

State Authority and The Regulation of Maritime Fencing Practices in Indonesia

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Abstract

The sea plays a strategic role in supporting the social, economic, environmental, and defense life of a country, especially for Indonesia as an archipelagic nation. Based on UNCLOS 1982 and national regulations, Indonesia has sovereignty over its maritime territory to regulate, manage, and utilize it. However, the practice of fencing maritime areas by individuals, groups, corporations, and foreign parties often violates the law and causes various problems, such as restricting access for traditional fishermen, ecosystem damage, and social conflict. This fencing action is often carried out without official permission or is contrary to marine spatial planning, and opens up opportunities for resource exploitation by foreign parties. This paper aims to analyze the state's authority to enforce the law against the practice of fencing maritime areas, using a normative approach through a review of laws and legal principles. The focus of the study includes the limits of state authority at sea, forms of fencing violations, and legal steps that can be taken to enforce the rules. It was found that although the state has a strong legal basis, implementation in the field still faces obstacles in inter-institutional coordination, overlapping authorities, and the absence of specific regulations related to restrictions on the use of marine space by the private sector. This paper



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recommends strengthening regulations, increasing monitoring capacity, and involving coastal communities in decision-making to realize marine management that is fair, sustainable, and in line with the principle of state sovereignty

KEYWORDS *Authority, Maritime Fencing, Territorial Boundaries, UNCLOS 1982*

Introduction

The sea plays a strategic role in a nation's social, economic, environmental, and defense life. As an archipelagic nation, Indonesia has sovereignty and jurisdiction over its maritime territory based on the 1982 United Nations Convention on the Law of the Sea (UNCLOS) and national regulations, such as Law Number 6 of 1996 concerning Indonesian Waters, as repealed by Law Number 32 of 2014 concerning Maritime Affairs. Under these laws, the state has the right to regulate, manage, and utilize marine resources in various zones, including territorial seas, contiguous zones, exclusive economic zones (EEZs), and continental shelves.¹

However, in practice, various violations frequently occur in Indonesian maritime areas, including illegal exploitation of natural resources, environmental pollution, and conflicts of interest between coastal communities and investors. One increasingly common issue is the fencing of maritime areas by certain parties, whether individuals, groups, corporations, or foreign entities. This fencing is carried out for various reasons, ranging from economic interests, such as fishpond construction, marine tourism development, or fishery resource exploitation, to private ownership claims that violate applicable law.

This aligns with Mochtar Kusumaatmadja's statement that: "The act of fencing off marine areas raises various legal issues and negative impacts, both socially, economically, and environmentally. These impacts include restricted access for traditional fishermen. Marine fencing makes it difficult for fishermen to access previously free fishing grounds, thus threatening their livelihoods. This can negatively impact the economic well-being of fishermen and coastal communities."²

¹ Huala Adolf, *Aspek-Aspek Negara Dalam Hukum Internasional*, 3rd ed. (Jakarta: Rajawali Press, 2002).

² Mochtar Kusumaatmadja, *Pengantar Hukum Internasional*, (Bandung: Sinar Grafika, 2018).

Essentially, fencing off maritime areas blocks fishermen's access to fishing, which is their livelihood. Therefore, fencing off maritime areas is a fatal act, as it directly impacts the economic well-being of fishermen and coastal communities.

This maritime fencing action not only impacts fishermen and coastal communities but also has serious negative economic, social, and environmental consequences. Furthermore, this action raises various legal issues.

Other impacts related to the aspect of natural resources in the sea and the marine environment are also threatened, because the fencing of marine areas is carried out using materials that can damage the ecosystem in the sea, namely an ecological system formed by the existence of an inseparable reciprocal relationship between living creatures and their environment. In addition, it is necessary to pay attention to the interdependence between life on land and at sea, such as the sustainable and continuous management of fish resources, both capture fisheries where the utilization/exploitation must pay attention to the potential and the number of permitted catches as well as the ability to catch them, as well as fisheries that directly require human intervention. For example, pond management that does not pay attention to the environment can potentially pollute the environmental area, ultimately making its utilization unsustainable.

Marine fencing that violates spatial planning regulations is usually carried out without official permission. In some cases, this has led to conflicts between coastal communities, the government, and the private sector. Fencing in maritime areas that should be public areas can be considered an illegal seizure of maritime space. Furthermore, poorly monitored fencing can also open up opportunities for resource exploitation by foreign parties, potentially harming national interests. Marine fencing carried out without involving local communities often creates friction between fishermen, businesses, and the government. Imbalances in the use of maritime space can trigger prolonged conflicts that hinder maritime-based economic development.

From a legal perspective, maritime fencing remains a complex issue. While international and national law grants states the authority to regulate, manage, and utilize their maritime territories, the implementation of regulations related to the ownership and utilization of marine space still faces various obstacles. Many cases of fencing are carried out without official permits or by exploiting legal loopholes, often making it difficult for states to effectively enforce the law. Furthermore, the lack of clear

regulations regarding the limits on the use of marine space by private parties leads to overlapping authorities in monitoring and enforcement.³

Several cases in Indonesia have demonstrated that marine fencing is not merely an administrative legal issue, but also reflects a conflict of interest between coastal communities, investors, and the government. For example, in some areas, marine tourism companies have erected fences or boundaries in the sea for the sake of business exclusivity, preventing fishermen from operating in those areas. Meanwhile, in some fishpond areas, fencing has been implemented without regard to spatial planning regulations, ultimately leading to environmental and social problems. This phenomenon aligns with Mochtar Kusumaatmadja's view that enclosing marine areas produces significant legal and socio-economic harm, particularly by restricting access for traditional fishermen and undermining the sustainability of marine ecosystems. Maritime fencing endangers ecological systems through the use of harmful construction materials, disrupts the balance between land sea resource management, and poses risks to long-term fisheries sustainability. In addition, fencing practices that contravene spatial planning rules and are carried out without proper authorization frequently spark disputes among coastal communities, local governments, and private actors. When maritime spaces—legally categorized as public areas are enclosed without oversight, such actions may constitute illegal appropriation of marine territory and potentially facilitate foreign exploitation of Indonesia's maritime resources. From a legal standpoint, the issue of maritime fencing remains complex due to overlapping authorities, unclear regulatory boundaries, and the difficulty of enforcing rules against unauthorized marine space utilization.

Recent scholarship has examined related issues from various angles. "Implications of Illegal Sea Fence Construction on Maritime Security, Environment, and Welfare of Coastal Communities" by Aygy Yolanda, Aries Sudiarso, and I.B. Putra Jhandana analyzes the environmental damage, reduced access for fishermen, and maritime security risks arising from unauthorized fencing practices, with a strong emphasis on ecological and social consequences⁴. Meanwhile, "Balancing Between Land and Sea Rights: An Analysis of the 'Pagar Laut' (Sea Fences) in Tangerang,

³ Muhadam Labolo, "Pagar Laut dan Kewenangan Pemda", *Tangsel Pos*, (2025), https://tangselpos.id/detail/31160/pagar-laut-dan-kewenangan-pemda#google_vignette.

⁴ Hariyantana Aygy Yolanda, Aries Sudiarso and I.B Putra Jhandana, "Implications of Illegal Sea Fence Construction on Maritime Security, Environment, And Welfare Of Coastal Communities", *ARRUS Journal of Social Sciences and Humanities*, Vol.5, No.1 (2025): 810-819. <https://doi.org/10.35877/soshum3703>.

Indonesia” by Walter Timo de Vries and Sukmo Pinuji focuses on governance fragmentation and the regulatory inconsistencies between coastal land administration and marine spatial planning, using Tangerang, PIK as a case study. In a legal-administrative context, “Government Policy Towards the Marine Fence Polemic in Tangerang (Civil Law Review of Coastal Areas Control Rights)” by Ayni Suwarni and Aliya Sandra Dewi highlights weaknesses in enforcement and ambiguous regulations on coastal control rights that enable private actors to restrict marine areas⁵. Furthermore, “Sea Fence and Public Policy: Impact on the Welfare of Fishermen Families in Tangerang, Indonesia” by Musleh Harry, Fakhrudin, Ahmad Wahidi, Nur Jannani, and Meisy Fajari stresses the socio-economic implications of maritime fencing, demonstrating how restricted marine access deteriorates fishermen’s welfare and contributes to growing inequality⁶.

Although these studies make important contributions, they reveal a clear research gap. Existing literature predominantly focuses on environmental impacts, welfare concerns, spatial planning conflicts, or administrative-law interpretations. However, none of the studies provide a systematic, doctrinal, and enforcement-oriented examination of the precise scope and limits of state authority in managing and regulating maritime fencing across different maritime zones under both national law and UNCLOS. Additionally, current works tend to rely on localized case studies especially in Tangerang thereby limiting broader theoretical conclusions. They also do not offer a comprehensive classification of maritime fencing violations nor do they bridge the gap between normative state authority and its practical enforcement challenges.

