

Illegal Fishing in Indonesia and the Role of International Maritime Law on Illegal Fishing Action

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ABSTRACT: Indonesia as one of the largest maritime sources face many challenges, one of is illegal fishing. This study aims to analyze the role of international maritime law and its practices on handling illegal fishing in Indonesia. This study found and confirmed that illegal fishing action or action of foreign fishing vessels entering the territorial waters of Indonesia without permits and exploiting the natural wealth in it, would violate the sovereignty of the State of Indonesia. For that there must be a firm law enforcement in the form of catching foreign fishermen and their ships to be processed legally. The capture of foreign fishing vessels may be justified if they are filled with evidence that the fishing vessel is conducting illegal fishing. Associated with the problem of illegal fishing, the effort of a State that suffered losses is also a thing to be reckoned with. Efforts taken by a State in handling cases of illegal fishing must be regulated in a clear regulation. In fact, the efforts taken by a State with a different State.

KEYWORDS: Illegal Fishing, Maritime Law, Law Enforcement, International Maritime Law



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I. INTRODUCTION

The United Nations Conference on the Law of the Sea held the United Nations Conference on UNCLOS III. That ended with the endorsement of the final manuscript in Jamaica dated December 10, 1982, by 118 States and covers matters including codify the provisions of existing maritime law, such as freedoms on the high seas and the right of peaceful passage in the territorial sea, development of existing maritime law, such as the provision of territorial sea width to a maximum of 12 nautical miles and the criteria for continental shelf, and creation of new rules, such as island nation states, Exclusive Economic Zones (ZEE) and international seabed mining¹.

¹ Simela Victor Muhamad, "Illegal fishing di perairan indonesia: permasalahan dan upaya penanganannya secara bilateral di Kawasan." *Jurnal Politica Dinamika Masalah Politik Dalam Negeri dan Hubungan Internasional* 3, No. 1 (2016): 59-85; Armain Naim, "Pengawasan sumberdaya perikanan dalam penanganan illegal fishing di perairan Provinsi Maluku Utara." *Agrikan: Jurnal Agribisnis Perikanan* 3, No. 2 (2010): 1-14; Amin Bender, "Illegal Fishing sebagai Ancaman Kedaulatan Bangsa." *Perspektif Hukum* 15, No. 1 (2015): 1-26. It is also further emphasized that the United Nations Convention III on the Law of the Sea (UNCLOS 1982) divides the sea into three parts. First, the sea which is part of the sovereign territory of a country (territorial sea and inland sea); Second, the sea which is not a sovereign territory of a country, but the country has a number of rights and jurisdictions over certain activities (additional zones and exclusive economic zones); Third, the sea which is not a sovereign territory and is not a right/jurisdiction of any country, namely the free sea. The exclusive economic zone (EEZ) is one of the most revolutionary features of UNCLOS 1982 and has a significant impact on the management and

The maritime boundaries set out in the UNCLOS in 1982 include the boundaries of the Territorial Sea (Territorial Sea), the limits of the Exclusive Economic Zone / EEZ (Exclusive Economic Zone), and the limits of the Continental Shelf (Continental Shelf). The clarity of the boundaries of the waters of a State provides benefits to the State itself, which is to help clarify the defense of the State, i.e., to safeguard the possibility of attacks or infiltrations from outside the territory.²

For a country following UNCLOS 1982 dividing the sea into three types or maritime zones:

