

IDEAL MODEL IN IMPLEMENTING THE PROMPT RELEASE PROCEDURE AS AN EFFORT TO OPTIMIZE LAW ENFORCEMENT IN THE INDONESIAN EEZ

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ABSTRACT

*This article examines the implementation of the Prompt Release Procedure in Indonesia as mandated by Article 73 paragraphs (2) and (3) of the 1982 United Nations Convention on the Law of the Sea (UNCLOS 1982). This article aims to answer questions related to how the Prompt Release Procedure is currently implemented in Indonesia and what the ideal model for implementing the Prompt Release Procedure in Indonesia would be as a means of enforcing the law against Illegal, Unreported, and Unregulated Fishing (IUU Fishing) in Indonesia's Exclusive Economic Zone (EEZ). This study uses a normative method supported by empirical data. The approaches used are a regulatory approach, a comparative approach, and a conceptual approach. The results of the study show that currently, prompt release has not been implemented in Indonesia even though its provisions are regulated in Article 15 of the ZEEI Law and Article 104 paragraph (1) of the Indonesian Fisheries Law. Currently, the law enforcement approach used is a criminal approach as *primum remedium* without first going through administrative mechanisms as mandated by Article 73 of UNCLOS 1982. The model for implementing the Prompt Release Procedure in Indonesia is to make administrative law enforcement the *primum remedium* against IUU Fishing in the EEZ and the criminal approach the *ultimum remedium*.*

Keywords: Prompt Release Procedure, Indonesian EEZ, UNCLOS 1982, IUU Fishing, Administrative Law Enforcement.

INTRODUCTION

The Exclusive Economic Zone (EEZ) is a maritime zone extending 200 nautical miles from a country's coastline, or in short,

the EEZ is a maritime zone bordering the outer limits of a country's territorial waters.¹

The EEZ area is the result of a compromise between countries in the 1982 United

¹ Walter Arévalo Ramírez, "Resistance to Territorial and Maritime Delimitation Judgments of the International Court of Justice and Clashes with 'Territory Clauses' in the Constitutions of Latin

American States.," *Leiden Journal of International Law*, Vol. 35, No. 1, (2022), hlm. 185–208, <https://doi.org/10.1017/S0922156521000522>.

Nations Convention on the Law of the Sea (UNCLOS 1982).² This condition gives the EEZ a different sovereignty from territorial waters, where the sovereignty that applies in the EEZ is limited (sovereign rights).³ This means that in the EEZ, coastal states do not have the sovereignty to exercise their functional sovereignty if problems arise there, because coastal-state sovereignty does not apply there. However, coastal states do have sovereign rights over it. It is this limited sovereignty that often causes disputes and makes it difficult to resolve disputes that occur in the EEZ, including Illegal Unreported Unregulated Fishing (IUU Fishing).⁴

In relation to IUU fishing by foreign vessels in the EEZ, the law enforcement mechanism regulated under Article 73, paragraph (2), of UNCLOS 1982 is the Prompt Release Procedure. The Prompt Release Procedure is designed as an instrument to achieve a balance of interests

between coastal states and flag states, whereby flag states have legitimate interest in securing the release of vessels and/or their crew members. On the other hand, detaining states have legitimate interest in ensuring the administration of justice and the payment of fines.⁵ *The Prompt Release Procedure is the embodiment of the principle of justice designed by UNCLOS 1982 to ensure fair and effective settlement of maritime disputes. Therefore, the Prompt Release Procedure is a form of administrative effort to resolve IUU Fishing by setting a reasonable bond by the detaining State, taking into account relevant facts such as the price of the vessel, the value of the vessel's equipment and the proceeds from the activity, plus the maximum amount of fines incurred by the detaining State as a result of IUU Fishing activities by foreign vessels.*⁶

Indonesia is an archipelagic country with an EEZ covering 2.55 million km², or

² Walter Arévalo-Ramírez and Leopoldo M.A. Godio, "Coastal State Jurisdiction over the EEZ and Foreign Military Activities," *Marine Policy*, Vol. 184, (2026), hlm. 2, <https://doi.org/10.1016/j.marpol.2025.106930>.

³ Limited sovereignty means that the sovereignty of a State over a territory is limited only to sovereign rights, which are the rights to exercise State jurisdiction, the rights to exploit, explore, and other matters related to the utilization of the EEZ as stipulated in the provisions of UNCLOS 1982. See further Hartana, Putu Agus Rio Krisnawan Hartana, "Penyangkalan Dan Pembatasan Pelabuhan Selama Covid-19," *Jurnal Pendidikan Kewarganegaraan Undiksha*, Vol. 8, No. 2 (2020), hlm. 210–219.

