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Analyzing the Enforcement of Fines on Foreign Offenders of Fisheries Crimes in the Indonesian Exclusive Economic Zone (IEEZ)

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Abstract

Indonesia has vast and diverse fisheries potential, as the sea accounts for approximately 70 percent of the territory. Consequently, numerous foreign nationals sail in the Indonesian Exclusive Economic Zone (IEEZ) for fishing and many of them violate the regulations concerning resource utilization, conservation, and management within the IEEZ. However, based on the current legal provisions, foreign offenders are only subject to monetary fines or, in some cases, imprisonment. Regrettably, in practice, many foreign suspects fail to pay the imposed fines or opt for imprisonment as a substitute, burdening the Attorney General's Office and even the state itself. This analysis uses normative juridical methods and qualitative data to evaluate the enforcement of criminal fines on foreign perpetrators of fisheries crimes within the Indonesian Exclusive Economic Zone (IEEZ). This research examined the effectiveness of enforcing criminal fines on foreign perpetrators, highlighting issues such as the inadequate enforcement of legal regulations, the ineffectiveness of the existing legal structure in imposing criminal fines on all individuals convicted of fisheries crimes in the IEEZ, and the prevailing shortcomings in the legal culture.

Keywords: Legal Culture; Criminal Fines; Legal Structure; Legal Regulations; Indonesian Exclusive Economic Zone (IEEZ).

1. INTRODUCTION

An archipelagic nation, Indonesia has a significant proportion of sea territory, offering vast and diverse fisheries potential. Effective control measures are essential to enhance the people's welfare and generate foreign exchange revenue.[1] One method of regulating fisheries activities in Indonesia involves the Implementation of fisheries management guidelines after the ratification of the 1982 United Nations Convention on the Law of the Sea, as outlined in Law Number 17 of 1985. This ratification grants Indonesia sovereign rights to responsibly utilize, conserve, and manage fish resources within its Exclusive Economic Zone (EEZ) and the High Seas in adherence to relevant international requirements and standards.[2]

1 (General Explanation of Law Number 45 of 2009 on the Amendment to Law Number 31 of 2004 on Fisheries., 2009).
2 (Law Number 45, 2009)

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The legal framework governing the management of fish resources in Indonesia is established by Law Number 45 of 2009, which amends Law Number 31 of 2004 concerning Fisheries. Within the Fisheries Law, fishery activities cover all processes involved in managing and utilizing fish resources and their associated environment, ranging from pre-production to production, processing, and marketing stages conducted within a fisheries business system.[3] Besides addressing the management and utilization of fish resources and the environment, the Fisheries Law also regulates the provisions concerning prohibited activities classified as fisheries crimes.

The vast fisheries potential of Indonesia remains untapped, mainly for the welfare of its people. According to the 2014 report by the Food and Agriculture Organization (FAO), illegal fishing yielded approximately 11-26 million tons of fish annually, while overfishing reached 430 tons annually, resulting in substantial economic losses, estimated at IDR 101.04 trillion per year, a significant increase from the Rp 30 trillion recorded in 2001.[4] The Fisheries Law describes a range of criminal offenses within the fisheries sector, encompassing fifteen violations. These offenses include (1) conducting fishing activities without the necessary licenses, (2) possessing incomplete, (3) forging documents, (4) employing prohibited fishing gear, (5) fishing in restricted areas, (6) using unauthorized fishing equipment not compliant with the issued Fishing License (SIPI), (7) lacking a transmitter for vessel monitoring systems, (8) engaging in unauthorized fish transportation or transshipment, (9) accommodating fish in violation of the Fish Transport Vessel License (SIKPI), (10) coral reef theft, (11) deploying chemical, biological, or explosive substances for destructive fishing practices, (12) operating without a Letter of Operation (SLO), (13) improper loading and unloading procedures against SIPI, (14) employing foreign crew members or skipper without appropriate SIPI documentation, and (15) engaging in fishing activities in undesignated "gray areas."[5]

The previously mentioned law enforcement and fisheries crimes resolution highly depend on the specific fisheries management areas. According to Article 5, paragraphs (1) and (2) of the Fisheries Law,[6] The fisheries management areas within the Republic of Indonesia comprise various fishing and fish farming regions, including Indonesian waters, the Indonesian Exclusive Economic Zone (IEEZ), rivers, lakes, reservoirs, swamps, and other bodies of water suitable for cultivation and potential fish farming within the territory of Indonesia. Furthermore, the management of fisheries within the areas mentioned earlier is conducted following the applicable laws and regulations, as well as the stipulated requirements and generally accepted international standards.

Law enforcement within the Indonesian Exclusive Economic Zone (IEEZ) presents a significant concern.[7], as indicated by Article 5, paragraph (1), letter b of the Fisheries Law. Furthermore, Article 4, paragraph (1), letter b, Law Number 5 of 1983, about the IEEZ specifies that Indonesia holds sovereign rights over the exploration, exploitation,

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3 Explanation of Law Number 45 of 2009 on the Amendment to Law Number 31 of 2004 on Fisheries.

4 "Fakta-fakta Seputar Pencurian Ikan [Facts about Fish Theft]", (*Tempo.Co:* March 26, 2020). https://m.tempo.co/read/news/2014/11/01/090618747/fakta-fakta-seputar-pencurian-ikan.

