

**ANALYSIS OF JUDGES' DECISIONS ON CRIMINAL SANCTIONS
FOR ILLEGAL FISHING RECIDIVISTS
(Study of Sinabang District Court Decision Number 7/Pid.Sus/2022/PN
Snb jo 28/Pid.Sus/2016/PN Snb)**

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Abstract

This research aims to analyze the considerations and reasons of judges when determining the same punishment for recidivist offenders engaged in illegal fishing, as well as the factors that contribute to the ineffectiveness of sanctions imposed on illegal fishing perpetrators. Recidivism is regulated in Articles 486, 487, and 488 of the Criminal Code, which stipulate that the penalty for repeat offenses should be increased by 1/3 of the previous sentence. However, in decision number 7/Pid.Sus/2022/PN Snb jo 28/Pid.Sus/2016/PN Snb, the judge imposed the same sentence of 3 years in prison for the defendant, without increasing the sentence as required. The research utilizes normative juridical and empirical juridical methods. The findings indicate that, in determining sanctions, judges consider aggravating and mitigating circumstances for the defendant. Their decisions are not solely based on formal evidence, but also rely on the judge's conviction. The judge's reasoning for imposing the same sanctions in this case was due to the fact that the defendant did not own the object of the crime, demonstrated good behavior during the trial, and was the breadwinner of the family. Factors contributing to the ineffectiveness of the imposed sanctions include lenient penalties, factors related to law enforcement, environmental considerations, and socio-economic factors.

Keywords: *Illegal Fishing Recidivism, Sanction Considerations, Ineffective Penalties, Criminal Code, Normative Juridical*

1. INTRODUCTION

Illegal fishing involves unauthorized fishermen engaging in fishing activities that violate regulations. This activity poses a significant threat to the country as it can have adverse effects on the aquatic ecosystem, impacting various stakeholders, including traditional fishermen who face disruptions due to ecosystem damage (Almaa'di, 2021). Illegal fishing refers to fishing practices that are prohibited, lack legal regulation, and are not recognized by the state (Banjarani, 2020).

Illegal fishing is not a new phenomenon in Indonesia, occurring frequently in Indonesian waters with the presence of foreign vessels and local fishing boats engaged in illegal fishing, resulting in losses for both the state and small-scale fishermen. Individuals involved in illegal fishing activities seek quick profits through various means. The types of illegal fishing can be categorized into four: fishing without a license, fishing with a forged license, fishing with a license for a different type of fishing, and fishing with prohibited tools or methods that violate regulations (Sinurat, 2019). Illegal fishing activities persist in the field, often utilizing unauthorized fishing tools.

One common tool used in illegal fishing is explosives, commonly referred to as fish bombs. Fish bombs are favored by illegal fishing actors as they can capture a wide range of fish species, from small to large, depending on the size of the fishing gear. The larger

the tool, the greater the potential to catch more and larger fish. However, the use of fish bombs also causes significant damage to coral reefs and fish habitats, leading to the loss of not only targeted fish but also smaller fish populations.

The practice of illegal fishing is regulated in Article 84, CHAPTER XV of Law of the Republic of Indonesia Number 31 of 2004 concerning Fisheries, as amended by Law Number 45 of 2009. This law explicitly prohibits fishing practices that involve the use of chemicals, biological materials, explosives, tools, and/or methods that can harm or endanger the preservation of fish resources and the environment. The law imposes penalties on offenders, including a maximum imprisonment of 6 years and a maximum fine of Rp1,200,000,000.00 (one billion two hundred million rupiah).

Illegal fishing often involves repeated offenses committed by the same individuals, known as recidivists. Recidivism refers to someone who has been previously convicted and subsequently repeats the same crime. In the context of criminal sanctions, recidivism serves as a reason for imposing aggravated penalties. According to Book II of the Criminal Code on Crimes, specifically Articles 486, 487, and 488, criminal sanctions can be increased by one third of the maximum penalty (Rozi, 2015). Prosecutors have the authority to increase charges by one third of the previous sentence, while judges can enhance the sentence by one third of the original punishment. The conditions for considering an act as a repetition of a criminal offense include: (1) the perpetrator being the same person, (2) the repetition occurring after a prior conviction with permanent legal force, and (3) the repetition happening within a certain time frame (Paramitha et al., 2021).