Therefore, this study aims to fill that gap by analyzing the extent of state authority in responding to maritime fencing practices within Indonesia’s maritime jurisdiction. It examines the legal boundaries of state powers under international and national law, identifies the types of maritime fencing violations that occur in practice, and evaluates the state’s obligations to safeguard public access, environmental sustainability, and

⁵ Ayni Suwarni and Aliya Sandra Dewi, “Government Policy Towards the Marine Fence Polemic in Tangerang (Civil Law Review of Coastal Areas Control Rights)”. *Journal of Governance: Jurnal Ilmu Pemerintahan Universitas Sultan Ageng Tirtayasa*, Vol.10, No.2, (2025): 383-398, <https://jurnal.untirta.ac.id/index.php/jog/article/view/31783/0>.

⁶ Musleh Harry, Fakhrudin, Ahmad Wahidi, Nur Jannani and Meisy Fajari, “Sea Fence and Public Policy: Impact on the Welfare of Fishermen Families in Tangerang, Indonesia”. *EL-USRAH: Jurnal Hukum Keluarga*. Vol.8 No.1, (2025): 660-677. https://jurnal.ar-raniry.ac.id/index.php/usrah/article/view/29518#pkp_content_main.

national interests. By integrating normative legal analysis with practical enforcement considerations, this research seeks to contribute to the development of clearer regulatory frameworks and more effective maritime governance in Indonesia.

Therefore, this paper aims to analyze state authority in enforcing the law against maritime fencing practices. This study will discuss the limits of state authority in marine management based on international and national law, identify the forms of maritime fencing violations that occur, and propose legal steps that states can take to enforce the rules more effectively. The results of this paper are expected to provide policy recommendations that can be used by the government to create fair, sustainable, and compliant marine resource management under the principle of state sovereignty. This paper will focus on examining issues related to the unclear state authority in managing maritime fencing, which has the potential to give rise to legal, social, and environmental conflicts. The main issues raised are: first, what are the limits of state authority in maritime areas related to maritime fencing? Second, what authorities must the state uphold in managing maritime fencing? And third, what forms of maritime fencing violations are committed by certain individuals?

The present study employs a normative juridical research method, which is appropriate for examining the boundaries and exercise of state authority over maritime fencing practices. This method was chosen because the core problems raised in this paper state powers, legal limits, and violations occurring in maritime areas are fundamentally questions of legal norms, institutional competences, and regulatory consistency. Normative legal research is directed at analyzing legal rules, legal principles, and legal doctrines to determine how the law “ought to be” and how it functions within a complete legal system⁷. The normative juridical approach requires not only examining rules, but also interpreting the coherence and hierarchy of legal norms to construct a systematic understanding of the legal order⁸. Accordingly, this research utilizes a statute approach, which involves a systematic examination of all relevant legal norms governing state authority in maritime areas. The primary legal materials consist of binding laws and regulations, including: the 1945 Constitution of the Republic of Indonesia, Law No. 23 of 2014 on Regional Government, UNCLOS 1982, Law No. 32 of 2014 on Maritime Affairs, Law No. 43 of 2008, Presidential Regulation No. 115 of 2015, Law No. 45 of 2009 on Fisheries, and the Regulation of the Minister of

⁷ Soerjono Soekanto, *Pengantar Penelitian Hukum*, (Jakarta: Rajawali Press, 2020).

⁸ Peter Mahmud Marzuki, *Metode Penelitian Hukum*, (Jakarta: Kencana, 2017).

Maritime Affairs and Fisheries No. 42/PERMEN-KP/2005. These instruments collectively regulate maritime jurisdictions, coastal management, marine resource governance, and enforcement mechanisms—thus providing the normative basis for assessing maritime fencing practices. Secondary legal materials include academic books, scholarly articles, legal commentaries, and relevant expert analyses that interpret and discuss maritime law, public authority, marine spatial management, and state responsibility.

The analysis is conducted through qualitative juridical interpretation, which includes: (i) examining the *ontology* of each legal norm to understand the rationale behind its creation; (ii) identifying the *philosophical foundations* that inform the division of powers in maritime governance; and (iii) analyzing the *ratio legis* of specific provisions that regulate access, control, and enforcement in marine areas. This is complemented by a systematic interpretation, which treats the Indonesian legal order as a coherent normative system, ensuring harmony between national legislation and international maritime law frameworks such as UNCLOS. Through doctrinal analysis, comparison of regulatory provisions, and identification of normative gaps, this methodological approach enables a comprehensive assessment of the limits of state authority, the nature of state obligations, and the classification of maritime fencing violations committed by individuals.

Limitations of State Authority In Maritime Areas Related to the Fencing of Maritime Areas

The delineation of state authority in maritime spaces represents an essential foundation for maintaining sovereignty, territorial integrity, and sustainable marine governance particularly for archipelagic states such as Indonesia. As a nation with a maritime area exceeding its landmass, Indonesia faces multidimensional challenges in regulating its waters, including the recent emergence of *maritime fencing*, which may disrupt public access, local livelihoods, and ecological resilience. Maritime fencing encompasses not only physical barriers such as floating buoys or coastal fences but also regulatory mechanisms, no-sailing zones, restricted access areas, and spatial demarcation implemented to pursue national interests. Although maritime fencing is widely used as a regulatory tool, it frequently becomes a source of legal and socio-economic conflict. The case of coastal fencing in Tangerang, for instance, triggered local disputes when erected

barriers were argued to impede traditional fishing routes and coastal community access to marine resources. Such controversies highlight the need for a clearer articulation of the legal boundaries inherent in the state's maritime authority.

Amidst these conditions, Indonesia is facing the phenomenon of maritime fencing. Maritime fencing is not only understood as a physical structure, but also as a complex set of challenges, threats, and disruptions, both social, economic, and environmental, including the sustainability of marine ecosystems. The limits of state authority in maritime areas are crucial for maintaining sovereignty and territorial integrity, particularly for an archipelagic nation like Indonesia. As a nation with a sea area larger than its land area, Indonesia faces challenges in managing its maritime territory, including the fencing of maritime areas, which can impact public access and environmental sustainability.⁹ Often, maritime fencing is carried out by countries to regulate, manage, and utilize waters for national interests while also taking into account the welfare of coastal communities and environmental aspects. Fencing in maritime areas can take the form of restricting access to certain zones, no-sailing zones, or installing temporary or even permanent physical fences. Essentially, fencing implemented by the state is under the state's authority in maritime areas.

The practice of installing maritime fences or physical barriers by private actors, investors, or corporate entities further illustrates the growing complexity of this phenomenon. Such actions do not merely involve administrative considerations but also carry significant legal implications, particularly in relation to state sovereignty, the rights of coastal communities, and marine ecosystem sustainability. Conflicts arising between corporations that restrict access to coastal waters and indigenous or local communities demonstrate that maritime fencing cannot be understood merely as a spatial regulatory act; rather, it constitutes a measure with profound legal, social, and ecological consequences. Constitutionally, Article 33(3) of the 1945 Constitution which mandates state control over land, water, and natural resources for the greatest prosperity of the people reinforces the principle that any restriction of maritime space must not undermine public access rights or ecological justice.

⁹ Mariana Zhuo, Jemmy Rumengan and Henry Aspan, "Analisis Yuridis Kewenangan Kesatuan Penjagaan Laut Dan Pantai Dalam Perindakan Pelanggaran Hak Lintas Damai Pelayaran Di Perairan Indonesia". *Mizan: Jurnal Ilmu Hukum*, Vol.9 No. 2 (2020): 95-102. <https://ejournal.uniska-kediri.ac.id/index.php/Mizan/article/view/1094lam yang>

Within this constitutional framework, Indonesia's maritime authority is elaborated through Article 25A of the 1945 Constitution, which affirms Indonesia as an archipelagic state whose boundaries and maritime rights are established by law, as well as Article 18A(2), which mandates the division of authority between central and regional governments in managing natural resources, including marine areas. Further elaborations are found in Law No. 43 of 2008 on State Territory and Law No. 32 of 2014 on Maritime Affairs, which affirm that the state holds full authority over Indonesia's maritime domain and must ensure that its use remains equitable, sustainable, and aligned with national interests. The state's authority over maritime territory has been fundamentally regulated in the 1945 Constitution (UUD 1945). The related articles are Article 33 paragraph (3), Article 25A, and Article 18A (2). In detail, Article 33 (3) UUD 1945 emphasizes that the state has control over natural resources in the sea, which includes water and everything contained therein.

