Lex Publica
Jurnal Ilmu Hukum Asosiasi Pimpinan Perguruan Tinggi Hukum Indonesia
e-ISSN: 2579-8855
p-ISSN: 2354-9181
https://journal.appthi.org/index.php/lexpublica

Enforcing Legal Measures against Illegal Fishing by Foreign Fishermen in Territorial Waters: Challenges and Solutions

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Abstract. Illegal fishing is the unauthorized or unofficial act of capturing fish. This activity is carried out illegally by foreign fishermen. The illegal fishing of fish has caused financial losses to the country, driven by the increasing global demand for fish and other seafood. Law enforcement at sea plays a crucial role in upholding the credibility and sovereignty of the state. The objectives of this research are to analyze the forms of punishment given to perpetrators of illegal fishing crimes by foreign fishermen and to analyze law enforcement against foreign fishermen in Indonesian waters. This research uses a qualitative research method with a normative juridical approach. Legal materials used are obtained through legal research or a literature review of primary, secondary, and tertiary legal materials. The results of this study conclude that the form of punishment for the crime of illegal fishing is regulated in Law No. 45 of 2009 concerning Fisheries, where the punishment is a fine without the option of imprisonment as an alternative if the fine is not paid. However, there are challenges in enforcing the law against foreign nationals involved in illegal fishing if Indonesia does not have an extradition agreement with the home country of those foreign nationals. This means that when a foreign national becomes a suspect, Indonesia does not have the authority to detain them, including for the purposes of investigation. To overcome this challenge, law enforcement against foreign fishermen engaged in illegal fishing in Indonesian waters involves coordination efforts between various agencies and institutions. In addition, cooperation between countries related to fishing activities needs to be established so that in the event of a crime committed by foreign fishermen, the government can impose imprisonment because there is a cooperation agreement with the foreign fishermen's home country.

Keywords: Law enforcement, Crime, Illegal fishing, Exclusive Economic Zone

Abstrak. *Penangkapan ikan ilegal adalah tindakan penangkapan ikan yang tidak sah atau tidak resmi. Kegiatan ini dilakukan secara ilegal oleh nelayan asing. Penangkapan ikan secara ilegal telah menimbulkan kerugian finansial bagi negara, didorong oleh meningkatnya permintaan global terhadap ikan dan makanan laut lainnya. Penegakan hukum di laut berperan penting dalam menegakkan kredibilitas dan kedaulatan negara. Tujuan penelitian ini adalah untuk menganalisis bentuk-bentuk hukuman yang diberikan kepada pelaku kejahatan illegal fishing yang dilakukan nelayan asing dan menganalisis penegakan hukum terhadap nelayan asing di perairan Indonesia. Penelitian ini menggunakan metode penelitian kualitatif dengan pendekatan yuridis normatif. Bahan hukum yang digunakan diperoleh melalui penelitian hukum atau kajian pustaka terhadap bahan hukum primer, sekunder, dan tersier. Hasil penelitian ini menyimpulkan bahwa bentuk hukuman terhadap tindak pidana illegal fishing diatur dalam Undang-Undang Nomor 45 Tahun 2009 tentang Perikanan, dimana hukumannya berupa denda tanpa adanya pilihan hukuman penjara sebagai alternatif apabila denda tersebut tidak dibayarkan. Namun demikian, terdapat tantangan dalam penegakan hukum terhadap warga negara asing yang terlibat dalam penangkapan ikan ilegal jika Indonesia tidak memiliki perjanjian ekstradisi dengan negara asal warga negara asing tersebut. Artinya, ketika ada warga negara asing yang menjadi tersangka, Indonesia tidak mempunyai kewenangan untuk menahannya, termasuk untuk kepentingan penyidikan. Untuk mengatasi tantangan tersebut, penegakan hukum terhadap nelayan asing yang melakukan penangkapan ikan ilegal di perairan Indonesia melibatkan upaya koordinasi antar berbagai instansi dan lembaga. Selain itu, kerjasama antar negara yang berkaitan dengan kegiatan penangkapan ikan perlu terjalin sehingga apabila terjadi tindak pidana yang dilakukan oleh nelayan asing, maka pemerintah dapat menjatuhkan pidana penjara karena ada perjanjian kerjasama dengan negara asal nelayan asing tersebut.*

