

CHAPTER FOUR

FINDING AND ANALYSIS

Enforcement of environmental law is closely related to the ability of the apparatus and the compliance of the citizens to the prevailing regulations, which includes three legal areas, namely administrative, criminal and civil. Thus, the enforcement of environmental law is an attempt to achieve compliance with rules and requirements in general and individual legal provisions, through the supervision and application (or threat) of administrative, criminal, and civic facilities.¹

The development undertaken and is currently used in the reform era is a sustainable development environment. Development program in question is the pattern of development policy that does not disrupt the balance of ecosystem development-oriented to the management of natural resources as well as seek protection and development. In its legal language, environmental management is based on the preservation of a harmonious and balanced environmental capability to support sustainable development for the improvement of human well-being.²

The constitutional basis of environmental management or natural resources in our country is contained in Article 33 Paragraph (3) of the 1945

¹ Rangkuti, Siti Sundari, 1996, *Hukum Lingkungan dan Kebijaksanaan Lingkungan Nasional*, Surabaya, Airlangga University Press, p. 190.

² Erwin, Muhamad, 2011, *Hukum Lingkungan Dalam Sistem Kebijaksanaan Pembangunan Lingkungan Hidup*, Bandung, PT Refika Aditama, p. 113.

Constitution which affirms that "Earth, water and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people."

Administrative measures may be preventive and aim to enforce related legislation on illegal fishing (e.g. Laws, Government Regulations, Ministerial Decrees, etc.) Law enforcement can be applied to activities related to permit requirements, management plans, etc.³

The enforcement of laws and regulations governing activities in Indonesian seas and coastal waters is undertaken by several government agencies jointly. In the exploration, exploitation and conservation of marine natural resources in marine and coastal areas, there are two main ministries responsible for law enforcement. The two government Ministries are the Ministry of Marine Affairs and Fisheries (KKP) and the Ministry of Forestry (KEMENHUT).⁴

A. Laws and Regulations Applicable in Law Enforcement in the Indonesia's Exclusive Economic Zone (Preventive Measures)

Marine Security Agency and its Role in Eradicating Illegal Fishing based on Article 59 Paragraph (3) of Law No. 32 of 2014 on Marine regulates the establishment of the Marine Security Agency. The Marine Security Agency (Bakamla) is a non-ministerial government institution under the

³ Rangkuti, Siti Sundari, *Op.Cit*, p. 192.

⁴ Dirhamsyah, 2007, "Penegakan Hukum Laut Di Indonesia", *Oseana*, Volume XXXII, Nomor 1: 1 - 13 ISSN 0216-1877. p. 38.

President,⁵ which has the main duty of conducting security and safety patrols in the territorial waters of Indonesia and the jurisdiction of Indonesia.⁶ Basically, Bakamla is a revitalization of Bakorkamla,⁷ which has been strengthened its authority, which is the central command of law enforcement in the territorial waters of Indonesia,⁸ unlike Bakorkamla which only coordinates related institutions.

1. International Law

a. Law Enforcement of IUU Fishing in UNCLOS 1982

In 1985, through Act No. 17/1985, Indonesia ratified Law of the Sea Convention 1982 (1982 Sea Law Convention) or better known as UNCLOS 1982, it means that Indonesia has recognized that the articles in UNCLOS 1982 have become positive law in Indonesia. Therefore, in view of the territorial waters and the sea, Indonesia should see UNCLOS 1982 as a reference of law provisions.

In terms of law enforcement, including law enforcement for IUU Fishing perpetrators, UNCLOS 1982 outlines the two seas of marine territories, namely the territorial sea under sovereignty and maritime territories in which a country has jurisdiction. Marine areas

⁵ See Article 60 of Law No. 32 Year 2014 on Marine.

⁶ See Article 61 of Law No. 32 Year 2014 on Marine.

⁷ Bakorkamla is abbreviated from Badan Koordinasi Keamanan Laut which can be translated as the maritime security coordinating body.

⁸ See Article 63 of Law No. 32 Year 2014 on Marine.

subject to the sovereignty of a coastal / archipelagic country are inland waters and territorial waters or archipelagic waters and territorial waters. While the marine areas where a coastal / island nation has sovereign rights and jurisdiction is EEZ and Continental Shelf.

The EEZ region has a sui generis legal status (unique/different). The uniqueness lies in the existence of rights and obligations of coastal countries and other countries over EEZ. Unlike in the territorial sea, where coastal states have sovereignty, in EEZ coastal states have only sovereign rights. Such sovereign rights are limited to the exploration and exploitation of marine resources, both biological and non-biological resources.

In UNCLOS 1982 the rights and jurisdictions of coastal states in EEZ include: (1) exploration and exploitation of marine resources (biological-non-biological); (2) to make and enact legislation relating to the exploration and exploitation of marine resources; (3) development of artificial islands and other permanent installations; (4) conducting marine scientific research; and (5) protection of the marine environment. While the EEZ coastal state obligations include: (1) respecting the existence of other countries' rights and obligations on the territory of EEZ; (2) determining maximum allowable catch for biological resources in this case fishery; and (3) in the case of a coastal state incapable of harvesting an entire allowable catch, granting other

countries access to surplus allowable catch through prior agreements for optimizing the utilization of marine resources, especially fishery resources for conservation purposes.⁹

UNCLOS 1982 does not govern the IUU Fishing. The discourse on illegal fishing emerged within the framework of IUU (Illegal, Unreported and Unregulated) fishing practices during the CCAMLR (Commission for Conservation of Antarctic Marine Living Resources) forum from 27 October to 7 November 1997. IUU Fishing can be categorized into three groups:

- 1) Illegal fishing is illegal fishing activity in territorial waters or EEZ of a country, or does not have permission from the country;
- 2) Unregulated fishing means catching activity in territorial waters or EEZ of a country that does not comply with applicable rules in that country; and
- 3) Unreported fishing is fishing activity in territorial waters or EEZ of a country that is not reported either operational or ship data and its catch.

The practice of IUU Fishing takes place both in marine areas that are subject to sovereignty as well as in EEZ. It is conducted by the

⁹ Subagyo, P. Joko, 2013, *Penerapan Hukum Laut di Indonesia*, Jakarta, Rineka Cipta. p. 3.

vessel of the concerned coastal state itself or by a foreign flag ship. Although it does not regulate IUU Fishing, but relates to law enforcement at sea, UNCLOS 1982 regulates in general, both in marine areas subject to the sovereignty and EEZ of a country.¹⁰

In exercising its sovereign rights and jurisdiction, the coastal state shall observe the rights and obligations of other countries in the Exclusive Economic Zone. Rights and Obligations of other countries in EEZ are set out in Article 58 of UNCLOS 1982, as follows:

1) In the Exclusive Economic Zone, all countries, whether or not coastal countries enjoy, are subject to the provisions relevant to this Convention, freedoms of freight and aviation, as well as the freedom to lay down the submarine cables and pipes mentioned in Article 87 and the use of the sea in connection with the operation of ships, aircraft, and submarine cables and pipelines, and in conformity with other provisions of this Convention.

