

The Urgency Of Shifting The Regulation Of Enforcement Of Fisheries Criminal Laws From Criminal Sanctions To Administrative Sanctions

Fathurrahim Fathurrahim, Muhaimin Limatahu, Ahmad Mufti

Faculty of Law, Khairun University, Ternate, Indonesia
fathurrahim@unkhair.ac.id

Abstract

This study aims to analyze the urgency of shifting the paradigm of fisheries crime law enforcement from the dominance of criminal sanctions to the strengthening of administrative sanctions. Previous studies have focused more on the effectiveness of criminal sanctions or technical administrative implementation, but have not criticized the dominance of the penal approach, which has led to problems of imbalance in law enforcement, where criminal instruments are used extensively without considering the nature of the offense and the capacity of the perpetrator. This condition has implications for the emergence of legal uncertainty, inefficient judicial burdens, and a lack of corrective effects on the main actors in fisheries crime. This research gap is the main basis for conducting this study. The method used is normative legal research with a legislative, conceptual, and comparative approach, enriched with limited empirical analysis through a review of law enforcement practices and court decisions. The results of the study show that criminal sanctions have so far been ineffective in targeting the main actors (corporations), while administrative sanctions—such as license revocation, administrative fines, and business freezing are more strategic because they are responsive, adaptive, and in line with global practices. However, its effectiveness is still hampered by institutional capacity, accountability in implementation, and unequal treatment between large operators and small-scale fishermen. The research conclusion emphasizes the novelty of offering a reorientation of fisheries law that places administrative sanctions as the primary instrument (primum remedium), while criminal sanctions are positioned selectively as the last resort (ultimum remedium). Thus, this study offers a new conceptual framework that is more progressive, fair, and sustainable in the enforcement of Indonesian fisheries law.

Keywords: Administration; Criminal; Law Enforcement; Shift

1. INTRODUCTION

Fisheries resource management in Indonesia faces major challenges that recur from time to time, particularly in relation to rampant illegal fishing practices, the use of destructive fishing gear, and weak surveillance systems at sea.¹ Until now, the state has mostly treated fisheries crimes as offenses that must be punished with criminal instruments such as imprisonment and fines, as stipulated in Law No. 31 of 2004 in conjunction with Law No. 45 of 2009 on Fisheries.² This criminal approach is considered important to provide a deterrent effect, but in practice, it often fails to address the root of the problem.³ Law enforcement in the field actually shows a tendency toward asymmetry, because it is the captains or crew members who are most often prosecuted as the direct perpetrators, while the capital owners or corporations behind them are rarely held accountable. This situation shows that harsh

¹ Christina Aryani, “Mendorong Lahirnya RUU Keamanan Laut dalam Penguatan Sistem Keamanan Laut Nasional,” *Jurnal Pembangunan Hukum Indonesia* 3, no. 2 (2021): 155–73, <https://doi.org/10.14710/jphi.v3i2.155-173>.

² M. Ghufuran H. Kordi K., *Pengelolaan Perikanan Indonesia*, 1 (Yogyakarta : Pustaka Baru Press, 2015).

³ Faarkhaan Asrori dkk., “Kajian Penanggulangan Tindak Pidana Perikanan Illegal Fishing Di Laut Natuna Dalam Perspektif Kriminologi,” *Gema Keadilan* 8, no. 3 (2021): 278–98, <https://doi.org/10.14710/gk.2021.12634>.

criminal instruments are not always effective, because they do not target the main actors who benefit from illegal fishing practices.⁴

In this context, the discourse on shifting the approach to law enforcement from the dominance of criminal sanctions to administrative sanctions is becoming increasingly relevant.⁵ Administrative sanctions such as license suspension, license revocation, administrative fines, or written warnings are essentially more flexible, swift, and proportionate than imprisonment.⁶ This instrument allows the state to punish not only the perpetrators in the field, but also the companies that own the vessels and have business licenses. This shift does not mean eliminating criminal penalties, but rather rearranging priorities so that fisheries law enforcement places greater emphasis on administrative instruments while maintaining criminal penalties as a last resort.⁷

The urgency of this change is also closely related to the need to maintain the sustainability of marine ecosystems, given that slow and complicated law enforcement often allows environmental damage to spread before sanctions are actually implemented.⁸ Data from LIPI and the Ministry of Environment and Forestry (KLHK) show that by 2020, more than 30% of coral reefs in Indonesia were damaged, mostly due to destructive fishing practices such as the use of bombs, poisons, and environmentally unfriendly fishing gear. This damage is exacerbated by the degradation of seagrass beds at a rate of approximately 5,000 hectares per year, even though seagrass has a strategic ecological function as a blue carbon sink, marine habitat, and coastal protection.

Illegal, unreported, and unregulated (IUU) fishing practices have also placed heavy pressure on marine biodiversity, including protected species such as sharks, manta rays, turtles, and dugongs, which often fall victim to bycatch due to weak monitoring of fishing gear, size, season, and area. This phenomenon shows that the exploitation of marine resources is driven more by short-term economic orientation without regard for the principles of ecological sustainability. Economically, the Ministry of Maritime Affairs and Fisheries (KKP) estimates that illegal fishing practices cause the state to lose more than Rp101 trillion per year.⁹ However, law enforcement that focuses on prosecuting individuals such as captains and crew members is not commensurate with the economic and ecological impacts caused.

⁴ Maf'ullilahi Zakinah dkk., "Efektivitas Unclos Ditinjau Dari Kasus Illegal Fishing Di Laut Natuna (2012-2021)," *WISSEN: Jurnal Ilmu Sosial dan Humaniora* 2, no. 3 (2024): 183–200, <https://doi.org/10.62383/wissen.v2i3.182>.

⁵ Saiful Anam dkk., "Sanksi Administratif sebagai Primum Remedium Pelanggaran Pemanfaatan Ruang Laut: Efek Jera atau Negosiasi: Administrative Sanctions as a Primary Remedy for Violations in Marine Space Utilization: A Deterrent Effect or Negotiation," *Perspektif Hukum*, 21 Maret 2025, 35–65, <https://doi.org/10.30649/ph.v25i1.326>.

⁶ Muh. Risnain, "Rekonsepsi Model Pencegahan dan Pemberantasan Illegal Fishing di Indonesia," *Padjadjaran Jurnal Ilmu Hukum (Journal of Law)* 4, no. 2 (2017): 379–98, <https://doi.org/10.22304/pjih.v4n2.a9>.

⁷ Maron, *Politik Hukum Penanggulangan Kejahatan Di Bidang Perikanan* (Aura CV. Anugrah Utama Raharja, 2019).

⁸ Anggrainy, Rae, Aziza Aziz Rahmaningsih, "Penerapan Sanksi Hukum Terhadap Pencemaran Lingkungan," *Siyasah Jurnal Hukum Tatanegara* 4, no. 2 (t.t.).

