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FISHERY CRIME IN WETLAND ENVIRONMENT

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Abstract: *The aim of this research is first, to find out the characteristic of crime in Wetland Environment in Hulu Sungai Utara Regency. Secondly, to know the description of law enforcement in the Wetland Environment Area in Hulu Sungai Utara Regency. The method of this research is normative law research supported by field data (sociolegal research). The result of the research shows the characteristic of criminal acts in the environment, which is the Illegal Fishing of small fishermen by using the stun device with the transportation of boats conducted in the river, lake, and swamp areas. Illegal Fishing Crime is done to meet the needs of daily economic life. The law enforcement on illegal fishing, conducted by preventive efforts by the way of socialization to the community both collectively and individually, both organized and situational at the scene. Repressive efforts are conducted in 2 (two) forms: (1) through the process outside the judiciary and (2) in the judiciary. The process outside of the judiciary is conducted through criminal mediation based on police discretion, whereas through the judicial process is carried out by the process of investigation followed by prosecution and criminal detention through a court decision.*

Keywords: *Fishery Crime; Wetland Environment*

INTRODUCTION

The Regency of Hulu Sungai Utara with

an area of 892.7 km², mostly consisting of lowland which is inundated by swampland

either inundated monotonically or periodically. Approximately 570 km² is a swampland.¹

Swamplands which are part of wetland are the areas where the soil is saturated with water, either permanent (settled) or seasonal. The regions are partially or completely enclosed by a layer of shallow water. Categorized into these wetlands, among them, are swamps (including mangrove swamps), marsh, and peat. Water that inundates wetlands can be classified into freshwater, brackish or salt.²

As wetland areas such as swamps, it certainly has its own peculiarities about the types of crimes that occur in communities that often deal with wetlands. In the case of criminal acts in the wetland environment is certainly closely related to the land, such as land grabbing annexation, the crime of letter fraud and authentic deeds. The criminal act that makes the wetland environment as a means to commit crimes is such as Illegal Fishing. Regarding the criminal rate in Hulu Sungai Utara Regency which has been decided in Amuntai District Court, 2,498 cases in 2014, and 3,989 cases in 2015³. Based on the data of the Case Study Information System at the Amuntai District Court the character of the criminal acts occurring in the Hulu Sungai Utara region is broadly

divided into general crimes (including theft, gambling, embezzlement, extortion, torture, murder, crime of morality, possession of sharp weapons) then a special criminal act (including Drugs, health, child protection).

The latest case of North Hulu Sungai (HSU), South Kalimantan (South Kalimantan), assigned 8 suspects involved in the arson of members of the Army of Praka Ruspiani to death. The Motives of murders against Army Members Praka Ruspiani was allegedly triggered by land disputes. This case confirms that the criminal act of murder is motivated or triggered by a land dispute.

According to the Attorney General, the handling of general criminal cases which objects are in the form of land shows an increasing trend and escalation. That the case with the object of the land is a prospective business land and tantalizing so the land cases are potentially ridden by various interests, both among individual actors, land mafias and case brokers. There are indications that land cases which supposed to be in private law are enforced and engineered into criminal cases using Articles 170, 263, 266, 378, 385 and 406 of the Criminal Code (contained in Letter No. B-230 / E / Ejp / 01/2013 is concerning Handling Case of Criminal Acts of Objects in the Form of Land). The formulation of the problem in this research is on how is the characteristics of criminal acts in the field of wetland environment and how the law enforcement of criminal acts in the field of Wetland Environment in Hulu Sungai Utara Regency.

METHOD

The method of this study uses normative legal research method (*sociolegal*

- 1 Wikipedia.2017.https://id.wikipedia.org/wiki/Kabupaten_Hulu_Sungai_Utara#Luas_Wilayah. Accessed on March, 31st
- 2 The Introduction of Wetland Environment.2015. Faculty of Mathematics and Natural Sciences Lambung Mangkurat University .February. <https://pllbmfipaunlam.wordpress.com/2015/02/27/lahan-basah-wetland/>. Accessed on 31st of March 2017.
- 3 The Central Bureau of Statistics of Hulu Sungai Utara Regency. <https://hulusungaiutarakab.bps.go.id/webbeta/frontend/Subjek/view/id/169#subjekViewTab3|accordion-daftar-subjek1>. Accessed on 31st of March 2017.

research),⁴ supported by field data using an interdisciplinary or “hybrid” approach between normative research aspects and sociological approach using qualitative analysis, which is by analyzing a data in-depth and holistic. Paying close attention to the suitability of *das sollen* and *das sein*, this is to fulfill the need for more detailed and thorough explanations of legal issues in a more meaningful way by comparing law in books with the law in action.⁵

ANALYSIS AND DISCUSSION

The Characteristic of Criminal Acts in Wetland Environment.

