

Criminal liability for perpetrators of the crime of lobster cultivation without a permit (Case Study Decision Number: 5/Pid.Sus-PRK/2021/PN Jkt.Utr)

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KEYWORDS	ABSTRACT
Criminal responsibility; illegal lobster cultivation; the North Jakarta District Court verdict are key concepts discussed in this research.	There are still immoral individuals who do not comply with existing regulations, one of which involves the illegal transportation of baby lobster larvae without a Fisheries Business License (SIUP). This is reflected in the case study of the criminal fisheries ruling, which has become final and binding, namely the ruling on the crime of Lobster Cultivation Without Permission in the North Jakarta District Court ruling number 5/Pid.Sus-Prk/2021/PN Jkt.Utr. This research aims to analyze the criminal responsibility of the perpetrators in the lobster cultivation crime based on this ruling and to examine the judge's considerations in imposing criminal sanctions. The research uses a normative legal study method, which examines the system of legal norms through legislation, court decisions, and doctrines. The research findings show that the criminal responsibility of Defendants I and II is joint responsibility in the fisheries crime, as they were not the owners but were instructed by the owners of the baby lobster larvae, who are still being searched. The legal basis applied is Article 88 Jo Article 16 paragraph (1) of Law No. 11 of 2020 on Job Creation, with the judge's considerations covering legal, sociological, and philosophical aspects.

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Introduction

Indonesia as an archipelagic country has been established since the Djuanda Declaration in 1957 and strengthened by the *United Nations Convention on the Law of the Sea* (UNCLOS). Indonesia has about 17,500 islands, with a coastline of 81,000 km. Around 62% of Indonesia's territory is sea and waters, this is confirmed from MPA data, the land area is 1.91 million km² while the water area reaches 6.32 million km² (Beckman & Liliansa, 2020; Buntoro, 2014; Sudini et al., 2020).

In addition, as an archipelagic country whose territory is mostly made up of the sea, it has a very large and diverse fisheries potential. The fishery potential is an economic potential that can be used for the future of the nation, as the backbone of national development. This is in accordance with the mandate of the 1945 Constitution Article 33 paragraph 3 which states:

"The earth and water and the natural resources contained in it are controlled by the state and used for the greatest prosperity of the people."

Optimal utilization for the prosperity of the people is directed at the utilization of fish resources by paying attention to the existing carrying capacity and its sustainability, improving the living standards of small fishermen and small-fish cultivators, increasing revenue from state

foreign exchange, providing expansion and employment opportunities, increasing productivity, added value and competitiveness of fishery products and ensuring the preservation of fish resources, fish farming land and spatial planning. This means that as a country that has a diversity of animals and plants that are rarely owned by other countries both on land and in the sea, many other countries want Indonesia's natural resources, one of which is lobster.

The potential of lobster in Indonesia was mentioned by a member of the advisory board, Bambang Haryo Soekartono from the Indonesian Fishermen Association (HNSI) of East Java, said that (Jawapos, 2024):

The potential of Indonesian lobster seeds is estimated to reach billions of rupiah per year, and can even reach hundreds of trillions of rupiah every year if each seed is priced in the price range of fifty thousand rupiah. If the lobster seeds are cultivated to reach a weight of 500 grams, the price can reach five hundred thousand rupiah. So, the economic potential provided is much greater. Furthermore, when comparing the potential of lobster seeds in Indonesia with Vietnam. Indonesian fishermen can harvest two to three million lobsters in just one or two months, while Vietnam has to wait up to a year to harvest the same amount of lobsters.

This shows that the potential of lobster owned by the Indonesian state is very large and this directly affects in terms of international trade, The lobster life cycle consists of 5 stages, starting from the egg that produces sperm or eggs in adulthood, hatching into filaments (larvae), then becoming eggs (*post larvae*)), develop into larvae and adults. The genus *Panulirus* has many life cycles especially for species living in tropical waters, and there is still a lack of understanding of larval life rates (Setyanto Nabilla Artini et al., 2018). Lobster seeds must be maintained for generations so that they do not disappear from Indonesian waters as stipulated in article 1 number 6 of Law No. 45 of 2009 concerning Fisheries and Article 1 number 10 of the Regulation of the Minister of Marine Affairs and Fisheries of the Republic of Indonesia Number 7 of 2024 concerning the Management of Lobster (*Panulirus* spp.), Crab (*Scylla* spp.), and Crab (*Portunus* spp.), which states as follows:

Article 1 number 6 of Law No. 45 of 2009 concerning Fisheries that:

"Fish farming is an activity to raise, raise, and/or breed fish and harvest the results in a controlled environment, including activities that use ships to load, transport, store, cool, handle, process, and/or preserve them".

