

## Law Enforcement against Perpetrators of Trade Crimes Shark Fins According To Positive Law in Indonesia



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**ABSTRACT:** Indonesia is the largest maritime country in the world with a variety of marine life, where to protect it, the Government of Indonesia has passed Law Number 5 of 1990 concerning Biological Resources and Ecosystems, and Law Number 31 of 2004 concerning Fisheries. However, the fact is, there are still frequent catches and trade of shark fins which are protected animals. This research is normative juridical research, with a legislative approach and a case approach. The results of the research, that First, that law enforcement against the perpetrators of the crime of shark fin trade in the case of Denpasar District Court Decision Number 312/Pid.Sus/2015/PN Dps, and the Rokan Hilir District Court Decision Number 549/Pid.Sus/2018/PN Rhl, is still not implemented optimally, where the judge's criminal sentence is still very light from the criminal threat in the law so that it does not provide a deterrent effect to the perpetrators and does not provide general prevention to the public. Second, obstacles in law enforcement against perpetrators of shark fin trafficking, namely constraints on legal substance that have not specifically regulated criminal sanctions for shark fin trading, obstacles for law enforcement, namely not implementing the provisions of the law to the maximum, obstacles in facilities and infrastructure that are not adequate to expose shark fin traders, and obstacles in public legal awareness, especially fishermen, regarding the prohibition of shark fin trade.

**KEYWORDS:** Law Enforcement, Perpetrators, Crime, Trade, Shark Fins

### I. INTRODUCTION

As a maritime country, Indonesia has a wealth of biological resources in the sea that are very abundant with a variety of marine life which is a potential natural resource that can be used as a source of livelihood for the community in various fields, namely fisheries, tourism and other related fields so that it can realize welfare for the people, nation and state of Indonesia

One type of biota found in the ecosystem in the sea is fish which can be a source of food for human life so that the ecosystem in the sea needs to be preserved, where the Government of Indonesia has passed Law Number 5 of 1990 concerning Biological Natural Resources and Their Ecosystems and Law Number 31 of 2004 concerning Fisheries.

In the ecosystem in the sea, the existence of sharks has an important value in balancing the marine ecosystem, where sharks occupy the position of top-level predators that ensure the control of fish populations and maintain the balance of the ecosystem, where sharks as the most apex ecosystem chain and sharks are the determinants of the chain of ecosystem cycles in the sea can be maintained.<sup>1</sup>

Internationally, the ban on shark fishing, which is classified as a protected animal because of its endangered population, is regulated in the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) or Washington Convention which is an international agreement drafted at a conference in Washington DC, United States on March 3, 1975 which was attended by 88 participating countries.<sup>2</sup>

Shark fishing prevention efforts are also being undertaken by the Inter-American Tropical Tuna Commission which prohibits the capture and sale of the endangered cow shark (*Carcharhinus longimanus*), of which there are several species of sharks listed in CITES Annex II including the cow shark and three types of hammerhead sharks designated in 2013, as well as the silk shark and three species of threshing shark in 2016.<sup>3</sup>

<sup>1</sup> Tika Dian Pratiwi, *Shark Finning Sebagai Isu Global Penyebab Kepunahan Hiu di Dunia*, *Jisiera: The Journal of Islamic Studies and International Relations*, Volume 1, Nomor 1, 2016, Hlm 68.

<sup>2</sup> Made Ayu Ananda Aulia dan Reni Windiani, *Peran Pemerintah dalam Perlindungan Hiu di Indonesia*, *Journal of International Relations Diponegoro (JIRUD)*, Volume 7 Nomor 3, 2021, Hlm 140

<sup>3</sup> Elizabeth Claire Alberts, *Global Shark Deaths Increasing Despite Finning Bans, Study Shows*, <https://news.mongabay.com/2024/01/global-shark-deaths-increasing-despite-finning-bans-study-shows>, accessed on February 2, 2025, at 07.00 WIB.

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However, the reality that occurs in Indonesia, shark trade still occurs on a large scale, for example in 2017, where according to data from the Directorate General of Marine Space Management of the Ministry of Maritime Affairs and Fisheries of the Republic of Indonesia states that Indonesia still exports shark meat as much as 3,800 tons and 1,350 tons of shark fins per year with destination countries including Hong Kong, Malaysia to Russia.<sup>4</sup>

According to the Food and Agriculture Organization (FAO) statistical data, the average value of global shark fin imports from 2000 to 2011 reached US\$378 million per year. Shark meat is more likely to be consumed locally with an average value of around US\$240 million per year, with demand for shark fins in Asia and globally being a driving factor for overfishing and population decline.<sup>5</sup>

The flow of the shark supply chain in Indonesia starts from catching fishermen who directly catch sharks in the sea, then sold to local collectors, then sold to large collectors until finally sold to exporters in the city of Surabaya or Jakarta by using various modes to avoid applicable regulations, contra and supervision from authorized officers.<sup>6</sup>

In this regard, normatively, the activity of catching and trading shark fins, which is a protected species of animal because it is endangered, is a prohibited act as stipulated in Article 21 paragraph (2) of Law Number 5 of 1990 concerning Biological Natural Resources and their Ecosystems, and is also regulated in the provisions of Article 16 of Law Number 31 of 2004 concerning Fisheries.