⁹ Nurhakim Rochman, "Nelayan Terancam, Laut Terluka: Dampak Iuu Fishing Bagi Masyarakat Dan Ekosistem," *New Detail Kenebterian Kelautan dan Perikanan Republik Indonesia*, 2025,

Meanwhile, corporations and ship owners, as the main actors who reap significant profits, often escape the law, rendering criminal policies ineffective and failing to produce a substantive deterrent effect.

In addition, the application of criminal sanctions in the fisheries legal system also causes tension with the socio-economic reality of coastal communities. In various regions such as North Maluku, there are traditional fishermen who have been criminalized for violating fishing gear regulations, even though they do not have access to adequate information, capital, or legal literacy to comply with modern licensing requirements.¹⁰ Law enforcement that solely emphasizes criminal aspects creates legal uncertainty for small-scale fishing communities, while threatening the sustainability of their livelihoods, even though they are not the ones causing significant damage to the marine ecosystem.¹¹

On the other hand, criminal instruments have also proven to be ineffective in encouraging compliance among large-scale fishing businesses. In many cases, companies prefer to pay fines in court or even delay legal proceedings, while continuing their operations. The lengthy and complicated criminal process actually allows businesses to continue operating without any meaningful change in behavior. As a result, overexploitation and damage to marine ecosystems continue, while the main objectives of law enforcement, namely the protection of resources and environmental sustainability, remain difficult to achieve.¹²

Thus, this situation shows that a law enforcement model that places too much emphasis on criminal sanctions is not only economically and ecologically ineffective, but also has the potential to cause social injustice. Therefore, a shift in orientation towards strengthening administrative sanctions is needed as a more adaptive, proportional, and responsive strategic measure to the complexity of issues in the fisheries sector. This approach allows the state to directly take action against business actors who bear the greatest legal and economic responsibility, while providing fairer protection for coastal communities that depend on marine resources. The application of administrative sanctions also has a dual urgency: on the one hand, it can reduce the burden of criminalization, which has often been disproportionate to small-scale fishermen, and on the other hand, it can increase the effectiveness and speed of law enforcement by targeting key economic actors who control fishing practices. Furthermore, this step is not merely an effort to improve the effectiveness of the law, but also reflects the nation's strategic commitment to maintaining the sustainability of marine ecosystems, ensuring social justice for small-scale fishers, and ensuring that the fishing

¹⁰ Muhaimin Limatahu dkk., "Kajian Sosio Legal Terhadap Permen 18 Tahun 2021 Tentang Penempatan Alat Penangkapan Ikan Dan Alat Bantu Penangkapan Ikan Di Wilayah Pengelolaan Perikanan Indonesia," *Iblam Law Review* 4, no. 1 (2024): 149–62, <https://doi.org/10.52249/ilr.v4i1.225>.

¹¹ Kania Tamara Pratiwi dkk., "Penerapan Asas Primium Remedium Tindak Pidana Lingkungan Hidup," *SASI* 27, no. 3 (2021): 363, <https://doi.org/10.47268/sasi.v27i3.471>.

¹² Risnain, "Rekonsepsi Model Pencegahan dan Pemberantasan Illegal Fishing di Indonesia."

industry operates based on principles of fair, sustainable, and environmentally-oriented compliance.¹³

Several studies over the past five years have shown that these changes have contributed significantly to the study of fisheries law enforcement, but each has a different focus, with topics highlighting the urgency of shifting fisheries crime law enforcement regulations from criminal sanctions to administrative sanctions. For example, the research by Afif (2025), for example, emphasizes the application of administrative sanctions to encourage compliance in the fishing industry. The strength of this study is its implementative focus, providing an overview of how administrative instruments can be operationalized in supervisory practice. However, its weakness lies in the limited scope of analysis, as it only examines the effectiveness of existing regulations without proposing broader regulatory paradigm shifts. Shafira (2021) takes a different position by emphasizing the importance of criminal law as the primary instrument for dealing with illegal fishing. The strength of her study lies in her bold affirmation of criminal law as the *primum remedium*, arguing that illegal fishing is a serious crime against state sovereignty. However, this study ignores the issues of overcriminalization and the burden on the judicial system resulting from the dominance of criminal instruments, meaning that her solution does not address the problem of long-term effectiveness. Umboh (2025) focuses more on empirical cases in North Sulawesi by examining the application of legal sanctions for fishing exploitation. Its strength lies in its strong empirical basis at the local level, showing the impact of the law on coastal communities and fishery resources. Its weakness is that this study lacks a national normative-regulatory analysis, thus failing to propose the repositioning of administrative sanctions as a legal policy framework.

From these three studies, it can be concluded that none of them directly discuss the shift in fisheries law enforcement regulations from the dominance of criminal sanctions to the strengthening of administrative sanctions as the main instrument. This is where the originality of this study lies, namely in presenting a critical and normative perspective on the need to reposition sanctions instruments, in which administrative sanctions are considered more effective, faster, more flexible, more proportional, and in line with the restorative justice paradigm and international practices in fisheries law enforcement. This research does not merely assess existing practices or reiterate the criminal paradigm that has been widely discussed, but offers a new perspective on the urgency of regulatory transformation that places administrative sanctions as the *primum remedium* in the enforcement of fisheries criminal law in Indonesia. Thus, this research fills an academic void by providing theoretical and normative contributions to the development of Indonesian fisheries law, while offering a

¹³ Mohamad Rifki, "Reformulasi Sanksi Administrasi Bersifat *Primum Remedium* Dalam Pengelolaan Perikanan (Sebuah Upaya Memberi Efek Jera Bagi Korporasi Pelanggar Ketentuan Di Bidang Perikanan)," *Esensi Hukum* 1, no. 1 (2019): 51–69, <https://doi.org/10.35586/esensihukum.v1i1.7>.

more progressive and adaptive policy direction towards the needs of sustainable marine and fisheries resource protection.

International studies also confirm differences in approach between countries. Rosello (2022) compares Indonesia's mechanisms with those of Vietnam, where Vietnam is more assertive in imposing direct administrative fines on violators, followed by additional sanctions in the form of license suspensions and confiscation of catches.¹⁴ In contrast, Indonesia still relies primarily on criminal penalties, while administrative penalties are more often used as a supplement or a rarely used alternative. This comparison shows that the effectiveness of administrative sanctions is highly dependent on institutional commitment and consistency in their application.¹⁵

The strengths of these studies are that they have opened up space for normative analysis of the existence of administrative sanctions in positive law, provided an overview of dominant practices in Indonesia, and presented comparative perspectives with other countries. However, a clear weakness is the lack of research that delves into the extent to which administrative sanctions are actually applied empirically in the field, how effective they are in reducing violations, and what their social and economic impacts are on businesses and small-scale fishermen. In other words, existing studies remain focused on legal norms and symbolic enforcement practices, while aspects of implementation and consistency of application have not received serious attention.

