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## The Effectiveness of Criminal Sanctions in Stopping Smuggling of Lobster Seeds in Indonesia

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**Abstract:** Indonesia is a country that has wide seas separating one island from another, so smuggling can often occur considering the fact that Indonesia has very interesting marine products. Using illegal methods, marine biota becomes increasingly scarce, causing state losses of up to trillions of rupiah. The aim of this research is to find out the regulations regarding the prohibition of catching lobsters and the application of sanctions for the criminal act of smuggling lobster seeds. The research method used is normative juridical, this research was carried out by reviewing the applicable legislation and its application to a legal problem. The research specification used is the descriptive analysis method, namely a research method that describes phenomena or events based on existing facts, which is then linked to legal theory. Guidelines for catching lobster seeds are regulated in the Minister of Maritime Affairs and Fisheries Regulation Number: 16/PERMEN-KP/2022 concerning Management of Lobsters (*Panulirus Spp.*), Crabs (*Scylla Spp.*), and Crab (*Portunus Spp.*) in the Territory of the Republic of Indonesia.

**Keyword:** Implementation of Sanctions, Smuggling Actors, Lobster Seeds.

### INTRODUCTION

Indonesia as a country of the archipelago. The word Nusantara comes from two words namely "nusa" which means island and "antara" which means relationship. So it can be concluded that the archipelago means a series or collection of islands in Indonesia. Indonesia is an archipelagic country bounded by the ocean. Indonesia has so many abundant natural resources and with this abundant natural wealth, one of which is in the waters, especially the Indonesian ocean, there are many marine life (Izza Elvany, 2020).

Indonesia's marine natural resources are very large natural resources, almost all natural resources in the Indonesian sea can be renewed or improved. The source in question is natural resources that can multiply and have a very large amount. Fish resources in Indonesia's seas cover 37% of the world's fish species, of which some species have high economic value, such as tuna, shrimp, lobster, reef fish, various types of ornamental fish, shellfish, and seaweed. The marine wealth owned by Indonesia must be utilized for the

welfare of the people (Tayibnapis et al., 2020). This is as stipulated in Article 33 paragraph (3) of the Constitution of the Republic of Indonesia Year 1945 (hereinafter referred to as the 1945 Constitution) which states that "Earth and water and the natural resources contained therein are controlled by the State and used for the greatest prosperity of the people". So the statement provides flexibility for every community to be able to easily utilize natural wealth for the benefit of daily life or to get more results by selling products that basically come from nature, especially the sea. As one of the incomes of Indonesian coastal communities, namely by buying and selling marine products, as one of them lobsters that have a very high economic value (Anggarini et al., 2021).

Lobsters belong to a family (Nephropidae, sometimes also Homaridae). They have long bodies with muscular tails and live in crevices or holes on the seabed. Lobsters are invertebrates with a hard outer armor. The habitat of crayfish (lobster) in general is in coastal waters where there are many rocks / coral reefs. This coral reef besides being a barrier (protector) from waves, also a place to hide from predators and also functions as a foraging area (Cella, 2023). Lobster is one of the export commodities of the Indonesian fisheries subsector and is an important component for shrimp fisheries in Indonesia. This kind of commodity needs to be further developed because of its trade value and high potential. Lobster ranks fourth for export commodities from the Krustacean nation after the *Penaeus*, *Metapeneus*, and *Macrobrachium* clans according to Indonesian Statistics records in 2005 (Zuhri, et al., 2023).