An instance of illegal fishing recidivism can be found in the case of SL, as documented in the decision of the Sinabang District Court with case number 7/Pid.Sus/2022/PN Snb jo 28/Pid.Sus/2016/PN Snb. In this case, the defendant SL committed the crime of illegal fishing using explosives. The initial decision was made in 2016 when the defendant SL acted alone, resulting in a guilty verdict for committing a fisheries crime and violating Article 84, Paragraph (2) of Law Number 31 of 2004 concerning Fisheries. The judge imposed a sentence of 3 years' imprisonment and a fine of Rp. 300,000,000.00, with the provision that failure to pay the fine would lead to 6 months of imprisonment. Subsequently, in a second case in 2022, the defendant SL engaged in the offense jointly with other defendants, namely AT, BD, MSL, ES, PS, RW, and HD. In this instance, the defendant SL was sentenced to 3 years' imprisonment and a fine of Rp500,000,000.00. Failure to pay the fine would result in 6 months of confinement. The other defendants were each sentenced to 1 year of imprisonment and a fine of Rp500,000,000.00, with 3 months of imprisonment in case of failure to pay the fine.

Based on the aforementioned case, it is evident that there was minimal legal aggravation for the defendant SL, who is an illegal fishing recidivist. According to articles 486, 487, and 488 of the Criminal Code, the judge has the authority to increase the sentence by one third of the original punishment. Referring to the provisions for recidivism, the judge could have sentenced the defendant to 4 years of imprisonment. However, in reality, the judge decided on a sentence of 3 years, which is the same as the previous sentence.

Furthermore, Article 486 of the Criminal Code stipulates regulations regarding special recidivism. According to this article, the penalty is increased by one third if the following conditions are met: (1) repetition of the same crime or a crime considered the

same by law, (2) a judicial decision between the commission of one crime and another, (3) a prison sentence (not a fine or other form of punishment), and (4) a period of no more than 5 years, calculated from the time the offender completed all or part of the previous sentence.

The judge also imposed a fine that did not significantly differ from the previous one. In the initial decision, a fine of 300 million was imposed, while in the second decision, a fine of 500 million was imposed. Additionally, the judge resorted to the same punishment in lieu of a fine, namely 6 months of imprisonment if the defendant was unable to pay the fine. Consequently, the punishment or sanction imposed by the judge fails to have a deterrent effect on the perpetrator, making it highly likely for the offender to repeat the same act after completing the sentence.

Based on the aforementioned issues, this research aims to analyze the considerations taken by judges when determining sanctions for illegal fishing recidivists, specifically in the case number 7/Pid.Sus/2022/PN Snb. The study also aims to explore the reasons why judges impose the same sanctions for illegal fishing recidivists and identify the factors contributing to the ineffectiveness of sanctions, leading to repeated offenses by illegal fishing perpetrators.

2. RESEARCH METHODS

The research method employed in this study is the normative juridical method. The normative juridical method involves conducting legal research using library materials as the primary source, including books and laws (Mughtar, 2015). This approach focuses on examining legal conceptions and rules rather than human behavior (Muhaimin, 2020). Data collection for this research involved reviewing relevant decisions and laws. Additionally, to enhance the research's validity and support, the researchers conducted interviews with judges from the Sinabang District Court. The gathered data will be analyzed using a qualitative approach, wherein the data will be presented in a systematic and concise manner using words to facilitate the reader's comprehension.