5 Koalisi Rakyat Untuk Keadilan Perikanan, Efek Jera Tindak Pidana Perikanan Harus Menerima Sanksi Hukum Berat dan Kewajiban Membayar Denda Pemulihan Sumber Daya Ikan [People's Coalition for Fisheries Justice: The Deterrent Effect of Fisheries Crimes Should Receive Severe Legal Sanctions and Obligation to Pay Fines for the Recovery of Fish Resources], http://www.kiara.or.id/efek-jera-tindak-pidana-perikanan-harus-menerima-sanksi-hukum-berat-dan-kewajiban-membayar-denda-pemulihan-sumber-daya-ikan/, accessed on 26 March 2020.

6 Article 5, paragraphs (1) and (2) of Law Number 31 of 2004 concerning Fisheries as amended by Law Number 45 of 2009.

7 The Indonesian Exclusive Economic Zone (IEEZ) is an area beyond and adjacent to the Indonesian territorial sea, as stipulated in the relevant legislation on Indonesian waters, including the seabed, the subsoil, and the water above it, extending up to a maximum distance of 200 nautical miles from the baseline of the Indonesian territorial sea. This definition can be found in Article 1, point 21 of Law Number 31 of 2004 concerning Fisheries, as amended by Law Number 45 of 2009.

management, and conservation of both biological and non-biological natural resources within the seabed, subsoil, superjacent waters, and other activities related to the economic utilization of the zone, such as harnessing power from water, currents, and wind. Besides, the ratification of the United Nations Convention on the Law of the Sea (UNCLOS) in 1982 had legal consequences for Indonesia. It grants Indonesia the authority to exercise its sovereign rights, which include boarding vessels, conducting inspections, making arrests, and initiating judicial proceedings. However, without a mutual agreement between the relevant nations, Indonesia cannot detain or confine criminal offenders who violate the law within the IEEZ.[8]

The provision above is further reiterated in Article 102 of the Fisheries Law, which explicitly states that imprisonment penalties outlined in the law do not apply to criminal offenses in the field of fisheries occurring within the fisheries management area of the Republic of Indonesia, as specified in Article 5, paragraph (1), letter b unless an agreement exists between the Government of the Republic of Indonesia and the government of the relevant country.

This emphasis is reinforced by Supreme Court Circular Letter No. 03/2015, which serves as a guideline for the court's duties and highlights the application of the formulation discussed during the Plenary Meeting of the Supreme Court Chamber in 2015. Specifically, it outlines that in cases involving illegal fishing within the EEZ, defendants may only be subject to fines without the possibility of imprisonment as an alternative penalty.

The provision above is further reiterated in Article 102 of the Fisheries Law, which explicitly states that imprisonment penalties outlined in the law do not apply to fisheries criminal offenses occurring within the fisheries management area of the Republic of Indonesia, as specified in Article 5, paragraph (1), letter b unless an agreement exists between the Government of the Republic of Indonesia and the government of the relevant country.

Furthermore, the Supreme Court Circular Letter No. 03/2015 also emphasizes this matter, serving as a guideline for the court's duties and highlighting the application of the formulation discussed during the Plenary Meeting of the Supreme Court in 2015. Specifically, it outlines that in cases involving illegal fishing within the IEEZ, defendants may only be subject to fines without imprisonment as an alternative penalty.

This research examined the judgment of a fisheries crime case within the EEZ involving Nguyen Van Tue at the Pontianak Prosecutor's Office, which was settled by a monetary fine.[9] This situation presents a significant challenge since successfully proving the charges against the defendant does not necessarily guarantee the prosecutor's ability to enforce the imposed fine and ensure compliance by the offender.

This case stemmed from the actions of Nguyen Van Tue, the captain of Fishing Vessel BV 93817 TS, who, along with Nguyen Thanh Tung (separate file), departed from Vietnam to do fishing activities in Indonesian waters. However, they engaged in fishing without possessing a valid Fisheries Business License and utilized trawl gear, which is prohibited in the Indonesian fisheries management area. Nguyen Van Tue violated Article 92, Jo. Article 26, paragraph (1), Article 102, Article 85, Article 9, paragraph (1), and Article 102 of Law Number 31 of 2004 on Fisheries, as amended by Law Number 45 of 2009. The public prosecutor pressed charges against Nguyen Van Tue for violating

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8 See Article 73, paragraphs (1), (2), (3), and (4) of UNCLOS 1982 United Nations Convention on the Law of the Sea.

9 H.M. Prasetyo, *Catatan Kritis Terhadap Pelaksanaan Hukum Acara Tindak Pidana Perikanan [Critical Notes on the Implementation of Procedural Law for Fisheries Crimes],* presented as a guest speaker at the National Co-ordination Meeting on Prevention and Eradication of Illegal, Unreported and Unregulated Fishing, (Jakarta: July 29, 2016).

these provisions, leading to a verdict imposing a fine of IDR. 200,000,000 (two hundred million rupiah).

The Fisheries Crimes Court at the Pontianak Prosecutor's Office found Nguyen Van Tue guilty of committing fisheries crimes (Number: 5/Pid.Sus-PRK/2019/PN. Ptk, July 23, 2019). The charges against him were based on violating Article 92, Jo. Article 26, paragraph (1), Article 102, Article 85, Article 9, paragraph (1), Article 102 of the Law of the Republic of Indonesia Number 31 of 2004 concerning Fisheries, as amended by the Law of the Republic of Indonesia Number 45 of 2009, dealing with the amendments to the Law of the Republic of Indonesia Number 31 of 2004 concerning Fisheries. Therefore, Nguyen Van Tue was sentenced to a fine of IDR. 200,000,000 (two hundred million rupiah).