Kata kunci: *Penegakan hukum, Kejahatan, Penangkapan ikan ilegal, Zona Ekonomi Eksklusif*

1. Introduction

The Republic of Indonesia is an archipelagic country, often referred to as a maritime nation, surrounded by vast oceans. As the world's largest archipelago, Indonesia boasts approximately 5.8 million square kilometers of maritime territory, which constitutes 75 percent of its total land area. This includes 0.3 million square kilometers of territorial waters, 2.8 million square kilometers of archipelagic waters, and 2.7 million square kilometers of Indonesia's Exclusive Economic Zone (EEZ). Given its extensive water territory compared to its landmass and its strategic geographical location, it is only natural that Indonesia has a fundamental interest in controlling and utilizing its oceans. The nation possesses a strong maritime identity and culture, leveraging its strategic position for the benefit of the nation and regional security, in line with constitutional mandates.[1]

Indonesia's rich marine and fisheries resources hold a unique attraction for maritime industry players, prompting various efforts to explore and exploit them. The potential marine and fisheries resources within Indonesia's waters have the capacity to sustainably yield approximately 5.12 million tons per year if managed optimally, while adhering to sustainable harvesting practices. This can lead to significant benefits, including increased foreign exchange earnings from the export of marine fisheries commodities. However, the geographical conditions and vast potential fishery resources in Indonesian waters have unfortunately given rise to frequent incidents of illegal fishing.[2]

Illegal fishing entails the unlawful capture of fish. In the realm of international crime, fisheries crimes encompass not only theft of fish (illegal fishing) but also unreported fishing and unregulated fishing, collectively referred to as Illegal, Unreported, and Unregulated (IUU) Fishing.[3] Foreign fishermen from neighboring countries engage in illegal fishing activities within Indonesian waters through

[1] Harry Purwanto and D. G. Mangku, "Legal Instrument of the Republic of Indonesia on Border Management Using the Perspective of Archipelagic State," *International Journal of Business, Economics and Law* 11, no. 4 (2016): 55.

[2] Dawn Rothe and David Friedrichs, *Crimes of globalization* (London: Routledge, 2014), 76. See also, Reece Walters, "Environmental crime in Scotland," in *Criminal Justice in Scotland*, ed. Hazel Croall, Gerry Mooney, and Mary Munro (London: Willan, 2012), 164.

[3] Joanna Vince, "Policy responses to IUU fishing in Northern Australian waters," *Ocean & coastal management* 50, no. 8 (2007): 683. See also, Robert Pomeroy et al., "Drivers and impacts of fisheries scarcity, competition, and conflict on maritime security," *Marine Policy* 67 (2016): 94; Mary Ann Palma-Robles, "Integrating monitoring, control and surveillance and anti-money laundering tools to address illegal fishing in the Philippines and Indonesia," *Following the Proceeds of Environmental Crime* (2014): 100; Joe McNulty, "Western and Central Pacific Ocean fisheries and the opportunities for transnational organised crime: Monitoring, Control and Surveillance (MCS) Operation Kurukuru," *Australian Journal of Maritime & Ocean Affairs* 5, no. 4 (2013): 146.

various modi operandi, capturing fish and subsequently trading them outside of Indonesia for substantial profits.[4] This illegal fishing activity has inflicted financial losses on the country, driven by increased global demand for fish and other seafood. Illegal fishing can be categorized into four groups: fishing without permission, fishing using fake permits, fishing with prohibited gear, and fishing for species that do not match the permit.