3. RESULTS AND DISCUSSION

3.1. Analysis of Judges' Considerations in Deciding Sanctions for Illegal Fishing Recidivists in Decision Number 7/Pid.Sus/2022/PN Snb

Illegal fishing is a fishing activity that is carried out illegally and not in accordance with applicable regulations. It is a common crime in Indonesia, where both local residents and people from other regions engage in these activities. Illegal fishing is often conducted using fishing gear that does not comply with regulations, such as chemicals or fish bombs. When dealing with illegal fishing cases, judges play an active role because it is a criminal offense. They have the authority to request investigators to gather additional evidence if the existing evidence is considered insufficient.

According to Decision No. 7/Pid.Sus/2022/Pn Snb, the defendant SL has committed two crimes of the same nature, one in 2016 and another in 2022. In 2016, SL committed the crime individually and received a sentence of 3 years of imprisonment and a fine of 300 million rupiahs. In case the defendant was unable to pay the fine, an additional 6 months of imprisonment was imposed. In 2022, SL committed the crime in collaboration with several other defendants, resulting in the same sentence as before, with a slightly

increased fine of 500 million rupiahs. Again, if the defendant is unable to pay the fine, an additional 6 months of imprisonment will be imposed.

In 2022, defendants I (SL), II (HD), III (RW), IV (PS), V (ES), VI (MSL), VII (BD), and VIII (AT) were charged with the offense of fishing with explosives, as stipulated in Article 84 Paragraph (2) of Law No. 31 of 2004 concerning Fisheries, as amended by Law No. 45 of 2009. These activities took place in the waters of Mincau Island, Teupah Island Village, West Teupah District, Simeulue Regency. They used explosive devices, such as homemade fish bombs.

Defendant I (SL) has been sentenced to 3 years of imprisonment and a fine of Rp. 500,000,000 (five hundred million rupiah). If the fine is not paid, it will be substituted with 6 months of imprisonment. Defendant II (HD), Defendant III (RW), Defendant IV (PS), Defendant V (ES), Defendant VI (MSL), Defendant VII (BD), and Defendant VIII (AT) have each been sentenced to 1 year of imprisonment and a fine of Rp. 500,000,000 (five hundred million rupiah). If the fine is not paid, it will be replaced with 3 months of imprisonment each.

The judge's considerations in determining the sanctions for the defendants are as follows:

- The defendants are legally competent individuals who were able to recall and provide detailed explanations about the case. This indicates that they can be held accountable for their actions, including those committed in this case.
- Based on the facts presented during the trial, Defendant I (SL) was the captain of the vessel KM Fahira, while Defendant II (HD), Defendant III (RW), Defendant IV (PS), Defendant V (ES), Defendant VI (MSL), Defendant VII (BD), and Defendant VIII (AT) were crew members with specific roles as divers, cooks, and an engine man. As they embarked on the fishing expedition, all the defendants can be considered fishing experts.
- Throughout the trial, the Panel of Judges did not find any grounds to exempt the defendants from criminal responsibility. Therefore, they must be held accountable for their actions.
- The defendants expressed remorse for their actions and requested leniency. The judges will thoroughly consider this request.

Before sentencing the defendants, the judge carefully considered both the aggravating and mitigating circumstances. The aggravating circumstances include the defendants' actions, which contradict the Government of the Republic of Indonesia's program on the management and utilization of fish resources and the environment. Illegal fishing activities have caused severe damage to ecosystems, particularly underwater ecosystems and coral reefs, which will require a long time to recover to their original state. Additionally, these activities can harm traditional fishermen due to the negative impact on underwater life.

Regarding the first defendant, SL, it was taken into account that they had previously been convicted in 2016 for a fisheries crime involving the use of explosives for fishing. In that case, the defendant SL was sentenced to 3 years of imprisonment, a fine of Rp. 300,000,000 (three hundred million rupiah), and 6 months of confinement in case of non-payment of the fine.

As for the mitigating circumstances, it was considered that, apart from defendant I's conviction in 2016, none of the other defendants had a prior criminal record. The

defendants expressed remorse for their actions and vowed not to engage in similar offenses in the future. Furthermore, the defendants are the main providers for their families, and prolonged detention could result in neglect of their families' needs. There is concern that the defendants' families might resort to criminal activities such as theft to obtain money for daily expenses.