Further provisions governing the prohibition of trading activities of several types of protected sharks in Indonesia are regulated in the Regulation of the Ministry of Marine Affairs and Fisheries of the Republic of Indonesia Number 5/Permen-KP/2018 concerning the Prohibition of the Export of Cowboy Sharks (*Carcharhinus Longimanus*) and Hammerhead Sharks (*Sphyrna Spp*) from the Territory of the Republic of Indonesia to Outside the Territory of the Republic of Indonesia.

Even though it has been banned, in reality there are still frequent fishing and trading activities of protected shark fins, such as in the case of Denpasar District Court Decision Number 312/Pid.Sus/2015/PN Dps, and Rokan Hilir District Court Decision Number 549/Pid.Sus/2018/PN Rhl, where the perpetrators trade cowboy shark fins (*Carcharhinus longimanus*) and hammerhead shark (*Sphyrna SPP*).

Based on the description mentioned above, it is important to study how law enforcement against the perpetrators of shark fin trafficking crimes according to positive law in Indonesia, and whether there are obstacles in law enforcement against the perpetrators, so that the results of this study can provide input to relevant agencies in the context of law enforcement against the perpetrators of shark fin trafficking crimes

## II. RESEARCH METHODS

This research is normative legal research, which is research aimed at written regulations or other legal materials through literature research or document studies.<sup>7</sup> In normative legal research, the data studied is secondary data in the form of library materials, namely written regulations or legal documents, so it is also called literature research.<sup>8</sup>

The approach used in this study is the legislative approach, which is by examining laws and regulations related to legal issues or problems being researched, and the case approach, which is by examining cases related to legal issues or problems that are being researched and have received court decisions.<sup>9</sup>

The sources of legal materials in this study are primary legal materials, namely binding legal materials, namely laws and regulations, secondary legal materials, namely legal materials that provide explanations of primary legal materials, such as books and scientific articles, and tertiary legal materials, namely legal materials that provide explanations of primary and secondary legal materials, such as dictionaries or encyclopedia.<sup>10</sup>

The technique of collecting legal materials which is secondary data through research or literature study, namely data collection by searching for data or legal materials stored in the library, or conducting a study of legal documents such as laws and regulations or court decisions on a case related to the problem being researched.<sup>11</sup>

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<sup>4</sup> Lisa Regina Syahfriliani dan Dessy Sunarsi, *Perlindungan Hukum Terhadap Perdagangan Satwa Liar Jenis Ikan Hiu di Indonesia*, *Supremasi Jurnal Hukum*, Volume 3 Nomor 1, 2020, Hlm 242-243.

<sup>5</sup> *World Wildlife Fund*, <https://www.worldwildlife.org/species/shark> accessed on February 2, 2025 at 07.30 WIB.

<sup>6</sup> A. Asnawi, *Mengungkap Perdagangan Hiu Ilegal, Berbagai Modus Kelabui Aturan*, <https://www.mongabay.co.id/2023/07/15/mengungkap-perdagangan-hiu-ilegal-berbagai-modus-kelabui-aturan-2>, accessed on February 2, 2025, at 08.00 WIB.

<sup>7</sup> Bambang Waluyo, *Penelitian Hukum Dalam Praktik*, Jakarta: Sinar Grafika, 2008, Hlm 13-14.

<sup>8</sup> Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*, Jakarta: PT. RajaGrafindo Persada, 2003, Hlm. 13.

<sup>9</sup> Peter Mahmud Marzuki, *Penelitian Hukum*, Jakarta: Kencana, 2013, Hlm 133-134.

<sup>10</sup> Muhaimin, *Metode Penelitian Hukum*, Mataram : Mataram University Press, 2020, Hlm 60-62.

<sup>11</sup> Bambang Sunggono, *Metodologi Penelitian Hukum*, Jakarta: PT. Raja Grafindo Persada, 2013, Hlm 112.