In addition to the exploration, exploitation, and management of resources within its EEZ, Indonesia also has the authority to enforce the law through measures such as vessel apprehension and the apprehension of individuals suspected of committing violations within its EEZ. This includes actions such as stopping vessels and, in some cases, transferring them and their crew to ports where legal proceedings can be initiated.[5] Law enforcement at sea plays a vital role in establishing the credibility and sovereignty of the nation in its maritime territory. To prosecute individuals engaged in illegal fishing, whether Indonesian or foreign nationals, Indonesia has established legal provisions within Law No. 31 of 2004, as amended by Law No. 45 of 2009, concerning Fisheries. However, in enforcing the law, Indonesia must harmonize national legal provisions with international laws, highlighting the nation's commitment to respecting international legal norms.[6]

The enforcement of criminal fisheries offenses within Indonesia's Exclusive Economic Zone (EEZ) is regulated by Article 97 paragraph (2), Article 102 of the Fisheries Law, and Article 104 paragraph (1). These articles are an adoption of provisions found in the United Nations Convention on the Law of the Sea (UNCLOS). Article 97, paragraph (2) addresses the master of a foreign-flagged fishing vessel operating with permission to capture specific types of fish in specific areas of the EEZ but engaging in other unauthorized fishing activities. Such individuals may be subject to criminal fines. Article 102 of the Fisheries Law stipulates that imprisonment is not applicable within the EEZ unless an agreement exists between the Indonesian government and the relevant foreign government. This provision is adapted from Article 73 paragraph (3) of UNCLOS, which states that Coastal State penalties for violations of fisheries laws and regulations in the

[4] Eve De Coning and Emma Witbooi, "Towards a new 'fisheries crime' paradigm: South Africa as an illustrative example," *Marine Policy* 60 (2015): 209.

[5] Lina M. Saavedra-Díaz, Andrew A. Rosenberg, and Berta Martín-López, "Social perceptions of Colombian small-scale marine fisheries conflicts: Insights for management," *Marine Policy* 56 (2015): 61; Joeri Scholtens and Maarten Bavinck, "Lessons for legal pluralism: investigating the challenges of transboundary fisheries governance," *Current Opinion in Environmental Sustainability* 11 (2014): 10; Alice M. M. Miller, Simon R. Bush, and Arthur PJ Mol, "Power Europe: EU and the illegal, unreported and unregulated tuna fisheries regulation in the West and Central Pacific Ocean," *Marine Policy* 45 (2014): 139.

[6] Victor P.H. Nikijuluw, "Small-scale fisheries management in Indonesia," *Interactive mechanisms for small-scale fisheries management* 42 (2002), 43. See also, Edward H. Allison and Frank Ellis, "The livelihoods approach and management of small-scale fisheries," *Marine policy* 25, no. 5 (2001): 377.

exclusive economic zone may not include imprisonment, in the absence of agreements to the contrary by the States concerned, or any other form of corporal punishment.

The application of sanctions in the form of fines without imprisonment for illegal fishing within the EEZ is due to the sovereign rights of coastal states to explore, exploit, manage, and conserve living and non-living natural resources on the seabed and its subsoil, as well as the water column above it, and other economic activities within the zone, such as generating energy from water, currents, and wind[7]. The prohibition of criminal imprisonment sanctions against illegal fishing offenders in the EEZ is further reinforced by the issuance of Circular Letter No. 3 of 2015 from the Supreme Court of Indonesia, which provides guidance for the implementation of judicial tasks. Under this guidance, it is stipulated that in cases of illegal fishing within the EEZ, the defendant may only be subject to fines without the option of substituting them with imprisonment.

