
Law Enforcement Against Fishing Ship Crews That Do Not Have A Sail Permit

Ismail Lasantu ¹, Lisnawaty W. Badu ², Julius T. Mandjo ³

¹²³ Faculty of Law, State University of Gorontalo, Indonesia.
Korespondensi: E-mail: ismaillasantu1002@gmail.com

ARTICLE INFO

Keywords :

Law Enforcement,
Crew, Permit to Sail r

How To Cite :

Ismail., Badu, L. W.,
Mandjo, J. T. (2019). Law
Enforcement Against
Fishing Ship Crews That
Do Not Have A Sail
Permit. [Estudiante Law
Journal](#). 1 (1): 184-195

DOI :

ABSTRACT

This study aims to determine and analyze Law Enforcement Against Crews of Fishing Vessels Who Do not Have Sailing Permits. The data used in this study were analyzed and presented descriptively by using a *statute approach* and case approach (*case uproach*) through a qualitative approach to secondary data and primary data. The results show that law enforcement against fishing vessel crews who do not have a sailing permit can basically be done by fixing and improving the system and management of licensing documents in a simple way with the one-stop integrated service method (PTSP) in improving the quality of service by presenting the harbormaster's representative office in every area/city district and conducting surveillance and patrols in areas frequented by ships to catch fish and the activity of the marine police in providing counseling to fishing communities with the aim of providing knowledge about the obligations of each ship captain or crew members to have a letter of approval to sail and take action based on the Criminal Procedure Code and other relevant laws and regulations as a formal source of law used in enforcing criminal law. a material through the imposition of imprisonment, payment of fines, warnings and coaching.

©2019 Ismail., Badu, L. W., Mandjo, J. T.
Under the license CC BY-SA 4.0

I. INTRODUCTION

A. BACKGROUND

The problems that befell the Indonesian nation today are increasingly complex, including in the legal field. Legal certainty is very necessary, because it not only provides guarantees to the public about which actions may / may not be carried out, but also serves as a guide for law enforcement officers in carrying out their duties.

Law as a social phenomenon that occurs in people's lives. As a social phenomenon, law aims to balance one's interests in society, so as to minimize conflicts. The interaction of community members to fulfill the interests of their lives needs to be regulated by legal rules so that positive cooperative relations between community members can run safely and in an orderly manner.

The development of this era affects legal awareness and the assessment of a behavior. Whether the act is considered normal or even vice versa is a threat to social order. Acts that threaten social order are classified as crimes, often using or using technology. This crime is a type of crime that is relatively new and dangerous for order in society.

In Indonesia, aquaculture is carried out through various means. The most common cultivation activities are carried out in ponds/ponds, ponds, tanks, cages, and floating cages.

For this reason, because fish is one of the greatest wealth of the Indonesian state, it must be protected as well as possible through law enforcement that regulates and strict safeguards against fish fishing in Indonesian waters so that all fishermen have complete permits to enter Indonesian waters, both fishing permits and fishing business permits . Permits to sail and so on are very necessary in order not to harm the state .

More specifically, with regard to licensing in the field of fishery business, it is further regulated by Regulation of the Minister of Maritime Affairs and Fisheries of the Republic of Indonesia Number 58/Permen-Kp/2020 concerning Capture Fisheries Business as regulated in Article 10 to Article 11 of the Regulation of the Minister of Maritime Affairs and Fisheries. .

The presence of a number of laws and regulations, both in the form of laws and other laws and regulations in the field of fisheries, is essentially aimed at creating order and order in the community, especially in utilizing aquatic resources in the form of the sea, including in the process of catching fish carried out by fishing vessels. fish. One of the rules that must be met when

catching fish at sea is related to fishing permits which until now are still often neglected by the community, especially fishermen as contained in the case handling data by the Dit Polair ud Polda Gorontalo from 2018 to 2015. 2020 regarding the handling of fisheries cases. To avoid the expansion of the study in the preparation of this thesis proposal, the author raised the title of the proposal, namely: "**Law Enforcement Against Crews of Fishing Vessels Who Do not Have Sailing Permits** "

B. FORMULATION OF THE PROBLEM

1. how law enforcement against fishing vessel crews who do not have a sailing permit ?
2. What are the factors that cause fishing boat crew do not have a sailing permit ?

