

Law Enforcement Strategies and Policies for Money Laundering from Predicate Crime in Fisheries

Syahrijal Syakur

Pusat Pelaporan dan Analisis Transaksi Keuangan, Gambir, Jakarta Pusat, DKI Jakarta, Indonesia

Corresponding author: syakursyahrijal@gmail.com

Keywords:

law enforcement, money laundering, fishery

Abstract

Law enforcement on money laundering originating from criminal acts in the field of fisheries (Illegal Fishing) after the Constitutional Court Decision Number 15/PUU-XIX/2021, which is not only the duty of investigators in the field of fisheries, but also the public prosecutor and judges in court who will process the results investigation at trial level. For this reason, each of these law enforcement officers must have the same perception in law enforcement as stipulated in the laws and regulations in the field of fisheries. This paper aims to find out the investigation of money laundering where the predicate crime is in the field of fisheries related to the differences in the respective procedural law and to find out the authority of the Special Fisheries Court to adjudicate money laundering cases where the predicate crime is in the fishery sector. This research used normative or doctrinal methods. The recommendation from the author is that the investigation of money laundering cases where the predicate crime is in the field of fisheries is carried out by separating the case files of criminal acts in the field of fisheries from the files of investigations of money laundering crimes but the investigation is still carried out in parallel. Regarding the authority of the special court for fisheries, judges at the special court for fisheries can interpret the law to mean that based on Article 71 of the Fisheries Law, the special court for fisheries has the authority to examine, adjudicate, and decide on money laundering cases where the predicate crime is in the field of fisheries.

Submitted: 20 April 2023

Accepted: 25 August 2023

Published: 1 December 2023

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To cite this article: Syakur, S. 2023. *Law Enforcement Strategies and Policies for Money Laundering from Criminal Origins in Fisheries*. *AML CFT Journal* 2(1):19-34, <https://doi.org/10.59593/amlcft.2023.v2i1.67>

Introduction

Criminal acts in the field of fisheries commonly called Illegal, Unreported, and Unregulated (IUU) Fishing¹ is one of the crimes listed in Article 2 Paragraph 1 of Law No. 8 of 2010 concerning the Prevention and Eradication of Money Laundering (TPPU Law) as a crime that produces assets that are the object of money laundering. Illegal fishing is part of

¹ Food And Agriculture Organization of The United Nations (FAO), *International Plan Of Action To Prevent, Deter And Eliminate Illegal, Unreported And Unregulated Fishing (IPOA-IUU)* (Roma, 2001), 2.

transnational organized crime if it involves organized crime groups across national borders.² This can be seen from its characteristics, namely one, there is cooperation involving more than two people. Fishing operations are not a single effort, they involve fishermen themselves, boat owners, funders, and others collaborating in financing and carrying out fishing operations, as well as in the final sale of the fish. Second, illegal fishing operates across borders at the international level. Empirically, in the waters of one country, across borders, or on the high seas there can be illegal capture, transport, and sale outside Indonesian jurisdiction. Third, there is the possibility of using various efforts to hide or disguise (money laundering) wealth resulting from illegal catches by illegal fishing criminals.³ The proceeds of crime that are hidden or disguised can be put into capital for infrastructure development in the form of ships, fish processing, fish processing plants, and other new equipment, or for the benefit of fishing and transportation operations.⁴

With the reasons mentioned above, law enforcement in uncovering the crime of Illegal Fishing is time to also reveal the crime of money laundering. The application of articles in the TPPU Law in addition to trapping perpetrators of criminal acts in the fisheries sector, also aims to reveal parties who are intellectual daders and beneficial owners of criminal acts in the fisheries sector and trace assets resulting from criminal acts of very large value, so that maximum seizure can be carried out.⁵

The Constitutional Court Decision Number 15/PUU-XIX/2021 dated June 29, 2021, has given the authority to investigate money laundering crimes to investigators of original crimes outside the investigators listed in the Explanation to Article 74 of the TPPU Law, one of which is investigators of original crimes in the field of fisheries. This ruling is a breakthrough to open a barrier for investigators of original crimes in the fisheries sector, which during the promulgation of the TPPU Law cannot investigate money laundering crimes even though in terms of disclosure of financial transactions and fund flows, there are indications of money laundering crimes. With the Constitutional Court decision Number 15/PUU-XIX/2021, investigators in the fisheries sector can immediately follow up by investigating criminal acts in the fisheries sector and at the same time investigating money laundering crimes.

Follow-up after the Constitutional Court Decision Number 15/PUU-XIX/2021 is not only the duty of investigators in the fisheries sector in the context of handling money laundering crimes originating from Illegal Fishing, but also public prosecutors and judges in court who will process the results of investigations in the trial to determine whether or not the perpetrators are proven and determine the status of evidence. For this reason, each law enforcement officer must have the same perception of law enforcement, both formal and material laws as stipulated in laws and regulations in the field of fisheries and money laundering.

Criminal law enforcement in the field of fisheries refers to procedural law as stipulated in Law Number 31 of 2004 concerning Fisheries and Law Number 45 of 2009 concerning Amendments to Law Number 31 of 2004 concerning Fisheries. In this study, the author's concern is related to the applicable procedural law in handling money laundering crimes whose origins are in the fisheries sector because this still raises questions for legal practitioners,

² Interpol, *International Law Enforcement Cooperation in the Fisheries Sector: A Guide for Law Enforcement Practitioners*, (Lyon, 2018), 8. Baca juga: FAO, *The State of World Fisheries and Aquaculture: Opportunities and Challenges*, (Rome, 2014), 18.

