

## UNCLOS 1982 AND THE LAW ENFORCEMENT AGAINST ILLEGAL FISHING IN INDONESIA: JUDGES' DIVERGING PERSPECTIVES

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### ***Abstract***

*Indonesia has not been able to come up with an effective punishment enforcement to deal with illegal, unreported, unregulated fishing (IUUF) in its Exclusive Economic Zone (EEZ), partly due to certain legal limitations put forward in United Nations Convention on The Law of the Sea 1982 (UNCLOS 1982) regarding the permissible punishment. There are two perspectives of Indonesian judges regarding the imposition of penalties towards IUUF offenders in the Indonesia's EEZ. They agree to impose fines but differ on whether to add substitutive confinement. This study aims to understand the diverging views of judges regarding the implementation of UNCLOS 1982 provisions and to provide recommendations to optimize the law enforcement of fisheries regulations. This study is a normative legal research, which utilizes secondary data. This study concludes that the diverging view is correlated to the judges' view on the adoption of international laws into national laws and that it is imperative for the Government to choose and optimize one legal policy to achieve an effective law enforcement regime.*

**Keywords:** *Indonesia's EEZ; IUUF; substitutive confinement; UNCLOS 1982*

### ***Intisari***

Indonesia mengalami kendala dalam menerapkan penegakan hukuman terhadap pelaku illegal, unreported, unregulated fishing (IUUF) di Zona Ekonomi Eksklusif (ZEE). Terdapat dua perspektif hakim-hakim di Indonesia dalam putusannya terkait penjatuhan hukuman pidana terhadap pelaku IUUF di ZEE Indonesia. Mereka sepakat untuk menjatuhkan pidana denda, namun berbeda pendapat terkait penjatuhan pidana kurungan pengganti denda. Penelitian ini bertujuan untuk memahami alasan perbedaaan pandangan oleh hakim terhadap penerapan ketentuan-ketentuan dalam United Nations Convention on The Law of the Sea Tahun 1982 (UNCLOS 1982) dan memberikan rekomendasi optimasi penegakan hukum di bidang perikanan. Penelitian ini merupakan penelitian legal normatif dengan menggunakan data sekunder. Hasil penelitian menunjukkan bahwa perbedaan pandangan hakim berkaitan dengan pandangan mereka terhadap penerapan hukum internasional ke dalam hukum nasional, dan penting bagi Indonesia untuk memilih dan melakukan optimasi terhadap satu legal policy untuk menciptakan rezim penegakan hukum yang efektif.

**Kata Kunci:** *ZEE Indonesia; IUUF; pidana kurungan pengganti,; UNCLOS 1982*

## A. Background of the study

Illegal, unreported, unregulated fishing (IUUF, hereinafter illegal fishing) is a major problem faced by Indonesia as the largest archipelagic state with enormous fishery potential. Illegal fishing does not only occur in the territorial waters but also in Indonesia's Exclusive Economic Zone (hereinafter IEEZ). It is estimated that the total loss caused by illegal fishing is over Rp200 trillion per year. The reports of the Illegal Fishing Eradication Task Force (hereinafter Task Force 115)<sup>1</sup> since 2017 to 2018, indicate the following: 633 vessels were caught for illegal fishing, 267 of them were foreign-flagged, and 488 vessels had been sunk following court decree or decision.<sup>2</sup>

Various efforts have been made by the Indonesian government to curb illegal fishing, including: (1) the establishment of a regulatory framework as a legal basis in law enforcement for illegal fishing, (2) the Establishment of Task Force 115, and (3) strengthening bilateral, regional, and international cooperation against illegal fishing.<sup>3</sup> Eversince, it is reported that there is some but unsatisfying decrease of illegal fishing activities.<sup>4</sup>

This paper raises one of the factors that weakens government efforts to eradicate illegal fishing in Indonesia in the IEEZ related to the "suitability of substitutive confinement enforcement" with "any other form of corporal punishment" provision in Article 73 (3) of United Nations Convention on The Law of the Sea Tahun 1982 (hereinafter UNCLOS 1982).<sup>5</sup> The definition of 'illegal fishing' in this paper is limited to fishing activities without the *Surat Izin Menangkap Ikan* (the Indonesian Fishing License).<sup>6</sup>

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1 Task Force 115 is a government agency tasked to combat illegal fishing in territorial jurisdiction waters (i.e., EEZ). This body was established with Presidential Regulation No. 115/2015.

2 SIAR, "Ini Capaian Satgas 115 Dalam Perangi Kejahatan Perairan Di Indonesia", <https://siar.com/ini-capaian-satgas-115-dalam-perangi-kejahatan-perairan-di-indonesia/> (accessed 19 August 2020).

3 Act No. 31 of 2004 concerning Fisheries with its 2009 amendment and derivative regulations; Presidential Regulation No. 115 of 2015 on the Establishment of Task Force 115.

4 Ministry of Fisheries and Marine Affairs, 2018, Laporan Pengawasan SDKP Tahun 2018, Jakarta: Directorate General of Fisheries and Marine Resources Supervision, p. 2.

5 The imposition of a substitutive confinement has raised doubts among the Indonesian judges in upholding the law for illegal fishing in Indonesian EEZ because they consider the provisions in Article 73 (3) of UNCLOS 1982 "may not include imprisonment" but later adds "any other forms of corporal punishment".

6 This limitation is necessary considering the meaning of illegal fishing is not limited to fishing without proper fishing license, but also includes various other activities that do not comply

The issue of substitutive confinement arises when the defendant is unable or unwilling to pay the fine sanctioned by the judge. The question is whether the imposition of substitutive confinement as per Article 30 of the Indonesian Criminal Code (*Kitab Undang-Undang Hukum Pidana*; hereinafter Criminal Code),<sup>7</sup> would contradict the prohibition of imprisonment sentence in Article 73 (3) of UNCLOS 1982.<sup>8</sup>

Having all that said, this study examines: (1) the perspective of Indonesian judges in assessing the compatibility between substitutive confinements and Article 73 (3) UNCLOS 1982 in the case of illegal fishing in the IEEZ, and (2) how to optimize the law enforcement in this regard.

This study is a normative legal research by examining secondary data, namely the relevant regulations and judicial decisions. This study employs a qualitative method in processing the data to find the relevant norms.