Based on the aggravating and mitigating circumstances, it is important to note that the nature and purpose of punishment is not for revenge, but rather to help the defendants recognize and acknowledge their actions. The theory of correction (*Verbeterings Theorie*) emphasizes that punishment should aim to correct individuals who have committed crimes and have a deterrent effect to prevent future offenses. However, the Panel of Judges also took into consideration that the defendants' actions contradicted the Government of the Republic of Indonesia's program on the management and utilization of fish resources and the environment. Furthermore, Defendant I has a prior conviction in 2016 for a fisheries crime involving the use of explosives, resulting in a sentence of 3 years of imprisonment and a fine of Rp. 300,000,000 (Three Hundred Million Rupiah), with a subsidiary 6 months of imprisonment in case of non-payment of the fine. Considering these factors, the Panel of Judges determined that the imposed punishment is appropriate and fair for the defendants.

Based on the above description, it can be observed that the judge had considerations in deciding the sanctions. However, according to the author's analysis, the sentence given by the Panel of Judges to Defendant SL appears to be too lenient, considering that the defendant is a recidivist who has previously engaged in illegal fishing activities in 2016 and has already been convicted. It is suggested that the judge should have imposed a higher sentence on the defendant, as recidivism is a condition that can warrant harsher criminal penalties. Typically, the penalty for recidivists is one third higher than their previous sentence. Therefore, the defendant could have been sentenced to at least 4 or 5 years of imprisonment to create a stronger deterrent effect and discourage repeat offenses.

The purpose of giving a heavier sentence to defendant SL than the previous one is to ensure that the defendant feels a stronger deterrent effect and remorse for their actions, thus preventing them from repeating the same behavior in the future. Additionally, this serves as a lesson to the community, encouraging greater obedience to the law and discouraging similar crimes. According to Aristotle, the purpose of law is to facilitate the attainment of a better life (Marzuki Mahmud, 2009). In terms of punishment theory, the objectives of punishment are (Efritadewi, 2020) to inflict suffering upon the offender and to prevent crime, both in relation to the specific offender to discourage them from repeating their actions, and in general to discourage the community from committing crimes.

According to the absolute or retaliation theory (*De Vergelding Theori*), punishment is seen as retribution for the wrong that has been committed. Punishment is administered because the offender must face consequences for their actions. As the crime has caused suffering to others, the offender must experience suffering in return (Efritadewi, 2020). In line with this theory, it is appropriate for the judge to increase the punishment for SL, as SL has caused suffering to others and should, therefore, experience suffering in return.

On the other hand, according to the Special Deterrence or Intimidation theory (the theory of approach as a reason for justifying the imposition of punishment), punishment serves as a deterrent specifically for the offender to discourage them from reoffending. This theory is particularly relevant in cases involving recidivism (Efritadewi, 2020).

Therefore, SL should receive an aggravated punishment as a deterrent to prevent them from repeating their crime.

3.2. Reasons for Judges Determining the Same Sanctions for Illegal Fishing Perpetrators in Decision Number 7/Pid.Sus/2022/PN Snb

Sanctions refer to the suffering or rewards given to individuals found guilty of committing a crime or criminal act. These sanctions are administered through a judicial process and enforced by the authority of the law. The purpose of criminal sanctions is to enable the person being sanctioned to recognize their mistakes and refrain from repeating them in the future. Additionally, sanctions serve as a deterrent to discourage the public from engaging in unlawful acts (Suyanto, 2018).

A recidivist is a criminal who commits the same offense after having been previously convicted and sentenced by a judge with permanent legal force. Once the offender has completed their sentence, they engage in the same criminal behavior and face punishment once again. Recidivism involves the repetition of criminal acts, while a recidivist is an individual who commits repeated criminal offenses (Wahyuni, 2017).

