

Constraints in Countermeasures to Illegal Fishing Crime by Water Police Directorate of Papua Regional Police

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Abstract

The recognition of Indonesia as an archipelagic states is a great boon for the Indonesian nation as the waters of the National jurisdiction of the Republic of Indonesia are increasingly widespread and judged to have a wealth of diversity contained in it is very potential for the economic development of the country. One of the big islands located in the eastern tip of Indonesia which also has a wealth of fisheries and marine resources is a very large island of Papua. Yet this enormous potential has not been properly managed and utilized, accountable and sustainable for the welfare of society. The problems studied in this paper are the constraints faced by the Directorate of Water Police in the handling of illegal fishing crime in the jurisdiction of the Papua Regional Police. This type of research is normative legal research and empirical legal research using legislation approach, conceptual approach, and case approach. There are two types of data in this study, namely primary data and secondary data. The collected data were analyzed using descriptive-qualitative technique. The results showed that the constraints faced by the Directorate of Water Police in the handling of Illegal Fishing crime is caused by the lack of optimal human resources of water police related to the number and competence in the field of water; Infrastructure constraints that have not been optimal in the form of Patrol Ship, the existence of Dock and Docking Ship that is still not available; obstacles Regulation related to boundary Jurisdiction or authority that is only 12 miles drawn from coastline as opposed to Law of the Republic of Indonesia Number 2 Year 2002 about Police in Article 17 that Police officer in carrying out its duties and authority throughout the territory of the Republic of Indonesia; constraints of people without high legal awareness; and cultural constraints that have been done for a long time, this is done by the community as a mode to pursue a profit.

Keywords: countermeasures, illegal fishing, obstacles, Papua Regional Police.

I. Introduction

Indonesia as an archipelagic state extends from Sabang Island to Merauke with a total of 17,508 islands and a coastal length of 81,000 km² consisting of 0.3 million km² (5.17%) of territorial sea, 2.8 million km² (48, 28%) archipelagic waters, as well as 2.7 million km² (46.55%) Exclusive Economic Zone (EEZ).¹ Recognized by the world after the United Nations Convention on the Law of the Sea (UNCLOS) adopted on December 10, 1982 and Indonesia has ratified it with Law No. 17 Year 1985.

The recognition of Indonesia as an archipelagic states is a great boon for the Indonesian nation as the waters of the National jurisdiction of the Republic of Indonesia are increasingly widespread and judged to have a wealth of diversity contained in it is very potential for the economic development of the country. One of the big islands located in the eastern tip of Indonesia which also has a wealth of fisheries and marine resources is a very large island of Papua. Yet this enormous potential has not been properly managed and utilized, accountable and sustainable for the welfare of society. This is due to the lack of knowledge and information of the actors of the importance of utilizing and cultivating sustainably and sustainably. The coastal areas, seas, and small islands in Papua's seascape region itself have fishery resources, oil and gas, tourism, marine transportation and high conservation potential. With the enormous potential of natural resources, this area is very likely to be utilized and developed as a producer of foreign exchange and domestic consumption needs.

In general the Fisheries Management Area (FMA) of Papua is divided into two, namely the northern waters of Papua incorporated Nabire, Biak, Supiori, Yapen, Waropen, Sarmi, Jayapura territories covering the waters of the Cendrawasih Sea and the Pacific coast with 509 nautical miles (916 km) 6,110 nautical miles

¹ National Legal Development Board of the Ministry of Justice of the Republic of Indonesia, *Penggantian dan Pembaharuan Perundang-Undangan Kolonial Menjadi Nasional (Stb. 1939 No.442 Territoriale Zee En Maritieme Kringen Ordonantie)*, Jakarta, 1996/1997, p. 1

(11,000 km²) as a region rich in Pelagic Big fisheries resources (Tuna, Paruh Panjang, Cakalang and Tenggiri). While in the Southern part of Papua into the region of Timika, Asmat, Wanam, Merauke which covers the waters of the Arafura Sea with a long coastline of 662 nautical miles (1,191 km) with a water area of 7,944 nautical miles (14,300 km) and is rich in Demersal Fish resources (tuna, shrimp, Kakap Merah, Kakap Putih, Bawal, Pari, Cucut and also other small Pelagic Fish (Teri, Tongkol, Bloated) Other group of fish are Grouper Fish, Napoleon, Lobster and ornamental fish.¹