⁴ Kevin Vilio Parasian, et al., "Pembayaran Uang Jaminan Dalam Upaya Penegakan Hukum Terhadap

Iuu Fishing Dalam Perspektif Hukum Internasional (Studi Terhadap Kasus Volga, Prompt Release)," *Diponegoro Law Journal*, Vol. 6, No. 1 (2017), hlm. 1–19, <http://www.ejournal-s1.undip.ac.id/index.php/dlr/>.

⁵ Maya Shafira, et al, "Optimalisasi Prompt Release Sebagai Primum Remedium Dalam Penanggulangan Illegal Fishing Terhadap Nelayan Asing," *Laporan Akhir Penelitian Dasar Fakultas Hukum Universitas Lampung* (2021), hlm. 5.

⁶ Haridus, "Tinjauan Yuridis Prompt Release Procedure Dalam Menangani Tindak Pidana Perikanan Di Zona Ekonomi," *Jurnal Hukum & Pembangunan*, Vol. 50, No. 2 (2023), hlm. 514, <https://doi.org/http://dx.doi.org/10.21143/jhp.vol50.no2.2586>.

83% of Indonesia's total maritime territory.⁷ Indonesia's EEZ has a fishing potential of 2.1 million tons per year.⁸ The abundant fishery potential in Indonesia's EEZ not only benefits Indonesia but also poses a challenge for the country due to the risk of IUU fishing by foreign-flagged vessels, which are predominantly from ASEAN countries. The massive scale of IUU fishing by foreign vessels in Indonesia's EEZ has significant environmental, social, and economic impacts. These multidimensional impacts have become the primary factors driving the need for effective law enforcement against IUU fishing, which remains rampant in Indonesia's EEZ,⁹ which is still rampant in Indonesia's EEZ.

In cases of IUU fishing in Indonesia's EEZ, Indonesia's law enforcement is still not optimal because it remains rooted in the criminal paradigm. This is reflected in the criminal sanctions stipulated in Article 93, paragraph (2) of Law No. 45 of 2009 concerning Amendments to Law No. 31 of

2004 concerning Fisheries¹⁰, and the fact that the Prompt Release Procedure stipulated in Article 73 of UNCLOS 1982 has not been implemented.¹¹

Provisions regarding the Prompt Release Procedure in Indonesia are regulated under Article 104 paragraph (1) of the Fisheries Law,¹² which stipulates that a request for the immediate release of foreign vessels caught conducting IUU fishing in Indonesia's EEZ can be made before the fisheries court issues a decision by submitting a reasonable amount of bail as determined by the fisheries court. Based on the provisions of this article, there are three elements of the Prompt Release Procedure: the time period for submitting an application, financial security, and the determination by the fisheries court. However, in practice, the Prompt Release Procedure has never been applied in Indonesia as a law enforcement mechanism against IUU fishing by foreign-flagged vessels. So far, law enforcement through a

⁷ Kementerian Kelautan dan Perikanan Republik Indonesia, "Peraturan Menteri Kelautan Dan Perikanan Republik Indonesia Nomor 25/Permen-Kp/2015 Tentang Rencana Strategis Kementerian Kelautan Dan Perikanan Tahun 2015-2019", <https://peraturan.bpk.go.id/Details/158485/permen-kkp-no-25permen-kp2015-tahun-2015>.

⁸ Abdul Rasyid Jalil, et al., "Potensi Dan Tingkat Pemanfaatan Sumberdaya Ikan Pelagis Provinsi Kalimantan Utara," *Prosiding Simposium Nasional VI Kelautan Dan Perikanan Unhas*, Vol, 6 (2019), hlm. 1, <http://journal.unhas.ac.id/index.php/proceedingsimnaskp/article/view/7666/4115>.

⁹ Andrew J Temple et al., "Illegal , Unregulated and Unreported Fishing Impacts : A Systematic Review

of Evidence and Proposed Future Agenda," *Marine Policy*, Vol. 139, No. 105033, (2022), hlm. 1–8, <https://doi.org/10.1016/j.marpol.2022.105033>.

¹⁰ Republik Indonesia, "Undang-Undang Republik Indonesia Nomor 45 Tahun 2009 Tentang Perubahan Atas Undang-Undang Nomor 31 Tahun 2004 Tentang Perikanan", Pasal 93 ayat (2).

¹¹ United Nations, "United Nations Convention on the Law of the Sea of 10 December 1982", Article 73 (2), https://www.un.org/depts/los/convention_agreements/texts/unclos/UNCLOS-TOC.htm.

¹² *Op.Cit*, Undang-Undang Perikanan, Pasal 104 ayat (1).

criminal approach has been the only mechanism applied to foreign vessels engaged in IUU fishing in Indonesia's EEZ. As an archipelagic country that has ratified UNCLOS 1982, Indonesia is obliged to implement it as a manifestation of its status as a party to the convention.

