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## General Court Decisions in Handling Criminal Cases Violating Article 78 of Law No. 31 of 2004 Result in Legal Nullity at the District Court, High Court, and Supreme Court (Case Study: Cirebon District Court)

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**Abstract:** Fisheries crimes are generally handled in District Courts designated as Fisheries Courts with the following composition of judges: two career judges and one ad hoc judge, based on Article 78 of Law No. 31 of 2004 concerning Fisheries. However, some fisheries crimes are handled by District Courts that do not have fisheries courts. Meanwhile, the transitional provisions of Article 106 allow cases to be handled outside the jurisdiction of fisheries courts. The transitional period has exceeded three years since the enactment of the law, so that the validity of judges' decisions in cases heard by three career judges at the District Court, High Court, and Supreme Court has become null and void. The establishment of fisheries courts has not been evenly distributed in areas where fisheries crimes often occur, and there is still a lack of readiness in terms of ad hoc judges with expertise in fisheries. Of the 33 provinces, there are only 10 fisheries courts, which is detrimental to the Indonesian economy and local fishermen. The Indonesian government does not seem to be serious in dealing with fisheries crimes that are often committed by foreign parties, thereby harming the Indonesian state.

**Keyword:** The Annulment of Court Decisions in District Courts, High Courts, The Supreme Court That Violate Article 78 of Law No. 31 Of 2004 Concerning Fisherrie.

### INTRODUCTION

Provisions regarding judicial power are regulated in Law No. 4 of 2004 concerning Judicial Power, Law No. 8 of 2004 concerning General Courts, and Law No. 5 of 2004 concerning the Supreme Court. With the enactment of Law No. 4 of 2004, the previous law on judicial power was declared invalid. Law No. 4 of 2004 is the parental law and general framework that lays down the foundations and principles of the judiciary and guidelines for the four types of courts, specifically the administrative, military, ecclesiastical, and general courts. With the Supreme Court at the top, each court's rules are nonetheless governed by distinct legislation.

The Juvenile judicial, Human Rights Court, Industrial Relations Court, Commercial Court, Fisheries Court, and Corruption Court are among the Special Courts that are part of the ordinary judicial system. Within the ordinary judicial system, the Fisheries judicial is a Special Court with the power to investigate, try, and rule on crimes pertaining to fisheries. Law Number 31 of 2004 regulating Fisheries served as the foundation for the establishment of the Fisheries Court. The District Courts of North Jakarta, Medan, Pontianak, Bitung, and Tual initially formed Fisheries Courts in 2004. In 2010, based on Presidential Decree No. 15 of 2010, Fisheries Courts were established in the District Courts of Tanjung Pinang and Ranai. Then in 2014, based on Presidential Decree No. 6 of 2014, three new Fisheries Courts were established at the Ambon District Court, the Sorong District Court, and the Merauke District Court. The jurisdiction of the Fisheries Court is in accordance with the jurisdiction of the District Court.

Given the vast size of the Republic of Indonesia, it is imperative to immediately expand the establishment of Fisheries Courts to reduce fisheries crimes committed by foreign nationals. Domestically, it is also necessary to reform local fishermen to improve human resources in marine management and fishing, as well as the preservation of the archipelago.

In accordance with Article 3 of Law No. 6 of 1996 pertaining to Indonesian waters: 1) Archipelagic waters, inland waterways, and Indonesian territorial waters are all considered to be part of Indonesian waters; 2) According to Article 5, the territorial sea of Indonesia is a 12-nautical-mile-wide strip of sea that is measured from the baseline of the Indonesian archipelago; 3) All waters on the inner side of the straight archipelagic baseline, regardless of their depth or distance from the coast, are considered Indonesian internal waters; 4) All waters on the landward side of the low-water line of the Indonesian coast, including all waters on the landward side of a closing line as mentioned in Article 7, are considered Indonesian internal waters.