³Mawar Safhira Nadhila, "Upaya Mengungkap Ruang Gerak Illegal Fishing di Indonesia", https://www.ppatk.go.id/siaran_pers/read/954/upaya-mengungkap-ruang-gerak-illegal-fishing-di-indonesia.html diakses pada tanggal 10 Februari 2022

⁴*Ibid.*

⁵ Menurut Guru Besar Fakultas Perikanan dan Ilmu Kelautan-IPB, Rokhmin Dahuri bahwa *Illegal, Unreported dan Unregulated (IUU) Fishing* atau kegiatan perikanan yang tidak sah menyebabkan kerugian ekonomi yang besar buat Indonesia yaitu sekitar Rp. 45 Trilyun per tahun sedangkan secara keseluruhan dunia mencapai sekitar 10-23 miliar dolar AS per tahun. <https://republika.co.id/berita/qge6lm374/iuu-fishing-rugikan-indonesia-rp-45-triliun-per-tahun> diakses pada tanggal 10 Februari 2022

especially law enforcement officials as parties who are very interested in law enforcement, especially in the field of fisheries and money laundering crimes. If we look at the specificity of the procedural law of the two crimes, we know that the procedural law for crimes in the fisheries sector has different provisions from money laundering from investigation, and prosecution to examination in court hearings.

If law enforcement officials from investigators, public prosecutors, and judges want to handle money laundering cases whose original crimes are in the fisheries sector whose case files are combined, then the legal problem is that if in the process of investigating cases in the fisheries sector the suspect is detained, then the detention period is relatively short, which is a maximum of 30 (thirty) days, and related to the results of the investigation which must be submitted to the public prosecutor within a period of only 30 (thirty) days. This can result in efforts to investigate money laundering crimes not optimally. Then if the locus delicti of the case is still included in the jurisdiction of the special fisheries court, then the legal problem that arises is related to the authority of the special fisheries court in prosecuting, examining, and deciding cases of money laundering whose original crime is a criminal offense in the field of fisheries. Based on the background described above, some of the main issues that will be discussed in this paper are how the law enforcement strategy (investigation) of TPPU whose original crime is in the field of fisheries is associated with differences in their respective procedural laws and how legal policies related to the authority of fisheries courts in adjudicating cases of money laundering whose original crimes are in the field of fisheries.

There have been many writings discussing law enforcement of criminal acts in the field of fisheries, but writings discussing law enforcement of money laundering crimes whose original crimes in the field of fisheries, throughout the search, have never existed. For this reason, the purpose of this paper is to provide recommendations for the concept of law enforcement policies in the eradication of criminal acts in the fisheries sector by applying criminal provisions in the TPPU Law to perpetrators of criminal acts in the fisheries sector. In addition, the purpose of this paper can also be used as a means of increasing legal insight for the public related to law enforcement of money laundering crimes whose original crimes were in the field of fisheries.

Methods

The method used in this paper is a juridical-normative or doctrinal method⁶ using a statute approach, namely Law No. 8 of 2010 concerning the Prevention and Eradication of Money Laundering, Law Number 31 of 2004 concerning Fisheries and Law Number 45 of 2009 concerning Amendments to Law Number 31 of 2004 concerning Fisheries and a case approach using secondary data sources in the form of materials Libraries. In addition, in this paper, the author has also conducted interviews with several sources from law enforcement officials and academics.

Discussion

Law Enforcement Strategy for Money Laundering with Predicate Crime in Fisheries.

Perpetrators of illegal fishing crimes caught and sentenced have been many, but illegal fishing activities are still rife in Indonesian waters. This is because the imposition of punishment does not touch the intellectual actors of illegal fishing, most of whom are financiers who fund the action. Likewise, the imposition of penalties under fisheries law alone is not maximum enough to seize assets from perpetrators so asset recovery cannot be carried out optimally. In fact, in the TPPU Law, the criminal act of illegal fishing is listed as one of the original crimes

⁶ Yati Nurhayati, Ifrani, dan M. Yasir Said. "Metodologi Normatif Dan Empiris Dalam Perspektif Ilmu Hukum." *Jurnal Penegakan Hukum Indonesia*, Vol. 2, No.1, (2021): 3.

of money laundering as stipulated in Article 2 Paragraph (1) of the TPPU Law. Although the term in Article 2 (1) is a criminal act in the Marine and Fisheries sector, in this paper the author focuses only on criminal acts in the field of fisheries.

There are 3 violations in the field of fisheries, namely Illegal Fishing⁷ which is defined as fishing activities that violate applicable laws and regulations. Unreported Fishing⁸ which is defined as fishery activities that are not reported or reported incorrectly. Unregulated Fishing⁹ is defined as unregulated fishery activities, such as fishery activities carried out in water areas or for fish stocks where there are no conservation and management arrangements that can be applied. In general, these 3 violations are known in law enforcement in the field of fisheries as IUU Fishing.

Criminal provisions in the field of fisheries in Indonesia are regulated in Law Number 31 of 2004 concerning Fisheries promulgated on October 6, 2004, as amended by Law Number 45 of 2009 concerning Amendments to Law Number 31 of 2004 concerning Fisheries. Criminal provisions in both laws that include crimes are criminal offenses as stipulated in Article 84, Article 85, Article 86, Article 88, Article 91, Article 92, Article 93, and Article 94.¹⁰

There are several articles in the criminal provisions in Law Number 31 of 2004 concerning Fisheries which have been amended by Law Number 45 of 2009, namely Article 85, Article 93, and Article 98. Then there is the addition of new articles, namely Article 94A, Article 100A, Article 100B, Article 100C, and Article 100D.

The amendment is a manifestation of partiality for small fishermen and small fish farmers, among others, in the aspects of licensing, the obligation to implement provisions regarding the monitoring system of fishing vessels, fishery levies, and the imposition of criminal sanctions.¹¹

Investigation of criminal acts in the field of fisheries refers to the Code of Criminal Procedure (KUHAP) except those stipulated in the provisions of the Fisheries Law.¹² This means that in general the investigation of fisheries crimes is carried out based on the Criminal Procedure Code, but there are activities in the context of investigating criminal acts in the fisheries sector which must be carried out in accordance with the Fisheries Law even though the Criminal Procedure Code also stipulates provisions related to the same. This means that there are provisions in the Fisheries Law that deviate from the provisions in the Criminal Procedure Code. In the Indonesian legal system, this is called the principle of *lex specialis derogate legi generali*. If there are provisions that are the same between laws and regulations that are specific and general, then special provisions must be applied. This principle is known as the principle of preference. Therefore, in the practice of handling criminal cases in the field of fisheries, procedural law provisions in the Fisheries Law are prioritized, except those that are not specifically regulated in the Fisheries Law, the procedural law provisions refer to procedural law provisions that have been regulated in the Criminal Procedure Code.

