

THE ROLE OF CITES MANAGEMENT AUTHORITIES IN LAW ENFORCEMENT ON SHARK FINNING CRIMES IN INDONESIA

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ABSTRACT

Sharks are one of the animals that are included in the CITES Appendix list and occupy the top position in the food chain in marine ecosystems. But in reality, these animals are often becomes the main catch targets or by-catch targets. The practice of shark finning is one of the activities that refer to cutting only the fins of sharks and throwing the rest of the body (whether alive or dead) back into the sea. If the animals that are at the top of the food chain in the sea are exploited irresponsibly so that they are threatened with extinction, this will have an impact not only on the species itself but will also have to impact other species and damage the marine environment. The purpose of this article is to find out how the role of management authorities in law enforcement in the crime of shark finning in Indonesian waters. Thus the question in this article is, how law enforcement will be able to suppress shark finning activities that occur in Indonesian waters. The research method uses a descriptive qualitative approach and is supported by secondary data based on available literature to explore about shark finning crime. Research results show that the Ministry of Maritime and Fisheries as the Indonesian fish resource management authority has participated in the Task Force to eradicate illegal fishing under the rules of the Minister of Maritime and Fisheries of the Republic of Indonesia related to the standard operating procedures of the Law Enforcement Task Force to Eliminate Illegal Fishing as a specific criminal charge for the crime of shark finning as transnational crime. If activities are carried out in the waters of Indonesia, the charges for fins of sharks in the waters of Indonesia are under the jurisdiction of Indonesia as a sovereign state.

Keywords: *by-catch; CITES; management authorities; shark finning.*

INTRODUCTION

Shark is a type of fish that belongs to the taxon *Elasmobranchii*. Fish species included in this taxon are known to be vulnerable to overexploitation. This is because their slow growth and few breeds are characteristic of the *Elasmobranchii* life cycle.¹ One of the causes of the vulnerability of shark species in the world is due to the increasing number of sharks caught, both those caught as main targets and by-catch. Sharks as by-catch are usually related to tuna's fishing by fishermen. This is because the habitat of tuna lives side by side with the shark

¹Passantino (2014). "The EU Shark Finning Ban at the Beginning of the New Millennium: The Legal Framework." *ICES Journal of Marine Science*, 71(3), pp. 429.

habitat, so it is not surprising that juvenile sharks enter the net and become a by-catch. Targeted shark fishing as the main catch is generally to be able to take advantage of shark body parts which are known to have high economic value in the international market. One of the activities of taking shark body parts is known as shark finning. Shark finning is an activity that refers to cutting only the fins of sharks and throwing the rest of the body (whether alive or dead) back into the sea. The practice of killing sharks is carried out on 38 million sharks every year, with as many as 26-73 million sharks caught in world fishing activities.² This method of catching sharks as the main target uses gillnets, which is a fishing method by using a net that is stretched near the bottom of the water with the help of 100 (one hundred) pieces of anchor per ship, and a buoy is provided at the end so that it will be easy to pull the anchor that has been installed.³

Sharks are a type of fish that can influence the population of marine animals in the food chain. This is because sharks are the top predators that prey on weak or sick and injured animals. The presence of shark populations contributes to maintaining marine ecosystems and maintaining the balance of fish populations in marine ecosystems. Large-scale fishing and hunting of sharks cause disruption of the balance of the food chain in marine ecosystems. The carnivorous fish that are usually preyed on by sharks will increase in number so that the small fish will decrease in number drastically. As a result, the algae that are usually eaten by small fish will multiply and interfere with oral health. When coral reefs are damaged, small fish are threatened with extinction, as are big fish. In other words, reducing the population of sharks and manta rays in large numbers will have a negative impact on food security.⁴

On March 3, 1973, the Convention on International Trade in Endangered Species of Wild Flora and Fauna ("CITES") was concluded. This convention aims to ensure that the international trade in specimens of certain wild animals and plants included in the Appendix is legal, sustainable, traceable, and does not threaten the survival of these species. CITES member countries have the same responsibility to protect and manage natural resources (both flora and fauna). The Appendix is a list of flora and fauna species (including fish) that are affected by international trade. There are three levels of protection in the CITES appendix, namely: 1) Appendix I, namely, animals or plants that are included in this list are endangered species, so these species are prohibited from being traded unless they are the result of breeding; 2) Appendix II regulates animals and plants that cannot be said to be endangered, but trade in these species is allowed and controlled internationally; 3) Appendix III regulates species which a certain country whose trade requires international control assistance. Indonesia itself has ratified CITES through Presidential Decree No. 43 of 1978 on the Ratification of CITES. As a member country of CITES, Indonesia must appoint Management Authorities and Scientific Authorities. Traded plants are obtained in a legal, sustainable and traceable manner. At the same time, the Scientific Authorities function to provide opinions and advice to the Management Authority regarding the types of fish that will be included in the CITES appendix list. Several types of sharks in Indonesia have been included in the CITES appendix list, namely: *Carcharhinus longimanus*, *Sphyrna lewini*, *Alopias spp.*, *Rhincodon typus*, *Sphyrna mokarran*, *Sphyrna zygaena*. This shark species is included in Appendix II, which is said to have not experienced extinction but will become extinct if the trade is not controlled.

