

MEANING OF CRIMINAL OFFENSES IN THE FISHERIES FROM A FORMAL CRIMINAL LAW PERSPECTIVE

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Abstract - In establishing a fisheries court, many things must be taken into account, because the court that will try perpetrators of criminal acts in the fisheries sector has been strictly regulated in the Fisheries Law. Even so, these regulations deviate greatly from the provisions of the Criminal Procedure Code. The research aims to analyze the application of the Criminal Procedure Code to criminal acts in the fisheries sector and analyze the obstacles and solutions. This writing uses descriptive normative legal research methods. The results of the research show that the application of the Criminal Procedure Code to criminal acts in the fisheries sector can be carried out within a maximum of one day. Handling criminal cases takes a maximum of 400 days, from investigation to cassation decision. Fisheries Law, arrest of vessels and/or people suspected of committing criminal acts in the territorial sea or Indonesian EEZ for a maximum of seven days. The time limit for resolving criminal cases in the fisheries sector is 140 days from the investigation to the cassation decision at the Supreme Court. Obstacles in implementing the Criminal Procedure Code include investigative authority, length of arrest, and detention period. The application of the principle of *lex specialist derogate legi general* is a solution in the application of criminal procedural law.

Keywords: criminal acts; fisheries; formal criminal law

INTRODUCTION

Indonesia is an archipelagic country; this is because Indonesia's territory consists of islands. The meaning of archipelagic country based on the Law of the Republic of Indonesia Number 32 of 2014 concerning Maritime Affairs in Article 1 paragraph (5) can be interpreted as a country which consists entirely of one or more islands and can include other islands (Deddi et al., 2022). Which has 17,504 islands with a coastline 95,181 km long. Based on the 1982 International Law of the Sea Convention (UNCLOS), Indonesia has sovereignty over a territorial sea of 3.2 million km² consisting of archipelagic waters covering an area of 2.9 million km² and a territorial sea covering an area of 0.3 million km².

Indonesia's vast marine waters also contain large fisheries resources. This has encouraged many foreign and local fishermen to carry out illegal activities in exploiting fisheries resources in Indonesian waters (Belhabib& Le Billon, 2023). For example, illegal fishing, throughout January 2021 as many as 9 vessels consisting of 8 foreign fishing vessels and 1 domestic fishing vessel carried out illegal fishing (Alimuddin et al., 2022). Fisheries crime is the act of catching fish using a fishing license with a fake permit, not being equipped with a fishing permit, using prohibited fishing gear, and catching fish of a type and size that does not comply with the permit (Oner et al., 2022).

Illegal fishing has harmed the country financially because it has significantly reduced productivity and catches (Shadiq& Karim, 2023). Another impact of criminal acts in the fisheries sector is



damage to ecosystems and marine biological resources (Zubaidah et al., 2022). Many coral reefs have been damaged and destroyed due to fishing carried out using illegal tools and materials (Hasniati et al., 2023). The use of dangerous chemicals and tools that are not environmentally friendly will only kill marine biota, which in the end fish that should not be caught die and the fish population will become small due to the use of fishing tools on a large scale which can result in the sustainability of fisheries disturbed (Karim et al., 2022). Fishing activities without permits are carried out by foreign fishermen from neighboring countries in the region who enter Indonesian waters against the law (Shadiq et al., 2023).

Regulations regarding fisheries are currently regulated in Law Number 45 of 2009 concerning Amendments to Law Number 31 of 2004 concerning Fisheries, containing various regulations governing formal law and material law as a policy in overcoming criminal (Shadiq, 2022). CTS in the fisheries sector, which will be the basis for policies on overcoming criminal acts in the fisheries sector will be used as a basis for implementation and execution which are formed to create effectiveness and efficiency in law enforcement in the fisheries sector (Shadiq, 2022). Procedural law in investigations, prosecutions, and trials at fisheries courts is carried out according to the Criminal Procedure Code (KUHAP) unless specifically stipulated in Law Number 45 of 2009 concerning amendments to Law Number 31 of 2004 concerning Fisheries. Criminal provisions in the Fisheries Law are regulated in Chapter (Adang et al., 2021).

Article 73 of Law Number 45 of 2009 concerning amendments to Law Number 31 of 2004 concerning Fisheries states that the period for investigating criminal acts in the fisheries sector in the fisheries management areas of the Republic of Indonesia * (Kurniati et al., 2021). Is carried out by Civil Servant Fisheries Investigators, Indonesian Navy Officer Investigators, and/or Indonesian National Police Investigators. In the amendment to this article, which is numbered Article 73B, the law gives fisheries investigators the authority to carry out their investigative duties and the authority to detain people and goods (Elvany, 2020). For the case investigation process, fisheries investigators have a maximum detention period for suspects of 20 days. If it is still necessary for unfinished purposes, the detention examination can be extended by 10 days.