C. RESEARCH METHODS

This type of research is an empirical juridical law research. Empirical juridical legal research is another term used in sociological legal research, and can also be referred to as field research. This sociological legal research is based on primary data. Primary data is data obtained directly from the community as the first source through field research. Primary data acquisition from field research can be done either through observation, interviews or distributing questionnaires.

The approach used in this research is to use a qualitative approach. This approach method is a procedure that produces descriptive data in the form of written and spoken words from people and observed behavior. The results of qualitative data in this study are data obtained from observations at the research location taken from several samples as respondents as obtained from Dit Polair ud Polda Gorontalo.

II. DISCUSSION

Law Enforcement Against Crews of Fishing Vessels Who Do not Have Sailing Permits

In relation to fishing business activities using ships, at the implementation level, there are often violations of the law, including in the realm of criminal law, such as fishing activities carried out by fishing vessel crews who do not have sailing permits, so it is important to enforce the law. Law enforcement against fishing vessel crews who do not have a sailing permit in their orientation is part of the scope of law enforcement in the field of fisheries cases.

The process of law enforcement in the field of fisheries cases is basically the same as the law enforcement process in ordinary criminal cases, which begins with the investigation, prosecution and trial process in court. The investigation is carried out by a certain institution with special duties and responsibilities in the field of investigation, namely the Indonesian National Police. Especially for fisheries cases, although it has its own court, the procedural law used still refers to the Criminal Procedure Code (KUHAP).

Law enforcement efforts carried out in Indonesia are preventive and repressive law enforcement. Preventive law enforcement efforts are efforts to prevent crime which is part of criminal politics which is a crime prevention, which is carried out before the crime occurs. Meanwhile, repressive law enforcement efforts are all actions taken by law enforcement officers after the crime (crime) has been committed.

Violation of law in the field of fisheries cases, such as violations of the law regarding the completeness of a sailing permit that is not owned by the crew as fishery business actors when carrying out fishing activities is one of the important problems to get attention from the side of criminal law enforcement both preventively and legally. repressive.

This can be seen in the data on handling fisheries cases, especially reports on case handling by the Directorate of Water and Air Police of the Gorontalo Region from 2018 to 2020 which will be presented in the following table:

Table 1
Case Data Report of the Directorate of Water and Air Police of the
Gorontalo Region from 2018 to 2020

No	Year	Case Type	Amount	bestowed	Finished
1	2018	Fishery	5	2	3
2	2019	Fishery	5	3	2
3	2020	Fisheries	4	-	4

Based on the case data report of the Gorontalo Regional Water and Air Police Directorate from 2018 to 2020 on fisheries matters, it was noted that in 2018 there were 5 fisheries cases with category 2 cases assigned to the

Fisheries Department and 3 cases completed the legal process, further on in 2019 there were 5 fisheries matters with the category of 3 matters transferred to the Fisheries Department and 2 matters completed the legal process and in 2020 there were 4 fisheries matters which were all completed with the legal process stage.

Starting from the data on fisheries cases that occurred from 2018 to 2020 which in total amounted to 25 cases (cases) including violations of sailing permits as regulated in the Law of the Republic of Indonesia Number 17 of 2008 concerning Shipping, it is important in this case to take preventive measures by improving the service system, both legal and technical with the aim of preventing and minimizing the potential for violations of the completeness of the sailing permit for ship crews who will carry out fishing activities.

Which Factors Causing Fishing Vessel Crew Does Not Have a Sailing Permit

Legal factors that cause violations committed by ship crews when catching fish that do not have a sailing permit are caused by the many regulations that regulate and require fishing business actors related to the completeness of documents that must be met when carrying out fishing business activities. fish.

The number of regulations governing the completeness of licensing documents that must be fulfilled by fishing business actors in their existence is one of the causes of apathy for capture fish business actors to fulfill all required documents when carrying out fishing activities. This is like the completeness of a sailing permit which is often ignored by ship crews when carrying out fishing activities because the sailing permit is only valid for 1 day or 24 hours after the permit is issued .

