

Illegal FAD Installations: Criminal Law Approaches in Indonesian Philippine Waters

Albri Labaka 

Universitas Hein Namotemo, Maluku Utara, Indonesia

labakaalbri@gmail.com

Abstract

This study aims to explain that fish aggregators (FADs) are fishing aids (ABPI) that are an integral part of fishing vessels. The illegal installation of FADs by Filipino fishermen in the EEZ area is contrary to the 1982 UNCLOS, which states that Indonesia has jurisdiction to take action under Law No. 45 of 2009 on fisheries, using normative research methods, conceptual approaches, and legislative approaches. The study results show that the judge in the trial of the case complies with UNCLOS 1982 Article 73 paragraph (3), which is the basis for fines without imposing imprisonment unless there is a prior agreement between Indonesia and the Philippines. As a result, punishing the perpetrator does not have a deterrent effect, so other actors appear to commit the same crime. The weakness of the Fisheries Law is that it does not regulate the application of additional sanctions. Therefore, with the basic idea of a double-track system, in the future, it is necessary to revise the Fisheries Law with the formulation of additional sanctions in the form of ship sinking sanctions, social work sanctions, and the concept of maximizing fines based on social welfare, with a multi-example system

KEYWORDS

Criminal Law, Illegal FAD Installations, ZEEI



Introduction

Indonesia has 17,508 islands. The country has an area of three million square kilometers² and an extensive coastline of over eighty-one thousand kilometers. The area has 2.8 million square kilometers of archipelagic waterways and 0.3 million square kilometers of territorial seas.¹ According to the Central Statistics Agency, the fishing industry contributed 505.06 trillion rupiah, which accounts for 2.58% of the national GDP in 2022.² Fish theft incurs an annual cost of over 101 trillion rupiah to the nation, as the Ministry of Marine Affairs and Fishing reported.³ Therefore, to protect the environment, the Government must exhibit sincerity. In social science, institutions are responsible for managing natural resources.⁴

This is because Indonesia's seas and the Indonesian Exclusive Economic Zone (EEZ), which includes nine crucial regions, have a potential marine fish resource of 6.5 million tons annually. The coastline area has an approved catch (JTB) of 5.12 million tons annually, enough to support 60% of Indonesia's population.⁵ The primary challenge for the Indonesian Government in maintaining governance over its sea domain is. ⁶Using explosives, anesthetics, illegal fishing gear, dangerous drugs, drag nets, manipulating fishing permits, and stealing fish across international boundaries are all practices that fishermen from different countries

¹ Fadli Afriandi and others, 'Analysis of Illegal Fishing in Aceh Waters,' *Journal of Marine and Fisheries Socio-Economics*, 18.2 (2023), 149–62
<<https://doi.org/http://dx.doi.org/10.15578/jsekp.v18i2.13006>>.

² (Badan Pusat Statistik, 2023){akses 15 agustus 2023}

³ Kementerian Kelautan dan Perikanan, 'Kerugian Negara Akibat Illegal Fishing, 101 Triliun Rupiah!,' *News.Kkp. Go.Id*, 2023
<<https://news.kkp.go.id/index.php/kerugian-negara-akibat-illegal-fishing-101-triliun-rupiah/>> [accessed 20 May 2023].

⁴ Dag Standal and Bjørn Hersoug, 'Illegal Fishing: A Challenge to Fisheries Management in Norway,' *Marine Policy*, 155 (2023), 105750
<<https://doi.org/10.1016/j.marpol.2023.105750>>.

⁵ (Ema Wulaningsih, Dwiki Herdyan, 2023)

⁶ Jimly Asshiddiqie, *Introduction to Constitutional Law* (Jakarta: Rajawali Pers, 2017). h.15

participate in.⁷ The usage of fish aggregation devices (FAD) positioned inside Indonesian borders by Filipino fishermen is an example of fish stealing in Indonesian waters. The installation of FAD is often seen to be included in KKPN with appropriate permission.⁸

In the last occurrence, from January to April 2019, 29 unlawful fish aggregating devices (rumpon) held by Filipino fishermen were seized by the Fisheries Surveillance Vessel (KKP). This event took place in the North Sulawesi Sea, which borders the seas of the Philippines, a neighboring nation, the Fisheries Leadership Area of the Republic of Indonesia (WPP-NRI). Unauthorized entry of the fish aggregating devices into the approximately one nautical mile-long Indonesian Exclusive Economic Zone (EEZ).⁹ In the State Fisheries Management Area of the Republic of Indonesia (WPP-NRI) 716, adjacent to the Philippines, the Ministry of Maritime Affairs and Fisheries (KKP) requested 16 pontoons or floating platforms on October 23, during the operation of the Marine and Fisheries Surveillance Ship Orca 04. The rumpon entered Indonesia's Exclusive Economic Zone without permission, advancing about two nautical miles. The building of illegal rumpon, which might operate as a hiding place for illegal fishing boats, is the focus of this limitation, which is part of the KKP's offensive against the fraudulent activity of illicit fishing. This technique adversely affects indigenous Indonesian fishermen. The fish will not go into Indonesian waters because they will only gather close to the rumpon.¹⁰

Consequently, installing illegal fishing equipment (rumpon) inside Indonesia's Exclusive Economic Zone (EEZ), articulated in Article 56 of the

⁷ Asiyah Jamilah and Hari Sutra Disemadi, 'Enforcement of Illegal Fishing Law in the Perspective of UNCLOS 1982', *Mulawarman Law Review*, 5.1 (2020), 29–46 <<https://doi.org/10.30872/mulrev.v5i1.311>>.

⁸ M Ambari, 'The Entrance for Fish Thieves is Rumpon', *Mongabay.Co.Id* (Jakarta, 2020) <<https://www.mongabay.co.id/2020/11/03/pintu-masuk-bagi-para-pencuri-ikan-adalah-rumpon/>>.

⁹ Info public.id, 'KKP Tertibkan 20 Rumpon Ilegal Di Perairan Perbatasan Indonesia-Filipina', *Dewaluyo*, 2019 <<https://infopublik.id/kategori/sorot-ekonomi-bisnis/408158/index.html>> [accessed 10 May 2024].

¹⁰ (www.kkp.go.id, 2023){akses 12 juni 2023}

1982 UNCLOS, constituted a violation.¹¹ The legal power, jurisdiction, and obligations of coastal states inside exclusive economic zones: 1) within coastline states' Exclusive Economic Zone (EEZ); 2) coastal states must take other states' rights and obligations into account when exercising their rights and fulfilling their obligations in the EEZ and act in accordance with the provisions of this Convention; 3) the rights outlined in this Article with respect to the seabed and the land beneath it must be exercised in compliance with Part VI. Fishing boat activities impact every aspect of the maritime environment. An essential part of Indonesia's power to manage its fisheries is monitoring fishing boats.

In response, Indonesia has legally accepted and implemented the 1982 Convention on the Regulation of the Ocean. Straightforwardly and openly, the 17th legislation of 1985 was passed.¹² Infractions about the ownership and operation of boats with fishing equipment or assistance that do not meet size, legal, and customary requirements, or do not have the required license, are considered illegal fishing breaches pursuant to Fish Law.¹³ Fishing boats are prohibited in the Republic of Indonesia's handling area for the following reasons, according to Article 9 of the Fishing Law (Law No. 31 of 2004 jo Law No. 45 of 2009): a. fishing tools and equipment that do not fit the required size specifications; b. fishing equipment that is not the required size; and c. illegal fishing equipment.¹⁴

¹¹ Dina Andriani and Syofiaty Lubis, 'Legal Implementation in the Exclusive Economic Zone (EEZ) Area According to Presidential Decree No. 115 of 2015 concerning Illegal Fishing from the Perspective of International Maritime Law', *EDUCATION Journal: Indonesian Education Journal*, 9.2 (2023), 777 <<https://doi.org/10.29210/1202323209>>.

¹² Muhammad Insan Tarigan and Tjondro Tirtamulia, 'Strengthening International Law As A Guarantee For High Seas Fisheries Conservation', *Bina Hukum Lingkungan*, 4.2 (2020), 329 <<https://doi.org/10.24970/bhl.v4i2.136>>.

