



## **Omnibus Law: Effectiveness of Online Licensing and Law Enforcement of the Capture Fisheries Sector in Indonesia**

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*Received: 05-07-2024*

*Reviewed: 20-07-2024*

*Accepted: 05-08-2024*

### **Abstract**

The government has carried out the task of simplifying several laws through the ratification of Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 11 of 2020 regarding Job Creation. This initiative aims to encourage investment and increase employment opportunities. A number of articles of the old law have been amended or deleted by this regulation. One of the laws in question is Law Number 31 of 2004 concerning Fisheries. In addition, Law Number 45 of 2009 is an amendment to Law Number 31 of 2004. This study applies a normative legal research methodology, where this type of research refers to scientific investigations of legal issues by conducting research through library sources or data related to secondary license issued by the OSS Institution through an integrated electronic system. This research approach is characterized by consideration of the risk-based licensing process, not only based on licensing criteria. Apart from the main goal of increasing user convenience, individuals with limited educational levels, such as fishermen, may face challenges when trying to access the OSS system. The application and implementation of criminal law as the main legal remedy poses its own challenges. Therefore, the utilization of the criminal justice system as a means to eradicate fish theft is mainly used as a final remedy (*ultimum remedium*). While other sanctions, such as administrative sanctions and actions, are generally used as the main means of law enforcement.

**Keywords:** fisheries, law enforcement, omnibus law, effectiveness, licensing

### **Introduction**

The government is reducing the number of laws and regulations that are considered deviant and hindering the smooth running of business activities so that they can then be

combined into one known as the omnibus law, as well as the needs of people who want extensive employment opportunities and ease of investing. As a substitute for Law no. 11 of 2020 concerning "job creation", Law no. 6 of 2023. Some legal experts usually call the omnibus law a legal umbrella (Sujono & Nugroho, 2023). The presence of regulations that regulate 11 categories in certain fields serves to illustrate the achievement of the main goals, namely expanding employment opportunities, increasing investment and ease of doing business. (Suharto, 2017) The eleven clusters in this Law are intended as a means of resolving various normative disputes that hinder the creation of job opportunities through capital investment. In this law, articles relating to licensing simplification dominate. Before becoming integrated, effective and efficient to facilitate business, integrated licensing is regulated by various articles of law and regulations. In the past, businesses had to pay high fees, obtain multiple permits, and license their operations in order to obtain long-term permits. Therefore, every company activity is required to obtain a business permit, in accordance with Law Number 6 of 2023.

Business Licensing which is currently known as "Online Single Submission (OSS)" refers to permits granted by the OSS Institution through an integrated electronic system by paying attention to the risk-based licensing process, not permit-based (Tarigan, 2018). There are three categories of risk activities: low, medium, and high risk. While low-risk activities are adequately registered, medium-risk activities require requirements, and high-risk activities require a license. Despite claims that the OSS system is inexpensive, it is sometimes observed that fishermen find it difficult due to the permit requirements of the OSS system. This is due to fishermen's limited awareness and understanding of technology. Yunitasari (2020), emphasized that "Electronically Integrated Business Licensing (PBTSE) or Online Single Submission, hereinafter abbreviated to OSS, is a Business Permit issued by the OSS Institution to business actors (fishermen) through an integrated electronic system on behalf of the minister, head of the institution, governor or regent/mayor".

Maritime and fisheries licensing is also regulated by the OSS. SIUP (Fisheries Business Permit) and SIPI (Fisheries Permit) are documents that must be shown as proof of ship ownership in this system, whether the ship is extended or built from scratch. OSS is a place where fishermen must register their boats. This aims to make data collection easier for the government. According to Putri (2016), the development of the OSS system aims to increase user comfort. However, individuals with limited educational backgrounds, such as fishermen, may face challenges when trying to access the system. To enhance or facilitate the implementation of these OSS systems, individuals involved in fishing activities in this specific context require the involvement of intermediary entities, such as the provision of assistance provided by agencies.

Due to challenges in obtaining permits through the OSS system which requires possession of an NIB, a large number of fishermen were forced to submit complaints either directly or in writing to the Fisheries Service. Fishermen's lack of understanding about the procedures for creating an OSS account, completing the required documentation, and obtaining an NIB is an obstacle in obtaining the necessary permits, namely SIPI and SIUP. Protracted licensing procedures have implications for individuals involved in fishing activities. Apart from

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that, the inability of fishermen to start sailing, coupled with the difficulty of extension procedures, is why fishermen feel objections. Fishermen are less adept at utilizing internet-based platforms, such as OSS systems, for permit processing purposes.

The Republic of Indonesia has implemented reforms in the field of law and legislation, one of which is the ratification of Law no. 6 of 2023. In this law, especially the fisheries and marine cluster is crucial for the Unitary State of the Republic of Indonesia because the number is almost 6 million people. Territorial waters, which are under the sovereign control and jurisdiction of a country, demand the collective attention and focus of individuals, especially those who have an interest in enforcing law enforcement and ensuring maritime security, by guarding against external interference and encroachment. Implementation of Law no. It is hoped that Law No. 6 of 2023 will be a constructive step and basic guidance for law enforcement officials and fisheries judges in responding to legal issues related to the non-criminalization of fish theft (Harahap & Tanjung, 2024). These illicit activities have significant adverse consequences for the state, potentially resulting in adverse effects on the state and its economy.

