

**LAW ENFORCEMENT ON ILLEGAL FISHING BY FOREIGN
FISHING VESSELS WITHIN INDONESIA'S EXCLUSIVE
ECONOMIC ZONE
UNDERGRADUATE THESIS**



**This Undergraduate Thesis is submitted as one of the requirements to obtain
the degree of Bachelor of Laws at the Faculty of Law Universitas
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**FACULTY OF LAW
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APPROVAL PAGE

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**LAW ENFORCEMENT ON ILLEGAL FISHING BY FOREIGN FISHING
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DECLARATION PAGE

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

I hereby declare that the Undergraduate Thesis which is entitled “**LAW ENFORCEMENT ON ILLEGAL FISHING BY FOREIGN FISHING VESSELS WITHIN INDONESIA’S EXCLUSIVE ECONOMIC ZONE**”, its content is truly the work of my own and I did not do a plagiarism or quotation in ways that are inconsistent with the prevailing ethnic in the scientific community. On this statement, I am ready to bear the risk/any sanctions imposed to me in accordance with the applicable regulations, if in the future a breach of scientific ethnics, I am willing to accept the sanctions.

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ABSTRACT

Indonesia is a country with a vast archipelago of land and sea. The number of territorial waters owned by Indonesia resulted in the number of fish that are very feasible to be consumed to be caught by illegal fishers. The research aims to understand and analyse further about the implications of law enforcement on illegal fishing by foreign fishing vessels within Indonesia's exclusive economic zone. By using the normative legal research, the result of the research shows that Indonesian Government has made a proper regulation and appropriate law enforcement to combat the illegal fishing in the Indonesia's Exclusive Economic Zone. The result shows that there are many factors that make a lot of illegal fishing are still happening. Although Indonesian Government has made a proper law, there are still some law enforcers who did not execute their tasks accordingly. Indonesia has ratified the UNCLOS 1982 based on Law No. 17 Year 1985 and it makes the UNCLOS 1982 has become a binding law for Indonesian Government. In Law No. 5 Year 1983 on Exclusive Economic Zone (EEZ), it stated on the sovereignty of the territorial waters of the Republic of Indonesia, and therefore it is illegal for foreign fishing vessels to fish around the Indonesia's Exclusive Economic Zone without any permit. The research suggests that Indonesian Government should make a completion of fishery licensing system and mechanism. And also Indonesian Government must make more patrols around the Indonesia's Exclusive Economic Zone to have more prevention towards the illegal fishers.

Keywords: illegal fishing, Indonesia's exclusive economic zone, law enforcement

Background

Indonesia is a country with a vast archipelago of land and sea. According to the record of the Indonesian Forum for the Environment, Indonesia is the largest archipelagic country in the world, which has 17,480 islands with 95,181 km of coastline. Under the United Nations Convention on the Law of the Sea (UNCLOS) 1982, Indonesia has sovereignty over 3.2 million km² of waters comprising of 2.9 million km² of archipelagic waters and a territorial sea of 0.3 million km².¹

As country with numerous seas, Indonesia has been a frequent victim of illegal fishing events, and repeatedly Indonesia has also arrested and sentenced severe punishment to foreign illegal fishers. But that does not make the foreign fishermen deterrent or afraid to catch fish in Indonesia. The recent case occurred in Ambon, two foreign fishing vessels caught illegally fishing in Maluku waters and were destroyed in the waters of Mamala-Morela State, Leihitu District, Ambon Island, Central Maluku on April 1st, 2017.² This proves that many foreign fishermen still want to catch fish illegally in Indonesia despite the many incidents that make the Indonesian government provide severe punishment for the perpetrators.³

The large number of illegal fishing events made the government and people of Indonesia suffered huge losses. Sources of fisheries in Indonesia are one factor to develop the nation's prosperity. The fish can be used for consumption as a source of protein, and can also

¹ Nunung Mahmudah, 2015, *Illegal Fishing*, Jakarta, Sinar Grafika, p. 1.

² Nancy Junita, 2017, *Penangkapan Ikan Ilegal : 2 Kapal Asing Segera Ditenggelamkan*, taken from <http://industri.bisnis.com/read/20170330/99/641206/penangkapan-ikan-ilegal-2-kapal-asing-segera-ditenggelamkan>, accessed on November 8th, 2017 at 8:47 am.