This means that the state has the authority to regulate, utilize, and manage marine resources for the benefit of all Indonesian people. Furthermore, Article 25A UUD 1945 emphasizes that Indonesia is an archipelagic country characterized by the archipelago with territorial boundaries and rights stipulated by law. These characteristics include maritime territorial boundaries, including the rights contained in these areas. The elaboration of the provisions of Article 25A UUD 1945 is outlined in the law governing state territory, namely Law Number 43 of 2008. Furthermore, regarding the authority of regional governments, Article 18A paragraph (2) grants regional governments the authority to manage and utilize resources in their regions, including marine areas. This utilization must not deviate from applicable national and international regulations. Although Indonesia's constitutional and statutory framework formally grants the state broad authority to regulate maritime areas, practical implementation consistently reveals a friction between state control and the principle of public access. In several documented coastal disputes, fencing measures whether installed by government agencies or facilitated through private concessions have been challenged for lacking clear justification grounded in proportionality or necessity¹⁰. These cases demonstrate that regulatory measures often drift from their original public-interest rationale toward exclusionary practices that favour economic development or security agendas at the expense of local

¹⁰ Coastal State Regulation and the Limits of UNCLOS – Ocean Development & International Law

communities. Thus, the primary legal issue is not whether the state has authority, but whether the exercise of that authority remains consistent with constitutional obligations to safeguard community access and prevent privatization of common-pool maritime resources.

The rules that form the basis of the state's authority to act concerning state authority at sea, apart from those contained in the 1945 Constitution which is the Constitutional Foundation of the State of Indonesia, Law Number 32 of 2014 concerning Maritime Affairs, also emphasizes that the state has full authority over Indonesia's maritime territory, including ensuring that the waters are used fairly for national interests. Maritime fencing by the state is an action taken to regulate and manage water areas to protect national interests, the environment, and coastal communities.¹¹ The point is to utilize marine space by regulations and fairly for all parties. The main objective of maritime fencing by the state is to maintain security aspects, namely those related to sovereign territory and welfare aspects, namely aspects related to jurisdictional territory, namely protecting the natural resources contained therein so that they can continue to be utilized sustainably, as well as ensuring that the action of fencing this area must be carried out by considering the rights of coastal communities and must not hinder their access to the sea which is a source of livelihood.

Indonesia's maritime authority is framed by its obligations under the 1982 United Nations Convention on the Law of the Sea (UNCLOS), which grants coastal states sovereignty over territorial waters (12 nautical miles) and sovereign rights over the Exclusive Economic Zone (200 nautical miles). However, these rights are conditioned by obligations to respect innocent passage, international navigation, and environmental protection. Maritime fencing that obstructs navigation, restricts public access without legal justification, or threatens marine ecosystems may constitute a breach of UNCLOS principles. Thus, the limit of state authority emerges from the interplay between sovereignty and the doctrine of *due regard* requiring states to consider the rights of other states and non-state actors when exercising their maritime regulatory power. In the context of international law, the 1982 United Nations Convention on the Law of the Sea (UNCLOS) stipulates that coastal states have sovereignty over territorial waters up to 12 nautical miles and sovereign rights over an

¹¹ Anisa Fauziah, Fithry Khairiyati and Sugeng Samiyono, S, "Pengaturan Hukum Laut Internasional Terhadap Illegal Fishing Di Wilayah Laut Zona Ekonomi Eksklusif", *Kertha Semaya : Journal Ilmu Hukum*, Vol. 11, No. 11 (2023): 2662-2676, <https://ojs.unud.ac.id/index.php/kerthasemaya/article/view/106236>.

Exclusive Economic Zone (EEZ) up to 200 nautical miles. However, these rights must be exercised with due regard for the right of innocent passage for foreign vessels and must not impede public access to the sea. Fencing off maritime areas without a clear legal basis can be considered a violation of the provisions of UNCLOS 1982¹². A deeper examination shows that Indonesia's maritime regulatory practices do not always align with UNCLOS's "due regard" obligation. While UNCLOS grants coastal states wide latitude to regulate territorial seas, it simultaneously limits that authority by requiring states to respect navigation rights and avoid measures that unduly obstruct international passage. Maritime fencing that results in the creation of de facto exclusion zones particularly in areas adjacent to traditional fishing routes or transit corridors risks violating these obligations even if domestically justified. This disconnect highlights that Indonesia's legal framework, although formally consistent with UNCLOS, lacks operational guidance for balancing sovereign rights with the maritime freedoms guaranteed under international law, leading to regulatory overreach and inconsistent enforcement.

At the national level, Indonesia has regulated the division of government affairs between the central government, provincial governments, and district/city governments. Law No. 23 of 2014 concerning Regional Government, in the context of regional autonomy, defines the authority of each level of government. The provincial government's authority at sea includes the management of marine natural resources, with provisions excluding oil and gas management, administrative arrangements, spatial planning, and participation in maintaining maritime security and sovereignty, up to 12 nautical miles from the coastline. More specifically, natural resource management refers to biological natural resources for exploration, exploitation, and conservation. Furthermore, administrative arrangements relate to the issuance of permits, the regulation of seaworthiness, and the safety of navigation in its maritime territory. Spatial arrangements, meanwhile, encompass marine spatial planning for various purposes, such as fisheries, conservation, and tourism. For maritime security, the provincial government participates in maintaining security and order in its maritime territory. Regarding the aspect of state sovereignty, the provincial

¹² Taufiqurrahman Syahuri and Eudia Octavia Sitompul "Analisis Yuridis Pengelolaan Batas Wilayah Laut Dan Pesisir Berdasarkan Undang-Undang Nomor 23 Tahun 2014 Tentang Pemerintahan Daerah." *Jurnal Esensi Hukum*, Vol. 2 No.2, (2020): 13-22, <https://journal.upnvj.ac.id/index.php/esensihukum/article/view/25>.

government participates in maintaining state sovereignty in its maritime territory.

Furthermore, district/city governments have authority over the sea up to 4 nautical miles. Examples include planning, utilization, and supervision of coastal spatial planning, as well as maintaining public order and security in coastal areas. The purpose of this division of authority between the central and regional governments, both at the provincial and district/city levels, is to encourage more effective and sustainable management of marine natural resources. However, in practice, this presents challenges, including overlapping authority and a lack of coordination between institutions.

The state's responsibility for regulating maritime fencing lies in its obligation to respect the rights of coastal communities to maintain access to the sea to carry out their livelihood activities, as well as international law, such as illegal fishing and violations of territorial boundaries by foreign vessels. States must not take actions that hinder public access to the sea or damage the marine environment. Any fencing action must be based on applicable laws and regulations and consider its impact on the community and the environment. Therefore, effective marine management requires a balance between national interests, environmental protection, and the rights of coastal communities.

A central factor behind the misalignment between practice and international norms is bureaucratic fragmentation. Studies on Indonesian maritime governance highlight persistent overlaps in jurisdiction between central ministries, provincial governments, and sectoral agencies, leading to inconsistent enforcement and uncoordinated decision making¹³. This institutional fragmentation often enables regional or private actors to install fencing without comprehensive legality assessments, particularly in areas where local economic interests dominate¹⁴. Scholars of ocean governance have described this as a structural weakness common in Southeast Asian states, where the absence of a unified regulatory mechanism consistent with UNCLOS's integrated ocean management mandate results in decisions that fail to consider navigation rights, ecological resilience, and social equity¹⁵. These issues demonstrate the

¹³ Nurhidayah, L., & McIlgorm, A. "Governance gaps in Indonesia's marine environmental protection". *Australian Journal of Maritime & Ocean Affairs*, Vol.11 No. 2 (2019): 85.

¹⁴ Klein, N. "Balancing navigation rights and coastal state sovereignty". *The International Journal of Marine and Coastal Law*, Vol. 33 No.1, (2018): 1–24.

¹⁵ Patil, P. G., et al. "Integrated ocean governance in Southeast Asia: Challenges and prospects". *Ocean & Coastal Management*, Vol. 134, (2016): 65–75.

urgent need for Indonesia to harmonize domestic regulatory frameworks with the normative architecture of UNCLOS. Current practice prioritizes sovereignty and economic development but often neglects the obligations to safeguard marine ecosystems and protect community access, obligations which scholars describe as integral to the modern interpretation of coastal state duties under international law¹⁶. A coherent reform agenda would involve statutory clarification on the permissible scope of maritime fencing, mandatory community consultation, environmental impact reviews, and an integrated institutional mechanism for assessing compatibility with UNCLOS principles¹⁷. Without such reforms, Indonesia risks maintaining a regulatory system that is legally sound on paper but vulnerable both domestically due to social contestation and internationally due to potential claims of non-compliance.

Enforcement By The State in Handling Marine Territory Fencing

A maritime fence, conceptually, is a security structure or physical and operational boundary built in a maritime area to control access, protect the area from legal violations, and anticipate external threats. The strategic function of a maritime fence is not only symbolic as a boundary marker, but also tactical as a country's first line of defense against various forms of illegal penetration, such as smuggling, violations of the EEZ boundary, and exploitation of resources by foreign parties. In this case, the maritime fence is transformed into a dynamic and multifunctional form of territorial protection, integrating military, legal, and social elements in a single maritime security system.¹⁸ Unilateral fencing of maritime areas, whether by state or non-state actors, often gives rise to sovereignty conflicts and resource exploitation that is detrimental to the state.¹⁹

¹⁶ Rengifo, A. "Legal obligations of coastal states under UNCLOS: A contemporary analysis." *Journal of Environmental Law*, Vol.32, No.2 (2020): 201–223.

¹⁷ Young, M. "Regulatory overreach in coastal management". *Environmental Law Review*, Vol.22 No.3, (2020): 159–176.

