

Criminal Law Enforcement Against Illegal Fishing Under Law Number 45 of 2009 on Fisheries

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Abstract

Illegal fishing is a serious threat to Indonesia's maritime sovereignty, marine ecosystem sustainability, and national economy. Indonesia has enacted Law Number 45 of 2009 concerning the Amendment to Law Number 31 of 2004 on Fisheries as a criminal law instrument to combat fisheries crimes. However, the existence of strong statutory provisions has not automatically guaranteed effective law enforcement. This study analyzes the implementation of criminal law enforcement against illegal fishing under Law Number 45 of 2009 and identifies the main obstacles faced by law enforcement institutions. This research uses normative legal research with statutory and conceptual approaches. The results show that Law Number 45 of 2009 provides a relatively strong legal basis through special investigative authority, fisheries courts, criminal sanctions, and special measures such as burning or sinking foreign fishing vessels based on sufficient preliminary evidence. Nevertheless, enforcement remains limited by overlapping authority among maritime law enforcement agencies, insufficient patrol infrastructure, weak coordination, sophisticated offender methods, and diplomatic challenges in border waters. Therefore, institutional synchronization, strengthening the role of Bakamla as a coast guard, optimizing satellite-based monitoring, and targeting corporate actors behind illegal fishing are necessary to ensure effective, accountable, and sustainable fisheries law enforcement.

Keywords: *Illegal Fishing; Criminal Law Enforcement; Fisheries Law; Maritime Sovereignty; Marine Resources.*

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Introduction

Indonesia is the largest archipelagic state in the world, with vast marine areas and a strategic position between the Indian and Pacific Oceans. The sea is not only a geographical identity but also a source of food security, economic growth, employment, and national sovereignty. Fisheries resources therefore constitute a vital component of national development and require a legal protection system that is capable of preventing exploitation beyond ecological and legal limits.[1]

One of the most serious threats to Indonesian marine resources is illegal, unreported, and unregulated fishing. Illegal fishing is not merely an ordinary administrative violation; it is a fisheries crime that may involve foreign vessels, falsified documents, destructive fishing gear, transshipment at sea, and organized networks that operate across jurisdictions. Its consequences are multidimensional: loss of state revenue, depletion of fish stocks, damage to marine ecosystems, and weakening of the state's authority over its maritime territory.[2]

In response to these challenges, Indonesia has strengthened its fisheries legal framework through Law Number 31 of 2004 on Fisheries, as amended by Law Number 45 of 2009. The law provides special legal instruments, including fisheries criminal provisions, special investigative authority, fisheries courts, and special measures against foreign fishing vessels. One of the most widely discussed provisions is Article 69 paragraph (4), which authorizes investigators or fisheries supervisors to burn or sink foreign fishing vessels based on sufficient preliminary evidence.[3]

However, the implementation of criminal law enforcement against illegal fishing still faces serious obstacles. The vastness of Indonesia's waters is not proportionate to the number and capacity of patrol vessels, while several institutions share authority at sea, including the Ministry of Marine Affairs and Fisheries, the Indonesian Navy, the Water Police, and the Maritime Security Agency. This multi-agency structure has the potential to create overlapping authority, sectoral ego, and inefficiency in law enforcement operations.[4]

From the perspective of law enforcement theory, the effectiveness of legal norms is influenced not only by the substance of the law but also by the quality of law enforcement officers, facilities, public awareness, and legal culture. Therefore, the strong wording of criminal sanctions in fisheries legislation does not automatically create deterrence if the supporting institutional structure and enforcement mechanisms are weak.[5]

Based on these problems, this study formulates two main research questions: first, how is criminal law enforcement against illegal fishing implemented under Law Number 45 of 2009 on Fisheries; and second, what obstacles and challenges are faced by law enforcement agencies in combating illegal fishing in Indonesian waters? This study argues that the central problem lies not in the absence of criminal norms, but in the gap between legal design and institutional implementation.

Research Methodology

This research uses normative legal research, which focuses on the study of legal norms, legal principles, and statutory provisions relevant to illegal fishing and criminal law enforcement. Normative legal research is appropriate because the main object of analysis is the legal regulation contained in fisheries legislation and its relation to institutional enforcement mechanisms.[6]

The approaches used in this study are the statutory approach and the conceptual approach. The statutory approach is applied by examining Law Number 31 of 2004 on Fisheries, Law Number 45 of 2009 on the Amendment to the Fisheries Law, Law Number 32 of 2014 on Marine Affairs, and relevant provisions of the United Nations Convention on the Law of the Sea 1982. The conceptual approach is used to analyze criminal law enforcement, fisheries crime, maritime sovereignty, deterrence, and institutional coordination.[7]

The legal materials used consist of primary, secondary, and tertiary legal materials. Primary legal materials include laws and regulations related to fisheries, maritime security, and criminal law. Secondary legal materials include textbooks, journal articles, research reports, and scholarly opinions concerning illegal fishing and law enforcement. Tertiary legal materials include legal dictionaries and encyclopedias that support conceptual clarification.