## **B. Perspectives of Judges: A Survey of Judicial Decisions**

This study examines judicial decision at the Fisheries Chamber at the District Court, particularly on cases of illegal fishing in the IEEZ. The cases taken as samples in this study are not illegal fishing in a broad sense but limited to operating foreign-flagged fishing vessels conducting fishing in the IEEZ without a proper fishing license as obliged in the Article 93 (2) of the Fisheries Law.<sup>9</sup> The judicial decisions taken as sample are limited to those issued between 2016 and 2019 (as published in the Supreme Court Decision directory page). Such period of time was chosen due to the enactment of the Supreme Court Circular Letter No. 03 of 2015 (*Surat Edaran Mahkamah Agung No. 3 Tahun 2015*; hereinafter SC Circular Letter 03/2015),<sup>10</sup> among

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with the national and international provisions regarding natural resources at sea. In general, the term “illegal fishing” is usually used in “Illegal, Unreported and Unregulated Fishing (IUUF)” which sometimes is also referred to as “Crimes Related to Fisheries, Fisheries Crimes, Fisheries-Related Crimes, Crimes in The Fisheries Sector, or Crimes in The Fishing Industry”.

7 Article 30 of Criminal Code stipulates that in case of fines that are not paid, it will be substituted with a substitutive confinement.

8 UNCLOS 1982, Article 73 paragraph (3): “Coastal State penalties for violations of fisheries laws and regulations in the exclusive economic zone may not include imprisonment, in the absence of agreements to the contrary by the states concerned, or any other form of corporal punishment.”

9 See Law No. 31 of 2004 on Fisheries (as amended by Law No. 45 of 2009 and Law No. 11 of 2020), Article 93 (2).

10 The implementation of Chamber System in the Supreme Court is to maintain the consistency of

which stipulates “in the case of illegal fishing in the IEEZ, the defendant can only be charged with fine without confinement as a substitutive for fine.” SC Circular Letter 03/2015 must be taken as a guideline by all judges in the District Court. Thus, normatively, the judges’ decision on the case of Illegal fishing activities in IEEZ shall be uniform, complying to the guideline in the SC Circular Letter 03/2015.

Considering the illegal fishing activities studied in this paper are only those occurring in the IEEZ, only few district courts have ruled such cases. According to the Supreme Court Decision directory page, there are three District Courts (hereinafter DCs) that ruled most illegal fishing cases in the IEEZ. These DCs are the Ranai DC, Tanjung Pinang DC and Bitung DC, with a total of 162 cases between 2016-2019 as provided in Table 1.<sup>11</sup>

**Table 1.**  
**Number of Judicial Decisions on Illegal Fishing in IEEZ from 2016-2019**

Year	Penalties	Bitung DC	Tanjung Pinang DC	Ranai DC
2019	Fine	12	9	25
	Fine + Substitutive Confinement	0	0	0
2018	Fine	6	4	21
	Fine + Substitutive Confinement	0	3	23
2017	Fine	N/A	N/A	0
	Fine + Substitutive Confinement	N/A	N/A	30
2016	Fine	N/A	N/A	2
	Fine + Substitutive Confinement	N/A	N/A	27

**Source: Adapted from the Supreme Court Decision directory page by the Authors (the original data can be seen in Annex I of this article)<sup>12</sup>**

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judicial decisions. In 2015, Indonesia’ Supreme Court conducted a plenary meeting discussing the most intriguing problems from each chamber. Illegal Fishing in IEEZ was among the topic discussed.

11 The district court is designated to record or register the case, but the ruling is still under fisheries court as regulated by the fisheries act; note that the numbers shown in the table is according to the data available in the Supreme Court Decision directory page. There might be some differences to the actual data on the field.

12 Annex I is available at the following link: <http://bit.ly/merdekawati-IUUF1>.

Table 1 indicates the correct understanding of the judges' of Article 73 (3) UNCLOS 1982, shown by no imprisonment taken as the main penalty in all decisions.<sup>13</sup> Although, in several cases, the public prosecutor in their requisitory charges demands imprisonment for a penalty as mentioned in Article 93 (2) of Fisheries Act. Generally there are two main issues discussed in all the judicial decision, which are: (1) criminal conviction,<sup>14</sup> and (2) confiscation of evidences.<sup>15</sup>

We will discuss the first issue, where the judges opinions on the matter are polarized. It will be divided into two sections: (1) those which impose fine and (2) those which impose fine and substitutive confinement if the defendant is unable to pay. Based on the sample of judicial decisions, these two views are quite striking in Ranai DC as follows:<sup>16</sup>

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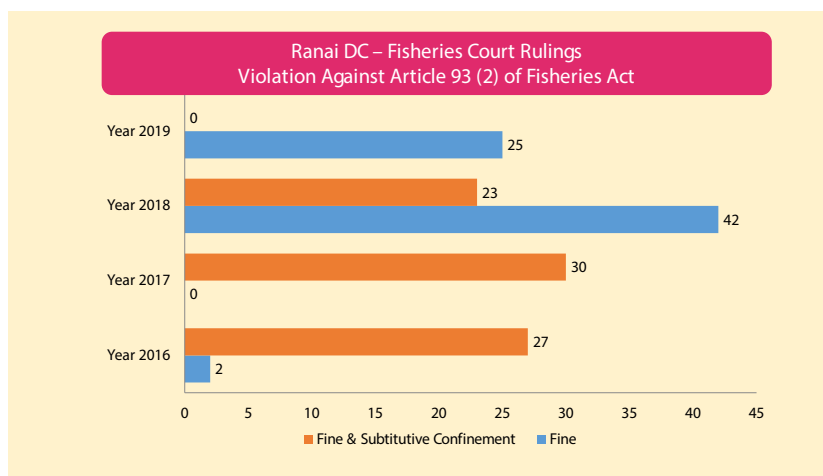
13 See for example Judgment No. 4/Pid.Sus.Prk/2019/PN Ran, p. 37; and Judgment No. 18/Pid.Sus.Prk/2018/PN Tpg, p. 23.

14 There are two patterns of sentencing used by the judges, which are: (1) judges only impose fines without substitutive confinement; and (2) judges impose fines, which if not paid, is to be replaced with a substitutive confinement. The amount of fines imposed according to the samples is ranging from forty million rupiahs to five billion rupiahs. The maximum fines allowed by Art 93 (2) of Fisheries Act is twenty billion rupiahs.

15 This is according to provisions of Art. 76A and Art. 104 of Fisheries Act which stipulates that things and/or tools used for and/or generated from committing fisheries violations may be confiscated for the State or destroyed upon court order.

16 The judicial decisions in Ranai DC are quite varied and relatively more than in Tanjung Pinang DC and Bitung DC. This is due to the location of Rinai DC in Natuna, Kepulauan Riau, the closest court with the IEEZ around the South China Sea. The Ranai DC jurisdiction corresponds with Article 14 No. 15 1983 stating that the court responsible to rule violations to this law is district court whose jurisdictions cover the port where the vessels and/or fishermen suspected of doing violation in the IEEZ were detained.

