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**CRIMINAL LIABILITY OF FISHERY PERPETRATOR ACCORDING TO FISHERY  
LAW NUMBER 45 OF 2009 CONCERNING AMENDMENT TO LAW NUMBER 31  
OF 2004**

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**ABSTRACT**

Many occurrences of fisheries criminal offenses make the writer interested to learn about criminal provisions and the responsibility of the perpetrators according to Law No. 45 of 2009 concerning amendments to Law No. 31 of 2004 concerning Fishery. By studying, understanding, and analyzing these articles of law, the author significantly obtains the picture of whether this Fishery Law is appropriate and able to force the perpetrator of their responsibility for their actions. The purposes of this paper are 1) To analyze the patterns of fishery criminal so the perpetrators could be charged their responsibilities according to Law No. 45 of 2009, 2) To study and analyze how to determine the penalties according to the Law No. 45 of 2009. This paper is a qualitative descriptive. The method of this research is normative law with conceptual and institutional approaches. The result of the study showed that legislation in Indonesia relating to Fisheries, administratively, there are still several articles that are sticking out and controversy according to Law No. 45 of 2009 concerning amendments to Law No. 31 of 2004 concerning Fishery. For small fishermen who do not have a Yachting Approval Letter (SPB) in Indonesia should be subjected to administrative sanctions such as paying compensation. If administrative sanctions are not implemented, then the principle of *ultimum remedium* can be applied as a last choice in violations of fisheries and there are still several articles that are detrimental to the interests of the State as well as the interests of local fishermen which, if seen from criminal liability, may be imposed.

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## 1. INTRODUCTION

Criminal liability is a condition where a legal subject is obliged to bear the burden of criminal acts as a result of acts that violate the law. The definition of criminal liability is different from a criminal act, the criminal act shows the nature of the act, that is the nature that is prohibited and threatened with a criminal offense if violated. People cannot be held liable if the specified accountability requirements are not fulfilled.

According to Mustafa Abdullah dan Ruben Ahmad (1986, p. 153) that:

Criminal liability is to determine whether a suspect/defendant can be held responsible for a crime that occurred or not. In other words, whether the defendant will be convicted or acquitted, he can be convicted, if the actions that have been taken are against

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the law and he can take responsibility. This ability shows the mistakes of the perpetrators in the form of deliberate or negligence because the principle of accountability in criminal law is that there are no mistakes. This means that the action is despicable and the accused is aware of the action taken.

Criminal liability is inseparable from the concept of crime. In the science of Criminal Law, the term criminal act is one of the basic terms which is the definition of law, in addition to criminal liability. The term "criminal event" or "criminal offense" is a translation of the Dutch term "Strafbaarfeit" or "delict" (Kansil and Kristin:2007, p. 27).

Furthermore, according to Utrecht (via Moeljatno:2002, p. 2007), stated that advocating the use of the term criminal event, because the term criminal event includes acts (*handelen or doen, positive*) or neglect (*verzuim or nalaten or niet-doen, negative*) or its consequences. Another term that is popularly used is, "criminal acts" are acts that are prohibited by legal regulation of the land were accompanied by threats (sanctions) in the form of certain crimes, for those who violate the prohibition.

Many criminal acts are carried out by criminal offenses that violate the rules of criminal law whether regulated in Criminal Code (KUHP) or another role beside the Criminal Code, including Fisheries Criminal Acts regulated in Law No. 45 of 2009 concerning amendments to Law No. 31 of 2004 concerning Fisheries and several other implementing regulations relating to criminal fisheries in Indonesia. Regarding fisheries crime, the definition of Fisheries is "activities related to the management and utilization of fish resources". Tribawono (2013, p.1) states that:

Fishery is all activities that are closely related to the management and utilization of fish resources. The fish resources themselves encompass various types of fish including another aquatic biota, such as:

1. Pisces (finfish)
2. Crustaceans (shrimp, crab, and the like)
3. Molluscs (clams, oysters, squid, octopus, snails and the like)
4. Coelenterata (jellyfish and the like)
5. Echinoderms (sea cucumbers, sea urchins and the like)
6. Amphibia (frogs and the like)
7. Repilia (crocodiles, turtles, monitor lizards, water snakes and the like)
8. Mammals (whales, dolphins, dugongs and the like)
9. Algae (seaweed and the like)
10. Other aquatic biotas which are related to the nine types.

