

# Illegal Fishing by Other Countries: Complicated Law Enforcement in Indonesia

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**ABSTRACT:** As an archipelagic country, illegal fishing become one of the challenges faced by Indonesia. This study aims to analyze the complexity of law enforcement in Indonesia in dealing with cases of illegal fishing carried out by other countries. This study confirms and finds that illegal fishing is illegal fishing activity or fishing activity carried out contrary to the provisions of laws and regulations in the field of fisheries. The government has also issued a number of regulations related to illegal fishing, including Law Number 31 of 2004 concerning Fisheries, Law Number 45 of 2009 concerning Amendments to Law Number 31 of 2004 concerning Fisheries, Law Number 5 of 1983 concerning the Indonesian Exclusive Economic Zone, Law Number 21 of 2004 concerning Shipping, Law Number 6 of 1996 concerning Indonesian Waters, Presidential Regulation Number 115 of 2015 concerning the Task Force for the Eradication of Illegal Fishing, Minister of Maritime Affairs and Fisheries Regulation

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Number 37/Permen-KP/2017 concerning Standard Operational Enforcement Procedures Law of the Task Force for the Eradication of Illegal Fishing. This study also underlines that in Article 69 of Law Number 45 of 2009, fisheries surveillance vessels can stop, inspect, bring and detain vessels that are suspected or should be suspected of committing violations in the Indonesian fishery management area to the nearest port for further processing. Fishery investigators or supervisors can also take special action in the form of burning and/or sinking fishing boats with foreign flags based on sufficient preliminary evidence.

**KEYWORDS:** Illegal Fishing, Maritime Boundaries, Fisheries Crimes, Marine Protection, Law Enforcement



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## I. INTRODUCTION

As an archipelagic country whose territory consists mainly of the sea, Indonesia has a very large and diverse fishery potential. The potential of fisheries owned is an economic potential that can be utilized for the future of the nation, as one of the backbones of national development. Optimal utilization is directed at the utilization of fish resources by taking into account the existing carrying capacity and its sustainability to improve the welfare of the people, improve the living standards of small fishermen and small fish farmers, increase revenues from state foreign exchange, provide expansion and

employment opportunities, increase productivity, added value and competitiveness of fishery products and ensure the sustainability of fish resources, fish farming land and spatial planning. This means that the utilization of fishery resources must be balanced with their carrying capacity, so that they are expected to provide benefits continuously. One of them is carried out by controlling fisheries business through fisheries management arrangements.

The 1982 United Nations Convention on the Law of the Sea, which was ratified by Law Number 17 of 1985 concerning ratification of the 1982 United Nations Convention on the Law of the Sea, places Indonesia as having sovereign rights to utilize, conserve, and manage fish resources in Indonesia's Exclusive Economic Zone (EEZ), and the High Seas implemented based on international requirements or standards that applies.

Therefore, a legal basis for fish resource management is needed that is able to accommodate all aspects of fish resource management and anticipate the development of legal and technological needs. The presence of Law Number 31 of 2004 concerning Fisheries is expected to anticipate as well as a solution to very large changes in the field of fisheries, both related to the availability of fish resources, environmental sustainability of fish resources, as well as the development of fisheries management methods that are increasingly effective, efficient, and modern.<sup>1</sup>

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<sup>1</sup> Abdul, Firmansyah. "Pencurian Ikan oleh Kapal Asing di Wilayah Teritorial Indonesia dalam Perspektif Hukum Positif di Indonesia." *Lex et Societatis* 4, No. 1 (2016); Putri, Hertria Maharani, Radityo Pramoda, and Maulana Firdaus. "Kebijakan Penenggelaman Kapal Pencuri Ikan di Wilayah Perairan Indonesia dalam Perspektif Hukum." *Jurnal Kebijakan Sosial Ekonomi Kelautan dan Perikanan* 7, No. 2 (2018): 91-102; Matompo, Osgar S. "Penanganan Praktik Pencurian Ikan Illegal di Perairan Indonesia." *Legality: Jurnal Ilmiah Hukum* 26, No. 1 (2018): 130-141.