**Figure 1.**  
**Judicial Decisions of Ranai Fisheries Court on IUUF in IEEZ 2016-2019**



**Source: Adapted from the Supreme Court Decision directory page (The original data can be seen in Annex I)<sup>17</sup>**

Figure 1 shows, from 2016-2019, there is a balanced number of judges who sentenced fine versus judges who sentenced fine with substitutive confinement. It is intriguing to research further on the polarized views, especially considering there is SC Circular Letter No.3/2015 as a guideline for all judges.

According to the findings, the Authors analyzed the factors that affect the views of the judges on the law enforcement of illegal fishing cases in IEEZ, particularly regarding the imposition of substitutive confinement. The results of the analysis are as follows.

### **1. Judicial decisions whom rule fine without substitutive confinement**

The judges who choose to charge fine without substitutive confinement as replacement of fine (in the case where the defendant is unable to pay) base their judgment on the following reasons:

#### *a. Application of pacta sunt servanda principle*

Most judges who imposed only fines follow the *pacta sunt servanda* as per Article 26 of the Vienna Convention on the Law of Treaties 1969 (hereinafter VCLT 1969) and Act No. 24 of 2000 on International Treaties. Based on the data from the United Nations Treaty Collection (hereinafter UNTC),

<sup>17</sup> Annex I of this article is available at the following link: <http://bit.ly/merdekawati-IUUF1>.

Indonesia signed the UNCLOS 1982 on 10 December 1982 and ratified it on 3 February 1986. In several judicial decisions, the judges are of the opinion that when a rule of international law has been incorporated to the national law, the former has primacy over the latter.<sup>18</sup> Article 73 (3) of UNCLOS 1982 explicitly states that, in cases where coastal state imposes penalties to the perpetrators, the penalty may not include imprisonment or any other form of corporal punishment, except if there is a prior agreement between the coastal state and the concerned state. The substitutive confinement as per article 30 of the Criminal Code must be interpreted as a form of corporal punishment which deprives one's freedom during the sentence, this contradicts the prohibition to impose "any other form of corporal punishment".<sup>19</sup>

*b. Application of lex specialis derogat legi generali and lex posteriori derogat legi priori principles*

In many judicial decisions taken as sample in this study, the judges use *lex specialis derogat legi generali* and *lex posteriori derogat legi priori* principles in their argument. Unfortunately, it is not always elaborated clearly how exactly these two principles play role in the judges' final decision. Some judicial decisions apply the *lex specialis derogat legi generali* principle by treating the Fisheries Act as a special law and the Criminal Code as a general law. Since the Fisheries Act does not regulate on the substitutive confinement, it must be interpreted that the lawmakers did not intend such punishment to be applied.<sup>20</sup> Meanwhile judges who elaborate the *lex posteriori derogat legi priori* principle in their decision applies it with UNCLOS 1982 (as ratified via Act No. 17 1985), which is more recent than the Criminal Code. Hence, the former must overrule the latter in the case of contradiction, including in the issue of substitutive confinement. Considering Indonesia Fisheries Act does not regulate on the imposition of substitutive confinement, it needs to be

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18 See Dinah Shelton, "International Law and Domestic Legal Systems Incorporation, Transformation, and Persuasion," *Oxford University Press*, 2011, 124.; see also Melissa A. Waters, "Creeping Monism: The Judicial Trend Toward Interpretive Incorporation of Human Rights Treaties," *Columbia Law Review* 107, no. 3 (2007): 652–94..

19 See for example Judgment No. 18/Pid.Sus-Prk/2018/PN Tpg, p. 23, and Judgment No. 39/Pid.Sus-Prk/2018/PN Tpg., p. 21

20 See for example Judgment No. 39/Pid.Sus-PRK/2018/PN.Tpg, p. 21.

assumed that the lawmakers did not expect such punishment to be imposed.<sup>21</sup>

*c. Article 4 (1) of Act No. 5 of 1983 on IEEZ*

This provision stipulates that the Indonesian sovereign rights referred by the law is not the same or cannot be equated with the full sovereignty owned and carried out by Indonesia over their territorial sea, archipelagic waters, and inland waters. Hence, the sanctions imposed in the IEEZ are different from the sanction imposed in waters under Indonesian full sovereignty. Based on this, the judges choose to only impose fine without substitutive confinement. According to them, substitutive confinement is included in one of the impermissible corporal sentences under Article 73 (3) of UNCLOS 1982.<sup>22</sup>

*d. Article 309 of UNCLOS 1982*

Some judges based their judgment on article 309 of UNCLOS 1982 which stipulates that “no reservations or exceptions may be made to this Convention unless expressly permitted by other articles of this Convention”. Therefore, a state only has two options; either to accept UNCLOS 1982 fully without exception including Article 73 (3), or to refuse becoming a state party. Considering that Indonesia has consciously chosen to be a state party, all the provisions of UNCLOS 1982 should be carried out in good faith.

*e. Supreme Court Circular Letter No. 03/2015*

Almost all judges who agree on substitutive confinement refer to the SC Circular Letter No. 3/2015. Specifically, in the Criminal Chamber Legal Formulation point 3 stipulates that “in the case of illegal fishing in the IEEZ, the defendant may only be subject to fine penalty without substitutive confinement”.<sup>23</sup> Considering that one of the goals of implementing the chamber system in the Indonesian Supreme Court is to maintain the unity of law application and consistency of decisions, the judge must follow the provisions in SC Circular Letter No. 3/2015 to achieve consistency of decisions over the similar cases.

*f. Case Law of the Supreme Court*

In some decisions, the judges referred to the Cassation Judgment No.

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<sup>21</sup> *Ibid.*

<sup>22</sup> *Ibid.*, p. 20.

<sup>23</sup> *Ibid.*, p. 21; see also for example in Judgment No. 4/Pid.Sus.Prk/2019/PN Ran, p. 37.



1206 K/Pid.Sus /2015 dated 23 February 2016, which rejected the cassation submission by the Tanjung Pinang DC Prosecutors who disagreed with *Judex Facti* of imposing fines without substitutive confinement. Although Indonesia does not use *stare decisis* doctrine,<sup>24</sup> the judges still choose to refer to it as a subsidiary source of law.<sup>25</sup> This is based on the understanding that decisions made in the District Court will have the possibility of being reviewed through appeals as well as cassation mechanism. If at the level of cassation, the judges' decision in the Supreme Court is as stipulated in SC Circular Letter No. 03/2015, the District Court must also follow the judges' legal opinion at the Supreme Court.