Ramlan (2015, p. 119) stated that:

*Article 25 paragraph (1) of Law No. 45 of 2009 determines fisheries business carried out in the fisheries business system, including preproduction, management and marketing. Article 25 above explains that the management of fishing businesses is carried out in a business system, but the UUP itself does not provide an understanding of the system to be guided. As for Article 1 number 1 PP No. 54 of 2002 gives the meaning of fishing business is: all businesses of individuals or legal entities to catch or breed fish, including activities to store, cool or preserve fish for commercial purposes.*

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Many community activities misuse fisheries for personal gain without thinking about the ecosystems, for example by using prohibited fishing gear and causing damage to the marine ecosystem. Nowadays, fisheries crime is in the spotlight of the public due to the rise of fisheries crime. Fish bombing, illegal fishing business and many more cases related to fisheries crimes that occur in Indonesia.

Indonesia is an archipelago country consisting of 18 islands with the second length in the world after Canada. Indonesia's territory which stretches from Sabang to Merauke which consists of 1/3 of the land and 2/3 of the sea which has been ratified by the 1982 UN Convention on the Law of the Sea, by Indonesia based on Law No. 17 of 1985 the area became 7.9 million km<sup>2</sup>, which means the area of Indonesia's sea area covers 70% of the entire territory of Indonesia. Indonesia's marine area is a long-term national asset that contains natural resource potential including its marine resources including fish.

Therefore, the use and management of marine resources including fish resources in Indonesia absolutely must be done. The development of human life and the increasing need for food from marine products influence the utilization and management of marine resources. They use new methods that can get the maximum number of marine products faster and don't think about the balance of nature anymore. The sustainability of the marine ecosystem is no longer a top priority, but only a material benefits even though by breaking the law such as the use of chemicals that are harmful to the sustainability of the marine ecosystem. The existence of local fishermen with simple equipment is often eliminated by large and modern companies. in addition, many fishermen from foreign countries enter illegally to take advantage of Indonesian marine products, as reported in print and electronic media.

There are many violations of criminal acts in the fishery business when referring to Law no. 31 of 2004 concerning fisheries and Law No. 45 of 2009 concerning amendments to Law No. 31 of 2004 concerning fisheries. In Law No. 31 of 2004 concerning fisheries, several articles governing criminal acts (offense) in the field of fisheries there are 2 (two) categories, namely categories of violations and categories of crime. Judges who prosecute offenders in the field of fisheries are also specialized, namely ad hoc judges consisting of two ad hoc judges and one career judge. Trial hearings can be carried out in *absetia* as well as detention is specifically regulated.

The mechanism for detaining fisheries criminal cases is not like handling criminal cases in general. Article 73 paragraph (3) of Law No. 31 of 2004 concerning fisheries mandated the establishment of a coordinating forum as a medium to coordinate in handling fisheries crime. This coordinating forum according to Adriyanty, et al. (2012, p. 93-100), consists of:

1. Investigation officer from Maritime and Fisheries Service for law enforcement of fisheries crime.
2. Investigation Personnel from Water Police Directorate of Regional Police to help filing.
3. Navy personnel to assist the investigation of fisheries criminal offenses if a case occurs in the EEZ region
4. Coordination and supervision (PPNS) of Regional Police Officer for the guidance of PPNS Provincial Maritime and Fisheries Service.
5. Prosecutor's Office, to prosecute if the investigation process is finished and the

case is deemed to have been P-21 (ready to be filed and prosecuted).

