman state that any action to be taken by the role holders, implementing institutions and lawmakers is always within the scope of the complexities of social, cultural, economic and political forces and so on. All social forces always work together in every effort to function the applicable regulations, apply sanctions, and in all activities of implementing institutions. Finally, the role played by legal institutions and institutions is the result of the operation of various kinds of weaknesses. The influence of social forces in the operation of this law, Seidman clearly describes it as follows:<sup>20</sup>

<sup>14</sup>Satjipto Rahardjo, "Progressive Law: Liberating Law", Journal of Progressive Law, Vol. 1 No. 1 April 2005, PDIH Undip Legal Studies, h. 3.

<sup>15</sup> Satjipto Rahardjo, Progressive Law as the Basis for the Development of Indonesian Legal Studies, in Ahmad Gunawan BS, Mu'amar Ramadhan (Ed.), 2006, Initiating Progressive Indonesian Law, Student Library, Yogyakarta, h. 8-9.

<sup>16</sup> Ibid.p.2

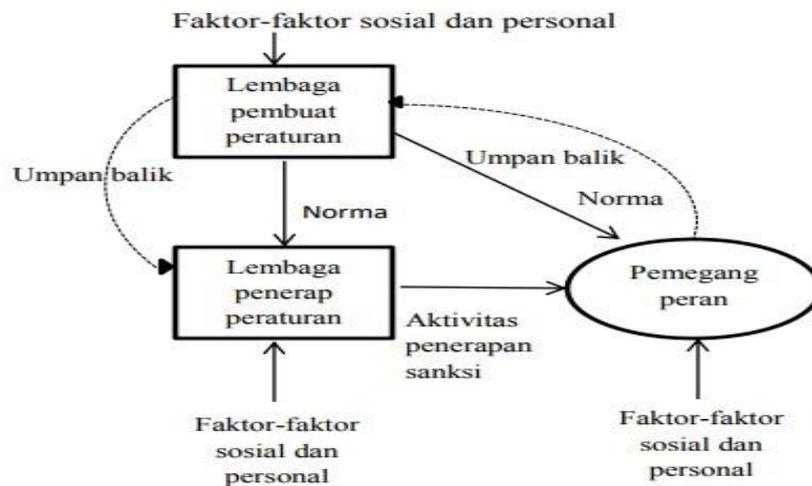
<sup>17</sup> Satjipto Rahardjo, Legal studies, Citra Aditya Bakti, Bandung, 2012, p. 13-14.

<sup>18</sup> Soetandyo Wignjosebroto, Progressive Law: What Must be Thought and Done to Implement it, paper of the Progressive Law National Seminar organized by the Faculty of Law UNDIP in collaboration with the Doctoral Program in Law UNDIP Semarang and the Faculty of Law Trisakti Jakarta, Semarang, 15 December 2007, h.1-2

<sup>19</sup> Anis Mashdurohatun, Criminal Law Enforcement in the Field of Illegal Logging for Environmental Conservation and Countermeasures, Journal of Law Vol XXVI, No. 2, August 2011

<sup>20</sup>Esmi Warassih, Legal Institutions A Sociological Study, Suryandarma Utama. Semarang.2011.p.22

Chart 1 Work of personal and social forces



It can be clearly seen that the law enforcement factor in the case of fishing theft is influenced by:

- There are still limited facilities and infrastructure for supervision as well as human resources for supervision, especially in terms of quantity which is not yet comparable to the wide coverage of the sea area that must be monitored.
- The perception and cooperation steps of law enforcement officers are still not solid in handling fisheries crime cases, especially in terms of understanding legal actions, and the commitment to operating supervisory vessels in the EEZ.
- The absence of a mechanism for using evidence to recover state losses has resulted in law enforcement being unable to achieve the substance of the purpose of law enforcement in cases of fishing theft which is nothing but restoring state losses, where the return of state losses can be reused for the restoration of the marine environment due to the crime of illegal fishing.