This study aims to address this gap by emphasizing the need for empirical analysis of the effectiveness of administrative sanctions in enforcing fisheries crime laws in Indonesia. Through interviews with civil servant investigators (PPNS) in fisheries, fisheries court judges, supervisory officials, and fisheries business actors, this study seeks to uncover the real picture of the extent to which administrative sanctions have become the primary option, the obstacles faced, and how they are integrated with criminal sanctions. Additionally, this study uses an analysis of court decisions to assess the extent to which judges tend to prioritize criminal over administrative sanctions. Thus, this study does not stop at the normative level but also moves into the realm of implementation.

The main question asked in this study is what is the urgency of shifting the regulation of criminal law enforcement from criminal sanctions to administrative sanctions, and to what extent has the application of administrative sanctions been effective in cases of fisheries crimes in Indonesia. By formulating this question, the study aims to find solutions that are applicable and appropriate to the institutional conditions in Indonesia.

¹⁴ Mercedes Rosello, "Regional Fishery Management Organisation Measures and the Imposition of Criminal and Administrative Sanctions in Respect of High Seas Fishing," *Marine Policy* 144 (Oktober 2022): 105213, <https://doi.org/10.1016/j.marpol.2022.105213>.

¹⁵ Mashuril Anwar dan Maya Shafira, "Harmonisasi Kebijakan Pengelolaan Lingkungan Pesisir Lampung dalam Rezim Pengelolaan Berbasis Masyarakat," *Jurnal Hukum Lingkungan Indonesia* 6, no. 2 (2020): 266–87, <https://doi.org/10.38011/jhli.v6i2.156>.

This study uses a normative legal method with an emphasis on literature review of primary legal materials such as the Fisheries Law, the Environmental Protection and Management Law, and international legal instruments related to fisheries resource management, which are analyzed through legislative, conceptual, and comparative approaches. secondary legal materials in the form of academic literature and previous research results are used to assess the effectiveness of criminal and administrative sanctions, while tertiary legal materials help clarify concepts, so that the analysis can provide comprehensive legal arguments regarding the urgency of shifting the enforcement of fisheries criminal law from criminal sanctions to administrative sanctions.

Despite its limitations, this study is expected to make an original contribution to the discourse on fisheries law in Indonesia. First, this study presents empirical evidence on the practice of administrative sanctions, which has rarely been touched upon in previous studies. Second, this study presents a model for integrating administrative and criminal sanctions so that they can be applied proportionally, without negating each other, and providing a greater deterrent effect for major offenders, especially corporations. Third, this study provides more concrete policy recommendations for regulators and law enforcement officials so that the paradigm of fisheries law enforcement can shift from symbolic criminal prosecution to a sustainable system of administrative sanctions.

Based on the above description, The main objective of this study is to formulate a more effective, fair, and sustainable model for enforcing fisheries crime laws through a proportional shift from the dominance of criminal sanctions to the strengthening of administrative sanctions as the primary instrument or *primum remedium*. With this objective in mind, this study seeks to develop a conceptual framework and practical recommendations that not only strengthen institutional capabilities in law enforcement, but also ensure balanced and proportional accountability for both corporations and individuals. This study explicitly aims to analyze the weaknesses of the law enforcement paradigm that still relies on a criminal approach, evaluate the effectiveness and potential of administrative sanctions as a more adaptive and restorative law enforcement instrument, and formulate an ideal model of fisheries law enforcement based on administrative sanctions in line with the principles of restorative justice, environmental sustainability, and international legal practices. Thus, the results of this study are expected to contribute theoretically and practically to strengthening Indonesia's fisheries law policy to be more progressive, fair, and oriented towards the sustainability of marine resources.

2. METHOD

The research method used in this study is normative legal research, which was chosen because it is most appropriate for analyzing the urgency of shifting the paradigm of fisheries crime law enforcement from the dominance of criminal sanctions to the strengthening of administrative sanctions as *primum remedium*. Through this approach, law is understood as a written norm that must be studied systematically and critically in order to find the

philosophical, juridical, and policy basis for the transformation of sanction instruments.¹⁶ The scope of analysis covers national regulations, such as Law Number 31 of 2004 jo. Law No. 45 of 2009 concerning Fisheries and Law No. 32 of 2009 concerning Environmental Protection and Management, as well as comparisons with international instruments such as the FAO Code of Conduct for Responsible Fisheries (CCRF) and MARPOL as global best practices. This study utilizes primary legal materials in the form of legislation, secondary legal materials in the form of academic literature, journal articles, and previous research results discussing the issues of overcriminalization, the effectiveness of administrative law, and the restorative justice paradigm, as well as tertiary legal materials such as legal dictionaries and encyclopedias to clarify terminology.¹⁷ All legal materials are analyzed qualitatively using systematic legal interpretation, vertical and horizontal synchronization between laws and regulations, and comparison with international regulations, through three main approaches, namely the statute approach, the conceptual approach, and the comparative approach.¹⁸ Using this method, the study is expected to identify the urgency of shifting from criminal sanctions to administrative sanctions in a normative-critical manner and to formulate a model for fisheries law enforcement that is more responsive, proportional, and fair in accordance with the principles of restorative justice and marine resource sustainability.

3. RESULTS AND DISCUSSION

3.1 The Urgency Of Shifting Criminal Law Enforcement Regulations From Criminal Sanctions To Administrative Sanctions

The shift in law enforcement regulations from criminal sanctions to administrative sanctions is one of the most relevant issues in contemporary legal discourse, particularly in Indonesia, which is facing complex legislation and major challenges in managing natural resources and strategic sectors such as fisheries.¹⁹ Criminal law, which has long been positioned as the primary instrument for combating all forms of violations, is now increasingly being questioned for its effectiveness.²⁰ Criminal sanctions are retributive in nature, based on the logic of retaliation, and in practice often fail to provide an adequate deterrent effect, even failing to create the desired legal certainty.²¹ Furthermore, criminal sanctions often give rise to new injustices because technical administrative violations are

¹⁶ Fajar Achmad, *Dualisme Penelitian Hukum Normatif Dan Empiris* (Pustaka Belajar, 2013).

¹⁷ *Pengantar Metode Penelitian Hukum*, Edisi Revisi. Cetakan ke-11, Januari 2020, with Amiruddin dan Zainal Asikin (Rajawali Pers, 2020).

¹⁸ Kornelius Benuf dan Muhamad Azhar, "Metodologi Penelitian Hukum sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer," *Gema Keadilan* 7, no. 1 (2020): 20–33, <https://doi.org/10.14710/gk.2020.7504>.