Wetlands are areas where the soil is saturated with water, either permanent (settled) or seasonal. These regions are partially or wholly inundated by shallow water layers. Included in this wetland are such as swamps (including mangrove swamps), marsh, and peat. Water that floods the wetland can be classified as fresh, brackish or salty.

Wetlands are areas that have high levels of biodiversity compared with most ecosystems. On that land, various types of vegetations grow, such as freshwater swamp forests, peat swamp forests, mangrove forests, grass marsh, and others. Wildlife wetland residents are also not less diverse, ranging from typical wetlands such as crocodiles, turtles, lizards, snakes, various species of frogs, and various kinds of fish, to hundreds of species of birds and mammals, including tigers and elephants.

The definition of a wetland is from the meaning of the word wetlands from English. Wetland is a transitional area between dry land and aquatic areas such as lakes, swamps, marsh, rivers, and beaches. Not all wetlands are always runny or stagnant throughout the year.⁶

According to the Indonesian Wikipedia, wetlands Are areas where the soil is saturated with water, either permanent or seasonal. These regions are partially or wholly inundated by shallow water layers. Included in this wetland, are such as swamps (including mangrove swamps), marsh, and peat. Water that inundates wetlands can be classified into freshwater, brackish or salty. Wetlands are areas that have high levels of biodiversity compared with most ecosystems. On wetlands, various types of vegetation grow (vegetation), such as freshwater swamp forests, peat swamp forests, mangrove forests, grasslands, and others. Wildlife wetland residents are also no less diverse, ranging from typical wetlands such as crocodiles, turtles, lizards, snakes, various types of frogs, and various kinds of fish; up to hundreds of species of birds and mammals, including tigers and elephants. On the other hand, many areas of wetlands are fertile soil, which is often opened, dried and converted to farmland, both can be as rice fields, aquaculture locations, and in Indonesia as transmigration areas.⁷

Based on the legal theory of law and community development that pays attention to sustainable development and environmentally friendly, environmental

4 Sulistyowati Irianto dan Shidarta. (eds). 2011. *The Legal Research Methods: Constellation and Reflection*. Penerbit.Yayasan Obor Indonesia. P 177. Also in Sulistyowati Irianto. 2011. *The Legal Research Practice: Sociolegal Perspective*. Jakarta: National Law Development Agency. P.12

5 *Ibid*, p 175.

6 Conservation Technology Information, 2007. *Wetlands : A Key Links in Watershed Management*, Download Internet.

7 Wikipedia, *Wetlands*, https://id.wikipedia.org/wiki/Lahan_basah#Beberapa_tipe_lahan_basah, Accessed on 31st of March 2017.

issues become a development issue. It means that besides the economic development and social development, the environmental issues are quickly becoming a debate and also a new dimension of the concept of development. This development is referred to as environmental development and its principles became the Stockholm declaration of 1972.⁸

Fish cultivation is regulated in Article 1 number 7 of Law Number 45 the Year 2009 concerning Amendment to Law Number 31 the Year 2004 regarding Fisheries says:

⁸ “Fishery management is all efforts, including integrated processes in the collection of information, analysis, planning, consultation decision making, allocation of fish resources, and the implementation and enforcement of legislation in the field of fishery, exercised by the government or other authorities directed to achieve a continuous productive water bio-resources and agreed-upon”.

North Hulu Sungai Regency which has wetland areas such as lakes, rivers, and swamps, has the unique characteristic of a criminal act which is illegal fishing by using electric shock to get fish, which is used when looking for fish in lakes, rivers, and swamps.