Regarding the handling of criminal acts in the field of fisheries, it can be said that investigators from the three agencies, namely the National Police, the Navy, and PPNS Fisheries have tried with all the resources they have to overcome this illegal fishing. This success can be seen from the number of fisheries criminal convictions that have been produced by district courts or courts of first instance in various regions of Indonesia from the entry into force of the Fisheries Law until mid-2022 which amounted to 1592 cases with details as presented in the following table:

⁷ Admin KKP, "FAQ Sumber Daya Kelautan dan Perikanan (Ditjen PSDKP).", Kementerian Kelautan dan Perikanan, 1 Juli 2019, lebih lanjut dapat dilihat melalui: <https://kkp.go.id/artikel/11800-faq-sumber-daya-kelautan-dan-perikanan-ditjen-psdkp> diakses tanggal 16 Juni 2022

⁸ *Ibid.*

⁹ *Ibid.*

¹⁰ Pasal 103 Ayat (1) Undang-Undang No. 31 Tahun 2004 tentang Perikanan sebagaimana telah diubah dengan Undang-Undang Nomor 45 Tahun 2009 tentang Perubahan atas Undang-Undang Nomor 31 Tahun 2004 tentang Perikanan.

¹¹ Penjelasan Umum, *loc.cit.*

¹² Pasal 72 UU Perikanan

Table 1. Fisheries Crime Verdict¹³

No.	District Court	Number of Verdicts
1.	Ranai	302 verdicts
2.	Tanjung Pinang	240 verdicts
3.	Medan	107 verdicts
4.	Pontianak	99 verdicts
5.	Bitung	67 verdicts
6.	Ternate	50 verdicts
7.	Sorong	46 verdicts
8.	Sungai Liat	32 verdicts
9.	Tebing Tinggi	31 verdicts
10.	Tarakan	28 verdicts
11.	Palembang	25 verdicts
12.	Jakarta Utara, Marabahu, Sumenep	@ 24 verdicts
13.	Banyuwangi	22 verdicts
14.	Kandangan, Langsa	@ 21 verdicts
15.	Maumere	19 verdicts
16.	Sibolga	15 verdicts
17.	Amuntai	14 verdicts
18.	Padang	13 verdicts
19.	Kotabaru	12 verdicts
20.	Denpasar, Labuha, Pati	@11 verdicts
21.	Nunukan, Rantau, Singkel	@10 verdicts
22.	Ambon, Pangkajene	@ 9 verdicts
23.	Cibadak, Pandeglang, Tembilahan	@ 8 verdicts
24.	Bengkalis, Masamba, Selayar	@ 7 verdicts
25.	Jambi, Jantho, Kalianda, Lubuk Linggau, Mataram, Meulaboh, Painan, Palu, Poso, Watampone, Bulukumba, Kupang, Larantuka, Pangkal Pinang,	@ 6 verdicts
26.	Sabang, Takalar, Tapak Tuan, Tobelo, Tual, Wonosari, Lhok Sukon, Pangkalan Bun, Sinabang, Waingapu. Demak, Donggala, Gorontalo, Kalabahi, Kuala	@ 5 verdicts
27.	Tungkal, Lembata, Marisa, Parigi, Rokan Hilir, Serang, Sinjai, Tanjung Pandan.	@ 4 verdicts
28.	Arga Makmur, Bangil, Bau Bau, Bengkulu, Bireuen, Buntok, Cianjur, Jember, Kuala Simpang, Lhokseumawe, Limboto, Liwa, Lubuk Basung,	@ 3 verdicts
29.	Mamuju, Pariaman, Probolinggo, Sambas, Stabat. Bintuhan, Pidmil Manado, Amlapura, Bandung, Banjarmasin, Barabai, Bengkayang, Bontang, Cibinong, Gunung Sitoli, Jakarta Pusat, Kepanjen, Kolaka, Labuhan Bajo, Majene, Merauke, Negara,	@ 2 verdicts
30.	Putussibau, Rote Ndao, Ruteng, Sarolangun, Saumlaki, Sidoarjo, Singaraja, Sukadana, Tangerang, Tanjung Balai Karimun, Tanjung Jabung Barat, Tanjung Karang, Tegal, Timaluta, Waikabubak.	@ 1 verdicts

¹³ Mahkamah Agung RI, Direktori Putusan Mahkamah Agung RI. Selanjutnya dapat diakses melalui: <<https://putusan3.mahkamahagung.go.id/direktori/index/kategori/perikanan-1.html>> . Diakses pada tanggal 27 Juni 2022

Based on the analysis of the decisions mentioned above, it can be seen that in general, the handling of fisheries cases is carried out by starting the process of arresting the perpetrators in the field and confiscating evidence, namely means of transportation, catches, and documents and other evidence found by officers. Then the arrest of the perpetrators, examination of witnesses and perpetrators as stated in the minutes of examination. If the evidence of the catch is easily damaged, an auction will be held immediately. Then the case file is transferred to the public prosecutor and then transferred to the court for trial. In a court hearing, the judge decides the guilt of the defendant and the imposition of a criminal sentence. Regarding the evidence seized and confiscated, most of them are tools used to carry out illegal fishing, in this case, ships, fishing equipment, catches, and shipping documents. So based on the analysis of these decisions, asset recovery cannot be achieved optimally because it only seizes tools and catches that were successfully secured at the time of capture. Law enforcement has not touched on acts that can be subject to criminal acts in the TPPU Law.

This happened because there was no authority to investigate money laundering crimes by TNI AL and PPNS investigators. TNI AL and PPNS Fisheries investigators are only authorized to investigate criminal acts in the fisheries sector, while the authority to investigate money laundering crimes was only given to TNI AL and PPNS Fisheries investigators after the issuance of the Constitutional Court decision Number 15/PUU-XIX/2021 dated June 29, 2021. Prior to the Constitutional Court ruling, only National Police investigators were authorized to investigate fisheries crimes as well as money laundering.