*g. Requisitory charges*

Some judges also mention that one of the reasons to only impose fine without substitutive confinement is because the requisitory charges only demand for a fine penalty. However, there are also many public prosecutors who demanded substitutive confinement in their requisitory charges to achieve effectiveness of the decision execution.<sup>26</sup>

**2. Judges whom impose fine along with a substitutive confinement**

The judges who choose to charge fine followed with substitutive confinement as replacement of fine base their judgment on the following reasons.

*a. The necessity to transform the ratification act into a national law*

An interesting argument brought by the judges who are in favor of substitutive confinement is related to the legal consequences of international treaties ratification in the Ratification Act. The argument revolves around the classic debate in international law; whether an international treaty ratified through the Ratification Act will make the norms (provisions) in the treaty (1) automatically be applicable in the national legal system including the national court (the incorporation theory) or (2) does not automatically apply

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24 *Stare decisis* theory requires that a judge in deciding a matter should follow the past judgments on the similar matter. If he were to decide differently then he has to provide clear and logical reasonings. This theory is generally applied in anglo-saxon law system; see Mark J. Richards and Herbert M. Kritzer, "Jurisprudential Regimes in Supreme Court Decision Making," *American Political Science Review* 96, no. 2 (2002): 305–20..

25 See for example in Judgment No. 39/Pid.Sus-PRK/2018/PN Tpg, p. 22.

26 Some requisitory charges demand up to 10 months confinement, exceeding the 6 months limit as stipulated in the Article 30 (3) of Indonesian Criminal Code.

because it requires a transformation process where the international treaties substance must be ‘translated’ into Indonesian national legal regulations (the transformation theory).<sup>27</sup>

Between the two streams of incorporation and transformation theories, the judges who are in favor of substitutive confinement tend to incline towards transformation.<sup>28</sup> They argue that the ratification of an international convention or treaties does not automatically make the provisions in international law directly applicable in every case decided by a court, rather a national legislation policy is needed to formulate the treaty’s provisions into a (criminal) law.<sup>29</sup> Based on such views, they believe that the Fisheries Act is the law they should refer to on the matter, of which in Article 102 it does not stipulate the prohibition of constitutive confinement.

*b. The different legal definitions in the term ‘confinement’ and ‘imprisonment’*

These judges are of the opinion that there are differences in legal definitions in the terms ‘confinement’ (*kurungan*) and ‘imprisonment’ (*penjara*) according to the Indonesian penitentiary law and the provisions in the Criminal Code.<sup>30</sup> Article 102 of the Fisheries Act clearly states that the provisions on imprisonment do not apply to fisheries crime that occur in the IEEZ, unless there are already prior agreements between the Indonesian government and the government of the concerned state. The Article 102 of the Fisheries Act clearly affirms the exemption of imprisonment for fisheries crime occurring in the IEEZ, but there is no exception to confinement as a substitutive of fines in this article. In other words, imposition of substitutive confinement is not prohibited under Article 102 of the Fisheries Act.<sup>31</sup>

*c. The need for a guarantee towards the fine’s execution*

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27 Dinah Shelton, *Op. cit.*, p. 8-10; see also Hikmahanto Juwana, “Kewajiban Negara Dalam Proses Ratifikasi Perjanjian Internasional: Memastikan Keselarasan Dengan Konstitusi Dan Mentransformasikan Ke Hukum Nasional,” *Undang: Jurnal Hukum* 2, no. 1 (2019): 17–24..

28 See for example Judgment No. 39/Pid.Sus-PRK/2018/PN Tpg, p. 22-23.

29 See dissenting opinion on Judicial Review No. 1206 K/Pid.Sus/2015; see also Edwin Borchard, “The Relation between International Law and Municipal Law,” *Virginia Law Review* 27, no. 2 (1940): 137–48.; and Stephen J. Toope, “Inside and Out: The Stories of International Law and Domestic Law,” *UNBLJ* 50 (2001): 11–24..

30 See Mompang L. Panggabean, “Pokok-Pokok Hukum Penitensier Di Indonesia,” *UKI Press*, 2005, 140–47..

31 See for example Judgment No. 39/Pid.Sus-PRK/2018/PN Tpg, p. 22.

Judges who are in favor of substitutive confinement believe that the Indonesian national criminal law system does not have a legal instrument that can be used in case the defendant is unable to pay criminal fines. This fact ultimately puts substitutive confinement in place of a fine to be imperative and not facultative.<sup>32</sup> The judges also argued that there are no legal instruments that could be used to execute the fine by confiscating the defendant's assets.<sup>33</sup>

*d. Fulfilling the equality before the law principle*

Another perspective taken by the judges is to use the 'equality before the law' principle as a justification to impose substitutive confinement. They believe it is unfair to discriminate the punishment for Indonesian and foreign nationals for the similar case.<sup>34</sup> There is a special treatment for foreign nationals which unable the law to impose any kind of imprisonment or corporal punishment, including substitutive confinement.

*e. Enforcement of the Criminal Code*

By prioritizing the effectiveness of fine execution, the judges who are

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32 SeeTatik Sunatri et al., *Optimalisasi Pelaksanaan Eksekusi Pidana Denda Dikaitkan Pasal 102 Undang-Undang Nomor 31 Tahun 2004 Tentang Perikanan, Kejaksaan Agung Pusat Penelitian Dan Pengembangan* (Jakarta: Miswar, 2017), 60–65.; in her research it is stated that in the event of a convicted person (foreign nationals) in illegal fishing case in IEEZ is unable to pay a fine, they would be released without any sanctions, because of the prohibitions of imposing substitutive confinement. When they are about to go back to their country, the Indonesian immigration will not allow them to leave Indonesian territory because they still have legal obligations to pay fines which are indebted forever. This will create another problem as Indonesia have to bear the cost of foreign convicts who are still detained by the law enforcement officials. The number of foreign convicts which are up to hundreds of people would require a huge cost to sustain. In fact, the convicts are often detained in the Prosecutor's Office for months, until it can equate or exceed the maximum sentence of substitutive confinement of up to 6 months. On the other hand, the fines that are not paid by the convicted person in the illegal fishing case at IEEZ will be listed as state income that must be accounted for by the Prosecutor's Office and become the arrears of the Prosecutor's Office in reporting Non-Tax State Revenue, even though this is clearly non-executable.

