

# **THE LAW ENFORCEMENT ON ILLEGAL FISHING IN INDONESIAN SEA UNDER INDONESIAN LAW AND INTERNATIONAL LAW**

**Rise Andari Harti Saswiki**

Faculty of Law Universitas Muhammadiyah Yogyakarta

(rise.andari28@gmail.com)

## **ABSTRACT**

Illegal fishing is one of problem that often occurs in Indonesia, that is because Indonesia is very strategic geographical location and can be reached by neighboring countries for Indonesian maritime boundary adjacent to it directly. Illegal fishing became a common problem that causing Indonesia loses up to IDR 240 trillion per year. This research aims to analyze whether the law enforcement on illegal fishing in Indonesian sea is in accordance with Indonesian law and International law. The methodology used in this research is normative legal research. The result of research shows that the law enforcement on illegal fishing in Indonesia under Indonesian law based on Law No. 45 Year 2009 stated that Indonesian government may impose the punishment by burning and/or sinking of foreign vessel based on sufficient evidence. While the law enforcement on illegal fishing in Indonesia under International law related to the law enforcement of sovereignty over the territorial sea based on Article 2 UNCLOS 1982 stated that the coastal state may enforce all its laws and even criminal law against foreign vessels which is conduct illegal fishing in the territorial sea of a coastal states and if the violations have an impact on the coastal state or disrupt the security of the coastal state, and law enforcement in Exclusive Economic Zone based on Article 73 UNCLOS 1982, the coastal states may take any measures, including boarding, inspection, arrest as well as the ship and crew shall be released with the reasonable bond given to the coastal state.

**Keywords:** *Law Enforcement, Illegal Fishing, Indonesian Sea.*

## **BACKGROUND**

Illegal fishing is a problem that often occurs in a country that has many islands. The issue of illegal fishing has existed and occurred long time, but until right now the

problem of illegal fishing is still difficult to eradicate. This is due to the difficulty to supervise many marine areas at the same time. Illegal and unreported fishing contributes to overexploitation of fish stocks and is a hindrance to the recovery of fish populations and ecosystems.<sup>1</sup> Illegal fishing is prevalent globally and has detrimental effects on commercial fish stocks and non-target species.<sup>2</sup> Illegal fishing creates significantly collateral damage to ecosystems. Illegal Fishing, by its very nature, does not respect national and international actions designed to reduce by catching and mitigating the incidental mortality of marine animals such as sharks, turtles and mammals.<sup>3</sup>

Geographically, the Republic of Indonesia is an archipelagic state and two-thirds of it is the ocean.<sup>4</sup> Because marine waters are very spacious and the potential of fisheries are huge and diverse, the potential of fishery can become an economic capital that can be utilized as much as possible for the nation's future as the backbone of national development.<sup>5</sup> Illegal fishing is a common problem in Indonesia. Moreover, Indonesia has very strategic geographical location and can be reached by neighboring countries for Indonesian maritime boundary is adjacent to them directly. This is the main problem that causes many illegal fishing activities occurring in Indonesia.

Article 46 (a) of the United Nations Convention on the Law of the Sea (UNCLOS) 1982 defines an archipelagic state as one being constituted wholly by one or more archipelagos and may include other islands. In sub-section (b) of the same

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<sup>1</sup> David J. Agnew, John Pearce, Ganapathiraju Pramod, Tom Peatman, Reg Watson, John R. Beddington, Tony J. Pitcher, 2009, "Estimating the Worldwide Extent of Illegal Fishing", Vol. 4, Issue 2, February 2009, *PLoS ONE*, p. 1.

<sup>2</sup> Henrik Osterblom and Orjan Bodin, 2012, "Global Cooperation among Diverse Organizations to Reduce Illegal Fishing in the Southern Ocean", Vol. 26, Issue 4, August 2012, taken from [onlinelibrary.wiley.com/doi/10.1111/j.1523-1739.2012.01850.x/full](http://onlinelibrary.wiley.com/doi/10.1111/j.1523-1739.2012.01850.x/full), accessed on Monday, November 13rd, 2017 at 8:17pm.

<sup>3</sup> *Op. Cit.*, p. 5.

<sup>4</sup> Vivian Louis Forbes, 2014, *Indonesia's Delimited Maritime Boundaries*, London, Springer, p. 2.

