

Proses penegakan hukum di dalam tindak pidana perikanan (suatu kajian atas pelaksanaan pasal 69 ayat 4 undang-undang nomor 45 tahun 2009) = Law enforcement process in the crime of fisheries a study on implementation of article 69 paragraph 4 of act no 45 of 2009 / Antony Putra Abraham

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Abstrak

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Salah satu bentuk penegakan hukum tindak pidana perikanan adalah penenggelaman kapal

asing. Pihak yang diberi kewenangan yaitu Penyidik Pegawai Negeri Sipil Perikanan, Penyidik Perwira Tentara Nasional Indonesia Angkatan Laut (TNI AL), dan/atau Penyidik Kepolisian Negara Republik Indonesia. Sebagaimana tercantum di dalam Pasal 69 ayat (4) Undang-Undang Perikanan dapat dilakukan tindakan berupa pembakaran dan penenggelaman kapal asing dalam kondisi memaksa (forced major), seperti adanya perlawanan dari Nakhoda atau anak buah kapal (ABK) kapal asing yang dapat membahayakan keselamatan kapal pengawas perikanan. Dalam perkembangan selanjutnya, penenggelaman kapal yang semula bertujuan untuk memberikan efek jera dinilai kurang efektif karena proses peradilan selama ini hanya menjerat Nakhoda dan awak mesin kapal namun tidak menjerat pemilik kapal. Permasalahan lainnya yaitu pengawasan yang lemah serta proses hukum yang berlarut-larut. Selain itu, penerapan Pasal 69 ayat (4) dalam pelaksanaan di lapangan menimbulkan distorsi dan banyak kritik dari berbagai pihak karena terkait dengan ketentuan-ketentuan hukum internasional khususnya Konvensi PBB tentang hukum laut (UNCLOS 1982). Dengan demikian, isi dari Pasal 69 Ayat (4) Undang-Undang Perikanan yang mengatur ketentuan penenggelaman kapal asing dengan didasarkan bukti permulaan yang cukup ke depannya menjadi sulit untuk dilaksanakan. Tindakan penenggelaman kapal ikan berbendera asing yang dapat dipertanggungjawabkan secara hukum memerlukan uji materiil terhadap Pasal 69 ayat (4) Undang-Undang Perikanan

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One form of criminal law enforcement in law of the sea is an act of sinking foreign vessels.

Parties whom authorized to do that action are Civil Servant Investigators Fisheries, Investigators Navy officer, and / or Investigator of the Indonesian National Police. Until now, there is no other better way in handling vessels that allegedly used in the crime of fisheries. As stipulated in Article 69 paragraph (4) Indonesia Fisheries Act when in a state of forced major, such as the resistance of the captain or crew of foreign vessels that may endanger the safety of fishery patrol ship, then it could be the reason to burn and sink them. On further developments, sinking ship that was originally intended to provide a deterrent effect, considered less deterrent for the vessels owner. Legal sanction has been given to the captain and chief of engine room crew, but have not been able to ensnare the ship owner because

proceedings for the perpetrators of illegal fishing has not ensnare vessel owner and is still constrained weak supervision and a dragged on legal process. In addition, the application of Article 69 paragraph (4) the implementation of a practice cause a lot of distortion and get criticism from various parties including countries that are victims of sinking as in the case of foreign vessel sinking associated with the provisions of international law, especially the UN Convention on the law sea (UNCLOS 1982). Thereby, the content of Article 69 Paragraph (4) Fisheries Act provisions governing foreign vessel sinking with sufficient evidence based on the future becomes difficult to implement. In order for sinking action of foreign fishing vessel could be accounted for by law then it required judicial review of Article 69 paragraph (4) of the Fisheries Act