According to Law No. 9 of 1985 concerning fisheries. This legal product is the first regulation in the form of a law that specifically regulates fisheries. This law was established in the context of implementing national development with an archipelagic perspective, whereby the management of fish resources must be carried out as well as possible based on fairness and equity in their utilization, with an emphasis on expanding employment opportunities and improving the standard of living for fishermen and small-scale fish farmers, as well as ensuring the sustainability of fish resources and their environment, which will enhance national resilience. Thus, this study has three main objectives:

1. To urge the government to take more serious action in establishing fisheries courts.
2. To improve human resources in the field of fisheries crime and recruit more judges, namely career judges and ad hoc judges, to be placed in district courts, high courts, and the Supreme Court.
3. To immediately establish fisheries courts in areas where fisheries crimes frequently occur in order to reduce state losses. This study is expected to enrich the academic discourse on fisheries crime law and provide practical contributions to the government.

## **METHOD**

This research is a normative legal study using a legislative research approach, case studies, and conceptual analysis to propose solutions to the problems described. The legal materials used in this study are primary and secondary legal materials. The primary legal materials consist of relevant legislation and a literature review of legal materials that serve as references. The analysis used in this study is descriptive analysis.

### **Population and Sampling Techniques**

The research population technique covers all laws, regulations, and court decisions that have permanent legal force in Indonesian fisheries and general courts. This population

includes: Law No. 48 of 2009 concerning the Judiciary; 2. Law No. 17 of 1985 concerning UNCLOS; 3. Law No. 31 of 2004 on Fisheries; 3. Law No. 45 of 2009 concerning Amendments to Law No. 31 of 2004 on Fisheries; 4. Guidelines for the Implementation of Court Duties and Administration Book II; The research sample was determined using purposive sampling, which is the selection of primary and secondary legal materials based on their direct relevance to the research object.

### **Research Instruments and Procedures**

The main research instrument is a legal analysis sheet that serves to record, classify, and interpret each legal norm. The research procedure is carried out through three systematic stages:

1. Inventory of legal materials, namely the collection of primary and secondary legal materials sourced from official sources such as JDIH, the Ministry of Law and Human Rights, the Ministry of Maritime Affairs and Fisheries, the Ministry of Transportation, the Supreme Court Decision Directory, and the library.
2. Classification of norms by mapping the provisions of TIPIKOR Criminal Acts and Fisheries Criminal Acts.
3. Normative-comparative analysis, which compares norms and practices in handling cases in the General Court and the designated Fisheries Court.

Case Study Approach Cirebon court decisions: PN\_Cbn\_2021\_Pid.Sus\_38 and PN\_Cbn\_2017\_2017\_Pid.Sus\_182. Three legal interpretation techniques were used in the analysis stage:

1. Interpretation of Article 78 in Law Number 31 of 2004.
2. A systematic interpretation to link Article 106 of Law No. 31 of 2004 and Article 84 of Law No. 8 of 1981 on Criminal Procedure into the framework of the national legal hierarchy.
3. Legal Order: an order of human behavior, Legal Order: a coercive order, and Legal Order: as a coercive normative order (Soerjono Soekanto, 1985)

### **Validity and Reliability**

The validity of the research was ensured through triangulation of sources, namely comparison between written legal norms and court decisions. Internal validity was tested by examining the consistency between norms in the national legal system. To ensure reliability, all stages of analysis and legal sources were documented so that this research could be replicated by subsequent researchers.

### **Scope and Limitations**

This study is limited to designated Fisheries Courts and the handling of fisheries crimes in General Courts that do not have ad hoc judges in Indonesia. In accordance with the doctrinal approach and case study method, there is no quantitative data or statistical testing, and the results of the study can be accounted for in accordance with the verdicts that have been handed down for the sake of future improvements to the government's seriousness.