¹⁸ Lestiani, D. V., Dian, A.B., & Saputri, I. H. "Pagar Laut sebagai Instrumen Pertahanan Negara". *Jurnal Pendidikan dan Kewarganegaraan Indonesia*, Vol.2, No.2, (2025): 218. DOI: <https://doi.org/10.61132/jupenkei.v2i2.445>.

¹⁹ Gillbrain, Wiwid Putri Handayani and Riska Andi Fitriyono, "Penenggelman kapal asing sebagai upaya pencegahan pencurian hasil laut". *Jurnal Gema Keadilan*, Vol.8 No.3, (2021): 45–52. <https://ejournal2.undip.ac.id/index.php/gk/article/view/12641>

However, the implementation of the maritime fencing system has not been without obstacles. The main challenges faced include overlapping authority between institutions, a lack of coordination between agencies responsible for maritime areas, and budget and technology limitations. Illegal maritime fencing cases expose loopholes in the permitting system and weak oversight, which open up space for certain individuals to claim maritime territory illegally. The absence of a unified maritime spatial management system exacerbates the problem, creating a regulatory vacuum that can be exploited by certain parties. Furthermore, the involvement of coastal communities in the defense system remains minimal, even though they are the primary actors interacting directly with maritime areas.²⁰

To address these challenges, the strengthening of Indonesia's maritime "sea-fence" system cannot be implemented partially or through a military-based approach alone. Rather, it must incorporate civil measures, law enforcement mechanisms, and the application of maritime surveillance technology. Cross-sectoral coordination is a fundamental requirement, as maritime security governance in Indonesia involves multiple institutions with distinct yet complementary authorities.

The Ministry of Marine Affairs and Fisheries (KKP), through the Directorate General of Marine and Fisheries Resources Surveillance, holds the authority to oversee and enforce laws against violations concerning the utilization of fishery resources, as stipulated in Article 66 of Law Number 45 of 2009 on Fisheries. This authority includes inspection, arrest, and investigation of fishery violations within Indonesia's jurisdiction.

The Indonesian Maritime Security Agency (Bakamla) plays a central role in ensuring maritime security, safety, and law enforcement within Indonesian waters, as mandated in Articles 59–63 of Law Number 32 of 2014 on Marine Affairs. Bakamla's role is not only operational but also coordinative, particularly in managing overlapping maritime law enforcement authorities among various institutions. In the context of combating illegal fishing, Indonesia previously established the Illegal, Unreported, and Unregulated Fishing Task Force (Satgas 115) based on Presidential Regulation Number 115 of 2015, which mandated cross-agency coordination among KKP, the Indonesian Navy (TNI-AL), the Water Police (Polairud), Bakamla, and other relevant institutions. The establishment of this Task Force represents the realization of the state's due diligence principle in protecting national interests in maritime zones.

²⁰ Gillbrain, Wiwid Putri Handayani and Riska Andi Fitriyono, 219.

The role of the Indonesian Navy (TNI-AL) is also essential in maritime law enforcement. Its functions in national defense and maritime law enforcement are constitutionally mandated under Articles 9 and 10 of Law Number 34 of 2004 on the Indonesian National Armed Forces, which position the Navy at the forefront of safeguarding maritime sovereignty. In practice, TNI-AL routinely carries out maritime patrols, intercepts illegal foreign vessels, and protects vulnerable border zones. However, the literature identifies challenges including the vast scope of patrol areas, limited patrol assets, and the need for interoperability among maritime institutions. Academic studies suggest that the effectiveness of maritime law enforcement increases significantly when cross-sectoral coordination mechanisms and maritime surveillance technologies are implemented.

Indonesia's efforts are further reinforced through the establishment of cross-sectoral task forces, such as the Illegal Fishing Response Task Force, which serves as a model of best practice in addressing transboundary maritime crimes. This approach aligns with the principle of joint maritime enforcement adopted by modern maritime states and reflects Indonesia's commitment to upholding the rule of law at sea, while maintaining the stability of its maritime domain.²¹

Preventive measures, arrests, and investigations are carried out in accordance with applicable legal procedures. Apprehended foreign vessels will be prosecuted, including possible confiscation, auction, or sinking. The primary legal basis is Article 69 paragraph (4) of Law No. 45 of 2009 concerning Fisheries, which authorizes investigators, including fisheries supervisors, to take special action in the form of burning and/or sinking foreign-flagged fishing vessels based on sufficient initial evidence. This ship-sinking policy is reinforced by UNCLOS 1982, which grants coastal states the right to manage marine resources and enforce laws in their Exclusive Economic Zones (EEZs).²²

Furthermore, data integration and the use of satellite-based monitoring technology are needed to increase the effectiveness of

²¹ Abdul Qodir Jaelani, "Illegal, unreported, and unregulated (IUU) fishing: Upaya mencegah dan memberantas illegal fishing dalam membangun poros maritim Indonesia", *Jurnal Supremasi Hukum*, Vol.3 No. 1, (2024): 56–65, <https://ejournal.uin-suka.ac.id/syariah/Supremasi/article/view/1958>

²² Bambang S. Irianto, Penegakan hukum di Zona Ekonomi Eksklusif Indonesia (ZEEI) dalam rangka kepentingan nasional Indonesia di bidang kelautan" *Justiciabelen*, Vol.4, No.2, (2022): 112–120, <https://journal.umg.ac.id/index.php/justiciabelen/article/view/3564?articlesBySimilarityPage=6>

oversight. Empowering coastal communities must also be part of this strategy, by providing them with training and access to information so that they become not merely policy objects but also active subjects in safeguarding their own maritime territories. Equally important, systematic restructuring of regulations on marine space management needs to eliminate legal loopholes that could allow for abuse of authority in Indonesian waters.

Strengthening the maritime fencing system must be part of a grand national maritime defense strategy oriented toward long-term resilience. This means that the construction of a maritime fence must be seen as a defense investment, not a mere expense. The presence of a maritime fence can create a deterrent effect for lawbreakers and simultaneously build Indonesia's image as a maritime nation that is serious about protecting its territorial boundaries. By making the sea a strategic policy priority, Indonesia not only defends its physical space but also affirms its geopolitical identity as a sovereign and dignified maritime nation.²³

In the context of Indonesia, the world's largest archipelagic nation, maritime law enforcement challenges are also extremely complex.²⁴ This is not only due to the vast expanse of waters that must be protected, but also due to the high frequency of violations, such as illegal fishing, unauthorized entry of foreign vessels, and unauthorized maritime fencing. Unilateral maritime fencing, whether by state or non-state actors, often leads to sovereignty conflicts and resource exploitation that is detrimental to the state.²⁵

In this regard, addressing the practice of maritime fencing is a manifestation of state authority, encompassing the enforcement of sovereignty, jurisdiction, navigational safety, and marine environmental protection. In internal waters and territorial seas, states retain full sovereignty and the authority to remove illegal structures and carry out arrests or seizures. In the Exclusive Economic Zone (EEZ), states retain sovereign rights for exploration and exploitation, thus having the right to take action against sea fencing that obstructs fishing activities and navigation. This authority is exercised through maritime patrols, criminal and administrative enforcement mechanisms, and diplomatic efforts when

²³ Lestiani, D. V., Dian, A.B., & Saputri, I. H., 219-220.

²⁴ Ambarsari, R. A., Putri, S. M., Ernawati, & Hutapea, S. A. "Analisis yuridis terhadap pemagaran laut di pesisir Tangerang dalam kerangka hukum laut internasional". *Aliansi: Jurnal Hukum, Pendidikan dan Sosial Humaniora*, Vol. 2 No. 2, (2025):89–95. <https://doi.org/10.62383/aliansi.v2i2.823>

²⁵ Gillbrain, Wiwid Putri Handayani and Riska Andi Fitriyono, 45–52.

involving foreign countries. Therefore, addressing illegal sea fencing is not merely a sporadic response, but an integral part of the state's authority to enforce national and international maritime law.

In the face of this situation, Indonesia is not remaining silent. The government continues to strive to strengthen legal instruments and implement direct law enforcement measures on the ground. One of the most decisive and internationally recognized measures is the policy of sinking foreign vessels found to be conducting illegal activities, particularly illegal fishing, in Indonesian waters. This policy is implemented based on Article 69 paragraph (4) of Law Number 45 of 2009 concerning Fisheries, which authorizes the sinking of vessels found violating the law. This policy is considered successful in providing a deterrent effect and sending a clear message that Indonesia will not tolerate violations of its maritime jurisdiction. Although this policy has received various reactions, including diplomatic protests from the countries of origin of the vessels, Indonesia remains committed to the principles of national law and international maritime law, which guarantee the right of coastal states to defend their resource sovereignty.²⁶

The Sea and Coast Guard Unit (KPLP) under the Ministry of Transportation also plays a crucial role in maritime law enforcement. The KPLP is mandated to monitor, promptly pursue, and investigate violations at sea, particularly those related to shipping and maritime safety. However, one major challenge is overlapping authority between institutions, which can hamper effective law enforcement. Furthermore, oversight of criminal law enforcement remains inadequate due to the lack of a dedicated maritime criminal law enforcement institution.²⁷ An integrated and adaptive framework is needed.²⁸ Effective law enforcement depends on the integrity and mindset of law enforcers; therefore, increased coordination, strengthened sectoral regulations, and synergy between maritime law enforcement agencies are needed to avoid jurisdictional confusion in the field. Furthermore, international cooperation in maritime surveillance and law enforcement is also needed to combat illegal fishing.