2) Article 88 to Article 115 and other applicable international laws apply to the Exclusive Economic Zone as long as it does not conflict with other laws.

¹⁰ Usmawandi, 2012, *Penegakan Hukum IUU Fishing Menurut Unclos 1982 (Studi Kasus: Volga Case)*, <http://rezaaidilf.wordpress.com/2012/11/18/penegakan-hukum-iuu-fishing-menurut-unclos-1982-studi-kasus-volga-case/> accessed on April 11th, 2018 at 06:26 pm.

3) In exercising the rights to fulfill the obligations under this Convention in the Exclusive Economic Zone, States shall take due account of the rights and duties of the coastal State and shall abide by the laws and regulations established by the state in accordance with the provisions of this Convention and the rules of international law the provisions are not inconsistent with the provisions of this Convention.

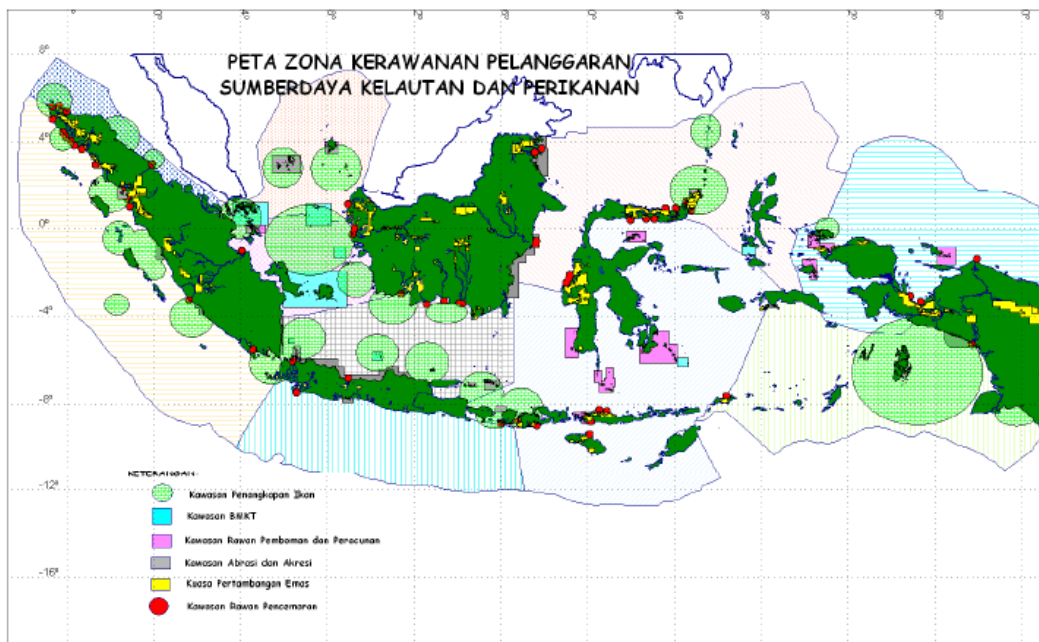
These three rights and obligations are a relic of the freed ocean which has been recognized in the 1958 Geneva Sea Law Convention where the present part of the Sea of Exclusive Economic Zones and formerly was part of the high seas with four freedoms of its freedoms. Only the freedom of fishery is erased, due to the intent and purpose of the legal institutions of this Exclusive Economic Zone is for the reserve of its biological and non-biological natural resources for the interests of the coastal state itself. These natural resources are the core in order to meet the interests of the coastal state.¹¹

The United Nations Conference on Law of the Sea (1973-1982), had reached an agreement on the width of the territorial sea, so that there is uniformity about the width of the sea, which is a

¹¹ I Wayan Parthiana. 2014. *Hukum Laut Internasional dan Hukum Laut Indonesia*, Bandung: Yrama Widya.p. 150.

maximum width of 12 (twelve) nautical miles measured from the base line. It is affirmed in Article 3 of UNCLOS 1982 that each country has the right to assign its territorial sea width to a limit not exceeding 12 nautical miles, measured from baselines determined in accordance with UNCLOS.¹²

Figure No. 1 Map of the Insecurity Zone of Indonesian Marine and Fishery Resources.



Source: Slamet, Kepala Sub Direktorat Pengawasan Penangkapan Ikan Wilayah Barat, 2014, *Penerapan Ketentuan Port State Measure Agreement Dalam Pemberantasan IUU Fishing*, Delivered in National Seminar held by Airlangga University, Surabaya.

¹² *Ibid.*

b. International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing 2001.

International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA-IUU 2001) is a voluntary instrument that can be applied to all countries. The definition and mechanism of prevention and control of IUU Fishing is clearly stated in IPOA-IUU 2001. The mechanism is focused on the responsibility and role of all countries in the world such as coastal state, port country, research organization as well as Regional Fisheries Management Organization (RFMOs).¹³

2. National Law

a. Law No. 5 Year 1983 on Indonesia's Exclusive Economic Zone

This law was adopted in October 1983 during the Suharto presidency, in accordance with the development of

¹³ Maimuna Renhoran, 2012, *Strategi Penanganan Illegal, Unreported and Unregulated (IUU) Fishing di Laut Arafura*, Jakarta, Fakultas Hukum Universitas Indonesia, p.19.

international law at that time requiring every coastal state to have regulatory legislation governing the Exclusive Economic Zone, in response to the UN Convention on the Law of the Sea UNCLOS III, which later in its development the UN Convention was ratified into Indonesian national law with the existence of Law No. 17 of 1985.¹⁴

The law explained that the definition of Exclusive Economic Zone (EEZ) is the outer and adjacent lane of the Indonesian territorial sea as stipulated under applicable law on Indonesian waters covering the seabed, below ground and above water with the outer limit of 200 (two hundred) nautical miles measured from the basin of the Indonesian territorial sea.

In IEEZ, the Republic of Indonesia has and exercises:

- 1) Sovereign rights to undertake the exploration and exploitation, management and conservation of biological and non-biological natural resources from the seabed and subsoil below and above water and other activities for the Economic exploration and exploitation of such Zones, such as the generation of energy from water, currents, and wind;
- 2) Related jurisdictions related to:

¹⁴ P. Joko Subagyo, 1993, *Hukum Laut Indonesia*, Jakarta, Rineka Cipta, p. 4.