The issue arose when the fine imposed on the defendant was not properly implemented, which should be enforced without substitution by imprisonment, as stated in Article 102 of the Fisheries Law. Failure to pay the fine results in it becoming receivable for the Attorney General's Office, which is reported under the Non-Tax State Revenue (PNBP) Law Number 20 of 1997. Government Regulation 22 of 1997 specifies the types of PNBP deposits, and Appendix IIB specifically pertains to non-departmental institutions like the Indonesian Attorney General's Office. The Attorney General's Office of the Republic of Indonesia is subject to various types of PNBP, including revenue from the sale of confiscated or forfeited assets, compensation in corruption cases, other miscellaneous receipts such as found money and proceeds from the auction or sale of unclaimed evidence, as well as revenue derived from fines.

Moreover, the types and rates of non-tax revenues applicable to the Attorney General's Office of the Republic of Indonesia are outlined in Government Regulation Number 39 of 2016, including a) payment of compensation for corruption crimes, b) payment of criminal case costs, c) payment of criminal fines, d) payment of fines for traffic violations, e). payment of fines for violations of regional regulations, f) state booty, g) state booty derived from corruption crimes, h) state booty derived from money laundering crimes, i) proceeds from the sale of state booty, j) proceeds from the sale of state booty derived from corruption crimes, k) proceeds from the sale of state booty derived from criminal acts of corruption, l). proceeds from the sale of state booty derived from criminal acts of money laundering, m). proceeds from the sale of evidence not claimed by the rightful owner, n). proceeds from the sale of found items, o) found money, p) proceeds from the return of state money, q) proceeds from the recovery of state financial losses, and r). proceeds from cooperation in law with other countries.[10]

This present study adopted Lawrence M. Friedman's perspective to analyze the legal system, focusing on its legal substance, structure, and culture. The legal substance is regulations and provisions outlining the expected behavior of institutions.[11]. Legal structure, as described by Lawrence M. Friedman, constitutes a fundamental and tangible component of the legal system. If the substance represents a tool for understanding the system, the structure is a framework supporting it.[12] On the other hand, the element of legal culture pertains to social attitudes and values.[13] Within legal culture, a dynamic interplay exists between individual or community values, legal norms or public attitudes, moral commitments, and awareness, propelling the functioning of the legal system. In

10 Article 1 paragraph (1) of Government Regulation Number 39 of 2016 concerning Types and Tariffs on Types of Non-Tax State Revenue Applicable to the Attorney General's Office of the Republic of Indonesia.

11 Lawrence M. Friedman, *Sistem Hukum Perspektif Ilmu Sosial*, (Bandung: Nusa Media, 2011), 15-17.

12 Ibid, Lawrence M. Friedman.

13 Ibid, Lawrence M. Friedman.

essence, legal culture consists of all the factors determining the logical integration of the legal system within the cultural framework of the public. Consequently, "legal culture" denotes the community's collective attitudes and value system, ultimately shaping law enforcement within society. Friedman aptly characterizes legal culture as the fuel driving the engine of justice.[14]

The study focuses on the normative provisions articulated in Article 102, Jo. Article 5, paragraph (1), letter b, of the Fisheries Law, the Supreme Court Circular Letter Number 03 of 2015, and other relevant regulations. The legal structure under examination is the Prosecutor's Office, the enforcement agency. Article 270 of Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHAP) stipulates that the Implementation of the verdict with permanent legal force should be conducted by the attorney general,[15] To whom the clerk sends a copy of the decree. Furthermore, the role of the attorney general as the executor of court decisions with permanent legal force is also established in Article 30, paragraph (1), letter b of Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia (Prosecutor's Office law).[16] Hence, the prosecutor is also the sole entity responsible for executing court decisions (*executive ambtenaar*) besides serving as the overseer of the case process (*dominus litis*) and occupying a central position in determining whether a case can be presented before the court (based on valid evidence as dictated by criminal procedure law).[17]

The legal substance, structure, and culture hold significance in the execution of criminal cases, mainly due to the lack of detailed regulations about the IEEZ. Specifically, there is a shortage of clarity regarding the payment of fines, regulatory procedures, and the responses of law enforcement agencies and the general public. Thus, the novelty of this study lies in its focus on exploring prosecutors' role in enforcing criminal fines on foreign criminal offenders within the IEEZ. Beside into the Indonesian government's endeavors to combat such exploitation and provide insights into law enforcement concerning biological natural resources within the IEEZ, governed by many laws and regulations[18]. Additionally, these studies encompass research elucidating the regulation of fisheries resources within the IEEZ, particularly concerning marginalized fishermen.[19]

Thus, this case presents a compelling aspect as the regulatory focus is not primarily directed toward biological resources, as in previous studies, instead of eradicating criminal fines. The legal system plays a pivotal role in facilitating law enforcement efforts and delineating the boundaries of the law's applicability.[20] This research examined the enforcement of criminal fines on foreign offenders involved in fisheries crimes within the IEEZ by employing a normative juridical approach and qualitative data analysis.

14 Abdul Manan, *Aspek-Aspek Pengubah Hukum [Law Changing Aspects]*,(Jakarta: Kencana, 2005) Jakarta, 96.

15 Article 1 point 1 of Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia states that an attorney has the official authority to act as a public prosecutor and executor of court verdicts with permanent legal force and other authorities based on the law".

16 Article 30 paragraph (1) letter b of Law No. 16/2004 on the Attorney General's Office of the Republic of Indonesia states that the Attorney General's Office has the duty and authority to implement the judgment and court decisions with permanent legal force.