The authority to investigate criminal acts in the fishery sector is one of the problems that arises in Law No. 45 of 2009 concerning Amendments to Law No. 31 of 2004 concerning Fisheries. The Indonesian Navy wants to be involved in investigating cases outside of marine violations in the Indonesian EEZ, this request relates to the functions, duties and authority to monitor and arrest violators in all territorial waters. However, the Ministry of Maritime and Fisheries Affairs (KKP) that has the initiative to formulate and submit a Fisheries Law Draft through his minister at the time Fadel Muhammad objected to the request.

The problem is more complex because the National Police also wants to be involved as investigators in law enforcement against criminal acts in the field of fisheries. The Indonesian National Police (POLRI) argued that the Police as a state instrument played a role in maintaining public order and security, upholding the law, providing shelter and services to the public. Thus, the Indonesian National Police also has the authority to investigate criminal offenses in the field of fisheries.

In addition to the police, investigations are also carried out by PPNS investigators or other investigators. Therefore, it is necessary to synchronize so that it does not overlap in the implementation of tasks between law enforcers. Synchronization is important for success in the handling of fisheries criminal cases.

The overlapping authority in investigating fisheries criminal acts will lead to problems in the mechanism of criminal liability against fisheries criminal offenders. In practice in the field, it was found that the circumstances of the case resolution through the statement of regret by the perpetrator who was given the seal of Rp. 6000, - against criminal acts of marriage committed by farmers or small fishermen. This is ironic considering the criminal provisions specified in Law No. 45 of 2009 concerning amendments to Law No. 31 of 2004 concerning fisheries, did not recognize the efforts of peace and settlement through the statement of regret by the perpetrators who were stamped Rp. 6000, - Of course, this will lead to a pattern of criminal liability for fishery offenders experiencing legal problems in the form of overlapping authority to conduct investigations and efforts to resolve cases that are carried out outside the legal corridor regarding the imposition of sanctions that are regulated in Law No. 45 of 2009 concerning amendments to Law No. 31 of 2004 concerning fisheries.

In addition, fisheries criminal offenses also create many other problems beyond who is more authorized to conduct investigations on fisheries criminal offenses with several law enforcers who can examine and handle fisheries criminal cases as previously described. The issue of criminal liability for fisheries crimes is also an interesting problem, especially if it is carried out on a large scale and well-organized, even involving corporations that benefit from fisheries criminal acts committed that obtain large profits. What if seen from the criminal liability, who must meet the requirements to be held accountable if the perpetrators involve the corporation, this is interesting to be investigated further, because many cases have occurred involving corporations or non-corporations but involving many actors. The author wants to see in terms of legal norms, whether it is appropriate and able to prosecute the perpetrators or whether there are still many shortcomings of the existing norms, so that perpetrators of criminal acts of fisheries cannot be held criminally accountable.

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Based on the explanation above, the authors are interested to do a research entitled *"Criminal Liability of Fishery Perpetrator According to Fishery Law Number 45 of 2009 Concerning Amendment to Law Number 31 of 2004"*

## 2. LITERATURE REVIEW

In the science of criminal law, the term criminal act is a basic term which is a legal definition, in addition to the accountability of speech, the term "criminal event" or "criminal offense" is as a translation of the Dutch term "Strafbaarfeit" or "offense" (Kansil & Christine, p. 37).

While the term "criminal act" is also not free from criticism. Moeljatno stated, because this term develops from the Ministry of Justice and it was often used in legislation... Nevertheless, the use of the term "criminal offense" is very widespread and dominant today in the laws and regulations in general and legislation in particular.

Then R. R. Soesilo (p. 6), added that the criminal act is: "something that is prohibited or required by law which if done or ignored, then the person who commits or ignores it is threatened with criminal."

### a. Definition of Fishery Criminal Acts

Fishery is all activities that are closely related to the management and utilization of fish resources. The fish resources themselves encompass various types of fish including another aquatic biota, such as Pisces (fin fish), crustaceans (shrimp, crab, and the like), Molluscs (clams, oysters, squid, octopus, snails and the like), Coelenterata (jellyfish and the like), Echinoderms (sea cucumbers, sea urchins and the like), Amphibia (frogs and the like), Repilia (crocodiles, turtles, monitor lizards, water snakes and the like), Mammals (whales, dolphins, dugongs and the like), Algae (seaweed and the like), Other aquatic biota which is related to the nine types (Tribawono, 2013, p.1).

