

# CRIMINAL LAW REFORM OF ILLEGAL FISHING BY CORPORATIONS IN INDONESIA'S EXCLUSIVE ECONOMIC ZONE

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## Abstract

Indonesia is a maritime country with 17,508 islands endowed with great fisheries resource. Globalization that occurs can affect the development of a nation. Even though it has a positive impact on countries in the world, Indonesia is no exception. The point of contact between law and globalization as a social phenomenon that cannot be avoided covers various aspects and extends to all regions of the world, one of which is illegal fishing in Exclusive Economic Zone. Illegal fishing is fishing activity that is contrary to the laws of a country or international provisions. However, illegal fishing in Indonesian waters has a direct impact on the economy, especially fishermen and fish traders in Archipelago Riau. This study uses a normative juridical approach. Data were collected through a literature review and analyzed qualitatively. The results show that several issues in handling illegal fishing crime still occur even though Law No. 31 of 2004 already existed and was strengthened by Law No. 45 of 2009 concerning Illegal Fishing Crime. This study revealed that there was no difference toward the imposition of penalties against the perpetrators of illegal fishing between "individual" and "corporations". Indonesia still adheres to the system of liability in which corporations act as responsible makers and administrators. This does not seem comparable to the effects of the crime committed. This illegal fishing crime has also an economic impact on the income of fishermen and local governments, especially Archipelago Riau, which comes from the fisheries and marine sector.

**Keywords:** Illegal Fishing; Archipelago Riau; Corporations; Exclusive Economic Zone.

## INTRODUCTION

Indonesia as the largest archipelago in the world with abundant potential and natural resources as a gift from God Almighty, has a very important meaning for the Indonesian people as a living space and fighting space as well as a unifying medium that connects islands in a unity of ideology, politics, culture, defense and security in a spatial container of the Unitary State of the Republic of Indonesia.<sup>1</sup>

For Indonesia as an archipelagic State, the birth of the 1982 United Nations Convention on the Law of the Sea (UNCLOS) confirmed its status. The total area of Indonesia increased to 8,193,163 km<sup>2</sup>, consisting of 2,027,087 km<sup>2</sup> of land and 6,166,163 km<sup>2</sup> of ocean. Indonesia's total sea area can be broken down into 0.3 million km<sup>2</sup> of territorial sea, 2.8 million km<sup>2</sup> of archipelagic waters, and 2.7 km<sup>2</sup> of Indonesia's Exclusive Economic Zone (EEZ). The North Sumatra and Riau Islands provinces that are the location of this research are certainly affected by the enactment of the 1982 United Nations Convention on the Law of the Sea (UNCLOS). The coast of North Sumatra has a coastal length of 1300 km consisting of 545 km of East Coast and 375 km of West Coast with fisheries potential in the Malacca Strait of 276,030 tons per year. Having this potential, this area has become the subject of various studies related to the Malacca Strait Policy.<sup>2</sup>

Illegal fishing crimes are not only committed by individuals but can also be committed by a corporation. A corporation is a legal subject that can conduct a legal relationship or legal action, so it should be held accountable, because a corporate crime can be

categorized as a transnational crime that has an organized nature. It is said that way because the crime of a Corporation must involve a systematic system. It is said to be systematic because there is a very solid criminal organization (Criminal Group). Thus, a corporate crime often contains elements of deceit, misrepresentation, concealment of facts, manipulation, breach of trust, subterfuge or illegal circumvention of regulations that are very detrimental to the community at large.<sup>3</sup>

Regarding Corporations as perpetrators of criminal offenses, when a Corporation is said to have committed a criminal offense, then the Corporation should be held accountable for the criminal offense committed both to the Corporation concerned, as well as its management. Supreme Court Regulation Number 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations (Perma Number 13 of 2016), especially in Article 4 paragraph (1), determines that: "Corporations may be held criminally liable in accordance with the criminal provisions of Corporations in the laws regulating Corporations".