¹³ Andre Putra Rumegang, 'The Authority of the Indonesian Navy in the Eradication of Illegal Fishing According to the Presidential Decree of the Republic of Indonesia No. 115 of 2015 concerning the Task Force for the Eradication of Illegal Fishing', *Lex et Societatis*, IV.2 (2016), 139–46 <<https://doi.org/https://doi.org/10.35796/les.v4i2.1.11434>>.

¹⁴ Adhitya Perma Niman, Tofik Yanuar Chandra, and Mohamad Ismed, 'Law Enforcement Against Foreign Fishermen Committing Illegal Fishing Crimes in Indonesia,' *PERFECTO: Journal of Legal Sciences*, 01.September (2023), 183–90 <[https://doi.org/https://doi.org/10.58977/ijlh.v2i1.1\(3\)183-190](https://doi.org/https://doi.org/10.58977/ijlh.v2i1.1(3)183-190)>.

The fishing gadgets mentioned earlier include the rumpon fish-gathering apparatus. The 18th Law of 2021, which was released by the Department of Marine Affairs and Fishing, governs the positioning of fishing gear and boats in Indonesia's high seas and within the State Fish Administration Region. The Regulation also covers fishing facility layout. Article I, Section 4 Fish gathering gear is any fishing device mounted on a fishing vessel and made with different types of bait and solid objects that attract fish. Using these instruments to attract and capture fish makes fishing operations more effective and efficient.¹⁵ Sustainable fisheries may be negatively impacted over time by inadequate management of fish-gathering gear in a single water area. While fish-gathering practices have many benefits, reducing or eliminating their negative consequences is imperative to avoid more serious issues for the environment and civilization.

A strict criminalization policy must be implemented within the judicial system to guarantee the effective and visible enforcement of the rules.¹⁶ The Marine and Fisheries Law contains criminal control. Its goal is to make the unlawful use of fishing gear a federal offense. Criminal Law is defined as (punishment) and a component of criminal justice policy. (*penal policy*).¹⁷ Nonetheless, the notion that a crime is an activity that contradicts the State's interests, which stand for the general welfare of the populace, is the foundation for the validity of the State's power to create laws, enforce them, and punish violations.

The author claims that the widespread usage of "rumpon," an illegal fishing tool, by Filipino fishermen in the Indonesian Exclusive Economic Zone (EEZ) makes this topic intriguing to examine. The Government's use of legal instruments has failed to interrupt the cycle of maritime criminal

¹⁵ Article 1 Number (4) of the Ministerial Regulation No. 18 of 2021. Regarding the Placement of Fishing Gear and Fishing Aids in the Fisheries Management Area of the Republic of Indonesia and the High Seas and the Arrangement of Fishing Andons

¹⁶ (Muladi dan Barda Mawawi Arief, 2007) p. 157

¹⁷ Barda Nawawi Arief, *Bunga Ranpai Criminal Law Policy*, Revised Edition (Bandung: Citra Aditya Bakti, 2005). p. 28

activity. The following issues were found in this study, according to the supplied problem description: First, what are the conditions and mechanisms for using fish collection equipment according to Indonesian positive Law? Second, why are foreign fishermen only sentenced to fines and imprisonment? Third, what is the ideal way for law enforcement to prevent the use of illegal fishing aids "rumpon" in the future?

First and foremost, this research aims to investigate and clarify the legal basis for using fishing gear (rumpon) via a comprehensive scholarly inquiry. The second goal is to examine if punitive measures are in place, such as fines and jail time, for those who use fishing aids. In addition, the next fisheries law will be required to clarify how the best or most appropriate punishments should be developed for those who install illegal fishing equipment.

Methods

A normative juridical research approach is used in this work. Using a statutory technique, this study examines laws, regulations, and legal provisions related to the aforementioned legal challenges. The research utilizes a conceptual approach as its technique. This study employs both primary and secondary legal sources. Law No. 45 of 2009, Regulation of the Minister of Maritime Affairs and Fisheries of the Republic of Indonesia Number 36 of 2023, the Fisheries Law, the ZEEI Law, and UNCLOS 1982 are the primary legal texts analyzed in this study. Furthermore, secondary legal materials are accessible, including books, journals, and other publications related to the discussion of illegal fishing inside Indonesia's Exclusive Economic Zone (EEZ). Legal papers relevant to the research debate are analyzed as part of the document analysis data collection approach. Furthermore, the snowball approach is used.

Result and Discussion

1. State Power over the Exclusive Economic Zone Area

The 1982 United Nations Convention on the Law of the Sea (UNCLOS) introduced the Exclusive Economic Zone (EEZ), a marine law term. One way to interpret Exclusive Economic Zones (EEZs) is as the outcome of national or global governments claiming exclusive rights to marine fisheries resources.¹⁸ Law No. 31 of 2004 governs the Indonesian Exclusive Economic Zone (EEZ), emphasizing that, as per international regulations, the high seas and the waters under the sovereignty and jurisdiction of the Unitary State of the Republic of Indonesia (NKRI) have fish resources and the potential for fish farming. According to the 1945 Constitution and the Pancasila doctrine, these resources are seen as a heavenly gift given to the Indonesian people. The goal is to utilize them as much as possible for the benefit and development of the Indonesian people.

The 1982 United States Convention on the Law of the Sea (LOSC) contains Article 74, which governs the boundaries of the Exclusive Economic Zone (EEZ), which separates states. Nonetheless, Article 74 must include a thorough description of how to establish the EEZ border, especially from a technical standpoint. The discussions over the delineation of Exclusive Economic Zone (EEZ) limits, including the methodologies and factors that affect it, depend on the mutual agreement of the two disputing states. Article 74 of the LOSC indicates that the primary objective in delineating the boundaries of the EEZ is to achieve an equitable settlement. The notion of equidistance, according to which the distance between two countries is shared equally, is often used by states to construct their maritime boundaries. As an alternative, states can use a baseline to establish

¹⁸ I Dewa Ayu Maheswari Adiananda, I Gede Eggy Bintang Pratama, and Ida Ayu Brahmantari Manik Utama, 'Law Enforcement Problems in Illegal Fishing in Indonesian EEZ Waters', *Udayana Master Law Journal*, 8.2 (2019), 237 <<https://doi.org/10.24843/jmhu.2019.v08.i02.p07>>.

their naval delineations. Establishing the marine boundary between two hostile or adjacent countries is done via a treaty.

As part of the marine zone under UNCLOS 1982, the Exclusive Economic Zone (EEZ) agreement is used to draw the maritime boundaries between two nations adjacent or opposed to one another. The likelihood of disputes with nearby countries is quite high in this area. One of the causes is that the biological assets found in the Exclusive Economic Zone are mostly highly migratory species. As a result, if they are not captured in the Indonesian Exclusive Economic Zone, they will either be captured by foreign fleets in the open ocean or in other nations' Exclusive Economic Zones, or they will go extinct.

The idea of an Exclusive Economic Zone (EEZ) was created to boost the economic growth of coastal countries, especially those that continue to grow. Its main goal is to enable coastal states to use biological resources within the defined marine territory under their sovereignty.¹⁹ The idea of an exclusive economic zone represents the coastal countries' attempts to control and manage all resources found in the maritime environment outside and adjacent to their territorial seas. Workload will be facilitated by establishing Exclusive Economic Zones for the Indonesian Government. Since a reduction in management may lead to a major loss of the nation's fishing potential, the Government must continue to exercise some degree of monitoring over this novel idea.

The three previously mentioned components are included in fish theft activities, sometimes referred to as illicit fishing, according to the International Plan of Action (IPOA) organization. The illegal practice of participating in unreported fisheries, which includes fishing operations that are not reported to the proper authorities, is known as "fish theft." Because it disregards the present standards and laws regulating fishing methods,

¹⁹ Teddy Nurcahyawan and Leonardo Saputra, 'Law Enforcement and Sinking of Foreign Vessels (Case Study of Criminal Acts of Illegal Fishing),' *Era Law*, 2.1 (2017), 344–83 <<https://doi.org/https://doi.org/10.24912/era%20hukum.v15i2.1074>>.

this kind of fishing is sometimes called uncontrolled fishing. Indonesian national waters are subject to unregulated fishing activity.:

- a. Foreign fishing boats have never arrived or moored at Indonesian ports of fishing and engage in fishing operations in Indonesian seas without the proper documentation.
- b. Indonesian fishing boats were formerly owned by foreigners and had original paperwork, but they lacked or had phony permission papers (asphalt).
- c. The presence of asphalt-documented Indonesian fishing boats (the paper was provided by an official who proved to be a fake).
- d. Without any paperwork, Indonesian fishing vessels capture fish without authorization.
- e. Both domestic and international fishing boats engage in fishing operations in Indonesian seas that contravene fishing gear regulations and tamper with the fish or catch carried.