The act of illegal fishing presents a number of inherent challenges, including issues related to legal ambiguity and uncertainty, as well as a lack of clarity in the licensing bureaucracy. These issues include differences in interpretation of statutory provisions, inconsistent application, discrimination against legal violations committed by foreign vessels, and collusion by foreign and local businessmen with the justice system. In Law no. 6 of 2023, acts of fish theft have legal consequences, including imprisonment and imposition of fines, according to the seriousness of the violation (Sujono et al., 2024). Neither imprisonment nor punishment was carried out in a fair manner. Another problem that is less clear is regarding the imposition of penalties on licensing bureaucracies, supervisors and law enforcement officers at sea who deliberately deviate from established provisions or release perpetrators unlawfully.

Administratively, government supervision in the fisheries sector falls under the responsibility of the Ministry of Maritime Affairs and Fisheries (KKP) because fisheries issues can also turn into marine issues. Criminal acts committed in the fisheries sector that are organized and carried out internationally have the potential to damage state sovereignty and the supremacy of law. Apart from endangering food sustainability, this crime also has a negative impact on the economy, damages the environment and violates human rights. There are undeniable law enforcement challenges related to fisheries crimes, especially those of a global nature, often occurring widely and comprehensively. Starting from planning fishing operations, licensing, ship ownership, insurance, as well as corruption in issuing permits, which includes activities such as falsifying documents, money laundering, tax evasion, and interference in prohibited practices such as human and drug trafficking, and so on. The problems faced are very complicated.

Many parties with addresses in other countries are also involved in these crimes. The Viking FV ship is an example of a fishing theft case. This type of fishing is prohibited and goes against a country's sovereignty. This ship can change flags at any time because it carries 25 different flags. In addition, registration documents and permits are easy to forge. Obstacles that

are sometimes imposed by statutory regulations must therefore be overcome by various parties. Fish theft is a widespread issue because it is an international or transnational crime, especially for countries that have maritime territories. Fishing industry human trafficking cases, transnational organized crime cases, capacity building initiatives, and the role of intergovernmental organizations are all factors in the fight against fisheries crime. That fisheries crimes still occur and efforts to stop them are still being made in various countries. At a practical level, technically the obstacles that must be immediately found are related to the existence of sectoral egos between ministries. Indications of administrative obstacles are shown by weak coordination between government institutions. The aim of this research is "to analyze the effectiveness of online licensing in the capture fisheries sector with the enactment of Law Number 6 of 2023 and to find out the implications of Law Number 6 of 2023 for law enforcement in the capture fisheries sector in Indonesia".

## **Literature Review**

In Indonesia, fish theft is not a new crime. Because foreign fishing vessels are frequently detected in Indonesian waters, this practice is common in these locations. Fishermen from a number of neighboring countries operate along the Indonesian Sea, committing crimes of illegal fishing in marine areas. Fish theft is a form of organized crime that takes several forms to multiply revenues from the sale of illegal fish (Hermawan, 2017). In Indonesia, one of the big issues currently is cross-border crime. The world community is starting to pay more attention to the issue of fishing theft because it is a global problem. The problem of fishing theft must be prioritized by the international community, because ignoring it can pose a significant threat to fisheries resources and the sustainability of marine ecosystems. This concern arises from the occurrence of fishing theft in various regions of the world (Ariyanto, 2019).

The involvement of fishermen in fishing activities carried out without paying attention to applicable regulations is a criminal act known as fish theft. Illegal fishing behavior can be seen from the use of fishing gear that has the potential to cause damage to the marine ecosystem. According to Putri (2017), "illegal, unreported, and unregulated (IUU) includes activities related to fishing that are considered illegal, unreported, or unauthorized". This phrase describes fisheries policies and management that violate or work around domestic and international rules governing the protection and management of fisheries. This applies to all forms of sea fishing.

Monitoring and management of fisheries activities to date has not been effective. With the new legal regulations, it is hoped that the criminal sanctions for theft can be maximized to protect state revenues in the fisheries sector. Law Number 6 of 2023 is expected to be successful in eradicating the fish theft mafia (Hibatulla, 2018). By using this tool to eradicate fishing theft, punishment for violators has been regulated. The purpose or intention behind committing a crime is one example of how punishment is linked to crime and punishment. Indonesia and various other countries in the Asia Pacific region are involved in illegal fishing which is usually called "illegal, unregulated, and unreported (IUU) fishing". These violations are widely

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recognized as significant threats that require immediate elimination to preserve fisheries. The disclosure of details relating to vessels captured by the warships has revealed a range of violations, which include unauthorized transfers, falsified documentation, and illegal use of nets for fishing purposes, often accompanied by the use of explosives in contravention of established regulations established, especially with immigration and unpermitted foreign workers.