Article 1 number 10 of the Regulation of the Minister of Marine Affairs and Fisheries of the Republic of Indonesia Number 7 of 2024 concerning the Management of Lobster (*Panulirus* spp.), Crab (*Scylla* spp.), and Crab (*Portunus* spp.), that:

"Fish Farming, hereinafter referred to as Cultivation, is an activity to raise, raise, and/or breed fish and harvest the results in a controlled environment, including activities that use ships to load, transport, store, cool, handle, process, and/or preserve them".

Lobster (*Panulirus* spp) and including clear lobster seeds (*Puerulus*) are one of the potential marine biological resources that are abundant in Indonesia. Lobster plays an important role as a reliable export commodity. To meet the market demand for lobster supply, fishermen fish in various Indonesian waters. However, the supply of lobsters caught has not been able to meet market needs. This is due to seasonal effects that result in difficulties in the supply of lobster stocks (Sanjaya, 2021).

Along with the increasing demand for lobster, it is also necessary to make efforts to maintain it so that it remains sustainable. One of them is through the cultivation of Lobster itself. Of course, this has a direct impact on the sustainability of Lobster itself. This is the basis for the government to set rules regarding the restriction and prohibition of lobsters under certain conditions to be caught. The community as a cultivator must certainly abide by the applicable legal rules. For

example, not catching lobsters using dangerous fishing gear intensively and there is no sale of lobster or clear lobster seeds without licenses or permits. However, there are still immoral people. They do not comply with the applicable regulations. One of them is illegally transporting clear lobster seeds without a Fisheries Business License (SIUP) (Gemilang, 2019).

Licensing as stipulated in Article 26 paragraph (1) of Law Number 45 of 2009 concerning Amendments to Law of the Republic of Indonesia Number 31 of 2004 concerning Fisheries, states that:

"Everyone who conducts a fishery business in the field of fishing, cultivation, marketing, processing, and marketing of fish in the fishery management area of the Republic of Indonesia is required to have a SIUP"

The article shows that the Fisheries Business License or hereinafter referred to as SIUP is a written permit that must be owned by fishery companies that conduct fishery business using the production facilities listed in the permit. This SIUP is valid as long as the community carries out fishery business activities unless there is an expansion or reduction.

This is because unlicensed lobster cultivation is closely related to the challenges of managing fishery resources in Indonesia. Lobster is a very valuable commodity, both in terms of economy and ecology. However, unlicensed cultivation practices can have a negative impact, namely the abuse of actions by smuggling lobster seeds, both for domestic marketing and illegally exported abroad without a permit and of course this is an act of violating positive legal principles in the sense of community law, it is a criminal act of fisheries smuggling (Setyanto Nabilla Artini et al., 2018), as stipulated in article 88 of Law Number 45 of 2009 concerning Amendments to Law Number 31 of 2004 concerning Fisheries, which states that:

"Any person who deliberately enters, removes, procures, distributes, and/or raises fish that is detrimental to the community, fish farming, fish resources, and/or the environment of fish resources into and/or outside the fisheries management area of the Republic of Indonesia as referred to in Article 16 paragraph (1), shall be sentenced to imprisonment for a maximum of 6 (six) years and a maximum fine of Rp1,500,000,000, 00 (one billion five hundred million rupiah)".

As not long ago, the Palembang Lanal III team succeeded in securing 277,800 BBL from smugglers in Jambi. Hundreds of thousands of fry are planned to be smuggled to Singapore and throughout 2024 eight frying fries have been thwarted by various parties ranging from the Indonesian Navy, the National Police, to Airport AVSEC officers, with a total of nearly 1 million BBL rescued (Liputan6, 2024).

Law enforcement efforts to eradicate smugglers are increasingly intensified because it is alleged that there are still perpetrators who commit these acts in various ways such as by air, land and sea, this is done because the seafood business is very profitable and can be traded illegally in a fairly simple way (Sutomo, 2019). So that if the act of transporting lobster seeds without a permit is proven, then the perpetrator who commits the act or who participates in helping to commit the act can be held accountable, as stipulated in Law Number 45 of 2009 concerning Amendments to Law Number 31 of 2004 concerning Fisheries and the application of criminal rules to this cultivation is also regulated in Article 55 paragraph (1) of the Criminal Code.

In this regard, one of the cases of the decision on fisheries crimes that has been inkrah or has permanent legal force is the decision on the crime of Lobster Cultivation Without a Permit which is under the jurisdiction of the North Jakarta District Court number 5/Pid.Sus-Prk/2021/PN Jkt.Utr, with the defendant Ujang Kurniawan bin Sihron and the defendant Nursidik bin (Alm) Hae proven guilty of committing a criminal act "who commits, instruct and participate in deliberately entering, receiving, procuring, distributing, and/or maintaining fish that are

detrimental to the community, fish farming, fish resources, and/or the environment of fish resources into and/or outside the fisheries management area of the Republic of Indonesia.

This research aims to analyze these two aspects and is expected to contribute to criminal law knowledge, especially related to criminal acts in the fisheries sector. Practically, this research aims to be a guideline for students, the community, legal practitioners, and law enforcement in uncovering cases of fisheries crimes, especially those related to illegal lobster cultivation.

