

# The Domination of National Criminal Law in Law Enforcement of *Illegal Fishing* by Foreign Ship in Indonesian Waters

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## Abstract.

*The purpose of this study is to determine, examine and analyze the dominance of national criminal law in law enforcement of illegal fishing by foreign vessels in Indonesian waters. This study uses a normative juridical method with research specifications in the form of descriptive analysis. The object analyzed is the legal norm. Based on the discussion which concluded that the application of sanctions against foreign fishing vessels in accordance with Article 10 of the Criminal Code, it is known that there are two types of criminal penalties, namely the principal and additional penalties. The main punishment is a sentence that must be imposed by the judge which consists of the death penalty, imprisonment, imprisonment, and a fine. Meanwhile, additional punishments are not required to be imposed by judges, namely in the form of revocation of certain rights, confiscation of certain goods, and announcement of judge's decision. The type of criminal punishment in the field of fisheries only recognizes the main crime, while additional penalties are not regulated in the Fisheries Law. Regarding the main punishments that can be imposed by judges in fisheries criminal cases in the form of imprisonment and fines. Although the Fisheries Law does not specifically regulate additional penalties, fisheries judges can still impose additional penalties based on Article 10 of the Criminal Code. The nature of criminal penalties in the field of fisheries is mostly cumulative, both aimed at criminal offenses and offenses.*

*Keywords: Crime; Fishing; Foreign; Illegal; Ships.*

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## 1. Introduction

In the 1945 Constitution of the Republic of Indonesia, Article 1 paragraph (3) states that the State of Indonesia is a legal state based on Pancasila and the 1945 Constitution which contains the meaning of all actions, patterns of behavior of citizens which must also be synchronized with the norms set by the state.<sup>1</sup> The purpose of the Indonesian state is stated in the preamble to the fourth paragraph of the Constitution which states that the Government of the State of Indonesia has been established which aims to protect the entire Indonesian nation and the entire homeland of Indonesia and to promote public welfare, educate the nation's life, and participate in carrying out world order that is based on freedom, lasting peace and social justice.<sup>2</sup> So with this, the Indonesian people have the right to receive protection, safety and security in the perspective of the life of the nation and state.

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<sup>1</sup>Supriyono, *Criminology Study of Crime of Fencing the Stolen Goods*, Jurnal Daulat Hukum, Volume 3 Nomor 1, March 2020, url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/8407/4068>

<sup>2</sup>Sulistiyawan Doni Ardiyanto, Eko Soponyono, and Achmad Sulchan, *Judgment Considerations Policy in Decree of the Court Criminal Statement Based On Criminal Destination*, Jurnal Daulat Hukum, url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/8409/4067>

However, the facts that occur in people's lives are not in accordance with the goals of the Indonesian state.<sup>3</sup>

In terms of sovereignty, as stated in Article 25A of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) that Indonesia is an archipelagic State, this provision confirms that Indonesia has a wide sea area and is divided into islands.<sup>4</sup>The sea can be used as a natural resource, a transportation route, as a country's territorial boundary and other interests. Natural resources in the sea that are very useful for the needs of human life certainly require a legal basis to maintain interests in fulfilling the utilization of the contents of the sea.

The Indonesian Sea consists of 2.7 km<sup>2</sup> of Exclusive Economic Zone or EEZ and 3.2 million km<sup>2</sup> of territorial sea, so that according to UNCLOS 1982 the total area of Indonesia's seas is 5.9 million km<sup>2</sup>. This fact shows that Indonesia has a large enough marine potential that it can even become one of the supporting aspects of Indonesian economy.<sup>5</sup> This can be seen in the economic potential of the fisheries sector reaching US\$ 82 billion per year.<sup>6</sup>So it can be said that the marine and fisheries sector can be used as a mainstay sector for the economy in Indonesia. But in reality the development of the fishery sector for the Indonesian economy must be delayed due to rampant illegal fishing practices that occur in Indonesia.

The territorial waters of the sea or Indonesian waters are part of the Exclusive Economic Zone (EEZ), which covers an area of 200 miles from the coastline. Within the marine zone, that the existence of a coastal state is given the right to the wealth or natural resources contained therein, and is given the right to utilize and issue legal policies, is also given the freedom to navigate activities, carry out flight activities over its territory and carry out planting activities of cables and pipelines under the sea for the benefit of the nation and state. The concept of the Exclusive Economic Zone arises from the existence of urgent needs and conditions. Meanwhile, its development is based on history originating from the need that developed since 1945 which aims to expand the area of jurisdiction of the coastal state over the sea it owns. In an effort to make this happen actually already has a clear legal source, the source that is used as a reference is in preparation for the issuance of UNCLOS III.<sup>7</sup>