In reference to the fifth example of the usage of fishing gear, those who suffer as a consequence, such as individuals or companies, are impacted, in addition to the State's and society's overall interests being violated. If that's what we're after, we call it socioeconomic crime. Article 85: According to Section 9 of the Republic of Indonesia's fishery management area, anyone who willfully owns, supervises, transports, and uses fishing gear and aids that interfere with and undermine the ongoing existence of fish resources on fishing vessels faces a maximum prison term of five years and a maximum fine of Rp2,000,000,000.00 (two billion rupiahs).

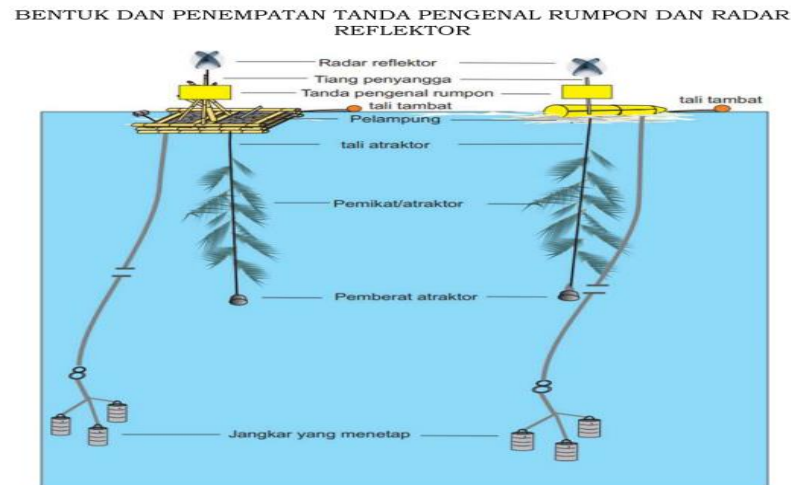
According to Friedmann, who Muladi and Barda Nawawi Arief quoted, the Law protects private property from unauthorized interference and maintains the core framework of the national economy. Furthermore, since using a technology method requires specific knowledge of ecological business practices, it raises the possibility that economic crime will be committed inside the environmental industry. In this context, any activity that violates the Law by utilizing physical force is called an impossible

limitation. The author states that it mostly includes elements like deceit, fraud, abuse, grooming, violation of trust, and legal avoidance. It is possible to prioritize the interests of the State and society using a social approach.

The Mechanism for Installing Rumpon, as described in the Minister of Marine Affairs and Fisheries of the Republic of Indonesia Regulation Number 36 of 2023, governs the use of rumpons as fishing gear, which is the subject of this study. A rumpon is an auxiliary fishing device (ABPI) incorporated into a fishing vessel. To draw fish and make it easier for them to collect, it uses a range of solid objects in various shapes and sizes as bait or lures. Rumpon is intended to increase the effectiveness and efficiency of fishing operations.²⁰

²⁰ Article 1 Number 10 of the Regulation of the Minister of Maritime Affairs and Fisheries of the Republic of Indonesia Number 36 of 2023 concerning the Placement of Fishing Gear and Fishing Aids in Measured Fishing Zones and State Fisheries Management Areas of the Republic of Indonesia in Inland Waters.

Fig.1
Types of Rumpon



Source, Image; ²¹

As an ABPI fishing aid, the "fixed fish collecting device" is the fish gathering equipment seen in the above illustration. Please note that there are two sorts of fish gathering tools: a. Fish collection tools, and b. lights. The two types of fish gathering equipment are: a. a. drift fish collector and b. a fixed fish collector. Fish collectors set up on the water's or sea's surface without anchors and float in the direction of the current are known as drifting fish collectors. Fish-gathering equipment permanently positioned with anchors and ballasts is a fixed fish-gathering apparatus. A fixed surface fish collection device is placed on the water's or sea's surface. Another kind of fixed fish fiscal instrument is a fixed important fish collecting device located at the bottom of the ocean. The high seas are equipped with floating fish gathering devices. Equipment for collecting fish is still kept in the frigid seas or PL WPPNRI.²²

²¹ Image Source, Regulation of the Minister of Maritime Affairs and Fisheries of the Republic of Indonesia Number 36 of 2023 concerning the Placement of Fishing Gear and Fishing Aids in Measured Fishing Zones and State Fisheries Management Areas of the Republic of Indonesia in Inland Waters.

²² Chapter IV Article 13 Paragraphs (1), (2), (3), (4), (4), (5), (6) and Article 14 of the Regulation of the Minister of Maritime Affairs and Fisheries of the Republic of Indonesia Number 36 of 2023 concerning the Placement of Fishing Gear and Fishing Aids in Measured Fishing Zones and Fisheries Management Areas of the Republic of Indonesia in Inland Waters.

2. Aspects of Placement Licensing Rumpon

The maximum number of permanent rumpons allowed for any fishing vessel working in PL WPPNRI is three (3). For those working in the High Seas, there can be no more than 15 (fifteen) permanent rumpons. Furthermore, according to the RFMO's guidelines for vessels operating in the High Seas, the rumpon drifted. There can be no more than five (5) rumpons on a minimum of ten (10) units of fishing vessels owned by small fishermen who are part of cooperatives or joint business groupings.²³

Permanent fish collection equipment is placed in PL WPPNRI with the following restrictions: (a) it must be placed in the fishing area specified in the Fishing Subsector Business License; and (b) it must be at least 10 (ten) nautical miles from Fishing Route II to Fishing Route III. The Indonesian archipelago's sea channels, turtle and marine mammal migratory pathways, shipping channels entering and leaving ports, and coral reef ecosystem zones are still off-limits to the use of fish gathering equipment.²⁴ The following rules must be followed while using fish gathering equipment on the high seas: (a) it must be located in a fishing area specified in the Fisheries Subsector Business License; (b) it cannot be placed in a conservation area; and (c). It is not situated along the migratory routes of marine animals and turtles. The Minister or Governor decides the distribution of fish gathering equipment in compliance with his authority. According to a study conducted by organizations that work in marine and fisheries research, as well as other organizations, the distribution of fish gathering equipment is decided. The equipment's distribution is considered when issuing a SIPR for fish collecting equipment in PL WPPNRI.

²³ Article 16, Paragraphs (1) and (2) of the Regulation of the Minister of Maritime Affairs and Fisheries of the Republic of Indonesia Number 36 of 2023

²⁴ Article 17 (1), (2) and Article 14 Paragraph (6) of the Regulation of the Minister of Maritime Affairs and Fisheries of the Republic of Indonesia Number 36 of 2023

3. Basis for Enforcement of Fines and Criminal Penalties in the Fisheries Law

As a matter of international Law, the authority of the Government and the Government of the State demonstrates sovereignty, which is necessary for a country to operate. Additionally, the main idea behind sovereign space is that a country's ultimate power is limited by its borders, giving it absolute control over its territory.²⁵ The relationships between states and other entities recognized as international Law govern subjects of international Law. A country's territory is divided into four major groups under international Law, and the maritime area is one of them.²⁶ As to M. Daud Silalahi's book, "The sea is a vital component that offers numerous advantages for the country's well-being."²⁷ Achieving maximum prosperity is the main objective of managing and controlling natural resources per the spirit of Article 33 of the 1945 Constitution.²⁸

Indonesia's fisheries policy has been developed based on the 1945 Constitution. To protect the nation's marine waterways, this policy calls for creating rules and regulations to deter and eradicate fisheries offenses. Among these laws is the Territorial Sea and Marine Environment Law of 1939 (Territorial Zee en The marine sector Kringen Ordonantie, Stbl. 1939 No. 442). Regarding the acceptance of the United Nations Convention on the Law of the Sea (UNCLOS), the Article refers to Indonesian Law Number

Article 19 Paragraph (1), (2), and (3) of the Regulation of the Minister of Maritime Affairs and Fisheries of the Republic of Indonesia Number 36 of 2023

²⁵ E. R Mochtar, K, & Agoes, *International Law of the Sea* (Bandung: Binacipta, 2021). p. 128

²⁶ Mirza Satria Buana, *Hukum Internasional: Teori dan Praktik* (Bandung: Nusamedia, 2019).