Research Method

The research in this thesis uses a descriptive analytical method that aims to describe the existing facts and then analyze, as well as describe the applicable laws and regulations, associated with legal theories and positive law implementation practices in society. The type of research used is normative juridical research, which aims to study the application of legal norms in legal practice. The data sources used consist of primary legal materials such as laws, court decisions, and related regulations, secondary legal materials that provide instructions to primary legal materials, and tertiary legal materials that provide further support. The data analysis techniques used are qualitative analysis and interpretation analysis, to strengthen hypotheses and connect legal principles with their application by judges. This research was conducted in the North Jakarta area, DKI Jakarta, with a research schedule lasting for three months.

Results And Discussion

Criminal liability for the perpetrators of the crime of Lobster Cultivation Without a License based on decision number 5/Pid.Sus-PRK/2021/PN Jkt.Utr.

1. Chronology of the case of decision number 5/Pid.Sus-PRK/2021/PN Jkt.Utr.

a. Case Position

There have been fishery crimes committed by:

1) Defendant I

- a) Full Name : Ujang Kurniawan bin Sihron;
- b) Place of birth : Sukabumi;
- c) Age/date of birth : 40 Years/April 10, 1981;
- d) Gender :Man;
- e) National :Indonesia;
- f) Residence : Kampung Cikawung RT 05/04
Purwasedar Village, Sub-district
Ciracap, Sukabumi Regency,
West Java Province;
- g) Religion :Islam;
- h) Work Wiraswasta.

2) Defendant II

- a) Full Name : Narsedik bin (knowledge);
- b) Place of birth : Sukabumi;
- c) Age/date of Birth: 39 Years/July 5, 1982;
- d) Gender :Man;
- e) National :Indonesia;
- f) Residence : Cidangdeur Village RT 11/03
Ciracap Village, District

Ciracap, Sukabumi Regency,
West Java Province;
g) Religion :Islam;
h) Work :Self employed

b. Public Prosecutor's Demand

- 1) Declaring that the Defendant Ujang Kurniawan bin Sihron and the Defendant Nursidik bin alm Hae, were found guilty of committing a criminal act "who commits, orders to do and participates in deliberately entering, removing, providing, distributing, and/or maintaining fish that are detrimental to the community, fish cultivation, fish resources, and/or the environment of fish resources into and/or outside the fisheries management area of the Republic of Indonesia as referred to in Article 16 paragraph (1) "as regulated and threatened in Article 88 Jo Article 16 paragraph (1) of Law Number 11 of 2020 concerning Job Creation as amended by Law Number 45 of 2009 concerning Fisheries as amended by Law Number 31 of 2004 concerning Fisheries Jo Article 55 paragraph (1) 1st of the Criminal Code (Second indictment);
- 2) Imposing a criminal sentence on the Defendant Ujang Kurniawan bin Sihron and the Defendant Nursidik bin alm Hae with a prison sentence of 10 (ten) months each reduced while the defendant is in custody and a fine of Rp100,000,000 (one hundred million rupiah) Subsidiary 3 (three) months of imprisonment;
- 3) Declaring evidence:
 - a) 61,398 (sixty-one thousand three hundred and ninety-eight) baby lobster seeds, divided into 2 types, namely: 15,349 (fifteen thousand three hundred and forty-nine) PEARL type in 3 styrofoam and 46,049 (forty-six thousand forty-nine) in 8 styrofoam; Confiscated for release at sea based on Acaa Release News Number BA-Release.1002.13/15.0/DPW.520/VII/2021 dated July 13, 2021 by the Ministry of Marine Affairs and Fisheries of the Jakarta Fish Quarantine, Quality Control and Fishery Product Safety Center;
 - b) 1 (one) Unit of Toyota Avanza Car in Black color with Pol. No. F-1776-VF along with key and STNK in the name of RESTI YUNIARSIH; Returned to Sdri. Ismawati;
 - c) 1 (one) unit of Mitsubishi Pick Up L.300 Car in Black color with Pol. No. BE-8297-XC along with ignition key and STNK in the name of MEIMASARI AFIF; Returned to Mr. Jacob;
 - d) Cash in the amount of Rp1,300,000 (one million three hundred thousand rupiah);
 - e) Cash of IDR 350,000 (three hundred and fifty thousand rupiah); Confiscated for the State;
 - f) 11 (eleven) pieces of white styrofoam;
 - g) 1 (one) unit of OPPO Type F11 Brand Mobile Phone in Purple color;
 - h) 1 (one) unit of VIVO Brand Mobile Phone in White;
 - i) 12 (twelve) Yellow Fiber Boxes;
 - j) 1 (one) unit of REALME Type C.21 Brand Mobile Phone in White. Confiscated to be destroyed
- 4) Stipulating that the defendant be burdened with paying the cost of the case of Rp5,000 (five thousand rupiah) each