### Cultural Weaknesses

Community life in its development always requires orderly and orderly conditions, orderly and orderly conditions in the community can be realized if in a society there is one order. The order in society is not the same, this is because an order consists of various different norms. These differences can be observed in the link between *das sollen* and *das sein* or between the ideals of law and law in their implementation in society. This is what Gustav Radbruch calls "*ein immer zunehmende Spannungsgrad zwischen ideal und Wirklichkeit.*" Radbruch's opinion can be interpreted that every difference in the existing order and norms can be seen from the existence of different content in the ideals of law and law in its implementation in society.<sup>21</sup>

Furthermore, Satjipto Rahardjo stated that in an order that can be seen from the outside, basically there is a complex order in it, or it can also be said that in an order there are sub-orders that make up the order. The complex sub-orders consist of:

#### 1. Habits

Customary order or customary rules can be said to be the closest order or rule to people's lives. It can also be said that the order of habits or customary rules comes from the struggle that is always carried out by the community through a filter in the form of regularity, constancy and the willingness of the community to accept the habit as an order or rule.

This shows that this rule has a content that depends on the dynamics of society so that the level of idealism between *das sollen* and *das sein* is very low, this is because society is very dynamic while the ideal ideal is sometimes firm and less flexible or not in line with changes in society so that the level of the ideal between *das sollen* and *das sein* is very low. In this rule, humans who can be said to be ideal humans are humans who always act in accordance with the norms and rules or orders that apply in society. However, the norms in the customary order are not the same as the norms in the legal and moral order.

#### 2. Law

Furthermore, the legal order is an order or rule that is very close to the event of a shift between *das sollen* and *das sein* in society. However, the release between a rule from a customary rule which is a basic rule, through the rule of law cannot be completely separated, this is shown by the existence of customary law and customary law in the community that still adheres to the habits of the people which are *das sollen* in society.

The shift between customary rules and other rules can be seen in the positive law of the state made by an institution appointed by the community and assigned by the community to create a rule of law. In this process, it is clear that norms and rules are deliberately created to create order in society.

Meanwhile, the order in question is also a complex sub-rule in society which is determined by its members through certain work mechanisms. or order in society.

Hence, it is clear that both norms and rules or orders are formed based on human will. Thus, it is clear that the human will is the basic foundation and characteristic of the legal order. This is because the existing human will able to independently determine the

<sup>21</sup> Radbruch, G., Paulson, B. L., Paulson, S. L., Radbruch, G., & Paulson, S. L. (2014). Five Minutes of Legal Philosophy. Oxford Journals of Legal Studies, 26(1), 13–15.

position of the legal rules independently not depending on the rules of morality and customary rules, this is because the human will is able to independently form a norm and its own rules.

Furthermore, it can be clearly seen that law is in the middle between the ideal world and the real world, so that according to Stijpto Rahardjo, the task of law is to mix the ideal world and the real world. For this reason, independence and confidence are needed from separate legal rules that depart from human will and existing norms.

### 3. Morality

Regarding the order of decency, it can be stated that the order of morality has similarities with the order of habits, that is, both come from the community, only if the habit order comes from the habits of the community, the moral order comes from the ideal values that the community wants to realize.

Therefore, the order of decency is based on the ideas possessed by the individual and the existing society. This has implications for the determination of human behavior which must be based on the idea of seeing an action at an ideal level. In this setting, decision making regarding an action or

Norms may or may not be accepted based on ideal values which are then concretized by official community institutions based on ideal values without having to mix between the real world and the ideal world like a legal order. Thus, it is clear that the purpose of this order is to form the ideal human. Based on the various explanations above, it is clear that basically the types of complex sub-orders are still very numerous, not only covering the three complex sub-orders above. However, Satjipto Raharjo only chose the three sub-orders above because the three sub-orders have very large tensions in their relationship as sub-orders in society. Based on the various explanations above, it can also be seen that basically the law has an uneasy task, namely combining two different worlds, namely the ideal world and the real world, therefore it is impossible for people to wait for a legal vacuum, so that people often demand to make rules that are able to cover legal vacuum, this is clearly closely related to legal capacity, not an ideal order and also not related to people's habits.

