



## JURIDICAL ANALYSIS OF MANAGEMENT OF FOREIGN FISHERY SHIP CRIME OF FISHERIES IN THE EXCLUSIVE ECONOMIC ZONE (EEZ) OF INDONESIA

(Research Study at Batam Marine and Fishery Resources Supervision Base Office)

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### Abstract

*Illegal fishing is a fishing activity that is contrary to the law in a particular country and international law. The forms of fishing theft practices that occur in Indonesian waters include fishing without a permit using a fake permit, catching fish using fishing gear that has been prohibited and catching fish species that are not in accordance with the applicable permit. This study uses a normative juridical method, namely by discussing the law that is conceptualized as written in the applicable laws and regulations and is linked or proven by facts in the field which is supported by empirical legal research (practice in the field) to obtain data. primary. The results of the study show that law enforcement in each country has different ways of dealing with the problem of fishing theft, one of which is Indonesia, policies against illegal fishing by taking action against foreign vessels have a positive impact, actions against illegal fishing in accordance with Law No. 45 of 2009 concerning Fisheries concerning amendments to Law Number 31 of 2004 and also international law of UNCLOS 1982. Based on the results of the study, it can be concluded that in an effort to handle criminal acts in the field of fisheries (Illegal Fishing) Indonesia as a country that has ratified UNCLOS (United Nation Convention in the Law of the Sea) has the authority and sovereignty to enforce laws relating to domestic interests in waters bordering other countries,*

**Keywords:** *Policy, State, Fish Theft*

### 1. INTRODUCTION

Indonesia's geographical conditions and the diversity of marine and fishery resources as well as a group of islands stretching from Sabang to Merauke constitute a single nation as an economic, political, social and cultural force as well as defense and security that must be continuously maintained and guarded by the entire Indonesian nation. As a form of gratitude for the grace of God Almighty, the Indonesian marine paradigm is the future of the nation and makes Indonesia's position as the world's maritime axis that must be managed, maintained and utilized wisely for the welfare of the entire Indonesian nation. Indonesia's strategic position with abundant fish, energy, Minerals in the sea make Indonesia an important value in inter-country organizations both regionally and multilaterally so that they are seen as influential by other countries in the world. The abundance of fish resources in Indonesian seas also poses a separate threat to Indonesia with fishing theft activities carried out by foreign ships from neighboring countries who deliberately enter Indonesian waters with various modus operandi of illegal fishing. Considering first that fisheries as a potential source of the Indonesian economy, need to be managed effectively, efficiently and sustainably for the greatest prosperity of the people, The two violations and crimes in the field of fisheries, especially the act of illegal fishing (illegal fishing) are very concerning, so it is necessary to take firm steps that can cause a deterrent effect on the perpetrators. thirdly that the practice of illegal fishing has harmed the state both economically and socially, the ecosystem of fishery resources and threatens the achievement of fisheries management goals, fourthly eradicating illegal fishing requires extraordinary law enforcement efforts that integrate the power of government agencies related to the right strategy utilizing technology. so that it can run effectively and efficiently, be able to cause a deterrent effect, and be able to restore state losses.

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Based on these considerations, the government established a Task Force for the Eradication of Illegal Fishing (Illegal Fishing) with a Presidential Regulation. This step is taken as a manifestation of the seriousness of the Indonesian government in fighting illegal fishing. As a state of law, it must have elements that apply generally to every state of law, one of which is that all government actions must be based on laws or statutory regulations. By regulation, the United Nations Conference law of the Sea (UNCLOS) 1982 has been ratified by the Indonesian government regarding matters regulated in international agreements at sea as well as national regulations in the form of Law Number 11 of 2020 concerning Job Creation,

This Exclusive Economic Zone has only been known since 1982 with the ratification of the United Nations Convention on the Law of the Sea, however, the Exclusive Economic Zone is the highest point or the highest peak for unilateral claims from various countries. The issue of disputed fishing areas in the Exclusive Economic Zone (EEZ), such as between Indonesia and Malaysia, Indonesia and Vietnam in the Natuna waters, Indonesia and the Philippines in the Sulawesi Sea, is related to overlapping EEZ boundaries. This issue has prompted Indonesia and several neighboring countries to carry out diplomacy to clarify the position of recognized national borders as agreed in international law. Fines as one of the main crimes listed in the Criminal Code (KUHP) which are limitedly stated in article 10 letter a are now a problem among law enforcers (Recht Aparat) especially among the Prosecutor's Office as the executor of decisions and in the scope of the judiciary. . The criminal fine becomes a polemic when it is imposed on the defendant without a substitute punishment (subsidiary) as stated in Article 30 paragraph (2) of the Criminal Code (KUHP) which states "If the fine is not paid, it is replaced with imprisonment". A fine imposed without a substitute penalty is called a single fine, namely a fine without a substitute penalty.