Furthermore Ramlan (2015, p.119), stated that:

*Article 25 paragraph (1) of Law No. 45 of 2009 determines fisheries business carried out in the fisheries business system, including preproduction, management and marketing. Article 25 above explains that the management of fishery businesses is carried out in a business system, but the UUP itself does not provide a definition of this system to be guided. As for Article 1 number 1 PP No. 54 of 2002 gives the meaning of fishery business is: all businesses of individuals or legal entities to catch or breed fish, including activities to store, cool or preserve fish for commercial purposes.*

Many communities misuse fishing activities for personal gain without thinking about the sustainability of the marine ecosystem. Examples of large-scale fishing with equipment that is prohibited by law. Fisheries business is a lot of violations of fisheries crime, fishery crime refers to or regulated in Law No. 31 of 2004 concerning fisheries and Law No. 45 of 2009 concerning amendments to Law No. 31 of 2004 concerning fisheries. In Law No. 31 of 2004 concerning fisheries has included several articles governing criminal acts (offense) in the field of fisheries. Fisheries business is a lot of violations of fisheries crime, fishery crime refers to or regulated in Law No. 31 of 2004 concerning fisheries and Law No. 45 of 2009 concerning amendments to Law No. 31 of 2004 concerning fisheries. In Law No. 31 of 2004 concerning fisheries has included several articles governing criminal acts (offense) in the field of fisheries. There are 2 (two) categories regarding fisheries crime, namely the violation category and the crime category. Judges who will try violations in the field of fisheries are also special, namely ad hoc judges consisting of two ad hoc judges and one career judge. Trial hearings can be carried out absentia. Similarly, detention is specifically regulated. In



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Indonesia, according to Law No. 9 of 1985 and Law No. 31 of 2004 states, that: fisheries activities begin from preproduction, production, processing to marketing carried out in a fisheries business system.

### 3. METHODOLOGY

This paper is a qualitative descriptive. The method of this research is normative law with conceptual and institutional approaches.

### 4. RESULTS AND DISCUSSION

#### a. Types of Fishery Crimes

There are 17 Articles governing the formulation of fishery offenses from Article 84 to Article 100 in Law No. 31 of 2004 concerning fishery and Law No. 45 of 2009. As regulated in the Fishery Law, namely:

##### Article 84

1. Every person who, intentionally, within the Indonesian Fish Cultivation Territory, catches and/or breeds fish using chemical substances, biological substances, explosives, tools and/or means and/or structures, which may damage and/or endanger conservation of fish resources and/or the environment thereof, as set forth in Article 8 paragraph (1), will be penalized with imprisonment of maximum 6 (six) years and monetary charge of maximum Rp. 1.200.000.000,00 (one billion two hundred million Rupiah).
2. Masters or captains of fishing boats, fish catching specialists and ship crews who, intentionally, within the Indonesian Fish Cultivation Territory, catch and/or breed fish using chemical substances, biological substances, explosives, tools and/or means and/or structures, which may damage and/or endanger conservation of fish resources and/or the environment thereof, as set forth in Article 8 paragraph (2), will be penalized with imprisonment of maximum 10 (ten) years and monetary charge of maximum Rp. 1.200.000.000,00 (one billion two hundred million Rupiah).
3. Owners of fishing boats, owners of fishery companies, managers of fishery companies and/or fishing boat operators, who, intentionally, catch and/or breed fish using chemical substances, biological substances, explosives, tools and/or means and/or structures, which may damage and/or endanger conservation of fish resources and/or the environment thereof, as set forth in Article 8 paragraph (3), will be penalized with imprisonment of maximum 10 (ten) years and monetary charge of maximum Rp. 2.000.000.000, 00 (two billion Rupiah).
4. Owners of fish cultivation companies, authorities of fish cultivation companies and/or managers of fish cultivation companies, who, intentionally, catch and/or breed fish using chemical substances, biological substances, explosives, tools and/or means and/or structures, which may damage and/or endanger conservation of fish resources and/or the environment of which, as set forth in Article 8 paragraph (4), will be penalized with imprisonment of maximum 10 (ten) years and monetary charge of maximum Rp. 2.000.000.000,00 (two billion Rupiah).