### **Research Method**

This research applies a normative legal research methodology, where the research refers to the process of conducting legal research by reviewing literature or secondary data sources. This study was conducted using a comprehensive methodology that includes a statutory approach, a conceptual approach, and a case-based approach. This methodology is strengthened by the inclusion of primary legal sources, such as relevant laws and regulations, as well as secondary legal sources, including relevant legal literature relating to legal issues, as well as the analytical descriptive nature of the research

### **Result and Discussion**

#### **Effectiveness of Online Licensing For The Captured Fishery Sector With The Enforcement Of Law Number 6 Of 2023.**

The issuance of fishing business permits is regulated in the legal framework established by Law no. 31 of 2004 and Law no. 45 of 2009, which amends the provisions of Law no. 31 of 2004 concerning "Fisheries". Furthermore, these regulations have been further amended by Law no. 6 of 2023. The main aim remains consistent, namely to improve the welfare of the community or business actors (Adhiatma, 2019). Licensing requirements for people or entities carrying out fisheries business activities were previously regulated in Article 1 points 16, 17 and 18 of the Fisheries Law. This regulation mandates the acquisition of special permits, namely "Fisheries Business Permit (SIUP), Fishing Permit (SIPI), and Ship Permit (SIKPI) for transporting fish". Fishing businesses after Law number 6 of 2023 have differences and simplifications in business licensing. By paying attention to risk-based licensing procedures, licensing is sought. MSMEs as well as large organizations are required to obtain a risk-based license, depending on the evaluation of the level of risk and assessment of the size of the business operations. Based on the results of the risk analysis, the risk level is determined. In addition, the magnitude of the risks faced will determine certain business permit requirements that must be fulfilled by the business entity.

The business license registration process has been changed in accordance with Republic of Indonesia Law no. 6 of 2023 and PP no. 5 of 2021 "Implementation of Risk-Based Business Licenses". RI PP No. 5 of 2021 concerning "Implementation of Risk-Based Business Licensing". The risk basis is considered when adjustments are made in these companies'

licensing programs. Due to more effective and efficient licensing procedures, this improvement makes it easier for business actors to register permits. (Widodo, 2017)

Legal certainty is unclear because there is no formulation of the definition of authority in Law no. 6 of 2023. Limited to the authority of the relevant technical ministry or regional government which will receive authority from the central government. Because the Job Creation Law also attracts different regional government officials to the central government. The issuance of the work copyright law is in fact interrelated. The Fisheries Act, the previous law, required commercial actors to register their permits for a long period of time, and the application and issuance process was laborious. This hampers investment and employment growth. The key to increasing employment is the simplification and relaxation of licensing requirements. Because the government pays attention to ease of doing business, employment opportunities have increased. This will of course have an impact on investment, and investment attractiveness will increase if the government can make it easier for investors to do business in the fisheries sector.

Fisheries legislation and job creation law have similarities in regulating business permits because both require permits and have the same function (Rahmayanti, 2017). By changing various provisions of the Fisheries law, the government simplified licensing and ease of doing business. In particular, the central government must change/merge the "Fishing Business License (SIUP), Fishing License (SIPI), and Fish Transport License (SIKPI)", into a risk-based business license. The transformation at UUCK is an excellent example of innovation because it uses OSS technology to issue risk-based business permits (Afrina, 2018). Its implementation is regulated in a derivative of the Job Creation Law, namely PP RI No. 5 of 2021 concerning "Implementation of Risk-Based Business Licensing".

The most important infrastructure and facilities required to deploy this system is a strong and reliable internet network. Internet connectivity requirements are essentially related to the issuance of recommendations for Capture Fisheries Business Permits (SIUP/SIPI/SIKPI) and the management of data collection on these permits through the use of applications. The problem is that because so many users are using this program at once, the internet network slows down at every working hour. This happens because of the application's direct link to the official website of the Ministry of Maritime Affairs and Fisheries (KKP) and the fact that all marine and fisheries services in Indonesia use it. This incident resulted in a decrease in employee effectiveness in complying with technical procedures, thereby impacting the ability to achieve punctuality.

To speed up the licensing process, both central and regional governments must implement comprehensive government policies regarding One Stop Integrated Services. The authority to issue permits has been given to PTSP (Head of BKPM and DPMPST) by ministers, mayors, regents, governors and heads of institutions. The SPIPISE system developed by BKPM which can be accessed at "<https://onlinespispise.bkpm.go.id>" has been utilized for providing online services. However, investors continue to face challenges in carrying out the licensing process, primarily due to a lack of coordination between central and regional government entities. Even though the central PTSP has served optimally, investors still have to go to the regional authorities for permits which are the authority of each region. Apart from that, regional

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PTSP has not yet achieved optimal operational efficiency. Furthermore, responding to these developments, the central government under the Coordinating Ministry for Economic Affairs accelerated the implementation of the OSS system.