¹⁹ Ioannis Chapsos dan Steve Hamilton, "Illegal Fishing and Fisheries Crime as a Transnational Organized Crime in Indonesia," *Trends in Organized Crime* 22, no. 3 (2019): 255–73, <https://doi.org/10.1007/s12117-018-9329-8>.

²⁰ Muhammad Rafli Saniah dan Isrina Siregar, "Dinamika Kebijakan Poros Maritim Indonesia pada masa Pemerintahan Joko Widodo Periode Tahun 2014-Sekarang," *JEJAK : Jurnal Pendidikan Sejarah & Sejarah* 1, no. 2 (2021): 64–72, <https://doi.org/10.22437/jejak.v1i2.16408>.

²¹ Hafiz Dwi Alhadi dkk., "Tinjauan Kriminologis Terhadap Faktor-Faktor Penyebab Terjadinya Tindak Pidana Dibidang Perikanan Dan Penanggulangannya Di Laut Kabupaten Bintan," *Delicti : Jurnal Hukum Pidana Dan Kriminologi* 1, no. 2 (2023): 26–35, <https://doi.org/10.25077/delicti.v.1.i.2.p.26-35.2023>.

treated as serious criminal offenses.²² This is where the idea of normative reorientation becomes relevant, placing administrative sanctions as the *primum remedium*, while criminal sanctions should only be used as the *ultimum remedium* for acts that truly threaten the public interest in a significant way.²³

The aspect of fairness is an important entry point in discussing this problem. The law is essentially there to provide equal and proportional treatment, weighing the severity of the act against its legal consequences.²⁴ However, in practice in Indonesia, it is not uncommon for administrative violations such as delays in reporting catches, technical errors in licensing records, or violations of fishing quotas, which are actually more appropriately handled administratively, to result in criminal prosecution. When the threat of imprisonment is applied to such violations, substantive justice becomes blurred.²⁵ Perpetrators not only bear excessive sanctions, but also receive the social stigma of being “criminals,” even though their violations do not pose a serious threat to public safety. The most obvious example is the case of a number of national fishing companies that were late in submitting their catch reports but were still prosecuted with the threat of imprisonment. The process took a long time, while business activities continued without any significant change in behavior. In such situations, the principle of substantive justice is neglected because the punishment is not directly proportional to the nature of the violation.

Justice is also compromised when criminal sanctions fail to protect the interests of the wider community. The case of illegal fishing involving foreign vessels flying the Vietnamese flag in the Natuna Sea in 2019 illustrates this point.²⁶ Dozens of vessels were successfully captured, but the criminal proceedings against the crew were slow, and most cases ended in deportation after the crew served light sentences.²⁷ The vessels, as instruments of crime, were left abandoned in port, awaiting lengthy trials, and the cost of maintaining the evidence was borne by the state. In terms of justice, this situation is ironic because the state and society continue to suffer while the perpetrators do not truly feel the deterrent effect. Compare this with administrative action in the form of sinking vessels in accordance with Article 69 paragraph (4) of the Fisheries Law, which has proven to be fairer to the wider community because it immediately stops illegal fishing activities and sends a strong message to

²² Maf'ullilahi Zakinah dkk., “Efektivitas Unclos Ditinjau Dari Kasus Illegal Fishing Di Laut Natuna (2012-2021).”

²³ Muhammad Farid Maya Shafira Aisyah Muda Cemerlang, Damanhuri Warganegara, *Konstruksi Kebijakan Hukum Pidana Administrasi Penanggulangan Illegal Fishing Di Indonesia*, 1 ed. (Avenir Literasi Indonesia, 2023), <https://repository.lppm.unila.ac.id/52858/1/BUKU%20KONSTRUKSI%20HUKUM%20PID%20ADM.pdf>.

²⁴ Hari Agus Santoso, “Perspektif Keadilan Hukum Teori Gustav Radbruch Dalam Putusan PKPU” *Jatiswara* 36, no. 3 (2021): 325–34, <https://doi.org/10.29303/jtsw.v36i3.341>.

²⁵ Septa Candra, *Perumusan Ketentuan Pidana Dalam Hukum Pidana Administratif: Telaah Kritis Implikasi Perumusan Ketentuan Pidana Dalam Undang-Undang Administratif Di Bidang Lingkungan Hidup Terhadap Pertanggungjawaban Pidana Korporasi*, Edisi Pertama, Cetakan ke-1 (Kencana, 2021).

²⁶ Maulana Rifai dan Rara Tiara Lestari Jatmoko, “Illegal Fishing Nelayan Vietnam: Perspektif Keamanan Kawasan RI di Laut Natuna,” *PANDITA: Interdisciplinary Journal of Public Affairs* 8, no. 2 (2025): 381–95, <https://doi.org/10.61332/ijpa.v8i2.332>.

²⁷ Barda Nawawi Arief, *Masalah Penegakan Hukum Dan Kebijakan Hukum Pidana Dalam Penanggulangan Kejahatan*, Ed. 1., Cet. 1 (Kencana Prenada Media Group, 2007).

perpetrators that violations cannot be tolerated.²⁸ Substantive justice in this case is better achieved through administrative mechanisms than through criminal proceedings, which are slow and ineffective.

From an efficiency perspective, the use of criminal law to address administrative violations has proven to be a burden on the country's legal and financial systems. Criminal proceedings are costly, involve many law enforcement officials, and take a long time from investigation and prosecution to trial.²⁹ In many cases, the cost to the state of prosecuting a single criminal case is much greater than the losses caused by the violation itself. In fisheries cases, the state must bear the costs of detaining foreign crew members, storing evidence, and trial costs, while the ecological and economic losses continue throughout the legal process. This situation demonstrates the inefficiency of the criminal justice system, which is contrary to the principles of good governance.³⁰

In 2023, according to data from the Directorate General of Corrections, correctional institutions in Indonesia will experience overcapacity. One of the contributors is cases classified as minor crimes such as petty theft, public order violations, small-scale fraud, and other small economic offenses, with a total of 1490, which are minor criminal or administrative cases that should be handled outside the criminal mechanism.³¹ In the fisheries sector, for example, of the more than 240 illegal fishing vessels arrested by the KKP in the period 2024,³² only a small number were sentenced by the courts to severe penalties, while the rest ended up with minor penalties or the deportation of the crew. During the process, the state had to bear significant logistical costs, while the perpetrators' vessels remained potentially capable of reoffending.³³ In contrast, administrative sanctions such as license revocation, business suspension, progressive fines, or vessel sinking have proven to be more efficient because they immediately stop state losses, do not require large costs, and have an immediate and tangible impact. From an efficiency perspective, the use of administrative sanctions is clearly more rational than criminal prosecution.³⁴

The aspect of legal certainty also highlights the urgency of this regulatory shift. The criminal justice system often creates uncertainty because the process is lengthy, complicated,

²⁸ Ruland Albert Assa dkk., "Studi tanggapan masyarakat nelayan desa Kema III terhadap kebijakan penenggelaman kapal illegal fishing," *Jurnal Ilmu Dan Teknologi Perikanan Tangkap* 6, no. 1 (2021): 17, <https://doi.org/10.35800/jitpt.6.1.2021.30947>.