On the other hand, there are several issues in fisheries development that need attention from all parties, both the government, the community and other parties related to fisheries development. These issues include the symptoms of overfishing, fish theft, and other *illegal fishing* actions that not only cause harm to the state, but also threaten the interests of fishermen and fish-farmers, the industrial climate, and national fisheries businesses. These problems must be resolved seriously, so that law enforcement in the field of fisheries becomes very important and strategic in order to support fisheries development in a controlled and sustainable manner. The existence of legal certainty is an absolutely necessary condition in handling criminal acts in the field of fisheries.<sup>2</sup>

Article 33 of the 1945 Constitution states the basis of economic democracy, production is carried out by all, for all under the leadership of members of society. It is the prosperity of society that comes first, not the prosperity of a single person. It goes on to say that " The earth and water and the natural wealth contained in the earth are the points of prosperity of the people. The 1982 United Nations Convention on the Law of the Sea, which was ratified by Law Number 17 of 1985 concerning the Ratification of the 1982 *United Nations Convention on the Law of the Sea*<sup>3</sup> places Indonesia with sovereign rights to utilize, conserve, and manage fish resources in Indonesia's Exclusive Economic Zone (EEZ) and the high seas.<sup>4</sup>

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<sup>2</sup> Djoko Tribawono, *Hukum Perikanan Indonesia* (Bandung, PT Citra Aditya Bakti, 2013), pp. 13-14

<sup>3</sup> Republic of Indonesia, *Undang-Undang Dasar Tahun 1945*, Article 33.

<sup>4</sup> Tribawono, 2013. *See also* Setyadi, Ignatius Yogi Widiyanto. "Upaya negara Indonesia dalam menangani masalah illegal fishing di Zona Ekonomi Eksklusif Indonesia." *Jurnal Ilmiah Ilmu Hukum* (2014): 1-15; Adiananda, I. Dewa Ayu Maheswari, et al. "Problematika Penegakan Hukum Dalam Tindak Pidana Illegal Fishing di Wilayah Perairan ZEE Indonesia." *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)* 8, No. 2 (2019): 237-248; Widyatmodjo,

The presence of Law Number 45 of 2009 concerning Fisheries is expected to anticipate as well as a solution to very large changes in the field of fisheries, both related to the availability of fish resources, environmental sustainability of fish resources, as well as the development of fisheries management that is increasingly effective, efficient, and modern.

On the other hand, there are several issues in fisheries development that need attention from all parties, both the government, the community and other parties related to fisheries development. These issues include the symptoms of overfishing, fish theft, and other illegal fishing actions that not only cause harm to the state, but also threaten the interests of fishermen and fish farmers, the industrial climate and national fishing businesses. These problems must be resolved seriously, so that the enforcement of laws in the field of fisheries becomes very important and strategic in order to support the development of fisheries in a controlled and sustainable manner.<sup>5</sup>

Since ancient times the word fish resources have been widely used by humans and this continues until now. Starting with "hunting" catching/fishing, humans get it and prioritize family meals. Then the development of ways of cultivating fish, which emerged after humans thought that in time it could be "out of fish", which happened if they were constantly caught without thinking about how to "make" their children. Because more and more humans need to eat, including

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Ruth Shella, and Purwoto Pujiyono. "Penegakan Hukum terhadap Tindak Pidana Pencurian Ikan (Illegal Fishing) di Wilayah Zona Ekonomi Eksklusif (Studi Kasus: Putusan Pengadilan Negeri Ambon Nomor 01/pid. sus/prk/2015/pn. amb)." *Diponegoro Law Journal* 5, No. 3 (2016): 1-14.