The term of the crime *strafbaar feit*, with criminal acts, criminal events, offenses and deeds^[9]. In legislation that uses the term criminal acts both in its own chapters, and in its explanation almost always uses the word

deed. Pompe formulates that a *strafbaarfeit* is actually nothing other than an action which, according to some formula, the Act has been declared a punishable act.^[10] R. Tresna stated that “a criminal event is an act or series of human acts contrary to law or other laws and regulations, against which acts of punishment are committed.”⁹

This crime is seen to threaten the sustainability of the environment ecosystem, because the search for fish by using electric shock will make the extinction of seeds and children of fish, so that in the future, our grandchildren, possibly no longer know the type of fish *papuyu*, *haruan*, *sasapat*, *jelawat*, *lais*, *baung*, and other typical Kalimantan fish.

Therefore, the importance of keeping the environment is in order to remain existing and for the sustainability of development in the future, as a legacy for prosperity.

Based on secondary data which is obtained from 3 (three) institutions in the Hulu Sungai Utara Department (Resort) Police, Amuntai District Attorney and Amuntai District Court obtained data as follows:

8 Daud Silalahi, 2003 “Sustainable Development in the Framework of Management (Including Protection) Natural Resources Based on Socio-Economic Development”. Paper in the framework of Law Development Seminar VIII, 14-18th of July 2003. Denpasar.

9 Mr R. Tresna. R1959. *The Criminal Law Principles* Jakarta : PT. Tiara Limited. p. 27.

Table 1 : The rate of Illegal Fishing Crime for 5 (five) Years

No	Name of Institution	Year				
		2013	2014	2015	2016	2017
1	Resort Police HSU	2	6	6	2	4
2	Amuntai District Attorney	2	6	6	3	3
3	Amuntai District Court	2	6	6	3	3

Source: Reprocessed from secondary data source November 2017

As seeing the modus operandi of criminal acts of fishing by using tools and ways that can harm and endanger the sustainability of fish and environmental resources conducted by small fishermen. In some cases, the equipment used is boat made of ironwood with various variations of length and width ranging from 5 meters to 7 meters, since 2013 until 2017. Police and Attorney General's Office has seized 13 units engine boat (*jukung/sampan*) from various brands.

The form of illegal fishing by giving electric shock to fish using the machine was done by the defendant doing fish electrocuting activity by using the ginset stun tool that is by ginset machine turned on electric current connected to the capacitor to take negative and positive currents, for negative currents are permanently implanted in *jukung / sampan* / boat, while the positive current is connected to *halawit* (sticks made of bamboo ends with iron circle and meshed from nylon) which is given a socket (switch), if the sticks such *halawit* pressed then *halawit* is flowed by electric current so that if there are fish in the water then *halawit* is directly put into the water and the fish will be exposed to electric current/stun and fainted and they are taken by *halawit* sticks that have the net after that the fish are put in a bucket with fish catches that can weigh kilograms. Types of *sepat siam* fish, *haruan* fish, *lais* fish, *papuyu* fish, etc. which are types of freshwater fish.

Fishing action by using stun ginset

made by defendants to the environment of fishery resources can cause the death of microorganisms / plankton which is a natural food of fish for mother of fish that is spawning / mating so that it can cause the death of small-sized fish (from seed to child and if the use of stun device in along time and repeatedly to make the large and other animals faint so that they can easily be caught, besides it can cause disruption of habitat/environment of the fish also fish production to decline, extinction of certain types of fish and lack income of fisherman. Acts committed by the defendant such as fishing activities by using stun tool contrary to and prohibited by the applicable legislation/existing regulation because the defendant's act of intentionally making fishing using ginset-powered stun device may endanger the sustainability of fish resources.

Fish catching according to Law Number 45 the Year 2009 on Fisheries Article 1 number 5 which stated:

"Fish catching is an activity to take uncultivated fish from waters by using any means or methods including activities using ships to load, transport, store, cool, handle the process, and/or preserve it".

Fishing conducted by some communities in Hulu Sungai Utara Regency located in river areas, Panggang lake, and swamps in Law Number 31 the Year 2004 as amended by Law Number 45 the Year 2009 on Fisheries (hereinafter referred to as the Fisheries Law)

17 the category of Small Fishermen. This is in accordance with the provisions of Article 1 number 11 which says:

“Minor Fisherman is a person whose way of living is catching fish to meet his daily living requirements using a fishing ship with a weight of not more than five (5) gross ton (GT)”. Although it is a minor fisherman, the characteristic of the illegal fishing is the crime committed by small fishermen, who look for fish to meet their daily needs, so this crime happens to make a living (economy).