Based on the provisions of Article 73 of Unclos 1982, the coastal State in exercising its sovereign rights can board ships, inspect, arrest and carry out court proceedings, as necessary to ensure compliance with the laws and regulations that it has established in accordance with the provisions of this Convention. Captured ships and their crews must be released immediately after being given an

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<sup>3</sup>Isyadora Islami Salma, Rakhmat Bowo Suharto and Widayati, *Sociological Juridical Review Of Children Appointment Through The Determination Of Judges In The Religion Court Of Semarang*, Jurnal Daulat Hukum, Volume 3 No 1, March 2020, url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/8406/3926>

<sup>4</sup>Indra, Mexasai, *Urgensi Pengelolaan Wilayah Perbatasan Dalam Kaitannya dengan Kedaulatan Negara Kesatuan Republik Indonesia*, Jurnal Selat, Vol.1 No.1, 2013, p.13

<sup>5</sup>Ridwan Lasabuda, *Tinjauan Teoritis pembangunan Wilayah Pesisir Dan Lautan Dalam Perspektif Negara kepulauan republik Indonesia*, Jurnal Ilmiah Platax, Vol.1 No.2, 2013, p. 92.

<sup>6</sup>Zebua & Ramli, *Analisis Pengaruh Jumlah Armada, Jumlah Nelayan, Pdrb, dan Investasi Terhadap Produksi Perikanan di Wilayah Nias (Analisis Data Panel)*, Jurnal Ekonomi dan Keuangan, Vol.2 No.8, 2014, p. 465.

<sup>7</sup>Frans E. Likadja, (1998), *Bunga Rampai Hukum Laut Internasional*, Bina Cipta, Bandung, p.58.

appropriate bail. However, at this time there are legal problems in the exclusive economic zone of Indonesia outside of the exploration, exploitation and processing of biological resources. Especially organized and international illegal arrests.

The practice of illegal fishing is a crime that can be carried out across countries, is organized and can cause serious damage to Indonesia and other countries.<sup>8</sup>In addition to being economically, socially, and ecologically detrimental, this practice also includes actions that weaken the territorial sovereignty of a country. The most common illegal fishing activity in Indonesian waters/seas is the theft of fish by foreign fishing vessels (KIA) originating from several neighboring countries. The act of foreign ships entering Indonesian waters without permission and exploiting its natural resources is a form of violation of the sovereignty of the State. Based on the results of the supervision carried out, it can be concluded that illegal fishing by KIA mostly occurs in the EEZ and quite a lot occurs in several archipelagic countries (archipelagic states).<sup>9</sup>

Based on the description above, this study aims to determine and analyze the dominance of national criminal law in law enforcement of illegal fishing by foreign vessels in Indonesian waters.

## 2. Research Methods

To conduct an assessment in this writing, the author uses a normative juridical method, with an emphasis on literature study. As a normative-based juridical writing, this writing is based on an analysis of legal norms, both law in the sense of law as it is written in the books (in the rule of law) and law in the sense of decided by judge thought judicial process (court decisions). Thus, the object analyzed is legal norms, both in laws and regulations and those that have been concretely determined by judges in cases decided in court.

## 3. Results and Discussion

### **Dominance of National Criminal Law in Enforcement of Illegal Fishing Laws by Foreign Ships in Indonesian Waters**

The use of the term law of the sea, both national and international, without explanation will cause doubts, because in the Dutch law library, the term *Zeerecht* the law of the sea is usually used in a narrower sense. WLP A Moelengraaf, HFA Vollmar, and FG Scheltema in *Het Nieuwe Zeerehct*, studied the law of the sea in the field of legal regulations relating to ship voyages at sea, especially regarding the transportation of goods or people by ship. In essence, most experts study the law of the sea in a civil law environment, not including public law.<sup>10</sup> With the current development of science and technology, marine regulation is not only viewed from

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<sup>8</sup>Ioannis Chapsos and Steve Hamilton, *Illegal Fishing and Fisheries Crime as a Transnational Organized Crime in Indonesia*, Trends in Organized Crime, Vol.22 No.3, 2019, p. 160.

<sup>9</sup>Haryanto and Joko Setiyono, *Kebijakan Penanggulangan Kapal Asing Pelaku Illegal Fishing Oleh Pemerintah Indonesia Dalam Perspektif Hukum Pidana Internasional*, LAW REFORM, Vol.13 No.1, 2017, p. 75.

<sup>10</sup>R. Wirjono Prodjodikoro, (1991), *Hukum Laut Bagi Indonesia*, Jakarta, Sumur Bandung, p. 7

the aspect of civil law, but is even more emphasized on the public aspect, considering that the civil aspect is only a small part of the current maritime law issues.

