Criminal Law Policy in The Field of Fishery Based on Indonesia’s International Obligation

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CRIMINAL LAW POLICY IN THE FIELD OF FISHERY BASED ON INDONESIA’S INTERNATIONAL OBLIGATION

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Abstract

The Indonesian Fisheries Law has determined criminal threats for perpetrators of illegal fishing in ZEEI. There are differences in applying imprisonment instead of fines for Indonesian citizens and foreign nationals involved in illegal fishing. Article 102 of the Fisheries Law is linked to 73 of UNCLOS 1982, which is the basis for imposing penalties for unlawful fishing in the ZEEI. The results show that criminal law policies should be based on international obligations, and Indonesia should pay attention to UNCLOS 1982, as ratified by Law no. 17 of 1985. Injustice is seen when foreign nationals who catch illegal fishing are subject to confinement instead of fines. Therefore, the Fisheries Law needs to be amended by confirming the imposition of confinement instead of fines for citizens involved in illegal fishing practices. This assertion does not contradict Indonesia’s international obligations because the 1982 UNCLOS did not emphasize the prohibition of confinement application instead of a fine. Article 30 of the Criminal Code has also served as the basis for the imposition. This change provides a deterrent effect for perpetrators of illegal fishing in the ZEEI who have the status of foreign citizens. The objective is also in line with the nature of the “premium remedium” of criminal sanctions in the Fisheries Law. Additionally, the abolition of the dualism of crime needs to be carried out and adjusted to the RUU-KUHP.

Keywords: Criminal threats; International Obligation; Illegal fishing; Indonesian Fisheries Law; Injustice.

I. INTRODUCTION

Indonesia is characterized by an archipelago with territories whose boundaries and rights are stipulated by law as confirmed in Article 25A of the 1945 Constitution. This provision corroborates that Indonesia, as an archipelagic country, has a wide sea area divided into several islands with large and diverse fisheries potential.1 Fisheries have an important


2 Eddy Rifai and Khaidir Anwar, “Politik Hukum Penanggulangan Tindak Pidana...
and strategic role in developing the national economy, increasing job opportunities and income distribution while improving the nation’s standard of living for small fishermen, fish cultivators, and business actors.³

The role of fisheries in national development is constitutionally stated in Article 33, paragraph (3) of the 1945 Constitution, which affirms that water and wealth are controlled by the state and used for the greatest prosperity of the people. Therefore, fisheries also contribute to the achievement of national development goals. This provision is a constitutional basis and a direction for regulating various matters relating to natural resources.⁴

Indonesia has sovereignty and jurisdiction over territorial waters, as well as the authority to establish provisions regarding the use of fish resources while increasing prosperity and justice for maximum utilization for the benefit of the nation and state. Fish resources, which have a very high fertility rate, are a gift from God and have been used by the people for a long time.⁵

The utilization as a potential sector in supporting life certainly does not rule out the possibility of violating the applicable legal provisions by irresponsible parties.⁶ One of the violations related to using fish resources is illegal fishing in territorial waters or the Exclusive Economic Zone (ZEE). Illegal fishing is included in the IUU (Illegal, Unreported and


Unregulated)-Fishing group.\textsuperscript{7} It refers to fishing carried out by national or foreign vessels in waters under the jurisdiction of a country without permission or contrary to the laws and regulations of the country.\textsuperscript{8} The fishing gear used by illegal foreign vessels in Indonesian waters is productive gear such as purse-seine and trawl.\textsuperscript{9}

The state and society are certainly very aggrieved by the occurrence of illegal fishing, which impacts coastal communities. Additionally, other people who become consumers are disadvantaged because they cannot enjoy marine products. On a macro level, the stolen Indonesian fish are processed with qualified equipment, increasing the selling price abroad.\textsuperscript{10} This can hinder the achievement of national development goals to create the greatest prosperity because the perpetrators only enjoy the profits from the high selling price of fish.