²⁷ Amandha Budhy Adhywidya and Anto Ismu Budianto, 'Legal Remedies Against Illegal Fishing of Vietnamese Fishing Vessels in Zeei,' *Trisakti Law Reform*, 5.2 (2023), 293–304 <<https://doi.org/10.25105/refor.v5i2.16272>>.

²⁸ Elita Rahmi, Rustian Mushawirya, dan Eko Nuriyatman, 'Omnibus Law Prospective on Natural Resources', *Pengembangan Hukum Lingkungan*, 5.2 (2021), 304–18 <<https://doi.org/http://dx.doi.org/10.24970/bhl.v5i2.170>>.

17 of 1985. Law Number 5 of 1983 deals with Indonesia's Exclusive Economic Zone, which the user refers to. The Republic of Indonesia passed Law Number 32 of 2014 regarding marine issues. The text refers to Law Number 45 of 2009 of the Republic of Indonesia, which amends Law Number 31 of 2004 concerning Fisheries.²⁹ (6) Law No. 11 of 2020 on Employment Creation and (7) Government Regulation No. 13 of 2022 on the Ministry of Maritime Affairs and Fisheries' Application of Performance Allowances. The Article refers to Regulation Number 36 of 2023, which was published by the Republic of Indonesia's Minister of Marine Affairs and Fisheries. Fishing and hunting gear installation in state fisheries management areas and measured fishing zones inside Indonesia's inland waterways is governed by this Law.³⁰ The Government of Indonesia must thus enact laws that use preventive and punitive methods to guarantee the preservation of fishing resources and protect and control them.

Law enforcement policies, especially those related to criminal Law, involve steps to deter crime, according to Barda Nawawi Arief. The pattern of threats from criminal Law is a reliable indicator of a society that upholds the core values of modern social life.³¹ A broad view of the goal of criminal punishment should be held, including not only the avoidance of unlawful behavior but also the maintenance of a steady balance between interests and values..³² The fundamental tenet of criminal Law is the doctrine of guilt, or "accountability," *Mens rea*, the Latin word for the notion of shame. It describes the mental State of an individual who does an act that is only deemed blameworthy if their motive is sinister. This concept is known as

²⁹Andrie Irawan and Yulio Iqbal Cahyo Arsetyo, 'Optimization of Criminal Law Enforcement of Illegal Fishing in Indonesian Waters', JOURNAL OF LAW DAS SOLLEN, 9.2 (2023), 780–809 <<https://doi.org/10.32520/das-sollen.v9i2.2985>>.

³⁰Article 85, Paragraph (1) of Law Number 31 of 2004 concerning Fisheries, which was amended to Law Number 45 of 2009

³¹Hwian Christianto, 'Interpretation of Progressive Law in Criminal Cases', Law Pulpit - Faculty of Law, Gadjah Mada University, 23.3 (2012), 479 <<https://doi.org/10.22146/jmh.16170>>.

³²Derita Prapti Rahayu, 'Criminal Objectives of the Mineral Law in the Perspective of the Criminalization Policy,' Bina Hukum Lingkungan, 5 (2021) <<https://doi.org/http://dx.doi.org/10.24970/bhl.v5i2.189>>.

the presumption of innocence in English, which holds that an individual is not considered guilty unless their acts are deemed to be legally liable. This notion stipulates that two conditions must be met to punish an individual who has committed a crime. The prohibition of external action or criminal activity must be explicit. A wicked or repugnant mindset must exist inside the act (*actus reas*). (criminal intent).³³

J.E. Sahetapy underscored the significance of coordinating criminal punishment with the tenets of legal awareness. These guidelines must be flexible enough to accommodate time, place, and situation variations. When a particular offense disturbs the existing order and calls for the application of an appropriate punishment, they ought to be used." Articles 85 to 101 of Law Number 31 of 2004 concerning Fisheries, which strictly define what constitutes a material offense, stipulate that anyone found in the fisheries management area of the Republic of Indonesia as defined by Article 9 will be imprisoned for a maximum of five (five) years and fined up to Rp 2,000,000,000.00 (two billion rupiah) for willfully possessing, controlling, carrying, and using fishing gear and fishing aids that interfere with and damage the sustainability of fish resources on fishing vessels. Official Refinement Article 71A states, "The fisheries court has the power to examine, adjudicate, and decide cases of criminal acts in the fisheries sector that occur in the fisheries management area of the Republic of Indonesia, both by Indonesian citizens and foreign citizens." Indonesian Navy Officers, Fisheries Civil Servant Investigators, and National Police Investigators of the Republic of Indonesia investigate illegal activity in the fisheries sector inside the fisheries control region of the country.³⁴

Table 1

³³ Mahrus Ali, *Criminal Law of Terrorism Theory and Practice* (Jakarta: Gramata Publishing, 2012). p. 221

³⁴ Article 71A, and 73 Paragraph (1) of Law Number 45 of 2009 concerning Fisheries

Source: Fisheries Crime Case Decision (Bitung District Court)

No	Case Number	Defendant	Penalty
1	8/Pid.Sus-PRK/2023/PN Bit	Wendel Labador Amores (Philippina)	Criminal Fine Rp. 25,000,000.00
2	09/Pid.Sus-PRK/2023/PN Bit	Harim Pasculado Salmoro (Philippina)	Criminal Fine Rp. 25,000,000.00
3	6/Pid.Sus-PRK/2023/PN Bit	Angelo Santiago Angalan (Philippina)	Criminal Fine Rp. 25,000,000.00
4	1/Pid.Sus-PRK/2022/PN Bit	Eliseo Manatad Ramos JR. Jr (Philippina)	Criminal Fine Rp. 75,000,000.00
5	20/Pid.Sus-PRK/2020/PN Bit	Daniel Alcaide (Philippina)	Criminal Fine Rp. 250.000.000.00
6	19/Pid.Sus-PRK/2020/PN Bit	Joel L. Della Pena (Philippina)	Pidana Denda Rp. 250.000.000,00
7	13/Pid.Sus-PRK/2021/PN Bit	Jorge Quisto (Philippina)	Criminal Fine Rp. 50.000.000.00
8	9/Pid.Sus-PRK/2019/PN.Bit	Saddam Nor Baluan (Philippina)	Criminal Fine Rp. 400.000.000.00
9	1/Pid.Sus-PRK/2020/PN.Bi	Vincent Catamora Laureto (Philippina)	Criminal Fine Rp. 30,000,000.00
10	7/Pid.Sus-PRK/2021/PN Bit	Leopoldo Bruna Orence Laureto (Philippina)	Criminal Fine Rp. 70.000.000

According to the preceding statistics, only Filipino citizens were punished criminally between 2019 and 2023. Due to the cumulative criminal procedure used under the Fisheries Law, prison time and penalties are imposed simultaneously. Instead of accomplishing the intended criminal goals of deterrence, the penalty imposed in the judge's judgment eventually acts as an educational tool to help the guilty person admit and remedy his mistake. It is essential to acknowledge the use of illegal fishing gear as a serious criminal activity to solve this problem. This calls for persistent and efficient law enforcement actions and severe fines that effectively deter such conduct. Any punishment or order must be considered, considering the potential deterrent effect on the subject. Mertokusumo claims that law enforcement has a certain meaning and a

predetermined way of being carried out. Legal clarity, usefulness, and justice must be considered to guarantee efficient law enforcement.³⁵

As previously said, the judge's ruling raises questions about why it only considers fines as the main punishment and ignores jail or other types of punishment. Understanding the elements that make up a crime is essential before reacting, since there is a need to apply sanctions. Holding people and companies accountable for their illegal actions is critical to establishing legal certainty in the fishing industry.

The following conditions are met by Article 85 in accordance with Article 9 paragraph (1) of Law Number 31 of 2004 controlling Fisheries and Article 55 paragraph (1) number 1 of the Criminal Code: 1. Personal characteristics; 2. Intentional considerations; 3. Elements of fishing equipment and tool ownership, skill, transportation, and use; 4. Elements that interfere with and damage the long-term sustainability of fish stocks; 5. Elements of fishing boats; 6. Elements falling within the Republic of Indonesia's purview for fisheries administration

The content of the Article's components is interdependent, which means that every element of illegal behavior is continuously linked to other elements. The reasons why an unlawful activity is ethically wrong or against the Law are made clear by this connection. The procedure by which things are developed as a need for criminalization is explained in the following material.

