

THE CONCEPT OF CORPORATE CRIMINAL LIABILITY IN THE FISHERIES SECTOR AFTER THE ENACTMENT OF THE JOB CREATION LAW

Nurul Hudi¹, Muhadar², Otto Yudianto³

^{1,2,3}Doctoral program of law, 17 Agustus 1945 University, Surabaya

Abstract

Various kinds of criminal acts in the fisheries have emerged, consisting of individuals and or corporations. The existence of a corporation is an obstacle in determining criminal responsibility. The purpose of this research is to analyze the concept of corporate criminal liability in the fisheries sector. The research method used is normative juridical with statutory and conceptual approaches. The results of the study found differences in the concept of corporate criminal responsibility after the enactment of the Job Creation Law where previously criminal acts of fishing could be carried out by corporations, and criminal responsibility was carried out by administrators. After the enactment of the Job Creation Law, the concept of corporate criminal responsibility for fisheries follows the development of the third stage of corporate criminal responsibility, in which the corporation commits a crime against the responsible corporation.

Keywords: Corporations; Fisheries; Job Creation; Responsibility

Abstrak

Berbagai macam tindak pidana di bidang perikanan telah bermunculan yang terdiri dari perorangan dan atau korporasi. Keberadaan korporasi merupakan kendala dalam menentukan pertanggungjawaban pidana. Tujuan dari penelitian ini adalah untuk menganalisis konsep pertanggungjawaban pidana korporasi di sektor perikanan. Metode penelitian yang digunakan adalah yuridis normatif dengan pendekatan perundang-undangan dan konseptual. Hasil penelitian menemukan perbedaan konsep pertanggungjawaban pidana korporasi setelah Penerapan UU Cipta Kerja dimana sebelumnya tindak pidana penangkapan ikan dapat dilakukan oleh korporasi, dan pertanggungjawaban pidana dilakukan oleh pengurus. Setelah pemberlakuan UU Cipta Kerja, konsep pertanggungjawaban pidana korporasi perikanan mengikuti perkembangan pertanggungjawaban pidana korporasi tahap ketiga, yaitu korporasi melakukan kejahatan terhadap korporasi yang bertanggung jawab.

Kata kunci: Korporasi, Perikanan, Cipta Kerja, Pertanggungjawaban

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Introduction

On November 2, 2022, the President of the Republic of Indonesia has signed Law Number 11 of 2022 on Job Creation (hereinafter referred to as the Job Creation Law). According to the Government, the Job Creation Law is a legal breakthrough in the formation of statutory regulations using the *Omnibus Law* method, the method or concept of making statutory regulations by combining several regulations with different regulatory substances into one major regulation, and when that regulation promulgation has the consequence of revoking several regulations that have been in effect previously, either partially or in whole (Setiadi, 2020).

The Job Creation Law was established as an effort to respond to the need for legal certainty in the investment sector in Indonesia by overhauling several articles in various laws through one law and is expected to be able to reach across

sectors that are under the affairs of various institutions, agencies or ministries (Kristian, 2014). The purpose of the Job Creation Law is to improve the industrial economic sector in society which will have an impact on creating jobs for the community.

The composition of the Job Creation Law consists of 15 Chapters collected on 1,187 pages and 11 sectors. The 11 clusters contained in the Job Creation Law are as follows starting from Chapter III which contains Improving Investment Ecosystems and Business Activities; Chapter IV, Employment; Chapter V, Ease of Protection and Empowerment of Micro, Small, and Medium Enterprise Cooperatives; Chapter VI, Ease of Doing Business; Chapter VIIA, National Fiscal Policy Relating to Taxes and Levies; Chapter VII, Research and Innovation Support; Chapter VIII, Land Procurement; Chapter IX, Economic Areas; Chapter X, Central Government Investment and Ease of National Strategic Projects, and Chapter XI,

One of the priority business sectors in the Job Creation Law is the marine and fisheries sector. There are at least 4 (four) maritime and fisheries sector laws that have been revised through the Job Creation Law, such as Law Number 45 of 2009 on Amendments to Law Number 31 of 2004 on Fisheries (Fisheries Law), Law Number 1 of 2014 on Amendments to Law Number 7 of 2007 on Management of Coastal Areas and Small Islands (UUWP3K), Law Number 32 of 2014 on Maritime (Marine Law) and Law Number 7 of 2016 on Protection and Empowerment of Fishermen, Fish Farmers and Salt Farmers (*UU Cipta Kerja & Sektor Perikanan*, 2020).