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The technique of analysis legal materials in this study is qualitative analysis, which is an analysis carried out by examining or examining legal materials obtained from research results in the form of primary data systematically and consistently to obtain clarity on the legal issues or problems being researched, then conclusions are drawn to answer the problems in the research.<sup>12</sup>

### III. RESEARCH RESULTS AND DISCUSSION

#### An Overview of Law Enforcement, Crime and Shark Fin Trafficking in Indonesia

According to Satjipto Rahardjo, law enforcement is essentially efforts to realize abstract legal ideas, namely justice, certainty and usefulness into reality in people's lives, which are carried out through institutions or bodies formed by the state, namely the police, prosecutor's office, courts and correctional institutions.<sup>13</sup>

Soerjono Soekanto stated that conceptually, the essence of law enforcement lies in the activity of harmonizing the relationship of values described in stable and concise principles, and the attitude of action as a series of elaboration of the final stage of values to create, maintain and maintain peace in the association of life between individuals in the life of society.<sup>14</sup>

Then regarding the term criminal act derived from the Dutch criminal law, namely *Strafbaar feit* in *Wetboek van Strafrecht*, consisting of the word *straf* means criminal, *baar* means permissible or can, and *feit* means action, event or deed, so that by jurists *strafbaar feit* is interpreted as a criminal act, criminal event, delict, criminal offense, punishable act, punishable act, punishable act, and criminal acts.<sup>15</sup>

According to Moeljatno, a criminal act is an act that is prohibited by a rule of law, where it is accompanied by a threat (sanction) in the form of a certain criminal penalty for whoever violates the prohibition, or an act that is prohibited and threatened by a legal rule, that the prohibition is directed at the act, while the criminal threat is directed at the person who caused the act.<sup>16</sup>

The term criminal act is used by the Government of Indonesia as stated in various laws and regulations, where according to Soedarto, a criminal act is an act that meets the formulation in the law, is unlawful, committed by a person who is able to be responsible for mistakes, either in the form of intentionality (*dolus*), or forgetfulness (*culpa*), and there is no excuse.<sup>17</sup>

Furthermore, related to the shark fin trade, it is a follow-up activity in the form of a buying and selling transaction carried out with an object in the form of shark fins obtained through hunting activities and shark fins in the sea, where it is undeniable that the hunting of shark fins for sale is still a serious issue and problem faced by Indonesia and other countries in the world.<sup>18</sup>

The results of tracing the conservation status of silk shark species on the International Union for Conservation of Nature (IUCN) website with the results that the shark species has experienced population decline and is vulnerable to extinction due to overexploitation carried out in various parts of the world, especially in countries that have a capture fisheries industry around the Pacific, Indian and Atlantic Oceans.<sup>19</sup>

Shark fishing areas in Indonesia include in the waters of the southern part of the island of Lombok, the Alas Strait, the Sawu Sea, the Flores Sea, the waters of eastern and southern Sumba, the Bali Sea and the Makassar Strait which are carried out all year round except in the western season due to unfavorable weather, then the catch is collected by local collectors, then sold to collectors in the city of Surabaya.<sup>20</sup>

Shark fishing also occurs in the eastern region of Indonesia, including in the Sorong area, West Papua, where shark fins are caught by fishermen from several areas, namely the waters of Bintuni, Teminabuan, Saigun and the waters of the city of Sorong, then the catch is traded outside the city of Sorong with the destination of the city of Makassar and the city of Surabaya.<sup>21</sup>

#### Law Enforcement Against Perpetrators of Shark Fin Trafficking According to Positive Law in Indonesia

To examine how law enforcement against perpetrators of shark fin trafficking crimes according to positive law in Indonesia, the author examines examples of cases handled by law enforcement officials and have received judges' decisions, namely the Denpasar District Court Decision Number 312/Pid.Sus/2015/PN Dps and the Rokan Hilir District Court Decision Number 549/Pid.Sus/2018/PN Rhl.

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<sup>12</sup> Burhan Ashshofa, *Metode Penelitian Hukum*, Jakarta: PT.Rineka Cipta, 2004, Hlm. 20.

<sup>13</sup> Satjipto Rahardjo, *Penegakan Hukum; Suatu Tinjauan Sosiologis*, Yogyakarta: Genta Publishing, 2009, Hlm 12.

<sup>14</sup> Rahman Amin, *Hukum Pembuktian Dalam Perkara Pidana dan Perdata*, Sleman: Deepublish, 2020, Hlm 4.

<sup>15</sup> Adhami Chazawi, *Pelajaran Hukum Pidana I*, Jakarta: PT. Raja Grafindo, 2010, Hlm 67-68.

<sup>16</sup> Rahman Amin, *Pengantar Hukum Indonesia*, Sleman: Deepublish, 2019, Hlm 141.

<sup>17</sup> Sudarto, *Hukum Pidana I*, Semarang: Fakultas Hukum Universitas Diponegoro, 1990, Hlm 48.

<sup>18</sup> Tika Dian Pratiwi, *Op Cit*, Hlm 56.

<sup>19</sup> Maratade Mopay, et all, *Identifikasi Molekuler dan Status Konservasi Hiu Dari Perdagangan Sirip di Kota Manado Sulawesi Utara*, *Jurnal Ilmiah Platax*, Volume 9, Nomor 2, 2021, Hlm 352.

<sup>20</sup> Triyono et all., *Sumber Daya Hiu dari Perspektif Sistem Ekologi Sosial (Studi Kasus di Tanjung Luar, Lombok Timur, Nusa Tenggara Barat)*, *Jurnal Enggano*, Volume 5 Nomor 3, 2020, Hlm 457-458.

