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## Enforcement of Fisheries Criminal Laws in the Field of Fish Catching and Processing Based on Law Number 45 of 2009 Concerning Fisheries (Case Study of Medan High Court Decision Number: 754/PID.SUS/2015/PT-MDN)

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### Keywords

law enforcement; fisheries crime

### Abstract

The independent and sovereign state of Indonesia has sovereignty and jurisdiction over Indonesian territorial waters as well as the authority to determine provisions regarding the utilization of fish resources, both for fishing and fish cultivation activities while increasing prosperity and justice for maximum utilization in the interests of the nation and state while maintaining pay attention to the principles of preserving fish resources and the environment as well as the sustainability of national fisheries development. Fisheries have an important and strategic role in national economic development, especially in increasing the expansion of employment opportunities, equal distribution of income, and improving the standard of living of the nation in general, small fishermen, small fish farmers, and business actors in the fisheries sector while maintaining the environment, sustainability, and availability of fish resources. In Indonesia, according to Republic of Indonesia Law Number 9 of 1985 and Republic of Indonesia Law Number 31 of 2004, activities included in fisheries start from pre-production, production, processing to marketing which are carried out in a fisheries business system. In the fishing business, fisheries crimes often occur, so it is necessary to enforce the law on fisheries crimes based on Law Number 31 of 2004 and Law Number 45 of 2009



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### 1. Introduction

Indonesia is a country consisting of thousands of islands separated by shallow waters and deep waters (straits, territorial seas, and high seas), Indonesia's territorial waters have a diversity of biological resources, and this is what characterizes the maritime country owned by Indonesia. Indonesia's geographical condition consists of an archipelagic country and two-thirds of its territory is marine waters consisting of coastal seas, open seas, bays, and straits which are rich in marine and fish resources (Purwanto & Mangku, 2016).

Fisheries have an important and strategic role in national economic development, especially in increasing the expansion of employment opportunities, equal distribution of income, and improving the standard of living of the nation in general, small fishermen, small fish farmers, and business actors in the fisheries sector while maintaining the environment sustainability and availability of fish resources (Tribawono, 2002). Indonesia's status as an archipelagic country that has many beaches. This of course means that Indonesia is also vulnerable to fisheries crime problems. Moreover, Indonesia is also known as a country with large biological resource potential. Indonesia's marine fisheries resources are estimated to reach 6,167,940 tons per year (Maryani, Nasution, & Yopiza, 2020). Fisheries crime is a

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classic problem that is often faced by countries that have many coasts because this problem has existed for a long time. However, until now the problem of fishing crimes has still not been eradicated (Boonstra & Österblom, 2014). This is because monitoring large sea areas simultaneously is difficult. Even countries that already have advanced technology in the field of defense and security have certainly also been subject to crimes involving fisheries crimes. Every Indonesian-flagged fishing vessel requires a Fishing Permit (SIPI) issued by the Ministry of Maritime Affairs and Fisheries. SIPI is required for every fishing vessel to carry out fishing which is an inseparable part of the fishing business permit (SIUP) (Tranggono, Diamantina, & Sekar, 2021). Since August 8, 2018, the KKP has issued a circular to all provinces to refer to the licensing process. By Ministerial Regulation No. 30 of 2012 and Ministerial Regulation 12 of 2012. Therefore, the permit process runs smoothly in various regions (Söderholm et al., 2015).

Business permits and operational permits or commercial permits through the One Stop Integrated Service (PTSP) of the Ministry of Maritime Affairs and Fisheries in each province, related to business permits in the capture fisheries sector, are still implemented by the Minister of Maritime Affairs and Fisheries Regulation Number 30/PERMEN/2012 concerning Capture Fisheries Businesses in Fisheries Management Areas in Indonesia. Capture fisheries permits which are under the authority of the regional government are further processed by the provisions regulated by regional regulations which refer to the Minister of Maritime Affairs and Fisheries Regulation concerning capture fisheries businesses in the Fisheries Management Area of the Republic of Indonesia. However, in reality, in the field, many Indonesian-flagged fishing vessels are found passing through Indonesian waters/seas without having the permits mentioned above (Ramadhan & Dugis, 2021).