Illegal fishing often occurs in the territory of Indonesia as a part of fisheries crime, which is not easy to solve. This is because the perpetrators come from abroad without having the right to catch fish from the water of others \textsuperscript{11}. Illegal fishing is categorized as an environmental and transnational organized crime\textsuperscript{12}. In Indonesia, it has resulted in huge losses to the state, both economically and socially, to the ecosystem and threatens the achievement of fisheries management goals. Eradication of illegal fishing requires extraordinary law enforcement efforts that integrate the power between government agencies regarding the right strategy, and utilizing the latest technology to run effectively and efficiently.\textsuperscript{13}

\textsuperscript{7} John Dirk Pasalbessy, “Manajemen Peradilan Perikanan dalam Perspektif Hukum Acara Pidana Indonesia [Fisheries Court Management in the Perspective of Indonesian Criminal Procedure Law],” Proceedings of the 2019 National Marine and Fisheries Seminar, Faculty of Fisheries and Marine Sciences Unpatti, Ambon, Indonesia, 18-19 December 2019, 23.


\textsuperscript{9} Rifai, “Politik Hukum Penanggulangan Tindak Pidana,” 281.

\textsuperscript{10} Khairi, “Politik Hukum Pemerintah dalam Penanganan,” 242.

\textsuperscript{11} Marimin, “Penal Policy for Handling Illegal,” 119.

\textsuperscript{12} Bondaroff, et.al., “The Illegal Fishing and Organized,” 37.

\textsuperscript{13} National Center for Analysis and Evaluation of Law, Laporan Akhir Analisis dan Evaluasi Hukum dalam Rangka Pemberantasan Kegiatan Perikanan Liar (IUU Fish-
The Law of the Republic of Indonesia Number 31 of 2004 concerning Fisheries as amended by Law oNumber 45 of 2009 (abbreviated as Law on Fisheries) has been enacted. In this law, illegal fishing is categorized as a criminal act because the perpetrator is threatened with sanctions. The law that ZEEI is one of the fishery management areas of the Republic of Indonesia for fishing is confirmed in Article 5 paragraph (1) letter b. Furthermore, the criminal threats for perpetrators are stipulated in Article 102 of the Fisheries Law. This provision confirms that imprisonment does not apply to fisheries crimes unless there has been an agreement between the Indonesian government and the country concerned.

Therefore, criminal sanctions for perpetrators of illegal fishing are formulated as primum remedium and have encountered several obstacles in their application. It provides a deterrent effect but cannot be applied optimally due to the limitation by the provisions of international legal instruments.

One of these obstacles can be seen in the application of confinement instead of fines for perpetrators between Indonesian citizens and foreign nationals. Foreign nationals who fish illegally are fined but not imprisoned. For Indonesian citizens, the imposition of a fine is followed by imprisonment. This practice occurs because Article 102 of the Fisheries Law, as the basis for imposing penalties, is associated with Article 73 of UNCLOS 1982.

The situation certainly creates injustice for Indonesian citizens because the fines imposed are always followed by substitute confinement, unlike the citizen’s foreign countries. From this situation, the formulation of criminal sanctions for illegal fishing actors will be studied. This study is related to international obligations, which have ratified UNCLOS 1982 with the Republic of Indonesia Law Number 17 of 1985.

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II. THE DIRECTION OF CRIMINAL LAW POLICY IN FISHERIES

Satjipto Raharjo in Erfandi stated that Indonesia is an entity based on the rule of law, which institutionalizes a large role in the staatsidee formulation, as stated in the Preamble to the 1945 Constitution. In the Preamble, the government was formed to promote public welfare. The imposition of responsibility for advancing the general welfare, automatically in legal politics, will have implications for legal products. Development in the field, especially the development or renewal of criminal law, does not build legal institutions. However, it includes the substance of legal and cultural products, which are the legal system in the form of criminal law regulations.15

Continuous legal reform efforts in Indonesia, which started since the proclamation of independence on August 17, 1945, through the 1945 Constitution, cannot be separated from the foundation. In the Preamble of the 1945 Constitution of the Republic of Indonesia, the fourth paragraph read:

“The Republic of Indonesia is organized according to a Constitution of the State, which serves to protect the entire Indonesian nation and the entire Indonesian homeland, as well as to advance public welfare, educate the nation’s life, and take part in carrying out a world order based on independence, eternal peace, and social justice. An arrangement of a Republic which is sovereign by the people, based on One Supreme Godhead, just and civilized humanity, with the people who are led by wisdom in deliberation, is laid out in the Constitution of the State.”16

Muladi, Diah Sulistyani, and Barda Nawawi Arief in Erfandi reported that the state protects citizens and realizes social defense and welfare.17 The law should continue to evolve and transform but still prioritize the harmonization of the development of universal law between nations in

16 Ibid.
17 See Ibid.
the era of multi-dimensional globalization. National goals are general policy lines that form the basis and the goal of achieving legal politics in Indonesia. The reformation is expected to follow the politics of criminal law, where the purpose of punishment should be directed to the protection of society from crime as well as the balance and harmony of life in society while considering the interests of the community, victims, and perpetrators18.