## Article 103

1. The criminal acts, as set forth in Articles 84, 85, 86, 88, 91, 92, 93 and 94 are construed as crimes.
2. The criminal acts, as set forth in Articles 87, 89, 90, 95, 96, 97, 98, 99 and 100 are construed as violations.

### b. Criminal Liability

Criminal Liability or *tanggungjawab pidana* in Indonesia comes from the words "tanggung" and "jawab". These two words cannot be separated because of the compound word which means to bear all what happens that is associated with an obligation or deed. In foreign languages, criminal liability is referred to "*toerekemboonheid*", "criminal responsibility", "criminal liability" which can be interpreted as a result that must be borne by someone as the effect of his actions towards others. Criminal liability means the consequences that must be borne by someone because of his actions against another. While the criminal translation of the word "*Straf*" or punishment

According to Mustafa Abdullah dan Ruben Achmad, criminal law contains the following elements:

1. Criminal in essence is a justification of suffering.
2. Criminal is intentionally given by an authorized person or body.
3. Criminal is imposed on responsible person of a criminal event according to the constitutions, (p. 49).

### c. Forms of Fishery Criminal Acts According to Law Number 45 of 2009 concerning Amendment to Law Number 31 of 2004 concerning Fishery

Law Number 45 Year 2009 Concerning Amendments to Law No. 31 of 2004 Concerning Fishery regulates the types of fishery criminal acts as follows:

#### a. The Characteristics of Fishery Law

In Law Number 45 of 2009 concerning Amendments to Law Number 31 of 2004 concerning Fishery, two kinds of offenses are regulated, namely:

- 1) Criminal offense (*misdriften*)
- 2) Violation offense (*overtredingen*)

Mohammad Ekaputra (2010, p. 94), Stated that:

*The crimes are criminal-onrecht, which are acts that are contrary to the law, and also norms according to culture and justice determined by God. While violations are politie onrecht, which are acts that are generally prohibited by the regulations of the authorities or the state.*

Andi Hamzah (1994, p. 98), stated: "The criteria for criminal offense are offenses that violate the interests of the law and also endanger the concrete, while the violations only endanger in *abstracto* way".<sup>1</sup>

Criminal offenses in the field of fishery including crimes offenses are regulated in Article 84, Article 85, Article 86, Article 88, Article 91, Article 94, and Article 100A and Article 100B, while violations offenses are regulated in Article 87, 89, 90,

<sup>1</sup>Andi Hamzah, *Asas-Asas Hukum Pidana*, Rineka Cipta, Jakarta, 1994, p. 98.

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95.96, 97, 98, 99, 100 and Article 100C. Crime Fishery meet the elements of a crime classified as a conventional crime. For the aspect of the perpetrators, the scene, and the impact caused by the formulation of Law Number 45 of 2009 concerning Amendments to Law Number 31 of 2004 concerning Fishery. Fishery criminal acts as a whole as follows:

1. Catch fish or collect fish from fishing areas without having the right or permission from the authorized official.
2. Managing and or cultivating fish originating from fisheries areas without having the right or permission from the authorized official.
3. Carrying out, possessing, controlling the fishery products without completing the certificate of the validity of fishing products in the form of fish.
4. Carrying tools or other materials used to capture and / or manage fisheries in the fisheries management area without permission from the authorized official.