Fisheries crimes in waters are by National Police Chief Regulation Number 22 of 2010, so handling them is entirely the responsibility of the Directorate of Maritime Police, which has the main duties, including carrying out patrols, escorts, and law enforcement in water areas. In this regard, the ranks of the Directorate of Water Police must carry out a series of procedures in disclosing cases through the investigation stages. According to Article 1 Paragraph (13) of Law Number 2 of 2002 concerning the State Police of the Republic of Indonesia (Asmariah & Kusnadi, 2023).

To provide a comprehensive picture of the problem that will be presented, the author will analyze the criminal case of fishing at sea for not having a Fisheries Business License (SIUP), as depicted in the Medan High Court Decision Number: 754/PID.SUS/2015/PT-MDN. In this case, the defendant is ABDULLAH RAHIM alias ABDULLAH (35 years). In the trial process, the defendant was found guilty because he was legally and convincingly proven to have carried out or ordered to be carried out, intentionally in the fisheries management area of the Republic of Indonesia carrying out a fisheries business in the field of catching, cultivating, transporting, managing and marketing fish which did not have a SIUP (Fisheries Business Permit). In this case, the judge sentenced the defendants to imprisonment for 1 (one) year and 6 (six) months each and a fine of Rp. 1,000,000,000 (one billion rupiah) each with the provision that if the fine was not paid, it would be replaced. with imprisonment for 3 months (Rohromana, 2017).

## 2. Materials and Methods

The approach method used is a normative juridical and sociological juridical approach, which can be identified through two things (Sudiarawan, Tanaya, & Hermanto, 2020):

- a. Carry out textual studies of statutory regulations and policies critically to explain the philosophical, sociological, and juridical problems of written law. In this way, it is known what the meaning is and what implications it has for legal subjects.
- b. Using various new methods that can explain a very wide range of legal phenomena. This approach is used to analyze various regulations related to the crime of fishing at sea without a permit.

## 3. Results and Discussions

### Enforcement of Material Criminal Law Against Fisheries Crimes That Do Not Have a Fisheries Business License

#### Case Position

- a. That they are defendant 1. Abdullah Rahim as the captain of the unnamed fishing vessel without the Indonesian flag Selar together with defendant 2. Akbar Tanjung as the captain of the unnamed fishing vessel without the Indonesian flag Selar on Tuesday 22 September 2015 at 13.00 WIB or at least at other times in September 2015 at the position 03°- 21'-189" N and 099°- 33'- 337" E or 4 (four) miles southeast of the CM6s10m5M light Kuala Tanjung Waters, Batubara Regency, North Sumatra Province, waters Indonesian territory or at least in another place that is still included in the jurisdiction of the Medan District Court has the authority to examine and try this case in accordance with Article 84 paragraph (2) of the Criminal Procedure Code or Article 71 paragraph (3) of

Law No. 45 of 2009 concerning Amendments to Law No. 31 of 2004 concerning Fisheries, "either as a person who carries out, participates in carrying out or orders to carry out, intentionally in the fisheries management area of the Republic of Indonesia carrying out fisheries business in the field of catching, cultivating, transporting, managing and marketing fish that does not have a SIUP (Fisheries Business License ) as intended in article 26 paragraph (1)", the defendants committed these acts in the following manner:(Lestari, 2014).