c. Judge's Decision

- 1) Declaring that the Defendant Ujang Kurniawan bin Sihron and the Defendant Nursidik bin (Alm) Hae mentioned above, are legally and convincingly proven guilty of committing the crime of fisheries "jointly by deliberately holding and distributing prohibited fish that are detrimental to fish resources in the State Fisheries Management Area of the Republic of Indonesia";
- 2) Imposing a criminal sentence on the Defendant Ujang Kurniawan bin Sihron and the Defendant Nursidik bin (Alm) Hae therefore with a prison sentence of 7 (months) each, and a fine of Rp.60,000,000.00 (sixty million rupiah), with the provision that if the fine is not paid, it will be replaced with imprisonment for 2 (two) months;
- 3) Stipulating that the period of arrest and detention that the Defendants have undergone is entirely deducted from the sentence imposed;
- 4) Ordering the Defendants to remain in custody;
- 5) Determining evidence in the form of:
 - a) 61,398 (sixty-one thousand three hundred and ninety-eight) baby lobster seeds, divided into 2 types, namely: 15,349 (fifteen thousand three hundred and forty-nine) PEARL type in 3 styrofoam and 46,049 (forty-six thousand forty-nine) SAND type in 8 styrofoam;
Confiscated for release at sea based on the Minutes of Release Number BA-Lepasli.1002.13/15.0/ DPW.520/VII/2021, dated July 13, 2021 by the Ministry of Marine Affairs and Fisheries of the Jakarta Fish Quarantine, Quality Control and Fishery Product Safety Center.
 - b) 1 (one) Unit of Toyota Avanza Car in Black color with Pol. No. F1776-VF along with key and STNK in the name of RESTI YUNIARSIH;

Returned to Sdri. Ismawati.
 - c) 1 (one) unit of Mitsubishi Pick Up L.300 Car in Black color with Pol. No. BE-8297-XC along with ignition key and STNK in the name of MEIMASARI AFIF;
Returned to Mr. Yakob.
 - d) Cash in the amount of Rp1,300,000.00 (one million three hundred thousand rupiah); - Cash of Rp350,000.00 (three hundred and fifty thousand rupiah)
Confiscated for the State.
 - e) 11 (eleven) pieces of white styrofoam;
 - f) 1 (one) unit of OPPO Type F11 Brand Mobile Phone in Purple color;
 - g) 1 (one) unit of VIVO Brand Mobile Phone in White;
 - h) 12 (twelve) Yellow Fiber Boxes;
 - i) 1 (one) unit of REALME Type C.21 Brand Mobile Phone in White.
Confiscated to be destroyed.
- 6) Charging the Defendants to pay the case fee of Rp5,000.00 (five thousand rupiah) each.

d. Case Analysis

The acts committed by defendants I and II are criminal acts participating in fisheries crimes, namely transporting clear lobster seeds (puerulus) without having a

Certificate of Origin issued by the Fisheries Service of Ratu Sukabumi Port, West Java to be transported to Muara Angke Port, North Jakarta and subsequently to be sent to the Lampung area so that the consequences of the defendants' actions can harm the community, fish cultivators, fish resources and/or the environment of fish resources in Indonesia and in its indictment on the first alternative is contrary to Article 92 Jo Article 26 paragraph (1) of Law Number 11 of 2020 concerning Job Creation as amended by Law Number 45 of 2009 concerning Fisheries as amended by Law Number 31 of 2004 concerning Fisheries Jo Article 55 paragraph (1) 1 of the Criminal Code and according to the author of the article This is not correct because defendants I and II are not voters but those ordered by their owners, namely DEDE and Mr. NURYAWAN als ADUT as the owner of baby lobster seeds who are still trapped and in search of people / DPO). The appropriate article for Defendants I and II for their actions is regulated and criminally threatened in Article 88 Jo Article 16 paragraph (1) of Law Number 11 of 2020 concerning Job Creation as amended by Law Number 45 of 2009 concerning Fisheries as amended by Law Number 31 of 2004 concerning Fisheries Jo Article 55 paragraph (1) 1st of the Criminal Code;

At the time this decision was established and had permanent legal force in 2021, one of the rules used at that time was the Regulation of the Minister of KP Number 17/Permen-KP/2021 concerning Lobster Management (*Panulirus* spp.) Crab (*Scylla* spp.) And Crab (*Portunus* spp.) in the Territory of the Republic of Indonesia, where this provision includes about:

- 1) Catching Clear Lobster Seeds (puerulus) can only be done by Small Fishermen who are registered in the Fishermen group at the location of catching Clear Lobster Seeds (puerulus) and have been determined by the Provincial Office.
- 2) Small Fishermen who will catch Clear Lobster Seeds (puerulus) must submit registration to the Online Single Submission (OSS) Institution, either directly or can be facilitated by the Agency.