Previous research conducted by Blaise Kuemlengan et al. in 2023¹³, stated that law enforcement against IUU fishing must be in line with the provisions of UNCLOS 1982. Meanwhile, in the Indonesian context, research conducted by Sandi Yudha Prayoga in 2020¹⁴, found that IUU fishing by foreign vessels remains a criminal offense, despite provisions for prompt release under Article 104 (1) of the Fisheries Law. Furthermore, in the context of the application of prompt release in Indonesia, Yuliantiningsih, et.al in 2021¹⁵ and Haridus in 2023¹⁶ stated that to date, Indonesia has never implemented the prompt release procedure as a mechanism for resolving IUU fishing by foreign vessels in Indonesia's EEZ, due to several factors such as the readiness of legal instruments

and the dominance of the criminal paradigm based on the Fisheries Law.

Although these obstacles have been identified, the existing literature has not offered a concrete operational model to bridge the gap between the Indonesian criminal paradigm and UNCLOS's international obligations. This study contributes by offering a model that integrates clear criteria for prompt release compliance, a streamlined review mechanism for detained foreign vessels, and procedures adapted from proven Australian practices. These elements are designed to optimize law enforcement against IUU Fishing by foreign vessels in Indonesia's EEZ through a prompt release procedure based on UNCLOS 1982, balancing legal certainty with the protection of sovereignty in the EEZ

METHOD

The writing method used in this article is normative legal, supported by empirical data.¹⁷ This research was conducted by examining secondary data in the form of laws and regulations, supported by primary

¹³ Blaise Kuemlengan, *et.all.*, "Enforcement approaches against illegal fishing in national fisheries legislation", *Elsevier : Marine Policy*, Vol. 149, (2023) 105514, hlm. 1-13. DOI : <https://doi.org/10.1016/j.marpol.2023.105514>

¹⁴ Sandi Yudha Prayoga, "Penegakan Hukum Tindak Pidana Penangkapan Ikan Secara Ilegal Oleh Kapal Berbendera Asing Pada Wilayah Perairan Zona Ekonomi Eksklusif Indonesia", *Jurnal Legal*, Vol. 3, No. 1, (2020), hlm. 49-64

¹⁵ Aryuni Yuliantiningsih, *et.all.*, "The Problems of the Implementation Prompt Release and Reasonable Bond before the ITLOS and in Indonesia's Experiences", *Indonesian Yearbook of International Law*, Vol. 2, (2021), hlm. 81-102

¹⁶ Haridus, (2023), *Op.Cit.*

¹⁷ Soerjono Soekanto dan Sri Mamudji. *Penelitian Hukum Normatif Suatu Tinjauan Singkat*. Jakarta: Raja Grafindo Persada, 2006, hlm. 13.

data from interviews with Head of the Sub-Directorate for Marine and Fisheries Crime Handling, PSDKP, KKP RI. The approaches used in this legal research are legislative, comparative, and conceptual. The legislative approach is used to identify weaknesses in Indonesian fisheries laws regarding the Prompt Release Procedure.¹⁸ A comparative approach was used to compare the practices and regulations of Australia, whose waters directly border Indonesia. Australia has regulations in accordance with UNCLOS 1982 and, like Indonesia, has recognized prompt release procedures under its national legislation. In addition, Australia has also applied prompt release in the Volga case¹⁹ as a concrete practice of implementing this procedure. Finally, the conceptual approach was used to identify the ideal concept to recommend for improving the provisions of the Prompt Release Procedure in Indonesia.

RESULTS AND ANALYSIS

The Obligation to Implement the Prompt Release Procedure In Indonesia.

Indonesia is an archipelagic country that has ratified UNCLOS 1982 in its

entirety through Law No. 17 of 1985 concerning the Ratification of the United Nations Convention on the Law of the Sea,²⁰ which serves as the legal basis for the application of its provisions in Indonesia. In the Law on Ratification of UNCLOS 1982, there are only two articles stating that Indonesia agrees to submit itself to UNCLOS 1982 in its entirety, without exception, to its provisions. Thus, the enactment of this Law results in Indonesia's rights and obligations as an archipelagic state and a party to the convention, including the implementation of the Prompt Release Procedure as a mechanism to enforce the law against IUU Fishing by foreign vessels in Indonesia's EEZ.

The specific characteristics of sovereignty in the EEZ, as stipulated in Articles 55-56 of UNCLOS 1982, namely that the EEZ is a maritime zone extending 200 nautical miles that is subject to a special legal regime whose sovereignty is limited (sovereign right),²¹ where the relevant provisions of the convention govern the rights and freedoms of other countries. Coastal states are only granted

¹⁸ Muhaimin. *Metode Penelitian Hukum*. NTB: Mataram University Press, 2020, hlm. 57.