1. The sea that is part of the territory of sovereignty (in the territorial sea, inland sea)

conservation of marine resources. The EEZ regime regulates unilateral (unilateral) claims to waters by countries in the past, by giving the coastal State the right to explore and exploit, manage and conserve living and non-living natural resources from the seabed and subsoil and water. above it and other activities for the economic exploration and exploitation of the zone, such as the generation of energy from water, ocean currents and wind. Exclusive rights in the EEZ come with responsibilities and obligations. For example, UNCLOS 1982 encourages optimal utilization of fish stocks. In its EEZ, each coastal State must determine the total allowable catch for each fish species and estimate its fishing capacity. *See also* Stephen C. Nemeth, et al. "Ruling the sea: Managing maritime conflicts through UNCLOS and exclusive economic zones." *International Interactions* 40, No. 5 (2014): 711-736; Usmawadi Usmawadi. "Implementation of the UNCLOS 1982 in Utilization of Highly Migratory Species by Indonesia." *Sriwijaya Law Review* 4, No. 1 (2020): 124-135; Nigel Bankes, "Legislative and enforcement jurisdiction of the coastal state with respect to fisheries in the exclusive economic zone." *The Development of the Law of the Sea Convention*. (Cheltenham Glos UK: Edward Elgar Publishing, 2020); R. Pramoda, et al. "Fisheries management policy in Indonesia's Exclusive Economic Zone area." *IOP Conference Series: Earth and Environmental Science*. 869, No. 1. (2021).

² Dewinta Ayu Syaharani, M. Al Musadieq, and Ari Darmawan. "Analisis Peran Kebijakan Illegal, Unreported, and Unregulated Fishing (IUU) pada Ekspor Ikan Tuna dan Udang Tangkap." *Jurnal Administrasi Bisnis* 45, No. 1 (2017): 27-36.

2. The Sea is not a sovereign territory, but it has the right of jurisdiction over certain activities (in additional zones and exclusive economic zones)
3. The sea is beyond the two above (not including its sovereign territory and not jurisdictional territory), but the country has an interest (such as free ocean).³

UNCLOS also regulates the rights and obligations of coastal States to which the State in respect of the State may apply to the coastal State may uphold its laws and regulations as set forth in the Convention on the Law of the International Sea (UNCLOS III) in article 73 which states that:

- a. The coastal State may, in exercising its sovereign right to undertake the exploration, exploitation, conservation and management of living resources in the exclusive economic zone to take such measures, including boarding, examining, apprehending, and conducting judicial proceedings, as necessary to ensure compliance with laws and regulations stipulation in accordance with the provisions of this Convention.
- b. The captured ships and their crew shall be released immediately after being given a proper security deposit or other form of security.
- c. The coastal state penalty imposed on violation of the fisheries legislation in the Exclusive Economic Zone shall not include confinement, if there is no contrary agreement between the states concerned, or any other form of corporal punishment.⁴

³ Tedjo Edhy Purdjiantoro, "Peran TNI Angkatan Laut dalam Penegakan Kedaulatan Negara dan Keamanan di Laut." *dalam Jurnal Diplomasi, Pusdiklat Departemen Luar Negeri* 1, No. 2 (2009): 27-48.

⁴ Hasjim Djalal, *Perjuangan Indonesia Di Bidang Hukum Laut*, (Bandung: Binacipta, 1979).

The archipelagic countries that have strategic positions and have great potential fishery resources, attract the attention of foreign fishing vessels to illegal fishing. In addition, one of the factors of the occurrence of illegal fishing is the need of world fish (demand) increases, on the other hand the world supply of fish decreases, and there is excess demand (overdemand), especially types of fish from the sea such as Tuna. Associated with the problem of illegal fishing⁵, the effort of a State that suffered losses is also a thing to be reckoned with. Efforts taken by a State in handling cases of illegal fishing must be regulated in a clear regulation. In fact, the efforts taken by a State with a different State as an example of Indonesia, the effort taken by the Indonesian government is the sinking of foreign fishing vessels by means of blasting.⁶ Illegal fishing action is not only detrimental to the economy with the value of trillions of rupiah lost, but also destroy the fishermen's economy. It also poses a political impact on the relationships between coexisting States, violates the sovereignty of the State and threats to the conservation of marine biological resources.

As described above, in Indonesia there has been the arrest of foreign fishing vessels that do illegal fishing accompanied by the action of sinking the ship by blasting. The goal is to provide a deterrent effect and demonstrate the firmness of the government in realizing sustainable and responsible fisheries. However, it should be remembered that the act of drowning by means of the blasting of

⁵ Koesrianti Koesrianti. "Penindakan Illegal Fishing dan Perjanjian Bilateral Bidang Perikanan dengan Negara Tetangga." *Mimbar Hukum* 20, No. 2 (2008): 393-410.