17 Muhammad Yusni, *Keadilan dan Pemberantasan Tindak Pidana Korupsi [Justice and the Eradication of Corruption],* (Surabaya: Airlangga University Press, 2019), 86.

18 Andriani Wahyuningtyas Novitasari, Refleksi Kedaulatan Negara dalam Penegakan Hukum Sumber Daya Alam Hayati di Zona Ekonomi Eksklusif, *Jurnal Konstitusi* [Reflection of State Sovereignty in Law Enforcement of Biological Natural Resources in the Exclusive Economic Zone, Journal of the Constitution], Volume 17, No 4, December 2020, 920-940 < DOI: https://doi.org/10.31078/jk17410 > .

19 Ida Kurnia, "Pengaturan Sumber Daya Perikanan di Zona Ekonomi Ekslusif Indonesia (ZEEI) [Regulation of Fisheries Resources in Indonesia's Exclusive Economic Zone (EEZ)]", *Jurnal Mimbar Hukum* 26 No 2" (2014), 215-219: https://doi.org/10.22146/jmh.16040

20 Lawrence M. Friedman, *Sistem Hukum Perspektif Ilmu Sosial.*

2. ANALYSIS AND DISCUSSION

2.1 Application of Legal Substance Concerning the Enforcement of Criminal Fines to Foreign Offenders of Fisheries Crimes in the IEEZ

Within the context of fisheries crimes committed in IEEZ, numerous legal provisions exist to regulate the enforcement of criminal fines on those responsible for engaging in illegal fishing activities within the IEEZ, as follows.

1) Article 102 of the Fisheries Act stipulates that the provisions regarding imprisonment outlined in the legislation, as mentioned earlier, do not extend to criminal offenses in the fisheries sector within the fisheries management area of the Republic of Indonesia, as specified in Article 5, paragraph (1), letter b. However, exceptions to this exclusion exist when an agreement is reached between the Government of the Republic of Indonesia and the relevant foreign government. Article 102 of the Fisheries Law is derived from Article 73, paragraph (3) of the United Nations Convention on the Law of the Sea (UNCLOS), ratified by the Government of Indonesia through Law Number 17 of 1985 concerning the Ratification of the United Nations Convention on the Law of the Sea, stating: "Coastal State penalties for violations of fisheries law and regulation in the exclusive economic zone may not include imprisonment, in the absence of agreements to the contrary by the States concern, or any other form of corporal punishment."
2) The Circular Letter of the Supreme Court No. 3 of 2015, about implementing the Results of the Plenary Meeting of the Supreme Court Chamber in 2015, provides guidelines for the court's duties. Within the formulation section specific to fisheries crimes, it explicitly states that in the case of illegal fishing within IEEZ, the defendant may defendants may only be subject to fines without imprisonment as an alternative penalty.

Law enforcement practices based on the perspective of prosecutors as the executors encounter challenges due to the provisions outlined in Article 102 of the Fisheries Law. These provisions hinder the prosecutor's primary duties and authority as the executor. Yuse Chaidi Adhar argued that Article 102 of the Fisheries Law poses obstacles for prosecutors in fulfilling their responsibilities since they are restricted to imposing fines solely on foreign perpetrators of fisheries crimes within the IEEZ. The application of imprisonment as a substitute for fines remains a subject of debate, as most court decisions across various levels, including the District Court, High Court, and Supreme Court of Indonesia, predominantly impose fines without any accompanying term of imprisonment. This reliance on fines only, without a subsidiary measure such as imprisonment, poses challenges for the prosecutor in enforcing court verdicts, particularly when the defendant cannot pay the fine.[21]

The issue arises when most perpetrators of fisheries crimes within the IEEZ cannot fulfill the financial obligations associated with imposed fines. This circumstance engenders legal uncertainty and causes unpredictability concerning the enforceability of fines, thereby casting doubt on the effectiveness of the legal substance. Conversely, legal certainty and predictability are fundamental prerequisites that law enforcers, such as prosecutors, rely upon to uphold law and justice.

Out of 30 cases involving foreign offenders of fisheries crimes within the jurisdiction of the West Kalimantan Provincial Prosecutor's Office, from 2018 to May 2020, none convict was capable of fulfilling the fines,[22] despite fines being the sole form of

21 Interview with Yuse Chaidi Adhar, Fisheries Prosecutor at the West Kalimantan Provincial Prosecutor's Office, on June 29, 2020.

22 Yuse Chaidi Adhar.

punishment applicable in these cases, including the prominent Nguyen Van Tue case. Furthermore, foreign defendants were fined as their sentence did not have the option of substituting it with imprisonment.

In their capacity as the executor, the prosecutor faces challenges in forcing the convicts to pay the fines, with no provision for substituting imprisonment in lieu of unpaid fines. Consequently, unpaid fines accumulate as unpaid non-tax state revenue (PNBP) arrears under the purview of the Prosecutor's Office.[23] The Indonesian Attorney General's Office has implemented a policy outlined in Letter No to address these issues. B-053/A/SKJA/03/2017, issued on March 31, 2017. This policy serves as technical guidance for the resolution of executing fisheries crimes committed within the IEEZ. However, thus far, this policy has not successfully executed fines for fisheries crimes in the IEEZ. The policy primarily emphasizes alternative solutions for the prosecutor to ensure the completion of fisheries crime cases and the attainment of legal certainty confirmation.