For the provision of fishing vessels as fishing gear at a certain depth, it is necessary to regulate the licensing so that there is no overlap of authority. Authority is something that is attached to a person because of his position, so that with this authority the official can issue an agreement in the form of a permit to carry out any activity related to the law, which is usually called a "license". About to capture capturing business activities, licensing is very absolute. Especially if the business uses sophisticated shipping equipment and is carried out in a wider and deeper ocean. In Article 19 of the Regulation of the Minister of Maritime Affairs and Fisheries Number Per.05/Men/2008 it is stated that the Minister gives authority to the Director General tDirector-Generalxtend:

- (a) Fishery Business Permit (SIUP), Fishing Vessel Permit (SIKPI) to Indonesian persons or legal entities using vessels with sizes above 30 *gross tonnages*.
- (b) Fishery Business Permit (SIUP), Fishing Permit (SIPI), and/or Fish Transport Vessel Permit (SIKPI) to Indonesian persons or legal entities using vessels with sizes above 30 (thirty) *gross tonnage*.
- (c) Fishery Business Permit (SIUP), Fishing Permit (SIPI,) and/or Fish Transport Vessel Permit (SIKPI) to persons or legal entities employing foreign workers; and
- (d) Fishery Business Permit (SIUP), Fishing Permit (SIPI,) and/or Fish Transport Vessel Permit (SIKPI) in the field of investment to Indonesian legal entities that carry out fishing activities and/or fish transportation with investment facilities in paragraph (1).¹

In line with the provisions contained in article 19 of the fisheries law, one of the activities that play an important role in the process or procedure for licensing capture fisheries business which is the authority of the Minister of Maritime Affairs and Fisheries. However, the granting of this permit may be delegated to the Governor as an extension of the Central Government in the regions. This is by the provisions contained in Article 20 of the Minister of Maritime Affairs and Fisheries Number: Per.05/Men/2008, that the Minister may delegate the authority to issue an extension of the Fishing Permit (SIPI) and/or the Permit for Fish Transporting Vessels to the Governor for fishing vessels. Indonesian flag size above 30 (thirty) *gross tonnage* up to a certain size paragraph (1). The implementation of the delegation of authority as referred to in paragraph (1) shall be regulated separately by a Ministerial Regulation.²

The approval letter for sailing has been implicitly regulated in the Law of the Republic of Indonesia Number 17 of 2008 concerning Shipping and then further regulated by Regulation of the Minister of Transportation of the Republic of Indonesia Number: PM 82 of 2014 concerning Procedures for Issuing Sailing Approval Letters. The following will describe the provisions of the sailing approval letter according to the Regulation of the Minister of Transportation of the Republic of Indonesia Number: PM 82 of 2014.

Article 1 paragraph (1) to paragraph (8) explains that:³

¹Ibid., p. 337-338

²Ibid., p. 338

³Article 1 paragraph (1) to paragraph (8) Regulation of the Minister of Transportation of the Republic of Indonesia Number: PM 82 of 2014 concerning Procedures for Issuing Sailing Approval Letters

Paragraph 1: Issuance of a sailing approval letter is a supervisory activity carried out by the harbormaster on ships that will sail based on the captain's statement letter.

Verse 2 "Letter of consent to sail is a State document issued by the Syahbandar to each ship that will sail"

Paragraph 3 : *Master Sailing Declaration* is a statement made by the Master stating that the ship, cargo and crew have met the requirements for safety and security of navigation and protection of the maritime environment to sail to the destination port.

Paragraph 4 "Syahbandar is a government official in the port appointed by the Minister and has the highest authority to carry out and supervise the fulfillment of the provisions of legislation to ensure the safety and security of navigation.

Paragraph 5: "Syahbandar at a fishing port is a porter who is specially placed in a fishing port for administrative management and to carry out the function of maintaining shipping safety.

Paragraph 6 "Shipworthiness is a condition of a ship that meets the requirements of ship safety, prevention of water pollution from ships, manning, loading lines, loading, welfare of ship crew and health of passengers, the legal status of ships, safety management and prevention of pollution from ships and ship security management. to sail the waters.

Paragraph 7 : "The Minister is the Minister of Transportation.

Paragraph 8 "The Director-Generals the Director-General of Sea Transportation".