In order to carry out effective and efficient handling of fisherman criminals, the Director General of PSDKP KKP issued Regulation of the Director General of PSDKP Number 70 of 2014 concerning Technical Instructions for Handling Fisheries Crime Crews. The purpose of the preparation of this perdirjen as a reference for PPNS Fisheries and officers in dealing with crew members of fishery criminal acts, the interesting thing based on the data that the author collects is that there are differences in decisions regarding criminal penalties in the ZEEI area. There are decisions that only impose fines and there are decisions that impose imprisonment in lieu of fines. This is of course related to Article 102 of the Fisheries Law which regulates that imprisonment in the ZEEI area does not apply unless there is an agreement between the Indonesian government and the government of the country concerned. This article was further strengthened by the existence of SEMA Number 3 of 2015 which stated that the imprisonment sentence was not valid in lieu of a fine in illegal fishing cases. The Law of the Republic of Indonesia Number 45 of 2009 concerning Amendments to Law Number 31 of 2004 concerning Fisheries does not regulate in detail the types of basic punishments, so regarding the provisions of the principal punishment, it refers to the Criminal Code (KUHP), The main points are expressly regulated in Article 10 letter a of the Criminal Code which consists of the death penalty, imprisonment, imprisonment and a fine. The Panel of Fisheries Judges at the District Court has sentenced the Defendants who committed criminal acts in the Exclusive Economic Zone (ZEEI) to only criminal penalties without being accompanied / accompanied by confinement as a subsidiary substitute for fines, even though in a limited and firm manner regarding substitute penalties attached to fines have been regulated in Article 30 paragraph (2) of the Criminal Code in conjunction with Article 103 of the Criminal Code (KUHP). Article 30 paragraph (2) of the Criminal Code reads: "If the fine is not paid, it is replaced with imprisonment". And the sound of Article 103 of the Criminal Code is "The provisions in Chapters I to Chapter VIII of this book also apply to acts which other statutory provisions are punishable by, unless the law provides otherwise". Normatively, the provisions of Article 30 paragraph (2) of the Criminal Code have determined that if a fine is imposed and the fine is not paid, it will be replaced with imprisonment. Based on the description above, the authors are interested in studying and analyzing how to handle foreign fishing vessel crews who commit Illegal



Fishing Crimes in the Indonesian Fisheries Management Area. Law enforcement in the field of fisheries is not yet optimal, namely law enforcement that has not provided a deterrent effect, fines and prisons that are set are not balanced with the violations committed, making illegal fishing actors not deterrent and take the law lightly in Indonesia. The author is interested in studying and analyzing how to handle foreign fishing vessel crews who commit Illegal Fishing Crimes in the Indonesian Fisheries Management Area. Law enforcement in the field of fisheries is not yet optimal, namely law enforcement that has not provided a deterrent effect, fines and prisons that are set are not balanced with the violations committed, making illegal fishing actors not deterrent and take the law lightly in Indonesia. The author is interested in studying and analyzing how to handle foreign fishing vessel crews who commit Illegal Fishing Crimes in the Indonesian Fisheries Management Area. Law enforcement in the field of fisheries is not yet optimal, namely law enforcement that has not provided a deterrent effect, fines and prisons that are set are not balanced with the violations committed, making illegal fishing actors not deterrent and take the law lightly in Indonesia.

## 2. IMPLEMENTATION METHOD

Research is a managed, systematic, data-based, critical, objective and scientific investigation or investigation of a specific problem aimed at finding alternative solutions to related problems. Methods are processes, principles and procedures for solving a problem. So the research method can be interpreted as a process of principles and procedures for solving the problems encountered in conducting research. The method used in a research is basically a stage to find the truth again. So that it will answer the questions that arise about an object of research. Specifications Normative legal research serves to provide juridical arguments when there is a vacancy,

## 3. RESULTS AND DISCUSSION

Fisheries crime (Illegal Fishing) is any act that is punishable by punishment as a criminal act or a violation of the law contained in the Law of the Republic of Indonesia in the field of Fisheries. Illegal fishing actions that still occur frequently indicate that there are weak policies governing the problem of illegal fishing. Maritime policy in supervising Indonesian waters has not run optimally, so that the Indonesian sea is still controlled by foreign fishermen. In the international definition, fisheries crime is not just illegal fishing, but also includes unreported fishing and unregulated fishing or better known as Illegal, Unreported and Unregulated Fishing (IUU) fishing).

The practice of illegal fishing by foreign ships can also damage the sustainability of the ecosystem and habitat of Indonesia's marine biological resources, because usually foreign fishermen use methods that are not environmentally friendly, so that it can automatically have a negative impact on Indonesian waters. .

Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia states that:

"Earth and water and the natural resources contained therein are controlled by the state and used for the greatest benefit of the people".

The territorial sea of Indonesia is very wide so that efforts are needed to protect it from encroaching on territorial boundaries and illegal fishing so that friction and problems do not occur. The international community has attempted to establish an International Law of the Sea. The conference was the United Nations Conference on the Law of the Sea III in 1982 which succeeded in realizing the convention on international law of the sea, namely the "United Nation Convention On The Law Of The Sea (UNCLOS)". The main point of "UNCLOS 1982" for Indonesia is that UNCLOS 1982 has set a detailed baseline. The most common illegal fishing activity in Indonesian waters/seas is the theft of fish by foreign fishing vessels (KIA) originating from several neighboring countries. The act of foreign ships entering Indonesian waters without permission and exploiting its natural resources is a form of violation of the sovereignty of the State. Based on the results of the supervision carried out, it can be concluded that illegal fishing by foreign fishing