According to Moenaf H. Siregar:

"Business entities whose existence and legal status are equated with humans (people), regardless of the form of organization. Corporations can have assets and receivables, have obligations and rights, can act according to the law such as filing a lawsuit and being sued before the court, because a Corporation is man-made which is not the same as a human being, it must be run by humans called administrators or managers. A Corporation usually has 3 (three) organs, namely the General Meeting of Shareholders (GMS), the Board of Commissioners, and the Board of Directors".<sup>4</sup>

According to Alvi Syahrin:

The development of criminal law in Indonesia related to criminal laws outside the Criminal Code (Special Criminal Law) has expanded the subject of criminal law, which is not only limited to humans but also to corporations. This development is in line with the development of criminal law in other countries. Corporations in their space of movement are intended to provide welfare to the wider community, so that the goal of advancing the general welfare mandated by the Preamble of the 1945 Constitution, and Article 33 Paragraph 1 (of the 1945 Constitution states that the economy is structured as a joint effort based on family principles in order to improve the standard of living of the Indonesian people."<sup>5</sup>

Indonesia as a country with a vast territory, especially in its territorial waters are often the place where illegal fishing activities are carried out by foreign fishermen. There are several reasons why Indonesia has become a target for foreign fishermen in carrying out Illegal Fishing. First, a large area that makes supervision difficult by the state. Second, the capability of the Indonesian marine fleet is still limited both in terms of human resources and equipment. Third, weak law enforcement where law enforcement related to Illegal Fishing in Indonesia is still ineffective. Fourth, the weak ability of local fishermen which then causes Indonesian waters not to be fully explored so that fishing in Indonesia is not yet effective.<sup>6</sup>

One of the non-traditional security issues is transnational crime. Transnational crimes can be interpreted as crimes that occur across national borders and have a detrimental impact on the countries crossed.<sup>7</sup> One form of transnational crime that is quite new is Illegal Fishing, or better known as IUU (illegal, unregulated and unreported) Fishing.

IUU fishing is common in outer waters or borders between one country and another, for example in the Exclusive Economic Zone.

Illegal Fishing in the context of this paper is the concept of the definition of fish theft as referred to in the National Fisheries Law, as well as illegal fishing in the formulation standardized by the International Plan of Action (IPOA), a regional organization engaged in fisheries planning and management that maps the definition of illegal fishing, as follows; "Illegal, Unregulated, Unreported Fishing (IUU)" includes:<sup>8</sup> In IPOA's concept and definition, illegal fishing includes:

1. Illegal fishing is illegal fishing in the exclusive territorial waters or EEZ of a country, without a license from that country.
2. Unregulated fishing is fishing activities in the exclusive territory or EEZ of a country that do not comply with the rules that apply in that country.
3. Unreported fishing is fishing activities in the exclusive territorial waters or EEZ of a country that are not reported, both operational and vessel data, and catches. So according to the International Plan of Action (IPOA) organization, Illegal fishing includes the three materials mentioned above, theft of fish is unreported fishing and does not comply with existing regulations (Unregulated fishing).

Within Indonesia's national jurisdiction, the types of Illegal Fishing are:

1. Fishing without a license.
2. Fishing using a fake license.
3. Fishing using prohibited fishing gear, and
4. Fishing with types that are not in accordance with the license.

Meanwhile, the classification/category of fishing theft in the form of Unreported fishing are:<sup>9</sup>

1. Fishing that does not report its actual catch or falsifying catch data.
2. Fishing that is directly taken to another country (transshipment) in the middle of the sea.

Activities that take the form/category of Unregulated Fishing in Indonesian National jurisdictional waters are:

1. Foreign fishing vessels conducting fishing activities in Indonesian waters without documents and never landing / anchoring at fishing ports in Indonesia.
2. Indonesian ex-foreign ownership fishing vessels with original but fake documents (asphalt) or no permit documents.
3. The existence of Indonesian fishing vessels with asphalt documents (the official who issued the document is not an official, aka fake documents).
4. Indonesian fishing vessels with no documents at all fishing without a license.
5. Indonesian fishing vessels or foreign fishing vessels conduct fishing activities in Indonesian waters that violate the provisions of fishing gear and manipulate the catch or fish being transported.

In interactions between countries, there are times when differences arise regarding perceptions, interests and even attitudes between countries that interact with each other. One of the problems related to differences in perceptions between countries is about territory. Differences in perceptions about regions often occur due to differences in views in history which lead to different perceptions of each country towards a particular area. Indonesia as an archipelagic country with a vast territory often has issues regarding its territory, ranging from border disputes to illegal fishing.