Various explanations related to the community's need for legal certainty as described above are not entirely correct, Satjipto Rahardjo further stated that law is a human work in the form of norms that contain instructions regarding human behavior. In other words, the law is a reflection of human will regarding how to develop humans and how to direct humans in social life, of course. Therefore, the law contains a record of human ideas that are always based on the value of justice.

Furthermore, in its development, law is different from morality because the law binds itself to the community which is its social basis, so that the law always pays attention to the needs and interests of the community and always serves the community. With regard to the issue of justice, the law in realizing it is not easy so that it requires proper reflection and weighing with a time that cannot be taken in a short time.

Based on the various explanations above, it can be seen that the community does not want a fair law and is able to serve their needs and interests only but must also be able to realize legal certainty that is able to ensure a sense of security in people's lives both in interacting or realizing mutual needs between one member of the community and the other. other community members.

Based on the various explanations above, it can be concluded that in realizing an order in society, three things are needed, namely justice, expediency, and legal certainty. These three things are stated by Gustav Radbruch as basic legal values. The interests of the litigants and the interests of society in general. This means that the judge in applying the law should consider the final result, whether the judge's decision brings benefits or benefits to all parties.<sup>22</sup>

Basically, according to Satjipto Rahardjo, among the three basic legal values, there is often tension or *spannungsverhältnis*. This means that the three basic values have different demands. This is because in every process of realizing these three basic values, it is inseparable from the interests of individuals or groups in society in a complex manner. This *spannungsverhältnis* problem has resulted in the obstruction of law enforcement in its various dimensions.<sup>23</sup>

In its development, the law between one sect and another is often even partly as a polemic, it can be positivistic versus non-positivistic, as well as in other forms. This is rooted in the nature of change with all its consequences (for example, the current situation, namely progressive law versus conservative law). With regard to law enforcement, although legal polemics will in fact never end as long as human life still exists, the process of law enforcement must be no less important in line with legal criticism, especially in this discussion in the Indonesian context. Talking about law enforcement means talking about law enforcement and the community who occupy a strategic position in upholding the rule of law.<sup>24</sup>

The process to achieve a sense of justice is a link that cannot be separated at least since the making of laws and regulations, the occurrence of a legal case or event, until it is verbally processed in the police and prosecutor's prosecution, or a lawsuit in a civil case, and then ends with a judge's verdict. obtain permanent legal force (*inkracht vangeweisde*) so that the quality of the process is actually a guarantee of the quality of the culmination point of the results or benefits of a set of laws and regulations made.

## CONCLUSION

Basically, the law enforcement mechanism in the case of illegal fishing is currently unable to bring about justice for the community, which is due to legal factors, this is because the value of the loss is very large which so far cannot be replaced through any existing law enforcement. In its development, ships which are evidence in cases of illegal fishing should be able to be allocated for the losses that have been caused, but in reality, most of the ships which are evidence in cases of illegal fishing were sunk, this is in accordance with the provisions as regulated in Article 69 of the Fisheries Law. This is clearly an act that is also unable to compensate for losses from illegal fishing, it can be seen that criminal acts in the field of fisheries committed by corporations are only targeted at the management, while the corporation cannot be punished. Such an arrangement would lead to many drawbacks. Logically, for certain cases where the profits obtained by the company are so large and/or the losses borne by the community are

<sup>22</sup> Sudikno Mertokusumo, *Knowing the Law of an Introduction*, Yogyakarta: Liberty, 2005, p. 160.

<sup>23</sup> Satjipto Rahardjo, *Op.Cit.* p.19-20.

<sup>24</sup> Sabian Ustman, *Responsive Law Enforcement*, *op.cit.* 11-12

so large, the imposition of imprisonment/fines only on the management of the corporation will be disproportionate. In addition, the imposition of a crime on the management of a corporation is also not sufficient to guarantee that the corporation will not take similar actions in the future. In addition to the legal substance factor, there are also structural factors, legal culture, and infrastructure.

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