<sup>5</sup> Zaqiu Rahman, 2015, Peneggelaman Kapal Sebagai Usaha Memberantas Praktik Illegal Fishing, taken from [http://rechtsvinding.bphn.go.id/jurnal\\_online/PENEGGELAMAN%20KAPAL\\_OK.pdf](http://rechtsvinding.bphn.go.id/jurnal_online/PENEGGELAMAN%20KAPAL_OK.pdf), downloaded on Monday, March 6<sup>th</sup>, 2017 at 10am.

article, the term archipelago is defined as a group of island, including parts of islands, waters and other natural features form an intrinsic geographical, economic and political entity, or which historically have been regarded as such.<sup>6</sup>

There are several factors that cause illegal fishing activities in Indonesia:<sup>7</sup> 1) Consumption of fish in the world globally is increasing year per year, with increasing the consumption of fish in global is causing a crisis fish in the sea. it is because there has been no concrete steps to anticipate the crisis of fish, so it will trigger the practice of illegal fishing in Indonesian sea and it is estimated that the Indonesian sea still have abundant of fish; 2) fish resources in other countries are on the wane, as other countries has run into a crisis of fish in their sea. Meanwhile, the demand of fish for consumption has been increasing, leading to the expansion of fishing to other country's sea water and Indonesia's is one of the fishing destinations. If the expansion is done illegally then illegal fishing occurs in Indonesian; 3) lack of law enforcement in Indonesian sea. There are sea areas which are never patrolled by Indonesian navy and police water resulting in the weak law enforcement in those areas.

Food and Agricultural Organization (FAO) reports that Indonesia is the second largest catchment country in the world in 2012, after China. Indonesia's fishery production reached 5.8 million tons with a value of about IDR 79.4 trillion (equivalent to 6.6 billion USD) in 2012. This value is a huge result of an area of 1.919.440 km<sup>2</sup> stretching from the Indian Ocean to the Ocean Pacific and South China Seas<sup>8</sup>

Data from Food and Agriculture Organization (FAO) noted that Indonesia losses per year due to illegal fishing is IDR 30 trillion, but, the Minister of Marine

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<sup>6</sup> Vivian Louis Forbes, *Op. Cit.*, p. 3.

<sup>7</sup> Astri Sulastri, "Faktor Penyebab Illegal Fishing", taken from <https://www.scribd.com/doc/245746057/Faktor-Penyebab-Illegal-Fishing>, accessed on Thursday, November 3<sup>rd</sup>, 2016 at 7:15pm.

<sup>8</sup> Anonymous, "Memberantas Pelaku Kejahatan Perikanan", taken from <http://www.wwf.or.id/?38242/Memberantas-Pelaku-Kejahatan-Perikanan>, accessed on Wednesday, April 19<sup>th</sup>, 2017 at 1pm.

and Fisheries states that the data is still low. The data state that Indonesia losses much greater than the numbers described by FAO, namely reaching US\$ 20 billion, or IDR 240 trillion per year.<sup>9</sup> The amount of the loss due to illegal fishing is not bit amount. This is a big problem and very detrimental to Indonesia. Therefore, the appropriate action to resolve the problem is required.

Illegal fishing is not only done by the Indonesian fishermen but also done by foreign fishermen. That is because their country does not have much fisheries resources.<sup>10</sup> In order to combat illegal fishing activities in Indonesian sea, Indonesian government took an action by sinking foreign ships as firm sanction that aims to show firmness and seriousness of the Indonesian government in protecting the territorial sovereignty and expected to be a deterrent effect as well as a form of the government efforts to realize the vision of the shaft maritime especially related to the sovereignty at sea.<sup>11</sup> There are nine government's policy strategy to tackling illegal fishing activities in Indonesia, namely: 1) strengthening the local fishing fleet in Indonesian sea; 2) increasing the surveillance activities; 3) maximizing the role of Indonesian navy, police water, and institutions related to the supervision of the activities of fisheries resources; 4) improving the quality of human resources in the management of fishery resources; 5) increasing efforts for the implementation of the law on fisheries resources management throughly and continuously; 6) giving strict sanctions in order to give deterrent effect to the offenders fisheries violation; 7) improving the coordination and the relationship between the relevant agencies in the

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<sup>9</sup> Anonymous, "Menteri Susi: Kerugian Akibat Illegal Fishig Rp 240 Triliun", taken from <http://finance.detik.com/berita-ekonomi-bisnis/d-2764211/menteri-susi-kerugian-akibat-illegal-fishing-rp-240-triliun>, accessed on Friday, November 4<sup>th</sup>, 2016 at 10:10pm.