The legal materials were collected through library research and analyzed qualitatively. The analysis was conducted using descriptive-analytical and prescriptive methods. Descriptive analysis is used to explain the current legal framework and implementation problems, while prescriptive analysis is used to formulate recommendations for strengthening criminal law enforcement against illegal fishing in Indonesia.

Results

1. Implementation of Criminal Law Enforcement Against Illegal Fishing Under Law Number 45 of 2009

Law Number 45 of 2009 provides a progressive legal basis for combating illegal fishing. The law establishes criminal provisions for various fisheries crimes, including fishing without permits, the use of prohibited fishing gear, document falsification, and fishing activities that damage marine ecosystems. In this context, fisheries criminal law functions not only as a punitive instrument but also as a preventive tool to protect marine resources and national sovereignty.[8]

One important aspect of the law is the recognition of multi-institutional investigative authority. Fisheries crime may be investigated by Civil Servant Investigators in the fisheries sector, officers of the Indonesian Navy, and officers of the Indonesian National Police. Normatively, this arrangement expands the state's capacity to respond to violations occurring at sea. However, in practice, multi-agency authority requires strong coordination to prevent duplication, jurisdictional conflict, and inefficiency.[9]

Another significant feature is the establishment of fisheries courts. Fisheries courts are designed to ensure that fisheries criminal cases are examined by judges with competence in fisheries law and are resolved within a relatively strict time frame. This mechanism is intended to support the principles of speedy, simple, and low-cost justice. Nevertheless, the effectiveness of fisheries courts depends on the quality of evidence collection, investigation, prosecution, and inter-agency coordination before cases reach trial.

The most prominent measure under Law Number 45 of 2009 is the authority to burn or sink foreign fishing vessels based on sufficient preliminary evidence. This provision reflects the state's firm stance toward foreign vessels that unlawfully exploit Indonesia's fisheries resources. Such a measure has symbolic and practical importance: symbolically, it demonstrates state sovereignty; practically, it prevents foreign vessels from escaping legal process or being reused for similar crimes.[10]

However, the use of special measures must still be understood within the framework of due process of law. Although decisive action is necessary to protect state interests, law enforcement must remain accountable, based on sufficient evidence, and in accordance with applicable procedures. Strong enforcement without legal accountability may create new problems, including diplomatic tension and challenges to the legitimacy of state action.

The effectiveness of the sanctions also depends on the ability of law enforcement agencies to distinguish between administrative violations and fisheries crimes that threaten ecological sustainability. Administrative non-compliance may be resolved through administrative sanctions, but destructive fishing, foreign vessel intrusion, and corporate-organized illegal fishing require criminal law intervention. This distinction is important to prevent over-criminalization while ensuring that serious offenders receive proportional punishment.

2. Obstacles and Challenges in the Enforcement of Fisheries Criminal Law

The first major obstacle is the limited availability of patrol facilities and surveillance technology. Indonesia's vast maritime area requires continuous monitoring, yet the number of patrol vessels, operational budget, fuel capacity, and supporting technology remains limited. Illegal fishing offenders often exploit this gap by operating in remote waters, moving quickly across maritime boundaries, or conducting transshipment at sea.[11]

The second obstacle is overlapping authority among maritime law enforcement institutions. Several agencies have roles in maritime security and fisheries law enforcement, including the Ministry of Marine Affairs and Fisheries, the Indonesian Navy, the Water Police, and Bakamla. Although each institution has a legal basis for its authority, weak coordination may lead to sectoral ego, inefficient use of resources, and fragmented enforcement. This situation shows that the issue of illegal fishing is not merely a question of legal substance but also a problem of institutional structure.[12]

The third obstacle is the increasingly sophisticated modus operandi of offenders. Illegal fishing vessels may turn off Vessel Monitoring System devices, use false vessel identities, fly flags of convenience, falsify fishing permits, or conduct transshipment to obscure the origin of fish catches. These methods require law enforcement agencies to move beyond conventional patrols and adopt intelligence-based and technology-based enforcement strategies.[13]

The fourth obstacle concerns the execution of sanctions and the targeting of the real beneficiaries of fisheries crimes. In many cases, law enforcement focuses on vessel crews or ship captains, while the beneficial owners, financiers, or corporations behind illegal fishing activities are more difficult to reach. As a result, criminal sanctions may fail to produce an optimal deterrent effect because the main economic actors remain untouched.[14]

The fifth obstacle is the diplomatic dimension of law enforcement against foreign fishing vessels. Enforcement in border areas, particularly in waters with overlapping claims or unsettled maritime boundaries, may create diplomatic sensitivity. Therefore, criminal law enforcement must be supported by maritime diplomacy, bilateral cooperation, and clear rules of engagement to ensure that state sovereignty is protected without escalating unnecessary international disputes.