The Criminal Procedure Code is the basis for law enforcement officials such as the police, prosecutors, and courts to exercise their authority (Beseng, 2021). This book regulates investigations, prosecutions, trials, and other matters that are procedures for criminal acts regulated by the Criminal Procedure Code. In the first part of the criminal procedure law, it is stated that an investigator is a police official of the Republic of Indonesia or a certain civil servant official who is given special authority by the criminal procedure law to carry out investigations. Apart from what is regulated in Article 1 point 1 of the Criminal Procedure Code, there is also Article 10 of the Criminal Procedure Code, which regulates the existence of assistant investigators alongside investigators (Churchiil, 2021). For investigative purposes, the investigator or assistant investigator, on the orders of the investigator, is authorized to carry out detention for 20 days. If it is still necessary for unfinished purposes, the detention investigation can be extended for 40 days.

In Article 1 point 7 of the Criminal Procedure Code, it is stated that prosecution is the action of the public prosecutor to transfer a criminal case to the competent district court in terms and according to the method regulated in this law with a request that it be examined and decided by a judge at the trial. Court (Susanto & Masyhar, 2020). The public prosecutor also has the authority to detain him for 20 days, if it is still necessary for unfinished business, the detention hearing can be extended for 40 days.

From the explanation above, it can be concluded that it turns out that the procedural law for fisheries crimes still deviates from the Criminal Procedure Code, including investigation, prosecution, and the authority of the court in adjudicating, so that the handling of criminal acts in the fisheries sector is currently not running optimally and is experiencing various obstacles in its resolution (Vooronin, 2021). The maximum detention time for fisheries investigators is 30 days, this detention time is shorter than the provisions of Article 24 of the Criminal Procedure Code because, for criminal cases generally, the detention period is a maximum of 60 days.



The maximum detention time in the prosecution of a fisheries crime is 20 days, This detention time is shorter than the provisions of Article 24 of the Criminal Procedure Code because, for criminal cases generally, the detention period is a maximum of 60 days. As a consequence, the public prosecutor must be able to work quickly to prepare an indictment to submit the file to the Fisheries Court (Wahyudi et al., 2023). The maximum detention time during an examination at a fisheries court is 30 days. This detention time is also shorter than the provisions of Article 24 of the Criminal Procedure Code because for criminal cases generally, the detention time is a maximum of 60 days. In connection with the background above, the author is interested in conducting more in-depth research on criminal acts of crime from the perspective of formal law or the Criminal Procedure Code (Ali & Setiawan, 2022). The problem in this research is how to apply the Criminal Procedure Code to criminal offenses and what are the obstacles and solutions in applying the Criminal Procedure Code to criminal offenses. The purpose of this research is to find out and explain the application of the Criminal Procedure Code to criminal offenses and to find out and explain the obstacles and solutions in the application of the Criminal Procedure Code to criminal offenses. The type of research used in this research is normative legal research. Normative legal research essentially examines law which is conceptualized as norms or rules that apply in society, and becomes a reference for everyone's behavior. This research uses a descriptive normative legal research method, with the approach used being statutory, carried out by examining all laws and regulations relating to legal issues relating to fisheries crimes.

METHOD

The type of research used in this research is normative legal research. Normative legal research essentially examines law which is conceptualized as norms or rules that apply in society, and becomes a reference for everyone's behavior. This research uses descriptive normative legal research methods. The approach used is a statutory approach, carried out by reviewing all laws and regulations relating to legal issues relating to fisheries crimes.

RESULT AND DISCUSSION

Based on the results of the study above, the detention process contained in the Criminal Procedure Code, at the investigation stage, is only valid for a maximum of 20 (twenty) days. This period, if necessary for an incomplete examination, can be extended by the prosecutor for a maximum of 40 days. If the 60 days for the investigation have not been completed, the suspect must be released from detention.

For prosecution purposes, the public prosecutor can detain a suspect for a maximum of 20 years per day. This period, if necessary for an incomplete examination, can be extended by the chairman of the district court for a maximum of 30 (thirty) days. After these 50 days, the public prosecutor must release the suspect from detention by law.