## **RESULTS AND DISCUSSION**

The results of the study indicate that there are only 10 fisheries courts established within the general court system, while general courts without fisheries courts often handle fisheries criminal cases, which are presided over by three career judges and no ad hoc judges. whereas according to Article 78 of Law No. 31 of 2004, it is stipulated that (1) Ad hoc and career judges make up the judiciary of the Fisheries Court. (2) There are one (1) professional judge and two (2) ad hoc judges on the panel of judges. (3) The Chief Justice of the Supreme

Court makes the decisions that determine the appointment of career judges, as mentioned in paragraph (1). (4) The President appoints and removes the ad hoc judges mentioned in paragraph (1) based on the Chief Justice of the Supreme Court's proposal.

With reference to the transitional features Article 106 Criminal cases in the field of fisheries that take place outside the jurisdiction of the fisheries court as referred to in Article 71 paragraph (3) will continue to be investigated, tried, and decided by the competent district court as long as there is no fisheries court other than the one mentioned in that paragraph. The transitional provisions have a specific time limit, so that legal certainty in the application of fisheries courts in areas where fisheries crimes such as fish theft frequently occur is still very minimal, which has an impact on fishermen, especially on the government, which suffers state losses.

The handling of criminal fisheries cases in general courts where the judges do not have Ad Hoc Judges in the District Court violates Article 78, resulting in the court decision being null and void. Meanwhile, in high courts that hear criminal fisheries cases that do not have Ad Hoc Judges, the decision is also null and void. Similarly, cases involving criminal offenses heard by the Supreme Court without an Ad Hoc Judge result in the decision being null and void.

The handling of cases in the fisheries court has a valid decision. When an appeal is filed in the High Court, which does not have an Ad Hoc Judge for fisheries crimes, the judge's decision is legally void because it contradicts Article 78. The case is then continued with a cassation appeal to the Supreme Court, where it is heard by career judges without any ad hoc judges, resulting in the judge's decision being null and void.

His analysis, based on Pure Theory (Soerjono Soekanto, 1985) related to legal order, identifies three types of legal order: 1) Legal order: a system of human behavior; 2) Legal order: a coercive system; and 3) Legal order: a coercive normative system. From this theory, it can be considered that a normative order of coercion occurs in the application of law to produce a decision from the lower level to the highest level, namely the Supreme Court. However, the result of this act of human behavior also violates this norm, so that the harmonization of justice and legal certainty is still very minimal. Therefore, the Indonesian government needs to urgently establish fisheries courts in vulnerable areas where fisheries crimes often occur in order to reduce state losses, improve the welfare of small-scale fish farmers, and take firm action against foreign fish thieves.

## CONCLUSION

This study confirms that General Courts hearing Fisheries Crimes without Ad Hoc Judges based on Article 78 of Law No. 31 of 2004 are associated with Pure Theory, which results in the judge's decision being legally void; With the Cirebon Court Decision: PN\_Cbn\_2021\_Pid.Sus\_38 and the Cirebon Court Decision: PN\_Cbn\_2017\_2017\_Pid.Sus\_182. The High Court that tried fisheries crimes without an Ad Hoc Judge based on Article 78 of Law No. 31 of 2004 was associated with Pure Theory, which resulted in the judge's decision being legally invalid. The Supreme Court, which hears fisheries crimes in cassation without ad hoc judges based on Article 78 of Law No. 31 of 2004, is associated with the Pure Theory, which results in the judge's decision being null and void.

As an archipelagic country, Indonesia continues to face complex maritime issues. In the legal field, for example, Indonesia still faces several problems such as overlapping laws and regulations that lead to complications in the authority between institutions. In addition, Indonesia is faced with the problem of a legal vacuum in creating a complete and integrated legal structure (Ahmada Solilhin, 2010). Therefore, the Indonesian government must immediately establish fisheries courts in vulnerable areas where fisheries crimes frequently

occur in order to reduce state losses, improve the welfare of small-scale fish farmers, crack down on foreign fish thieves, and maintain the integrity of the Republic of Indonesia.

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