³ Muhammad, Simela Victor, 2012, "Illegal Fishing di Perairan Indonesia: Permasalahan dan Upaya Penanganannya Secara Bilateral di Kawasan", *Politica*, Vol. 3 No. 1, May 2012. p. 3.

be sold as a source of income for the people and government.⁴ The presence of Minister of Maritime Affairs and Fisheries of Indonesia, Susi Pudjiastuti, makes the illegal fishing practitioners more frequent, this is because minister Susi is very actively to combat the illegal fishing practitioners, although so many similar events often occur.

There are still many cases of illegal fishing because Indonesian government is still not maximally in supervising the waters in Indonesia. There is no maximum security in Indonesia that makes the illegal fishers are afraid to enter the territory of Indonesia.⁵

Research Problem

From the discussion above, the researcher formulates the research problem, namely: what are the implications and law enforcement on illegal fishing by foreign fishing vessels within Indonesia's Exclusive Economic Zone?

Objectives of the Research

The objectives of the research are to understand and analyse further the implications and law enforcement on illegal fishing by foreign fishing vessels within Indonesia's Exclusive Economic Zone.

Law Enforcement

Law enforcement is a preventive act taken by every law enforcer.⁶ It all aims to get legal certainty. It is similar in maintaining the sovereignty of maritime. Law enforcement is

⁴ Zaki Mubarak Busro, 2017, "Burning and/or Sinking Foreign Fishing Vessels Conducting Illegal Fishing in Indonesia", *Asia-Pacific Journal of Ocean Law and Policy*, Volume 2, Issue 1, p. 174-179, DOI: 10.1163/24519391-00201011, IN: 2451-9367 E-ISSN: 2451-9391, The Netherlands, Brill Nijhoff.

⁵ Wawan, 2011, *Pengawasan Perairan Indonesia Kerap Bergantung Informasi Nelayan*, taken from <http://dkp.papua.go.id/berita-101-5-pengawasan-perairan-indonesia-kerap-bergantung-informasi-nelayan-.html> accessed on November 8th, 2017 at 12:10 pm.

⁶ Atip Latipulhayat, 2016, "Khazanah: Hart", *Padjadjaran Jurnal Ilmu Hukum*, Volume 3 Nomor 3, 2016, ISSN 2460-1543, e-ISSN 2442-9325. p. 658.

also an attempt to actualize the justice, legal certainty and social benefit to become a reality. So, law enforcement is essentially a process of materializing ideas.⁷

According to Black's Law Dictionary, the definition of law is the regime that orders human activities and relations through systematic application of the force of politically organized society, or through social pressure, backed by force, in such a society; the legal system (respect and obey the law).⁸

Aside of that, the Dictionary also define "the enforcement" as an act or process of compelling compliance with a law, mandate, command, decree, or agreement. Enforcement Power is the authority by which Congress may enforce a particular constitutional amendment's provisions by appropriate legislation."⁹

The Law Enforcement itself defines as a preventive act taken by every law enforcer. It all aims to get legal certainty. It is similar in maintaining the sovereignty of maritime. Law enforcement is also an attempt to actualize the justice, legal certainty and social benefit to become a reality. So, law enforcement is essentially a process of materializing ideas.¹⁰

Illegal Fishing

The term "illegal act" means an act or omission that violates any law, or any rule or regulation having the force of law.¹¹ In Black's Law Dictionary the word illegal means forbidden by law, unlawful (prohibited by law or invalid).¹² Thus, illegal fishing is a series of harvesting and transporting activities conducted illegally because they do not have the

⁷ Dellyana, Shant, 1988, *Konsep Penegakan Hukum*, Yogyakarta, Liberty, p. 32.

⁸ Garner, B.A., 1999, *Black's Law Dictionary*, Seven Edition, West Group, Dallas, Texas, p. 962.

⁹ *Ibid*, p. 608.

¹⁰ Dellyana, Shant, 1988, *Konsep Penegakan Hukum*, Yogyakarta, Liberty, p. 32.

¹¹ Anonymous, 2012, *Illegal Act*, https://definedterm.com/illegal_act accessed on November 9th, 2017 at 10:27 am.

¹² Garner, B.A., *Op.Cit.*, p. 750.

consent of the authorities. The acts contrary to the applicable law and is seen as an act that may damage the sea. Thus it can be said that illegal fishing includes the destruction of sea that may result in the loss of both aspects of the Economic, ecological and socio-cultural.

