

## JURIDICAL ANALYSIS OF THE APPLICATION OF ADDITIONAL PENALTIES IN FISHERIES CRIMES

Muhammad Trialdy Suryaputra  
Master of Laws, Sriwijaya University, Palembang, Indonesia



DOI: 10.33603/responsif.v17i1.11895

Accepted: 25 January 2026; Revised: 5 February 2026; Published: 17 February 2026

### Abstract

Fisheries crime is a form of crime that has a multidimensional impact, both on state sovereignty, the sustainability of marine ecosystems, and national economic stability. Additional criminal regulations in Law Number 31 of 2004 concerning Fisheries, as amended by Law Number 45 of 2009, are intended to strengthen deterrence by authorizing the seizure of ships, fishing gear, and fishery products, and the revocation of business licenses. Along with the enactment of Law Number 1 of 2023 concerning the National Criminal Code, Indonesia's penal system has undergone a renewal that emphasizes proportionality, prevention, and protection of the public interest. This study aims to juridically analyze additional criminal arrangements in fisheries crimes and to examine their effectiveness in judicial practice. The research method used is normative legal research with a legislative and conceptual approach. The results of the study show that normatively, additional crimes have a strategic position as the main instrument in cutting off the economic benefits of the perpetrators, but in practice, there are still inconsistencies in implementation due to the facultative nature of the norm and the lack of optimal harmonization with national penal policies.

**Keywords:** Additional Crimes, Fisheries Law, Criminal Policy.

### A. INTRODUCTION

Indonesia is an archipelagic country with an area of sea that exceeds the mainland, so the fisheries sector has a strategic position in national development. The potential of Indonesia's fishery resources is not only a source of state income, but also supports the lives of millions of coastal communities. From a constitutional perspective, Article 33, paragraph (3) of the 1945 Constitution of the Republic of Indonesia emphasizes that the earth, water, and natural resources contained therein are controlled by the state and used as much as possible to promote the prosperity of the people. This provision is a philosophical and juridical basis for the state to strictly regulate and enforce the law against all forms of violations in the fisheries sector (Novemyanto, 2024). However, in practice, the fisheries sector faces various forms of complex and organized crime. The practice of illegal, unreported, and *unregulated fishing* (IUU Fishing) is a real threat to the sustainability of marine resources. These crimes often involve foreign

vessels illegally entering Indonesian waters, taking advantage of weak supervision and regulatory loopholes. In addition, national business actors also commit violations through the manipulation of permits, the use of prohibited fishing gear, and the reporting of catches that are not in accordance with the facts (Nurhakim, 2025).

This crime is an economically driven crime carried out to obtain large economic benefits with relatively low legal risk (Hudi, 2021). Penal approaches that rely only on prison sentences and fines are not always effective. Perpetrators with substantial capital may consider criminal fines part of operational costs, while prison sentences are often not imposed at the maximum against capital owners. To address these challenges, Law Number 31 of 2004 concerning Fisheries, later amended by Law Number 45 of 2009, has established additional penalties, including confiscation of ships, fishing gear, and fishery products, and revocation of business licenses. This additional penalty is designed as a strategic instrument to cut off the means of production and eliminate economic benefits obtained illegally (Songgigilan et al., 2022). Thus, fisheries criminal law policy is not only oriented towards individual punishment, but also towards the protection of economic and ecological systems.

The reform of the national criminal law through Law Number 1 of 2023 concerning the Criminal Code has brought a new paradigm in the Indonesian criminal system. The National Criminal Code emphasizes that the purpose of punishment is not solely retributive but also preventive, protective of the community, and restorative (Nur, 2026). In fisheries crimes, this paradigm is particularly relevant because the losses incurred are collective and have long-term environmental impacts. Although additional criminal arrangements have been normatively available, judicial realities show that their application has not been consistent. Many court decisions impose only prison sentences and fines, without maximizing ship seizure or license revocation. This raises questions about the effectiveness of the legal norms that have been formulated.

Theoretically, additional crimes serve a strategic function in the theory of deterrence: increasing the cost of crime so that it exceeds the benefits the perpetrator obtains (Sriwidodo, 2019). If the ship and fishing gear are confiscated, the perpetrator will suffer significant losses, thereby suppressing the potential for the recurrence of criminal acts. Without the seizure, the perpetrator still has the means to commit the offense again. In criminal policy, additional penalties are part of penal policies that must be supported by non-penal policies such as administrative supervision and strengthening the licensing system. This means that the effectiveness of additional crimes cannot be separated from coordination between law enforcement officers and related agencies.