The Ministry of Maritime Affairs and Fisheries (KKP) arrested 83 vessels that caught illegal, unreported, and unregulated fishing (IUU Fishing) in Indonesian waters during January-June 2022. Adin Nurawaluddin, Director General of Marine Resources and Fisheries Monitoring at KKP, said the majority of the illegal vessels were Indonesian, while the rest were foreign-flagged. "So far, the results of surveillance ship operations during the first semester of 2022, we have succeeded in capturing approximately 83 units of fishing vessels. Consisting of 72 Indonesian fishing vessels, eight Malaysian-flagged foreign fishing vessels, one Philippine-flagged foreign fishing vessel, and finally two Vietnamese-flagged vessels," Adin said in a statement quoted from Antara, Monday (8/8).<sup>10</sup>

The Ministry of Maritime Affairs and Fisheries (KKP) arrested two foreign fishing vessels that committed illegal fishing in the North Natuna Sea on Tuesday (17/8/2021). The arrests, which coincided with the celebration of the 76th Independence Day of the Republic of Indonesia, emphasized the commitment of Maritime Affairs and Fisheries Minister Sakti Wahyu Trenggono in protecting Indonesia's seas from IUU fishing practices, as an effort to maintain sovereignty, economic growth, and ecosystem sustainability.<sup>11</sup>

Based on the audit results from the Ministry of Fisheries and Maritime Affairs in 2023, the operation of marine and fisheries resource monitoring vessels successfully arrested and prosecuted 558 illegal fishing perpetrators during the period 2019 to August 2023. Of these, 196 were foreign-flagged fishing vessels, namely 76 Malaysian fishing vessels, 78 Vietnamese fishing vessels, 40 Philippine fishing vessels, 1 Panamanian fishing vessel, and 1 Taiwanese fishing vessel. Meanwhile, 362 fishing vessels are Indonesian fishing vessels.<sup>12</sup>

Riau Islands (abbreviated as Kepri) is a province located in Indonesia. The province has its capital in Tanjungpinang City. The province is bordered by Vietnam and Cambodia to the north by the North Natuna Sea; West Kalimantan Province and Malaysia to the east; Bangka Belitung Islands Province and Jambi to the south; Singapore, Malaysia, and Riau Province to the west. This province is an archipelago province in Indonesia. In 2020, the population of Riau Islands amounted to 2,064,564 people, with a density of 252 people/km<sup>2</sup>, and 58% of the population is in Batam City.<sup>13</sup>

Overall the Riau Islands region consists of 5 regencies, and 2 cities, 52 sub-districts and 299 villages with a total of 2,408 large and small islands, 30% of which are not yet named, and populated. The area is 8,201.72 km<sup>2</sup>, about 96% of which is ocean, and only about 4% land.<sup>14</sup>

In Natuna waters, many foreign vessels foreign ships commit fish theft, ranging from countries of China, Thailand, Malaysia, Vietnam, the Philippines, and even ships that are already wanted by the authorities. That are already wanted by Interpol. Thousands of tons of fish are caught illegally illegally, Indonesia loses trillions of rupiah, to the destruction of marine ecosystems are a series of problems that occur in the Natuna.

Department of Maritime Affairs and Fisheries (DKP) explained that the Natuna waters to the Indonesian Exclusive Economic Zone (ZEEI) in the South China Sea as an the area most prone to fish theft by foreign ships).<sup>15</sup>

As for Article 73 paragraph (2) of UNCLOS 1982, the coastal state may initiate court proceedings, as necessary to ensure the observance of the laws and regulations which it has established in accordance with the provisions of this Convention. Captured vessels and their crew must be released immediately after being given a bail or an appropriate fine. This provision is still widely debated, with the non-application of imprisonment, the application of the provision will be will experience difficulties if the convicted person does not want to pay the fine or is unable to pay the fine imposed on him. to pay the fine given to him, this will certainly result in the lack of legal certainty. The realization of legal certainty. The polemics over this article occurred again with the issuance of Supreme Court Circular Letter No. 3 Year 2015 on the Implementation of the Formulation of the Results of the Supreme Court Chamber Plenary Meeting 2015. Supreme Court Chamber Plenary Meeting 2015 on December 29, 2015, as Task Implementation Guidelines for Courts, in letter A number 3 stipulates that "In the case of illegal fishing in the EEZ, the defendant can only be imposed with may only be subject to a fine without being sentenced to confinement in lieu of a fine". With the issuance of SEMA, it is hoped that the court decision will only refer to the imposition of fines without any sentence of confinement in lieu of fines, this is certainly contrary to Article 30 paragraph (2). This is of course contrary to Article 30 paragraph (2) of the Criminal Code which states "If the fine is not paid, it shall be substituted with imprisonment in lieu of fine". If the fine is not paid, it shall be substituted with light imprisonment". One of the efforts made by the Indonesian government to overcome the theft of marine resources is to sink ships caught stealing fish. The sinking of this ship is a form of special action that can be carried out by Indonesian fisheries surveillance vessels. This authority is contained in Article 69 of Law Number 45 of 2009 concerning Amendments to Law Number 31 of 2004 concerning Fisheries. In this article, fisheries supervisory vessels can stop, examine, bring, and detain vessels suspected or reasonably suspected of committing violations in the Indonesian fisheries management area to the nearest port for further processing. Fisheries investigators or supervisors can also take special actions in the form of burning and/or sinking foreign-flagged fishing vessels based on sufficient preliminary evidence. Implementation of prison and fine sanctions In addition, the government's efforts to tackle illegal fishing are also reflected in criminalization through criminal sanctions in the form of fines and imprisonment for illegal fishing perpetrators.<sup>16</sup>