<sup>5</sup> Supriadi and Alimuddin, *Hukum Perikanan Indonesia*. (Jakarta, Sinar Grafika, 2011), pp. 521-522.

consuming fish, the use of resources, which were originally only family needs, has turned into a commercial form.<sup>6</sup>

In this modern century management and fishing are equipped with fairly modern equipment, no longer traditional fishing is carried out. However, the impact that is quite felt from these management activities is their influence on the marine ecosystem/environment, especially if the management is without regard to the required provisions and requirements. In determining the requirements, the capacity and quality of the marine environment have been taken into account, so that violations of the requirements will damage or destroy the marine environment.<sup>7</sup>

Since the integration of the Indonesian economy into an international economic system oriented towards capital or capital, the use of natural resources as a source of driving economic activity has become inevitable. The environment in the ecological sense does not know territorial boundaries, but what is meant by the Indonesian environment legally includes the space where the Indonesian state exercises sovereignty within its jurisdiction. For most Indonesians who are unfamiliar with the importance of the environment, in their view the environment is just a simple object that is simply related to

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<sup>6</sup> Tribawono, 2013. *See also* Lewerissa, Yanti Amelia. "Praktek illegal fishing di perairan Maluku sebagai bentuk Kejahatan Ekonomi." *SASI* 16, No. 3 (2010): 61-68; Jamilah, Asiyah, and Hari Sutra Disemadi. "Penegakan Hukum Illegal Fishing dalam Perspektif UNCLOS 1982." *Mulawarman Law Review* (2020): 29-46; Fernandes, Inggrit. "Tinjauan Yuridis Illegal Fishing di Indonesia Berdasarkan Undang-Undang Perikanan." *Jurnal Hukum Respublica* 17, No. 1 (2017): 189-209; Maulida, Tia, and Indra Kusumawardhana. "Analisis Respon Vietnam dalam Menghadapi Kebijakan Illegal Fishing Indonesia di Zona Ekonomi Eksklusif Perairan Natuna." *Insignia: Journal of International Relations* 7, No. 2 (2020): 154-173; Afdini, Humaira, and Tundjung Herning Sitabuana. "Upaya Hukum dalam Meminimalisir Illegal Fishing Terkait Kawasan ZEE (Zona Ekonomi Eksklusif) Indonesia." *Jurnal Hukum Adigama* 4, No. 2 (2022): 2156-2175.

<sup>7</sup> Joko Subagyo, *Hukum Laut Indonesia*. (Jakarta: PT Rineka Cipta, 1993), pp. 9-11.

nature, plants, and animals. In fact, the scope of the environment is much broader than it is, that is, it concerns the overarching entity in which all living things are located. In the context of state development and community empowerment, all its activities and activities cannot exclude the existence of the environment at certain points and limits. Therefore, development and empowerment that do not pay serious attention to the environment will actually produce anti-development and anti-empowerment. Moreover, the protection of the environment is also closely related to the fulfillment of human rights.<sup>89</sup>

## II. METHODS

In writing a paper on "Law Enforcement Over Illegal Fishing Involving Other Countries" this paper uses data collection methods or literature (*library research*). According to Koentjaraningrat, literature technique is a way of collecting data on various materials contained in the literature room, such as newspapers, books, journals, magazines, manuscripts, documents and so on that are relevant to research. According to Sugiyono, literature studies are related to theoretical studies and other references related to values, cultures and norms that develop in the social situation under study, besides that literature studies are very important in conducting research, this is because research will not be separated from scientific literature. Based on this understanding, research on "*Law Enforcement of Illegal Fishing Involving Other Countries*" uses various books such as books, journals, newspapers, theses, and so on.

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<sup>8</sup> Handoyo, Eko. "Aspek Hukum Pengelolaan Lingkungan Hidup." *Jurnal Ilmu Hukum Pandecta* 3, No. 2 (2009).

<sup>9</sup> Bridget Lewis, "Environmental Rights or A Right to The Environment? Exploring The Nexus Between Human Rights and Environmental Protection", *Macquarie Journal of International and Comparative Environmental Law* 8 No. 1 (2012): 36-47.