- 1) Every person is referred to as "Everyone" in Article 1, 14 of the Law of the Republic of Indonesia. Law No. 45 of 2009 amends the Republic of Indonesia's laws. The 31st modification to the original Fisheries Law, which was passed in 2004, is the current version of the Law. According to Regulation Number 11 of 2020, which deals with job creation, as previously amended by Regulation instead of Law Number

³⁵ Rokilah Rokilah, 'The Dynamics of the Indonesian Legal State: Between Rechtsstaat and Rule of Law,' Nurani Hukum, 2.1 (2020), 12 <<https://doi.org/10.51825/nhk.v2i1.8167>>.

2 of 2022 concerning Job the Universe, "each person" may be either an individual or a firm.

When it comes to implementing criminal Law, "everyone" means any person thought to have committed a crime. People who can justify their behavior and are in excellent bodily and spiritual health fall under this category.

- 2) The element of intentionality is that the word intention (*opzet*) means that the act is a conscious purpose from the will to commit a specific criminal act. *Memorie van Toelichting (MvT)* states that intentionality is the act of doing an act that is forbidden intentionally and knowingly (*willens en wetens*).

The term "willen" describes the motivation or purpose that underlies an action, suggesting that a wanted or expected result is present. However, according to Wettens, the perpetrator of the act is already aware of the consequences before they are carried out. He understands what he wants to do is illegal (against the Law). According to the Law, unlawful acts (*wederrechtelijkheid*) are prohibited behaviors that may result in criminal proceedings.

- 3) Getting, learning how to use, transferring, and using fishing instruments and equipment. The Law of the Republic of Indonesia Number 45 of 2009, which amends Law of the Republic of Indonesia Number 31 of 2004 concerning Fisheries, states in Article 9 Paragraph (1) that tiger trawls, illegal fish collection devices, and compressors are examples of fishing equipment and tools that interfere with and damage the long-term availability of fish resources.

Regarding positioning fishing aids and gear in WPP-NRI and the high seas, and the arrangement of fishing accessories, the user refers to Regulation Number 18 of 2021 of the Minister of Marine Affairs and Fisheries. The Republic of Indonesia's Regulation of the Minister of Marine Affairs and Fisheries Number 36 of 2023, which addresses the placement of fishing gear and aids in Fisheries Management Areas and

Measured Fishing Zones in Inland Waters, has amended this Regulation. Outlines rules on what fishing gear is allowed and what is not, including prohibiting the use of illegal gear to aid fishing.

- 4) Variables that impair and disturb fish populations' long-term sustainability. The phrase "can harm and endanger the sustainability of fish resources and their environment" is a cumulative variation within the sentence. This suggests that the condition is deemed satisfied if the components are met.³⁶

As a result, the harmful fishing methods seriously threaten the efficient management of Indonesia's fisheries resources. The Republic of Indonesia's Attachment to Ministerial Decree Number 114/KEPMEN-KP/SJ/2019 concerns a National Action Plan for the Prevention and Control of Dangerous Fish Activities from 2019 to 2023. This plan argues that using fish harvesting equipment negatively affects fishing methods since it leads to catching many tiny tuna utilizing fishing gear that works close to the water's surface, including ring trawls. The sustainability of fish stocks and the ecosystem is at risk due to this practice.

It may also affect the behavior and migration of tuna fish, preventing or trapping them and interfering with the operation of other fishing gear, including tuna and gill nets. Fish-gathering equipment must be safely positioned within a 10-mile radius to maximize tuna fishing effectiveness. Because of this, excessive fishing gear might cause conflicts amongst fishermen and interfere with the young tuna's ability to migrate.³⁷

- 5) According to Article 1 number 9 of Law of the Republic of Indonesia Number 45 of 2009 concerning Amendments to Law of the Republic

³⁶ Sumangat Solomon Sidauruk, July Esther, and Herlina Manullang, 'Criminal Law Policy as an Effort to Minimize Bullying Crimes in Electronic Media,' *Nommensen Journal of Legal Opinion*, 2.02 (2021), 232–41 <<https://doi.org/10.51622/njlo.v2i02.390>>.

³⁷ Wudianto Wudianto and others, 'A Study on the Management of Deep-Sea Rumpon as a Tool to Assist Tuna Fishing in Indonesian Waters,' *Indonesian Fisheries Policy Journal*, 11.1 (2019), 23 <<https://doi.org/10.15578/jkpi.1.1.2019.23-37>>.

of Indonesia Number 31 of 2004 concerning Fisheries, as most recently modified by Law of the Republic of Indonesia Number 11 of 2020 regarding Job Creation, as most recently amended by Regulation instead of Law Number 2 of 2022 concerning Job Creation, fishing vessels are any boats, ships, or other gliding devices used for fishing, supporting fishing operations, raising fish, transport, processing, education, and research/exploration.

Accordingly, when the Criminal Law applies, a "fishing vessel" is an item the offender uses to conduct fisheries offenses.

6) Elements that make up the Republic of Indonesia's State Fisheries Management Region. According to Article 5 Paragraph (1) of Law Number 31 of 2004, as well as Articles 85 and 1 Number 3 of Government Regulation of the Republic of Indonesia Number 11 of 2023 concerning Measured Fishing, the State Fisheries Administration Area of the Republic of Indonesia (WPPRI) is an approved region for fishing and fish farming. The Republic of Indonesia's fishery oversight area, which encompasses both fishing and fish farming operations, is referred to as the fisheries in question. Fish farming is possible on land inside the Republic of Indonesia's borders and in Indonesia's waterways, such as ZEEI, rivers, reservoirs, and other bodies of water.

a) According to Law Number 6 of 2023 regarding the Conversion of Government Regulations into Law Number 2 of 2002 concerning Job Creation, Article 27, 1 states that Indonesian waters include interior and archipelagic waters. This is per Article 1, number 20, paragraph 2 of the Marine and Fishing Law.

b) The Marine and Fisheries Law's Article 1, Number 21, Paragraph 2, and Law Number 6 of 2023's Article 27, Number 1 on the Stipulation of Government Regulations, instead of Law Number 2 of 2002 about Job Creation into Law, both describe the ZEEI (Exclusive Economic Zone). This Law stipulates that the ZEEI, or

Indonesian Exclusive Economic Zone, is a maritime region that extends outside the territorial sea of Indonesia. The seafloor, the land underneath it, and the ocean above it are all included in the ZEEI's borders, which are established by Indonesian laws and regulations governing its seas. Two hundred nautical miles from the Indonesian Territory Sea's baseline is the ZEEI's furthest boundary.

- c) The Republic of Indonesia may employ rivers, reservoirs, and other bodies of water, as well as possible locations for fish farming. Article 1 of the Minister of Marine Affairs and Fisheries of the Republic of Indonesia Regulation Number 18/PERMEN-KP/2014 concerning the State of the Republic of Indonesia Fisheries Management Area (WPPNRI) states that the State of the Republic of Indonesia Fisheries Management Area, or WPPNRI for short, is the fisheries management area for fish farming, conservation, studies, and fisheries development. This area includes exclusive seas, coastal waters, archipelagic waters, additional zones, and Indonesia's exclusive economic area.

Article 73, Paragraph (3) of the 1982 UNCLOS International Convention must be followed by Indonesia, even if it has complied with the criminal components specified in positive Law. This Article outlines that, without a mutual agreement or other types of physical punishment, coastal governments should not be subjected to incarceration as a form of punishment for violating fishing rules and regulations inside the Exclusive Economic Zone. This criterion complies with the 1982 UNCLOS Article 73 clauses, Paragraph (3).³⁸

Furthermore, as stated clearly in letter A, 3 of SEMA Number. 3 of 2015, which deals with the execution of the solutions made during the Supreme Court chamber's plenary meeting in 2015 as a directive for carrying out

³⁸ Nur Aprilia Al Rasyid, Jusina Augustina Yvonne Wattimena, and Octovina Lucia Charlotte Tahamata, 'Violation of the Maritime Boundaries of the Exclusive Economic Zone by Vietnamese Fishermen and Its Legal Implications', *PATTIMURA Law Study Review*, 1.1 (2023), 92–102 <<https://doi.org/10.47268/palasrev.v1i1.10588>>.

court responsibilities, "In instances of fish theft within the ZEEI area, the accused can solely be liable for a monetary penalty instead of being incarcerated." UNCLOS 1982's Article 73, paragraph (1), states that the Republic of Indonesia is legally authorized to enforce its laws and regulations within its Exclusive Economic Zone (EEZ) by boarding ships, conducting inspections, making arrests, and bringing legal proceedings against those who steal fish.