Regulation of the Minister of KP Number 17/Permen-KP/2021 concerning Lobster Management (*Panulirus* spp.) Crab (*Scylla* spp.) And Crab (*Portunus* spp.) in the Territory of the Republic of Indonesia has currently undergone 2 (two) changes, namely:

- 1) Regulation of the Minister of Marine Affairs and Fisheries Number 16 of 2022 concerning Amendments to the Regulation of the Minister of Marine Affairs and Fisheries Number 17 of 2021 concerning Lobster Management (*Panulirus Spp.*), Crab (*Scylla Spp.*), and Crab (*Portunus Spp.*) in the territory of the Republic of Indonesia, which was stipulated on August 12, 2022.

Through the Ministerial Regulation KP 16/2022, there are 18 Articles that have undergone changes from the provisions contained in the Ministerial Regulation KP 17/2021. These changes include the deletion, modification, and addition of provisions that are considered more relevant to current conditions. As referred to in Article 1 paragraph (2) of the Ministerial Regulation No. 16/2022, one of the additions is the provision regarding the reporting of the results of the catch of Clear Lobster Seeds (puerulus) carried out electronically, except in the event of no access to the internet network or *other force majeure* where it is impossible for the report to be submitted electronically (Kementerian Kelautan dan Perikanan, 2022).

In addition, the provisions in Article 6 of Ministerial Regulation KP 17/2021 concerning the traffic of Lobster Seeds from cultivation locations within the territory of

the Republic of Indonesia have been deleted as referred to in Article 1 paragraph 6 of Ministerial Regulation KP 16/2022.

With the enactment of Ministerial Regulation KP 16/2022, it is hoped that the sustainability and availability of fishery resources through optimal management of clear lobster seeds to meet the needs of lobster cultivation in the territory of the Republic of Indonesia can always be maintained.

- 2) Regulation of the Minister of Marine Affairs and Fisheries of the Republic of Indonesia Number 7 of 2024 concerning the Management of Lobster (*Panulirus* spp.), Crab (*Scylla* spp.), and Crab (*Portunus* spp.)

Regulation of the Minister of Marine Affairs and Fisheries Number 7 of 2024 concerning the Management of Lobster (*Panulirus* spp.), Crab (*Scylla* spp.), and Crab (*Portunus* spp.) was stipulated on March 21, 2024 (Mongabay, 2024).

The new rules replace the old rules that are official at the same time, namely the Minister of KP Regulation Number 17 of 2021 and the Minister of KP Number 16 of 2022. The two rules regulate the management of lobsters, crabs, and crabs.

Overseeing the implementation of the new governance, the Ministry of Marine Affairs and Fisheries (KKP) enacted the Crab and Crab Lobster Management Information System (SILOKER) application which functions to oversee the use of lobster clear seed (BBL) capture quotas by fishermen or fishermen groups.

This rule, according to the Acting Director General of Capture Fisheries of KKP Tb Haeru Rahayu explained that:

- 1) This system makes the upstream and downstream management of BBL utilization.
- 2) The system is called the Crab and Crab Lobster Management Information System (SILOKER) and has been integrated with existing systems in the central government, regions, or BBL fishing groups. Therefore, this system is accessible to all such networks.
- 3) The SILOKER application was prepared by the KKP as a form of implementation of the Ministerial Regulation KP 7/2024 with the aim of making it easier for fishermen when submitting proposals for fishermen groups. At the same time, propose a BBL catch quota which is usually determined by the provincial marine and fisheries service (DKP) to fishermen groups/joint business groups (KUB).

As explained by the Acting Director General of Capture Fisheries of KKP Tb Haeru Rahayu, but it turned out that it received a poor response from the People's Coalition for Fisheries Justice (KIARA), as explained by the Secretary General of KIARA Susan Herawati, namely:

- 1) Ministerial Regulation KP 7/2024 is a legal product that was created and born without going through a scientific review process and the use of valid data. Strictly speaking, the rule only benefits investors.
- 2) Ministerial Regulation 7/2024 states that the opening of BBL exports will be reopened under the guise of BBL cultivation activities outside the territory of the Republic of Indonesia.
- 3) Since it is still in the form of a draft, the Ministerial Regulation 7/2024 has been full of problems, especially because in the past there have been victims of similar regulations that have been issued in the past period. They even went to prison because they had problems with regulations on lobsters.

- 4) The presence of these rules will have the potential to repeat the bad history of lobster management by the KKP. More precisely, due to the absence of valid data, minimal scientific studies, monopolistic, and the absence of transparency about the actors who play in it.
- 5) This regulation will obviously only benefit investors and business entities affiliated with the KKP.
- 6) Looking at the implementation of similar rules in previous years, KIARA actually gave appreciation to the KKP. The reason is, the previous regulation prohibiting the export of BBL was considered successful in saving lobster resources from overexploitation. The proof is that as many as 1,347,986 BBL were successfully rescued throughout 2023, with an estimated loss of IDR 183 billion.
- 7) Based on the records made by KIARA, there are a number of problems that threaten to destroy lobster governance in the future. Susan explained, one of them is because it allows BBL to be exploited and exported, for cultivation reasons outside Indonesia.
- 8) In fact, the reason is contradictory because the original purpose of the regulation is to maintain the sustainability of the availability of fishery resources and improve the welfare of fishermen. However, this goal is also contrary to logic, because in fact it leads to the optimization of PNPB and an increase in the country's foreign exchange.
- 9) Then, the regulation is considered to provide opportunities for BBL to become an export product under the pretext of cultivation activities abroad. This clause is also contradictory because Article 2 of Ministerial Regulation KP 16/2022 states that "Catching Clear Lobster Seeds (puerulus) can be carried out for cultivation in the territory of the Republic of Indonesia".