In Indonesia, as an archipelagic country that surrounding waters is a wealth that can be maximized and prioritized in the utilization of natural resources, especially marine areas.⁵

²Firda Yusrina, Vika Milatil dan Isah Afkarina.(2019), "Dampak Pengolahan dan Konsumsi Sup Sirip Ikan Hiu", *Journal of Food Technology and Agroindustry* 1(2):32

³Firda Yusrina, Vika Milatil dan Isah Afkarina.(2019), "Dampak Pengolahan dan Konsumsi Sup Sirip Ikan Hiu", *Journal of Food Technology and Agroindustry* 1(2):33.

⁴Zaka Firma Aditya, dan Sholahuddin. (2017). "Perlindungan Hukum terhadap Ikan Hiu dan Ikan Pari untuk Menjaga Keseimbangan Ekosistem Laut Indonesia" *Legality* 24(2):227

⁵Law of the Republic of Indonesia Number 43 of 2008 on State Territory, Article 1

Where the Indonesian sea area covers archipelagic waters, inland waters, territorial seas, and land. The territory of the state has aspects of a close relationship with sovereignty. Sovereignty, according to international law, means that a country is able to enforce the laws that apply in its country within the territory that is the sovereignty of that country. As a sovereign country, Indonesia has sovereign rights in its jurisdiction as per international law, and applicable laws and regulations as the Law on State Territory have stipulated in detail the area of national waters, which includes Indonesia's national jurisdiction, including the Exclusive Economic Zone ("EEZ"), the continental shelf, and contiguous zones.⁶ The regime of this sea area is also described in UNCLOS 1982.

In terms of law enforcement for the crime of shark finning, Indonesia is considered to have jurisdiction over it if the activities occur in Indonesian waters such as inland sea areas, archipelagic waters, and territorial seas. This is because Indonesia, as a sovereign country, has the right to enforce the laws of its country in the territory that is under Indonesian jurisdiction. While in the area that becomes sovereign rights. Indonesian cannot fully implement its laws as a coastal state. This is because there are other countries' rights that must be respected by Indonesian government.⁷

Several writing articles have presented and discussed the concept of shark finning crime.⁸ However, the discussion still focuses on the practice of shark finning in several countries around the world. This article will systematically examine the role of CITES management authorities in law enforcement for the crime of shark finning in Indonesian waters. The discussion in first part will discuss the crime of shark finning internationally and how this crime occurs in Indonesia. The second part will examine the territorial waters of Indonesia as an archipelagic country. The third section discusses the role of management authorities in law enforcement for the crime of shark finning in Indonesian waters. The last section will be equipped with conclusions and suggestions to conclude the discussion of this article.

METHODS

This research uses doctrinal legal or normative juridical methods which are carried out based on secondary data studies. In legal research, secondary data includes primary legal materials, secondary legal materials and tertiary legal materials. The data used in this research is secondary data, namely data from the existing literature. Such as scientific journals, books, the internet, applicable laws and regulations, and other sources that can be used as literacy in research. Data collected through literature study.

ANALYSIS AND DISCUSSION

Shark Finning as Transnational Crime

Shark finning or taking shark fins is an activity of cutting the fins of a shark and throwing the rest of its body (whether alive or dead) back into the sea.⁹ This action is generally considered a crime because in the end, the sharks that are thrown back into the sea will eventually become carrion because they are unable to swim and defend themselves. These shark carcasses will pollute the marine ecosystem for many other marine species. Shark fins were taken regardless

⁶*Ibid*

⁷Fahmi dan Dharmadi. (2013) *Tinjauan Status Perikanan Hiu dan Upaya Konservasinya di Indonesia*. Jakarta: Direktorat Konservasi Kawasan dan Jenis Ikan, p.55

⁸Vista Dhea Nurastri dan Ilham Marasabessy. (2021) "Status Konservasi Ikan Terancam Punah yang Diperdagangkan Keluar Kota Sorong (Studi Kasus: Ikan Hiu Berdasarkan Identifikasi di Loka Pengelolaan Sumberdaya Pesisir dan Laut Sorong)", *Jurnal Riset Perikanan dan Kelautan* 3(1):304.