Recidivism can be categorized into two types. The first type is general recidivism, where an individual commits a different crime than the one previously committed, but it is still considered a repetition of criminal behavior. The second type is special recidivism, where the current and previous crimes are the same or similar (Patuju & Afamery, 2016).

The repetition of criminal acts or recidivism is not a new phenomenon; it has occurred in various forms of criminal activity, including illegal fishing. Legal expert Bartholomew argues that criminal recidivism is viewed as a continuation of malicious intent, indicating that the practice of recidivism itself is as old as the practice of crime (Darmasya, 2014).

According to Decision Number 7/Pid.Sus/2022/PN Snb, the judge's decision to impose the same prison sentence as the previous ruling, namely 3 years of imprisonment and a fine of 500 million rupiah with the provision that non-payment of the fine would result in 6 months of confinement, is based on several reasons. Firstly, the defendants used a boat that did not belong to them but rather worked under the instruction of the boat owner for fishing activities. Additionally, the judge took into consideration that the defendants were the primary earners for their families, and an extended period of imprisonment could lead to neglect of their families. Furthermore, the judge was convinced that the defendants genuinely regretted their crimes and were unlikely to reoffend in the future. In making a decision, judges consider not only formal evidence but also rely on their own belief in the matter. In this case, the judge was convinced that the defendant expressed sincere remorse, took responsibility for their actions, and made a commitment to avoid repeating the offense.

Moreover, the judge also took into account the defendant's behavior during the trial. The defendant's conduct in court can influence the judge's decision regarding the severity of the sentence. If the defendant behaves impolitely, acts inappropriately, or obstructs the trial process, it may lead to a more severe sentence. Conversely, if the defendant is polite, provides honest answers to questions, and cooperates during the trial, the judge may consider a less severe sentence for the defendant.

Based on the information provided, it is evident that the judge took several factors into consideration when determining the same sentence, including the defendant's behavior during the trial and their expression of remorse and commitment to not repeat

their actions. However, the researcher believes that the panel of judges should have also acknowledged the defendant's previous conviction, even though the defendant exhibited good behavior during the trial and expressed remorse. This would have justified an increase in the sentence to align with the defendant's actions. Imposing an additional sentence on defendant I would have served as a deterrent to prevent future offenses and as a reminder to the other defendants. The researcher supports the view that punishment should strike a balance between retaliation and achieving the purpose of punishment, ensuring justice and satisfaction within the community (Efritadewi, 2020).

3.3. Factors Causing Ineffective Sanctions for Illegal Fishing Offenders

Law is a tool used to improve and regulate the behavior of individuals within a specific area, ensuring their compliance with applicable rules and norms. In Indonesia, there are numerous instances of law violations committed by the community, such as illegal fishing. These violations may be carried out by individuals from the local area or by people from other regions who intentionally travel to different areas to engage in large-scale illegal fishing.

According to Hans Kelsen, legal effectiveness is closely tied to validity (Kelsen, 2014). Validity refers to a legally binding norm that everyone must adhere to and apply in their behavior. Legal effectiveness implies that individuals must actively conform to legal norms, and that these norms must be implemented and obeyed.

Friedman suggests that the effectiveness of a rule of law can be influenced by several factors (Friedman, 2009). Firstly, the legal substance factor determines whether there are specific regulations governing a particular crime. Secondly, the legal structure factor assesses whether the law can be effectively enforced, considering the competence of legal authorities. Regardless of the quality of laws, their enforcement relies on the ability of legal authorities to ensure compliance. Thirdly, the legal culture factor plays a role in determining the effectiveness of a rule of law. If the community respects and complies with the law, it can be enforced to its fullest extent. Conversely, if the community disregards or disobeys the law, its implementation is hindered.

Moreover, the lack of law enforcement and control over those involved in illegal fishing creates an environment where perpetrators do not fear consequences. Currently, the legal process focuses solely on the crew of the ship, without investigating the individuals orchestrating these activities behind the scenes (Mahmudah, 2022).