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vessels (KIA) mostly occurs in the Indonesian Exclusive Economic Zone (EEZ) and quite a lot occurs in several archipelagic countries. The Indonesian Exclusive Economic Zone (EEZ) is a path outside and bordering the Indonesian territorial sea as determined based on the applicable law concerning Indonesian waters which includes the seabed, subsoil and water above it with an outer limit of 200 nautical miles measured from the sea base of the Indonesian territory. With this Exclusive Economic Zone (EEZ), the government has the sovereign right to use its policies in regulating foreign vessels that carry out illegal fishing in Indonesian sea areas. In article 9 of Law Number 31 of 2004 jo. Law Number 45 of 2009 concerning Fisheries (Fishing Law) explains things that are prohibited, namely: "Everyone is prohibited from owning, controlling, carrying, and/or using on fishing vessels in the management area of the Republic of Indonesia: a. . Fishing gear and/or tools to assist catching fish that are not in accordance with the specified size; b. Fishing gear that is not in accordance with the requirements or standards set for certain types of gear; c. Prohibited fishing gear" Law Number 45 of 2009 concerning Fisheries (Fishing Law) explains things that are prohibited, namely: "Everyone is prohibited from owning, controlling, carrying, and/or using on fishing vessels in the management area of the Republic of Indonesia: a. . Fishing gear and/or tools to assist catching fish that are not in accordance with the specified size; b. Fishing gear that is not in accordance with the requirements or standards set for certain types of gear; c. Prohibited fishing gear" Law Number 45 of 2009 concerning Fisheries (Fishing Law) explains things that are prohibited, namely: "Everyone is prohibited from owning, controlling, carrying, and/or using on fishing vessels in the management area of the Republic of Indonesia: a. . Fishing gear and/or tools to assist catching fish that are not in accordance with the specified size; b. Fishing gear that is not in accordance with the requirements or standards set for certain types of gear; c. Prohibited fishing gear" Fishing gear that is not in accordance with the requirements or standards set for certain types of gear; c. Prohibited fishing gear" Fishing gear that is not in accordance with the requirements or standards set for certain types of gear; c. Prohibited fishing gear"

Fishing without a permit by foreign fishing vessels (foreign fishermen), must be immediately addressed by law enforcement in force in the territory of Indonesia. If it refers to the legal principle of equality before the law, then equality of treatment before the law is important. So that criminal sanctions in the form of corporal confinement against foreign fishermen who catch fish without a permit in the Indonesian Exclusive Economic Zone (EEZ) are deemed necessary even though there was no previous cooperation.

**Legal Arrangements for the Handling of Crews of Foreign Fishing Vessels for Criminal Acts in the Fisheries Sector (Illegal Fishing)**

The politics of criminal law in overcoming fisheries crime has been enacted in Law Number 45 of 2009 concerning Amendments to Law Number 31 of 2004 concerning Fisheries. Sas a form of part of protecting and securing the territory of Indonesia, especially Indonesian maritime affairs and as a form of carrying out the mandate of Law Number 45 of 2009 concerning Amendments to Law Number 31 of 2004 concerning Fisheries which states: Waters that are under the sovereignty of the Unitary State of the Republic of Indonesia and The Indonesian Exclusive Economic Zone and the high seas contain potential fish resources and as a fish cultivation area are a blessing from God Almighty which is mandated to the Indonesian people who have the philosophy of life Pancasila and the 1945 Constitution of the Republic of Indonesia, taking into account the carrying capacity that exist and their preservation is to be utilized as much as possible for the welfare and prosperity of the Indonesian people. The state is an organization of sovereign power with governance that has a system or rules that apply to all individuals in the region, therefore, within the state it is necessary to have a theory of sovereignty, one of which is sovereignty in the state/state sovereignty.





## **Law No. 17 of 1985 concerning the Ratification of UNCLOS in 1982**

Synergy between national legal policies and international law, especially related to marine affairs and fisheries in Indonesia is very much needed. *United Nations Convention on the Law of the Sea* hereinafter referred to as UNCLOS 1982 as a provision of international law that generally regulates law enforcement in the territorial sea and the Exclusive Economic Zone (EEZ) of a country, but does not explicitly regulate illegal fishing. UNCLOS 1982 states that the jurisdiction and rights of coastal states in the Exclusive Economic Zone (EEZ) include: Exploration and exploitation of marine resources (biological-non-biological), making and enforcing laws and regulations relating to the exploration and exploitation of marine resources and as a form of anticipation, the Indonesian government has ratified UNCLOS 1982 with the promulgation of Law No. 17 of 1985 concerning the Ratification of UNCLOS in 1982.

In Law No. 17 of 1985 there is law enforcement against illegal fishing which is regulated in Article 73 which states several important points, namely:

- a. The coastal state in exercising its sovereign rights for the exploration, exploitation, conservation & management of living natural resources in the Exclusive Economic Zone (EEZ) may take boarding, inspection, arrest and judicial proceeding steps, as part of complying with laws and regulations in accordance with this convention. ;
- b. The captured ship and its crew must be released immediately after paying the guarantee;
- c. The punishment imposed on a fishery crime may not be in the form of a corporal punishment unless there is an agreement;
- d. In the case of the detention of foreign vessels, the coastal state must immediately notify the flag state through diplomatic channels, including the punishment imposed.