According to Satjipto Raharjo in Khilmatin Maulidah, Nyoman Serikat Putra Jaya, as a unitary state based on Pancasila and law upholding the rule of law as stated in the explanation of the 1945 Constitution, Indonesia depends on the law (Rechtsstaat) and not mere power (Machtstaat) 19.

Furthermore, the effort to reform law has been started since the birth of the 1945 Constitution and cannot be separated from the foundation and objectives to be achieved as formulated in the Preamble. The intended objective is to protect the entire nation and to promote the general welfare. This is the basis of legal politics and the objective of every legal reform effort, including criminal law and crime prevention policies. 20

Marcus P Gunarto, E. Soponyono in Khilmatin Maulidah, and Nyoman Serikat Putra Jaya stated that criminal law seems rigid and is enforced to give retaliation. Law enforcement officers tend to qualify an act as a crime when it has fulfilled the formulation of the articles in the Criminal Code only and should be resolved through criminal law. This leads to a prison sentence instead of a corrective justice formulation prioritizing the recovery of victims and perpetrators. The application of criminal law will give the impression of pampering criminals and not paying attention to the broad interests of the community, state, and victims of criminal acts21.

18 Ibid.
20 Ibid.
21 Ibid.
According to Barda Nawawi Arif, a crime can be imposed when it contains the conditions for a criminal act and guilt. The “goal” variable is not visible because it is not explicitly formulated in the Criminal Code. The basis for justification of the existence of a crime lies only in criminal acts and errors with this model. Therefore, the crime is seen as an absolute consequence when both conditions are proven. Impressed as a rigid “model of certainty.” It feels odd when the conditions are proven, but the perpetrator is “forgiven” and not punished22.

As stated by Moeljatno, Sudarto in Khilmatin Maulidah, and Nyoman Serikat Putra Jaya, anyone who does a “criminal act” may face criminal charges. For the existence of a criminal act, there should be several elements, such as the act which fulfills the formulation in the law.23

There should be a formal requirement because of the legality principle contained in Article 1 of the Criminal Code. The material conditions are also expected to exist because the community should truly feel the act. Sudarto in Eddy Rifai and Khaidir Anwar said that making laws and regulations is determined by legal politics, which are24

a) Efforts to realize good regulations by the circumstances and situations at a time,

b) The state’s policy through the competent bodies establishes the desired regulations to express the elements of the society.

From the description above, efforts and policies in making good criminal law regulations cannot be separated from crime prevention. Therefore, the politics of criminal law is identical to the notion of crime prevention policies, forming essential parts of the enforcement efforts.

Efforts to overcome crime through the making of criminal laws are essentially an integral part of social welfare. Criminal policy in crime prevention and control is one of the policies, in addition to others. Barda Nawawi Arief in Eddy Rifai and Khaidir Anwar stated that crime prevention requires integration between criminal and social

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22 Ibid.
23 Ibid.
politics, as well as a penal and non-penal approach. Social policy can be interpreted as all rational efforts to achieve public welfare while including community protection\textsuperscript{25}.

This discussion is related to the prevention of fisheries crime by using the means of criminal law. The politics have promulgated several laws and regulations, namely the Fisheries Law and ministerial regulations. Law enforcement officers have carried out the implementation in investigation activities, prosecution, court hearings, and implementation of court decisions \textsuperscript{26}.

Meanwhile, non-penal efforts in overcoming fisheries crime are carried out through socialization to increase public legal awareness. The implementation of criminal justice in prevention has not been effective and efficient. This occurs because of coordination problems in the investigation and prosecution processes. Therefore, the results of criminal law enforcement are relatively small, and the perpetrators are only local fishermen.

In non-penal efforts, policies to improve the fishermen’s productive economy are still lacking, and socialization in the community has not been efficient. Public legal awareness is low in law enforcement of fisheries crime prevention. It tackles the occurrence of fisheries crimes, allowing fishermen to produce abundant products that can improve the economy and welfare with effective and efficient law enforcement.