Changes to the marine and fisheries sector in the Copyright Law are: 1) Simplification of business licensing; 2) Risk based approach in licensing; 3) Changes to the definition of small-scale fishermen who were previously qualified based on the size of the vessel used according to the Fisheries Law, which is <5 GT, as well as the Fishermen Protection Law, which is <10 GT, amended with the definition of small-scale fishermen as people whose livelihood is fishing to meet the necessities of daily life both using fishing vessels and not using fishing vessels; 4) Granting of permits previously based on Ministerial Regulations is amended through Government Regulations; 5) Removing several forms of permits such as SIPI (fishing license), SIUP (fishery business license), SIKPI (fishing vessel permit) into one permit, namely business permits issued by the central government or local government according to their authority; 6) The operation of foreign fishing vessels in Indonesian territory is not obligatory to use or employ Indonesian crew members of at least 70 percent; 7) Changes in the types of sanctions against operating fishing vessels without accompanying licensing documents, modifying fishing vessels without approval and operating vessels that are not registered as Indonesian fishing vessels can only be subject to administrative sanctions, which previously could be in the form of fines or criminal sanctions, and changes in criminal sanctions for corporations that commit criminal acts according to the Fisheries Law from only being imposed on managers to being imposed on managers and corporations.

The Fisheries Law is enacted to protect potential fish resources from exploration activities and all forms of possible violations of law or Illegal,

Unreported, and Unregulated Fishing (IUU Fishing) which can be detrimental to the state and aquatic ecosystems. Potential losses for the state that can be saved by the government throughout 2021 reach 1.1 trillion Rupiah obtained from the capture of 114 vessels from Indonesia and 52 foreign vessels (Syukra, 2021).

Illegal fishing activities in the Republic of Indonesia's Fisheries Management Area (WPP-RI) have become a common sight, and the perpetrators are not only small-scale fishermen but are also carried out by large capital companies (corporations) (Shidarta, 2019). The provisions in the Fisheries Law make it possible for corporations to be prosecuted criminally as in Article 101 of the Fisheries Law which states "in the event of a crime as referred to in Article 84 paragraph (1), Article 85, Article 86, Article 87, Article 88, Article 90, Article 91, Article 92, Article 93, Article 94, Article 95, and Article 96 are carried out by corporations, charges, and criminal sanctions are imposed on their management and the fine is added to 1/3 of the sentence imposed.

The formulation of Article 101, as an acknowledgment that corporations are legal subjects and can commit criminal acts in the field of fisheries, however, the provisions of Article 101 above are not followed by provisions when corporations have committed crimes in the field of fisheries so that they can be held criminally responsible. On the other hand, the provisions of Article 101 only relate to the imposition of criminal sanctions on corporations. This condition will affect the enforcement of criminal law. As we know the principles in criminal law for the perpetrators of criminal acts to be sanctioned, it is not enough just to prove their actions, but the perpetrators must also have mistakes and can be held criminally accountable.

Research Problems

The purpose of this study, is the concept of corporate criminal responsibility in criminal acts in the fisheries sector.

Research Methods

Legal research is a process to find legal rules, legal principles, and legal doctrines to answer the legal issues at hand (Marzuki, 2019). The research method used is normative legal research, namely studying law which is conceptualized as a norm or rule that applies in society and becomes a reference for everyone's behavior with statutory and conceptual approaches.

Discussion

Corporations as Perpetrators of Fisheries Crimes

Soetan K. Malikul Adil gives an etymological sense of corporation: *corporatie* (Dutch), *corporation* (English), *corporation* (Germany) derived from the Latin word *corporatio*. *Corporatio* is a noun derived from the verb *corporare*. *Corporare* itself comes from the word *corpus* which in Indonesian means body or giving body or body. Thus, corporation means the result of bodily work, in other words, a body that is made of a person or an entity that is obtained by human

actions as opposed to a human body that occurs according to nature (Priyanto, 2017).