- b. That on Tuesday 22 September 2015 at 13.00 WIB, witness Asun Nelson Simanjuntak SH as Commander of the Police Patrol Boat KP.II- 1001 Ditpolair Polda North Sumatra, together with witnesses Suwandi as BA TEK and Hendrico P Kaban SH as BA NAT based on Sailing Order Letter Number: SPB /123/IX/2015/Ditpolair, dated 01 September 2015, carrying out water patrols and taking action against perpetrators of illegal fishing using the Police Patrol Boat KP.II-1001 saw 2 (two) fishing boats without names and without warning signs with a Mitsubishi engine with an Indonesian flag sailing and operating fishing around the Kuala Tanjung Waters area, Batubara Regency, namely Indonesian territorial waters, and witness Asun Nelson Simanjuntak ordered the ship to be chased after being approached and it turned out that the 2 (two) ships were ships that were operating to carry out fishing (Manik, 2018). Then, the two captains of each 2 (two) vessels were ordered to stop the vessel and dock with the Police Patrol Vessel KP.II-1001 after an inspection was carried out on 2 (two) unnamed and unmarked fishing vessels with a Mitsubishi engine with an Indonesian flag. It turned out that the respective ships were captained by the defendant Abdullah Rahim alias Abdullah as the captain of Ship I which had an anchovy trawler, and the defendant Akbar Tanjung as the captain of Ship II who only assisted in carrying out operations with the Crew of each ship being Abdul Bene Padang, Muhammad Yusuf, Madan, Sayuti, Superman and the two defendants had operated pair trawls to catch fish in the sea for 14 (fourteen) days (round trip) and then an inspection of the ship's documents was carried out by the arresting witness, however, the defendant Abdullah Rahim, as the captain of the unnamed fishing vessel without the Indonesian flag Selar and the defendant Akbar Tanjung, as the captain of the unnamed fishing vessel without the Indonesian flag Selar, could not show documents relating to fishing in Indonesian waters in the form of a SIUP (fishing business permit), and SIPI (Fishing Permit) and on board the fishing boat there were also 1/2 (half) baskets of mixed wet anchovy fish caught and weighed 25 (twenty-five) kg with fishing gear used on 2 (two) unnamed and unmarked fishing vessels with Mitsubishi engines with Indonesian flags were pair trawls, while the ship's equipment items that were also confiscated were from 2 (two) vessels. Unnamed and unmarked fish with a Mitsubishi engine with an Indonesian flag, namely 1 (one) set of pair trawls, 1 (one) Garmin 128 GPS unit, 1 (one) Furuno Fcv-668 computer, 1 (one) round basket made of bamboo and the catch was 25 (twenty-five) kg of anchovies. Then the defendants, crew members, and all evidence were taken to the Belawan Water Police Directorate Pier for further examination (Laili, 2023).

Based on expert information from the Belawan Fisheries Education and Training Center, it is clear that the documents intended for fishing vessels are by Law No. 45 of 2009 concerning Amendments to Law No. 31 of 2004 concerning Fisheries, namely Fisheries Business License (SIUP), Fishing License (SIPI), Sailing Approval Letter (SPB) and Operation Worthy Letter (SLO) as well as pair trawls used by 2 (two) unnamed and unmarked fishing vessels with Mitsubishi engines with Indonesian flags. It is prohibited to operate because the fishing gear is active and can damage the ecosystem and the preservation of fish resources in Indonesian waters (Nainggolan, 2021).

The actions of the defendants are regulated and punishable by crime in Article 92 of Law no. 31 of 2004 concerning Fisheries in conjunction with Article 55 paragraph (1) 1 of the Criminal Code. Or, secondly:

- a. That he is defendant 1. Abdullah Rahim as the captain of the unnamed fishing vessel without the Indonesian flag Selar together with defendant 2. Akbar Tanjung as the captain of the unnamed fishing vessel without the Indonesian flag Selar on Tuesday 22 September 2015 at 13.00 WIB or at least at other times in September 2015 at the position 03°- 21'-189" N and 099°- 33'- 337" E or 4 (four) miles southeast of the CM6s10m5M light Kuala Tanjung Waters, Batubara Regency, North Sumatra Province, waters Indonesian territory or at least in another place which is still included in the legal area of the Medan District Court has the authority to examine and try this case by article 84 paragraph (2) KUHAP or Article 71 paragraph (3) of Law no. 45 of 2009 concerning amendments to Law no. 31 of 2004 concerning Fisheries, "whether as a person who carries out, participates in carrying out or orders to carry out, intentionally owns, controls, carries and/or uses fishing equipment and/or fishing aids which disturb and

damage the sustainability of fish resources on board fishing in the fisheries management area of the Republic of Indonesia", the defendants committed these acts in the following manner:

- b. That on Tuesday 22 September 2015 at 13.00 WIB, witness Asun Nelson Simanjuntak SH as Commander of the Police Patrol Boat KP.II-1001 Ditpolair Polda North Sumatra, together with witnesses Suwandi as BA TEK and Hendrico P Kaban SH as BA NAT based on Sailing Order Letter Number: SPB/123/IX/2015/Ditpolair, dated 01 September 2015 carrying out water patrols and taking action against perpetrators of illegal fishing using the Police Patrol Boat KP.II-1001 has seen 2 (two) unnamed and unmarked fishing boats The Indonesian-flagged Mitsubishi-engined vessel was sailing and operating fishing around the Kuala Tanjung Waters area, Batubara Regency, namely Indonesian territorial waters, and witness Asun Nelson Simanjuntak ordered to chase the ship after being approached and it turned out that the 2 (two) ships were ships that were currently operating. fishing, then the two captains of 2 (two) vessels each were ordered to stop the vessel and dock with the Police Patrol Vessel KP.II-1001 after an inspection was carried out on 2 (two) unnamed and unmarked fishing vessels with Mitsubishi flag engines. In Indonesia, it turns out that the respective ships were captained by the defendant Abdullah Rahim alias Abdullah as the captain of Ship I which had an anchovy trawler, and the defendant Akbar Tanjung as the captain of Ship II who only assisted in carrying out operations with the Crew of each ship being Abdul Bene. Padang, Muhammad Yusuf, Madan, Sayuti, Suparman, and the two defendants had been operating pair trawls to catch fish in the sea for 14 (fourteen) days, then an inspection of the ship's documents was carried out by the catcher witnesses but the defendant Abdullah Rahim as the captain of the unnamed fishing vessel without the Indonesian flag Selar and the defendant Akbar Tanjung as the captain of the unnamed fishing vessel without the Indonesian flag Selar were unable to show documents relating to fishing in Indonesian waters in the form of SIUP (fishing business permit) and SIPI (Fishing Permit) and on board the fishing boat there was also 1/2 (half) basket of mixed wet anchovy fish caught and after weighing it weighed 25 (twenty-five) kg with the fishing gear used above (Sulasnawan & Mukhlis, 2019). The 2 (two) unnamed and unmarked fishing vessels with Mitsubishi engines with Indonesian flags were paired trawls, while the ship's equipment items that were also confiscated were from 2 (two) unnamed fishing vessels without markings with a Mitsubishi engine with an Indonesian flag, namely 1 (one) set of pair trawls, 1 (one) Garmin 128 brand GPS unit, 1 (one) Furuno Fcv-668 brand computer, 1 (one) round baskets made of bamboo and the catch was anchovies weighing 25 (twenty-five) kg. Then the defendants, crew members, and all evidence were taken to the Belawan Water Police Directorate Pier for further examination.
- c. Based on expert information from the Belawan Fisheries Education and Training Center, it is clear that the documents intended for fishing vessels are by Law no. 45 of 2009 concerning Amendments to Law no. 31 of 2004 concerning Fisheries, namely Fisheries Business License (SIUP), Fishing License (SIPI), Approval Letter Sailing (SPB) and Certificate of Operational Worthiness (SLO) as well as pair trawls used by 2 (two) unnamed and unmarked fishing vessels with Indonesian flag Mitsubishi engines are prohibited from being operated because the equipment Active fishing can damage the ecosystem and the sustainability of fish resources in Indonesian waters.

The actions of the defendants are regulated and punishable by crime in Article 85 of Law No. 45 of 2009 concerning Amendments to Law No. 31 of 2004 concerning Fisheries in conjunction with Article 55 paragraph (1), one of the Criminal Code.

Reading the letter of demand from the Public Prosecutor at the Belawan District Prosecutor's Office, the Defendant has been charged as follows:

- a. Declaring the defendant Abdul Rahim alias Abdullah and the defendant Akbar Tanjung guilty of committing a criminal act "as a person who ordered or participated in carrying it out, intentionally owned, controlled, carried and/or used fishing equipment and/or fishing aids that disturbed and damage the sustainability of fish resources on fishing vessels in the Fisheries Management Area of the Republic of Indonesia" as intended in Article 85 of Law No.31 of 2004 as amended by Law No.45 of 2009 concerning Fisheries Jo. Article 55 paragraph (1) 1st of the Criminal Code.
- b. Sentenced the defendants to imprisonment for 2 (two) years and paid a fine of Rp. 2,000,000,000 (two billion) each, subsidiary to 6 (six) months in prison.
- c. State evidence in the form of:
  - 1 unnamed and unmarked fishing vessel with a Mitsubishi engine bearing an Indonesian flag.
  - 1 unnamed and unmarked fishing vessel with a Mitsubishi engine bearing an Indonesian flag.
  - 1 (one) Garmin 128 brand GPS unit.
  - 1 (one) unit of Furuno Fcv 668 brand computer.
  - 1 (one) set of pair trawl type fishing gear
  - 1 (one) Garmin 128 brand GPS unit.