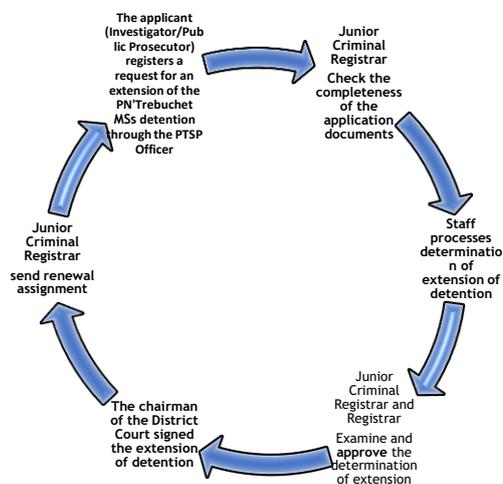


Figure 1. Detention process and extension of detention



District court judges also have the authority to issue detention orders for a maximum of 30 days. If necessary for examinations that have not yet been completed, this period can be extended by the chairman of the district court for a maximum period of 60 days. If the detention period has reached 90 days, even though the case has not been decided, the suspect must be released by law. For examination at the appeal level, the high court judge who examines and tries the case can detain him for a maximum of 30 days. This period can be extended by a maximum of 60 days by the chairman of the high court if the appeal case has not been completed. Even though the defendant's case has not been resolved, if the detention has lasted 90 days, the defendant must be released from detention for legal purposes.

At the cassation level, the supreme court judge who examines and tries the case, for the cassation examination, also has the authority to issue a detention order for a maximum of 50 days. This period, if necessary for examinations that have not yet been completed, can be extended by the Chief Justice for a maximum of 60 days. After 110 days, even if the case has not been decided, the defendant must be released from detention for legal purposes.

Procedural Law in Fisheries Law, detention is carried out by investigators against suspects for a maximum of 20 days, if it is still needed for unfinished purposes, the detention examination can only be extended for a maximum of 10 days. Once the 30 days have been completed, the suspect must be released from detention for legal purposes. Detention can be carried out by the public prosecutor for a maximum of 10 days and if detention is still necessary for an investigation that has not been completed, the detention can be extended by the head of the competent district court for a maximum of 10 days. After these 20 days, the public prosecutor must release the suspect from detention by law. During court hearings at the fisheries court, the judge can detain him for 20 days. If detention is still necessary for an investigation that has not yet been completed, the detention can be extended for a maximum of 10 years. For examination purposes, the judge at the high court has the authority to determine detention for 20 days. If detention is still necessary for an investigation that has not been completed, the detention can be extended for a maximum of 10 days.

For examination purposes, the judge at the Supreme Court has the authority to determine detention for 20 days. If detention is still necessary for an investigation that has not been completed, the detention can be extended for a maximum of 10 days. However, the procedural legal provisions of the Fisheries Law, follow the principle of *lex specialist derogate lex generalist* which means that specific legal rules will override general legal rules. So it can be concluded that when there is a rule that is not regulated in the Fisheries Law then the Criminal Procedure Code is used, Then in this provision, it is clear that violations of fisheries crimes committed in Indonesian waters still use the procedural law of the Fisheries Act.

The position of the Criminal Procedure Code is as a *lex generalist* which regulates matters that have not been regulated in the Fisheries Law as a *lex specialist*. So, as long as it has not been regulated in the Fisheries Law, the general regulations in the Criminal Procedure Code still apply. The application of the Criminal Procedure Code begins with an investigation. If an investigation has begun, the investigator immediately notifies the matter to the prosecutor's office in the form of a Notice of Commencement of Investigation (SPDP) by the mandate of Article 109 (1) of the Criminal Procedure Code. For investigative purposes, investigators carry out the following things, Arrest, Detention, Search, Confiscation

CONCLUSION

Whereas the application of the Criminal Procedure Code to criminal acts in the fisheries sector, namely the Criminal Procedure Code, regulates those arrests that can be made for a maximum of one day. The limit for settling criminal cases in the Criminal Procedure Law is a maximum of 400 days to complete a case from investigation to examination at the Supreme Court. Meanwhile, the Fisheries Law regulates the arrest of vessels and/or people suspected of committing violations in Indonesian maritime areas, including in the Indonesian Exclusive Economic Zone (EEZ) for a maximum of 7 days.



The time limit for resolving criminal offense cases in the fisheries sector is quite short, namely 140 days to resolve a criminal offense case in the fisheries sector, starting from investigation to the Supreme Court's cassation decision, so that there is no synchronization in the application of the Criminal Procedure Law and the Fisheries Law to crimes in the fisheries sector. Obstacles and solutions in implementing the Criminal Procedure Code are obstacles from legislative material originating from legal substance, involving inconsistent statutory regulations, thus having an impact on the implementation of law enforcement. These obstacles consist of investigative authority, length of arrest, and discretionary detention period. The application of the legal principle of *lex specialist derogate leg generalist* has become a solution in the application of the Criminal Procedure Code to criminal acts in the fisheries sector. With the provisions of this principle, criminal acts in the fisheries sector take priority using the procedural law in the Fisheries Law, and if it is not regulated in the fisheries law, then the Criminal Procedure Law is used, thus, there is no overlap in handling criminal cases in the fisheries sector.

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