⁹ Firda Yusrina, Vika Milatil dan Isah Afkarina.(2019), "Dampak Pengolahan dan Konsumsi Sup Sirip Ikan Hiu", *Journal of Food Technology and Agroindustry* 1(2):32

of the size, age, and species of the shark. Shark fin is considered to have a high selling value in the market, especially if it is sold in several countries that routinely consume it as a ritual meal, such as China, Hong Kong, and Taiwan. In the last few decades, the increase in shark fin harvesting activities has increased so that it has an impact on the position of sharks as a species that is on the verge of extinction. Asian countries such as Indonesia are one of the largest producers of shark fisheries products in the world.¹⁰ However, there are fewer shark catches, and now shark fishing has shifted to eastern Indonesia.

The United Nations on Transnational Organized Crime requires four things to define a crime as a transnational crime, namely:

- a. The crime was committed in more than one country
- b. Crime is committed in one country, but important parts such as planning, direction, and control are carried out in another.
- c. Crimes that are committed in one country but involve criminal organizations that carry out criminal activities in many countries
- d. Crimes committed in one country have a significant effect in another.

Judging from the conditions above, it can be concluded that shark finning activities can be categorized as a transnational crime. This is because these activities are carried out in more than one country. Producers in the shark fin trade come from a country whose catch will then be exported or sold on the international market. In addition, this shark finning activity has a significant effect on the balance of a country's marine ecosystem. Sharks, as top predators, have an important role in maintaining marine health. If the shark population decreases, the balance of the marine ecosystem will become unbalanced.

United Nations Convention on the Law of the Sea (UNCLOS) is a codification of pre-existing international legal norms, both customary law and norms in the previous treaty (Geneva Convention of 1958 concerning the territorial sea and the high seas). Crucially, it is about how UNCLOS places the coastal state and the state as a whole regarding how the state claims the sea area to become its sovereign territory and territory of sovereign rights. When a country is going to measure a sea area, it must start with a baseline, which is a line that will determine the zone or sea area of a country. The baseline is taken at low tide, so the sea area becomes much larger. The agreed maritime zones are based on "customary international law" and "treaty law" (Geneva Convention of 1958 and 1982 UNCLOS), namely inland seas, territorial seas, contiguous zones, EEZs, continental shelf, high seas, and areas.¹¹ Inland sea areas, territorial seas, and contiguous zones are the jurisdictions of the coastal state, where the coastal state can enforce the domestic rules of its state in the area while respecting the rights of other countries.¹²

The Role of Management Authorities in Law Enforcement For Shark Finning Crimes in Indonesian Waters

The Convention on International Trade in Endangered Species of Wild Flora and Fauna ("CITES") is a convention that aims to ensure that the international trade in specimens of certain wild animals and plants that enter the Appendix is legal, sustainable, traceable, and does not threaten survival the species. The Appendix is a list of flora and fauna species (including fish) that are affected by international trade. There are three levels of protection in the CITES appendix, namely: 1) Appendix I, namely, animals or plants that are included in this list are

¹⁰Sadili, Dharmadi, Fahmi, Sarmintohadi, I. Ramli dan Sudarsono. (2015) *Rencana Aksi Nasional (Ran) Konservasi Dan Pengelolaan Hiu Dan Pari* Jakarta: Direktorat Konservasi dan Keanekaragaman Hayati Laut Direktorat Jenderal Pengelolaan Ruang Laut Kementerian Kelautan dan Perikanan.

¹¹Law Number 43 of 2008, *Op.Cit*

¹²Humphrey Wangke.(2017).*Kerjasama Indonesia-Malaysia Dalam Pengelolaan Perbatasan di Kalimantan*. Jakarta: Yayasan Pustaka Obor Indonesia, p.61.

endangered species, so these species are prohibited from being traded unless they are the result of breeding; 2) Appendix II regulates animals and plants that cannot be said to be endangered, but trade in these species is allowed and controlled internationally; 3) Appendix III regulates species which a certain country whose trade requires international control assistance. CITES member countries have a shared responsibility to protect and manage natural resources (both flora and fauna).

Indonesia has ratified CITES through Presidential Decree No.43/1978 on the Ratification of CITES. Indonesia has an obligation to appoint Management Authorities and Scientific Authorities as a form of state responsibility for the protection of flora and fauna under its jurisdiction. The designated Management Authorities aim to be able to issue permits and certifications on behalf of the state party in the trade of animals and plants that are included in the CITES Appendix and to ensure that the traded animals and plants are obtained in a legal, sustainable and traceable manner. At the same time, the Scientific Authorities function to provide opinions and advice to the Management Authority regarding the types of fish that will be included in the CITES appendix list.