²⁶ Bambang S. Irianto, 112–120.

²⁷ Anis Widyawati, Ridwan Arifin, Rohadhatul Aisy, Shofriya Qonitatin Abidah, Heru Setyanto, "Supervision in Integrated Justice: Legal Reform and Constructive Enforcement in the Criminal Justice System". *Journal of Law and Legal Reform* Vol.5 No. 2, (2024): 433-58, <https://doaj.org/article/cbef50a56ce248cc837041b9b07df7ee>

²⁸ Anis Widyawati, Dian Latifiani, Helda Rahmasari and Ade Adhari. "Optimizing Oversight: Developing an Ideal Framework for Supervision Prisoners' Rights Allocation." *IJCLS (Indonesian Journal of Criminal Law Studies)*, Vol.9 No.2, (2024): 185-206, <https://journal.unnes.ac.id/journals/ijcls/article/view/36628>

Furthermore, Indonesia is strengthening law enforcement in its maritime territory by using a Vessel Monitoring System (VMS), a vessel monitoring system that uses satellite technology to track the position and movement of vessels. The government, specifically the Directorate General of PSDKP (National Marine Resources and Fisheries Agency) of the Ministry of Maritime Affairs and Fisheries, is responsible for implementing this system.²⁹ Based on Ministerial Regulation No. 42/PERMEN-KP/2005, VMS installation is mandatory for certain fishing vessels, particularly those exceeding 30 GT. The government provides free VMS for small-scale fishermen with vessels of 10 GT or less.

Indonesia's vast maritime territory means that monitoring its maritime territory with VMS technology offers numerous benefits, including: security, which assists fishermen in emergencies; efficiency, which allows fishermen to plan their sailing routes; protection, which protects fishermen from illegal activities; and increased productivity, as better monitoring allows fishermen to increase their yields. The benefits of VMS extend beyond its function as a fisheries monitoring tool, as it also plays a crucial role in monitoring activities in Indonesia's maritime territory, including monitoring violations by foreign vessels, particularly those not subject to international law and not licensed by the Indonesian government. Furthermore, the VMS also serves to increase the frequency of maritime patrols. These measures affirm Indonesia's compliance with the provisions of the 1982 United Nations Convention on the Law of the Sea (UNCLOS), the basis of international maritime law, and its active commitment to upholding its rights and authorities in national maritime territory.

In addressing the rampant practice of maritime fencing, the country needs to implement a more assertive and integrated regulatory and governance approach. The central and regional governments must strengthen regulations on the use of marine space, ensure strict oversight, and consistently enforce the law, involving the community as the primary stakeholder. The principles of social justice and environmental sustainability must underpin marine space management, so that the welfare of coastal communities is not sacrificed by the economic interests

²⁹ Zainal Abidin Pakpahan and Marlon Simanjorang, "Penegakan hukum terhadap tindak pidana di ZEE (Zona Ekonomi Eksklusif Indonesia) menurut Konvensi Hukum Laut Internasional (UNCLOS 1982)". *Qisth: Jurnal Hukum dan Keadilan*, Vol.4 No.1, (2025): 78–85,

https://www.researchgate.net/publication/392542909_Penegakan_Hukum_Terdapat_Tindak_Pidana_di_ZEE_Zona_Ekonomi_Eksklusif_Indonesia_Konvensi_Hukum_Laut_International UNCLOS 1982

of certain individuals or groups. To prevent overlapping authority, institutional coordination between the ATR/BPN, the Ministry of Maritime Affairs and Fisheries (KKP), and regional governments must be strengthened, particularly in the permit issuance process and enforcement of violations.³⁰

In addition to improving the permit system and law enforcement, future solutions must incorporate an environmentalism from below approach, namely empowering local communities to manage their own marine resources. The establishment of community-based conservation areas (MPAs) serves a dual function as a mechanism for ecosystem preservation and monitoring illegal activities such as the installation of sea fencing. Active community oversight and an open reporting system provide more effective social control than a purely top-down model. Furthermore, the use of modern technologies such as the Vessel Monitoring System (VMS) and the Automatic Identification System (AIS) needs to be integrated to build a transparent and publicly accessible early detection system. However, their implementation must pay attention to proportionality, with large industrial vessels receiving stricter oversight than traditional fishermen, to prevent an unfair regulatory burden. Therefore, the combination of firm regulations, institutional coordination, strengthening the role of local communities, and utilizing surveillance technology constitutes a complementary set of solutions. This approach not only ensures effective enforcement against marine fencing but also ensures equitable, sustainable, and inclusive marine governance in the long term.³¹

Outside Indonesia, the phenomenon of unilateral “sea-fencing” or maritime enclosure also appears in various forms across international maritime regions, revealing legal and political patterns that are compelling for comparison. For example, in the South China Sea, including areas such as the Spratly Islands several studies indicate that fishing fleets from overseas do not merely engage in illegal fishing, but are positioned as instruments of maritime policy to reinforce territorial claims. In the article “*Catching sovereignty fish: Chinese fishers in the southern Sprathys*,” it is explained that the Chinese government provides subsidies and logistical support to fishermen, while mobilizing them as part of what is known as the “maritime militia”, thereby making fishing activities an integral

³⁰ Mokodompit, E. A., & Hakim, M. L. “Pelanggaran Keamanan Maritim Pagar Laut Dan Solusi Pencegahannya” *Jurnal Dinamika Sosial Dan Sains*, Vol.2 No.5, (2025): 724.

³¹ Mokodompit, E. A., & Hakim, M. L, 725.

component of maritime sovereignty strategy.³² This practice has dual consequences. In addition to creating competition for access to fishery resources, the establishment of "zones of actual control" through the presence of subsidized fishing vessels makes it difficult for other countries to access these waters and can trigger sovereignty conflicts and violations of international maritime law. This approach illustrates how sea-fences are not only physical (fence or noose), but also de facto sovereignty through economic, social, and operational maritime occupation.³³

The practice of unilateral maritime fencing is not only an Indonesian issue but a regional phenomenon that has been addressed through various models of maritime sovereignty enforcement. The Philippines' experience demonstrates that states require UNCLOS-based lawfare and enforcement authority to challenge the installation of maritime barriers and unilateral claims. This is reflected in the Philippines' legal strategy analyzed by Heydarian, who positions international litigation as part of the maritime sovereignty enforcement toolkit.³⁴ The 2016 PCA arbitration ruling affirmed that coastal states have the right to reject unilateral measures such as floating barriers and illegal installations in the EEZ and have the authority to dismantle or reject such structures as part of their sovereign rights.³⁵

At the operational level, the Philippine Coast Guard's action in removing floating barriers in Bajo de Masinloc serves as a concrete example that the state must have and enforce maritime policing authority, including inspections, enforcement, demolition of illegal structures, and protection of public access to waters.³⁶ Meanwhile, a study on China's Maritime Militia by Erickson & Kennedy shows that the presence of state-subsidized fishing vessels can become an instrument of de facto territorial control, so that other countries must enforce firmer authority in

³² Ryan Martinson, "Catching sovereignty fish: Chinese fishers in the southern Spratlys". *Marine Policy*, Vol.125, Page 104372, (2021): 1-11. <https://doi.org/10.1016/j.marpol.2020.104372>.

³³ Ryan Martinson, 1-11.

³⁴ Richard Javad Heydarian, "Mare Liberum: Aquino, Duterte, and the Philippines' evolving lawfare strategy in the South China Sea, *Asian Politics and Policy* Vol.10, Issue 2, (2018):283-299. <https://doi.org/10.1111/aspp.12392>.

³⁵ Robert Beckman, "Is the Time Ripe for Serious Negotiations on a Code of Conduct for the South China Sea?" *The Second Manila Conference on the South China Sea*, (2016): 1-13. <https://cil.nus.edu.sg/wp-content/uploads/2016/08/Beckman-Paper-Manila-Conf-August-2016.pdf>.

