

ASSESSING THE EFFECTIVENESS OF SPECIAL FISHERIES COURTS IN INDONESIA

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Abstract

This article aims to provide comparison viewed from the economic and law enforcement aspect prior to and following the establishment of Special Fisheries Courts. This study combines two methods of research, namely research on normative laws and supported by an empirical study of the law using various sources of data. Data collection was conducted by document search and in-depth interviews. The findings of this research indicate that Special Fisheries Courts play a rather significant role in the economic improvement of the fisheries sector. However, viewed from the aspect of law enforcement, there has been an increase in crime in the fisheries sector after the establishment of Special Fisheries Courts. Based on the findings and discussion it is concluded that Special Fisheries Courts are yet to be effective in prosecuting criminal acts in the fisheries sector. The limitations and contribution of this research forward to proposes several strategies namely the establishment of Special Fisheries Courts in all areas prone to illegal fishing, extending the jurisdiction of *ad hoc* judges, and appointing *ad hoc* judges at the appeals and cassation level.

Keywords: *special fishery court, Indonesia, effectiveness, illegal fishing*

1. INTRODUCTION

Indonesia is an archipelagic country consisting of 17,508 islands and with sea territory of approximately 3.1 million km² (Satria & Matsuda, 2004). Viewed from its geographical location and size, the span between the Western and Eastern part of Indonesia is about 6,400 km, while the span between the Northern and Southern part of Indonesia is about 2,500 km (Dahuri, 2001). Such geographical conditions have created bountiful resources for Indonesia, one of them being enormous and diverse Fisheries potentials. Indonesia's natural Fishery resources amount to 6,520,100 tons per year (Jaelani & Basuki, 2014). Accordingly, due to its rather significant economic contribution, Indonesia's economy is quite dependent on the fisheries sector (Rochwulaningsih et al, 2019). Fisheries remain Indonesia's primary export sector. Indonesia has been the second largest fish producer globally after PRC (Tran et al, 2017). Based on data of the Ministry of Maritime Affairs and Fisheries, the Gross Domestic Product (GDP) growth in the fisheries subsector in 2011 and 2012 was 7.65% and 6.29% respectively. The rate of GDP growth of the fisheries sector in 2013 and 2014 reached 7.24% and 7.35% respectively, while in 2015 and 2016 it was 7.89% and 5.15% respectively (Rahmantya et al, 2015). The said potential posed pressure on Indonesia's fishery resources resulting in excessive illegal fishing (Tupper et al, 2015).

As a result of such abundance of fishery resources, Indonesia has been facing various hazards such as theft of fish (Sodik, 2012). There have been several cases in which perpetrators were arrested in Indonesian waters (Gunawan & Yogar, 2019). Theft of fish is a form of organized piracy and it has a complex modus operandi (Jin et al, 2019) which has a harmful effect on the national economy (Riddle, 2006). In addition to the above, fish theft can potentially disrupt developing countries (Campbell & Hanich, 2015) such as Indonesia which strongly rely on the fisheries sector in their revenue earnings. Legal fishing practices not only among foreign fishermen who harm the country, and threaten the interests of fishermen, fish cultivation person, as well as the national fishing entrepreneur, but it is also done by the local fishermen (Shafira, 2017). According to FAO, losses suffered by Indonesia as a result of illegal fishing total about IDR30,000,000,000,000 per year (Raharjo et al, 2018). It is against such background that the Indonesian Government enacted Law Number 45 Year 2009 concerning the Amendment of Law Number 31 Year 2004 concerning

Fisheries. Law Number 31 Year 2004 has not been able to fully accommodate developments in the area of science and technology (Situmorang, 2016) or requirements for legal services in the context of the management and exploitation of fishery resources. Law Number 45 Year 2009 provides for the criminal law procedure as well as criminal acts in the fisheries sector (Supramono, 2012). In addition to the above, Law Number 45 Year 2009 mandates the establishment of Fisheries Courts. Fisheries Courts have the jurisdiction to examine, adjudicate and issue verdicts in fisheries related criminal cases. The first Fisheries Courts were set up in 2007 at the District Courts of North Jakarta, Medan, Pontianak, Bitung and Tual respectively. Subsequently, in 2010 Fisheries Courts were established at the District Court of Tanjung Pinang and Ranai. Most recently, in 2014 Fisheries Courts were established at the District Court of Ambon, Sorong and Merauke respectively, making it the total of ten Fisheries Court in Indonesia to date.

Criminal acts involving fish theft require firm action as they can lead to the exploitation of fishery resources, and at the same time they can potential pose a threat on Indonesia's sovereignty at sea (Tarigan, 2018). Special Fisheries Courts play an highly important role in enhancing the effectiveness of criminal law enforcement in the fisheries sector. In principle, the provisions of Article 71A of Law Number 45 Year 2009 concerning Fisheries provide that Special Fisheries Courts have the jurisdiction to examine, adjudicate and issue verdicts in criminal acts in the fisheries sector perpetrated within Indonesia's fisheries management territory. Under the provision of Article 2 of Minister of Maritime Affairs and Fisheries Regulation Number 18 Year 2014, the fisheries management territory of the State of the Republic of Indonesia (hereinafter briefly referred to as *WPPNRI*) is divided into eleven areas namely as follows:

1. *WPPNRI* 571 which includes the waters of the Strait of Malacca and Andaman Sea;
2. *WPPNRI* 572 which includes the waters of the Indian Ocean and the Western Part of Sumatra and the Sunda Strait;
3. *WPPNRI* 573 which includes the waters of the Indian Ocean and the southern part of Java up to the Southern part of Nusa Tenggara, the Sea of Sawu and the Western part of the Timor Sea;
4. *WPPNRI* 711 which includes the waters of the Karimata Strait, Natuna Sea, and South China Sea;
5. *WPPNRI* 712 which includes the waters of Java Sea;
6. *WPPNRI* 713 which includes the waters of Makassar Strait, Bone Gulf, Flores Sea, and Bali Sea;
7. *WPPNRI* 714 which includes the waters of Tolo Bay and Banda Sea;
8. *WPPNRI* 715 which includes the waters of Tomini Strait, Maluku Sea, Halmahera Sea, Seram Sea and Berau Strait;
9. *WPPNRI* 716 which includes the waters of Sulawesi Sea and the Northern part of Halmahera Island;
10. *WPPNRI* 717 which includes the waters of Cendrawasih Bay and the Pacific Ocean;
11. *WPPNRI* 718 which includes the waters of Aru Sea, Arafuru Sea and the Eastern part of Timor Sea.

Furthermore, Special Fisheries Courts are established only at the first instance level (District Court). Consequently, criminal acts fisheries related which are appealed at the high court or cassation level are not adjudicated by *ad hoc* judges who possess special competencies in the area of fisheries. The aim of this study is to assess the effectiveness of Special Fisheries Courts with a comparative approach from the economic and fisheries law enforcement perspective, prior to and following the establishment of Special Fisheries Courts.