Developing countries will try to control the sea in order to expand its jurisdiction to protect its interests, moreover, increasingly advanced technological advances encourage a desire to utilize natural resources that will be able to provide benefits for a country. Therefore, to implement the wishes and regulate the interests of all international countries so that there is no overlap between these interests, international law of the sea conventions were held, the last of which has been the successful implementation of the United Nations Convention on the Law of the Sea (United Nations) 1982 which has produced the United Nations Convention on the Law of the Sea (UNCLOS). One of the provisions of UNCLOS 1982 is to regulate maritime boundaries.<sup>11</sup>

About practice the *illegal fishing* in the territorial waters, the involvement of foreign parties in fishing theft is classified into two types, namely First, semi-legal theft, namely the theft of fish carried out by foreign ships by using a legal fishing license owned by local entrepreneurs, using ships with local flags or flags of other countries. This practice is categorized as illegal fishing because in addition to catching fish in the territorial waters of other countries, illegal fishing actors also send fish catches without going through the process of landing fish in legal areas. Such practices are known as "flag borrowing" or Flag of Convenience (FOC) practices. Second, pure illegal theft is the process of catching fish by foreign fishermen and ships using their own flag to catch fish in the territory of a country. However, this illegal fishing crime can not only be carried out by foreign parties but also by fishermen and local entrepreneurs. Illegal fishing carried out by fishermen or local entrepreneurs can be classified into three groups, namely: First, fishing vessels with Indonesian flags, former foreign fishing vessels whose documents are fake or even do not have permits; Second, Indonesian fishing boats (KII) with documents that are "asphalt/original but fake", for example, the official who issued the document is not an authorized official or the document is fake; and Indonesian fishing boats (KII) without any documents, this means catching fish without a permit.<sup>12</sup>

Law enforcement can be defined as the legal territory of a country (country jurisdiction).

- *Jurisdiction of legislation* or jurisdiction to prescribe (The authority to make legal rules to regulate various interests;
- *Jurisdiction to enforce the law* (authority to enforce applicable laws).

The provisions for law enforcement in the ZEEI in the new law of the sea convention can be detailed, namely:

- The coastal state can carry out the processing and preservation of natural resources in the ZEEI, as well as carry out inspections in accordance with the legal procedures applicable in the country in accordance with the provisions of the convention, Article 73 (paragraph 1) Unclos 1982.

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<sup>11</sup>Heryandi, (2013), *Hukum Laut Internasional*, Fakultas Hukum Universitas Lampung, p. 10

<sup>12</sup>Budiono, (2014), *Pembatasan Kedaulatan Negara Kepulauan Atas Wilayah Laut*, Bandar Lampung: Justice Publisher, p. 43

- Detention of the ship and its crew who are detained must be released after the payment of dependents or other security guarantees, Article 73 (paragraph 2) Unclos 1982;
- Violation of the law that applies to a coastal State in its exclusive territorial waters does not include confinement if there is no agreement from the State involved in the agreement. It is contained in "Article 73 (paragraph 3) Unclos 1982";
- If there is a detention in that country, immediately report to the ambassador
- Representatives who commit criminal offenses in the waters. Which is contained in "Article 73 (paragraph 4) Unclos 1982".

This is the meaning of the punishment that applies to the exclusive waters of the latest coastal State, for the next step we will review the enforcement of the law regulated in the laws and regulations in Indonesia. According to the provisions of Article 13 of Law No. 5 of 1983, it was ratified in carrying out a sovereignty, processing and utilization of living natural resources as stated in "Article 4 paragraph (1)", by the Indonesian state legal apparatus who has the authority to determine punishment in accordance with the Act. - Law Number 8 of 1981 contained in the Criminal Procedure Code (KUHP), except:

- With the arrest of a foreign ship committing a criminal act in the ZEEI waters until it is handled at the nearest base, it can be processed further.
- The process of violating criminal acts by foreign ships has a time limit not exceeding 7 days if there are other provisions.
- In the case of detained status, the violations contained in "Article 16.17 which are in the category of violations regulated in "Article 21 paragraph (4) of Law No. 8 of 1981 concerning the Criminal Procedure Code.<sup>13</sup>

Then it is explained that every violation committed by the ship or by any person is carried out according to the initial evidence that occurred at sea for the ship and/or every person. For violators, Indonesian citizens, immediately go to the nearest base on the orders of investigators to be processed immediately. The termination of the ship regulated in the legislation cannot be carried out in one day at sea due to several natural factors. The stipulation regarding the termination of the ship has not been regulated in "Law No. 8 of 1981. The provisions for violations committed by ships or by any person will be processed by law enforcement officers in the ZEEI, namely the ship commander or an investigating officer appointed by the Commander of the Armed Forces of the Republic of Indonesia. In this case, the prosecutor of the district court is the one who judges the violation in general.