The actions of small fishermen who catch fish by using stunner or chemicals such as potash etcetera is a criminal act of fishery, which regulated in Article 84 and Article 100B of the Fisheries Law.

Article 84

- (1) Every person who, intentionally, within the Indonesian Fish Cultivation Territory, catches and/or breeds fish using chemical substances, biological substances, explosives, tools and/or means, and/or structures, which may damage and/or endanger conservation of fish resources and/or the environment thereof, as set forth in Article 8 paragraph (1), will be penalized with imprisonment of maximum 6 (six) 3 years and monetary charge of maximum Rp. 1.200.000.000,00 (one billion two hundred million rupiahs).

The elements contained in Article 84 paragraph (1) of the Fisheries are:

- 1) Every person referred to Article 1 number 14 Law no. 45 of 2009 is an individual or a corporation;
- 2) Intentionally within the Indonesian Fish Cultivation Territory, catches and/or breeds fish; This is an alternative element that allows the

panel of judges directly select one of the actions relevant to the legal facts and in the sense that if one of the acts in this element has been fulfilled, then this element must also be stated has been fulfilled.

- 3) Using chemical substances, biological substances, explosives, tools and/or means, and/or structures, which may damage and/or endanger conservation of fish resources and/or the environment; This is an alternative element that allows the panel of judges directly select one of the actions relevant to the legal facts and in the sense that if one of the acts in this element has been fulfilled, then this element must also be stated has been fulfilled.
- 4) Committed by minor fishermen and/or minor fish cultivator, explained in Article 1 paragraph 11 Law Fisheries which is : “Minor Fishermen is a person whose way of living is catching fish to meet his daily living requirements using a fishing ship with a weight of not more than five (5) gross ton (GT)”.

Then The Article 100B of the Fisheries Law states:

“In the event the criminal act referred to in Article 8, Article9, Article12, Article 14 paragraph (4),Article 16 paragraph (1),Article20 paragraph (3),Article21, 10 article23 paragraph (1),Article26 paragraph (1),Article 27 paragraph (3),Article 28 paragraph (1)Article 28 paragraph (3),Article35 paragraph (1),Article36 paragraph (1),Article 38,Article 42 paragraph (3),Article55 paragraph (1)wa committed by a

minor fisherman and/or a minor fish cultivator, he/she shall be sentenced with imprisonment for a maximum of one (1) year or fine of a maximum of Rp.250.000.000,00 (two hundred fifty million rupiah).”

If minor fisherman catches for business activities as mentioned in Article 7 paragraph (2), then the provision of Article 100C of the Fisheries Law states that “In the event the criminal act referred to in paragraph (2) Article 7 was committed by a minor fisherman and/or minor fish cultivator, he/she will be sentenced with fine for maximum of Rp.100.000.000,00 (one hundred million rupiah). Article 7 paragraph (2) of the Fisheries Law states:

Any person performing business and/or activities on fishery management must obey the provisions meant in paragraph (1) on:

- a. kinds, amount, and measurement of fish catching equipment;
- b. kinds, amount, measurement, and placement of fish catching auxiliary tools;
- c. area, lane and time or season of fish catching;
- d. fish catching terms or standard operating procedures;
- e. fishing ship monitoring system;
- f. kinds of new fish to be cultivated;
- g. kinds of fish and the zone of spread and fish catching based on cultivation;
- h. cultivation of fish and its protection;
- i. prevention of pollution and damages to fish resources and its environment;
- j. minimum measurement of weight of kinds of fish permissible to be caught;
- k. conservation water zones;
- l. plague and area of the fish disease plague;

- m. kinds of fish prohibited to be traded, entered into, and exported from the State of the Republic of Indonesia; and
- n. kinds of protected fish.