2. LITERATURE REVIEW AND HYPOTHESIS DEVELOPMENT

2.1 Special Court

The idea of establishing a special court was particularly developed in the post-reform era, especially to fulfill the increasingly complex demands of development for justice in society. At the end of the New Order era, a special court was formed, namely the Court Children based on Law no. 3 of 1997. After the reform, decentralization of government and diversification of the power functions of developing countries coincided with the liberalization movement and democratization in all areas of life. Therefore, the judiciary is special more and more established by the Government. In 1998, with Perpu No. 1 of 1998 which then passed into Law no. 4 In 1998, we established the first Commercial

Court time. Furthermore, in 2000 and 2002, we established the Human Rights Court (HAM) with Law no. 26 of 2000, and the Corruption Crime Court (TIPIKOR) by Law No. 30 of 2002. Also, we have also formed an Industrial Relations Dispute Settlement Court based on Law no. 2 of 2004, and the Fisheries Court based on Law no. 31 of 2004, and many others. Until now, there are more than 10 special courts kinds, namely:

- 1) Juvenile Court (in the field of criminal law);
- 2) Commercial Court (civil law sector);
- 3) Human Rights Court (in the field of criminal law);
- 4) TIPIKOR Court (in the field of criminal law);
- 5) Industrial Relations Court (civil law sector);
- 6) Fisheries Court (criminal law sector);
- 7) Tax Court (field of state administration law);
- 8) Shipping Court (civil law sector);
- 9) Syar'iyah Court in Aceh (field of Islamic religious law);
- 10) Customary Courts in Papua (execution of decisions related to general courts); and
- 11) Ticket Court

In fact, every time there are always new ideas to form a special court others which are generally intended to make law enforcement efforts more effective in certain fields, such as in the forestry sector, and so on. Therefore, when there was a need to enact a new forestry law, and an idea emerged to establish a forestry court in the draft law discussed in the Council People's Representative. Initiatives for ideas like this sometimes come from members of the DPR, but sometimes it comes from the Government itself which is often not based on the results of an integrated study, mainly due to weak coordination among government agencies themselves. That is why new forms of special court continue to grow and increase the numbers in Indonesia's post-reform justice system.

2.2 The Position Of The Fishery Court In Completing Criminal Actions Of Fishery

Law Number 49 Year 2009 Concerning the Second Amendment to Law Number 2 Year 1986 Concerning Public Courts, Article 1 point 1 states: The court is a district court and a high court within the general court. Article 1 point 2: Judges are judges at district courts and judges at high courts. Article 1 point 5: Special Court is a court which has the authority to examine, hear and decide on certain cases which can only be formed in one of the jurisdictions of a judicial body that is under the Supreme Court which is regulated by law. Article 1 point 6: Ad hoc judges are judges of a temporary nature who have expertise and experience in certain fields to examine, hear and decide a case whose appointment is regulated by law.

Article 8 paragraph:

- (1) Within the general court, a special court which is regulated by law can be established.
- (2) In a special court, an ad hoc judge may be appointed to examine, hear and decide cases, which require expertise and experience in certain fields and within a certain period.
- (3) Provisions regarding the terms and procedures for the appointment and dismissal as well as allowances for ad hoc judges are regulated in statutory regulations.

Elucidation of Article 8 paragraph (1): What is meant by "special court is held" is the differentiation/specialization in the general court where special courts can be formed, for example juvenile courts, commercial courts, human rights courts, corruption courts, relations courts. industrial, fishery court located within the general court, meanwhile what is meant by "regulated by law" is the structure, powers and the law of the procedure. Elucidation of Article 8 paragraph (2): What is meant by "within a certain period" is a temporary nature by the provisions of laws and regulations. The purpose of appointing ad hoc judges is to assist the settlement of cases requiring special expertise, for example banking crimes, tax crimes, corruption, children, industrial relations disputes, telematics (cyber crime).

Article 14B paragraph:

- (1) To be appointed as an ad hoc judge, a person must meet the requirements as intended in Article 14 paragraph (1) except letter d, letter e, and letter h.

- (2) Apart from the requirements as intended in (1) to be appointed as an ad hoc judge, a person is prohibited from concurrently serving as an entrepreneur as referred to in Article 18 paragraph (1) letter c unless the law stipulates otherwise.
- (3) The procedure for implementing the provisions as intended in paragraph (1) shall be regulated in statutory regulations.

Law Number 45 of 2009 concerning Amendments to Law Number 31 of 2004 concerning Fisheries, Article 71 paragraph:

- (1) With this Law a fishery court is established which has the authority to examine, try and decide criminal acts in the fishery sector.
- (2) The fishery court as meant in paragraph (1) is a special court within the general court.
- (3) Fishery courts as referred to in paragraph (1) will be established at the North Jakarta, Medan, Pontianak, Bitung, and Tual District Courts.
- (4) The fishery court as meant in paragraph (1) is domiciled at a district court.
- (5) The establishment of a fishery court is then carried out in stages according to the needs stipulated by a Presidential Decree.

Article 71A: The fisheries court has the authority to examine, try and decide criminal cases in the fisheries sector that occur in the fisheries management area of the Republic of Indonesia, whether committed by Indonesian citizens or foreign nationals. As an archipelago, Indonesia is also a maritime country because it has a vast ocean. As a maritime nation, our nation is no stranger to the oceans and since ancient times, the Indonesian nation has been known as a seafaring nation. With the vast oceans we can use the oceans to achieve the prosperity of the country. By looking at this situation, it appears that the ocean is a field that can still accommodate various jobs related to the sea. Everyone can do work at sea as long as they have the knowledge, education, experience and skills and will that is in them. As a meritim country, we will continue to increase development in the sea, under the motto "jales viva jaya mahe" (Supramono, 2011).

3. RESEARCH METHODOLOGY

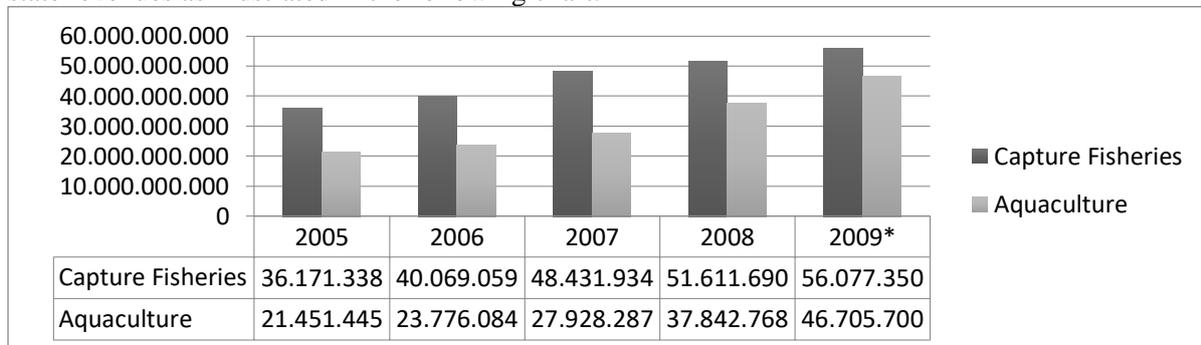
This research is a study that combines two types of research, namely the normative legal research and supported by empirical legal research. Data used in this research was collected during the period 2005 through 2019. Data collection was conducted by document search and in-depth interviews (Murni, 2017). Document search is a research strategy which relies on data collected directly (firsthand) or available data, as well as indirect information (secondhand data). Such indirect sources of information include written public records such as minutes of court examination, statistical data and performance reports. Furthermore, with the aim of understanding the effectiveness of Special Fisheries Courts, this article provides a comparative aspect from the economic and fisheries criminal law enforcement perspective, supported by in-depth interviews with several respondents. Respondents in this research include criminal law experts from the Faculty of Law of Universitas Lampung, Public Prosecutors from the Belawan Public Prosecutor's Office, as well as Judges from the Special Fisheries Court at the Class I District Court in Medan. The said respondents were given several questions related to the effectiveness of Special Fisheries Courts. The data collected through document search and interviews was analyzed using the descriptive method supported by various sources of reference such as books, articles and other sources related to the issue under study. Such analysis method has been applied in order to enable readers to understand the currently prevailing conditions of Fisheries Courts as well as the effectiveness of Fisheries Courts in fisheries related criminal law enforcement in Indonesia.