Hence, the legal substance concerning enforcing criminal fines for perpetrators of fisheries crimes within the IEEZ cannot be deemed adequate, as it encounters significant challenges. This situation poses a considerable obstacle for the prosecutors, who assume the role of the executors, hindering their ability to execute and resolve criminal cases in this context successfully.

2.2 Legal structure concerning the enforcement of Criminal Fines to Foreign Offenders of Fisheries Crimes in the IEEZ Area

2.2.1. Prosecutors as executors of court decisions

The legal structure in this study consists of the institutions and enforcement apparatus within the system, specifically focusing on the Indonesian Attorney General's Office. The authority vested in the Indonesian Attorney General's Office is stipulated in Article 30 of Law Number 16 of 2004, which governs the functions and responsibilities of the Indonesian Attorney General's Office as follows:[24]

(1) In criminal law, the Prosecutor's Office assumes the following duty and authority:

a. conducting prosecution;

b. implementing the judgment and court decisions with permanent legal force;

c. supervising the enforcement of conditional criminal decisions, criminal decisions, and conditional release decisions.;

d. investigating certain criminal offenses based on the law;

e. completing certain case files and conducting additional examinations for this purpose before submitting them to the court by coordinating with the investigator.

(2) In civil law and state administration, the prosecutor's office, through specific authorization, can act both within and outside the court on behalf of the state or government.

(3) In the aspect of public order and tranquility, the prosecutor's office also organizes the following activities:

a. increasing public legal awareness;

b. securing law enforcement policies;

23 Interview with Asep N. Mulyana, Head of the Legal and Foreign Relations Bureau of The Attorney General's Office of The Republic of Indonesia, on July 3, 2020.

24 Article 30 of Law No. 16/2004 on the Attorney General's Office of the Republic of Indonesia.

c. supervising the circulation of printed items;

d. supervising the cults that may endanger society and the state;

e. preventing abuse and/or blasphemy of religion;

f. conducting legal research and development and criminal statistics.

The fulfillment of the duties and authorities of the Indonesian Attorney General's Office is conducted by officials with specific expertise in the organizational Structure of the Attorney's Office, namely the Prosecutors. Article 1, Point 1 of Law Number 16 of 2004, concerning the Indonesian Prosecutor's Office, defines prosecutors as the officials authorized with legal authority to serve as public prosecutors and execute court decisions with permanent legal force and assume other powers conferred by law. Moreover, a public prosecutor is authorized by the law to conduct prosecutions and enforce court decisions.[25] The appointment and dismissal of Prosecutors fall under the purview of the Attorney General. While executing their duties and exercising their authority, prosecutors act on behalf of the state and are accountable through hierarchical channels.

Hence, the authority of the prosecutor extends beyond mere prosecution and includes the execution of court decisions with permanent legal force, particularly in criminal cases. Notably, the Fisheries Law incorporates specific procedural matters provisions that govern the investigation, prosecution, and trial processes of fisheries-related criminal cases. These proceedings adhere to the procedural regulations delineated within the Fisheries Law. Hence, the execution of criminal fisheries crimes continues to be conducted by referencing Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHAP).

Article 270 of the Criminal Procedure Code (KUHAP) establishes that the execution of court decisions with permanent legal force is the prosecutor's responsibility, facilitated by transmitting a copy of the decree by the court clerk. Theoretically and practically, a court decision can be executed when it has acquired the permanent legal force, known as "*in kracht van gewijsde*." The criteria for a decision to acquire permanent legal force include the following: a) the defendant and the public prosecutor have received the verdict, b) the entitled party has not utilized legal remedies within the specified grace period, c) the entitled party initially filed a legal remedy but subsequently withdrew it, and d) the Supreme Court has rendered a decision in cassation proceedings.

Furthermore, Article 30, paragraph (1), letter b of Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia outlines and emphasizes the prosecutor's role as the executor of court decisions with permanent legal force. Thus, the Prosecutor's Office is the exclusive entity responsible for executing court decisions ("*executive ambtenaar*"), enforcing all court decisions with permanent legal force, including judgments related to fisheries crimes.

2.2.2. Prosecutor as the Executor of Fine Enforcement to Foreign Offenders of Fisheries Crimes in the IEEZ Area

The execution of criminal fines by the Public Prosecutor's Office against perpetrators of fisheries crimes within the IEEZ constitutes an integral and interconnected entity linked to the legal substance governing fisheries crimes in the IEEZ, as stipulated in Article 102 of the Fisheries Law, along with the prosecution process and subsequent court decisions. Article 102 of the Fisheries Law specifies that the provisions regarding

25 Article 1 point 2 of Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia.

imprisonment outlined in the law do not apply to fisheries crimes within the IEEZ unless an agreement exists between the Government of the Republic of Indonesia and the relevant foreign government. Consequently, this provision serves as a guiding principle for the public prosecutor, who solely seeks the imposition of fines without any alternative measure of imprisonment if the defendant fails to pay the fine.

Similarly, this approach is followed by judges at the court who, following the guidelines provided by Supreme Court Circular Letter No. 3/2015, examine and implement decisions. The circular letter outlines the Implementation of the Results of the Plenary Meeting of the Supreme Court in 2015 as the guidelines for the court's duties, specifically concerning fisheries crimes (illegal fishing). It is explicitly stated that, in cases involving illegal fishing within the IEEZ, defendants are exclusively subject to fines and are not sentenced to imprisonment as a substitute for fines.