Smuggling lobster fry that does not pay attention to the law of sustainability is one of the biggest threats to the world of marine conservation. Many lobster fry are hunted by fishermen and then traded illegally. In recent years, lobster seeds have undergone many catches to be developed outside Indonesia and sold when they were still seed-sized and one of the lobster fry that experienced this came from Indonesian lobster seeds. Unlike other types of fish, on average it is only sold in the state of adult fish or by measuring the unit weight of the fish, but in contrast to lobster which is still fry size or under 8 cm in size already has a pretty fantastic price (Indradinata & Samputra, 2023). Thus, Indonesia, which is a state of law, must be strong in enforcing laws that regulate its natural wealth in order to achieve the ideals of the law and can also unite various interests in society. Related to fisheries crime, it has been stipulated in Law Number 45 of 2009 jo. Law Number 31 of 2004 concerning fisheries (Made et al., 2023). Meanwhile, lobsters have been prepared in the Regulation of the Minister of Marine Affairs and Fisheries Number: 16/PERMEN-KP/2022 concerning the Management of Lobster (*Panulirus* Spp.), Crab (*Scylla* Spp.), and Rajungan (*Portunus* Spp.) in the territory of the Republic of Indonesia. Thus, there is a ban on catching and sending lobster seeds abroad, because there are very many criminal acts of smuggling lobster seeds in Indonesia. So the right way is also needed to overcome it as a step to protect marine wealth in Indonesia (Hartanto Sinaga et al., 2023). This can be done by eradicating the criminal act of smuggling lobster seeds to the point. In the event of the criminal act of smuggling lobster seeds, therefore the "Application of Sanctions Against Perpetrators of Smuggling Lobster Seeds" was prepared. Based on the description above, it is interesting to examine: 1) What is the regulation of Indonesian law regarding lobster seeds? 2) What are the sanctions applied to lobster seed smuggling? This study is intended to obtain data and information related to the laws governing lobster seeds, therefore the objectives of this study are: 1) To know and provide an explanation of Indonesian legal regulations regarding lobster seeds, 2) To know, explain the sanctions applied to perpetrators of smuggling lobster seeds.

## **METHOD**

This writing uses normative research methods (legal research) usually "only" a study of documents, namely using sources of legal materials in the form of laws and regulations,

court decisions / decrees, contracts / agreements / contracts, legal theories, and opinions of scholars. Another name for normative legal research is doctrinal legal research, also referred to as literature research or document study. Wiradipradja explained that normative legal research is "legal research that examines positive legal norms as the object of study". In normative legal research, law is no longer seen as a utopia but has been institutionalized and has been written in the form of existing norms, principles and legal institutions. Legal materials used in research are collected by searching and documenting studies, both through e-books, libraries and internet media, so that there is no need for data search to descend directly to the public regarding research problems. With legal materials collected and grouped, they are then examined using conceptual approaches, statutory approaches, and case approaches to obtain an overview or answer to the problems that are the focus of study in this study (Singer, 2009).

## **RESULTS AND DISCUSSION**

### **Application of sanctions against lobster seed smuggling perpetrators**

#### **Regulation on the prohibition of lobster fry fishing**

Regulations related to the capture and release of lobster fry have been regulated in Article 16 of Law Number 45 of 2009 concerning Fisheries and reinforced by the threat of sanctions in Article 88, but the specific regulations are set forth in Ministerial Regulation Number 16/PERMEN-KP/2022 (Husein & Aziz, 2020). What is meant by Expenditure is the activity of removing Lobster (*Panurilus* spp.), Crab (*Scylla* spp.), and Rajungan (*Portunus* spp.) out of an area to another area within the territory of the Unitary State of the Republic of Indonesia or out of the Territory of the Unitary State of the Republic of Indonesia, and authorized on August 12, 2022 regulated in :

1. Article 7 of Ministerial Regulation Number 16/PERMEN-KP/2022 concerning provisions for catching and/or removing lobsters (*Panulirus* spp.) from the territory of the Republic of Indonesia.
2. Article 8 of Ministerial Regulation Number 16/PERMEN-KP/2022 concerning provisions for the catching, traffic, and/or expenditure of crabs (*Scylla* spp.) for consumption purposes in or from the territory of the Republic of Indonesia.
3. Article 9 of Ministerial Regulation Number 16/PERMEN-KP/2022 concerning provisions for catching crabs (*Scylla* spp.) within the territory of the Republic of Indonesia for cultivation.
4. Article 11 of Ministerial Regulation Number 16/PERMEN-KP/2022 concerning the provisions for the capture, traffic, and/or expenditure of crabs (*Portunus* spp.) for consumption purposes in or from the territory of the Republic of Indonesia.
5. Article 12 of Ministerial Regulation Number 16/PERMEN-KP/2022 concerning the provisions for crab fishing (*Portunus* spp.) within the territory of the Republic of Indonesia for cultivation.
6. Article 15 of Ministerial Regulation Number 16/PERMEN-KP/2022.