The implementation of the OSS program has effectively achieved its objectives. In minimizing obstacles to the successful implementation of the OSS program, the main obstacle that must be overcome is data synchronization from the central system for business actors who wish to register their business at the One Stop Integrated Investment and Licensing Service office (Nababan, 2018). To fulfill the objectives of the OSS program which aims to increase accessibility to the OSS System, there are many advantages for business entities in simplifying administrative procedures. These benefits include speeding up the processing of various business permits, such as operational permits both at the central and regional levels with a system for fulfilling permit commitment requirements, business permits, as well as prerequisites for carrying out business such as building, environmental and location permits. This is achieved through mechanisms that ensure compliance with permit commitment requirements (Zulham & Matulete, 2017). Implementation of the OSS System facilitates effective communication between business actors and relevant stakeholders, thereby enabling them to obtain permits safely and efficiently. Additionally, this simplified process facilitates reporting and resolving licensing issues for business entities, as it allows them to do so in a centralized location, as well as enabling the consolidation of licensing data under one business identity, known as the Business Identification Number (NIB). Actors in the business world pay contributions (PNBP or regional taxes/levies). Business actors (especially MSMEs) are assisted by OSS institutions in obtaining business licenses through the OSS system. Compliance with business permit obligations as well as compliance with commercial or operational permits, payment and implementation are supervised by Ministries, Institutions and Regional Governments.

The process of revoking these levies appears to be an obstacle in implementing fishing business licensing procedures; In particular, many objects or traders close their stalls or deliberately leave the stall when the levy is about to be withdrawn. As a result, officers cannot demand compensation from the stall owner, and traders often maintain ownership of their merchandise arbitrarily, resulting in a disorderly atmosphere. . In overcoming this challenge, guidance is often carried out by the security and order departments apart from the Head of Service. This arrangement was carried out to organize the market so that it is orderly and makes it easier to collect fees (Nasirin, 2017). In accordance with PP no. 24 of 2018, confirms that "the One Stop Integrated Service system has been refined into an Online Single Submission system, namely the application used for all registration procedures, business license applications, and other permit applications included in business licensing services." The policy for implementing the authority to grant business permits is determined by the Central Government, in accordance with relevant Government Regulations and other relevant laws and regulations.

Indonesian National Standards (SNI) and other obligations, including environmental permits, buildings, locations, and other implementation documents, can all be completed at the same time as the business actor's production process begins thanks to OSS. The Directorate General of Taxes, Ministry of Finance and the Directorate General of General Legal

Administration, Ministry of Law and Human Rights, are both intended to be integrated with OSS. In fact, OSS is intended to be used not only for information but also for complaints and grievances. One of the weaknesses in the process of obtaining company permits through the OSS system is that businesses establishing Limited Liability Companies (PT) still depend on consultants to complete the required documents (Salsabila, 2018). Therefore, help desks in government institutions are very important because there are still many OSS system users who do not understand the operational principles and how they work. Its introduction has made business actors, especially those founded by PT, apply for permits through their companies, although many business owners are still unable to complete the forms available on the OSS system page.

Even though the Business License has been issued by the Central OSS Agency, the permit processing system is still running. On the other hand, Business License Applicants receive this data, with the intention of quickly fulfilling their commitments to the Investment Office. Furthermore, the Central Tapanuli Regency One-Stop Integrated Licensing and Investment Service Service will verify this information so that the Business Permit requested by the Applicant can be issued. Obtaining a business identification number in an OSS system is common practice. Next, the OSS system will distribute the NIB and process the business permit within the specified time limit (Saputra, 2016). The OSS system greatly reduces the time and effort required to obtain permits while closing loopholes for illegal fees and corrupt practices (extortion). Illegal levies continue to be carried out by several PTSP implementers in Indonesia even though they are online and integrated. Reports on sting operations carried out in various regions provide clear indicators. Approaches that are often used include “simplifying services” through facilitating licensing procedures, “accelerating services” by speeding up the issuance of permits beyond legal requirements, and “cheapening services” by reducing the amount of levies. Individuals receive a certain amount of money from the app for the services mentioned above, which is clearly above and beyond the fees mentioned.

In PP no. 24 of 2018 concerning "Electronically Integrated Business Licensing Services" was officially ratified and implemented on June 21 2018. The issuance of this regulation is intended to improve and speed up the licensing process and company transactions. According to Uno (2017), the implementation of the OSS system, an Electronic Integrated Business Services system, has increased the efficiency, effectiveness and modernity of PTSP services provided to central and regional governments. This government step is a breakthrough, but there are still several obstacles in its implementation, both from regulatory and non-regulatory aspects. This is because although the government has made significant progress in terms of simplifying rules and procedures, there are still problems in their implementation.