- a) Manufacture and use of artificial islands, installations and other buildings;
 - b) Scientific research on maritime;
 - c) Protection and preservation of the marine environment.
- 3) Other rights and obligations under the applicable Convention of the Sea Law (UNCLOS 1982).¹⁵

The relation with illegal fishing lies in the arrangement of the boundary line of EEZ which is often used by illegal fishing actors as a place of escape from the pursuit of security apparatus of Indonesia, because it turns out in this Act there is a gap for the perpetrators of illegal fishing dodging from legal trap that is with the article 4 Paragraph (3) which reads: "In the Indonesian Exclusive Economic Zone, the freedom of international shipping and aviation and the freedom of submarine cables and pipelines are recognized in accordance with applicable international maritime law principles." And Article 5 Paragraph (3) which reads " the provision of Article 4 Paragraph (2), the exploration and exploitation of a living natural resource in a certain area of the Indonesian Exclusive Economic Zone by a person or legal entity or a foreign

¹⁵ Article 4 Paragraph 1 of Law No. 5 Year 1983 on Indonesia's Exclusive Economic Zone.

government may be permitted if the amount of catch allowed by the republic government of Indonesia for that species exceeds the capacity of Indonesia to use it." Of course there is no firmness of sanctions against the perpetrators of illegal fishing mentioned explicitly in Law No. 5 of 1983.¹⁶

Regarding law enforcement in IEEZ, Article 13 of Law No. 5 Year 1983 provides that in order to exercise sovereign rights, other rights, jurisdiction and obligations as referred to in Article 4 Paragraph (1), the authorized law enforcement apparatus of the Republic of Indonesia may take appropriate law enforcement measures with Law No. 8 of 1981 on the Criminal Procedure Code, with the exception of the following:

- 1) The capture of ships and/or persons suspected of committing an offense in the Indonesian Exclusive Economic Zone involves the cessation of the vessel until the transfer of the vessel and / or persons on the port where the case may be further processed;
- 2) The delivery of such vessels and / or persons shall be made as soon as possible and shall not exceed 7 (seven) days unless there is a state of force majeure;

¹⁶ *Ibid*, p.5.

3) For the purpose of detention, the offenses set forth in Article 16 and Article 17 shall be classified as criminal acts as referred to in Article 21 Paragraph (4) sub-Paragraph b of Law No. 8/1981 on the Book of Criminal Procedure Code.

Regarding who becomes law enforcer in IEEZ, Article 14 specifies the following:

- 1) The law enforcement apparatus in the field of investigation in the Indonesian Exclusive Economic Zone shall be the Indonesian National Armed Forces Officer of the Navy appointed by the Commander of the Armed Forces of the Republic of Indonesia.
- 2) The prosecutor is the prosecutor at the district court as referred to in Paragraph (3).

The competent tribunal to adjudicate violation of the provisions of this law is a state court whose jurisdiction covers ports where the vessels and / or persons as intended in Article 13 a.¹⁷

¹⁷ Abdul Muthalib Tahar dan Widya Krulinasari, "Pembagian Kewenangan Dalam Penegakan Hukum Terhadap Pelanggaran Peraturan Perundang-Undangan Di Perairan Indonesia", *Fiat Justitia Jurnal Ilmu Hukum*, Volume 6, No. 1, ISSN 1978-5186 1, Januari-April 2012. p. 8.

b. Law No. 45 Year 2009 *jo* Law No. 31 Year 2004 on Fishery.

Other provisions related to the exploitation of biological resources in IEEZ are regulated in Law No. 31 Year 2004 on Fisheries. According to this Fisheries Law the fishery management area of the Republic of Indonesia for fishing and / or fish cultivation includes:

- 1) Indonesian waters;
- 2) Exclusive Economic Zone of Indonesia; and
- 3) Rivers, lakes, reservoirs, swamps, and other potable water pools, as well as potential fish farming areas in the territory of the Republic of Indonesia.¹⁸

This law also regulates on the supervision of the fishery. It regulates who are the supervisors and what activities are being supervised by the supervisor of fishery.

Article 66

- 1) Fishery control is carried out by supervisor's fishery.

¹⁸ Article 5 of Law No. 31 Year 2004 on Fishery.

- 2) The fishery supervisor is on duty to supervise orderly implementation of regulatory provisions legislation in the field of fisheries.
- 3) Supervision of orderly implementation of the regulation the legislation referred to in Paragraph (2) includes:
 - a) fishing activities;
 - b) fish cultivation, seeding;
 - c) processing, distribution in and out of fish;
 - d) quality of fishery products;
 - e) distribution of fish-infected and out-of-fish
 - f) conservation;
 - g) pollution caused by human actions;
 - h) germplasm;
 - i) research and development of fisheries; and
 - j) genetically engineered fish.

And then, in Article 66 A, it explains who the fishery supervisor is.

Article 66A

- 1) The fishery supervisor as referred to in Article 66 is a civil servant who is working in the field of fisheries raised by minister or appointed official.

The article about the sinking of foreign ships can be found in Article 69 of the Fisheries Law which reads:

- (1) Fishery supervisory boats function to carry out supervision and law enforcement in the field of fishery in the territory of fisheries management of the Republic of Indonesia.
- (2) The fishing vessel as meant in Paragraph (1) may be equipped with firearms.
- (3) Fisheries supervisory boats may stop, inspect, carry and hold vessels suspected or reasonably suspected of committing violations in the territory of the Republic of Indonesia fisheries management to the nearest port for further processing.
- (4) In performing the functions as meant in Paragraph (1) the fishery investigator and / or supervisor may take special action in the form of burning and / or sinking of a foreign flagged fishing vessel based on sufficient initial evidence.

The existence of government policy on fishery is in article 73 Paragraph (1) of Law Republic of Indonesia No. 45 of 2009. The provisions of Article 73 are amended so that Article 73 reads as follows:

- (1) Investigation of criminal acts in fishery field in fishery management territory of Republic of Indonesia is conducted by Investigator of Civil Servant of Fishery, Investigator of Navy Officer, and / or Police Investigator of the Republic of Indonesia;
- (2) In addition to TNI AL investigators, Civil Servant Fisheries Investigators are authorized to conduct investigations into criminal acts in the field of fisheries that occurred in IEEZ;
- (3) Investigation of criminal offenses in fishery affairs occurring in fishery port, preferably made by Fisheries Civil Service Investigator;
- (4) Investigators as referred to in Paragraph (1) may coordinate in the handling of criminal investigations in the field of fisheries.

The provisions referred to in Article 7 Paragraph (2) of Law Number 45 Year 2009 on Fisheries, states that among others, every person conducting business and / or fisheries

management activities shall comply with provisions on the type, quantity and size of fishing gear; type, quantity, size, and placement of fishing aids; area, path, and time or season of fishing; requirements or standards of fishing operations procedures; fishing vessel monitoring system; new species of fish to be cultivated; fish species and re-stocking areas and cultivation-based fishing; fish cultivation and protection; prevention of pollution and damage to fish resources and the environment; minimum size or weight of 6 species of fish to be captured; marine conservation area; outbreaks and areas of fish disease outbreaks; types of fish that are prohibited to be traded, entered and issued to and from the territory of the Republic of Indonesia; and protected species of fish.¹⁹

c. Law No. 6 Year 1996 on Indonesian Waters.