⁶ Joko Subagyo. *Hukum Laut Indonesia*. (Jakarta: Rineka Cipta, 2009); Heru Prijanto. *Hukum Laut Internasional*. (Malang: Bayumedia, 2007).

ships belonging to other States may also violate the provisions of the Charter of the United Nations (UN) which bind Indonesia as a member.⁷

Therefore, this study aims to analyze on how far the government's role and action in is handling the case of illegal fishing in Indonesia, what is the impact of government policy in handling cases of illegal fishing in Indonesia, and the extent to which the role of the International Sea Law in handling cases of Illegal Fishing in Indonesia.

II. METHODS

The research method used in the discussion of this problem is descriptive method of analysis. The purpose of this method is a method of research that tells and interprets the data, then analyzed. The purpose of the research descriptive analysis is to identify problems, make comparisons or evaluations and determine what is done by others in the face of a problem. Actual information gathering in detail describes existing symptoms, identifies ongoing problems as they occur or about developing phenomena.

Data collection methos are one of the main elements or components in doing research, meaning that without data will not research, and data used in a study is the right data. Data collection is a step in the scientific method, namely as a systematic procedure, logical, and valid data search process, which is obtained directly for the purposes

⁷ United Nations Convention of the Law of Seas 1982; Mochtar Kusumaatmadja and Etty R. Agoes, *Pengantar Hukum Internasional*. (Bandung: PT. Alumni, 2003); Abdul Qodir Jaelani, "Illegal Unreported and Unregulated (IUU) Fishing: Upaya Mencegah dan Memberantas Illegal Fishing dalam Membangun Poros Maritim Indonesia." *Supremasi Hukum: Jurnal Kajian Ilmu Hukum* 3, No. 1 (2014): 168-192.

of analysis and implementation of the discussion, or research correctly, who will find conclusions and obtain answers as an attempt to solve a problem faced by research.

Data collection methods used in this study is literature study, which literature study itself is looking for data that support for penelitia. This is done to obtain data through literature or references related to the issues studied, such as books, magazines, articles, newspapers, government, and non-governmental reports as well as data contained in websites or the internet, which can support the research discussion.

III. INTERNATIONAL MARITIME LAW & ITS PRACTICES TO OVERCOME ILLEGAL FISHING IN INDONESIA

According to Brierly International law as a set of rules or principles for do something that binds the civilized nations in their relationships with others. And according to Charles Cheny hyde international Law is a set of laws consisting largely of principles and regulations, regulations that must be obeyed by countries. Therefore, international law must be adhered to in relationships with one another. In the beginning, international law only regulates relations between nations and state as a legal subject.⁸ However, it develops the subjects' other laws, such as international organizations and the national liberation movement. In certain cases, international law is suspected of being imposed on individuals, individuals in relation to countries.

The sea can be used by mankind as a natural resource for its livelihood, shipping lanes, defense and security interests and other

⁸ Albert W. Koers, *Konvensi Perserikatan Bangsa-Bangsa Tentang Hukum Laut*, (Yogyakarta: Gadjah Mada University Press, 1994).

interests. The functions of the sea above have been felt by humanity and have given impetus to the mastery and exploitation of the sea by each country or kingdom based on a conception of international law.⁹

The birth of the concept of international sea law can not be separated from the history of the growth of international maritime law that recognizes the difference between two conceptions, namely: *first*, *Res Communis*, which states that the sea belongs to the people of the world, and therefore can not be taken or owned by each country; and *second* *Res Nulius*, which states that no sea has possession, and therefore can be taken and owned by each country. In the context of the state's sovereignty over the sea, the growth and development of international maritime law after the collapse of the Roman Empire began with the demands of a number of states or kingdoms over a part of the sea bordering its shores for various reasons.