The Ministry of Marine and Fisheries Affairs noted that by 2016, it had drowned 236 foreign ships and local vessels committing fishing in Indonesian waters and the drowned vessel was dominated by Vietnamese vessels totaling 96 vessels. There are also 58 Philippine boats, 21 Chinese vessels, 38 Malaysian ships, 15 Indonesian vessels, Papua New Guinea 2 ships, China 1 vessel, Belize 1 vessel and no flag 4 ships. Based on the records in the period 2016 alone the Ministry of Marine and Fisheries Affairs along with the Navy, the Police of the Republic of Indonesia (Polri), especially the Water Police (Polair) and the community managed to capture about 781 fishing boats with foreign and local flags that stole fish in Indonesian waters. The biggest case is the arrest of 24 ships with 400 crew (ABK) who are doing the transfer of the catch from small vessels to two large ships in the Arafura Sea, Papua.² It was also delivered by President Jokowi when opening a high-level meeting of Symposium on Fisheries Crime, in Gedung Agung, Yogyakarta Presidential Palace that the practice of fish theft causes at least US \$ 20 billion or approximately Rp. 260 trillion of Indonesia's economic losses.³

The Police of the Republic of Indonesia is one of the functions of state government in the field of maintaining security and public order (Harkamtibmas) as protector and public servant and enforcing law throughout the territory of the Republic of Indonesia. Seeing from the police function, the Police are responsible for tackling the existence of Illegal Fishing practices that occurred in Indonesia, in addition to being authorized to the Ministry of Marine and Fisheries Affairs, as well as the Indonesian National Army-Navy (TNI-AL). The boundaries given authority to The Police of the Republic of Indonesia are the entire territory of Indonesian territory but specifically for the investigation of Illegal Fishing crime in the waters only have jurisdiction of authority with an area of 12 miles measured from the base of the Coast, and the limit of the authority of the Navy of 200 nautical miles measured from the sea line of the Indonesian territory⁴. The existence of such authority to prevent overlapping of handling is made a mutual agreement between the Ministry of Marine and Fisheries Affairs of the Republic of Indonesia, the Indonesian National Police, the Indonesian National Army-Navy on Operational Standard and Procedures for Handling of Fishery Crime on level of Investigation.⁵

The Papua Regional Police as responsible for the maintenance of security in the territory of Papua has a role to follow up the illegal practices that occur along the waters of Papua, in this case in accordance with the main task carried out by the Directorate of Water Police.⁶ Based on this, then the problem to be studied in this paper is how are the constraints faced by the Directorate of Water Police in the handling of illegal fishing crime in the jurisdiction of the Papua Regional Police?

II. Research Method

This type of research is normative legal research⁷ and empirical legal research using legislation approach, conceptual approach, and case approach.⁸ There are two types of data in this study, namely (1) primary data, ie data derived from the results of interviews and observations, (2) secondary data ie data obtained from library search, documents and data available on the Papua Regional Police relating to the prevention Illegal Fishing Crime. The data collected through the stages of editing, then coding and analyzed using descriptive-qualitative techniques.

¹ Kartika Listriana, Directorate General of the Ministry of Marine and Fisheries Affairs, Tanpa Tahun, Mengembangkan Papua Yanga kaya,

² Iwan Supriyatna, January 17, 2017, Menteri Susi: 236 kapal Pencuri Ikan Ditenggelamkan sepanjang tahun 2016, see <http://ekonomi.kompas.com>, accessed on February 18, 2018

³ CNN, October 10, 2016, Jokowi Sebut pencurian Ikan Rugikan Indonesia Rp 260 Triliun, see <http://www.cnnindonesia.com>, accessed on February 18, 2018

⁴ Article 14 paragraph (1) of Law of the Republic of Indonesia Number 5 Year 1983 on Exclusive Economic Zone of Indonesia

⁵ Charter of Collective Agreement Number 121/DJPSDKP/VIII/2012, B/32/VIII/2012, PKB/14/VIII/2012, August 7, 2012 on Standard Operations and Procedures

⁶ Regulation of the Chief of Police of the Republic of Indonesia Number 22 Year 2011 on the Organizational Structure of Police Working System