Based on this description, the problem studied is how the normative construction of additional fisheries crimes, according to Indonesia's positive law, and how effective their application in judicial practice is when associated with the latest national criminal policy. The purpose of this research is to analyze in depth the legal basis, rationality, and implementation of additional penalties in the Indonesian fisheries legal system. This research is important because fisheries crimes affect the state's strategic interests and environmental sustainability. Without the optimal implementation of additional penalties, the policy to eradicate illegal fishing could become ineffective. Thus, a juridical analysis of additional crimes in fisheries becomes relevant to assess the extent to which legal norms can address the challenges posed by modern economic crimes in the marine sector.

## **RESEARCH METHODS**

This study uses a normative legal research method to analyze written legal norms that govern additional crimes in fisheries. Normative research was chosen because the main object of study is laws, regulations, and legal doctrines. The approaches used include the statutory, conceptual, and systematic approaches. The legislative approach is carried out by comprehensively examining the provisions in Law Number 31 of 2004 jo. Law Number 45 of 2009 and Law Number 1 of 2023 concerning the national Criminal Code. The conceptual approach is carried out by analyzing theories of punishment, including the absolute theory (retributive), the relative theory (utilitarian), and the combined theory. The absolute theory views crime as retribution for wrongdoing, while the relative theory emphasizes the prevention and protection of society. In the context of fisheries crimes, relative theory and deterrence are more relevant because they focus on preventing the recurrence of such crimes. A systematic approach is used to examine the relationship between fisheries law, as *lex specialis*, and the National Criminal Code, as *lex generalis*. This analysis is important to ensure that there is no conflict of norms in the application of additional penalties. The primary legal materials used include related laws and regulations, while secondary materials include literature, scientific journals, and the opinions of criminal law experts. Tertiary legal materials are used to strengthen conceptual arguments. The analysis technique is carried out qualitatively, using grammatical interpretation methods to understand the textual meaning of norms, systematic interpretation to examine the relationships between articles, and teleological interpretation to understand the lawmakers' goals. The analysis is also carried out by examining the rationality of penal policies in the context of economic crimes. This is important because fisheries crimes cannot be separated from the motive of financial gain. With this method, this study is expected

to provide a comprehensive analysis of the position and effectiveness of additional penalties in the Indonesian fisheries law system.

## RESEARCH RESULTS

### Juridical Analysis of Additional Criminal Applications in Fisheries Crime

In the national criminal law system, additional penalties were initially positioned as a complement to the main penalty. However, the development of modern criminal law shows that additional criminal status can no longer be seen as a mere accessory instrument. Law Number 1 of 2023 concerning the National Criminal Code classifies crimes into principal and additional crimes, where additional crimes include confiscation of certain goods, revocation of certain rights, announcement of a judge's decision, and certain obligations specified in the law (Auli, 2024). This reformulation reflects a paradigm shift from an orientation toward corporal punishment to a more comprehensive approach focused on the protection of legal interests (*rechtsbescherming*). Thus, additional crimes no longer simply follow the main crime but become a strategic instrument targeting objects or means directly related to the commission of criminal acts.

In fisheries crimes, additional criminal arrangements are specifically regulated in Article 76A of Law Number 45 of 2009 concerning Amendments to Law Number 31 of 2004 concerning Fisheries. The provision states that, in addition to the main crime, the perpetrator may be sentenced to additional penalties, including confiscation of fishing vessels, fishing equipment, and fishery products, and revocation of fishing business licenses. Grammatically speaking, the phrase "can be dropped" indicates a facultative nature (Nurchayawan & Saputra, 2017). However, this norm is designed to eliminate the primary instrument that enables criminal acts. Boats and fishing gear are not just objects, but means *of production* that are the core of fishing activities. Without these means, perpetrators cannot illegally exploit resources.

Systematically, the relationship between the National Criminal Code and the Fisheries Law reflects the application of *the principle of lex specialis derogat legi generali*. The National Criminal Code provides a general framework regarding additional types of crimes, while the Fisheries Law regulates more specifically the objects that can be seized in fisheries crimes. Thus, there is no conflict of norms, but complementary relationships. The seizure of vessels and fishing gear in fisheries law is a concrete form of the seizure of certain goods as recognized in the National Criminal Code. This construction strengthens the judge's legitimacy in imposing additional penalties as an instrument for restoring violated legal interests.