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tackle illegal fishing are also reflected in criminalization through criminal sanctions in the form of fines and imprisonment for illegal fishing perpetrators.<sup>17</sup>

## RESEARCH METHODS

This study employs qualitative approaches and descriptive analysis. The researching employs a normative juridical method by analyzing legal materials through a literature study.<sup>18</sup> Researchers are also interested in the regulated of the criminal analysis on illegal fishing. The analysis is based on the description and the facts obtained to precisely answers the formulated problem. This study analyzes the factors driving the development of economic growth in the fisheries and marine sectors in the Riau Archipelago and sanctions for perpetrators of corporate illegal fishing crimes.

## ANALYSIS AND DISCUSSION

The definition of criminal offense contained in the Criminal Code by the legislator is often referred to as *Strafbaarfeit*. The term "*strafbaar feit*" is a Dutch word consisting of three words, namely *straf* which means punishment (*pidana*), *baar* which means can (may) and *feit* which means act, event, offense and action. So the term *Strafbaarfeit* is an event that can be punished or an action that can be punished.<sup>19</sup>

According to Lamintang, every criminal offense in the Criminal Code can generally be described by its elements into two types, namely subjective elements and objective elements. Subjective elements are elements that are attached to the perpetrator or related to the perpetrator and include something that is contained in his heart. Objective elements are elements that have to do with the circumstances, namely the circumstances in which the action of the perpetrator must be carried out.<sup>20</sup>

Illegal Fishing is a foreign term popularized by legal experts in Indonesia, which then became a popular term in the mass media and became an interesting legal study for environmental activists. Terminologically, illegal fishing literally comes from the English language, which consists of two words illegal and fishing. Illegal means illegitimate, forbidden or against the law Fish means fish or meat and Fishing means fishing as a livelihood or place to catch fish a place to catch fish.<sup>21</sup>

According to Garner, the notion of corporation is taken from the English term "corporation" which means a legal entity or group of people who are allowed by law to act as an individual as a legal subject, in contrast to its shareholders. Corporate criminal liability in the analysis of identification theory, known as the concept of direct corporate criminal liability. Identification theory basically recognizes that the actions of certain members of the corporation, as long as those actions are related to the corporation, are considered as actions of the corporation itself. This theory also holds that certain agents in a corporation are considered as the "directing mind" or "alter ego". The actions and mens rea of the individuals are then associated with the corporation. If individuals are authorized to act on behalf of and during the course of the corporation's business, then the mens rea of the individuals is the mens rea of the corporation.<sup>22</sup>

So far, the principle of corporate responsibility has not been very popular in handling cases of fisheries crime. Although Law Number 9 Year 1985 on Fisheries recognizes the existence of "Legal Entities" (in addition to individuals) as legal subjects in fisheries crimes, the Law does not further regulate when a legal entity is said to commit a criminal act and who can be held responsible for the criminal act. The corporation as

the person responsible is not subject to criminal sanctions. Supposedly, when a corporation is said to have committed a criminal offense, the corporation can be held accountable for the criminal offense committed either to the corporation concerned such as members of the management, directors, or senior officials authorized to act for and on behalf of the corporation. This is in line with Supreme Court Regulation No. 13/2016 on the procedure for handling criminal cases by corporations (Perma 13/2016), especially Article 4 paragraph (1) which states that: "Corporations may be held criminally liable in accordance with the criminal provisions of corporations in the Law regulating corporations". in Supreme Court Regulation No. 13/2016, The corporation/manager can be held accountable in accordance with corporate crime. Article 101 of the Fisheries Law states that if the criminal offense is committed by a corporation, the corporation is also subject to criminal sanctions through its management. The regulation of corporate criminal liability system in Law Number 45 Year 2009 on fisheries still has weaknesses and its enforcement is not maximized. As contained in Article 101 of the Fisheries Law, this is a setback, because it positions the position of the corporation as the perpetrator of Illegal Unreported Unregulated (IUU) fishing, but the corporation is not subject to criminal sanctions, but the criminal sanctions are only imposed on the skipper, which is very unfair if only the skipper is subject to criminal sanctions, while on the other hand the corporation itself, which obtains assets resulting from fisheries crimes, is not touched by the law, thus making the corporation accumulate assets obtained by unjustified means. Ways that are not justified by the applicable laws and regulations.