Although in 2017, the Government of the Republic of Indonesia and the Government of the Philippines ratified the Agreement *Between The Government Of The Republic Of Indonesia And The Government Of The Philippines Concerning The Delimitation Of The Exclusive Economic Zone Boundary (2014)*. Determining the borders of the Exclusive Economic Zone between the two nations provides legal clarity concerning sovereign rights, among other things.

A bilateral agreement that would expressly regulate the Criminal Law of Confinement's rules is not included. The ruling in this case must thus follow the guidelines set out in UNCLOS. A country's governing body has to be able to handle both internal and foreign problems. The region over which Indonesia exerts its control and enforces its laws and boundaries when other nations attack it is called its "jurisdictional territory." Therefore, it is evident that further legal frameworks about the rights and obligations of protecting Indonesian waters are required.

The Fisheries Law must also be broadened to include additional regulatory actions, fines, penalties, and incarceration. Additional transgressions indeed need to be regulated. Accordingly, a judge may discover legal facts via the application of morality. National and international legal norms have backed the existence of an independent judiciary. The judiciary's power to uphold the Law and administer justice is established under Article 24, Paragraph (1) of the Republic of Indonesia's 1945 Constitution.

In addition, Article 1 of Law Number 4 of 2004 concerning Judicial Power clearly states that judicial power is the right of a sovereign state to preserve an independent judiciary that respects the Pancasila-based principles of justice and Law to carry out the rule of Law in the Republic of Indonesia. According to laws and regulations, independent judicial authority means that judicial power is procedurally and institutionally autonomous. Judicial independence is the autonomy and impartiality shown in the analysis of cases, the presentation of evidence, and the rendering of decisions. For example, where the main punishment is not enough to achieve the desired result of the penalty, further crimes may be imposed under Article 66 Paragraph (1) of the Criminal Code Number 1 of 2023.³⁹

4. Construction of Additional Criminal Sanctions and Actions as a Deterrent Effect on Perpetrators

Philosophically speaking, laws and regulations must faithfully embody the core ideas upon which they are based. The term "content" describes the particular clauses and specifications that, according to the relevant legal laws and regulations, establish a statute or Regulation. A policy-oriented approach should be the main method for criminal law reform. It is also committed to providing a value-centric methodology.⁴⁰ J.A. Pontier explained that legal discovery activities are government actions (*overheidshandelen*) and a monopoly of public authority (*overheidsmonopolie*), so assistance can be obtained using violence.⁴¹ As a result, people who commit crimes cannot be blamed and punished; instead,

³⁹ Criminal Code Number 1 of 2023, Article 66 of the Criminal Code, Paragraphs (1) and (2)

⁴⁰ Kresna Adicandra and Teguh Suratman, 'The Urgency of Civil Servant Investigators in Law Enforcement of Criminal Acts in the Environmental Sector,' *MLJ Merdeka Law Journal*, 1.1 (2020), 10–21 <<https://doi.org/10.26905/mlj.v1i1.4289>>.

⁴¹ Rocky Marbun, 'Repositioning Victims in the Criminal Justice System in Indonesia: A Throwaway (Gowerfen-Sein) in the Myth of Modernity,' *Udayana Master Law Journal*, 8.4 (2019), 525 <<https://doi.org/10.24843/JMHU.2019.v08.i04.p07>>.

they must receive treatment for resocialization and self-improvement.⁴² The legal system's power to control and outlaw actions that might jeopardize the stability and long-term sustainability of fish resource management and the environment is urgently needed. The legal function has the advantage of being forceful or binding in addition to its role in regulating fishing resources. Four categories are used to classify the purpose of criminal Law: absolute, relative, combination, and current punishment ideas.⁴³

Relative, integrated, and absolute theories are the three modified modern theories. According to Wayne R. Lafave, one criminal objective is to have a deterrent impact, preventing offenders from committing the same crimes again.⁴⁴ Three pillars form the foundation of the contemporary school of criminal Law. To begin with, criminality must be eradicated. Second, take note of different scientific fields. Utmost remedium comes in third.⁴⁵ Social protection laws are primarily intended to help people become part of society rather than to penalize them for their behavior."⁴⁶

Offenders who violate this system are subject to criminal penalties and different forms of intervention, including medical measures. The fundamental tenets of the double track system, the need for equitable criminal consequences, and the balancing of rebuke and education lead to criminal actions and penalties. According to Albert Camus's existentialism, a philosophical system that acknowledges the equivalence of punishment and treatment, a person's sentence must be guided by either instruction or punishment to help them become a more complete person. Every

⁴² M. Abdul Kholiq and Ari Wibowo, 'The Application of the Theory of Criminal Objectives in Cases of Violence Against Women: A Study of Judges' Decisions,' IUS Law Journal QUIA IUSTUM, 23.2 (2016), 186–205
<<https://doi.org/10.20885/iustum.vol23.iss2.art2>>.

⁴³ Al-Abidin Farid, *Executive Pidana 1* (Jakarta, Graf, 2007).Hlm. 11

⁴⁴ Eddy O.S. Hiariej, *Principles of Criminal Law* (Yogyakarta: Cahaya Atma Pustaka, 2018). p. 35

⁴⁵ Eddy O.S. Hiariej, *The Principle of Legality & Legal Discovery in Criminal Law* (Jakarta: Erlangga, 2009).p. 27

⁴⁶ Muladi and Barda Nawawi Arief, *Criminal Theories and Policies* (Bandung: Alumni, 2010). p. 35

community needs a social order, or a system of regulations founded on the universal need and desire to coexist, according to Frenchman Marc Ancel, the founder of *Defence Sociale Nouvelle*.⁴⁷

Regarding the punishment of acts, Roeslan Saleh said that when an offender tries to achieve his goals by carrying out an act and executing a sentence, there are repercussions for non-criminal behaviors. These penalties are specifically designed to avoid. One of the objectives of this action is to safeguard the public from people who pose little danger but have the capacity to commit crimes. In addition to serving as a form of vengeance, sanctions are also meant to protect criminals. To prevent the offender from repeating his actions, the action also aims to educate him about the wrongness of his actions and their legal ramifications. H.L. Packer claims that regarding punishments, "benefiting the individual receiving therapy is the main goal of treatment. The emphasis is on assisting him rather than his past or future behavior".⁴⁸

a. Concept of Maximizing Fines for Social Welfare

Human rights advocates believe fines, not prison time, should be the main penalty under the Fisheries Law. The concept has been substantially altered, nevertheless, by the addition of the idea of maximizing social welfare. One way to gauge societal well-being is to look at how much money the criminal makes from committing a crime, how few losses it causes, and how much the police spend. The Government's direct losses, damages, and costs that the state candidate must pay to avoid becoming a victim are all a consequence of this unlawful behavior. Criminal law enforcement's costs include deterrence, disclosure, arrest, and punishment. It is necessary to compute all of this and compare it to the money earned by the criminal via

⁴⁷ Syaiful Bakhri, 'The Influence of Criminal Philosophical Schools in the Formation of National Criminal Law,' *Ius Quia Iustum Law Journal*, 18.1 (2011), 136–57 <<https://doi.org/10.20885/iustum.vol18.iss1.art8>>.

⁴⁸ Pardomuan Gultom, 'Sociological Analysis of Law on the Possibility of Implementing Restorative Justice in Corruption Crime Cases in Indonesia,' *SSRN Electronic Journal*, 3.2 (2022), 358–67 <<https://doi.org/10.2139/ssrn.4065348>>.

the commission of an unlawful conduct. These costs are doubled to prevent overspecialization and overinterpretation of the Law.