While the punishment of fishery criminal acts is regulated in the article 84 paragraph 1 to 4 Law Number 45 2009 as follow:

#### **Article 84**

- (1) Every person who, intentionally, within the Indonesian Fish Cultivation Territory, catches and/or breeds fish using chemical substances, biological substances, explosives, tools and/or means and/or structures, which may damage and/or endanger conservation of fish resources and/or the environment thereof, as set forth in Article 8 paragraph (1), will be penalized with imprisonment of maximum 6 (six) years and monetary charge of maximum Rp. 1.200.000.000,00 (one billion two hundred million Rupiah).
- (2) Masters or captains of fishing boats, fish catching specialists and ship crews who, intentionally, within the Indonesian Fish Cultivation Territory, catch and/ or breed fish using chemical substances, biological substances, explosives, tools and/or means and/or structures, which may damage and/or endanger conservation of fish resources and/or the environment thereof, as set forth in Article 8 paragraph (2), will be penalized with imprisonment of maximum 10 (ten) years and monetary charge of maximum Rp. 1.200.000.000,00 (one billion two hundred million Rupiah).
- (3) Owners of fishing boats, owners of fishery companies, managers of fishery companies and/or fishing boat operators, who, intentionally, catch and/or breed fish using chemical substances, biological substances, explosives, tools and/or means and/or structures, which may damage and/or endanger conservation of fish resources and/or the environment thereof, as set forth in Article 8 paragraph (3), will be penalized with imprisonment of maximum 10 (ten) years and monetary charge of maximum Rp. 2.000.000.000, 00 (two billion Rupiah).
- (4) Owners of fish cultivation companies, authorities of fish cultivation companies and/or managers of fish cultivation companies, who, intentionally, catch and/ or breed fish using chemical substances, biological substances, explosives, tools and/or means and/or structures, which may damage and/or endanger



conservation of fish resources and/or the environment of which, as set forth in Article 8 paragraph (4), will be penalized with imprisonment of maximum 10 (ten) years and monetary charge of maximum Rp. 2.000.000.000,00 (two billion Rupiah).

The crime referred to in Article 84 paragraph (1), paragraph (3), paragraph (4) above is a crime and also meets the element of violation. Criminal acts in this paragraph if carried out by and or on behalf of a legal entity or business entity, criminal charges are imposed on the persons both individually and jointly subject to criminal sanctions with criminal threats from each of the criminal charges imposed. All fishery proceeds from crime and violations and or the tools including the tools of transportation used for committing crimes or violations as referred to in Article 84 are seized by the state

The criminal sanctions referred to in Article 84 paragraph 1 to 4 of the Act are as follows:

- 1) Everyone is prohibited from damaging marine infrastructure and facilities.
- 2) Every person who is given a business license for the capture, management and cultivation of fisheries is prohibited from carrying out activities that cause damage to the marine ecosystem.
- 3) Everyone is prohibited to:
  - a. Illegal fishing and or carrying out fishing, management and cultivation in Indonesian waters.
  - b. Doing fishing, management, and cultivation in the territorial waters of Indonesia in accordance with the provisions of the EEZ restrictions by using chemicals, explosives.
  - c. Conducting general investigation or fish exploitation activities in Indonesian waters without permission.
  - d. Carrying unusual and improper equipment and also suspected chemical explosives will be used to carry out fishing, management and cultivation of fisheries without permission.
  - e. Disposing of chemicals or objects that are dangerous and can cause damage to the marine ecosystem and endanger the existence and sustainability of marine functions in the waters.

Based on the form and sanction of the fishery crime, the main elements of the subject and object can be formulated: everyone intentionally and due to their negligence (Article 84 paragraph 1, paragraph 2, paragraph 3, paragraph 4) violates the provisions (against the law).

#### **d. The Types of Criminal Law and Criminal Sanction Formulation System**

##### **1. The types of Criminal Law**

According to Law Number 45 of 2009 concerning Amendments to Law Number 31 of 2004 concerning Fishery, the types of punishment that are known are only basic crimes, namely imprisonment and fines. This law does not formulate additional crimes in the articles concerning criminal sanctions. Imprisonment sentences have been maximized to provide penalties against perpetrators of criminal offenses in the field of fishery and criminal fines imposed are quite large, but there are several articles that provide fines against perpetrators of criminal offenses in the field of fishery that are inappropriate because of the

traditional fishermen. The problem of fines imposed is too high even though the perpetrators are only traditional fishermen.