## **Law Number 5 of 1983 concerning the Exclusive Economic Zone (EEZ) of Indonesia**

On the basis of the permissibility of certain activities in the Exclusive Economic Zone, law enforcement is also regulated when a foreign ship makes an arrestfish in the Indonesian Exclusive Economic Zone (EEZ) without asking permission from the Indonesian government as an archipelagic country. This is regulated in Article 13 which states that: In the context of exercising sovereign rights, other rights, jurisdictions and obligations as referred to in Article 4 paragraph (1), the competent law enforcement apparatus of the Republic of Indonesia may take enforcement actions. law in accordance with Law Number 8 of 1981 concerning the Criminal Procedure Code. In supporting the implementation of Article 13 regarding law enforcement in the Exclusive Economic Zone in Indonesia, the Criminal Provisions contained in Article 16 paragraph (1) state that:

"Whoever commits acts that are contrary to the provisions of Article 5 paragraph (1), Article 6, and Article 7 shall be punished with a maximum fine of Rp. 225,000,000 (two hundred and twenty five million rupiah)." Furthermore, it is also stipulated that law enforcement officials, public prosecutors and courts are authorized to handle law enforcement regarding Illegal, Unreported, and Unregulated Fishing (IUU Fishing) as stipulated in Article 14 of Law No. 5 of 1983.

## **Law Number 45 of 2009 concerning Amendments to Law Number 31 of 2004 concerning Fisheries**

Article 93 paragraph (2) which states that:

"Everyone who owns and/or operates fishing vessels with foreign flags catching fish in the Indonesian Exclusive Economic Zone (EEZ) that does not have a Fishing Permit (SIPI) as referred to in Article 27 paragraph (2), shall be subject to imprisonment for a maximum of 6 (six) years and a maximum fine of Rp. 20,000,000,000.00 (twenty billion rupiah)".

Article 93 paragraph (4) states that:

"Everyone who operates a fishing vessel with a foreign flag in the Indonesian Exclusive Economic Zone (EEZ), which does not carry the original SIPI as referred to in Article 27 paragraph

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(3), shall be subject to a maximum imprisonment of 6 (six) years and a maximum fine of Rp. .000,000,000.00 (twenty billion rupiah)”.

The provisions of Article 93 paragraph (4) are very inconsistent with the provisions in Article 102 which states that: The provisions regarding imprisonment in this Law do not apply to criminal acts in the field of fisheries that occur in the Fisheries Management Territory of the Republic of Indonesia as referred to in Article 5 paragraph (1) letter b, unless there is an agreement between the Government of the Republic of Indonesia and the government of the country concerned. In essence, the provisions of Article 102 exclude foreign-flagged vessels as referred to in Article 5 paragraph (1b), especially the State of Indonesia has agreements with other countries regarding the management of fishery areas. This has the potential to be unfair in its enforcement for national ships and foreign-flagged ships.

#### **Law Number 11 of 2020 concerning Job Creation**

The existence of Law Number 11 of 2020 concerning Job Creation has a risk based monitoring approach and has provided a new paradigm for the Ministry of Maritime Affairs and Fisheries (KKP). The new paradigm is related to law enforcement in providing administrative sanctions against perpetrators of violations in the marine and fisheries sector. Law No. 11 of 2020 concerning Job Creation (UUCK) aims to accelerate economic growth through ease of doing business in various sectors, which is accompanied by strict supervision by prioritizing the ultimatum principle which prioritizes the imposition of administrative sanctions rather than criminal sanctions.

#### **Submission of Information for Providing Notification and Consular Access That In the Context of Handling Crews and Foreign Fishing Vessels**

Criminal acts in the marine and fisheries sector that are orderly, effective and prioritize the protection of human rights in accordance with the laws and regulations, are stipulated by the Director General Regulation No. 5 of 2022 concerning Technical Instructions for Submission of Information for Issuing Consular Notifications and Providing Consular Access in Handling Crews and Ships Foreign Fisheries Crimes in the Marine and Fisheries Sector. Consular Notification is an official notification from the Government of the Republic of Indonesia to Representatives of Foreign Countries and International Organizations regarding the arrest, detention, accident, death, repatriation, transfer of bodies, and others that befell the crew or foreign fishing vessels in Indonesia. Consular Access is the granting of rights to representatives of foreign countries to provide consular assistance for Crews of Fishing Vessels of their country who are arrested, detained, or experiencing problems in Indonesia. Efforts to provide this access are to realize the handling of foreign TPKP crews and fishing vessels in accordance with the provisions of national and international laws and regulations. Submission of information for publishing Consular notification is carried out in the case of arresting foreign fishing crews and vessels, Presence of foreign crews and vessels suspected of committing TPKP, Stages of TPKP investigation for foreign crews and fishing vessels, Problems, Handing over of foreign crew members to immigration, Application for certain information from representatives of the country of origin of the crew. Submission of information for the issuance of consular notifications on the presence of foreign crews and ships suspected of committing TPKP must be carried out as soon as possible after the handover from the catcher. The procedure for submitting information for the issuance of consular notifications on the presence of foreign crews and ships suspected of committing TPKP is as follows: (1) The Head of UPT PSDKP reports information on the presence of foreign fishing crews and vessels in UPT PSDKP to the Director General of PSDKP and copied to the Director of Violation Handling. The information as referred to in letter a shall at least contain: date and time of handover; the name and flag of the ship; number of crew members; identity of the crew consisting of name, age, role on the ship and nationality of the crew; alleged violation; location of handling crew and fishing vessels and other supporting documents.



The Director of Violation Handling on behalf of the Director General of Supervision of Marine and Fishery Resources then submits information on the presence of foreign crew and vessels suspected of committing a Marine Fisheries Crime to the Director General of Protocol and Consular Affairs and to the Consular Director. Fisheries crime, handling mechanisms have been regulated, among others related to matters, namely: the condition of the crew of the ship having died and the handling of their bodies; the condition of the crew member is seriously ill, has an accident or has a mental disorder; or the condition of the crew escaping.