### **Law Number 6 of 2023 and Law Enforcement Of The Capture Fishery Sector In Indonesia**

Illegal fishing activities in Indonesian maritime areas are carried out methodically and continuously. Not only that, it is important to note that illegal fishing activities are not isolated incidents, but have been intertwined with transnational or cross-border crime networks. The phenomenon of illegal fishing carried out by individuals from foreign countries who carry out unlawful activities outside their own country's borders, accompanied by the existence of

transnational networks, indicates that illegal fishing has become a form of transnational crime (Youdy, 2019). The issue of cross-border crime has emerged as a significant challenge facing the Indonesian nation.

The involvement of fishermen in fishing activities carried out without paying attention to applicable regulations is a criminal act of fish theft. Illegal fishing behavior can be seen from the use of fishing gear that has the potential to cause damage to the marine ecosystem. The term "IUU (illegal, unreported, and unregulated) fishing" is used to describe fishing activities carried out in violation of laws, regulations and reporting requirements (Basriati, 2018). This phrase describes fisheries policies and management that violate or work around domestic and international rules governing the protection and management of fisheries. This applies to all forms of sea fishing.

Efforts to overcome violations of "illegal, unreported, and unregulated fishing (IUU Fishing)" in the Exclusive Economic Zone (EEZ) are carried out through strict law enforcement. The 1982 UN Convention on the Law of the Sea has effectively supported law enforcement initiatives targeting IUU within the EEZ (Mussadun & Putri, 2016). According to Article 73 Paragraph (1) explains that "if a foreign ship does not comply with the Fisheries Legislation of the coastal state in the Exclusive Economic Zone (EEZ), the coastal state can board, inspect, arrest and carry out judicial proceedings against the foreign ship, as necessary to ensure compliance with the laws and regulations established in accordance with the provisions of the 1982 United Nations Convention on the Law of the Sea." Therefore, coastal states need to enforce national laws and regulations to deal with violations by foreign fishing vessels involved in IUU within a country's EEZ.

To assert their jurisdiction in accordance with the 1982 UN Convention on the "Law of the Sea", coastal states are permitted by Article 73 Paragraph (1) and further supported by the provisions of Article 111 to immediately pursue foreign fishing. If there is sufficient initial evidence to support the assumption that the ship has violated coastal laws and regulations (Hidayat, 2018). In the absence of consensus from the countries involved, detention should not be part of the punishment for international fishing vessels. According to the UN Convention on the "Law of the Sea 1982", captured vessels and their crews must be efficiently released subject to reasonable bond provisions or alternative forms of bail to the coastal state.

According to Ambari (2017), Article 292 of the 1982 UN Convention on the "Law of the Sea" stipulates regulations relating to the immediate release of a ship and its crew after receiving a valid security deposit. According to the report, after receiving appropriate deposits, coastal governments that seize international fishing vessels are required to immediately release the vessel or its crew. The UN Convention on the "Law of the Sea 1982", the UNCLOS 1982 document itself, and national law, in their implementation, do not set any limits on the size of the security deposit. Determination of security deposits is only based on agreement between the parties, this is expressly stated in the UN Convention on "Law of the Sea 1982", Article 292 (Andeas & Euni, 2016). As a result, discrepancies often arise due to excessive amounts of guarantees imposed by coastal states, causing other countries to consider the guarantees to be too high and consequently not comply with the guarantee requirements.

Along with international law which regulates "law enforcement against Illegal, Unreported, and Unregulated Fishing (IUU Fishing) in the Exclusive Economic Zone (EEZ)", Indonesian legislation also includes provisions relating to "regulation and enforcement of IUU Fishing". According to Law Number 5 of 1983 concerning the "Indonesian Exclusive Economic Zone", Article 13: "To carry out sovereign rights, rights, jurisdiction and other obligations as intended in Article 4 paragraph (1), authorized law enforcement officials from the State The Republic of Indonesia, may take law enforcement actions in accordance with the provisions of this paragraph." (Aprilianti & Astuti, 2019).

Articles 84 to 101 Republic of Indonesia Law no. 45 of 2009 concerning Amendments to Republic of Indonesia Law no. 31 of 2004 concerning "Fisheries Criminal Sanctions" which states that "the maximum prison sentence is 10 years and a maximum fine of Rp. 20,000,000,000.00 (twenty billion rupiah)" (Basuki, 2014). The statement suggests that criminal punishment is now the first line of defense rather than the last resort. The need for criminal sanctions to eradicate fishing theft is quite urgent, it needs to be remembered. The government's legal tool of choice for combating crime is currently considered criminal sanctions. Fish theft is one of them. To eradicate fish theft, criminal law is a primary preventive measure to protect the potential of fisheries which are the main source of livelihood for coastal residents. In line with its potential, a number of problems, including overfishing, fish theft, loss of coastal habitat, and marine pollution, threaten the sustainability of fisheries. Furthermore, the use of criminal law aims to have a deterrent effect on perpetrators, especially individuals from foreign countries who carry out criminal activities related to illegal acquisition of fish in the Indonesian Fisheries Management Area (Ayu, 2019). Implementation of this action is very important because of the negative impact of illegal fishing activities. Not only does it pose a significant threat to the country, but it also endangers the interests of local fishermen, endangers the potential availability of fish, weakens the national fishing industry, disrupts the industrial climate, and causes a significant depletion of fish stocks.