In practice, the involvement of foreign parties can be classified into semi-legal and purely illegal theft. Semi-legal theft is conducted by foreign vessels using a legal license owned by local entrepreneurs, a local-flagged vessel, and a borrowed flag. Meanwhile, illegal theft is fishing in Indonesian territory by foreign fishermen and vessels using their flags. This activity is quite large, and based on FAO estimates (2008), there are around 1 million tons per year with a total of 3,000 vessels. The ships came from Thailand, Vietnam, Malaysia, China, the Philippines, Taiwan, and South Korea.

The politics of overcoming fisheries crime needs to be carried out by building a criminal law. It is deemed appropriate to carry out an

\textsuperscript{25} Ibid.  
\textsuperscript{26} Ibid.
integral policy as an appropriate legal concept for eradicating and
tackling fisheries crime through a convergence approach to criminal
and social politics. The formulation of such criminal political objectives
was stated in one of the reports on the 34th training course organized by
UNAFEI in Tokyo in 1973, as follows:

“Most of the group members agreed to some discussion that
“protection of the society” could be accepted as the final goal of criminal
policy. This is not the ultimate aim of society, which might perhaps
be described by terms like “happiness of citizens,” “a wholesome and
cultural living,” “social welfare” or “equality.”

III. CRIMINAL LAW POLICIES IN THE FISHERIES SECTOR FOR
THE FUTURE BASED ON INDONESIA’S INTERNATIONAL
OBLIGATIONS

The Fisheries Law still raises several problems when applied in
real life, especially regarding the imposition of fines for illegal fishing
perpetrators in the ZEEI. There are differences/disparities between
Indonesian citizens and foreign nationals at the practical level. The
imposition of fines against Indonesian citizens is always followed by
imprisonment instead of fines, unlike foreign nationals. Foreigners who
commit illegal fishing in ZEEI are not subject to further penalties. The
situation is unfair because illegal fishing actors are treated differently
between Indonesian citizens and foreign nationals.

This injustice is caused by the provisions of the Fisheries Law,
especially Article 102, where the provisions for imprisonment do not
apply to illegal fishing actors who are foreign nationals unless there
is an agreement between the government and the country concerned.
This provision is interpreted as including imprisonment instead of fines
hence perpetrators who carry out illegal fishing are only subject to fines
without imprisonment. In contrast, the existence of confinement instead
of fines in criminal law is a guarantee for the convict.

Therefore, punishing illegal fishing actors with the best status as
foreign citizens does not have a deterrent effect. The provisions of Article
102 of the Fisheries Law are an obstacle for the Public Prosecutor in
carrying out executions. Additionally, the convict has returned home,
which resulted in arrears regarding the execution. Weaknesses or shortcomings can be avoided when judges who examine illegal fishing cases are guided by the provisions of the Criminal Code (KUHP).

In the Criminal Code, there are two types of crimes, namely, the main and the additional punishment. The main punishment is a crime that should be imposed by the judge, including the death penalty, imprisonment, and fines. Meanwhile, additional punishment is not mandatory for a defendant, consisting of revocation of certain rights, confiscation of goods, and the judge’s decision. The Fisheries Law does not regulate additional penalties because the types are only limited to the main punishment of imprisonment and fines.

Even though the Fisheries Law does not regulate additional penalties, they can be imposed by the judge instead of fines. This is confirmed in Article 30 of the Criminal Code, which states that fines can be replaced with imprisonment. The provision can serve as an alternative to streamline legal remedies when the fine is not paid by the captain involved in the illegal fishing.

The provisions of the Criminal Code are not enforced in the practice of enforcing criminal law. The provision was related to Article 73 of UNCLOS 1982, which states that coastal states may not punish perpetrators of fisheries crimes with imprisonment except when there is approval from the country concerned. There is also a Supreme Court Circular Number 3 of 2015 concerning the Enforcement of the 2015 Supreme Court Chamber Plenary Meeting, which confirms that illegal fishing defendants can only be subject to a fine without imprisonment. This circular is used as a guide for judges when examining illegal fishing cases by foreign nationals.27

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27 United Nations Convention on The Law of The Sea, opened for signature on 10 December 1982, (entered into force 16 November 1994), art. 73. In full reads “(1) The coastal State may, in the exercise of its sovereign rights to explore, exploit, conserve and manage the living resources in the exclusive economic zone, take such measures, including boarding, inspection, arrest and judicial proceedings, as may be necessary to ensure compliance with the laws and regulations adopted by it in conformity with this Convention. (2) Arrested vessels and their crews shall be promptly released upon the posting of reasonable bond or other security. (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,
Therefore, it is necessary to change the criminal provisions in the Fisheries Law to prevent the reappearance of these weaknesses or shortcomings when applied in real life. The criminal provisions in the Fisheries Law should be reformulated to provide justice. This discussion is closely related to the policies in fisheries, especially regarding criminal provisions for foreign nationals involved in illegal fishing. The formulation of this criminal law policy should be based on international obligations to the 1982 UNCLOS, ratified by Law no. 17 of 1985.