In view of the many criminal offenses committed by corporations, it is only natural that corporations should also be held responsible for all their actions. The criminal regulations of illegal fishing corporations according to the prevailing laws and regulations are:

1. Law Number 31 Year 2004 Jo Law Number 45 Year 2009 on Fisheries.
2. Law No. 32 of 2009 on Environmental Protection and Management.
3. Supreme Court Regulation Number 13 of 2016 concerning Procedures for Handling Criminal Cases Committed by Corporations.

The concept of corporate criminal liability contained in the Fisheries Law and the Supreme Court Regulation still adheres to the principle that the management is responsible if the corporation commits a criminal offense. The fine given to the skipper alone will not provide a deterrent effect. The Government of Indonesia should pay more attention to providing a deterrent effect to corporations in committing illegal fishing crimes, because if the corporation is only released without any punishment or fines given, it is likely that illegal fishing crimes will continue to occur in the future.

The concept of National Interest is used to explain and understand the behavior of international actors. In a realist perspective, the National Interest is equated with the efforts of a country in pursuit of "power", where power in International Relations is not only interpreted as the tangible strength of a country but also the power of a country in building an influence over other countries in the international political arena.<sup>23</sup>

National interests arise from the needs of a country. This interest can be seen from the internal conditions of a country such as political-economic, military and socio-cultural conditions. National Interest is based on the "power" that a country wants to manifest so that that country can have direct influence or impact on other countries.

The national interest of a country can be seen from its foreign policy which is then manifested through foreign policy. Thus, conceptually national interests are used to explain the foreign policy behavior of a country.<sup>24</sup>

In relation to Indonesia's marine potential, there are three types of sea that are important for Indonesia to manage, namely:<sup>25</sup> Seas that are Indonesian territory, namely sea areas that are:

1. Under the sovereignty of Indonesia;<sup>26</sup>
2. The sea that is under Indonesia's authority, which is an area of sea2. in which Indonesia has sovereign rights over its natural resources and the authority to regulate certain matters;<sup>27</sup>
3. Seas that are in Indonesia's interest, meaning that Indonesia has3. related to the sea area even though Indonesia does not have sovereignty or sovereign rights over the sea area.<sup>28</sup> Indonesia does not have sovereignty or sovereign rights over the sea area.

International Law of the Sea is part of the Law International. The Law of the Sea initially arose due to problems regarding the ownership of the sea. Ownership issues to the sea is related to the potential wealth possessed by the sea such as fish, minerals and other resources. In addition to the potential for wealth, the issue of ownership of the sea is also related to security aspects, namely the control of the sea area as well as the land. The International Law of the Sea aims to regulate competition between countries in seeking (exploration) and using (exploitation) the wealth possessed by the sea and maintaining the sustainability (conservation) of the Sea itself.<sup>29</sup>

The United Nations Convention on the Law of the Sea (United Nations Convention on the Law of the Sea) abbreviated as UNCLOS, also called the Law of the Sea Convention or the Law of the Sea Treaty is an international agreement resulting from the United Nations Conference on the Law of the Sea which took place from 1973 to 1982. Convention on the Law of the Sea or UNCLOS defines the rights and responsibilities of countries in the world in the use of the world's oceans and establishes good guidelines for business, the environment and the management of marine natural resources. This convention was inaugurated at the third UN Conference on the Law of the Sea in 1982 which later replaced the International Agreement on the sea, namely the 1958 Geneva Convention.<sup>30</sup>

As a country that has a very large sea area, Indonesia certainly has many problems related to its sea area, Indonesia faces various transnational crimes that commonly occur at sea such as, Illegal fishing, Smuggling of goods, Drug smuggling, Trafficking / Smuggling of humans and boat people (boat people), terrorism and piracy. To protect the vast sea area, Indonesia has seven law enforcement agencies that have patrol task forces at sea. These law enforcement agencies include the TNI-Navy; POLRI-Directorate of Marine Police; Ministry of Transportation-Directorate General of Hubla; Ministry of Maritime Affairs and Fisheries-Directorate General of PSDKP; Ministry of Finance-Directorate General of Customs; Bakamla, and the Illegal Fishing Eradication Task Force (Task Force 115). The seven law enforcement agencies carry out patrols related to security at sea sectorally in accordance with their authority based on their respective laws and regulations.<sup>31</sup>