### III. JURIDICAL REVIEW OF FISH THEFT

The act of sinking illegal ships is basically not a new policy for the Indonesian government, because this policy was carried out during the reign of Megawati Soekarnoputri. As is known, one of the functions of applying legal sanctions is to have a deterrent effect on perpetrators of violations or crimes. The weak enforcement of the law so far and the absence of enforcement against perpetrators of violations or crimes occurring because they are not oriented towards a deterrent effect can be regarded as an indirect contribution of the state to the proliferation of criminal acts that occur. It can even be said to be a form of the state's inability to provide legal protection to its citizens, both fishermen in particular and the Indonesian people as a whole as owners of Indonesia's marine resources.

In law, especially the criminal law that is regulated is about the behavior that must be obeyed by every subject of the law, which deeds can be done, and which deeds should not be done. Behavior that is not in accordance with the norms / misappropriation of these norms can cause problems in the field of law and harm society. Such misappropriation is usually referred to by society as an offense, even as a crime. Therefore, *illegal* foreign vessels that commit fish theft need to be given a deterrent effect by strictly cracking down on perpetrators in accordance with applicable laws and regulations. The goal is to avoid greater losses to society and the country.

The policy of sinking *illegal* foreign vessels is not believed to affect Indonesia's bilateral, regional, and multilateral relations with other countries. According to Professor of International Law at the



University of Indonesia, Hikmahanto Juwana, there are five reasons why the policy is actually worthy of support and will not worsen relations between countries.

*First*, there is no country in the world that justifies the actions of its citizens who commit crimes in other countries. The sunken foreign vessel is an unlicensed vessel to fish in Indonesian territory, so it is called a criminal act. *Second*, the act of sinking is carried out in the sovereign territory and sovereign rights of Indonesia (exclusive economic zone). *Third*, the act of drowning is carried out on the basis of valid legal provisions, namely Article 69 paragraph (4) of the Fisheries Law. *Fourth*, other countries must understand that Indonesia is harmed by such criminal acts. If it continues to be allowed<sup>10</sup>

Nevertheless, the government needs to socialize the policy to other countries. Hikmahanto Juwana emphasized that the mechanism that the government can do is to inform the policy to the ambassadors in Indonesia to forward it to their respective governments, especially to countries whose ships often enter Indonesian territory illegally, such as Thailand, the Philippines, Malaysia, China, and also Taiwanese representatives. The next step, the Government coordinated with representatives of the country whose ship was sunk. Thus, good relations between countries are expected to be maintained.

*Illegal Fishing* has been regulated by Law No. 31 of 2004 concerning fisheries so that fish resources remain sustainable, and their use can be optimal and sustainable. Article 8 paragraphs (1) (2) and (3), Article 9 and Article 12 paragraph (1) of Law No. 31 of 2004

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<sup>10</sup> Sulasi Rohingati, "Penenggelaman Kapal Ikan Asing: Upaya Penegakan Hukum Laut Indonesia", *Jurnal Info Singkat Hukum*, VI, No. 24/II/P3DI/December/2014, p. 3.

concerning fisheries regulate the prohibition against the use of explosives, toxic materials and electricity. Article 1 paragraph 5 in law number 45 of 2009 concerning amendments to Law No. 31 of 2004 concerning fisheries is: "*Fishing is an activity to obtain aquatic fish that is not included in the state of being cultivated by any means or means, including activities that use vessels to load, transport, store, cool, handle, manage, and/or preserve*".

In criminal law there is the principle of *lex specialis derogate legi generalis*, which means that a special regulation overrides a general rule. This means that if the law has regulated a criminal act, there is no need to use the rules in the Criminal Code. So that in cases about fishing using bombs or explosives, the rules used should be the existing law, namely Law Number 45 of 2009 concerning Fisheries.

Fisheries crimes can also be defined from several aspects, namely:

1. The definition of criminal acts in the field of fisheries is interpreted from the scope of activities in the field of fisheries;
2. Definition of criminal acts in the field of fisheries given on the basis of the modus operandi of criminal acts committed;
3. The definition of fisheries crimes is seen from the aspect of the region or area or place where criminal acts occur, then criminal acts in the field of fisheries can be interpreted as criminal acts that are part of the criminal acts of water areas.