²⁹ Mohamad Rifki, "Reformulasi Sanksi Administrasi Bersifat Primum Remedium Dalam Pengelolaan Perikanan (Sebuah Upaya Memberi Efek Jera Bagi Korporasi Pelanggar Ketentuan Di Bidang Perikanan)."

³⁰ Pratiwi dkk., "Penerapan Asas Primum Remedium Tindak Pidana Lingkungan Hidup."

³¹ Syamsudin Nanank, "Penanganan Overcrowded Melalui Model Collaborative Governance Pada Rumah Tahanan Negara Dan Lembaga Pemasarakatan" (program Doktorat Politeknik STIA LAN Jakarta, 2023), <https://repository.stialan.ac.id/id/eprint/268/1/005%20DAPN%202023%20-%20Nanank%20Syamsudin%20-%20%20BAB%20L.pdf>.

³² siaran Pers Kementerian Kelautan Dan Perikanan, "KKP Tangkap 240 Kapal Pencuri Ikan Sepanjang 2024," *New Detail Kementerian Kelautan dan Perikanan Republik Indonesia*, 2024.

³³ Muhamad Rigel dkk., "Kepastian Hukum Terhadap Keamanan Investasi Bagi Pelaku Bisnis Pelayaran di Perairan Indonesia," *Syntax Idea* 6, no. 10 (2024): 6572–91, <https://doi.org/10.46799/syntax-idea.v6i10.10013>.

³⁴ Anam dkk., "Sanksi Administratif sebagai Primum Remedium Pelanggaran Pemanfaatan Ruang Laut."

and new decisions only become legally binding after many years.³⁵ During this process, both businesses and affected communities find themselves in a state of uncertainty. This uncertainty is contrary to the needs of modern society, which demands clarity and speed in the resolution of legal issues.³⁶ Administrative sanctions provide a solution with fast, clear, and measurable procedures. Offenders can immediately know the consequences of their violations, such as the revocation of a ship's operating license or an administrative fine that must be paid within a certain time limit.³⁷ The wider community also gains assurance that the law works in practice, not just as a threat on paper. In the case of illegal fishing in Natuna, legal certainty is more evident when vessels are sunk administratively than when waiting for criminal verdicts that often take years and often result in light sentences. Legal certainty in this case concerns not only the perpetrators, but also the community and the state, which are entitled to the protection of marine resources.³⁸

In terms of alignment with global trends, the shift towards administrative sanctions is not new. Many modern jurisdictions have long relied on administrative instruments as the primary means of dealing with technical and administrative violations.³⁹ The European Union, for example, has a Common Fisheries Policy regime that emphasizes administrative mechanisms such as fines, quota restrictions, and license revocation for violators.⁴⁰ The United States, through the National Oceanic and Atmospheric Administration (NOAA), grants broad authority to administrative agencies to impose sanctions in the form of large fines and license revocation without having to go through criminal courts.⁴¹ Australia even implements a strict satellite-based surveillance system to monitor fishing vessels, and quota violations are immediately subject to administrative sanctions in the form of fines of millions of Australian dollars and the obligation to restore the ecosystem. International instruments such as the FAO Code of Conduct for Responsible Fisheries and international conventions such as MARPOL also encourage the use of administrative sanctions as a more effective mechanism for promoting compliance.⁴²

As part of the global community, Indonesia cannot turn a blind eye to these developments. As developed countries move towards more adaptive and efficient legal

³⁵ Mohamad Rifki, "Reformulasi Sanksi Administrasi Bersifat Primum Remedium Dalam Pengelolaan Perikanan (Sebuah Upaya Memberi Efek Jera Bagi Korporasi Pelanggar Ketentuan Di Bidang Perikanan)."

³⁶ Candra, *Perumusan ketentuan pidana dalam hukum pidana administratif*.

³⁷ Maya Shafira, *Konstruksi Kebijakan Hukum Pidana Administrasi Penanggulangan Illegal Fishing Di Indonesia*.

³⁸ Asrori dkk., "Kajian Penanggulangan Tindak Pidana Perikanan Illegal Fishing Di Laut Natuna Dalam Perspektif Kriminologi."

³⁹ Pratiwi dkk., "Penerapan Asas Primum Remedium Tindak Pidana Lingkungan Hidup."

⁴⁰ Luky Adrianto, "Implementasi Code of Conduct for Responsible Fisheries dalam Perspektif Negara Berkembang," *Indonesian Journal of International Law* 2, no. 3 (2005), <https://doi.org/10.17304/ijil.vol2.3.3>.

⁴¹ Dona Jonaidi dan Andri Wibisana, "Konsep Gugatan Pemerintah Atas Pencemaran Lingkungan: Komparasi Antara Indonesia Dan Amerika Serikat," *Arena Hukum* 14, no. 2 (2021): 268–92, <https://doi.org/10.21776/ub.arenahukum.2021.01402.4>.

⁴² Noula Pangemanan Marsudi Triatmodjo, "Implementasi Code of Conduct for Responsible Fisheries dalam menanggulangi Illegal, Unreported, Unregulated Fishing di Zona Ekonomi Eksklusif Indonesia" (Universitas Gaja Mada, 2007), <https://etd.repository.ugm.ac.id/penelitian/detail/34573>.

systems, Indonesia will fall behind if it continues to rely primarily on criminal penalties to address administrative violations. Furthermore, aligning with global trends is also important to strengthen Indonesia's position in international diplomacy.⁴³ In the context of transnational illegal fishing, the effectiveness of Indonesia's law enforcement is a measure of the country's credibility in the eyes of the world. If the slow criminal justice system continues to be maintained, Indonesia will find it difficult to build a reputation as a country with strong marine resource management.⁴⁴

The novelty of this research lies in its boldness to not merely repeat criticism of the weaknesses of criminal law, such as overcriminalization or prison overcrowding, which have become common discourse, but to offer a normative reorientation that places administrative sanctions as the *primum remedium*. This concept is not only a practical choice but a fundamental necessity in building a legal system that is fair, efficient, certain, and in line with global practices. Within this framework, criminal law is only used as the *ultimum remedium*, that is, the last resort applied when violations seriously harm the public interest. Thus, criminal law is no longer a rigid instrument of retribution, but rather an instrument used selectively for specific cases that require the most severe enforcement.