Article 102 of the Fisheries Law, which allows the seizure or destruction of foreign vessels for fisheries crimes, underscores the dimension of protecting state sovereignty (Munawaroh, 2025). This norm is consistent with the principles of international maritime law regarding the sovereign right of coastal states to manage resources in the Exclusive Economic Zone. In constitutional law, this provision is also an implementation of Article 33, paragraph (3) of the 1945 Constitution, which affirms that the earth, water, and natural resources contained in it are controlled by the state for the greatest prosperity of the people. Therefore, additional penalties for fisheries crimes are not only grounded in criminal law but also have constitutional legitimacy.

When analyzed teleologically, the main purpose of additional penalties in fisheries law is to deter through the loss of economic benefits. Fisheries crimes are generally financially motivated crimes with the potential for large profits and legal risks that are often considered low. In *the theory of deterrence* in economic criminal law, the effectiveness of sanctions is measured by their ability to increase the cost of crime to exceed the benefits the perpetrator obtains. The seizure of ships, fishing gear, and fishery products significantly increases these costs, thereby strengthening the deterrence of criminal law. Additional crimes in fisheries law can also be understood as a form of *asset forfeiture* that aims to cut off the flow of illegal profits (Kaban & Kholiq, 2025). In practice, the value of the ship and the catch often far exceeds the penalty of fines. If the forfeiture is not imposed, the perpetrator can still retain the illegally obtained profits. This will weaken the preventive function of criminal law and is contrary to the principle of "*crime should not pay*". Therefore, confiscation, as an additional crime, plays a strategic role in reducing the economic incentives for crime.

From the perspective of criminal theory, the imposition of additional penalties in fisheries crimes is more consistent with relative or utilitarian theories that emphasize community protection and crime prevention. Given the impact of illegal fishing on the ecology, national economy, and the welfare of local fishermen, preventive orientation has become more relevant than retaliation alone. Thus, additional penalties can no longer be positioned as a mere complement, but as the main instrument of criminal policy in the fisheries sector.

However, in terms of the construction of Article 76A, it still leaves normative problems. The facultative nature of norms opens a wide space for interpretation and may weaken their preventive purpose. There are no objective parameters as to when the seizure of a vessel is mandatory and when it is not. The absence of these criteria can lead to disparities in decision-making and reduce legal certainty (*rechtzekerheid*). From the perspective of the principle of legality and legal certainty, the formulation of these norms remains minimalist and

does not fully reflect the nature of modern economic crimes. Another weakness can be seen in the context of corporate criminal liability. The National Criminal Code has created a broad basis for imposing additional penalties, including profit confiscation and revocation of business licenses, against corporations. However, the Fisheries Law has not explicitly incorporated this principle as an obligation to forfeit all profits from criminal acts. In fact, in organized economic crime, the loss of profits is the foundation of the effectiveness of criminalization (Manik, 2018).

Therefore, a more progressive reformulation of norms is needed. Article 76A should be strengthened with an imperative clause under certain conditions, for example, against repeat offenders, corporations, or foreign-flagged ships. In addition, it is necessary to make strict arrangements regarding the obligation to forfeit all economic profits, including proceeds that have been diverted, to prevent legal evasion through asset manipulation. Reformulation based *on an asset-based punishment approach an urgently needed* so that additional penalties truly function as the main instrument for eradicating fisheries crimes. Thus, it can be affirmed that although additional fisheries crimes already have a strong legal and constitutional basis, their normative construction still needs to be strengthened to align with the character of modern economic crimes and the goal of protecting Indonesia's marine resources.

### **Analysis of the Effectiveness of the Application of Additional Penalties in National Criminal Policy**

Although normatively, additional crimes in fisheries have been regulated quite comprehensively, the effectiveness of their application in judicial practice still faces various fundamental problems. One of the main problems lies in the construction of Article 76A of Law Number 45 of 2009, which uses the phrase "can be imposed", thus placing additional penalties in a facultative position. Theoretically, the granting of discretion to judges is a manifestation of the independence of judicial power. However, in practice, discretion without objective parameters often leads to disparate decisions in cases with similar characteristics.

This disparity directly undermines the principle of legal certainty and the consistency of criminal policy. In some cases involving small fishermen, judges tend to consider socio-economic factors to avoid imposing the seizure of the boat. These humanitarian considerations are sociologically understandable. However, in cases involving large ships or corporations with a broad range of operations, additional penalties are not always applied optimally (Musdamin et al., 2023). This inconsistency creates an imbalance in law enforcement and has the potential to weaken the purpose of criminalization as an instrument to prevent the recurrence of criminal acts.