33 After the promulgation of Act No. 31 of 1999 in conjunction with Act No. 20 of 2001 concerning Eradication of Corruption, the concept of confiscation of the defendant's assets is introduced in Article 18. It is explained in Article 18 that in addition to the basic sentence, a Judge could also impose additional sentences, one of which is in the form of paying the same amount of money equal to the property obtained from the of corruption. The sentence to pay replacement money is a consequence of a criminal act of corruption that "can harm the state finances or the economy of the country", so to recover the loss, a juridical means is needed in the form of paying replacement money. As for the amount of replacement money that must be paid by the convicted person regulated in Article 20, is as much as the property obtained from criminal acts of corruption. The calculation is carried out by the authorized agencies by considering many factors to ensure the calculation is accurate.

34 See for example Judgment No. 26.Pid.Sus-Prk/2016/PN Ran, p. 19.

in favor of substitutive confinement consider that the enforcement of the Indonesian criminal code is allowed in this case.<sup>35</sup> Article 102 of the Fisheries Act does not mention clearly whether it is permissible or prohibited to impose substitutive confinement as a replacement of fine, therefore the judge would refer to the Criminal Code. In addition, the judge also added that if the procedures stipulated in Article 102 of the Fisheries Act must be strictly followed (to impose a substitutive confinement as a replacement a fine), one must wait for the Indonesian government to make an agreement with the relevant states; thus this seems to be irrational as one could only imagine how long it will take to execute just one judicial decision.<sup>36</sup>

Looking at the various legal arguments put forward by both sides, it can be concluded that difference in judges' views do not lie in the substance of Article 73 (3) of UNCLOS 1982. Rather, the differences were caused by differing views regarding the acceptance of international law and the effectiveness of sanctioning. Thus, it can be concluded the judges agree that substitutive confinement is part of 'corporal punishment' prohibited by Article 73 (3) of UNCLOS 1982. The views of these judges are in line with the general perspective of the phrases 'imprisonment' and 'corporal punishment'.

In terminology, the word 'imprisonment' is translated as '*hukuman penjara*' in Bahasa Indonesia, as for the term 'corporal punishment' is translated as '*hukuman badan*'. In a juridical perspective, there are three correct meanings of the word 'imprisonment' taken from the Black's Law Dictionary, which are "the act of putting or confining a man in prison; the restraint of a man's personal liberty; coercion exercised upon a person to prevent the free exercise of his powers of locomotion."<sup>37</sup> Whereas, corporal punishment in legal terms means "physical punishment as distinguished from pecuniary punishment or a fine; any kind of punishment of or inflicted on the body."<sup>38</sup> With this explanation, the meaning of corporal punishment is broader

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35 This is in accordance with Article 103 of the Criminal Code which stipulates that "The provisions in Chapters I to VIII in this book also apply to acts which according to other laws are subject to criminal sanctions, unless otherwise determined by that law".

36 See for example in Judgment 26/Pid.Sus-Prk/2016/PN Ran, p. 19.

37 Henry Campbell Black, 1990, Black's Law Dictionary 6th Ed, West Publishing Co., p. 770.

38 *Ibid.*, p. 339.

than imprisonment because all forms of punishment involving the human body directly (including pinching, caning, and beating) can be categorized as corporal punishment.

### **C. Recommendations for Optimizing Law Enforcement of Illegal Fishing Cases at IEEZ**

The various approaches by the judges in IEEZ illegal fishing cases, the numerous difficulties in executing the sentences of those cases, and the enormous losses suffered by Indonesia due to these illegal fishing cases, all point towards Indonesia's incapability to resolve the problem. The question of compliance towards UNCLOS 1982 also adds to the problem. As a result, it has been difficult for Indonesia to come up with an effective policy to deal with illegal fishing in the IEEZ.

Before going to technical policy recommendations, there must be a consensus regarding the direction of the Indonesian Government's policy in dealing with the problem illegal fishing in the IEEZ. The consensus in the form of policy choices will later become the basis for the government to formulate more technical policies to implement. By considering various relevant data and facts, there are three policy options that can be taken: (1) application of imprisonment, (2) application of fine penalty, and (3) optimization of confiscation of assets by the state.

#### **1. Changes in policy with the application of imprisonment**

The choice to impose imprisonment conviction on illegal fishing offenders in IEEZ can be taken by Indonesia with the condition that there is an accountable study proving that imprisonment is the most effective when it comes to: give deterrent effects to the perpetrators, having the potential to reduce the need for monitoring, and reducing high-cost law enforcement.

The follow-up action is to prepare the media to accommodate the policy. Referring to Article 73 (3) UNCLOS 1982 and Article 102 of the Fisheries Act, the requirement for coastal states to be allowed to impose imprisonment on illegal fishing perpetrators in IEEZ is when there is an agreement between the coastal state and the country concerned. Thus, it is imperative for the Indonesia Government to make a prior agreement with the country concerned

if we were to criminally enforce this. This is in line with the recommendations by Tatik Sunatri which *inter alia* recommends Indonesia to immediately make bilateral agreements with neighboring countries whose citizens often caught committing fisheries crimes in the IEEZ region.<sup>39</sup> However, the recommendation by Sunarti (i.e., to push for more bilateral agreements) will be neither effective nor efficient if their sole purpose is merely to justify substitutive confinement and execution. There should be a wider and more meaningful purpose for these bilateral agreements.

There are several reasons for the above-mentioned claim. First, a more detailed examination of Article 73 (3) of UNCLOS 1982 and Article 102 of the Fisheries Act would reveal a clear purpose formulated by the regulators in these provisions to legalize criminal penalties for illegal fishing activities in IEEZ which is normatively prohibited by UNCLOS 1982. The purpose is the enactment of ‘imprisonment’, not merely legalizing substitutive confinement. Second, the process of making ‘agreement’ as required in the Article 73 (3) of UNCLOS 1982 is not an easy and simple process. This is because Article 102 of the Fisheries Act translates ‘agreement’ as ‘treaty’ between the Indonesian government and the government of the foreign states concerned. Consequently, all the provisions that are relevant to international agreements as regulated in Act No. 24/2000 must be satisfied.<sup>40</sup> Third, political obstacles are expected to exist and would hinder the implementation, as it will not be easy to persuade the other states to allow their citizens to be prosecuted in Indonesia.<sup>41</sup>

The choice of this type of criminal sanction is still in accordance with UNCLOS 1982, although this policy choice may be considered unpopular because it is not widely chosen by other countries including neighboring countries of Indonesia.<sup>42</sup> For example, through Malaysia Fisheries Act No.

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39 Tatik Sunatri, *et al.*, *Op. cit.*, p. 129.

40 See Eddy Pratomo, *Hukum Perjanjian Internasional: Dinamika Dan Tinjauan Kritis Terhadap Politik Hukum Indonesia* (Jakarta: Elex Media Computindo, 2016), 539–60.