Since the double fines system is governed by Article 40 paragraph (7) of Law Number 44 of 2008 about Pornography and Article 130 of Law Number 35 of 2009 concerning Narcotics, it is not a new addition to Indonesia's criminal Law. Additionally, it must be ensured that the fines paid by the offenders are used to compensate the State for the harm it has endured. The offender's fine must be utilized to upgrade the institution's operational support equipment and internal and external systems. For example, the quantity and capacity of fish captured would be affected if the defendant set up unlawful fish collecting equipment inside Indonesian territory.

b. Implementation of Social Work Crimes as an Alternative to Prison Sentence Procedures

Adding social work in place of punishments is another change that has to be brought about. Social work crimes are an alternative to jail since they include social activities meant to change the conduct of offenders. This kind of punishment is already specified in Criminal Code Number 1 of 2023; it is not yet included in criminal laws and regulations that are not part of the Criminal Code. Because fishing is considered a criminal activity, a defendant may be required to do social work for fishing-related charges. Social work crime is a tempting substitute for alleviating prison congestion and minimizing the negative consequences of incarceration on criminals. The forms vary, ranging from finding employment at a government institution to serving as janitors in courts or public areas while closely monitored by law enforcement or other authorities.

Social Work Crime aims to help criminals improve themselves, learn new skills, and reenter the workforce. These are the objectives for persons who commit fishing-related crimes. Second, offenders must have access to positive social activities via social work. Third, suitable support and counseling are imperative for criminal offenders involved in social work

crimes; Fourth, an effective monitoring and assessment system is vital for executing social work crimes; and Fifth, support and counseling are crucial. Collaboration Among Affiliated Entities: Executing social work crimes necessitates robust coordination across several affiliated groups, including social institutions, law enforcement, the prosecutor's office, and correctional facilities.

c. Sanctions Policy for Ship Sinking for Foreign Fishermen

According to the theory of international criminal law enforcement, national legal proceedings made to accuse and try transnational criminals operate as a conduit for the practice of sinking and burning ships, which is an indirect way of upholding international Law. All evidence of fishing vessels must be eliminated per this international criminal Law. Hence, court proceedings must be finished before ships flying foreign flags may be destroyed or burnt. Hikmahanto Juwana, a professor of international Law at the University of Indonesia, provides five reasons.(Nurcahyawan & Saputra, 2017):

- 1) Every country forbids its citizens from committing crimes abroad. Fishing in Indonesian waters was prohibited for foreign ships that sank. This is considered to be against the Law. This suggests that the person in question is guilty since the sinking ship was previously the focus of a legal action. The sinking policy for foreign fishing vessels needs support.
- 2) The sinking happened in the region where Indonesia defends sovereignty and sovereign rights.
- 3) There is a legal foundation for ship sinkings under Article 69, Paragraph 4 of the Fisheries Law 2009. A judicial decision with long-term legal consequences was necessary before a yacht could be sunk in 2009.
- 4) Other countries must recognize the severity of this crime against Indonesia. Indonesia would suffer even more significant damage if this were left unchecked.

- 5) The safety of the crew is the priority throughout the sinking operation.

The sinking mechanism has been the focus of most fisheries crime investigations to date; nevertheless, this mechanism only applies to ships flying foreign flags and does not apply to foreign fishermen employing illegal fishing gear. But in the future, this system will have to be consistently implemented by meeting various criteria. The provisions of Article 69, Paragraph 4 of Law Number 45 of 2009 about Amendments to Law Number 31 of 2004 concerning Fisheries may be applied if the objective and subjective conditions have been satisfied. This policy of sinking foreign fishing boats operating in Indonesian seas must be enforced more strictly by the Government of Indonesia to prevent these illicit operations and safeguard Indonesian sovereignty. The Fisheries Law controls ship sinkings in two ways: directly, as per Article 69 Paragraph 4 of the Fisheries Law, and through a mutual agreement charter between the Directorate General, PSDKP of the National Police, the Indonesian Navy, and the National Police if the ship takes part in risky maneuvers and the crew or captain resists acts of violence. Or, as stated in Article 76 A of the Fisheries Law, one may ask for authorization and court decisions.

Conclusion

Based on the results and discussion above, this research concludes as follows. First off, an ABPI (a kind of fishing aid) that is fastened to a fishing vessel is called a rumpon. It increases fishing efficacy and efficiency using various lures or attractors shaped like solid items to draw fish. In the Indonesian Exclusive Economic Zone (EEZ), a rumpon has been installed, violating Article 56 of the 1982 UNCLOS. Second, while issuing penalties under the ZEEI criminal system, the judge must consider Article 73, Paragraph (3) of the 1982 UNCLOS International Convention. The next section specifies that "Coastal State sanctions imposed for violations of

fisheries laws and regulations in the Exclusive Economic Zone shall not include confinement if there is no agreement to the contrary between the State concerned or other forms of physical punishment." Therefore, a bilateral agreement is still necessary for Indonesia and the Philippines to adhere to the conditions of UNCLOS.

Furthermore, SEMA Number. 3 of 2015's letter A number 3, which deals with the implementation of the outcomes of the 2015 Supreme Court chamber plenary meeting, states the following as a guideline for the judiciary's duties: "In the case of illegal fishing in the ZEEI area, the defendant can only be subject to a fine without being sentenced to prison instead of a fine." Third, the basic idea behind a double-track system is that criminal crimes and penalties come from the same place. This suggests the need for a fair criminal justice system and a balance between reprimands and coaching. This indicates that more severe and stringent penalties for domestic violations and larger fines for fisheries infractions are required if the legal treatment of offenders is to have a true deterrent effect rather than operate as a prize draw.

References

Book

- Ali, M. (2012). *Hukum Pidana Teroriseme Teori dan Praktik*. Gramata Publishing.
- Asshiddiqie, J. (2017). *Pengantar Hukum Tata Negara*. Rajawali Pers.
- Badan Pusat Statistik. (2023). *Statistik Sumber Daya Laut dan Pesisir 2023*. Bps.Go.Id.
- Barda Nawawi Arief. (2005). *Bunga Ranpai Kebijakan Hukum Pidana* (Edisi Revi). Citra Aditya Bakti.
- Eddy O.S. Hiariej. (2018). *Prinsip Prinsip Hukum Pidana*. Cahaya Atma Pustaka.
- Eddy O.S. Hiariej. (2009). *Asas Legalitas & Penemuan Hukum Dalam Hukum Pidana*. Erlangga.

Mirza Satria Buana. (2019). *Hukum Internasional: Teori dan Praktek*. Nusamedia.

Mochtar, K, & Agoes, E. R. (2021). *Hukum Laut Internasional*. Binacipta.

Muladi dan Barda Mawawi Arief. (2007). *Bunga Rampai Hukum Pidana*. Alumni.

Muladi dan Barda Nawawi Arief. (2010). *Teori-Teori dan Kebijakan Pidana*. Alumni.

Zainal Abidin Farid. (2007). *Hukum Pidana 1*. Sinar Grafika.

Journal

Adiananda, I. D. A. M., Pratama, I. G. E. B., & Manik Utama, I. A. B. (2019). Problematika Penegakan Hukum Dalam Tindak Pidana Illegal Fishing di Wilayah Perairan ZEE Indonesia. *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)*, 8(2), 237. <https://doi.org/10.24843/jmhu.2019.v08.i02.p07>

Adicandra, K., & Suratman, T. (2020). Urgensi Penyidik Pegawai Negeri Sipil dalam Penegakan Hukum Tindak Pidana di Bidang Lingkungan Hidup. *MLJ Merdeka Law Journal*, 1(1), 10–21. <https://doi.org/10.26905/mlj.v1i1.4289>

Afriandi, F., Ariyadi, F., Abdillah, L., & Lestari, Y. S. (2023). Analisis Illegal Fishing Di Perairan Aceh. *Jurnal Sosial Ekonomi Kelautan Dan Perikanan*, 18(2), 149–162. <https://doi.org/http://dx.doi.org/10.15578/jsekp.v18i2.13006>

Amandha Budhy Adhywidya, & Anto Ismu Budianto. (2023). Upaya Hukum Terhadap Illegal Fishing Kapal Penangkap Ikan Vietnam Di Zeei. *Reformasi Hukum Trisakti*, 5(2), 293–304. <https://doi.org/10.25105/refor.v5i2.16272>

Andriani, D., & Lubis, S. (2023). Implementasi hukum di area zona ekonomi eksklusif (ZEE) menurut perpres no. 115 tahun 2015 tentang illegal fishing perspektif hukum laut internasional. *Jurnal EDUCATIO: Jurnal Pendidikan Indonesia*, 9(2), 777. <https://doi.org/10.29210/1202323209>