From a legal perspective, the application of fines without the option of imprisonment has generated debate among law enforcement agencies handling such cases[8]. The controversy arises from the conflict between Article 102 of Law No. 45 of 2009 on Fisheries, which prohibits imprisonment for fisheries offenses within the EEZ, and Article 30 of the Indonesian Criminal Code, which allows for the substitution of unpaid fines with imprisonment. However, there are humanitarian concerns regarding the application of Article 102 to foreign fishermen, as it may potentially violate human rights and tarnish Indonesia's international image. In practice, courts have issued judgments that apply fines, such as in the case with judgment No. 11/Pid.Sus-PRK/2019/PN.Bit, where the court imposed a fine of IDR 400,000,000 without the option of substituting it with imprisonment if the offender could not pay the fine. In this judgment, the court also considered Article 73 of UNCLOS, which prohibits imprisonment for foreign nationals unless there is a bilateral agreement between the countries concerned. Based on data from the National Commission on Fisheries Resources (*Komisi Nasional Pengkajian Sumber Daya Ikan*), it is evident that imposing fines alone has not had a deterrent effect on foreign fishermen; in fact, it has led to an increase in foreign fishermen entering Indonesian waters for illegal fishing. This is reflected in the number of fishing vessels that have been sunk in Indonesian waters. Consequently, the research aims to analyze the forms of punishment imposed on

[7] Murray Johns, "Enhancing responsible fishing practices in South East Asia to combat Illegal, Unreported and Unregulated (IUU) fishing," *Australian Journal of Maritime & Ocean Affairs* 5, no. 3 (2013): 115; Juan He, "The EU illegal, unreported, and unregulated fishing regulation based on trade and market-related measures: unilateralism or a model law?," *Journal of International Wildlife Law & Policy* 20, no. 2 (2017): 173.

[8] De Coning and Witbooi, "Towards a new 'fisheries crime' paradigm," 210.

foreign fishermen engaged in illegal fishing and to analyze the enforcement of the law against foreign fishermen in Indonesian waters.

2. Research Methods

This research employed a qualitative research method with a normative juridical approach. In this study, legal materials were obtained through legal research or a literature review of primary, secondary, and tertiary legal sources. Primary legal materials are authoritative legal documents, including legislation, official records, or reports in the legislative process, used as legal sources in this research. They include the Constitution of the Republic of Indonesia 1945; Law No. 8 of 1981 on the Criminal Procedure Code; Law No. 5 of 1983 on the Exclusive Economic Zone of Indonesia (ZEEI); Law No. 17 of 1985 on the Ratification of UNCLOS 1982; Law No. 31 of 2004 concerning Fisheries, and Law No. 45 of 2009 amending Law No. 31 of 2004 concerning Fisheries; United Nations Convention on the Law of the Sea (UNCLOS). Secondary legal materials are supportive materials that complement primary legal sources and provide additional explanations. Secondary legal materials include publications related to the law, such as research findings, papers, and scientific discoveries. Tertiary legal materials further elaborate on primary and secondary legal sources. The collection of legal materials involved identifying and inventorying legal regulations related to illegal fishing by foreign fishermen, fisheries crimes, journals obtained from the internet, theses on similar topics, and other relevant legal documents. Subsequently, these legal materials were classified, selected, and ensured to be consistent with each other. The analysis of legal materials was conducted through legal interpretation and legal construction methods, employing grammatical interpretation techniques. This involved interpreting the applicable laws in connection with the research topic and utilizing official interpretations when available.

3. The Crime of Illegal Fishing

Law No. 31 of 2004 concerning Fisheries is an Indonesian law that regulates the fisheries sector. This law provides the legal basis for the management of fisheries resources, protection of aquatic environments, supervision of fishing activities, development of the fisheries industry, and related issues.[9] Despite the regulations outlined in this law, not everyone immediately complies with them, and

[9] Nikijuluw, "Small-scale fisheries," 45. See also, Allison and Ellis, "The livelihoods approach," 377.

violations of these provisions often occur. To strengthen compliance with these administrative provisions, Law No. 45 of 2009 concerning Amendments to Law No. 31 of 2004 concerning Fisheries includes criminal sanctions, which is a policy in criminal law (penal policy).[10] states that penal policy is an effort to realize good criminal regulations that are suitable for the prevailing circumstances and the future.