Regarding sanctions for fisheries criminal acts regulated in the Fisheries Law, in general, it can provide a deterrent effect. On the other hand, the perpetrators of criminal acts of foreign nationality in the ZEEI area have not provided a deterrent effect because they cannot be subject to imprisonment unless previously there has been an agreement between the Indonesian government and the government of the country concerned (Article 102 of Law No. 31 of 2004). This provision is in line with Article 73 paragraph (2) of UNCLOS 1982 which does not justify the existence of a

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<sup>13</sup>Yudi Dharma Putra, 2015, *Tinjauan Tentang Penegakan Hukum Tindak Pidana Penangkapan Ikan Secara Illegal (Illegal Fishing) di Wilayah Zona Ekonomi Eksklusif Indonesia*, Naskah Publikasi Jurnal, FH UNBRA, Malang, p.9



coastal state regulation to apply imprisonment/corporal punishment if there is no previous agreement with the country concerned.

The application of sanctions against foreign fishing vessels in accordance with Article 10 of the Criminal Code is known to have two types of criminal penalties, namely the principal and additional penalties. The main punishment is a sentence that must be imposed by the judge which consists of the death penalty, imprisonment, imprisonment, and a fine. Meanwhile, additional punishments are not required to be imposed by judges, namely in the form of revocation of certain rights, confiscation of certain goods, and announcement of judge's decision. The type of criminal punishment in the field of fisheries only recognizes the main crime, while additional penalties are not regulated in the Fisheries Law. Regarding the main punishments that can be imposed by judges in fisheries criminal cases in the form of imprisonment and fines. Although the Fisheries Act does not specifically regulate additional penalties, however, the fishery judge can still impose additional penalties under Article 10 of the Criminal Code. The nature of criminal penalties in the field of fisheries is mostly cumulative, both aimed at criminal offenses and offenses. In the cumulative law, corporate punishment (prison) with a fine is applied at once. In this case, there is no reason for the judge not to impose the two penalties, nor can the judge choose one sentence to be imposed, but must impose the principal sentence of both. Punishments in the form of high prison sentences and heavy fines for fishery criminals aim to create a deterrent effect. Perpetrators who are found guilty in addition to being obliged to serve years in prison, are also required to pay a fine to the state whose value is not small.<sup>14</sup>

As for the types of fisheries criminal offenses that do not have a SIUP, are subject to Article 26 paragraph (1) in conjunction with Article 92 of Law No. RI. 31 of 2004 concerning Fisheries, shall be sentenced to a maximum imprisonment of 8 (eight) years and a maximum fine of IDR 1,500,000,000,- (one billion five hundred million rupiah), while fishing gear does not match the size, may be subject to Article 85 of the UUUP with a maximum penalty of 5 (five) years and a maximum fine of IDR2,000,000,000.- (two billion rupiah) and for fishing boat owners who do not have SIB, are subject to Article 98 of the UUP with a maximum imprisonment of 1 (one) year and a maximum fine of IDR 200,000,000, - (two hundred million rupiah).<sup>15</sup>

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<sup>14</sup>Dina Sunyowati, (2013), *Port State Measures dalam Upaya Pencegahan terhadap IUU Fishing di Indonesia*, Peran Hukum Dalam Pembangunan Di Indonesia, Remaja Rosdakarya, Bandung, p.438

<sup>15</sup>Inggrit Fernandes, *Tinjauan Yuridis Illegal Fishing Di Indonesia Berdasarkan UndangUndang Perikanan*, Jurnal Hukum Respublica, Vol.17 No.1, 2017, p. 201

#### 4. Conclusion

The application of sanctions against foreign fishing vessels in accordance with Article 10 of the Criminal Code is known to have two types of criminal penalties, namely the principal and additional penalties. The main punishment is a sentence that must be imposed by the judge which consists of the death penalty, imprisonment, imprisonment, and a fine. Meanwhile, additional punishments are not required to be imposed by judges, namely in the form of revocation of certain rights, confiscation of certain goods, and announcement of judge's decision. The type of criminal punishment in the field of fisheries only recognizes the main crime, while additional penalties are not regulated in the Fisheries Law. Regarding the main punishments that can be imposed by judges in fisheries criminal cases in the form of imprisonment and fines. Although the Fisheries Act does not specifically regulate additional penalties, however, the fishery judge can still impose additional penalties under Article 10 of the Criminal Code. The nature of criminal penalties in the field of fisheries is mostly cumulative, both aimed at criminal offenses and offenses. In the cumulative law, corporate punishment (prison) with a fine is applied at once. In this case, there is no reason for the judge not to impose the two penalties, nor can the judge choose one sentence to be imposed, but must impose the principal sentence of both. Punishments in the form of high prison sentences and heavy fines for fishery criminals aim to create a deterrent effect. Perpetrators who are found guilty in addition to being obliged to serve years in prison, are also required to pay a fine to the state whose value is not small.

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