Within the framework of national legal development, the shift towards administrative sanctions is also closely related to the creation of a conducive business climate. Regulations that place too much emphasis on criminal sanctions actually create uncertainty for business actors. Investors are concerned that minor administrative violations could lead to lengthy criminal proceedings, thereby reducing investment interest. Conversely, administrative sanctions provide certainty that violations will be dealt with proportionally, quickly, and in accordance with the severity of the offense. This is in line with the government's vision to build a friendly yet integrity-based investment climate. Strengthening the authority of administrative institutions such as the KKP is an important part of this strategy.⁴⁵

However, the shift towards administrative sanctions is not without risk. The potential for abuse of authority by administrative agencies is one of the major challenges. When sanctions can be imposed without going through the court process, there is a risk of violating the principle of due process of law. Therefore, strengthening control mechanisms is very important, whether through internal oversight, public accountability, or the right to appeal to the courts. In this way, regulatory shifts remain in line with the principles of the rule of law and the protection of human rights.

⁴³ Robiyanoor Robiyanoor, "Analisa Penegakan Hukum Pidana Perikanan di Indonesia," *Jurnal Ilmu Pertanian dan Perikanan* 1, no. 1 (2024): 11–16, <https://doi.org/10.70134/penarik.v1i1.13>.

⁴⁴ Pratiwi Ayu Sri Daulat, "Urgensi Penggunaan Sanksi Hukum Pidana Dalam Konteks Penanggulangan Kejahatan," *Hukum Dan Dinamika Masyarakat* 16, no. 1 (2018), <https://doi.org/10.36356/hdm.v16i1.848>.

⁴⁵ Bona Jevon Tampubolon dkk., "Praktik Illegal Fishing Di Perairan Indonesia Sebagai Transnational Organized Crime (Studi Kasus Kapal Run Zeng Di Laut Arafura)," *Jurnal Hukum Statuta* 4, no. 1 (2024): 50–62, <https://doi.org/10.35586/jhs.v4i1.9763>.

The urgency of this regulatory shift ultimately boils down to the need for legal reform in Indonesia. The shift from criminal sanctions to administrative sanctions is an important step toward building a more modern, responsive legal system that meets the needs of contemporary society. It is not only a solution to the problems of overcriminalization, legal uncertainty, and legal bureaucratic inefficiency, but also a sign of a transformation in the national legal paradigm toward a more humanistic, proportional approach that is in line with global practices. The success of this shift will greatly depend on careful regulatory design, strengthening the capacity of administrative institutions, and effective oversight mechanisms. If all of these are fulfilled, then administrative sanctions can truly function as a legal instrument that is fair, efficient, certain, and in line with the principles of a democratic state based on the rule of law.

3.2 Effectiveness of the Policy Shift in the Enforcement of Fisheries Crime Regulations from Criminal Sanctions to Administrative Sanctions

Law enforcement in the fisheries sector always presents unique complexities because it involves the interconnection between economics, social issues, politics, and state sovereignty. Indonesia, with a maritime area covering more than two-thirds of its total territory, faces enormous challenges in managing its abundant yet fragile fishery resources against overexploitation.⁴⁶ As the world's largest archipelagic nation, the sea is not only a geographical space, but also a living space, an economic space, and a strategic space that determines the future of the nation. Fish resources are both an economic asset and the basis of food security, but they are also subject to theft, illegal fishing practices, and ecological damage due to the use of destructive fishing gear. In this context, the national legal framework plays an important role as an instrument to ensure that marine resources are not only a source of short-term foreign exchange but are also managed sustainably for future generations.⁴⁷

Since the enactment of Law No. 31 of 2004 on Fisheries, which was later amended by Law No. 45 of 2009, the legal approach in Indonesia has tended to emphasize criminal law as the primary tool for enforcing the law against fisheries violations. This approach treats fisheries crimes, particularly illegal fishing, the use of prohibited fishing gear, or permit violations, as serious crimes that warrant a repressive response through the court system.⁴⁸ This policy was initially seen as a firm response to the rampant practice of fish theft by foreign and domestic vessels, as well as a symbol of state sovereignty at sea. The peak of this symbolism was seen in the policy of sinking foreign vessels engaged in fish theft, which began around 2014 and later became an icon in Indonesia's maritime diplomacy.⁴⁹

⁴⁶ Maron, *Politik Hukum Penanggulangan Kejahatan Di Bidang Perikanan*.

⁴⁷ M. Ghufuran H. Kordi K, *Pengelolaan Perikanan Indonesia*.

⁴⁸ Maya Shafira dkk., "Illegal Fishing: Optimalisasi Kebijakan Penegakan Hukum Pidana sebagai Primum Remedium," *Jurnal Wawasan Yuridika* 5, no. 1 (2021): 40, <https://doi.org/10.25072/jwy.v5i1.391>.

⁴⁹ Asiyah Jamilah dan Hari Sutra Disemadi, "Penegakan Hukum Illegal Fishing dalam Perspektif UNCLOS 1982," *Mulawarman Law Review*, 30 Juni 2020, 29–46, <https://doi.org/10.30872/mulrev.v5i1.311>.

However, in subsequent developments, there has been a significant shift in the orientation of regulations and law enforcement practices, from the dominance of criminal sanctions to the dominance of administrative sanctions. Criminal sanctions are now considered the *ultimum remedium*, while administrative sanctions have become the *primum remedium* in dealing with fisheries violations. This shift is not merely a technical change in legal instruments, but a paradigm shift with major implications for effectiveness, efficiency, fairness, legal certainty, and marine ecological sustainability. The main question that must be answered is whether this shift has actually improved the effectiveness of law enforcement or whether it has opened the door to injustice and covert impunity, especially for large-scale offenders with financial resources.⁵⁰

The normative consideration of this shift is based on the principle of modern criminal law which emphasizes that criminal punishment should be the *ultimum remedium*. This means that criminal punishment should only be used if other legal instruments prove incapable of providing adequate protection of legal interests.⁵¹ In the context of fisheries, administrative violations such as delays in permit renewals, use of incomplete documents, or violations of fishing zone boundaries are more appropriately addressed through administrative mechanisms such as permit revocation, vessel detention, or administrative fines, without having to enter the criminal realm. Practical considerations also play an important role.⁵² Criminal proceedings often face obstacles in the form of difficulties in proving cases, slow judicial processes, limited resources for officials, and high costs borne by the state. In contrast, administrative sanctions are faster, more flexible, and more cost-effective, as they can be imposed directly by authorized officials without going through lengthy court proceedings.⁵³

In terms of efficiency, this shift has clear advantages. Cases no longer take months or years to resolve, as is the case with criminal proceedings. Businesses immediately feel the consequences of their violations, whether in the form of license revocation or financial penalties. Cost efficiency also increases because the state does not need to finance lengthy trials, bring in expert witnesses, or bear the high operational costs of law enforcement. Efficiency parameters can be measured by the average speed of case handling and savings in litigation costs. From this perspective, the regulatory shift appears to be a step forward in line with the global trend of reducing the burden on the criminal justice system.⁵⁴

⁵⁰ Mohamad Rifki, "Reformulasi Sanksi Administrasi Bersifat *Primum Remedium* Dalam Pengelolaan Perikanan (Sebuah Upaya Memberi Efek Jera Bagi Korporasi Pelanggar Ketentuan Di Bidang Perikanan)."