Based on the discussion above, conclusions can be drawn. Characteristics of criminal acts in the wetland environment in Hulu Sungai Utara Regency are Illegal Fishing conducted by Small Fishermen using Electric Device (electric /battery/genset) by the transportation of boat (*jukung/sampan*) carried out in the stream, lake, and swamp areas. Fishery crime is conducted by the people because it is a job to meet the needs of daily economic life

Law Enforcement of the Criminal Act of Wetland Environment in Hulu Sungai Utara Regency.

Law enforcement, according to law experts, is:

1. Soerjono Soekanto, the meaning of law enforcement is the harmony of the relation between the values that are elaborated in the steady and concreated rules with the behavior as a series of the describing value of the final stages to create, maintain and maintain peace of life. Furthermore, it is said that law enforcement is not merely the implementation of legislation even though in reality, it tends to happen in Indonesia.¹⁰
2. Soedarto defines law enforcement as the concern and the work on the act against the law (tort) that really happen (onrecht in actu) as well as possible

10 Soerjono Soekanto, 2007. *The Factors Affecting Law Enforcement*. Jakarta: PT. Raja Grafindo Persada, p. 3

unlawful acts (onrecht in potentie).¹¹

3. Satjipto Rahardjo explained that the essence of law enforcement is a process for realizing the desires or legal ideas into reality. The desire of the law is the mind of the constitution-making body, which is the idea or concepts of justice, the legal certainty and the social benefits formulated in the rule of law.¹²
4. Suharto, as quoted by R. Abdussalam said that law enforcement is a series of activities conducted by law enforcement officers both preventive actions and enforcement measures in applying the applicable legal provisions to create a safe, peaceful and orderly atmosphere for the sake of legal certainty in society.¹³
5. Jimly Asshiddiqie put forward the definition of law enforcement as a process of doing efforts for the establishment or functioning of legal norms as a behavioral guide in the traffic or legal relations in the life of society and state.¹⁴

The effectiveness of law enforcement is basically influenced by several factors, where these factors have a close relationship and influence each other. According to Soerjono Soekanto, these factors are:

1. Legal factors or legislation.
 - a. Problems that occur or disruption of law enforcement that comes from the law may be caused by:
 - b. The principles of the enactment of the law were not followed
 - c. The absence of the enforcement regulations which is urgently needed to implement the law
 - d. The lack of clarity in the meaning of the words in the law which results in confusion in the interpretation and application.¹⁵

2. The Factors of the law enforcement apparatus.

The scope of the term “law enforcement” is very broad. In this paper, the law enforcers will be limited to those directly involved in law enforcement that is not only the law enforcer but also peace maintenance. It should be assumed that the group includes those who served in the areas of the judiciary, the prosecutor, the police, the lawyer and the penitentiary.¹⁶

The law enforcer is a role model in society, therefore they should have certain abilities, in accordance with the aspirations of the community. They must be able to communicate and get understanding from the target group, in addition, to be ably carrying out the roles that are acceptable to them. Apart from that, the role model should be able to utilize elements of certain traditional patterns, thereby stimulating the participation of the target group or the wider community. The role model should also be able to choose the right time and environment in introducing some new norms or rules of law and providing good

11 Soedarto 2000. *The Kapita Selekta of The Criminal Law*. Bandung: Alumni. p. 111

12 Satjipto Rahardjo. 2007. *The Problem of Law Enforcement A Sociological Overview*. Bandung: Sinar Baru. p. 15

13 R. Abdussalam. 1997. *The Law Enforcement in the Field by the Police*. Bandung: Gagas Mitra Catur Gemilang. p. 18

14 Jimly. Asshiddiqie. 2017. *The Law Enforcement*, www.docuDesk.com . Accessed on April, 1st 2017 p.1

15 Soerjono Soekanto, *Op. Cit*, p. 17-18

16 *Ibid*, p. 19

exemplary.¹⁷

3. The Factor of facility

Without certain facilities, it is impossible for law enforcement works smoothly. The facilities include educated and skilled human labor, good organization, adequate equipment, sufficient finances and so on. If these things are not met, then it is impossible for law enforcement to achieve its objectives.¹⁸

Therefore, for the problem of facilities, it should be followed by the following thoughts:¹⁹

- a. What does not exist - the new one provided;
- b. Damaged or wrong - repaired or corrected;
- c. The less - plus;
- d. The jam - launched;
- e. The retreat or degenerate - advanced or enhanced.