⁷ Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif*, Jakarta: Rajawali Pers, 2011, p. 14

⁸ Peter Mahmud Marzuki, *Penelitian Hukum*, Jakarta: Kencana Prenada Media Group, 2010, p. 96

III. Results and Discussion

A. Human Resource Constraints

Criminal acts are acts that are contrary to the order of law desired by law,¹ so there is a threat of criminal sanction.² According to Simon, *Strafbaar Feit* is a behavior or handling that is threatened with crime that is unlawful in relation to mistake by a responsible person.³ Countermeasures of illegal fishing crime requires human resources who have competence especially in the field of nautics, engineering, communications and electronics and aquatic investigators. It is necessary to find out how the human resources can operationalize existing patrol boats and investigate if they find an optimal crime. In terms of quantity of human resources having competence is not optimal compared with the effort to be done to maintain the waters in Papua. And most importantly not only the quantity/number of human resources, but what is required is the ability possessed of each of its human resources. The water police are different from the mainland police because one of the main duties is required to have swimming skills, so that no human resources should be assigned to the water police officers. Because the human resources of the water police are formed in the Water Education School in Tanjung Priok Jakarta for the rank of Tamtama and Brigadier. The current obstacles are the officers who occupy duties in the Police of Water, especially the Directorate of Water Police in Papua Regional Police they come from ordinary General Police who are not equipped with technical and tactical skills in handling tasks in the waters. The average officers present in the Water Police Directorate of Papua Regional Police do not all have technical and tactical skills in handling tasks in the Waters in education of aquatic specialist development (Education specialist development), except Water Police Directorate.

In the prevention of illegal fishing crime is how human resources in the use of patrol boats and aquatic investigators. For that can be in the classification of constraints faced in the prevention of illegal fishing crime that is:

1. Human Resources/Personnel Patrol Boat Directorate of Police Department in Papua Regional Police

In general, the quantity of human resources available in the Water Police Directorate of Papua Regional Police is still adequate compared to the number of patrol boats available today, but for members who have nautical expertise is still less than the number of ships that exist today is 7 ships while those who have nautical skills only 3 people. Furthermore, human resources with technical expertise are only 2 people so that in operationalizing and maintaining the ship is not maximal, causing the existing ship is currently damaged and can not be operated let alone the ship is old production vessel (based on the data of C1 Patrol boat type in damaged condition can operate)

2. Human Resources Aquatic Investigator.

In the structure of orchestration of regulation of Chief of Police of the Republic of Indonesia Number 22 Year 2010 on SOTK of Regional Police level there is a special section to conduct waters investigation that is sub field of law enforcement (subditgakkum). This sub-directorate is responsible for carrying out technical guidance of water police in the field of accident investigation and violation action in waters including patrol and escort. In performing these duties, Subditgakkum conducts the function of investigation of crime and/or violation of law in jurisdiction of Regional Police and also performs custody and evidences, as well as implementation of patrol and escort. From the duties and functions of the Subditgakkum then the investigation of Illegal Fishing crimes that occurred in the waters of Papua conducted by Subditgakkum personnel.

B. Constraints of Facilities and Infrastructure

In an effort to manage the illegal fishing crime optimally, it is necessary to patrol boat facilities that must be adequate. However, in the Water Police Directorate of Papua Regional Police is still limited with the number of patrol boats that exist, especially with the territorial waters of Papua is wide enough. Apart from that the patrol boats are old and not maximal to be operationalized. The condition of the patrol boat is not yet optimal is very decisive in supporting the performance of the Water Police Directorate in the handling of Illegal Fishing. It also does not support other facilities and infrastructure currently available at the Papua Regional Police Directorate, namely Command Headquarters (Mako), Dermaga, Docking ship/workshop, budget support and fuel oil (BBM) as mentioned above.