For example, Venetia claims most of the Adriatic Sea, a claim recognized by Pope Alexander III in 1177. Based on his authority over the Adriatic Sea, Venetia collects duties on every ship that sails there. Genoa also claims power over the Ligurian Sea and its surroundings and performs actions to carry it out. The same is done by Pisa who claims and performs actions on the Thyrrhenian Sea. For the current era concerning food issues that extend also to marine with the potential of its fish, that the current world fishery can no longer be said to be still abundant. Without the concept of environment-based management, it is feared that a very potential resource (as a source of healthy protein and cheap) can be threatened sustainability.¹⁰

⁹ Nur Yanto. *Memahami Hukum Laut Indonesia*. (Jakarta: Mitra Wacana Media, 2014).

¹⁰ Hartono Dimiyati, *Yurisdiksi Nasional Indonesia Sebagai Negara Nusantara*, (Bandung: Binacipta, 1983).

1. Illegal Fishing: Indonesia and Global Context

Several theories about Illegal Fishing. According to Divera Wicaksono as quoted by Lambok Silalahi that Illegal Fishing is "*using a fake Fishing License (SIPI), not equipped with SIPI, the contents of the license documents are not in accordance with the vessel and the type of fishing gear, catching fish with banned types and sizes*". In addition, the notion of Illegal Fishing refers to that notion issued by the International Plan of Action (IPOA) 2001 initiated by Food Agriculture Organization (FAO) in the context of implementing Code of Conduct for Responsible Fisheries (CCRF). Understanding Illegal Fishing is described as follows:

- 1) Activities undertaken by national or foreign vessels in water under the jurisdiction of a state, without permission of that state, or in contravention of its laws and regulation; (Fishing activities undertaken by a particular country or foreign vessels in waters not of their jurisdiction without the consent of a country having jurisdiction or fishing activities is in conflict with laws and regulations of that country).
- 2) Activities conducted by vessels flying the flag of states that are parties to a relevant Regional Fisheries Management Organization (RFMO) but operate in contravention of the conservation and management measures adopted by the organization Section II International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported, and Unregulated Fishing, Food and Agriculture Organization of The United Nations, Rome, 2001. Fishing activities that are conducted by a fishing vessel flagged one of the countries incorporated as member of the regional fisheries management organization

Regional Fisheries Management Organization (RFMO).¹¹ However, the operation of its vessels is in conflict with conservation and fisheries management measures that have been adopted by RFMO. RFMO countries are required to follow the rules set out or other rules relating to International Law.

- 3) Activities in violation of national laws or international obligations, including those undertaken by cooperating states to a relevant Regional Fisheries Management Organization (RFMO); (Fishing activities as opposed to legislation of a country or international provisions, rules specified by RFMO member countries). Although IPOA-FAO Fishing has provided restrictions on the notion of Illegal Fishing, in a more simple and operational sense, Illegal Fishing can be defined as an activity unlawful fishery.¹²

Illegal fishing is a foreign term popularized by legal experts in Indonesia which later became a popular term in the mass media and used as a legal study. For the problem of illegal fishing in Indonesia the government has done a number of actions such as by the drowning of foreign ships proven to conduct illegal fishing as an example, On October 22, 2015, Indonesia sank two foreign vessels flagged vietnam in the waters of Batam, Riau Islands, and 1 Thai-flagged ships in waters Langsa, Aceh. The three were captured by Tiger Shark Patrol Ship 005 on March 7, 2015 and March 22, 2015 in the waters around Batam. While foreign ships that conduct illegal fishing in ZEE will be subject to administrative sanctions and must pay a reasonable bond.

¹¹ Muh Risnain, "Rekonsepsi Model Pencegahan dan Pemberantasan Illegal Fishing di Indonesia." *Padjadjaran Journal of Law* 4, No. 2 (2017): 379-398.

¹² Yanti Amelia Lewerissa, "Praktek illegal fishing di perairan Maluku sebagai bentuk Kejahatan Ekonomi." *Jurnal Sasi* 16, No. 3 (2010): 61-68.