From the perspective of Law Number 1 of 2023 concerning the National Criminal Code, the purpose of punishment is no longer solely oriented towards retaliation, but also includes the prevention of criminal acts, community protection, the restoration of balance, and the development of perpetrators (Angwamasse, 2025). In the context of fisheries crimes, aspects of community protection and public interest are very dominant because the losses caused are collective, have an impact on the sustainability of natural resources, and affect the welfare of future generations. Therefore, additional penalties should be positioned as the primary instrument to achieve the goal of protection, not merely a complement to the main crime, in the form of imprisonment and fines.

The dominance of the retributive paradigm in judicial practice can still be seen in judges' tendency to focus more on the main crime. In fact, in fisheries crimes, the main loss lies in the exploitation of illegally obtained resources and economic gains. If the boat and fishing gear are not confiscated, the perpetrator retains the capacity to resume production and return to commit the offense after serving a prison sentence (Togelang et al., 2021). Thus, imprisonment without asset confiscation often does not produce a significant deterrent effect, especially for perpetrators with large capital.

If analyzed through *the economic analysis of law* approach, the perpetrator of the crime will make a rational calculation between the profits obtained and the risks incurred. If the legal risk is less than the economic benefits produced, then criminal acts will continue to be committed (Setiawan et al., 2025). In situations where additional penalties are not consistently applied, the legal system indirectly creates a negative incentive for the perpetrator to treat the offense as part of the *cost of doing business*. This is clearly contrary to the principle of *deterrence*, which demands that punishment significantly increase the cost of crime.

Additional criminal effectiveness is also closely related to corporate criminal liability. The National Criminal Code has provided a broad scope for corporate criminalization, including the imposition of additional penalties, such as deprivation of profits from criminal acts and revocation of business licenses. However, in fisheries law enforcement practice, this instrument has not been utilized optimally. It is not uncommon for only the captain or crew to be punished, while capital owners or corporations that make the main profits are not subject to the maximum sanctions (Loing et al., 2022). This condition reflects inequality in the application of the principle of substantive justice and weakens the effectiveness of criminal policies against organized economic crime. In addition, the absence of specific criminal guidelines in fisheries cases heightens the risk of inconsistency. Without a clear standard for when vessel seizures are mandatory, for example, in cases of repeated violations, the use of

prohibited fishing gear, or corporate involvement, judges tend to use different subjective considerations. From the perspective of the principle of *equality before the law*, this condition could lead to unequal treatment and undermine public trust in the justice system.

In terms of criminal policy, additional criminal optimization must be integrated into a comprehensive strategy to eradicate *illegal fishing*. Additional crimes cannot stand alone; they must be supported by a transparent licensing system, effective administrative supervision, and coordination between law enforcement officials (Shafira et al., 2021). However, within the framework of *penal policy*, additional crimes still have a central position because they directly target criminal instruments and profits. Therefore, the seizure of ships and the revocation of permits should be understood as *core sanctions* rather than *supplementary sanctions*.

Penal policy reform is an urgent need to strengthen its effectiveness. The preparation of guidelines for the specific criminalization of fisheries crimes, including the possibility of issuing technical guidelines by the Supreme Court, can be a concrete step to ensure the consistency of the application of additional penalties. The guidelines should emphasize the priority of seizing vessels and fishing gear in large-scale cases or repeated violations, and should also firmly integrate corporate accountability. Thus, the effectiveness of additional criminal prosecutions in fisheries crimes is highly dependent on the alignment between legal norms, the orientation of national criminal policies, and the commitment of law enforcement officials in placing asset confiscation as the main instrument for protecting marine resources. Without harmonization and consistent implementation, progressively formulated norms risk losing their practical usefulness and failing to address the challenges of modern fisheries crime.