With the Constitutional Court decision Number 15/PUU-XIX/2021, in addition to police investigators, other investigators in the field of fisheries, namely the Navy, and PPNS, can investigate money laundering crimes whose crimes originate from illegal fishing crimes so that the mitigation of criminal acts in the fisheries sector is expected to be carried out optimally. Arrests and investigations of criminal acts in the field are not only to the perpetrators in the field but also to trace who are the masterminds or intellectual actors behind illegal fishing activities, given that illegal fishing often involves organized crime groups not only on a national scale but more than that, the perpetrators of illegal fishing are often internationally organized crime groups.¹⁴

There are at least 6 (six) advantages or advantages of the application of the TPPU Law in handling illegal fishing, namely:

1. Focus more on asset tracing (follow the money),
2. Asset tracing (follow the money) is used to link crimes with intellectual actors (intellectual dader),
3. Asset tracing (follow the money) is used as a means for maximum asset recovery,
4. Can penetrate bank secrecy provisions, meaning that there are exceptions to bank secrets or other secrets from transaction reporting by financial service providers until further inspection by law enforcement.
5. Can ensnare parties involved in concealment or disguise the proceeds of crime,
6. Can suppress a person's desire to commit a crime, especially economically motivated crimes. The approach of depriving the proceeds of crime reduces or eliminates people's motivation to commit criminal acts because wealth or money is the backbone of crime

¹⁴ *The Food and Agriculture Organization (FAO) of the United Nations found that IUU fishing occurs in all types and sizes of fisheries (both on the high seas and in areas under national jurisdiction), concerns all aspects and stages of the capture and utilization of fish and may sometimes be associated with organized crime. (Food and Agriculture Organization (FAO) Perserikatan Bangsa-Bangsa menemukan bahwa IUU fishing terjadi pada semua jenis dan ukuran perikanan (baik di laut lepas maupun di wilayah yurisdiksi nasional), menyangkut semua aspek dan tahapan penangkapan dan pemanfaatan ikan dan kadang-kadang dapat dikaitkan dengan kejahatan terorganisir.)* Lihat: Interpol, *Op.Cit.*, hal. 84.

organizations, pursuing and seizing the wealth of crime proceeds will weaken criminals so as not to endanger the public interest.

With the application of the TPPU Law in law enforcement of illegal fishing, investigators can use instruments in the TPPU Law to trace assets suspected to be the proceeds of illegal fishing that lead to the seizure of these assets.¹⁵ However, in the context of implementing the TPPU Law in investigating criminal acts in the fisheries sector, an important issue is still found, namely the procedural law for investigating criminal acts in the fisheries sector has provisions that are different from money laundering crimes. This problem arises when the investigator combines the investigation of fisheries criminal cases with money laundering as referred to in Article 75 of the TPPU Law.

To make it easier to analyze the differences in procedural law in the Fisheries Law and the TPPU Law, the researchers present it in the table as follows:

Table 2. Difference Between Fisheries Law and TPPU Law

Event Terms	Fisheries Law	UU TPPU
Detention	<p>Level of Investigation:</p> <p>Detention of Investigator for 20 (twenty) days¹⁶</p> <p>Extension of the Public Prosecutor for 10 (ten) days¹⁷</p> <p>Level of Prosecution:</p> <p>Public Prosecutor's detention is safe for 10 (ten) days¹⁸</p> <p>Extension of the Chairman of the District Court for 10 (ten) days¹⁹</p> <p>Level of Court Examination</p> <p>Detention of Judges for 20 (twenty) days²⁰</p>	<p>Level of Investigation:</p> <p>Detention of Investigator for 20 (twenty) days²²</p> <p>Extension of the Public Prosecutor for 40 (forty) days²³</p> <p>Level of Prosecution:</p> <p>Detention of the Public Prosecutor for 20 (twenty) days²⁴</p> <p>Extension of the Chairman of the District Court for 30 (thirty) days²⁵</p> <p>Level of Court Inspection</p> <p>Judge's detention for 30 (thirty) days²⁶</p>

¹⁵ Rizki Zakariya, "Optimalisasi Penelusuran Aset Dalam Penegakan Hukum Pembalakan Liar Oleh Penyidik Pegawai Negeri Sipil Kementerian Lingkungan Hidup dan Kehutanan," *Padjajaran Law Review*, 8, no. 1, (2020): 169.

¹⁶ Pasal 73 Ayat (6) UU Perikanan

¹⁷ Pasal 73 Ayat (7) UU Perikanan

¹⁸ Pasal 76 Ayat (6) UU Perikanan

¹⁹ Pasal 76 Ayat (7) UU Perikanan

²⁰ Pasal 81 Ayat (1) UU Perikanan

²² Pasal 24 Ayat (1) KUHAP

²³ Pasal 24 Ayat (2) KUHAP

²⁴ Pasal 25 Ayat (1) KUHAP

²⁵ Pasal 25 Ayat (2) KUHAP

²⁶ Pasal 26 Ayat (1) KUHAP

	Extension of the Chairman of the District Court for 10 (ten) days ²¹	Extension of the Chairman of the District Court for 60 (sixty) days ²⁷
Investigation Results	30 (thirty) days must be submitted to the public prosecutor. ²⁸	There is no time limit for investigation
	Research the files resulting from the investigation by the Public Prosecutor within 5 (five) days. ²⁹	Examination of the investigation results by the Public Prosecutor within 14 (fourteen) days ³¹
	Submission of case files to the court within a maximum of 10 (ten) days after receiving the complete case files. ³⁰	There is no time limit for delegation

The differences in procedural law provisions between criminal acts in the fisheries sector and money laundering crimes related to detention and handover of the results of the above investigations will give rise to doubts by law enforcers in applying the provisions of the TPPU Law when handling criminal cases in the fisheries sector. This is a legal problem that can become an obstacle for law enforcement.³²

Detention of suspects in criminal acts in the fisheries sector for a period of 20 (twenty) days, which can be extended by the public prosecutor for 10 (ten) days, can be an obstacle for investigators to combine investigations of criminal cases in the fisheries sector with investigations of laundering criminal cases. There is an added problem that the results of investigations into criminal acts in the fisheries sector must be submitted to the public prosecutor within 30 (thirty) days. However, investigations into money laundering crimes can take a long time depending on the complexity of the method used by the suspect. In investigating the crime of money laundering, investigators not only look for evidence to support the allegations against the perpetrator but also trace the assets resulting from the original crime using the follow the money method.³³