The meaning of the Indonesian waters is the Indonesia's territorial sea, its archipelagic and inland waters.²⁰ Then, it is explained in detail about the definition of the territorial waters of Indonesia that is the territorial waters covering Indonesia's

¹⁹ Adrian Sutedi, 2010, *Hukum Perizinan Dalam Sektor Pelayanan Publik*, Jakarta, Sinar Grafika, p. 194.

²⁰ Article 2 of Law No. 5 Year 1983 on Indonesia's Exclusive Economic Zone.

territorial waters, archipelagic waters and inland waters. Indonesia's territorial sea is a sea lane width of 12 (twelve) nautical miles measured from the base line of the Indonesian archipelago as referred to in Indonesia's archipelagic waters are all waters located on the inner side of the island's straight line without regard to the depth or distance of the coast.²¹ Indonesia's inland waters are all waters located on the land side of the low water line from Indonesian beaches, including the depth of all parts of the waters located on the land side of a closing line.²² So, when there are foreign ships crossing the areas mentioned above, they must submit to and obey the rules in force in Indonesia, for ships of all countries enjoy the right of peaceful passage through the territorial sea and waters of the Indonesian archipelago, but crossing by foreign ships is considered to endanger peace, order, or the security of Indonesia, if the vessel while on the territorial sea and or in the archipelagic waters conduct activities prohibited by convention and or other international law, one of which is illegal fishing activities, so illegal fishing boats can be snared by using this Act.

²¹ Article 4 Paragraph 3 of Law No. 5 Year 1983 on Indonesia's Exclusive Economic Zone.

²² Article 5 Paragraph 3 of Law No. 5 Year 1983 on Indonesia's Exclusive Economic Zone.

d. Law No. 21 Year 1992 on Sailing

Many cases of illegal fishing are deliberately carried out by the perpetrators accompanied by criminal acts of shipping, maybe they do not realize that this kind of criminal acts will even exacerbate the sanctions imposed penalty, especially the majority of ships used in illegal fishing is a ship that violates this Shipping Law, for example, if the captain or ship's leader during the voyage is in violation of the rules relating to traffic procedures, cruise lines, route systems, navigational navigation aids, and telecommunication voyages, it may be enshrined in Article 15 Paragraph (1).²³ Although, the reality is that this Act is not too firmly against the case of illegal fishing. It is because in fact this Act only regulates the issue of ships used to sail, not to the substance of the activities of the voyage.

In addition to legal products, law enforcement efforts in the area of Exclusive Economic Zones of Indonesia need to be

²³ Preamble of Point G of Law No. 5 Year 1983 on Indonesia's Exclusive Economic Zone.

coordinated between related institutions so that law enforcement becomes more optimal. Coordination of related agencies includes:

- 1) The Supreme Court, to provide an advisory opinion on court decisions, provisions that encourage rapid judicial system implementation of cases of fishery crime.
- 2) Attorney General, as the public prosecutor to make the heaviest prosecution in accordance with the legislation.
- 3) Ministry of Transportation, in this case Directorate General of Sea Transportation, to revoke illegal fishing vessel documents.
- 4) Department of Finance, in this case the Directorate General of Taxes, to conduct research on tax payment of fishing vessels.
- 5) Indonesian Army and Indonesian Police, to enforce the law firmly and consistently in accordance with applicable legislation.²⁴

e. Monitoring System Based on Community (SIWASMAS)

Regarding Monitoring System based on Community or known as SIWASMAS is a supervisory system that involves

²⁴ I Nyoman Ngurah Suwarnatha, 2008, *Penegakan Hukum Terhadap Penangkapan Ikan Secara Ilegal Oleh Kapal Berbendera Asing Di Zona Ekonomi Eksklusif Indonesia* taken from https://www.academia.edu/12962116/Penegakan_Hukum_Terhadap_Penangkapan_Ikan_Secara_Ilegal_oleh_Kapal_Berbendera_Asing_Di_Zona_Ekonomi_Eksklusif_Indonesia accessed on Friday, April 13th, 2018 at 4:51 pm.

the active role of the community in overseeing and controlling the responsible management and utilization of marine resources in order to obtain sustainable benefits. If SISWASMAS has evolved throughout Indonesian waters, it will greatly assist in enhancing oversight and law enforcement capabilities at sea. Law enforcement efforts in EEZ can also be done by establishing overseas cooperation to strengthen marine security both bilaterally and multilaterally. Cooperation includes joint training of law enforcement officers and security forces at sea, exchange of intelligence information, establishing and enhancing joint patrol coordination among neighboring countries and undertaking development of supervisory technology with developed countries.²⁵

B. Sanctions of Illegal Fishing (Punitive Measures)

1. Law Enforcement at Sea under UNCLOS 1982 Subject to Sovereignty.

²⁵ Handoko, Wignyo, 2004, *Kebijakan Pengawasan Sumber Daya Kelautan dan Perikanan*, Jakarta, Jurnal Hukum Internasional, Lembaga Pengkajian Hukum Internasional – Fakultas Hukum Universitas Indonesia, p. 125-127.

If a violation of the coastal state legislation takes place in the territorial sea or inland waters or in the archipelagic waters of a country, then in accordance with the sovereignty granted by Article 2 of UNCLOS 1982, the coastal state may enforce its law and even its criminal law against the vessel. Provided that the violation has an impact on the coastal state or disturbs the coastal state's security as defined in Article 27 (1) of UNCLOS 1982. However, if the elements mentioned in Article 27 (1) UNCLOS 1982 are not met, the coastal state cannot apply criminal jurisdiction of the vessel. The extent of the authority of the coastal State to enforce its law for unlawful foreign ships in territorial waters, inland waters or in these archipelagic waters (fulfilling the provisions of article 27, Paragraph 1), is the embodiment of territorial jurisdiction.

2. Law Enforcement in Exclusive Economic Zone

a. Based on UNCLOS 1982

Article 27 (5) UNCLOS 1982 further refers to Chapter IX (Conservation and Protection of the Marine Environment) and Chapter V on EEZ. In the case of violations of coastal state legislation related

to the exploration, exploitation, conservation and management of fisheries resources the coastal State may enforce the law.²⁶

Concerns about coastal state law enforcement in EEZ is governed in article 73 of UNCLOS 1982 which determines:

- 1) The coastal State may, in exercising its sovereign right to undertake exploration, exploitation, conservation and management of living resources in the Exclusive Economic Zone, take such measures, including boarding, examining, apprehending and conducting litigation, as necessary to ensure compliance with laws and regulations its stipulation in accordance with the provisions of this Convention.
- 2) The captured ships and their crew shall be released immediately after being granted a proper security deposit or other form of security.
- 3) The coastal state penalty imposed on violation of the fisheries legislation in the Exclusive Economic Zone shall not include confinement, if there is no reverse agreement between the states concerned, or any other form of corporal punishment.
- 4) In the case of arrest or detention of foreign ships the coastal state shall promptly notify the flag state, through appropriate channels, of the action taken and of any imposed punishment."