These actions are conducted so that law enforcement in Indonesia is firm and effective, so that foreign fishermen will be deterred to catch fish illegally and there are no more big losses suffered by the Indonesian state. In practice, the act of burning or drowning against any foreign vessel that engages in illegal fishing raises a reaction from neighboring countries. For example, Thailand through Thailand's Foreign Ministry, Arrmanantha Nassir considers that the drowning of a foreign ship of Indonesian thieves is wrong. Therefore, such actions could threaten security in ASEAN. In addition, a spokesman for Vietnam's Foreign Ministry said that Vietnam hoped Indonesia would handle foreign fishermen who violate its territorial waters in accordance with international law and for humanitarian considerations. The Ministry of Foreign Affairs of Malaysia also hopes that the Indonesian government will act in good faith to ensure the welfare of fishermen in handling such incidents in the future. The Malaysian Ministry of Foreign Affairs also questioned Indonesia's policies and actions on the sinking of vessels, considering that the two countries have signed Memorandum of Understanding (MoU) on January 6, 2012. Under the MoU between Indonesia and Malaysia, Indonesia does not have to detain fishermen, but enough to drive the ships.¹³

2. UNCLOS Practices in Indonesia: How Illegal Fishing Eradicate?

In addition to generating reactions from neighboring countries, the act of burning and / or sinking of foreign ships is also declared to violate or contradict the provisions of international law, namely the provisions of the United Nations Convention on The Law of the Sea

¹³ Starke, J.G., *An Introduction to International Law, Ninth edition*, (London: Butterwordhs, 1984).

(UNCLOS). Indonesia's implementation of the international treaty was ratified in Law No. 17 of 1985 on the Legalization of UNCLOS 1982 that Indonesia is an archipelagic state, and geographically the largest archipelagic country in the world with 5.8 million km² of marine area consisting of territorial sea with an area of 0.8 million km², sea archipelago 2.3 million km² and ZEE 2.7 million km² and has as many as 17.480 islands and coastline 95.181km.¹⁴

Article 73 Paragraph (1) UNCLOS declares a coastal State may take measures to board a ship, examine, arrest and conduct judicial proceedings, as necessary to ensure compliance with laws and regulations. Such action is also deemed to be contrary to Article 73 paragraph (2) of UNCLOS stating that the captured ships and their crew shall be released immediately after being given a proper security deposit or other form of security. Subsequently Article 73 Paragraph (3) of UNCLOS regulates the punishment of coastal states against crimes in ZEE territory namely: Indonesia shall not punish by punishment which includes corporal punishment, corporal punishment may only apply if already signed bilateral agreements with other countries.¹⁵

Foreign fishing vessels that fish theft or fish illegally can be fined and then the foreign fishermen can be deported to their home country. Thus the act of burning or drowning of foreign ships is a controversial action, on the one hand Indonesia takes a policy or decisive action in order to maintain the sovereignty of its territory, but on the other

¹⁴ Republic of Indonesia. *Undang-Undang No. 17 Tahun 1985 tentang Pengesahan Konvensi Perserikatan Bangsa-Bangsa tentang Hukum Laut 1982*. (Jakarta: Sekretariat Negara, 1985).

¹⁵ Muhammad Ithiar Alhalaz. "Upaya Pemerintah Indonesia dalam Mengatasi Illegal Fishing di Wilayah Zona Ekonomi Eksklusif Indonesia", *Thesis* (Bandung: Universitas Pasundan, 2016).

hand the policy or action invites reaction from other countries especially the country whose vessel is drowned by Indonesia as opposed to and it is considered as a wrong act, it is not impossible that other countries will reply to Indonesia's firm actions against Indonesian vessels and Indonesian citizens (WNI) residing in their country.¹⁶

By optimizing KEPMEN Number KEP / 50 / MEN / 2012 Regarding National Action Plan and Illegal, Unreported and Unregulated Fishing (IUU Fishing)¹⁷, illegal fishing in ZEE Indonesia region will

¹⁶ Ela Riska, "Diplomasi Maritim Indonesia Terhadap Aktivitas Penangkapan Ikan Ilegal (Illegal Fishing) oleh Nelayan China di ZEE Perairan Kepulauan Natuna." *Jurnal Diplomasi Pertahanan* 3, No. 2 (2017): 33-47.