In their role as the executors, the prosecutor is obligated to enforce court decisions, imposing fines without imprisonment in lieu of fines. However, many perpetrators of fisheries crimes within the IEEZ cannot fulfill the imposed fines. Despite the defendant being found guilty and ordered by the court to pay a fine, the prosecutor, as the executor, may face challenges in enforcing the decision. This is particularly evident since most criminal acts within the IEEZ are committed by captains who work for companies or individuals. As a result, the prosecutor's success in proving the charges does not necessarily translate into success in compelling the convict to pay the fine. Consequently, such fines, if not deposited into the state treasury as mandated by Government Regulation No. 22 of 1997 concerning Types of PNBP Deposits and Government Regulation No. 39 of 2016, contribute to the accumulated debt of the Attorney General's Office (AGO) in terms of PNBP reporting.

Concerning these issues, the Attorney General of the Republic of Indonesia has provided technical guidance related to fines in Fisheries Crimes in the IEEZ committed by foreigners through decree number: B-053/A/SKJA/03/2017, March 31, 2017, with the following instructions:[26]

a) The Provincial Prosecutor's Office or the District Prosecutor's Office, in whose jurisdiction exists the representative office of the country of origin of the convicted person, to approach and discuss for its citizens fulfill the obligation to fulfill the fine following the court decision;
b) When the negotiations reveal that the convict lacks the financial means to pay the fine, a letter of inability must be signed by both the convict and the representative office of their home country. It serves as administrative documentation and substantiates the efforts to address the matter during the subsequent examination conducted by the Supreme Audit Agency (Badan Pemeriksa Keuangan or BPK).;
c) The evidence of ships and other fishing equipment that remain intact during the investigation must be requested for their confiscation on behalf of the state.

The above technical guidelines are an alternative approach adopted by the Indonesian Attorney General's Office to provide prosecutors at both the Provincial and District Prosecutor's Offices nationwide with a framework for resolving cases involving fisheries crimes within the IEEZ. These guidelines were established due to the lack of comprehensive legal provisions specifically addressing criminal acts committed by foreigners within the IEEZ. Hadi Winata explained that, after introducing these technical guidelines, the Attorney General's Office implemented them across Indonesia, instructing prosecutors to primarily impose fines on the perpetrators of fisheries crimes

26 Decree of the Attorney General of the Republic of Indonesia Number: B-053/A/SKJA/03/2017, March 31, 2017, regarding Instructions concerning the Execution of Fines in Fisheries Crimes committed by Fishermen/ Foreigners in the Indonesian Exclusive Economic Zone (IEEZ).

within the IEEZ.[27] During the execution of the court verdict, the prosecutor collaborates with the perpetrator's country's Embassy to ensure compliance with the fine obligation as prescribed by the court. However, a statement letter to document their inability to pay must be issued if the perpetrator cannot fulfill the obligation.[28]

This condition is exemplified through the examination of a specific case concerning a fisheries crime within the IEEZ, Nguyen Van Tue's case at the Pontianak District Attorney's Office, as follows:[29]

a) Position Case

On Tuesday, April 9, 2019, at around 08:40 WIB, within the Indonesian Exclusive Economic Zone (IEEZ) of the South China Sea (5° 22' 660" N - 110° 12' 366" E as indicated by GPS or 05° 22' 39" LU - 110° 22' 39" BT after conversion and plotting on a nautical chart), Nguyen Van Tue, the captain of Fishing Vessel BV 93817 TS, along with Nguyen Thanh Tung (separate file), departed from Vietnam and entered Indonesian waters to engage in fishing activities without possessing a Fisheries Business License. Moreover, they employed trawl gear, a prohibited tool within the Indonesian fisheries management area.

b) Articles violated

The perpetrator violated Article 92 Jo. Article 26 paragraph (1), Article 102, Article 85, Article 9 paragraph (1), and Article 102 of Law Number 31 Year 2004 on Fisheries as amended by Law Number 45 Year 2009 on the amendment of Law Number 31 Year 2004 on Fisheries.

c) Criminal Charges:

On June 23, 2019, the public prosecutor formally charged Nguyen Van Tue with violating Article 92 Jo. Article 26, paragraph (1), Article 102, Article 85, Article 9, paragraph (1), and Article 102 of the Republic of Indonesia Law Number 31 of 2004 concerning Fisheries, as amended by the Republic of Indonesia Law Number 45 of 2009, which pertains to amendments to the former Fisheries Law. Nguyen Van Tue was subsequently sentenced to a fine of IDR. 200,000,000 (two hundred million rupiah).

d) Court Decision:

In the verdict rendered on July 23, 2019, the Fisheries Crimes Court at the Pontianak District Court (Decree Number: 5/Pid.Sus-PRK/2019/PN.Ptk) found Nguyen Van Tue quilt of committing a fisheries crime, violating Article 92 Jo. Article 26, paragraph (1), Article 102, Article 85, Article 9, paragraph (1), and Article 102 of the Republic of Indonesia Law Number 31 of 2004 concerning Fisheries, as amended by the Republic of Indonesia Law Number 45 of 2009. Consequently, Nguyen Van Tue was sentenced to a fine of IDR. 200,000,000 (two hundred million rupiah).

e) The Public Prosecutor and Nguyen Van Tue accepted the verdict, rendering it legally binding.

f) Subsequently, the Head of the Pontianak District Attorney's Office issued an Order to implement the verdict (P-48) (Number: Print-1736/O.1.10/Eku.3/08/2019, on August 21, 2019).

g) The assigned prosecutor responsible for executing the court's decision proceeded to collect the imposed fine from the convicted individual, Nguyen Van Tue; however,

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27 Interview with Hadi Winata, Section Head of State Security, Public Order and Other General Crimes at the West Kalimantan High Prosecutor's Office, on July 10, 2020.