<sup>10</sup> Annisa Puteri Adityani and Adrianus E. Meliala, 2014, "efektivitas Penegakan Hukum Illegal Fishing di Indonesia", p. 2.

<sup>11</sup> Yusuf Istianto, 2015, "Penenggelaman Kapal Pelaku Illegal Fishing Sebagai Upaya Penegakan Hukum Perikanan di Indonesia", taken from <http://download.portalgaruda.org>, downloaded on Tuesday, December 27<sup>th</sup>, 2016 at 8pm.

management of fishery resources in the waters of Indonesia; 8) building port facilities adequate; and 9) Improving regional and international cooperation.<sup>12</sup>

Based on the description above the author is interested in conducting research and analyzing how is the law on illegal fishing is enforced in Indonesia under Indonesian law and International law.

## **RESEARCH METHODS**

In this research the author used a normative legal research method. This means that the research is based on the library research and focuses on reading and analysis of the primary and secondary materials.<sup>13</sup> The research refers to the legal norms contained in legislation and international regulations.

## **FINDING AND ANALYSIS**

### **A. The Description of Law Enforcement on Illegal Fishing in Indonesian Sea under Indonesian Law and International Law**

The chapter of this research will be divided into two. Firstly the author will explain about law enforcement on illegal fishing under International law and then continue to discuss the concern on the law enforcement on illegal fishing under Indonesian law.

#### **1. The Law Enforcement on Illegal Fishing in Indonesia under International Law**

##### **a. Background of International Law**

International law reflects the establishment and subsequent modification of a world system founded almost exclusively on the notion that independent sovereign states are the only relevant actors in the

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<sup>12</sup> Firman Pra Setia Nugraha, 2015, "Permasalahan dan Strategi Penanggulangan IUU Fishing di Perairan Indonesia", taken from [http://pusluh.kkp.go.id/arsip/c/1858/?category\\_id=2](http://pusluh.kkp.go.id/arsip/c/1858/?category_id=2), accessed on Sunday, November 27<sup>th</sup>, 2016 at 7:15pm.

<sup>13</sup> Johnny Ibrahim, 2006, *Teori dan Metodologi Penelitian Hukum Normatif*, Second Edition, Malang, Bayu Media, p. 46.

international system.<sup>14</sup> International law is usually defined as the legal rules, norms, and customs governing the relationship of autonomous states and associations of states. States are the subjects of international law.<sup>15</sup>

**b. History of the International Law of the Sea 1982**

The description of the history of international law of the sea should begin with a discussion of the various functions of the sea for mankind. In history, the sea has been proven to have various functions, among others: 1) food sources for humans; 2) cross-trade routes; 3) a means of conquest; 4) a place of combat; 5) place to have fun; 6) separator and unifying the nation.<sup>16</sup>

**c. The Law Enforcement on Illegal Fishing based on UNCLOS 1982**

UNCLOS 1982 does not regulate the IUU Fishing. The discourse on illegal fishing emerged in the framework of IUU Fishing Practices at the CCAMLR forum (Commission for Conservation of Atlantic Marine Living Resources) on 27 October - 7 November 1997. IUU fishing can be categorized into three groups, namely:

1. Illegal fishing is an activity to catch a fish illegally in the Exclusive Economic Zone of a state, or do not have license from the state;
2. Unregulated fishing is an activity to catch a fish in the Exclusive Economic Zone of a state which does not comply with the rules that apply in the state; and

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<sup>14</sup> Encyclopaedia Britannica, "Historical Development", taken from <https://www.britannica.com/topic/international-law/Historical-development>, accessed on Wednesday, March 1<sup>st</sup>, 2017 at 1.p.m.

<sup>15</sup> Anonymous, "Background and Context in International Law", available on <http://lawexplores.com/background-and-context-in-international-law/>, accessed on Thursday, March 2<sup>nd</sup>, 2017 at 8.am.

<sup>16</sup> Dikdik Mohammad Sodik, 2014, *Hukum Laut Internasional dan Pengaturannya di Indonesia*, Revised Edition, Bandung, PT Refika Aditama, p. 1.

3. Unreported fishing is an activity to catch a fish in the Exclusive Economic Zone of a state which is the operation and data of ship as well as their catch are not reported.