¹⁷ This Ministerial Decree is the basis for National Action in tackling Illegal, Unreported, and Unregulated Fishing. The Ministerial Decree contains at least several important Indonesian action plans, including: (1) continuing the process of ratification of the FAO Compliance Agreement in 1993; (2) continue the membership process in the WCPFC; (3) continue the process of ratifying Port State Measures; (4) continue the process of integrating resolutions of RFMOs into national legislation; (5) active in activities carried out by RFMOs, including implementing resolution and capacity building; (6) renew authorized fishing vessels and records of fishing vessels; and (7) complementing laws and regulations and implementing guidelines for the implementation of international instruments. Please see Akmal Fauzan, "Analisis Yuridis Tindak pidana Illegal Fishing yang Dihubungkan oleh Undang-Undang 45 Tahun 2009 Tentang Perubahan atas Undang-Undang 31 Tahun 2004 Tentang Perikanan." *Bandung Conference Series: Law Studies* 2, No. 1 (2022); Hertria Maharani Putri, Radityo Pramoda, and Maulana Firdaus. "Kebijakan Peneggelaman Kapal Pencuri Ikan di Wilayah Perairan Indonesia Dalam Perspektif Hukum." *Jurnal Kebijakan Sosial Ekonomi Kelautan dan Perikanan* 7, No. 2 (2018): 91-102; Muhammad Fatahillah Akbar, "Koherensi Pengaturan illegal, unreported, and unregulated fishing di Indonesia." *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 8, No. 2 (2019): 245-264; Merisa Nur Putri, "Penegakan Hukum terhadap Penangkapan Ikan secara Ilegal yang Melibatkan Negara Lain." *Logika: Jurnal Penelitian Universitas Kuningan* 11, No. 1 (2020): 40-51.

be mitigated, marked by the reduction of Illegal Fishing case violation in Indonesia.

IV. CONCLUSION

The sovereignty of the coastal State over its territorial sea is limited by the provisions of International Law, namely the right of innocent passage in the territorial sea, to foreign vessels. In line with the development of the International Law of the Sea with the acceptance of the conception of the Archipelago State in the 1982 Sea Law Convention, the peaceful passage is not only the territorial sea but also the right of peaceful passage or archipelagic flow in the island's waters. Foreign ships traveling peacefully in territorial sea waters as well as in archipelagic waters shall comply with national legislation of the coastal State or Islands State and comply with international regulations. For the protection of the coastal State and the Islands State may take the necessary measures or measures within its territorial sea or archipelagic waters to prevent a peaceful passage and / or temporarily suspend a peaceful passage for a foreign ship if the suspension is indispensable for its security or arms training.

The illegal fishing action carried out in the territory of the Indonesian state by fishermen from other countries caused a lot of losses in the economic sector especially Indonesia is a maritime country, illegal fishing action is also detrimental to local fishermen who experienced difficulty in fishing in the sea (territorial sea). The action taken by the Indonesian government is with enacting the sinking of vessels for foreign vessels that are suspected of illegal fishing. but the action imposed by the government caused controversy for neighboring countries whose vessels were drowned by the Indonesian government, they assumed that Indonesia had violated the rules of

international law regulating the illegal fishing regulated in UNCLOS article 73 paragraphs 1, 2, and 3. but which according to Indonesia itself this action is a form of self-defense in order to maintain the sovereignty of its territory.

Given the rules of the United Nations Conference on The Law of The Sea or UNCLOS which must be obeyed by coastal states and island states that must have marine problems concerning illegal fishing has been contained and regulated in Article 73 paragraph (1) UNCLOS states the coastal state can taking action on board, examining, apprehending and conducting judicial proceedings, as necessary to ensure compliance with laws and regulations. Such action is also deemed to be contrary to Article 73 paragraph (2) of UNCLOS stating that the captured ships and their crew shall be released immediately after being given a proper security deposit or other form of security. Subsequently Article 73 Paragraph (3) of UNCLOS regulates the punishment of coastal states against criminal offenses in the ZEE territories, namely: Indonesia shall not punish by punishment which includes corporal punishment, corporal punishment may only apply when it has signed bilateral agreements with other countries.

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COMPETING INTERESTS

The Authors declared that they have no competing interests.

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