41 Considering that such an agreement may benefit both states, it is still possible to reach an agreement.

42 The number of states choosing this policy is a large minority. Among them are Antigua and Barbuda, Bangladesh, Barbados, Burma (Myanmar), Cape Verde, Grenada, Guinea-Bissau, India, Maldives, Mauritius, Nigeria, Niue, Pakistan, Portugal, Senegal, Seychelles, Suriname, Tanzania, Vanuatu, and Yemen; See Roach J. Ashley and Robert W. Smith, *Excessive Maritime Claims*, Martinus Nijhoff Publishers (London, 2012), 176.; See also, United Nations General

317 of 1985, Malaysia adopted a policy of only applying fines and not imprisonment for illegal fishing in their EEZ as stipulated in Section 25.<sup>43</sup> Likewise for the Philippines, through Republic Act No. 10654 Year 2014 (An Act to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing), Amending Republic Act No. 8550 Year 1998 (The Philippine Fisheries Code of 1998), adopts a policy to not impose corporate crimes for foreign citizens/corporations/entities that fish or operate fishing vessels in the Philippines' EEZ. The penalty is only in form of administrative fines and seizure of the catch, tools and vessels used.<sup>44</sup>

Imprisonment is in line with the opinion of Malcom Barrett who suggests that the existence of Article 73 (3) UNCLOS 1982 would not necessarily close the coast state's access to impose a prison sentence on illegal fishing case in the EEZ. Rather, the Article gives the coastal state two opportunities under conditions: (1) The coastal state has an agreement with the state concerned to impose a prison sentence to the offender, and (2) in the event that the offender is unable to fulfill his administrative obligations to provide a reasonable amount of collateral money, then the perpetrator may be subject to confinement with the condition that they must be released immediately when able to fulfill the

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Assembly, "Report of the Secretary General A/47/512," 1992, para. 36.

43 Section 25 "Any person who contravenes or fails to comply with any provision of this Act shall be guilty of an offence and where no special penalty is provided in relation thereto, such person shall be liable: (a) where the vessel concerned is a foreign fishing vessel or the person concerned is a foreign national, to a fine not exceeding one million ringgit each in the case of the owner or master; and one hundred thousand ringgit in the case of every member of the crew; (b) in all other cases, to a fine not exceeding twenty thousand ringgit or a term of imprisonment not exceeding two years or both."

44 Section 93 Act No. 10654 (Poaching in Philippines' Waters): *It shall be unlawful for any foreign person, corporation or entity to fish or operate any fishing vessel in Philippine waters. The entry of any foreign fishing vessel in Philippine waters shall constitute a prima facie presumption that the vessel is engaged in fishing in Philippine waters. Upon a summary finding of administrative liability, any foreign person, corporation, or entity in violation of this section shall be punished by an administrative fine of Six hundred thousand US dollars (US\$600,000.00) to One million US dollars (US\$1,000,000.00) or its equivalent in Philippine currency. Upon conviction by a court of law, the offender shall be punished with a fine of One million two hundred thousand US dollars (US\$1,200,000.00), or its equivalent in Philippine currency, and confiscation of catch, fishing equipment and fishing vessel.* Section 2 Act No. 10654 jo. Section 3 Act No. 8550: (a) all Philippine waters including other waters over which the Philippines has sovereignty and jurisdiction, and the country's 200-nautical mile Exclusive Economic Zone (EEZ) and continental shelf.

collateral money.<sup>45</sup>

The technical implementation of the policy need not be in form of a formal ‘bilateral agreement’ per se. This is not only due to the absence of provisions in national or international law which necessitate the agreement to be strictly in the form of bilateral agreements, but also due to considerations of effectiveness and adaptation to existing developments. One can utilize the power of international organizations, especially regional ones such as ASEAN. The data from 160 judicial decisions that were taken as sample in this study shows that most of the perpetrators of illegal fishing are citizens of ASEAN members.<sup>46</sup>

As supplement, the Government should make more technical regulations and guidelines as operationalization of the agreements stipulated in Article 102 of the Fisheries Act. Other important preparations needed includes preparing a reliable well-researched negotiating team to represent Indonesia’s interest in negotiating the agreement.

## **2. Imposition of fines**

Imposing fine to the criminals is the policy implemented in the current formulation of the Fisheries Act in Indonesia. If Indonesia believes that imposing fines to illegal fishing offenders in IEEZ is still the best policy, then the recommendation needed is to ensure that the criminal fines implementation can be executed well. We propose two technical recommendations to support the implementation of criminal fines:

### *a. Optimization of immediate release (prompt release) provisions*

The implementation of the immediate release set out in Article 73 (2) of UNCLOS 1982 could be an interesting option to consider to solve various technical problems that arise in law enforcement for illegal fishing perpetrators in IEEZ, and can also be a solution to reduce the cost spent by the coastal state in handling these kind of cases.<sup>47</sup> Especially considering the fact that in vast

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45 See Malcom Barret, “Illegal Fishing in Zones Subject to National Jurisdiction,” *James Cook UL Rev* 5, no. 1 (1998): 14–15.; see also ITLOS Case 19, M/V “Virginia G” Case (Panama v. Guinea-Bissau), para. 297-311.

46 See above note 13.

47 Art. 73 (2) UNCLOS 1982 stipulates that “arrested vessels and their crews shall be promptly released upon the posting of reasonable bond or other security”.



majority of cases, the fines are left unpaid by the convicted. The optimization of prompt release is aimed to avoid Indonesia from bearing the living cost of the detained foreign nationals indefinitely. The submission of reasonable bond from the flag state serves as an assurance that its nationals will answer to the conviction even though they are not in the custody of Indonesia. The juridical proceedings against the foreign nationals will still take place after the submission of the bond.

The provisions regarding prompt release have been incorporated in both the IEEZ Act and in the Fisheries Act. However, such provisions almost never been carried out by Indonesia. The reasons being: (1) there is no operational provision for prompt release as a condition for implementing Article 15 of Act No. 5 of 1983 and Article 104 of Act No. 31 of 2004 in conjunction with Act No. 45 of 2009;<sup>48</sup> and (2) Referring to the explanation of Article 104 paragraph (1), the provisions of the prompt release in the Fisheries Act seems impossible to execute due to the over-burdensome prerequisites for “reasonable collateral money”.<sup>49</sup> Therefore, one of the improvements that needs to be done to optimize the prompt release is a review of the formula for determining the collateral money.