2. Criminal Sanction Formulation System

There are several systems for the formulation of criminal sanctions according to the Indonesian Criminal Code (KUHP) as follows:

- a. Single Formulation System
- b. Alternative Formulation System
- c. Cumulative Formulation System
- d. Cumulative-Alternative Formulation System

Whereas in Law Number 45 of 2009 concerning Amendment to Law Number 31 of 2004 concerning Fishery, the formulation system used is a cumulative formulation system, both aimed at criminal offenses and violation offenses. Where in the cumulative formulation system applied imprisonment and criminal fines. In this case, imprisonment and fines are applied simultaneously.

**e. Criminal Liability of Fishery Perpetrator According to Fishery Law Number 45 Of 2009 Concerning Amendment to Law Number 31 Of 2004 Concerning Fishery**

Fishery Criminal Act is an act which according to Law Number 45 of 2009 concerning Amendment to Law Number 31 of 2004 concerning Fishery can be convicted. As usual in the criminal act formulation policy, according to Law Number 45 of 2009 concerning Amendments to Law Number 31 of 2004 concerning Fishery has been formulated regarding to 3 (three) main substances of criminal law. The problems that exist related to the perpetrator responsibility of fishery crime are as follow:

- a. What acts should be criminalized, or abbreviated as criminal matters.
- b. What conditions should be fulfilled to blame / take responsibility for someone who committed the act, or commonly abbreviated with the problem of error.
- c. Sanctions (criminal) should be imposed on people suspected of committing criminal acts, or commonly referred to as criminal matters.

**1. Criminal Formulation**

According to Law Number 45 of 2009 concerning Amendments to Law Number 31 of 2004 concerning Fishery, it is divided into two categories, namely crime and violation. The criminal acts referred to as crimes are regulated in Articles 84, 85, 86, 88, 91, 92, 93, 94, 94A. Whereas violations in fishery crime are regulated in Articles 87, 89, 90, 95, 96, 97, 98.99, 100A, 100B, 100D.

**2. Criminal Liability Formulation**

The development of criminal law has assumed that corporations are subjects of criminal law so that corporations can commit criminal acts and the criminal liability can be held. In its application, it is possible even though the Criminal Code only recognizes criminal liability by natural persons (*natuurlijke person*), because of the existence of regulations in Article 103 of the Criminal Code as a bridge with special criminal law provisions.

In accordance with Law Number 45 of 2009 concerning Amendments to Law Number 31 of 2004 concerning Fishery, it has recognized and governed corporations as legal subjects for which liability can be held when committing a

fishery crime. However, the corporation is not determined to be sentenced to criminal, because criminal liability can only be imposed on the actors (Article 101). Criminal punishment only for management is not enough to be a repression of criminal acts committed by corporations. The corporation should also be determined to be criminally liable as in Article 15 paragraph (1) of Law no. 7 Drt 1955 concerning economic crime, that is, which can be held criminally responsible are:

- a. Legal entity, corporation, engagement or foundation; or
- b. Those who give orders or who act as leaders / responsibility in actions or negligence.
- c. Both (a and b).

#### **f. Criminal Sanction Formulations**

Criminal sanctions in accordance with Law Number 45 of 2009 concerning Amendments to Law Number 31 of 2004 concerning Fishery are cumulatively formulated except for the formulation of violations in Articles 97 and 100 which only formulate criminal fines. In cases which are categorized as other violations, namely article 97 and article 100 which only formulate criminal fines. In cases categorized as other violations, namely those formulated in Article 87 paragraph (1) the criminal sanctions are formulated as imprisonment of 2 (two) years and a fine of Rp. 1,000,000,000 (1 billion). This formulation does not seem to distinguish between crime and violations, because in general violations are threatened with imprisonment or crimes that are lighter than crime.