The term corporation is often used in the field of criminal law, which is in other fields of law, especially civil law as a legal entity, in Dutch it is called *rechtspersoon* and in English, it is called legal entity (Kristian, 2017). Meanwhile, according to Satjipto Raharjo, a corporation is an entity created by law. The legal entity he creates consists of a corpus, namely its physical structure and into which the law incorporates animus elements that make the legal entity have a personality. Therefore, a legal entity is a creation of law, its death is also determined by law (Mahrus, 2013).

Sutan Remi Sjahdeni stated that defining the meaning of corporation can be seen from its meaning narrowly, as well as broadly. Narrowly, as a legal entity, a corporation is a legal figure that has the existence and authority to carry out civil legal actions as well as the "death" of corporations also due to law. Broadly speaking, the definition of corporation in criminal law includes legal entities and non-legal entities. Not only legal entities such as limited liability companies, foundations, cooperatives, or associations that have been legalized as legal entities are classified as corporations according to criminal law, but also firms, limited partnerships or CVs, and partnerships or *Maatschap*, namely business entities which according to civil law is not a legal entity (Sjahdeini, 2006). Based on this opinion, the definition of a corporation in civil terms is "legal entity" while the understanding in criminal law, corporations are not limited to legal entities but also those that are not legal entities.

In fact, in the context of civil law, there has never been any doubt about the existence of corporations that have legal personality. Meanwhile, in the field of criminal law, it is not that simple. Even the reluctance to bring corporations into the realm of criminal law, according to Diamantis and Laufer, has led to under prosecution of corporations, the civil law regime is different from criminal law, so there is a need for a precautionary principle in placing corporations as subjects of criminal law. In other words, the relationship or mutual influence between civil law and criminal law cannot be ignored (Harkrisnowo, 2019).

In Indonesia, the development of corporate arrangements as legal subjects or perpetrators of criminal acts is found outside the Criminal Code in special legislation. Meanwhile, the Criminal Code itself still recognizes that the subject of criminal law is "a person". The subject of criminal law is in the form of corporations, for the first time contained in Law Number 7 Drt of 1955 on Investigations and Prosecution of Economic Crimes, after that several laws have recognized corporations as subjects of crimes such as Law Number 5 of 1997 on Psychotropics, Law Number 22 of 1997 on Narcotics, Law Number 20 of 2021 on Amendments to Law Number 31 of 1999 on Eradication of Corruption Crimes, Law Number 15 of 2002 on Money Laundering Crimes and also Law Number 45 of 2009 on Amendments to Law Number 31 of 2004 on Fisheries.

The Fisheries Law defines a corporation as a group of people and/or assets that are organized either as a legal entity or not as a legal entity. This concept is mostly used in laws outside the Criminal Code or special crimes that include

corporations as perpetrators of crimes (Mahmudah, 2015). After the Job Creation Law Enactment, this definition will still be maintained.

Meanwhile, the regulation of criminal acts in the field of fisheries is contained in several articles and is differentiated into crimes (*misdrifven*) and violations (*overtredingen*). Provisions which qualify as crimes are contained in Article 84, Article 85, Article 86, Article 88, Article 91, Article 92, Article 94, as well as Articles 100A and Article 100b. While the qualifications for violations are regulated in Article 87, Article 89, Article 90, Article 95, Article 96, Article 97, Article 98, Article 99, Article 100, and Article 100c.

From an international perspective, criminal acts in the field of fisheries are known as illegal, unregulated, and unreported fishing or IUU fishing, which means fishing is illegal, not reported, and not according to regulations (Darmika, 2015). The term IUU Fishing is defined as illegal fishing activities, fishing activities that are not regulated by existing regulations, or fishing activities that are not reported to the authorized fisheries management agency as stated in Article 3.1, Article 3.2, and Article 3.3. International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported, and Unregulated Fishing (IPOA-IUU Fishing) (Darmika, 2015). IPOA-IUU Fishing is a voluntary instrument of international law and regulates the responsibilities of various countries in eradicating IUU fishing.