UNCLOS 1982 is included in an international agreement because the term “Convention” is used for naming or mentioning international treaties. Following Article 38, paragraph (1) of the Statute of the Court of Justice, international treaties are sources of law. Functionally, international agreements can be divided into 2 (two) groups, namely (1) treaty contracts involving a contract in civil law that results in rights and obligations between the parties, (2) Law making treaty is an agreement that lays down legal provisions or rules for the international community.

UNCLOS 1982, as an international treaty, regulates the jurisdictional boundaries of maritime territory with other countries, regulating the authority of the coastal state. The provisions regarding the rights, jurisdiction, and obligations of a coastal state are contained in Article 56 as follows:

1. In the exclusive economic zone, the coastal state has

   a) Sovereign rights to explore and exploit, conserve and manage the natural resources of the waters superjacent to the seabed and the seabed and its subsoil, and to concern other activities for the
economic exploitation, such as the production of energy from the water, currents, and winds,

b) Jurisdiction as provided for in the relevant provisions of this Convention concerning:
   i. The establishment and use of artificial islands, installations, and structures,
   ii. Marine scientific research,
   iii. The protection and preservation of the marine environment,

c) Other rights and duties are provided for in this Convention.

2. In exercising the rights and performing the duties under this Convention in the exclusive economic zone, the coastal state shall have due regard to the rights and duties of other States and shall act in a manner compatible with the provisions of this Convention.

3. The rights set out for the seabed and subsoil shall be exercised under Part VI.

Indonesia has agreed to bind itself to its provisions with the ratification of UNCLOS 1982. This is in line with Article 11 of the 1969 Vienna Convention, where the agreement to bind oneself to a treaty can be expressed in several ways, often practiced by signing and ratifying.30 This is a follow-up carried out by countries after completing a negotiation to form an international agreement. Furthermore, after receiving a text of an agreement, the action gives rise to specific obligations for negotiating countries, including the need not to violate the substance, intent, and purpose of international accords.31

The obligation to comply with the 1982 UNCLOS is in line with the principles contained in Article 26 of the 1969 Vienna Convention, which states, “Every treaty in force is binding upon the parties to it and should be performed in good faith.” Sumaryo Suryokusumo stated that there are two important principles. First, “pacta sunt servanda” is

31 Kusumaatmadja, Pengantar Hukum Internasional, 117.
a fundamental principle in treaty law that binds a state party. Second, the principle of good faith is a moral requirement that can be carried out earnestly. Under this principle, Indonesia must carry out the contents of the 1982 UNCLOS seriously. Indonesia should not refuse to implement it on the grounds of legal difficulties, as stated in Article 27 of the 1969 Vienna Convention.

In formulating criminal sanctions for foreigners involved in illegal fishing, Indonesia is expected to pay attention to UNCLOS 1982. This obligation arises because the country has been bound after ratifying UNCLOS 1982 with Law no. 17 of 1985. Furthermore, the commitment to UNCLOS 1982 aligns with the principle of pacta sunt servanda. There is no justification for Indonesia’s refusal to adopt the 1982 UNCLOS. The question is, “How is the criminal law policy based on international obligations that can provide justice for the Indonesian people?”

Justice is one of the basic ideas of law, as stated by Gustav Radbcurh. Most experts also identified three legal goals, namely justice, expediency, and legal certainty. Therefore, the criminal provisions should reflect justice, including benefits and legal certainty. Justice is defined as equality before the law, where everyone is treated equally. The concept needs to be applied because it has declared itself as a state, as affirmed in Article 1, paragraph (3) of the 1945 Constitution. Meanwhile, equality before the law is one element of the rule of law.