²⁶ P. Joko Subagyo, 2013, *Penerapan Hukum Laut di Indonesia*, Jakarta, Rineka Cipta. p. 28.

Thus under Article 73 of UNCLOS 1982, if a foreign ship fails to comply with the coastal state fisheries legislation in EEZ, the coastal state may board, inspect, arrest and conduct litigation of the vessel and notify the flag state of the vessel. However, the vessel and its captured crew shall immediately be released with reasonable bonds provided to the coastal state. The penalty imposed shall not be in the form of corporal punishment which is prison.²⁷

b. Law No. 5 Year 1983 on Indonesia's Exclusive Economic Zone

The acts or acts that fall into the category of crime in IEEZ according to Law No. 5 Year 1983 are:

- 1) Conducting exploration and / or exploitation of natural resources or other activities for Economic exploration and / or exploitation such as power generation from water, currents and wind in the Exclusive Economic Zone of Indonesia without the permission of the Government of the Republic of Indonesia or by international agreement with the Government of the Republic of

²⁷ Ali Purnomo Putra, 2013, *Proses Penegakkan Hukum Terhadap Tindak Pidana Illegal Fishing*, <http://stresspraktikum.blogspot.com/2013/06/proses-penegakan-hukum-terhadap-tindak.html> accessed on Friday, April 13th, 2018 at 5:32 pm.

Indonesia and carried out under international licensing or approval conditions.²⁸

- 2) Creating and / or using artificial islands or installations or other buildings in the Indonesian Exclusive Economic Zone without permission from the Government of the Republic of Indonesia.²⁹
- 3) Conducting scientific research activities in the Exclusive Economic Zone of Indonesia without obtaining prior approval from and exercised under the conditions stipulated by the Government of the Republic of Indonesia.
- 4) Carrying out actions that cause damage to the environment and / or pollution of the environment in the Indonesian Exclusive Economic Zone.³⁰

c. Law No. 31 Year 2004 on Fishery

The Fisheries Act also contains criminal provisions. From the provisions, it contained applicable regulations to IEEZ as the territory of Indonesian fisheries are as follows:

- 1) Establish a fishery court authorized to examine, hear, and adjudicate criminal acts in the field of fisheries that are in the general judicial environment. The fishery court was first

²⁸ Article 5 Paragraph 1 of Law No. 5 Year 1983 on Indonesia's Exclusive Economic Zone.

²⁹ Article 6 of Law No. 5 Year 1983 on Indonesia's Exclusive Economic Zone.

³⁰ Article 16 Paragraph 3 of Law No. 5 Year 1983 on Indonesia's Exclusive Economic Zone.

established in the North Jakarta, Medan, Pontianak, Bitung, and Tual Courts.

- 2) Investigation, prosecution and examination in court in the criminal culprit in the field of fisheries shall be conducted in accordance with applicable procedural law, unless otherwise provided in this Law.
- 3) Investigations of criminal offenses in the field of fisheries conducted by Fisheries Civil Investigators, Navy Officers, and Police Officers of the Republic of Indonesia. Investigators in carrying out their duties can coordinate with relevant authorities.
- 4) The prosecution of a criminal offense in the field of fisheries is conducted by a public prosecutor who is appointed by the Attorney General and / or a designated official.
- 5) The judge of the fishery court consists of career judges and judges ad hoc.
- 6) Any person who commits fishing using dangerous substances is prohibited and shall be punished with imprisonment for a maximum of 6 (six) years and a maximum fine of IDR 1,200,000,000.00 (one billion two hundred million rupiah).
- 7) The captain or the leader of a fishing vessel, a fishing expert, and a crew member who commits fishing by means of hazardous substances shall be liable to imprisonment with a maximum

imprisonment of 10 (ten) years and a fine of not more than IDR 1,200,000,000.00 (one billion two hundred million rupiah).

- 8) Owner of fishing vessel, owner of fishery company, person in charge of fishery company, and / or fishery vessel operator conducting fishing business using hazardous substances prohibited shall be punished with imprisonment for a maximum of 10 (ten) years and a fine of not more than IDR 2,000,000 00, 00 (two billion rupiah).
- 9) Any person owning and / or operating a foreign-flagged fishing vessel fishing in a fishery management area of the Republic of Indonesia, which does not have Fishing Permit (SIPI) shall be subject to imprisonment of a maximum of 6 (six) years and a maximum fine of IDR 20,000,000,000, 00 (twenty billion rupiah).
- 10) A skipper operating a foreign-flagged fishing vessel that does not have a fishing license, which, while located in the fishery management territory of the Republic of Indonesia, does not store fishing equipment in the hold shall be punished with a maximum fine of IDR 500,000,000.00 (five hundred million rupiahs).
- 11) A skipper operating a foreign-flag fishing vessel that has a fishing license with 1 (one) certain type of fishing gear in a

certain part of IEEZ carrying other fishing gear is punishable by a fine of not more than IDR 1,000,000,000.00 (one billion rupiah).

- 12) A skipper operating a foreign-flagged fishing vessel that has a fishing license, which does not hold fishing gear in the hold while it is outside the allowed fishing area of the fishery management territory of the Republic of Indonesia shall be subjected to a fine of a maximum of IDR 500,000,000 , 00 (five hundred million rupiah).
- 13) The provisions on imprisonment in this Law shall not apply to criminal offenses in the field of fisheries occurring in the territory of fisheries management of the Republic of Indonesia (IEEZ), unless there is an agreement between the Government of the Republic of Indonesia and the government of the country concerned.
- 14) An application to release a ship and / or a person arrested for committing a criminal offense in the territorial fishery management territory of the Republic of Indonesia (IEEZ) may be made at any time before a fishery court decision is made by submitting a reasonable sum of money, . Tools used in and / or resulting from a fishery offense may be seized for the state.

C. Causes of the Occurrence of Illegal Fishing

The problem of illegal fishing is still often happening in the waters of Indonesia.³¹ Illegal actions in fishing lead to significant collateral damage to ecosystems. Only solutions of illegal fishing problems will result in compliance with these broader ecosystem management measures. Additionally, as part of a step to explore ecosystem-based management, unreported haul estimates have proven important for balancing ecosystem models.