Fishing using bombs/explosives used by perpetrators of criminal acts or crimes with a certain purpose and purpose, in a way or mode of crime that has been planned so as to cause damage to potential fish resources in the fisheries management area of the Republic of Indonesia is an act prohibited by laws and regulations so that it is classified as a fisheries crime.

Article 85 of Law Number 45 of 2009 concerning fisheries regulates fishing using bombs/explosives which reads: "*Any person who knowingly possesses, controls, carries, and/or uses fishing gear that interferes with and damages the sustainability of fish resources on fishing vessels in the fisheries management area of the Republic of Indonesia as stipulated in Article 9 shall be punished with a maximum imprisonment of 5 (five) years and a maximum fine of Rp.2,000,000,000.00 (two billion rupiah)*". Law Number 45 of 2009 concerning Fisheries Crimes states criminal threats for perpetrators with a maximum criminal threat of 5 (five) years and a maximum fine of Rp.2,000,000,000.00.

In the 1982 UNCLOS it states the rights and jurisdictions of coastal states in the EEZ include:

1. Exploration and exploitation of marine (biological-non-biological) resources;
2. Create and enact laws and regulations relating to the exploration and exploitation of marine resources;
3. Construction of artificial islands and other permanent installations;
4. Conducting marine scientific research; and
5. Protection of the marine environment.

Meanwhile, the obligations of EEZ coastal states include:

1. Respect the existence of the rights and obligations of other states over the territory of the EEZ;
2. Determine the maximum allowable catch for biological resources in this case fisheries; and
3. In the event that coastal states are unable to harvest the entirety of the allowable catch, it gives other countries access to the surplus allowable catch through previous agreements for the

optimization of the utilization of marine resources, especially fishery resources for conservation purposes.



**Figure 1 Indonesia Maritime Zone-UNCLOS 1982**

Law enforcement against illegal fishing crimes in Indonesia includes the following:

1. Law Number 31 of 2004 and its amendments to Law Number 45 of 2009 concerning Fisheries.
2. Law No. 27 of 2007 concerning the Management of Coastal Areas and Small Islands and other implementing regulations such as: Government Regulation Number 54 of 2005 concerning Fisheries Business.
3. Government Regulation Number 60 of 2007 concerning Fish Resource Conservation.
4. Government Regulation Number 30 of 2008 concerning the Implementation of Fisheries Research and Development.

5. Regulation of the Minister of Maritime Affairs and Fisheries Number PER.13 / MEN / 2005 concerning the Coordination Forum for Handling Crimes in the Fisheries Sector.
6. Regulation of the Minister of Maritime Affairs and Fisheries Number PER.14 / MEN / 2005 concerning the National Commission for the Assessment of Fish Resources.
7. Regulation of the Minister of Maritime Affairs and Fisheries Number PER.15 / MEN / 2005 concerning Fishing and / or Fish Farmers in Fisheries Management Areas of the Republic of Indonesia That Are Not for Commercial Purposes.
8. Regulation of the Minister of Maritime Affairs and Fisheries Number PER.05/MEN/2008 concerning Capture Fisheries Business, Regulation of the Minister of Maritime Affairs and Fisheries Number PER.06/MEN/2008 concerning the Use of Hela Trawls in the Waters of Northern East Kalimantan, Regulation of the Minister of Maritime Affairs and Fisheries Number PER.08/MEN/2008 concerning the Use of Gill Net Fishing Equipment in the Indonesian Exclusive Economic Zone (EEZ).