*b. Revising Supreme Court Circular Letter Number 03 of 2015*

The presence of SC Circular Letter No.3/2015 on one hand has indeed succeeded in reducing dissent among the judges and successfully led the judges to be consistent with one stance not to impose a substitutive confinement against illegal fishing in the IEEZ. This is seen from the data of judicial decisions in 2019, which shows a unity of the judges’ views to only impose fines. However, SC Circular Letter No.3/2015 was apparently not

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48 As reference, technical provisions can be adopted and modified from the International Tribunal for the Law of the Sea (ITLOS)’s technical provisions related to the Prompt Release of Vessels and Crews as the implementation of Article 292 UNCLOS 1982. In its rules, ITLOS regulates at least 3 technical terms related to the prompt release: (a) Application by the flag State or on its behalf, (b) Proceedings and (c) Judgment and financial security.

49 As stated in the explanation of the article, the determination of a reasonable collateral money will be calculated from (a) the value of the ship, (b) the equipment of the ship, (c) the results of its activities, and (d) plus the amount of the maximum fine. This maximum fine, if we synchronize with Article 93 (2) which regulates the provisions of the illegal fishing crime in IEEZ, is a maximum of Rp20,000,000,000.00 (twenty billion rupiah). Whereas according to the samples, the fines imposed range from forty million rupoahs to five billion rupiahs.

welcomed and was objected to by many parties from the law enforcement of illegal fishing case. Among them is Sherief Maronie (The Sub-Directorate of Fisheries and Law Enforcement Cooperation) who argues that: (1) confinement as a substitutive of fines can be applied and is not contradictory to Article 73 Paragraph (3) of UNCLOS 1982 and Article 102 of the Fisheries Act; and (2) SC Circular Letter No. 3/2015 cannot be a solution to the difference of opinion.<sup>50</sup>

Should the political direction of Indonesia in eradicating illegal fishing activities in the IEEZ is in line with the existing formulation in the Fisheries Act (i.e., to only impose fines and a guarantee of the execution mechanism for fines), then SC Circular Letter No. 3/2015 needs to be revised. It is necessary to prepare legal argument to justify that substitutive confinement is in line with the provisions of UNCLOS 1982 especially Article 73 (3). As a solution, we can use a similar argument as used by Malcolm Barrett when providing justification for coastal states to carry out confinement to perpetrators who are unable to provide proper guarantees.<sup>51</sup>

*c. Reinterpreting the term 'agreement' in Article 73 (3) of UNCLOS 1982 and the application of tacit procedure*

A careful examination of UNCLOS 1982 shows no limit (legal definition) of what the term 'agreement' means. Hence, it could mean either a 'treaty' as stipulated under VCLT 1969 or any other forms of treaties. The absence of a binding definition for the term 'agreement' in the UNCLOS 1982 context, provides an opportunity for coastal states, including Indonesia, to make their interpretations.<sup>52</sup> This interpretation can be used as one of the ways to provide

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50 Sherief Maronie, "Telaah Penegakan Hukum Tindak Pidana Perikanan Di Wilayah Perairan Zona Ekonomi Eksklusif Indonesia", <https://kkp.go.id/djpsdkp/artikel/4326-telaah-penegakan-hukum-tindak-pidana-perikanan-di-wilayah-perairan-zona-ekonomi-eksklusif-indonesia-sherief-maronie> (accessed 23 August 2020)

51 Malcolm Barrett, *Loc. cit.*; see above note 46, in his argument, Malcolm Barrett mentioned that the obligation to provide adequate guarantees is an administrative obligation, hence confinement is a consequence of administrative violations committed and it is not a corporal punishment for Illegal fishing activities in IEEZ. However, we need to study further this option from the state administration law perspective, whether an administrative violation can result in confinement in the Indonesian legal system.

52 Judge Lauterpacht describes five ways in which an absence of an effective common intention may occur: (1) although using identical language, the parties did not intend the same result; (2) one or more of the parties deliberately intended to benefit from an ambiguity surrounding the

justification for the substitutive confinement. Arguably, one can link the term ‘agreement’ in Article 73 (3) with Article 73 (4) which regulates “in cases of arrest or detention of foreign vessels in the coastal State shall promptly notify the flag state, through appropriate channels, of the action taken and of any penalties subsequently imposed”. Article 73 (4) clearly states that, at the time of capture or confinement of foreign-flagged vessels, the coastal state must immediately notify the flag state through appropriate channels (diplomacy, consular, or other official channels) regarding the actions that have been taken and the subsequent actions that will be taken by the coastal state.

In this regard, the terms ‘agreement’ and ‘any penalties subsequently imposed’ are linked, and the word ‘agreement’ needs to be interpreted as any form of agreement and not as the VCLT 1969-style treaty. The agreement is to be made at the time the coastal state notifies the flag state as per Article 73 (4) which can be based upon reciprocity principle (i.e., in the case where Indonesian fishermen caught committing IUUF in other country’s EEZ, then the same procedure also applies). Among the contents of the notification is the judicial process to be carried out against suspected perpetrators of illegal fishing in the IEEZ with possible sentence of a fine and, in the event of unpaid fine, substitutive confinement. Hence, the notification to the flag state also includes a ‘tacit procedure’ clause.<sup>53</sup> This reinterpretation needs to be formulated in a technical policy on handling cases of fisheries crimes in Indonesia. Thus, the existence of this new legal framework may eliminate the doubts of the judges in imposing substitutive confinement which will be an important instrument in ensuring the execution of fines.

### **3. Optimization of confiscation of certain goods**

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expression or provision it succeeded in having inserted in the treaty; (3) being unable to reach an agreed solution, the parties used an ambiguous or non-committal expression, leaving the divergence of views to be resolved in the future; (4) the particular problem did not occur to the parties, although it falls within the purview of the treaty; and (5) two or more provisions of the treaty are mutually inconsistent; Hersch Lauterpacht, “Restrictive Interpretation and the Principle of Effectiveness in the Interpretation of Treaties”, *Brit. YB Int’l L.*, Vol. 26, 1949, pp. 70-81.

- 53 “Tacit procedure” is a procedure that has gained popularity as a mechanism for accepting amendments of the international treaties secretly or without explicit statements from state parties to be bound by the treaty. Therefore, the Tacit procedure is also known as the Tacit Amendment. The main aim is to describe an approval process without having to give an active act of approval; see G.I. Tunkin, “Remarks on the Juridical Nature of Customary Norms of International Law,” *California Law Review* 49, no. 3 (1961): 423–28.