4. RESULTS AND DISCUSSIONS

4.1 Economic Aspect of Fisheries in Indonesia

Indonesia is a maritime country with the vastest sea territory and the greatest number of islands in the world. It possesses biological as well as non-biological economic potentials in the maritime sector. In addition to the above, nearly 65% of Indonesia's population live in coastal and maritime areas. According to data from the Directorate General of Fisheries, approximately 1.4 million people work as fishermen (Takwa, 2015). Furthermore, according to Brown, Bengen and Knight about 3.5 million

tons or about 70% of fisheries products originate from capture fisheries, while the remaining portion originates from aquaculture and freshwater fishing (Bailey, 1988) in other words, fisheries are one among economic resources of strategic importance for enhancing welfare (Patlis, 2007). Therefore, the fisheries sector needs to be protected and developed for the people's prosperity (Sitanela, 2018). As this research indicates, Indonesia's fisheries sector has provided a rather significant contribution to state revenues as illustrated in the following chart:



Note:

* *Preliminary Figures*

Chart. 1. Value of fisheries production in the period 2005-2009 (prior to the establishment of Special Fisheries Courts)

Source: Statistics and Information Center of the Ministry of Maritime Affairs and Fisheries of the Republic of Indonesia

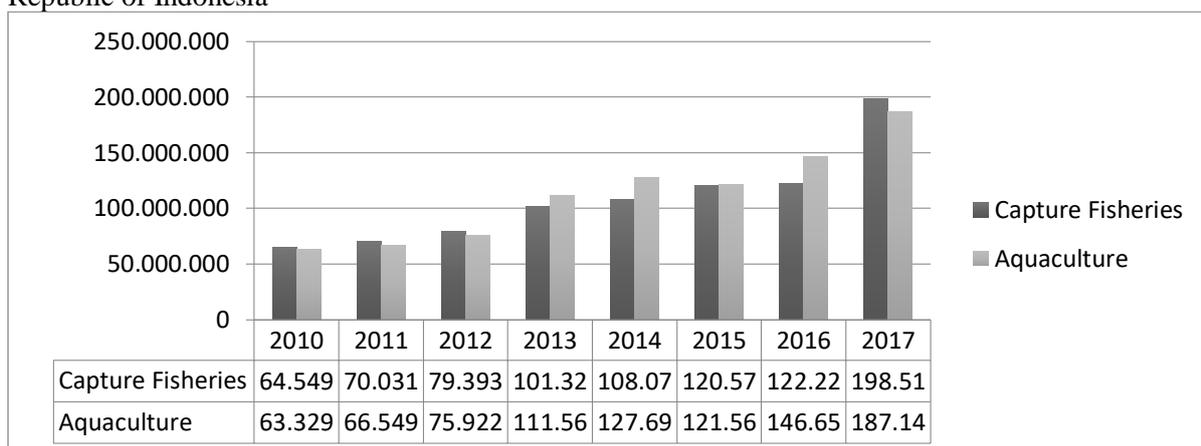


Chart. 2. Volume of fisheries production in the period 2010-2014 (following the establishment of Special Fisheries Courts)

Source: Statistics and Information Center of the Ministry of Maritime Affairs and Fisheries of the Republic of Indonesia

The maritime industry such as fisheries has contributed a quarter of the gross domestic product and has employed more than 15% of Indonesian manpower (Nurkholis et al, 2016). Exports in the fisheries sector from 2005 through 2008 demonstrated a trend of instability. Subsequently, in the period from 2009 through 2014, the volume and value of Indonesian fisheries exports continued to show constant increase.

	Year									
	2005	2006	2007	2008	2009*	2010	2011	2012	2013	2014
Volume (Ton)	857.922	926.477	854.329	911.674	796.700	1.103.576	1.159.349	1.229.114	1.258.179	1.274.982
Value (US \$1.000)	1.913.305	2.103.472	2.258.920	2.699.683	2.371.000	2.863.831	3.521.091	3.853.658	4.181.857	4.641.913

Note:

* *Preliminary Figures*

Table 1. Volume and export value of fisheries produce in the period 2005-2014

Source: Statistics and Information Center of the Ministry of Maritime Affairs and Fisheries of the Republic of Indonesia

As an archipelagic country, Indonesia possesses enormous fishery potentials as a driving force of economic growth (Dahuri & Dutton, 2000), among other things capture fisheries. Based on data of the Ministry of Maritime Affairs and Fisheries, Indonesia's fisheries production in the period 2005-2008 experienced an average growth of 2.20%. Subsequently, in the period 2010-2014, the average growth of Indonesia's fisheries production reached 4.64% as evident from the following table:

Units: Ton

Species	Year						Increasing Average (%)	
	2012	2013	2014	2015	2016	2017	2012-2017	2016-2017
Total Production	5.435.633	5.707.013	6.037.654	6.204.668	6.115.469	6.603.632	3,43	5,05
1. Shrimp	263.032	251.343	273.133	278.625	585.279	400.073	16,93	-31,64
2. Tunas	275.779	305.435	313.873	255.452	273.336	293.233	1,84	7,28
3. Skipjack Tunas	429.024	481.014	496.682	415.060	440.812	467.548	2,24	6,07
4. Eastern Little Tunas	432.138	451.048	515.571	524.387	476.233	471.009	2,02	-1,10
5. Other Fishes	3.684.633	3.848.064	3.988.564	4.121.272	4.078.425	4.172.331	2,54	2,30
6. Others	351.027	370.109	449.831	609.873	261.384	619.920	28,52	137,17

Table 2. Sea Capture Fisheries Production at Sea Based on Primary Commodities, 2012-2017

Source: Maritime affairs and fisheries in figures

4.2 The Condition of Special Fisheries Courts and Fisheries Related Criminal Law Enforcement in Indonesia

Fisheries Courts play a vital role in upholding justice and safeguarding Indonesia's maritime resources. As an archipelagic country, Indonesia has the right to enforce the law in criminal acts perpetrated within Indonesia's fisheries management territory (*WPP RI*). The purpose of the establishment of Fisheries Courts has been to enhance the effectiveness of law enforcement in criminal acts related to fisheries (Rachmawati & Mursinto, 2017). The structure and number of qualified human resources of Fisheries Courts have not been commensurate with the number of criminal cases related to fisheries. Up to **the present time, Indonesia has only ten Fisheries Courts** which are spread over District Courts in North Jakarta, Medan, Pontianak, Bitung, Tual, Tanjung Pinang Ranai, Ambon, Sorong, and Merauke respectively. In addition to the above, the limited number of *ad hoc* judges in the area of fisheries is not commensurate to the number of cases as well as the vast area of Indonesia's sea territory. To date, there are only 84 *ad hoc* judges in the area of fisheries spread over ten Fisheries Courts in Indonesia as evident from the following table:

No	Fisheries Court	2019		2020		2021		2022	
		Retired	Active	Retired	Active	Retired	Active	Retired	Active
1.	North Jakarta District Court	-	2	-	2	-	2	2	0
2.	Medan District Court	-	7	4	3	-	3	3	0
3.	Tanjung Pinang District Court	-	7	5	2	-	2	2	0
4.	Ranai District Court	-	2	1	1	-	1	1	0
5.	Pontianak District Court	-	5	4	1	-	1	1	0

6.	Bitung District Court	-	2	1	1	-	1	1	0
7.	Tual District Court	-	2	-	2	-	2	2	0
8.	Ambon District Court	-	3	-	3	-	3	3	0
9.	Sorong District Court	-	1	-	1	-	1	1	0
10.	Merauke District Court	-	2	-	2	-	2	2	0
TOTAL		-	33	15	18	-	18	18	0

Table 3. Total number of Fisheries Courts and *ad hoc* Judges in the period 2019-2022

Source: General Judicature Body, Supreme Court of the Republic of Indonesia

In recent years, Indonesia has been facing an increasing number of cases of illegal fishing perpetrated by various modus operandi (Khairi, 2017). Types of violations have been ranging from fishing without permit, fishing equipment violations, use of fake documents, use of explosives and electrocution, catching fish using *accu*, fishing ground violations, transshipment, to storing fish in a manner not compliant with *SIKPI*, as well as similar types of violations (Sodik, 2009). Illegal fishing is a crime which can potentially compromise the sustainability of fisheries (Koesrianti, 2008). In addition to the above, illegal fishing also poses a significant threat on the preservation of the sea and has a harmful effect on the stability of developing countries (Arnakim & Shabrina, 2019). Appropriate and legal fishing is important for maintaining the integrity of fisheries resources (Petrossian Clarke, 2014). Therefore, combatting illegal fishing activities has become Indonesia's main priority (Haken, 2011). During the era of the Minister of Maritime Affairs and Fisheries, Susi Pudjiastuti, the government has engaged in the sinking of the boats of illegal fishing perpetrators in an effort to create deterrent effect. However, such measure has not been successful in reducing the number of criminal acts related to fisheries; there was a considerably great number of various types of criminal cases in the area of fisheries during the period 2007 through 2013, as the table below indicates:

No	Court	2014	2015	2016	2017	2018	2019	Total
1.	Jakarta Utara District Court	3						3
2.	Medan District Court	1						1
3.	Pontianak District Court	1						1
4.	Tual District Court	2						2
5.	Tanjung Pinang District Court	3						3
6.	Ranai District Court	26						26
7.	Medan High Court		15	22	19	23	14	93
8.	Pekanbaru High Court		60	94	141	106	62	463
9.	Jakarta High Court		6	3	10	6	2	27
10.	Pontianak High Court		59	29	36	44	7	175
11.	Ambon High Court		15	2	3	3	0	23
12.	Jayapura High Court		15	12	7	15	6	55
13.	Mataram High Court		0	3	0	0	0	3

14.	Samarinda High Court			18	0	0	0	18
15.	Manado High Court			49	31	31	16	127
16.	Banda Aceh High Court				1			1
17.	Palembang High Court				3	1		4
18.	Surabaya High Court				11	9	3	23
19.	Kupang High Court				3	1	2	6
ACCUMULATION								1.054

Table 4. Number of Fisheries Criminal Cases in the Judiciary Body Under the Supreme Court 2014-2019

Source: The Supreme Court of the Republic of Indonesia Supreme Court

There is an urgent need for law enforcement in the area of fisheries in the context of upholding Indonesia's maritime sovereignty. The Indonesian Government has enacted Law Number 45 Year 2009 concerning Amendment to Law Number 31 Year 2004 concerning Fisheries. The said law mandates, among other things, the establishment of Fisheries Courts in an effort to enhance the effectiveness of law enforcement against crimes in the fisheries sector. Despite the establishment of Fisheries Courts, the number of violations perpetrated by fishing boats, foreign as well as domestic, remains high. Law enforcement measures had already been taken against criminal acts in the fisheries sector prior to the establishment of Fisheries Courts. Based on data from the Department of Maritime Affairs and Fisheries (*DKP*), during the period 2001-2005 a total of 1,061 criminal cases related to fisheries were prosecuted, as evident from the following chart:

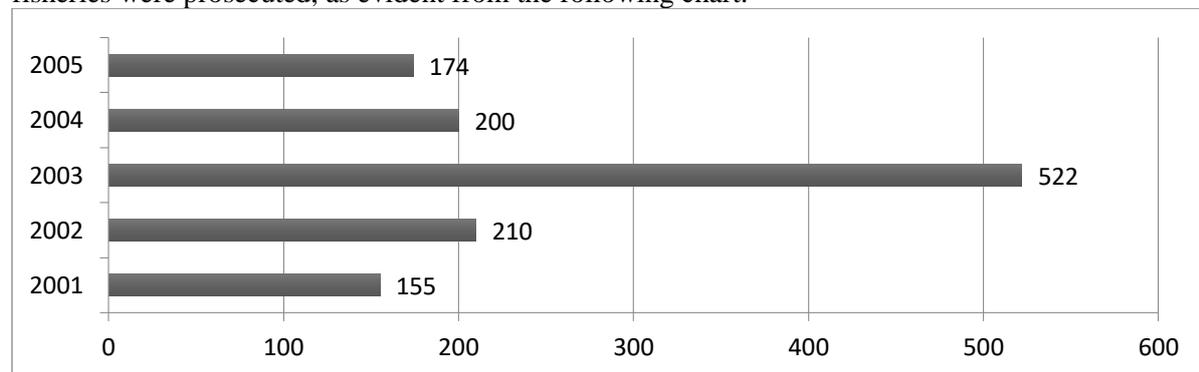


Chart 3. Data on criminal acts related to fisheries in the period 2001-2005

Source: Ministry of Maritime Affairs and Fisheries of the Republic of Indonesia

From 2014 to 2018, the Directorate General for Maritime and Fisheries Resources Supervision handled a total of 883 criminal cases related to fisheries, as the following chart indicates:

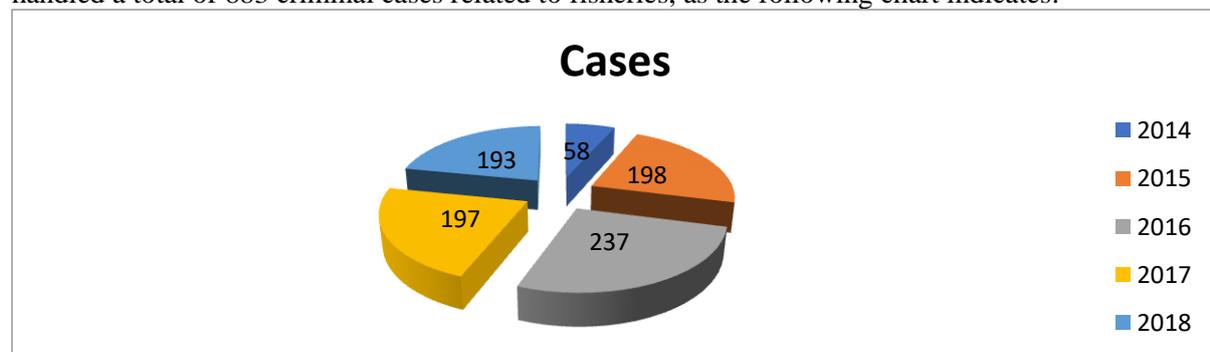


Chart 4. Data on the handling of criminal cases related to the maritime and fisheries sector in the period 2014-2018