Specifically, the regulation for lobster seed production is only contained in Article 7 and Article 15 of Ministerial Regulation Number 16/PERMEN-KP/2022 which reads: "Article 7 namely: (1) The capture and/or removal of lobsters (*Panulirus* spp.) from the territory of the Republic of Indonesia can only be carried out with the following conditions: :

1. not in egg-laying conditions seen on the outer abdomen and carapace length above 6 (six) centimeters or weight above 150 (one hundred fifty) grams per head for sand lobster (*Panulirus homarus*), rock lobster (*Panulirus penicillatus*), batik lobster (*Panulirus longipes*), and Pakistani lobster (*Panulirus polyphagus*); or
2. not in egg-laying conditions seen on the outer abdomen and carapace length above 8 (eight) centimeters or weight above 200 (two hundred) grams per head for lobsters (*Panulirus* spp.) other types.

The purpose of the Abdomen in Article 7 paragraph (1) a is the arrangement of the top plate in which there is the digestive tract and reproductive organs.

Article 15 reads:

1. Clear Lobster (*puerulus*) seeds caught not in accordance with the provisions in Article 2 and/or lobsters (*Panulirus spp.*) caught and/or removed not in accordance with the provisions in Article 7 under circumstances:
  - a. dead, then destroyed or utilized by the state in accordance with the provisions of laws and regulations; or
  - b. live, then released into the wild and / or used for the purposes of education, training, research, development, study, application and / or pilot within the territory of the Republic of Indonesia.
2. In the case of buying and selling activities or transactions, sellers and buyers (collectors) must have licensing documents mentioned in Article 16 paragraph (4), among others:
  - a. Business licensing documents by ensuring the match of the Business Identification Number in accordance with the registered one;
  - b. Type and quantity of commodities to be released or trafficked;
  - c. The condition of the commodity to be transported or released is to ensure that it is in a state of laying eggs or not;
  - d. Conformity of intended or permissible size;
  - e. Validity of provisions.

So it can be concluded that the amendment to the ministerial regulation number: 17/PERMEN-KP/2021 to 16/PERMEN-KP/2022 is a form of stretching in the rules for the circulation of lobster seeds within the territory of the Indonesian state which is one of the government's efforts to maintain the economic stability of the people who focus their lives in the fisheries sector by providing space in the distribution of the results of lobster farming while still following the provisions that have been regulated in Government regulation number: 16/PERMEN-KP/2022 (Leonita et al., 2022).

### **Responsibility of Lobster Seed Smuggling Perpetrators**

Law Number 31 of 2004 as amended by Law Number 45 of 2009 concerning Fisheries which stipulates "Fish are all types of organisms whose entire or part of their life cycle is in the aquatic environment". Based on these provisions that lobsters are included in the provisions of fish as stipulated by Law Number 31 of 2004 as amended by Law Number 45 of 2009. According to Article 1 of Law Number 45 of 2009 concerning Amendments to Law Number 31 of 2004 concerning Fisheries states that "Fisheries are all types of activities related to the management and utilization of fish resources and their environment both from preproduction, production, processing to marketing carried out in the fisheries business system". While fisheries crime is an act that is prohibited in all activities related to the management and utilization of fish resources and the environment in a fishery business system and carried out by people or legal entities who are able to be responsible and can be threatened with crime in accordance with the provisions of Law Number 45 of 2009 concerning Amendments to Law Number 31 of 2004 concerning Fisheries (Hartanto Sinaga et al., 2023).

In the Regulation of the Minister of Marine Affairs and Fisheries Number 16 of 2022 concerning the Management of Lobster (*Panulirus Spp.*), Crab (*Scylla Spp.*), and Rajungan (*Portunus Spp.*) In the territory of the Republic of Indonesia, Article 19 states that :

1. Any person who releases Lobster Clear Seed (*puerulus*) outside the territory of the Republic of Indonesia as referred to in Article 18 paragraph (1) is subject to criminal sanctions in accordance with the provisions of laws and regulations.
2. Any person who catches, cultivates, traffics and/or releases Lobster Clear Seeds (*puerulus*), lobsters (*Panulirus spp.*), crabs (*Scylla spp.*), and crabs (*Portunus spp.*) in

conditions not in accordance with the provisions as referred to in Article 18 paragraph (2), paragraph (3), and paragraph (4), shall be subject to administrative sanctions in the form of:

- a. Written warning/reprimand.
- b. Government coercion consisting of:
  - 1) termination of capture, cultivation, expenditure, education, research and development, assessment, application, and/or pilot activities.
  - 2) Sealing.
  - 3) Reduction or temporary lifting of arrest quotas and locations; and/or
  - 4) Other measures aimed at stopping violations and restoring resource sustainability.
- c. Administrative Penalty.
- d. freezing of business license documents; and/or
- e. Revocation of Business Licensing Documents.