This principle is emphasized in Article 27, paragraph (1) of the 1945 Constitution, that every citizen has the same position in law and government with no exceptions. The provisions imply that supporters

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32 Farida “Kewajiban Negara Indonesia Terhadap Perjanjian.”
33 Article 47 of the 1969 Vienna Convention states, “A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. This rule without prejudice to article 46”; Ibid.
34 Achmad Ali, Menguak Teori Hukum (Legal Theory) dan Teori Peradilan (Judicial-prudence) Termasuk Interpretasi Undang-Undang (Legisprudence) [Revealing Legal Theory and Judicial Theory, Including the Interpretation of Laws (Legisprudence)], (Jakarta: Kencana Prenada Media Group, 2012), 288.
of rights and obligations are equal to their legal position. 36 This is an acknowledgment and guarantee of the equal rights of all citizens in law and government.37 In this regard, Article 28D paragraph (1) of the 1945 Constitution states that everyone has the right to recognition, guarantees, protection, fair legal certainty, and equal treatment before the law.

Based on justice, the criminal provisions in the Fisheries Law should reflect the similarities between foreign nationals and Indonesian citizens regarding illegal fishing in the ZEEI. The criminal provisions should be the same between foreign nationals and Indonesian citizens. The provisions of Article 102 of the Fisheries Law should be changed by emphasizing that imprisonment is expected to follow the criminal fines imposed on illegal fishing actors who are foreign nationals. This affirmation can be in the form of changes to the formulation of Article 102 of the Fisheries Law or formulated in the explanation.

The inclusion of substitute imprisonment will be a way out when the defendant is unable or unwilling to pay the fine imposed. Therefore, the substitute imprisonment sentence is considered to facilitate the execution of this decision. The prohibition in the 1982 Fisheries Law and UNCLOS is the imposition of corporal punishment. Article 30, paragraph 2 of the Criminal Code specifies that imprisonment will replace the fine when not paid. Every fine imposed should be accompanied by a substitute sentence, such as imprisonment. The formulation of article 30, paragraph (2) of the Criminal Code does not contain the word ‘can.’ Therefore, the judge needs to decide on a fine, accompanied by a substitute sentence, namely imprisonment, unless it is ruled out by other regulations.

Fisheries crime is extraordinary, hence it is necessary to apply confinement instead of fines. The importance of using this reduction

in compensation for fines is that criminal law in the Fisheries Law is intended to provide a deterrent effect to perpetrators, especially foreign nationals involved in illegal fishing.\(^{38}\) Stronger and stricter sanctions are needed because the perpetrators use various methods, such as illegal fishing grounds, document falsification, and ship data manipulation.\(^{39}\)

Article 73 paragraph (3) UNCLOS prohibits the imposition of imprisonment and corporal punishment as the main crime as stated in Article 10 letter a of the Criminal Procedure Code. Furthermore, it does not emphasize that the prohibition of confinement and imprisonment as a substitute for fines is not the main crime. Therefore, confinement should be applied to illegal fishing actors who are foreign nationals. The application does not conflict with international obligations because UNLOS 1982 did not affirm the prohibition of confinement instead of fines.

In addition to amending Article 102 of the Fisheries Law, it is also necessary to abolish the dualism of criminal acts as stipulated in Article 103. These provisions distinguish fishery’s criminal acts into crimes and violations. The division is the same as the Criminal Code, which regulates crimes and violations in books II and III, consisting of 31 and 9 chapters and 385 and 81 articles. It is necessary to abolish this dualism to enforce the law on fisheries crime to be more effective in line with the revised RKUHP. The Draft Criminal Code no longer distinguishes the two categories, hence there are only 2 books on General Provisions and Criminal Acts. The boundaries are getting blurry, and the Draft Criminal Code no longer distinguishes between Crimes and Violations.

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IV. CONCLUSION

Based on the description of the discussion above, it can be concluded that the law causes injustice in imposing fines on illegal fishing actors. Article 102 of the Fisheries Law stipulates that foreign nationals who catch fish illegally in the ZEEI can only be subject to a fine. Furthermore, law enforcement officers always relate to Article 73 of UNCLOS 1982, which expressly regulates that perpetrators of illegal fishing may not be subject to corporal punishment. In UNCLOS 1982, no rules explicitly prohibited confinement applications instead of fines. This imprisonment is not included in the type of crime listed in Article 10, paragraph (1) of the Criminal Code. Article 102 of the Fisheries Law should be amended to bring justice by enforcing criminal law in the fishing industry. The changes should be made instead of a fine to force the defendant. The use of confinement in the Fisheries Law does not conflict with international obligations related to compliance with the 1982 UNCLOS. Additionally, article 103 of the Fisheries Law needs to be amended to eliminate the duality of crimes and make enforcement of the legislation.
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