Additionally, fish thieves commit crimes in a variety of ways, including by using unlawful fishing grounds, falsifying records, manipulating vessel data, and more. Therefore, heavier penalties must be applied to perpetrators of fish theft (Duadji, 2017). In addition, the diversity of fishing enterprises may have negative effects on fisheries resources. One issue that often arises is the exploitation of fish resources that ignores sustainability, often facilitated through the use of dangerous fishing gear. The problem of fishing theft requires urgent attention because of its significant implications for the conservation of fish resources and the overall economic well-being of the nation (FAO, 2019). Thus, the philosophical basis underlying the role of criminal law lies in its function as the main legal remedy, which is specifically aimed at maintaining a harmonious relationship between the use of fish resources and the long-term sustainability of these resources.

Criminal consequences are not only prioritized in Indonesia when fighting illegal fishing. Some countries have strict regulations to combat seafood theft. The maximum prison sentence for fish thieves in France is two years, and they can also be fined up to €375,000. The Netherlands has strict penalties for fishing theft, including fines of up to 82,000 euros and prison sentences ranging from 3 months to 6 years. There are various laws in the UK that

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regulate punishment for fish thieves. For example, the Marine Fish (Conservation) Act 1967 stipulated that fish thieves would face fines ranging from 5,000 to 50,000 pounds sterling (Rahayu, 2019).

Fishing can be prevented by using the criminal justice system as a first line of defense, concentrating on repressive tactics or outright eradication. Therefore, it is very important to incorporate social policy objectives, namely social welfare and social defense, which prioritize the welfare and justice of the population, into the policy framework at all levels to effectively address the fishing problem.

The role of the criminal justice system as *primum remedium* deviates from its normal role as final or ultimate remedy. However, as its development continues, the significance of criminal law as *primum remedium* or primary recourse makes it increasingly urgent (Indonesia, 2017). In addition to tackling fish theft, the application of criminal sanctions as the main solution has proven to be an effective approach in tackling criminal acts of fish theft which have various impacts, including negative impacts on the national economy, wider society and the environment.

The sustainability of Indonesian fisheries is threatened by fish theft which is also detrimental to the nation and the fishing industry. Therefore, to promote controlled and sustainable use of fish resources, strong law enforcement activities are needed. In its application and implementation, Indonesia's legal political decision to use criminal law as the main means (*primum remedium*) to eradicate the crime of illegal fishing has several consequences, both legal and non-legal.

In RI Law no. 45 of 2009 concerning "Amendments to Law Number 31 of 2004 concerning Fisheries" follows a cumulative punishment system, namely the imposition of fines and imprisonment simultaneously. However, there is no mechanism for imposing fines. As a result, according to Article 30 of the Criminal Code, which states that "imprisonment is used as a substitute for a fine if it is not paid". To clarify, it can be said that decisions handed down by Fisheries Court Judges always lead to restrictions on freedom, such as imposing measures of detention and confinement (Kurniaty, 2017). These procedural weaknesses are exacerbated by the implementation of positivistic law enforcement, resulting in minimal legal progress made by Fisheries Court Judges. The main objective of criminal law in dealing with fish theft causes judges to rely more on criminal sanctions as a determining factor in fish theft cases, so that their application is practical. Fish theft offenses are subject to legal sanctions, usually involving the imposition of monetary penalties and periods of detention as alternative criminal penalties. The judge's decision is contrary to the established international legal framework, in particular "*United Nations Convention on the Law of the Sea (UNCLOS)* 1982 as well as the domestic legal framework, especially Supreme Court Circular Letter Number 3 of 2015 concerning the Implementation of the Preparation of Results of the 2015 Supreme Court Plenary Session as Guidelines for the Implementation of Judicial Duties."

Apart from that, the application of sanctions in the general maximum system in the regulations of Republic of Indonesia Law no. 45 of 2009, which amends Law no. 31 of 2004 concerning "Fisheries", does not provide fair treatment for small boat fishermen. This is

because the potential losses experienced by small vessel operators are disproportionate compared to their partners who operate large fishing vessels (Kurniawan, 2020). Small fishermen, as is known, are also closely related to criminal laws that may trap them. Local fishers experience disproportionate criminalization compared to foreign individuals involved in fish theft, as criminal law serves as the primary means of addressing and eliminating this criminal activity. The application of criminal penalties to foreign nationals involved in fishing theft is limited by the international legal framework. Therefore, the transition of criminal law policy from *ultimum remedium* to *primum remedium* has failed to provide a perception of justice for individuals involved in local fishing activities, especially those operating on a small scale.