In this regard, according to the author's opinion, the government has been and has always strived to realize better BBL governance in maintaining the sustainability of lobster resources and improving the welfare of BBL fishermen, in addition to minimizing fishermen or groups of fishermen committing illegal acts in fisheries activities without permission, because as stipulated in this regulation, BBL fishermen are required to have NIB and registered in OSS and a member of a fisherman group. This is intended to ensure the traceability of lobster clear seeds including information on fishermen catching, time, location, and the number and type of lobster clear seeds caught;

The acts committed by Defendants I and II are not having a Business License and have carried out a fishery business that is detrimental to fish resources because the clear lobster seeds that are traded do not have a Certificate of Seed Origin as stipulated in the Minister of Fisheries and Fisheries Regulation Number 17/PERMENKP/2021 dated June 4, 2021, which has currently been revoked and amended by the Regulation of the Minister of Marine Affairs and Fisheries of the Republic of Indonesia Number 7 of 2024 concerning Lobster Management (*Panulirus* spp.), Crab (*Scylla* spp.), and Crab (*Portunus* spp.),

The actions of Defendants I and II also violate the provisions of Article 88 juncto Article 16 paragraph (1) of Law of the Republic of Indonesia Number 31 of 2004 concerning Fisheries, as amended by Law of the Republic of Indonesia Number

45 of 2009 concerning Amendments to Law Number 31 of 2004, concerning Fisheries in conjunction with Article 55 paragraph (1) 1 of the Criminal Code, This rule is the basis for the Judge's Decision in imposing criminal sanctions against the Defendant Ujang Kurniawan bin Sihron and the Defendant Nursidik bin (Alm) Hae in prison for 7 (months) each, and a fine of Rp.60,000,000.00 (sixty million rupiah), with the provision that if the fine is not paid, it will be replaced with imprisonment for 2 (two) months. Of course, the sanction is intended to have a deterrent effect so that in the future it will not be repeated again.

In addition, the actions of defendants I and II show that there is still a desire from the community who violate the law to seek wealth or personal profit in order to enrich themselves without caring that the act is a criminal act that will harm themselves and their families.

2. Criminal Liability Analysis based on decision number 5/Pid.Sus-PRK/2021/PN Jkt.Utr.

Criminal liability is the defendant's responsibility for a criminal act committed whether the defendant will be convicted or acquitted. According to Roeslan, criminal liability is defined as the continuation of objective reproaches that exist in criminal acts and are subjectively eligible to be punished for their actions (Saleh, 2003). The objective reproach in question is that the act committed by the suspect/defendant is indeed a prohibited or unlawful act. Meanwhile, the subjective reproach in question refers to the suspect or defendant who committed a prohibited act. Even though the prohibited acts have been committed by the defendant,

If the defendant cannot be reproached because he is not at fault, then criminal liability cannot exist (Amrani Mahrus, 2015). In essence, criminal liability is a form of mechanism created to react to the violation of a certain act that has been agreed (Huda, 2006).

Liability for criminal acts against someone who commits a violation or an act of a criminal act requires the principles of criminal law. One of the principles of criminal law is the principle of *nullum delictum nulla poena sine pravia lege* or what is often referred to as the principle of legality. This principle is the main unwritten basis for sentencing a person who has committed a criminal act is not punished if the principle is not guilty. This basis is about the accountability of a person for the actions he has done. This means that a person can only be held accountable if the person makes a mistake or commits an act that violates laws and regulations.

This principle of legality contains the meaning of a principle that determines that no act is prohibited and threatened with criminal punishment if it is not specified in advance in the law. In criminal law legislation, the principle of legality is known, which is contained in Article 1 Paragraph (1) of the Criminal Code, namely:

"No act can be punished except for the provisions of the existing law, before the act is committed".

The meaning of the article can be interpreted that an act can be punished if there has been a regulation that regulates previously about whether or not an act can be criminalized. If a person has committed a criminal act, he can only be tried based on the criminal laws and regulations in force at the time the act was committed. So that accountability if the act has indeed been regulated, a person cannot be punished or held accountable if the regulation appears after a criminal act. To determine the existence of a criminal act, the word figurative word must not be used and the rules of criminal law do not apply retroactively.