As it is known that the combination of predicate crime investigations with money laundering crimes is a strategy in the implementation of the TPPU Law. Therefore the former of the TPPU Law included a clause combining the investigations of the two crimes in Article 75 of the TPPU Law which states “in the event that investigators find sufficient initial evidence of the occurrence of the crime of Money Laundering and predicate crime, the investigator combines the investigation of predicate crimes with the investigation of criminal acts Money Laundering and notify PPATK.” The existence of Article 75 of the Money Laundering Law is a special facility provided by the Money Laundering Law in order to realize

²¹ Pasal 81 Ayat (2) UU Perikanan

²⁷ Pasal 26 Ayat (2) KUHAP

²⁸ Pasal 76 Ayat (1) UU Perikanan

²⁹ Pasal 76 Ayat (3) UU Perikanan

³⁰ Pasal 76 Ayat (5) UU Perikanan

³¹ Pasal 110 KUHAP

³² Garibaldi, Penyidik PSDKP pada Kementerian Kelautan dan Perikanan, pada acara *Focus Grup Discussion* dalam rangka penyusunan Kajian Hukum “Problematika Penegakan Hukum TPPU dari Tindak Pidana Asal di Bidang Perikanan” yang diselenggarakan oleh Direktorat Hukum PPATK, 14 Desember 2022.

³³ Christyanda Sabrielle R N T dkk, “Praktik Penelusuran Aset (*Asset Tracing*) Hasil Kejahatan Oleh Pusat Pelaporan dan Analisis Transaksi Keuangan (PPATK) Dalam Penegakan Tindak Pidana Pencucian Uang,” *Diponegoro Law Journal*, 6, no. 1, (2017): 7.

the principle of a fast, simple, low-cost trial so that the process of investigating money laundering crimes becomes simpler and more efficient.³⁴

Combining investigations into predicate crimes with money laundering crimes is a way to prevent perpetrators of predicate crimes from enjoying the proceeds of their crimes³⁵ and taking measures to keep assets resulting from criminal acts away from investigators by transferring, changing the form, fleeing these assets abroad or other actions. Combining investigations of criminal acts in the fisheries sector with criminal acts of money laundering can normally be carried out as stated in Article 75 of the TPPU Law, however the length of the investigation still refers to procedural law in the Fisheries Law, namely a maximum of 30 (thirty) days. This is because the procedural law related to investigations in the Fisheries Law is more specific than the procedural law related to investigations into the TPPU Law which refers to the Criminal Procedure Code. In practice, this means that the combination of investigations into criminal acts of money laundering and criminal acts in the fisheries sector has the potential to not be carried out optimally if the length of the investigation is limited to only 30 (thirty) days.³⁶

Therefore, this article tries to provide a solution related to strategies that can be carried out by investigators when carrying out investigations in the context of law enforcement for money laundering crimes from crimes in the fisheries sector, namely by separating the investigation files for criminal acts in the fisheries sector from the investigation files for money laundering crimes. But the investigation is still being carried out in parallel.³⁷ Technically, when investigators carry out investigations into criminal acts in the field of fisheries (arrest of perpetrators, detention of perpetrators, confiscation of evidence, filings and so on), investigators also conduct investigations of money laundering crimes by looking for initial evidence of alleged money laundering crimes in the form of information, statements, data, financial transaction records and financial transaction documents (investigators conduct forensic investigations of financial data)³⁸. Investigators are also tracing assets suspected of being the proceeds of crime obtained from crimes in the fisheries sector, both in the form of movable and immovable assets. If the perpetrator is detained, then the perpetrator is detained for a criminal case in the field of fisheries.

The next process, when the investigation of the original crime in the fisheries sector is complete, the investigator submits the results of the investigation to the public prosecutor for the prosecution process and is transferred to the court in the context of the examination process in court until the judge decides the case. During this process (in parallel), if the investigator has found sufficient preliminary evidence of the alleged money laundering crime, the investigator can raise the money laundering case to the investigation stage without waiting for the original criminal case to be decided by a judge. The goal is that investigators can make coercive or prejudicial efforts against the perpetrators, the parties involved, evidence, and assets suspected of being the proceeds of criminal acts in fisheries. The investigation process of money laundering is carried out by investigators as is the practice of handling ordinary cases in general by referring to the procedural law in the Criminal Procedure Code.³⁹

For more details, as shown the flowchart of handling crimes in the field of fisheries and money laundering as follows:

³⁴ Muh. Afdal Yanuar, *Tindak Pidana Pencucian Uang dan Perampasan Aset*, (Malang: Setara Press, 2021), 65

³⁵ Lawrence, Note, Let Me Seller Beware: "Money Merchant and 17 U.S.C gg 1965-1957," *Banking Crime Law Rev.* 33, (1992): 841.

³⁶ Garibaldi, *Loc. Cit*

³⁷ Wawancara dengan penyidik Polda Jambi pada tanggal 11 Agustus 2022

³⁸ Subianto, "Tahapan dan Mekanisme Tindak Lanjut Hasil Analisis PPATK oleh Penyidik, dalam Perspektif Penyelidikan dan Penyidikan TPPU", Depok, FGD Penanganan Tindak Lanjut Hasil Analisis PPATK, 2022.

³⁹ Lihat *ratio decidendi* dalam Putusan Mahkamah Konstitusi No 35/PUU-XV/2017 yang menyatakan bahwa untuk dapat dilakukan penyidikan, penuntutan, dan pemeriksaan perkara TPPU tetap harus didahului oleh adanya tindak pidana asal, namun tidak perlu menunggu sampai adanya putusan pengadilan yang telah memperoleh kekuatan hukum tetap terhadap tindak pidana asalnya.