Source: General Judicature Body, Supreme Court of the Republic of Indonesia

As the annual data of the General Judicature Body of the Supreme Court of the Republic of Indonesia indicates, during the period 2014 to 2018 a total of 2,133 criminal cases related to fisheries were prosecuted at the District Courts including Fisheries Courts, as evident from the chart below:

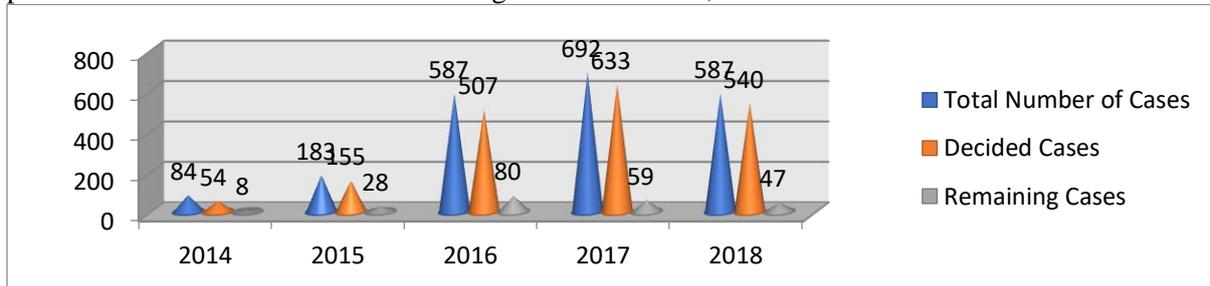


Chart. 5. Criminal case related to fisheries in the period 2014-2018

Source: General Judicature Body, Supreme Court of the Republic of Indonesia

Despite the establishment of Special Fisheries Courts at the respective District Courts, the number of criminal acts related to fisheries remained unabated. Based on annual data of the General Judicature Body of the Supreme Court of the Republic of Indonesia, in the period 2014 to 2018 a total of 2,133 criminal cases related to fisheries were examined by District Courts, including Fisheries Courts. The establishment of Fisheries Courts has not eliminated the various types of violations which continue to occur posing a threat on Indonesia’s fisheries potentials. In response to the proliferate number of criminal cases related to fisheries, such cases have been handled at the District Court concerned. It has been due to the fact that the number of fisheries *ad hoc* courts and judges is not commensurate with the number of criminal cases in this area. Failing to vest the District Courts with the jurisdiction to hear criminal cases related to fisheries would result in a backlog of cases in this area. Based on data of the General Judicature Body of the Supreme Court of the Republic of Indonesia, in the period 2016-2018 a total of 1,066 criminal cases related to fisheries were prosecuted at the District Court level (outside Fisheries Courts), as evident from the chart below:

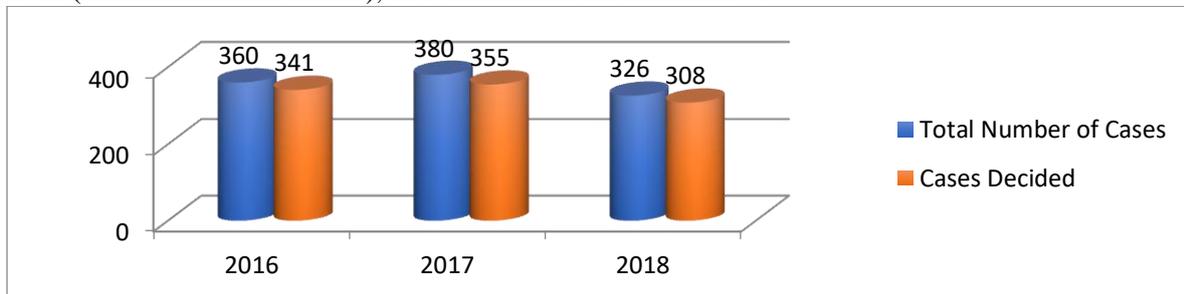


Chart. 6. Statistics on criminal acts related to fisheries outside the Fisheries Courts

Source: General Judicature Body, Supreme Court of the Republic of Indonesia

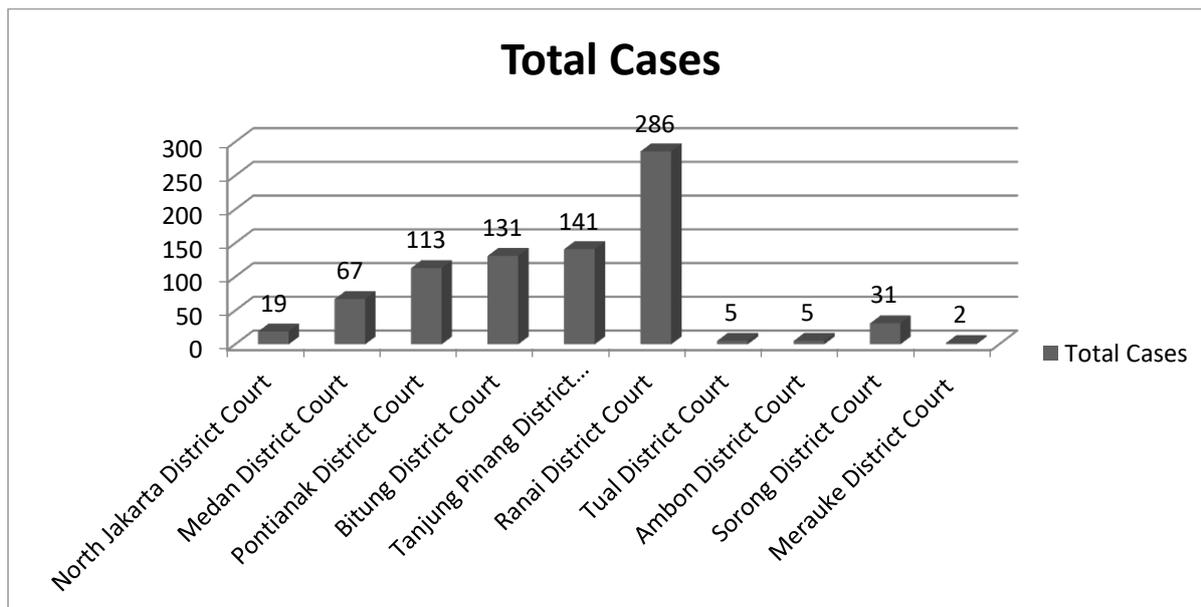


Chart 7. Criminal cases related to fisheries at Fisheries Courts in the period 2016-2018
Source: General Judicature Body, Supreme Court of the Republic of Indonesia

Based on the above chart, in the period from 2016 to 2018 the Ranai District Court handled the greatest number of cases, namely 286 criminal cases related to fisheries. It was due to the fact that the jurisdiction of the Ranai District Court includes Natuna Regency and Anambas Isles Regency. These two areas have a rather expansive sea territory with great fishery potentials and are located on the border with Malaysia and Vietnam. It is therefore not surprising that vessels from the said two neighboring countries have been predominant in perpetrating violations in the Natuna waters. From 2014 through May 2019, as many as 254 Vietnamese fishing vessels were sunk by the Ministry of Maritime Affairs and Fisheries of the Republic of Indonesia led by Minister Pudjiastuti (Sodik, 2009). At the same time, in 2019 a total of 14 Malaysian vessels were detained in the Natuna waters (Sagita, 2017). Apart from that, since taking office in 2014, Susi Pudjiastuti had sunk several boats engaging in illegal fishing in various sea territories of Indonesia as indicated in the table below:

Flag Carrier	Year 2015	Year 2016	Year 2017
Vietnam	35 Units	39 Units	88 Units
Philippines	35 Units	34 Units	-
Thailand	18 Units	19 Units	4 Units
Malaysia	8 Units	7 Units	8 Units
Papua New Guinea	-	2 Units	-
PRC	1 Unit	1 Unit	-
Nigeria	-	1 Unit	-
TOTAL	107 Units	107 Units	103 Units

Table 5. Total number of vessels sunk in the period 2015-2017
Source: PDSI KKP 2018

4.3 Current Condition of Existing Fisheries Courts in Indonesia

Under Law Number 48 Year 2009 concerning Judicial Power, the highest level of judicial power in Indonesia is implemented by the Supreme Court and the courts below it, as well as by the Constitutional Court. In the course of its development, special judicial bodies have been established under the Supreme Court, including the Fisheries Courts among others (Saptaningrum, 2019). The basis for the establishment of Fisheries Courts is set forth in the provisions of Article 71 of Law Number 31 Year 2004 amended by Law Number 45 Year 2009 concerning Fisheries. Fisheries Courts possess the authority to examine, adjudicate and decide criminal cases related to fisheries independently, or free from intervention by any party whatsoever (Chapsos, Koning, & Noortmann, 2019). The first Fisheries Courts were established in 2007 at the North Jakarta District Court, Medan District Court, Pontianak District Court, Bitung District Court and Tual District Court. In 2010,

Fisheries Courts were established at the Tanjung Pinang and Ranai District Courts respectively. Most recently, in 2014 Fisheries Courts were established at the Ambon, Sorong and Merauke District Courts respectively. It means that to the present time, Indonesia has as many as ten Fisheries Courts.

The Fisheries Courts were established in response to the inability of existing judicial bodies to tackle the various legal issues arising in the fisheries sector. It was expected that with the establishment of Fisheries Courts, Indonesia's fishery potentials as an important source of food and revenue for traditional communities would be safeguarded (Daud, 2019). Viewed from the economic perspective, Indonesia's maritime and fishery potentials amount to USD1.2 trillion per year. At the same time, fishery resource potentials at sea total 7.3 tons per year. Such enormous fishery potentials have caused Indonesia to become target of foreign as well as domestic fishing vessels engaging in illegal fishing. In 2015, the Ministry of Maritime Affairs and Fisheries identified 1,132 vessels in violation of fishing equipment regulations (Hanich, Teo, & Tsamenyi, 2010). Consequently, Fisheries Courts bear responsibility in the context of safeguarding Indonesia's abundant fish resources by enforcing the law against violations in using such fish resources.

District Courts have been handling a greater number of criminal cases related to fisheries as opposed to Fisheries Courts (Chart 3). It is quite understandable, considering the limited number of Fisheries Courts available currently. Another issue in the enforcement of criminal cases related to fisheries has been the application of the criminal punishment of imprisonment. The provisions of Article 102 of Law Number 31 Year 2004 concerning Fisheries set forth that the criminal punishment of imprisonment is not applicable to criminal acts related to fisheries perpetrated within Indonesia's fisheries management territory, unless there is an agreement between the Indonesian Government and the government of the foreign country concerned. The imposition of criminal punishment of imprisonment for acts of illegal fishing perpetrated within Indonesian Exclusive Economic Zone (*ZEEI*) is only applicable to perpetrators of Indonesian nationality, while it is not enforceable towards foreign nationals committing crime within the *ZEEI*. Furthermore, the criminal punishment of fine cannot be substituted with confinement, hence convicted persons end up not paying the fine. Such are the implications of the application of Article 73 paragraph (3) of UNCLOS and Supreme Court Circular Letter (*SEMA*) No. 03/BUA.6/HS/SP/XII/2015 concerning the Enactment of the Wording Decided Upon in the Supreme Court Chamber Plenary Meeting. The said *SEMA* serves as guideline for the implementation of functions of the courts deciding that the defendant, perpetrator of illegal fishing, can only be imposed with the criminal punishment of fine without the criminal punishment of confinement as substitution, thus creating an increasing window of opportunity for perpetrators to avoid paying a fine. Furthermore, limiting the judge's authority to impose the criminal punishment of imprisonment and confinement does not correspond to the purposes of UNCLOS. As evident in its preamble, in principle the purpose of UNCLOS is to ensure the materialization of a just, efficient, conservative use of maritime resources, as well as to guarantee the protection and preservation of the maritime environment (Hidayat, 2019). Therefore, as a matter of legal framework, the UNCLOS is considered to be both inappropriate as well as inadequate in the context of providing for the conservation and exploitation of fishery resources (Babu, 2015).

4.4 Effectiveness of Fisheries Courts in Enforcing the Law against Criminal Acts related to Fisheries in Indonesia

Effective law enforcement involves a higher degree of compliance with the rules (Joyner, 1998). Effective law enforcement is not limited to simply enhancing the legal capacity to catch perpetrators, rather, it also prioritizes prevention measures (Karper & Lopes, 2014) and involving the role of the community becomes a necessity (Anwar & Shafira, 2020). Thus, in addition to imposing punishment on perpetrators of criminal acts related to fisheries, Fisheries Courts are also expected to be able to induce compliance with rules in Indonesia's fishery territories. The great number of criminal cases in the fisheries sector examined by District Courts, including Fisheries Courts, is an indicator of the low level of compliance with fishery rules in Indonesia. Furthermore, during the era of Minister of Maritime Affairs and Fisheries, Susi Pudjiastuti, as many as 16 modus have been identified practiced by fishing vessels in Indonesia, namely modification of vessel without Ministerial approval, illegal transshipment, incorrect catch reporting, tax non-compliance, sailing without permit, discrepancy

between budget allocation and realization, human rights violations, ship crew exploitation, mark down practices, violation of fishing routes, using illegal subsidized fuel, the use of prohibited fishing equipment, the use of fish aggregating device without a permit and illegal charges (Catedrilla, 2012).