Judge's consideration in imposing criminal sanctions in decision number 5/Pid.Sus-PRK/2021/PN Jkt.Utr.

The judge has the duty to make decisions in every case or conflict he faces, determining matters such as legal relationships, legal values of behavior, and the legal position of the parties involved in a case, so as to be able to resolve them referring to the written legal provisions regarding the case. disputes or conflicts that are impartial under the law. If possible, judges should always be independent and free from the influence of any party, especially in making decisions (Mustofa, 2013).

In this regard, there are several duties of the Judge in his authority to decide a case as conveyed by Bambang Waluyo, namely (Waluyo, 2014):

1. Receiving reports that have been submitted to the judge, seeking evidence and evidence.
2. Examining and observing the case file against the defendant.
3. Decide, sentence the case that is being examined and tried by the judge.

The judge's decision in a trial is defined as the peak and end of a case that is being examined and tried by the judge. Therefore, of course, the judge in making a decision must pay attention to all aspects in it.

When the judge makes a decision, he will always try to make his decision acceptable to the community as much as possible. The judge will feel relieved when his decision can be accepted and give satisfaction to all parties in a case. With reasons or considerations that are in accordance with the values of truth and justice.

According to Jonaedi Efendi and Johnny Ibrahim in their book it is explained that (Efendi Johnny, 2016):

Judges use 3 (three) aspects as basic concepts in making decisions, namely juridical considerations, sociological considerations and philosophical considerations.

Thus, as described above, it can be said that the work of law in society must be based on three things, namely juridical, sociological and philosophical aspects so that the basic concept/standard of law work in society can be applied effectively, as decided by the judge of the North Jakarta State Court number 5/Pid.Sus-PRK/2021/PN Jkt.Utr, there are 3 (three) basic aspects of the judge's consideration in giving a decision, explained as follows:

1. Juridical considerations

Juridical consideration is the judge's consideration based on his decision on the formal provisions of laws and regulations (formal). Juridically, the judge may not impose a criminal sentence except with at least 2 (two) valid evidence, so that the judge can obtain confidence that a criminal act really occurred. and it was the defendant who was guilty of doing it. The valid evidence in question is: 1) witness statements, 2) expert statements, 3) letters, 4) instructions, 5) defendant's statements or something that is already well known so that it does not need to be proven. In addition, the defendant's actions are also considered to violate formal law and meet the criminal elements he committed (Mulyadi, 2012).

2. Sociological Considerations (Non-Jurisprudence)

The circumstances that are classified as sociological considerations are the background of the crime, the consequences caused, the circumstances of defendants I and II, the economic situation and family environment of defendants I and II, and religious factors. In the decision of the judge of the North Jakarta District Court 5/Pid.Sus-PRK/2021/PN Jk, the matters considered by the judge are aggravating and mitigating matters.

Every judge's decision, if the author pays attention, always contains incriminating and mitigating matters. This is indeed regulated in article 197 paragraph (1) of the Criminal Procedure Code which states that the criminal sentencing indictment contains aggravating matters and mitigating matters for the defendant.

3. Philosophical Considerations

Philosophical considerations are the ideal foundation. Motivating law enforcement officials to direct the spirit and dedication of law enforcement service to realize the nobility of truth and justice. Truth is defined as words or deeds that actually happen in accordance with reality, while justice is equal or balanced, unbiased and impartial to anyone (Harahap, 2010).

The North Jakarta District Court Decision Number 5/Pid.Sus-PRK/2021/PN Jkt.Utr, judging from the Public Prosecutor's indictment, witness statements, statements of the defendants, and evidence have shown the truth that occurred in the case, namely jointly deliberately holding and circulating prohibited fish that are detrimental to fish resources in the State Fisheries Management Area of the Republic of Indonesia. This is what builds the judge's confidence to decide a criminal case with a verdict that is as fair as possible in accordance with the truth and justice for the community. The interpretation of the judge who decided to sentence Defendants I and II to 7 (seven) months in prison each is considered the right punishment for the defendants because the judge must not identify the truth and justice in the same way as the formulation of the law, the judge must also look at the factors of the defendants who transport and market Illegal Lobster Seeds that do not have a Fisheries Business License (SIUP). Incriminating matters and mitigating matters for the defendants so that the imposition of imprisonment for 7 (seven) months each by the judge creates a sense of justice for the community and the defendants.

Thus, the author can conclude that the basis for the judge's consideration in imposing criminal sanctions on the North Jakarta District Court Decision Number 5/Pid.Sus-PRK/2021/PN Jkt.Utr. has been incorporated or has permanent legal force through philosophical, sociological, juridical considerations, the judge in this case has paid attention to what is the basis for the criminal imposition, by looking at the facts in the trial, the indictment, the defendant's statement, witnesses and evidence.

