



**UPAYA PENEGAKAN HUKUM TERHADAP *ILLEGAL, UNREPORTED AND UNREGULATED FISHING* DI ZONA EKONOMI EKSKLUSIF INDONESIA MELALUI PENERAPAN *PROMPT RELEASE PROCEDURE***

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**ABSTRAK**

Penegakan hukum terhadap *Illegal, Unreported And Unregulated Fishing (IUU Fishing)* di Zona Ekonomi Eksklusif Indonesia (ZEE Indonesia) yang masih menggunakan pendekatan pidana berupa hukuman badan telah bertentangan dengan ketentuan di dalam *United Nations Convention on the Law of the Sea 1982 (UNCLOS 1982)*, sehingga berdampak pada ketegangan diplomatik antara Indonesia dan negara lain. Penelitian ini ditujukan untuk meneliti Upaya penegakan hukum terhadap *IUU Fishing* Di ZEE Indonesia Melalui Penerapan *Prompt Release Procedure* dengan rumusan masalah (1) Bagaimana penerapan *Prompt Release Procedure* di dalam Penegakan hukum Indonesia terhadap *IUU Fishing* oleh kapal asing di ZEE Indonesia; (2) Apa saja hambatan dalam penerapan *Prompt Release Procedure* terhadap *IUU Fishing* di ZEE Indonesia. Penelitian ini merupakan penelitian dengan metode hukum normatif empiris. Pendekatan penelitian yang digunakan adalah pendekatan perundangan, pendekatan konsep, pendekatan kasus dan pendekatan perbandingan. Teknik analisa data yang digunakan terhadap bahan hukum primer adalah *editing, coding, reconstructing* dan Teknik *content analysis* berdasarkan *script interview* terhadap hasil wawancara. Adapun hasil penelitian ini menunjukkan bahwa *Prompt Release Procedure* sebagai mekanisme penegakan hukum terhadap *IUU Fishing* di ZEE Indonesia sampai saat ini belum pernah diterapkan, selama ini penegakan hukum yang diterapkan adalah dengan pendekatan pidana berdasarkan Pasal 93 ayat (2) Undang-Undang Nomor 45 Tahun 2009 tentang perubahan atas Undang-Undang Nomor 31 Tahun 2004 tentang Perikanan (UU Perikanan), ketentuan sanksi ini bertentangan dengan apa yang diatur berdasarkan Pasal 73 ayat (3) dan (4) UNCLOS 1982 yang melarang adanya hukuman badan terhadap awak kapal pelaku *IUU Fishing* di ZEE tanpa adanya perjanjian internasional antar negara terlebih dahulu. Ketentuan *Prompt Release Procedure* di diatur di dalam Pasal 13 dan 15 Undang-Undang Nomor 5 Tahun 1983 tentang Zona Ekonomi Eksklusif Indonesia (UU ZEEI) dan Pasal 104 UU Perikanan, namun pengaturan ini masih memerlukan penyempurnaan sebagai dasar hukum penerapan *Prompt Release Procedure* di Indonesia. Di samping itu, penelitian juga menunjukkan bahwa belum diterapkannya *Prompt Release Procedure* terhadap *IUU Fishing* oleh kapal asing di ZEE Indonesia disebabkan oleh beberapa hambatan yang meliputi pertama struktur hukum yang terdiri dari belum terintegrasinya Lembaga pelaksana *Prompt Release Procedure* dengan sistem peradilan perikanan Indonesia serta masih terjadi tumpang tindih kewenangan lembaga penegak hukum di ZEE; kedua, substansi hukum yang terdiri dari pengaruh sistem hukum Eropa Kontinental dalam sistem peraturan perundang-undangan Indonesia yang mendominasi, dan pengaturan *Prompt Release Procedure* yang belum diakomodir secara lengkap di dalam UU Perikanan serta belum ada Perjanjian Internasional terkait pengelolaan ZEE antara Indonesia dengan negara lain; dan terakhir Budaya hukum yang terdiri dari paradigma pembentuk peraturan perundang-undangan dan lembaga negara dalam memandang *Prompt Release* masih berfokus pada fungsi lain penyitaan kapal dan belum mengarah pada upaya pengembalian kerugian negara, adanya pemahaman penegak hukum yang masih menyamakan sifat kedaulatan antara Laut Teritorial dengan ZEE, dominasi pendekatan pidana dalam Peradilan Perikanan saat ini masih sebagai *Ultimum Remedium* serta masih adanya dualisme pemahaman hakim dalam memberikan sanksi terhadap awak kapal asing.