<sup>21</sup> Ferni Febriani Pipa, et all, *Alur Proses Produksi dan Perdagangan Sirip Hiu di Kota Sorong Provinsi Papua Barat Daya*, *Innovative: Journal of Social Science Research*, Volume 4, Nomor 5, 2024, Hlm 612

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In the case of Denpasar District Court Decision Number 312/Pid.Sus/2015/PN Dps with the defendant Mr. Mak Siu Lay starting on Friday, October 31, 2014 at around 12.30 WITA at the main swallow shop on the Kuta Highway Number 88 A Tuban, Kuta District, Badung Regency, where the defendant Mr. Mak Siu Lay deliberately traded, storing or possessing the skins, bodies or other parts of protected animals or articles made from such animal parts, or removing them from Indonesia to other places within or outside Indonesia, with evidence in the form of:

1. 2 (two) pieces of saw shark snout (Sentani Shark) + 55 cm;
2. 13 (thirteen) plastic boxes of medium-sized dried fish meat suspected to be turtle meat;
3. 17 (seventeen) plastic boxes of dried fish meat of small sizes/slices suspected to be turtle meat;
4. 2 (two) yellowish-white dried fish fins suspected to be shark fins;
5. 1 (one) brownish-gray dried fish fin, suspected to be a shark fin placed/displayed in the store's cabinet or storefront.

The defendant, Mr. Mak Siu Lay, was charged with an alternative charge of committing the crime of shark fin trade as regulated and threatened in Article 21 paragraph (2) letter d Jo Article 40 paragraph (4) of Law Number 5 of 1990 concerning the Conservation of Natural Resources and Their Ecosystems, as follows:

Article 21 paragraph (2): Any person is prohibited from trading, storing or possessing the skins, bodies or other parts of protected animals or goods made from such animal parts or removing them from any place in Indonesia to another place in or outside Indonesia. Juncto Article 40 paragraph (4): Whoever due to his negligence commits a violation of the provisions as referred to in Article 21 paragraph (1) and paragraph (2) and Article 33 paragraph (3) shall be sentenced to imprisonment for a maximum of 1 (one) year and a maximum fine of Rp 50,000,000 (fifty million rupiah).

Then the panel of judges of the Denpasar District Court handed down the verdict as follows:

1. Declaring that the Defendant Mr. Mak Siu Lay has been legally and convincingly proven guilty of committing a criminal act due to his negligence in committing the violation of storing the skin, body or other parts of protected animals;
2. Imposing a criminal sentence on the Defendant with imprisonment for 6 (six) months;
3. Stipulate that the crime does not have to be served, unless later there is another order in the Judge's decision because the Defendant is blamed for committing a crime/violation before the probation period ends for 8 (eight) months;
4. Imposing on the Defendant a fine of Rp.1,000,000,- (one million rupiah) with the provision that if not paid, it will be replaced with imprisonment for 2 (two) months.

Based on the facts revealed in the trial and the evidence, namely witness statements, statements from the defendant and evidence, the evidence regarding the elements of the articles charged can be described, namely:

1. Everyone's element.  
That what is meant by the element of every person in the context of the application of criminal law is to refer to the subject of law, namely each person as a supporter of rights and obligations that are physically and spiritually healthy and able to account for the deeds that have been committed. In this case, the defendant is Mr. Mak Siu Lay who is a legal subject who is able to account for his actions.
2. Elements by their negligence commit the offense of trading, storing, or possessing the skin, body, or other parts of protected animals or goods made from such animal parts or exporting from a place in Indonesia to another place.  
Negligence or forgetfulness is something that is lower in degree than intentionality. Forgetfulness is divided into two, namely realized forgetfulness and forgetfulness that is not aware of the consequences, the determination of forgetfulness must be concluded from the outside, from a certain situation, how the suspect should have acted. In this case, the Defendant Mr. Mak Siu Lay is suspected of negligence because of his ignorance of his act of storing the body or other parts of protected animals, namely 2 (two) pieces of sawfish snout (Sentani Shark) +55cm, 13 (thirteen) plastic boxes of medium-sized dried fish meat which are suspected to be turtle meat, and 1 (one) piece of dried sawfish/sentani fins in the defendant's shop, namely at the main swallow shop located on Jalan Raya Kuta No.88 A Tuban, Kuta District, Badung Regency

Thus, the defendant's actions have fulfilled the elements of Article 21 paragraph (2) letter d Jo Article 40 paragraph (4) of Law Number 5 of 1990 concerning the Conservation of Natural Resources and Their Ecosystems, however, the sentence imposed on the defendant must be adjusted to the provisions of the applicable laws and regulations even though there are several factors that affect the length or severity of the sentence imposed such as legal considerations from the judge.