The practice of IUU fishing occurs in marine areas that come under the sovereignty and in the Exclusive Economic Zone (EEZ), conducted by the flag vessel of the coastal state in question itself or by a foreign vessel. Even though it does not regulate IUU Fishing, but relates to the law enforcement at sea, UNCLOS 1982 regulates in general, both in marine areas subject to sovereignty and the EEZ of a state.<sup>17</sup>

## **2. The Law Enforcement on Illegal Fishing in Indonesian Sea under Indonesian Law**

Indonesia is an archipelagic state with most of its territory made up seawater area which have huge and diverse fisheries potential. Fisheries potential is an economic potential that can be utilized to improve national economy and national development.

The Indonesia's geographical location provides advantages for the country. Indonesia inevitably must be active in international forums in the maritime field including the law of the sea. The condition cannot be separated from the interests of the Indonesian nation in the field of politics, economy, social, culture, defense and security.

### **a. Illegal Fishing in Indonesian Waters**

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<sup>17</sup> Encyclopaedia Britannica, "Historical Development", taken from <https://www.britannica.com/topic/international-law/Historical-development>, accessed on Wednesday, March 1<sup>st</sup>, 2017 at 1.p.m.

<sup>17</sup> Anonymous, "Background and Context in International Law", available on <http://lawexplores.com/background-and-context-in-international-law/>, accessed on Thursday, March 2<sup>nd</sup>, 2017 at 8.am.

<sup>17</sup> Dikdik Mohammad Sodik, 2014, *Hukum Laut Internasional dan Pengaturannya di Indonesia*, Revised Edition, Bandung, PT Refika Aditama, p. 184.

Indonesia has vast territorial waters with big marine resources has important significance for Indonesia because it contains fishery resources that have great potential as a source of new economic growth and become one of the primary mover of national development. As the world's largest marine and archipelagic country, Indonesia has a marine area of about 5.8 million km<sup>2</sup> (75 percent of the total area of Indonesia) consisting of 0.3 million km<sup>2</sup> of territorial marine waters; 2.8 million km<sup>2</sup> of marine waters of the archipelago; and 2.7 million km<sup>2</sup> of sea of Indonesia Exclusive Economic Zone. In the vast territorial waters of Indonesia it contains large fishery resources.<sup>18</sup>

**Table 1**

**IUU Fishing Vessel that Arrested in 2010-2015**

	Year	Indonesian Vessel	Foreign Vessel	Total	Number of surveillance vessel
Arrested Vessel	2010	24	159	183	24
	2011	30	76	106	25
	2012	42	70	112	26
	2013	24	44	68	26
	2014	23	16	39	27
	2015 - (12 Maret)	23	13	36	27
	Total	166	378	544	

Source: Ditjen PSDKP, 2015

<sup>18</sup> *Ibid.*



Based on the data above revealed that illegal fishing activities conducted by foreign fishing vessels in Indonesian waters has been decreased from year to year. The waters around West Kalimantan has become one of the most attractive places for foreign fishing vessels to conduct illegal fishing activities. Illegal fishing activities are mostly done in Indonesia Exclusive Economic Zone (IEEZ), South China Sea and also around West Kalimantan's waters. Foreign fishing vessel generally comes from Thailand, Vietnam, Malaysia, Cambodia, Myanmar, and some from China.

**b. The Causes of Illegal Fishing in Indonesian Waters**

Causes of illegal fishing activities in Indonesian waters namely:<sup>19</sup>

1. Limited facilities and monitoring infrastructure;
2. Limited funds for supervisory operations;
3. Limited police officers of fisheries and Civil Service Investigators
4. The limited ability of Indonesian fishermen to utilize the potential of fishery in Indonesian waters, especially in Exclusive Economic Zone (EEZ);
5. The need for raw material resources in the country of illegal fishing actors has been dwindling due to industrialization practices, so that the growth of fish is not proportional to the number of captured, and as a result, they expand into Indonesian territory;
6. The ability to monitor every marine patrol surveillance vessel can be detected by foreign fishing vessels due to sophisticated communication tools, resulting in poor operation.

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<sup>19</sup> Simela Victor Muhammad, *Op. Cit.*

### **c. Indonesia's Effort Against Illegal Fishing in Indonesian Sea\**

The enactment of Law No. 45 Year 2009 in conjunction with Law No. 31 Year 2004 on Fishery, the various legal provisions concerning supervision is quite comprehensive, especially in terms of granting more and more strict supervisory authority, such as stopping, checking, arresting, carrying and holding.<sup>20</sup> To combat illegal fishing practices, President Joko Widodo has ordered that field supervisors can act decisively, if necessary by sinking foreign vessels which catch a fish in Indonesian waters. This is certainly conducted in accordance with the rules and procedures applicable.<sup>21</sup> The law applied by the Indonesian government in combating criminal acts in the field of fisheries, namely Law No. 45 Year 2009 in combating illegal fishing crime in Indonesian waters.