¹⁹ International Tribunal for the Law of the Sea, "Reports of Judgments Advisory Opinions and Orders of The Volga Case (Russian Federations Cs Australia), List of Case No. 11," ITLOS, (2002), Availabe at

<https://www.itlos.org/en/main/cases/list-of-cases/case-no-11/>.

²⁰ Republik Indonesia, "Undang-Undang Nomor 17 Tahun 1985 Tentang Pengesahan United Nations Convention On The Law Of The Sea".

²¹ I Wayan Parthiana. *Hukum Laut Internasional Dan Hukum Laut Indonesia*. Bandung: Yrama Widya, 2014, hlm. 216.

sovereign rights to explore, exploit, conserve, and manage living and non-living natural resources originating from the waters, seabed, and subsoil as stipulated in Article 56 of UNCLOS 1982.²² The sovereign rights that apply in the EEZ differ and cannot be equated with the full sovereignty that applies in territorial waters, so the sanctions imposed in the Indonesian Exclusive Economic Zone differ from those imposed in waters under the sovereignty of the Republic of Indonesia.²³

In terms of jurisdiction, under Article 58 of UNCLOS 1982, a country may apply its national laws and regulations when exercising its rights in the EEZ, provided they are consistent with and do not conflict with the convention and other international legal instruments.²⁴ In the event of violations occurring in the EEZ, the applicable law enforcement mechanisms are subject to international law. One of the violations that often occurs in EEZs globally is IUU fishing²⁵ by foreign-flagged vessels.²⁶ The issue of IUU fishing

in EEZs is a longstanding concern in marine affairs and fisheries.²⁷ Aris Subagyo defines IUU fishing as fishing activities carried out by vessels without permission in waters under the jurisdiction of a country in violation of laws and regulations.²⁸

As part of efforts to combat IUU fishing by foreign vessels in the EEZ, countries should be able to enforce fisheries laws effectively. In the event of IUU fishing by foreign vessels in the EEZ, UNCLOS ideally requires resolution through the Prompt Release Procedure, as stipulated in Article 73, paragraph (2), of UNCLOS 1982. This provision explicitly states that the crew and vessels caught must be released immediately upon the provision of adequate financial guarantees. Furthermore, UNCLOS 1982 explicitly prohibits corporal punishment in any form, as stipulated in Article 73, paragraph (3). However, this provision may be exempted if there is an international agreement between the coastal state and the flag state, as determined in Article 73 paragraph (4)

²² Kentaro Furuya, "Law Enforcement over Fishery Activities in Contested EEZs," *Indonesian Journal of International Law*, Vol. 17, No. 4 (2020), hlm. 441, <https://doi.org/10.17304/ijil.vol17.4.794>.

²³ Chairul Anwar. *Zona Ekonomi Eksklusif Di Dalam Hukum Internasional*. Sinar Grafika, 1995, hlm. 161.

²⁴ Donald Rothwell (eds), et al., *The Oxford Handbook of the Law of the Sea*. Oxford: Oxford University Press, 2015, hlm. 165, <https://doi.org/https://doi.org/10.1093/law/9780198715481.001.0001>.

²⁵ Blaise Kuemlangan et al., (2023), *Op.Cit.*

²⁶ Aryuni Yuliantiningsih, et.al., (2021), *Op.Cit.*

²⁷ Dag Standal, "Illegal Fishing: A Challenge to Fisheries Management in Norway," *Marine Policy Journal*, Vol. 155, No. 105750, (2023), hlm. 1, <https://doi.org/10.1016/j.marpol.2023.105750>.

²⁸ Rizki Alfina Tiara, Budi Parmono, Sunardi "Double Flagging Kapal Asing Di Wilayah Zona Ekonomi Eksklusif Dalam Tindak Pidana Perikanan Di Indonesia," *Dinamika*, Vol. 29, No. 1, (2023), hlm. 6291–6308.

of UNCLOS 1982. The procedures for implementing the Prompt Release Procedure are further regulated by Article 292 of UNCLOS 1982. This mechanism is designed as a law-enforcement mechanism that prioritizes justice,²⁹ balance between countries,³⁰ and the protection of marine resources.³¹ In line with this, Soerjono Soekanto argued that realizing justice is a form of concrete law enforcement, in which providing justice in a case means applying the law in concreto and ensuring compliance with substantive law through procedural methods established by formal law.³²

In Indonesia, provisions regarding the Prompt Release Procedure are regulated in two laws, namely Article 15 of Law Number 5 of 1983 concerning the Indonesian Exclusive Economic Zone (ZEEI Law) and Article 104 paragraph (1) of the Fisheries Law, as well as the prohibition of imposing criminal imprisonment on foreign crew members through SEMA Number 3 of 2015. These

provisions are a consequence of Indonesia's ratification of UNCLOS 1982. As a convention country, Indonesia automatically binds itself to the provisions of Article 309 of UNCLOS 1982, United Nations Convention on the Law of the Sea of 10 December 1982.³³ This states that no exceptions may be applied other than those stipulated and permitted by the convention, so that there are only two choices for the country concerned: either to accept the provisions of UNCLOS in full or to refuse to become a State Party.³⁴ Thus, implementing the Prompt Release Procedure against IUU fishing by foreign vessels in Indonesia's EEZ is an obligation for Indonesia as a state party to the convention.