⁵¹ Titis Anindyajati dkk., "Konstitusionalitas Norma Sanksi Pidana sebagai *Ultimum Remedium* dalam Pembentukan Perundang-undangan," *Jurnal Konstitusi* 12, no. 4 (2016): 872, <https://doi.org/10.31078/jk12410>.

⁵² Anggrainy, Rae, Aziza Aziz Rahmaningsih, "Penerapan Sanksi Hukum Terhadap Pencemaran Lingkungan."

⁵³ Arief, *Masalah Penegakan Hukum Dan Kebijakan Hukum Pidana Dalam Penanggulangan Kejahatan*.

⁵⁴ Hozairi Za Hozairi, "Optimasi Penentuan Jumlah Kapal Pengawas Perikanan Di Wilayah Pengelolaan Perikanan – 716 Menggunakan Algoritma Genetika," *NJCA (Nusantara Journal of Computers and Its Applications)* 4, no. 1 (2019), <https://doi.org/10.36564/njca.v4i1.130>.

However, the effectiveness of law enforcement is not only measured by procedural efficiency. The deterrent effect is an important parameter that determines whether an instrument is truly capable of reducing the level of violations. At this point, the effectiveness of administrative sanctions is questionable. Many large fishing companies fear losing their operating licenses more than facing criminal charges, because licenses are direct assets that determine business continuity. On the other hand, administrative fines, even if large, are often considered tolerable operating costs because the profits from violations far outweigh the losses resulting from sanctions. This illustrates a paradox: administrative sanctions are effective in deterring small violators, but have less impact on large violators.⁵⁵

This context can be explained through Lawrence M. Friedman's theory of legal effectiveness, which emphasizes the importance of balance between legal structure, legal substance, and legal culture. In terms of substance, the shift to administrative sanctions does provide a clearer and more efficient normative basis.⁵⁶ In terms of structure, weaknesses are evident in the limitations of the supervisory apparatus, weak coordination between the Ministry of Maritime Affairs and Fisheries (KKP), the Indonesian Navy (TNI AL), and the Water Police (Polair), as well as a lack of maritime surveillance facilities. In terms of legal culture, there are still challenges in the form of low compliance with regulations by business actors, accompanied by rent-seeking and corruption in the licensing bureaucracy. Thus, the effectiveness of administrative sanctions cannot yet be said to be complete, because only their substance is relatively strong, while their structure and culture remain weak.

Based on KKP records, the number of ships sunk in 2015 reached 113 units, increasing to 125 units in 2017, then decreasing dramatically to only 24 ships in 2023. This decline is often interpreted as evidence of the success of the sinking policy in providing a deterrent effect. However, this interpretation is problematic because the decline in the number of ships sunk could also reflect a policy shift towards the dominance of administrative sanctions, rather than a decline in violations. Data on actual violation rates, including the number of licenses revoked, fines imposed, and trends in the use of prohibited fishing gear, must be linked to assess whether violations have actually decreased or simply changed in form. Without such data, claims about the success of the deterrent effect are difficult to sustain.⁵⁷

In terms of legal certainty, the shift to administrative sanctions presents two sides. On the one hand, procedural legal certainty increases because business actors can easily predict the type of violation and the consequences they will receive. The procedures are simple, and sanctions can be immediately enforced without waiting for lengthy court proceedings.⁵⁸ However, on the other hand, substantive legal certainty weakens because the potential for

⁵⁵ Maf'ullilahi Zakinah dkk., "Efektivitas Unclos Ditinjau Dari Kasus Illegal Fishing Di Laut Natuna (2012-2021)."

⁵⁶ Soerjono Soekanto, *Faktor-faktor Yang Mempengaruhi Penegakan Hukum*, 1 ed. (Jakarta: Rajawali Pers, 2013).

⁵⁷ Urrifatul Choiro dkk., "Dampak Penenggelaman Kapal Illegal Fishing di Wilayah Indonesia Ditinjau dari Perspektif Hukum Internasional," *Begawan Abioso* 15, no. 2 (2025): 51–59, <https://doi.org/10.37893/abioso.v15i2.1000>.

⁵⁸ Yoserwan, *Doktrin Ultimum Remedium Dalam Hukum Pidana Indonesia (Implementasinya dalam Hukum Pidana Ekonomi)*, vol. 1 (Andalas University Press, 2019),

abuse of authority by officials is enormous. Revocation of licenses or the imposition of fines can be used as bargaining tools, or even as instruments of extortion. In practice, major violators can lobby or bribe to have their sanctions reduced, while minor violators have no bargaining power. This situation creates substantive uncertainty that undermines the legitimacy of the law.⁵⁹

The aspect of fairness is the most vulnerable point in this shift. For small-scale fishermen, the new policy provides a little breathing room because technical errors do not immediately land them in jail. For example, delays in renewing permits or other administrative errors can now be resolved with warnings or light fines. However, at the same time, they often become victims of injustice because they are unable to pay fines or lose access to permits. In contrast, large corporations with strong capital can easily pay fines or negotiate sanctions.⁶⁰ This inequality shows how substantive justice is not achieved, because the law is practically harsher on the weak and softer on the strong. Using Radbruch's framework, the value of legal certainty is achieved, the value of utility is partially realized through efficiency, but the value of justice fails to be adequately realized.⁶¹

From an ecological perspective, the effectiveness of this shift must be assessed in terms of its impact on the protection of fish resources and the marine environment. If serious violations such as the use of fish bombs, poisons, or tiger trawls are only punished with administrative sanctions, then ecological damage cannot be restored simply by paying fines. The ecological damage is far greater than the value of the fines imposed. Therefore, criminal mechanisms are still necessary for destructive cases. Administrative sanctions are only appropriate for technical or procedural violations, not for violations that damage the ecosystem.⁶²

Global trends show that other countries also apply the principle of proportionality in fisheries law enforcement. The European Union, for example, uses a system of administrative sanctions for technical violations, but still imposes criminal sanctions for serious violations that threaten the sustainability of fish resources.⁶³ The United States, through the Magnuson-Stevens Act, also applies a combination of administrative sanctions in the form of fines and license revocation with criminal sanctions for serious violations.⁶⁴ Thus, Indonesia's policy

⁵⁹ I Dewa Ayu Maheswari Adiananda dkk., "Problematika Penegakan Hukum Dalam Tindak Pidana Illegal Fishing di Wilayah Perairan ZEE Indonesia," *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)* 8, no. 2 (2019): 237, <https://doi.org/10.24843/JMHU.2019.v08.i02.p07>.