Explain that the influence of the criminal justice system on the wider society is challenging to measure precisely.[11] This influence consists of various actions and reactions that differ and are closely interrelated. There are various terms used to refer to this influence, such as prevention, general prevention, reinforcement of moral values, strengthening collective awareness, reaffirmation of public safety, alleviation of fears, release of aggressive tensions, and so on. Specifically, in the context of the impact of imprisonment[12] highlights the importance of understanding the influence of criminal sanctions on offenders. However, the broader impact on society as a whole, often referred to as general prevention, remains an area that is not fully understood. This area is like "terra incognita," a region that has not yet been fully explored in criminal law research. In other words, the effects of imprisonment on society in terms of general crime prevention are still an area that has not been well-explored.[13]

Convey important perspectives on issues related to preventing and correcting criminal behavior.[14] Often, there is a lack of a clear understanding of the most effective methods for preventing and correcting criminal behavior and the extent of the effectiveness of each method. Comprehensive knowledge of the etiology of human behavior is crucial. Etiology refers to a deep understanding of what factors drive someone to engage in criminal actions.[15] Before we can develop effective strategies for crime prevention and offender rehabilitation, we need a deeper

[10] Sudarto, *Hukum and Hukum Pidana* (Penerbit Alumni, 1981), 25.

[11] Gabriel J. Culbert et al., "Within-prison drug injection among HIV-infected male prisoners in Indonesia: a highly constrained choice," *Drug and alcohol dependence* 149 (2015): 74.

[12] Howard Dick, "Why law reform fails: Indonesia's anti-corruption reforms," in *Law Reform in Developing and Transitional States*, ed. Tim Lindsey (London: Routledge, 2006), 43.

[13] Bruce Taylor, Christopher S. Koper, and Daniel J. Woods, "A randomized controlled trial of different policing strategies at hot spots of violent crime," *Journal of experimental criminology* 7 (2011): 151.

[14] Eric Lambert, "The impact of organizational justice on correctional staff," *Journal of criminal justice* 31, no. 2 (2003): 155. See also, Matthew S. Crow, Chang-Bae Lee, and Jae-Jin Joo, "Organizational justice and organizational commitment among South Korean police officers: An investigation of job satisfaction as a mediator," *Policing: an international journal of police strategies & management* 35, no. 2 (2012): 403.

[15] Anja Kollmuss and Julian Agyeman, "Mind the gap: why do people act environmentally and what are the barriers to pro-environmental behavior?," *Environmental education research* 8, no. 3 (2002): 241.

understanding of the psychological, social, and environmental factors that contribute to criminal behavior. With a more complete knowledge of the etiology of human behavior, we can better direct our efforts to understand and address crime problems in society.

Presents a profound understanding of the role and function of criminal law in dealing with crime.[16] He explains that the use of criminal law in law enforcement is actually more of an action to address the symptoms or consequences of a criminal act (*kurieren am sympton*) rather than an effort to eliminate its underlying causes. This means that criminal law is often used as a means to punish or sanction offenders in response to their actions but may not always effectively address the root causes or factors that drive someone to commit a crime. Criminal sanctions or punishments cannot be considered as remedies (remedium) that effectively address the root causes or reasons behind criminal behavior.[17] Instead, criminal law is more of a "symptomatic treatment," aiming to address the consequences that arise from legal violations. In this regard, there are limitations to the ability of criminal law to provide comprehensive solutions to the issue of crime[18]. This approach underscores the importance of a deeper understanding of the factors driving criminal behavior and more effective preventive efforts beyond the criminal justice system. It also reflects the view that law enforcement and the criminal justice system should be combined with other efforts, such as rehabilitation, education, and social change, to address the root causes of crime and achieve better community safety.[19]

The concept of individual-oriented punishment, often referred to as individual or personal punishment, emphasizes the philosophy of rehabilitation and care for offenders. This approach promotes a humanistic idea that emphasizes the individualization of punishment and aims for punishment that is more focused on the improvement of the individual who committed the crime.[20] The primary goal of this approach is rehabilitation, reformation, re-education, resocialization, social readaptation, social reintegration, and the like. However, it is important to remember that in this concept, attention is not only directed at the improvement of the offender but also at society and the environmental conditions.[21] This approach acknowledges that it's not only the offenders who need care and rehabilitation but also the community that shapes the environment in which

[16] Sudarto, *Hukum and Hukum Pidana*, 38.