Exclusive Economic Zone

In Article 55 of the 1982 United Nations Convention on the Law of the Sea there is a definition of an Exclusive Economic Zone, and it may be interpreted that the Exclusive Economic Zone is a sea lane located outside and adjacent to its territorial sea, where the sea lane adheres to a special legal regime set out in Chapter V of United Nations Convention on the Law of the Sea 1982.¹³ Article 57 of the 1982 United Nations on the Law of the Sea stipulates that every country with a coastal area shall have the right to determine its Exclusive Economic Zone. However, the specified distance should not exceed 200 nautical miles measured from the same line used to measure the width of its territorial sea.¹⁴

In the provisions of Article 56 of the 1982 United Nations Convention on the Law of the Sea, it is stipulated that in an Exclusive Economic Zone, coastal states have sovereign rights for the purpose of exploration, exploitation, conservation and management of natural, biological and non-biological resources from waters on the seabed and from marine and subsoil and in respect of other activities for the purpose of exploration and exploitation of such economic zones, such as energy production from water, currents and wind.¹⁵

RESEARCH METHOD

Type of Research

¹³ Article 55 of United Nations Convention on the Law of the Sea 1982.

¹⁴ Dikdik Mohamad Sodik, 2016, *Hukum Laut Internasional dan Pengaturannya di Indonesia*, Bandung, PT Refika Aditama, p. 81.

¹⁵ *Ibid*, p. 82.

The type of the research is normative legal research, one kind of legal research prominent in professional legal writings, such as handbooks, monographs, commentaries, and textbooks of law that implements a specific legal method consisting in the systematic, analytically evaluative exposition of the substance of private law, Indonesian law, international law, United Nations Convention on the Law of the Sea 1982, etc. The author is focusing on the regulations, and also other books related to the title. The case approach is conducted by reviewing the case related to the issues.¹⁶

Type of Data

The data of the research is taken from the secondary data which consists of primary, secondary, and tertiary legal materials. The secondary data means the writer is finding the sources from the journal, book, news, or other typed references.

Method of Collecting Data

The data is collected through library research, which means all data are collected through the finding in the legislations, court decision, books, journal, news, internet, and all typed or printed references.

Data Analysis

The data would be analysed systematically through juridical qualitative. Juridical qualitative means it would be connected with the principle of law, convention and other related regulations. The method of research that is used in this paper is a qualitative research.

FINDING AND ANALYSIS

¹⁶ Peter Mahmud Marzuki, 2011, *Penelitian Hukum*, Jakarta: Kencana Prenada Media Group. p. 24

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 President,¹⁷ which has the main duty of conducting security and safety patrols in the territorial waters of Indonesia and the jurisdiction of Indonesia.¹⁸

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.

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.

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

In IEEZ, the Republic of Indonesia has and exercises:

¹⁷ See Article 60 of Law No. 32 Year 2014 on Marine.

¹⁸ See Article 61 of Law No. 32 Year 2014 on Marine.

- 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;¹⁹

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.

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.²⁰

Sanctions of Illegal Fishing (Punitive Measures)

Law Enforcement at Sea under UNCLOS 1982 Subject to Sovereignty.

¹⁹ Article 4 Paragraph 1 of Law No. 5 Year 1983 on Indonesia's Exclusive Economic Zone.

²⁰ Article 5 of Law No. 31 Year 2004 on Fishery.

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.

Law Enforcement in Exclusive Economic Zone

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.²¹

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.²²

CONCLUSION AND RECOMMENDATION

Conclusion

The result of the research shows that the law enforcement on illegal fishing by foreign fishing vessels within Indonesia's Exclusive Economic Zone has not been conducted properly.

²¹ P. Joko Subagyo, 2013, *Penerapan Hukum Laut di Indonesia*, Jakarta, Rineka Cipta. p. 28.

²² 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.

Although the applicable laws in Indonesia have regulated the illegal fishing in detail, there are still so many illegal fishers that are fishing in Indonesia's Exclusive Economic Zone. It is also mainly because of the lack of law enforcer, lack of supervision and limited facilities provided by the Indonesian government. Based on the applicable laws, the implication of law enforcement on the foreign fishing vessels is not making the deterrent effect to the illegal fisher. It does not make the illegal fishers feel afraid to enter the Indonesia's Exclusive Economic Zone.

Recommendation

The government must make a completion of fishery licensing system and mechanism. The number of fishing vessels permitted to operate in a fishing area should not exceed the amount of allowable catch in order for the fishing business to be profitable and sustainable.

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