⁶⁰ Nunung Mahmudah, *Illegal Fishing: Pertanggungjawaban Pidana Korporasi Di Wilayah Perairan Indonesia*, Cetakan Pertama (Sinar Grafika, 2015).

⁶¹ Santoso, "Perspektif Keadilan Hukum Teori Gustav Radbruch Dalam Putusan Pkpu "PTB".

⁶² Hario Danang Pambudhi dan Ega Ramadanti, "Menilai Kembali Politik Hukum Perlindungan Lingkungan dalam UU Cipta Kerja untuk Mendukung Keberlanjutan Ekologis," *Jurnal Hukum Lingkungan Indonesia* 7, no. 2 (2021): 297–322, <https://doi.org/10.38011/jhli.v7i2.313>.

⁶³ Teresa Fajardo, "To Criminalise or Not to Criminalise IUU Fishing: The EU's Choice," *Marine Policy* 144 (Oktober 2022): 105212, <https://doi.org/10.1016/j.marpol.2022.105212>.

⁶⁴ Laws & Policies, "Understanding Laws and NOAA Fisheries," *NOAA Fisheries*, t.t., <https://www.fisheries.noaa.gov/insight/understanding-laws-and-noaa-fisheries>.

of prioritizing administrative sanctions is actually in line with global trends, but the weakness lies in its implementation, which is not yet proportional and accountable.

Institutional analysis shows that weaknesses in maritime law enforcement structures remain a serious obstacle. Coordination between law enforcement agencies is often overlapping, and the number of fisheries investigators is still limited. Given Indonesia's vast geographical area, surveillance is a major challenge. Administrative sanctions are only effective if violations can be detected, but weak surveillance means that many violations escape the law. This shows that the effectiveness of administrative sanctions depends heavily on the capacity of the legal structure, not just on their substantive design.⁶⁵

In the context of legal culture, the persistence of rent-seeking practices and low compliance among business actors pose a particular challenge. Many business actors view regulations merely as an administrative burden that can be negotiated, rather than as a moral and legal obligation. This legal culture makes administrative sanctions easy to circumvent, thereby reducing their deterrent effect. Friedman rightly emphasizes that without the support of a strong legal culture, substantive legal changes will not be effective.⁶⁶

From the overall analysis, it appears that the effectiveness of shifting regulations from criminal sanctions to administrative sanctions is relative. This shift is effective in increasing time and cost efficiency, as well as providing procedural legal certainty. However, its effectiveness is weak in terms of deterring major violators, substantive justice for small-scale fishermen, and ecological protection against destructive practices.

To overcome this weakness, a more proportional solution model is needed. The dual-track system concept is a relevant answer. This system clearly distinguishes between administrative and criminal violations. Technical administrative violations, such as permit delays or document violations, are punished with administrative sanctions in the form of fines or permit revocation. Conversely, serious violations that are destructive to the ecosystem, such as the use of destructive fishing gear, transnational fish theft, or violations that threaten national sovereignty, must continue to be punished with criminal sanctions. Thus, the sanction system becomes more proportional, fair, efficient, and in line with global trends.

The implementation of the dual-track system must also be accompanied by strengthening institutional structures and procedural transparency. The KKP needs to increase the capacity of the Fisheries PPNS, strengthen coordination with the Indonesian Navy and Water Police, and develop a satellite-based digital surveillance system to monitor vessel activities in real time. Accountability mechanisms also need to be strengthened so that administrative sanctions do not become a tool for corruption. Transparency in the imposition

⁶⁵ Fathurrahim Fathurrahim dan Andika Adhyaksa, "Implementasi Perlindungan Lingkungan Maritim Atas Pencemaran Limbah Kapal Di Pelabuhan Rakyat Kota Ternate," *Jatiswara* 39, no. 2 (2024): 229–43, <https://doi.org/10.29303/jtsw.v39i2.711>.

⁶⁶ Fathurrahim, "Penegakan Hukum Tindak Pidana Ilegal Fishing Dengan Menggunakan Bahan Peledak Oleh Satuan Polair Polres Halmahera Utara," *JISOS: Jurnal Ilmu Sosial* 1, no. 12 (2023), <https://mail.bajangjournal.com/index.php/JISOS/article/view/4802>.

of fines and revocation of licenses must be ensured through a public reporting system that is accessible to the community. With institutional strengthening and transparency, substantive legal certainty can be better guaranteed, while substantive justice for small-scale fishermen can be realized through a mechanism of proportional differentiation of sanctions.

Thus, the shift in regulation towards administrative sanctions can only be considered effective if it is understood as part of a broader system, not as a single substitute for criminal sanctions. Effectiveness must be measured holistically through parameters of efficiency, legal certainty, deterrence, substantive justice, and ecological protection. Without a proportional combination of administrative and criminal sanctions, the shift in regulation risks becoming merely an administrative instrument that makes it easier for large violators to escape criminal prosecution, while small-scale fishermen remain victims of structural injustice. A proportional dual-track system, supported by institutional strengthening, procedural transparency, and changes in legal culture, is the only way to ensure that fisheries law enforcement in Indonesia is not only procedurally efficient, but also fair, firm, and oriented towards the sustainability of marine ecology as a national asset.

4. CONCLUSION

The main conceptual contribution of this study lies in its proposed regulation that places administrative sanctions as the *primum remedium* in Indonesian fisheries law, in contrast to previous studies that still emphasize the dominance of criminal law or merely describe administrative implementation. This finding confirms that the paradigm shift in law enforcement should not stop at the discourse of reducing criminalization, but must be realized in regulatory designs that normatively and institutionally make administrative sanctions the primary instrument, with criminal sanctions being applied selectively for serious violations that are destructive or threaten state sovereignty. The recommendations arising from this study are operational in nature. First, revise the Fisheries Law to reinforce the position of administrative sanctions as *primum remedium* with clear parameters regarding the types of violations that fall under administrative and criminal jurisdiction. Second, increase the number and capacity of Civil Servant Investigators (PPNS) in the fisheries sector so that they are able to effectively monitor and take action against violations in the field. Third, develop an internal oversight mechanism and provide administrative judicial channels to prevent abuse of authority by officials in imposing administrative sanctions. Fourth, harmonize national regulations with international practices such as those in Vietnam and the European Union, which have proven to be more progressive in placing administrative sanctions as the primary instrument while maintaining proportionality with criminal sanctions. Thus, this study not only offers a normative reconstruction of Indonesian fisheries law, but also provides policy directions that are more adaptive to global challenges and the need for marine resource sustainability.

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