Based on the illegal fishing case in decision Number 28/Pid.Sus/2016/PN Snb jo 7/Pid.Sus/2022/PN Snb, several factors contribute to the ineffectiveness of the imposed sanctions, including:

1) Mild sanctions:

The light punishment given does not serve as a sufficient deterrent for the perpetrators, allowing them to disregard the severity of their crime. Consequently, there is a risk of repeat offenses, irrespective of the existing laws and potential sanctions. In this case, the defendant SL repeated their actions due to the lenient sanctions imposed by the judge, which failed to deter them.

2) Non-compliance with the law:

Adherence to the law significantly affects the effectiveness or failure of legal measures. The defendant SL's lack of knowledge about the laws in Indonesia led to disobedience, resulting in a disregard for the imposed sanctions. The defendant's low level

of education and limited understanding of the law prevented them from comprehending and considering the consequences of their actions.

3) Environmental factors:

The environment plays a crucial role in shaping an individual's behavior. If an offender resides in an environment conducive to criminal activities, they may disregard the potential punishment and engage in illegal acts. In this case, the defendant SL committed the crime alongside other defendants, living in an environment that supported criminal behavior without due consideration for the resulting sanctions.

4) Socio-economic factors:

Low socio-economic status and limited employment opportunities can drive individuals to resort to criminal activities as a means of generating income and improving their lives. As the defendant lacked a stable job, they resorted to explosive-based fishing techniques, yielding a substantial catch in a short period of time.

Based on the aforementioned description, it becomes evident that several factors contribute to the ineffectiveness of sanctions against illegal fishing. Firstly, the light nature of the sanctions fails to create a deterrent effect, enabling perpetrators to repeat their actions. Secondly, there are cultural factors that lead to non-compliance with the law, despite the presence of strict sanctions. Furthermore, the lack of assertiveness among law enforcement officials in delivering punishments renders the imposed sanctions ineffective. Referring to the applicable regulations provides clear guidance on addressing fisheries crimes and repeat offenders, allowing law enforcers to impose appropriate sanctions based on the offenders' actions. Judges should demonstrate greater assertiveness when determining sanctions, particularly when dealing with recidivists like Defendant I. Inadequate sanctions provide an opportunity for further criminal activities, as offenders are already aware of the punishments they will receive. Thirdly, adverse environmental factors may influence perpetrators to commit crimes regardless of the potential consequences. Lastly, socio-economic factors such as limited education and job opportunities drive many unemployed individuals to resort to any means necessary to improve their lives financially.

4. CONCLUSION

Based on the discussion in the preceding sub-chapters, it can be concluded that the judge considers aggravating and mitigating circumstances when deciding on sanctions for the defendant. Aggravating circumstances include the defendant being a recidivist, having previously received a final decision from a panel of judges and having served a sentence. Mitigating circumstances include the defendant being the sole provider for their family and having familial obligations. Another mitigating circumstance was the defendant's polite behavior during the trial and their ability to provide satisfactory answers to all questions.

There were several reasons that led the judge to impose the same sentence on the perpetrators of illegal fishing in this case. Firstly, the judge observed the defendant's good and polite behavior during the trial. Additionally, the vessel used in the crime did not belong to the defendant, but to another individual. Furthermore, the judge based the sanction on the belief that it would effectively deter the defendant, and the defendant expressed remorse for their actions and vowed not to repeat them.

Several factors contribute to the ineffectiveness of illegal fishing sanctions, leading to the recurrence of such crimes. Firstly, the light nature of the sanctions fails to create a deterrent effect, causing the defendant to disregard them and repeat their actions. Secondly, there is a factor of non-compliance with the law, where the defendant does not obey or fear the legal consequences. Moreover, the lack of strictness among law enforcers in delivering punishments leads the defendant to overlook the severity of the sanctions. Environmental factors also play a role, as the defendant may engage in criminal behavior due to living in a detrimental environment. Additionally, socio-economic factors, including limited employment opportunities and low education, contribute to the defendant's impulsive decision-making, resulting in disobedience and disregard for potential sanctions.

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