¹ Roeslan Saleh, *Perbuatan Pidana Dan Pertanggungjawaban pidana*, Aksara Baru, Jakarta, 2003, p. 53

² Moelyatno, *Perbuatan Pidana dan Pertanggungjawaban Pidana*. Bintang Indonesia, Bandung, 1998. p. 37-78

³ Moeljatno, *Asas-asas Hukum Pidana*, Rineka Cipta, Jakarta, 1983, p. 56

C. Constraints on Rules

Based on the provisions of Law of the Republic of Indonesia No. 5 Year 1983 on the Indonesian Exclusive Economic Zone (IEEZ) in Article 14 paragraph (1) that the law enforcement officer in the field of investigation in ZEEI is a Navy National Army officer appointed by the Commander of the Armed Forces of the Republic of Indonesia. It is seen in this Act that the only law enforcers who conduct investigations in IEEZ are Navy Officers, but in Law of the Republic of Indonesia Number 45 Year 2009 on Fisheries in Article 73 paragraph (1) that the investigation of criminal acts in the field of fishery in the territorial fishery management territory of the Republic of Indonesia is conducted by Investigator of Civil Servant of Fishery, Investigator of Navy Officer and/or investigator of Police of the Republic of Indonesia. In paragraph (2) that besides Navy National Army investigators, Civil Fisheries Investigator is authorized to conduct investigations in the field of fisheries that occurred in IEEZ. In the two Laws, there is an overlap of authority in law enforcement in the IEEZ region between the Navy National Army officers and the civil servants of the Fisheries Affairs.

While from the police indirectly do not have the authority to conduct investigation of water crime in IEEZ region. Under the United Nations Convention on the Law of the Sea 1982, any Archipelagic State as well as the Indonesian Archipelagic State may declare certain parts of the Waters and the Sea that borders the Indonesian Archipelago:

1. Internal Waters

The 1982 Convention on the Law of the Sea (UNCLOS 1982) makes no mention of what is meant by inland waters, but in one article it is mentioned that river estuaries, coves and harbor waters can be expressed as inland waters. When associated with the provisions of Law of the Republic of Indonesia No. 4 Prp Year 1960 jo Government Regulation Number 8 Year 1962 and TZMKO in terms of so-called Island Waters, the Inland Waters in question include: Kuala rivers, Muara kanusan, Smalla Sea, Rivers, Lakes, Canals, Waters between clusters of islands and waters located on the inner-water line low.

The legal status of the inland waters is in accordance with its status as an integral part of the territory of the State under the sovereignty of the State without any exemptions by the provisions of international law. Thus the State/Government is entitled to take measures of utilization of inland waters as well as other actions related to the management of inland waters for the purposes of various aspects of the interests of the people, the nation and the State of Indonesia as well as authorized to make regulations and enforce them.

2. Archipelagic Waters

Archipelagic Waters within an archipelagic States according to the provisions of the UN Sea Law Convention of 1982 are all waters located on the inside of the archipelagic base line that is in the form of straight lines archipelagic (Base Line) and or Normal base line when compared with Law of the Republic of Indonesia No.4 Prp Year 1960 hence mentioned the inland sea and strait that reside in the archipelago of Indonesia is same with waters of archipelago above. As well as inland waters, the waters of the archipelago is also an integral part of the State territory. Hence the legal status of the waters of the archipelago is also subject to the sovereignty of the State.

3. Territorial Sea

Sea territory of an archipelagic State as well as the State of the Republic of Indonesia both under the laws of the Indonesian National Law and under the Convention of the UN Law of the United Nations 1982, is a certain sea or sea lane situated on the outskirts of the land, the waters of the archipelago and or inland waters of the archipelagic State the width of 12 Nautical miles is measured from a base line of the archipelago. The legal status of the territorial sea is under the sovereignty of the State. As well as in the waters of the archipelago, in the sea area is also known the existence of cross-peace, cross-flow of archipelago and other rights arising from the Malaysian-Indonesian bilateral agreement as mentioned above.

4. Contiguous Zone

Contiguous Zone is a sea line that borders and is outside the sea territory with the widest limit of 24 Mile of sea measured from the base of the archipelago. In essence the legal status of the supplementary zone is subject to the principle of freedom on the sea but with the development of law in the 1982 UN Sea Law Convention

where known New legal regime is the Exclusive Economic Zone (EEZ) which is also outside and adjacent to the territorial sea itself by itself in the zone additional applicable EEZ legal status.

5. Continental Shelf

The continental shelf according to the prevailing laws and regulations (Law of the Republic of Indonesia No. 1 Year 1973) is the seabed and subsoil which is a continuation of the coastal plain outside and adjacent to the sea up to a depth of 200 meters or until the State is able to managing the natural resources that are based on the sea.