From the explanation above, there are details of the juridical review used in fish theft carried out by other countries, namely:

**Table 1 Regulations relating to fish theft**

No	Regulations Related to Fish Theft
1	Law No. 31 of 2004 concerning Fisheries
2	Law of the Republic of Indonesia Number 45 of 2009 concerning Amendments to Law Number 31 of 2004 concerning Fisheries
3	Law No. 27 of 2007 on Coastal and Island Management
4	Government Regulation Number 60 of 2007 concerning Fish Resource Conservation
5	Government Regulation Number 30 of 2008 concerning the Implementation of Fisheries Research and Development

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**No Regulations Related to Fish Theft**


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- 6 Regulation of the Minister of Maritime Affairs and Fisheries Number PER.13 / MEN / 2005 concerning the Coordination Forum for Handling Crimes in the Fisheries Sector
  - 7 Regulation of the Minister of Maritime Affairs and Fisheries Number PER.14 / MEN / 2005 concerning the National Commission for the Assessment of Fish Resources
  - 8 Regulation of the Minister of Maritime Affairs and Fisheries Number PER.15/MEN/2005 concerning Fishing and/or Fish Farmers in Fisheries Management Areas of the Republic of Indonesia That Are Not for Commercial Purposes
  - 9 Regulation of the Minister of Maritime Affairs and Fisheries Number PER.05/MEN/2008 concerning Capture Fisheries Business, Regulation of the Minister of Maritime Affairs and Fisheries Number PER.06/MEN/2008 concerning the Use of Hela Trawls in the Waters of Northern East Kalimantan, Regulation of the Minister of Maritime Affairs and Fisheries Number PER.08/MEN/2008 concerning the Use of Gill Net Fishing Equipment in the Indonesian Exclusive Economic Zone (EEZ)
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#### IV. IMPACT OF FISH THEFT

The rise of *Illegal Unreported and Unregulated (IUU) Fishing* activities that occur in Indonesian seas is increasingly worrying, based on data reported by the Ministry of Maritime Affairs and Fisheries of the Republic of Indonesia, state losses due to *illegal fishing* reach 300 trillion rupiah per year, namely by taking into account the level of losses that reach 25% of the total potential of Indonesian fisheries. The losses have a detrimental impact on the country and threaten the sustainability of sources marine and fisheries power.<sup>11</sup>

Every crime certainly produces losses that affect all sectors of life, the state, society, and the marine environment are direct victims of these

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<sup>11</sup> Kementerian Kelautan dan Perikanan Republik Indonesia, *Laporan Kementerian Kelautan dan Perikanan Republik Indonesia Tahun 2014*. (Jakarta: Sekretaris Jenderal KKP RI, 2014), pp. 18-20

*illegal fishing* actions. The impact of this loss is one of the main reasons a human action can be classified as a crime, *illegal fishing* in this case is a real crime and should be strictly acted upon because it has caused enormous losses to all sectors of Indonesian people's lives.<sup>12</sup>

1. Damaging Fish Sustainability in Indonesia's Seas

In fact, now *unreported* or misreported fisheries practices, *underreported* fish reports, and *unregulated* fisheries practices will cause a very crucial problem for the sustainability of Indonesian fish, namely the problem of accuracy of data on available fish stocks. If fish stock data is inaccurate, it is almost certain that fisheries management will not be appropriate and will threaten the sustainability of national and global fish stocks.

2. Harming the Country's Economy

Nationally, the state is the party directly harmed by this *illegal fishing* crime. Based on the Report of the Audit Board (BPK) state losses from The marine and fisheries sector is estimated to have suffered state losses from IUU Fishing of Rp 300 trillion every year.

3. Environmental Damage

In practice, *illegal fishing* actors do not hesitate to use fishing gear or *Fish Aggregating Devices (FAD)* that can damage the marine environment (*destructive fishing*), for example fishing using fish bombs, the use of cyanide poison, anesthesia and the use of fishing gear such as trawls (tiger trawls), they are not aware that fishing in that way will exploit marine habitats as where the fish live and carry out reproduction.

4. Illegal Fishing Violates Indonesia's Sovereignty

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<sup>12</sup> Riza Damanik, et. al.. *Menjala Ikan Terakhir (Sebuah Fakta Krisis di Laut Indonesia)*, (Jakarta: WALHI, 2008), pp. 33-34.