[17] Dick, "Why law reform fails," 47.

[18] Ashley McCrea-Strub et al., "Understanding the cost of establishing marine protected areas," *Marine Policy* 35, no. 1 (2011): 1.

[19] Nikijuluw, "Small-scale fisheries," 44; Allison and Ellis, "The livelihoods approach," 378.

[20] Gerald Dworkin, "Offense to Others: The Moral Limits of the Criminal Law," *The Philosophical Review* XCVIII, no. 2 (1989): 239.

[21] De Coning and Witbooi, "Towards a new 'fisheries crime' paradigm," 209.

criminal activities occur. An interesting perspective from Kim Rossmo[22] suggests that if crime is a product of society, then the main solution is to improve and care for the society itself. In this context, what needs care or treatment is actually the community that can contribute to the emergence of criminal behavior. Therefore, the focus of individual-oriented punishment should not only be on the offenders but also on the improvement and care of the community and its environmental conditions. This holistic approach aims to create a healthier and safer social environment, ultimately helping to reduce crime rates.

4. Enforcement of The Criminal Act of Illegal Fishing

According to Safdar et al. (2020), the general definition of law enforcement is the activity of implementing or enforcing regulations. It is explained that a good legal system involves the harmonization of values with norms and with actual behavior.[23] Thus, as long as the intensity of a threat is considered to disrupt order and legal interests, the actions taken in response to that threat are in the form of law enforcement. Furthermore, the general definition of law enforcement is interpreted as a state's/apparatus' activity based on the state's sovereignty and/or based on international legal provisions to ensure that legal regulations in the sea, both national and international legal norms, are adhered to or obeyed by every individual and/or legal entity and the state as a legal subject.[24] This way, national and international legal order can be established. The national objective is a primary consideration in law enforcement in Indonesia's Territorial Waters, aimed at providing national resilience, as any organization, regardless of its form, in the process of pursuing its objectives, will always face internal and external challenges, as well as the state in achieving its goals.[25] Therefore, a prepared situation and condition are needed to face them. For Indonesia, the philosophy and ideology underpinning national resilience are derived from the Preamble of the 1945 Constitution[26].

[22] D. Kim Rossmo, "Case rethinking: a protocol for reviewing criminal investigations," *Police Practice and Research* 17, no. 3 (2016): 214.

[23] Amitai Etzioni and Oren Etzioni, "Incorporating ethics into artificial intelligence," *The Journal of Ethics* 21 (2017): 403; Hsinchun Chen et al., "COPLINK Connect: information and knowledge management for law enforcement," *Decision support systems* 34, no. 3 (2003): 272.

[24] Taylor, Koper, and Woods, "A randomized controlled trial," 151.

[25] Scholtens and Bavinck, "Lessons for legal pluralism," 2.

[26] Elizabeth McLeod, Brian Szuster, and Rodney Salm, "Sasi and marine conservation in Raja Ampat, Indonesia," *Coastal Management* 37, no. 6 (2009): 656; Michel Picard, "Cultural tourism, nation-building, and regional culture: The making of a Balinese identity," *Tourism, ethnicity, and the state in Asian and Pacific societies* (1997): 182.