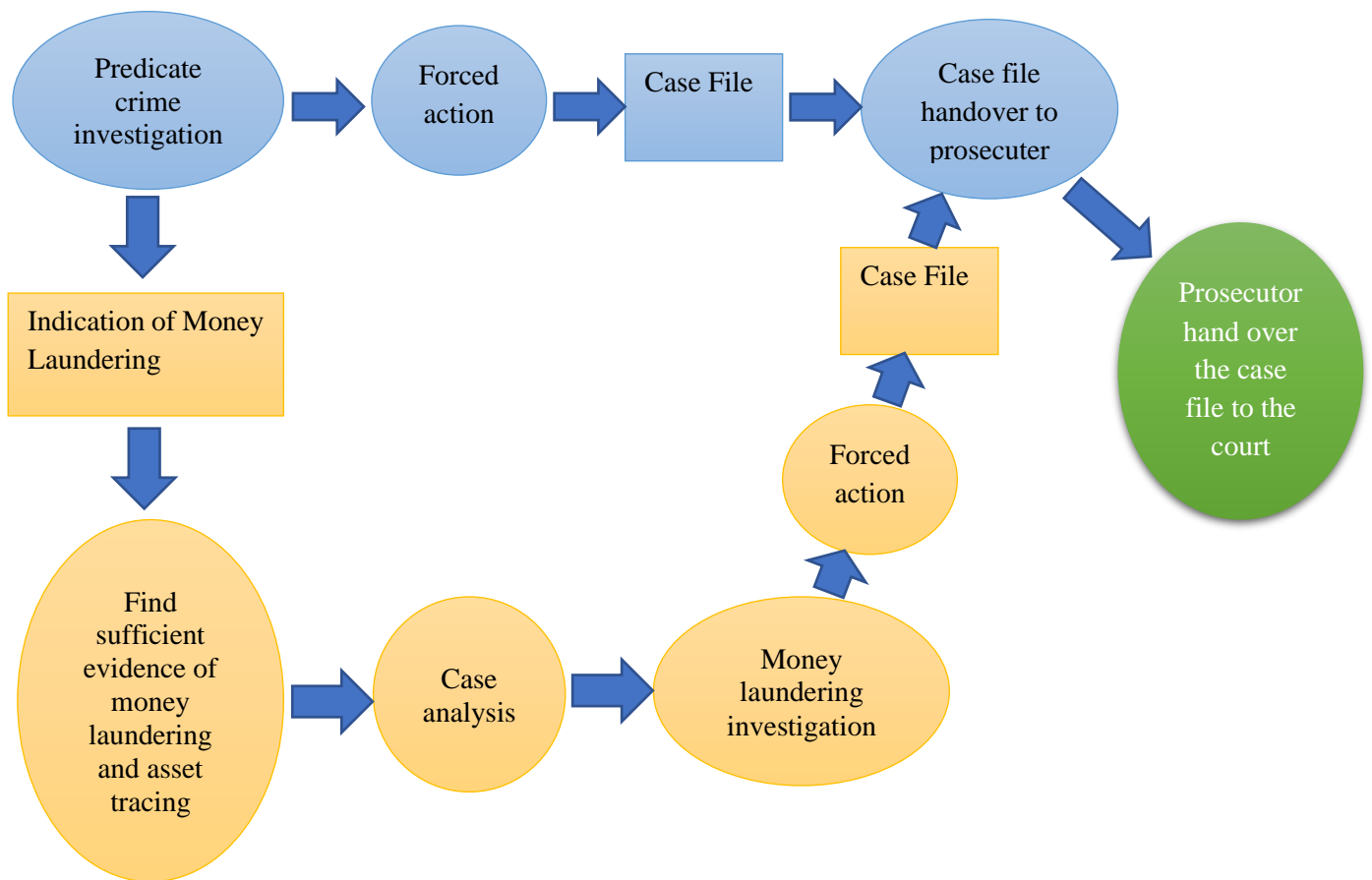


Figure 1. Legal Policy Regarding the Authority of the Special Fisheries Court to Prosecute Criminal Acts of Laundering from Criminal Acts in the Fisheries Sector.

The provisions of the Fisheries Law regulate the authority of the Fisheries Special Court, namely Article 71 of Law Number 31 of 2004 concerning Fisheries as amended by Law Number 45 of 2009 concerning Amendments to Law Number 31 of 2004 concerning Fisheries.

Based on the provisions of Article 71 above, Special Fisheries Courts were established in 5 jurisdictions, namely the North Jakarta, Medan, Pontianak, Bitung, and Tual District Courts. Then another Fisheries Special Court was established in 5 other legal areas through the issuance of Presidential Decree Number 15 of 2010 dated June 17, 2010, concerning the Establishment of Fisheries Courts at the Tanjung Pinang District Court and Ranai District Court, and also issued Presidential Decree Number 6 of 2014 dated February 6, 2014, concerning the Establishment of Fisheries Courts at the Ambon District Court, Sorong District Court and Merauke District Court.

The nature of the establishment of the Special Fisheries Court is intended to:⁴⁰

- a. ensure the implementation of optimal and sustainable management of fish resources. In this case, the implementation of law enforcement in the field of fisheries becomes very important and strategic in order to support fisheries development;
- b. provide more clarity and legal certainty for law enforcement of criminal acts in the field of fisheries;

⁴⁰Tim BPHN, *Analisis dan Evaluasi Hukum Tentang Pengadilan Perikanan*, (Jakarta, BPHN Departemen Hukum dan HAM RI, 2007), 3-4.

- c. Complete and perfect the procedural law in the process of investigation, prosecution, and examination in court hearings (in addition to following the procedural law in Law No. 8 of 1981 concerning the Code of Criminal Procedure, it also contains a special procedural law);
- d. ensure that material law and procedural law (formal) are faster;
- e. increase the efficiency and effectiveness of law enforcement against criminal acts in the field of fisheries.

The five objectives of establishing the Fisheries Special Court described above, especially letters d and e are in line with the objectives of the principle of trial carried out simply, quickly, and at low cost as stated in Article 2 Paragraph (4) of the Law on Judicial Power.⁴¹

The authority of the Fisheries Special Court to examine, try, and decide criminal cases in the field of fisheries in its jurisdiction is not accompanied by the granting of authority to examine, try, and decide cases of money laundering whose original crimes are in the field of fisheries. The absence of authority of special fisheries courts to examine, try, and decide money laundering crimes whose original crimes are in the fisheries sector creates a legal vacuum. Therefore, against the legal vacuum, at this time a legal interpretation is needed to resolve the legal problem.