Juridically, the Fisheries Law is the main source of law in the field of fisheries. As Article 4 states the Fisheries Law applies to:

- a. Everyone, both Indonesian citizens and foreigners and Indonesian and foreign legal entities conducting fishing activities in WPP-RI;
- b. Every Indonesian-flagged fishing boat and foreign-flagged fishing boat conducting fishing activities in WPP-RI;
- c. Every Indonesian-flagged fishing boat that catches fish outside WPP-RI;
- d. Every Indonesian-flagged fishing boat catches fish either individually or jointly, in the form of cooperation with foreign parties.

Based on the provisions of Article 4, the legal subject in the field of fisheries besides every person (individuals and corporations) includes fishing vessels with the Indonesian flag and fishing vessels with foreign flags. Then Article 5 of the Fisheries Law stipulates that WPP-RI includes: a) Indonesian waters; b) Indonesian Exclusive Economic Zone (ZEEI); c) Rivers, lakes, reservoirs, swamps, and other bodies of water that can be exploited as well as potential fish farming areas in WPP-RI.

IUU Fishing practices are increasing, this situation can be seen from several IUU Fishing practices in several areas of Indonesia that have good fish potential. In accordance with the provisions of Article 7 paragraph (1) of the Fisheries Law in conjunction with Regulation of the Minister of Maritime Affairs and Fisheries No.Per.01/Men.2009 concerning the Fisheries Management Areas of the Republic of Indonesia the number of WPP-RI was increased to eleven, among others as follows:

1. WPP-RI 571 in the Malacca Strait and Andaman Sea area;

2. WPP-RI 572 West Indian Ocean region of Sumatra (Indian Ocean west of Sumatra and the Sunda Strait);
3. WPP-RI 573 the South Indian Ocean region of Java (the Indian Ocean south of Java) to the southern part of Nusa Tenggara, the Savu Sea, and the western part of the Timor Sea;
4. WPP-RI 711 in the Karimata Strait, Natuna Sea, and South China Sea areas;
5. WPP-RI 712 Java Sea region;
6. WPP-RI 713 in the Makassar Strait, Bone Bay, Flores Sea and Bali Sea;
7. WPP-RI 714 Tolo Bay and Band Sea;
8. WPP-RI 715 areas of Tomini Bay, Maluku Sea, Halmahera Sea, Senam Sea and Berau Bay;
9. WPP-RI 716 in the Sulawesi Sea region and the northern region of Halmahera Island
10. WPP-RI 717 Cendrawasih Bay and Pacific Ocean region;
11. WPP-RI 718 in the Aru Sea, Arafuru Sea, and the eastern region of the Timor Sea (Jaya & Lutfi, 2015).

The criminal acts that can be committed by the above fisheries' legal subjects are intentionally at WPP-RI engaging in fishing and/or cultivating fish using chemicals, biological materials, explosives, tools and/or methods, and/or buildings that can harm and/or endanger the preservation of fish resources and/or the environment (Article 84 of the Fisheries Law).

Article 84 of the Fisheries Law has 4 paragraphs with the same formulation of criminal acts (*actus reus*) but the subjects of the perpetrators are different. Article 84 paragraph 1 the perpetrator is more common, namely "everyone". While paragraphs 2, 3, and 4 provide different subject specifications, namely the skipper or leader of the fishing boat, fishing expert, and crew members (paragraph 2), then paragraph (3) provides subject specifications for fishing boat owners, fishing company owners, the person in charge fishing companies, and/or fishing boat operators, and paragraph (4) defines the owner of the fish farming company, the power of attorney for the owner of the fish farming company, and/or the person in charge of the fish farming company (Akbar, 2019).

The qualifications of legal subjects or actors in Article 84, when linked to the boundaries of corporations, become blurred and even make it difficult to determine when a corporation has committed a criminal act violating Article 84. As in the previous description, the Fisheries Law defines a corporation as a group of people and/or wealth. those that are organized are both legal entities and non-legal entities, while in Article 84 paragraphs 2, 3, and 4 there are qualifications such as fishing boat owner, fishing company owner, and person in charge of a fishing company which is conceptually more identical to a corporation. As a result, it is difficult to resolve cases of fisheries crime involving corporations and in many cases, those who are tried and sentenced to criminal sanctions are only perpetrators in the field such as skippers, heads of engine rooms, and ship crews (Akbar, 2019).