Law enforcement at sea cannot be separated from the issue of sovereignty enforcement at sea. The concepts of law enforcement on one hand and sovereignty enforcement on the other can be distinguished, but they cannot be separated because sovereignty enforcement at sea includes law enforcement at sea.[27] Sovereignty enforcement can be carried out not only within a state's jurisdiction but can also extend beyond its borders, whereas law enforcement at sea is a process of capturing and investigating a case arising from violations at sea under applicable legal provisions, both international and national. Thus, in practice, sovereignty enforcement and law enforcement at sea are carried out simultaneously.[28] Therefore, the differentiation between law enforcement and sovereignty enforcement depends on the intensity of the threat faced.[29] As long as the threat is considered to jeopardize the existence of a state, the action that can be taken to address that threat is sovereignty enforcement. The authority to enforce sovereignty and law is derived from the sovereignty and jurisdiction possessed by the respective states, in accordance with international legal provisions.

Essentially, sovereignty is the highest and fullest authority of a state that is comprehensive in nature, allowing it to take necessary actions in the interest of its national well-being based on national law while considering international law[30]. The sovereignty of a state is articulated in the form of various powers or rights of the concerned state, including jurisdiction, which is the state's authority to create and enforce legal regulations. Therefore, law enforcement at sea by a state through its authorities fundamentally signifies the exercise of sovereignty itself because the authority and capability to carry out law enforcement are essentially derived from state sovereignty and simultaneously represent the manifestation of sovereignty[31]. Law enforcement at sea encompasses activities such as surveillance, vessel interception, including boarding and inspection (investigation and inspection), and investigation in case of criminal offenses, with further proceedings taking place on land. The capacity of law enforcement authorities at sea, located in various government agencies, primarily in terms of understanding relevant regulations, is deemed to be quite adequate, as each agency has been improving the skills of its law enforcement personnel involved in maritime law enforcement.[32]

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[27] Nikijuluw, "Small-scale fisheries," 44; Allison and Ellis, "The livelihoods approach," 379.

[28] Serge Raemaekers et al., "Review of the causes of the rise of the illegal South African abalone fishery and consequent closure of the rights-based fishery," *Ocean & Coastal Management* 54, no. 6 (2011): 434.

[29] Palma-Robles, "Integrating monitoring," 100.

[30] Dworkin, "Offense to Others," 239.

[31] Dick, "Why law reform fails," 61.

[32] Jade Lindley and Erika J. Techera, "Overcoming complexity in illegal, unregulated and unreported fishing to achieve effective regulatory pluralism," *Marine Policy* 81 (2017): 74.

Enhancements in capabilities are carried out through education and training, as well as coaching clinics, particularly related to surveillance techniques, surveillance procedures, investigation procedures, and legal processes related to maritime and fisheries. However, in terms of quantity, resources for surveillance personnel, particularly human resources, remain limited. There are significant challenges and problems, including the relatively high prevalence of illegal fishing practices, both by foreign-flagged fishing vessels through direct landing in their home countries (transshipment) and foreign fishing vessels engaged in illegal fishing in Indonesian waters, as well as the use of crew members not in accordance with applicable regulations.[33] Moreover, other criminal activities in and through Indonesian waters and additional zones are challenging to combat, with some types of criminal offenses and violations on the rise, often employing sophisticated technology.

emphasize that the law serves as the protection of human interests. For human interests to be protected, the law must be enforced.[34] The enforcement of the law can occur normally and peacefully, but it can also result from legal violations[35]. In this context, when the law has been violated, it must be upheld, and through law enforcement, the law becomes a reality. In enforcing the law, there are three elements that must always be considered: legal certainty (*rechtssicherheit*), utility (*Zweckmäßigkeit*), and justice (*gereichtigkeit*). There is a provision that faces challenges in its application, and that provision is Article 102 of the Fisheries Law, which states that law enforcement authorities cannot impose imprisonment on foreign fishermen who commit fisheries crimes in the EEZ unless there is an agreement with the respective country.