### **3. Sinking Vessel as an Effort to Eradicated Illegal Fishing Practice**

The sinking vessel is expected to strengthen and enforce the sovereignty of the country, especially at sea. Actually the sinking vessel is not new, but it has been done since a few years ago. From 2007 to 2012, the Ministry of Marine and Fisheries in this case the Directorate General of Supervision of Marine and Fishery Resources Submission has drowned about 38 foreign vessels which were proven conduct illegal fishing.<sup>22</sup>

Sinking vessel policy certainly raises the response whether this action violates the law or not. According to Hikmahanto Juwana, there are five reasons why the policy is actually worthy of support, as follows:<sup>23</sup>

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<sup>20</sup> *Ibid.*

<sup>21</sup> *Ibid.*

<sup>22</sup> Mina Bahari, *Op. Cit.*, p. 16.

<sup>23</sup> Sherief Maronie, 2016, "Peneggelaman Kapal dalam Undang-Undang Perikanan", taken from <http://www.hukumpedia.com/smaronie/peneggelaman-kapal-dalam-undang-undang-perikanan>, accessed on Thursday, April 20<sup>th</sup>, 2017 at 9am.

1. The drowned foreign vessel is a vessel that has no license to catch fish in Indonesian territory. It is considered a criminal act. This means that the previously sinking vessel has gone through litigation and has been legally enforceable that the person is guilty.
2. The act of sinking is done in the territory of sovereignty and sovereign rights of Indonesia (Exclusive Economic Zone).
3. The act of sinking is done based on legitimate law, namely Article 69 Paragraph (4) of the Fisheries Law 2009.
4. The other countries must understand that Indonesia is harmed by such criminal acts. If continue to be left then the losses experienced will be greater.
5. The reason is of course the process of drowning also pay attention to the safety of the crew.

As a form of efforts to eradicate illegal fishing practices, President Joko Widodo has ordered to sink a foreign vessel that stole fish in Indonesian waters. The instruction issued by the President to take firm action against the perpetrators of illegal fishing in the territorial waters of Indonesia one of them is done by sinking vessel based on Article 69 Paragraph (1) and Paragraph (4) on Fisheries Law.<sup>24</sup>

## **CONCLUSIONS AND RECOMMENDATION**

### **A. Conclusions**

UNCLOS 1982 generally regulates about the sovereignty over the territorial sea and enforcement in Exclusive Economic Zone. Relating to the law enforcement of sovereignty over the territorial sea it is regulated in Article 2 UNCLOS 1982, The coastal state may enforce all its laws and even

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<sup>24</sup> Zaqiu Rahman, *Op. Cit.*

criminal law against foreign ships which is conducted in illegal fishing in the territorial sea of a coastal states on condition the violations have an impact on the coastal state or disrupt the security of the coastal state as defined in Article 27 Paragraph (1) UNCLOS 1982. While the law enforcement in Exclusive Economic Zone regulated in Article 73 UNCLOS 1982 states that the coastal states may take any measures, including boarding, inspection, arrest, and judicial proceedings as well as the ship and crew shall be released with the reasonable bond given to the coastal state.

The law enforcement on illegal fishing under Indonesian law regulated specifically in Law No. 45 Year 2009 in conjunction with Law No. 31 of 2004 on Fisheries. In order to combat illegal fishing, the perpetrator of illegal fishing in Indonesian territorial sea or Indonesia Exclusive Economic Zone may be imposed by the punishment of sinking vessel in accordance with Article 69 Paragraph 1 on Fisheries Law and to commit the sinking vessel it shall be based on sufficient evidence which is regulated in Article 69 Paragraph 4 on Fisheries Law.

## **B. Recommendation**

To further optimize the implementation of sinking vessel, it should be regulated on operational standards or guidance on the execution of the destruction of fishing vessels in which to regulate the implementation, mechanism, and procedures of ship extermination. The decisive action taken by Indonesia in enforcing the law and maintaining sovereignty by burning and/or sinking foreign ships is not enough, because it is a repressive act. Indonesia should also take effective precautions, namely more stringent supervision.

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