To determine whether a crime has been committed by a corporation if the crime was committed by a board or employee of the corporation who is still within

the scope of their authority, in the sense that it is still within the aims and objectives of the corporation and the act was committed for the benefit of the corporation. Thus, if the crime was committed by actors such as fishing boat owners, and fishing company owners, according to the author, the person in charge of the fishing company is a form of corporate action.

In comparison, Law 20 of 2001 concerning Amendments to Law 31 of 1999 concerning the Eradication of Corruption Crimes (UUPTPK) is one of the laws that has formulated when corporations commit acts of corruption as stipulated in Article 20

Article 20

- 1) In the criminal act of corruption committed by or on behalf of a corporation, criminal charges, and convictions can be made against the corporation and or its management.
- 2) The criminal act of corruption is committed by a corporation if the crime is committed by people either based on work relations or based on other relationships, acting within the corporate environment either alone or together.
- 3) If a criminal charge is made against a corporation, the corporation is represented by the management.

To complete the legal vacuum, especially corporate criminal procedure law and to encourage the effectiveness and optimization of the handling of criminal cases with corporate perpetrators, the Supreme Court has issued Supreme Court Regulation Number 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations. Supreme Court Regulation 13/2016 defines corporate criminal offenses as criminal offenses committed by persons based on employment relationships or based on other relationships either individually or jointly acting for and on behalf of the corporation within or outside the corporate environment (Suhariyanto, 2018).

The concept of an employment relationship is the relationship between a corporation and its workers or employees based on an agreement that has elements of work, wages, and or orders. While other relationships, namely the relationship between management and or corporations with other people and or corporations so that the other party acts in the interests of the first party based on a written or unwritten agreement. As for the corporate environment, namely the corporate scope or corporate business scope or scope of work which includes and/or supports corporate business activities, either directly or indirectly.

According to the author, this regulation can be considered for use as a guideline for judges at the Fisheries Court of the Republic of Indonesia in handling criminal acts in the field of fisheries to overcome the legal vacuum of the special Fisheries Law relating to the procedural law of crimes in the field of fisheries with corporate actors.

Fisheries Corporation Criminal Liability Concept

To determine corporate criminal responsibility, there are at least 4 (four) main things that need attention, namely a) the problem of formulation of

prohibited acts; b) the issue of corporate wrongdoing; c) the issue of determining sanctions against corporations, and d) the nature of corporate responsibility (Sembiring & Pujiyono, 2020). The principle of criminal responsibility is "no crime without fault" in Dutch *Geen straf zonder schuld*, *Actus non facit reum nisi mens sist rea* (Moeljanto, 2015). Imposing criminal sanctions on a person is not enough only if that person has committed an act that is contrary to the law (according to the formulation of the offense) or is against the law. Even though a person's actions have fulfilled the elements of offense in the law, it does not yet meet the requirements to impose a sentence. other conditions must be met to convict someone other than fulfilling the elements of the offense, namely the person who committed the crime had a fault (intentionally or negligently). Thus, a person can be held criminally responsible because of an error (Ariman & Raghil, 2007).

While the basis for determining when a person can be blamed or held responsible for his actions is the mental state of the maker. The state of the soul that can be held accountable is when the maker is healthy or conscious. Mental health or mental awareness is the basis of error. This awareness of the soul is called *toereningsvathaarheid* or the ability to be responsible (Ariman & Raghil, 2007).

The Criminal Code does not regulate the ability to be responsible, what is regulated is the opposite, which is the inability to be responsible as formulated in Article 44 of the Criminal Code:

- 1) Whoever commits an act for which he cannot be held accountable, because his soul is disabled in his development or disturbed by an illness, shall not be punished;
- 2) If it turns out that the act cannot be held accountable to him because his soul is disabled in development or disturbed by an illness, the judge can order that this person be put in a mental hospital, for a maximum of one year as probation.