Illegal fishing cases that have occurred in Riau Islands so far are a security problem that is still rooted, fisheries resources in Riau Islands are still used as "shared assets" by surrounding countries. The state loss caused by illegal fishing is Rp. 30 trillion per year, of which 10 percent comes from Riau Islands. The point of this study is how to solve marine security solutions related to illegal fishing in the Riau Islands border area with several surrounding countries.<sup>32</sup>

That the majority of illegal fishing that occurs in the Riau Islands is in the EEZ area and has begun to expand to the economic and environmental sectors, so that illegal fishing that occurs in the Riau Islands does not only refer to traditional security, but has expanded towards non-traditional security. Indonesia's low marine vision, overlapping authority between actors and inadequate infrastructure have the potential to perpetuate illegal fishing in Riau Islands, thus requiring non-state actors to participate in handling illegal fishing. Strengthening coastal communities (fishermen) will be a key actor in handling illegal fishing cases, and coordination and streamlining the authority of state actors and multilateral cooperation with surrounding countries are also needed.<sup>33</sup>

Illegal fishing is also a serious problem around the waters of the Riau Islands. The Riau Islands are located between the South China Sea, Malacca Strait and Karimata Strait, has 2,408 large and small islands, and the total area is 252,601 km<sup>2</sup>. 252,601 Km<sup>2</sup>, 95% of which is ocean and the remaining 5% is land and the remaining 5% is land area. Because it borders directly with neighboring countries, the Riau Islands, which have fish-rich waters, are the most strategic place for fishers. Rich waters are the most strategic place for illegal fishing to occur.<sup>34</sup>

The real efforts made by the central government in eradicating illegal fishing include sinking the vessels of the perpetrators. Illegal fishing during the leadership of Minister Susi, among others, by sinking the ships of illegal fishing perpetrators through Law No. 45/2009 on Illegal Fishing. Illegal fishing through Law No. 45 of 2009 concerning Amendment to Law Number 31 Year 2004 on Fisheries. Article 69 paragraph (1) of the Fisheries Law stipulates that fisheries surveillance vessels functions to carry out supervision and law enforcement in the field of fisheries in the fisheries management area of the Republic of Indonesia. Article 69 paragraph (4) states that in carrying out the functions as paragraph (1), fisheries investigators and / or supervisors may carry out special actions in the form of burning and or sinking of foreign-flagged fisheries vessels based on preliminary evidence. Based on sufficient preliminary evidence.<sup>33</sup>

Article 102 of the Fisheries Law regulates the inapplicability of imprisonment in the EEZ area unless there is an agreement between the Indonesian government and the government of the country concerned. Government of the country concerned. This article is an adoption of Article 73 paragraph (3) of UNCLOS 1982 which states: "Coastal State penalties for violations of fisheries laws and regulations in the exclusive economic zone may not include imprisonment, in the absence of agreements to the contrary by the States concerned, or any other form of corporal punishment". (Coastal State penalties imposed for violations of fisheries legislation in the exclusive economic zone may not include confinement, in the absence of agreements to the contrary by the States concerned, or any other form of corporal punishment. then the Supreme Court issued Supreme Court Circular Letter No. 3 Year 2015 on the Implementation of the Formulation of the Results of the Supreme Court Chamber Plenary Meeting 2015 on December 29, 2015, as Guidelines for the Implementation of Tasks for the

Court, in letter A number 3 stipulates that "In the case of illegal fishing in the EEZ, the defendant can only be imposed with may only be subject to a fine without being sentenced to confinement in lieu of a fine".

The imposition of punishment to corporations is usually in the form of fines. There are 3 (three) ways to be able to penalize Corporations, as follows:

1. Corporations can be criminalized based on the principle of strict liability for crimes committed by their employees;
2. Corporations can be penalized based on the principle of identification;
3. Corporations can be subject to payment for the damaged marine environment, based on Article 2 letter j of the Environmental Protection Law, which states that the polluter pays principle, defined as every responsible party whose business and/or activities cause pollution and/or environmental damage, is obliged to bear the costs of environmental restoration.<sup>35</sup>