### **Legal Arrangements in Technical Handling of Crews of Foreign Fishing Vessels**

Legal arrangements in handling crew members are based on the interest to uphold human rights, so in handling foreign fishing vessel crews who are IUU Fishing actors, they are required to follow technical instructions for handling crew members as regulated in Perdirjen PSDKP Number 70 of 2014 as a result of amendments to the Decree of the Director General of Source Supervision. Maritime Affairs and Fisheries No. Kep. 285/DJ-PSDKP/2011 concerning Technical Guidelines for Handling Crews Perpetrators of Fishery Crimes.

1. Handling the Crew of the Suspect Ship, the handling starts from the issuance of the Investigation Order (SPDP) until the investigation file is declared complete by the Public Prosecutor accompanied by the surrender of the suspect and evidence to the Public Prosecutor, or until the issuance of an Investigation Termination Order.
2. The handling of non-suspected crew members starts from the time the TPP case is followed up to the investigation stage until: non-suspected crew members are returned to their area of origin or their families for crew members who are Indonesian citizens; and/or Non-suspected crew members are handed over to the Immigration Office, for crew members who are foreign nationals.
3. The release of the Crew of the TPP Perpetrators can be carried out for the purposes of investigation, devolution of stage 2, submission to immigration for deportation and repatriation to the area of origin of the crew.
4. The release of the Crew of the TPP Perpetrators for the purpose of handing over to the Immigration Party, is carried out to: the Crew of the Suspect Ship who are foreign nationals whose investigation is terminated; and/or Non-suspected crew members of foreign nationals who were removed from the supervision of officers for the purpose of handing over to the Immigration party for deportation.
5. Reception and safekeeping of crew members of TPP perpetrators: Crews of TPP perpetrators who can be re-entrusted by the Public Prosecutor/Judges/Other Agencies to the Fisheries PPNS are suspects with an official report of receipt of safekeeping Form BA-32 Decree of the Director General of Marine and Fishery Resources Supervision Number KEP.372/DJ-PSDKP/2011 concerning Technical Guidelines for Investigation of Fisheries Crimes; Non-suspected Indonesian crew members who are witnesses are joint responsibility according to the stages of the legal process; Non-suspected crew members who are foreign nationals who serve as witnesses are jointly responsible according to the stages of the legal process until the witness is handed over to immigration for deportation;

In realizing orderly reporting and tracking of incidents against foreign fishing vessel crews handled by the fisheries PPNS at the Batam PSDKP Base Technical Implementation Unit office, standard operating procedures have been prepared in the technical stages of handling starting from the inspection stage to crew care such as providing food, health/treatment to time of visit, worship is regulated in detail in the Standard Operating Procedures (SOP) for Batam PSDKP Base.

### **Perspective of Relevant Agencies in Handling Crews of Foreign Fishing Vessels**

In relation to the implementation of technical handling of IUU fishing vessel crews, whether justisia (legal process) or non-justicial (not legal process) resulted in several views from stakeholder stakeholders. The related parties are partners of the Batam PSDKP Base Office which have functions related to foreigners. Several agencies that provide legal and technical views regarding foreign fishing vessel crews are from the Central Rudenim of Tanjung Pinang, Batam

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District Attorney, Batam PSDKP Base and Fisheries PPNS, Vietnamese Embassy in Jakarta, Malaysian consular office in Pekanbaru, Fisheries judge at Tanjung Pinang District Court. Several views were conveyed through direct interviews with observations in the field regarding things that developed and became the duties and functions of each of these agencies. In the normal process of handling foreign nationals, deportation activities are carried out through immigration, but in certain cases there is discretion so that ship-to-ship efforts are carried out according to procedures and have security clearance from the Ministry of Defense. UPT Pangkalan PSDKP Batam technically handles foreign ship crews referring to the technical instructions of Kepdirjen 70 of 2014 regarding the handling of fishery crime ship crews. Matters relating to the activities and activities in which the foreign crew members are under the full authority of the PSDKP agency in handling of course prioritizes humanitarian principles and upholds Human Rights (HAM). but in certain cases there is discretion so that ship to ship efforts are carried out according to procedures and have security clearance from the Ministry of Defense. UPT Pangkalan PSDKP Batam technically handles foreign ship crews referring to the technical instructions of Kepdirjen 70 of 2014 regarding the handling of fishery crime ship crews. Matters relating to the activities and activities in which the foreign crew members are under the full authority of the PSDKP agency in handling of course prioritizes humanitarian principles and upholds Human Rights (HAM). but in certain cases there is discretion so that ship to ship efforts are carried out according to procedures and have security clearance from the Ministry of Defense. UPT Pangkalan PSDKP Batam technically handles foreign ship crews referring to the technical instructions of Kepdirjen 70 of 2014 regarding the handling of fishery crime ship crews. Matters relating to the activities and activities in which the foreign crew members are under the full authority of the PSDKP agency in handling of course prioritizes humanitarian principles and upholds Human Rights (HAM).