³⁶ Anonim, "Floating barriers at Bajo de Masinloc removed", *Philippine News Agency*, (2023) <https://www.pna.gov.ph/articles/1210541>.

identifying non-conventional threats, law enforcement against non-commercial vessels, and countermeasures against covert maritime fencing through the occupation of militia fleets.³⁷

From an international legal perspective, Kraska & Monti assert that the use of civilian entities as a means of maritime militia creates an ambiguity in legal status that states must respond to by strengthening their investigative, detention, and maritime-based rules of engagement.³⁸ In the Malaysian context, Bateman's research on maritime security governance in the Indian Ocean Region demonstrates the need for an integrated maritime enforcement model, namely coordination between the navy, coast guard, and civilian maritime agencies to regulate illegal structures, illegal fishing gear, and fencing fishing areas.³⁹ Malaysia's approach emphasizes the importance of cross-agency authority for dismantling installations, enforcing environmental regulations, and sustainably monitoring the maritime domain.⁴⁰

Overall, this comparative evidence shows that nearly all countries require the same authority, namely:

1. the authority to reject and dismantle illegal maritime fencing;
2. administrative and criminal enforcement authority against violating vessels and maritime structures;
3. maritime domain awareness authority to detect militia activity or civilian fleets used as instruments of the state;
4. hot pursuit and interdiction authority within jurisdictional areas;
5. the use of international mechanisms such as UNCLOS arbitration to strengthen the legitimacy of enforcement actions.

Bringing international cases into the analysis not simply for geographical comparison but as representations of maritime legal, political, and security strategies strengthens the analytical dimension of this research. The focus on Indonesia not only demonstrates domestic conditions but also places them within broader regional and international dynamics, illustrating how Southeast Asian archipelagic states face similar

³⁷ Rear Admiral Michael McDevitt, "Becoming a Great "Maritime Power": A Chinese Dream", *CNA Analysis & Solutions*, (2016) : 1-160. <https://www.cna.org/reports/2016/IRM-2016-U-013646.pdf>

³⁸ James Kraska and Michael Monti, "The Law of Naval Warfare and China's Maritime Militia" *Stockton Center for the study of International Law Studies*, Vol. 91(450), (2015) : 450-467 <https://digital-commons.usnwc.edu/ils/vol91/iss1/13/>.

³⁹ Sam Bateman, "Maritime security governance in the Indian Ocean region" *Journal of the Indian Ocean Region*, Vol.12, No. 1 (2016): 5-23, <https://www.tandfonline.com/doi/full/10.1080/19480881.2016.1138709>

⁴⁰ Sam Bateman, 5-23.

challenges in maintaining maritime sovereignty, resource sustainability, and public access to the sea. Thus, the issue of maritime fencing demands a combination of legal, diplomatic, and operational authority not only for Indonesia, but for all archipelagic states in Southeast Asia.

Forms of Violations of Marine Territory Fencing

Forms of violations involving the fencing of maritime areas include a range of actions that directly or indirectly restrict access, appropriate marine space, or damage marine ecosystems, thereby hindering the sea's function as a public domain.⁴¹ The first type of violation appears through physical fencing along the coast, namely the installation of sea barriers made of bamboo, wood, concrete, embankments, or similar structures that are initially claimed as wave-breaking techniques or mangrove restoration instruments, but in practice are carried out without scientific basis, without an environmental impact assessment (AMDAL), and without the consent of coastal communities.⁴² In reality, such installations often constitute a form of bluewashing, framed as sustainability efforts but in fact blocking fishers' access, altering ocean currents, triggering sedimentation, damaging coral reefs, and disrupting shoreline stability, which is crucial for maritime boundary determinations.⁴³ This practice violates Article 33(3) of the 1945 Constitution, Law 27/2007 as amended by Law 1/2014 on coastal zone licensing and management, as well as Law 32/2009 concerning mandatory environmental impact assessments for any activity affecting the environment; such violations may even be subject to criminal sanctions. Case studies in Tangerang and Bekasi show losses reaching IDR 116.91 billion per year due to disrupted fishing access, increased operational costs, and ecosystem degradation, while WALHI has noted that the bamboo fences along the North Coast obstruct ocean currents, increase sedimentation, bury corals, and degrade water quality.⁴⁴

The second violation takes the form of maritime space fencing by foreign vessels through IUU fishing practices, namely the illegal expansion

⁴¹ Bona Jevon Tampubolon, Raden Roro Kamilia Hana Putri and Abqary Faraz Darmawan, "Praktik illegal fishing di Laut Arafura." *Jurnal Hukum Statuta*, Vol. 4 No.1 (2021): 89–102. <https://doi.org/10.35586/jhs.v4i1.9763>.

⁴² Mokodompit, E. A., & Hakim, M. L., 721-724.

⁴³ Irvan Maulana, "Pagar Laut, "Bluewashing" dan Keadilan Akses Maritim", *Kompas*, (2025), <https://www.kompas.id/artikel/pagar-laut-bluewashing-dan-keadilan-akses-maritim>

⁴⁴ Mokodompit, E. A., & Hakim, M. L., *Loc.Cit*

of operational space into Indonesia's Exclusive Economic Zone (EEZ) in the Natuna Sea or Arafura Sea. Although no physical fence exists, the actions of foreign vessels entering Indonesian waters and fishing illegally constitute a de facto form of fencing, because they take over fishing grounds that should belong to Indonesian fishers.⁴⁵ The Ministry of Marine Affairs and Fisheries (KKP) recorded that from January to May 2025, of the 32 IUU fishing vessels prosecuted representing Rp774.3 billion in state losses saved nine were foreign vessels, and 23 illegal fish aggregating devices (rumpon) were confiscated for obstructing fish migration in Indonesian waters.⁴⁶ These activities are not only resource violations but also actions that restrict the rights of local fishers and disturb the state's sovereignty and control over maritime space as regulated by national law and UNCLOS 1982.

The third violation is coastal fencing by corporations and individuals, manifested through the construction of private ports, exclusive jetties, concrete fences, embankments, or other structures along the shoreline that block public access to the sea.⁴⁷ Many of these developments exploit loopholes in non-transparent licensing processes, lacking environmental impact assessments (AMDAL) and failing to consider environmental sustainability or the economic livelihood of coastal communities. This practice violates Law 1/2014, which affirms that every citizen has the right to equal access to the sea, and when coastal space is privatized for corporate interests, it breaches the public trust doctrine that positions the sea as a public domain.

Next, the fourth violation is ecological fencing, namely actions that damage marine ecosystems such that their ecological function as fishing

⁴⁵ Aninditya Gita Kireina Persada, Lazarus Tri Setyawanta, Sri Kusriyah "Reconstruction of Artificial Islands Regulations in International Law to Realize Territorial Jurisdiction". *Scholars International Journal of Law, Crime and Justice*, Vol. 7, Issue 8, (2024): 291–296. DOI: [10.36348/sijlcrj.2024.v07i08.001](https://doi.org/10.36348/sijlcrj.2024.v07i08.001)

⁴⁶ PPID Direktorat Jenderal Pengawasan Sumber Daya Kelautan dan Perikanan, "KKP Selamatkan Potensi Kerugian Negara Rp774,3M Imbas Ilegal Fishing Periode Januari-Mei 2025, 2025, [https://ppid.kkp.go.id/upp/direktorat-jenderal-pengawasan-sumber-daya-kelautan-dan-perikanan/news/detail/kkp-selamatkan-potensi-kerugian-negara-rp7743-m-imb-ilegal-fishing-periode-januari-mei-2025/#:~:text=JAKARTA%2C%20\(20/5\)%20-%20Kementerian%20Kelautan%20dan%20Perikanan,Kelautan%20dan%20Perikanan%20Republik%20Indonesia%20\)%20](https://ppid.kkp.go.id/upp/direktorat-jenderal-pengawasan-sumber-daya-kelautan-dan-perikanan/news/detail/kkp-selamatkan-potensi-kerugian-negara-rp7743-m-imb-ilegal-fishing-periode-januari-mei-2025/#:~:text=JAKARTA%2C%20(20/5)%20-%20Kementerian%20Kelautan%20dan%20Perikanan,Kelautan%20dan%20Perikanan%20Republik%20Indonesia%20)%20)

⁴⁷ Roberto Virzo, "Sea-Level Rise and State of Necessity: Maintaining Current Baselines and Outer Limits of National Maritime Zones." *The Italian Review of International and Comparative Law* 2, (2022): 21–47, <https://www.sciencedirect.com/org/science/article/pii/S2772564222000259>

grounds becomes closed off.⁴⁸ Destructive fishing practices such as blast fishing and poison, placement of illegal rumpon, and alterations in currents caused by bamboo fences or other coastal structures result in habitat destruction, water turbidity, loss of nutrient flows, and coral reef degradation.⁴⁹ These ecological impacts obstruct the living space of marine biota and limit fishers' catch areas, indirectly creating an "ecological fence" that marginalizes coastal communities. Such practices violate environmental law, fisheries law, and marine conservation provisions under UNCLOS 1982.

The next violation is administrative and institutional fencing, referring to maritime construction or space use conducted without legal mechanisms: without KKPRL, without management permits, without AMDAL, and without mandatory public consultations in coastal spatial governance, or through the granting of permits secretly to specific parties.⁵⁰ This lack of clear governance leads to overlapping institutional authorities, slow government response, and weak oversight by the Navy (TNI AL) and other maritime agencies, allowing illegal sea fences and coastal projects to continue to proliferate. This practice also results in marine space being allocated for corporate or private projects without community involvement and without the required public consultation process. Such legal fencing creates legal uncertainty because it contradicts the fundamental principle of marine governance that places the state as the holder of the public trust mandate.⁵¹ As a result, marine spaces that should be accessible to many parties become exclusive areas, harming traditional rights and fishers' livelihoods.