- Bakhri, S. (2011). Pengaruh Aliran-Aliran Falsafat Pemidanaan Dalam Pembentukan Hukum Pidana Nasional. *Jurnal Hukum Ius Quia Iustum*, 18(1), 136–157. <https://doi.org/10.20885/iustum.vol18.iss1.art8>
- Christianto, H. (2012). Penafsiran Hukum Progresif Dalam Perkara Pidana. *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada*, 23(3), 479. <https://doi.org/10.22146/jmh.16170>
- Ema Wulaningsih, Dwiki Herdyan, D. A. (2023). Teknologi Mikro Satelit Berbasis AI Hasil Anak Bangsa Untuk Penanganan Illegal Fishing di Indonesia. *Humanities, Management and Science Proceedings*, 3(2), 1316–1320.
- Gultom, P. (2022). Analisis Sosiologi Hukum Terhadap Kemungkinan Dapat Diterapkannya Restorative Justice Dalam Perkara Tindak Pidana Korupsi Di Indonesia (Sociological Analysis of Law on the Possibility of Implementing Restorative Justice in Corruption Crime Cases in Indone. *SSRN Electronic Journal*, 3(1), 154–178. <https://doi.org/10.2139/ssrn.4065348>
- infopublik.id. (2019). *KKP Tertibkan 20 Rumpon Ilegal di Perairan Perbatasan Indonesia- Filipina*. Dewaluyo.
- Iqbal, M. (2012). Illegal Fishing sebagai Kejahatan Korporasi Suatu terobosan Hukum pidana dalam mengadili kejahatan. *Jurnal Hukum Dan Peradilan*, 1(3), 417. <https://doi.org/10.25216/jhp.1.3.2012.417-434>
- Irawan, A., & Arsetyo, Y. I. C. (2023). Optimization Of Illegal Fishing Criminal Law Enforcement In Indonesian Waters. *JURNAL HUKUM DAS SOLLEN*, 9(2), 780–809. <https://doi.org/10.32520/das-sollen.v9i2.2985>
- Jamilah, A., & Disemadi, H. S. (2020). Penegakan Hukum Illegal Fishing dalam Perspektif UNCLOS 1982. *Mulawarman Law Review*, 5(1), 29–46. <https://doi.org/10.30872/mulrev.v5i1.311>
- Kementerian Kelautan dan, & Perikanan. (2023). *Kerugian Negara Akibat*

Illegal Fishing, 101 Triliun Rupiah! News.Kkp.Go.Id.

- Kholiq, M. A., & Wibowo, A. (2016). Penerapan Teori Tujuan Pemidanaan dalam Perkara Kekerasan terhadap Perempuan: Studi Putusan Hakim. *Jurnal Hukum IUS QUIA IUSTUM*, 23(2), 186–205. <https://doi.org/10.20885/iustum.vol23.iss2.art2>
- Marbun, R. (2019). Mereposisi Korban dalam Sistem Peradilan Pidana di Indonesia: Suatu Keterlemparan (gowerfen-sein) dalam Mitos Modernitas. *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)*, 8(4), 525. <https://doi.org/10.24843/JMHU.2019.vo8.io4.p07>
- Niman, A. P., Chandra, T. Y., & Ismed, M. (2023). Penegakan Hukum Terhadap Nelayan Asing Pelaku Tindak Pidana Illegal Fishing Di Indonesia. *PERFECTO : Jurnal Ilmu Hukum*, 01(September), 183–190. <https://doi.org/https://doi.org/10.58977/ijih.v2i1.1> (3) 183-190
- Nurchayawan, T., & Saputra, L. (2017). Penegakan Hukum Dan Penenggelaman Kapal Asing (Studi Kasus Tindak Pidana Pelaku Illegal Fishing). *Era Hukum*, 2(1), 344–383. <https://doi.org/https://doi.org/10.24912/era%20hukum.v15i2.1074>
- Prapti Rahayu, D. (2021). Criminal Objectives of the Mineral Law in the Perspective of the Criminalization Policy. *Bina Hukum Lingkungan*, 5. <https://doi.org/http://dx.doi.org/10.24970/bhl.v5i2.189>
- Prastiwi, D. E., & Wulansari, E. M. (1994). *Penegakan Hukum Terhadap Illegal , Unreported And Unregulated Fishing (IUU Fishing) Di Zona Ekonomi Eksklusif (ZEE) Indonesia*. 1–12.
- Rahmi, E., Mushawirya, R., & Nuriyatman, E. (2021). Prospektif Omnibus Law Bidang Sumber Daya Alam Omnibus Law Prospective on Natural Resources. *Bina Hukum Lingkungan*, 5(2), 304–318. <https://www.bhl-jurnal.or.id/index.php/bhl/article/view/156>
- Rasyid, N. A. Al, Wattimena, J. A. Y., & Tahamata, O. L. C. (2023). Pelanggaran Batas Wilayah Laut Zona Ekonomi Eksklusif Oleh Nelayan Vietnam Dan Implikasi Hukumnya. *PATTIMURA Law Study*

- Review*, 1(1), 92–102. <https://doi.org/10.47268/palasrev.v1i1.10588>
- Rhaptalyani Herno Della. (2023). Konflik Delimitasi Maritim di Zona Ekonomi Eksklusif (ZEE) antara Indonesia dan Vietnam. *Jurnal Kajian Kelautan Dan Integrasi Nasional*, 6(2), 117–123. <https://doi.org/https://doi.org/10.14710/jmsni.v6i2.13635>
- Rizki Apriliana, A. N. (2023). Sistem Sertifikasi Hasil Tangkapan Ikan Sebagai Solusi Penanggulangan Praktik Illegal Fishing. *Jurnal Hukum Indonesia*, 2(3), 130–138. <https://doi.org/10.58344/jhi.v2i3.84>
- Rokilah, R. (2020). Dinamika Negara Hukum Indonesia: Antara Rechtsstaat dan Rule Of Law. *Nurani Hukum*, 2(1), 12. <https://doi.org/10.51825/nhk.v2i1.8167>
- Rumegang, A. P. (2016). Kewenangan Tni Al Dalam Pemberantasan Tindak Illegal Fishing Menurut Perpres Ri No. 115 Tahun 2015 Tentang Satuan Tugas Pemberantasan Penangkapan Ikan Secara Ilegal (Illegal Fishing). *Lex et Societatis*, IV(2), 139–146. <https://doi.org/https://doi.org/10.35796/les.v4i2.1.11434>
- Sidauruk, S. S., July Esther, & Manullang, H. (2021). KEBIJAKAN HUKUM PIDANA SEBAGAI UPAYA MEMINIMALISIR TINDAK PIDANA BULLYING DI MEDIA ELEKTRONIK. *NOMMENSEN JOURNAL OF LEGAL OPINION*, 2(02), 232–241. <https://doi.org/10.51622/njlo.v2i02.390>
- Standal, D., & Hersoug, B. (2023). Illegal fishing: A challenge to fisheries management in Norway. *Marine Policy*, 155, 105750. <https://doi.org/10.1016/j.marpol.2023.105750>
- Tarigan, M. I., & Tirtamulia, T. (2020). STRENGTHENING INTERNATIONAL LAW AS A GUARANTEE FOR HIGH SEAS FISHERIES CONSERVATION. *Bina Hukum Lingkungan*, 4(2), 329. <https://doi.org/10.24970/bhl.v4i2.136>
- Wudianto, W., Widodo, A. A., Satria, F., & Mahiswara, M. (2019). KAJIAN PENGELOLAAN RUMPON LAUT DALAM SEBAGAI ALAT BANTU PENANGKAPAN TUNA DI PERAIRAN INDONESIA. *Jurnal*

Kebijakan Perikanan Indonesia, 11(1), 23.
<https://doi.org/10.15578/jkpi.1.1.2019.23-37>

Website

M Ambari. (2020). *Pintu Masuk bagi Para Pencuri Ikan adalah Rumpon*. Mongabay.Co.Id.

www.kkp.go.id. (2023). *Putus Mata Rantai Illegal Fishing, KKP Amankan 16 Rumpon Ilegal di Perbatasan Indonesia-Filipina*. Kementrian Kelautan Dan Perikanan Republik Indonesia.