Conclusion

Criminal liability for Defendants I and II is the crime of participating in fisheries crimes because both were ordered by the owners of baby lobster seeds, DEDE and NURYAWAN als ADUT, who are still being searched. Their actions support the production and distribution of lobster seeds outside Indonesia's fishing area, and even though they are not the owners, they can still be held criminally liable in accordance with Article 88 Jo Article 16 paragraph (1) of Law Number 11 of 2020 concerning Job Creation. This verdict was handed down in 2021, with criminal provisions in the form of 7 months imprisonment and a fine of IDR 60,000,000.00, which if not paid will be replaced with 2 months of imprisonment. Based on the judge's considerations from juridical, sociological, and philosophical aspects, suggestions for changes to regulations related to the crime of distributing baby lobster seeds are urgently needed, considering the increasingly massive situation. Law enforcement is also expected to immediately arrest DEDE and NURYAWAN for trial, while judges are advised to intensify criminal sanctions in the future to provide a deterrent effect and prevent similar violations.

References

- Amrani Mahrus, H. A.-A. (2015). *Criminal accountability system for development and application* (1, Ed.). Rajawali Pers.
- Bambang Haryo: Ekspor benih lobster langkah tepat, ini alasannya. (2024, August 3). *JawaPos*. <https://www.jawapos.com/politik/01279751/bambang-haryo-ekspor-benih-lobster-langkah-tepat-ini-alasannya>
- Beckman, R., & Liliansa, D. (2020). Passage through Indonesian Waters on Routes Used for International Navigation. In *Center for Oceans Law and Policy* (Vol. 23). https://doi.org/10.1163/9789004412026_018
- Budidaya lobster bawa berkah, Indonesia bisa cuan nyaris Rp 1 triliun per tahun. (2024, August 3). *Liputan6*. <https://www.liputan6.com/bisnis/read//budidaya-lobster-bawa-berkah-indonesia-bisa-cuan-nyaris-rp-1-triliun-per-tahun?page=4>
- Buntoro, K. (2014). *Passage navigation in the Indonesian archipelago*. Rajawali Press.
- Efendi Johnny, J. A.-I. (2016). *Legal research methods*. Pustaka Setia.
- Gemilang, Z. S. (2019). *Criminal application of lobster marketing actors who do not have a fisheries business license (SIUP)*.
- Harahap, M. Y. (2010). *Discussion of problems and application of the Criminal Code investigation and prosecution*. Sinar Grafika.
- Huda, C. (2006). *From criminal acts without fault to no criminal responsibility without error* (2, Ed.). Kencana.
- Kementerian Kelautan dan Perikanan. (2024, October 3). *Peraturan Menteri Kelautan dan Perikanan Nomor 16 Tahun 2022 tentang Perubahan atas Peraturan Nomor 17 Tahun 2021 tentang Pengelolaan Lobster (Panulirus spp.), Kepiting (Scylla spp.), dan Rajungan (Portunus spp.)*. <https://jdih.maritim.go.id/permen-kp-162022-perubahan-atas-peraturan-menteri-kelautan-dan-perikanan-nomor-17-tahun-2021-tentang-pengelolaan-lobster-panulirus-spp-kepiting-scylla-spp-dan-rajungan-portunus-spp-di-wilayah-negara-republik-indonesia>
- KKP luncurkan sistem baru untuk awasi tata kelola benih bening lobster. (2024, October 3). *Mongabay Indonesia*. <https://www.mongabay.co.id/2024/05/07/benih-bening-lobster-kkp-luncurkan-sistem-baru-untuk-awasi-tata-kelola/>
- Mulyadi, L. (2012). *Indonesian criminal procedure law*. Citra Aditya.
- Mustofa, W. S. (2013). *Code of ethics for judges* (2, Ed.). Prenadamedia Group.
- Saleh, R. (2003). *Criminal acts and criminal liability: Two basic definitions in criminal law* (3, Ed.). New Script.
- Sanjaya, M. A. (2021). Juridical review of law enforcement of the crime of lobster seed smuggling. *Journal of Legal Construction*, 2(3), 570.
- Setyanto Nabilla Artini, Yulianto Eko Sulkhani, & Arief - Rachman. (2018). Distribution and composition of lobster species caught in the waters of the Java Sea in East Java, Indonesia. *Journal of Fisheries of Gadjah Mada University*, 20(2), 50.
- Sudini, L. P., Raka, A. A. G., & Herawan, T. (2020). Strict liability principle application in the management of straits marine pollution for international navigation according to the Indonesia sea convention law. *Journal of Environmental Management and Tourism*, 11(7). [https://doi.org/10.14505/jemt.v11.7\(47\).01](https://doi.org/10.14505/jemt.v11.7(47).01)
- Sutomo, D. (2019, August 28). South Lampung Police foiled lobster seed smuggling worth Rp 12.8 billion. *Tribunnews Lampung*. <https://lampung.tribunnews.com/2019/08/28/breaking-news-polres-lampung-selatan-gagalkan-penyelundupan-benihlobster-senilai-rp-128-mili>
- Waluyo, B. (2014). *Crime and punishment*. Sinar Grafika.