Fencing constitutes a constitutional violation because it prevents the state from fulfilling its duty to manage marine space for the public

⁴⁸ Putri, P. N. A., Wijaya, A. U., & Hadi, F. "Penegakan hukum illegal fishing dalam rangka mewujudkan ketahanan lingkungan". *Jurnal Yustisiabel*, Vol.8 No.1, (2023): 67–80. <https://doi.org/10.32529/yustisiabel.v8i1.3066>

⁴⁹ Hermanus Marang Temaluru and Yohanes Arman, "Efektivitas kebijakan hukum dalam menangani illegal fishing." *Jurnal Penelitian Ilmiah Multidisiplin*, Vol.8, No.7 (2024): 112–125, <https://sejurnal.com/pub/index.php/jpim/article/view/6573>

⁵⁰ Walter Timo De Vries and Sukmo Pinuji, "Balancing Between Land and Sea Rights - An Analysis of the 'Pagar Laut' (Sea Fences) in Tangerang, Indonesia". *Marine Policy*, 14, 1382, 2025: 6-21, <https://www.mdpi.com/2073-445X/14/7/1382>

⁵¹ Andriani Hikmah Agustin, Murti Wulandari, and Abdul Amid Jalaludin, "Ancaman terhadap perairan Laut Natuna oleh pelaku illegal fishing". *Jurnal Archipelago*, Vol.1 No.1 (2022): 32–41. <https://doi.org/10.69853/ja.v1i1.6>

interest.⁵² Fencing practices essentially privatize public space. When fencing, whether physical, operational, or ecological, restricts public access to the sea, even if carried out by individuals or corporations, it violates Article 33(3) of the 1945 Constitution, which mandates that natural resources must be controlled by the state for the greatest prosperity of the people.

In relation to fisheries law and international maritime law, fencing that blocks traditional fishers' access also contradicts the principles of freedom of navigation and innocent passage under UNCLOS 1982.⁵³ Even if a fence is not located along an international shipping lane, restricting access to waters that are legally part of the public domain remains a violation. Such forms of fencing erode traditional fishing rights and cause conflicts with other ocean users.

Finally, fencing of maritime areas can also be seen as a violation of social justice, coastal community rights, and environmental human rights, because sea fences whether physical or non-physical disproportionately benefit corporations, investors, or certain groups, while traditional fishers lose their living space. Fencing that blocks small navigation routes, forces fishers to travel farther offshore, increases fuel costs, and damages boats when they become entangled in fences constitutes structural inequality that creates horizontal conflict and economic marginalization.

Thus, the forms of maritime fencing violations include: (1) physical fencing that blocks public access; (2) maritime space fencing through IUU fishing; (3) coastal fencing by corporations; (4) ecological fencing caused by habitat destruction; (5) administrative fencing due to licensing violations; and (6) social fencing that deepens injustice for coastal communities. Maritime space fencing is not merely an administrative violation of licensing rules, but a practice that undermines social justice, reduces fishers' economic rights, harms coastal ecosystems, weakens principles of state governance, and threatens Indonesia's maritime sovereignty. For that reason, maritime fencing must be understood as a complex violation requiring integrated law enforcement, governance reform, licensing transparency, strengthened ecological protection, and

⁵² Østhagen, A. "Maritime Boundary Disputes: What are they and why do they matter" *Marine Policy*, 120 (104118), 2020: 1-8, <https://www.sciencedirect.com/science/article/pii/S0308597X20302426>

⁵³ Persada, A. G. K., Setyawanta, L. T., & Kusriyah, S. (2024). Reconstruction of artificial islands regulations in international law to realize territorial jurisdiction. *Scholars International Journal of Law, Crime and Justice*, 7(8), 291-296. <https://doi.org/10.36348/sijlcj.2024.v07i08.001>

the empowerment of coastal communities as primary actors in marine spatial management.

Conclusion

Taken together, the analysis demonstrates that Indonesia's constitutional framework, statutory laws, and international commitments establish a maritime authority that is broad but not absolute. Although the state is empowered to regulate, protect, and utilize its maritime spaces, including through practices such as maritime fencing, this authority is constrained by constitutional guarantees of public access, community livelihoods, environmental sustainability, and the *due regard* principle under UNCLOS 1982, which protects navigation and other lawful uses of the sea. Accordingly, the legality of maritime fencing depends not on the existence of state authority itself, but on whether its exercise satisfies the principles of proportionality, necessity, and compliance with domestic and international legal obligations. The analysis further reveals that Indonesia's multilevel governance system assigns distinct maritime responsibilities to central, provincial, and district governments to promote integrated and sustainable ocean management; however, bureaucratic overlap, weak institutional coordination, and fragmented enforcement frequently undermine these objectives, allowing uncoordinated fencing practices by governmental or private actors to occur without adequate legal, environmental, or social assessment. Such practices may restrict public access, interfere with navigation, and conflict with the integrated ocean governance principles embodied in UNCLOS. Moreover, maritime area fencing violations take multiple forms, including physical coastal barriers installed without scientific justification, environmental impact assessments, or community consent; maritime space encroachment through illegal, unreported, and unregulated (IUU) fishing by foreign vessels; corporate coastal developments that block public access; ecological degradation caused by destructive fishing methods and coastal infrastructure; administrative violations involving the use of marine space without the required permits, KKPRL, environmental approvals, or public consultation; and social exclusion that limits traditional fishers' access to marine resources and undermines their livelihoods. Collectively, these practices violate constitutional principles, Indonesia's maritime and environmental legal framework, and the obligations established under UNCLOS 1982 by effectively privatizing marine spaces intended for public use while disproportionately harming coastal communities.

References

- Adolf, Huala. *Aspek-Aspek Negara Dalam Hukum Internasional*. 3rd ed. Jakarta: Rajawali Press, 2002.
- Agustin, Andriani Hikmah, Wulandari, Murti and Jalaludin, Abdul Amid. “Ancaman terhadap perairan Laut Natuna oleh pelaku illegal fishing”. *Jurnal Archipelago Vol. 1, No. 1* (2022): 32–41. <https://doi.org/10.69853/ja.v1i1.6>
- Aliyah, Putri Nur, Wijaya Andy Usmina, and Hadi Fikri. “Penegakan hukum illegal fishing dalam rangka mewujudkan ketahanan lingkungan di Indonesia Guna Mencapai Tujuan Pembangunan Berkelanjutan (SDGs). *Jurnal Yustisiabel*, 8(1) (2024): 67–80. <https://doi.org/10.32529/yustisiabel.v8i1.3066>
- Ambarsari, R. A., Putri, S. M., Ernawati, & Hutapea, S. A. “Analisis yuridis terhadap pemagaran laut di pesisir Tangerang dalam kerangka hukum laut internasional”. *Aliansi: Jurnal Hukum, Pendidikan dan Sosial Humaniora*, Vol. 2 No. 2 (2025): 89–95. <https://doi.org/10.62383/aliansi.v2i2.823>
- Anonim. “Floating barriers at Bajo de Masinloc removed”. *Philippine News Agency*, (2023). <https://www.pna.gov.ph/articles/1210541>.
- Bateman, Sam. “Maritime security governance in the Indian Ocean region” *Journal of the Indian Ocean Region*, Vol.12, No. 1 (2016): 5–23, <https://www.tandfonline.com/doi/full/10.1080/19480881.2016.1138709>
- Beckman, Robert. “Is the Time Ripe for Serious Negotiations on a Code of Conduct for the South China Sea?” *The Second Manila Conference on the South China Sea*, (2016): 1-13. <https://cil.nus.edu.sg/wp-content/uploads/2016/08/Beckman-Paper-Manila-Conf-August-2016.pdf>.
- Fauziah, Anisa, Khairiyati, Fithry, and S, Samiyono, Sugeng. “Pengaturan Hukum Laut Internasional Terhadap Illegal Fishing Di Wilayah Laut Zona Ekonomi Eksklusif”. *Kertha Semaya : Jurnal Ilmu Hukum*, Vol. 11, No. 11 (2023): 2662-2676, <https://ojs.unud.ac.id/index.php/kerthasemaya/article/view/106236>.
- Gillbrain, Handayani, Wiwid Putri and Fitriono, Riska Andi, “Peneggelaman kapal asing sebagai upaya pencegahan pencurian hasil laut”. *Jurnal Gema Keadilan*, Vol.8 No.3, (2021): 45–52. <https://ejournal2.undip.ac.id/index.php/gk/article/view/12641>
- Harry, Musleh, Fakhrudin, Wahidi, Ahmad, Jannari, Nur and Fajari, Meisy. “Sea Fence and Public Policy: Impact on the Welfare of Fishermen