Indonesia's Empirical Practice in the Application of Prompt Release

Based on existing law enforcement practices, the Prompt Release procedure, as an administrative law enforcement mechanism for resolving IUU fishing in

²⁹ Chester Brown, "Reasonableness ' in the Law of the Sea: The Prompt Release of the Volga 'Reasonableness' in the Law of the Sea : The Prompt Release of the Volga," *Leiden Journal of International Law*, Vol. 16, (2003): 621–630, <https://doi.org/10.1017/S0922156503001328>.

³⁰ Seline Trevisanut, "Twenty Years of Prompt Release of Vessels : Admissibility , Jurisdiction , and Recent Trends Twenty Years of Prompt Release of Vessels : Admissibility ," *Ocean Development & International Law*, Vol. 48, No. 3–4, (2017), hlm. 300–312, <https://doi.org/10.1080/00908320.2017.1325694>.

³¹ Yoshifumi Tanaka, "Prompt Release In The United Nations Convention On The Law Of The Sea : Some Reflections On The Itlos Jurisprudence," *Netherlands International Law Review*, Vol. 48, No. 5, (2004), hlm. 269–270, <https://doi.org/10.1017/S0165070X04002372>.

³² Shant Dellyana. *Konsep Penegakan Hukum*. Yogyakarta: Liberty, 1988, hlm. 32.

³³ United Nations Convention on the Law of the Sea of 10 December 1982, Article 309.

³⁴ Agustina Merdekawati et al., "Unclos 1982 And The Law Enforcement Against Illegal Fishing In Indonesia: Judges' Diverging Perspectives," *Mimbar Hukum*, Vol. 33, No. 1, (2021), hlm. 46.

Indonesia's EEZ, has not yet been applied to foreign vessels. In Indonesia, the Prompt Release Procedure is regulated in Article 15 of the EEZ Law and Article 104 of the Fisheries Law. However, the existing regulations remain very general and broad. They are not yet strong enough to serve as a basis for implementing the Prompt Release Procedure against IUU Fishing by foreign vessels in Indonesia's EEZ. These two provisions are still general and normative, so they are not yet adequate to serve as a basis for the concrete application of the Prompt Release Procedure in Indonesia. To date, there are still no specific regulations that explain in detail the Prompt Release Procedure, including how the mechanism should be used comprehensively, such as the agency or institution receiving Prompt Release Procedure requests, the application process, the time frame for completion as stipulated in Article 292 of UNCLOS 1982, and the criteria for appropriate financial guarantees. This deficiency could lead to a significant legal vacuum and hinder the implementation of the Prompt Release Procedure as an effective law enforcement mechanism against IUU Fishing by foreign vessels in Indonesia's EEZ.

Until now, law enforcement strategies for addressing foreign vessels engaged in IUU fishing in Indonesia's EEZ have relied

entirely on a criminal law approach. According to data from the Indonesian Ministry of Marine Affairs and Fisheries' PSDKP Directorate's Performance Report on Violations, 225 foreign vessels were caught fishing IUU in Indonesia's EEZ between 2018 and 2023. The details include 31 foreign vessels in 2018, 60 in 2019, 54 in 2020, 54 in 2021, 18 in 2022, and 16 in 2023. A total of 301 crew members from various countries were identified as perpetrators of violations (justitia) on the captured vessels.

Based on the above data, the flags most used by foreign vessels engaged in IUU fishing in Indonesia's EEZ are those of ASEAN countries such as Malaysia, the Philippines, and Vietnam. In addition, non-ASEAN countries whose vessels have been caught fishing illegally in Indonesia's EEZ include Taiwan, the Netherlands, and Panama. Based on interviews with the Head of the Sub-Directorate for Marine and Fisheries Crime Handling of the Directorate of Fisheries Resources Supervision of the Indonesian Ministry of Marine Affairs and Fisheries, in the process of law enforcement against vessels engaged in IUU fishing in Indonesia's EEZ, foreign crew members caught for engaging in IUU fishing in the EEZ are classified into two categories, namely non-justice crew members (foreign crew members who are arrested along with the