6. Indonesian Exclusive Economic Zone IEEZ

The Exclusive Economic Zone (EEZ) is a particular sea lane that lies outside and adjacent to the territorial sea, whose widest limit is as far as 200 nautical miles measured with the base line of the archipelago. In the marine law conventions above it can be seen that the legal status of EEZ is subject to a special law regime (meaning Specific Legal Regim) which means that the EEZ region is not completely under the sovereignty of a coastal State but not completely free legal regime, so in addition to the coastal State concerned have certain rights and jurisdiction in EEZ (on the source of wealth in it) Other countries have certain freedoms in the EEZ.

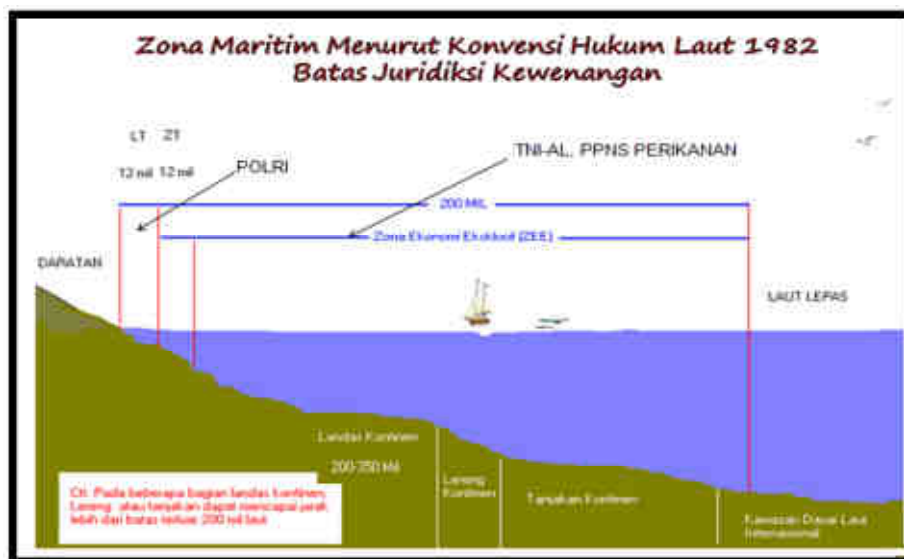
7. High Sea

The open sea is part of the sea that is not included in the Exclusive Economic Zone, Territorial Sea, archipelagic Waters and deep waters

8. International Seabed Areas

International seabed is the seafloor which is located outside the continental shelf and is under the open sea.

Figure 1
Limits Jurisdiction of Police Authority in the Waters



Source: Report of the Police Directorate of Papua Regional Police Year 2018

Illegal fishing means fishing or fishing activities illegally.¹ What is currently a problem for the police in keeping the waters of Indonesia is the limit of jurisdiction or authority that is only 12 miles drawn from the coastline. Meanwhile, judging from Law of the Republic of Indonesia No. 2 Year 2002 on Article 17 that the police officers in carrying out their duties and authority throughout the territory of the Unitary State of the

¹ Nunung Mahmudah, *Illegal Fishing*, Jakarta: Sinar Grafika, 2015, p. 80

Republic of Indonesia, especially in the legal areas of each place appointed in accordance with the legislation. While the definition of the territory of the Republic of Indonesia in the explanation of Article 6 paragraph (1) of Law of the Republic of Indonesia Number 2 Year 2002 is the jurisdiction of the sovereignty of the Republic of Indonesia in accordance with applicable laws and regulations. Meanwhile, the sovereignty of the Republic of Indonesia in Indonesian waters in Article 4 of Law of the Republic of Indonesia Number 6 Year 1996 concerning Indonesian Waters includes territorial sea, archipelagic waters, inland waters as well as airspace over territorial sea, and the seabed and subsoil, including natural resources contained in it.

So it is not true if anyone thinks that the investigation authority given to the Police is only against the general crimes committed in the territory of the Unitary State of the Republic of Indonesia and the Indonesian interior waters only, but also has the authority of investigation and investigation in all criminal acts throughout the territory of the Republic Indonesia (terrestrial, aquatic and aerial territories), in accordance with applicable international laws and regulations and serve as the principal investigator and coordinator of supervision and technical guidance for Police equipment, Civil Service investigators (PPNS) a form of self-security which has limited police authority.