These obstacles show that fisheries criminal law enforcement is a systemic issue. The law has provided sanctions and special authority, but enforcement capacity depends on institutional integration, budget support, technological modernization, and the ability to pursue corporate networks. Without these supporting elements, the criminal law will remain reactive and will only reach the visible perpetrators at sea.

3. Strengthening the Future Model of Criminal Law Enforcement Against Illegal Fishing

Strengthening fisheries criminal law enforcement requires a shift from fragmented enforcement to an integrated maritime law enforcement model. In this regard, the role of Bakamla should be strengthened as a coast guard institution with clearer coordination authority. The single agency multi-task model does not necessarily eliminate the role of other institutions, but it provides a unified command and coordination framework for maritime security operations.[15]

In addition, surveillance technology must be optimized. Vessel Monitoring System, Automatic Identification System, satellite imagery, and maritime drones should be integrated into a national surveillance platform. Technology-based monitoring enables law enforcement agencies to detect suspicious movements in real time, prioritize patrol targets, and reduce operational costs. This is especially important given the vastness of Indonesia's waters and the limited number of patrol vessels.

Criminal law enforcement should also be expanded through a follow-the-money approach. Illegal fishing is economically motivated, and therefore enforcement should target financial flows, corporate ownership structures, and assets derived from fisheries crimes. By linking

fisheries crimes with money laundering investigations, law enforcement can reach beneficial owners and prevent the crime from recurring under different vessels or corporate identities.[16]

Finally, criminal sanctions should be combined with environmental recovery measures. Fisheries crimes often cause ecological damage, especially when destructive fishing methods are used. Therefore, the criminal justice response should not only focus on imprisonment and fines but also on confiscation of illegal proceeds, restoration of damaged marine ecosystems, and compensation for environmental harm. This approach aligns criminal law enforcement with sustainable marine resource management.

The reconstruction of enforcement should also emphasize community participation. Coastal communities are often the first to identify suspicious fishing activities, yet they may lack safe reporting mechanisms or legal awareness. Public participation, protection for informants, and community-based surveillance can strengthen the early detection of illegal fishing while building a legal culture that supports sustainable fisheries governance.

4. Normative Direction for Sustainable Fisheries Governance

The protection of marine resources cannot rely solely on repressive criminal law. Criminal sanctions are necessary, but they must be integrated into a broader governance framework that includes licensing control, vessel monitoring, administrative supervision, corporate accountability, and environmental restoration. This integrated framework reflects the idea that criminal law should function as the last and strongest instrument when administrative and preventive measures fail.

Law Number 45 of 2009 therefore needs to be read not only as a fisheries statute but also as part of Indonesia's maritime sovereignty regime. The law's effectiveness will be measured by whether it can reduce illegal fishing, protect ecological sustainability, and ensure that fisheries resources contribute to national welfare. In this sense, criminal law enforcement must be accountable, measurable, and oriented toward long-term marine resource management.

The future policy direction should place illegal fishing within the framework of transnational organized crime where appropriate. When illegal fishing involves cross-border networks, corporate financing, document falsification, and money laundering, enforcement should not stop at the vessel level. Instead, it must pursue the intellectual actors who organize, finance, and benefit from illegal fishing. This approach will strengthen deterrence and prevent the repetition of similar crimes through different vessels or corporate structures.

Conclusion

- 1 Criminal law enforcement against illegal fishing in Indonesia has a strong legal basis under Law Number 45 of 2009 on Fisheries. The law provides special instruments, including multi-institutional investigative authority, fisheries courts, severe criminal sanctions, and special measures against foreign fishing vessels. These provisions reflect Indonesia's commitment to protecting maritime sovereignty and marine resources. However, the effectiveness of the law depends on how consistently and accountably these provisions are implemented in practice.
- 2 The main obstacles to fisheries criminal law enforcement include limited patrol facilities, overlapping institutional authority, weak coordination, sophisticated offender methods, difficulties in reaching corporate beneficiaries, and diplomatic challenges in border waters. Therefore, future law enforcement must be strengthened through institutional synchronization, the development of a coast guard model, technology-based surveillance, a follow-the-money approach, and environmental recovery-oriented sanctions. In this way, criminal law enforcement can support not only deterrence but also sustainable management of Indonesia's marine resources.

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