When viewed from the perspective of procedural law, Eddy O. S. Hiariej found that there are three basic principles in procedural law, namely: (a) written expressive verbis in laws and regulations; (b) cannot be interpreted other than what is written expressively verbis in laws and regulations; and (c) is official (only competent authorities may enforce it and in accordance with procedures).⁴² In addition, if viewed from the perspective of the meaning of authority, it can be said that authority according to H.D. Stoud can be interpreted as "*Bevoegheid wet kan worden omscreven als het geheel van bestuurechtelijke bevoegdheden door publiekrechtelijke rechtssubjecten in het bestuurechtelijke rechtsverkeer*" (authority can be explained as the entirety of rules relating to the acquisition and use of government authority by subjects of public law in public law).⁴³ Based on the two reviews above, it can be concluded that the authority must be based on written laws and regulations so that based on these two reviews, the special fisheries court does not have the authority to prosecute money laundering crimes whose original crimes are in the field of fisheries.

However, if this perspective is maintained, there will be anomalies when compared to the principle of trial that must be carried out quickly, simply, and lightly and the principle of free, honestly, and impartial must be applied consequently at all levels of the judiciary.⁴⁴ Therefore, it is necessary to need an instrument of legal interpretation that can be used to complete the conceptual discourse.

In Germany, there is known an instrument of legal interpretation called the *fundamentalnormen des rechstaat* principle,⁴⁵ which mentions two principles, namely the principle of proportionality and the principle of subsidiarity. The principle of proportionality requires a balance between means and ends.⁴⁶ In this case, the purpose of procedural law politics (inter alia procedural law in the field of fisheries) is to realize a fast, simple and low-cost trial.

⁴¹ Dalam Penjelasan Pasal 2 Ayat (4) UU Kekuasaan Kehakiman, yang dimaksud dengan "sederhana" adalah pemeriksaan dan penyelesaian perkara dilakukan dengan cara efisien dan efektif. Yang dimaksud dengan "biaya ringan" adalah biaya perkara yang dapat dijangkau oleh masyarakat. Namun demikian, asas sederhana, cepat, dan biaya ringan dalam pemeriksaan dan penyelesaian perkara di pengadilan tidak mengesampingkan ketelitian dan kecermatan dalam mencari kebenaran dan keadilan.

⁴² Keterangan Ahli Edward Omar Sharif Hiariej pada Putusan PN Jakarta Pusat Nomor 777/Pid.B/2016/PN.Jkt.Pst atas Nama terdakwa Jessica Kumala Alias Jessica Kumala Wongso Alias Jess hal. 186

⁴³ Irfan Fachruddin, *Pengawasan Peradilan Administrasi terhadap Tindakan Pemerintah*, (Bandung: Alumni, 2004), 4.

⁴⁴ Lihat Penjelasan Umum angka 3 KUHAP dan Pasal 2 Ayat (4) UU Kekuasaan Kehakiman.

⁴⁵ Jan Rammelink, *Hukum Pidana: Komentar atas Pasal-pasal Terpenting dari Kitab Undang-undang Hukum Pidana Belanda dan Padanannya dalam Kitab Undang-undang Hukum Pidana Indonesia*, diterjemahkan oleh Tristam Pascal Moeliono dkk, (Jakarta: PT Gramedia Pustaka Utama, 2003), 46

⁴⁶ *Ibid*

And the court must try to overcome all obstacles and obstacles to achieve such a simple, fast, and low-cost trial.⁴⁷ Therefore, the way to go is to make provisions that are representative of that principle. Therefore, the existence of provisions in the Fisheries Law related to the authority of special fisheries courts to examine, adjudicate and decide cases in the field of fisheries that are not accompanied by the authority of special fisheries courts to examine, try and decide cases of money laundering do not reflect the principle of proportionality as described above.

Second, the principle of subsistence demands that if a difficult problem gives rise to several alternative solutions (several solutions), then the solution that causes the least harm should be chosen.⁴⁸ In this case, the imposition of criminal articles on money laundering perpetrators whose original crimes in the fisheries sector at this time is very important in the context of eradicating illegal fishing in Indonesian waters thoroughly and completely. Therefore, the examination of money laundering cases whose original crimes are in the field of fisheries in a special fisheries court is a necessity that must be realized. If this cannot be realized just because the special fisheries court does not have the authority to examine, try, and decide cases of money laundering whose original crime is in the field of fisheries, then, in the end, it is contrary to the principle of *Lites finiri oportet* (not allowing legal cases to drag on endlessly is rational).⁴⁹ In order not to contradict this principle, the special fisheries court should not refuse to examine, prosecute, and decide money laundering cases whose original crimes in the field of fisheries are filed under the pretext that the law does not exist or is unclear, but is obliged to examine and try them.⁵⁰

The authority of the court, represented by the Judge, has independent power. This means that freedom from interference in judicial affairs by other parties outside the judicial power is prohibited, except in matters as referred to in the Constitution of the Republic of Indonesia Year 1945.⁵¹ Judges and constitutional judges are obliged to explore, follow, and understand the legal values and sense of justice that live in society.⁵² In this case, the Judge is given the authority to conduct legal discovery known as judicial activism. According to Christopher G. Buck, judicial activism is a legal action to adapt social change by developing principles drawn from existing constitutional texts and rulings in order to implement the basic values of the constitution progressively.⁵³ There are examples of decisions in which the Judge has carried out legal interpretations of the provisions of laws and regulations, namely Constitutional Court Decision Number 77 / PUU-XII / 2014, Constitutional Court Decision Number: 072-073 / PUU-II / 2004, and Pekanbaru PN Decision Number: 38 / Pid.Sus-TPK / 2018 / PN.Pbr.