vessel but are not named as suspects and can therefore be repatriated) and justice crew members (foreign crew members who are arrested and named as suspects or witnesses). Meanwhile, corporations as vessel owners or parties behind the vessel's identity are rarely touched.³⁵ This is supported by court decision data published on the Supreme Court Decision Directory website, which indicates that the defendants held responsible in court decisions are the ship's captain and/or chief engineer. In terms of the types of verdicts issued, there are two types of punishment used by judges in sentencing, namely subsidiary fines and non-subsidiary fines, where from 2018 to 2023, a total of 294 decisions related to IUU Fishing were handed down with penalties in the form of fines and 53 others used the type of punishment in the form of fines with subsidiary imprisonment. The top three Indonesian fisheries courts that have decided the most IUU Fishing cases are the Bitung District Court, the Ranai District Court, and the Tanjung Pinang District Court.

³⁵ Nunung Mahmudah. *Illegal Fishing Pertanggungjawaban Pidana Korporasi Di Wilayah Perairan Indonesia*. Jakarta: Sinar Grafika, 2015, hlm. 99.

³⁶ Pengadilan Negeri Ranai, "Putusan Pengadilan Negeri Ranai Nomor 40/Pid.Sus-Prk/2028/PN Ran," Direktori Putusan Mahkamah Agung Republik Indonesia, 2018.

Based on a review of the judges' considerations in verdicts on IUU fishing committed by foreign vessels in the EEZ, the available data shows that some of the judges who imposed fines without substitution have essentially taken into account Article 73 paragraph (2) of UNCLOS 1982, which prohibits corporal punishment of foreign crew members who are convicted of IUU fishing in the EEZ and explicitly mandates the application of the Prompt Release Procedure as a mechanism for resolving IUU fishing by foreign vessels in the EEZ of coastal states.³⁶ However, some judges who use subsidiary imprisonment as a form of criminal punishment argue that an alternative, in the form of a guarantee, should be provided as a safeguard if the crew is unable to pay the fine, thereby potentially overriding the provisions of UNCLOS 1982.³⁷

Currently, practices in Indonesia still rely heavily on a criminal approach to law enforcement against IUU Fishing by foreign vessels in Indonesia's EEZ. This can be seen from the types of sanctions imposed by judges based on court

³⁷ Pengadilan Negeri Ranai, "Putusan Pengadilan Negeri Ranai Nomor 10/Pid.Sus-Prk/2018/PN Ran," Direktori Putusan Mahkamah Agung Republik Indonesia, 2018. <https://putusan3.mahkamahagung.go.id/direktori/putusan/980c41d609eed98c3d434145f40f9d98.html>.

decisions on IUU Fishing cases in Indonesia's EEZ, which can be accessed on the official website of the Supreme Court Directory as follows:

Table 1. Data on sanctions imposed based on fisheries court verdicts

No.	Year	Sanctions Based On Verdict	
		Criminal Fine	Criminal Fine or Imprisonment
1.	2018	50	39
2.	2019	86	7
3.	2020	41	7
4.	2021	79	0
5.	2022	21	0
6.	2023	17	0
Total		294	53

Source: Official Website of the Supreme Court Decision Directory, Special Criminal Decision Directory for Fisheries Classification 2018-2023

The fact that criminal charges still predominate in law enforcement responses to IUU fishing in Indonesia's EEZ is a strong indicator of a disharmony between the provisions of UNCLOS 1982 and the Indonesian Fisheries Law regarding mechanisms for resolving and punishing IUU fishing by foreign vessels. This has resulted in the Prompt Release Procedure mandated by UNCLOS 1982 never having been implemented in Indonesia to date.

In Indonesia, policies on prosecuting IUU fishing by foreign vessels vary depending on the government in power. One of the approaches commonly applied today is the handover of seized vessels to the Attorney General's Office for further handling on land. The handling of seized foreign vessels can include various actions, such as blowing them up or sinking them, as was the policy under Minister Susi Pudjiastuti.³⁸ Then, during Minister Trenggono's Leadership, he shifted the handling method, including using foreign vessels for educational purposes: some were handed over to institutions as learning tools, allocated to fishing communities, and some were used as surveillance fleets.³⁹ In principle, confiscated vessels should serve as compensation for state losses, especially when the Prompt Release Procedure with adequate financial guarantees from the vessel's country of origin cannot be realized.

Best Practice Prompt Release Regulations : Australia

Australia is a country whose waters border Indonesia and has fairly

³⁸ Ivan Drago, "Analisis Kebijakan Penenggelaman Kapal Asing Pencuri Ikan Dan Alternatif Penyelesaian Sengketa Pencurian Ikan Oleh Kapal Asing Di Perairan Indonesia," *Jurnal Hukum Lex Generalis*, Vol. 1, No. 3, (2020), hlm. 67–82, <https://doi.org/10.56370/jhlg.v1i3.261>.