**Kata Kunci:** *IUU Fishing, ZEE Indonesia, Penegakan Hukum, Prompt Release Procedure, Kapal Asing.*

# **LAW ENFORCEMENT EFFORTS AGAINST ILLEGAL, UNREPORTED AND UNREGULATED FISHING IN INDONESIA'S EXCLUSIVE ECONOMIC ZONE THROUGH THE IMPLEMENTATION OF THE PROMPT RELEASE PROCEDURE**

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## **ABSTRACT**

Law enforcement against Illegal, Unreported, and Unregulated Fishing (IUU Fishing) in Indonesia's Exclusive Economic Zone (EEZ) that still uses a criminal approach in the form of corporal punishment is contrary to United Nations Convention on the Law of the Sea (UNCLOS 1982), thereby causing diplomatic tensions between Indonesia and other countries. This study aims to examine law enforcement efforts against IUU Fishing in the Indonesian EEZ through the application of the Prompt Release Procedure with the following research questions: (1) How is the Prompt Release Procedure applied in Indonesian law enforcement against IUU Fishing by foreign vessels in the Indonesian EEZ? (2) What are the obstacles to the application of the Prompt Release Procedure against IUU Fishing in the Indonesian EEZ? This research is a study using a normative empirical legal method. The research approaches used are the legislative approach, conceptual approach, case approach, and comparative approach. The data analysis techniques used for primary legal materials are editing, coding, reconstructing, and content analysis techniques based on interview scripts. The results of this study show that the Prompt Release Procedure as a law enforcement mechanism against IUU Fishing in Indonesia's EEZ has never been implemented to date. So far, law enforcement has been carried out using a criminal approach based on Article 93 paragraph (2) of Law Number 45 of 2009 concerning amendments to Law Number 31 of 2004 concerning Fisheries. This sanction provision contradicts the provisions of Article 73 paragraphs (3) and (4) of UNCLOS 1982, which prohibits corporal punishment of crew members involved in IUU fishing in the EEZ without a prior international agreement between countries. The Prompt Release Procedure is regulated in Articles 13 and 15 of Law No. 5 of 1983 concerning Indonesia's Exclusive Economic Zone (ZEEI Law) and Article 104 of the Fisheries Law, but this regulation still needs to be refined as the legal basis for the application of the Prompt Release Procedure in Indonesia. In addition, the study also shows that the Prompt Release Procedure has not been applied to IUU fishing by foreign vessels in the EEZ due to several obstacles, including, first, the legal structure, which consists of the lack of integration of the Prompt Release Procedure implementing agency with the Indonesian fisheries justice system and the overlapping authorities of law enforcement agencies in the EEZ; second, the legal substance consisting of the influence of the European Continental legal system in Indonesia's dominant regulatory system, and the Prompt Release Procedure provisions that have not been fully accommodated in the Fisheries Law and the absence of international agreements related to EEZ management between Indonesia and other countries; and finally, the legal culture consisting of the paradigm of regulatory and state institutions in viewing Prompt Release, which still focuses on other functions of vessel seizure and has not yet led to efforts to recover state losses; the understanding of law enforcement officials who still equate the nature of sovereignty between the Territorial Sea and the EEZ; the dominance of a criminal approach in the current Fisheries Court as *Ultimum Remedium*; and the dualism in judges' understanding in imposing sanctions on foreign crew members.

**Key Word: IUU Fishing, Indonesian EEZ, Law Enforcement, Prompt Release Procedure, Foreign Vessel**