- 1 (one) round basket made of bamboo.
- Seized to be destroyed.

d. Determine that the defendants pay court costs of IDR 2,000 (two thousand rupiah).

After reading the defendants' petition, in essence, the defendants admitted their actions, regretted the actions they had taken, promised not to repeat their actions, and asked for leniency because the defendants had a big responsibility towards their families to support their young children. and elderly parents.

Read the Decision of the Fisheries Crime Court at the Medan District Court dated 19 November 2015 Number: 15/Pid.Sus.PRK/2015/PN.Mdn. whose warning is as follows:

- a. Declare that the defendants, ABDULLAH RAHIM Alias ABDULLAH and AKBAR TANJUNG, have been legally and convincingly proven guilty of committing the crime of "Taking part in committing a fisheries crime in the field of catching and processing fish by not having a SIUP in the fisheries management area of the Republic of Indonesia";
- b. Sentenced the defendants to imprisonment for 10 (ten) months each and a fine of Rp. 1,000,000,000 (one billion rupiah) each with the provision that if the fine was not paid, it was replaced by imprisonment for 3 months;
- c. Determine that the period of arrest and detention that the defendants have served shall be deducted entirely from the sentence imposed;
- d. Determine that the defendants remain in detention;
- e. Determine evidence in the form of:
  - 2 (two) sets of Pair Trawl fishing gear and 1 (one) round basket made of bamboo, confiscated for destruction;
  - 2 (two) unnamed fishing vessels with Mitsubishi engines; 1 (one) Garmin Brand GPS unit-128; 1 (one) computer unit (twenty-five thousand rupiahs) from the sale of caught fish is confiscated to the state;
- f. Charge the defendants each to pay court costs in the amount of Rp. 2,000,- (Two Thousand Rupiah);

Have read :

- a. Deed of Appeal made by the Registrar of the Fisheries Crime Court at the Medan District Court that on November 19, 2015, the Public Prosecutor submitted an appeal request against the Fisheries Crime Court Decision at the Medan District Court Number: 15/Pid.Sus.PRK /2015/PN.Mdn dated 19 November 2015;
- b. Relax notification of the appeal request made by the Substitute Bailiff of the Fisheries Crime Court at the Medan District Court that the appeal request has been fully notified to the Defendants on November 26, 2015;
- c. Letter to study the case files of the Fisheries Crime Court at the Medan District Court dated 25 November 2015, which was submitted to the Public Prosecutor and the Defendants respectively, to study the case files, for 7 (seven) days starting from 25 November 2015 until 02 December 2015 of the notification, before the file is sent to the High Court;

#### **Public Prosecutor's Indictment**

- a. The defendant violated Article 85 of Law No.31 of 2004 as amended by Law No.45 of 2009 concerning Fisheries Jo. Article 55 paragraph (1) 1st of the Criminal Code.
- b. The defendant violated Article 93 paragraph (1) of Law no. 45 of 2009 concerning amendments to Law no. 31 of 2004 concerning Fisheries in conjunction with Article 55 paragraph (1) 1 of the Criminal Code.
- c. The defendant violated Article 85 of Law No. 45 of 2009 concerning Amendments to Law No. 31 of 2004 concerning Fisheries in conjunction with Article 55 paragraph (1) 1 of the Criminal Code.

#### **Judge's Legal Considerations**

- a. Considering, that the request for examination at the appeal level by the Public Prosecutor has been submitted within the time limit and by the procedures and meets the requirements determined by the Law, then the request for appeal can formally be accepted;
- b. Considering, that the Public Prosecutor submitted a request for appeal but did not submit a Memorandum of Appeal so that the Panel of Judges at the Medan High Court does not know the exact reasons for the Public Prosecutor's request for a re-examination;
- c. Considering, therefore, the Panel of Judges at the Medan High Court, in reviewing the Public Prosecutor's appeal request, only follows what has been contained in the minutes of the trial, the requisition and the decision of the court of first instance;
- d. Considering, that after reviewing the Decision of the Fisheries Crime Court at the Medan District Court Number: 15/Pid.Sus.PRK/2015/PN.Mdn dated 19 November 2015, first of all, it is clear that there is a difference of opinion regarding the proven Article which according to the Public Prosecutor who is proven to have committed a criminal act in Article 85 of Law Number: 31 of 2004 concerning Fisheries, while the first level panel judge considers that

he is proven to have committed a criminal act in Article 92 of the Fisheries Law; The next difference is regarding the punishment/strafmacht imposed on perpetrators of criminal acts;