³⁹ Sulaeman, "Menteri Trenggono Pilih Hibahkan Kapal Ikan Asing Ke Nelayan Daripada Ditenggelamkan," *Liputan6.com*, 2021, <https://www.liputan6.com/bisnis/read/4744253/menteri-trenggono-pilih-hibahkan-kapal-ikan-asing-ke-nelayan-daripada-ditenggelamkan#:~:text=Liputan6.com%2C>.

comprehensive and sound regulations for the implementation of prompt release procedures, both in terms of compliance with UNCLOS 1982 and the readiness of centralized institutions to implement them, as previously mentioned in the research methods section. Furthermore, Australia is one of the countries that has implemented the prompt release procedure for IUU fishing by Russian-flagged foreign vessels in the Volga case.

Provisions related to law enforcement against IUU fishing by foreign vessels in Australia's EEZ are regulated under the Fisheries Management Act of Australia 1991 No. 162 (Australian Fisheries Act). Provisions of Article 100⁴⁰ of the Australian Fisheries Act stipulate that, foreign vessels are prohibited from fishing in the Australian Fishing Zone, including the Australian EEZ. If a foreign vessel is caught engaging in IUU fishing, such action is classified as a violation and subject to criminal fines. However, there are exceptions to the application of this provision, namely for vessels that have obtained a permit or license to conduct fishing activities based on international agreements on the utilization of marine resources in the Australian EEZ.

Holistically, the law enforcement approach under the Australian Fisheries Act is based on two classifications: criminal law enforcement, imposing fines on vessels outside the agreement or permit, and administrative law enforcement, imposed on vessels within the agreement or on licensed vessels. This means that violations committed by foreign vessels within the agreement are resolved administratively through the Prompt Release Procedure, provided the vessel is part of the agreement. Under the Australian Fisheries Act, IUU fishing by foreign vessels is subject to strict liability, so corporal punishment is not a lawful sanction in law enforcement. This provision is in line with Article 73(3) of UNCLOS 1982, which prohibits corporal punishment or other forms of punishment.

The Australian Fisheries Management Authority (AFMA) stipulates in Article 88⁴¹ Section 45, of the Australian Fisheries Act that it may release seized vessels provided they are deemed to comply with AFMA's provisions, including the provision of financial guarantees as a commitment to address violations that have occurred. Furthermore, in implementing Prompt Release, Australia uses an interstate agreement model for the management of fishery resources in the EEZ, which also

⁴⁰ Office of Parliamentary Counsel, "Australia Fisheries Management Act 1991, Amendments Act No. 39, 2024", Article 101.

⁴¹ Ibid, Article 88.

governs the use of Prompt Release as a law enforcement mechanism for fishery violations in Australia's EEZ. This model was chosen because it is considered an effective model for accessing foreign entities involved in IUU fishing by foreign vessels in the EEZ. The international agreement on the utilization of fishery resources in the jurisdiction that Australia is currently implementing is with the United States, which uses a regional model between the Pacific Island Countries and the United States through an agreement called the "Treaty on fisheries between the Governments of certain Pacific Island States and the United States of America".⁴² In implementing the Prompt Release Procedure through international agreements, the provisions also require each State party to first appoint and agree on an administrator as a liaison/representative of the State who can act for and on behalf of the State. Article 1⁴³ of the agreement defines an administrator as "a person or organization appointed by the Pacific Islands Parties to act on their behalf in accordance with this Treaty and notified to the Government of the United States." The administrator is an authorized agency (single agency) or executor that plays an

important role in implementing the Prompt Release Procedure in Australia.

Model for Implementing the Prompt Release Procedure in Indonesia

Under the Indonesian Fisheries Law, sanctions and law enforcement against IUU fishing by foreign vessels remain focused on criminal approaches, while the Prompt Release Procedure mechanism, as an instrument regulated explicitly by UNCLOS 1982, has not yet been optimally implemented. This is due to several obstacles, including the persistence of the criminal paradigm as the sole law enforcement mechanism against IUU fishing by foreign vessels in Indonesia's EEZ, the absence of an authorized institution to implement the Prompt Release Procedure, the lack of legal certainty regarding the timing of Prompt Release Procedure requests, as practiced in Australian fisheries law, and the incompleteness of regulations on the Prompt Release Procedure in Indonesian fisheries law, such as provisions on who can file a request and the mechanism for submitting a Prompt Release Procedure request. In addition, there are still disparities in the regulations governing the mechanism for handling vessels seized

⁴² The governments of the Pacific Islands and the United States, *Treaty on fisheries between the*

Governments of certain Pacific Island States and the United States of America, 1991, Article 1.