The important thing to note is that PPNS fisheries receive an abundance of safekeeping from the prosecutor's office for the suspect/defendant/convict after the court's decision. This will certainly increase the burden, especially the consequences such as the risk of getting sick, running away, and even dying. Indeed, a mechanism/technical guide has been regulated in the re-delegation of suspects after stage 2 of delegating them to the prosecutor's office, however, it cannot be denied that potential problems will arise, plus the means to accommodate foreign crew members at the DTC. The Batam PSDKP Base is very limited with a small capacity. It is hoped that the assistance of related parties such as the Rudenim can assist in the process of detention and accommodation before deportation.

**Handling of Crews of Foreign Ships Perpetrators of Fisheries Crimes in the Indonesian Exclusive Economic Zone (Zee)**

The interception and inspection of foreign vessels carrying out illegal fishing activities is carried out by recognizing the physical shape and flag of the ship which is a characteristic of the country of origin of the perpetrator of a fishery crime, and the results of the termination and inspection of caught foreign vessels will be carried out adhocing, namely the act of bringing the ship to the nearest port or dock for inspection. in further processing by the Fisheries Civil Servant Investigator (PPNS). Not all of the crew members who have been arrested have been legally processed or named as suspects, but the status of the crew members is not a suspect (non justitia).

Provisions regarding foreign ship crews with non-justitia status have been regulated in Article 83A paragraph (1) of the Fisheries Law, which states that in addition to those designated as suspects in fisheries crimes or other criminal acts, other crew members may be repatriated including those who are foreign nationals. In terms of the legal process for a fishery crime, the suspect is determined by the captain and the head of the engine room (K), while the others only have the status of witnesses or have no status (non-justitia). For crew members (ABK) with suspect status, legal proceedings will be carried out in accordance with applicable laws and regulations, until a court decision is obtained. Meanwhile, non-justicia foreign crew members will be returned to the country through coordination with the Directorate General of Immigration and





representatives of the country concerned. This is in accordance with Article 83A paragraph (1) of Law Number 45 of 2009 concerning Amendments to Law Number 31 of 2004 concerning Fisheries, which states that in addition to those designated as suspects in fisheries crimes or other criminal acts, other ship crews can repatriated including foreign nationals. The repatriation/deportation of non-judicial foreign crew members also eases the task of Civil Servant Investigators (PPNS) in the field. With the return of non-judicial foreign crew members, the duties and responsibilities of officers in the field will be lighter and more concentrated on legal proceedings against suspects. This is in accordance with Article 83A paragraph (1) of Law Number 45 of 2009 concerning Amendments to Law Number 31 of 2004 concerning Fisheries, which states that in addition to those designated as suspects in fisheries crimes or other criminal acts, other ship crews can repatriated including foreign nationals. The repatriation/deportation of non-judicial foreign crew members also eases the task of Civil Servant Investigators (PPNS) in the field. With the return of non-judicial foreign crew members, the duties and responsibilities of officers in the field will be lighter and more concentrated on legal proceedings against suspects. This is in accordance with Article 83A paragraph (1) of Law Number 45 of 2009 concerning Amendments to Law Number 31 of 2004 concerning Fisheries, which states that in addition to those designated as suspects in fisheries crimes or other criminal acts, other ship crews can repatriated including foreign nationals. The repatriation/deportation of non-judicial foreign crew members also eases the task of Civil Servant Investigators (PPNS) in the field. With the return of non-judicial foreign crew members, the duties and responsibilities of officers in the field will be lighter and more concentrated on legal proceedings against suspects. which states that other than those designated as suspects in a fisheries crime or other criminal acts, other crew members can be repatriated including those who are foreign nationals. The repatriation/deportation of non-judicial foreign crew members also eases the task of Civil Servant Investigators (PPNS) in the field. With the return of non-judicial foreign crew members, the duties and responsibilities of officers in the field will be lighter and more concentrated on legal proceedings against suspects. which states that other than those designated as suspects in a fisheries crime or other criminal acts, other crew members can be repatriated including those who are foreign nationals. The repatriation/deportation of non-judicial foreign crew members also eases the task of Civil Servant Investigators (PPNS) in the field. With the return of non-judicial foreign crew members, the duties and responsibilities of officers in the field will be lighter and more concentrated on legal proceedings against suspects.

### **Flow of Handling of Crews Perpetrators of Fishery Crimes**

The flow of handling fisheries crimes carried out by Fisheries Civil Service Investigators (PPNS):

1. Fishery Supervisory Vessels or parties that catch vessels that commit fisheries crimes submit the crew of the ship's perpetrators of Fishery Crimes (TPP) to the Fisheries Civil Servant Investigator (PPNS),
2. Fisheries Civil Service Investigators (PPNS) conducted a Preliminary Examination (Perdirjen PSDKP Number 372 of 2011) to determine potential suspects and non-justitia. After determining whether the crew members entered as suspects or non-justitia, crew officers who are also Fisheries Civil Servant Investigators (PPNS);
3. Fisheries Civil Servant Investigators (PPNS) carry out the process of custodial, shelter, maintenance, security and release to the crew of the ship's perpetrators of Fishery Crimes (TPP).
4. The repatriation of Non-Justitia Crews to their areas of origin in accordance with the provisions of Article 83A paragraph (1) of the Fisheries Law, it is stated that in addition to those designated as suspects in fisheries crimes or other criminal acts, other crew members may be repatriated, including foreign nationals.

The process in handling non-justitia crew members starts from a temporary shelter belonging to the PSDKP for preliminary examination to the investigation stage, then non-justitia

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crew members with foreign nationals are handed over to the Immigration Detention Center (Rudenim) after which they are returned to their area of origin.