4. Community factors.

Law enforcement comes from the community and aims to achieve peace within the community. Therefore, it is viewed from a certain perspective, and then society can influence law enforcement.²⁰

When citizens know their rights and obligations, they will also know the activities of how to use the legal effort to protect, fulfill and develop their needs with the existing rules. All of this is usually called as legal competence which is impossible if the community:²¹

- a. Not knowing or not aware, if their

rights are violated or disturbed;

- b. Not aware of any legal efforts to protect their interests;
- c. Powerless to utilize legal efforts due to financial, psychological, social or political factors;
- d. Not having the experience of being a member of an organization fighting for its interests;
- e. Having unfavorable experiences in the process of interaction with various elements of the formal legal community.

4
5. Cultural factors.

The legal culture basically includes the values underlying the prevailing laws, the values / which are abstract conceptions of what is considered good (so embraced) and what is considered bad (thus avoided). These values are usually a pair of values that reflect two extreme conditions that must be harmonized.²²

The implementation of the law may proceed normally and peacefully, but it may also occur due to a violation of the law. In case of the violation has already occurred, then the law shall be enforced. It is through law enforcement that this law becomes a reality. There are three elements in enforcing the law that must always be considered, Those are legal certainty (*rechtssicherheit*), benefit (*zweckmassigkeit*) and justice (*gerechtigkeit*).²³

Through legal certainty, it will create justiciable protection to arbitrary actions, which means that one will be able to obtain something to be expected

17 *Ibid*, p. 34

18 *Ibid*, p. 37

19 *Ibid*, p. 44

20 *Ibid*, p. 45

21 *Ibid*, p. 56-57

22 *Ibid*, p. 59-60

23 Sudikno Mertokusumo.1991. *Knowing the Law (An Introduction)*. Yogyakarta: Liberty. p. 134

in certain circumstances. With the legal certainty, people will be more orderly because the law is in charge of creating legal certainty that turns out to be public order. Aside from expecting certainty, people also expect benefits in law enforcement. Since the law is for human beings, law enforcement must benefit society and it should not cause anxiety in society. A Justice, in law enforcement of justice, it is also very expected by society. Although the law is not identical with justice, in law enforcement, injustice is very avoided because according to its principle law applies to all people.²⁴

The law enforcement is conducted by the North Hulu Sungai Resort Police through two steps, they are preventive and repressive. The preventive way is done by carrying out socialization or counseling either organized or face-to-face directly to each fisherman. In addition, Police also put banners warning about not to make fishing in ways that are prohibited as with the stunner because it will endanger the lives and bodies of the perpetrators themselves or others and it will disrupt with the biological conservation of both fish and water plants.

The repressive measures undertaken by the Hulu Sungai Utara Police Resort are to realize the second main duty of the police which is law enforcement. Efforts to enforce the law can be a resolution outside the legal process or through legal proceedings to court. The effort to settle outside the legal process is usually done by giving reprimand or warning, especially for the beginners. The concept of this settlement in criminal law can be said as a criminal mediation through restorative justice.

²⁴ *Ibid*, p. 134-135

According to Indonesia's positive law, any criminal case basically can not be resolved out of court, although in certain cases it is possible to settle the cases outside the court. However, In law enforcement practices in Indonesia, criminal cases are often settled out of court through the discretion of law enforcement officers, reconciliation mechanisms, customary institutions and so on. The practical implications of the settlement of the cases outside the court so far have no formal legal basis, so it is very common that there are cases that have informally been done peace settlement through customary law mechanism, but they are still proceeded to court according to positive law.

Barda Nawawi Arief explained that the developed criminal mediation departs from the ideas and working principles as follows:²⁵

a. Conflict Handling (*Konfliktbeitung*)

The mediator's task is to make the parties forget the legal framework and encourage them to engage in the communication process. This is based on the idea that crime has caused interpersonal conflict. The Conflict which the mediation process leads to.

b. Process Orientation (*Prozessorientierung*)

Penal Mediation is more oriented to the quality of the process rather than the outcome, which to awaken the perpetrators of the crime of wrongdoing, the deadlocks of the conflict will be solved, to bring peace to the victim, relieve the fear from them and so on.

c. Informal Proceeding (*Informalitat*)

²⁵ Barda Nawawi arief.2004. *The Mediation Penal Settlement Outside the Court*, Semarang: Pustaka Magister. P.4

Penal mediation is an informal process, not bureaucratic, avoiding strict legal procedures.

d. Active and Autonomous Participation (*Parteiautonomie/Subjectivierung*)

Parties (perpetrators and victims) are not seen as the objects of the criminal procedure but rather as subjects with personal responsibility and ability to act. They are expected to act on their own free will.