Law enforcement must possess a high level of effectiveness in order to be able to create deterrent effect to perpetrators, particularly in the area of fisheries. However, in reality, Fisheries Courts have not been able to create such deterrent effect. In fact, since the establishment of Fisheries Courts the number of criminal acts related to fisheries has been on the rise in Indonesia. Before Fisheries Courts were established, a total of 1,061 of fisheries criminal cases were recorded in the period 2001-2005 (Chart 1), whereas following the establishment of Fisheries Courts the total number of fisheries criminal acts increased to 2,133 cases in the period 2014-2018. Such numbers adequately represent the Fisheries Courts' failure in enforcing the law in the fisheries sector. Furthermore, according to the theory of Lawrence M. Friedman, the effectiveness of law enforcement agencies can be measured based on three indicators, namely legal substance, legal structure and legal culture (Movanita, 2019); in other words, it can be considered that law enforcement is effective if it meets the above mentioned three indicators. Fisheries Courts arguably constitute part of the legal structure, hence this research is focused on the second indicator, namely the legal structure as an indicator for assessing the effectiveness of Fisheries Courts. Legal structure includes judges, the jurisdiction of courts, hierarchy of the judicature, and the various groups of people related to the various types of judicature (Roper & Friedman, 1976). At the present time, there are ten Fisheries Courts in Indonesia spread over the District Courts of North Jakarta, Medan, Pontianak, Bitung, Tual, Tanjung Pinang Ranai, Ambon, Sorong and Merauke respectively (Table 1). The said number of Fisheries Courts is by far non-commensurate with the number of fisheries criminal cases. Since 2007 through 2013 as many as 821 fisheries criminal cases were recorded (Table 2). At the same time, annual data of the General Judicature Body of the Supreme Court of the Republic of Indonesia in the period 2014-2018 indicate as many as 2,133 fisheries criminal cases (Chart 2). As a result of such limited capacity of Fisheries Courts, in the period 2016-2018 a total of 1,066 fisheries criminal cases were adjudicated outside the Fisheries Courts, which were handled by the District Courts concerned (Chart 3). Ideally, fisheries criminal cases should be adjudicated by the Fisheries Courts, considering that hearings at the Special Fisheries Courts involve two *ad hoc* judges with specific competence in the area of fisheries. Furthermore, the effectiveness of Fisheries Courts is assessed by looking at the number judges. Pursuant to Lawrence M. Friedman's theory, judges are a component of the legal structure. Whereas according to Kess Schuit, one of the components of the legal system are officials, in this particular case fisheries *ad hoc* judges (Friedman, 1975). Based on the findings of this research, the total number of fisheries *ad hoc* judges is currently 84 persons distributed over ten Fisheries Courts in Indonesia. Out of the said 84 judges, 69 will remain active until 2021, while the rest of them will have retired by that time. Compared to the number of fisheries criminal cases, the current number of judges is far from ideal. For instance, at the Ranai District Court there are three *ad hoc* judges, whereas in the period 2016-2018 the Ranai District Court adjudicated 286 cases (Chart 4). The limited number of fisheries *ad hoc* judges does not allow for the optimal handling of cases. In fact, it leads to the over-fatigue of judges, diminishes their concentration, resulting in inadvertent inaccuracies in adjudicating cases thus affecting the quality of examination and judgment (Schuyt, 1983). In order to alleviate the load of Fisheries Courts, by virtue of the transitional provisions of Law Number 31 Year 2004 concerning Fisheries, fisheries criminal acts perpetrated outside the Fisheries Courts' jurisdiction are adjudicated by the District Court concerned. However, in reality this strategy has not proven effective, considering that since 2016 to 2018 there has been a **backlog of 62 cases**. It is conceivable, considering that adjudication by District Courts is not limited to fisheries criminal acts; rather, it also includes general criminal acts. **For the purpose of assessing the effectiveness of Special Fisheries Court in Indonesia, this article provides further comparison of data viewed from the economic and law enforcement perspective, prior to and following the establishment of Special Fisheries Courts, as follows:**

4.4. 1 The Economic Aspect of National Fisheries

The fisheries sector is an important contributor to Indonesia's food security. The most recent research indicates that Indonesia ranks the eighth among the most dependent countries on the fisheries sector, Law enforcement by Special Fisheries Courts plays an important role in protecting Indonesia's fishery potentials. The competence of Special Fisheries Court includes violations against aquacultures, capture fisheries, the movement of fish out of and into Indonesian territory, prevention of environmental pollution which damages fishery resources and the like. At the present time, however, Special Fisheries Courts have only be adjudicating criminal cases involving capture fisheries, while there are numerous other forms of crime which are harmful to the Indonesian economy such as the smuggling of lobster seed, which are yet to be referred to the Special Fisheries Court. Prior to the establishment of Special Fisheries Courts, Indonesian fisheries' production value in the period 2005-2008 continued to increase, both in terms of capture fisheries as well as aquacultures (Chart 1). In the period following the establishment of Special Fisheries Courts under Law Number 45 Year 2009, the production value of Indonesia's capture fisheries and aquacultures continue to grow (Chart 2).

Subsequently, the volume and value of fishery product exports from 2005 to 2009 or during the period preceding the establishment of Special Fisheries Courts showed a tendency to fluctuate (Table 1). Between 2007 and 2009 the volume and value of fisheries product exports declined. On the other hand, in the period 2010-2014 or following the establishment of Special Fisheries Court, the volume and value of fisheries product exports showed a constant increase (Table 1). A total average increase of 2.20% occurred in capture fisheries production in the period 2005-2008 (Table 2). Whereas in the period 2009-2014, the commodity based production of capture fisheries experienced an average increase of 4.64% (Table 3).

4.4. 2 The Law Enforcement Aspect

There has been an improvement in legal awareness in Indonesia, however, the law management and enforcement strategy is yet to be optimally applied to illegal fishing practices even though they are prohibited by law (Setiyono, 2018). The existing fisheries legal framework in Indonesia still lacks adequacy in dealing with the issues which arise, thus causing the degradation of coastal and maritime resources (Soede, Cesar, & Pet, 1999). This section presents a comparison of the total number of fisheries criminal cases prior to and following the establishment of Special Fisheries Courts. **In the period 2001-2005 or prior to the establishment of Special Fisheries Court there were 1,252 fisheries criminal acts (Chart 3). Whereas from 2014-2018 or after the Special Fisheries Courts were established, based on annual data of the General Judicature Body of the Supreme Court of the Republic of Indonesia, a total of 2,133 fisheries criminal cases were adjudicated by District Courts, including Fisheries Courts (Chart 5). The above comparison presents an adequate basis for demonstrating that a rapid and steady increase took place in the number of fisheries criminal acts following the establishment of Special Fisheries Court. Such increase in the number of fisheries criminal acts was affected by the increased number of fishery patrol boats. Fishery patrol boats are the main component in fishery oversight. The presence of patrol boats is also a manifestation of the sovereignty of national law at sea (Dirhamsyah, 2006). Before Special Fisheries Courts were established, the total number of fishery patrol boats had been limited, thus producing a lower level of operational output. Up to the year 2009, there were 72 units of fishery patrol boats. In the subsequent period of 2010-2017 the number of fisheries patrol boats totaled 132 units distributed in several areas.**

In fact, in addition to the Police, the Ministry of Maritime Affairs and Fisheries, and the Navy, Indonesia has a special agency which has the responsibility to investigate *illegal fishing activities*, namely the Indonesia Coast Guard. Considering the level of violations which remain high in Indonesia's fisheries management territory, there is a need to optimize the function of the Indonesia Cost Guard (Krisnafi et al, 2017). Furthermore, agencies which have the function of safeguarding the sovereignty of Indonesia's sea territory need to study potential conflicts affecting maritime security in support of government policy aimed at maritime development (Hehanusa et al, 2014).