The Supreme Court also issued Supreme Court Regulation (PERMA) No. 13 of 2016 which regulates the procedure for handling corporate criminal cases. The regulation states that if a corporation is suspected of committing a criminal offense, law enforcement officials can hold the corporation legally responsible. Corporate legal responsibility can be imposed on a person attached to the corporate deed as the management of the corporation. The sanctions stipulated in PERMA No. 13/2016 are expected to deter perpetrators of illegal fishing crimes, especially corporations, as they are subject to substantial fines. The implementation of law enforcement on this regulation can improve the performance of fisheries activities and marine catches that will increase the Riau Islands' local revenue.<sup>36</sup>

In the field of Criminal Law, the existence of a legal entity or business entity that bears the term "corporation" is accepted and recognized as a legal subject that can commit criminal acts and can also be held accountable. According to Mardjono Reksodiputro:

"In the development of Criminal Law in Indonesia, there are 3 (three) systems of corporate responsibility as a subject of criminal offense, namely:

1. The management of the corporation commits the act, then the management is responsible;
2. The corporation as the maker, then the management is responsible;
3. The corporation as the maker and responsible".<sup>37</sup>

To overcome the problem of illegal fishing by corporations in the Indonesian EEZ, based on the research results, it is known that:

1. "Changes are needed to the rules of Article 102 of Law Number 45 Year 2009, namely the imposition of fines on corporations and individuals who commit illegal fishing by foreigners;
2. There is a need for cooperation between the Government of Indonesia and the Government of foreign countries to form the imposition of prison sentences to be more effective and have a deterrent effect and legal certainty considering the halfway house for foreign perpetrators in the stages of the investigation process, prosecution and court.

3. It is necessary to pay attention to the cost of food and medical costs, so that it is more effective;
4. To maximize the competence of fisheries cases that are included in special courts, it is necessary to have a judicial review of the provisions of Article 106 of Law Number 45 Year 2009, namely every fisheries problem is tried, examined and decided in the fisheries court considering that it is a special court similar to the PHI Court, Commercial Court, Human Rights Court, and Corruption Court;
5. There needs to be a change in the period of examination at the level of investigation, prosecution and trial, and also must have expertise that can hear fisheries cases;
6. There is a need for the placement of Judges at the Appeal and Cassation levels of the Fisheries Ad Hoc Judge, considering that fisheries cases at the Appeal and Cassation levels already exist;
7. There is a need for a special court such as corruption crime".<sup>38</sup>

Based on the research results, it is also known that:

"To overcome the problem of illegal fishing by corporations in the Indonesian EEZ:

1. There needs to be an amendment to Article 102 of Law No. 45 Year 2009, namely the imposition of fines on corporations and individuals must be replaced with imprisonment for foreign illegal fishing perpetrators;
2. There needs to be cooperation between the Government of Indonesia and foreign governments to establish imprisonment to be more effective and have a deterrent effect;
3. There needs to be a change in the period of examination at the level of investigation, prosecution, and trial, and also must have expertise that can hear fisheries cases;
4. There needs to be an interpreter who has special certification in Myanmar, Thai language".<sup>39</sup>

Based on the whole explanation, it is emphasized that the protection of Indonesia's sovereignty as a state of law and the protection of natural resources from destroyers (for their own interests), must be enforced properly and correctly. Although Indonesia has ratified various conventions regarding the marine and environment, and has issued various laws and regulations in order to protect the sovereignty of the state and protect the environment, but there are often criminal acts of territorial violations and environmental destruction committed by foreign and domestic parties both in the form of corporations or individuals.

This condition essentially requires a reformation of the Criminal Law, which includes a reformation of the application of Criminal Law fines for perpetrators of illegal fishing in the Indonesian EEZ, so that future Criminal Law regulations relating to the prevention of illegal fishing in the Indonesian EEZ are expected to be more successful and effective. Thus, at least the occurrence of illegal fishing in the Indonesian EEZ by foreign corporations can be minimized.