28 Hadi Winata.

29 Criminal Case Files Case Register Number: PDM-211/PONTI/06/2019 in the name of defendant NGUYEN VAN TUE at the Pontianak District Attorney, 2019.

due to his inability to pay the fine of IDR. 200,000,000,- (two hundred million rupiah), Nguyen Van Tue submitted a Declaration of Inability (Form D-2) on August 21, 2019.

h) After the submission of the D-2 letter, the Head of the Pontianak District Prosecutor's Office corresponded with the Ambassador of the Socialist Republic of Vietnam in Jakarta (A letter Number: B-4437/O.1.10/Eku.3/08/2019, dated August 30, 2019). This communication aimed to seek assistance in executing the fisheries crime case involving a Vietnamese citizen, Nguyen Van Tue.
i) In response to the aforementioned correspondence, the Embassy of the Socialist Republic of Vietnam in Jakarta issued a letter (Number: 299/SQ/2019, dated October 9, 2019) conveying that Nguyen Van Tue, the convict, was unable to fulfill the payment of the imposed fine.
j) Next, the Head of the Pontianak Prosecutor's Office proceeded to transfer the convict, Nguyen Van Tue, to the Head of Immigration Office Class I Pontianak (a letter Number: B-5059/O.1.10/Eku.3/10/2019, dated October 17, 2019). The purpose of this transfer was to initiate further procedures and actions by the Immigration Office, effectively signifying the conclusion of the fisheries crime case involving Nguyen Van Tue.

Despite the lengthy and tedious nature of the case proceedings, the prosecutor's endeavor to compel the convict, Nguyen Van Tue, to pay the fine and thereby contribute to the PNBP on behalf of the Indonesian Attorney General's Office did not yield the desired outcome. Moreover, during the case handling process, Nguyen Van Tue resided at the Pontianak Marine and Fisheries Resources Monitoring Station (PSDKP), burdening his living expenses to the Government of Indonesia, specifically the PSDKP Pontianak, for an unspecified duration.[30]

Due to the unpaid fine and the response from the Embassy of the convict's country, the fine can no longer be included in the Prosecutor's Non-Tax State Revenue (PNBP) report nor represents an outstanding receivable for the Prosecutor's Office regarding PNBP. Essentially, within the internal framework of the Prosecutor's Office, the administrative process of executing the criminal fine is considered complete, even if the fine remains unpaid.[31] However, when considering the comprehensive handling of fisheries crimes within the IEEZ region, it is evidenced that the Indonesian state incurs a loss as it bears the burden of the convict's livelihood while in Indonesia, despite the inability to enforce the imposed fines.

The analysis shows that based on the legal system's positioning of the interplay between substance and structure, wherein the structure operates based on the foundation of substance, structure, and substance represent fundamental components of a static legal system.[32] Therefore, the issue concerning the legal structure of the execution of criminal fines for perpetrators of fisheries crimes within the IEEZ has not been able to effectively and successfully function as intended. The legal structure has been unable to execute criminal fines against all convicts who commit fisheries crimes within the IEEZ following the existing legal substance, thereby impeding the conversion of the paid fines into PNBP on behalf of the Indonesian Attorney General's Office.

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30 Letter of the Head of Pontianak Provincial Attorney's Office to the Ambassador of the Socialist Republic of Vietnam in Jakarta (Number: B-4437/O.1.10/Eku.3/08/2019, dated August 30, 2019), regarding requesting assistance in the execution of fisheries crime cases committed by Vietnamese citizens on behalf of the convict Nguyen Van Tue.

31 Letter of the Head of Pontianak Provincial Attorney's Office to the Ambassador of the Socialist Republic of Vietnam in Jakarta.

32 Lawrence M. Friedman, *Sistem Hukum Perspektif Ilmu Sosial.*

2.3 Legal Culture Concerning the Execution of Criminal Fines to Foreign Offenders of Fisheries Crimes in the IEEZ

Satjipto Rahardjo argued that the legal culture of a nation is established upon certain values that serve as a reference for enforcing the laws.[33] Fundamentally, legal culture serves as a reflection of identity and a source of introspection, encapsulating the values present in legal products, institutionalized within legal institutions, and ingrained in the attitudes and behavior of legal practitioners, justice seekers, and citizens. Furthermore, legal culture also influences the modus operandi of leaders and the mechanisms of legal governance.[34]

In Indonesia, legal culture is intertwined with the historical development of regulations governing the utilization, conservation, and management of fish resources within the IEEZ. This research focuses on fisheries crimes in general and specifically delves into those within the IEEZ, serving as the *locus delicti* for such offenses. During Indonesia's early days of independence, the recognized territorial sea spanned a mere three miles, leaving the Indonesian islands separated by open waters. However, with the adoption of the 1982 United Nations Convention on the Law of the Sea (UNCLOS), the concept of archipelagic states, exclusive rights over the sea (EEZ), and other provisions were recognized. Indonesia ratified the UNCLOS through Law No. 17 of 1985 to secure these rights. As a result, the UNCLOS holds the "national law" status in Indonesia, as stipulated by the ratification, with the following provisions.