The incriminating matter for the Defendant Bro. Mak Siu Lay is the possession of 2 (two) sawfish snouts, 13 (thirteen) medium-sized dried fish meat suspected to be turtle meat, and 1 (one) saw shark fin which is a type of animal that is possessed. While the mitigating factor is that the defendant has never been punished, the defendant behaves politely and admits his mistakes, the defendant is the backbone of the family, the defendant suffers from illness and requires treatment from a doctor.

According to the author, the criminal sanction imposed on the Defendant Mr. Mak Siu Lay was too light, even though the possession of the saw shark fin found was a consignment, but the defendant should have been able to first examine the consignment.

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The light penalty does not have a deterrent effect on criminals who have traded shark fins, which are a type of animal protected by the Indonesian Government because they are endangered

In this regard, the imposition of a criminal penalty is not only a means to retaliate against the perpetrator who has committed an act prohibited by the provisions of the criminal law, but also aims to prevent the perpetrator and the wider community from committing the same act in the future, and no less important is to improve the perpetrator so that he becomes a good person and does not repeat his actions again.<sup>22</sup>

In addition, light crimes can reduce public trust in law enforcement officials, especially judges where laws and regulations have determined that the act of trafficking in protected animals is an act that is prohibited and threatened with criminal sanctions, so that the purpose of criminalization as a general prevention cannot be achieved, because the public considers that the act is only subject to light criminal sanctions.

Furthermore, in the case of the Rokan Hilir District Court Decision Number 549/Pid.Sus/2018/PN Rhl, with the Defendant Mr. Bun Sua which began on Tuesday, November 27, 2018, at around 08.00 WIB in the Panipahan area, Pasir Limau District, Rokan Hilir Regency, Riau, the Defendant Mr. Bun Sua together with Mr. Eng Tat performed, ordered to do and who participated in doing deliberately provided an opportunity, means or information for the commission of a crime of entering, receiving, procuring, 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.

The chronology of the case began when the Defendant, Mr. Bun Sua, was contacted by Mr. Eng Tat and conveyed information that there would be a shipment of dried shark fins from the terrain using the delivery of the Marine Services Trading Business and later it would be picked up by Mr. Eng Tat 2 days later in Panipahan Rokan Hilir, then the Defendant Mr. Bun Sua told Mr. Baharudin as a transport worker to pick up the shark fins at the roundabout in front of the Pasir Limau Kapas Panipahan Rokan Hilir Sub-district Office.

Then Mr. Baharudin picked up the shark fins which were packaged in 9 (nine) cardboard boxes put in white plastic burlap sacks, then Mr. Baharudin delivered the shark fins to the Defendant's warehouse on Jalan Karya Kepenghuluan, Teluk Pulaui, Pasir Limau Kapas District, Rokan Hilir Regency, Riau, then the Defendant Mr. Bun Sua packed the shark fins in fiber (cool box) and moved them to the warehouse in front of him.

Furthermore, Mr. Rudi Faizah as a member of the Special Marine Resources and Fisheries Police Region III Riau together with Mr. Khairul Abdi and Mr. Syafrizal conducted an inspection of the warehouse belonging to the Defendant Mr. Bun Sua and found 3 (three) fiber (cool boxes) each containing 3 (three) cardboard boxes of dried shark fins with a total weight of 90.4 (Ninety point four) kilograms, and then the shark fins were secured to the Rokan Downstream Marine Resources and Fisheries Supervision work area office for legal proceedings.

For his actions, the defendant Mr. Bun Sua was charged with violating Article 88 of Law Number 31 of 2004 concerning Fisheries, amended by Law of the Republic of Indonesia Number 45 of 2009, Jo Article 55 Paragraph (1) 1 of the Criminal Code, Jo Article 56 Paragraph (2) of the Criminal Code. The provisions of Article 88 of Law Number 31 of 2004 concerning Fisheries read:

Any person who deliberately enters, discharges, procures, distributes, and/or raises 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 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,- (one billion five hundred million rupiah).

Then the Panel of Judges of the Rokan Hilir District Court handed down the verdict of the Defendant Mr. Bun Sua, among others, as follows:

1. Declaring that the Defendant Mr. Bun Sua has been legally and convincingly proven guilty of committing a criminal act that committed, ordered to commit and who participated in the commission of deliberately providing opportunities, means or information for the commission of a crime of entering, receiving, procuring, circulating fish resources, and/or the environment of fish resources into and/or outside the fisheries management area of the Republic of Indonesia as the first indictment;
2. Sentence the Defendant Mr. Bun Sua therefore with a prison sentence of 5 months, as well as a fine of Rp.25,000,000,- (twenty-five million rupiah) with the provision that if the fine is not paid, it will be replaced with imprisonment for 1 (one) month.

Based on the facts revealed in the trial, both from the testimony of witnesses and statements from the defendant and evidence, the elements of the article charged can be described, namely:

1. Everyone's element

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<sup>22</sup> Rahman Amin, *Pidana dan Pemidanaan Menurut Hukum Nasional*, Sleman: Deepublish, 2024, Hlm 41.