- e. Considering that, after reviewing the considerations of the decision of the Court of first instance, the Panel of Judges of the Medan High Court judicially agrees with the considerations and qualifications of the criminal act proven in the quo case; Therefore, the Decision of the Fisheries Crime Court at the Medan District Court Number: 15/Pid.Sus.PRK/2015/PN.Mdn dated 19 November 2015, has provided appropriate and correct legal considerations so that it is strengthened;
- f. Considering that, however, in terms of punishment, the Panel of Judges at the Medan High Court considers that it is still light so that it does not provide enough protection for the sustainability of the State's resources, especially fisheries, and also does not provide enough support for the government's efforts to combat illegal fishing in the seas of the Republic of Indonesia; which requires a huge amount of money to secure; In sentencing the Defendants, the fault of the Defendants should be proportional to the losses incurred and the government's efforts to tackle illegal fishing;
- g. Considering that, according to the Panel of Judges at the Medan High Court, it believes that in the a quo case, it is necessary to aggravate the sentences imposed on the Defendants, in full as stated in the verdict;
- h. Considering, that based on the considerations mentioned above, the Panel of Judges at the Medan High Court changed the Decision of the Fisheries Crime Court at the Medan District Court Number: 15/Pid.Sus.PRK/2015/PN.Mdn dated 19 November 2015, simply regarding the length of the sentence involved. dropped;
- i. Considering, that the Panel of Judges at the Medan High Court assumes that the Defendants have been legally and convincingly proven guilty of committing criminal acts in Article 92 of Law Number 31 of 2004 jo. Law Number 45 of 2009 concerning Amendments to Law Number 31 of 2004 concerning Fisheries jo. Article 55 paragraph (1) 1 of the Criminal Code;
- j. Considering, that because the Defendants were sentenced to crime, they are burdened with paying case costs at both levels of justice;

Bearing in mind, Article 92 of Law Number 31 of 2004 jo. Law Number 45 of 2009 concerning Amendments to Law Number 31 of 2004 concerning Fisheries jo. Article 55 paragraph (1) 1 of the Criminal Code Jo. Law No: 08 of 1981 concerning the Criminal Procedure Code in conjunction with Law Number: 49 of 2009 concerning Amendments to Law Number: 8 of 2004 concerning General Courts and statutory regulations relating to this case;

#### **Judge's Decision**

- a. Receive appeal requests from the Public Prosecutor;
- b. Change the decision of the Fisheries Crime Court at the Medan District Court Number: 15/Pid.Sus.PRK/2015/PN.Mdn dated 19 November 2015, which was requested to be appealed, only regarding the sentence imposed on the Defendants, so that the complete ruling is as follows:

Declare that the defendants: 1. ABDULLAH RAHIM Alias ABDULLAH and 2. AKBAR TANJUNG, has been legally and convincingly proven guilty of committing the crime of "Participating in committing a fisheries crime in the field of fish catching and processing by not having an SIUP in the fisheries management area of the Republic of Indonesia";

Sentence the defendants to imprisonment for 1 (one) year and 6 (six) months each and a fine of Rp. 1,000,000,000 (one billion rupiah) each with the provision that if the fine is not paid, it will be replaced by a criminal penalty. imprisonment for 3 months;

#### **4. Conclusion**

Enforcement of criminal law against perpetrators of fisheries crimes who do not have an SIUP, as in the Medan High Court Decision Number: 754/PID.SUS/2015/PT-MDN, for defendants who are legally and convincingly proven guilty of committing fisheries crimes in the field of catching and processing fish by not having an SIUP in the fisheries management area of the Republic of Indonesia, the defendants were sentenced to imprisonment for 1 (one) year and 6 (six) months each and a fine of Rp. 1,000,000,000 (one billion rupiah) each provided that if the fine is not paid it will be replaced by imprisonment for 3 (three) months.

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