As long as there is no agreement with the respective country, the application of this article can weaken law enforcement against fisheries crimes. Considering the majority of fishing activities in the EEZ are carried out by foreign nationals, and as of the time of this research, there has been no Memorandum of Understanding (MoU) with the Government of the Republic of Indonesia in the field of fisheries.[36] Therefore, from the perspective of legal certainty, not imposing imprisonment in the form of incarceration against foreign fishermen who commit illegal fishing raises legal uncertainty, as evidenced by the continued presence of foreign vessels engaged in fishing activities in Indonesian waters despite law enforcement efforts. Additionally, when considering the element of legal utility in the execution of court decisions, a subsidiary punishment such as imprisonment in

[33] Prosper Weil, "Towards relative normativity in international law?," *American Journal of International Law* 77, no. 3 (1983): 416.

[34] Johns, "Enhancing responsible fishing practices," 115.

[35] D. Dirhamsyah, "Indonesian legislative framework for coastal resources management: A critical review and recommendation," *Ocean & coastal management* 49, no. 1-2 (2006): 68.

[36] Miller, Bush, and Mol, "Power Europe," 212.

lieu of a fine can be an alternative court decision, providing benefits when offenders refuse or are unable to pay.[37] From the above analysis, it can be concluded that the three elements that must be considered in law enforcement are not functioning well because the provision of a fine as a criminal penalty does not deter other foreign fishermen. Consequently, it can be said that such a situation poses challenges to law enforcement against illegal fishing by foreign fishermen. Moreover, many believe that law enforcement against illegal fishing is weak or ineffective, despite the existing regulations.[38]

5. Conclusion

The results of this research conclude that the form of punishment for illegal fishing offenses regulated in Law No. 45 of 2009 on Fisheries is only in the form of fines without the option of imprisonment in lieu of fines. In other words, when someone is involved in illegal fishing and found guilty, their punishment is a fine without the option of imprisonment as an alternative if the fine is not paid. However, there are challenges in law enforcement against foreign nationals (FNs) involved in illegal fishing if Indonesia does not have an extradition agreement with the home country of the FN. This means that when FNs become suspects, Indonesia does not have the authority to detain them, including for the purpose of investigation. To address this challenge, law enforcement against foreign fishermen engaged in illegal fishing in Indonesian waters involves coordination efforts among various agencies and institutions, such as the Indonesian Navy (TNI AL), the Indonesian Maritime Security Agency (Bakamla), the Office of Sea and Coastal Services (KPLP), and other relevant parties. This collaboration aims to strengthen surveillance of illegal fishing offenses committed by foreign fishermen in Indonesian waters. Thus, despite legal constraints related to the detention of FNs, authorities in Indonesia are making efforts to enhance surveillance and law enforcement against illegal fishing to protect national fisheries resources. Furthermore, it is essential to establish international cooperation agreements related to fishing activities so that when criminal offenses are committed by foreign fishermen, the government can impose imprisonment as there is an agreement with the foreign country of the fisherman involved. Additionally, to deter foreign fishermen and ensure legal certainty and legal utility, it is advisable for the Supreme Court, together with stakeholders (the Attorney General's Office, the National

[37] Timothy Walker, "Maritime Security in West Africa: Aiming for long-term solutions," *African Security Review* 22, no. 2 (2013): 85; Aditi Chatterjee, "Non-traditional maritime security threats in the Indian Ocean region," *Maritime Affairs: Journal of the National Maritime Foundation of India* 10, no. 2 (2014): 83.

[38] De Coning and Witbooi, "Towards a new 'fisheries crime' paradigm," 219.

Police, the Indonesian Navy, Bakamla, and the Directorate General of PSDKP KKP), to reevaluate the consequences of not imposing imprisonment in lieu of fines.

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De Coning, Eve, and Emma Witbooi. "Towards a new 'fisheries crime' paradigm: South Africa as an illustrative example." *Marine Policy* 60 (2015): 208-215

Dick, Howard. "Why law reform fails: Indonesia's anti-corruption reforms." In *Law Reform in Developing and Transitional States*, edited by Tim Lindsey, 42-64. London: Routledge, 2006.

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