If various accountable studies have proven that both the application of imprisonment and fine are not effective in handling illegal fishing crimes in IEEZ, then optimization of goods that can be seized by the state can be chosen. This recommendation will convey an idea how the state can ensure that it gets as much booty as possible to replace the losses caused by illegal fishing activities in IEEZ without having to face various technical problems in the imposition of imprisonment or confinement. The technical implementation of this proposal is by making a policy formula to support to the implementation of prompt release and designing criminal provisions in a special law (i.e., the Fisheries Act) distinct from the general provisions in Article 10 of the Criminal Code by placing “seizure of goods used for or obtained from criminal acts in illegal fishing activities in IEEZ” as the primary criminal conviction.<sup>54</sup>

#### **4. Redesigning the different responsibilities to subjects involved in the illegal fishing case in IEEZ**

In addition to the recommendations above, other recommendation that needs to be considered regardless of the political policy choices (whether criminal imprisonment, fines, or optimization of certain assets confiscation) is redesigning the responsibility for the subjects involved in Illegal fishing activities in IEEZ. The practice of illegal fishing activities in IEEZ in the vast majority of cases are carried out in groups in an organized manner.<sup>55</sup> In

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54 Article 103 of the Criminal Code regulates that “Provisions in Chapters I through Chapter VIII of this book also apply to criminal acts which are subject to other laws, unless otherwise determined by law”. This means that the formulation of the principal penalties and additional penalties in the Criminal Code is not set-in stone (i.e. different arrangements can still be made in more specific acts with the condition that a special circumstance is present which requires special treatment). One practice that applies this specificity can be found in the Act No. 31 of 1999 concerning the Eradication of the Crime of Corruption Act and its amendmend, of which in Art. 38 par. (5) and (6) stipulates that “in the case of the defendant died before the verdict is handed down, and there is sufficient evidence that the defendant has committed a criminal act of corruption, then the judge by the demand of the public prosecutor decrees for the confiscation of siezed goods. The article was designed to answer the problem of many corruption cases that were clearly proven to be detrimental to the state, but the defendant died before the verdict was handed down. In accordance with Article 77 of the Criminal Code, in the event that the defendant dies, the claim is dropped due to the fact that the claim cannot be inherited. Article 38 (5) and (6) of the Amended Corruption Act is a breakthrough to ensure how the state can still seize back the outcome of corruption committed by suspects who have died before the decision; see Rizzi R. Deli, “Implementasi Perampasan Aset Hasil Tindak Pidana Korupsi Menurut Undang-Undang,” *Lex Administratum* 4, no. 4 (2016): 46–53.

55 See Ioannis Chapsos and Steve Hamilton, “Illegal Fishing and Fisheries Crime as a Transnational Organized Crime in Indonesia,” *Trends in Organized Crime* 22, no. 3 (2018): 255–73.

these cases, the parties involved in such cases would include the vessel owner, vessel operator, vessel manning agent, the commander and the crew.<sup>56</sup>

Due to many parties involved in an illegal fishing operation in IEEZ, there are questions as to who should be responsible: (1) Everyone must be responsible proportionally according to the principles of Common but Differentiated Responsibilities and Respective Capabilities (CBDR-RC), (2) The responsibility rests only on the vessel owner regardless of whether it is owned by an individual or a corporation in the case where the vessel owner runs his own ship. (3) The responsibility only rests on the operator of the vessel, or (4) The responsibility only rests on the commander and the crews because both parties are caught in the location with their ships.

Practices in several countries show that the differences in subject and responsibility have been designed in the construction of their regulations.<sup>57</sup> The current construction of the Indonesia Fisheries Act, particularly in Article 93 (2) is designed with the phrase “everyone who owns and / or operates a foreign-flagged fishing vessel in the IEEZ [...]” This stipulates that in the Indonesian law, there is no specific distinction on the subject involved and the demand for accountability.

Judicial decisions used as samples in this study shows that the majority of responsibilities was only placed on the commander as a party caught in the act and proven to have operated the vessel. In a number of cases, the responsibility was also extended to the crews who were considered as participating parties (mededaders) in illegal fishing activities in the IEEZ.<sup>58</sup> Considering this, it is necessary to consider whether Indonesia needs to adjust the Fisheries Act to accommodate a differentiation legal responsibility imposed on different subjects.

Additionally, the current practice gives no deterence towards the

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<sup>56</sup> *Ibid.*

<sup>57</sup> See Malaysia Fisheries Law No. 317 Year 1985; The Phillipines Republic Act No. 10654 Year 2014 (An Act to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing); and Tanzania The Deep Sea Fishing Authority Regulations No. 338 Year 2009.

<sup>58</sup> The samples in this research indicate that, in most cases, the owners or operators of the vessels are not held accountable for the fisheries crime. The evidences actually does lead to the owners or operators, but they could not be physically reached or presented at the hearing. See above note 10.

perpetration of the crime.<sup>59</sup> For the ship owners and those in the top level chain of command, the capture of the ship along with the commander and crews is part of opportunity loss which has been calculated as part of business risk.<sup>60</sup> Thus, this is contrary to the purpose of criminal conviction which is to give deterrence effect to the wrongdoers and to put stop to the violations.

#### **D. Conclusion**

The rules and regulations in Indonesia regarding the punishment for fisheries violations by foreign nationals in IEEZ have been consistent with the international norms stipulated in UNCLOS 1982. However, the court rulings show that there is a diverged practice in the imposition of the punishment. There are two perspectives of Indonesian judges in their decisions relating to the imposition of fines for illegal fishing activities in IEEZ, i.e., to either only impose fines without substitutive confinement or to impose fines supplemented with substitutive confinement. Such difference is not due to interpretation in assessing the suitability of the substitutive confinement penalties to the provisions of Article 73 (3) UNCLOS 1982. Rather, it is due to the difference of theory regarding the acceptance of international agreements.

This study leads to a recommendation that it is imperative for the government to optimize the law enforcement for illegal fishing cases in the IEEZ, be it through: (1) imprisonment; (2) imposition of fine with substitutive confinement; or (3) optimization of confiscation of certain goods. Irrespective of the choice, it must be equipped with well-tailored technical guidelines to maintain compliance with UNCLOS 1982 provisions and ensure effective enforcement.

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59 For the ship owners, management, and also business-oriented manning agents, it does not really matter to them how many crews and commanders are captured or imprisoned by coastal states; see Anthony T. Charles, "The Economics of Illegal Fishing: A Behavioral Model," *Marine Resource of Economics* 14 (1999): 95–109.; see also William D. Moreto et al., "The Convergence of CAPTURED Fish and People: Examining the Symbiotic Nature of Labor Trafficking and Illegal, Unreported and Unregulated Fishing," *Deviant Behavior* 41, no. 6 (2019): 733–49.

60 Anastasia Telesetsky, "Laundering Fish in the Global Undercurrents: Illegal, Unreported, and Unregulated Fishing and Transnational Organized Crime," *Ecology Law Quarterly* 41 (2014): 113–22.

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