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That what is meant by everyone is anyone as a supporter of rights and obligations who are subjects of law who are physically and spiritually healthy and can be held accountable for every act they commit and there is no excuse or justification that can abort the charge or is a charge or abolish the criminal act committed by him. That based on the facts of the trial, the defendant Mr. Bun Sua was examined as a defendant and had justified his identity as stated in the indictment so that there was no error in persona. The defendant is also physically and mentally healthy and can be held accountable for his actions.

2. Elements of the crime of deliberately inserting, 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.

That what is meant by intention is part of the fault (schuld). The intentionality of the perpetrator has a closer psychiatric relationship to an action. According to Memorie van Toelichting, what is meant by intentionality is to want and realize the occurrence of an action and its consequences (willens en wetens veroorzaken van en gevolg). This means that a person who performs an action intentionally, must want and be aware of the action and/or its consequences. Meanwhile, from the perspective of its formation, intentionality has 3 levels that it goes through, namely the presence of stimulus, the existence of will, and the existence of action.

That the business of processing dried shark fins is prohibited if it is marketed outside the Republic of Indonesia in accordance with the Regulation of the Minister of Marine Affairs and Fisheries Number: 5/PERMEN-KP/2018 concerning the Prohibition of the Export of Cowboy Sharks (*Carcharhinus longimanus*) and Hammerhead Sharks (*Sphyrna SPP*) from the Territory of the Republic of Indonesia to Outside the Territory of the Republic of Indonesia and the results of the decision of the Conservation on International Trade in Endangered Species of Wild Fauna and Flora (CITES). And every person or corporation that collects and distributes, one of which is shark fins, must have a permit, especially a business license or called a Fisheries Business License (SIUP).

3. Element as a person who does, who tells to do or participates in doing.  
Based on the facts revealed at the trial from the evidence of witnesses, experts, clues, statements of the defendant and evidence which basically explained that the defendant was contacted by Mr. Eng Tat who said that there would be a shipment of dried shark fins from Medan using UD Jasa Laut. Then the defendant, Mr. Bun Sua, instructed Mr. Baharudin as a transport worker to pick up the shark fin goods at the roundabout in front of the Pasir Limau Kapas Sub-district office, Panipahan Darat roundabout.
4. Elements that provide opportunities, means or information for the commission of a crime  
Based on the facts revealed at the trial from the evidence of witnesses, experts, clues, the defendant's testimony and evidence which basically explained that the defendant Mr. Bun Sua explained the origin of the dried shark fins in the warehouse where he was doing business from Medan, North Sumatra. The dried shark fins that have been collected or sent are stored for 2 days. The dried shark fins were found as many as 3 fibers (cool boxes) where each fiber contained 3 cardboard boxes of dried shark fins. The total amount of contents of the three fibers is 9 cardboard boxes weighing 90.4 kg. Meanwhile, there are about 9 burlap that are to be marketed abroad with a total price obtained from the shark fins worth Rp. 20,000,000,- (twenty million rupiah).

Thus, the actions of the Defendant Mr. Bun Sua have fulfilled the elements of Article 88 of Law Number 31 of 2004 concerning Fisheries, amended by Law of the Republic of Indonesia Number 45 of 2009, Jo Article 55 Paragraph (1) 1 of the Criminal Code, Jo Article 56 Paragraph (2) of the Criminal Code, but the criminal sanction imposed on the Defendant Mr. Bun Sua is very light, namely imprisonment for 5 months, and a fine of Rp.25,000,000,-, (twenty-five million rupiah), compared to the criminal threat in the law, namely imprisonment for a maximum of 6 (six) years and a maximum fine of Rp1,500,000,000 (one billion five hundred million rupiah).

According to the author, the criminal sanctions imposed on the Defendant Mr. Bun Sua should be adjusted to the provisions of the applicable laws and regulations even though there are several factors that affect the length or severity of the sentence imposed such as legal considerations from the judge, where the incriminating thing for the Defendant Mr. Bun Sua is the possession of 9 (nine) cardboard boxes containing dried shark fins amounting to 90.4 (ninety point four) kg and the defendant's actions have damaged the fish ecosystem. Meanwhile, the mitigating factors for the defendant are that the defendant is polite, honest, and admits his actions, and the defendant has never been convicted before.

The imposition of light criminal sanctions on the Defendant Mr. Bun Sua who is proven guilty of committing the crime of trading shark fins is reviewed from the purpose of the penalty, so the imposition of the penalty cannot provide special provisions to the Defendant Mr. Bun Sua as a deterrent effect not to repeat his actions in the future so that the very short prison sentence has no benefit to change the perpetrator. As for the public, the light sentence against the Defendant Mr. Bun Sua does not provide a general precaution so that the wider community does not commit acts of trading shark fins.