## CONCLUSIONS

International law, namely UNCLOS 1982, does not explicitly regulate the actions that can be taken against perpetrators of Illegal Fishing. In UNCLOS 1982 Article 73 only regulates the payment of bail for the perpetrators of Illegal Fishing, and prohibits corporal punishment in the form of confinement for the perpetrators of Illegal Fishing. This then becomes a gap in law enforcement in Indonesia's sovereign territory, where the perpetrators of criminal acts. Illegal Fishing cannot be subject to confinement sanctions. In the Indonesian Government's efforts to deal with Illegal Fishing, the method then applied by the Indonesian Government is in the form of Sinking / Burning Ships of Illegal Fishing criminals, which gained legitimacy based on Article 69 paragraph (4) of Law No. 45 of 2009 concerning Fisheries. However, it was no longer enforced after the end of Minister Susi's tenure. There is no mechanism to sink foreign vessels that commit illegal fishing crimes in international law, because international law does not recognize law enforcement in the form of sinking. The application of punishment for perpetrators of illegal fishing by Corporations in the EEZ is only the imposition of fines determined by Court Decisions and it is hoped that with the auction of the ship, payment of fines can be made so as to create equitable Law Enforcement. Ideally, the concept of regulating criminal liability against foreign corporations for illegal fishing in the Indonesian EEZ is the application of criminal fines for foreigners in the Indonesian EEZ is not ideal, because there is no substitute penalty for fines for foreigners. There is a need to reform the application of fines, namely by auctioning the evidence vessels, then the money from the auction is paid for the fines of foreign illegal fishing in the Indonesian EEZ. In addition, good cooperation and coordination between the Government of Indonesia and foreign governments is needed, so that there is legal certainty for the protection of the Indonesian EEZ, and justice is also created.

### Notes

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- 9) Ibid
- 10) <https://www.cnnindonesia.com/ekonomi/20220808134523-92-831724/kkp-ringkus-83-kapal-pencuri-ikan-sepanjang-semester-i-2022>
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- 21) John M. Echols dan Hasan Shadily, *Kamus Inggris Indonesia*, Gramedia Pustaka Utama, Jakarta, 2002, hlm. 311.
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- 24) P. Anthonius Sitepu. 2011. *Studi Hubungan Internasional*. (Yogyakarta: Graha Ilmu, 2011), p 163.
- 25) Hasjim Djalal, *Mengelola Potensi Laut Indonesia*, Seminar Nasional Hukum Laut, Fakultas Hukum Universitas Airlangga, Surabaya, 21 Desember 2005.
- 26) Yang termasuk wilayah laut jenis ini adalah perairan pedalaman, perairan kepulauan dan laut teritorial/ laut wilayah yang lebarnya 12 mil dari garis pangkal.
- 27) Yang termasuk jenis laut ini adalah Zona Tambahan (Contiguous Zone), yaitu wilayah laut yang terletak 12 mil di luar Laut Wilayah atau 24 mil dari garis pangkal di sekeliling negara Indonesia, dan Zona Ekonomi Eksklusif Indonesia (ZEEI) yang luasnya adalah 200 mil laut dari garis pangkal.
- 28) Wilayah laut yang termasuk dalam kategori ini adalah laut bebas yang berdekatan dengan Zona Ekonomi Eksklusif Indonesia, contohnya adalah Samudera Pasifik dan Samudera Hindia. Di dua Samudera ini Indonesia mempunyai kepentingan di dalamnya yang berkaitan dengan kelestariannya.
- 29) Boer Mauna, *Hukum Internasional Pengertian, Peranan dan Fungsi dalam Era Dinamika Global*, (Bandung: ALUMNI, 2005), p 305.
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- 33) *Ibid*
- 34) <file:///C:/Users/ASUS/Downloads/305-592-1-SM.pdf>
- 35) *Ibid*
- 36) Alvi Syahrin., Martono Anggusti., Abdl Aziz Alsa., *Hukum Lingkungan Di Indonesia*, Medan: Divisi Kencana, 2018, hlm. 75 <file:///C:/Users/ASUS/Downloads/2232-Article%20Text-6855-1-10-20210423.pdf>

- 37) Menurut Edmund Mezger: "Hukum Pidana merupakan semua aturan-aturan hukum (*die jenige rechtsnormen*) yang menentukan (menghubungkan) suatu pidana sebagai akibat hukum (*recht folge*) kepada suatu tindakan yang telah dilakukan". Menurut D. Simons: Hukum Pidana merupakan semua perintah dan larangan yang diadakan oleh negara dan yang diancam dengan suatu nestapa (pidana) bagi barang siapa yang tidak menaatinya, semua aturan yang menentukan syarat akibat hukum, dan semua aturan untuk mengadakan (menjatuhi) dan menjalankan pidana". Menurut G.A. van Hamel: "Hukum Pidana merupakan semua dasar dan aturan yang dianut suatu negara dalam menyelenggarakan ketertiban umum (*rechts orde*), yaitu dengan melarang yang bertentangan dengan hukum dan mengenakan suatu nestapa kepada yang melanggar larangan"., hlm. 7-9.
- 38) Saiful Anam, Hakim Ad Hoc Perikanan PN Medan Kelas I A Khusus, *Hasil Wawancara*.
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