⁴³ Ibid.

under the current Indonesian Fisheries Law and UNCLOS 1982, which continue to hinder the implementation of the Prompt Release Procedure as a law-enforcement mechanism against foreign vessels engaged in IUU fishing in Indonesia's EEZ.

In Indonesia, pursuant to Article 104 paragraph (1),⁴⁴ the institution authorized to implement the Prompt Release Procedure is the Fisheries Court, a judicial institution. This differs from the practice in Australia, which explicitly delegates the authority to implement the Prompt Release Procedure to administrative institutions first, before it is transferred to judicial institutions for a decision.

Furthermore, currently, the provisions regarding the deadline for submitting a Prompt Release Procedure application based on Article 104 paragraph (1) of the Indonesian Fisheries Law are still not strong enough to provide legal certainty, where the provision states that an application for immediate release can be made at any time as long as there has been no decision by the fisheries court and the submission of adequate financial guarantees as determined by the fisheries court. This provision lacks a clear time limit, leading to confusion during implementation. This finding is also

supported by the fact that many cases of IUU fishing by foreign vessels take a long time to reach the court decision stage from the time the vessel is captured. These are important aspects that need to be clearly regulated in Indonesian legislation as the basis for the application of the Prompt Release Procedure.

Compared to Australia, the Prompt Release Procedure mechanism is well organized, with its implementation carried out in accordance with international agreements. In addition, the Australian Fisheries Act regulates the instruments necessary for implementing the Prompt Release Procedure, including the authority to carry it out, the deadline for applications, the application mechanism, and the mechanism for handling seized vessels in cases where financial guarantees have been provided. The international agreement model used by Australia is an effective scheme for enforcing the law against IUU Fishing in EEZs. The existence of international agreements makes it easier for coastal states to access foreign entities involved in IUU fishing, as these agreements are binding on both the coastal state and the flag state.

Based on the above description and given practices in Australia, the prompt

⁴⁴ Republik Indonesia, Undang-Undang Republik Indonesia Nomor 45 Tahun 2009 tentang Perubahan

Atas Undang-Undang Nomor 31 Tahun 2004 Tentang Perikanan, Article 104.

release procedure in Indonesia must be established as a statutory provision to be implemented in the context of law enforcement against IUU fishing by foreign vessels in Indonesia's EEZ. This is a consequence of Article 104, paragraph (1), of the Fisheries Law, which normatively refers to Article 73, paragraph (2), of UNCLOS 1982. Thus, ideally, the first step that should be taken in law enforcement against illegal, unreported, and unregulated (IUU) fishing in Indonesia's Exclusive Economic Zone (EEZ) should not be criminal action, but rather a Prompt Release Procedure that must first be comprehensively regulated in Indonesian legislation and explicitly established as an administrative law enforcement mechanism (*primum remedium*) against IUU fishing by foreign vessels in Indonesia's EEZ, as specifically regulated in the 1982 United Nations Convention on the Law of the Sea (UNCLOS 1982)..

Furthermore, in order to implement the prompt release procedure as an effort to optimize law enforcement against IUU fishing by foreign vessels in Indonesia's EEZ, Indonesia must first improve the existing provisions in legislation, including the institutions authorized to implement the Prompt Release Procedure, the time limit for submitting a request for the Prompt Release Procedure, the submission

mechanism, and the handling or actions to be taken against the seized vessel.

In addition, the implementation of the Prompt Release Procedure should ideally be preceded by an international agreement between Indonesia and other countries (that have the potential to engage in IUU fishing in Indonesia's EEZ) as a measure that is considered effective in gaining access to foreign entities, such as ship owners and financiers of foreign vessels engaged in IUU fishing in Indonesia's EEZ.

CONCLUSION

The Prompt Release Procedure, as a mechanism for enforcing the law against IUU fishing by foreign vessels in the EEZ, has not yet been implemented by Indonesia. As a form of Indonesia's international commitment to UNCLOS 1982, the Prompt Release Procedure must be implemented immediately. To implement the Prompt Release Procedure, Indonesia can adopt the model that has been implemented by Australia, including establishing the Prompt Release Procedure as an administrative law enforcement mechanism, supplementing legal instruments to support the implementation of the Prompt Release Procedure based on laws and regulations, establishing an institution authorized to implement the Prompt Release Procedure, determining who is the applicant and the mechanism for

submission, setting a clear time limit for submission of applications, and establishing a mechanism for handling seized vessels in accordance with the essence of the Prompt Release Procedure based on UNCLOS 1982 so that the Prompt Release Procedure can be implemented as a law enforcement mechanism against IUU Fishing by foreign vessels in Indonesia's EEZ effectively.

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