To perfect criminal law policies in the fisheries aspect and maximize efforts to eradicate fish theft, it is necessary to reconstruct fish theft criminal legislation with a justice perspective, including: The use of criminal law to eradicate fish theft raises various problems at the implementation and implementation level, including the formulation of consequences. action. Currently, the use of prisons within the criminal law policy framework is questionable due to their limited effectiveness in arresting local fishermen, especially small-scale ones, while failing to arrest foreign nationals involved in fishing theft. Additionally, the implementation of fines as a policy measure is also considered inadequate, regardless of the monetary value associated with them. The absence of a regulatory policy governing the process of implementing these fines is the cause of this situation. Therefore, the application of sanctions can function as a potential solution to the problems faced. Determination of sanctions for dealing with fishing theft can be found in Article 103 of the Draft Criminal Code Bill, which includes "counseling, rehabilitation, job training, treatment in institutions, and correction of the consequences of criminal acts".

Prioritization of administrative sanctions on fisheries is emphasized in Article 35A Paragraph (3) and 41 Paragraph (4) of Republic of Indonesia Law No. 45 of 2009, regarding "amendments made to Law of the Republic of Indonesia Number 31 of 2004 concerning Fisheries". However, the regulations outlined in the articles above merely give authority to fisheries permit providers to carry out disciplinary actions, such as warnings, freezing and revoking permits that have been duly issued (Mussadun & Putri, 2016). The mechanisms used by the state to grant permits and impose administrative fines on violators are not further regulated in these two articles. Considering that the use of criminal law to eradicate fishing theft is limited by international and domestic legal instruments, administrative sanctions in Republic of Indonesia Law no. 45 of 2009 concerning "Amendments to Law of the Republic of Indonesia Number 31 of 2004 concerning Fisheries", needs to be reaffirmed.

Indonesia could also consider Poland's policies when deciding how to categorize criminal fines in the fight against illegal fishing. The size of the vessel and the capacity of the perpetrator are taken into consideration when imposing criminal fines in Poland, so fishing vessel operators face a minimum fine of 500 Zloty and a maximum fine of 50 times their annual salary. The maximum fine for boat operators catching fish under 10m in length is 10 times their annual salary, with a minimum fine of 500 zloty. The lowest fine for captains of fishing vessels less than 10 meters long is 500 zlotys, while the maximum fine is ten times that.(Youdy, 2019).

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Apart from violating Article 73 paragraph (3) of the 1982 UN Convention on the "Law of the Sea", the decision to eliminate confinement as a punishment for fishing theft is also considered disproportionate in relation to economic losses, which must be borne by Indonesia as a result of this criminal act. Not only that, the lack of a comprehensive policy governing the protocol for imposing fines creates loopholes that allow violators to evade their financial obligations. As a result, the burden of uncollected fines falls on prosecutors, who are responsible for recovering the amount owed on behalf of the state. Furthermore, the accumulation of unpaid fines contributed to an increase in state receivables. The prosecutor's office is also responsible for reporting cases of non-tax state revenue (PNBP) arrears, which are not effective as a deterrent.

The primary tool (*primum remedium*) involves the use of alternative measures, such as administrative sanctions and legal enforcement actions. This is consistent with the fact that in the event that other legal remedies are deemed insufficient, then criminal law must be the last resort (Rahayu, 2019). Additionally, continuing to use criminal law as a last defense against illegal fishing may be the best course of action. This is because RI Law no. 45 of 2009 concerning "Amendments to Law of the Republic of Indonesia Number 31 of 2004 concerning Fisheries" is a deregulation instrument, which means maximizing the use of fisheries resources and effectively combating (Ariyanto, 2019). Therefore, it is very important to prioritize the emphasis on alternative sanctions to effectively address the problem of illegal fishing, taking into account their efficiency.

The role of criminal law as a premium remedy in eradicating fishing theft is that judges often base their decisions on criminal sanctions, giving rise to inconsistencies between these decisions and the international legal framework (Kurniawan, 2020). UNCLOS 1982, UN Convention on the Law of the Sea Small-scale fishermen feel treated unfairly under the 1982 UN Convention on the Law of the Sea, and local fishermen are more likely to face legal action. The Ministry of Maritime Affairs and Fisheries of the Republic of Indonesia states that "fish theft or Illegal, Unreported and Unregulated (IUU) is literally fishing activities that are prohibited and not regulated in applicable laws and regulations, as well as fisheries activities that are prohibited, not registered and reported to a fisheries institution recognized by the government (Afrina, 2018)".

The problem of fishing theft in Indonesian waters, when viewed from the perspective of international law, is closely related to the role of the international legal framework in handling and preventing these illegal activities. This is very important and has received widespread attention, especially in the current era. Globalization, as a legal framework and international system, operates as an autonomous and independent political and legal system on a global scale. It includes various provisions of international law that serve international political interests and uphold the principles of the rule of law. There are international legal bodies that enforce rules related to IUU activities, including:

UNCLOS, the UN convention which regulates the "Marine Law of the Indonesian Exclusive Economic Zone (EEZ) and the high seas", has been ratified by Republic of Indonesia Law no. 17 of 1985 concerning "Ratification of the 1982 UN Convention on the Law of the Sea".