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### Obstacles in Law Enforcement Against Shark Fin Trafficking Perpetrators

Obstacles in law enforcement against perpetrators of shark fin trafficking based on the results of research on 2 (two) cases that are the object of this research are obstacles derived from the law, obstacles from law enforcement officials, obstacles to facilities and infrastructure, and obstacles to public legal awareness, which can be described in the discussion below.

#### 1. Legal Constraints

Normatively, according to the provisions of the laws and regulations applicable in Indonesia, that the act of trading shark fins which are protected animals is categorized as a criminal act as regulated in Article 21 paragraph (2) of Law Number 5 of 1990 concerning Biological Natural Resources and their Ecosystems, which reads that everyone is prohibited from having skin, body or other parts of protected animals or goods made from parts of the animal or removing them from a place in Indonesia to another place inside or outside Indonesia.

Then the provisions that regulate the prohibition of trading shark fins which are a category in the fisheries sector are also regulated in Article 16 paragraph (1) of Law Number 31 of 2004 concerning Fisheries, which reads that everyone is prohibited from entering, receiving, 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 Republic of Indonesia

However, the provisions in Law No. 5 of 1990 concerning Biological Natural Resources and Their Ecosystems and Law No. 31 of 2004 concerning Fisheries do not explicitly regulate the prohibition of trading shark fins which is one of the types of animals protected by the Government of Indonesia, so that it can have an impact on its application to cases that occur in people's lives. Because there is a legal loophole for interpretation by law enforcement officials in the application of legal provisions that do not clearly and firmly regulate the form of prohibited acts, namely trading shark fins

The lack of clarity and inadequacy of the provisions of the law can cause differences in the application of the law to factual cases that occur in people's lives, which leads to the application of articles at the investigation stage, prosecution stage, and trial stage in court, to the imposition of criminal sanctions against the perpetrators of the crime of trading shark fins who are proven guilty and convincing based on valid evidence according to the provisions applicable law.

#### b. Obstacles for Law Enforcement Officials

Law enforcement officials have a very important role in law enforcement efforts against the perpetrators of shark fin trafficking crimes that occur in people's lives, where in criminal law enforcement in Indonesia is carried out by institutions, namely police investigators or civil servant investigators in government agencies, public prosecutors in the prosecutor's office, judges in court institutions, and Correctional Institutions in a forum called the integrated criminal justice system as regulated in Law Number 8 of 1981 concerning the Criminal Procedure Law.

As an investigation sub-system, the existence of the National Police as a state tool tasked with enforcing criminal law in accordance with applicable provisions as stipulated in Article 30 paragraph (4) of the Constitution of the Republic of Indonesia of 1945, and then further regulated in Law Number 2 of 2002 concerning the National Police, where Article 2 states that the National Police is a function of government/state in the field of kamtibmas, criminal law enforcement, as well as various efforts in order to protect, protect, and serve the community.<sup>23</sup>

Police investigators and civil servant investigators in government agencies are the spearhead in law enforcement efforts against perpetrators of shark fin trafficking where investigators who receive reports or complaints from the public about the occurrence of criminal acts, or by carrying out investigation activities on events that are suspected of being criminal acts so that investigations can be carried out until the case file is complete and submitted to the Public Prosecutor, then delegated to the court for examination at the trial.

This means that the Investigator's knowledge and understanding of the provisions governing the prohibition of trading shark fins can be an obstacle in law enforcement efforts against the perpetrators, if the Investigator does not know and understand what types of sharks are categorized as protected animals according to the provisions of applicable laws and regulations, so that no law enforcement efforts are carried out against the perpetrators. In addition, the limited ability of investigators to investigate and investigate techniques and tactics is an obstacle in uncovering the crime of shark fin trade.

Then at the prosecution stage, the Public Prosecutor according to Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, amended by Law Number 11 of 2021, has the authority to prosecute criminal cases in accordance with the provisions of the applicable criminal procedure law, where the level of knowledge and understanding possessed by the Public Prosecutor towards the provisions of the applicable laws and regulations regarding the prohibition of trading shark fins It is necessary so that the prosecution can be carried out optimally.

Furthermore, at the stage of examination in court, the judge has a role in applying legal provisions in adjudicating cases based on the principle of freedom, honesty and impartiality which is the power of the judiciary as stipulated in Law

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<sup>23</sup> Rahman Amin dan Muhammad Fikri Al Aziz, *Penguatan Komisi Kepolisian Nasional Dalam Pengawasan Penyidikan Tindak Pidana Oleh Polri*, *Jurnal Krtha Bhayangkara*, Volume 17, Nomor 1, 2023, hlm. 2.

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Number 48 of 2009 concerning Judicial Power. Therefore, the success of law enforcement efforts against the perpetrators of shark fin trafficking will be difficult to achieve if the judge who examines and decides the case in the trial does not consider the impact caused by the act of trading shark fins which has an impact on the loss of the balance of the biota ecosystem in the sea, which leads to the imposition of light criminal sanctions on the perpetrators who are proven guilty.