In the case of the criminal act of smuggling lobster seeds that occur in the State of Indonesia, the criminal sanctions have been regulated in Law No.17 of 2006 concerning customs, criminal sanctions against smugglers as contained in Article 102, Article 102A, and Article 102 B. Basically, it applies criminal approval as the principal, namely for detention and special fines which are agreements in the combined crime (combined), focusing on the use of detention consent first and then followed by joint criminal authorization (Kusnadi, 2024).

In Law No. 45 of 2009 concerning Amendments to Law No. 31 of 2004 concerning Fisheries, criminal acts against smuggling perpetrators are regulated in Article 88 which reads: "Any person who intentionally inserts, removes, procures, distributes, and/or maintains fish that harm the community, fish farming, fish resources, and/or fish resource environment into and/or out of the fisheries management area of the Republic of Indonesia as referred to in Article 16 paragraph (1), shall be punished with a maximum imprisonment of 6 (six) years and a maximum fine of Rp.1,500,000,000 (one billion five hundred million rupiah)" (Bayu Priyambodo, 2018). Furthermore, Article 18 Paragraph (4) of the Regulation of the Minister of Marine Affairs and Fisheries Number 16 of 2022 explains that: "everyone is prohibited from catching and or removing lobsters (*Panulirus spp.*), in conditions that are not in accordance with the provisions referred to in Article 7 subject to sanctions in accordance with the provisions of laws and regulations. Based on the description above, it can be seen that the act of distributing the results of lobster seed management is a criminal act with a transnational form, where there is an act of shipping lobster seeds can only be categorized as smuggling if there is an intention to send the lobster seeds abroad (Wahyudi et al., 2023). In addition, it shows that there is specificity in the criminal process and with the establishment of a special criminal justice system, in the sense that the Fisheries Law has also established a special criminal justice system and process for the examination of cases related to fisheries crimes. Criminal liability for perpetrators of the criminal act of smuggling lobster seeds, because it has been legally proven and convinced guilty of committing the criminal act of exporting goods without submitting a customs notification carried out jointly, can be sanctioned in accordance with the laws and regulations governing this (Sugiyono, et al., 2023).

## CONCLUSION

The regulation to produce lobster fry has been regulated in Law Number 45 of 2009 concerning Fisheries and clarified in the details in the Regulation of the Minister of Marine Affairs and Fisheries of the Republic of Indonesia Number 16 of 2022 concerning the Management of Lobster (*Panulirus Spp.*), Crab (*Scylla Spp.*), and Rajungan (*Portunus Spp.*) Where in the regulation it is explained how to spend, license, requirements for lobster seeds that can be issued by the Government. Law enforcement against smuggling is regulated in

Law Number 17 of 2006 concerning Customs which explains the definition of smuggling both in terms of export and import. There are criminal sanctions for smuggling as stipulated in the provisions of Articles 102, 102A, and 102B. Basically, it applies criminal sanctions in the form of imprisonment and fines which are combined criminal sanctions, based on the subsidiary of Article 30 of the Criminal Code which regulates fines. Criminal responsibility for perpetrators of criminal acts in smuggling the results of lobster seed management outside the territory of Indonesia is contained in Article 88 jo Article 16 paragraph (1) of Law Number 31 of 2004 as amended by Law Number 45 of 2009 concerning Fisheries which reads: "Any person who intentionally inserts, removes, procures, and/or maintains fish that harm the community, fish farming, fish resources, and/or fish resource environment into and/or outside the fisheries management area of the Republic of Indonesia as referred to in Article 16 paragraph (1), shall be punished for a maximum of 6 (six) years and a maximum fine of Rp.1,500,000,000.00 (one billion five hundred million rupiah).

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