Indonesia, as a member country of CITES, has appointed and authorized the Indonesian Institute of Sciences (LIPI) as scientific authorities¹³ to provide opinions or advice to the designated Management Authorities, namely the Ministry of Environment and Forestry (KLHK), for wild plant and animal species as regulated in Government Regulation No. 8 of 1999 concerning the Utilization of Wild Plants and Animals. Meanwhile, related to fish species, it is under the control of the Ministry of Marine Affairs and Fisheries as regulated in Government Regulation Number 60 of 2007 concerning Conservation of Fish Resources as Management Authorities. Implementation of the CITES mandate for the conservation of fish resources as regulated in the Minister of Marine Affairs and Fisheries Regulation Number 61 of 2018 concerning the Use of Protected Fish Species and/or those listed in the CITES Appendix.

As an archipelagic country that covers waters, it is a wealth that can be maximized and prioritized in the utilization of natural resources, especially marine areas, where the Indonesian sea area covers archipelagic waters inland waters, territorial seas, and land.¹⁴ The territory of the state has aspects of a close relationship with sovereignty. Sovereignty, according to international law, means that a country is able to enforce the laws that apply in its country within the territory that is the sovereignty of that country. As a sovereign country, Indonesia has sovereign rights in its jurisdiction as per international law and applicable laws and regulations. As the Law on State Territory has stipulated in detail the area of national waters, which includes Indonesia's national jurisdiction, including the Exclusive Economic Zone ("EEZ"), continental shelf, and contiguous zones¹⁵

Law enforcement is one of the processes that take place to transform the desires of the law (in the form of the legislator's ideas) into an inseparable reality.¹⁶ Indonesia is a maritime country where the existence of the sea plays an important role in benefiting the well-being of the local community. The sea not only connects the islands but is also one of the producers of biological and non-biological resources. For maritime sustainability to play an important role in enabling communities and law enforcement authorities to manage Indonesia's wealth.

Coordination is needed by several relevant agencies authorized to enforce the law of the sea, including the Indonesian Navy, the Indonesian National Police, the Ministry of Maritime

¹³ES Nurbani, et.al (2021), Implementation of CITES 1973 in Indonesia: A Study of Shark Fishing in Tanjung Luar, East Lombok, *IOP Conf. Ser.: Earth Environ. Sci.* **712** 012045

¹⁴Law Number 43 of 2008, *Op.Cit*

¹⁵*Ibid*

¹⁶Satjipto Rahardjo dalam Nur Yanto. (2014). *Memahami Hukum Laut Indonesia*. Jakarta: Mitra Wacana Media, p.95

and Fisheries, the Department of Immigration, and the Ministry of Justice and Human Rights, Ministry of Transport, General Administration of Customs, Ministry of Finance. These authorities are empowered to enforce the law of the sea, especially in the Indonesian waters under national jurisdiction. However, especially in the case of wildlife (including shark species) trading, the jurisdiction of the Ministry of Marine Affairs and Fisheries (“KKP”) as a CITES management authority specializing in marine species is regulated by Government Order No. 60 of 2007. I am. Conservation of fish stocks that previously had that authority. It is subordinate to the Ministry of Environment and Forestry (“KLHK”), which complies with Decree No. 8 of 1999 on the use of wildlife.

The Ministry of Maritime Affairs and Fisheries is one of the authorities holding the authority in law enforcement for shark finning activities in Indonesian waters, and there are several laws and regulations that examine Indonesian sovereign territory and support law enforcement on shark finning activities, including:

1. Law of the Republic of Indonesia Number 17 of 1985 concerning Ratification of the United Nations Convention on the Law of the Sea 1982
2. Law of the Republic of Indonesia Number 6 of 1996 concerning Indonesian Waters
3. Presidential Decree No. 43/1978 concerning Ratification of the Convention on International Trade in Endangered Species of Wild Fauna and Flora
4. Law of the Republic of Indonesia Number 5 of 1990 concerning Conservation of Natural Resources and Their Ecosystems
5. Law Number 45 of 2009 concerning Amendments to Law Number 31 of 2004 concerning Fisheries
6. Government Regulation of the Republic of Indonesia Number 60 of 2007 concerning Conservation of Fish Resources
7. Decree of the Minister of Maritime Affairs and Fisheries of the Republic of Indonesia Number 18/KEPMEN-KP/2013 concerning the Determination of the Full Protection Status of the Whale Shark (*Rhincodon Typus*)
8. Regulation of the Minister of Maritime Affairs and Fisheries of the Republic of Indonesia Number 34/PERMEN-KP/2015 concerning Amendments to the Regulation of the Minister of Maritime Affairs and Fisheries Number 59/PERMEN-KP/2014 concerning the Prohibition of Exporting Cowboy Sharks (*Carcharhinus logimanus*) and Hammerhead Sharks (*Sphyrna* spp.) from the Territory of the Republic of Indonesia to outside the Territory of the Republic of Indonesia
9. Regulation of the Minister of Maritime Affairs and Fisheries of the Republic of Indonesia Number 48/PERMEN-KP/2016 concerning the Second Amendment to the Regulation of the Minister of Maritime Affairs and Fisheries Number 59/PERMEN-KP/2014 concerning the Prohibition of Exporting Cowboy Sharks (*Carcharhinus logimanus*) and Hammerhead Sharks (*Sphyrna* spp.) from the Territory of the Republic of Indonesia to outside the Territory of the Republic of Indonesia
10. Regulation of the Minister of Marine Affairs and Fisheries Number 3 of 2010 concerning Procedures for Determining the Status of Protecting Fish Species
11. Regulation of the Minister of Marine Affairs and Fisheries Number 61 of 2018 concerning Utilization of Protected Fish Species and/or Fish Species listed in the Appendix of the Convention on International Trade in Endangered Species of Wild Fauna and Flora

The Indonesian government has made efforts to eradicate illegal fishing by establishing a Task Force for the Eradication of Illegal Fishing, namely “Satgas 115,” to be able to carry out Law Enforcement Operations to eradicate illegal fishing (Illegal Fishing) and fishing activities

that are not reported. (unreported fishing) through Presidential Regulation Number 115 of 2015. Satgas 115 consists of several law enforcement agencies and government agencies, such as:

- a. Marine and Fisheries Ministry,
- b. Indonesian National Army Navy,
- c. Indonesian National Police,
- d. Maritime Security Agency and
- e. Prosecutor's Office of the Republic of Indonesia.

The elements that are cross-agency and broad coordinating authority are expected to optimize all legal instruments by using the concept of not only one law to ensnare criminals but also other laws related to fishing activities in the event that facts are found. The fact of the existence of other crimes (multi-legal regimes), as well as optimizing coordination both domestically and abroad, so that law enforcement against illegal fishing (illegal fishing) becomes effective and efficient.

Law enforcement with the concept of multiple legal regimes and coordination carried out by Satgas 115 aims to create uniformity in its implementation. The Ministry of Maritime Affairs and Fisheries, as the Management Authorities of fish resources in Indonesia, has joined the Task Force for the Eradication of Illegal Fishing through the Regulation of the Minister of Maritime Affairs and Fisheries of the Republic of Indonesia Number 37/PERMEN-KP/2017 concerning Standard Operating Procedures Law Enforcement of the Satgas 15 for the Eradication of Illegal Fishing, as a tangible form of law enforcement action on the crime of shark finning as a crime in the field of fisheries.

In terms of law enforcement for the crime of shark finning, Indonesia is considered to have jurisdiction over it if the activity occurs in Indonesian waters, such as in the inland sea area, archipelagic waters, and territorial sea. This is because Indonesia, as a sovereign country, has the right to be able to enforce the laws of its country in the territory that is Indonesia's jurisdiction. While in the area that becomes sovereign rights, Indonesia cannot fully implement its laws as a coastal state. This is because there are other countries' rights that must be respected by Indonesia.

CONCLUSIONS

The governing authority is the party that issues licenses and certifications for animal and plant transactions contained in the CITES Appendix on behalf of the state and guarantees a legal, sustainable and traceable way to obtain them. As the Indonesian fish resource management authority, the Ministry of Maritime and Fisheries has participated in the Task Force to eradicate illegal fishing under the rules of the Minister of Maritime and Fisheries of the Republic of Indonesia No.37/PERMEN-KP/2017 related to the standard operating procedures of the Law Enforcement Task Force to Eliminate Illegal Fishing. This is a specific criminal charge for the crime of shark finning as a fishing crime. If activities are carried out in the waters of Indonesia, the charges for fines of sharks in the waters of Indonesia are under the jurisdiction of Indonesia as a sovereign state, as Indonesia has the right to enforce its own laws in the region.

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Peraturan Menteri Kelautan dan Perikanan Nomor 61 Tahun 2018 tentang Pemanfaatan Jenis

Ikan Dilindungi dan/atau Jenis Ikan yang terancam dalam Appendiks *Convention on International Trade in Endangered Species of Wild Fauna and Flora* .