From the rise of illegal fishing in Indonesian marine waters, it can be seen that generally there are two driving factors that are part of the cause of illegal fishing: Internal and external factors:

1. Internal Factors (Perspective of Indonesian Government)

a. Status of Fishery Crisis and Over Fishing

As one of the 3 countries with the largest fishery production in the world ³², this makes an advantage for Indonesia to continue to develop the fishery industry in order to continue to increase. But unfortunately, the stages to achieve the target are still hampered by some obstacles, one of which is the optimization that is not supported by the availability of a

³¹ Maulana, Asep, 2009, *Illegal Fishing Perspektif Hukum Islam*, Yogyakarta, Fakultas Syari'ah, Universitas Islam Negeri, Sunan Kalijaga, p. 1.

³² FAO, 2010, *World Review of Fisheries and Aquaculture*, <http://www.fao.org/docrep/013/i1820e/i1820e01.pdf> accessed on April 8th, 2018 at 09:11 am.

good environment and also management of the marine ecosystem is lacking.³³ Indonesia's readiness to face the ASEAN Economic Community 2015 can be seen from the aspect of economic growth, the national export growth and Gross Domestic Product (GDP). The readiness of Indonesia can be viewed from the aspect of economic growth.³⁴ Moreover, fishery activities continue to be boosted by massive production / over-fishing exploitation, causing degradation of the number of fish and also the destruction of territorial waters of Indonesia. But it still has not made the perpetrators stop because of the impetus of a large global fish needs. Here is also a table showing the fishery processing area in Indonesia:

Table No. 1 (Regional Status of Fisheries Management)

No. WPP	WPP-571	WPP-572	WPP-573	WPP-711	WPP-712	WPP-713	WPP-714	WPP-715	WPP-716	WPP-717	WPP-718
				Samudera							
Wilayah	Wilayah	Samudera	Hindia	Selat	Laut	Selat	Teluk	Teluk	Sulawesi	Teluk	Laut

³³ Hughes, S., A. Yau, L. Max, 2012, *A framework to assess national level vulnerability from the perspective of food security: The case of coral fisheries.* p. 102. https://researchonline.jcu.edu.au/24153/1/Hughes_et_al_2012_Environmental_Science_and_Policy.pdf accessed on May 7th, 2018 at 12:42 pm.

³⁴ Yordan Gunawan and Yovi Capaja Endyka, 2017, "The Protection of Small and Medium Enterprises in Yogyakarta: The Challenges of ASEAN Economic Community", *Pertanika Jurnal. Soc. Sci. & Hum.* 25 (S): 199 – 206 (2017), ISSN 0128-7702 (Print); ISSN 2231-8534 (Online), Kuala Lumpur, University Putra Malaysia Press. Also available at: [http://www.pertanika.upm.edu.my/Pertanika%20PAPERS/JSSH%20Vol.%2025%20\(S\)%20Oct.%202017/JSSH\(S\)-0550-2017.pdf](http://www.pertanika.upm.edu.my/Pertanika%20PAPERS/JSSH%20Vol.%2025%20(S)%20Oct.%202017/JSSH(S)-0550-2017.pdf)

Tangkapan	Tangka-	Hindia	sebelah	Kari-	Jawa	Makassa	Tolo	Tomini,	dan	Cendra-	Aru,
	pan Selat	sebelah	Selatan	mata,		Teluk	Laut	Laut	sebelah	wasih	Laut
	Malaka	Barat	s.d. Selatan	Laut		Bone,	Banda	Maluku,	Utara	dan	Arafuru
	dan Laut	Sumatera	Nusa	Natuna		Flores,		Laut	Pulau	Samud-	dan
	Andaman	dan Selat	Tenggara,	Laut dan		dan Laut		Halmahera,	Halma-	era	Laut
		Sunda	Laut Sawu,	Laut Cina		Bali		Laut Seram	hera	Pasifik	Timor
			Laut Timor	Selatan				dan Teluk			bagian
			bagian Barat					Berau			Timur
Kedalaman	<200	200+	200+	<200	<200	<200	200+	<200	200+	200+	<200
Potensi Produksi	276,000	565,200	491,700	1,059,000	836,600	929,700	278,000	595,600	333,600	299,100	855,500
Produksi 2011	461,800	558,600	506,900	588,700	823,700	614,300	537,000	443,600	213,200	148,900	449,100

Source: Ministry of Marine Affairs and Fisheries

b. Imbalance Comparison Between Water and Law Enforcement Instruments

Reflecting on the data obtained by MSY (Maximum Sustainable Yield), which in these vast Indonesian waters, it is

unbalanced with patrols / guards done by law enforcers, resulting in the lack of action against illegal fishing. Whereas in fact, it can be viewed from reality and empirical, that there are 3 areas that become subscriptions and prone to looting fish in the Indonesian ocean, namely Natuna Islands which are adjacent to the South China Sea, northern waters next to North Sulawesi bordering the Pacific Ocean, and the Arafuru Sea waters.

Calculation of patrol operation pattern with assumption of radar surveillance capability = 20 Miles radius, which means for all three aquatic areas required minimum 45 patrol boats guarding 24 hours continuously (to operate it, 60: 45 operation vessels and 15 maintenance vessels and improvement). In comparison, 3:1, or cycle in a year, which are 75% operating time and 25% improvement.³⁵ This impact also causes the occurrence of illegal fishing that continues to grow in Indonesia.

c. Regulation on Fisheries: Response to Uncounted and Unhandled Cases (IUU Fishing)

³⁵ Nunung Mahmudah, *Op.Cit*, p. 3.

Over fishing and illegal fishing that occurred in Indonesia was donated by Malaysia, Vietnam, China, Myanmar, Thailand and the Philippines.³⁶ Unfortunately, cases that occur in the waters of the archipelago are not all processed and followed up especially by the government of Indonesia. Although routine patrols are conducted by the Ministry of Marine Affairs and Fisheries, but IUU Fishing is still rife in Indonesia.

At least, there are 4,326 local and international ship units examined for this case.³⁷ The origin of the ships is from Indonesia (317 people), Malaysia (10 people), Vietnam (407 people), Thailand (270 people), Philippines (266 people), Laos (1 person), Cambodia (1 person), Myanmar people), and China (1 person).³⁸

Of the ships, in fact only a few are followed up by going to the Court. This shows that the commitment of the Government of Indonesia is still very weak. Whereas the loss of illegal fishing recorded by FAO Indonesia, in the range of

³⁶Greenpeace Report, 2015, *Laut Indonesia dalam Krisis*, <http://www.greenpeace.org/seasia/id/press/reports/Laut-Indonesia-Dalam-Krisis/> accessed on May 7th, 2018 at 12:25 pm.

³⁷ PSDKP-KKP, 2013, *Refleksi 2015 dan Outlook 2016: Pengawasan Sumberdaya Kelautan dan Perikanan*, https://psdkpinfrastruktur.weebly.com/uploads/2/9/6/4/29643353/refleksi_2015_dan_outlook_2016_psdkp.compressed.pdf accessed on May 7th, 2018 at 12:29 pm.