These activities must be carried out in accordance with relevant international requirements or standards. In its capacity as UN organizer, the organization has assumed responsibility for enforcing the above provisions through the publication of the Agreement on the Implementation of UNCLOSS Provisions on 10 December 1982. Regarding topics of concern for and management of strading fish stocks and highly migratory fish stocks (United Nations). More details about international legal regulations regarding the crime of illegal fishing can be seen in Articles 63 and 64(Zulham & Matulete, 2017).

The UN Convention on the "Law of the Sea" basically recognizes the aspiration to build a systematic legal framework governing the seas and oceans, with the aim of promoting global communication and facilitating the utilization of maritime resources (Aprilianti & Astuti, 2019). In PP no. 27 of 2021 concerning "Administration of the Maritime Affairs and Fisheries Sector" which is one of the regulations that is still being developed but cannot be implemented immediately because it examines existing developments both related to Legal Gaps and Empirical Gaps.

The coaching strategy is an attempt to revive the idea of original thinking, which should be the ultimate remedy and only used in extreme cases in law enforcement. This strategy is especially effective with offenders who do not have malicious intent(Nasirin, 2017). The government's desire to promote sustainable development in the fishing industry is clearly contrary to the provisions outlined in PP No. 27 of 2021 concerning "Administration of the Maritime and Fisheries Industry". It is clear that the aim is to accommodate the investment interests of business actors so that investment zones can also be established in conservation areas or core zone locations(Nababan, 2018). Apart from providing access to exploitation companies to protect the core zone of conservation areas in an effort to accelerate national strategic initiatives, this clearly adds challenges for traditional fishermen and the existing fish potential.

In RI Law no. 6 of 2023 functions to "harmonize domestic and international criminal law, enabling effective conservation of biological resources through regulatory procedures. National laws that do not yet regulate cooperation in monitoring fisheries in the high seas have several shortcomings"(Saputra, 2016). In accordance with the regulations of Republic of Indonesia Law no. 6 of 2023, "the simultaneous application of imprisonment and fines constitutes a cumulative penalty". However, the mechanism for imposing criminal fines is missing. As a result, according to Article 30 of the Criminal Code, imprisonment is used as a substitute for fines if they are not paid. In essence, it can be said that the decision handed down by the Fisheries Court Judge will result in restrictions on freedom, including detention and confinement(Adhiatma, 2019). Positive law enforcement and the rare legal innovations carried out by judges in the Fisheries Court contribute to this procedural deficiency. The decision of a fisheries court judge usually takes the form of a sentence because the court often uses criminal sanctions as a basis for deciding fish theft cases because criminal law functions as a primam remedium to eradicate fish theft.

To manage fisheries resources in a sustainable and beneficial way, community involvement is essential. The consequence is that criminal law is used as a complement to social control. Meanwhile, in theory, the final instrument (ultimum remedium) in regulating

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society is criminal law, not the first instrument (*primum remedium*). (Widodo, 2017). On the contrary, the way it develops is just the opposite. This indicates a change in the way criminal law is used.

Investigations are not subject to regulations in accordance with Article 37 of Republic of Indonesia Law No. 6 of 2023 concerning "Investigators". In order to make the various stages of examination more effective, there needs to be 1 (one) comprehensive regulation within the framework of the Criminal Procedure Code "starting from the process at the level of inquiry and investigation, prosecution, until the examination in court, and the implementation of the judge's decision."

It is necessary to "reconstruct" RI Law no. 6 of 2023 by adding language related to the investigation process, prosecution and examination, as well as the implementation of judicial decisions. The administration of administrative sanctions is stated in Republic of Indonesia Law no. 6 of 2023. The process of granting permits by the state and the mechanism for imposing administrative sanctions on violators are not regulated further. Administrative sanctions regulations need to be reconstructed by adding and/or inserting clauses that better explain the process of granting permits by the state and the process of administrative sanctions for violators.

### **Conclusion**

Based on the description above, the conclusion is that Article 1 points 16, 17 and 18 of the Fisheries Law previously provided regulations regarding licensing requirements for individuals or entities that will carry out fisheries business activities. These requirements include having a fish transportation permit, a fishing permit (SIPI), and a fishing business permit (SIUP). The implementation of the OSS program, which aims to increase access to the Online Single Submission System, has much to offer. These include making it easier to manage various permits such as operational permits both at the central and regional levels with a system for fulfilling the requirements for permit commitments, business permits, as well as prerequisites for carrying out business such as building, environmental and location permits. Furthermore, Article 73 Paragraph (1) of the 1982 United Nations Convention on the Law of the Sea (UNCLOS) explains that "if a foreign ship does not comply with the Fisheries Legislation of a coastal state in the Exclusive Economic Zone (EEZ), the coastal state can board, inspect, arrest and carry out judicial proceedings against foreign ships." Thus, coastal states have the authority to enforce their domestic laws and regulations in response to violations by foreign fishing vessels involved in Illegal Unreported and Unregulated Fishing (IUU Fishing) within their Exclusive Economic Zone (EEZ).

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