Regarding the issue of the authority of the Fisheries Special Court to try money laundering cases, Mahmud Mulyadi argued that the Fisheries Special Court has the authority to examine, prosecute, and decide money laundering cases whose original crimes are in the fisheries sector, provided that the prosecutions are carried out simultaneously or combined. This is because of the principle of simple, fast, and low-cost trials.⁵⁴ Surya Jaya explained that the Fisheries Special Court is authorized or has the competence to prosecute money laundering crimes whose origins are in the fisheries sector with the premise, namely:⁵⁵

⁴⁷ Lihat Pasal 4 Ayat (2) UU Kekuasaan Kehakiman

⁴⁸ *Ibid*

⁴⁹ Lihat di Tulisan pemikiran B. Arief Sidharta dalam “Negara Hukum Yang Berkeadilan” Kumpulan Pemikiran dalam Rangka Purna Bhakti Prof. Dr. Bagir Manan, Asas Hukum, Kaidah Hukum, Sistem Hukum, dan Penemuan Hukum, (Bandung: PSKN FH UNPAD, 2011), 15.

⁵⁰ Lihat Pasal 10 Ayat (1) UU Kekuasaan Kehakiman.

⁵¹ Lihat Pasal 3 Ayat (2) UU Kekuasaan Kehakiman

⁵² Lihat Pasal 5 Ayat (1) UU Kekuasaan Kehakiman

⁵³ Christopher G. Buck, “Judicial Activism” dalam Gary L. Anderson dan Kathryn G. Herr, editor, *Encyclopedia of Activism and Social Justice*, (California: SAGE Publication, 2007), 785

⁵⁴ Wawancara dengan Mahmud Mulyadi, Dosen Fakultas Hukum Universitas Sumatera Utara, pada tanggal 13 Juli 2022

⁵⁵ Surya Jaya, disampaikan pada *Focus Grup Discussion* dalam rangka penyusunan Kajian Hukum “Problematisa Penegakan Hukum TPPU dari Tindak Pidana Asal di Bidang Perikanan” yang diselenggarakan oleh Direktorat Hukum PPAATK, 14 Desember 2022.

1. Taking a comparison that in the Military Enforcement Law, there is no provision that the Military Court is authorized to try money laundering crimes whose original crimes were committed by military members, but there are trafficking cases whose original crimes were committed by the military that were tried by Military Courts.⁵⁶
2. If the fisheries crime case is tried in the fisheries court, but the money laundering case is tried in the district court, this will cause difficulties for the district court judge because the judge must also understand the fisheries crime case. If fisheries and money laundering cases have been integrated into fisheries courts, this will make it easier for judges.
3. 3.If fisheries cases are tried in fisheries courts, then money laundering cases are tried in district courts, then this is not in accordance with the principles of simple, fast, and low-cost trials.

Based on the descriptions that have been explained regarding legal issues regarding the authority of the Special Fisheries Court in examining, prosecuting, and deciding cases of money laundering whose original crimes are in the field of fisheries, the author argues as follows:

1. The principle of simple, fast, and low-cost justice as stated in the Law on Judicial Power is a principle that must be guided by every Judge and Constitutional Judge. And the court must try to overcome all obstacles and obstacles to achieve such a simple, fast, and low-cost trial. For this reason, the Court is prohibited from refusing to examine, adjudicate, and decide a case filed under the pretext that the law does not exist or is unclear, but is obliged to examine and try it.
2. With the power of an independent court, Judges and Constitutional Judges are obliged to explore, follow, and understand legal values and a sense of justice that lives in society, especially if there is a legal vacuum that can become an obstacle in law enforcement resulting in the achievement of a sense of justice in society.
3. Guided by the principles of judicial power mentioned in points 1 and 2 and reflecting on the decisions as described above, Judges at the Special Fisheries Court can interpret the law by interpreting that based on Article 71 of the Fisheries Law, the Special Fisheries Court has the authority to examine, prosecute, and decide money laundering crimes whose original crimes are in the field of fisheries.

In the future, it is necessary to have a legal policy embodied in the form of provisions regulating the authority of special fisheries courts to examine, prosecute, and decide money laundering cases whose original crimes are in the field of fisheries. This provision can be embodied in regulations or circulars issued by the Supreme Court as the highest authority in the judiciary in Indonesia, one of whose functions is to further regulate matters necessary for the smooth administration of justice if there are matters that have not been adequately regulated in the Law on the Supreme Court as a complement to fill the legal deficiencies or vacancies needed for the smooth administration of justice (vide Article 79 of Law No.14 of 1985 concerning the Supreme Court).

Conclusions

Investigation of money laundering from crimes in the fisheries sector cannot be carried out optimally if the duration of the investigation is limited to only 30 (thirty) days. Therefore, the law enforcement strategy that can be carried out by investigators when investigating money laundering from crimes in the fisheries sector is to separate the investigation file for criminal acts in the fisheries sector from the investigation file for money laundering crimes but the

⁵⁶ Lihat Putusan Pengadilan Militer Nomor: 27-K/PM.II-11/AD/III/2011 atas nama Joko Suripto. Terdakwa diputus bersalah melakukan tindak pidana penadahan dan pencucian uang secara berlanjut.

investigation is still carried out in parallel. Legal policies related to the authority of the Fisheries Special Court in examining, prosecuting, and deciding money laundering criminal cases whose original crimes in the fisheries sector must be guided by the principles of simple, fast, and low-cost trials. For this reason, the Court is prohibited from refusing to examine, adjudicate, and decide a case filed under the pretext that the law does not exist or is unclear, but is obliged to examine and try it. Based on this principle, Judges at the Fisheries Special Court can interpret the law by interpreting that based on Article 71 of the Fisheries Law, the Fisheries Special Court has the authority to examine, prosecute, and decide money laundering crimes whose original crimes are in the fisheries sector.

So that law enforcement agencies, namely investigators in the field of fisheries, public prosecutors, and judges establish a legal policy in the form of laws and regulations containing technical instructions on law enforcement procedures for money laundering crimes whose original crimes in the field of fisheries apply internally to their respective agencies. To ensure legal certainty, a regulation or circular letter of the Supreme Court is issued that authorizes the Special Fisheries Court to examine, prosecute, and decide cases of money laundering whose original crime is in the field of fisheries, before the provisions of the law governing this matter.

Acknowledgements

Alhamdulillah for the help and grace of Allah Subhanahu wa ta'ala, this research can be completed. Thank you to Pusdamitra PPATK as the organizer of the Journal for providing suggestions to express ideas and thoughts related to issues in the field of APUPPT. Thank you also to the resource persons who have provided information and input in the context of writing this scientific paper.

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