³⁸ *Ibid.*

2001, estimates of research figures, about 25% of fish stocks stolen and discarded, which should be a whip for Indonesia to take immediate action.³⁹

d. The Weak National Fishing Fleet

The Indonesian fishery fleet is called weak due to the government's lack of attention to the fishermen as the main actors in the fleet of fisheries, to the moment the composition of the fishing fleet is still dominated by a small-scale fleet of non-motorized boat fleets, very weak and lagging far behind foreign tourists using large ships with the capability in large quantities.⁴⁰

e. The Existence of the Involvement of Officers

In the case of illegal fishing the involvement of unscrupulous personnel is working with the owners of capital / fish entrepreneurs who provide great rewards and very seductive. As an example of the case of illegal fishing, it was

³⁹ FAO, 2010, *World Review of Fisheries and Aquaculture*, <http://www.fao.org/docrep/013/i1820e/i1820e01.pdf> accessed on April 8th, 2018 at 09:11 am.

⁴⁰ Kementerian PPN dan Bappenas, 2016, *Kajian Strategi Pengelolaan Perikanan Berkelanjutan*, https://www.bappenas.go.id/files/9214/4401/4205/8_BAB_6_ISU_STRATEGIS_DAN_PERMASALAHANNYA.pdf accessed on March 17th, 2018 at 04:53 pm.

in North Sulawesi waters in 2007, based on data obtained from WALHI, the case is a cooperation between unscrupulous officers, fish entrepreneurs on land, and fish operators in the sea which is very systematic.⁴¹

f. Weak Supervision of Indonesian Marine Apparatus

The weakness of the reactive attitude of the apparatus who is obliged to supervise the Indonesian Sea is one of the factors causing the rampant illegal fishing case, whereas Indonesia has many laws and regulations governing fisheries and marine.⁴²

g. Weak Law Enforcement in the Indonesian Ocean

There are areas of sea that have never been touched by patrols of the Navy or water police which are the result of weak law enforcement. This causes uncontrollable crime in the

⁴¹ Sumardi Ariansyah, 2015, *IUU Fishing Karena Lemahnya Integritas Penegakan Hukum*, <http://m.greenpeace.org/seasia/id/high/blog/Perjalanan-Pembela-Lautan/iuu-fishing-karena-lemahnya-integritas-penega/blog/51808/> accessed on April 21st, 2018 at 01:23 pm.

⁴² *Ibid.*

sea of Indonesia, and creates opportunities for illegal fishing actors to be free to commit crimes at sea in Indonesia.⁴³

h. Open Fisheries Management System

The fisheries management system in the form of a licensing system is currently open (open access); restriction is limited to the input restriction. It is less suitable if faced with the geography of Indonesia, especially EEZ Indonesia bordering the high seas.⁴⁴

i. Limited Facilities and Infrastructure of Supervision and Human Resources

The limitation of facilities and infrastructure supervision and human resources supervision is what makes it difficult to prevent illegal fishing, especially in terms of quantity.⁴⁵ As an illustration, up to 2008, there were only 578 Fisheries Investigators and 340 Crew (Children of Fruit Ships) Fisheries Supervisory Boats. The amount, of course, is not very

⁴³ *Ibid.*

⁴⁴ Widodo, Johannes dan Suadi, 2006, *Pengelolaan Sumberdaya Perikanan Laut*, Yogyakarta, Gajah Mada University Press. p. 192.

⁴⁵ Kementerian PPN dan Bappenas, 2016, *Kajian Strategi Pengelolaan Perikanan Berkelanjutan*, taken from https://www.bappenas.go.id/files/9214/4401/4205/8_BAB_6_ISU_STRATEGIS_DAN_PERMASALAHANNYA.pdf accessed on April 18th, 2018 at 09:22 am.

proportional to the wide range of marine areas that must be monitored.⁴⁶

2. External Factors (Perspective of Illegal Fisher)

a. Global Fish Stocks Significantly Decrease

With the many fishing activities that occur in almost all the waters of the world, causing a decline in the number of fish very rapidly without accompanied by a good ecosystem development cycle. The decline of world marine fish stocks significantly due to illegal fishing and over fishing. Reduction of vessel operating license, causing Indonesian waters becomes the target of illegal fishing. Data obtained from the study in 2012, compared with 27 other fish producing countries, Indonesia's most vulnerable fisheries are destroyed based on coral reef management indicators,⁴⁷ fishery situation and food security, whereas Indonesian waters are home to many species of marine biota and are targeted by other countries in fishing.

⁴⁶ Mukhtar, 2011, *Illegal Fishing di Indonesia*, available at <http://mukhtar-pi.blogspot.com/2011/05/illegal-fishing-di-indonesia.html> accessed on April 18th, 2018 at 10:45 am.

⁴⁷ Hughes, S., A. *Op.Cit*, p. 105.

This is also the cause for some fishing industry nations to get a stable supply of fish, both legally and illegally.⁴⁸

b. Fish Price Disparity

Fish price disparity between Indonesia and fishery industry countries is so significant that there is intensive Economic to do illegal fishing in Indonesia, and from that there is still profit margin although illegal fishing cost is also expensive.⁴⁹ The disparity (price) of whole fish in other countries than in Indonesia is high enough to make income surplus.

c. The Increasing of Global Fish Consumption Rate

With the increasing number of fish consumption globally resulted in the fish crisis in the oceans, especially in the absence of rapid anticipation steps from countries around the world, as well as in Indonesia. There are no concrete steps to anticipate the crisis, so it will greatly trigger the practice of

⁴⁸ George Junus Aditjondro, 2003, *Kebohongan-Kebohongan Negara, Perihal Kondisi Objektif Lingkungan Hidup di Nusantara*, Yogyakarta, Pustaka Pelajar, p. 27.

⁴⁹ *Ibid.*

illegal fishing in the waters of Indonesia which has been predicted that it will still store the source of abundant fish.⁵⁰

d. Fish Resources in Other Countries are Reduced

Due to the countries with advanced technology have experienced fish crises in their nations, while the need for marine fish in developed countries is very big, then what happens are the expansion of fishing to other countries that are considered still have a lot of fish stocks, one of the purpose of its expansion is Indonesia. If the fish expansion is done illegally and unconditionally, then what will happen is illegal fishing will be conducted in Indonesian waters.⁵¹

The legal implications to the foreign fishing vessels that enter the Indonesia's Exclusive Economic Zone based on Article 73 of United Nations Convention on the Law of the Sea are, if there is no agreement between the coastal states or even the fisher does not have any permit, the ship of foreign fishing

⁵⁰ FAO, 2010, *World Review of Fisheries and Aquaculture*, taken from <http://www.fao.org/docrep/013/i1820e/i1820e01.pdf> accessed on April 8th, 2018 at 11:34 am.