4.5 Strategy for Creating Effective Law Enforcement Against Fisheries Criminal Acts

Illegal fishing is not only done by foreign fishermen but also done by local fishermen. Illegal fishing crimes committed by local fishermen generally involve the falsification of documents on ships or fishing vessels that do not have any documents (Brotosusilo, 2016). The General Secretary of the United Nations (UN) has remarked that *illegal fishing* is one among the threats against maritime security (Shafira, 2017). In addition to the above, illegal fishing creates a hazard in livelihood and food security (Vrancken, Witbooi, & Glazewski, 2019). In 2014 FAO recorded that 61.3% of fish stocks are subject to excessive exploitation (Hanich, Tsamenyi, & Parris, 2010). From the beginning when Joko Widodo took office in 2014, maritime sovereignty was set as the main priority of his government. President Joko Widodo's strategic plan is to make Indonesia a maritime country "again" (Tuerk, 2015). In order to keep in step with constantly evolving maritime law which continues to create new challenges (Chapsos & Malcolm, 2017), President Joko Widodo introduced the concept of "*global maritime fulcrum*", putting emphasis on firm enforcement measures against perpetrators of illegal fishing. President Joko Widodo declared zero tolerance of fisheries criminal acts, illegal fishing in particular (Harrison, 2011). Subsequently, Minister Susi Pudjiastuti determined the priority of detaining vessels engaging in *illegal fishing* which, apart from inflicting losses, also serve as instruments of perpetrating other crimes such as human and drug trafficking (Juned, Samhudi, & Lasim, 2019). For the purpose of protecting Indonesia's fishery potentials, Minister Susi Pudjiastuti adopted the policy of sinking vessels (Chapsos & Hamilton, 2019) which engage in illegal fishing. The said policy demonstrated Minister Susi Pudjiastuti's strong stance against illegal fishing activities; in fact, in 2015 Minister Susi Pudjiastuti proposed to treat illegal fishing as transnational crime (Ikrami & Bernard, 2018). As a result of the government's serious approach to combatting illegal fishing activities, Fisheries Courts came to the forefront in the context of law enforcement against criminal acts related to fisheries.

Researchers, policy makers and law enforcement agencies all over the world have been striving to come up with an effective strategy to bring criminal activities, including illegal fishing, under control (Yuliatiningsih et al, 2018). Special Fisheries Courts are subsystems of the criminal judicature and law enforcement agencies in the area of fisheries. As described above, law enforcement by Fisheries Courts against criminal acts related to fisheries is still encountering various issues such as, among other things, the limited number of Courts and *ad hoc* judges at Special Fisheries Courts. The various above described issues most certainly affect the effectiveness of Fisheries Courts in fisheries criminal law enforcement, thus calling for a strategy for the effective handling of criminal cases at Fisheries Courts. The following strategy is proposed in this article, namely:

1) Establishment of Fisheries Courts in all areas with sea territory

Indonesia's fishery potentials are not limited to several areas determined as fisheries management territories, rather, fishery potentials can be found in every sea territory in Indonesia. The establishment of Fisheries Courts has been mandated in the Fisheries Law, namely in Article 71 paragraph (1), which reads as follows: "with this law Fisheries Courts shall be established with the authority to examine, adjudicate and issue verdicts on criminal acts in the fisheries sector." [Unofficial translation] At the same time, the provisions of paragraph (3) read as follows: "for the first time, Fisheries Courts as intended in paragraph (1) shall be established at the District Courts of North Jakarta, Medan, Pontianak, Bitung, and Tual respectively." [Unofficial translation] Furthermore, in 2010 Fisheries Courts were established at the Tanjung Pinang District Court and the Ranai District Court. In 2014 Fisheries Courts were set up at the District Courts of Ambon, Sorong and Merauke respectively. With Indonesia's vast sea territory and the increasing complexity of criminal acts related to fisheries, it is certainly inadequate to have Fisheries Courts only in ten areas following the jurisdiction of the respective District Courts concerned. Therefore, Fisheries Courts should be ideally set up in every fisheries management territory. In addition to the above, the legal basis for the establishment of Fisheries Courts continues to be problematic, as it laid down only in a single article of the Fisheries Law. According to the provisions of Article 24 of the 1945 Constitution, judicial bodies under the Supreme Court must be established based on a specific law. Bearing in mind that they have not been established in compliance with the provisions of Article 24 of the 1945 Constitution, the decisions of Fisheries Courts do not have

binding legal force. Accordingly, the establishment of Fisheries Courts in the future needs to be provided for in a specific law.

2) Extending the jurisdiction of *ad hoc* judges

Ad hoc judges in the area of fisheries possess specific competence in the area of fisheries. Therefore, in order to issue ideal verdicts which reflect justice, utility and legal certainty, every criminal case related to fisheries should be examined, adjudicated and decided by *ad hoc* judges. Apart from that, it is expected that with the competence of *ad hoc* judges in the field of fisheries they will be able to issue verdicts which protect fishery resources and take into account all interests (Dujin, Kashirin, & Sloom, 2014). As the number of *ad hoc* judges in the fisheries sector is still extremely limited, District Courts examining criminal cases related to fisheries can invite *ad hoc* judges from the closest location to the territory of the District Court concerned. There are four *WPP RI* points within the territory of Sumatra, namely *WPP RI* 572 in the Western Coast area with Fisheries Court in Medan, 571 and 711 in the Eastern Coast with Fisheries Courts in Ranai and Tanjung Pinang, and 712 in the Bangka Belitung and South Sumatra area with alternative Fisheries Courts namely in Ranai, Tanjung Pinang, and North Jakarta. In the event that a fisheries criminal act occurs outside the jurisdiction of a Fisheries Court, an opportunity needs to be given for such case to be adjudicated by inviting a fisheries *ad hoc* judge from the closest territory. For instance, if a fisheries case occurs in Lampung Province, the Class IA Tanjung Karang District Court needs to invite fisheries *ad hoc* judges from North Jakarta in accordance with *WPP RI* 712.

3) *Ad hoc* judges at the appeals and cassation level

The institutional aspect of Fisheries Courts is provided for under Article 78 paragraph (1) and paragraph (2), setting forth that Judges of Fisheries Courts consist of career judges and *ad hoc* judges. The subsequent paragraph sets out further that the panel of judges shall consist of 2 (two) *ad hoc* judges and 1 (one) career judge. The question that arises is whether examination at the appeals and cassation level would also involve *ad hoc* judges, because the subsequent articles remain silent on the involvement of *ad hoc* judges at the appeals as well as at the cassation level, while the examination procedure at the Fisheries Courts recognizes three stages, namely examination at the first instance (District Court – *PN*), at the appeals level (High Court – *PT*), and at the cassation level (Supreme Court - *MA*). The absence of *ad hoc* Judges at the appeals and cassation level is also likely to affect the expeditiousness in case handling, and issuing verdicts at these two levels of the judiciary. Therefore, new provisions need to be added in the regulation on Fisheries Courts, namely by including the component of *ad hoc* Judges not only at District Court level, but also at the appeals and cassation level.

5. CONCLUSION

It is highly important to assess the effectiveness of Fisheries Courts, not only in order to optimize criminal law enforcement in the fisheries sector, but also in order to inform the public about the performance of the Fisheries Courts in protecting Indonesia's fishery resources. One of the Indonesian Government's controversial policies has been the sinking of vessels engaging in illegal fishing during the era of Minister Susi Pudjiastuti. However, such policy is yet to prove effective in enhancing compliance with the rules in Indonesia's fisheries management territories. The results of this research indicate that there had been a smaller number of fisheries criminal acts prior to the establishment of Special Fisheries Courts compared to the period subsequent to the establishment of the same. However, Special Fisheries Court have thus far managed to play a rather significant role in enhancing the national economy in the fisheries sector.

LIMITATION AND STUDY FORWARD

The research forward to proposes several strategies namely the establishment of Special Fisheries Courts in all areas prone to illegal fishing, extending the jurisdiction of *ad hoc* judges, and appointing *ad hoc* judges at the appeals and cassation level.

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