Furthermore, in Chapter II concerning Issuance of Sailing Approval Letters Article 2 to Article 7 describes as follows:⁴

⁴Article up to Article 7 Regulation of the Minister of Transportation of the Republic of Indonesia Number: PM 82 of 2014 concerning Procedures for Issuing Sailing Approval Letters

Section 2

Paragraph 1: "Every ship sailing is required to have a sailing approval letter issued by:
a. harbormaster and
b. harbormaster at the fishing port".

Paragraph 2 : "To obtain a sailing approval letter as referred to in paragraph (1), every ship must meet the ship's seaworthiness requirements and other obligations".

Paragraph 3: "For fishing vessels, the sailing approval letter as referred to in paragraph (1) is issued by the harbormaster at the fishing port".

Article 3 "The obligations as referred to in Article 2 are exempted for:
a. Warships and/or
b. State ships/government ships as long as they are not used for commercial activities".

Article 4

Paragraph 1 : yahbandar as referred to in Article 2 paragraph (1) letter a, includes:
a. Head of the Main Harbormaster Office;
b. Head of Batam Port Office;
c. Head of Harbormaster and Port Authority Office;
and/or
d. Head of the Port Management Unit Office.

Paragraph 2 : yahbandar at fishing port as referred to in Article 2 paragraph (1) letter b is an official/officer authorized to handle port at fishing port appointed by the Minister".

Article 5 : "The sailing approval letter is valid for 24 (twenty-four) hours from the time it is issued and can only be used for 1 (one) voyage".

Article 6: "The harbormaster as referred to in Article 2 paragraph (1), in issuing a sailing approval letter, can appoint an official and/or officer who has competence in the harboring sector".

Article 7 "InIf fishing vessel sails from a port located outside the fishing port or there are no harbormaster at the fishing port, a sailing approval letter is issued by the local harbormaster after obtaining an operation-worthy letter".

Referring to the description of the provisions of the Regulation of the Minister of Transportation of the Republic of Indonesia Number: PM 82 of 2014 concerning Procedures for Issuing Sailing Approval Letters as described in the provisions of Article 5 which confirms that the sailing approval letter is only valid for 24 (twenty-four) hours and can only be used for 1 (one) voyage, then this is one of the factors causing the completeness of the document to be often violated by the crew, especially fishing vessels when carrying out fishing activities that are not equipped with a sailing approval letter (sailing permit). Thus, to minimize the occurrence of violations of the completeness of the sailing approval letter document, it is necessary to facilitate services for the management of the sailing approval letter by presenting representatives of the harbormaster's office in each region/regency/city which is currently still centralized in the provincial capital.

III. CLOSING

A. Conclusion

Based on the results of the research described above, the researchers can conclude, as follows:

1. Law enforcement against fishing vessel crews who do not have sailing approvals can basicall by fixing and improving the system and management of licensing documents in a simple way with the one-stop integrated service method (PTSP) in improving the quality of service by presenting the harbormaster's representative office in every regional/municipal districts as well districtting surveillance and patrols in areas frequented by ships to catch fish and the activities of the marine police in providing counseling to fishing communities with the aim of prto providehe obligation of every ship captain or ship crew to have a certificate. approval of sailing as well as taking action based on the law of the Criminal Procedure Code and other relevant laws and regulations as a source of formal law used in enforcing material criminal law through imposing n imprisonment, payment of fines, warnings and coaching.
2. Factors that lead ,to violations of the crew who don't have a sailing permit caused by legal factors and non-legal factors.

Which is the cause of legal actors are the many regulations that regulate and require catching fish business actors to fulfill the requirements for completeness of documents when carrying out fishing business activities. such as fishery business licenses (SIUP), fishing licenses (SIPI) and fish transport ship permits (SIKPI) as well as sailing approval letters (sailing licenses). Meanwhile, non-legal factors are caused by the difficult conditions experienced by the crew in managing a sailing permit due to the many recommendation stages that must be passed in obtaining a sailing permit including the Security Unit of the Directorate of Water and Air Police, Naval Base and Harbor Masters as government official at the port appointed by the Minister of Transportation with the task of issuing a sailing approval letter.

B. Suggestion

Based on the conclusions described above, the researcher provides some suggestions and inputs as follows:

It is necessary to immediately bring representatives of the harbormaster's office in each district/city to facilitate access for capture fisheries business actors to arrange sailing approval letters and maximize the role of the marine police.