Another repressive measure undertaken by the North Hulu Sungai Resort Police is to process the perpetrator through the process of the investigation until P21 (complete) by the Public Prosecutor. Based on data from the Hulu Sungai Utara Attorney Office between 2014 and 2017, there are 14 cases and a case of a criminal offense in a fishery that often occurs and has been predicted with a permanent legal force as a violation of article 84 paragraph (1) jo. Article 100B of Law no. 31 the Year 2004 jo. UU no. 45 the Year 2009 on Fisheries. Article 84 paragraph (1) states that:

Every person who, intentionally, within the Indonesian Fish Cultivation Territory, catches and/or breeds fish using chemical substances, biological substances, explosives, tools and/or means, and/or structures, which may damage and/or endanger conservation of fish resources and/or the environment thereof, as set forth in Article 8 paragraph (1), will be penalized with imprisonment of maximum 6 (six) years and monetary charge of maximum Rp. 1.200.000.000,00 (one billion two hundred million rupiahs).

Article 8 paragraph (1) of the Fisheries

Law shall be read “Every person shall not to do fish catching and/or breeding by chemical substances, biological substances, explosives, means and/or methods, and/or structures, which may harm and/or damage the conservation of fish resources and/or the environment thereof, in Indonesian fish cultivation territory”.

Violation of Article 84 paragraph (1) jo. Article 8 Paragraph (1) of the Fishery Law shall be lightened if the qualification of the perpetrator is a small fisherman. According to Article 1, number 11 of the Fisheries Law referred to as Minor Fishermen is a person whose way of living is catching fish to meet his daily living requirements using a fishing ship with a weight of not more than five (5) gross ton (GT). The legal basis of the punishment is lighter if done by minor fishermen according to Article 100B of Fisheries Law as read:

“In the event the criminal act referred to in Article 8, Article 9, Article 12, Article 14 paragraph (4), Article 16 paragraph (1), Article 20 paragraph (3), Article 21, Article 23 paragraph (1), Article 26 paragraph (1), Article 27 paragraph (3), Article 28 paragraph (1) Article 28 paragraph (3), Article 35 paragraph (1), Article 36 paragraph (1), Article 38, Article 42 paragraph (3), Article 55 paragraph (1) was committed by a minor fisherman and/or a minor fish cultivator, he/she shall be sentenced with imprisonment for a maximum of one (1) year or fine of a maximum of Rp.250.000.000,00 (two hundred fifty million rupiahs).”

Based on the above discussion, the following conclusions can be drawn: Law enforcement of Wetland Environment, in Hulu Sungai Utara Regency conducted by the Hulu Sungai Utara Resort Police against illegal fishing, such as fishing by using of tools

that can harm the preservation of biological resources and the environment through stun devices done in the form of preventive and refreshing

CONCLUSION

1. Characteristics of criminal acts in the wetland environment in Hulu Sungai Utara Regency are Illegal Fishing conducted by Small Fishermen using Electric Device (electric/battery/genset) by the transportation of boat (*jukung/sampan*) carried out in the stream, lake, and swamp areas. Fishery crime is conducted by the people because it is a job to meet the needs of daily economic life.
2. Law Enforcement of Wetland Environment, in Hulu Sungai Utara Regency conducted by the Hulu Sungai Utara Resort Police against illegal fishing, such as fishing by using of tools that can harm the preservation of biological resources and the environment through stun devices done in the form of preventive and refreshing. Preventive efforts by giving socialization to the community both collectively and individually, both organized and situational at the scene. Repressive efforts are done in 2 (two) forms: (1) through the process outside the judiciary and (2) in the judiciary. The process outside of the judiciary is carried out through criminal mediation based on police discretion, whereas through the judicial process is carried out by the process of investigation followed by prosecution and criminal detention through a court decision.

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