With regard to the law of the event, according to Law Number 45 of 2009 concerning Amendment to Law Number 31 of 2004 concerning Fisheries, it is regulated in Chapter XIII and Chapter XIV. In essence, the criminal procedure law in accordance with Law Number 45 of 2009 concerning Amendment to Law Number 31 of 2004 concerning Fisheries is the same as the procedural law stipulated in the Criminal Procedure Code. The difference is only in some provisions that have been specifically regulated by the Law on Fisheries.

In general, the responsibility for criminal acts can be charged or imposed on the perpetrators of criminal acts (legal subjects), including fishery criminal acts, including:

1. Human (*Natuurlijke* person) is every person and citizen or foreigner who does not look at his religion and culture, has rights and obligations in carrying out legal actions, which start from the moment he is born until he dies. But there are exceptions in the law not all people are competent before the law, as regulated in Article 44 of the Criminal Code, which indeed cannot be held accountable for their actions even though they committed a criminal act.
2. Corporations, are new legal subjects in criminal law and the Criminal Code actually do not know, because according to Article 59 of the Criminal Code the subject of criminal law is generally human. Then the placement of corporations as legal subjects cannot be separated from social modernization and the development of progress that occurs. Social

modernization has the effect that society is more advanced and complex social, economic and political systems and because of this the need for formal life control will be even greater. This is the background of why corporations are also used as legal subjects, because to answer the public's need for justice, this rule is contained in several laws outside the Criminal Code such as the Narcotics Law, Corruption Law including Law on Fisheries which also regulates corporate responsibility as a legal subject.

In addition, Indonesian Criminal Law adheres to the principle of error which is the basis for applying criminal liability to offenders who violate the provisions of criminal law. This means that to be liable to a criminal for a criminal offense, in addition to proving the elements of his actions that cause interruption in accordance with the formulation in the Act, in the perpetrator there must be an element of error. Error is the mental state of the maker and the inner connection between the maker and his actions, the mental state of the person who does the action is what is often referred to as the ability to be responsible, while the relationship between the perpetrator and his actions is intentional, negligence and the reasons for criminal offense and forgiving reasons that can make a person what can or cannot be liable for criminal acts.

To determine the existence of a mistake as the basis of criminal responsibility must meet the following elements:

1. The ability to responsible of the perpetrator.

In accordance with the opinion of legal experts that for the ability to be responsible must meet the following:

- a. The ability to distinguish between good and bad deeds that are in accordance with the law and against the law.
- b. The ability to differentiate his will according to his conviction about the pros and cons of the act earlier
- c. The relationship between the mind of the performer and his actions in the form of intent (Dolus), or negligence (Culpa) is called the forms of error.
- d. There are no excuses for erasing mistakes and no excuses for forgiveness

## 5. CONCLUSION

After all the discussion above, the author concludes several points as follow:

1. Forms of fishery criminal acts to be accounted criminally according to Law Number 45 of 2009 concerning Amendments to Law Number 31 of 2004 concerning Fishery is divided into two, namely crime and violations. Crimes are regulated in Article crimes in Articles 84, 85, 86, 88, 91, 92, 93, 94, 94A. Whereas violations in fishery crime are regulated in Articles 87, 89, 90, 95, 96, 97, 98.99, 100A, 100B, 100D.
2. Criminal liability for fishery Criminals according to Law Number 45 Year 2009 Concerning Amendments to Law No. 31 of 2004 Concerning Fishery relating to accountability for fisheries criminal offenses, the perpetrators pay attention to the following matters:
  - a. What acts should be criminalized, or abbreviated as criminal matters.

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- b. What conditions should be fulfilled to blame / take responsibility for someone who committed the act, or commonly abbreviated with the problem of error.
- c. Sanctions (criminal) should be imposed on people suspected of committing criminal acts, or commonly referred to as criminal matters.

In matters relating to accountability for fishery crimes against perpetrators, it can be subject to individual or corporate legal subjects because the fishery law regulates the problem.

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