### c. Facilities and Infrastructure Constraints

Facilities and infrastructure are one of the factors that can be an obstacle in law enforcement efforts against the perpetrators of shark fin trafficking, where these facilities and infrastructure are in order to support the implementation of the duties of law enforcement officials, especially for investigators in uncovering shark fin trafficking crimes that occurred early, namely when shark fishing was carried out in very large Indonesian waters and required ship support patrols equipped with GPS technology and monitors so that they can track shark fishing activities in the sea.

The limitations of inadequate facilities and infrastructure in the context of law enforcement of the shark fin trade can be an obstacle and an obstacle for investigators in detecting, arresting and prosecuting shark fishing perpetrators who are carried out with various modus operandi so that it is difficult to be detected by law enforcement. The use of sophisticated technology by law enforcement is very necessary to be able to facilitate law enforcement when at sea considering that the waters in Indonesia are very large.<sup>24</sup>

### d. Obstacles to Public Legal Awareness

Public legal awareness is one of the factors that can be an obstacle in law enforcement against the perpetrators of shark fin trafficking if the public does not have good knowledge and understanding of the applicable legal provisions. According to Soerjono Soekanto, the high and low degree of people's legal compliance with positive law is determined by the level of legal awareness based on factors, namely knowledge of regulations, knowledge of the content of regulations, attitudes towards regulations, and behavior in accordance with regulations.<sup>25</sup>

According to Article 1 of the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number: M01. PR.08.10 of 2006 concerning Legal Counseling Patterns, amended by the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number: M-01. PR.08.10 of 2007, that public legal awareness is a value that lives in society in the form of understanding and obedience or compliance of the community with applicable legal norms and laws and regulations.

Related to this, the lack of knowledge and legal understanding of the public about the provisions of laws and regulations that regulate the prohibition of catching and trading shark fins can be a very crucial obstacle, where the shark fin trading business is very tempting for the community because of the profits that can be obtained by the community so that it becomes a motivation for the community to catch sharks and trade shark fins that is a protected animal.

In addition, the low legal awareness of people who still consume shark fins as one of their favorite dishes in life makes the demand for shark fins very large in the market so that economic principles apply in the shark fin trade. The high market demand in inverse proportion to the limited number has made the price of fish fins very expensive which has become a business field for perpetrators of shark fin trade crimes at the local, regional and international levels.

## IV. CONCLUSION

Based on the description of the previous discussion, it can be concluded, First, law enforcement against the perpetrators of shark fin trafficking according to positive law in Indonesia has still not been applied maximum legal sanctions against the perpetrators in order to protect the shark ecosystem which is a protected animal, where in the case that is the object of research, namely the Denpasar District Court Decision Number 312/Pid.Sus/2015/PN Dps, and the case of the Rokan Hilir District Court Decision Number 549/Pid.Sus/2018/PN Rhl, the judge in court only imposed a light prison sentence of 6 (six) months and 5 (five) months in prison respectively so that it did not provide a deterrent effect to the perpetrators, and did not provide general prevention to the public not to commit the crime of shark fin trafficking. Second, obstacles in law enforcement against perpetrators of shark fin trade in Indonesia, namely legal constraints that have not explicitly and adequately regulated the prohibition of shark fin trade so that it can cause differences in interpretation in its application, obstacles for law enforcement officials who have not fully understood the provisions of the law that regulate the prohibition of shark fin trade in order to preserve the ecosystem in the sea so that the application of sanctions to the perpetrators has not been maximized, the constraints of limited facilities and infrastructure so that they have not been able to support the implementation of law enforcement duties in exposing the perpetrators of shark fin trafficking crimes from an early age in Indonesian waters, and the obstacles in the legal awareness of people who are still catching and trading shark fins because of the motivation to get economic benefits to meet the demand for shark fins in the market. Suggestions that can

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<sup>24</sup> Samaluddin dan Afdal Rahmat Slamet, *Peran Unit Penegakan Hukum Satpol AIRUD Terhadap Tindak Pidana Penggunaan Bom Ikan oleh Nelayan di Perairan Laut Teluk Baubau*, Jurnal Ilmu Hukum Kanturuna Wolio, Volume 4, Nomor 2, 2023, Hlm 92.

<sup>25</sup> Soerjono Soekanto, *Kesadaran Hukum dan Kepatuhan Hukum*, Jurnal Hukum & Pembangunan, Volume 7, Nomor 6, 1977, Hlm. 468-469.



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be given, First, to the Government of Indonesia to revise Law No. 5 of 1990 concerning Biological Natural Resources and Their Ecosystems and Law No. 31 of 2004 concerning Fisheries, by explicitly regulating the prohibition of shark fin trade, Second, to law enforcement to increase understanding of the provisions of the law prohibiting shark fin trade so that it can be implemented optimally, improve the facilities and infrastructure used in uncovering the crime of shark fin trade from an early age in Indonesian waters, Third, to the public so that they do not catch and trade shark fins which are protected animals according to the provisions of the applicable law in Indonesia.

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