1. In providing counseling to the fishing community in providing knowledge about the obligation of each ship captain or crew to have a sailing approval letter and the importance of immediately presenting a one-stop integrated service (PTSP) in every region/city district too make it easier for capture fish business actors in managing documents. -licensing documents .
2. The need to simplify the regulation of licensing documents in the field of capture fisheries business, especially in obtaining a sailing approval letter (sailing permit) which is one of the mandatory requirements for fishing vessels when carrying out fishing activities as well as simplifying the system and management of providing recommendations in issuance the of permits in order to reduce the amount of costs incurred during the preparation of each permit document.

BIBLIOGRAPHY

Bambang Sunggono, 2012, *Legal Research Methodology* , Rajawali Press Publisher, Jakarta.

Bambang Waluyo, 2008, *Criminal and Criminal Investigation* , Sinar Graphic, Jakarta.

Bernard Arief Sidharta, 2013, " *Indonesian LAW - Efforts to Develop Responsive Systematic Law to Changes in Society* ". Publisher: Genta Publishing, Yogyakarta.

Darodi, " *EffeParodiess of Law Enforcement of Pekalongan City Regional Regulation Number 19 of 2012 concerning Non-Smoking Areas (Study of Members of the Pekalongan City Police Police)* ," Journal: Iea Hukum Vol. 2 No. 1 March 2016 Edition Master of Law Faculty of Law, Jenderal Sudirman University.

Desi Apriliani , 2016, " *Society Law Study on Criminalization Analysis of Farmers Surokonto Wetan Kab. Kendal (Theory of the Working of Law)* ". Article.

Fence M. Wantu, 2011, *Idee Des Recht Legal Assurance, Justice and Benefit (Implementation in the Civil Court Process)* Publisher. Student Library.

Fenty U. Puluhulawa, 2013, *Mineral and Coal Mining in Legal Perspective* , Publisher. Interpena Yogyakarta.

<http://Reference.Elsam.Or.Id/2015/01/Uu-Nomor-32-Tahun-2014-About-Kelautan>. Accessed On February 11, 2020.

https://id.wikipedia.org/wiki/Budi_daya_perairan. in the case on February 11, 2020.

Lawrence M. Friedman, 2011. *Legal System Perspective of Social Sciences* , Bandung Nusa Media .

Leden Marpaung, 2012, *Principles-Theory-Practice, Criminal Law* , Publisher: PT. Sinar Graphics, Jakarta.

Muhammad Syukri Albani Nasutioan and Zul Fahmi Lubis, 2016, *Law in Philosophical Approach* , Publisher : PT. Kencana, Jakarta.

Mukti Fajar and Yulianto Achmad, 2010, *Dualism of Normative & Empirical Legal Research*, Publisher . Student Library, Yogyakarta.

PAF Lamintang, 2014, *Fundamentals of Criminal Law in Indonesia* , Publisher. Sinar Graphics, Jakarta.

Regulation of the Minister of Maritime Affairs and Fisheries Number 10 of 2015 on the Amendment to the Regulation of the Minister of Maritime Affairs and Fisheries Number 56 of 2014.

Peter Mahmud Marzuki, 2010, *Legal Research* , Publisher Kencana Prenada Media Group, Jakarta.

R. Rismala Dewi, 2016, *Law Enforcement of Criminal Acts in the Fisheries Sector*, Research Center of the Indonesian House of Representatives Expertise Board, Jakarta.

Soerjono Soekanto, 2014 *Factors Affecting Law Enforcement*. Jakarta: UI Press.

Soerjono Soekanto. 2014 *Introduction to Legal Research*. Jakarta: UI Press.

Sudarsono, 2007, *Introduction to Law* , Publisher. Rineka Cipta, Jakarta.

Suratman and Philips Dillah, 2013, *Legal Research Methods* , Alfabeta Publishers, Bandung.

Teguh Prasetyo, 2014, *Criminal Sentence Revised Edition* , Grafindo Persada Jakarta.

Wawan Muhwan Hariri, 2012, *Introduction to Law* , Publisher. Bandung Faithful Library.