- Families in Tangerang, Indonesia”. *EL-Usrah: Jurnal Hukum Keluarga*. Vol.8 No.1, (2025): 660-677. https://jurnal.ar-raniry.ac.id/index.php/usrah/article/view/29518#pkp_content_main.
- Heydarian, Richard Javad. “Mare Liberum: Aquino, Duterte, and the Philippines’ evolving lawfare strategy in the South China Sea”. *Asian Politics and Policy* Vol.10, Issue 2, (2018):283-299. <https://doi.org/10.1111/aspp.12392>.
- Irianto, Bambang S. “Penegakan hukum di Zona Ekonomi Eksklusif Indonesia (ZEEI) dalam rangka kepentingan nasional Indonesia di bidang kelautan” *Justiciabelen*, Vol.4, No.2, (2022): 112–120, <https://journal.umg.ac.id/index.php/justiciabelen/article/view/3564?articlesBySimilarityPage=6>
- Jaelani, Abdul Qodir. “Illegal, unreported, and unregulated (IUU) fishing: Upaya mencegah dan memberantas illegal fishing dalam membangun poros maritim Indonesia”. *Jurnal Supremasi Hukum*, Vol.3 No. 1, (2024): 56–65, <https://ejournal.uin-suka.ac.id/syariah/Supremasi/article/view/1958>
- Klein, N. “Balancing navigation rights and coastal state sovereignty”. *The International Journal of Marine and Coastal Law*, 33(1) (2018): 1–24.
- Kraska, James and Monti, Michael. “The Law of Naval Warfare and China’s Maritime Militia” *Stockton Center for the study of International Law Studies*, Vol. 91(450), (2015) : 450-467 <https://digital-commons.usnwc.edu/ils/vol91/iss1/13/>
- Kusumaatmadja, Mochtar. *Pengantar Hukum Internasional*. Bandung: Sinar Grafika, 2018.
- Labolo, Muhadam. “Pagar Laut dan Kewenangan Pemda”. *Tangsel Pos*, (2025). https://tangselpos.id/detail/31160/pagar-laut-dan-kewenangan-pemda#google_vignette
- Lestiani, D. V., Dian, A.B., & Saputri, I. H. “Pagar Laut sebagai Instrumen Pertahanan Negara” *Jurnal Pendidikan dan Kewarganegaraan Indonesia* Vol.2, No.2, (2025), hlm. 218. DOI: <https://doi.org/10.61132/jupenkei.v2i2.445>.
- Martinson, Ryan. “Catching sovereignty fish: Chinese fishers in the southern Spratlys”. *Marine Policy*, Vol.125, Page 104372, (2021): 1-11. <https://doi.org/10.1016/j.marpol.2020.104372>.
- Marzuki, Peter Mahmud, *Metode Penelitian Hukum*, (Jakarta: Kencana, 2017).

- Maulana, Irvan. "Pagar laut, "bluwashing" dan keadilan akses maritim". *Kompas*. (2025). <https://www.kompas.id/artikel/pagar-laut-bluewashing-dan-keadilan-akses-maritim>
- McDevitt, Rear Admiral Michael. "Becoming a Great "Maritime Power": A Chinese Dream". *CNA Analysis & Solutions*, (2016): 1-160. <https://www.cna.org/reports/2016/IRM-2016-U-013646.pdf>
- Mokodompit, E. A., & Hakim, M. L. "Pelanggaran Keamanan Maritim Pagar Laut Dan Solusi Pencegahannya". *Jurnal Dinamika Sosial Dan Sains*, Vol.2 No.5, (2025): 724.
- Nurhidayah, L., & McIlgorm, A. "Governance gaps in Indonesia's marine environmental protection". *Australian Journal of Maritime & Ocean Affairs*, 11(2) (2019): 85.
- Østhagen, A. "Maritime Boundary Disputes: WHat are they and why do they matter" *Marine Policy*, 120 (104118), 2020: 1-8, <https://www.sciencedirect.com/science/article/pii/S0308597X20302426>
- Pakpahan, Zainal Abidin and Simanjorang, Marlon. "Penegakan hukum terhadap tindak pidana di ZEE (Zona Ekonomi Eksklusif Indonesia) menurut Konvensi Hukum Laut Internasional (UNCLOS 1982)". *Qisth: Jurnal Hukum dan Keadilan*, Vol.4 No.1, (2025): 78–85, <https://www.researchgate.net/publication/392542909>
- Patil, P. G., et al. "Integrated ocean governance in Southeast Asia: Challenges and prospects". *Ocean & Coastal Management*, 134, (2016): 65–75.
- PPID Direktorat Jenderal Pengawasan Sumber Daya Kelautan dan Perikanan. "KKP selamatkan potensi kerugian negara Rp774,3M imbas ilegal fishing periode Januari–Mei 2025". (2025). <https://ppid.kkp.go.id/upp/direktorat-jenderal-pengawasan-sumber-daya-kelautan-dan-perikanan/news/detail/kkp-selamatkan-potensi-kerugian-negara-rp7743-m-imbis-ilegal-fishing-periode-januari-mei-2025/>
- Rengifo, A. "Legal obligations of coastal states under UNCLOS: A contemporary analysis". *Journal of Environmental Law*, 32(2), (2019): 201–223.
- Soekanto, Soerjono. "Pengantar Penelitian Hukum". Jakarta: Rajawali Press, 2020.
- Suwarni, Ayni and Dewi, Aliya Sandra. "Government Policy Towards the Marine Fence Polemic in Tangerang (Civil Law Review of Coastal Areas Control Rights)". *Journal of Governance: Jurnal Ilmu*

- Pemerintahan Universitas Sultan Ageng Tirtayasa, Vol.10, No.2, (2025):* 383-398,
<https://jurnal.untirta.ac.id/index.php/jog/article/view/31783>
- Syahuri, Taufiqurrahman and Eudia Octavia Sitompul. “Analisis Yuridis Pengelolaan Batas Wilayah Laut Dan Pesisir Berdasarkan Undang-Undang Nomor 23 Tahun 2014 Tentang Pemerintahan Daerah.” *Jurnal Esensi Hukum, Vol. 2 No.2, (2020):* 13-22,
<https://journal.upnvj.ac.id/index.php/esensihukum/article/view/25>
- Tampubolon, B. J., Putri, R. R. K. H., & Darmawan, A. F. “Praktik illegal fishing di Laut Arafura” *Jurnal Hukum Statuta, 4(1) (2021):* 89–102.
<https://doi.org/10.35586/jhs.v4i1.9763>
- Temaluru, Hermanus Marang and Yohanes Arman, “Efektivitas kebijakan hukum dalam menangani illegal fishing.” *Jurnal Penelitian Ilmiah Multidisiplin, Vol.8, No.7 (2024):* 112–125,
<https://sejurnal.com/pub/index.php/jpim/article/view/6573>
- Virzo, Roberto. “Sea-Level Rise and State of Necessity: Maintaining Current Baselines and Outer Limits of National Maritime Zones.” *The Italian Review of International and Comparative Law 2, (2022):* 21–47,
<https://www.sciencedirect.com/org/science/article/pii/S2772564222000259>
- Vries, Walter Timo De and Sukmo Pinuji, “Balancing Between Land and Sea Rights - An Analysis of the ‘Pagar Laut’ (Sea Fences) in Tangerang, Indonesia”. *Marine Policy, 14, 1382, 2025:* 6-21,
<https://www.mdpi.com/2073-445X/14/7/1382>
- Widyawati, Anis, Latifiani, Dian, Rahmasari, Helda and Adhari, Ade. “Optimizing Oversight: Developing an Ideal Framework for Supervision Prisoners’ Rights Allocation.” *IJCLS (Indonesian Journal of Criminal Law Studies), Vol.9 No.2, (2024):* 185-206,
<https://journal.unnes.ac.id/journals/ijcls/article/view/36628>
- Widyawati, Anis, Arifin, Ridwan, Aisy, Rohadhatul, Abidah, Shofriya Qonitatin, Setyanto, Heru. “Supervision in Integrated Justice: Legal Reform and Constructive Enforcement in the Criminal Justice System”. *Journal of Law and Legal Reform Vol.5 No. 2, (2024):* 433-58,
<https://doaj.org/article/cbef50a56ce248cc837041b9b07df7ee>
- Yolanda, Hariyantana Aygy, Sudiarso, Aries and Jhandana, I.B Putra. “Implications of Illegal Sea Fence Construction on Maritime Security, Environment, And Welfare Of Coastal Communities”.

ARRUS *Journal of Social Sciences and Humanities*, Vol.5, No.1 (2025): 810-819. <https://doi.org/10.35877/soshum3703>.

Young, M. (2020). Regulatory overreach in coastal management. *Environmental Law Review*, 22(3), 159–176

Zhuo, Mariana, Jemmy Rumengan and Henry Aspan, “Analisis Yuridis Kewenangan Kesatuan Penjagaan Laut Dan Pantai Dalam Penindakan Pelanggaran Hak Lintas Damai Pelayaran Di Perairan Indonesia”. *Mizan: Jurnal Ilmu Hukum*, Vol.9 No. 2 (2020): 95-102. <https://ejournal.uniska-kediri.ac.id/index.php/Mizan/article/view/1094lam>

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