**Implementation of Handling Fisheries Crime Cases in the Exclusive Economic Zone (Zee) of Indonesia**

Law enforcement of criminal acts in the field of fisheries in the Indonesian Exclusive Economic Zone (EEZ) is regulated in Article 97 paragraph (2), Article 102 and Article 104 paragraph (1) of the Fisheries Law. These articles adopt from the provisions contained in UNCLOS.

1. Article 97 paragraph (2) reads:

"The captain who operates a fishing vessel with a foreign flag that already has a fishing license with 1 (one) type of certain fishing gear in a certain part of the Indonesian Exclusive Economic Zone (EEZ) carrying other fishing gear as referred to in Article 38 paragraph (2) , shall be punished with a fine of not more than Rp. 1,000,000,000.00 (one billion rupiah)."

The article above regulates the captain of a ship operating a fishing vessel with a foreign flag who already has a fishing license with 1 (one) type of certain fishing gear in a certain part of the Indonesian Exclusive Economic Zone (EEZ) carrying other fishing gear can be punished with a criminal sanction. fine.

2. Article 102 of the Fisheries Law reads:

"The provisions on imprisonment in this Law do not apply to criminal acts in the field of fisheries that occur in the fishery management area of the Republic of Indonesia as referred to in Article 5 paragraph (1) letter b, unless there is an agreement between the Government of the Republic of Indonesia and the government of the country concerned.

The article above stipulates that imprisonment is not applicable in the Indonesian Exclusive Economic Zone (EEZ) unless there is an agreement between the Indonesian government and the government of the country concerned. This article is an adoption of article 73 paragraph (3) of UNCLOS which states Coastal State penalties for violations of fisheries law and regulations in the exclusive economic zone may not include imprisonment, in the absence of agreements to the Contrary by the state concerned, or any other form of corporal punishment (the coastal state's punishment imposed for violation of national laws and regulations in the Indonesian Exclusive Economic Zone (EEZ) may not include confinement, if there is no agreement otherwise between the countries concerned, or any other form of corporal punishment).

The above provisions are still a lot of debate, with the implementation of imprisonment, the implementation of these provisions will experience difficulties if the bank's funds do not want to pay the fine or are unable to pay the fine imposed on him, this of course will result in not realizing legal certainty. The polemic of this article again occurred with the issuance of the Circular Letter of the Supreme Court Number 3 of 2015 concerning the Implementation of the Formulation of the results of the Plenary Chamber of the Supreme Court of 2015 as a Guide to the Implementation of Duties for the Court, in letter A number 3 stipulates that "in the case of Illegal Fishing in the Exclusive Economic Zone ( EEZ) of Indonesia against the defendant can only be subject to a fine without being sentenced to imprisonment in lieu of a fine". With the issuance of this Supreme Court Circular (SEMA), it is hoped that

3. Article 104 (1) of Law Number 31 of 2004 concerning Fisheries reads:

"Applications to release ships and/or persons arrested for committing criminal acts in the Indonesian fishery management territory as referred to in Article 5 paragraph (1) letter b, may be made at any time before a decision is made by the fisheries court by submitting an



appropriate amount of security deposit. , the determination of which is carried out by the fisheries court.

The article above means that an application to release a ship and/or person arrested for committing a criminal act in the Indonesian Exclusive Economic Zone (EEZ) can be made at any time before a decision from the fisheries court submits an appropriate amount of security deposit, the determination of which is made by the fishery court. court. This article is an adoption of article 73 paragraph (2) of UNCLOS which reads Arrested vessels and their crews shall be promptly released upon the posting and reasonable bond or the security. appropriate or other form of guarantee).

Until now, the implementation of Article 104 paragraph (1) of the Fisheries Law has not materialized even though the provisions of this article can be used as a source of non-tax state revenue (PNBP) by looking at the number of criminal acts that occur in the Indonesian Exclusive Economic Zone (EEZ).

There are differences in court decisions regarding fines imposed on perpetrators of fisheries crimes in the Indonesian Exclusive Economic Zone (EEZ) which are closely related to Article 102 of the Fisheries Law which regulates that imprisonment for perpetrators does not apply unless there is an agreement between the Indonesian government and the Indonesian government. the government of the country concerned. This article was further strengthened by the Circular Letter of the Supreme Court (SEMA) No. 3 of 2015 which stated that the imprisonment sentence in lieu of fines in the case of illegal fishing in the Indonesian Exclusive Economic Zone (EEZ) is expected to be able to unite the views of judges. in law enforcement in the Indonesian Exclusive Economic Zone (EEZ).