## CONCLUSION

Additional fisheries crimes have a strong legal basis in both Law Number 1 of 2023 concerning the National Criminal Code and Law Number 45 of 2009 concerning Fisheries, and are supported by constitutional legitimacy under Article 33 paragraph (3) of the 1945 Constitution. Conceptually, additional crimes, especially the seizure of ships, fishing gear, fishery products, and the revocation of permits, are strategic instruments based on asset-based punishment that are relevant to the character of fisheries crime as profit-motivated economic crimes. However, the construction of still facultative norms, the absence of objective parameters, and the suboptimal application to corporations do not maximize their effectiveness and may lead to disparities in decisions. Therefore, it is recommended to reformulate Article 76A by strengthening the imperative nature in certain conditions, such as repeated violations, corporate involvement, or the use of foreign ships, accompanied by strict regulations regarding

the confiscation of all profits from criminal acts. In addition, it is necessary to prepare guidelines for the special criminalization of fisheries crimes to ensure consistency and legal certainty, so that additional penalties truly function as the primary sanction in protecting marine resources and preventing fisheries crimes in a sustainable manner.

## BIBLIOGRAPHY

- Angwarmasse, L. C. (2025). Implications of the New Criminal Code on the Criminal System in Indonesia. *Judge*, 6(5): 1660–1668.
- Auli, R. S. (2024). Types of Criminal Law in the Criminal Code. Retrieved from <https://www.hukumonline.com/klinik/a/jenis-hukum-pidana-cl194/>.
- Hudi, N. (2021). Criminalization of Fisheries Crimes Based on Economic Losses. *Legal Perspectives*, 21(2): 222–234.
- Kaban, K. S., & Abdul, K. (2025). Optimization of Criminal Regulations Related to Asset Forfeiture of Economic Crimes Based on the Perspective of Progressive Law with Justice. *Locus Journal*, 4(5) : 1811-1823.
- Loing, J., et.al. (2022). Criminal Provisions for Fishing Vessel Captains Who Do Not Have a Sailing Approval Letter. *Lex Privatum*, 10(4): 1–15.
- Manik, J. D. N. (2018). Enforcement of Criminal Law in the Fisheries Sector (Based on Law Number 45 of 2009 concerning Amendments to Law Number 31 of 2004 concerning Fisheries). *Legal Perspective*, 18(1): 56–75.
- Munawaroh, N. (2025). Legal basis for the sinking of foreign vessels that steal fish. Retrieved from <https://www.hukumonline.com/klinik/a/dasar-hukum-penenggelaman-kapal-asing-pencuri-ikan-lt54e31f284a8ff/>.
- Musdamin., et.al. (2023). Juridical Analysis of Fisheries Crimes Committed by Foreign Fishermen at the Bitung Fisheries District Court. *Journal of Social and Humanities Current*, 3(2): 90–108.
- Novemyanto, A. D. (2024). Conceptualization of Strengthening the Redistribution of Natural Resources Products in Article 33, Paragraph (3) of the 1945 Constitution. *Journal of Legal Essence*, 6(1) : 43–57.
- Nur, A. W., et.al. (2026). Transformation of Criminal Policy in the National Criminal Code: Between the Humanization of Punishment and the Effectiveness of Crime Control. *Collaborative Journal of Science*, 9(1): 1414–1421.
- Nurcahyawan, T., & Leonardo, S. (2017). Law Enforcement and the Sinking of Foreign Ships (Case Study of Criminal Acts of Illegal Fishing Perpetrators). *Era of Law*, 2(1): 344–383.
- Nurhakim, R. (2025). Fishermen are threatened, the sea is hurt: The impact of IUU Fishing on Communities and Ecosystems. Retrieved from <https://pengawasperikanan.or.id/publication/post/nelayan-terancam-laut-terluka-dampak-iuu-fishing-bagi-masyarakat-dan-ekosistem-20250705001828>.
- Setiawan, R. N., et.al. (2025). Prosecutors as Dominus Litis in the Perspective of Economic Analysis of Law in the Handling of Corruption Crimes in Indonesia. *History*, 8(4): 5412–5427.
- Shafira, M., et.al. (2021). Illegal Fishing: Optimizing Criminal Law Enforcement Policy as a Primum Remedium. *Juridical Insights*, 5(1): 40–59.
- Songgigilan, D. O. M., et.al. (2022). The Crime of Operating Indonesian and Foreign Flagged Fishing Vessels in the Fisheries Management Area of the Republic of Indonesia. *Lex Administratum*, 10(4): 1–18.

- Sriwidodo, J. (2019). *Indonesian Criminal Law Studies: Theory and Practice*, Yogyakarta: Kepel Press.
- Togelang, R. D., et.al. (2021). Enforcement of Criminal Provisions for Fines Against Small Fishermen or Small Fish Farmers If They Commit Criminal Offenses. *Lex Crimen*, 10(3): 194–203.