⁵¹ WWF Indonesia, 2008, *Krisis Perikanan Landa Indonesia*, taken from <https://www.wwf.or.id/?6443/krisis-perikanan-landa-indonesia> accessed on March 28th, 2018 at 05:24 pm.

vessels will be captured and the crew of the ship will be arrested.

D. Implementation of Indonesia's Maritime Law

Indonesia implements its national maritime law which is in line with International convention in order to monitor, control and protect its ocean territory. Moreover, President Joko Widodo was eager to escape the country from maritime crime as well as its economic disadvantages to the country. Therefore, since 2014, Susi Pudjiastuti as the Ministry of Maritime and Fishery (KKP) took aggressive treatment towards IUU Fishing based on Article 69 Paragraph 4 of Law No. 45 Year 2009 on Fishery. Firstly, Indonesian government can save and maintain the vessels as evident during jurisdiction process. This way is not effective to the government since maintaining the vessels need a lot of budget. Secondly, government can give the vessels to citizen or university for academic research, however limited spare part availability made the vessels useless and unmaintained. Thirdly, government can sale these vessels by auction process. Unfortunately, buyers often cooperate with the vessels owner in order to determine the price lower than it's deserve. In this case, the winner of auction process will sell back the

vessels to the origin vessels owner. This process become more ineffective since the owner will use the vessels to commit IUU fishing again.⁵²

Indonesian government needs to determine stricter and stronger policy in order to give shock therapy to IUU Fishing. When common regulation does not give deterrent effects, Indonesian government through KKP implement its national regulations based on Article 69 Paragraph 1 and 4 of Law No. 31 Year 2004 on Fishery that legalize Indonesian government to sink IUU vessels. In term of sink the vessels, government can use some methods, such as exploding, burning, or leaking the vessels as long as crews have been evacuated. The majority vessels belong to both local and foreign fisherman, like Thailand, Vietnam, Philippine, and Malaysia.⁵³

1. Impacts on Regional Stability

Indonesian maritime security policy which exploding and sinking IUU vessels were responded by some ASEAN countries, especially Malaysia, Thailand and Vietnam, since majority of IUU vessels operated in Indonesian territory are owned by these countries. Although the policy in line with domestic and International common law, varieties of response are inevitable. The exploding and sinking policy is purely about criminal

⁵²Muhammad Shobaruddin, 2017, *Analyzing the Indonesia's Maritime Security Policy and its Impacts on Regional Stability*, taken from https://www.researchgate.net/publication/322077393_%27Analyzing_the_Indonesia%27s_Maritime_Security_Policy_and_its_Impacts_on_Regional_Stability%27 accessed on May 1st, 2018 at 08:46 am.

⁵³ *Ibid.*

issue, but Indonesian government needs to softly explain and maintain ASEAN regional stability.⁵⁴

Since the policy was implemented in 2014, ASEAN countries responded it in vary ways. Thailand through Bangkok Post blames on Indonesian maritime security policy by citing "Indonesia is Wrong" on its editorial.⁵⁵ They said that exploding and sinking IUU vessels is fragile towards ASEAN regional unity since this region eager to create regional integrity through ASEAN Economic Community. Moreover, they also argued that Indonesia escalated tension in South China Sea, since China claimed and invaded its power in South China Sea which caused conflict between China, Vietnam, Malaysia, Philippine, Brunei Darussalam, and Taiwan. Nevertheless, this issue was solved since Thai Prime Minister, Prayut Chan O Cha and Indonesian President, Joko Widodo prefer to cooperate in dealing with illegal fishing.⁵⁶

Furthermore, Malaysia also conveyed negative respond when this policy initially implemented in 2014. One of popular Malaysian media, Utusan.com criticized Jokowi's policy by citing that the policy restates Indonesian provocation towards Malaysia like Soekarno era in 1960s. A

⁵⁴ Dharanindra, 2016, *Mempertanyakan Kebijakan Penenggelaman Kapal Asing*, taken from <http://pssat.ugm.ac.id/id/2016/03/24/mempertanyakan-tindakanpenenggelaman-kapal-asing/> accessed on May 1st, 2018 at 09:34 am.

⁵⁵ Bangkok Post, 2015, *Indonesia is Wrong*, taken from <https://www.bangkokpost.com/opinion/opinion/454323/indonesia-is-> accessed on May 8th, 2018 at 11:15 am.

⁵⁶ Dharanindra, *Op.Cit.*

confrontation approach which was taken by Joko Widodo reflects his arrogant which leads negative sentiment between two countries (serumpun). Unlike Indonesia, Malaysia claims has more appropriate methods in punishing illegal fishing by sinking them without exploding.⁵⁷

Although Malaysia tends to criticize this policy, a contradictive current policy was taken by Malaysian government by following Indonesian regulation in dealing with IUU Fishing. Since there is a lot of IUU Fishing in Malaysian maritime territory (Borneo), the government determines burning policy towards IUU Fishing vessels. Recently, according to Malaysian Maritime Enforcement Agency (MMEA), Malaysia burns IUU vessels for a first time in 30 August 2017. Moreover, according to FMT News, Amanah's Raja Kamarul Bahrin Shah Raja Ahmad claimed that fisherman urged the government to take Indonesia as an example and destroy boats when handling illegal fishing in Malaysian waters.⁵⁸

Unlike Thailand and Malaysia, Vietnam responded Indonesian policy by soft diplomacy. In Vietnam's case, the issue has been raised during several bilateral relations since the fishery sector is an important one in the overall trade relationship. In November 2014, Vietnam's ambassador to Indonesia, Nguyen Xuan Thuy, met with Maritime and

⁵⁷ *Ibid.*

⁵⁸ *Ibid.*

Fisheries Minister Susi Pudjiastuti to discuss the issue. Moreover, Vietnam government also declared that they will educate their fisherman about fishery laws and regulations. Currently, Secretary General of Vietnamese communist party, Nguyen Phu Trong and President Republic of Indonesia, Joko Widodo ratified bilateral memorandum of understanding to eradicate illegal fishing.⁵⁹

Nevertheless, although initially Indonesian “exploding and sinking” policy to deal with IUU Fishing get negative respond from ASEAN member countries, currently those countries tend to support Indonesia due to the same issue also occurred in their own maritime territory.

⁵⁹ Muhammad Shobaruddin, 2017, *Analyzing the Indonesia's Maritime Security Policy and its Impacts on Regional Stability*, taken from https://www.researchgate.net/publication/322077393_%27Analyzing_the_Indonesia%27s_Maritime_Security_Policy_and_its_Impacts_on_Regional_Stability%27 accessed on May 1st, 2018 at 10:25 am.