### **Obstacles in Handling Fisheries Crimes for Crews of Foreign Fishing Vessels**

One of the processes for handling fisheries crimes at the Batam Marine and Fishery Resources Supervision Base (PSDKP) is the investigation stage, but in the process there are challenges and obstacles that cannot be avoided. *Fiat justitia ruat caelum*, which means let justice be served even though the sky will fall. The said legal expression can be interpreted that whatever the conditions the law must still be enforced. Given the various obstacles and obstacles and associated with the criminal justice system (CJS) process that involves various elements of law enforcement, which in the process requires different stages. tiered and long enough because it involves many parties, both citizens as reporters, attorneys, suspects and/or witnesses, investigators, public prosecutors, and courts. Obstacles in the process of investigating fisheries crimes against crew members of foreign fishing vessels, namely:

1. The limited facilities and infrastructure for supervision used for law enforcement at sea until this year are still very lacking. Temporary shelter facilities (RPS) for crews of foreign fishing vessels at the Batam Marine and Fishery Resources Supervision Base and several monitoring units have limited capacity and adequate facilities for habitation.
2. Limited Civil Servant Investigators (PPNS) make investigations in relation to law enforcement in the field of fisheries in accordance with Article 73 of Law Number 31 of 2004 in conjunction with Law 45 of 2009 concerning Fisheries explains that investigations of criminal acts in the field of fisheries are carried out by Fisheries Civil Servants, Indonesian Navy Officers, and/or State Police Officers of the Republic of Indonesia. The limited number of Fisheries PPNS personnel in the field makes the handling of fisheries crime slow
3. Handling of Crews on Fishing Vessels Not all of the crew members who have been arrested have been legally processed or named as suspects, but the status of the crew members is not a suspect (*non justitia*). The provisions regarding foreign ship crews with *non-justitia* status have been regulated in Article 83A paragraph (1) of the Fisheries Law, stating that in addition to those designated as suspects in fisheries crimes or other criminal acts, other crew members can be repatriated including those who are foreign nationals.

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4. The existence of refocusing / Budget Savings Government policies that prioritize the acceleration of handling Covid-19, where a number of reductions and cuts are made in several budget posts, including the budget for handling fisheries crimes, have contributed to the problems that must be faced by investigators during the Covid-19 pandemic. .
5. Handling of Evidence for Fisheries Crime In almost cases of fisheries crime, the evidence for which responsibility has been handed over to the Public Prosecutor (Second Stage Submission) will be returned to the investigators because the Public Prosecutor does not have a place to store the evidence. With the uncertainty of the time for the safekeeping of suspects and investigators and the protracted handling of evidence, it can have an impact on budget expenditures.

#### **Solutions in Overcoming Obstacles in Handling Fisheries Crime**

In overcoming obstacles, it is very necessary to think about a model for handling fisheries crime in an emergency, by issuing several rules related to the implementation of the investigation process of handling fishing vessel crews by teleconference so that there is uniformity in implementation which in the future will be outlined in technical instructions for handling fisheries crimes, along with If there are obstacles that occur, then there must be a solution to overcome these obstacles, which include:

1. The Directorate General for Supervision of Marine Resources and Fisheries (PSDKP) has completed the construction of the Fishery Supervision Vessel and Supervision Speedboat
2. The Directorate General for Supervision of Marine and Fishery Resources (PSDKP) regularly cooperates with the Indonesian National Police Education Institute (Lemdikpol) every year to educate Civil Servants who have met the requirements to take part in the Fishery Civil Servant Investigator (PPNS) training.
3. In order to carry out effective and efficient handling of fishery criminals, the Director General of PSDKP, Ministry of Maritime Affairs and Fisheries issued Regulation of the Director General of PSDKP Number 70 of 2014 concerning Technical Guidelines for Handling Fisheries Crime Crews. The purpose of this regulation is to serve as a reference for PPNS on Fisheries and officers in dealing with crew members who commit fisheries crimes. Handling of fishery criminals can be responded to by providing knowledge to Fisheries Civil Servant Investigators (PPNS)
4. To protect this vast sea area, Indonesia has seven law enforcement agencies that have a patrol task force at sea. These law enforcement agencies include the TNI-Navy; POLRI-Directorate of Water Police; Ministry of Transportation-Directorate General of Hubla; Ministry of Marine Affairs and Fisheries-Directorate General of PSDKP; Ministry of Finance-Directorate General of Customs and Excise; Bakamla, and the Task Force for the Eradication of Illegal Fishing (Satgas 115).

Handling of evidence of fishery crime (TPP) in the form of sinking of foreign-flagged fishing vessels can be carried out at the time of inspection in the middle of the sea based on the provisions of Article 69 paragraph (4) of Law Number 45 of 2009 concerning Amendments to Law Number 31 of 2004 concerning Fisheries which states: "In carrying out the functions as referred to in paragraph (1), fishery investigators and/or supervisors may take special actions in the form of burning and/or sinking fishing vessels with foreign flags based on sufficient preliminary evidence".

#### **4. CONCLUSION**

Based on the descriptions described previously, several conclusions can be drawn, namely:

1. The Indonesian government has made and established regulations related to fisheries crime, namely Law Number 45 of 2009 concerning Amendments to Law Number 31 of 2004 concerning Fisheries. In Article 103 of Law Number 45 of 2009 concerning Amendments to Law Number 31 of 2004 concerning Fisheries, fisheries crimes are divided into 2 (two) types of criminal acts, namely crimes and violations.





2. Efforts to overcome IUU Fishing cases include the mechanism for investigating criminal acts in IUU Fishing cases carried out by Fisheries Civil Service Investigators (PPNS), Navy Officers Investigators, and/or Indonesian National Police Investigators. The implementation of the authority of the Fisheries PPNS in the investigation process encountered various obstacles related to coordination problems with other law enforcement officers as well as infrastructure and support resources owned.
3. To unite views and minimize criminal disparities or inconsistent decisions in order to achieve legal certainty and legal benefits, it is better if the Supreme Court sits down with stakeholders (AGO, Polri, TNI AL, and the Directorate General of PSDKP KKP) to hear the consequences of the appeal. not to impose imprisonment in lieu of a fine.

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