The majority of illegal fishing cases that occur in Indonesia, violations of Indonesian sovereignty are committed by all *illegal fishing* actors from the *countries* mentioned above, these foreign fishermen have violated the territorial boundaries of Indonesia's sovereignty without permission, entered the Indonesian seas and robbed Indonesian fishery assets. The firm stance of Indonesian law enforcement officials must be upheld in maintaining Indonesia's sovereignty from being entered by countries that intend to rob the nation's assets. Because the *tinakan* is one form of criminal act that is rampant in Indonesian waters.<sup>13</sup>

## V. APPLICATION OF SANCTIONS AGAINST FOREIGN FISH VESSELS IN ILLEGAL FISHING CASE

### 1. Types and Nature of Fisheries Criminal Penalties

The type of criminal punishment article 10 of the Criminal Code is known to have two types of criminal punishment, namely the main criminal and the additional criminal. The main penalty is a sentence that must be imposed by a judge consisting of the death penalty, imprisonment, confinement, and fines.<sup>14</sup>

### 2. Types of criminal violations of fisheries

1) Not having a SIUP, subject to article 26 paragraph (1) jo article 92 of the Law of the Republic of Indonesia No. 31 of 2004 concerning Fisheries, shall be punished with a maximum imprisonment of 8 (eight) years and a maximum fine of Rp. 1,500,000,000,- (one billion five million rupiah).

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<sup>13</sup> Jaelani, Abdul Qodir. "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).

<sup>14</sup> Gatot Supramono, *Hukum Acara Pidana & Hukum Pidana di Bidang Perikanan*. (Jakarta, Rineka Cipta, 2011), pp. 153-155.



- 2) Fishing gear is not in accordance with the size, can be subject to article 85 of the UUP with a maximum penalty of 5 (five) years and a maximum fine of Rp. 2,000,000,000,- (two billion rupiah)
- 3) Not having a SIB, subject to article 98 of the Fisheries Law with a maximum imprisonment of 1 (one) year and a maximum fine of Rp. 200,000,000,- (two hundred million rupiah)

### 3. Fisheries Criminal Sanctions

Criminal sanctions according to fisheries law can be in the form of administrative sanctions (revocation of permits), confinement (imprisonment) or fines. and with scattered sanctions can have a deterrent effect on illegal fishing actors in Indonesia's Exclusive Economic Zone. Especially in the field of fisheries, the EEZ law has been exclusively regulated in the new Fisheries Law, namely RI Law No. 34 of 2009 concerning amendments to RI Law No. 31 of 2004 concerning Fisheries.

### 4. Subsidence of Foreign Fish Ships performing Illegal Fishing at ZEEI

There are five reasons why the Foreign Fish Vessel removal policy is worth supporting:

- 1) There is no country in the world that justifies the actions of its citizens who commit crimes in other countries, the foreign ship that is sunk is a ship that does not have a license to fish in Indonesian territory. It is considered a criminal act. This means that the ship that was sunk before has gone through the court process and has maintained the legal force that the person concerned is guilty.
- 2) The act of exaltation is carried out in the territory of Indonesia's sovereignty and sovereign rights.

- 3) The act of drowning is carried out on the basis of a valid legal umbrella, namely article 69 paragraph (4) of the 2009 UUP, before 2009, indeed the sinking process must go through a court decision of permanent legal force.
- 4) Other countries should understand that Indonesia is harmed by such criminal acts. If it continues to be allowed, the losses suffered will be even greater.
- 5) The sinking process also pays attention to the safety of the crew members.<sup>15</sup>

There are two ways of sinking foreign fishing vessels carried out by the Indonesian government through the Authority:

5. Sinking of the ship through a court decision
  - a. Authorities that catch foreign fishing vessels bring boats and crew ashore.
  - b. On land where there is a fisheries court will be held legal proceedings
  - c. Once tried and convicted and convicted and the verdict has the force of law, the vessels will be confiscated.
  - d. If the ship is seized, then it is up to the executor prosecutor what to do with the ship.
  - e. Whether the ship will be auctioned or destroyed
  - f. If it is the choice, then one way is to be detonated and drowned.
6. Caught by the authorities
  - a. The second method is based on article 69 of the Fisheries Law No. 45 of 2009.