(a) National laws applicable in the EEZ must adhere to UNCLOS (Vide: Article 55 UNCLOS)
(b) National laws applicable in the EEZ must adhere to UNCLOS (Vide Article 56 paragraph 2, Article 58 paragraph (3) and (c) Article 73 paragraph 1 UNCLOS).
(c) National laws applicable in the EEZ must be relevant to UNCLOS (Vide: Article 58(1) UNCLOS)
(d) National laws applicable in the EEZ are not against UNCLOS (Vide: Article 58(3) UNCLOS)

Under the United Nations Convention on the Law of the Sea (UNCLOS) of 1982, coastal states can enforce and apply their national laws concerning fishing within their Exclusive Economic Zone (EEZ). In the event of suspected violations, the coastal state may detain foreign vessels, informing the flag state of the vessel and setting bail requirements, but imprisonment is prohibited.

The EEZ encompasses the area beyond and adjacent to a coastal state's territorial sea, as defined by the applicable laws governing the country's waters. It includes the seabed, the subsoil, and the superjacent waters, with an outer boundary extending up to 200 nautical miles from the baseline of the coastal state's territorial sea. In the utilization, conservation, and management of fish resources within Indonesia's EEZ, citizens of other nations must adhere to conservation measures, provisions, and other requirements outlined in Indonesian laws and regulations.

Narendra Jatna argued that the legal culture of each country varies in terms of interpreting and complying with the provisions concerning the IEEZ. Not all countries, particularly neighboring nations of Indonesia, recognize the concept of the IEEZ. Consequently, challenges frequently arise regarding criminal acts committed within the IEEZ. Fisheries crimes committed by foreign individuals within the IEEZ are not

33 Satjipto Rahardjo, *Sisi-sisi Lain dari Hukum di Indonesia [The Other Side of the Law in Indonesia]*, (Jakarta: Kompas, 2003), 96.

34 Jimly Asshiddiqie, "*Struktur hukum dan hukum struktural Indonesia [Indonesian legal structure and structural law]*", in *Dialektika Pembahuran Sistem Hukum Indonesia*, (Jakarta: Sekretariat Jenderal Komisi Yudisial Republik Indonesia, 2012), 39.

always subject to dual criminality, as the perpetrator's home country may not consider the actions of its citizens as criminal offenses.[35]

Challenges to criminal acts within Indonesia's EEZ are frequently observed in the South China Sea, particularly in Natuna Regency. China asserts its claim over the Natuna waters in Riau Islands Province through the Nine Dash Line or nine-dotted line concept. As a result, fishing vessels under the protection of Chinese Coast Guard (CCG) ships often engage in fishing violations within the IEEZ waters of the Natuna Sea. Another issue arises concerning the maritime boundary of the EEZ with Vietnam, where overlapping lines between the two countries persist, leading to maritime tensions. Vietnamese fishermen's fishing activities are frequently regarded as violations of the EEZ. Unfortunately, the two countries have not agreed on the EEZ boundary.

Based on these legal culture concerns, the potential for EEZ violations remains considerably high. Thus, robust and consistent law enforcement measures become imperative. Stringent actions encompassing prevention and apprehension at sea should be complemented by resolute and streamlined processes of investigation, prosecution, and execution of fisheries crime perpetrators within the IEEZ, ensuring effectiveness and efficiency in enforcement efforts.

The execution of court decisions emerges as a significant challenge in achieving effective and efficient law enforcement. Particularly concerning fisheries crimes within the EEZ, prosecutors, as executors, have encountered difficulties executing court decisions with permanent legal force against the convicted perpetrators. The absence of a prison or confinement regime for handling fisheries crimes fails to provide a deterrent effect. Furthermore, the general unpaid fines by perpetrators further exacerbate the problem, allowing illegal fishing activities within the IEEZ to serve as a lucrative endeavor for criminals seeking substantial profits, consequently posing a direct threat to the Indonesian state.

Considering the legal culture of the community, particularly Indonesian fishermen, a perception of being interconnected with nature exists. Therefore, they expect that overfishing, fish theft, and other illegal fishing practices resulting in losses to the state and jeopardizing the interests of fishermen, fish farmers, and the national fisheries industry should be subject to strict enforcement as a means to ensure justice, support and control the development of fisheries sustainably.

3. CONCLUSION

The existing IEEZ regulations lack comprehensive provisions to serve as a reliable framework for domestic and international law enforcement. Thus, the government must establish more detailed rules to prevent state losses, aligning with the legal substance, legal structure, and legal culture in handling IEEZ cases. The current legal substance governing the execution of criminal fines against perpetrators of fisheries crimes in the EEZ falls short of providing clear and detailed guidelines for implementing such fines and alternative measures. Furthermore, as the legal structure responsible for executing these fines, the Indonesian Attorney General's Office has not effectively and efficiently enforced the legal substance, resulting in difficulties in enforcing court decisions with permanent legal force and compelling convicts to pay the fines imposed. In addition, differing legal cultures among nations contribute to the occurrence of fisheries crimes in the IEEZ due to overlapping territorial claims within the EEZ.

35 Interview with Narendra Jatna, a full-time lecturer at the Faculty of Law, University of Indonesia, and the Special Assistant at the Attorney General of the Republic of Indonesia, on June 25, 2020.

Considering the earlier discussion on the legal substance, legal structure, and legal culture, it is evident that the execution of criminal fines against foreign perpetrators of fisheries crimes within the EEZ has not been effective. This can be attributed to the inadequate Implementation of the legal substance, the inability of the legal structure to execute fines against all convicts involved in fisheries crimes in the EEZ following the established legal framework, and the suboptimal functioning of the legal culture in this regard.

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