The concept of criminal responsibility is the conditions needed to impose a sentence on a person who commits a crime. Meanwhile, based on the mono-dualistic idea (*daad en dader strafrecht*), a due process for determining criminal responsibility is not only carried out by taking into account the interests of society but also the interests of the maker himself. The process depends on the fulfillment of the conditions and conditions that can be reproached by the perpetrator of the crime so that it is legal if he is sentenced to a crime (Candra, 2013).

Regarding the acceptance of corporations as subjects of criminal law, the consequences are also related to corporate criminal responsibility. Corporate responsibility in criminal law was born without going through in-depth research by experts but as a result of the tendency of legal formalism. The doctrine of corporate criminal responsibility has developed without any theory justifying it (Mahrus, 2013).

Historically, the recognition of corporations as subjects of criminal law and can be judged to have committed criminal acts and criminal liability has been going on since 1635 (Mahrus, 2013). Meanwhile, the history of corporate criminal liability in Indonesia is slightly behind when compared to countries that adhere to

the common law legal system such as England, America United States, and Canada (Muladi & Sulistyani, 2013).

The theory of corporate criminal responsibility begins with Respondeat Superior Theory based on Vicarious Liability which develops towards Aggregation Theory (a wide vicarious liability model) which is an over-detering model. Next comes Identification Theory or Alter Ego Theory which is an under-detering and less retributive model. In Canada, the development of Delegation Theory is due to the development of modern and large corporations which consist of more than one corporation with technical decision making based on the delegation of authority from the board of directors which reflects the corporate directing mind (Kristian, 2018).

As in the previous description, various laws including the Fisheries Law above have fulfilled the requirements for law enforcement both juridically, sociologically, and philosophically so that their existence is expected to control and enforce order for business activities and activities carried out by corporations and have provided a basis or guidelines for law enforcers who will implement criminal liability for corporations that commit criminal acts (Amirullah, 2012). However, in the perspective of policy formulation related to the formulation and definition of the corporation itself, there are still many laws outside the Criminal Code which define corporations with various terms and how the principle of guilt from the principle of no crime without fault can be enforced absolutely to impose a sentence on corporations.

In connection with the concept of corporate criminal responsibility in the field of fisheries, Article 101 of the Fisheries Law states, if a fishing crime is committed by a corporation, criminal charges and sanctions are imposed on its management and the fine is increased by 1/3. The construction of Article 101 is linked to the development of the corporate criminal liability system, including the development of the second stage, "the corporation is the maker, the management is responsible". As we all know, the development of corporate criminal responsibility begins with the first stage which recognizes that corporate management is the creator and it is the management who is responsible; the second stage, the corporation as a responsible maker and administrator; and the third stage, the corporation as a maker and responsible (Kristian, 2014).

This second stage is an acknowledgment that a crime can be committed by an association or legal entity (corporation). However, the burden of responsibility falls on the corporation's management. The responsibility at this stage slowly shifts from members of the board to those who order or in other words that criminal responsibility for criminal acts committed by the corporation is still held accountable to the board who leads the corporation (Mahmudah, 2015).

The construction of Article 101, although corporations are recognized as perpetrators of criminal acts in the field of fisheries, the corporation itself cannot be held criminally liable. Such arrangement will cause many weaknesses. In certain cases where the profits obtained by the company and or the losses borne by the community are so large, the imposition of criminal sanctions only on the management of the corporation is certainly not comparable. In addition, the

imposition on the management of the corporation is also not enough to provide a guarantee that the corporation will not commit similar acts in the future.(Sjahdeini, 2006). It is very unfair if the management of the corporation must bear the burden of criminal responsibility. On the other hand, the corporation obtains and stores assets resulting from fisheries crime..

If associated with the developing doctrine of corporate criminal responsibility, the formulation of Article 101 is more similar to the doctrine of identification (Doctrin of identification or Identification Theory). The theory of identification rests on the principle of corporate law which determines that the board is an organ of the organization, the soul of the board is the soul of the corporation, and the body of the board is the body of the corporation. However, this principle only applies as long as:

- a. The management in carrying out the act does not deviate from the aims and objectives of the corporation as contained in its articles of association;

Actions carried out by the management are still within the limits of the authority of the management as stipulated in the articles of association (Sukmawijaya & Saputro, 2020).