D. Constraints on Society

The low awareness of community law which is a constraint in the prevention of illegal fishing crime, especially local communities. As in the waters of Cendrawasih Bay the number of people using fishing bombs in fishing for economic needs, they do not have a high legal awareness that it is prohibited and most importantly the impact of the fish bomb will damage the marine biota inside. Such apathy and carelessness will have an impact on the destruction of existing marine resources, if not preventable, will occur continuously.

Similarly, in the current conditions, that illegal fishing crimes committed by foreign ships have decreased and even no effect due to the policy of the Minister of Marine and Fisheries Affairs, but with this situation is actually exploited by local fishermen we seek the opportunity to break the rules with a variety of modes in order to seek more profit:¹

- a. Building a ship without obtaining prior permission from the Office of Marine and Fisheries;
- b. A ship owner has one license for more than one Ship;
- c. Owner of the ship deliberately lowers the capacity of its vessel's capacity in order to obtain a faster and easier operation permit;
- d. Building a ship in the absence of a fishing license, or building a boat firstly clears its permits;
- e. Local ships with sizes below 30 Gross Tonnage (GT) should be fishing over 7 to 12 miles, but fishing under 7 miles;
- f. Conducting fishing outside fishing ground that is not in accordance with the permit given

It becomes the character of our society, although it has been given the opportunity from the Government to get the catch of fish that many still keep doing activities that are against the rules. In this case, due to lack of legal awareness, the public still seeks opportunities by breaking existing rules.

E. Constraints on Culture

Crime prevention efforts by penal and non-penal can be pursued by: Criminal Law Application; Prevention without punishment; Influencing people's views on crime and punishment through mass media.² Culture in this society is almost the same as the customs of society, generally the culture that occurs in the community in line with the rules that apply but sometimes the habit and culture are also often contrary to the rules. In terms of countermeasures Illegal Fishing crime, one of the factors that become obstacles that culture/habits of society and culture is usually done long ago. And culture is also done by the community as a mode to gain a profit.

As is the case in the northern part of Papua, people's habit of catching fish using fish bombs/dolphins, this habit has been done for a long time because people want to quickly find or get fish but do not pay attention to the impact or the effect it does. Likewise in the southern part of Papua, the customs of people who often tend

¹ Adjunct Commissioner Police (AKP) Sakka, Head of Water Police Unit, interview on Merauke dated March 17, 2018.

² Barda Nawawi Arief, Bunga Rampai Kebijakan Hukum Pidana, Penerbit PT. Citra Aditya Bakti Bandung. 2005, p. 42

to violate the legal rules of fishing vessels using the ships crew (ABK) are not registered in the manifest, fishing activities outside fishing arc, fishing facilities that are not according to the rules, do not land the captured diareal/location of the harbor and do the fishing on the beach is not in accordance with the weight of the Gross Tone (GT) vessel misalnya 10 GT then it should catch the fish above 7 miles but the fact is often found doing fishing under 7 miles.¹ Seeing the habits of the community is none other than to seek profit by shortcuts and not pay attention to the rules that apply.

These things are often a constraint and obstacles for law enforcement officers in tackling Illegal fishing, culture or habits that contradict this rule make the opportunity for illegal fishing perpetrators fishing in the waters of Papua.

IV. Conclusion

Constraints faced by the Water Police Directorate in the handling of Illegal Fishing crime due to the lack of optimal human resources of Polair related to the problem of the number and competence in the field of water; Constraints of Infrastructure that have not been optimal in the form of Patrol Ship, the existence of Dock and Docking Ship that are still not available; obstacles Regulation related to boundary Jurisdiction or authority that is only 12 miles drawn from coastline as opposed to Law of the Republic of Indonesia Number 2 Year 2002 about Police in Article 17 that Police officer in carrying out its duties and authority throughout the territory of the Unitary State of the Republic of Indonesia; constraints of people without high legal awareness; and cultural constraints that have been done for a long time, this is done by the community as a mode to pursue a profit alone.

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¹ Adjunct Commissioner Police (AKP) Sakka, Head of Water Police Unit, interview on Merauke dated March 17, 2018.