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<sup>15</sup> Gatot Supramono, *Foreigners Law In Indonesia*, (Sinar Grafika, Jakarta, 2012), p 108

Article 69:

- (1) Fisheries supervisory vessels function to carry out supervision and law enforcement in the field of fisheries within the fisheries management area of the Republic of Indonesia.
- (2) A fishery surveillance vessel as referred to in paragraph (1), may be equipped with a firearm.
- (3) Fisheries surveillance vessels may stop, inspect, carry and detain vessels suspected or reasonably suspected of violations in the fisheries management area of the Republic of Indonesia to the nearest port for further processing.
- (4) In carrying out the functions referred to in paragraph (1) the fisheries investigator and/or supervisor may take special actions in the form of burning and/or sinking foreign-flagged fishing vessels based on sufficient preliminary evidence.

Article 93

- (1) Any person who owns and/or operates an Indonesian-flagged fishing vessel fishing in the fisheries management area of the Republic of Indonesia and/or on the high seas, who does not have SIPI as referred to in Article 27 paragraph (1), shall be punished with a maximum imprisonment of 6 (six) years and a maximum fine of Rp2,000,000,000.00 (two billion rupiah).
- (2) Any person who owns and/or operates a foreign-flagged fishing vessel fishing in the EEZ that does not have SIPI as referred to in Article 27 paragraph (2), shall be punished with a maximum imprisonment of 6 (six) years and a maximum fine of Rp20,000,000,000.00 (twenty billion rupiah).
- (3) Any person who operates an Indonesian-flagged fishing vessel in the fisheries management area of the Republic

of Indonesia, who does not carry the original SIPI as referred to in Article 27 paragraph (3), shall be punished with a maximum imprisonment of 6 (six) years and a maximum fine of Rp2,000,000,000.00 (two billion rupiah).

- (4) Any person who operates a foreign-flagged fishing vessel in the EEZ, who does not carry the original SIPI as referred to in Article 27 paragraph (3), shall be punished with a maximum imprisonment of 6 (six) years and a maximum fine of Rp20,000,000,000.00 (twenty billion rupiah).

## VI. CONCLUSION

Illegal fishing is an illegal fishing activity in the territorial waters or exclusive economic zone (EEZ) of a country, meaning fishing activities that do not have permission to fish from fishing from the country concerned or in other words theft of fish by foreign parties. In terms of handling *illegal fishing* cases that occur in Indonesian waters, the government is too soft in processing perpetrators of violations. This is what makes neighboring countries not reluctant to Indonesia and results in cases like this always happening in Indonesia. We can overcome this problem when the Indonesian government makes improvements in various marine fields such as the procurement of modern petrol vessels and clear and firm legal actions, especially criminal enforcement in Law Number 45 of 2009 concerning Fisheries. Most recently, Indonesia through the Minister of Maritime Affairs and Fisheries has issued KEPMEN Number KEP/50/MEN/2012 concerning the National Action Plan for the Prevention and Control of *Illegal, Unreported and Unregulated Fishing* (IUU Fishing). Now law enforcement against illegal fishing actors has

begun to be strictly acted upon by the Indonesian government by carrying out the functions of Article 69 paragraph (4) of Law Number 45 of 2009 concerning Fisheries which reads: "In carrying out the functions as referred to in paragraph (4) fisheries investigators and/or supervisors may take special actions in the form of burning and/or sinking foreign-flagged fishing vessels based on sufficient preliminary evidence".

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## COMPETING INTERESTS

The Authors declared that they have no competing interests.

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*The only ones to profit from illegal, unreported and unregulated fishing are the owners of the fishing fleets who remain hidden behind veils of corporate secrecy.*

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