The Concept of Fisheries Corporation Criminal Liability According to the Job Creation Law

The Job Creation Law was born with the aspiration to create jobs and increase investment, both domestic and foreign sources through foreign investment. The presence of investors is expected to have a significant impact not only on the local community but also nationally.

In the marine and fisheries sector, there are serious issues that are of concern to the Job Creation Law, including opening access to fishing by foreign fishing vessels in Indonesia's EEZ (Article 27 point 10), the use of small islands and the waters around them by foreign parties must refer to the Law on Foreign Investment (Article 18 point 22), the abolition of the National Commission for the Study of Fish Resources (article 27 point 2), the authority given to the central government to issue business permits (article 18 point 14) and the combination of types of permits business into one permit with the designation of business licensing (Article 18 points 15 and 16)

Regarding sanctions, there are provisions regarding sanctions in the Job Creation Law which are formulated incorrectly. There are guiding principles in determining actions that can be imposed with administrative sanctions and those that must be imposed with criminal sanctions. One of the principles is if an action relates to the interests of the wider community. Article 18 point 23 states that the act of exploiting small islands and the waters around them without permission in the context of foreign investment is only subject to administrative sanctions. This action should be subject to criminal sanctions considering that this action can cause a large impact (Priyatno & Kristian, 2020). Provisions about corporate criminal liability have also been amended by imposing sanctions on management and corporations (Article 27 number 36)

Article 27 point 36 The provisions of Article 101 of the Fisheries Law are amended so that it reads as follows: Article 101 on a crime as referred to in Article

84 paragraph (1), Article 85, Article 86, Article 87, Article 88, Article 90, Article 91, Article 93 or Article 94 is committed by a corporation, charges, and criminal sanctions are imposed on its management and the corporation is subject to a fine with an additional weight of $\frac{1}{3}$ (one third) of the fine imposed.

Corporate criminal responsibility in the field of fisheries in the Job Creation Law is a concept of corporate criminal responsibility that combines the criminal responsibility of management and corporations. As was the opinion of Sutan Remy Sjahdeini who stated that management and corporations were both perpetrators of criminal acts and both of them had to bear criminal responsibility (Priyatno & Kristian, 2020).

According to Sutan Remy Sjahdeini, the imposition of corporate responsibility on management and corporations is carried out for the following reasons:

- a. If only the management is burdened with criminal liability, it will create injustice for the people who have suffered losses due to the actions of corporate management carried out for and on behalf of the corporation and intended to provide benefits or avoid or reduce losses for the corporation.
- b. If only corporations are burdened with criminal liability, then the attitude of the management may be "throw stones and hide their hands" or shift their accountability. The management will take cover behind the corporation and will reason that what is being done by the management is not for their interests but for the interests of the corporation;
- c. The imposition of criminal liability on corporations is only possible in lieu of liability or vicariously (doctrine of vicarious liability) because a corporation can't commit an act by itself, the criminal act is carried out by a person or human or naturally, namely the management (Mahmudah, 2015).

Furthermore, if we look at the aspect of criminal sanctions, the formulation of Article 27 number 36 of the Copyright Law is clear that criminal sanctions are imposed jointly between the management and the corporation with the type of criminal sanction of a fine with aggravation plus $\frac{1}{3}$. According to Nunung Mahmudah, the imposition of punishment on the corporation will indirectly have an impact on its management. When the corporation as a container and tool is left, it is not impossible that other people can still run it, but when the corporation as a container and tool is banned, the people in it will automatically dissolve. (Sjahdeini, 2017).

From the perspective of the type of criminal sanction, a corporation can't be sentenced to imprisonment. Only humans can be sentenced to imprisonment. Therefore, the main punishment that can be imposed on corporations is only fines. According to Clifford Chance in his writing entitled corporate liability. High fines for corporations can be a deterrent for small companies. With the high fines imposed on corporations, the corporations went out of business (Ministry of Marine Affairs and Fisheries, 2022).

Criminal sanctions in Copyright Law are *Ultimum Remedium* in nature and prioritize administrative sanctions. As stated by the Director General for Supervision of Maritime Resources and Fisheries Rear Admiral TNI Adin Nurawaluddin "With this *ultimum remedium* approach, punishment is the last resort, this is the spirit of the Job Creation Law which exists in all sectors, meaning that by implementing these administrative sanctions the Government hopes that the business climate stay conducive," (Ministry of Marine Affairs and Fisheries, 2022). On the other hand, the existence of criminal sanctions is still required for actions that have a major impact on the sustainability of fish resources and their ecosystems, for example, fishing activities using hazardous substances or prohibited fishing gear which result in damage to fish resources and aquatic ecosystems.

The inclusion of fines for administrators and corporations in Article 101 of the Fisheries Law in conjunction with Article 27 point 36 of the Job Creation Law creates problems when the perpetrator does not carry out or does not pay the fine. Based on Adriano's opinion, of the many laws that stipulate that corporations can also be prosecuted criminally, there is absolutely nothing that regulates the existence of a penalty in lieu of fines if the corporation does not pay the fines imposed (Adriano, 2016). In contrast to convicting individual/human offenders, if they do not pay a fine, they can be subject to imprisonment in lieu of a fine.

To deal with the problems of executing fines against corporations, Adriano further stated that there are 2 (two) sentencing scenarios as a form of principal punishment, are;

1. The corporation is sentenced to a fine followed by the confiscation of the assets belonging to the corporation. If the corporation does not pay the fine, then the corporation's assets will be auctioned off to cover the payment of the fine, and if it is found to be insufficient, the corporation is dissolved;
2. Corporations are sentenced to Dissolution of Corporations and Criminal Fines followed by confiscation of corporate assets, and if the corporation does not pay fines, then corporate assets will be auctioned off to cover payment of fines

This scenario if applied to corporate criminal liability in the field of fisheries will experience several problems considering that fisheries crimes that occur in WPP-RI are not only local corporations but also foreigners using fishing vessels.

The involvement of foreign parties in fisheries crimes, especially fishing activities, can be classified into two modes, namely as follows: First, semi-legal fish theft activities, namely fishing carried out by foreign vessels using fishing permits or SIPI (removed by law). the Job Creation Law was replaced with a business license) owned by local entrepreneurs using local-flagged or other-country-flagged vessels. This practice is often referred to as the "flag of convenience"; Second, the practice of pure-legal fish theft, namely fishing activities carried out by foreign fishermen and using foreign vessels with their flags (Rifai & Anwar, 2014).

The involvement of corporations in criminal acts in the field of fisheries can cause harm to the state and society. In addition, it does not rule out the possibility

that the perpetrators are transnational corporations supported by technological advances that they own, making it difficult for the state to ensnare corporations that commit criminal acts of fishing or illegal fishing.

The purpose of confiscating corporate assets is to prevent them from being transferred to other parties, corporate asset confiscation can eliminate or reduce corporate capital to commit crimes in the fisheries sector. Confiscation of corporate assets can also reduce or eliminate the opportunity for perpetrators to enjoy the proceeds from crimes in the fisheries sector. Given the involvement of transnational corporations in criminal acts in the fisheries sector at WPP-RI, Indonesia needs to carry out international cooperation using the principle of Mutual Legal Assistance (MLA) (Putra & Sugama, 2021).

Conclusion

The concept of corporate criminal responsibility in the fisheries sector after the entry into force of the Copyright Law imposed corporate criminal responsibility on management and corporations which previously only imposed responsibility on management. This concept is an amalgamation of 2 models of corporate criminal responsibility which are currently used in several laws and regulations, namely the corporation commits a crime, the management is responsible and the corporation that commits a corporate crime is responsible.

While from the aspect of criminal sanctions for corporations in the form of fines. The problem with the imposition of fines for fisheries corporations is that if corporations fail to pay fines, the Fisheries Law does not provide for alternative punishments such as confiscation of corporate assets. This can weaken law enforcement, especially the execution of fines.

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